EASTCHESTER ZBA - 2/13/18

THE CHAIRMAN: Good evening. Welcome to the Town of Eastchester Zoning Board of Appeals meeting for February 13th, 2018. We start our meetings with the Pledge of Allegiance, so if you would please rise and face the flag. Whereupon the Pledge of Allegiance was said.

THE CHAIRMAN: Before I go through the roll, I will, as I do at each meeting, go through the ground rules very quickly. Firstly, we utilize Robert's Rules of Parliamentary Order.

Secondly, any item that is on first time, first time being heard, will not be decided tonight. As it's printed on every application package, first time on matters they're deliberated on. So anything being heard tonight for the first time will not be decided until March. Our calendar is usually out a year in advance. We meet nine times a year or generally the second Tuesday of every month excepting for July, August, and December.

In addition, any item that's on for...
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THE CHAIRMAN: Before we get to our resolutions, I make a motion to approve the minutes from the meeting -- not November, that would be January.

MS. UHLE: January 9th.

THE CHAIRMAN: January 9th. Is there a second to my motion?

MR. CAHALIN: I'll second.

THE CHAIRMAN: Mr. Cahalin. All in favor.

(All aye.)

THE CHAIRMAN: Okay. Item 1, 17-66 -- MS. UHLE: Excuse me. Could you just announce that Application 17-65 for 157 Montgomery Avenue has been adjourned?

THE CHAIRMAN: Thank you, Ms. Uhle, yes. Rather than wait until the end, if anyone is here on the application for 157 Montgomery Avenue, that's been adjourned to March 13th.

Yes, please.

MALE SPEAKER: This is the second time, right, that it's being postponed?

MS. UHLE: Yes, that's correct.

THE CHAIRMAN: It was adjourned last time as well, that's correct. Thank you, Mrs. Uhle. I apologize, you would have been sitting here if we had not told you in advance. That's adjourned. If you have an ongoing interest in this matter, you may want to call and see if it is on next time as well so you don't have to come in if it's not on.

MALE SPEAKER: The next time is March 13th?

THE CHAIRMAN: March 13th.

MALE SPEAKER: Thank you very much.

THE CHAIRMAN: Thank you.

MR. MILLER: Mr. Chairman?

THE CHAIRMAN: Yes.

MR. MILLER: Just for clarification, when you indicated 16-14, 600 White Plains Road, I believe the applicant said present. I don't know if he indicated whether he was going forward or what.

APPLICANT: Yes, we plan on proceeding.

MR. MILLER: Thank you.

THE CHAIRMAN: Thank you and thank you.
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MS. UHLE: But that's not meaningful to people listening.

THE CHAIRMAN: Thank you very much.

MS. UHLE: You're welcome.

THE CHAIRMAN: Item 4, 17-55, 330 White Plains Road, I make a motion it adopt a resolution approving Application 17-55; is there a second to my motion?

MR. DE MARCO: I'll second.

THE CHAIRMAN: Mr. DeMarco. Mr. Cahalin, vote.

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. That's been approved five/nothing.

Okay, now on to old business. While the applicant is getting prepared --

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MALE SPEAKER: Goodnight.

THE CHAIRMAN: Goodnight. Okay, so just as a point of order, your additional submission has been received and the board has reviewed it. I just want to see whether the board has any further questions before we proceed further.

Mr. Cahalin, do you have any questions on the materials that were recently received?

MR. CAHALIN: No.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: Not that were received, no.

THE CHAIRMAN: Mr. Nurzia?

MR. NURZIA: No.

THE CHAIRMAN: Mr. DeMarco?

MR. DE MARCO: No.

THE CHAIRMAN: I have a motion, but before I make that motion I just want you to be aware that if the motion upholds the Building Department's determination, are you going to proceed with your application for the second part of that?

MR. NAPIOR: Certainly.

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2 existing non-conforming use is as a single
family residence. The applicant -- I put in
the financial history, but I'll just go through
5 it. The applicant purchased the site for
6 $400,000, made about a hundred thousand dollars
7 in property upgrades, and in order to demolish
8 the existing structure and remove the
9 underground storage tanks and turn it into a
10 residential site, it would be fairly cost
11 prohibitive. Sales prices in the area just
12 based on looking at Zillow for single family
13 homes range from like 500 to $900,000. We put
14 forth to turn the site into a single family
15 residence it would probably cost in the range
16 of a million bucks, so it's a losing
17 proposition.
18 I could certainly go through the other
19 factors of the test bit I think that's the most
20 important to the board's analysis. So I could
21 start there and see if you guys have any
22 questions.
23 THE CHAIRMAN: At this time, I'll open
24 it up to the board for any questions and after
25 the public hearing maybe questions and

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1 comments.
2 Mr. Cahalin, any questions?
3 MR. CAHALIN: None at this time.
4 THE CHAIRMAN: Mr. Miller?
5 MR MILLER: No, I just have one
6 comment. Just to pigeon toe on what you said,
7 I think to even consider turning it into
8 residential you would be well into some
9 significant expenses for testing for hazardous
10 substances. You would need to start at phase
11 two.
12 MR. NAPIOR: Correct, and then even if
13 I could get a clean site, I would have to
14 import a lot of fill to fill in all the gaping
15 holes in the ground.
16 THE CHAIRMAN: Mr. Nurzia?
17 MR. NURZIA: No, no questions.
18 THE CHAIRMAN: Mr. DeMarco?
19 MR. DE MARCO: No questions.
20 THE CHAIRMAN: I'm not going to use
21 the term synthetic, but I think there's some
22 reason to your argument as to the cost
23 effectiveness in light of what the permitted
24 use is. My only question would be that the

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property and not pandemic to the neighborhood. I put before the board I'm not aware of any other existing non-conforming gas stations in your town in the residential district, so it certainly is unique to this site in that it's a non-conforming use that's currently existing. Therefore, it's unique to this property and not rampant throughout the town.

The next prong is whether it would alter the essential character of the neighborhood. It already operates as a gas station. What we're asking for is to occupy the balance of the building. We're not changing the footprint of the building at all. Essentially, the nature of the business will stay exactly the same. There's a small convenience store already on site, so really it's a continuation of the existing use of the site. In addition, per the requirements of the applicant's application before the Planning Board, there will be some screening upgrades and improvements throughout the site where he can accommodate those changes given the constraints on the property. So in essence, it

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will stay the same and there will be some improvements to the surrounding neighbors. Whether the alleged hardship has been self-created. Obviously, that is -- to have constructive knowledge of the zoning controls and what's in place concerning the property almost every area variance and use variance is a self-created hardship unless the zoning is changed on you. That in and of itself isn't necessarily a death nail to an application.

As I said before, the applicant continues to pay property taxes. He anticipated being able to use the space and not just have to support, you know, two thirds of an empty building to run his gas station.

We also have area variances to go through, so I don't know if you would like me to touch on those as well?

THE CHAIRMAN: I think we will. Some of the items that we are concerned about really are -- or at least I am -- are more applicable to planning, but I did have one question about the actual building. Just to be clear, refresh my recollection, you're not going beyond the

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THE CHAIRMAN: Fair enough. So yes, why don't you go through those use variances.

MR. NAPIOR: So there are a handful of area variances that are also required.

Section 9M2 of the code requires a front landscaped area. It's rather vague. It doesn't give specifics on that. So we are proposing new plantings where feasible. The front yard will remain paved parking and a filling area for the pumps. So we are requesting a variance from the requirement to maintain a front landscaped area or whatever that means.

Transition buffer area, Section 9M3 of the code, requires and evergreen buffer 10 feet in width from the adjoining one or two family

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residential district. The applicant is proposing to maintain the existing retaining wall and the fence on the northern property line -- so along this side -- and guardrail on the southern property line. The northern property line is only 14 and a half feet off the edge of the building, so to have a 10 foot buffer of evergreen plantings that impede on circulation around the back of the building, which is part of and during the Planning Board process I believe the town retained a traffic consultant, I know the client was required to retain a traffic consultant, and the net result of that was to have traffic circulation on site coming in here, so one way in on the southerly curb cut, parking in front where they could fuel and exit here, and then parking in the rear with traffic circulating around the building in a counterclockwise direction. So similarly to this setback off the guardrail will be 15 feet, with 10 feet of evergreen planting you wouldn't have enough room to maneuver a car around the perimeter of the building.

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Section 13-C-7E, perimeter landscaped area, requires a landscaped area around the perimeter of any parking area. The applicant, again, is proposing to maintain the existing guardrail. There is some parking on this edge of the property here as well as over here. So we are requesting, again for the same reasons, we don't have the real estates to maintain any significant landscaping buffers around those areas. All this is essentially proposed to remain as existing. The applicant is adding some planting along the front here, as well as in the front corner here where he could get it in without disrupting the traffic flow on the property.

So those are the three area variances that we will need. They all deal with perimeter plantings.

THE CHAIRPERSON: At this time, does the board have any questions of the applicant?

Mr. Cahalin?

MR. CAHALIN: No.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: No.

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THE CHAIRMAN: Mr. Nurzia?

MR. NURZIA: No.

THE CHAIRMAN: Mr. DeMarco?

MR. DE MARCO: No.

THE CHAIRMAN: I can't speak for the entire board, but I reviewed the application from its beginning with the understanding that we may wind up hearing the use variance parts of your application, so I got a pretty good understanding of where you're coming from in your argument.

Mrs. Uhle, as point of order, would there be a reason to maintain the public hearing as open since we've heard both the use and area variance aspects of the application?

MS. UHLE: I don't think you need to keep it open unless you plan to come back and have further discussion with the applicant. If you were going to come back with a resolution, then I think you obviously should close it.

THE CHAIRMAN: I'm speaking for myself, but I think I want to get the flavor from board here, because I think I'm ready as a board member to come back for a resolution.

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THE CHAIRMAN: Mr. DeMarco. All in favor.

(All aye.)

THE CHAIRMAN: Okay. You will be back for a resolution at the next meeting.

MR. NAPIOR: Thank you all.

THE CHAIRMAN: Thank you. Last item, new business, 6, this is 735 White Plains Road.

MR. FAUSTINI: Good evening. My name is Nicholas Faustini. I'm here on behalf of John Cotugno, Architect, as well as Wilmar Properties, which is the owner of the building.

The proposed work includes change of use from a dental office to a retail space. The building is composed of three spaces right now, one personal service establishment, a retail space, as well as a dental office. Our proposal here is changing the dental office to a retail space, which necessitates one additional parking space. When you look through our zoning schedule, you'll see that 25 spaces are required for the present use and five only currently exist. So our proposed use changing the dental office to a retail space would require 26 spaces where five only exist, and that would require one additional parking space variance.

Also, we are at 2,998 square feet of combined personal service as well as retail space, which is below the threshold of 3,000 square feet where a loading space is required. Once we convert the dental office to a retail space, now we're above that 3,000 square foot threshold and do require a loading space.

As you can see, our property is quite small and it's really just the five parking spaces in the back. There really isn't space to add additional parking or a loading space.

The building was built as a retail space with this number of parking spaces in the 1950's. The middle retail space that we're talking about tonight or the proposed retail space was originally a retail space, it was converted to a dental office in the Eighties. So we're here tonight just to ask to restore it to its original use as three retail establishments.

We understand that the parking is non-conforming, but it's really a small question. That arrangement, is that a handshake agreement or is there some formal agreement?

MR. FAUSTINI: It's essentially a handshake agreement.

MR. NURZIA: Okay. No other questions.

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THE CHAIRMAN: Mr. DeMarco?

MR. DE MARCO: No questions.

THE CHAIRMAN: I don't have anything at this time.

I make a motion to open this matter to a public hearing; is there a second to my motion?

MR. CAHALIN: I'll second that.

THE COURT: Mr. Cahalin. All in favor.

(All aye.)

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

(No comments.)

THE CHAIRMAN: Going once, going twice. Seeing no one, I'll make a motion to close this application for the public to be heard on it; is there a second to my motion?

MR. DE MARCO: Second.

THE CHAIRMAN: Mr. DeMarco. All favor.

(All aye.)

THE CHAIRMAN: Back to the board. Any questions or comments; Mr. Cahalin?

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MR. CAHALIN: None.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: None.

THE CHAIRMAN: Mr. Nurzia?

MR. NURZIA: No.

THE CHAIRMAN: Mr. DeMarco?

MR. DE MARCO: Nothing.

THE CHAIRMAN: I don't have anything either. Your application meets the test for the variance. It's very basic and straightforward. I have nothing further. I do have a motion to adjourn this matter for resolution at the next meeting; is there a second?

MR. MILLER: Second.

THE CHAIRMAN: Mr. Miller. All in favor.

(All aye.)

THE CHAIRMAN: Thank you.

MR. FAUSTINI: Have a good evening.

THE CHAIRMAN: You too. Okay. Having no further business, I make a motion to adjourn this February meeting of the Zoning Board of Appeals for the town of Eastchester; second to

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MAINTENANCE OF TUNNEL, OFF-PIECE 112419

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