

Town of North Hempstead

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

Members
Leslie Francis, Esq.
David I. Levine, Esq.
Daniel Donatelli, Esq.
Jay Hernandez



Board of Zoning Appeals

210 Plandome Road
Manhasset, NY 11030
(516) 869-7667
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TO: TOWN CLERK
FROM: Virginia Wagner, Secretary
CC: Building Dept.
DATE: May 18, 2022
RE: BZA Decisions for MAY 11, 2022

Appeal No.	Name	Sec.	Blk.	Lots
21092	679 Port Washington Blvd, LLC (Alma Bank)	6	2	115&277
21216	Daniel Drolet	8	303	11
21222	Sha Sha Jiang	9	578	15
21223	SAB 1488 1506 Northern Associates, LLC	3	145	205
21225	Jerikho, LLC	33	124	2583-2585

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NOTICE OF DECISION

APPEAL #21092 - 679 Port Washington Blvd., LLC (Alma Bank); 679 Port Washington Boulevard, Port Washington; Section 6, Block 2, Lots 115 & 277; Zoned: Business-A & Residence-C

Appeal for Determination that a use be permitted per §70-225.E or a variance in the alternative from §70-44, and Variances §§ 70-103(B), 70-103(F), 70-103(O), 70-203(T)(2)(j) to construct a new bank and drive-through with the drive-through lane located within a residence district (not a permitted use), parking spaces that are too small, a loading zone that is too small, a drive aisle that is too small, and a drive-through bypass lane that interferes with the internal circulation of the site.

Whereas, an application (FILE #21-260937, BZA21-104948) 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 **May 11, 2022** the appeal in the above-entitled matter was decided as follows:

GRANTED with respect to the appeal for determination that a use be permitted per §70-225.E, **DENIED as moot** with respect to the variance sought under §70-44, and **GRANTED** with respect to the variances sought under §§ 70-103(B), 70-103(F), 70-103(O), and 70-203(T)(2)(j) of the dimension and in the location as shown on drawings prepared by Jason Alan Pontieri, P.E. dated December 14, 2020 and revised though February 1, 2022 and on drawings prepared by Emilio Susa, R.A. dated November 25, 2020 and revised through December 24, 2020 **SUBJECT TO THE CONDITIONS CONTAINED IN THE ATTACHED RIDER.**

SEE ATTACHED RIDER

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

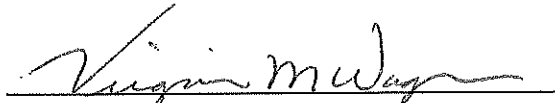
The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by: Member Hernandez Seconded by: Member Goodsell

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

Nays: None

Recused: Member Donatelli



VIRGINIA M. WAGNER
SECRETARY

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Board of Zoning Appeals

Town of North Hempstead

Rider #1 to Appeal #21092 (Findings of Fact)

APPEAL #21092 - 679 Port Washington Blvd., LLC (Alma Bank); 679 Port Washington Boulevard, Port Washington; Section 6, Block 2, Lots 115 & 277; Zoned: Business-A & Residence-C

Appeal for Determination that a use be permitted per §70-225.E or a variance in the alternative from §70-44, and Variances §§ 70-103(B), 70-103(F), 70-103(O), 70-203(T)(2)(j) to construct a new bank and drive-through with the drive-through lane located within a residence district (not a permitted use), parking spaces that are too small, a loading zone that is too small, a drive aisle that is too small, and a drive-through bypass lane that interferes with the internal circulation of the site.

This is in part an appeal for a Determination that a use be permitted per §70-225.E of the Town Code. Pursuant to this Section of the Code the Board of Zoning Appeals may:

“Permit a use authorized on a portion of a lot in a lower restricted district to extend to the entire lot, but not more than 50 feet beyond the boundary line of the higher restricted district in a case where a use district boundary line divides a lot in a single ownership at the effective date of this chapter.”

The Board finds that it is appropriate to allow this application to qualify for relief under this section of the Code for the following reasons:

1. The encroachment of the drive through lane into the residentially zoned portion of the site is minimal, ranging from 3’8” down to 1’5”.
2. The residential portion of the subject property, with a maximum width of only 20 feet, is too small to be utilized for any residential purpose.
3. A 15’ wide landscaped buffer will be maintained between the residential property to the east and the drive through lane.
4. The minimal encroachment is necessary to maintain adequate traffic circulation for vehicles accessing the proposed bank, and will have little to no impact on the surrounding residential properties due to the small encroachment and compliant landscaped buffer.

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,

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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 Board finds that granting variances from §§ 70-103(B), 70-103(F), 70-103(O), 70-203(T)(2)(j) will not result in an undesirable change to the character of the neighborhood nor will there be a detriment to nearby properties as a result of extending the business use into the residentially zoned portion of the site. This determination is based on the fact that there is only a minor encroachment of the drive-through into the residentially zoned portion of the property. In addition, there will be a 15' landscaped buffer located between the drive-through lane and the neighboring residential property. This buffer will be planted with evergreen trees which should provide adequate screening between the drive-through/parking area and the residential area to the east. The Board finds that the variance requested under 70-203(T)(2)(j) primarily involves internal site design and circulation and therefore, will not have any impact on adjacent properties or the surrounding area. In addition, the traffic study prepared by the applicant's expert, Mulryan Engineering, P.C. dated March 7, 2022, concludes that no impacts are anticipated as a result of the smaller than required parking spaces, smaller than required loading space and smaller than required access aisle.

Although the neighbors testified at the hearing that the project would have an adverse impact on traffic conditions in the neighborhood, the generalized concerns of the neighbors were not supported by expert testimony or the evidence submitted into the record for this appeal. In fact, the project involves the elimination of an existing curb cut onto Park Avenue which will be an improvement to the site and surrounding area. In addition, as a condition of granting approval of the application the curb cut onto Park Avenue will be limited to a one-way entrance into the site and the curb cut onto Port Washington Blvd. will be limited to an exit only.¹ This condition will further mitigate any potential adverse impacts from the proposed project as a result of increased traffic onto Park Avenue. The traffic study prepared by Mulryan Engineering, P.C. had concluded that the project would not have any adverse impacts as a result of increased traffic even before this condition was considered by the Board.

2. The benefit to the applicant to construct a bank with a drive-through cannot be achieved without the requested variances. The constraints of the site necessitated the requested variances in order to accommodate the features required by the bank and appropriate circulation. The proposed plan already incorporates a revision which eliminated the need for a variance for a smaller than required landscape buffer. The landscape buffer was increased to the required width of 15'.

¹ Applicant's counsel consented to this condition by email dated May 4, 2022.

3. The Board does not find the requested variances to be substantial. As stated above, the traffic study prepared by Mulryan Engineering, P.C. and dated March 7, 2022 concludes that no impacts are anticipated as a result of the smaller than required parking spaces, smaller than required loading space and smaller than required access aisle. Although the variance sought under 70-103(B) for insufficient parking space size could be considered substantial, the Board does not find the substantiality of the variance to be a factor which weighs in favor of denial where 9x18 parking stalls are considered acceptable by the Institute of Transportation Engineers,² and in this instance will benefit site circulation.
4. As explained in #1 above, the Board does not find that the requested variances will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. In fact, the Board finds that the redevelopment of the property for use as a bank will be more compatible with the residential neighborhood to the east than the existing use of the site as an auto repair shop.
5. The difficulty is self-created because the applicant chooses to develop the property with a bank that does not conform to the requirements of the Town Code. The Board does not find this fact to be determinative.

² See page 3 of the traffic study prepared by Mulryan Engineering, P.C. and dated March 7, 2022.

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Board of Zoning Appeals

Town of North Hempstead

Rider #2 to Appeal # 21092(Conditions)

APPEAL #21092 - 679 Port Washington Blvd., LLC (Alma Bank); 679 Port Washington Boulevard, Port Washington; Section 6, Block 2, Lots 115 & 277; Zoned: Business-A & Residence-C

Appeal for Determination that a use be permitted per §70-225.E or a variance in the alternative from §70-44, and Variances §§ 70-103(B), 70-103(F), 70-103(O), 70-203(T)(2)(j) to construct a new bank and drive-through with the drive-through lane located within a residence district (not a permitted use), parking spaces that are too small, a loading zone that is too small, a drive aisle that is too small, and a drive-through bypass lane that interferes with the internal circulation of the site.

- 1. The curb cut on Park Avenue shall be restricted to a one-way only entrance into the site. The curb cut on Port Washington Boulevard shall be restricted to a one-way only exit from the site.*
- 2. The 15' landscape buffer shall be planted in accordance with the requirements of §70-203.G of the Town Code. Irrigation shall be provided to this area in a manner which ensures the health of the vegetation.*
- 3. All lighting shall be shielded and directed away from residential areas and 0 footcandles shall be maintained at the property line.*

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NOTICE OF DECISION

APPEAL #21216 - Daniel Drolet; 119 Laurel Drive, New Hyde Park; Section 8, Block 303, Lot 11; Zoned Residence-B

Variances from §§70-40.A, 70-41.A & 70-101.B to construct additions that are too close to the side property line and the street and to construct a portico that is too close to the street.

Whereas, an application (FILE #21-010028, BZA22-000030) 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 **May 11, 2022**, the appeal in the above entitled matter was decided as follows:

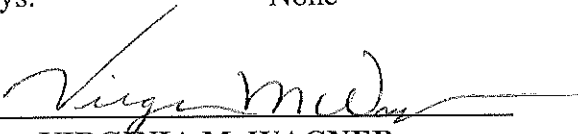
GRANTED of the dimension and in the location as shown on drawings prepared by Todd O'Connell, R.A. dated June 28, 2021 and revised through May 4, 2022 *as amended*.

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,
Vice Chairman Francis, Chairman Mammina

Nays: None



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NOTICE OF DECISION

APPEAL #21222 – Sha Sha Jiang; 9 Center Dr., New Hyde Park, Section 9, Block 578, Lot 15; Zoned Residence-B

Variations from §§ 70-41.A & 70-208.F to construct additions to a non-conforming dwelling that are too close to the side property line and with not enough total side yard space.

Whereas, an application (FILE #22-000674, BZA22-000034) 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 **May 11, 2022**, the appeal in the above-entitled matter was decided as follows:

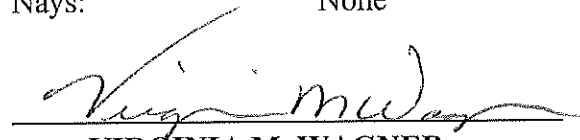
GRANTED of the dimension and in the location as shown on drawings prepared by Bernard Rogers, R.A. dated August 31, 2021 and revised through February 14, 2022.

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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NOTICE OF DECISION

APPEAL #21223 – SAB 1488-1506 Northern Associates, LLC; 1488 Northern Blvd., Manhasset, Section 3, Block 145, Lot 205; Zoned Business-A

Variance from § 70-103(A)(1) and a conditional use under 70-126(A) to construct interior alterations to an existing building for use as a bakery (conditional use) with not enough parking.

Whereas, an application (FILE #21-013414, BZA22-000046) 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 **May 11, 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 Harry Nicolaides, R.A. dated November 8, 2021 and revised through February 25, 2022
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 Hernandez Seconded by: Member Donatelli

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

Nays: None

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Board of Zoning Appeals

Town of North Hempstead

Rider to Appeal # 21223

APPEAL #21223 – SAB 1488-1506 Northern Associates, LLC; 1488 Northern Blvd., Manhasset, Section 3, Block 145, Lot 205; Zoned Business-A

Variance from § 70-103(A)(1) and a conditional use under 70-126(A) to construct interior alterations to an existing building for use as a bakery (conditional use) with not enough parking.

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 45 as depicted on the drawings prepared by Harry Nicolaidis, R.A. dated November 8, 2021 and revised through February 25, 2022. 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.

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[2]. The addition or removal of counter/kiosk service for the placement of a food order.

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 #21225 – Jerikho, LLC; 2208 Jericho Tpke., New Hyde Park, Section 33, Block 124, Lot 2583-2585; Zoned Business-B

Variances from §§ 70-103(A) and 70-103(B) to construct interior alterations to convert a retail building into professional offices with not enough off-street parking and parking spaces that are too small.

Whereas, an application (FILE #21-009552, BZA22-000044) 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 **May 11, 2022**, the appeal in the above-entitled matter was decided as follows:

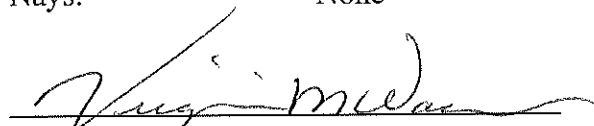
GRANTED of the dimension and in the location as shown on drawings prepared by Luigi Gileno, R.A. dated May 28, 2021 and revised through February 9, 2022.

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

Motioned by: Member Goodsell Seconded by: Member Hernandez

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

Nays: None


VIRGINIA M. WAGNER
SECRETARY

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