EASTCHESTER ZBA - 1/9/2018

THE CHAIRMAN: Okay. Good evening and welcome to the town of Eastchester Zoning Board of Appeals meeting for January 9th, 2018. We start our meeting with the Pledge of Allegiance. If everyone could rise, please. (Whereupon the Pledge of Allegiance was said.)

THE CHAIRMAN: Before I call the roll, I just want to go over some of the ground rules, as I do every meeting. Firstly, we apply Robert's Rules of Parliamentary order, if you're interested in that sort of thing.

Secondly, as the terms and conditions are printed on your application, all items that are on tonight first time are not decided tonight. They are deliberated upon. So that means that anything on tonight for the first time, the earliest it will be resolved will be the February meeting. I tell you that because we print our calendar in advance and we only meet nine times a year. We meet once a month, usually the second Tuesday. The calendar is available to the public. Anyway, we do not

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approving this application; is there a second?

MR. NURZIA: Second.

THE CHAIRMAN: Mr. Nurzia. Let's take

the vote. Mr. Cahalin.

MR. CAHALIN: Yes.

THE CHAIRMAN: Mr. Miller.

MR. MILLER: Yes.

THE CHAIRMAN: Mr. Nurzia.

MR. NURZIA: Yes.

THE CHAIRMAN: Mr. DeMarco.

MR. DE MARCO: Yes.

THE CHAIRMAN: And I vote yes. The

application has been approved five/nothing.

Okay, let's move on to the first item

to be heard, which is under old business, and

this is 16-14, 600 White Plains Road.

MR. NAPIOR: Good evening. For the

record, Leo Napior with the law firm of

Harfenist, Kraut & Perlstein on behalf of the

applicant.

We are back before this evening I

understand that following the last meeting the

board had some further questions or wanted some

further discussion on our interpretation

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request, so I'm happy to present any additional

information, address any questions that you may

have. I'll leave it to you from there.

THE CHAIRMAN: Great. A couple of

points of order.

Firstly, the matter has been closed to

a public hearing as it relates to the

interpretation, so as you correctly stated

you're here to further clarify. As part of

your application, there's also a use variance

application. Are you ready to proceed with

that element of your application?

MR. NAPIOR: Not this evening.

THE CHAIRMAN: It's your choice.

MR. NAPIOR: We could discuss that

this evening. It depends on how the board

handles the interpretation request. If the

board did not agree with our proposed

interpretation of our proposed use of the

property, then I would certainly engage in the

discussion with you all about the use variance.

I don't know if there would be any additional

information you would require in order to

process that component of the application. As

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principal use of the property as a gas station

is protected, it's an existing non-conforming

use. As an existing non-conforming use, you are

entitled to have accessory uses provided they

are truly accessory and do not become the

principal use of the property.

Based on the gas station industry and

the changes throughout time, as well as the

established case law, it's been held previously

in courts of law that the retail or C store use

is accessory to the principal use of the gas

station.

MR. NURZIA: Can you give me a

particular site that you're referring to?

MR. NAPIOR: Sure. In the matter

of -- hold on one second -- I think it was in

our cover letter as well but I have it here --

Exxon Corp. versus the Board of Standards and

Appeals, City of New York 128 A.D.2d 290, and

that case actually went up, got remanded, and

then went back before the Court of Appeals in

'99 and that is 151 A.D.2d 438. The court

basically found that the C store use is an

accessory use to gasoline stations. They cited

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that some studies in 1985 found there were --
at that time there were 55,000 gas stations
throughout the United States, of those
approximately one third had convenience stores.
I could provide you with some more updated
information. The National Association of
Convenience Stores does a retail fuels report
every year and they basically study this
industry, and so the 2016 retail fuels report
cited -- bear with me one second -- in 2013
didn't have any of those 153,000 gasoline
stations throughout the country or site selling
gasoline. That includes big box stores, C
stores, and stand alone gasoline stations. Of
those 153,000, approximately 124,000 all had
the C store component to them. So that's
roughly 80 percent of the site's selling
gasoline throughout the entire country have C
store components to them. Another 4 percent of
those are big box stores, so they're K-Marts
and Costcos and whatnot that are getting into
the fuel sales industry. That study also found
that only approximately 26 percent of the
people frequenting those properties to buy gas

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go inside to also -- whether they're there to
buy gas or not, they go inside to buy items
from the C store. So approximately a quarter
of the people that are frequenting the site,
including buying gas, are going inside to
purchase retail items or convenience items from
the store.

As far as whether it's customary and
 incidental to the use, I think it's been
established by the court, and if you have
80 percent of the stations throughout the
entire country have a C store component, I
would say that's pretty customary.

THE CHAIRMAN: Fair enough, but if I
may interrupt you, counselor, before the other
board members ask their questions it seems
timely for me to interject. My main concern is
that although it may be customary to have these
type of retail set asides, I can't comment on
the places in which these are constructed, but
I can tell you here with this specific case in
hand you have the current use is legal
non-conforming, the retail use that you're
proposing is non-conforming, and it would be

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the bays are now -- they're no longer --
because of the time frame in which they've not
been used can no longer be used are not part of
the equation, and now you're looking to make
the argument or the logical leap that almost
the entire premise is now going to retail.
That's what I'm trying to drive my point home
with.

MR. NAPIOR: So I would again say the
retail use would be an accessory. I realize
that it --

THE CHAIRMAN: How is it accessory if
it's almost the entire premises?

MR. NAPIOR: Because the volume of
business that's generated by it is a minor
aspect and accessory to the principal use as a
gas station. Gas stations in general, they're
not destinations, they're more pass by
locations and gas stations with C stores.
People typically don't get out -- leave their
house and drive to the convenience store to
pick up milk and eggs and these things.
They're more a matter of convenience and if
it's on your route to where you're going, you

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stop, you fill up, you go in and you buy a
candy bar or a soda. That is why if you're
doing traffic studies for gas stations with
convenience stores, they're entitled to what's
called a pass-by credit. I realize that's more
of a Planning Board item than it is for the
Zoning Board, but they have these trip
generation factors and then you're entitled to
a 60 percent pass by credit because of that
nature of the business. So if people don't get
out go -- you leave your house, you go to a
restaurant for dinner. You don't leave your
house and go fill up your car and come back
home typically.

In addition, per Anderson, which is a
New York zoning law and practice, which is
legal treatise on zoning law and practice, the
addition of -- I'm going to quote here, so this
is from the third addition Section 6.28, page
252: The addition of an accessory use to a
non-conforming use is not a proscribed change
if an accessory use can be expanded and made
the principal use of the premises without
offense to an ordinance prohibiting the change

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going to get to when you finished your
presentation. So I don’t actually don’t have
any other questions.

THE CHAIRMAN: Great minds think
alike. Mr. DeMarco?

MR. DE MARCO: No questions.

MS. UHLE: Can I ask a question?

THE CHAIRMAN: Of course you can, Mrs. Uhle. Ask away.

MS. UHLE: What I’m confused about is
you’re defining an accessory use as something
that is sort of commonly understood to be
associated with, say, a gas pump. I’m not sure
that it’s something that’s, you know, really
incidental or necessary for the operation of a
service station. So I guess what I’m confused
about is other than the fact that -- in some of
the examples that you gave, I’m certain that
most of those service stations were located in
areas that permitted retail and permitted gas
as well. Certainly a big box store cannot be
considered incidental to a gas pump, I think it
would be the other way around. To me by your
definition of an accessory use, and I hate this

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kind of analogy but I’m going to use it
anyway -- what if a nail salon wanted to go
there, what if a doctor’s office, and you could
say, well, you know, people typically would
come for five minutes, that’s not going to be
their primary destination or something. To me,
the retail is, yes, we’re accustomed to that
for 7-Elevens or something like that, but it
really is not truly related to the function of
people having to get gasoline. It’s providing
an additional service or additional options in
addition to providing gasoline. To me, an
accessory use to, say, a gas station would be
if the applicant wanted to come in and put a
canopy over, I wouldn’t say that was expanding
it, I would say that’s something that is
directly related to the sale of gas, or, again,
selling windshield wiper fluid or something
like that.

MR. NAPIOR: So the town of
Eastchester’s definition of accessory use is a
use which is customarily incidental and
insubordinate to the principal use of the lot
or building and located on the same lot,

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MR. NAPIOR: Yes. So he's now looking to make additional investment into the property, which I think would help to beautify the site.

MR. CAHALIN: Which would further his return on his property.

MR. NAPIOR: I'm sorry.

MR. CAHALIN: That would further his return on his property, these additional investments.

MR. NAPIOR: Yes. I don't know that the amount of return on his investment has anything to do with --

MR. CAHALIN: It does not.

THE CHAIRMAN: If I may interrupt, I don’t want to cross over into the use variance questions at this point because --

MR. CAHALIN: That's where we're headed.

THE CHAIRMAN: I understand. I know it's part of your application, so I'm actually being departmentalized in my process here,
they involve any sort of expert testimony to talk about this is how the changes have occurred and whatnot?

MR. NAPIOR: The Exxon case in particular, they brought in studies and experts with respect to the industry. There was a lot more at stake in that case. It was a major station in New York City.

THE CHAIRMAN: Hey, wait a minute, this is Eastchester, how dare you.

MR. NAPIOR: This is a little -- not to downplay anything, this is --

THE CHAIRMAN: We're the center of the universe, how dare you.

MR. NAPIOR: Yes, so there were experts. I am somewhat piggybacking, the numbers have even increased since then. At the time that that case was putting itself out, maybe it was only one third of the stations throughout the country had convenience stores on them. I gave you the numbers from the 2016's fuel sales report. Now it's 80 percent of the stations have convenience stores tacked onto them.

Further, just one other point that I forgot to touch on before, so even though the profit margins are higher on the C store items, the overall gross revenue of the fuel sales completely outstrip anything that even comes close. It's still about a 20 percent C store as far as gross revenue is concerned versus fuel sales. So that's just a further point that the amount of money that's actually being generated and traffic to the business the principal use of that is as a gas station and selling gas.

THE CHAIRMAN: Okay. I made this point earlier and I think what I'm going to ask you to do, and I don't want to make too much extra work for you, but for me you could hear the scepticism in my questioning because I'm having a difficult time seeing this as accessory use and then making the leap to making the use of the premises almost entirely retail. So I think perhaps your submission should be tied to that point.

MR. NAPIOR: Understood.

THE CHAIRMAN: But again, you're making a reasoned argument and I want to give you the benefit of that. So I think that's where I would like to see this -- anyone else on the board like to see something a little more specific on this?

MR. MILLER: Not only specific, and I don't want to make too much of an issue on this, again, you're incredibly knowledgeable, maybe you could bring an expert or consultant in here and drill it down a little bit.

MR. NAPIOR: Specifically on which topic?

MR. MILLER: On all the numbers you've talked about. You talked about 80 percent -- I think you said 80 percent have accessory uses, the cost ratio of the gas to the actual sale of the products that will be sold.

MR. NAPIOR: I'll see what I could do, but I can provide you with all the information and the source materials that they came out of. That I could do a hundred percent. In the meantime, I'll see what I could do about a --

THE CHAIRMAN: That may be germane to the use variance elements as well, so it may

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MR. NAPIOR: Understood.

THE CHAIRMAN: That's precisely my mind, counselor.

MR. TUDISCO: That is another issue you may want to address in those cases.

THE CHAIRMAN: When you're referring to such a large swath of uses, areas where this is being done, we're really drilling down on one area, and that is that the current use for the gas is legal non-conforming. You couldn't do that today as of right. So that changes what we're looking to see here because the retail is also not as of right. In certain

THE CHAIRMAN: That may be germane to the use variance elements as well, so it may
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areas, parts of that use may be as of right.
So although you're saying that this is
predominantly where it went, that may be a
market driven decision by certain gas stations
and they're doing it in an area where some,
most, or all of it may be as of right. This is
very specific. You're here before us because
this use is not as of right. So if you can, I
appreciate you being more specific in your
request. I think that's a very important
element. Again, I would say that would be all
that I need. Mr. Cahalin?
MR. CAHALIN: Well, it strikes me that
if we were to interpret this to the applicant's
favor, we would open up a whole plethora of
things to get a use variance. By interpreting
favorably, diminishes the use variance in our
code. So that's my comment.
THE CHAIRMAN: The use variance is not
even being heard at this point.
MR. CAHALIN: I understand but that's
where we're going to end up. If we end up
there or down the road with another applicant,
they're going to point to an interpretation.

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that we made that could diminish our use
variance law.
THE CHAIRMAN: In this instance -- I
often times have concerns about precedential
value. In this instance I see absolutely none
because it's specific to the idea of accessory
to a gas station.
MR. CAHALIN: I'm going to disagree
with you.
THE CHAIRMAN: As long as you
respectfully disagree.
MR. CAHALIN: No, I don't respect you.
THE CHAIRMAN: Yes, counselor.
MR. TUDISCO: What I would suggest is
that whether or not you believe -- look, the
applicant has an absolute right to frame their
arguments however they see fit, and at this
point in time I think it appears to me the way
you are -- the direction you are leaning is
that the interpretation is a threshold issue.
You may not need to get to the use variance or
you may have to address it, but it is a
separate issue. We're talking about a legal
interpretation in your roll as interpreting

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zoning law and as an appeal from a
determination made by the Building Department
versus a substantive issue in terms of a
request for a use variance. Your arguments,
you know, depending on what facts are brought
out, whether you believe it's sufficient or
not, you may have concerns about precedential
value and that it may be a valid argument, but
I think at this point right now you should
focus on that threshold issue first and
assuming that -- if you find that you do not
believe this is an accessory use, then I think
those arguments definitely come into play and
you have to address them. That was just my
caution.
THE CHAIRMAN: Thank you, counselor.
Would anyone else like to add to that?
(No comments.)
THE CHAIRMAN: Counselor, I'll give
you the choice, because again, your application
is really one application, despite the fact
that our counselor is also correct that if your
application was resolved in the affirmative
there would be no reason for you to go further.

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I'll give you the choice, you could begin your
presentation on the use variance tonight or we
can adjourn, you could submit your materials,
and then at the next meeting we could make a
decision -- a resolution at that time or
adjourn to resolve and then hear the use
variance in its entirety. I'm going to leave
that entirely up to you.
MR. NAPIOR: I would prefer the latter
and table the use variance until the
interpretation requested has been resolved one
way or another.
THE CHAIRMAN: Okay. So we shall
adjourn the application to the next meeting and
you will submit on those points as best you can
considering we were shooting a very broad net
at you.
MR. NAPIOR: Understood, and I'll
contact Margaret tomorrow.
THE CHAIRMAN: Thank you. I thank you
for your time, and I also thank you again for
being open and transparent when we go over
these things because although you knew you were
coming here because the board had questions,

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you didn't know what the questions were, they weren't submitted to you in advance. So I appreciate you standing on your feet on this one.

MR. NAPIOR: Understood. Thank you.

THE CHAIRMAN: Okay. Have a good night, counselor.

MS. UHLE: Excuse me. Could you take a two minute break for you and Mark?

THE CHAIRMAN: Yes. I'm going to make a motion to take a one minute break, we're going to be quick. Is there a second to my motion?

MR. CAHALIN: Second.

(A short recess was taken.)

THE CHAIRMAN: Okay. We have on our calendar four items of new business. If you haven't appeared before us before, these items that are on first time, all of the materials are marked as submitted, they're part of the public record, and they've been reviewed by the board, and in many instances the board also reviews the site. You are under no obligation to read your five part test for the area.

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Having said that, I'm going to see if the board has any questions of this applicant.

Mr. Cahalin, any questions?

MR. CAHALIN: Well, my first question would be, is there any way to minimize the variance for the width? That is a severe ask at 137 percent.

MR. MAIORANO: So it's very difficult to -- there is a jog in the house, so we're basically extending that front. I know the percentage looks a little --

MR. CAHALIN: Math doesn't help you here.

MR. MAIORANO: So basically you're allowed that 30 percent, we're extending 76 percent, so we're ultimately 46 percent over that, but you in actuality it's --

MR. CAHALIN: It's still a lot.

MR. MAIORANO: Yes, but the way the house functions with the dining room and the living room, if they cut off a couple of feet the aesthetics of the front elevation won't get that feeling. It's either like you go all or basically none because the front doors in the

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front won't really walk out.
MR. CAHALIN: Usually the front door
is in the front.
MR. MAIORANO: What's that?
MR. CAHALIN: Usually the front door
is in the front.

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make a motion to close this matter to the
public hearing; is there a second?
MR. DE MARCO: Second.
THE CHAIRMAN: Mr. DeMarco. All in favor.
(All aye.)
THE CHAIRMAN: Okay. Comments from
the board, we'll start on my right; Mr.
DeMarco?

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ends up being a little uncomfortable, so it
wouldn't actually function as somewhat of a
front porch and that's just, you know, again
for the aesthetics and, you know, covering for
weathering so that you could have maybe a chair
or something and decorative furniture or
something and be able to actually walk by it
and not be clustered in there.

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Thank you, Mr. Nurzia.
Mr. DeMarco?
MR. DE MARCO: No questions.
The CHAIRMAN: And I don't have any
questions. I make a motion to open this matter
to a public hearing; is there a second to my
motion?

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Thank you, Mr. Nurzia.
Mr. DeMarco?
MR. DE MARCO: No questions.
The CHAIRMAN: And I don't have any
questions. I make a motion to open this matter
to a public hearing; is there a second to my
motion?

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Thank you. Would anyone
like to be heard on this application from the
public?
(No comments.)

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Okay. Seeing no one, I
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So what we're proposing, starting with
the northwestern addition on the bottom right
side of that site plan, is a 125 square foot
addition to align with the existing exterior
walls below. So basically we're proposing to
place an addition on top of an existing one
story structure making it a two story
structure.

On the southwestern corner, the second
structure is basically filling in a gap within
the front yard. It doesn't encroach in the
front yard setback, but again, since we are
aligning it with the southern side of this
house, which already encroaches, that is what's
the cause of that area variance.

Then the second addition out of the
rear of the existing structure basically is an
extension of an existing dormer, again within
the existing footprint, not encroaching beyond
the existing footprint of the home, and I'm
prepared to answer any questions that you have.

THE CHAIRMAN: Thank you for your
presentation. I'll start on the left. Mr.
Cahalin, do you have any questions?

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MR. CAHALIN: No.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: Not at this time.

THE CHAIRMAN: Mr. Nurzia?

MR. NURZIA: No question but one
comment. I appreciate the fact that everything
was laid out nice and neat for easy reference.

It was very easy to follow.

THE CHAIRPERSON: You got an A for
neatness. Mr. DeMarco?

MR. DE MARCO: No questions.

THE CHAIRMAN: I went to Catholic
school, I like neatness as well, so I'll give
you a comment on that. I do have a motion to
open this matter to the public; is there a
second to my motion?

MR. MILLER: Second.

THE CHAIRMAN: Mr. Miller. All in
favor.

(All aye.)

THE CHAIRMAN: Would anyone from the
public like to be heard on this application?

(No comments.)

THE CHAIRMAN: Seeing no one, I make a
favor.

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motion to close this application to the public
hearing; is there a second?

MR. DE MARCO: Second.

THE CHAIRMAN: Mr. DeMarco. All in
favor.

(All aye.)

THE CHAIRMAN: Okay, well, we're going
to see if the board has any comments. Mr.
DeMarco, any comments?

MR. DE MARCO: No comments.

THE CHAIRMAN: Mr. Nurzia?

MR. NURZIA: No questions or concerns.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: Still none.

THE CHAIRMAN: Mr. Cahalin?

MR. CAHALIN: No.

THE CHAIRMAN: My only comment is it
seems that your application addresses
adequately the five part tests for the various
variances. I think I'm ready to make a motion
to adjourn this matter for a resolution at the
next meeting; is there a second?

MR. DE MARCO: Second.

THE CHAIRMAN: Mr. DeMarco. All in
favor.

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favor.

(All aye.)

THE CHAIRMAN: Thank you for your
application. There will be a resolution at the
next meeting.

Okay, 19 Stebbins Avenue. While
you're setting up, this is an area variance to
construct a one story addition to an existing
single family home. Name and address for the
record and please proceed.

MR. IANNACITO: Good evening. Happy
new year to everyone. My name is John
Iannacito, I'm an architect, and I'm
representing Mr. and Mrs. DeBitetto this
evening, the owners of the subject property.
John is with me this evening. We are proposing
an addition and alteration to the existing
single family residence located at 19 Stebbins
Avenue.

The proposed scope of work will be to
construct a one story addition at the front and
side of the existing residence, which is
highlighted here on the proposed site plan.

We're also proposing site alterations which
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will include the relocation of the existing driveway from Everett Street onto Stebbins Avenue. Here’s the new driveway providing access to the new garage.

I’ll just quickly go through the floor plans. Here we have the lower floor, the basement level, with the addition highlighted which will consist of the new two car garage.

MR. MILLER: John, could you do me a favor, just show me again where you’re going to put the driveway.

MR. IANNACITO: The driveway is right here.

MR. MILLER: So it will be on the corner area?

MR. IANNACITO: Yes. I’m not sure of the exact dimension, but this is 22 feet here so it’s probably from the radius here maybe another 30 feet from the corner. So it’s right here.

MR. MILLER: I’m having trouble seeing, I’m getting old here. Where would the front door be? Just point to the front door.

Okay, got it.

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MR. IANNACITO: Because it’s a long, narrow lot, the actual front yard is considered this side of the house, but actually the front entrance is on Stebbins.

MR. MILLER: Just for full disclosure, I know Mr. DeBitetto well, been to his house about 400 times so I’m familiar with it.

MR. DE MARCO: We won’t hold it against him.

MR. IANNACITO: Looking at the lower floor, we have the addition highlighted, which would consist of the new two car garage. Here we have the first floor plan, here is the addition highlighted, and that will consist of a new family room on the main floor. Here are the exterior elevations. The addition for the garage and the family room on the front of the house. Here is the addition at the rear and the side view.

MR. MILLER: Where’s the pool in that?

MR. IANNACITO: The pool would be somewhere over here.

MR. MILLER: Okay.

MR. IANNACITO: The existing pool is

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1 further -- it would be as if it's coming out
2 much further than where the current house is at
3 17 Everett.
4
5 MR. IANNACITO: I think I have an
6 aerial shot in the packet here which should
7 show -- it's not very large -- the house -- so
8 17 Everett would be right here.
9
10 MR. NURZIA: Exactly. I'm sorry, I
11 don't know if you could tell from your diagram,
12 but where exactly is it in relation to the
13 extension there?
14
15 MR. IANNACITO: Right now the existing
16 house is 38.2 feet set back from the Everett
17 Street property line, so most likely this house
18 here is probably set back 30 feet because
19 that's the traditional requirement for
20 setbacks. So if we take this line here, it's
21 probably somewhere here, 30 feet back. I can
22 add it on there if it helps. It definitely is
23 set further back and I think --
24
25 MR. DEBITETTO: John DeBitetto, 19
26 Stebbins Avenue. Right about here.
27
28 MR. NURZIA: So that would be the
29 front of the house facing Everett. That's the
30
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1 going to come out -- the house is going to come
2 out onto where the existing driveway is now?
3
4 MR. IANNACITO: Correct. If you look
5 at the drawings, it's here the existing
6 driveway.
7
8 MR. MILLER: Is that going to affect
9 the house on -- right here, right on that
10 corner -- is that going to have any effect on
11 that because you're coming out and cutting a
12 little bit of the sunlight off?
13
14 MR. IANNACITO: Right now the side
15 yard setback is 8 feet, so we're going to
16 basically align with the existing house. We're
17 not asking for a side yard variance.
18
19 MR. MILLER: There will be no effect
20 on the other house?
21
22 MR. IANNACITO: As far as the side
23 yard, but as far as coming out towards the
24 street if someone is standing on the front
25 porch of that house, they will see the side of
26 the house, which actually is the rear of the
27 house.
28
29 MR. MILLER: No further questions.
30
31 THE CHAIRMAN: Mr. Cahalin?
32
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2 MR. CAHALIN: None.
3 THE CHAIRMAN: I don’t have any
4 questions at this time. I make a motion to
5 open this application to a public hearing; is
6 there a second?
7 MR. CAHALIN: Second.
8 THE CHAIRMAN: Mr. Cahalin. All in
9 favor.
10 (All aye.)
11 THE CHAIRMAN: Would anyone like to be
12 heard on this application?
13 (No comments.)
14 THE CHAIRMAN: Seeing no one, I make a
15 motion to close the public hearing; is there a
16 second?
17 MR. DE MARCO: Second.
18 THE CHAIRMAN: Mr. DeMarco. All in
19 favor.
20 (All aye.)
21 THE CHAIRMAN: Okay, comments. Mr.
22 Cahalin?
23 MR. CAHALIN: Again, I appreciate Mr.
24 Iannacito’s -- the way he submits his
25 applications, they’re straightforward and that

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2 helps me.
3 THE CHAIRMAN: Mr. Miller?
4 MR. MILLER: I mean, living in this
5 neighborhood and being very familiar with that
6 street and that location, it seems consistent
7 with a lot of the houses as the development
8 continues to grow, so I don’t think it’s out of
9 character with what’s occurring in the
10 neighborhood.
11 MR. IANNACITO: Understanding that the
12 house here is close, we did try to keep that a
13 little bit lower. So this is the roof facing
14 the side of the house.
15 MR. MILLER: I appreciate that.
16 THE CHAIRMAN: Thank you, Mr.
17 Iannacito. Mr. Nurzia?
18 MR. NURZIA: No further questions.
19 THE CHAIRMAN: Comments? Nothing?
20 MR. NURZIA: No.
21 THE CHAIRMAN: Okay. Mr. DeMarco?
22 MR. DE MARCO: Nothing.
23 THE CHAIRMAN: Well, your application
24 answers, to my satisfaction, the five part test
25 sufficiently. The only item I have is a motion

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2 to adjourn this matter for a resolution at the
3 next meeting; is there a second?
4 MR. DE MARCO: Second.
5 THE CHAIRMAN: Mr. DeMarco. All in
6 favor.
7 (All aye.)
8 THE CHAIRMAN: Thank you.
9 MR. IANNACITO: Thank you.
10 THE CHAIRMAN: Okay. The last item on
11 our calendar for tonight under new business is
12 330 White Plains Road.
13 MR. IANNACITO: Good evening, again.
14 John Iannacito, I’m an architect, and I’m
15 representing Cos-Jon LLC, the owners of the
16 subject property. We are proposing a one story
17 addition and a change of use to the existing
18 Type 1 food service establishment located at
19 330 White Plains Road.
20 The proposed scope of work will
21 include the following: It includes the removal
22 of an existing non-compliant structure at the
23 rear of the existing building, which is
24 highlighted here on the existing survey. It
25 also includes the construction of a new one

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2 story addition at the rear of the existing
3 structure, which is highlighted here on the
4 proposed plan. We’re also proposing to change
5 the use from a deli to a pizzeria. We’re
6 proposing exterior facade alterations and site
7 alterations including reconfiguration of the
8 existing parking lot and the addition of new
9 landscaping.
10 Here are the existing and proposed
11 floor plans. The existing structure is
12 currently 1,236 square feet and is used as a
13 deli. Here’s the existing ground floor plan
14 which was used as a storage and prep area, and
15 then existing first floor plan, which had a
16 small kitchen, small walk-in refrigerator, and
17 a small service counter for the deli. The
18 proposed addition will add 294 square feet and
19 will create additional space for a new walk-in
20 refrigerator and new handicapped accessible
21 toilet rooms. Currently, there are no toilet
22 rooms on the main floor of this building, so
23 we’re adding two new ones for the pizzeria use.
24 Here is the proposed plan with the new walk-in
25 refrigerator and two new toilet rooms in the

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addition, and then the existing footprint will
have the existing kitchen in the same location,
service counter, and a small interior dining
area. The proposed pizzeria will also have
seasonal outdoor dining, which will require an
additional special permit. Since there is an
existing hood in this structure, we are also
required an amendment to the existing special
permit for the Type 1 food service
establishment, and we've gone to the
preliminary review from the Planning Board
already with that.

When we look at the exterior, as far
as the changes on the exterior, on the front
we're going to increase the glass area and
create some folding doors so that the interior
and exterior could be open when the seasonal
dining is in use. We're also adding new
awnings and new signage. Here's the one story
addition at the rear, which will basically be
conscuded behind the existing structure and
probably not be seen from the street. That
will be clad in a HardiePlank siding, and then
on the side of the building facing the parking

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years ago. Also, the parking layout, the
existing backup aisle is much smaller than what
we're proposing and the existing cars need to
back out over the sidewalk and the
right-of-way. The proposed parking lot will
create a safer situation for both pedestrians
and vehicles.

We also with the application submitted
a written statement describing how we comply
with the special permit requirements. You all
don't have that. If you have any questions on that,
I'll be happy to answer that. That's it.
Thank you for your time. I'll be happy to
answer any questions.

THE CHAIRMAN: Mr. Iannacito, thank
you for your presentation. The board will now
open up for questions. Mr. Cahalin?

MR. CAHALIN: Yes. In the back of the
property -- because of the cold I drove by it a
couple of times and I didn't get out, to be
honest, I didn't walk around it, but what I
notice in the pictures it looks like there's
three propane tanks back there?

MR. IANNACITO: Yes.

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MR. CAHALIN: Are they being removed?

MR. IANNACITO: Yes, they are.

Currently, there is no gas in the building. We have a work order in with Con Edison and we're going to bring natural gas to the building, which probably won't happen until March, but we are removing the propane gas.

MR. CAHALIN: It's tough to make pizza without natural gas. That was one thing. The other thing is, are they going to improve the fencing or anything back there? The fence is horrible.

MR. IANNACITO: Yes. The entire fence is being replaced on the rear property line. We did submit a cut sheet of the fence. We're also creating -- we're also going to add some planting wherever we can. Initially, we had more planting. We were trying to keep the parking the same way but after reviewing it with the Planning Department, this layout works much better and is much safer, and we also get one additional parking space, which is great.

We are going to replace this entire fence and add some landscaping on the corner here and

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also some planters at the front along the sidewalk.

MR. CAHALIN: Okay. Thank you.

THE CHAIRMAN: Anything further, Mr. Cahalin?

MR. CAHALIN: No.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: The thing that bothers me about this location -- it always bothered me -- is parking. You sort of hit on it. It's basically a nightmare. When John was running it as the deli, you were taking your life in your hands when you parked there and when you walk past there. So you're obviously asking for a variance for the parking, how are you going to make it better and safer? Just expand on that for me.

MR. IANNACITO: This black line right here on the existing survey, that is the existing curb cut right now, which basically covers the entire parking lot and goes into the C-Town site. We're proposing to reduce that curb cut to 20 feet to come into the center of the parking lot, and then we're going to have

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them to park there after a certain hour.

MS. UHLE: They're before the Planning
Board right now for lighting.

THE CHAIRMAN: Mr. Nurzia?

MR. NURZIA: No further questions.

THE CHAIRMAN: Mr. DeMarco?

MR. DE MARCO: I have a question of
Ms. Uhle and Mr. Tudisco. Here's my question:

This application reminds me of an application
we heard a few years back where we were called
upon as a board to decide whether an applicant
was a fast food restaurant or not.

MS. UHLE: I love this question.

MR. DE MARCO: It was Panera;

remember?

MS. UHLE: Yes.

MR. DE MARCO: And I believe the issue
was -- I mean, the issue that we were called
upon to decide was whether the applicant was
proposing a fast food restaurant a hundred
yards away from this very same property. How
is this application different from that
application?

MS. UHLE: It's very different for two

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different reasons. One, after the Panera Bread
debacle, we rewrote the definitions. So we no
longer have -- previously, the fast food
definition was based on whether you got up and
ordered food at a counter --

MR. DE MARCO: Like a pizza shop.

MS. UHLE: Yes. Yes. Now the way
that our definitions are drafted, it doesn't
matter whether you have table service, whether
you order at a counter, whether somebody brings
it to you. The definition of a fast food
restaurant one of the primary aspects is
besides the fact that you're ordering at a
counter and it's from a preset menu that's
consistent, there have to be at least I think
it's seven others in the country. So you can
have essentially a fast food restaurant if it's
one or two or three of a kind. You can't have
it if it's a franchise essentially.

MR. DE MARCO: Okay. So that's the

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these type of applications, but I can see that
there is a light at the end of the tunnel here,
sort to speak, where it won't be abused or
necessary as we've seen in prior applications
with restaurants where they have to walk up a
hill to get to the place, it's not like that
here. That's all I have to say.
THE CHAIRMAN: Thank you for your
commentary, Mr. Cahalin. Mr. Miller?
MR. MILLER: No, I have no questions.
THE CHAIRMAN: Comments?
MR. MILLER: No comments. I'm going
to stay silent.
THE CHAIRMAN: Mr. Nurzia?
MR. NURZIA: No questions or comments.
THE CHAIRMAN: Mr. DeMarco?
MR. DE MARCO: No, thank you.
THE CHAIRMAN: My commentary -- I
could start with my comment before about the
parking and I think the application overall
addresses those parts of the test that are
applicable to an area variance, and again, we
give you an A for straightforwardness.
So I make a motion to adjourn this
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matter for resolution at the next meeting; is
there a second to my motion?
MR. DE MARCO: Second.
THE CHAIRMAN: Mr. DeMarco. All in
favor.
(All aye.)
MR. IANNACITO: Thank you.
THE CHAIRMAN: Thank you, Mr.
Iannacito, for your presentation.
Now I'm making a motion to adjourn our
meeting.
MR. MILLER: Mr. Chairman, before you
adjourn, I may have not been paying attention,
but I don't believe we approved the minutes.
MS. UHLE: I don't believe you did. I
don't have that in my notes.
THE CHAIRMAN: Anyone younger on this
board have a better memory than the old?
MR. TUDISCO: I don't believe you did
either.
MR. CAHALIN: I know you didn't.
MR. DE MARCO: Even if we did; we
should do it again.
THE CHAIRMAN: I make a motion to
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THE CHAIRMAN: Okay. I make an application to adjourn our meeting to February, which is after January; is there a second to my motion?

MR. CAHALIN: Second.

THE CHAIRMAN: All in favor.

(All aye.)

(Meeting adjourned.)

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CERTIFICATION

STATE OF NEW YORK )
 ) Ss.
COUNTY OF WESTCHESTER)

I, DINA M. MORGAN, Court Reporter and Notary Public within and for the County of Westchester, State of New York, do hereby certify:

That the above transcript was taken from a videotape of the actual hearing. I was not present for such hearing. The videotape was taken and transcribed by me to the best of my ability.

And, I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of January, 2018.

DINA M. MORGAN
Court Reporter

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