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Town of North Hempstead  
Board of Zoning Appeal  
PUBLIC HEARINGS

Wednesday, August 14, 2024  
10:00 a.m.

BOARD MEMBERS PRESENT:

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

ALSO PRESENT:

- Deborah Algios, Deputy Town Attorney
- Virginia Wagner, Secretary
- Michael Tumbarello, Planner
- Mariesel Berrios, Stenographer

1 CHAIRMAN MAMMINA: If everyone would please rise and join Vice  
2 Chairman Francis in the Pledge of Allegiance.

3 (WHEREUPON, the Pledge of Allegiance was recited.)

4 CHAIRMAN MAMMINA: Good morning, ladies and gentlemen.  
5 Welcome to the Town of Hempstead Board of Zoning Appeals. What I'll  
6 do is I'll go through the way we conduct business here in case you've  
7 never been to a Zoning Board, or you've been to a Zoning Board and  
8 it may be handled differently there just in terms of procedure. What  
9 will happen is Secretary Wagner will call each one of the cases, and  
10 we'll ask for the applicant to get up, come forward. Applicant will  
11 give their name and address. I'll also ask if there's anyone who's  
12 interested in the application, which means you may want to be here  
13 to speak for something or against something. Once that part is done,  
14 if there is someone else who wishes to speak, the applicant then gets  
15 a second turn at the microphone because we may have questions the  
16 Board wants to ask. The applicant may want to support or refute what  
17 someone else had said. After that is done, the hearing is over, and  
18 in 99.9 times out of 100, no one has to come back for a second hearing.  
19 So if people have appeared in villages and things, you can come back  
20 15 times in a village. It's just handled differently.

21 Now, once that is done the board will do one of four things.  
22 We will either grant the application, deny the application, we may  
23 reserve the application, which just means that we got everything that  
24 we need, but we may want to go out and look at the site again, you  
25 know, something to that effect potentially. The fourth thing would  
26 be that we may continue the application. Now, if we continue the

1 application, what that means is, you know, we might say, look, you  
2 got 100 stories on the building, cut it down to one story, and you're  
3 gonna be okay, but then we need drawings to come back. There may  
4 be some documents that we would ask the applicant to present to us,  
5 maybe a closing document from a bank or whatever funding agency, so  
6 that can be for any number of reasons. Then the record is still open,  
7 and if the record is still open, we submit that back to the Zoning  
8 Board, and that gets brought up to Ms. Wagner's office, which is  
9 across the street on the second floor, and then will get distributed  
10 to the Board. We may or may not then, in the next hearing, decide  
11 whether or not the Board is satisfied with what's there in order to  
12 make a decision.

13 All of our decisions are made in public. They are deliberated  
14 in public. That's a law called the Sunshine Law. After this hearing  
15 today, we'll deliberate on some older cases, and then some of those  
16 may get decided. Some of those may not. That's the way that it  
17 happens. Also, we do live stream, so if you want to hear anything,  
18 all you need to do is just get on to the channel for the Town, and  
19 you'll be able to watch that proceeding. No questions can be asked  
20 of the Board when we then are deliberating, and that's the way rules  
21 go for you, attorney guys.

22 Just a couple of other points. When we have anyone who's  
23 speaking after the applicant, someone in support, someone who is  
24 against an application, that's limited to three minutes. What I like  
25 to say is we're not chopping anybody's head off at the end of three  
26 minutes, but we need to kind of contain how long the hearing will

1 go. If there's an attorney that is representing opposition, we will  
2 give that attorney then more time on that. If you do speak, we just  
3 ask that we try not to repeat one another and that we focus on what  
4 the denial is for. Just by example, if somebody's here because they  
5 need the side yard on a side of their house because it's five feet,  
6 and they need seven if you're then speaking about the application,  
7 the Board can't hear testimony regarding the school buses that come  
8 down the street or, you know, where people park because it's not part  
9 of that, and we understand that you want to bring forward, you know,  
10 whatever points you may have, but this is a quasi-judicial hearing.  
11 We have very specific boundaries within the law of what we are  
12 permitted to consider within our application.

13 I think with all of that said -- Deborah, I got everything?

14 ATTORNEY ALGIOS: Yes.

15 CHAIRMAN MAMMINA: All right. All of these toys that we have  
16 that we can't live without, just put them on mute. If you need to  
17 make a phone call or take a phone call, just get on up and, you know,  
18 walk out into the outer area. All of that is okay. If you're  
19 expecting somebody else to be coming today, just give them that same  
20 information. We request that crosstalk be limited to zero only  
21 because we have a stenographer here, who's at the mercy of all of  
22 us, and she's got magic fingers there, and then also it gets  
23 confusing, you know, for the Board, so that's just appreciated, and  
24 I'm sure everybody can understand that.

25 So with all of that said, Ms. Wagner, do we have any  
26 modifications to the calendar today?

1           SECRETARY WAGNER: Yes, Chairman. We have an adjournment for  
2 Appeal #2186, Onkar Singh; 47 Reed Drive, Roslyn; Section 9, Block  
3 653, Lot 64; in the Residence A Zoning District. Variances from  
4 70-29(C) and 70-30(C) to legalize a new home which is too big and  
5 is located too close to the street.

6           We also have an adjournment request for Appeal -- oh, that will  
7 be adjourned to September 4th. We also have an adjournment request  
8 for Appeal #21573, Commonwealth O'Leary Real Estate Corp, 1833  
9 Gilford Avenue, New Hyde Park; Section 8, Block 190, Lot 15; in the  
10 Industrial B Zoning District. Variances from 70-103.A(1) and  
11 70-103.B to legalize an interior mezzanine that requires site plan  
12 review with not enough parking on site and parking stalls that are  
13 too small, and an appeal for determination that site plan review under  
14 70-219.A(1)(a) is not required. That is requested to be adjourned  
15 without a date.

16           CHAIRMAN MAMMINA: Okay, so if anyone is here for the first  
17 appeal, that will not be heard today but will be heard on the 4th  
18 of September, and then if anyone is here for the second appeal, that  
19 is adjourned without a date. Meaning that they're not going to  
20 intend to come back until they may then be ready, and you will be  
21 noticed again then if that's the case. So I think with all of that  
22 said, maybe we'll just give two minutes here, and then we'll call --

1 SECRETARY WAGNER: We're just having some technical issues.  
2 So before start the first appeal, waiting for that be to resolved.

3 (WHEREUPON, at this time, there was a pause in the proceeding.)

4 SECRETARY WAGNER: First appeal, Appeal #21538, Benjamin Brian  
5 and Shira Vered Roth; 12 Beverly Road, Port Washington; Section 5,  
6 Block 20, Lot 7; in the Residence A Zoning District.

7 Variances from 70-30.C and 70-31A to construct a foyer and  
8 portico too close to the street and to legalize a deck located too  
9 close to a side property line and with not enough total aggregate  
10 side yards.

11 CHAIRMAN MAMMINA: You've heard Appeal #21538, Benjamin Brian  
12 and Shira Vered Roth. Is there anyone in the room interested in the  
13 application other than the applicant? Seeing no one, please give  
14 your name and address.

15 MS. DEEGAN DICKSON: Good morning. My name is Kathleen Deegan  
16 Dickson. I'm a partner in the law firm of Forchelli Deegan Terrana,  
17 330 Earle Ovington Boulevard, Uniondale, New York. I'm here on  
18 behalf of Benjamin and Shira Roth, who are the owners of the property  
19 at 12 Beverly Road in Port Washington. If this application sounds  
20 a little familiar to some of you, this matter was last before you  
21 on May 8, 2024; just last spring. Ben and Shira were not available  
22 to be here that day, and the case was presented by their client's  
23 architect, Curtis Conklin. He did a fine job of presenting the  
24 plans, but he wasn't as familiar with the overall neighborhood as  
25 the Roths would have been, and some things were left out of the  
26 application and out of the presentation.

1           The hearing was continued to allow the applicant to provide  
2 additional information and possibly modify the plans. I was  
3 retained by the Roths after the hearing, and I'm here today to see  
4 if I can help complete the record, and we believe that it supports  
5 the application as it was originally presented.

6           I reviewed the transcript of the May 8th hearing, and I'd like  
7 to clarify some of the information that was contained in that record,  
8 and I would like to also incorporate that into today's record, so  
9 we don't have to rehash the things that were already hashed here.

10          I would like to just hand in a packet of hearing exhibits that  
11 you can refer to throughout my presentation.

12          SECRETARY WAGNER: Were these also submitted electronically?

13          MS. DEEGAN DICKSON: No, they were not. We will send them.

14          SECRETARY WAGNER: Thank you.

15          MS. DEEGAN DICKSON: They're really for reference.

16          SECRETARY WAGNER: So this will be -- and this is all -- is it  
17 one packet containing --

18          MS. DEEGAN DICKSON: Yes.

19          SECRETARY WAGNER: We'll call this Exhibit 1.

20          CHAIRMAN MAMMINA: Thank you. Okay.

21          MS. DEEGAN DICKSON: Thank you. So the application this  
22 morning is for the approval of a proposed vestibule to be constructed  
23 on the front of the Roth's house at 12 Beverly Road. The proposed  
24 vestibule conforms the architectural style and material of the  
25 building, but it exceeds the dimensions that are permitted for  
26 encroachments into the front yard. So Section 70-101.C, provides

1 that a one-story enclosed vestibule, which is what we're proposing,  
2 not greater than 8 feet width and 5 in depth, may extend to the  
3 required front yard provided that the vestibule shall conform an  
4 architectural and material -- architecture and material to the  
5 building. So the proposed vestibule that's before you -- and I'm  
6 going to show you.

7 CHAIRMAN MAMMINA: Excuse me, Ms. Dickson, are you a member of  
8 the architectural union? I don't know that you're allowed to do  
9 that.

10 (WHEREUPON, there's laughter from Board Members.)

11 MS. DEEGAN DICKSON: A lot of what I'm saying that's styling  
12 and architectural is from the prior record from the architect as well.

13 CHAIRMAN MAMMINA: There you go.

14 MS. DEEGAN DICKSON: So the proposed vestibule exceeds the  
15 dimensions permitted as of right now, which is why we're here for  
16 a variance to provide for at 12-foot wide vestibule that's  
17 approximately 8 feet deep. It is fairly consistent with what the  
18 existing stoop is on the front of the house. You'll see some  
19 photographs of the Roth's residence that is unenclosed at this point.

20 The house is a fairly modest sized to begin with. It's 2100  
21 square feet, and the addition of the foyer and vestibule, does not  
22 trigger any violations or exceedances of the F.A.R or lot coverage,  
23 and I think that's notable. The house is also setback farther from  
24 the street than the average setback in this zoning district.

25 Required minimum setback is 35 feet or the average of the houses on  
26 either side of the same block from it. So the average setback is



1 36.9 feet, and they're at 38.96, almost 39 feet, so they exceed the  
2 minimum -- the setback by almost 4 feet and the average setback by  
3 2 feet.

4 CHAIRMAN MAMMINA: And that's for the house.

5 MS. DEEGAN DICKSON: For the house, yes.

6 CHAIRMAN MAMMINA: Right, not the proposed addition?

7 MS. DEEGAN DICKSON: Right. So the addition will encroach into  
8 the required side yard, but part of that vestibule will exist within  
9 the permitted or outside of the -- adjacent to the house, not --

10 CHAIRMAN MAMMINA: I just want to make sure I was reading the  
11 plan correctly. That's all.

12 MS. DEEGAN DICKSON: Yes. So the vestibule will extend less  
13 than 5 feet into the required front setback. So the code says you  
14 can have a vestibule 8 feet wide by 5 feet deep. We're  
15 proposing -- I'm sorry, 8 feet wide by 5 feet deep. We're proposing  
16 12 feet wide by 8 feet deep. That includes the covered porch and  
17 it's outside of the enclosed portion, so there's -- as you walk out  
18 of the vestibule, there'll be a stoop with a covering and then two  
19 pillars. So that entire structure will -- is proposed to be  
20 7.71 feet.

21 As mentioned, the vestibule itself only encroaches  
22 approximately 2 feet into the front yard setback, so it's less than  
23 the 5 feet that the code contemplates. Am I confusing you?

24 MEMBER HERNANDEZ: On one side I believe. The drawings are  
25 very difficult to read, okay? And on one side, it may be 2 feet plus,  
26 but on the other side, it appears to be 5 feet, according to the

1 drawing.

2 MS. DEEGAN DICKSON: Well, that goes all the way out to the  
3 stoop, so there's a vestibule, and then there's a stoop beyond it  
4 that has a covering and the pillars. So the code section --

5 MEMBER HERNANDEZ: I'm sorry, before you go on. So the  
6 vestibule is 92.5 square feet, and then you have the stoop in front  
7 of that?

8 MS. DEEGAN DICKSON: So the vestibule --

9 MEMBER HERNANDEZ: Because I don't see that in your drawing.

10 CHAIRMAN MAMMINA: Do we have a floor plan, and I don't mean  
11 to put you on the spot. There's no floor plan with this, so we can't  
12 see what's inside it, you know, that might necessitate it.

13 MS. DEEGAN DICKSON: Right.

14 SECRETARY WAGNER: I think there was something submitted.

15 CHAIRMAN MAMMINA: Your rendering looks, makes it look very  
16 deep.

17 MEMBER HERNANDEZ: And there's a stoop in front of it so makes  
18 it even deeper.

19 MS. DEEGAN DICKSON: Well, the stoop is really just a step  
20 outside of --

21 MEMBER HERNANDEZ: Sure.

22 MS. DEEGAN DICKSON: -- so you're not stepping right out onto  
23 the dirt from the vestibule. There is a floor plan that was included  
24 and submitted. It's Page A1 of the plans.

25 CHAIRMAN MAMMINA: We don't have it in our packet.

26 SECRETARY WAGNER: It's listed as an exhibit.

1 MEMBER GOODSSELL: Under exhibits.

2 CHAIRMAN MAMMINA: Oh, it's under exhibits, not under plans,  
3 okay.

4 SECRETARY WAGNER: Because it was submitted after the fact.

5 CHAIRMAN MAMMINA: Oh, okay, so it came in later. All right.

6 MS. DEEGAN DICKSON: But you had it for the last hearing.

7 SECRETARY WAGNER: And it's that plan right there, A1.

8 CHAIRMAN MAMMINA: I thought that we had it for the last  
9 hearing. I'm saying, okay, I don't see it, but, you know.

10 MEMBER DONATELLI: Okay, found it.

11 CHAIRMAN MAMMINA: Okay, got it.

12 MEMBER HERNANDEZ: Is it one page?

13 CHAIRMAN MAMMINA: Yes.

14 SECRETARY WAGNER: Yes.

15 MS. DEEGAN DICKSON: So A1, actually, it's a little clearer what  
16 the dimensions are. It gets a little confusing on the site plan  
17 because he's showing the minimum setback and the average setback.

18 MEMBER HERNANDEZ: Okay, now I can see the drawings. Let me  
19 ask the question again.

20 MS. DEEGAN DICKSON: Okay.

21 MEMBER HERNANDEZ: There is a landing in front of the house  
22 right now?

23 MS. DEEGAN DICKSON: Yes.

24 MEMBER HERNANDEZ: According to the -- not the rendering, but  
25 the actual drawing of the lot, that appears to be 96 square feet.  
26 That landing. So is the vestibule going to use all of that landing

1 and then in front of that it's gonna be two columns with an overhang  
2 and then a step?

3 MS. DEEGAN DICKSON: Correct. That's what --

4 MEMBER HERNANDEZ: Because none of that appears on the drawing.

5 MS. DEEGAN DICKSON: I'm sorry, I didn't get that last thing.

6 MEMBER HERNANDEZ: None of that appears on the drawing. The  
7 drawing only shows is the landing being covered by one thing.

8 MS. DEEGAN DICKSON: Well, so the landing will be. So if you  
9 look at the first floor drawing on A1.

10 MEMBER HERNANDEZ: Yes.

11 MS. DEEGAN DICKSON: You'll see the entry -- well, it's labeled  
12 as entry, and it shows 7 feet 8.5 inches deep like toward the front  
13 street by 12 feet wide, so there's a lot of different dimensions here.  
14 It's in the bottom right-hand corner of the drawing.

15 MEMBER HERNANDEZ: I'm trying to read it.

16 CHAIRMAN MAMMINA: I see it. It's also -- not for me to say  
17 or the fact we're not an aesthetic board or whatever, but that landing  
18 is 2 foot 4 inches. I mean, that seems -- I don't want to say almost  
19 dangerous, but 2 foot 4 inches is very de minimis.

20 MS. DEEGAN DICKSON: Well, it's going to be coming out -- as  
21 you walk out the front door.

22 CHAIRMAN MAMMINA: Yeah.

23 MS. DEEGAN DICKSON: You'll be walking onto that front stoop.  
24 I mean --

25 CHAIRMAN MAMMINA: Just my feeling.

26 MS. DEEGAN DICKSON: We can make it larger, but that would

1 increase the variance.

2 CHAIRMAN MAMMINA: No, that's going to increase it. We pull  
3 back. The vestibule just -- look I don't mean to get like  
4 fancy-schmancy, but ergonomically that doesn't work based on how long  
5 that is as to how high that riser is going to be, but I just -- I  
6 just put that out there, and we're not an aesthetic board, so, you  
7 know.

8 MEMBER HERNANDEZ: I'm having a problem with the dimensions.  
9 It says in one drawing that the vestibule is 96 square feet, but then  
10 as I look at this A1, A2, whatever it is that we're looking at here,  
11 at lower right corner.

12 MS. DEEGAN DICKSON: Right.

13 MEMBER HERNANDEZ: It's showing the vestibule to be 9 by 7. The  
14 actual vestibule, and then they --

15 MS. DEEGAN DICKSON: Well, it pulls the entry, and I think that  
16 excludes the closet. If you look to the right-hand side of that,  
17 there's a closet that's 1 foot 10 inches by 7.4, so I think if you --

18 SECRETARY WAGNER: No, it's definitely --

19 MS. DEEGAN DICKSON: -- net that out, that's --

20 SECRETARY WAGNER: -- 12 foot wide. It's 12 feet wide. Right  
21 there.

22 MEMBER HERNANDEZ: Okay.

23 SECRETARY WAGNER: And it's 7 and --

24 MEMBER HERNANDEZ: But it says the entry, it says 9 by 7. Wait.  
25 I'm --

26 SECRETARY WAGNER: Right, but that's the interior. That's

1 so -- what she's saying is it excludes -- that dimension might exclude  
2 the closet.

3 MEMBER HERNANDEZ: So it's --

4 SECRETARY WAGNER: I would go by the outside by this whole  
5 piece, which is 12 feet by 7.

6 MEMBER HERNANDEZ: That's the problem. I'm trying to figure.  
7 I don't know what the dimension is.

8 SECRETARY WAGNER: So 12 feet is wide. The whole thing. Times  
9 7.5 deep.

10 MEMBER HERNANDEZ: So it's 96. So that means that this thing  
11 is going to be over the existing platform that's out there.

12 MS. DEEGAN DICKSON: Correct.

13 MEMBER HERNANDEZ: And then in front of that, they're going to  
14 throw another 3 feet for the two columns, right?

15 CHAIRMAN MAMMINA: It says 2 foot 4 on the right-hand side.

16 MEMBER HERNANDEZ: And it says three on the left.

17 MS. DEEGAN DICKSON: So if you look on the left-hand side of  
18 the foundation drawing where it shows the unexcavated area is 7 feet  
19 8.5 inches by 11 feet 10.5 inches.

20 (WHEREUPON, a discussion was held among Board Members.)

21 SECRETARY WAGNER: I think this is bigger than what's there now.

22 MEMBER DONATELLI: If you take --

23 SECRETARY WAGNER: The survey doesn't give the dimension, but  
24 it looks similar.

25 MS. DEEGAN DICKSON: I think I can clarify. So the vestibule  
26 is going to sit on top of the existing platform.

1 MEMBER HERNANDEZ: Right.

2 VICE CHAIRMAN FRANCIS: Right.

3 MS. DEEGAN DICKSON: That will be an additional 2.5 feet outside  
4 of that so that there is actually a step so that you're not stepping  
5 right out of the front door onto the walkway.

6 CHAIRMAN MAMMINA: The rendering shows carved out at the  
7 corner, making that deeper into the front yard. The drawing  
8 doesn't --

9 MS. DEEGAN DICKSON: Are you talking about that --

10 CHAIRMAN MAMMINA: The 3D view. If you take a look at the lower  
11 corner at grade.

12 MS. DEEGAN DICKSON: Over here?

13 CHAIRMAN MAMMINA: Right there and on the other side, that shows  
14 another piece coming out beyond that that's not on the drawing.

15 SECRETARY WAGNER: The line on it is smaller. Do you see that?

16 MS. DEEGAN DICKSON: Yes, I see that. I see that on the  
17 rendering.

18 CHAIRMAN MAMMINA: That's what I said about the landing being,  
19 in my opinion, a landing being too shallow.

20 MS. DEEGAN DICKSON: Right, so unfortunately, the architect is  
21 not here today, so I'm not sure that I can provide an answer, but  
22 if that's a concern, I'm sure that we can make a modification for  
23 that.

24 CHAIRMAN MAMMINA: Is the young lady representing the  
25 architect?

26 MS. DEEGAN DICKSON: No, she's from -- oh, you didn't meet her

1 last time. Off the record real quick.

2 (WHEREUPON, a discussion was held off the record.)

3 MS. DEEGAN DICKSON: Yes, so the architect wasn't able to be  
4 here today, so there may be technical questions that we can come back  
5 with answers on. As far as the cutaway goes, you know, my impression  
6 is that somewhat aesthetic so that you can have it match up with the  
7 walkway as it's proposed rather than having a 12-foot wide walkway.  
8 The entry it looks like it narrows.

9 CHAIRMAN MAMMINA: The major question that I have is why does  
10 it need to be that deep?

11 MS. DEEGAN DICKSON: The vestibule or the --

12 CHAIRMAN MAMMINA: That entry where it says 9 feet by 7 feet.  
13 If my memory serves me, coming out there are times that we have granted  
14 something that comes forward -- excuse me, that is wider, but not  
15 coming out beyond it.

16 MS. DEEGAN DICKSON: Right.

17 CHAIRMAN MAMMINA: Because that moves it aesthetically closer  
18 to the street, you know, and --

19 MS. DEEGAN DICKSON: So the --

20 CHAIRMAN MAMMINA: We're not aesthetic, but I think in the  
21 character of the neighborhood, near the projection, you know, of this  
22 is very bulky.

23 MS. DEEGAN DICKSON: So you're talking about the area --

24 CHAIRMAN MAMMINA: The depth of it.

25 MS. DEEGAN DICKSON: So not necessarily the vestibule but the  
26 vestibule with the --



1 MEMBER HERNANDEZ: I think it's a combination.

2 CHAIRMAN MAMMINA: Right. Well, the roof and width it has as  
3 well, but I would say, just as one Board Member, you know, the width  
4 personally doesn't bother me as much as how far it projects, you know,  
5 out from the front of the house.

6 MS. DEEGAN DICKSON: So I think that's something that we can  
7 address. You know, that portion is not as essential. If we take  
8 off that roofed over portion with the two columns, that will eliminate  
9 some of the bulkiness of the front. They still need the stoop, which  
10 to step onto --

11 CHAIRMAN MAMMINA: You need something to step out onto.

12 MS. DEEGAN DICKSON: Yeah, but the vestibule, you know, the  
13 concept was really to put an addition on that looks like it's a natural  
14 part of the house rather than an appendage that was stuck on at the  
15 end. This house was built -- when was it built? It's not a new home.

16 CHAIRMAN MAMMINA: Probably in the 60s.

17 MS. DEEGAN DICKSON: Yeah, so the, you know, the whole  
18 neighborhood, and this what I wanted to put into the record today,  
19 that the neighborhood really is not an aesthetically neighborhood.  
20 It's not a consistent neighborhood. I think at the last hearing,  
21 Mr. Donatelli, at least according to the record, talked about it being  
22 in the Crest, Eastern Crest homes neighborhood, which is actually  
23 on the other side of Port Washington Boulevard. There are some  
24 pictures of the Eastern Crest homes in your packet, and you can see  
25 those are pretty much two designs that were all built around the same  
26 time, same architect, same builder, and I understand the concern if

1 you're going to throw a vestibule on the front of those homes. That  
2 would probably stick out like a sore thumb. We also --

3 CHAIRMAN MAMMINA: Without interrupting you. In favor of what  
4 you're looking at, that door swinging in and touching the steps --

5 MS. DEEGAN DICKSON: Right.

6 CHAIRMAN MAMMINA: My own house in Carle Place had almost an  
7 even worse condition --

8 MS. DEEGAN DICKSON: Really?

9 CHAIRMAN MAMMINA: -- than that, and not having an entry closet,  
10 you know, is something that, you know, that is not usual to have one.  
11 So again, I think it's -- I think it's the -- I don't know.

12 MEMBER DONATELLI: Let me just jump in.

13 CHAIRMAN MAMMINA: Please.

14 MEMBER DONATELLI: I recall this case from when we heard it for  
15 the first time, and I don't believe that we had the interior floor  
16 plans for the vestibule at that time, so my question was, we  
17 understand that we'll need to grant a variance for the front yard  
18 setback given the average of the other homes in the area, but what  
19 mandated this vestibule to be the size that it was? Couldn't it be  
20 made smaller, perhaps somewhat larger than 8 by 5, but perhaps less  
21 than 7 10 by 12, so without the benefit of the floor plan, we didn't  
22 really know what was being proposed there, and why it was necessary.

23 Now that we have the floor plan, and I see it, and I understand  
24 that the applicant would like to put a closet there, but isn't there  
25 some way to still make the vestibule slightly smaller because it is  
26 enclosed. It is not, for the most part, an opened vestibule. The

1 only part that is going to be open is where the pillars are, so it  
2 will intrude on the street. Bringing the house closer to the street,  
3 visually impacting the street.

4 MS. DEEGAN DICKSON: So the --

5 MEMBER DONATELLI: Is there some way to make it smaller?

6 MS. DEEGAN DICKSON: So the issue with the size is not so much  
7 how close it is to the street because from the -- from the average  
8 setback, we're still only encroaching -- the vestibule itself is  
9 4.67. The code says you can go 5 feet beyond the front setback.

10 MEMBER DONATELLI: But if it's compliant.

11 MS. DEEGAN DICKSON: But if it's complaint, yes. So it's only  
12 coming out a little bit farther. What I think you're saying that  
13 is that if it's 4 feet wider, that makes it that much more significant,  
14 and I understand. The issue is, you know, partially aesthetic and  
15 partially functional. So the aesthetics at 12 feet -- the front of  
16 the house is about 37 feet wide, so this is a little less than a third  
17 of the house.

18 As I mentioned, the idea was to not have something that looked  
19 like an appendage. We've all seen the old houses where they put a  
20 stairwell on the outside of those, you know, the little, you know,  
21 4 by 6, looks like a little shed that they tack onto the front of  
22 the house, and that was something that they wanted to avoid here.

23 This is a beautiful neighborhood with a lot of character. It's  
24 a Beacon Hill neighborhood. There are a lot of houses that have  
25 vestibules, have porches, have porticos. Some have none. Some have  
26 all of the above. You know, with the average setback requirement,

1 it's hard to tell with these houses being built as early as the 1930s  
2 and as recently as a few years ago, it's hard to tell if anybody  
3 received variances for them, or if it was just the way the  
4 neighborhood grew organically.

5 And the feeling for the architect of the Roths was that this  
6 was something that fit into that character, and I know well that  
7 you're not an aesthetic architectural review board, we always value  
8 your input on that, but we do have to look at the character of the  
9 neighborhood. This is also, I think, all of you have been there.  
10 It's a very hilly neighborhood, so it's -- then it's a very heavily  
11 treed neighborhood. So the topography is different. No single  
12 house presents like any other single house in the neighborhood, but  
13 the objective here was really to make this fit into the character,  
14 so that's --

15 MEMBER GOODSSELL: If I can just interrupt you then.

16 MS. DEEGAN DICKSON: Yeah.

17 MEMBER GOODSSELL: The client is aware that they could have a  
18 5 by 8 open vestibule, which doesn't seem practical because of the  
19 way the front door opens.

20 MS. DEEGAN DICKSON: Right.

21 MEMBER GOODSSELL: Okay. They know they could have a 5 by 8  
22 enclosed vestibule, but this is a vestibule and a portico. It's a  
23 double, and that's something at least in my experience, we rarely  
24 approve.

25 MS. DEEGAN DICKSON: So I would say the portico is not as crucial  
26 to this application. That was really sort of, I'm gonna say an

1 aesthetic appendage to make the front of the house look sort of  
2 complete it. The vestibule -- and I was just about to start talking  
3 about the function of the vestibule.

4 As you see from the photographs there. The front door opens  
5 and pretty much hits the front steps. There -- and on the floor plan,  
6 you can see on sheet A1, there's -- it's sort of a narrow entryway  
7 with a closet door on the left as you come in, and it's enclosed.  
8 And their idea will be to allow people to enter the house a little  
9 bit back, remove it from the stairs. Hang up your coat. Pick up  
10 your shoes. Take the dog's leash off. Leave them there, and then  
11 walk into the house, so if somebody's coming down the steps, you're  
12 banging into them.

13 MEMBER HERNANDEZ: You know that I use my house as an example  
14 because I have a very similar house. They're almost identical. The  
15 same thing.

16 MS. DEEGAN DICKSON: Okay.

17 MEMBER HERNANDEZ: So I know exactly what your problem is  
18 because I lived through it. What they show, I'm assuming they're  
19 going to completely remove the front of the house as opposed to the  
20 vestibule, so that you don't have the door issue of banging into the --

21 MS. DEEGAN DICKSON: Correct.

22 MEMBER HERNANDEZ: So you're going to remove that door.

23 MS. DEEGAN DICKSON: Yes.

24 MEMBER HERNANDEZ: And only have one door on the outside, so  
25 that vestibule really becomes part of your foyer.

26 MS. DEEGAN DICKSON: Right.

1 MEMBER HERNANDEZ: Inside the house. Exactly what I did. The  
2 problem that I have is that if you look at the foyer of the house,  
3 the existing foyer -- I think, based on the drawing that you gave.  
4 I'm having a lot of trouble reading them. There's a very  
5 well-reclined foyer. There's a closet on your right, and there is  
6 like an opening into the den on the left. Right? I'm looking at --

7 MS. DEEGAN DICKSON: Are you talking about --

8 MEMBER HERNANDEZ: I'm looking at A1, as you described, right?  
9 If you look at A1?

10 MS. DEEGAN DICKSON: Oh, okay.

11 MEMBER HERNANDEZ: I don't see dimensions, so I really can't  
12 tell you what the dimensions are.

13 MS. DEEGAN DICKSON: There is no opening to the den on the left.

14 CHAIRMAN MAMMINA: It's proposed.

15 MS. DEEGAN DICKSON: Right, that's proposed.

16 CHAIRMAN MAMMINA: It's proposed.

17 MEMBER HERNANDEZ: Oh, it's proposed.

18 MS. DEEGAN DICKSON: Yeah.

19 MEMBER HERNANDEZ: Okay, they're proposing that opening.

20 MS. DEEGAN DICKSON: Yeah.

21 MEMBER HERNANDEZ: So if you look at that -- forgot about that  
22 opening at that -- opening right now, the proposed opening. You have  
23 a hallway basically, a foyer, going into the new space. Then the  
24 new space doesn't continue that line. It pops wide, okay? And it  
25 pops wide those extra 4 feet. It pops wide significantly to the right  
26 door closet, and then -- I don't know why to the left, but it also

1 pops to the left, and that's what makes it 8 feet wide. If those -- if  
2 you follow the line, it will probably be 6 feet, which is what I  
3 suspect that hallway is; 3 feet for the stairs and 3 feet for the  
4 hallway next to it, okay? So then it's very, very bulky.

5 If I look at the front of the house, and I'm not an aesthetic  
6 board, I'm not gonna make a comment on that, but you brought it up.  
7 You said it's because of the size of the house. You want to have  
8 a big foyer. That opening of that entryway is actually much bigger  
9 than it should be for the size of the house. I mean, one third. It  
10 is much closer to the window on the left than it is to the window  
11 on the right. Again, based on the drawings.

12 MS. DEEGAN DICKSON: That's the location of where the front door  
13 is --

14 MEMBER HERNANDEZ: But that's -- it's closer --

15 MS. DEEGAN DICKSON: It's centered on the --

16 MEMBER HERNANDEZ: Because they had widened it so much. If  
17 they had not widened it so much, you would not be so close to that  
18 window. Now, I'm not commenting on the aesthetics. I'm commenting  
19 on the size of that entryway, okay? There is no reason for -- I mean,  
20 I don't know what's gonna be there; maybe a bench for you to sit on.

21 MS. DEEGAN DICKSON: Yes, so it'll be furniture. It will be  
22 a bench.

23 MEMBER HERNANDEZ: There'd be a bench, okay.

24 MS. DEEGAN DICKSON: Kids sit. Take off shoes.

25 MEMBER HERNANDEZ: And you have a closet in the original foyer.

26 MS. DEEGAN DICKSON: Well, so --

1 MEMBER HERNANDEZ: As shown right now.

2 MS. DEEGAN DICKSON: So the proposal is to open up the floor  
3 plan a bit. Right now, when you walk in, you're basically walking  
4 in a hallway, and then to go into the family room, you go through,  
5 you know, an entry there, so it's a narrow entry. They'd like to  
6 open up the door into the -- the wall into the den. So essentially  
7 creating a central hall situation. You know, the house  
8 aesthetically, is a Colonial style, and because of the way that the  
9 stairs come down and where the coat closet --

10 MEMBER HERNANDEZ: It's a closet. Center the whole doorway.  
11 You walk in the middle, there's stairs going, there's stairs going  
12 down, and you have two wings to the house.

13 MS. DEEGAN DICKSON: Right, but usually, when walk you in, you  
14 can get to the two wings. You don't have to walk all the back and  
15 around to enter them.

16 MEMBER HERNANDEZ: By opening that wall in front of the stairs  
17 as you enter to your right by making that an opening, then you can  
18 go into the den. You're absolutely right.

19 MEMBER DONATELLI: I would like to address another issue. I  
20 looked at your Exhibit No. 4, the second photograph. The first  
21 photograph shows the existing door literally touching the stairs.  
22 We're all mindful that that presents a problem. The second  
23 photograph shows that your door is 36 inches, I believe, wide, so  
24 what we're basically looking to do is to have doubled the width of  
25 the door within the entryway. More than double the width of the door  
26 within the entryway, so it would be -- again, in my opinion, it's



1 just juts out too much. If we can cut it back from 12 feet, for  
2 example, ten feet or something similar to that, or -- well, the inside  
3 of the entryway to 6 feet, then that would make it much more palatable.  
4 It's just, in my opinion, it's just out too far into the front yard  
5 setback.

6 MS. DEEGAN DICKSON: So what you're saying that if it pulls out  
7 from 8 feet to 6.5 or something of that and then --

8 MEMBER DONATELLI: Well, we've got approximately --

9 CHAIRMAN MAMMINA: It's 7 foot 10.

10 MEMBER DONATELLI: -- 7 foot 10 to the wall. All right, so let's  
11 talk 8 feet. So if you were to bring it back to 6 feet, I think that  
12 would probably make it more palatable.

13 CHAIRMAN MAMMINA: I also don't think that it affects them, and  
14 you know, I am very sympathetic. As I said, I had exactly the same  
15 thing, you know, in my home, but then by having six beyond that and  
16 then having another three up the stairs, they end up with a 9-foot  
17 space in there. Plus, also, and I think it's smart, but we're not  
18 architects here, but opening the den, it makes that visibly bigger.  
19 I'm not sure what's going on with the family room, but that doesn't  
20 matter, but I think then if that becomes 10 feet, they still get their  
21 closet.

22 I don't want to get overly technical, but the drawing is  
23 confusing, but if you were to look, Ms. Dickson, at the floor plan,  
24 the right-hand side to the center ridge of that is 5 foot 0 and 3  
25 quarters. The other side is 5 foot 11.5. The two have to be the  
26 same width; otherwise, one side is going to be down and the other

1 side is going to be up. You're not gonna get that elevation that's  
2 shown in that drawing.

3 VICE CHAIRMAN FRANCIS: Right.

4 CHAIRMAN MAMMINA: Because they would both then have to be  
5 the --

6 MEMBER HERNANDEZ: The same length.

7 CHAIRMAN MAMMINA: Yep. If you had those at 5 feet, you'd have  
8 a 10-foot wide foyer in there. I don't think it affects their  
9 function, you know, of it, and the point is that it then pulls it  
10 back more, and I think makes it more in character with the  
11 neighborhood. Putting aside that, I think it's a better porch.

12 MEMBER DONATELLI: It also serves the purpose of getting the  
13 door away from the steps without having it, you know, be so far away  
14 that it's in a different zip code.

15 MS. DEEGAN DICKSON: So I think the concern is less with the  
16 depth than with the width from the Roths' point of view. That, you  
17 know, pull it back, you know, a foot farther from the street is  
18 probably not as a big of a deal as shrinking it because they do want  
19 to have their coat closet in there, and they want to have, you know,  
20 walk in the front door and walk straight into the house, and not have  
21 to -- if you narrow it, the coat closet is going to have to -- it's  
22 going to be sort of in that.

23 CHAIRMAN MAMMINA: No, it can be there still. Believe me.  
24 That 5 foot 11, that 6 feet does not work in there. It absolutely  
25 does not, and it's going to be lopsided.

26 MS. DEEGAN DICKSON: So I don't think it is. I don't know why

1 he did this.

2 CHAIRMAN MAMMINA: I don't why he did any of this.

3 MS. DEEGAN DICKSON: I'm not an architect.

4 CHAIRMAN MAMMINA: I don't mean to knock on him, but --

5 MS. DEEGAN DICKSON: But if you notice a 5 foot 3 quarters inch,  
6 re-center line to the --

7 CHAIRMAN MAMMINA: Yeah.

8 MS. DEEGAN DICKSON: -- center line that the pillar on the right  
9 side, and the 5 foot 11.5 goes from the center line of the ridge to  
10 the outside, so I don't know why he drew it that way.

11 CHAIRMAN MAMMINA: I have no idea.

12 MS. DEEGAN DICKSON: That might have been just to, you know,  
13 showing because it's symmetrical; just giving you additional  
14 information without overlaying it on top of itself.

15 CHAIRMAN MAMMINA: I think for me -- still trying to cut to the  
16 chase, and I'm only one Board Member, 6 feet deep, 10 feet wide, and  
17 I think they have within something that we can consider. It is within  
18 the range of what we would normally grant for something in this  
19 setback that it is in the character of the neighborhood. You know  
20 that the way that it is here, but that's just me, and I can't make  
21 a motion, and I'm not making a motion.

22 MS. DEEGAN DICKSON: Okay.

23 MEMBER DONATELLI: Again, I'm harping back to my comment from  
24 the first time we had this. Certainly, we see the necessity for a  
25 closet. We see a necessity for an expanded vestibule. We're trying  
26 to be sympathetic, but we have to also be mindful that anything we

1 decide here might be used as precedent in future cases, and front  
2 yard setbacks are a real concern because they go to the very heart  
3 of our consideration, so I would also, as one Board Member, I would  
4 also urge the applicant to consider 6 by 10. I think that that's  
5 a good compromise.

6 MEMBER HERNANDEZ: I'd just like to make one comment on  
7 something you said since we're talking about a precedent. I don't  
8 think a closet is a necessity in the vestibule in the front. You  
9 can have a closet anywhere on the front door, so it's nice to have  
10 a closet in the vestibule, but I don't want to say that it's a  
11 necessity. It's a necessity to be able not to have a door hitting  
12 your steps.

13 VICE CHAIRMAN FRANCIS: Right.

14 MEMBER HERNANDEZ: That I agree with you with the need to put  
15 that, but I guess --

16 MEMBER GOODSELL: Maybe a coat rack.

17 MEMBER HERNANDEZ: Right. If you could put a coat rack, you  
18 can put the closet someplace else on the ground floor. You don't  
19 have to put it right next to the door.

20 VICE CHAIRMAN FRANCIS: Right, you could still even have the  
21 bench and a coat rack.

22 MEMBER GOODSELL: So I think what we're saying is that it's a  
23 lovely plan, it's just too big, and it's a nice neighborhood.  
24 It's -- again, we're not an aesthetic board, so if I tell you that  
25 I think this looks lovely. It looks lovely if that for the character  
26 of the house, I have to be in agreement with Mr. Donatelli. Something

1 a little smaller can still accomplish the goal and not require so  
2 much of a variance. We are required to grant the minimum variance  
3 necessary.

4 MS. DEEGAN DICKSON: So my clients are here. Would you give  
5 me a quick moment to --

6 MEMBER GOODSELL: They're certainly entitled to put their  
7 application in as you have presented it, and if they do so, then we  
8 will certainly consider it.

9 MS. DEEGAN DICKSON: Understood.

10 CHAIRMAN MAMMINA: We can also continue this.

11 VICE CHAIRMAN FRANCIS: Yes.

12 CHAIRMAN MAMMINA: So that you can consider --

13 MS. DEEGAN DICKSON: So that we don't hold everything up.

14 CHAIRMAN MAMMINA: You can consider, you know, what we're  
15 talking about, so you don't have to be on the spot now, you know,  
16 to say my gosh, I have to make a decision. We're all homeowners,  
17 you know, in the unincorporated parts of the town, so again, we are  
18 sympathetic.

19 MEMBER DONATELLI: Would you rather do a second call if your  
20 client --

21 MEMBER HERNANDEZ: Before we even get to that. The deck is not  
22 as big an issue but I think it's something that needs to be addressed  
23 as well.

24 MS. DEEGAN DICKSON: Yes, so I believe the architect did address  
25 the deck at the last hearing. The deck is an existing condition that  
26 was there when my clients purchased the house. It is a minor

1 encroachment over the minimum -- maximum aggregate side yard. The  
2 code requires a minimum of 10 feet on one side of the aggregate.  
3 Aggregate of 21 is what it works out to because our side yard setback  
4 aggregate is 20 foot 7 inches, I believe.

5 MEMBER DONATELLI: It's 20.37.

6 MS. DEEGAN DICKSON: Thank you, 20.37. So it's a very minimus  
7 variance as far as the aggregate goes. As far as the side yard -- from  
8 10 feet, it's now 4.5 feet, so it encroaches 5.5 feet into that side  
9 yard on the north side -- south side of the property.

10 So the neighbors to the south have had this there in their next  
11 door situation for a number of years. It has not had any negative  
12 impact on them. The way that the yard slopes, it goes -- it's about  
13 an average of 4-foot height off of the ground. It's toward the rear  
14 of the house. It's not apparent from the front of the house. You  
15 can't see it as you look at the front of the house. In order to cut  
16 it back to the minimum would require -- it would basically eliminate  
17 the deck altogether.

18 It has no impact on the character of the neighborhood. It's  
19 not -- to allow it to exist will not create any detriment to any of  
20 the surrounding properties. I have to say, nobody showed up at the  
21 last hearing either. Everybody -- all of the adjacents had notice  
22 and have seen the plans, have met with my clients.

23 It's really a de minimus variance being -- with the aggregate  
24 side yard being the more important, I think, measure for the most  
25 part under the code.

26 MEMBER DONATELLI: How long has the deck been there.

1 MS. DEEGAN DICKSON: Prior to my client's ownership. My  
2 clients' purchased in 2018.

3 VICE CHAIRMAN FRANCIS: I would imagine that it would also be  
4 a financial hardship to demolish this deck and rebuild it so that  
5 it is compliant.

6 MS. DEEGAN DICKSON: Yes, and I don't think it's a practical  
7 matter. It really could be built as a compliant deck. Just  
8 because --

9 MEMBER DONATELLI: I'm familiar with the area. I know that  
10 there's substantial differences in elevation, and obviously, having  
11 a smaller deck with a yard that has a substantial elevation difference  
12 would it make it more usable.

13 MS. DEEGAN DICKSON: Absolutely.

14 MEMBER DONATELLI: Much more unusable.

15 VICE CHAIRMAN FRANCIS: Usable, yes.

16 MEMBER DONATELLI: Sorry.

17 MS. DEEGAN DICKSON: It's an interesting neighborhood too  
18 because a lot of the lots are through lots, which you can see the  
19 rear, even though, you know, it's heavily screened -- actually it  
20 has frontage on Middle Neck Road, so there's a lot of rear yard that  
21 would be not as usable, not only because of the slope but because  
22 of that, so.

23 CHAIRMAN MAMMINA: For the record, run through the Five Factors  
24 so that's all on the record.

25 MS. DEEGAN DICKSON: Sure. For the deck or for --

26 CHAIRMAN MAMMINA: For the whole thing.

1 MS. DEEGAN DICKSON: Okay. So I think it's clear to what the  
2 benefit is to the applicant is for both of these variances. So the  
3 benefit that can be -- I think we can agree that there is a benefit  
4 to have your front door not hitting the steps, to have a vestibule.  
5 Also, the financial hardship that would be created from removing the  
6 deck, and the fact that the backyard is not overly functional without  
7 the side deck.

8 We submitted photographs of other homes in the immediate  
9 vicinity that show what the character of the neighborhood is as far  
10 as not only aesthetics, but also, porticos and vestibules in the front  
11 yard. The fact that the deck has existed in its present location,  
12 we know for at least the last six years, but we know that it was there  
13 prior to that, and apparently built by a prior owner without the  
14 benefit of permits, otherwise, we wouldn't be here today. That has  
15 already become somewhat part of the character of the neighborhood.  
16 It's a very treed area. The homes are staggered, sort of set apart,  
17 so having this -- maintaining a deck is not going to have any negative  
18 impact.

19 There is no other location for the vestibule, obviously, other  
20 than the front of the house. Making it much smaller would defeat  
21 the purposes of construction. If you brought it back, it would not  
22 only have the aesthetic look at the house, which being the family's  
23 being investment, you don't want to have something that sticks out  
24 like a sore thumb, even if it does -- if it were compliant with the  
25 zoning. So there really is no other method feasible to achieve these  
26 goals other than area variances, otherwise, we wouldn't be here.



1           The variances are not substantial. As I mentioned, the  
2 vestibule is permitted to go out 5 feet if it's narrower, so that -- so  
3 the front yard setback that we've cited for is minimal. Actually,  
4 it's just the stoop that's outside of that. And the side yard setback  
5 for the deck, again, looking at the aggregate versus the actual side  
6 yard setback that if you take it with the totality of the  
7 circumstances, that is also a minimal encroachment.

8           The vestibule is obviously self-created because they purchased  
9 their house, and would like to make a change, but I think in light  
10 of the other elements, that should not be dispositive for this Board.  
11 And the deck is -- while they purchased the house with a deck that  
12 was not permitted, it was not something of their own creation, so  
13 we would ask that the Board consider that in making its decision as  
14 well.

15           MEMBER DONATELLI: Did you want to have this matter a second  
16 call? Did you want to continue --

17           MS. DEEGAN DICKSON: Yeah, why don't we do that. Why don't we  
18 do a second call.

19           CHAIRMAN MAMMINA: May I also add one thing?

20           MS. DEEGAN DICKSON: Yeah.

21           CHAIRMAN MAMMINA: That maybe positive in the homeowners'  
22 perspective because again, we're all homeowners. We all know -- we  
23 know everything about owning a house and whatever. Our goal is to  
24 say yes, not to say no. Those two columns on the outside that can  
25 still be there, okay? So if you push it back 2 feet, you can have  
26 that -- still have that overhang, you know, that you'll have the

1 aesthetic of that. If you just make it flat, you know, it's going  
2 to look like anything that you call a builder and say, hey, can you  
3 build this for me, and he's going to say, yeah, sure. I just think  
4 that would be, you know, a consideration, but again, you know,  
5 why -- only do second call that you're call you again.

6 MS. DEEGAN DICKSON: Quick question. Second call at fall end  
7 of the full calendar or at the end of the --

8 CHAIRMAN MAMMINA: We try to do it --

9 SECRETARY WAGNER: So what are we doing next?

10 VICE CHAIRMAN FRANCIS: Second call. We'll call the next case.

11 MS. DEEGAN DICKSON: Then we'll circle back.

12 CHAIRMAN MAMMINA: Okay.

13 MS. DEEGAN DICKSON: Thank you, I appreciate it.

1 SECRETARY WAGNER: Next appeal, Appeal #21583, United Cerebral  
2 Palsy Association of Nassau County; 9 Belleview Avenue, Port  
3 Washington; Section 5, Block 81, Lot 10; in the Residence C Zoning  
4 District.

5 Variances from 70-44 and 70-208.G to convert a three-family to  
6 a four-family house (not a permitted use) that is an expansion of  
7 a non-permitted use.

8 CHAIRMAN MAMMINA: You've heard Appeal #21583, United Cerebral  
9 Palsy Association of Nassau County. Is there anyone in the room  
10 interested in the application other than the applicant? Seeing no  
11 one, please give your name and address, and then I'm just gonna say  
12 a couple of things before we get started.

13 MR. SYNDER: Good morning, Ray Synder, Fusion Architecture,  
14 representing our client, United Cerebral Palsy Association. We're  
15 here regarding the application for 9 Bellevue Avenue, Port  
16 Washington. Now located on the north side of Franklin Avenue. The  
17 property --

18 CHAIRMAN MAMMINA: If I could, the standard of law that you're  
19 putting forward -- that you have to be able to defend the use of the  
20 use variance, is a very high standard, and we want to be certain that  
21 we're giving every opportunity to the applicant to put best foot  
22 forward to be successful. While you don't have any obligation, I'm  
23 just making a suggestion, that you may want to come back with an  
24 attorney who is going to create a record, you know, for you. Just  
25 a suggestion. If you say no, you think you can handle it, then that's  
26 fine. Deborah, did I state it properly?

1 ATTORNEY ALGIOS: I think so.

2 MR. SYNDER: I do accept that advice.

3 CHAIRMAN MAMMINA: Truly, say that only in your best interest  
4 in trying to move this to success for you, so what we can --

5 ATTORNEY ALGIOS: Why don't we reserve the date?

6 SECRETARY WAGNER: So if we adjourn it to a -- do you think  
7 September 18th will be an available date for you?

8 MR. SYNDER: We can manage that.

9 SECRETARY WAGNER: So that way you just have to send out by  
10 regular mail to all the neighbors. We'll send you notice. You won't  
11 have to do the certified mail, but you will have to do the regular  
12 mail again. Is that acceptable to you?

13 MR. SYNDER: Yes.

14 SECRETARY WAGNER: So we're adjourning on the record to  
15 September 18th, so the applicant may retain counsel.

16 MR. SYNDER: Thank you very much for your time.

17 CHAIRMAN MAMMINA: Thank you, both. Appreciate that.

18 SECRETARY WAGNER: Should we call them back in?

19 CHAIRMAN MAMMINA: If they're ready?

20 VICE CHAIRMAN FRANCIS: Do you want to check?

21 CHAIRMAN MAMMINA: If they're ready, yeah. If not, we can go  
22 one more; that's okay.

23 SECRETARY WAGNER: She's not ready, so we'll call the next one.

1 CHAIRMAN MAMMINA: That's fine. Next appeal.

2 SECRETARY WAGNER: Next appeal, Appeal #21584, Wai Hui; 113  
3 Monterey Drive, New Hyde Park; Section 8, Block 266, Lot 20; in a  
4 Residence A Zoning District.

5 Variance from 70-100.2(A) (4) to legalize a fence and gates that  
6 are too tall.

7 CHAIRMAN MAMMINA: You've heard Appeal #21584, Wai Hui. Is  
8 there anyone the room interested in the application other than the  
9 applicant? Seeing no one, please give your name and address.

10 MR. HUI: Sure. Name is Wai Hui. Address is 113 Monterey  
11 Drive, New Hyde Park, 11040.

12 CHAIRMAN MAMMINA: Good morning.

13 VICE CHAIRMAN FRANCIS: Tell us about your application.

14 MR. HUI: So I want the fence to be consistent with what other  
15 fences, so that's why I'm trying to do a variance to have a 5-foot  
16 fence facing the street. I'm not aware of these rules just because  
17 I'm obviously my first time home buyer, and I was not aware of these  
18 things, but I think that's pretty much the application.

19 VICE CHAIRMAN FRANCIS: You have a 5-foot fence on the side of  
20 your property.

21 MR. HUI: Yeah.

22 VICE CHAIRMAN FRANCIS: Which is fine. And you have 5 feet  
23 across the back.

24 MR. HUI: Yeah.

25 VICE CHAIRMAN FRANCIS: Where you could have six.

26 MR. HUI: Oh, I didn't know that too.

1 VICE CHAIRMAN FRANCIS: But you have two gates that face the  
2 front.

3 MR. HUI: Yes.

4 VICE CHAIRMAN FRANCIS: And those are 5 feet?

5 MR. HUI: That's correct.

6 VICE CHAIRMAN FRANCIS: That's where the problem lies.

7 MR. HUI: Yes.

8 VICE CHAIRMAN FRANCIS: Because those can only be 4 feet.

9 MR. HUI: Yes.

10 VICE CHAIRMAN FRANCIS: Now, is the fence a PVC fence?

11 MR. HUI: Yes, it is.

12 VICE CHAIRMAN FRANCIS: Okay.

13 MEMBER DONATELLI: Did you put up the fence?

14 MR. HUI: No, I did not.

15 MEMBER DONATELLI: Did a fence company put up the fence?

16 MR. HUI: Yes, they did.

17 MEMBER DONATELLI: So the fence is existing right now?

18 MR. HUI: Yes, it is.

19 MEMBER DONATELLI: Do you know if they applied for a permit?

20 MR. HUI: I do not think they did because I think that's why  
21 I'm here now.

22 (WHEREUPON, a discussion was held among Board Members.)

23 MEMBER DONATELLI: The Town of North Hempstead requires permits  
24 for fencing, and we have a rule that any fence that faces the front  
25 should be no more than 4 feet. Any fence along the side yard lot  
26 line should be 5 feet or no more than 5 feet, and the rear, you can

1 go up to 6 feet. Now -- so it strikes me that any company that put  
2 up a fence, should know the rules, and should know that they need  
3 to get a permit, and I guess, I, as one Board Member, am shocked that  
4 a fence company would put up a fence without a permit. Was this an  
5 actual company?

6 MR. HUI: Yes, it was.

7 MEMBER GOODSELL: Almost everybody knows now that you need a  
8 permit for a fence, even if it complies, you need a permit for a fence.

9 VICE CHAIRMAN FRANCIS: Is this a Nassau County fence company?

10 MR. HUI: Yes, it is. So I have a question. I don't know if  
11 I can ask.

12 CHAIRMAN MAMMINA: Well, I guess, just one thing that's very  
13 important. Is there anything that's unique about this property that  
14 says this property should have a 5-foot fence instead of a 4-foot  
15 fence, so that if the next person who comes in -- we are very  
16 consistent with fences -- and I apologize for cutting myself off,  
17 so -- and also, just understand that the Town Board sets these  
18 regulations. We don't. Our task is to be a balancing test and grant  
19 variances or to change them and limit them or to deny them in  
20 circumstances, but consistency, that's very important. I'll just  
21 ask it again. Is there anything in here that you would say, well,  
22 I need this because, and my neighbor next door doesn't need it  
23 because.

24 MR. HUI: I mean besides the consistency, just my kids playing  
25 ball and bouncing, jumping over; that's about it.

26 CHAIRMAN MAMMINA: But they're not going to jump over a 4-foot

1 fence. If they are, the Olympics will be coming.

2 MR. HUI: No, not them. The ball.

3 CHAIRMAN MAMMINA: I'm being facetious.

4 MR. HUI: Yes, of course.

5 MEMBER DONATELLI: When was the fence installed.

6 MR. HUI: When? I don't know the exact dates. I'm really bad  
7 with dates.

8 CHAIRMAN MAMMINA: That's fine.

9 MR. HUI: Okay. I'm going to say, it was 2020, and it was like  
10 in the fall; somewhere around there.

11 CHAIRMAN MAMMINA: Okay.

12 MEMBER HERNANDEZ: Close enough.

13 MEMBER GOODSELL: I'm familiar with this neighborhood. I grew  
14 up in New Hyde Park. I know people in this neighborhood. I drove  
15 the neighborhood. If I were code enforcement, my ticket book would  
16 be full. There are some people in your neighborhood that seem to  
17 have the incorrect size fence, including your next door neighbor,  
18 people across the street, the people three or four house down, so  
19 I understand why you would think, well, everybody has a 5-foot fence  
20 on the return gate, I must be entitled to it but, in fact, just take  
21 a look at them. I'm not sure they're legal because we've had the  
22 4-foot on the front, five on the side, six in the back rule forever.  
23 Well, certainly for many years now, and there's really no excuse for  
24 the fence company, if they weren't getting a permit, they should have  
25 said to you, we'll start, you go get the permit, and when you go get  
26 a permit, you bring your survey, and says this is what I want to do,



1 and the Building Department says yes or no immediately, and so we're  
2 kind of distressed that this fence company did not either say you  
3 got to go get a permit, or we'll get the permit for you.

4 VICE CHAIRMAN FRANCIS: What is the name of the fence company.

5 MR. HUI: Off the top of my head, I do not remember, but I did  
6 send the paperwork, and it should be on the photo.

7 MEMBER GOODSELL: Let me see. Let me look.

8 MR. HUI: If the fence company did tell me that, I would have  
9 gotten the permit.

10 VICE CHAIRMAN FRANCIS: Of course, then you wouldn't be in front  
11 of us if they had done the right thing.

12 MR. HUI: Yes, that's true. Also, I don't know whose  
13 responsibility. I don't know if it's the fence company or is it  
14 mines. I don't know.

15 MEMBER DONATELLI: Did you get a violation from the Town?

16 MR. HUI: Yes, I did.

17 MEMBER DONATELLI: So you have an open violation with the Town?

18 MR. HUI: Yes.

19 MEMBER GOODSELL: Let's see what's on your application.

20 MEMBER DONATELLI: I don't see it.

21 MR. HUI: Can I look on my phone?

22 MEMBER DONATELLI: Yes.

23 VICE CHAIRMAN FRANCIS: Sure.

24 (WHEREUPON, a discussion was held among Board Members.)

25 CHAIRMAN MAMMINA: Would it be Leiva Fence, L-E-I-V-A, Fence  
26 Incorporated, Babylon Turnpike, Roosevelt?

1 MR. HUI: Yes, that's the one.

2 SECRETARY WAGNER: Where are you seeing that?

3 CHAIRMAN MAMMINA: It's on the Board of Zoning review sheets.

4 SECRETARY WAGNER: In the application?

5 CHAIRMAN MAMMINA: So he has it down as the architect because  
6 that's where he elected to put it. I understand.

7 SECRETARY WAGNER: Oh, I see.

8 (WHEREUPON, a discussion was held among Board Members.)

9 MEMBER DONATELLI: Well, I will say this. You're fortunate in  
10 the sense -- as long as I've been on the Board, I have not seen this  
11 Board approve applications such as this, but as one Board Member,  
12 I can tell you that the cost of remediating this making it better  
13 is very minimal because you're really only talking about the two gates  
14 that turn at the front of the house, which are 5 feet, which should  
15 be 4 feet high.

16 I'm mindful of the fact you do have an open violation with the  
17 Town. I know how the Town works. They want to see this matter  
18 corrected. It's a relatively easy manner to correct it. In my  
19 opinion, you may also want to contact the fence company. Bring this  
20 to their attention, and perhaps they do the right thing and correct  
21 it at no cost to you, but I can't say that for certain, but what I  
22 would suggest is that you certainly contact them and see if they can  
23 correct it and bring it into compliance.

24 CHAIRMAN MAMMINA: My feeling is, and we're going a little bit  
25 beyond again, just saying, we understand the position you're in.  
26 With the PVC fence, they can cut it, you know, the bottom of that,

1 and then two sides at the top, and they bring it up and screw it back  
2 together, and it's done.

3 VICE CHAIRMAN FRANCIS: Right.

4 CHAIRMAN MAMMINA: But I think that you can see that I believe  
5 the general opinion of the Board is that we can't separate this from  
6 any other house that comes in. Nothing unique about this, so we would  
7 be in a position where we would have no reason to approve this, and  
8 we're stuck with what we would rather not do, but we have a legal  
9 obligation to do.

10 MEMBER HERNANDEZ: And just because some of your neighbors may  
11 have illegal fences, doesn't mean that we can make yours legal because  
12 they have illegal fences.

13 CHAIRMAN MAMMINA: Your contractor has a very nice website.  
14 The whole thing and I mean --

15 MEMBER HERNANDEZ: They should know the code.

16 CHAIRMAN MAMMINA: I just know personally because I sat here  
17 for a very long time. At one point, we brought a fence company in  
18 to the Town Attorney's Office and his license was suspended because  
19 it was just repeat, repeat, repeat. We had people coming in with  
20 fences that were put up without permits.

21 (WHEREUPON, a discussion was held among Board Members.)

22 MEMBER DONATELLI: Have you contacted the fence company since  
23 you got the violation?

24 MR. HUI: Yes, I think my wife did, and he was --

25 MEMBER GOODSELL: What was their response?

26 MR. HUI: Their response was that it was weird that I got a

1 violation because it's been so long already, and then he said you  
2 just have to do a variance. That's what he told me.

3 MEMBER DONATELLI: He said, what?

4 MR. HUI: He said you just have to file for a variance for the  
5 fence. So he seemed very familiar with it.

6 VICE CHAIRMAN FRANCIS: Did you sign a contract with the fence  
7 company?

8 MR. HUI: Yes, actual I think that page -- that thing I uploaded  
9 in a way the contract; the contract/invoice.

10 CHAIRMAN MAMMINA: All right, let's see that.

11 SECRETARY WAGNER: You uploaded it to where?

12 MR. HUI: Into the portal, yes.

13 CHAIRMAN MAMMINA: Okay, let's see.

14 SECRETARY WAGNER: That was just the name on the application.

15 MR. HUI: Oh, okay.

16 SECRETARY WAGNER: Now, you're saying it's in the portal.

17 MR. HUI: I see. Yeah, I have it here.

18 MEMBER DONATELLI: Again, we cannot give you advice, but it  
19 would appear that the Board, you're hearing the reluctance of the  
20 Board. I think we have to deny this. My suggestion might be for  
21 you to contact the fence company. They said come for a variance.  
22 If you tell them that you were denied by the Board, you can insist  
23 that they take the 5-foot fence down to a 4-foot, and there's the  
24 resolution to your court case because I don't know that this Board  
25 can approve this application. I'm sorry to say.

26 MR. HUI: That's fine. I mean, that's how I have to rectify

1 the problem, that's fine.

2 CHAIRMAN MAMMINA: We appreciate your understanding.

3 VICE CHAIRMAN FRANCIS: Somebody want to make a motion.

4 MEMBER GOODSSELL: I will make a motion that unfortunately, I  
5 have to recommend to the Board that we deny the application as simply  
6 cannot grant something that deviates from the rule without  
7 extenuating circumstances, which we just don't have them here, so  
8 I do make a motion.

9 CHAIRMAN MAMMINA: We have motion by Member Goodsell. Do we  
10 have a second?

11 VICE CHAIRMAN FRANCIS: Second.

12 CHAIRMAN MAMMINA: Second by Vice Chairman Francis. Please  
13 poll the Board.

14 SECRETARY WAGNER: Member Hernandez?

15 MEMBER HERNANDEZ: Aye.

16 SECRETARY WAGNER: Member Donatelli?

17 MEMBER DONATELLI: Aye.

18 SECRETARY WAGNER: Member Goodsell?

19 MEMBER GOODSSELL: Aye.

20 SECRETARY WAGNER: Vice Chairman Francis?

21 VICE CHAIRMAN FRANCIS: Aye.

22 SECRETARY WAGNER: Chairman Mammina?

23 CHAIRMAN MAMMINA: Aye. The application is denied.

24 MEMBER GOODSSELL: But we want to go back to the fence company.

25 CHAIRMAN MAMMINA: Yes, go back to the fence company.

26 MEMBER GOODSSELL: Tell them we're very unhappy as you are very

1 unhappy with them.

2 MR. HUI: Yes.

3 MEMBER GOODSSELL: It's not so much the fence company should get  
4 the permit, but if they're saying, well, it's the owner's job to get  
5 the permits, they should tell you before they start work.

6 VICE CHAIRMAN FRANCIS: Right.

7 SECRETARY WAGNER: And they shouldn't be doing the work unless  
8 there's a permit in place, so when they say, the owner gets the permit,  
9 they need to look at the permit to see that you have actually done  
10 that.

11 MEMBER GOODSSELL: Correct.

12 SECRETARY WAGNER: Because they're supposed to be licensed to  
13 do work in the town.

14 MEMBER GOODSSELL: Good luck to you.

15 CHAIRMAN MAMMINA: Innocent victim.

16

1 SECRETARY WAGNER: We're going to recall the case. Appeal  
2 #21538, Benjamin Brian and Shira Vered Roth; 12 Beverly Road, Port  
3 Washington; Section 5, Block 20, Lot 7; in the Residence A Zoning  
4 District.

5 Variances from 70-30.C and 70-31A to construct a foyer and  
6 portico too close to the street and to legalize a deck located too  
7 close to a side property line and with not enough total aggregate  
8 side yards.

9 CHAIRMAN MAMMINA: So a second call on Appeal #21538.

10 MS. DEEGAN DICKSON: Good morning. Thank you. Thanks for  
11 giving us an opportunity to confer. My clients actually reached out  
12 to the contractor to make sure that that would still be able to  
13 accommodate a closet and a bench in entry foyer area, if they reduce  
14 it to 6 feet in depth and 10 feet wide, and appears that they can,  
15 and they'd be very happy to modify the plans to reflect that. Just  
16 a clarification question, that would be shifting everything back  
17 closer to the house by 2 feet, so they still would maintain the roofed  
18 over portico and the pillars, so that there is a place for somebody  
19 to ring a doorbell that would be out of the elements for just they  
20 were able to --

21 VICE CHAIRMAN FRANCIS: And the added benefit is that it'll be  
22 a wider step into the vestibule.

23 MS. DEEGAN DICKSON: Yes.

24 MEMBER DONATELLI: So everything, the portico, as well the  
25 vestibule will be moved back 2 feet?

26 MS. DEEGAN DICKSON: Yes, they would just shift everything back

1 2 feet closer to the house and narrow it by 2 feet also.

2 MEMBER DONATELLI: Well, we appreciate the applicant's  
3 flexibility. I would like to see plans --

4 VICE CHAIRMAN FRANCIS: Yes.

5 MEMBER DONATELLI: -- shifting it back. I don't think we need  
6 another appearance by the applicant, but if we can perhaps continue  
7 the hearing to see revised plans, and I think we will act quickly.

8 MS. DEEGAN DICKSON: Thank you.

9 CHAIRMAN MAMMINA: I also would say, in terms of the revised  
10 plan, we're really not looking for you to spend money and whatever;  
11 just give us the plan.

12 MEMBER HERNANDEZ: The numbers.

13 CHAIRMAN MAMMINA: Showing the numbers, you know, and the  
14 setback.

15 VICE CHAIRMAN FRANCIS: Nothing fancy.

16 CHAIRMAN MAMMINA: Nothing fancy; that's all.

17 MS. DEEGAN DICKSON: Good. We'll communicate that there.

18 SECRETARY WAGNER: Well, submit them to the Building Department  
19 as well.

20 CHAIRMAN MAMMINA: Submit it, right.

21 SECRETARY WAGNER: So we get their sign-off on any changes that  
22 are made.

23 MS. DEEGAN DICKSON: Okay, will do.

24 CHAIRMAN MAMMINA: That protects you, as your attorney will  
25 tell you that the last thing you want is when the whole thing is built,  
26 have the Building Department say, hey, wait a minute, you know, that's



1 not what -- that way, they're putting their stamp on it.

2 MS. DEEGAN DICKSON: And we appreciate your flexibility as  
3 well. Thank you very much.

4 MEMBER DONATELLI: Thank you.

5 SECRETARY WAGNER: So it's continuing for submission.

6 CHAIRMAN MAMMINA: Yes, for submission of plans.

7 MS. DEEGAN DICKSON: Thank you.

1 SECRETARY WAGNER: Next appeal, Appeal #21585, Dan  
2 Geevarghese; 344 Bryn Mawr Road, New Hyde Park; Section 9, Block 523,  
3 Lot 32; in the Residence C Zoning District.

4 Variance from 70-100.2(H) to legalize the relocation of three  
5 A/C units more than 3 feet from the home.

6 CHAIRMAN MAMMINA: You heard Appeal #21585, Dan Geevarghese.  
7 Is there anyone in the room interested in the application other than  
8 the applicant? Seeing no one, give your name and address.

9 MR. GEEVARGHESE: How you're doing?

10 CHAIRMAN MAMMINA: Good morning.

11 MR. GEEVARGHESE: Good morning. My name is Dan Geevarghese.  
12 I live in 344 Bryn Mawr Road, New Hyde Park, New York, 11040. I'm  
13 here to get a variance to legalize the three AC units; it's more than  
14 three feet from my house.

15 MEMBER GOODSELL: Sir, you very clearly just renovated the  
16 house.

17 MR. GEEVARGHESE: Yes.

18 MEMBER GOODSELL: It came out lovely.

19 MR. GEEVARGHESE: Thank you.

20 MEMBER GOODSELL: I must say. Again, I'm the New Hyde Park  
21 person. I'm very familiar with your street. I thought you might  
22 be the house that was completely overgrown, you were not. It's a  
23 house much further down the block. There's a jungle, unfortunately.

24 MR. GEEVARGHESE: All right, thank you.

25 MEMBER GOODSELL: Your renovations -- again, we're not  
26 aesthetic, but your renovations were very nice.

1 MR. GEEVARGHESE: Thank you.

2 VICE CHAIRMAN FRANCIS: I see why you have AC units where they  
3 are. Well, tell us where they are so we have it on the record.

4 MR. GEEVARGHESE: Okay, it's on the -- supposed to be on the  
5 right side of my -- back of the house. Since my lovely wife wants  
6 to build a -- that's my wife, Sally, and she wants to -- she would  
7 like to have a deck, and with that AC unit cannot be there. It's  
8 obstructing. It doesn't have enough space from the garage to -- in  
9 case of like an emergency situation like the fire department comes.

10 VICE CHAIRMAN FRANCIS: Right.

11 MR. GEEVARGHESE: You need to have like 5 feet from the garage  
12 to the deck. And since they relocated to the left side -- I mean,  
13 to the right side of house, the rear, and which the contractor never  
14 come told me this is going to be a situation. It's going to be a  
15 problem, which I would not have do it, but it's cost more -- a lot  
16 of money. I spent almost like a million dollars for this house for  
17 the material, everything, you know. We living there for 21 years.  
18 Took us 21 years to renovate this house. So the only things I'm  
19 waiting for, everything is approved. The permits are approved. I'm  
20 waiting for the final inspection. So this is the only things that  
21 came on the hindrance. The three units, we just move feet away from  
22 the house.

23 VICE CHAIRMAN FRANCIS: Right.

24 MR. GEEVARGHESE: And that is the only things we waiting for  
25 to get approval.

26 VICE CHAIRMAN FRANCIS: So as it stands right now, the three

1 units are next to your existing deck.

2 MR. GEEVARGHESE: Yes.

3 MEMBER HERNANDEZ: And that's a raised deck, I'm assuming.

4 MR. GEEVARGHESE: Yes, we got the permit. Everything's  
5 approved for that deck.

6 MEMBER HERNANDEZ: So your deck is above your units?

7 MR. GEEVARGHESE: No, I have picture of it.

8 SECRETARY WAGNER: Do you want to submit this as an exhibit?  
9 So this will be Exhibit 1.

10 MEMBER HERNANDEZ: Thank you.

11 (WHEREUPON, a discussion was held among Board Members.)

12 VICE CHAIRMAN FRANCIS: I'm going to assume because they're not  
13 here, that your neighbors had no problem with the placement of your  
14 air conditioners.

15 MR. GEEVARGHESE: No, they even call me again what is the  
16 problem. I said the only things three units just move away from the  
17 building. It's nothing is hindering or affecting the neighbor and  
18 things. She said that's fine, you know. We're not going to be  
19 there.

20 MEMBER DONATELLI: Sir, I know you're not an attorney, but there  
21 are Five Factors that we're required to consider. If you don't mind,  
22 I'm just going to take you through the Five Factors very briefly.

23 MR. GEEVARGHESE: Okay.

24 MEMBER DONATELLI: Try and do your best to answer.

25 MR. GEEVARGHESE: Okay.

26 MEMBER DONATELLI: But it's not a pop quiz or anything, but

1 let's see if you can address the questions.

2 MR. GEEVARGHESE: Okay.

3 MEMBER DONATELLI: The first question is whether there will be  
4 an undesirable change -- Ms. Wagner is actually giving you the sheet  
5 for the questions, so you know the questions ahead. If we grant this  
6 variance, will we be producing an undesirable change in the character  
7 of the neighborhood?

8 MR. GEEVARGHESE: An undesirable change means some of -- can  
9 you just?

10 MEMBER DONATELLI: Sure. Where the air conditioners are --

11 ATTORNEY ALGIOS: Your wife might may be able to answer.

12 MEMBER HERNANDEZ: Your wife might want to answer.

13 SECRETARY WAGNER: Put your name and address on your record  
14 before you speak.

15 MS. GEEVARGHESE: My name is Sally Geevarghese. I'm also the  
16 owner for this house, and the question for that -- answer for that  
17 question is no.

18 MEMBER DONATELLI: It will not produce an undesirable change.

19 MS. GEEVARGHESE: No.

20 MEMBER DONATELLI: Can you tell us why it's not?

21 MS. GEEVARGHESE: There is no way to impact -- negative impact  
22 to the neighbors. The neighbors on any side.

23 MEMBER DONATELLI: It's actually further away from  
24 the neighbors.

25 MS. GEEVARGHESE: Almost 8 feet away from the neighbors, yes.

26 CHAIRMAN MAMMINA: But it's adjacent to the deck.

1 MEMBER GOODSELL: It's right next to the deck where you'd like  
2 be sitting, and you understand that by putting them right next to  
3 the deck, when you sit on the deck, you're going to hear them go on  
4 and off.

5 MS. GEEVARGHESE: Yeah.

6 CHAIRMAN MAMMINA: I think the issue, the zoning issue, is that  
7 they're not in the middle of your backyard.

8 MEMBER DONATELLI: Right.

9 CHAIRMAN MAMMINA: That they're approximate to a structure  
10 and --

11 MEMBER DONATELLI: And the other zoning issue is whether or not  
12 it would be so close to the neighbor's yard as to render a noise to  
13 the neighbors, and I think probably this would minimize that.

14 MR. GEEVARGHESE: Right.

15 MEMBER HERNANDEZ: It's closer to the neighbor's garage than  
16 to the house.

17 MEMBER DONATELLI: The second question, and again, it's not a  
18 trick question. We're going to try and help you answer it. Whether  
19 the benefit sought can be achieved by some other method without  
20 granting a variance? Is there some other spot where we could put  
21 these air conditioning units that would not require a variance?

22 My guess is probably not given where the wood deck is because  
23 the wood deck basically is in the spot where the air conditioners  
24 might go. Do you agree with that?

25 MR. GEEVARGHESE: Yes.

26 MS. GEEVARGHESE: Yes.

1 VICE CHAIRMAN FRANCIS: And you definitely don't have room on  
2 the side yard to put these three air conditioners.

3 MR. GEEVARGHESE: (Nonverbal response given.)

4 MEMBER DONATELLI: I'm sorry, I see you nodding, but I think  
5 it's important for the record that you say yes.

6 MS. GEEVARGHESE: Yes.

7 MR. GEEVARGHESE: Yes.

8 VICE CHAIRMAN FRANCIS: Good.

9 MEMBER DONATELLI: Whether the variance requested is  
10 substantial?

11 MEMBER GOODSSELL: Is this a big variance?

12 MS. GEEVARGHESE: No.

13 MR. GEEVARGHESE: No, no, it's only like a minor.

14 VICE CHAIRMAN FRANCIS: Right.

15 MEMBER DONATELLI: Good answer.

16 MR. GEEVARGHESE: Yes.

17 MEMBER DONATELLI: Whether the proposed variance will have an  
18 adverse environmental impact? Is there something that's going to  
19 be harming the environment if this variance is granted?

20 MR. GEEVARGHESE: No.

21 MS. GEEVARGHESE: No.

22 MEMBER DONATELLI: Excellent. And the last question is  
23 whether this alleged difficulty is self-created? Let me just warn  
24 you that most variances that come before us are self-created;  
25 however, that's not necessarily determinate. Do you agree with  
26 that?

1 MR. GEEVARGHESE: Yes.

2 MEMBER GOODSELL: In other words, you don't have central air  
3 conditioning right now. You would like to have central air  
4 conditioning. Obviously, you got the zones here because you have  
5 a couple of units. Even though this is something that you want that  
6 you don't have right now, we call that self-created. That is not  
7 determinative for us. It's a question that we ask. Do you feel this  
8 is -- or do you believe this is self-created?

9 MR. GEEVARGHESE: Self-created that we did ourselves?

10 VICE CHAIRMAN FRANCIS: Yes.

11 MR. GEEVARGHESE: No.

12 MEMBER GOODSELL: Well, we kind of think that it is, but it's  
13 just one factor.

14 VICE CHAIRMAN FRANCIS: It really -- that part, it doesn't  
15 matter. You did buy these air conditioners. You did put them where  
16 they are, so it self-created.

17 MS. GEEVARGHESE: Okay.

18 MR. GEEVARGHESE: Oh, okay, thanks.

19 MEMBER GOODSELL: Can I say, after the summer we've had, central  
20 air conditioning is like a necessity of life because I love central  
21 air conditioning, and I understand that pointed out what we were  
22 talking about before, is that you do hear the fans go on and off,  
23 but the units today are so quiet that I don't think it's going to  
24 bother you.

25 VICE CHAIRMAN FRANCIS: Right.

26 MEMBER GOODSELL: So I think it's -- what you're doing is you're



1 setting them in a place that's more considerate of your neighbors.  
2 They're not going to hear them at all, and if you hear them, you will  
3 hear them, but they're very quiet. Would you agree with that?

4 MS. GEEVARGHESE: Yes.

5 MR. GEEVARGHESE: Yes.

6 MEMBER DONATELLI: Congratulations, you passed the test.

7 MEMBER GOODSSELL: Yes.

8 MR. GEEVARGHESE: Thank you.

9 MS. GEEVARGHESE: Thank you.

10 MEMBER DONATELLI: So would you make a motion?

11 MEMBER GOODSSELL: I will make a motion. Mr. Vice --

12 VICE CHAIRMAN FRANCIS: Yeah, I think we can.

13 MEMBER GOODSSELL: Members of the Board, I am making a motion  
14 that we grant the application to put the three air conditioner units  
15 where they're shown on the survey.

16 CHAIRMAN MAMMINA: We have a motion from Member Goodsell.

17 MEMBER DONATELLI: I will second.

18 CHAIRMAN MAMMINA: Second from Member Donatelli. Please poll  
19 the Board.

20 SECRETARY WAGNER: Member Hernandez?

21 MEMBER HERNANDEZ: Aye.

22 SECRETARY WAGNER: Member Goodsell?

23 MEMBER GOODSSELL: Aye.

24 SECRETARY WAGNER: Member Donatelli?

25 MEMBER DONATELLI: Aye.

26 SECRETARY WAGNER: Vice Chairman Francis?

1 VICE CHAIRMAN FRANCIS: Aye.

2 SECRETARY WAGNER: Chairman Mammina?

3 CHAIRMAN MAMMINA: Aye. The application is granted.

4 MR. GEEVARGHESE: All right, thank you.

5 MS. GEEVARGHESE: Thank you.

6 VICE CHAIRMAN FRANCIS: Have a wonderful day.

7 CHAIRMAN MAMMINA: In my house, my wife does all the talking,  
8 so I'm not allowed to.

9 (WHEREUPON, there's laughter from Board Members.)

10

11

1 SECRETARY WAGNER: Next appeal, Appeal #21587, Elizabeth  
2 LaPierre-Cyr; 12 Arlington Street, Westbury; Section 10, Block 164,  
3 Lot 57; in the Residence C Zoning District.

4 Variances from 70-100.2(A)(4) and 70-100.2(A)(4)(a) to  
5 legalize fencing that is too tall.

6 CHAIRMAN MAMMINA: You've heard Appeal #21587, Elizabeth  
7 LaPierre-Cyr. Is there anyone in the room interested in the  
8 application other than the applicant? Seeing no one, please give  
9 your name and address.

10 MS. LAPIERRE-CYR: My name is Elizabeth LaPierre-Cyr. I am the  
11 owner, resident, and occupant full time at 12 Arlington Street,  
12 Westbury, New York.

13 CHAIRMAN MAMMINA: Okay.

14 MR. CYR: Frank Cyr. I also live at 12 Arlington Street,  
15 Westbury, New York.

16 CHAIRMAN MAMMINA: Thank you.

17 MR. NELSON: Barry Nelson. 220 Pettit Avenue, Bellmore, New  
18 York 11710. On behalf of the applicant.

19 CHAIRMAN MAMMINA: Good morning.

20 MR. NELSON: Good morning.

21 MS. LAPIERRE-CYR: Good morning, Mr. Chairman, distinguished  
22 Members of the Board.

23 CHAIRMAN MAMMINA: Okay, so if you could tell us a little bit  
24 about your application?

25 MS. LAPIERRE-CYR: My application extends from a permit  
26 application that I filed in 2021, for a fence along the north and

1 south property lines, as well as a gate across the front side of my  
2 house. My fencing company installed the fencing in November of this  
3 past year. I wanted to see if I had any open permits or any  
4 open -- because I'm thinking of selling within the next five years,  
5 and I did not want to have any issues comes time for sale.

6 I've owned my house since August of 1988, and needless to say,  
7 the neighborhood has deteriorated tremendously since that time. I'm  
8 four homes from Old Country Road, which is heavily trafficked. My  
9 block is a cut-through for various traffic, commercial and otherwise.

10 I have had several foot pursuits through my yards over the years  
11 from the police chasing people from Old Country Road. I have also  
12 had children in the neighborhood access my yard illegally without  
13 permission. I've also had one instance where it was Christmas week  
14 one year, someone tried to break into my home through my back yard.  
15 At the time, I only had a 4-foot cyclone fence on the north and south  
16 property line, and a 4-foot cyclone at the gate. At present, there  
17 is 6 foot on the north property line, PVC. Six foot on the south  
18 property line, and 6-foot gates at the front of the house.

19 I have obtained and filed for the Board consents from the north  
20 property owner, the south property owner, and just yesterday, one  
21 of the east property owners from Barrington Street, dropped his  
22 consent to agree to the variance of the fence.

23 The fence is also precipitated by the event that occurred in  
24 2021 or 2020. I apologize. We have a Section-8 housing next door  
25 at number 10. One of the men was out in front of the house, and was  
26 committing lewd and lascivious activities when my daughter came home

1 from shopping.

2 MEMBER GOODSELL: Ma'am, you were sitting here and you heard  
3 us speak about -- to the other applicant who wanted a 5-foot fence.

4 MS. LAPIERRE-CYR: Yes.

5 MEMBER GOODSELL: Are you aware of the Town rules with respect  
6 to fencing?

7 MS. LAPIERRE-CYR: I am now.

8 MEMBER GOODSELL: You are now; 4 foot in the front, 5 foot on  
9 the side, 6 foot in the back. When was this fence put up?

10 MS. LAPIERRE-CYR: The fence was installed in September 2021.

11 MEMBER GOODSELL: And was it installed by a fence company?

12 MS. LAPIERRE-CYR: Yes, it was, Blizzard Fence.

13 MEMBER GOODSELL: And did Blizzard Fence discuss with you a  
14 permit.

15 MS. LAPIERRE-CYR: No, they did not. I, on my own, wanted to  
16 seek the permit -- file the permit, and with various correspondence  
17 with Mr. Gray in the Building Department, and any insufficiencies  
18 were satisfied by uploading to the portal, then I never heard anything  
19 back.

20 MEMBER GOODSELL: So you don't know whether a permit was issued  
21 for the 6-foot fence, or you don't believe a permit was issued?

22 MS. LAPIERRE-CYR: I don't believe the permit was issued.

23 Notwithstanding the fact that we did supplement with everything that  
24 Mr. Gray wanted. I found out there was no permit when I went in  
25 November '23, to see if I had anything open, and that's when --

26 MEMBER GOODSELL: And Blizzard Fence did not ask to see your

1 permit --

2 MS. LAPIERRE-CYR: No, they did not.

3 MEMBER GOODSELL: -- before they began construction?

4 MS. LAPIERRE-CYR: No, they did not.

5 VICE CHAIRMAN FRANCIS: I think you heard the prior application  
6 that we went through with regard to a 5 foot facing the front. Is  
7 there anything unique about your property or the people who live in  
8 your house that would necessitate having a 6-foot fence all the way  
9 around.

10 MS. LAPIERRE-CYR: If I could refer that to Mr. Nelson for  
11 comment, please?

12 VICE CHAIRMAN FRANCIS: Sure.

13 MS. LAPIERRE-CYR: Thank you.

14 MR. NELSON: Again, my name and address, and I was engaged by  
15 the applicant in that they requested to maintain -- they provided  
16 the documents and the information. They want to maintain the  
17 existing fencing. The uniqueness of this property and area -- while  
18 I look at the code, and I see probably the last time the fence  
19 application was -- or that section of the code was probably amended  
20 in 1996. The area has substantially changed over the time frame,  
21 and the applicants have owned the house since 1988.

22 You have Old Country Road to the south, a Dunkin Donuts with  
23 a drive-thru at the corner, and you do have a lot of vacancies in  
24 the area; commercial, industrial-type of uses along Old Country Road  
25 now have been vacant. The Dunkin Donuts. The street, Arlington,  
26 is a cut-through now from -- or how it was before, but is now

1 increasing traffic from Old Country Road north to Grand Boulevard.  
2 You have a lot of pedestrians in the area.

3 Some of the developments in the area now on Old Country Road  
4 do not comply with onsite parking, so they do park on the side street,  
5 and that would include the subject property. Dunkin Donuts is a  
6 restaurant, which was a former, I believe, Friendly's. Now, it's  
7 a burger-type of restaurant.

8 The applicant has resided at this location many years, and  
9 they've seen the changes in the locale. As well as many of the houses  
10 now along the subject street in the area, general area, has now gone  
11 from owner occupied to rental-type residences, and that in itself  
12 has impacted the quality of life for the applicant, and you heard  
13 she identified to the south an area that's a little less desirable  
14 than when she bought it in 1988.

15 It's a unique situation. The applicant has obtained the  
16 consents from the north and the south side neighbors, as well as to  
17 the east. The applicant by code is allowed to have a 6-foot fence  
18 along the rear property line and 5 feet on the north and south side,  
19 and 4 feet in the front. The building -- I mean, the fencing itself  
20 is to the east of the front building line. It does not go forward.

21 As part of my responsibility to the applicant and to this Board,  
22 I did -- and the Board I'm sure has gone through the area. I've taken  
23 photographs and aerial views.

24 SECRETARY WAGNER: Are you submitting this as an exhibit?

25 MR. NELSON: Yes, I have original and copies.

26 SECRETARY WAGNER: So the aerial will be Exhibit 1, and the

1 packet will be Exhibit 2.

2 MR. NELSON: I believe the applicant emailed, uploaded my  
3 photographs. You should have it on file, but I provided copies.

4 SECRETARY WAGNER: Okay.

5 MR. NELSON: While I understand -- if I may continue? While  
6 I understand the Board's position on if we grant this anxious, we  
7 have to grant everybody else. I did provide photographs of other  
8 locations in the subject block, the subject street, the block to the  
9 east and west that have numerous fencing, 6 foot, that go forward up  
10 the building line. In this case, the applicant is looking to  
11 maintain it from the building line easterly to the rear yard.

12 MEMBER DONATELLI: Do you know if these other houses that you're  
13 citing have permits for their fences?

14 MR. NELSON: I do not know. It's the aerial character and the  
15 pattern of development for this location, but the applicant is seeing  
16 is an area variance to maintain 6 foot where 5 feet is permitted on  
17 the side north and south side, and 6 feet in the front where 4 feet  
18 is allowed.

19 If you look at my photographs, and I'm sure the Board is very  
20 familiar with the location, it's not going to alternate or change  
21 the essential character of the neighborhood. It's a unique  
22 situation. The fence has been up for almost four years now, three  
23 and a half years. The property to the north has resold twice without  
24 impact of property values. Again, the neighbor to the north,  
25 neighbor to the south, the most affected properties have consented  
26 to the fence.



1 VICE CHAIRMAN FRANCIS: Unfortunately, the Town Board has not  
2 seen fit to make an exception to the fence rule for the area that  
3 is New Castle.

4 MR. NELSON: Correct.

5 VICE CHAIRMAN FRANCIS: New Castle has changed. I live in New  
6 Castle, so I'm very much aware of how much it has changed over the  
7 years. Unfortunately, we are stuck with the fence provisions. You  
8 know because you've been before us many, many times.

9 MR. NELSON: Correct.

10 VICE CHAIRMAN FRANCIS: We do not vary with what the Town Board  
11 has said. Unless there are very extenuating circumstances having  
12 to do mostly with the residents of the property. The only time we've  
13 done it is when an autistic child lives in the property or some other  
14 reason having to do with the people in the property. The fact of  
15 the matter is that there are a lot of illegal fences in New Castle.  
16 Probably none of the ones that you've pointed were put up with  
17 permits. As one Board Member, I would not be in favor of granting  
18 this application.

19 MR. NELSON: What we have indicated is that while the property  
20 itself, the residents now there, family that's lived there over  
21 30 years, now have to live by a house that is non-owner occupied on  
22 one side and a less desirable non-owner to the south side. That in  
23 itself makes is unique. Making the subject property as well.  
24 Quality of life issues are present.

25 With that said, we're strictly asking for area variances, and  
26 this Town has up-zoned many areas where it went from 50 by 100 to

1 60 by 100, and granted area variances. While the Town Board may have  
2 changed the code from the 50 by 100 or 40 by 100, to a 60 by 100 or  
3 up-zoned them, we're not asking for anything different in this  
4 application, and maybe it is time that the -- and I'm not gonna  
5 say -- and I'm not gonna bring it on, that the Town Board looks at  
6 fencing because it is a quality of life issue, and it is not limited  
7 to this house. As you can see, most of people have -- many people  
8 have put up these 6-foot PVC fences surrounding their property. I  
9 understand your position that the Town Board indicated something that  
10 we should live by it. I would like the rest of the community, police,  
11 et cetera, live by what they're supposed to do, but we have a quality  
12 of life issue here, and it's not unique to the property, but it is  
13 unique in this immediate area. We're not asking for anything that  
14 is out of the norm, and we can go through the Five Factors. Based  
15 on an area variance that this Board is treating it as an area variance,  
16 which I am, or a special exception. Either way, it really  
17 considered.

18 VICE CHAIRMAN FRANCIS: For purposes of having a complete  
19 record, why don't you go through the Five Factors.

20 MR. NELSON: Certainly. Whether an undesirable change will be  
21 produced in the character of the neighborhood or a detriment to nearby  
22 properties will be created by granting of the area variance? I give  
23 you that we're four houses off Old Country Road. Old Country Road  
24 as a development has changed substantially in the last 10 and 15-plus  
25 years, including there's a substantial amount of pedestrian and  
26 outdoor activity taking place back on nonresident owners on Arlington

1 Street.

2 Whether the benefit sought by the applicant can be achieved by  
3 some method feasible for the applicant to pursue other than an area  
4 variance? We have existing fence that cost substantial amount of  
5 money. Now, it would almost cost the same thing to remove it and  
6 put new fencing or even cut it down, which would affect the quality  
7 of the fence and its integrity. You would cut it down and it'd cost  
8 you \$3,000 or \$4,000 or more to cut it all around, and then you have  
9 fences with holes in it, and looking crappy, if you don't mind my  
10 language.

11 Whether the requested area variance is substantial? It is  
12 substantial monetary to the homeowner, and in fact, I believe part  
13 of the fence was also by shared money from one of the adjacent  
14 neighbors, so it would be number ten.

15 Whether the proposed variance will have an adverse effect of  
16 impact on the physical environmental conditions in the neighborhood  
17 or the district? I would say no, absolutely not.

18 Whether the alleged difficulty was self-created which  
19 consideration shall be relevant to the decision of the Board of  
20 Appeals, but shall not preclude the granting of an area variance?  
21 Yes, it was self-created. The applicant did file for a permit at  
22 the time. Did not hear from it. The applicant's fence company went  
23 and installed it, and now, it's been up for three years.

24 Nevertheless, the pattern of development in the area, location,  
25 and the trending of rental homes and illegal occupancies in the area,  
26 consider this applicant's need for fencing on this property. Again,

1 they've been a good neighbor. They got the consents, and in my  
2 opinion, the benefit to the applicant outweighs any detriment to the  
3 surrounding community. Thank you.

4 VICE CHAIRMAN FRANCIS: Mr. Chairman, I think with regard to  
5 this particular application, I would want to reserve decision on it;  
6 notwithstanding my denial, to discuss this among ourselves and to  
7 go over some of the extenuating circumstances that the applicant  
8 pointed out.

9 CHAIRMAN MAMMINA: That's a good decision.

10 MR. NELSON: Thank you so much.

11 CHAIRMAN MAMMINA: So we reserve decision on this application.  
12 This will not be decided today.

13 MR. NELSON: Enjoy your day.

14 VICE CHAIRMAN FRANCIS: Thank you very much.

1 SECRETARY WAGNER: We're just going to take five minutes before  
2 the commercial calendar.

3 (Whereupon, there was a recess taken in the Proceeding.)

4 SECRETARY WAGNER: Appeal #21588, Steel Equities; 401 Old  
5 Country Road, Carle Place; Section 10, Block 288, Lot 44; in the  
6 Business A Zoning District.

7 Variance 70-196(J) (1) (a) to install more than one wall sign per  
8 wall.

9 CHAIRMAN MAMMINA: You've heard Appeal #21588, Steel Equities.  
10 Is there anyone in the room interested in the application other than  
11 the applicant? Seeing no one, please give your name and address.

12 MR. ARIF: My name is Shabbir Arif, and I am the owner of  
13 Signarama, who's manufacturing the sign and installing it on the  
14 address given on the application. He's Mr. Sarit Roy.

15 MR. ROY: I'm Sarit Roy. I'm the owner of the business -- of  
16 the pharmacy at 401B Old Country Road, Carle Place, 11514.

17 MR. ARIF: So we had for an application for a sign, illuminate  
18 sign, and it was disapproved because there is already a sign already  
19 installed on that particular elevation, and we are here requesting  
20 a variance for that.

21 MEMBER HERNANDEZ: So you're here for the OnPoint Pharmacy  
22 sign.

23 MR. ARIF: Correct.

24 MR. ROY: Correct.

25 MEMBER HERNANDEZ: And the one that's already there is the Mount  
26 Sinai.

1 MR. ARIF: The Mount Sinai is already installed, yes.

2 MR. ROY: Just to clarify on that point, elevation, I'm  
3 guessing, is height, we'd actually be underneath the Mount Sinai sign  
4 on the wall.

5 CHAIRMAN MAMMINA: We understand.

6 MEMBER HERNANDEZ: So I guess the OnPoint Pharmacy is open to  
7 the public separately from Mount Sinai doctors?

8 MR. ROY: Correct.

9 MEMBER HERNANDEZ: So I guess, if someone goes to a doctor, they  
10 get prescription, then they can fill in the --

11 MR. ROY: The pharmacy.

12 MEMBER HERNANDEZ: It's a separate business that's why you're  
13 advertising.

14 MR. ROY: Correct.

15 MEMBER DONATELLI: Will the sign be illuminated?

16 MR. ROY: Yes.

17 MEMBER DONATELLI: Do you have hours that it will be  
18 illuminated, or do you know if it will be on a timer?

19 MR. ARIF: It'll be on a timer.

20 MR. ROY: Yes, timer. There's also an OnPoint up the road like  
21 on Plandome Avenue inside the Raindeew as well.

22 MEMBER GOODSELL: The pharmacy doesn't have a separate  
23 entrance, does it? You go to the main entrance to 401?

24 MR. ROY: Actually, no, we -- so 401A is the main entrance is  
25 in the back.

26 MEMBER GOODSELL: Okay.

1 MR. ROY: 401B, main entrance is actually in the front.

2 MEMBER GOODSSELL: Okay, it just says 401 over the doorway, so  
3 I wasn't --

4 MR. ROY: Yeah, so we just added the B.

5 MEMBER GOODSSELL: Okay, so for the pharmacy, though, you go into  
6 the main building, and then there's a separate entrance, or you have  
7 a separate entrance from the outside?

8 MR. ROY: There's a separate -- so there's 393, which is on the  
9 corner.

10 MEMBER GOODSSELL: Right.

11 MR. ROY: 399, which is Zwanger-Persiri. There's a door for  
12 them, and then all the way on the previous entrance to Shiro Japan  
13 is 401. That front door you walk in, and if you go left, it's OnPoint  
14 Pharmacy, and it's our door. If you stay straight technically, it's  
15 the back door of the doctor's office, but they don't use that  
16 as -- it's an exit.

17 MR. ARIF: That's on the parking lot.

18 MR. ROY: Huh?

19 MR. ARIF: That's the parking lot.

20 MR. ROY: No, that's the street. The Old Country Road side.  
21 We don't have an entrance from the parking lot side.

22 MEMBER GOODSSELL: Okay. Normally, we don't like multiple  
23 signs on buildings, but if you're inside the building, somebody has  
24 to know that you're there.

25 MR. ROY: Correct.

26 MEMBER GOODSSELL: That part we do understand.

1 CHAIRMAN MAMMINA: I also want to point out that -- because  
2 usually the size of the sign is my thing, and the size is not part  
3 of the disapproval, and also, the height of the sign, which is also  
4 kind -- well, it's the Board's thing, not just mine, is also  
5 compliant.

6 MEMBER GOODSELL: Is it a 24-hour pharmacy?

7 MR. ROY: No.

8 MEMBER GOODSELL: It is not.

9 MR. ROY: It's primarily going to be delivery, but we will serve  
10 as both 393 and 401.

11 MEMBER GOODSELL: So the illumination of the sign. Is it going  
12 to be illuminated when no one is there?

13 MR. ROY: I think the intention is, but we can -- we will have  
14 control over that if that's an issue.

15 MEMBER GOODSELL: Because the Mount Sinai, I do not know whether  
16 that's illuminated or not. I have to go back and look at that.

17 MR. ROY: So what we'll probably do is match whatever they do.  
18 I'll be happy to agree to do that, of course.

19 CHAIRMAN MAMMINA: Just a question. This pharmacy is not  
20 serving the public; is that correct?

21 MR. ROY: It can. No, it's a full retail pharmacy. I own  
22 OnPoint. We have -- this is our 13th location, including, again,  
23 on Plandome Road here. We're mostly in Nassau County.

24 MEMBER HERNANDEZ: Where are you on Plandome Road? Which one?

25 MR. ROY: Do you know where the Raindew is?

26 MEMBER HERNANDEZ: Yeah.



1 MR. ROY: So we're inside the Raindew.

2 MEMBER HERNANDEZ: Oh, you're the Raindew.

3 MR. ROY: We're the pharmacy inside the Raindew, yep.

4 MEMBER HERNANDEZ: Okay.

5 MR. ROY: We're also in Roslyn, Floral Park, Malverne, Island  
6 Park.

7 MEMBER GOODSELL: Is your business to be inside a building  
8 inside another business, or do you have free-standing pharmacies?

9 MR. ROY: Both.

10 MEMBER GOODSELL: You do have both.

11 MR. ROY: Half and half. So half are inside and then half are  
12 standing only businesses.

13 VICE CHAIRMAN FRANCIS: I may have missed your hours of  
14 operation.

15 MR. ROY: So today, this pharmacy is open Monday through Friday,  
16 9:00 to 5:00, but it may expand in the future, but as of today with  
17 State Board, we're registered from 9:00 to 5:00. We do deliver  
18 outside of those hours.

19 VICE CHAIRMAN FRANCIS: In terms of the illumination of the  
20 sign, will you be okay with, say, dusk to 11:00 P.M.?

21 MR. ROY: So our intention, in general, has been this  
22 property -- this is a new kind of situation for us with Mount Sinai,  
23 is we generally in all other things to match whatever they're doing.  
24 If that's okay, we're happy to sort of agree to whatever they've been  
25 approved for. We won't go above that.

26 MR. ARIF: Yeah, but I think dusk to 11:00 P.M. is --

1 MR. ROY: Yeah, that's fine.

2 MEMBER GOODSSELL: It seems kind of unjust that by putting a sign  
3 on the front of the building, Mount Sinai has now excluded anybody  
4 else from putting a sign on the front of the building, especially,  
5 when this is a different business.

6 MEMBER DONATELLI: I do have a question. As I look at the  
7 application that was uploaded on the file, I'm looking at the  
8 Signarama posting, and it has an aerial photograph of the site, and  
9 also shows Old Country Road and Carle Road, but I don't know that  
10 the -- I guess, as I'm looking at the diagram of Old Country Road  
11 and Carle Road, my impression was that this building is directly on  
12 Old Country Road. This is showing it recessed and showing another  
13 road in front of the building.

14 MR. ROY: Yeah, so in front -- off of Old Country Road, there  
15 is a like a -- the whole shopping center or whatever, the old -- is  
16 slightly recessed, and there's a road that runs all the way through  
17 it.

18 MEMBER HERNANDEZ: You can circle the building --

19 MR. ROY: Yes.

20 MEMBER HERNANDEZ: -- in the parking lot.

21 MR. ROY: Yeah, it's always --

22 VICE CHAIRMAN FRANCIS: So it's like a service -- it's not  
23 even -- it's not a public road?

24 MR. ROY: No, it's not a public road. It's an internal road.

25 MEMBER DONATELLI: It's just an internal parking access.

26 MEMBER HERNANDEZ: It's the parking lot road.

1 MR. ROY: Yeah.

2 MEMBER DONATELLI: So in other words, my point is the building  
3 is on Old Country Road, which is, we all know is it's extremely well  
4 traveled and it's not a residential road at least not in this section  
5 of Nassau County.

6 MR. ROY: Yeah, so I went to Clarke High School so I -- that  
7 DSW Warehouse was like the most lit building on the road for many,  
8 many years, so.

9 MEMBER HERNANDEZ: You got Costco across the street.

10 MR. ROY: You got Costco, Walmart, and Best Buy.

11 MEMBER DONATELLI: Any questions? Any concerns?

12 CHAIRMAN MAMMINA: No.

13 MEMBER GOODSELL: I don't have any objection to this. The  
14 illumination should be for the hours they're open. If it's going  
15 to be 24-hour pharmacy, it's going to be illuminated 24 hours. I  
16 need to know that, but otherwise, if it's not --

17 CHAIRMAN MAMMINA: But they're also not denied for that.

18 MEMBER HERNANDEZ: The illumination is OnPoint--

19 MEMBER GOODSELL: The illumination is --

20 MEMBER HERNANDEZ: Facing commercial property.

21 VICE CHAIRMAN FRANCIS: It's not anywhere near.

22 (WHEREUPON, a discussion was held among Board Members.)

23 VICE CHAIRMAN FRANCIS: All right, Mr. Chairman, I'm going to  
24 make a motion that we grant the application.

25 CHAIRMAN MAMMINA: We have a motion from Vice Chairman Francis.

26 MEMBER GOODSELL: I'll second that.

1 CHAIRMAN MAMMINA: Second from Member Goodsell.

2 SECRETARY WAGNER: Was there a condition about the lighting?

3 VICE CHAIRMAN FRANCIS: Yeah, with the condition that the  
4 lighting of the sign but between the hours of, let's say, 6:00 A.M.  
5 to 11:00 P.M.

6 MEMBER GOODSELL: Well, it could be lit during the day.

7 Nobody's going to see it.

8 MR. ROY: Right.

9 VICE CHAIRMAN FRANCIS: So sunset to 11:00 P.M. Whatever time  
10 sunset is.

11 MR. ROY: No, problem.

12 MEMBER GOODSELL: Yeah, I'll clarify the motion with that.

13 CHAIRMAN MAMMINA: Please poll the board.

14 SECRETARY WAGNER: Poll the Board?

15 CHAIRMAN MAMMINA: Yes.

16 SECRETARY WAGNER: Member Hernandez?

17 MEMBER HERNANDEZ: Aye.

18 SECRETARY WAGNER: Member Goodsell?

19 MEMBER GOODSELL: Aye.

20 SECRETARY WAGNER: Member Donatelli?

21 MEMBER DONATELLI: Aye.

22 SECRETARY WAGNER: Vice Chairman Francis?

23 VICE CHAIRMAN FRANCIS: Aye.

24 SECRETARY WAGNER: Chairman Mammina?

25 CHAIRMAN MAMMINA: Before I say, aye, I just want say that I  
26 think this Board and certainly myself, we look very carefully at

1 signs, and just for the record, this is strictly for a second sign  
2 on the building. It doesn't exceed the height, as a matter of fact,  
3 it's quite low on the building, and the illumination, I think, you  
4 know, eliminating that is much appreciated because that's not part  
5 of the disapproval.

6 With that, I say aye, as well.

7 MR. ARIF: Thank you.

8 MR. ROY: Thank you.

9 MEMBER HERNANDEZ: Good luck.

10 MR. ROY: Appreciate it, thank you.

11 MR. ARIF: Thank you.

12

1 CHAIRMAN MAMMINA: Please call the next case.

2 SECRETARY WAGNER: Appeal #21505.A, 9 Powerhouse RD LLC  
3 (Starbucks); 9 Powerhouse Road, Roslyn Heights; Section 7, Block 72,  
4 Lot 71; in the Business A Zoning District.

5 Variances from 70-203.T(2)(e) and 70-135 to construct an  
6 ordering station with audio equipment facing a residentially zoned  
7 property and to erect a fence on top of a retaining wall which will  
8 exceed the permitted height; is too tall.

9 CHAIRMAN MAMMINA: You've heard Appeal #21505.A, Power House  
10 RD LLC, Starbucks. Anyone in the room interested in the application  
11 other than the applicant? Seeing no one, please give your name and  
12 address.

13 MR. MIGATZ: Bruce W. Migatz. Law firm Albanese & Albanese,  
14 1050 Franklin Avenue, Garden City, New York. At the outset, I'd like  
15 to hand in some of the return receipt envelopes, and I have marked  
16 -- pre-marked Exhibits 1 through 4 in a binder, and I have for  
17 demonstration purposes, I have enlarged Exhibit 3, so that you can  
18 see that more readily.

19 MR. TUMBARELLO: Thank you.

20 MR. MIGATZ: I have a copy for the record and each member of  
21 the Board.

22 SECRETARY WAGNER: So that's Exhibits 1 through 4.

23 (WHEREUPON, a discussion was held among Board Members.)

24 MR. MIGATZ: Shall, I continue, Mr. Chairman?

25 CHAIRMAN MAMMINA: Yes, please.

26 MR. MIGATZ: This application was before the Board January 24th

1 of this year, Appeal #21505. It was an application to erect a  
2 Starbucks drive-thru, stand-alone drive-thru building with no seats.  
3 We had several variances. I think this approval notice had like 15  
4 or so variances for signs, for access aisles, and many more variances,  
5 and a conditional use permit. They were all granted and by decision,  
6 March 20, 2024.

7 The applicant filed the application for the special use permit  
8 for the drive-thru that goes before the Town Board, and during the  
9 review of that application with the Planning Department and the  
10 Building Department, it was noticed that the disapproval notice in  
11 the first appeal neglected to cite Section 70-203T2E, that says an  
12 ordering station cannot be in residentially zoned property.

13 During the review, it was also discovered that the proposed  
14 7-foot high stockade fence required a height variance, which I will  
15 explain in more detail, and that is before the Board on this  
16 application. Those are the only two issues before the Board; the  
17 ordering station and the height of the fence.

18 I will make an application to incorporated by reference the  
19 record in the prior Appeal 21505.

20 CHAIRMAN MAMMINA: Granted.

21 MR. MIGATZ: Thank you. The potential for noise from the  
22 ordering station to carry to the rear residential properties was  
23 discussed at the prior hearing; pages 98 through 101 of the prior  
24 transcript. Dan Conti from Starbucks, who could not be here today,  
25 I apologize, explained that the ordering station has an organized  
26 volume control system. Automatically adjusts the sign level

1 depending on the background noise. Mr. Conti said he's not a noise  
2 expert, but as a consumer, he doubts the speaker noise will be heard  
3 by the rear neighbors. As a consumer, I agree.

4 On my way to this hearing today, I drove through a brand new  
5 Starbucks built drive-thru stand-alone -- not stand-alone. It's  
6 stand-alone, but it does have seats. The drive-thru in Port  
7 Washington. I stopped. I ordered a decaf latte with a half shot.  
8 That was for Ms. Goodsell, not for me.

9 MEMBER GOODSELL: I didn't get it.

10 MR. MIGATZ: I couldn't bring it. But I got myself a cold brew,  
11 and this is a brand new Starbucks, so presumably, it has the state  
12 of the art sound system, speaker system, and it was not a loud speaker.  
13 I mean, it seems like the person who was standing next to me speaking  
14 in a normal tone of voice. It's like the old fashion Jack in the  
15 Box, where there's -- if you remember that in Mineola.

16 CHAIRMAN MAMMINA: Where I graduated from high school.

17 MR. MIGATZ: Where they're screaming at you and you're  
18 screaming back, what? It's not like that today.

19 At the prior hearing, the applicant submitted that the speaker,  
20 which is 28 feet away from the rear property line, which will be  
21 baffled by a row of arborvitaes that will grow to a mature height  
22 of ten to 15 feet, plus the existing 5-foot wall, plus a 7-foot  
23 stockade fence would sufficiently baffle the noise, and this Board  
24 granted the application for the Starbucks.

25 Now, you did not have before you that section of the code that  
26 is before you now, but the underlining facts that they rise to your



1 approval of that application that had the ordering board in the same  
2 place that it is now. Those underlining facts do not change merely  
3 because now the section of the code before you.

4 So I submit to you there's no basis to change your opinion that  
5 the distance from the speaker, the landscaping, the wall, and the  
6 fence will sufficiently stream the noise from the rear property.

7 There is a letter from the Nassau County Planning Commission,  
8 which issued a local determination with a comment letter, and there  
9 was a revised letter just submitted today that I emailed to Ms.  
10 Wagner. The comment from the Planning Commission was to move the  
11 ordering station beyond the drive-thru bend, and if you look at the  
12 blown-up diagram I gave you, you can see that more readily on that  
13 diagram, I believe, to reduce the impact of the noise and to increase  
14 the queueing capacity of the ordering station.

15 The Planning Commission did not issue a comment letter on the  
16 last application, and the plans have not changed. I asked Mr. Katz  
17 why are you discussing this now? He said, well, when the Planning  
18 Commission looks at things a second time, sometimes they have second  
19 thoughts. Okay, but the queueing of the cars is not before this Board  
20 on this application. That was approved and should not be before the  
21 Planning Commission to comment on.

22 Now, in the comment letter, Mr. Katz said that the application  
23 has not undergone 239F review. I brought to his attention that it  
24 did. That was a false statement, and that DPW, in fact, traffic  
25 engineer, in fact, approved the curve cuts, and which entails the  
26 queueing of the cars. So they did issue a letter just today that

1 withdraws the statement that this does not have a 239F approval, but  
2 adheres to their comments about queueing; even though DPW approved  
3 it, the Planning Commission is concerned about it, and about the  
4 ordering station, about moving the ordering station.

5 Let me read into the record because Dan Conti could not be here.  
6 I showed his comment letter to Starbucks, and this reply came from  
7 Corey Bertram, who's the store development manager for Starbucks.  
8 And I quote, "As far as the menu board on the plan, it needs to stay  
9 at car seven. This is a thoughtful placement based on the time  
10 average to create an order and ensure that it is ready when a customer  
11 approaches the pickup window. Moving it closer will result in a back  
12 up for customers waiting for orders, slow down speed, and actually  
13 have the opposite effect the Town is asking for here." It wasn't  
14 the Town, it was the Planning Commission. "The seven car stack meets  
15 today's standards based on your prototype building and operation  
16 goals. Also, placing the order point on the curve based on this  
17 design is further from customers and makes it harder to see the menu  
18 board in sunlight and then puts the speaker box further, which will  
19 make it harder for customers to hear." I know Vice Chairman Francis  
20 is not a Starbucks fan, we have one Starbucks --

21 MEMBER GOODSSELL: I do have some questions as the Starbucks fan.  
22 I'll let you finish.

23 MR. MIGATZ: Okay.

24 MEMBER GOODSSELL: And then I'll ask you my questions.

25 MR. MIGATZ: All those ordering boards, they have to be angled  
26 and have to face the -- not angled. The ordering board has to be

1 opposite the customer's car. If it is on an angle, then you'll be  
2 farther away from it like this email says, and then you will be having  
3 to raise the volume of the speaker. So it is counterproductive to  
4 what the Planning Commission is concerned about.

5 You have a question about that at this point?

6 MEMBER GOODSELL: I do, as a matter of fact. As the Board  
7 knows, I very frequently go to Starbucks. There's a drive-thru  
8 Starbucks in Mineola, where I spent a great deal of time during the  
9 pandemic. That ordering station is three cars away from the pickup  
10 window. This summer, I've had occasion to go to the Starbucks in  
11 Sea Cliff, which also has a drive-thru, and that ordering station  
12 is three cars away from the pickup window. I believe there is one  
13 more that I've been to that I can specifically think of in Panera  
14 that I've been to, which is, again, three or four cars.

15 I disagree with Starbucks' statement that this must be seven  
16 cars away from the window because the other Starbucks that I've been  
17 to are functioning just fine. If this was moved, and I'm looking  
18 at the plans, if it was moved to the position of either car four or  
19 car five, you would not have this issue. The speaker would be towards  
20 the Long Island Expressway, which is not subjected to the noise and  
21 away from the neighborhood. I also went back to look at the  
22 neighborhood again behind this proposed location.

23 Now, I am in favor of the location, but I'm sensitive to the  
24 neighbors behind, and those houses are a little closer than I thought  
25 they were. The speaker in Sea Cliff is two car widths away from a  
26 residential property. The speaker in Mineola is two car lengths away

1 from a commercial property. In both cases, I didn't find the volume  
2 excessive, but they were much closer to the pickup station than this  
3 plan. This may be Starbucks working plan now, but it's not a  
4 necessity to place it where it is, in my opinion, because those other  
5 Starbucks are working just fine.

6 MR. MIGATZ: May I ask a question?

7 MEMBER GOODSSELL: Yes.

8 MR. MIGATZ: Did those other Starbucks, is there queuing  
9 capacity on the site to move the ordering space further back, or are  
10 they confined to a small site plan?

11 MEMBER GOODSSELL: They're confined to a small site. There are  
12 other stores on the site, including the one up in Sea Cliff, has a  
13 Bank of America ATM machine, which people have to be sensitive to  
14 allow a car to pull up there. They do have the escape lane, but they  
15 do have one lane, which comes around. In Mineola, they have the sign  
16 with the proposed menu right on top of the speaker. Now, I realize  
17 they want to do, and I agree with this, pre-order menu sign, which  
18 may or may not be illuminated, depending upon the type of sign that  
19 they have, far enough back so that someone is not holding up the line,  
20 but take a look at the plan that you submitted. What would be  
21 Starbucks objection to put in the speaker facing away from the  
22 residents between the proposed handicap ramps or at car number four?

23 MR. MIGATZ: Well, it can't be on a curve, all right?

24 MEMBER GOODSSELL: Cannot be a curve?

25 MR. MIGATZ: Cannot be on a curve.

26 MEMBER GOODSSELL: So what about the location right next to car

1 number four?

2 MR. MIGATZ: Well, then you'd only have two cars between  
3 you -- no, no. Only --

4 MEMBER GOODSSELL: Well, two cars between you -- three cars if  
5 you count a car at the ordering station.

6 MR. MIGATZ: Well, cars picking -- you're giving an order, all  
7 right? And there's one picking up their order, so it's just two cars  
8 in between. Starbucks' concern is we can't get that customer order  
9 ready in time if there are just two cars in between you and the car  
10 picking up, and they don't want customers being, you know, annoyed  
11 or being, you know, inconvenient.

12 MEMBER GOODSSELL: It happens all the time. There is a line at  
13 9:00, 8:00 in the morning, there is a line on both of those  
14 drive-thrus.

15 MR. MIGATZ: All right, but do those drive-thrus have enough  
16 queueing space for 13 vehicles?

17 MEMBER GOODSSELL: Not for 13, no.

18 MR. MIGATZ: That's the difference.

19 MEMBER GOODSSELL: The one in Mineola has enough for 11 to 12  
20 possibly on Jericho Turnpike, and I know because I've counted them.

21 MR. MIGATZ: If -- you know, sometimes, you have to make do with  
22 a smaller site, but here, you know, there is sufficient room for  
23 queuing. Now, in -- with respect to the residents in the rear, nobody  
24 raised their hand in opposition. These two ladies are from the Town.  
25 I'm not sure who the lady in the back is, but nobody raised their  
26 hand in opposition at this --

1 MEMBER GOODSSELL: I understand.

2 MR. MIGATZ: May I finish? At this hearing or the prior  
3 hearing. So those people got two notices of this application. I  
4 checked to make sure everybody got them. Only one was returned and  
5 in both cases, and that was from Constance Metz who lived at the  
6 extreme east end -- excuse me, I'm sorry, extreme west end of the  
7 property. She doesn't live there. It happened to be a former  
8 receptionist in my prior law firm. I don't think she's still alive,  
9 so I don't really know who really is living there. So that one house  
10 that did not get the notice is at the far west, and they have a garage  
11 between --

12 MEMBER GOODSSELL: I noticed that.

13 MR. MIGATZ: Their house.

14 MEMBER GOODSSELL: They have a garage between themselves.

15 MR. MIGATZ: So, you know, when we looked at is it going to have  
16 an adverse on the community? Well, the community didn't complain,  
17 and what can go here instead? The community could be looking at a  
18 three-story high office building.

19 MEMBER GOODSSELL: We're beyond that Mr. Migatz.

20 MR. MIGATZ: Well, no, I don't -- with all due respect, I  
21 don't --

22 MEMBER GOODSSELL: Purposely discussions; just speaker.

23 MR. MIGATZ: But if you're looking at the adverse impact on the  
24 community, don't you have to look at what could be there in place?  
25 If you turn down, you know, I don't know Starbucks will proceed with  
26 this application if you made them move that speaker. I don't think

1 they would, so I think you have to look at what's the alternate. A  
2 three-story high office building where these homes in the rear are  
3 looking at lights, which usually are turned on 24-hours a day inside  
4 offices. Do they to want look at that? I don't think they do, and  
5 that's why I think nobody opposed this application. They are okay  
6 with the application, and if the residents have not raised concerns,  
7 I'm not sure why the Board would raise those concerns to protect those  
8 residents.

9 MEMBER GOODSELL: Well, that's not the standard. Whether  
10 anybody objects or not, whether anybody sees it or not. The standard  
11 is what's the variance? How would this impact the neighborhood?  
12 That's our guide.

13 MR. MIGATZ: Yes, but don't you ask the neighborhood how you  
14 are impacted? You just said the issue before you, how does it impact  
15 the neighborhood? The neighborhood did not raise any questions  
16 about impacts. So how's the impact to the neighborhood if they don't  
17 complain.

18 MEMBER GOODSELL: If we let everything past that no one  
19 complained, I think we'd have a different Nassau County Town of North  
20 Hempstead. It's our obligation to look at this.

21 MR. MIGATZ: But you're talking here about a very specific  
22 issue.

23 MEMBER GOODSELL: Yes, we are.

24 MR. MIGATZ: A very specific issue. It's not should a  
25 Starbucks be there or not. It's is this order station where it's  
26 proposed going to have an adverse impact on the rear neighbors?

1 That's the issue.

2 MEMBER GOODSSELL: Correct.

3 MR. MIGATZ: And when the rear neighbors don't complain about  
4 it, I'm sorry, I don't think your position that will be upheld by  
5 the courts if you say, well, we think it has an impact on the  
6 neighbors, even if the neighbors don't think it has an impact on them.  
7 With all due you respect.

8 MEMBER GOODSSELL: We can disagree, Mr. Migatz.

9 MR. MIGATZ: And this ordering station was there when you  
10 approved this. It's not something new.

11 MEMBER GOODSSELL: Agreed. It was there.

12 MR. MIGATZ: What's the change of facts?

13 MEMBER GOODSSELL: An issue has been raised, and I think we need  
14 to consider whether or not alternatives. I'm asking Starbucks for  
15 alternatives.

16 MR. MIGATZ: In my opinion, as their representative, no. If  
17 there was, I would have a different response. I asked about it, and  
18 this is the response that I received, so no, there is no alternative,  
19 and -- what issue was raised by Nassau County Planning Commission?  
20 They didn't raise that the first time, either, all right. Now, all  
21 of a sudden, they're raising that.

22 ATTORNEY ALGIOS: Bruce, Bruce, let me just say one thing. In  
23 fairness, yes, the ordering station was there the last time you were  
24 here, but the Board was not considering the Five Factors specifically  
25 whether there was an alternate, right? Because there was no variance  
26 before them.



1 MR. MIGATZ: But they're considering -- it's also a conditional  
2 use application, so they considered all of the impacts of the  
3 Starbucks as part of the conditional use application that included  
4 the ordering station.

5 ATTORNEY ALGIOS: True, true, but it is a little different now.  
6 They have this specific variance, and they're looking at the Five  
7 Factors as it relates to this specific variance, so they're asking  
8 now, for the first time, now, they're asking about, is there an  
9 alternative?

10 MR. MIGATZ: No.

11 ATTORNEY ALGIOS: Okay.

12 MR. MIGATZ: And it doesn't change the underlining facts. It  
13 can be a factor that now that section of codes before. It doesn't  
14 change the fact that the ordering station was before you last time  
15 around, and you talked about it. You talked about it. It wasn't --

16 MEMBER GOODSELL: We had questions about the menu board and we  
17 had questions about the ordering station.

18 MR. MIGATZ: And you agreed that the 28-foot distance, the wall,  
19 and the fence was sufficiently baffle any noise.

20 MEMBER GOODSELL: We did not consider the noise.

21 MR. MIGATZ: Whoa, whoa, whoa, whoa, let me get the tran -- let  
22 me go to the videotape.

23 MEMBER GOODSELL: Go to the videotape.

24 MR. MIGATZ: Hold on one second.

25 MEMBER GOODSELL: I will take notice, Mr. Migatz. I was told  
26 that yes, we did consider that, so I accept what the transcript says.

1 MR. MIGATZ: Vice Chairman Francis, I think between the  
2 arborvitaes and the wall and the distance, it's probably going to  
3 be minimal in terms of any sound they are going to hear.

4 MEMBER HERNANDEZ: Mr. Migatz, arborvitae has come up a couple  
5 of times, and I have a question based on the new -- I the don't know  
6 if it's the new or the old, whatever; I don't see on the plans where  
7 the arborvitaes are.

8 MR. MIGATZ: No, I didn't give you the landscape plan, Mr.  
9 Hernandez. This was part -- this was given to you in connection with  
10 the fence that I'm going to talk about. This is not the landscape  
11 plan. This is part of the fence plan.

12 MEMBER DONATELLI: So the landscaping, the arborvitaes are  
13 still part of the overall plan?

14 MR. MIGATZ: Oh, yes, and that landscaping will be an issue that  
15 I'm sure will be discussed by the Town Board at the site plan review.

16 (WHEREUPON, a discussion was held among Board Members.)

17 CHAIRMAN MAMMINA: Mr. Migatz, just a question regarding the  
18 arborvitae, and I did show Member Hernandez where they are shown and  
19 where they're called out on the planting schedule as being  
20 arborvitae, 6 to 8 feet height installed height, so that would mean  
21 that when they come to the site, they're going to be at least 6 feet  
22 maybe as high as 8 feet. Just for clarification, because I believe  
23 there was one place where it was presented that fence was behind the  
24 wall, and then another one it was on top of the wall, so can you just,  
25 you know, clarify, I believe that it is on top of the wall based on  
26 what you submitted.

1 MR. MIGATZ: Yeah, well, that's why we're here today because  
2 of what you just said Mr. Chairman, and the confusion was probably  
3 my generation. I generate the confusion because, at the hearing,  
4 I referred to the fence on top of the wall and at one point, the fence  
5 behind the wall, which to me was a distinction without a difference  
6 because I thought, and I believe that the applicant thought that that  
7 wall was a retaining wall, and it didn't make any difference if the  
8 fence was on top of the wall or behind the wall because of -- the  
9 wall is there. It was then during the discussion with the Planning  
10 Department, which was very cooperative, and with the Building  
11 Department. Our engineer went out there and merged it behind the  
12 wall, and it turns out that it's only partially a retaining wall to  
13 the land behind the wall, and on various spots along the rear line,  
14 the wall is higher than the ground it retains. And when that happens,  
15 the Building Department somehow, magically, turns that wall into a  
16 fence, and it says whatever part of the retaining wall is above the  
17 ground it retains, becomes a fence. I've been through that before.  
18 There's no -- nothing in the code that supports that, but because  
19 of that, it makes a difference whether the wall -- whether the fence  
20 is on top of the wall to give you that 12-foot barrier, 5-foot wall,  
21 7-foot fence, or behind.

22 And if you turn to Exhibit 1, this is a sketch prepared by the  
23 Building Department, and you'll see that they measure the 7-foot  
24 height of the wall from the ground behind the wall where it stops  
25 retaining the ground. So that's why that 7-foot fence on top of the  
26 wall they need to higher than seven feet because they include the

1 section of the wall that is above the ground it retains.

2 And if you look at Exhibit 2, highlighted in yellow is the height  
3 of the fence -- the portion of the fence that would be above the wall  
4 if it was the behind the wall, and if that is the case, if it goes  
5 behind the wall, because the land behind the wall is not a uniform  
6 grade, the portion of the fence sticking up above the wall, it would  
7 range from 2.5 feet to 4.9 feet. So you would not be getting your  
8 5-foot wall, plus your 7-foot fence. You'd be getting your 5-foot  
9 wall plus 2.5 fence or 4.9 fence.

10 When the fence is on top of the wall, which is what I believe  
11 the Board thought was going to be the situation to give the 5-foot  
12 plus 7-foot barrier; if you look at Exhibit 3, and that's the one  
13 that I blew up because you can barely read those numbers on the reduced  
14 copy. When it's above the -- when it's on the wall, if you measure  
15 the fence from the property behind the wall, it varies from 9 feet  
16 to 11 feet 6 inches, and we did all those for measurements, and I  
17 highlighted that for you. Now, the -- but it's still a 7-foot fence  
18 on top of a 5-foot wall.

19 VICE CHAIRMAN FRANCIS: Right.

20 MR. MIGATZ: One concern about putting the fence -- well, two  
21 concerns putting the fence behind the wall, which would not require  
22 a variance is one, it doesn't give the extra protection from the sound  
23 and light.

24 And Exhibit 4, the photograph that shows the homes right behind  
25 the subject property, most of them have a 6-foot high stockade fence,  
26 and part of that fencing is on Starbucks property. Property they

1 will be leasing. So part of those fences would have to be moved in  
2 order to put a new 7-foot fence there, and that 7-foot fence would  
3 only be one foot higher than what fence is there now. So, I mean,  
4 the applicant will do whatever the Board wants. They'll go put the  
5 fence either way, behind it or on top of it, but Starbucks feels that  
6 it's better to seek a variance to have a 7-foot fence on top of the  
7 wall to provide the noise protection, light protection, that this  
8 Board discussed at the last hearing, which they found was acceptable.  
9 Does the Board have any questions?

10 CHAIRMAN MAMMINA: Yeah, just because I can't -- maybe because  
11 I can't read it. It's very small, but I guess, my question, which  
12 I guess, speaks to what we're talking about, does Starbucks even own  
13 that property that's behind the wall?

14 MR. MIGATZ: Well -- no --

15 CHAIRMAN MAMMINA: Offsets slightly?

16 MR. MIGATZ: Well, the landlord, nine --

17 CHAIRMAN MAMMINA: That's what I mean, yeah.

18 MR. MIGATZ: Yes, their property goes one or two feet beyond  
19 the wall, and some of those existing fences from the neighborhood  
20 are encroaching onto the applicant's property.

21 MEMBER HERNANDEZ: So that is a retaining wall back there.  
22 It's just that part of it because of the undulation of the land is  
23 above it.

24 MR. MIGATZ: Right.

25 MEMBER HERNANDEZ: But it is a retaining wall. It's a solid  
26 surface wall.

1 MR. MIGATZ: Yes, and -- but magically the Building Department  
2 makes it into a fence.

3 CHAIRMAN MAMMINA: But, I guess, do -- I don't have to make your  
4 argument for you. You can do that well enough, but if we put the  
5 7-foot fence on top of the existing wall, some of those neighbors  
6 can have an 11-foot fence, you know, which is probably just about  
7 as high as this ceiling from the ground.

8 MEMBER HERNANDEZ: They're only going to see above grade, so  
9 they're only going to see seven plus.

10 CHAIRMAN MAMMINA: Yeah, here's --

11 MR. MIGATZ: Chairman is correct.

12 CHAIRMAN MAMMINA: You can see it in the photograph.

13 (Whereupon, a discussion was held off the record.)

14 MEMBER HERNANDEZ: These are all 6-foot fences. They're going  
15 to see another line above it. So it's not that they're going to see  
16 more or less. They're going to see the same line above it because  
17 it's directly above their fence.

18 VICE CHAIRMAN FRANCIS: Yeah, right.

19 MEMBER HERNANDEZ: These two lines are parallel.

20 CHAIRMAN MAMMINA: I'm agreeing, but I'm saying it's this, but  
21 they're measuring from top of this wall.

22 MEMBER HERNANDEZ: Right.

23 VICE CHAIRMAN FRANCIS: Exactly.

24 CHAIRMAN MAMMINA: This, let's say, this is 5 feet, and there's  
25 now a 7-foot fence. This whole thing is 12 now in here; 7-foot fence,  
26 then that's the retaining.

1 MEMBER HERNANDEZ: But that's 4 feet on this side. On the other  
2 side --

3 CHAIRMAN MAMMINA: No, but he's saying that if they put a 7-foot  
4 fence on top of this wall --

5 MEMBER HERNANDEZ: Yes.

6 CHAIRMAN MAMMINA: If this wall is consistent --

7 MEMBER HERNANDEZ: Right.

8 CHAIRMAN MAMMINA: The grade --

9 VICE CHAIRMAN FRANCIS: Changes.

10 CHAIRMAN MAMMINA: Changes.

11 MEMBER HERNANDEZ: But where -- this line is consistent.

12 CHAIRMAN MAMMINA: I think because -- but the neighbors put  
13 their fences up.

14 MEMBER HERNANDEZ: Right, they're going to see above that  
15 another foot, another two feet.

16 CHAIRMAN MAMMINA: Correct me if I'm wrong, Mr. Migatz, that  
17 Starbucks or the landlord is willing to put in a fence that is  
18 continuous with what is already there by the neighbors. The neighbor  
19 fences will be --

20 SECRETARY WAGNER: Will be behind.

21 CHAIRMAN MAMMINA: Right, they would be behind.

22 MR. MIGATZ: They'll put the fence behind the wall on their  
23 property.

24 CHAIRMAN MAMMINA: Right.

25 MR. MIGATZ: But it's not going to be the same height as the  
26 neighbor's fence because the neighbor's property has different

1 elevations.

2 SECRETARY WAGNER: But you're saying you don't want to put it  
3 behind the wall, you want to put it on top.

4 MR. MIGATZ: Well, we think it's better. It's not like we're  
5 blocking the view of the water or a park. We're blocking the view  
6 of the Long Island Expressway service road and the Long Island  
7 Expressway, and you're blocking the noise from the trucks that are  
8 on the service road as well as the expressway, and you're blocking  
9 the lights, so again that's why I submit the neighbors, they got  
10 notice of this. They knew what the height was. My letter, I always  
11 send a cover letter with my notices. I think this Board knows. If  
12 you have any questions, please call me. I'll show you the plans.  
13 Nobody called me. Nobody wrote. Nobody objected.

14 So going through the Five Factors. Will there be an undesirable  
15 change produced in the character of the neighborhood or a detriment  
16 to neighbor properties? I think the best judge of that are the nearby  
17 properties. The nearby properties have not raised any objection to  
18 either the ordering station or to the fence, and the fence is a benefit  
19 to the rear properties because it will not just block any noise from  
20 Starbucks, it will help to block noise from the Long Island  
21 Expressway.

22 Can the benefit sought be achieved by some other feasible  
23 method? No. To Starbucks' opinion, it's not feasible to relocate  
24 that ordering station. They think it's going to slow down the line.  
25 It's gonna annoy the customers, and it's not good for their business.  
26 So they did look at it. I asked them to look at it, and they -- opinion



1 is that we don't have an alternative. We have to put it at car seven.

2 There is an alternative to the fence. We can put it, like I  
3 said, behind the wall, so no variance, but we think it's a better  
4 benefit to the neighbors to have it on top.

5 Are the variances substantial? Looking at the totality of the  
6 circumstances, I submit to you they're not substantial. It's not  
7 going to have an adverse impact, which is really the key to the  
8 measuring of the -- whether or not a variance is substantial. It's  
9 a type-two -- I'm sorry, part is a type-two action, parts unlisted,  
10 but this Board gave a negative declaration on the first application,  
11 and the plans have not changed from the first application to this  
12 application, so I submit to you there'll be a negative deck again.  
13 There should be a negative deck again.

14 And is it self-created? Yes, you know, it is if you purchase  
15 a property subject to code enforce, you seek a variance. But  
16 weighing those factors, the totality of the circumstances, the fact  
17 that these same plans were before the Board in January, and they were  
18 approved by the Board, and the fact that no neighbors twice now have  
19 raised any objection to either the ordering board or the fence.

20 I submit to you the application should be granted. We have a  
21 hearing scheduled before the Town Board for September 10th for site  
22 plan review. It's not that easy to get on the calendar for public  
23 hearing. We don't want to miss that public hearing date, so I would  
24 respectfully ask the Board to render a decision on this application  
25 one way or the other today.

26 MEMBER DONATELLI: Mr. Chairman, I've listened very carefully

1 to the presentation, and I'm only going to speak as one Board Member  
2 hopefully, you know, find other Board Members in agreement. This  
3 is a unique property. It is along the Long Island Expressway. It  
4 doesn't escape me that the State and the federal government have spent  
5 a lot of the money putting up sound barriers similar to -- somewhat  
6 similar to the fence that we're talking about here because these  
7 fences do at some point mitigate some of the noise. The property  
8 is unique in the sense that if you live near a highway, you know that  
9 there is a consistent drawing of the traffic, and people get used  
10 to blocking out whatever noise. They purchased the property.  
11 They're aware of the expressway. The expressway has been there for  
12 70, 80 years, as far as I know, probably longer.

13 So the applications before us today really for the placement  
14 of ordering board, and I just -- I find it that is probably -- it  
15 may be a significant impact on some other site. I do not think that  
16 the placement of the ordering board where it is, 26, 27, 28-feet away  
17 from their homes, will have any detrimental impact to the noise that's  
18 already there from the highway. So I'd be inclined to grant that  
19 particular variance.

20 As to the fence, I think it's probably more advantageous for  
21 the homeowners to have the fence situated on top of the wall. Again,  
22 to act -- to mitigate some of the sound that might leech from this  
23 property to the rear angle. So as one Board Member that would be  
24 my take on the application.

25 MEMBER HERNANDEZ: I totally agree with you. I'll just make  
26 one correction. It's probably 26 feet not from the house but from

1 the property line to the house, so the house is much further --

2 MEMBER GOODSSELL: Yes.

3 MEMBER HERNANDEZ: -- away, and yes, having it on top of the  
4 wall makes a lot more sense, but the one you want a straight fence.  
5 You don't want a fence that goes like this. I'm sure when they put  
6 up the PVC fence, they also put straight. They didn't go following  
7 the contour. So yes, I'm in agreement.

8 CHAIRMAN MAMMINA: Is that motion?

9 MEMBER HERNANDEZ: So if that's a motion, I'll second that.

10 MEMBER DONATELLI: I'll make the motion.

11 CHAIRMAN MAMMINA: Motion from Member Donatelli. We have a  
12 second from Member Hernandez. Please poll the Board.

13 SECRETARY WAGNER: Member Goodsell?

14 MEMBER GOODSSELL: Aye.

15 SECRETARY WAGNER: Member Donatelli?

16 MEMBER DONATELLI: Aye.

17 SECRETARY WAGNER: Member Hernandez?

18 MEMBER HERNANDEZ: Aye.

19 SECRETARY WAGNER: Vice Chairman Francis?

20 VICE CHAIRMAN FRANCIS: Aye.

21 SECRETARY WAGNER: Chairman Mammina?

22 CHAIRMAN MAMMINA: Before I say, aye, I just want to echo,  
23 hopefully not being repetitious of everything that's been said.  
24 This a very, very unique circumstance with extenuating physical  
25 condition in front of the property location, Long Island Expressway.  
26 Enough from me, aye.

1 MR. MIGATZ: Thank you very much.

2 CHAIRMAN MAMMINA: Application is granted.

3 MR. MIGATZ: Thank you.

1 SECRETARY WAGNER: Do we want to adopt SEQRA?

2 MEMBER DONATELLI: I make a motion to adopt SEQRA.

3 CHAIRMAN MAMMINA: Okay, we have a motion.

4 MEMBER HERNANDEZ: Second.

5 CHAIRMAN MAMMINA: Seconded by Member Hernandez.

6 SECRETARY WAGNER: All in favor?

7 BOARD MEMBERS: Aye.

8 SECRETARY WAGNER: SEQRA is adopted.

9 (WHEREUPON, the Proceedings concluded at 1:18 P.M.)

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STATE OF NEW YORK )

SS.:

COUNTY OF NASSAU )

I, *Mariesel Berrios*, a Shorthand (Stenotype) Reporter and Notary Public, do hereby certify that the foregoing proceedings, taken at this time and place aforesaid, is a true and correct transcription of my shorthand notes.

I further certify that I am neither counsel for nor related to any party to said action, nor in any wise interested in the result our outcome thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this 19<sup>th</sup> day of September, 2024.

*Mariesel Berrios*

\_\_\_\_\_  
MARIESEL BERRIOS