EASTCHESTER ZBA - 11/10/15

The Chairman: Good evening. I would like to welcome everyone to the town of Eastchester Zoning Board of Appeals meeting for November 10, 2015. Before we start the meeting, we are going to start with the Pledge of Allegiance, please. If you could rise. (Whereupon the Pledge of Allegiance was said.)

The Chairman: Okay. Before I call the roll, I would like to remind the public that's here and the listening public, that anyone who's contemplating an application before this board, as clearly denoted on each application, applications are not decided the first time they're heard. So any application on for the first time tonight will not be decided upon until January. So anyone contemplating an application when you pick up your application, you'll see that's noted on it.

So I'm going to call the roll. We have three items that are on for resolution; 15-43, 79 Maple Street; 15-45, 152 Summerfield Street; and 15-62, 7 Howard Avenue. Those will...
EASTCHESTER ZBA - 11/10/15

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 denied five nothing.

Application 15-62, 7 Howard Avenue. I make a motion to adopt a resolution to approve this application; is there a second to that motion?

MR. CAHALIN: I’ll second that.

THE CHAIRMAN: By Mr. Cahalin. All in favor.

(All aye.)

THE CHAIRMAN: To the vote. Mr. Cahalin.

MR. CAHALIN: I vote yes for the approval.

THE CHAIRMAN: Mr. Miller.

MR. MILLER: I vote yes for the approval.

THE CHAIRMAN: Mr. Nurzia.

DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

We are proposing the construction of a roof overhang at the front entrance of the existing single family residence located at 36 Park Avenue. I’ve highlighted the area in question in yellow on the site plan and on the floor plans and also on the elevations just to clear it up.

An application on this property was presented to the Zoning Board back in March of 2015. Area variances were granted for the construction of second story additions over the existing footprint. During the course of construction, the owner decided it would be beneficial to have a covered entrance and since the frame man was working on the addition that was working on addition that was approved previous, he decided to go ahead and frame the roof overhang over the front entrance.

The roof overhang is constructed over an existing landing, which currently sits closer to the property line than the roof overhang, and it will be supported by the brackets not columns. The roof overhang will create an increase to the existing.

DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

non-conforming front and side yard setbacks and we are requesting two area variances for the overhang.

The first is a front yard setback.
The front yard setback to the overhang is 6.4 feet and the required is 26 feet, a deficiency of 19.6 feet or 75.4 percent. The second is for a side yard setback. The side yard setback to the proposed overhang is 5.5 feet where the required is 6 feet, a deficiency of .5 feet or 8.3 percent.

Thank you for your time, and I'm happy to answer any questions you might have.

THE CHAIRMAN: Thank you, Mr. Iannacito. Before we open the application for the public hearing, I would like to get any questions or comments from the board. Mr. Cahalin?

MR. CAHALIN: Yes, I’ll start off.

Mr. Iannacito, are we supposed to believe that this wasn’t considered until the framer was on site? Are we really supposed to believe that?

You’re insulting my intelligence.

MR. IANNACITO: No. I had a.

DINA M. MORGAN, REPORTER
EASTCHESTER ZBA - 11/10/15

1 conversation with the owner -- I had a
2 conversation with the owner before he built it,
3 and I told him he would require a variance to
4 build an overhand.
5
6 MR. CAHALIN: But he went ahead and
7 built it?
8
9 MR. IANNACITO: And he went ahead and
10 framed it since the framer was there. He said
11 it would be easier for him to knock it down
12 rather than build it later. So he understands
13 that if the application is denied, he will
14 remove it.
15
16 MR. CAHALIN: I just don't, you
17 know --
18
19 MR. IANNACITO: That's the answer I
20 got from him. We discussed it before he built
21 it.
22
23 MR. CAHALIN: You're really taking
24 advantage. Really. Mr. Chairman, I feel we
25 should just have him take it down.
26
27 THE CHAIRMAN: Okay. Anything
28 further?
29
30 MR. CAHALIN: That's it.
31
32 THE CHAIRMAN: Mr. Miller, any
33 DINAM M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

1 comments or questions of this application?
2
3 MR. MILLER: I have to be honest, I'm
4 growing leery of contractors doing stuff they
5 know they can't do. This has to be the
6 hundredth time I've heard this same story.
7 It's not the homeowner's fault. They're
8 innocent most of the times. But the contractor
9 goes ahead and does something he knows he can't
10 do. He knows he needs a variance and he does
11 it, and then he comes to the board putting the
12 homeowners in an awkward position and putting
13 you also in an awkward position of having to
14 ask us to grant permission. I'm being quite
15 honest, I share Mr. Cahalin's view on this.
16 I'm tired of hearing this. I mean, the poor
17 homeowners are now sitting here coming to us
18 for a variance.
19
20 MR. IANNACITO: Well, the homeowner
21 here and the contractor are the same person.
22
23 MR. MILLER: Well, that's even worse.
24
25 Then I have zero tolerance for it. I have
26 absolutely no tolerance for it.
27
28 MR. CAHALIN: We appreciate the
29 honesty, John, we do.
30
31 DINAM M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

1 MR. MILLER: I was trying to give you
2 an out here.
3
4 MR. CAHALIN: You're too nice, Joe.
5 THE CHAIRMAN: Other than that, Mrs.
6 Lincoln, did you enjoy the show?
7
8 MR. MILLER: I would like the
9 contractor to be here who decided to do this.
10 Is he here?
11
12 MR. IANNACITO: He's not here this
13 evening.
14
15 MR. MILLER: Well, I'm shocked by
16 that. It seems like every time a pool guy puts
17 in a pool without a variance, he doesn't show
18 up. You know what, I would like the owner and
19 the contractor to be standing there so we could
20 ask him why he did it knowing he didn't have
21 the right to do it, if that's permissible.
22
23 THE CHAIRMAN: We could make a motion
24 for that.
25
26 MR. MILLER: I would like to make a
27 motion for that.
28
29 THE CHAIRMAN: I would like to hear
30 from the rest of the board firstly.
31
32 MR. MILLER: Thank you.
33 DINAM M. MORGAN, REPORTER

THE CHAIRMAN: Mr. DeMarco?
12 MR. DE MARCO: I have no questions.
13
14 THE CHAIRMAN: That's an old maxim of
15 the Jesuit education; it's easier to ask for
16 forgiveness than permission.
17
18 I take it back a step. The portico
19 itself is on a structure that was already legal
20 non-conforming?
21
22 MR. IANNACITO: Yes. The front of the
23 house currently sits 10.9 feet from the front
24 property line and the existing landing
25 currently sits 6 feet from the property line.
26
27 THE CHAIRMAN: Okay. So what I'm
28 going to do is make a motion to open the public
29 hearing; is there a second?
30
31 DINAM M. MORGAN, REPORTER
MR. CAHALIN: Second.

THE CHAIRMAN: Second by Mr. Cahalin.

MR. DE MARCO: John, let me ask you a question.

THE CHAIRMAN: Sure.

MR. DE MARCO: If the variance is denied, the homeowner has to take down the --

MR. IANNACITO: Just the overhang.

MR. DE MARCO: And what's the cost of that, approximately; if you know?

MR. IANNACITO: Probably the day labor and they're cutting a couple of members off. I think the cost to frame it outweighs the cost of removing it.

MR. DE MARCO: Right. And what would that be?

MR. IANNACITO: A portico like that, maybe two grand.

THE CHAIRMAN: Anything further, Mr. DeMarco?

MR. DE MARCO: No. Thank you.

MR. IANNACITO: The Building Department could also look at this as a legal at this point and fine the

DINA M. MORGAN, REPORTER

owner/contractor.

THE CHAIRMAN: That's not before this tribunal at this time. We're addressing --

MR. IANNACITO: Just to address -- I understand that he was wrong for putting it up before, but as an architect I think aesthetically I think it helps the mass of the building. So for that reason I think it's a good thing to have the overhang there, but it was definitely wrong.

MR. CAHALIN: If this was back in April, I would be with you a hundred percent.

MR. IANNACITO: And we could have had it on the previous application.

MR. CAHALIN: Absolutely. It wouldn't have been an issue I don't think.

MR. IANNACITO: Correct. If he had not built it, it probably wouldn't have been an issue either.

MR. CAHALIN: If you go down the street, it's not the first one that's on the street.

MR. IANNACITO: Yes.

MR. DE MARCO: Were plans prepared by

DINA M. MORGAN, REPORTER
EASTCHESTER ZBA - 11/10/15

motion to adjourn the application to the January meeting, at which time the applicant and the contractor can be here for further questions. Is that something the board would entertain?

MR. CAHALIN: Sure.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: Yes.

THE CHAIRMAN: Mr. Nurzia?

MR. NURZIA: Sure.

THE CHAIRMAN: Mr. DeMarco?

MR. DE MARCO: Sure.

THE CHAIRMAN: I will make such a motion. Motion to move this application to the January hearing, at which time we would ask that the applicant and the contractor be present.

MS. UHLE: You don't want to keep the public hearing open for that?

THE CHAIRMAN: We'll have to reopen it at that time.

MS. UHLE: You just closed it. You can't reopen it at that time unless you reopen it now.

DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

Mr. Cahalin: I'll make a motion to reopen it.

THE CHAIRMAN: I'll second that motion. Thank you, Mrs. Uhle. All in favor.

(Aye.)

THE CHAIRMAN: So the public hearing is now going to remain open, and we will see the applicant in the new year.

Mr. Iannacito: Okay.

THE CHAIRMAN: Thank you, Mr. Iannacito.

Mr. Iannacito: Thank you.

THE CHAIRMAN: Okay. The final item on our docket tonight, 15-73, JC Auto Repair, 164 Summerfield Street.

Mr. Steinmetz: Good evening, Mr. Chairman, members of the board. David Steinmetz from the law firm of Zaron & Steinmetz representing JC Auto this evening. Good to be back before the board and to see all of you. With me this evening, Mr. Chairman and members of board, my clients from JC Auto, John and Jeff Casale; numerous of their employees are here this evening as well; our project.

DINA M. MORGAN, REPORTER
EASTCHESTER ZBA - 11/10/15

Summerfield. He rented that property in '76 and operated a three bay garage. He purchased that property six years later in 1982. So from 1976 forward, John Casale has been operating an automotive repair business, saw certainly not only what was happening on his own property, what was happening on the adjacent property, 164 Summerfield.

In 1982, he actually expanded his business on 166, and there's some documentation in the Building Department's records about permits being issued in connection with the operation of a auto repair facility on the property. In fact, this matter or a matter was presented to the Zoning Board of Appeals in the Eighties, as best we can reconstruct the records, and I know we're going to hear from Ms. Uhle tonight in terms of what the Planning and Building Department has found.

In 1988, JC purchased the adjacent property. 1988 they purchased 164 Summerfield from AB Wolle. Why did John do that? John did that not because he thought it would be fun to own another piece of property, he did that.

DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

because he needed to continue the operation of his business, he needed to expand the physical area and the area immediately adjacent to his property had previously for decades been used for automotive repair. So he purchased it thinking, I'm going to buy it, I'm going to continue my automotive repair, and, in fact, the record shows he cut a penetration in the dividing wall between 166 and 164, and it allowed him to more freely operate between the two properties. So both properties prior to that had been utilized for automotive repair, but from that point forward they were being utilized for automotive repair exclusively by JC.

Prior to 1988, and subsequently, our position is 164 was an automotive repair land use. It may not have been designated as such, but it was a praeexisting non-conforming use.

It's exactly why folks like Angelo DeLucia will tell us that for the last fifty, sixty years, to the best of his recollection, he has seen automotive repair occurring on that property openly, notoriously. Nobody was hiding the

DINA M. MORGAN, REPORTER
EASTCHESTER ZBA - 11/10/15
25
2 stopping you, but it wasn't clear.
3 MR. STEINMETZ: I want the whole board
4 to be clear. In effect -- and let's use that
5 as a simple jumping off point -- to the extent
6 that 166 is a preexisting legal non-conforming
7 use, and we're really here tonight talking
8 about this yellow area which is where the
9 penetration occurred and this portion of the
10 old AB Wolle property, the issue for me is: Is
11 that a continuation of a preexisting legal
12 non-conforming use? Is the yellow area an area
13 that previously was utilized in much the same
14 fashion as 166? If so, then the question for
15 you is simply: Is this a continuation of a
16 preexisting, non-conforming use? The town of
17 Eastchester concedes there is a preexisting
18 non-conforming use here. I don't think it's a
19 big stretch for the town of Eastchester through
20 your board to then interpret, okay, if there
21 was a preexisting non-conforming use on 166,
22 let's take a look at what was happening
23 historically at 164.
24 So we're here tonight to delve into
25 164. I don't think you're going hear any kind
26 DINA M. MORGAN, REPORTER
27

EASTCHESTER ZBA - 11/10/15
1
2 two buildings, I worked at the lot next door,
3 and that's where it was years ago. We just
4 continued the same thing throughout the years.
5 MR. STEINMETZ: So unlike the prior
6 application, there's not a direct connection,
7 but watching you analyze and your reaction to
8 the prior application, this is not something,
9 folks, where he kind of just showed up and
10 started doing something recently. The Casale
11 family has been operating for decades. The AB
12 Wolle family of that property goes back five
13 decades. I can't speak to that, but Mr.
14 DeLucia, who's 93 years old, could speak to
15 what was occurring in Eastchester in the
16 Forties and the Fifties and Sixties. So I
17 don't think it's a big stretch for your board
18 to look at the facts and circumstances.
19 There's a reason the town of
20 Eastchester Building Department in 1985 granted
21 some kind of Zoning Board application in
22 connection with the expansion of the automotive
23 use and never even commented on the legal
24 status. It was a preexisting non-conforming
25 use, and the folks sitting on the board at that
26 DINA M. MORGAN, REPORTER
27

EASTCHESTER ZBA - 11/10/15
1
2 of airtight, wonderful, clear record from the
3 Building Department that says, we know exactly
4 how it was being used in the Twenties and the
5 Thirties and the Forties and forward. In fact,
6 I think the record is sparse. So in a
7 situation like that, we turn to the community.
8 We turn to the folks who have lived here, we
9 turn to the folks who have worked here for
10 50 years, and it's of critical importance that
11 those who have lived in and around the area
12 have observed automotive repair occur in that
13 property.
14 We could pursue this matter as use
15 variance. I don't think we need to pursue this
16 matter as a use variance, because it's an
17 automotive facility. It's been an automotive
18 facility for -- John, you've been operating now
19 for what?
20 MR. CASALE: 41 years.
21 MR. STEINMETZ: 41 years. And you've
22 been operating at 164 for?
23 MR. CASALE: Probably for the last --
24 MR. STEINMETZ: Come forward.
25 MR. CASALE: -- I worked between the
26 DINA M. MORGAN, REPORTER
EASTCHESTER ZBA - 11/10/15

MR. IANNACITO: Good evening, again.
I'm going to start with this sketch here first
and just briefly sum up the history of the
property.

So outlined here in purple was the
original parcel dating back to the 1940's.
Originally, that one big property had this one
building, which is highlighted in green, which
was built in 1946, and the building -- the use
that was in the Building Department file was
for a roof and sheet metal plant.

In 1950, this yellow area here was
constructed as an addition to the roof and
sheet metal plant as a garage for storage of
vehicles.

In 1972, this addition was constructed
again with the same use of the roof and sheet
metal plant, and again, it was used as a shop
and garage for that use.

In 1982, the one parcel was subdivided
into three parcels, which this was 164, 166,
and then this one is 188 Summerfield, which is
also developed, but I didn't show the building.

DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

permit that somehow never went away, and
then the --

THE CHAIRMAN: Mr. Iannacito, wasn't
that permit used as a temporary use due to a
fire?

MR. IANNACITO: Yes. I'm sure there
was a time that it expired. I didn't get to
see the file if there was an actual date of
when it expired. I believe from that point on
it's been used as the auto repair.

THE CHAIRMAN: Okay.

MR. IANNACITO: And then this other
portion of the structure is currently used as a
bakery and catering facility where they
manufacture on site and then send out to
wholesale places for sale.

MR. STEINMETZ: So if the board would
allow us, if we could just ask Mr. DeLucia --

THE CHAIRMAN: Yes, please.

MR. STEINMETZ: Mr. Chairman, members
of the board, Angelo DeLucia.

MR. DELUCIA: Hi. My name is Angelo
DeLucia. I am 93 years old working on 94. I
live in the area all my life and -- what else

DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

was I going to say? You have to excuse me, I'm
very slow.

MR. DE MARCO: Mr. DeLucia, don't be
nervous. Take your time. Don't worry about
it.

MR. DELUCIA: I know John a long time
and what more could I say? I know the prior
owner was Freddie Orsinger (Ph.) and then after
him was AB Wolle, and they each had mechanics
doing repair work in the building. I was a
young man then, but I remember. As I said, I
live in the area all my life, and I think John
is doing a great job of what he has there,
keeping in order and clean. That's all I could
say.

THE CHAIRMAN: Thank you for your
time.

MR. STEINMETZ: Mr. DeLucia, could I
just ask you one question before you sit down?

MR. DELUCIA: Sure.

MR. STEINMETZ: Could you just tell
me, this is that portion that John has the
smaller area of his shop?

MR. DELUCIA: Yes, right.

DINA M. MORGAN, REPORTER
EASTCHESTER ZBA - 11/10/15

Mr. Steinmetz: In this area, to the
best of your recollection, during what years,
what decades do you recall automotive repair
occurring in that area?

Mr. Delucia: I was riding a bicycle.
Mr. Steinmetz: Let the record -- at
the beginning when you were riding a bicycle,
not last week when you were riding?

The Chairman: Be careful, there are
four attorneys on this board, we'll ask if you
ride a bike now.

Mr. Steinmetz: I saw him out there
last week.

The Chairman: I appreciate your time
and your memory and your dedication to the
community as well. Thank you, Mr. DeLucia.

Mr. Camillone: Good evening. My name
is Nick Camillone. I live at 13 Alba Place in
the town of Eastchester. Just one little
comment off the record.

The Chairman: Actually, everything is
on the record. You're on television as well.

This is reality TV.

Mr. Camillone: I just want to honor
DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

Mr. Moses. He passed away this weekend. He
was a very influential part of the town of
Eastchester. I just had come from the house.
They are sitting Shiva, and I thought I might
hear something before I come in here. I think
the board should recognize him as an
outstanding citizen in the town of Eastchester,
and this was his Eastchester Eastchester,
avways known as that. He gave his heart for
this town. So I just thought I would make that
comment.

The Chairman: He sure did.

Mr. Camillone: As far as the Casales
are concerned, I'm 73 going to be 74, and I got
out of college in 1964, and my dad was doing a
lot of work in the area. We worked for AB
Wolle, and AB Wolle had the building on the
corner and had the lot next door, and we did
electrical work, and we actually serviced that
building where he was repairing his
automobiles. Later we went on to do the
renovation for the Casales in the new building.
We maintained the building that he bought
afterward. We would repair lighting and
DINA M. MORGAN, REPORTER
for the temporary permit in 1999? If your position is that AB Wolle serviced their vehicles there since Mr. DeLucia was a young man, why the need -- someone thought in 1999, hey, if we want to continue doing work while the reconstruction on 166 -- 166?

MR. STEINMETZ: Yes.

MR. DE MARCO: -- is going on, we need to get a temporary permit for 164.

MR. STEINMETZ: Correct.

MR. DE MARCO: Why?

MR. STEINMETZ: I think it's an excellent question, and I pondered the same thing, and I'm not going to give you a great answer on your specific question, but I'm going to use your question I think to go up a little higher. I can't tell you why the Building Department in the town of Eastchester in '85 or --

MR. DE MARCO: '99.

MR. STEINMETZ: -- '99 required the temporary permit. I found it fascinating, though, that there is absolutely nothing in the record where the town of Eastchester required

DINA M. MORGAN, REPORTER

them not just to get this temporary permit but to get a temporary use variance or a temporary interpretation. There is nothing in the record that indicates that the Building Department was concerned about the lawfulness of the use. There was something about -- it's a durational limitation. So all I see is the town of Eastchester Building Department saying, let's make the guy get a permit, or maybe he did it, you know, and John you could probably speak to it as to why he did it. As my submission indicates, he did it out of an abundance of caution. He knew what had been happening prior to 1999. He had been there for 23 years at that point. So nobody could tell us what was happening in that space better than John because John worked next door for 23 years. He has a fire. He's not hiding the fact that he wants to use that space. He comes before the government and the government says, no problem, we're going to give you this temporary permit. No one said to John Casale in 1999 -- quite frankly, no one has said it since '76 -- hey, John, it's not lawful to repair vehicles at 164
EASTCHESTER ZBA - 11/10/15

1 taking a permit to put new floors in so I could
2 put lifts in there, because I don't want
3 somebody to go under a car and it fall on them.
4 I had no idea that thing even existed. Again,
5 if you went through a major problem like I did,
6 I lost everything I ever built, I worked all my
7 life, I didn't even think about it. If you
8 look on the permit, it says a value of $900.
9 It was to put a floor.
10 Like I said, I would have done
11 anything that would make it legal. I'm not
12 here to hurt Eastchester. I'm here to earn a
13 living. Basically what the attorney --
14 Mr. De Marco: I'm not insinuating
15 that you are. I just had a question.
16 Mr. Casale: It was not a thought in
17 my mind at the time why I had the permit. The
18 last thing I was worried about was the permit,
19 because I went through a major disaster because
20 of my own stupidity. I only had an $8,000
21 coverage for my building, the property inside.
22 I went back to work and I'm still paying for it
23 and I'm still working.
24 Mr. Steinmetz: Before we sit,
25 Dina M. Morgan, Reporter

EASTCHESTER ZBA - 11/10/15

42

1 initially, can you just state for the record,
2 John, your understanding of what took place in
3 that space, 164, from 1976 forward? Just if
4 you would state that.
5 Mr. Casale: It was general use. They
6 used it to maintain their truck. They had a
7 mechanic. His name was Mack. He just passed
8 away about a year ago. They had another
9 mechanic that worked for them who was a fireman
10 in the town of -- in the village of Scarsdale
11 that he worked there part-time. I serviced the
12 vehicles for Mr. Wolle. Because I had a
13 smaller shop before I started in '76, I,
14 personally, worked in there building on the
15 ground below it. It was general use. They put
16 electrical panels together, we put engines
17 together, we did transmissions, we did front
18 end work. We did whatever needed to be used.
19 When I purchased the property,
20 honestly, I didn't know anything so I continued
21 to do use it for the same use. I actually
22 don't do any repairs there. The only repairs
23 that were done there was by people that use my
24 shop, okay, not even for me to get paid. That
25 Dina M. Morgan, Reporter

EASTCHESTER ZBA - 11/10/15

43

1 area for me is more for prepping the work, I do
2 light work, I do service. It is not equipped
3 to do repairs. I have even my time machine, my
4 balancing machine, and that's how we operate.
5 Mr. Steinmetz: Let me ask a question,
6 John, on that last point for the board: If the
7 board wanted to impose certain conditions of
8 what you could do --
9 Mr. Casale: I --
10 Mr. Steinmetz: Let me finish. What
11 you could do in that space and create a
12 distinction between what you do in your primary
13 shop versus --
14 Mr. Casale: I would be glad to talk
15 about that. Not a problem.
16 Mr. Steinmetz: We're happy to answer
17 any questions and to listen to the public.
18 The Chairman: Sure. I'm going to
19 yield the floor in a moment to Mrs. Uhle, but I
20 just want to be clear on something and the
21 tenor and the way this meeting is going.
22 People like Mr. Casale are exactly the kind of
23 people we want in our community, who are
24 committed, that doesn't seem to have a record
25 Dina M. Morgan, Reporter

EASTCHESTER ZBA - 11/10/15

44

1 that has any negative impact on the business
2 he's been running. Your application is
3 something a little bit different. It's an
4 interpretation. Although I certainly can't
5 opine on what use variance if it came before me
6 how I would decide upon that, we're asking
7 these questions that sound negative for a
8 specific reason. I have not seen anything in
9 the record that reflects that at any time that
10 was a legal non-conforming use, meaning that
11 the zoning on that lot was never an automotive
12 and that's why we're asking those questions,
13 because you're also stating that somehow the
14 town had a legal obligation to let him know he
15 was not doing the right thing, and that's
16 inaccurate. The town doesn't have that
17 obligation.
18 Mr. Steinmetz: Mr. Chairman, again, I
19 believe -- and if I did, let's clear it up --
20 the town has no legal obligation. I did not --
21 I don't believe the record would play out that
22 I used the phrase "the town has a legal
23 obligation." However, I think it is true that
24 there is no indication in the record that the
25 Dina M. Morgan, Reporter
EASTCHESTER ZBA - 11/10/15

town called into question. So to the extent
that zoning is in derogation of common law
property rights, and if there is any confusion
in the record I think it's clear black letter
zoning law that it should be construed in favor
of the property owner and against the
municipality.

In this situation, the fact that we
can't find anything where the town of seemingly
authorizing a new automotive repair
operation, and, in fact, it appears to have
granted a permit for it to at least have
occurred temporarily, I think the record, and
we could disagree, but I'll tell you my
position is your town records show I think
your town's people show that for five decades
that property has been used as an automotive
repair facility.

THE CHAIRMAN: Right, and what I'm
asking you is, I see the factual basis for that
opinion, I'm looking for some, since you're
looking for an interpretation, a legal basis to
support the opinion that it's a legal
non-conforming use. That's where I'm heading.

DINA M. MORGAN, REPORTER

---

EASTCHESTER ZBA - 11/10/15

The progression of uses at 164
Summerfield Street, and the record seems that
for decades it functioned as a roof and sheet
metal plant or as a HVAC business. I'm going
to give you an analogy. There is no evidence
in the record that it was ever permitted as an
auto repair shop. I disagree with Mr.
Steinmetz with regard to saying because someone
services their own vehicles relative to an
individual business, that that's the same thing
as putting up a shingle and servicing other
people's vehicles. An example would be AMHAC.
They have garages, they're certainly allowed to
service their own vehicles within their garages
on their property. They would not be able to
put up a sign and a shingle and start services
on other vehicles. So I think that the fact that
people were servicing vehicles related to a
permitted business is very different than
opening up an entire different auto repair
business. So I just want to make that clear.
Also, we have people come before our
department all the time that have had additions
at the rear of their homes for, you know, 30,

DINA M. MORGAN, REPORTER

---

EASTCHESTER ZBA - 11/10/15

We're premature. It's young in the application
right now. I want to yield the floor to Mrs.
Uhle, there's going to be a public hearing, and
we can flesh this out a little bit. Mrs. Uhle.

MR. STEINMETZ: Terrific.

MS. UHLE: Okay. Just a couple of
things that I want to say. When we receive a
complaint or an indication that we need to
investigate whether something is legal or not
legal, obviously we're obligated to be sort of
very neutral the way we review the record and
the file, and we can't pick and choose whether
somebody is a good citizen or not a good
citizen or whether somebody is a lovely person
or not a lovely person. So we're just looking
strictly at the record to see whether we can
sort of find any evidence in support of or
against a particular use.

I would like to disagree with Mr.
Steinmetz on a couple of points.

One, the record is fairly unclear how
the use was originally permitted at 166
Summerfield Street. That's where the record is
not very clear. I think the record is very

DINA M. MORGAN, REPORTER

---
necessary and somebody needed clarification on
that, we would most likely write a letter to
the file just clarifying this is a permitted
use. But when that permit says, temporary
permit because of fire damage next door, to me
that's fairly clear that the intent that it be
a temporary use. Both the permit and the
application for the permit were included in
your files. There was no date on that
indicating when that would expire, but I think
the implication it specifically says, temporary
permit while fire damage being repaired. I
think that's it.

THE CHAIRMAN: Thank you, Mrs. Uhle.
Mr. Steinmetz, would you like to reply?
MR. STEINMETZ: Just real brief. Mr.
Chairman, I want to go back five minutes.
Certainly, my client and I certainly don't want
to go into the meeting to be anything other
than cooperative and informational. I hope the
board --

THE CHAIRMAN: Actually, my commentary
was the board's questioning. We don't want
your applicant to feel that he's under the gun.
DINA M. MORGAN, REPORTER

MR. STEINMETZ: Got it.
THE CHAIRMAN: The reason why these
questions are so important is because of the
application you're making. You're making a
very specific legal --

MR. STEINMETZ: I thought there was
some concern with us.

THE CHAIRMAN: Absolutely not.
MR. STEINMETZ: I appreciate that. I
want to go backwards one step. While Margaret
was speaking, I replayed something you said in
my mind, and I want to disagree with it.
The interpretation we're seeking is
not predicated upon legal arguments. An
interpretation of a preexisting non-conforming
use, in my experience, and I think the case law
bears this out, it's really predicated upon the
facts. It's all a factual question of how was
the land used. That's not a legal issue. It's
a question of what does the record show, what
does history show. So I want you to understand
we're not here making legal arguments about how
we prove up the non-conforming use. We're
making factual arguments that hang on a
DINA M. MORGAN, REPORTER
That's not land use. There's a very -- we've discussed this next doctrine in other matters together. There's a doctrine called Use v User. Town of Eastchester regulates the use of land, not who's doing it, not how they're doing it, not the internal business operation, not whether John Casale charges or repairs cars for free, not whether he only repairs his son's car or he repairs my car and yours. The issue is how is he using his real property. So I disagree it's not whose vehicles are being serviced, it's the land being used with lifts, with oil changes, with tools, with tires, with various aspects of repair. That's how we use the land. Not who's doing it, not whether they're making money doing it, because that's not what land use and zoning regulation are all about.

So the fact that AB Wolle was permitted to something -- look, I'm a lawyer, you're a lawyer, we have law firms, we have offices, if I suddenly started changing oil at my law firm, it would be noticed that I was no longer transacting business of an office. I think he's being doing for 50 years.

THE CHAIRMAN: Right, but the application is an interpretation --

MR. STEINMETZ: Absolutely.

THE CHAIRMAN: It's an actual use

was providing some kind of service. I would be deviating from my land use, as would you, if we suddenly started putting cars up on jacks. The fact AB Wolle was able to put cars and trucks up on jacks means somebody recognized -- they must have recognized they weren't operating a warehouse, they weren't just operating the manufacturing business, Mr. DeLucia is telling me that when he's riding a bicycle they're servicing vehicles. So I suspect, again, suspect, I can't prove it, and I'm hoping that you could get over that hump with me, I suspect it's been used as automotive repair literally for decades, and that's why -- that's why John Casale bought the property, that's why the town watched him buy the property, and that's why the town never shut him down for the 17 years since Mr. DeMarco's questions of 1999.

I can't figure out what's going on here. All I could tell you is sympathetically the guy's operating a business like everybody else along that corridor, it's clean, it's obviously utilized by the community, it's employing folks. I think you have the power to

THE CHAIRMAN: The problem is the arguments are morphing and what we want to do is focus on the interpretation, because -- I don't need to speak for Mrs. Uhle, but I think the point she's making on use versus user is that I could cook for the entire board in my home, the second I open it up to the public and I'm a restaurant it's entirely different application of that interpretation. So what we're doing is trying to interpret whether that site is a legal non-conforming use.

MR. STEINMETZ: Certainly.

THE CHAIRMAN: And that's what I
EASTCHESTER ZBA - 11/10/15

Really want to focus on, and we're going to focus the board on those questions and then we'll open it to the public.

Mr. Cahalin, do you have any questions?

MS. UHLE: Can I just ask --
THE CHAIRMAN: Mrs. Uhle. I was speaking for you. Would you like to speak for yourself?

MS. UHLE: Just a couple of other clarifications, because, first of all, we did go through the zoning and I can let the board know when auto repair uses were permitted in which zones. Most of the other legal non-conforming auto repair businesses are located in a GB zone, which did permit those uses back in the Thirties, etcetera. Even if it had been a permitted use back in the Twenties or Thirties, once it became a roof and sheet metal business or an HVAC business, it would no longer be considered an auto repair business. So really the question is: In 1999 was it a permitted use at that time. I very much disagree, because I think it has

DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

Consequences for the way we make determinations about uses is we're not saying that, you know, we're basing this on the user. I'm still talking about different uses and the different uses are we have two business uses here, a roofing company and an HVAC company verse an auto repair business. They're not the same use in our interpretation. And, in fact, if you go back and look at the zoning over time, most of the businesses that allow some kind of auto repair use it's very clear as an accessory use to a principal use. For example, auto sales agencies can have as an accessory use the maintenance of their own vehicles. But again, auto sales agencies that's maintaining their own vehicles is not then permitted to put up a shingle and service everyone else's. The only reason I want to make this clear is because I do think it has consequences for determinations that we make in our office down the road.

THE CHAIRMAN: Thank you, Mrs. Uhle.

Mr. Cahalin, do you have any questions or comments for this application?

MR. CAHALIN: I would like to hold

DINA M. MORGAN, REPORTER
EASTCHESTER ZBA - 11/10/15

ME that. Do you have anything else that could get me to that point?

MR. STEINMETZ: And I was candid about that word. In fact, I underscored it, which is probably why you heard it loud and clear, because I know this board all too well and the board knows me. I'm not going to misrepresent something to you. I don't have the kind of definitive evidence -- the best evidence that I have is Angelo DeLucia telling me what he saw. I don't find people from, you know, 50, 70 years ago who I can bring in to testify. That's kind of a nice factual find. So finding that, I can only connect dots. I have somebody who I believe to be credible who's been here before all of us, and he could tell me what he observed on the property. I trust that what he observed is accurate, auto repair occurred there. I then have to make the intellectual leap, and I challenge, quite frankly, your Building Department to disprove the intellectual leap. If it was happening and he's right, why wasn't it shut down in the Thirties and the Forties and the Fifties and

DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

They go out to service HVAC units.

MR. STEINMETZ: I disagree with the predicate here, and that's Margaret's predicate that, well, it's a sheet metal -- give me what your explanation was.

MS. UHLE: Well, it was a roofing business for quite a few years and --

MR. STEINMETZ: Okay, so it's a roofing business.

MS. UHLE: -- then it's an HVAC business.

MR. STEINMETZ: So it's a roofing business. I got to tell you, I mean, you can disagree with me, I appear all around the county, I see lots of roofing businesses, roofing business -- I hire a guy to come repair my roof, I'm hiring a guy to come repair my roof. That doesn't mean I'm going to go to his facility and find that he's got lifts, that he's got oil reserves, that he's got belts and he's got motors and he's doing repair. There's an extra use. You can disagree with me. I'm emphatic that AB Wolfe is doing something on that property in 1976 that's other than

DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

the Sixties and the Seventies and the Eighties?

There's a reason. That's where I think straight pragmatic reasoning, deductive reasoning leads me to believe the town of Eastchester had a very good understanding that that use predated zoning. I can't prove it, Mr. Miller, but I have a pretty good feeling that three or four building inspectors who have held office since then probably would have shut this down.

MR. DE MARCO: Wouldn't they be allowed to remain open for the same reason we allow AMHAC to remain open? If AMHAC is repairing their vehicles that they use for the HVAC much the same way as AB Wolfe was, we don't shut them down for doing that because they're not operating a automobile repair --

MR. STEINMETZ: Let's -- I didn't want to -- it went from --

MR. DE MARCO: If we followed your argument --

MR. STEINMETZ: Let's respond to that.

MR. DE MARCO: -- we would have to shut down AMHAC for repairing the vans that

DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

operating a sheet metal business.

MR. DE MARCO: So what you're saying is AB Wolfe was actually being paid to repair vehicles?

MR. STEINMETZ: You don't have to go with the payment.

MR. DE MARCO: Repairing vehicles other than their own?

MR. STEINMETZ: They were repairing vehicles. It doesn't matter whose vehicles that they were repairing.

MR. DE MARCO: It does, doesn't it?

MR. STEINMETZ: I'm arguing that it doesn't. I'm arguing that it doesn't. I can't find anything in your code that says you only operate an auto repair business if you're repairing somebody else's vehicles. I find that if you're repairing something, then you're operating an auto repair business. Your code doesn't tell me otherwise.

MR. DE MARCO: So if I were to -- my father is a mechanic, if he were to come to my house every day in Eastchester and change my oil and change my brother's oil, and change

DINA M. MORGAN, REPORTER
EASTCHESTER ZBA - 11/10/15

Margaret's oil and change Joe's and Mr. Cahalin's and change your oil, Mr. Steinmetz, and do the timing and work on the cars to extent he can, can I then now come before the before and seek a non-conforming use interpretation that my home is now an auto repair facility?

MR. STEINMETZ: If it had been operating in that fashion since prior to zoning, yes. In fact, I have an application pending right now in another community, it's a two family house, behind the two family house is contractor's yard. The record that we were able to expose showed that the guy had been -- somebody had been operating a contractor's yard behind the two family home since 1929. I found records in another municipality that showed an old map that had a legend on the map that indicated it was being used as a nursery, and the board was able to make an interpretation that nursery has trucks and different types of earth moving equipment. Even though it was a residential property and today there's trucks back there, the municipality was trying to shut

DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

down the contractor's yard. When we looked at the record, the record showed this seems to be a preexisting non-conformity contractor's yard.

I want to go to the bakery thing, because I tried to think fast and couldn't think fast enough, but I want to respond to the bakery metaphor analogy about whether or not if somebody was baking in their home and then they start selling, whoever's it was.

MR. DE MARCO: It was Mr. Pilla's.

MR. STEINMETZ: So if Mr. Pilla goes home tonight and decides he's not going to sleep there anymore, he's going to take his single family home and he's going to put an oven in every single room in that home and just cook, it's lawful for him to have cooked tonight before he came here, but if he goes home tonight and takes that home and all he's doing in it is cooking, I think he's not allowed to do that. I don't think the fact that he was cooking in the kitchen -- it's -- so it's not the retail component, it's the use of the real property because his real property today is a single family home with a cooking

DINA M. MORGAN, REPORTER
EASTCHESTER ZBA - 11/10/15

should be talking about a use variance for this
gentleman so he could keep his business, for
crying out loud. The interpretation, I think,
is an end run, if I could use the football
reference here. I think the client would have
been better served just coming in straight up
with a use variance.

Based upon all your information about
what it was and 20 years ago, we would be hard
pressed to argue with you about that. The way
I see it is if the town made a mistake and
you're asking us for interpretation, I've
always been told we have to go with the law
that's on the books. Well, the law on the
books says that's not a permitted use, and
if you want to argue that the sheet metal
company was servicing their own vehicles, well,
maybe that wasn't a use that was permitted
either then and nobody found out about it or
everybody turned a blind eye to it doesn't make
it right.

MR. STEINMETZ: Agreed, it doesn't
make it right, but there is a concept of
detrimental reliance. Mr. Casale relying to
DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

his detriment for as many years after as many
inspections kind of shifts the issue of
municipal estoppel. I agree that --

MR. CAHALIN: There is no municipal
estoppel.

THE CHAIRMAN: There is no such thing
as municipal estoppel.

MR. CAHALIN: I'm not even an attorney
and I know that.

MR. STEINMETZ: But it sounded like
you were arguing that the municipality could
now correct it's mistake.

MR. CAHALIN: I didn't say that.

MR. STEINMETZ: Okay. Maybe I
misunderstood. I thought --

MR. CAHALIN: You did.

MR. STEINMETZ: So you are not
suggesting that the municipality --

MR. CAHALIN: I'm not suggesting that.

MR. STEINMETZ: Okay. Understood.

Let me ask one question if that's the case:

If, in fact, Mr. Casale decides to present
evidence in the nature of a use variance, is it
DINA M. MORGAN, REPORTER
EASTCHESTER ZBA - 11/10/15

because there is at least a history of
approvals and permits, etcetera, being issued,
which is why the violation that we issued and
the focus of the application is really just
what's on 164 Summerfield Street.

THE CHAIRMAN: What I'm going to do,
if we can on the board, limit our questions and
comments to the specific point right now, which
is interpretation of whether the use was legal
non-conforming and doesn't require a use
variance.

Mr. Nurzia, do you have any questions
or comments of the applicant at this time?

MR. NURZIA: No. My only comment,
actually, is just to follow up with the
rationale about going for the interpretation as
opposed to the use variance. I know you
mentioned that you're suspecting that there
were certain factual patterns that were in
effect 10, 20, 30 years ago. I believe so, but
you and I don't know, nobody knows for sure.
We think so but, you know, we could play back
to the future but we don't know for sure. So I
could also say, yeah, maybe there were

DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

mechanics in that space at 164 and maybe once a
month they changed the oil on the truck; is
that the equivalent of an auto repair service?
I don't know. How many trucks did they have?
That's complete conjecture. They probably did
change the oil and fix them, but I don't think
it was 9 to 5 every day. If not, how would
they make money if they were a sheet metal
company and they were just fixing the trucks
and the trucks weren't going to client's
houses? So that's what I'm having trouble
going around on that factual pattern. So
that's my comment.

MR. STEINMETZ: Thank you.
THE CHAIRMAN: Thank you, Mr. Nurzia.

Mr. DeMarco?

MR. DE MARCO: No, nothing.
THE CHAIRMAN: Okay. At this time, I
would like to make a motion to open the public
hearing; is there a second to that motion?

MR. CAHALIN: Second that.
THE CHAIRMAN: Second by Mr. Cahalin.

All in favor.

(All aye.)

DINA M. MORGAN, REPORTER
EASTCHESTER ZBA - 11/10/15

1. That that was used for the trucks to be repaired at. It was a loading dock. No way for a vehicle to get into that spot that they're talking about.
2. MR. MILLER: Sir, where are the pictures?
3. MR. MIGNONE: I have them right here if you would like to see them. This is the garage then. This is the garage now.
4. MR. MILLER: Did Mr. Steinmetz ever see these?
5. MR. MIGNONE: No, I'm sure he did not.
6. MR. MILLER: Perhaps you want to show Mr. Steinmetz as you show us, to be fair.
7. MR. MIGNONE: Right here is the garage they're talking about, this area, another garage, this is open here with no garage door.
8. You could see the level goes up abruptly about two feet. That was a loading dock. There were never any vehicles --
9. MR. DE MARCO: Let me see.
10. MR. MIGNONE: As Mr. Casale stated, he had put a new floor in. He failed to notify --
11. THE CHAIRMAN: May I interrupt you?
12. DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

1. was a loading dock.
2. After the fire, Mr. Casale got his temporary permit and stated himself he had put a new floor in order to get the lifts in there. His brother, who has a contracting company, came in and dropped that floor level a foot and a half to two feet so you could drive vehicles in there to get them on the lifts.
3. That was never stated by Mr. Casale or Mr. Steinmetz. So he changed the structure of the building, the floor of the building so he could use it for auto repair.
4. MR. MILLER: When were those photographs taken?
5. MR. MIGNONE: This photograph was taken today. This was prior to 1999 before he bought the building. He bought the building in '88. He bought the building in '98.
6. MALE SPEAKER: Could I just make one comment to that?
7. THE CHAIRMAN: Let him finish.
8. MR. MIGNONE: So let me mention before and after, before he purchased the property and purchased the building.
9. DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

1. Can I ask you to put those photos onto the podium and to speak from the rostrum if you don't mind. I would also like to give Mr. Steinmetz an opportunity to take a look at them.
2. MR. STEINMETZ: We'll look after he's done.
3. THE CHAIRMAN: Okay.
4. MR. STEINMETZ: My client is prepared to respond. Let him finish.
5. THE CHAIRMAN: Okay.
6. MR. MIGNONE: In this photo here, this is the garage as it stood prior to 1999. You could clearly see the height elevation, as it was a loading dock. It wasn't a garage as a used for mechanical to fix trucks. The garage to the left of it, which had a garage door at that time, both of these areas as far back as I remember the early Seventies was nothing but storage. You could see in these pictures piping, oil burners, everything for AB Wolle was stored in there, and supplies. There was no way to get a vehicle into that garage at that time to do any kind of repair work. It

DINA M. MORGAN, REPORTER

12/07/2015 11:11:55 AM
by former employees of AB Wolle or others
stating that they observed mechanical work
done at this -- at AB Wolle. The
important distinction is that the vehicles that
were being worked on were AB Wolle's and not
public vehicles.
As a matter of fact, in respect to
Angelo, who is going on 94, he stated that as a
teenager, in his letter to the board, that he
saw people working on vehicles in there. With
all due respect, the garage was put up in 1950.
So as a teenager that was the Thirties. So
there was no garage there in the Thirties. It
was built in the Fifties. I verified that with
the town Building Department.
If AB Wolle worked on his own thing,
it was for an accessory use to the primary use
of the building and the property. For example,
if I change my oil in my driveway and then have
15 of my friends come over and change their
oil, that doesn't give me the legal right to
uphold an auto repair business at my property.
That's basically what they're saying they're
doing here, that it's been done for years, and
DINA M. MORGAN, REPORTER

we strongly disagree. My parents have lived,
like I said, across the street from that.
We're pretty aware -- obviously we understand
why Mr. Steinmetz didn't -- he said he spoke to
people in the neighbor, we understand why he
didn't come to talk to my mother or my cousin
who lives next door to my mother to get our
opinion on what really went on at AB Wolle for
30 years. It's very clear to us.
I have a copy of the temporary
building permit which states: Temporary use of
building while fire damage repair is done.
Obviously Mr. Casale did not object to the term
"temporary" written on the permit and the
implication that this use was not occurring
before the fire or that the temporary use would
be terminated once the fire damage was
repaired. I concur with the Building
Department that JC Auto Repair has operated a
non-permitted use for 16 years against local
zoning orders.
At no time through the various
expansions and reconstruction of JC Auto Repair
was there and effort by the town to ensure that
DINA M. MORGAN, REPORTER

he had sufficient onsite parking as required by
town ordinances. Section 13D of the town
zoning states: Garage repair shops require one
parking for each 500 square feet of gross floor
area or three spaces per work station,
whichever is greater. The building at 166
would require 15 spaces onsite and 160 would
require another six. This has caused the
greatest problems and hardships as residents of
the street for decades. He had zero
accommodation for either employees or customer
parking and has treated the street and public
parking as his own personal parking lot. This
not only involves in taking all the past
metered spots without regards to businesses,
employees, customers, or visitors to the
residential properties of the street, in
addition, for almost 30 years Mr. Casale has
parked cars illegally on both sides of the
street and encourages his customers to park
anywhere they wanted, including in front of my
mother's house blocking her entire driveway.
On many occasions, my mother could not get into
her driveway and had to either stay in the
DINA M. MORGAN, REPORTER

street with her signal light on or circle the
block until his customers moved their vehicles.
Besides the parking of vehicles in
front of my mother's driveway, these violations
put an unnecessary burden on my parents for
over 30 years. Risks stemming from traffic,
noise, garbage, unregulated hours of operation,
light disturbance, and unruly customers have
argued with many of our family members for over
numerous times over the years.
Over 20 years ago, Supervisor Jim
Cavanaugh despairingly referred to this area of
town as "gasoline alley." The town amended the
town's master plan to revitalize this area,
recognizing the need to improve the quality of
life for the residents of the area and to make
this area worthy to be seen as part of
Eastchester. This situation with JC Auto
Repair is contrary to the goals of the town's
master plan and is not merely a continuation of
a benign non-conforming use as suggest by Mr.
Steinmetz.
Not only should this Board uphold the
interpretation of the building inspector, Mr.
DINA M. MORGAN, REPORTER
EASTCHESTER ZBA - 11/10/15

Casale should not be permitted to use the facility at 160 to 164 Summerfield Street. Furthermore, if anything was demonstrated by what you heard tonight, there is no historical, zoning, planning, or any other basis to even entertain a future variance application by Mr. Casale. As stated before, it seems like another example of them trying to get approval after the fact. Also, there has been a lack of this town not enforcing decisions by this board in regards to non-conforming uses; for example --

THE CHAIRMAN: Mr. Mignone, may I cut you off there?

MR. MIGNONE: Sure.

THE CHAIRMAN: There is no evidence of this behavior on the town's behalf. So what I would like to do is stick to the issue of the interpretation.

MR. MIGNONE: Would you like evidence?

THE CHAIRMAN: Is it germane to what we're discussing tonight?

MR. MIGNONE: As far as decisions made by this board not being upheld?

DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

THE CHAIRMAN: As it relates to this property?

MR. MIGNONE: This property, no. The property directly behind my mother, which another auto repair.

THE CHAIRMAN: Correct. It's not part of this application.

MR. MIGNONE: Okay.

THE CHAIRMAN: So let's limit it to the interpretation, please.

MR. MIGNONE: Okay.

THE CHAIRMAN: Let's avoid disparaging boards.

MR. MIGNONE: One other thing I'm just going to jump back to. He actually had to change the physical characteristics of that building to use it for auto repair. Like I stated before, he lowered the floor. That's basically all I need to say.

THE CHAIRMAN: Okay. Anything further?

MR. MIGNONE: No, unless you have any questions.

THE CHAIRMAN: I don't. Anyone from

DINA M. MORGAN, REPORTER
EASTCHESTER ZBA - 11/10/15

1
2 tin fabrication company that went to automotive repair. Maybe it's not on paper anywhere, but
3 at some point the town either closed their eyes
4 on it or let it go actually. Actually, Moses,
5 the guy that passed away, is the one who gave
6 us the final seal on this project after years
7 of arguments with the town.
8
9 When we talk about people living in
10 the area, I'm not going to lie that traffic on
11 the street, the amount of parking spots that we
12 apply for companies, they may not be all the
13 same for everybody. How many stores have 10
14 employees working for them and only two parking
15 spots? I think there was a project on
16 Summerfield Street that got approval for a ton
17 of parking variances.
18
19 We're just trying to work with the
20 town here, trying to keep people employed,
21 trying to keep tax revenue coming into the
22 town. We're trying to make a case that this
23 was like this before. We didn't go for a use
24 variance because we felt that the town would
25 understand this appeal and that we could get to
26 the solution without having to go and drag the
27 DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

1
2 town through a long, tedious process.
3 The only man that was ever working in
4 this premises late hours, was that man right
5 there. Many times on Sundays I would come down
6 to the property for him to work on an engine on
7 his own vehicle in my building. So when he
8 says, oh, we work late hours, half the time it
9 was him. The only reason why this matter was
10 even brought up in front of the town was a
11 disagreement that me and him had, and I
12 apologize to you --
13
14 MALE SPEAKER: You did not apologize
15 to me.
16
17 MR. JEFFREY CASALE: Not to you --
18 THE CHAIRMAN: Please. Please. Let's
19 put an end to the cross talk. You'll have an
20 opportunity to speak.
21
22 MR. JEFFREY CASALE: We were trying to
23 clarify when was the usage there. The town
24 never defined automotive use ever. They
25 acknowledge it at some point in '84 right here.
26 The buildings were adjoined, that's a fact.
27 When this building was here, it was a two bay
28 garage. My father, when he started off, would
29 DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

1
2 work in these bays. I remember as a kid coming
down to that place where he said all the
3 garbage was, they used to work on their trucks.
4 I remember guys working there occasionally
5 working on their vehicles 8, 10 years old. In
6 the instance where he's talking about the
7 loading dock would be this right here, which is
8 still in existence. This area here the floor
9 was dropped in '99 and a concrete floor was put
10 in place. The foundation in this location was
11 made of stone, which wouldn't be an adequate
12 support when we put the floor in. So it was
13 dug down and the footings were put in place to
14 be safe.
15
16 MR. STEINMETZ: John wants to come up
17 and help explain the loading dock.
18
19 THE CHAIRMAN: At this point, no.
20
21 This is a public speaker. Let him continue.
22
23 You'll have an opportunity to respond to
24 everything that's said in the public hearing.
25
26 Continue.
27
28 MR. JEFFREY CASALE: At the end of the
29 day, that's pretty much what is there, what
30 I've seen over the years. Again, I'm 34 years
31 DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

1
2 old. I've been coming down to that shop since
3 I was a kid.
4
5 THE CHAIRMAN: You're still a kid.
6
7 MR. JEFFREY CASALE: I'm getting
8 older. I'm learning as I go on. I mean, my
9 experience in the shop and the building and
10 what we do in this location is basic
11 maintenance and prep. We don't do any
12 mechanical work there. It's only reserved for
13 this area of the shop. The reason is this
14 cannot really support that type of work. We
15 would like to continue using it. I would like
16 to keep all my employees working for me, and I
17 would like to keep making money for the town
18 and taxes and pay my guys. Everybody makes
19 out. If it makes it all work out better for
20 everybody, I'm here to work with you guys, but
21 we can go over that later.
22
23 THE CHAIRMAN: Thank you for your
24 time. Is there anyone else from the public who
desires to speak on this application?
25
26 MR. COLLINS: Can I speak?
27
28 THE CHAIRMAN: Sure. Name and
29 address, please.
30
31 DINA M. MORGAN, REPORTER
EASTCHESTER ZBA - 11/10/15

MR. COLLINS: Michael Collins. I live in Connecticut, but I work at JC Auto.

THE CHAIRMAN: Okay.

MR. COLLINS: John is my father-in-law.

THE CHAIRMAN: You better choose every word very carefully.

MR. COLLINS: I think one thing that has to be brought up is the person who filed the complaint just came up and spoke and said, they've known for 16 years that there was an illegal opening in that spot, there has been these so-called late hours, operation hours on Sundays, late on Saturday nights, parking issues. Why all of a sudden is this a problem? If he's known and this has been a problem for 30 years, there's never been a complaint. Never once. So I think the board needs to take into account that obviously something happened to this person that is, you know, having him come up here for a reason. If it was so bad for all those years, the 30 years or since the 1890's his family's been around, how come there's never been one complaint? The only

DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

We'll get to it in a minute.

MALE SPEAKER: My name is (indiscernible). I work for JC Auto 30 years, and I remember before I work down the street I always remember that shop there for -- I don't see why we all come to the people they make it before your friend and the next day you're --

THE CHAIRMAN: Okay. Thank you for your time. Mr. Miller, did you want to say something?

MR. MILLER: I see Mr. Steinmetz reacting to his client, and I certainly appreciate it, but could we not point at -- this goes for everybody. I saw you react to your client. Could you just remind him do not point fingers at other people. I saw you react. We've had too many incidences in here recently.

THE CHAIRMAN: Okay. Anyone else interested in speaking? Name and address, please.

MR. BRUNERO: Hi. My name is Mario Brunero (Ph.). I was originally from

DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

Eastchester. I grew up in Eastchester. I just want to -- I've been working with John for 10 years. I always loved working on cars. That's my thing. I just want to bring out that working with John it's phenomenal. I'm from Eastchester, his place, how it's run, how he takes care of everybody, it's great. I can't, I just, you know -- as far as how the -- the feel, like working there in the area, he keeps it clean, you know. It's like no other. I've been other places and, you know -- as far as if something were to happen to the shop as far as like, you know, the other side, it's going to hurt me, you know, and a co-worker of mine if something were to happen. We just wish it wouldn't happen.

THE CHAIRMAN: We understand. Thank you for your time. At this time, I don't see anyone else interested from the public to speak on this application. So would the applicant -- hold on. Sure.

MR. MIGNONE: Gerard Mignone again. A couple of other corrections I just remembered. Mr. Steinmetz stated that Mr. Casale in his

DINA M. MORGAN, REPORTER
EASTCHESTER ZBA - 11/10/15

building that he does do -- he's allowed to do
the automotive repair, said he had three lifts
in there. He has five lifts in that shop, not
three, and he has two in the other shop. I
noticed in his application that he said that if
he was to lose this, he would have to fire two
of his mechanics because of the loss of those
two lifts. Out of the eleven employees,
there's five mechanics. I believe they're all
here. So if there's five lifts in that shop
and there's five mechanics, why would he have
to fire two people when there is one for every
lift?

THE CHAIRMAN: I appreciate your
presentation. It's really not pertinent to the
application, which is really strictly an
interpretation. I would like to cut you off
not because I don't want to recognize your
right to speak, but I don't want it to take on
a personal nature because really we're strictly
talking about the interpretation of whether
this is a non-conforming use.

MR. MIGNONE: 164.

THE CHAIRMAN: It's that simple.

DINA M. MORGAN, REPORTER

EASTCHESTER ZBA - 11/10/15

Mr. Mignone: He's saying if he loses
the lifts at 164.

THE CHAIRMAN: He can say whatever he
wants. He could say that the Yankees are going
to win the World Series next year. It's not
really that important. We're following the
direction of our attorney and the fact that
we're deciding upon the application that's
before us.

MR. MIGNONE: Interpretation only?
THE CHAIRMAN: Yes. Do you have
anything else to add?
MR. MIGNONE: That's it. Thank you.
THE CHAIRMAN: Okay. Does the
applicant or anyone on his behalf want to reply
to what the public has brought out, please?
MR. STEINMETZ: Unless the board wants
further clarification regarding the photographs
or the area of the truck loading, John could
address that. I don't think it's necessary,
but if the board wanted to hear it. I think
Jeff Casale tried to respond. My client has
explained to me that he believes the
photographs don't really reveal the situation

DINA M. MORGAN, REPORTER
procedural stuff, but obviously as long as it satisfies what Margaret requires, I don't have any objection to the application, to amending the application. Of course, there is a test.

MS. UHLE: It just needs to be renoticed as a use variance as well as an interpretation.

MR. MILLER: You have to submit additional proof obviously.

MR. REDA: He said he planned to.

THE CHAIRMAN: I want to hear from two board members, then I have something to add. Mr. Nurzia?

MR. NURZIA: No. With that comment about re-submitting or amending, that's fine. I mean, I think that's the point that you and I were discussing earlier.

THE CHAIRMAN: Mr. DeMarco?

MR. DE MARCO: His decision.

Applicant's decision I should say.

THE CHAIRMAN: Okay. So again, I'm going to leave it to our town attorney and to our lead planner the procedural and substantive process issues, and I'm going to make a motion.

DINA M. MORGAN, REPORTER
EASTCHESTER ZBA - 11/10/15
It sounds like we will see you in
January, in which case I wish you all a happy
holiday, happy new year, and we'll see you in
January.

MR. MILLER: Thank you.

THE CHAIRMAN: I make a motion now to
close our meeting for November 10th, 2015; is
there a second to my motion?

MR. MILLER: Second.

THE CHAIRMAN: All in favor.

(All aye.)

THE CHAIRMAN: Thank you.

(MEETING ADJOURNED.)

DINA M. MORGAN, REPORTER

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 6th day of December, 2015.

DINA M. MORGAN, REPORTER