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TOWN OF NORTH HEMPSTEAD
BOARD OF ZONING APPEALS
PUBLIC HEARINGS

Wednesday
January 24, 2024
10:21 a.m.

BOARD MEMBERS PRESENT:

- David L. Mammina, Chairman
- Leslie Francis, Vice Chairman
- Patricia Goodsell, Member
- Daniel Donatelli, Member
- Jay Hernandez, Member

ALSO PRESENT:

- Deborah Algios, Deputy Town Attorney
- Virginia Wagner, Secretary
- Nicole L. Basile, Court Reporter

1 Proceedings

2 VICE CHAIRMAN FRANCIS: Good morning, ladies and
3 gentleman. Welcome to the Board of Zoning Appeals for the Town
4 of North Hempstead. We're still waiting for the live feed to
5 come up, but I'll start my preliminary remarks while we're
6 waiting for that.

7 If you're here for a zoning variance, you will come up
8 to the podium and introduce yourself. Give your name and
9 address to the court reporter and tell us what it is that you
10 want and why you want it. We try our best to grant variances,
11 but, you know, occasionally that's not possible. So we'll hear
12 what you have to say. We'll either grant your application
13 today, or we'll reserve it to give it a little bit more
14 deliberation, or we'll continue it for additional information,
15 or we'll deny it. If there's anyone here in opposition to a
16 petition, you will also have an opportunity to come to the
17 podium and tell us why you're in opposition and you will have a
18 three minute limit presentation in terms of why you don't like
19 this particular application.

20 We all have these cell phones that we carry around. I
21 actually one day left work and left my cell phone at work, and
22 I almost in my driveway and turned around to go back to work to
23 get my phone, because I felt like I had no points on. So we
24 are connected to these things like never before. I would ask
25 you to put them on vibrate or silent so you don't interrupt
26 anyones presentation.

1 Proceedings

2 What else? Oh, I said the three minute thing.

3 Anything else? Did I miss anything? I think that's it. Yes.

4 You want to wait to discuss the changes in the calendar until
5 we get to the live feed?

6 SECRETARY WAGNER: Yeah. We have to wait.

7 VICE CHAIRMAN FRANCIS: Then we'll wait on the Pledge
8 of Allegiance for the same reason.

9 One other thing. Because the court reporter is taking
10 a record of this, we ask that you kind of keep cross-talking to
11 an absolute minimum, because it districts her, it districts us
12 and it districts whoever is giving their presentation.

13 All right. So hopefully we will be getting started in
14 a minute as soon as the live feed is on. Oh, it's up. Okay.
15 All right. So let's start with the Pledge of Allegiance. If
16 you'll join Ms. Goodsell.

17 (Whereupon, the Pledge of Allegiance was said.)

18 VICE CHAIRMAN FRANCIS: All right. Are there any
19 changes to today's calender?

20 SECRETARY WAGNER: Yes. First, for the record, I'd
21 like to note that Vice Chairman Francis will be acting chairman
22 this morning and possibly all day. Chairman Mammina is absent
23 from this hearing.

24 The first appeal to be adjourned is Appeal Number
25 21498, Yannan Wang; 13 Bayview Court, Manhasset; Section 3,
26 Block 40, Lot 936 in Residence-C Zoning District. Variances

1 Proceedings

2 from 70-48, 70-29.B, 70-51.A and 70-208.F, to construct an
3 addition that is too close to the side property line, makes the
4 home too big, and covers too much of the lot for a
5 nonconforming home. This appeal is adjourned until February
6 14th.

7 We also have an adjournment of Appeal Number 21500,
8 Frank Radocaj; 136 Albertson Parkway, Albertson; Section 7,
9 Block 55, Lot 58 in the Residence-B Zoning District. Variances
10 from 70-40.A and 70-41.A, to construct additions that are too
11 close to the side and front property lines and with less than
12 required total (aggregate) side yards. This appeal is
13 adjourned until February 14th.

14 Appeal Number 21501, Kazi Ahmed; 925 North 6th Street,
15 New Hyde Park; Section 8, Block 17, Lot 39 in the Residence-C
16 Zoning District. Variances from 70-50.A and 70-208.F, to
17 construct a new roofed over porch that is too close to the
18 street on a non-conforming dwelling. This appeal is adjourned
19 until February 14th.

20 Appeal Number 21502, Jaswinder Singh; 24 Royal Way, New
21 Hyde Park; Section 8, Block 257, Lot 19 in the Residence-A
22 Zoning District. Variance from 70-31.A, to legalize a deck
23 that is too close to the side property line and with smaller
24 than required total (aggregate) side yards. This appeal is
25 adjourned until February 14th.

26 Appeal Number 21503, Kenny Lin; 121 Sigsbee Avenue in

1 Appeal Number 21494

2 Albertson; Section 9, Block 656, Lot 44 in the Residence-C
3 Zoning District. Variance from 70-100.2.A(4) (B), to legalize
4 fences on side property lines that are too tall. This appeal
5 is adjourned until March 6th.

6 Appeal Number 21504, Thomas Varghese; 125 Sigsbee
7 Avenue, Albertson; Section 9, Block 656, Lot 114 in the
8 Residence-C Zoning District. Variance from 70-100.2(A) (4), to
9 legalize fencing that is too tall. This appeal is also
10 adjourned to March 6th.

11 And so if anybody is here for any those appeal, those
12 have all been adjourned and we will not be hearing those today.

13 First appeal, Appeal Number 21494, James and Geraldine
14 Gilligan; 62 Murray Avenue, Port Washington; Section 5, Block
15 58, Lot 41 in the Residence-A Zoning District. Variances from
16 70-202.1.C and 70-202.1.E, to legalize a retaining wall that is
17 too tall and higher than the adjoining land that it retains.

18 VICE CHAIRMAN FRANCIS: You've heard Appeal Number
19 21494. Is there anyone here interested in this application?
20 Seeing no one. All right. Mr. Migatz, please give your name
21 and address.

22 MR. MIGATZ: Bruce W. Migatz, law firm Albanese and
23 Albanese, 150 Franklin Avenue, Garden City, New York. Good
24 morning Members of the Board and a belated happy new year to
25 everyone.

26 VICE CHAIRMAN FRANCIS: Same to you.

1 Appeal Number 21494

2 MR. MIGATZ: At the outset, I'd like to hand in
3 premarked Exhibits 1 through 8 that I have put in a binder.
4 One for each member of the Board, for the record and for
5 counsel.

6 I appear before you this morning representing James
7 Gilligan as the applicant and the owner of the subject property
8 is 62 Murray Avenue, LLC. James Gilligan and his wife
9 Geraldine Gilligan are the members of that LLC. The subject
10 property is 62 Murray Avenue, Port Washington and this property
11 was before this board not that long ago and perhaps you may be
12 familiar with this site. Just for the record, Section 5, Block
13 58, Lots 41 and 172, Residence-A Zone and lot area 14,500
14 square feet and the property is in the Port Washington Historic
15 District.

16 Exhibit 1 that I have marked is a photograph of the
17 house from -- from the street and you see why it's in the
18 Historical District. It's a house that was built in 1903 and
19 is quite a statement. It was remodelled in 1965, purchased by
20 the Gilligan's in 2021. Exhibit 2 is the decision in this
21 Board's prior appeal. In Appeal Number 21316, that granted a
22 floor area ratio for a rear addition to the house and Exhibit 3
23 is just for your information to show you how that addition
24 turned out and I think it turned out looking very, very well on
25 that -- on that property. I don't know how often you get to
26 see what you have granted so.

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2 VICE CHAIRMAN FRANCIS: Not often.

3 MEMBER HERNANDEZ: Especially in the back of the house.

4 MR. MIGATZ: Correct. So I thought I would show that
5 too.

6 VICE CHAIRMAN FRANCIS: Very nice.

7 MR. MIGATZ: The present application is to maintain an
8 11 foot five inch high retaining wall that exceeds the grade
9 that it supports by two feet. Exhibit 4 is a photograph of
10 that retaining wall. It's in the rear of -- of the -- of the
11 property. The Gilligan property extends three feet beyond that
12 retaining wall. Exhibit 5 is a photograph taken from the pool
13 deck facing the rear retaining wall and you can see the two
14 feet of that retaining wall that comes up above the ground that
15 the retaining wall is supporting. That -- that is what needs
16 the variance. The --

17 MEMBER HERNANDEZ: I'm sorry, just for clarification.
18 It's not just those two feet though.

19 MR. MIGATZ: It is. The retaining wall -- the --
20 disapproval notice recognizes that it's a prior nonconforming
21 retaining wall. That retaining wall, absent the two feet, has
22 always been there from my research due to change of grade.
23 Exhibit 6 is a Nassau County Department Assessment Property
24 Card. It shows that the house was built in 1903 and that it
25 shows that the garage existed in 1938 of an undetermined age.
26 Exhibit 7 is a picture of that garage. You can see the

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2 retaining wall to the right of the garage and the garage that
3 was there since at least 1938 acts as a retaining wall itself.
4 Exhibit 8 is a photograph of the garage from the front before
5 that retaining wall was added with the extra two feet and you
6 can see that the grade hasn't been changed by the applicant.
7 That grade was -- that's the natural topography of the
8 property. And the disapproval notice cites 70-208, which
9 divides a nonconforming building or structure really to only be
10 extended with extensions to not increase the nonconformity. So
11 that is what the building department cited. That we increased
12 the nonconformity by raising that retaining wall up two feet.
13 If I may take you back to photograph four, the retaining from
14 the rear. I am informed by -- by Mr. Gilligan, you can see two
15 different shades of concrete there. The -- the -- the lighter
16 shade above the darker shade was a timber retaining wall when
17 he purchased the house. So that timber retaining wall was in
18 disrepair. So he replaced that section of timber retaining
19 wall with a concrete block wall. That was a repair. That --
20 that -- that did not require a variance. It was a repair to an
21 existing nonconforming retaining wall. But since he was
22 building that patio and that pool, he raised it two feet and
23 the reason for raising it two feet is to prevent leaves, dirt,
24 debris from going over into the rear yard and blow into the
25 neighbor's rear yard. Now, you know, jumping ahead, is there a
26 feasible alternative to this variance. Well, yes. That --

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2 that extra two feet, if it was not on top of the retaining
3 wall, would not need a variance. The retaining wall would stop
4 at the grade it supports. Then you go in a couple of inches
5 and you build a two foot wall to stop debris from going over.
6 The -- the appearance from the rear neighbor would be the same.
7 You couldn't discern that that extra two feet is setback one
8 inch from the top of the retaining wall. So that's a feasible
9 alternative, but not really -- doesn't accomplish anything.
10 The retaining wall has been there since at least 1938, doesn't
11 have an adverse affect on -- on -- on anybody's property and it
12 benefits the rear neighbor otherwise, there would be a collapse
13 of the Gilligan's property on -- on top of the rear neighbor.
14 So to me it makes no difference with whether that extra two
15 feet, which is to prevent debris from going over the wall is on
16 top of the wall or set in one foot from the wall. This is a
17 type two action deem not to have an adverse impact on the
18 environment. The variance, I don't think is substantial. It's
19 not really discernable that extra two feet from the rear of the
20 neighbor. The rear neighbor. Perhaps the difficulty is self
21 created, simply because Mr. Gilligan purchased the property
22 subject to the code for which he now seeks a variance. But if
23 you weigh all those factors, the extra two feet is a benefit
24 not just to the Gilligan property, but to the rear neighbor's
25 property to prevent, again, debris or to have it from blowing
26 off their patio.

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2 MS. ALGIOS: I just have a question. Mr. Migatz, did
3 Mr. Gilligan go to the Landmarks Commission to get approval for
4 the changing of the retaining wall?

5 MR. MIGATZ: Yes. Yes, they approved it. I read the
6 transcript. I don't have the certificate yet, but I did read
7 the transcript. It was given approval.

8 MS. ALGIOS: It was for that rear area?

9 MR. MIGATZ: It was couple of things.

10 MS. ALGIOS: I know he was before, but I don't recall
11 that rear --

12 MR. MIGATZ: You were there. I read the transcript.

13 MS. ALGIOS: But I just don't recall the rear portion
14 being part of it.

15 MR. MIGATZ: It was mentioned very briefly that the
16 retaining wall is existing and they had no problem with it.

17 MS. ALGIOS: With him -- with him changing from the
18 timber over to the concrete?

19 MR. MIGATZ: No. It was raising it two feet. Well,
20 the transcript wasn't that specific, other than the fact that
21 we have no issue with the retaining wall.

22 MS. ALGIOS: Okay. Because I seem to recall the
23 retaining wall that was at issue at Landmarks was in the front.
24 Was there also a retaining wall in the front?

25 MR. MIGATZ: It's not really a retaining wall.

26 MS. ALGIOS: That's what I recall the issue being, but

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2 it was a while ago so I may be wrong.

3 MR. MIGATZ: From -- from reading it and Mr. Alberto
4 was the architect, and he told me that it was approved and the
5 transcript, like I said, is kind of sketchy, but it sounds like
6 to me they were approving it.

7 MS. ALGIOS: Since it wasn't an in-kind replacement,
8 you didn't do timber to timber, it would have to get Landmarks
9 approval.

10 MR. MIGATZ: Like I said, the transcript said we
11 approved the retaining wall.

12 MS. ALGIOS: All right. I'm gonna just have to take a
13 look at it.

14 MR. MIGATZ: Sure. Sure.

15 MEMBER GOODSSELL: Mr. Migatz, did you mention that your
16 client has a pool in the backyard now?

17 MR. MIGATZ: I did not mention that, no.

18 MEMBER GOODSSELL: Oh, okay. I thought you said debris.
19 Is there a pool back there?

20 MR. MIGATZ: A pool, yes.

21 MEMBER GOODSSELL: There is a pool. I'm just looking at
22 your survey that is part of the package from 2021. It is not
23 on the survey. So I presume that that was an improvement that
24 you client put in. Was that for that prior application?

25 MR. MIGATZ: Well, it was all done in connection with
26 each other. It was a renovation to the backyard with a pool,

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2 patio and repairing of the retaining wall and raising the
3 retaining wall two feet. I can tell you for sure that the
4 Landmarks Commission did approve the pool otherwise it wouldn't
5 be built.

6 MEMBER GOODSELL: Okay.

7 MEMBER DONATELLI: And the pool was obviously installed
8 by a contractor?

9 MR. MIGATZ: Yes.

10 MEMBER DONATELLI: Was the retaining wall also done by
11 the same contractor?

12 MR. MIGATZ: Mr. Gilligan is a contractor. It was
13 designed by an engineer and Mr. Gilligan is a contractor and he
14 constructed the wall.

15 MR. GILLIGAN: Correct.

16 MEMBER GOODSELL: Is there any objection received by
17 the neighbors?

18 MR. MIGATZ: There is no formal objection. I contacted
19 him by -- by e-mail and I left him a phone call. He did send
20 me an e-mail back that says I'm not happy with your client or
21 the way you -- I'm not happy with your or your client, the way
22 they handled this so don't think I am consenting to this. But
23 he didn't object. But he --

24 MS. ALGIOS: Who said that?

25 MR. MIGATZ: The rear neighbor.

26 MEMBER GOODSELL: The rear neighbor and presumably he

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2 has looked at the timber retaining wall since it's been there
3 longer than this applicant.

4 MEMBER DONATELLI: So --

5 SECRETARY WAGNER: Was this photograph taken from his
6 property?

7 MR. MIGATZ: Well, I kind of leaned back. I didn't
8 trespass over his property.

9 MEMBER DONATELLI: What strikes me about this
10 application, is that I guess there are three different levels.
11 There is a lower level of the concrete retaining wall, then
12 there is the higher level that serves as the foundation from
13 rear of the garage and then there is the third level, which is
14 the timber retaining wall that was then made into a concrete
15 retaining block. So can you -- do you know and I know we have
16 the property cards here, but I haven't had a chance to review
17 them as I'm listening to the presentation. How long has the
18 garage been there on that retaining wall?

19 MR. MIGATZ: Since 1938 according to the assessment
20 card. The assessment card says it was there, but it was of an
21 undetermined age but it was there since '38.

22 MEMBER DONATELLI: And your client installed that --
23 the replacement for the timber wall. Was that engineered, is
24 that anchored into the ground?

25 MR. MIGATZ: It is was engineered. Yes. The
26 engineered plans have been filed with the building department.

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2 Not -- well, not -- not the existing lower section.

3 MEMBER DONATELLI: No. No. No. No. I'm talking
4 about the upper section.

5 MR. MIGATZ: Yes.

6 MEMBER DONATELLI: And the pool was built with a
7 permit?

8 MR. MIGATZ: Yes. Mr. Gilligan thought, you know, this
9 was a repair to the retaining wall, did not need a permit.

10 MEMBER HERNANDEZ: That photograph that you leaned over
11 to take, shows three components to the wall. Clearly the one
12 underneath the garage dates back to 1938.

13 MR. MIGATZ: That's not an issue.

14 MEMBER HERNANDEZ: Yeah. Yeah. Clearly. However, the
15 one behind it is the one we're discussing here, appears to be,
16 like you said, two different colors. Appears to be the
17 original retaining wall on the lower part and then the so call
18 replacement wall for the timber. Okay. They appear to be,
19 again, just by looking at a picture, approximately the same
20 size. All right. Is there anyway of knowing what the -- when
21 that lower wall was put in, because as I look at the topography
22 of the land, the way the land goes down in the photograph that
23 you showed in Exhibit 4, I think it was.

24 VICE CHAIRMAN FRANCIS: Mm-hmm. Four.

25 MEMBER HERNANDEZ: Not four. The other one. Four
26 shows it, but not that one. The one that has the garage.

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2 Here, Exhibit 8. The topography clearly goes down, right, but
3 where is the pool as it relates to this garage?

4 MR. MIGATZ: To the left of it.

5 MEMBER HERNANDEZ: So where that tree was, right? More
6 or less.

7 MR. MIGATZ: Right. Right.

8 MEMBER HERNANDEZ: Okay. I don't see a retaining wall
9 behind the garage. I know it would be on the other side.
10 Okay. I know it would be on the far side of the garage so it
11 wouldn't be shown on this picture, but if that retaining wall
12 was back there, then the back should be level. It shouldn't be
13 just a free standing wall with nothing to retain.

14 MR. MIGATZ: The garage -- if you look at the
15 photograph seven.

16 MEMBER HERNANDEZ: Yes.

17 MR. MIGATZ: The garage is acting as a retaining wall.

18 MEMBER HERNANDEZ: Correct. Correct. And -- and that
19 is the -- that is the back of the garage. No, I'm sorry, the
20 side of the --

21 MR. MIGATZ: Correct. No, that's the back of the
22 garage.

23 MEMBER HERNANDEZ: That's the back of the garage
24 looking at the neighbor's house?

25 MR. MIGATZ: No. No. That's the garage. That's a
26 picture --

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2 MEMBER HERNANDEZ: Looking from the neighbor's house.

3 MR. MIGATZ: Standing on Mr. Gilligan's three feet of
4 property and leaning over, yes.

5 MEMBER HERNANDEZ: Leaning over, yes. Okay. Now, if
6 you look at the other picture which is presumably looking at
7 the garage from your clients house, right?

8 MR. MIGATZ: Yes.

9 MEMBER HERNANDEZ: Okay. Now, where that tree is,
10 clearly there's a grade that dramatically drops.

11 MR. MIGATZ: No.

12 MEMBER HERNANDEZ: Sorry, am I seeing -- am I making
13 sense?

14 MEMBER DONATELLI: No, it does. You're talking behind
15 the tree.

16 MEMBER HERNANDEZ: Okay. Behind the tree clearly it
17 dramatically drops.

18 MR. MIGATZ: Yeah. Right.

19 MEMBER HERNANDEZ: That retaining wall, okay, the one
20 that you showed in the other picture facing the neighbor -- is
21 this the neighbor behind him? Is that the house that you were
22 leaning towards?

23 MR. MIGATZ: No.

24 MEMBER HERNANDEZ: Is it --

25 MR. MIGATZ: There's no picture of the neighbor's
26 house. I'm not sure what you're getting at, Mr. Hernandez.

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2 MEMBER HERNANDEZ: What I'm getting at is that -- okay.
3 I was trying to explain what my logic is. That clearly the
4 foundation of the garage is the foundation of the garage, has
5 to be there from 1938 or whenever the garage was built or
6 possibly before it. There is no doubt. I'm trying to
7 determine when did the lower part of this retaining wall come
8 into existence. You assumed that it was 1938. I can't make
9 that assumption, because maybe they just built the retaining
10 wall for the garage and the back was just property sloping
11 down.

12 MR. MIGATZ: There is no -- there is -- you're right
13 that you can't prove a negative. There's no -- I'm looking at
14 the building department file. All right. House is built in
15 1903. There are no plans on file. All right. So there's
16 nothing that would -- would demonstrate when that wall was
17 built. But for me, if you're saying that the prior owner
18 filled in all that land? Mr. Gilligan --

19 MEMBER HERNANDEZ: No. No. But they could have very
20 easily -- they could be very easily -- this foundation could
21 have been filled in in 1938 or thereabouts or before to build
22 the garage and this would have been the retaining wall. The
23 stone wall under the garage could have been the original wall
24 and subsequently somebody else did this. Maybe the -- maybe
25 this was the property, okay. Or maybe they just, like it -- it
26 doesn't seem to make any sense to me that they would build a

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2 stone retaining wall to the end of the garage and then continue
3 it a cement wall.

4 MR. MIGATZ: Instead of the stone wall you mean?

5 MEMBER HERNANDEZ: Yeah. Why didn't they continue with
6 a stone wall? I mean, like, why all of a sudden when the
7 garage ends. So to me, more logically, it was done at a later
8 time.

9 MR. MIGATZ: Mr. Hernandez, in all due respect, that's
10 a lot of speculation. Okay. The fact remains, okay. If you
11 -- if you -- the building department is not challenging
12 anything but the two feet. They are saying that you have
13 increased a prior nonconforming wall by two feet. They're not
14 challenging the -- the -- the other balance of retaining wall.

15 MEMBER HERNANDEZ: I would like to go back to our
16 previous approval to see if the plans show that there was a
17 retaining wall there that was 10 feet high.

18 MR. MIGATZ: It wouldn't have been on the plans.

19 MEMBER HERNANDEZ: It would have been on the site plan
20 or the -- what do you call the engineer's drawing?

21 MR. MIGATZ: Are you suggesting that we remove
22 everything?

23 MEMBER HERNANDEZ: No. Of course not. I'm not
24 suggesting that. I want to find out, because then that plan
25 should have showed a retaining wall. If you have a retaining
26 wall around your property and you're developing the property,

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2 your plans should show a retaining wall there. You've been in
3 front of us long enough.

4 MR. MIGATZ: The survey --

5 MEMBER HERNANDEZ: The survey. Thank you. The survey.
6 I forgot the name of it. Thank you.

7 MR. MIGATZ: The survey shows the retaining wall. The
8 survey that I submitted with this application. It doesn't show
9 the height, it shows the retaining wall.

10 MEMBER GOODSSELL: It doesn't show the height, it
11 doesn't show the pool, that's why I was asking you about it.
12 It was from 2021 when your client bought the house.

13 MEMBER HERNANDEZ: So you were cited for being too
14 high. That's what I'm trying to determine.

15 MR. MIGATZ: Well, yeah, the extra two feet.

16 MEMBER HERNANDEZ: No. No. No. No. No. It's both.

17 SECRETARY WAGNER: The first part of the disapproval
18 cites for being too high.

19 MR. MIGATZ: But if you read 208 F that they cited,
20 you've extended a prior nonconforming structure. That's what
21 they're referring to. Look this -- this is -- this is -- this
22 is some antics. We can't remove that wall. The whole property
23 will cave in. What is the relevance of that? It can't be
24 removed, Mr. Hernandez. We can remove the top two feet, but
25 that's not what this is really about. Remove the top two feet
26 and set in one inch. We can do that, but that's --

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2 MEMBER HERNANDEZ: You're also being cited for a wall
3 being too tall. If that wall is determined that it was built
4 after the fact. Okay. That's all I'm trying to determine,
5 whether it was built earlier or it was built later. What you
6 have shown me so far doesn't show that.

7 MR. MIGATZ: But again, what's the relevance. It can't
8 be removed.

9 MEMBER GOODSELL: The wall itself can't be removed, but
10 you have indicated that the top two feet could be removed.

11 MR. MIGATZ: Yes, and set back one inch, which is --
12 which is a difference without no distinction. I mean, that
13 makes no sense. Move -- take off the top two feet, move it in
14 one inch, put it back down to prevent the debris from going
15 over.

16 VICE CHAIRMAN FRANCIS: So, Mr. Migatz, the original
17 timber retaining wall was not -- was stacked the same way that
18 this addition. It wasn't setback, you know, the five feet?

19 MR. MIGATZ: Correct, from what I am told by
20 Mr. Gilligan when he bought the house. But it ended at the top
21 of the grade.

22 VICE CHAIRMAN FRANCIS: Right.

23 MR. MIGATZ: So the building department is saying
24 you've extended a prior nonconforming retaining wall is too
25 tall for a prior nonconforming but you extended it another two
26 feet.

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2 VICE CHAIRMAN FRANCIS: Another two feet.

3 MR. MIGATZ: So they're saying you need a variance for
4 the now the increased height and a variance because it extends
5 beyond the land it supports.

6 MEMBER DONATELLI: So, Mr. Migatz, as I'm sure you
7 know, we try to conduct a weigh and balancing here of the
8 factors that we are required to consider in connection with the
9 variance. Does your client and I know that you've indicated
10 that he's a contractor, does he have any estimate of what it
11 might cost to remove the top two feet of the retaining wall?

12 MR. MIGATZ: And then to set in it one inch?

13 MEMBER DONATELLI: And to set it in --

14 MEMBER GOODSSELL: Whether he chooses to replace it or
15 not is optional. We're asking whether -- how much it would
16 cost to take down.

17 MR. MIGATZ: I'll ask him to see if I can get an answer
18 for you. It would cost about \$4,500 to remove that top two
19 feet.

20 MEMBER DONATELLI: And when the pool was installed,
21 what is the size of the pool approximately?

22 MR. MIGATZ: I don't know.

23 MEMBER DONATELLI: Okay. Because I don't think it
24 showed on the survey.

25 MR. MIGATZ: No, the as built survey has not yet been
26 done.

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2 MEMBER DONATELLI: Okay. If the -- if the -- again, as
3 we weigh all the factors and determine the age of the original
4 retaining wall and then the timber wall that was then converted
5 to a concrete block retaining wall, would the pool have to be
6 reconfigured if that upper concrete retaining wall were
7 removed?

8 MR. MIGATZ: Absolutely. The whole backyard would cave
9 in.

10 MEMBER DONATELLI: Okay. And would there be an expense
11 or are you able to somehow estimate the expense of what the
12 removal or reconfigured pool might be under those
13 circumstances?

14 MR. MIGATZ: The whole backyard would cave in, Mr.
15 Donatelli. Have you been there?

16 MEMBER HERNANDEZ: We can't see the back of the house,
17 but we can see areas.

18 MEMBER DONATELLI: We can't see in the back of the
19 house. But what I'm -- I'm trying to help you.

20 MR. MIGATZ: That would be nice.

21 MEMBER DONATELLI: I'm trying to give you -- I'm trying
22 to put on the record, as we consider our five factors, what the
23 cost might be to make the pool smaller, to move the pool, to
24 reconfigure the pool if that upper retaining wall were not
25 there.

26 MR. MIGATZ: It's impossible to ascertain without a

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2 full set of engineered plans, because you would have to -- you
3 would have to build a retaining wall in steps so that the
4 backyard doesn't cave in and without an engineered set of
5 plans, cannot even -- couldn't even guess as to what that would
6 entail or cost. But it would be a tremendous charge.

7 MEMBER DONATELLI: Last question, at least for me for
8 the time being. I see that your client has installed a fence
9 on top of the retaining wall that -- that exceeds two feet.

10 MR. MIGATZ: It's not on top of the retaining wall.
11 It's inside the retaining wall. That's the six foot fence
12 required for the pool.

13 MEMBER DONATELLI: Okay. And that is a six foot fence?

14 MR. MIGATZ: Yes.

15 MEMBER DONATELLI: All right. Unless the Board has
16 other questions, I know that Ms. Algios has -- has asked the
17 question as to the Historic District. I would like to continue
18 this so that we may consider that in -- in our decision making
19 process. I think I would also like to review the application
20 for the installation of the pool. So -- so at least in my
21 mind, there is some unopened questions that I'd like to answer.

22 MR. MIGATZ: The pool did not come before you,
23 Mr. Donatelli.

24 MEMBER GOODSSELL: No, it would have been the building
25 department and we're just wondering why this issue on the
26 retaining wall being two feet too high --

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2 MR. MIGATZ: That's when it came up.

3 MEMBER GOODSELL: That's where it came up?

4 MR. MIGATZ: Yes.

5 MEMBER GOODSELL: It was built and then it came up. Is
6 that correct?

7 MR. MIGATZ: Yes. Not the pool, the retaining wall.

8 MEMBER GOODSELL: The retaining wall was built two foot
9 higher. We would like to look at the plans to see when the
10 pool was put in, whether the building department approved the
11 retaining wall. Whether it was three feet or did they approve
12 it five feet.

13 MR. MIGATZ: I'm not aware that -- that they dealt with
14 that two feet retaining wall at all. They dealt with the pool,
15 but I have not seen those plans.

16 MEMBER GOODSELL: Okay. That's part of what we would
17 like to see.

18 MEMBER DONATELLI: And again, that's why we would like
19 to continue. We just want to see if the issue was in any way
20 dealt with.

21 VICE CHAIRMAN FRANCIS: All right. Anything else?

22 MEMBER HERNANDEZ: No.

23 MEMBER DONATELLI: I don't know if Mr. Norgent is here
24 to --

25 (A discussion was held off the record.)

26 MR. NORGENT: Glen Norgent, Deputy Commissioner of the

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2 Building Department. It looks like there's a clarification.
3 This was written, in my opinion, that there was an existing
4 retaining wall that was greater than five feet in height, but
5 we don't know exactly how high it was, because the work was
6 done without a permit and we didn't have the existing survey so
7 he quoted this. Now, I would say that the property owner or
8 somebody should be able to testify as to what was the height of
9 the existing retaining wall before the work was done. If it
10 was less than 11 feet five inches, then that would have been an
11 extension of a nonconforming retaining wall. Plus, it's now
12 two feet above the grade which is also a violation.

13 So any questions?

14 MEMBER DONATELLI: Mr. Norgent, so if the retaining
15 wall, the upper portion of the retaining wall, were changed
16 from timber to concrete block, if hypothetically, it were the
17 same height, will that trigger a new variance for that height?

18 MR. NORGENT: Well, there's also the question about was
19 the original, like I don't know any -- if the original
20 retaining wall was removed in it's entirety and a new one
21 built, then the new one has to conform to the current code.
22 You would have built a five foot one set it back five feet,
23 build another five feet and set it back another five feet and
24 then one foot five inches. So I haven't had a chance to look
25 at the plans. If the plans are saying that it's a totally new
26 retaining wall, then the entire retaining wall has to conform

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2 to today's code or get a variance.

3 MEMBER DONATELLI: Okay.

4 MR. MIGATZ: Mr. Norgent, the owner testified that the
5 top section of the retaining wall that was timber was there
6 when he bought the house and what he did was replace the timber
7 section with concrete, because it was falling in disrepair. He
8 didn't build a whole new retaining wall, he replaced the timber
9 portion of it.

10 MR. NORGENT: Well, it looks like from the pictures,
11 that the entire retaining wall wasn't removed just the top
12 portion of it so I would leave that to the Board of Zoning
13 Appeals to determine what has to be done, because that's not an
14 occurrence that happens everyday and it looks like the -- to
15 me, it comes down to how tall was the wall before and we don't
16 have any plan -- I mean, we could look -- you could look online
17 to the Google street views to see what was there prior and then
18 make a determination.

19 MEMBER DONATELLI: Well, it's in the rear of the
20 property.

21 MR. NORGENT: Well, then forget about that.

22 MEMBER GOODSSELL: If I could ask the homeowner maybe
23 they can clarify.

24 MR. NORGENT: Right. That's why I said the only one
25 who might know is the homeowner. See, we would have asked for
26 that if it was done with a permit prior to it being

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2 constructed.

3 MEMBER GOODSELL: Mr. Migatz, I know you speak to the
4 homeowner. Perhaps I can ask you. The homeowners bought this
5 in 2021 I believe you indicated?

6 MR. MIGATZ: Yes.

7 MEMBER GOODSELL: When they bought this absolutely
8 lovely house, because it is a beautiful house. When they
9 bought this house, did they have home inspection, were pictures
10 taken, do they still have them, could we take a look, were
11 there pictures of the old timber retaining wall, was the old
12 timber retaining wall two feet higher than the level. That's
13 what we're asking.

14 MR. MIGATZ: The old timber retaining wall was not two
15 feet higher. I've said that. The old retaining wall ended at
16 the grade. When Mr. Gilligan replaced the timber wall, he
17 raised it another two feet, because he was building the pool
18 and the terrace, and he wanted to prevent debris from going
19 over the top of the retaining wall into the neighbor's yard.
20 So no good deed goes unpunished, I guess. He should have let
21 all the debris --

22 MEMBER GOODSELL: Not by this Board anyway.

23 MR. MIGATZ: Let all the debris blow over into the
24 neighbor's backyard. But I want Mr. Gilligan to put on the
25 record that when he bought the house that timber retaining wall
26 was there.

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2 VICE CHAIRMAN FRANCIS: Yeah, I think that's a good
3 idea.

4 MR. MIGATZ: Mr. Gilligan.

5 MR. GILLIGAN: Good morning.

6 VICE CHAIRMAN FRANCIS: Good morning. Please give your
7 name and address.

8 MR. GILLIGAN: James Gilligan, 62 Murray Avenue, Port
9 Washington. Good morning.

10 VICE CHAIRMAN FRANCIS: Good morning.

11 MR. GILLIGAN: So the wall, it was a timber wall at the
12 level. This right here, it was at that level and I extended it
13 two feet. I'm willing to take the two feet down if you so
14 decide.

15 MEMBER GOODSELL: Did you have a permit to extend it
16 two feet?

17 MR. GILLIGAN: It was all when I got the permit when I
18 went before the Landmark Commission. My understanding was in
19 kind to restore in kind which I was doing all along.

20 MS. ALGIOS: That's not in kind replacement. Going
21 from timber to a different material is not in kind, but I'm
22 waiting what on confirmation as to what exactly was approved.

23 MR. GILLIGAN: Okay, I understand.

24 MR. MIGATZ: It's a repair. I disagree with counsel.
25 It's a repair. He's repairing a wall.

26 MS. ALGIOS: That's incorrect. I disagree with you,

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2 Mr. Migatz.

3 MEMBER GOODSSELL: That's what we wanted to know,
4 whether or not if the timber portion came up two feet above the
5 land or did not.

6 MR. GILLIGAN: No, it did not.

7 MEMBER GOODSSELL: It did not.

8 MEMBER DONATELLI: I think we have enough.

9 VICE CHAIRMAN FRANCIS: Yeah, I think we have enough.

10 Thank you, Mr. Gilligan.

11 MR. MIGATZ: I think we're loosing sight of the forest
12 of trees here. The bottom line is he can't remove that
13 retaining wall. It can't be removed without catastrophic
14 results, having to reengineer a whole new step up wall and
15 reengineer the patio, the pool. I mean, this is a balancing
16 test. That, to me, that makes absolutely no sense.

17 MEMBER HERNANDEZ: Just to get it on the record, what
18 is the distance between the pool and the actual retaining wall?

19 VICE CHAIRMAN FRANCIS: I was just going to ask the
20 same question.

21 MR. MIGATZ: I don't know.

22 MEMBER HERNANDEZ: If I look -- again, just from your
23 picture, because I don't have measurements, I don't have
24 drawings, I can't tell what it is. It appears to be a minimum
25 of 10, 12 feet, maybe 15. I have no idea. But it's certainly
26 not that the pool is two feet away from the retaining wall.

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2 MR. MIGATZ: No.

3 MEMBER HERNANDEZ: We can agree on that. It's a fair
4 distance from the retaining wall. But if I look at an aerial
5 of the pool, again, no measurements, it appears to be a
6 substantial distance.

7 MR. MIGATZ: I can't agree or disagree with that.

8 MEMBER HERNANDEZ: No. No. Substantial is subjective.
9 I agree. But you are saying completely redo the whole
10 backyard, no, it will cut off a piece of the backyard but it
11 will not destroy the backyard and just to get it on the record
12 straight. That's all.

13 MR. MIGATZ: And, Mr. Hernandez, what does that
14 accomplish?

15 MEMBER HERNANDEZ: It could accomplish and again, I'm
16 not trying to make anything -- I'm just trying to understand
17 when things happened. You may get -- if you were rebuilding
18 the retaining wall, you could have built a five foot step back
19 retaining wall. That was an option that was not chosen at the
20 time and that's what I'm trying to determine, when was that
21 original retaining wall built. When I look at your pictures,
22 again, all I have is pictures. I have no drawings, I have no
23 measurements, but again, looking at the pictures, just as the
24 same way they could have gone straight up, they could have gone
25 in five feet that the code requires and gone up the five feet
26 and accomplish the same thing. That's all I'm trying to

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2 determine.

3 MR. MIGATZ: But you're -- he was -- he was -- in my
4 opinion, a repair to a retaining wall. If he put new timber
5 retaining wall there is that an in-kind? But instead of
6 putting timber that's going to decay again, he did the sensible
7 thing and made it concrete.

8 MEMBER HERNANDEZ: I'm not disagreeing with the
9 concrete. Okay. And I'm not even completely in disagreement
10 in what he attempted to do in adding the other two feet from
11 preventing the debris from going over. I think those are
12 probably smart things to do. I'm not necessarily disagreeing
13 with that. I'm disagreeing with when was the original
14 retaining wall put there how high was the original retaining
15 wall and how much of it was back filled. That's all. Now,
16 hopefully when we look at the past records we'll be able to see
17 when it was done.

18 MR. MIGATZ: You won't be able to see that. I went
19 through the building department files, Mr. Hernandez, you know
20 I do my homework before I come here.

21 MEMBER HERNANDEZ: I know you do.

22 MR. MIGATZ: I went through it all. There's nothing
23 there and if you've been to the property, you can see the
24 natural topography. You can see it from the street. You see
25 the way the house goes up. You see it from the street.

26 MEMBER HERNANDEZ: Yes. Yes. Yes. Absolutely.

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2 MR. MIGATZ: You see how it goes. I mean that's the
3 natural topography. Mr. Francis started this hearing by saying
4 that the Board likes to grant variances when they can. Well,
5 to me, this is a -- should be granted. The rear neighbor,
6 although he sent me an e-mail that he doesn't like me or
7 Mr. Gilligan, he didn't send in a letter of opposition, he's
8 not here to object to it. He's the only one who would be
9 affected by looking at 11 foot wall as compared to a stepped in
10 wall. A stepped up wall. So there is no opposition from the
11 neighbor. I'm having a hard time understand why the Board has
12 issues wit this.

13 MEMBER GOODSSELL: Mr. Migatz, you are not asking us to
14 approve a nine foot retaining wall. You're asking for an 11
15 foot retaining wall.

16 MR. MIGATZ: But what is the -- what is the difference
17 if that extra two feet is rebuilt one inch away from the
18 retaining wall as of right?

19 MEMBER GOODSSELL: As of right, that is his right.
20 You're asking us -- what if -- what if he wanted to build a
21 three foot retaining wall or a four feet. You're asking us to
22 approve something that is not in the code.

23 MR. MIGATZ: That's your job. That's why I'm here.

24 MEMBER GOODSSELL: We're trying to figure out why he
25 needs that extra two feet.

26 MR. MIGATZ: To prevent debris, pool toys, what have

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2 you from going over into the neighbor's backyard.

3 MEMBER GOODSELL: And that's what the six foot fence
4 does? There's also a six foot fence. A very nice six foot
5 fence.

6 MR. MIGATZ: He put a stockade fence there. But what's
7 the difference between the view of the rear neighbor. That's
8 what I can't understand. What is the -- what is the difference
9 to the rear neighbor. I mean, what he's looking at is a six
10 foot stockade fence on top of the one foot in retaining wall or
11 two foot -- two foot concrete block. What's the difference?

12 MEMBER GOODSELL: What's the difference? Let's see
13 whether or not we have sufficient reason to have an 11 foot
14 wall instead of a nine foot wall. That's what we're
15 considering.

16 MR. MIGATZ: Well, I'm giving you the reason. The
17 reason is to prevent the property from collapsing and the extra
18 two feet is to prevent debris from blowing into the neighbor's
19 backyard.

20 MEMBER GOODSELL: That's the issue we're considering.
21 That's the issue we're considering, the extra two feet and
22 reasonable minds can differ.

23 MR. MIGATZ: Yes, they can.

24 MEMBER DONATELLI: Yeah. So -- so -- so we're actually
25 -- we're considering two different things. We are considering
26 the overall height, which is 11 and a half feet and we are

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2 considering two feet above the grade.

3 VICE CHAIRMAN FRANCIS: Right.

4 MEMBER DONATELLI: And for completeness of the record,
5 I think we should mention one other thing that I haven't
6 mentioned before, which is that whether the replacement of the
7 timber portion of the retaining wall was in-kind or not
8 in-kind, the removal of that higher portion of retaining wall
9 might then somehow impact the foundation, side foundation of
10 the garage, which because you start messing with retaining
11 walls, things replace and I am not an engineer, but I can tell
12 you or Jay, you may know this better than I, but once you start
13 removing retaining walls, then you may also compromise the
14 foundation of the garage. And I'm not saying that that is a
15 factor or favor, but it is a factor that I think should be put
16 on the record just for the sake of completeness. I agree with
17 you it is a weighing factor, I said that earlier. When we look
18 at the expense of compliance verses noncompliance, that is
19 certainly one of the factors that we weigh upon. But again,
20 there are some holes in what we know so I would like the
21 opportunity to continue this so that we can conduct our
22 research and try to make the best decision. And as Mr. Migatz
23 says, there may not be answers to some of these questions, but
24 at least we will have given it a try.

25 VICE CHAIRMAN FRANCIS: I agree.

26 MS. ALGIOS: I also just would like to read from

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2 Chapter 27 of the Historic Landmarks section of the code.

3 "Replacement in-kind is defined and it's defined as the act or
4 process of replicating any historic exterior architectural
5 feature to substitute for the existing and deteriorated or
6 damaged architectural feature with like materials of similar
7 quality as the original feature."

8 MR. MIGATZ: That's not the building code rules.
9 That's the historic rules and regulation of the historic
10 district.

11 MS. ALGIOS: Right. But that's what the Historic
12 Landmarks commission has to base their approval on.

13 MR. MIGATZ: But that has nothing to do with the
14 building department of the zoning board.

15 MS. ALGIOS: No. But what I'm saying is whether or not
16 -- whether or not. We have to find out if the Landmarks
17 commission gave their approval for that replacement in kind.
18 That's what we will look into.

19 MR. MIGATZ: Okay. Well, you there.

20 MS. ALGIOS: I know I was there, but that was a while
21 back so I just requested the records.

22 MR. MIGATZ: Now, Chairman, if this Board is
23 contemplating telling the applicant that we have to remove that
24 top section and do a step in retaining wall, if you are
25 contemplating that as part of your decision, then we'll have to
26 get a new set of engineered plans to show you whether that's

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2 feasible.

3 MEMBER GOODSSELL: Wait. I'm -- I'm -- we're not asking
4 you to remove the top two feet. We're considering whether he
5 should move the top two feet. Whatever else he puts there
6 would be his own option as of right, but that's what we're
7 considering.

8 MR. MIGATZ: No. Mr. Hernandez has suggested that this
9 wall should be stepped back every five feet and that's what --
10 if that's what you're considering, we have to -- we can show
11 you whether or not that's even feasible to do. If that's on
12 the table. It sounds like it's something Mr. Hernandez is
13 considering.

14 MEMBER HERNANDEZ: I'm one vote on the Board.

15 MEMBER GOODSSELL: We've had retaining walls come in
16 front of us so we've considered the issue before.

17 MEMBER DONATELLI: So there are things -- many things
18 to consider. There are mitigating factors that might be
19 helpful that might grant the variance. We could do a bunch of
20 things, but, again, I'm just not there yet. I would like an
21 opportunity to look at the file.

22 VICE CHAIRMAN FRANCIS: I agree.

23 MR. MIGATZ: If I may point out Section 70-208F says a
24 nonconforming structure can be altered provided you do not
25 increase the nonconformity. So we can replace a timber -- we
26 can alter the existing retaining and replace the timber section

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2 with concrete, provided we do not extend the nonconformity by
3 making the wall higher. So replacement of the timber with
4 concrete, in my humble opinion, is as of right pursuant to
5 208F. The extra two feet is what needs the variance.

6 MS. ALGIOS: You're forgetting, Mr. Migatz, you're in a
7 Historic District. So if you were not, the analysis would stop
8 there. But this is a Historic District so the building
9 department is then going to refer it Landmark. They are then
10 going to look at this per the definition that I read to you.

11 MR. MIGATZ: That is totally two separate issues.

12 MS. ALGIOS: That's right. That's right. So if you're
13 correct and the Landmarks Commission had looked at this and
14 gave their blessing on it, then that is now a separate issue
15 and that's off the table.

16 VICE CHAIRMAN FRANCIS: Okay. Anything else, Mr.
17 Migatz?

18 MR. MIGATZ: No. I've exhausted my time.

19 VICE CHAIRMAN FRANCIS: I know you're here with us all
20 today. As Mr. Donatelli pointed out, we are going to continue
21 this case and certainly discuss it in a lot more depth in terms
22 of making a decision.

23 MR. MIGATZ: Since you are going to looking at other
24 documents, I request that the record be kept open and the
25 hearing be continued.

26 VICE CHAIRMAN FRANCIS: Absolutely. Absolutely.

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2 MEMBER HERNANDEZ: To be continued.

3 MS. ALGIOS: To be continued.

4 MR. MIGATZ: That will be to February 14th?

5 VICE CHAIRMAN FRANCIS: I believe that's the next date,
6 yes.

7 MR. MIGATZ: Okay. Thank you.

8 MEMBER DONATELLI: Thank you.

9 MR. MIGATZ: See you later.

10 SECRETARY WAGNER: Next appeal, Appeal Number 21499, -
11 Alexander and Mariana Shakhmurov; 41 Shadetree Lane, Roslyn
12 Heights; Section 7, Block 223, Lot 14 in the Residence-AA
13 Zoning District. Variance from 70-22.6, to extend a driveway
14 which exceeds the allowable amount of coverage of front yard
15 paving.

16 VICE CHAIRMAN FRANCIS: You've heard Appeal Number
17 21499, Alexander and Mariana Shakhmurov. Is there anyone here
18 interested in the application other than the applicant? Seeing
19 no hands. Sir, please give your name and address. Just one
20 second. Go ahead, sir.

21 MR. ACAMPORA: Martin Acampora, A-C-A-M-P-O-R-A, 6
22 Renee Court, North Babylon, New York 11703.

23 VICE CHAIRMAN FRANCIS: And you are here in what
24 capacity, sir?

25 MR. ACAMPORA: I am the contractor, designer. I'm
26 representing the Shakhmurov's and I'd first like to apologize,

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2 they had a family emergency and couldn't be here today so I
3 scrambled and put this together.

4 VICE CHAIRMAN FRANCIS: Not a problem.

5 MR. ACAMPORA: So the problem with their property is
6 when they purchased the house is that the driveway is too small
7 to really put two cars and effectively have an area for their
8 children to play. When they purchased the house, they observed
9 the neighbor as it is and I'd just like to make a -- submit an
10 Exhibit 1.1. It consists of all an overall map showing all the
11 properties next to it and as well as some close ups of these
12 properties. In that area that connects to their property
13 within the 300 foot limit, there are 40 homes, not all within
14 the 300 feet, but of those 40 homes, 11 of them lot coverages
15 are close to 50 percent, some over 50 percent. So when they
16 purchased the home, unknowingly about that 30 percent lot
17 coverage.

18 VICE CHAIRMAN FRANCIS: Not to be argumentative, but do
19 you have proof of what you just said. That they are at 50
20 percent or over?

21 MR. ACAMPORA: No. It can be observed. But no, I
22 don't have proof. I didn't want to even take photos of
23 someone's photos or bother them. So I just been went on Google
24 Earth and took blowups of some of these properties. But it can
25 be somewhat assessed by looking at the photographs.

26 MEMBER DONATELLI: To the Chairman's point and as you

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2 probably just heard from the prior application, sometimes an
3 application -- an applicant will take it upon themselves to do
4 something without permits.

5 MR. ACAMPORA: Correct.

6 MEMBER DONATELLI: And often we get photographs of
7 other houses in the neighborhood, but we have not proof whether
8 or not what they did was with permits or without permits.

9 MR. ACAMPORA: I understand that.

10 MEMBER DONATELLI: And so that is why we always ask
11 that question.

12 MEMBER GOODSELL: Mr. Acampora, when I drove that
13 block, on that specific block, there was approximately 20, 22
14 homes and six of them have circular driveways and there is one
15 of them, number 33, which to my vision, my -- my layman's
16 vision, looks like it clearly violates the front yard paving.
17 And if we're going to use it as a comparison, because I can see
18 why buying in that neighborhood you clients would want to put
19 in a circular driveway, you have to show us that these are
20 legal. If they're not legal, then you can't use them as an
21 argument that you should have one too.

22 MR. ACAMPORA: Well, I guess it speaks to the question
23 number one, right. Because it -- the neighborhood is like that
24 and number 10, I don't know if you noticed the first house on
25 the right, that's 70 or 80 percent lot coverage. It's the
26 whole front yard. But, you know, once again, I don't know if

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2 they're legal or not. My point of giving this document is to
3 say -- to support why they thought they were going to be able
4 to do it and I advised them that they weren't when I saw there
5 was triple A. A zoning that I've never seen before to be
6 honest. It uses 50 percent. At first I was, like oh, this is
7 doable, but then when I started to dig in, I saw it was 30
8 percent so they said would like --

9 MEMBER GOODSSELL: It's a very nice section of town.
10 It's a beautiful block.

11 MR. ACAMPORA: They said they would like to move ahead
12 and see if they can get a variance. But it, you know, question
13 number one is supported by that document, I guess. I cannot
14 prove someone's front yard lot coverage. I don't want to take
15 pictures of the house to show you all because it's, you know,
16 invasion of privacy I thought.

17 MEMBER DONATELLI: What is the purpose of their seeking
18 the circular driveway.

19 MR. ACAMPORA: Well, right now they can't really fit
20 two cars in their driveway so one is the street. But they have
21 two teenage sons and they'd like to have a place for their
22 teenage sons to mess around, you know, with the basketball and
23 such in the front yard without having to be in the street like
24 many people do. They're not looking to have, like, an official
25 sports court, but they're thinking about putting a hoop up on
26 the side of the house or maybe putting a temporary hoop up so

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2 they can play in the front yard and also keep cars off of the
3 street.

4 MEMBER GOODSSELL: Those houses that do not have a
5 circular or front yard paved driveway, they have managed to fit
6 and I've counted several of them with cars by extending their
7 driveway over.

8 MR. ACAMPORA: Right.

9 MEMBER GOODSSELL: Would such an extension require a
10 variance? Has the home owner considered that?

11 MR. ACAMPORA: Well, when I spoke to him about how we
12 would go about doing it, his concern was to be able to park
13 cars and have young driver's get in and out of the house. That
14 he desired a circular driveway. So it's a desire not a
15 requirement.

16 MEMBER GOODSSELL: You're preaching to the choir. I had
17 three teenage sons at one point. We had five cars, we had to
18 shoehorn onto my block so I get it.

19 MR. ACAMPORA: So to answer your question, it's a
20 desire not a 100 percent need.

21 MEMBER GOODSSELL: Thank you.

22 MR. ACAMPORA: And it would require removing a large
23 tree also that's part of the neighborhood topography.

24 MEMBER DONATELLI: I'm sorry, I didn't catch that.

25 MR. ACAMPORA: Yeah. If they expand the driveway width
26 wise this way just to make it square, there's a really large

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2 tree that's in the front yard that's, I think predates that
3 whole neighborhood and they would have to remove that tree in
4 order to do that. So it's designed now where it's made a
5 little bit wider to the left where two cars could park and one
6 car could still be able to turn around and get out. They can
7 even park four cars when the children get older. Right now
8 they have two and one of them parks on the street all the time
9 now.

10 MEMBER DONATELLI: I see that there is also a garage.
11 Do they use the garage for parking?

12 MR. ACAMPORA: I believe so. Sometimes. But once
13 again, it's considered a two car garage but it's not the size
14 of a two car garage where you can pull in and open your doors,
15 even if you took every single scrap, or bicycle and, you know,
16 garbage can out of there you still wouldn't be able to fit two
17 cars and open the doors.

18 VICE CHAIRMAN FRANCIS: It looks like it's only 10 feet
19 wide. Is that correct? The garage.

20 MR. ACAMPORA: No. It's 16 I think. I believe it's
21 16.

22 MEMBER HERNANDEZ: It's a one half. I'd just like to
23 add one thing, because Ms. Goodsell brought it up, which is the
24 house a couple of houses away that you mentioned had a very big
25 circular driveway that looks like it's over. The difference
26 between that house and what your client is proposing is that

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2 that house has two very large green islands on the driveway.

3 One at the curb and one at the house.

4 MEMBER GOODSSELL: That's true. That's true.

5 MEMBER HERNANDEZ: Okay. Obviously when you pave that
6 island it adds a lot of square footage.

7 MR. ACAMPORA: Right.

8 MEMBER HERNANDEZ: So again, the reason why I'm saying
9 it is that it's very difficult when you do a drive by, which we
10 all do. We all drive in front of the houses and look at them.

11 MR. ACAMPORA: Correct.

12 MEMBER HERNANDEZ: We need to be much more discernable
13 when we look at something, because at first glance, oh, yeah,
14 he's got a circular driveway or she's got a circular driveway,
15 I can do that too. But how deep you make the circular
16 driveway, how many green islands you leave in between, that's
17 all square footage.

18 MR. ACAMPORA: Do you have the plan?

19 MEMBER HERNANDEZ: No, I don't. I wouldn't have the
20 plan. I looked at when I drove by, I looked at it now in the
21 aerial. As I said, I can look on Google Maps and I can see
22 your client's house and the house two houses over and that one
23 has two very large green areas. When I looked at the proposed
24 plan for your client, they have the one against the curb but
25 they have paved everything right up to the house.

26 MR. ACAMPORA: No. Actually, there's a big island

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2 between the --

3 MEMBER HERNANDEZ: No. There's an existing planter,
4 according to your plans, that is only about three feet.

5 MR. ACAMPORA: Oh, against the house. Yeah.

6 MEMBER HERNANDEZ: Yes. And the other houses she was
7 mentioning has a very large half circle island on it. And
8 again, that island takes a way a lot of ground coverage.

9 MR. ACAMPORA: Right. But also, the circular part of
10 the driveway is only 10 feet wide. So that's bear minimum for
11 a circular driveway and that's, like, kind of the spur to get
12 out of the vehicle and be able to park.

13 MEMBER HERNANDEZ: Well, the curb cut, the one to the
14 right as you look to the house, the one to the right is 10 feet
15 wide.

16 MR. ACAMPORA: Right. Yes.

17 MEMBER HERNANDEZ: But the moment it approaches the
18 front of house, it becomes and I can't see the difference, but
19 I would say at least 20 feet wide which makes sense.

20 MR. ACAMPORA: In front of the garage.

21 MEMBER HERNANDEZ: And in front of the door of the
22 house. Because it's at least 45 feet to the house and it looks
23 like it's about midpoint. So somewhere in that vicinity of 20
24 roughly. It might be 18 or something like that. And then when
25 it gets in front of the garage it's all blacktop or whatever.

26 MR. ACAMPORA: Yeah. Pavors.

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2 MEMBER HERNANDEZ: Pavors, whatever. And that's, I
3 think, what's creating and then you have to the side of the
4 existing garage another 16 by 20 section, which I assume is the
5 basketball hoop is going to go.

6 MR. ACAMPORA: Yeah. But that's not blacktop.

7 MEMBER HERNANDEZ: No problem. But I'm saying it adds
8 the whole thing to the view. When you look at the house,
9 you're going to see all of this pavement, hard surface,
10 whatever.

11 MR. ACAMPORA: Yeah. Almost every house on that street
12 does that.

13 MEMBER DONATELLI: Is your client also considering
14 widening the driveway to the left of the premises, as you're
15 looking at the house from the street?

16 MR. ACAMPORA: Yes.

17 MEMBER HERNANDEZ: Yes. He is.

18 MEMBER DONATELLI: Would he also be widening it toward
19 that arborvitae?

20 MR. ACAMPORA: Yeah. So what happens is that width
21 that way gives him the room to park two cars and open the
22 doors. Then the rest is all about having the circular part and
23 getting out and that's 10 feet wide. But to make the arch,
24 right. So it depends upon where on that arch you measure it.
25 In front of the front door, I don't have a scale but I don't
26 believe it's 20 feet. There may be a part of the arch that is

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2 20 feet but not in front of the door. I just made a nice
3 curved arch from the center point and see there's another tree
4 on the right hand side, it was probably planted when they first
5 did the neighborhood. It's a blue spruce tree, a really nice
6 tree. So the reason the driveway curves in that curve is not
7 to disturb that tree or the other existing larger tree.

8 MEMBER DONATELLI: That is a lot of pavement for a
9 front yard and I understand your argument that there are other
10 houses in the area and that is certainly something we consider.
11 But again, we need to know whether or not those other houses
12 are complaint, or whether they requested a variance, or whether
13 they were done without a permit.

14 MR. ACAMPORA: I cannot answer that.

15 MEMBER GOODSELL: Okay. So they're all public records.
16 Technically the burden is on the applicant to show us that
17 these are legal. We can do a little bit of research ourselves,
18 which did not turn up at least on Shade Tree Lane, which did
19 not turn up any variances because that's easy for us to search.

20 MR. ACAMPORA: Okay.

21 MEMBER GOODSELL: But because there seem to be so many
22 houses on this street, like 25 percent that have front yard
23 paving, is it possible for you to look at just those houses on
24 the street public record and show us that those are in fact
25 legal driveways or that they -- some of them may meet setbacks,
26 some of them may meet the front yard paving requirement of 30

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2 percent or less, some of them may not.

3 MR. ACAMPORA: Yeah. I've been doing this a while.

4 MEMBER GOODSSELL: Some of them may have been put in
5 without applications.

6 MR. ACAMPORA: Yeah. I was just trying to make the
7 point with that document, you know, number one.

8 MEMBER GOODSSELL: I noticed.

9 MR. ACAMPORA: And when they purchased the house, why
10 they thought it was going to something they can do.

11 MEMBER GOODSSELL: Although, I appreciate the fact that
12 you went a 300 foot radius. I was most interested on those
13 houses on Shade Tree Lane that seem to have what your client
14 was asking for.

15 MR. ACAMPORA: Logic.

16 VICE CHAIRMAN FRANCIS: So would you like an
17 opportunity to do what Ms. Goodsell suggested and try to find
18 whether or not those are --

19 MR. ACAMPORA: Yes. If the board is inclined not to
20 approve it, yes, I would.

21 VICE CHAIRMAN FRANCIS: I think that's where we're
22 leaning. So we can continue your application. You can submit
23 that any time between now and February 14th and then we'll make
24 a decision subsequent to that.

25 MR. ACAMPORA: Thank you so much.

26 MEMBER GOODSSELL: We take what you say seriously that

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2 what you're showing us is the character of the neighborhood.

3 We understand that.

4 MR. ACAMPORA: Right. Right.

5 MEMBER GOODSELL: We had other cases where we had to
6 consider other factors as well when an applicant comes forward.

7 But we are asking the applicant to put a little bit of work
8 into it just to show us that there are other variances there.

9 MR. ACAMPORA: So if they're not a variance I should
10 just leave it off?

11 MEMBER GOODSELL: You should speak to your client about
12 whether it's really necessary and whether there is anything
13 that can be done that cuts down the additional footage. You
14 know, we're not -- I'm speaking as one board member, but I'm
15 not too concerned if it was five or 15 feet over, but you're
16 asking for, I believe it's 19 percent over.

17 MR. ACAMPORA: 19.

18 VICE CHAIRMAN FRANCIS: And keep in mind it's not
19 before us, but the entire backyard is paved pretty much.

20 MR. ACAMPORA: Yeah. There's a pool patio back there.

21 VICE CHAIRMAN FRANCIS: Yeah. Yeah.

22 MEMBER HERNANDEZ: And since we did talk about it, you
23 did a 25 foot radius throughout the front island of green. The
24 depth to the house is 45 feet so that's 20 feet in between of
25 pavement and it appears that the planter is about three feet
26 deep so it's about a 17 foot wide in front of the house. So it

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2 wasn't 20 feet as I said originally, but it appears to be
3 around 17 feet. 17 feet.

4 VICE CHAIRMAN FRANCIS: Okay.

5 MEMBER HERNANDEZ: You do not have to come in person,
6 you can just submit it via e-mail to the zoning board.

7 MR. ACAMPORA: By the 14th.

8 VICE CHAIRMAN FRANCIS: Oh, no before.

9 MEMBER HERNANDEZ: Yeah.

10 MR. ACAMPORA: Thank you for your time.

11 MEMBER HERNANDEZ: Thank you.

12 SECRETARY WAGNER: Thank you, so we're going to
13 continue this?

14 Next appeal, Appeal Number 21508, Lujo Thomas; 31
15 Kingston Street, New Hyde Park; Section 8, Block 345, Lot 25 in
16 the Residence-C Zoning District. Variance from 70-51.A, to
17 legalize a roofed-over deck that is too close to a side
18 property line.

19 VICE CHAIRMAN FRANCIS: You've had Appeal Number
20 21508. Is there anyone interested in the application other
21 than the applicant? Seeing no hands. Is the applicant here?

22 MEMBER HERNANDEZ: It's not marked as adjourned.

23 VICE CHAIRMAN FRANCIS: It's not marked as adjourned,
24 but I don't see an applicant.

25 SECRETARY WAGNER: All right. We'll do a second call.

26 Appeal number 21772.A, Masada, LLC, 29 Beechwood

1 Appeal Number 21772.A

2 Avenue, Port Washington; Section 5, Block 94, Lot 581 in the
3 Industrial-B Zoning District. Appeal for determination, or in
4 the alternative, conditional use 70-187.O, to legalize a prior
5 nonconforming outdoor storage structure located in the rear
6 yard, and variances from 70-129.B, 70-202.2, and 70-212.B, to
7 legalize a prior nonconforming outdoor storage area (per
8 Stipulation of Settlement 606625/2020) that is too large and
9 too close to the property lines, a storage structure that is
10 too close to the rear and side property lines, and rear yard
11 paving with no provision of onsite storm-water retention.

12 VICE CHAIRMAN FRANCIS: You've heard Appeal Number
13 21772.A. Is there anyone here interested in the application
14 other than the applicant? Seeing no hands. Please give your
15 name and address.

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

19 The application before you today involves the real
20 property located at 29 Beachwood Avenue in Port Washington. It
21 is known as Section 5, Block 94, Tax Lot 581 on the Nassau
22 County Land and Tax Map. The subject premises is located in
23 the Industrial-B District. The applicant who has owned the
24 property for over 25 years seeks a finding that the existing
25 use of the rear portion of the premises as an industrial
26 storage yard is a prior nonconforming use or in the

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2 alternative, the granting of area variances to maintain the use
3 of the storage yard for vehicles, material and equipment in the
4 rear yard of the premises and an area variance to maintain the
5 container in the rear yard. I would note with regard to the
6 McDonald's issue by the building department, specifically
7 section 70-202.2, the applicant does intend to install a dry
8 well to comply with this provision and eliminate this variance
9 and accept the condition as a requirement. In fact, the
10 applicant did file for a building permit application for the
11 installation of the dry well under building permit application
12 number RPD22-000197. So that application for that dry well is
13 on file.

14 MEMBER DONATELLI: I'm sorry, I hate to interrupt, but
15 that application is not part of this variance.

16 MR. MINERVA: That application would eliminate the
17 necessity for the variance for the storm water management.

18 MEMBER DONATELLI: And is that filed under a separate
19 permit?

20 MR. MINERVA: It's filed under a separate building
21 permit application, yes.

22 MEMBER DONATELLI: And has that permit been issued or
23 adjudicated?

24 MR. MINERVA: No. It's pending review.

25 MS. ALGIOS: So you're withdrawing your request for
26 that variance?

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2 MR. MINERVA: I will withdraw the request for an area
3 variance for section 70-202.2, as we have the application
4 pending to install that dry well.

5 The property is improved with a single family dwelling
6 built in 1928 in a rear industrial storage yard, which is used
7 by the current owner in connection with his landscaping
8 business and has been for over the last 25 years. This
9 property was the subject of a public hearing on November 13,
10 2019, seeking to maintain the same conditions but included a
11 use variance to maintain a mixed use property. That
12 application was denied by the Board on May 20, 2020. Sorry
13 2020. And an Article 78 proceeding under Index Number
14 606625/2020 was subsequently commenced. Parties entered into
15 to a settlement agreement providing that the mixed use for the
16 subject premises does not require a use variance and agreeing
17 to re-file for the rear storage -- to maintain the rear storage
18 and if it was denied again, to reapply to this Board for any
19 necessary area variances or a prior nonconforming finding,
20 which were the terms of the stipulation. The original hearing
21 under Appeal Number 20772, 19 affidavits were submitted from
22 prior owners and area residents that indicate that the use of
23 the rear of this property for an industrial storage yard has
24 been in existence as far back as the 1940s. We also submitted
25 a court decision for another property on the same block that
26 indicates that the nonconforming use must go back to 1951, as

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2 well as affidavits from other people with knowledge from 50s,
3 60s, 70s and 80s as to the store yard. The affidavits were
4 collectively submitted as Applicant's Exhibit A and the court
5 decision is Applicant's Exhibit B to the original hearing. I
6 respectfully request that the exhibits, the record and the
7 transcript from the original hearing be deemed in Exhibit 2 and
8 incorporated in this hearing.

9 VICE CHAIRMAN FRANCIS: Yes. Absolutely.

10 MR. MINERVA: Thank you. Thank you. It saves me from
11 resubmitting everything.

12 In that file, a copy of an appellate division second
13 department case, Abbatiello V. Town of North Hempstead, which
14 in holding, that the applicant has a prior nonconforming two
15 family dwelling, reiterated the standards for determining a
16 nonconforming property and that is arbitrary and capricious to
17 the applicant for the continuation of a nonconforming use with
18 evidence presented as to said use and that one specifically
19 dealt with prior owners in the area and residents affidavits as
20 well.

21 Shortly, I will also have the applicant's expert
22 witness testify as to the surrounding areas. You will see that
23 the area variance as requested and in the alternative, prior
24 nonconforming finding is in keeping with the character of the
25 area and will not be detrimental to the surrounding properties,
26 and that there are many other properties legalized in a similar

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2 manner in this area.

3 One other thing I specifically wanted to note, which is
4 in the prior record too. 4 Beachwood Avenue went through a
5 similar issue, you know, years ago in 1980. That was a
6 dwelling in the front with a rear storage yard for a towing
7 company. They were issued violations, it was litigated and the
8 violations were dismissed by the court for using the rear
9 storage for the towing trucks and it has been in use ever since
10 and that's right on the corner of that block. And you'll see
11 when Mr. Nelson submits his photos, it's certainly within the
12 120 feet of required setback for the storage yard. As most of
13 these properties Mr. Nelson will explain it, most of these
14 aren't that deep. Our property is only 100 feet deep so we
15 can't comply with the 120 foot setback requirement and as I
16 said, you have all the affidavits that are used that way for a
17 storage yard. And you can also see from the photos from 4
18 Beachwood and from all of the surrounding property owners that
19 houses and rear storage yards, that they are all over 15
20 percent of the lot area. At this time, I will call up
21 Mr. Nelson.

22 SECRETARY WAGNER: Mr. Minerva, can you just clarify,
23 you said there were exhibits you wanted to incorporate as
24 Exhibit 2?

25 MR. MINERVA: No. No. I wanted to incorporate the
26 entire record from the prior hearing and the transcript as an

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2 exhibit incorporated into this hearing.

3 SECRETARY WAGNER: You said that was Exhibit 2 though I
4 thought?

5 MR. MINERVA: We can call it Exhibit A.

6 SECRETARY WAGNER: But was there an exhibit one is my
7 question?

8 MR. MINERVA: No. No. I just referenced that on the
9 hearing that was held on November 13, 2019, that there were
10 certain documents that were exhibits to that hearing. But on
11 this hearing, I'm just asking for that collectively to be
12 admitted into evidence.

13 SECRETARY WAGNER: Okay. There was no prior. I just
14 wanted to clarify.

15 MR. MINERVA: We can call it Applicant's Exhibit A.

16 MEMBER DONATELLI: So you mentioned a series of
17 affidavits that were submitted in connection with the earlier
18 application and you're incorporating those for reference as
19 exhibits, but we don't have those here before us right now.
20 Did those affidavits specifically refer to the storage shed at
21 some property.

22 MR. MINERVA: No, and I'll clarify. With regard to the
23 storage container or storage shed, we are not putting forth the
24 argument that that's a prior nonconforming use. For the
25 storage shed itself, we're asking for the area variances for
26 that and we're also asking this Board to consider those

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2 separately. The rear storage yard, which we are requesting a
3 nonconforming finding or in the alternative area variances.
4 We're asking you to consider those variances on a separate
5 denial on the denial sheet. 70-212.B separate from the denial
6 for 70-187.0 and 70-192.B that specifically relate to the
7 container itself. So we would ask you to consider those
8 separate.

9 VICE CHAIRMAN FRANCIS: So with regard to the
10 container, I guess the question is, why can't it be moved to a
11 compliant location?

12 MR. MINERVA: Yeah. So let me just take a look at my
13 site plan.

14 MEMBER GOODSSELL: Is it actually movable? Is it built
15 on a foundation?

16 MR. MINERVA: No. Let me confer with my client, but I
17 believe it's just a container. It's not on a foundation. So
18 there's a few things we can do. So if the Board is totally
19 uncomfortable with the whole container itself, my client would
20 just, in lieu of that, he could put the trailers that you see
21 on the back of landscape trucks that are movable in the yard
22 instead. But we could move the container. It looks like we
23 could move the container, I don't know about the full 20 feet.
24 It looks like the backyard, you know, it's 100 foot deep
25 property. I can tell you right now. Let me just calculate the
26 fee that the house is so I know the depth of the backyard,

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2 because the container is 20 feet long and if we have to have a
3 20 foot setback, that's going to bring it 40 feet. You just
4 want to make sure there is enough room to do that. Yes. Our
5 backyard is 51.6. Yeah. So let me just check where the doors
6 are.

7 MEMBER DONATELLI: Sorry, I would like you to check,
8 but I just want you to ask a few questions. But again, for the
9 time being, we're limiting ourselves to the container. What
10 does it store? Does it store anything flammable? Is it fire
11 rated? You've answered it is moveable. So -- so when we talk
12 about, for example the setback on the side or zero setback on
13 the rear yard, these are things I think are germane to the town
14 code and that's why it's important for us to get answers to
15 those questions.

16 MR. MINERVA: Understandable. So it's storing the
17 lawnmower equipment. The lawnmower, the blowers. They're
18 stored -- they're used during the day and at the end of the day
19 they're put back there without fuel and then they're refilled
20 in the morning when they go back out for the next job. So it's
21 just the lawnmowers, the blowers and whatever else, you know,
22 landscaping equipment that the applicant has.

23 MEMBER HERNANDEZ: So basically the container is like a
24 shipping container with the metal doors?

25 MR. MINERVA: Yeah. Yeah. It is a shipping container.

26 MEMBER HERNANDEZ: It is a shipping container?

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2 MR. MINERVA: It's a small shipping container.

3 MEMBER DONATELLI: Fire rated?

4 MR. MINERVA: It's steel so. Steel, metal container.

5 It's not a wood shed that would burn.

6 MEMBER HERNANDEZ: Yeah. It's not a shed.

7 VICE CHAIRMAN FRANCIS: I just find it, you know, most
8 landscapers do not empty the equipment of gasoline.

9 MR. MINERVA: Well they use it. They use it during the
10 day.

11 VICE CHAIRMAN FRANCIS: Right.

12 MR. MINERVA: So they have done 12 lawns and they're
13 using the blower at all the house. So they are filled up in
14 the morning and they use all the equipment throughout the day
15 and by the time they bring it back at the end of the day, it's
16 empty or near empty. They don't refill it that evening. My
17 client says he actually empties it before he stores them. So
18 they're not stored full of gasoline.

19 MEMBER DONATELLI: Please continue.

20 MR. MINERVA: I'm going to have Mr. Nelson at this time
21 come up and testify, and then after he gives his appearance, I
22 would just ask if the Board would accept Mr. Nelson as a real
23 estate expert.

24 VICE CHAIRMAN FRANCIS: Absolutely. He's been before
25 us many, many times.

26 MR. NELSON: Good afternoon. It's still morning. It's

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2 five minutes.

3 VICE CHAIRMAN FRANCIS: It feels like afternoon.

4 MR. NELSON: It's Barry Nelson, 220 Pettit Avenue,
5 Bellmore, New York 11710.

6 VICE CHAIRMAN FRANCIS: No, of course not.

7 MR. NELSON: I'm on my own.

8 VICE CHAIRMAN FRANCIS: You are all on your own.

9 MR. NELSON: I would like to first submit photographs
10 of the subject property and the surrounding uses. I have an
11 original packet and three copies, and I believe there's 30
12 photographs.

13 SECRETARY WAGNER: This will be Exhibit 1.

14 MR. MINERVA: That will be Exhibit B or one and two,
15 whichever.

16 SECRETARY WAGNER: B is good. Thank you.

17 MR. NELSON: I have some aerial views that include the
18 subject property, the surrounding area most affected by the
19 subject property.

20 SECRETARY WAGNER: I'm going to make this C.

21 MR. NELSON: As counsel mentioned, this application or
22 this property was before this Board, I believe it was October,
23 November of 2019. At that time, I did prepare and testify on
24 the application in 2019. I have visited the property recently
25 several times. My photographs bear the date that I took it and
26 that would be my most recent inspection of the subject property

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2 and surrounding area. Generally, the property is west of Port
3 Washington Boulevard, east of the Long Island Railroad. The
4 official map of the town will indicate, except for about 100
5 feet west of Port Washington Boulevard to the subject property
6 and for at least one block west, one block south and several
7 blocks north, it's an all Industrial-IB Zoning. The nearest
8 residential zoning would be at least a quarter of a mile west
9 of the subject property, at least six, seven blocks north.
10 Port Washington Boulevard generally is a Business-A Zoning
11 District. The parcels are unique all along Beechwood Avenue
12 between Port Washington Boulevard and South Bayliss Avenue to
13 the west. Everything on the north side is typically small
14 parcels, say between 30, 35 feet wide and 100 feet depth, as is
15 on the south side and north side of Willis Avenue to the north
16 and further north to Davis Avenue within the radius of the
17 subject property. Most of the properties on the radius map
18 indicate residential. They are mixed uses on Beachwood Avenue.
19 The south side, a little bit more intense industrial type uses
20 and in an industrial zone. My photographs will depict same and
21 in my opinion, those photographs accurately depict the
22 character of the neighbor and the pattern of development. The
23 aerial views will indicate -- will support that most, if not
24 all the parcels, within the 200 foot radius or 300 foot radius
25 have mixed uses, residences and storage, outside storage of
26 vehicles, contractors equipment, et cetera in their backyards.

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1
2 Some of them have them in their front yards. The parcel to the
3 west of the subject property, 31 and 33 Beechwood Avenue are
4 automotive related uses. Those properties are just about built
5 to their side and rear property lines with the storage of
6 vehicles, equipment in front of the buildings on the north side
7 of Beechwood Avenue. To the east you'll find similar type
8 developments on the south side where there's storage in front
9 of the buildings and in the side yards, as well as in the rear
10 yard. The applicant here seeks to maintain the existing uses.
11 Storage outside in the rear yard, entirely within the rear yard
12 and there is fencing and screening to mitigate any viewing from
13 the street. While substantially to the west, as well as even
14 east and the south side, many of them have front yard storages
15 of containers, trailers, trucks, et cetera. The parcels to the
16 north, some of them have -- just to the north of the subject
17 property, I believe it's 30 Willis Avenue, nonconforming use,
18 multifamily, two two-story buildings. The southerly building
19 is right up to the property line of the rear yard and you would
20 find that just to the east of that building, 28 Willis Avenue
21 and continuing east. Some of these uses even have open storage
22 or refuse containers in their rear yard to the property line.
23 The storage container that's being looked to maintain on the
24 subject site, at the northwest corner is a still container, it
25 has a roof and a door on the side. It is not affixed to the
26 land. It's a storage container. It's what you define as, Mr.

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2 Minerva mentioned, a cargo type of container. The outside
3 storage, if you look at my photographs, you will see that right
4 to the east on several of the parcels and some of them have
5 garages right on the property lines to the north. The building
6 to the west is a concrete stucco building, same as the building
7 to the north. Generally the area is established, many of them
8 are nonconforming uses. The -- from Port Washington Boulevard
9 going west you have the vacant parking lot, I believe it's been
10 before the town board for automotive related uses. You have
11 the car wash, you have the mixed uses right up to the subject
12 property. To the south side you have the Chester Towing, which
13 was part of the application before this Board that received
14 outside storage and mixed uses, commercial, industrial,
15 intensive uses. It's my professional opinion that the request
16 before this Board is in keeping with the character of the
17 neighborhood and is not detrimental to the surrounding
18 properties. Why do I say that? I worked in 2019, I've been in
19 this area prior to that. There has been some redevelopment on
20 the -- on -- to the northeast of the subject property while the
21 existing uses have been in place. The industrial uses, more
22 owners than what the applicant is proposing on the south or
23 looking to maintain on the south side. You have the sporting
24 center to the south providing parking right the in front of the
25 building and then you have the utility building at the
26 northeast corner of Beachwood Avenue and South Bayliss Avenue.

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2 That said, it's a reasonable request for the applicant before
3 this Board to maintain what's been there while the applicant
4 has owned the property from at least 25 to 30 years. I believe
5 it was 25 years when we did it in 2019 and the affidavits that
6 were submitted for that application would support back to
7 1950s, late 1940s. The variances sought, as I indicated and
8 mentioned, the building to the west right on the property line
9 to the west, the buildings to the north right on the property
10 line, storage and garages along the north side of Beachwood
11 Avenue, as well as on the south side. Majority of these
12 properties are nonconforming uses and developments. Thank you.

13 MEMBER GOODSELL: Mr. Nelson, is any part -- I was not
14 on the board in 2019 so I have no memory of this. I joined two
15 years later. I'm the newest member. Is any part of the
16 subject property currently being used for residential?

17 MR. NELSON: Yes.

18 MR. MINERVA: Yes. There's a single family residential
19 dwelling on the front and that is being rented and that has the
20 proper permit.

21 MEMBER GOODSELL: And it 's currently being occupied?

22 MR. MINERVA: Yes. I will check my book, but I believe
23 that's been the case for the full 25 years that he's owned it.

24 MEMBER DONATELLI: Can you address outdoor storage as
25 required by the code, of course it has to be more than 125 feet
26 and it can be in excess of 15 percent of the lot. Can you

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2 address the coverage of more than 15 percent of the lot and
3 also that 125 foot setback?

4 MEMBER GOODSSELL: Thank you, Mr. Nelson.

5 MR. MINERVA: So one, it's a small parcel. It's an
6 undersized parcel and the equipment that my client has, you
7 know, will occupy significantly more than the 15 percent of the
8 parcel area. 15 percent, if the lot is under 4,000 square
9 feet, so you're talking about five or 600 square feet that
10 would be permitted to be occupied. The rear yard is, I
11 believe, per the denial, is about 1,900 square feet and it does
12 meet the use of the entire yard and that will go to two points.
13 One, the prior nonconforming but in the alternative we are
14 asking for the area variance and in Mr. Nelson's testimony, the
15 extent of commercial storage in the surrounding area, it would
16 be in keeping with the character of the area and would not be
17 detrimental of exceeding the 15 percent of the storage.

18 MEMBER GOODSSELL: Mr. Minerva, can I ask you a question
19 again. Do the tenants in the house have any use or occupancy
20 of any part of the backyard?

21 MR. MINERVA: I believe the answer is no. No. It's
22 just solely used by the owner.

23 MEMBER GOODSSELL: Do they have any parking space
24 designated for them on the premises?

25 MR. MINERVA: Yes, they do. They do park off street in
26 the driveway. So my client utilizes the rear storage yard.

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2 He's the owner of the property and the homeowner does park the
3 vehicle in the driveway.

4 MEMBER DONATELLI: So getting back to the storage
5 vehicles. These are landscaping vehicles?

6 MR. MINERVA: Yeah. Landscape trucks.

7 MEMBER DONATELLI: And they're taken out every morning
8 and they're returned to the site every afternoon?

9 MR. MINERVA: When in season, yes. Yes.

10 MEMBER DONATELLI: Okay. And when not in season?

11 MR. MINERVA: I believe they're just stored there
12 during the winter. Yeah.

13 MEMBER DONATELLI: They're just stored there. As part
14 of the landscaping business, are there snow plows there for
15 winter, is there storage of snow removal equipment?

16 MR. MINERVA: Yes. There are two -- two snow plows
17 that can be attached to the vehicles.

18 MEMBER DONATELLI: And as the vehicles are removed in
19 the morning, where do the employees park? Do they -- do they
20 then occupy the spaces in the rear -- in the backyard that had
21 been occupied by the trucks?

22 MR. MINERVA: Yes.

23 MEMBER DONATELLI: So whether the trucks are there or
24 not, there is always parking back there. There is always
25 storage back there?

26 MR. MINERVA: Yes.

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2 MEMBER DONATELLI: I am pleased that the applicant is
3 -- withdrawn the -- that part of the application that was
4 dealing with the paving, because in point of fact I am very
5 familiar with Beachwood and I know that all you need is a
6 slight drizzle to cause flooding on that road. So the fact
7 that the applicant is installing dry wells and is withdrawing
8 that part of the application is -- is some -- I am -- I am
9 thankful for that.

10 Having said that, I, of course, would like to have the
11 chance to review the record from the prior application and so I
12 would ask, unless the Board has any other questions --

13 VICE CHAIRMAN FRANCIS: I just want to clarify with
14 regard to the container, the storage container. I don't know
15 whether or not we got a definitive answer as to whether that
16 could be moved to a more complaint area?

17 MR. MINERVA: Yes, but not the 20 feet because there is
18 not going to be enough room. So if we can move it five or 10
19 feet forward away from the setback and that is, I think a two
20 story masonry building behind there. So if we can move it five
21 or 10 feet forward from the rear setback line, that would still
22 work.

23 VICE CHAIRMAN FRANCIS: Okay. Okay.

24 MEMBER DONATELLI: So I ask that we reserve decision on
25 this and that would give us a chance to review the prior
26 filings and exhibits and consider the issue carefully.

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2 VICE CHAIRMAN FRANCIS: I agree. So we will reserve
3 decision on this. It probably will not be decided today.

4 MR. MINERVA: All right. Can I just give a brief --
5 before we close, a brief brief summary?

6 VICE CHAIRMAN FRANCIS: Absolutely. I thought you were
7 done. Absolutely.

8 MR. MINERVA: I'll be very brief. I just wanted to
9 indicate, you know, it would be, based on my representation,
10 Mr. Nelson's testimony and the prior record, we believe we've
11 made the case for prior nonconforming use or in the
12 alternative, we've met the requirements for the area variance.
13 Mr. Nelson has testified that the undesirable change and
14 character of the area will not be the result of granting this
15 application. There are no other methods to contain the relief
16 that the applicant needs. He's been using that property that
17 way for the last 25 years. The variance was not self created
18 as he purchased this property as -- as it's currently being
19 used and we believe that went back all the way back to the
20 1940s and there will be no adverse affect on surrounding
21 property owners. There is a conditional use for the storage
22 container and those, just briefly, is in harmony with the
23 surrounding uses. Mr. Nelson testified that all the
24 surrounding uses are being used in a similar manner, will not
25 be other development. The area is fully developed and also in
26 a similar manner, no noise, light or vibration is going to

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2 disturb the neighbors, there is nothing hazardous and in terms
3 of vehicle traffic. It's di minimus. There's a lot of truck
4 traffic in this area and we're talking about just a few
5 landscape vehicles that will be coming in and out once a day in
6 season and then I would also note the applicant will certainly
7 comply with all performance standards of 70-189.2 as required
8 by the code. Thank you.

9 VICE CHAIRMAN FRANCIS: Thank you.

10 MEMBER HERNANDEZ: Thank you.

11 MEMBER GOODSSELL: Thank you.

12 VICE CHAIRMAN FRANCIS: So as I indicted, we will
13 reserve decision on this particular application.

14 SECRETARY WAGNER: Appeal number 21508, Lijo Thomas, 31
15 Kingston Street in New Hyde Park, Section 8, Block 345, Lot 25
16 in the Residence-C Zoning District. Variances from 70-51.A, to
17 legalize a roofed-over deck that is too close to a side
18 property line is being adjourned until March 6th.

19 And we're just going to take a five minute break before
20 the next hearing.

21 (A recess was taken.)

22 SECRETARY WAGNER: Next appeal, Appeal Number 21505, 9
23 Powerhouse Road LLC (Starbucks); 9 Powerhouse Road, Roslyn
24 Heights; Section 7, Block 72, Lot 71 in the Business-A Zoning
25 District. Appeal for determination, or in the alternative,
26 variances from 70-203.G, 70-203.T(2)(c), 70-203.T(2)(f),

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1
2 70-203.T(2)(j) and 70-196(J)(1)(a), a conditional use under
3 70-126.F, and variances from 70-103.B, 70-103.F, 70-103.M,
4 70-103.O, 70-134, 70-203.T(2)(a)[3], 70-203.T(2)(b),
5 70-196.J(1)(b), 70-196.J(1)(f), 70-196.J(2)(a), 70-196.J(2)(b),
6 70-196.J(2)(c), and 70-196.J(2)(d), to construct a new
7 drivethrough coffee shop (a conditional use), with parking
8 spaces and access aisles that are too small, no loading zone,
9 parking in a front yard, a dumpster located within a required
10 rear yard setback, a dumpster, bypass lane, and handicap access
11 aisle located within a required landscape buffer, which makes
12 the buffer too small and does not effectively screen the
13 facility from the adjacent residential property, vehicle
14 standing spaces interfering with the ability to use parking
15 spaces, vehicle standing spaces located in a way so that the
16 headlights are visible from the adjoining residential use,
17 pedestrian pathways conflicting with vehicle standing spaces
18 and the drivethrough lane and aisle, a bypass lane that is not
19 being provided for all vehicle standing spaces, construction of
20 too many signs on a wall, wall signs that are too tall and too
21 high above the ground, too many detached ground signs on the
22 property, a ground sign that is too large, ground signs that
23 are too close to property lines, and ground signs that do not
24 have enough space between the bottom of the sign and the
25 ground.

26 VICE CHAIRMAN FRANCIS: You've heard Appeal Number

1 Appeal Number 21505

2 21505, 9 Powerhouse Road LLC. Is there anyone interested in
3 the application other than the applicant? I see one hand, two
4 hands. Okay. You will have a chance to speak after.

5 Mr. Migatz, please give your name and address.

6 MR. MIGATZ: Bruce W. Migatz, Albanese and Albanese,
7 1050 Franklin Avenue, Garden City.

8 Ms. Wagner has described the application very well. Do
9 you have any questions?

10 VICE CHAIRMAN FRANCIS: She does a good job.

11 SECRETARY WAGNER: I need a Starbucks coffee after
12 that.

13 MR. MIGATZ: I have premarked and bound Exhibits 1
14 through 12 that I am going to hand in. One for the record and
15 one for each member of the Board and I have one I can give to
16 the lady and gentleman to follow along. Should I swing this
17 around so that the audience can see it.

18 I appear before you representing the owner of the
19 property 9 Powerhouse Road LLC and the contractor Starbucks.
20 With me this afternoon is Michael Rant, the project engineer,
21 second project engineer on the job Dan Conte from Starbucks and
22 Aaron Machtay from VHB Traffic and Engineering. I will walk
23 you through the application and any questions you have of any
24 of the people I just introduced, they can come forward and
25 answer those questions for you.

26 Just for the record, property is Section 7, Block 72,

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1
2 Lots 71 and 72 in a Business-A Zoning. The subject property
3 presently has a vacant gasoline service station on it, which
4 was constructed pursuant to a variance in 1957 in Appeal Number
5 5554. In Appeal Number 14285 decided in September 26, 1990,
6 the conditional use permit was granted to add a canopy and a
7 kiosk as an accessory use. The 1957 application, the site plan
8 had no landscape zone. They granted a variance of a 15 foot
9 landscape buffer. In the 1990 application, they provided a
10 five foot landscape buffer.

11 Exhibit 1 in my packet, there's two photographs of the
12 subject property. The first photograph shows the vacant lot to
13 the left of the vacant gasoline station, which is shown in the
14 second photograph of Exhibit 1. Exhibit 2 is the prior BZA
15 decision and the approved plan in the 1990 application, Appeal
16 Number 21285 and you can see that approved plan only has a five
17 foot landscape buffer. The application before you is to
18 construct a Starbucks drivethrough only facility. The building
19 itself is only 986 square feet, one story building. There are
20 no -- there will be no seating. It is strictly a drivethrough
21 operation.

22 Let me go through the site plan and while I do that, I
23 can address the various variances and determinations that --
24 that got cited. The site plan shows seven off street parking
25 spaces and by code, none are required but seven are provided
26 for employees. Even though we don't have to provide parking

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1 spaces, the fact that we do provide them, the building
2 departments says and correctly so, that they must meet the
3 dimensions. The alternative is we show no parking spaces and
4 that eliminates the variance, but we don't want to do that. We
5 want parking spaces for employees. So the variance is required
6 for parking spaces that are less than 10 feet in width. The
7 applicant has provided six off street parking spaces nine feet
8 in width and one handicap space eight feet in width, which
9 meets the handicap code requirement. The VHB traffic report
10 before you is of the opinion that a nine foot wide parking
11 spaces are adequate and the town code, in fact allows nine foot
12 wide parking spaces for offices of a percentage and this Board
13 has many times granted a variance for nine foot wide parking
14 spaces. Most recently in the prior Starbucks application that
15 is before you in Greenvale, which I will be referring to
16 several times. I spoke to Kathleen Dickson and I told her I'm
17 going to cite her application. She had no problem with that.
18 That was Appeal Number 21366, 114 Northern Boulevard where a
19 variance was granted for nine foot wide parking spaces for
20 employees. The other variance in connection with the parking
21 spaces was aisle width less than 18 feet. Site plan has 12
22 foot wide parking spaces on each side, 15 feet on the west
23 side. They're only used by employees and if I may, on the east
24 side, although it's only 12 feet, providing nobody is in the
25 drivethrough lane, there is more than 20 feet for the employees
26

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1
2 to come in in the morning and leave at night. VHB traffic
3 report, again, opines that based upon the nature of this
4 operation, that the aisle width is adequate. A variance of
5 70-103.M for one parking space that encroaches 1.9 feet into
6 the required front yard, that's this space on the west side.
7 That is encroaching into the front yard, but the front yard
8 being the service road of the LIE. And I submit to you that
9 slight encroachment has no adverse impact on drivers using the
10 LIE service road. Then I turn to the inbound vehicle standing
11 spaces. The code only requires three, we have provided 13.
12 The disapproval notice cites that two of the vehicles standing
13 spaces interfere with the adjacent parking spaces. That is the
14 last two vehicle standing space along the east side would
15 interfere with the employee parking. When those vehicles
16 standing spaces are occupied, I think it's safe to presume the
17 employees already parked their car and they are inside. Again,
18 VHB traffic report looked at this and they find that that width
19 is adequate. Now, a determination is sought that a variance is
20 not required for the last three VSS, vehicle standing spaces
21 and the disapproval notice says the headlights are visible from
22 the adjacent property. I submit to you that they are not,
23 because the site plan shows there is a five -- existing five
24 foot high retaining wall on top of which the applicant is
25 proposing a seven foot high stockade fence. So that 12 feet
26 would block any of the headlights of those last three cars in

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1
2 the vehicle standing spaces. And the houses to the north of
3 us, that is their backyard. That is improved with garages for
4 the most part, but I will submit to you that those last three
5 vehicles with headlights will not be visible from the adjacent
6 residences, because of the fence. But alternatively we seek a
7 variance to permit those last three standing spaces. Again,
8 that variance can be eliminated if we eliminate those last
9 three spaces, but that's not a real good thing to do.

10 Starbucks want to have, based upon their criteria, they want to
11 have those 13 vehicle standing spaces. Second determination is
12 sought and a variance is not required to permit pedestrian
13 walkways that are not designed to minimize and the code says
14 minimize conflicts with the vehicle standing spaces. Minimize
15 is subjective. We submit to you that we had minimized
16 potential conflicts. There's two crosswalks. That's minimal
17 number of crosswalks that is feasible to get people from the --
18 the employees from the parking spaces to the store. So we have
19 minimized it as much as possible. I don't think a variance is
20 required for that, but alternatively we have sought a variance.
21 The code requires one outbound parking space. We have provided
22 that. That is for the vehicle that has picked up their order
23 and now they're waiting to exit and they're putting their
24 wallet back in their coat or back in their pocketbook and
25 that's -- that one standing space meets code. Building
26 department cites a 10 foot wide bypass line. We do have a 10

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1
2 foot wide bypass lane, which is what the code requires. But
3 the building department has taken the position that not every
4 vehicle has access to that bypass lane. Everybody up through
5 the ordering station, up through the pre-menu board, the
6 ordering station, coming around that turn, they all have access
7 to the bypass lane. The code does not say that every car in
8 the que must have access to the bypass lane and I know that
9 Starbucks has done studies on this and in fact it was presented
10 at the last hearing for Starbucks that once people place their
11 order, they don't leave. Very, very rare will someone leave.
12 So when you pull in and I know from my own practice, if I pull
13 in and there's a long line waiting to order, I leave. But once
14 I placed my order, I made my commitment. I made my order, I'm
15 going to wait. So everybody prior to putting in their order
16 and even after they have put in their order, they have access
17 to the bypass lane. There is nothing in the code that says
18 that every single vehicle has access to the bypass lane. So we
19 don't think we need a variance for that, but alternatively we
20 have applied for that variance. There's no loading zone.
21 Starbucks gets deliveries at these facilities, either during
22 off hours or during closed hours. They will either come by a
23 tractor trailer or by box truck. It depends upon how many
24 other stores are on that driver's route, whether it's coming by
25 a tractor trailer, coming by a box truck. But in any event,
26 they always come during off hours or during closed hours. The

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1 driver has access to the store, key to the store. Unloading
2 takes only about 30 minutes and they're in and they're out.
3 This variance was granted in the Greenvale application. They
4 too did not have a loading zone for the same philosophy. A
5 variance is required for lack of a 15 foot buffer zone. That
6 actually is cited twice. It's cited once under the general
7 section 70-203.G, that's any time you have a business adjacent
8 to a residence you need a 15 foot buffer zone. Let me address
9 that first, because I did seek a determination that we do not
10 need a variance of that. Somewhat academic, because the
11 drivethrough section of the code still says you need a 15 foot
12 buffer zone. All right. But with respect to section 70-203.G,
13 there's a prior variance that runs with the land and we have to
14 have a five foot buffer zone. Although it's academic because
15 we need the variance for the drivethrough code requirements,
16 it's still noteworthy, because this property can be
17 redevelopment should Starbucks be turned. This property can be
18 redeveloped and that variance runs with the land, where you can
19 have, I'll say it now, a great big parking lot with a five foot
20 buffer zone. But like I said, that is academic, because
21 70-203.T(2)(b), which has to do with the drivethrough lane per
22 se, requires a 15 foot wide buffer zone. We have -- we have an
23 open area of 14.5 feet to the drivethrough que lane, but then
24 we have -- we have 4.5 feet for the bypass lane and then we
25 have a 4.5 foot landscape buffer zone, which, based upon a
26

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2 preliminary landscape zone, I say preliminary because if we get
3 to the town board stage, they are going to dictate, I believe,
4 what landscaping they want to see. So there is 4.5 foot
5 landscape buffer zone shown to be planted with arborvitaes. A
6 planting height six to eight feet with grow height of 10 to 15
7 feet. Behind that there is an existing five foot high concrete
8 wall and on top of that wall, we propose to put a seven foot
9 high stockade fence. If you look in the photograph Exhibit 1,
10 one you can see that most of the neighbors back there already
11 have a stockade fence. I believe -- because we can't rely on
12 their stockade fence, they have the right to take that down so
13 we are proposing to put in front of their fence, a seven foot
14 high stockade fence on our property. Our property goes beyond
15 that -- that -- that five foot wall.

16 MEMBER DONATELLI: Mr. Migatz, does the retaining
17 wall --

18 MR. MIGATZ: Yes. It belongs to the owner.

19 MEMBER DONATELLI: Applicant.

20 MR. MIGATZ: Yes.

21 MEMBER DONATELLI: Thank you.

22 MR. MIGATZ: And it stops on the top of the grade.

23 MEMBER DONATELLI: You're paying attention.

24 MR. MIGATZ: So that is a variance and I would say that
25 is probably the most significant variance that we are seeking
26 at this point. But you can see that there is sufficient

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2 buffering through the arborvitaes, the existing wall and the
3 fence on the top. Bear in mind that this property could be
4 refurbished with a five foot landscape zone with a three story
5 high office building. A variance is required for the location
6 of the dumpster, which is in the required rear yard setback.
7 That is located in the northwest corner. There is no other
8 feasible place on the site to put that -- that -- that
9 dumpster. It is screened by the arborvitaes. It is screened
10 by the five foot concrete wall and it is screened by the seven
11 foot high fence that would be behind the -- behind the wall.
12 Before I move onto the ground signs, do you have questions of
13 the engineers regarding the site layout or Aaron Machtay
14 regarding the traffic flow?

15 MEMBER HERNANDEZ: I just have one question on your
16 proposed stockade fence of seven feet. As you know, the
17 neighbors to the north it's their backyard so they have a six
18 foot as of right fence on that side. Is there a particular
19 reason why you're going to seven verses matching their six?

20 MR. MIGATZ: Higher is better to give more screening
21 and I think their they or estimated their fence to be five feet
22 high. Six foot high fence in the backyard is usual. But in
23 any event, we are allowed to have seven feet because we're
24 business property adjacent to a residential property and the
25 seven foot is better. I know there is one couple here, you
26 know, we're open to suggestions as far as what kind of fencing

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2 or screening they want to see.

3 VICE CHAIRMAN FRANCIS: The garbage pick up from that
4 location, time of day -- what time of day would that be?

5 MR. MIGATZ: They endeavor to have that, again, in off
6 hours so it doesn't interfere with the customers.

7 VICE CHAIRMAN FRANCIS: And access for the garbage
8 truck, would they have to go around that same similar route?

9 MR. MIGATZ: Part of the plans we submitted does have a
10 traffic plan -- traffic movability plan. That is part of the
11 plan that demonstrates a truck does have the ability to move.
12 Do you want to have Mr. Rant to talk about that?

13 VICE CHAIRMAN FRANCIS: Yeah, please.

14 MR. RANT: Good evening -- I'm sorry, good afternoon,
15 Board Members. Michael Rant, Northcoast Civil, 39 West Main
16 Street, Oyster Bay, New York. We did prepare a site
17 circulation plan. This application is on a service road so it
18 is governed by both the New York State DOT and the Nassau
19 County DPW. So they requested how vehicles can access the
20 property and make sure it's safe. So we have part of our
21 submission set. The garbage trucks would enter on the only
22 exit, which is on the east side of the property. They would
23 head in, load the dumpster, they would exit and heading back
24 west on the service road. So there is adequate traffic lane
25 movability for the garbage truck.

26 VICE CHAIRMAN FRANCIS: Thank you.

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2 MR. RANT: Thank you.

3 MEMBER GOODSSELL: Mr. Migatz, before you move onto
4 signs, I have a question for you on the property itself. The
5 development is going to be on Tax Lot 71 and 72. Is that
6 correct?

7 MR. MIGATZ: Correct.

8 MEMBER GOODSSELL: Okay. Right now on the survey,
9 current survey, it looks like there is one story concrete
10 building that comes over to Lot 72. Is that coming down?

11 MR. MIGATZ: Yes.

12 MEMBER GOODSSELL: Okay. Was that part of the gas
13 station which is on the corner?

14 MR. MIGATZ: Yes. No. No. That's separate. No. No.
15 The corner gas station is a separate gas station. There used
16 to be a Mobile gas station here since 1941.

17 MEMBER GOODSSELL: I know it's now a 76 gas station.

18 MR. MIGATZ: No, that's a different property. That's a
19 different property. That's a corner property.

20 MEMBER GOODSSELL: That's a corner property. So the
21 building that is on Tax Lot 72, that is going to be what? Was
22 that a service station?

23 MR. MIGATZ: Yes.

24 MEMBER GOODSSELL: Has that been remediated or just
25 abandoned? It's just coming down. Were there any gas tanks
26 there?

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2 MR. MIGATZ: I can't answer that at this point. That
3 would be the subject, I presume, of the building permit
4 application.

5 MEMBER GOODSELL: Okay. Okay. Because it looks like
6 there is some demolition that has to be done to make the lot
7 big enough to do the proposed drivethrough and I'm just
8 comparing the survey to the current plan. Thank you.

9 MR. MIGATZ: Okay. I have, for demonstration purposes,
10 an enlarged print of what is in the packet as Exhibit 3, where
11 I have highlighted in yellow the -- all of the signs and I have
12 numbered them, so as I go through them you can follow along so
13 the court reporter doesn't go crazy when I say here.

14 SECRETARY WAGNER: Which exhibit is this?

15 MR. MIGATZ: This is three.

16 Now, the signs that are subject of this application,
17 some are not really signs. They are menu boards, but the
18 building department calls them signs. These are all the
19 typical signs that you would see at virtually every Starbucks
20 and what was at -- that you saw at the last hearing in the
21 Greenvale Starbucks application. The building department cites
22 a variance to permit seven ground signs, where only one is
23 permitted. Now, the one ground sign permitted as of right is
24 the typical ground sign, which I've advertised -- which I
25 marked as number four in the lower right hand corner. You see
26 four, you see five, but number four is the pylon sign and a

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1
2 picture of that sign is Exhibit 4 in your -- in your -- in your
3 hand out of exhibits. That sign meets code in -- in -- in all
4 respects. Let me withdraw that. It requires a variance of .7
5 feet. It is setback 9.3 feet from the property line. So a
6 variance is required for .7 foot setback, but the height of the
7 sign and the size of the sign meets code. Now, the other six
8 ground signs that the building department says they all need
9 variances. There are two directional signs, they're required
10 by the town code for a drivethrough. Enter sign and exit sign.
11 I'm going to address each of these separately. The other four
12 so called ground signs, in my opinion, are not signs. It's a
13 pre-menu board, it's a clearance height bar, an order screen
14 and a menu board. The building department considers these
15 signs. They really are incidental or accessory structures to a
16 drivethrough. They are not signs advertising the business, but
17 the building department has always treated that as signs and I
18 do not seek a determination on that, because this Board has
19 granted those variances in the past recognizing that those are
20 not really signs. I'll go through them one by one. Exhibit 5
21 in the handout is the drivethrough sign and on your marked up
22 site plan, you will see that number five, for the directional
23 sign, that is the sign that says drivethrough. A variance is
24 required because it doesn't have three feet of open space. It
25 is kept low intentionally to be less obstructive and it's a
26 small sign that points to the drivethrough entrance. It needs

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2 a variance, because it is not setback 10 feet. The code says
3 all ground signs must be setback 10 feet. Well, you can't set
4 the sign back 10 feet, because it's supposed to show the cars
5 coming off the service road turn here. So it's setback 11.25
6 inches. A similar sign was granted a variance in the Greenvale
7 application, Appeal Number 21366. Sign number six is on the
8 west side of the property. I'm sorry, it's on the west side of
9 the drivethrough lane showing the exit. If you look at where
10 number six is, it's right after the drivethrough pickup window
11 and that sign -- you have a picture of that as Exhibit 6. It
12 says exit only facing Powerhouse Road and then it says thank
13 you facing the car that has just picked up their -- their
14 coffee. That needs a variance, because it doesn't have a three
15 foot clearance and -- and it's more than one ground sign. That
16 was granted in the Greenvale Starbucks as well.

17 MEMBER GOODSSELL: Mr. Migatz, are you saying sign
18 number five, there's actually two signs?

19 MR. MIGATZ: It's one sign two sided.

20 MEMBER GOODSSELL: It doesn't count as two signs.

21 MR. MIGATZ: No. No. One sign. Exhibit 7, we have a
22 picture of the clearance bar. That's number seven on -- on the
23 site plan I gave you. The building department calls that a
24 sign. No comment on that.

25 MEMBER DONATELLI: It's a sign that your car may be too
26 high.

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2 VICE CHAIRMAN FRANCIS: Right.

3 MR. MIGATZ: Right. So they call that another ground
4 sign for which we need a variance. Again, that was granted in
5 the Greenvale Starbucks application as well. Exhibit 8 is the
6 pre-menu board. Number eight on that site plan and you have a
7 picture of that as Exhibit 8. Not really a sign. It is an
8 accessory structure for any drivethrough that serves food to
9 have a pre-menu board. It's not advertising the business on
10 the premises. It's letting people know what food and drink are
11 being offered. But building department says we need to have a
12 variance because there's more than one ground sign and it has
13 less than three feet of open space. The pre-menu board has 19
14 inches of open space. We don't want to make it any higher,
15 then the people can't read the pre-menu board. Sign -- so
16 called sign nine --

17 MEMBER GOODSELL: Question about that. Is this an LED
18 sign that changes or is this a what I'll call a flat sign?

19 MR. MIGATZ: It is digital. Typically it's digital.

20 VICE CHAIRMAN FRANCIS: The purpose of this is what
21 now?

22 MR. MIGATZ: It's to speed up traffic flow. So before
23 you get to sign number nine, which is the ordering sign.

24 VICE CHAIRMAN FRANCIS: Right.

25 MR. MIGATZ: You can look while you're waiting for the
26 car in front of you. You make your selections as to what you

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2 want.

3 VICE CHAIRMAN FRANCIS: So the ordering sign also has
4 the same list of beverages and whatever on it?

5 MR. MIGATZ: Yes.

6 VICE CHAIRMAN FRANCIS: In addition to that, there's
7 another sign next to it, number 10, that is also a menu board.
8 It seems to be a little bit too many menu boards.

9 MR. MIGATZ: Many people get up and they still don't
10 know what they want. So they can look at the --

11 MEMBER HERNANDEZ: This is a screen.

12 VICE CHAIRMAN FRANCIS: Yeah. Right. So there is no
13 menu on the order screen?

14 MR. MIGATZ: No.

15 VICE CHAIRMAN FRANCIS: Okay. Okay. Now, I -- okay.
16 I'm fine.

17 MR. MIGATZ: So number nine is not really a sign.
18 That's the digital order screen where you place your order and
19 number 10 is not really a sign. That's the five panel menu
20 board so when you forgot what you wanted between the pre-menu
21 board sign and now you're at the ordering sign -- ordering
22 screen, you have the menu board in front of you again. Same --
23 same --

24 MEMBER HERNANDEZ: And just for the record, although
25 these are not -- do not have the three foot clearance in the
26 bottom, they are open in the bottom and that is a pedestal.

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2 It's not a big rectangle going down to the bottom.

3 MR. MIGATZ: That's correct. The pre-menu board has 19
4 inches of space, the digital order screen has 22 inches of open
5 space and the menu board has 19.45 inches of open space. Not
6 the three feet. Can't make it any higher then you can't see.
7 And to be repetitive, same menu boards, ordering screen were
8 granted variance in the last Starbucks that was before you in
9 the Greenvale application. Before I move onto wall signs, any
10 questions about ground signs?

11 VICE CHAIRMAN FRANCIS: No.

12 MR. MIGATZ: Exhibit 11 is a rendering of the east
13 elevation and the north elevation. The north elevation faces
14 the homes to the rear. There's no sign on that wall. The east
15 elevation is -- faces Powerhouse Road, faces the drivethrough
16 entrance and the building department says there are two signs
17 there. Starbucks is one sign and drivethrough is a second
18 sign. Building department says both signs need a variance,
19 because you only have one sign on a wall. Only one of the two
20 signs needs a variance. You're allowed to have one sign as of
21 right and it's only the second sign that needs a variance.
22 Those -- those signs do not need any other variances. They
23 meet the requirements. Similar variance granted in the
24 Greenvale Starbucks. Exhibit 12 is the south elevation, which
25 only has the Starbucks logo on it. The -- and -- I'm sorry,
26 and drivethrough.

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2 VICE CHAIRMAN FRANCIS: Drivethrough.

3 MR. MIGATZ: So once again, only one of those signs
4 needs a variance. Ones permitted as of right. The building
5 department did not city size, but they did cite that the --
6 that the logo is 18 -- I'm sorry, strike that. The variance is
7 permitted for that Starbucks logo disc, which is -- measures 60
8 inches, vertical measurement, where only 54 is required. That
9 variance was granted in the Greenvale application as well. And
10 a variance or height above grade, 18 feet permitted. For some
11 reason it's 18 feet, two inches. And if the Board feels
12 strongly about, that that can be lowered two inches.

13 MEMBER HERNANDEZ: Is that the -- the drawings don't
14 show heights so I -- I'm assuming that's the top of the sign?

15 MR. MIGATZ: It does show the height, but it's reduced.
16 It's very hard to read, but it is shown.

17 MEMBER HERNANDEZ: So it's 18.2 to the top so then the
18 building itself is probably 20 feet high or so. Can you see
19 the measurement of that?

20 MR. MIGATZ: 19.5 feet.

21 MEMBER HERNANDEZ: Okay. Thank you.

22 MS. ALGIOS: Bruce, I just have a question just for my
23 own edification. The digital order screen is where you order.
24 That's that single screen and what is the five panel menu board
25 for?

26 MR. MIGATZ: Because when you -- when you get -- when

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2 you -- between the pre-menu board and the ordering board, in
3 case you forgot what you wanted or you want to change your
4 mind, you can look in front of you and see the menu again.

5 MS. ALGIOS: Oh. So the menu is not on the order
6 board?

7 MR. MIGATZ: No. No. Mr. Conte is here from
8 Starbucks. I want to make sure I'm describing this correctly.
9 Mr. Conte, is that correct?

10 MR. CONTE: Sure. Yes.

11 VICE CHAIRMAN FRANCIS: Mr. Migatz, one second. Just
12 one moment. Because I thought I saw a menu on the order screen
13 itself.

14 SECRETARY WAGNER: Yeah. We saw that as well.

15 MS. ALGIOS: That's why I asked.

16 VICE CHAIRMAN FRANCIS: Yeah. This one.

17 MR. MIGATZ: I think when you order it pops up as to
18 what you order, but let me have Mr. Conte come forward.

19 MR. CONTE do you want me to step up?

20 MR. MIGATZ: Yes, please. From my own personal
21 experience, when you order it pops up on the screen.

22 VICE CHAIRMAN FRANCIS: I don't drink Starbucks so I
23 have no idea.

24 MR. CONTE: Dan Conte, the address is 38 Campbell
25 Street, Red Bank, New Jersey. So yeah, the way to explain it
26 is, when you're at the ordering station, it's a digital panel.

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2 So when you order, it's going to show up on the board what you
3 order. There is no menu to look at on that particular board.
4 That's the five panel board that you see right here. So in
5 other words, when you're at this point, you can speak to
6 somebody but see in front of you what you're trying to order
7 and then the pre-menu you guys figured out before.

8 MEMBER HERNANDEZ: What we're seeing in this rendition
9 here is basically the order that I have placed, it's popping up
10 on there so I can say, oh, no, I made a mistake.

11 MR. CONTE: Right. Correct. Yes. Correct. Yeah.
12 Yeah. Yeah. Is this right, you know, yes.

13 VICE CHAIRMAN FRANCIS: So referencing the exhibit
14 again. If I drive up to this, I don't see anything on this
15 board. I don't see these cups at the bottom, I don't see
16 anything?

17 MR. CONTE: There might be a graphic, an art graphic of
18 the Starbucks logo that I don't have any control over. I don't
19 know what that is, but that's just a disseminated from, you
20 know, a design from corporate. But you're not going to be
21 looking at, you know, a grande mocha late or whatever.

22 VICE CHAIRMAN FRANCIS: Right.

23 MEMBER HERNANDEZ: Unless you order it. If you order
24 it then it pops up.

25 MR. CONTE: Unless you order that. Exactly.

26 MEMBER GOODSSELL: All three signs are LED signs?

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2 MR. CONTE: So I actually -- I thought you guys were
3 talking about the menu board. That's going to be digital.

4 MEMBER GOODSSELL: That's going to be digital.

5 MR. CONTE: But the preorder, that's just a graphic
6 inside of the sign.

7 MEMBER GOODSSELL: And the menu board is a digital sign.
8 Is that correct?

9 MR. CONTE: Correct.

10 MEMBER GOODSSELL: And they all face the neighbors.
11 They face the driveway, but they also face the neighborhood.
12 Is that correct?

13 MEMBER HERNANDEZ: Sideways.

14 MEMBER GOODSSELL: Sideways.

15 MR. CONTE: More or less towards the vehicle I would
16 say in the drivethrough.

17 MEMBER GOODSSELL: And are those signed turned off,
18 connected at night. What happens when Starbucks closes?

19 MR. CONTE: Yeah, I think we have the ability to turn
20 them off per whatever guidelines you recommend. Yeah.

21 VICE CHAIRMAN FRANCIS: Okay. Thank you.

22 MR. MIGATZ: We also need a conditional use permit.
23 But with respect to the area variances, I think I more or less
24 touched on those factors that we don't think this will have an
25 adverse impact on the community, because number one, it is on
26 the expressway service road. There is no traffic going through

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2 the neighborhood. It's -- you enter from the service road and
3 you exit onto the service road. The employee parking is
4 strictly for employees so you're not going to have problems
5 with cars backing up and shopping around. It's strictly
6 employees. And there is sufficient screening, we believe
7 between the arborvitaes, the five foot wall and the seven foot
8 fence on top that you are not going to see from the adjacent
9 property those ordering screens or all the cars that are in
10 that -- in that drivethrough. So we submit it will not have an
11 adverse impact on the community. I don't think any of them are
12 substantial variances. Some of these are Type II actions, some
13 are unlisted actions, but either way they are standard
14 variances for -- for a Starbucks that were granted in the past.
15 As to the difficulty, as a matter of law, you buy a property
16 there is a difficulty, but that's only one factor and I
17 mentioned feasible alternatives. We can eliminate a lot of the
18 parking variances by eliminating parking spaces altogether, but
19 that's not really a feasible alternative so that's why we are
20 seeking those variances for those parking spaces and the
21 aisles.

22 MEMBER HERNANDEZ: For the sake of clarity, parking is
23 not really customer parking because there will be no customers
24 to park and go in. It's really staff parking, employee
25 parking?

26 MR. MIGATZ: That's correct. And I read the transcript

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2 from the Greenvale application and the question was asked,
3 well, how are you going to stop people who are in the
4 neighborhood who are going to walk in and not know this is a
5 drivethrough. You're not going to have that issue here,
6 because it's the service road of the expressway. Nobody is
7 walking down the service road of the expressway, except me when
8 I'm taking pictures and almost getting run over. But other
9 than that, you're not walking down the service road so you're
10 not going to have that issue. People will know right away --

11 MEMBER GOODSSELL: No. But the situation, I think, that
12 we want to avoid is somebody is clipping along on the service
13 road on Powerhouse Road, the service road of the LIE suddenly
14 misses the Starbucks, misses the entrance, pulls over and walks
15 over there thinking that they can get a cup of coffee. We
16 don't have too many exclusively drivethrough's. You mentioned
17 Greenvale, but Greenvale hasn't even broken ground yet. So we
18 don't have on Long Island too many of these just drivethrough's
19 and so the situation I envision is not if somebody from the
20 neighborhood is gonna walk down or that the rear neighbors are
21 going to climb down a ladder, that's just not going to happen,
22 but I envision people speeding past realizing there's a
23 Starbucks and thinking that they can pull over.

24 MR. MIGATZ: Ms. Goodsell, I don't think that's
25 realistic. I don't see anybody pulling over on the service
26 road of the expressway.

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2 MEMBER GOODSSELL: Oh, you don't me. I'm sorry.

3 MR. MIGATZ: Getting out of their car and -- and
4 walking. There's no sidewalk there. Okay. They're walking
5 down the service road and those cars --

6 MEMBER GOODSSELL: In between the trees and into the
7 pedestrian parking lot.

8 MR. MIGATZ: And by looking at this building and seeing
9 all the signs drivethrough, a reasonable man or woman is going
10 to realize there is no seating. It's a small little building.
11 It's less than 1,000 square feet.

12 MEMBER GOODSSELL: I've knocked on a window or two
13 before and said excuse me, can you help me. I agree that
14 Starbucks has done what they can to minimize this. But yes, I
15 am Starbucks fan and as I said, we did -- we did make Greenvale
16 eliminate. They wanted something like 33 signs and we got them
17 down to, I don't know how many. 12 or 13. We did make them
18 eliminate some signs. Like the sign that said thank you that
19 we said that's just not necessary. But we did allow them to
20 keep the signs that said drivethrough, drivethrough,
21 drivethrough, emphasis on drivethrough. It's something the
22 public just, at least in Nassau County, is not used to yet.

23 MR. MIGATZ: Well, I think -- I read that transcript, I
24 read the decision and I believe every sign that we are asking
25 for was approved.

26 MEMBER GOODSSELL: I believe you are correct. That's

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2 why I asked you whether or not the exit sign and the thank you
3 sign were two signs.

4 MR. MIGATZ: Yeah. One sign. It says thank you on one
5 side and exit on the other side.

6 VICE CHAIRMAN FRANCIS: Mr. Migatz, I don't see any,
7 like, generalized lighting posts on the property. Are there
8 going to be, you know, down facing lighting?

9 MR. MIGATZ: There will be. We did not put that on
10 this plan, because this has to go to the town board if you
11 approve the variances, at which point we will get a detailed
12 range plan, more detailed landscape plan, lighting plan and so
13 forth.

14 VICE CHAIRMAN FRANCIS: Okay.

15 MS. ALGIOS: Bruce, how many employees are they
16 anticipating?

17 MR. MIGATZ: At peak hours no more than seven, maybe
18 eight and otherwise less than five and not -- we've got seven
19 parking spaces, but not all these employees -- if there are
20 eight employees there during peak hour, they don't all come by
21 car also.

22 MEMBER DONATELLI: Am I reading this plan correctly,
23 this enlargement that you gave us, it looks like it's about 28
24 feet from where the pre-menu board is to the rear property
25 line. It's a little bit difficult to read, because it is
26 enlarged.

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2 MR. MIGATZ: Well, it's 14.5 to the drivethrough lane
3 and the drivethrough lane is 10 feet so it would be 24.5 feet.
4 I think that's what it says. Let me ask Mr. Rant.

5 MR. RANT: The building itself for the pre-menu board
6 is 31.5 feet from the property line. It's just in front of the
7 building so it's about -- it's about 28 and a half feet.

8 MEMBER DONATELLI: Okay. Yeah. So I'm reading the
9 enlargement correctly.

10 MR. RANT: And to touch on the parking, part of the
11 requirements from Nassau County was to put -- there is signage
12 of no parking along there and they are also requiring striping
13 to delineate that vehicles cannot park on the service road. So
14 hopefully that will deter parking in front.

15 MEMBER GOODSSELL: Like me.

16 MR. MIGATZ: Except Ms. Goodsell.

17 MEMBER GOODSSELL: Except me when I'm determined to get
18 a cup of coffee. While I have this gentleman up, how are you
19 going to deal with mobile orders. Is this Starbucks going to
20 accept mobile orders?

21 MR. RANT: That would not be a question for me.

22 MEMBER GOODSSELL: Okay. Then in that case, I'll let
23 whoever is going to handle that. And the reason I ask is
24 because people preorder and think they're skipping the line.
25 There is no skipping the line. It's one line.

26 MR. CONTE: That's correct.

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2 MEMBER GOODSSELL: So mobile orders are going to be
3 dealt with how?

4 MR. CONTE: So it comes in at a time and the baristas
5 take it inline. So if somebody is in the drivethrough, that
6 order will get created. Somebody will be kind of watching the
7 station where the mobile orders come in. They print the ticket
8 and they get to it. So the idea is that that would be
9 beneficial to us. The drink is already made, so when they pull
10 up to the order board, hey, I'm Patricia, I have an order for
11 whatever, pull forward.

12 MEMBER GOODSSELL: I have a preorder for a nonfat decaf
13 latte with half shot of --

14 MR. MIGATZ: And I'm in hurry.

15 MEMBER GOODSSELL: And I'm in a hurry. Yes. Thank you.
16 I have to get to the Board of Zoning Appeals.

17 MR. CONTE exactly. So it should be ready and it will
18 say on the application estimated time 10, 12 minutes, five to
19 eight minutes, whatever it is.

20 MEMBER GOODSSELL: As I said in the other proceeding, I
21 know from experience in Mineola, how many cars and how much
22 time it takes and I have my limit as to, like Mr. Migatz said,
23 if I can't in line satisfactorily time, I'm going to skip that
24 Starbucks.

25 MEMBER DONATELLI: So what will happen to those cars,
26 those driver's that are waiting for that mobile order and where

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2 will they wait?

3 MR. CONTE: In que just as any other order.

4 MEMBER DONATELLI: One line?

5 MR. CONTE: Yes. Exactly.

6 MEMBER DONATELLI: And my other point getting back to
7 the 28 feet to the rear property line. We've been talking all
8 along about Greenvale, but of course Greenvale is in between, I
9 think a Burger King and a shopping center parking lot. This,
10 of course, abuts to the residences. Tell us about the sound,
11 if you can, of the speakers or the --

12 MR. CONTE yeah.

13 MEMBER DONATELLI: Or the order board.

14 MR. CONTE we do have touch sheets and specks on the
15 order board. There is the ability to kind of tone down the
16 sound and it does recognize how much background noise there is
17 so that customer can hear what the barista is saying through
18 the mic, you know, in the store. So it should be smart enough
19 to do that.

20 MEMBER DONATELLI: My question is more geared toward
21 whether or not the sound of the order board or the conformation
22 of the order, or pricing, or whatever it is, is whether that
23 has the ability to carry to the rear yard neighbor?

24 MR. CONTE I'm not an expert along those lines. I
25 wouldn't be able to say whether they travel 30 feet. I'm not
26 sure. Me, personally, as a consumer, I would doubt it. I

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2 mean, that sounds like really far away for sound to travel from
3 an order board that's made to, you know, reduce noise and
4 levels so.

5 MR. MIGATZ: Plus it's baffled by the arborvitaes and
6 the concrete wall, and the seven foot high fence.

7 MEMBER HERNANDEZ: That back wall is in affect 12 feet,
8 you have a five foot and a seven foot so you have a 12 foot
9 barrier blocking any sound or even light.

10 MR. MIGATZ: Right.

11 MEMBER HERNANDEZ: Unless the lights are 18 feet tall,
12 you're not going to see any light overcast.

13 VICE CHAIRMAN FRANCIS: Mr. Migatz, hours of operation
14 of the Starbucks?

15 MR. MIGATZ: It's anticipated to begin at five a.m. and
16 end at 10 p.m., but that's subject to probably decreasing those
17 hours based upon consumer demand. The five o'clock hours, you
18 know, people coming off the LIE to get their coffee and at 10
19 o'clock it's questionable if that would have that many
20 customers. So that closing time could be downgraded, but they
21 anticipate opening the five to 10.

22 VICE CHAIRMAN FRANCIS: There are fences similar to the
23 fences along the LIE that are noise abating fences. Could we
24 maybe look into putting that -- not to the extent of the LIE
25 obviously, but some kind of noise abating fence on top of that
26 five foot wall?

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2 MR. MIGATZ: Other than -- in place of a stockade
3 fence?

4 VICE CHAIRMAN FRANCIS: Yeah.

5 MR. MIGATZ: I mean, if you ask us to look into that we
6 can. I'm not sure if the neighbors would want to see a higher
7 wall. Some of the neighbors are here today.

8 VICE CHAIRMAN FRANCIS: I don't think it would be
9 higher. I think it would still be the same height.

10 MR. MIGATZ: Instead of a seven foot fence, have a
11 seven foot wall on top of the five foot wall?

12 VICE CHAIRMAN FRANCIS: Yeah. I hear what you're
13 saying.

14 MR. MIGATZ: That is a big wall.

15 VICE CHAIRMAN FRANCIS: That is a big wall. I was just
16 thinking in terms of the sound.

17 MR. MIGATZ: That's bigger than my last application.

18 VICE CHAIRMAN FRANCIS: I was just trying to address
19 the ability of whether sound would be able to travel to those
20 residences.

21 MR. MIGATZ: Again, as a layperson, I doubt that that
22 sound is going to travel beyond the arborvitaes and the five
23 foot wall and the seven foot stockade fence, and they can tone
24 it down if necessary.

25 VICE CHAIRMAN FRANCIS: Yeah. I withdraw that. I
26 think you're right. I think between the arborvitaes and the

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2 wall, and the distance it's probably going to be minimal in
3 terms of any sound they are going to hear.

4 MR. MIGATZ: It is. The code requires 15 feet. It is
5 15 feet, but it is not landscaped 15 feet.

6 VICE CHAIRMAN FRANCIS: Right.

7 MR. MIGATZ: So it is setback more than what the code
8 would require. It's not landscaped the entire 15 feet. I'll
9 just go through the conditional use real quickly so we have a
10 clean record.

11 VICE CHAIRMAN FRANCIS: Sure.

12 MR. MIGATZ: The purposes as set forth in the zoning
13 code, food uses are conditional use, which case law says you
14 can't amount to a permitted use. Whether the proposed uses are
15 to be appropriate and in harmony with the surrounding property.
16 I think I addressed that already. It's on the service road and
17 we think and feel that we have buffered it efficiently from the
18 residences in the rear. Nobody can deny, including Ms.
19 Goodsell, that it provides a desirable service and the
20 connivence to the community. It's no traffic congestion,
21 because, again, it's on -- off LIE service road and that pretty
22 much, I think, covers those standards. Planning commission
23 gave the local determination on this application.

24 VICE CHAIRMAN FRANCIS: We're going to hear from the
25 neighbors now.

26 SECRETARY WAGNER: I'm sorry, before you speak.

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2 MR. NORGENT: Glen Norgent, Deputy Commissioner of the
3 Building Department here to just address a couple of the issues
4 there were brought up. There's a lot said about signage that
5 this isn't a sign, that's not a sign. Well, I'm going to read
6 the definition of a sign into the record. 70-231, sign
7 definition, includes every kind of billboard, sign board or
8 other shape or device arranged, intended, designed or used for
9 advertisement, announcement or direction including any text,
10 symbol, marks, letters or figures painted on or incorporated in
11 the composition of the exterior surface of the building or
12 structure. Our definition of sign basically includes anything
13 and everything. Now, it includes direction. So exit,
14 entrance, one way, parking in the rear, those are all
15 directions. Our definition of a sign includes that. Any
16 little thing that has the symbol of Starbucks on it is
17 advertisement. Our definition includes that. Now, I believe
18 that we can all agree that our sign code hasn't kept up with
19 today's -- what's happening and every McDonald's, or Wendy's,
20 or Burger King, or Starbucks, or Dunkin Donuts that wants to
21 open in the Town of North Hempstead or even do a refurbishments
22 needs the variances for the sign boards, the exit signs and the
23 entrance signs. And that's up to -- until the code is changed,
24 the building department has to enforce the code as it's written
25 and it's up to this Board to grant variances if that's what
26 they so choose. Directional signs, our code addresses

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1 directional signs but unfortunately it only allows a
2 directional sign directing persons to a parking area placed on
3 a side wall of a building and it may be erected at the
4 authorization of the Board of Zoning Appeals. So that's
5 addressing sign issues. We can all agree that the canopy sign
6 on a gas station is something that every gas station has. Our
7 code doesn't permit at this time. So -- okay. The other
8 thing was the landscape buffer. Yes, this property might have
9 been granted a landscape buffer by the Board of Zoning Appeals,
10 but our code states that no building or structure which has
11 been demolished, damaged or removed for any reason to that the
12 extent that the damage, demolition or removal exceeds 50
13 percent of the exterior structure and/or interior floor systems
14 exclusive of foundations shall be repaired, rebuilt or used
15 except provision of this ordinance and the current addition of
16 the fire prevention code. This code was put in place in 2012
17 to address these exact type of situations. You can't demolish
18 this building more than 50 percent and then say, hey, I can
19 keep that five foot landscape buffer and build a 40 foot
20 building. No. Once you demolish the building more than 50
21 percent, everything on the property has to meet today's zoning
22 code. So you lose that. The circulation that was addressed
23 that you need to have a bypass lane and the code doesn't say
24 that every car has to have -- okay. That would be up to you to
25 determine if that meant that only one car has to have a bypass
26

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2 lane, every car needs to have a bypass lane. It's the building
3 department's opinion that or it's our job to interpret the code
4 that it means every car has to have a bypass lane. Any
5 questions?

6 MEMBER DONATELLI: No.

7 MEMBER GOODSSELL: Thank you for the clarification.

8 VICE CHAIRMAN FRANCIS: Thank you very much.

9 MR. MIGATZ: Glen, don't go yet, please. I did not
10 seek a determination on the so called signs. Okay. I
11 recognize the building department calls them signs and I
12 applied for a variance. Commissioner Norgent is in error. He
13 is citing a section of the code that has to do with prior
14 nonconforming buildings. Once you have a building by the
15 variance, it's not prior nonconforming. It is a virtue of a
16 variance and that variance runs with the land. So you can
17 redevelop this property and that variance still runs with the
18 land, and that's case law and the town code can't change case
19 law. If it were prior nonconforming not pursuant to a
20 variance, then Mr. Norgent is right. If tear down, you lose
21 the nonconforming, but not to have a variance.

22 MR. NORGENT: Glen Norgent, Building Deputy
23 Commissioner. The code that I cited was n't for prior
24 nonconforming. That dealt with any property in existence no
25 matter when it was built. That was 70-209. The prior
26 nonconforming is 70-208. This is a different code.

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2 MR. MIGATZ: But you can't change case law by the code.

3 MEMBER GOODSSELL: We understand.

4 VICE CHAIRMAN FRANCIS: So we will invite the neighbors
5 up.

6 SECRETARY WAGNER: Just give your name and address for
7 the record.

8 MR. GAY: Good afternoon. My name is Bob Gay, this is
9 my wife Joyce. We are here to oppose any variances here today
10 for this property.

11 MEMBER HERNANDEZ: Your address, please.

12 MR. GAY: Oh. 73 South Cabot Lane, Westbury, New York.

13 MEMBER HERNANDEZ: And where are you in relation to the
14 property?

15 MR. GAY: We are -- we are the owners of the adjacent
16 property at 1 Powerhouse. KA and H LLC.

17 MEMBER HERNANDEZ: Are you the property to the east or
18 west?

19 MR. GAY: We are the first property on the corner of
20 the service road.

21 MEMBER HERNANDEZ: So you're the gas station property?

22 MR. GAY: Yes. We feel that any business that needs
23 this many variances is not a business that fits on this type of
24 property. There are concerns for traffic, noise pollution,
25 emission pollution, cars backed up waiting online. If they are
26 standing there idling and they get busy, then cars are backed

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2 up onto the service road of the expressway, which you all know
3 is a tetrotus road. It would also block entrance and exits to
4 our property. In addition, all -- with all due respect to the
5 buffer zones, the signs lining up the area will be high above
6 the buffer zones. The car passing in that bypass lane, they
7 may not hit direct light into the houses behind them, but there
8 will be shadow lights and ambient lights going into their
9 houses. Also, I don't know about you, but I would not want an
10 18 wheeler diesel power truck making deliveries in my backyard
11 at two o'clock in the morning. I also respectfully suggest to
12 the board that they check with the EPA to see if this property
13 is on the fund site, being that this was an auto repair shop
14 and a gas station for great many years. I know the expense
15 that we had to go through when we bought the property.
16 Remediations. They are directly next to us, only separated by
17 a brick wall. In regards to the traffic on the service road of
18 the express way, there is a construction supply right connected
19 to this property that causes congestion at times of day when
20 employees are picking up or dropping off equipment. It's just
21 not a good fit for that area. So again, we oppose the granting
22 of any variances for this property and we thank you for your
23 time.

24 MEMBER GOODSSELL: Sir, if I can ask you, how long have
25 you owned the gas station?

26 MR. GAY: We've been if that position September 7,

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2 1970.

3 MEMBER GOODSELL: So you are long time owners?

4 MR. GAY: Yes, ma'am. We actually bought the property
5 back in 1993 from Sunoco Company.

6 MEMBER GOODSELL: And the service -- service building
7 that was immediately adjacent to yours, that was operating for
8 many years, was it not?

9 MR. GAY: That was operating before us, yes.

10 MEMBER GOODSELL: And what was the vacant lot used for?
11 Has it always been a vacant lot where Starbucks is going?

12 MR. GAY: Where Cirillos is? Cirillos was an operating
13 service station and auto repair shop and then they had -- the
14 grandfather and their father had adjacent properties right at
15 the end of it. That's where the construction site is now.

16 MEMBER GOODSELL: I did notice the construction site.

17 MR. GAY: Yes.

18 MEMBER GOODSELL: But the site that Starbucks is
19 proposing is partly a big empty space right now. What was
20 there before it was an empty space?

21 MR. GAY: Just parked cars from Cirillos that they
22 repaired, junked cars and things like that.

23 MEMBER GOODSELL: So there's never actually been a
24 business operating on that location?

25 MR. GAY: No. No. But I know right at our property
26 line is where we had most of the pollution and we had to have

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2 monitoring wells put in, because at the time, they said that
3 the contamination was coming from us onto Cirillo's property.
4 The state found that the water flowed northwest instead of
5 southeast, which shows that most of the pollution is coming
6 from there. Whether any remediation was done, I do not know.
7 I would also like to state that before we got into the station
8 in September 1970, from 1951 that was a Sin Claire service
9 station. So it has always been there.

10 MEMBER GOODSELL: And again, to the best of your
11 knowledge, you have gas tanks on your property?

12 MR. GAY: Correct.

13 MEMBER GOODSELL: Has there ever been gas tanks on the
14 property before us?

15 MR. GAY: Oh, yeah. They spent over \$300,000 replacing
16 them and we have what called a polar system. They are double
17 wall fiber glass tanks and when they put them in the ground,
18 they have sensors around the tanks, they have sensors inside
19 the double wall and in the office, you have what's called a
20 polar system, which monitors these tanks all the time to see if
21 there's any leaks, or seepage, or anything like that.

22 MEMBER GOODSELL: Are these the tanks you have or the
23 tanks next door?

24 MR. GAY: No, these are our tanks.

25 MEMBER GOODSELL: Next door, have they ever had gas
26 tanks?

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2 MR. GAY: They had gas tanks, but they were all steel
3 gas tanks.

4 MEMBER GOODSSELL: Do you know if there's been any
5 improvement on them?

6 MR. GAY: I don't know.

7 MEMBER GOODSSELL: That's something that we have to find
8 out.

9 MR. GAY: Yes. But I would definitely suggest
10 contacting the EPA.

11 MEMBER GOODSSELL: And how long has that been deserted,
12 how long has the business been vacant?

13 MR. GAY: It's gotta be 20 years. It's just been
14 sitting there.

15 MS. GATES: You know what, maybe the tax department can
16 help you out. I guess they're still paying taxes.

17 MEMBER GOODSSELL: Everybody pays taxes.

18 SECRETARY WAGNER: Could you put your name and address
19 on the record please.

20 MEMBER GOODSSELL: Hold on one second.

21 MS. ALGIOS: Say it into the mic.

22 MS. GAY: Joyce, J-O-Y-C-E, Gay, G-A-Y, 73 Cabot,
23 C-A-B-O-T, Lane, Westbury, New York 11590.

24 MS. ALGIOS: Thank you.

25 MR. GAY: To be perfectly honest, several years ago we
26 were talking with Harry Singer, the owner of Bolla station. We

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2 were thinking of buying that property next door together, but
3 after he looked into it, he felt it wasn't a good fit. But we
4 don't know anymore than that.

5 MEMBER GOODSELL: It hasn't been operating as a
6 business for a long time.

7 MR. GAY: Long time. As a matter of fact, we have
8 gotten summonses from the town that we're overgrown and
9 graffiti has been on wall.

10 MS. GAY: It's not us.

11 MR. GAY: And we had to come to the building department
12 and tell them it's 9 Powerhouse Road, it's not 1 Powerhouse
13 Road.

14 MS. GAY: I have nothing against Starbucks, but I'm
15 concerned about the cars going in that driveway and coming out
16 that driveway. They're so close to our driveway and they come
17 flying down that road. They're nuts.

18 MR. GAY: They fly down that road.

19 SECRETARY WAGNER: If you could just speak one at a
20 time. She has to record it.

21 MR. GAY: Thank you very much.

22 VICE CHAIRMAN FRANCIS: Thank you for coming out. We
23 appreciate it. Mr. Migatz, any response?

24 MR. MIGATZ: The county and state has approved this
25 drivethrough curb cuts, they are not concerned about traffic on
26 the service road. I have said that whether or not this

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2 property needs clean up, I did not inquire. That's not an
3 issue before this Board in granting these variances. There
4 will be an issue before the building department before the
5 permits are issued and whatever has to be addressed will be
6 addressed at that time.

7 VICE CHAIRMAN FRANCIS: Okay.

8 MS. ALGIOS: So, Bruce, I mean, it is relevant to this
9 Board because they are the lead agency on SEQRA so there will
10 have to be some type of SEQRA determination.

11 MR. MIGATZ: The SEQRA determination whether or not the
12 variances and conditional use permit will have an adverse
13 impact on the environment, not whether or not there has to be
14 clean up from the prior station. Your SEQRA gives duplicate
15 variances for that.

16 MS. ALGIOS: We'll look into that, because you are also
17 getting a conditional use, right. There is food use so if is
18 there any type of contamination, I think that would be in the
19 purview of the Board to consider that.

20 MR. MIGATZ: No, I disagree. The conditional use has
21 to do with whether or not a food use is going to have an
22 adverse impact on the community. Not whether or not this has
23 to be cleaned up before they get a permit to operate a food
24 use. That's totally different.

25 MS. ALGIOS: We'll look into it.

26 MR. RANT: The application was also before the Nassau

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2 County Department of Health. They've approved the sanitary
3 system already for the food use and -- and as proposed. That
4 application has been submitted. They've reviewed it, we've
5 done the necessary plans and they've approved it for the use of
6 the food use on the property as proposed.

7 VICE CHAIRMAN FRANCIS: Okay. Anything else, Mr.
8 Migatz?

9 MR. MIGATZ: No.

10 VICE CHAIRMAN FRANCIS: I think we are going to reserve
11 this. We have a lot to chew on with regard to this
12 application.

13 MR. MIGATZ: Thank you.

14 VICE CHAIRMAN FRANCIS: So you can check with Ginny.
15 It has to be continued, because we haven't gotten a
16 SEQRA determination.

17 MR. MIGATZ: For yourselves?

18 VICE CHAIRMAN FRANCIS: Right. Yeah.

19 SECRETARY WAGNER: Okay. We are continuing it, which
20 means that there may be some additional information submitted.
21 So if you want to follow up with the Board of Zoning Appeals,
22 you can do that and the Board will most likely make a decision
23 at a later date.

24 (A recess was taken.)

25 SECRETARY WAGNER: So let the record reflect that the
26 Chairman, Chairman Mammina is present and Acting Chairman

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2 Francis is returned to Vice Chairman Francis.

3 Appeal Number 21506, Foot Locker (Signs) - 1484 Union
4 Turnpike, New Hyde Park; Section 8, Block 235, Lot 56 in the
5 Business-AA Zoning District. Variances from 70-196.J(1)(a),
6 70-196.J(1)(b), and 70-196.J(1)(f), to construct more than one
7 sign on a wall and signage that is too tall and too high above
8 the ground.

9 CHAIRMAN MAMMINA: You've heard Appeal Number 21506,
10 Foot Locker (Signs). Is there anyone interested in the
11 application other than the applicant? Seeing only one person.
12 I assume you're the applicant?

13 MS. RONNEBURGER: I am the applicant, yes.

14 CHAIRMAN MAMMINA: So you're not here to speak against
15 it. Come on up and give your name and address.

16 MS. RONNEBURGER: Good afternoon. Hi, everybody. My
17 name is Jennifer Ronneburger, my company is Go Permit and my
18 address is 9061 Woodlark Terrace, Boynton Beach, Florida 33472.
19 So I came up from Florida just to hang out.

20 MEMBER GOODSELL: You didn't pick a great week.

21 MS. RONNEBURGER: No, I did not.

22 CHAIRMAN MAMMINA: What part of Florida?

23 VICE CHAIRMAN FRANCIS: Where in Florida?

24 MS. RONNEBURGER: It's a town called Boynton Beach.

25 CHAIRMAN MAMMINA: Oh, sure.

26 MS. RONNEBURGER: Yeah. Everybody knows. Boynton

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2 Beach is pretty popular. It's just a little south of West
3 Palm.

4 CHAIRMAN MAMMINA: Yeah. So if you go to Boynton Beach
5 and you sit in a restaurant, you count how long it's gonna take
6 until somebody says Jericho Turnpike.

7 MS. RONNEBURGER: Exactly. You know, honestly to be
8 totally honest, I grew up here. I actually was born in
9 Rockville Centre. I grew up in Patchogue so this is like home,
10 you know, so it was very nice that I was able to be able to
11 this and Florida is honestly just an extension on Long Island.
12 It really, really is.

13 VICE CHAIRMAN FRANCIS: Very true.

14 CHAIRMAN MAMMINA: It's true.

15 MS. RONNEBURGER: If only we could get the pizza and
16 bagels right we'd be all set.

17 Okay. So I'm just going to read you something real
18 quick. This is just for a sign variance for Foot Locker.

19 CHAIRMAN MAMMINA: Just nice and easy and slow for the
20 court reporter.

21 MS. RONNEBURGER: It's going to be hard for me, but I'm
22 going to try.

23 We are here for Foot Locker and we're here for exterior
24 sign package in the Lake Success shopping center. The property
25 is located on the south side of Union Turnpike just west of New
26 Hyde Park Road. Town of North Hempstead identifies this

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1
2 property as Section 8, Block 235, Lot 56. The property is
3 approximately 17.53 acres and is the multitenant of Lake
4 Success shopping center. Our request was to install one
5 illuminated wall sign that is separated onto each level of the
6 newly designed facade totalling 176 square feet. The signage
7 consists of Foot Locker verbiage and two striper logos. The
8 Foot Locker verbiage is measured at three foot four inches high
9 by 24 feet wide, total of 80 square feet and that will be
10 centered in the middle section. Each striper measures six foot
11 six by seven foot five, total of 48 square feet and that will
12 be centered on each side for a cohesive design. The code
13 section we are requesting variances for is 70-196, permitted
14 sign where only one sign is permitted on a wall.

15 The second variance we are requesting will be from
16 section 70-196. Again, permitted signs shall not exceed 24
17 square feet in area and the third is code section same and that
18 is no sign shall be higher than 18 feet above level of the
19 ground. The variances being requested on the basis of
20 excessive building setback of 190 feet from the main
21 thoroughfare. The applicant relies on wall sign visibility for
22 the right of way traffic to their store due to the setbacks and
23 the lack of a freestanding sign at the front of their property.
24 With this in mind, the updated facade has been designed to
25 enhance the Lake Success shopping center with a newly decorated
26 facade to attract the customers and promote a higher end feel.

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2 Enforcing the sign as written will be a detriment as one will
3 appear lost on the newly approved installed facade and it will
4 not be centered in the sign band causing the appearance to be
5 clustered. Unfortunately there is no other option centering
6 the signs and having them fit proportionately in the sign band
7 is the only viable option to ensure uniformity. The applicants
8 request meets the intent of the code and Foot Locker is looking
9 to bring their best foot forward to this area. They've spent
10 time and dedication in the detail and will hope you will
11 approve it as submitted. I have the property owner here with
12 me if you guys have any questions.

13 CHAIRMAN MAMMINA: Do you have any comparison of this
14 sign to, you know, other signs that are -- that are there in --
15 in the center?

16 MS. RONNEBURGER: There are other signs in the center.
17 I know one is The Paper Store and the other one is, I believe
18 Burlington.

19 CHAIRMAN MAMMINA: Do we have any sizes and heights --

20 MS. RONNEBURGER: I don't have the measurements.

21 CHAIRMAN MAMMINA: -- showing that this would be in
22 character with those signs?

23 MS. RONNEBURGER: I don't have the measurements of the
24 other signs, but it is within character, because when we went
25 out and looked at the sign and the property itself, everything
26 is inline with what's there.

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2 CHAIRMAN MAMMINA: Okay. Because I would say normally,
3 you know, there will be some exhibits. I mean, it's a very
4 lovely shopping center. It's -- it's -- the owner has done a
5 fantastic job, you know, own it. But normally we do get some
6 comparison of how this balances against whatever else, you
7 know, is, you know, is there, because that's kind of what we do
8 is, you know, a balancing test.

9 MS. RONNEBURGER: Okay.

10 MEMBER GOODSELL: I noticed that we did give Paper
11 Stores sign and the logo. This would be a sign with two logos
12 and what is that that I see in the foyer under the words Foot
13 Locker. Is that some sort of a banner or --

14 VICE CHAIRMAN FRANCIS: It looks like a reflection.

15 MEMBER GOODSELL: What is that?

16 MS. RONNEBURGER: That is a -- it's not -- it's
17 actually a digital print, because the lighting inside of there
18 -- so it doesn't come out into the parking lot, they are
19 probably going to put a digital print in there, I believe. But
20 it's not illuminated, it doesn't have the words Foot Locker on
21 there. It just has a visual graphic.

22 MEMBER GOODSELL: Okay. I couldn't tell. Thank you.

23 CHAIRMAN MAMMINA: Does that graphic change or does
24 it --

25 MS. RONNEBURGER: No, it does not. They call it a
26 digital print. It's the way that it's manufactured, but it's

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2 basically flat vinyl in other words.

3 CHAIRMAN MAMMINA: I know we've had a lot of signs and
4 we look at them, you know, carefully and I mean, I don't know
5 how anybody else feels and I mean, I recognize that shopping
6 center has been there since I was a little boy and that's a
7 long time ago. You know, it is setback from the road. I mean,
8 we understand that. We have had other signs like Iavarone,
9 which is an amazingly successful vendor, but, you know, still
10 their signs were very aggressive when you looked at it, you
11 know, in light of the rest of the center, you know, and they
12 reduced them, you know, to something we feel is more
13 acceptable. Target, you know, we went through a little bit of
14 back and forth on it. So I'm just saying as one board member,
15 you know, I mean, our goal is to, you know, is to help whoever
16 we can in however we can within the boundaries of what we --
17 what we do. I mean, so I'm certainly not adverse to what is
18 shown there. It's more, you know, it's context with the --
19 with the rest of the shopping center, because the next person
20 who then comes in for a sign is going to say, well, look at
21 what you approved here, here, here and here.

22 MEMBER HERNANDEZ: Correct.

23 CHAIRMAN MAMMINA: And I think that's my -- I mean,
24 that's my single issue is establishing a record that says yes,
25 this is in context with the rest of the shopping center, you
26 know, from me --

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2 MEMBER GOODSSELL: Nobody has two logos. I've looked at
3 this. Nobody has two logos. I did notice that Paper Store
4 does have a logo, we gave them a logo. There are one or two
5 others that do have a logo, a small one. The only reason I
6 think you have two logos here, two umpires, is to balance the
7 Foot Locker sign, but they are kind of large.

8 MS. RONNEBURGER: Right. And it's also because the way
9 that facade is designed. It's also, you know, levelled too.
10 So it's just -- instead of we don't have like an even blank to
11 be able to do that. We have a sign here and a logo or what
12 have you and that's why we did it this way to level it out and
13 have a more cohesive design.

14 CHAIRMAN MAMMINA: When you say level, you're saying
15 balance within the architecture.

16 MS. RONNEBURGER: Correct. Correct.

17 MEMBER HERNANDEZ: For sake of clarity, the property
18 that we're discussing has, in affect, the three sections. The
19 center section is forward of the outside section.

20 MS. RONNEBURGER: That's correct.

21 MEMBER HERNANDEZ: So if you were to look at this
22 property at a 45 degree angle instead of a direct line, you
23 would probably not see the third side of it.

24 MS. RONNEBURGER: Correct.

25 MEMBER HERNANDEZ: Because the front side would be
26 blocking your view. So you would see the left side umpire.

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2 MS. RONNEBURGER: That's correct.

3 MEMBER HERNANDEZ: And if you were on the right side
4 looking at it from the other angle, you would see the right
5 side umpire with the Foot Locker sign.

6 MS. RONNEBURGER: Correct.

7 MEMBER HERNANDEZ: And the height of the Foot Locker
8 itself may exceed the approved. However, that is the natural
9 location of the sign line.

10 MS. RONNEBURGER: The sign band. It's called a sign
11 band.

12 MEMBER HERNANDEZ: If you brought it down, then it
13 would look strange because it would be either hanging off of it
14 or it would be sitting on the bottom of it. So by putting it
15 in the middle, you are making it higher than the code permits.

16 MS. RONNEBURGER: You are absolutely correct.

17 MEMBER HERNANDEZ: And I think that's fairly unique to,
18 not just this shopping center, but many shopping centers who
19 have created those sign bands and in order to avoid the
20 architectural flatness, they have to be at different distances
21 also creating that other problem of unbalanced, if you want to
22 call it.

23 MS. RONNEBURGER: That's absolutely correct.

24 MEMBER DONATELLI: So I'm pretty sure that it's a
25 referee not an umpire.

26 MS. RONNEBURGER: Technically it's called a striper.

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2 MEMBER DONATELLI: A striper or a zebra, right.

3 MS. RONNEBURGER: I called it a referee, I was
4 corrected. It's a striper.

5 MEMBER DONATELLI: My question is --

6 MS. RONNEBURGER: I don't know.

7 MEMBER DONATELLI: My question is was any thought given
8 to moving the striper onto the same facade as Foot Locker and
9 reducing it from two to one?

10 MS. RONNEBURGER: Yes. You're talking about just
11 having where the Foot Locker is currently?

12 MEMBER DONATELLI: Yeah. Yeah.

13 MS. RONNEBURGER: You're talking about the striper and
14 then the verbiage Foot Locker?

15 MEMBER DONATELLI: That's right.

16 MS. RONNEBURGER: Yes, there was.

17 MEMBER DONATELLI: Because it almost looks to me like
18 it's carrying the logo to the four corners of the facade as
19 oppose to identifying where the entrance to the store is. So
20 can you just speak to that point?

21 MS. RONNEBURGER: Yes. So there was. That is the
22 other thing that they had discussed having one striper with the
23 verbiage Foot Locker just on the center section.

24 MEMBER DONATELLI: Right.

25 MS. RONNEBURGER: They wanted to do this, because they
26 did feel that it just looked better from a design perspective

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2 to have two stripers on the side with the logo on the front,
3 because of the different levels of the facade. So that's why
4 they would prefer that, but that was something that was
5 discussed. So this is the preferred option.

6 MEMBER DONATELLI: Is there any particular reason why
7 the striper needs to be as big as he is? And I think it is a
8 man so I think I can say he. Yes.

9 MS. RONNEBURGER: That's completely fine.

10 MEMBER DONATELLI: Can it be made smaller, the striper?

11 MS. RONNEBURGER: How -- okay. So there is obviously
12 cooperate branding and all of that stuff. How much smaller are
13 we talking? Because there, you know, there is -- there's
14 something called -- I do signs for a living. That's literally
15 all I do and I'm not even kidding, I could have answered all of
16 the Starbucks stuff and if you have any questions, you can ask,
17 because I used to do them too. But so there's something that's
18 called a family of signs and the reason why they do that is for
19 consistency for when they go national which is, obviously Foot
20 Locker is a national brand. So they have, like, different
21 sizes in their sign family. So how much smaller are we
22 looking?

23 MEMBER DONATELLI: Okay. So we don't typically suggest
24 smaller. Where my concern is coming from -- we do -- we can
25 recommend that you go smaller, but of course it's the
26 applicant's application.

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2 MS. RONNEBURGER: Yes.

3 MEMBER DONATELLI: My concern is, as I'm looking at the
4 facade, I see that the striper is substantially larger than --
5 as a proportion of the facade then the actual Foot Locker sign
6 is as a proportion of the middle. So I'm trying to see if
7 there is some way that we can unify or -- and either move the
8 striper toward the center or a least make the stripers on
9 either side smaller so that they don't subtract from your main
10 Foot Locker sign.

11 MS. RONNEBURGER: Okay.

12 MEMBER GOODSELL: You're allowable height is supposed
13 to be four foot six inches and your stripers are six foot six
14 inches.

15 MS. RONNEBURGER: Correct.

16 MEMBER GOODSELL: If, you know, as one Board member I'm
17 really less concerned about the number of signs. We have had
18 an application, like Target of all things to put three signs on
19 wall, because they had two other businesses inside or maybe
20 they will have two other businesses contained when they finally
21 open. So we've approved multiple signs before. But I think
22 and I'm speaking as one Board member, the Board would look more
23 favorably on the application if those stripers came down a
24 little closer to the allowable height.

25 MEMBER HERNANDEZ: Size.

26 MEMBER DONATELLI: Size.

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2 MEMBER GOODSSELL: Size. Size not height.

3 SECRETARY WAGNER: There's vertical measurements as
4 well.

5 MEMBER GOODSSELL: And the size of the striper. And
6 that would be up to your client. If your client wants to
7 present this application and wants to keep this, then --
8 they're open for business. I've noticed that they've got the
9 doors open and they have banners up there so you can find them.

10 MS. RONNEBURGER: They have a banner up, yes. And
11 they're not thrilled about the banner obviously.

12 MEMBER GOODSSELL: No, obviously it is temporary.

13 MS. RONNEBURGER: Yes, of course. Okay. Can I hear
14 how everybody else is feeling?

15 CHAIRMAN MAMMINA: I'm sorry?

16 MS. RONNEBURGER: I said can I hear about how everybody
17 else is feeling before I make a decision?

18 CHAIRMAN MAMMINA: I think I had put mine out there,
19 you know, in the beginning.

20 MS. RONNEBURGER: Yes.

21 CHAIRMAN MAMMINA: Look, I understand retail. You
22 know, as an architect I do retail. I was at Staples for years
23 and years and years and I've had plenty of applications before
24 zoning boards regarding signs and sometimes I'm successful,
25 sometimes I wasn't. You know, when, you know, as Member
26 Goodsell had pointed out, I mean, The Paper Store, you know,

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2 has a figure within that, but it's really within the text.
3 Target has multiple signs, but they have multiple facades, you
4 know, on the building, you know, as well and I guess, you know,
5 from my own personal opinion, I -- I don't mind, you know,
6 having Foot Locker and then, you know, the two stripers there.
7 But I mean, maybe it can just be looked out. Maybe this is the
8 proper solution. So for me, you know, I'm not saying, you
9 know, no. We want you guys to be successful, you know, there
10 and, you know, maybe it can be looked at, you know, to, you
11 know, to submit a couple of -- of other samples and maybe
12 again, just show kind of within the context, you know, of
13 what's there and again, just for myself as one Board member, I
14 say that only because we get a lot of sign applications in the
15 town.

16 MS. RONNEBURGER: Yes.

17 CHAIRMAN MAMMINA: We've gotten, you know, many sign
18 applications here, but considering how many stores they have
19 it's actually very few people stay there. Tenants, you know,
20 once they are there, it's a great shopping center.

21 MS. RONNEBURGER: Yes.

22 CHAIRMAN MAMMINA: So our, you know, our balancing test
23 does come down to, you know, individually each -- each piece of
24 property. So my feeling, you know, just again, one Board
25 member is, you -- to me, you would not have to come back, you
26 know, you could submit, you know, some -- some other things

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2 that, you know, that might -- that might be in the -- the
3 universe in what you -- what you would like to see.

4 MS. RONNEBURGER: Okay.

5 CHAIRMAN MAMMINA: And, you know, we can handle it that
6 way. I mean, we went back and forth with Target many times. I
7 don't think that they -- generally we don't do second hearings.

8 MS. RONNEBURGER: Okay. Okay.

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

10 MS. RONNEBURGER: Okay. I wasn't sure. I was, like,
11 how does this work here.

12 VICE CHAIRMAN FRANCIS: Just keep in mind here that
13 you're asking for three signs where only one is allowed. So to
14 the extent that we get mitigate your number of signs and still
15 give you what you want by bringing those stripers down a little
16 bit, that would be in your best interest.

17 MS. RONNEBURGER: Yes. And I think that would be the
18 option I would like to go with. I can have some drawings
19 prepared with reducing the striper. I don't know if we can get
20 it down to four foot six based on, you know, the size of the
21 facade.

22 MEMBER GOODSSELL: You said there were standard sizes.

23 MS. RONNEBURGER: We can look at it and if it's
24 relatively close to that.

25 VICE CHAIRMAN FRANCIS: As close as you can. Yeah.

26 MS. RONNEBURGER: Okay. So the banner obviously, as we

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2 all know, is quite the bone of contention. So can -- is there
3 -- and I don't know how this work and I'm sorry for not being
4 here before knowing how this works.

5 CHAIRMAN MAMMINA: No apologies necessary.

6 MS. RONNEBURGER: So can I have, please, the Foot
7 Locker channel letters that -- is that -- I mean, we can agree
8 that that would be okay and then the size of the stripers, if I
9 reduce those, would that be a viable option?

10 SECRETARY WAGNER: We can do it all at the same -- we
11 decide it all the same hearing.

12 MEMBER GOODSELL: I mean, is this a situation where you
13 just need to make a phone call?

14 MS. RONNEBURGER: Yes. Absolutely.

15 MEMBER GOODSELL: Because we would certainly be happy
16 to let you step outside and call.

17 MS. RONNEBURGER: That would be wonderful. If you
18 could do that, I would sincerely appreciate it.

19 CHAIRMAN MAMMINA: We can't split though the striper
20 out from the rest of the signage.

21 MS. RONNEBURGER: Okay. If I could step out and make a
22 call, that would be wonderful. I can have an answer in a
23 moment.

24 SECRETARY WAGNER: So she would have to submit a
25 drawing.

26 VICE CHAIRMAN FRANCIS: Yeah. We would have to see

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2 something.

3 MEMBER GOODSELL: We can continue it so that you can
4 submit a new drawing, but you wouldn't have to come back.

5 VICE CHAIRMAN FRANCIS: I think that's the best way to
6 go.

7 MEMBER HERNANDEZ: And we can't take a vote on the sign
8 now, but the sign itself we don't have a real problem with.

9 MS. RONNEBURGER: I understand what you're asking. I
10 understand what you're asking for.

11 CHAIRMAN MAMMINA: No one is adverse to the Foot Locker
12 sign there or the concept of the stripers.

13 MS. RONNEBURGER: Right. It's just the size. I
14 understand.

15 CHAIRMAN MAMMINA: You know, so if there were a way
16 that we could say yeah, sure, go ahead you're fine on the Foot
17 Locker sign and come back with the other, but we can't really
18 make that --

19 MS. RONNEBURGER: I understand. You can't break it up.

20 CHAIRMAN MAMMINA: We can't break it up, you know, in
21 that way.

22 MS. RONNEBURGER: Okay. Yup.

23 CHAIRMAN MAMMINA: You know, and it would not be really
24 mine to suggest to you if you want to tell your sign guy to go
25 ahead and start fabricating the Foot Locker sign.

26 MS. RONNEBURGER: Right.

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2 CHAIRMAN MAMMINA: You know, that would be on you. You
3 know, but I think that certainly the Board, you know, is saying
4 yes to the Foot Locker sign.

5 MS. RONNEBURGER: Yeah. For the main ID sign, the main
6 issue was that, you know, exactly like what you had said. If
7 we had it to where code allows it to, it would literally
8 hanging off the building and that's not a good look.

9 CHAIRMAN MAMMINA: And we also like very much, the way
10 that the owner has taken that shopping center and varied, you
11 know, the --

12 MS. RONNEBURGER: Yes. The individuality is really
13 cool for every tenant. Okay.

14 SECRETARY WAGNER: So we don't need to go and confer
15 anything with the company right now.

16 VICE CHAIRMAN FRANCIS: No.

17 SECRETARY WAGNER: Just discuss with them --

18 MS. RONNEBURGER: Which option and then submit it?

19 SECRETARY WAGNER: -- what we just discussed and get
20 back to us.

21 MS. RONNEBURGER: And then I just send it into Michael?

22 CHAIRMAN MAMMINA: Yes. As soon as they get back to
23 the zoning office, then Virginia will distribute those to us.

24 MS. RONNEBURGER: Yup. Okay.

25 CHAIRMAN MAMMINA: You know, and I can't promise
26 anything, but in all likelihood at the next thing which is

1 Appeal Number 21507

2 whatever two weeks.

3 SECRETARY WAGNER: February 14th.

4 MS. RONNEBURGER: Okay. All right. That will be
5 great. Thank you very much for your time, everyone I really
6 appreciate it.

7 CHAIRMAN MAMMINA: Thank you.

8 VICE CHAIRMAN FRANCIS: Safe travels home.

9 MEMBER HERNANDEZ: Safe travels home.

10 CHAIRMAN MAMMINA: And very nice presentation.

11 MS. RONNEBURGER: Thank you.

12 SECRETARY WAGNER: Appeal number 21507, Baylawn Plaza,
13 Incorporated/Westbury Properties (East Coast Tacos); 347 Old
14 Country Road, Carle Place; Section 10, Block 228, Lot 53 in the
15 Business-A Zoning District. Conditional Use
16 70-225(B) (7) (a) [2], to expand an existing restaurant with the
17 addition of mobile service counters.

18 CHAIRMAN MAMMINA: You've heard Appeal Number 21507,
19 Baylawn Plaza, Inc./Westbury Properties (East Coast Tacos), 347
20 Old County Road, Carle Place -- I don't have to read the whole
21 thing, I apologize. I'm done with my part. Is there anyone in
22 the room who has any interest in the application? Seeing no
23 one. Please proceed.

24 MR. FIORE: Brian Fiore, architect.

25 CHAIRMAN MAMMINA: We don't swear in here.

26 MR. FIORE: All right. Just checking. So appearing on

1 Appeal Number 21507

2 behalf of the owners. We are changing tenancy on this quick
3 service restaurant. It was previously a Subway. We are
4 changing our counter that was -- previously there was about
5 eight linear feet of counter -- service counter space. We are
6 doing alterations to the building that are pretty minimal,
7 interior and trying to keep everything intact, but these
8 counters were being changed to three mobile counters that are
9 totalling about 21 foot six inches and we are asking for relief
10 from the previously approved conditional variance. These
11 counter spaces would be used for ordering your food, picking up
12 your food and then another counter for something that's
13 recently changed in the fast food industry is Doordash,
14 Grubhub, you know, deliveries that pick up your food is why
15 they need the extra counter space. So there will be no changes
16 to the seating, the occupancy, occupant load, parking, nothing
17 is being impacted by this alteration, level two alteration. So
18 we feel this is pretty minor request for a new additional
19 variance for these service counters and that's about it.

20 CHAIRMAN MAMMINA: Could you go over a little bit what
21 the standard restaurant conditions, you know, are and then
22 acknowledgement of those?

23 MR. FIORE: Well, you typically have your ordering
24 area, your cash register --

25 CHAIRMAN MAMMINA: I'm talking about there are certain
26 things, like you have to have refrigerated garbage and then

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2 where is the refrigerated garbage, no doors to the rear and if
3 there are, they have to be solid. I mean, there are some
4 standard conditions that the town requires.

5 MR. FIORE: Correct. Correct. We are -- there's --
6 there's -- we've done with the building department. Certainly
7 we have our garbage coolers interior all taken care of.

8 CHAIRMAN MAMMINA: Can you, on the record, point to
9 where they are here, because as I said to the previous
10 applicant, we get a lot of conditional uses as well, we get
11 lots of restaurants.

12 MR. FIORE: Correct.

13 CHAIRMAN MAMMINA: And putting on the record that
14 you're complying, you know, is a way that further binds your
15 client to the requirements of the town, even though they have
16 to sign that any way.

17 MR. FIORE: There's actually three walk-in coolers in
18 the -- in the rear of the restaurant, garbage, food storage,
19 food prep. We have our three compartment sink and typical hand
20 sink. All our code requirements for a restaurant --

21 CHAIRMAN MAMMINA: Code requirements for Department of
22 Health.

23 MR. FIORE: Department of Health. Correct. And, you
24 know, this was a Subway and then there was a prior application
25 for a cheese steak place, which never opened due to the
26 pandemic so it's been vacant pretty much for the past four,

1 Appeal Number 21507

2 five years. So that's -- all your service and storage is in
3 the rear of the building and our kitchen area with your -- your
4 -- your -- your Ancel system, exhaust and all frying
5 departments is located, you know, behind the service area and
6 really minimal changes to this work. It's sort of preexisting
7 conditions. Handicap bathroom.

8 CHAIRMAN MAMMINA: That's for the bulling department.
9 We're only, you know, we're only the -- the zoning parts of it.
10 So I do see that -- that outside of the three -- the two
11 walk-in boxes and the freezer you spoke to, I mean, they're not
12 going to put their garbage in there, you know, but there is
13 another box that is labeled as waste refuse. So I mean, that's
14 important. That garbage has to be picked up inside the
15 building. That can't be put out at the curb. Does your client
16 understand that? I know that they're not here, but if you can
17 put that on the record.

18 MR. FIORE: Yes. They will definitely comply with
19 their garbage requirements, not putting out the garbage, you
20 know.

21 CHAIRMAN MAMMINA: And again, for the record, door
22 number three that goes out to the side of the -- of the
23 building, is that solid door?

24 MR. FIORE: Yes. It will a solid door.

25 CHAIRMAN MAMMINA: Okay. I mean, from my perspective,
26 as somebody living in Carle Place for 42, 43 years, I never

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2 realize it had a name as a shopping center. But I know the
3 Doordash stuff is very -- is very popular and while again, it
4 has nothing to do with the zoning board, you do have complaint
5 parking. It's -- it's, you know, it's tough getting in and out
6 of there. If you have a Doordash car pulling up, I don't know
7 how they're going to do that, but that's up to you. That has
8 nothing to do with the application. As long as we have the --
9 it appears that we do have the owner here. So I mean, if he
10 wants to come up, just put himself on the record and just put
11 on the record that he understands the safety made and the
12 conditions and that he agrees to the five factors.

13 MR. MARTINI: John Martini, I live at 5733 262nd Street
14 in Little Neck, New York. How are you?

15 MEMBER DONATELLI: Good afternoon.

16 MEMBER GOODSSELL: Good afternoon.

17 MR. MARTINI: Good afternoon. So as what to you were
18 saying about the waste garbage, refrigerator waste garbage, we
19 did add that in next to the hand sink in the back and it's 24
20 by 24, like, under counter refrigerator. We estimate to have
21 about two to five pounds of waste, because it's tacos,
22 quesadillas, empanadas so most of that stuff is given away.
23 All the stuff is precooked in our commissary kitchen located in
24 Brooklyn so there's not going to be cleaning of the meats and
25 waste from that. We are going to do salads, so maybe there
26 will be a little salad waste and stuff like that. But for the

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2 most part minimal garbage.

3 MEMBER GOODSELL: Sounds interesting. Mexican food is
4 very popular.

5 MR. MARTINI: Yes, it is. They just opened taco too
6 across the street.

7 MEMBER GOODSELL: Yours will be better.

8 MR. MARTINI: Of course. Of course.

9 MEMBER DONATELLI: Tell me about the mobile service
10 counters that are new. The three mobile service counters that
11 you are proposing. What will be on these counters, will it be
12 cash registers?

13 MR. MARTINI: Yeah. So on the left as you walk in the
14 store, the counter to the left, that would be two registers,
15 two screens where you would order. Our cashiers would be there
16 taking the orders, then in the middle, the middle counter would
17 be mostly to receive the food from the kitchen, the packing
18 area, putting it in bags and there will be, like, condiments
19 there, we have our sauces underneath the counter. Underneath
20 the counter will be the packaging, boxes, bags, napkins, cups,
21 things of that nature and then the counter to the right most
22 would be the third-party deliveries. The Doordash, Uber Eats
23 station, if people order on the app, like Starbucks has that
24 order station, it will something similar to that. And then
25 there is a, like, a dish tray shelf that's behind the counter
26 sort of on the way to the bathroom and that's for our staff to

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2 clean up any of the trays from the people that are sitting.
3 They can place it there and it would be brought into the
4 kitchen area through the little trail to the kitchen.

5 MEMBER GOODSSELL: Can you tell me or estimate for me
6 what percentage of the business you think is going to be
7 takeout and Uber Eats and food delivery service?

8 MR. MARTINI: So it's hard to tell, because we've never
9 opened up in Long Island. But in Brooklyn it's about 40
10 percent of the business.

11 MEMBER GOODSSELL: It's quite a bit then.

12 MR. MARTINI: Yeah. Hopefully not, because they take a
13 percentage, but I think the environment we're gonna create in
14 there, the vibe is going to good that people would want to come
15 in, even if it's for 10, 15 minutes and head out. I know
16 parking is limited, but we hope that it will be okay.

17 MEMBER GOODSSELL: But I didn't have any trouble
18 parking.

19 MR. MARTINI: Good.

20 MEMBER GOODSSELL: It doesn't seem as though it's
21 overcrowded a lot and besides, the whole point of Doordash and
22 Uber Eats and the food and delivery services is to get in and
23 get out as quickly as possible.

24 MR. MARTINI: Exactly.

25 MEMBER GOODSSELL: Okay. I have no further questions.

26 CHAIRMAN MAMMINA: Anyone want to make a motion?

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2 VICE CHAIRMAN FRANCIS: Yeah, I'll make a motion. I'll
3 make a motion that we grant this application. It's in my
4 neighborhood.

5 MR. MARTINI: Thank you.

6 MEMBER GOODSSELL: And I'll second the motion.

7 CHAIRMAN MAMMINA: Okay. We have a motion by Vice
8 Chairman Francis and seconded by Member Goodsell. Please poll
9 the board.

10 SECRETARY WAGNER: Member Hernandez?

11 MEMBER HERNANDEZ: Aye.

12 SECRETARY WAGNER: Member Goodsell?

13 MEMBER GOODSSELL: Aye.

14 SECRETARY WAGNER: Member Donatelli?

15 MEMBER DONATELLI: Aye.

16 SECRETARY WAGNER: Vice Chairman Francis?

17 VICE CHAIRMAN FRANCIS: Aye.

18 SECRETARY WAGNER: Chairman Mammina?

19 CHAIRMAN MAMMINA: Aye. Application is granted.

20 SECRETARY WAGNER: With restaurant conditions, right?

21 VICE CHAIRMAN FRANCIS: With restaurant conditions,
22 yes. Absolutely.

23 CHAIRMAN MAMMINA: Yes. Restaurant conditions.

24 SECRETARY WAGNER: Appeal Number 21509, Golda Realty,
25 LLC; 30 Glen Cove Road, Greenvale; Section 20, Block 29, Lot 52
26 in the Business-B and Residence-C Zoning District. Variance

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2 from 70-103(A)(1), to construct interior alterations to an
3 existing retail store, converting it to a medical spa with not
4 enough parking.

5 CHAIRMAN MAMMINA: You've heard Appeal Number 21509,
6 Golda Realty, LLC. Is there anyone in the room interested in
7 the application? Seeing one hand and you will have an
8 opportunity to speak after the presentation. Thank you.

9 MR. MIGATZ: Bruce W. Migatz, Albanese and Albanese,
10 1050 Franklin Avenue, Garden City, New York. At the outset,
11 let me hand in the premarked exhibits one through four, which I
12 have bounded.

13 MEMBER DONATELLI: Mr. Migatz, does this application
14 involve a retaining wall?

15 MR. MIGATZ: Not yet. We'll see how it goes. The
16 application is strictly for a parking variance. Golda Realty
17 is the -- LLC is the owner and the applicant is Amny Holdings,
18 LLC doing business as Vibrance Aesthetics and Wellness. With
19 me today are the principals of Vibrance, Dr. Helen Hsieh, which
20 is spelled, H-S-I-E-H, and her husband Richard Liu, L-I-U.

21 The subject premises is located on the corner of
22 Northern Boulevard and Glen Cove Road in Greenvale. It is a
23 shopping center 1.89 acres. The first one 100 feet fronting on
24 Northern Boulevard is -- and Glen Cove Road is Business-B and
25 the balance Residence-C. This property, I'm showing my age and
26 maybe the Chairman's age, this property was developed many

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2 years ago by Charles Krypell and he put together several
3 delapidated buildings and parcels, and built what I think is a
4 gorgeous building for his jewelry store and for the two other
5 stores. Exhibit 1 is an areal photograph that actually comes
6 from Wayne Muller's traffic report. Wayne Muller is here to
7 testify about the parking study and it shows the -- the -- what
8 is marked as site -- is labeled site, S-I-T-E, is the now the
9 vacant retail store, which hopefully will be the -- the
10 business for Vibrance. To the left of the site is Charles
11 Krypell's jewelry store. Exhibit 2 shows -- there's two other
12 -- one other building, two other stores on the site and that
13 picture is in Exhibit 2. That is occupied by Northwell Health
14 and by California Closets. And Exhibit 3 is a picture of the
15 main building. Directly in the forefront is the vacant space,
16 which was previously Ulta beauty and to the right of that you
17 can see Charles Krypell's jewelry store. The vacant retail
18 space is 7,011 square feet and that is the proposed medical
19 spa. Since this does involve a parking variance, just want to
20 mention two prior applications. In Appeal Number 19109, in
21 2012 when this shopping center was constructed, 60 spaces were
22 required and 60 spaces were provided. It was just a variance
23 for the size of some of the parking spaces. There was a second
24 application in Appeal Number 20464, decided July 18, 2016, that
25 was for the urgent care facility. Since it went from retail to
26 medical, it required a five space parking variance. Now, the

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2 applicant presently operates a similar medical spa in
3 Manhattan. So they are very familiar with the operation and
4 how this facility will operate. In Mr. Muller's report, he
5 goes into detail about the nature of the operation and how it
6 affects the parking, but let me -- let me summarize that for
7 you if I may. The scope of the services include facial,
8 aesthetics, body contouring, injectables, botox, filler, PRP
9 injection, wellness, antiaging, high beam therapy and spa
10 facials. So it's a medical facility. There would be a maximum
11 number of nine employees onsite, including two medical doctors,
12 one physician assistant, three aestheticians. There we go, the
13 guy that knocks you out. I call them anesthesiologist.

14 CHAIRMAN MAMMINA: That's what I call them also.

15 MR. MIGATZ: So two receptionists and one accountant.
16 The anticipated hours of operation would be 10 a.m. to six
17 p.m., six to seven days a week and the peak hours would be one
18 to five. Now, services are by appointment only and typically
19 there are five customers per hour. Five clients per hour, five
20 patients per hour I should say, which is 40 customers over an
21 eight hour day. Now, the site plan before you shows a lot of
22 rooms. All right.

23 CHAIRMAN MAMMINA: To say the least.

24 MR. MIGATZ: It has a conference room, consultation
25 room, seven treatment rooms, main treatment room, six spa
26 rooms, one VIP spa room, infrared sauna, separate lockers for

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2 male and female and complimentary food and drink cafe. Now,
3 the reason why there's so many reasons when they say they only
4 see 40 people a day, is that some of the services take more
5 than an hour, with some services taking up to five hours and
6 many of the treatment rooms are for -- designed for specific
7 treatments that the client would choose. So they would be
8 vacant if the client that is there is not seeking that
9 treatment. So these are specialized treatment rooms and that's
10 why there are so many of them. But based upon their
11 experience, they would not see more than typically 40 customers
12 a day and it is strictly by appointment only. Ulta beauty
13 retail store was retail 1.300 parking spaces. Medical spa is
14 double that, 1.150 so we are short 23 spaces. But the traffic
15 parking study done by R&M Engineering and Wayne Muller
16 substantiates that there is sufficient parking and I would like
17 to have Wayne Muller come forward now to summarize the report.

18 MR. MULLER: Good afternoon. For the record, Wayne
19 Muller, Robinson and Muller Engineering, 50 Elm Street,
20 Huntington, New York. I'm here on behalf of the application.
21 As Mr. Migatz has indicated, we prepared a parking and traffic
22 generation analysis. That document is dated December 15, 2023.
23 It was previously submitted as part of the record. As Mr.
24 Migatz has indicated, it is currently proposed to change the
25 use of a portion of the building, the main building that's on
26 the site from what was previously an Ulta cosmetics store to a

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2 medical spa as he indicated. As indicated in my report, as
3 just stated by Mr. Migatz, is a detailed discussion as to how
4 the medical spa will operate, the extent of employees, the exam
5 rooms and the like. To determine the level of parking activity
6 that currently exists on the property, we performed
7 observations of the activity on Friday, I think that was
8 December 8, 2023 and then Saturday, December 9, 2023 between
9 the hours of 10 o'clock in the morning and six o'clock in the
10 evening. The results of those observations are summarized in
11 the tables that are appended to my document and what we found
12 was that on Friday, the peak hour or the peak time that we
13 observed were 26 vehicles parked at 12:30 p.m. That translate
14 to a 43 percent occupancy leaving 34 vacant spaces. On
15 Saturday, the peak time occurred at 3:30 p.m. There were 23
16 vehicles parked translating to a 37 space vacancy on the
17 property. I would like to point out that obviously early
18 December relates to the Christmas activity at retail centers,
19 more specifically the jewelry store so that the level of
20 activity that we observed would tend to be on the high side,
21 but it's definitely an indication of what the activity is on
22 the site. I happened to stop there again this morning on my
23 way to the hearing. At 11:30 this morning, there were a total
24 of 18 vehicles parked on the subject property, which is well
25 inline with the observations that we saw back in December of
26 2023. As indicated by Mr. Migatz, the medical spa doesn't

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2 anticipate any more than 40 customers per day and nine
3 employees. If we just assume that they were five customers per
4 hour and added to the employees, that would be 14 peoples.
5 Indicating that there would be more than sufficient parking
6 provided on the property to satisfy that demand. We took our
7 analysis one step further and utilized the institute of
8 transportation engineers parking generation statistics as it
9 would relate to medical office and using that computation, we
10 found that 19 vehicles would be -- would be parked associated
11 or changed to medical use. So it's not specifically pertaining
12 to what the applicant is proposing and still there would be 15
13 vacant spaces on Friday and 18 on Saturday. So therefore,
14 based on our observations of the existing parking on the
15 property and a fairly conservative estimate as to the parking
16 that would be utilized by the proposed change in use, there
17 will be adequate parking supplied on the property to
18 accommodate the demand solely in the spaces that are on the
19 subject property not infringing on the neighborhood available
20 parking and/or the adjacent property. It would be totally
21 sufficient on this property. As indicated in my report which
22 is what we call the traffic generation analysis, again,
23 utilizing the medical statistics presented by the ITE in their
24 trip generation manual and we don't believe that the traffic
25 generated by the change in use would have any significant
26 impact on the traffic conditions in that area. So therefore,

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2 based on the analysis that we performed, it is my professional
3 opinion that the granting of this application by the Board
4 would not have any significant impact on the parking conditions
5 in and around the subject property and that the traffic
6 generated by the proposed use will not significantly alter
7 traffic patterns and/or conditions within this area. Thank
8 you.

9 CHAIRMAN FRANCIS: Mr. Muller, I guess the question
10 that I have, because while as Mr. Migatz has said, yes, I was
11 -- I was on the Board when this center was developed back when
12 and, you know, in looking at the -- at the drawings and some of
13 the exhibits, it shows that there is a connection to the
14 adjacent property and you specifically testified that there
15 would be no parking on adjacent properties. Could you just
16 refresh my -- my mind regarding that or maybe Mr. Migatz should
17 either way.

18 MR. MULLER: Yeah. I testified. In fact, my firm did
19 the site plans for what was a gas station, I believe and then
20 it was Lester's, I believe was the clothing store that was
21 there and the properties were combined and I believe I
22 testified for the first variance and the second variance before
23 the Board. Yeah. I believe the connection is solely for
24 access from -- really from -- between both properties and not
25 for parking. And again, as indicated in my report, I do not
26 believe that there will be a need for anyone associated with

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2 the change in use and/or the existing conditions to parking on
3 Mr. Larensalies (phonetic) property to the north, because
4 there's plenty of parking provided on the property. I did do
5 some spot observations on the activity on the northern side,
6 there's plenty of parking there also. The one thing that we
7 did notice is that on the Saturday that we were out there,
8 somebody in the neighborhood had a party and the people from
9 the party were parking in the parking lot, because there was
10 such an abundance of parking on Mr. Larensalies property.

11 MEMBER DONATELLI: So I already know the answer to
12 these questions, but I think it's probably good to get it on
13 the record. Is there any on street parking either on Glen Cove
14 Road or State Road 25A?

15 MR. MULLER: No. Nor should there be in this area.
16 It's extremely wide in all directions.

17 MEMBER DONATELLI: I think I remember reading that this
18 may be the second most trafficked intersection in all of Nassau
19 County, closely behind Glen Cove Road.

20 MR. MULLER: And I think Old Country Road. It's a very
21 busy intersect, absolutely.

22 MEMBER DONATELLI: Where is the closest on street
23 parking that is --

24 MR. MULLER: It's on the street located to the north.

25 MEMBER DONATELLI: And that would be residential
26 street?

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2 MR. MULLER: Correct. Yes. I believe it's called
3 Chestnut Street if I'm not mistaken.

4 MEMBER DONATELLI: Did you notice any parking of any
5 vehicles associated with this shopping center on any local
6 streets?

7 MR. MULLER: We did not, no.

8 MEMBER DONATELLI: It was not practical, it's far?

9 MR. MULLER: In reality there is no need, because
10 there's an abundance of spaces on the property. Based on the
11 uses that are there, even with the urgent care that's there.
12 You've got the California Closets, Mr. Krypell's jewelry
13 business, which i believe is pretty high end. He's a big
14 designer of jewelry. So based on the mix of uses, there is no
15 -- there's no need for anyone associated with this center to
16 park on the street and I believe -- what's interesting though
17 is that I had testified back when this was specked, he didn't
18 really have a tenant and the -- I testified that the building
19 would able to satisfy it's own demand and low and behold it has
20 been. And I believe Ulta was there, which I guess is a fairly
21 busy retail facility. It's pretty poplar, right. I mean, so
22 that -- there was never a problem with parking spilling onto
23 neighbor streets from that. And again, this is a very
24 specialized use. There is one that was recently built in
25 Huntington, a medical spa on New York Avenue just south of Main
26 Street. It was the old Freeman Jewelers, which is a very large

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2 jewelry business and then it got converted to a medical spa. I
3 pass by it multiple times a day, I don't know how they make any
4 money, there's never really anyone in there, but it's very,
5 very nice and I assume that the services that are provided are
6 way out of my pay grade.

7 MEMBER DONATELLI: And the services that would be
8 provided by the applicant and I don't know if this is a
9 question Mr. Migatz or yourself, but the services would all be
10 by appointment?

11 MR. MULLER: Correct.

12 MEMBER DONATELLI: So that they shouldn't bunch up at
13 anyone particular time or another.

14 MR. MULLER: No. And just based on my limited
15 knowledge on the one in Huntington, I think people just want to
16 be, like, relaxed and calm. This is not like a doctors office
17 where there's 700 people and everyone is a little bit agitated.
18 I think they want to chill out a bit and do what they are going
19 to do.

20 MEMBER DONATELLI: So it's by appointment only?

21 MR. MULLER: Yeah. Absolutely. I have nothing
22 further.

23 CHAIRMAN MAMMINA: Thank you.

24 MR. MULLER: Thank you. Thank you.

25 MR. MIGATZ: I can tell you from personal experience,
26 unfortunately I've been in Charles Krypell's store way too many

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2 times and nobody is every in that store. It's a gigantic
3 store. It's a wonderful store. If you ever want to buy
4 jewelry, it's just a gorgeous store and, you know, there are
5 three people -- three customers in there at a time, it's a lot,
6 you know, and it was never a problem when Ulta was there and as
7 Mr. Muller said that's potentially a much more high traffic
8 generator and of course we have to bring up the dreaded nail
9 spa that can go in there as of right and have tremendous
10 traffic. So going through the standards, I think Mr. Muller
11 has addressed whether or not there would be an adverse impact
12 on the community. His report demonstrates there's sufficient
13 parking on the site and there is no other feasible alternative
14 other than a variance. These are substantial on paper
15 percentage wise, perhaps but percentage deviation is not the
16 whole picture, Ms. Goodsell, and that comes from the judge.

17 MEMBER GOODSSELL: I'll tell him you said.

18 MR. MIGATZ: Give him my regards. And in the weighing
19 all those factors. It's unlisted action, it's a parking
20 variance, not going to have an adverse impact on the community.
21 Self created an a matter of law, because the applicant and
22 owner purchased the property subject to the code to seek a
23 variance. The zoning board did forward to me an e-mail they
24 received from a purported resident complaining about traffic in
25 general. The resident does not give her address and in my
26 book, that's not credible. You don't give your address as to

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2 where you live, you can't assess the credibility of those
3 objections and in any event, Mr. Muller's testimony and his
4 report substantiates that this application does not cause any
5 traffic congestion.

6 SECRETARY WAGNER: Just so you know, I reached out to
7 that person and they did not respond with their address.

8 MR. MIGATZ: Very good. I understand there is one
9 person here who wants to speak so I will step aside.

10 CHAIRMAN MAMMINA: Thank you.

11 MR. BROOKSTEIN: Good afternoon, Mr. Chairman and
12 Members of the Board. Joshua Brookstein from Sahn, Ward,
13 Braff, Koblenz and Coschignano. I'm here this morning on
14 behalf of our client Kevin Developers, LLC. The owner of the
15 property at 32 Glen Cove Road, also known as Section 20, Block
16 29, Lots 49, 161, 162, 163 and 164 on the Nassau County Land
17 and Tax Map. Kevin developers, LLC has had applications before
18 this Board in the past and we will have an upcoming application
19 before this Board in February. We have had the opportunity, my
20 client has had the opportunity to review the plans the Board is
21 considering today for 30 Glen Cove Road and we offer our
22 support to that application. I do have and would like to hand
23 up copies of a consent letter signed by my client in support of
24 the application.

25 MEMBER GOODSSELL: Your client is the adjoining property
26 owner?

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2 MR. BROOKSTEIN: That's correct. 32 Glen Cove Road.

3 SECRETARY WAGNER: Exhibit A from resident in support.

4 MR. BROOKSTEIN: And with that, I thank you for your
5 time.

6 VICE CHAIRMAN FRANCIS: Thank you.

7 CHAIRMAN MAMMINA: Thank you so much.

8 MR. MIGATZ: I agree with what Mr. Brookstein has said.

9 CHAIRMAN MAMMINA: It's not that frequent that it
10 happens.

11 MR. MIGATZ: I'm not used to that. I have nothing
12 further. We hope the Board looks favorably on this
13 application.

14 MEMBER GOODSELL: I have no objection to this
15 application and to my surprise -- to my surprise, the parking
16 and the rear of the building is bigger than it appears. There
17 are quite a number of parking spaces back there and so I'd only
18 just passed this site in anticipation for this application and
19 I actually drove in there and yes, there are two people Charles
20 Krypella's jewelry store, because there were two cars there.
21 But otherwise, it's pretty big back there and I think just
22 given the numbers that Mr. Muller presented and even if the
23 medical spa has a full capacity, I think there's still going to
24 be a couple of spots left, unless the medical spa is going to
25 run medical emergency services. I make a motion that we grant
26 the application.

1 Proceedings

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

4 MEMBER DONATELLI: Second.

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

7 SECRETARY WAGNER: Member Hernandez?

8 MEMBER HERNANDEZ: Aye.

9 SECRETARY WAGNER: Member Goodsell?

10 MEMBER GOODSSELL: Aye.

11 SECRETARY WAGNER: Member Donatelli?

12 MEMBER DONATELLI: Aye.

13 SECRETARY WAGNER: Vice Chairman Francis?

14 VICE CHAIRMAN FRANCIS: Aye.

15 SECRETARY WAGNER: Chairman Mammina?

16 CHAIRMAN MAMMINA: Aye. Application is granted. Good
17 luck.

18 MR. MIGATZ: It was a pleasure spending the day with
19 you.

20 SECRETARY WAGNER: Does anybody want to adopt SEQRA as
21 modified?

22 MEMBER GOODSSELL: I'll move it.

23 SECRETARY WAGNER: Somebody want to second?

24 MEMBER HERNANDEZ: Second.

25 SECRETARY WAGNER: Member Hernandez?

26 MEMBER HERNANDEZ: Aye.

1 Proceedings

2 SECRETARY WAGNER: Member Goodsell?

3 MEMBER GOODSSELL: Aye.

4 SECRETARY WAGNER: Member Donatelli?

5 MEMBER DONATELLI: Aye.

6 SECRETARY WAGNER: Vice Chairman Francis?

7 VICE CHAIRMAN FRANCIS: Aye.

8 SECRETARY WAGNER: Chairman Mammina?

9 CHAIRMAN MAMMINA: Aye.

10 (TIME NOTED: 2:47 p.m.)

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C E R T I F I C A T E

I, NICOLE L. BASILE, a Notary Public within and for the State of New York do hereby certify that the foregoing proceeding was taken before me on the 23th day of January, 2024. The said testimony was taken stenographically by myself and then transcribed. The within transcript is a true record of the said testimony.

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

IN WITNESS WHEREOF I have hereunto set my hand this 7th day of March, 2024.

Nicole L. Basile

NICOLE L. BASILE