

TOWN OF NORTH HEMPSTEAD
BOARD OF ZONING APPEALS
PUBLIC HEARING

Town Hall
220 Plandome Road
Manhasset, New York 11030
Wednesday, November 19, 2014
10:13 o'clock a.m.

P R E S E N T :

DAVID MAMMINA	Chairman
DONAL MCCARTHY	Member
LESLIE FRANCIS	Member
DAVID I. LEVINE	Member
LINDA ZUECH	Chief Deputy Town Attorney
GERARD TERRY	Special Counsel
JONATHAN FIELDING	Secretary

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CHAIRMAN MAMMINA: If everyone would please rise and join Mr. McCarthy in the Pledge of Allegiance.

(Whereupon, the Pledge of Allegiance was recited in a body.)

CHAIRMAN MAMMINA: Good morning, ladies and gentlemen and welcome. What I'm going to do is just take a minute or so to go through how we conduct business at the Town of North Hempstead. If you've never been at a Zoning Board hearing before, it could be very helpful. If you have been at Zoning Board hearings in other municipalities, we may conduct business a little bit differently here than other places, so what we will do is as each case is called, we'll ask the applicant to identify themselves by standing up and coming forward to the podium. Each person as you're at the podium will give your name and address to Robin so that we have that as part of the record. I will then ask if anyone has any interest in the case either in support or in opposition to the case and we just ask for a show of hands so that we know that there are people that wish to speak.

With that in place, the podium belongs to the applicant and you'll put your case on the record, the Board will ask whatever questions it feels it needs to, and at that point if there is anyone else that wishes to speak, we'll ask the applicant just to take a seat wherever, in the front here, and we'll invite people up one at a time to give their perspective, the Board will ask whatever questions it chooses to ask, and then the applicant will be invited back to the podium to refute or support whatever might have been said. The applicant and only the applicant will have the opportunity to speak two times. Everybody gets one turn at bat.

With that done, then the Board will close that hearing and we will deal with it in one of three ways. We will either approve the application, we will deny the

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application or we may reserve the application. If we reserve the application, we may do that for any number of reasons. We may be looking for the applicant to submit another document, we may want to see a Building Department file, we may want to go out to the site again, we may offer some compromise that would be a resubmitted drawing, so essentially that's the way that we do business here.

I will ask everybody to just kind of take your cell phones out, hold them up high, anything that makes any kind of a sound, please shut it off. I will ask everybody not to be nervous when they come up to the front, but you might be, and the last thing that you need is your own phone going off or somebody else's as I like to say playing the cha-cha as they're running out of the room, so it will be very helpful to everyone.

I will also ask that we really have no talking within the hearing room. Robin is taking down a record of this and the Board has to be able to hear what the testimony is. If someone is coming in to meet you, you know, please ask them the same, and honestly, honestly, if at any time you just want to stretch your legs, you want to make a phone call, you know, you need to discuss something regarding the case because somebody else just came in, stand up, you know, right outside, it's okay, it really is okay, there is no disrespect in doing that or anything. We just want to try to keep the room as quiet as possible.

So with all of that said, Mr. Fielding, do we have any modifications to today's calendar?

MR. FIELDING: Yes, Mr. Chairman, Appeal#19875, Joseph Cella at 97 Ivy Way in Port Washington, is adjourned to January 7, and Appeal#19883, Emike Properties LLC/ Nassau Expeditors for 296 Wright Street in Westbury is adjourned to January 7.

CHAIRMAN MAMMINA: So if anyone is

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here for either of those two cases, those will not be heard today, so, you know, no need then for you to sit around.

With all of that said then, please call the first case, Mr. Fielding.

MR. FIELDING: We have Appeal#19874 - Molly & Amir DaSilva, variance 70-100.2.H to maintain 2 A/C units within a required front yard setback; northwest corner of #50 Oakland Ave & Radcliff Avenue, Port Washington, Section 4, Block 12, Lot 49, R-B District.

CHAIRMAN MAMMINA: You've heard Appeal#19874, Molly and Amir DaSilva. Is there anyone in the room interested in the application other than the applicant?

Seeing no one, please give your name and address.

MS. DaSILVA: Molly DaSilva, 50 Oakland Avenue, Port Washington, New York 11050.

CHAIRMAN MAMMINA: Okay. The podium is yours. Tell us a little bit about what you've got.

MS. DaSILVA: I have two A/C units in what's considered a front yard because I'm on a corner and I have two front yards and we're asking to maintain them where they are. That's basically it.

CHAIRMAN MAMMINA: Okay. And then those two units, I mean, we I guess fortunately or unfortunately, whatever, we get a lot of air conditioning units and we like to deal with every application the same way that we would deal with any other one, so those units, what's the story of those units in terms of --

MS. DaSILVA: In terms of why they're there?

CHAIRMAN MAMMINA: -- how they got

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there, how long they've been there?

MS. DaSILVA: We did some construction and honestly I left it up to the contractors to determine the most logical place for it. I didn't even know at that point that that was considered a front yard. Our back yard is really small and actually closer to my neighbor than where they are now, so that's how they got there. We do have -- did you go by the property?

CHAIRMAN MAMMINA: Sure.

MS. DaSILVA: So we do have like trees covering all three sides, so they're obscured by all those trees.

MR. FRANCIS: And this is a fairly -- they're new units, they're relatively new units?

MS. DaSILVA: One is quite new because when we did our construction, we had our air conditioning upstairs put in. The other one is a bit older, but they're not huge and unsightly in terms of air conditioning units.

MR. FRANCIS: Okay.

CHAIRMAN MAMMINA: All right. And I guess on corner lots, the Board will frequently give consideration to the fact that the back yards, if we want to call it that, you know, recreation spaces is limited, you know, and in your case, you know, you have only 19 feet between yourself and your neighbor. There's a garage that continues, you know, back along that -- back to the north side, which has a very tiny side yard, and it really would not be so wonderful to put them all the way over on that side and they are further away from the -- from your neighbor than where they're located now, and, of course, the reason for this part of the zoning regulation, you know, is seeing units from the street, hearing them from the street. The air

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conditioning units have gotten much, much, much quieter, you know --

MS. DaSILVA: They're pretty quiet.

CHAIRMAN MAMMINA: -- since the 30 or 40 years ago that this became part of the ordinance, so typically on something like this we would just put a condition on this that they be screened with evergreen so that anything that might be there, you know, should it no longer exist because a maintenance guy came and he pulled the shrub out of the ground, that that be maintained so that we don't see the units.

Does anybody else have any other comments on this?

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

CHAIRMAN MAMMINA: So with all of that said, do we have a motion?

MR. McCARTHY: Okay. I move that we grant the application with the requirement that the arborvitae screen or equivalent evergreen screen be maintained.

MS. DaSILVA: Oh, yeah, definitely.

CHAIRMAN MAMMINA: Okay. So we have a motion.

MR. FRANCIS: Second.

CHAIRMAN MAMMINA: Seconded by Mr. Francis.

Please poll the Board.

MR. FIELDING: Mr. Levine?

MR. LEVINE: Aye.

MR. FIELDING: Mr. Francis?

MR. FRANCIS: Aye.

MR. FIELDING: Vice Chairman McCarthy?

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MR. MCCARTHY: Aye.

MR. FIELDING: Mr. Chairman?

CHAIRMAN MAMMINA: Aye.
The application is granted. Thank
you.

See, that wasn't so bad.

MS. DaSILVA: Easy enough.

CHAIRMAN MAMMINA: Don't anybody get
any ideas though.

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MR. FIELDING: We have Appeal#19876 - Scott Pecullan, variances 70-101.B and 70-208.F to construct a porch on a non-conforming dwelling within a required front yard setback, west side of 33 Mitchell Road, 445.83 feet south of Luquer Road, Port Washington, Section 5, Block 112, Lot 534, R-B District.

CHAIRMAN MAMMINA: You've heard Appeal#19876, Scott Pecullan. Is there anyone in the room interested in the application other than the applicant?

Seeing no one, please give your name and address.

MR. SCLARE: My name is Don Sclare, S-C-L-A-R-E, I'm the architect for the Pecullan family, 60 East 42nd Street, New York 10165.

CHAIRMAN MAMMINA: Good morning, Mr. Sclare.

MR. SCLARE: Good morning to you.

CHAIRMAN MAMMINA: Go ahead.

MR. SCLARE: So the Pecullans have a nice little two story old house almost at the end of Mitchell Road and we're putting an addition on the side of the house to provide a new master bedroom suite with a garage on the street level to the property, and we also would like to build a front porch on the house that would extend pretty much across the front of the old house at the front door that would allow the family and the kids to sit out front, it's got a very small back yard area and down the hill at the basement level, so this would allow them to sit outside, store their chairs and kids' toys at the moment and be a part of the social front yard area.

The house is set back behind what's called the regular front yard setback and the intended front porch would project four and a half feet into what is normally the

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allowable five foot front porch overhang, but because of the zoning with the average front yard setback, we would be in fact encroaching on the front yard by 3 foot 4 inches and we're asking if we can get a variance that would allow us to build that and it would give us a front porch of approximately 7 foot in depth, which is big enough to sit on and move around on.

MR. McCARTHY: I'll move that we grant the application. I was there yesterday and it's a -- it really is at the end of that street and it falls away, I guess the golf club is behind it?

MR. SCLARE: Golf club; yes.

MR. McCARTHY: So the porch would have no bad effect on the neighborhood, and as the applicant pointed out, they could sit out front and people will come by and say hello.

MR. SCLARE: Yes, whenever I've been there, it's a very sociable cul-de-sac area.

MR. McCARTHY: Okay. So I move that we grant the application.

MR. LEVINE: Second.

CHAIRMAN MAMMINA: Okay. We have a motion. We have a second by Mr. Levine. Please poll the Board.

MR. FIELDING: Mr. Levine?

MR. LEVINE: Aye.

MR. FIELDING: Mr. Francis?

MR. FRANCIS: Aye.

MR. FIELDING: Vice Chairman McCarthy?

MR. McCARTHY: Aye.

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MR. FIELDING: Mr. Chairman?

CHAIRMAN MAMMINA: Aye.

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MR. FIELDING: Appeal#19877 - Robin and James Carr, variances 70-40.C, 70-100.2.H, and 70-208.F to construct additions to a non-conforming dwelling within a required front yard setback and install an A/C unit within a required side yard setback; south side of 10 Plymouth Road, 160 feet east of Colby Road, Port Washington, Section 6, Block 45, Lot 9, R-B District.

CHAIRMAN MAMMINA: You've heard Appeal#19877, Robin and James Carr. Is there anyone in the room interested in the application other than the applicant?

Seeing no one, please give your names and addresses, one at a time, and you're certainly both welcome to speak, just one at a time.

MS. CARR: Okay. Thank you.

CHAIRMAN MAMMINA: Thank you.

MS. CARR: I'm Robin Carr, I reside at 1 Plymouth Road in Port Washington, 11050.

MS. MILLER: I'm Janice Miller, 2 Lincoln Place, Port Washington, New York.

CHAIRMAN MAMMINA: Okay, ladies, whomever would like to --

MS. MILLER: Do you want to go first?

MS. CARR: Okay. Well, we are asking for an allowance to have our garage moved forward by one foot because we can't fit our car in the garage. The house was built in 1938 and we'd like to be able to put our car in the garage, it gets a lot of sap on it from the trees that are near the driveway, and we would also like to -- while we are expanding the garage, we would also like to keep the air conditioner on the side of the house where it is because it's very expensive to move it and rewire it, number

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one, but it also is very far set back from the front of the house, so it's on the back corner of the house. It's also surrounded by -- I had put in skip laurels on the whole side of the house, so you cannot see it at all from the street, and you would not be able to in the future see it at all from the street, so the --

CHAIRMAN MAMMINA: We are also concerned about the side yard to the neighbor and I'm sure we would do exactly the same thing there, so in an instance like this where it's in the side yard, we are screening it from the neighbor principally.

MS. CARR: The skip laurels that I have there are totally screened from the neighbor, they screen the whole yard.

CHAIRMAN MAMMINA: Yes, for privacy, for shade.

MS. CARR: Yes. Okay. Thank you.

CHAIRMAN MAMMINA: Okay.

MS. MILLER: I have not much to add except that the average on the street, the setback is 33.16 feet and this -- by the time we move this out, our garage will be 29.65 and that's really it.

CHAIRMAN MAMMINA: As someone who lives in one of the original Levitt colonial houses where the garage is only 10 feet from outside the house, Mr. McCarthy had that same house at one point, it is only nine feet on one side --

MS. MILLER: Yes. That's the issue.

MS. CARR: Yes.

CHAIRMAN MAMMINA: -- it's really virtually unusable.

MR. LEVINE: Drive a Prius.

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CHAIRMAN MAMMINA: What's that?

MR. LEVINE: Drive a Prius.

MS. CARR: I don't even know if a Prius would fit.

MR. FRANCIS: Or a Smartcar.

CHAIRMAN MAMMINA: Or a Mini Cooper. And in this case, the change is only a one foot movement to the front of the garage. I don't see any issue. I don't know if --

MR. McCARTHY: Do I interpret your plans that you're going to tear down that whole garage and rebuild it?

MS. MILLER: Because we're going wide and --

MR. McCARTHY: Yes. Why can't it be built backwards?

MS. CARR: There's windows upstairs. We had originally wanted to do that, but there are windows upstairs, so doing that would require the windows to be moved and a lot of other problems.

MR. McCARTHY: I hear you.

MS. CARR: I drove Janice crazy trying to preserve the windows where they are and have the light the same. I am very, very particular about the house and keeping the aesthetics of the house.

MR. McCARTHY: Well, if you have to do alterations beyond that garage building just to accommodate the problem that I brought up, I think that that's a good enough reason because you're not really doing any work on the rest of the house.

MS. CARR: She did try.

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MS. MILLER: I did try.

MS. CARR: Very hard.

CHAIRMAN MAMMINA: You are not changing any of the house, you are just changing that attached garage.

MS. CARR: Yes. Correct.

CHAIRMAN MAMMINA: Okay. Is that a motion or do you want to cobble it into a motion, unless somebody else wants to make a motion? You can capitalize on that.

MR. McCARTHY: I want people to know that I just look mean, I'm actually not mean.

MR. LEVINE: He is getting winded.

MR. McCARTHY: Okay.

MR. LEVINE: Mr. Chairman, having heard the application, I move that we grant it. I think what the applicant is asking for is not particularly -- will not have any impact other than a good impact upon the area. The relief they are seeking is not particularly great. I would note also that this house is -- they could legally add 1,500 square feet on this house legally speaking, so they are not looking to add any bulk onto this property, just make it much more useful, so I make a motion that we grant the application.

CHAIRMAN MAMMINA: We have a motion. Do we have a second?

MR. FRANCIS: Second.

MR. FIELDING: One question. Do you want to have the screening?

MR. LEVINE: Oh, yes. I'm sorry. The standard air conditioning screening.

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CHAIRMAN MAMMINA: We have a motion
and we have a second.
Please poll the Board.

MR. FIELDING: Mr. Levine?

MR. LEVINE: Aye.

MR. FIELDING: Mr. Francis?

MR. FRANCIS: Aye.

MR. FIELDING: Vice Chairman McCarthy?

MR. MCCARTHY: Aye.

MR. FIELDING: Mr. Chairman?

CHAIRMAN MAMMINA: Aye.
The application is granted.

MS. MILLER: Thank you.

MS. CARR: Thank you very much.

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MR. FIELDING: Appeal#19878 - Bijoy Abraham, variances 70-50.B, 70-52, 70-100.1.A, and 70-208.F to maintain a sunroom in a non-conforming dwelling and accessories within a required front yard setback and a garage within a required rear yard setback; southwest corner of 189 Cellar Avenue and Soma Street, New Hyde Park, Section 8, Block 104, Lot 253, R-C District.

CHAIRMAN MAMMINA: You've heard Appeal#19878, Bijoy Abraham. Is there anyone in the room interested in the application other than the applicant.

Seeing no one, please give your name and address.

MR. ABRAHAM: My name is Bijoy Abraham, I am representing my house at 149 Cellar Avenue on the variances that he mentioned.

MR. LEVINE: I would ask you just to slow down. We're not going anywhere, there's no time limit on this, and I'd like to hear everything that you have to say because I'm sure it's very important, so just slow down.

CHAIRMAN MAMMINA: And Robin has to type it all. Thank you.

MR. LEVINE: So just slow down. I want to hear everything.

MR. ABRAHAM: Okay. My name is Bijoy Abraham, I'm representing my house at 149 Cellar Avenue on the variances 70-50.B, 70-52, 70-100.1.A, and 70-208.F to maintain a sunroom in a non-conforming dwelling and accessories within a required front yard setback and a garage within a required rear yard setback.

I brought two more consent forms.

CHAIRMAN MAMMINA: Mr. Fielding will take them from you.

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MR. ABRAHAM: Can I proceed?

MR. LEVINE: Please.

CHAIRMAN MAMMINA: Yes.

MR. ABRAHAM: I bought this house in 2011 in April from Alberto Gonzalez. Actually at the time of closing, there was an issue that there was a past behind that my previous owner closed before taking the permit, so that was an issue during closing, so actually what the lawyers did is actually they came to a conclusion that they put some money in the escrow account and the previous owner has to take care of that part and we closed the house and we started living in that house and we put a time limit of one year to finish that work by the previous owner and the previous owner assigned the architect and filed the job before the Town of North Hempstead and we got a letter from Town of North Hempstead that it was not only the issue of patio, there are so many issues, which only I became aware of that at that point, and the owner actually put \$7,500 in the escrow account, but we came to know that that amount is not sufficient to clear all the issues. Actually unfortunately the previous owner didn't take any of the things, and we reminded them through the lawyer and we gave it one more year but unfortunately nothing happened within two years, and they just walked out because they knew that this money, even that amount of money isn't going to be enough to cover all the costs because there are a lot of things inside the house they changed the planning and everything, but, you know, since I like this house, I thought it's my responsibility, I called that money to the lawyer and hired my own outside architect and we hired the job from the Town of North Hempstead, and we were trying to do one by one, but unfortunately a new thing came in 2010, unfortunately, there was a small issue with the garage, and I had a garage in my back yard and the new issue is actually that

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that garage was constructed in 1955, and actually the way that it is constructed is that actually it exceeds a couple of inches, maybe two to three inches to the other property which is actually the Department of Highways, so I had to file an application before the Department of Highways to get variance from that point and I already filed that application, I got variance from their side. Then we submit all the applications before Town of North Hempstead and we thought this Board of Zoning -- and we filed all the jobs, informed all the neighbors, and actually I had to inform like five, just the neighbors, and I got three consents from all of that and nobody actually is here to oppose my application, so actually I'm getting close to my permit, I have to do some more work inside my house, but I am getting close to get my permit, I am trying to do in the last five years, and my wife is actually here, we have three kids and we are going to have one more kid next year, so actually I have been going through so many mental troubles all these years because of this. We already spent like \$16,000 so far and there should be another \$5,000, 6,000 more to occur to do this, so I do appreciate if I could get a variance on all this issue so that we could happily move forward.

MR. McCARTHY: You know, one of the major issues here is that garage and you have cleared up with the Town Highway Department the fact that it overlaps somewhere on the check paper check paper. Now, our concern -- well, first of all, you have an odd piece of property here check paper, but more typically we encounter garages that have been built in a particular part of the lot and in the back corner of the lot the garage has been built and there's supposed to be clearance enough for somebody to get in there and clean it up, so that the property owner can get around the garage and maintain the garage and his property, and that's why they require a clearance of I think it's three feet or two

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feet.

MR. FIELDING: Three feet.

MR. McCARTHY: Three. Three and three, okay, from the side and the back, and that whole issue does not pertain here because you have plenty of room to get around that garage and do whatever has to be done to the garage and it's not really a burden that you are closer than three feet to the property line, so I don't see that as an issue that should hold things up. I guess that's one. The sunroom, the sunroom lines up with the house, doesn't it?

MR. ABRAHAM: Yes.

CHAIRMAN MAMMINA: Everything lines up with what was there.

MR. McCARTHY: So there, again, that was something that we would normally -- if you're adding something onto a house that -- remember, these houses were built before the setback lines were established by the code.

MR. ABRAHAM: Right.

MR. McCARTHY: And the code established a setback maybe in the typical case, the code might have established a setback of 35 feet, but the house is 30 feet from the front line and the owner wants to add a second floor to the house and that is rejected by the Building Department because it encroaches on the front yard setback, but it doesn't do any more than what is already on that house, and it's similar with yours. You have your sunroom added on and it lines up with the house, so it's perfectly all right.

I think also the fact that you're on a dead-end here helps you because you don't have a neighbor on the other side complaining.

MR. ABRAHAM: No.

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MR. LEVINE: 59 was the garage, according to the property card.

CHAIRMAN MAMMINA: And I guess where it says on a site plan or a survey was submitted with an erroneous setback, I mean, it could very well be, but I think the point also, you know, is that there is a right-of-way in the back which essentially is the Lake Success Shopping Center, you are on a dead-end street, so you have, you know, all kinds of things that are in your favor, you know, regarding this, so I think that's also important to point out that when you get to the front of the garage, you might very well be close to the 15 feet because there is a slight splay to the property line, so I would just like to add that to the motion.

MR. McCARTHY: Sure.

CHAIRMAN MAMMINA: So we have a motion. Do we have a second?

MR. McCARTHY: Is that a motion? I didn't move it yet.

CHAIRMAN MAMMINA: Well, then move it.

MR. McCARTHY: Okay.

You also have some items in front of the house, a planter, a statue, etc., and these are items that can, if another applicant, if another purchaser comes along and buys the house from you and he doesn't like them, he can easily remove them. The Building Department interprets those items as being structures, they're structures that are in your front yard and shouldn't be there, so it's up to us to say, okay, you can leave them, and I don't want -- it's good to see the Building Department being strict on this because we're the ones that are supposed to relax the restrictions of the law and not the guys behind the desk at the Building Department, so I include in my

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motion -- which I'm now making --

MR. ABRAHAM: I appreciate that.

MR. MCCARTHY: -- I include the
statuary and whatever is in the front there.

CHAIRMAN MAMMINA: Okay. We have
motion. Do we have a second?

MR. FRANCIS: Second.

CHAIRMAN MAMMINA: Please poll the
Board.

MR. FIELDING: Mr. Levine?

MR. LEVINE: Aye.

MR. FIELDING: Mr. Francis?

MR. FRANCIS: Aye.

MR. FIELDING: Vice Chairman McCarthy?

MR. MCCARTHY: Aye.

MR. FIELDING: Mr. Chairman?

CHAIRMAN MAMMINA: Aye.
The application is granted. Thank
you.

MR. LEVINE: Good luck, sir.

CHAIRMAN MAMMINA: Off the record.
(Whereupon, a discussion was held off
the record.)

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MR. FIELDING: We have Appeal#19879 - Michael Collins (Owner)/Giovanni Patane (Applicant), variance 70-41.A and 70-208.F to maintain an addition to a non-conforming dwelling with insufficient aggregate side yards; south side of 30 Durham Road, 205 feet east of Mayfair Road, New Hyde Park, Section 8, Block 297, Lot 12, R-B District.

CHAIRMAN MAMMINA: You've heard Appeal#19879, Michael Collins/Giovanni Patane. Is there anyone in the room interested in the application other than the applicant?

Seeing no one, please give your name and address.

MR. MIGATZ: Bruce W. Migatz, Albanese & Albanese, 1050 Franklin Avenue, Garden City, New York.

MR. LEVINE: Do we tell him we're not taking exhibits anymore.

MR. MIGATZ: I'm going to make this case as brief as I can, Mr. Levine.

MR. LEVINE: All exhibits should be submitted electronically a week in advance. Only kidding.

MR. MIGATZ: This is an application to maintain a den with insufficient aggregate side yard setback. This property, Exhibit 1, which will be the only exhibit, is a photograph of the property, which is in section of New Hyde Park where after the property -- after these houses were built in a Residence C zone, the founding fathers of the Town decided to rezone the whole area Residence B.

MR. LEVINE: Founding fathers?

MR. MIGATZ: Or their successors and assigns.

MR. TERRY: In those days, it was not just successors and assigns, it was heirs.

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That's the way it went.

MR. MIGATZ: So the property -- when this house was built, it had the required Residence C side yard setback. The owner of the house, Michael Collins, acquired the house from his uncle four years ago, and he had recently put the house on the market, never actually lived there, and before they put the house on the market he got good advice to check the Building Department file to see what COs were there and there was no apparent building permit that they could find for this rear den that was constructed. As far as Michael Collins remembers, his uncle bought the house in the '80s. To his recollection, that rear den was always there, but we're not exactly sure when it was constructed.

MR. TERRY: So, Bruce, it's right behind the garage; right?

MR. MIGATZ: It's right behind the garage, not really visible from the street, it maintains the same side yard setbacks as the main dwelling and the setback variance we request is minimum.

MR. TERRY: Did you find the neighbor next door?

MR. MIGATZ: Did I find? I never lost the neighbor next door, but the neighbor next door got notice of the hearing and did not object nor consent. The neighbor across the street did consent.

MR. TERRY: Is that an exhibit?

MR. MIGATZ: That's Exhibit 2.

MR. LEVINE: You said there was only one exhibit.

MR. MIGATZ: I'll take it back. No. Only kidding.

It doesn't move things along. This is a fairly straightforward application. This Board has granted these applications in the past recognizing the difficulty that the

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change of zone caused all these houses.

CHAIRMAN MAMMINA: Okay. Certainly this area of New Hyde Park is well-known, you know, to the Zoning Board as we have had many, many applications in this area. As Mr. McCarthy said, even more typically there, these are second floor additions, you know, onto these and we've given those fairly regularly, mitigating the architectural roof forms as best we can. So, I mean, I see this as, you know, something that has really no impact on the community.

MR. FRANCIS: I would adopt the Chairman's statement as a motion to grant the application.

CHAIRMAN MAMMINA: We have a motion from Mr. Francis. Do we have a second?

MR. LEVINE: Second.

CHAIRMAN MAMMINA: Seconded by Mr. Levine.

Please poll the Board.

MR. FIELDING: Mr. Levine?

MR. LEVINE: Aye.

MR. FIELDING: Mr. Francis?

MR. FRANCIS: Aye.

MR. FIELDING: Vice Chairman McCarthy?

MR. MCCARTHY: Aye.

MR. FIELDING: Mr. Chairman?

CHAIRMAN MAMMINA: Aye.

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MR. FIELDING: Appeal#19880 - Arpit Sheth (Owner)/John Seifert, WSJS Architects (Applicant), variance 70-50.A and 70-101.B to maintain a portico within a required front yard setback; west side of 76 Chaffee Avenue, 405 feet south of McKinley Avenue, Albertson, Section 9, Block 62, Lot 1022, R-C District.

MR. SCHERER: Actually --

CHAIRMAN MAMMINA: I didn't call it yet. Give me one second.

MR. SCHERER: Sorry.

CHAIRMAN MAMMINA: You have heard Appeal#19880, Arpit Sheth/John Seifert. Is there anyone in the room interested in the application other than the applicant?

Seeing no one, please give your name and address.

MR. SCHERER: Actually it's William Scherer, I'm the WS of WSJS.

CHAIRMAN MAMMINA: Okay. You're allowed to be here.

MR. SCHERER: My partner couldn't make it today, so you got me. Ours also is a simple application --

MR. TERRY: Mr. Scherer, would you be kind enough to give your address of record?

MR. SCHERER: Yes. 755 New York Avenue, Huntington, New York 11743.

MR. TERRY: Thank you. Would you be kind enough just to verify on the record that you are a registered architect in the State of New York?

MR. SCHERER: Yes, of course I'm a registered architect in the State of New York.

Again, our application is a fairly

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simple one. Our client purchased this home a little over a year ago and there were some maintain applications that they're taking care of. In the course of doing so, it became apparent that there's an existing front portico which encroaches about eight and a half inches into what it would otherwise be allowed to encroach, it's eight and a half inches too far, and it's eight and a half inches by about 6.7 feet wide. I trust that the Board members have been out to see it, but I also have a photograph here which I'd like to submit.

CHAIRMAN MAMMINA: That goes to Mr. Fielding.

MR. SCHERER: Thank you. And as you can see, it's pretty innocuous, it's not overstated or it doesn't have tremendous columns, it's pretty much keeping in character with the scale of the homes in the area, and we're pretty much asking that the Board allow it to be maintained as it exists.

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

MR. FRANCIS: Mr. Chairman, this portico is not the largest portico I've ever seen. It's rather de minimus in size. It really has no effect on the neighbors or anyone else. I would move that we grant this application.

CHAIRMAN MAMMINA: We have a motion. Do we have a second?

MR. MCCARTHY: I'll second it.

CHAIRMAN MAMMINA: We have a second by Mr. McCarthy.
Please poll the Board.

MR. FIELDING: Mr. Levine?

MR. LEVINE: Aye.

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MR. FIELDING: Mr. Francis?

MR. FRANCIS: Aye.

MR. FIELDING: Vice Chairman McCarthy?

MR. McCARTHY: Aye.

MR. FIELDING: Mr. Chairman?

CHAIRMAN MAMMINA: Aye.
The application ask granted.

MR. SCHERER: Thank you very much.

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MR. FIELDING: Appeal#19881 - Tina Cohen, variances 70-100.2.H and 70-102.G to relocate 2 A/C units and maintain a shed in a required front yard setback; southwest corner of 23 Valentine Dr. And Croyden Court, Albertson, Section 9, Block 646, Lot 24, R-B District.

CHAIRMAN MAMMINA: You've heard Appeal#19881. Is there anyone in the room interested in the application other than the applicant?

Seeing no one, please give your name and address.

MR. DiCONZA: William DiConza, 5 Audrey Avenue, Oyster Bay, New York, on behalf of the Applicant.

CHAIRMAN MAMMINA: Good morning.

MR. DiCONZA: Good morning, Mr. Chairman, members of the Board. I'm here on behalf of Ms. Cohen. The subject premises is located at 23 Valentine Drive and is improved with a single-family dwelling, it's approximately 10,850 square foot lot in a Residence B Zoning District where the minimum lot area is 6,000 square feet. There are two -- it's a corner lot which imposes the hardship that we're facing today in trying to have this Board grant variances to alleviate. The two issues are a moving of two air conditioning units to an area that's defined as a front yard as well as to maintain a shed that's currently existing within that front yard area. I would just like to hand up to the Board for those who have possibly not been to the property and even for those who have. The pictures that I have provided to the Board, that first picture is from the applicant's dining room and that's what she looks at. That's an appropriately located air conditioning unit in a side yard.

MR. LEVINE: I thought we were going to be like Deliverance now and have dueling

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air conditioners.

MR. DiCONZA: Well, we could do that and then we wouldn't have to be here. We are looking to do something which we believe is more appropriate, which is put ours on the other side of the house, which is by definition a front yard, but it is not visible by anybody unlike this one that is legal that the applicant sees all the time.

MR. FRANCIS: Is that the side yard with the very big shrubbery?

MR. DiCONZA: Where we're seeking to locate it, yes, it is.

MR. FRANCIS: Okay.

MR. DiCONZA: Yes, it is.

MR. LEVINE: It is an odd shape property.

MR. DiCONZA: It is, it is a corner lot, it is an odd shaped property, and one of our yards is entirely enclosed with a 12 foot huge hedge, which is why, and I'll hand up the rest of these, these are consents from all of the neighbors across the street, next to the property and along that side. Those are -- they know they don't see anything. You will see in the picture package the two A/C units that we're seeking to just slide around the corner there and relocate and the shed that we're looking to maintain. The applicant went to get a permit for the shed and he was told by the Building Department because of its size it didn't need a permit, but they didn't tell him it couldn't be in a front yard, so that's why it is where it is. He attempted to do the right thing, but they did tell him about the A/C units, so we're here to legalize the shed and to receive permission to swing those A/C units from the rear of the house around to the side of the house where the shed is located, it's away from

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all of the neighbors, the shed could be in a rear yard three feet off of the property line, which would have a far greater impact on the neighbors, and the air conditioner as you saw from the neighbors could be in a place where the neighbors are impacted. No one is impacted by the applications that we're here before the Board with today and we'd ask that the Board grant them and we'd accept a condition that we'd have to maintain that hedge, shrub, as long as we have those things there.

MR. McCARTHY: That shed is in a front yard.

MR. DiCONZA: Yes.

MR. McCARTHY: And pretty far into the front yard, too. It's not like it was a modest distance from the house. It's much closer to the hedge than to the house.

MR. DiCONZA: It's approximately nine feet off of that front yard line as it were, but it is behind the face of the house and entirely obscured by those houses.

MR. McCARTHY: Yes.

MR. FRANCIS: And this shed is definitely not a new structure. I would hazard to guess that it's been there for quite some time.

MR. COHEN: It's been there for about three -- about two years.

CHAIRMAN MAMMINA: Okay. If you can put that on the record then or --

MR. DiCONZA: It's been there for approximately two years.

MR. FRANCIS: I would just mention that the shed is completely obscured from the street view by the shrubbery.

MR. McCARTHY: Yes. I didn't even

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see -- I really couldn't look into the yard because of the shrubbery, but I wouldn't have been -- I didn't know exactly where the shed was from the file that I had and it's only looking at your pictures here that I see -- I'm able to say it's closer to the --

MR. DiCONZA: Right. And it would only be -- that would only be visible to somebody on the property looking from inside out and we'll seek to maintain that condition.

MR. McCARTHY: Okay. We have to, whatever is moved, we have to make sure that it's absolutely imperative that the shrubbery be maintained so that it continues to hide it.

MR. LEVINE: Mr. Chairman, I'm very familiar with the area. This is actually probably the biggest piece of property in that little neighborhood, most of them I think are fifth or sixth of a neighbor. I would note I'm familiar with the property. I looked at it as part of the investigation before this hearing. I would note you can't -- you would not be able to see the air conditioners now because of the hedges and I would assume that would still be the case, and given the fact that it's almost -- you could almost see three front yards in the house, it's almost impossible to have them in someplace where it's not going to be in a front yard unless you have it way in the back where there's almost no room between the applicant and the neighbor which I think would be much -- have a much greater impact on the neighbor, so I would have no problem with the air conditioner.

With regard to the shed, this part of the application, this shed and this shed only, for some reason should this shed burn down, disappear in a tornado or something else should happen to it, I would not agree that it should be rebuilt in this place, but as long as the shed is there, I have no objection to it staying there. Should the

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applicant decide to take it down and build another shed, I would suggest that it be moved to a different part of the house, which isn't there, but other than that, I move we grant the application based upon this shed and the air conditioning units, and if they have to be replaced the successor air conditioning units.

CHAIRMAN MAMMINA: We have a motion. Do we have a second?

MR. FRANCIS: Second.

CHAIRMAN MAMMINA: Seconded, Mr. Francis.
Please poll the Board.

MR. FIELDING: Mr. Levine?

MR. LEVINE: Aye.

MR. FIELDING: Mr. Francis?

MR. FRANCIS: Aye.

MR. FIELDING: Vice Chairman McCarthy?

MR. McCARTHY: Aye.

MR. FIELDING: Mr. Chairman?

CHAIRMAN MAMMINA: Aye.

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MR. FIELDING: Appeal#19882 - Trevor Joad-Singh, variance 70-100.2.A(4)(b) to erect fencing exceeding the permitted height and within a required front yard setback; east side of 32 Hamilton Drive, 649.29 feet north of Manhasset Avenue, Roslyn, Section 9, Block 653, Lot 10, R-A District.

CHAIRMAN MAMMINA: You've heard Appeal#19882, Trevor Joad-Singh. Is there anyone in the room interested in the application other than the applicant?

MR. JOAD-SINGH: Good morning, all. My name is Trevor Joad-Singh, I live at 32 Hamilton Drive, Roslyn, New York 11576.

MR. LEVINE: Okay. Please proceed.

CHAIRMAN MAMMINA: Please proceed.

MR. JOAD-SINGH: So I purchased the property back in 2013, July, moved in. Great property. Facing my house to the left side there's a walk trail that allows access from Hamilton Drive to the high school, which is the back of the property. Currently there's a fence right now, a five foot fence, chain link all the way to the back, I would like to replace that with a higher fence, six feet fence, with more privacy and safety, and then to the front of the property, coming out to the street on Hamilton Drive, it's open right now, my neighbor to the left of me has a four feet chain link as well that segregates the trail from their property, I would like to do similar, segregate the trail from my property with a PVC picket fence four feet high as well just to keep the separation and also to protect for safety of my kids and also my neighbors and the kids for the high school as well.

MR. MCCARTHY: Mr. Joad-Singh, your concern is, I can't think of a proper adjective, your concern is understandable with these high school kids, I live a few

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blocks from Manhasset High and when I drive during the day and come to a stop sign, I stop, but a lot of other cars there don't stop, a lot of new drivers that just ignore the law, and I don't know how I would feel about a foot pad used regularly by high school kids next to my property. I would want to put up a fence.

MR. LEVINE: There is a fence there.

MR. McCARTHY: Well, he wants to put and I think it's a good idea, he wants to put on -- put up a PVC fence and then take it out as a four foot PVC picket fence to the street, and a picket fence is probably a pretty good concession to our restriction on fences in the front yard, and I think it's a good idea to be able to guide those kids onto the path and off of your property, so I move that we grant the application.

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

MR. LEVINE: The house next to you on the other side of the path, how tall is that fence?

MR. JOAD-SINGH: It's six, so from that front line.

MR. LEVINE: It's six all the way back?

MR. JOAD-SINGH: It's six all the way back. And then in addition there's another trail between 84 and 88 Hamilton. They have the same setup as well.

MR. LEVINE: You want to keep the kids on a path, that's the key, you have to keep the young kids on a path.

MR. McCARTHY: And your concern is not as great in the front yard.

MR. JOAD-SINGH: No, because --

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MR. McCARTHY: Okay. So I think we've made a proper compromise here and I moved it already, we want to endorse that.

CHAIRMAN MAMMINA: Okay. So I think that's a motion and do we have a second?

MR. LEVINE: I will second it. I would say this. You want to put up a PVC fence?

MR. JOAD-SINGH: Yes.

MR. LEVINE: I would ask the applicant to regularly check the side he doesn't see from his house to make sure there's no graffiti on it.

MR. JOAD-SINGH: Okay.

MR. LEVINE: Because a chain link fence, no one is drawing on it, but these kids are going down and seeing a nice clear clean white surface, I can see where that's going.

MR. TERRY: Mr. Levine, why don't you condition it on a fence maintained in a manner that it's graffiti free.

MR. LEVINE: That's fine. That's just my concern is if I'm the neighbor looking at the -- I don't want to see any writing on it, unfortunately even the finest kids sometimes with a marker will see a clear canvas to be the next --

MR. FIELDING: Is that all right?

MR. McCARTHY: That's all right with me.

MR. TERRY: So Mr. Joad-Singh, that will be your obligation.

MR. JOAD-SINGH: Yes. So I will maintain and make sure there is no graffiti.

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MR. LEVINE: You never look at the other side of the fence.

MR. JOAD-SINGH: Well, I use the trail as well to get to the back.

MR. LEVINE: Okay. I'm just saying that's my concern.

MR. JOAD-SINGH: Thank you very much.

CHAIRMAN MAMMINA: We have a motion by Mr. McCarthy, seconded by Mr. Levine. Please poll the Board.

MR. FIELDING: Mr. Levine?

MR. LEVINE: Aye.

MR. FIELDING: Mr. Francis?

MR. FRANCIS: Aye.

MR. FIELDING: Vice Chairman McCarthy?

MR. MCCARTHY: Aye.

MR. FIELDING: Mr. Chairman?

CHAIRMAN MAMMINA: Aye.
The application is granted. Thank you.

MR. JOAD-SINGH: Appreciate your time. Thank you very much.

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MR. FIELDING: Appeal#19861 - Seth Starr (Owner)/Paul E. Muhs/Express Permits (Applicant), variance 70-100.2.A(2) to maintain fencing beyond the front building line; southwest corner of 12 Shoredale Dr. and Grinsted Street, Manhasset, Section 3, Block 40, Lot 412, R-B District.

CHAIRMAN MAMMINA: You've heard Appeal#19861, Seth Starr. Is there anyone in the room interested in the application other than the applicant?
Seeing no one --

MR. McCARTHY: Is the applicant here?

CHAIRMAN MAMMINA: Yes.
Please give your name and address.

MR. MUHS: Paul Muhs from Express Permits, 201 North West Drive, Farmingdale, New York. Good morning. It's still morning.

CHAIRMAN MAMMINA: Good morning.

MR. MUHS: Mr. Chairman, members the Board, I am here today representing Mr. Ken Starr of 12 Shoredale drive, Manhasset. This property is located in an R-B District. We are seeking the approval to maintain an existing four foot fence beyond the front building line on the southwest corner of Shoredale Drive and Grinsted Street, Manhasset. I would like to submit some photographs and refer to those.

MR. TERRY: Mr. Muhs, it seems like a simple case, but when we have, you know, a permit person or an expediter, of course, we always reserve the right, if you're going to provide testimony in a way that bears on the appeal, we reserve the right to ask you to provide that testimony under oath. We're not going to do it right now. No. We're not going to do it right now.

MR. MUHS: Okay.

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MR. TERRY: It seems like a simple and straightforward case.

MR. MUHS: Thank you.

Mr. Starr purchased this home in 1993, the fence was installed in 2004. As seen in the pictures submitted, the entire rear yard is substantially elevated, required an extensive two tier retaining wall system. The highest portion of this rear yard is actually in the area that we're discussing in this variance on the southwest side because of the sloping of the property. There is a distinctive estate style fence being used to provide the needed safety.

MR. McCARTHY: Wait. It's on the north side. The fence in question, you say the southwest side. Wouldn't it be the northwest?

MR. MUHS: I may have my bearings --

CHAIRMAN MAMMINA: I think it's southwest; right?

MR. McCARTHY: No. No. It's on the -- the fence in question is the fence basing the Shoredale Drive?

MR. MUHS: That is correct.

MR. McCARTHY: It is on the south side of Shoredale, but it's on the northwest. I think he said it was the southwest corner of the property. Didn't you say that?

MR. MUHS: I said southwest corner. I was referring to my notes. Perhaps I'm wrong. But it is on the corner of -- the property is on the corner of Shoredale and --

MR. McCARTHY: Oh, the property is on the south.

MR. MUHS: Right.

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CHAIRMAN MAMMINA: Correct.

MR. McCARTHY: I'm sorry. I thought you were saying the fencing in question was on the southwest side of the premises.

MR. MUHS: It's on the corner of Shoredale and Grinsted Street.

MR. McCARTHY: Okay. And the fence at issue is the one facing north?

MR. MUHS: Yes.

MR. McCARTHY: Okay.

MR. MUHS: And that fence, again, as you see, they used an estate style fence and it's hardly noticeable as you see in those photographs, but there is a considerable risk to anyone in that yard as seen in those photographs, particularly at night it becomes even more treacherous. Now, the -- we are asking for the approval of this application for the purposes of safety primarily. He does have children, he has pets, and again that's the consideration. Now, I also went locally when I did a little research and I'd like to submit photographs from similar homes that have similar fences.

MR. FIELDING: Thank you.

MR. MUHS: That completes my application.

MR. McCARTHY: Okay. I live very near there, I'm about two blocks away, and I'm very familiar with that because when I'm driving up to Manhasset station, I take that road rather than go up on those traffic roads. I stay off of those roads. But that is a site that cries out for that fence, you absolutely need it, but the -- I haven't seen the pictures, but --

MR. LEVINE: You shouldn't really say

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that in the middle of a motion.

MR. McCARTHY: Well, yes, here's a picture that's taken from down the slope a little bit, it shows the fence, the relevant part of the fence and how it sits on that property, on that hill, and that hill is the very hazardous slope and if you have children in that house or adults, you definitely need a fence to keep accidents from happening.

MR. MUHS: Right. That's why we --

MR. McCARTHY: And choosing an estate type fence because it sort of takes the edge off like a PVC fence up there slapping us in the face up the hill, it would be too obvious. This estate fence accomplishes the ends that we want, and I move that we grant the application.

CHAIRMAN MAMMINA: We have a motion. Do we have a second?

MR. FRANCIS: Second.

CHAIRMAN MAMMINA: We've got a tie on that one. I'm giving that one to Mr. Francis.

Please poll the Board.

MR. FIELDING: Mr. Levine?

MR. LEVINE: Aye.

MR. FIELDING: Mr. Francis?

MR. FRANCIS: Aye.

MR. FIELDING: Vice Chairman McCarthy?

MR. McCARTHY: Aye.

MR. FIELDING: Mr. Chairman?

CHAIRMAN MAMMINA: Aye.
The application is granted. And just

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for the record, as we try to distinguish one application from another, taking into account that steep slope, Mr. Starr obviously spent a lot of money building an aesthetic retaining wall, stepping it in conformance with what the zoning requires, and as Mr. McCarthy said, you know, not asking for some solid fence on the top for an estate top fence which essentially disappears on many levels, so it is actually kind of nice looking. This isn't an architectural review Board, but for me as the architect, I look at stuff like that and say yes, this is a nice way to do it. So thank you.

MR. MUHS: Well, thank you very much for your consideration.

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

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MR. FIELDING: Appeal#19884 - 668 Realty Associates, LLC (Owner)/North Bay Cadillac Buick GMC (Applicant), variance 70-196.J(1)(a) to erect signage exceeding the number permitted on a wall; south side of #720 Northern Blvd., 115 feet east of Summer Avenue, Great Neck, Section 2, Block 107, Lots 10-19, B-A District.

CHAIRMAN MAMMINA: You've heard Appeal#19884, 668 Realty Associates, LLC/North Bay Cadillac Buick GMC. Is there anyone in the room interested in the application other than the applicant?

Seeing no one, please give your name and address.

MS. TSOUKALAS: Andrea Tsoukalas, Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, 333 Earle Ovington Boulevard, Uniondale, New York. Good morning, Mr. Mammina, members of the Board.

CHAIRMAN MAMMINA: Good morning. Nice to see you.

MS. TSOUKALAS: Nice to see you as well.

This is an application for area variances to permit signs that exceed the maximum permitted per wall. I just handed up a photograph which depicts the facade facing Northern Boulevard so that you could see --

MR. LEVINE: I'm sorry. I was just saying this is -- I mean, this is -- there's nothing even closely resembling Northern Boulevard right in front of this picture. I'm sorry. It looks so bucolic in this thing.

MS. TSOUKALAS: The facade is accurate.

MR. LEVINE: The facade is accurate.

MS. TSOUKALAS: Right. But --

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MR. LEVINE: But it is not a fair and accurate representation of Northern Boulevard.

MS. TSOUKALAS: I concede on that point.

MR. McCARTHY: This is the front as it appears.

MS. TSOUKALAS: Right now there is no signage, but yes, they did do a renovation last year.

MR. McCARTHY: But there are signs?

MS. TSOUKALAS: No, there aren't any.

MR. McCARTHY: I didn't see Buick and GMC when I went by yesterday.

MS. TSOUKALAS: No, there are no signs up now. What they did was they superimposed on that photograph what the signs would look like.

MR. McCARTHY: I know, but I went by yesterday and I saw that signs were up.

MS. TSOUKALAS: The signs were up?

MR. McCARTHY: Yes, signs were set right in that wall, Buick and GMC.

MS. TSOUKALAS: Well, one is permitted by wall, so perhaps that's why.

MR. McCARTHY: I'm sorry?

MS. TSOUKALAS: One is permitted by wall. You're saying all three were up?

CHAIRMAN MAMMINA: Well, I'm -- the traffic is ferocious, as I was going by, I actually didn't see North Bay, but I saw Buick and GMC.

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MS. TSOUKALAS: Okay.

MR. LEVINE: Maybe they were just seeing if they fit.

MR. MCCARTHY: Maybe your client was just going ahead knowing that you would do such a great job.

MS. TSOUKALAS: I'm sorry. He didn't advise me of that. When I went to see the property, there was no signage up.

MR. MCCARTHY: Well, I went by just yesterday.

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

MS. TSOUKALAS: Just to explain where the premises is and just give a little bit of background and then we could -- the premises are on the south side of Northern Boulevard, #70 Northern Boulevard, a hundred feet west of Spinney Hill Drive in Great Neck, it is in the Business A Zoning District, it's a one story building. It's used as an auto dealership for both Buick and Cadillac, so on one side you have the Cadillac dealership and there's already signage up for Cadillac and then the other entrance is for GMC Buick and then there's also what we're proposing as the North Bay dealership signage.

As I mentioned, they did renovate this facade last year and this is the last stage of that renovation.

The three signs that are proposed are Buick, GMC and North Bay. The Buick sign is 19 square feet and it's proposed with black block lettering and the GMC sign is 24 square feet in the same type of large black block letters.

The North Bay side to the right of the eyebrow arch is 31 square feet and is proposed with white block lettering against a black panel.

The proposed signage is in character with other commercial signage in the

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neighborhood. It should be approved because it does not have any negative impact on the character of the community.

The new signage is consistent with the new facade, it has a modern sleek look. Also there's going to be one additional side -- sign, excuse me, rather, on where the driveway is, so I think GMC is up now and we're also putting up a Buick sign.

MR. McCARTHY: Okay. While I did see signs, I have no problem with them, so that's okay. I think it complies certainly with the intent of our ordinance in the sense that it keeps the signs from getting out of control. The signs are tastefully arranged and it's not a -- it is not an ugly arrangement of signs or whatever, and I think in that sense it's appropriate for us to give a little bit of leeway to the property owner for the business located there. So accordingly, I move we grant the application.

CHAIRMAN MAMMINA: We have a motion. Do we have a second?

MR. LEVINE: Second.

CHAIRMAN MAMMINA: We have a second by Mr. Levine. Please poll the Board.

MR. FIELDING: Mr. Levine?

MR. LEVINE: Aye.

MR. FIELDING: Mr. Francis?

MR. FRANCIS: Aye.

MR. FIELDING: Vice Chairman McCarthy?

MR. McCARTHY: Aye.

MR. FIELDING: Mr. Chairman?

CHAIRMAN MAMMINA: Aye.

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The application is granted and I would just like to, you know, add a little something to that because we get a lot of sign applications. The car business I think has changed very drastically over probably the last ten years, dealers have multiple products, and I think it is important for people to know that they can get a Volvo and they can get a Hyundai and, you know, whatever in order to keep those businesses viable, and I think those businesses are a big part of the Town of North Hempstead and its economy. I've said many times this is not an Architectural Review Board, but in my whole experience and what I do through the industry is that very tasteful buildings are being created, signage is being done in an extremely conservative manner, we're not plastering signs that say used cars --

MS. TSOUKALAS: Right.

CHAIRMAN MAMMINA: -- leasing, all of that sort of thing.

MR. McCARTHY: We Buy Cars, that's a sign on the north side of Northern Boulevard much closer to the city line. In fact, we rejected that and the court said no, no, you have to let them put it there.

CHAIRMAN MAMMINA: So I think we can distinguish this from many other applications that come in and I just wanted to add that to the record. Okay? Thank you.

MS. TSOUKALAS: Thank you very much. Have a great day.

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MR. FIELDING: Appeal#19885 - Port Railroad Property, LLC (Owner)/Marine Fisheries of Port Washington, LLC (Applicant), conditional use 70-139.A and variance 70-103.A to convert a retail fish market to a restaurant with insufficient off-street parking; north side of #71 Main Street, 48.45 feet west of Herbert Avenue, Port Washington, Section 5, Block G, Lot 3 and 8, B-B District.

CHAIRMAN MAMMINA: You've heard Appeal#19885, Port Railroad Property, LLC/Marine Fisheries of Port Washington. Is there anyone in the room interested in the application other than the applicant?

Seeing no one, please give your name and address.

MR. MIGATZ: Bruce W. Migatz, Albanese & Albanese, 1050 Franklin Avenue, Garden City. Good morning, Mr. Chairman, members of the Board. At the outset, let me submit some additional return receipts that came back subsequent to my submission of the affidavit of mailing.

I am representing the applicant, Marine Fisheries of Port Washington, LLC. With me presently is one of the members, Allyson Cohen. The other member should be filtering in. You moved much faster today than I expected, but I'm happy for that.

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

MR. MCCARTHY: I think maybe when we get to the conclusion of your presentation, maybe we would wind up reserving decision so that Mr. Aloe could have a look at the record.

MR. MIGATZ: Hopefully that won't be necessary, Mr. McCarthy.

CHAIRMAN MAMMINA: Okay. Well, let's see.

MR. MCCARTHY: Let's see. You're

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going to do such a great job, that he couldn't possibly say no?

MR. MIGATZ: Let's see.

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

MR. MIGATZ: Just for the record, the other members of the LLC are Charles Fravola, F-R-A-V-O-L-A, who should be here shortly, and Marvin Kleinberg. Mr. Fravola owns and operates the Marine Fisheries in Great Neck, which has been on Middle Neck Road for many, many years. My wife is one of their best customers and hopefully their second store in Port Washington will make her trip a little shorter. They are looking to open a second store where Quality Fish used to be and most recently Quality Fish used to be on Main Street in Port Washington for many, many, many years. The legal notice is a little misleading. It advertises alteration of a fish store to add a restaurant use. That's not really what's being proposed. The Marine Fisheries of Port Washington will be a fish store, a retail fish store, just like Quality Fish was. The difference is they want to add a kitchen so they can also sell as they do in Great Neck some prepared cooked fish and some incidental items. They want to add six seats so that people in the neighborhood waiting to take the train, this is right across the street from the train station, they want to grab a quick bite before they go back to their office or the train, they are going to have six seats in the fish store similar to a -- to the way a delicatessen sometimes has a handful of seats for people who want to eat their sandwich before they go back to their office or whatever, so it is not really a restaurant use and I think the plans indicate that.

The property is 71 Main Street, Port Washington, in a Business B zone. I have a photograph of the subject property. I offer that as Exhibit 1. It is a downtown row

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store constructed in 1905 prior to the Town requiring parking, so it does have insufficient parking as does most of the stores on Main Street, if not all of them. They rely on the commercial -- I'm sorry -- they rely on the municipal parking lot and in the evening the railroad parking lot, which is right across the street from the subject property. The store adjacent to the proposed fish store is a restaurant, fast food restaurant, Mole Mole, Fresh Mexican Grill. The Board granted them a conditional use and a parking variance in Appeal#19679, and I offer that into evidence as Exhibit 2.

The proposed addition of the kitchen is a conditional use. This fish store was there before the Zoning Board -- before the Zoning Code required conditional use permits, but adding a kitchen to it now requires a conditional use permit.

To address the standards in Town Code Section 70-225.B, the first criteria is whether the purposes of the zoning as set forth in the Town Law is consistent with the proposed use.

The Town Code permits food uses as conditional uses. Case law holds that they are conditional uses tantamount -- and I heard you mentioned that before --

MR. LEVINE: We know it's coming, so, you know --

CHAIRMAN MAMMINA: Off the record.
(Whereupon, a discussion was held off the record.)

MR. MIGATZ: I was listening while I was in the lobby. A conditional use is tantamount to a permitted use.

Second criteria is whether the proposed use is of such a character, size, location, design and site layout to be in harmony with the surrounding properties. The courts have held that by making a conditional -- by making a use a conditional use, it is a per se finding by the Town Board that the use is in fact in harmony

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with the surrounding area, and Main Street, as you all know, has numerous food uses as does Main Street in all downtown areas and it is a consistent use with the character of the community.

Whether it is a desirable service or facility. I don't think anybody can take argument with the fact that a fish store is a desired facility for a downtown area.

Whether the use would be conflicting by reason of excessive traffic. It's a retail store, always has been a retail store. Adding six seats I submit to you is not going to cause excessive traffic and we've all heard a traffic engineer say this kind of a use is not a destination use. Nobody is driving to Port Washington to sit down and have a fish sandwich and then go back to the office in Westbury or Garden City.

MR. LEVINE: I have been looking for a good fish taco in Nassau County for a while.

MR. MIGATZ: We will deliver to you.

MR. LEVINE: I'm just telling you, if you make a good fish taco, it will become a destination. There are many in the west coast, but east coast, slim to none.

MR. MIGATZ: But it's not going to be a destination. It is going to be for shoppers who are in the area, for commuters who are in the area.

And the last criteria is whether or not the use is objectionable to nearby residential dwellings. There are two apartments above this store as they are on Main Street, but the vision today for smart growth is to have dwellings above stores in downtown areas, so I would submit to you that this is consistent with that smart growth vision and that the conditional use permit should be granted.

It does require a parking variance and I can say without hesitation that a

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parking variance is an area variance which requires a balancing test, the benefit to the applicant versus the detriment to the community. There will be no undesirable change to this area by the addition of a kitchen to prepare fish to take out whether you're buying raw fish or you're buying prepared fish or incidental items, soups or salads or, therefore, it is not going to have an adverse impact on the community, and, again, having a handful of seats also should not have an adverse impact on the community.

There is no feasible method to provide parking for the six seats that are being provided, there's no parking almost anywhere downtown Main Street other than the municipal lots and the train lot.

Whether the variance is substantial. In this regard, the requirement versus the proposed is misleading because the Building Department has treated this as a restaurant, as a fast food restaurant, and in addition to requiring one parking space for every two seats, they are requiring parking spaces for standing room as they do in a fast food restaurant, but that's not the case here. Whether the people are standing to buy raw fish to take home or whether they are standing to buy cooked fish, it makes no difference, but because they treat it as a restaurant, it throws the parking calculation way out of whack. The retail store itself does not require any parking based upon the size of the retail store.

Whether or not the variance for parking will have an adverse impact on the environment. I'm glad Mr. Aloe is not here to debate this with me. It is a Type II action and the parking variance is deemed -- I'm sorry. It's an unlisted action and I submit to you that it will not have an adverse impact. Mr. Fravola just walked in, so at least I can send my bill now to him since he saw me up here.

And whether or not the difficulty is self-created. It's not. This building was constructed before the parking was required

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and it is a prior nonconforming insufficient parking.

I do have as Exhibit 2 consents from seven people within a 300 foot radius and I would offer that as my final exhibit, and I believe that the Planning Commissioner gave local determination on this. Is that right, Mr. Fielding?

MR. FIELDING: That is correct.

MR. LEVINE: I will say this. Off the record.

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

MR. MIGATZ: Unless the Board has any further questions or further jokes by Mr. Levine, I am done.

CHAIRMAN MAMMINA: As part of and assuming we're going to grant an approval, we have to remember that a seat is a seat, whether or not somebody is sitting in that seat, and there are six seats here and should there become eight seats or nine seats --

MR. LEVINE: Or seven.

CHAIRMAN MAMMINA: -- then this conditional use variance would become null and void as it's not being used in accordance with what the conditional use is, so six seats is six seats whether or not somebody is sitting in them.

MR. MIGATZ: I'm well aware of that.

MR. LEVINE: Yes.

CHAIRMAN MAMMINA: Okay. So with that said, does anyone have any other question or a motion?

MR. MCCARTHY: I would just offer this, that we have -- in that exact neighborhood within a block or so there are

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numerous small restaurants, and I don't think anybody comes in here with parking that had -- I mean, comes in and actually has parking available, and we rely heavily on, as you have proposed, that a good number of the people who would be using the shop or would be maybe sitting down to have a snack are people who are on foot in the area anyway who are parked for another purpose, but also the availability of those municipal lots can't be overlooked. It's a fact and after -- certainly after the pressure of commuter parking is relaxed and on the weekends, there shouldn't be any problem at all, so I'm going to move that we grant the application because I think the benefit to your client.

Under SEQRA, we are the lead agency and this is classified as an unlisted action and after your presentation and based upon our knowledge of the premises and the neighborhood would have no significant impact on the environment. So I am moving, one, that we take SEQRA action, and, two, that we grant your application.

MR. MIGATZ: SEQRA action being a negative declaration; right.

MR. MCCARTHY: Yes. Negative declaration.

CHAIRMAN MAMMINA: We have a motion. Do we have a second?

MR. FRANCIS: Second.

CHAIRMAN MAMMINA: Seconded by Mr. Francis.
Please poll the Board.

MR. FIELDING: Mr. Levine?

MR. LEVINE: Aye.

MR. FIELDING: Mr. Francis?

MR. FRANCIS: Aye.

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MR. FIELDING: Vice Chairman McCarthy?

MR. McCARTHY: Aye.

MR. FIELDING: Mr. Chairman?

CHAIRMAN MAMMINA: Aye.

The application is granted. Thank
you.

MR. FRANCIS: Off the record.

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

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MR. FIELDING: Appeal#19886 - Benito Ferranti - conditional use 70-126.A and variance 70-103.A(1) to maintain interior alterations to an existing commercial structure for a restaurant with insufficient off-street parking; northwest corner of 795 Old Country Road and Elton Street, Westbury, Section 10, Block 52, Lot 51, B-A District.

Are you here for that, sir?

MR. GILLESPIE: Yes, but I'm not him.

MR. FIELDING: Oh, you're not him.

MR. GILLESPIE: I am just a concerned citizen.

MR. FIELDING: So let's see if we have. --

MR. LEVINE: I think everybody is shocked at how efficient we are this morning.

MR. GILLESPIE: You worked fast. I've never been at one of these kinds of things.

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

MR. FIELDING: Appeal#19886 - Benito Ferranti - conditional use 70-126.A and variance 70-103.A(1) to maintain interior alterations to an existing commercial structure for a restaurant with insufficient off-street parking; northwest corner of 795 Old Country Road and Elton Street, Westbury, Section 10, Block 52, Lot 51, B-A District.

CHAIRMAN MAMMINA: You've heard Appeal#19886, Benito Ferranti. Is there anyone in the room interested in the application other than the applicant.

Seeing one hand and you'll have the opportunity to speak after the presentation.

Thank you.

Whoever is the applicant, come on up and name and address.

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MR. FERRANTI: Benito Ferranti, 2700 Two Brothers Court, Oceanside, New York 11572.

MR. TERRY: Hello, Mr. Ferranti. Are you represented by counsel?

MR. FERRANTI: Yes, I am.

MR. TERRY: Let's get counsel up here, please.

MS. COWARD: Good afternoon. Nicole Coward, counsel for Mr. Ferranti as well as for the tenant of the building.

MR. FIELDING: Can you give your address for the record?

MS. COWARD: Sure. It's 148 South Long Beach Avenue, Freeport, New York 11520.

MR. LEVINE: Please, the floor is yours.

CHAIRMAN MAMMINA: Okay. You're up.

MS. COWARD: Okay. This is an application for a conditional use. Mr. Ferranti would like to continue using the commercial space located at 795 Old Country Road as a restaurant. The conditional use is required because apparently there is no legal record that this business has operated as a restaurant for the last 50 years. Accordingly, we come to you for this variance.

In addition, with respect to the parking, the existing parking structure does not -- the existing structure does not allow for code compliant parking. We've conducted a parking study, which will allow for a variance of 37 stalls that indicates that that would be sufficient for the traffic at the restaurant.

In addition, for your consideration, the restaurant has been unable to operate based on these proceedings since March of

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2014 and we would request that, you know, in -- pending these proceedings, that we have some discussion about allowing the restaurant to open, albeit with conditions if necessary just to provide Mr. Ferranti with some sort of relief from the hardship he has suffered.

MR. TERRY: So, counsel, let's just back up here.

MS. COWARD: Sure.

MR. TERRY: The restaurant -- does Mr. Ferranti propose a new restaurant at that location?

MS. COWARD: From -- there is no restaurant there currently now.

MR. TERRY: There is no restaurant?

MS. COWARD: Right.

MR. TERRY: What is there now?

MS. COWARD: There is nothing because the restaurant has been closed.

MR. LEVINE: Okay. What was there?

MR. TERRY: What was there?

MS. COWARD: There was a restaurant.

MR. TERRY: And I don't want to go too far afield because I don't know what you know, but that restaurant ceased operating when?

MS. COWARD: March 16, 2014.

MR. TERRY: And why did it cease operating?

MS. COWARD: The Town -- there were a couple of violations, the public assembly license was due for renewal, there were some

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structural Building Code violations.

MR. TERRY: So the Town --

MS. COWARD: And the Town stepped in.

MR. TERRY: So the Town served what?

MS. COWARD: A violation, a summons.

MR. TERRY: So do you know whether those matters are currently pending in the Nassau County District Court?

MS. COWARD: Yes. They are currently pending. I actually have an appearance on the 21st. We scheduled it after this, after this appearance.

MR. TERRY: So just to clarify off the bat, the extent of the authority of this Board is to grant relaxation of the Zoning Code and/or grant certain permits that the authority to grant emanates from the Town Board's decision that Board of Zoning Appeals would have the authority to grant, in this case a conditional use.

MS. COWARD: Yes.

MR. TERRY: So this Board doesn't have the ability to affect the Building Department or the District Court issues, just so we're clear.

MS. COWARD: Of course.

MR. TERRY: Okay?

MS. COWARD: Yes.

MR. TERRY: So you are here before the Board for what relief and approval this Board can grant you.

MS. COWARD: Correct.

MR. TERRY: That's it?

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MS. COWARD: Yes.

MR. TERRY: And, Mr. Ferranti, to get the place opened, is going to have to deal with the other authorities.

MS. COWARD: Okay.

MR. TERRY: Just so I am crystal clear, was Mr. Ferranti the owner of the previous restaurant?

MS. COWARD: No.

MR. TERRY: Okay.

MR. FRANCIS: How many seats are in this restaurant?

MS. COWARD: I believe --

MR. FRANCIS: Or the proposed seats.

MS. COWARD: The proposed seats are 64.

MR. LEVINE: I am looking at the property card from Nassau County and I must say they never taught me how to read these things in law school, so I'm trying to see if we can get it printed out somewhere. It indicates that it's -- there's clearly an indication that it was San Remo restaurant years ago.

MS. COWARD: Correct.

MR. LEVINE: But I am trying to get an idea of when that was.

MS. COWARD: So what I found was were two glowing reviews in the New York Times from 1983 and 1985. Mr. Lambert also has a Certificate of Occupancy from 1982, however, it's a general business at that time, so we haven't been able to actually find anything that specifically says, but I have the same

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property card and San Remo restaurant did operate there for about 15 years.

MR. LEVINE: Do you know when it was there?

MS. COWARD: 19 -- do you --

MR. FERRANTI: I actually operated the restaurant myself as Prima Pasta from 1992 through 2006.

MR. TERRY: So this is a return engagement for you, Mr. Ferranti?

MR. FERRANTI: Well, I started off as a tenant and I purchased the building maybe about seven or eight years in and, you know, I heard a lot of customers coming in, giving me what it was prior. I knew San Remo, I was told it was a German restaurant or something like that even prior to that, you know, back in the late '60s or whatever, you know, you hear --

MR. TERRY: Back in the day.

MR. FERRANTI: -- I remember when this was this or this was that.

MR. TERRY: But there was a legendary little Italian place right down the block back in the '50s or 60s, Cervini's (phonetic), Lou Cervini, right there on one of the side streets -- on a side street a block over in what is now the monstrosity.

MR. LEVINE: Which one?

MR. TERRY: Yes. Yes. The big, big monstrosity between State and whatever it is. You know.

CHAIRMAN MAMMINA: Ms. Coward, just a question. You say there is a Certificate of Occupancy from 1982 as general business.

MS. COWARD: Mm-hmm.

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CHAIRMAN MAMMINA: Are you representing that general business would have covered a restaurant at the time because I believe restaurant has been, you know; a use listed in the zoning kind of like forever, you know, as well as its requirement for a conditional use, so, I mean, just as a matter for the record unless there is something else that you're going to bring forward, general business is not a restaurant.

MS. COWARD: Unfortunately I walked into that. I can't show --

CHAIRMAN MAMMINA: Okay.

MS. COWARD: -- any other.

CHAIRMAN MAMMINA: That's okay.

MS. COWARD: If I could, I definitely would do that today.

CHAIRMAN MAMMINA: Just for clarifying the record.

MS. COWARD: Yes.

CHAIRMAN MAMMINA: Okay. Continue.

MS. COWARD: I do have with me the architect, Tim Lambert, as well as the engineer for the parking study, Aaron Machtay, if you have any questions with respect to those submitted reports.

MR. LEVINE: In 1983 there was a plumbing and air conditioning permit issued, but it doesn't say for what.

CHAIRMAN MAMMINA: Did you research any of that and can you tell us what --

MS. COWARD: I did --

CHAIRMAN MAMMINA: Do you have a copy

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of that application?

MS. COWARD: No, I don't. However, I did learn that the BZA has a separate records room and I was before this hearing going to go to see if I could find anything on San Remo based on the property card.

CHAIRMAN MAMMINA: You wouldn't get that today. You had to come down two weeks ago for something like that.

MR. LEVINE: Does she want an adjournment to do that?

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

CHAIRMAN MAMMINA: What Ms. Zuech and Mr. Fielding are pointing out, I mean, they do some research beforehand, there are some prior appeals for the building, but nothing for a restaurant.

MS. COWARD: I think that is consistent with the research that we've done.

CHAIRMAN MAMMINA: Okay. Continue then.

MS. COWARD: Well, for the most part, my presentation is over. I do have the engineer available for the --

CHAIRMAN MAMMINA: Do you want to make the points of law for a conditional use?

MS. COWARD: In terms of the character and nature of the surrounding community because the space is operated as a restaurant, we don't feel that there should be any hardship or any issues with the surrounding areas, I'm not sure that -- I don't think if we're allowed to continue as is --

CHAIRMAN MAMMINA: Well, there are

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five tests. So I think what you should do is lay out those five tests so that you've made a case for the conditional use, otherwise you kind of leave the Board with nothing to make a decision.

MS. COWARD: In terms of the nature of the business, it is a commercial business, this is a commercial area.

MS. ZUECH: There is also a parking variance.

CHAIRMAN MAMMINA: That's true. You have a parking variance and you have a conditional use. You have both of those. Thank you, Linda.

MS. COWARD: Thank you. Okay.

CHAIRMAN MAMMINA: So go ahead.

MS. COWARD: The variance that we're requesting does not change the nature of the community, it's a commercial business and we'd like to continue to keep it as that.

The surrounding areas are -- continue to not be affected in any way that would disallow the use that we're asking for. There have been no obligations prior to this application regarding the facility as a restaurant and I believe that is the extent of my presentation.

CHAIRMAN MAMMINA: Okay. So is there anything that you'd like to --

MR. LEVINE: You have the traffic study.

MS. ZUECH: Put the traffic guy on.

MS. COWARD: Well, I think for the traffic, I would like to defer to Mr. Machtay.

MR. LEVINE: Sure.

MS. COWARD: And if I have anything

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to add at that time, I would do that.

CHAIRMAN MAMMINA: Sure.

MR. LEVINE: You're on. Please go ahead.

CHAIRMAN MAMMINA: Give your name and address.

MR. MACHTAY: Aaron Machtay, offices at 355 New York Avenue, Huntington. You may be familiar with my boss, Wayne Muller.

I am asking to be accepted as a traffic expert. I have a copy of my CV.

MR. MCCARTHY: How do you spell your last name?

MR. MACHTAY: M-A-C-H-T-A-Y.

MR. FRANCIS: Off the record.

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

MR. MACHTAY: RMS Engineering was retained by the applicant in order to conduct a parking study for the proposed legalization of the restaurant as a previously existed. Of course, because the restaurant was closed prior to us being able to conduct the study, ideally for something like this we would look at how it actually operates and explain how the parking works and ask for that to be legalized, but unfortunately we had to sort of project what it would be based on industry standard data, which is released by the Institute of Transportation Engineers.

Based on that, for a restaurant of this nature, we'd expect that the 64 seats would require a peak of approximately, I just want to make sure I get the number correct, 23 parked vehicles, and this conducting our study because there is no parking provided onsite, the only available areas that would represent municipal site as we might refer to it would be onsite areas.

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We found in total approximately 80 -- capacity for about 83 vehicles including the side streets, that does include areas that extend to the residential areas. I know that's less than desirable, but I think the reality is based on the nature of the area is that some people are going to be parking there at the peak periods of activity for the restaurant. There is availability of parking along Old Country Road. That's sort of unique in this area. If you go immediately east or immediately west of the frontage of the property, no parking is allowed, there's not even a shoulder, so you can't even park illegally without taking your life into your hands, so to speak, so just at a peak, looking at the areas that were available in close proximity including the residential areas, once again, just for the record, we saw a maximum of 35 parked vehicles on Friday and 39 parked vehicles on a Saturday, so in total there would be available space to accommodate the potential generation of 23 new parked vehicles to accommodate the restaurant reopening.

CHAIRMAN MAMMINA: Okay. Why don't we do this. Unless, Ms. Coward, you have someone you want to put up at this point, we can hear from the gentleman.

MR. TERRY: Yes. Hear from the gentleman and then Ms. Coward will come back and she'll do the final.

MR. GILLESPIE: Hi. My name is Raymond Gillespie, I reside at 10 Elton Street, and I've been residing there since 1968. The restaurant -- it's always been a restaurant since I've been there, other than the part of the air conditioning, it was occupied by Archie Niles who was a harness racer at Roosevelt Raceway when I first resided there. What's going on now is the parking problem. When I -- when I first resided there, we had eight single family homes. We still have eight homes there, but we have three single family homes and five

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rooming houses. We had 31 people residing in the five houses, now we have 54. We had ten cars on the block. Now we have 54 cars, SUVs, trucks and 4X4s, so its's a disaster. We have noise every hour of the day, and what happened when the previous restaurant occupant was there, we had horns all hours of the night, we had beer bottles thrown on the lawns. I had a car come on my driveway and smash the bricks and took off and it's just unbearable to the people in the area what goes on there.

MR. TERRY: Could I just ask you, sir?

MR. GILLESPIE: Yes.

MR. TERRY: Now, this Board does not do enforcement, let's make that clear.

MR. GILLESPIE: Okay.

MR. TERRY: But we sometimes will ask a question about enforcement, and my question is: If your understanding of your own neighborhood is that five out of the eight dwellings have occupants -- maintain occupancies that are illegal under the Town Code, have you attempted any -- working with the Town with respect to code enforcement?

MR. GILLESPIE: The Town doesn't want to get involved. What happened is the house next door to me has 14 people in it. They have people -- the five rooming houses, they got people living in the basements of all these houses. Nothing is being done.

MR. TERRY: So have you ever made a complaint yourself?

MR. GILLESPIE: Well, what I did was when they asked me to apply for a tax reduction, I listed all the rooming houses and my house and saying why should I pay the same taxes rooming houses pay and they ignored me, they disallowed my --

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MR. FRANCIS: Now, when you say rooming houses, you mean that these are one family houses?

MR. GILLESPIE: Yes.

MR. LEVINE: Single family dwellings.

MR. GILLESPIE: Yes. So we have 54 cars or trucks or whatever you want to call them either parked on the street or on the property and we have, of course, with the restaurant, we say restaurant, but after a certain hour it becomes a bar and grill. Now, neighbors informed me that there were drugs going on there. My son's a detective in the city, so I spoke to him about it and he spoke to the local police and that was it. That's where it was left. Now, what goes on there is, like I say, once you're past a certain hour, people are just coming to drink and there's a lot of young people who go there who are drinking and they leave, they're boisterous, they're running their engines, they race up the block, and, of course, we like our sleeping time, and that's what --

MR. LEVINE: As do I.

MR. GILLESPIE: -- go through on weekends. Not during the week, but on weekends, we go through that.

MR. LEVINE: I assume it's abated since this place is closed?

MR. GILLESPIE: Excuse me?

MR. LEVINE: It's lessened since this place has been closed for a while?

MR. GILLESPIE: Yes. We have no more beer bottles on our lawns at this point, but then we also get problems with the Town trucks, the recycle trucks. Elton Street is posted as no commercial traffic. I

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complained several times about the Town recycling trucks using the street. No one picks up the phone.

MR. MCCARTHY: They use the street in what way? They park, you mean.

MR. GILLESPIE: They go back -- there's a recycle plant that's off of Grand Boulevard.

MR. FRANCIS: Right.

MR. GILLESPIE: And they get a line up on Grand Boulevard to go to Jamaica Ash.

MR. FRANCIS: Right.

MR. GILLESPIE: So what they do is they cut through the streets and get back on line.

MR. MCCARTHY: On your street; right?

MR. GILLESPIE: Yes. And then the concrete trucks.

MR. MCCARTHY: Maybe the other streets, too?

MR. GILLESPIE: Yes. The sounds of the engines, you know, they're discreet, you can hear them going up the other streets.

MR. MCCARTHY: Yes. They make a racket.

MR. GILLESPIE: And the same with all the concrete that's going on there now, they use the streets, and our houses are now getting covered with ash from -- they get all these cement contractors, the little guys, they come up the street illegally because it's supposed to be no commercial traffic, they come up the street and we get smashed, crushed, my house was white, it is now covered with concrete ash.

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MR. McCARTHY: But, you know, all of this, it's unfortunate and I really sympathize with you, but it's unrelated to the --

MR. GILLESPIE: Well, I'm concerned about the parking and the noise. That's what I -- I don't care if they make a nice restaurant, I couldn't care less. I've been in the industry, architect since 1955.

MR. McCARTHY: Oh.

MR. GILLESPIE: So I know what goes on and I've been --

CHAIRMAN MAMMINA: So you've been tortured even longer than me. I've only been an architect since 1978.

MR. GILLESPIE: I still work as a consultant in the city.

CHAIRMAN MAMMINA: So what's your number, your license number?

MR. GILLESPIE: No, I'm not.

CHAIRMAN MAMMINA: Oh, you're not licensed.

MR. GILLESPIE: In 1955 you didn't have to be licensed.

CHAIRMAN MAMMINA: Okay. Thank you.

MR. LEVINE: A lot of it is enforcement and we, of course, don't deal with enforcement, but we can certainly help you out with directing you the way to go to get certain matters hopefully resolved.

MR. GILLESPIE: I would appreciate it.

MR. TERRY: Mr. Chairman, with your permission, I can escort him to his Councilperson's office where he can start getting this conversation in confidence.

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MR. FRANCIS: I think that would be --

MR. TERRY: Does that make sense?

MR. FRANCIS: Absolutely.

MR. TERRY: Come on. Let's go.

MR. LEVINE: You're back up.

MS. COWARD: In my return, I would like to run through the factors for a conditional use.

CHAIRMAN MAMMINA: Okay. Thank you.

MS. COWARD: You're welcome.

The proposed conditional use is a use that's permitted in the district. It's a restaurant. This is a commercial strip.

The proposed use is of such a character, size, location, design and site layout as to be appropriate to and in harmony with the surrounding area, which is a commercial strip.

The proposed use will provide a food service, which is a desirable service to the area.

The proposed use will not be hazardous or conflicting or incongruous with the immediate neighborhood. We do recognize that there is a parking issue based on what we have presented before. However, our parking study does provide that there will be sufficient parking to address these concerns.

The proposed use will not be objectionable -- will not be objectionable to the extent that we have heard the objections here, Mr. Ferranti is an experienced restaurant owner and can address these concerns. The new restaurant is a different concept that actually has less hours I believe than the prior restaurant was.

And, finally, the proposed use will

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be harmonious in the district for the same reasons. We fully commit to Mr. Ferranti operating that restaurant in a harmonious way that will be congruous with the neighborhood.

MR. FRANCIS: And Mr. Ferranti is going to be an owner operator, so he's going to be on the premises during the hours of operation?

MR. FERRANTI: No.

MS. COWARD: No. He is not an operator. He is the landlord, but he is very hands on with the property and is a long-time owner.

MR. FRANCIS: Okay.

CHAIRMAN MAMMINA: Do we have the operator in case the other gentleman is the operator?

MS. COWARD: No. No, we don't because there isn't a current operator. It's been out of business, so --

CHAIRMAN MAMMINA: So, then, maybe Mr. Ferranti, if you can just hop up for a second.

MR. FERRANTI: Sure.

MR. FRANCIS: If he can address those concerns.

CHAIRMAN MAMMINA: And I guess I'm concerned regarding what the gentleman pointed to I guess regarding, you know, specifically the beer bottles and his street and that sort of thing. I mean, I live in Carle Place, I mean, and, you know, we have even more congestion --

MR. FERRANTI: Sure, I --

CHAIRMAN MAMMINA: -- than that, and

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I guess it would seem unusual to go to a message that is legitimately a restaurant and I order a bottle of beer at my table, you know, I'm not carrying that --

MR. FERRANTI: Let me address that actually because that's exactly what I was going to say to you. The restaurant that was there or any other restaurant does not have a permission to sell beers to go. We have to control the alcohol that we sell within the premises ourselves and I have also experienced broken beer bottles in front of my store and I can attribute that to there's a bodega or deli a couple of doors down that that's all they do is sell beer bottles. If you're going to drink beer outside, why would you go to a restaurant and pay \$5 for it when you could go two doors down and pay a dollar for it.

MR. FRANCIS: Right.

CHAIRMAN MAMMINA: You know, that's one thought. The business that I have now, the tenant that I have that wants to take place, I don't know if they're contemplating no alcohol or just the wine and beauty salon only, with not only a beauty salon, maybe a service bar, and operated more as a represent than it was prior and it was staying open later or anything like that. Now, with respect to myself, I own multiple properties, I own about 13 different buildings. I take pride in what I own and what I do and being a good neighbor and Mr. Gillespie is my neighbor and I don't even know if he was my customer, maybe the 15 years I was there as Prima Pasta.

MR. GILLESPIE: I don't think I was -- I was in Archie's place, I don't think I went into your place.

MR. FERRANTI: Well, you missed out on a good Italian meal. I'll tell you that. You know, you try and do the right thing. I'm not there obviously 24/7, there are

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plenty of businesses that are there that do serve alcohol and that there have been like, you know, if the car is smashed in front of someone's gate, I can't tell you that that was a customer of my restaurant or the bar two doors down or the deli or the bodega or one of the other restaurants up and down the row, you know, but I know that the place has been closed since March. My other properties are mainly located along with my home near Long Beach and Oceanside. I don't want to cry the blues, but I got my butt kicked pretty good during Sandy, I'm struggling financially. I've been paying the taxes, mortgage and insurance which have all been going up on this property without collecting any rent for close to a year now. You know, I'm trying to do the best I can.

MR. TERRY: And the thought is you're going to get a good, responsible, reliable tenant.

MR. FERRANTI: I have a tenant in line that wants to open immediately. They're looking to do Colombian restaurant, which from my understanding is a little bit more higher end on the food-wise, a higher check average, which usually means less traffic. You know, when I had my restaurant there, I might have had a \$20 check average, \$25 check average, so I was doing maybe 2,000 dinners a week. This concept here would allow to make the same amount of money serving 3 to 400 dinners a week, so there should be less congestion. I don't know if they're going to be open for lunch. I'm sure they're not going to be open for late night, but, you know, it will be weekends and evenings when a lot of the other businesses, by the way, are closed as far as restaurants are concerned, so the 15, 16 years I ran the place myself, I never had a parking problem, I never had the Town or a neighbor or anyone come down there and complain about that.

MR. TERRY: Good.

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MR. FERRANTI: If anything I did business with the two main businesses, the two main business sizes in the area are Cancos Tile and G. Fried Carpet and they verbally would tell me, Ben, you know, anybody comes in, park their car over there overnight, we didn't have anything worked out, but, again, neighborly, I was trying to be nice to them, they were nice back to me.

MR. TERRY: Mr. Ferranti, let me just mention real fast and I think the Chairman has something in mind -- am I correct about that -- but we have one more -- we have something we've got to clarify. Before you take your seat, just a heads up, you have a tenant ready to go --

MR. FERRANTI: Yes.

MR. TERRY: -- or close to ready to go. Bear in mind that tenant, even though this would result in the conditional use and legalization of what you have --

MR. FERRANTI: Yes.

MR. TERRY: The permits are a different process, cooking equipment, kitchen design, etc., etc., so bear in mind that you're going to have to work closely with your tenant to get the permits that they need for installing --

MR. FERRANTI: Well, the place is fully fixtured.

MR. TERRY: Oh, you're all ready to go?

MR. FERRANTI: It's fully fixtured and what I'm trying to do because I realized I don't want to open a can of worms is telling anyone who is interested in the place you have to take it the way it is.

MR. TERRY: So he is taking it the

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way it is. Got it.

MR. FERRANTI: I don't want walls knocked down or construction, if you take it the way it is, you can probably get open right away.

MR. TERRY: Well, right away in the North Hempstead building context is not right away on a timeline, and that's no -- it's not a negative, it's just a description. Remember, you have all of your kitchen equipment here, I'm thinking, okay, an operator that is going to want to customize is going to take another whole layer of work, but if this conditional use which includes the fixtures and how it's laid out and so on, if this conditional use to operate a restaurant is good enough for that tenant, then you can cut directly to the chase, but directly to the chase is not going to be a month, so you need to have that as part of your business plan.

MR. FERRANTI: Well, I am looking -- I do plan on owning the building for a while, I'm 49, I got three kids in college, I'm not retiring any time soon, but I do anticipate, you know, there's a lot of turnover in the restaurant industry and even if I have other people in the future, I'd like to set up something that I could have even if this one doesn't make it or for the next two or whatever it be down the line, so the place is literally turnkey. I mean, tables, chairs, everything, cleaning, paint, if anything, and I'm hoping that -- I have three people -- I have one guy and three other people backing them up, all willing to take it in the condition that it's in.

MR. TERRY: So then that's good, just a reminder, you have a permit process that's separate from this, it's not going to be a matter of days or weeks, it's going to be longer than that, and hopefully everything will just work out fine, let me just say --

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MR. FERRANTI: When you say permit, I don't mean to --

MR. TERRY: Building permit. You get no permits here.

MR. FERRANTI: Right.

MR. TERRY: You get no permits from us.

MR. FERRANTI: So which permit is it that they're actually looking for? Because if it's less than 75 people, I believe there is no public assembly permit.

MR. TERRY: We don't do the permits.

MR. FERRANTI: Whatever permit is required?

MR. TERRY: Whatever permit is required.

MR. FERRANTI: And however long it takes, whether it's a week, a month?

MR. TERRY: And the other thing on this property is that there never was a conditional use permit, so with the utmost respect because we want to keep things positive, you operate you had your place for 15 years, likely, it's history, who cares --

MR. FERRANTI: Right.

MR. TERRY: Likely you operated without the required approvals at that time, so of course you're here, you're a mature person, real estate person, stand-up person, etc., so obviously the Town of North Hempstead you as the landlord to ensure that going forward this property and its relationship to the Town is absolutely pristine and correct in every respect. We are counting on you. The Town is counting on you.

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MR. FERRANTI: And I appreciate -- I take my responsibilities, you know, to heart. I thought, for whatever it's worth and whatever it means, that the place was, in quotes, grandfathered in. That's what I was under the understanding. I never had a --

MR. TERRY: Could have been.

MR. FERRANTI: -- documentation. Actually you gave me a lot of history on the place that it was a restaurant from the '60s. So I don't have any documentation to prove it. When I called health departments and building departments, after you go five years in the past, no one has anything. You know what I mean? They're not keeping archives for 40, 50 years.

MR. TERRY: That's the history. We're going to look ahead.

MR. FERRANTI: Right.

MR. TERRY: Now, Chairman, Mr. Chairman informs me that we have to bring the architect back up. Counsel, can we do that?

MS. COWARD: Yes.

MR. TERRY: Because this is now the dramatic part of the hearing where we start to count seats. Seats are of immense importance to this Board, number of seats, anything that can be a seat, a bench, a chair, a couch, a potted plant that can be turned upside down, so we are now going to do the ceremonial seating and Mr. Fielding is going to walk us through that.

MR. FIELDING: And I just want to ask you; Mr. Lambert -- have you gone on the record?

MR. TERRY: Please make your appearance.

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MR. LAMBERT: My name is Timothy Lambert, I am the architect, I have been hired by the building owner to facilitate this process and get the right permits and the grants needed to have a restaurant at this location.

MR. TERRY: What is your address, for the record, Mr. Lambert.

MR. LAMBERT: My address is 3012 Fortesque Avenue in Oceanside.

MR. TERRY: When I write the great American novel, I'm going to have one of my characters living on Fortesque Avenue. I like that.

CHAIRMAN MAMMINA: Pretty good one.

MR. TERRY: All right, Jon.

MR. FIELDING: Mr. Lambert, when you look at your plan A1, it references a total dining and seating of 64 seats.

MR. LAMBERT: That's correct.

MR. FIELDING: I count 11 booths that say four persons per booth.

MR. LAMBERT: Yes. And I have a copy of the plans here.

MR. FIELDING: Okay. So that's 44. Now, I then see a -- I see five seats on that side, two two-tops and one one-top?

MR. LAMBERT: That's correct.

MR. FIELDING: Okay. And then a four-top that's stand alone and ten seats between these, so half booth, half table?

MR. LAMBERT: Yes. That's correct.

MR. FIELDING: And then four barstools at the bar?

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MR. LAMBERT: Right.

MR. TERRY: So it's 67 when I add those up. So is 67 the right number of seats or 64?

MR. LAMBERT: So can I take a moment and recount that?

MR. FIELDING: Sure.

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

MR. LAMBERT: So it looks like my count has 24 seats movable, like unfixed, 24, and that's like the two tops and the booths, I mean, the seating on the right. Now, the booth seating at four persons, we have 11 booths, that's 44, plus the 24, which would be -- yeah, I'm counting like 68.

MR. FIELDING: 68? So that the rectangles that say booth seating for two persons, that's two seats plus the -- you have tables with chairs that are up against those booths on the right side of the drawing.

MR. LAMBERT: Right.

MR. FIELDING: So that would be five seats and then six more seats at those booths?

MR. LAMBERT: Yes.

MR. FIELDING: I think that adds one more, so that would give me 68.

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

MR. TERRY: So is 68 the number?

CHAIRMAN MAMMINA: 68 is the number.

MR. TERRY: Okay. 68 is the number

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including the four bar seats which are going to stay in, even though they're not there, which means -- and, counsel, I will say this to you -- which means that the seats approved as part of the plan can -- they can be there on day 1 of opening or they cannot be there at all if the operator chooses or they can be added at a later time because they're approved seats, but there are only 68 approved seats and there can never be 69, there can never be 70, otherwise you risk the conditional use. Okay? And while we don't do the enforcement, as we say over and over, we are certainly on notice and aware that the folks in the Town who do the enforcement show up at restaurants from time to time to do a surprise inspection. And what's one of the things they do? They count seats. So, Chairman.

CHAIRMAN MAMMINA: That I can assure you that they do. There are people that go out in the evenings and, you know, that's part of their job is to go out to all public assembly spaces, not just restaurants, you know, it could be a bowling alley or whatever it might be, because that's a life safety issue. If there are too many people in the space that aside from parking, it's also life safety.

MR. LAMBERT: I'm wondering if the plan examiner had noted 64 seats in his rejection letter or 68 and I don't know if that has a bearing.

MR. TERRY: We're done. We're good. We're good on the seats.

CHAIRMAN MAMMINA: Right.

MR. TERRY: And the plans, Jonathan, what are we going to do? Correct the legend?

MR. FIELDING: Well, it does say 64 seats dining area, so technically if you leave off the four bar stools --

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MR. TERRY: Okay.

MR. FIELDING: -- there are 64 in the restaurant.

MR. TERRY: Okay. So here is what we're going to do.

MR. FIELDING: That is just a clarification.

MR. TERRY: The clarification will be on the stenographic record that the plans are correct to the extent that they reflect 64 seats or for dining and we will also note for the stenographic record that the plans show an additional four bar seats, which are not currently in place, but which are part of the plans, and, therefore, if the plans are approved, they would be approved along with the bar seats in addition to the 64 dining seats for a total of 68. Okay. We're done with seats. Anything else, Chairman?

MR. LAMBERT: Can I interject one? Actually it's not a mistake, I thought it was a mistake.

MR. TERRY: No seats.

MR. LAMBERT: But it's not an issue because it's in here.

MR. TERRY: You're done with seats. Chairman, anything else?

CHAIRMAN MAMMINA: I think that's it.

MR. TERRY: Okay. That's it.

MR. LAMBERT: Can I just add one more note? You know, these grants, and this would be directed to Mr. Gillespie, these grants go to the building owner to have a restaurant there, not necessarily to the tenant or to a bad tenant or something like

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that, so if we could maybe just point that out to everyone here today, we'd appreciate that.

CHAIRMAN MAMMINA: And that is a very good point in that, you know, again, you own the conditional use. Your tenant screws it up and it goes away, it's still your problem then.

MR. LAMBERT: Okay. Thank you very much.

CHAIRMAN MAMMINA: Is that --

MR. FERRANTI: It's my --

CHAIRMAN MAMMINA: Do you understand that?

MR. FERRANTI: The tenant does something wrong --

CHAIRMAN MAMMINA: Come back up.

MR. FERRANTI: If the tenant does something wrong, for argument's sake, they go there, and they see 72 people there, there's no way for me to enforce standing there, you know.

MR. TERRY: Which means you have to have a good tenant because you're can't -- you're not --

MR. LEVINE: It has to be in your lease.

MR. TERRY: You can't transfer --

MR. FERRANTI: So if I have in my lease you have to have this, I could still have the conditional use for the next tenant.

MR. TERRY: Let's worry about the first tenant except to say be very clear, counsel will explain this to you, a

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conditional use is not transferable. It's yours.

MR. FERRANTI: Right.

MR. TERRY: You're installing -- you plan to install a tenant under your conditional use, not his conditional use or my conditional use.

MR. FERRANTI: Right. And is there a way that they could do something where I lose the conditional use?

MR. TERRY: Sure.

CHAIRMAN MAMMINA: Sure.

MR. TERRY: Sure.

CHAIRMAN MAMMINA: And that's why you need to make random drop-ins or your brother-in-law or whomever and you've got to get there at different times because if he knows that you're showing up, I think you've got a better chance. Just as plain fair level ground, you should understand what your obligations are and what your risks are, you know, under this.

MR. FERRANTI: I understand that. I mean, there's only so much I could do. I will do the best I can.

MR. FRANCIS: That to the extent that you make it abundantly clear --

MR. FERRANTI: Right.

MR. FRANCIS: -- that this is very, very important to you as the owner of the building --

MR. FERRANTI: Right.

MR. FRANCIS: -- and you make that clear to your tenant, you know, and, again, counsel -- I don't know if counsel is

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handling your leasing --

MR. FERRANTI: Yes.

MR. FRANCIS: -- but I'm sure she can give you some advice with regard to that as well.

MR. FERRANTI: I'm sure the seating is more than adequate as well, so I'm not going to harp on that anymore.

MR. TERRY: Okay. Chairman, anything else?

CHAIRMAN MAMMINA: No, I think that's it.

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

MR. FRANCIS: Mr. Chairman, this is kind of my neighbor hooded, I live in Westbury. I am familiar with the neighborhood, I am familiar with the restaurants along Old Country Road. This particular restaurant, this particular use is not out of character with regard to the neighborhood, and as counsel pointed out and I will reiterate, I don't believe that it's going to have a negative effect on the community, so with that said, I would move that we grant this application.

CHAIRMAN MAMMINA: We have a motion. Do we have a second?

MR. LEVINE: Second.

CHAIRMAN MAMMINA: Seconded by Mr. Levine.

Please poll the Board.

MR. LEVINE: Standard restaurant conditions.

MR. FRANCIS: Yes. Standard restaurant conditions.

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MR. FIELDING: Mr. Levine?

MR. LEVINE: Aye.

MR. FIELDING: Mr. Francis?

MR. FRANCIS: Aye.

MR. FIELDING: Vice Chairman McCarthy?

MR. MCCARTHY: Aye.

MR. FIELDING: Mr. Chairman?

CHAIRMAN MAMMINA: Aye.

The application is granted. Thank
you.

MR. FRANCIS: Good job, counsel.

CHAIRMAN MAMMINA: Yes. Good job.

MR. TERRY: Very good job.

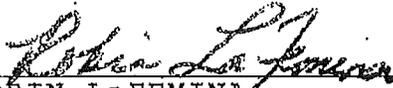
MR. MCCARTHY: Good job, all.

CHAIRMAN MAMMINA: Yes. It was a
good application.

(Time noted: 1:14 p.m.)

C E R T I F I C A T I O N

I, ROBIN LaFEMINA, a Registered Professional Reporter, Certified LiveNote Reporter and Notary Public, within and for the State of New York, do hereby certify that the above transcript is a true and accurate copy of the minutes taken by myself stenographically at the aforementioned public meeting of the Board of Zoning Appeals of the Town of North Hempstead held on November 19, 2014.



ROBIN LaFEMINA

Maria I. Gomes

From: nd-legaladv <legaladv@newsday.com>
Sent: Friday, January 09, 2015 1:29 PM
To: Maria I. Gomes
Subject: Legal notice confirmation - 21048942
Attachments: DOC010915.pdf

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Sent: Friday, January 09, 2015 1:26 PM
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