

TOWN OF NORTH HEMPSTEAD
BOARD OF ZONING APPEALS
PUBLIC HEARINGS

Wednesday
November 6, 2024
10:12 a.m.

BOARD MEMBERS PRESENT:

Leslie Francis, Vice Chairman

Patricia Goodsell, Member

Daniel Donatelli, Member

Jay Hernandez, Member

ALSO PRESENT:

Deborah Algios, Deputy Town Attorney

Virginia Wagner, Secretary

Nicole L. Basile, Court Reporter

Proceedings

VICE CHAIRMAN FRANCIS: Okay. Please join Mr. Donatelli as we say the Pledge of Allegiance.

(Whereupon, the Pledge of Allegiance was said.)

VICE CHAIRMAN FRANCIS: All right. Good morning and welcome to the Town of North Hempstead Board of Zoning Appeals.

I'll go through a few preliminary things before we get started. First and foremost, just like us, if everyone would put their phones on vibrate so that applicants are not bothered by any phones while they're presenting. The way that we proceed is that the applicant will have the first shot at giving us their story in terms of their application. If there is opposition or people in support, you will have an opportunity to speak with a three minute limitation on your comments. After that, the applicant will return to the podium to sum up and we will either grant the application on the spot, reserve it to make it at a different time, deny it or continue it for additional information. And that is pretty much how this is going to go. I don't think that we are going to have too many issues with regard to this calendar. So let's get started.

SECRETARY WAGNER: First appeal, Appeal Number 21620 Sun Deyu; 29 Centre Drive, Manhasset; Section 3, Block 85, Lot 141; in the Residence-B Zoning District. Variance from 70-40.A, to construct a new house on an existing foundation that would be too close to the street.

1 Appeal #21620

2 VICE CHAIRMAN FRANCIS: Ginny, the only thing I didn't
3 ask is whether or not there is changes to the calendar?

4 SECRETARY WAGNER: No, Chairman, there is not.

5 VICE CHAIRMAN FRANCIS: One moment, sir.

6 SECRETARY WAGNER: Sorry. Hold on one second. I
7 apologize. We have one adjournment of Appeal Number 21583,
8 United Cerebral Palsy Association of Nassau County; 9 Bellevue
9 Avenue, Port Washington; Section 5, Block 81, Lot 10; in the
10 Residence-C Zoning District. Variances from 70-44 and
11 70-208.G, to convert a three family to a four-family house (not
12 a permitted use) that is an expansion of a non-permitted use.
13 That is adjourned until December 18th.

14 VICE CHAIRMAN FRANCIS: Okay. Thank you. So if anyone
15 is here on that application, it will not be heard today.

16 You've heard Appeal Number 21620, Sun Deyu. Is there
17 anyone interested in the application other than the applicant?
18 Seeing no hands. Sir, please give your name and address.

19 MR. ADONES: My name is Ronald Adones, 555 Broadhollow
20 Road, Suite 327, Melville, New York 11747.

21 VICE CHAIRMAN FRANCIS: Okay.

22 MR. ADONES: Good morning, Members of the Board. My
23 name is Ronald Adones and I'm here representing the property
24 owner Ms. Deyu Sun, who is here present with me today on the
25 property of 29 Centre Drive. Today we are here respectfully
26 requesting a front yard setback variance for a modest project

Appeal #21620

to enhance her property. We are going to be remaining consistent with the character and the setting of the neighborhood and we are looking for relief on the front yard setback line, which is code 70-40. That is 30 feet proposed for a front yard setback for a new dwelling and the existing currently is 23. And for the front yard setback proposed portico, it has to be 25 feet proposed and we currently have existing 18 feet. So Ms. Sun purchased her property here in early 2024 with a vision of creating a space that will meet functional needs for her family while adding an appeal to the neighborhood. She designed the proposal with those goals in mind and, however, due to the property's lot configuration, it is on an elevated street. So she is it at a higher pitch than most houses. We are -- I'm sorry, I lost my place. Due to the lot configuration limitations, we are required to stand in front of you guys to have a front yard setback variance. So the need for variances arises due to the conditions of the property itself. The topography, the lot shape and we are just looking to look for relief on that front yard. We aren't proposing any movements to the foundation. We are trying to build on top of what is currently the foundation and expand the second story. We did have challenges during the application process where we had to cutback on certain things and bedroom counts and everything to avoid certain requirements from the Board of Health and additional dry well requirements for the

1 driveway and what we were proposing with the foundation. So
2 right now that's what we're looking to do. We're looking to
3 ask for relief for the front yard. We aren't necessarily
4 adding anything additional to the second story to what is
5 already existing. And yes, we're looking for relief from the
6 town to allow us to pursue that project to comfort her family
7 and move into this primary home.
8

9 MEMBER DONATELLI: May I ask a question. It seems to
10 me that you're going to be expanding the house rearward, right.
11 Is that correct?

12 MR. ADONES: Yes. Rearward, yes.

13 MEMBER DONATELLI: And also toward the two side yard
14 lot lines?

15 MR. ADONES: Yes. Slightly for foundation. To bring
16 up the expansion of the second story.

17 MEMBER DONATELLI: So what struck me in reading your
18 application, that you're requesting the front yard setback
19 variance based on your desire to reuse the existing foundation.
20 But a point of fact, you're only using one of the four
21 foundation walls. Is that correct?

22 MR. ADONES: The front -- so we're keeping them. We're
23 just adding -- we're adding to the outside of the foundation to
24 support it. So we're not removing the walls. So we're not
25 removing the front or the sides. We're removing the rear one
26 to expand, because we're going around it. We're gonna be

adding -- hold on.

MEMBER DONATELLI: Won't the new footprint of the house have new foundations?

MR. ADONES: It will have slightly wider, yes.

MEMBER DONATELLI: So in other words, three of the four foundation walls will be new.

MR. ADONES: They're going to be new, but they're not getting -- those aren't getting removed. So it's going to be wider. So when we provide the final survey when the works done, it will be slightly wider but we're not taking down those concrete walls.

MEMBER DONATELLI: Do you know the approximate cost of removing the existing front foundation wall and putting it back in a code compliant space? Code compliant measurement.

MR. ADONES: I'm not too sure about the cost of that, but I do believe -- well, the conversation went -- the property owner and contractor, when they were preparing the bid and the contract, it was just -- removing that was going to be over how we proposed it, which was out of her budget.

MEMBER HERNANDEZ: Technically you don't have to remove it. Like you said, they're not removing the side foundations.

MR. ADONES: Correct.

MEMBER HERNANDEZ: They're just adding further foundations to support the house, right?

MR. ADONES: Correct. Correct.

MEMBER HERNANDEZ: So I think what Member Donatelli is saying, if you're adding two on the sides, you are adding one in the rear, right, because you're going back. Then why don't you just add another one in the front. So all you're really doing is adding one more foundation wall to the three that -- you're really not using the existing foundation. If you were building straight up over the existing foundation, totally different issue.

MR. ADONES: Okay.

MEMBER HERNANDEZ: But you are replacing three out of the four walls. It seems logical that you're replacing three out of the four foundation walls, why not replace all four?

MR. ADONES: Yeah, I'm not -- to be completely honest with you, I'm not too sure what the difference was in removing the full foundation and adding that. We -- I had just, you know, done the drafting on it.

VICE CHAIRMAN FRANCIS: Mr. Adones, I neglected to ask you in what capacity are you representing your client?

MR. ADONES: I'm the applicant. I was the permit expeditor.

VICE CHAIRMAN FRANCIS: Permit expeditor?

MR. ADONES: Yes.

VICE CHAIRMAN FRANCIS: So you don't have the --

MR. ADONES: No. No. I worked with the engineer Andrew Barum from ASB Engineering.

MEMBER DONATELLI: When we are asked -- similarly when we are asked to grant variances based on existing foundation and typically it's relatively minor. It's an existing foundation. As Mr. Hernandez says, someone is looking to just buildup on the existing foundation. And -- and so when you are replacing or rebuilding three of the four foundation walls and building a structure on top of it, it seems to me a very relatively minor additional expense to comply with the front yard setback. To build a new foundation for the front yard setback, because it's a relatively smaller portion of the overall project. The applicant is looking to spend quite a bit of money I'd guess and, again, we, as a board, are required to weigh the five factors. And one of the factors that, in my mind is a very large factor, is whether or not the benefit sought by the application can be achieved by some other method that may not require a variance.

MR. ADONES: Okay.

MEMBER DONATELLI: And this is exactly, I think, what that contemplates.

MR. ADONES: Okay.

MEMBER DONATELLI: So as one board member, I'm a little bit skeptical with this and so I guess I would just -- I would want to know what the cost differential might be as part of this project to determine what the cost of building that front foundation wall would be to make it compliant.

1 Appeal #21620

2 MR. ADONES: Okay. Because they would have to shift
3 their whole foundation at that point.

4 MEMBER HERNANDEZ: You're shifting three quarters of
5 it.

6 MEMBER DONATELLI: You're already shifting three
7 quarters of it as Mr. Hernandez said.

8 MR. ADONES: Okay.

9 MEMBER DONATELLI: So it's relatively a small portion.
10 Now, again, these are substantial front yard setbacks. They're
11 seven feet which is 28 percent. So that's a fairly substantial
12 setback and it's out of context for the neighborhood.

13 MR. ADONES: Okay. There are some properties with
14 front yard setbacks of 20 feet, 23. Some do have 25, 27, 30.

15 VICE CHAIRMAN FRANCIS: Do you have that with you now?

16 MR. ADONES: I have the addresses. The abutting
17 addresses, for example, I did property searches on 20 Centre
18 Drive.

19 VICE CHAIRMAN FRANCIS: But you don't have physical
20 evidence of those?

21 MR. ADONES: I have surveys.

22 VICE CHAIRMAN FRANCIS: Do you want to hand them up to
23 us?

24 MR. ADONES: I have it digitally.

25 SECRETARY WAGNER: So what is the average front yard
26 setback?

MR. ADONES: So the average front yard is 20 and a half feet.

MEMBER DONATELLI: So on page A1, you are showing the average front yard setback for the houses on that block. It looks like the average front yard setback is 20.5. So the portico -- if the average front yard setback is 20.5, this is 23 to the house and 18 to the portico. I don't know. Mr. Hernandez, do you have any thoughts on this?

MEMBER HERNANDEZ: Well, the problem that I have is that you have a 23 foot setback now.

MR. ADONES: Correct.

MEMBER HERNANDEZ: Which needs zoning board approval, but you're also proposing to expand that.

MR. ADONES: Yes.

MEMBER HERNANDEZ: Not just to the portico, but if you're going sideways, you are also making the house bigger sideways. So you're increasing the nonconformity of the house. And as Mr. Donatelli said earlier, when we have a nonconforming home that is being remodeled and is going straight up, then you're really increasing it only because you're going over the front wall. But I think in this case you're not going over the front wall. You're going over the front wall, you're going over the sides.

MR. ADONES: Yes. Correct.

MEMBER HERNANDEZ: You're going everywhere. So you're

Appeal #21620

really increases it substantially.

MR. ADONES: Yes.

MEMBER HERNANDEZ: It's much larger than and it would be much more forward to the street because of the size. And I apologize, I'm having a problem with Teams and I can't pull the plans up, but how wide are you going to the sides?

MR. ADONES: We're going 28 feet. 28.7 feet. So width of the overall home. I have an extra copy of the drawings if you want them.

MEMBER HERNANDEZ: Thank you.

MR. ADONES: I would just note for the record that the average front yard setback, as I review them, it looks like it's skewed downward by one lot, which is lot 132, which is 10.1 feet. Everything else seems to be around 25, 26. But that one lot really does skew it.

MEMBER HERNANDEZ: Okay. Thank you. So you are adding three feet on one side and four feet on the other. You're adding seven feet to the width of the house.

MR. ADONES: Correct.

MEMBER HERNANDEZ: So you see how you are also increasing the nonconformity of the house. So you are increasing it not just by the portico in the front, but you're increasing it all around.

MR. ADONES: Correct. Which we were still complying with FAR and all of what was being requested with the building

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2 department. Our only issue was the front yard. So that's
3 where -- that's where we're just trying to figure out what the
4 best approach is so can we can either get this approved or to
5 meet your standards. And obviously that's why I have the
6 homeowner here with me so she can as well.

7 MEMBER HERNANDEZ: She's welcome to speak if she wants
8 to of course.

9 MR. ADONES: Yes.

10 MEMBER DONATELLI: Before we have the homeowner speak,
11 I guess I have another question. I'm not really familiar and
12 I'm not the architect on the board. Our Chairman who is the
13 architect who is not here at the moment. But I'm not familiar
14 with the process by which there's a double foundation. Can you
15 describe what does that look like. Does that mean that -- is
16 there basement space between the inner foundation and the outer
17 foundation?

18 MR. ADONES: No, there's not gonna be any space there.

19 MEMBER HERNANDEZ: So it's solid concrete?

20 MR. ADONES: It's just solid concrete to hold what
21 we're expanding on.

22 MEMBER DONATELLI: So it's solid concrete on the two
23 side yards, but it presumably would be a new foundation wall
24 along the rear yard.

25 MR. ADONES: It's not going to be accessible but it's
26 to support. So yes, on the new survey it's going to be

1 slightly -- it is going to be slightly wider.

2 MEMBER DONATELLI: Will that be unexcavated or is that
3 going to be new basement space?

4 MR. ADONES: No, it's not new basement space. It's
5 just going to be unexcavated. That's just for straight
6 support.

7 MEMBER HERNANDEZ: If she wants to speak, please, she's
8 welcome to.

9 MS. DEYU: Hi, everybody. My name is Deyu Sun. I came
10 here about 15 years ago.

11 VICE CHAIRMAN FRANCIS: Just give your name and
12 address.

13 MEMBER HERNANDEZ: Give your address.

14 MS. DEYU: Oh, my address is 29 Centre Drive,
15 Manhasset. My name is Deyu Sun. I came America like 15 years
16 ago to catch my American dream. I have two kids, 16 years and
17 eight years. And yes, after I working hard for 15 years and I
18 finally get enough money to build my new house. Yeah. I don't
19 want to spend too much money on this house, because my kids
20 going to college next year. Next, next year. I have saved
21 money for him. So the contractor told me don't change the
22 foundation. You can save money. About 50, like, 50,000
23 something. I said yes, keep it, because the kids going to
24 college. Also, I working full-time job. I don't have enough
25 money to do really nice house, because we came here for the
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1 school. We check online. They say the school is very good.
2 So good for the kids. The small one is eight year old boy.
3 And yes, that's all I need to catch my American dream. Build
4 my new house. Yeah. I don't want to -- most important thing
5 is I don't want to put too much money in this house. I want to
6 save some money for the kids.
7

8 MEMBER DONATELLI: May I ask a quick question. Did
9 your contractor give you an estimate of what this project will
10 cost.

11 MS. DEYU: They gave me estimate. About 645 something.
12 They told me if I change the foundation, it's going to be 700
13 something. Yeah. Too much for me so. We keep the garage, we
14 keep in front of the wall. They told me don't dig the
15 basement. Don't dig the basement, don't change the wall, you
16 know. You can only dig the wall and put some concrete making
17 the foundation, that's better to you and also you have
18 something -- some smaller garage. Right now there's two garage
19 on that. We change it to one instead making the house more
20 bigger. Yeah.

21 MEMBER HERNANDEZ: So first of all, you made a very
22 good choice coming to Manhasset.

23 MS. DEYU: Thank you.

24 MEMBER HERNANDEZ: My daughters went through the school
25 here and it's a very good school system.

26 MS. DEYU: Yes. The school very well.

MEMBER HERNANDEZ: Yes. It's a very good school system.

But you can -- I think you can clearly understand what we're asking, because your contractor said the right thing. You don't have to change the foundation. You don't, right, because you can save a lot of money. I agree with them. And by the way, I'm not an architect either. But I have built my fair share of homes, because that's what I did for many years. You are building a foundation however. You're building three quarters of a foundation.

MS. DEYU: The most important thing, we put the foundation. We don't dig out all the dirt and we don't dig out all the old foundation. We keep it there is more cheaper for us.

MEMBER HERNANDEZ: You're correct. You are abandoning the old foundation, but the pint is that you're building the three walls on this side. You're building a big U. The only thing you're leaving is the one wall in the front.

MS. DEYU: To keep it.

MEMBER HERNANDEZ: Right. So if you're building three walls already, there's no reason why he could not have built the fourth wall two, three, whatever number of feet into the basement if you will.

MS. DEYU: My contractor told me we have to dig the basement. We dig out the old foundation to put the new one.

Appeal #21620

So we keep the older one. We don't need to dig out the older foundation. We just dig later on. We put the concrete inside then we build it. We keep the old one for the old basement, something like this. They said we don't need the basement too much. We need more room for the kids. That's why.

MEMBER HERNANDEZ: So he's only suggesting what you do is leave. So what is he going to do with the extension in the back, he's not going to dig that out either?

MS. DEYU: We build the house. The house already existing. It's 900 feet. That's too small for my family, because the kids grow, they gonna marry. My tradition we live together. We don't separate the kids. That's why we decide to build a new house.

MEMBER HERNANDEZ: But he -- he is extending your basement in the back, correct?

MS. DEYU: Yeah. The basement have to be extended. Right now it's too small. They have something older thing like a boil -- like an oil tank things. It's the -- it's the house is very old. They told me it's about 18 something. It's very creepy. I don't know how to explain so.

MEMBER HERNANDEZ: Okay. So he is digging the new foundation and connecting it to the existing basement in the back of the house?

MS. DEYU: Yes. Yeah.

MEMBER HERNANDEZ: Okay.

Appeal #21620

MS. DEYU: Thank you, guys. Thank you.

MEMBER DONATELLI: Sir, are you familiar with the five factors that we're required to address?

MR. ADONES: Yes.

MEMBER DONATELLI: Would you mind going through them, please?

MR. ADONES: Oh, no. I know you guys -- I don't know them, but I know you guys have the five factors.

MEMBER DONATELLI: Are they up at the podium?

MEMBER HERNANDEZ: They might be at the podium. Check underneath if they're not on top.

MR. ADONES: Five factors. Oh, okay. Yes. Read it from the top?

MEMBER DONATELLI: Yes, please.

MR. ADONES: If requesting an area variance that is permission to build an otherwise restricted portion of the property, such as a required front, side or rear yard or above the required building height or in excess of the lot coverage, then state law requires the applicant to show that the benefit that the applicant stands to receive from the variance will outweigh any burden of health, safety and welfare that might be suffered by the community. State law requires the BZA to take the following factors into consideration in making the determination; whether an undesirable change will be produced in the character of a neighborhood or a detriment to nearby

properties.

VICE CHAIRMAN FRANCIS: Just as you read them, answer the -- each one.

MR. ADONES: Okay. So whether an undesirable change in that area, no. I don't believe that it would be out of character.

MEMBER GOODSELL: In other words, will you be the biggest house in the neighborhood, will you be the only house in the neighborhood that has these setbacks, will this stand out from the neighborhood?

MR. ADONES: No, it won't stand out from the neighborhood.

MEMBER GOODSELL: Why?

MR. ADONES: There are other houses on the block that have recently been built as well and then as well as some of the existing houses existing right now just there right now. Obviously this one is going to stand out a little bit, because it's a brand new home. But overall, there's multiple homes on the block and in the surrounding area that are similar to what we're proposing.

MEMBER GOODSELL: So you have no GFA issues. You're only seeking ground floor area that is permitted and it's really a question of your proposed construction that the building is department is questioning and that this board is questioning.

MR. ADONES: Correct. Yes.

MEMBER GOODSELL: Go to the second factor.

MR. ADONES: Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than an area variance.

MEMBER GOODSELL: That is what we are asking you.

MR. ADONES: Okay.

MEMBER GOODSELL: If the contractor is going to replace three foundation walls, what is the cost of replacing the fourth wall to make this house complaint. Can the benefit to the applicant be achieved by some other way or is the cost prohibited?

MR. ADONES: We can figure that out. See with the -- like the property owner had mentioned, it was an extra expense to add that fourth foundational wall, which she didn't want to pursue due to, you know, her goals and certain factors. That's why we prepared and filed the application as it is and then pursued this front yard variance.

MEMBER GOODSELL: Go to the third factor.

MR. ADONES: Whether the requested area variance is substantial. Yes, it's substantial.

Whether the proposed variance will have an adverse affect, impact the physical or environmental conditions of the neighborhood or district. No, it won't have an adverse effect or impact, other than it just being a brand new home on the

1
2 block.

3 Whether the alleged difficulty was self-created, which
4 consideration shall be relevant to the decision of the Board of
5 Appeals but shall not necessarily preclude granting of the area
6 variance.

7 MEMBER GOODSELL: In effect this is self-created,
8 because it is new construction.

9 MR. ADONES: Yes.

10 MEMBER GOODSELL: And the board's primary question when
11 we have new construction, why can't we comply and that's what
12 you're doing. You're explaining to the board why.

13 MR. ADONES: Correct. So we can't comply because of
14 the front yard.

15 MEMBER GOODSELL: And your average front yard setback
16 is supported by the data in your application. Is that correct?

17 MR. ADONES: Correct.

18 MEMBER GOODSELL: My other question was, do you feel
19 you are lessening the impact on the neighborhood by removing
20 the two car garage and making it a one car garage reducing the
21 over bulk of this project?

22 MR. ADONES: Can you repeat that first part?

23 MEMBER GOODSELL: There's an existing two car garage on
24 the property right now?

25 MR. ADONES: Correct.

26 MEMBER GOODSELL: According to the survey, correct?

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MR. ADONES: Correct.

MEMBER GOODSELL: The proposal is to take that down and make it a one car garage. Is that correct?

MR. ADONES: Correct.

MEMBER GOODSELL: And in your opinion and the applicant's opinion, does that reduce somewhat of the bulk of this house?

MR. ADONES: Having a two car garage would reduce the bulk of the house. That's why we dropped it down to a one car garage, yes.

MEMBER HERNANDEZ: Again, for the sake of clarity, your existing two car garage is not -- is almost not visible from the street, because it is in the back of the property and all you see is a driveway going to the back of the house.

MR. ADONES: Correct.

MEMBER HERNANDEZ: By removing that garage and putting a one car garage, which is attached and part of the house, with building over it, which is what you're proposing, you're making the bulk to the street substantially greater than what you have today.

MR. ADONES: Correct. But we're not attaching the garage. It's a detached. We're not attaching it.

MEMBER GOODSELL: It's a detached garage.

MR. ADONES: I have the drawings right there.

MEMBER HERNANDEZ: Yeah, I got it. I'd like to see

1 that in writing.

2 VICE CHAIRMAN FRANCIS: Can you get that to us?

3 MR. ADONES: Yeah, of course. I can ask the contractor
4 to have something I can forward to you guys.

5 MEMBER HERNANDEZ: Submit.

6 MR. ADONES: Of course. We would do an affidavit?

7 MEMBER HERNANDEZ: So the question is how much will it
8 cost to abandon the front wall as well as they abandon the
9 other three and then just build the fourth foundation wall.
10 It's basically adding one wall. That's why it sounds 60,000 --
11 I mean that could be -- could be a contractor just throwing out
12 a number, because he figures they're going to say no
13 automatically and just leave it there.

14 MR. ADONES: We're trying to keep most of the frame as
15 well. We're doing interior alterations as well. So that's
16 also included in this application, which we're doing a bunch of
17 work at this house and --

18 MEMBER HERNANDEZ: Exactly.

19 MR. ADONES: We're keeping most of, like, what the
20 existing house is. Like right now it's a brick framed house.
21 We are keeping that aesthetic and with the expansion, we're
22 putting vinyl on. We're trying to keep the whole front as
23 existing. We're just trying to expand on the width.

24 MEMBER HERNANDEZ: Forgive me, but as I look at your
25 elevation. I know you're not the architect. But your
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2 elevation resembles absolutely nothing what you're expressing
3 -- what you're presenting now to us. Do you have a comparison
4 of your present house to the proposal?

5 MR. ADONES: Yeah. Yeah.

6 MEMBER HERNANDEZ: Can I see it?

7 MR. ADONES: Yeah. I have the survey and then I have
8 the drawings.

9 MEMBER HERNANDEZ: No, I'm looking at the drawing and
10 the survey and I don't have -- unless I'm confusing it with
11 another house.

12 MEMBER GOODSELL: What we have asked certain applicants
13 to do is to show us the existing house and then superimpose the
14 proposed house so we can see where it's being added.

15 MR. ADONES: So you want --

16 MEMBER GOODSELL: Well, it's not -- if you are in fact
17 keeping the front wall of the house, both stories, it doesn't
18 really look like that on your plans, because you're going --
19 you're applicant -- your client rather is going out on either
20 side and back on either side.

21 MR. ADONES: Correct.

22 MEMBER GOODSELL: So the board is asking what is the
23 cost of simply moving the whole house back to a compliant
24 position. Not changing the house. You're already building a
25 new foundation on three sides. What is the cost and why is it
26 that you can't now move the house back to a compliant position.

MR. ADONES: Okay. Yeah, we can figure that out and I can get you guys a letter.

MEMBER GOODSELL: Give us a cost from your contractor and perhaps it is prohibitive, but the building department is classifying this as a new construction anyway.

MR. ADONES: Correct.

MEMBER GOODSELL: And so it's not as if you have to keep three walls up in order to comply with a renovation. This is new construction.

MR. ADONES: Okay.

MEMBER DONATELLI: And by the way, the point that I was going to make, we are not giving you a hard time.

MR. ADONES: No, I understand.

MEMBER DONATELLI: Those five factors that you've recited we are required to do a weigh of the benefit of the applicant to verses the detriment to the applicant. So this written estimate will be part of what we weigh as we determine whether or not to grant your application.

MR. ADONES: Correct. Yes. And on top of that, we did have to make some modifications. So from the original agreement that the property owner and the contractor had has changed, because we did have to do changes to the drawing while we were in the building permit process. So there are some modifications that have been done, which will skew the price of the overall cost of construction. So we will address that.

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2 It's just because we don't have approve site yet so we don't
3 know what exactly will get approved. But I can definitely get
4 you a ballpark of -- with these plans, what the cost and then
5 the additional -- what the difference would be of moving the
6 foundation, I guess the seven feet to make the 30 feet new
7 construction setback. And how much time do I have or do I have
8 to come back or --

9 MEMBER HERNANDEZ: You don't have to come back.

10 MR. ADONES: I can just upload that to the portal or
11 reach out to any representative?

12 MEMBER GOODSELL: To Ms. Wagner.

13 MR. ADONES: To Ms. Wagner.

14 MEMBER GOODSELL: Yes. You don't have to come back, no
15 and you have it ready for the next meeting that we have, which
16 I believe is on November 20th. We will consider you on
17 November 20th. You don't have to be here. It goes onto the
18 reserve calendar.

19 MR. ADONES: Two weeks. All right. Cool.

20 MEMBER GOODSELL: We are already in November. Yes, we
21 are.

22 MR. ADONES: All right. So is there anything else from
23 the board that I can clarify or anything else for -- for our
24 case?

25 MEMBER DONATELLI: I'm good.

26 MR. ADONES: All right. I appreciate you guys. Thank

Appeal #21621

you for your time and honestly, this is one of the first times I've had to read this and no other building department has ever done this and you guys do it right. So thank you so much. I'm going to take one if that's okay.

MEMBER GOODSELL: Thank you.

SECRETARY WAGNER: Next appeal, Appeal Number 21621, Theodore Katsihtis; 78 Hill Top Drive, Manhasset; Section 3, Block 221, Lot 9; in the Residence-A Zoning District. Variance from 70-29.B, to construct an addition that makes a home too big.

VICE CHAIRMAN FRANCIS: You've heard Appeal Number 21621. Is there anyone interested in the application other than the applicant? Seeing no one. Good morning. Please give your name and address.

MR. MALLIA: Good evening. Good morning, Ladies and Gentlemen of the Board. My name is Michael Mallia from DiProperzo and Mallia Architects, 499 Jericho Turnpike, Mineola 11501. I'm here today on behalf of Theodore and Christina Katsihtis at 78 Hill Top Drive, Section 3, Block 221, Lot 9 zoned as Resident-A. The applicants are here because they have an elderly parent who is going to be moving in with them and needs medical attention. They're looking to construct a fourth bedroom over their existing garage, which would be an additional 292 square feet. The lot that they currently are on is 8,050 square feet, where a typical Resident-A lot where

1 would be 8,500. So they're little -- they have a hardship
2 there, because their lot is smaller than the typical 8,500
3 square foot lot. So if they were on that lot, they would only
4 be looking for a 60 foot variance for that bedroom. The -- it
5 would be in character and design of the surrounding properties
6 and it would not negatively impact the welfare of the community
7 nor be conflicting or incongruous with the immediate neighbors.
8 They did reach out to the neighbors and the neighbors have no
9 problem with them doing the addition over the garage. It would
10 not increase the lot area. It would just be an increase in
11 floor area. And I'm here -- I have a note from the -- from the
12 -- from the hospital regarding their father -- Theo's
13 father-in-law with me if you guys need to see it and I'll take
14 any questions you have.
15

16 MEMBER GOODSSELL: When I drove this neighborhood, this
17 is a very nice neighborhood. There are some very large houses,
18 there are some smaller houses. The lot sizes -- this is not a
19 cookie cutter. The lot sizes seem to vary. The ask from your
20 applicant is that we go over the allowed overage GFA by 28
21 square feet.

22 MR. MALLIA: That's correct.

23 MEMBER GOODSSELL: Which is a substantial amount. It's
24 not 10, 12 or 15 feet. It's a substantial amount. I was just
25 looking at the current floor plans and I'm looking for the
26 proposed floor plans. So the only change that you're

1
2 suggesting is an additional bedroom over the existing garage
3 where there is currently a balcony. Is that correct?

4 MR. MALLIA: Correct. And the reason that's coming out
5 is because we want to keep that addition inline with the house
6 so there's balance. We have the front porch portion setback on
7 the inside and we want to kind of balance out.

8 MEMBER GOODSELL: How many bedrooms are in the house
9 right now?

10 MR. MALLIA: Right now they have three bedrooms and
11 they have two children. They're full.

12 VICE CHAIRMAN FRANCIS: There is a very large walk-in
13 closet that's attached to a bathroom?

14 MR. MALLIA: Yes.

15 VICE CHAIRMAN FRANCIS: It looks like it's large enough
16 to be a bedroom. What are the dimensions of that walk-in
17 closet?

18 SECRETARY WAGNER: You just had it.

19 MR. MALLIA: Yeah, I know. I'm just trying to look for
20 a reference. It's about 11 foot six.

21 MEMBER DONATELLI: I'm sorry.

22 MR. MALLIA: I would say just scaling it off, roughly
23 it's around 11 foot six.

24 MEMBER HERNANDEZ: What you're proposing is what is
25 done probably by most houses, including my own which I did
26 years ago. Okay. I didn't do it for an elderly parent,

1 because I didn't want to have them climb the stairs. As a
2 matter of fact, I'm thinking for myself putting an elevator in,
3 because I don't want to have to climb stairs either. But it is
4 the most common place for people to add space. Now, over that
5 terrace you have already added a master bedroom -- a master
6 bath next to that big closet without dimensions.

7 MR. MALLIA: Yes.

8 MEMBER HERNANDEZ: I'm trying to find the floor plan
9 for the second floor for the proposed build out.

10 MR. MALLIA: It's on A2 on the bottom left.

11 MEMBER HERNANDEZ: A2 or A3?

12 MR. MALLIA: Yeah, A3. I'm sorry. A3 is the proposed.

13 MEMBER HERNANDEZ: Yeah, that's what I want to see.
14 The proposed. So you are reducing the size of the modified
15 master bedroom.

16 MR. MALLIA: Yes. To provide a hallway to get into the
17 bedroom.

18 MEMBER HERNANDEZ: Right, to provide a hallway and you
19 are creating a 19 by 11 and 19 is misleading, because with all
20 the doors that you have in the hallway that you have there, it
21 appears to me that if you had converted that existing walk-in
22 closet into a bedroom, it would have given you better access,
23 because then you could have had the closet, a smaller closet
24 built where the new bedroom is and connected the modified
25 master bedroom directly to that closet into that bathroom. But
26

I'm not the architect. Okay.

MR. MALLIA: The idea is when the parent is in that room, that this will be the flow through the closet into the bathroom.

MEMBER DONATELLI: And your new bedroom number three, I see that also includes a smaller balcony. Is that correct?

MR. MALLIA: Yeah. That's the extent of where the garage is currently. That's over the existing structure.

MEMBER DONATELLI: So in other words, the new bedroom three will not come out to be flush with the existing wall underneath?

MR. MALLIA: That's correct. But it will be flush with the adjacent east end of the house. We're trying to align it.

MEMBER HERNANDEZ: You don't want to create one giant wall. Aesthetically it looks nicer.

MR. MALLIA: Yes. I have the elevation if you would like to see.

MEMBER HERNANDEZ: I'm looking at it. It is a large request for the size and I know the area well obviously. There is a lot of hilly areas there so every single lot is a little different. Some of them are huge but they're not buildable because of the way the lot is built on these little 15 foot retaining walls you can't build there. So there are very different lots all over the place. So this is one of the smaller ones and you're asking for a significant overage.

MEMBER GOODSELL: By my calculation, it's about 75 percent over what is allowed.

MR. MALLIA: 36 is what's required. We're at 39.

MEMBER DONATELLI: I have 2,898 which is allowed and you're 3126.

MR. MALLIA: We're at 38.9 over based on the lot.

MEMBER HERNANDEZ: I'm sorry, could you repeat that?

MR. MALLIA: What we proposed would come out to 38.9 percent instead of 36.

MEMBER HERNANDEZ: Oh, okay. You're talking about percentages.

MR. MALLIA: Yes.

MEMBER HERNANDEZ: We were talking about actual square footage.

MR. MALLIA: Oh. The actual square footage is 228.77. Yes, 228.77.

MEMBER GOODSELL: Is there a way to accomplish this without going so far over GFA. Is there other space in the house that could be used for this bedroom?

MR. MALLIA: I mean we were trying to make it look aesthetically pleasing. We can set it back further.

MEMBER GOODSELL: It's not a setback issue. It's a square foot issue.

MR. MALLIA: We're not 60, 80 square feet over.

MEMBER GOODSELL: I believe that Mr. Hernandez is

1 correct. As I drove the neighborhood, there are many many
2 houses that have a garage and there are several houses that
3 have added additions over the garage. But I would have no way
4 of knowing, because we don't hit the button to see how many of
5 them go over GFA. So one of the questions -- one of the five
6 factors is, is there another way to accomplish this perhaps
7 without going quite so far over, because that is kind of a big
8 ask.
9

10 MEMBER HERNANDEZ: Right now you're ground floor, your
11 garage, you're not just going -- yes, you're going just over
12 your garage.

13 MR. MALLIA: Right. That's correct.

14 MEMBER HERNANDEZ: But we also have behind the garage,
15 based on your drawings, another 11 and a half foot ground
16 floor, which whatever is down there, a kitchen, dining room,
17 whatever and above that you have the master bathroom. Existing
18 master bathroom. So you already have a build out over that
19 garage area in the back. Now you want to -- you're proposing
20 to add over the garage itself. Most of those houses that you
21 see in that area that have built over the garage, my own
22 included, I'll admit to it, we don't have that extension going
23 in the back behind it so. And that extension is, looks like 11
24 and change by 11 and change. Okay. So it's about 140 square
25 feet or so.

26 MR. MALLIA: Yes, the expanded garage is on the first

1 floor. Yes.

2 MEMBER HERNANDEZ: And the 140 is just the above.
3 Okay. So it's top and bottom, you know, it's 280. So that's
4 pretty much what you're asking now. So you already have the
5 add on that most people would do over the garage, except that
6 you did it in the back corner and over the back corner.
7

8 MR. MALLIA: Right. And without going over FAR, I mean
9 we didn't come for a variance.

10 MEMBER HERNANDEZ: Yes, absolutely. And had you not
11 done that, the you could do that over the garage without going
12 FAR. That's the point I'm trying to make. So you already made
13 use of the excess capacity that you had someplace else.

14 MEMBER DONATELLI: So I'm not the architect either, but
15 I would ask the question slightly differently getting at the
16 same thing. I'm trying to figure out if there is some way that
17 we can accomplish what the homeowner is seeking to accomplish
18 without the need for such a large variance. Perhaps doing away
19 entirely with the requirement of the variance or at least
20 decreasing the variance and my question is as follows: It is
21 possible to reconfigure that existing walk-in closet to make it
22 perhaps slightly larger and where you have the proposed new
23 bedroom number three, to turn that into an existing walk-in
24 closet and perhaps have it be half the size of the proposed
25 bedroom number three. In other words just swap the existing
26 walk-in closet with a newly proposed space that is half the

size of bedroom number three?

MR. MALLIA: Can I have the homeowner come up?

MEMBER DONATELLI: Absolutely. Please. We're just trying to explore options. Name and address.

MS. VALAR: Christina Valar, 78 Hill Top Drive, Manhasset 11030. Unfortunately my dad hasn't been getting better. Last two years he had a stroke. We weren't expecting this. I built my own walk-in closet. That was my dream. My two lovely kids, you know, and I'm hopefully gonna try for a third, if, God willing. But right now my dad is having seizures and I need him home and I need him close to me. I can't have him on the first floor. He needs to be on the second floor. So that's why we're here.

MEMBER GOODSELL: Why? Normally people want the first floor so the elderly people don't have to climb the stairs.

MS. VALAR: He can do the stairs. He's okay with that. But I would prefer him to be closer to me.

MEMBER GOODSELL: And your bedroom is on the second floor?

MS. VALAR: Yes. It would be right next door. He would be using my master bath. It's just closer. It's more convenient.

MEMBER GOODSELL: And were you in the homeowners when the expansion was done in the back of the house?

MS. VALAR: Yes.

MEMBER GOODSELL: And you understand what we were asking.

MS. VALAR: Yes.

MEMBER GOODSELL: You kind of used up your GFA on the expansion in the back of the house.

MS. VALAR: Correct.

MEMBER GOODSELL: Do you have an answer for us as to whether or not there's another way to accomplish this, besides going over GFA?

MS. VALAR: I'm gonna let my husband speak, because he's very familiar with this.

MR. KATSIHTIS: Theodore Katsihtis, 78 Hill Top Drive. Six years ago when we did, we weren't expecting we were going to have this issue. And the only reason we decided was the only way that we were trying to figure out where is the right spot to add the extra bedroom and also it's more easy for him to have access to the master bathroom and for us also. He's an older guy. Another scenario, maybe we can come a little bit smaller in the size of the bedroom. The only way we decided to do that, because as my attorney told you, we are trying to keep the same line.

MR. MALLIA: The room that was the intent to align it with the other side of the house. We definitely could have shift it back and make it not --

MR. KATSIHTIS: It's okay with me.

MEMBER GOODSELL: Well, as the board has noticed, it's a 19 foot by 11 foot room, which is a very substantial room. 11 feet is not substantial but 19 feet is.

MR. MALLIA: Yeah, and the only reason was just to come out and match the other facade of the house.

MR. KATSIHTIS: But we can definitely move it back if it makes it more palatable.

MEMBER HERNANDEZ: Can I ask what is on the expanded garage. What's in there, because the drawing doesn't show anything. It just shows an empty space. On the ground.

MR. KATSIHTIS: Just the garage. Yeah.

MEMBER HERNANDEZ: So there's nothing there. Just space for the car?

MR. KATSIHTIS: Storage right now.

MEMBER HERNANDEZ: I know the feeling. I know you want your father next to you.

MS. VALAR: I do.

MEMBER HERNANDEZ: Okay. As someone who is probably old enough to be your father. Okay. I can tell you that I went through similar things with my father-in-law. He never had to move in permanently with us, but he was with us for six months. Okay.

MS. VALAR: Yeah.

MEMBER HERNANDEZ: And although he was able to climb stairs, because he lived in a three story walk-up in Brooklyn

all his life so he was in very good shape, it got to the point that it got very difficult. So forgetting about this.

Personally reconsider wanting him next to you, because God willing he will live a very long life and you want him to be able to walk in and out of the house without having to climb stairs. So just reconsider that personally. Forget about the zoning board. Okay?

MS. VALAR: Yes.

MEMBER HERNANDEZ: The issue that we are having is that you have used up all of your space in the back. I agree with you aesthetically, the nicest thing to do is to bring it forward to match the other wing of the house. It would look much nicer. I don't like it when it's all flush, because it looks like one big wall. If you move it back too much then it looks kind of odd. So yes, aesthetically it looks nicer. But we don't deal with aesthetics on the board unfortunately. We deal with numbers and it is a large ask that you're asking, since you have used so much of that space already. That overage -- not overage but that excess that you could have built, you know.

MEMBER DONATELLI: I do have a question. I'm not sure that you picked up on it, but is it possible to somehow reconfigure your plans such that that existing walk-in closet and I know you're very attached to it. I heard that. That that could become a bedroom and that you create a new walk-in

1 closet in where you proposed a new bedroom number three. Might
2 that not be a possibility and thereby reducing the ask?

3 MR. KATSIHTIS: I'm not the contractor, but the cost is
4 going to be less to transfer those but we can do that. We can
5 see.

6 MEMBER DONATELLI: One of the things that we're
7 required to consider are alternatives, because we don't set the
8 gross floor area. We don't set these numbers. The town board
9 does. We're empowered under certain circumstances to grant
10 variances, but we have to go through and weigh the five factors
11 and as I've said, one of the five factors is whether or not
12 there is another alternative. So we are not the architects.
13 Our Chairperson is the architect on the board and he is not
14 here. So I think I would like his opinion.

15 MEMBER HERNANDEZ: Yes, me too.

16 MEMBER DONATELLI: I would like to reserve it. Well,
17 would you like the opportunity to consider other alternatives?

18 MR. MALLIA: Or have Chairman Mammina take a look at
19 it?

20 MEMBER DONATELLI: Yes. So in other words, the
21 question is, if we reserve the decision, that means we have
22 what we need to render our decision and we make our
23 deliberations. If you would like the opportunity to somehow
24 modify the plans based on what you've heard today, then we can
25 continue it for your supplying new plans.

Appeal #21622

SECRETARY WAGNER: So then you want to talk with your client.

MEMBER GOODSELL: It seems like no matter what you do, you're now going over GFA. So it's a question of weighing what the possibilities are.

MEMBER HERNANDEZ: There's no downside to continuing it.

VICE CHAIRMAN FRANCIS: Not at all.

MEMBER HERNANDEZ: We would like to see the Chairman who is the architect look at it as well and if we have any conversations back and forth and you want to submit something else, we can. Okay. So there's no downside.

VICE CHAIRMAN FRANCIS: If you submit to decide a modified plan, then you have that option as well.

MR. MALLIA: Which we will. Based on this conversation, I think that's the way to go.

MEMBER HERNANDEZ: Right. And you don't have to come in person again. You can do it electronically.

MS. VALAR: Thank you very much.

VICE CHAIRMAN FRANCIS: You're welcome.

MEMBER DONATELLI: You're welcome.

MEMBER HERNANDEZ: Okay. Thank you.

SECRETARY WAGNER: Next appeal, Appeal Number 21622, Scott Harford; 20 Pepperday Avenue, Port Washington; Section 4, Block 25, Lot 18; in the Residence-B Zoning District. Variance

Appeal #21622

from 70-100.1(A), to relocate a shed in a side yard (not a permitted location).

VICE CHAIRMAN FRANCIS: You've heard Appeal Number 21622, Scott Harford. Is there anyone interested in the application other than the applicant? Seeing no one. Oh, seeing one hand. Okay.

MR. HARFORD: That's my wife.

VICE CHAIRMAN FRANCIS: That's your wife. You're not gonna speak in opposition.

Sir, just give your name and address.

MR. HARFORD: Yes, it's Scott Harford, 20 Pepperday Avenue. So I'm here with my wife Alice. We're the property owners of 20 Pepperday Avenue for 20 years now. We put a shed on the side yard about 10 years ago. I thought it was all to code at the time when I hired a local Long Island company and asked where I wanted it. Put it there. It's 12 feet by eight feet, about 100 square feet. It's under 10 feet tall. I wasn't aware that it was in the wrong spot until I recently applied for a patio permit where the planning inspector called out that the shed needed to be in the backyard. The problem with our property at Pepperday, the whole length of it where it runs along a valley, all the homes are built on a hill, ours included. The way our house is situated, the house is almost all the way back on the property. Right behind us are two retaining walls. Technically there is no space in the backyard

1
2 to put a shed. We have six children. It's not that big of a
3 house, but it's big enough for us. So this extra space for,
4 you know, the kids bicycles, we have the kids mow the lawn,
5 they do the leaves, all the gardening tools go in the shed so I
6 really don't want to have to take it down. I did get letters
7 from all three of my neighbors. Adjoining neighbors to the
8 south, west and north of me stating they are totally cool with
9 where the shed is since it's been there for a long time. You
10 know, I'm proposing to, you know, hopefully I can keep it there
11 being there is no room in our backyard. You can look at the
12 plans and I have a picture of what the little backyard does
13 look like so you can get an idea of the two retaining walls.
14 It just can't physically go in the backyard. But the -- where
15 was I going with this. Yeah, I mean I was hoping, you know, we
16 can keep it, you know, where it is because it's been there 10
17 years. I don't think it's going to move very easy. It's a
18 nice shed. It's got siding on it, it's got windows. I'm not
19 sure if we try to move it out two feet even, you know, how it's
20 going to hold up. But, you know, if that works we'll give it a
21 whirl. Ideally I would to keep it where it is.

22 MEMBER GOODSSELL: What is it built on?

23 MR. HARFORD: It's built on one stack of railroad ties
24 just to make the area level. The front is one stack of
25 railroad ties, I think it's about eight inches and it goes
26 flush to the property in the back and then it's level.

MEMBER DONATELLI: So it's not attached to a slab or anything like that?

MR. HARFORD: No.

MEMBER DONATELLI: Is there electricity in the shed?

MR. HARFORD: Yes.

MEMBER DONATELLI: And that's hardwired to your electric service to your house?

MR. HARFORD: That's correct.

MEMBER DONATELLI: I'm the person from Port Washington on the board and I know your area very, very well. It's actually a beautiful area and the -- not only the landscaping, but the geographic nature of the rolling hills make it very very trying in the area. I know that your house is perched up on top of the hill. As you've been hearing, we're required to weigh the five factors and I guess the one problem that I have is that since you will be moving the shed to a more compliant spot, albeit two feet, my one question was whether or not it could be in the side yard, but then I did see the retaining walls and there's really no way to move it with those retaining walls in place. So that's the first thing I would share with the board. The second thing that I would share with the board is given the hills in the area and the fact that this house does sit up on a hill, the shed is not as visible as it might be if it were just on the ground level. The third thing that I would note is given the fact that there is electricity, which

1
2 would also have to be reconfigured that would certainly give
3 certain determination as to whether or not the expense would be
4 to move the shed two feet as oppose to moving it 30 feet and
5 the fourth thing that I would say is that your lot is
6 irregularly shaped. So it kind of serves as a corner lot, it
7 is right at the intersection, it's not a rectangular lot. So
8 it kind of comes to a point and that really limits were you
9 place the shed. Have I said anything incorrect?

10 MR. HARFORD: No, I agree with everything. Thank you.
11 Thank you.

12 MEMBER DONATELLI: As one board member, I've reviewed
13 this and have no questions. Does anyone else have questions?

14 VICE CHAIRMAN FRANCIS: No questions.

15 MEMBER HERNANDEZ: I would only add that although
16 technically it is on the side of the house, it is as far back
17 on the side of the house as it could possibly be. It's not
18 that it's facing --

19 MR. HARFORD: Yeah, we tried to hide it, you know.

20 MEMBER HERNANDEZ: It's not facing the street and
21 again, we're not an aesthetic board, but it is not a nice
22 looking shed. It's not offensive to look at.

23 MEMBER DONATELLI: You built this yourself?

24 MR. HARFORD: No. I had a company on Long Island build
25 it and put it together.

26 MEMBER DONATELLI: I was going to say I was very

impressed.

MR. HARFORD: Thank you. Thank you. We're trying.

VICE CHAIRMAN FRANCIS: Is the company Tough Shed?

MR. HARFORD: It was like 10 years ago and I honestly forget who they are.

VICE CHAIRMAN FRANCIS: They make really nice sheds.

MR. HARFORD: Yeah, it's held up beautifully. That's why I'm here. I love it. I don't want to tear my shed down. Thank you.

MEMBER DONATELLI: So if no one has any questions, I make a motion that we grant the application.

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

MEMBER HERNANDEZ: Second.

VICE CHAIRMAN FRANCIS: Second by Member Hernandez. Please poll the board.

SECRETARY WAGNER: Member Goodsell?

MEMBER GOODSSELL: Aye.

SECRETARY WAGNER: Member Donatelli?

MEMBER DONATELLI: Aye.

SECRETARY WAGNER: Member Hernandez?

MEMBER HERNANDEZ: Aye.

SECRETARY WAGNER: Acting Chairman Francis?

VICE CHAIRMAN FRANCIS: Aye.

Application is granted.

Appeal #21623

MR. HARFORD: Thank you so much. It's been a pleasure.
Thank you.

SECRETARY WAGNER: Appeal Number 21623, Michael Licciardello; 25 Third Avenue, Port Washington; Section 5, Block 45, Lot 204; in the Residence-C Zoning District. Variance from 70-51(E), to legalize a deck which is located too close to the side property line and with smaller than required total (aggregate) side yards.

VICE CHAIRMAN FRANCIS: You've heard Appeal Number 21623, Michael Licciardello. Is there anyone interested in the application other than the applicant? Seeing no hands. Please give your name and address.

MR. CAHN: Good morning. My name is Daniel Chan, C-A-H-N, from Jaspan, Schlesinger and Narendran here for the applicant. We had an expeditor file the appeal documents, but I'll be handling today's proceeding.

I do have just a small packet of exhibits that I'd like to hand up. I have one packet for each of you if that's okay.

VICE CHAIRMAN FRANCIS: Sure.

SECRETARY WAGNER: Sir, just so you know, we did get some letters --

MR. CAHN: I just saw that on my e-mail from the neighbor.

SECRETARY WAGNER: Yes. I sent them to Mr. Alberto so. Is that who you got them from?

MR. CAHN: I got the one from the Mullers who live right next door at 23 Third Avenue, but I haven't seen any of the other letters.

SECRETARY WAGNER: Yeah, we will get them to you.

MR. CAHN: Okay. I will take a little time to respond to the one letter that I've seen, but I can't respond to the ones I haven't.

MEMBER DONATELLI: And I'd like to just ask you if you would please, I'm not sure if you're familiar with this, has this come before our board for another matter, because this seems awfully familiar this application?

MR. CAHN: It sounds -- it looks like from looking at the correspondence and in fact Mr. Muller's letter indicates that it was originally applied as a single family and that was a mistake, because it's a two family residence. So it's possible that this was submitted in writing as an application previously. I don't think it ever went to a hearing.

MEMBER DONATELLI: And perhaps withdrawn?

MR. CAHN: Perhaps withdrawn and then resubmitted.

MEMBER DONATELLI: That way I can put that out of my head.

MEMBER HERNANDEZ: So it's a semiattached house, not a two family home. It's two semi-attached houses?

MR. CAHN: Correct. With a party wall dividing them, correct.

1 So we're here seeking a single variance from section
2 70-51(E). So the minimum side yard is 12 feet as you know.
3 Applicant has a raised deck and I'll get to the history of the
4 deck and how long it's been there in a moment. But at its
5 closest point to the property line, it's 7.2 feet instead of 12
6 and at the furthest it sort of veers out little bit to 7.8 feet
7 on the back end. But since we're looking at the closest point,
8 we're talking about 7.2 feet.
9

10 So if you look at the first attachment, there's a
11 letter from the prior attorney in our firm to Carlos Reyes, the
12 plans examiner here, which attaches an affidavit from the
13 original builder or it might be -- let's see. Yeah, it is the
14 original builder William E. Bonny of Bonny Contracting and what
15 he says there is that the deck was originally constructed along
16 with the house in 1975, '76 timeframe. It was constructed by
17 Bonny Contracting in compliance with the then applicable bulk
18 area and zoning requirements for the then RM District pursuant
19 to town building permit number N-303210. So our position
20 originally before we applied for the variance was that this was
21 permitted as of right in the RM District and that the CO that
22 was issued on the house, number 00043, to Robert S. Bonny for
23 the two family residence including the deck, that was dated
24 9/15/76. And we took the position that the CO, you know,
25 included the deck along with the two family dwelling. But I
26 think if you look at the CO, I don't believe it mentions the

deck, it just mentions the dwelling. So originally we applied for a permit to legalize without the variance and that was declined or rejected. So that's why we're here. No improvements have been made. So just as background, as I just was saying, you know, the deck has been there for almost 50 years. No improvements have been made since the original construction in 1976, except for ordinary repair and maintenance, which I believe is exempted from review by the building department under section 2-9. The footprint of the deck remains the same as originally constructed. The notice of disapproval, as I was just mentioning, was just a couple of months ago on September 25th of this year. So we filed a variance application. The Bonny affidavit, that first exhibit, notes that the deck serves as a point of egress and ingress to the main residence and he confirms in his affidavit that the deck is in the same location and same dimensions as it was when originally constructed in 1976. If you go to the next exhibit, it's a survey. I'll just pull mine out here as well. The Scalice single page survey. It's a little small, but you can see that this a unique lot as we were just talking about. It only has one side yard, because it's this two family with the party wall. So that party wall is on the property line and so there's only one side yard. There's a nonconforming rear yard and, you know, if we were talking about building a new deck now and there was no deck, there really isn't any other place to

put it other than where it's been for the past 48 years.

VICE CHAIRMAN FRANCIS: It appears from the picture though that this deck has been redone in that it now has vinyl posts on it.

MR. CAHN: Yeah, I don't -- redone.

MEMBER GOODSELL: It certainly does. Not only redone, but now the balustrade look like they're code compliant with today's code, because I built a deck in the 70s and we had -- you could build whatever you wanted. And so the balustrades were much further apart and they were wood. We didn't do white vinyl way back in the 70s.

VICE CHAIRMAN FRANCIS: They didn't have it in the 70s.

MEMBER GOODSELL: Exactly. So when you say ordinary maintenance and repair, I think the chairman is correct. It looks visually like it has been completely updated. Maybe not moved, but certainly updated.

MR. CAHN: Okay. So that is possible. I don't think I have a picture of the original deck. So it was originally wood and now it's PVC.

MEMBER GOODSELL: I know what I built in the 70s and it was pressed lumber and pressure treated lumber was the rage and that was exactly what we did because it was gonna last forever. Nobody told us it was gonna splinter and crack, which it does.

MR. CAHN: Right.

MEMBER GOODSELL: So I appreciate the photo. I mean

1
2 I've looked at this property and I did see and I made a note
3 that it didn't quite look like it was from the 70s although the
4 location may be. It looks like it has been updated.

5 MR. CAHN: Yeah, it may have been updated in place and
6 I I mean I don't know if you would say in kind, because it's
7 not the same materials. But the dimensions are identical, I
8 think, as far as I know to what it used to be.

9 VICE CHAIRMAN FRANCIS: I think it lends to the
10 argument that this is a new deck.

11 MR. CAHN: Well, I don't -- I wouldn't go that far.
12 And if you look at the photo at the end of exhibit -- well, I
13 don't have your exhibits numbered, but the exhibits that start
14 with the permit -- with the application itself. The last page
15 of that is a different photo and that photo is a little closer
16 up and if you look at the stairs and the decking itself, they
17 appear to still be original wood. It's possible that the
18 fencing around, you know, the guardrail has been replaced as
19 PCV. But it looks like the other parts of the deck remain the
20 same as they were originally.

21 MEMBER GOODSELL: I do recognize the compressed lumber
22 posts holding the deck.

23 MR. CAHN: Right. And so, you know, going -- if you
24 look at either one of these photos, you know, the neighboring
25 lot as you're looking at the photo in front of the house to the
26 left, that's the Muller's house 23 Third Avenue. I can't say

1
2 for sure what the measurements are between that house or its
3 detached garage or shed, whatever that is in the back and the
4 fence. But it appears that at the very least, that their shed
5 is also under the 12 foot minimum from the sideline. So I
6 don't think that the fact that there are these nonconforming
7 small lots that are difficult to work with that have structures
8 that are closer than 12 feet is out of character of the
9 neighborhood, but I'll get to the five factors at the end. I
10 just want to give a little more background. That same packet
11 that has this photo that shows the Jeep in it, that's the
12 application packet. It shows that all fees were paid. A bunch
13 of documents were uploaded to the system. I think some of the
14 things that I'm showing you today in the packet were already
15 uploaded. There's a BZA affidavit of ownership and then I
16 think I also included an affidavit of mailing showing that the,
17 you know, there was proper notice provided. I'm gonna go
18 through the variance standards very quickly and then I'll try
19 to address very quickly as well what Mr. Muller said in his
20 letter, because that's only one I've seen.

21 So whether an undesirable change will be produced in
22 the character of the neighborhood or a detriment to nearby
23 properties will be created by the granting of the area
24 variance, no. There's no change to the character of the
25 neighborhood, because the deck has been in place albeit
26 possibly redone with the PVC portions for almost 50 years and

1
2 it's not proposed to be changed in any way. And I also don't
3 know when the deck, if it was replaced with PVC over wood
4 composite, when that happened. Our applicant, the owner,
5 current owner Licciardello, they acquired in 2019 according to
6 the title report. So this was already there for over four
7 decades by the time they acquired it. I don't know when the
8 changes were made. But, you know, as I was saying, the survey
9 and the site plan and the photos, they show clearly there is no
10 other side yard. The rear yard is quite short as well. So I
11 don't think any change will be created to what's currently
12 there and I think that should be taken into consideration when
13 this is -- this is, you know, distinct and different from new
14 construction that's going to be something new in the
15 neighborhood that hasn't been there before.

16 Whether the benefit sought by the applicant can be
17 achieved by some method feasible for the applicant to pursue
18 other than the area variance. Again, we say no. This is the
19 only side yard. There is nowhere else that the deck could have
20 been placed and it serves as a point of ingress and egress to
21 the residence. It's already built. It's been there for more
22 than four decades and we don't see any other feasible methods
23 or locations to keep and maintain the deck.

24 Number three, whether the requested area variance is
25 substantial. Well, that's a matter of perspective. I guess
26 it's 7.2 feet at the closet point. That would be a 4.8 foot

1 variance on 12 feet. 4.8 feet I would say is not substantial
2 in the greater scheme of things. If you do it percentage
3 terms, it appears to be more substantial. I think that's the
4 only factor that -- that, you know, I'm not confident that we
5 meet the requirements, but I would make an argument that 4.8
6 feet is not substantial. Especially that it's been there for
7 so long and, you know, the complaint from the neighbor next
8 door doesn't appear to be with the proximity to the -- to the
9 sideline -- property line. It's more with the height of the
10 deck and just the fact that there is a deck that when they're
11 standing on it, you know, they might have guests over. I saw
12 something about, you know, complaints about noise. You know, I
13 think that would be more appropriately addressed with a noise
14 compliant. I mean if they think that they're violating the
15 noise ordinance, by all means call it in and I think, you know,
16 the building department will or the appropriate authority or
17 agency will address that. Whether there was a problem.

18 But let me get to the last two elements. Whether the
19 variance will have an adverse effect or impact on the physical
20 or environmental conditions in the neighborhood. No. Again,
21 no adverse effect because it's been there for so long without
22 incident. It's not intrusive and we find that it's utility to
23 the owner as a means of egress and ingress to the residences
24 outweighs any perceived detriment to the neighborhood by
25 allowing it to remain after it's already been there for so
26

1
2 long.

3 And finally, whether the alleged difficulty was self
4 created. Again, no. The property was acquired by the current
5 owner with the deck. I believe with the deck with the PVC but
6 I can't say for sure. And it was in existence, again, since
7 the 1970s. So this is not a self-created hardship. We didn't
8 even think, as I said in the beginning, that a variance was
9 required and they've made attempts to legalize it because they
10 felt that the original CO also included the deck. We got it,
11 you know, rejected on that. But I think attempts were made to
12 try to legalize this, you know, in any way possible without
13 making any changes to it.

14 VICE CHAIRMAN FRANCIS: It is self-created in that they
15 purchased the property with the deck on it. That's not
16 determinative.

17 MR. CAHN: I hear you. Yeah. I understand your point.
18 It's well taken. But I think that, you know, when they
19 purchased, they may have been advised that as they thought, you
20 know, with us initially, that it was actually legal. So I
21 don't know that they knew that it was illegal based on the CO
22 that's was issued in the 1970s.

23 If I could just look at my phone to read the letter.

24 Oh, do you have a question?

25 MEMBER DONATELLI: Yes, I do. Before you address that
26 letter or other letters I think you may have received.

1
2 You mentioned a few times that it is a means of ingress
3 and egress to the house, but there is another means of ingress
4 and egress, right. There's the front door?

5 MR. CAHN: Right. It's a secondary means of ingress
6 and egress. Secondary means. Alternate means if you prefer
7 that word.

8 I'm just gonna very quickly address some of the points
9 that were made by Mr. Muller in his letter. You know, what he
10 seems to be doing is, other than, you know, complaining about
11 the noise and the, you know, what he says is an evasion of
12 privacy, because they've got children and the deck, you know,
13 the eyeline, you know, the sight line is into the second story
14 bedrooms, I guess. That's what the letter says. You know, I
15 don't know what they're getting out there. I mean there are
16 things called window coverings and if it's nighttime, most
17 people do pull the blinds down so people can't see inside
18 during the day. I don't know how often they're using the deck.
19 These are working people just like all of us. I imagine that
20 they're not using it much during the day, but if they do, you
21 know, I don't -- in the daylight hours it's really difficult --
22 first of all, I don't think anyone is trying to look into the
23 other windows, but it's difficult to see. So I don't know what
24 to make of the intrusion on privacy arguments. But the one
25 thing I would take issue with is what the Muller's are doing
26 and I appreciate where they're coming from. You know, again,

1 everyone has a right to feel the way they feel, but what they
2 seem to be doing is suggesting a whole bunch of other variances
3 be obtained. They're suggesting that a variance be obtained to
4 create a fence along the property line and instead of being the
5 maximum four feet, is seven or eight feet. And I don't know
6 how that, aside from it being an odd suggestion to an applicant
7 to apply for additional variances, I don't know that that would
8 really do anything when you're standing on a deck that's -- I'm
9 not sure how high it is, but eight to 10 feet off the ground I
10 presume. I'm not even sure that would do anything. They're
11 asking for trees, you know, arborvitaes to be planted that
12 would grow up to 10 feet. You know, I think that the neighbors
13 might have to talk to our client about it. But I don't think
14 that's a crazy suggestion. If it would, alone, planting some
15 trees for privacy would, you know, alleviate, obviate their
16 concerns overall. But if they're gonna want the trees and then
17 also want them to take down the deck and either move it to the
18 backyard, which is even, I think, a shorter setback to the rear
19 yard than there is at the side, then, you know, I -- I just
20 take issue, you know, with them suggesting that a whole bunch
21 of additional variances be obtained.
22

23 VICE CHAIRMAN FRANCIS: Isn't that side of the house
24 though already paved. Is it even possible to plant trees
25 there?

26 MR. CAHN: There is a strip of grass. If you look at

1 the picture that has the Jeep in it and look behind the Jeep,
2 there is, I guess 7.2 feet of grass right there at the front of
3 the steps and 7.8 at the back.
4

5 MEMBER DONATELLI: In the past we've had situations
6 like this. I mean the whole point of the side yard setback and
7 an aggregate side yard setback is that we like the suburban
8 feel of the area. And I can think of at least two or three
9 occasions where, within the last year or two, we've had
10 situations where a house violated the side yard setback with
11 steps in a similar situation such as this. And I believe that
12 we did impose a condition of the planting of arborvitae as a
13 screen. Would your client be amendable to something like that?

14 MR. CAHN: I would think so. Yes. Certainly would be
15 amendable to that over taking down the deck or moving the deck,
16 which I don't know if there is any other place to move it to.
17 But yeah, I think that's a reasonable request and I will take
18 it to them and explain how reasonable it is.

19 MEMBER DONATELLI: And specifically what comes to mind
20 with this one case that I am now referring to was the
21 neighbor's concern that somebody could be peaking over the
22 fence into the kitchen and, you know, we all want and expect a
23 certain amount of privacy. So it's not an unreasonable
24 request.

25 MR. CAHN: It may take some time. I mean I don't know
26 if they can plant it at 10 feet, you know, but they grow very

fast as you know. Within a couple of years they'll shoot up a few feet. So we can discuss this further if you had, you know, if you had wanted them to plant a six foot arborvitae or an eight foot, you know, line of trees. You know, I'm sure that the applicant would be willing to work with the town and the board in that manner. And I don't think it's an unreasonable request and I agree whole heartily, you know, with the whole privacy. I have a home and I understand those issues as well. I would just point out that the house itself is 20 and a half feet from the line. So it's -- there's no issues with the house, you know, on this side, you know, plenty of distance from the house to the line. It's really only when people are using the deck for, you know, guests. Not just walking up and going into the house. They're not interested in the neighbors house. If people are milling about and having, you know, a cocktail party on the deck, then, you know, I certainly understand why it would be nice for them as the neighbors to have a little bit of screening. So yeah, I think that's a reasonable request. But I don't think it's reasonable for the neighbors to be, you know, asking for it to be taken down. I don't know, I should've looked this up. I didn't do a search on the neighbor's house to find out when they purchased their house, but, you know, if it was anytime within the last 40 years, 45 years, they would have purchased with knowledge of this deck and so I think, you know, self-created hardship I

1
2 know only applies to the applicant, but in a generic sense, you
3 know, they -- they -- they knew it was there and, you know,
4 presumably didn't have an issue with it when they bought their
5 house. Again, if it comes down to neighbors respecting their
6 neighbors, having quieter gatherings, things like that, those
7 are valid concerns. But they're totally, not totally but
8 mostly irrelevant to the structure and to the variance that
9 we're here about. Those things can be taken care of by being a
10 good neighbor and by asking people to come inside if they're
11 being too loud or what have you. And I think that in, you
12 know, the client, the applicant would certainly be willing to
13 listen to those concerns and if they have a party that's too
14 loud, as I said before, the neighbors are free to -- they
15 shouldn't have to do this. The parties shouldn't be too loud
16 to begin with. I don't know if they have been or not. This is
17 just the neighbor's opinion. But if they were in fact
18 violating the noise ordinance or just being loud or intrusive in
19 someway, then, you know, call code enforcement and they'll take
20 care of it.

21 MEMBER GOODSSELL: I think it's very impressive that you
22 have an affidavit from the builder that it confirms that it was
23 built between '75 and '76. I also, as I mentioned, built a
24 deck in 1979, called the town, the town said we don't have any
25 regulations on a deck so we built a deck.

26 MR. CAHN: Right.

MEMBER GOODSELL: To my surprise, in the early 80s, everybody suddenly enacted codes concerning the decks. So the fact that this was constructed at a time when we had a different rule and now the rule has changed, satisfies me, in my mind, that this was done properly.

MR. CAHN: At the time.

MEMBER GOODSELL: At the time.

MR. CAHN: Right.

MEMBER GOODSELL: Now, when I went to utilize my deck, I didn't have so much as a lumber receipt showing when my deck was built. It was just my word. But I know I got caught off guard and so I can understand how this applicant feels. Our solution was to take the deck down, because after 30 years it was a pile of splinters.

MR. CAHN: I appreciate that. Did you replace it, if you don't mind my asking?

MEMBER GOODSELL: No. Took it down.

MR. CAHN: That doesn't help me.

MEMBER GOODSELL: It served its purpose. But I do understand how the code changes, because I did caught off guard myself.

MR. CAHN: Okay. Well, I appreciate that sentiment and that's how we feel about it. Is that they did feel it was legal when the CO was originally issued and we are going through the process to try to legalize it now. And, again,

1
2 applicant would be willing to consider the screening and I'm
3 pretty sure I can convince them that that's a wise move, if the
4 board were willing to grant the variance to allow the deck to
5 remain.

6 MEMBER DONATELLI: So what I would suggest is that we
7 -- I understand that several letters were just recently
8 e-mailed and they're part of the file. You may want the
9 opportunity to review them and to respond.

10 MR. CAHN: May I respond in writing?

11 MEMBER DONATELLI: Yes. So that's what I'm going to
12 suggest. That we continue this hearing to allow you to submit
13 any response that you want to respond -- any response that you
14 want to submit in opposition to the letters that have been
15 filed and that way we can consider for record.

16 MR. CAHN: And then at the end of the process, when
17 I've submitted whatever response I want, would that be then
18 when a determination is made or will you call it back for a
19 second hearing?

20 MEMBER DONATELLI: No, I don't think we ever call
21 matters for a second matter.

22 MEMBER HERNANDEZ: No, you don't need to come back.
23 But you should also discuss with your client the possibility of
24 planting some arborvitaes, because the odds are that if we do
25 decide to go with approving it, we are going to require --

26 MR. CAHN: That would be a condition?

Appeal #21624

MEMBER HERNANDEZ: Yeah.

MR. CAHN: Understood. It makes my job easier that you just said that. So I will do what I have to do on my end. Thank you.

MEMBER DONATELLI: All right. You're welcome.

SECRETARY WAGNER: Continued, right?

VICE CHAIRMAN FRANCIS: Yes. Continued.

(A recess was taken.)

SECRETARY WAGNER: Appeal Number 21624, Helena Gomez; 65 Burnham Avenue, Roslyn Heights; Section 7, Block E, Lot 864; in the Residence-C Zoning District. Variances from 70-50.C, 70-51.B, 70-52.5 and 70-202.2, to legalize a new dwelling located too close to the primary and secondary front property lines and located too close to the side property line, with a porch which is located too close to the primary and secondary front property lines, with paving which exceeds the permitted amount and with no means of storm water runoff retention on site.

VICE CHAIRMAN FRANCIS: You've heard Appeal Number 21624, Helena Gomez. Is there anyone interested in the applicant other than the applicant? Seeing no hands.

MR. ALTMAN: I don't have an interest, but I'll present the case.

VICE CHAIRMAN FRANCIS: Okay. We appreciate that.

MR. ALTMAN: David Altman, from the law office Brown,

Appeal #21624

Altman, Dileo, 538 Broadhollow Road, Suite 301W, Melville, New York. Still good morning.

VICE CHAIRMAN FRANCIS: It's still good morning.

MR. ALTMAN: Good to see everybody. I'm sorry Mr. Mammina is not here, but I suspect he's recovering from running the marathon this weekend. Is that why?

VICE CHAIRMAN FRANCIS: No actually.

MR. ALTMAN: He didn't run?

VICE CHAIRMAN FRANCIS: No.

MR. ALTMAN: Oh, I am surprised. I am surprise.

So on behalf of Helena Gomez who is here with me today and John Novello our project architect. Property is 65 Burnham Avenue, Roslyn Heights. Nassau County Tax Map Section 7, Block E, Lots 864 and 865. Property is situated in a Residence-C Zone. It is located at the southwest corner of Burnham Avenue and Elm Street. And in that regard, I'm gonna hand up some copies of an area map, which depicts the subject property and the surrounding neighborhood. I have a copy for everybody and one for the clerk as well.

Property itself is 50 by 100 with frontage on Elm Street on the north side and on Burnham Avenue to the east. Approximately a 5,000 square foot lot. The lot itself is consistent with other lots in the area. All of which are 50 by 100 square foot lots. In that regard, I know the board probably has in its records, a copy of our radius map, but I'll

submit additional copies of the radius map, which was used for the compliance mailing as well so the board has that. The surrounding lots themselves are all 50 by 100. The neighborhood itself was fully built out with single family residential homes to the north, to the east, to the south similar to the subject parcel. To the west there is a slight buffer of existing distinguish vegetation that you can see from one of the pictures I'll provide next, which is --

SECRETARY WAGNER: So the first one was Exhibit 1, the photos, the areal and then Exhibit 2 is the radius map and now you're submitting pictures?

MR. ALTMAN: That's right. So I have some photos that I will submit, which were taken in October this year, which shows the current state of the dwelling as partially improved and I'll get to that in a second. But more importantly also shows the extensive vegetated buffer particularly at the end of Elm Street and then along the west side of the property. Elm Street, by the way, is a dead end. There are no single family residences at the end of that street.

As you can see from Exhibit 3, which I just provided to you, which is a photograph of the existing structure that's partially built circa October of this year. This is a two story single family home, which you can see from the existing photo, depicts the rear addition -- two story rear addition to the dwelling previously approved by this board on March 1st of

Appeal #21624

2023 under Case Number 21317, wherein that this board did grant certain variance relief in part which is before this board again today. Which specifically is the primary front yard setback relief and the secondary front yard setback relief and I'll just note them for the record. Under section 70-50.C, front yard depth, the primary front yard depth required here is 26 feet. What's provided is 20.2. That's as to the dwelling. And as to the setback for the front porch, it's 21 feet with 15.8 feet provided. As to the secondary front yard on Elm, 20 feet is required to the dwelling. Eight feet is provided and that's what's been existing. And as to the secondary front yard to the porch and I'm not sure how building came to this determination, but that's the call. It's 15 feet required, eight feet provided. Those variances were previously considered by this board as I've mentioned and granted in its March 1 decision. There is no change to those variances. What was previously approved by this board approximately 18 months ago remains as is. There is no change and in fact there is no change to the footprint of the dwelling, which is along those lot lines which has been in this location for the past eight years or so. Where there is a need for a minor and I'll use the word de minimus, although I'm often reluctant to do so, I believe in this instance there is. There is a side yard setback under section 70.51.B for the gabled roof over a, I'll call it redone extension on the south side of the dwelling.

1 And what I have with me here and I think will be helpful for
2 the board to see, is a comparison photo. Just give me one
3 second to give out copies. It's a comparison photo facing the
4 dwelling from Burnham and you can see the extents on the south
5 side here as it exists today with the gabled roof. That gabled
6 roof is what necessitates the variance. Five feet is required.
7 It's 4.65 feet. So it's .35. It's fairly di minimus and
8 frankly not even discernible to the eye. And you can see what
9 the house looked like previously, right. That, again, that
10 little extension on the south side existed albeit of course
11 it's been reattached to what exists today.

12
13 Where we get to the new variances and what frankly has
14 brought us here before you today, in principle part is the
15 issue of impervious surface on the property and storm water
16 retention. So variances are requested under section 70-52.5,
17 which is the amount of paving in the secondary front side yard
18 as well as storm water management or retention of storm water
19 runoff onsite under section 70-202.2, where the call in the
20 denial letter from the building department notes that 670.1
21 cubic feet capacity is required, whereas the applicant provides
22 with a dry well with a capacity of 342.05 feet. On its face
23 that seems fairly significant. Roughly a 50 percent variance
24 in terms of maintaining onsite storm water capacity or
25 drainage. I will note that the dwelling, prior to being
26 redone, between the 2023 approval and today, did not have a dry

1 well onsite. A dry well was in fact added to the property, I
2 believe on July 10th of 2023 and I do have a letter from the
3 company. It's called Cesspool Pro. That is dated October 23rd
4 of 2024, sworn to by Joseph Cyber, who is an owner and partner
5 in the company, which discusses the fact that on that
6 particular dated, which I mentioned in July of '23, a dry well
7 approximately 10 by five was installed in the rear yard of the
8 subject property beneath the now existing patio, which is of
9 sufficient size and depth to handle existing storm water
10 drainage and that the soil quality that they observed was
11 sufficient for onsite percolation and leeching of storm water.
12 I will note that Ms. Gomez has and I've spoken to her at length
13 about this, she's lived in the house for 20 years. She bought
14 the house towards the end of 2003. She's been there for 20
15 years. There has never been a drainage problem or flooding
16 problem at the property either prior to the redo of the house
17 or since the redo of the house.

18
19 Now, the new patio that's in the backyard is roughly
20 the same as the patio that was there in terms of it's
21 dimensions prior to that second story addition. So there has
22 really been no additional impervious surface, other than of
23 course we have that second story addition that, again, was
24 previously approved. So there's perfect -- completely
25 sufficient drainage capacity and I will also note, given and
26 I've been speaking to Mr. Novello, if the board has any

1 questions from him, this property is fairly high above sea
2 level. So the depth of the water table is significant. You
3 don't have shallow ground water here. You don't have perching
4 ground water here. Have you had that problem, Ms. Gomez
5 certainly would have experienced that over the past 20 years.
6 That simply has not been the case.
7

8 MEMBER DONATELLI: May I ask a question?

9 MR. ALTMAN: Of course.

10 MEMBER DONATELLI: The plans that this board approved
11 for the initial variance, did that include plans for just one
12 dry well?

13 MR. ALTMAN: I believe it did.

14 MEMBER DONATELLI: And did the plans that this board
15 previously approve show (inaudible). In other words, how did
16 this question arise after being built?

17 MR. ALTMAN: I'm sorry, I couldn't hear you.

18 MEMBER DONATELLI: How did this question arise after
19 the approval of the original set of plans and between then and
20 the actual construction?

21 MR. ALTMAN: Good question. So as I understood, during
22 the inspection process as the new house was being built, the
23 rear second story addition that was added to the dwelling,
24 could not be tied in structurally based upon the construction
25 of the old house from 80 years ago and that was of course
26 discovered when the rear wall was removed, hence additionally

1
2 -- more outside walls had to be taken off to properly build out
3 the house and tie in the new addition to the old. It was
4 during those inspections and as I understand it that, the
5 building department said hey, wait a minute, you've removed
6 more than 50 percent of the exterior walls --

7 MEMBER DONATELLI: New construction.

8 MR. ALTMAN: New construction and now you're subject to
9 the new rules. So here we are. Obviously this has been on
10 hold -- the construction has been on hold, as I understand it,
11 for the better part of 10 months. So not only is the applicant
12 carrying, in terms of mortgage costs, et cetera, the -- this
13 particular dwelling and paying for a contractor, but they are
14 also renting an apartment while all this work is being done.
15 So obviously there is a sense of urgency.

16 MEMBER DONATELLI: Thank you for shedding light on my
17 question.

18 MR. ALTMAN: Absolutely. Absolutely.

19 But, you know, in terms of the five factor balancing
20 test under 267-B of the town law, I'll go to the first one
21 which seems most obvious. Is it self-created? Yeah, it is.
22 Is there a way to sort of ameliorate this? Not really because,
23 you know, to provide that additional capacity for onsite
24 drainage, it would require the addition of a second dry well,
25 tearing up --

26 MEMBER DONATELLI: Forgive me a moment. We're just

trying to clarify something.

My understanding is, is that I guess 671 cubic feet of water that is required to be held in its dry well verses 332, which is actually the capacity of the dry well, right?

MR. ALTMAN: Right.

MEMBER DONATELLI: Okay. Please continue.

MR. ALTMAN: So in terms of, as I said, self-created, yes. It is a self-created hardship. Again, by law not determinative. The alternative to this without variance relief, yeah, I suppose you could but that would come with substantial cost and hardship to the applicant. In that we would have to tear up the patio they just put in, there's the expense of the new dry well. Where I would suggest there is an alternative to adding another dry well and I think the code even sort of addresses this in general terms, the applicant and I've discussed with them, is willing to do a perimeter plant of low lying vegetation to help retain rainwater onsite and if the board is so inclined, we can even put a small berm in place, particularly along Elm to avoid any storm water runoff. I will note in looking at the site survey, this is a pretty flat property. It's all fairly harmonious throughout. The elevation is between 180 and 190 over the entire course of the property. So this property is pretty flat. You're not gonna have runoff onto other properties from here.

MEMBER GOODSELL: Well, I have to disagree with you,

Appeal #21624

because when I looked at it, that's one of the things I looked at and it does slope gently towards the front of the house. And in looking at one of your pictures, the water runoff down the street is going in this direction. So the water running off Elm, would simply join this and I don't know where the closest sewer is. Runoff does go in a particular direction. I'm not quite sure, but I can see from the picture that there was water. There was only one section of what the paving was that I wrote to myself why and I see it's on the picture. As you're standing on Burnham Avenue looking at the front of the house, immediately to the right corner it's paved up to front of the house and yet on Elm, the door to the side of the house is in the center. What would be the purpose of paving it from the side door towards Burnham. It's just a small section that I couldn't understand why you paved.

MR. SUMMERSTEIN: From the door to Burnham?

MEMBER GOODSSELL: From the side door right over here.

MEMBER HERNANDEZ: Facing Elm you have to wings in the door. I don't know, maybe like you put some chairs maybe. I don't know.

MEMBER GOODSSELL: The trash cans maybe?

MR. SUMMERSTEIN: Yes.

MEMBER GOODSSELL: Come up and speak.

MR. SUMMERSTEIN: Jonathan Summerstein, 65 Burnham Avenue, Roslyn Heights 11577.

MEMBER GOODSELL: Yes, you can address my question. What was the purpose of -- because I think it puts you over square footage. What was the purpose of paving that particular area?

MR. SUMMERSTEIN: Just from aesthetics and a space to put our garbage cans that can be protected, that were not in site. Otherwise it's going to be into the backyard side of it. And we have two windows to the basement in that area. So the -- with wells so the basement windows prevented us putting garbage cans anywhere else but on the nearside of the house.

MEMBER GOODSELL: Okay. I could not understand, because I think in doing that, that may have been part of what created too much paving of the secondary front yard.

MR. ALTMAN: I'll just submit to the record the survey.

MEMBER HERNANDEZ: Usually that area is served for plantings, not paving. That's why.

SECRETARY WAGNER: Mr. Altman, did you submit the letter from the cesspool company as an exhibit?

MR. ALTMAN: Yeah, I did.

Relative to the other factors, there's no change in the character of the area. It's a single family residential home. It remains a single family residential. This board, as mentioned previously, granted the application finding the character of the area remains consistent. There is no adverse environmental impact here and on balance, the benefit to the

1
2 applicant as oppose to any detriment as a whole to the
3 community weighs in favor of granting the applicant.

4 And of course if the board has any questions of myself,
5 or Mr. Novello, or the applicant, we are at your disposal.

6 MEMBER HERNANDEZ: Just out of curiosity, the cesspool
7 company that installed it, they made a conscious decision to
8 install a smaller cesspool then required?

9 MR. ALTMAN: No, I think it's a bigger cesspool.

10 MR. SUMMERSTEIN: May I speak again?

11 MEMBER HERNANDEZ: Please do it at the microphone.

12 MR. SUMMERSTEIN: The initial application and the
13 initial plans had a five by 10. That was before we had to make
14 the change to the new construction application. So initially
15 that was approved, the five by 10. Back in 2023. That was put
16 in before we -- that was the first thing we did when we started
17 the project in, I believe it was July of 2023. When they put
18 the cesspool in, it was based upon the original plans that the
19 five by 10 was sufficient for the runoff at that time. Once we
20 changed the second floor roofing and added the patio, they
21 readdressed that in the new application and said now we're in
22 sufficient. So that letter is from the company that installed
23 it in July of 2023 after the first variance and that was
24 approved on the plans.

25 MEMBER HERNANDEZ: I'm reading the letter dated October
26 23, 2024. This says the original plan that was approved by the

Appeal #21624

Town of North Hempstead called for two eight by four dry wells. Due to space constraints, a decision was made to install. A decision was made. I'm assuming by them, right?

MR. SUMMERSTEIN: No. It was actually made before we came to the board initially. So we had had approval for the five by 10. Those plans were altered. So it doesn't really detail. That letter doesn't really detail the process. So that was on the initial plan. The very initial plan that was submitted. Then we had to submit a new plan for the cesspool that was five by 10, because the septic tanks and leeching pool took up too much room. We couldn't fit two eight by fours or whatever it was. So they had to switch it to a five by 10 and I believe it was approved.

MEMBER HERNANDEZ: But you didn't get approval, because it's being picked up no.

MR. SUMMERSTEIN: No, that was prior to any construction. So our initial submission to the town in 2022 included that and that was addressed before we even came to the board initially. So I think if you look back at the initial plans that was submitted, there was a five by 10 change. It was changed to five by 10.

MEMBER HERNANDEZ: That's not what's in this letter. This letter says that it was a requirement of two eight by fours and because of constraints, a decision was made to install one 10 by five dry well. It doesn't say that it was

1 consulted with the Town of North Hempstead, that the building
2 department approved it. It doesn't say any of that. Okay. It
3 says because it was determined that the 10 by five was capable
4 of handling the runoff efficiently for the entire roof area,
5 including full lot drainage. So it doesn't say anything about
6 the town being involved in this decision. So I think you need
7 to get a new letter if you want to use this, otherwise it goes
8 against it.
9

10 MR. ALTMAN: We are happy to submit a revised letter.

11 MEMBER HERNANDEZ: Yeah, thank you.

12 MEMBER DONATELLI: I just note for the record that the
13 other variations from the variances that we have previously
14 granted are --

15 MR. ALTMAN: Mr. Hernandez, I understand that during
16 the inspection process, that the town building inspector did
17 signoff on the dry wall as installed. But we are happy to
18 clarify in a letter.

19 MEMBER HERNANDEZ: I don't understand why they would
20 pick it up now.

21 MR. ALTMAN: We're happy to clarify in the letter. No
22 problem.

23 MEMBER HERNANDEZ: Thank you.

24 MEMBER DONATELLI: So I was just making a point that
25 the other variances that are being request today are really de
26 minimus. With the exception, I think, of this dry well issue

1 and the front yard paving.

2 MR. ALTMAN: Folks, I think Mr. Novello would like to
3 say something.

4 MEMBER DONATELLI: Relatively di minimus and don't
5 cause me great concern as one board member.

6 MR. NOVELLO: Good afternoon, Chairman and Members of
7 the Board. My name is John Novello. I'm from John F.
8 Capobianco Architects at 159 Doughty Boulevard, Inwood, New
9 York 11096.

10 I just wanted to point out Mr. Hernandez's comment
11 about the dry wells. I just looked quickly. The letter stated
12 that originally they were supposed to install two four by
13 eights. So I quickly looked and two four by eight dry wells, a
14 four by eight dry well can hold 168.88 cubic feet of water. So
15 I think the letter is addressing because of space, they
16 couldn't install two four by eights side by side. So the plans
17 were switched to a five by 10, which can hold, you know, the
18 correct amount. The 342.05 cubic feet. That still worked out.
19 So it was -- it was an equal change.

20 MEMBER HERNANDEZ: So what you're saying is that one
21 five by 10 is the equivalent of two four by eights?

22 MR. NOVELLO: Well, it -- sort of, yes. If you do the
23 math -- let's do the math first. But it met the -- yes. It's
24 right. Yeah.

25 MEMBER HERNANDEZ: If that's what you're testifying to
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then that's fine.

MR. NOVELLO: Yes. Yes. So we actually, by installing the five by 10, it's a hair better than the two four by eights.

MEMBER HERNANDEZ: Thank you. That's fine.

SECRETARY WAGNER: Mr. Altman?

MR. ALTMAN: Yes.

SECRETARY WAGNER: Did the prior plans show the patio. Did the prior plans, did they include the patio?

MR. ALTMAN: That exists today?

SECRETARY WAGNER: Yes.

MR. ALTMAN: I believe they did.

SECRETARY WAGNER: I don't see that on my plan. But could that be possibly be a reason for such an increase in the runoff?

MR. NOVELLO: Can I explain the increase, please?

VICE CHAIRMAN FRANCIS: Yeah.

MR. NOVELLO: So initially we came before this board and it was just an addition. When -- after the construction started and I guess at some point when the building inspector came and determined that the house was over 50 percent or considered a new -- because the existing second floor -- yeah. The front seat of the -- the existing second floor, the walls were, you know, rebuilt. So when the inspector came, I guess he said you have to file a supplement. So when the plan examiner reviewed the plans, now it became a new dwelling even

1
2 you need drainage now for entire house. You know, everything
3 on the property.

4 MEMBER HERNANDEZ: All right. Thank you.

5 MEMBER DONATELLI: Yeah, but the fact is that the patio
6 was not shown on the first iteration on the plans and it exists
7 now. So whether that was done with the theory that it was an
8 old house that was being remodeled or then was pushed over to
9 50 percent and now became new construction, still somehow the
10 original plans that came before us didn't show the patio that
11 now exists. So there may have been some confusion, some mix
12 up, some miscommunication in the application process and the
13 manner in which things were built. And I understand, you know,
14 now of course is the question of whether or not we should grant
15 the variance or require ripping up of the patio. But somewhere
16 along the line the applicant decided to install a patio that
17 was not on the original plans.

18 MEMBER GOODSELL: I remember looking at this house back
19 in March of 2023 and I was on the board then and I'm part of
20 the decision. I couldn't tell you what those plans are,
21 because we've had hundreds of plans since then. But I, for
22 one, would like to take a look and see if the patio was on the
23 original plans. I can understand how the can't got caught in
24 this, but did the applicant, in my mind, contribute to any of
25 this by adding or increasing a patio. I don't know the answer
26 to that.

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2 MEMBER DONATELLI: Do we have an estimate of what it
3 might cost to install a second dry well. To rip up the pavers
4 and install a second dry well?

5 MR. ALTMAN: In excess of 20 grand easily and I think
6 there's a better way and more aesthetically pleasing way
7 without going through that expense and frankly inconvenient of
8 tearing up the patio, which is, again, controlling, if
9 anything, any kind of storm water through vegetation and
10 landscaping of the property. Which is you do a perimeter
11 planting particularly along Elm of low lying vegetation,
12 there's going to be grass planted as well and if the board is
13 so inclined, there can even be a slight berm installed along
14 the property line, which is far less intrusive, far less
15 inconvenient and far less expenses then having to have the dry
16 well company come back, tear up the patio, dig up the existing
17 dry well, dig a new hole, put in two rings, right. That's a
18 substantial expense, which is, in my opinion, not necessary and
19 I think the code contemplates alternative means for retaining
20 storm water onsite. And, again, I'll reiterate, Ms. Gomez
21 lived in this house for 20 plus years. There's never been a
22 problem of storm water runoff or ponding in the entire time
23 she's lived. I'm not aware of any complaints having been made
24 to the town about that. About this property being problematic
25 and given the, you know, the soil complexion, make up or
26 consistency, it's well drained property at a high elevation.

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2 So if the board is inclined to require any kind of measure, I
3 think, you know, landscaping and perhaps minor berming is more
4 than sufficient.

5 MEMBER DONATELLI: Well, as one board, I think I would
6 like to hear from the building department as to whether or not
7 there are other means of mitigating this, aside from ripping up
8 the patio and installing the dry well. So I know that we don't
9 have anyone here from the building department, but perhaps we
10 can continue the hearing such that we can get some sort of
11 response. That would be my preference.

12 VICE CHAIRMAN FRANCIS: Okay. Makes sense. All right.
13 Does anyone have anything else?

14 MEMBER GOODSELL: No.

15 MR. ALTMAN: Can we put a timeframe on this, folks,
16 because I mentioned, you know, the applicant is carrying the
17 cost of two places right now.

18 VICE CHAIRMAN FRANCIS: When's our next hearing?

19 MEMBER GOODSELL: 20th. November 20th.

20 VICE CHAIRMAN FRANCIS: I'm sure we can get it done by
21 then.

22 MR. ALTMAN: Do you need an appearance on the 20th?

23 VICE CHAIRMAN FRANCIS: No, not at all.

24 MEMBER DONATELLI: We're asking the building department
25 if there are some other means of mitigating.

26 MR. ALTMAN: I understand where Mr. Donatelli is going,

1
2 as this is not a board of site plan review, they want to
3 consult with the building department to find out what the
4 measures are. I got it.

5 MEMBER DONATELLI: So another question that I have is,
6 is there some way to change the pavers. Short of \$20,000
7 expenditure, to change the pavers from impervious to pervious.

8 MR. ALTMAN: I know what you're asking. I was gonna
9 also suggest, folks, if you're gonna consult with the building
10 department, I think it may be appropriate for us to actually
11 come back on the 20th, because let's say the building
12 department says no, tear it all up you need another dry well, I
13 think we need the opportunity to consider what they're asking
14 and to respond to that. Particularly if we believe reasonable
15 alternative measures with less expense and less intrusive means
16 can achieve the result.

17 SECRETARY WAGNER: But are the reasonable alternative
18 measures?

19 MR. ALTMAN: I just suggested it. Which is we do the
20 appropriate landscaping of the property. Those are accepted
21 storm water measures and by the way, it's provided for in the
22 code.

23 MEMBER DONATELLI: So we'll continue till the next
24 hearing.

25 MR. ALTMAN: I mean certainly in terms of replacing
26 pavers. I know what you're talking about pervious pavers.

MEMBER GOODSELL: Again, how much would have to be removed in order to make it acceptable to the building department. Is it two rows or it's pavers or is it the entire thing. It makes a difference.

MR. ALTMAN: Of course it does. That's why I said I think we probably need to visit with you.

MEMBER GOODSELL: And it makes a difference whether it's removed in the rear yard or it's removed in the secondary front yard, which is why I said before why do you have this.

MR. ALTMAN: No, I got it.

MEMBER GOODSELL: Besides a \$20,000 installing of another dry well, is there another less expensive alternative. I don't know the answer to that.

MEMBER DONATELLI: The existing patio is pavers?

MR. ALTMAN: Yeah. If you look in the pictures you can see it.

MEMBER HERNANDEZ: I can see the pictures, but I'm looking at the drawings. The architectural drawings and they don't show or at least I can't find them, how much of the backyard is paved. I can see from the picture that it's the side, you know, the two strips on the side and I can see some of the back.

MR. ALTMAN: If you look at the survey.

MEMBER HERNANDEZ: The survey has it?

MR. ALTMAN: Yes.

Appeal #21608

MEMBER DONATELLI: I would like to hear from the building department and, you know, while we typically do not require applicants to make a second appearance, I do understand why the applicant may want to have some input.

VICE CHAIRMAN FRANCIS: Right. Let's find out what they say. Yeah, I think in this case it would make sense.

MR. ALTMAN: I think it's appropriate for us to be here on the 20th.

VICE CHAIRMAN FRANCIS: I agree.

MR. ALTMAN: Particularly based upon what the building department says.

VICE CHAIRMAN FRANCIS: Right. All right. So we will continue this until November 20th.

MR. ALTMAN: Thank you, everybody.

MEMBER HERNANDEZ: Thank you.

SECRETARY WAGNER: So this will be number seven as an exhibit.

Appeal Number 21608, Giacobbe Realty Corporation; 17 Beechwood Avenue, Port Washington; Section 5, Block 94, Lot 589; in the Industrial-B Zoning District. Appeal for determination, or in the alternative, variances from 70-202.A, 70-212.B, and variances from 70-50.A, and 70-208.F, to legalize an addition to a non-conforming dwelling that will result in the expansion of a non-conforming dwelling that is located too close to the street, and to legalize an area of outdoor storage

Appeal #21608

for vehicles, construction equipment and machinery that is too big and is located too close to the property line.

VICE CHAIRMAN FRANCIS: You've heard Appeal Number 21608, Giacobbe Realty Corporation. Anyone interested in the application other than the applicant? Seeing no one. Please give your name and address.

MR. MINERVA: Thank you. Dominick Minerva, Minerva and D'Agostino, 107 South Central Avenue, Valley Stream, New York attorney for the applicant.

The application before you today involves the real property located at 17 Beechwood Avenue, Port Washington, New York. It's known as Section 5, Block 94, Lot 589 on the Nassau County Land and Tax Map. Subject premises is located in the Industrial-B District. The application seeks a finding that the existing use of the rear portion of the premises as an industrial storage yard is a prior nonconforming use or in the alternative, the granting of area variances to maintain the use of the storage yard for vehicles, material and equipment. And an area variance to maintain a dormer addition for the dwelling on the premises. Property is improved with a single family dwelling built in the early 1920s and a rear storage yard, which is rented by the applicant. The current owner has owned the subject premises since 1992 and the property has been in the Giacobbe family since 1979. My client has continuously rented the rear of this property, as well as the property next

door at 19 Beechwood Avenue. Also owned by the applicant.

There have been various tenants over the years, but the current tenant, Chester's Towing, has rented the yard for the last 20 years. The adjacent property at 19 Beechwood Avenue was the subject of the public hearing before this board on November 13, 2019, seeking to maintain the same conditions, but at that time included a use variance for a mixed use property. That application was denied by the board on June 3, 2020. In an Article 78 proceeding under Index Number 606683 of 2020 was subsequently commenced. The parties entered into a settlement agreement providing that the mixed use having a residential dwelling and a rear commercial or industrial storage yard is permitted use. There was also similar settlement involving a property at 29 Beechwood Avenue, which is several parcels away from the subject premises, which recently came before this board earlier this year for substantially the similar variances that is before you today. And I'll give a copy of that disposition as Applicant's Exhibit A. And before I hand it up, I just want to read one paragraph in the decision, because it's right on point to what we're asking for today and I believe it would be law of the case, because it talks about the area.

This property is on the same block between the same two side streets and within the 200 foot radius appears on the map. So that said, this was dumping and storage, section 70-212.B. The town code requires an accessory outdoor storage area not be

Appeal #21608

located closer than 120 feet to the property line and not occupy more than 15 percent of the plot area. Same two variances we are going for for the subject property. The board finds that because the property is an undersized lot and only 100 feet in depth, our subject property is also 100 feet in depth, the applicant cannot comply with this requirement. The board also finds it is reasonable to permit the applicant to occupy a greater percentage of the lot for the following reasons. One, the storage is only in the rear of the property and this decision is conditioned on the applicant limiting the storage to that location. Here we're also only in the rear yard and we're willing to limit any storage to the rear yard. Because the lot is under 4,000 square feet and the storage is limited to the rear portion of the lot, the space available to the applicant for the commercial storage of equipment would be insufficient. That parcel was 32.85 by 100. Just under 3,800 square feet. Our lot is 30 by 100 so it's 3,000 square feet. Very compatible to the 29 Beechwood property. And third and last finding, other surrounding properties utilize the entire rear yard for commercial storage. Given that the existing commercial storage is in keeping with the character of the neighborhood, the board finds that the benefit to the applicant in maintaining the outdoor storage area outweighs any detriment to the neighborhood. And I'll submit that as Applicant's Exhibit A.

Also, at the original hearing for 29 Beechwood Avenue, under Appeal Number 20772, affidavits were submitted from prior owners and area residents that indicated that the use of the rear of this property, 17 Beechwood, and those affidavits also covered 19 and 29, because I was working on all three properties at the same time. For an industrial storage yard has been in existence as far back as the 1940s and it also submitted at that hearing, the court decision for another property on the same block, which incidentally happened to be 4 Beechwood Avenue, which is the Chester's Towing property. That indicated that the nonconforming use must go back to 1951, as well as other affidavits from the 1950, 60s, 70s and 80s as to the storage yards existence. So I'm gonna submit copies of those documents as Applicant's Exhibit B. So those are the affidavits. And the court decision from the Chester's Towing case 4 Beechwood from 1980. And I'm also gonna submit a recent appellate division second department case Abetelli v. Town of North Hempstead, which in holding, that the applicant had a prior nonconforming use with regard to the two family dwelling for the property that was the subject of that court decision. It just reiterated the standards for determining the nonconforming property and I'm going to submit that as Applicant's Exhibit C.

I would also note that it is the applicant's position that the use of the storage yard is in keeping with the

character of the area, will not be detrimental to surrounding property owners, the variances are minor in nature and they're not self-created, and it's in keeping with prior decisions of this board for these immediate areas I just indicated. The areas improved with a mix of residential and industrial properties all located in Industrial-B Zoning District on the same block between Port Washington Boulevard and I think it's Baylis, South Baylis Avenue on Beechwood Avenue and it's all developed in this pattern. There's a self-storage facility on the corner and on the south side of the street, across from the house, there are industrial uses including a truck repair facility, a sports complex and these are big large buildings. And on the north, including the subject premises, it's a mix of industrial and residential uses, including a towing company, Chester's Towing, there's a car wash on the block. I think just three or four parcels away from the subject line. A car dealing facility and auto shop and then you have a mix of residential uses with -- that have industrial uses on the property, such as Chester's Towing, commercial landscaping. And I'm just gonna submit just a few photos taken by me on November 4, 2024, that I feel accurately represent the subject premises and the surrounding area. On the back of the photo is the address of each parcel so you can see what's actually on that block.

MEMBER DONATELLI: Mr. Minerva, I have a question.

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MR. MINERVA: Sure.

MEMBER DONATELLI: On your Exhibit Number 1, which is the prior appeal of this saga of 2072.A, the fourth condition states that the outdoor storage area shall be adequately screened by a fence/gate. Is the subject property that is now before us screened by view -- from view from the street?

MR. MINERVA: So the storage area is not visible from the street and --

MEMBER DONATELLI: Well, is it screened. Is there a gate or a fence between -- between the street and the rear yard storage?

MR. MINERVA: My client is indicating that yes, there is one and I'm just looking at the survey. It's showing on the -- on 17 Beechwood Avenue that there is a gate at the back of the house that goes from the back of the house to the property line and it goes around and it a concrete block wall with five foot tall chain link fence that goes around, yes. And that's on the survey that's on file with this application.

MEMBER GOODSELL: Mr. Minerva, this property, the applicant's property, it has a certificate of occupancy as a one family, does it not?

MR. MINERVA: Yes. There was a certificate from years ago that addressed the dwelling, yes.

MEMBER GOODSELL: Is it being used as a dwelling now?

MR. MINERVA: Yes. The house that's there is being

Appeal #21608

used as a one family dwelling. It's rented by the applicant. She does have a rental permit for the house and then the rear yard, which is paved, is being rented by Chester's Towing.

MEMBER GOODSELL: Which I observed of this property. What type of building is 29 Beechwood?

MR. MINERVA: Very similar. Single family dwelling.

MEMBER GOODSELL: 29. Not 19, 29.

MR. MINERVA: Yes, 29 Beechwood is a single family dwelling with a rental permit and a rear storage yard exactly like 17 and 19.

MEMBER GOODSELL: 29 that I observed is a car wash and an industrial building. Not a residence. I will check that to be sure that I'm looking at the correct property, but I didn't find 29 to be comparable. I found 19 Beechwood to be comparable to 17 Beechwood.

MR. MINERVA: Okay. I did include a photograph. I believe I included a photograph of 29 Beechwood in my packet so. And I already handed up, but if it could be handed back down to me I can flip to that photo.

MEMBER GOODSELL: Okay. I will take a look at that.

MR. MINERVA: Sure.

MEMBER GOODSELL: Now the type of equipment that's gonna be stored, supposed to be stored or is being stored in the rear yard, it cannot be very big, because the driveway is only 7.6 feet wide. What type of industrial equipment, what

1 type of business is supposed to be stored here?

2 MR. MINERVA: Okay. So what's being stored is trailers
3 and vehicles. And the rear storage yard is accessed by the
4 driveway at 19 Beechwood Avenue. There's a driveway between 17
5 and 19 on -- let me just look at the survey here. So that
6 would be on the west side of the subject premises. There is an
7 asphalt driveway shown on the survey. That's the driveway that
8 accesses the rear storage yard behind 17 Beechwood.
9

10 MEMBER DONATELLI: So as I look at the what we have
11 here, it seems to me like it's screened on the east side from
12 the street, but I don't see any screening on the west side of
13 the street. Is there screening on the west side of the street?

14 MR. MINERVA: Give me a second. So my client is saying
15 there's a gate there. So the setback from -- on the west side
16 from 17 Beechwood to the property line, I think is only 1.5
17 feet so. And actually it's being shown on my survey here. So
18 on 19 Beechwood is where the gate is. Chain link gate. I can
19 hand up this survey.

20 MEMBER DONATELLI: Is there some formal easement
21 between the two properties even though it is the same owner?

22 MR. MINERVA: Okay. When you're ready I'll clarify a
23 few things.

24 MEMBER DONATELLI: Yes, please.

25 MR. MINERVA: So my survey that we filed, again, we
26 started this process in 2016 with this property. It shows the

1 chain link gate. Yes, I looked at the Google image and the
2 gate is not there. So we will put a screening gate between 17
3 and 19. And my client indicated the 29 Beechwood that had the
4 car wash might be 29 Beechwood in Manhasset, because there is a
5 29 Beechwood Avenue in Manhasset. So I think that might have
6 been the confusion, because the one I presented in, I think it
7 was March of 2024 before this board, that was a single family
8 dwelling with a rear storage lot. Almost identical to the 17
9 and 19 Beechwood properties. So if it was looked up online and
10 not a physical inspection, that might've been where the
11 confusion was.
12

13 MEMBER DONATELLI: So again, there is no screening gate
14 between the subject premises and the street and the applicant
15 is saying that they will install a screening gate?

16 MR. MINERVA: They will install the screening gate on
17 the 19 Beechwood property and attach it to the 17 Beechwood so
18 that there's no peak through.

19 MEMBER DONATELLI: What is the approximate square
20 footage of the rear yard that is being used for the storage of
21 vehicles?

22 MR. MINERVA: Approximately the entire rear yard and I
23 believe that was in the denial letter. I want to say it was
24 1,800 square feet or in that range.

25 MEMBER DONATELLI: And my understanding is that the
26 code allows for 450. Is it your testimony that the entire

square yard -- the square footage of the rear yard has been used for storage since the 40s?

MR. MINERVA: Yes. And that was the same thing with 29 Beechwood and they -- that variance granted. Very similar. The whole backyard and that parcel is a little bigger so it was probably around the same, if not -- I think the parcel was a little bigger but the house might have been a little bigger so it was substantially around the same square footage lot wise that was granted on 29 Beechwood for storage as we're proposing here for 17 Beechwood and they will ultimately come before you on 19 Beechwood.

MEMBER DONATELLI: And I think your application also includes a variance for the -- for an addition dormer on the dwelling. Do you want to address that, please?

MR. MINERVA: Yes. So with regard to the dormer addition, it requires a front yard setback variance. I would note that the front yard setback to the dormer is in keeping with the existing front yard to the original dwelling. So it doesn't encroach anymore into the front yard than the dwelling does. The setback to the dormer addition is 16.6 feet, whereas 25 feet is required and the setback to the existing dwelling is 15.8 feet. So it is setback a tiny bit further. It bumps in a little bit, which you may be able to see from my photo from the front wall of the existing dwelling. When my client purchased the property in 1992, the dormer existed. So it's been there

1
2 for over 30 years with no detriment to surrounding properties.
3 It's in keeping with the character of the area as there are
4 other larger homes in the area. Some of which are multiple
5 family dwellings unlike the subject premises. So right next
6 door at 15 Beechwood is a full two story house and that's
7 listed as a two family dwelling with Nassau County Department
8 Assessment. The variance is minor in nature. The hardship is
9 not self-created and it's in keeping with the setbacks on the
10 block so.

11 MEMBER DONATELLI: How would you respond to the fact
12 to, I guess one of the issues on the disapproval, the expansion
13 of a nonconforming use. This is zoned industrial B. We have
14 it being used as a one family residence, but how do you respond
15 to that?

16 MR. MINERVA: It is an expansion of a nonconforming
17 use. The floor area is only increased slightly. So right now
18 on the second floor, I think it's 20 by 22. So it's 440 square
19 feet. There's two bedrooms up there. So it's really just a
20 small bump out of the -- and really the use was already there.
21 There was a second floor existing. You have a living room,
22 dining room, kitchen with one bathroom and upstairs is now two
23 bedrooms. So it's a small expansion of a nonconforming use.

24 MEMBER DONATELLI: Do you want to address that, address
25 the five factors?

26 MR. MINERVA: Well, as I said, it's in keeping with the

1
2 character of the area. I would indicate that, you know, the
3 hardship, again, was not self-created.

4 MEMBER DONATELLI: When was that built. When was the
5 addition built?

6 MR. MINERVA: We don't know. Prior to my client's
7 acquisition.

8 MEMBER GOODSELL: You said your client owned it since
9 1979.

10 MR. MINERVA: My client has owned it since 1992. The
11 family has owned it since '79. That was her father-in-law and
12 they're not, you know, from her previous marriage. He died a
13 long time ago. So she does not know when exactly that was
14 built, if it was built before 1979 or it's built between 1979
15 and 1992. She just knows that 1992 it was there.

16 MEMBER GOODSELL: Thank you.

17 MEMBER HERNANDEZ: Well, I will say for the record that
18 Willow Road is a street that's been like this for quite
19 sometime, because it is an old street and -- I'm sorry.

20 MR. MINERVA: I will note Willow and Davis are the next
21 two blocks and they're on the map and they're developed
22 substantially the same way that Beechwood is developed.

23 MEMBER DONATELLI: It's built and zoned in a very
24 interesting way. We've spent a lot of time grappling with
25 this. So I'm mindful of Beechwood. I'm mindful of the mixed
26 use. I'm mindful of the precedent that this board has voted on

1 Appeal #21625

2 for several other applications. So I think I would, as one
3 board member, I would like to reserve decision on this. Is
4 there anything else that you would like to add?

5 MR. MINERVA: No, unless there's any other questions.
6 I think I've submitted everything.

7 MEMBER DONATELLI: So I would like to reserve decision
8 on this.

9 VICE CHAIRMAN FRANCIS: All right. So we will reserve
10 decision.

11 MR. MINERVA: Thank you.

12 MEMBER DONATELLI: Thank you.

13 SECRETARY WAGNER: So let the record reflect that the
14 acting Chairman Francis will be stepping out and Member
15 Donatelli will be acting as chairman.

16 Appeal Number 21625, Dave s Hot Chicken (signs); 207
17 Glen Cove Road, Carle Place; Section 10, Block N, Lot 239; in
18 the Industrial-B Zoning District. Variances from
19 70-196(J) (1) (a), 70-196(J) (1) (b), and 70-196(J) (1) (f), to erect
20 too many wall signs on a wall, wall signs that are too tall and
21 too big, and wall signs that are too high off the ground.

22 MEMBER DONATELLI: You've heard Appeal Number 21625
23 Dave's Hot Chicken. Is there anyone in the room who would like
24 to speak as to this application? Seeing no one. Please, name
25 and address.

26 MR. EDWARDS: Good afternoon, Mr. Acting Chairman and

Appeal #21625

Members of the Board. For the record my name is Wayne Edwards, Sahn Ward, 333 Earle Ovington Boulevard, Uniondale, New York. I am the attorney for the applicant TCB Carle Place LCC, which is the tenant in the shopping center known as Parkway Plaza operating a franchise of Dave's Hot Chicken. They're currently building that out. They have building permits to build that out and this is -- hopefully they'll have the signage necessary to bring customers in.

This was formerly, if you're familiar with the shopping center, the Hale and Hearty location. Brixmore LLP is the landlord. The applicant is before you today requesting three sign variances for the franchisee. Before I start detailing the sign variances, I want to make you familiar and I'm sure you're familiar with the shopping center itself. Much has gone through several changes since I last appeared before you regarding Orange Theory. That was a parking variance. The shopping center is located on the east side of Glen Cove Road and it has approximately 8,900 square feet of space. The key tenants are now Aldi supermarket, which is on east side of the L shape of the south shopping center and in the corner where the L meets TJ Max. Those are the two major tenants. I've attached as Exhibit 1 in your packet of materials, hopefully you've gotten them, is a Google satellite of the shopping center. As I've indicated, Dave's Hot Chicken will be taking the place of Hale and Hearty. I've highlighted their location

on a recent site plan, which is Exhibit 2, which is highlighted in yellow. It's store number L 24, which is on the northwest corner of the center. There is, in front of that, a pad site with a Smoothie King and a Capital One bank. On the east side is -- is facing the Meadowbrook Parkway. On the south side is Clock tower Place Shopping Center. They have a big change of tenancy all the time, but that's where West end Cafe is and that's one of the restaurants there. Across the street is Boyce Road and now Western Beach Shopping Center.

As you're aware, Glen Cove Road is a heavily traveled north south road. Basically for this shopping center and the shopping on Boyce Road acts as an in between Jericho Turnpike and the Northern State Parkway and Old Country Road and the main business corridor on Old Country Road. So this is the busiest corridor for that area and this is where the customers of all those retail shops basically come from in terms of destination.

Dave's Hot Chicken is the franchise serving Nashville type hot chicken and at this point in time there are 130 locations that originated in LA in probably 2017. And they've expanded across the country. They finally have some locations in the Metropolitan area. White Plains, New York City, New Jersey and they're expanding. Carle Place will be their first Long Island franchise. Their franchisee is local. They're Burger Brothers. Jeff and John Faccaro. They have 40 Burger

Appeal #21625

Kings and QDOBA's throughout Long Island. They're very successful. Their office is in Port Washington and this is a new franchise that they're very excited about.

The issue is the existing signage. What we want to do is install additional signage on this location. We submitted sign plans to the building department and they've indicated that we need variances. The signage we're talking about basically is on the west side of the premises that will be above the store. It will be a two foot by 18.2 Dave's Hot Chicken. That's gonna go above the store. I've submitted photographs of the shopping center. All of the tenants have signage above their location and this will be that location. On the same facade, the upper facade, you'll note that we're putting a six foot logo sign that says Dave's Hot Chicken and has a picture of an, I'll call it a surprised chicken. I think there are pictures of it in your packet.

MEMBER DONATELLI: Surprised chicken, because he's gonna be dinner?

MR. EDWARDS: I guess so. I didn't know how to describe it.

We also will have space on the pylon sign. This sign -- this sign is very important, because we're trying to capture customers coming south from Jericho Turnpike and Northern State Parkway along Glen Cove Road and pull them off that street. In addition, on the west -- on the north -- on the west elevation,

1 which is around the corner, we'll have on the mansard roof, a
2 similar sized sign, which is three feet by 27.28 feet and also
3 on that part of the upper facade, again, the logo sign that
4 says Dave's Hot Chicken. In terms of size, that's where we run
5 into some problems. The six foot sign is 23 feet high where
6 only 18 feet is provided on both sides and in terms of the size
7 of the sizes in terms of the size of the signs, we exceed the
8 maximum 24 square feet. The sign on the north side would be 38
9 square feet and the measurements on the sign on the other side
10 will be slightly bigger.
11

12 Under 267B, the balancing test, there is and I've given
13 you -- basically I've taken random photographs of that area and
14 you'll note in terms of Exhibit 4, you'll note that there are a
15 lot of signs and it's a very well retailed area. So I wanted
16 to show you what the character of that neighborhood is. You're
17 all familiar with it. I really didn't have to take pictures,
18 but you're all familiar with it and there a lot of signs, a lot
19 of large signs, a lot of small signs but that establishes the
20 character.

21 There will be no detriment to the community.

22 MEMBER GOODSSELL: Mr. Edwards, did you take these
23 pictures at five o'clock in the morning, because there's no
24 traffic?

25 MR. EDWARDS: Can I just say when I took them. I live
26 in Westchester and with daylight savings time, I took them on

Monday at 6:45 in the morning.

MEMBER GOODSELL: I was going to say there's no traffic on this main road that you're telling us.

MR. EDWARDS: I wasn't trying to prove traffic. I was just trying to stay safe and it allowed me to make left turns and right turns as I took pictures. So it was at 6:45 in the morning. I came in from Westchester on my way in and stopped off and took pictures.

MEMBER GOODSELL: Just an observation.

MR. EDWARDS: You understand what the character of the neighborhood is. There's not going to any detriment to the surrounding community. Interestingly enough, Brixmore, who is the landlord, gave us permission to put this over signage. They recognize, as well as my clients, the need for signage in this. We've had two or three restaurants in this shopping center go under. That was Mercado and Hale and Hearty. There is a pizza place. I think that might be closed as well and the bagel place closed. There's another bakery opening up which is an Australian bakery. That's under construction as well. They've did a wonderful job in terms of renovating the shopping center with Aldi and with TJ Max. Of course that brings traffic, but my client depends on traffic off of that street. Traffic from the shopping center is not going to provide enough traffic and with their experience, that's why they needed it. There's no detriment to the surrounding area. There will be a

benefit sought by the applicant can achieved by some other method. Signage is the most important thing for this type of casual dining. They will have probably afterwards. This is a first time franchisee. Nobody knows about them and it's signage that is going to do something. Before my previous life, I came from a retail background and my family had a number of women's dress stores on Long Island and in terms of my grandfather, signage is always very important. We always had a nice size signs over our stores. This is before the internet and things like that. So it's always an important thing. Whether the requested area variance is substantial. In terms of the size of the sign, I agree that they are larger than permitted and in this case, because of the location at the end of this shopping center, on the back end of the L, it's very -- it's not that substantial. And whether the proposed variance will have adverse impact. It won't at all. So that basically is my application. If anybody has a question, I'd be more than happy to answer them. And I've never had Dave's Hot Chicken yet.

VICE CHAIRMAN FRANCIS: It's hot.

MR. EDWARDS: I've had Prince's in Nashville but I never had -- where I think it all started, but I've never had Dave's.

MEMBER GOODSSELL: Well, to start off, I would agree. I was a fan of Hale and Hearty. It's a soup place that is no

1 longer there. I recognize there are other food places there.
2 I did go to Mercado. Again, signage is the key. That is not
3 an area where people reside. It's an area where people shop
4 and it's -- you could blow past this corner without even
5 realizing that there is a food establishment. So I do agree
6 with the sign and visibility. Generally the town doesn't allow
7 more than one sign per building or per even facade. And we
8 have discussed that many times on this board. Your client has
9 one sign that identifies it as Dave's Hot Chicken and one sign,
10 which I guess would classify as a logo sign. Now, even the
11 logo sign is oversized according to the building department.
12

13 MR. EDWARDS: Yes. And it's higher.

14 MEMBER GOODSELL: Well, I recognize that. I mean the
15 red and white Dave's Hot Chicken doesn't attract attention, the
16 chicken itself would, surprised or otherwise.

17 MEMBER DONATELLI: I would refer to it, your logo sign
18 as the tower sign, because it kind of stands on that tower
19 albeit not a very high tower. We have had applications where
20 -- that have come before us where there has been a logo and
21 then a printed sign and I understand how retailers want to have
22 marketing. They want to have that visual impact. I know that
23 in the past we have granted similar signs and the one that
24 comes to mind is the Port Washington Tennis Academy, where they
25 had the name of the facility and then they also had a separate
26 logo sign. So I'm less concerned with the number of the signs.

Appeal #21625

And I think, and this is my opinion, that visiting that shopping center numerous times, I do not even necessarily have a problem with the size of the surprised chicken face. I have a problem, I think the Dave's Hot Chicken on the north elevation, the sign above the store on the north elevation is much bigger than many of the signs that are there. That was my impression when preparing for this application. Again, because this is at the very corner of the shopping center and that's really to your client's benefit. The fact that it is so visible, the fact that there is a tower there, the fact that the landlord is allowing for the construction of the logo sign on the tower, that's all to your client's benefit. But this is not in the middle of the shopping center. This is towards the end of the shopping center closest to the street. So I would ask is there some way that we can make that Dave's Hot Chicken sign, that's directly above the store, is there some way to make that smaller so that it would fit in there with the size of the other signs?

MR. EDWARDS: I have no issue with that, in terms of that. I think because it's so many letters making it that narrow. I think we can bring it to like 18 inches and then maybe we can squeeze the letters to basically like 16. I haven't done the math, but we can bring it to like 26 or 27 square feet.

MEMBER DONATELLI: Right now it's proposed at, I guess

two feet one inch in height.

MR. EDWARDS: Yes.

MEMBER DONATELLI: And 38 square feet verses what's allowed, which is 24 square feet.

MR. EDWARDS: We can bring it to 28. We'll make the letters smaller and make it 18. I haven't done the math, but whatever. We can probably bring it 18 inches by 16 feet, whatever that would be.

MEMBER GOODSELL: I can just remind the board. We can compare this to a multi sign we granted for the Foot Locker sign where we allowed Foot Locker a sign with two stripers. Stripers on either side. We did ask that they cut them down and they did, but we have in the past allowed and it is a very visible sign and I understand that visibility is key here.

MEMBER DONATELLI: So the current sign that we're talking about is 18.

MR. EDWARDS: It's two feet and three quarters by 18 feet on the north side and the west side is larger. It's three feet by 27 feet. I would just make both signs size the same.

MEMBER DONATELLI: Right. So my question is, you've offered to make the sign 18 inches verses the two feet one inch and what length are we talking about?

MR. EDWARDS: I guess -- I don't know. It's hard, but how about 16 feet. I don't have a calculator with me.

MEMBER DONATELLI: Let me try and do it real fast.

MEMBER HERNANDEZ: I also don't have an issue with having two signs facing the same direction, because actually the tower can be viewed as a separate building the way it's laid out.

MEMBER GOODSSELL: This is different than a case we previously heard. Verizon had a vanity sign. It's not a vanity sign.

MEMBER HERNANDEZ: Yeah, no. This is basically two different fronts. One is the store front itself and one is the tower for lack of a better word, which is actually separated from it.

MR. EDWARDS: It comes out to 24 square feet.

MEMBER DONATELLI: So I became an attorney because I promised there would be no math involved. If you do one and a half feet by 16 feet it comes to 24 square feet.

MR. EDWARDS: And we can do it on both the north side and on the west side. I think my client, you know, would be very happy if we can get the logo sign plus those. I think he'd be very happy.

MEMBER GOODSSELL: There's only one position you can possibly stand in to see both logos at the same and it's fleeting, because if you're traveling it's not to be distracted.

MR. EDWARDS: No, I think he would be very pleased. And another logo sign and I still get a lot of comments on is

Appeal #21625

the Sole Cycle sign on the Expressway. I get more compliments on that than any building I've ever done. Everybody thinks it's wonderful.

MEMBER HERNANDEZ: And you can see it clearly.

MR. EDWARDS: And you can see it. And you can see it.

MEMBER DONATELLI: Mr. Edwards, can you get us the plans quickly? I understand you're already in the course of construction.

MR. EDWARDS: Of course I can. We're in the process. We're gonna be opening up in a few weeks, but I'll get those plans for you right away.

MEMBER DONATELLI: So then my request would be that we continue this for plans showing the amendment as discussed.

MR. EDWARDS: Okay.

MEMBER HERNANDEZ: And you said the logo signs are 24 feet?

MR. EDWARDS: 23.

MEMBER HERNANDEZ: 23.

SECRETARY WAGNER: So submit those to the building department as well.

MR. EDWARDS: Okay. I will take care of it right away. I'll eliminate two of the variances for the size of the hot chicken signs.

VICE CHAIRMAN FRANCIS: Good.

MR. EDWARDS: Thank you very much.

1 Appeal #21626

2 MEMBER HERNANDEZ: Thank you.

3 SECRETARY WAGNER: Next appeal, Appeal Number 21626,
4 Brixmor SPE 6, LLC; 209 Glen Cove Road, Carle Place; Section
5 10, Block N, Lot 239; in the Industrial-B Zoning District.
6 Appeal for determination or in the alternative, Variance from
7 70-203(X)(1)(a), to provide bollards which do not afford
8 sufficient vehicle impact protection.

9 VICE CHAIRMAN FRANCIS: You've heard Appeal Number
10 21626 Brixmor. Is there anyone interested in the applicant
11 other than the applicant? Seeing no one. Oh, one hand. I'm
12 sorry. Name and address.

13 MR. MINERVA: Dominick Minerva, Minerva and D'Agostino,
14 1507 South Central Avenue, Vallet Stream, New York, attorney
15 for the applicant.

16 The application before you today is and appeal of the
17 determination from the building department that a variance is
18 required from section 70-230(X)(1)(a), on the grounds that the
19 bollard plans depict vehicle impact detection bollards in
20 compliance with said chapter. That section 3.12.2 of the 2020
21 New York State Fire Code is inapplicable to charging stations
22 and that a building permit should have been issued or in the
23 alternative and just clarifying that there was a permit issued
24 and then the bollard issue came up and they submitted an
25 amended plan and we appealed to this board for this appeal. Or
26 in the alternative, applicant request a variance from section

70-203(X) (1) (a). Subject premises is a shopping centered located at 209 Glen Cove Road in Carle Place. It is improved with a mix of retail tenants, food establishments and personal services and surface level parking as previously described in the last case. Same shopping. The applicant proposes to install 12 electrical vehicle charging stations along with associated electrical equipment and 12 existing parking stalls located along the northern property line. The building department first determined that vehicle protection bollards are required pursuant to the zoning chapter of the town code and then that a three foot setback from electrical equipment to the bollards as required in order to meet the New York State Building and Fire Code standards. It's the applicant's position that there is no setback requirement from the electrical equipment to the bollards, which position has been confirmed by New York State department of state division of codes and the applicant's New York licensee engineer will testify to that also shortly.

Okay. My first exhibit, Applicant's Exhibit A, is the state bulletin issued regarding this matter that I'm going to submit to the board. Just one item I would read from that. This is New York State building, standards and codes, electrical vehicle charging stations and it just indicates that this addition discusses currently asked questions regarding EV charging stations and the relevant part needing charging

stations located in the following places are not regulated under the uniformed code, parking lot not associated with a building structure and EV charging station located in a parking lot that has it's utility service connection and associated electrical service independent from the building structure. Here we have an electrical system that's separate from the building. It's not feeding off the building. So I'll submit that as Applicant's Exhibit 1.

SECRETARY WAGNER: This is Exhibit 1.

MR. MINERVA: Exhibit 1. Sure.

I would also note that the plans as submitted, depict bollards on the site plan which are setback one foot from the vehicle charging equipment and therefore, the building permit should have been issued. The engineer who handles the project from Tesla and has done other sites in other jurisdictions in the State of New York will indicate that they have not been required to install bollards three feet away from the electrical charging stations. And those other jurisdictions indicate the New York State building code following the requirement and comply throughout the state.

In the alternative, the applicant seeks a variance from section 70-203(X)(1)(a) of the town code for the requirement to install vehicle impact protection bollards or similar structures entirely and the engineer will testify although required by town code, the vehicle impact protection bollards

1
2 are not required at all by state building and fire code and
3 he's also going to testify that they are not necessary and do
4 not provide any additional safety measures then those that are
5 already built into the design of the electrical vehicle
6 charging system.

7 Additionally, before I call the engineer to testify. I
8 will note with regard to the criteria for the granting of an
9 area variance, that the applicants in compliance with the New
10 York State town requirements. To with the proposal is in
11 keeping with the character of the area, will not be detrimental
12 to surrounding properties and the variance is minor in nature,
13 and the hardships are not self-created. With regard to
14 character of the area, there are other electrical vehicle
15 charging stations in the area, including another station on the
16 subject property with bollards that do not meet the three foot
17 setback. With regard to the detriment to the surrounding
18 property owners, the electrical vehicle charging station does
19 not have electrical current running through them when not in
20 use. Therefore, it's the applicants position that not only
21 will the lack of bollards not be detrimental to surrounding
22 property owners. But they are necessary for the safety of the
23 charging station. Whether or not they meet the setback
24 requirement variance is minor in nature as it will not
25 substantially affect the proposed improvements. It merely
26 eliminates the bollard that the applicant intends is not

1 necessary. And the hardship is not self-created as the
2 shopping center and parking lot are fully developed. There is
3 no room to install bollards within the parking spaces with the
4 three foot setback to the charging station. Parking stalls are
5 simply not deep enough to accommodate three foot setback to the
6 charging station without impacting the parking layout drive
7 aisles. And I'll submit as Applicant's Exhibit B, two photos
8 first photo is of the existing charging station that's at that
9 location. These are a little different in they're side by side
10 to the parking stall rather than head in. The location that my
11 client has leased in the shopping center will be head in
12 parking layout and I have second photo indicating the area
13 where the charging stations are going to be located.

14
15 And lastly, as Exhibit C, I just want to submit what we
16 found on the town of North Hempstead website. Just a policy
17 issue. Town of North Hempstead has indicated that they are
18 looking to increase electrical vehicle charging stations on
19 town properties for employees and for the public use. So it's
20 something that the town has a policy and has indicated that
21 they're in favor to these charging stations and having more of
22 them and more availability.

23 And lastly, I would just note Tesla has four of these
24 stations in some various stage of permitting or approvals.
25 This is the first one coming in before you so obviously this
26 will, you know, the you know outcome of this case, you know,

will affect a few other ones that we have in the works to see how we do the design and how these get constructed.

At this time I'm going to call my engineer Deep Patel to come up and testify. And submit a copy of his credentials for the record and just ask him to state his name and address and briefly summarize his credentials.

MR. PATEL: Deep Patel, 600 Parsippany Ave, Parsippany New Jersey, Civil Engineer, licensed professional engineer in the states of New Jersey, New York, Connecticut, Pennsylvania and New Mexico. I have been practicing engineering for the past six years. I have a bachelors of engineering in 2018 from the New Jersey Institute of Technology and a masters in civil and structural engineering in 2019 from also New Jersey Institute of Technology.

MR. MINERVA: Mr. Patel, will you give the board your professional opinion on the three foot setback requirement that was indicated in the notice of disapproval from the Town of North Hempstead Building Department.

MR. PATEL: Yes. It is my professional opinion that a three foot setback is not required for these electrical vehicle charging stations. As previously mentioned, there is no electrical charge going into these chargers. Normally in electrical equipment, the biggest fear is if you hit it and it's charged then it will have a detrimental effect to whoever hits it. In these cases, the chargers themselves do not get

energized until somebody plugs the cord into a car. The car has to register it, then there's a power cabinet that will feed power to those chargers. So up until that handshake agreement happens between the charger and the vehicle, those chargers are not energized.

MR. MINERVA: Can you mention how other Tesla charging stations have been constructed in other municipalities in the State of New York?

MR. PATEL: Yes. They have not been requiring bollards within three feet and also on our sites moving forward, Tesla has opted to not even put any bollards.

MEMBER DONATELLI: Are bollards required?

MR. PATEL: No. They are not.

MEMBER GOODSELL: And in Tesla's experience, has there been a problem eliminating bollards?

MR. PATEL: Our representative from Tesla is here that can answer that.

MEMBER GOODSELL: I'll ask the next witness. With respect to yourself, you said you're licensed in a two other states. New Mexico and Pennsylvania?

MR. PATEL: Connecticut and New Jersey.

MEMBER GOODSELL: How do they do bollards?

MR. PATEL: Similar. They're opting for no bollards.

MEMBER GOODSELL: No bollards at all. Aren't they afraid the equipment will get damaged. Surely it's expensive

to replace if a car backs into this thing or hits it.

MR. PATEL: Yes. So if they hit it and it gets damaged, Tesla's service team will go out and they will just replace it. That was Tesla's determination so we are following that and we are not violating any code requirements. It is acceptable to use.

MR. MINERVA: So just to clarify. The bollards is the town code requirement, not the building code requirement.

MEMBER DONATELLI: But once again, the recharging units, they are not connected to the electrical structure from the building. They are detached from the building. Is that correct?

MR. PATEL: Correct.

MR. MINERVA: Okay. I will call up Franz. State your name and address on the record.

MR. CURTIS: Hi. My name is Franz Curtis. I'm a senior design engineer for Tesla for about three and a half years. My address 2719 Columbus Avenue in Bellmore, New York 11758.

MR. MINERVA: Okay. So the board had a question for you on the Tesla charging stations not having the bollards. Can you just repeat your question.

MEMBER GOODSSELL: My question is to whether Tesla has had a problem with people hitting the charging stations and causing property damage by not having a bollard.

1
2 MR. CURTIS: Yes. Previously our standard design did
3 include bollards. Going forward, about maybe six months to a
4 year ago we decided to go forward with no bollards, because it
5 improves access for non-Teslas. Not everybody has a charge
6 port in the same location. So sometimes bollards can be a
7 hindrance. In terms of damage to the post. If any, it's
8 usually very minor. So maybe it cracks the skin of the post or
9 it gets pushed back a little bit. But it happens so
10 infrequently that we decided to move away from the bollards.
11 Some places it makes more sense for us to have bollards. Like
12 if there's no curb protecting the post and particularly in New
13 York where we have snow, bollards are helpful for snowplows.
14 So there are some locations where we decided we do want to use
15 bollards, but that's not our initial design.

16 MEMBER GOODSSELL: This is the northeast. Eventually it
17 will snow.

18 MR. CURTIS: Yes. Yeah. So most of our posts in the
19 northeast have curb in front of it at the very least.

20 MEMBER GOODSSELL: Do I see something on the plans that
21 says the proposed bollards are removable bollards. Is there a
22 difference between a permanent and a removable bollard?

23 MR. CURTIS: Yes. A removable bollard you can pull
24 out. The removable bollard are particularly for in front of a
25 transformer. It's a PSEG transformer. So if they needed to
26 have access to one of the other sides of the transformer, they

1
2 can determine to remove it or not. In my experience they're
3 not going to remove them. I used to work for PSEG. But we
4 just did that for their ease of use.

5 MR. MINERVA: So just to clarify, there's bollards
6 proposed on the plan at the front of each stall in front of a
7 charging station. There are bollards proposed around the
8 electrical equipment. Those bollards we are not asking relief
9 for. Those are going to be installed as per the plans. It's
10 the ones in front of the charging station that we're asking
11 for, either an interpretation that we don't need a three foot
12 setback because it's not required by either town code or
13 building code and that the permit should have been issued
14 because we have a bollard there or a variance for no bollard,
15 which is the applicant's preference, because of how they're
16 designing these systems.

17 MEMBER HERNANDEZ: And just to be clear. What you're
18 saying is that the tower itself is not energized until the
19 moment that a car is plugged in, for lack of a better word.

20 MR. CURTIS: Yeah, not just plugged in. After it's
21 plugged in, like Deep said, a check goes between the charger
22 and the car to make sure that there is no technical
23 malfunctions in either one before it allows the power to flow.

24 MEMBER HERNANDEZ: Okay. So therefore even if somebody
25 were to hit it, back into it, it would just knock it or
26 whatever that no danger of power --

Appeal #21626

MR. CURTIS: It will be physical damage that needs to get set back straight. Correct. Correct. And same thing, if you're plugged in, you can't just drive away. Your car is incapable of moving forward while it's being charged itself.

MEMBER HERNANDEZ: While it's in the charging position.

MR. CURTIS: Correct.

VICE CHAIRMAN FRANCIS: Thank you.

MR. CURTIS: Thank you.

VICE CHAIRMAN FRANCIS: Any other questions? Thank you.

MR. MINERVA: No other questions, that concludes my presentation.

MEMBER DONATELLI: Thank you.

VICE CHAIRMAN FRANCIS: We will hear from the building inspector.

MR. CANZONERI: Good afternoon. Joseph Canzoneri, Jr. I'm a plans examiner for the Town of North Hempstead Building Department.

So in general, building codes have always been put into place for life safety. Usually a function of a code is due to, unfortunately tragedy. Most recently carbon monoxide detectors were required in all commercial buildings because of the incident that happened out on the island where there was a carbon monoxide leak and two people died. So we are a department of building safety enforcement. When looking at

chargers and looking at the code, when these chargers first came out, we had no idea what were involved. The idea we were concerned with is these could be high voltage. We didn't know exactly what the voltage was going to each one. We know there are transformers and remember, our code is written not just for Tesla, but is written for all electric vehicle charges for all types and sizes. So we have to write a broad code for a broad spectrum of things. Basically the -- our code, we put into it that vehicle protection was required. When you look at the NEC -- well, first of all. Our town code section 2-70B requires that all electrical work in the town comply with the NEC, which is the National Electrical Code. When you look at the National Electric Code, the National Electric Code does require that there is some type of vehicle protection required. But unfortunately, it doesn't state -- it doesn't give you anything as to what that is supposed to be. The only code in the building department is section -- sorry -- in the building code is section 312 in the fire code, which specifically outlines bollards and how they're supposed to be installed. A bollard is supposed to be installed at a certain depth and a certain distance away in order that if somebody hits the bollard, the bollard doesn't then hit the item it is protecting. At that point it's useless. If you have a bollard right next to anything, this podium, that desk, a vehicle charger and a vehicle hits the bollard and moves the bollard, it's now going

1 to still hit the desk, this podium or the electric charger.
2
3 The code section that we use and that we use exclusively in the
4 town and have always used for the past 10 years at least that I
5 have been plan examiner is section 312 of the fire code. And
6 that states that a bollard has to be three foot in the ground,
7 three foot in the high and it also needs to be spaced three
8 feet away from the object that it's protecting. We use it for
9 gas meters, vehicle -- we put it in front of egress doors
10 coming out of backs of buildings to make sure people don't hit
11 the doors and block an egress door that is for a tenant space
12 or anything. And along with this, as far as past practice,
13 this is the code that we have strictly enforced. We have and I
14 have specifically reviewed applications, such as I can remember
15 one off the top of my head, 361 Willis Avenue where we put in
16 Tesla chargers and there are bollards there that are three feet
17 away.

18 MEMBER GOODSELL: That are or are not?

19 MR. CANZONERI: That are three feet away from what
20 they're protecting. The other thing we have to take into
21 consideration is, okay, while the Tesla chargers are there and
22 there is no car plugged into them, maybe there's no power. Is
23 this the same for other vehicle chargers. I don't know.
24 That's not my determination to figure out. A manufacturer
25 would have to bring that to us and we may have to modify the
26 code. The next thing is, so if you're there charging your

Tesla, all of a sudden another car comes around and hits. Now the charger is active and live. Your car is sitting there charging but another car hit your car and now backed your car into the live charging station. We have to take everything into consideration. A lot of times we have to take into consideration the absurd. But as you see recently, these things that can happen that we think are so absurd. Out in Selden we have a gentleman drive through unfortunately right into the store and, you know, he had alcohol in his system, but he drove through into a store. There are so many things that we cannot account for, because we can't imagine for them. We have to think about what the worse case scenario would be when we apply a code that is in the New York State building code and is the only reference for vehicle protection. We say that you have to provide vehicle protection for the charging stations. The prior code provides a complete detailed section that says what vehicle protection is and how it must be applied. Our town code references vehicle protection and that's the section we use. Regardless of what other towns do and whether they require vehicle protection in their code is irrelevant here. We are a separate Town of North Hempstead. Every town has their town codes that they all use and enforce separately. That's basically my presentation. This is what we've used for many many years and this is what we still enforce and it has been enforced on numerous occasions.

VICE CHAIRMAN FRANCIS: Can you provide the distinction between the charging stations at the Americana and the ones that are being proposed on this application? Because the Americana does not have bollards.

MR. CANZONERI: I don't know. I didn't review that. I would have to review that. I would have to look into and get back to you. They're supposed to have bollards.

VICE CHAIRMAN FRANCIS: I'm looking at an image of them right now and they do not.

MR. CANZONERI: I could not answer that at this time.

MEMBER DONATELLI: Are you familiar with the distinction between electricity that is provided by the building as oppose to electricity provided from a separate structure?

MR. CANZONERI: Yes.

MEMBER DONATELLI: And can you explain that to us?

MR. CANZONERI: The vehicle chargers, they're at a parking area. They could be right next to a building or 100 feet away from a building. They need their own power source. Typically there is a transformer that is in the parking area or close by that provides the power to that. The electric doesn't come from the building itself. It's not like air-conditioning, light, things of that nature. That's basically the difference. The code -- the New York State has said that since it's not similar or a kind to say a light or an air-conditioning system

1
2 or something like that where the building is providing the
3 electric, a vehicle is charger is not that.

4 MEMBER DONATELLI: Right. So take that no the next
5 step if you would. If there is a separate source that is not
6 coming from the building, the state does not require protection
7 for those systems?

8 MR. CANZONERI: No.

9 MEMBER DONATELLI: But the town still does or does the
10 town -- I guess my question is, does the town independently
11 require the bollards that the state does not?

12 MR. CANZONERI: Well, if you put a transformer on your
13 property, the NEC, National Electric Code says you need vehicle
14 protection. We would say provide vehicle protection and the
15 only standard that New York State gives for vehicle protection
16 is section 312. That is a section that we would enforce. The
17 NEC is a standard, a reference standard from the building code.
18 The building code can't encompass everything. It can't rule on
19 everything so it uses standards. Like the NEC for electric.
20 The NFPA for fire related items and those organizations provide
21 the standards for which installations must be done. So the
22 building code will say for this electric thing, refer to
23 building NEC code X. We then go to NEC code X and that is the
24 standard. The NEC code says that vehicle protection must be
25 provided. So it says right there something has to be provided.
26 Part of the building code. So we say then, like I said, we use

section 312, because that is the only standard in the building code that references how vehicle protection should be set up.

MEMBER DONATELLI: Okay. I understand that and I appreciate that. But I guess what I'm getting at is if the New York State code does not require vehicle protection for the source of electricity if it does not come from the building, then it seems to me that the Town of North Hempstead is taking a step that the state is not taking.

MR. CANZONERI: Yes. We are, because we feel that these things need to be protected. You're having a 3,000 pound car rolling at this thing that provides electric. Is it high voltage, low voltage. When things were first coming out, we don't know. Like I said, we are in charge of providing life safety items. It is our obligation to make sure that things are safe out in the field, out in the real world. That's why we put these in. You know, we do have sometimes inclement weather, sometimes people put their wrong foot on the brake instead of the gas or vice versa. Things happen. We have to think of the absurd somethings and think of the worse case scenario and how do we protect ourselves. We didn't do this arbitrarily. When we wrote this code, we thought long and hard about what are we going to do and we even changed the code, because we had a different number of spaces that you could put in and things like that and it was affecting parking variances. So it's not like we don't and that's not relative to this, but

1
2 it's not that we just put a code in place and that we forget
3 about it. We constantly reevaluate and relook at the code and
4 say okay, it's about time. We've had so many variances for
5 this or now there's so many vehicle charging stations that are
6 going in place that we don't need to do this. So we amend the
7 code as we see necessary. This is a safety item that we felt
8 should be put in place. And again, it's not just for Tesla
9 charger. It's for all vehicle chargers. Now, I reviewed 40
10 Boyce Road is going to be a Tesla auto body collision. They
11 are putting chargers in, but they are putting them on a wall.
12 They're not in the ground. I did not require vehicle
13 protection there, because there was no stand. There was no
14 support coming out of the ground that someone could hit. These
15 chargers were all wall mounted. There's nothing to hit.
16 There's no need for vehicle protection. So I did not require
17 it there. I spoke to Deputy Commissioner Glen Norjen about it
18 and we discussed it. He said yeah, the bollards are in place
19 to protect something that's sticking out of the ground
20 basically in plain English. These with are wall mounted. They
21 weren't required.

22 MEMBER DONATELLI: Thank you.

23 MEMBER HERNANDEZ: Did you say when these policies were
24 put into place?

25 MR. CANZONERI: I'd have to look back at the code. I
26 don't know off the top of my head. It's been five or six years

1
2 at least we've had this.

3 MEMBER HERNANDEZ: Because Vice Chairman mentioned the
4 Tesla in the Americana. We also have Lucid in the Americana
5 that came in front of us within the last year or two.

6 MR. CANZONERI: Right.

7 MEMBER HERNANDEZ: On two occasions. And they're right
8 next to the Americana in the other shopping center. And they
9 also have no bollards.

10 MR. CANZONERI: They're supposed to.

11 MEMBER HERNANDEZ: The Eisenhower Golf Course just
12 installed in the last six months -- actually this summer. They
13 installed about three charging stations. I stand corrected.
14 They have two little bollards. Pretty much like these right up
15 against --

16 MR. CANZONERI: Unfortunately Eisenhower is not in our
17 jurisdiction. So I can't speak to that.

18 MEMBER HERNANDEZ: No, but I'm just saying that it
19 seems that every one that I have seen, if they have anything,
20 they have, like you said, protection so the equipment doesn't
21 get damaged.

22 MR. CANZONERI: There are other instances in which they
23 could provide vehicle protection. There are other sections in
24 the code that if they want to put something up and we did this
25 at Amazon. At Boyce Road, 2 Boyce Road where when they just
26 recently changed all their Rivian electric powered vehicles.

1
2 Because of the configuration of the parking area that they had
3 already put in place, they were retro fitting. There are
4 requirements in the code that say vehicle protection must meet
5 certain forces, be able to protect a certain -- allow all force
6 hitting it, things of that nature. They decided to not put
7 bollards in. They put a guardrail in. A full guardrail that
8 was low in front of the whole strip and they were able to
9 demonstrate that it complied with the requirements of the code.
10 That was acceptable to us. It was vehicle protection.

11 MEMBER HERNANDEZ: And that was three feet away from --

12 MR. CANZONERI: It was not three feet away. Because
13 like I said, there are requirements in the code that says that
14 if it can meet certain lateral forces that are put upon it and
15 that means basically in plain language it was rigid enough that
16 if a car hit it or a truck hit it, it would be able to withstand
17 the force. It wouldn't bend and it wouldn't have to be three
18 feet away.

19 MEMBER HERNANDEZ: Okay. So then if the bollard could
20 prove that it would withstand the force, then it shouldn't have
21 to be three feet away.

22 MR. CANZONERI: There's also other things with the
23 bollard as far as width in between. Because you could put
24 bollards at 10 feet apart, but somebody could still drive in
25 between them.

26 MEMBER HERNANDEZ: I understand.

Appeal #21626

MR. CANZONERI: Yeah. So if you provided a guardrail or something similar.

MEMBER HERNANDEZ: Bollards that were, you know, every three feet no car fits between three feet.

MR. CANZONERI: The code is that they have to be a minimum of four feet in between them. They have to be four feet on center so that if a car comes in at an angle or something of that nature, it doesn't hit what it is protecting. That's the other thing is why it has to be three feet away. Because if something comes in at an angle and you have -- if my glasses are these bollards and something comes in at an angle, it can stick through. The further apart they are, the more it can go between the, you know, between the bollards. The closer they are, then that also provides the protection of them hitting in between the bollards.

VICE CHAIRMAN FRANCIS: If you put bollards three feet away from the charging station in a parking spot, that parking spot now becomes 23 feet longer in order to get a car in there and now you're disrupting the traffic flow in the parking lot.

MR. CANZONERI: Yes.

VICE CHAIRMAN FRANCIS: How do we get around that?

MR. CANZONERI: You can design one of the guardrails that are zero clearance. That runs the span in front of everything. It's a continuous guardrail and you can put that almost right up in front of the chargers and you can put that

at zero clearance.

VICE CHAIRMAN FRANCIS: I guess from my perspective, what I really need to know is what the distinction is between the charging stations at Americana and these proposed charging stations because I don't -- visually I don't see any difference between the two.

MR. CANZONERI: We say vehicle protection. We don't tell you how to do it. The standard that we have -- there's two things in the code. There's either bollards that are listed in section 312 of the fire or there's other avenues that you can design to.

VICE CHAIRMAN FRANCIS: Can you get back to us on the Americana issue?

MR. CANZONERI: Sure. I will.

VICE CHAIRMAN FRANCIS: Does anyone have anything else?

MR. CANZONERI: Who should I provide that to? Ms. Wagner?

VICE CHAIRMAN FRANCIS: Ms. Wanger. That would be great. Thank you.

MEMBER HERNANDEZ: Thank you very much.

VICE CHAIRMAN FRANCIS: Appreciate your time.

MR. CANZONERI: Thank you. My pleasure.

MR. MINERVA: Can we have an opportunity for rebuttal?

VICE CHAIRMAN FRANCIS: Sure. Absolutely.

MR. MINERVA: I'm gonna have the engineer speak to a

few items. A few things I just wanted to mention. If you're asking about the distinguishment between Americana Manhasset and what we're proposing here, we also didn't really hear the distinguishment between what we're proposing here and the other charging station that's not a Tesla charging station that's on the site, because those bollards are right around the charger. They're not spaced out. So that's something that I, you know, wouldn't see the difference there either, because those are next to the chargers. I think it's been clarified that the state building code doesn't apply to these chargers and it's the Town of North Hempstead and now it's in the zoning chapter that is what's applying. That your code requires the vehicle protection or the bollards. So therefore, it's in your jurisdiction to vary it or, you know, make a determination or conditions. And, you know, like we had said, when the car is there charging, you know, it's disabled. It can't move or drive. But I do want my engineer just to talk as to the safety of the bollards being less than one foot. Again, it's our preference not to have the bollards at all. But if we had the bollards at one foot, would that make the site work, because of the issue you raised. If the bollard is three feet, the car is halfway into the drive aisle. That's not going to work. And also to speak why a guardrail wouldn't work. He'll speak to it. But just briefly, you know, now you have an obstruction between you and the charger. Let me call Deep Patel up again.

MR. PATEL: So the bollards that are proposed on the site that we currently show that are one foot away from the charger, those are crash tested rated for ASMF 3016. So those are rated to stop a 5,000 pound vehicle traveling 10 miles per hour. Which in a parking lot, 10 miles per hour is pretty fast. So that's what those bollards currently are shown, that's what they are crash rated for. So they do offer protection, but they don't -- the three foot clearance that you will have to put is just a little unnecessary, because then you're adding an additional three feet to the cord length. I'm sorry, reducing three feet to the cord length. So like it may work for a Tesla, but someone with a Hyundai, someone with their charge port might be on the other side. Now if you lost that three feet, how are you going to know. So like someone plugs in -- someone looks on their phone, oh, I want to go to the charger and they go to this charger and they find out, like, oh, I lost three feet because of the bollard protection verses other, like, the few examples that you guys were sharing that doesn't have any bollard protection so they get that full cord reach. Similar to a barrier. If we had a zero penetration barrier that was continuous along the front, someone has to stand in front of that and reach over. Ming you, it might only be a foot or so, but most people -- I mean some people can't do that.

MR. MINERVA: They would have to step over the

1 barriers.

2 MR. PATEL: Yes. It turns into a safety issue.

3 MEMBER GOODSSELL: Could you address the issue of how
4 they are spaced and I think the town gentleman indicated that
5 bollards should be four feet apart to stop somebody coming in
6 at angle. So could address that issue?
7

8 MR. PATEL: Yeah. So I mean the bollards were just put
9 in. Again, Tesla does not prefer bollards. But they were put
10 in just to protect the bollard or something. But if you put in
11 the three feet, you're protecting something that needs
12 protection. In our case, we are putting a bollard for
13 something that doesn't need protection. So like it's counter
14 counterproductive. Whether you smash into a bollard or you
15 smash into a charger, you're smashing into something. So if
16 you're raising as a public safety, a life safety issue, you're
17 not stopping an accident. So you're still crashing into
18 something. There's just vehicles and -- yeah. And it's not
19 electrically charged. So again, the safety issue gets
20 eliminated because the chargers aren't energized up until that
21 point. So the four foot on center, you're question is, if
22 you're providing full protection then yes, a vehicle cannot
23 pass in between at all approach intervals.

24 MEMBER GOODSSELL: But you don't feel that that is
25 necessary in a design like that?

26 MR. PATEL: No.

MEMBER GOODSELL: And thank you for your testimony as to how much of an impact these bollards can withstand, because that was going to be one of my questions. And apparently there are a various degree of bollards. Some of them are stronger than others and some are greater in diameter.

MR. PATEL: Yeah. It really depends on what you're trying to stop and how fast. Obviously in a parking lot you don't want to design something for 90-something miles an hour.

MEMBER GOODSELL: Exactly.

MR. PATEL: It's not feasible.

MEMBER GOODSELL: Now that vehicles can go .6 seconds, it does happen. And I think you heard testimony that it does happen, that somebody gets confused and puts their foot on the gas instead of the brake and accidents do happen.

MR. PATEL: Yes.

MEMBER HERNANDEZ: If the -- you said it was a 5,000 pound vehicle at 10 miles an hour. Is it designed to stop in it's direct position or would it collapse?

MR. PATEL: It would haven't have full collapse or go down. It would have some dynamic penetration. That's just manufacturer on testing. So the bollard comes from the que. That's the manufacturer. So they would know exactly how much.

MEMBER HERNANDEZ: How much give.

MR. PATEL: Yes.

MR. MINERVA: Right. But if there's no car in there

1
2 being charged, it's electrified or anything like that. If
3 there is a car there being charged and someone hits the gas,
4 you're not at 10 miles an hour. You're barely moving.

5 MEMBER HERNANDEZ: And if somebody hits a car that's
6 being charged, you have to move to move the car first.

7 MR. DEEP" that's just basic inertia. So yeah, you may
8 hit it at 10 miles an hour but there's still a curb offering
9 some sort of resistance. Oh, and I did want to bring up a
10 safety issue of that. If the car does indicate a crash or
11 something is malfunctioning in the charger, there are safety
12 precautions within the units where they will trip themselves.
13 So the power will get cut. So it's not that if somebody
14 smashes into it and someone is charging the power is just gonna
15 be continuously going. Everything will sense it and the
16 breakers in the power will trip.

17 MEMBER DONATELLI: Where do you put the quarters in for
18 the charger.

19 MR. MINERVA: It's probably more like \$10 bills.

20 VICE CHAIRMAN FRANCIS: Thank you.

21 MEMBER GOODSSELL: All right. Thank you.

22 VICE CHAIRMAN FRANCIS: Mr. Canzoneri, just one other
23 thing. If you could also, in addition to the Americana
24 chargers, if you can take look at the Lucid chargers too,
25 because those are in North Hempstead. Also just for the sake
26 of completeness.

1 Appeal #2162

2 MR. CANZONERI: Yes, I will. I will.

3 VICE CHAIRMAN FRANCIS: Okay. Thank you, sir.

4 MR. CANZONERI: You're welcome.

5 VICE CHAIRMAN FRANCIS: All right. I think we are
6 going to continue this in order to get that information from
7 building. So do you have anything else?

8 MR. MINERVA: No. If you get the information --

9 VICE CHAIRMAN FRANCIS: We will pass it along to you.

10 MR. MINERVA: We would like to have an opportunity to
11 have our engineer look at it and have the opportunity to
12 respond.

13 VICE CHAIRMAN FRANCIS: Yeah, of course. Of course.
14 All right. Thank you very much, gentlemen. Thank you.

15 MR. MINERVA: Thank you.

16 (A recess was taken.)

17 SECRETARY WAGNER: Appeal Number 21627, 1025 II LLC;
18 1025 Old Country Road, Westbury; Section 11, Block 80, Lot 92;
19 in the Industrial-B Zoning District. Variances from
20 70-103.A(1), 70-103.B and 70-103.O, to construct parking lot
21 alterations with not enough onsite parking, parking spaces that
22 are too small, and drive aisles that are too small.

23 VICE CHAIRMAN FRANCIS: You've heard Appeal Number
24 21627, 1025 II LLC. No one is here to -- other than the
25 applicant so we will get started with our last of the day.

26 MS. TSOUKALAS CURTO: Good afternoon, Vice Chairman

Appeal #2162

Francis and Members of the Board. For the record, my name is Andrea Tsoukalas Curto. I'm with the law office of Forchelli, Deegan, Terrana with offices at 333 Earle Ovington Boulevard, Uniondale, New York on behalf of the applicant 1025 II LLC. I would like to submit an exhibit packet before I begin. This is Applicant's Exhibit A.

With me today is Robert Franco who is one of the principles and Peter Argrakis, A-R-G-R-A-K-I-S, and Keyan Cody with R&M Engineering.

So the applicant seeks area variances to legalize the existing parking at the premises. So I wanted to explain from the outset that this legalization was not triggered by notice of violation or notice from the town upon inspection of the premises. My client took it on himself on his own initiative to legalize the parking that's there now to address safety issues and to create better circulation within the building for the interior parking maneuverability and circulation, and also to really legalize it as it's actually being used today. My clients have owned the premises since 2019. After two years of being at this space, they realized that they had to legalize the parking. In 2021 I obtained approvals for them for 19 State Street. That's surface parking, which created an additional 20 parking stalls. We did not need to come before this board for that approval, but we did go before the town board and that approval was dated 9/22/22. Just to give you

some background. The premises is located on the northwest corner of Old Country Road and State Street. It's situation in the town's Industrial-B Zoning District and it's 3.73 acres. It's developed with a multi-tenant building, which is mainly comprised of general office space data storage. Major carries rent rack space within that data center. Long Island Interconnect has space in the building and serves as a technology center and they lease out cabinets, secure cages and data suites to companies that want to locate their servers in a secure location. And as you see from the site plan, the premises is also improved with outdoor parking lots on State Street and Bond Street that were previously approved by this board. I'm gonna give you some additional background, because you really need the background for context in terms of, you know, why we're coming before you today. So the premises was originally used as an auto dealership. So the internal parking garage was used to store vehicles and stack them very closely to maximize the number of cars that actually could be stored in the building. And then the only people that were really using those internal spaces were the employees of the dealership. For this reason, those stalls and the aisle widths did not comply in any respect with the town's zoning regulations with respect to parking stall size and aisle widths. Again, this is a very unique building in that respect, because you don't really see that in any buildings in North Hempstead. You know,

if there's no external lots there's usually underground parking or cantilever building with parking on the first floor. So when the parking was converted from auto dealership to an office building, you know, some of those internal parking spaces were reconfigured to be more inline with typical parking stalls. But they still did not comply with the town's parking regulations. At this time, the applicant seeks to further amend the layout so that they more closely comply and really to create a safer parking lot on each of the floors to create the maneuverability ability and circulation that you need to get in and out of those spots. So for example, there were spots that were right next to a pole. So a spot was there, but it was not a usable spot or, you know, the aisle width was 16 feet. Those spots that were on the end were not usable spots. In addition to reconfiguring those internal spots, they're removing from the count the roof parking that was originally in the 2018 approval and the 2008 approval. And the reason that they're doing that is because it's never been used it's. Not safe to be used. There's a very steep ramp that goes up there. Again, understand what this was originally designed for. It was designed for a dealership. And now we have longer cars. We have SUVs most of us. So we're trying to go through these sharp curves to try and get up there and in inclement weather, icy conditions, it just didn't work. So it was rarely used. So the reason why the plans show zero for roof, is because

Appeal #2162

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2 we're proposing to not use it anymore and really, in reality,
3 it has not been used by the tenants because it was not intended
4 for tenant use. So although the changes have significantly
5 reduced the number of parking spaces within the interior of the
6 building, we still have sufficient parking for existing tenants
7 and proposed tenants. So there's about 40,000 square feet left
8 in the building and there's 100 excess parking stalls in the
9 building at this time. And so the demand for 40,000 would be
10 79 parking stalls.

11 As you all know, this is a commercial and industrial
12 area. North of the premises is a parking lot on Bond Street.
13 I did provide photographs of the community character, as well
14 as the building itself and an aerial and a radius map to show
15 you the configuration of the lots in relation to other
16 commercial issues. Across the street on the west side of State
17 Street is an additional parking lot. Some of the other uses in
18 and around this area is a TD Bank on the corner of Old Country
19 Road and State Street. There is a Sir Speedy Print Shop and a
20 BMW service station located on the west side of State Street
21 north of the parking lot. And NAPA Industries is located on
22 the corner of State Street and Main. So all of these uses are
23 commercial and industrial.

24 So we did have a parking study done. So I do have
25 Keyan Cody here from R&M Engineering here if you would like to
26 hear from him to just go through his study.

1 Appeal #2162

2 VICE CHAIRMAN FRANCIS: Sure.

3 MS. TSOUKALAS CURTO: Okay.

4 MR. CODY: Good afternoon Vice Chairman and Members of
5 the Board. For the record, my name is Keyan Cody. I am with
6 R&M Engineering. Our office is at 50 Elm Street, Huntington,
7 New York.

8 So we were retained by the applicant to prepare a full
9 traffic impact study for the project at 1025 Old Country Road.
10 The property was mainly for the reconfiguration of internal
11 parking and the occupation remaining square feet in the
12 building. The building right now is being used by a mix of
13 mainly office space with a small bit of data storage space and
14 that is going to continue in the future based off what the
15 applicants told us. It's going to be roughly 36,000 square
16 feet of additional office -- 18,000 square feet of small minor
17 retail and the remaining would be the data storage or other
18 storage space. So we're looking at mainly 90, 95 percent of
19 that space being that office space. We performed both traffic
20 and parking observations and as Andrea has gone over, the
21 building itself is very -- at one point itself it was a car
22 dealership with multiple different levels of internal parking,
23 which was used to stack vehicles in such a way that you'd see
24 in a dealership where you have vehicles right against each
25 other so you can store as physically as many as possible in
26 those areas. Since then it's been slowly retrofitted to be

Appeal #2162

more office. So the parking onsite has been brought a little bit further into compliance. But what we found when we surveyed the area is the pass approvals sort of vastly over represented how many parking spaces were actually onsite. We observed a total of 289 existing spaces and the proposed is 288. That includes the interior and the surface lots. So realistically, based off of our surveys, we're only dropping by one parking stall while bringing, I think five or six more spaces into compliance. Straight up and dimensional requirements, while also removing a large chunk of spaces to make maneuverability on the interior better. The parking observations were done on Thursday, February 15th of this year. We observed the site between seven a.m. and six p.m. to capture the standard time the office will be operating. We surveyed the surface lots, the on street parking and the interior garages to what was being occupied at that time. Some areas were blocked off and no one was parking in those areas. Based off those observations, we found that there is a total of 96 vehicles parked during the peak time in the interior lots. I'm going to use the future capacities for all of these to not skew anything. The future capacity of the interior is 113 spaces. So leaving 17 spaces vacant in the interior. The surface lots had 102 vehicles parked out of 175 future spaces with 73 spaces vacant and then the on street demand, we did the three on streets within the area of the property was 80 vehicles parked

out of an estimated 93 total on street spaces for 13. So the total overall demand was 268 out of 381 used. 381 total spaces. Essentially we then took the future, you know, roughly 40,000 square feet of office space that would be occupied and used the parking generation manual that we use for office, which is 710. We use 822 for the small 1,800 square feet of retail and then for the remaining space we use 710.50 which represents warehousing space which we use for data storage. There's no real closer representation of land use in IT. And what we found is that the future parking demand would increase by 79 vehicles. As I have stated, there are 73 vacant spots during the peak time on the surface lots and an additional 17 in the interior building based on our observations. So that's 79 can get accommodated in those two spaces without dipping into the on street parking. But on street parking does provide an extra 13 spaces if ever it's need. But based off that information, we found that there will be adequate parking in the area to support the full occupation of the building and that's including removing interior spaces to make the circulation better and bringing the sit further into compliance dimension. Compared to the 2018 approved plans, the number -- we were 83 percent, you know, 83 percent compliant at that point, but -- whereas now we're dropping down significantly about half that. Those 83 percent for 576 stalls that were provided, it seems essentially farce. There wasn't really

1 striped stalls. A lot of the plans that we have been provided
2 that represent the approved plans doesn't show any stripping at
3 all in these areas and assumed to be parking. But what we've
4 done is gone floor by floor and put through and scrutinized and
5 put parking where we believe is viable to park without
6 essentially impeding any maneuverability in the building. So
7 we think it's a very good middle ground. We know the variance
8 seems to have increased significantly. It doesn't actually
9 reflect what was actually out there back in 2018. We also did
10 study three of the intersections along Old Country Road on the
11 same day. We studied them during the a.m. commuters, seven to
12 nine. The midday of 11 to three and the p.m. commuter four to
13 six on February 15th. What we found was once we estimated the
14 future traffic demand using IT, once again, we found that the
15 proposed project would generated about 65 more vehicles on the
16 roadway during that peak demand, which is the p.m. commuter.
17 And we found the roadways have significant capacity to
18 accommodate that. The only issues we found with the levels of
19 service was at the closest intersection, because to the east
20 you have High Court and then Resident Street and it's two
21 signals, but they work in conjunction with each other. So what
22 we found was that the eastbound through traffic at the High
23 Court light did have a segregation from A to B. So we're
24 talking about a 2.1 second increase which is going to be
25 interceptive to most drivers. Other than that, everything
26

1 stayed at the same levels of service and delays weren't
2 anything astronomical. Everything was pretty minor. So what
3 we deemed is that there's going to be adequate parking within
4 the interior parking spaces and on the surface lots and that
5 the amount of traffic that could be generated by this full
6 occupation really would not impede traffic along Old Country
7 Road.
8

9 VICE CHAIRMAN FRANCIS: And there's on street parking
10 on both State and Bond Street?

11 MR. CODY: Yes and I believe also to the west.

12 MEMBER DONATELLI: Where are the closest residences to
13 this building?

14 MR. CODY: I believe the closest residences would be
15 across in the Town of Hempstead on the other side of Old
16 Country Road. As Andrea testified to, the whole area on the
17 south of the railroad tracks up there is all commercial and
18 industrial use. There's recycling plants, auto body repair and
19 things like that. I think there's a concrete plant to the west
20 so.

21 MEMBER DONATELLI: It's not likely that somebody
22 looking to utilize 1025 Old Country Road would park across the
23 street.

24 MR. CODY: No.

25 MEMBER DONATELLI: It's much more likely they'd park on
26 that side of the street.

1 Appeal #2162

2 MR. CODY: Yes. And I don't think any residents in the
3 Town of Hempstead that maybe have, you know, Christmas dinners
4 or something like that that are gonna recommend any family
5 members coming over to park all the way on the northern side of
6 Old Country Road to walk across. I think anything with the
7 residential is going to stay in the residential areas.

8 VICE CHAIRMAN FRANCIS: Any other questions?

9 MEMBER GOODSELL: I did find the parking over there to
10 be very nice. I circled a lot. There wasn't a single on
11 street parking onsite that was available and this was in the
12 middle of the day. And I was not brave enough to under the
13 building. It looked pack and I didn't look like I was going to
14 be able to even turn around. So I am pleased to see there is a
15 lot across the street that did have some empty spots. I did
16 observe empty spots in the middle of the day. I personally
17 didn't want to walk from the back of the lot.

18 MR. CODY: Yeah. And unfortunately that's just how,
19 you know, retrofitting that sort of building, that's sort of
20 the hardship you have to go through.

21 MEMBER GOODSELL: Well, that whole area has parking
22 issues. The whole area has parking issues.

23 MR. CODY: I do know there's a lot of front yard
24 setbacks and things like that.

25 VICE CHAIRMAN FRANCIS: Oh, yeah.

26 MEMBER DONATELLI: And I would note that as we noted in

1
2 other such observation, this is self-limiting that should the
3 tenants or their patrons not find parking, they ultimately will
4 have to relocate and if the area cannot accommodate spillover
5 effect, that will just be self-limiting in a sense. So we do
6 come across that from time to time.

7 VICE CHAIRMAN FRANCIS: Definitely. Typically in this
8 area. Thank you.

9 MR. CODY: Thank you.

10 VICE CHAIRMAN FRANCIS: Andrea?

11 MS. TSOUKALAS CURTO: I'll go through the area variance
12 standards. The proposed variances will not have a negative
13 change in the character of the community. This is an existing
14 building in an industrial district. The parking that is being
15 utilized is primarily the interior parking. So the proposed
16 variances, if granted, will not have a negative impact on the
17 character. The variances granted will also not have a negative
18 impact on the environment. We're not creating additional paved
19 areas. These areas are parking stalls that are within an
20 existing building and are currently being use by tenants that
21 are in the building. Also, the applicant is not increasing the
22 square footage of the building. We're also not converting
23 parking areas to leasable floor areas. We're simply making the
24 existing parking areas usable and safe. Although the parking
25 variances is numerically substantial, it should not be
26 considered substantial because it does not have a negative

Appeal #2162

1 impact on the character, which is the most important factor to
2 consider when determining whether a variance is substantial.
3 The applicant does not have any alternatives to the requested
4 variance. The variances are needed to bring the interior
5 parking lots within the building closer to compliance to the
6 towns dimensional regulations. Again, this will only make this
7 building safer. Also, the roof is not a viable option for
8 tenant parking. It's dangerous and it's currently not being
9 used, because it's difficult to navigate to. Finally, this is
10 not a self-created hardship. As explained, the building was
11 originally designed as an auto dealership. So the intended
12 parking was for storage of vehicles in the interior lots. This
13 is a unique situation where the dealership was converted to
14 office space and the internal parking lot was then reconfigure
15 to be used as conventional parking stalls. So for these
16 reasons we ask that the requested variances be granted.

17
18 VICE CHAIRMAN FRANCIS: Thank you.

19 MS. TSOUKALAS CURTO: You're welcome.

20 MEMBER DONATELLI: So, Mr. Chairman, I make a motion
21 that we grant the application.

22 VICE CHAIRMAN FRANCIS: All right. We have a motion.
23 Do we have a second?

24 MEMBER GOODSSELL: I'll second that.

25 VICE CHAIRMAN FRANCIS: Second by Ms. Goodsell.

26 SECRETARY WAGNER: Member Hernandez.

Appeal #2162

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MEMBER HERNANDEZ: Aye.

3

SECRETARY WAGNER: Member Goodsell?

4

MEMBER GOODSELL: Aye.

5

SECRETARY WAGNER: Member Donatelli?

6

MEMBER DONATELLI: Aye.

7

SECRETARY WAGNER: Acting Chairman Francis?

8

VICE CHAIRMAN FRANCIS: Aye. Application is granted.

9

MS. TSOUKALAS CURTO: Thank you very much. Have a good

10 day.

11

SECRETARY WAGNER: Who wants to move SEQRA?

12

MEMBER HERNANDEZ: I move it. Move SEQRA.

13

SECRETARY WAGNER: Second?

14

MEMBER DONATELLI: And I'll second that.

15

SECRETARY WAGNER: All in favor.

16

MEMBER GOODSELL: Aye.

17

MEMBER DONATELLI: Aye.

18

MEMBER HERNANDEZ: Aye.

19

VICE CHAIRMAN FRANCIS: Aye.

20

(TIME NOTED: 2:35 p.m.)

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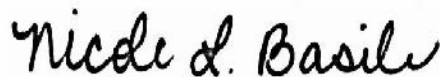
C E R T I F I C A T E

I, NICOLE L. BASILE, a Notary Public
within and for the State of New York do hereby
certify that the foregoing examination of was taken
before me on the 6th day of November, 2024. The said
witness was by me duly sworn before the commencement
of their testimony.

The said testimony was taken
stenographically by myself and then transcribed. The
within transcript is a true record of the said
testimony.

I am not connected by blood or marriage
with any of the said parties, nor interested directly
or indirectly in the matter in controversy, nor am I
in the employ of any of the counsel.

IN WITNESS WHEREOF I have hereunto set my
hand this 13th day of January, 2025.



NICOLE L. BASILE