

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

Page 2

1 ZBA PUBLIC HEARING

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3 A P P E A R A N C E S:

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6 MICHAEL PETTIFORD CHAIRMAN

7 AARON SANTIAGO BOARD MEMBER

8 TRACEY TORRES BOARD MEMBER

9 JUSTIN LARMARCH BOARD MEMBER

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17 ALSO PRESENT: Joseph McKay, Village Attorney,

18 Village of Harriman, Maria Hunter, Zoning Board of

19 Appeals Secretary, Village of Harriman.

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Page 4

1 ZBA PUBLIC HEARING

2 February 19th, 2025.

3 Roll call, now. All right. If I

4 say your name, just say that you're here.

5 Aaron Santiago?

6 MR. SANTIAGO: Here.

7 THE CHAIRMAN: Justin Larmarch?

8 MR. LARMARCH: Here.

9 THE CHAIRMAN: Tracey Torres?

10 MS. TORRES: Here.

11 THE CHAIRMAN: Christine Biaz?

12 MS. HUNTER: She's absent.

13 THE CHAIRMAN: She's absent. All

14 right.

15 May I have a motion to approve the

16 minutes from the last meeting?

17 MR. LARMARCH: I'll make that

18 motion to approve the minutes from the

19 last meeting.

20 MS. TORRES: I second that motion.

21 THE CHAIRMAN: All right. The

22 minutes are approved then.

23 MR. MCKAY: Who -- who made the

24 motion?

25 THE CHAIRMAN: Justin --

Page 3

1 ZBA PUBLIC HEARING

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4 THE CHAIRMAN: Good evening,

5 everyone. I'd like to call this meeting

6 of the Harriman Zoning Board of Appeals.

7 Please rise for the Pledge of Allegiance.

8 (Whereupon, the Pledge of

9 Allegiance was recited by all present, as

10 of this date.)

11 THE CHAIRMAN: Welcome to the

12 February 27th, 2025, Zoning Board of

13 Appeals. My name is Michael Pettiford,

14 I'm the Chairman.

15 Before we proceed, I would like to

16 outline our agenda for this evening.

17 We've done the pledge, two, the roll call.

18 There are three line items, continued

19 Public Hearing and MYL Investors, a/k/a

20 Right Choice Builders.

21 Our next Zoning Board of Appeals

22 meeting is scheduled for Wednesday,

23 March 5th, 2025. And the deadline for

24 completed paperwork submission, for the

25 next ZBA Meeting was due by noon,

Page 5

1 ZBA PUBLIC HEARING

2 MS. TORRES: -- Justin.

3 MR. MCKAY: Who seconded?

4 THE CHAIRMAN: Tracey.

5 MS. HUNTER: Tracey.

6 MR. MCKAY: What was the vote?

7 THE CHAIRMAN: Approval of the

8 minutes from the last time.

9 MR. MCKAY: No. I -- in other

10 words, you weren't on the Board, so I

11 think, you should recuse yourself from the

12 vote.

13 So, it's three yes and one no.

14 MS. HUNTER: Okay.

15 THE CHAIRMAN: We now open the

16 floor for the Public comments --

17 (Whereupon, a discussion was held

18 off the record.)

19 (Back on the record.)

20 THE CHAIRMAN: Okay. The Board

21 would like to open the floor for MYL

22 Investor to make their preparation.

23 MR. WARNER: Yes. Um -- good

24 evening, my name is Aaron Warner. I'm an

25 Attorney, from the Law Firm Zarin and

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

Page 6

1 ZBA PUBLIC HEARING
2 Steinmetz. We represent the Applicant MYL
3 Investors. I'm also joined by my Partner
4 Dan Richmond and Colleague, John Loch,
5 Professional Engineer and Land Surveying.
6 We represent the Applicant, MYL
7 Investors in connection with their mix use
8 and office storage space project, located
9 at 200 Route 17M, in the Village's B2
10 zoning district.
11 Per view, the building is already
12 constructed, fully constructed. But,
13 however, due to a minimal height
14 discrepancies, we require an area variance
15 from the 35 foot height restriction, in
16 the B2 zoning district.
17 As you know, we're continuing from
18 the previous Public Hearings on this
19 matter. However, tonight we request that
20 the Applicants application for a zoning
21 code interpretation of whether a mezzanine
22 constitutes as a third-story. And the
23 variances for parking and third-story, be
24 held in abeyance. And Public Hearing kept
25 open, while the Applicant addresses the

Page 8

1 ZBA PUBLIC HEARING
2 it.
3 MR. MCKAY: And that, the agreement
4 is a verbal agreement, right? With the
5 building inspector, is there anything in
6 writing?
7 MR. WARNER: We're finalizing the
8 terms to that agreement.
9 MR. RICHMOND: We're waiting for
10 the Village Attorney to break down and to
11 finalize their terms.
12 MR. MCKAY: Okay.
13 MR. WARNER: Consistent with both
14 of these things, we're currently only
15 seeking a variances for the as constructed
16 building height, in feet. Specifically,
17 the reason that we're seeking a height
18 variance for the as constructed height is
19 that, the building inspector's denial
20 letter, which we appealed and the reason
21 why we're before your Board, lists a range
22 of possible height calculations.
23 And in addition to the range of
24 possible height calculations, it also
25 clearly states that, the Village's

Page 7

1 ZBA PUBLIC HEARING
2 mezzanine and third-story and parking
3 issues, with the Planning Board.
4 Including, obtaining their feedback prior
5 to returning to the ZBA.
6 On that note, we are finalizing
7 conceptual terms to an agreement with the
8 Village that would prohibit use of the
9 third-story/mezzanine level, until we
10 obtain Planning Board approval.
11 This agreement would allow the
12 Applicant to operate the first and
13 second-story, until we are able to obtain
14 Planning Board approval for parking and
15 resolve the mezzanine/third-story issue.
16 Furthermore, this agreement has at
17 least, tentative approval from the current
18 building inspector. Who has also, by the
19 e-mail that you've just received and
20 looked at, indicated that merely 100
21 percent of the building code issues have
22 been resolved as of today.
23 And I would just like to reiterate
24 again, that we did pass out that e-mail
25 and that the Board Members have received

Page 9

1 ZBA PUBLIC HEARING
2 consulting engineer calculated the
3 building height to be, 36.5, 2, feet tall.
4 There's also ambiguity in the code.
5 Which is why there was a range of heights
6 listed in the building inspector's denial
7 letter. So, I would like to invite my
8 Colleague, John Loch, to explain the range
9 of heights and the ambiguity of the
10 coding.
11 MR. LOCH: Most certainly. Hi, my
12 name is John Loch. I've been introduced,
13 I'm the engineer with AFR.
14 When we starting working towards
15 getting the C.O. on the building, one of
16 the things we did was, we prepared an as
17 built -- um -- which included things like
18 measurements on the roof and ground
19 elevations. And that was the first time
20 that came up as an issue, that we may have
21 exceeded the height that was allowed.
22 If you look at the site plan, there
23 are some building height calculations on
24 it. Okay. It was before I was involved
25 with this project. It was prepared by

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

Page 10

1 ZBA PUBLIC HEARING
2 somebody else. I can't track the numbers
3 on it. How they match up to the plan,
4 with respect to -- staying within the 35
5 or exceeding. I don't understand those
6 calculations on here.
7 Your Village has a rather,
8 interesting definition of how height is
9 calculated. Um -- essentially, for
10 something that is peek roof. The upper
11 level is pretty obvious, they talk about
12 midpoint. Based on definition in the
13 midway, between the peek in the eve.
14 But then they have the ground
15 elevations that you're supposed to be
16 considering is, it's an average at every
17 foundation corner. This building, happens
18 to have, in my opinion, six foundation
19 corners. It also talks about an average
20 at a point.
21 Well, you don't usually have an
22 average at a point. You usually have at
23 the corner, a single elevation. Now, to
24 try and at least work within the spirit of
25 it, there's some debate as to what

Page 12

1 ZBA PUBLIC HEARING
2 MR. LOCH: I'm sorry. You want me
3 to identify this document?
4 MR. MCKAY: Yes.
5 MR. LOCH: Yes, okay. I'm sorry.
6 This is a document that I've titled, "AFR
7 Project 10951 200 Route 17N. Building
8 height definition diagram for ZBA." It's
9 dated, "10/31/24" and copies were provided
10 to the Board; I believe back in -- when we
11 were here in November. I think we
12 provided copies at that point.
13 Um -- there're actually were
14 several diagrams that we used just to
15 explain the various heights that were
16 possible, in terms of calculations on
17 this.
18 Um -- another good example is, your
19 code also has in other sections, it says,
20 you don't count the height that's taken up
21 by the loading dock. In other words, if
22 you've never ramped loading dock. And we
23 have -- the whole back of the building is
24 loading dock. And roughly, half of the
25 front of the building is depressed because

Page 11

1 ZBA PUBLIC HEARING
2 elevation you should be using. Because at
3 two of the corners we have retaining
4 walls. Is the ground elevation there
5 where it's filled at the top of the wall?
6 Is the ground elevation where it's all the
7 way down at the bottom of the wall?
8 Since it used the term average, we
9 looked at midway between. Um -- but
10 because there is some ambiguity in the
11 language, I would guess that's why the
12 building inspector in writing the denial
13 letter, put a range of values on it.
14 Um -- I have provided a -- the
15 plans that you see in front of us, which
16 have your code written out, a
17 diagram. This is more schematic, not
18 necessarily to scale for your building.
19 But indicating how the heights are
20 calculated. So, that's why we've asked it
21 just to be to the height as built.
22 Now --
23 MR. MCKAY: -- Can you just state
24 what document you're looking at? And,
25 what page as far as that?

Page 13

1 ZBA PUBLIC HEARING
2 of loading docks.
3 If you knock that four feet off of
4 that height right there, we're not over
5 for -- um -- for the overall height.
6 However, where that language is put in,
7 it's not in the same place that you have
8 in your height definition.
9 But at the same time, you have
10 another section that says, it doesn't
11 count for height. So, that's why we've
12 asked for it the way we have.
13 Now, to document the existing
14 conditions, the as built, this is a
15 particular one we made up just for the ZBA
16 application. Because we were in the
17 process of revising other things for the
18 C.O.'s and things.
19 It does provide elevations on
20 specific points of the building. The
21 ground elevations, none of that is being
22 changed. So, there is an adequate
23 documentation as to the existing
24 conditions are. If we are granted the
25 variance to maintain the existing, as

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

Page 14

1 ZBA PUBLIC HEARING
2 constructed facility.
3 (Whereupon, a discussion was held
4 off the record.)
5 (Back on the record.)
6 MR. WARNER: I would like to
7 emphasize that, the Applicant itself,
8 according to plans that were reviewed and
9 then permanent, based on those plans from
10 the building inspector.
11 Um -- as my Colleague has
12 explained, there is ambiguity in the
13 zoning code regarding the calculations of
14 building height. And case law dictates
15 that any ambiguity in the zoning code
16 should be resolved in favor of the
17 applicant and against the municipality.
18 And it's because of this ambiguity
19 and the varying height, possible height
20 calculations which is why we're seeking
21 the height variance as constructed. To
22 account for the different possible
23 permutations of the calculation of height.
24 However, based on the Village's
25 Consulting Engineer, Lincoln Tully, based

Page 16

1 ZBA PUBLIC HEARING
2 caused by granting the as constructed
3 height variance here. Which again, is
4 small, it's only 1.52 feet. And this is
5 primarily due to the site topography,
6 including both natural and manmade
7 screening.
8 The building is on an extreme
9 slope. Essentially, tucked away in a
10 lower elevation than much of the other
11 buildings surrounding it. Um -- we --
12 switch that --
13 (Whereupon, a discussion was held
14 off the record.)
15 (Back on the record.)
16 MR. WARNER: So, to the back of the
17 site, behind the building you can see that
18 there is dense tree vegetation that blends
19 in with the building's earth and tones.
20 And blocks view from Heritage Trail,
21 behind it.
22 And you can also tell that, to the
23 side of the buildings there are other
24 large commercial ventures. And from this
25 vantage point you can also get a sense

Page 15

1 ZBA PUBLIC HEARING
2 on the denial letter, the height of the
3 building only exceeds the 35 foot height
4 restriction by 1.52 feet. Meaning, our
5 constructed height variance is extremely
6 minimal.
7 Your Board's responsibility is to
8 grant relief from the zoning code when it
9 will not harm the neighborhood. And with
10 respect to area variances, like, the
11 minimal as constructed height variance
12 that we seek here, the ZBA determines
13 whether or not to grant an area variance.
14 Based on a balancing test of the five
15 factors under your Town Law.
16 I'm going to walk through each of
17 these five factors and explain exactly why
18 respectfully, your Board should grant this
19 minimal height variance here.
20 The first factor is regarding
21 whether an undesirable change will occur
22 to the community character, by the
23 granting of the height variance.
24 An undesirable change to the
25 character of the community will not be

Page 17

1 ZBA PUBLIC HEARING
2 that, the building is clearly at a lower
3 elevation than closer to Route 17M. Which
4 is where this photo was taken. And in
5 addition to the obvious trees in front of
6 the building. Which is again, is more
7 natural screening.
8 This photo shows it was taken from
9 the vantage point slightly east of the
10 site. To the west of the site, is another
11 large commercial venture. Which is Loyal
12 Tire and Auto, which also has a large
13 commercial parking lot in that direction
14 as well.
15 A -- go to the next photo please.
16 Um -- most importantly, is to the front is
17 Frankie's Full Auto Car Service Shop.
18 Which primarily screens the site from view
19 and draws view away, with its bright, red,
20 blue, coloration. Whereas, our building
21 here on the site, it's more drape earthy
22 tones. And tends to blend in with the
23 background natural screen.
24 And if we go to the next photo,
25 please. This is a view of head on,

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

Page 18

1 ZBA PUBLIC HEARING
2 looking directly at Frankie's Auto Car
3 Service Shop. It's clear, you cannot see
4 the building from this vantage point. And
5 this is a Google Earth Street View photo,
6 directly in front of Frankie's Auto
7 Car Service.
8 And you can also -- part of the
9 reason for this is part of the site lines
10 and the different elevations from
11 Route 17M, compared to our building.
12 Um -- and finally, Photo 5, please.
13 I'll give you a few seconds to try and
14 find the building. John, I don't know if
15 you can maybe point it out.
16 MR. LOCH: That's the building,
17 right there. (Indicating)
18 MR. WARNER: So, what he's pointing
19 out is just the top sliver. Which is the
20 only thing that you could possibly see
21 from this building from Route 17M here.
22 There are other commercial ventures and
23 nature screening that clearly blocks the
24 building.
25 Again, emphasizing that our height

Page 20

1 ZBA PUBLIC HEARING
2 MR. LOCH: It's the same thing,
3 that's just a blown up copy, so that I
4 could point to it in a meeting. (Handing.
5 MR. WARNER: So, the Applicant was
6 previously before the ZBA in 2017.
7 However, seeking a nine foot height
8 variance. Where is now, we're only
9 seeking a 1.52 foot height variance.
10 However, the ZBA determined that
11 even a nine foot height variance would
12 not cause an undesirable change to the
13 character of the community.
14 Therefore, our much smaller as
15 constructed height variance, should also
16 not cause any undesirable change to the
17 character of the community.
18 It's a much smaller variance in any
19 way that you calculate it. No matter what
20 number is used on the building inspector's
21 denial letter, it's still a smaller
22 variance than the nine foot height
23 variance. That the ZBA previously found,
24 did not have an undesirable change to the
25 character of the community.

Page 19

1 ZBA PUBLIC HEARING
2 variance is minimal. Um -- furthermore,
3 in 2017, the Applicant was before this ZBA
4 seeking a nine foot height variance.
5 MR. MCKAY: I'm sorry, for
6 interrupting. All those photos that you
7 just referenced, those were the
8 February 20th, memo to the Board?
9 MR. WARNER: Yes, yes.
10 MR. MCKAY: Thank you.
11 MR. LOCH: When you're looking for
12 this particular plan - you might not have
13 realized, where I provided to the Board
14 previously was, smaller copies so that
15 every individual has it. The large one
16 was just for me, being able to point at
17 something here.
18 MR. SANTIAGO: Mr. Loch, so we have
19 the front plans are from October 31st?
20 MR. LOCH: Yes.
21 MR. SANTIAGO: And the smaller one,
22 which is the second page there, was that a
23 different date?
24 MR. LOCH: No, same date.
25 MR. SANTIAGO: Same date.

Page 21

1 ZBA PUBLIC HEARING
2 Accordingly, respectfully, it would
3 be contradictory and irrational for your
4 Board to weigh this factor against the
5 Applicant. There's ample New York case
6 law that holds that ZBA's acts arbitrarily
7 and irrationally, when they deny de
8 minimis area variances. Or those that
9 minimally exceed the bulk requirements.
10 For example, in Bout versus ZBA,
11 Oyster Bay, a Second Department case from
12 2010. The Court held that the ZBA acted
13 arbitrarily when it denied a area variance
14 that was de minimis. And only minimally
15 exceeded the bulk side yard requirements
16 for the zone.
17 Another example is, Staten versus
18 Siegel, a Second Department case from
19 1984. That affirmed a granting of a side
20 yard variance that exceeded the side yard
21 requirement by little over a foot. Again,
22 de minimis area variance.
23 The de minimis nature of these area
24 variances, including our own 1.52 foot
25 height variance, means that they would

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

Page 22

1 ZBA PUBLIC HEARING
2 have little to no impact. Like, the de
3 minimis as constructed height variance
4 that we seek here.
5 Accordingly, this factor easily
6 weighs in favor of granting the as
7 constructed height variance.
8 Um - does your Board have any
9 questions before we move on to the second
10 factor?
11 MR. MCKAY: Any questions?
12 THE CHAIRMAN: You can go ahead.
13 MR. WARNER: The second factor is
14 whether there's a feasible alternative to
15 achieve the benefits sought by the
16 Applicant. Here there's no feasible
17 alternative to achieve the benefit sought
18 by the Applicant.
19 Here the benefit sought by the
20 Applicant is the legalization of the
21 building through a height variance. So,
22 that the first two floors could at least
23 be used while the Applicant addresses the
24 mezzanine and the third-story issue. As
25 well as, the additional parking with the

Page 24

1 ZBA PUBLIC HEARING
2 variance would not be substantial.
3 Our requested - again, it's the as
4 constructed height variance is only for
5 1.52 feet. Which we submit, is very
6 minimal and respectfully not substantial.
7 And furthermore, there's no
8 irrational basis for the Board to divert
9 from the New York Court precedent, that
10 routinely upholds the granting of de
11 minimis, relatively small variances, area
12 variances.
13 Furthermore, even if the requested
14 variance is deemed substantial, it is well
15 settled law that, substantially cannot be
16 judged in the abstract. Rather, it's the
17 totality of the circumstances. And
18 whether the variance will actually have an
19 adverse impact to the character of the
20 community. Which goes back to the first
21 factor that we already reviewed and went
22 over.
23 But again, this, minimal height
24 variance will not have an adverse impact
25 on the character of the community, due to

Page 23

1 ZBA PUBLIC HEARING
2 Planning Board.
3 The Applicant built the building
4 pursuant to plans reviewed and permitted
5 by the building inspector. The building
6 cannot be legalized without a height
7 variance. Because the building's already
8 constructed. Therefore, the variance is
9 necessary to achieve the benefits sought
10 by the Applicant here. Um - therefore,
11 there's no feasible alternative to achieve
12 the benefits sought by the Applicant.
13 Does your Board have any questions
14 before we move on to the third factor?
15 THE CHAIRMAN: No.
16 MR. WARNER: The third factor is
17 whether the as constructed 1.52 foot
18 height variance is substantial. The as
19 constructed 1.52 foot height variance is
20 not substantial. Again, when the
21 Applicant was before the ZBA in 2017, it
22 was seeking a nine foot height variance.
23 Drastically bigger than the height
24 variance that we're seeking here. Yet the
25 ZBA also found that a nine foot height

Page 25

1 ZBA PUBLIC HEARING
2 the nature of the variance. Case law
3 supports this, as I mentioned.
4 In Waybill versus South Hampton
5 Zoning Board of Appeals, a Second
6 Department 2016, case. The court reasoned
7 that, while we agree with the petitioner
8 the proposed variance is substantial.
9 However, there was no evidence that
10 granting of the evidence would have an
11 undesirable effect on the character of the
12 community or the neighborhood. Or
13 adversely impact the physical and/or
14 environment conditions. Or otherwise
15 result in a detriment to the health,
16 safety and welfare, of the neighborhood or
17 community.
18 Therefore, even if you somehow
19 consider a 1.52 foot as constructed height
20 variance to be substantial, respectfully,
21 case law dictates that it would still be
22 contradictory and irrational for the Board
23 not to weigh this factor in favor of the
24 Applicant. Due to the fact that there's
25 zero impact from this de minimis height

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

Page 26

1 ZBA PUBLIC HEARING
2 variance.
3 Does your Board have any questions
4 before we move on to the fourth factor?
5 THE CHAIRMAN: No, questions.
6 Proceed.
7 MR. WARNER: The fourth factor is
8 whether there would be an adverse impact
9 on the environment or physical conditions
10 of this height variance. Again, the
11 Applicant in 2017, was before your Board
12 seeking a nine foot height variance. And
13 the Zoning Board then, also determined
14 that there was no impact on the physical
15 or environmental conditions from a nine
16 foot height variance.
17 Respectfully, we're seeking a much
18 less, a much smaller height variance.
19 There should also be no impact on the
20 physical or environmental conditions on
21 this site.
22 Does your Board have any questions
23 before we move on to the fifth factor?
24 THE CHAIRMAN: No.
25 MR. WARNER: The fifth factor is

Page 28

1 ZBA PUBLIC HEARING
2 from the average grade of the ground, at
3 the base height of the house. And that
4 town building examiner determined that the
5 -- a -- height of the building was
6 35 feet.
7 After receiving a building permit
8 and framing the house, the Applicant
9 modified the house. By extending its
10 second-story over its garage, by changing
11 the pitch of the roof. Which did not
12 change the height of the house. The
13 Applicant, thereafter, submitted amended
14 building plans that depicted this
15 modification.
16 A different town building examiner
17 used a different height calculation. And
18 determined that the height of the house
19 was 37.71 feet. Exceeding the zoning
20 code's 35 foot height restriction.
21 The ZBA found that the Applicants
22 hardship was totally self imposed due to
23 it's conduct. The Second Department,
24 however, rejected this determination. And
25 held that the hardship was not totally

Page 27

1 ZBA PUBLIC HEARING
2 whether the alleged hardship is deemed
3 self created. Even if your Board deems
4 the alleged hardship is self created, this
5 does not preclude granting the area
6 variance. Again, this is a balancing test
7 of considering all the relevant factors.
8 All five of the factors and no one factor
9 is determined. And this is supported by
10 case law.
11 Case law establishes that, where a
12 height variance is the result of varying
13 interpretations of municipal code, by
14 different officials in response to amended
15 building plans. It is irrational to hold
16 that hardship is entirely self imposed.
17 This was exactly what occurred in
18 *Mo roto V. Shire*, a Second Department case
19 from 2007. The town had a maximum
20 building height of 35 feet. And the
21 zoning code provided a definition of
22 height and how it was calculating.
23 Um -- the original town building
24 examiner, examined the original plans and
25 determined that height should be measured

Page 29

1 ZBA PUBLIC HEARING
2 self imposed because of the town's
3 involvement.
4 This case, with facts that are
5 merely similar to those here, establishes
6 that the hardship here is also not
7 entirely self created. And, therefore,
8 it's -- under these facts, should not be
9 weighed against the Applicant. However,
10 even if it is, this does not preclude the
11 granting the de minimis 1.52 foot height
12 variance, that we're seeking here, in the
13 as constructed height variance.
14 In conclusion, as a majority of the
15 factors weighed in favor of granting the
16 height variance, we respectfully request
17 that your Board grant the as constructed
18 height variance, that we're seeking here.
19 Thank you.
20 THE CHAIRMAN: Thank you, for your
21 presentation.
22 (Whereupon, a discussion was held
23 off the record.)
24 (Back on the record.)
25 THE CHAIRMAN: Anybody have any

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

Page 30

1 ZBA PUBLIC HEARING
2 questions of the presentation?
3 I now would like to open up the
4 meeting for the Public comments.
5 MR. YUNQUG: I want to start off
6 with a question.
7 MS. HUNTER: If you come up to the
8 microphone, speak loudly. And you might
9 have to spell your name for the Reporter,
10 please, thank you.
11 MR. YUNQUG: Sure.
12 Hi, Rob Yunqug, from Harriman
13 Heights, here in Harriman. I heard the
14 beginning of the presentation the term,
15 "mix use." I'd just like you to
16 elaborate, what you mean by, "mix use" for
17 this facility?
18 MS. HUNTER: He should be talking
19 to you, not the Attorneys.
20 MR. MCKAY: So, that's fine. He's
21 asking the question of the, mix use.
22 MR. YUNQUG: Yeah, I'm a little
23 curious as to what "mix use" is in their
24 interpretation.
25 MR. LOCH: I don't think, "mix use"

Page 32

1 ZBA PUBLIC HEARING
2 building, there are office spaces all
3 around the perimeter. The interior of the
4 building is really just very, very, large
5 spaces for storage purposes.
6 So, the layout was, they wanted the
7 offices ringing around on the outside of
8 the building with windows, so every office
9 space had adequate natural daylight. They
10 didn't want to have offices that were
11 essentially in the interior further end of
12 the building.
13 MR. SANTIAGO: Can I ask a
14 question? Mr. Loch, right?
15 MR. LOCH: Yes.
16 MR. SANTIAGO: Mr. Loch,
17 originally, you gave the presentation
18 that included this picture, right?
19 MR. LOCH: Yes.
20 MR. SANTIAGO: And the same at the
21 last visit, you said, your words and I
22 don't want to -- I don't -- I can't say
23 verbatim what they were. But you said,
24 I'm not sure exactly how they calculated
25 the distance, right. Because it didn't

Page 31

1 ZBA PUBLIC HEARING
2 was used correctly in terms of the classic
3 definition of rezoning. In this case,
4 what we have is a use of office space and
5 accessory storage space.
6 MR. YUNQUG: Okay. Also, I think,
7 there was a question on, I think, it was
8 Slide 2. If you could put Slide 2, up
9 please. We're also a little curious as to
10 this particular photo here. I couldn't
11 help but notice how many, it looks to be,
12 windows, on these two or three levels.
13 I don't know if that kind of makes
14 sense but -- it just seems to be a whole
15 lot of windows on this property for
16 something like "mix use." I wasn't here
17 the first session because I was in the
18 City. I just want to get a better idea of
19 the interpretation of why there are so
20 many windows on this particular property?
21 With respect, again, to the "mix
22 use" terminology part.
23 MR. LOCH: So, basically, what we
24 have is for the backside of the building
25 and roughly the front side of the

Page 33

1 ZBA PUBLIC HEARING
2 make sense --
3 MR. LOCH: Okay.
4 MR. SANTIAGO: When did you see
5 that? Or when did you take over and
6 looking at it yourself and say -- this
7 doesn't -- it's not going to make the cut?
8 MR. LOCH: I wasn't aware that
9 there was an issue until we really had
10 done an as built on it. Our firm was not
11 involved in the initial review and
12 approvals of this project. We were hired
13 initially to stake it out and provide
14 surveying services.
15 MR. SANTIAGO: So, you were still
16 on from 2017, onward?
17 MR. LOCH: No. Construction, I
18 don't think, in terms of this was until
19 end of 2019, 2020, something in that
20 range.
21 No, when I said, I couldn't make
22 sense of the calculations, this is also a
23 page that was provided to the board. This
24 is -- (Handing) from the original site
25 plan. And, when I look at the numbers on

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

Page 34

1 ZBA PUBLIC HEARING
2 there, where they say that, that's the
3 height calculations.
4 To me, I can't -- I can't find a
5 correlation between those numbers and what
6 I saw on the approved site plan for this
7 job. So, I don't know how they were
8 coming up with those calculations.
9 MR. SANTIAGO: I can give
10 you -- just looking at this, the whole
11 entire lower level looks like, below
12 grade. If this represents grade here --
13 MR. LOCH: -- Yes.
14 MR. SANTIAGO: That probably is not
15 right.
16 MR. LOCH: The way this building is
17 built, basically you have the back is, the
18 lowest level is exposed in the back of the
19 building.
20 MR. SANTIAGO: Okay.
21 MR. LOCH: And it has loading docks
22 available to it. Um -- I don't know, did
23 you want that? (Handing)
24 MR. SANTIAGO: I have looked at
25 that.

Page 36

1 ZBA PUBLIC HEARING
2 questions -- um -- what is the entire
3 height of the building complete at it's
4 highest point?
5 MR. LOCH: Give me a minute and I
6 will try to give you -- what are you
7 looking for?
8 MS. CARRILLO: The entire height of
9 the highest point of the building.
10 MR. LOCH: Okay. Which face of the
11 building?
12 MS. CARRILLO: So, you're saying
13 that the front of the building is taller
14 than the back of the building?
15 MR. LOCH: No.
16 MS. CARRILLO: Or vice versa?
17 MR. LOCH: The front of the
18 building would be shorter --
19 MS. CARRILLO: -- Okay.
20 MR. LOCH: -- than the back of the
21 building.
22 MS. CARRILLO: So, I'm looking
23 for -- I'll give you what I'm looking for
24 completely.
25 MR. LOCH: Okay.

Page 35

1 ZBA PUBLIC HEARING
2 MR. RICHMOND: I just want to
3 emphasize what John said. So, John was
4 retained after. Again, this building was
5 built and received approval from the
6 building inspector to be built as designed
7 as it is now, in the field exists.
8 The 1.5 foot came -- you know -- an
9 issue, again, which is de minimis, came up
10 only when he started doing the field
11 survey, so we could get -- you know -- the
12 certificate of occupancy. The building
13 inspector in reviewing it, I honestly,
14 have been practicing land use for almost
15 30 years, I've never seen a building
16 inspector not take a position of what a
17 village code says. Which I think,
18 highlights the ambiguity of the code here.
19 Which, again, my colleague Aaron
20 emphasized, needs to be constructed in our
21 favor. But again, it looks like you're
22 talking about a 1.5 foot variance on the
23 height.
24 MS. CARRILLO: Jennifer Carrillo,
25 Harriman, New York. I just have a few

Page 37

1 ZBA PUBLIC HEARING
2 MS. CARRILLO: So, I'm trying to
3 get to, what is the entire height of the
4 building? And, how are the three floors
5 divided? What are the heights of each
6 floor, the mezzanine, the middle floor and
7 the -- the bottom floor? I would like to
8 know the heights of how there're divided.
9 MR. RICHMOND: Well, I think, John,
10 I mean, you can't answer that question. I
11 mean, that's why the project is at a
12 slope, so what I think John asked, are you
13 asking for the height of the front of the
14 building? Or are you asking the height --
15 MR. LOCH: -- The problem --
16 MS. CARRILLO: -- I think, that
17 it's really not ambiguous. I think that
18 what I'm asking is, you have storage space
19 on the ground level, correct?
20 MR. LOCH: We have storage space on
21 two levels.
22 MS. CARRILLO: Okay. And so you
23 have a ceiling at some point.
24 MR. LOCH: Yes, yes.
25 MS. CARRILLO: What is the height

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

Page 38

1 ZBA PUBLIC HEARING
2 of the bottom, to the top of the first
3 floor? What is the height of the bottom,
4 to the top of the second floor? And, what
5 is the height of the mezzanine, is what
6 I'd like to know? That would give me the
7 entire height of the building, would it
8 not?
9 MR. RICHMOND: Well, again --
10 MR. LOCH: -- Okay. Here's the
11 problem, that's not how the Village in
12 their code defines the height of a
13 building. I understand what you're asking
14 for.
15 MS. CARRILLO: Okay. The ceilings
16 in here, they do have dips and -- but you
17 can probably say that maybe, it's a
18 25 foot ceiling on average? I mean --
19 MR. LOCH: -- Okay. So, the
20 question you're asking --
21 MS. CARRILLO: -- I mean, right?
22 So, what is average height of the --
23 MR. LOCH: -- All right. Hold on.
24 What I can tell you is that --
25 MR. RICHMOND: -- Well, I think,

Page 40

1 ZBA PUBLIC HEARING
2 Which are, what the project consistency is
3 with the community character, at the end
4 of the day.
5 MS. CARRILLO: Well, I think we
6 discussed the impact. And that was one of
7 the things that prevents -- um -- zoning
8 if there's an impact to the community.
9 So, I think use, definitely impacts the
10 community. Does it not? So, I want to
11 know what it's used for?
12 MR. RICHMOND: The use -- let's be
13 clear, the use is approved. No one is
14 questioning if this is an approved use.
15 The viability and the compatibility
16 of this use, in this district, was
17 established in the Village code a long
18 time ago.
19 MS. CARRILLO: But we can't
20 determine how high a ceiling is?
21 MR. RICHMOND: You can determine,
22 again, how high a ceiling is from a
23 certain point. That's why we're asking,
24 are you asking, from the front or the
25 back? It's a sloped site.

Page 39

1 ZBA PUBLIC HEARING
2 then your question, you're comparing to
3 this room. What if, the floor of this
4 room were at a slant? This building is
5 built on a slope.
6 MS. CARRILLO: So, you're not going
7 to -- you can't at this point answer that
8 question?
9 MR. RICHMOND: You could not at any
10 point answer your question because A)
11 It's not consist with the code. And
12 there's a definition of the code that
13 accounts for the facts that there's
14 geographic variability at different sites.
15 That's why, as John explained, he
16 talks about average grade density. When
17 you talk about height, again, you're
18 talking about the front.
19 MS. CARRILLO: Maybe it would be
20 more helpful then at the next meeting if
21 you brought pictures of the inside of the
22 building of how it's used.
23 MR. RICHMOND: I don't see how the
24 inside of the building has to do with the
25 issue that's before the Zoning Board.

Page 41

1 ZBA PUBLIC HEARING
2 MS. CARRILLO: Okay.
3 MR. YUNQUG: What is it in the
4 front? And, what is it in the back?
5 THE CHAIRMAN: Just wait.
6 MR. YUNQUG: Sorry. Apologies.
7 Just making it easier.
8 MR. LOCH: All right. So, the
9 first floor level, which is accessible
10 from the back of the building, through the
11 second floor level. It's roughly, a 16
12 foot difference in height.
13 MS. CARRILLO: It slopes, is what
14 you're saying?
15 MR. LOCH: No, no, no slope. The
16 ground slopes on the side of the building
17 there's a substantial slope, that's how
18 you get it. When you come in the front
19 part of the building, you're basically
20 coming into the second floor.
21 This drops off, in the back, you
22 have access to the first floor. Mind you,
23 it's also with some loading dockets, so
24 the ground is depressed a little further
25 around there.

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

Page 42

1 ZBA PUBLIC HEARING
2 From the first floor level, which
3 is all the way down at the bottom, up to
4 the second floor level, it's roughly a
5 16 foot difference in height. You're
6 asking for the floor height of the
7 building. One floor to the next.
8 From there, up to the -- peek of
9 the roof -- let's see --
10 MS. CARRILLO: -- Is that what
11 you're calling the mezzanine? From there
12 to the peek of the roof?
13 MR. LOCH: No.
14 MS. CARRILLO: Okay.
15 MR. LOCH: And actually, we're
16 not -- we're not addressing the mezzanine
17 and things at this meeting. There is no
18 variance to that.
19 MS. CARRILLO: I'm sorry. I was
20 just trying to understand what floors mean
21 what. Because of the mezzanine and --
22 MR. LOCH: -- Okay. See if I
23 can --
24 MS. CARRILLO: -- So
25 MR. LOCH: We have, at the first

Page 44

1 ZBA PUBLIC HEARING
2 my recollection, this is over 20 feet
3 tall. Don't quote me on the number, I'm
4 not looking it up right now. But if you
5 look at the office space it's only using
6 up nine feet of space here.
7 Clearly, you got room for more
8 space above it. And there is some
9 discussions regarding whether that's a
10 mezzanine or third floor? That's not
11 really what's in front of the Board right
12 now. We're just worried about the overall
13 height.
14 The reason being in the state
15 building code, they define mezzanine, as
16 not counting as another story. Because
17 the mezzanine is fully within the level
18 it's being used for, the second story.
19 MS. CARRILLO: No. This image is
20 helpful.
21 MR. LOCH: I hope I explained what
22 the use is.
23 MS. CARRILLO: I see what you're
24 saying. And the one and a half, is that
25 the additional blue line that goes above

Page 43

1 ZBA PUBLIC HEARING
2 floor level, some office spaces, very few
3 a little bit less than we do on the next
4 level. And we have the quarter building,
5 which is mostly storage. And actually, a
6 lot of the storage even goes up to this
7 first wall. This is more schematic, this
8 is not to scale. And intended to
9 be -- this is so we can explain stories
10 and heights, when we're discussing with
11 the Board.
12 At the second floor level, which is
13 here, we have offices here, we have
14 offices here. And via, you cut the
15 building.
16 The bulk of the interior of the
17 building is storage space, full height.
18 And actually, there's not a ceiling it
19 goes basically up to the roof. It's an
20 exposed roof system. Which -- you got a
21 steel structure installation, it's not
22 really a dropped ceiling or anything here.
23 What will be discussed further in
24 another setting, is mezzanine use, which
25 is basically, if you got something here,

Page 45

1 ZBA PUBLIC HEARING
2 it?
3 MR. LOCH: No, that was
4 actually -- we've had this display at a
5 couple of meetings.
6 MS. CARRILLO: Okay.
7 MR. LOCH: Many, many, years ago,
8 they actually talked about doing a full
9 three-story building. Which was going to
10 be much taller than this. That was back
11 in 2017 --
12 MS. CARRILLO: -- Yes, 2017.
13 MR. LOCH: And, yes, what you see
14 in blue here, that was me trying to answer
15 a question on the fly here. And drawing
16 on the thing.
17 MS. CARRILLO: Okay.
18 MR. LOCH: That's not what we have
19 -- um -- what we've got -- basically, is
20 the way they define zoning, we're going
21 with some numbers that would be about from
22 here to here. (Indicating)
23 Which is, they measure from
24 midpoint on a roof and they measure it
25 average ground elevation, at every

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

Page 46

1 ZBA PUBLIC HEARING
2 foundation corner. And then you average
3 those. And if you use those numbers you
4 end up saying, it's about a foot and a
5 half higher, than is allowed. That's what
6 we're applying for, a foot and a half.
7 It's not -- um -- it's not related
8 to the mezzanine or third story issue with
9 respect to it.
10 The way they went about putting
11 this building up is -- they got their
12 permits in -- okay, first they got the
13 Planning Board approval. Then they went,
14 they got their building permits sort of
15 incrementally.
16 First, they got the permit, to let
17 them get started on some of the site work.
18 And then, they got a permit that let them
19 do, basically, the foundation. Which
20 covers the entire first floor. Because
21 the back wall is concrete.
22 Then the upper levels are actually
23 steel framed buildings. Which are
24 generally the order of a particular
25 building to fit on that. And that's what

Page 48

1 ZBA PUBLIC HEARING
2 to Arron right? Or the legal term.
3 But did you advise them or LLC --
4 the building engineers that A) This
5 doesn't make sense? You know, I think
6 we're going to be off on the numbers even
7 from powering the original foundation. If
8 the slope of the roof hadn't changed
9 -- um -- I haven't seen the original
10 blueprints or what was proposed but
11 -- you know -- two plus two, is usually
12 four, so, so --
13 MR. RICHMOND: I think what John
14 was talking about, the original site plan.
15 I think it's different from what the plans
16 that were submitted to the building
17 department. I think, John, could correct
18 me if I'm wrong, showed the height of what
19 we built already.
20 MR. MCKAY: At the risk of
21 interjecting myself in the meeting. I
22 think that's what the question is. We
23 understand there are certain dimensions on
24 the site plan and cannot reconcile at this
25 point. But I think, the question is, I

Page 47

1 ZBA PUBLIC HEARING
2 they did.
3 I don't know -- it seems
4 that -- what they constructed in terms of
5 floor levels, matches up with the site
6 plan that was approved. There is nothing
7 on the site plan that indicates what the
8 peak of the roof was supposed to be at.
9 And I don't really know exactly how they
10 ended up with the thing, a foot and a half
11 higher. Because as I've said, I've looked
12 at the calculations on the site plan and
13 the numbers don't seem to match in what
14 you expect to see with the code. Um --
15 MS. CARRILLO: -- Thank you.
16 MR. LOCH: So, I hope I've answered
17 your question.
18 MS. CARRILLO: I appreciate your
19 time. Thank you, very much.
20 THE CHAIRMAN: Any more questions
21 from the Public? Anything from the Board?
22 MR. SANTIAGO: Mr. Loch, I think
23 you just said it pretty well, it doesn't
24 add up. So, that's why -- and I
25 understand the de minimus amount according

Page 49

1 ZBA PUBLIC HEARING
2 think, the Board is asking --
3 MR. LOCH: -- When did I know it?
4 MR. MCKAY: Yes, that's one
5 question. At some point an application
6 was made for the building, for the
7 construction permits.
8 MR. WARNER: Yes.
9 MR. RICHMOND: Yes.
10 MR. LOCH: Yes. Okay.
11 MR. MCKAY: That's really what the
12 people are interested in.
13 MR. LOCH: Okay. If I can. I
14 believe I can address that. I didn't
15 become aware that there was an issue with
16 respect to the height. It wasn't
17 something that I was looking at, until it
18 was brought up after I prepared the as
19 built. And we were trying to gear up, get
20 ready for the C.O.
21 If terms of permitting on the
22 building, that was handled by architect.
23 Who was actually the person that prepared
24 the site plan on this. This is a copy of
25 the approved plan. Which you have within

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

Page 50

1 ZBA PUBLIC HEARING
2 your files here.
3 No, I did not submit a full set and
4 everything to the Zoning Board.
5 But what I can tell you is, nowhere
6 on this plan, does it say what the roof
7 pitch is. Or what the height of the peek
8 of the roof is.
9 MR. SANTIAGO: It doesn't say 12.2?
10 MR. LOCH: No, it doesn't.
11 It's -- and that's one of the things made
12 it difficult for me. Where I look at
13 where they're supposed to have a table
14 here that they calculated the height of
15 the building. And none of those numbers
16 are something that I can look at the plan
17 view and say, yeah, I can see where that
18 number came from and how this works.
19 MR. MCKAY: John, that's the signed
20 site plan?
21 MR. LOCH: Yes, it is. This was
22 approved by the Village Planning Board
23 dated 4/15/2019. So, I know that -- I
24 have seen -- the plans for the building,
25 the later on when the ceiling thing was up

Page 52

1 ZBA PUBLIC HEARING
2 MR. RICHMOND: I think, the point
3 to emphasize, our Client, the plans got
4 approved by the building department. They
5 abided by it. They thought -- you know --
6 had every reasonable expectation to
7 understand that what they were building
8 was permitted by law, pursuant to the site
9 plans. They had a building permit from
10 the building inspector.
11 Then when they turn around and
12 C.O.'d, I think as, Aaron talked about the
13 Moroto case, which is similar to this.
14 They got a different code enforcement
15 officer, that says, well, actually you're
16 off. You got a foot and a half here too
17 high. So, here we are.
18 But I think, to place that on our
19 Client, I mean, this is our fourth meeting
20 for a foot and a half variance. I mean,
21 for a building that's ready to be
22 occupied. We've been trying to work with
23 the Village and still interested in going
24 to the Planning Board.
25 We're here tonight for a foot and a

Page 51

1 ZBA PUBLIC HEARING
2 and on. But at no point, was anybody
3 doing height calculations on that.
4 Um -- normally, that is something
5 that -- I think, you would have for your
6 code enforcement official, your permitting
7 people looking at -- you know -- is this
8 in conformance. But I don't know exactly
9 how it occurred. I can't speak for other
10 people's actions.
11 MR. SANTIAGO: Sir, I know steel is
12 not free so, I'm sure somebody was
13 counting on how much foot of steel you
14 guys were putting up. And not that it
15 matters here, because we're here just for
16 a variance issue. I don't want to drag
17 things out.
18 MR. LOCH: No.
19 MR. SANTIAGO: But I'm sure
20 somebody had to cut a check for it, at the
21 end of the day.
22 MR. LOCH: Yes, I'm sure somebody
23 did. I don't know.
24 MR. SANTIAGO: That's what I'm
25 saying.

Page 53

1 ZBA PUBLIC HEARING
2 half that I think, as you see from the
3 pictures, has no real impact on the
4 community. Which is the Zoning Board's
5 charge.
6 MR. LOCH: I mean, I also well, I
7 appreciate -- you know -- the outlook that
8 somebody is obviously paying for the
9 steel. You tend to try to minimize, you
10 don't buy more than you need to.
11 Generally, these types of buildings you're
12 also buying from stock sets. You're not
13 getting things that are custom made just
14 for your building. There are exceptions
15 and I'll give you an example.
16 The end frames on this building
17 would probably have to be custom made
18 because the building is skewed. It's not
19 a right angle building. But the rest of
20 the stuff, probably, in fact, I know,
21 basically these were two stock sets of
22 plans. I don't know if something said,
23 oh, we didn't look to see what the roof
24 pitch was.
25 THE CHAIRMAN: Any other questions?

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

Page 54

1 ZBA PUBLIC HEARING
2 MR. LOCH: Oh, I should also
3 emphasize one other thing too.
4 MR. SANTIAGO: I have something.
5 Again, you said, those were stock plans,
6 right? From like, an erector steel?
7 MR. LOCH: That's how most are
8 obtained, yes.
9 MR. SANTIAGO: It's -- at who --
10 chooses the roof pitch? Could that
11 building be a flat roof perhaps? Is that
12 possible?
13 MR. LOCH: It's not really
14 economical. I mean, it's much, much, less
15 expensive to build with a roof that has
16 pitch to it. Flat roofs are structurally
17 more difficult. And your cost would go up
18 substantially.
19 MR. RICHMOND: If you're asking our
20 Client to convert this to a flat roof now
21 would be cost prohibited. Again, despite
22 of all the history here and what he's gone
23 through with the Planning Board, building,
24 again, this is --
25 MR. LOCH: -- Conversion was --

Page 56

1 ZBA PUBLIC HEARING
2 curtail on this.
3 MR. LOCH: There is one other thing
4 I wanted to emphasize too. While we've
5 had some discussions this evening about
6 the mezzanine -- the additional foot and a
7 half foot height, would not have made a
8 difference in terms of the development of
9 that space.
10 We still have space above there
11 that's not occupied. So, we didn't make
12 the building taller so that we could get
13 that additional space.
14 MR. SANTIAGO: I haven't said -- I
15 haven't looked at the original blueprints.
16 MR. LOCH: No, I just --
17 MR. SANTIAGO: -- and what you had
18 to say at some point in time, I can peruse
19 them for myself. I appreciate everything
20 that you guys gave good evidence.
21 MR. LOCH: Thank you.
22 THE CHAIRMAN: Any one else in the
23 Public have any comments? It seems like
24 a, no.
25 With that being said, I would like

Page 55

1 ZBA PUBLIC HEARING
2 MR. RICHMOND: -- This roof was
3 developed pursuant to --
4 MR. LOCH: -- Not even close. But
5 I would leave it initially planning the
6 building, you would not plan something
7 like this with a flat roof.
8 MR. SANTIAGO: I want to take a
9 second look at the meat and potatoes.
10 Forgive me, because I'm just trying to
11 catch up --
12 MR. LOCH: No, no, we appreciate
13 it.
14 MR. RICHMOND: We appreciate that.
15 MS. HUNTER: Aaron, would you
16 please put your mic's on when you speak.
17 THE CHAIRMAN: There're on.
18 MR. SANTIAGO: It's on.
19 MS. HUNTER: Is the green light on?
20 You have to talk into the mic itself.
21 MR. SANTIAGO: Thank you, for --
22 MR. RICHMOND: No, we appreciate
23 your engagement. It's refreshing, very
24 refreshing.
25 MR. SANTIAGO: I'm trying to

Page 57

1 ZBA PUBLIC HEARING
2 to thank the Representatives from MYL
3 Investors. You gathered the necessary
4 information. I would like to -- have a
5 discussion with the Board in private.
6 MR. MCKAY: Attorney client
7 session.
8 THE CHAIRMAN: Attorney client
9 session. We are adjourning and coming
10 right back.
11 MR. MCKAY: Is this --
12 THE CHAIRMAN: Speak loud.
13 MR. MCKAY: Well, just for the
14 record, the Public Hearing is still open,
15 we're just adjourning to attorney client
16 session. And then the Board will come out
17 and there may be additional questions.
18 (Whereupon, the ZBA Members retired
19 for attorney client session, as of this
20 date.)
21 (Whereupon, ZBA Members are all
22 present, Public Hearing resumes, as of
23 this date.)
24 THE CHAIRMAN: I have the time as
25 9:53 p.m., I have a motion to have

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

Page 58

1 ZBA PUBLIC HEARING
2 attorney client to go back to the Public
3 Hearing. Can I have someone second that
4 motion?
5 MR. SANTIAGO: I second that.
6 MS. TORRES: I second that.
7 THE CHAIRMAN: We have two seconds
8 for the motion. The meeting is now back
9 open.
10 At this point on, I will invite
11 each Board Member to share their views.
12 And each feel free to discuss, any points
13 of agreement and concern by the
14 application presented by MYL Investors.
15 We the Board, we use actually, I'm
16 just going to read the framework to which
17 we use to grant variances.
18 "New York the authority of the
19 Village ZBA to grant area variances
20 governed by New York City Village Law,
21 7-712-B3."
22 "For an area variance which
23 involves relief from aforementioned
24 requirements, like, building height, the
25 ZBA must lead in a balancing test. To

Page 60

1 ZBA PUBLIC HEARING
2 Um -- at this point, I would like
3 to discuss here with the Public and
4 amongst the ZBA, whether if you consider
5 the first factor. Granting the variance
6 will produce an undesirable change in
7 character of the neighborhood or detriment
8 to the nearby properties.
9 (Whereupon, a discussion was held
10 off the record.)
11 (Back on the record.)
12 THE CHAIRMAN: I'll open up to the
13 Village Board the ZBA, whether granting
14 the variance will produce an undesirable
15 change in the character in the
16 neighborhood or in connection to the
17 nearby properties?
18 I'll go first. I feel that
19 considering the evidence, considering the
20 evidence, looking over the photos and
21 listening to the statements from MYL
22 Investors. 1.52 feet, is that where we
23 are?
24 MR. WARNER: Yes.
25 THE CHAIRMAN: That's all we can

Page 59

1 ZBA PUBLIC HEARING
2 weigh the benefits to the applicant and
3 his potential detriment to the health,
4 safety and welfare of the neighborhood or
5 community. The statute requires the ZBA
6 to consider five factors."
7 "The first factor, is stating
8 whether granting the variance will produce
9 an undesirable change to the character of
10 the neighborhood or detriment to nearby
11 properties."
12 "The second, whether the benefits
13 sought to be achieved by some feasible
14 alternative method, not requiring a
15 variance."
16 "Third factor, whether the
17 requested variance is substantial."
18 "The fourth factor, whether the
19 variance will have an adverse effect on
20 physical environments, conditions, in the
21 neighborhood."
22 "And the fifth being, whether the
23 difficulty was self-created. Though this
24 alone does not preclude granting the
25 variance."

Page 61

1 ZBA PUBLIC HEARING
2 consider as we're discussing -- um -- as
3 we're discussing the variance, right now.
4 That's all they're here for.
5 Um -- granting the variance, in my
6 opinion, does not necessarily produce an
7 undesirable change in the character of the
8 neighborhood in the community. Or the
9 nearby property.
10 The height alone, does not create
11 an issue for me, in my opinion. And from
12 understanding what they presented in their
13 evidence.
14 Anyone else?
15 MS. TORRES: I'm Tracey Torres. I
16 did visit the building. And based on that
17 one criteria, as to whether the character
18 of the neighborhood is impacted, I say,
19 no. I don't see the impact. So, I don't
20 see an issue with the 1 -- the 1.52.
21 MR. LARMARCH: I would have to
22 agree with the two other Board Members.
23 1.52 does not seem -- um -- you know -- a
24 drastic change.
25 THE CHAIRMAN: Okay. The second

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

Page 62

1 ZBA PUBLIC HEARING
2 factor -- I'm sorry, the second -- did you
3 abstain from comment?
4 MR. SANTIAGO: I abstained on that.
5 THE CHAIRMAN: Okay. The second
6 balancing factor -- excuse me, the second
7 of the five factors are -- states whether,
8 the benefits sought can be achieved by
9 some feasible alternative method, not
10 requiring a variance.
11 I mean, you could chop off the roof
12 but I mean, what -- you know -- how does
13 that work, I'm not actually sure.
14 Um -- so, I'm not sure if there -- if we
15 could achieve -- getting it to the correct
16 height without -- without the variance.
17 Um -- that's pretty much my opinion on
18 that.
19 MS. TORRES: My opinion was that, I
20 don't see how they can -- resolve the 1.52
21 issue. So, I think, the variance would be
22 needed. Because I don't see any changes
23 happening from 1.52.
24 MR. SANTIAGO: I will comment on
25 that. On this line item, the second part,

Page 64

1 ZBA PUBLIC HEARING
2 see an issue there.
3 THE CHAIRMAN: Any comments?
4 MR. MCKAY: Does anybody else want
5 to comment?
6 MR. LARMARCH: I have to agree with
7 the two Other Zoning Board Members. 1.52
8 is -- not a -- it's not a major or
9 substantial increase, right now.
10 THE CHAIRMAN: Okay. A -- on the
11 th factor, whether the -- I'm sorry,
12 Aaron. I apologize.
13 MR. SANTIAGO: I'm going to
14 abstain.
15 THE CHAIRMAN: The fourth factor,
16 whether the variance would have an adverse
17 effect on physical or environmental
18 conditions in the neighborhood. Again,
19 we're only allowed to vote on the 1.52
20 foot variance -- um -- I'm not sure that
21 height is going to have a physical or
22 environmental effect on the neighborhood.
23 I'm looking at the photos and the
24 evidence, the blending of the vegetation
25 was taken into consideration, by the

Page 63

1 ZBA PUBLIC HEARING
2 I brought up to the attention, I think of
3 Mr. Loch and the Attorneys. And asked
4 about a flat roof that would be
5 -- you know -- the only thing that I could
6 see being feasible.
7 But -- you know -- 1.52 is de
8 minimus. As I reflect on that -- um --
9 it's not enough to cause a change in the
10 existing structure.
11 THE CHAIRMAN: Out of the three of
12 the five factors, whether the requested
13 variance is substantial -- you know --
14 when I first got on the ZBA and I was
15 understanding all of the factors
16 -- you know -- it's a lot long. That's
17 not what we're here for today. We're here
18 for a 1.52 variance.
19 And is it substantial to the
20 overall structure. Looking at it, I can't
21 find reason to say that 1.52 feet is
22 substantial.
23 MS. TORRES: I'm in the same
24 sentiment, whether the required variance
25 are substantial. Um -- so -- I -- I don't

Page 65

1 ZBA PUBLIC HEARING
2 builders. It seems, for the color.
3 Um -- again, not even up for decision
4 about that. Only talking about 1.52 feet.
5 So, no.
6 Anyone else?
7 MR. SANTIAGO: I -- I took the time
8 to read a little bit of the -- 209-page
9 packet, from the study that was done.
10 There's no significant finding that
11 anything would have a detriment towards
12 it. However, I don't know if anyone here
13 locally lives here -- um -- you know, I'll
14 end it at that. So, I won't say anything.
15 MS. TORRES: For Number 4, whether
16 the proposed variance would have an
17 adverse effect on the physical or
18 environmental condition.
19 So, we're talking, we're going up
20 1.52. So, that space up there, in that
21 area that's still hasn't been labelled
22 whether, it's mezzanine or third-story,
23 going up, is not impacting that.
24 If it was one point -- maybe, if
25 the building was getting this way longer

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

Page 66

1 ZBA PUBLIC HEARING
2 and more offices, more parking, you would
3 assume. Or more traffic, but
4 there -- we've been told over and over
5 again, that this, this variance that we're
6 deciding yea or nay on, is based on 1.52,
7 from here to here. Up this space up here.
8 (Indicating)
9 So, I also don't see an issue of
10 not giving the variance based on Number 4.
11 MR. LARMARCH: I'm going to decline
12 to answer the question.
13 THE CHAIRMAN: On factor Number 5,
14 whether the difficulty was self created,
15 though this alone, does not preclude the
16 variance.
17 I have to say that, MYL Investors
18 this entire situation was self created
19 through a series of -- you know -- checks
20 and balances that seems like you guys did
21 go through. You know -- some with
22 -- um -- other employees and personnel.
23 But -- a -- you know -- it's -- as far as
24 the blueprints, as far as who okay'ed it,
25 as far as, how we got here, to the point

Page 68

1 ZBA PUBLIC HEARING
2 particular project. And it's -- it's
3 interesting because when you look at the
4 way things happen in government and you
5 wonder why this happens, why that happens.
6 And here, this is just one little
7 personal experience that I'm having. And
8 it's like, I'm so appreciative of the
9 community members that came. But you see
10 the frustration, because there should be
11 more people participating and coming to
12 events like this -- you know -- that also
13 would help. And we need to become more
14 proactive as citizens in Harriman.
15 And the other piece is, so, I'm
16 trying to catch up, I'm reading but I'm
17 not an engineer. I can't understand
18 things. And just like what was said, it's
19 checks and balances and some people are
20 here today and some people are not.
21 And it's -- you know -- it seems a
22 little awkward, the other meetings when
23 it's the reaction to the ZBA Board, is
24 like, why are we prolonging this?
25 Now, that I'm sitting here today,

Page 67

1 ZBA PUBLIC HEARING
2 where we need a variance.
3 Um -- you know -- that's -- that's
4 not what we have to vote on. We only have
5 to vote on the 1.52 variance, was self
6 created on. I do believe so. How, is a
7 tough one more me, so I'll stop right
8 there.
9 MR. SANTIAGO: I -- a -- I think I
10 said some statements earlier in this
11 meeting that address the cost of issues to
12 materials and blueprints. I also referred
13 to your engineer. I also believe it's
14 self inflicted, there's no question.
15 It's hard to build a building of
16 that size and that square footage without
17 knowing what you're doing. That being
18 said, we're talking about 1.52 feet here
19 tonight. So, that is the only thing that
20 that's in question. So --
21 MS. TORRES: Number 5, whether the
22 alleged difficulty was self created. Here
23 is where for me -- you know -- I'm brand
24 new to the ZBA Board and I think we've had
25 maybe four or five meetings based on this

Page 69

1 ZBA PUBLIC HEARING
2 I'm grateful that we did say, no, let's
3 come back another day. And it may have
4 seemed or it seemed to me that, the
5 interpretation is that, we don't know what
6 we're doing and I'm learning. But
7 -- you know -- you want to do your due
8 diligence and you want to do right by the
9 community.
10 So, with that said -- I said -- I
11 can't deny giving a variance on those
12 four. I will say that -- you know -- the
13 project leaders and the Client, the person
14 who the owner who chose all this, at a
15 certain point, ignorance is no excuse,
16 they say.
17 So, I do feel this was somewhat
18 self created, that's my opinion. Because,
19 too many numbers shifting here and there.
20 And that kind of behavior makes it very
21 uncomfortable for someone like me, to say,
22 yea and nay and feel comfortable walking
23 out in the community. Because that's who
24 you want to do right by.
25 And not only that, you want to set

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

Page 70

1 ZBA PUBLIC HEARING
2 that precedence of respect in being
3 professional and responsible enough, to
4 read numbers and make sure you're doing it
5 accordingly.
6 So, I did feel that this whole
7 thing blew up, because yes, it was
8 somewhat self created. There was a lack
9 of -- um -- being careful and being
10 completely -- having somebody double
11 check. And holding accountability for
12 that part. Instead of saying, it wasn't
13 us. So, that's my opinion. Thank you.
14 MR. LARMARCH: We're here for,
15 originally, we were here for multiple
16 things. Tonight, we're only here for 1.52
17 variance, height variance. Could it have
18 been avoided, yes.
19 You guys didn't have a clerk of
20 works. If you guys had a clerk of works
21 on the project, they would have talked to
22 the building department a lot more. Every
23 commercial building that's built has a
24 clerk of works, all right.
25 You know -- it's just, hearing

Page 72

1 ZBA PUBLIC HEARING
2 MS. HUNTER: Yes.
3 THE CHAIRMAN: All in favor, say
4 Aye.
5 MS. TORRES: I motion to support
6 the variance.
7 MR. LARMARCH: I second the motion.
8 MR. SANTIAGO: I also support.
9 MR. MCKAY: Motion to approve.
10 Second it and now take a vote.
11 THE CHAIRMAN: Motion to approve,
12 second it. And, now to take a vote. To
13 approve the variance, yes or no?
14 MS. TORRES: Yes.
15 MR. LARMARCH: Yes.
16 MR. SANTIAGO: Yes.
17 MS. HUNTER: We have four, yes's?
18 THE CHAIRMAN: Yes, 4, yes's.
19 MR. RICHMOND: Thank you, very much
20 and the Board, we appreciate it.
21 MR. WARNER: Thank you.
22 (Whereupon, a discussion was held
23 off the record.)
24 (Back on the record.)
25 THE CHAIRMAN: Okay. I'd like to

Page 71

1 ZBA PUBLIC HEARING
2 different numbers throughout the four
3 meetings that we had was -- you know --
4 ridiculous. But we're only talking about
5 a 1.52 variance, all right. That's all I
6 have.
7 Mike?
8 THE CHAIRMAN: Um -- is it --
9 (Whereupon, a discussion was held
10 off the record.)
11 (Back on the record.)
12 THE CHAIRMAN: Okay. Um -- thank
13 you. Understand, again, everyone who
14 participated, tonights meeting, all your
15 input is invaluable to our process.
16 This is a reminder the next meeting
17 is scheduled for March 5th, 2025, at 7:30.
18 And we'll take a full vote.
19 May I have a motion to approve or
20 deny --
21 MR. MCKAY: Do one.
22 THE CHAIRMAN: Just do one?
23 So, the motion to approve the
24 variance on the 1.52 foot variance at the
25 property at 200 Route 17M?

Page 73

1 ZBA PUBLIC HEARING
2 make a motion to have the ZBA Attorney to
3 draft the decision for our vote tonight.
4 MR. MCKAY: To be signed by who?
5 THE CHAIRMAN: To be signed by me,
6 The Chairman.
7 MR. LARMARCH: I'll make that
8 motion.
9 MS. TORRES: I'll second that
10 motion.
11 THE CHAIRMAN: All in favor?
12 MS. TORRES: Aye.
13 MR. LARMARCH: Aye.
14 MR. SANTIAGO: Aye.
15 MS. HUNTER: That was four yes's.
16 THE CHAIRMAN: Yes, that's four
17 yes's.
18 (Whereupon, a discussion was held
19 off the record.)
20 (Back on the record.)
21 THE CHAIRMAN: Any announcements
22 anybody?
23 MS. HUNTER: That's next weeks
24 agenda.
25 THE CHAIRMAN: So, no.

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

Page 74

1 ZBA PUBLIC HEARING
2 MR. WARNER: Excuse me, I think we
3 need to -- set a return date. Because --
4 MR. RICHMOND: -- Adjournment.
5 Adjourn the Public Hearing.
6 MR. WARNER: Adjourn the public
7 hearing to a date certain -- um --
8 MR. MCKAY: You know -- on the
9 items that were held in abeyance?
10 MR. WARNER: On the remaining
11 variances and the zoning interpretation.
12 So, we would suggest a tentative date in
13 May, that you guys are meeting.
14 MS. HUNTER: I don't have my phone
15 with me. What's the first Monday, in May?
16 MS. TORRES: The 7th.
17 MR. MCKAY: Do you think that's a
18 reasonable date to get the Planning Board,
19 have a public hearing and come back? I
20 mean, that's already --
21 MR. RICHMOND: We haven't been
22 before them. I guess, if worse comes to
23 worse, it could be adjourned again, at
24 that point.
25 MR. MCKAY: Yes, thank you.

Page 76

1 ZBA PUBLIC HEARING
2 appeared before the Planning Board yet.
3 It'll depend -- I don't know what's going
4 to happen.
5 MR. MCKAY: Do you have an
6 application yet filed with the Planning
7 Board?
8 MR. RICHMOND: No.
9 MS. HUNTER: No.
10 MR. RICHMOND: We have to file it.
11 And I think, Monday, is the deadline.
12 MS. HUNTER: Monday's, the deadline
13 to be on the --
14 MR. RICHMOND: -- April, again.
15 MS. HUNTER: March.
16 MR. RICHMOND: March?
17 MS. HUNTER: We're in February.
18 MR. RICHMOND: Yeah, yeah.
19 MS. HUNTER: March 3rd, to be on
20 the 17th --
21 MR. RICHMOND: Deadline.
22 MS. HUNTER: Agenda. Can you get
23 it to me?
24 MR. RICHMOND: We're going to try.
25 MS. HUNTER: It would be May 17th,

Page 75

1 ZBA PUBLIC HEARING
2 MR. RICHMOND: Okay.
3 MR. MCKAY: So, I guess what I'm
4 thinking is, if we hold it on the first
5 week in May, the notices would have to go
6 out by mid-April. Mid, to the third week
7 in April.
8 MR. RICHMOND: For what?
9 MR. MCKAY: Well, I think, under
10 the circumstances, since we're adjourning
11 to a date certain, we should probably
12 republish.
13 MR. RICHMOND: You think we're
14 going to have to renew? I mean, just --
15 MR. MCKAY: -- I'm just saying,
16 republish.
17 MR. RICHMOND: Not re-notice?
18 MR. MCKAY: Not re-notice but given
19 the lapse in time.
20 MR. RICHMOND: You mean, just in
21 the newspaper?
22 MR. MCKAY: Correct. With
23 recommendation to the Board with
24 re-notice.
25 MR. RICHMOND: I guess, we haven't

Page 77

1 ZBA PUBLIC HEARING
2 it would be March -- I'm sorry -- April, I
3 don't have the schedule in front of me.
4 THE CHAIRMAN: March 7th -- no, May
5 7th.
6 MS. HUNTER: Can I have that?
7 Ermer, has it. We have certain dates for
8 our Planing Board meetings. Thank you,
9 Ermer. Thank you, Joe. (Handing)
10 MR. MCKAY: You're welcome.
11 MS. HUNTER: Our next meting for
12 the Planing Board would be March 17th,
13 with a March 3rd, submission.
14 And then, the next meeting is
15 April 21st, with April 7th, submission to
16 the Planing Board. And that's by
17 noontime.
18 And then we have, May 19th, to be
19 the next meeting. If they have a meeting
20 on the 21st, I don't know if we're going
21 to have a decision on the May 7th, ZBA
22 Meeting. Do you see where I'm heading?
23 And then -- you know -- because --
24 April 21st -- April 21st, is
25 before -- right after Easter. Because the

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

Page 78

ZBA PUBLIC HEARING

17th, is a Friday. 18th, 19th, 20th, 17th, 18th, 19th, 20th, 21st, is the day after Easter. Just putting it out there. Making sure everyone -- can see the Planning Board will be present. Make sure all my Members are not on vacation or anything.

So, I'm just hesitant about the May 7th, ZBA Meeting. It might have to go to June. I'm trying to do --

MR. RICHMOND: I understand, but I think we'll know by April, where we stand.

MS. HUNTER: I mean -- we could --

MR. MCKAY: So, I wasn't trying to make it more complicated. I think that's an aggressive deadline. But if the Board is willing to make a motion to adjourn the remainder of the variance request and interpretation to May 8th?

MS. TORRES: May 8th?

MS. HUNTER: May 7th.

MR. MCKAY: Sorry, May 7th. If we find out prior to that date that it's not going to go, we'll let the Applicant know

Page 80

ZBA PUBLIC HEARING

we'll take that off and leave is as is. Okay, all right.

THE CHAIRMAN: If there's no further business I'll entertain a motion to adjourn. Can I have a motion?

MR. SANTIAGO: Motion to adjourn.

MS. TORRES: I second that motion.

THE CHAIRMAN: All in favor?

MS. TORRES: Aye.

MR. LARMARCH: Aye.

MR. SANTIAGO: Aye.

THE CHAIRMAN: This meeting is adjourned. Thank you, everyone for your participation.

MR. WARNER: Thank you, everyone, again.

MR. RICHMOND: Thank you.
(Time noted: 10:21 p.m.)

Page 79

ZBA PUBLIC HEARING

as soon as possible.

MR. SANTIAGO: We'll change it.

MR. WARNER: Yes.

MR. RICHMOND: Yes.

MR. MCKAY: And it's not published, set it for an another date. A motion to adjourn the remaining matters to May 7th, ZBA Meeting. So, you want to make that motion?

MR. SANTIAGO: I'll make that motion.

MS. TORRES: I'll second that motion.

THE CHAIRMAN: All in favor?

MS. TORRES: Aye.

MR. SANTIAGO: Aye.

MR. LARMARCH: Aye.

THE CHAIRMAN: The date is?

MS. HUNTER: May 7th, is the ZBA. (Whereupon, a discussion was held off the record.)

(Back on the record.)

MS. HUNTER: Yeah, I had you on the agenda for next week, for continued. But

Page 81

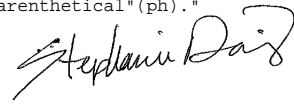
ZBA PUBLIC HEARING

CERTIFICATION

I, Stephanie A. Colon-Davis, Certified Court Reporter, before whom this proceeding was taken, do hereby state on the Record:

This to be a true and accurate transcript of the aforesaid proceeding and that due to the interaction in the spontaneous discourse of the proceedings, dashes (--) have been used to indicate pauses, changes in thought, and/or talkovers; that same is the proper method for a Court Reporter's transcription of proceedings, and that the dashes (--) do not indicate that words or phrases have been left out of this transcript;

That any words and/or names which could not be verified through reference material have been denoted with the parenthetical "(ph)."



Stephanie A. Colon-Davis

Dated: February 27, 2025

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

<hr/> 1 <hr/>	20 44:2	<hr/> 4 <hr/>	above 44:8,25 56:10
1 61:20	200 6:9 12:7 71:25	4 65:15 66:10 72:18	absent 4:12,13
1.5 35:8,22	2007 27:19	4/15/2019 50:23	abstain 62:3 64:14
1.52 15:4 16:4 20:9 21:24 23:17,19 24:5 25:19 29:11 60:22 61:20,23 62:20,23 63:7,18,21 64:7,19 65:4,20 66:6 67:5,18 70:16 71:5, 24	2010 21:12	<hr/> 5 <hr/>	abstained 62:4
10/31/24 12:9	2016 25:6	5 18:12 66:13 67:21	abstract 24:16
100 7:20	2017 19:3 20:6 23:21 26:11 33:16 45:11, 12	5th 3:23 71:17	access 41:22
10951 12:7	2019 33:19	<hr/> 7 <hr/>	accessible 41:9
12.2 50:9	2020 33:19	7-712-B3 58:21	accessory 31:5
16 41:11 42:5	2025 3:12,23 4:2 71:17	7:30 71:17	account 14:22
17M 6:9 17:3 18:11,21 71:25	209-page 65:8	7th 74:16	accountabilit y 70:11
17N 12:7	20th 19:8	<hr/> 9 <hr/>	accounts 39:13
1984 21:19	25 38:18	9:53 57:25	achieve 22:15,17 23:9,11 62:15
19th 4:2	27th 3:12	<hr/> A <hr/>	achieved 59:13 62:8
<hr/> 2 <hr/>	<hr/> 3 <hr/>	a/k/a 3:19	acted 21:12
2 9:3 31:8	30 35:15	Aaron 4:5 5:24 35:19 52:12 55:15 64:12	actions 51:10
	31st 19:19	abeyance 6:24 74:9	acts 21:6
	35 6:15 10:4 15:3 27:20 28:6,20	abided 52:5	add 47:24
	36.5 9:3	abled 7:13 19:16	addition 8:23 17:5
	37.71 28:19		additional 22:25 44:25 56:6,13 57:17
			address 49:14 67:11

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

addresses 6:25 22:23	allow 7:11	25:5	27:5 58:19, 22 65:21
addressing 42:16	allowed 9:21 46:5 64:19	applicant 6:2,6,25 7:12 14:7,17 19:3 20:5 21:5 22:16, 18,20,23 23:3,10,12, 21 25:24 26:11 28:8, 13 29:9 59:2	around 32:3,7 41:25 52:11
adequate 13:22 32:9	alternative 22:14,17 23:11 59:14 62:9	Applicants 6:20 28:21	Arron 48:2
Adjourn 74:5,6	ambiguity 9:4,9 11:10 14:12,15,18 35:18	application 6:20 13:16 49:5 58:14	asked 11:20 13:12 37:12 63:3
adjourned 74:23	ambiguous 37:17	applying 46:6	asking 30:21 37:13, 14,18 38:13, 20 40:23,24 42:6 49:2 54:19
adjourning 57:9,15	amended 27:14 28:13	appreciate 47:18 53:7 55:12,14,22 56:19 72:20	assume 66:3
Adjournment 74:4	amount 47:25	appreciative 68:8	attention 63:2
adverse 24:19,24 26:8 59:19 64:16 65:17	ample 21:5	approval 5:7 7:10,14, 17 35:5 46:13	attorney 5:25 8:10 57:6,8,15,19 58:2 73:2
adversely 25:13	and/or 25:13	approvals 33:12	Attorneys 30:19 63:3
advise 48:3	angle 53:19	approve 4:15,18 71:19,23 72:9,11,13	authority 58:18
affirmed 21:19	announcements 73:21	approved 4:22 34:6 40:13,14 47:6 49:25 50:22 52:4	Auto 17:12,17 18:2,6
aforementioned 58:23	answer 37:10 39:7, 10 45:14 66:12	arbitrarily 21:6,13	available 34:22
AFR 9:13 12:6	answered 47:16	architect 49:22	average 10:16,19,22 11:8 28:2 38:18,22 39:16 45:25 46:2
agenda 3:16 73:24	anybody 29:25 51:2 64:4 73:22	area 6:14 15:10, 13 21:8,13, 22,23 24:11	avoided 70:18
ago 40:18 45:7	anyone 61:14 65:6, 12		aware 33:8 49:15
agree 25:7 61:22 64:6	Apologies 41:6		awkward 68:22
agreement 7:7,11,16 8:3,4,8 58:13	apologize 64:12		Aye 72:4 73:12,
ahead 22:12	appealed 8:20		
alleged 27:2,4 67:22	Appeals 3:6,13,21		
Allegiance 3:7,9			

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

13,14	behavior 69:20	13 21:4 22:8 23:2,13 24:8 25:5,22 26:3,11,13, 22 27:3 29:17 33:23 39:25 43:11 44:11 46:13 47:21 49:2 50:4,22 52:24 54:23 57:5,16 58:11,15 60:13 61:22 64:7 67:24 68:23 72:20 74:18	16,21,24 20:20 22:21 23:3,5 27:15,20,23 28:4,5,7,14, 16 31:24 32:2,4,8,12 34:16,19 35:4,6,12,15 36:3,9,11, 13,14,18,21 37:4,14 38:7,13 39:4,22,24 41:10,16,19 42:7 43:4, 15,17 44:15 45:9 46:11, 14,25 48:4, 16 49:6,22 50:15,24 52:4,7,9,10, 21 53:14,16, 18,19 54:11, 23 55:6 56:12 58:24 61:16 65:25 67:15 70:22, 23
B	behind 16:17,21	Board's 15:7 53:4	building's 16:19 23:7
B2	believe 12:10 49:14 67:6,13	bottom 11:7 37:7 38:2,3 42:3	buildings 16:11,23 46:23 53:11
6:9,16	below 34:11	Bout 21:10	built 9:17 11:21 13:14 23:3 33:10 34:17 35:5,6 39:5 48:19 49:19 70:23
back	benefit 22:17,19	brand 67:23	bulk 21:9,15 43:16
5:19 12:10, 23 14:5 16:15,16 24:20 29:24 34:17,18 36:14,20 40:25 41:4, 10,21 45:10 46:21 57:10 58:2,8 60:11 69:3 71:11 72:24 73:20 74:19	benefits 22:15 23:9, 12 59:2,12 62:8	break 8:10	buy 53:10
background 17:23	better 31:18	bright 17:19	buying 53:12
backside 31:24	Biaz 4:11	brought 39:21 49:18 63:2	
balances 66:20 68:19	bigger 23:23	build 54:15 67:15	
balancing 15:14 27:6 58:25 62:6	bit 43:3 65:8	builders 3:20 65:2	
base 28:3	blend 17:22	building 6:11 7:18,21 8:5,16,19 9:3,6,15,23 10:17 11:12, 18 12:7,23, 25 13:20 14:10,14 15:3 16:8,17 17:2,6,20 18:4,11,14,	
based 10:12 14:9, 24,25 15:14 61:16 66:6, 10 67:25	blending 64:24		
basically 31:23 34:17 41:19 43:19, 25 45:19 46:19 53:21	blends 16:18		
basis 24:8	blew 70:7		
Bay 21:11	blocks 16:20 18:23		
beginning 30:14	blown 20:3		
	blue 17:20 44:25 45:14		
	blueprints 48:10 56:15 66:24 67:12		
	board 3:6,12,21 5:10,20 7:3, 10,14,25 8:21 12:10 15:18 19:8,		

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

C	11,18 25:2, 6,21 27:10, 11,18 29:4 31:3 52:13	changed 13:22 48:8	8,15,19 58:2 69:13
C.O. 9:15 49:20	catch 55:11 68:16	changes 62:22	close 55:4
C.o.'d 52:12	caused 16:2	changing 28:10	closer 17:3
C.o.'s 13:18	ceiling 37:23 38:18 40:20,22 43:18,22 50:25	character 15:22,25 20:13,17,25 24:19,25 25:11 40:3 59:9 60:7,15 61:7,17	code 6:21 7:21 9:4 11:16 12:19 14:13, 15 15:8 27:13,21 35:17,18 38:12 39:11, 12 40:17 44:15 47:14 51:6 52:14
calculate 20:19	ceilings 38:15	charge 53:5	code's 28:20
calculated 9:2 10:9 11:20 32:24 50:14	certain 40:23 48:23 69:15 74:7	check 51:20 70:11	coding 9:10
calculating 27:22	certainly 9:11	checks 66:19 68:19	colleague 6:4 9:8 14:11 35:19
calculation 14:23 28:17	certificate 35:12	Choice 3:20	color 65:2
calculations 8:22,24 9:23 10:6 12:16 14:13,20 33:22 34:3,8 47:12 51:3	Chairman 3:4,11,14 4:7,9,11,13, 21,25 5:4,7, 15,20 22:12 23:15 26:5, 24 29:20,25 41:5 47:20 53:25 55:17 56:22 57:8, 12,24 58:7 60:12,25 61:25 62:5 63:11 64:3, 10,15 66:13 71:8,12,22 72:3,11,18, 25 73:5,6, 11,16,21,25	chooses 54:10	coloration 17:20
call 3:5,17 4:3	change 15:21,24 20:12,16,24 28:12 59:9 60:6,15 61:7,24 63:9	chop 62:11	come 30:7 41:18 57:16 69:3 74:19
calling 42:11		chose 69:14	comes 74:22
Car 17:17 18:2,7		Christine 4:11	comfortable 69:22
careful 70:9		circumstances 24:17	comment 62:3,24 64:5
Carrillo 35:24 36:8, 12,16,19,22 37:2,16,22, 25 38:15,21 39:6,19 40:5,19 41:2,13 42:10,14,19, 24 44:19,23 45:6,12,17 47:15,18		citizens 68:14	comments 5:16 30:4 56:23 64:3
case 14:14 21:5,		City 31:18 58:20	commercial 16:24 17:11, 13 18:22 70:23
		classic 31:2	community 15:22,25
		clear 18:3 40:13	
		clearly 8:25 17:2 18:23 44:7	
		clerk 70:19,20,24	
		client 52:3,19 54:20 57:6,	

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

20:13,17,25 24:20,25 25:12,17 40:3,8,10 53:4 59:5 61:8 68:9 69:9,23 compared 18:11 comparing 39:2 compatibility 40:15 complete 36:3 completed 3:24 completely 36:24 70:10 conceptual 7:7 concern 58:13 conclusion 29:14 concrete 46:21 condition 65:18 conditions 13:14,24 25:14 26:9, 15,20 59:20 64:18 conduct 28:23 conformance 51:8 connection 6:7 60:16 consider 25:19 59:6 60:4 61:2 consideration 64:25 considering 10:16 27:7	60:19 consist 39:11 consistency 40:2 Consistent 8:13 constitutes 6:22 constructed 6:12 8:15,18 14:2,21 15:5,11 16:2 20:15 22:3,7 23:8,17,19 24:4 25:19 29:13,17 35:20 47:4 construction 33:17 49:7 consulting 9:2 14:25 continued 3:18 continuing 6:17 contradictory 21:3 25:22 Conversion 54:25 convert 54:20 copies 12:9,12 19:14 copy 20:3 49:24 corner 10:17,23 46:2 corners 10:19 11:3 correct 37:19 48:17 62:15 correctly 31:2	correlation 34:5 cost 54:17,21 67:11 count 12:20 13:11 counting 44:16 51:13 couple 45:5 court 21:12 24:9 25:6 covers 46:20 create 61:10 created 27:3,4 29:7 66:14,18 67:6,22 69:18 70:8 criteria 61:17 curious 30:23 31:9 current 7:17 curtail 56:2 custom 53:13,17 cut 33:7 43:14 51:20	dated 12:9 50:23 day 40:4 51:21 69:3 daylight 32:9 de 21:7,14,22, 23 22:2 24:10 25:25 29:11 35:9 47:25 63:7 deadline 3:23 debate 10:25 deciding 66:6 decision 65:3 73:3 decline 66:11 deemed 24:14 27:2 deems 27:3 define 44:15 45:20 defines 38:12 definitely 40:9 definition 10:8,12 12:8 13:8 27:21 31:3 39:12 denial 8:19 9:6 11:12 15:2 20:21 denied 21:13 dense 16:18 density 39:16
<hr/> D <hr/>			
		Dan 6:4 date 3:10 19:23, 24,25 57:20, 23 74:3,7, 12,18	

deny 21:7 69:11 71:20	difficult 50:12 54:17	docks 13:2 34:21	17:21
department 21:11,18 25:6 27:18 28:23 48:17 52:4 70:22	difficulty 59:23 66:14 67:22	document 11:24 12:3,6 13:13	easier 41:7
depicted 28:14	diligence 69:8	documentation 13:23	easily 22:5
depressed 12:25 41:24	dimensions 48:23	doing 35:10 45:8 51:3 67:17 69:6 70:4	east 17:9
designed 35:6	dips 38:16	double 70:10	economical 54:14
determination 28:24	direction 17:13	draft 73:3	effect 25:11 59:19 64:17,22 65:17
determine 40:20,21	directly 18:2,6	drag 51:16	elaborate 30:16
determined 20:10 26:13 27:9,25 28:4,18	discrepancies 6:14	drape 17:21	elevation 10:23 11:2, 4,6 16:10 17:3 45:25
determines 15:12	discuss 58:12 60:3	drastic 61:24	elevations 9:19 10:15 13:19,21 18:10
detriment 25:15 59:3, 10 60:7 65:11	discussed 40:6 43:23	Drastically 23:23	emphasize 14:7 35:3 52:3 54:3 56:4
developed 55:3	discussing 43:10 61:2,3	drawing 45:15	emphasized 35:20
development 56:8	discussion 5:17 14:3 16:13 29:22 57:5 60:9 71:9 72:22 73:18	draws 17:19	emphasizing 18:25
diagram 11:17 12:8	discussions 44:9 56:5	dropped 43:22	employees 66:22
diagrams 12:14	display 45:4	drops 41:21	end 32:11 33:19 40:3 46:4 51:21 53:16 65:14
dictates 14:14 25:21	distance 32:25	due 3:25 6:13 16:5 24:25 25:24 28:22 69:7	
difference 41:12 42:5 56:8	district 6:10,16 40:16	E	
different 14:22 18:10 19:23 27:14 28:16,17 39:14 48:15 52:14 71:2	divert 24:8	e-mail 7:19,24	ended 47:10
	divided 37:5,8	earlier 67:10	enforcement 51:6 52:14
	dock 12:21,22,24	earth 16:19 18:5	engagement 55:23
	dockets 41:23	earthy	engineer 6:5 9:2,13 14:25 67:13

68:17	examined		70:6
engineers	27:24	F	feet
48:4	examiner		8:16 9:3
entire	27:24 28:4,	face	13:3 15:4
34:11 36:2,8	16	36:10	16:4 24:5
37:3 38:7	exceed	facility	27:20 28:6,
46:20 66:18	21:9	14:2 30:17	19 44:2,6
entirely	exceeded	fact	60:22 63:21
27:16 29:7	9:21 21:15,	25:24 53:20	65:4 67:18
environment	20	factor	field
25:14 26:9	exceeding	15:20 21:4	35:7,10
environmental	10:5 28:19	22:5,10,13	fifth
26:15,20	exceeds	23:14,16	26:23,25
64:17,22	15:3	24:21 25:23	59:22
65:18	exceptions	26:4,7,23,25	files
environments	53:14	27:8 59:7,	50:2
59:20	excuse	16,18 60:5	filled
erector	62:6 69:15	62:2,6	11:5
54:6	74:2	64:11,15	finalize
essentially	existing	66:13	8:11
10:9 16:9	13:13,23,25	factors	finalizing
32:11	63:10	15:15,17	7:6 8:7
established	exists	27:7,8 29:15	finally
40:17	35:7	59:6 62:7	18:12
establishes	expect	63:12,15	find
27:11 29:5	47:14	facts	18:14 34:4
eve	expectation	29:4,8 39:13	63:21
10:13	52:6	far	finding
evening	expensive	11:25 66:23,	65:10
3:4,16 5:24	54:15	24,25	fine
56:5	experience	favor	30:20
evenly	68:7	14:16 22:6	firm
20:11	explain	25:23 29:15	5:25 33:10
events	9:8 12:15	35:21 72:3	first
68:12	15:17 43:9	73:11	7:12 9:19
everyone	explained	feasible	15:20 22:22
3:5 71:13	14:12 39:15	22:14,16	24:20 31:17
evidence	44:21	23:11 59:13	38:2 41:9,22
25:9,10	exposed	62:9 63:6	42:2,25 43:7
56:20 60:19,	34:18 43:20	February	46:12,16,20
20 61:13	extending	3:12 4:2	59:7 60:5,18
64:24	28:9	19:8	63:14 74:15
exactly	extreme	feedback	fit
15:17 27:17	16:8	7:4	46:25
32:24 47:9	extremely	feel	five
51:8	15:5	58:12 60:18	15:14,17
		69:17,22	27:8 59:6

62:7 63:12	73:15,16	getting	green
67:25	fourth	9:15 53:13	55:19
flat	26:4,7 52:19	62:15 65:25	ground
54:11,16,20	59:18 64:15	give	9:18 10:14
55:7 63:4	framed	18:13 34:9	11:4,6 13:21
floor	46:23	36:5,6,23	28:2 37:19
5:16,21	frames	38:6 53:15	41:16,24
37:6,7 38:3,	53:16	giving	45:25
4 39:3 41:9,	framework	66:10 69:11	guess
11,20,22	58:16	goes	11:11 74:22
42:2,4,6,7	framing	24:20 43:6,	guys
43:2,12	28:8	19 44:25	51:14 56:20
44:10 46:20	Frankie's	going	66:20 70:19,
47:5	17:17 18:2,6	15:16 33:7	20 74:13
floors	free	39:6 45:9,20	
22:22 37:4	51:12 58:12	48:6 52:23	<hr/> H <hr/>
42:20	front	58:16 64:13,	half
fly	11:15 12:25	21 65:19,23	12:24 44:24
45:15	17:5,16 18:6	66:11	46:5,6 47:10
foot	19:19 31:25	good	52:16,20
6:15 15:3	36:13,17	3:4 5:23	53:2 56:7
19:4 20:7,9,	37:13 39:18	12:18 56:20	Hampton
11,22 21:21,	40:24 41:4,	Google	25:4
24 23:17,19,	18 44:11	18:5	handing
22,25 25:19	frustration	governed	20:4 33:24
26:12,16	68:10	58:20	34:23
28:20 29:11	full	government	handled
35:8,22	17:17 43:17	68:4	49:22
38:18 41:12	45:8 50:3	grade	happen
42:5 46:4,6	71:18	28:2 34:12	68:4
47:10 51:13	fully	39:16	happening
52:16,20,25	6:12 44:17	grant	62:23
56:6,7 64:20	<hr/> G <hr/>	15:8,13,18	hard
71:24	garage	29:17 58:17,	67:15
footage	28:10	19	hardship
67:16	gathered	granted	27:2,4,16
Forgive	57:3	13:24	28:22,25
55:10	gave	granting	29:6
found	32:17 56:20	15:23 16:2	harm
20:23 23:25	gear	21:19 22:6	15:9
28:21	49:19	24:10 25:10	Harriman
foundation	generally	27:5 29:11,	3:6 30:12,13
10:17,18	46:24 53:11	15 59:8,24	35:25 68:14
46:2,19 48:7	geographic	60:5,13 61:5	head
four	39:14	grateful	17:25
13:3 48:12		69:2	
67:25 69:12			
71:2 72:17			

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

health 25:15 59:3	21,23 10:8 11:21 12:8, 20 13:4,5,8, 11 14:14,19, 21,23 15:2, 3,5,11,19,23 16:3 18:25 19:4 20:7,9, 11,15,22 21:25 22:3, 7,21 23:6, 18,19,22,23, 25 24:4,23 25:19,25 26:10,12,16, 18 27:12,20, 22,25 28:3, 5,12,17,18, 20 29:11,13, 16,18 34:3 35:23 36:3,8 37:3,13,14, 25 38:3,5,7, 12,22 39:17 41:12 42:5,6 43:17 44:13 48:18 49:16 50:7,14 51:3 56:7 58:24 61:10 62:16 64:21 70:17	high 40:20,22 52:17 higher 46:5 47:11 highest 36:4,9 highlights 35:18 hired 33:12 history 54:22 hold 27:15 38:23 holding 70:11 holds 21:6 honestly 35:13 hope 44:21 47:16 house 28:3,8,9,12, 18 HUNTER 4:12 5:5,14 30:7,18 55:15,19 72:2,17 73:15,23 74:14	26:8,14,19 40:6,8 53:3 61:19 impacted 61:18 impacting 65:23 impacts 40:9 importantly 17:16 imposed 27:16 28:22 29:2 included 9:17 32:18 including 7:4 16:6 21:24 increase 64:9 incrementally 46:15 indicated 7:20 indicates 47:7 indicating 11:19 18:17 45:22 66:8 individual 19:15 inflicted 67:14 information 57:4 initial 33:11 initially 33:13 55:5 input 71:15 inside 39:21,24 inspector 7:18 8:5 11:12 14:10
heard 30:13			
hearing 3:1,19 4:1 5:1 6:1,24 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1, 14,22 58:1,3 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1,25 71:1 72:1 73:1 74:1,5, 7,19	heights 9:5,9 11:19 12:15 30:13 37:5,8 43:10 held 5:17 6:24 14:3 16:13 21:12 28:25 29:22 60:9 71:9 72:22 73:18 74:9 help 31:11 68:13 helpful 39:20 44:20 Heritage 16:20		
Hearings 6:18			
height 6:13,15 8:16,17,18, 22,24 9:3,			
		I	
		idea 31:18 identify 12:3 ignorance 69:15 image 44:19 impact 22:2 24:19, 24 25:13,25	

23:5 35:6, 13,16 52:10 inspector's 8:19 9:6 20:20 installation 43:21 intended 43:8 interested 49:12 52:23 interesting 10:8 68:3 interior 32:3,11 43:16 interjecting 48:21 interpretatio n 6:21 30:24 31:19 69:5 74:11 interpretatio ns 27:13 interrupting 19:6 introduced 9:12 invaluable 71:15 Investor 5:22 Investors 3:19 6:3,7 57:3 58:14 60:22 66:17 invite 9:7 58:10 involved 9:24 33:11 involvement 29:3 involves 58:23	irrational 21:3 24:8 25:22 27:15 irrationally 21:7 issue 7:15 9:20 22:24 33:9 35:9 39:25 46:8 49:15 51:16 61:11, 20 62:21 64:2 66:9 issues 7:3,21 67:11 item 62:25 items 3:18 74:9	know 6:17 18:14 31:13 34:7, 22 35:8,11 37:8 38:6 40:11 47:3,9 48:5,11 49:3 50:23 51:7, 8,11,23 52:5 53:7,20,22 61:23 62:12 63:5,7,13,16 65:12,13 66:19,21,23 67:3,23 68:12,21 69:5,7,12 70:25 71:3 74:8 knowing 67:17	52:8 58:20 lawl 24:15 layout 32:6 lead 58:25 leaders 69:13 learning 69:6 leave 55:5 legal 48:2 legalization 22:20 legalized 23:6 letter 8:20 9:7 11:13 15:2 20:21 level 7:9 10:11 34:11,18 37:19 41:9, 11 42:2,4 43:2,4,12 44:17 levels 31:12 37:21 46:22 47:5 light 55:19 Lincoln 14:25 line 3:18 44:25 62:25 lines 18:9 listed 9:6 listening 60:21
	J		
	Jennifer 35:24 job 34:7 john 6:4 9:8,12 18:14 35:3 37:9,12 39:15 48:13, 17 50:19 joined 6:3 judged 24:16 Justin 4:7,25 5:2		
	K		
	kept 6:24 kind 31:13 69:20 knock 13:3	labelled 65:21 lack 70:8 land 6:5 35:14 language 11:11 13:6 large 16:24 17:11, 12 19:15 32:4 Larmarch 4:7,8,17 61:21 64:6 66:11 70:14 72:7,15 73:7,13 law 5:25 14:14 15:15 21:6 25:2,21 27:10,11	

lists 8:21	longer 65:25	major 64:8	Meaning 15:4
little 21:21 22:2 30:22 31:9 41:24 43:3 65:8 68:6,22	look 9:22 33:25 44:5 50:12, 16 53:23 55:9 68:3	majority 29:14	means 21:25
lives 65:13	looked 7:20 11:9 34:24 47:11 56:15	make 4:17 5:22 33:2,7,21 48:5 56:11 70:4 73:2,7	measure 45:23,24
LLC 48:3	looking 11:24 18:2 19:11 33:6 34:10 36:7, 22,23 44:4 49:17 51:7 60:20 63:20 64:23	makes 31:13 69:20	measured 27:25
loading 12:21,22,24 13:2 34:21 41:23	looks 31:11 34:11 35:21	making 41:7	measurements 9:18
locally 65:13	lot 17:13 31:15 43:6 63:16 70:22	manmade 16:6	meat 55:9
located 6:8	loud 57:12	March 3:23 71:17	meeting 3:5,22,25 4:16,19 20:4 30:4 39:20 42:17 48:21 52:19 58:8 67:11 71:14, 16 74:13
Loch 6:4 9:8,11, 12 12:2,5 18:16 19:11, 18,20,24 20:2 30:25 31:23 32:15, 16,19 33:3, 8,17 34:13, 16,21 36:5, 10,15,17,20, 25 37:15,20, 24 38:10,19, 23 41:8,15 42:13,15,22, 25 44:21 45:3,7,13,18 47:16,22 49:3,10,13 50:10,21 51:18,22 53:6 54:2,7, 13,25 55:4, 12 56:3,16, 21 63:3	loudly 30:8	match 10:3 47:13	Member 58:11
Lock 32:14	lower 16:10 17:2 34:11	matches 47:5	members 7:25 57:18, 21 61:22 64:7 68:9
long 40:17 63:16	lowest 34:18	materials 67:12	memo 19:8
	Loyal 17:11	matter 6:19 20:19	mentioned 25:3
	M	matters 51:15	method 59:14 62:9
	made 4:23 13:15 49:6 50:11 53:13,17 56:7	maximum 27:19	mezzanine 6:21 7:2 22:24 37:6 38:5 42:11, 16,21 43:24 44:10,15,17 46:8 56:6 65:22
	maintain 13:25	MCKAY 4:23 5:3,6,9 8:3,12 11:23 12:4 19:5,10 22:11 30:20 48:20 49:4, 11 50:19 57:6,11,13 64:4 71:21 72:9 73:4 74:8,17,25	mezzanine/ third-story 7:15
		mean 30:16 37:10, 11 38:18,21 42:20 52:19, 20 53:6 54:14 62:11, 12 74:20	

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

mic 55:20	modified 28:9	necessary 23:9 57:3	obtained 54:8
mic's 55:16	Monday 74:15	need 53:10 67:2 68:13 74:3	obtaining 7:4
Michael 3:13	Moroto 52:13	needed 62:22	obvious 10:11 17:5
microphone 30:8	motion 4:15,18,20, 24 57:25 58:4,8 71:19,23 72:5,7,9,11 73:2,8,10	needs 35:20	obviously 53:8
middle 37:6		neighborhood 15:9 25:12, 16 59:4,10, 21 60:7,16 61:8,18 64:18,22	occupancy 35:12
midpoint 10:12 45:24	move 22:9 23:14 26:4,23	never 12:22 35:15	occupied 52:22 56:11
midway 10:13 11:9	multiple 70:15	nine 19:4 20:7, 11,22 23:22, 25 26:12,15 44:6	occur 15:21
Mike 71:7	municipal 27:13	noon 3:25	occurred 27:17 51:9
Mind 41:22	municipality 14:17	note 7:6	October 19:19
minimal 6:13 15:6, 11,19 19:2 24:6,23	MYL 3:19 5:21 6:2,6 57:2 58:14 60:21 66:17	notice 31:11	office 6:8 31:4 32:2,8 43:2 44:5
minimally 21:9,14		November 12:11	officer 52:15
minimis 21:8,14,22, 23 22:3 24:11 25:25 29:11 35:9	N	number 20:20 44:3 50:18 65:15 66:10,13 67:21	offices 32:7,10 43:13,14 66:2
minimize 53:9	name 3:13 4:4 5:24 9:12 30:9	numbers 10:2 33:25 34:5 45:21 46:3 47:13 48:6 50:15 69:19 70:4 71:2	official 51:6
minus 47:25 63:8	natural 16:6 17:7,23 32:9		officials 27:14
minute 36:5	nature 18:23 21:23 25:2	O	okay 5:14,20 8:12 9:24 12:5 31:6 33:3 34:20 36:10, 19,25 37:22 38:10,15,19 41:2 42:14, 22 45:6,17 46:12 49:10, 13 61:25 62:5 64:10 71:12 72:25
minutes 4:16,18,22 5:8	nay 66:6 69:22	obtain 7:10,13	okay'ed 66:24
mix 6:7 30:15, 16,21,23,25 31:16,21	nearby 59:10 60:8, 17 61:9		
Mo 27:18	necessarily 11:18 61:6		
modification 28:15			

one 5:13 9:15 13:15 19:15, 21 27:8 40:6,13 42:7 44:24 49:4 50:11 54:3 56:3,22 61:17 65:24 67:7 68:6 71:21,22	packet 65:9	permits 46:12,14 49:7	plan 9:22 10:3 19:12 33:25 34:6 47:6,7, 12 48:14,24 49:24,25 50:6,16,20 55:6
onward 33:16	page 11:25 19:22 33:23	permitted 23:4 52:8	planning 7:3,10,14 23:2 46:13 50:22 52:24 54:23 55:5 74:18
open 5:15,21 6:25 30:3 57:14 58:9 60:12	paperwork 3:24	permitting 49:21 51:6	plans 11:15 14:8,9 19:19 23:4 27:15,24 28:14 48:15 50:24 52:3,9 53:22 54:5
operate 7:12	parking 6:23 7:2,14 17:13 22:25 66:2	permutations 14:23	please 3:7 17:15,25 18:12 30:10 31:9 55:16
opinion 10:18 61:6, 11 62:17,19 69:18 70:13	part 18:8,9 31:22 41:19 62:25 70:12	person 49:23 69:13	pledge 3:7,8,17
order 46:24	participated 71:14	personal 68:7	point 10:20,22 12:12 16:25 17:9 18:4,15 19:16 20:4 36:4,9 37:23 39:7,10 40:23 48:25 49:5 51:2 52:2 56:18 58:10 60:2 65:24 66:25 69:15 74:24
original 27:23,24 33:24 48:7, 9,14 56:15	participating 68:11	personnel 66:22	pointing 18:18
originally 32:17 70:15	particular 13:15 19:12 31:10,20 46:24 68:2	peruse 56:18	points 13:20 58:12
outline 3:16	Partner 6:3	petitioner 25:7	position 35:16
outlook 53:7	pass 7:24	Pettiford 3:13	possible 8:22,24
outside 32:7	paying 53:8	phone 74:14	
owner 69:14	peek 10:10,13 42:8,12 47:8 50:7	photo 17:4,8,15,24 18:5,12 31:10	
Oyster 21:11	people 49:12 51:7 68:11,19,20	photos 19:6 60:20 64:23	
<hr/> P <hr/>	people's 51:10	physical 25:13 26:9, 14,20 59:20 64:17,21 65:17	
	percent 7:21	picture 32:18	
	perimeter 32:3	pictures 39:21 53:3	
	permanent 14:9	piece 68:15	
p.m. 57:25	permit 28:7 46:16, 18 52:9	pitch 28:11 50:7 53:24 54:10, 16	
		place 13:7 52:18	

12:16 14:19, 22 54:12	proactive 68:14	5:1,16 6:1, 18,24 7:1	
possibly 18:20	probably 34:14 38:17	8:1 9:1 10:1	<hr/> Q <hr/>
potatoes 55:9	53:17,20	11:1 12:1	quarter 43:4
potential 59:3	problem 37:15 38:11	13:1 14:1	question 30:6,21 31:7 32:14 37:10 38:20 39:2, 8,10 45:15 47:17 48:22, 25 49:5 66:12 67:14, 20
powering 48:7	proceed 3:15 26:6	15:1 16:1	questioning 40:14
practicing 35:14	process 13:17 71:15	17:1 18:1	questions 22:9,11 23:13 26:3, 5,22 30:2 36:2 47:20 53:25 57:17
precedence 70:2	produce 59:8 60:6,14 61:6	19:1 20:1	quote 44:3
precedent 24:9	professional 6:5 70:3	21:1 22:1	<hr/> R <hr/>
preclude 27:5 29:10 59:24 66:15	prohibit 7:8	23:1 24:1	ramped 12:22
preparation 5:22	prohibited 54:21	25:1 26:1	range 8:21,23 9:5, 8 11:13 33:20
prepared 9:16,25 49:18,23	project 6:8 9:25 12:7 33:12 37:11 40:2 68:2 69:13 70:21	27:1 28:1	reaction 68:23
present 3:9 57:22	prolonging 68:24	29:1 30:1,4 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1,21 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1,23 57:1,14,22 58:1,2 59:1 60:1,3 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1,5,6,19	read 58:16 65:8 70:4
presentation 29:21 30:2, 14 32:17	proof 54:15	55:1 56:1,23 57:1,14,22 58:1,2 59:1 60:1,3 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1,5,6,19	reading 68:16
presented 58:14 61:12	properties 59:11 60:8, 17	purposes 32:5	ready 49:20 52:21
pretty 10:11 47:23 62:17	property 31:15,20 61:9 71:25	pursuant 23:4 52:8 55:3	real 53:3
prevents 40:7	proposed 25:8 48:10 65:16	put 11:13 13:6 31:8 55:16	realized 19:13
previous 6:18	provide 13:19 33:13	putting 46:10 51:14	
previously 19:14 20:6, 23	provided 11:14 12:9, 12 19:13 27:21 33:23		
primarily 16:5 17:18	public 3:1,19 4:1		
prior 7:4			
private 57:5			

reason 8:17,20 18:9 44:14 63:21	relevant 27:7	response 27:14	ridiculous 71:4
reasonable 52:6 74:18	relief 15:8 58:23	responsibilit y 15:7	right 3:20 4:3,14, 21 8:4 13:4
reasoned 25:6	remaining 74:10	responsible 70:3	18:17 32:14, 18,25 34:15
received 7:19,25 35:5	reminder 71:16	rest 53:19	38:21,23
receiving 28:7	Reporter 30:9	restriction 6:15 15:4 28:20	41:8 44:4,11 48:2 53:19
recited 3:9	represent 6:2,6	result 25:15 27:12	54:6 57:10 61:3 64:9 67:7 69:8,24 70:24 71:5
recollection 44:2	Representativ es 57:2	resumes 57:22	ringing 32:7
reconcile 48:24	represents 34:12	retained 35:4	rise 3:7
record 5:18,19 14:4,5 16:14,15 29:23,24 57:14 60:10, 11 71:10,11 72:23,24 73:19,20	request 6:19 29:16	retaining 11:3	risk 48:20
recuse 5:11	requested 24:3,13 59:17 63:12	retired 57:18	Rob 30:12
red 17:19	require 6:14	return 74:3	roll 3:17 4:3
referenced 19:7	required 63:24	returning 7:5	roof 9:18 10:10 28:11 42:9, 12 43:19,20 45:24 47:8 48:8 50:6,8 53:23 54:10, 11,20 55:2,7 62:11 63:4
referred 67:12	requirement 21:21	review 33:11	roofs 54:16
reflect 63:8	requirements 21:9,15 58:24	reviewed 14:8 23:4 24:21	room 39:3,4 44:7
refreshing 55:23,24	requires 59:5	reviewing 35:13	roto 27:18
regarding 14:13 15:20 44:9	requiring 59:14 62:10	revising 13:17	roughly 12:24 31:25 41:11 42:4
reiterate 7:23	resolve 7:15 62:20	rezoning 31:3	Route 6:9 12:7 17:3 18:11, 21 71:25
rejected 28:24	resolved 7:22 14:16	Richmond 6:4 8:9 35:2 37:9 38:9,25 39:9,23 40:12,21 48:13 49:9 52:2 54:19 55:2,14,22 72:19 74:4, 21	
related 46:7	respect 10:4 15:10 31:21 46:9 49:16 70:2		
	respectfully 15:18 21:2 24:6 25:20 26:17 29:16		

routinely 24:10	38:4 41:11, 20 42:4 43:12 44:18 55:9 58:3,5, 6 59:12 61:25 62:2, 5,6,25 72:7, 10,12 73:9	Service 17:17 18:3,7	Sir 51:11
<hr/> s <hr/>		services 33:14	site 9:22 16:5,17 17:10,18,21 18:9 26:21 33:24 34:6 40:25 46:17 47:5,7,12 48:14,24 49:24 50:20 52:8
safety 25:16 59:4	second-story 7:13 28:10	session 31:17 57:7, 9,16,19	sites 39:14
Santiago 4:5,6 19:18, 21,25 32:13, 16,20 33:4, 15 34:9,14, 20,24 47:22 50:9 51:11, 19,24 54:4,9 55:8,18,21, 25 56:14,17 58:5 62:4,24 64:13 65:7 67:9 72:8,16	seconded 5:3	set 50:3 69:25 74:3	sitting 68:25
SANTIGO 73:14	seconds 18:13 58:7	sets 53:12,21	situation 66:18
saying 36:12 41:14 44:24 46:4 51:25 70:12	section 13:10	setting 43:24	size 67:16
says 12:19 13:10 35:17 52:15	sections 12:19	settled 24:15	skewed 53:18
scale 11:18 43:8	see 11:15 16:17 18:3,20 33:4 39:23 42:9, 22 44:23 45:13 47:14 50:17 53:2, 23 61:19,20 62:20,22 63:6 64:2 66:9 68:9	several 12:14	slant 39:4
scheduled 3:22 71:17	seek 15:12 22:4	share 58:11	slide 31:8
schematic 11:17 43:7	seeking 8:15,17 14:20 19:4 20:7,9 23:22,24 26:12,17 29:12,18	shifting 69:19	slightly 17:9
screen 17:23	self-created 59:23	Shire 27:18	sliver 18:19
screening 16:7 17:7 18:23	sense 16:25 31:14 33:2,22 48:5	Shop 17:17 18:3	slope 16:9 37:12 39:5 41:15, 17 48:8
screens 17:18	sentiment 63:24	shorter 36:18	sloped 40:25
second 4:20 19:22 21:11,18 22:9,13 25:5 27:18 28:23	series 66:19	showed 48:18	slopes 41:13,16
		shows 17:8	small 16:4 24:11
		side 16:23 21:15, 19,20 31:25 41:16	smaller 19:14,21 20:14,18,21 26:18
		Siegel 21:18	sort 46:14
		signed 50:19 73:4,5	
		significant 65:10	
		similar 29:5 52:13	
		single 10:23	

sought 22:15,17,19 23:9,12 59:13 62:8	statute 59:5	25 64:9	talking 30:18 35:22 39:18 48:14 65:4,19 67:18 71:4
South 25:4	staying 10:4	substantially 24:15 54:18	talks 10:19 39:16
space 6:8 31:4,5 32:9 37:18, 20 43:17 44:5,6,8 56:9,10,13 65:20 66:7	steel 43:21 46:23 51:11,13 53:9 54:6	suggest 74:12	tall 9:3 44:3
spaces 32:2,5 43:2	Steinmetz 6:2	support 72:5,8	taller 36:13 45:10 56:12
speak 30:8 51:9 55:16 57:12	stock 53:12,21 54:5	supported 27:9	tell 16:22 38:24 50:5
specific 13:20	stop 67:7	supports 25:3	tend 53:9
Specifically 8:16	storage 6:8 31:5 32:5 37:18, 20 43:5,6,17	supposed 10:15 47:8 50:13	tentative 7:17 74:12
spell 30:9	stories 43:9	sure 30:11 32:24 51:12,19,22 62:13,14 64:20 70:4	term 11:8 30:14 48:2
spirit 10:24	story 44:16,18 46:8	surrounding 16:11	terminology 31:22
square 67:16	Street 18:5	survey 35:11	terms 7:7 8:8,11 12:16 31:2 33:18 47:4 49:21 56:8
stake 33:13	structurally 54:16	surveying 6:5 33:14	test 15:14 27:6 58:25
start 30:5	structure 43:21 63:10, 20	switch 16:12	thank 19:10 29:19, 20 30:10 47:15,19 55:21 56:21 57:2 70:13 71:12 72:19, 21 74:25
started 35:10 46:17	study 65:9	system 43:20	there're 12:13 37:8 55:17
starting 9:14	stuff 53:20	<hr/> T <hr/>	thing 18:20 20:2 45:16 47:10 50:25 54:3
state 11:23 44:14	submission 3:24	table 50:13	
statements 60:21 67:10	submit 24:5 50:3	take 33:5 35:16 55:8 71:18 72:10,12	
Staten 21:17	submitted 28:13 48:16	taken 12:20 17:4,8 64:25	
states 8:25 62:7	substantial 23:18,20 24:2,6,14 25:8,20 41:17 59:17 63:13,19,22,	talk 10:11 39:17 55:20	
stating 59:7		talked 45:8 52:12 70:21	

56:3 63:5 67:19 70:7 things 8:14 9:16,17 13:17,18 40:7 42:17 50:11 51:17 53:13 68:4, 18 70:16 think 5:11 12:11 30:25 31:6,7 33:18 35:17 37:9,12,16, 17 38:25 40:5,9 47:22 48:5,13,15, 17,22,25 49:2 51:5 52:2,12,18 53:2 62:21 63:2 67:9,24 74:2,17 third 23:14,16 44:10 46:8 59:16 third-story 6:22,23 7:2 22:24 65:22 third-story/ mezzanine 7:9 thought 52:5 three 3:18 5:13 31:12 37:4 63:11 three-story 45:9 time 5:8 9:19 13:9 40:18 47:19 56:18 57:24 65:7 Tire 17:12	titled 12:6 today 7:22 63:17 68:20,25 told 66:4 tones 16:19 17:22 tonight 6:19 52:25 67:19 70:16 73:3 tonights 71:14 top 11:5 18:19 38:2,4 topography 16:5 Torres 4:9,10,20 5:2 58:6 61:15 62:19 63:23 65:15 67:21 72:5, 14 73:9,12 74:16 totality 24:17 totally 28:22,25 tough 67:7 town 15:15 27:19, 23 28:4,16 town's 29:2 Tracey 4:9 5:4,5 61:15 track 10:2 traffic 66:3	Trail 16:20 tree 16:18 trees 17:5 try 10:24 18:13 36:6 53:9 trying 37:2 42:20 45:14 49:19 52:22 55:10, 25 68:16 tucked 16:9 Tully 14:25 turn 52:11 two 3:17 11:3 22:22 31:12 37:21 48:11 53:21 58:7 61:22 64:7 types 53:11 <hr/> U <hr/>	upper 10:10 46:22 <hr/> v <hr/> values 11:13 vantage 16:25 17:9 18:4 variability 39:14 variance 6:14 8:18 13:25 14:21 15:5,11,13, 19,23 16:3 19:2,4 20:8, 9,11,15,18, 22,23 21:13, 20,22,25 22:3,7,21 23:7,8,18, 19,22,24 24:2,4,14, 18,24 25:2, 8,20 26:2, 10,12,16,18 27:6,12 29:12,13,16, 18 35:22 42:18 51:16 52:20 58:22 59:8,15,17, 19,25 60:5, 14 61:3,5 62:10,16,21 63:13,18,24 64:16,20 65:16 66:5, 10,16 67:2,5 69:11 70:17 71:5,24 72:6,13 variances 6:23 8:15 15:10 21:8, 24 24:11,12
--	--	---	---

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

<p>58:17,19 74:11 various 12:15 varying 14:19 27:12 vegetation 16:18 64:24 venture 17:11 ventures 16:24 18:22 verbal 8:4 verbatim 32:23 versa 36:16 versus 21:10,17 25:4 viability 40:15 view 6:11 16:20 17:18,19,25 18:5 50:17 views 58:11 village 7:8 8:10 10:7 35:17 38:11 40:17 50:22 52:23 58:19,20 60:13 Village's 6:9 8:25 14:24 vise 36:16 visit 32:21 61:16 vote 5:6,12 64:19 67:4,5 71:18 72:10,12</p>	<p>73:3</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait 41:5 waiting 8:9 walk 15:16 walking 69:22 wall 11:5,7 43:7 46:21 walls 11:4 want 12:2 30:5 31:18 32:10, 22 34:23 35:2 40:10 51:16 55:8 64:4 69:7,8, 24,25 wanted 32:6 56:4 Warner 5:23,24 8:7, 13 14:6 16:16 18:18 19:9 20:5 22:13 23:16 26:7,25 49:8 60:24 72:21 74:2,6,10 way 11:7 13:12 20:19 34:16 42:3 45:20 46:10 65:25 68:4 Waybill 25:4 Wednesday 3:22</p>	<p>weeks 73:23 weigh 21:4 25:23 59:2 weighed 29:9,15 weighs 22:6 welfare 25:16 59:4 went 24:21 46:10, 13 west 17:10 windows 31:12,15,20 32:8 wonder 68:5 words 5:10 12:21 32:21 work 10:24 46:17 52:22 62:13 working 9:14 works 50:18 70:20, 24 worried 44:12 worse 74:22,23 writing 8:6 11:12 written 11:16 wrong 48:18</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>yard</p>	<p>21:15,20 yea 66:6 69:22 yeah 30:22 50:17 years 35:15 45:7 yes's 72:17,18 73:15,17 York 21:5 24:9 35:25 58:18, 20 Yunqug 30:5,11,12, 22 31:6 41:3,6</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>Zarin 5:25 ZBA 3:1,25 4:1 5:1 6:1 7:1, 5 8:1 9:1 10:1 11:1 12:1,8 13:1, 15 14:1 15:1,12 16:1 17:1 18:1 19:1,3 20:1, 6,10,23 21:1,10,12 22:1 23:1, 21,25 24:1 25:1 26:1 27:1 28:1,21 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1</p>
---	--	---	--

ZBA Public Hearing - Zoning Board of Appeals
February 27, 2025

45:1 46:1
47:1 48:1
49:1 50:1
51:1 52:1
53:1 54:1
55:1 56:1
57:1,18,21
58:1,19,25
59:1,5 60:1,
4,13 61:1
62:1 63:1,14
64:1 65:1
66:1 67:1,24
68:1,23 69:1
70:1 71:1
72:1 73:1,2
74:1

ZBA's

21:6

zero

25:25

zone

21:16

zoning

3:6,12,21
6:10,16,20
14:13,15
15:8 25:5
26:13 27:21
28:19 39:25
40:7 45:20
50:4 53:4
64:7 74:11