

1

2

Town of North Hempstead

3

Board of Zoning Appeals

4

PUBLIC HEARINGS

5

6

7

Wednesday, May 24, 2023

8

10:00 a.m.

9

10

BOARD MEMBERS PRESENT:

11

David L. Mammina, Chairman

12

Leslie Francis, Vice Chairman

13

Daniel D. Donatelli, Member

14

Patricia A. Goodsell, Member -

15

(Joined 12:12 p.m.)

16

Jay Hernandez, Member

17

18

19

ALSO PRESENT:

20

Deborah Algios, Town Attorney

21

Virginia Wagner, Secretary

22

Steven Perotta, Planner

23

Amy Boguszewski, Stenographer

24

25

26

Proceedings

CHAIRMAN MAMMINA: Good morning, ladies and gentlemen. Please rise and join Vice Chairman Francis in the Pledge of Allegiance.

(Following recitation of the Pledge of Allegiance, the meeting was called to order.)

CHAIRMAN MAMMINA: Thank you, all, and good morning to the Town of North Hempstead Board of Zoning Appeals. What I would like to do before we get started is to go over the way that we conduct business, the way that we do things in the Town of North Hempstead. In case you have been to other municipalities, we may do things a little bit differently here or if you have never been to a zoning board before, we are going to ask you just to stay relaxed. When you come up, just pretend we are all sitting at the kitchen table and we are talking. So the way that this will work is that as each case is called, we will ask the applicant to come up. The applicant will give their name and address to our reporter, and as everyone will when they come up. Simultaneously, I will then call the case. Just let me back up for a second. Our Secretary, Ms. Wagner, will call the case first and then I will call it after that. I will also ask if there is anyone in the room who has interest in the case. So that means that you are here to say it's wonderful or you are here to say it's horrible, but you just put your hand up at that point. And what we will do is when that case comes up after the

Proceedings

1
2 presentation has been made, we will ask that, one at a time,
3 for those people to come up, they give their name and address,
4 and it's the same procedure.

5 When that is done, if there is any support or
6 opposition, then the applicant -- and typically only the
7 applicant will get a second turn at the podium. Because they
8 will potentially have raised things that the Board wants to ask
9 them about, things that may have been said that they would like
10 the opportunity to either support or refute. And once that is
11 done, then the Hearing is done. It is very seldom that there
12 is a second Hearing. I can probably count on my two hands in
13 30-odd years how many times we have had a second Hearing. And
14 the Board will then do one of four things: We will either
15 approve the application, deny the application, we may reserve
16 the application or we may continue the application. Everybody
17 gets the deny and the approve, but what is the difference
18 between the reserve and the continued. So if we were to
19 reserve the application, that means the Board has all the
20 information that it wants, it doesn't need anything else, and
21 we need to either maybe look at another piece of paper, offer
22 maybe potentially a -- let me take that back.

23 I'm an architect. Everybody else is the attorneys
24 here. And every time I think I have it down, I don't. If we
25 reserve, that means the Board needs nothing else. And as I
26 said, we live stream so you can watch as we deliberate. It's

Proceedings

1
2 completely public. If we continue, that means that there are
3 other things that the Board either requests or would like to
4 do. So we may want to see a Building Department application.
5 We may offer some compromise to the applicant. We may want to
6 go out and take a look at the property again. So that would
7 mean that there is other information that either the applicant
8 would potentially be submitting to the Board or the Board
9 themselves wants to see. So did I get that all right, Deborah?

10 ATTORNEY ALGIOS: (Nodding.)

11 CHAIRMAN MAMMINA: Good. So three minutes. The
12 applicant, then they have the podium and they have to put their
13 case on the podium. Anyone who wishes to speak either in
14 support or in opposition, we have a three-minute rule. Now,
15 it's not three minutes where we are going to chop your head
16 off, you know, if you hit three minutes and you need another 30
17 seconds or so, but we do like it to be concise because
18 otherwise we could be going on here for the better part of the
19 day, which frequently our calendar makes that happen, anyway,
20 and we don't mind, that's part of what we do. But, you know,
21 we limit it in that way so that we can get the Hearing in. If
22 there is something that you agree with that was said by the
23 previous applicant, all you need to do is come up and say I
24 agree with everything that the person before me said or you
25 might like to say, but I would like to add, you know, whatever.
26 So please feel free to have that.

Proceedings

1
2 Then, I guess, the last two things I will say is we all
3 live and die by our phones and our computer stuff. So if you
4 could please take them out, hold them up high. You don't have
5 to shut them off, they just need to be on silent so that it
6 doesn't start to play Stairway to Heaven in the middle of the
7 Hearing. And if you need to make a phone call or take a phone
8 call, all you need to do is stand up and just go out into the
9 lobby, and that's okay. That's absolutely fine. The other
10 thing that we will ask is that if there is anyone who is not
11 here yet, would you please pass the same thing on to them. And
12 then we also ask that crosstalk between people in the audience
13 is really kept to zero because this young lady has a tough
14 enough job getting all of this recorded. We don't want to give
15 her an any more difficult time. The Board, every once in a
16 while, has to be reminded just to slow down and not talk over
17 each other.

18 So with that said, Ms. Wagner, do we have any
19 modifications to the calendar this morning?

20 SECRETARY WAGNER: We do not.

21 CHAIRMAN MAMMINA: Okay. There you go. So all cases
22 will be heard today. So please call the first case.
23
24
25
26

1 Appeal #21385

2 RESIDENCE CALENDAR

3 SECRETARY WAGNER: The first Appeal is Appeal #21385 -
4 Matthew & Heather Perceval; 12A Henderson Avenue, Port
5 Washington; Section 4, Block 38, Lot 26; Zoned: Residence-C.
6 Variance from S70-49.C to construct additions that make the
7 house too big.

8 CHAIRMAN MAMMINA: So you heard Appeal #21385 - Matthew
9 & Heather Perceval. The applicant will then come forward. Is
10 there anyone else interested in the application? Seeing no
11 one. Please give your name and address. And I will assume
12 that you are Heather Perceval?

13 MRS. PERCEVAL: (Nodding.)

14 CHAIRMAN MAMMINA: So the only thing that we ask is --
15 you may certainly speak, but one at a time, okay. And then if
16 you speak, please put your name and address on the record, as
17 well.

18 CHAIRMAN MAMMINA: Ms. Miller, you are up.

19 MS. MILLER: Janice Miller, Architect, PLLC; 2 Lincoln
20 Place, Port Washington, New York. The Percevals have a Cape
21 Cod home built in 1961 in Port Washington. It's in a
22 Residence-C District, but they have over 10,000 square feet of
23 property. And we are here today to ask for a gross floor area
24 variance of a 107 square feet, which is -- it's for a first
25 room mud room, which is badly needed in their home and an
26 additional bedroom and bathroom upstairs. So we tried very

Appeal #21385

hard to keep these three minimal additions so that we wouldn't exceed the gross floor area by much. The home is 1940 square feet as it is, it's going up to 2399. But the issue is the garage, a two-car garage, which is 508 square feet, which we would like not to touch, if we could. That's the gist of this.

CHAIRMAN MAMMINA: Do you want to talk about the fact that you have a very large lot and what might, if you were in a different situation, you be entitled to what we call a bump-up so that we understand what would happen if you were to look at the full 10,000 square feet.

MS. MILLER: So in order to receive the bump-up, we would have to comply with every setback requirement. And the house is 25.4 feet from the front yard, which is what a Residence-C is allowed, 25 feet. But we don't make the bump-up to even the B District with that front yard setback. These additions, by the way, are all in the back and they won't be visible from the front. We are not changing the character of the neighborhood in any way or the home, really, from the front.

VICE CHAIRMAN FRANCIS: Is there another house directly behind this house?

MS. MILLER: On the street behind, correct. Yeah.

VICE CHAIRMAN FRANCIS: But not abutting your backyard?

MS. MILLER: It's 140-foot depth.

MEMBER DONATELLI: If we could just ask that you go

Appeal #21385

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

over the five factors?

MS. MILLER: Did I do my homework? Yes. So there is really no undesirable change, as I see it, because it's all happening in the rear. Is there another way to achieve this? Actually, no. The additions are a dormer in the back of a second floor Cape Cod and a mud room in the back where the garage -- I'm sorry -- where the driveway comes right up to the house. It's not a substantial variance. It's a 107 square feet, and we really kept that in mind in designing this. I don't see any way that this has an impact on the conditions in the neighborhood. And is it self-created? No, it's not self-created. They inherited the house with a 508 square foot garage, which they do need, but they did not create this situation. They are just looking for a little additional space for their three children to grow up in this neighborhood.

MEMBER DONATELLI: Well, not to be argumentative, but the fact on whether the alleged difficulty is self-created, it is self-created because you are requesting the variance. But that is not necessarily determinative. But again, not to be argumentative but almost everything that comes before us is self-created. Does anyone else have any questions?

CHAIRMAN MAMMINA: Yes. I guess, the other thing that, I think, might be important to the record is what is the required front yard? And again, what do you have as your front yard that creates the deficiency?

1 Appeal #21385

2 MS. MILLER: The required is 25 feet.

3 CHAIRMAN MAMMINA: Okay.

4 MS. MILLER: We have 25.4. Yeah.

5 CHAIRMAN MAMMINA: Okay.

6 MEMBER HERNANDEZ: How long has the garage been there?

7 When was it built? Do you know?

8 MRS. PERCEVAL: All right.

9 MEMBER HERNANDEZ: Just put your name on the record,
10 please.

11 MRS. PERCEVAL: Heather Perceval; 12A Henderson Avenue.
12 To my knowledge, the garage was built at the same time as the
13 house, so in the early 1960s. We have lived in the house for
14 10 years. It's been there since then.

15 MEMBER DONATELLI: I would note for the record that as
16 I went through the neighborhood, and particularly Henderson,
17 there tend to be great many houses on standard-sized lots. And
18 this house really stands out because of the point of the fact
19 the lot is so much larger than many other houses in the area,
20 which is actually a nice thing to see. Henderson is actually a
21 very charming street. Most of us go down to see these
22 applications in-person before we vote on them and always
23 pleasantly surprised to see how charming Henderson is. Does
24 anyone else have any questions?

25 CHAIRMAN MAMMINA: I think I would just like to correct
26 my question that I had just asked regarding the required front

Appeal #21385

yard. Because you have 25.4, which is a compliant front yard in a Residence-C, but if you were to bump-up, that would have to go to 30 feet. So, that, is the deficiency.

MS. MILLER: Yes.

CHAIRMAN MAMMINA: Because you would not be able to bump-up to the B, then, because of the front yard setback.

MEMBER DONATELLI: I would also point out for the record that this house would otherwise be compliant had the garage been 300 square feet less, but because the garage is 507 square feet, that puts this property technically over the limit because the 507 square feet are added into the gross floor area. I know in the past, Mr. Chairman, we have taken the size of the garage into account, particularly when the garage is not the subject of an application, but it does have the effect of putting the entire gross floor area over. So in the past, we have approved such applications. I also find that, really, the purpose of the Town Board would be met here in trying to preserve an oversized lot if we were to grant this application. So I make a motion that we grant. Well, the size of the overage --

MEMBER HERNANDEZ: Is almost 500 square feet.

MEMBER DONATELLI: But it's a 107 square feet.

MEMBER HERNANDEZ: Only if you take the garage out. I think what we need to do is have it appear on the record that it's over 500 feet.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Appeal #21385

MS. MILLER: No. It's over 107 with the garage.

MEMBER DONATELLI: Right, with the garage.

MS. MILLER: Right.

MEMBER DONATELLI: So in other words, factoring in the garage, but we are still only 107 feet.

MEMBER HERNANDEZ: My mistake.

MEMBER DONATELLI: So going back to my motion. I make a motion that we grant the application.

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

VICE CHAIRMAN FRANCIS: Second.

CHAIRMAN MAMMINA: Seconded by Vice Chairman Francis. Please poll the Board.

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.

MS. MILLER: Thank you.

MRS. PERCEVAL: Thank you so much.

1 Appeal #21386

2 SECRETARY WAGNER: The next Appeal is Appeal #21386 -
3 Bob Campbell; 72 Murray Avenue, Port Washington; Section 5,
4 Block 58, Lot 139; Zoned: Residence-A. Variance from
5 \$70-100.2(K) to install a generator that is too close to the
6 side property line.

7 CHAIRMAN MAMMINA: You heard Appeal #21386 - Bob
8 Campbell. Is there anyone who is interested in the application
9 other than the applicant? Seeing no one. Please give your
10 name and address.

11 MR. CAMPBELL: Good morning. My name is Bob Campbell;
12 72 Murray Avenue, Port Washington, New York.

13 MEMBER DONATELLI: Sorry. Audiovisual issues.

14 MR. CAMPBELL: Okay. Good morning, Chairman, Vice
15 Chair, and Board Members. We are proposing to install a
16 whole-house generator in a location on the side yard of our
17 home that does not comply with the setback requirements of the
18 Building Department. Using a suitable location that won't
19 adversely impact both the Appeal and the appearance of our
20 property, as well as the functionality of our small backyard is
21 difficult because, one, we are on a small parcel of land, 50 by
22 120, and, two, being on a corner property, it's bordered by two
23 sides, by Murray Avenue and Mitchell Road. The proposed
24 location is on the same side of our home where there are two AC
25 condenser units for which a variance was previously granted
26 several years ago.

Appeal #21386

1
2 As far as the noise is concerned, the sound rating of a
3 Generac generator is one of the industry's quietest for its
4 bimonthly 5-minute test cycle that is rated at 57 decibels, and
5 the normal operating rating is 67. When you compare that to
6 the two condensing units, which are 75.5 and 76.4 ratings, it
7 is quieter.

8 As we did with the AC units, we would plant bushes in
9 front of it as a screen. This side is where both the gas main
10 comes into the building and where the electric panel is located
11 in the basement below. The proposed location is already,
12 approximately, 30 feet from these utilities. Moving it any
13 farther away will add to the cost to an already expensive
14 project.

15 Before applying for the permit, we spoke to both our
16 backyard neighbors and our side yard neighbors and they have no
17 objection to the location. I have since spoken to three of the
18 other neighbors noticed in the Appeal and they all said that
19 they have no objections and that they are willing, if you
20 require, to state so in writing.

21 Lorraine and I bought our home over 35 years ago. And
22 as you can see from our file, we've made numerous improvements
23 over the years, and this one has been on our to-do list for
24 quite some time. We are both now in our 70s and not as quite
25 as hearty as we once were. And as we age, we dread the
26 potential of having to live through an extended power outage

1 Appeal #21386

2 like Superstorm Sandy, especially if it comes in the middle of
3 a deep winter freeze. For these reasons, we hope that you will
4 grant our Appeal.

5 VICE CHAIRMAN FRANCIS: So the two AC units that we
6 granted, how far are they away from the side property line?

7 MR. CAMPBELL: I don't know.

8 VICE CHAIRMAN FRANCIS: Well, is the generator going to
9 be any closer to the side property line in the proposed site?

10 MR. CAMPBELL: I don't honestly know. I can get back
11 to you with that.

12 CHAIRMAN MAMMINA: My own feeling is that, as a joke,
13 that the wild parties that you have and five minutes every two
14 months make much more noise than this generator testing. You
15 know, generators have become a necessity at this point, at
16 least viewed by the Town Board, by most municipalities, and
17 certainly a large percentage of the constituents. You have a
18 very small area to place it in. And if you were to place it in
19 a compliant area, you would actually see the generator more
20 than that, and these are things that Member Donatelli had
21 pointed out to me. I didn't mean to take it over.

22 MEMBER DONATELLI: It's okay. Now I don't have
23 anything to say.

24 VICE CHAIRMAN FRANCIS: So my note says that the AC
25 units are 1.3 inches away from the side property line.

26 MEMBER HERNANDEZ: 1 foot 3 inches.

Appeal #21386

VICE CHAIRMAN FRANCIS: 1 foot 3 inches. Sorry. Would you agree that that's probably --

MR. CAMPBELL: That's probably it because that's where we put it.

MEMBER DONATELLI: I would add, just as in the other application that we just heard, we, Members, try to see all the properties that come before us. And having driven past your house and the unique circumstances of your house, where your house is placed on the lot and where the proposed generator -- where you are proposing to put the generator is probably the best place for it because it is most shielded from, really, the public view. And it is really in keeping in line with the prior grant that we gave you for the air-conditioners. So unless somebody else has any questions?

MEMBER HERNANDEZ: I would just like to make one comment. Because from personal experience, although your AC units are nicely screened, as Mr. Donatelli said in the shrubbery, unfortunately, that, will not be the case for the generator. Any shrubbery you put surrounding your generator will be burnt up by the weekly testing, so you will need to find some other form of screening with wood fencing or something. Because whatever plants you spend money on there will die. So find another screening alternative, but you have to screen it, of course.

MEMBER DONATELLI: But these generators I know do come

Appeal #21386

1
2 with a noise abatement and they do tend to be some of the
3 quietest units on the market. So having said all of this and
4 because I do think the uniqueness of this property really does
5 make this the best location for them, I make a motion that we
6 grant the application.

7 CHAIRMAN MAMMINA: We have a motion to approve by
8 Member Donatelli. Do we have a second?

9 MEMBER HERNANDEZ: Second.

10 CHAIRMAN MAMMINA: Seconded by Member Hernandez.
11 Please poll the Board.

12 SECRETARY WAGNER: Member Hernandez.

13 MEMBER HERNANDEZ: Aye.

14 SECRETARY WAGNER: Member Donatelli.

15 MEMBER DONATELLI: Aye.

16 SECRETARY WAGNER: Vice Chairman Francis.

17 VICE CHAIRMAN FRANCIS: Aye.

18 SECRETARY WAGNER: Chairman Mammina.

19 CHAIRMAN MAMMINA: Aye. The application is granted.

20 MR. CAMPBELL: Thank you very much.

21 MEMBER DONATELLI: Thank you very much.

22 CHAIRMAN MAMMINA: Thank you.

23

24

25

26

1 Appeal #21387

2 SECRETARY WAGNER: Next Appeal is Appeal #21387 - Adam
3 Block; 13 Wakefield Ave., Port Washington, Section 6, Block 65,
4 Lot 26; Zoned Residence-B. Variances from §§ 70-40.A and
5 70-229.A to reconstruct an existing attached garage that is too
6 close to the street and not in compliance with a prior BZA
7 approval.

8 CHAIRMAN MAMMINA: You have heard Appeal #21387 - Adam
9 Block. Is there anyone in the room interested in the
10 application other than the applicant? Seeing no one. Please
11 give your name and address.

12 MR. THOMAS: Good morning. My name is Victor Thomas,
13 Architect, P.C.; 155 Stonytown Road in Plandome, New York. The
14 application in front of you is -- so a little history on the
15 project. It's a unique situation insofar that my clients were
16 interested in renovating, refurbishing the interior of their
17 home. We were going to take down a few interior walls. And
18 that project --

19 CHAIRMAN MAMMINA: Excuse me. One second. Everyone
20 please put the phones on silent. And again, if you need to
21 take a call, take a call. And if you got important e-mails
22 coming in, you can just step outside. You can hear the Hearing
23 outside. You will know when your turn is coming up. So again,
24 we just request that as a courtesy to one another, but I think
25 most of all to our stenographer.

26 MR. THOMAS: So maybe I will just start again.

Appeal #21387

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CHAIRMAN MAMMINA: Sure.

MR. THOMAS: So the project, originally, my clients, their intention was to refurbish the interior of their home, reconfigure some of the spaces. And part of that extended to the fact that their existing garage, the roof joists were at the end of their life. We wanted to refurbish the garage. The garage in its current configurations is quite low. My clients cannot fit their minivan in the garage. It has a 6 foot 5 garage door that is custom cut and the garage ceiling height is under 7 feet. So we applied for that application. And it turns out that the garage in 1954 was constructed -- so it's over half a century ago -- to a different dimension than what was approved, I guess, back in the 1950s. During that time, the house has had multiple projects that have been completed to it, specifically in 2003 a monster addition where they took the roof off the cape and made it a colonial, which there is a Certificate of Completion for. So when my clients purchased the house in 2016, they had no idea that there was even an outstanding issue with the garage.

So what we were planning on doing was simply repairing the roof. We wanted to raise the roof so my clients could park their car in the garage. Because the garage configuration, the current configuration, in order for everyone to come out and go into the driveway, they almost have to walk to the sidewalk to physically get to the driveway. And that's when we determined

Appeal #21387

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

that somewhere over the last 60 years, the garage was modified and it was never picked up for that period of time. So we are asking -- we are not reconstructing physically the garage, we are rebuilding the roof and raising the roof to make the garage usable.

MEMBER HERNANDEZ: So is the whole roof of the garage unimpeded by the house? The garage is all outside of the house?

MR. THOMAS: Yes.

MEMBER HERNANDEZ: Because I am looking at your plans and it looks like --

MR. THOMAS: So the garage, it's a unique garage. Clearly, back in the 50s, this was something they thought was a good idea. It's a unique garage. It's deep. You cannot physically get to the garage from the house. Due to my clients' needs, they have three small --

MEMBER HERNANDEZ: But that wasn't my question. My question is, as I am looking at your plans.

MR. THOMAS: Yes.

MEMBER HERNANDEZ: It appears that at least the last third of the garage is part of the house. It's not sitting in front of it.

MR. THOMAS: At a lower level. The back wall of the garage sits against the foundation. Because there is no basement in this house. It physically touches the house, yes.

1 Appeal #21387

2 MRS. BLOCK: But it's distinct.

3 VICE CHAIRMAN FRANCIS: Ma'am.

4 CHAIRMAN MAMMINA: Name and address, please.

5 MRS. BLOCK: Lauren Block; 13 Wakefield Avenue in Port
6 Washington.

7 CHAIRMAN MAMMINA: Okay. Go ahead.

8 MRS. BLOCK: The garage is adjacent to and attached to
9 the house and completely separate and only accessible by
10 walking to the sidewalk.

11 MEMBER DONATELLI: So may I ask some questions just for
12 clarification? Again, we past by your house and I saw that it
13 is below street grade so that there is a slight decline as you
14 are pulling into your garage. And, certainly, we are all aware
15 of the fact that cars lately have gotten substantially taller
16 and larger than they ever were in the 40s and 50s when these
17 things were built. Having said that, how much taller are you
18 anticipating that the garage will be than it currently is?

19 MR. THOMAS: Approximately, a foot.

20 MEMBER DONATELLI: So just 1 foot taller?

21 MR. THOMAS: Our goal is maintain a flat roof to
22 minimize the bulkiness of the structure. We are raising it a
23 foot so that I can put a 7-foot garage door. As you observe,
24 when you come down the driveway, you are at a slope. So when
25 you hit the horizontal section, it's a higher elevation than it
26 is flat.

Appeal #21387

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

MEMBER DONATELLI: Especially, if you have a luggage rack or something on top of the car.

MR. THOMAS: Right. They have a minivan.

MRS. BLOCK: And our goal is to get the cars off the street so that we can actually park it in the garage and leave the space in front of our house free.

MEMBER DONATELLI: Right. So it is a two-car garage. And it is actually one of the requirements of the Town Code that houses actually have places for two off-street cars. So your purpose in wanting to get the cars off the street is actually helping you comply with another section of the Town Code.

MRS. BLOCK: Exactly. Exactly. And this way it's safer for our kids to not have to go to the street to then get to the house.

MEMBER DONATELLI: I did drive up and down Wakefield. Most of the houses there really do seem to honor the front yard setback. And I understand this was, I guess, a prior Board decision in 1954 that allowed for the encroachment done to the front yard setback. But, apparently, when it was built, it was encroaching a little bit farther than approved in 1954. Having said that, it's really only 1 foot. The applicant is proposing to raise the garage only 1 foot than that which it currently exists. Does anyone else have any questions?

CHAIRMAN MAMMINA: I think it's 2 foot 2, because you

1 Appeal #21387

2 are raising it to 8 inches and then you have your framing at 1
3 foot 2. It doesn't give an overall dimension in your
4 elevation. On the tag, it's 1 on Drawing A3. So I think you
5 are raising it -- and it's not going to damn your application.
6 I just want the record to be correct. And if I'm wrong, you
7 know, that's okay, because the 1 foot 2 on top of the 8.

8 MR. THOMAS: I'm thinking interior height, yes. I'm
9 sorry about that.

10 CHAIRMAN MAMMINA: Okay.

11 MEMBER DONATELLI: So it will be 1 foot taller on the
12 inside, but 2 feet taller on the outside?

13 CHAIRMAN MAMMINA: 2 foot 2.

14 MR. THOMAS: I can kick down.

15 CHAIRMAN MAMMINA: You don't need to, but zoning is
16 about the exterior and generally not about the interior, and
17 that's okay. That's reasonable. You need that to build it.
18 So we have a motion from Member Donatelli.

19 MEMBER DONATELLI: I didn't make it yet.

20 CHAIRMAN MAMMINA: It's just that I'm very excited
21 about this application because the original was approved in
22 1954, approximately, the day of my first birthday.

23 MR. THOMAS: It's an interesting application. It's an
24 interesting application.

25 MEMBER DONATELLI: All right. So with all of that
26 said, I make a motion that we grant the application.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Appeal #21387

CHAIRMAN MAMMINA: Okay. We have a motion.

VICE CHAIRMAN FRANCIS: Second.

CHAIRMAN MAMMINA: Seconded by Vice Chairman Francis.

Please poll the Board.

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. Application is granted. Thank
you very much.

VICE CHAIRMAN FRANCIS: Off the record.

(Whereupon, a discussion was held off the record.)

1 Appeal #21380

2 SECRETARY WAGNER: Next Appeal is Appeal #21380 -
3 Geevarghese Philipose; 185 Patton Boulevard, New Hyde Park;
4 Section 8, Block 110, Lot 35; Zoned: Residence-C. Variances
5 from §§70-49.C, 70-50.C, 70-101.B and 70-50.B to construct a new
6 dwelling on an existing foundation that will be too big and too
7 close to the street with a front porch that will be too close to
8 the street.

9 CHAIRMAN MAMMINA: You have heard Appeal #21380 -
10 Geevarghese Philipose. Is there anyone in the room interested in
11 the application other than the applicant? Seeing one hand -- two
12 hands up. So you will have the opportunity to speak after the
13 presentation. Thank you, both.

14 MR. GRAY: Good morning. Chris Gray, Architect; 2401
15 Capri Place, North Bellmore, New York. I am representing
16 Geevarghese Philipose located at 185 Patton Boulevard, New Hyde
17 Park. Good morning. I would like to hand in some cards,
18 mailing cards. My client recently purchased this home. They
19 are sitting in the audience behind me to the left. And on this
20 property, they would like to put a 2-story addition that wraps
21 at the rear of the dwelling and also to the left side of the
22 dwelling and also a covered porch. So in doing so, the first
23 issue is -- also, the amount of wall being removed on this
24 structure is deeming it a new dwelling on an existing
25 foundation. So it's a healthy sized two-story addition.

26 First issue is that they are going over the allowable

Appeal #21380

1 floor area, floor area maximum allowable in this zone. They
2 are located in Residence-C. The floor area proposed is 2,883,
3 whereas the limit is 2,800. So they are 83 square feet over
4 the allowable floor area. Also, the other issues are the front
5 yard setbacks. This property is located on a corner piece of
6 property. In the principal front yard on Patton Boulevard, the
7 majority of the structure complies with zoning, but as you
8 approach the corner, the property kind of turns inward and so
9 the corner of the porch and the corner of the two-story
10 addition are within the front yard. The required front yard
11 setback is 25.58 feet, that is the average front yard setback
12 on Patton. The two-story addition, there is a little cut out
13 on the second floor, so that setback is a little larger. The
14 second floor is 25.58 feet to the front property line, so
15 that's 0.28 feet within the required front yard setback. And
16 the lower section on the first floor, the setback is 23.8 feet,
17 and that is 1.78 feet into the required front yard. And the
18 porch starting with the 25.58 average front yard setback
19 requirement, there is a 5-foot permitted encroachment. So the
20 required setback of the porch should be 20.58 feet. The
21 proposed is 17.8. So that front porch is 2.78 feet within the
22 required front yard setback.
23

24 VICE CHAIRMAN FRANCIS: Did you say 21.58?

25 MR. GRAY: Well, that is what is required. 20.58 feet
26 is required.

Appeal #21380

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

VICE CHAIRMAN FRANCIS: I thought it was 20.53.

MR. GRAY: Well, it started. It's 25.58 is the front yard setback normally to adhere to, but being that it's a covered porch, there is a permitted encroachment of 5 feet. So that requirement front yard setback is 20.58 feet for the porch. I am taking 5 feet off. If there is a discrepancy, I can clarify it.

VICE CHAIRMAN FRANCIS: I think we are good.

MR. GRAY: Okay. Then the next item, being this is on a corner lot, the front yard setback required on Mason is 20 feet and we are proposing a front yard of 15.5 feet, so that is 4.5 feet into the required front yard. In doing this and coming up with this design, we kind of -- I was looking to make this addition so that it would not encroach into Mason Street and try to push this thing back, but the design wasn't working too well. So we did explore that option. With the front, we really can't help with the way the house is positioned right now, especially on Patton as it approaches the corner, how that property line cuts into the house. So in any event, there would be a front yard issue in any case. So, that, we can't help too much with the front yard on Patton and in respect to the main building.

Looking at the five factors. Is this going to create an undesirable change? The existing structure, I'm sure you have seen it. It's a boring little box as the house sits right

Appeal #21380

1
2 now. The proposed design is going to make for a very beautiful
3 home and it will hold some nice value. And I am sure it will
4 help the neighbors increase the value of their properties, as
5 well. And item number 2, if this was sought by another method?
6 Yes. We did explore a little bit in kind of doing a little
7 less onto Mason and a little more onto the rear property line.
8 But like I said, the design was not working as well as this
9 does, too. Also, in the future, they would like to install a
10 pool. So they would like to keep some reasonable space in what
11 is their backyard. Is the variance substantial? I think it's
12 not substantial, but it's a reasonable request. The bigger
13 issue is the encroachment on Mason Street. So we are
14 requesting to go into that required front yard a little less
15 than 25 percent going into there. So not massive, but, yes, we
16 are asking relief for that. Would this have an adverse effect
17 on the neighborhood? I would say no. This is going to enhance
18 the neighborhood. As you see the front design of this, it
19 looks very nice. A major upgrade as to what is currently
20 there. And the last thing is, is if this is self-created? Of
21 course it's self-created, otherwise we wouldn't be here.

22 MEMBER DONATELLI: Mr. Gray, I have a question. Right
23 now the house is compliant with front yard setback and the
24 secondary front yard setback. Is that correct?

25 MR. GRAY: Let me double-check. It's very close, that
26 corner, but we will say yes.

Appeal #21380

MEMBER DONATELLI: And you have indicated that you are looking to use the existing foundation. What percent of the existing foundation are you looking to reuse?

MR. GRAY: Well, use the entire foundation that's there and then expand on it. The reason why is the definition. There is 50 percent of exterior wall removal that would constitute being a new dwelling. So by technicality, that's what is being used into a new dwelling on an existing foundation.

CHAIRMAN MAMMINA: What does that mean, that you are reusing existing foundation? That, has nothing to do with what you are building. You are creating an entire new foundation all around it. So you are, basically, engulfing an existing foundation. I mean, you are doing it for a building code reason. We are zoning. So I think that's the way we need to look at it. It doesn't matter where your existing foundation is because it's not like you are saying, okay, I got this house and I'm going to build exactly where it was and it had a non-conforming front yard. Can I have my front yard back? So I don't understand that part of it. And if I'm missing something, then, please. But I am looking at your Drawing A2 and it shows -- I mean, I'm not going to venture a complete guess, but what you are adding beyond that existing foundation in square feet gets pretty close to exactly what the existing house is, if we improve the porch issues.

Appeal #21380

1
2 MR. GRAY: Well, that's the intention, to work with the
3 majority of the structure that's there and expand on it. It
4 was just by technicality that the term -- you know, this would
5 normally start off as a proposed two-story addition, but
6 because by technicality of how much is going to be removed on
7 the second floor mainly or mostly, then by definition, it
8 turned into a new dwelling.

9 CHAIRMAN MAMMINA: But I think it twists the words. So
10 it would be one thing if you were building two stories up on
11 top of the existing foundation, and we get many applications
12 that way. And I'm not saying you are trying to pull a fast one
13 and I don't mean it that way, but that's not what you are doing
14 here. You are expanding the foundation out and then you are
15 building two stories on top of that. Is that correct?

16 MR. GRAY: Well, it's starting with a two-story
17 structure and then adding a two-story addition on two faces.
18 How does that not answer?

19 CHAIRMAN MAMMINA: You are mincing words.

20 MEMBER HERNANDEZ: Let me try it differently, Chairman.
21 When you are saying you are using the existing foundation, are
22 you removing the wall that sits on top of the existing
23 foundation?

24 MR. GRAY: A part, yes.

25 MEMBER HERNANDEZ: Okay. Are you replacing that wall
26 in that location?

Appeal #21380

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

MR. GRAY: No.

MEMBER HERNANDEZ: You're not?

MR. GRAY: No.

MEMBER HERNANDEZ: So therefore, you are not building over an existing foundation, you are building over a different foundation, which happens to be farther out?

MR. GRAY: That's fine, yes.

MEMBER HERNANDEZ: Okay.

CHAIRMAN MAMMINA: There is a platform that will be in there, but that platform has, as far as I can see, nothing to do with what you are proposing, you know, to do. And, I guess, my concern is that those front yard setbacks are, you know, in terms of relief, very substantial. Are there any other houses that you can point to in the community that have 15-foot setbacks?

MR. GRAY: No.

CHAIRMAN MAMMINA: Because you say it's in character with the community. So in character with the community would mean that you can point to other instances. I mean, that becomes a 31-foot facade that your -- 32 foot, according to the drawing, two stories that you are proposing on there with a gable end, as well. So that's going to be a 28-foot-6-high wall that has, as you said, 20 percent less front yard setback than it's supposed to have. Now I'm not saying that it would be magic, but if it was one story and it had a hiping piece on

Appeal #21380

1
2 it or something, but you are coming down the road and you are
3 getting something that is more than two times the height of
4 this room.

5 MEMBER DONATELLI: Such a build would be out of
6 context, particularly when we are talking about a corner
7 property that is currently compliant with front yard and
8 secondary setback. And now you are asking us to build
9 something that is substantially not compliant when there are no
10 other houses in the area that are similar to that. There are
11 parts of Town that predate the code. There are parts of Town
12 where, as the Chairman said, if a house predates the code and
13 it burns down and now the code requires a certain setback, the
14 applicant will come to us and will say we want to use the
15 existing foundation, it is a huge cost to pour a new
16 foundation, we are just looking to replace what is there.
17 That, is a different situation from what is being proposed
18 right here. A large part of what we do is how the house
19 presents to the street, to the public. And I, as one Board
20 Member, would think that this is a very significant
21 encroachment to both the front yard and the secondary front
22 yard setbacks. And unfortunately, we really don't factor into
23 our discussions whether or not aesthetically it's pleasing,
24 that's not what we do as a Board of Zoning Appeals. So, that,
25 we really can't factor that into our calculations.

26 MR. GRAY: I would like the owner to say a few words.

Appeal #21380

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

MEMBER DONATELLI: Sure.

SECRETARY WAGNER: Just put your name and address.

MR. PHILIPOSE: Geevarghese Philipose; 185 Patton Boulevard. How are you guys? Good morning. My wife and I are in medical healthcare. We are PAs. Two hospitals, NYU Winthrop and Flushing Hospital. And we currently reside in Elmont, two little kids, 12 and 7, and our dream house would be this. We purchased it in December and we want to be in a good neighborhood for our kids to elevate in the education. This is why we chose this neighborhood. And, obviously, this is our dream house for the next 20 years and be part of this community as healthcare workers. And this is what our dream house is, to be honest with you.

MEMBER DONATELLI: We listen very carefully and we try to factor all of this into our decision-making process. Again, as one Board Member, we are required by law to review the five factors and to try and come up with a decision based on the five factors. Part of the reason why people love Nassau County, typically the Town of North Hempstead, is because of the way residences are situated. And so, as you have indicated, many people move here because they like the environment, they like the schools, they like the neighborhoods. If we were to allow an encroachment into this case, then we would be required to allow encroachments in other cases, as well. So unfortunately, it's not just a matter of

Appeal #21380

pleasing yourself, it's a matter of trying to comply with the five factors that we are required to consider, but it's also setting precedent for other future cases.

CHAIRMAN MAMMINA: I will put one other thing out there. Because one of our tests is, is there an alternative. And, you know, to the applicant, believe me I understand exactly what you are saying, that's why I live in Nassau County. We pay a ton of taxes and that's all okay. And we pay those taxes -- I don't want to say willingly, but because it's all part of what we all have to gain. But, I guess, Mr. Gray, I am looking at your proposed design. Why can't you just add onto the back of the house that same dimension just by turning the house and then it's gone. You are, basically, reconfiguring the entire interior of the house, which is wonderful. And I also feel strongly that everyone should have that very nice master bedroom suite and those other bedrooms, and that TV room, and the new kitchen. And again, we all work hard and you are going to be investing a lot of money into this house. And I have been in my house 43 years. So we kind of dig in and we love it. And I think everybody sitting up here is the same way. So, I guess, I am looking at it and saying, okay, if you were to turn the house -- because you can now really reuse your existing foundation -- that part that fronts along Patton as part of your side -- I guess, it's your side yard there that faces your neighbor -- and then the part that

Appeal #21380

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

also faces Mason and you could get your porch in front. Just flip the house and you got it.

MR. GRAY: You mean what? Move the front door?

CHAIRMAN MAMMINA: Yeah. Let the front door face Mason. Or, you don't have to do it that way. You could have a long direction if you had a narrower lot, but that would give you exactly what you want, maybe with more flexibility.

MR. GRAY: Well, we did explore that route and spaces weren't coming up to their liking. So at first, they came to me and they wanted to go 10 feet into the Mason Street. I advised that was way too much. Going 4.5 I thought was, you know, enough to ask.

CHAIRMAN MAMMINA: It's a lot. You are asking for 20 feet, you know. Again, you are asking for a gable end there, as well. I mean, please, take this as I mean it, you know, it's like a racquetball wall. It's very, very tall. And to the applicant, you will have the opportunity to speak, but one of the things that we have to look at in one of the tests is, is there alternative, and there is an alternative. I mean, it's a very, very plain alternative or a very obvious alternative is the word that I'm looking for. I can, basically, take the footprint of what you have here exactly the way that it is and turn it. You can have a compliant front yard by adding onto that 20 feet, which would give you a little more depth, if you needed it that way. So just, you know, for

Appeal #21380

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

me -- and I can be completely wrong -- I don't see a reason why you can't do that.

MEMBER DONATELLI: And I think it would still preserve the option. I think you indicated that your clients, at some point, might want to consider a swimming pool in the backyard. I think by following the Chairman's suggestion, it might still preserve that option for you.

CHAIRMAN MAMMINA: And we do recognize that corner lots are typically difficult when houses were built way back when. You know, generally, corner lots go for a little less money because you had to deal with the two front yards in there, but I don't know. I see a strong option there. I don't know if it would eliminate all of the variances. And I know your client wants to speak, and that's certainly fine. But again, I think there is an option there. We would certainly give you the opportunity to go back and see what happens on this suggestion. And then if you still had variances that you needed, you know, to come on back. That's okay. We could leave it open. As we say, we could continue the case giving you an opportunity. Yes, ma'am.

MRS. PHILIPOSE: Good morning. My name is Sabrina Philipose. And so right now, this house actually has no attic space. Once you go into the house, there is no attic space, so that's why he is kind of raising the roof. And the fact that we would like a barbecue area in the backyard and a pool for

Appeal #21380

the kids later on. If we go backwards, we won't have that opportunity to have that, because you can't put a pool in the side yard.

CHAIRMAN MAMMINA: But you can come back and ask for that. And in certain circumstances, we have granted that. So I wouldn't guarantee what I'm saying, but it would be a reasonable request that there would be history that says, as I just said this a little while ago, corner houses, they create challenges. And it doesn't mean they are not beautiful and it doesn't mean that you can't make it beautiful. So I think that door would be more open to that sort of thing. And then if you were to turn this house, you could make that attic as high as you would like, as long as you fall within the maximum height that is permitted under the zoning. You could have a whole thing and you can design it in any way that you would like. Our job is to mitigate, you know, an impact.

MEMBER HERNANDEZ: What you are asking for going closer to that Mason Street, think of it -- you are bringing the house much closer to the street, number one. And as you look down Mason Street, we have to look at both streets. Right when you look down Patton Street, you see all the houses, more or less, the same aligned up. When you look at Mason Street, all the houses are pretty much the same until you get to the corner. Now all of a sudden, you have a house jetting across, and that's what we are trying to avoid. And we want it to look,

1 Appeal #21380

2 more or less, the same so it doesn't impact, otherwise it
3 changes the look of the neighborhood.

4 MRS. PHILIPOSE: Actually, there is a big beautiful
5 house across the street from ours.

6 MEMBER HERNANDEZ: But if you look at the dimensions of
7 the house, it lines up with the other houses. Just do a Google
8 Maps and you can see that it lines up. Yes, it's beautiful,
9 it's large. This is a beautiful design and it's large. And
10 what happens is that it's just a little bit too close and it
11 comes out of joint. So I am looking at the three corners of
12 your house right now around your house and they all line up
13 with the other houses. This one, with the exception. So you
14 don't see it when you look only at your drawings, but when you
15 look at it in the context of the neighborhood.

16 MRS. PHILIPOSE: Is that because of the patio?

17 MEMBER HERNANDEZ: It's because of the -- no. The
18 wraparound porch is a patio. You are calling it a wraparound
19 porch, but I don't see it as a wraparound porch. It's only on
20 one wall.

21 CHAIRMAN MAMMINA: You can have that if you turn the
22 house.

23 MRS. PHILIPOSE: But how do we turn the house?

24 CHAIRMAN MAMMINA: That's for your architect to do.

25 MRS. PHILIPOSE: Can we just take out the patio and you
26 will approve it?

Appeal #21380

1
2 CHAIRMAN MAMMINA: In the old days, I would say give me
3 my red pencil and I can. You can still have your lovely facade
4 you have now and it would work, at least I feel it would work.
5 Mr. Gray is a very good architect and he very wisely did plans
6 that are adequate to come to the Zoning Board. I see people
7 who do a whole set of construction documents and go all the way
8 down the line. Then they come in only to be disappointed in
9 what they end up getting. This is done correctly, in my mind,
10 in terms of how to get something to the Zoning Board. So as I
11 said, he is a very good architect. I know him for a bunch of
12 years and I think that he should be able to do that. And I
13 know that I said this before, if there are some variances that
14 you might need at that point, then that's fine. But I think
15 you can have the porch still, just as I look at your drawing,
16 and also, as he said, in that required front yard, you are
17 permitted to encroach a bit. And if there are any other
18 variances, in case I was not clear, we would then give you the
19 opportunity to come back and present those variances.

20 MRS. PHILIPOSE: Thank you.

21 CHAIRMAN MAMMINA: It's a lovely street. I love the
22 curve and would hate to see that encroached on in this one
23 case.

24 MR. GRAY: Thank you, guys.

25 CHAIRMAN MAMMINA: I'm going to assume we will continue
26 this so that you can continue to create something and send it

Appeal #21380

1
2 back. And as Mr. Gray knows, we don't need -- it could be a
3 very simple drawing. We are not interested so much in what you
4 are putting inside the envelope. What is the envelope? We
5 look at the envelope. So, you know, if you have four bedrooms
6 or five bedrooms or, you know, that's all -- that's up to you
7 to fit in. Now, you do have to look at floor area and I do
8 think you don't need a really gigantic floor area variance, but
9 you may be able to eliminate some in this instance. And I am
10 not saying the floor area is approved or denied, but, to me,
11 it's always better if you can get compliance on anything.

12 There were two gentlemen that wanted to speak and I
13 want to give them the opportunity to do that. So if you can
14 just have a seat and we will let them come up, so please. And
15 you can come up second. You will speak separately. I don't
16 care if you want to come up together. Please give your name
17 and address.

18 MR. MIGNONE: My name is Ed Mignone, M-I-G-N-O-N-E; 162
19 Patton Boulevard, New Hyde Park. I have been living there for
20 49 years. I live in this house for 49 years and I got my house
21 beautiful, looks nice. Anybody who goes by there, they look at
22 it. You want to know which one mine is, just look for the
23 flowers and you will find the house. I have been told a number
24 of times, but that's besides the point. The point is, I love
25 the people to come in and improving the neighborhood, improve
26 the property to come out nice, but why I think it's going to

Appeal #21380

1
2 come up to no matter how -- I heard the discussion -- to turn
3 around the house. First of all, it's going 10 feet behind the
4 wall where it's in the backyard. And 10 feet from that wall,
5 the whole section, the whole backyard, it goes straight up
6 another 10 feet on the side of the house. Now it's becoming
7 like a nursing home. Do we need that in my neighborhood?
8 Besides, the house is going to be too big. They want to put
9 the pool. They want to put the deck in the front. Then they
10 don't talk about where they put the garage? Where they are
11 going to put the cars? Where those cars going to be parked?
12 You on the corner. You can't block the corner because we can't
13 see when you go by already as it is. It's a very tight corner
14 and I live right in front of it. A lot of people, sometimes
15 they almost run into my driveway. It's very, very hard when
16 you making something and this house is going to be like 30
17 feet, 40 feet higher. What do you see in front of you?

18 CHAIRMAN MAMMINA: Well, it can't be 40 feet.

19 MR. MIGNONE: Whatever. 35 feet. 35 feet, to me, it's
20 almost closer. But what you see in front of my house, I am
21 looking now and I'm looking at a building. I'm not looking at
22 a house that fits into the neighborhood.

23 CHAIRMAN MAMMINA: Okay. Thank you. The important
24 thing to understand is that if they build within the parameters
25 of the zoning, they can build whatever they would like and
26 that's why there is zoning. For a corner house, you have two

Appeal #21380

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

front yards, you have a side yard, and then a rear yard is in back of that.

MR. MIGNONE: This is what I have. I built on the side of the house and I have an extension. I put the garage on the side of the house. It was done legal and it's going to the neighborhood the way it looks. I don't have a building in front of me because I only have one and a half floor. But to look at this, no matter if you come up Campbell Street, the first thing you see in front of you is a building. You don't see the house no more, that's a building. And you put the deck in the front of the house, it just doesn't fit at all. Besides that, where they going to park the car? Two, three, four cars that come with this family, where these people going to park their cars?

CHAIRMAN MAMMINA: The parking that they are showing on their drawing is compliant with the ordinances in the Town. You don't have to have a garage, they can be outside. I hate to give examples and talk about my own house. I have a garage and there has never been a car inside of it.

MR. MIGNONE: I have the same thing. I have a huge garage, but there is no car in the garage.

CHAIRMAN MAMMINA: Mine is storage. You know, I try my best without overly explaining to explain that if they build it within, I will say, the four corners -- and I don't mean the four corners -- then they have a right to do that.

1 Appeal #21380

2 MR. MIGNONE: Okay. But I understand that, but you
3 going to have to understand, too, that when you put the porch
4 in front of it, how big is the porch? I didn't look at the
5 porch. I can't tell on the plan.

6 CHAIRMAN MAMMINA: I think the three minutes is up.

7 ATTORNEY ALGIOS: Your three minutes is up, so if you
8 want to wrap up.

9 CHAIRMAN MAMMINA: So you can wrap up. And I will say
10 that under the zoning that is put in place by the Town Board --
11 and it's been for years and years and years -- is that you are
12 permitted to put a porch 5 feet into the front yard as long as
13 it's open.

14 MR. MIGNONE: The only thing I can say is I look at
15 this house today, the way it is and it looks like a box to me.
16 It don't look like a house. The house, the existing house
17 right now, I'm looking out my bedroom window and I see over
18 there just a box. They should have realized that before.

19 CHAIRMAN MAMMINA: Well, they want to change the box.

20 MR. MIGNONE: The people, they should have realized
21 before they buy things. What they buying and what they doing?
22 How they can do it?

23 CHAIRMAN MAMMINA: Understood. Thank you so much.

24 MR. MIGNONE: Thank you very much. Have a good day.

25 CHAIRMAN MAMMINA: We always appreciate when neighbors
26 come down, that's important.

1 Appeal #21380

2 MR. PERROTTA: How are you doing? Good morning.

3 CHAIRMAN MAMMINA: Good morning.

4 MR. PERROTTA: My name is Antonio Perrotta. I live on
5 166 Patton Boulevard. Well, you know, I haven't seen the plans
6 yet, but many years ago, I built a house across the street from
7 my neighbors and I tried to stay within limits. And what they
8 want to do here is they want to bump out onto the side street.
9 And that's going to be an eyesore, the way I feel. And also,
10 it's for safety reasons. There is a lot of people that ride
11 their bikes, you know, a lot of people walking. It's like my
12 neighbor said, it's a very tight corner and it's very
13 dangerous. If you put a building -- if you put a building
14 there -- you know, you can't see around the corner. It's going
15 to be very dangerous.

16 CHAIRMAN MAMMINA: Solid point.

17 MR. PERROTTA: And that's the way I feel. But the
18 corners are open for a reason. Because right now, it's all
19 open, you could see it. But if, you know -- if you extend the
20 house, it's going to be very tight. It's going to be very
21 tight.

22 CHAIRMAN MAMMINA: Understood.

23 MR. PERROTTA: But, you know, if you could stay within
24 limits. I mean, I built a beautiful home on 166 Patton
25 Boulevard. I had a ranch and I built a colonial. I stayed
26 within my setbacks. I got 25 feet from the side yard. I got

Appeal #21380

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

35 feet from my front and I built a beautiful home. They could do exactly the same thing.

CHAIRMAN MAMMINA: Well, I think that's what we are asking them to look at.

MR. PERROTTA: Yeah, exactly. So I mean, that's all I really need to say. But I just felt that it was a dangerous situation extending this home -- this house into the side yard, you know.

CHAIRMAN MAMMINA: I appreciate it.

MR. PERROTTA: Thank you.

MEMBER DONATELLI: Thank you for coming down.

CHAIRMAN MAMMINA: So Mr. Gray, I don't know if you have anything else that you want to put on the record?

MR. GRAY: No, nothing more. You clarified the parking situation. What was strange on this property, there was no garage and there was no driveway, which is kind of strange, but we made that conform to get the two required off-street parking spaces. So that's it. So we will have to take a look at this, but, for the record, I say that 5-foot encroachment, to me, in my opinion, it's not going to change the sight triangle around the corner, but that's my opinion.

CHAIRMAN MAMMINA: All right. So then we will leave the record open. And if, for any reason, you don't need the Zoning Board anymore, then you will just let Secretary Wagner know. And then, you know, at that point, it gets you removed

Appeal #21380

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

then.

MR. GRAY: Well, a plan would have to be filed at the Building Department and then re-reviewed to see if there is any other variance issues and then that will bring us back again.

CHAIRMAN MAMMINA: And then if there are no variances, then you're good. Does the Building Department do that or, basically, you would just be withdrawing the application. Is that correct?

SECRETARY WAGNER: If it became compliant.

CHAIRMAN MAMMINA: If not, then you can ask for a new date and we would give you a new date.

MR. GRAY: That's fine. Okay. Very good.

SECRETARY WAGNER: Well, no.

CHAIRMAN MAMMINA: Never mind. We will just take the plans.

SECRETARY WAGNER: Unless there is a new variance that's triggered.

MR. GRAY: I see. But, I guess, would the proper procedure be to file at the Building Department, the change, or should the change just come before the Board?

SECRETARY WAGNER: No. That, would be the best way, to upload the plans onto the portal.

MR. GRAY: And then do all the write up or whatever it might be.

SECRETARY WAGNER: And then you can just let us know if

Appeal #21380

you have done that. When they issue a revised disapproval or if they just let us know maybe it's the same variances or less, if you are taking away something.

MR. GRAY: Okay. Very good.

CHAIRMAN MAMMINA: Thank you. Thank you both.

MR. GRAY: Thank you.

CHAIRMAN MAMMINA: We are just going to take literally 5 minutes, if anyone wants to use the ladies room or the men's room or whatever it might be.

(Whereupon, a recess was taken at this time.)

1 Appeal #21356

2 COMMERCIAL CALENDAR

3 SECRETARY WAGNER: Next Appeal is Appeal #21356 - Port
4 Washington Yacht Club, Inc.; 1 Yacht Club Dr., Port Washington,
5 Section 5, Block C, Lots 191, 216, 236, 303, 304, 435, 443 &
6 460; Zoned Residence-A. Appeal for determination of §70-24
7 (permitted uses) or in the alternative a conditional use under
8 §70-25 to permit the storage of boats (outdoor storage) at the
9 yacht club; Appeal for determination or in the alternative
10 modification of prior BZA approval (Appeal #16079) condition 2
11 to legalize paving over a landscaped area not in compliance
12 with prior BZA approval as required by §70-229.A; and Appeal
13 for determination or in the alternative variance § 70-100.1.A
14 to legalize accessory structures which are located within a
15 front yard.

16 CHAIRMAN MAMMINA: You heard Appeal #21356 - Yacht
17 Club, Inc. Is there anyone interested in the application other
18 than the applicant? Okay. We see some hands up here. We are
19 handing around a sign-sheet sheet. On the sign-in sheet, you
20 put your name and your address so that we make sure that
21 everyone has the opportunity to speak. When it comes around
22 and we call it, if you don't have anything you want to speak
23 about, that's okay. You just say I will pass. Okay.
24 Mr. Migatz, all yours.

25 MR. MIGATZ: Bruce Migatz, Law Firm of Albanese &
26 Albanese; 1050 Franklin Avenue, Garden City, New York.

Appeal #21356

Appearing on behalf of the Port Washington Yacht Club, Inc.

With me this morning is the Commodore of the Yacht Club, Thomas C. Steele, S-T-E-E-L-E, and the club manager, Lee Koons, K-O-O-N-S.

The application before you is a lot simpler than the disapproval notice makes it sound. The yacht club is not proposing anything new. They are proposing to maintain what is existing, some of which has been existing for a long, long, long time. They are seeking to maintain boat storage on what is referred to as Lots 303 and 304, to maintain paving, and to maintain five storage sheds, a dumpster and a refrigeration unit. I have pre-marked in a binder Exhibits 1 through 10 that I would hand up. I have one for the record, one for each Board Member, and one for Counsel. I will refer to them as I go along.

VICE CHAIRMAN FRANCIS: Mr. Migatz, we are going to circulate one of them.

MR. MIGATZ: Sure. The yacht club is in a Residence-A Zone. In a Residence-A Zone, golf courses, yacht clubs, and other recreational uses are permitted as a conditional use. So the yacht club is a conditional use in this Residence-A Zone. Exhibit 1 is the full survey of the entire yacht club property. And as part of Exhibit 1, I have blown up the section of the club's property that is the subject of this Appeal, and that is in the south corner of the yacht club. As you can see on that

Appeal #21356

1
2 blown-up survey, asphalt paving, boat storage. And you can see
3 the sheds, a refrigeration unit and a dumpster unit. Exhibit 2
4 consists of two photographs of the subject Lots 303 and 304,
5 and this is where the boats are stored during the winter.
6 During the spring, when this picture was taken, there is
7 trailers there because there is a boat ramp also that is also
8 offered on Lot 304. Right now, boats are being launched so
9 there are some trailers there. They are removed once the boats
10 are launched. And during the wintertime, that's where the
11 boats are stored. Exhibit 3 is a photograph taken from
12 Beachway, that's the south adjoining street. And the subject
13 lots are behind that landscaping, and you can see that from
14 street level. You cannot see what is on the other side of that
15 landscaping. Exhibit 4 is a picture of the storage sheds.
16 Those storage sheds have been there for, approximately, 13
17 years. Exhibit 5 is a picture of the refrigeration unit and
18 the dumpster enclosure. The refrigeration unit has been there
19 for, approximately, 13 years. The dumpster enclosure has been
20 there, according to the dock master, ever since he was in high
21 school going back to at least 1988. And, that, is used for
22 cardboard refuse. That, is not garbage, it's refuse. Exhibit
23 6 is a photograph that's actually taken from the Nassau County
24 Department Assessment website and that was taken on March 26,
25 2013. You can see that in March, some of those boats are
26 shrinkwrapped in there for storage. There is very little

Appeal #21356

activity or no activity in front of those boats. This property has been used for boat storage since the 60s. You are going back 63 years that boats have been stored on this property.

In that photograph 6, you can see there is a grass strip in between two paved strips on either end, and that is what brought us here today. Because in 2019, the yacht club thought they were doing a good thing by paving that over. They did not have a permit to do that. A complaint was filed, presumably, by somebody and a violation was issued. And they applied for a permit to maintain that paving and to put in a drain.

Now, when I filed -- when we filed for the permit for the paving, the plans examiner raised the issue that you can't store boats, because the survey shows boat storage. The plans examiner made no mention of the storage units. And I surmise that the Board might ask questions about that. We did not want to come back for a second Hearing on that. So I contacted the plans examiner and I asked, did you overlook the storage sheds shown on the survey? And he didn't say yes, he didn't say no, but he said, well, submit a survey for me that shows in more detail and I will issue you an updated disapproval notice. So I wanted everything to be upfront with the Board. We want to maintain those, as well.

Now, there are some letters that were submitted to the Board. They raised issues, some issues that are not part of

Appeal #21356

1
2 this application. Those letters discuss restrictive covenants
3 that the Port Washington Estates Association has. This Board
4 historically does not enforce restrictive covenants, that is a
5 private matter between the parties through the covenants. The
6 issue through this Board is simply zoning. Alleged drainage
7 problems are discussed in these letters. That, also is not
8 before this Board. That, is an issue that is before the
9 Building Department. This Board deals with zoning. And the
10 one letter mentions alleged DEC violations. Again, that's not
11 before this Board. If there are violations, we are not aware
12 of them, but that's a DEC matter.

13 So let's talk about the zoning issues before the Board.
14 There are three issues. The club seeks a determination that
15 the storage of boats is a customary practice and use of a yacht
16 club and is permitted pursuant to their conditional use permit.
17 The club seeks a determination that the building official's
18 error in saying that the paving of that grass area is in
19 violation of a prior condition in Appeal #16079. We believe
20 that is false. And we seek a determination that the accessory
21 structures are not in a front yard. The Building Department
22 and plans examiner did not raise any issue regarding the use of
23 those structures. They only raised the issue that accessory
24 structure must be in a rear yard, and they are not in a rear
25 yard. Those are the three issues before the Board.

26 Let's address the determination of whether the outdoor

Appeal #21356

1 storage of boats is permitted. If you turn to Exhibit 7,
2 Exhibit 7 is an e-mail from Scott Collier, the chief plans
3 examiner. It is an e-mail responding to Gavin Pipe. But if
4 you read the entire e-mail, Mr. Collier is under the impression
5 that Gavin Pipe is a yacht club representative; he is not. He
6 was, at that time, President of the Port Washington Estates
7 Association. In his e-mail, Scott Collier recognizes that this
8 Board's decision in 1998 in Appeal 16079 granted a conditional
9 use permit for yacht club purposes for the entire yacht club
10 property, including Lots 303 and 304. That, is the Building
11 Department's determination. However, he states: "However,
12 although a conditional use for a yacht club would include all
13 uses that are customarily associated with a yacht club, the
14 Town Code expressly prohibits any type of exterior storage."
15 And he says boat storage is prohibited by Section 70-212(A) of
16 the Town Code. 70-212 is dumping and storage and it reads:

18 "No lot or plot or tract of land shall be used for the
19 storage, dumping or abandonment of any combustible materials,
20 junk, metal, bricks, stone, concrete, concrete blocks,
21 pavement, paving, plaster, lumber or any other kind of building
22 material, automobiles, automobile bodies, automobile chassis or
23 parts or portions thereof, tanks, barrels, containers,
24 machines, machinery, engines, utensils or appliances, any of
25 which or any parts whereof are entirely or in part made of
26 metal, or any other abandoned article."

Now, in the disapproval notice, the plans examiner does not site 70-212(A). He sites 70-24, which states the use is permitted in the Residence-A Zone. And he said boat storage is not permitted under that section. He entirely overlooks or doesn't realize that Section 70-25 is controlling, which says a yacht club is a conditional use. And boat storage is a customary use of a yacht club property. Now, the Commodore is not going to like my next statement. A yacht club is nothing more than a fancy marina. Marinas store boats. Drive in front of any marina and you see boats there. Manhasset Bay Yacht Club, they were before you just last year. On their site plan, boat storage in the wintertime and seasonal parking in the

Appeal #21356

summertime. Knickerbocker Yacht Club, when they were there, boat storage. To say that the storage of boats at a property of a yacht club that is a conditional use is not permitted defies logic, defies any rationale, and this should be overturned by this Board. Otherwise, you are setting a very dangerous precedent for any yacht club and any marina within the Town that can't store boats; it's absurd.

Now, the original site plan filed back in 1998 in that prior Appeal, it showed that was to enlarge a dining room and a swimming pool, a kiddie pool, but it showed Lots 303 and 304 existing to remain, no change. Exhibit 8, so the record is complete, is the decision of this Board in that Appeal and it prohibits parking on those lots, because they used to park cars on those lots. But certain residents complained about parking on these two lots and this Board made a condition of that decision, no parking. It did not prohibit boat storage. Exhibit 9 is a Town Board Resolution 296 1999, which approved site plan review for the addition to the dining room that was before this Board and a swimming pool. Also, note that the resolution says the site plan complies with zoning and it also showed Lots 303 and 304, no change. Exhibit 10 is the transcript of the Hearing of the site plan review. And on page 47, the question is asked by, I think, Mr. Newburger about these Lots 303 and 304. And Mr. Higgins said, "the south side, we have two parcels of property adjacent to those residential

Appeal #21356

homes and we agreed several years ago we would not park cars there. We only store small boats, 14 to 14 foot sails." So it was on the record that boats are stored on this property, and they were not just sailboats. Back in 1961, they might have been sailboats, but over the years small power boats were stored there, as well. So with respect to that determination, again, I submit to you that it defies logic that the chief plans examiner can say that these lots have a conditional use permit for a yacht club, but you can't store boats as part of your yacht club operation, that, should be reversed.

Now, the second determination, the building official said that the paving of that grass area violated Condition 2 of the Board's prior decision, that's Exhibit 8. Condition 2 says that the applicant shall install and maintain all landscaping as indicated on the revised drawings. Now, Exhibit 11 is that approved plan. I tried to reduce it and make copies, but it's such a dark copy that it wouldn't reproduce to a smaller version, so I just have one. If you look, that plan showed plantings to be installed on the north where new parking was being proposed, and some are on the south by the driveway. They were to be installed and maintained. If you look at the lower left-hand corner, that's Lots 303 and 304 existing to remain, no change in this area. There is no indication of grass to be installed or grass to be maintained. There was grass there at the time, but there is no indication you must

Appeal #21356

maintain that grass. Now, Mr. Mammina was on the Board at that time and I will defer to his judgment, but, in my opinion, the condition had to do with the plantings that were to be installed, as shown on the plan. It was a modification. That, was what was to be installed and maintained. But in the event that you were of the opinion that that grass had to be maintained, then we have asked to modify that condition to allow that pavement to remain. Dry wells are on the plan to be installed to control run-off. They have not yet been installed because we don't have a permit yet because we had to get this issue resolved. So it would be an improvement to have the dry wells installed and to maintain them. Can we rip it out? Yeah, we can rip it out, but it doesn't seem like a whole lot of sense. It would make more sense to have proper drainage installed in that lot.

Lastly, the club seeks a determination that the building official's error that these accessory structures are not in a rear yard. The code permits accessory structures. The plans examiner recognized these as accessory structures, but the code says they must be in the rear yard. This property doesn't have a front yard, doesn't have a rear yard. There is no building on it. He is saying -- he, the plans examiner, is saying that these sheds are in a front yard. The front yard is defined in the code as a yard across the full width of the lot extending from the front line of the building to the front line

Appeal #21356

1 of the lot measured between the side property lines. If there
2 is no building, there can be no front yard by definition.
3 There can be no rear yard. There is a vacant piece of property
4 with accessory structures on it. So we seek a determination
5 that these structures are not in a front yard and they comply
6 with the code.
7

8 Now, as I always do when I seek a determination, no
9 matter how right I believe I am and that the Board should grant
10 it, in the alternative, I always seek the required variance.
11 So alternatively, we have applied for the Board to -- if the
12 Board believes that the existing conditional use permit doesn't
13 permit boat storage -- to amend that conditional use permit to
14 permit boat storage. Conditional use standards are one of the
15 purposes of the zoning code. Town Code permits yacht clubs as
16 a conditional use. Case law holds that a conditional use can't
17 amount to a permitted use. And a yacht club, which is a fancy
18 marina, stores boats. 2: Whether the proposed use will effect
19 the character, size, location, design, and site layout? Are
20 they in harmony with the surrounding property? Case law holds
21 that the inclusion of the conditional use in the zoning
22 district is tantamount to a legislative finding that the use is
23 in harmony with the general zoning plan and it will not
24 adversely affect the neighborhood. North Shore Steak House
25 case, there is a case on that. 3: Whether the proposed use
26 will provide a desirable service, facility or convenience to

Appeal #21356

the area or otherwise contribute to the proper growth and development of the community and to its general welfare. The Port Washington Yacht Club has existed since 1905. And it has provided a desirable service for the Greater Port Washington area and it is appropriate for a Residence-A District by code.

4: Whether the proposed use will be hazardous to or conflicting or incongruous to the immediate neighborhood by reason of excessive traffic, assembly of persons or vehicles in close proximity to travel routes or congregation of children or pedestrians. We are not on a street here. There is a gate there that is closed. There is a pedestrian gate to allow people from the Beachway community to walk into the yacht club. Even though some are not members, they walk on the grounds. There is a gate that is closed and only open for vehicles in case of an emergency. So storing boats does not have any impact on traffic. And lastly, whether the proposed use will be of such nature as to be objectionable to nearby residential dwellings by either noise, lights, vibration or other factors of impact. People that buy houses next to a yacht club have no reasonable expectation not to see boats, not to hear some noise, not to see some lights. A case illustrative of that is the Matter of Holbrook Associates. The Dev. Company versus McGowan, 261 AD2d 620 Second Department 1999. The relief for Appeal denied, 93 NY2d 817. I will e-mail you those. A quote from that decision. This was an application for a special use

Appeal #21356

1
2 permit in Hempstead for a restaurant. It was turned down by
3 the Town Board.

4 "The Town Board's resolution denying the permit does
5 not contain reasonable grounds for denying the permit. The
6 main reason set forth in the Town Board's resolution, that the
7 use is characterized by late hour noise, outdoor congregation,
8 conversation, vehicular movement, rubbish and odors, amounts to
9 an objection to the nature of the use itself. A restaurant/bar
10 is a permitted use, and since the foregoing characteristics are
11 inherent in the operation of such a business, this reason for
12 denying the permit is without merit. It is tantamount to
13 finding that a restaurant/bar is an undesirable use, which
14 conclusion runs contrary to the zoning plan permitting such
15 use."

16 Same holds true of a yacht club. Town Board has made a
17 finding that a yacht club is a comparable use and is in harmony
18 with a Residence-A Zone. To object to a yacht club being near
19 your home because you see boats or you hear boats or anything
20 else that is customary to a yacht club, runs contrary to the
21 Town Zoning plan that says yacht clubs belong here. When you
22 buy a house next to a yacht club, you buy a house next to a
23 restaurant, you have to expect the usual customary impacts that
24 that use might have.

25 The alternative application for a variance of the
26 section that says accessory structures must be in a rear yard

Appeal #21356

1
2 when they have no rear yard, we would seek a variance to permit
3 them to stay. Because like I said before -- I think I said it
4 -- the storage shed and refrigeration unit have been there for
5 13 years. The dumpster enclosure has been there since at least
6 1988 and they are screened from the street. We submit they
7 have no impact on the community or on the neighborhood.

8 Whether the variance is substantial? You can't
9 quantify the deviation. We don't have a rear yard. We can't
10 put it in the rear yard. Whether the variance will have an
11 adverse impact on the environment, the physical conditions?
12 The Board will make their SEQR finding on that point. And
13 whether the difficulty is self-created? Well, by law, it's
14 self-created. But we are only seeking to maintain what has
15 been there for many years. And quite frankly, I am very
16 interested to hear what the people have to say. We are not
17 trying to change anything. This all started because we paved
18 an area without the permit and now the plans examiner raised a
19 ludicrous position. Glenn Norjen is probably listening. I'm
20 sorry, Glenn, but it's a ludicrous position that -- or that he
21 didn't raise -- Scott Collier did -- that boat storage is not a
22 customary use of a yacht club.

23 So I would just reserve some time to respond to any
24 comments from the audience, unless the Board has questions of
25 me now.

26 MEMBER DONATELLI: Mr. Migatz, I do have a question.

Appeal #21356

Just for clarification. I am familiar with the Port Washington Yacht Club and I have actually attended many affairs there. The boat storage that is being conducted on Lots 303 and 304, is that for members alone or is that made available to others who are not members of the yacht club?

MR. MIGATZ: Just members. And it is predominantly the boats that the yacht club owns for their ideal racing, ideal 18 racing, and small paddle boats that the coaches use when the juniors are out there racing. So it's yacht club boats. Now, there is a boat ramp there, but only for members. The plans examiner did not raise an issue about the boat ramp. The boat ramp has been there for almost forever also. So there is traffic there and you will see boats there that are there in the springtime or in the fall or when they are hauled. And that's, again, a customary use of a yacht club. You have to get boats in and out of the water. The storage is winter storage. You have your boat there and you might have it hauled out in the spring and in the summer for repair, but the storage itself is winter storage.

MEMBER DONATELLI: Thank you.

VICE CHAIRMAN FRANCIS: Mr. Migatz, you mentioned another case. Could you give me the name and citation for that first case you mentioned?

MR. MIGATZ: North Shore Steak House case? I didn't write that citation down.

Appeal #21356

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ATTORNEY ALGIOS: You could just e-mail that to me along with the other one and I will forward that.

MR. MIGATZ: That's a landmark case.

VICE CHAIRMAN FRANCIS: That will be fine. Thank you.

MR. MIGATZ: Any other questions at this time?

CHAIRMAN MAMMINA: I don't think so. We will hear from everyone else. And as is typical, the applicant will have the opportunity to respond. So if we could have people come up one at a time. We have Deputy Commissioner Glenn Norjen.

MR. NORJEN: Glenn Norjen, Building Department. Once again, this is an Appeal for determination. And as such, this is going to be a split decision. As I actually said to Mr. Migatz the other day, I reviewed these things today. So I mean, I'm not involved in the whole determination at the beginning. Use of the property for storage of boats. I will go one by one. I feel that the storage of boats is a use that's usually common with a yacht club. If these boats were stored prior to 1980 in this location, they wouldn't even fall under 212 because that was passed in 1980 by that Town Board. So it's my opinion that the outdoor storage of boats would be a use that's normal for a yacht club. And so any questions on that one?

CHAIRMAN MAMMINA: No.

MR. NORJEN: Second one. What was the second determination?

1 Appeal #21356

2 VICE CHAIRMAN FRANCIS: Paving of the grass area.

3 MR. NORJEN: Paving of the grass area. Well, this is
4 one that I will leave up to the Board because I don't know what
5 happened back then. And, you know, if the condition was that
6 all landscaping has to be done and maintained, I don't know if
7 that included every tree and every piece of grass that was on
8 the property. It could have because it might have been looked
9 at and said, okay, all these areas, you know, keep them, but it
10 might not have. So any questions on that one? No. Okay.

11 Here is the one where I agree with the plans examiner.
12 The Town definition of a lot in 70-231 includes plot, tract,
13 premises or parcel of land, with or without buildings or
14 structures located thereon, as surveyed and apportioned for
15 sale or other purposes. This lot doesn't -- Lot 303, Lot 304,
16 Lot 191, they don't get looked at separately. This is a lot
17 group. The Planning Board always considers this as one lot, as
18 defined by the Town. It's not Lot 303, it's not Lot 304. This
19 is one lot group, as we call it, but that's the definition of a
20 lot. When you look at it that way on the survey that had been
21 submitted by the applicant, there is a building, there is a
22 front yard. The front yard goes through all those lots, Lots
23 303, Lot 191. So anything forward of the front line of the
24 building. Because the Town's definition of front yard: "A
25 yard across the full width of the lot extending from the front
26 line of the building to the front line of the lot measured

Appeal #21356

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

between the side property lines." Well, when you look at the front line of the building, these sheds are in front of it.

CHAIRMAN MAMMINA: Isn't there a definition? I'm only going to New York City Zoning because predominantly a lot of my work is in New York City. A lot has to front on a street in order to have boundaries as front yard and side yard and rear yard. And if it has no frontage, then it's just kind of --

MR. NORJEN: Well, the whole thing fronts on Capi Lane. I mean, according to the survey.

CHAIRMAN MAMMINA: All right. But you had said that the way that the building was facing. So normally, the way the building is facing doesn't necessarily --

MR. NORJEN: Well, no.

CHAIRMAN MAMMINA: I just wanted it to be clear.

MR. NORJEN: A front yard from the front line of the building.

MEMBER DONATELLI: Right. But there is also frontage of Beachway, as well.

MR. NORJEN: There is frontage on Beachway, as well. And I think there is frontage on -- is there another street? Oh, no, Yacht Club Drive, so yeah.

CHAIRMAN MAMMINA: It's tricky. It's tricky.

MR. NORJEN: So these structures are in the front yard, as defined by the Town Code. Now, whether they get granted a variance or not, that's up to you. Any other questions?

1 Appeal #21356

2 CHAIRMAN MAMMINA: No. I don't, anyway. But thank
3 you, Mr. Norjen, we always appreciate your input.

4 So given the Deputy Commissioner's first turn at that.
5 Then in whatever order, we will invite people to come up.

6 SECRETARY WAGNER: I just wanted to note for the record
7 that Member Goodsell is here.

8 MS. FAMIGLIETTI: Melissa Famiglietti; 103 Murray, Port
9 Washington, New York. But I am here on behalf of the Beachway
10 Estates Association, which is located on Lot 301 and 436, which
11 borders 303 and 304 of the yacht club.

12 Basically, our property is a designated wetlands and
13 the lowest point around the surrounding properties and streets.
14 During severe weather, we do experience erosion and that's been
15 known to occur. Run-off from neighboring properties, even
16 normal rain creates a pooling at the entrance and flows across
17 Beach into the bay. As one of the few natural beaches in our
18 stretch of Town, our property does not have a dock or a
19 seawall. When visiting the beach, our neighbors play in the
20 sand. They launch their kayaks into the bay and enjoy
21 splashing along the shoreline. The association is asking that
22 the BZA take appropriate environmental considerations to ensure
23 that run-off from the proposed and existing hardscape be
24 captured and evaluated properly. We hope that all activities
25 approved by the BZA on the neighboring lots do not have an
26 impact on the ecological state of Manhasset Bay. Thank you.

Appeal #21356

MR. PEROTTA: Mark Schneider.

MR. SCHNEIDER: Mark Schneider; 15 Beachway, Port Washington. My wife and I have been residents for 47 years. We have lived next to the yacht club. We have experienced -- I can't go into it if I only have three minutes, but it's been a terrible experience. Even though we have been members, we have been boat owners. I hold a Coast Guard license for 100-ton vessels for a 100 miles offshore. As the attorney for the yacht club mentioned at the very beginning, they are not asking for anything new. They have been doing what they have wanted to do consistently in violation with Town Code and regulations, including New York State DEC. I have attempted to reach out to previous Commodores and the existing Commodore to have a discussion of what they were doing versus what is allowed. I was denied those discussions and I was told I had to go to the authorities. That's why we are here today, because they would not listen and they would not conform to Town Code. The application, which I saw, had the statement that there were no violations. Well, in fact, there are existing violations from code enforcement, from the Building Department, and from New York State DEC. The attorney said he is not aware of the DEC. If he would like, I would be glad to send him copies of the e-mails where the DEC told me that the club was in violation. And they are currently under supervision by DEC before because of these violations. The word "boat storage" is very ambiguous

Appeal #21356

1
2 because when a boat gets stored, it has to be winterized.
3 Boats with motors require oil changes, require anti-freeze
4 change, potable water, need their tanks drained. Well, where
5 is all of this going? The yacht club, I don't know how they
6 are doing it, but these lots drain right into the bay. As you
7 heard from the listener about Beachway Estates Association,
8 there is a natural beach located right next to the boat ramp.

9 Now, the boat ramp. Why is the boat ramp used? Well,
10 when the yacht club acquired the 60s boat yard, which is the
11 property Lot 443 on the north side of their property and they
12 went into the boat storage business. Prior to that, they were
13 talking about little day sailers under 14 feet, which you heard
14 the testimony, and those boats did not have an environmental
15 problem. They used the launch -- the ramp -- excuse me -- for
16 launching purposes. So the definition of boat storage is very
17 broad and very inappropriate for this discussion.

18 The landscaping, which is the grass area that they
19 referred to. I was in this building before the BZA at the time
20 for the approval for the expansion of their dining room. The
21 conditions were very clear. They were not allowed to use these
22 lots for parking, for storage. And right now, junk is not
23 referring to their beautiful boats, it is replying to the other
24 things, which you will find on these lots. Now, I appreciate
25 the --

26 ATTORNEY ALGIOS: Mr. Schneider, I'm sorry to interrupt

Appeal #21356

you. Your time is up. I did give you some additional time, so if you can just wrap up.

MR. SCHNEIDER: Okay. I submitted a 10-page letter. It was about 10 pages of attachments for your consideration. We were not given the attachments, which were presented to you so I can't comment directly on them, but there are many points that are beyond the scope of three minutes to address this very important life-changing situation. Correction. Let me rephrase that. This deteriorating of a life situation. I thank you for your attention and I hope you will read my letter.

MEMBER DONATELLI: May I just make a comment. Your letter is part of the record and it is part of the documents that we review. It is part of our file. That, will be taken into account.

MR. SCHNEIDER: I appreciate that. And thank you for paying a visit. The lots haven't been this clean in five years.

CHAIRMAN MAMMINA: Thank you. Who do we have next?

MR. PEROTTA: Tim Mockler.

MR. MOCKLER: Hi. I'm Tim Mockler. I live at 28 Beachway, Port Washington, and I live on the lot that is adjacent to Lot 304. And I have submitted a letter that I understand has been received by the Board.

First, in contrast with what the yacht club's attorney

Appeal #21356

1
2 stated about when a person buys a house next to a yacht club,
3 they have no expectation of boats not being stored there. I
4 would say that when a yacht club buys a residentially-zoned
5 property that's within the portion of the estates perimeter
6 that has existing covenants on it, they have no expectation
7 that those covenants would not be enforced, including the one
8 that prohibits commercial activity other than doctors,
9 dentists, and lawyers. There are boats that are stored there.
10 The yacht club charges those people who store their boats there
11 as money, which then constitute commercial activity. I would
12 also submit that the photos that I saw and the exhibits by the
13 yacht club's attorney today were strategically taken. Nowhere
14 do I see any of the five or so very large floats and docks that
15 are stored on Lots 304 and 303, nor do I see the propane tanks
16 that are stored on Lot 304 or the propane heaters that are
17 left. There are about 7 or 8 propane heaters that are stored
18 right next to these two sheds that are on Lot 304. Those sheds
19 that were stored on Lot 304 about five years or so ago, no
20 advance warning, no permits. They just threw them up there.
21 And one day, it must be 40 or 50 chairs that are stacked up and
22 stored on that Lot 304. It doesn't look like a boat to me.
23 There is a lot of, what I will say, junk that gets stored there
24 that, apparently, nobody else wants to see it, so they store it
25 on Lot 304. Some very large boats get stored there. And the
26 lot was originally -- not originally created, but when that

Appeal #21356

1 large grassy island was created in 1987, it was very neatly
2 done with line spaces for those small boats that were used by
3 the junior sailing program. And over the years, that was
4 gradually let to deteriorate. It's not maintained well. There
5 is a lot of junk that's stored there. At one point, 15 or 20
6 years ago, there was a large portable trailerable machine that
7 one day appeared there. I woke up in the morning and you see
8 this huge structure out there. I waited a couple of days.
9 Nothing was happening. I complained to the yacht club. They
10 promptly removed it. But again, it's an example of things just
11 being stored there arbitrarily. Things that no one else wants
12 to see because they don't want to store it anywhere else. When
13 they bought Lot 443, I believe it is, which is the old Sigma
14 marina boat yard, that would have been the appropriate
15 location. And, apparently, the yacht club decides to store
16 their unwanted material on Lots 303 and 304. When they decided
17 to pave over the center island, the grassy area, I think it was
18 around 2019, I saw the large equipment coming in and starting
19 work. And I went over there and I saw the yacht club dock
20 master, who appeared to be overseeing the work, and I asked him
21 if he obtained a permit to do this work from the Town. And he
22 said, yes. And it was only later that I learned that no permit
23 was obtained. Just like with the sheds, like with the
24 dumpster, the enclosed dumpster that's there, and the large
25 refrigeration unit. So there is a lack of intent in dealing
26

Appeal #21356

with the neighborhood to letting you know in advance what you are planning on doing and getting the proper approvals. I'm sure I have used my three minutes. All right. Thank you.

CHAIRMAN MAMMINA: Thank you so much.

MR. PEROTTA: Rhonda Sussman.

MS. SUSSMAN: Hello. My name is Rhonda Sussman. I'm at 16 Capi Lane, Port Washington. My house adjoins, the right two sides of my house are next to the Port Washington Yacht Club. So I have the back of my house and the side of my house. And I have lived there since 1982. Years ago, the Port Washington Yacht Club asked for a variance to store their boats, and that was going to be in the lot right next to my property. They also said it wouldn't be used as a parking lot, but they were told to use a crash gate so that cars weren't going to be going in and out from Capi Lane. They put up a gate, but this was never done properly. It's not a crash gate. They open it when they need it. And a crash gate, as far as I was told, is something that you crash into, like a fire engine, if there is a fire, they could smash it down. So that was never done properly and, I guess, nobody really cared and just let it be that way.

MEMBER DONATELLI: May I stop you for a moment? I'm sorry to interrupt. But according to your testimony, is it opened and then used for other purposes?

MS. SUSSMAN: It's opened to bring boats sometimes in

Appeal #21356

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

and out, like for the season.

MEMBER DONATELLI: From Capi Lane?

MS. SUSSMAN: Yes.

CHAIRMAN MAMMINA: But it's not used regularly?

MS. SUSSMAN: No, it's not used regularly.

CHAIRMAN MAMMINA: But you are correct. I mean, the intention is that fire vehicles can crash through it, if it's locked or not locked. They don't like to do that because it messes up the front of their fire engines.

MS. SUSSMAN: Yes, but for emergency.

CHAIRMAN MAMMINA: But for emergency.

MS. SUSSMAN: And then the use of the land was to supposed to be when the boats go back into the water. I have found -- my husband and I have found that they started to use this property right next to us as a camp. Now, they will tell you that it's a babysitting -- it's just for babysitting the kids, but this isn't true, it's a camp. They have sports. They play games. They do, you know, basketball. And I mean, if that's supposed to be a crash gate, where are they supposed to get out of if they have a camp running there? There are different rules for camps, okay. I found years ago that when they first started doing this camp, I had a bunch of children sitting out on my lawn laying down, eating their snacks, papers everywhere, and their parents were picking them up from Capi Lane. So you can't tell me that's a babysitting thing. They

Appeal #21356

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

are out on their own sitting on the lawn with their parents
picking them up.

Then I also had a problem where the kids were throwing
rock and stones at our house. They broke a window. I had to
call the police down. And while the policeman was there, we
were up on the terrace, the kids actually did it again and saw
them. So that's proof that this was going on. And this is not
-- like, this was a camp. This was not a babysitting thing.

And now, this was a while back. This is a couple years
back. I don't know what year it was, but I actually saw the
yacht club taking water. There is a water like -- on Capi
Lane, there is a cul-de-sac, that's where I'm at, where I live
by. And in the center, there is a water thing that they
control and whatever. But the yacht club went, took hoses, and
they put the hoses into this water. They were taking water and
it was night so that no nobody would really see it. And I
don't know. I think they filled their pool that year, but I
can't say for sure. But what I have come down to say is that I
saw that and my husband saw that. And I find that the yacht
club is less than truthful and they have been like that for
years. So please be leery when they ask you for things. They
do a lot of things that you don't know about. They do what
they want and then they see what they can get away with, I
guess. Thank you.

CHAIRMAN MAMMINA: Thank you. Who is next on the list?

Appeal #21356

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Michael Waskover.

MR. WASKOVER: Michael Waskover; 27 Beachway. And what I would like to do is give my time over to a neighbor of mine because he is going to go over the three minutes.

VICE CHAIRMAN FRANCIS: Sure.

MR. GIL: Mier Gil, M-I-E-R G-I-L; 10 Beachway. I would like to say that everything I have heard from the yacht club, some of it is very disingenuous. They have a disregard for the law and they are making a mockery of the Town's Zoning laws and now they want you to approve all the illegal structures and the storage use that they have done over the years. The pictures that you saw, especially number 6 from their own document, has been staged. They cleaned everything up and then presented these pictures to you as if it's just a normal, clean storage area with very small boats. I personally, over the years, have seen them put huge power boats there. The privacy fence that's there, I think, is 6-foot tall. These boats were at least 6 feet above that in shrink wrap. I was on the Board of Port Washington Estates for 15 years. I have lived there for 32 years. I resigned about 2 years ago. We have a gentleman's agreement with them that they would only put small boats under 12 feet there for storage. They have broken that agreement numerous times. The same thing with the storage units that they put in and the refrigeration unit. As my other neighbor has said, they do whatever they

Appeal #21356

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

want, try to see how much they can get away with whatever they can. And only when they get caught, then they try to finagle their way out of it.

 Their gates that they claim are only used by Beachway people. Those gates are open all the time and there are people from other places that are coming down Beachway all the time and using those gates. I know the door gate, not the driving gate, it's not even operable. If you close it, you can just touch it with your finger and it will pop open because the door and the post next to it aren't close enough to latch the door.

 MEMBER DONATELLI: I'm sorry. Are you referring to the access from Beachway onto the Port Washington Yacht Club property?

 MR. GIL: From Beachway, yes. And we had an agreement with them that it would be kept locked all the time and only people from Beachway would have a key to go in through there, but now it's open all the time and people from all over town are going in. If they are members, they are going into the club through there. And they are also parking on Beachway and using the club. They do the same thing during their parties when they have overflow, they're using our beach for parking their cars. Their members have been using our beach to drink. When I asked two of them, why are you on our beach drinking? They said, well, it's cheaper for us to buy the beer and drink it here and then go into the club. So they don't seem to be in

Appeal #21356

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

control of their own members and the usage of the areas around their club.

I just want to finish up with that any promises they make, they usually break them, and please keep that in mind if you approve anything for them.

VICE CHAIRMAN FRANCIS: I would only point out that the picture that you referred to, the Exhibit 6, was not a photo that the applicant took, that's a photo that came from Nassau County.

MR. GIL: Well, as I said, it's been cleaned up. They are supposed to have only little boats. You see three boats there that are shrinkwrapped, the power boats. A lot of time they have those power boats or similar ones to them in an area where we have an agreement they should only have 14-foot small sailboats in there. But actually, there is no picture showing that. But if this goes further, we will start taking pictures and submit them to you.

MEMBER DONATELLI: Thank you.

MR. GIL: Thank you very much.

MEMBER DONATELLI: Before we call the next speaker up, if I can just say a few comments. We have had several speakers come up and talk about their experiences, their personal experiences with what they have seen and not seen with Port Washington Yacht Club. Let me suggest that if any speakers will get up to continue this discussion, if we can try to limit

Appeal #21356

1
2 the issues to the issues that are before us in this variance
3 application, which is, essentially, the asphalt paving, the
4 outdoor storage of the boats, and the third issue are the
5 accessory buildings, the sheds. So while that is helpful in
6 terms of context to hear your personal experience -- and,
7 certainly, we value that -- but, as a Board, we are required to
8 look at those three issues. And I would appreciate if members
9 of the public get up to make their comments, that you can
10 address those three issues. That, would be helpful to us, as a
11 Board.

12 MR. VANDENBERG: My name is Bob Vandenberg. I live at
13 14 Beachway. I am one of, probably, five houses that have a
14 direct view of the property in question. My house is shown in
15 Exhibit 2. I can tell you we don't have any objection to
16 anything we see, because we can't see anything. I have a fence
17 blocking, basically, everything. Now, the immediate neighbor
18 might see down into the property, but I don't see how anyone
19 else does. Port Washington Yacht Club has been a great
20 neighbor. I don't understand anything that I have heard, and
21 that's my point.

22 CHAIRMAN MAMMINA: Thank you.

23 MR. PEROTTA: Is there anyone else who wishes to speak?

24 CHAIRMAN MAMMINA: Mr. Migatz.

25 MR. MIGATZ: As Mr. Donatelli said, we will stick to
26 the issues before this Board. Lee Koons has been the general

Appeal #21356

1
2 manager since 2016 and he is hearing things today that he never
3 heard before. So if people have other issues with the club
4 other than what is before this Board, he is happy to meet with
5 them. He has said to me that Mr. Mockler has always been a
6 gentleman, doesn't recall any complaints from Mr. Mockler, at
7 least when he was the general manager. And they are hearing
8 things today for the first time. Mr. Koons will sit down with
9 Mr. Mockler, if he wants, and try to address his other
10 concerns.

11 Now, this is a yacht club. They do have chairs that
12 are moved around for the patio. There are propane heaters,
13 especially that became very popular during the pandemic. Golf
14 courses, golf country clubs have that. This is part of a
15 operation of a yacht club. It is not before the Board. The
16 issue of the boat storage is permissible. Deputy Commissioner
17 Norjen agreed with me that it is part of their normal
18 operation. Whatever gentleman's agreement that has varied
19 since 1961 -- because the gentleman's agreement used to allow
20 parking there, now you are not allowed to park there, but
21 that's a private issue. We have a letter from the Port
22 Washington Estates Association that says the Port Washington
23 Yacht Club has been a good neighbor. That's from the
24 association. And they want to be a good neighbor. So if
25 people have complaints about parties or whatever that's not
26 part of this application, they are happy to talk to them.

Appeal #21356

1
2 Mr. Schneider is another issue. He said nobody would
3 listen to him. That's because he is unreasonable. You don't
4 hear me say that many times at a Hearing. He is unreasonable.
5 He complains about everything, calls 311 all the time. Calls
6 the building inspector all the time. So, no, we are not going
7 to sit down with him. We will sit down with Mr. Mockler, as
8 the immediate adjacent neighborhood, and we will discuss some
9 of his concerns that don't relate to the boat storage. And
10 it's the lawyer in me that I can't resist, but respond when
11 Mr. Schneider says "a terrible experience living next to the
12 yacht club." He used to live at 17 Beachway. He is at 15 now.
13 And he came to the 1998 Hearing and complained about
14 everything. He then sold that house. And in 2001, he bought
15 this house that he has now and built a brand new house. So
16 life was terrible. He complained in 1998. Then he moved
17 closer to the yacht club and now he still complains that life
18 is terrible. So that case that I cited is very apropos. You
19 can't buy a house across from a yacht club and not expect to
20 hear some noise or see some boats and to see things going on.
21 And if Mr. Norjen agrees with me, I must be right, right? One
22 out of two is not bad.

23 Winterizing. They don't winterize boats in Lots 303 or
24 304, that's done in the boat yard. That's on the north side of
25 the property. Boats are taken there and that's where they are
26 winterized.

Appeal #21356

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Just one last comment about the accessory structures.
Manhasset Bay Marina -- I'm sorry -- Manhasset Bay Yacht Club
has a bunch of accessory structures in front of their
clubhouse. So if our accessory structures are somehow deemed
in front of our clubhouse, well, there is a track record for a
yacht club that would have accessory structures because their
clubhouses are facing the water. So you can't put them behind
the clubhouse.

I just ask the Board to stick to the issue, and the
issue is the storage of boats, not the type of boats, the size
of boats. We can discuss that with the Port Washington Estates
Association. The issue before the Board is, are these storage
of boats normal customary use of a yacht club? I say it is.
The Building Department says it is. I trust you will say it
is, as well. Thank you.

MEMBER DONATELLI: Mr. Migatz, before you sit down,
going back to the sheds, the accessory structures. Can you
tell us? One is refrigeration. What is maintained in the
refrigerated unit?

MR. MIGATZ: Food. Mostly beer.

MEMBER DONATELLI: For the yacht club's facilities?

MR. MIGATZ: Of course. Of course.

MEMBER DONATELLI: And what is stored in the other
sheds?

MR. MIGATZ: There is landscaping equipment. There is

Appeal #21356

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

a lot of restaurant equipment that are stored in those sheds.

MEMBER DONATELLI: So everything that really pertains to the running of the yacht club?

MR. MIGATZ: Absolutely.

MEMBER DONATELLI: Of the facility?

MR. MIGATZ: Yes.

MEMBER DONATELLI: The propane heaters that are stored. When I drove onsite, I saw that or that the yacht club had some propane heaters in the vicinity of the tennis courts. Those are, I guess, when people are playing or in the vicinity of the tennis courts, they are used to keep members comfortable?

MR. MIGATZ: I would imagine so, yes.

MEMBER DONATELLI: And when they are stored onsite, are they detached from the propane canisters or are the propane canisters kept there?

MR. MIGATZ: I will find out. They are taken out and there is a cage that meets code. The building inspector was down there and looked at that. It meets code and that's where the propane canisters are stored.

MEMBER DONATELLI: And the five sheds. I think are five sheds. There is one for refrigeration, plus four other sheds, if I'm not mistaken. Are these movable sheds? Are they permanent sheds?

MR. MIGATZ: They do not have a foundation, so they are not structures, but that would be reviewed by the Building

Appeal #21356

Department if the variance was granted to maintain them. They would then go through a Building Department review to see what must be done to meet code. Those are less than 100 square feet and deemed portable sheds, they don't need a permit. And, I think, all but one or two of these would qualify. And we showed on the plan that the ones that are larger than 100 square feet can be replaced with those less than 100 square feet.

MEMBER DONATELLI: I did see on the plans that at least two of the sheds were 144 square feet.

MR. MIGATZ: We can replace those.

MEMBER DONATELLI: And another thought that I had, again, pertaining to the sheds. Forgive me. It popped in and popped out. If it comes back to mind, I will let you know. So that really concludes my questions. I think we have been given quite a bit to think about. I think we can reserve.

ATTORNEY ALGIOS: Mr. Migatz, the cage that stores the propane tanks, is that on a different section of the property?

MR. MIGATZ: No. It's on 303 and 304.

ATTORNEY ALGIOS: Oh, it is on there?

ATTORNEY ALGIOS: Yes. Again, not raised by the Building Department. The inspector was down there, did not raise that as an issue.

CHAIRMAN MAMMINA: I think at this point we will reserve decision on the application. There is a lot for us to

Appeal #21356

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

consider. And we appreciate --

MR. SCHNEIDER: Excuse me.

CHAIRMAN MAMMINA: I'm sorry, sir.

MR. SCHNEIDER: Since my reputation was attacked, do I have an opportunity to defend myself? You are making this part of a public record and I wish to be able to address the comments that were mentioned to me.

CHAIRMAN MAMMINA: Please permit me to remain courteous. I'm sorry. That, is not the forum for it. And whatever everybody feels the forum for it is is beyond my authority here. So with that, we reserve decision and I can say this will not be decided today. We have an awful lot to look at.

MR. MIGATZ: I just urge you to stick to the issues that are before you. Thank you.

MEMBER HERNANDEZ: Thank you all for coming.

MEMBER DONATELLI: And we thank the neighbors, as well, for coming down. We appreciate your input.

(Whereupon, a recess was taken at this time.)

1 Appeal #21390

2 SECRETARY WAGNER: Next Appeal is Appeal #21390 -
3 Sublime Subs, LLC (Jersey Mike's Subs); 1034 Willis Ave.,
4 Albertson, Section 7, Block 230, Lot 45; Zoned Business-A.
5 Conditional Use §70-126(F) to construct interior alterations
6 for a new retail food use (a conditional use.)

7 CHAIRMAN MAMMINA: You have heard Appeal #21390 -
8 Sublime Subs, LLC (Jersey Mike's Subs). Is there anyone in the
9 room interested in the application other than the applicant?
10 Seeing no one. Please give your name and address.

11 MR. SBARRRO: Good afternoon. My name is Gianni
12 Sbarro. I'm an associate with Forchelli, Deegan, Terrana, LLP.
13 We have an office at 333 Earle Ovington Boulevard, Uniondale,
14 New York. Thank you all for having me today. In support of
15 our application, I just wanted to start with I have a letter
16 from Mr. James Meci supporting. He is the owner of 17 Park
17 Lane Drive, which is the first residential property across the
18 street, which is behind the gas station across the street from
19 Willis Avenue. We also have menus for the Board to review.

20 SECRETARY WAGNER: So you want to submit the consent
21 and you also submitted others. So the consent will be Exhibit
22 1 and the menu will be Exhibit 2.

23 MR. SBARRO: So the requested application relates to
24 the tenant space known as 1034 Willis Avenue located in the
25 Albertson shopping center on the northeast corner of Willis
26 Avenue and IU Willets Road in Albertson. The property is

Appeal #21390

1
2 designated on the Nassau County Land & Tax Map as Section 7,
3 Block 230, Lot 45. It's, approximately, 5.3 acres and it's
4 situated in the Business-A District of the Town. The property
5 is developed with over 60,000 square feet of tenant space. And
6 some of the uses provided within the center include
7 restaurants, beauty salons, a grocery store, a bank, and
8 various retail stores.

9 The proposed addition to the center is a Jersey Mike's
10 Subs franchise, which will be owned and operated by John and
11 Rebecca Gallo of Sublime Subs, LLC. John and Rebecca are here
12 today and they are willing to answer any questions that the
13 Board may have later on.

14 As some of you may know, Jersey Mike's Subs is a
15 67-year old American sandwich chain with over 2,000 locations
16 throughout the United States, Canada, and Mexico. This
17 specific store will be located in an existing 1,350 square foot
18 former dry cleaner space with the main entrance facing Willis
19 Avenue. Importantly, the dry cleaners that previously occupied
20 the space was a drop-off-only store and no dry cleaning was
21 done onsite. The applicant is proposing interior alterations,
22 including improving the design, signage, lighting, HVAC system,
23 ductwork and more. Today, we are seeing a conditional use
24 approval pursuant to Section 70-126(F) of the code. According
25 to that section, a property may be used for a retail food use,
26 when authorized by this Board, pursuant to the provisions of

Appeal #21390

Article 24 and for no others. The Jersey Mike's Subs is classified as a retail food use, and therefore a conditional use permit is required. Notably, the plans comply with all other aspects of the code.

The Board should approve the requested conditional use because it's in line with the purposes of zoning as set forth in the Town law and the use is permitted in the Business-A District. In addition, the use is appropriate and in harmony with the surrounding properties in the area and it will contribute to the growth and general welfare of the community. Furthermore, the proposed retail use will not have any negative impact on the immediate neighborhood, nor nearby residences.

Specifically, I would like to point out that parking is not an issue at this site. As you may recall, in January of 2020 under Appeal #21178, our client, Gino's Albertson, LLC, requested a similar conditional use permit for a proposed ramen noodle restaurant, as well as a variance of Section 70-103.A(1) for a 16-space deficiency in parking. As they did for the present application, Mulryan Engineering prepared a traffic engineering report, which concluded that there was plenty of parking at the center to accommodate the uses within, and that the granting of the Gino's application would not have an adverse impact on the traffic or parking conditions in the area. The Board strongly agreed with that conclusion, as well.

Lastly, as previously mentioned, Jersey Mike's Subs is

Appeal #21390

1
2 a popular nationwide franchise and the centralized location of
3 the center will allow John and Rebecca Gallo to successfully
4 cater to the residents from Albertson, Williston Park, Roslyn
5 Heights, New Hyde Park, and many other nearby areas. As such,
6 we respectfully request that the Board approve the condition
7 for the reasons previously stated.

8 CHAIRMAN MAMMINA: Is the applicant aware of the
9 standard conditions of a restaurant?

10 MR. SBARRO: Yes. Specifically, are you referring to
11 the refrigerated garbage in the rear?

12 CHAIRMAN MAMMINA: Garbage, garbage pick up inside the
13 facility?

14 MR. SBARRO: Yes. So there is a refrigerated garbage
15 in the rear right next to the back door of the restaurant. And
16 the applicant had some conversations with Winters Brothers, who
17 does the pick up -- just the pick up of garbage at the site and
18 they plan to pick up two to three times a week.

19 CHAIRMAN MAMMINA: Do they acknowledge, though, that
20 they are picking up inside the building and not outside of the
21 building?

22 MR. SBARRO: Yes.

23 CHAIRMAN MAMMINA: Just let the record show that the
24 applicant has acknowledged that pick up. Normally, we will
25 talk a little bit about Uber and that sort of thing, but I
26 don't think that would be a case here because it's a shopping

Appeal #21390

center. I'm sure there is plenty of Ubering going on already and it doesn't impact anyone on the street or residential.

MEMBER GOODSSELL: For the record, there are other food establishments in that particular shopping center, is there not?

MR. SBARRO: Yes.

MEMBER DONATELLI: I would also just put on the record that no parking variances are required.

CHAIRMAN MAMMINA: Okay. We have a motion.

MEMBER DONATELLI: I make a motion that we grant the application subject to restaurant conditions.

CHAIRMAN MAMMINA: We have a motion from Member Donatelli.

MEMBER HERNANDEZ: Second.

CHAIRMAN MAMMINA: Seconded by Member Hernandez. 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.

1 Appeal #21390

2 CHAIRMAN MAMMINA: Aye. The application approved. Let
3 the subs begin.

4 MR. SBARRO: Thank you very much.

5 MEMBER DONATELLI: Good luck to you.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 Appeal #21391

2 SECRETARY WAGNER: Next Appeal is Appeal #21391 -
3 Con-Strux; 702 Grand Blvd., Westbury, Section 10, Block R, Lots
4 420. 731 & 732; Zoned Industrial-B/Business-A/New Cassel Urban
5 Renewal Overlay District. Variances §70-188.B(7)(a) and
6 70-103.M to construct a new facility to maintain and enclose a
7 concrete recycling operation with not enough parking and
8 parking within a front yard setback.

9 CHAIRMAN MAMMINA: You heard Appeal #21391 - Con-Strux.
10 Is there anyone in the room interested in the application other
11 than the applicant? Seeing no one. Please give your name and
12 address.

13 MS. DICKSON: Good afternoon. My name is Kathleen
14 Deegan Dickson. I'm a partner in the Law Firm of Forchelli,
15 Deegan, Terrana; 333 Earle Ovington Boulevard, Uniondale, New
16 York. Here on behalf of Con-Strux, LLC, which is the owner and
17 operator of the concrete recycling operation at 702 Grand
18 Boulevard in the Hamlet of Westbury here in the Town of North
19 Hempstead.

20 We are here this afternoon to request a continuing --
21 to request a conditional use permit for a parking variance and
22 to allow parking of one car within the front yard setback in
23 connection with the existing concrete recycling facility that
24 exists at the property. The proposal is to enclose the
25 property or the operations on the property with a 22,919 square
26 foot building. The premises has been operated as a concrete

Appeal #21391

1
2 recycling facility for over 40 years, with being operated by
3 Con-Strux since 1991. It's located in the Industrial-B
4 District in Westbury. The operations include taking in
5 demolished concrete, asphalt, masonry materials, and then it's
6 crushed into various sizes and then recycled and used for
7 things like road base, drainage, stone, and aggregate
8 replacement. The operations, in addition to being regulated by
9 the Industrial-B performance standards of the Town of North
10 Hempstead, are also regulated by the DEC under what is known as
11 a Part 360 Permit. I think a lot of the applications that come
12 before this Board involve the industrial uses in this area of
13 Westbury. And we know that dust, odor, and noise are all
14 byproducts of industrial uses, especially outdoor industrial
15 uses. It certainly creates an unpleasant situation for people
16 who live and work in the area. With the encouragement and
17 cooperation of Michael Posillico, who is one of the principals
18 of Con-Strux, the Town Board amended the Town Code in 2016 to
19 make concrete recycling a conditional use as opposed to a
20 permitted use. And later again, with Con-Strux's input and
21 cooperation, the Town Board adopted performance standards
22 within the Industrial-B District, all of this in order to
23 reduce the negative effects of certain industrial operations on
24 the nearby residential neighborhoods. Mr. Posillico and his
25 partners worked closely with the Town of North Hempstead to
26 create these new regulations to mitigate the dust and noise

Appeal #21391

that are inherent in the concrete-crushing industry.

In 2018, Con-Strux applied to this Board and received very similar approvals to what is being sought today. It was under Appeal #20522 - Con-Strux, LLC. That building was not constructed, but I have a copy of the decision. I know you have it in your files, but I will submit it just so you have it handy.

SECRETARY WAGNER: So this is Exhibit 1.

MS. DICKSON: Yes, Exhibit 1. So as part of that application, Con-Strux received over 25 letters in support. I have copies of those letters, if you are interested. They are, certainly, in your file from the previous application, but I do have copies of them with me today. Really, what it evidences is the fact that Con-Strux and its management stay in close contact with their neighbors and really work hard to establish a good-working relationship, despite the nature of the operations. They have been very conscientious about trying -- before this building is constructed and the operations continue -- to try to keep the noise and the dust down. I would like to just submit these so that you have them. Although, they are dated May 2018, as I said, it's a very similar application to that, which was approved by this Board in 2018.

MR. PEROTTA: Exhibit 2.

MS. DICKSON: So the 2018 application was for a slightly larger building. It was a 23,000, more or less,

Appeal #21391

square foot building. 23,164 square feet, whereas today we are looking for 22,919. So it's, essentially, the same size, roughly the same size, but a different configuration. And what is being proposed now is a little more functionally appropriate and a little more constructible from a constructability point of view. We do require the same or a similar parking variance. That application that was approved by this Board had a requirement of 32 parking spaces where 4 were required. This application similarly provides 4 parking spaces, but our requirement is 29. So it's actually a lesser variance than what was required. There was also a variance for one car in the front yard setback. Similarly, in this application we have, one of the parking stalls encroaches into the front yard setback of 10 feet along Grand Boulevard. And it was also for a conditional use permit at that time, as well. So we are just seeking -- those variances expired, by the way. They were valid for a period of, I believe, two years and then it was renewed a few times. And then we were not able to renew again, so we ended up back here. But at the same time, the building has been redesigned, as I said, to be a little more functionally appropriate and certainly more constructible.

VICE CHAIRMAN FRANCIS: Can you just explain that?

That's the second time you said that.

MS. DICKSON: Constructability?

VICE CHAIRMAN FRANCIS: Yes.

Appeal #21391

1
2 MS. DICKSON: So the prior application was for the
3 23,000 square foot building. It had a building that pretty
4 much followed the property lines on the south. I'm going to
5 call this the west and the east side. It's an oddly-shaped
6 property. It's a triangular-shaped property, which has its
7 functional challenges to begin. So the original application
8 was to enclose the entire rear portion of the premises with
9 this being Grand Boulevard. It was right up against the
10 railroad track, up against the -- this is the Omni recycling
11 over here to the west, and then right up against Grand
12 Boulevard. So this application required also a front yard
13 setback for the building. So the building in this application
14 -- so see how it goes out to the corners here. So we pulled
15 it back from the property line along Grand, pulled it back from
16 the property line along the Long Island Railroad, and then also
17 left these outside corners open. So first of all, you are not
18 building a triangular building, which I think Mr. Mammina would
19 know better than the lawyers here. I think there are some
20 challenges to actually building into the corners. So from a
21 constructability point of view, this made sense.

22 MEMBER DONATELLI: How do you clean in the corners?

23 MS. DICKSON: Well, that's it. From an operational
24 standpoint also, these become sort of dead space and not so
25 functional. So it's a little more economical, but certainly
26 more functional to have the building that's proposed now.

Appeal #21391

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CHAIRMAN MAMMINA: Is there a roll-down door on the western? I see something where it says "at openings for dust protection. See architect for plans for details." Again, my only thing on that is how do you get back there just for general trash and weeds? I mean, I know it's not a garden spot there, but it could be important.

MS. DICKSON: Well, there is an entrance you see. I'm not sure. I would defer. Not sure as to whether it's a roll-down.

CHAIRMAN MAMMINA: It looks like a roll-down.

MR. NEE: Andrew Nee, VHB Engineering; 100 Motor Parkway, Suite 305, Hauppauge, New York. So the rear triangle that you are referring to, there is a passageway that people could get access to the site for storage of equipment or something that is the farthest away from the frontage. There is no door there, it's just an opening on the side of the building.

CHAIRMAN MAMMINA: So that's open?

MR. NEE: Correct.

CHAIRMAN MAMMINA: I saw the line and I said, okay, it looks like a something.

MR. NEE: So obviously, more difficult to construct the building to that. And also, the operation, it works well for them to have that at the rear portion of their site. Out of sight out of mind for storage.

1 Appeal #21391

2 CHAIRMAN MAMMINA: Sidebar. Off the record.

3 (Whereupon, a discussion was held off the record.)

4 MEMBER GOODSSELL: But the closest residential houses
5 would be on the other side of Grand Boulevard?

6 MS. DICKSON: Yes. Let me show you the aerial. So
7 this has a rendered depiction of the new building. This is the
8 back triangle that we were just talking about. This is the
9 front triangle. So the residential neighborhoods are all
10 across Grand Boulevard in this direction and then there are
11 also others on the far side of the railroad tracks, but they
12 won't have an impact.

13 MEMBER GOODSSELL: Because the railroad acts as a
14 natural barrier.

15 MS. DICKSON: Right. The railroad tracks and then
16 there is industrial. Then there is property and then you get
17 to the other residential. So you know, I want to just put it
18 on the record that Con-Strux really does pride itself as
19 running as clean an operation as humanly possible for this type
20 of use. As I mentioned, they worked with the Town and
21 voluntarily, which may seem a little counterintuitive, but they
22 understand that being in close proximity to residential can
23 cause problems for an industrial user. So they are really
24 trying to make the impact on the residences and the other
25 commercial properties really minimized. They have spray
26 operations. They have Palmers that they spray to keep the dust

Appeal #21391

1
2 down. They bought a street sweeper so that they can clean
3 their property and clean up and down in front of their
4 property, and even a couple of the neighboring properties on
5 Grand Boulevard. They put noise attenuation equipment in
6 place. And then they also, which I found kind of interesting,
7 in addition to being subject to the inspections by the Town and
8 by the state, they also have a full-time compliance officer
9 that polices their 7 sites and shows up randomly to make sure
10 that they are in compliance with the DEC regulations and with
11 the Town regulations. Because they don't want to be in a
12 reactive situation, they want to be proactive as far as keeping
13 things running smoothly.

14 MEMBER GOODSSELL: They have 7 other sites?

15 MS. DICKSON: Yes, 7. Other concrete-crushing sites on
16 other parts of Long Island.

17 MEMBER GOODSSELL: This is the only one in the Town of
18 North Hempstead?

19 MS. DICKSON: Yes, I believe so. Yeah. But they also
20 put a lot of technology in place with dust sensors and noise
21 sensors that go directly to the site manager's cell phone and
22 to the compliance officer's cell phone. So if there is a dust
23 cloud or if there is any incidences, you know, on a Saturday or
24 a Sunday or at midnight, they are getting an alert and then
25 there are reports that are generated. So it's sort of unique,
26 the self-policing. And I only mention it because it costs a

Appeal #21391

1
2 lot of money and it puts them a little bit at a competitive
3 disadvantage as to some of their competitors who are not quite
4 as conscientious. And I only mention it because I think some
5 of them are going to be coming before this Board in the next
6 several months with similar applications because the code does
7 require enclosure. And we would hope that this Board would
8 keep Con-Strux in mind as a model and maybe hold other
9 operations to the same standard so that there is a level
10 playing field.

11 As I mentioned, we require a parking variance. Our
12 site requires 29 parking spaces once we create this building
13 because it's based on the size of the building, the square
14 footage of the building, which at 22,000 square feet, it
15 requires 29 parking spaces. That's 1 per 800 square feet. The
16 truth is the operations here require very little parking.
17 There is not a ton of employees who work here. And those who
18 do, a good amount of them come from the immediate area and
19 either bicycle to work or get dropped off or walk to work. We
20 submitted with the original application, in 2018, a report by
21 Cameron Engineering, and then it was updated and verified by
22 VHB as part of this application. That's in the submissions
23 that you have in your packet. And it verifies that on average,
24 there is two to three occupied parking stalls onsite at any
25 given time. That's for, essentially, employee parking or, you
26 know, visitor parking when I go and check out the site before a

Appeal #21391

Hearing. But, you know, it's not a high-parking demand. Also, the only thing that creates the need for parking under the code is the fact that now we have a building, where before with an open site, there is no parking requirement, you know, based on the square footage of the building.

I do have Aaron Machtay from VHB here this afternoon who can speak to you about the parking. Just before I do introduce him, I just want to point out the one space that is within the front yard setback. There is a fence that runs along this property line along Grand Boulevard, plus at this point here, you will see a lighter line outside of the property line that shows the retaining wall, that's the edge of Grand Boulevard overcast because it goes up. So this parking space, even though it's within the front yard setback, it's not going to have any negative impact on the community at all. Nobody is going to see it. And, frankly, having one car there is probably not the worst that someone is going to see at a concrete-recycling place. We do have, as part of our submission, the truck-turning radius that's part of the requirement for the conditional use permit. Just really quickly -- and Andrew, you could probably correct me if I come up with anything incorrectly -- the main crushing machine here is in the back of the building. The trucks coming off of Grand Boulevard will come in forward, go forward, and then back into the building to dump their material. Inside the building,

Appeal #21391

1
2 there is equipment that moves the material to where they want
3 it. So they sort it, different types of concrete. Different
4 quality of the things that are dumped will be moved into
5 different piles and then processed separately so that at the
6 end, they have their specific products that they sell. And
7 then sometimes the same truck, sometimes different trucks will
8 then reload with the new recycled material and they will take
9 them offsite. There is enough room that there will be no
10 backing up onto Grand Boulevard. There is plenty of room to
11 maneuver for a truck that pulls into the building and then as
12 it's dumping its material inside the building. Also, the truck
13 shown here on this diagram are larger than what is typically
14 experienced at this site. Because it is a small site, it's
15 only about 32,000 square foot site, whereas many others are
16 acres and acres. If somebody has a tractor trailer, they are
17 usually directed to one of the other sites somewhere else
18 because it's just not practical to have a tractor trailer in
19 this area. Even those 40-foot trucks that are depicted are
20 fairly uncommon, most of them are much smaller. So with that,
21 I would like to just introduce Aaron Machtay from VHB.

22 VICE CHAIRMAN FRANCIS: Kathleen, just before you do
23 that, just two questions.

24 MS. DICKSON: Yes.

25 VICE CHAIRMAN FRANCIS: In terms of having to come
26 back, what took so long to get your other approvals that they

Appeal #21391

needed to go forward with the construction? And are they anticipating that that's not going to take as long this time and that the building will be done in a timely fashion?

MS. DICKSON: It will. It will. So there were a lot of things at work, the fact that these were new regulations that had come on in 2018. And then again in 2022, the new performance standards were put in place. I would say it was pretty obvious that Con-Strux was the only player in the field that was actually coming to the table and doing the right thing. And as I mentioned, it's a very large expense. And once they start spending this money -- and it puts them at an operational disadvantage also. They wanted to see that their competitors were also toeing the line. And frankly, none of them were. It took the Town to issue some violations in order to get everybody back into the table. And by that time, the approvals had expired. So it seems that everybody is sort of getting on the bandwagon and doing the right thing. And as a practical matter, you know, right now Con-Strux is geared up to this. They redesigned the building to make sure that it was something that was able to be built comfortably. And we will have to go for site plan review because we are doing a new building on a site larger than 25,000 square feet. But upon approval of this Board, that will open us up to go to site plan review and our intention is to proceed.

VICE CHAIRMAN FRANCIS: How many other competitors are

Appeal #21391

there in the Town of North Hempstead? I'm assuming they are probably in New Cassel.

MS. DICKSON: I know of one. There is one direct competitor. So let me introduce Aaron Machtay. Also, just so you know, I have Mark Wrights, who is the operations manager of this site, Joseph Posillico is one of the owners, he is here with us today, and also Caitlin, who is the architect, if you have questions for any of them. And then you already met Andrew Nee from VHB.

MR. MACHTAY: Chairman and Members of the Board, good afternoon. For the record, Aaron Machtay with VHB Engineering. Offices at 100 Motor Parkway in Hauppauge, New York. As Ms. Dickson alluded to, for this application, the original application, I will call it, back in 2018, there was a traffic and parking assessment that was prepared by Cameron Engineering. VHB was asked to review that for its applicability to the current application, which we did. That original study, that primary topics that we reviewed it for, parking, traffic generation, maneuverability. And we looked at all of those and how they may apply to this current application.

First and foremost, the parking was already alluded to. The previous report looked at the parking demand that is associated with this use and observed on average, 2 vehicles parked as well as some smaller machinery, Bobcat-type things

Appeal #21391

occasionally occupy the parking spaces. And irregardless of what was there, it, basically, shows that 4 spaces being provided for this use is more than adequate. In my opinion, that is to remain true. And based on the information that the applicant has provided us, we are not expecting there to be a significant increase in activity onsite that would cause the parking being provided to be inadequate.

Now, with regard to a traffic generation. This is a very low generator of traffic. There are trucks that come in and out throughout the day. The Cameron Engineering report estimated that the maximum would be somewhere around 40 during the course of the entire day. So it can range anywhere from 1 to 4 trucks an hour. As far as everything is concerned, that level of traffic entering and exiting the site, those are heavier vehicles. It was pretty de minimus. If you look at the average amount of traffic that's on Grand Boulevard in this area and based on New York State DOT traffic data viewer, it can be upwards of about 600 vehicles. So 1 to 4 is less than 1 percent, and that's a de minimus increase. Especially, given that if you were to look at traffic volume on any roadway on any given day, as a traffic engineer, we would expect there to be a fluctuation of around 10 percent. So basically, the traffic generated by this site is indecipherable from just the regular fluctuation of traffic in the area. So it doesn't really have an impact on the operation of the surrounding area.

Appeal #21391

1
2 Maneuverability is probably the primary crux of this
3 application from a traffic and parking operations standpoint.
4 Obviously, this site is required to accept larger vehicles in
5 order to access the manufacturing facility and so forth. The
6 Cameron Engineering report focused on a smaller design vehicle,
7 an SU-30, which is defined as a single-unit truck 30-feet long.
8 As you can see on the plan prepared now that VHB prepared,
9 that's a 40-foot truck. Again, it's just a design vehicle, but
10 it shows the general maneuverability patterns of it. And from
11 review of this, the vehicle is able to enter the site, back up,
12 access the building, and exit without interrupting parking
13 areas and without interrupting the traffic on Grand Boulevard.

14 MEMBER GOODSSELL: So I do have a question for you. Is
15 it anticipated that any of these trucks, as they come in and
16 drop their load, need to stay for a few minutes to complete
17 some paperwork? Where would they hover, if they were going to
18 do that, or is it simply that the trucks come in, they drop,
19 and they leave?

20 MR. MACHTAY: As to whether or not they would need to
21 complete paperwork, I would defer to the applicant, but I would
22 say that based on the low volume that I am talking about, they
23 would back in, the driver would hop out, and they back in where
24 they are.

25 MEMBER GOODSSELL: I completely understand. I just want
26 to know if it's anticipated. And I am looking at the turning

Appeal #21391

radius, if it's anticipated that more than one truck might be there.

MR. MACHTAY: Well, I don't think more than one truck would not be maneuvering on the site at a time, and I think that's the key. I think it may just be a matter of them being queued. If it does occur, again, it's 1 to 4 per hour. So there is a potential that 2 could be present at once, but it's, probably, very unlikely. But again, just to point out, it wouldn't be maneuvering at the same time. So it would just be a matter that one may be slightly blocking or they may be next to each other, if necessary, and then one would leave and then the other would leave. So I don't see that something as a major issue.

MR. NEE: So if I may, just in response.

VICE CHAIRMAN FRANCIS: Just give your name.

MR. NEE: Andrew Nee from VHB. With relation to the duration in which these trucks are outside, it's an average of 3 to 5 minutes. So they are there for a very short time span.

MEMBER GOODSSELL: Well, this facility is not open to the general public, is that correct? In the sense that you are not going to get someone with a station wagon delivering something.

MR. NEE: Correct.

MEMBER GOODSSELL: What you are going to get are commercial trucks, which where do they pick up their material

Appeal #21391

from? I will ask the applicant when it's his turn. Let each person finish their testimony.

MR. BRETZ: Mark Bretz; 702 Grand Boulevard, Westbury. In response to your question, we are open to masonry guys and commercial trucks. Generally, it's the public, but it's a very select few of those tradesmen that would patronize us. The material comes from various projects. It could be a small driveway guy that's replacing his driveway, you know, a small driveway contractor up to a utility contractor like Aspen for emergency auto, for a broken gas line across the road, rips up the road, and the sidewalk. It could also be a large union-sized contractor like doing the Long Island Expressway that might be needing our CA for lanes and pavement.

MEMBER GOODSSELL: And do they notify you in advance that they are coming?

MR. BRETZ: We have an element of scheduling, yes. Some of it we do not. This type of work is controlled by the weather. So, you know, they are not going to be working construction and working outside in the pouring rain. But there is some degree of scheduling. We have a pretty good idea of what our day is going to look like in that facility.

MEMBER GOODSSELL: So to go back to my original question, which is, do you anticipate a truck or two lining up because there is no room on your property to do so?

MR. BRETZ: Typically, what we do in an instance like

Appeal #21391

1
2 that when we get one or two trucks, we will back the one guy in
3 while the other guy queues up in that turn spot, that turning
4 radius. He will go in and get his paperwork done. It's
5 typically a three to five minute turn with that truck in and
6 out, so it's very quick. We queue everything up on property.
7 We don't stop anybody in the street. We don't have operations
8 in the street at all.

9 MEMBER GOODSSELL: Thank you.

10 MR. BRETZ: Thank you.

11 MR. MACHTAY: So just to summarize. I think based on
12 the fact that this is such a low generator of traffic, these
13 instances where there are two trucks at once, it doesn't
14 represent an issue because there is adequate space to have two
15 trucks on the site at once. They are not going to be blocking
16 any operations. There is no passenger vehicles that they're
17 conflicting with or anything like that, so they are able to
18 manage it. And I think that's, you know, an acceptable
19 situation. In greater summary, just based on this updated plan
20 and based on the fact that the operation is going to be similar
21 to what was proposed in 2018 just with a slightly modified
22 building, and after reviewing the previous report that was
23 done, it's my opinion that this site is not going to create any
24 undue traffic hazard or congestion.

25 CHAIRMAN MAMMINA: Thank you.

26 MS. DICKSON: So we don't have anything more, unless

Appeal #21391

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

you have other questions.

VICE CHAIRMAN FRANCIS: I have just one question. If, in fact --- well, first of all, we can't do anything today because of SEQR, but assuming that we grant the variances, how long do you anticipate it taking you to get to the site plan approval?

MS. DICKSON: We should be able to proceed fairly quickly. Just final completion of the engineering site plans, which Mr. Nee says they are pretty much done and then we submit to the Town Board.

VICE CHAIRMAN FRANCIS: And construction?

MS. DICKSON: I would say the construction drawings would take another period of time, but engaging in a structural engineer. So I think it's our intention at this point to proceed expeditiously, you know. I think we could strive to be under construction by the end of the year, I would imagine weather-permitting. Just the process takes some time, but I think I don't want to put words in your mouth, but we are not in the same position that we were the last time. I think that right now we feel pretty confident that we are ready to proceed, start construction, you know, and we feel pretty confident that the other industrial users in the neighborhood are proceeding with theirs, as well, and we are moving forward.

VICE CHAIRMAN FRANCIS: So this time next year, there should be a building?

Appeal #21391

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

MS. DICKSON: I would think so. This time next year,
I'm not sure. I don't know how long the construction
timeframes would be.

VICE CHAIRMAN FRANCIS: That's fair.

MS. DICKSON: But I will tell you it's the intention of
Con-Strux to proceed expeditiously at this point.

VICE CHAIRMAN FRANCIS: Thank you. I appreciate that.

CHAIRMAN MAMMINA: Terrific.

MS. DICKSON: Thank you. Are you closing the Public
Hearing?

VICE CHAIRMAN FRANCIS: Yes, we will reserve.

MS. DICKSON: All right. Thank you very much.

1 Appeal #21392

2 SECRETARY WAGNER: Next Appeal is Appeal #21392 - Suman
3 Saha; 1015 Prospect Avenue, Westbury; Section 11, Block 121,
4 Lot 43; Zoned: Business-A/New Cassel Urban Renewal Overlay
5 District. Conditional use §70-126(F) to construct interior
6 alterations to convert a retail space to a food use.

7 CHAIRMAN MAMMINA: You have heard Appeal #21392 - Suman
8 Saha. Is there anyone in the room interested in the
9 application other than the applicant? Seeing no one. Please
10 give your name and address.

11 MR. CLAYTON: Larinzo Clayton, Expediter for the 1015
12 Prospect Avenue Deli. 505 Alicia Drive, Westbury, New York. I
13 have some pictures, as well, for the Board of just different
14 delis along that Union Avenue and Prospect corridor. The one
15 that you see, Freetay Creole, the actual tenant worked for the
16 establishment and became a partner in the establishment and is
17 now launching out on his own.

18 VICE CHAIRMAN FRANCIS: You have a lot of competition
19 over there.

20 MR. CLAYTON: Survival of the fittest.

21 SECRETARY WAGNER: Just for the record, the consent
22 forms will be Exhibit 1 and the photographs will be Exhibit 2.

23 MR. CLAYTON: I also have a list, if they want to
24 follow along, with the addresses. To Mr. Francis' point, there
25 are, indeed, a lot, but it's a very diverse community. And I
26 am sure you all are aware that when you talk about the Latina

Appeal #21392

population or the Hispanic population -- excuse my ignorance -- it's not monolithic. There are so many. And Mr. Vila, who will be the tenant to run the operation, he is Dominican. So there are a lot of Guatemalans, El Salvadorians, but there are not a lot of Dominican restaurants in that immediate vicinity.

VICE CHAIRMAN FRANCIS: There are two on the next block, one on one side and one on the other side.

MR. CLAYTON: Dominican?

VICE CHAIRMAN FRANCIS: Yes.

MR. CLAYTON: I don't know. Not to the level of our cuisine. We like to think ours will be a standout. We will do that show that Mr. Donatelli talked about. But more to the point of us today, it's not a unique business, of course, in that area and the taste buds vary in that area. So again, the five factors that we are talking about is no undesirable effect. In fact, we tend to think it will be just the opposite. The alternative was we were going to do a fried chicken establishment, but we just scaled it down just for a whole lot of reasons, budgetary amongst them. There is no substantial variance that we are requiring. It is a conditional use. There is no negative impact on the community. In fact, we are going to beautify the establishment. Self-created, of course. But, of course, when you do business to get in, sometimes you have to do that. Again, it will be a small family-run business. Mr. Vila will be employing a few

Appeal #21392

1
2 people from the community on the younger side. Hopefully,
3 takeout and also delivery. It is definitely a takeout
4 establishment. It's not going to be where you come and sit
5 down. It's going to be largely you come in, you buy your
6 sandwich. And it's mostly foot traffic. You won't have a lot
7 of cars that are going to be coming in that area. And with
8 that said, the architect is here as well as the contractor.
9 And if you have any questions, we would be glad to answer.

10 MEMBER DONATELLI: Do you anticipate having some sort
11 of delivery service, such as Uber Eats or something like that?

12 MR. VILA: I would say yes.

13 VICE CHAIRMAN FRANCIS: Just give your name and address
14 when you come up, sir.

15 SECRETARY WAGNER: Before that, I just want to say for
16 the record that the CBA did submit a letter, I believe, it was
17 last night or this morning in support of the application, which
18 was forwarded to you, Mr. Clayton, and I e-mailed copies to the
19 Board.

20 MR. VILA: Hi. My name is Henry Vila. I am a tenant
21 from 1015 Prospect Avenue in Westbury 11590.

22 MR. CLAYTON: So his question was delivery.

23 MR. VILA: Oh, yes. We will do car deliveries to home,
24 taking and bringing food home between 3 to 5 mile distance, no
25 charge.

26 MEMBER DONATELLI: And where do you anticipate having

1 Appeal #21392

2 these cars come and pick up the delivery?

3 MR. VILA: They will come in the back door. There is a
4 little parking in the back.

5 MEMBER DONATELLI: Thank you.

6 MR. VILA: You're welcome.

7 MEMBER HERNANDEZ: When I think of Dominican food,
8 which I happen to love, I don't think of it as a deli. To me,
9 a deli is a sandwich.

10 MR. CLAYTON: There are steam tables, as you saw.

11 MEMBER HERNANDEZ: Steam tables, I think of rice and
12 beans and that kind of stuff. So that is what you are going to
13 have there?

14 MR. CLAYTON: Yes.

15 MEMBER HERNANDEZ: So it's going to be a full kitchen
16 that I would imagine you are putting in.

17 MR. CLAYTON: Yes.

18 MEMBER HERNANDEZ: So you are not going to have
19 seating, but you are acting like a restaurant/kitchen. You are
20 preparing all the foods, not just assembling.

21 MR. CLAYTON: All to be taking out, essentially, but
22 yes.

23 MEMBER HERNANDEZ: The reason why I'm bringing it up is
24 because you are technically a restaurant, so you need to follow
25 all the restaurant conditions.

26 MR. CLAYTON: Oh, yeah. I spoke to the Department of

Appeal #21392

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Health already with all the food conditions, so full compliance with that.

VICE CHAIRMAN FRANCIS: But there are also Town of North Hempstead conditions you need to act on.

MR. CLAYTON: As I was researching, they kind of overlay each other, so I didn't see anything that was, you know.

VICE CHAIRMAN FRANCIS: Well, I'm very familiar with this area. I live in New Cassel. I don't live very far from where this proposed restaurant is going to be or deli is going to be. You will see me there. I do frequent the areas on Prospect Avenue. My barber is on Prospect Avenue. So I'm going to move that we grant the application. However, I'm going to move it with a conditional use of three years. So you will have to come back in three years. And depending how the operation is going, it will either be approved or disapproved on that. And hopefully, it won't be disapproved and everything will be fine. Let me just bring up the CBA letter.

MEMBER DONATELLI: While we are looking for that, may I ask you another question? As part of this application, you submitted some photographs. Are you able to tell us what those are photographs of?

MR. CLAYTON: Yes. They are different delis/restaurants all along the Union --

MEMBER DONATELLI: No, not the photographs that were

Appeal #21392

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

just handed up. The photographs in your initial submission.

MR. CLAYTON: Oh, these?

CHAIRMAN MAMMINA: The interior photographs that show like some walls that are broken and that sort of thing, just so we understand what the purpose of those are.

MR. CLAYTON: Sure. I will have the contractor come up to address that. I know the floor was broken.

MEMBER DONATELLI: There is one at the rear of the premises with a porta potty. There is some of broken walls. Just so we understand the context.

MR. CLAYTON: Sure. There is a few things. The pharmacy just opened, a nail salon is coming, and all of this construction is happening simultaneously. I don't believe that porta potty has anything to do with the actual 1015.

MR. HENN: Hi. My name is Brian Henn; 809 Avalon Pines Road, Coram, New York. He is going to hire me to fix all that.

MEMBER DONATELLI: So you are the contractor?

MR. HENN: Yeah.

MEMBER DONATELLI: So are those photographs of the current condition?

MR. HENN: Yeah. I'm coming there to finish it and fix it all up.

MEMBER DONATELLI: Again, the photographs were just part of the submission and now I understand. Looks like you are going to have your work cut out for you.

Appeal #21392

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

VICE CHAIRMAN FRANCIS: So Ginny, should I just read this?

SECRETARY WAGNER: Mr. Clayton, the letter that the CBA has sent has certain recommendations, some of those recommendations may end up in the form as part of the conditions and some of the recommendations maybe even you want to respond to and say you are willing to do this or that. So the Board just wants additional time to look at that and you will also have an opportunity to.

VICE CHAIRMAN FRANCIS: So I'm going to withdraw my motion right now and we will continue.

ATTORNEY ALGIOS: We will continue this so you can take a look at that.

VICE CHAIRMAN FRANCIS: So you can just read the CBA letter.

MR. CLAYTON: Do we have to come back?

VICE CHAIRMAN FRANCIS: No. You will be informed of the decision and that may be decided today or it may not be.

MR. CLAYTON: I haven't seen it, so I have no idea.

VICE CHAIRMAN FRANCIS: So that's another reason you should take a look at it.

SECRETARY WAGNER: They are just recommending.

MEMBER DONATELLI: Since this is CBA funding, certainly, we need to consider that in terms of your proposed application.

1 Appeal #21392

2 VICE CHAIRMAN FRANCIS: Well, I'm going to take that
3 off the table, as well.

4 MEMBER DONATELLI: So what I'm saying is it's part of a
5 larger picture and that would make sense.

6 VICE CHAIRMAN FRANCIS: Yes, absolutely.

7 CHAIRMAN MAMMINA: Thank you.

8 MR. CLAYTON: Thank you.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

Proceedings

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SECRETARY WAGNER: Somebody want to move SEQR?

VICE CHAIRMAN FRANCIS: I will move it.

MEMBER GOODSSELL: So moved.

CHAIRMAN MAMMINA: Please poll the Board.

SECRETARY WAGNER: Member Hernandez.

MEMBER HERNANDEZ: Aye.

SECRETARY WAGNER: Member Donatelli.

MEMBER DONATELLI: Aye.

SECRETARY WAGNER: Member Goodsell.

MEMBER GOODSSELL: Aye.

SECRETARY WAGNER: Vice Chairman Francis.

VICE CHAIRMAN FRANCIS: Aye.

SECRETARY WAGNER: Chairman Mammina.

CHAIRMAN MAMMINA: Aye.

(Time noted: 1:52 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

C E R T I F I C A T E .

STATE OF NEW YORK)

) Ss.

COUNTY OF NEW YORK)

I, Amy Boguszewski, a Shorthand
(Stenotype) Reporter and Notary
Public, do hereby certify that the
foregoing proceedings, taken at this
time and place aforesaid, is a true
and correct transcription of my
shorthand notes.

I further certify that I am
neither counsel for nor related to any
party to said action, nor in any wise
interested in the result or outcome
thereof.

IN WITNESS WHEREOF, I have
hereunto set my hand this 12th day of
June, 2023.

A handwritten signature in dark ink, appearing to read 'Amy Boguszewski', is written over a light-colored rectangular background.

AMY BOGUSZEWSKI