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Town of North Hempstead
Board of Zoning Appeals
PUBLIC HEARINGS

Wednesday, September 6, 2023
10:15 a.m. - 1:54 p.m.

BOARD MEMBERS PRESENT:

David L. Mammìna, Chairman - Not Present
Leslie Francis, Vice Chairman
Daniel D. Donatelli, Member
Patricia A. Goodsell, Member
Jay Hernandez, Member

ALSO PRESENT:

Adriana Bactheller, Town Attorney -
(Present: 10:15 to 11:50 a.m.)
Deborah Algios, Town Attorney
Virginia Wagner, Secretary
Amy Boguszewski, Stenographer

1 Proceedings

2 VICE CHAIRMAN FRANCIS: Good morning, everyone. Would
3 you please stand and join Mr. Donatelli in the Pledge of
4 Allegiance.

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

7 VICE CHAIRMAN FRANCIS: Thank you. All right. Our
8 Chairman is not here today because he had to take time off for
9 personal family matters, so I am filling in today for him. Let
10 me just go over a few preliminary things so we can get an
11 understanding of how we run the hearings.

12 First things first, make sure your phones are off and
13 on vibrate, that's very important. The applicants will have
14 the first opportunity to present their case. After which, if
15 there is anyone who is interested in the application, they will
16 get three minutes to add their comments to the record, and then
17 the applicant gets a final shot at bat. Today, we will either
18 grant the applications, deny the applications, reserve them,
19 which means we will deal with them at a different time, or we
20 will continue them for additional information. I think that's
21 about it.

22 MEMBER GOODSELL: Changes to the calendar.

23 VICE CHAIRMAN FRANCIS: Right. Okay. I will. Thank
24 you. Feel free to leave at any time. We won't be upset if you
25 get up and go outside to use the restroom or do whatever. If
26 you have to take a phone call, please do that outside, as well.

1 Proceedings

2 With that said, are there any changes to the calendar?

3 SECRETARY WAGNER: Yes, Chairman. We have an
4 adjournment of Appeal #21434. That's adjourned to September
5 20th and that is for John Roggendorf; 255-19 East Pembroke
6 Avenue, Great Neck; Section 2, Block 55, Lot 218; Zoned:
7 Residence-C. Variances from §§70-100.2(A)(2) and
8 70-100.2(A)(4) to legalize and to replace fencing located
9 beyond the front building line (in the front yard) and legalize
10 and replace fencing that is too tall.

11 Again, that's adjourned until September 20th.

12 We also have an adjournment of Appeal #21445 - H&W
13 Homes, Incorporated; 52 Main St., Port Washington, Section 5,
14 Block 98, Lot 218; Zoned Business-A. Variance from §130(A) to
15 construct a new building façade that would be higher than
16 permitted.

17 That's adjourned until October 11th.

18 And we have an adjournment of Appeal #21447 - Yardbird
19 (Signs); 120 Glen Cove Road, Carle Place; Section 9, Block 670,
20 Lot 27; Zoned: Industrial-B. Variances from §§70-196.J(1)(b)
21 and 70-196.J(1)(f) to construct new signs that are too tall and
22 too high above the ground.

23 That, is also adjourned until October 11th.

24 And I believe all of these adjournments are due to
25 mailing errors or insufficiencies.

26 VICE CHAIRMAN FRANCIS: So the first adjournment was on

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Proceedings

the residential calendar and the last two were on the
commercial calendar?

SECRETARY WAGNER: Right. The first one was adjourned
to September 20th. The last two, October 11th.

VICE CHAIRMAN FRANCIS: Okay. Very good.

1 Appeal #21435

2 RESIDENTIAL CALENDAR

3 SECRETARY WAGNER: So the first Appeal is Appeal #21435
4 - Yaron Levy; 38 Hawthorne Lane; Great Neck; Section 2, Block
5 367, Lot 57; Zoned: Residence-A. Variances from §§70-29.C,
6 70-30.C and 70-208.F to construct additions and alterations
7 that will make the home too big, will be located too close to
8 the street and will increase the non-conformity of a
9 pre-existing non-conforming home.

10 VICE CHAIRMAN FRANCIS: You have heard Appeal #21345.
11 Is there anyone interested in the application other than the
12 applicant? Seeing no one.

13 Mr. Bloom, good morning. Please give your appearance.

14 MR. BLOOM: And good morning to you, Mr. Vice Chairman
15 and Chairman for the day, and Members of the Board. Good to
16 see you again and welcome back after the, I guess, the
17 unofficial end of summer. Paul Bloom, Harris, Bloom & Archer;
18 445 Broad Hollow Road, Melville, New York. Appearing on behalf
19 of the owners of the property, Natalie and Yaron Levy. The
20 property is located at 38 Hawthorne Lane in the unincorporated
21 area of Great Neck; Section 2, Block 367, Lot number 57.

22 And just for the record, the Levys purchased this house
23 in March of 2022. So as I go through my presentation, you will
24 see that things occurred since 1948, then 1994, none of what
25 was done or appearing before any Board has anything to do with
26 the current owners. They purchased it as a legal

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1 non-conforming home. It's in a Residence-A Zone. It's in a
2 regular parcel of land. It's a corner parcel of land. So not
3 only is it a corner lot, but it has irregular lines, especially
4 front lines or front yard to the house. It is 0.343 acres of
5 land. 14,941 square feet. And as I indicated, construction of
6 the original house on the site is 1948. It is 65 years old.
7 In 1994, there were renovations that were made and proved they
8 were consistent with the code at the time that they were built.
9 And at that stage, the house was permitted to be built at
10 5,289.3 square feet. I am going to make a guess or a
11 presumption, because sometime between when they received an
12 approval for the house, which was in accordance with the code
13 at that time as it was written, there was a -- what I would
14 call -- minor modification to the structure itself. Looking at
15 what that minor modification is, I would say that minor
16 modification was, probably, done at the same time as the 1994
17 construction, which was permitted. That, added an additional
18 52.7 square feet. Something to the extent of something a
19 little less than 1 percent addition to the house.
20

21 MEMBER HERNANDEZ: You are using the word "permitted".

22 MR. BLOOM: Excuse me?

23 MEMBER HERNANDEZ: You are using the word "permitted".

24 What do you mean by permitted?

25 MR. BLOOM: At the time that the house was built or
26 renovated in 1994, it conformed to the code at that time. Code

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2 has changed with respect to how you calculate FAR. And so at
3 the time, the floor area ratio or the floor area of the house
4 was consistent with the calculation of what would be permitted
5 under the town code. Since then, the code has been modified,
6 and so the maximum floor area under the current code is no
7 longer the same number, it is a lower number than what we have.

8 SECRETARY WAGNER: Is this an exhibit?

9 MR. BLOOM: Exhibit 1. The exhibit that I just handed
10 up, which was marked as Exhibit 1, has two sheets associated
11 with it. The first is the aerial view. And I think in the
12 center, you will see a blue arrowhead, which identifies the
13 property. You will see there is a house that was -- for
14 purposes of this discussion -- to the left of it and a house
15 that is to the right of it. I'm going to be discussing both
16 those houses, identifying those houses as it relates to the
17 character of the neighborhood, which is one of the items that
18 this Board must take into consideration when area variances are
19 being requested.

20 The second sheet is a face-on of the existing house.
21 What is being proposed with the new home is to take the two
22 peaked roofs on each side of the house, remove those peaked
23 roofs, and make them flat one-story structures. And so there
24 is an elimination of the visual bulk and impact by taking --

25 MEMBER HERNANDEZ: One moment, please. Just for
26 clarification. It's a one-story second story to the house,

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correct?

MR. BLOOM: Exactly.

MEMBER HERNANDEZ: I want to make it clear for the record that it's not a one-story addition. You are building on top of an existing story?

MR. BLOOM: What? No. The front on the right is a garage. It is a one-story structure, but it has that peaked roof, which gives it the appearance of being a one-and-a-half or a two-story.

MEMBER HERNANDEZ: The point is you are taking a peaked roof and making it into a big square box, so you are adding bulk to the front of the house.

MR. BLOOM: Well, actually, we are pushing it down so that it will be a one-story flat roof. Same situation --

MEMBER HERNANDEZ: Again, I would just like to clarify. It's a second-story flat roof?

MR. BLOOM: No.

MEMBER HERNANDEZ: It's the second story of the house.

MR. BLOOM: It's the first story of the house and it's a flat roof.

MEMBER HERNANDEZ: That's not what the plan says. But you have your plans, could you put them up?

MR. BLOOM: Well, I have renderings. So I think that might help you in visualizing what we are proposing. I will hand this up as Exhibit 2. If you look at the second page of

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Exhibit 2, you will see that the peaked roof on the one-story garage to the right and the peaked roof on the one-story bedroom to the left are now removed. And you have one-story flat-roof structures on both sides.

MEMBER HERNANDEZ: Got it. Got it.

MR. BLOOM: And so what has been done by eliminating those two peaked roofs is setting back in a visual manner the second floor from the one story on each side. In addition, what we are doing is we are removing the dormer, the peaked dormer in the center of the existing house, which, by the way, is the, quote-unquote, 50-plus-minus square feet that was added. It was supposed to be 8-feet wide. It's actually 15 or 12-feet wide. That's why I say where it's located and how it's constructed, this was not done at a subsequent time. This was done at the time of the original construction. It was just not something that was caught at that time. And so what we are doing is visually, we do see the bulk of the structure itself by clearly setting back the second story a significant amount of footage from the front roadway.

The one-story addition that we are adding, if you take a look again at Exhibit 1, you will see that there is an overhang in the front of the house. That overhang currently counts for floor area. It's got three walls and it's covered. And for floor area calculations, that open porch is counted for FAR, for floor area. And so we are building out the one story,

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2 which you can see in the rendering on the left and right side
3 of the two-story portico. And so the square footage on the
4 first floor that exist today is the same square footage of the
5 proposed structure that is before you today. So there is not
6 one square foot being added to the first floor of this house
7 over what currently exists. The house that we are proposing is
8 on the same footprint of the existing house. It is not coming
9 any closer to any front yard. It is being built on the same
10 footing. We are building up and, in some cases, removing the
11 peaked roof, which gives a two-story appearance to the house in
12 the front. And so in terms of the visual impact, one, we are
13 not increasing the footprint. We are not changing the front
14 yards on either side of the house. And the visual impact upon
15 those who pass or drive by this house is that this house, it
16 already looks smaller than the house that was there before.
17 The only addition in the front that we are proposing is a
18 two-story portico. And if you look at the rendering again, you
19 will see that it is an open portico.

20 VICE CHAIRMAN FRANCIS: You know how we feel about
21 two-story porticos?

22 MR. BLOOM: I absolutely understand how you feel about
23 two-story porticos. It is a two-story portico, but the house
24 itself, the face of the house is no closer to the street than
25 it is today.

26 MEMBER HERNANDEZ: It could be the rendering. And I

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don't see the dimensions on your drawings or on the architect's drawings. Excuse me. But the front porch that you are enclosing effectively, right?

MR. BLOOM: Yes.

MEMBER HERNANDEZ: You said you are not adding any square footage, which is fine, but the height does not appear to be one story. The height appears to be almost one-and-a-half stories. Again, it could be the visual drawing.

MR. BLOOM: Look, what I say to everybody and, I guess, if the Chairman were here, renderings are pictures and conceptions. The fact is, it is a one-story addition enclosure of the first floor. Renderers are artists, they are not necessarily capable in exactly duplicating what you are going to see. If you go to the house when this is built and you look at the rendering, you will say it kind of looks like that, but this is an exhibit to help you try to understand what we are proposing to do.

MEMBER HERNANDEZ: I don't see it offhand, so I'm going to ask you to ask the architect that if they are not here, to please provide the height of those rooms.

MR. BLOOM: Okay. That one question, we can have that answered right now.

MEMBER HERNANDEZ: Okay. Or you can wait till later, that's fine.

MR. BLOOM: No. Let's not forget it. You want the

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question answered, we will give you the answer immediately.

MEMBER HERNANDEZ: I don't see it. What is the height?
We found it. We found them.

MR. BLOOM: You found them?

MEMBER HERNANDEZ: Yes, thank you.

SECRETARY WAGNER: Looking at the elevations.

MR. BLOOM: I am told by Mr. Bahary, the architect,
that the interior height of that is 8 and a half feet.

SECRETARY WAGNER: We are looking at A8.

MEMBER HERNANDEZ: So it's a 5-foot parapet or a 4-foot
parapet on top of it?

MR. BLOOM: Now you are beyond my scope. I always say
I am a frustrated architect and engineer, but I have no
qualifications whatsoever.

MEMBER HERNANDEZ: Because it says that it's 14-feet
tall. So if the inside is only 9, obviously, something is
taking up 5 feet. Go ahead.

MR. BLOOM: Now, the question is, why are we here? We
are here because we received a Notice of Disapproval dated June
14, 2023. It identifies the three variances for which notices
have been sent out. Section 70-208.F, as in Frank. And I am
going to read something from the denial letter with respect to
that. 70-30.C, as in Charles, minimum front yard depth on
Shore Cliff, the roadway to the left, if you are looking at the
survey or the house. The existing setback is 35.75. The

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2 minimum setback is 35. But the average calculated by the
3 Building Department is 40.1 for the setback on Shore Cliff.
4 And 70-29.C, as in Charles, which is gross floor area. And
5 what we are proposing in this application is to increase the
6 square footage of the existing house by 36.51 square feet. 656
7 is, basically, the increase over the existing house.

8 Now, with respect to 70-208 --

9 MEMBER DONATELLI: I'm sorry. Mr. Bloom, as to that
10 last point you just made. That, is an increase of 36 square
11 feet over and above the dormer that is built without a permit.

12 MR. BLOOM: That, is absolutely correct, and that's why
13 I have been very careful with respect to how I'm making my
14 presentation. I said it's over the existing house. With
15 respect to the dormer, which is, I would say, at least 30 years
16 old, 29, 30 years old, as I believe, it was probably done at
17 the same time as the house was built. That's 52.7 square feet.
18 And so with respect to what was approved for building in 1994,
19 we are a total of 89.21 square feet over what was approved. We
20 are still under a 100 square foot under what was approved in
21 1994. You are absolutely correct, and I have no problem in
22 explaining that. We are not going to walk away from it. It is
23 what it is.

24 With respect to 70-208.F, the denial letter -- and I
25 hope you have it in front of you -- talks about a gross floor
26 area. I am in the small print with the asteric under that on

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2 the first page. And the third line down says that the total
3 gross square footage of 5,342 square feet. The above subject
4 application proposes removing and replacing the existing
5 dormer, and therefore eliminates the need to maintain it,
6 unless the application is withdrawn or modified. What we have
7 is a situation where today if we did nothing, we are prior
8 non-conforming. There is nothing that anybody can do. At
9 worst, now that this 52.7 square feet has been discovered, we
10 can come back to this Board and say we would like to maintain
11 the 52.7 square feet, and we are not doing anything to the
12 house. We are just asking for that approval. My opinion, that
13 if we came back, this Board today would look at that and say
14 it's been there theoretically for 29 years, are we now going to
15 deny a maintained application for a 52.7 square feet? I'm not
16 a betting person. I don't go to Atlantic City. I don't go to
17 Nevada. I would bet that this Board, under those
18 circumstances, would grant that 52.7 and not make us take that
19 dormer and reduce it down. That's my opinion.

20 And so let's look at what we are looking at today.
21 There is a house that exists that is over what is today the
22 permitted floor area. And if we do nothing or do nothing and
23 come to this Board for a maintain, we would have a house that
24 is exactly what you see today. We are asking for an increase
25 of an additional 6 by 6, 36 square feet for this house. That
26 increase is, I believe, 0.6 percent. 0.6 percent additional

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2 over what exists right now. We are talking about things that
3 are, in fact, de minimis.

4 But, what is the benefit ultimately? The benefit
5 ultimately is we are now changing the appearance of this house
6 by taking off the dormers, by setting -- literally setting back
7 visually the second floor and also not changing the square foot
8 whatsoever of the footprint of this building. And so my
9 architect would say with respect to this, that if you look at
10 the history, if you look at what is there today and what we are
11 asking for, yes, it requires a variance. But that variance in
12 a practical, not legal sense, in a practical sense is 36 square
13 foot. In a legal sense is 89.21 square feet. I would say that
14 either 89.21 square feet is a de minimis with respect to a
15 house of this size.

16 MEMBER HERNANDEZ: If I can just make one comment?
17 Because you are making a strong argument that it's a de minimus
18 amount of 36 square feet. You are also effectively --
19 although, it's technically a remodel of a new house, you are
20 almost constructing a new house here because it's a completely
21 different shape. Much more beautiful, by the way. I happen to
22 agree with the architect. It's a much more beautiful design.
23 But just like 36 square feet is a de minimis amount, when you
24 are building the house, take off the 36 square feet. Moving a
25 wall 6 inches would take away more than 36 square feet.

26 MR. BLOOM: The house, which is being proposed, adds an

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additional bedroom to this house. That bedroom is not 36 square feet. But that 36 square feet is part of creating that new bedroom -- by the way -- on the first floor, which we are not adding any additional square footage to.

MEMBER HERNANDEZ: I'm sorry. You are creating an extra bedroom?

MR. BLOOM: Because of the realignment of all of the structures within the house itself. I mean, this is gut-renovation. Then the area of the 36, if you are looking to where is that 36 square feet? It happens to be on the second floor. And so if, in fact, we don't have the 36 -- and I came up with the same question. Let's lose 36 square feet, come on. And the answer to that is, losing that 36 square feet destroys the first-floor layout and plan of the house and would then eliminate one of the bedrooms, which is on the left side of the house. Take a look at the new construction. You will see that there are two --

MEMBER HERNANDEZ: But you just said you weren't adding any square footage to the ground floor.

MR. BLOOM: We are not. We are not. The square footage is on the second floor.

MEMBER HERNANDEZ: So why would you lose a bedroom on the ground floor?

MR. BLOOM: Because of the layout of the rooms. If you take a look on the left side of the plan where the existing

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structure is one bedroom.

MEMBER GOODSSELL: Mr. Bloom, I have your plans up on my computer. When I take a look at the plans, am I looking at the plans for the first floor or the second floor only?

MR. BLOOM: First floor only. Okay. You will see on the left side of the house, there is one bedroom. Take a look at the proposed, first floor left side.

MEMBER HERNANDEZ: Right. It says existing bedroom on the first floor, left side.

MR. BLOOM: If you take a look at the existing, you will see that there is an existing bedroom on the first floor and there is a breakfast area in the back. If you take a look at the new construction, you will see that there are two bedrooms, one where the front one is and one in the back of the house.

MEMBER HERNANDEZ: Which plan number is that?

MR. BLOOM: A004, I believe.

MEMBER HERNANDEZ: Well, I see 4, but that's the existing. I don't see the proposed, unless they are superimposed.

MR. BLOOM: No. A002.

MEMBER HERNANDEZ: A002?

MR. BLOOM: Yes.

MEMBER HERNANDEZ: Okay.

MR. BLOOM: The top left drawing.

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2 MEMBER HERNANDEZ: I don't have a 2.

3 VICE CHAIRMAN FRANCIS: It's on the computer.

4 MEMBER DONATELLI: I've got it, too.

5 MR. BLOOM: So where there was one bedroom at that side
6 of the house, there will now be two bedrooms.

7 VICE CHAIRMAN FRANCIS: But now we are talking about
8 the second floor now, not the first floor.

9 MR. BLOOM: First floor.

10 MEMBER HERNANDEZ: But that second bedroom is where the
11 existing family room is.

12 MR. BLOOM: Well, it was noted as the breakfast room.

13 MEMBER HERNANDEZ: The breakfast room, yeah. So you
14 are right. The square footage is exactly the same downstairs.
15 You are removing. You now have an existing bedroom, a primary
16 bedroom with an enclosed bathroom, but that's not adding the 36
17 square feet.

18 MR. BLOOM: No. No. As I said, it is -- what we are
19 doing is able to create that additional bedroom within the same
20 square footage. And so the 36 square feet is on the second
21 floor of the house, not on the first floor.

22 MEMBER HERNANDEZ: Right. Again, my question is, how
23 does that affect? How does this ground floor bedroom affect
24 the 36 square feet upstairs?

25 MR. BLOOM: Where do you take the 36 square feet from?

26 MEMBER HERNANDEZ: Like I said, 36 square feet in a

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2 house that is 40, 50-feet wide is a 6-inch movement of a wall.
3 Like you said, it's a minimal amount.

4 MR. BLOOM: But we are not moving the walls other than
5 the front of the house, which doesn't add any square footage.

6 MEMBER HERNANDEZ: Somewhere you are adding 36 square
7 feet. You have to be adding it somewhere, so tell me where it
8 is.

9 MR. BLOOM: It is. It's there. The 36 is there. We
10 are not denying it's there. What we are saying is that the
11 first floor has no change and that the 36 square foot is on the
12 upper floor.

13 MEMBER HERNANDEZ: Fine.

14 MR. BLOOM: So I'm not quite sure how I can answer your
15 question any better than that.

16 MEMBER HERNANDEZ: Well, you are adding walls upstairs,
17 correct? Because you are removing existing dormers and you are
18 adding a wall straight up?

19 MR. BLOOM: That's correct.

20 MEMBER HERNANDEZ: Fine. Why can't that wall be moved
21 back 6 inches, a foot to eat up the 36 square feet? You are
22 discussing the whole ground floor. You haven't discussed the
23 second floor.

24 MR. BLOOM: I can only ask the architect if that's
25 capable of being done.

26 MEMBER HERNANDEZ: Sure.

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VICE CHAIRMAN FRANCIS: Put your name and address on the record.

MR. BAHARY: Good morning. Robert Bahary.

THE REPORTER: I'm sorry. Your last name?

MR. BAHARY: B-A-H-A-R-Y, Architect.

VICE CHAIRMAN FRANCIS: And an address.

MR. BAHARY: 310 Northern Boulevard, Great Neck, New York 11021. Good morning. So the answer to the question is, since right now currently there is a second-floor dormer and we are proposing to make a flat ceiling. So that's where the additional floor area would kick in. So if we would step that back, Mr. Bloom was explaining that we would effectively be losing one bedroom. Because right now, the two bedrooms that we are proposing is just the minimum size. So if we lose any further square footage from that, it would be an extremely small two bedroom making it useless to be a two bedroom by itself.

MR. BLOOM: I think the point that is being made is we are not changing the exterior walls on the second floor. But as was indicated, I'm holding my hands such that I have a peaked roof with my two hands.

MEMBER HERNANDEZ: I'm sorry. There is no exterior wall on the second floor. It's an exterior roof that you are putting up a wall.

MR. BLOOM: What we are doing is we are taking the

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2 peeked roof in the center, which has a certain square footage
3 associated with it. And by raising the two ends of the roof --
4 my hands are now finger to finger and I got a straight
5 horizontal in front of me -- the addition between the angle of
6 the roof between the peak and raising the roof to a flat comes
7 to the 36 square feet.

8 MEMBER HERNANDEZ: That's not what you have here.
9 Because as you pointed out, your upstairs wall do not go to the
10 front of the house, they are recessed. That's what your
11 drawing shows. Your walls are recessed. You are describing
12 something which is not here. Am I making sense?

13 VICE CHAIRMAN FRANCIS: Yeah.

14 MR. BAHARY: So we are maintaining that same wall
15 that's in the front of the house right now. We are maintaining
16 that. If you see the pictures, existing pictures, the existing
17 is --

18 MEMBER HERNANDEZ: This one, okay.

19 MR. BAHARY: Compared to the rendering of the second
20 floor, okay. So those two walls are more or less in the same
21 location.

22 MEMBER HERNANDEZ: More or less, okay. Not quite. So
23 again, more or less could be 36 square feet. I am making a
24 very simple point.

25 VICE CHAIRMAN FRANCIS: Correct.

26 MR. BAHARY: I would say it's in the same location.

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It's hard to.

MEMBER HERNANDEZ: The only wall on the second floor here is the front of the dormer.

MR. BAHARY: Correct.

MEMBER HERNANDEZ: That's the only wall. You are going to rip all that out.

MR. BAHARY: We are going to keep that wall.

MEMBER HERNANDEZ: No, you are not. You are going to rip the whole roof out because you have to remove the roof. And when you remove that roof out, that wall is floating in mid-air.

MR. BAHARY: That wall is going to be braced in place and we are going to use that wall for the new addition.

MEMBER HERNANDEZ: You are going to use that wall for your new portico, but you are not going to use that wall for your addition because your additions are to the right and to the left of this. Your additions are on this side and this side, they are not in the middle.

MR. BAHARY: What you are saying is correct. In addition to that, the existing dormer is going to be used, as you said, part of the two-story portico and is going to be used part of the proposed second floor wall.

MEMBER HERNANDEZ: Yes.

MR. BAHARY: So we are not proposing to move that wall.

MEMBER HERNANDEZ: So all I am saying is you have two

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big walls right here -- and I don't have the dimensions of that, but I am sure they are here somewhere -- but these two walls right here are not there.

MR. BAHARY: The one-story walls, correct.

MEMBER HERNANDEZ: Again, the wall on the second floor, the one on top. These walls right here. This is the second floor.

MR. BAHARY: That's going to be occurring behind the roof that exists today.

MEMBER HERNANDEZ: Are you telling me that this room is the same exact depth as your front porch?

MR. BAHARY: That room on the second floor to the rear is existing to remain. We are not changing that. You can see that on sheet A005. We are proposing to keep that room. That wall that is currently in the front of that room is in that position. But right now, it's hidden behind the attic. Since we are removing that peak, the gable --

MEMBER HERNANDEZ: I'm sorry. I am looking at a picture at the side of your house right now, okay. And that dormer in the back ends before the peak of your house, and you have that wall coming forward of the peak. So you are going through the peak and coming out the other end's. It looks beautiful, but --

MR. BAHARY: I'm trying to explain to the Board Member, that wall that you see in the rendering, that's occurring right

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now, presently it's behind the gable roof. Once we remove that roof, that's where the wall now appears and exposed, and we are just putting a demonstration on that to make it more life.

MR. BLOOM: If you take a look at A005.

MEMBER GOODSSELL: We are not trying to redraw your plans for you. What we are asking you is, you really are only here because you are asking for more. Is it possible to make this addition conform? Can you take 36 square feet out somewhere so that we don't have to give you a hard time? I mean, I realize the plans are beautiful. I agree with Mr. Hernandez, this will look spectacular, but we don't go by looks, we go by numbers. Is it possible to remove 36 square feet? In fact, 88 square feet somewhere so that you don't have to need a variance for the house? That's what we are asking.

MR. BAHARY: So the answer is yes, okay. But we will be effectively making one bedroom less, which is what they need to raise their family. They have a mother-in-law, an elderly mother-in-law. So we need as many bedrooms and natural light as possible. That's why we created that second bedroom down there.

MR. BLOOM: Currently, there are five bedrooms in the house. At the end of the day, there will be six. So the children with the parents with the older generation, we need that sixth bedroom. And the 36 square feet, as I said, is not going to be a bedroom, but with respect to how the calculations

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are being made, we are 36 square feet over.

VICE CHAIRMAN FRANCIS: However you look at this, this is a lot of house already. With regard to GFA, you know how we are with GFA. As the Chairman would say, we give it out like drops of blood. So if you can mitigate this situation by making this house smaller, you would be doing both of us a favor.

MEMBER DONATELLI: The point that I would like to add and I would agree with what the Vice Chairman has just indicated. I would also say if the Chairman were here and he is the architect on the Board. All of us have different professions, but he is the architect on the Board. As I look at the back of that second floor, I see the existing sitting area, the existing bedroom, the master bathroom, that is a lot of space there that might be put to better use in an effort to save. And let's not forget. Because I think you touched on it before, but I think it's important to make this very clear for the record. First of all, we are not an aesthetic Board. So what one or more members may think about whether or not this is attractive is neither here nor there. Aside from that, the town did, of course, change the way it calculates gross floor area versus FAR, but the code did so -- the town Board did so specifically to try to limit development on some of these lots. And so we are being asked to increase a non-conforming. We've already got a non-conforming and now we are being asked to

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increase it. And that for me, is a very heavy lift.

MEMBER HERNANDEZ: Thank you for clarifying the aesthetics. I would just like to point out, because you made a point of the wall being where the wall is and your inability to move it. On the right side of the house where you are building in what appears to be all new because it doesn't say that it's existing, and it says new tile flooring, the walk-in closet, the laundry room, and everything else, that wall is much further forward than the wall on the left side. And as I look at the rendering, it's very difficult to judge, but it appears to be that way, as well. So maybe you can't take it from the left, maybe you are absolutely right. But why can't you take it from the right? You have a 25-foot wide width. 2 feet is 40 feet. You need 36.

SECRETARY WAGNER: It's also a two-story entryway that is being counted twice.

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

MEMBER HERNANDEZ: So there are options, and our job is to make sure that it's the minimum that we have to give as a variance. As you well know, you have been here many, many, many times before, okay. And this is oversized already and now you are asking us to give you more.

MR. BLOOM: Can I proceed and answer that question?

MEMBER HERNANDEZ: Go ahead.

VICE CHAIRMAN FRANCIS: Before you do, let me just

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2 throw out another option. Move the entryway back.

3 MEMBER GOODSSELL: Talk to us about the entryway.

4 MR. BLOOM: We can get that 36 square feet on the right
5 side.

6 MEMBER HERNANDEZ: Okay.

7 MR. BLOOM: It can be done.

8 MEMBER HERNANDEZ: So you are going to be withdrawing
9 the request for the 36?

10 MR. BLOOM: I will withdraw the request, but I'm going
11 to ask for the maintenance of the 52 square feet.

12 MEMBER DONATELLI: Mr. Bloom, do you have plans for the
13 entry and the foyer? Because I see that that's open to the
14 above. Does that count towards your gross floor area?

15 MR. BLOOM: I believe it does. It does.

16 MEMBER DONATELLI: And is that one and a half? Does
17 the architect know? And, I guess, my question would be, is
18 there some way to save this some square footage on reducing
19 that entry foyer in some way so that it doesn't count as 1 and
20 a half or two?

21 MEMBER HERNANDEZ: It's two because if you put a floor
22 on --

23 MR. BLOOM: That portico area actually counts as two as
24 opposed to one and a half. The answer to you is that we can
25 find 36. And with respect to that aspect of it, we will not
26 require this Board to make a determination as to that 36 square

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feet, whether it be on the right side of the house or it be the portico or some other area. We can find the 36 square feet, and that is not before the Board.

But, that doesn't mean that I am still not going to go into the character of the neighborhood?

VICE CHAIRMAN FRANCIS: Go ahead. Of course. We would expect nothing less.

MEMBER HERNANDEZ: Of course.

MR. BLOOM: Well, we did the house just down the road, which is down right on the water and has that --

VICE CHAIRMAN FRANCIS: Yes.

MR. BLOOM: -- that very, very steep driveway. That, was a challenge, as well.

MEMBER HERNANDEZ: Absolutely.

MR. BLOOM: So if I can just then go further. We understand, we will find 36 square feet one way or another. On 70-30.C, the front yard setback. That front yard setback -- and I'm going to ask you if you can please look at your survey. The front yard setback is the front yard on Shore Cliff. As you can see on the survey, there are two front yards, Hawthorne and Shore Cliff. As you can see, the lines to the front yard are irregular with respect to this property because of the roadways. The house itself, the existing house -- and they are not changing footprint -- is not parallel with the roadway on Shore Cliff. And it did conform to the code as it existed in

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1994 with the 35-foot setback. And by the way, it's still the minimum setback. There is no change whatsoever in the building permit. And if you take a look, the setback at its closest point on Shore Cliff is either 35.8 or 35.75, but I'm not going to argue over the 6 inches one way or the other. But if you take a look at the farthest point back, you will see that there are 47.5 feet. And so if you draw your line with respect to the 40.1 square feet -- excuse me -- setback, you will see that only a corner of that side of the house is non-conforming. In fact, when you go farther back on Shore Cliff, we are actually 7.4 feet greater in depth. And I also would just like to point out that the average here is one house. And so under the circumstances, this is actually prior non-conforming, as well, but we would ask that the variance be granted with respect to it.

So if I might, I am going to skip over -- because I think we have beaten this dead horse with respect to the FAR. My back is feeling it, but that's okay. It's not because of the surgery and it's not because of you, either. If we can then, go to what is the character of this neighborhood? We are a 0.343 acre parcel of land. And I would like to also hand up original letters of consent from multiple property owners surrounding, including next door neighbors. And attached to this is not only the consents. Here are the originals. Here are copies.

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SECRETARY WAGNER: This will be Exhibit 3.

MR. BLOOM: That, will be 3. If you take a look in the package that is being handed up, we have eight consents of neighbors, which is then followed on the last page of a map showing where those neighbors are located.

VICE CHAIRMAN FRANCIS: And the house would be where the star is?

MR. BLOOM: The star is our house. The house, you see the 36 Shore Cliff, the one, which is immediately adjacent to us. You have the one at 35 Edgewater. You have 36 Hawthorne, et cetera, et cetera. The neighbors are content with what they saw with respect to renderings and, by the way, with the additional 36 square feet. With respect to the house, which is to our left that is the 36 Shore Cliff, that house is a relatively new construction. It was built under the current code. That lot is 218 square feet smaller than our lot. It is at 14,723 square feet, 0.338 acres compared to our 14,941. Let's now go to the house on the right, 35 Edgewater. By the way, we have a consent from both these two neighbors of the house. That lot, which is to our right is 3.42 acres. It's, approximately, the same size. Actually, it's 42 square feet smaller than our lot. That house is 6,083 square feet, our immediate neighbor. Why? The line between the unincorporated area and the Village of Saddle Rock runs right at our property. And all of the houses to the north and to the east of us are in

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2 the Village of Saddle Rock, which have similar houses. Come
3 down the street, drive down the street, take a look at it;
4 6,000, 6100, 5900. We are consistent, even as a nonconformity
5 with the 36 additional square feet. We are consistent with the
6 character of the neighborhood. In addition, if you look at the
7 houses themselves, and let's look at the two houses. This will
8 be the next exhibit.

9 SECRETARY WAGNER: Exhibit 4.

10 MR. BLOOM: The first photo in this package shows on
11 the right, the subject property. On the left, in the Town of
12 North Hempstead, not within Saddle Rock. The house to the
13 left, 36 Shore Cliff, whose given us a consent, you take a look
14 at that house, flip it over, take a look at the second
15 photograph, this is 36 Shore Cliff. Is our rendering and our
16 proposal consistent with what we have next door to us? Let's
17 please go to the third photograph.

18 VICE CHAIRMAN FRANCIS: The second photograph looks
19 like a public school that I went to.

20 MR. BLOOM: Well, I am not the architect. Don't blame
21 me. I had a project in one of the villages and one of the
22 Board Members looked at it and said, this looks like a bank
23 building, will you please put it in a commercial area.

24 The third photograph, you have on the left our subject
25 property. To the right, a 6,000 square foot house immediately
26 adjacent to. What is the character of this neighborhood?

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2 That's one of -- actually, a couple of the elements that this
3 Board has to take into consideration on the 267B. Will we have
4 a negative impact? Will there be a visual impact? Will there
5 be any environmental condition that will change the character
6 of this neighborhood? And the answer is check, check, check,
7 check with the 36 square feet. We are still within the
8 character of the neighborhood. And so we are asking this Board
9 under all of the conditions -- and we will find 36 square feet,
10 but I will say to you, consider the 36 square feet, if you
11 would, considering where this house is located, the conditions
12 of the neighborhood, the environmental impact. And then also
13 consider what is the visual impact? When I have a map before
14 this Board, which involves a floor area ratio or a floor area
15 issue, the first thing I ask the architect and the client is,
16 where is the additional square feet. If it's in the back of
17 the house and it's not being seen by anybody and the people
18 around don't really care about what is in the back of your
19 house, you have a better opportunity to be able to get a
20 variance. If you are pushing the house out in the front and
21 you are putting it in people's face and you have this wall in
22 front of you, hey, I am not quite sure you are going to be able
23 to get this by the Board. The Board does not like floor area
24 ratio. What we are doing is we are cutting the visual impact
25 here. We are eliminating that wall in front of you with the
26 peaks. We are really doing nothing more than adding or what we

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are proposing to add is 36 square feet. I have said it for the record, we are withdrawing it. The fact is if this Board wants to consider it on its own and say that this is really de minimis, then we would ask the Board to grant the variances that we are proposing today.

MEMBER DONATELLI: And, Mr. Bloom, only because we really just briefly touched upon it. As long as I have been sitting on this Board -- and I think this goes for Mr. Hernandez, as well -- I don't recall when this Board has ever approved a two-story portico. I know that that is just something we don't approve. So as you reexamine the plans, please reexamine that.

MR. BLOOM: And yet, we are not called out for a two-story portico variance.

MEMBER DONATELLI: But we are being called out for a front yard setback.

MR. BLOOM: But the front yard setback is not on that street. The front yard setback is compliant on Hawthorne. And by the way, we are not changing the footprint. It's within the same footprint.

MEMBER DONATELLI: You might be right. We will give it some consideration, but still.

MEMBER GOODSSELL: We recognize that when you are far enough back or your setback is far enough back, you can do a two-story portico. The setback -- I think we mentioned to you,

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the setback on Shore Cliff does not bother us. Because, as you say, it's greater in the back. But I think we need to take a look at the portico in the front and just make sure it's not on the Building Department Notice of Disapproval.

MR. BLOOM: The portico in the front, I believe, is where the overhang is right now. So again, it's no closer to the street than what exists right now. Mr. Hernandez, you may want to disagree with me.

MEMBER HERNANDEZ: The overhang for the front porch?

MR. BLOOM: Yes. I see that we are, quote-unquote, 5 feet. I am looking now at A001. It shows the portico comes out 5 feet from the front of the house, which is still behind the left-hand extension to the existing house. We are still within the setback, well-within the setback. And I believe that that measurement is 35 feet, which is the minimum that is required and there is no average here for this.

MEMBER DONATELLI: Again, I don't see it on the Notice of Denial.

MR. BLOOM: It's not on the notice.

VICE CHAIRMAN FRANCIS: Mr. Bloom, I would suggest that we continue your application to allow the architect to submit new plans both to our office and a set of plans to be submitted to the Building Department, as well as to the BZA.

MR. BLOOM: Very good. I thank you for your attention and consideration and your deliberations.

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2 VICE CHAIRMAN FRANCIS: Always good to see you. Thank
3 you.

4 MR. BLOOM: Always good to see you.

5 VICE CHAIRMAN FRANCIS: I'm sorry. So I need a motion
6 to continue.

7 SECRETARY WAGNER: No, we don't. We don't.

8 VICE CHAIRMAN FRANCIS: Okay. Good.

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1 Appeal #21436

2 SECRETARY WAGNER: Next Appeal. Just give us a minute.

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

4 SECRETARY WAGNER: Next Appeal is Appeal #21436- Yin
5 Liu; 956 N. Seventh St., New Hyde Park, Section 8, Block 19,
6 Lot 192; Zoned Residence-C. Variances from §§ 70-231 to
7 legalize fixed stairs to an attic and to legalize a finished
8 floor in an attic.

9 VICE CHAIRMAN FRANCIS: You've heard Appeal #21436. Is
10 there anyone interested in the application other than the
11 applicant? Seeing no one. Please give your appearance, your
12 name and address.

13 MS. LING: Good morning, Mr. Chairman and the Board.

14 THE REPORTER: Can you just speak into the mic, please?

15 MS. LING: My name is Mo Ching Ling. I reside at 12
16 Crest, White Plains. I am here today to represent the owner at
17 956 North Seventh Street. My case will be a simple and easy
18 quick one.

19 VICE CHAIRMAN FRANCIS: Before you get to that, in what
20 capacity are you representing the owner?

21 MS. LING: I'm an expediter. So as for the case 21436
22 and the finished attic above the first floor. It is
23 pre-existing condition before the owner bought the property
24 back in December 2019. The finished attic is about 314 square
25 feet within an existing stairs going up and existing window.
26 The space has been used as storage will remain to be used as a

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storage only. The owners has no intention at all to sleep or cook in the attic. I would like to handout the two photos that was taken yesterday.

SECRETARY WAGNER: So this will be Exhibit 1 and you will describe what they are.

MS. LING: So these photos are showing that the space has been used as a storage. And also, I can get an affidavit submitted to say that the owners are only going to be using that space as the storage. They have no intention to live up there. The variance we are requesting today is not substantial, it's not self-created. Everything remains the same. It's a pre-existing condition and it will not impact on the character of the neighborhood. And I Googled the neighborhood. It looks like there are many homes with the windows from the outside on the attic. And it will keep the same.

And moreover, additionally, it will be a huge financial burden for the owners to close up the attic space and remove the stairs, so we respectfully request the relief be granted today.

VICE CHAIRMAN FRANCIS: On your second photo -- actually, on the first and second photo, there looks to be a smoke detector or part of a smoke detector on the ceiling, is that correct?

MS. LING: There is one. I guess, it's missing from

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the photo. They can put --

VICE CHAIRMAN FRANCIS: It's actually missing the smoke detector itself.

MEMBER HERNANDEZ: The mounting plate is there, but not the smoke detector.

MS. LING: I don't know why it was taken off, maybe.

MEMBER DONATELLI: I know you said that this is for storage only, but when I look at your photographs, I do see that there is wood paneling and plates on the light fixtures and electrical outlets that appear to be in a finished condition. Do you know why that is?

MS. LING: I don't. I don't. It's totally finished. That, was totally from the last owner. Everything was from the last owner. They did not do anything.

MEMBER DONATELLI: Do you know the height of the area?

MS. LING: Yes. From under the bridge, it will be 5 feet. The highest point is 5 feet.

MEMBER DONATELLI: The height is 5 feet?

MS. LING: Yes.

MEMBER HERNANDEZ: At the center?

MS. LING: Yes, in the center. So everything else is below 5 feet.

MEMBER HERNANDEZ: And you don't have a picture of the stairs, except for like one step on the edge somewhere. The stairs, what are they? Are they open at the bottom? Is it

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2 behind a door? Where are the stairs?

3 MS. LING: It's open. It's open right to the front.

4 Do you have the floor plan?

5 MEMBER HERNANDEZ: Yeah. I couldn't figure it out,
6 that's why.

7 MS. LING: So it shows the stairs going right to the
8 living room facing the front of the street.

9 MEMBER HERNANDEZ: Oh, it's L-shaped. The stairs are
10 L-shaped, so they open up into the living room area?

11 MS. LING: Yeah.

12 MEMBER HERNANDEZ: Now, you said that it was there when
13 he bought the house. Can you describe the stairs for us? Do
14 they look like they are part of the original house or does it
15 look like they were added?

16 MS. LING: I don't know if it was added. Maybe it was
17 a long time ago. But when they bought that house, it was
18 already there. It looks old, so it doesn't look something new.

19 MEMBER DONATELLI: Do you know how many square feet the
20 house is in all?

21 MS. LING: Yeah. The first floor is about a 1,000.
22 The attic is above 314 square feet. And then there is a
23 finished cellar, it's about maybe 5, 600.

24 MEMBER DONATELLI: Well, it's a very small house.

25 MS. LING: Yeah. It's a very small house. And I
26 believe the maximum allowed that they are is, like, 50 percent.

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So it's the reason they are allowed total floor area.

MEMBER DONATELLI: But my point is that one of the things that we are required to consider as a Board is whether or not there are any alternatives to granting a variance that would not require that a variance be granted. And I know that your client, because the house is so small, your client would be within their rights to build a second story, a full second story of the house. Has the applicant ever considered that?

MS. LING: They might, but they don't have money. That's another consideration that she is asking me to come to the Board to grant the Appeal today. That, she is hoping that she doesn't need to close up the attic as she has no intentions to use the space as a living space.

MEMBER DONATELLI: Well, the problem is the fixed stairs. We wouldn't necessarily be closing the attic, but, certainly, getting rid of the stairs.

VICE CHAIRMAN FRANCIS: What brought your applicant's attention to the Building Department? How did you even get on?

MS. LING: She was doing some renovation of the bathroom and the kitchen when she bought the house, so she filed the plans with the Building Department and that's when everything hit, yeah.

MEMBER GOODSSELL: So she wasn't filing for anything for the attic or anything for that level?

MS. LING: No. No.

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2 MEMBER GOODSSELL: It was just the building inspector
3 who came and said she can't do that?

4 MS. LING: Yeah.

5 MEMBER GOODSSELL: And it look like they were all built
6 at the same time by the same builder?

7 MS. LING: Yeah. There are quite a few houses that
8 look very similar to this one.

9 MEMBER GOODSSELL: Do you know if there are any building
10 plans that would show that that staircase was built with the
11 house?

12 MS. LING: I don't. We never pulled out the records.

13 MEMBER GOODSSELL: We can ask the Building Department if
14 they do. From that era, sometimes there are a property tax
15 card, which seems to indicate there were no stairs to the
16 attic, but that would be from 1948. If these stairs were built
17 with the house, then they are non-conforming pre-existing,
18 which is permitted. And it's easy for us to say, oh, she can
19 just build a second floor, but it's expensive to do that. And
20 there are other houses on that street that have added a second
21 floor rather than look for a variance. Would it be possible
22 for you to get us some pictures of those stairs?

23 MS. LING: I might. I have it on the phone, if that's
24 okay with you?

25 MEMBER HERNANDEZ: You can e-mail them to us.

26 SECRETARY WAGNER: You can e-mail them to the zoning

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MEMBER DONATELLI: Take a look at the drawing A-001305. You will see on the first floor plan that the staircase is L-shaped going up.

MEMBER HERNANDEZ: No. The attic is the far right.

MEMBER DONATELLI: It does look like a door.

MEMBER DONATELLI: Sorry. First floor plan all the way on the left stairs going up.

MEMBER HERNANDEZ: No. On the first floor, the stairs are on the right going up and then turning into the house.

MEMBER DONATELLI: Exactly.

MEMBER HERNANDEZ: But you can't tell whether or not the steps --

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

MEMBER DONATELLI: Is there full height on the stairs going up?

MS. LING: Yes. She did a measurement yesterday, actually. So the risers are about 7 inch and the thread is about 10 inch.

MEMBER HERNANDEZ: That's standard.

MEMBER GOODSSELL: I would guess the house was built with these.

MEMBER HERNANDEZ: And a full-sized person can walk all the way up without having to duck?

MS. LING: Right, yeah.

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

VICE CHAIRMAN FRANCIS: All right. We are not going to make a decision on the application today. We are going to reserve decision, take a look at the plans in the Building Department, and determine whether or not the stairs were pre-existing.

SECRETARY WAGNER: Or if they exist, the plans themselves.

VICE CHAIRMAN FRANCIS: So you can check back with the BZA, probably, what, two weeks?

SECRETARY WAGNER: Well, we won't make a decision until the next hearing, which is September 20th.

MS. LING: Okay. Thank you.

MEMBER HERNANDEZ: Thank you.

MS. LING: Have a good day.

1 Appeal #21437

2 SECRETARY WAGNER: Appeal #21437 - Robert Friscia; 40
3 Croyden St., New Hyde Park, Section 8, Block 345, Lot 7; Zoned
4 Residence-C. Variance from § 70-100.2 to legalize a fence that
5 is too tall.

6 VICE CHAIRMAN FRANCIS: You have heard Appeal #21437.
7 Is there anyone interested in the application other than the
8 applicant? Seeing no one. Sir, please give your name and
9 address.

10 MR. FRISCIA: Robert Friscia; 40 Croyden Street in New
11 Hyde Park, New York.

12 VICE CHAIRMAN FRANCIS: Okay. Tell us why you are
13 seeking relief.

14 MR. FRISCIA: Okay. I have a side fence on the south
15 side of my property. It's about 30 feet in length to the back
16 of my property. Instead of being 5 feet, it's 5 feet 10 inches
17 tall and extends to the back fence, which totals 6 feet, which
18 is kind of confusing why it's 6 in the back and only 5 on the
19 side. But the neighbor on that side of the property sent an
20 e-mail saying she has no issue with the fence, the fence has
21 been up for quite a few years and that neighbor has no issue
22 with that fence. Like I said, it's only 10 inches above the
23 5-foot code and it's about 30 feet in length. And the last
24 thing the neighbor wants me to do is take the fence down and
25 take 10 inches off.

26 MEMBER GOODSSELL: That's nice, but she doesn't make the

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decision, I do.

MR. FRISCIA: No, I know that. If I have to do it, if I have to do it.

VICE CHAIRMAN FRANCIS: The fence is a wood fence?

MR. FRISCIA: It's a cedar fence. It's a wood fence, yeah. And another thing, I know a bunch of wrongs don't make a right, but if I walk around my block, I can count ten houses that have fences on the side that are 6 foot. Hopefully, they all have a variance, but I don't know that.

VICE CHAIRMAN FRANCIS: They probably don't have variances.

MR. FRISCIA: Yeah, I know that.

VICE CHAIRMAN FRANCIS: And that is the problem. The Town Board specifically passed a law saying that 6-foot fences would be allowed in the rear of the property, 5 on the side, and 4 facing the front of the street.

MR. FRISCIA: What is the logic behind that, 6 in the back and 5 on the sides?

VICE CHAIRMAN FRANCIS: I think we used to get a lot of fence applications for varying heights and so forth, and they came up with this formula. Well, actually, the BZA came up with the formula. And the rear 6 feet gives you a little bit more privacy from your rear neighbor. The 5 foot on the side makes it a little less intrusive in terms of having like a wall around your property. One of the things that -- and it doesn't

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look like you have room to do it, but there is no law that says you can't plant Arborvitaes and have them grow 15-feet high. But it doesn't look like you have the room to do that. Our hands are kind of tied when it comes to fencing. The only time that we vary the rule with regard to fencing is if the property contains a child with autism. We have done that on several occasions. We don't even do it for big dogs. People come in and, oh, I got a big dog. Well, get a small dog. I mean, we just don't.

MEMBER DONATELLI: The problem is that if we were to grant it for one applicant, then we would really be hard-pressed to deny any other applicants in the future. So we really have to be concerned about the precedent that we are setting.

VICE CHAIRMAN FRANCIS: Are fences on both sides 5 foot 10?

MR. FRISCIA: No. The one on the north side of the property is 5 feet. It's a PVC fence. Just that 30-foot section is 5 feet 10 inches, just that one section.

VICE CHAIRMAN FRANCIS: Was the fence there when you bought the property?

MR. FRISCIA: No. It was put in, probably, about 20-something years ago, around there.

MEMBER DONATELLI: Let me just say, for the record, that we received a letter just now from your neighbor at 44

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Croyden Street and that will become part of the record. And they are saying that they don't have any objection to your application.

MR. FRISCIA: Yes.

MEMBER DONATELLI: From James Spratt and Maria.

MR. FRISCIA: Yes. That's the neighbor that the fence is right on their property. We have adjoining properties.

MEMBER GOODSSELL: They are the ones that have the fence?

MR. FRISCIA: Yeah.

MEMBER GOODSSELL: Because I looked at the property and nobody walked into your backyard, but I walked and I looked at your property. Your fence is clearly taller than theirs. The town is trying to have a kind of uniform code. There was a time where your fence was not allowed at all. We have made some very few exceptions. It's supposed to be 4 feet even with the house, 5 feet on the side, you can have 6 feet on the back. You are in the middle of the block. So your side is everybody else's side and it should be 4 feet, 5 feet, 6 feet. Have you considered not removing the fence, lowering down the fence?

MR. FRISCIA: That's what I would have to do.

MEMBER GOODSSELL: You are absolutely correct. You drive through your neighborhood and there are all kinds of things. We have another fence case or two coming up on our calendar and fences up without permits, and they put up

Appeal #21437

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2 whatever they would like to put up. And then eventually, they
3 come in front of us and say, well, we would like to keep it.
4 Well, we understand that, but that's not the code. It's sort
5 of like why am I doing 65 on the Long Island Expressway when
6 everybody else is doing 80? And we can see your point of view.
7 We may not have the power to grant that. If there is any way
8 you can show us that your fence went up before we changed the
9 rules or before we enacted a fence law, because there are some
10 very old fences in New Hyde Park.

11 VICE CHAIRMAN FRANCIS: Give us one moment.

12 MR. FRISCIA: Sure.

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

14 MEMBER GOODSSELL: Do you have anything in your records
15 that shows the age of your fence?

16 MR. FRISCIA: I bought the house in '99 and we put up
17 the fence just around when we bought the house. That's an
18 honest statement, yeah.

19 MEMBER DONATELLI: Well, we appreciate that.

20 VICE CHAIRMAN FRANCIS: All right. Why don't we do
21 this? Why don't we reserve decision on your application, take
22 another look at your property, and talk about it at our next
23 meeting date, which is the 20th.

24 MEMBER GOODSSELL: And double-check when the fence law
25 actually went up.

26 MR. FRISCIA: That's fair.

1 Appeal #21437

2 MEMBER GOODSSELL: When you did something, let's just
3 say 40 years ago, you put a fence up and we had no fence rules
4 whatsoever, and now we have fence rules. You are grandfathered
5 in. We are going to double-check when this fence rule went in.

6 MR. FRISCIA: Okay. When do I find out?

7 VICE CHAIRMAN FRANCIS: You can call the BZA.

8 SECRETARY WAGNER: So after September 20th, on that
9 day, they might make a decision. So then you can call the
10 office after that to find out what the decision was.

11 MR. FRISCIA: Okay.

12 SECRETARY WAGNER: And then the decision will be put on
13 the portal.

14 MR. FRISCIA: Okay. Great. Thank you.

15 MEMBER HERNANDEZ: Thank you.

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1 Appeal #21438

2 SECRETARY WAGNER: Next Appeal is Appeal #21438 - Hira
3 Lodaya; 18 Dechiaro Ln., Williston Park, Section 9, Block 641,
4 Lot 23; Zoned Residence-C. Variance from § 70-49.C to
5 construct an addition that would make the house too big.

6 VICE CHAIRMAN FRANCIS: You have heard Appeal #21438.
7 Is there anyone interested in the application other than the
8 applicant? Seeing no hands.

9 MR. BROWNE: Good morning, Chairman, Members.
10 Christian Browne, McLaughlin & Stern; 1122 Franklin Avenue,
11 Garden City for the applicant. We are before you today on an
12 application seeking to add a one-story addition consisting of a
13 bedroom and a bathroom on this split-level house at 18 Dechiaro
14 Lane. I should note that the architect on the project is here,
15 as is the applicant.

16 The reason for the application is that the applicants,
17 Mr. and Mrs. Lodaya, are getting a little older. Mrs. Lodaya
18 is already having some mobility issues. And they are hoping
19 they can have a bedroom on the first floor, so that they don't
20 have to continue going up and down the steps in a split-level
21 home. So the proposal is to add, as I said, just a bedroom and
22 a bathroom. On that first level, it's a 256.37 foot square
23 foot addition and it triggers one variance, which is the gross
24 floor area. And it would bring us from the present. The
25 present gross floor area is just under what is permitted. So
26 what is permitted is 37.74 percent. We are currently at 37.21.

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2 And with the addition, we would be at 40.48. So it would raise
3 the percentage by about 3 points and add 256 square feet onto
4 the existing home.

5 Otherwise, there are no changes proposed to the home.
6 The home will maintain its current front and side yard
7 setbacks. The rear yard setback will be reduced, but it will
8 still be substantial, well-more than the required 15 feet that
9 had almost 25 foot to the rear yard. So other than the gross
10 floor area, there are no other encroachments. As you can see,
11 the addition will be located in the back, so it wouldn't be
12 particularly visible from the street or as, you know, from
13 anyone's vantage point. The home would remain looking just as
14 it has for many years.

15 So the benefit to the applicant is the ability to have
16 a bathroom. There is no bathroom on the first floor currently.
17 So there would be a bathroom and a bedroom on the same level
18 avoiding the need for the stairs, allowing this couple to stay
19 in this home over the long term, which is their plan.

20 The detriment to the neighborhood, I would say is nil.
21 There really is no other way to achieve this benefit. If we
22 were to add a bedroom in any other way, it would eat in
23 substantially into the living area, which is not huge on the
24 first floor, as you can see. If you look at the floor plan, it
25 just consists of a living room, a dining room, and a kitchen.
26 So if we were to design this in any other way, they would lose

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2 that living space. They would, basically, lose the dining
3 room.

4 So given the cost and benefits, we thought that this
5 made sense. And again, because it doesn't trigger any other
6 variances, it doesn't come any closer to the neighbors. It
7 respects all of the setbacks. And it's really the minimum you
8 can do to have a bedroom and a bathroom. We would ask you to
9 grant the application.

10 And I will also note -- and I will hand up the decision
11 -- that the Board, back in May of this year, heard a somewhat
12 similar case under Appeal 21385. That, was also a Residence-C
13 Zoning District application up in Port Washington. And I just
14 note that in the findings, you will see there is some
15 similarities. The Board noted that there was still ample room
16 on the setbacks, and that, like this case, that this prior
17 application in May was very close to being eligible for the
18 bump-up to the B-District rules, but just missed it slightly,
19 and that's the case here. We don't comply with the side yard
20 aggregate for the district. If we did, we would be entitled to
21 the bump-up and this would be as of right under the B District.
22 So we are not able to get the bump-up. We are just off a bit
23 and it's a somewhat similar to the case the Board granted back
24 in May, which was on gross floor area. So I will hand that up
25 for the record.

26 MEMBER DONATELLI: How many square feet is this lot?

1 Appeal #21438

2 MR. BROWNE: The lot is 7,417 square feet.

3 MEMBER DONATELLI: And in Residence C, what is
4 required?

5 MR. BROWNE: I believe it's 5,000.

6 SECRETARY WAGNER: So this will be Exhibit 1.

7 VICE CHAIRMAN FRANCIS: And the dimensions of the
8 proposed bedroom?

9 MR. BROWNE: It's a little uneven, but it's about 13 by
10 20, and that includes the bathroom.

11 MEMBER GOODSSELL: Mr. Browne, I think part of the
12 problem with split level is there is really no place to build
13 onto, unlike a cape. You are kind of limited. So I understand
14 your application. There is currently no bathroom on the first
15 floor?

16 MR. BROWNE: Not on the first floor. There is no
17 bathroom on the first floor.

18 MEMBER GOODSSELL: So in the split, then you would have
19 to go up half a level, over the garage, and then up again?

20 MR. BROWNE: The answer is yes.

21 MEMBER DONATELLI: Let me just say that the Appeal that
22 you cite, 21385, was motioned by myself. And I hate when my
23 kids use my own words against me.

24 MR BROWNE: I'm using it to show you what a smart
25 decision you made. So, yes, you are right. There really
26 aren't too many other options to achieve this benefit here.

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2 And I am well-aware of the Board's, you know, antipathy or
3 skepticism to explore gross floor area ratios. But in prior
4 applications, at least that I have done, usually it concerns a
5 two-story addition, there is concern about volume, say, of
6 blowing up a cape. Here, we are just talking about a
7 one-story, you know, what I would call a bump-out in the back.

8 MEMBER GOODSSELL: Okay. Would you save me the trouble
9 of scrolling? One of the difficulties of not having the paper
10 in front of you is you have to scroll. The doorways in this
11 addition, are they wide enough to accommodate a wheelchair or a
12 walk-in shower?

13 MR. BROWNE: I can ask Mr. Mandel if you can answer
14 that question.

15 MEMBER GOODSSELL: If you wouldn't mind? I'm interested
16 to know what adaptations have they made to not have to climb
17 the stairs.

18 MR. MANDEL: Fair question. Jared Mandel, Architect;
19 25 Hillside Avenue, Williston Park, New York 11596. So to
20 answer some of the questions that you are posing here. We do
21 have a 3-foot door on the bathroom. We have 3 foot 4, which is
22 ample room in the hallway. We went a bit more wider. We would
23 have loved to go a little bit bigger. To be honest, we would
24 have loved to have turning radius in the bathroom. It was
25 something that was discussed, but we did minimize it knowing
26 that the Board's, I guess, sensitive nature to the floor area,

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2 that we designed this addition with respect to the regulations
3 that exist and were somewhat restrictive, to be honest. So if
4 the Board ever considers something in the future, these were
5 some of the things that we posed the challenges on. As
6 architects, we want to do things that are beneficial, but at
7 the same time, we have to be restrictive. So we did the best
8 we could with what we had and met that median. In the future,
9 obviously, splits have challenges always. So it would have
10 been great if we were walking into one level or if we had the
11 opportunity to be at one level, but this was our best way of
12 being able to do that, knowing that in the future, we may have
13 a stair lift chair. But at least it's not going up and down a
14 set of stairs to go to a bathroom, which is the reason why we
15 added the bathroom to this level, as well. And being that it's
16 on the kitchen level, as well, they can self-sustain, live on
17 one floor with the only challenge getting into the house,
18 obviously, and out of the house, but we are hoping to
19 accommodate that. There is a lot of challenges.

20 MEMBER GOODSSELL: But the splits were not built for the
21 aging population, but they are relatively easy to adapt. Now,
22 you did hear the first case this morning about the 36 square
23 feet. And you are asking us for -- refresh my recollection,
24 202 square feet?

25 MR. MANDEL: Yes. So would you like me to describe
26 further or do you have something to add to that?

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MEMBER GOODSSELL: Well, I understand the aging population and I understand the necessity for wanting to live on one floor. This house was not designed to live on one floor. It was never designed to live on one floor. I'm amazed that there isn't even a bathroom on the first floor, though.

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

MEMBER HERNANDEZ: The stairs going down are to the garage, I assume?

MR. MANDEL: To another level, yes.

MEMBER DONATELLI: So I see that we do not have floor plans for the second floor, do you happen to have those?

MR. MANDEL: I don't have them on me. I didn't think it was --

MEMBER DONATELLI: I would like to --

MEMBER GOODSSELL: I understand why you don't have them.

MEMBER DONATELLI: But I would like to see them just to get full context.

MEMBER HERNANDEZ: I understand. Completely understand. I can provide it in e-mail.

MEMBER HERNANDEZ: You can e-mail them, that will be fine.

MR. MANDEL: I think the Board will see what you are envisioning, which next time, I will have the complete floor plans. Obviously, we try to minimize the scope of work in case the Board doesn't approve it. So that's where it kind of comes

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from, I guess.

MEMBER DONATELLI: We are mindful of your clients needs. We have many applications where we are being asked to approve something over what the Town Board has authorized. So in my mind, we need to be able to justify our deviation. We don't set the floor area ratio, it's the Town Board that does. So we are empowered under certain circumstances to grant variances, but as we weigh the five factors, in my mind, one of the things that we want to look at is the larger context, the home as it currently exists, so that we might be able to somehow distinguish this from another applicant who might come forward requesting similar relief and, perhaps, with a different justification.

MEMBER GOODSSELL: The other question I have is this is right over by the water tower area. What is behind this house? Is there a street there? Is it greenery? What does Google -- because I'm going to try to pull it up -- what does Google show? Is there a rear yard neighbor?

MR. MANDEL: Rear yard is a residence.

MEMBER GOODSSELL: It is a residence, all right. Because there is a street that runs parallel to Dechiaro.

MR. BROWNE: Yes.

MEMBER GOODSSELL: I know there is no outlet to it. I don't know where it ends in relation to your client's house. All right. So there is a rear yard neighbor.

1 Appeal #21438

2 MR. BROWNE: There is a year yard neighbor.

3 MEMBER GOODSSELL: Did the rear yard neighbor raise any
4 objections?

5 MR. BROWNE: No.

6 MEMBER GOODSSELL: Did they consent?

7 MR. BROWNE: There has been no comment.

8 MEMBER DONATELLI: And as I review the plans, I see
9 that we have an egress from the back from that proposed en
10 suite, is that correct?

11 MR. MANDEL: Yes, it's an egress window.

12 MEMBER DONATELLI: Egress window or is that an egress
13 door?

14 MR. MANDEL: Egress window.

15 MEMBER DONATELLI: I'm sorry?

16 MR. MANDEL: Egress window.

17 MEMBER DONATELLI: Window. All right. Well, I would
18 ask that we see the second floor.

19 MEMBER HERNANDEZ: How do you get to the backyard from
20 this house?

21 MR. MANDEL: They have a side entry off of the kitchen.

22 MEMBER HERNANDEZ: Oh, there it is.

23 MR. MANDEL: Maybe just one thing, as I think we have
24 mentioned within the past, just within character of the
25 neighborhood, obviously, if they were to bump-up zones, not
26 that they are going to because this was a totally different

Appeal #21438

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2 situation, but, obviously, any of the houses next to or within
3 the vicinity, within the same zone, if they conform to the R-B
4 zone, then they are able to bump-up. It would be a massive
5 house compared to this house in comparison. This is just a
6 challenge that, obviously, as people age and are restricted in
7 income, this just seems to be the best option for them.

8 VICE CHAIRMAN FRANCIS: I am sure we will see more
9 applications like this one in the future.

10 MR. BROWNE: And it's also a little less than 10
11 percent under your footprint. So you are allowed 35 percent
12 lot coverage, but then you are somewhat restricted by the gross
13 floor area. So you can't sort of get the full benefit of what
14 the code allows in a way.

15 MEMBER GOODSSELL: One section of the code was written
16 without regard to the other section of the code and they are
17 not best friends.

18 MEMBER DONATELLI: So Mr. Chairman, I would ask that we
19 continue for the purpose of receiving the second floor plans.

20 VICE CHAIRMAN FRANCIS: I agree. Mr. Browne, do you
21 have anything further?

22 MR. BROWNE: No, nothing further. We will submit the
23 second floor plans and then we will contact you after the next
24 hearing.

25 VICE CHAIRMAN FRANCIS: That sounds fine. Thank you
26 very much.

1 Appeal #21438

2 MR. BROWNE: Thank you very much.

3 MR. MANDEL: Thank you.

4 VICE CHAIRMAN FRANCIS: We are going to take a
5 ten-minute break right now.

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

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1 Appeal #21439

2 SECRETARY WAGNER: Next Appeal is Appeal #21439 - Pawan
3 Verma; 22 Reed Drive, Roslyn; Section 9, Block 654, Lot 38;
4 Zoned: Residence-A. Variance from 70-28 to construct a roof
5 that covers too much of the lot.

6 VICE CHAIRMAN FRANCIS: You have heard Appeal #21439.
7 Is there anyone interested in the application other than the
8 applicant? Seeing no one. Sir, please give your name and
9 address.

10 MR. ROGERS: Good afternoon, Mr. Chairman and Members
11 of the Board. Bernie Rogers, Architect. My office is located
12 at 2150 Wantagh Park Drive, Wantagh, New York 11713. I am
13 before you this afternoon representing my clients, Pawan and
14 Bharti Verma, the owners of 22 Reed Drive, Roslyn, New York
15 11576, Zoned Residence-A by the Town of North Hempstead.

16 My clients are proposing to build a roof over their
17 existing second floor rear terrace. In 2013, my clients had
18 their house built, and part of its design was a second floor
19 roof terrace built off of their master bedroom. Unfortunately,
20 its design created the possibility of water infiltration due to
21 a large flat roof area. Over the years, the Vermas have dealt
22 with numerous or almost every time it rains and when it snows,
23 they have to shovel the snow off the terrace as quickly as
24 possible to avoid the problems that that melting snow brings
25 on. They have tried multiple remedies and fixes throughout the
26 years and have not been able to solve the problem.

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2 Unfortunately, the water continues to pour into their house and
3 into their family room.

4 In an effort to keep the design of the terrace, they
5 decided to build a roof over it to try to stop the issue of
6 direct driving rain and snow from being the problem. The
7 terrace is built partially over a portion of the first floor of
8 the house and partially extended from the house. Our proposed
9 roof is to be built over the part that is over the first floor,
10 as well as the portion of the extended terrace. The extended
11 part of the terrace did not previously count towards the
12 property's maximum allowable lot coverage, but now that we are
13 covering it, it does. This area of roof creates an additional
14 square footage of lot coverage of 186 square feet, which brings
15 us to a total lot coverage of 2,311 square feet, where 2,125
16 square feet is the maximum allowable. An overage of only 2.2
17 percent. I would like to note that we are not increasing the
18 size of the second floor terrace, nor are we truly increasing
19 the coverage. The terrace is already there, even though, as
20 per the town's code, the extended portion of it was exempt from
21 being added to the coverage calculations.

22 The Vermas have no intentions of ever enclosing the
23 terrace and would, of course, have no issue with that being a
24 condition of the variance, if it were to be granted. My
25 clients have spoken to their two next door neighbors, Raju
26 Abraham at 18 Reed Drive, and Mr. Daversa at 26 Reed Drive,

Appeal #21439

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2 along with their rear yard neighbor, Niruta Patel at 12 Old
3 Homestead Way, Albertson 11507. They have shown our plans and
4 explained why we need to come before the Board today to seek
5 relief. They have all said that they have no issues with our
6 proposal whatsoever, and they have all signed consent letters
7 that I would like to submit to the Board at this time.

8 SECRETARY WAGNER: This will be Exhibit 1.

9 MR. ROGERS: We feel our proposal maintains the
10 aesthetic of the original house and still conforms with the
11 houses on the block and within the area. We believe that if
12 approved, it will have no adverse affect on neighboring
13 properties or the neighborhood in general. So in conclusion, I
14 would like to thank you very much for your time and
15 consideration with hearing our request.

16 VICE CHAIRMAN FRANCIS: My only comment is that rain
17 doesn't always fall straight down. And this is an open
18 terrace, so how is this solving your problem?

19 MR. ROGERS: So there is going to be partial railings
20 that are going to be solid railings. They are, in theory,
21 going to be blocking part of it. There will be a space
22 underneath so it's not walls that are being built. So the
23 hope, again, is that driving rain, when we are getting a lot of
24 wind, that potentially it may still be the issue -- we hope it
25 isn't -- but standard rain and snowfall, things like that.
26 Snow won't be able to build on top of it because it will be

Appeal #21439

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covered. And at the same time that they are building this terrace roof, as part of our relief, if I'm not mistaken, it's the third or the fourth time they are going to be redoing the surface of that flat roof.

VICE CHAIRMAN FRANCIS: The railing doesn't look solid. It says vertical spindles.

MR. ROGERS: Correct.

VICE CHAIRMAN FRANCIS: So it's not a solid.

MR. ROGERS: No. The hope is that it will diffract enough rain that it won't rain directly on. And the issue, again, is the house has been up since 2013, and, obviously, now we are ten years into it. They can't determine the exact spot that it's coming from, that's the most frustrating thing of all. They know where it ends up. It ends up in a very specific spot in their family room.

MEMBER GOODSSELL: The family room is on the first floor?

MR. ROGERS: Yes. It's directly under that, which, of course, it's nice. It's also open to the dining room and the kitchen, so it creates a nice little water-effect when it rains.

VICE CHAIRMAN FRANCIS: And it's leaking through the ceiling?

MR. ROGERS: Correct. Correct. So again, they love the terrace and they love the aspect of having it. That, was

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one of the things that they liked about the original design of the house. Unfortunately, at the time, nobody really educated them to the fact that large flat roofs have a tendency to create a problem.

MEMBER GOODSSELL: Do you have a pictures of the way it looks? I just looked through your application. Do you have a photograph of the way it looks now? I would be interested in seeing it.

SECRETARY WAGNER: So the photographs will be Exhibit 2.

MEMBER DONATELLI: I have a question. Is there anything that is being engineered other than this roof to try to mitigate the leakage problems?

MR. ROGERS: Once again, we are redoing the surface of the flat roof. The problem is when the house was built, there is not a big differential of height from that second floor of the house for them to step down to that roof. It's the same structural member that extends out. So in other words, it wasn't built independently, it was kind of built as part of the house, and that creates the problem. We don't have that differential in heights.

MEMBER HERNANDEZ: There is no steps?

MR. ROGERS: There is no step there. It literally is about a half an inch that they were able to raise the door up.

MEMBER GOODSSELL: They can walk out onto the terrace

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now?

MR. ROGERS: Yes, that's what they have, and that's why they want to keep that. They do enjoy that design.

MEMBER DONATELLI: I mean, I think if it were me, I would want to know that whatever solution is being proposed, it would deal with the problem, and that would be my first priority. And I know that when I had explored doing something like this for my own house, my contractor talked me out of it for exactly this reason. And it just seems to me as attractive as this is, I would want to engineer a solution rather than just trying to cover it and hoping that it is not as bad.

MR. ROGERS: We are pretty confident that the combination of the roof over it along with redoing that roof one last time is going to solve the problem.

MEMBER DONATELLI: The neighbor you said that is directly adjacent to the rear, who is that?

MR. ROGERS: So the rear yard neighbor, last name is Patel at 12 Old Homestead Way.

MEMBER DONATELLI: And we have received no word from him, either in support or in opposition?

MR. ROGERS: We submitted a consent letter to you.

MEMBER DONATELLI: Okay. Then, it's part of the record.

MR. ROGERS: Yes.

MEMBER GOODSSELL: Mr. Chairman, I would just like to

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say we heard several floor area ratio cases this morning. This is a mathematical calculation. This doesn't seem to change the usable space. The fact that we now count the roof and the portion under it as floor area, I think Counsel is correct. It doesn't really add to the bulk of the house. It's not visible from the front. And had I not read the code, as a layperson, I would be like, really, a roof adds floor area, especially it's not a room.

SECRETARY WAGNER: No. It's not floor area. It's lot coverage.

MEMBER GOODSSELL: Lot coverage.

MR. ROGERS: It's very interesting. The portion that we are adding is the portion that extends from the house. And it's very interesting that that portion does not count without the roof over it. As a matter of fact, if I'm not mistaken, this is one of the very few municipalities that that does not count. Typically, it does. So that condition is there already.

MEMBER HERNANDEZ: It will stop the bulk of the rain from coming down, but rain will still come down.

MEMBER DONATELLI: Water will find a way.

MR. ROGERS: Absolutely.

MEMBER DONATELLI: However, as for the merits of this particular application -- I'm sorry -- are you familiar with the five points of law that we are required to consider?

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MR. ROGERS: Yes.

MEMBER DONATELLI: Okay. Would you go through those?

MR. ROGERS: Of course. Absolutely. The first is whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance? No. There really won't be. The house will still conform. The terrace is there. Putting the roof over it isn't going to change the value of the houses, the aesthetic of the other houses. So in our opinion, that answer is no.

Number two: Whether the benefit sought by the applicant can be achieved by some other measure feasible for the applicant to pursue other than the area variance? Again, they are just changing the roofing surfaces. We feel that putting something over it and changing the roofing surface one more time and maybe finding the right contractor to do that job will solve that problem. So we don't feel that there is another way to achieve that.

Number three: Whether the requested area variance is substantial? Again, at a 2.2 percent overage, we feel we really are de minimus.

Number four: Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district? Again, no, because we believe that the house fits in within the aesthetic of the

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block. We really are not changing what is there very much.

And then number five: Of course, whether the alleged difficulty is self-created? As is the case with all area variances, we are asking for it, so we are kind of self-created.

VICE CHAIRMAN FRANCIS: Okay.

MEMBER DONATELLI: Does anyone else have any other questions?

VICE CHAIRMAN FRANCIS: No.

MEMBER DONATELLI: So I am of the opinion, as Member Goodsell said, that, in fact, a strict definition of the code does include this as lot coverage, but because it does have a roof over it, it really doesn't change the fundamental calculation. So with that in mind, I make a motion that we grant the application.

VICE CHAIRMAN FRANCIS: We have a motion. Do we have a second?

MEMBER GOODSSELL: I'll second.

VICE CHAIRMAN FRANCIS: Ginny, 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.

1 Appeal #21439

2 SECRETARY WAGNER: Acting Chairman Francis.

3 VICE CHAIRMAN FRANCIS: Aye. The application is
4 granted. Thank you.

5 MR. ROGERS: Thank you very much. Have a great day.

6 MEMBER GOODSELL: And good luck. It may or may not
7 solve the problem. You may still need snow shovels.

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1 Appeal #21440

2 SECRETARY WAGNER: Next Appeal is Appeal #21440 -

3 Theresa Lemanczyk; 100 Roosevelt Court, Carle Place; Section
4 10, Block S04, Lots 12 & 39; Zoned: Residence-C. Variance
5 from §70-102.C(2) to legalize pool fencing which extends beyond
6 the rear building line.

7 VICE CHAIRMAN FRANCIS: You have heard Appeal #21440.
8 Is there anyone interested in the application other than the
9 applicant? Seeing no one. Please give your name and address.

10 MS. LEMANCZYK: Sure. Good afternoon, everyone. My
11 name is Theresa Lemanczyk. I reside at 100 Roosevelt Court in
12 Carle Place. My husband and I are seeking your approval to
13 maintain a fence. We have had this. The 6-foot fence has been
14 in place since the late 1980s. A pool was installed in 1987.
15 I guess, the application went in in February. And soon after
16 that, an application went in to add a rear addition to the
17 home. I do have a copy of a CO from May 31st of 1988 where the
18 rear addition was approved, I guess, and then 9 days later
19 where the pool and fence were approved. And that fence over
20 time came into some disrepair. It was one of those wooden
21 stockade fences. That was here and there. But then as a
22 result of Superstorm Sandy in 2012, it was damaged
23 significantly enough that it needed to be replaced. So the
24 decision in, I guess, the Spring of 2013 was to replace that
25 post by post for a PVC vinyl fence, which is what exists today.

26 And I came back because we bought the home in 2015 and

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2 decided to do some renovations, and not to the backyard at all,
3 not changing the footprint, just adding above that rear
4 addition. And it came to light that there was not a permit for
5 the PVC fence, which the homeowner at the time didn't know.
6 Because they said I got a permit for the fence, for the wood
7 fence. I guess, the semantics got lost in translation.

8 I have spoken with my neighbors. They all received the
9 letters, but I'm close with my two neighbors on either side.
10 On the west side, he has been there for over 25 years. And on
11 the right side, over 20 years. They are both not only okay
12 with this, they are in favor of this. They actually asked me,
13 can we sign something saying, yes, we want this? And I just
14 didn't know you are supposed to just appear if you don't want
15 it, I guess. But I am sure that they would submit something,
16 if that would be beneficial. And I do have some pictures and I
17 can send them to you. The way our properties line up on the
18 left side, our fences are actually side by side. And my fence
19 is his fence. On the right side, my fence starts where his
20 fence ends. And if my fence was to change, he would have to
21 change his fence, as well, I suppose. So they, like I said,
22 would certainly be in favor. And so I'm really not looking to
23 change anything in the environment. I am just looking to keep
24 what has been there.

25 MEMBER GOODSSELL: I have to stop you there for a
26 second.

1 Appeal #21440

2 MS. LEMANCZYK: I know, I talk fast.

3 MEMBER GOODSSELL: I am a real estate attorney. Your
4 fence is not on the property line as you are looking at the
5 house on the left-hand side, which kind of makes my hair curl.
6 But you have a bizarre shape in the back. You have a pizza
7 slice with a little edge on it, which is very interesting. It
8 must be the way the houses on the block are.

9 MS. LEMANCZYK: I am just on the corner. And, yes, we
10 have a slice of pizza in the back.

11 MEMBER GOODSSELL: So there is no permit for this fence.
12 The town could take a nice red pen and say, you are off your
13 property line quite a bit.

14 MS. LEMANCZYK: On the left-hand side?

15 MEMBER GOODSSELL: So facing your house and you are
16 looking at the house, on the left-hand side, as you get back
17 into that little peaky point.

18 MS. LEMANCZYK: You would definitely --

19 MEMBER HERNANDEZ: It's inside the property line.

20 MEMBER GOODSSELL: It is inside the property line.

21 MEMBER HERNANDEZ: You are giving up. You are giving
22 up 3 feet of your property.

23 MS. LEMANCZYK: My neighbor has my land is what you are
24 saying?

25 MEMBER HERNANDEZ: Yes.

26 MS. LEMANCZYK: Okay. I actually knew that. I thought

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you were telling me that I had my neighbor's land. And I was going to say that I think my architect told me that he has my land.

VICE CHAIRMAN FRANCIS: Do you have children?

MS. LEMANCZYK: I do.

MEMBER HERNANDEZ: Was the fence replaced in the same place where the original permits were?

MS. LEMANCZYK: To my knowledge, yes.

MEMBER HERNANDEZ: Do you have a copy of that, by any chance?

MS. LEMANCZYK: So the copy of the fence is from 1987. So I have an e-mail, I can send it to you.

MEMBER HERNANDEZ: If you can e-mail it to us, that would be great. Thank you.

MS. LEMANCZYK: It's really hard to read. It's there. The one thing I did want to mention, because there is an error, and I took a video and I don't know if that will help. On that left side where my neighbor has my fence, they drew the gate to push-in, which I know is not appropriate. It doesn't. It absolutely pulls out. That's why I took a video. There is actually one of those.

MEMBER GOODSSELL: Let me interrupt you there. Are you talking about the gate at the top of the ramp?

MS. LEMANCZYK: The gate is actually not at the top of the ramp. That ramp is to the side entrance of the home, but

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just beyond that, yes.

MEMBER GOODSSELL: That's the gate you are talking about.

MS. LEMANCZYK: But it opens out.

MEMBER HERNANDEZ: You don't have to e-mail it. We have it in the filing.

MEMBER DONATELLI: So if the Chairman were here, he would remind us --

VICE CHAIRMAN FRANCIS: Who actually lives in Carle Place.

MEMBER DONATELLI: He would remind us that the fence ordinance is really mostly about safety. It's all about safety.

VICE CHAIRMAN FRANCIS: Yeah, it is.

MS. LEMANCZYK: Sure.

MEMBER DONATELLI: And so the town says that the fence really cannot come forward of the rear building line. So I see here that a fence does come forward of the rear building line instead of returning to the house. In other words, it continues along the side of the house and then it kind of comes in at a slant on the left side, but it's beyond your rear building line. And the same is true on the right side, too. It comes in and then it comes -- you have existing planters and an existing wood deck and it comes in and it looks like there are some stairs there and comes into the steps. So the

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Building Department and the Town of North Hempstead would say that those fencer turns are supposed to come to the rear building line. Because, again, with safety in mind, the thought is that an adult looking outside would be able to peruse the entire pool area and to not have any blind spots. So it's really a safety issue that, to my knowledge, this Board really kind of adheres to.

VICE CHAIRMAN FRANCIS: Yeah. That's where I was going when I asked you if you have children. Because a child could be hiding in that area. And if you look out at that pool and maybe you are having a party and you are looking out at the pool, you can't account for all of your children because of the way that this is set back.

MS. LEMANCZYK: I understand that. The way the house is shaped, basically, like if you are looking down, it's an L. The inner part of the L or the lower part of the L is my kitchen. So I spend a lot of time in there. So that window looks directly out into my backyard. If I were to put a fence at the back of that addition, I actually wouldn't be able to see the pool.

MEMBER HERNANDEZ: It doesn't need to be a solid fence. It could be like a metal.

MS. LEMANCZYK: Like a chain-link fence?

MEMBER HERNANDEZ: No.

MS. LEMANCZYK: Oh, like wrought iron-ish?

1 Appeal #21440

2 MEMBER HERNANDEZ: Yes.

3 MEMBER DONATELLI: The kitchen you say --

4 MS. LEMANCZYK: Is like the lower part of the L.

5 MEMBER DONATELLI: So that is the main portion and then
6 this addition that you built in 1988?

7 MS. LEMANCZYK: Correct.

8 MEMBER DONATELLI: That's the portion that extends into
9 the rear yard?

10 MS. LEMANCZYK: Correct.

11 MEMBER GOODSSELL: And what is that? What is being
12 used? Is it a family room?

13 MS. LEMANCZYK: Living room, family room.

14 MEMBER HERNANDEZ: The permit that I am looking at here
15 shows the house originally when the house was a rectangle
16 before it became an L. Then they built that extension as a
17 family room or a living room?

18 MS. LEMANCZYK: Right. But then when they gave the CO,
19 the rear extension was there. I'm not looking to change
20 anything. I just want to keep what is there.

21 MEMBER DONATELLI: No, I understand. The other issue
22 -- and I don't know how to resolve this -- is that existing
23 shed. Because, again, that's kind of in the middle and that
24 might also present a safety issue. We are not trying to give
25 you a hard time. We are just trying to minimize any safety
26 risks because that's what we really have to do.

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VICE CHAIRMAN FRANCIS: What is the measurements of the shed?

MS. LEMANCZYK: I don't know that off the top of my head. I don't know if I can tell that you, but I can check.

VICE CHAIRMAN FRANCIS: No.

MS. LEMANCZYK: 8 by 12.

MEMBER GOODSSELL: I am looking at your survey that was done in January of 2023. The vinyl shed near the pool equipment looks like it's 8 feet by 12 feet.

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

MEMBER GOODSSELL: The addition, which is perfectly legal, creates a fence issue that we have no idea was being created, and we are trying to solve it.

MS. LEMANCZYK: I appreciate it.

MEMBER DONATELLI: Through Hurricane Sandy.

MEMBER GOODSSELL: Mother nature had said, oh, you think you want that, really.

MEMBER DONATELLI: We understand your plight. Our plight is that what we do in one case is what we try and do in all other cases. We try and stay consistent with precedent. And I understand that there were three or four, five different things that combined in just the perfect storm to put you here in front of us here today, and we are trying to be helpful, but with the safety in mind. And I would like to hear what our Chairman has to say.

1 Appeal #21440

2 VICE CHAIRMAN FRANCIS: I agree.

3 MEMBER GOODSSELL: Maybe we could ask for some pictures,
4 too. Could you take some pictures not of the pool? We can see
5 the pool on the survey. But the side of the house beyond where
6 the ramp ends, there seems to be a space back there alongside
7 the addition, your family room addition. We would like to see
8 what is in there. And then your wood deck, maybe what you see
9 looking out the back of your kitchen window. Because we are in
10 charge of the safety. And your addition is perfectly legal,
11 but it creates visual blockings that had you come to the
12 Building Department today, they would say no, no, no, you can't
13 put the fence there, you have to put the fence here and here.
14 So you kind of got backed into this.

15 VICE CHAIRMAN FRANCIS: One of the photos should be
16 directly out of your kitchen window.

17 MEMBER GOODSSELL: So we can see what it is that you see
18 and then stand at the end of the ramp.

19 MS. LEMANCZYK: At the foot of the ramp or the top of
20 the ramp?

21 MEMBER GOODSSELL: Top of the ramp and show me what you
22 see. Then maybe go on the other side of the gate and show me
23 what is on the side. There is your family room on one side.
24 Your neighbor's fence is on one side as you are walking.

25 MS. LEMANCZYK: The video I actually took this morning,
26 so I can send that to you.

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MEMBER GOODSSELL: I wish we could see your video, but we don't have the ability.

MS. LEMANCZYK: Even if I sent it in e-mail? I made it short. Because I really wanted to show you that the gate swung the proper way. It doesn't swing in, it swings out.

MEMBER GOODSSELL: That would be fine.

MS. LEMANCZYK: I can send it just so you have it. Can you just tell me the e-mail address?

SECRETARY WAGNER: Bzadept@north --

MS. LEMANCZYK: Got it.

SECRETARY WAGNER: You have it?

MS. LEMANCZYK: Yes.

MEMBER GOODSSELL: Because we just had one of the previous applicants this morning who sent pictures, which pictures tell a thousand words or your pictures are worth a thousand words, whatever it is. So you can see what I see. Good.

MEMBER DONATELLI: And with the photographs that you send us, can you also send us a photograph -- and it may very well be the same thing -- of that planter, the wood deck, and the steps leading down, that whole area.

MS. LEMANCZYK: Sure. You are not going to see so much of the planter and the steps from the kitchen. So I will do it from there and then I will go out and take from the scene close up.

1 Appeal #21440

2 VICE CHAIRMAN FRANCIS: Perfect.

3 MS. LEMANCZYK: Are we good?

4 VICE CHAIRMAN FRANCIS: So we will reserve decision.

5 MEMBER DONATELLI: Well, we will continue.

6 MS. LEMANCZYK: Thank you very much for your time.

7 MEMBER HERNANDEZ: Thank you.

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

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1 Appeal #21441

2 SECRETARY WAGNER: Next Appeal is Appeal #21441 -
3 Shane Fritsche; 288 Mallard Rd., Carle Place, Section 10, Block
4 35, Lot 28; Zoned Residence-C. Variances from §§ 70-50.C &
5 70-51.A to construct a second-story addition that is too close to
6 the street and a side property line.

7 VICE CHAIRMAN FRANCIS: You have heard Appeal
8 #21441. Is there anyone interested in the application other than
9 the applicant? No. The crowd is starting to go diminish. Name
10 and address, please.

11 MR. PYZYNSKI: I will be brief. Leo Pyzynski,
12 P-Y-Z-Y-N-S-K-I; 100 Clinton Avenue, Mineola, New York 11501.

13 MR. FRITSCHKE: Shane Fritsche; 288 Mallard Road, Carle
14 Place, New York 11514.

15 VICE CHAIRMAN FRANCIS: Thank you.

16 MR. PYZYNSKI: So we would like to add a second floor
17 over this one-story house for a growing family. Adding
18 bedrooms and bathrooms and a laundry room upstairs.
19 Unfortunately, the house, when it was built in 1955, was
20 constructed too close to the west property line and too close
21 to the front. It is significantly close to the front from the
22 other houses. As you can see, the setback is 24 feet and we
23 are at 18 and change. We are going straight up from what is
24 there now. The 4.9 on the left side, I believe, is because
25 there is three sidings on the house. And I think once we strip
26 the house down and re-side it, it we will be closer to the 5.

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We do show that the second floor is set in to 5 feet so we don't have to fire rate that whole entire wall. We do have a real cantilever of 36 square feet, which is not an issue in this case. Thank you. And we, basically, are just looking to go straight up.

The issue that we have is that if you see the drawings, that staircase goes east to west right in the middle of the house. So if we were to setback the house to conform to the code, we would lose two of those bedrooms above the living room and dining room, a little over 200 square feet. And we can't go any farther out the back because that staircase is right there. We would have to take that staircase out, reverse it, run it front to rear. So the rooms are a moderate size with the exception of the master, but we have two children now. One bedroom will be used as an office.

The owner is the owner of the diner on Jericho and Willis Avenue, so he will use that as a home office. And we will also put an egress window in the basement, which is not part of the variance, but since construction is going on, I wanted to have that legalized.

MEMBER DONATELLI: How many square feet is the house right now?

MR. PYZYNSKI: Currently, it's around 1400 square feet.

MEMBER DONATELLI: And what is being proposed?

MR. PYZYNSKI: We are going straight up from what's

Appeal #21441

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2 there with the exception over the porch area. We are leaving
3 that as a one-story porch area. So my encroachment is only 24
4 feet, instead of the 39 or 37, rather. So you see the front,
5 there is only that one reverse gable that goes out there. The
6 porch will stay.

7 MEMBER DONATELLI: Actually, I was asking about gross
8 floor area. It looks like maximum is 2500 and you are still
9 coming in at 2304.

10 MR. PYZYNSKI: Correct. So we are well-under the lot
11 coverage and well-under the floor area ratio.

12 MEMBER GOODSSELL: The other thing I would like to put
13 on the record. When you look at the applicant's front door,
14 the railroad tracks are right there.

15 MR. PYZYNSKI: Right. We have the Nassau County
16 drainage and then the Long Island Railroad runs parallel.

17 MEMBER GOODSSELL: So it's all green? There is no
18 neighbor across the street?

19 MR. PYZYNSKI: No. And we did speak to the adjacent
20 properties. They didn't give us consent letters, but they have
21 seen the drawings and they don't have any issues at all. Also,
22 it is going to be very similar to other homes in the area
23 character-wise, not adjacent immediately, but further down the
24 street. And I worked on three homes on Curtis just behind us
25 and they are all similar to this one.

26 VICE CHAIRMAN FRANCIS: When I first moved to Westbury

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-- I am kind of a neighbor of yours -- I couldn't sleep because of the railroad. I heard it all the time. And over time, I just stopped hearing it and now, you know, I don't hear it at all.

MR. FRITSCH: It comes by so often, you don't even hear it.

VICE CHAIRMAN FRANCIS: No. It's amazing.

MEMBER DONATELLI: Some of us grew up near LaGuardia Airport.

VICE CHAIRMAN FRANCIS: That's a different story.

MR. PYZYNSKI: The only thing I would like to submit is this overhead photo showing that on the 4.9 side, we do have a driveway area. That's the larger side yard of the adjacent property. And on the east side, that is our driveway area. So we are not really encroaching on anyone at all.

SECRETARY WAGNER: Are you submitting this as an exhibit?

MR. PYZYNSKI: Please.

SECRETARY WAGNER: Exhibit 1.

MEMBER DONATELLI: I'm sorry. What is this a representation of?

MR. PYZYNSKI: I just wanted to show the distance between the houses. On the west side, that's our 4.9, that's the neighbor's larger side, and on the other side is our neighbor's driveway side.

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MEMBER GOODSSELL: Mr. Chairman, after looking at the photos and the plans submitted by the applicant, I have no objection to this application, and therefore I would make a motion that we grant the application allowing the applicant to construct a second-story addition that is technically too close to the street -- although, it really doesn't appear to be so visually -- and technically too close to the side yard. And again, I think the applicant has offered a satisfactory explanation as to why the side yard is so narrow, and therefore I move that we grant the application.

VICE CHAIRMAN FRANCIS: All right. We have a motion to grant. Do we have a second?

MEMBER HERNANDEZ: Second.

VICE CHAIRMAN FRANCIS: Ginny, please poll the Board.

SECRETARY WAGNER: Member Goodsell.

MEMBER GOODSSELL: Aye.

SECRETARY WAGNER: Member Hernandez.

MEMBER HERNANDEZ: Aye.

SECRETARY WAGNER: Member Donatelli.

MEMBER DONATELLI: Aye.

SECRETARY WAGNER: Acting Chairman Francis.

VICE CHAIRMAN FRANCIS: Aye. The application is granted.

MR. PYZYNSKI: Thank you very much.

1 Appeal #21442

2 SECRETARY WAGNER: Next Appeal is Appeal #21442 -
3 Dimitri Suleimanov; 12 Locust Street, Greenvale; Section 20,
4 Block 35, Lot 15; Zoned: Residence-C. Variance from
5 70-100.2(A)(2) to legalize fencing in a front yard.

6 VICE CHAIRMAN FRANCIS: You have heard Appeal #21442.
7 Is there anyone interested in the application other than the
8 applicant? Seeing no one. Please give your name and address.

9 MS. SULEIMANOV: Hi. I represent myself. 12 Locust
10 Street, Greenvale, New York 11548. I represent myself and
11 Dimitri Suleimanov, he is my husband. So I am sorry. I am
12 nervous because I have never been before.

13 SECRETARY WAGNER: Just speak slower. I'm sorry. She
14 has to record.

15 MS. SULEIMANOV: I just want to explain why the fence
16 is there and why it's a little taller than it needs to be. I
17 have a child who has severely autism disorder. He is very,
18 very behavioral. I'm sorry.

19 VICE CHAIRMAN FRANCIS: No, that's fine. And you heard
20 what I said this morning.

21 MS. SULEIMANOV: I just know that if -- I don't know
22 what I am going to do.

23 SECRETARY WAGNER: It's okay. Just slow down and take
24 your time. We understand.

25 MS. SULEIMANOV: Because I have a problem. He can run
26 from the home. We found him outside so many times, even my

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neighbors. I apologize.

VICE CHAIRMAN FRANCIS: We completely understand.

MEMBER DONATELLI: We understand. Do you have a doctor who is helping you?

MS. SULEIMANOV: Yes. I have all the papers, like, to confirm the diagnosis.

SECRETARY WAGNER: So we will submit these as Exhibit 1.

MS. SULEIMANOV: And, yes, the fence, it's not fences, it's like locked fences. And each time, I have to make sure it's locked because we lose him a couple of times. I watch him, believe me. Even nighttime, I stand up. I watch him, make sure he is not. We put locks. Everything is whatever it needs to be, but it is what it is. How much, like, you try to be safe, it's never enough. And this is the reason. So I have this. I mean, five or six years ago, when we bought that house, it was just a fence like maybe 4 feet, but it wasn't covered or anything, and he was losing a couple of times. But I spoke with the neighbor and the neighbor was bringing him back to home when he was lose. So the neighbor is even happy when I put the safety. So the size is 5 feet, I guess. I mean, you know, the yard is not so even so you can't just go 5, maybe some couple more. I know the back, it's 6 feet, but the front is 5.5. You know, when he was small, he just jump. Believe me, he just jump.

1 Appeal #21442

2 VICE CHAIRMAN FRANCIS: Over the 4?

3 MS. SULEIMANOV: Yeah, even little. I mean, he can do
4 the things, whatever. You cannot explain, you know. It's like
5 you have to feel it, whatever it is.

6 VICE CHAIRMAN FRANCIS: And he is 13 years old now?

7 MS. SULEIMANOV: He is 13 years old. His feet is a
8 little more higher than me. He is still thin, but he is very
9 strong. Since he is not audible, he is a lot of, you know,
10 strong and a lot of behave. I'm sorry for my -- I don't want
11 to be sorry for myself. It's nothing.

12 VICE CHAIRMAN FRANCIS: Of course not.

13 MS. SULEIMANOV: But if it is no, I was just thinking,
14 if they are going to say no, what I am going to do next, you
15 know. Even yesterday, I call for the safety, you know, the 20
16 miles per hour. The cars is very, very close to the road, you
17 know. I have a picture where I have my home. So this is the
18 reason why.

19 MEMBER DONATELLI: May I ask you? Does the fence help
20 you keep your child under control?

21 MS. SULEIMANOV: Yes. And, you know, I put the fence
22 -- if you make it on the picture, I put these little things so
23 he cannot. Like, it's really to protect him, you know, with
24 the things.

25 MEMBER GOODSSELL: Yes, I noticed that. And I have to
26 tell you, normally we don't allow that. But because you have a

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child with a classified disability, under the Americans with Disability Act, we take all of that into account. So things that we would normally not even consider, we consider very seriously because this is a life necessity. You know, the other thing is not a block away, you have the main road. God forbid he walked down there and walked right out. That's a blind corner right there. So we normally would not even consider this, but you have submitted very compelling evidence.

VICE CHAIRMAN FRANCIS: Just give us one moment.

MEMBER DONATELLI: Yes, give us one moment, please.

VICE CHAIRMAN FRANCIS: While Mr. Hernandez is looking at that, I just want to mention that you can contact the highway department for a sign that goes on the outside of your house or somewhere in the street indicating that there is an autistic child that lives on the block. So it kind of puts everyone on notice that they should slow down in terms of driving.

MEMBER HERNANDEZ: It's not on your house, it's a sign on the street.

VICE CHAIRMAN FRANCIS: Right.

MS. SULEIMANOV: Okay.

VICE CHAIRMAN FRANCIS: So it just makes people aware of his presence.

MS. SULEIMANOV: Okay. Thank you for that.

MEMBER DONATELLI: So Mr. Vice Chairman, after having

Appeal #21442

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2 reviewed the file, I would like to put a few things on the
3 record. I know, I believe, it was within the last year, we had
4 a similar application for a resident of Derby Road in Port
5 Washington. And in that instance, we found that putting a
6 fence in the front yard was a reasonable accommodation under
7 the Americans with Disabilities Act. And I believe that that
8 would be the case here, as well, that this is a reasonable
9 accommodation under the ADA. And certainly, our record is
10 filled with those letters regarding the medical condition of
11 the child. So having said that, I make a motion that we grant
12 the application.

13 VICE CHAIRMAN FRANCIS: All right. We have a motion.
14 Do we have a second?

15 MEMBER HERNANDEZ: Second.

16 VICE CHAIRMAN FRANCIS: Ginny, please poll the Board.

17 SECRETARY WAGNER: Member Goodsell.

18 MEMBER GOODSSELL: Aye.

19 SECRETARY WAGNER: Member Hernandez.

20 MEMBER HERNANDEZ: Aye.

21 SECRETARY WAGNER: Member Donatelli.

22 MEMBER DONATELLI: Aye.

23 SECRETARY WAGNER: Acting Chairman Francis.

24 VICE CHAIRMAN FRANCIS: Aye. The application is
25 granted.

26 MS. SULEIMANOV: Thank you so much. I really

1 Appeal #21442

2 appreciate it. I get emotional. Thank you. So apologize for
3 my --

4 VICE CHAIRMAN FRANCIS: No apologies necessary.

5 MEMBER GOODSELL: No apologies necessary.

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SECRETARY WAGNER: Next Appeal is Appeal #21443 -
Surameet Singh; 10 Hilton Ave., Garden City Park, Section 33,
Block 140, Lot 889; Zoned Residence-C. Variances from §§
70-50.B, 70-101.B, 70-52.3.A & 70-52.3.B to construct a new
home that is too close to the street and pierces the required
sky exposure plane.

VICE CHAIRMAN FRANCIS: You have heard Appeal #21443.
Is there anyone interested in the application other than the
applicant? Seeing no one. Please give your name and address,
please.

MR. KAPLAN: Andrew Kaplan, Architect; 68 West Main
Street, Oyster Bay, New York. We have a relief in front of you
for a variance to build a new dwelling on a corner lot in a
Zone R-C. It requires a variance for a front yard setback and
sky plane.

VICE CHAIRMAN FRANCIS: Before you start, I always want
to question. If you are building something new, why can't you
build it compliant?

MR. KAPLAN: In this particular case, due to the nature
of this property, there is an existing garage. And due to the
geometry of this property, if we were to conform simply just to
the zoning, we wouldn't be able to build a house, in this case,
large enough to fit the family needs. The front yard setback
that we are going to be going for, while it does appear to be a
20-foot setback along Hilton, and it's a secondary front yard,

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the average front yard setback along that property line is 16.9 feet. And even with that, the advance of our front yard setback is 17.5 square feet. While it is deficient of the 2.57 feet of the requirement, it does meet the average. And the house directly next door on that line -- because there are only two homes on that side of the street on that block -- is set at 9.2 feet. So we are still retaining the street wall, essentially, to that area, but to maintain the additional 125 square feet to build the home large enough for the family, we need that additional coverage of the property.

I do want to point out, though, that both gross floor area and the lot coverage were compliant in this case even with the setbacks. In fact, we are still 1.9 percent below the maximum coverage and we are just below the maximum floor area.

SECRETARY WAGNER: Mr. Kaplan, do you want to talk about the exhibit?

MR. KAPLAN: Yes. Exhibit A or 1, as you guys have been calling it, it's a diagram that just breaks down how the encroachments are occurring. The encroachment to the sky plane specifically, the most part is that one-story section of the new home that does encroach into the setback. So the bulk of the home is actually at 20 feet, at the required setback, as well as there is a small little sliver on the rear of the property that kind of cuts into the sky plane. And then Exhibit 9 on the second floor, that area just below is above.

1 Appeal #21443

2 The height of the house is set to 30. It has a good roof
3 pitch. It doesn't look unnatural in any way. As well as the
4 second page of the diagram --

5 VICE CHAIRMAN FRANCIS: What is the roof pitch?

6 MR. KAPLAN: The roof pitch is, I believe, 7.512.

7 VICE CHAIRMAN FRANCIS: I don't see it on here.

8 MR. KAPLAN: It's on page 3 of 9 on the roof plan and
9 as well as noted on all floor elevations on page 4, as well as
10 showing all the sky plane.

11 MEMBER DONATELLI: I'm sorry. Because I typically like
12 to hear the applicant put their case on before I start asking
13 questions. You mentioned a few times the needs of the family
14 in terms of the size of the home.

15 MR. KAPLAN: Yes.

16 MEMBER DONATELLI: What are the needs of the family in
17 terms of the size of the home? Can you fill that in for us?

18 MR. KAPLAN: The family is large. They have a couple
19 of children. They have elderly aging family.

20 VICE CHAIRMAN FRANCIS: Is that couple two?

21 MR. KAPLAN: Two children and an aging set of family
22 members.

23 MEMBER DONATELLI: Can you please be specific? They
24 all live in the house?

25 MR. KAPLAN: They will be when the house is built.

26 MEMBER DONATELLI: Okay. And who are they, in-laws?

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MR. KAPLAN: In-laws. And that's why the design is so we have, essentially, two rooms on the first floor to act as bedrooms and bathrooms. In case of the future needs of the family needs, it's to keep everyone on one floor. If we were to reduce the 125 square foot, I mean, the rooms could get a little smaller. There isn't a lot of living space on the first floor, and he wouldn't have the availability, based on the build of the house, to have it of the appropriate size. Encroaching into the front yard is the logical place, to some degree, to, essentially, break the ordinance. If we were to go to the rear yard, we would be on top of someone's property. If we built towards the side yard, we would demolish the garage, as we would get too close. And if we were to go towards the true front yard, which is the Bedford Avenue direction, we would still be going for a variance.

SECRETARY WAGNER: Mr. Kaplan, can I ask you a question?

MR. KAPLAN: Yes.

SECRETARY WAGNER: You are showing that the portico is the area that encroaches into the sky plane? That's what it appears. So why does -- the green area says area of dwelling encroaching into the sky plane.

MR. KAPLAN: Well, that area, including that front yard does appear to have a 20-foot setback.

MEMBER GOODSSELL: Sky plane.

1 Appeal #21443

2 SECRETARY WAGNER: Sky plane is this.

3 THE REPORTER: I can't hear what he is saying now.

4 MR. KAPLAN: From my recollection from speaking with
5 plans examiner, for the sky plane, the angled line only counts
6 once you hit the actual setback of the house. If I'm
7 incorrect, then technically --

8 SECRETARY WAGNER: I mean, I think that the sky plane
9 line is the line that you are showing here, and that the part
10 that pierces the sky plane is the back eave, according to your
11 diagrams.

12 MR. KAPLAN: Then, in that case, I have a much more
13 diminutive sky plane issue than what I originally thought.

14 SECRETARY WAGNER: Well, that's what I would think
15 based on the angle.

16 MS. LEONARDO: Then I am mistaken, but that's the
17 direction that I have been often told by the plans examiner to
18 follow. That's why the diagrams have that line.

19 SECRETARY WAGNER: Maybe we could go to the Building
20 Department and clarify. But then that means what you are
21 submitting is incorrect. It is showing that the portico is --
22 I mean, the portico is there at the lower height, and that
23 probably would not be an issue, anyway.

24 MR. KAPLAN: No.

25 MEMBER DONATELLI: So to put it in another way. The
26 exhibit that you just handed up, Exhibit A, 1 out of 3. You do

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have a sky plane on the right side of the house where the portico is.

MR. KAPLAN: Correct.

MEMBER DONATELLI: That is well-beyond where the portico ends, so it's well within the sky plane area.

MR. KAPLAN: Understood.

SECRETARY WAGNER: In that portion in the back area.

MEMBER DONATELLI: Right. In the back, it just clips.

SECRETARY WAGNER: And then the other thing that you indicated here is that the area of the dwelling is higher than the allowable eave height. The allowable eave height. You don't exceed the allowable eave height where you would need a variance for that. It's the fact that you exceed the eave height at the point -- at the setback is what forces you to get the variance for the sky plane, sky exposure plane.

MR. KAPLAN: Understood.

MEMBER DONATELLI: So once again, if we go back to the Notice of Disapproval, we got the front yard setback issue.

MR. KAPLAN: Correct.

SECRETARY WAGNER: Do you want this in the record?

MR. KAPLAN: The other page explains the front yard setback.

SECRETARY WAGNER: I will hand it back to you and you can correct it however you want.

MEMBER DONATELLI: So we really got the front yard

1 Appeal #21443

2 setback and then the secondary front yard setback, and then a
3 tiny sky exposure plane, which is 9 inches. Now, the Building
4 Department also set out two sky exposure planes.

5 VICE CHAIRMAN FRANCIS: It did.

6 SECRETARY WAGNER: There is two sections of the code.
7 One of them has to do with the topography of the property and
8 the other one has to do with the direct setback ratio.

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

10 MEMBER DONATELLI: All right. Did you want to --
11 because I know we asked a bunch of questions -- do you want to
12 continue with your presentation? And if you would please, at
13 some point in your presentation, address the five issues and
14 the five factors.

15 SECRETARY WAGNER: So you are re-submitting Exhibit 1?

16 MR. KAPLAN: Yes. As we were previously stating that
17 our front yard setback on Hilton, which is the secondary front
18 yard is 17.5. That, gives us the additional 125 square feet
19 additional to the property while still being under the maximum
20 lot coverage and under the maximum floor area. Doing the sky
21 plane, apparent now, it's just the rear of the house that has
22 the issue, which is good. While we are ahead of that 20-foot
23 setback from the average front yard setback given by the
24 surveyor, it's 16.9. In this case, we are still retaining the
25 street wall so it doesn't look too irregular on that side of
26 the street from Hilton.

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2 And I do know and I am aware of also two letters that
3 were submitted to the Board opposing this application. One
4 letter is from a neighbor that doesn't have a name, but it was
5 e-mailed to Ms. Wagner, speaking about the property that has an
6 Airbnb currently being used in the existing home. In the
7 future, it will not be an Airbnb anymore. They also bring up a
8 question about the house being a multifamily home or a
9 two-family home, et cetera. I think that comes with regard to
10 the design of the house, as there are two porticos,
11 essentially, on the home. The portico on Hilton, which is the
12 main entrance to the home, acts as the main entry into the
13 house. The other portico that is also on Hilton is connected
14 to the dining room of the home and acts as, essentially, the
15 only green space on this property where you can entertain, have
16 children run around, et cetera. If we were to relocate that
17 portico or even the stoop elsewhere on the property based on
18 the design of the home, either, A, it becomes an issue with the
19 code for fire rating of the property, an issue about creating a
20 zero-line setback to a neighboring house or an inaccessibility
21 of walking 360 around the home.

22 The second letter is from Albert Devito, also provided
23 to the Zoning Board, speaks about the home irrevocably damaging
24 the look of the neighborhood (phonetic). There are a lot of
25 larger homes being built in this area. This house does not
26 overrate the size of this neighborhood. So in this case, I

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2 don't think that this home is any different than following the
3 zoning with the exception of the setback issue. As well as the
4 location of Alberto Devito is, essentially, 300 feet southeast
5 of this location. There is no way of him even seeing this
6 house from his property. So I do not know if that's really an
7 issue for him, per se, directly. But I understand that people
8 do want to voice their opinion and that's why we are here.

9 Considering the five points of coverage. Will this be
10 out of character of the neighborhood? I don't think so. This
11 house, while it is, you know, sizable on the lot, it does
12 conform with the lot coverage and floor area.

13 Could it be achieved by some other method? Without
14 changing possibly a different zoning ordinance being broken,
15 such as coverage or setback in a different way, we can't get a
16 house of this size.

17 Is it substantial? Being that we are following the
18 average front yard setback, even though it's not technically
19 required by a secondary yard, we are still keeping that in mind
20 and not making something egregious in the neighborhood.

21 Could it have any adverse impacts on the environment or
22 community? I don't believe so.

23 And is it self-created? In this case, yes. We are in
24 front of the Zoning Board.

25 So I will take any other questions you guys might have.

26 MEMBER HERNANDEZ: I have a question about the portico.

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The house's main entrance is on the secondary front yard,
correct, facing Hilton?

MR. KAPLAN: Yes.

MEMBER HERNANDEZ: And which portico is the one that is
encroaching, the one facing Hilton or the one facing Bedford?

MR. KAPLAN: The one that is facing Hilton would be the
encroaching one. The one facing Bedford is actually within the
allowable 5-foot encroachment. If we do follow the average
front yard setback, the proposed portico on Hilton also
conforms, but I know based, certainly, on the zoning, there is
no average front yard within a secondary front yard.

MEMBER GOODSSELL: I have to submit, it's unusual to
have two porticos, and I think that's the source of the
neighbors concern, that this looks like it might be used for
either rental purposes or for an apartment somewhere. Again, I
am not saying that anything on your floor plan gives me
concern, but I understand the concern of the neighbors. It's
very nice to have two porticos, but it's unusual in that
neighborhood to have two porticos.

MR. KAPLAN: Understood. If it was a matter of simply
removing the roof on that section, would that be grounds for
possibly --

MEMBER GOODSSELL: The portico itself is not in
violation of anything. It's just that I think that's what
triggers about what is this house going to be used for.

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MR. KAPLAN: Understandably.

MEMBER DONATELLI: Can you direct us? As I am looking through the plans, can you direct us to the site plan, the actual siting of the house? The siting of the proposed house on the lot and what the setbacks will be to each lot line?

MR. KAPLAN: Okay. On Bedford, all the -- first of all, the building sits parallel to the lot. So there is no weird angles, everything is perpendicular. On Bedford, we have a 25-foot setback to the front yard of the house.

MEMBER DONATELLI: Are you referring to a page?

MR. KAPLAN: Page 1 of 9. It's the first page.

MEMBER DONATELLI: Okay. And that's the upper right-hand corner?

MR. KAPLAN: Correct. And then looking at Hilton, if you look at the northwest corner of the home, there is a dimension saying 1750, which is the encroachment that we are discussing here. And then we have 1350 to the proposed portico, that's the main entry into the home. We have 25 feet to the rear of the house, which is the dimension from the southmost property line to the house. And then 5 feet to the eastern property line, which is the side yard, also being de minimus.

MEMBER DONATELLI: 5 feet.

MEMBER HERNANDEZ: You mentioned that the side portico was there because the dining room is how they are going to

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access what would be a function of the backyard. And I recognize this is a front yard and the fence can never go on there?

MR. KAPLAN: Exactly.

MEMBER HERNANDEZ: Okay.

MEMBER GOODSSELL: The obvious question is, when you design a house, can it be designed so that you don't need a variance? It's a good sized lot for that area. It's 50 by a 100, which I think is a good sized lot. I have no issue with the design. I have no issue with the orientation of the house. I just think it's unusual to have two porticos. I note that there are stairs going down to the cellar, which we always scrutinize just to see what is going on in the cellar. And as I am looking at what the plans are, will it be either a finished or not finished, the cellar?

MR. KAPLAN: It will be one open space finished with a bathroom down there and some laundry.

MEMBER GOODSSELL: Finished?

MR. KAPLAN: Yes.

MEMBER HERNANDEZ: An open space?

MR. KAPLAN: Yes. But there are no additional walls, and page 2 of 9 shows that space.

MEMBER GOODSSELL: When we see cellars and cellar stairs coming from the outside, we always look to see whether or not it has the potential for an illegal apartment.

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MR. KAPLAN: Understood.

MEMBER GOODSSELL: Is there any reason why there has to be a full bathroom in the basement?

MR. KAPLAN: I think it's something, typically, we see these days.

MEMBER GOODSSELL: How many bathrooms will be in the house all together?

MR. KAPLAN: It's a five-bathroom home, including that bathroom on the side.

MEMBER GOODSSELL: Five bathrooms?

MR. KAPLAN: Four and a half bath, technically.

MEMBER GOODSSELL: Four and a half bath, including one in the cellar?

MR. KAPLAN: Yes.

MEMBER GOODSSELL: All right. That one, I am just a little bit concerned about.

MEMBER DONATELLI: So one of the things that we are charged with doing is trying to see if there is in some way that we can minimize the variances that are being requested. And the 9-inch sky exposure plan, which are points 3 and 4 of the Notice of Disapproval, is it possible to bring the height of the house down so that we can avoid those variances?

MEMBER GOODSSELL: Well, how tall are the ceilings?

MR. KAPLAN: They are 9 feet.

MEMBER GOODSSELL: Whereas code requires 8 feet. So if

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it was built to code --

MEMBER HERNANDEZ: It's the bedrooms is usually 8 and the downstairs is usually 9.

MR. KAPLAN: We are okay with bringing it down to 8 feet.

MEMBER GOODSSELL: That, would eliminate the necessity for the sky plane.

MEMBER DONATELLI: And lower the eave.

MEMBER HERNANDEZ: So it falls within the permitted.

MEMBER DONATELLI: Exactly.

MR. KAPLAN: Just to be clear, 9-foot first floor and 8-foot second floor?

MEMBER HERNANDEZ: Correct. You are lowering it one foot, basically.

MEMBER GOODSSELL: You are 9 inches over.

VICE CHAIRMAN FRANCIS: Do you have anything else to present?

MR. KAPLAN: No.

VICE CHAIRMAN FRANCIS: Okay.

MR. KAPLAN: I'm sorry, I do. Just for the record, I do still have the letters from the homeowners along with our responses, as well as Exhibit B.

VICE CHAIRMAN FRANCIS: Yes. We should definitely submit that.

MR. KAPLAN: Exhibit B has a letter from ourselves

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explaining the architectural design of the home as well as we are also stating the house will be used for their use and not for residential rental use. And the other exhibit, being the second letter, is our response to the average front yard setback, location of the home, et cetera.

VICE CHAIRMAN FRANCIS: Okay. Good. I am of the opinion that we should reserve decision on this to let the Chairperson take a look at it.

ATTORNEY ALGIOS: Do you want to continue and he can submit revised plans?

VICE CHAIRMAN FRANCIS: I'm sorry. Yes. Because you are going to submit revised plans showing that you are going to lower, so let's do that, instead of reserve.

MR. KAPLAN: Yes.

VICE CHAIRMAN FRANCIS: All right. So you can get that to us. It doesn't have to be fancy.

MR. KAPLAN: We will get it to you pretty quick. Thank you very much.

MEMBER HERNANDEZ: Thank you.

VICE CHAIRMAN FRANCIS: Thank you.

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

1 Appeal #21444

2 SECRETARY WAGNER: Next Appeal is Appeal #21444 - Kim
3 Cheung; 32 Dyckman Avenue, New Hyde Park; Section 33, Block
4 563, Lot 62; Zoned: Residence-C. Variances from §§
5 70-100.2(A)(4), 70-100.2(A)(4)(a) and 70-100.2(A)(4)(b) to
6 construct a fence that would be too tall and legalize fences
7 that are too tall.

8 VICE CHAIRMAN FRANCIS: You have heard Appeal #21444.
9 Well, I'm going to answer my own question. There is no one
10 else here.

11 SECRETARY WAGNER: Only Mr. Edwards.

12 MS. CHEUNG: Hi. My name Kim Cheung. I live at 32
13 Dyckman Avenue, Garden City Park. This is my mom. She goes by
14 Maggie. So we bought the house in 2021 and it already had
15 existing PVC fencing around the home. So we are legalizing the
16 side fence, I think, that's too high, about 10 inches or
17 something.

18 VICE CHAIRMAN FRANCIS: So the only way to legalize the
19 side fence is to make them 5 feet.

20 MS. CHEUNG: Okay. I'm sorry. So we are requesting a
21 variance for that.

22 VICE CHAIRMAN FRANCIS: So what do you need? How high
23 are the fences on the side?

24 MS. CHEUNG: I think they are 5'11.

25 VICE CHAIRMAN FRANCIS: So almost 6 feet?

26 MS. CHEUNG: Yes.

1 Appeal #21444

2 VICE CHAIRMAN FRANCIS: Why do you need it that high?

3 MS. CHEUNG: Just because they were existing and
4 without doing any construction to have to pay for that.

5 MEMBER GOODSSELL: You are familiar with the fence rule
6 that we have in the Town of North Hempstead; 4 feet in the
7 front even with the house, 5 feet on the side, 6 feet on the
8 back. We consider special circumstances, which you just heard
9 somebody with an autistic child. Anyway, how do you stand the
10 noise from the firehouse?

11 MS. CHEUNG: They are totally fine. They don't make
12 any noise. They are very respectful. They actually leave out
13 of Jericho.

14 MEMBER GOODSSELL: They no longer make the sound at
15 noon?

16 MS. CHEUNG: 6:00 p.m. every day.

17 MEMBER GOODSSELL: Well, God bless you. Because I live
18 maybe a mile away and I hear it.

19 MS. CHEUNG: I feel like the New Hyde Park one might be
20 a little louder.

21 MEMBER GOODSSELL: I'm thinking we don't even need that
22 anymore. We all have cell phones. To go back to you. You do
23 have a very busy street, I will give you that. When that
24 firehouse is called, it is hopping over there. I can
25 understand the need for privacy, but you have to explain to us
26 what it is that prevents you from complying with the rule. Is

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there some circumstance other than, well, we would just like to keep it.

VICE CHAIRMAN FRANCIS: Well, in addition to the side fences being 6 feet, you want 12 feet for the rear fence.

MAGGIE CHEUNG: Yeah. Because can I talk?

VICE CHAIRMAN FRANCIS: Just give your name.

SECRETARY WAGNER: Just give your name even though I know you are her mother.

MAGGIE CHEUNG: My name is Maggie Cheung and I live with my daughter. You know, the backyard neighbor, they always cooking. They cooking like crazy. Even my backyard, my driveway, when I open my door, the flies come in. The oil hit. So many oil on my back door. I always wash detergent, bleach to wash the door. And then I come and ask, please, can you turn the kitchen vent to other side? We don't need to face to my backyard. And then they cooking like a crazy, like a restaurant. It's driving me crazy. I cannot cook in my backyard. My garage is right there. I need to go out, come back, always smell like crazy. How can I live like this? How can I live here? I just bought the house. First year, no problem. No problem at all. Since September, I saw in the window, they have some people coming, living in the basement. They do takeout restaurant. I write down everything. Can you see?

SECRETARY WAGNER: So you want to submit this letter as

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an exhibit? So this will be Exhibit 1.

MAGGIE CHEUNG: It's the same letter. She made six copies.

SECRETARY WAGNER: Okay.

MAGGIE CHEUNG: Right now, all the rats come to the house, come and go. All the pictures right here, I can show you.

VICE CHAIRMAN FRANCIS: You can submit those, if you want.

MS. CHEUNG: I have a video, as well, which I heard you can't take. But I have a Google photo album of the rats. So the rats run literally from on the backyard property line and they go into the back neighbors. I guess, there is a little crevice or a crack. There is a space underneath the fence and the retaining wall. So they are coming back and forth between the back neighbor's property and our property. So they run along the back property line of the house and into the back neighbor's house or they will come back out of there and then go to my other neighbor's.

MEMBER DONATELLI: Now, when you say your backyard neighbor, this is not a restaurant?

MS. CHEUNG: It's not a restaurant, it's residential.

MEMBER DONATELLI: Okay. And how would a very tall fence stop the rodents or the odors?

MAGGIE CHEUNG: I need 12-feet fence because they

1 Appeal #21444

2 blocking. It's my back door it's blocking.

3 MEMBER HERNANDEZ: So they have an exhaust fan, I
4 guess, in the back?

5 MS. CHEUNG: Correct.

6 MEMBER HERNANDEZ: And it blows at your backyard?

7 MS. CHEUNG: Correct.

8 MAGGIE CHEUNG: Yes, and then my back door, driveway.

9 MEMBER HERNANDEZ: Now, you have two neighbors behind
10 you, one behind your garage, is that the one or is it the other
11 one?

12 MS. CHEUNG: No. It's the one with the larger.

13 MEMBER HERNANDEZ: Okay. We are not going to approve a
14 12-foot fence. I'm sorry.

15 MAGGIE CHEUNG: Then how can I live like this?

16 MEMBER HERNANDEZ: Well, what you can do is you can put
17 plantings there that will grow very, very fast.

18 MAGGIE CHEUNG: No. The plant doesn't grow because the
19 smell is so strong. It's so strong. How can I go to my
20 driveway and do the road? If you stand there, you smell it
21 very strong.

22 MS. CHEUNG: She is saying you can smell it all the way
23 over to the front street.

24 MEMBER HERNANDEZ: Understood. She is saying you can
25 smell it the next block over. There is no way that we can
26 approve in the town a 12-foot-tall fence in the backyard of a

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private residence, because think of the way your backyard will look for all the other neighbors.

MS. CHEUNG: So I have a photo, but I didn't printout. Some people sell the panels that, basically, look like shrubs. So I was going to cover both sides of the fence with that so it doesn't look like a fence or a wall. It would just look like the trees.

MEMBER HERNANDEZ: And we appreciate. We would still be approving a 12-foot fence and --

MAGGIE CHEUNG: Then, how can I live like this, you know? My daughter say you have to go to your backyard and sit outside in fresh air. I cannot sit in my backyard because they always cooking. They crazy. I think they doing takeout business. They cooking, you know. My father almost died and I always go to the hospital and then come back 12:00 a.m. and my backyard, they already firing. It smell like crazy, my driveway. How can people live in this area? How?

VICE CHAIRMAN FRANCIS: The only other thing that you can do is make a report to 311.

MAGGIE CHEUNG: I do all the time. I do 311. I call the town, they tell me call police. I call police. Police, they don't do anything. Nobody help. That's I am thinking I only protecting myself only make a higher fence.

MEMBER DONATELLI: In this letter that you just submitted to us, you say that you believe that your backdoor

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neighbor may be doing business as Chinese food takeout.

MAGGIE CHEUNG: Yes.

MEMBER DONATELLI: Why do you believe that?

MAGGIE CHEUNG: Because they always cooking. They cooking like a Chinese takeout restaurant, the smell.

MEMBER DONATELLI: Do you see them delivering food? Do you see people coming in and out?

MAGGIE CHEUNG: No. They always block the door, block the window. They cannot open the curtain. They block.

MEMBER DONATELLI: Do you see people coming out and going in with bags of food?

MAGGIE CHEUNG: No, I don't. Because I live in other side, but I saw since September, I saw Chinese people over there cooking crazy. Until I complain and then they block all the windows. The curtains block all the windows. Cannot see inside.

MEMBER GOODSSELL: Well, we cannot give you a higher fence.

MAGGIE CHEUNG: Please.

MEMBER GOODSSELL: We cannot give you a higher fence. The same way we cannot give you permission to do 95 miles an hour when you are driving.

MAGGIE CHEUNG: We need it.

MEMBER GOODSSELL: We can give you permission for a 12-foot hedge.

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2 VICE CHAIRMAN FRANCIS: You don't even need our
3 permission for that.

4 MAGGIE CHEUNG: Tell me, what can you do.

5 MEMBER GOODSSELL: We are only here to tell you what you
6 cannot do. You cannot put a 12-foot fence.

7 MAGGIE CHEUNG: It always smell and they cook smell,
8 stinking food.

9 MEMBER GOODSSELL: We are not the Board that can help
10 you with that. I wish we could. We cannot help you with that.

11 MEMBER DONATELLI: If your backyard neighbor was using
12 a single-family house as an illegal Chinese restaurant --

13 MEMBER HERNANDEZ: Or any kind of business.

14 MEMBER DONATELLI: Or any kind of business, then the
15 town can help you. But my guess is, whether it's a 12-foot
16 fence, a 6-foot fence, if there are bad odors coming out, the
17 bad odors are going to keep coming out.

18 MAGGIE CHEUNG: No, I don't think so.

19 MEMBER DONATELLI: I hear in your voice that you are
20 very upset. I saw in your letters that you are very upset.
21 And I appreciate your -- the fact that you are upset, but,
22 unfortunately, we are bound by the town code, just as everyone
23 in the town is. And we can't just allow someone to build a
24 fence twice as high as what is allowed to keep odors out. We
25 can't do it. I have been on this Board for years now. I don't
26 think I have ever seen it done. In fact, I know I have never

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seen it done.

MAGGIE CHEUNG: Nobody can have the smell like this in my backyard.

MEMBER DONATELLI: We care about your plight. We understand what you are going through, but we are powerless to do anything about it.

MAGGIE CHEUNG: Two days ago, I call police. Police doesn't help me. Police tell me all the time, call the Town North of Hempstead, maybe they help you.

VICE CHAIRMAN FRANCIS: So I would suggest that you contact directly the council person for your area whose name is Dennis Walsh. You can call here. You can come here. You can find out what his office hours are and you can bring this up with him.

MEMBER HERNANDEZ: He will work in this building.

VICE CHAIRMAN FRANCIS: He is your elected representative.

ATTORNEY ALGIOS: When you leave, you can stop at the security booth. Maybe if he is here, you can ask for an appointment.

VICE CHAIRMAN FRANCIS: Right. Ginny, did she give these to us to keep?

MS. CHEUNG: Yes. These are for you to keep.

MAGGIE CHEUNG: You see the rat is so big. It's so horrible.

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2 SECRETARY WAGNER: You called 311? When you say you
3 called the town, you called 311?

4 MAGGIE CHEUNG: Yes.

5 SECRETARY WAGNER: And what was the response?

6 MAGGIE CHEUNG: I call many times. Nobody helped.

7 SECRETARY WAGNER: Nobody responded?

8 MAGGIE CHEUNG: No.

9 MS. CHEUNG: They said you have to talk with your
10 neighbor. We can't get involved. This is a neighbor
11 situation.

12 MAGGIE CHEUNG: I say, please help me change the
13 direction to other side. I pay the money for you to help me.
14 They don't do it. I talking to the wife. I say you cannot do
15 like this to your neighbor. I pay them money. Can you change?
16 I paid. How much money I pay you. Change that direction to
17 other side. Don't face to my backyard. They don't do it.

18 MEMBER HERNANDEZ: You need to be an industrial-sized
19 exhaust fan to reach all the way into your backyard and that
20 house is 20 feet away from your backyard.

21 MEMBER DONATELLI: You cannot direct the fan. It has
22 to go straight up.

23 SECRETARY WAGNER: I don't think the Building
24 Department would allow --

25 MEMBER DONATELLI: But even if it's noncommercial, it
26 might be a fire hazard.

1 Appeal #21444

2 MEMBER HERNANDEZ: You want it to go straight up.

3 VICE CHAIRMAN FRANCIS: I just don't understand why 311
4 is not doing anything.

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

6 VICE CHAIRMAN FRANCIS: As you heard, there is nothing
7 that we can do. Your best option is to talk to your council
8 member. He has a whole lot power.

9 MEMBER HERNANDEZ: We can only deal with things
10 pertaining to the code and give you permission to do something
11 else. Putting up a 12 foot is not going to solve the problem.
12 It's a bigger problem here. Deal with that problem.

13 MS. CHEUNG: Okay. As for the existing side fences,
14 it's for privacy because it is an extremely busy street with
15 all the EMTs and the volunteer responders.

16 VICE CHAIRMAN FRANCIS: We are going to talk it over
17 among ourselves. We are not going to make a decision right
18 now. We will reserve decision. And we may even come by and
19 look at your house. And you have also piqued my interest about
20 the house behind you, so we want to look at that house also.

21 MEMBER GOODSSELL: What is the address of that house?

22 MS. CHEUNG: 35 Madison.

23 MEMBER DONATELLI: Madison Street?

24 MS. CHEUNG: Avenue.

25 MEMBER HERNANDEZ: Madison Avenue.

26 MAGGIE CHEUNG: Excuse me. If you drive by the house,

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the curtain, they always pull down the curtain. Nobody can see inside.

MEMBER GOODSSELL: That's perfectly legal. You are allowed to do that.

MEMBER DONATELLI: Can you see the exhaust fan?

SECRETARY WAGNER: I didn't see the fan in there.

MEMBER DONATELLI: Again, just to repeat what the Vice Chairman has said. The council members, they have office staff, and part of what they do is they try and help constituents. So if you are calling 311 and you are not getting a good answer from 311, I would recommend that you speak to your town council member so that he can help you get the answers you need from 311.

MS. CHEUNG: That was Mr. Dennis Walsh?

VICE CHAIRMAN FRANCIS: Correct.

MAGGIE CHEUNG: Do you see the picture? This is the vent.

SECRETARY WAGNER: You are claiming this is the vent on your neighbor's property?

MAGGIE CHEUNG: Yeah. Yeah.

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

MEMBER DONATELLI: Excuse me. You submitted this one photograph and you got the rodents circled, but there are two houses side by side in the background, which one of these two houses is it? Is it the one with the red umbrella in the

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background?

MS. CHEUNG: Yes.

MEMBER DONATELLI: Unfortunately, there is a raindrop
right where --

MS. CHEUNG: I know. It just so happened to be on the
window, there was a raindrop.

THE REPORTER: It's just becoming very conversational.

MEMBER DONATELLI: The rat is -- again, there may be a
cleanliness problem. There may be some other problem that 311
can help you with. It's not necessarily just the odors.
Because in my mind, they are two separate things. So I would
absolutely follow-up with your town council member. And if you
are not getting the answer from 311, let him know.

VICE CHAIRMAN FRANCIS: Right.

MAGGIE CHEUNG: Thank you.

MS. CHEUNG: Thank you very much for your time.

MEMBER DONATELLI: Good luck to you.

SECRETARY WAGNER: So now we are reserving this?

MEMBER HERNANDEZ: Reserving.

SECRETARY WAGNER: So the Board won't make a decision
about this until the next -- we are not going to do it today,
right?

VICE CHAIRMAN FRANCIS: No.

SECRETARY WAGNER: Probably, September 20th, which is
the next meeting. So you can call the zoning office to find

1 Appeal #21444

2 out what that decision is and it will be filed with the
3 Building Department, as well.

4 MS. CHEUNG: Okay.

5 SECRETARY WAGNER: And they may or may not make a
6 decision next week. So just letting you know, it may be done
7 on the 20th, but it's not a guarantee.

8 VICE CHAIRMAN FRANCIS: Talk to Mr. Walsh. See if you
9 can make an appointment today.

10 MAGGIE CHEUNG: Okay.

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1 Appeal #21446

2 COMMERCIAL CALENDAR

3 SECRETARY WAGNER: Next Appeal is Appeal #21446 -
4 Herricks & Hillside Development, LLC (Moge Tee); 3340 Hillside
5 Avenue, New Hyde Park; Section 9, Block 514, Lot 50; Zoned:
6 Business-A/Residence-C. Conditional use §70-126.F to convert a
7 restaurant to a retail food use.

8 Before you proceed, did you have copies of the
9 correspondence that were submitted to the Board regarding this?
10 I believe it was Mr. Sahn?

11 MR. EDWARDS: Regarding what?

12 SECRETARY WAGNER: That neighbors submitted a report.

13 VICE CHAIRMAN FRANCIS: You have heard Appeal #21446.
14 Please give your name and address.

15 MR. EDWARDS: Good afternoon, Mr. Chairman and Members
16 of the Board. For the record, my name is Wayne Edwards of
17 Sahn, Ward; 333 Earle Ovington Boulevard, Uniondale, New York.
18 We are before you today for a conditional use permit for a
19 retail use, food use under Section 70-126 of the building
20 zoning ordinance in the Town of North Hempstead. The premise
21 is located on the south side of Hill Side Avenue in a strip
22 center, which is east of Herricks Road.

23 The strip center actually consists of three separate
24 buildings, which is the big 99 discount store. The strip
25 center, which is Allstate, a pizza place that's closed down, an
26 ice cream store, and a food store. And behind that is the

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Herricks Cinema, which closed in February of 2022.

It is our application to locate the Moge Tee establishment within the Allstate office, which left the site. They sell bubble tea and other various teas and food-based drinks. I would like to submit a copy of the menu. It's a franchise operation. There is about 14 or 15 Moge Tees in the New York Metropolitan area in New York State.

SECRETARY WAGNER: This will be Exhibit 1.

MR. EDWARDS: Yes. I have one for each Board Member. The hours of operation are estimated to be between 11:00 a.m. and 8:00 p.m. There will be six to eight employees. There is plenty of parking at this site because of the movie theater. The store is 1139 square feet. There is about eight seats in the front. There will be a counter where you order the drinks and then there is a food-prep area behind it. There will be refrigeration because of what food they serve, a lot of fruit.

It's located in the Business-A Zone with a small street in the Residence-C in the rear. If you go along the south side of Hillside Avenue towards Herricks, besides my client's building, there is the Super 88 International Supermarket, then a farmer's market, which was formally Sweet Pea.

MEMBER GOODSSELL: I miss Sweet Pea.

MR. EDWARDS: Under the original owners. And then comes an office building, the Herricks office building. And then there is a Dunkin Donuts on the corner, which is formally

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2 Nathan's. Across the street there is Iceland, which is an ice
3 skating rink and a bakery, which is connected. You can
4 actually go from the bowling alley on the south side of the
5 throughway easement right of way onto the Herricks Cinema
6 property and our property. So there is two ways to get in
7 there.

8 We did receive correspondence regarding a flooding
9 situation for the rear neighbor behind. The buildings are
10 managed by Ripco. We had them investigate and the homeowners.
11 Apparently, we don't believe it's coming from our property.
12 It's coming from the bowling alley property. I have three
13 pictures. I think the homeowner mentioned --

14 MEMBER GOODSSELL: This shop is so far away from the
15 property line that I cannot imagine that they would have
16 anything to do with any kind of a drainage or flooding problem.

17 MR. EDWARDS: So you will note the demarcation line
18 between the rear parking lot and in the rear is between the
19 bowling alley and our property. They must have done some
20 renovations. And our property has the tree. There is -- looks
21 like -- a 2- to 3-inch curb in the parking lot and the buffer
22 goes up. So it had to be a pretty high rain for it to go up,
23 but we are investigating it. If there is an issue coming from
24 our property, we will take care of it.

25 SECRETARY WAGNER: So this is Exhibit Number 2.

26 MR. EDWARDS: Yes. Under Section 70-225, the Board has

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to consider certain general standards in case of a conditional use permit. Whether the proposed use is such a character, size, location, and design, and site layout as to be appropriate. This is an infill of a store. It's a typical use, a bubble tea store. You have approved other bubble tea stores and similar uses.

Whether the proposed use will provide a desirable service? I have had bubble tea. I like it. I think people in the community and within the New Hyde Park area will be happy.

MEMBER DONATELLI: Does it tickle your throat going down?

MR. EDWARDS: It does, but it's chewy. I like it. And then there is another thing on the menu, which I don't understand, it's called cheese foam tea.

VICE CHAIRMAN FRANCIS: I was going to ask you about that.

MR. EDWARDS: They have an explanation for it. I have to try it. I think it's going to be an acquired taste.

VICE CHAIRMAN FRANCIS: I was going to ask you if that was a drink or a food.

MR. EDWARDS: It's a drink and what it is is -- here is the explanation. They use a cream cheese and milk foam on top of the sweet tea and you drink at a 45-degree angle, you get a little foam and then you sip the tea and it's a mixture. It's almost like a liquid cheese cake. I will have to try it when

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it opens.

Whether the proposed use will be hazardous and conflicting? No.

And will it be objectionable to nearby residential buildings? There is a residential property in the back, but as Councilwoman said -- I mean, the Member said, it's pretty far back.

MEMBER GOODSSELL: It's pretty far back. There is a fence there and there is a hedge there.

MR. EDWARDS: And there is also trees.

MEMBER GOODSSELL: And there is also trees.

MR. EDWARDS: And it will be harmonious with the other uses along Herricks whether or not residential.

MEMBER GOODSSELL: It was literally less and less attended over the years. The 99 cent store is busy. That little strip mall where this Moge Tee is proposing to go in has had many other businesses there. God bless them. I hope they are successful.

VICE CHAIRMAN FRANCIS: Is that a motion?

MEMBER GOODSSELL: It will be a motion. I am just reliving my childhood, okay. Having spent many, many years there and it just -- I can't explain why that particular area seems to be vacant and dying. And it needs more light in there, but if one little bubble tea shop will do it, then I move that we grant the application for the little bubble tea

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Appeal #21446

shop to lead everybody back to a full occupancy.

MEMBER HERNANDEZ: Under restaurant conditions.

MEMBER GOODSSELL: Under restaurant conditions.

SECRETARY WAGNER: You made a motion?

MEMBER GOODSSELL: I made a motion.

VICE CHAIRMAN FRANCIS: Seconded by Mr. Hernandez.

SECRETARY WAGNER: Okay. Poll the Board?

VICE CHAIRMAN FRANCIS: Please.

SECRETARY WAGNER: Member Donatelli.

MEMBER DONATELLI: Aye.

SECRETARY WAGNER: Member Goodsell.

MEMBER GOODSSELL: Aye.

SECRETARY WANGER: Member Hernandez.

MEMBER HERNANDEZ: Aye.

SECRETARY WAGNER: Acting Chairman Francis.

VICE CHAIRMAN FRANCIS: Aye. The application is
granted.

MR. EDWARDS: Thank you very much.

VICE CHAIRMAN FRANCIS: With restaurant conditions.

Proceedings

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MEMBER DONATELLI: I make a motion that we approve
SEQR.

MEMBER HERNANDEZ: Second.

SECRETARY WAGNER: And then we need to re-adopt, as
well.

MEMBER HERNANDEZ: I move that we re-adopt.

MEMBER DONATELLI: Jay just moved it and I will second.

SECRETARY WAGNER: All in favor?

(Whereupon, all Board Members voted affirmatively.)

(Time noted: 1:54 p.m.)

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

STATE OF NEW YORK)

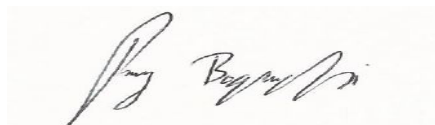
) Ss.

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 20th day of
September, 2023.

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

AMY BOGUSZEWSKI