

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

Vice Chairman
Leslie Francis, Esq.

Members
Daniel Donatelli, Esq.
Jay Hernandez
Patricia A. Goodsell, Esq

Town of North Hempstead



Board of Zoning Appeals

210 Plandome Road
Manhasset, NY 11030
(516) 869-7667
Fax (516) 869-7812

NOTICE OF DECISION

APPEAL #21382 - Guillermo Ortiz; 55 Bayview Avenue, Manhasset; Section 3, Block 138-02, Lots 101-104 & 805; Zoned: Business-B

Appeal for determination or in the alternative, variances from §70-138 and §70-103.B to legalize the conversion of an automobile service station to an auto body repair shop (not a permitted use within the Business-B district) with parking stalls that are too small.

Whereas, an application (CBP21-000177, BZA22-000108) was filed with the Board of Zoning Appeals and a public hearing was held following due notice; and

Whereas, a review was undertaken pursuant to the State Environmental Quality Review Act, and the Board of Zoning Appeals hereby establishes itself as “lead agency” and hereby determines that this Unlisted Action will not result in any significant adverse environmental impacts, therefore, at a meeting of the Board held on **April 3, 2024**, the appeal in the above-entitled matter was decided as follows:

The appeal for determination that the building official erred in issuing a Notice of Disapproval for the variance sought under § 70-138 is **DENIED**, the variance sought under § 70-138 is **DENIED** and the variance sought under § 70-103.B is **DENIED** as *moot without prejudice*.

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

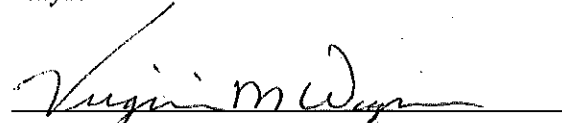
THIS IS NOT A BUILDING PERMIT

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

Motioned by: Member Hernandez Seconded by: Member Donatelli

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

Nays: None

A handwritten signature in cursive script, reading "Virginia M. Wagner", is written over a horizontal line.

VIRGINIA M. WAGNER

SECRETARY

THIS IS NOT A BUILDING PERMIT

Board of Zoning Appeals

Town of North Hempstead

Findings of Fact for Appeal # 21382

APPEAL #21382 - Guillermo Ortiz; 55 Bayview Avenue, Manhasset; Section 3, Block 138-02, Lots 101-104 & 805; Zoned: Business-B

Appeal for determination or in the alternative, variances from §70-138 and §70-103.B to legalize the conversion of an automobile service station to an auto body repair shop (not a permitted use within the Business-B district) with parking stalls that are too small.

With respect to the above referenced appeal the Board of Zoning Appeals (the “Board”) makes the following findings of fact:

1. The Property is a 12,500 square foot irregularly shaped lot located on the corner of Bayview avenue and Locust Place in Manhasset and identified on Nassau Section 3, Block 138-02, Lots 101-104 & 805.
2. The Property contains one building that was previously used as a gasoline service station and has a certificate of occupancy as an “automobile service station”.
3. The applicant purchased the property on November 11, 2020.
4. According to the application filed by the applicant, they propose to utilize the property for an “auto body repair facility”.
5. The subject property lies at the western end of the business district and is bordered to the north and west by residential properties.
6. The Property is located within the Business “B” zoning district which, according to § 70-138 of the Town Code permits the following uses:

Article XVII Business B District

§ 70-138 – Permitted Uses

A building may be erected, altered or used and a lot or premises may be used for any of the purposes set forth in this Article and for no other:

A. All permitted uses set forth in Article XVI applicable to Business A Districts.¹

¹ Under 70-125 the permitted uses in the Business A District are as follows:

- A. Offices, financial institution.*
- B. Retail store, except those listed in § 70-126B and F and stores of the type known as “farmers’ markets” and stores of a type known as “big-box commercial use” as defined in § 70-140B.*
- C. Sale or repair of jewelry, watches, clocks or optical goods, musical, professional or scientific instruments.*
- D. Shops for personal services, including beauty shops, barbershops, self-service laundrettes, and dry cleaning pickup shops.*
- E. Hand laundry, custom tailoring, hand dressmaking, millinery, shoemaking and repairing.*
- F. Employment office.*
- G. Funeral homes, funeral directing and embalming.*
- H. Greenhouse; flower shops.*

B. Shops for carpenters, hand cabinetmaking, furniture repair or upholstery, electrical work, hand metalworking, blacksmith, tinsmith, new and unused plumbing, gas, steam or hot water fittings, bicycle repair.

C. Barber, drafting, hairdressing or secretarial schools.

D. Medical or dental laboratories.

E. Radio or television studios.

F. Research laboratories in electronics or precision instruments.

G. Accessory uses on the same lot and customarily incidental to any of the above permitted uses, except for accessory drive-through facilities, which shall be subject to the provisions of § 70-203T, and for below-grade parking structures, which shall be subject to the provisions of § 70-203U.

7. On or about July 27, 2021 a Building Permit application was filed to maintain the conversion of an automobile repair station to an auto body repair facility. The scope of work was listed as follows:

“CHANGE OF COFO FOR AUTO REPAIR AND COLLISION REPAIR WITH PAINT SPRAY BOOTH. OFF STREET PARKING FOR 20 CARS ON THE LOT”

8. On or about June 24, 2022 a Notice of Disapproval (“NOD”) was issued by the Building Department. A revised NOD was issued on June 7, 2023. The NOD cited non-compliance with the following Sections of the Town Code:

I. A regularly organized institution of learning approved by the State Board of Regents and supported by public funds.

J. A public library, public art gallery, public museum, municipal or volunteer firehouse, municipal park for recreational use, railway passenger station.

K. Church or other building used for religious purposes.

L. Parish house, parochial school, private school.

M. Philanthropic or eleemosynary uses or institutions other than correctional institutions.

N. Hospital or sanatorium except those prohibited under § 70-207.

O. Nursing home.

P. Clubhouse, fraternity house, lodge, golf house or other recreational building.

Q. Public utility.

R. Government or municipal buildings, regardless of whether said buildings are erected for the purpose of discharging governmental or corporate functions.

S. Accessory uses on the same lot with and customarily incidental to any of the above permitted uses, except for accessory drive-through facilities, which shall be subject to the provisions of § 70-203T, and for below-grade parking structures, which shall be subject to the provisions of § 70-203U.

T. Buildings and uses provided in § 70-125J to S, inclusive, shall conform to the provisions of Article VI as to height, plot areas, lot coverage and open spaces.

U. Dry-cleaning establishments employing a maximum of five workers, and provided that the dry-cleaning equipment utilizes nonflammable fluids and bears the approval of the Fire Underwriters' Laboratory.

V. Mixed-use buildings within the New Cassel Urban Renewal Area.

W. A caretaker unit, as defined in § 70-231, located within a building or on a property designated on the National Register of Historic Places, State Register of Historic Places or designated as an individual landmark under Chapter 27 of this Code and having a portion of the building accessible to the public.

1. **70-103.B:** - Off-street parking requirements – all off-street parking spaces must have dimensions of not less than 10 feet by 20 feet.

Proposed: Twelve (12) off-street parking spaces with dimensions of 9 feet by 18 feet.

2. **70-138** - Permitted Uses – A building may be erected, altered or used and a lot or premises may be used for any of the purposes set forth in this Article and for no other:

Proposed – conversion of an Automobile Service Station to an Auto Body Repair Facility with a paint spray booth. An Auto Body Repair Facility is not a permitted use in the Business B Zoning district.

Note: The use of the premises as an Automobile Service Station that did not perform Auto body Repair is confirmed by testimony provided during the Board of Zoning Appeals Hearing for Appeal #16142 dated February 10, 1999. During that hearing the applicant’s representative stated “The nature of his business deals with mostly imported cars. It is done on an appointment only basis, no body and fender work done there.”

9. Pursuant to the NOD the applicant filed an appeal with this Board on or about August 3, 2022 which included an appeal for determination that the building official erred in requiring a use variance for the proposed action and in the alternative that a variance be granted under 70-138 of the Town Code. The appeal also includes a request for a variance under 70-103.B of the Town Code. The application includes the following²:

- An Application for Variance, Conditional Use or Permit form received by the Board on or about August 3, 2022;
- A zoning analysis sheet prepared by Ashish A. Patel, R.A.;
- A short Environmental Assessment Form prepared by John C. Farrell, Esq. dated April 25, 2023;
- A survey prepared by Osiris J. Ramirez, L.S. dated April 12, 2022.
- A radius map prepared by Long Island Expeditors dated June 26, 2023;
- Drawings prepared by Ashish A. Patel, R.A. dated July 22, 2021.
- A Real Estate Appraisers Report prepared by Barry C. Nelson, dated March 31, 2023.
- A Traffic Engineering Report prepared by Mulryan Engineering, P.C. dated March 21, 2023 and revised through May 5, 2023.
- A “Narrative Description of Use 55 Bayview Avenue Manhasset, NY” (“Narrative”) prepared by the applicant’s attorney, John Farrell, Esq.

10. On the application to the Board the applicant identified the former or present use of the property as “Automotive Repair Station” and the proposed use of the property as “Auto Body Repair Facility”.

² Some materials were submitted later than the original filing date.

11. On the application the applicant indicated that the date the owner purchased the property was November 11, 2020.
12. Once the application was deemed complete a hearing was scheduled for May 10th, 2023.
13. The proposed action was classified as an “Unlisted” in accordance with the provisions of SEQRA and an EAF Part 3 was completed that determined the proposed action would not result in any significant adverse environmental impacts.³
14. As required by General Municipal Law 239-m, this Board referred the matter to the Nassau County Planning Commission (the “NCPC”) which recommended Local Determination by letter dated April 6, 2023.
15. Several letters were submitted to the Board opposing this application. These letters are incorporated by reference herein.
16. At the May 10, 2023 hearing the applicant appeared by their attorney, John Farrell, Esq. of Sahn Ward Braff Koblenz. Mr. Farrell requested that the application be adjourned so that the applicants would have an opportunity to address some of the concerns raised by the neighbors.
17. The Board voted unanimously to adjourn the appeal sine die.
18. On June 7, 2023, a “Revised” NOD was issued by the Building Department. The revised NOD clarified that the existing authorized use of the property is an “Automobile **Service Station**” not an “Automobile **Repair Station**”
19. Once again, the application was referred to NCPC which recommended local determination by letter dated July 24, 2023.
20. The appeal was scheduled to be heard on August 16, 2023. However, due to a noticing error⁴ the hearing was again adjourned to October 11, 2023.
21. Additional letters of opposition were submitted to the Board from neighbors regarding the proposed use of the site and the required variances.
22. A hearing was held on October 11, 2023.
23. The applicant appeared by their attorney John Farrell, Esq.
24. During the hearing the applicant’s attorney submitted several letters of support/consents (Exhibit #4).

³ The determination of significance/EAF Part 3 was adopted by the Board on April 4, 2024.

⁴ Applicant failed to post a sign on the property noticing the hearing as required by §70-227.D(3)

25. The applicant's Real Estate expert, Barry Nelson, appeared at the hearing in support of the appeal. He discussed the findings of the report that was submitted with the application.
26. Mr. Nelson submitted the following exhibits:
 - Exhibit #1: Aerial photographs of the subject property and surrounding area
 - Exhibit #2: Copy of a Nassau County Tax Map
 - Exhibit #3: Copy of a Town of North Hempstead Zoning Map
27. The applicant's Traffic Expert, Sean Mulryan, P.E. appeared at the hearing in support of the appeal.
28. At the conclusion of the hearing the record was left opened so that the applicant could submit additional information in support of the appeal.
29. The transcript of the hearing is incorporated by reference herein.
30. On March 5, 2024, the applicant's attorney submitted the following additional information to the Board:
 - Several specification sheets from "Nanoshine Group Corp." for the ceramic coating materials used in the proposed ceramic coating business at the site.
 - Floor plans for the building
31. Several documents that were submitted to the building department as part of the building permit application were also included in the record for this appeal. The applicant's attorney was made aware that these documents would be considered as part of the record for this appeal.
32. This appeal is in part a request for a determination that the Building Official erred in citing that a use variance is required.

The applicant (by their attorney) puts forth two arguments:

1. The first argument is that auto body repair work falls under the definition of a Motor Vehicle Repair Shop (which the applicant claims is the only definition in the Town Code related to the repair of vehicles).

The Board finds that the applicant is incorrect in stating that the only definition in the code that relates to the repair of motor vehicles is the definition of a Motor Vehicle Repair Shop. Specifically, under 70-231 of the Town Code, the definition of an "Automobile Service Station" is as follows:

**“GASOLINE SERVICE STATION or AUTOMOBILE SERVICE STATION
(used synonymously in this chapter)**

The use of premises for the dispensing of motor fuels, lubricants and other materials used in the operation of motor or other vehicles and/or where minor repairs to motor or other vehicles are made.”

Clearly, this definition also refers to the repair of motor vehicles. Moreover, the Certificate of Occupancy for the building dated February 14, 1949, states the permitted use of the building is an “Automobile Service Station” (not a Motor Vehicle Repair Shop). Therefore, only minor repairs to motor vehicles are allowed based on the use of the building permitted by the Certificate of Occupancy.

The Board notes that (1) the building has never been authorized for use as a “Motor Vehicle Repair Shop”, AND (2) the application before the Board is not to convert the building to a Motor Vehicle Repair Shop. In light of these facts the Board finds that it need not opine on whether the definition of a motor vehicle repair shop includes auto body repair, but will make the determination in an effort to clarify the Town Code, which does not separately define auto body shop or auto body repair work. The Board finds that while it is not defined, the Code nevertheless makes a distinction between a motor vehicle repair shop and an auto body shop. For instance, in 70-103(A)(1) which establishes off street parking requirements, the Code includes a category as follows, “Gasoline service station/convenience store, motor vehicle shop as defined in § 70-231, auto body shop, including any and all shops that work with and on vehicles”. The Code clearly separates out and distinguishes an auto body shop from a motor vehicle shop as its defined in the Code. Moreover, auto body work is generally accepted as being a more intensive use of the land than motor repair work, given that vehicles may be on the property in various states of physical disrepair (missing doors, fenders, etc.). The Business B zoning district, with its mix of retail, office, food and other less intensive uses would most likely not be compatible with an auto body shop. Therefore, the Board finds that the Town Board in allowing a motor vehicle repair shop as a special use in the Business B zone did not intend to include auto body work.

2. The applicant’s second argument is that they are not repairing the bodies of vehicles but that they are adding a Ceramic Coating/Vehicle Wrap service to the auto repair work that is currently permitted at the site. The applicant states in their narrative “, “Nevertheless, while our client believes that Auto Body Repair is permitted by the Code in Business B as a special use, it seeks an interpretation that the work he performs at the site using the spray booth is NOT, in fact, Auto Body Repair.”

With respect to this argument the Board notes that the pre-existing non-conforming use of the property per the C/O is for an “Automobile Service Station” not for a “Motor Vehicle Repair Shop”. An automobile service station is not listed as a permitted use, a conditional use or a special use in the Business B zoning district. Any additional services provided by the applicant above and beyond “minor repairs to motor or other vehicles...” would be considered an expansion of a non-conforming use. The Board points to the Court of Appeals decision in Matter of

Crossroads Recreation v. Broz, 4 N.Y.2d 39, 42 (1958). In that case, which sought the enlargement of a gasoline station (a nonconforming use), the Court stated:

“While it is clear here, and no one questions the fact, that the petitioners may continue to operate the gasoline station as it presently exists because it was devoted to such a use prior to 1945, when the prohibitory zoning ordinance took effect the petitioners may not ‘enlarge that use as a matter of right’ [cite omitted]. Were that not so, zoning laws would, in effect, be rendered nugatory and nonconforming parcels, as a result, would assume great values “a premium would then be the reward for violating the law” (citing *Pisicchio v. Board of Appeals of Village of Freeport*, 165 Misc. 156, 157 (Sup.Ct. 1937).

With respect to this argument, the Board also finds it perplexing that the applicant stated on their own BZA application form that the proposed use of the property is for an “Auto Body Repair Facility”, yet their attorney argues that they are NOT proposing to use the site as an auto body repair shop.

Given the above, the appeal for determination with respect to both arguments is denied.

33. This appeal is in part a request for a use variance(s). Under Town Law § 267-B(2), this Board is empowered to grant use variances where the applicant demonstrates that; (1) the applicant cannot realize a reasonable return provided that lack of return is substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created.

(1) Reasonable return

In order to demonstrate that the applicant cannot realize a reasonable return they must provide “dollars and cents proof” that the return from each and every permitted use under the ordinance would not be reasonable. *Matter of Forrest v. Evershed*, 7 N.Y. 2d 256 (1959); *Matter of Westbury Laundromat, Inc. v. Mammina*, 879 N.Y. 2d 188 (2009).

The applicant submitted a Certified Appraisal Report prepared by Barry C. Nelson which claims the following with respect to realizing a reasonable financial return on the existing permitted use of the property as an automotive repair station:

“For the applicant to realize a reasonable financial return on their investment of 5-7% they would need to lease the property out to an automobile mechanic(s) for a monthly lease of \$11,150.00 or \$133,800 per annum. An almost impossible situation, this may be further supported just by the trends of most gasoline service stations repair facilities (buildings) being converted to convenience stores abandoning the mechanical repairs.”

The report also states that the building would not be suited for another permitted use in

the district because a substantial investment would be required in order to convert and upgrade the building for that purpose. The report makes the following conclusions:

“In summation, the applicant cannot realize a reasonable profitability of the existing mechanical repair business without the accessory use of ceramic coating and wrapping and the maintenance of the installed spray booth.”

“As the site is currently improved a realization of a reasonable rate of return on their investment cannot be achieved.”

The Board finds that the applicant has failed to meet their burden on this element. Specifically, the applicant has failed to provide the income generated by the current use, the projected income from the proposed use or the income which might be generated by a permissible use. Without this information, it is impossible for the Board to compare the return on the requested use with the projected return on a retail or other permitted use. The applicant's expert makes only conclusory statements in his report regarding converting the premises to retail or office use without any dollar and cents showing as to what return might be generated by any of the uses permitted in the Business B Zoning District.

During the hearing testimony of Mr. Nelson, Member Donatelli stated as follows:

“The certificate of existing use is for an auto shop, auto repair shop. Now, if your client is saying that your client is no longer able to make any kind of a profit on the auto repair shop, then, certainly, that should be some testimony that we can hear. But the standard is not whether or not putting in -- having a basis of 2 million, plus an additional one million would then bring it to \$61 a square foot, that is not the standard for the change in use zone.”

For the above reasons the Board finds that the applicant has failed to show that for each and every permitted use it cannot realize a reasonable return.

(2) That the alleged hardship is unique

The applicant has not stated why the subject property is unique as compared to surrounding properties. The Board finds that the applicant failed to distinguish the features or location of the subject premises from any other properties in the Business B portion of the neighborhood. In fact, it appears that the subject property is capable of hosting multiple permitted uses upon the same conditions as other neighboring properties. For example, this Board recently approved area variances for the vacant bank building directly across the street from the subject property to allow for the conversion of the building into a dance studio.

(3) That the requested use variance, if granted, will not alter the essential character of the neighborhood.

As stated herein, the subject property is at the northern and western terminus of the business district and is bordered on two sides by residential homes. Adding a vehicle wrapping and ceramic coating business together with a spray booth in order to perform these operations would be out of character with the existing business uses to the south and east and with the residential uses to the north and west. This is of special concern because, not only does the property abut residential properties, but the building itself is only 10' from the residential property to the west and 15' from the residential property to the north. The large metal vent for the spray booth has been located atop the building and if operational would be venting fumes directly towards these residences.

As testified by Glenn Norjen, Deputy Building Commissioner at the hearing, auto body shops are not permitted uses within the Business B zoning district and are only permitted in the Industrial B zoning district because they are not specifically prohibited. In deciding not to permit auto body shops in the Business B zoning district, the Town Board has determined that these uses are not compatible with other uses within the Business B zoning district.

Many neighbors testified at the hearing that the proposed use would negatively impact the use and enjoyment of their property. Not only were the residents opposed to the use of the property as an auto body repair shop that does vehicle wrapping and ceramic coating, but they were concerned that the property is currently being used illegally as an auto body repair shop. Based on photographs submitted by the residents/neighbors as well as personal observations by Board members (including an observation that there is sign on the window which states "Collision Repair") the Board agrees that the property is being used illegally as an auto body repair shop. In fact, the applicant, Sam Chow, testified at the hearing that they accept damaged vehicles at that property. She testified that the vehicles are not repaired at that site but that it is being used as a drop off for a facility in Port Washington.

The board finds that both the proposed use of the property for vehicle wrapping and ceramic coating and the existing illegal use of the property to store cars for auto body repair, are uses which are incompatible with the surrounding neighborhood and would alter the essential character of the neighborhood.

(4) That the alleged hardship has been self-created.

A hardship is self-created where the applicant acquired the property subject to the restrictions from which it is seeking relief. The applicant's Real Estate Appraiser claims that the owners paid \$2,024,064 to purchase the property in November of 2020. Shortly thereafter, on July 27, 2021 they filed a building permit application to convert the business to an Auto body repair shop. It would implausible that the applicant could have

suffered such an economic loss between the time they purchased the property and the time they filed the permits to convert the business to an auto body repair shop. Ostensibly they knew the requirements of the zoning code at the time they purchased the property. The zoning code did not change with respect to the allowable uses in the Business B zoning district between the time the applicant purchased the property and the time they filed for the building permit to change the use. For these reasons the Board finds the hardship to be self-created which is fatal to a use variance application.

34. This appeal in part is a request for area variances. Under Section 267-b of the Town Law, the Board is empowered to grant area variances in cases where the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood or community. The Board is also required to grant the *minimum* variance necessary. In making such determination the Board shall also consider: 1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; 2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; 3) whether the requested area variance is substantial; 4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and 5) whether the alleged difficulty was self-created. After careful consideration of the facts presented during the hearing, personal observations of the site and surrounding area, and a review of Building Department files, the Board finds the following with respect to these criteria:

§70-103(B)

The applicant requires a variance for insufficient stall size in order to permit 12 of the parking spaces to have dimensions of 9' x 28' where 10' x 20' is required. As stated herein, the Board denies the appeal for determination and the use variance necessary to convert the business from an automobile service station to an auto body repair shop. Therefore, since the requested variance for insufficient stall size is connected with the application to convert the automobile service station to an auto body repair shop, the Board denies this variance as moot without prejudice.

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

Vice Chairman
Leslie Francis, Esq.

Members
Daniel Donatelli, Esq.
Jay Hernandez
Patricia A. Goodsell, Esq.

Town of North Hempstead



Board of Zoning Appeals

210 Plandome Road
Manhasset, NY 11030
(516) 869-7667
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NOTICE OF DECISION

APPEAL #21502 - Jaswinder Singh; 24 Royal Way, New Hyde Park; Section 8, Block 257, Lot 19; Zoned: Residence-A

Variance from §70-31.A to legalize a deck that is too close to the side and rear property lines and with smaller than required total (aggregate) side yards.

Whereas, an application (RBP23-000570, BZA23-000167) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **April 3, 2024**, the appeal in the above-entitled matter was decided as follows:

GRANTED of the dimension and in the location as shown on drawings prepared by Emilio Susa, R.A. dated July 24, 2023 and revised through March 6, 2024 *as amended****
SUBJECT TO THE FOLLOWING CONDITIONS:

The applicant/owner shall plant 6' high arborvitae (to be planted 4.0' on center) on the south side of the deck in a manner which is sufficient to screen the rear side of the deck.

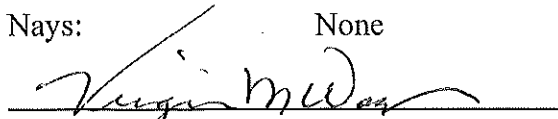
****This decision only applies to the legalization of the deck. Any other items shown on the plans which may require variances must be filed for separately.*

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

Motioned by: Member Goodsell Seconded by: Member Donatelli

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

Nays: None


VIRGINIA M. WAGNER
SECRETARY

THIS IS NOT A BUILDING PERMIT

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

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Town of North Hempstead



Board of Zoning Appeals

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NOTICE OF DECISION

APPEAL #21527 - John Corallo; 4 Howard Court, Carle Place; Section 9, Block 458, Lot 51; Zoned: Residence-C

Variance from §70-49.C to construct a rear addition that would make a house too big.

Whereas, an application (RBP24-000032, BZA24-000023) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **April 3, 2024**, the appeal in the above-entitled matter was decided as follows:

GRANTED of the dimension and in the location as shown on drawings prepared by Howard Peter Curtis, R.A. dated January 2024 and revised through February 8, 2024.

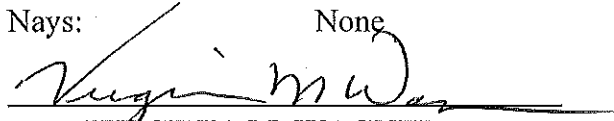
IN REACHING THIS DETERMINATION, THE BOARD CONSIDERED THE FACTORS SET FORTH IN THE ATTACHED FINDINGS OF FACT

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

Motioned by: Vice Chairman Francis Seconded by: Member Donatelli

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

Nays: None


VIRGINIA M. WAGNER
SECRETARY

THIS IS NOT A BUILDING PERMIT

Board of Zoning Appeals

Town of North Hempstead

Rider (Findings of Fact for Appeal # 21527)

APPEAL #21527 - John Corallo; 4 Howard Court, Carle Place; Section 9, Block 458, Lot 51; Zoned: Residence-C

Variance from §70-49.C to construct a rear addition that would make a house too big.

Under Section 267-b of the Town Law, the Board is empowered to grant area variances in cases where the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood or community. The Board is also required to grant the *minimum* variance necessary. In making such determination the Board shall also consider: 1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; 2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; 3) whether the requested area variance is substantial; 4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and 5) whether the alleged difficulty was self-created. After careful consideration of the facts presented during the hearing, personal observations of the site and surrounding area, and a review of Building Department files, in weighing the above criteria the Board finds the following:

1. The Board finds that granting the requested variances will not produce an undesirable change in the character of the neighborhood or community. The two-family home is located on a 12,246 s.f. property and a larger home would have been permitted as of right if the existing home complied with the required setbacks of the R-B zoning district. The Board further finds that because the proposed addition is adding bulk to the rear of the home, the excess GFA will not be discernable from the street (Howard Court). Although the addition will be somewhat visible from Raff Avenue, there are many street trees which will screen the addition from the neighbor's view across this dead end street.
2. The Board does not feel that the benefit sought by the applicant could be achieved by any other method since the space in the home is limited by the second dwelling unit and by the fact that the home has no basement.
3. Although the Board finds that the variance requested for gross floor area "GFA" could be considered substantial (177 s.f. in excess of what is permitted by Code) the plans demonstrate the minimum variance for GFA which is necessary for the applicant to achieve the benefit sought.
4. The Board does not find that granting the requested variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood.
5. Although the alleged difficulty is self-created, this fact is not determinative.

THIS IS NOT A BUILDING PERMIT

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

Vice Chairman
Leslie Francis, Esq.

Members
Daniel Donatelli, Esq.
Jay Hernandez
Patricia A. Goodsell, Esq.

Town of North Hempstead



Board of Zoning Appeals

210 Plandome Road
Manhasset, NY 11030
(516) 869-7667
Fax (516) 869-7812

NOTICE OF DECISION

APPEAL #21528 - Yuhsuan Chao; 31 Pubins Ln., New Hyde Park; Section 9, Block 550, Lot 22; Zoned: Residence-C

Variances from §§ 70-49.C & 70-50.A to construct additions that would make the house too big and to construct a second story addition that is located too close to the street.

Whereas, an application (RBP23-000965, BZA24-000020) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **April 3, 2024**, the appeal in the above-entitled matter was decided as follows:

GRANTED of the dimension and in the location as shown on drawings prepared by Todd O'Connell, R.A. dated July 27, 2023 and revised through February 9, 2024.

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

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

Motioned by: Member Goodsell Seconded by: Vice Chairman Francis

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

Nays: None

A handwritten signature in black ink, appearing to read "Virginia M. Wagner".

VIRGINIA M. WAGNER
SECRETARY

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Board of Zoning Appeals

Town of North Hempstead

Rider (Findings of Fact for Appeal # 21528)

APPEAL #21528 - Yuhsuan Chao; 31 Pubins Ln., New Hyde Park; Section 9, Block 550, Lot 22; Zoned: Residence-C

Variances from §§ 70-49.C & 70-50.A to construct additions that would make the house too big and to construct a second story addition that is located too close to the street.

Under Section 267-b of the Town Law, the Board is empowered to grant area variances in cases where the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood or community. The Board is also required to grant the *minimum* variance necessary. In making such determination the Board shall also consider: 1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; 2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; 3) whether the requested area variance is substantial; 4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and 5) whether the alleged difficulty was self-created. After careful consideration of the facts presented during the hearing, personal observations of the site and surrounding area, and a review of Building Department files, in weighing the above criteria the Board finds the following:

1. The Board finds that granting the requested variances will not produce an undesirable change in the character of the neighborhood or community. The home is located on a 10,135 s.f. property and a larger home would have been permitted as of right if the existing home complied with the required setbacks of the R-B zoning district. Also, because the existing garage is over 300 s.f., the entire 393 square footage of the garage is included in the total gross floor area of the home. The Board does not find that removing 93 s.f. of the garage (which would eliminate the need for a GFA variance) would measurably reduce any impacts to the neighborhood or surrounding properties.

Although the applicants are attempting to minimize the setback variance required by setting the second story back from the front of the home, the Board finds it would be difficult to comply entirely with the front yard setback requirements of the code due to the existing configuration of the home. The Board does not find that granting this variance would produce an undesirable change in the neighborhood especially since the home immediately across the street appears to violate the front yard setback requirements and the property immediately to the west is a driveway to the home in the rear.

2. The Board does not feel that the benefit sought by the applicant could be achieved by any other method than the requested variances.

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3. Although, numerically the variance for GFA could be considered substantial (270 s.f in excess of what is permitted by code) when weighing the factors above, the Board finds that this does not weigh in favor of denial.

The variance required for the front yard setback could also be considered substantial (17.8 foot setback where 25' is required = 29% variance), however, given the fact that the existing home is non-compliant with respect to the front yard setback, the fact that the second story will be setback from the front property line even further than the setback of the existing home, and the fact that the home across the street appears to have a non-compliant front yard setback, the Board does not find the substantiality to weigh in favor of denial.

4. Given the above, the Board does not find that granting the requested variances will have an adverse effect or impact on the physical or environmental conditions in the neighborhood.
5. Although the alleged difficulty is self-created, this fact is not determinative.

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Vice Chairman
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Members
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NOTICE OF DECISION

APPEAL #21529 - Bryan Arcos (Arcos & Arcos Group, Inc.); 14 Cedar Road, Westbury; Section 11, Block 414, Lot 435, Zoned: Residence-C
Variance from 70-100.2(A)(2) to legalize fencing in a front yard.

Whereas, an application (RFP24-000006, BZA24-000019) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **April 3, 2024**, the appeal in the above-entitled matter was decided as follows:

GRANTED of the dimension and in the location as shown on a survey prepared by Jason D. Leadingham, L.S. dated June 29, 2023 *as annotated by the applicant and as amended by the Board SUBJECT TO THE FOLLOWING CONDITIONS:*

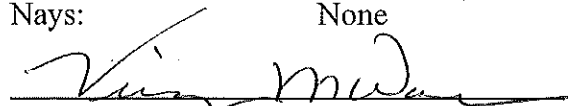
- *Fence shall be a 4' estate style fence*
- *Fence shall be located 3' from the property line.*
- *Arborvitae shall be planted along the outside of the fence along Montauk Court and along the side of the fence which abuts the property to the west (up to the front building line) as shown on the amended plan.*

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

Motioned by: Vice Chairman Francis Seconded by: Member Donatelli

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

Nays: None


VIRGINIA M. WAGNER
SECRETARY

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

Vice Chairman
Leslie Francis, Esq.

Members
Daniel Donatelli, Esq.
Jay Hernandez
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NOTICE OF DECISION

APPEAL #21530 - Lake Success Shopping Center; 1400 Union Turnpike, New Hyde Park; Section 8, Block 235, Lot 56; Zoned: Business-AA

Variations from §§ 70-202.4(C)(1) & 70-202.4(C)(4) to construct cart corrals within a parking lot that would not be permanently anchored to the ground and without the protective roof.

Whereas, an application (CBP23-000321, BZA24-000018) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **April 3, 2024**, the appeal in the above-entitled matter was decided as follows:

DENIED with respect to the variance sought under 70-202.(C)(1) to construct cart corrals within a parking lot that would not be permanently anchored to the ground and **GRANTED** with respect to the variance sought under 70-202.4(C)(4) to construct cart corrals within a parking lot that would not have a protective roof of the dimension and in the location as shown on drawings prepared by Rand Rosenbaum, R.A. dated November 16, 2023 and revised through January 11, 2024.

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

Motioned by: Member Goodsell Seconded by: Member Hernandez

70-202.(C)(1) – Motion to DENY

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

Nays: None

70-202.4(C)(4) – Motion to GRANT

Ayes: Member Goodsell, Member Hernandez, Chairman Mammina

Nays: Member Donatelli, Vice Chairman Francis

VIRGINIA M. WAGNER
SECRETARY

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