

BOARD OF ZONING APPEALS
VIRTUAL ZOOM PUBLIC HEARING

Wednesday, May 25, 2022
10:18 A.M.

BOARD MEMBERS PRESENT:

DAVID L. MAMMINA, A.I.A. - Chairman
LESLIE FRANCIS, ESQ. Vice Chairman
PATRICIA GOODSELL, ESQ. Member
DANIEL DONATELLI, ESQ. Member
JAY HERNANDEZ - Member

ALSO PRESENT:

DEBORAH ALGIOS, ESQ. - Deputy Town Attorney
VIRGINIA WAGNER - Secretary
MADELINE TAVANI - Stenographer

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1 CHAIR MAMMINA: Everyone please rise
2 and join the Vice Chairman --

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4 VICE CHAIR FRANCIS: (Indecipherable.)

5 CHAIR MAMMINA: -- please in the
6 Pledge of Allegiance.

7
8 (Pledge of Allegiance.)

9
10 CHAIR MAMMINA: Okay. Good morning.
11 Good morning, ladies and gentlemen, and welcome to
12 the Zoning Board of Appeals, Town of North
13 Hempstead.

14 What I'd like to before we get
15 started for I guess -- before we get
16 started, is -- just take a couple of minutes
17 to go through the way that we do things here
18 in the town in case you've never appeared
19 before a Zoning Board; or you may have
20 appeared before a different municipality or
21 a village or a town, we may do things a
22 little bit differently.

23 If you've never appeared before a
24 zoning board, I will ask you just to be nice
25 and calm and, you know, just talk to us when
26 you come on up. And we certainly try our
27 best to make everyone feel comfortable. So
28 what will happen then this morning is that
29 as each case is called, we will ask for the
30 Applicant to identify themselves by standing
31 up and coming forward to the podium. I'll
32 then ask if there is anyone in the room who
33 is interested in the case, and that could be
34 negatively or positively. We just look for
35 a show of hands on that so that we know that
36 there are other people that wish to speak.

37 So everyone will state their name
38 and address to our virtual Court Reporter,
39 wherever he or she is and, therefore,
40 placing themselves formally on the record.
41 They will present their case to the Board,
42 and the Board will ask for whatever
43 questions, you know, it might feel
44 appropriate. And if there are any persons
45 who wish to speak regarding the application,
46 we will then ask the Applicant to have a
47 seat any place, and those people will then
48 come up one at time. It doesn't mean if

1 there's a couple here that they can't come
2 up together; yes, they can.

3 We just try to ask people to try
4 not to speak over one another because it's
5 difficult for the stenographer to take an
6 accurate record.

7 Yes, and thank you. That never --

8 In terms of a person speaking,
9 there's a three-minute time limit on that.
10 We're not going to chop you off out at three
11 minutes, but we're going to kind of ask you
12 to make your point. One of the things that
13 I find helpful to suggest to people, is that
14 if someone has already put something onto
15 the record, if you say the same thing, it
16 doesn't give it any more strength. It's in
17 the record negatively or positively. You
18 don't have to speak because you're here, but
19 you can just come on up and say, I agree
20 with the previous speaker, or I disagree
21 with the previous speaker, but I would also
22 like to say that there's a school bus stop
23 there, wherever it might be, so that, you
24 know, we try to be extremely courteous to
25 everyone. But, of course, the hearing would
26 go on and on and on.

27 So the Applicant at -- once that
28 it is done, the Applicant, and typically
29 only the Applicant, will get to speak a
30 second time because it gives the Board the
31 opportunity then to ask questions of the
32 Applicant that may have been raised by
33 people who spoke and put different thoughts,
34 you know, into -- into our head that we
35 would like to resolve and be part of the
36 record.

37 You know or, we may at that point
38 then propose to the Applicant some kind of
39 compromise, you know, on something,
40 potentially. I would like to say it's
41 "Let's Make A Deal," but that doesn't mean
42 that sort of thing is, you know, is not --
43 is not offered to Applicants.

44 When that is completed, the Board
45 will then do one of four things:

46 We will either approve the
47 application.

48 We'll deny the application.

1 We may continue the application,
2 which would mean that we're offering some
3 sort of a compromise. We may want to see
4 another document that we may ask the
5 Applicant to bring forward to Ms. Wagner in
6 our zoning office. We may want to go see
7 the site again. We may be looking for a
8 folder from the -- from the Building
9 Department. So there could be any -- any
10 number of reasons why would we continue the
11 application. It's -- it's continued with
12 specificity. So it doesn't mean that it's
13 open season to submit anything else that
14 you'd like. The facts have been put on the
15 record, and, you know, the record is the
16 record, and it would be strictly limited to
17 what the Board has asked for.

18 And then the fourth would be that
19 we would reserve the application. And that
20 would mean that the Board, at this point, is
21 not prepared, you know, to make -- to make a
22 decision. All deliberation that we make is
23 made in public, and you're welcome to come
24 back to hear your case and what the Board
25 has to -- you know, has to say. Or you can
26 tune in to --

27 Virginia, is that through -- what
28 site?

29
30 MS. WAGNER: The town website. They
31 can view the recordings on the -- under the Boards
32 and commissioners.

33
34 CHAIR MAMMINA: Good.

35 Okay. So I mean, you're welcome to do
36 it that way as well. So there are a lot of ways
37 that you can then, you know, hear that
38 deliberation.

39 So I think I've covered all of the
40 points what we will ask. And I mean, as you can
41 see, I mean, everyone has got the phones, and you
42 know, their laptops and their iPads and all of
43 those things that we've come to rely on, especially
44 since Zoom and, you know -- and the pandemic. So
45 we're just going ask anyone who has a phone, you
46 don't have to turn it off; please turn off any kind
47 of ringer or noise that it may make. It can give
48 you a buzz or whatever you'd like so that it knows

1 that there's someone trying to contact you.

2 If at any point you have to make a
3 call or take a call, just stand on up and you can
4 walk out into the lobby area and you can do that,
5 that's oaky. We're all ladies and gentlemen and,
6 you know, you'll do that nice and quietly and
7 that's fine.

8 If there's someone else who you're
9 expecting at the hearing who hasn't yet joined you,
10 we also ask that you just ask them to do that as
11 well.

12 We will request that crosstalk between
13 people, you know, who are sitting in the room be
14 zero. It's very hard for the stenographer to hear
15 when there's background noise. It's sometimes very
16 distracting to the Board as well when, you know,
17 sub-conversations are going on. At any point you
18 can step outside and, you know, have all the
19 conversation that you choose. Did I cover
20 everything? All good. Okay.

21 So with that said, Ms. Wagner, do we
22 have any adjournments today?

23
24 MS. WAGNER: Chairman, we have an
25 adjournment request of Appeal #21228 Richard
26 Schefer; 144 Luquer Road in Port Washington;
27 Section 5, Block 76, Lot 435; in the Residence-B
28 Zoning District.

29 Variance from §70-39.C to legalize
30 additions that are too big.

31 Does the Board to want to vote on that
32 adjournment request?

33
34 CHAIR MAMMINA: Sure. Do we have a
35 motion?

36
37 VICE CHAIR FRANCIS: So moved.

38
39 CHAIR MAMMINA: Okay. A motion by
40 Mr. Francis, seconded by Member Goodsell.
41 And please poll the Board.

42
43 MS. WAGNER: Member Goodsell.

44
45 MEMBER GOODSELL: Aye.

46
47 MS. WAGNER: Member Donatelli.
48

1 MEMBER DONATELLI: Aye.
2
3 MS. WAGNER: Member Hernandez.
4
5 MEMBER HERNANDEZ: Aye.
6
7 MS. WAGNER: Vice Chairman Francis.
8
9 VICE CHAIR FRANCIS: Aye.
10
11 MS. WAGNER: Chairman Mammina.
12
13 CHAIR MAMMINA: Aye.
14 So the adjournment is granted and that
15 is granted to June 8th.
16 Okay. So if there's anyone in the
17 room who came today for that -- that Application,
18 that will not be heard this morning.
19
20 MS. WAGNER: We also have an
21 adjournment of Appeal #21212. Marco Barrera; 24
22 Fairview Avenue in Port Washington, Section 6,
23 Block 10, Lot 876; in the Residence-C Zoning
24 District.
25 Variance from 70.B to construct
26 additions and a portico to an existing home that
27 would be too close to the street.
28 That is adjourned until June 8th
29 because we're mailing.
30
31 CHAIR MAMMINA: Okay.
32
33 MEMBER DONATELLI: I'll make the
34 motion.
35
36 MS. WAGNER: That one, we don't have
37 to vote on.
38
39 CHAIR MAMMINA: We don't have to vote
40 on that. Okay. You got me all wound up. I was
41 all set.
42
43 MS. WAGNER: We also -- Appeal #21215
44 has been withdrawn by the Applicant, Juiching Hsu;
45 29 Ridge Road in Albertson, Section 7, Block 304,
46 Lot 23; in the Residence-A Zoning District.
47 Variance from 70-29.B to construct
48 additions that will make the house too big.

1 That has been withdrawn by the
2 Applicant.
3

4 CHAIR MAMMINA: If anyone is here for
5 any of those three applications, you know -- of
6 course, 21215, 29 Ridge Road Albertson will not be
7 heard at all because it's been withdrawn.

8 And then the other two Applications,
9 21228 and 21212 those will -- those are adjourned
10 until the 8th. And I don't know if it's -- I guess
11 and also the last application, 21232 we don't have
12 Nassau County Planning Commission; is that correct?
13

14 MS. WAGNER: We'll be hearing it.
15

16 CHAIR MAMMINA: We'll hear it, but we
17 can't make any kind of a decision today because we
18 don't have that back from Nassau County Planning
19 Commission.

20 So with that said, Ms. Wagner would
21 you please call the first case.
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Appeal # 21226

1 MS. WAGNER: Appeal #21226. Aren
2 Tung; 26 Avenue A, Port Washington, Section 4,
3 Block 36, Lot 308; in the Residence-C Zoning
4 District.

5 Appeal for Determination that the
6 Building Department erred in not recognizing a
7 previously Issued Certificate of Existing Use.
8

9 CHAIR MAMMINA: You've heard number
10 21226, Aaron Tung.

11 Is there anyone in the room who is
12 interested in the application other than the
13 Applicant?

14 Seeing one hand up. Yes.

15 And, Mr. Norjen, you will have the
16 opportunity to speak after the presentation.
17

18 MS. DEEGAN DICKSON: Good morning.
19

20 CHAIR MAMMINA: Please proceed.
21

22 MS. DEEGAN DICKSON: Kathleen Deegan
23 Dickson. Partner in the law firm of Forchelli
24 Deegan Terrana, 333 Earle Ovington Boulevard,
25 Uniondale, New York. Here on behalf of the
26 Applicant, Aaron Tun,g who is the owner of 26
27 Avenue A in Port Washington, known as Section 4,
28 Block 36, Lot 308.

29 We're here on a somewhat unusual
30 application this morning, as we're appealing an
31 omissions letter of the Building Department rather
32 than a notice of disapproval. However, in order to
33 get a notice of disapproval, we would have to
34 provide the information that we're seeking relief
35 from today. So it was sort of a catch-22, and we
36 decided to appeal the omissions letter.

37 We're not seeking any variances, but
38 rather we're seeking a determination that the
39 Building Department erred in two matters when
40 determined that the Certificate of Existing Use for
41 a two-family home, which was issued in 1993, was
42 issued in error and that the separation of the
43 parcels, known as Section 4, Block 36, Lots 208 and
44 308, constituted an illegal subdivision because
45 they were not approved by the Town.

46 So the Building Department has refused
47 to continue its review of Ms. Tung's application to
48 restore and renovate the house at 26 Avenue A until

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1 she proved that the CEU was valid.

2 Give you a little background: The
3 Applicant purchased the property in December of
4 2020. Prior to taking title, she had an attorney,
5 she ran a title search and was provided with a
6 Certificate of Existing Use which was issued by the
7 town on February 3rd, 1993, for a two-family
8 dwelling.

9 We submitted a copy with our
10 application, but I have additional copies here that
11 I would like to just enter into the record.

12
13 CHAIR MAMMINA: Thank you.

14
15 MS. DEEGAN DICKSON: So after closing
16 on the property, which she did with a large
17 reliance on this certificate of existing use, the
18 Applicant subsequently applied to the Building
19 Department in order to obtain building permits and
20 rental registration permits in order to bring the
21 building up to code and to renovate it, restore it
22 back to a good quality condition.

23 In response to that submission, the
24 Applicant received an omissions letter dated
25 February 17th, 2022, in which the Building
26 Department determined that the CEU was issued in
27 error and, therefore, could not continue its
28 review.

29 The conclusion was reached because the
30 Town's files do not currently contain the
31 information permitted to determine that the
32 two-family use was preexisting, legally
33 preexisting. The file did contain the CEU. It
34 wasn't something that my client just had in her
35 files. It was something that was in the Town's
36 files.

37 However, the Building Department
38 determined that it was appropriate to conduct a de
39 novo review of this document that has existed in
40 the Building Department files for nearly 30 years.
41 They did not provide any information that the
42 issuer of the certificate acted improperly in 1993
43 or that there was some mistake made in 1993 or that
44 there was some irregularities in 1993, but rather
45 that in 2022, some 29 years later, that the
46 Building Department's file was incomplete and so
47 there must have been an error in issuing that
48 certificate of existing use.

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1 So rather than relying on the CEU that
2 they did have and give the benefit of the doubt to
3 a bona fide purchaser for value who did their due
4 diligence and at least two owners after the
5 issuance of the original CEU, they determined that
6 it was up to my client to prove that that CEU was
7 issued properly, rather than have the burden on
8 them, where it's supposed to be, that it was issued
9 improperly.

10 We understand that there's no
11 municipal estoppel. If they were able to determine
12 that it was issued improperly, we would have to
13 come back before this board and seek some
14 variances. But that's not what happened here.
15 What happened here is the Building Department,
16 because they didn't have the backup now 30 years
17 later that we would presume was in the file when it
18 was issued, they've shifted the burden of proof to
19 my client to issue -- to prove that the CEU was not
20 issued in error. Always a challenge to prove a
21 negative, but that's what they're asking my client
22 to do.

23 That's just -- frankly, turns the law
24 on its head. Frankly, first of all, there is a
25 general presumption that a public official does not
26 act contrary to his or her official duties. So the
27 fact that that document exists in that file carries
28 with it a presumption that it was issued properly.
29 That's been upheld by The Court of Appeals, and it
30 is also -- it's a fairly standard rule of evidence,
31 that when you have a document that was issued by an
32 official in their official capacity, it carries a
33 presumption of validity.

34 Now, that -- granted that is a
35 rebuttable presumption but not by lack of evidence.
36 There is a CEU in the file, and the presumption is
37 that that building official issued that CEU and
38 that they did it with the proper backup in evidence
39 to support it. The absence of some evidence that
40 the building official acted improperly -- in the
41 absence of some evidence that the building official
42 acted improperly, he is presumed to have acted
43 properly.

44 So it cannot be incumbent on every
45 future property owner to prove that certificates
46 that are in the files of the Town of North
47 Hempstead were not fraudulently procured or not
48 improperly issued. This is why there's a

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1 presumption of regularity. People need to be able
2 to rely on the official documents issued by the
3 Town, especially when this Town, like many others,
4 has had misplaced files, has had misplaced
5 documents.

6 These files, up until very recently,
7 were open to the public for review and anybody from
8 title companies to property owners to neighbors to
9 real estate brokers could come up, pull the file,
10 take a look at it. Things got misplaced all the
11 time. It's been my experience on several
12 occasions, as I'm sure any of you who have sought
13 files here, sometimes you'll find a stray piece of
14 paper in another file that's not part of that file.
15 The good people give it -- turn it in and say, hey,
16 this is in the wrong file, and it presumably gets
17 refiled.

18 But it's an imperfect system, or at
19 least it was. Now that it's computerized, it's a
20 little bit more controlled. But it wasn't
21 controlled for a long time; and certainly the time
22 between 1993 and the last few years when everything
23 was computerized, there was very little control on
24 what went in and what came out of files. So I
25 don't think that a presumption that because
26 something is not there now, that it never existed,
27 is a fair or rational presumption to make.

28 The Town Code actually provides a
29 formal process for revoking a CEU. Section
30 70-223.1 provides a process that includes a finding
31 of an investigation that the building is being
32 improperly occupied, and it requires a public
33 hearing before the Town Board.

34 In this instance, the Building
35 Department is improperly attempting to revoke the
36 CEU without providing any of the due process that's
37 provided under the Town Code. By refusing to allow
38 the occupancy that is permitted by the CEU, they
39 are working a de facto revocation of that CEU
40 without providing -- without following the process
41 of providing the due process that's required.

42 In its omissions letter, the Building
43 Department asserts that the preponderance of the
44 evidence did not establish the use of a two-family
45 dwelling. That is, in 2022, that was not
46 established. In 1993, we are presuming that the
47 preponderance of the evidence did support that,
48 otherwise, the commissioner at that time would not

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1 have issued it.

2 The Building Department relies on the
3 older 1938 tax assessor's card, which is not
4 conclusive. It's a five-page card. I don't know
5 if you have it in your records, but I do have
6 copies here for you. We have pored over it. You
7 know how these cards are; there's a lot blurriness,
8 you know, sometimes hard to decipher. There's
9 absolutely nothing -- (indecipherable).

10 There's nothing in that document that
11 says that it's a one-family, it's a two-family,
12 it's a five-family, it's -- there's nothing in that
13 document that would indicate the number of dwelling
14 units that are -- that are included in that
15 property in 1938.

16 So the fact that the property card
17 from 1938 is inconclusive, it leads one to believe
18 that the building official who issued the CEU in
19 1993 must have relied on some additional -- other
20 information included -- in concluding that the
21 building was a legal two-family use.

22 Typically, that's done by affidavits.
23 It's done by, you know, other historical records
24 and the -- not necessarily something that a new
25 owner, two owners later who has no nexus to the
26 family that owned the property since the buildings
27 were built in nineteen-teens and the 1920s would
28 necessarily have.

29 The fact that the information is no
30 longer in the Building Department files is not
31 surprising, but it's also not sufficient to shift
32 the burden of proof to my client. The CEU has
33 already been issued and now carries that
34 presumption of validity until the Building
35 Department proves in the affirmative otherwise.
36 Pointing to an inconclusive tax assessors card is
37 not proof. But even if it could be considered
38 proof, their obligation would be then to bring that
39 to the Town Board and have the Town Boarder make
40 the determination whether or not the revocation of
41 the Certificate of Existing Use is proper.

42 And they understand that that's not
43 something they're going to be able to do. So
44 that's why they've done this quote, unquote, back
45 door revocation by refusing to the review the file
46 further until my client can prove this negative.

47 So we are requesting a determination
48 that in the absence of a specific reasonable

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1 finding, pursuant to Section 2-14 and 70-223.1,
2 that the Certificate of Existing Use is still valid
3 and enforceable against the Town and carries the
4 presumption of validity and that the Building
5 Department has honored -- obligated to honor this
6 CEU.

7 So I want to continue, because the
8 Building Department also concluded that the
9 property was illegally subdivided, as it did not
10 have any records in its file, once again, that the
11 property was -- that there was an application for a
12 subdivision to the town.

13 We obtained a file tax map from 1944
14 that shows that Lots 208 and 308 existed as
15 separate tax lots as of that date.

16 This, I did not submit. We just
17 received this, so I'd like to have this marked as
18 an exhibit.

19
20 MS. WAGNER: This will be Exhibit 1.

21
22 MS. DEEGAN DICKSON: So the -- you'll
23 see there's an email on the front of it, that's
24 from my paralegal who actually met with the
25 individual in the assessor's office to get an
26 explanation of what we were looking at. You have a
27 copy of a portion of the larger map.
28 Unfortunately, our large format printer was not
29 working yesterday, so we had to do it on a smaller
30 size.

31 But you'll see the -- I'm sorry --
32 it's on the south side of Avenue A, you'll see
33 where the Lot 8 is crossed out and 208 -- 108 and
34 208 and 308 were created.

35 So you're probably asking the question
36 I asked, how do we know when that was done? That's
37 what the email is there to explain. So this tax
38 map came with the red markings, as of 1944. This
39 is when Queens County turned these records over to
40 Nassau County.

41 The -- you'll see on the top left,
42 there's two stamps, one from 1948 that says what
43 has changed from then and then one from October of
44 1944 that talks about the 209 and 309 out of 109.
45 So those, according to the assessor's office, are
46 the only changes that were made to this map after
47 it was received by the Queens County clerk in 1944.

48 Also down on the bottom, change on the

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1 tax map, you'll see 203, 303 out of 403 that was
2 also in 1944. All of the other notations on the
3 map predate -- predate 1944.

4 So I think this board is aware that
5 the authority for subdivisions lies with the Nassau
6 County Planning Commission because this is a town
7 that does not have its own subdivision authority.
8 It reverts to the County. That's the body with the
9 subdivision authority pursuant to New York State
10 real property law 334A.

11 334A 1B also contained what is
12 commonly referred to as the old file map exception
13 to the requirement for subdivision.

14 Now, in recent years in the last ten
15 or fifteen years, the County of Nassau has changed
16 their law to not recognize the old filed map
17 exception. But in 1993, when the CEU was issued,
18 and in 1988, when the last deeds or first deeds
19 were recorded since 1938, that -- that filed -- old
20 file map exception was in effect. And it provides
21 that if a lot exists as a separate lot on a map
22 filed prior to January 12th, 1945, it is exempt
23 from subdivision requirements of the county. This
24 exemption existed in 1988, when the Nassau County
25 Department of Assessment apportioned the lots for
26 taxation purposes separately from one another.

27 And I have a copy of the letter from
28 the Department of Assessment that we received
29 recently that talks about the history of the tax
30 apportionment of these parcels that I would like to
31 submit and have them marked.

32
33 MS. WAGNER: This will be Exhibit 2.

34
35 MS. DEEGAN DICKERSON: I also want to
36 submit the Nassau County assessment records that
37 indicate that the property is currently being taxed
38 as a two-family home. I know that that's not
39 conclusive for historical purposes, but if it was
40 being taxed as a one-family home, I think that
41 might be indicative that maybe what I'm saying
42 doesn't bear out. But the fact that it is
43 currently and going back at least to 1988, I think
44 that's something that is germane in considering
45 this case for the record.

46 So I'd like to submit these as an
47 exhibit as well.
48

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1 MS. WAGNER: These will be Exhibit 3.

2

3 MS. DEEGAN DICKSON: So also,
4 interestingly, I mentioned that Lot 208 and Lot 308
5 were once part of the former Lot 8 and were divided
6 up at some point; they were separated.

7 There was a Certificate of Existing
8 Use issued to the owner of Lot 208 as recently as
9 2015. So that is the lot that my client's lot was
10 purportedly illegally subdivided from, but that was
11 not a finding that was made by the Building
12 Department when they issued the Certificate of
13 Existing use in 2015.

14 So I'd like to -- well, it's part of
15 the Town's records. I'd like to submit this as an
16 additional exhibit. So this is for the adjacent
17 property, which is the property that has the deli
18 and other residential uses on it and the
19 Certificate of Existing Use.

20

21 MS. WAGNER: This will be Exhibit 4.

22

23 MS. DEEGAN DICKSON: So I know I've
24 given you a lot of information today, and I know
25 while I said I know I wasn't going to do it, that
26 it was an improper shift of the burden to my
27 client, we did research that we could to bolster
28 the fact that that CEU that was issued in 1993 was
29 issued legitimately and should be honored.

30 I have to say, in recent years, the
31 Building Department has gotten into a habit of
32 requiring Applicants to prove things that are
33 really not appropriate.

34 I know you heard a case a couple of
35 weeks back, maybe a month back also on Avenue A in
36 Port Washington, which, as you know, is an old
37 section of town. It's an old family section where
38 properties were purchased and passed generation to
39 generation, and sometimes things were formalized
40 and sometimes they weren't. And it's something
41 that is really very typical of that area and other
42 older areas of the town.

43 But I believe that was at 13 Avenue A
44 where there was a letter in lieu of a certificate
45 that was in the file. And letters in lieu have
46 fallen out of favor, although a lot of smaller
47 municipalities still use them, and they've been
48 replaced in the Town of North Hempstead by a

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1 certificate of existing use.

2 And this board found in that case, and
3 granted that it was a little bit different of a
4 case, but the documentation question and what's in
5 the file and what do we have to prove when there's
6 actual documentation in the file. That -- that's a
7 very similar situation here.

8 And I think that I understand the
9 Building Department's want and need to have their
10 files papered properly and I understand that
11 there's been a lot of irregularities over the years
12 that have caused certain files to not have the
13 information that in a perfect world we would like
14 to see in them. It is not fair to shift that
15 burden to new owners of property, who have
16 absolutely no ability to prove things that look
17 like they were already proven years ago. It would
18 be much more rational and very simple and nobody
19 would ever criticize them to say, you know what,
20 there's a Certificate of Existing Use.

21 I don't see everything, every bit of
22 backup, but this is a 30-year-old document. This
23 is something that -- who knows what happened over
24 the intervening 30 years. I think we have a right
25 to rely on this. There's not a person in the world
26 that would criticize that decision. But instead of
27 doing that, they're trying to complete their files
28 on the backs of basically innocent third parties.
29 I think it's unfair. I think it's improper. I
30 think it's illegal. And I would ask this board to
31 please find and direct the Building Department to
32 honor the Certificate of Existing Use. And I'd
33 like to see a broader decision where a message is
34 sent to the Board that we're not going to pick
35 apart every ancient document and require you to
36 review it de novo and shift the burden of proof to
37 property owners where the burden really should be
38 on the Town.

39 And when there is a document there
40 that they should be honored and respective for the
41 official documents that they are. Otherwise,
42 nobody is ever going to want to buy a piece of
43 property in the Town of North Hempstead.

44 If you think that any given point of
45 time, your legal use is going to be taken out of
46 from under you, you may not have the wherewithal to
47 prove that it was issued properly.

48 So that is my request today. If you

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1 have any further questions, I'm happy to answer
2 them. I'm sure you're interested to hear from
3 Mr. Norgen and hear his point of view, as am I.
4 And I'm available after that to speak to anything
5 that needs rebuttal.

6

7

MEMBER HERNANDEZ: Just one question
8 on one of the documents.

9

10

MS. DEEGAN DICKSON: Yes.

11

12

13

14

MEMBER HERNANDEZ: On the tax lots
which you showed, what is the square footage on the
Lot 308, the lot that we're discussing here.

15

16

17

MS. DEEGAN DICKERSON: Lot 308, it is
29 feet by 180 I think. I'd have to take a --

18

19

20

21

22

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24

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26

MEMBER HERNANDEZ: If there's a
(inaudible) but according to the (indecipherable),
there must be an error, because this things says
that the lot square footage is 10,962. So this
must be 28 -- 208 and 308 (indecipherable)
approximately twice the size, but it appears that
at some point (indecipherable), that the tax
records were split.

27

28

29

30

MS. DEEGAN DICKERSON: So if you look
on page 2, about halfway down the page where you
see the words "lot grouping".

31

32

33

MEMBER HERNANDEZ: Yep.

34

35

36

37

MS. DEEGAN DICKSON: If it was the
combined lots, it would include that tax lot as
well.

38

39

40

41

MEMBER HERNANDEZ: Right. If you look
at the square footage, it's 10,962 on the same
(indecipherable) fourth line from the bottom.

42

43

44

MS. DEEGAN DICKERSON: So it sounds
like my client has been --

45

46

47

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MEMBER HERNANDEZ: 5,000 in change
that your lot is supposed to be. So it appears
that it's about half the number. I didn't do the
math.

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MS. DEEGAN DICKERSON: That could be. The only thing that tells me is that my client is being overtaxed.

MEMBER HERNANDEZ: Yes.

MS. DEEGAN DICKERSON: It doesn't say anything to me --

MEMBER HERNANDEZ: The record's wrong.

MS. DEEGAN DICKERSON: That the record may be wrong, yeah.

Unfortunately, I don't have the same sheet for Lot 308 -- for Lot 208. I didn't think to print that. But, you know, I don't know -- what that would say.

But, again, where it's not grouped together, it's not intended to be part of the two lots together. This is intended to be a separately assessed lot according to the assessment department.

MEMBER GOODSELL: I have one other question. This is right now (indecipherable.)

MS. DEEGAN DICKERSON: Yes -- well, they haven't because my client is a law-abiding citizen and has been asked not to occupy it until she has rental registration permits and has it -- has it brought back to code.

So her intention has been and is to get in there -- it was up until she took title and actually up until there were -- there were tenants in there that had to be removed. The property was bought in foreclosure.

So -- so, yes, it's still -- yes, being used and intended to be used as a two-family dwelling.

VICE CHAIR FRANCIS: And the prior owner used it the same way?

MS. DEEGAN DICKERSON: Yes. Well, the immediately prior owner was the bank. But the tenants were still in the building. To my knowledge, the best of my knowledge, because when

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1 Ms. Tung purchased the building, there was still
2 one tenant on the second floor.
3
4 VICE CHAIR FRANCIS: Did there ever
5 exist a rental registration form?
6
7 MS. DEEGAN DICKERSON: We checked with
8 the Town, and it does not appear that there was
9 ever a rental registration.
10
11 MEMBER GOODSSELL: Your client is not
12 related to the family in 1978 or 1993?
13
14 MS. DEEGAN DICKSON: Correct.
15
16 MEMBER GOODSSELL: So there's no chance
17 of any family records.
18
19 MS. DEEGAN DICKERSON: Unfortunately
20 not.
21
22 MEMBER GOODSSELL: And the third-party
23 purchaser?
24
25 MS. DEEGAN DICKERSON: Yes.
26
27 (Sidebar conversation.)
28
29 CHAIR MAMMINA: I think we can hear
30 from Mr. Norjen.
31
32 MS. DEEGAN DICKERSON: Okay.
33
34 MR. NORJEN: Hello, again, after a
35 long time.
36
37 CHAIR MAMMINA: You've been working
38 out.
39
40 MS. DEEGAN DICKERSON: Excuse me?
41
42 CHAIR MAMMINA: I said it looks like
43 you've been working out.
44
45 MR. NORJEN: Yeah, I've lost a lot of
46 weight.
47
48 CHAIR MAMMINA: That's very good.

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1
2 MR. NORJEN: Glenn Norjen, Deputy
3 Commissioner of Building Department.
4 A lot to cover here. The code
5 regarding the revocation of permits or
6 certificates. I don't remember when --
7
8 MS. DEEGAN DICKSON: 223.1.
9
10 MR. NORJEN: Okay. 223.1.
11 Is penalties for valuation of certain
12 state law.
13
14 MS. DEEGAN DICKSON: (Indecipherable.)
15
16 MR. NORJEN: Okay. The code -- the
17 town code for the revocation of permits is 2-14
18 which states: "The building commissioner shall
19 have the authority to revoke any permits
20 theretofore issued or withhold or revoke any
21 certificate issued pursuant to the completion of
22 the permitted work in the following instances:
23 "B, where he finds that the permit was
24 issued in error and should not have been issued in
25 accordance with the applicable laws."
26 There's nothing in 2-14 that says that
27 you go to the Town Board for anything, any
28 determination of the Building Department would go
29 to the Zoning Board. Now --
30
31 CHAIR MAMMINA: Which applicable laws
32 are -- are you addressing?
33
34 MR. NORJEN: 2-14.
35
36 CHAIR MAMMINA: Yes, but specifically
37 with this case.
38
39 MR. NORJEN: No, well, I'm just saying
40 it's brought up that, you know, she had
41 mentioned --
42
43 CHAIR MAMMINA: Yeah, but you're
44 saying that you have the right to revoke it --
45
46 MR. NORJEN: Right.
47
48 CHAIR MAMMINA: -- based upon

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1 applicable laws.

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MR. NORJEN: Right. Well, that's just --

CHAIR MAMMINA: Just revoke the CO on my house tomorrow.

MR. NORJEN: Right. And then -- well, we could if the commissioner finds that something was done in error.

CHAIR MAMMINA: So now you're going to proceed to what's in error.

MR. NORJEN: That's really -- yes.

CHAIR MAMMINA: Okay.

MR. NORJEN: Let's say, hypothetically, in 2006, numerous permits were issued for houses that were way too big. Well, we never actually revoked those certificates of occupancies. We issued letters telling people that, hey, you have an issue, if you -- please address it; and if you address it, go to the Board of Zoning Appeals, use 235G and pay a fine, get rid of a room to bring it into compliance. We never revoked those certificate of occupancies; we just informed the people that they were issued in error.

Well, the same thing here. Now, the thing that we do is let's say somebody does not pursue a remedy. Then we would pursue the revocation of the certificate. But they filed with the Board of Zoning Appeals, they're pursuing a remedy, so we're going to let it play out and maybe you'll tell us to honor that Certificate of Existing Use; maybe you won't. And at that point, we'll have to move forward. That's just addressing, you know, our authority to do this.

Now, as far as the determination, the tax records that you were given. If you look at them, they don't say -- when it says "dwelling" and "four-car garage," it don't say "dwelling two-family." Like, if you look at all the two-family dwellings, it indicates that it's a two-family. Tax cards show the number of bathrooms that are in the house; you'll notice that they only

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1 show one bathroom.

2 If there was a second kitchen, if
3 there was a two-family, it would have the "kitchen,
4 other" box checked. None of those are checked.

5
6 CHAIR MAMMINA: I see. And I see that
7 the check mark has the bathrooms. Just a guess
8 because Member Francis and I were looking at that.
9 There's a little line on the other side of the
10 line, which I realize is not in the box.

11
12 MR. NORJEN: Right.

13
14 CHAIR MAMMINA: Just any thoughts on
15 what that one is. I'm not saying that there's a
16 second bathroom, you know, in the house. It just
17 seems to be this extraneous line.

18
19 MR. NORJEN: I don't have it in front
20 of me, if I could see it.

21
22 MEMBER GOODSELL: (Handing). Any
23 thoughts what that second --

24
25 MR. NORJEN: Yeah, that's what they
26 always do. They check that there's a bathroom and
27 that one is one bathroom. That's what it
28 indicates. If there were two bathrooms, that would
29 say "two."

30
31 CHAIR MAMMINA: I see.

32
33 MR. NORJEN: That's --

34
35 CHAIR MAMMINA: Yep.

36
37 MR. NORJEN: So that's what -- so
38 that's what I'm referring to where the card has
39 every indication that this was a single-family
40 dwelling back in 1938 when they did the initial.

41 As was brought up, yes, this might
42 have been Lot 8, and then at one point, they
43 created Lots 208 and 209. But they're still owned
44 by the same people. They were still considered a
45 tax lot group. If you look at the card, it says
46 208 and 209. And that record's never changed on
47 those cards that were used up until 1985.

48 And if you go on the My Nassau

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1 Property website, the -- there is actually no tax
2 card for Lot 308. You have to go to lot 208 to get
3 the combined tax card.

4 As was indicated, the lot area is
5 shown as 10,900 square feet. Lot width was 52 feet
6 for the combined 208, 209.

7 Okay. So there's nothing in any --
8 like -- okay -- also if you go to -- now, it's not
9 an official thing, send one maps, the insurance
10 maps were used up to until 1978. We have a copy of
11 that. That still showed this as one lot group,
12 208, 209, and it indicated that this house was a
13 single-family dwelling back in 1978.

14 So we look at all records, our
15 records, the Zoning Board records. So making the
16 claim that it's missing from our file. Well, for
17 the conversion of a one-family to a two-family on a
18 substandard-sized lot, the width 26 feet, way too
19 small for a two-family dwelling.

20 So where is the Zoning Board records
21 for that? Because the Building Department wouldn't
22 have been able to approve that. We would have had
23 to refer to the Board of Zoning Appeals, because it
24 violated zoning going back to 1948.

25
26 MEMBER GOODSELL: Could you address
27 the Certificate of Existing Use that was issued in
28 '93?

29 Is there any basis to indicate what
30 information is used to issue that?

31
32 MR. NORJEN: That's just it. We don't
33 have any information. In 1985 the certificate of
34 existing use code was added to the code, and part
35 of that code says that they're supposed to provide
36 information showing that they have a right to the
37 use that they're asking for.

38 Now there is Certificate of Existing
39 Use issued before 1985, but there was really
40 nothing codified. So back the previous Building
41 Commissioner made a determination that prior to
42 1985, if this Certificate of Existing Use had been
43 issued, we would honor it. Because there's nothing
44 in the code that said that you had to give us any
45 proof that use was a legitimate use. But he made
46 the determination that after 1985, there has to be
47 some proof that it was a legitimate ask.
48

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1 MEMBER DONATELLI: And why 1985?
2
3 MR. NORJEN: That's when the Town
4 Board codified the requirements for Certificates of
5 Existing Use.
6
7 MEMBER GOODSELL: The Building
8 Department's position was that this was issued in
9 error, not that it's fraudulent, not that it's --
10 any other -- any other reason other than in error.
11
12 MR. NORJEN: In error. And the Town
13 code actually says that -- and, actually, New York
14 State law upholds that an error by a Building
15 official doesn't automatically say that the zoning
16 is okay.
17 There's the 31-story skyscraper in New
18 York City that --
19
20 MEMBER GOODSELL: We're all familiar
21 with that case.
22
23 MR. NORJEN: Yes.
24
25 MEMBER GOODSELL: Which cost a lot of
26 money to take down.
27
28 MR. NORJEN: Right.
29
30 MEMBER GOODSELL: But in that case,
31 that happened pretty quickly after the structure
32 went up.
33
34 MR. NORJEN: Yes.
35
36 MEMBER GOODSELL: Could you address
37 the issue that some 29 years have passed and
38 several owners later, that the certificate of
39 existing use is now.
40
41 MR. NORJEN: Because nothing has ever
42 been filed between then and now, so we --
43
44 MEMBER GOODSELL: Has there been
45 reliance by the owners on that certificate.
46 Certainly there was testimony that there --
47
48 MR. NORJEN: Yes.

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1
2 MEMBER GOODSSELL: -- was reliance on
3 this owner.
4
5 MR. NORJEN: Right. And we understand
6 that.
7 But like I just brought up, there was
8 overbuilt houses from 2006, there were reliance on
9 the owner there too. Just because we made an
10 error, and people are relying on it, doesn't wave
11 the magic wand and say, well, they can violate
12 zoning because it was an error made.
13
14 MEMBER GOODSSELL: Does the Building
15 Department recognize that a board could make a
16 decision that --
17
18 MR. NORJEN: Sure.
19
20 MEMBER GOODSSELL: (Indecipherable.)
21
22 MR. NORJEN: Absolutely. And we have
23 no problems with that.
24 We make them with everything that ever
25 happened, we make our determination, it gets
26 brought to the Board, you make your determination,
27 we're fine with it. We don't take it personally.
28 We just look at the totality of the record and say,
29 wow, you have this big property -- oh, and
30 subdivision.
31 Now, yes, the subdivision shouldn't
32 have happened the way it did. But we recognize
33 that Nassau County has the authority on
34 subdivisions. The problem is that subdivision
35 created not only zoning code issues but building
36 code issues. You have a four-car garage that
37 straddles this property line now. Going all the
38 way back to 1929, that accessory structure needed a
39 3-foot setback. There is no setback.
40
41 MEMBER GOODSSELL: It's just
42 commonality of ownership where they didn't care
43 about --
44
45 MR. NORJEN: Right. Well, it was one
46 property, so there was not setback between property
47 lines. But when they subdivided the property, all
48 of a sudden, you created a zoning issue and a

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1 building code issue. Because going way back in the
2 code, there had to be a firewall between those, a
3 building that straddles the property line.

4 But so when we say that the
5 subdivision wasn't done correctly, we didn't
6 approve it. It created zoning issues. It created
7 building code issues the way we recognize in Nassau
8 County. But now that we have this larger property
9 that was now a smaller property going back to 1945,
10 it couldn't have been -- it couldn't have been
11 converted from the one-family, which is clearly
12 shown in the property tax cards that it was a
13 one-family, shown in the Sanborn maps that it was a
14 one-family all the way to 1978. We don't have any
15 records showing a conversion to a two-family. And
16 making a claim that while the records are missing.

17 You can make that claim on everything.
18 I built a 23-story skyscraper; the Building
19 Department must have lost the records. That's an
20 argument that can be just made on any property.
21 And in my 14 years with the Building Department,
22 there's been two cases where somebody has been able
23 to provide a certificate or paperwork that we
24 didn't have. So it's very, very, very rare that we
25 are missing the documents.

26 And like I said, going all the way
27 back to 1945, this two-family dwelling converted
28 from a one, which is shown in the property tax
29 records, to a two-family violated zoning. Where is
30 the zoning board records if it was done correctly?

31 Now, I seen your records. They're
32 locked away in a room that nobody has access to,
33 and they're very complete. So I -- there's the --
34 on Laserfiche, there's the records for every,
35 single hearing that the Board of Zoning Appeals
36 ever had. There was no hearing on this property as
37 far as creating a two-family dwelling on the
38 substandard-sized lot.

39 So we basically -- like I said, we
40 base our decision not -- we don't make an easy --
41 we're not -- we -- to ask we have the proof that it
42 was a single-family dwelling that was converted to
43 a two-family without permits, we're not putting the
44 burden on them. We're just telling them we have
45 determined this; what do you want to do about it?
46 They're here to challenge our determination. Which
47 is fine. That's the way the New York State law
48 works.

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1 But we base it on -- but we -- but we
2 base it on, like I said, records. The Nassau
3 County tax maps, the fact that this supposed
4 two-family dwelling since 1996 has never been in
5 the rental program. That the Sanborn maps shows
6 that 178 is a single-family dwelling on the larger
7 lot. We looked at all these records.

8
9 MEMBER GOODSELL: We recognize these
10 discrepancies in the records.

11 I just want to point out a slightly
12 different interpretation of the tax card that's
13 been presented. Because when I look at the tax
14 card, the first part says "grocery store." Now, we
15 all recognize that this building, whatever it is,
16 was in existence before this tax card was created,
17 because this was dated 1938.

18
19 MR. NORJEN: Right.

20
21 MEMBER GOODSELL: But according to
22 this -- on page -- I think it's page 1. In April
23 of 1938, this is a grocery store which has one
24 bathroom, and I've highlighted it for you.

25
26 MR. NORJEN: Okay.

27
28 MEMBER GOODSELL: And then -- and it
29 says that the dwelling is approximately 21 years
30 old at the time that the tax card was created, and
31 it mentions the garage.

32 There is another page, also dated
33 April 5th, 1938, which seems to indicate a
34 different floor that also has a bathroom. So this
35 card, I just want to point out to the Building
36 Department, could be interpreted that, in fact,
37 there are two existing bathrooms in 1938; one in
38 the grocery store and one on a different floor.
39 (Handing.)

40 It is a possible interpretation of a
41 document created --

42
43 MR. NORJEN: Yeah.

44
45 MEMBER GOODSELL: -- years after a
46 property was built.

47
48 MR. NORJEN: That's a different

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1 building. There's four different buildings on the
2 main property. There's a store, two dwellings and
3 a four-car garage.
4

5 MEMBER GOODSSELL: I stand corrected.
6 So this was one lot.
7

8 MR. NORJEN: No. That's -- that was
9 one of the two houses that was on the larger
10 combined 208, 209 -- I mean 208, 308. So, yes,
11 there was a store, two separate dwelling buildings
12 and a four-car garage that's --
13

14 MEMBER GOODSSELL: So to the Building
15 Department's knowledge, the first floor of this
16 particular property we're considering was never
17 used as a commercial property or a grocery store.
18

19 MR. NORJEN: No, this was always a
20 single-family dwelling.
21

22 FEMALE SPEAKER: So I have some
23 photographs.
24

25 MEMBER GOODSSELL: You'll get a chance.
26

27 MS. DEEGAN DICKSON: No, this might be
28 helpful.
29

30 MR. NORJEN: Yeah, now --
31

32 MS. WAGNER: Are you submitting those
33 for the record?
34

35 MS. DEEGAN DICKSON: No. I'm just
36 giving them to Board Member Goodsell.
37

38 MR. NORJEN: Now, when it came --
39 comes to reading the tax cards, we had a very, very
40 good teacher named Jean Ornick, who actually used
41 to work for the Nassau County Tax Assessor's Office
42 who was a secretary to this board at one time. His
43 office was right across the street -- the hall from
44 mine; and whenever I had a question on what the tax
45 card meant, he had the answers. If you ever see
46 some of the -- some of the tax cards actually have
47 his name on it.
48

So any questions?

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CHAIR MAMMINA: No, thank you
Mr. Norjen.

MR. NORJEN: Thank you.

MS. DEEGAN DICKSON: I submit those
photographs so you can get an idea. I do recognize
the tax -- the 1938, the old, old tax cards may be
a little bit confusing.

So, originally, when this was all
part -- you can see on the first page, it says part
of eight, part of eight and that's crossed out,
then it's 208 and 308 written in.

So, again, presumably, those two lots
were created prior to 1938. I gave you the tax map
from 1944 that showed that they were created prior
to 1944. But you'll also see on the second line
there, it has the property dimensions of 29 x 187,
so that's each of those two lots. So that was
something that was acknowledged back in 1938, as
early as 1938.

I personally find these assessment
cards to be very inconclusive as to the number of
dwelling units on the property. You can see from
the photographs of that I submit, this property had
a deli, you know, a commercial building and then to
the left is the brick building is the two-family
house. There's also a dwelling unit in the grocery
building.

And then you flip a few pages later,
you'll see there's another building, the white
building in the back. That's another one-family
dwelling. And then in the back, further in the
back, there's the four-car garage.

So I think to Member Goodsell's point,
you know, with family-owned properties and
compounds, there's often no need to straighten
things out, and it ends up happening after the
fact.

MS. ALGIOS: Kathleen, Kathleen, I
just want to say, if you're asking the Board, you
gave them the photos and now they're considering
them. It really does have to be part of the
record.

MS. DEEGAN DICKSON: Okay. I'm fine

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1 with Exhibit 5. Thanks. I wanted you to see it
2 because I do recognize that the tax cards are a
3 little confusing.

4 You know, Glenn was talking about --

5
6 MEMBER HERNANDEZ: (Indecipherable.)

7
8 MS. DEEGAN DICKSON: Right.

9
10 MEMBER HERNANDEZ: We drive by these
11 houses when we look at the property, so it was hard
12 to see past the second white house behind the deli.

13
14 MS. DEEGAN DICKSON: Right.

15
16 MEMBER HERNANDEZ: But it troubles me
17 that there's a four-car garage straddling, which is
18 a new property line back in '44 or whatever.

19
20 MS. DEEGAN DICKSON: '38.

21
22 MEMBER HERNANDEZ: '38, whenever this
23 was provided. And because that clearly creates a
24 zoning issue.

25
26 MS. DEEGAN DICKSON: Well, I don't
27 know -- Glenn talks how in 1945, there was a
28 requirement -- or 1949, the requirement for a
29 3-foot setback was put into the code. We're
30 obviously talking about something that occurred way
31 prior to 1949, so I don't know that at the time
32 that garage was built or that lot line was created,
33 that it necessarily did create a zoning issue.

34 I mean, as a practical matter, we know
35 that there are issues, but there's also easements
36 in the deeds that allow use of an 11-foot strip
37 between the two houses for access to the rear and
38 to have the garage maintained on the two
39 properties. So it was something that was
40 acknowledged, maybe not blessed by the Building
41 Department.

42 But, again, to our point, this all
43 predates that. We're talking about buildings that
44 were built in the nineteen-teens and the 1920s. It
45 was before the Town of North Hempstead ever thought
46 about zoning. This was, you know -- this was
47 farmland. It was, you know, the family -- families
48 built houses in barns and garages and everyone

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1 lived together. And now we're tasked with trying
2 to clean that up, and I get that. We want to try
3 and have things cleaned up.

4 When we talk about or Glenn talks
5 about the magic wand, frankly, this board does have
6 a magic wand. You, at some point, can say, look,
7 we're not going to go back 30 years to something
8 that's out of everybody's control right now and try
9 and recreate a record that, frankly, we wouldn't be
10 able to create.

11 We don't have the people who live
12 there. They're not people that we're in touch
13 with. I don't know even if they're alive. They're
14 few owners ago. We don't have the ability to
15 recreate that record.

16 What we do have is a Certificate of
17 Existing Use that, to Glenn's point, was not issued
18 in 2006 when we know there was a reason to question
19 several things that came out of the Building
20 Department. There's nothing in the history of the
21 town that says in 1993, there was nothing rogue
22 going on in the Building Department.

23 There's, you know, he points to
24 Sanborn maps that say it was a one-family house.
25 How does -- how does the Sanborn company know that
26 they're a one-family house? They're taking aerial
27 photographs. They're not pulling out property
28 records from 1917 when the building was built.
29 It's -- that's not a conclusive way of determining
30 what it's not.

31 This also -- Glenn says that the
32 Building Department can issue a conversion without
33 the BZA. I would agree with that. But we're not
34 looking to convert it; we're looking to maintain
35 what's existed there for 100 years. And that's all
36 we're asking the Board to do.

37 You know, to Glenn's credit, he
38 says -- he doesn't care either way, which, in my
39 opinion, you know, why not err on the side of
40 making it a little easier for the residents and the
41 town. But, you know, I think -- I think that this
42 board has enough before it to say, look, it's
43 inconclusive. We do have an existing certificate
44 of existing use. That we have no evidence that
45 there was any fraud, any -- any mistake. We have
46 an absence of evidence but the absence doesn't
47 prove that it was issued improperly.

48 If we had a set of plans that showed

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1 it as a one-family house and they issued the
2 certificate of existing use in the face of that, I
3 would say, yes, okay, that's an error by the
4 Building Department. That's something that the
5 Building Department has a right to correct. But in
6 this instance, the lack of evidence doesn't give
7 rise to the presumption that that was -- that was
8 issued in error.

9 So that's all I have, unless you have
10 any further questions.

11
12 CHAIR MAMMINA: Any other questions?

13
14 MEMBER HERNANDEZ: I have one. I have
15 one question (indecipherable) I may have missed it.
16 Do we have any idea when the garage in
17 the back was built? Because I don't see that on
18 the property cards. I also don't see the second
19 house that appears to be, like, on the property
20 line 208 and 308.

21
22 MS. DEEGAN DICKSON: I don't know.
23 Again, the house in the back is on Lot 208. So
24 that's -- so that's not part of our property.

25
26 MEMBER HERNANDEZ: I realize that.

27
28 MR. NORJEN: The garage -- I don't --
29 I don't know. I haven't found any indication of
30 when that was built.

31
32 MEMBER HERNANDEZ: (Indecipherable) on
33 this property.

34
35 MS. DEEGAN DICKSON: The garage, I'm
36 sorry?

37
38 MEMBER HERNANDEZ: The garage is at
39 least in part on the property line.

40
41 MS. DEEGAN DICKSON: Yes.

42
43 MEMBER HERNANDEZ: You said there was
44 an easement and a practical agreement to allow the
45 use of it and for this agreement, that's why I was
46 wondering. I don't see it on the property card.

47
48 MS. DEEGAN DICKSON: No, I don't see

Appeal # 21226

1 it either.

2

3

(Sidebar conversation.)

4

5

6 MEMBER GOODSELL: Mr. Chairman, I
7 think we should reserve the decision on this for no
8 other reason other than that there's a lot of
9 information to consider. In my experience -- and
10 I've been an attorney for 22 years -- in my
11 experience, things with certificates really began
12 to heat up in the early 1990s. And I speculate
13 Ronowski, who was the owner at the time and to whom
14 the certificate was issued, was getting ready to
15 either sell or transfer the property and said, oh,
16 it's the 1990s. Everybody -- all the banks are
17 suddenly concerned about the permit and
18 certificates; maybe I should get a certificate for
19 this property. And what I'd like to do is just go
20 back and check the deed of this property, which is
21 a public record, and see how long it remained in
22 this family.

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But I am satisfied with your
representation that your client is not related to
this family and bought it as a -- is it correct to
say as a bank foreclosure?

MS. DEEGAN DICKSON: Yes.

MEMBER DONATELLI: I would agree. I
would like to consider the arguments that we've
heard this morning.

CHAIR MAMMINA: There's a lot that was
heard. There's a thorough examination on both
sides.

MS. DEEGAN DICKSON: Yes, I appreciate
it. If there's any additional information, I do
have deeds that I can email to you and --

MEMBER GOODSELL: They are the land
records.

MS. DEEGAN DICKSON: Yeah, they are in
the land records. I can just save you the trouble
and if you want or if there's anything else that
you think would be helpful in making your decision.

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1 (Sidebar conversation.)
2

3 CHAIR MAMMINA: If you could, and
4 maybe in fairness, send them also to Mr. Norjen,
5 you know, just so that he has whatever we have
6 or -- I don't know if he has the ability just to
7 come over the zoning office, but you know, just
8 want to make sure everybody has the same cards.
9

10 MEMBER GOODSELL: And in my practice I
11 have now, that when there are families or
12 commonality of ownership, that the lines blur.
13

14 MS. DEEGAN DICKSON: Absolutely.
15

16 MEMBER GOODSELL: Sometimes they don't
17 care about the lines.
18

19 MS. DEEGAN DICKSON: I do want to
20 point out -- sorry, I don't see it on my sheet --
21 where's Glenn -- what you just showed me where the
22 garage was.

23 Glenn pointed out something on the
24 property card. I think it was for 208, so we can
25 submit a copy of that, that the property card for
26 208 indicates.
27

28 MR. NORJEN: Garage four card.
29

30 MS. DEEGAN DICKSON: Okay. I see. So
31 it's actually on the second page to Mr. Francis'
32 question, I think it was Mr. Francis. The garage
33 four card on the top left showed that it was 12
34 years old in 1938 -- no, that was you,
35 Mr. Hernandez, I'm sorry.

36 So, again, well before the 1939
37 requirement for 3-foot setback for garages.
38

39 CHAIR MAMMINA: Okay.
40

41 MR. NORJEN: Thank you very much.
42

43 CHAIR MAMMINA: Thank you all.
44
45
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48

Appeal # 21227

1 MS. WAGNER: Next appeal, Appeal
2 #21227, Suzanne Kolen; 99 Ivy Way in Port
3 Washington; Section 5, Block 72; Lot 200; in the
4 Residence-A Zoning District.

5 Variance from 70-30.C to construct an
6 addition that is too close to the street.

7
8 CHAIR MAMMINA: You've heard Appeal
9 #21227, Susan Kolen.

10 Is there anyone interested in the
11 Application other than the Applicant?

12
13 (No response.)

14
15 CHAIR MAMMINA: Seeing no one, please
16 give your name and address.

17
18 MR. HERZ: Arnie Herz. I'm Suzanne's
19 husband. 99 Ivy Way, Port Washington, New York.

20
21 CHAIR MAMMINA: Good morning.

22
23 MR. HERZ: Good morning.

24
25 CHAIR MAMMINA: Okay.

26
27 MR. HERZ: So, we -- we were asked to
28 appear today. We want to do a bump-up over our
29 garage, not change the footprint at all. The house
30 was built in 1925, and we're not coming any closer
31 to the street than we are currently, and we
32 understood that something had to be provided by
33 architect, and he provided that on April 6th, and
34 that there would be -- and that we had give notice
35 which was given and we're here to seek approval for
36 the variance that apparently is needed.

37
38 CHAIR MAMMINA: Okay. Do you want to
39 talk about the -- the statistics of what is -- what
40 is before us?

41
42 MR. HERZ: My understanding is that --
43 again, I'm not an expert on this. I didn't
44 realize -- I thought that our architect had
45 presented information of what was needed to cure
46 what the defect is. But I think we're maybe 7 feet
47 too close to the street, how the house was
48 originally built because, originally, it used to be

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1 sidewalks there, but there was no sidewalk, so if
2 you take out the sidewalk, I think you have the
3 appropriate setback because there's no sidewalks in
4 that part of our street. We have the appropriate
5 35-foot setback.

6
7 CHAIR MAMMINA: You want to talk a
8 little about the shape of the lot?

9
10 MR. HERZ: The shape of the lot, when
11 you come down the street and it's -- the driveway
12 actually faces the street. The house is sort of
13 facing -- it's on the -- I believe on the east
14 side, facing back so when you drive up, you see the
15 driveway.

16
17 CHAIR MAMMINA: Did you say it's
18 skewed on the lot?

19
20 MR. HERZ: On what?

21
22 CHAIR MAMMINA: Skewed on the lot.

23
24 MR. HERZ: Exactly. It's skewed and
25 then there's a whole back that drops down behind
26 the house. It's a wooded area.

27
28 MEMBER DONATELLI: Yeah, it's -- for
29 the record, because I did drive by there this
30 morning, it's a cul-de-sac.

31
32 MR. HERZ: Correct.

33
34 MEMBER DONATELLI: So the road splays
35 outward at the cul-de-sac.

36
37 MR. HERZ: Correct.

38
39 MEMBER HERNANDEZ: The distance
40 from -- you're here because of the distance from
41 your house to the sidewalk or to the street, to the
42 curb, right?

43
44 MEMBER DONATELLI: To the line.

45
46 MEMBER HERNANDEZ: To the property
47 line, which is affected by the curve of the street.

48

Appeal # 21227

1 MR. HERZ: Correct.

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MR. HERZ: Correct.

MEMBER HERNANDEZ: So when you look at the street, is it fair to say that on the left side of your house, it's one distance; on the right side of your house, it's a different distance? So does the street come closer to your house at some point?

MR. HERZ: Correct.

CHAIR MAMMINA: And also because there are no sidewalks, the perception is that the house is automatically setback further where -- my house was located -- part of the reason that I love the street was that there were no sidewalks, so there was another fifteen feet in front of all the street, of all of the houses so when you walk down the block. It just made everything look, you know, much larger.

So that visually helps to mitigate, you know, what you -- what you have there. You have the cul-de-sac, the curve of that, the fact that then splays the relationship to the -- to the house, and you know, the absence of sidewalks.

MEMBER DONATELLI: Mr. Chairman, perhaps because I think it would be helpful to us, at least in cursory fashion, to go through the five factors --

CHAIR MAMMINA: Please.

MEMBER DONATELLI: And ask some questions of the Applicant.

There are five factors which we, as a Board, are required to consider. And so if I can just ask you to read through these five factors very quickly and just ask you to address them.

Would an undesirable change be produced in the character of the neighborhood or a detriment to any nearby properties if we were to grant this variance?

MR. HERZ: I don't believe so. And to the contrary, I think this will improve -- the renovation will improve the property and the property values.

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1 MEMBER DONATELLI: Is there some other
2 benefit -- is there some other way to achieve the
3 benefit without requesting the variance? What --
4 what is the expansion for? What would you be
5 building there?
6

7 MR. HERZ: We -- the house was built
8 in 1925. It's a little bit tight. And so what
9 we're doing -- and we have five kids and,
10 hopefully, lots of grandkids at some point.
11

12 MEMBER DONATELLI: (Indecipherable)
13 For having five kids.
14

15 MR. HERZ: Exactly, exactly. In fact,
16 one was just texting me, I need the car, I need the
17 car. And my wife told me that if I don't win this,
18 I'm sleeping in the garage. No pressure.
19

20 But the renovation is -- we have a
21 bedroom that's over the garage right now. And the
22 way it was built is this -- the roof is very
23 pitched, so it's not really optimal for the space
24 so the idea is we're going to take those walls down
25 and do more vertical walls and then that will
26 become an office for me. And then we will have
27 a -- a bedroom above that; so it will expand to
28 another bedroom.

29 MEMBER DONATELLI: So getting back to
30 my question, is there some other way to achieve
31 without requesting a variance?
32

33 MR. HERZ: No. I mean, we would have
34 to move the house.
35

36 MEMBER DONATELLI: And do you want
37 to -- I don't want to get into the issue of -- of
38 that.

39 But will the proposed variance have
40 any inverse effect on any environmental factor in
41 the neighborhood?
42

43 MR. HERZ: No, not that I can see.
44

45 MEMBER DONATELLI: And we do recognize
46 the variance -- by making this Application, that
47 variance is self-created. However, really in
48 effect, all variances are self-created, and we do

Appeal # 21227

1 not find that necessarily dispositive to the merits
2 of your application.
3 I, as one board member, I move -- I
4 will venture a guess, unless anyone else has any
5 questions.
6
7 CHAIR MAMMINA: No. And I would like
8 to add one other thing as I read the drawings: It
9 also appears that the portion of the house facing
10 the -- you know, the street also slopes back as the
11 Applicant had said so that it really doesn't
12 present a whole lot more elevation to the street
13 than the rest of the house already does.
14
15 MR. HERZ: That's correct.
16
17 MEMBER DONATELLI: All right.
18 Well, having said that, then I make a
19 motion that we grant the application.
20
21 CHAIR MAMMINA: We have a motion.
22 Do we have a second?
23
24 MEMBER HERNANDEZ: Seconded.
25
26 CHAIR MAMMINA: We have a motion.
27 Please poll the board.
28
29 MS. WAGNER: Member Goodsell.
30
31 MEMBER GOODSELL: Aye.
32
33 MS. WAGNER: Member Donatelli.
34
35 MEMBER DONATELLI: Aye.
36
37 MS. WAGNER: Member Hernandez.
38
39 MEMBER HERNANDEZ: Aye.
40
41 MS. WAGNER: Vice Chairman Francis.
42
43 VICE CHAIR FRANCIS: Aye.
44
45 MS. WAGNER: Chairman Mamma.
46
47 CHAIR MAMMINA: Aye.
48 The Application is granted.

Appeal # 21227

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MEMBER GOODSSELL: I think this means
you don't have to sleep in the garage.

MR. HERZ: Thank you very much.

MEMBER DONATELLI: You're welcome.

MR. HERZ: Thank you.

CHAIR MAMMINA: You're welcome.
(Sidebar conversation.)

Appeal # 21229

1 MS. WAGNER: Next appeal, Appeal
2 #21229. Jebashini Jesurasa; 110 Stratford Road in
3 New Hyde Park; Section 9, Block 520, Lot 3; in the
4 Residence-C Zoning District.
5 Variances from 70-50, 70-49.B,
6 70-100.2.A(4) (b), 70-100.1(b) and a special
7 exception from 70-231 to legalize a home, including
8 a detached garage which is too big. A raised
9 terrace located too close to the street; fencing
10 that is too tall, a garage that is too close to the
11 side and rear property lines and stairs to an attic
12 which are not permitted.
13
14 CHAIR MAMMINA: Okay. You've heard
15 Appeal #21229. Jebashini Jesurasa.
16 Is there anyone in the room interested
17 in the application other than the Applicant?
18
19 (No response.)
20
21 CHAIR MAMMINA: Seeing no one, please
22 give you name and address.
23 Are they the Applicants?
24
25 MR. CAPPUCI: Yes, they're here.
26 They're the owners.
27
28 CHAIR MAMMINA: So they're not going
29 to come up and speak against the Application?
30
31 MR. CAPPUCI: No, no, no.
32 Nicholas Cappuci, C-A-P-P-U-C-I. I
33 work with Todd O'Connell Architects. 1200 Veterans
34 Highway, Suite 120, Hauppauge, New York.
35 Good morning and good afternoon.
36
37 VICE CHAIR FRANCIS: Are you also an
38 architect?
39
40 MR. CAPPUCI: No, architect
41 apprentice. Going for the test, couple of tests
42 done and need a couple of more complete.
43
44 CHAIR MAMMINA: Keep at it, keep at
45 it.
46
47 MR. CAPPUCI: I'm trying, I'm trying.
48 So, again, we're here before

Appeal # 21229

1 requesting a series of variances. Right off the
2 bat, to answer one of those five questions, this
3 wasn't a self-created variance. This is something
4 that my clients walked into. They purchased the
5 house. When they purchased the house, it was
6 purchased without a CL, and now once they filed and
7 put new solar panels onto the house, all this stuff
8 is coming up and trying to do the right thing and
9 get everything legalized and corrected the right
10 way with town.

11
12 MEMBER GOODSSELL: When did they
13 purchase, what year did they purchase?

14
15 MR. CAPPUCI: I believe about ten
16 years ago they've been there now, for quite awhile.

17
18 MEMBER DONATELLI: Did you say they
19 purchased the house without a certificate of
20 occupancy?

21
22 MR. CAPPUCI: Correct, short sale,
23 correct.

24
25 VICE CHAIR FRANCIS: Okay.

26
27 MR. CAPPUCI: And back then, it was
28 easy to enough to do it back then. There was no
29 title report searches, checks, it was easy to get
30 houses. Not like today.

31 So we're here again to legalize -- or
32 a request for a FAR variance. What is allowed on
33 the property in the Residence-C zone is 2,500
34 square feet for FAR. We do have a very minimal,
35 but it is over. We're at about 26, 22 square feet,
36 somewhere around there. So it's only about 122
37 square feet over of what we're doing.

38 The house itself complies. I think
39 where it mattered was at some point there was a
40 detached garage that was always there since the
41 original built in 1952. At some point though, that
42 garage had to be altered and maybe made a little
43 bit larger. So the new garage that we have there
44 today, again, not that my clients built it, that
45 they bought into is a little larger, and that's
46 kicking FAR over with the house and the detached
47 garage.

48 The detached garage, we're asking for

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1 relief too with that because it's a little closer
2 on the side yard and rear yard than what it is
3 permitted. It's at 2.9 feet.
4

5 CHAIR MAMMINA: -- on that please.
6 The setback of the garage.
7

8 MR. CAPPUCI: It's at 2.9 feet. So
9 it's a lot --
10

11 CHAIR MAMMINA: What is required?
12

13 MR. CAPPUCI: 3 feet.

14 And now just so -- to note, too, the
15 garage is masonry structure, so it is fire-rated,
16 so it does comply with building code to try to keep
17 that as is.

18 The other ones I would like to
19 actually like to submit here for you, I'm sure
20 you've guys have been past the house but just to
21 look at it. I have some photos I would like to
22 submit.

23 Also, I have some returned receipts
24 from the mailings and also some (indecipherable.)
25

26 MS. WAGNER: Okay. So are the letters
27 attached to the --
28

29 MR. CAPPUCI: They're in -- they're in
30 the envelope.
31

32 MS. WAGNER: So the photos will be
33 Exhibit 1, and the (indecipherable) is Exhibit 2.
34

35 (Sidebar conversation.)
36

37 MR. CAPPUCI: So the only thing we're
38 actually legalizing is that front stoop that you
39 can see, the front porch. It's just a porch that's
40 a little raised to get to the front door, it's
41 uncovered. We don't have a plan on putting a roof
42 or portico or covering over that, but it does
43 appear to come into the front yard a little more as
44 well as the fences on each side of the property,
45 which is required to be a 4-foot fence, and they
46 are 5-foot fence with the right side at 6 and the
47 gate to the driveway at 5-foot.
48

Appeal # 21229

1 MEMBER GOODSSELL: Could you go over
2 that again? The fence is on the property.
3
4 MR. CAPPUCI: The fence is on the
5 property.
6
7 MEMBER GOODSSELL: Do you recognize the
8 standard that we use?
9
10 MR. CAPPUCI: Five foot.
11
12 MEMBER GOODSSELL: Four foot in front,
13 five foot on the sides --
14
15 MR. CAPPUCI: Correct.
16
17 MEMBER GOODSSELL: -- and six feet in
18 the back.
19
20 MR. CAPPUCI: Correct.
21
22 MEMBER GOODSSELL: How do these fences
23 vary from that?
24
25 MR. CAPPUCI: Well, the whole permit
26 is 6-foot around the back and the sides. And then
27 when they connect to the house, the gate on the
28 photo that you can see is a 5-foot fence. And then
29 on the previous side where there's no gate, just a
30 covering to hide that side yard is a 6-foot fence.
31
32 VICE CHAIR FRANCIS: We almost never
33 grant variances from the fence statute.
34
35 MR. CAPPUCI: Well --
36
37 VICE CHAIR FRANCIS: Under really
38 extreme circumstances would we. So, you know,
39 that's not something that's -- that we're going
40 to -- that we're going to grant.
41
42 MEMBER HERNANDEZ: This house is also
43 on the corner lot.
44
45 MR. CAPPUCI: No. It's a through lot.
46
47 MEMBER DONATELLI: But it appears it's
48 at the end of the street across the street.

Appeal # 21229

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MEMBER GOODSELL: There's a fence on the street.

MEMBER DONATELLI: So may I ask with respect to the front porch, does that extend the entire width of the house?

MR. CAPPUCI: No.
Well, the front porch is the (indecipherable) is 33.

MEMBER DONATELLI: So most of the width but not the entire width.

MR. CAPPUCI: The inside of that is (indecipherable). The house is very well maintained; and, again, they've been there for ten years and still live there and even before that and prior to the other owners just keeping it well-known in the community. You can see all the letters are in favor of what they're doing there.

The house is in -- is in good shape; it's well-maintained; it's clean. No violations are on the property. And we're just trying to do everything right by you guys here today.

MEMBER DONATELLI: And your clients did receive a summons.

MR. CAPPUCI: Well, when they went for solar panel installation, particularly, you can see on top there. And with that, all this kind of triggered when the inspector came and looked and seen structures that were a little larger and just seen that everything was just -- looked too much on the property and looked into the file and then brought us to the attention that we had to handle it and address it.

MEMBER GOODSELL: Well, go ahead and ask your question.

CHAIR MAMMINA: Well, the fence is easy. You cut the fence down.

The floor area just poses a -- poses an issue, you know, for us. And I know it's a short sale, and there's certain perils that you

Appeal # 21229

1 take on a short sale.

2 It's nothing to do with this case, but
3 I have a niece of mine that bought a short sale,
4 and before she bought it, I said to her, this is
5 wrong, this is wrong and this is wrong. And seven
6 years later, she's still trying to fix them, and
7 she's not going to be able to fix them without
8 taking things down.

9 And, you know, and that's just --
10 that's just the risk that they decided to take. So
11 there are no permits on any of the work that's --
12 that's done.

13
14 MR. CAPPUCI: No, not that we looked
15 up and seen. Again, the only thing is dating back
16 for certificates of completions from kind of
17 original 1950s, 1952.

18
19 CHAIR MAMMINA: And was any of this
20 built -- I'm sorry.

21
22 MEMBER GOODSSELL: Go ahead.

23
24 CHAIR MAMMINA: Was any of this built
25 as part of that 1950, 1952?

26
27 MR. CAPPUCI: I would not know that.
28 I don't know exactly what was built. All I know is
29 it is kind of when they hire us to come on to the
30 job and then what we look at. I mean, this house
31 has been there for -- again 12, 12 years that --

32
33 CHAIR MAMMINA: You don't search for
34 the record to see?

35 I mean, maybe all of this was
36 permitted, you know, back when. Okay.

37
38 MR. CAPPUCI: No. No nothing come up
39 in the town records when we did our research, no.

40
41 MEMBER GOODSSELL: Could you address
42 the issue of the stairs going to the attic?

43
44 MR. CAPPUCI: Well, that again was
45 another issue that was on -- in the CO here that
46 had a bathroom and a bedroom in the attic on a
47 single-family dwelling.

48

Appeal # 21229

1 MEMBER GOODSELL: A bathroom and a
2 bedroom in the attic?
3

4 MR. CAPPUCI: Yes. So what -- what
5 was understood after we did our research to get the
6 certificate of completion that they had a -- that
7 stair was put in and they had access to the attic
8 and utilized and it was illegal so then they -- the
9 previous owner had then to remove the finishes,
10 remove the bedroom and remove the bathroom, which
11 they did, and the stairs was permitted to keep and
12 that's why they issued the certificate of
13 completion for that.

14 So there's no bathroom; there's no
15 bedroom. It's just an attic space with a full
16 walk-up stairs instead of a pull-down stairs.
17

18 MEMBER GOODSELL: Is there a door at
19 the top of the stairs?
20

21 MR. CAPPUCI: Yes, there's a door at
22 the top of the stairs. And then we are addressing
23 that in the Building Department again, no heat and
24 there's no equipment up there, and everything will
25 be reverted back to an unfinished space.
26

27 MEMBER GOODSELL: What type of
28 equipment is up there now?
29

30 MR. CAPPUCI: (Indecipherable.)
31

32 MS. WAGNER: The Court Reporter is
33 remote so you have to (indecipherable.)
34

35 MR. CAPPUCI: Okay.
36

37 MS. WAGNER: So you can repeat what
38 you were just saying.
39

40 MR. CAPPUCI: Mechanical equipment and
41 just the HVAC and the furnaces and stuff like that
42 up in the attic, just strictly for storage only.
43

44 MEMBER GOODSELL: Do you have the tax
45 card from the Nassau County tax department that
46 shows the original size of the garage that you
47 referred to as being built sometime in the 1950s?
48

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1 MR. CAPPUCI: No. The only thing I
2 have is the certificate of occupancy, which does
3 not -- certificate of completion, which does not
4 state the size of the garage.

5
6 MEMBER GOODSELL: There's a
7 certificate of completion for the garage?

8
9 MR. CAPPUCI: Correct.

10
11 MEMBER GOODSELL: And it does not
12 state the size.

13
14 MR. CAPPUCI: Yeah. They should have
15 been with the original package and submittal to the
16 Board. I don't really want to give you this one;
17 this is my only copy that I have right now.

18
19 MEMBER DONATELLI: The town code, now,
20 if you're familiar, does not allow for fixed
21 staircases to the attic area.

22 In your application you indicate that
23 the attic is going to be returned to storage use
24 only.

25
26 MR. CAPPUCI: Correct.

27
28 MEMBER DONATELLI: But in your plans,
29 you're still showing the fixed staircase.

30
31 MR. CAPPUCI: Correct.

32
33 MEMBER DONATELLI: So you do not
34 intend to remove the fixed staircase; is that
35 correct?

36
37 MR. CAPPUCI: No, we do not want to
38 remove that stairs again. That was kind of under
39 the impression that was a legal staircase under
40 this application and certificate of completion.
41 When they have access to the
42 third-story attic, or the third-floor attic space
43 with the bedroom and bathroom that just had to be
44 removed and then they were able to keep that third
45 floor back in 1950.

46
47 MEMBER DONATELLI: I don't know what
48 we can assume that, hence the Chairman's question

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1 to you as to whether or not you had checked the
2 prior Building Department file to determine whether
3 or not something was actually built lawfully or
4 not.

5 So, the fact that the attic was being
6 used as habitable space with a bedroom and a
7 bathroom and that there's fixed stairs leading up
8 to it, there's a very strong possibility that at
9 some point in the future, those fixed stairs
10 remain. And I'm not saying this necessarily but
11 some future owner perhaps. And so that, therefore,
12 the town has decided not to have fixed stairs
13 leading to an attic.

14 So I, as one board member, would like
15 to know whether or not that staircase, that fixed
16 staircase was lawful when the house was first built
17 or not.

18 So I think, again, getting to the
19 Chairman's earlier question, it would be helpful
20 for us to know what was prior, what was built prior
21 to these changes with what is in the town -- what
22 are in the town's files.

23
24 MEMBER GOODSSELL: Were there any
25 building plans in the town files from 1950s?

26 I know it's hit-or-miss, but did
27 anyone check the building records? Was there any
28 somewhere in the town records?

29
30 MR. CAPPUCI: There was a set of
31 building plans -- I don't have a copy of them on
32 here -- that actually showed the staircase.

33
34 MS. WAGNER: Just -- we don't have a
35 copies of those certificates in the
36 (indecipherable) package. If you'd like to submit,
37 you can submit them.

38
39 MR. CAPPUCI: Sure. I'll go get more.

40
41 MS. WAGNER: You can submit them later
42 on or if you get --

43
44 MR. CAPPUCI: I might as well submit
45 them later on to the Board and get some information
46 with what you guys wanted to see --

47
48 MEMBER GOODSSELL: I can give you a

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1 list of documents that I would like to see.
2 There's a couple of them.
3

4 MR. CAPPUCI: Yeah, the additional
5 plans. That won't be an issue.
6

7 MEMBER GOODSELL: Well, I can tell you
8 that the fact that the garage violates setback by
9 .1 inch does not bother me. In fact, if it was
10 decided, I would suggest pulling off the bottom
11 siding and having it reattached but it's not.
12

13 MR. CAPPUCI: It's not, it's masonry.
14

15 MEMBER GOODSELL: At some point, it
16 seems to me that the garage is larger now than what
17 it was in the 1950s. So I think what we'd like to
18 see is the records from the 1950s and possibly the
19 tax card that shows what the -- the Nassau County
20 tax card.

21 I think Mr. Francis is correct when he
22 says that the fences -- there hasn't been any
23 demonstration of a necessity why the fence needs to
24 be the height that it is rather than compliant with
25 code, and we do rarely grant fences that are higher
26 than code permits.
27

28 MR. CAPPUCI: Only to -- if a pool is
29 going in, then that would require a 6-foot fence.
30

31 CHAIR MAMMINA: When the pool goes in,
32 that's when you file for the fence.
33

34 MEMBER DONATELLI: So the current code
35 is 4 feet facing the street, 5 feet along the side
36 yards and 6 feet along the rear.
37

38 MR. CAPPUCI: Oh, yeah, mm'hmm.
39

40 MEMBER GOODSELL: I can also tell the
41 Board as one Board member, the front porch coming
42 slightly too close to the street also does not
43 bother me. There are several houses on the street
44 which appear to have similar -- not the same -- but
45 similar setbacks on the front step.

46 And as you indicated, there's no plans
47 to put portico over that front step at this time.
48

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1 MR. CAPPUCI: No, it could be
2 remained -- not at this time and even going on
3 record, not ever, at least as my owners will own
4 it.

5
6 MEMBER DONATELLI: Ms. Goodsell, I'd
7 like to add to you, I would like to see copies of
8 the building plans that are on file so that we can
9 determine if there were any other changes made to
10 the premises and specifically. I would like to see
11 whether or not the staircase leading up to the
12 attic is part of the original plans.

13
14 MR. CAPPUCI: That should not be a
15 problem.

16
17 CHAIR MAMMINA: That's it.

18
19 MEMBER GOODSSELL: Continue.

20
21 CHAIR MAMMINA: So I think we'll
22 continue the Application, giving you the
23 opportunity to submit the additional information
24 and things that the Board had talked.

25 I think that the takeaway, you know,
26 is that the fencing is okay.

27
28 MEMBER GOODSSELL: The fencing --

29
30 CHAIR MAMMINA: Excuse me. The
31 fencing is not okay. The terrace is okay.

32
33 MEMBER GOODSSELL: The setback for the
34 garage.

35
36 CHAIR MAMMINA: The setback for the
37 garage is fine. We get that an awful lot. Your
38 challenge is going to be the floor area and the
39 stair to the attic.

40
41 MR. CAPPUCI: Very good.

42 CHAIR MAMMINA: Okay.

43
44 MR. CAPPUCI: Thank you very much.

45
46 VICE CHAIR FRANCIS: Just one other
47 thing, you might also want to look into obtaining
48 an estimate for the removal of staircase to the

Appeal # 21229

1 attic.

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MR. CAPPUCI: Well, if we could avoid that; but, yes, we will definitely look into that and return that to a 2 x 4 pull-down attic stair or something along the lines like that.

CHAIR MAMMINA: The bigger one is the garage. Because you can -- you can take that square footage off of your variance by cutting the garage back to 300 square feet. Then none of it counts.

MR. CAPPUCI: By cutting the garage back, yes. Even cutting the house down too. But that's big burden and a big, big, you know, issue for my clients.

CHAIR MAMMINA: -- on the record though.

MEMBER DONATELLI: At this point, we are required to review these variances with the five factors that I enumerated previously.

MR. CAPPUCI: Yes.

MEMBER DONATELLI: And so to the extent that we can use, for example, an estimate of the cost for pairing down the garage or an estimate for the cost of removing the fixed staircase, then that would help us review that in terms of our five factors.

MR. CAPPUCI: Understood.

VICE CHAIR FRANCIS: So you might as well get that estimate as well.

MR. CAPPUCI: I understand. We'll get it.

Thank you. Have a good day.

CHAIR MAMMINA: Thank you.

We're going to do a five-minute break so everyone can refresh themselves. So feel free to refresh yourself as well.

(Recess.)

Appeal # 21230

1 MS. WAGNER: Next appeal is Appeal
2 #21230. JDK-PHRI, LLC. George D. Kofinas, MD,
3 FACOG; 66 Power House Road in Roslyn Heights.
4 Section 7, Block H, Lots 426 and 427 in the
5 Business-A Zoning District.

6 Variances from 70-103A(1),
7 70-196J(1)(a) and 70-196J(1)(f) to construct
8 interior alterations to convert an office building
9 into a medical office with not enough parking, to
10 construct more than one sign on the wall of a
11 building, and the sign higher than allowed.

12
13 CHAIR MAMMINA: You've heard Appeal
14 #21230, JDK-PHRI, LLC, and in brackets, George D.
15 Kofinas, FACOG.

16 Is there anyone in the room interested
17 in the Application other than the Applicant?

18
19 (No response.)

20
21 CHAIR MAMMINA: Seeing no one, please
22 give your name and address.

23
24 MR. MIGATZ: Bruce W. Migatz at the
25 law firm of Albanese and Albanese, 1050 Franklin
26 Avenue, Garden City, New York. Attorney for the
27 Applicant and the owner. Good morning, members of
28 the Board, counsel, secretary.

29 The -- at the outset, let me hand in
30 some additional return receipts cards and some
31 return envelopes and mailings.

32 And I have a book of exhibits, the
33 exhibits are marked 1 through 11. I request that
34 you don't mark the book as an exhibit
35 (indecipherable.)

36 With me this morning is Dr. George
37 Kofinas. He is the manager of the LLC that owns
38 the property, and he is the director and founder of
39 the Kofinas Fertility Group. The Kofinas Fertility
40 Group presently has two offices in Manhattan, one
41 in Brooklyn and one in Staten Island. And,
42 hopefully, it will have one in Nassau County.

43 Also with me is Pat Lennihan of VHB
44 Engineering and traffic engineer. We have
45 submitted a VHB traffic study, and Mr. Lennihan
46 will discuss that study in a little more detail.

47 The -- Exhibit 1 is a picture of the
48 subject premises. It is on the northeast corner of

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1 Powerhouse Road, which is really the Long Island
2 Expressway service road and Coolidge Avenue, Roslyn
3 heists, Section 7, Block H, Lots 426 and 427.

4 The property is 150 feet in depth.
5 The first 100 feet is zoned Business-A. The rear
6 50 feet is zoned Residence-C. It was purchased by
7 the present owner JDK-PHRI, LLC, in December of
8 last year. It is presently improved by the
9 four-story general office building.

10 The first two levels -- the one low
11 level is partially underground due to the
12 topography. There are two levels of parking and
13 then they have two levels of offices above the
14 parking levels. There are presently 86 off-street
15 parking spaces on the first and second level of the
16 parking area. The gross floor area of the
17 building, not counting the parking, is 19,210
18 square feet.

19 But I just want to explain something
20 about that: The lower parking level has an
21 elevator stairwell lobby and the upper parking
22 level has an elevator stairway lobby. They each
23 are 680 square feet, and they are included in the
24 gross floor area. But they're not really used for
25 medical purposes, and that does affect the parking
26 requirements, which I'll discuss in a little more
27 detail.

28 The subject building was constructed
29 pursuant to a variance granted as Exhibit 2, in
30 Appeal #12926, that was decided August 14th, 1985.
31 For that general office based on 1 per 200 square
32 feet, less the first 1,000; 96 parking spaces were
33 required and variance was given for 84 parking
34 spaces.

35 It appears that they actually built
36 86. That's the number that is there presently, but
37 there was a variance for 84. A variance for a
38 no-loading zone, a variance for accessory --
39 actually, conditional use for accessory parking in
40 a residential district and insufficient landscape
41 buffer zone. That was granted in that decision,
42 Exhibit 2.

43 Exhibit 3 is a decision in Appeal
44 #19350 in 2012 for a sign for Northwell Health
45 Stars Rehabilitation. Northwell Health Stars
46 Rehabilitation was actually a medical use and there
47 was no record in the Building Department for a
48 further parking variance to convert roughly 3,000

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1 square feet of that general office to a medical
2 use. They did get a sign variance, which I will
3 also discuss in a little more detail later.

4 The building is intended be occupied
5 by two tenants. One will be the Kofinas Fertility
6 Group, owned and operated by Dr. George Kofinas.
7 They will occupy the 2,335 square feet on the first
8 floor. The remainder of the first floor and the
9 second floor will be occupied by Empire Center for
10 special surgery.

11 That will be owned by physician
12 partners. Dr. Kofinas' son, Dr. Jason Kofinas,
13 will be one of those physician partners, and they
14 will bring in other physician partners to operate
15 that surgical center. That is similar to the
16 surgical center for the Long Island Ophthalmologic
17 Group where they have physician partners performing
18 surgery that does not require to be hospitalized,
19 similar to ProHealth.

20 They have a surgical center performing
21 surgery. I had my hernia surgery, two hernia
22 surgeries there. It's a day procedure, and it
23 doesn't need hospitalization. It cuts down on
24 medical costs. So this would be a similar type of
25 surgical center, performing surgery where you do
26 not have to be hospitalized, as a benefit to the
27 patient, a benefit to the medical insurers to save
28 that money.

29 Let's -- let me deal with the parking
30 variance for -- for this application before we
31 discuss the signs. The disapproval notice states
32 that 128 parking spaces are required and 82 are
33 provided. Based on 1 per 150, in excess of 1,000
34 square feet.

35 In preparation for this presentation,
36 I noticed that the parking calculations that did
37 not deduct the first 1,000 square feet, so it's
38 actually less than the 128 required. And I
39 mentioned to you about the two elevator stairwell
40 lobbies. Their combined area is 13,060 square
41 feet. That's not occupied by anybody. It's a
42 stairwell; it's an elevator. So if you really look
43 at the floor area that is occupied, it's really
44 16,850 square feet divided by 150 requires 113
45 spaces, as a practical matter.

46 The disapproval notice is not in
47 error, but I'm saying, as a practical matter, when
48 you look at it, it's really 113 spaces required,

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1 and we do provide 82.

2 We did submit a parking study from
3 VHB. This is not your typical doctor's office
4 where you have a lot of patients and a lot of
5 waiting rooms and a lot of exam rooms and a lot of
6 traffic. That is -- that is what the 1 per 150 is
7 really based upon, that kind of medical office.
8 This is a specialized medical office for fertility,
9 evaluation and treatment and a specialized
10 mini-surgical center that has large operating rooms
11 and waiting holding areas that you don't need that
12 kind of parking.

13 I'd like to have Pat Lennihan now talk
14 in more detail about that and explain why he
15 believes that we have a sufficient parking.

16 Pat?

17

18 MR. LENNIHAN: Good afternoon,
19 Chairman Mammia, Members of the Board and counsel
20 and staff. My name is Patrick Lennihan. I'm
21 director of the transportation division at VHB's
22 Long Island office, 100 Motor Parkway in Hauppauge.

23 As Mr. Migatz went through the
24 application for 66 Powerhouse Road received a
25 notice of disapproval from the Building Department
26 for a shortfall. One of the reasons for a short
27 fall of parking by code, so VHB was retained to
28 evaluate the level of parking to be provided on the
29 site versus the use that would be in the building
30 to determine whether the parking to be provided was
31 adequate and ensure no parking issues developed
32 outside the site with potential spillover.

33 In doing so, we looked at -- we looked
34 at the issue from two directions, and they're both
35 summarized in the report. The -- we asked -- Bruce
36 mentioned the specific tenants, so we asked the
37 tenants to provide us with the number of persons
38 that would be in the building at their peak time,
39 all rooms full, full staff, full load of patients,
40 a few people waiting in the waiting room for both
41 of the two uses that Bruce described.

42 And in the report, there is a table on
43 page 2 that indicates the result of that and with
44 ambulatory surgery, we've got patients in different
45 areas, we've got surgeons, nurses,
46 anesthesiologists. Similar information for the
47 medical office. And when we look at the sum of all
48 of them, if we were to reach that peak of the peak

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1 time and every single person in the building showed
2 up in their car, there was no carpooling, no drop
3 offs, no public transportation, we would have about
4 70 vehicles in the parking area.

5 And as Bruce mentioned, there will be
6 82 parking spaces. So we have a surplus of about
7 17 percent, even at the very conservative estimate
8 peak time. And one of the reasons we don't think
9 we're going to get there at that peak time, that
10 peak 70 is the nature of the ambulatory surgery.

11 Although it's not an overnight stay,
12 these procedures sometimes do take a number of
13 hours, and, generally, the patients -- a lot of
14 them -- and I know this from experience,
15 unfortunately, are dropped off by a family member,
16 and that person leaves and when that patient is
17 coming out of surgery, the practice will call them
18 to come and pick them up so we will anticipate that
19 we won't even hit that 70.

20 The other thing we did for a
21 check-in -- and this is the last part of the report
22 that I'm sure you're all familiar with the
23 institute of transportation engineers and traffic
24 generation. And we looked at what they would
25 forecast as peak parking demand for a
26 medical/dental office, and the ITE demand comes to
27 a parking ratio of 32.3 per thousand, and the 66
28 Powerhouse Road project will provide 4.27 per
29 thousand. So we are well above what a medical
30 office would be.

31 So, in summary, if the Board would
32 find its way to grant relief in the form of a
33 parking variance, we've concluded that doing so
34 would not cause any issues with regard to parking.
35 There won't be any spillover in the adjacent street
36 system. There won't be any traffic in the
37 neighborhood looking for a parking stall. It will
38 be completely self-contained.

39 And thank you for your time. I will
40 take any questions.

41
42 MEMBER GOODSSELL: If I could ask, are
43 there parking spaces there now, or are the spaces
44 that are now going to be reconfigured to make 82?

45
46 MR. LENNIHAN: I believe there are 86
47 spaces now.
48

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1 MEMBER GOODSELL: They're already
2 marked, they're already --
3
4 MR. LENNIHAN: And we lose -- because
5 of some work with elevators and stairwells, we lose
6 a few.
7
8 MEMBER GOODSELL: Okay. But you're
9 not asking us to approve smaller parking spaces or
10 sub-size --
11
12 MR. LENNIHAN: Not beyond what's there
13 now.
14
15 MEMBER GOODSELL: -- existing parking
16 spaces.
17
18 MR. LENNIHAN: Correct.
19 Okay. Thank you.
20
21 MR. MIGATZ: We recognize in future
22 years to come, tenants may change, we are not -- we
23 are all mortal. The layout of the -- of the
24 building dictates how it can be used. So even
25 though it may be up in years to come, there may be
26 somebody else taking over the practice, they are
27 still stuck with that same floor plan and they want
28 to change the nature of the operation, they would
29 have to come back before this Board.
30 There was a petition that was
31 submitted this morning by Karen Belfer with some
32 residents in the neighborhood to the rear, opposing
33 the Application because of insufficient parking. I
34 spoke with her prior to the meeting, and she did
35 not understand the application. The concern of
36 those people that signed the petition was, we don't
37 want people parking on our side street, and that's
38 what you're going -- that's what you're asking for
39 here. And we spoke to her; Mr. Lennihan spoke to
40 her. We gave her a copy of the traffic report,
41 and, you know, she asked why does it say
42 insufficient parking? We explained that that's the
43 code requirement and that's why we're here. After
44 that, she said we have no objection, we welcome you
45 to the neighborhood. She could not stay, but she
46 did send an email to counsel and to madam secretary
47 that she's withdrawing that petition.
48 Is that correct?

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MS. WAGNER: That's correct.

MR. MIGATZ: Let me address the five factors for the parking variance.

Will there be an undesirable change in the community or detriment to adjoining properties? As addressed by Mr. Lennihan, there will be no effect by adjoining properties. We have sufficient parking on-site. There will be no overflow parking, and this property fronts on the service road of the expressway.

Can the benefits sought by the Applicant be achieved by some other feasible means? No. There's no any other way to get more parking on this site.

Whether the variance is substantial, this one, even mathematically I don't think is substantial. But, moreover, whether or not it's substantial really only relates to whether or not it has an adverse impact on the -- on the community and as addressed by Mr. Lennihan it will not.

Whether the variance will have an adverse effect on the physical environmental conditions. And this is an unlisted action. We would submit to you that it's strictly interior alterations. Nothing exterior is changing, and it's not going to have an adverse effect on the environment.

And the difficulty is self-created because as a matter of law, if you buy a piece of property subject to a zoning for which you seek a variance is deemed self-created but is not determinative of an area variance.

Unless the Board has some questions about the parking, I will move on to the sign variances.

Exhibit 4 is elevation drawings of the proposed signs. I do have a larger handout, 11 x 17, that I need (indecipherable).

MS. WAGNER: This is Exhibit 12?

MR. MIGATZ: Well, no -- it's just for demonstrations purposes. It's the same as Exhibit 4.

What we're proposing is four signs all together. Two signs are proposed on the front of

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1 the building, which is shown on page 1 of Exhibit
2 4. One for Kofinas Fertility Group and one for the
3 surgical center, Empire Center for Special Surgery.
4 The -- there will also be one wall sign on each
5 side wall. The lower elevation on page 1 of
6 Exhibit 4 is the west elevation where a proposed
7 sign is for Kofinas Fertility Group. And page 2
8 shows the east elevation and the proposed sign for
9 Empire surgery -- surgical.

10 All four signs comply with the area
11 requirements, and in fact, are quite smaller. Each
12 of the Kofinas Fertility Group signs have an area
13 of 75.75 square feet, that will be internally
14 illuminated, channel logo and letters in blue with
15 daylight vinyl applied to the face, producing blue
16 letters during the daytime and white letters during
17 the nighttime.

18 The two signs, Empire Center of
19 Special Surgery, one on the front wall; one on the
20 east wall. Each one is 87.52 square feet in area.
21 Less than what is permitted. Also internally
22 illuminated channel logo letters in blue. That
23 does not have daylight vinyl applied to the
24 lettering.

25 Variances required. One variance is
26 required. Two signs on the front wall and all four
27 signs require a height variance. Now, due to the
28 topography of the land, which is demonstrated in
29 the elevation drawings on Exhibit 4, these heights
30 are all taken from the curb level, which varies.
31 It really has relation to when you look at the
32 building, how high it is on the building itself.

33 The Kofinas Fertility group sign on
34 the west wall and on -- will be 39.5 feet in
35 height, and the sign on the front wall of the
36 building would be 39.83. So roughly 39 and a half,
37 40 feet in height.

38 The Empire sign on the east wall would
39 have a height of 35.83; and due to the topography,
40 the Empire sign in front of the building has a
41 height of 47.25 feet.

42 Let me talk about the variance for two
43 signs on that front wall. What's the benefit to
44 the Applicant? Well, every -- every operator of
45 any business wants a sign.

46 The sign code is a little quirky in
47 this regard because if you go into a shopping
48 center, although there's one owner for the shopping

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1 center, you can have 10, 20, 30 stores. They all
2 have their own signs, but you get to an office
3 building, and the interpretation is nope, you --
4 even though you have two tenants there, you only
5 have one sign.

6 My law school professor said never say
7 anything is unfair unless -- and he gave me a good
8 example, which I won't repeat, but that's unfair.
9 But people -- here you have a fertility group and
10 you have a mini surgical center, and they -- they
11 want to be identified. So that's the benefit. And
12 they also want to be advertised, which I'll talk
13 about later.

14 Now, what's the detriment to the
15 community? Will there be an undesirable change in
16 the character of the community? The area of the
17 Kofinas and the Empire sign to combine area is
18 163.27 square feet. Based on the length of that
19 wall, linear feet of that wall, you can have one
20 sign with a 224 square feet area. Which would be
21 difficult for this building because of the elevator
22 tower and stairwell tower in the middle.

23 But you could provide a
24 224-square-foot sign, which is significantly larger
25 than the two smaller signs that are being asked
26 for.

27 Now, I've heard this Board say at
28 other hearings, aesthetics is not our proper
29 concern. But I disagree with you on that.
30 Aesthetics is part of whether or not a variance
31 will have an adverse effect on the community. And
32 aesthetically, I submit to you that two smaller
33 signs on the front of that building is much more
34 pleasing to the eye than one large sign, which will
35 have more bulk and more mass.

36 So I think the detriment to the
37 community will be if you have one large sign,
38 perhaps, but not by having two smaller signs that
39 are combined are less than what one large sign
40 would be. Whether the benefit can be achieved by
41 some other feasible means, no, we want two signs.
42 We need a variance to do that.

43 Whether the variance is substantial,
44 well, two versus one, of course, mathematically is
45 substantial. But if you look at the square footage
46 again, the square footage is less than what would
47 be permitted as of right.

48 Will there be an adverse effect on the

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1 environment? These two signs face the service road
2 and the expressway. And when I was there taking
3 pictures, I almost got run over several times.
4 Those cars think they're on the expressway as they
5 fly by that building. These signs are not visible
6 to any residences. They face the Long Island
7 Expressway.

8 Technically, the difficulty is
9 self-created once again, but that is, again -- is
10 not the detriment to an area variance.

11 So I will submit to you -- though I
12 see the Chairman studying something there very
13 carefully -- I will submit to you that the two
14 smaller signs, the benefit of that variance
15 outweighs any detriment to the community.

16 Now let's turn to the height, which is
17 always a tricky question with the Board.

18 The code allows 18 feet in height. In
19 the prior variance -- variance to Northwell Health,
20 Exhibit 5 is a picture of the sign that was given a
21 variance. That -- that is higher than 18 feet, and
22 I'll talk about that in a little while.

23 Now, that sign is not visible. You're
24 on the service road, and you're looking for this
25 building. If you look at Exhibit 6, a photograph,
26 that's what you see as you -- as you -- this road
27 comes down, it comes under the Long Island Railroad
28 trestle, and then it comes up. As you come up,
29 that is the view you have.

30 And what do you see? You don't see
31 that Northwell Health sign. That sign was higher.
32 Now, Northwell Health did want the sign where we're
33 proposing our sign. But that -- the Board did not
34 go along with that, and they put it where it is
35 now. That sign was where we're proposing the sign.
36 And if the height of the sign for that west wall
37 that we're proposing, that height is where we're
38 proposing it, you will see that, you will see that.

39 And there is a ground -- there is a
40 ground sign there, 24 square feet behind the
41 expressway plaza sign. You can't see that. All
42 right. And that traffic is going easily 50,
43 55 miles an hour. So you really need some
44 visibility.

45 Exhibit 7 is a photo of the west wall.
46 We're looking to put the sign, again, on that above
47 the windows of the second floor as opposed to
48 window before the first floor. The tree blocks --

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1 and that tree is not in full bloom yet, that tree
2 blocks any sign that is -- would be above the
3 windows on the first floor. So that's why we're
4 seeking to have it on the windows above the second
5 floor.

6 Now I am mindful that Northwell Health
7 sought a variance to have their sign above the
8 second floor windows, and I'm mindful that a prior
9 tenant, Hercules, also sought a sign above the
10 second floor window and those signs were denied.

11 Now I read the transcript of both of
12 those hearings, and the Board was of the opinion
13 that placing the sign near the top of the building
14 for visibility from the LIE is an advertisement or
15 akin to a billboard and not a proper purpose for
16 wall signs. And I respectfully -- that was in the
17 prior transcript. I respectfully disagree with
18 that.

19 First, signs offer two purposes:
20 Identification and advertising. If you look at the
21 Town code, what signs are permitted? Wall sign,
22 advertising only the business conducted in such
23 building.

24 Ground sign, advertising only the
25 business conducted on the premise.

26 Tower sign, advertising only the
27 business conducted in such building.

28 Hanging sign or blade sign recently
29 added, advertising only the business conducted in
30 such building.

31 Signs do identify a building occupant,
32 and it advertises the business. And for the
33 lawyers who have negotiated commercial leases, the
34 biggest negotiation is over where is my sign going,
35 how big is my sign going.

36 Why does Citibank pay millions of
37 dollars to have Citi Field instead of Shea Stadium?
38 Why do all these naming rights go on stadiums where
39 they spend millions of dollars to have the big sign
40 of their -- their company on the stadium? It's
41 advertising. The signs are for advertising and
42 identification.

43 I've driven up and down that service
44 road numerous times for this case. And on the LIE
45 and as you travel from east to west on the LIE, you
46 don't see that Northwell sign until you're directly
47 opposite the building. You do see the two top
48 corners way before that.

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1 Yes, when you see it -- if you're
2 using a sign for identification and you see that,
3 you have to go off and go around, you get off at
4 Glen Cove Road, and you go around and you come back
5 and you go around. But it does still identify the
6 building, and it is advertising.

7 Now, this Board has granted
8 substantial height variances in the past. And
9 there seem to be a common thread when you grant
10 those.

11 Now Exhibit 8, is Barnes & Noble. A
12 picture of Barnes & Noble in the Country Glen
13 shopping center that's Appeal #17719. That sign is
14 40 feet above grade. And the sign itself has a
15 variance for the height of the letters for 8 feet,
16 but that sign is 40 feet above grade. Why? It's
17 in a big shopping center, set far back from road.
18 They want to be seen from Old Country Road. They
19 said we need a higher and bigger sign.

20 Exhibit 9 is -- is the sign plan. The
21 decision, disapproval notice and Appeal #12747,
22 North Shore Hospital. That sign is 45 feet above
23 grade. Faces Community Drive.

24 Exhibit 10 is also a sign for North
25 Shore University Hospital. That's a picture from
26 Google Earth because that traffic was way too fast
27 on Community Drive to stop and take a picture.
28 That was granted 45 feet above grade in Appeal
29 #12747. We have the photo decision, sign plan
30 disapproval notice. That is advertising the Sandra
31 Atlas Bass Campus.

32 Exhibit 10, also North Shore
33 University Hospital. Appeal #18130 -- I'm sorry,
34 that was Exhibit 10.

35 Exhibit 11 is 18983, North Shore
36 University Hospital, 70 feet above grade
37 advertising the Katz Woman Hospital.

38 The Board, I'm sure, is mindful of
39 Brooks Brothers and Gucci in the Americana Shopping
40 Center. Those two signs are at the top of the
41 building. Why? Because if it was lower, the trees
42 would block those signs.

43 The sign for Marshalls in the parking
44 lot is at the top of the building. Why? When you
45 come into that shopping center, you're not going to
46 see that sign if it's lower, and that was granted a
47 height variance.

48 So the common thread when this Board

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1 grants height variances, and I know you're going to
2 say, well, North Shore is a hospital. That's not
3 one the five factors when determining whether or
4 not an area variance should be granted for height.
5 Hospital has their own zoning district and for
6 signs must -- and says must comply with 70-196. So
7 they don't get any special treatment. And
8 hospitals, not-for-profit, they are business. You
9 don't go there for free.

10 But I think the common thread is, when
11 you grant these variances, there's a need for
12 visibility. They face on busy streets and are not
13 visible for many nearby residences. And I submit
14 to you, this building falls into that group. It
15 faces the Long Island Expressway.

16 And they -- it does identify it to
17 motorists, not the best identification, but that's
18 where -- that's where the building is, and it
19 promotes -- it promotes the name. That's like
20 you're promoting Barnes & Noble bookstore or you're
21 promoting Gucci or you're promoting Brooks
22 Brothers.

23 Anyone lives in Manhasset, you know
24 where Brooks Brothers, but people don't -- hey,
25 Brooks Brothers. But I think we fall in that same
26 category. The benefit to the Applicant is to have
27 signs visible for both identification purposes and
28 advertising purposes.

29 If it's where the Northwell Health
30 sign is, it's barely visible from the expressway,
31 not visible from the service road at all when you
32 approach that building. The building has trees
33 that partially obstruct the wall before the first
34 floor windows and to have the visibility we're
35 asking for the height variance.

36 That does not have an adverse impact,
37 doesn't face any residences. It faces the Long
38 Island Expressway. Cannot achieve this benefit by
39 any other means. Mathematically, the height
40 variance on paper is substantial, but we have to
41 look at the whole picture. And we look at the
42 whole picture, it's not going to have an adverse
43 impact and it serves a benefit.

44 Its unlisted action, I submit to you,
45 has no adverse impact on the environment. It's
46 small, the signs are smaller than the signs that
47 you could have as of right. The -- I'm going to
48 give you those numbers.

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1 On the wall signs, based on the length
2 of the west wall where the Kofinas Fertility sign
3 hopefully goes, you could have a sign of 154 square
4 feet on that west wall. The sign proposes 75.75
5 square feet. On the east wall, where we're
6 proposing the Empire Surgical sign, that sign is
7 87.52 square feet. You could have a sign -- 154
8 square feet. Almost twice as big.

9 So although we're asking for a height
10 variance for visibility, we're putting a much
11 smaller sign than we could put if it was 18 feet
12 above grade. So I think -- I submit to you if you
13 weigh all those factors, the benefit outweighs any
14 potential detriment to the community. A lot of
15 money was put into buying this building and
16 developing -- will be spent in developing a
17 surgical center which is a great benefit, cost
18 savings to residents.

19 And a -- Dr. Kofinas is -- is shy, but
20 if you Google him, he is world-renowned in the
21 fertility group practice of doctors. And he has
22 five offices -- four offices now and he hopes to
23 have one in North Hempstead. And I hope we can
24 welcome him.

25 Any questions?

26
27 MEMBER GOODSELL: Well, there's a
28 point you haven't made, Mr. Migatz, which is in
29 your favor, and that is this building, the way it
30 is built and designed, it has almost three facades,
31 the left side, the right side and the center. And
32 so to the average person looking at it, it doesn't
33 look like two signs on one facade. It looks like
34 two separate signs on two separate facades of the
35 building.

36 And the other point I would agree with
37 you on is the east-facing side of the building
38 where the Empire sign is going to go, when you're
39 clipping along on Powerhouse Road, if you don't see
40 that sign, by the time you realize that you're at
41 66, you're well past 66. That, to me, is the most
42 important sign. Because if you don't see that,
43 you're going to miss the building altogether.

44
45 MR. MIGATZ: Correct.

46 You also remind me of something else.
47 The code allows in all business districts a tower
48 sign 35 feet in height. That's -- I think is a

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1 statutory recognition that a 35-foot high sign is
2 not detrimental to the community. That elevator
3 tower -- I could make a good argument to Mr. Norjen
4 that that's a tower. And I could have a
5 100-square-foot sign 35 feet high as of right on
6 that tower. So, of course, we're not asking for
7 that.

8 But, you know, the fact that the code
9 allows a 35-foot-high tower sign in the Business-A,
10 Business-B district is evidence that, per se, that
11 height is not detrimental to the community.

12
13 CHAIR MAMMINA: I will respectfully
14 strongly disagree with that (indecipherable) in
15 your Exhibit 7, I guess the expressway plaza came
16 in for a sign. That's what they ended up going
17 because that's visible as you're going up that
18 service road. You're not going to see something
19 that's (indecipherable) there's no leaves on these
20 trees.

21 From my own perspective, these are
22 advertisements. I mean (indecipherable) is going
23 to ask for a sign like this of their own
24 specific -- David Mammina architect and I want my
25 sign up there. It's very different than Barnes &
26 Nobles.

27 It's -- as a matter of fact,
28 Mr. Migatz, I believe that you, decades ago, were
29 very successful and I was impressed. I was not on
30 the Board at this time. In that same shopping
31 center as Barnes & Noble, the town was enforcing a
32 color requirement, and you took an Article 78 on
33 that and you (indecipherable) some sort of
34 electronics store, whatever, and you won.

35 You know, I can have my opinions about
36 sign uniformity. We haven't enforced that in a
37 really long time. That these are national
38 products, these are national stores, Barnes & Noble
39 is a national store. Gucci is a national store.
40 And you have a very minimal variance on that
41 because of whatever the band was.

42 And we wrestled with getting North
43 Shore that sign, you know, down there. And, again,
44 it's North Shore. I'm not going to talk about, you
45 know, you know, the Bass foundation and, you know,
46 the sign that's up there. There are -- there are
47 benefactors that give enormous amounts of money to
48 not-for-profit groups and are recognized.

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1 I personally have an adopted daughter.
2 My first daughter is adopted. And I didn't drive
3 down the expressway trying to find Kofinas
4 Fertility Group. That's not how I found the
5 doctor. I found that doctor through my family
6 doctor, who said just by chance, North Shore
7 University has the better fertility clinic in this
8 part of the world.

9 I didn't see a sign on the outside of
10 the doctor that we went to. We went to North
11 Shore. If every retail -- if every commercial
12 tenant in the Town of North Hempstead wanted a sign
13 on the outside of that building, what would this
14 town look like? You drive down Old County Road, if
15 you're going east or west, look at the Town of
16 Hempstead sign because they're very loosey-goosey
17 with their signs; North Hempstead isn't.

18 You know, should they have some sort
19 of a sign? Yeah, I guess so. You know, it should
20 be at the height that it should be at. You know,
21 it could be whatever size is permitted. If you're
22 permitted a 150-foot sign, let them put a 150-foot
23 sign. But I don't see this sign, you know, which
24 is 43 -- probably close to 50 feet to top of the
25 Empire logo. I mean, what's Empire?

26 I mean, when I see Kofinas Fertility
27 Group, I might consider the Kofinas Realty Group as
28 I'm driving by. This is an advertisement to the
29 expressway. You're not going to go see either of
30 these signs as you're going up that road in there.
31 The Expressway Plaza sign, from my perspective as
32 one board member, they've got that sign closer to
33 the street and because you need to be able to see
34 where that was.

35 There's an office building that's up
36 at the corner, you know, from here, and they've got
37 a small sign on their -- on their eastern elevation
38 so that you can see what they are. If you really
39 want to see where this is and they own this piece
40 of property, you're going back to your exhibit --
41 this is 9. Let them put it right on the building
42 here (indicating). Cut the tree down. They own
43 the tree; it's on their property. Now you're going
44 up the road, you can see it.

45
46 MR. MIGATZ: What exhibit are you
47 talking? You're talking about Exhibit 6?
48

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1 CHAIR MAMMINA: I'm sorry, 7.
2
3 MR. MIGATZ: Cut down that tree.
4
5 CHAIR MAMMINA: Yeah, cut the tree
6 down, put the sign there.
7
8 MR. MIGATZ: That's the first time I
9 ever heard Town Board member advocating cutting
10 down a tree.
11
12 CHAIR MAMMINA: I'm not a Town Board
13 member, I'm a Zoning --
14
15 MR. MIGATZ: A Zoning Board member
16 cutting down a tree.
17
18 CHAIR MAMMINA: For practical
19 purposes. That's what I would suggest to my
20 client.
21
22 MEMBER HERNANDEZ: I would agree with
23 the chairman. Not about cutting the tree. But
24 that is a one-way road; so, therefore, anyone
25 looking at that wall will be coming backwards in
26 a --
27
28 MR. MIGATZ: You can see that from the
29 expressway.
30
31 MEMBER HERNANDEZ: Exactly. So you're
32 really advertising to the expressway.
33
34 MR. MIGATZ: And identifying it. And
35 identifying it.
36
37 MEMBER HERNANDEZ: The other example
38 that you gave which was that you couldn't see the
39 Northwell because the trees were blocking it. But
40 like you would say, I would propose to you guys,
41 that you are in that position underneath that
42 building. You're going to see any sign on that
43 building at all, because you need to look out of
44 the passenger window to look up and see it anyway.
45 So the most appropriate sign would be
46 a street-level sign or road-level sign, basically.
47 Okay? So as you approach the building, you can see
48 it. Because if you're coming, looking for this

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1 building on and you're relying on your GPS and you
2 better have a sign by the entrance to the parking
3 lot.

4 But before you get to it, that says
5 that is going to be the entrance to the building
6 because you can't possibly be looking up at
7 buildings that are -- because of the nature of the
8 building. The building is above grade -- what --
9 20 feet above grade. So you can't possibly even
10 see the logo part of the building. You have to
11 rely on whatever is at the street level.

12
13 MR. MIGATZ: Northwell asked for that
14 same sign for the same reason we're asking for the
15 sign, to be visible from the Long Island
16 Expressway.

17 And you did grant them a significant
18 height variance. At a minimum, we're entitled to
19 that same variance. We're entitled to have our
20 signs at that same height at a minimum. They want
21 to be seen from the expressway.

22 And I disagree with what the Chairman
23 said. You don't have a sign on -- you don't have a
24 sign on Citi Field because you don't know where
25 Citi Field is.

26
27 CHAIR MAMMINA: (indecipherable) That
28 is a permitted sign, Mr. Migatz. I know that for a
29 fact.

30
31 MR. MIGATZ: And you --

32
33 CHAIR MAMMINA: Answer that. It's a
34 permitted sign.

35
36 MR. MIGATZ: No, but you're talking --
37 but you're saying signs aren't for advertising.

38
39 CHAIR MAMMINA: No, I'm not.

40
41 MR. MIGATZ: Yes, you did.

42
43 CHAIR MAMMINA: I didn't say they're
44 not for advertising.

45
46 MR. MIGATZ: You certainly did.

47
48 CHAIR MAMMINA: I gave you the

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1 example, if you want to speak to it, of the one
2 that you were very successful at getting approved
3 as permitted sign. Okay? You got that approved
4 because it's a national logo. Northwell, to me,
5 is -- you travel up and down the -- they're in
6 Florida now.

7 I mean, this is -- you can't
8 compare -- you can't compare Mr. Kofinas, who I'm
9 sure is an excellent doctor, or Mr. Empire to
10 Northwell or Citi Field or Barnes & Noble or
11 whichever the other retail person was.

12 That's -- again, I'll ask you the
13 question: If you went to any office building and
14 every single tenant in that building wanted a sign
15 that was up on that building, how could that
16 possibly be?

17
18 MR. MIGATZ: That's not what we're
19 asking. Okay? And -- and -- and the Country Glen
20 shopping center, that was over trademark that the
21 color was trademarked. Had nothing to do with --
22

23 CHAIR MAMMINA: And the sign.
24

25 MR. MIGATZ: No. It had to do with
26 the trademark color. Okay? And --
27

28 CHAIR MAMMINA: So you don't think
29 Barnes & Noble is trademarked to the shape of its
30 sign? You don't think that --
31

32 MR. MIGATZ: They're not trademarked
33 at 40 feet above grade.
34

35 CHAIR MAMMINA: That's not what I'm
36 saying.
37

38 MR. MIGATZ: But that's what we're
39 talking about.
40

41 CHAIR MAMMINA: That's not what I'm
42 saying.
43

44 Their trademark -- these are
45 individuals. How many Barnes & Nobles can I find
46 in the United States?
47

48 MR. MIGATZ: Show me where -- show me

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1 where that's a fact -- where is that one of the
2 five factors?
3

4 MEMBER HERNANDEZ: We're getting --
5 we're getting --
6

7 MR. MIGATZ: That's not one of the
8 five factors, whether you're not-for-profit or
9 whether you're trademark or you're not.

10
11 MEMBER HERNANDEZ: We're getting
12 beyond where we need to get.

13 The point that Mr. Mammina is making,
14 and which I agree with, is that today there are two
15 tenants in this building. What happens if they
16 decided to break each one of those floors into two
17 sections. I'm assuming it is one per floor. I
18 don't know how it is. If they decide to put four
19 tenants in the building, they're going to come back
20 and say they want to have two more signs.

21
22 MR. MIGATZ: Mr. Hernandez --
23

24 MEMBER HERNANDEZ: (Indecipherable.)
25

26 MR. MIGATZ: You know that every case
27 stands on its own merits. Okay? So Subway can't
28 come back here and say you allowed two signs, now
29 we want four signs. You have to -- they would have
30 to justify by applying the five factors of which
31 the stuff the Chairman, with all due respect, was
32 talking about is not one of the five factors.

33
34 MEMBER HERNANDEZ: But the ones that
35 you went through are all the five factors. And
36 what's to prevent someone from saying that they
37 want to have Kofinas and Empire on the left side of
38 the building because now they're going to put Smith
39 and Jones on the right side of the building?
40

41 MR. MIGATZ: Very simple.
42 Proliferation of signs, adverse impact on the
43 community.
44

45 MEMBER HERNANDEZ: Okay
46 (indecipherable.)
47

48 MR. MIGATZ: Well, we are saying two

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1 is not a -- is not excessive signage. So someone
2 comes back four, five, six, you can turn that down
3 because it's going to have an adverse impact on the
4 community, too many signs. The two signs we're
5 asking are less than the square footage than one
6 sign allowed, that's not a proliferation of
7 signage. We're not -- please let's stick to the
8 facts of this case. Someone wants to come back and
9 ask for more signs, that's a different story.

10 And although Barnes & Nobles is a
11 national chain, Brooks Brothers is a smaller but
12 national chain, Northwell Hospital is a hospital.
13 This Board still wouldn't grant a height variance
14 if you thought it would have an adverse impact on
15 the community, would you? No matter who they were?
16 Right? So that's not relevant.

17
18 MEMBER HERNANDEZ: You can't compare
19 Northwell Hospital, because you're talking about a
20 hospital compound. And those signs that you put up
21 are 50, 60, 100 feet back from the road.

22 So you -- yes, they are.

23
24 MR. MIGATZ: Yeah.

25
26 MEMBER HERNANDEZ: I know. I've been
27 there, unfortunately, too many times. So I know it
28 very well. So it's very far back.

29
30 MR. MIGATZ: Right. And that's why I
31 said the common theme --

32
33 MEMBER HERNANDEZ: They are surrounded
34 by public lands, by -- so it's completely
35 different.

36
37 MR. MIGATZ: I said that the common
38 theme to all these height variances is the -- that
39 either they're setback far from the property,
40 they're not surrounded by residences, they're on a
41 major thoroughfare. That's North Shore Hospital;
42 that's Barnes & Noble.

43 All right. So, again, we fit into
44 that category.

45
46 VICE CHAIR FRANCIS: The other common
47 thread with regard to the height variances and the
48 signs that you referenced to, notwithstanding

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1 Northwell, is they're all in shopping centers.

2 The Barnes & Nobles signs and shopping
3 center, all signs that you made reference to that
4 are at the Americana, that's a shopping center,
5 where you need to be able to identify where the
6 store is. This is a little bit different.

7
8 MR. MIGATZ: What -- just -- may I
9 just respond? It's just -- the Brooks
10 Brothers/Gucci sign is facing out towards Shelter
11 Rock Road and Northern Boulevard. It's not
12 identifying for anybody in the -- it's not inside
13 the shopping center. It's above the tree height.
14 It's pure advertisement.

15 And I don't know if the Chairman heard
16 what I said because he was in a caucus, but
17 regardless of whether it's a hospital or a national
18 chain store, this Board still would not grant a
19 height variance no matter who it was if you thought
20 it would have an adverse impact on the community.
21 And we're submitting to you this will not have an
22 adverse impact on the community, just like you
23 found with those signs.

24 And one of the five factors is not
25 whether you're a national chain or you're a
26 hospital. Doesn't -- that's not the factor that
27 should be applied.

28
29 CHAIR MAMMINA: I'm not saying that it
30 is. You said that it is. I didn't say --

31
32 MR. MIGATZ: No, I didn't.

33
34 CHAIR MAMMINA: Yes, you did. You
35 said what's the five factors, and then you said, we
36 had a little caucus sidebar and we turned -- we
37 would not permit Northwell up at that height.

38 And also, yes, I do think that that
39 has an environmental impact to what the whole world
40 looks like, and I gave that example by saying drive
41 on Old Country Road and look at the North Hempstead
42 sign and then look at the Hempstead sign. They are
43 drastically different, drastically different.

44
45 MR. MIGATZ: What we are asking is
46 nowhere near what you see on the south side of Old
47 Country Road. This -- these are small, tasteful
48 signs.

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1 CHAIR MAMMINA: These are far from
2 small and tasteful --
3
4 MR. MIGATZ: They're smaller than
5 allowed.
6
7 CHAIR MAMMINA: Where is tasteful in
8 the five factors? It's not in there.
9
10 MR. MIGATZ: It is. That's part of
11 the adverse impact on the community.
12
13 CHAIR MAMMINA: Yes, and I say this
14 has an adverse effect --
15
16 MR. MIGATZ: Yes, and that's your
17 opinion, we agree to disagree.
18
19 CHAIR MAMMINA: About what the
20 positive or negative adverse -- whether nor not you
21 feel there's an adverse and whether or not I feel
22 there's an adverse.
23 But, you know, the point is, that,
24 okay, the two of them will reach the same top of
25 the water. Yes, no. You say -- you say, no, it's
26 not. I say, yes, it is. You know --
27
28 MR. MIGATZ: That's a -- that's a
29 Beatles song.
30
31 CHAIR MAMMINA: That's why I love you,
32 Bruce, you know. And I apologize for interrupting
33 you before. I should not have done that. But
34 that's also part of why I love you.
35
36 MR. MIGATZ: Well, I'm -- that's --
37 that's my story, and I'm sticking with it. All
38 right. I think -- I think we're entitled based on
39 the five factors to have those signs at that height
40 and to have two signs. And at a minimum, we should
41 certainly have that same height that Northwell
42 Health received from this board, at a minimum.
43 If you have a moment -- you have any
44 questions? You have a moment for levity?
45
46 CHAIR MAMMINA: Yes, please.
47
48 MR. MIGATZ: I was reading the

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1 transcript of the North Shore --

2

3

CHAIR MAMMINA: Stenographer, this is
4 off the record.

5

6

(Off the record.)

7

8

MR. MIGATZ: All right. Thank you
9 very much.

10

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CHAIR MAMMINA: Thank you for a good
12 presentation.

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Reserve decision. Yes. Thank you.
(Sidebar conversation.)

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Appeal # 21219

1 MS. WAGNER: Next appeal is Appeal
2 #21219. Shapali, Inc., dba North Star Market; 600
3 Hillside Avenue in New Hyde Park; Section 8, Block
4 9, Lot 1; in the Business-A Zoning District.

5 Conditional use from 70-126.F to
6 convert a vacant commercial space to a grocery
7 store which is a conditional use).

8
9 CHAIR MAMMINA: You've heard Appeal
10 #21219 Shapali, Inc., dba North Star Market.

11 Do we have anyone who is interested in
12 the Application other than the Applicant?

13 Seeing two hands. And you will have
14 the opportunity to speak after the presentation.
15 Thank you.

16
17 MS. ROOPSINGH: Good afternoon,
18 Chairman Mammina and Members of the Board. On
19 behalf of the Applicant, Shapali, Inc., doing
20 business as North Star Market, Neera Roopsingh with
21 the firm of Sahn Ward Braff Koblenz, PLLC, with
22 offices at 333 Earle Ovington Boulevard, Uniondale,
23 New York.

24 It is an absolute pleasure to present
25 before this board today.

26
27 CHAIR MAMMINA: Welcome.

28
29 MS. ROOPSINGH: Thank you. With me
30 today is the sole member of the corporation, Mariam
31 Kandakar; the architect of record, Emilio Susa of
32 Emilio Susa Architects; and Wayne Muller of R&M
33 Engineering who prepared the trip generation
34 analysis for the project. And, finally, Jesse
35 Narula, the owner of the property.

36 We are here today seeking a
37 conditional permit to permit interior alterations
38 on the first floor and cellar of the subject
39 property in order to open a new grocery. The
40 proposed site is in compliance with all other
41 requirements of the Town Code. The subject
42 property is located at 600 Hillside Avenue in New
43 Hyde Park and identified as Section 8, Block 9, Lot
44 1 on the Nassau County land and tax map.

45 The property is located on the corner
46 of Hillside Avenue and North 6th Street and in the
47 Business-A zoning district.

48 The Applicant is the lessee of the

Appeal # 21219

1 subject property and has proposed a
2 4436-square-foot retail grocery store on the first
3 floor of the subject property, which will cater to
4 and fulfill the needs of the Southeast Asian
5 community in New Hyde Park.

6 The building at the subject property
7 was constructed approximately three years ago and
8 has been vacant since its construction.

9 The building was originally conceived
10 as four separate retail spaces and -- but that was
11 changed when the Applicant signed a lease and
12 applied for the requisite building permits. The
13 second floor is currently utilized as office space
14 by the owner of the property; however, that space
15 is not subject to our part of this application.

16 The grocery store will occupy the
17 first floor of the building, and the cellar will be
18 used for storage purposes.

19 The grocery store will sell items
20 typically sold in a regular supermarket such as dry
21 foods, frozen foods, produce, meat and paper and
22 cleaning products. But as mentioned before, it
23 will be more of a specialty market, focused on the
24 culinary need of the Southeast Asian population.

25 No on-site food preparation is
26 contemplated.

27 Additionally, there's a proposed meat
28 market -- I'm sorry, meat department within the
29 grocery store where meat will be cut and packaged
30 in such a manner so that the meat offered for sale
31 would be halal.

32 The off-street parking is code
33 compliant, and the site offers 15 spaces which are
34 located in the rear of the property. There are
35 also several on-street parking spots located in
36 front of the subject property on Hillside Avenue
37 itself. The proposed hours of operation will be
38 7:00 a.m. to 10:00 p.m. seven days week, with peak
39 time anticipated to be Friday and Saturday, between
40 5:00 and 8:00 p.m.

41 I'd like to point out that the workers
42 will probably arrive one hour prior to opening, in
43 order to set up, and leave approximately one hour
44 prior -- after closing, in order to clean up for
45 the day.

46 And I know that this Board is
47 typically concerned about waste and garbage
48 disposal. Trash and protrusible waste will be

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1 placed in the fenced-in dumpster area in the rear
2 of the property, and the refrigerated garbage
3 locker for protrusible waste will be located in the
4 store.

5 The Applicant plans to hire a private
6 waste carter to pick up and hold any garbage on a
7 daily basis and will ensure that the hours of
8 pickup will be in compliance with the Town Code.

9 The Applicant will coordinate with its
10 carting company to ensure that protrusible waste is
11 brought out to the garbage area just prior to
12 scheduled pickup time.

13 Also, the Applicant is required by its
14 lease to have a pest control company inspect the
15 property twice a month and treat as appropriate.

16 Deliveries will occur Monday through
17 Friday, primarily in the morning when the grocery
18 is not anticipated to be busy. Deliveries will be
19 made primarily by small box trucks as most vendors
20 will be local vendors.

21 We previously submitted a packet of
22 exhibits to the Board which consists of pictures of
23 the site as well as adjacent uses along Hillside
24 Avenue. I ask that they be made part of the record
25 and without going through each exhibit
26 individually.

27 I would note to the west of the site
28 is the Mavis repair shop. To the east is a Shell
29 gas station with a small market that sells hot
30 foods such as hot dogs and other convenience site
31 items such as coffee, soft drinks and snacks.
32 Directly across the street is a PC Richards, and
33 directly east of the PC Richards is a strip mall
34 which houses several restaurants, a bubble tea, a
35 green grocery selling fresh produce and other food
36 items.

37 Also, just northwest of the subject
38 property at 653 Hillside Avenue is a Stop & Shop
39 supermarket. It's approximately three minutes away
40 by car, .2 miles.

41 At this point, if I may, I would like
42 to give Mr. Susa an opportunity to briefly explain
43 the proposed plans and answer any questions the
44 Board may have.

45 Mr. Susa has testified to the Board in
46 the past, and I will ask that you recognize him as
47 an expert.
48

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1 VICE CHAIR FRANCIS: Yes.

2
3 MS. ROOPSINGH: Thank you.

4
5 MR. SUSAN: Good evening, Mr. Chairman
6 and Members of the Board.

7 So I would like to just -- if you have
8 the -- I'm sorry. My name is Emilio Susa. I
9 reside at 23 Russell Drive, New Hyde Park, New
10 York. I'm a registered architect in the State of
11 New York.

12 So as pointed out, this was a building
13 that we had approved and built about four years
14 ago. It was originally conceived as retail, four
15 individual retail stores on the ground floor, and
16 then upstairs there was small, about 1,200 square
17 foot office area. The office area will remain and
18 that is a separate tenant.

19 So the four stores will now be
20 combined so that we'll have one tenant, one retail
21 food grocery area, and then off to the side just
22 below the office is going to be a meat department,
23 which we've outlined. The cellar area is part
24 tenant storage and part refrigerated tenant
25 storage.

26 As also pointed out, the existing
27 parking lot will remain as-is. We are
28 parking-compliant. So our calculations prove that
29 there's no change in parking demand. All curb cuts
30 will remain the same. We've provided the new
31 retail area layout with an equipment plan and
32 equipment schedule. We've added drinking
33 fountains. As compared to the previous approval,
34 we -- we're planning on removing all the existing
35 partitions that comprise of the individual retail
36 stores. We'll be keeping all the structure as-is.

37 So the existing partitions that
38 section this into four retail areas were non-load
39 bearing, so the existing girders and columns will
40 remain. All superstructure will remain. The
41 exterior facade will remain, with the exception to
42 modification of the front storefront to create
43 sliding automatic doors to enter the market along
44 Hillside Avenue and enter the meat department, as
45 well, alongside Hillside Avenue. And we also are
46 making a modification to the exterior wall to enter
47 the space with sliding glass doors from the rear
48 parking area.

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1 We do have a landscape buffer that was
2 part of the original approval which is to remain.

3 If you have any question or comments I
4 would be happy to answer them.

5
6 MEMBER DONATELLI: I actually do.
7 Originally, this was built as four separate stores?
8

9 MR. SUSAN: Yes.

10
11 MEMBER DONATELLI: And partitioned as
12 such.

13 Do you have an opinion as to whether
14 or not the use may be more intensive for four
15 individual stores versus one larger store is -- I'm
16 trying to make an evaluation as to that.

17
18 MR. SUSAN: Well, in terms of the
19 parking, the code recognizes this as the same
20 intensity. So I can only really go by whatever is
21 delineated in the code. As far as traffic and
22 people coming to and from the space, I defer to
23 Mr. Muller on that one.

24 But, you know, if I'm just looking at
25 parking in the code, I would have to say they're
26 equal, in my -- in my opinion.

27
28 MEMBER DONATELLI: Okay. Thank you.

29
30 MR. SUSAN: Thank you.

31
32 CHAIR MAMMINA: Okay. Thank you.

33
34 MR. SUSAN: That's it. Okay.

35
36 MS. ROOPSINGH: Thank you, Mr. Susa.

37 I also want to give Mr. Muller the
38 chance to give a brief conclusion as to his
39 findings when he conducted the trip generation
40 analysis, as well as -- as well as how the proposed
41 site will affect traffic and congestion in the
42 area.

43 Mr. Muller has testified before this
44 Board in the past, and I ask that you recognize him
45 as an expert.

46
47 CHAIR MAMMINA: Mr. Muller is
48 well-known to this board, and he's recognized.

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1 MS. ROOPSINGH: Thank you.

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MR. MULLER: Thank you. Good afternoon. For the record, Wayne Muller, Robinson and Muller Engineering. Our offices are at 50 Elm Street, Huntington, New York.

As part of the -- this project, we have proposed an analysis that's been previously submitted to the Board. And that analysis is dated May 20th, 2022. And, essentially, in that analysis, it provides the details as to how we determine that the proposed project, the conversion of the retail space to the supermarket will not have any significant impact on traffic conditions although there is a minor intensity of use.

As indicated on the plans prepared by Mr. Susa, in accordance with the town code, 15 parking spaces are required by code and fifteen parking spaces are provided. In addition, the plan provides a separate conforming loading zone which is located in the eastern portion of the property. Access to the parking area will be provided via a single driveway, located south of Hillside Avenue on North 6th Street in the location that it currently exists. There will be no modifications to the driveway.

In order to prepare our analysis, we performed a peak hour traffic observations at the intersection of Hillside Avenue and North 6th Street on Saturday, April 30th, between the hours of 11:00 a.m. and 3:00 p.m., which is the peak hours of that roadway, and again on the Tuesday, May 3rd, 2022, between the hours of 7:00 in the morning and 9:00 in the morning, 11:00 in the morning, 3:00 in the afternoon; and then 4:00 to 6:00, the hours that people travel.

We reduced that data and came up with a peak hour for each of those periods. In order to determine the -- and, again, one other thing, we COVID-adjusted those volumes. We still are in the tail end of the pandemic, the New York State of Transportation issued guidelines two years ago on how we should modify traffic counts that are collected within the pandemic, to non-pandemic conditions, and we followed those procedures. And that's outlined in my report.

In order to determine the quantity of traffic generated by the proposed use to that which

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1 would be generated by what was previously approved,
2 that being a retail use versus a supermarket, we
3 utilized statistics presented in the Institute Of
4 Transportation of Engineers traffic generation
5 manual, the 11th edition, which is the current
6 edition. For both the previous use, for a retail
7 use that would be under land use code 822, which is
8 a small strip store, a small strip center, and land
9 use code 712, which is a small office building,
10 which would be the second-floor tenant space.

11 And then we performed a separate
12 calculation for the proposed supermarket and the
13 small office that would -- that would remain. And
14 the results of that analysis are summarized in
15 Table 1 of my report. And what that shows, upon
16 comparing the previously approved use to what the
17 proposed use, is that there will be a small
18 increase in traffic, due to the occupation of the
19 space by the supermarket. So the supermarket would
20 generate three more cars in -- in the -- in the
21 morning peak hour. There would be an 11-car
22 increase in the afternoon and then a 16-car
23 increase on Saturday.

24 The ITE statistics indicate that there
25 would be actually a decrease in traffic during the
26 midday peak hours, but I don't necessarily agree
27 with that. I mean, supermarkets are a little bit
28 more intense than general retail, depending on the
29 tenants. However, we did -- the statistics are
30 what they are, and we presented them in our report.

31 What we did is we performed a
32 before-and-after analysis of the intersection of
33 Hempstead Turnpike and North 6th -- that would be
34 under the previously approved condition -- and then
35 compared that to what would happen upon the
36 introduction of the incremental increase in traffic
37 generated by the supermarket. And what our
38 analysis found was there would be no significant
39 impact to the intersection of Hillside Avenue and
40 North 6th Street, upon the introduction of the
41 relatively small increase in traffic generated by
42 the supermarket.

43 What we found in our observations was
44 that the level of traffic activity that currently
45 exists on North 6th is relatively light; and,
46 essentially, it really just services some of the
47 traffic generated by Mavis and then the residential
48 neighborhood located to the south of the subject

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1 property.

2 And then, again, our before-and-after
3 molding indicating that there would be no
4 significant impact to traffic conditions upon the
5 introduction of the additional traffic and then
6 also show that the driveway to the subject property
7 on North 6th would operate at an acceptable level
8 of service. And we do not anticipate any
9 significant delays.

10 I had the opportunity to review some
11 of the emails that were transmitted to the Board as
12 far as the -- you know, the operation of the
13 supermarket. And in one of those emails, it was
14 indicated that there was a similar facility located
15 in New York City located in the west of the subject
16 property at the corner of Hillside Avenue and at
17 260th Street. And we were able to take a look at
18 that property, and we determined that it's not an
19 apples-to-apples comparison. It would more of an
20 apples-to-oranges comparison.

21 The market that's located to the west
22 in New York City is 23 percent larger. That market
23 is approximately 7,000 square feet, and the market
24 that we have, including the office space, is around
25 5,500 square feet. So that's a much larger
26 facility. But the facility located to the west of
27 the subject provides 12 parking spaces; we provide
28 15. So they only provide 80 percent of the parking
29 that we provide; however, their square footage is
30 bigger.

31 They do not have a loading zone on the
32 property. Parking is in the front of the building
33 rather than in the rear. There is no compliant ADA
34 parking space on that property. So I think by
35 comparing that use to this use, it's an
36 apples-to-oranges comparison in that ballad and I
37 would stand by the analysis that it compared and
38 contained in any report.

39 Another thing that we did observe
40 while we were doing our field observations is that
41 there is legal on-street parking along the site
42 frontage on Hillside Avenue. There is
43 approximately five parking spaces located within
44 that area from the eastern curb line of North 6th
45 to the property line of the Shell Station located
46 to the east of the subject.

47 When I was there, obviously, the
48 parking spaces were vacant because there's no

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1 activity at the building. And we don't anticipate
2 anybody but a patron to this facility to utilize
3 those spots. And I think we're all familiar with
4 the operation of the supermarkets. Depending on
5 your needs, it depends on how long you'll be in the
6 building. Sometimes you run in pretty quickly,
7 grab what you need, and you leave within a few
8 minutes. Other times you spend a little bit more
9 time to gather the groceries that you're buying for
10 that -- for that day or week or whatever, so the
11 turnover is little bit more different.

12 Another important component is that
13 the property is on the northern edge of a pretty
14 substantial large neighborhood that's located to
15 the south of the subject. In all likelihood, you
16 may have people that would walk to the market to
17 grab one item or two and then walk home, so there
18 would be some foot traffic that would be generated
19 by this facility.

20 And I would like to point that the
21 intersection of Hillside Avenue and North 6th
22 Street is signalized. It contains a two-phase
23 traffic signal, meaning that it only controls
24 traffic on Hempstead -- excuse me -- on Hillside
25 Avenue and east and west and then the northbound
26 and southbound traffic on North 6th and the
27 driveway to PC Richards, which is located directly
28 opposite the subject.

29 There are pedestrian indications
30 provided, meaning the push buttons and the "don't
31 walk/walk" signals. There are three crosswalks,
32 but the state -- it looked like the road was fairly
33 recently repaved, I guess, within the last year or
34 two, or year or so ago. And I checked out all the
35 buttons and everything works, so if somebody was
36 coming from the north side of Hillside Avenue and
37 they were walking, there's safe and efficient means
38 of crossing Hillside Avenue and also crossing North
39 6th Street in order to get to the proposed
40 supermarket.

41 And then, in summary, it is my
42 professional opinion that the granting of this
43 application by this board would not create undue
44 traffic congestion or hazard and as indicated by my
45 analysis, the traffic generated by this facility
46 will have insignificant impact on the operation of
47 the roadway network in the vicinity of the subject
48 property.

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1 And I'm happy to answer any questions
2 if I can.

3
4 MEMBER DONATELLI: So I would propose
5 the same question to you that I proposed before.
6 Would you anticipate any increased traffic or
7 stress in the area from the removal of the
8 partitions from creating four separate stores into
9 one grocery store? Would you anticipate any
10 increased density?
11

12 MR. SUSA: Yes, we would, definitely.
13 As I indicated in my report and as I
14 testified previously, there will be a small
15 increase in traffic generated by the change from
16 the retail shopping -- you know, the retail
17 shopping center to a supermarket. However, our
18 analysis is showing that that small increase in
19 traffic will not significantly change traffic
20 conditions in the area. So, yes, supermarkets are
21 slightly more intense use; however, there would be
22 no significant impact.

23 And one thing also, we also satisfy
24 the parking requirement in accordance to the Town
25 Code, so we're fully compliant as it relates to
26 parking. However, there are those additional five
27 spots located on the south side of Hillside Avenue
28 along the site frontage that could be utilized for
29 this use.
30

31 MEMBER DONATELLI: One more question.
32 Do you know if there is public parking available
33 along North 6th Street?
34

35 MR. MULLER: You know, further south
36 of the property, I do believe that it's permitted,
37 yes.
38

39 MEMBER DONATELLI: So, I'm sorry, what
40 was that?
41

42 MR. MULLER: Further south of the
43 property, I didn't -- I'll be honest, I took
44 pictures. I didn't bring them with me. I'm not
45 sure if there's legally-permitted parking between
46 Hillside Avenue and the property line of the
47 subject on 6th. I'm not sure.
48

 But Mavis has got a couple of large

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1 curb cuts on the road. We also have a driveway;
2 so, theoretically, there could be one or two north
3 of the driveway. But then the neighborhood to the
4 south, obviously, utilizes the on-street parking
5 for their own uses at night, I would assume.

6 However, one thing to point out, too,
7 is the parking on Hillside Avenue is restricted
8 between 3:00 in the morning and I believe it's 7:00
9 in the morning, as to not promote overnight parking
10 of vehicles on Hillside.

11
12 VICE CHAIR FRANCIS: How would you
13 compare the traffic generated by the neighboring
14 gasoline station to the traffic that's going to be
15 generated by the proposed supermarket?

16
17 MR. MULLER: Again, it's a totally
18 different use. It's got a convenience store
19 component. I believe they probably sell alcohol.
20 There will be no alcohol sales at the supermarket.
21 It's a gas station. It's traditionally gas
22 stations with convenience stores generate a lot
23 more traffic than this use would generate.

24
25 CHAIR MAMMINA: Just, I guess, two
26 questions. My first one is really just for myself.
27 There were two acronyms that you used in your
28 report. LOS, does that mean level of service?

29
30 MR. MULLER: Correct.

31
32 CHAIR MAMMINA: And then I think the
33 other one was CUL and then it had a number.

34
35 MR. MULLER: Land use code. LUC. So
36 that's called "land use code." So the way that all
37 the ITE manuals are the segregated by different
38 land use codes, so I think at this point they're up
39 to the 11th edition. Sad to say, when I first
40 started practicing engineering, I think we were on
41 the third edition, not to age myself.

42 So but over time, these books evolve.
43 I mean, different land uses come in. In fact, one
44 of the land uses that I'm currently involved in the
45 Village of Lake Success is a marijuana dispensary.
46 They have a land use for that because they studied
47 facilities out in Colorado. So it's pretty
48 comprehensive. And we found that the statistics

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1 presented in the manual closely mirror the activity
2 of various different uses that they study.
3

4 CHAIR MAMMINA: I was curious what it
5 meant. When I started architecture, we chipped
6 things out of rock. That's how we communicated.

7 I guess maybe it's just the same
8 question that was asked by Member Donatelli, you
9 know, in terms of the people who might frequent
10 this store in a car. Do you see that -- you know,
11 that people finding a parking space, you know, in
12 the spaces in the back would promote traffic to the
13 south in the neighborhood as a -- as regular use or
14 impact?
15

16 MR. MULLER: Well, I mean, in
17 accordance with any use that's going to be thrown
18 on this -- in the subject -- on the subject
19 property within the buildings, I'm just pulling out
20 an aerial traffic. I mean, the traffic in my
21 opinion that would come from -- to and from the
22 south will be the people who live there who would
23 frequent this type of facility.

24 I mean, it's located on the state
25 highway but very good access to the east and west
26 also to the north and south. Because of the
27 proximity of other major roadways in the area, such
28 as Lakeville Road and as you go further west, there
29 are major north/south arterials.

30 So in my opinion, just looking at the
31 map -- and I mean you've got a pretty well --
32 almost fully developed area to the south -- I think
33 the people who are going to come and go from the
34 south or to and from the south are going to live
35 there and they're going to frequent the market.
36

37 CHAIR MAMMINA: One last question,
38 does the ITE differentiate between, like, a small
39 retail store and the supermarket? Because, you
40 know, I kind of look at this and say, okay, it's a
41 supermarket. But to call it a supermarket by the
42 time we take down all of the refrigeration, and you
43 know, that other equipment, I don't know, it would
44 look to me like maybe 4,000 feet of it as left as
45 retail space.
46

47 MR. MULLER: Yes, they do. Yeah, it's
48 based on gross floor area. Both the statistics for

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1 a small shopping center and the supermarket are
2 based on the gross floor area, they don't allow you
3 to discount for the bulk items.

4 The one thing that's interesting and
5 just to talk traffic engineering for a moment, in
6 the current manual, ITE started to break down
7 retail. Usually, before this manual, all retail
8 was lumped in together, but now they've started to
9 break down retail by size. So they have shopping
10 centers that are 40,000 square foot or less, more
11 of your community-based shopping centers than I
12 think it's 40 to 100 or maybe 200 and then the
13 larger regional centers.

14 So they try to really hone in on the
15 traffic generation characteristics, and we found
16 them to be very accurate.

17
18 CHAIR MAMMINA: Which is part of what
19 promulgated my question, but do they divide it up
20 now as well?

21
22 MR. MULLER: Yes. As time goes on,
23 they're further refining the way that we look at
24 those facilities. Kind of interesting. Studied
25 traffic generation for a long time.

26
27 CHAIR MAMMINA: All good?

28
29 MEMBER DONATELLI: Thank you.

30
31 MR. MULLER: Thank you.

32
33 MS. ROOPSINGH: Thank you, Mr. Muller.
34 Just to answer one of the questions
35 that the Board just posed to Mr. Muller, I had the
36 chance to just briefly confer with the owner of,
37 and he did confirm that there is permitted parking
38 in from -- on North 6th Street from the curb cut up
39 until Hillside Avenue.

40 If I can, I'd like to address the
41 three letters received by the Board yesterday in
42 opposition to the application. The first one was
43 from Mr. Bevaro.

44 As Mr. Muller testified, the property
45 that Mr. Bevaro compares the subject property to is
46 not in the Town's jurisdiction, it's located in
47 Queens, New York City. And it's a little under a
48 mile away from the subject property. As Mr. Muller

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1 testified, it's apples and oranges. Mr. Bevaro
2 does not include his address in the correspondence
3 and does not identify any impact to himself or --
4 to himself any impact or harm to himself and upon
5 information and belief, he resides in Queens; and
6 as such, I will submit that he has no standing to
7 object.

8 With regard to the other two letters,
9 those are generalized objections. Nevertheless,
10 addressing the concerns, Mr. Muller testified that
11 the grocery store will generate only a slightly
12 larger quantity of traffic during peak hours. And
13 it will result in no significant impact in traffic
14 or congestion.

15 Again, the proposed parking is
16 compliant with the code's requirements, any other
17 retail use at that location and will generate just
18 as much traffic and any perceived parking issues
19 would be the same as off-street parking is
20 calculated at the same rate for both retail use and
21 grocery use.

22 With regards to the garbage. Only
23 trash and non-protrusible waste will be stored in
24 the fenced in garbage area at the back of the
25 property. Any protrusible waste will be stored
26 indoors in the refrigerated lockers and would be
27 brought out just prior to pick up by the carting
28 company, thereby eliminating any concerns about
29 rodents or smells.

30 As I mentioned before, the Applicant
31 will be required by its lease to have the pest
32 control company come to the property and do an
33 investigation and treat as necessary. Also,
34 there's a 15-foot buffer between the project site
35 and the closest neighbor to the south, and this
36 should help to alleviate any noise or activity that
37 they may experience from the parking area. There's
38 also a six-foot fence as well.

39 The deliveries would also occur during
40 the day and traffic pickup would be within the
41 hours permitted by the code and, again, alleviating
42 any noise concerns.

43 Finally, there's a 6-inch curb cut at
44 the end of the parking area right before the
45 landscape buffer begins, and this should be
46 sufficient to stop any cars from inadvertently
47 driving through the fence onto the property to the
48 south.

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1 I do have a picture of that that I'd
2 like to submit to the Board. My apologies that it
3 was not submitted before, but this issue was just
4 raised yesterday.

5
6 MS. WAGNER: That would be Exhibit 1
7 (indecipherable).

8
9 MS. ROOPSINGH: Thank you.

10
11 MS. WAGNER: So there's -- this will
12 be Exhibit 3 (indecipherable.)

13
14 MS. ROOPSINGH: Sure. So that's the
15 parking area that shows the concrete curb that runs
16 at the end of the parking area.

17
18 MEMBER GOODSELL: Can I ask if one of
19 the objection letters is from the house that's
20 shown in that picture?

21
22 MS. ROOPSINGH: I believe so, yes.

23
24 (Sidebar conversation.)

25
26 MS. ROOPSINGH: Thank you.

27 For the record, I would like to go
28 through the status of granting a conditional use
29 permit. The proposed use is consistent with the
30 purposes of zoning as set forth in town law. The
31 grocery is a conditional use in the Business A
32 District under the town code, which is akin to a
33 permitted use.

34 The second factor, whether the
35 proposed use is as such character, size, location
36 and design as to be harmonious with the surrounding
37 properties. The proposed use is in character and
38 is in harmony with the surrounding properties, as
39 noted before the areas of Hillside Avenue, adjacent
40 to the subject property is characterized by
41 business, retail and food uses.

42 Further, the courts have held that
43 including a conditional use in the district is
44 equivalent to legislative finding that the use is
45 in harmony with that area and will not adversely
46 effect the neighborhood.

47 The proposed use will be desirable
48 service and convenience to the neighborhood.

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1 Although there's a Stop & Shop nearby, there are no
2 other grocery stores in the sounding area that
3 cater to the needs of the Southeast Asian community
4 of New Hyde Park. Most of the food proposed to be
5 carried by North Star Market are not readily
6 available in traditional supermarkets, and where
7 they are, the brands and the variety are very
8 limited.

9 The proposed use will not be
10 hazardous, conflicting or incongruous to the
11 immediate neighborhood by use of excessive traffic,
12 assembly of persons or vehicles. The parking at
13 the site complies with the requirements of the town
14 code, and the grocery will not create any more
15 traffic than any other permitted use. Again, you
16 heard Mr. Muller's testimony that the grocery store
17 will not lead to an increase in traffic or
18 congestion.

19 Finally, the use is not as such to be
20 objectionable to nearby residential dwelling by
21 reasons of noise, light or other factors of impact.
22 The Applicant will comply with the town code with
23 regards to the times of permissible garbage pickup
24 and protrusible waste will be kept indoors and
25 refrigerated until time of pickup.

26 Again, any deliveries will occur
27 primarily in the morning, and the 15-foot buffer at
28 the rear of the property should alleviate noise and
29 activities concerns from the parking area. And,
30 again, the Applicant will be proactively having a
31 waste -- apologies -- a pest company come in to
32 inspect and treat twice a month.

33 The Board -- does the Board have any
34 other additional questions? If not, I believe that
35 that would be the entirety of our case today.

36
37 CHAIR MAMMINA: What we'll do is we
38 have some gentlemen with their hands up, and we'll
39 hear from them.

40 And as I said at the beginning
41 introduction, the Applicant gets last turn at bat.

42
43 MS. ROOPSINGH: Thank you so much.

44
45 CHAIR MAMMINA: Gentlemen.
46 Just as a reminder for the
47 three-minute rule. We just ask you try to keep it
48 someplace around there. If you do have something

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1 that's written out, you can hand that to -- to
2 our -- our board secretary, Ms. Wagner, and that
3 becomes part of the record and we will read, you
4 know, all of that. But just try, then, to hit the
5 high points.

6
7 MS. ROOPSINGH: All right. This is my
8 first time doing this.

9
10 CHAIR MAMMINA: That's what I'm
11 saying --

12
13 MS. ALGIOS: Give your name and
14 address.

15
16 CHAIR MAMMINA: Just so -- we're not
17 going to chop your head off at three minutes.

18
19 MR. SALECA: I gotcha. Thank you. My
20 name is Joseph Saleca. I network the 917 North
21 Street, New Hyde Park.

22
23 MS. WAGNER: Can you spell you last
24 name.

25
26 MR. SALECA: S-A-L-E-C-A.

27
28 MS. WAGNER: Thank you.

29
30 MR. SALECA: You're welcome.

31
32 MEMBER HERNANDEZ: Where is your house
33 in relation to the proposed supermarket?

34
35 MR. SALECA: North 6th Street, about
36 two, three blocks down. Going south, I believe.

37
38 CHAIR MAMMINA: Okay. Great. Thank
39 you.

40
41 MR. SALECA: Okay. So I knew about
42 this construction about a year ago. There are -- I
43 heard there was going to be an office building, but
44 they did their bait and switch, trying to turn it
45 into a grocery store. It was supposed to be an
46 office building.

47 I objected to this because of the
48 following reasons: The parking lot, which I

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1 personally believe it's too small. I'm not an
2 engineer, but I have traveled many areas when I
3 used to work for a utility company. I did towing.
4 I saw a lot of neighborhoods where things start to
5 overflow.

6 There's actually no real
7 accommodations for parking on the outside. I know
8 what the engineers they said, but me living there
9 for fifteen years, I could tell you, there isn't as
10 much parking as they say there is. Plus, we have
11 to unload the trucks. Me as an individual when I
12 used to work for the utility company, I towed
13 trucks, and I unload material. I could tell you
14 now, that's not big enough to have fifteen cars,
15 plus the workers -- they have to park their cars --
16 plus you have to bring in tow trucks.

17
18 CHAIR MAMMINA: Delivery trucks.

19
20 MR. SALECA: Yeah, delivery. So
21 trucks and deliveries will unload in the street, I
22 believe. Traffic congestion will result. The New
23 York State Highway Department just put a handicap
24 crosswalk right across at the corner -- at the
25 corner of that store.

26 All this traffic congestion will hurt
27 our most valuable people who need your protection.
28 There are no accommodations for dumpsters, and all
29 the garbage that a grocery stores generate will
30 bring rats. I will say something about that in a
31 minute.

32 The CVS pharmacy is two blocks away
33 and has a much bigger parking lot and a bad
34 situation. Yet that store has a rodent problem and
35 trash problem, which the town has gotten plenty of
36 complaints from my neighbors.

37 Now, just to let you know, when I used
38 to come home at night down Hillside Avenue, come
39 off the Cross Island when you saw -- when you had
40 the pandemic, I saw rats running across the street
41 because nobody was there and they're looking for
42 food from dumpsters and stores weren't open. I
43 seen it; it's there.

44 Second, from Hillside Avenue Floral
45 Park, Queens, if you look at it now, they have
46 those cameras, if you go past 25 miles an hour, you
47 get a ticket. You can't go past 25 miles an hour
48 because everything is loading up, there's trucks,

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1 people are double-parked. You can't, you'll never
2 get a ticker there, I can tell you now.

3 I come down that road, from nights and
4 mornings and I used to work a lot of overtime. I'm
5 telling you, if you're bringing Floral Park, Queens
6 right to where that store is now at 600 Hillside
7 Avenue, you're going to make a Floral Park, Queens
8 over here. Now, my taxes, I paid to avoid that.

9 Now, when you bring that to here,
10 you're bringing Queens there, why am I paying my
11 taxes? Let's be honest. And that's the front
12 line, because I believe all you live in Nassau
13 County and, you know, what happens, year after
14 year, you put another store.

15
16 MS. WAGNER: Mr. Saleca.

17
18 MR. SALECA: Yes.

19
20 MS. WAGNER: I'm sorry to interrupt.
21 Your time is up, so if you can wrap up your
22 comments.

23
24 MR. SALECA: Okay. I'm sorry. I ask
25 you, can you please not let this happen because it
26 will destroy our way of life in New Hyde Park.
27 Thank you.

28
29 CHAIR MAMMINA: Thank you very much.
30 So just a few quick points, not for response
31 though, just for the record.

32 The parking complies, so there's
33 really nothing within the power of the Zoning
34 Board, you know, regarding that. There is a trash
35 area that -- that is in the parking lot that's
36 dedicated but otherwise would be a parking space.
37 They're also compliant with the loading area.

38 I mean, so -- as the attorney had
39 said, this is a conditional use. So just to
40 understand what a conditional use is, a conditional
41 use is not a variance, a conditional use is
42 something that the courts -- not the Zoning Board
43 or the Town Board has decided. It's generally
44 something that belongs in a community, you know,
45 but we can put conditions on it. We can look at it
46 if this was right next door to a school or
47 something and say, well, you know, we think it's
48 too close to the school. Actually, there are even

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1 ordinances regarding other uses, you know, for the
2 conditional use that kind of speak to that.

3 I think that's just important to
4 understand what the powers of this board are.
5 Sir?

6
7 MR. KLIMAS: Thank you. My name is
8 Jeff Klimas. I'm a resident. I live at 909 North
9 6th Street, one block south --

10
11 CHAIR MAMMINA: Good afternoon.

12
13 MR. KLIMAS: -- of the location.
14 Thanks for hearing me.

15 Yeah. I understood what Joe said and
16 what's going on here now. I take umbrage with the
17 traffic expert who indicates he doesn't think that
18 the traffic flow into the neighborhood is going to
19 have an adverse effect on our quality of life.
20 It's a specialty store. There's none like it
21 around, so people are going to travel. They're not
22 going to walk.

23
24 CHAIR MAMMINA: Sir, please just --

25
26 MR. KLIMAS: They're not going to
27 walk. So, therefore, they're going to be coming on
28 Hillside Avenue. In order to get into the parking
29 lot, they're going to have to make a right turn
30 down my block. It's going to increase the traffic.
31 It has to.

32 Now, we have a big store, we have an
33 office above, we have people that work in the
34 store, and in the office above. We got 15 parking
35 spaces in the lot. Well, the workers are going to
36 get there an hour before, and they're going to
37 leave an hour later. Where are they parking their
38 cars?

39 And then we have a loading issue, we
40 have four or five spaces in front. And what's
41 going to occur with the traffic in Queens, there's
42 on all these other buildings and places that you
43 double park, that you run in and jump out. We're
44 going to have the same type of quality of life
45 issues with the building like this.

46 Then you have the gas station right
47 next door. You have cars parked. You have a
48 driveway right there that are going to try to cut

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1 into the gas station with the volume going on
2 there. It doesn't seem like it was built properly.
3 They -- they should have put the building -- if
4 they're going to make a supermarket, the building
5 should have went to the back, the parking lot
6 should have been in the front and so the curb cuts
7 could have stayed on Hillside Avenue.

8 Now, the way the building was built
9 it's causing everybody that wants to utilize that
10 facility to make the right turn to come down North
11 6th Street. You're having problem with the cars,
12 vans, deliveries, the -- the exhaust from all these
13 vehicles. The danger to the pedestrians, the
14 children at play, the elderly that are crossing the
15 streets. It's going to impact the quality of life.

16 And so I ask the Board to consider
17 that and not grant this conditional use appeal.
18 Thank you very much.

19
20 CHAIR MAMMINA: Thank you very much
21 and thank you for taking time to come out. It's
22 very important.

23
24 MS. ROOPSINGH: Thank you, Chairman.
25 I don't want to necessarily repeat the things that
26 I've said before, I think, you know, we would stand
27 on our testimony, the expert testimony of
28 Mr. Muller and Mr. Susa.

29 I just want to point out that North
30 Star Market wants to be a good neighbor. They
31 intend to be a good neighbor. They have purposely
32 designed their markets so that it is code compliant
33 and the only thing this is required is the
34 conditional use under the code. They plan to go
35 above and beyond, like I said, to be a good
36 neighbor to the residents south of the property.

37 The only other thing that I think was
38 not addressed was the workers, the employees that
39 will be at the market. Again, it's a specialty
40 market. It's proposed that most of the employees
41 will probably be local employees who will either
42 utilize the buses that run along Hillside Avenue,
43 which are numerous. They would probably also be
44 local as far as where they live in connection
45 with -- with the site and could possibly walk. And
46 for those that do drive, again, there's parking on
47 Hillside Avenue itself in front of the store and on
48 North 6th Street.

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1 And if the Board has nothing else
2 that, would conclude my presentation.
3
4 VICE CHAIR FRANCIS: Just one
5 question.
6
7 MS. ROOPSINGH: Sure.
8
9 VICE CHAIR FRANCIS: I don't recall
10 you saying how many employees.
11
12 MS. ROOPSINGH: Sure. I believe
13 what's being proposed at the moment is fifteen
14 employees. They would be in three shifts. Again,
15 that's just what's being proposed by North Star --
16 by North Star. Sorry.
17
18 CHAIR MAMMINA: May I ask Mr. Muller
19 just one other question.
20
21 MS. ROOPSINGH: Sure. Thank you.
22
23 CHAIR MAMMINA: We had another hand up
24 over there. I'm sorry, certainly.
25
26 SPEAKER: I didn't raise my hand
27 earlier.
28
29 CHAIR MAMMINA: Okay. Sure.
30
31 SPEAKER: I didn't plan on speaking.
32 CHAIR MAMMINA: That's quite all
33 right.
34
35 MR. KAWALZYK: My name is Karl
36 Kawalzyk, 1064 North 6th Street.
37 I'm the property that abuts the back
38 of this property, the entire 100 feet. And I've
39 had many conversations with Jesse Narula, who is
40 present, the owner of the property. Some things
41 were said here that are true, some were vague.
42 They did analysis, and they told you
43 about the east, north and west and what's around.
44 They didn't really tell you on the south side.
45 They talked about residents, yes, but I'm the
46 resident that abuts this property. The gentleman
47 that talked about parking, yes, I understand.
48 And another thing that wasn't brought

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1 up is that Mr. Narula was running his construction
2 company out of the parking lot. With three trucks
3 there, they go out during the day for whatever they
4 gotta do, but they're there in the early mornings
5 and night. The workers come in 7:30 in the
6 morning, slamming their car doors, slamming the
7 truck doors.

8 My bedroom faces the property.
9 Yesterday morning, for example, one of the workers
10 comes in, he has rooftop open and playing thumping
11 music at 20 after 7:00 in the morning, facing my
12 property. I had to go out in my pajamas in the
13 back, ask him to turn it down. I mean, it's just
14 rude.

15 I just want you, as you're thinking of
16 making a decision, put yourself in my place. Would
17 you want to live behind a grocery store and a
18 construction company and 15 spaces. He's utilizing
19 quite a few of them just for his own trucks. And
20 he said to me, and I quote, I can do whatever I
21 want, I own the property. He said that to me, and
22 that's a quote.

23 So I just want you to take these other
24 factors into effect as you make your decision. And
25 I appreciate it. Thank you.

26
27 MEMBER GOODSSELL: Mr. Kawalzyk, if I
28 could ask you a question.

29
30 MR. KAWALZYK: I'm sorry.

31
32 MEMBER GOODSSELL: You're the adjoining
33 neighbor.

34
35 MR. KAWALZYK: I am.

36
37 MEMBER GOODSSELL: And one of the
38 concerns of the Board is that there's the buffer
39 area between the parking lot and your house.

40 Is that fence that's between the
41 parking lot and your house, how high is that fence?
42

43 MR. KAWALZYK: On my side it's 6 foot,
44 which is what it has to be by rule.

45 But previous owner, which was Amandola
46 Fence, he converted it into a shed company, and he
47 legally -- because I checked -- he legally raised
48 property 3 feet to level it out because North 6th

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1 Street dies down. And at -- what is it 127 feet or
2 so there where Mr. Narula's property ends to level
3 it out, you gotta raise the property about three
4 feet. So on their side of the fence, it's only
5 3 feet tall.

6

7 MEMBER GOODSSELL: That was part of the
8 concern. Because we can't tell you that with
9 testimony how high that fence is.

10

11 MR. KAWALZYK: Right.

12

13 MEMBER GOODSSELL: And we also can't
14 tell, except by the picture, how much of a buffer
15 is even planted there.

16

17 MR. KAWALZYK: There is a 15-foot
18 buffer, there were hedges put in, as per the
19 prints. But right now, they're only like four feet
20 tall, and they're spread out because they're going
21 to grow over time.

22

23 But right now, we're talking about a
24 grocery store going in right now, and there's a
25 little 6-inch curve on the other side of that -- I
26 don't know if it's ever happened to you, but I know
27 it's happened to me. I'm 70 years old. I've been
28 driving for a long time. There's times when you
29 step on the gas instead of the brake. It's just a
30 normal thing that happens. And I can just see
31 somebody jumping that. You know. And I have
32 grandchildren that we regularly watch on a regular
33 basis and I'm concerned, you know, and I just
34 wanted that to be --

34

35 CHAIR MAMMINA: Where is the 3-foot
36 change in grade?

37

38 MR. KAWALZYK: Picture from
39 Hillside -- picture the Hillside Avenue here, North
40 6th Street in the back, the street dives down. So
41 what they had to do to make the sheds and display
42 all the sheds, they brought in soil and raised that
43 to.

44

45 CHAIR MAMMINA: Did they build a wall
46 or a retaining wall?

47

48 MR. KAWALZYK: They had a fence up, an

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1 old fence. And as a matter of fact, that fence was
2 actually four feet into their property and for over
3 60 years, I've been there 40, my wife grew up in
4 that house, they've been maintaining that four-foot
5 areas. So we had discussions back and forth, this
6 and that, and I didn't fight him on moving that
7 fence four feet towards me more which, you know,
8 was totally legal to do.

9
10 VICE CHAIR FRANCIS: You know, the
11 quality of life issue that you raised with regard
12 to the trucks, that is something that we're very
13 sensitive to. Obviously, it's out of our purview.

14
15 MS. ROOPSINGH: Right.

16
17 VICE CHAIR FRANCIS: We can't handle
18 that. But that's a simple call to 311. You
19 shouldn't have to put up with that.

20
21 MR. KAWALZYK: Yeah, I've always -- my
22 discussions I've had with Mr. Narula, I've always
23 said I just want to have a good neighbor
24 relationship, you know. And you always want to
25 have that with your neighbors. You don't want to
26 fight with your neighbors.

27 Yeah. So I just wanted to, you know,
28 mention those concerns as you're trying to make
29 your decision. Thank you very much.

30
31 CHAIR MAMMINA: Thank you.

32
33 MS. ROOPSINGH: Just briefly, we do
34 understand that there are -- I guess a few trucks
35 that are parked in the parking lot currently.
36 However, the property is vacant, obviously. Should
37 the Board grant this application and the Applicant
38 get the actual building permits and open the
39 property as the grocery store, those trucks will be
40 moved and used specifically for loading purposes as
41 delineated on the plans and parking purposes.

42
43 CHAIR MAMMINA: Is Mr. Narula -- is he
44 present?

45
46 MS. ROOPSINGH: Mr. Narula is, yes.

47
48 CHAIR MAMMINA: May I just have him

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1 come up for a moment? If that's okay with you,
2 Counsel.

3
4 MS. ROOPSINGH: Sure.

5
6 MR. NARULA: How you doing?

7
8 CHAIR MAMMINA: Please give your name
9 and address.

10
11 MR. NARULA: My name is Jesse Narula.
12 I'm the owner at 60 Hillside Avenue and the owner
13 of the Narula Development Corps.

14
15 CHAIR MAMMINA: Okay. Just a couple
16 of things. Being a good neighbor to me is an
17 absolute. Even right now, even though the building
18 is empty, parking the trucks is illegal. And, you
19 know, and you can certainly receive violations, you
20 know, for that.

21 I don't want to get into who said this
22 or that, you know, but, hopefully, that's not your
23 attitude regarding your property, you know, and you
24 can do whatever you want. That's a tough -- that's
25 a tough position, you know, to take. And I'm sure
26 your neighbor doesn't want to be calling 311 every
27 day, and I'm sure you don't want that either.

28
29 MR. NARULA: Correct.

30
31 CHAIR MAMMINA: So I want it, please,
32 on the record that you understand the parking your
33 trucking there right now, I'm not the truck police.
34 I understand that if the property is empty but, you
35 know, please try to do the right thing.

36
37 MR. NARULA: I've been -- so honestly
38 there are vans. They're not necessarily trucks, so
39 they're vans. One is not labeled; one is a
40 commercial van.

41 In terms of being neighborly, I'm very
42 neighborly to both my adjacent owners. As he
43 mentioned, I was in -- prior to this, the land that
44 I did provide and I actually built for him
45 particularly at no cost out of his pocket out of my
46 own, a retaining wall which is 3 foot high and
47 concrete, full retaining wall in addition to a
48 fence.

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1 So and I didn't do at any cost to his,
2 I was trying to be neighborly so the dirt doesn't
3 roll over to his land, making sure I fixed
4 everything for him. Even for his asphalt, whatever
5 I had to fix, I tried to do what I could for him as
6 well.

7 My neighbor next to me, obviously,
8 he's not here, which is irrelevant. But I did what
9 I had to do on my part as well, on his -- he
10 actually gave me problems, but that's a different
11 story.

12 But that being said, everything that I
13 coordinate with them and to my neighbors even for
14 cleaning, I know the Lakeville Estates President
15 Bill Cutrone very well. Every time he's asked me
16 to keep the place clean, it's been cleaned.
17 There's no issues. So I've done everything that I
18 have to.

19
20 CHAIR MAMMINA: Excellent.

21
22 MEMBER DONATELLI: I do have a
23 question. Do you run your construction business
24 out of the premises?

25
26 MR. NARULA: Currently, we have my
27 trucks there because it's vacant. I do have --

28
29 MEMBER DONATELLI: (Indecipherable.)

30
31 MR. NARULA: It's a vacant lot right
32 now, so the -- I don't want go pay rent if I don't
33 have to, honestly speaking.

34 But as soon as I -- the tenant moves
35 in, I don't plan on being there. I mean, I'm a
36 construction company and a management company.
37 We're rarely in the office.

38 I'll be honest with you, my office is
39 still vacant, it's been finished for months. I
40 don't even use it. I'll be very frank with you.
41 So when it comes to the volume of people going
42 there, it's slim to none. I really go to clients'
43 houses, we do government jobs, I do MTA work. I
44 don't have time to be bringing clients to my
45 office. So I hope that fulfills the answer.

46
47 MS. WAGNER: Thank you.

48

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1 MEMBER DONATELLI: Mr. Chairman,
2 because perhaps we reserve decision on this.

3
4 CHAIR MAMMINA: Let's just see if they
5 have anything else.

6
7 (Sidebar conversation.)

8
9 MEMBER GOODSELL: There were some last
10 minute emails that were received, and I know would
11 have the opportunity (indecipherable).

12
13 (Sidebar conversation.)

14
15 MS. WAGNER: We can continue to the
16 next meeting, to give us the opportunity to review
17 those emails as well as you. And we can't
18 guarantee they'll make a decision, though, so after
19 that, we'll be reserved in the record and the
20 record will be closed.

21
22 MEMBER DONATELLI: And you will be
23 supplied with a copy of emails so that if you want
24 to submit any response, you can do so.

25
26 MR. NARULA: Okay. Of course. Thank
27 you.

28
29 CHAIR MAMMINA: Okay. Thank you.

30
31 MR. NARULA: Thank you very much.

32
33 CHAIR MAMMINA: Thank you to the
34 neighbors for coming down. We do appreciate that.
35 I think it's important to receive that input. And
36 I think we're going to go take five minutes.

37
38 MS. WAGNER: So we're going to take a
39 five-minute break before the next appeal.

40
41 (Recess.)

42
43
44
45
46
47
48

Appeal # 21231

1 MS. WAGNER: Appeal #21231. 2035
2 Lakeville Road, LLC, Sign; 2035 Lakeville Road, New
3 Hyde Park; Section 8, Block 217, Lot 8; in the
4 Business-A Zoning District.

5 Variances from 70-196.J(2)(b) and
6 70-196.J(2)(c) to construct a ground sign that is
7 too close to the street and is too large.

8
9 CHAIR MAMMINA: You've heard Appeal
10 #21231, 2035 Lakeville Road, LLC, Sign.
11 Is there anyone that's in the room who
12 wishes to be recognized on this Application?

13
14 (No response.)

15
16 CHAIR MAMMINA: Seeing no one. Please
17 give your name and address.

18
19 MR. AVRUTINE: Good afternoon,
20 Mr. Chairman and Members of the Board. Appearing
21 for the Applicant, Howard Avrutine, 2116 Merrick
22 Avenue in Merrick is the application for the 2035
23 Lakeville Road, LLC, for variances required in
24 order to install a new, double-sided, illuminated
25 detached ground directory sign for a medical office
26 building.

27 The premises under application is
28 located at the southwest corner of Lakeville Road
29 and 78th Avenue in New Hyde Park. It has a street
30 address of 2035 Lakeville Road. It is also known
31 as Section 8, Block 217, Lot 8 on the Nassau County
32 land and tax map. The property is just south of
33 Union Turnpike and the New York City line.

34 The premises is zoned Business-A and
35 is developed with a three-story medical office
36 building and accessory parking. By this
37 application, the Applicant seeks approval of
38 variances required in order to install a new
39 double-sided, illuminated, detached ground
40 directory sign identifying the medical
41 professionals in the building.

42 I have some photographs I'd like to
43 hand up, if I may, which depict the subject
44 premises in the surrounding area.

45
46 MS. WAGNER: This will be Exhibit 1.

47
48 MR. AVRUTINE: The specific variances

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1 required are as follows: First, the area of the
2 sign, a maximum of 24-square feet is permitted,
3 41.69 square feet is proposed. And, in addition,
4 we require setback relief from the front property
5 line, 10 feet is required and 11.83 feet is
6 proposed.

7 If we can to go through the photos,
8 the first photo depicts the area in front of the
9 premises facing Lakeville Road. You can see that
10 Lakeville Road has two lanes in each direction and
11 a painted divider as shown on this photo.

12 The second photo is the opposite
13 direction, and you can see that the shopping center
14 on the lower right, opposite the subject premises
15 as well as the configuration of Lakeville Road with
16 two lanes in each direction. In the second photo
17 you can see that there's a turning lane to afford
18 access into the residential community.

19 The third photo depicts the knee wall
20 that is in front of the property, and the knee wall
21 goes right to the property line. So the distance
22 between the building and the knee wall is -- would
23 be the only place to put a sign, there's no other
24 place to have a detached sign that would not
25 violate the front setback requirements.

26 The next photo is just a closer-up
27 shot of the landscaping in the front of the
28 building in the area where the sign will go.

29 And if you look at the next photo,
30 you'll see the exact spot where the shrubberies are
31 not there, and that's where the sign would be
32 located.

33 And the next photo gives a different
34 angle. You can see where the sign would be once
35 installed, in the event that the Board grants the
36 variances.

37 And then the final photo is just a
38 shot of the building from the parking lot, to give
39 you a little more perspective of the building
40 itself.

41 I have a second exhibit, if I may, and
42 this is -- in the second exhibit is the first photo
43 is a simulation of what the sign will appear as if
44 installed and that location were I had indicated
45 previously. And it will have the identification of
46 the building address and spaces for various medical
47 tenants in the building.

48 The second sheet has all the

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1 dimensions of the proposed sign as indicated. It
2 is -- it will be illuminated internally.

3 And the third sheet is a survey of the
4 property depicting the location of the building,
5 the landscaped area on the Lakeville Road side of
6 the building and in the area depicting where the
7 sign would be imposed -- the proposed sign would be
8 installed. The upper right-hand side of that last
9 page shows the property line as I've described and
10 that the building itself is set forth, is
11 approximately 10.6 feet from the property line,
12 affording only that area within which to install a
13 sign.

14 The -- so I think I've already
15 addressed, anecdotally anyway, the need to put it
16 where it's located because there's no other place
17 to put it, and that would violate the requirement
18 of the ten-foot setback.

19 Regarding the size, you can see from
20 those driving to and from, anything smaller would
21 not be readily visible. The tenants have advised
22 my client that patients have offered complaints to
23 them, that they can't see the name of their doctor
24 on the sign as they're approaching. There's no
25 sign, they drive, they have to come back and -- to
26 find the building. And a sign there will afford
27 visibility going in both directions on Lakeville
28 Road. And we've tried to design it in an
29 unobtrusive way that will not have any negative
30 impact. There are other residences on the other
31 side of Lakeville Road that back on Lakeville, Rose
32 Lane, and is the street that they front on.

33 So we believe, overall, that there
34 will be no negative impact resulting from the
35 relief sought. The area character does not
36 militate against approval of this application. And
37 we believe that, overall, it will actually reduce
38 the opportunity for traffic hazards so that because
39 of the fact that the sign will make the destination
40 more apparent to those coming to and from the
41 property.

42 And unless the Board has any
43 questions, that completes my presentation.

44
45 MEMBER GOODSELL: Mr. Avrutine, I
46 don't see any other place where you can put a sign.
47 I'm familiar with the property. I've been in the
48 building, and I -- wouldn't even be able to suggest

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1 any other place to put a sign that would simply,
2 quietly say who is in the building. There's
3 nothing there now to indicate who is in the
4 building. We have to know your destination in
5 order to get there.

6
7 MR. AVRUTINE: That is correct. Thank
8 you.

9
10 MEMBER DONATELLI: I would just note
11 for the record one of my major concerns is line of
12 sight and that based on the curb cuts that I see on
13 the survey and really where the proposed sign is
14 going to be located, it doesn't look like it will
15 be interfering with any lines of site, either
16 coming in or out of that curb cut or really at the
17 intersection of Lakeville Road and 78th Avenue.

18
19 MR. AVRUTINE: There's correct,
20 Mr. Donatelli.

21 I would also add in that regard, with
22 those accessing both driveways, if you're coming --
23 I guess if you're coming -- I guess it's west on
24 Lakeville, you'll see that sign right in front of
25 you, and then you can turn into the lot. And if
26 you're coming in the east, you can make the left,
27 and once you pass the sign into the lot, so it
28 looks exactly where located it will cover both
29 sides of the roadway. And I think that was the
30 intention both by the Applicant and the sign
31 company that designed it.

32
33 MEMBER GOODSSELL: Mr. Chairman, I have
34 no objection to the sign.

35 In fact, unless the Board has any
36 questions I, would make a motion that you would
37 approve the Application as presented.

38
39 CHAIR MAMMINA: We have a motion from
40 Member Goodsell.

41
42 MEMBER DONATELLI: I will second it.

43
44 CHAIR MAMMINA: Seconded by Member
45 Donatelli.

46 Please poll the board.

47
48 MS. WAGNER: Member Goodsell.

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1 MEMBER GOODSELL: Aye.
2
3 MS. WAGNER: Member Donatelli.
4
5 MEMBER DONATELLI: Aye.
6
7 MS. WAGNER: Member Hernandez.
8
9 MEMBER HERNANDEZ: Aye.
10
11 MS. WAGNER: Vice Chairman Francis.
12
13 VICE CHAIR FRANCIS: Aye.
14
15 MS. WAGNER: Chairman Mammina.
16
17 CHAIR MAMMINA: Aye.
18 The application is granted.
19
20 MR. AVRUTINE: Thank you so much.
21
22 MEMBER GOODSELL: The only problem
23 you're going to have is they're all going to be
24 jockeying to get on there, because I don't think
25 that's enough for everybody that's at the building,
26 so they're going to have to come up with slots.
27
28 MR. AVRUTINE: Unfortunately, that's
29 not my purview.
30
31 CHAIR MAMMINA: Off the record.
32
33 (Off the record.)
34
35 MR. AVRUTINE: Thank you all. Have a
36 good afternoon.
37
38
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Appeal # 21232

1 MS. WAGNER: Next appeal, Appeal
2 #21232. Michael Tobias; 111 Magnolia Avneue,
3 Westbury, Section 11, Block 141, Lot 37; in the
4 Industrial-B Zoning District.

5 Variances from 70-103A, 70-190,
6 70-192(A), and 70-203(U) (3) (h) to construct a new
7 building for use as a micro-fulfillment
8 distribution warehouse with not enough parking, the
9 building being taller than permitted, a vehicle
10 entrance door too close to the street, and
11 construction of a ramp to a below-grade parking
12 structure that is too steep.

13
14 CHAIR MAMMINA: You've heard Appeal
15 #21232, Michael Tobias.

16 Is there anyone in the room interested
17 in the Application other than Applicant?

18 Seeing one gentleman, you will have
19 the opportunity to speak after the presentation.
20 Thank you.

21
22 MR. TOBIAS: Hi, Board.

23
24 CHAIR MAMMINA: State your name and
25 address.

26
27 MR. TOBIAS: Michael Tobias, owner of
28 111 Magnolia Avenue in Westbury. My first time
29 doing this as well.

30 So, first, I want to just go over
31 the -- the vision of this development. So my
32 father, Peter Tobias, owned the property and owned
33 it for the past 30-plus years. He has his business
34 there. That was the site of that large fire in
35 Westbury in the industrial area. I think you're
36 probably familiar with it. Unfortunately, it
37 tragically burned down about a year ago.

38 Me and my brother, Greg Tobias, are
39 rebuilding the site. Essentially, very similar to
40 as it was, almost in kind with the insurance money.
41 My dad is, unfortunately, retired after that.

42 So the vision is to basically agree to
43 this as-is, except to bring it to today's standard.
44 So this is going to be a warehouse, same as it was.
45 There is going to be a lot of new parking in the
46 basement. There was no basement in the previous --
47 in the previous building that burned down. We are
48 putting a basement in for parking, that's the big

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1 upgrade.

2 We want to make this a sustainable and
3 innovative warehouse so we're putting solar panels
4 on the roof. We're proposing electric vehicle
5 charging stations for the fleet of cars in the
6 cellar. We want to really, really bring up the
7 whole area with this development.

8 So I'd like to go through, one by one
9 those -- the variance requested, number one
10 parking.

11 We -- there's 25 spaces required. We
12 are proposing 22. We're short three spaces. Those
13 are all going to be in the basement. That's all a
14 new basement. The previous -- the original
15 building that was there had no -- no parking.
16 Everything was on the street. So this is a pretty
17 considerable betterment to the community.

18 We're going to have this should --
19 these parking spaces will hold all of the
20 employees. This will not be open -- this will not
21 be a public parking lot or anything like that.
22 This will -- so all of our employees can now park
23 underground as opposed to on the street like they
24 were doing before.

25 The height of the building is our next
26 one. The requirement is under 40 feet. We have --
27 we have the parapet, the actual roof parapet at
28 under 40 feet. We do -- we are asking for the
29 stair bulkhead to go up to 44 feet and 1 inch. You
30 know, it's a 4-foot 1-inch ask. So the reasoning
31 for that is to maintain the equipment on the roof.
32 Maintain solar panels, maintain -- maintain the
33 mechanical equipment on the roof.

34
35 CHAIR MAMMINA: I think you're
36 required to have that by building code.

37 And also, typically, it's a permitted
38 obstruction in the height but maybe not.

39
40 MR. TOBIAS: I also -- I brought my
41 architect here, Doug, and maybe that was --

42
43 CHAIR MAMMINA: You're not at the Town
44 of North Hempstead, you're at the Zoning Board --

45
46 MR. TOBIAS: It might have been an
47 oversight.

48

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1 CHAIR MAMMINA: -- work in the town.

2

3 MR. TOBIAS: Yeah. It might have been
4 an oversight on our end.

5

6 CHAIR MAMMINA: No, no, no. I'm not
7 saying that. I learn something every day.

8

9 MR. TOBIAS: So that's not -- we're
10 not asking for height of the whole building, purely
11 just the one staircase bulkhead to access that.

12

13 MEMBER HERNANDEZ: So the building is
14 38, but you need an additional four foot --

15

16 MR. TOBIAS: Correct, correct.
17 Just to that door, so, you know, it's
18 maybe like a 10-foot-by-4-foot area, not the whole
19 roof.

20

21 The alternative way to maintain the
22 equipment is by crane. All right? So to close off
23 the street, crane the things in, which would cause
24 a lot of havoc.

25

26 Our third variance request is the
27 door. We have a roll-up door which is the -- which
28 is the ramp, going down to the basement parking.
29 That -- that roll-up door, there's requirement for
30 the door to be 18 feet from the setback property
31 line. The door -- it's the roll-up door itself.
32 We could potentially set it back. We're asking it
33 to be 10 feet setback from the property line so its
34 flush with the building.

35

36 MEMBER HERNANDEZ: Everything going in
37 there will be the regular size vehicles, they're
38 not extended those vehicles.

39

40 MR. TOBIAS: There will be cars and
41 vans. You know, not, like, trucks or anything.

42

43 (CROSSTALK)

44

45 MR. TOBIAS: Yeah, the basement
46 parking.

47

48 MEMBER HERNANDEZ: There won't be
49 tractor trailers or anything like that?

50

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1 MR. TOBIAS: Nothing like that
2 downstairs, no.
3
4 CHAIR MAMMINA: But off the Grand
5 Street side, there are traffic control devices.
6
7 MR. TOBIAS: Correct. We do have
8 those three truck bays.
9 And in the previous -- in the previous
10 building, we had -- we had five truck bays, and
11 it's basically the same location.
12
13 CHAIR MAMMINA: But doesn't the
14 18 feet refers to --
15
16 MR. TOBIAS: The 18 feet refers to
17 this -- refers to this over here on Magnolia
18 Street.
19
20 MEMBER HERNANDEZ: The entrance to the
21 garage.
22
23 MR. TOBIAS: The entrance to the
24 garage, going down, this is going down.
25
26 MEMBER HERNANDEZ: (Indecipherable.)
27
28 CHAIR MAMMINA: I mean, the important
29 part is the tractor trailer side. Not -- not
30 the --
31
32 MR. TOBIAS: Yeah, those -- the
33 tractor trailers are substantially bigger.
34
35 MEMBER HERNANDEZ: Is there a gate to
36 access that bay?
37
38 MR. TOBIAS: The truck bays?
39
40 MEMBER HERNANDEZ: Yeah. Is there a
41 gate or a fence or something there?
42
43 MR. TOBIAS: They don't have it open.
44
45 CHAIR MAMMINA: So that's why.
46 Because normally, it's a gate -- let me be clear.
47
48 MR. TOBIAS: Correct, correct. The

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1 gate -- this -- this with a roll-up. A roll-up is
2 the issue --

3
4 CHAIR MAMMINA: No, no, no. I
5 think --

6
7 MR. TOBIAS: But there is --

8
9 CHAIR MAMMINA: I think we're fine
10 with that.

11
12 MR. TOBIAS: The reasoning is just we
13 don't want to create a cave of somebody hanging out
14 there and security risk and water issues.

15
16 MEMBER DONATELLI: So -- sorry. The
17 thought with the roll-up gate we're just talking
18 about, is the thought it would stay open during
19 business hours and be closed for nonbusiness hours?

20
21 MR. TOBIAS: Correct. Exactly right.

22
23 MEMBER DONATELLI: Please continue.

24
25 MR. TOBIAS: And our last question is
26 the ramp. This is the ramp, the car ramp going
27 down to the basement.

28 So this is -- we're proposing a
29 16-percent grade. Required by code is an 8-percent
30 grade. The reason we're doing this is purely to
31 allow for more parking. If we make this -- if we
32 make this an 8-percent grade, we're going to lose a
33 considerable amount of parking spaces, which we're
34 already short on.

35 As well as this is not a public --
36 this is not a public ramp. This is all going to be
37 used for employees. So there should be no public
38 safety concerns. And our traffic engineer will
39 speak with some case studies of how that grading is
40 considered an industry standard and safe.

41 Okay. With that, that's the summary.
42 I'll have Wayne come on up and discuss some of the
43 grading techniques.

44
45 MEMBER DONATELLI: If I might just ask
46 one more question. You talked about
47 micro-fulfillment distribution warehouse.

48 Can you just spend a little bit of

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1 time telling us what micro-distribution is versus a
2 regular distribution.

3

4 MR. TOBIAS: Sure, sure. Probably a
5 too fancy name for what we're proposing here.

6

7 MEMBER DONATELLI: It's a brave, new
8 world.

9

10 MR. TOBIAS: Yeah. We're trying to
11 make it a cutting-edge facility. But, essentially,
12 it's a warehouse -- for on a smaller size. Not --
13 not a giant, you know, million-square-foot Amazon
14 warehouse. This is a -- out first floor is 15,000
15 square feet. So it's a small -- we're trying to
16 hold a lot of goods in a small amount of space.
17 And that's basically all it is.

18 We have -- we have trucks -- you know,
19 trucks coming in. And we will warehouse the goods,
20 and we will have vans which will deliver the goods.

21

22 MEMBER DONATELLI: I guess my question
23 was more in of the nature of the business model. I
24 mean, is there a radius around which you would
25 deliver or do you know what that radius might be?

26

27 MR. TOBIAS: This -- the tenant is
28 undecided. It's going to be a little bit flexible
29 to accommodate that. But they would be delivering,
30 you know, likely -- you know, likely through Queens
31 to -- you know, into Suffolk from this facility.

32

33 VICE CHAIR FRANCIS: I'm glad you
34 cleared that up because in my mind, I was thinking
35 Amazon warehouse.

36

37 MR. TOBIAS: No. Amazon is, you know,
38 a million square feet. This is -- sorry.

39

40 MR. MULLER: I'll talk.

41

42 VICE CHAIR FRANCIS: Go ahead.

43

44 MR. MULLER: Good afternoon.

45 For the record, Wayne Muller, Robinson
46 & Muller Engineering. Offices at 50 Elm Street,
47 Huntington, New York.

48

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1 CHAIR MAMMINA: Good afternoon again.

2

3 MR. MULLER: Good afternoon.

4 I've been retained by the Applicant to
5 discuss the parking and traffic aspects of the
6 project. We had previously submitted an analysis
7 to the Board, which I left.

8 Bear with me one second.

9 Dated April 1st, 2022. In fact, my
10 firm had testified on the previous case that was on
11 this property back in 2018, which was approved by
12 the Board. And, essentially, what we're trying to
13 do is put a -- I call it a mini or micro last mile
14 distribution-type facility.

15 Amazon, which we represent on other
16 areas of Long Island, is a much larger facility.
17 Typically, their last mile facilities are about
18 100- to 120,000 square feet. So this is a fraction
19 of the size of that. So the activity that would be
20 generated by this facility would be, obviously, a
21 fraction of that which would be generated by
22 Amazon. This -- but in no way, shape or form, in
23 my opinion, would be Amazon. It's just too small.
24 And the way they operate their facilities would not
25 bide well for this -- for this type of building
26 insomuch as where it is, it's just too small.

27 So we performed an analysis based on
28 the ITE information for this type of facility and
29 found that the parking that's provided underneath
30 the building would satisfy the demand of the
31 employees and the vans that would be stored there
32 overnight as indicated by my client.

33 Previously, the bulk of the parking
34 associated with this facility was head into the
35 building from Main Street. So the parking spaces
36 were all along the southern side of the building
37 and that condition existed for many, many years; so
38 that aspect of this property will be removed. And
39 now all the parking would be contained on site
40 underneath the building. We performed an analysis
41 to determine that the 16-percent slope of the ramp,
42 down into the garage and also up into the loading
43 area, which is provided on the southern side of the
44 building, is well within the industry standards and
45 should not pose a problem. There will be no
46 parking on the ramp. It's just strictly a drive
47 ramp inside, inside the facility.

48

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1 CHAIR MAMMINA: Is the slope really --
2 is it really 8 percent in the -- the city
3 architect -- a ten-foot drop would be a 120-foot
4 long ramp. That's ridiculous.

5
6 MR. MULLER: Correct.

7
8 CHAIR MAMMINA: So I've learned two
9 things today --

10
11 MR. MULLER: Yeah, that's 8 percent.

12
13 CHAIR MAMMINA: That's an ADA ramp.

14
15 MR. MULLER: Correct. It's a little
16 bit more than that, yeah. Which is 1 or 12,
17 it's --

18
19 (CROSSTALK)

20
21 MR. MULLER: So, essentially, what
22 we're doing is replacing one building with another;
23 and based on the modifications that the way that
24 the industry works during the last couple of years
25 due to the pandemic, is just this facility is more
26 modernizing what would have occurred at the
27 facility had the pandemic not happened.

28 We do not anticipate any changes or
29 modifications to traffic patterns within the area.
30 The two streets that are located on either side of
31 the subject essentially dead-end at the railroad.
32 You've got the properties that are served to the
33 north and the south. However, they're not
34 through-streets. The Long Island Railroad is in
35 the way.

36 There's -- any activity that's
37 associated to the north of the subject property is
38 associated with those uses and generated by those
39 uses. There are no people driving through on their
40 way to anywhere. There's no way to go. The
41 loading docks in their location depicted on the
42 plans were almost identical to where they were in
43 the previously-approved plans, so we're really
44 making no changes to that.

45 I do not see any sight distance
46 impediments. The vehicles exiting the garage due
47 to the setback of the door, the vehicles basically
48 will go pretty slow out of the garage, have the

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1 ability to look to the north and the south
2 unimpeded, so I don't envision any problems. There
3 is that separate driveway that's located just to
4 the south of the garage where the vans will pull
5 onto the property. And then there's a raised
6 loading dock that they will load the vans with the
7 materials, and then the vans will leave and go on
8 their merry way and deliver the stuff to the
9 community.

10 So that's my testimony. I'm happy to
11 answer any questions if the Board has any.
12

13 VICE CHAIR FRANCIS: I guess one of
14 the -- you got opposition having to do more with
15 traffic generated than on this.

16 So if you can just speak to that, that
17 would be helpful.
18

19 MR. MULLER: Well, essentially, just
20 using the Amazon model just as a guide, even though
21 this really is a radically-different concept. And
22 in factoring down the numbers that an Amazon would
23 generate to account for the differences in square
24 footage. Obviously, Amazon delivers thousands of
25 items all over the place, every day long.

26 And I found it interesting the first
27 time I ever used a service like that, I bought a --
28 I needed a charger for my iPhone; I had lost mine.
29 And it was in my office within, like, two and a
30 half hours, and I was kind of dumbfounded by it.
31 Like, how can you order something and get it in two
32 and half hours?

33 And these places are the reasons why.
34 They have the stuff, they pick it up, they drop it
35 off, and then it's pretty insane. But even if this
36 were to utilize the Amazon model, the peak-hour
37 traffic generated would be a total of 30
38 vehicles -- 14 in and 16 out -- and that would
39 occur on off-traffic times because the Amazon model
40 really is the employees arrive prior to the -- the
41 peak hours of the roadway network -- right? -- and
42 then they leave after the peak hours of the roadway
43 network.

44 And the reason for that is, they want
45 to be able to deliver the goods to the places and
46 not be sitting in traffic. So they kind of take
47 the clock and they rotate it based on traffic,
48 which makes sense.

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1 But they don't make money when they
2 deliver the stuff to your door. And if the driver
3 is sitting in traffic for endless hours, they don't
4 make any money. So if we were to look at that type
5 of facility, if we were to look at just standard
6 Institute of Transportation Engineers traffic
7 generation statistics for a warehouse -- if you
8 bear with me, I think I left that over on -- over
9 here.

10 If we were to call this just a height
11 cube fulfillment center warehouse, which is a
12 long-winded Institute of Transportation Engineers'
13 name for an Amazon-type facility, the maximum
14 vehicular traffic generation would be 18. Seven
15 cars in and eleven cars out. And that's pretty --
16 really an insignificant number, I think.

17 You know, usually the threshold for
18 any type of traditional traffic analysis, in my
19 opinion, would be 100 vehicles total entering and
20 exiting, based on what the New York State
21 Department of Transportation requires. So 18 is a
22 really insignificant number.

23 And, again, if we looked at an aerial
24 photograph of the surrounding neighborhood, this
25 area, the industrial area which essentially runs
26 between Grand Boulevard to the south and west and
27 all the way over to the Wantagh Parkway to the
28 east, the railroad is, obviously, a very big
29 dividing line. And then you got Old Country Road
30 to the south, and it's really its own contained
31 area.

32 And the only traffic that's, in my
33 opinion, generated within that area is based on the
34 businesses that are in that area. Unless there are
35 custom -- and not a lot of customers, in my
36 opinion, you know, people in passenger cars,
37 driving into and out of the area besides the
38 employees. And then there is business activity
39 that's generated in that area that's not really
40 going to change. And I don't see this facility, if
41 it were to be approved by this board, changing any
42 of those aspects.

43 The positive things is that we're
44 bringing the parking, which used to head-in off of
45 Main Street against the building, and taking that
46 out of the equation, thereby relatively improving
47 traffic conditions. Because now we no longer have
48 cars backing in and out of the site. They're all

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1 going to be contained on the side streets in
2 formalized driveways.

3

4 VICE CHAIR FRANCIS: Very common
5 occurrence in this area.

6

7 MR. MULLER: Yeah. Those buildings
8 were built long before I was born. And then,
9 primarily, a lot of them, from what I remember,
10 serviced a lot of the large aircraft manufacturers
11 that were in and around the subject areas. And
12 then they morphed over time as Long Island changed.

13 That's really what it is. It's quite
14 interesting if you kind of look at the history of
15 it.

16

17 MEMBER HERNANDEZ: If you're looking
18 at the aerial here, which I'm looking at here, if
19 you look at the building and the ramps, where is
20 the smaller passage or for the lack of a better
21 word, the little ramp, and where is the big ramp
22 for the trucks, and what street are they?

23

24 MR. MULLER: So if you look at the
25 building cross-sections.

26 So this is the minor ramp. If you go
27 to the site plan. So here's the minor ramp.
28 That's the loading dock for the two vans.

29

30 MEMBER HERNANDEZ: And for the
31 passageways.

32

33 MR. MULLER: The driveway is just
34 located just to the north of that, about five to
35 ten feet north.

36

37 MEMBER HERNANDEZ: The passageway is
38 where the employees will park.

39

40 MR. MULLER: The vans will be stored
41 down in the basement.

42

43 MEMBER HERNANDEZ: Okay.

44

45 MR. MULLER: And then the truck
46 activity occurs on the Grand Street.

47

48 MEMBER HERNANDEZ: On the Grand Street

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1 side.

2

3

MR. TOBIAS: Yup.

4

5

6

MEMBER HERNANDEZ: I'm just looking at the aerial of the area, if you can have a tractor trailer back into that facility on Grand Street?

7

8

9

10

11

MR. MULLER: Yes, yes. Similar to what occurred there before. We really didn't change that aspect of the project.

12

13

14

Because if you look at the aerial that I have, shows the partially burned-out building. I don't know if you have that one.

15

16

17

MEMBER HERNANDEZ: Yeah, yes.

18

19

20

21

MR. MULLER: You can see the building is -- all the roof is gone. It's all, like, mangled and such. You can see the loading docks are basically in the same spot.

22

23

24

MEMBER HERNANDEZ: But those are loading docks for the small vans.

25

26

27

MR. MULLER: Yeah, it looks more like box trucks.

28

29

30

MEMBER HERNANDEZ: Or box trucks.

31

32

33

MR. MULLER: Yeah, probably the larger of the box trucks.

34

35

36

I'm not sure if tractor trailers --
(CROSSTALK)

37

38

MR. MULLER: Were those tractor trailers?

39

40

41

CHAIR MAMMINA: Those are tractor trailers.

42

43

44

45

MR. MULLER: My client has indicated that there were tractor trailers that weren't in the loading docks, but I'm not sure.

46

47

48

MEMBER HERNANDEZ: So the tractor trailers are backing up -- assuming that you're

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1 coming up Main Street and they have to back in
2 there (indecipherable) and then you back in all the
3 way this way.

4
5 CHAIR MAMMINA: You see it.

6
7 (CROSSTALK)

8
9 MR. MULLER: I think one interesting
10 thing, if you look at the aerial that's not an
11 uncommon occurrence in this area. And it's because
12 of the lack of foot traffic.

13 And, again, if we were to do this on
14 Hillside Avenue, then it might be a different
15 scenario. But, yes, so that's the way that it's
16 going to work. You've got this -- the loading ramp
17 which is a little bit of an incline up and then
18 the -- down to the parking area which is underneath
19 the building. And, actually, the tractor trailers
20 are going to be above the parking. So it's a
21 fairly expensive construction, I think.

22
23 CHAIR MAMMINA: How many cars were
24 there in the area?

25
26 MR. MULLER: 22. Taking them all off
27 the street, really.

28
29 MEMBER DONATELLI: You anticipate
30 having electric delivery vans?

31
32 MR. MULLER: That, I don't know.

33
34 MR. TOBIAS: Yes, we do.

35
36 MR. MULLER: The client indicated,
37 yes, electric delivery vans.

38
39 VICE CHAIR FRANCIS: How many tractor
40 trailers coming in and out during the day?

41
42 MR. MULLER: Sure. State your name
43 again.

44
45 MR. TOBIAS: We're envisioning
46 deliveries of probably three in the early -- early
47 morning hours before to input everything into the
48 facility.

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1 CHAIR MAMMINA: Can I just ask, just a
2 simple answer question that really has nothing to
3 do with the variance.

4 How do you move the merchandise and
5 things through the facility? Is it robotic? Are
6 they --

7
8 MR. TOBIAS: So we want to do it as
9 efficiently as possible, so we're piling it up
10 higher is one of the key aspects. And there's an
11 efficient routing with some robotics in there as
12 well.

13
14 CHAIR MAMMINA: Okay.

15
16 MR. MULLER: Do you have anything
17 further for me. I will be seated. Thank you.

18
19 MR. TOBIAS: Just one thing I just
20 want to add, is the -- the use is approved, you
21 know, we're not seeking a variance on changing the
22 use at all.

23 So the variances we are looking for,
24 the parking height door and ramp, those are not
25 traffic-related in any kind of way. Thank you.

26
27 MEMBER HERNANDEZ: It wasn't a
28 warehouse before?

29
30 MR. TOBIAS: It was a warehouse, it
31 was. Thank you.

32
33 MR. PIERRO: Good afternoon, Board.
34 Roger Pierro, Jr., attorney at law, 950 Third
35 Avenue, 11th Floor, New York, New York.

36 I'm presenting before the Board in
37 opposition to the variance for this project. I
38 happen to represent the principles and the land
39 owners of seven of the nine properties on Magnolia
40 Avenue.

41 The most impactful property is at 117
42 Magnolia, which is a New York State-regulated
43 commercial waste transfer station.

44 Operations of a transfer station of
45 that kind requires movement and use of large trucks
46 which come in and out of the facility. Materials
47 is brought in, has to be sorted, and then it's
48 called back. Hauling material has to go out, as

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1 indicated in my letter to the Board.

2 This involves, obviously, a lot of
3 trucks. We haven't found a modern way yet to move
4 that type of material. By having this project as
5 proposed with this garage door, extra vehicles on
6 Magnolia, the ingress and egress on Magnolia is
7 going to be severely impacted, most importantly, to
8 the transfer station. I don't think the community
9 would want the environmental impact of
10 diesel-burning trucks having to idle to wait for
11 other smaller vehicles to do what they're going to
12 do, in and out, parking.

13 Now, I've heard testimony today about
14 the timing. Transfer station operations, usually
15 their busiest time is the early morning hours. It
16 levels off, and then it then increases as the
17 morning wears on, as morning hauls have been
18 brought in.

19 This seems to be it's going to be a
20 confluence of extra vehicular activity on that --
21 in the area, and that's going to not only impact my
22 clients' operations, also their tenants. But then
23 it's also going to impact the neighborhood as well
24 because the vehicles are not going to be able to
25 come in and go out, which is how the operation of
26 the transfer station is maintained at this time.

27 So to allow this project as proposed,
28 it will severely, severely impact my clients'
29 operations and then also the ownership. And they
30 have their other tenants in the other properties on
31 the block.

32
33 MEMBER DONATELLI: Just for
34 clarification purposes, you -- 117, the address
35 that you just referenced, is that immediately to
36 the -- I guess that would be to the north --
37

38 MR. PIERRO: It's the north. It's the
39 one all the way down by the -- it abuts the train.

40 And it's important to note, too, that
41 the size of the facility is one of the largest on
42 Long Island. And they also contracted for some of
43 the government work third track, western bays
44 project so they're really involved in the economic
45 activity and the rebuilding of infrastructure here
46 on Long Island.

47 So to allow something to get in the
48 way of that, I think it's going to impact not only

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1 the community and the Town of North Hempstead, but
2 it also has an impact on how they can function and
3 add to the economic viability of Long Island as a
4 whole.

5
6 MEMBER DONATELLI: May I ask you, how
7 do you anticipate that -- that the project that we
8 just heard about, how would that interfere with
9 your facilities?

10
11 MR. PIERRO: Well, first of all, the
12 construction, we'll put that aside for the moment.
13 But the extra vehicular activity with the vans
14 pulling up to Magnolia or the driveway, the
15 vehicles coming in and out, that's going to be a
16 problem because there's -- I guess we've all seen
17 the very, very large dump trucks. And so they're a
18 much smaller vehicle. These are bigger vehicles
19 blocking the street.

20 Magnolia is only 30-feet wide. It
21 only takes one van or car to stop everything, as
22 these trucks need to navigate the street properly.

23
24 CHAIR MAMMINA: Magnolia is strictly
25 cars pulling in to go to work.

26 So I would assume and I would ask --
27 I'll ask the Applicant to verify, but it's cars
28 coming in and then cars that are going to leave and
29 the van -- there's only two vans.

30
31 VICE CHAIR FRANCIS: The tractor
32 trailers are on Grand Street. So that's -- that's
33 not really going to effect you.

34
35 MR. PIERRO: Correct, Mr. Francis.
36 But there's activity on Magnolia.
37 That's the ideal world. Things get backed up, all
38 of a sudden, you got three dump trucks that are
39 looping on to Main or sitting there right on the
40 corner, dangerously positioned so a traffic jam can
41 happen in an instant. And that's not going to be
42 helpful.

43 I would even think for the Applicant's
44 business, as well as my clients' business.

45
46 MEMBER GOODSELL: If I can ask the --
47 how long has the waste transfer station been there?
48

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1 MR. PIERRO: That's been there --
2 probably if my memory serves me correct, it's going
3 back probably 30, 40 years. We're a subsequent
4 owner.

5
6 MEMBER GOODSELL: So the waste
7 transfer separation operated when Mr. Tobias'
8 business was there?

9
10 MR. PIERRO: Right, it operated -- but
11 the vehicle traffic was on Main, it was not on
12 Magnolia. Most of the vehicle traffic was confined
13 from Grand and Main.

14 Now they're starting to flow onto
15 Magnolia. That could be a problem.

16
17 MEMBER GOODSELL: So -- well, the fact
18 that it's a vacant lot right now, there's
19 nothing --

20
21 MR. PIERRO: Right.

22
23 MEMBER GOODSELL: Obviously, it's a
24 convenience because it's nothing there. So what
25 you're objecting to, then, is the traffic on
26 Magnolia --

27
28 MR. PIERRO: Correct.

29
30 MR. TOBIAS: -- not the presence of
31 this building.

32
33 MR. PIERRO: Well, the presence of the
34 building, no. But how the project to going to be
35 used. We've heard testimony that it's going to be
36 a micro-distribution center, whatever that's going
37 to mean in this day and age. It just means more
38 traffic as proposed with the garage doors on
39 Magnolia and this is going to be a problem. And my
40 clients have grave concerns on how this can impact
41 their business.

42
43 MEMBER GOODSELL: Well, it seems to me
44 that at some point, they did operate with this
45 business going on.

46
47 MR. PIERRO: Right.

48

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1 MEMBER GOODSELL: And, again, I just
2 want to clarify that it's very nice that it's a
3 vacant lot right now. I'm sure the whole area
4 would like to leave it as a vacant lot, but that's
5 not what we're considering.

6
7 MR. PIERRO: Right. Also, but the
8 Board is also considering allowing a garage and
9 another garage, 22 cars potentially, vans, anything
10 that can impact a 30-foot wide avenue when you're
11 involving large-scale commercial hauling vehicles
12 that do traverse on Magnolia. That's the problem.

13
14 CHAIR MAMMINA: I'm very familiar with
15 New Cassel, having grown up in Mineola/Westbury,
16 which abuts it.

17 And the problem there is that cars
18 park on the sidewalks -- they -- you know, you get
19 tow trucks that bring in, you know, car wrecks from
20 the middle of the night, and they leave them.

21
22 VICE CHAIR FRANCIS: We've got a
23 lot -- we've got a lot of double-parking. I live
24 in New Cassel, so I'm really familiar with this
25 area.

26
27 CHAIR MAMMINA: And Magnolia, it's
28 just -- it's just it's 22 cars coming to work. You
29 know, they pull in, they spend their eight hours at
30 work and then they pull out.

31
32 MR. PIERRO: Mr. Chairman, okay. The
33 first times that the vehicles may be coming in and
34 out are -- it's a confluence of timing that
35 we're -- my clients inflow of material and outflow
36 of material, they cannot get backed up.

37 They're under routine inspections by
38 the New York State Department of Environmental
39 Conservation and God forbid that they're over
40 capacity, they wind up getting violations. So we
41 couldn't allow one property owner to develop and
42 have all this economic boom for their property at
43 the expense of another property owner.

44
45 CHAIR MAMMINA: But -- but you're
46 entitled to have economic survival, and they're
47 not?

48

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1 MR. PIERRO: They operate under strict
2 State guidelines -- okay? -- but we're just worried
3 about the impact and concerned about the impact of
4 having those 22 vehicles spilling out onto
5 Magnolia, whether it's at 5:00 in the morning, 5:00
6 in the evening.

7 It seems that it's going to impact and
8 we don't have to wind up having diesel trucks
9 sitting there, idling, beeping their horns,
10 whatever is going to go on. I don't think that
11 benefits anybody or any business.

12
13 MEMBER HERNANDEZ: I feel like -- I'm
14 trying to understand.

15 As I look at the aerial, you can have
16 potentially, because it's only 22 parking spaces,
17 so potentially 22 or some number less than that of
18 cars that are going to pull down an open driveway
19 and park.

20 I'm not the traffic expert. But
21 assuming that every one of those cars takes one
22 minute, which I cannot imagine it taking one minute
23 for one car to drive down a ramp, you're talking
24 about a 20-minute possible delay, all 22 cars
25 arrive at once and try to enter.

26 I don't see how that -- how that
27 becomes a traffic issue.

28
29 MR. PIERRO: It becomes a traffic
30 issue -- that's what we're talking in an ideal
31 world. But we don't operate in an ideal world.

32 So if there's a constant inflow and
33 outflow of vehicles, you have huge dump trucks
34 trying to traverse the street; now you have a whole
35 confluence of events. That could lead to more
36 traffic, more pollution, more noise.

37 The other part of the presentation,
38 which perhaps I'm a little unclear of, about the
39 constant loading and unloading of their delivery
40 vans for -- at the project site.

41
42 MEMBER HERNANDEZ: (Indecipherable)
43 Because the alternative is what they had before,
44 which is to have those or 20 or so cars basically
45 pulling into over a sidewalk and basically blocking
46 a sidewalk and potentially blocking your dump truck
47 because they're trying to squeeze in between two
48 cars because they're trying to squeeze 22 cars --

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1 MR. PIERRO: As -- as I understand it,
2 Mr. Hernandez, the other vehicles we're talking
3 about used to be parked on Main. We're talking
4 about now putting this garage door on Magnolia.
5

6 MEMBER HERNANDEZ: Correct. But the
7 car that was parking was a van 45 degrees from
8 90-degree parking, which means that somebody had to
9 either turn around and pull in head-first or back
10 in into it.

11 So, therefore, that creates a greater
12 backup on Grand Street or Main Street. So I would
13 have thought that that would have a greater impact
14 on your tractor -- on your dump trucks, trying to
15 cross Grand Street on Magnolia.

16 If they have 22 cars trying to squeeze
17 into that -- but that's --
18

19 MR. PIERRO: But there's more
20 maneuverability on that end. On Magnolia, you wind
21 up having a much smaller area in which to operate.
22 The other area's a much wider street to operate on.
23

24 MEMBER DONATELLI: I don't mean to
25 belabor the point. But this is an Industrial-B
26 area. It's not hard to imagine something going
27 into this area that might actually be more
28 intrusive than what is being proposed.

29 If they're proposing you take 22 cars
30 off of the street, I would think that that would be
31 a benefit, and I know that we've had certain
32 applications before this Board that have been much
33 more intrusive onto the oncoming streets. So,
34 frankly, I'm sorry, I'm just not persuaded by your
35 argument.

36 I -- I -- you know, I understand
37 that -- and you tried very hard not to have any
38 particular property owner incumber an adjoining
39 property owner. You've been sitting here this
40 morning and this afternoon, and you know that we do
41 a balancing test. And it seems that the project
42 that is before us now, without rendering a final
43 decision, the project that is before us now, could
44 be much worse for your client than what is actually
45 proposed.
46

47 MR. PIERRO: Duly noted,
48 Mr. Donatelli.

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1 Also I want to speak not only to my
2 clients' waste transfer station, but there are also
3 the other tenants who are the light industry.
4 There's a counter fabricator is one tenant.
5 There's another small container company is at 113.
6 So it's not only my client, but it's also their
7 tenants from the other properties that are on block
8 that do traverse Magnolia. And then to have all
9 this in-flow and out-flow and this extra traffic,
10 worried about the impact and then the environmental
11 impact on top of it.

12
13 CHAIR MAMMINA: I don't want to
14 belabor it either.

15
16 MR. PIERRO: Okay.

17
18 CHAIR MAMMINA: But would I have to
19 believe that you would support free enterprise?

20
21 MR. PIERRO: 100 percent.

22
23 CHAIR MAMMINA: So they have a right
24 to those streets the same way that you have a
25 right --

26
27 MR. PIERRO: Of course.

28
29 CHAIR MAMMINA: -- to those streets.
30 You have a right --

31
32 MR. PIERRO: But is there an
33 alternative to what they're suggesting? Could the
34 parking be -- outflow onto Grand? I mean, is there
35 something that doesn't impact the way traffic flows
36 in and out of Magnolia at this point?

37
38 CHAIR MAMMINA: To me, as an
39 architect, this seems like a very logic layout in
40 terms of economically using the land that's going
41 to be created there, you know, to get in and out.

42 And I don't mean to sound like a
43 wiseguy, and I'll apologize. Maybe you should
44 approach them and buy the building, buy the
45 property from them, and then you got nothing to
46 worry about.

47
48 MR. PIERRO: Anything is on the table,

Appeal # 21232

1 sir.

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CHAIR MAMMINA: Yeah. But, again, it's -- everybody is entitled to the use of their land.

MR. PIERRO: Of course. I'm not disputing that. I'm disputing how it's used and how it can impact not only my client's ownership and their operations, but also their tenants too.

Is there a way that the garage door can go onto Main instead of Magnolia, which would also be less impactful?

VICE CHAIR FRANCIS: We'll ask them that question if he comes back up.

MR. PIERRO: Okay.

CHAIR MAMMINA: I don't think so based on the architecture, the way that I see it.

MEMBER HERNANDEZ: Not only that, it will only create even more -- more traffic because in any way, coming off Main would have to be almost at the corner.

So now you're going to have traffic basically at the intersection, turning into. So if you have 22 cars also in that same exact minute, you're going to have a line of cars running across the intersection.

CHAIR MAMMINA: You're going to bisect their building, you know, by having a ramp going -- going down the middle of the building, you know, and that's where all of their major loading, you know, comes in. You know, they're landlocked on the other side.

I understand. I thought your letter and things were very well-written. And I understand, all of your -- your arguments. But I don't know. I just -- I don't -- within the four corners of what we do as a Zoning Board, I'm -- I'm not seeing it.

You know, in this case, we do that balancing test, and, you know, I think -- not to repeat what's been said, but Mr. Donatelli said something -- something much more intensive, you

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1 know, could be in there. And they could have
2 proposed to have their tractor trailers come in on
3 that end.

4
5 MEMBER DONATELLI: And we have seen
6 that.

7
8 MEMBER GOODSSELL: I think it's a
9 disaster for a 30-foot street.
10 We'll -- we'll -- we'll consider your
11 arguments.

12
13 MR. PIERRO: That's all I can ask,
14 Board.
15 Thank you for your time this
16 afternoon.

17
18 CHAIR MAMMINA: You've been quite a
19 gentleman.

20 MR. PIERRO: Thank you.

21
22 CHAIR MAMMINA: And I appreciate that.

23
24 MR. TOBIAS: Well, just to reiterate,
25 I guess similar -- the same points that I had
26 before.

27 One, these variances, parking height,
28 door and ramp are not irrelevant of use and
29 traffic. We're not asking for a traffic analysis.

30 Separately, the building that was
31 there before was higher load in terms of the
32 trucks, vans and employees, which were all on the
33 street, and the other facilities functioned fine
34 through those 30 years. So this is actually
35 relieving some of that and taking these cars off
36 the street, which is a very costly endeavor to
37 build based on parking. So I'll leave it at that.

38
39 MR. MULLER: I don't think I have
40 anything else either.

41
42 CHAIR MAMMINA: How do the employees
43 arrive and leave?

44
45 MR. TOBIAS: So, well, previously they
46 were all -- you know, all on street -- all on
47 street parking. Arriving usually around 6:00 a.m.,
48 leaving around -- around 4:00 p.m.

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1 The proposed building will be -- will
2 be essentially the same -- the same timings, as
3 well as we do have a -- we do have, actually, a
4 bike -- bike storage in the basement as well.
5 We're hoping to get a lot of local employees from
6 the biking community from the neighboring blocks.

7
8 MEMBER DONATELLI: Did you have any
9 complications with the prior building, prior to the
10 fire, any conflict in traffic with your neighbors?

11
12 MR. TOBIAS: I don't believe so.
13 Nothing else?

14
15 CHAIR MAMMINA: Nope.

16
17 MR. MULLER: Okay.

18
19 MR. TOBIAS: That's all. Thank you.

20
21 MEMBER DONATELLI: Thank you.

22
23 CHAIR MAMMINA: Okay. We'll reserve
24 this. We may or may not decide this today. So I
25 think everyone --

26
27 MS. WAGNER: We're not going to make a
28 decision until next time.

29
30 MR. TOBIAS: Okay. All right.

31
32 (CROSSTALK)

33
34 MR. TOBIAS: Okay. Thank you.

35
36 CHAIR MAMMINA: Bye-bye.

37
38 MS. WAGNER: So there's been a request
39 to reopen Appeal #21193 for Tabs Motors, 200
40 Hillside Avenue in New Hyde Park.

41 It's a request to reopen the Appeal.
42 We were sent reasoning for the request to reopen,
43 and it needs to be unanimous. You have to decide
44 to.

45
46 MEMBER DONATELLI: I'm -- if you don't
47 mind, I'm going to start.

48 I read in detail the comments that

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1 were made in the letter, and, certainly, I thought
2 it was helpful to have those comments brought to
3 life. But, again, I mean, we as the Board are --
4 we're not free to just disregard the Town Code when
5 it comes to the size of these convenience stores.

6 And I have -- I saw nothing in the
7 letter that was brought to light that would not be
8 applicable to any such convenience store. So there
9 weren't any particular circumstances that made it
10 unique, that distinguished it. And, frankly, I
11 just -- as one Board Member, I just don't see how
12 we can disregard the Town Code when it comes to
13 that permission.

14
15 MEMBER HERNANDEZ: It's basically the
16 (indecipherable).

17
18 MEMBER GOODSSELL: It was not that we
19 denied them the opportunity to vend to the public.
20 And I think I may have commented, and I know that
21 this is probably true, they're not making a lot of
22 money on gasoline. They can't raise the price that
23 much.

24 The money is in the convenience store.
25 They want people to stop in and grab and go. The
26 markup is there. I can certainly understand why
27 they would want a 3000-square-foot convenience
28 store. I think it would be reasonable when we say
29 that we're proposing 1,500; we would prefer you cut
30 this to 1,250 square feet. And I have not seen
31 anything that renders that as a reasonable
32 decision.

33 I mean, there are many, many pictures
34 attached with the equipment that they have to house
35 and that they have to do and what they have to
36 comply with. But have they shown us why it can't
37 be complied with?

38
39 MEMBER HERNANDEZ: But every other
40 convenience store has the same level of equipment.
41 It's not like -- that is not unique to them, right?
42 They all have their refrigerators banks surrounding
43 the outer perimeter of the store. Right? I mean,
44 that's --

45
46 MEMBER DONATELLI: I would think that
47 more appropriate remedy would be petition the Town
48 Board to change that section of the code.

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1 CHAIR MAMMINA: I would agree with
2 that because I certainly -- I'm going to stop in
3 for coffee, even if it's just for coffee, even if I
4 don't need gas.

5 You know, and in many other
6 municipalities, especially lately and further out
7 east, seeing convenience stores besides the
8 7-Eleven, you know, in the gas station. And,
9 admittedly, they've got a little more property and
10 property is very costly around here and it's
11 limited. There's been gas stations forever.

12 But I will certainly be sympathetic to
13 petitioning the Town Board on that, you know, on
14 that if we were asked an opinion.

15
16 MEMBER HERNANDEZ: And, clearly, that
17 size over the smaller than the other places,
18 there's some Mobile gas station right across from
19 Macy's here on Northern Boulevard with
20 (indecipherable) for auto repair to put in the
21 convenience store, because it was more profitable.

22 So even at that limited size, it's
23 still a profitable business. So the only thing
24 these guys want is they want to have a bigger
25 convenience store so they can make more money.

26
27 CHAIR MAMMINA: I think we're saying
28 that we get that. We just spoke with the other guy
29 with the -- about the previous case about free
30 enterprise.

31
32 MEMBER HERNANDEZ: I would want a
33 bigger store if I was building a store. But you
34 have to build it within what's permitted.

35
36 MEMBER GOODSSELL: What I think what
37 I'm hearing is that we don't have unanimous consent
38 to reopen.

39
40 CHAIR MAMMINA: No.

41
42 MEMBER HERNANDEZ: (Indecipherable)
43 here to say that we need to change our mind
44 (indecipherable.)

45
46 CHAIR MAMMINA: Do we have a motion to
47 reopen?
48

Appeal # 21232

1 MEMBER DONATELLI: Not from me.

2

3

4

MS. WAGNER: So the request is not
being considered. No motion is made.

5

6

7

CHAIR MAMMINA: So with apologies, no
motion to reopen. It would have to be unanimous if
we would.

8

9

(Hearing concluded at 3:28 P.M.)

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C E R T I F I C A T E
STATE OF NEW YORK)
COUNTY OF RICHMOND) SS.:

I, MADELINE TAVANI, a Notary Public for
and within the State of New York, do hereby
certify:

That the above is a correct
transcription of my stenographic notes.

I further certify that I am not related
to any of the parties to this action by
blood or by marriage and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 12th day of May, 2022.



MADELINE TAVANI