

*Chairman*  
David L. Mammina, A.I.A.

*Vice Chairman*  
Leslie Francis, Esq.

*Members*  
Daniel Donatelli, Esq.  
Jay Hernandez  
Patricia A. Goodsell, Esq.

## Town of North Hempstead



### Board of Zoning Appeals

210 Plandome Road  
Manhasset, NY 11030  
(516) 869-7667  
Fax (516) 869-7812

### NOTICE OF DECISION

**APPEAL #21189 - Westbury Nazis, Inc.; 349 Old Country Road, Carle Place; Section 10, Block 288, Lot 53; Zoned: Business-A**  
Conditional use under §70-126.F for a new restaurant.

Whereas, an application (FILE #21-005669, BZA22-000005) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **March 2, 2022**, the appeal in the above-entitled matter was decided as follows:

**GRANTED** of the dimension and in the location as shown on drawings prepared by Curtis M. Taufman, R.A. dated December 15, 2021 **SUBJECT TO THE CONDITIONS CONTAINED IN THE ATTACHED RIDER.**

### SEE ATTACHED RIDER

The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by: Member Donatelli                      Seconded by: Member Goodsell

Ayes: Member Goodsell, Member Hernandez, Member Donatelli,  
Vice Chairman Francis, Chairman Mammina

Nays: None

A handwritten signature in cursive script, appearing to read "Virginia M. Wagner", written over a horizontal line.

**VIRGINIA M. WAGNER**  
**SECRETARY**

**THIS IS NOT A BUILDING PERMIT**

# Board of Zoning Appeals

## Town of North Hempstead

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### Rider to Appeal # 21189

APPEAL #21189 - Westbury Nazis, Inc.; 349 Old Country Road, Carle Place; Section 10, Block 288, Lot 53; Zoned: Business-A  
Conditional use under §70-126.F for a new restaurant.

1. That the applicant shall install and maintain a suitable refrigerated garbage locker within the building. There shall be no outdoor storage of putrescible waste generated by the proposed restaurant at any time. The applicant shall arrange for indoor carry-out pick-up with a licensed sanitation collector and shall forward a copy of the contract to the Building Official prior to approval and/or issuance of a Place of Assembly or Place of Public Assembly License, as defined in the Town Code, and at every subsequent inspection following the issuance of said Place of Assembly or Place of Public Assembly License. All pick-up of sanitation shall be performed after 8:00 a.m.
2. That all exterior doors (with the exception of the primary customer entrance door) shall be of solid construction in a material permitted under the New York State Fire Prevention and Building Code, shall be equipped with self-closing hardware, and shall remain closed at all times except for ingress and egress.
3. At no time may the number of seats on the premises exceed 0 as depicted on the drawings prepared by Curtis M. Taufman, R.A dated December 15, 2021. For purposes of this condition, a seat is defined as any place on the premises where a patron may sit and be served, whether or not a person is seated there. A table set up with four chairs counts as four seats. The conditional use permit and/or variance set forth herein shall continue only for so long as there is compliance with this condition. If at any time the applicant is not in compliance with this condition, then the conditional use permit shall terminate, and the applicant must make a new application to the Board in order to continue the restaurant use.
4. That the applicant shall obtain a Place of Assembly or Place of Public Assembly License, if applicable, as defined in the Town Code, from the Building Department prior to the issuance of a Certificate of Occupancy or Completion.
5. That the applicant shall comply with all laws, ordinances, rules and regulations of all public authorities having jurisdiction over the premises and that no Certificate of Occupancy or Completion shall be issued until absolute compliance has been proven to the Commissioner of the Buildings.
6. That the applicant and or its successor shall comply with Code §70-225B(7)(a). Any restaurant or retail food use must apply to the board of Zoning and Appeals if any of the following occurs:
  - [1]. an increase in the size of an approved kitchen by 20% of floor area of said kitchen, or 250 square feet, whichever is less, inclusive of prep areas, is proposed.
  - [2]. The addition or removal of counter/kiosk service for the placement of a food order.

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7. That the conditional use permit set forth herein shall continue only for so long as there is compliance with these conditions. If at any time the applicant is not in compliance with these conditions, then the conditional use permit shall terminate, and applicant must make a new application to this Board in order to continue the premises as a restaurant/food use.

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### NOTICE OF DECISION

**APPEAL #21182 – Maria De Amorim; 5 Tudor Dr., New Hyde Park, Section 8, Block 303, Lot 20; Zoned Residence-B**

Variations from §§ 70-208.F, 70-40.C, 70-101.B, 70-41.A, 70-101.A, 70-41.F to construct additions to a non-conforming home that are too close to the street and too close to the side yard with less than required total side yards and to construct a portico that is too close to the street, to construct an overhang which encroaches too far into the front yard and side yard and to locate a cellar staircase too close to a side property line.

**Whereas**, an application (FILE #21-006908, BZA21-000053) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **March 2, 2022**, the appeal in the above-entitled matter was decided as follows:

**GRANTED** of the dimension and in the location as shown on drawings prepared by Vincent J. Bresnaider, R.A. dated June 23, 2021 and revised through February 9, 2022.

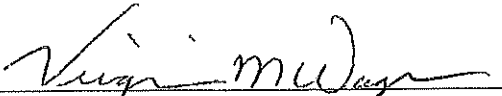
The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by: Member Goodsell                      Seconded by: Member Donatelli

Ayes: Member Goodsell, Member Hernandez, Member Donatelli,  
Chairman Mammina

Nays: None

Abstain: Vice Chairman Francis

  
\_\_\_\_\_  
**VIRGINIA M. WAGNER**  
**SECRETARY**

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#### NOTICE OF DECISION

**APPEAL #21185 - Juan Barrera; 39 Haven Avenue, Port Washington; Section 5, Block 90, Lot 49; Zoned: Residence-C**

Variance from §70-51.A to legalize a rear addition that is too close to the side property line.

Whereas, an application (FILE #21-010314, BZA22-000002) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **March 2, 2022**, the appeal in the above-entitled matter was decided as follows:

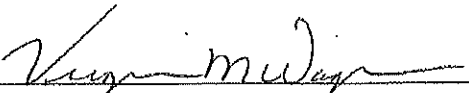
**GRANTED** of the dimension and in the location as shown on drawings prepared by Kurt A. Jacobs, R.A. dated September 2, 2021 and on a survey prepared by Christopher M. Buckley, L.S. dated February 27, 2009.

The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by:           Member Donatelli           Seconded by: Member Goodsell

Ayes:                   Member Goodsell, Member Hernandez, Member Donatelli,  
                              Vice Chairman Francis, Chairman Mammina

Nays:                   None

  
\_\_\_\_\_  
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### NOTICE OF DECISION

**APPEAL #21186 – Sandra Dipadova; 28 Appletree Ln., Carle Place, Section 10, Block 282, Lot 10; Zoned Residence-B**

Variances from §§ 70-40(C), 70-101(B), 70-41(A), and 70-208(F) to construct additions with a second-story addition that is too close to the street, a bay window that is too close to the street, an open porch that is too close to the street, and a 1<sup>st</sup> floor roof structure that is too close to the side property line and with less than required total side yards, to a non-conforming dwelling.

Whereas, an application (FILE #22-000265, BZA22-000003) s filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **March 2, 2022**, the appeal in the above-entitled matter was decided as follows:

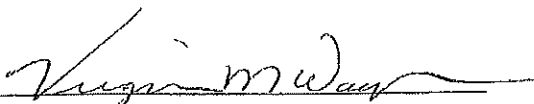
**GRANTED** of the dimension and in the location as shown on drawings prepared by Peter A. Cinquemani, R.A. dated September 30, 2021 and revised through October 4, 2021.

The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by: Member Goodsell                      Seconded by: Vice Chairman Francis

Ayes: Member Goodsell, Member Hernandez, Member Donatelli,  
Vice Chairman Francis, Chairman Mammina

Nays: None

  
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SECRETARY

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### NOTICE OF DECISION

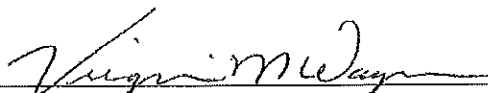
**APPEAL #21187 – Royal Blue Real Estate, LLC; 340 Great Neck Rd., Great Neck, Section 2, Block 43, Lots 29-34; Zoned Business-A**  
Variance from § 70-103(A) to legalize interior alterations for a Jiu Jitsu martial arts studio with not enough parking.

Whereas, an application (FILE #19-241035, BZA21-000008) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **March 2, 2022**, the appeal in the above-entitled matter was decided as follows:

**GRANTED** of the dimension and in the location as shown on drawings prepared by Matthew Adam Sharapata, R.A. dated January 23, 2020 and revised through March 3, 2021.

The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by:           Member Donatelli           Seconded by: Member Hernandez  
Ayes:                    Member Goodsell, Member Hernandez, Member Donatelli,  
                              Vice Chairman Francis, Chairman Mammina  
Nays:                    None

  
\_\_\_\_\_  
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### NOTICE OF DECISION

**APPEAL #21109 - Amalia DiMarino; 1200 Marcus Avenue, New Hyde Park, Section 8, Block 304, Lot 1A; Zoned-Residence-B**

Variations from §§70-40-B, 70-103.A and 70-100.2(A)(4)[5] and special exception from §70-231(1)(2) to legalize a mother daughter accessory apartment that is too large with a kitchen which is too large, to construct a 2<sup>nd</sup> floor addition that is too close to the street, to construct a vestibule that is too close to the street, to legalize a garage conversion with not enough parking on site, and to legalize fencing that is too tall and located within the front yard (not permitted).

**Whereas**, an application (21-105620, 21-105621, 21-105622, 21-105623) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **March 2, 2022**, the appeal in the above-entitled matter was decided as follows:

The variance sought under § 70-103.A is **DENIED**, the variance sought under §70-40-B for the proposed second floor addition is **DENIED as moot** and the variations and special exception sought under §§70-40-B (for the proposed vestibule), 70-100.2(A)(4)[5] and §70-231(1)(2) are **GRANTED** of the dimension and in the location as shown on drawings prepared by Mark Anthony Munisteri, R.A. dated January 19, 2021 and revised through March 5, 2022 **as amended SUBJECT TO THE FOLLOWING CONDITIONS AND THE CONDITIONS CONTAINED IN THE ATTACHED RIDER:**

- 1. That the door to the living room and adjacent wall be removed as shown on plans prepared by Mark Anthony Munisteri, R.A. dated January 19, 2021 and revised through March 5, 2022*
- 2. That the attic space shown adjacent to the second floor living room remain unfinished and inaccessible as shown on plans prepared by Mark Anthony Munisteri, R.A. dated January 19, 2021 and revised through March 5, 2022.*

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**3. SEE ATTACHED RIDER**

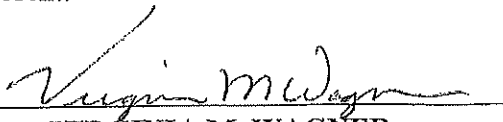
The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by:           Member Goodsell           Seconded by: Member Donatelli

Ayes:                   Member Goodsell, Member Hernandez, Member Donatelli,  
                            Chairman Mammina

Nays:                   None

Absent:                 Vice Chairman Francis



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## Town of North Hempstead



### Board of Zoning Appeals

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### NOTICE OF DECISION

**APPEAL #21130 - Glen Harbor Holdings, LLC; 10 Shore Road, Glenwood Landing; Section 20, Block Q, Lot 48; Zoned: Multiple Residence**  
Variances from §§70-196.J, 70-196.J(2)(d), 70-196.J(1)(b), 70-196.J(1)(f) and 70-196.J(2)(b) to legalize a wall sign in a residence district (that is not a permitted sign type) that is too tall and too high, and to construct a ground sign in a residence district (that is not a permitted sign type) that is too large and has no space between the bottom of the sign and the ground.

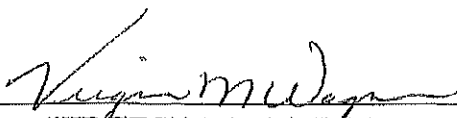
**Whereas**, an application (FILE #21-006975, BZA21-000004) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **March 2, 2022**, the appeal in the above-entitled matter was decided as follows:

### DENIED

### IN REACHING THIS DETERMINATION, THE BOARD CONSIDERED THE FACTORS SET FORTH IN THE ATTACHED FINDINGS OF FACT

The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by:           Member Donatelli           Seconded by: Member Hernandez  
  
Ayes:                   Member Goodsell, Member Hernandez, Member Donatelli,  
Nays:                   None  
Absent:                Vice Chairman Francis  
Recused:              Chairman Mammina

  
\_\_\_\_\_  
VIRGINIA M. WAGNER  
SECRETARY

**THIS IS NOT A BUILDING PERMIT**

# Board of Zoning Appeals

## Town of North Hempstead

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Rider to Appeal # 21130(Findings of Fact)

**APPEAL #21130 - Glen Harbor Holdings, LLC; 10 Shore Road, Glenwood Landing;  
Section 20, Block Q, Lot 48; Zoned: Multiple Residence**

Variances from §§70-196.J, 70-196.J(2)(d), 70-196.J(1)(b), 70-196.J(1)(f) and 70-196.J(2)(b) to legalize a wall sign in a residence district (that is not a permitted sign type) that is too tall and too high, and to construct a ground sign in a residence district (that is not a permitted sign type) that is too large and has no space between the bottom of the sign and the ground.

Under Section 267-b of the Town Law, the Board is empowered to grant area variances in cases where the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood or community. The Board is also required to grant the *minimum* variance necessary. In making such determination the Board shall also consider: 1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; 2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; 3) whether the requested area variance is substantial; 4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and 5) whether the alleged difficulty was self-created. After careful consideration of the facts presented during the hearing, personal observations of the site and surrounding area, a review of Building Department files, and a review of the Town Code as it pertains to development of this property, the Board finds the following with respect to these criteria:

1. The Town Code is clear in its intent to strictly limit advertising type wall and ground signs to business and industrial districts. Signs which advertise the name of a residential project are strictly limited in scope to subdivisions signs which are only temporary in nature (sign permit not renewed once subdivision reaches 90% completion). As this Board is entrusted with safeguarding the character of the neighborhood in accordance with Town Law and the Town's zoning laws, the Board finds that the character of this residential district will be negatively impacted by the erection of wall and ground signs at the subject residential property for the following reasons: (i) The Board finds it unnecessary and contrary to the spirit of the Town Code to "advertise" the name of a residential apartment building and therefore it finds the variances requested are accordingly unnecessary; and (ii) the Board finds that granting the requested variances to place signs on a residential property will set a negative precedent detrimental to the character of the neighborhood for approving similar applications which do not comply with the Town Code (*see Pecoraro v. Bd. of Appeals of Town of Hempstead*, 2 N.Y.3d 608, 613 (2004); *Nataro v. DeChance*, 53 N.Y.S.3d 156 (2<sup>nd</sup> Dept 2017); *Russo v. City of Albany Zoning Board*, 910 N.Y.S. 2d 263 (3<sup>rd</sup> Dept 2010).

**THIS IS NOT A BUILDING PERMIT**

2. The Board finds that the applicant cannot achieve the benefit of advertising the name of the building without the requested variances.
3. The Board finds the requested variances to be substantial:

Under 70-196.J of the Town Code no signs are permitted to be installed in residential zoning districts. Therefore, the proposed installation of a wall sign and a ground sign on this residentially zoned property represents variances of 100% and 100% respectively.

Under 70-196.J(2)(d) of the Town Code an open space of at least three feet in height shall be maintained between the bottom of the sign and the ground. The proposed ground sign includes no open space between the bottom of the sign and the ground. Therefore, this represents a 100% variance from the Town Code.

Under 70-196.J(1)(f) of the Town Code the top of a wall sign shall not be higher than 18 feet above the mean level of the ground. The proposed wall sign would be 36'7" high which is twice the height permitted by code.

Under 70-196.J(2)(b) of the Town Code no sign shall exceed 24 square feet in area. The proposed ground sign is 73.29 square feet which is more than three times the size permitted by Code.

4. The subject wall sign advertising the name of the building is oversized, lighted and situated high toward the top part of the building. The subject brick monument style ground sign advertising the name of the building is also oversized, could potentially impede sight lines along the bend of Shore Road and its location at the entrance of Scudders Lane might cause visitors looking for other properties on the block to believe the entire road is private. These factors could negatively impact the neighborhood.
5. The applicant is presumed to have been aware of the prohibition against these types of advertising signs prior to installing them at the property, thus the alleged difficulty is self-created.

In weighing the aforementioned factors, the Board recognizes there will be a financial cost to the applicant to remove the signs which were installed without the benefit of a permit. After weighing the benefit to the applicant in maintaining the signs against the detriment to the health, safety and welfare of the neighborhood and community the Board finds that the benefit to the applicant is outweighed by the detriment to the community and therefore the variances sought under §§70-196.J, 70-196.J(2)(d), 70-196.J(1)(b), 70-196.J(1)(f) and 70-196.J(2)(b) are **DENIED**.

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## Town of North Hempstead



### Board of Zoning Appeals

210 Plandome Road  
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### NOTICE OF DECISION

**APPEAL #21154 - JMP Orchard St. LLC; 25 Orchard Street, Manhasset; Section 3, Block 71, Lots 513-515; Zoned: Business-B**

Conditional use §70-139.J and variances from §§70-103.P, 70-143.B, and 70-146.B to construct a new 3-story office/senior living apartment building (a conditional use), with parking under a building, on a lot that is too small and too narrow, with the building too close to the street and side property line.

**Whereas**, an application (FILE #21-005810, BZA21-000031) was filed with the Board of Zoning Appeals and a public hearing was held following due notice; and

**Whereas**, a review was undertaken pursuant to the State Environmental Quality Review Act, and the Board of Zoning Appeals hereby establishes itself as "lead agency" and hereby determines that this Unlisted Action will not result in any significant adverse environmental impacts, therefore, at a meeting of the Board held on **March 2, 2022** the appeal in the above-entitled matter was decided as follows:

### DENIED

### IN REACHING THIS DETERMINATION, THE BOARD CONSIDERED THE FACTORS SET FORTH IN THE ATTACHED FINDINGS OF FACT

The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by:           Member Donatelli           Seconded by: Vice Chairman Francis

Ayes:                   Member Goodsell, Member Donatelli, Vice Chairman Francis,  
                                  Chairman Mammina

Nays:                   None

Recused:              Member Hernandez

VIRGINIA M. WAGNER  
SECRETARY

**THIS IS NOT A BUILDING PERMIT**

# Board of Zoning Appeals

## Town of North Hempstead

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Rider to Appeal # 21154 (Findings of Fact)

**APPEAL #21154 - JMP Orchard St. LLC; 25 Orchard Street, Manhasset; Section 3, Block 71, Lots 513-515; Zoned: Business-B**

Conditional use §70-139.J and variances from §§70-103.P, 70-143.B, and 70-146.B to construct a new 3-story office/senior living apartment building (a conditional use), with parking under a building, on a lot that is too small and too narrow, with the building too close to the street and side property line.

The Board is familiar with the subject property and surrounding area based upon personal inspection. The Board has given a great deal of consideration to the evidence presented at the hearing, including but not limited to, testimony, proposed plans, and a traffic generation report. The Board notes that this evidence also includes letters and testimony from several neighbors opposing the application, as well as consent letters from several of the neighboring properties.

This is partially an appeal for a Conditional Use under §70-139.J to construct a new 3-story office/senior living apartment building (a conditional use).

Pursuant to Section 70-225.B of the Code, this Board is empowered to grant conditional use permits to applicants. In so doing, the Board shall consider the following general standards under 70-225.B(1): (a) the purposes of zoning as set forth in the Town Law of the State of New York and uses permitted in the district in which the property is located; (b) whether the proposed use is of such character, size, location, design and site layout as to be appropriate to and in harmony with the surrounding properties; (c) whether the proposed use will provide a desirable service, facility or convenience to the area or otherwise contribute to the proper growth and development of the community and to its general welfare; (d) whether the proposed use will be hazardous, conflicting or incongruous to the immediate neighborhood by reason of excessive traffic, assembly of person or vehicles, proximity to travel routes or congregations of children or pedestrians; (e) whether the proposed use will be of such nature as to be objectionable to nearby residential dwellings by reason of noise, lights, vibration or other factors of impact; (f) whether the proposed use will be a harmonious use in the district in which it is to be situated and not hinder or discourage the appropriate use and development of adjacent uses or impair the value thereof; (g) in addition to the foregoing, the location and size of a proposed use in an business or industrial district, the nature and intensity of the operations proposed, the site layout and its relation to access streets shall be considered by the board having jurisdiction of the application to determine whether the vehicular traffic resulting from such use will be more hazardous than the normal traffic of the district, taking into account such factors as street intersection, traffic flow, sight distances and pedestrian traffic.

The Board finds the following with respect to the criteria set forth under § 70-225.B(1):

**THIS IS NOT A BUILDING PERMIT**

- a) The proposed use of the site for an office/senior citizen apartment building is consistent with the purposes of zoning as set forth in the Town Law of the State of New York with respect to the proposed "use" as it is considered a conditional use within the Business-B zoning district. However, the proposed development of the site is not consistent with the purposes of zoning as set forth in the Town Law of the State of New York with respect to the dimensional requirements of the Business-B zoning district because it requires several variances.
- b) The Board finds that the proposed use is not of such character, size, location, design and site layout as to be appropriate to and in harmony with the surrounding properties. As outlined below, the project requires substantial variances from the dimensional requirements of the Code. Of particular significance is an 82% variance from the minimum lot size criteria of the Code. The Town Board in establishing the 40,000 square foot minimum lot size criteria and 100' lot width criteria together with the required front and side yard setbacks anticipated that properties being considered for this purpose would have sufficient area to accommodate adequate parking and circulation and adequate setbacks from surrounding properties. The proposed project is attempting to squeeze a senior citizen apartment building onto an undersized lot and as a result requires several variances. For these reasons the Board finds that the proposed project is too intensive a use for the subject property and would not be in harmony with the surrounding properties.
- c) The Board finds that while the proposed use would generally provide a desirable facility within the Town the proposed use on a substantially undersized lot would not be a desirable facility within the Town.
- d) The Board finds that the proposed use could potentially be incongruous to the immediate neighborhood due to the location of the property toward the end of a one-way street. The Board foresees the potential for emergency vehicles attempting to enter the one-way street to quickly access residents of the proposed building during an emergency instead of driving around the block. Since there is an increased chance that emergency vehicles will be called to a senior living residence the Board finds the creation of this potentially hazardous situation incongruous to the immediate neighborhood.
- e) The Board finds that the proposed use will be of such nature as to be objectionable to nearby residential dwellings due to the overly intensive use of the property. There are single family residential properties located immediately behind the subject property. These properties will be impacted by the 24 hour/7 days a week use of the subject property as a senior citizen apartment building. The proposed plans offer no mitigation of impacts to these abutting residential properties. There is no buffer provided between the site and the residential neighborhood nor are any trees or shrubbery proposed along the rear property

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line which might serve to mitigate impacts from the 24 hour/7 days a week use of the proposed building.

- f) For the reasons stated above, the proposed use could impair the value of the surrounding properties.
- g) While the volume of traffic to be generated by the proposed use is not expected to be greater than the normal flow of traffic in the area, the Board finds that as stated above in paragraph (d) the potential for emergency vehicles attempting to enter the one-way street to quickly access residents of the proposed building during an emergency situation could create a hazardous situation which would not be a factor taking into consideration the normal traffic of the area.

This is partially an appeal for variances under §§ 70-103.P, 70-143.B, and 70-146.B of the Town Code to construct a new 3-story office/senior living apartment building, with parking under a building, on a lot that is too small and too narrow, with the building too close to the street and side property line.

Under Section 267-b of the Town Law, the Board is empowered to grant area variances in cases where the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood or community. The Board is also required to grant the *minimum* variance necessary. In making such determination the Board shall also consider: 1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; 2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; 3) whether the requested area variance is substantial; 4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and 5) whether the alleged difficulty was self-created. After careful consideration of the facts presented during the hearing, personal observations of the site and surrounding area, a review of Building Department files, and a review of the Town Code as it pertains to development of this property, the Board finds the following with respect to these criteria:

1. As this Board is entrusted with safeguarding the character of the neighborhood in accordance with Town Law and the Town's zoning laws, the Board finds that the granting the requested variances could potentially result in an undesirable change to the character of the neighborhood and could result in a detriment to nearby properties. While the Board does not necessarily find that the location of the property is inappropriate for an office/senior citizen housing facility, the grossly undersized nature of the property does not lend itself to the development of this site for such a facility as several substantial variances are required. Section 70-143.B of the Code requires a minimum lot area of 40,000 square feet for a senior citizen housing facility with a minimum lot width requirement of 100' and a front yard setback requirement

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of 25'. Section 70-146.B of the Town Code requires a minimum side yard setback of 15' for senior citizen housing facilities. The subject property is only 7,031 s.f., which is significantly less than the 40,000 s.f. minimum required lot area for this zone; is only 60' wide, which is significantly less than the 100' width required by the Code; the building is setback only 13' from the street, which is significantly less than the 25' setback required by Code and the building has a 0' side yard setback on one side which is significantly less than the 15' setback required by Code. In addition, the project requires a variance from 70-103.P of the Town Code in order to allow parking under the building which is not permitted. The Town Board in establishing the 40,000 square foot minimum lot size criteria and 100' lot width criteria together with the required front and side yard setbacks anticipated that properties being considered for this purpose would have sufficient area to accommodate outdoor green space, adequate parking and circulation and adequate setbacks from surrounding properties. The proposed project is attempting to squeeze an office/senior citizen apartment building onto an undersized lot and as a result requires several variances. In addition, the single family residential properties located immediately behind the subject property will be impacted by the 24 hour/7 days a week use of the subject property as a senior citizen apartment building. The proposed plans offer no mitigation of impacts to these abutting residential properties. There is no buffer provided between the site and the residential neighborhood nor are any trees or shrubbery proposed along the rear property line which might serve to mitigate impacts from the 24 hour/7 days a week use of the proposed building and the lights and noise of possible emergency vehicles entering and exiting the site during this time. Granting the requested variances would undermine the goals of the Town Board in establishing the requisite dimensional criteria and would result in the overdevelopment and intensified use of this site with such a facility. The Board is concerned that a grant of variances of this magnitude would violate the general purpose of the subject ordinances and might "introduce such an incongruity into the ordinance that the zoning pattern would be seriously disarranged" (*See Van Deusen v. Jackson*, 312 N.Y.S.2d 853 (2<sup>nd</sup> Dept 1970), *affd.* 28 N.Y.2d 608 (1971)). Certainly, granting the requested variances to allow the development of this grossly undersized lot as a senior living facility will set a negative precedent detrimental to the character of the neighborhood for approving similar applications which do not comply with the Town Code (*see Pecoraro v. Bd. of Appeals of Town of Hempstead*, 2 N.Y.3d 608, 613 (2004); *Nataro v. DeChance*, 53 N.Y.S.3d 156 (2<sup>nd</sup> Dept 2017); *Russo v. City of Albany Zoning Board*, 910 N.Y.S. 2d 263 (3<sup>rd</sup> Dept 2010)).

2. The benefit sought by the applicant cannot be achieved by any other method other than the requested variances because of the small size of the property.
3. As stated above, the Board finds that the requested variances to be very substantial. The requested variance for insufficient lot size represents a variance of 82%. The requested variance for lot width represents a variance of 40%. The requested side yard setback variances represent variances of 18% and 100% respectively. The

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requested front yard setback variance represents a variance of 50% and the requested variance for parking beneath the building represents a 100% variance. The Board finds that these variances are both individually and cumulatively substantial.

4. The Board finds that the requested variances will have an adverse effect or impact on the physical conditions in the neighborhood by developing an undersized lot with an office/senior housing facility which cannot accommodate the proper setbacks from neighboring properties and the street.
5. The difficulty is self-created because the applicant chooses to develop the property with an office/senior citizen housing facility that does not conform to the requirements of the Town Code.

In weighing the aforementioned factors, the Board finds that the detriment to the health, safety and welfare of the neighborhood and community outweighs the benefit the applicant would receive if the conditional use and variances and were granted and therefore the conditional use sought under §70-139.J and variances sought under §§70-103.P, 70-143.B, and 70-146.B are DENIED.

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