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Town of North Hempstead

3

Board of Zoning Appeals

4

PUBLIC HEARINGS

5

6

7

Wednesday, October 11, 2023

8

10:32 a.m.

9

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BOARD MEMBERS PRESENT:

11

David L. Mammina, Chairman

12

Leslie Francis, Vice Chairman

13

Daniel D. Donatelli, Member -
(Joined at 11:42 a.m.)

14

Patricia A. Goodsell, Member

15

Jay Hernandez, Absent

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17

ALSO PRESENT:

18

Deborah Algios, Town Attorney

19

Virginia Wagner, Secretary

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Steven Perrotta, Planner

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Amy Boguszewski, Stenographer

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1 Proceedings

2 CHAIRMAN MAMMINA: If everyone would please
3 rise and join Mr. Vice Chairman Francis in the Pledge
4 of Allegiance.

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

7 CHAIRMAN MAMMINA: Good morning, everyone,
8 and welcome to the Town of North Hempstead Zoning
9 Board of Appeals. What I would like to do before we
10 get started is just take a few minutes to go through
11 the way we do things in the Town in case you have
12 never been to a Zoning Board before, which is
13 absolutely fine or maybe you have been to other
14 zoning boards and we may do things a little bit
15 differently here procedurally.

16 Today, we only have a three-person Board
17 today, which is very unusual, but this is still -- I
18 use the word "legal" in that we do have a quorum, you
19 know, with three people. So we can make decisions,
20 you know, today and we will talk about decisions. So
21 what we will do is as each case is called off of the
22 calendar and, you know, it will be called by our
23 secretary, Ms. Wagner, over here, we will ask the
24 owner to stand up, come forward or the applicant, you
25 know, if you have representation, and make your way
26 up forward to the podium. And I will then ask if

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2 there is anyone who has interest in the case, and
3 that could be for the case or against the case. All
4 we ask for is a show of hands, you know. These
5 things can get very emotional, so we ask that
6 everyone is just ladies and gentlemen. And, you
7 know, there is no applauding or that sort of thing.

8 This is a quasi-judicial hearing. We
9 have a reporter. There is a record that is taken of
10 all of the proceedings today. And also, as we were
11 waiting for before, everything we do here is
12 televised because there are laws that say that --
13 it's called the sunshine laws. Everything that we do
14 has to be completely open to the public so they can
15 hear any kind of deliberation that we may have.

16 So with the owner or applicant at the podium,
17 they will give their name and address to our Court
18 Reporter. And at that point, the podium will belong
19 to the applicant. They will put their case on the
20 record. And then the Board will ask whatever
21 questions it may see fit of the applicant. And we
22 will then ask for anyone who had raised their hand,
23 either for or against, will come up one person at a
24 time to the podium. We will pass around a sign-in
25 sheet, if we have a good amount of people, and I can
26 see we have a good amount of people on at least one

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2 application. And again, it will be one person at a
3 time. We will call it off of the list. Just because
4 you signed the list doesn't mean that you have to
5 speak. Everyone will speak who wishes to speak. You
6 may be able to just come up and say I agree with the
7 person ahead of me, but the fact that your name is on
8 the list saying you are in support or you are not in
9 support, that would go into the official legal
10 document of the Hearing.

11 I just want everybody to be cognisant. We
12 have a three-minute rule for anyone else who wishes
13 to speak with the exception of the applicant. The
14 applicant has to have whatever time they need to put
15 their case on to the record. Typically, if there is
16 an attorney or an expert that is representing any
17 opposition, we will give that person, you know, that
18 same opportunity. Everyone can only speak one time.
19 And, you know, at the end of the three minutes, I
20 would like to say we are not going to chop anybody's
21 head off, but we do need to keep some kind of a
22 timeframe to the whole day, otherwise we can bring
23 our pajamas here on most Hearings.

24 So after the applicant has made their case on
25 the record, after we've heard anyone who wishes to
26 speak, the Board will then do one of four things: We

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2 will either approve the application, deny the
3 application, we may reserve the application or we may
4 continue the application. The difference between
5 reserving and continuing, if we reserve, that means
6 we have all the information that we need. We don't
7 need anymore information from anybody on that. The
8 Board may want to see a Building Department file. We
9 may want to go out and see the property again. We go
10 to look at the properties. We get very detailed
11 information from Ms. Wagner and her department and
12 all of the drawings and, you know, all of the stuff
13 that I have here. So every case is looked at very,
14 very carefully by the Board. We take this extremely
15 seriously, you know, what we do here. And the fourth
16 thing that we would have would be a continuation. A
17 continuation would be if we asked for some documents
18 from the applicant or someone in the audience.
19 Sometimes there is a civic association that's
20 representing a group. So there would be a timeframe
21 on when those documents would have to be submitted.
22 Those documents are public, so they may be looked at
23 in the zoning office. So there are no secrets.
24 There is nothing hidden. Everything is above board.
25 From the applicant, we may ask for a record
26 from a closing document, if somebody is buying a

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2 piece of property. We may ask for a additional
3 survey that has more information on it. We may offer
4 some kind of a compromise, even though I like to say,
5 you know, not in a sarcastic way, but it's not let's
6 make a deal, but we may. And we try our best to help
7 an applicant to potentially end up with an approval
8 -- it all depends -- or a denial. At least they
9 understand, you know, where the denial comes from.
10 This is all about points of law. This is not about
11 what the Board thinks of an addition to a house and,
12 you know, it has got Victorian details all over it
13 and it's going to be beautiful. And we may agree
14 that it's going to be beautiful, but if it needs a
15 variance because you want to build it 10-feet higher
16 than you are allowed to, we have to weigh that based
17 on what a community looks like. All of these
18 regulations are in a legal document that is put
19 forward by the Town Board. And that's true anywhere
20 that you are going to go in New York State, and that
21 is required, required to have a zoning board and
22 that's our job and the responsibility that we are
23 given here.

24 The other thing that I will ask, especially
25 we have a full room today, and I would ask the same
26 thing, anyway, is we all live and die by these

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2 electronic devices, and that's all okay. So we will
3 just ask if you can put your cell phone or if you
4 have a laptop, just put it on silent. And if you get
5 a phone call or an e-mail and you need to speak to
6 that person or you would like to make a phone call or
7 you would just like to stretch your legs, that's all
8 okay. Just stand up, make our way over to the door,
9 and you can go on out outside. If you want to have a
10 conversation, that's fine, as well. It's just not to
11 disrupt the Hearing that is going on.

12 I missed one point, that after the applicant
13 has made their presentation, after any opposition or
14 support has come on to the record, the applicant, at
15 that point, has the podium again. And because they
16 get the chance then to either support or refute what
17 someone else might say, and that is legal procedure,
18 you know, with it. And, you know, it is only the
19 applicants that will get a chance to speak two times.

20 We do not have second Hearings, typically.
21 That's not to say we have never done that, but in the
22 30-odd years I'm here, if I even needed two hands to
23 count, you know, that, that would be a lot.

24 So I will just make one more point. Going
25 back to the cell phones and things. If there is
26 anyone who is not here yet who you expect to come,

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please just pass those same things along to them, you

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know. And I will use the word silence loosely, but

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we truly do ask for no cross-talking in the room.

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It's very difficult for our stenographer. She has a

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hard enough time taking down the record when we start

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talking over each other. And every once in a while,

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I see she gives me a look to say just go easy. But

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if there is other talking in the audience, it's just

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very, very hard, you know, for her. It's hard for

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the Board to hear. It's hard for us to hear each

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other. So did I get everything, Deborah? Did I get

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everything?

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ATTORNEY ALGIOS: You got it all.

15

CHAIRMAN MAMMINA: Okay. Good. Thank you.

16

Ms. Wagner, do we have any modifications to today's

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calendar?

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SECRETARY WAGNER: We do not, but I would

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like to say one additional thing. If anybody is

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submitting anything into the record, if you could

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please label the material with the Appeal number and

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the exhibit number so that for recordkeeping

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purposes, we have more accuracy. Because at the last

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Hearing, we got a lot of documents that were just

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handed up last minute and it's hard to keep track of

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everything. So that's for the public as well as the

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2 applicants and their representatives. So please
3 label them with the appeal number and the exhibit
4 number.

5 CHAIRMAN MAMMINA: Right. Exhibit number, so
6 that they could be put into an order. So it could be
7 one, two, three, four, you know, that sort of thing,
8 and we will announce them up here. If you can get
9 that ahead of time, that would help. A very good
10 point. Thank you.

11 So we have no modifications to the calendar
12 today, meaning that there are no adjournments. So
13 the entire calendar will be heard. And then I will
14 ask, would you please call the first case.

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Appeal #21450

RESIDENTIAL CALENDAR

SECRETARY WAGNER: First Appeal is Appeal
#21450 - Dominick and April Kortkamp; 31 Hill Lane,
Roslyn Heights; Section 7, Block 164, Lot 11; Zoned:
Residence AA.

Variances from 22-4, 70-102.C(2)(5),
70-21.A, 70-100.2(I), 70-100.1A and 70-102.5(a) to
construct a pool that is too close to the rear
property line, to locate pool equipment in a side
yard and too close to the side property line, and to
construct a fire bowl and fire pit that will generate
an open fire that is too close to structures on the
property.

I would like to note that the variances under
22-4 are not before this Board, that's not something
that the Board is able to rule on. It's not part of
Chapter 70 of the Zoning Code

CHAIRMAN MAMMINA: And that will be heard by
the Town Board.

SECRETARY WAGNER: No. Deborah?

ATTORNEY ALGIOS: That's a state thing.

CHAIRMAN MAMMINA: So that will handled by
the state.

SECRETARY WAGNER: So you understand that we
are not going to be ruling on those.

1 Appeal #21450

2 CHAIRMAN MAMMINA: All right. Please give
3 your name and address.

4 MR. RANT: Yes. Michael Rant; 39 West Main Street,
5 Oyster Bay, New York.

6 CHAIRMAN MAMMINA: Wait. I am sorry. Let me back up.
7 Is there anyone in the room who is interested in the
8 application other than the applicant? Seeing no one. Please
9 give your name and address.

10 MR. RANT: Good morning, Mr. Chairman and Members of
11 the Board. Michael Rant, Northcoast Civil; 39 West Main
12 Street, Oyster Bay, New York 11771.

13 I am here this morning representing the owners of 31
14 Hill Lane. I am seeking variances in connection with the
15 proposed swimming pool. We do acknowledge the necessary state
16 variances approvals. And in speaking with the client, they
17 have agreed to eliminate any aspect of the plan that does
18 require a state variances, so that would be the fire bowl and
19 the fire pit. Those will be eliminated from the plans, so we
20 will not be seeking variances for those items. So I just
21 wanted to put that on the record. I do have a packet of
22 photographs for the Board Members.

23 MR. PERROTTA: This will be Applicant Exhibit 1.

24 MR. RANT: I did mark them. So by eliminating the fire
25 features, we are here for variances in connection with the
26 proposed swimming pool, for a rear yard setback, and the

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2 proposed pool equipment being located on the side yard, rather
3 than the rear yard. The pool equipment itself is being located
4 where the existing utilities are for the home. So there is a
5 generator in that location, there is AC units, the electric
6 circuits, the gas meter. It's really the ideal location for
7 that equipment. We do comply with the 10-foot setback. And
8 any necessary screening would be installed to shield it from
9 any neighbors.

10 VICE CHAIRMAN FRANCIS: Why not reorient the equipment
11 so that it's north-south versus east-west to make it a little
12 bit more compliant?

13 MEMBER GOODSSELL: Was there a reason for that other
14 than aesthetics?

15 MR. RANT: The reason was we need to be a certain
16 distance away from the generator with the pool equipment. And
17 then that would cause the pool equipment to then push further
18 into the rear yard. So at the rear wall of the house, we have
19 the fence that extends, as required by code. So if we rotated
20 the pool equipment, we would not be able to fit it in the space
21 between the generator and the fence.

22 CHAIRMAN MAMMINA: How much would the fence have to be
23 moved? Because it's very simple to push the fence up, you
24 know, a foot.

25 MR. RANT: Probably, maybe about 3 feet or so into the
26 rear yard.

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CHAIRMAN MAMMINA: All right. Because I might want to see that demonstrated or take a look. Do you have any documentation regarding the required 3-foot setback from the generator that we may want to make part of the record?

MR. RANT: Typically, for a generator to have a clearance requirement from all sides, I can provide that documentation.

CHAIRMAN MAMMINA: Not typically, specifically.

MR. RANT: Yeah. Sure. Sure. I can provide that document.

CHAIRMAN MAMMINA: And also a diagram of what would happen --

MR. RANT: Sure.

CHAIRMAN MAMMINA: -- if it had to move back that shows the generator, you know, as well as those two pieces of equipment so that we can see that.

MR. RANT: Sure. I would say dimensionally we can make it work. I think it would provide a greater setback and it wouldn't ruin the kind of overall layout of the property.

CHAIRMAN MAMMINA: I'm sure, as you know, Mr. Rant, that this Board and other Boards that I'm aware of, our job is to demonstrate that there is no alternative, you know. And we are locked in by a series of tests of law, which I know you are familiar with.

MR. RANT: Yes.

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CHAIRMAN MAMMINA: So alternatives is one of those.

MR. RANT: Sure.

CHAIRMAN MAMMINA: And we look at what that does do to the overall plan, as well, and we can take that into consideration also.

MR. RANT: Sure.

VICE CHAIRMAN FRANCIS: Since we are on the subject of what ifs, what if you move the pool closer to the house in order to be compliant with the rear yard?

MR. RANT: So the main driving factor of why we located the pool in this area. So there is an existing rear patio that steps down to the grade where the pool is located. So they want to provide enough room for safety for people to walk around the pool and not be congested in the location. So that's really the main driving force. So they made the pool only 14-feet wide. They don't have any patio on the rear side of the pool to mitigate any impact to the rear neighbor. And we felt, again, that the 10-foot circulation for people to congregate and have safe access around the pool was an appropriate dimension, and that's kind of how we came to that point.

CHAIRMAN MAMMINA: We get a lot of pools. We look at them extremely carefully. Because, again, our job is to balance and also to be fair in terms of what is the uniqueness of a piece of property. I mean, the house next door has

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compliant setbacks and they also have very nice lounge areas down at the end of it. I mean, the Board does recognize that there has to be a certain amount of walking space for safety reasons and that's enforced by the Department of Health, and that's a life-safety issue. But in looking at the area, which we do appreciate it. I've looked at it. Anyway, in the days of Google, it's just very easy, you know, to do that. So I'm not necessarily suggesting that the pool be made narrower because I can appreciate 14-foot pools, instead of the 12. But, you know, you are flanked on both sides by swimming pools. I mean, I realize you have the pool that is to your east is more like a lap pool. I'm a swimmer. I'm familiar with swimming pools and, you know, you are not going to do laps in a 25- or 30-foot pool, but in a lap pool, yes.

MEMBER GOODSSELL: This is a substantial piece of property. I'm from New Hyde Park. There is 40 by a 100 or 50 by a 100. This is a 140 by a 100. This is not a small piece of property. So what we are looking for -- again, it's not an irregular-shaped piece of property. What we are looking for is, is there a reason why a variance is necessary? Why a pool could not be designed to fit the space?

CHAIRMAN MAMMINA: Also, I will just add one other thing to that from my colleague. You are proposing additional pervious pavers between the existing patio, as it's labelled on the survey, you know, and the pool, you know. And you are

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showing seating areas at the one end and you have the proposed pavilion area at the other end. So, again, looking at other alternatives.

MR. RANT: Understood.

CHAIRMAN MAMMINA: And if you could go down the five factors and say why, you know, you can't meet those factors with that, you know, at least you got something on the record regarding that. Because you know as well as I do -- and I did say we try to be really fair. We are not here to say no, but we are not here to say yes, and we have to be really consistent in what we are doing.

MR. RANT: Understood. So in looking at the variances, the two different variances, we have the pool equipment located in the side yard. Regardless of where we put it in that location on the side, if we reorientated, we still need a setback variance because it's pool equipment in the side yard. I will review that with my client to see if we can make some adjustments to maximize that setback, and that's something that we can do. But again, the fact that there is already an existing generator there in that location, which produces noise, there is air-conditioning units, there is gas and electric there, it's the ideal location. We feel that it's most amenable to the property and will create the least detrimental impact to the neighboring properties.

As far as the pool itself, I agree with the Board's

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concern, we look for the least amount of variance possible. In looking at the photographs, you can see there is substantial screening around the property. The bushes along the rear yard and the side yard are about 20-feet tall. There is a full wall of evergreens. There will be no visual impact whether the pool is 12 feet or 15 feet. And I think the added benefit of having some additional space for maneuverability around the pool is beneficial to the property owner and will not create any detrimental impact to the surrounding areas.

Again, I will discuss making some modifications to that after hearing the Board's comments and concerns and see if there is a way that we can decrease that variance that's being sought.

CHAIRMAN MAMMINA: Just again, in looking at the plan, I know you do an excellent survey, there is so much information on there.

MR. RANT: Sure.

CHAIRMAN MAMMINA: You know, it makes it just a little bit tough just to see the whole thing. You know, for me, I look at these things all day long. But that landscaping that you are referring to, even though that's not something that the zoning says, and if there is landscaping, only because landscaping can die, as I am sure you know and can appreciate sometimes. Some evil bug comes through and kills all the certain type, and those are not on your property, you know.

1 Appeal #21450

2 They are on the property behind you.

3 MR. RANT: Correct.

4 CHAIRMAN MAMMINA: And visual screening is certainly, I
5 would assume, part of what was on the Board's mind however many
6 years ago this section of the zoning was written, but there is
7 also an acoustical consideration for that. And on some level,
8 a safety issue with those offsets of the pool. And the
9 distance that you have around the pool for additional
10 maneuverability, as best as I can read this, is that minimum
11 side 5 feet that you are looking for, you know, in there. So I
12 don't know. I don't really have anything else and I don't know
13 if you do, either.

14 VICE CHAIRMAN FRANCIS: The dimensions of the proposed
15 patio in front of the existing patio, what is the dimensions of
16 that?

17 MR. RANT: It's 10 feet from the existing step to the
18 pool.

19 VICE CHAIRMAN FRANCIS: 10 feet?

20 MR. RANT: 10 feet.

21 VICE CHAIRMAN FRANCIS: And what is the purpose of it?

22 MR. RANT: Well, it's a place for people to congregate.

23 VICE CHAIRMAN FRANCIS: But there is already a patio
24 there.

25 MR. RANT: Yes, there is.

26 VICE CHAIRMAN FRANCIS: Then why?

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MR. RANT: It's for more space for usability of the pool. Again, I hear the Board's concerns and I'm aware of them. I will definitely discuss with my client making some modifications to reduce that, that variance.

CHAIRMAN MAMMINA: I think what we will do is we will continue the application so that you have the opportunity to come back with something else. You can show us turning the generator. Maybe the impact is greater than it's really going to achieve anything. Because it's not turning the generator for the sake of turning the generator.

MR. RANT: Understood.

MEMBER GOODSSELL: The other thing you might want to address with your clients is moving the fire bowls, which, as from the safety standpoint, I think that's a good thing. But you also have several other fire sources, including a fire pit, which, again, we may not even be able to consider, you have a barbecue, an outdoor fireplace, a fire pit, and two fire bowls. You have discussed with your client what the Board cannot approve?

MR. RANT: So the barbecue and the fireplace are exempt from the setback requirements, and we are not seeking variances for those items. The fire pit and the fire bowls are being removed from the application.

MEMBER GOODSSELL: The fire pit is also being required.

MR. RANT: It also requires state variances for

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setbacks because there is state-required variances from a setback, which we do not comply with.

MEMBER GOODSELL: Thank you.

CHAIRMAN MAMMINA: Excellent presentation.

MR. RANT: Thank you very much. We will review and, hopefully, submit revised plans.

CHAIRMAN MAMMINA: And I know you know -- and I'm not suggesting that you rush on this, but the sooner we get it back, it would give us the most amount of time to circulate it around between everybody and have everybody at least have a look, you know, at what you are proposing.

MR. RANT: Sure. Thank you very much. Have a good day.

CHAIRMAN MAMMINA: Thanks so much.

1 Appeal #21456

2 SECRETARY WAGNER: Next Appeal is Appeal #21456 - Asmit
3 Rajbhandani; 123 Gilmar Lane, Roslyn Heights; Section 7, Block
4 257, Lot 12; Zoned: Residence-B.

5 Variances from 70-41.A and 70-42 to construct a wood
6 deck that is too close to the side and rear property lines.

7 CHAIRMAN MAMMINA: Good morning. Please give your name
8 and address.

9 MR. BATRA: Good morning. Paul Batra; 15A Maple Drive
10 Port Washington, New York. And I am representing Mr. Asmit
11 Rajbhandani for 123 Gilmar Lane, Roslyn Heights.

12 He has a setback a little bit over the variance. I
13 mean, we had to apply for the variance.

14 VICE CHAIRMAN FRANCIS: I'm sorry to cut you off.
15 Before you continue, in what capacity are you here
16 representing?

17 MR. BATRA: I'm his expediter and his applicant.

18 CHAIRMAN MAMMINA: That's fine. We just like to know.

19 MR. BATRA: Sorry.

20 CHAIRMAN MAMMINA: No apologies necessary.

21 MR. BATRA: So basically, it's a minor variance. One
22 is a 7 foot and we are about 6.9 feet, and the other one is
23 about 6 feet. I mean, it's only one deck that they are asking
24 for the variance.

25 VICE CHAIRMAN FRANCIS: How high is this deck?

26 MR. BATRA: The deck, as far as, you know, from the

Appeal #21456

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elevation?

VICE CHAIRMAN FRANCIS: Yes.

MEMBER GOODSSELL: Yes.

MR. BATRA: The elevation of the deck was -- hold on.
Let me just see. I think it was about 8 feet.

CHAIRMAN MAMMINA: 8 feet?

MR. BATRA: To the top.

CHAIRMAN MAMMINA: To the top?

MR. BATRA: Yes. I have to see the elevation. I have
the plans here. I brought them.

CHAIRMAN MAMMINA: Take your time and go to the
section. We are not looking to make you nervous, believe me.

MR. BATRA: No, I'm not nervous.

CHAIRMAN MAMMINA: But if you go to A200 and go to the
rear elevation.

MR. BATRA: 5 foot 6.

CHAIRMAN MAMMINA: I think it's only 3 foot 6.

MR. BATRA: 3 foot 6 is up to the top. That's to the
top.

CHAIRMAN MAMMINA: I was talking about where the deck
is.

MR. BATRA: I made a mistake.

CHAIRMAN MAMMINA: That's okay. That's okay. When I
took a look at the section where it shows a building section,
it's on the lower-left-hand side of that same sheet. It

Appeal #21456

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doesn't have a number, which to look at. It appears to be that there is a step down from the house to the deck.

MR. BATRA: Okay. From here, yes.

CHAIRMAN MAMMINA: So why can't we bring that deck down some? I think at least as one Board Member, I recognize that the siting, S-I-T-E, of this house on this parcel of property leaves almost no room for anything, you know, in the rear, you know -- in that rear yard. So the concept --

MR. BATRA: Maybe it would be good for them to use it for storage as far as keeping it a little higher.

CHAIRMAN MAMMINA: No. What our concern is -- and this, probably, isn't 3 foot 6, but I'm only 5 foot 6. So my eyes, you know, I'm going to be up on 3 foot 6, I'm going to be up 8 and a half feet above my neighbor. So it's more the idea of being able to see over. That's the Board's concern.

MR. BATRA: I see. I understand what you mean. There is a lot of screening around. They already had an issue with the air-conditioning, which we screened, and we proposed some screening around it. I mean, from what I saw, it didn't look like there was anything intrusive because the property behind is already elevated. There is a cliff behind.

MEMBER GOODSSELL: I noticed that.

MR. BATRA: So there is not really like flat.

MEMBER GOODSSELL: I noticed that. And just for the record, there seems to be a small retaining wall with a fence

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on top and greenery behind it. So the rear neighbors, if there are one, are not visible from the back of the house. And if they are, it's over the tops of --

MR. BATRA: This is correct. And kind of the same effect is going to be on the left side, too, facing the house. Because they had told us to put screening over there and they just wanted us to put it around the AC units. So there is going to be more on that side.

MEMBER GOODSSELL: The other thing I want to put on the record is that this is a relatively small piece of property. It's, approximately, 90 by 71.

MR. BATRA: Yes.

MEMBER GOODSSELL: And the house is already built and has been there for a long time. You have or your clients have a relatively small backyard. If we were to ask you -- your side yard setback is negligible on the deck, 6.9 as opposed to 7.

MR. BATRA: Correct.

MEMBER GOODSSELL: And 9 foot from the rear. You don't have that big of a backyard. If we ask you to cut the deck back to the permissible size, it's 8-feet wide. 8 feet is not wide enough to put a table and chairs.

CHAIRMAN MAMMINA: That's part of our --

MEMBER GOODSSELL: And that's what we do. We look at these things. So the record should note that the backyard is

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smaller than you would expect you would have for a property
this size.

MR. BATRA: Agreed.

CHAIRMAN MAMMINA: Give me one second. I remember what
it is. That deck -- I'm asking a question. Does that deck
come down directly from the kitchen? In other words, would you
open doors there, if you wanted to, you know, to go out into
that backyard deck area so that from the perspective of
adjacency and the depth of the deck, that would be the most
logical place?

MR. BATRA: So there would probably be a stepdown.

CHAIRMAN MAMMINA: Well, it might be a single stepdown,
but it's not going to be a flight of stairs then?

MR. BATRA: No.

CHAIRMAN MAMMINA: So that is where you come out of the
kitchen? Because there is no floor plan.

MR. BATRA: Correct.

CHAIRMAN MAMMINA: That's the only reason that I am
asking.

MR. BATRA: The architect did it based on only, you
know, what was required. So he didn't, probably, go inside.

CHAIRMAN MAMMINA: Well, there have been instances
where I say bring me back a plan that shows the whole thing.

MR. BATRA: You know what I mean. They do what they
do. They don't do anything extra.

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2 CHAIRMAN MAMMINA: Right. There is no doubt.

3 VICE CHAIRMAN FRANCIS: Let's go back to the shrubbery
4 for a moment.

5 MR. BATRA: Yes.

6 VICE CHAIRMAN FRANCIS: I see that there is shrubbery
7 around the AC unit.

8 MR. BATRA: Correct.

9 VICE CHAIRMAN FRANCIS: Would your client be willing to
10 extend the shrubbery alongside the property line back to the
11 rear property line, just to give the neighbor on that side a
12 little bit more privacy?

13 MR. BATRA: My answer to that is the neighbor on the
14 side that we are putting the shrubbery already, from what I
15 saw, that elevation that we were just talking about kind of
16 goes around that. It's still elevated on that corner. It's
17 the right side that would be any kind of concern, and I don't
18 see that concern, either. Because you are not really -- I
19 don't think you can see them, either, because there is also
20 screening on that side also, on the right side.

21 CHAIRMAN MAMMINA: And, I guess, maybe what you want to
22 do, as I had explained, whatever we -- generally, whatever we
23 approve, if the next person comes in and has exactly the same
24 circumstance, we are going to approve it there, as well. I
25 don't think there is enough information on this drawing to
26 demonstrate, you know, what Mr. Francis's question is and your

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answer to that, at least not for me.

MR. BATRA: I know. The properties are, in their own sense, kind of irregular because they are not flat. So in a sense they are being unique. I went all around that property. I looked. I didn't see any, per se, intrusion from any side. If there was anything, it was maybe the right side, but the left side and the back would look like it was --

CHAIRMAN MAMMINA: When you say the right side, are you talking about the air-conditioning?

MR. BATRA: No. I'm talking about facing the house, it would be the left.

CHAIRMAN MAMMINA: Because it's nowhere near the right side.

MR. BATRA: Correct. On the right side, we have enough space on that side.

CHAIRMAN MAMMINA: And on the left side, you comply. So we are looking at the air-conditioning on the left side and we are looking at the 3 and a half foot height based on the 9 feet from the rear property line, instead of 15 feet. That's really what we are looking at. 6.9 feet is so de minimis.

MR. BATRA: It's also about 6 feet we are talking about, the question here, as far as the back setback, the rear setback.

CHAIRMAN MAMMINA: You are talking about the 9 feet.

MR. BATRA: That's the pitfall of having a small place.

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CHAIRMAN MAMMINA: Not in the real world, though.

Because if I take it as a percentage of 9 feet, the extra 6 feet, it's significant.

MR. BATRA: I guess, for the usage. See, again, what we just discussed and Ms. Goodsell said, that there is an elevation there. So I don't think that back setback really is a factor, to me.

MEMBER GOODSSELL: I don't think it impacts your rear neighbor the way it would if this was an entirely flat neighborhood with no elevations whatsoever.

MR. BATRA: Exactly. I agree.

MEMBER GOODSSELL: I'm familiar with that area and I was actually surprised that there was even a house behind this, because, to me, this seems to back up to the parkway.

MR. BATRA: Correct.

MEMBER GOODSSELL: There is a street there. Mr. Chairman, as one Board Member, they have a small backyard. To cut the deck back really limits the enjoyment the homeowner has. Decks are very common, very popular. I do find it's a substantial ask to go from 15 feet to the 9-foot setback, but I don't think it impacts anybody. So I have no problem with this application.

CHAIRMAN MAMMINA: Do we have that as a motion?

MEMBER GOODSSELL: I will make a motion that we approve this application.

1 Appeal #21456

2 CHAIRMAN MAMMINA: We have a motion from Member
3 Goodsell. And do we have a second?

4 VICE CHAIRMAN FRANCIS: Second.

5 CHAIRMAN MAMMINA: Seconded by Member Francis. Please
6 poll the Board.

7 SECRETARY WAGNER: Member Goodsell.

8 MEMBER GOODSSELL: Aye.

9 SECRETARY WAGNER: Vice Chairman Francis.

10 VICE CHAIRMAN FRANCIS: Aye.

11 SECRETARY WAGNER: Chairman Mammina.

12 CHAIRMAN MAMMINA: Just before I vote, as I have spoken
13 about maybe more extensively than I should have, but uniqueness
14 is a factor that, I think, is very important. Having the deck
15 down one step from the kitchen and out of the kitchen onto a
16 deck in this configuration is truly the only logical place
17 based on all of the other things that constrict it. And if not
18 for the fact that there is that steep incline, you know, in the
19 back, because of the topography in that part of the world, I
20 might have a different opinion about it or at least want to go
21 back and look at it, you know, again. But based on what has
22 been presented both by the applicant and by Member Goodsell, I
23 will also vote Aye on this. So the application is approved.

24 MR. BATRA: Thank you, sir.

25 MEMBER GOODSSELL: With greenery. Remember, we like
26 greenery.

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MR. BATRA: Yes, of course. Okay.

SECRETARY WAGNER: Approved with greenery?

MEMBER GOODSELL: Yes, ask for greenery.

SECRETARY WAGNER: So are you making that a condition?

MEMBER GOODSELL: With some greenery on the west side of the property, which would give the neighbor to the left a bit more privacy.

MR. BATRA: I got you. I totally got you. So basically, with what we proposed, you want me to just go a little more.

VICE CHAIRMAN FRANCIS: A little more.

MR. BATRA: Okay. Fair enough. I will take care of that.

1 Appeal #21457

2 SECRETARY WAGNER: Next Appeal is Appeal #21457

3 Chanpreet Singh; 134 Old Courthouse Rd., New Hyde Park; Section
4 8, Block 257, Lot 5; Zoned: Residence-A.

5 Variance from 70-100.2(A)(2) to construct a fence in
6 the front yard.

7 CHAIRMAN MAMMINA: You have heard Appeal #21457 -
8 Chanpreet Singh. Is there anyone in the room interested in the
9 application other than the applicant? Seeing no one. Please
10 give your name and address.

11 MS. SINGH: Chanpreet Singh; 134 Old Courthouse Road in
12 New Hyde Park.

13 CHAIRMAN MAMMINA: You are tall like I am.

14 MS. SINGH: 11040.

15 CHAIRMAN MAMMINA: Okay. Please, go ahead.

16 VICE CHAIRMAN FRANCIS: Go ahead.

17 MS. SINGH: So we live on a two-way street. And
18 although it really should be designated at 15 miles per hour,
19 most drivers are driving anywhere from 40 miles per hour or
20 faster. There is a lot of traffic that comes onto the street
21 from Denton Avenue and from Shelter Rock Road. I have a child
22 with special needs, he has autism. And even though he is good
23 academically, he doesn't have personal safety skills.

24 MEMBER GOODSSELL: How old is your child?

25 MS. SINGH: He is 8 years old and he is in a special
26 needs class in a ratio of 6.

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CHAIRMAN MAMMINA: Do we have any kind of something from a doctor?

MS. SINGH: Yes, I have supporting documentation.

VICE CHAIRMAN FRANCIS: We have it in the file.

CHAIRMAN MAMMINA: Okay. I missed it in the text.

MS. SINGH: Oh, okay. I also have a letter from the councilman, from Councilman Peter Zuckerman, in support of this.

SECRETARY WAGNER: And that's also submitted.

MS. SINGH: And so that's why I'm requesting a fence. When I lived in Queens, I lived on a one-way street and the house had a fence around it, and my son never ran onto the street. We moved here and I specifically asked my real estate agent to help me purchase a home, either on a one-way street or on a quiet street. I am not from Long Island and I didn't know the flow of traffic on this street. And my real estate agent said, sure, it's a quiet street. So, you know, I can understand, of course, competing priorities. And so every time there was an open house, it would be on a Saturday or a Sunday between 2:00 and 3:00 p.m. or 2:00 and 5:00 p.m. and I wouldn't see the actually flow of traffic. Because I work full time, I didn't check on a busy workday from 6:00 to 9:00 a.m. when I have to, let's say, take him to school or 3:00 to 4:00 p.m. when he comes home from school, how it is a busy street.

MEMBER GOODSSELL: It's a busy street. I'm familiar

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with your area. It is a busy street. And, yes, people disregard. Thank God there is a stop sign at the corner of, I believe, it's Cedar.

MS. SINGH: They blow right through it.

MEMBER GOODSSELL: A lot of people do, that's very true.

MS. SINGH: My son has, unfortunately, gone onto the yellow divider. Since these letters were written, he had gone onto the yellow divider three times. The closest incident was where he was less than 6 inches away from a car stopping. Since these letters and there has been something written, he has gone onto the street twice. Even though I am holding his hand, let's say he will let go when he is getting to be older, and the biggest issue is just impulse control, you know. While we are working on PT to strengthen his muscles so that he can run, we don't want him to run onto the street, you know, and having that boundary would really help.

MEMBER GOODSSELL: I have to tell you that normally we would never approve a fence like this, normally, because we simply do not approve front yard fences. We have made exceptions for particularly children with disabilities, particularly autism. We have made exceptions for children and that's why I asked you how old your child was. We did do a Hearing where we learned that the autistic child was actually in his 20s, which, to me, is not a child. But normally -- and if you go along Old Courthouse Road, there are no front yard

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fences anywhere.

MS. SINGH: Absolutely. Right.

MEMBER GOODSELL: Now, we understand that you want to give your child a measure of safety.

MS. SINGH: Right.

MEMBER GOODSELL: Is there a possible compromise here? Is it possible for you to move the fence back possibly a few feet instead of going right up to the curb? I don't believe there is sidewalks in your area.

MS. SINGH: No, there are.

MEMBER GOODSELL: There are sidewalks?

MS. SINGH: Yes. So the fence company from which I obtained an estimate actually recommended that they worked on a house somewhere in the Town of North Hempstead, which did get a fence and it was recommended that it be one foot away from where the sidewalk starts and the lawn ends.

CHAIRMAN MAMMINA: But you have to remember the sidewalk does not belong to you, it is not on your property, typically.

MS. SINGH: Right.

CHAIRMAN MAMMINA: And the few times that we have granted front yard fences, we will look for 3 feet in there and then arborvitae in front of that because it can't grow in one foot and you can't be over that property.

MS. SINGH: So you are saying that the fence should be

1 Appeal #21457

2 3 feet away from where the lawn ends and the sidewalk begins?

3 CHAIRMAN MAMMINA: No, not necessarily.

4 MS. SINGH: Okay.

5 CHAIRMAN MAMMINA: Your survey, as far as I can see
6 here but should be verified, it appears to be 2 feet back from
7 what might be a concrete sidewalk. You may have to ask your
8 surveyor, but we would want it setback from that.

9 MS. SINGH: No problem.

10 MEMBER GOODSSELL: Can I ask what kind of fence you are
11 looking to install?

12 MS. SINGH: It will be a PVC and slats so you can see
13 through it, it's not going to be a picket fence.

14 MEMBER GOODSSELL: And how tall?

15 MS. SINGH: 4 feet, not higher.

16 MEMBER GOODSSELL: And across the driveway, you are
17 going to put a gate?

18 MS. SINGH: Yes.

19 MEMBER GOODSSELL: And how wide would that gate be, the
20 width of a driveway?

21 MS. SINGH: No. The width of a car. A little bit
22 wider than a car.

23 MEMBER GOODSSELL: We are considering the other cases
24 that we have had. And thank you for submitting physician's
25 notes that shows that your child does suffer from autism and
26 does have a personal safety issue, which we consider very

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strong evidence. The dilemma that we are having is that we truly do not want in the Town of North Hempstead fortress after fortress after fortress of front yard fences. We have approved an estate fence, which is like a black wrought iron fence.

CHAIRMAN MAMMINA: The estate fence is the best compromise on that. And when we say wrought iron, it doesn't need to be wrought iron. Wrought iron is very expensive. They sell them now in aluminum, you know, and that way they are transparent.

MS. SINGH: Okay. That's fine.

CHAIRMAN MAMMINA: And this way you can see through it.

MEMBER GOODSSELL: And ironically, if your child could -- we would allow you to plant whatever size plants you wanted in your front yard. It's the fence that gives us the issue, but we do recognize that you do have a necessity. And we just have to create the record because if one of your neighbors down the block says, well, she has a front yard, I think I want my Dobermanns to be able to roam the front yard. Those creatures do not have a disability, they are animals. We do have to be very careful if we granted your application for a front yard fence.

MS. SINGH: Yes.

MEMBER GOODSSELL: If we granted your application and, at some point, we made it a condition that if your son grew up and moved away or you sold the house to move to your dream

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house in Lloyd Neck or where ever it happens to be, that the fence comes down. The fence is there specifically for your child.

MS. SINGH: I can't wait for the day when he becomes more functional so that I can take the fence away. No mother said when she was ever pregnant, I want a child with autism. I'm not here to be on my soapbox. I'm a counseling psychologist. I am professor of counseling psychology. Living with my child allows me the ability to use my specialty with my kid, but for anyone who is a professional in any area, when it hits home, everything you have learned and everything you have teach goes out the window, at least for me. And I'm just a mom, you know. And speaking from the heart of a mother, I would love for him to be functional. My son is a math genius. I have to have a calculator beside me every day when I do math questions with him because I need to have the answer before he gives it to me five seconds later and he doesn't bother writing it. I just want him to be more functional in this world. So it would be please me to no end to rip that fence out once it has finished serving its purpose. I'm okay with that.

VICE CHAIRMAN FRANCIS: On just another note, I believe that you can make an application with the highway department for a sign that says that this area has an autistic child.

MS. SINGH: I did, and now it's been placed there.

VICE CHAIRMAN FRANCIS: Okay. Great.

1 Appeal #21457

2 MS. SINGH: Thanks to Councilman Pete Zuckerman, he got
3 me in touch with them. It's on both sides. Because it's a
4 two-way street, there is a sign that says "slow down autistic
5 child." So I'm very grateful.

6 VICE CHAIRMAN FRANCIS: Good.

7 MEMBER GOODSSELL: Again, you can see how much the
8 public really respects that.

9 MS. SINGH: Of course.

10 MEMBER GOODSSELL: But it's one more indicator.

11 CHAIRMAN MAMMINA: I will just throw one thing out that
12 is germane. When they built those houses, based on where they
13 are, I said, boy, those are lovely houses, but, wow, what a
14 tough location. Because of the amount of, you know, traffic
15 and that traffic can be almost like, you know, a Hillside
16 Avenue or Jericho Turnpike.

17 MS. SINGH: Yeah, absolutely.

18 CHAIRMAN MAMMINA: You know, in that area. So from
19 that perspective, as well, this is a unique street.

20 MS. SINGH: Is there a specific requirement that you
21 have that the estate fence be black or white?

22 MEMBER GOODSSELL: No.

23 CHAIRMAN MAMMINA: I would personally think black is
24 more --

25 MS. SINGH: Durable.

26 CHAIRMAN MAMMINA: -- is more visibly obtrusive. The

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same way if you see tennis court fences, they are usually black and you see right through them. So that's, generally, what we've had in the past.

MS. SINGH: Okay. Thanks.

MEMBER GOODSSELL: I will make a motion that we approve the application for a front yard fence to be not greater than 4 feet in height setback from the sidewalk.

VICE CHAIRMAN FRANCIS: No, we don't need that.

MEMBER GOODSSELL: Oh, we don't need that. Okay. And of an estate-type fence. I make a motion.

CHAIRMAN MAMMINA: And whatever gates are required, you need gates in order to get into your driveway.

MEMBER GOODSSELL: This way she can have the child come from the front of the house and into the driveway.

MS. SINGH: And that's exactly where the incident happened. So I will take his bookbag away from him so that I will hold the bag so he gets into the car, and instead of going to the car, he runs out onto the street.

MEMBER GOODSSELL: Well, I make a motion that we grant the application.

VICE CHAIRMAN FRANCIS: I second.

SECRETARY WAGNER: Member Goodsell.

MEMBER GOODSSELL: Aye.

SECRETARY WAGNER: Vice Chairman Francis.

VICE CHAIRMAN FRANCIS: Aye.

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SECRETARY WAGNER: Chairman Mammina.

CHAIRMAN MAMMINA: Aye. The application is granted.

MEMBER GOODSSELL: On the condition that the fence come down if the child moves away or we would want the exception to be for you and not anyone down the road.

CHAIRMAN MAMMINA: And just as a complete aside. Because my daughter is a special ed teacher and she is also a runner. And I think the mom actually wrote a book about two sons because one is virtually catatonic, unfortunately, and the other one is like your son, where he is a genius. But it's almost like the movie Rain Man where he knows everything about the New York City Transit Authority Subway System and it's just crazy to talk to him, but he is also a runner. And she ran the Boston Marathon with him, but they had to split it up into six different people because he was so fast, but they had to get people that ran with him so that he was familiar with them. And at one point, he saw whatever he saw when my daughter was running with him and off he went. And she was able to catch him and get him back in, but, you know, it's a challenge.

MS. SINGH: It really is. Thank you. I appreciate it.

MEMBER GOODSSELL: Good luck to you.

VICE CHAIRMAN FRANCIS: Thank you.

MS. SINGH: Thank you so much. Take care.

1 Appeal #21458

2 SECRETARY WAGNER: Next Appeal is Appeal #21458 -

3 Dhaval Patel; 296 Continental Drive, New Hyde Park; Section 8m

4 Block 276, Lot 11; Zoned: Residence-A.

5 Variance from 70-100.2(A)(4) to legalize fencing that

6 is too tall.

7 CHAIRMAN MAMMINA: You have heard Appeal #21458 -

8 Dhaval Patel. Is there anyone in the room interested in the

9 application other than the applicant? Seeing no one. Please

10 give your name and address.

11 THE REPORTER: Can you speak into the mic, please.

12 CHAIRMAN MAMMINA: And maybe spell your last name.

13 THE REPORTER: And state your address again.

14 CHAIRMAN MAMMINA: And take a deep breath.

15 MR. BARDALES: My name is Herbert Bardales. I'm here

16 on behalf of Association of Engineering and we are representing

17 Mr. Patel.

18 THE REPORTER: And spell your last name.

19 MR. BARDALES: B-A-R-D-A-L-E-S.

20 VICE CHAIRMAN FRANCIS: Go right ahead.

21 MR. BARDALES: Good morning, Mr. Chairman and Board

22 Members. We are here to legalize an existing 6-foot high fence

23 on the side yard of this property, which is along the east side

24 of the property. The reason that we want to maintain this

25 fence is for privacy reasons and for mainly because of the

26 existing siding. On the subject property, you will notice that

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there is a dip. The grade slopes towards Continental Drive east to west. So on the neighbor's side at 69 Valentine, it's much higher. So the 6-foot fence adds that privacy for the homeowner. And if you look at the site plan, that north-east corner is functionally a rear yard, right.

CHAIRMAN MAMMINA: Is functionally what?

MR. BARDALES: Is functionally a rear yard backyard corner, right, because this is a corner lot. And I have some additional photos. I have an aerial view and a few perspectives to help you get a better visual, if I may.

SECRETARY WAGNER: Are they labelled?

MR. BARDALES: Yes.

CHAIRMAN MAMMINA: Also, while we are handing those up, the Building Department looks at the 5-foot fence as the rear yard where you have the 6-foot fence in the side yard. And this is just what I'm surmising based on applications that I have had in other municipalities. They take the rectangle at the corner, and where ever the leg that is the longest in the rear yard, that is going to be at the back of that. So it's almost like this is averted. Where the 6-foot fence would be permitted along the northern property line, the 5-foot fence would be permitted as of right at the eastern property line. And, you know, then your 4-foot PVC fence across the front is permitted the way that it's shown.

MR. BARDALES: Correct, yeah.

1 Appeal #21458

2 CHAIRMAN MAMMINA: So would you agree with me that the
3 fence that is before the Board is the 6-foot fence that should
4 be 5?

5 MR. BARDALES: The fence that's there now on the east
6 property line is a 6-foot fence. That, should be 5.

7 CHAIRMAN MAMMINA: You understand it can be 5?

8 MR. BARDALES: Correct, it can be 5.

9 CHAIRMAN MAMMINA: Okay. So why not -- I guess, the
10 question I will ask first is, why does that have to be 6?
11 Also, I will point out that it goes off your property when you
12 reach the northernmost point of that side yard. And then why
13 can't that be 5 feet? In other words, why can't that fence
14 come down to 5?

15 MR. BARDALES: That's a great point, Mr. Chairman. If
16 I may give you these photos.

17 CHAIRMAN MAMMINA: Yes. If you would, please hand
18 those up.

19 SECRETARY WAGNER: These will be labeled as Exhibit 1.

20 MR. BARDALES: And Exhibit 2.

21 CHAIRMAN MAMMINA: Was this fence installed by a
22 fencing contractor or by the owner?

23 MR. BARDALES: I believe it was installed by a fencing
24 contractor, right. And at the time, he was unaware of the
25 regulations. They were installed back in November of 2016,
26 right. If you notice on Exhibit 2 and 3, right, you see that

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in a distance, you will see the siding, how it sort of slopes upwards on the neighbor's side, right, to the right. And that slope, it continues in the same direction at a lower grade elevation towards Continental, right. And in one of those pictures you can kind of see it in the distance, the neighbor's deck. And, one, because of the existing siding, the 6-foot fence provides the privacy that the owner would like. Also, the neighbor, we have a consent letter from the neighbor, right. And the neighbor --

MEMBER GOODSSELL: You have a consent from the neighbor who is the most impacted by the 6-foot fence who is on the other side of the 6-foot fence?

MR. BARDALES: Correct. And the owner has pointed out to me that the neighbor is a frequent smoker.

CHAIRMAN MAMMINA: A frequent what?

MR. BARDALES: A frequent smoker where he usually goes outside and smokes cigarettes.

MEMBER GOODSSELL: The fence isn't going to help with that. I mean, it's nothing more than a smoke shield.

MR. BARDALES: It's not much, but it's something, right. But in addition to that, because of the site grading that exists there now and how they use the property, the 6-foot fence gives him enough -- you know, the privacy at that point.

CHAIRMAN MAMMINA: I'm looking at your photos and I am saying that slope is nothing more than a builder who sloped

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that away from the house. And if anything, there should be an 8-inch reveal along there just to stop that simply from rotting out. It looks like that's all covered.

MR. BARDALES: Well, the slope continues. At that point, towards the middle of the yard, the neighbor's yard, right, he has more of the vantage point to see into the homeowner's yard at 296 Continental.

CHAIRMAN MAMMINA: I guess, the issue that we get into, you know, is the question of is this truly a unique and extenuating circumstance. And we just approved on a previous application, a deck that was higher off the ground than we would have liked to see and also was not compliant with the rear yard, but the property behind it sloped up to such a degree that you couldn't even see the house that was up at the top of that. So I mean, that's a very unique situation, also it's a rear yard. And the original construction, I think, it was 18-feet, you know, deep so they had truly no backyard now. I realize that's a deck, that's not a fence. But in terms of degree, you know, I am looking at this and, you know, I'm saying is there an alternative? There is an alternative. And we get a lot of fencing applications, which is the reason why -- I don't know -- about six years, eight years ago, the Town Board then made part of the zoning resolution that you could have a 6-foot fence in the rear yard, you could have a 5-foot fence along your sides, and a 4 foot at the front. Now, your

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2 owner did not use -- the fact that the owner is not aware --
3 excuse me -- that the fencing contractor is not aware of what
4 the law says does not in any way affect what our decision is,
5 and it's unfortunate, you know, for your client. You know, and
6 chances are very good also that he probably wasn't licensed,
7 either. I mean, you are required to have a license in the Town
8 of North Hempstead. So it puts us in that situation. The next
9 person who wants a 6-foot fence along their side yard, you
10 know, what is their extenuating circumstance, you know, for
11 that fence. And also, in terms of an alternative, while it's
12 not pretty, these fences can be cut down very easily. They are
13 all modular. And that bottom rail will still fit into those
14 vertical slats, you know, coming down, you know. I mean, I
15 don't know if your fencing contractor is still in business or
16 if that would even mean anything, you know, to him. But I just
17 get into the how do we differentiate this from another fence
18 that comes in.

19 MEMBER GOODSSELL: Can I interrupt you for one second?
20 Do you have a consent form from the neighbor on Valentine
21 Drive? For some reason, it's not part of my -- can we have a
22 copy of that? It's not part of my record.

23 CHAIRMAN MAMMINA: And just for me as one Board Member,
24 consent letters mean --

25 VICE CHAIRMAN FRANCIS: They are not very persuasive.

26 CHAIRMAN MAMMINA: The next person who comes in, you

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know, they say I hate that fence and/or who wants to be a bad neighbor.

MR. BARDALES: Yeah.

VICE CHAIRMAN FRANCIS: You know, there is a test that I teach in my classes, it's called the universalization test. And it asks if the thing I'm proposing was done by everyone in the world, would the world be a better place or a worse place? And we can apply that to your situation in Town of North Hempstead. The Town Board did not want houses to look like forts with large fences around them. So if we allowed a 6-foot fence, first of all, it would be violating the law. And secondly, it would make North Hempstead look like an armed camp, basically. So what we do for you, we have to do for everyone. So, I guess, you are getting the feeling that I'm not in agreement with your 6-foot fence application.

MR. BARDALES: Okay. I understand and I appreciate your comment, Mr. Francis.

VICE CHAIRMAN FRANCIS: You saw the application before you. That, was a very unique application involving a child with autism.

MR. BARDALES: Correct.

VICE CHAIRMAN FRANCIS: That, is really -- since I have been on this Board, that's the only time that we have ever varied. We have never varied an application other than that, and that is covered by the Americans with Disabilities Act.

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2 MR. BARDALES: Correct. That's a valid point,
3 Mr. Francis. Again, if maybe we can explore a compromise here.

4 MEMBER GOODSSELL: Well, a 5-foot fence would be
5 allowed. Would your client consider going to 5 feet?

6 MR. BARDALES: Would it be possible to keep the 6-foot
7 fence --

8 VICE CHAIRMAN FRANCIS: No.

9 MR. BARDALES: -- up to the corner of the house where
10 we have the 9.5 setback and thereafter, change that fence to a
11 5-foot fence? And the reasoning there is, again, so we can
12 keep, you know, as much privacy as we can. Again, the site
13 conditions, there is a bit of a slope. The neighbor has a bit
14 of a higher elevation next to the subject property. So a
15 6-foot fence, you know, would benefit him greatly.

16 SECRETARY WAGNER: Let the record show that Member
17 Donatelli has arrived and will be part of the Hearing.

18 MEMBER GOODSSELL: Would you speak to your client about
19 possibly bringing that fence down to 5 feet? We are not an
20 aesthetic Board. Your pictures are beautiful. I understand
21 why they would want to keep the fence. The fence company, they
22 really should have known better. They really should have known
23 better.

24 CHAIRMAN MAMMINA: Because I think also we need to look
25 at the character of the neighborhood and we also have to look
26 at legality and not legality.

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MEMBER GOODSSELL: There are big houses. It's a beautiful neighborhood. We don't allow front yard fences. We are very strict on fences. And again, ironically, your clients can plant 12-foot arborvitae, which is perfectly permissible, but a 6-foot fence is not.

VICE CHAIRMAN FRANCIS: It would require them to take out some of the paving.

MR. BARDALES: Those arborvitae are planted by the neighbor.

VICE CHAIRMAN FRANCIS: But you can plant them on your side.

CHAIRMAN MAMMINA: You can plant your own.

VICE CHAIRMAN FRANCIS: If you remove some of the paving, you can plant arborvitae and they can be as tall as 12 feet and now you have your privacy. But as to the fence, the fence has to be 5 feet.

CHAIRMAN MAMMINA: I'm also just looking at your survey and I could be wrong and I'm not trying to create a problem, but you are in a Residence-A zone and that setback to that deck is maybe -- okay. That deck has to be illegal. So I am just saying, you would then have the ability if you took -- I don't know if those are --

MR. BARDALES: The deck has been removed.

CHAIRMAN MAMMINA: But I'm just saying that then gives you the ability to take landscaping, you know, down that

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without saying, well, gee, the deck is so close in there. So I don't know.

MR. BARDALES: We filed a separate application for a new variance that is compliant, and that is currently in the works of getting approval contingent on legalization of this fence. And that new deck is compliant. So what you see is this is the initial plan submitted. That deck you see there is removed.

CHAIRMAN MAMMINA: I get that. All I am saying is with that deck, you need more room to create more privacy for your client should they want more privacy.

MR. BARDALES: Correct.

CHAIRMAN MAMMINA: I will say in my own home, I put in arborvitae. And within four years, they were 10-feet high. And now, you know, the landscapers need ladders to get up to the top of them. And I have a 60 by a 100 lot. My neighbor next door originally -- and I don't mean this in any way, but he was from Queens. And he was like, oh, my gosh, you just have to put a fence up. And I said, no, no, you don't need a fence up. And he then planted Arborvitae around the rest of his property because he saw how nice that was and how effective it was truly in terms of giving privacy. So I think that's where the Board is, and I don't know that we are going to see anything different. So I will just ask for a motion.

MEMBER GOODSSELL: Regretfully, I have to make a motion

1 Appeal #21458

2 that we deny the maintenance of the 6-foot fence.

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

5 VICE CHAIRMAN FRANCIS: Second.

6 CHAIRMAN MAMMINA: Seconded by Vice Chairman Francis.
7 And I would also say regretfully, because we have too many
8 fencing contractors that either don't understand the laws or
9 don't pay any attention and it ends up falling to the owner,
10 but I have to vote no also. Please poll the Board.

11 SECRETARY WAGNER: Member Goodsell.

12 MEMBER GOODSELL: Aye.

13 SECRETARY WAGNER: Vice Chairman Francis.

14 VICE CHAIRMAN FRANCIS: Aye.

15 SECRETARY WAGNER: Chairman Mammina.

16 CHAIRMAN MAMMINA: Aye. The application is denied.

17 MEMBER GOODSELL: Regrettably, the application is
18 denied. Your client has to comply.

19 MR. BARDALES: Thank you.

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1 Appeal #21459

2 SECRETARY WAGNER: Next Appeal is Appeal #21459
3 Jennifer Oh; 51 Brunswick Ave., Williston Park; Section 9,
4 Block 625, Lot 16; Zoned: Residence-C.

5 Variances from 70-100.2(A)(2) to construct a fence
6 in the front yard and 70-100.2(A)(4) to construct fencing
7 taller than permitted.

8 CHAIRMAN MAMMINA: You have heard Appeal #21459 -
9 Jennifer Oh. Is there anyone in the room interested in the
10 application other than the applicant? Seeing no one. Please
11 give your name and address.

12 MR. COSCIA: Salvatore Coscia, Permits R Us; 338
13 Jericho Turnpike, Syosset, New York. Good morning, Members of
14 the Board and Chairman.

15 I am here on behalf of Ms. Oh who is looking to
16 maintain and legalize a 5-foot fence where it's required 4 feet
17 in the front yard. And also, the fence is forward the dwelling
18 on the front yard. This is a secondary front yard, not a
19 regular front yard. It's on the back. The house is a corner.
20 It's on a dead-end street. The fence does not have any line of
21 sight issues. It does back up to a parking lot of a warehouse
22 or a supermarket. So they bought the home a year ago and the
23 fence was there when they bought it.

24 VICE CHAIRMAN FRANCIS: I think you have already heard
25 our position with regard to fences.

26 MR. COSCIA: Yes. Although, I do think that this has a

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little bit of a unique circumstance to the dwelling. The part of the fence that is forwarded the dwelling, it's on the back side of the house. It's only a very small portion. It is a dead-end block. It does back up to a parking lot. At some spots, it does drop down. There are no line of sight issues. Like I said, unfortunately, she purchased the home and the fence was already existing. And also, I would say this doesn't make it a compound in any way, shape or form. It's just the back.

MEMBER GOODSSELL: I have to agree with the applicant that the fence is old.

MR. COSCIA: Yes.

MEMBER GOODSSELL: Now, your client has a rather unique piece of property. From what I could see, the address is on Brunswick Avenue, but it faces Prospect Street.

MR. COSCIA: Right. Correct.

MEMBER GOODSSELL: The front of the house faces Prospect, not Brunswick.

MR. COSCIA: Correct. It has an address of Brunswick.

MEMBER GOODSSELL: It is a corner lot. It is, roughly, a square that is 70 by 85. And I was under the impression that a sump was on the other side, a drainage area. And I would have to look at the Google aerial to confirm what you are saying.

MR. COSCIA: To me, it looks like a parking lot. I

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could be wrong.

MEMBER GOODSSELL: It's a parking lot, all right.
Because there is a sump in that area. I'm from New Hyde Park,
so I'm familiar with the area. Excuse us while we take a look
at the Google aerial.

MR. COSCIA: Absolutely.

MEMBER GOODSSELL: We are considering each of the fences
separately. Let the record reflect that we have up on our
computers a Google overhead, a visual, and the survey. And we
are looking at five separate areas of fencing.

VICE CHAIRMAN FRANCIS: I think the fencing facing
Brunswick is a little bit more problematic than the fencing
between the property and, I guess, it's a parking lot behind
it. I am less concerned about that.

MR. COSCIA: Okay.

MEMBER DONATELLI: Sorry. What is the height of the
fence that faces Brunswick?

MR. COSCIA: It's 5 feet.

CHAIRMAN MAMMINA: 5? It looks like 6.

MR. COSCIA: It's a 5-foot fence.

VICE CHAIRMAN FRANCIS: Is that a wood fence or a PVC?
It's hard to tell.

MR. COSCIA: It's a wood fence.

CHAIRMAN MAMMINA: The yellow highlighted fence areas,
how tall are those?

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MR. COSCIA: All of the fences are 5 feet.

CHAIRMAN MAMMINA: Just a question. Why are those yellow?

MR. COSCIA: I don't know. I think it was just how they highlighted it, that's all. No specific -- no rhyme or reason.

CHAIRMAN MAMMINA: Also, I will just point out as information that that fence at the end of -- this one that's at the end of Prospect, that's at the dead end is off of the property line.

MR. COSCIA: Well-aware of it. Already had the surveyor stake it out. Hundred percent, yeah.

CHAIRMAN MAMMINA: Because you would have the opportunity to go to the Town, if you wanted to.

MR. COSCIA: No. They already had a survey done to stake out the house so they could see where their property line actually is, but I will give them the option, if they wanted.

MEMBER GOODSELL: Bear with me, Mr. Coscia. Mr. Chairman, I'm going to make a motion that based upon the unique position of this property, that the fences which are closest to Prospect Street be approved because they have minimal impact on the community, and the property appears to border a commercial parking lot. And Prospect is a dead-end street, which dead-ends at this house, but that we deny the application to maintain a 5-foot fence closest to Brunswick Avenue. That,

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should be 4 feet. The easterly side of the property faces Brunswick. There is a section of fence, sir, that is visible from Brunswick Avenue, it is to the south side of the house. That, needs to be 4 foot. So I make a motion that that part of the application be denied and that the remaining fences be granted.

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

VICE CHAIRMAN FRANCIS: Second.

CHAIRMAN MAMMINA: So we have a motion by Member Goodsell and a second by Member Francis. Please poll the Board.

SECRETARY WAGNER: Member Donatelli.

MEMBER DONATELLI: Aye.

SECRETARY WAGNER: Member Goodsell.

MEMBER GOODSSELL: Aye.

SECRETARY WAGNER: Vice Chairman Francis.

VICE CHAIRMAN FRANCIS: Aye.

SECRETARY WAGNER: Chairman Mammina.

CHAIRMAN MAMMINA: I vote Aye. But the only other thing that I would like to add to that is the fence, which faces Brunswick, Brunswick is a through street like any other through street. It's not part of the dead-end, and therefore because of the fact that it faces Brunswick, we would want to maintain that 4-foot part of the ordinance there. So I vote

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Aye also. Just supporting a little bit further what was made by Member Goodsell. So the application is partially denied and almost all approved.

MR. COSCIA: Thank you very much, everyone. Have a great day.

SECRETARY WAGNER: We will take a five-minute break.

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

1 Appeal #21460

2 COMMERCIAL CALENDAR

3 SECRETARY WAGNER: Next Appeal is Appeal #21460

4 Plymouth Realty Co, LLC; 485 Great Neck Rd., Great Neck;

5 Section 2, Block 51, Lot 209; Zoned: Business-A.

6 Conditional Use 70-126(A) and variance from
7 70-103(A)(1) to convert a retail space into a restaurant (a
8 conditional use) with not enough parking.

9 CHAIRMAN MAMMINA: You have heard Appeal #21460 -
10 Plymouth Realty Company, LLC; 485 Great Neck Road, Great Neck.
11 Is there anyone in the room who is interested in the
12 application other than the applicant? Seeing one hand, and you
13 will have the opportunity to speak after the presentation.

14 MR. MIGATZ: For the applicant, Bruce W. Migatz, Law
15 Firm of Albanese & Albanese; 1050 Franklin Avenue, Garden City,
16 New York. Good afternoon, Members of the Board.

17 CHAIRMAN MAMMINA: Good afternoon.

18 MR. MIGATZ: With me this afternoon is Jay Tuller, the
19 project architect from Rosenbaum Design Group. And also Wayne
20 Muller from R&M Engineering. You have his traffic report and
21 his parking study. He is here to summarize that for you. Also
22 with me -- the owner is Plymouth Realty Company, but the
23 applicant before you for the restaurant is H Mart, Inc. And
24 with me this afternoon is Sam King, who is the senior executive
25 director of H Mart, and he has some other people with him, as
26 well. If there are any questions that need to be answered, we

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can answer.

The subject property is in a shopping center known as Great Neck Commons. This property was before this Board not too long ago. It is zoned Business-A and it's a shopping center that consists of two building. Mr. Muller's parking study has an aerial photograph of the two buildings. The building to the left, which is the west building, is the H Mart supermarket and three other tenants. And the east building, which is the subject of this application, is known as 8 Plaza. It has five tenant spaces with their own street entrances and then it has an interior shopping mall with several shops. The proposed restaurant is in this interior space. It has no direct access to the street. And we propose to take the place of the vacant retail space.

As I said, this property was before this Board recently in Appeal #21412, Kinetic Physical Therapy, PC. That was an application for a parking variance to convert a retail space to a physical therapy office, and that required a four-space parking variance. As part of that application, as you may recall, we discovered that there is an error in the previous parking variance application where some square footage was inadvertently omitted and we sought to rectify that, and that was Appeal #18268. That, had 2,411 square feet of omitted retail space from the calculations. So we did seek a variance for that, and that was 9 additional spaces and that was granted

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as part of the Kinetic Physical Therapy application.

So the present application, as we have said, is to convert a retail space to a restaurant. It would be a casual-dining type restaurant. In fact, the menu has not yet been determined, but it would most likely be bakery items and Korean treats. This is pretty much a Korean shopping center. Most of the shoppers are of Korean background, and this will cater to their cuisine.

The application requires both a conditional use permit and a parking variance. The Notice of Disapproval says an additional 16 spaces was required. The plans examiner arrived at that by taking the difference between the retail space one for 300, and the restaurant one per 80, and the difference was 16. But on the site plan that Mr. Tuller prepared, we went through all of the spaces. And when you do the rounding up, it's actually a 17-space parking variance, and that's what we have applied for. So in the future, when this site plan goes before you again, it is a 17-space variance that was granted, not the 16 simply based upon the conversion of this retail space.

The parking variances and area variances, as this Board well-knows, we weigh the benefit of the applicant against the potential detriment of the community. One of the factors is will the variance, if granted, have an adverse impact on the neighboring properties? And the potential impact would be from

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2 a lack of sufficient parking if you grant the variance. And
3 Mr. Muller has prepared his analysis, which has been submitted,
4 and I would ask him now to now come forward to summarize his
5 study for you.

6 MR. MULLER: Good afternoon, Chairman and Members of
7 the Board. My name is Wayne Miller with the firm of Robertson
8 & Muller Engineering. Our offices are at 50 Elm Street in
9 Huntington, New York.

10 As Mr. Migatz has indicated, we prepared a parking
11 analysis dated August 2, 2023, which was previously submitted
12 to the Board and made part of the record. In addition, I
13 testified on the last case, as Mr. Migatz had indicated, for
14 the physical therapy office, which was granted by this Board.
15 And just to briefly summarize our analysis, as indicated by
16 Mr. Migatz, we are seeking a parking variance to allow the
17 conversion of the 1,750 square foot space within the mall area
18 of the building from retail to a restaurant, and we are seeking
19 a parking variance for an additional 17 vehicles.

20 As I testified previously, as indicated in my report,
21 we performed observations of the parking conditions on the
22 property on a Friday between 7:30 a.m. and 7:30 p.m. and again
23 on a Saturday between 7:30 a.m. and 7:30 p.m. And what we
24 found was that Friday at 1:00 was a peak time. There was 101
25 vehicles parked on the site representing a 66 percent
26 occupancy. And on Saturday, the number of vehicles parked was

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slightly lower.

As part of our analysis, we factored in the one existing vacant tenant, which is in the building of, approximately, 1 thousand and -- almost 1100 square feet, and the approval of the physical therapy office, as well as the conversion of the space in question from retail to restaurant. And what we found was that there will be available parking on the subject property to accommodate the entirety of the shopping center occupied at 100 percent. Our analysis is slightly conservative or not slightly, but it's very conservative insomuch as we did not account for any of the shared utilization between some of the existing clientele of H Mart and some of the other retail facilities that would also tend to utilize the restaurant because they would already be there. And also, we factored in the parking that would be generated by the restaurant during the peak-midday operation of the shopping center. And traditionally, restaurants of this kind may have a peak that's later on in the afternoon when the occupancy is less.

So therefore, based on our analysis, it is my professional opinion that by granting the relief required to allow the conversion of the space to a restaurant, there will be no significant impact on the parking conditions on the subject property. Thank you.

CHAIRMAN MAMMINA: Mr. Muller, I guess, two questions.

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I'm familiar with the center and have been for a couple of decades. If I were to go there and had my heart set on going to that restaurant and the entire parking lot was completely full, what options might I have in terms of where I was going to park within?

MR. MULLER: Well, there is some limited available street parking on Great Neck Road along the subject property along the opposite side of the building. So that would be, I guess, your other option to do that. At no times when we performed our analysis was the lot full. And again, I think due to the nature of the way that the sites or the two buildings function as one shopping center, it is more than likely that somebody will visit more than one facility at any one time, and thereby reduce the parking impact. For instance, somebody might be a customer at H Mart and then go to the restaurant. If this was a shopping mall, that would be the way they would work if it was fully enclosed. It's just that the two buildings are detached.

CHAIRMAN MAMMINA: So I have no residential neighbors where I'm saying, okay, I'm going to walk around the corner?

MR. MULLER: No. The closest one is actually pretty far away. It's located to I would call it the north. We have East Mill Drive, but that's a significant walk from the subject to park there. I don't see people doing that, really. People like to park close and do their thing.

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MEMBER GOODSSELL: Mr. Muller, there has to be an element of speculation here. There is no tenant, if I understand correctly, that has applied for that restaurant space. This is the owner of the parking lot. Doesn't it make a difference whether it's a fast food place, a sit-down restaurant, the hours of the restaurant make a difference in the parking study?

MR. MULLER: I would say no. And the reason why is we assumed utilizing the Institute of Transportation Engineers statistics for a restaurant.

MEMBER GOODSSELL: Just a generic restaurant, any restaurant?

MR. MULLER: High turnover sit-down restaurant. So that would tend to be a category that would generate more parking activity than, say, a quality restaurant. It's not a fast food restaurant, but it's a high turnover restaurant. Something that we get people in and moving throughout the property. So those statistics tend to be more conservative. And then we applied them during the retail peak hour. For a high turnover restaurant, the peak time is usually the dinner time, not lunch, and so therefore we took the activity that would be peak and applied it to the peak hours of the retail facility that's currently there, which is Friday at 1:00 and, again, on Saturday at around the same time, instead of doing it in the evening. In the evening, the level of activity at the

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shopping center starts to decrease. So there would be plenty of parking, assuming that the restaurant peaked in the evening.

CHAIRMAN MAMMINA: And if it were fast food, as Member Goodsell had said, I could be mistaken, but wouldn't that take on a different parking requirement under zoning?

MR. MULLER: I don't have the statistics in front of me.

CHAIRMAN MAMMINA: And that's okay.

MR. MULLER: But, yes, I do believe that fast food traditionally has a different requirement than other types of restaurants.

CHAIRMAN MAMMINA: So they may have to come back to the Board at the discretion of the Building Department if it were deemed to be a fast food restaurant rather than a sit down.

MR. MIGATZ: The zoning code does not make a distinction for parking on whether you are serving fast food, serving a casual menu or a white table clothe sit down restaurant. So I don't think -- the Building Department doesn't really have jurisdiction over the menu. So to answer your question, no, they will not have to come back to the Building Department. But this is in a shopping center in an interior mall. And the H Mart operates the mall. Their intention is to have a restaurant that caters to their clientele, which is a Korean clientele. You are not going to see a McDonald's going into a place like this because that's

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just a fact.

CHAIRMAN MAMMINA: I think that was my point.

MR. MIGATZ: You are not going to see a McDonald's. If this was a free-standing building on the corner with a drive-through, it's a different ball game all together. But this is in a shopping center interior mall that's setup and it's going to cater, for the most part, to the shopping. There is a food court in there now that this Board approved way back and it has not become a McDonald's, and this is not going to become a McDonald's, either. It is for casual dining, primarily probably lunch and an early dinner.

MEMBER GOODSSELL: Could I ask you a general question? What is the purpose of the applicant coming before the Board for the approval of restaurant space where there is no tenant yet lined up? And you knew I was going to ask that.

MR. MIGATZ: And as a real estate attorney, you should know the answer to that.

MEMBER GOODSSELL: I can guess my answer. I can't guess your answer.

MR. MIGATZ: They are trying to lease space to the restaurant and they say, how long before you can give us the restaurant? And you say, six months, if we are lucky, maybe eight months. And then you can't get a tenant that way, unless unusual circumstances.

MEMBER GOODSSELL: But doesn't that potential tenant,

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let's just say six months from now, a potential restaurant comes to the owner and says, we would like to lease that space. Doesn't that potential tenant have to come back before us?

MR. MIGATZ: Absolutely not.

MEMBER GOODSSELL: So you are doing a pre-approval for a restaurant to be yet determined?

MR. MIGATZ: Based upon the floor plan before you and the kitchen plan before you and the seats before you. So H Mart may operate this restaurant themselves or they may lease it out to a third party. But it will have to come back before you if they want to change up that floor plan and if they want to change the kitchen arrangement. So that is your control. That's really what prevents a restaurant from becoming a McDonald's overnight.

MEMBER GOODSSELL: I did not know that you had standing to apply for a pre-approval of a restaurant yet to be determined.

MR. MIGATZ: Of course we do.

MEMBER GOODSSELL: Well, I know you say that, but can you cite anything?

MR. MIGATZ: But why wouldn't you? If you build an office building, you don't have tenants for your offices. You could have an accounting firm or a law firm that has a lot of parking.

MEMBER DONATELLI: So I do have another question. The

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property that is immediately adjacent to the northeast, that appears to be multiple dwellings, is that correct, residential multiple dwellings?

MR. MIGATZ: Yes.

MEMBER DONATELLI: Okay. And it appears to be part of a larger residential complex, is that correct?

MR. MIGATZ: Yes. They were garden apartments. They may have gone co-op now, but I think it's Great Neck Gardens, if I'm not mistaken.

MEMBER DONATELLI: And do you know, do those co-op apartments have their own parking?

MR. MIGATZ: I don't know if they are co-ops, I said might.

MEMBER DONATELLI: I'm sorry. Those residential apartments, do they have their own?

MR. MIGATZ: Yes. On the aerial photograph, it looks like they do.

MEMBER DONATELLI: Thank you.

CHAIRMAN MAMMINA: Okay. I think that was my question and I think that has been established on the record.

MR. MULLER: Just to summarize. Again, based on our analysis, we believe that there is adequate parking on the subject property factoring the vacant space that is current there for a restaurant use to occupy that space.

CHAIRMAN MAMMINA: I think we have one gentleman who

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2 put his hand up. And as I said earlier, the applicant will
3 have the opportunity to respond, if they feel they need to.
4 Good afternoon.

5 MR. PENNER: Thank you. My name is Larry Penner. I
6 reside at 15 Walden Place in Great Neck. I grew up in the
7 Terrace Circle Apartments. I don't know these people and never
8 met them before, just a full disclosure.

9 Terrace Circle Apartments has its own private parking
10 for the people that live there; some have garages, some park in
11 the street. Any vacant storefront is a detriment to the
12 community. Between the city line and Jayson Avenue, we have
13 numerous vacant storefronts. I have been retired for ten
14 years. I walk by this site every morning. I walk through the
15 retail site to go to Lakeville Library. As a child growing up,
16 Ms. Tisdale was my librarian. Any entrepreneur, like this
17 gentleman here, that is willing to invest his money, not
18 taxpayers money to open up a restaurant or any type of business
19 is a positive for the community. They will create jobs for the
20 neighborhood. There will be delivery people, cooks, chefs. It
21 will also add safety to the neighborhood. I have walked
22 through there various times of the day. You don't need to
23 spend money for a parking study to know that you have ample
24 parking there day and night. Trust me, I go through there
25 every day at 10:00 a.m. when the library opens; that's my
26 second walk of the day.

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So I enthusiastically endorse the application and hope you will consider the benefits that the community will receive. There are probably a thousand people that live at the Terrace Circle Garden Apartments and another thousand live adjacent to the unincorporated area in Lakeville where I live, which is south of Northern Boulevard. Plus, there is another thousand neighbors in Little Neck. And as the neighborhoods change, it's becoming majority Korean. The mall now is, basically, very quiet, I hate to tell you. It's dead during the day. So by opening up this restaurant here, there will be more foot traffic, which is good for the people who work in the mall. There are neighbors that pay taxes. It adds to the safety of the community.

So I would enthusiastically endorse the application and hope you will consider the positive benefits that the neighborhood will receive. Originally, there was a luncheonette there in the 1960s on the corner, and there was a Sears with a terrace premise, and a liquor store, and a library. And there has been changes over the years or decades. And as a child growing up, there was a luncheonette on the corner. You bought Newsday for a nickle and you could get chocolate milk for a quarter. I used to shop in the Sears.

So just to summarize, I enthusiastically endorse their proposal. They are not using government funds. They are private sector businesses, and that's what built up our

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2 community. We are still trying to rebound from COVID-19. I
3 don't want Northern Boulevard between the city line and Jayson
4 Avenue to look like Great Neck Plaza with a dozen, two dozen
5 vacant storefronts. There are too many vacant storefronts in
6 the neighborhood and there is too much vacant spaces in the
7 mall. So any way you can help them expedite their application
8 would be enthusiastically embraced by the community, Korean and
9 non-Korean, because we are a multicultural diverse community.

10 Thank you for your time. And if you have any questions
11 about the history of the neighborhood, I grew up there from
12 1962, I would be happy as a resident historian. I don't even
13 know if it was zoned at the time for what you are asking for
14 today. And thank you.

15 CHAIRMAN MAMMINA: Thank you. Thank you very, very
16 much.

17 MR. MIGATZ: I have to get Mr. Penner a "vote yes"
18 label to put on. We also have a conditional use application.
19 I will go through those standards quickly for you so that the
20 record is complete. Those standards are set forth in
21 70-225(B), the purposes of zoning as set forth in the Town Law.
22 The Town code permits restaurants as conditional uses. Case
23 law holds that a conditional use can't amount to a permitted
24 use.

25 Whether the proposed use is of such character, size,
26 location, design and site layout as to be appropriate to and in

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2 harmony with the sounding properties. Once again, case law
3 holds that inclusion of a conditional use in a zoning code is a
4 legislative finding, that it is in harmony with the district.
5 And Mr. Penner has confirmed that for us, as well.

6 There are other food uses in the shopping center, a
7 bagel store in Appeal #14488. The food court was approved in
8 Appeal 18268. It used to be a Coco Fresh there, but they are
9 no longer there.

10 Whether the proposed use will provide a desirable
11 service or facility. Restaurants and shopping centers are a
12 commonplace and they provide a desire of service for the
13 shoppers as well as the employees.

14 Whether the use will be hazardous or conflicting to the
15 neighborhood by reason of excessive traffic. Wayne Muller has
16 addressed that. It will not.

17 And whether it be objectionable to nearby residential
18 dwellings. As we have shown on the aerial photograph and the
19 radius map, there is no immediate adjacent residential
20 dwellings that will be affected by this. And this is interior,
21 it's not free-standing. It's an interior existing shopping
22 center.

23 So based upon the foregoing, we request that the Board
24 grant the application.

25 MEMBER DONATELLI: Mr. Chairman, I make a motion that
26 we grant the application.

1 Appeal #21460

2 CHAIRMAN MAMMINA: We have a motion by Member Donatelli
3 to grant the application. Do we have a second?

4 VICE CHAIRMAN FRANCIS: Second.

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

7 SECRETARY WAGNER: Member Goodsell.

8 MEMBER GOODSELL: Good luck with the Aye.

9 SECRETARY WAGNER: Member Donatelli.

10 MEMBER DONATELLI: Aye.

11 SECRETARY WAGNER: Vice Chairman Francis.

12 VICE CHAIRMAN FRANCIS: Aye.

13 SECRETARY WAGNER: Chairman Mammina.

14 CHAIRMAN MAMMINA: Aye. The application is granted.

15 MR. MIGATZ: Thank you very much.

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1 Appeal #21461

2 SECRETARY WAGNER: Next Appeal is Appeal #21461- Fifth
3 Avenue of Long Island Realty Associates, LLC; 2052 Northern
4 Boulevard, Manhasset; Section 3, Block 183, Lot 12; Zoned:
5 Business-A/Parking District.

6 Variance from 70-196.J(1)(a) to construct too many
7 signs on a wall.

8 CHAIRMAN MAMMINA: You heard Appeal #21461 - Fifth
9 Avenue of Long Island Realty, LLC. Is there anyone in the room
10 interested in the application other than the applicant? Seeing
11 no one. Please give your name and address.

12 MR. MIGATZ: Bruce W. Migatz with the Law Firm of
13 Albanese & Albanese; 1550 Franklin Avenue, Garden City, New
14 York. For the applicant, Madewell, Inc.

15 I have pre-marked five exhibits. I have put them in a
16 binder. They are labelled 1 through 5. I have a copy for each
17 Member of the Board, one for the record, and one for Counsel.

18 The subject premises recently rented by Madewell, Inc.
19 is in the Americana Shopping Center. This Board is very
20 familiar with that shopping center. The application is called
21 to erect wall signs, but it's not in any practical sense wall
22 signs. These are lettering that says Madewell that is on the
23 valence of an awning, and the Building Department considers
24 that a wall sign. And when I questioned the plans examiner
25 about that, he said that the awning is an extension of the
26 wall, and therefore any lettering on the awning is a wall sign.

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2 I can see that looking on Plandome Road, there are some
3 storefronts that have the awning that covers their facade and
4 their sign is on the awning instead of the facade. But this is
5 more like a drop-awning, although it's not falling down, but
6 it's an awning that projects off of the building. And the
7 lettering is not even on the top of the awning, it's on the
8 valence of the awning as shown.

9 I did not seek a determination as I normally do. I
10 have to choose my battles, but I think this is certainly right
11 for a variance. Exhibit 1 is the existing wall sign that
12 Madewell has. That's a sign as of right. And I think this
13 sign faces the parking area behind the Americana shopping
14 center, so that's the first wall sign. The two awnings that
15 have the lettering Madewell are deemed the second and third
16 wall sign.

17 Going through the standards of an area variance. Will
18 there be an undesirable change in the character of the
19 neighborhood. These awnings are not visible from the street.
20 Their lettering on the awnings are not visible, unless you are
21 right smack in front of them, and it's not to have any impact
22 on any surrounding properties. Exhibit 2, I didn't take French
23 in high school, so I am not going to pronounce this correctly,
24 but this is another storefront in the shopping center,
25 Vilebrequin.

26 CHAIRMAN MAMMINA: I wouldn't have a clue how to

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pronounce it.

MR. MIGATZ: I don't know if that's the right way to pronounce it. But, anyway, they have exactly what Madewell is seeking. They have a typical wall sign and they have the awnings that has their name on the valence part of the awning.

VICE CHAIRMAN FRANCIS: Where is this store?

MR. MIGATZ: In the Americana shopping center.

VICE CHAIRMAN FRANCIS: Oh, it is?

MR. MIGATZ: Yes. I don't know if they came before the Board or not, but different plans examiners have different interpretations on what is a sign and what is not a sign. But that is exactly the same setup that Madewell is seeking.

Exhibit 3, also in the Americana shopping center, Anne Fontaine, another store that has an awning and they have their name on the valence of the awning.

Exhibit 4 is also the Americana shopping center, Morgenthal Frederics. They also have their name on the valence of the awning.

And Exhibit 5 is Brooks Brothers. They too have their name on the awning. And I counted eight awnings that Brooks Brothers has.

VICE CHAIRMAN FRANCIS: Now I'm really shocked that you didn't take a determination.

MR. MIGATZ: I have to choose my battles, Mr. Francis. But, perhaps, this Board will give some guidance to the

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Building Department that if you just have your name on the valence of the awning, you don't think it's a sign. That, would be, you know, helpful in future applications.

Going through the other factors. Can the applicant achieve the benefit by some other feasible means. No, we need a variance.

Is the variance substantial. This lettering is only -- if you box it out, it's 6-inches high and 25 and 3/8ths inches in length, for a total of 1.05 square feet.

Once before I told this Board that my favorite book is Everything is Important in Life that I learned in kindergarten. So I got out my scissors and paper and I made a cutout. This is the exact size, 6 inches by 25 and 3/8ths inches of the proposed Madewell lettering, not a substantial variance, if I may submit.

CHAIRMAN MAMMINA: Did you get to bill the clients for the arts and crafts? I couldn't resist.

MR. MIGATZ: I don't think we have to mark this as an exhibit. It's just for --

VICE CHAIRMAN FRANCIS: Visual purposes.

MR. MIGATZ: Visual purposes. So it's not a substantial variance. The difficulty is self-created as a matter of law because Madewell rented this space subject to the zoning code, but that's not determinative. And it is an area variance, so it's deemed a Type II Action, and that would not

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have an impact on the environment.

So having said all that, I would encourage the Board to give some guidance to the Building Department that this is not a sign. I am cutting my nose to spite my face.

MEMBER GOODSELL: Well, I actually would disagree with you. Because if Madewell wanted it to be the size of the 10 foot by 4 foot awning Madewell that goes across, that clearly would be a sign.

MR. MIGATZ: I am not asking for that. I'm asking for what is on the valence.

VICE CHAIRMAN FRANCIS: I believe that is a sign. I do not believe that it's a wall sign. So I think the interpretation of what we are looking at as a wall sign I think is not correct.

MR. MIGATZ: Well, the code only has wall sign, ground sign or billboard.

CHAIRMAN MAMMINA: Well, maybe that will be the clarification that needs to be made and then the Town Board will have to cite where a sign could be within certain parameters.

MR. MIGATZ: Or amend the code to specify.

CHAIRMAN MAMMINA: That's what I am saying. It's less than certain feet.

MR. MIGATZ: But it would be appreciated if you granted this variance.

1 Appeal #21461

2 VICE CHAIRMAN FRANCIS: Well, as one Board Member, I am
3 inclined to grant the application based on my earlier comments.
4 So I make a motion that we grant it.

5 MEMBER DONATELLI: Just before we do that, Member
6 Francis. Will there be -- I'm sorry. Let me rephrase that.
7 As I review the application, I see that we also have Madewell
8 at the bottom of the windows, is that correct? The name of the
9 store on the bottom of the windows?

10 MR. MIGATZ: What are you looking at?

11 CHAIRMAN MAMMINA: Page 3.

12 MEMBER DONATELLI: In the exhibits that you just handed
13 up, I think it's Exhibit 1. I'm seeing on either side of the
14 entrance, I am seeing Madewell on the bottom of the left window
15 and the right window.

16 MR. MIGATZ: Well, window signs are permitted. That's
17 a lot smaller than what you are allowed to have as of right.

18 MEMBER DONATELLI: Right. But my point -- and I'm not
19 sure that this is really indicative of my opinion or
20 dispositive of this application one way or another. So in
21 other words, you are going to have five signs. You are
22 proposing two on the windows, two on the awnings, and then the
23 one above the entrance, is that correct?

24 MR. MIGATZ: Well, you are going to have three wall
25 signs and then we are going to have window signs that are
26 permitted as of right.

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MEMBER DONATELLI: So, I guess, my --

MR. MIGATZ: That's for people who can't see above,
they can see the Madewell on the window.

MEMBER DONATELLI: I guess, my point is that I would
distinguish some of the other signs that you submitted in your
exhibits from what Madewell is proposing. Because I don't see
awning signs and window signs and a store sign in the other
applications.

MR. MIGATZ: Well, Exhibit 4, Morgenthal Frederics,
they have optician signs in their window. Brooks Brothers has
30-percent-off signs in their windows, friends and family.

MEMBER DONATELLI: I think it is tasteful and I think
it is in keeping with many of the awnings at the Americana,
but, I guess, I would just point out to the rest of the Board
-- and as I said, I don't think it's necessarily dispositive --
that we actually have five points of identification for this
store on one storefront.

CHAIRMAN MAMMINA: I think the disapproval is for --

SECRETARY WAGNER: Not for the window signs.

CHAIRMAN MAMMINA: Yes, three signs. I'm reading five
in my head.

MEMBER DONATELLI: Right, but it seems excessive. I am
not saying that that is dispositive. I would question why the
applicant would want, essentially, five identification signs.

MR. MIGATZ: Well, a lot of it is aesthetics as to how

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2 the store looks with the awnings and the name. And this wasn't
3 made very well, but it is a size of a Madewell sign, which is
4 very small. If you are in that shopping center, now you park
5 your car, now you are walking down the sidewalk, you are
6 looking for any store, Madewell. You don't see the wall sign,
7 you don't see the awning, so almost every store has something
8 in the window. So when you are walking down the sidewalk, oh,
9 this is Madewell. I think every store has something in the
10 window to identify them as you are walking down the sidewalk.

11 MEMBER DONATELLI: I do recall several months ago to my
12 other Board Members, I do recall we were asked to approve an
13 application, also in the Americana, where the applicant had
14 come in with a logo that the Building Department deemed to be a
15 sign. And again, it was because that was more at eye-level and
16 meant to attract a passerby. So the applicant's argument is
17 not about merit. Again, as one Board Member, I'm just saying
18 that even if two are of right, five would be a bit excessive.
19 However, that would not necessarily be dispositive because I
20 think it is, more or less, in keeping with the look of the
21 Americana. So I'm sorry, I interrupted you. I just wanted to
22 put that on the record.

23 VICE CHAIRMAN FRANCIS: Absolutely.

24 CHAIRMAN MAMMINA: We have a motion by Vice Chairman
25 Francis. Do we have a second?

26 MEMBER DONATELLI: I will second.

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CHAIRMAN MAMMINA: Seconded by Member Donatelli.

Please poll the Board.

SECRETARY WAGNER: Member Goodsell.

MEMBER GOODSSELL: Aye.

SECRETARY WAGNER: Member Donatelli.

MEMBER DONATELLI: Aye.

SECRETARY WAGNER: Vice Chairman Francis.

VICE CHAIRMAN FRANCIS: Aye.

SECRETARY WAGNER: Chairman Mammina.

CHAIRMAN MAMMINA: Aye. The application is granted.

MR. MIGATZ: Thank you.

1 Appeal #21382

2 SECRETARY WAGNER: Is there anyone here who wanted to
3 sign-in to speak at the next Appeal #21382 who hasn't signed
4 the sign-in sheet? If you want to register to speak, come up
5 to the desk and we will sign you in.

6 Next Appeal is Appeal #21382 - Guillermo Ortiz; 55
7 Bayview Avenue, Manhasset; Section 3, Block 138-02, Lots
8 101-104 & 805; Zoned: Business-B.

9 Appeal for determination or in the alternative,
10 variances from 70-138 and 70-103.B to legalize the conversion
11 of an automobile service station to an auto body repair shop
12 (not a permitted use within the Business-B district) with
13 parking stalls that are too small.

14 CHAIRMAN MAMMINA: You have heard Appeal #21382 -
15 Guillermo Ortiz. Is there anyone in the room who wishes to
16 speak regarding the application? Okay. You will all have the
17 opportunity. As I said, we have a 3-minute limit. And we just
18 ask that we try not to repeat each other. If something is on
19 the record four, five, six times, it's no different than the
20 fact that you signed in saying that you were not in favor of
21 the application or you were in favor of the application. So
22 thank you very much. We appreciate everyone here. Please give
23 your name and address.

24 MR. FARRELL: Good afternoon, Mr. Chairman and Members
25 of the Board. For the applicant, John Farrell of Sahn, Ward,
26 Braff & Koblenz. Our offices are at 333 Earle Ovington

Appeal #21382

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2 Boulevard, Suite 601, Uniondale, New York. With me today is
3 Sam Chow, she is a representative of the applicant; Barry
4 Nelson, Nelson Appraisals; and Sean Mulryan, who is a traffic
5 safety engineer.

6 The subject property is located on the northwest corner
7 of Bayview Avenue and Locust Place. It's about 12,500 square
8 feet in total lot area with a 100 feet of frontage on Bayview
9 and about a 111 or so feet on Locust Place. The property is
10 improved with a 2,170 square foot brick and masonry
11 construction building that has four garage doors. The property
12 is zoned Business-B and has been used as an auto repair shop
13 business since 1948.

14 We are here today challenging first the determination
15 of the plans examiner, who concluded that we are requesting a
16 change of use from an auto repair shop to an auto body shop due
17 to the installation of the spray booth at the premises. The
18 plans examiner's conclusion appears to be based on nothing more
19 than the installation of the spray booth. The fact of the
20 matter is my client does no body work at the site. He does not
21 use the spray booth to apply paint to vehicles. He strictly
22 does automotive repair and he does, essentially, detailing work
23 that requires the use of a spray booth to make the quality of
24 the product better.

25 In addition, we are also seeking to reduce the size of
26 the parking stalls from 10 by 20 to 9 by 18. In the

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alternative, we would ask for a use variance to maintain the spray booth, but, as I said, we don't believe that that is necessary.

VICE CHAIRMAN FRANCIS: Mr. Farrell, I'm sorry to cut you off. How is the spray booth being used and what is the product?

MR. FARRELL: So my client installed the spray booth without permits, that's acknowledged. It came to their attention through the fire marshal that they needed the permits. They got all their approvals through the fire marshal and then they started the process with the Town. They also received summonses from the Town.

MEMBER DONATELLI: I'm sorry. When was that installed?

MR. FARRELL: In July of last year, 2022. So they, basically, installed the spray booth to do vehicle treatments. They apply ceramic coating to cars and vinyl wraps. Now, the ceramic coating, let me just get to that point with my presentation. Ceramic coating is, essentially, like a second layer of skin that they apply to the car. It utilizes nanotechnology where tiny particles in this chemical come together to form a very thin transparent layer to completely -- that's completely visible to the naked eye. It's, essentially, a very high-end type of wax.

VICE CHAIRMAN FRANCIS: It's really paint protection?

MR. FARRELL: Yes. Like I said, it's similar to a wax,

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2 but it lasts much longer and it's a much more expensive product
3 to apply to a vehicle. But if you own a car and you own a
4 high-end car and you want to protect it long term, that's the
5 type of treatment you would give to it.

6 Now, many places that install this, many businesses
7 that install this or apply this, this coating do not utilize a
8 spray booth. But my client, in speaking with the manufacturer,
9 was advised that if they could apply it in a spray booth, that
10 would be the most ideal conditions to do it. Because with the
11 spray booth, you can remove the dust particles from the air,
12 you can remove the humidity from the room, and the temperature
13 is controlled. So it would make the product apply easier and
14 last longer. So with that knowledge, they went forward and
15 they installed the spray booth to be able to do this work.

16 They also do vinyl wrapping. Vinyl wrapping, you may
17 have seen vehicles driving around with advertising and things
18 like that on it. There are other uses for it, as well. A lot
19 of people use it as an alternative for painting their car. You
20 can change the finish of your car. You can put different
21 designs on your car. So vinyl wrapping, again, it's a process
22 where they use, basically, soap and water, then they apply the
23 vinyl wrap, and then they seal the vinyl wrap on the car.
24 Ideally, these are applied in a clean room. Because with the
25 cost, they don't want the customer to come back and be
26 dissatisfied that the surrounding coating is flaking or the

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vinyl wrap is peeling. So to do it in the spray booth provides the optimal environment in which to do the spraying.

No body work, no fender work is done at this site, and they have no intention of doing any body or fender work at this site. If this Board were so inclined to grant an approval, I have spoken to my client, we would be open to, you know, granting the Town, you know, inspections within -- you know, give us notice that you are coming in and we will allow the Town to come in and inspect on a regular basis. We would also agree to a term of years so that if we are not holding up our end of the bargain and we are not doing what we say we are going to do, then we would have to come back before this Board for a renewal of that approval. And the Board can say you are doing body work, you are doing auto body repair work, we are not going to continue with this approval. It's not my client's business, that's not what they intend to do. It is really a method to enhance their business.

Auto mechanics are not making the money that they used to. They have increasing competition from dealerships. When you lease a car -- and I know my wife leased a car. She has her first 15 oil changes are free. So, you know, you are taking money out of the hands of the small shop owners who are trying to scrape by and compete. This allows them another avenue in which they can generate revenue to maintain a successful business in Manhasset.

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MEMBER GOODSSELL: Let's go back to the very basics, all right.

MR. FARRELL: Sure.

MEMBER GOODSSELL: In 1949, the Town issued a Certificate of Occupancy for this property for an automobile service station, that's it. We have a definition of an automobile service station. I want to read it into the record, if you don't mind. According to the Town, an automobile service station is used for use of premises for the dispensing of motor fuels, lubricants, and other materials used in the operation of motor or other vehicles and/or where minor repairs to motor or other vehicles are made. That's what your client is authorized to do. What are you asking us now to approve? You are asking us to approve an expanded use of the property that's not under the original Certificate of Occupancy.

MR. FARRELL: So that is now how the plans examiner denied the application. The plans examiner denied the application as a conversion of an auto repair use to an auto body use. That, is how the application is denied. That, is what is being presented before the Board.

MEMBER GOODSSELL: So you don't feel that we have the right to question what you are presenting?

MR. FARRELL: Well, I think if you look at the code, if you look at motor vehicle. Even if you look at the definition of the motor vehicle repair shop, motor vehicle repair shop

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covers, basically, any work you do to a car with tools, and that's the definition of motor vehicle repair shop, with power tools. I'm sorry.

MEMBER GOODSELL: The definition under 70-231, Motor Vehicle Repair Shop, which is not on your Certificate of Occupancy, but which the Town does define: "A use or building or portion of a building in which mechanical, electrical or other similar power is used in the repair of motor vehicles or in which commercial motor vehicle repair work is done."

MR. FARRELL: Right.

MEMBER GOODSELL: That's not on your Certificate of Occupancy.

CHAIRMAN MAMMINA: I will go a step further because it continues. It says: "A motor vehicle repair shop shall be designed to minimize adverse aesthetic impacts and recognize local character and shall conform to the following requirements:

(1) There shall be at least one property boundary with frontage on a street with a minimum right-of-way width of 75 feet."

I don't have the survey of that street, but it certainly does look like it's 75 feet. And, you know, in terms of minimizing impact, you know, on the community where suddenly this spray booth shows up and you've got exhausts out of the spray booth.

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2 MR. FARRELL: Well, no, we don't.

3 CHAIRMAN MAMMINA: Let me finish. Well, then
4 why does the fire marshal need for it to be filed
5 with the fire marshal and approved and get involved
6 in spray booths? And if there is nothing coming out
7 of that spray booth, then I don't see why the fire
8 marshal would have anything at all to do. I also
9 still don't see how it fits those previous
10 definitions, either.

11 MR. FARRELL: That's not how the case was denied. So
12 technically, the call of the case is incorrect. The notice was
13 incorrect. So that is a legal deficiency.

14 CHAIRMAN MAMMINA: Suppose I come in to have my car
15 done and there is small dent, you know, in the fender. You
16 send me away to a body shop?

17 MR. FARRELL: Yes, we do.

18 MR. FARRELL: So I go away to the body shop. Can you
19 tell us what body shop?

20 MR. FARRELL: Port Washington Collision.

21 CHAIRMAN MAMMINA: Which one?

22 MR. FARRELL: Port Washington Collision.

23 CHAIRMAN MAMMINA: Okay. And can we verify that? Can
24 you produce something -- not necessarily today -- that then
25 says, yes, this is work that we received from?

26 MR. FARRELL: Yes, a hundred percent. We send all the

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2 auto body repair work to Port Washington. One hundred percent.

3 CHAIRMAN MAMMINA: Can we get something from them that
4 says, yes, we are a customer? And I will say with some
5 regularity? I don't even know if that's the word.

6 MR. FARRELL: Sure.

7 CHAIRMAN MAMMINA: Not a trick question. But that
8 would document that that type of work that was done there.

9 MR. FARRELL: Sure. Absolutely. That's not an issue
10 at all.

11 MEMBER DONATELLI: I have another question, which is
12 really, in my mind, relevant to the very part of the matter.
13 So the Notice of Disapproval indicates that this is a paint
14 sprayer?

15 MR. FARRELL: Right.

16 MEMBER DONATELLI: And you indicated that what will be
17 applied will be a ceramic coating for the vehicle wrap. I
18 don't know if you are able to tell us what the differences are
19 between a paint-spray booth and a ceramic-spray booth.

20 MR. FARRELL: So there is no spray with the ceramic.
21 There is no spray at all. There is no fumes. It's, basically,
22 it comes in a jar like this big and you take it out and you
23 apply it. After the car is washed and treated, you apply this
24 coating over the body of the car. There is no spraying. So
25 it's called -- that's what they are called in common jargon.
26 Within the industry, they are called paint-spray booths, that's

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2 what they are called. They have an exhaust system to remove
3 the dust and the humidity and the other particles from the room
4 so that they can do this treatment. There are no fumes coming
5 into this room. We've had reports made to the fire marshal
6 that we are using this spray booth on a regular basis. The
7 fire marshal has been there three times. And the fire marshal
8 has come in every time and said, you guys aren't even using
9 this, you have never turned it on. There is no paint in the
10 booth. There has never been.

11 MEMBER GOODSSELL: But there could be.

12 MR. FARRELL: But that's not -- you cannot base -- a
13 Board cannot base its decision on speculation of what a bad
14 actor might do. You are basing your decision on what the
15 application is before you. The application is that we want to
16 do this and we need the spray booth to do it. Okay. If there
17 are violations and we don't hold up our end, the approval can
18 be revoked. The CO can be revoked. The Town has revoked many
19 COs from people over the years, homeowners and businesses alike
20 where there are things that are not on the up and up with what
21 has been done with the property.

22 CHAIRMAN MAMMINA: Can you provide us with -- again,
23 not necessarily today -- with the approvals, the drawings, et
24 cetera for that? We will call it a spray booth, if that's what
25 you are saying is the terminology, or if it's not that. And
26 then any summonses or things that might have been issued,

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either by the fire marshal and/or the Town.

MR. FARRELL: The fire marshal didn't issue any summonses.

CHAIRMAN MAMMINA: I'm just asking for whatever summonses may have been issued so that we have that and that's something that can be considered and made part of the record, you know, positively or --

MR. FARRELL: Sure. I would be happy to provide. I believe we have correspondence from the fire marshal. I don't have them on me today.

CHAIRMAN MAMMINA: Also, I, as one Board Member, would like to see those submittals and then those approvals. And if there was any correspondence back and forth with the fire marshal in the process of the application and the approval.

MR. FARRELL: We can certainly provide that information. Again, this is not my client's intention to do an auto body repair use.

VICE CHAIRMAN FRANCIS: So how does he characterize what it is that you are doing?

MR. FARRELL: I would characterize it as detailing, at best.

MEMBER DONATELLI: What I would like to see -- and I appreciate, certainly, your testimony, but you are an attorney, you are an applicant. You are not a professional installer of these spray booths. Did your client have a company or a firm

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actually install this spray booth?

MR. FARRELL: Yes.

MEMBER DONATELLI: Are there some manufacturer specifications, brochures, anything that we can look at? For example, with my fellow Board Members, many times when we are asked to examine applications for generators, we get the specifications of the generator from the manufacturer. I think as one Board Member, I would like to see if the installer actually had some specifications, if we can see this. Because whether we call it a paint-spray booth or a vacuum booth or some other nomenclature, the fact of the matter is is that it takes particulates that are indoors and it makes them go outdoors.

MR. FARRELL: Through a filtration system, as well.

MEMBER DONATELLI: Right, but you don't know that -- I assume that you don't know the specifications.

MR. FARRELL: No. I can get you the specifications, that's not a problem.

MEMBER DONATELLI: I don't know them. You don't know them. So I would like to see some sort of professional specifications as to what exactly the filtration is. And, you know, I don't know whether or not the ceramic coating that is placed or whatever residue that are placed on the automobiles would present any kind of health issues to the surrounding neighbors.

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MR. FARRELL: Well, what I can tell you is that there are businesses that apply this in open rooms, they apply it outside. If you were so inclined, you could buy the chemical and apply it in your driveway. You are not going to get the best finish, you are not going to get the best final product, but that would produce more of a problem than doing it inside the spray booth. If we took out the spray booth, we could do it in the garage. And if there were -- which I don't believe there are -- any fumes or anything that would, you know, create a problem, they would be in the open air, anyway. They wouldn't be going through the filtration system.

MEMBER DONATELLI: And, that, could very well be. But we are, of course, bound by the Notice of Disapproval and by the definitions that are presented in the Town Code and by the mandates of the standards that we are required to apply.

MR. FARRELL: Understood.

MEMBER DONATELLI: So again, I would like to see those.

MR. FARRELL: Of course.

MEMBER GOODSSELL: So your client is already doing the detail?

MR. FARRELL: Hasn't done a thing.

MEMBER GOODSSELL: Has not used a spray booth?

MR. FARRELL: Has not used it at all. Has not turned it on.

VICE CHAIRMAN FRANCIS: How is he operating that?

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MR. FARRELL: He is just doing a regular vehicle repair. He wants to resolve these issues before he proceeds.

VICE CHAIRMAN FRANCIS: I have some familiarity with wrapping of a vehicle. One of my cars is wrapped and it's not a high-end car, believe me. And I also have some familiarity with the process of ceramic coating. I would like to see -- one, I would like to see which ceramic coating he is using or if he is using multiple ones, I would like to see the instructions for the application.

MR. FARRELL: Sure.

VICE CHAIRMAN FRANCIS: And the same thing with the wrapping. Because there are several companies, 3M, XL. There is a bunch that put out that product and they have varying instructions in terms of installation. So I would like to see those instructions, as well.

MR. FARRELL: That's perfectly reasonable.

MEMBER DONATELLI: Anything else?

MR. FARRELL: So at this point, you know, I think I covered the use. Again, we are not a body/fender shop, that work is farmed out, if the Board concludes that we are an auto body repair shop, you know. I think the uniqueness of the property and, you know, the motor vehicle repair business, in general, lends itself to the granting of a use variance. What I would like to do is I would like to call up my real estate appraiser to provide a valuation regarding the dollars and

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cents proof to prove that we need this to make a reasonable return investment.

CHAIRMAN MAMMINA: Thank you, Mr. Farrell.

MR. NELSON: Good afternoon. Barry Nelson; 220 Pettit Avenue, Bellmore, New York 11710. The Board should have a copy of my analysis. I will just hand in what was handed in back in, I think, it was March. I'm sure the Board is very familiar with the location and the area. I will just hand in some exhibits, aerial views, the zoning map, and a tax map for the subject property.

MR. PERROTTA: Thank you, sir.

SECRETARY WAGNER: Those will be Exhibits 1, 2, 3.

MEMBER DONATELLI: I'm sorry. Are these multiple copies of the same?

MR. NELSON: The aerial views are, yes. So you heard from the counselor as far as the property, the size, the building, the location. It is a corner property. Part of this application will include substantial improvements to the exterior of the building, including landscaped buffer areas on the northerly side and the westerly side where it's adjacent to the residences. The property is, approximately, 12,500 square feet. The building is an existing repair shop, formally a gasoline repair shop. The gasoline pumps have been removed.

The additional landscaping -- which the property now is void and has been void of any landscaping for many, many, years

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-- will be almost 30 percent of the property now; 15-foot buffer on the northerly side and 15-foot buffer on the westerly side. The uses that you will find in the immediate area, Bayview Avenue is an east-and-west roadway. It is a secondary main arterial road. Plandome Road is to the east, the main arterial road downtown business district. You have the fire department just to the east at the northeast corner of Locust and Bayview. The Locust Place, which runs north and south, you have a municipal parking field on the easterly side, approximately, three properties north. And then you have another parking field, municipal parking field on the westerly side. The easterly side would provide parking for the professional and retail uses found along Plandome Road. To the south, the lot front between Locust Street and Linden Street was a former, I believe, Citibank that has been closed for several years now. It has sold various times. In fact, if we just looked at the sale of that property, it sold in 2017 in excess of almost \$3 and a half million. And just recently, the sale of that property from the previous purchaser is now reported at \$2,200,000. That property will, probably, be redeveloped or used with a permitted use in the zone. It, probably, will be before this Board for parking, et cetera. It was a former bank with a drive-through. Just within the three years that it resold, it almost lost 30 percent in value.

This Board and the Town Board will see many of the

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1 changes that have taken place for gas stations, service
2 stations. Some of them have been drive-through now.
3 Drive-through gasoline with C-stores, convenience stores
4 converted to fast-food-type of operations, Starbucks. This
5 location doesn't lend itself to those type of uses in that it's
6 just not the proper location for a drive-through or a
7 fast-food-type of use.
8

9 The site has been a repair shop since 1948. Many of
10 your residents in the area purchased their properties knowing
11 what is there. The use of gas stations over the years have
12 taken away the repair shops. This Board knows that you drive
13 into just about any place, you get gas. You don't get your
14 repairs anymore. You go in to get your cigarettes and your
15 coffee or whatever, your mints. The applicant purchased this
16 property, probably, about seven years ago in excess of \$2
17 million. The report that I submitted will go over the analysis
18 for the dollars and cents proof, but just to get a reasonable
19 return on \$2 million, just say \$2 million, at 5 percent, you
20 almost need \$10,000 a month or a \$110,000 a year, and that
21 would be net, net, net. You have real estate taxes, you have
22 expenses, you have maintenance, insurance, et cetera. The
23 applicant cannot survive at that location. Just like the
24 Citibank across the street was not able to survive. And again,
25 it's the changing in the market, the changing in the demand.
26 Every bank is now you do your banking online.

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Service repairs of automobiles, majority of it is done now at the automotive dealerships where you do get a better experience. They will give you coffee and donuts.

MEMBER DONATELLI: I'm sorry. I don't want to interrupt, but I believe that the standard is that the applicant cannot make any reasonable return for any use.

MR. NELSON: Correct.

MEMBER DONATELLI: Any zoned use, not just particularly an auto repair shop.

MR. NELSON: Yes.

MEMBER DONATELLI: The auto repair shops have changed and we do see that on a fairly consistent basis, but I do believe the standard is slightly different from the one that you are enunciating.

MR. NELSON: No. In continuation of what you just brought up, in my report, again, we would use a starting now, that the applicant paid \$100,000 for the property. We would start at that and then add the cost to renovate it and put a permitted use, a permitted building with parking on that site. We are just in the same scenario. We are starting now at \$2 million purchase price. Again, the bank across the street, it's a larger parcel, it's about a little under half an acre, paid \$2,200,000. The reasonable return on your investment, we are starting at \$2 million for the property. If we had to do a new building, a new facade, construction costs are -- and I

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have drawn it out in my report that's dated March 31, 2023 that I submitted to this Board or submitted to the Town for a Hearing date. We will address construction costs --

MEMBER DONATELLI: Is it your testimony that there is no permitted use that will allow for a greater return as required or -- that necessitates a change of use application?

MR. NELSON: Well, we are really not requesting a change of use before this Board. We are asking for an accessory use to assist the applicant to realize a reasonable return on his money invested. An accessory use, we are going to continue with the automotive repairs and now introducing another phase of the automotive trends.

VICE CHAIRMAN FRANCIS: That kind of goes quite opposite of what Mr. Farrell said.

MR. NELSON: What do you mean?

VICE CHAIRMAN FRANCIS: Mr. Farrell said that they are not doing any auto body repair once they start doing this new use?

MR. NELSON: No. We are not doing no collision, no Bondo, no collision repairs.

VICE CHAIRMAN FRANCIS: So what kind of repairs?

MR. NELSON: Minor repairs will still take place. In fact, I was talking to the applicant just this morning and she brought up just the fact that Northern Boulevard has been under construction or renovations or whatever you want to call it.

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2 And in the last several weeks, more people have shown up for a
3 tire repair because of that, flats, et cetera. But the
4 applicant -- correct me if I'm wrong -- will continue to do the
5 minor auto repairs at that location.

6 VICE CHAIRMAN FRANCIS: All right. I think you left
7 out "minor" when you made the record of auto repair, which kind
8 of confused me.

9 MR. FARRELL: It's auto repair. It's engine repair,
10 it's transmission repair. It's, you know, flats, oil changes.
11 Whatever business they can get in terms of auto repair. We are
12 not doing auto body work.

13 MR. NELSON: No collision work, no Bondo work.

14 CHAIRMAN MAMMINA: I'm reading from the internet.

15 MR. NELSON: I'm sorry. What?

16 CHAIRMAN MAMMINA: I am reading from the internet and
17 this is from the Manhasset Chamber of Commerce: "Welcome to
18 Manhasset sponsored by the Manhasset Chamber of Commerce." It
19 has Port Washington Collision Automotive. Port Washington
20 Collision is an auto repair shop located at 55 Bayview Avenue,
21 Manhasset, New York. It shows a car with some substantial
22 damage to it. The business is listed under the auto repair
23 shop category. It has received 20 reviews with an average of 5
24 stars. So, I mean, in here, it's listed by the Chamber of
25 Commerce as a collision under a different name, under Port
26 Washington Collision. I can call it the ABC Collision. It

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doesn't matter that it says Port Washington. This is just me just Googling around. I don't know. I'm raising it. It has that title. It shows a photograph and it says that their location is at the location of the subject property and that it is listed under auto repair shop.

MR. NELSON: Auto repair shop.

CHAIRMAN MAMMINA: But it's listed under auto repair shop, I guess, in an ad or something somewhere, but it's saying here from the Manhasset Chamber of Commerce that it does auto collision.

MR. NELSON: And it has a very good rating, 4.8.

CHAIRMAN MAMMINA: But that doesn't matter.

MR. NELSON: Any grant by this Board would come with honest conditions. And as the applicant represents, no auto repair -- I mean, no auto collision, no banging, no Bondo.

CHAIRMAN MAMMINA: Can she come on up? And I will pass this down to her and she can read it and tell me what part of the English am I not understanding.

MR. FARRELL: I think first you can't believe everything you read on the internet. Second of all, Port Washington Collision is the affiliated business where those vehicles that need body work are sent. That's at 14 Carey Place in Port Washington. So to be a member of the Manhasset Chamber of Commerce, they need the address in Manhasset. So they put the Port Washington Collision address under 55

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Bayview. The work is not done at this location. The work is sent to Port Washington, as I stated in my testimony when we started today.

CHAIRMAN MAMMINA: I hear you, but I would certainly need to do some extreme verification.

MR. FARRELL: But, again, because you said that lots of things are on the internet.

CHAIRMAN MAMMINA: And that's true when my 39-year old daughter was in 6th grade, you could not rely on the internet. Now the internet is used constantly in every kind of application. And I, just for me, you know, it's hard for me to believe that if I was this person who owns this station and recognizes that they can't do auto body collision work, but they put in this spray booth and they permit this listing in the Manhasset Chamber of Commerce, I don't know how important that is, you know, that, well, I have to be listed in the Manhasset Chamber of Commerce.

MR. NELSON: But it's a draw in for business for their other shop, but it works. Internet is a draw in for business.

CHAIRMAN MAMMINA: We get that part, but that doesn't mean that cars don't get brought there that have been in an accident and they are dropped off by tow trucks, you know. I'm familiar with the business.

MR. FARRELL: I think, look, as I said, we are willing to agree to conditions that the Town can come in and regularly

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inspect and will agree with a term of years on the approval so you guys can come in and see that we are not doing body and fender work at this site. We can take a field trip right now. It's right around the corner. We can go see.

CHAIRMAN MAMMINA: But that's easy.

MR. FARRELL: No. We will go right now. I will take you right now.

CHAIRMAN MAMMINA: I'm sure you can take us before you have a Hearing, and I'm not being a wise guy.

MR. FARRELL: No, I know.

CHAIRMAN MAMMINA: You know that.

MR. FARRELL: I'm trying to explain. Look, in this business, in motor vehicle repair business, you have to try and capture as much business as possible. If that means taking a membership in the Manhasset Chamber of Commerce so that you can advertise an affiliated business where you are going to draw more revenue, then that's what you have to do. The fact that it's advertised on the internet doesn't mean that the work is actually happening there.

CHAIRMAN MAMMINA: Why wouldn't they just do it at the -- why wouldn't Port Washington Collision just do it in their bonafide collision shop?

MR. NELSON: They do. They probably have it there, too.

MR. FARRELL: They, probably, have it on the Port

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Washington Chamber of Commerce, as well.

CHAIRMAN MAMMINA: But this could be all speculative.

MR. FARRELL: But it's not speculative.

CHAIRMAN MAMMINA: The questions that I have are speculative and you say they may, you know, and I'm saying okay. Look, I agree, they may.

MR. FARRELL: The bottom line is we are proposing an application, but we can't speculate on what might be done by a bad actor in the future.

CHAIRMAN MAMMINA: And I'm not asking you to.

MR. FARRELL: And I think that the application has to be considered based on what is being presented, not on circumstantial evidence and any speculation.

CHAIRMAN MAMMINA: What I would also like to do, which I said before, I would like to invite that owner-operator up because then she would be perjuring herself, if you are not telling the truth, you know, before this Board, so I just want you to be aware of that.

VICE CHAIRMAN FRANCIS: Before we get to that, I would like to go back to Mr. Donatelli's point in that you are saying that there is absolutely positively no other use that this property can be put to in order for it to be profitable?

MR. NELSON: And I spelt it out on my report.

VICE CHAIRMAN FRANCIS: I want you to spell it out on the record.

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MR. NELSON: And we have a purchase price of \$2 million on the property as the repair shop as it exist today. For them just to renovate, construction, and make it palatable to a permitted use, we need at least 7 to a million dollars invested into that property.

VICE CHAIRMAN FRANCIS: And you base that on what?

MR. NELSON: Construction costs. The building is a 1948 building, overhead bay doors, you have to do plumbing, heating, electrical, roof, cosmetic, et cetera. Then I drew out that you would be into it almost \$3 million. For you to get a reasonable return, you need -- and it says in my report -- \$61 a square foot. Am I going to pay or is an applicant or a tenant going to pay \$61 at that location? Absolutely not. They don't even get that on Plandome Road on your typical retail shop.

CHAIRMAN MAMMINA: No one will ever buy a building on Plandome Road for their own business.

MR. NELSON: No, but they are going to use it if you have a vacant retail shop. And that's most of the permitted uses would be for office, for retail, and similar-type uses. That's between \$30 and \$40 a square foot, but they are not buying it.

CHAIRMAN MAMMINA: I will use an example that maybe is inappropriate. Before my practice was bought, I bought a little building for \$775,000 almost 20 years ago on Westbury

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Avenue in Carle Place. I put another \$500,000 into that building to use it for my business as just a sole practitioner architect. And it made money. I mean, I have paid it off and, you know, there were higher bids than mine.

MR. NELSON: Exactly. So you are into that building for a million two.

CHAIRMAN MAMMINA: Yes.

MR. NELSON: We are now into it for 2 million and another million to renovate it to bring it up to a retail or a professional-office-type use. Now you are into it \$3 million.

CHAIRMAN MAMMINA: We can go back and forth forever, but there are people that buy houses for \$900,000 when a community is selling for 750 because they are going to knock that house down, they are going to rebuild it, and they are going to put it on the market for 2 million, but they bought it still.

MR. NELSON: Yes. And they got their \$2 million in a residential market. And we are talking about a commercial retail space where you can get that same space on Plandome Road or Northern Boulevard in a downtown business district for a lot less. It's a reasonable return on your money that you are expecting. On a residence or so, et cetera, you are looking to live there for the next 20 or 25 years in a good community. Again, this is a good community. You sold your place of business with the renovated property and made a profit on that,

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2 and you used that for 10 or 15 or 20 years or whatever it was
3 for your place of business. We are now saying that this
4 applicant's use is their place of business because of the
5 changing times in the automotive. And if we continue to look
6 down the road with EV, electrical vehicles, and hybrid, he is
7 not going to be able to do those repairs. Maybe he should set
8 it up as a charging station. I don't know. But as far as a
9 reasonable return on your investment, \$2 million, another
10 million, \$3 million, and you are going to pay real estate
11 taxes, et cetera, et cetera, you are going to have to get at
12 least \$61 a square foot. The place across the street lost in
13 three years over a million dollars from one investment to
14 another and now we don't know what they are going to do with
15 it.

16 MEMBER DONATELLI: So Mr. Nelson, I don't mean to
17 interrupt, but I think you are possibly misstating the
18 argument. As I understand it, your client is asking for a
19 variance or, in the alternative, a change in use.

20 MR. NELSON: Yes.

21 MEMBER DONATELLI: So for the moment, I'm just focused
22 on the change in use.

23 MR. NELSON: Okay.

24 MEMBER DONATELLI: And I don't believe that the
25 standard is whether your client paid 2 million and then puts in
26 another one million as for improvements. And we haven't yet

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2 gotten to the cost of the installation of the spray booth. But
3 your client purchased this property subject to the existing
4 zoning, and the existing zoning is what it is. The certificate
5 of existing use is for an auto shop, auto repair shop. Now, if
6 your client is saying that your client is no longer able to
7 make any kind of a profit on the auto repair shop, then,
8 certainly, that should be some testimony that we can hear. But
9 the standard is not whether or not putting in -- having a basis
10 of 2 million, plus an additional one million would then bring
11 it to \$61 a square foot, that is not the standard for the
12 change in use zone.

13 MR. NELSON: That would be for a use variance.

14 MEMBER DONATELLI: Your client is asking for a change
15 in use in the alternative. So the variance is one application,
16 but in the other application, your client is asking in the
17 alternative for a change in use. And there is a very specific
18 legal standard there. And maybe you want Counsel to address
19 this, but there are two very different issues. The other issue
20 that I would want to point out is -- and I understand Counsel's
21 argument that this is not a paint-spray booth, this is a
22 ceramic spray booth or some sort of vacuum booth that makes the
23 application of the wrap better. But it seems to me that we are
24 really parsing definitions when it comes to what we are going
25 to call it and what the use is. But yet, as the Chairman has
26 noted, we are painting auto repair with a very broad brush when

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it comes to how it's being defined or advertised on the internet. So I see a disconnect between what the representations are that are being made here today and what we are seeing as advertisement on the internet.

MR. FARRELL: So the application in terms of the use is twofold. One is we are appealing the determination of the building inspector/plans examiner who concluded this is an auto body use. We do not believe this is an auto body use because we are not doing auto body work at the site. Okay. So that's our first argument. Alternatively, we would be asking for a use variance. Because if you determined that it's auto body shop, according to the plans examiner, auto body shops are not permitted in this particular zoning district. I'm not sure that I agree with that because the code does not necessarily -- does not at all define what an auto body shop is or what an auto repair shop is with any clarity that would allow an applicant to know, okay, this is what an auto body shop is in North Hempstead, this is where I can go.

MEMBER DONATELLI: I understand your point, and your point is well-taken. But as to that second alternative request for relief, the change in use. I'm trying to get you to focus on the standards that we need to consider for a change in use application.

MR. FARRELL: So I think the standard that Mr. Nelson is testifying to is the reasonable return on the investment.

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What Mr. Nelson is testifying to is that our client purchased the property for a certain number based on a use that was operating at the location for 75 years.

MEMBER DONATELLI: Which was an auto repair shop?

MR. FARRELL: Right. And he is continuing to use it in that manner. But again, if it's considered auto body, we would be using the auto body for a portion of the use. We would continue with regular motor vehicle repairs, but a portion of the building would be devoted to auto body shop as whatever that means. Because again, we don't have a clear definition. So that would be the use variance.

The argument that we are making on the rate of return or the reasonable return on investment is that without this component of the overall use of the property, the client cannot realize a reasonable return on his investment. Furthermore, with regard to the other permitted uses in the district, if he wanted to change the use to any other permitted use in the district, you have to start with the \$2.2 million valuation on the purchase price of the property. Then you have to factor in the cost of renovating the existing building to be whatever any one of those other uses would be, whatever other permitted use would be at the location. Add that construction cost to the valuation of the property, you get the number of \$61 a foot that you need to change the use. What Mr. Nelson is testifying to is that the bank directly across the street three years ago

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sold for \$3.2 million, nothing happened with it. They now have recently sold it for \$2.2 million. So they had a 30 percent loss in value because they can't make a reasonable return on investment with any other permitted use in the Business-B District. So that's where the reasonable rate of return argument is going, and that's what it's based on. It's based on the fact that we have proof positive directly across the street. If you could make money on a building at a \$5 million investment, it would have happened across the street. The bank has been vacant for many years now and nobody is showing any interest in it, because the numbers don't work. So in order to realize a reasonable return on my client's investment, they need to enhance their use with this addition.

VICE CHAIRMAN FRANCIS: Have we seen any projected income for this proposed use? How much money is she going to make by applying ceramic coating and wraps to cars?

MR. FARRELL: I would like to call Ms. Chow up to testify at this point, because I think the Chairman had asked for that, with regard to the use of the property. And I think she can give a little bit more color to the need for this use.

VICE CHAIRMAN FRANCIS: Okay. That's good.

MS. CHOW: Good afternoon. How are you?

CHAIRMAN MAMMINA: Please give your name and address.

MS. CHOW: Sam Chow. Home address? 55 Bayview Avenue, Manhasset 11030.

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MEMBER GOODSSELL: Are you related to the owner or are you standing in for the owner? The applicant is Guillermo Ortiz.

MS. CHOW: He is the president and owner of the property, yes.

MEMBER GOODSSELL: Is the property in the name of a corporation?

MS. CHOW: I'm sorry?

MEMBER GOODSSELL: Is the property in the name of a corporation?

MS. CHOW: Correct. It's under Bayview Realty, Inc.

MEMBER GOODSSELL: And your relationship to Bayview Realty would be?

MS. CHOW: I am one of the managers and part-owner of the business, yes.

VICE CHAIRMAN FRANCIS: Go right ahead.

MEMBER GOODSSELL: Go ahead.

MS. CHOW: So I see before a lot of my customers here who I have helped out tremendously in the past. And I know that a few of them have come up to me in the past weeks asking if we do any body work, and I have informed them that all body work gets done in Port Washington. I don't know if it was a trick question for me. But I informed them that we have our body shop and it's located at 14 Carey Place in Port Washington and all body work is done, parts are ordered there. All of the

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body work is there completed. And everything that needs to be done with auto body work is done in the Port Washington location.

MEMBER GOODSSELL: Do you accept drop-offs at 55 Bayview Avenue for body work?

MS. CHOW: Yes, sometimes.

MEMBER GOODSSELL: You do? Do you accept and have an appraiser on staff who would give an estimate for body work when cars are brought in for body work?

MS. CHOW: Yes.

MEMBER GOODSSELL: Do you have any signs in your windows that indicate Port Washington Body Work, Inc. as a potential office?

MS. CHOW: No. It does have Port Washington Collison logo on one of the windows, yes, that's facing Bayview.

MEMBER GOODSSELL: And you heard the Chairman indicate that when we just Googled Port Washington Collision, that your address comes up?

MS. CHOW: Correct. One of the Manhasset Chamber of Commerce members came up to us. And when this whole application was going on, she asked me what is this all about. And I said we have this enclosed booth installed, obviously, without permit. That, was our mistake. But the fire marshal had approved the plans. We misunderstood the process and the booth is in there, but it's never been turned on because the

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2 fire marshal came and inspected it multiple times. I explained
3 to her that we are doing ceramic coating work and vehicle
4 wrapping.

5 MEMBER GOODSSELL: Are doing or --

6 MS. CHOW: We were. We will be doing ceramic coating.

7 MEMBER GOODSSELL: Because I'm trying to establish
8 whether you are actually doing it now.

9 MS. CHOW: No, we are not. If you go in there right
10 now, it's been a storage facility for the past year, very
11 expensive storage facility, but, you know. But I explained to
12 her what ceramic coating is and what vehicle wrap is. And she
13 kind of informed me that, hey, maybe you should join Manhasset
14 Chamber of Commerce and it would look better. So as soon as
15 she left, I signed up for Manhasset Chamber of Commerce and
16 made our donation.

17 MEMBER GOODSSELL: When you say I, are you a principal
18 or shareholder or owner in Port Washington Body Works?

19 MS. CHOW: Yes.

20 MEMBER GOODSSELL: And one of the owners?

21 MS. CHOW: Correct. So I made the decision that it
22 would help out the business. So I made the donation and we
23 signed up for the Manhasset Chamber of Commerce not realizing
24 that I put my e-mail address at my Port Washington address
25 because that's where I get all my e-mails, and all the
26 correspondences are coming directly to me. So that's why, you

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know, it was under -- it is under Port Washington Collision.

CHAIRMAN MAMMINA: I will agree that I don't put all of my faith into the internet, but there are several other sites that point to 55 Bayview Avenue that are not linked to Port Washington Auto Collision.

MS. CHOW: I understand. I understand.

MEMBER DONATELLI: What was the cost of the installation of the spray booth?

MS. CHOW: I believe the spray booth was probably -- I'm not sure about the construction, but the booth itself is, probably, around a \$100,000. 80 to a \$100,000.

MEMBER DONATELLI: And that was done last year?

MS. CHOW: Correct, yes.

MEMBER DONATELLI: Was that done by a contractor?

MS. CHOW: Correct. And through the Counsel, I will submit all the paperwork with the application for the installation and everything with the Counsel and he can forward that.

MEMBER GOODSSELL: Do you also have a spray booth at the Port Washington location?

MS. CHOW: Yes, we do.

MEMBER DONATELLI: And did you employ the services of an architect at any point during the installation of the spray booth?

MS. CHOW: Yes.

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CHAIRMAN MAMMINA: Do you have plans submitted? This places no criticism on the architect, but they are very skinny. And I was hoping to see more information on the overall building and, you know, where things are done. And I mean, those are things that I'm used to seeing as an architect, but just because I put them on my drawings, doesn't mean that you have to put them on yours.

MS. CHOW: I understand.

MR. FARRELL: The original architect on this application did not really do a thorough enough job. We have been working with Emilio DeSousa who is preparing more long-range plans for this property, including facade improvements and other things. If this is voted on favorably, we want to make it look more residential in character and kind of give it more of a community feel. So we are working on that.

In terms of the spray booth, those are spec'd out. So we would have to get the plans from the manufacturer, which we agreed we would turn them over to the Board.

CHAIRMAN MAMMINA: Okay. Thank you. I appreciate that and I understand.

VICE CHAIRMAN FRANCIS: Can you give us an idea of projected earnings with regard to this new use?

MS. CHOW: So if we are doing a regular four-door sedan ceramic coating, a lifetime package runs anywhere from 4500 to

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\$6,000.

MEMBER GOODSSELL: Per vehicle?

MS. CHOW: Per vehicle, yes. Obviously, SUVs will need more material so there would be an additional cost. And the condition of the vehicle also varies. So let's say we average \$5,000 per vehicle and I do 20 vehicles, I've already made my money back on the enclosed booth. We also got certified for KAVACA, which is Ceramic Pro's version of the vinyl wrap, which already comes pre-coated with ceramic material. Ceramic Pro is the only company based out of California that gets reported to CARFAX, so the value of your vehicle goes up automatically. It raises the value anywhere from 3,000 to \$5,000 because it's been reported to CARFAX and raises the value of the car. It's the only one that has been tested in the United States and Asia and Europe. They just participated with Porsche Cars of America and now they are the premier installers for Porsche. So Ceramic Pro is one of the leading companies. It's the only one that is backed up by investors and has the greatest reviews. You have to be a certified installer in order to buy the material. Yes, you can go on Amazon now and buy any ceramic material and apply it at home, but Ceramic Pro's ceramic material is the only one that can be bought through an installer.

MEMBER GOODSSELL: And how long does it take to do one treatment to your car?

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MS. CHOW: So it depends on the vehicle. One treatment with each panel takes anywhere from, I would say, 10 to 25 minutes to install one layer. And depending on the level of package that you want on your vehicle, it takes anywhere from four to ten days to complete a job.

MEMBER GOODSELL: What are the hours of operation right now?

MS. CHOW: Right now, we are 8:00 to 6:00.

MEMBER GOODSELL: And do you anticipate evening work to complete these vehicles?

MS. CHOW: No, we do not work in the evening.

MEMBER GOODSELL: And you are not changing the hours to accommodate the additional work that you expect to get?

MS. CHOW: We will not be changing our hours.

VICE CHAIRMAN FRANCIS: So if you were wrapping a Porsche Carrera, you would not -- it wouldn't cost the same as wrapping a four-door sedan?

MS. CHOW: Absolutely.

VICE CHAIRMAN FRANCIS: So how much would it cost to wrap a Porsche Carrera or that size car?

MS. CHOW: I mean, it also depends if we are wrapping the whole vehicle, I would say anywhere from \$8,000 to \$12,000 depending on the color of the wrap.

VICE CHAIRMAN FRANCIS: Clear.

MS. CHOW: Just a clear?

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2 VICE CHAIRMAN FRANCIS: Yeah.

3 MS. CHOW: Yeah. Probably, about 8 to 12 grand.

4 VICE CHAIRMAN FRANCIS: So more than a four-door sedan?

5 MS. CHOW: Correct, because there is more curvatures.

6 There is more work. There is, you know, spoilers, inserts, you
7 know. So vehicles like that will require a lot more time than
8 if I was to do, let's say, a four-door Honda Civic.

9 MEMBER DONATELLI: In terms of the process, is there
10 any curing involved?

11 MS. CHOW: It's just air-cured.

12 MEMBER DONATELLI: So there is no application of heat?

13 MS. CHOW: Nothing.

14 MEMBER DONATELLI: Or anything like that?

15 MS. CHOW: No.

16 MEMBER DONATELLI: And does the process make any noise?

17 MS. CHOW: It does not. We apply four drops of liquid
18 onto a sponge and we apply a thin layer on it. Then we just
19 wipe it off with a microfiber towel and that is the first
20 layer. So we would go around the vehicle. And by the time we
21 are done with the last section, then we will be up to the first
22 panel again to do the second layer.

23 MEMBER DONATELLI: And this is for both the vehicle
24 wrap as well as the ceramic coating?

25 MS. CHOW: No, that's only for ceramic coating.

26 MEMBER DONATELLI: How about the other process?

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MS. CHOW: The clear bra and vinyl wrap is adhered by soapy water. So all we need is soap water, soap-diluted water, and we spray it onto the metal portion of the vehicle. And we put the clear broth on, let's say, a hood and then we squeegee out the soapy water. There is no chemicals involved. It's Whole Food's brand soapy water that works the best.

VICE CHAIRMAN FRANCIS: Prior to do doing that, there is a pretreatment to the car itself?

MS. CHOW: It depends on the vehicle, if it just needs a quick wash.

VICE CHAIRMAN FRANCIS: You don't clay bar?

MS. CHOW: If it needs to be clay-barred, then we would. If it needs to be polished, we would. But that's also depending on the age of the vehicle, the color of the vehicle, and things like that.

VICE CHAIRMAN FRANCIS: And that's going to add to the cost?

MS. CHOW: Absolutely.

CHAIRMAN MAMMINA: Thank you. Very professional.

VICE CHAIRMAN FRANCIS: Thank you.

MR. FARRELL: So we do have about 25 to 30 letters from people in the community in support of the application. I just want to turn those in for the record.

MR. PERROTTA: This will be Exhibit 4.

VICE CHAIRMAN FRANCIS: Ms. Chow, can I just call you

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up one second? You mentioned that there is a spray booth at the Port Washington Collision?

MS. CHOW: Correct.

VICE CHAIRMAN FRANCIS: Are they doing wraps and ceramic coatings over there or are they just doing painting over there?

MS. CHOW: They are only doing painting over there. Only body work and painting.

MEMBER DONATELLI: I'm sorry. I do have a question about the documents you just submitted, Schmitt's Family Auto. This is regarding Schmitt's Family Auto.

MR. FARRELL: That's the historic name of the site. That's how most people know. So I think at this point, I want to call up my traffic safety engineer to talk about the parking spaces and the dimensions of the parking spaces. We do comply with parking. We actually have more parking than required by cost, but we are requesting a reduction in the parking space size. So I'm going to call Mr. Mulryan up to provide testimony on that.

MR. MULRYAN: Good afternoon. Sean Mulryan of Mulryan Engineering; 1225 Franklin Avenue, Garden City, New York. Good afternoon.

I will keep my comments somewhat brief. I know this has been a long Hearing. And today, unusually, I am here to talk about parking spaces in which we have abundant parking

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spaces. We have more than we need. We have 17 provided where 8 are required. However, the parking spaces are undersized based on the Town of North Hempstead's Zoning Code, but they are 9-feet wide by 18-feet in length. They do provide a 24-foot drive aisle behind them. Those are dimensions that are standardly accepted and generally approved in other municipalities. The Town of North Hempstead has a larger space, both in length and width, to accommodate higher turnover locations. This is a subject site that has a low turnover rate, so you don't have customers coming in and out as you would at a convenience store or a retail store or a shopping center or something else of that type of use.

So we believe that these parking spaces will work here. Again, they are standard dimensions that are generally recognized by our municipalities on Long Island. They are also recognized by the Institute of Transportation Engineers handbook, and we believe that it will work on the subject site. The subject site currently does not have defined parking. And as mentioned, does not have landscaping. The granting of this application would provide for that landscaping and also create a more defined use of the parking area within the subject site. We believe that would be an improvement to the aesthetics of the site and also the operation therein.

So there are driveways on both roadways. We know that this is a busy intersection. And we believe that the approval

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of this application will help clean up the site and improve the circulation patterns therein. If there are any questions by the Board, I know that you have a copy of my report, but I would be happy to try to answer them, if I could.

CHAIRMAN MAMMINA: Any questions for Mr. Mulryan?

VICE CHAIRMAN FRANCIS: No.

MR. MULRYAN: Thank you very much.

CHAIRMAN MAMMINA: Thank you.

MR. MULRYAN: It was a pleasure.

CHAIRMAN MAMMINA: Anything else, Ms. Farrell?

MR. FARRELL: I just wanted to say we are done for this part of the presentation. We just reserve time to respond to any comments.

CHAIRMAN MAMMINA: Terrific. Thank you. I think that at this point before we get to the public part of it, we will invite Mr. Norjen to come up and he will put himself onto the record. He is from our Building Department.

MR. NORJEN: Glenn Norjen, Deputy Commissioner of the Building Department. I would like to first start by saying when this application was filed, it was filed as an auto body repair, to maintain that. The first time that I ever heard about this body wrapping and stuff was after it was filed with the Board of Zoning Appeals and they told me that they are making the argument that it's not an auto body repair, that it's a detailing auto body, vinyl wrap, ceramic. I visited the

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2 site. I will put in a picture of the site that says Collision
3 Repair Auto Repair, 24-Hour Towing. I will put this in for the
4 record.

5 SECRETARY WAGNER: This will be Building Exhibit 1.

6 MR. NORJEN: The next thing that I would like to put
7 into the record is a copy of the floor plans that was provided.
8 It says right on here, installation of paint-spray booth as the
9 scope of the work. And for something that doesn't include
10 paint or anything else, it shows a mixing room. So my question
11 is, why does it show a mixing room if you are not mixing
12 anything? Wouldn't that be an added expense to have installed
13 if you weren't going to use it? I would like to -- I have
14 circled in red where it shows that there is a mixing room
15 included.

16 MR. PERROTTA: Building Department Exhibit 2.

17 MR. NORJEN: Now, I would like to get into -- I have a
18 copy of the Certificate of Occupancy that I would like to put
19 into the record from 1949 as an automobile service station. I
20 want to put on the record that when I first issued my Notice of
21 Disapproval, I mistakenly called it a repair facility, a
22 vehicle repair facility, but I did correct it. I did issue a
23 new Notice of Disapproval that correctly stated that it was an
24 automobile service station.

25 MR. PERROTTA: Building Exhibit 3.

26 MR. NORJEN: And then I would like to go through

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2 definitions of historic codes. 1947 zoning code that's before
3 this building was built as an auto service station, it defined.
4 And it was already put on the record, the definition, so I'm
5 not going to repeat that. But the history of the zoning code
6 was in 1949 -- and this is where there is no definition of auto
7 body repair in the Town Code. In 1949, the Town Board
8 separated automobile body and fender repair and painting as a
9 conditional use. Before that, the automotive service station,
10 gasoline service station was a permitted use and still was in
11 1949, a permitted use in the BB-Zoning District. In 1949, they
12 separated out the whole auto body repair. Now, they never put
13 a definition of that, but it's clear what an automotive body
14 and fender repair and painting, and it says it right in the
15 title.

16 In 1959, all auto body, all auto service, all gasoline
17 service stations were removed from the BB-Zoning District. So
18 once they removed that, the only place -- it wasn't permitted
19 in any zoning district in the Town, but it wasn't prohibited in
20 the IB-Zoning District, which means that you can still do it in
21 the IB-Zoning District, but in no other district, no automotive
22 repair, no gasoline service stations, no paint, and body shops,
23 fender could be in any Business District as of 1959.

24 They are now saying that it's going to be a detailing
25 shop where they do body wraps and ceramics. That, still isn't
26 a permitted use in the B-Zoning District. They are limited to

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2 what the definition of automotive service station is:
3 Dispensing gasoline and doing minor repairs to vehicles.

4 Now, the whole reason why back in the day, these were
5 allowed in residential areas in the BB-Zoning District -- and
6 the BB-Zoning District is your main village. Okay. Manhasset
7 isn't a village, but it's the main street of Manhasset,
8 Plandome Road. The reason why they have very narrow, 100-foot
9 deep lots surrounded by residential, your BA-Zoning Districts
10 were your major thoroughfares, Jericho Turnpike, Hillside
11 Avenue, Northern Boulevard, but these were put into
12 neighborhoods, gasoline service stations, back in the day
13 because this is where you brought your car when you needed an
14 inspection, when you needed brakes, tune-up, and things like
15 that. You weren't having vehicles damaged in accidents being
16 towed to those sites, those were brought to automotive body
17 shops, which were in your industrial sections of the Town.
18 They said something was stated that they sometimes have damaged
19 vehicles dropped up; that's a violation of the code. You can't
20 have vehicles that are going to be serviced someplace else
21 dropped off at a automotive service station. This property has
22 had issues in the past. And although it has been used as an
23 automotive body repair shop facility, whatever you want to call
24 it, fender and body paint, it was never approved for that. And
25 any questions about the whole history of it?

26 MEMBER DONATELLI: I do have a question, then. So

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according to the code, this would be a permitted use in Industrial-B?

MR. NORJEN: This would be a permitted use in Industrial-B Zoning District.

MEMBER DONATELLI: It is not a permitted use under Business-B.

MR. NORJEN: No. All the other districts, as far as Industrial, actually list the permitted uses. And if you look at the Business-B Zoning District, this isn't a permitted use so.

MEMBER DONATELLI: If this would be, therefore, since the applicant has requested for either a variance or as an alternative for a change in use, this would, therefore, in your opinion, be appropriate as a change in use for an Industrial-B use in a Business-B District? I'm sorry.

MR. NORJEN: I don't --

MEMBER DONATELLI: Withdrawn.

MR. NORJEN: I am here to state the fact to challenge the determination. I leave whether it should be done up to the learned Board.

MEMBER DONATELLI: My point is, this would be a use variance?

MR. NORJEN: Yes, this would be a use variance because it's not a listed permitted use. And as per the Town Code, they can keep using this as an automotive service station from

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2 now until the end of time. Because as soon as the code changed
3 in 1959, this became a pre-existing non-conforming use. And as
4 per the Town Code, any pre-existing non-conforming use can keep
5 being used, but you can't change it. There was a request for a
6 copy of the court appearance summons that was issued by the
7 Building Department, I have it here. It includes photos that
8 were taken at the time that shows the whole parking lot filled
9 with vehicles that a few of them are damaged. It shows a
10 picture of the business certificate that actually lists Family
11 Auto at 14 Carey Place. This business certificate was posted
12 at this site. So like I said, there is pictures of that.

13 Another reason why paint shops are not permitted in the
14 BB/BA is also an aesthetic reason. This is what started the
15 whole process of the Building Department becoming aware. We
16 got complaints that all of a sudden, these huge ducts appeared
17 on the roof. So I would like to put the appearance ticket as
18 Building and the photo.

19 SECRETARY WAGNER: This is Building 4 and the photo
20 will be 5.

21 MR. NORJEN: And the whole aesthetics of not having
22 damaged vehicles parked, there is a big difference between a
23 car that is driven to the site or even towed to the site that
24 has just that it stopped working compared to having damaged
25 vehicles on the site. There has been a couple of delays in
26 this Hearing. The day before the first Hearing was supposed to

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2 be scheduled, I visited the site, and that's when I took the
3 picture, but there was also three vehicles on the site that had
4 body damage. There were vehicles parked behind the building in
5 violation of the previous BZA decision, which said that's the
6 landscaped buffer and there were vehicles parked behind the
7 building. Once again, that's about it. Any further questions?

8 CHAIRMAN MAMMINA: Yes. I have a question regarding
9 body wrapping. Would the Building Department consider that to
10 be body work or not?

11 MR. NORJEN: Well, I actually Googled body wrapping and
12 there was a video on YouTube about body wrapping and it showed
13 them removing fenders, door handles. Because it stated when
14 they do the door, they take the handles off because you can't
15 get under the handle and stuff. They were just -- you know,
16 they were doing a Porsche in the video. They took the front
17 fender off. Yes, I would consider this. This isn't
18 automotive, minor automotive repair. This is something that is
19 not permitted and I would put it in the category of auto body
20 work.

21 CHAIRMAN MAMMINA: Any other questions?

22 MEMBER DONATELLI: No.

23 CHAIRMAN MAMMINA: I guess, we will go to our list.
24 And, of course, Mr. Farrell, you can make your comments.

25 MR. FARRELL: I will be very, very quick. So we
26 understand about the damaged vehicles. We understand about the

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issues with the site. A lot of that has been rectified since I became involved with this application. And after that, around the time of that first Hearing date. I did tell my client that that needs to be resolved and that can't happen again. They took steps to -- they are renting parking spaces from the parking district to alleviate some of those issues. They were in contract to purchase a property, but that contract got terminated because of objections from individuals. So they are trying to deal with that issue. They will not have damaged vehicles on the property going forward.

In terms of removing portions -- in terms of this being auto body work because things are taken off the car when you are doing the vinyl wraps, that's just the way to justify the determination that this is an auto body shop. You have to take -- to do a transmission, you, basically, have to take three-quarters of the engine out these days to get to it. Back in the 50s and 60s and 70s when cars were big and made of heavy metal, you could look into the engine and see straight to the ground. Try and do that now. You can't. Everything is packed in so tight that to do even the most minor repair. I have a 2019 Ford Ranger. To change the oil filter on my car, I have to remove an entire plastic panel from under underneath the front quarter panel because that's the only place the engineers could fit it. Am I doing body work because I'm taking this off to change the oil filter? No, it's not auto body work. Auto

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body work, if the code defined it, would have a specific definition. It doesn't. And auto body work means fixing holes, banging out dents, stripping and repainting vehicles, that's auto body work. That's not what is being done here. So I think that's all I have to say on that testimony.

CHAIRMAN MAMMINA: Thank you, Mr. Farrell. We are going to take two minutes.

SECRETARY WAGNER: Five.

CHAIRMAN MAMMINA: Five minutes.

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

PUBLIC COMMENT

SECRETARY WAGNER: I just want to let everybody know that if anybody submitted a letter to the Board, it was sent to them and they have anything that was submitted to the record as well as to the applicant.

Mr. Farrell, there were a few more letters that were submitted this morning that we will forward over to you.

MR. FARRELL: Send it to me and I will prepare a written response.

SECRETARY WAGNER: So if you have comments that were already in your written letters, you can maybe just reference them or you can read them, if you want, but the Board does have those. So the first person to speak -- and I'm sorry.

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Chairman, you wanted to say something?

CHAIRMAN MAMMINA: Yeah. I just wanted to quickly say two things. One, as our very capable secretary, Ms. Wagner, just said, please don't read your letter back into the record again. I mean, we really do have -- every Member here has all of it in their computers and we've got hardcopies that we have looked at. All of that stuff is shared with Mr. Farrell as well as he shares anything with us. So it's really not necessary, but doesn't mean you shouldn't hit your point. Just hit your points. And again, if somebody else has the same points, just say I agree with the person before me, just wanted to get myself on the record.

Last thing is I will remind people that we have a three-minute limit on that. Again, we won't hold you to it, but at the same time, we don't want to have to ask anybody to please sit down. And, you know, the Town Attorney, Ms. Algios, she will remind you when your three minutes is up, you will hear a little alarm go off. So thank you, all.

SECRETARY WAGNER: Doris Murray.

MS. MURRAY: I just want to switch positions with Pasquale, if I could do that.

SECRETARY WAGNER: Okay. You are Pasquale Madina?

MS. MURRAY: Thank you.

CHAIRMAN MAMMINA: And name and address, please. Thank you.

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2 MR. MADINA: My name is Pasquale Madina.

3 SECRETARY WAGNER: Just speak up.

4 THE REPORTER: Yes. And could I just have everyone
5 spell their names, as well.

6 CHAIRMAN MAMMINA: Yes.

7 THE REPORTER: Spell your name.

8 MR. MADINA: P-A-S-Q-U-A-L-E M-A-D-I-N-A. I would like
9 to present this please. I'm sorry. I don't have a copy for
10 everybody.

11 SECRETARY WAGNER: You want us to keep this?

12 MR. MADINA: Yes, you can keep this.

13 MR. PERROTTA: Opposition Exhibit 1.

14 CHAIRMAN MAMMINA: May I ask a question. Does this
15 represent exclusively you or are there other people that --

16 MR. MADINA: This is the research that I have done.

17 CHAIRMAN MAMMINA: Thank you.

18 MR. MADINA: Okay. Again, my name is Pasquale Madina.

19 I am a certified master technician and I have 40-year-plus
20 experience in the automobile business. I have been living in
21 Manhasset for over 50 years. I live at the property right next
22 to 55 Bayview on the north side. I have been there for over 30
23 years. I am here today to say that I'm strongly opposed on
24 this approval on this body shop or whatever they are going to
25 call it next to my house. I have researched the matter and I
26 will read it. I have researched the matter and the spray booth

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2 and gotten an expert from within my network, that's the main
3 people that I work with for many years. There is no basis or
4 explanation that a spray booth is needed for the following
5 wrapping or coating. Even in my work, when we do it, we have a
6 nice place, clean area that we apply the ceramic coating. The
7 spray booth is meant for one thing only, and it's only meant to
8 spray paint. That's all it's meant for. There is nothing that
9 says the ceramic coating or the wrapping needs to have this
10 extensive spray booth with a humongous fence coming out of the
11 top. All you need is a nice clean place with plenty of lights
12 and that's all you need. Because this stuff does not to be
13 ventilated. It has to be temperature-controlled, yes, but it
14 does not need ventilation, it needs a nice clean place.

15 Also, the person mentioned a mixing room. I'm sorry if
16 I said it again, but I want to explain to you what a mixing
17 room is. A mixing room is a place where it's an enclosed room
18 where you go in there and you prepare the paint that you are
19 going to apply on the car, paint, primer, whatever you do on
20 the car. Now, this mixing room needs ventilation. Ventilation
21 has to be on 24 hours a day. It cannot be turned off because
22 there is a lot of fumes coming out of there and it can
23 potentially pose a fire hazard because of the fumes and the
24 paint material. Fumes from the mixing room and the spray-paint
25 booth are pulled out and polluting the area in the backyards of
26 where we live at. Personally, I myself, I'm blessed to have

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2 three grandkids that come to my house very often, and we use
3 the backyards constantly. That's where we spend most of our
4 time playing and spending time.

5 CHAIRMAN MAMMINA: That's the three minutes, so just
6 wrap it up, please. That's okay.

7 MR. MADINA: I'm sorry. I apologize. I just want to
8 get my point through. So I have a vegetable garden in the
9 back. The exhausting fumes are toxic. The fumes are toxic and
10 a danger in the neighborhood. Furthermore, I think these fumes
11 are highly flammable. And to have it next to the neighborhood
12 like we have, it's not adequate, I think. I implore you,
13 please not allow this body shop to come next to my house or
14 anybody in the neighborhood.

15 CHAIRMAN MAMMINA: Thank you.

16 MR. MADINA: Thank you.

17 MEMBER DONATELLI: May I ask you a very quick question?
18 Can you hear the fans from your yard?

19 MR. MADINA: I have not, but I do know that being in
20 the business, I have been next to this fence and they do create
21 very, very loud noises. Not only because of the vents, but
22 because of the echoing. Like the vents here.

23 MEMBER DONATELLI: The ducts.

24 MR. MADINA: The ducts, they vibrate the fence. I
25 would say it's hardly double the size of this bench here. They
26 turn all the time and they do make noises.

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2 MEMBER DONATELLI: Thank you.

3 SECRETARY WAGNER: Christina Robino.

4 MS. ROBINO: I'm going to pass my time to Mr. Tiffany.
5 He has to leave.

6 SECRETARY WAGNER: You are going to give up your time
7 all the together?

8 MS. RUBINO: No, I am going to pass or switch. Sorry.

9 SECRETARY WAGNER: What is your name, sir?

10 MR. TIFFANY: Michael Tiffany.

11 CHAIRMAN MAMMINA: And your address.

12 MR. TIFFANY: 31 Bayview Terrace next to the site. So
13 thanks for hearing from us and the community who are most
14 directed by this. Two factual issues I want to address right
15 off the bat. One is auto body work has been done on this
16 premise, despite what Counsel said. One, I have seen it
17 personally myself and you will hear from fellow neighbors who
18 have actually seen people working on cars. Second of all, do
19 you know what the worst part of living next to an auto body
20 shop is when they are doing auto body work? It's not the sound
21 in the garage, it's the wrecks out front. It's the wrecks
22 waiting for appraisers, that's the worst part. And Counsel
23 admitted here today that that's what they do. They have had
24 wrecks there and they have had appraisers onsite. They do the
25 worst part of auto body work and they are admitting it.

26 Second of all, they downplayed the new business they

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2 are trying to do. This is a chemical application. They
3 describe it as nanotechnology where they are applying
4 industrial chemicals to cars so they withstand weather, the
5 heat of the sun. These are strong chemicals. And they also
6 say in their case that they are using, using the exhaust
7 system, they say, to remove the humidity, but, obviously, they
8 can't remove air, just humidity. They are going to take
9 whatever the particles that they are applying in this chemical
10 application, and that is going out into the community. That is
11 going near my house. My younger son has asthma. My kids walk
12 to school every day. That area, which none of their papers
13 cite, is a thoroughfare for students walking to school right
14 down the block. They have to walk by it every day. There are
15 cars lined up along Linden Avenue when they are picking up
16 their kids. They submitted a full traffic report and didn't
17 mention anything about the schools. Nothing. So that's the
18 factual points that I want to make.

19 I want to address one legal point. I forgot to
20 mention, I'm a lawyer, as well, if I didn't mention it. They
21 reference Section 70-138. In that section, despite saying, oh,
22 nothing is clear, nothing is clear, I'm allowed to do whatever
23 I want. That section is crystal-clear in stating that unless
24 the business is listed below, it's excluded. It's excluded.
25 It couldn't be clearer. What they are asking you guys and this
26 Board to do is say, well, that includes a chemical application,

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2 but there is no reference to a chemical application in those
3 enumerated businesses that are allowed. Nothing. What you do
4 have there in the code is a business can open up where there is
5 smoking inside within 500 feet of a residential area. So in
6 their skew view of the code, you are allowed to open up an
7 industrial chemical application business using exhaust systems
8 that goes out into the community, but that same code you can't
9 open up a bar where people smoke inside. It is absurd and you
10 really have to stretch the language of the statute to have it
11 make any sense. It just makes no sense. So those are the
12 legal issues.

13 And I know I'm running out of time, but let me just
14 address, you know, because the burden is on them and they have
15 come up with virtually nothing. First, in pointed questions
16 from Mr. Donatelli about whether there is other uses for the
17 property that would be profitable or efficient, they ducked
18 that question. They provided nothing in their application that
19 state or analyzed businesses in Town to see whether it could be
20 a profitable location. They had the burden to establish it.
21 They submitted a report with just conclusions, just
22 conclusions.

23 CHAIRMAN MAMMINA: With all due respect, Mr. Tiffany,
24 you have to try to get it to a conclusion. Thank you so much.
25 We appreciate it.

26 MR. TIFFANY: Okay. I will wrap it right this second.

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Last point, the Mulryan report. Again, just conclusory. It doesn't discuss any details about trucks going in and out to support this new business. It doesn't discuss the fact that students run by every day on the track team. There is a bus stop on the corner. They ignored all of that. And by ignoring it, they made it on the surface level, a nicer application. It all just conclusory and it should be rejected by this panel.

CHAIRMAN MAMMINA: Thank you so much. We appreciate it.

SECRETARY WAGNER: Maria Gerber.

AUDIENCE MEMBER: She left.

SECRETARY WAGNER: Pat Sandra?

MS. SANDRA: I'm here, but I'm not speaking.

SECRETARY WAGNER: Renee Rowe.

CHAIRMAN MAMMINA: If we could try to go in order. It's not mandatory.

AUDIENCE MEMBER: Some people have to leave because they had to go to work.

SECRETARY WAGNER: Tim Stephenson is next. Kevin Snup (phonetic).

MS. ROWE: I didn't want to not speak.

SECRETARY WAGNER: Okay.

MS. ROWE: I live across the street.

SECRETARY WAGNER: Then come on up.

MS. ROWE: I just want to hand these to you.

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2 SECRETARY WAGNER: Are they labeled.

3 MS. ROWE: I put the appeal number.

4 SECRETARY WAGNER: You might want to move the
5 microphone down.

6 MEMBER GOODSELL: Start with your name and address so
7 we know where you are.

8 MR. PERROTTA: This will be Opposition Exhibit 2.

9 MS. ROWE: Okay. My name is Renee Rowe, R-O-W-E. I
10 live at 8 Bayview Terrace, which is right over Schmitt's
11 fence.

12 SECRETARY WAGNER: And you are submitting an exhibit.

13 MS. ROWE: I am submitting an exhibit. The very first
14 thing I put ABC.

15 SECRETARY WAGNER: Exhibit ABC.

16 MEMBER DONATELLI: This says Opposition Exhibit 2, so
17 you want to change that.

18 SECRETARY WAGNER: So this says Exhibit 2.

19 MR. PERROTTA: Just call it 2A, 2B.

20 MEMBER DONATELLI: Please continue.

21 MS. ROWE: So the first picture that you saw is through
22 my kitchen window. When I wash my dishes, suddenly there is a
23 giant vent there. It is huge. It's shaped like this. And
24 according to their own schematic in their application, it has
25 to be 6 feet between the roof and here and then it sticks up.
26 And it's huge. The picture on the left is what it looks like

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2 as the sun goes down and the glare comes right into my window,
3 and that's not even allowed in an Industrial Zone. In Planned
4 Industrial Park District, Section 70--154.H bands glare; no
5 direct or sky-reflected glare so as to be visible from the lot
6 line, and that is what I'm suffering.

7 Now, they talk about their investment and how difficult
8 their investment is. I have been living there for 27 years and
9 I was hoping to retire on the cost of my house. And now I have
10 this eyesore. My yard is minuscule. The schematic that they
11 put in says there is 15 feet to the north and 15 feet to the
12 west, that's me. It's 10 feet, and it is filled with garbage.
13 The bumpers of cars are piled so high that they stick up over
14 my fence, and there is pictures of that. They are not very
15 good because I'm not very good at taking pictures.

16 So I would like to say, for the record, 70-146.3(C): A
17 motor vehicle repair shop shall be designed to minimize adverse
18 aesthetic impacts and recognize local character and shall
19 conform to the following requirements:

20 3) Outside storage of an inoperative or unlicensed
21 motor vehicle or vehicles shall not be allowed. Not more than
22 four customer vehicles may be stored overnight -- not 24, four
23 -- in an outdoor location. A vehicle that is not in working
24 order shall not be stored on such premises for more than 48
25 hours.

26 There is a Mercedes there that's been there for five

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months.

Storage of all auto parts, such as tires -- which I put it my letter -- and materials used or sold on the premises shall be in an enclosed building.

So the alley where they are proposing to put trees, which is 10 feet, not 15 feet, is paved and there is giant cans marked "waste oil" less than 10 feet from my property. The vent on the roof, according to their own schematic -- and you can see that it's 10 feet in their drawing because their graph makes it 10 feet. And the thing on the top, 10 feet. So my son's bedroom window is less than 50 feet from this horrible thing that they are claiming they are not going to use as a paint booth. It sounds like a pretty expensive thing that they put in if they are not going to use it as a paint booth.

I also have an article written by Carl Wilson who writes to inform people who work in paint booths in auto body shops. And he says that everyone should wear ear protection because the vents put out -- I am trying to find it in my notes -- the decibels, put out 80 decibels. 80 decibels. That's like having a neighbor constantly with their leaf blower going. They haven't used it yet, and that's the only thing they said that was true. But I have witnessed them spraying paint on bumpers in their front yard, which is exclusively not allowed in New York. I don't have the code here, but I feel like I don't need it.

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So they only just bought this property. My property's value plummeted because of what they are doing. And I can't tell you how many cars they have all of the time. The Mercedes over there, it had a Connecticut license plate and now it does not, but it's still there. And they park the cars so close together. There is no 17 parking spaces. This is all disingenuous.

ATTORNEY ALGIOS: Ms. Rowe, your time was up a while ago. If you could, just wrap it up.

MS. ROWE: Thank you for your patience.

ATTORNEY ALGIOS: No problem.

CHAIRMAN MAMMINA: Thank you.

SECRETARY WAGNER: Kim Stephenson. Kevin Sam. Rose Marie. Anly Fang. Christine Delisa. (Phonetic)

MS. DELISA: But I'm not speaking.

SECRETARY WAGNER: Wendy Lee Dang (phonetic).

AUDIENCE MEMBER: She left.

SECRETARY WAGNER: Doris Murray.

AUDIENCE MEMBER: She had to leave.

SECRETARY WAGNER: Denotto Giaccone (phonetic).

AUDIENCE MEMBER: She left.

SECRETARY WAGNER: Anita Digangi.

CHAIRMAN MAMMINA: Again, just for information, that record will show that those people were present.

MS. DIGANGI: Good afternoon. My name is Anita

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2 Digangi. I reside at 11 Locust Street, Manhasset. They are
3 not very good neighbors. Locust Street has, last year, become
4 a junk yard. There were vehicles out there that were so
5 totally wrecked some of them didn't even have license plates on
6 them. We had company come over. We could only fit so many in
7 our driveway. The street was utilized by 55 Bayview with all
8 the wrecked vehicles.

9 When the Citibank closed and they finally moved
10 everything out, 55 Bayview came over and utilized the parking
11 lot for their own purposes. My bedroom looks right out onto
12 the parking lot. I go to bed early. The employees are coming
13 out 8:00, 8:30 at night, making noise, loud motors, mufflers,
14 whatever. The car carriers circle around Locust Street and
15 Linden Street and Hillside just to avoid the traffic to drop
16 off cars. I submitted some pictures yesterday to the Board of
17 one of the carriers sitting in front of Locust Street waiting
18 to drop off a car over there.

19 Now, the chain that is on the parking lot of Citibank
20 was put up because of 55 Bayview Avenue. The landlord found
21 out that they were utilizing that parking lot for their
22 business, so he put that up and it's been a pleasure right now.
23 At least, that's quiet over there. Thank you for your time. I
24 appreciate it. And I do oppose this because they are not good
25 neighbors at all. Thank you.

26 CHAIRMAN MAMMINA: Thank you very much.

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2 SECRETARY WAGNER: Sue Ruggiero.

3 MR. PERROTTA: 25 Locust.

4 MS. RUGGIERO: I agree with everything everybody said.

5 CHAIRMAN MAMMINA: Just come up. Put your name and
6 address on.

7 MS. RUGGIERO: My name is Gail Ruggiero and I live on
8 25 Locust Place, which is two houses down from the 55 Bayview
9 Avenue. And I just want to say they are not good neighbors.
10 We are a nice neighborhood. We don't deserve what has been
11 happening here. And we've tried our best to call, get the cars
12 taken away, and all that, but they just keep taking and taking.
13 I just really hope you oppose what they are asking for. And I
14 thank you for your time.

15 MEMBER DONATELLI: Thank you.

16 CHAIRMAN MAMMINA: Sir, your name and address.

17 MR. STEPHENSON: My name is Tim Stephenson. I live at
18 8 Bayview Terrace across the fence from 55 Bayview. The
19 gentleman is trying to lead us to believe that since the auto
20 repair industry has changed so much, that they need this to
21 continue having profitable business, but they purchased this
22 business only five years ago. The auto industry has not
23 changed that much in the last five years to the degree that
24 they would need to add this. They knew what they were
25 purchasing when they bought this property, because this
26 property had already been operating under the same business

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principals for decades. So when they lead you to believe that, they are misleading you. Thank you very much.

CHAIRMAN MAMMINA: Thank you.

SECRETARY WAGNER: Antonio, 39 Locust. Richard Rivero.

MR. RIVERO: Hi. Richard Rivero; 35 Locust Place, Manhasset. I live two homes down from the property. I can only say that I agree with most of what was said by the opposing people here today. In the wintertime, Mr. Madina and myself, we have to plow the snow in front of the property because it's never shoveled. So we go down and do it. Because we know all the kids and all the people in the community who need to cross the road there. It's a very dangerous intersection, especially in the wintertime when the snow is piled up, especially with all the kids crossing street going to school. I wish they were better neighbors. Hopefully, they will improve, and that's all I can say. They have an opportunity. They own the property. It's up to them to maintain it. Thank you very much.

VICE CHAIRMAN FRANCIS: Thank you.

SECRETARY WAGNER: Paul Wise (phonetic). Nia Colaitis.

MS. COLAITIS: Good afternoon. My name is Nia Colaitis. It's been a long afternoon. I live at 41 Bayview Terrace, a block away from the property.

ATTORNEY ALGIOS: Can you just spell your last name?

MS. COLAITIS: Sure. C-O-L-A-I-T-I-S. So my husband

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2 was supposed to be here and I'm going to try and say this as
3 quickly as I can. So he is a PE, a licensed PE. He was in the
4 Navy, that's how he got his license. And I had him look at the
5 schematics for me just to give us an idea of what is going on.
6 He wanted to speak extensively, so you are lucky he is not
7 here. But he wanted to know if whatever is going to come out
8 of this booth, was there an environmental study done to know
9 what the effects of whatever this ceramic or paint or wrapping
10 or whatever it's going to be? Was there an environmental study
11 done on the effects of this? Because, you know, he was in
12 Iraq. They have done studies on all the -- everything that was
13 going on over there. So was there one done here?

14 Vice Chairman Francis, we have been here for five
15 hours. So you, I think, mentioned that you teach a class.

16 VICE CHAIRMAN FRANCIS: Yes.

17 MS. COLAITIS: And in that class, you said that you
18 look at something that wants to be done. And if it makes the
19 world a better place, is it a better place with or without
20 this. So I say in a residential neighborhood that's near the
21 schools and near the kids and is one of the main arteries that
22 comes into our Town, you know, where people are walking every
23 day, I say no. This is not going to be a better place, you
24 know. I live there and it's not an industrial area, it's a
25 residential area. And, you know, I understand that they feel
26 maybe they are not making money, you know, doing the things

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that they are doing, but with all these lawyers and testimonies and paint booths they put in, maybe they could have used that money to do a feasibility study to see how much money they were going to make, instead of not making the money now and thinking about ways to pollute the neighborhood. Thank you very much. And thank you for that. That, was excellent what you said before. Thank you.

SECRETARY WAGNER: That was your husband? Spiro is your husband?

MS. COLAITIS: Yes.

SECRETARY WAGNER: Ryan Kenny. Angela Trombetta.

MR. KENNY: I will pass.

CHAIRMAN MAMMINA: Your address, please, ma'am.

MS. TROMBETTA: Oh, I'm sorry. 217 Thompson Shore Road in Manhasset. I am here to support my neighbors. I have lived in Manhasset for about 50 years. And I feel that the use of this property is inappropriate. It really is an industrial business, an auto body shop, a repair shop. It's no longer really just the repair shop that it was years ago. Steve ran that shop many years ago and did a good job and kept it clean and neat. Nowadays, it really looks like it should be in an industrial area. And since it is where it is, I think the owner cannot really continue to do this kind of work. It's an eyesore and I think it's a terrible position on the community and particularly the homes that are nearby because of what

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2 comes out of the vent that they are using. And I think it will
3 not be a healthy environment for the families that live there
4 and the young children that are being brought up. So that's my
5 take on it. I really like my house the way it is. And I think
6 it should continue to be a place that people can live in
7 comfort and safety. And I think this is not a safe shop in the
8 direction that it's going in. So thank you very much.

9 CHAIRMAN MAMMINA; thank you very much.

10 SECRETARY WAGNER: Kevin Chiano. Marianne Prespritori.
11 David Catlip. (Phonetic) Michael Sweeney.

12 MR. SWEENEY: Hello. Michael Sweeney; 175 Manhasset
13 Avenue. I have been a Manhasset resident for over 30-plus
14 years. I have raised a family of four boys here. And I
15 encourage you to vote strongly against this request. This Town
16 -- well, first off, they shouldn't be rewarded for flaunting
17 the rules and going around the permitting process, that's
18 number one. And number two, this does nothing to contribute
19 and make the community better. It only makes it worse. And I
20 am really very suspect that they put this in for the wrapping
21 and the ceramics when they have a stirring room for paint. So
22 let's call a spade a spade here. This is a bunch of bologna.
23 They made a pivot and they shouldn't be rewarded for it. And I
24 agree with everybody and everything said about environmental
25 concerns and children walking by there, and it shouldn't
26 happen. It just shouldn't happen. So I encourage you to vote

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no. Thank you.

CHAIRMAN MAMMINA: Thank you so much.

SECRETARY WAGNER: The residence of 205 Thompson Shore Road. Just state your name and address, sir.

MR. LEW: My name is Walter Lew, L-E-W. Address 205 Thompson Shore. I, basically, agree with everybody, what was said up on the podium here. I do have a concern about the so-called chemical that is used in the ceramic coating. I would like to see maybe an SDS, safety data sheet, regarding the chemicals and the use of it and how a person would be protected from the chemical use on this, as well. One other concern is that I can't see how the garage could have had a paint booth, spending 80 to \$120,000 spent on it, having an architect look at it, and having a contractor look at it without realizing a permit is required to be installed using this. I can't see how that's possible, with going through all those steps and saying, oops, I forgot about a permit. And that's all I have to say.

CHAIRMAN MAMMINA: Thank you.

SECRETARY WAGNER: Ran Chow at 67 Hillside Avenue (phonetic). Norman Nemec.

MR. NEMEC: Norman Nemec, Architect; 41 Onderdonk Avenue, Manhasset, New York. Chairman David Mammina and the Board of Zoning Appeals, thank you for allowing me to talk. Just two bullets. First has to do with the balance of

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2 adversity to the community versus benefit to the applicant.
3 Section 70-203 of the Town of North Hempstead Code prohibits --
4 I'm sorry -- public, safety, health, and general welfare,
5 Subsection B prohibits the discharge of toxic fumes, odors,
6 dust, and vapors; they are not permitted. In the research I
7 did, the National Library of Medicine has concluded the
8 nano-size airborne ceramic coating particulates are known to
9 reduce lung function, chronic bronchitis, and COPD, which all
10 can lead to cancer. The second point I wanted to make quickly
11 is, I believe if it was approved as a service station in 1948
12 or '49 and now it has transitioned into an automotive repair
13 facility or an automotive body shop facility, I dare say that
14 that's an increase of a non-conforming use. They do not have
15 the 40-foot separation to a Residential District, which is
16 required in Section 70-203 Subsection M of the Town of North
17 Hempstead Code. Therefore, there is the likelihood, in my
18 opinion, that there should be an area variance, as well, that
19 should be required. Thank you, Chairman Mammina and the Board
20 of Appeals.

21 CHAIRMAN MAMMINA: Thank you.

22 SECRETARY WAGNER: Frances Zino.

23 MS. ZINO: Z-I-N-O. Good afternoon, Chairman Mammina
24 and Vice Chairman Francis, Member Goodsell and Donatelli. I
25 reside at 42 Bayview Terrace. I did receive a letter from
26 Mr. Farrell's law firm, even though my neighbor did not. They

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2 were supposed to inform everyone in the 300-foot area. I'm
3 just saying that I find the testimony of Mr. Farrell and
4 Mr. Nelson very disingenuous. Why would you build a
5 paint-spray booth if you weren't going to paint spray vehicles?
6 It's so contradictory that it's unbelievable. The exhaust
7 systems use toxic paint causing a hazardous environments for
8 our residents, as well our school children that pass there
9 daily. Track teams running by. My most fearful concern is
10 that it will set a precedent, hearings of business that has
11 violated codes of having to operate. If this is permitted,
12 then that's it, the wall has been broken. There is no
13 deterrent to poor business management. This has to be stopped.
14 And I am hoping that this Board will exercise its
15 responsibility to preserve our beautiful and really unique
16 neighborhood. Manhasset is very distinct. It's not Great
17 Neck, it's not Port Washington. We are a bedroom community. I
18 cannot tell you -- I'm just going to relate how I feel.

19 My daughter married last year and we had guests who
20 attended the church, Saint Mary's, and they walked down
21 Plandome Road and said this is an absolutely beautiful town.
22 They couldn't believe it. The park. It's a small town. It's
23 been in existence hundreds of years and we want to preserve the
24 aesthetic quality as well as the environment. And please deny
25 this approval of this Appeal so that we can live in a beautiful
26 Manhasset. Thank you.

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CHAIRMAN MAMMINA: Thank you so much.

SECRETARY WAGNER: Karen Wilgone (phonetic). Katherine Gray. Christine Hogan.

MS. HOGAN: Good afternoon. I'm Christine Hogan. I reside at 22 Dewey Street. I didn't come here to speak today, I came to support my neighbors. I already wrote to you. But I sat here listening to lawyers or lawyer and legalese, which I'm very familiar with. I'm not a lawyer. But I can cut through a lot of semantics, and that's what was going on. I don't know code. I don't know the law, but we were splitting hairs about auto body work. Auto body work is cosmetic. We have all either driven a car or watched people driving on the road saying, that poor son of a gun, but the car drives. Anything else is cosmetic. That's auto body work. So I don't care if it's a wrap or if it's -- polyglycoat, do we remember that? That's what this is. I live two blocks away. I grew up in this town. I went to school in this town. My mother taught at Shelter Rock. I moved away. I came back. It's changed considerably. Let's maintain and preserve what we have. I feel for the guy if you bought the wrong business and it's not doing well, but that's not our responsibility to support him. Please vote no. Thank you.

CHAIRMAN MAMMINA: Thank you.

SECRETARY WAGNER: Zhikun Lin.

MR. LIN: Zhikun is spelled Z-H-I-K-U-N. Last name

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Lin, L-I-N. I live at 14 Locust Street. Good afternoon.
Mr. Chairman and Members of the Board. I think there has been
plenty enough said about the business. I will speak more about
that, but I do have two points. The first is that hearing what
the Counsel has said --

SECRETARY WAGNER: Could you just slow down a little
bit so the stenographer can get everything. Thank you. Just
repeat what you said.

MR. LIN: Yeah, of course. Two points I would like to
go through. The first is that the business is already dropping
off cars that are meant for a body shop. They already have a
business advertised in this same address that is labelled as an
auto body shop and they already have a paint-spray booth
installed, which they claim to not be using. As for the
internet, I hate to be dramatic, but that sounds like saying I
have a gun pointed and loaded at you, but I'm not going to use
it. A gun, which coincidentally costs \$10,000.

The second part I would like to say is that I don't
think anyone who is here has come and made an appearance today
is really anti-business, you know. A striving business center
is crucial to the well-being of its local residents. And on
the same strip of the land between Locust, Bayview Avenue, and
Plandome Road, there is four other businesses. There is a hair
salon, there is a Chinese restaurant, dry cleaners, and a
butcher shop. And I would love nothing more for all of them to

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2 keep in business for decades to come. All of them provide
3 crucial contributions to the local community and its
4 well-being. But in this particular case, in this auto repair
5 shop, I do think that it's come to a point where their
6 continuing existence or expansion of their existence have come
7 to be in direct contradictions of the well-being of the local
8 community. And it is crucial for them to have this Appeal
9 passed in order to keep in business. I do not see that as a
10 way to sustainable, for them to keep the investment and grow a
11 profit for years to come. That's all I have to say. Thank you
12 very much.

13 SECRETARY WAGNER: Christina Robino.

14 MS. ROBINO: Hi. Christina Robino. I live at 1
15 Bayview Terrace. Very close to 55 Bayview Avenue. I have
16 lived in Manhasset for 43 years. The first 20 years I lived in
17 South Stratford. I moved to the Bayview area 23 years ago. I
18 have raised my four children here. And I would like to see the
19 Manhasset that I was drawn to 43 years ago stay the way it is.

20 This nightmare was brought to my attention by my
21 distraught neighbor who was talking about vents on top of the
22 roof. And I'm going, what are you talking about? Usually, I
23 leave my house, go down Bayview Avenue, there is traffic, there
24 is lots of cars, children walking. I had no idea what she was
25 talking about until she brought it to my attention. And that
26 brought me to this point where I have never been involved in a

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2 civic thing before and now I know everything about FOIL
3 requests, Town Boards, Town Counsel, more than I want to know
4 ever. The attorneys or someone else that claimed that they
5 bought the property seven years ago, I don't think that's
6 correct. I checked to see if that's correct. They say they
7 bought the property for almost \$2 million. This is not an
8 honest business owner. He has owned a business before in Port
9 Washington. So he knew quite-well what he was buying in to. I
10 would not buy a home I can't afford or improve, if I need to
11 improve it. So his burden shouldn't be our burden.

12 We are very frustrated because we have called 311. I
13 don't want to be Inspector Robino. I want to be a homeowner
14 and enjoy my property. And to say that, you know, there will
15 be a conditional use on this property, that maybe he won't be
16 using the spray booth or we haven't used the spray both, that's
17 not up to us to keep watching to see what they do. I don't
18 want to be in that position, nor do I want to be in the
19 position to call the Building Department or to call 311 or
20 whatever it is.

21 One other thing. While I was doing all of my research
22 for the last six months, this property has been a problem.
23 Under Zelco, it was denied by the Town Board here, by the BZA
24 for commercial parking. That, was nothing compared to what
25 they are asking for. The damaged vehicles brought in and
26 stored there is just unbelievable. So for them to stand here

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and say they are not doing body work, I don't know if they are.
I don't hangout at the property. And I'm not here to police
them or the community is not here to police them. So,
basically, this Board really has all say with what is going on
to go on with this. And thank you very much for listening to
me.

CHAIRMAN MAMMINA: Thank you for coming today and
giving us your opinion.

SECRETARY WAGNER: Alexis Low (phonetic). Is there
anyone else here that wanted to speak that did not sign-in?

MADIA: My name is Rina Madia, M-A-D-I-A. My mom lives
on 52 Hillside Avenue, which is about a 100 meters from the
premises. What everybody has mentioned here, I agree with one
hundred percent. I'm against this establishment being done,
but no one has mentioned about the firehouse. And the
firehouse itself, it can cause -- this type of business can
cause fire hazards. If there is an emergency and there is one
of their cars in the middle, the fire trucks cannot go out. So
it's also safety of the neighborhood. Not just the air, not
just the noise, but the firehouse is also an important aspect.
So before you go ahead and make a decision, please consider all
of our issues and proceed forward. Thank you.

CHAIRMAN MAMMINA: Thank you.

SECRETARY WAGNER: I think that's it. Is there anybody
else?

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CHAIRMAN MAMMINA: Okay. Mr. Farrell.

MR. FARRELL: I will try and keep it quick. I took some notes while some of the residents were talking. I think first and foremost, I think we acknowledged that the business was not running optimally for a long time, including prior ownership and continued with my client's ownership. What I will say is that since I have become involved with the application, my client has made an assertive effort to clean the site and remove a lot of those issues. They have leased space in other places in Manhasset to park vehicles so that they are not overflowing and overriding the site.

My client does have a long-term vision for this site, which includes significant improvements to the aesthetics of the property. As part of this application, we are proposing, you know, 3,000 square feet of landscaping and a buffer zone surrounding the buildings. You know, they are trying to make this better. I think Mr. Norjen, in his testimony, though I disagreed with most of it, I think the one salient point he made is that the motor vehicle repair shop is there to stay. It's a pre-existing non-conforming use and that business can continue ad infinitum as long as my client continues to run it as such. I can't convince people to believe me when I say that we do not do body work at the site. All I can tell you is the proof is in the pudding. Not one person that testified saw them doing actually body work at the site. Town inspectors

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2 have been there. And the Town inspectors have been to the site
3 and they have concluded that the spray booth was never turned
4 on. None of the neighbors have ever turned on the fan. All of
5 the stuff that I have told the Board has been true. Again,
6 it's not perfect. But at the end of the day, we are here to
7 consider -- to narrow the issue down, to consider whether or
8 not the presence alone of a spray booth constitutes or makes
9 this an auto body repair use, and I don't think that that's the
10 case. You know, Mr. Norjen testified about the original
11 submission. I would counter with and I think I disclosed with
12 the Board that we were not very happy with the prior architect.
13 And the prior architect put things on his plans and made things
14 part of his submission that were just not accurate to the
15 client's business. The client has steadfastly maintained that
16 they don't do body work there. Town officials have inspected,
17 the fire marshal has inspected. Body work is not being done at
18 the property. As far as the use, it's going to stay a motor
19 vehicle repair shop. This particular part of the business will
20 enhance the business and make it better again. It doesn't make
21 it an auto body use. It is what it is.

22 ATTORNEY ALGIOS: Mr. Farrell, can I just clarify one
23 thing. So you said the prior architect submitted things on the
24 plans that were not correct?

25 MR. FARRELL: Yes.

26 ATTORNEY ALGIOS: So the mixing room that has been

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referenced --

MR. FARRELL: There is a mixing room there, that's part of the spray booth. It's not separate. It's part of the overall piece of the spray booth. Again, they are not mixing paint. And I have said we will agree to conditions that allow the Town to inspect during regular business hours and non-business hours, if you want to give us notice and we can have somebody there. We would agree to a short-term approval so that this Board can renew it next year and say, okay, they cleaned up, they have done what they said they were going to do or we haven't. If we haven't, then you don't renew the approval.

ATTORNEY ALGIOS: Maybe it would be helpful if someone explains what goes on in the mixing room?

MR. FARRELL: Nothing goes on in the mixing room, but I will have my client testify.

CHAIRMAN MAMMINA: May I just say something? We know each other a long, long time.

MR. FARRELL: Yes, of course.

CHAIRMAN MAMMINA: And we have both stood on that side of the podium.

MR. FARRELL: And I have been on the opposite side of table when you presented applications.

CHAIRMAN MAMMINA: The drawing does say on it "proposed mixing room manufacturer," la-la-la-la. And it shows proposed

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exhaust duct, but the mixing room -- look, I don't know every detail of a mixing room and I'm sure you don't, either and/or an exhaust hood. But it does show it as a whole different component of that. And I will apologize. I really don't like to do that, but there are photos that were submitted, you know, of cars that were, obviously, in the process of having body work and taken apart and cars that --

MR. FARRELL: There were photos of damaged cars. There weren't photos of people actually doing body work.

CHAIRMAN MAMMINA: There were damaged cars outside. There were cars with no plates on them.

MR. FARRELL: Again, I come here open-handed. I acknowledged that, that that is an issue and that I have told my client that that cannot continue.

CHAIRMAN MAMMINA: And you have. I agree with you.

MEMBER GOODSSELL: But you did say you are submitting to us a new diagram of this landscaping and architecture? Because it's not part of our plans here.

MR. FARRELL: No. That's the long-term plan. Right now, we are dealing with this particular aspect of the application. In terms of renovating the building and everything else, we are trying to turn more profit, obviously, so we can do that.

MEMBER GOODSSELL: Are you submitting to us a floor plan that shows us what's inside the building now?

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MR. FARRELL: I thought you had a floor plan.

MEMBER GOODSSELL: Including the location of the paint booth. I mean, we have a proposed paint mix room.

MR. FARRELL: Again, I can only apologize so much for the poor plans. If the Board wants something more detailed, we can certainly work to get that done.

CHAIRMAN MAMMINA: I would assume that there are lifts that are in here. There may be other equipment in that. It's shown just as an open space, and I get that in terms of this other architect because all he was filing for was for the spray booth. So he didn't show.

MR. FARRELL: We can certainly submit a more detailed plan. That's certainly not an issue.

VICE CHAIRMAN FRANCIS: Mr. Farrell, since we are on the subject of submitting new pieces of evidence, I would like to see some evidence that the current operation is not profitable, and I would like to see that in the form of a CPA's profit and loss statement for this business as it's operating right now.

MR. FARRELL: Okay. Just to be clear, a reasonable rate of return does not necessarily mean gain or profit under the law when you are discussing a use variance.

MEMBER GOODSSELL: Really?

MR. FARRELL: Yes. I am not on the Court of Appeals.

MEMBER GOODSSELL: In my opinion, a reasonable rate of

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return used to be 10 percent. I remember when we all had CDs at 10 percent. A reasonable rate of return five years ago might have been 2 and a half percent.

MR. FARRELL: Ms. Goodsell, if it were that simple, I wouldn't have to stand up here and present it. It's a very complicated area of the law when you deal with use variances. They are not commonly granted. Again, I don't think I need a use variance. My contention is that we are not doing auto body work within the traditional definition of the code or within the traditional definition of how it's used. You can't say all cosmetic work is auto body work. Because that means if I'm waxing my car in my driveway, the Town can come and issue me a summons for doing auto body work in my front yard in a residential. But if you want to take it to the most absurd, but I don't agree with the argument that all cosmetic work is body work, it's just not true.

VICE CHAIRMAN FRANCIS: Well, I think the distinction is if you are removing car parts to do whatever it is you are doing to the car, then, I think, you are coming close to auto body work.

MR. FARRELL: I would counter that with if you are doing a basic engine repair nowadays, you have to take out substantial parts of the car to get to -- you want to replace a fan belt, you have to take out half the engine to get to the fan belt because it's buried and it's packed into the front of

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2 the car. So simply taking things off a car, I think you are
3 running a risk of saying that anybody that does minor vehicle
4 repair is doing auto body work if they are taking parts off of
5 a car.

6 In terms of Mr. Nemec testified about the fumes. I
7 mean, I'm sure for his medical report, I could probably find 20
8 or 30 other medical reports on Google that say that there are
9 no harmful effects. My client has done this application, has
10 become certified to do this application. And she told me that
11 this ceramic coating that they use doesn't emit any odors.
12 There is no odors from it. So if that's the case, then I don't
13 understand how the fumes are harmful to the community because
14 there are no fumes. Again, the fans are going to run on the
15 spray booth when it's time to clean out the room to do the
16 treatment. I don't envision this. Again, I'm not an expert.
17 I don't envision they will have to be running all-day long
18 because the treatment themselves, you know, hours on end. So I
19 don't think it's going to be a situation where it's constantly
20 running all day long.

21 CHAIRMAN MAMMINA: Are the fans required in order to do
22 these wraps? I think I did hear her say something about it
23 drying faster or something like that, but I don't want to
24 characterize the how.

25 MR. FARRELL: So what I would say is that the fans are
26 necessary to clean out the air. So there is an exhaust that

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2 takes the debris and the humidity and removes it from the air
3 and discharges it, okay. That, allows them to do the work that
4 they need to do with the wraps and the ceramic coating.

5 CHAIRMAN MAMMINA: I don't want to interrupt. I do
6 have a question for Mr. Nelson that is completely innocent.
7 And only because I have seen this forever and I don't
8 understand how the county assessor develops a value of a piece
9 of property.

10 MR. FARRELL: I will have Mr. Nelson come up. I just
11 want to make sure that I covered everything. We heard some
12 people complaining about the glare. There are things that we
13 can do to address the glare from the ductwork. We understand
14 that. My client has been hesitant to do anything with it
15 because of this Board's approval and everything else. So if
16 the Board were to grant the approval and were to impose a
17 condition that we, you know, paint it or do something to it to
18 reduce the glare, we will certainly do that. That's not an
19 issue. Mr. Nelson.

20 VICE CHAIRMAN FRANCIS: Before Mr. Nelson comes up, I
21 want to go back to my question about profitability. Because
22 one of the reasons why you're saying your client is doing this
23 is because she needs to be more profitable. Whether it's the
24 law or not or it has anything to do with a use variance, I want
25 to see what she is making now, and I want them in the form of a
26 CPA's document.

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2 MR. FARRELL: Sure.

3 VICE CHAIRMAN FRANCIS: Okay.

4 MEMBER DONATELLI: And I would also renew my requests
5 to see specifications from the manufacturer so that we can
6 understand exactly the filtration system and any potential
7 negative environmental effects that might result.

8 MR. FARRELL: Sure. Absolutely. That's on our list of
9 things to provide. Does the Board have any other questions? I
10 think I have a lot of work to do.

11 CHAIRMAN MAMMINA: One other brief question, I think,
12 so if you want to come on up, Barry.

13 MR. NELSON: Yes, sir.

14 VICE CHAIRMAN FRANCIS: Like the Chairman, I am
15 constantly Googling things and trying to understand
16 applications a little bit better. And I Googled Property Shark
17 and Property Shark has 55 Bayview Avenue as having a current
18 tax assessment market value of \$650,000.

19 MR. NELSON: Correct.

20 VICE CHAIRMAN FRANCIS: Which makes no sense to me at
21 all, either one of us. If she purchased the property for \$2
22 million, I mean that's way off in terms of property assessment
23 value.

24 MR. NELSON: It's a level of equalization. It's a
25 number that they came up with for commercial.

26 VICE CHAIRMAN FRANCIS: They just pull it out of the

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sky?

MR. NELSON: No, they don't do that. It was assessed many years ago and the value has not been increased, but it's a level of a set value.

MR. FARRELL: Essentially, that's what it is. If you build a new building, it will get assessed at a much higher value than this. Because it's an older building, it maintains a lower value. But really what you have to look at is the tax rate and that determines how much you are being taxed. So the assessor looks at all of the values that they have on their books and then they come up with the rates to determine what the property taxes are. So an assessed value really is not related to a property value, so to speak. It really just deals with how you assess the property.

MR. NELSON: You will find the same thing with residential houses.

MR. FARRELL: There are tax attorneys that have been doing it for years and still can't explain it.

VICE CHAIRMAN FRANCIS: It just jumped out at me. Very bizarre.

MR. NELSON: If you take the same building across the street, I think it's 66 Bayview. Look at theirs as a bank and that originally sold a couple years ago -- not originally, but a couple years ago for over \$3 million.

CHAIRMAN MAMMINA: Thank you, all. We appreciate it.

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VICE CHAIRMAN FRANCIS: Thank you.

SECRETARY WAGNER: We will continue this.

CHAIRMAN MAMMINA: We will continue this.

SECRETARY WAGNER: So what that means is that if the Board has requested the applicant to submit additional information, which is part of the record for the Appeal and is available to the public to review, then the record is still open for any additional comments based on the submission of that material and until the Board closes the record.

ATTORNEY ALGIOS: And just so you are aware also, the planning department will not be sending out any additional information that comes in. They are not going to be sending that out. So you should be contacting the planning department to see if anything additional came in.

(Continued on the next page.)

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CHAIRMAN MAMMINA: So we will not be making a decision on this today. And we would certainly like to thank everyone for coming. And you can always reach out to Virginia in the office and she can give you an update of where we are. As I'm sure you can appreciate, we have a whole lot of homework to do in putting this all together in our balancing test. These are legal proceedings and we treat them, you know, as such. So I do thank everyone for coming down today and spending a good part of the day. We are not done yet, but I'm sure everyone else would head on out. So thank you to the applicant and thank you to the opposition. And we do appreciate it.

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

1 Appeal #21445

2 SECRETARY WAGNER: Next Appeal is Appeal #21445 H&W
3 Homes, Inc.; 52 Main St., Port Washington, Section 5, Block 98,
4 Lot 218; Zoned Business-A.

5 Variance from 130(A) to construct a new building
6 fa ade that would be higher than permitted.

7 CHAIRMAN MAMMINA: You heard Appeal # 21445 - H&W
8 Homes. Is there anyone in the room interested in the
9 application other than the applicant? Please give your name
10 and address.

11 MR. CUNNINGHAM: Sure. My name is Sean Cunningham. I
12 reside at 9 Gaul Road, Setauket, New York 11733. I am the
13 engineer of record and applicant for this Hearing number.

14 So, basically, as you know, we are here because of
15 Ordinance 70-130(A) with a new building to exceed three stories
16 or 40 feet in height. The building is 52 Main Street located
17 on the corner of Main and South Bayles. It's an existing
18 four-story structure that has a height of 49 feet right now.

19 MEMBER GOODSSELL: I'm sorry. Has a height of?

20 MR. CUNNINGHAM: 49 feet.

21 MEMBER GOODSSELL: 49 feet?

22 MR. CUNNINGHAM: 49 feet. And right now, I can show
23 you a little elevation of it right now. This is what it looks
24 like right now. Again, it's 49 feet and has some arched
25 parapet walls. Do you want me to pass it around?

26 CHAIRMAN MAMMINA: No, that's okay. We have it.

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MR. CUNNINGHAM: The issue with this building, it developed a crack above the fourth floor windows requiring the parapet wall to be removed and rebuilt.

MEMBER GOODSELL: Oh, you submitted a photo, that's quite a crack.

MR. CUNNINGHAM: Yeah. So after several discussions with the owner, contractors, we decided to just go with a simple -- well, before I put this up. One of the issues we found with the existing parapet wall is on these lower portions, they are only 30 inches above the roof. So they don't meet current code. So we decided to go with a simpler parapet wall design, just straight, but it is 42 inches above the roof line. And by doing so, we actually are reducing the height from 49 feet down to 47 feet. And also, we are going to make sure the brick matches existing, as well, so it blends in.

And I also walked around the neighborhood and I found some similar buildings, which could be Exhibits 1, 2, and 3, I guess. One is the building next door, which is 60 Main Street. The second is 55 Main Street and it has a similar parapet wall construction and we figured it should blend in with the surrounding buildings. That's about it.

CHAIRMAN MAMMINA: The only comments, you know, that I have -- because I understand the need for the replacement of the parapet and you are, probably, going to be doing lintels and some other pointing and things that don't have anything to

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2 do with the Board -- is you don't need the 42 inches. You
3 don't need any kind of net protection, unless you are within 10
4 feet coming up as a saddle or something in there, that's just
5 dollars and cents and that's just building code, as far as I
6 understand it. I do think it's a shame to lose that aesthetic
7 on the top of the building, that kind of hurts my heart. But,
8 I guess, I do understand, you know, at the same time, the
9 economics. And if we were an architecture review board in the
10 village or something, I would say to you, you have to do
11 something with the top of that.

12 MEMBER GOODSSELL: And I sympathize. I owned a building
13 in New Hyde Park for 23 years and they had kind of a saw-tooth
14 top. And I came in one day and one of the saw-tooth was
15 missing. And we went up on the roof and it had literally
16 collapsed onto the roof. So, yes, the contractor that I hired
17 said we have to cut it straight off, put an iron cap on it, and
18 nothing will fall down. But, yes, as the Chairman said, this
19 is charming and it's a shame, but, obviously, it's just not
20 sustainable.

21 MEMBER DONATELLI: On the other hand, I would point out
22 that the height is actually being reduced by 2 feet so that we
23 are taking something that is pre-existing non-conforming and
24 making it absolutely more conforming or at least reducing the
25 nonconformity. We are not a architecture review board, but I
26 am very familiar with the building. It is actually just down

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the street from my office building, so I know it quite-well.
Now, would you be getting rid of the standard name up top on
the building?

MR. CUNNINGHAM: That was the plan. I'm not sure if
it's salvageable.

CHAIRMAN MAMMINA: Maybe that can be taken out.

MR. CUNNINGHAM: I can ask the owner if it's
salvageable.

MEMBER DONATELLI: It adds some character.

CHAIRMAN MAMMINA: We can't impose that.

MR. CUNNINGHAM: I did bring it up to the owner, you
know. If it was still in good condition, I think he was
considering putting it back in.

MEMBER DONATELLI: Again, as the Chairman said, I don't
think we can make a condition of this, but that adds to the
charm of Port Washington. There are certain buildings that are
kind of part of the historical thing in Port Washington. Being
a historical community, I think that would mean a lot for the
community.

MR. CUNNINGHAM: Sure.

MEMBER DONATELLI: I don't really have any other
comments. Does anyone else have any questions?

CHAIRMAN MAMMINA: It's just safety.

MEMBER GOODSSELL: It is safety. And as much as I do
love the current facade, I'm looking at the crack going, that's

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gotta to be dealt with. And unfortunately, we are not a design board so that will work.

MEMBER DONATELLI: Would you be willing to have a conversation with the applicant as to whether or not they would be willing to amend the plans to include the standard's name on top of the building?

MR. CUNNINGHAM: Yes, I can do that.

CHAIRMAN MAMMINA: And if you could, just add it to that drawing, send it back to Virginia, and I'm sure at our next meeting, we would make a decision.

MEMBER DONATELLI: However, related to that -- and we see this photograph and we see the crack -- is this in danger of imminent collapse?

MR. CUNNINGHAM: No, but we did go ahead and get a separate emergency work permit to allow us to go up there and dismantle that. So the owner does have a contractor and he is mobilizing.

MEMBER DONATELLI: If you could get us just that amended plan, I think that we could act on it rather quickly.

MR. CUNNINGHAM: Okay. Great. So I will act on it today.

MEMBER DONATELLI: So maybe what we can do is leave the record open, Mr. Chairman, until we get the amended plans.

SECRETARY WAGNER: So if he consults with --

MR. CUNNINGHAM: Just one question. If the owner tells

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me he doesn't want to do it --

MEMBER DONATELLI: I'm sorry?

MR. CUNNINGHAM: If it happens that the owner says I don't want to do it.

ATTORNEY ALGIOS: Just let Virginia know, the planning department, and then she will relay it to the Board and we can discuss it.

MR. CUNNINGHAM: Fair enough.

SECRETARY WAGNER: You can just send an e-mail saying I have consulted with the owner and asked them about the signage.

MR. CUNNINGHAM: We were trying to keep it, a lot of the character.

CHAIRMAN MAMMINA: I am not saying you need to do this, but depending on your relationship with the ownership, you may just want to call them now or send them a text. But, I mean, that's up to you and we can call other cases. You don't have to do it this millisecond. I am just suggesting that and then that way it can just be put to bed.

MR. CUNNINGHAM: I will text him now.

CHAIRMAN MAMMINA: Okay.

MEMBER DONATELLI: Why don't we second call it?

CHAIRMAN MAMMINA: Yes. Let's second call it, which means the other applicants are going to go. The other applicants have been hanging around.

SECRETARY WAGNER: If we hears back, then we will

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second call it. If he doesn't hear back, we will just continue
it.

MEMBER DONATELLI: Did you want to try and contact him?

MR. CUNNINGHAM: I just shot him a text. I will give
him a call, too.

1 Appeal #21463

2 SECRETARY WAGNER: Next Appeal is Appeal #21463 Lfp
3 1020 Pwb, LLC (Wells Fargo Signs); 1020 Port Washington Blvd.,
4 Port Washington; Section 5, Block 126, Lot 230; Zoned:
5 Business-B.

6 Variances from 70-196(J)(2)(a), 70-196(J)(2)(c), &
7 70-196(J)(2)(d) to construct more ground signs than permitted,
8 a ground sign that is too close to the street, and ground signs
9 with not enough open space at the bottom.

10 CHAIRMAN MAMMINA: You have Appeal #21463 -Lfp 1020
11 Pwb, LLC (Wells Fargo Signs). Is there anyone in the room
12 interested in the application other than the applicant? Seeing
13 no one. Please give your name and address.

14 MS. MILLY: My name is Arlene Milly. I'm with Ultimate
15 Signs & Designs representing Wells Fargo. My address is 86
16 Sewell Street in Hempstead, New York.

17 So I am here. Once upon a time, there was North Fork
18 Bank and they went for a variance for a non-conforming ground
19 sign that had no clearance to it, and that was back several
20 years ago, way back when. And they were approved. And since
21 then, Capital One Bank had taken over the property and they
22 refaced the existing ground sign. And then they also added a
23 couple of their own directional signs that were there. So this
24 application - and Capital One Bank has been vacant from that
25 property for a while and Wells Fargo has taken it over. This
26 application is to remove the existing ground sign that was

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2 varianced and put in a new different type of ground sign in the
3 same location. It's going to be overall a little bit less
4 square footage. It's going to be in the same place. So it's
5 right up against the property of the building and there is not
6 going to be any line-of-sight issue. It's overall going to be
7 13-feet high, but no clearance on the bottom. But it doesn't
8 hinder any traffic. It's a very traffic area, highly
9 trafficked area, so that was definitely taken into
10 consideration when they planned this new ground sign structure.

11 Additionally, they are only proposing one second ground
12 sign, which is really a directional sign to show people the
13 flow of traffic to the drive-up ATM, and that is probably a
14 very smart thing to do considering the tightness of that
15 corner.

16 MEMBER GOODSSELL: It is a tight corner.

17 MS. MILLY: It is.

18 CHAIRMAN MAMMINA: Just for me, I just wasn't sure how
19 I felt about that vertical pylon within that setback. And the
20 other pylon was --

21 MS. MILLY: It was more of a monument-look as opposed
22 to a high vertical, but it just is still in line with the
23 building. It doesn't detract from anything. It actually adds
24 a nice little feel to the building. It's very well done.
25 Chase Bank has a lot of similar type of ground signs, as well,
26 so that they have the vertical look.

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2 CHAIRMAN MAMMINA: But they are not in the setback.

3 MS. MILLY: The ground sign, the 13-foot ground sign is
4 within the 10-foot setback.

5 CHAIRMAN MAMMINA: That's within the 10?

6 MS. MILLY: It is within the 10-foot setback.

7 CHAIRMAN MAMMINA: I thought it wasn't.

8 MS. MILLY: The directional sign is less than the
9 10-foot setback.

10 CHAIRMAN MAMMINA: Yeah.

11 MS. MILLY: So the case is just to permit the ground
12 sign, the 13-foot ground sign without a clearance to the
13 bottom. Everything else is conforming.

14 MEMBER DONATELLI: I'm sorry. What you have on your
15 site plan, is that the monument sign?

16 MS. MILLY: That's the sign, yes. That's to delineate
17 the ground sign.

18 MEMBER GOODSSELL: Is that illuminated or not?

19 MS. MILLY: It is illuminated.

20 MEMBER GOODSSELL: Well, there will be no mistake that
21 Wells Fargo is there because if it's red and it's illuminated,
22 it will be very, very visible.

23 MEMBER DONATELLI: I will say that it is a
24 heavily-trafficked area. There is a lot going on between the
25 students that cross during the school hours, pedestrians that
26 cross there. It just seems to me, even though we are not an

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architectural review board or an aesthetic board, it does seem to me that it does impose upon -- because it sticks out of the building.

MS. MILLY: Well, it's only 20 inches.

MEMBER DONATELLI: But it's 13-feet high.

MS. MILLY: Right, but it's still lower than the height of the building.

MEMBER DONATELLI: I understand that, but it does gloom over the eaves of the building. And I think it's visually -- my own impression as one Board Member, is that it is visually imposing. What is the purpose of the sign? What is it that Wells Fargo is trying to propose and trying to effectuate with that?

MS. MILLY: They found that the existing ground sign, the way they had it, was just not visible enough and it could be overcome by cars passing by, stopped at the traffic light. So a vertical sign actually gave better visibility for traffic coming from the opposite location so people would see it coming up, instead of when they got there.

MEMBER DONATELLI: But your mockup shows that it's partially obscured by the light in front of it.

MS. MILLY: The lights in front of it?

MEMBER DONATELLI: Yeah, there is a light.

MS. MILLY: A traffic light or a streetlight?

MEMBER GOODSSELL: A street light.

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2 CHAIRMAN MAMMINA: A street-light-type of thing.

3 MS. MILLY: A street light is not big enough to obscure
4 the sign, especially at night when it's illuminated.

5 MEMBER GOODSSELL: There is a tall pole with a gooseneck
6 and a bell light, and the bell is what Mr. Donatelli is saying
7 is --

8 MS. MILLY: And that is definitely more in the street
9 area, on the sidewalk area as opposed to on the property.

10 CHAIRMAN MAMMINA: It's on the property.

11 MEMBER DONATELLI: It's on your client's property.

12 CHAIRMAN MAMMINA: It's your sign. It's your street
13 sign.

14 MS. MILLY: I apologize. I missed that point.

15 MEMBER DONATELLI: It's okay. If you take a look at
16 the application that your office submitted, you will actually
17 see. I'm looking for a page number. It says total signs,
18 model number, and then it says N01. And it is directly behind
19 the street lamp.

20 MEMBER GOODSSELL: Does this help? This is what we are
21 looking at.

22 MS. MILLY: Yes, I am pulling that up.

23 MEMBER GOODSSELL: Okay. Good.

24 MEMBER DONATELLI: Site photo after.

25 MS. MILLY: I apologize.

26 MEMBER DONATELLI: That's all right.

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2 CHAIRMAN MAMMINA: Take your time.

3 MEMBER DONATELLI: Like I said, the pages don't appear
4 to be numbered.

5 MS. MILLY: Oh. Oh.

6 MEMBER DONATELLI: You see it?

7 MS. MILLY: I do.

8 MEMBER DONATELLI: It just doesn't seem to make sense
9 in that location. And as I said, that's a very
10 heavily-trafficked location.

11 MS. MILLY: And that's on the property. If they wanted
12 that removed, that shouldn't be an issue, then, correct?
13 That's not a state or a city.

14 MEMBER GOODSSELL: But given the choice between a large
15 sign and the light, wouldn't they prefer the light?

16 MS. MILLY: I don't know what they would prefer, so I
17 don't want to speak out of turn.

18 MEMBER GOODSSELL: Okay. We, as a Board, tend to try to
19 minimize the number of signs on a building. I am familiar with
20 Wells Fargo. There is a Wells Fargo in my neighborhood in New
21 Hyde Park. And I wasn't aware that red was their color because
22 it may vary from location to location.

23 MS. MILLY: Well, it used to be yellow.

24 MEMBER GOODSSELL: But the font that they use is
25 absolutely the Wells Fargo font, that is their lettering. And
26 we acknowledge that you want the bank to be identified as a

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Wells Fargo Bank. There is a Chase right down the road. There is other banks in that area. We want to make sure that people say, oh, Wells Fargo, they are on the corner, that you know where it is. So we understand the sign, but we tend to want to minimize signs as much as possible.

MS. MILLY: They are being re-branded. A lot of their existing brands are being re-banded and this is going to be the new look of their branding going forward.

MEMBER GOODSSELL: Is there one on Long Island already that I can go look at?

MS. MILLY: I don't know the answer to that. I know that we are doing one in East Chester. So that's not quite the same thing.

MEMBER GOODSSELL: No. I don't think I want to go to East Chester.

MS. MILLY: But that's the only two that we are involved with and maybe some in the city and Little Neck that we are working on, but we haven't done them yet.

MEMBER GOODSSELL: I am talking about the one in New Hyde Park on the corner of Herricks Road.

MS. MILLY: I don't know if they have gotten to that as a re-branding project yet, but this is going to be the new look with their new branding.

MEMBER GOODSSELL: You also have a proposed enter and exit ramp, which I have no objection to, but it's Wells Fargo

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Enter/Wells Fargo Exit with the red Wells Fargo with the yellow bands across the top, and that seems to add to the number of signs.

MS. MILLY: Well, if you look at where that sign is, it's really right butt up against their next door neighbor. So we want to make sure that that sign, they know it's really for Wells Fargo and not for another business. Even if we made the sign the way it was, it didn't originally approve that for a variance application. I mean, the sign itself is code-conforming with the exception of no clearance for the bottom, which was already approved for the North Fork Bank previously.

MEMBER DONATELLI: My only question is -- and I understand what it is that you are trying to accomplish with the sign, but my only question is whether or not there might be another space where it might be just as visible, but not as impactful to that corner.

MS. MILLY: It's actually within the 10-foot setback so it's not impactful to the corner at all. The building itself is really -- if you go down Main Street, there is no area down Main Street, no grassy area that can populate. We really want to catch the traffic on Port Washington Boulevard more than anything else.

CHAIRMAN MAMMINA: Is it really going to be skewed? In the picture, it doesn't look like it.

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MS. MILLY: It's on its own angle so that you can see that there is writing on there, but it's going to be perpendicular to Port Washington Boulevard.

CHAIRMAN MAMMINA: So then, I just want to understand. So it's skewed in the photo just so that we can see.

MS. MILLY: So you can see it has copy on it, correct.

MEMBER GOODSSELL: We are not an aesthetic board. We do not tell banks what colors they should use, what fonts they should use.

MEMBER DONATELLI: Can we also make the record? Any other questions, comments, concerns, Mr. Chairman? I make a motion that we grant the application.

MEMBER GOODSSELL: I will second.

CHAIRMAN MAMMINA: Motion by Member Donatelli. Second by Member Goodsell. Please poll the Board.

SECRETARY WAGNER: Member Goodsell.

MEMBER GOODSSELL: Aye.

SECRETARY WAGNER: Member Donatelli.

MEMBER DONATELLI: Aye.

SECRETARY WAGNER: Vice Chairman Francis.

VICE CHAIRMAN FRANCIS: Aye.

SECRETARY WAGNER: Chairman Mammina.

CHAIRMAN MAMMINA: Aye. The application is granted.

MEMBER GOODSSELL: I, for one, liked the older colors better, but maybe they have taken a lesson from Target that

Appeal #21463

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visibility is everything.

MS. MILLY: I wasn't part of their branding team, but I understand what you are saying. Thank you very much. Have a good night.

1 Appeal #21445 - Second Call

2 SECRETARY WAGNER: So we are going to re-call Appeal
3 #21445 H&W Homes, Inc.; 52 Main St., Port Washington, Section
4 5, Block 98, Lot 218; Zoned Business-A.

5 Variance from 130(A) to construct a new building
6 facade that would be higher than permitted.

7 CHAIRMAN MAMMINA: Okay. We have a second call on
8 Appeal #21445 - H&W Homes.

9 MR. CUNNINGHAM: Thank you. I spoke to the owner and
10 he said if he can salvage the sign. It's just that during the
11 demo process -- it is a terracotta panel -- he can't guarantee
12 that it won't get damaged during demolition. And he doesn't
13 want to pay the extra expense to have something made out of
14 precast.

15 MEMBER GOODSSELL: Well, we can't ask anymore than that.
16 That's a nice idea. As a practical matter, as much as we like
17 the facade, we completely understand why. It's just not
18 practical and it's gotta hold up another 250 years. So Mr.
19 Chairman, I make a motion. I am not making the motion yet. I
20 want to put that on the record. I appreciate the effort that
21 the client might go through to salvage a sign that says
22 Standard, that's just a historic detail of the building that
23 would be nice to keep, but is not required.

24 CHAIRMAN MAMMINA: He also wouldn't be able to do it in
25 precast concrete.

26 MR. CUNNINGHAM: I understand. He is just complaining

Appeal #21445 - Second Call

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about the cost as it is.

MEMBER GOODSSELL: Listen, I had a wood sign with gold lettering. Never mind cost. The village loved it. It was my law practice. I had a wood sign with gold lettering, which I paid a fortune for. And my father, who was the practical man of the firm, said, you are going to pay what for a sign? I just thought it looked cool. I know how expensive this could be.

MEMBER DONATELLI: I don't know that we could condition an approval on the possible salvage of the historical sign. I don't think we can, it's not appropriate. So while I would appreciate being able to do it, I don't think that we can require it. And like I said before, I think we would be taking a non-conforming building and making it slightly more conforming, and there is safety issues involved because of the brick pointing. So therefore, I make a motion that we grant the application.

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

MEMBER GOODSSELL: I will second.

CHAIRMAN MAMMINA: Second by Member Goodsell. Please poll the Board.

SECRETARY WAGNER: Member Goodsell.

MEMBER GOODSSELL: Aye.

SECRETARY WAGNER: Member Donatelli.

1 Appeal #21445 - Second Call

2 MEMBER DONATELLI: Aye.

3 SECRETARY WAGNER: Vice Chairman Francis.

4 VICE CHAIRMAN FRANCIS: Aye.

5 SECRETARY WAGNER: Chairman Mammina.

6 CHAIRMAN MAMMINA: Aye. The application is granted.

7 MR. CUNNINGHAM: Thank you.

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1 Appeal #21447

2 SECRETARY WAGNER: Now, the next Appeal is last but not
3 least, Appeal #21447 - Yardbird (Signs); 120 Glen Cove Road,
4 Carle Place; Section 9, Block 670, Lot 27; Zoned:
5 Industrial-B.

6 Variances from 70-196.J(1)(b) and 70-196.J(1)(f) to
7 construct new signs that are too tall and too high above the
8 ground.

9 CHAIRMAN MAMMINA: You have heard Appeal #21447 -
10 Yardbird (Signs). Is there anyone in the room interested in
11 the application other than the applicant? Seeing no one.
12 Please give your name and address.

13 MR. MCNERNEY: Good evening, Chairman Mammina and
14 Members of the Board. My name Michael Mcnerney. My company
15 name is Michael F. Mcnerney Architect PLLC. My address is 8
16 Chivalry Lane in Nesconset, New York 11767.

17 I'm not used to playing to an empty room like this, but
18 it's a pretty simple application before you. I do have with me
19 from Yardbird, Mr. Greg Hansen. He is the senior build-out
20 manager for Yardbird. They are currently under construction at
21 the site. They have leased the southern half of the former
22 Destination Maternity store, which has been vacant for,
23 probably, about 24 months, maybe longer. During COVID, they
24 went out. They had occupied the space since 2007. The space
25 was recently subdivided by the landlord with the benefit of a
26 building permit and the tenant is under construction under

Appeal #21447

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their own building permit at this time.

Yardbird is a furniture, an outdoor furniture showroom store. They are a wholly-owned subsidiary of Best Buy, the national electronics chain that we are all familiar with. The company is about six years old. And as I said, they sell high-end outdoor furniture. Think of competitors like Pottery Barn and Restoration Hardware.

My client wishes to obtain two variances from this Board for two wall signs that you can see in this exhibit that I will pass up to you, and I will call it Exhibit 1. There are six copies there for the Board and one for the record. The first sheet in that packet is the partial site plan that shows the two locations of the proposed signs on the Yardbird plan. The first one is a sign that faces west, faces Glen Cove Road. You will see two photographs in there. One is the photograph of the previous tenant, Destination Maternity, and their sign was granted by variance by this Board in the exact same location that we are proposing the wall sign facing Glen Cove Road. The wall sign facing Glen Cove Road is otherwise compliant other than the height, which is proposed at about 25 feet off the sidewalk where 18 feet is allowed.

The second sign in question is the one -- if you go to the third page of your packet there, you will see an existing photograph of the Destination Maternity store over the south-facing entrance at the marquee that was constructed there

Appeal #21447

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2 by Destination Maternity. That sign is not only too tall above
3 grade, but it is too tall in and of itself. It exceeds the
4 4-foot-6-inch height allowed by the code. If I may, the signs
5 that once graced the facade by Destination Maternity are very
6 similar in location and size.

7 And the signs are important to my client because a very
8 large percentage of their sales come through their showrooms.
9 This will be their 22nd showroom nationwide. Their nearest
10 showrooms are in Boston and King of Prussia, Pennsylvania. So
11 this is the only store they plan for on Long Island. So their
12 name recognition is an important thing to them. I never heard
13 of the company when they first approached me eight months or
14 ten months ago to be their architect.

15 The requested variance doesn't represent any
16 substantial or detrimental change to the neighborhood. It's
17 all commercial, as you may realize. This is, basically, main
18 and main in the area in terms of commercial real estate. The
19 benefit for the applicant could not be achieved by other means.
20 As discussed, the cost of rent and the taxes of a property like
21 this mean that they need to get maximum exposure out of it.
22 The hardship isn't self-created in that they are renting a
23 building that was constructed previously by a previous tenant
24 and placing the signs where they are effective and most
25 appropriate, as demonstrated by the previous variances granted
26 by this Board. And like I said, it mimics the numerous

Appeal #21447

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variances granted by this Board, including the Destination Maternity signs that were placed and put up in 2007. Like I said, there is really no adverse physical or environmental impact on the community; they are signs. So I would ask that you grant these variances as they have been requested. If you have any other questions, I would be happy to answer them. Like I said, Mr. Hansen is here to answer any questions for the tenant, as well.

CHAIRMAN MAMMINA: And these signs are the same size as they are now and in the same location, essentially, as they are now?

MR. MCNERNEY: Correct.

CHAIRMAN MAMMINA: Including the pylons.

MR. MCNERNEY: The pylons are all going into existing predetermined. No variances are requested for that.

CHAIRMAN MAMMINA: The pylons are not getting any bigger?

MR. MCNERNEY: No, sir, absolutely not.

MEMBER DONATELLI: It's part of an existing erected sign?

MR. MCNERNEY: Correct. All these signs that you see in the package are pre-approved directory signs where we are simply replacing the face.

MEMBER GOODSSELL: And this particular building, one side of the building is a corner property, one side faces Old

1 Appeal #21447

2 Country Road, and one side faces Glen Cove Road.

3 MR. MCNERNEY: Glen Cove Road, that is correct.

4 MEMBER GOODSSELL: And that's why the two signs are
5 requested.

6 MR. MCNERNEY: Correct.

7 MEMBER GOODSSELL: And, I guess, this is their branded
8 font?

9 MR. MCNERNEY: That is correct.

10 VICE CHAIRMAN FRANCIS: Mr. Chairman, I think we are
11 all familiar with this particular area. The sign seems in
12 keeping with the signs that are already in the center, so I
13 would move that we grant the application.

14 CHAIRMAN MAMMINA: We have a motion from Vice Chairman
15 Francis.

16 MEMBER DONATELLI: Second.

17 CHAIRMAN MAMMINA: And a second from Member Donatelli.
18 Please poll the Board.

19 SECRETARY WAGNER: Member Goodsell.

20 MEMBER GOODSSELL: Aye.

21 SECRETARY WAGNER: Member Donatelli.

22 MEMBER DONATELLI: Aye.

23 SECRETARY WAGNER: Vice Chairman Francis.

24 VICE CHAIRMAN FRANCIS: Aye.

25 SECRETARY WAGNER: Chairman Mammina.

26 CHAIRMAN MAMMINA: Aye. The application is approved.

1 Proceedings

2 MR. MCNERNEY: I thank you.

3 SECRETARY WAGNER: We have to adopt SEQR.

4 CHAIRMAN MAMMINA: Do we have a motion for the adoption
5 of SEQR?

6 MEMBER DONATELLI: I make the motion.

7 VICE CHAIRMAN FRANCIS: I will second it.

8 CHAIRMAN MAMMINA: Motion by Member Donatelli and
9 Second by Vice Chairman Francis.

10 SECRETARY WAGNER: All in favor?

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12 (Whereupon, all Board Members voted unanimously.)

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14 (Time noted: 4:28 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 23rd day of
October, 2023.



AMY BOGUSZEWSKI