EASTCHESTER ZBA - 1/12/21

First, the Chairperson: Good evening and welcome to the Town of Eastchester Zoning Board of Appeals meeting for January 2021. It is Tuesday, January 12, 2021. I'm calling the meeting to order. As has been since we began our remote Zoom meetings, some of the items that are part of the ordinary meeting are dispensed with, like the Pledge of Allegiance and a roll call for obvious reasons.

As far as roll call is concerned, we have seven items on tonight. There are three items on tonight for resolution, which will be decided. There is one item of old business and three items of new business. We observe Robert's Rules of Parliamentary Order. For those items that are on for old and new business, the applicant, as a general rule, will be making their presentation. For the new business items, applicants don't need to sit here and read their application and the five part test or the interpretation arguments because those matters are part of the public record and they have been submitted. You can if you would like. It doesn't help or hurt.

TRANSCRIPT OF EASTCHESTER ZONING BOARD OF APPEALS January 12, 2021

ZOOM MEETING

PRESENT:

MARGARET HELE, DIRECTOR OF PLANNING
ROBERT TUDISCO, DEPUTY TOWN ATTORNEY

Dina M. Morgan
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Bronxville, New York 10708
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THE CHAIRMAN: Mr. DeMarco.
MR. DE MARCO: Yes.
THE CHAIRMAN: I vote yes. The application has been approved four to one.
The last item on for resolution is item number 3. I make a motion to approve Application 19-42, 5 Ray Place; is there a second?
MR. DE MARCO: Second.
THE CHAIRMAN: Mr. DeMarco. To the vote. Mr. Cahalin.
MR. CAHALIN: No.
THE CHAIRMAN: Mr. Miller.
MR. MILLER: No.
THE CHAIRMAN: Mr. Nurzia.
MR. NURZIA: Yes.
THE CHAIRMAN: Mr. DeMarco.
MR. DE MARCO: Yes.
THE CHAIRMAN: And I vote yes. The application has been approved three to two.
Next item, item number 4, under the category of old business, this is 20-37, Immaculate Conception Church and ArchCare.
Just as a note before the applicant
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proceeds, this matter was not open to the public for a public hearing because there was some supplemental items, I'm sorry, for the presentation. So the public hearing has not been opened on this. We're ready to proceed.
MS. UHLE: I'm getting everyone on board here. I think that's everybody.
MR. ZARIN: Good evening, everyone.
Happy new year. My name is Michael Zarim, Zarim and Steinmetz. I'm joined tonight by Father Sorgie; William Snyder, engineer; Saky Yakas architect; and Erin Feldman, member of the applicant's board or one of the applicants.
As you recall, this is a joint application of ArchCare, an arm of the Archdiocese, the health care services, and the Parish of Immaculate Conception Assumption of Our Lady in connection with their joint application seeking special permit approval to rehabilitate and convert the parish's former convent building to provide 10 residential units for high functioning individuals with autism to be known as ArchCare Saint Frances Cabrini Apartments at Immaculate Conception.
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Church.
I know we were before you at your prior meeting of November 10, 2020, and I just thought I would very, very briefly just go over the proposal in case there's anyone here tonight to speak at the public hearing that might not have heard the previous description.
The convent takes up approximately the area of 1.98 acres of the 11.65 acre campus of the Parish. Previously, 28 nuns resided in this building. It has been vacant since 2012, and is in need of internal renovation and rehabilitation. This is an attempt to repurpose this building for a very important need in the community, residential homes for high functioning individuals with autism over the age of 21. This is a growing need for adults with autism and in this community. In fact, probably majority of the families who will have family members in this building come from the parish. ArchCare, again an arm of the Archdiocese health care system, currently operates a very similar building on Staten Island. It will be 10 units; 9 studios, one
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bedroom with an on-site coordinator for social activities and dining and alike, very little traffic. There will be 10 parking spaces for such time that there may be family guests. Probably the peak parking would be five at any one time.
Since we were before you previously, we have met a couple of times and spoken with the Fire Captain to work out some of the fire code issues. I believe planner Margaret has confirmed that we have met those fire compliance standards. We have also worked with your consultants and have provided them with an updated storm water plan in which we're going to, in fact, increase and build in new storm water treatment with a new proposed underground infiltration basin which doesn't presently exist on the site. We're also going to expand the driveway from 24 feet to 26 feet. We made a change in the site plan pursuant to the Fire Captain's request. I believe there are no variances and that those have been worked out. We've also added some new signage and some handicapped parking.
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So, hopefully, we've satisfied your criteria per the Chairman's instructions. I won't review each of those standards in Sections 12B and 12H. We set forth those in our letter to the Board of October 27th and had reviewed them at your November 10th hearing. At this point, we would hope that you will hold the hearing, close the hearing, and respectfully grant us this approval so we can then move on to the Planning Board for site plan review. So thank you very much.

THE CHAIRMAN: Thank you for your presentation, counselor. At this time, we usually reserve an opportunity for the Board to ask questions, sometimes even make comments.

Let me start with Mr. Cahalin. Do you have any questions or comments?

MR. CAHALIN: No.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: No questions.

THE CHAIRMAN: Mr. Nurzia?

MR. NURZIA: No.

THE CHAIRMAN: Mr. DeMarco?

MR. DE MARCO: No.

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

MR. CAHALIN: Second.

THE CHAIRMAN: Mr. Cahalin. All in favor.

(AYE)

THE CHAIRMAN: Mr. Tudisco, is there anyone from the public that is interested in being heard on this application?

MR. TUDISCO: If there is anyone interested from the public in being heard, please activate the raise your hand feature. I don't know if I have the ability to --

MS. UHLE: Hold on. Sorry. I can see nobody is raising their hand right now. Rob, I'm sorry, hold on one second. There you go, now you can see as well.

MR. TUDISCO: Okay. Mr. Chairman, I

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THE CHAIRMAN: While you're doing that, Margaret, I'll just comment to the public that this is an area variance to construct a deck with a side yard setback of 6 feet where a minimum of 8 feet is required.

MS. UHLE: You know what, I have promoted the architect, and, you know, his image or his name is on screen and he's muted, but I'm not sure whether -- here he comes.

There you go.

MR. DILEO: Hello, everybody. Good evening, members of the board. My name is Rocco Dileo, architect for the Gleeson residence, 33 Stewart Place.

The current property is located in an R-7.5 residential zoning district. As mentioned in your intro to this application, we are proposing a new deck in the area of where an existing deck lies today. The existing deck -- I can show you some general images of this deck -- is very small in nature. Frankly, it's not a relatively functional deck other than to access the rear yard. Given that the rear yard is compressed at the moment with the

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abundance of vegetation and plantings and fencing along the rear of the property, compressing it from what is required in the zone, 25.11 feet, to really usable space of about 19 and a half feet, the client's desire was really not to give up more rear yard space, particularly in these times when outdoor space is incredibly essential, and wanted to utilize this side yard space.

MS. UHLE: Excuse me, Rocco. Are you share your screen, because we're not seeing it if you are?

MR. DILEO: I thought I was. Let's see. It seems like the share button has disappeared.

MS. UHLE: It should be at the bottom of your screen.

MR. DILEO: All I have at the bottom of the screen is the raise hand.

MS. UHLE: Let me try one thing here. I had you on twice. Does that make a difference?

MR. DILEO: Here we go.

MS. UHLE: Okay. There you go. Okay.

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encroachment into the side yard setback. We understand that the limit is 8 feet as a required side yard setback. Although, per Section 7-D-2 in an R-7.5 zone, we are allowed to encroach beyond that side yard setback 4 feet with a deck, but not getting any closer to 6 feet to the property line, and that's exactly what we're proposing here, to extend beyond that 4 foot threshold, but not get any closer to 6 feet to the side yard property line, to give the client and the homeowner a little bit more deck space for her to ultimately place her barbecue grill on this level so that she doesn't have to constantly walk down to a lower level, half a flight of steps, to barbecue and entertain and keep going back and forth, because this is the only entrance to the first floor from the rear yard.

In terms of height, the new deck would be aligned -- sorry -- the new deck will be set at a finished floor elevation to where the existing deck is. The steps are located exactly where the existing steps are located.

So really the only thing that is changing from

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what currently exists is the overall width and length, again, to give the homeowner a bit more area, functional area, without having to impede into the rear yard and occupy valuable space. I'll turn it over to the Board if anyone has any questions.

THE CHAIRMAN: Thank you for your presentation. At this time, the Board generally will ask questions or comments, but I would just start by saying that this is one of the more modest requests and applications that I've seen in a long time, and the request is quite di minimus as it relates to the setback.

Let me start with Mr. Cahalin firstly.

Mr. Cahalin?

MR. CAHALIN: I agree with you, Mr. Chairman, that is a di minimus request compared to other things we'll see tonight.

THE CHAIRMAN: Thank you. Anything else, Mr. Cahalin, anything further?

MR. CAHALIN: No.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: No questions or comments.

THE CHAIRMAN: Mr. Nurzia?

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MR. NURZIA: No questions or comments.

THE CHAIRMAN: Mr. DeMarco?

MR. DE MARCO: Nothing, thanks.

THE CHAIRMAN: I have nothing further.

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

MR. CAHALIN: Second.

THE CHAIRMAN: Mr. Cahalin. All in favor.

(AYE)

THE CHAIRMAN: Mr. Tudisco.

MR. TUDISCO: Yes, Mr. Chairman. Are there any members of the public that wish to address the Board, please use the raise your hand feature and I'll invite you to un-mute yourself.

Mr. Chairman, at this time I don't see any members of the public that wish to address the Board.

THE CHAIRMAN: Okay. I make a motion to close the public hearing on this; is there a second?

MR. CAHALIN: Second.

THE CHAIRMAN: Mr. Cahalin. All in favor.

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MR. DILEO: Thank you.

THE CHAIRMAN: Last matter on our calendar, number 7, this is --

MS. UHLE: You're on number 6.

MR. CAHALIN: It's number 6.

MS. UHLE: Not the last yet.

THE CHAIRMAN: Sorry, guys, I was rushing. I apologize.

Actually, let me introduce this because it's on for an interpretation, but what we frequently do with applications of this nature as a courtesy to applicants, the applicant tonight is going to present an argument for an interpretation, but also will simultaneously or thereafter present a variance application so that if their argument for the interpretation in their favor is denied, we will have heard the variance application and they wouldn't have come back to multiple meetings. So having said that, the applicant may want to proceed at this point.

MR. ACCINELLI: Good evening, Mr.
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Chairman, members of the board. Happy new year and healthy to everyone. Can you hear me okay?

MS. UHLE: Yes.

MR. ACCINELLI: My name is Steven Accinelli from Veneruso, Curto, Schwartz & Curto, attorney for the applicant in connection with this matter. Participating with me this evening is the project engineer, Ralph Mastromono. Also, the property owner, Mr. Lanza, is also viewing, although he's not an intended participant. As the Chairman stated, this application has two components.

The first involves the applicant's request for an interpretation relative to the basis for the Building and Planning Department's denial as amended dated December 21st, 2020, pertaining to the impervious surface calculations pursuant to Section 9P of the Zoning Code of the Town of Eastchester.

The second aspect, and in the alternative, is a request for an area variance pertaining to impervious surface coverage, where the proposed total impervious surfaces are.

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MS. UHLE: I think you're going to need to share your screen so we can see the plan.

MR. ACCINELLI: Ralph, are you there?

Ralph, you there?

MR. MASTROMONACO: I’m here. For me to share the screen, I'm going to have to switch to my lap top. I'm on my cellphone at the moment. It will take me a minute.

MR. ACCINELLI: I apologize to the Board. Sorry for the delay.

THE CHAIRMAN: No problem.

MR. MASTROMONACO: It will take a few more minutes, I'm sorry.

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THE CHAIRMAN: What I may want to do is -- not may -- what we'll do is, I will have the Board ask any questions of the applicant, Mr. Accinelli, at this time.

Mr. Cahalin, do you have any questions as it relates to the interpretation or the variance application?

MR. CAHALIN: I was hoping to talk to the engineer about the application.

THE CHAIRMAN: Okay. I'll reserve your time. Obviously, you'll have plenty of time to do that.

Mr. Miller, do you have any questions?

MR. MILLER: Not at this time.

THE CHAIRMAN: Not at this time. Mr. Nurzia, any questions?

MR. NURZIA: Actually, same comment, I'm going to reserve until we hear from the engineer.

THE CHAIRMAN: Mr. DeMarco?

MR. DE MARCO: No questions.

THE CHAIRMAN: I just have one. It's really a comment. It's a highlight, actually, or point to be made. There's already a legal...

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non-conforming impervious area of about 8544 square feet, so your application, although it reads roughly one third, it's less if you count currently existing; correct?

MR. ACCINELLI: Correct, Mr. Chairman.

THE CHAIRMAN: Okay. We'll wait for your -- okay.

MR. MASTROMONACO: I think I might need another minute here. I think we see it?

THE CHAIRMAN: Yes.

MR. MASTROMONACO: Thank God.

THE CHAIRMAN: Proceed.

MR. MASTROMONACO: I'm Ralph Mastromonaco, I'm the engineer here. Essentially, this is the pool plan, the proposed neighbors, the proposed pool. If you look at the entire site, this is the property. It comes around here. A bit of it is in the lake. I think we made calculations for everybody to determine how much of that land was under water, how much was above water. I don't think it shows on this plan, but it was in the set that we sent to the town.

THE CHAIRMAN: It was part of your plan...

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question.

MR. ACCINELLI: Ralph, the question from Board Member Cahalin was, in the rear -- some of the board members visited the site or have some familiarity with the site, where the existing stone patio is, and you have some various step downs from that which is existing to that which is proposed, can you just explain the areas of the step down from that which is existing, and then also areas relative to the rear improved portion of the property.

MR. MASTROMONACO: I think you're talking about the -- can you see my cursor?

MS. UHLE: Yes.

MR. MASTROMONACO: Those are little short walls about 1 to 2 feet tall that step down from the upper patio, through the stairs over here, and then there are just little really garden walls that come down to the grade at 190.

MR. CAHALIN: So my question was, on the existing topography of the property, what you're proposing where the pool will go is what is the final step down because right now when

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188. The pool would be elevated I guess about 8 feet above grade.

MR. CAHALIN: Okay. That's what I was trying to get at.

MR. MASTROMONACO: I'm sorry. I'm in two different meetings right now.

MR. CAHALIN: I see that. The other thing is, the existing fire pit area, you're now putting a new fire pit area, according to the plans.

MR. MASTROMONACO: I believe that's there.

MR. CAHALIN: Is that going to be removed?

MR. MASTROMONACO: No.

MR. CAHALIN: So you're going to have two fire pits?

MR. MASTROMONACO: Well, I don't know if it's going to be removed by the owner. He didn't mention one way or the other.

MR. CAHALIN: So my question is, if the interpretation is not granted, there's a lot of impervious surface on this property, could you do something to lessen that burden of

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you look at the property, it has a green space and then it steps down out to the lake. So the pool is going to reside in that final step down is what I'm thinking in.

MR. MASTROMONACO: The general grade is about 188 on the unimproved portion. The pool deck would be 196 or so.

MR. ACCINELLI: What about the pool itself?

MR. MASTROMONACO: The pool itself is about 196, elevation 196.

MR. CAHALIN: So are you leveling it up to the second level or are you dropping it down?

MR. MASTROMONACO: Leveling it up.

MR. CAHALIN: You're leveling it up.

MR. MASTROMONACO: Yes. 198 is existing level.

MR. CAHALIN: Okay. That was my question, are you stepping down or are you continuing this same grade?

MR. MASTROMONACO: 198 to down to 196. The whole plateau would be about 196 grade, and then the unimproved part would be down about

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result. Elaborate on that, on why we should consider an interpretation in your favor.

MR. ACCINELLI: I think, Mr. Nurzia, the policy that was relied upon by the town is not a written policy. Quite frankly, it's my opinion that's tantamount to an amendment to the Zoning Code. The clear and unambiguous language of the code makes no accounting for lands under water with respect to calculations for impervious surface area. It does so with respect to maximum gross floor area, as an example. When the code was amended in 2008, if there was a desire or an intention for lands under water to be excluded from the calculations, I respectfully submit that that should have been part of the code as it was amended in 2008 or some time since then or even prior. I think that the standard of review and the legal standard as it relates to Zoning Ordinance is pretty well established. As I set forth in my memorandum, I think the situation where you've got a denial based upon something that's other than which is stated in the express language of the code, that's

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problematic, and that's not something that should be enforced against the property owner under the circumstances. I don't disagree that it could certainly result in varied and even extraordinary situations, I certainly don't dispute that possibility, but I think that under the circumstances if the impervious surface calculations are something that are going to be or intended to be calculated to the exclusion of lands under water, I think the town needs to amend its Zoning Code to make that clear to applicants and their retained professionals and the public so that when they're looking to make improvements to their properties and they're going forward with their plans, such as my client did, the law under the code is clear and people are put on notice of what the requirements are under the Zoning Code. That was not the case here. There is no notice regarding the policy, and it wasn't until the applicant received the denial letter, did the applicant and the engineer be advised of the existence of this policy of the Building Department.

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MR. NURZIA: Noted. I hear where you're coming from, but is there any point -- given that this is probably a case of first impression, is there any point where that position creates a completely crazy result? I mean, is there a bright line between what should be and taking it to the extreme?

MR. ACCINELLI: Unfortunately, I don't think that the Zoning Board has the ability or the authority to make determinations as to what's too much or too little. I think the town has a readily, and I don't know about easily, but certainly a readily available option, and that is to simply amend the Zoning Code. I don't think it's the Zoning Board's position or jurisdiction, quite frankly, under the circumstances, to start creating bright lines as to what constitutes too much. I think it's a matter for the town to decide where those lines are and incorporate those lines into the Zoning Code, as it had already done with respect to maximum gross floor area.


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THE CHAIRMAN: Thank you.

THE CHAIRMAN: Anything further, Mr. Nurzia?

MR. NURZIA: No.

THE CHAIRMAN: Mr. DeMarco?

MR. DE MARCO: Nothing.

THE CHAIRMAN: Okay. At this time moment, I don't have anything, but I do make a motion to open this matter to the public for a public hearing; is there a second?

MR. CAHALIN: Second.

THE CHAIRMAN: Mr. Cahalin. All in favor.

AYE

THE CHAIRMAN: Mr. Tudisco.

MR. TUDISCO: If there are any members of the public who wish to address the Board on this application, please use the raise your hand feature and I will invite you to un-mute yourself.

Mr. Chairman, I see no hand indicting no members of public wish to address the Board on this application.

THE CHAIRMAN: Okay. Having heard
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this from our attorney, I make a motion to
4 close the public hearing on this matter; is
5 there a second?
6 MR. DE MARCO: Second.
7 THE CHAIRMAN: Mr. DeMarco. All in
8 favor.
9 (AYE)
10 THE CHAIRMAN: Back to the Board for
11 questions or comments. Mr. Cahalin?
12 MR. CAHALIN: None.
13 THE CHAIRMAN: Mr. Miller?
14 MR. MILLER: None.
15 THE CHAIRMAN: Mr. Nurzia?
16 MR. NURZIA: No.
17 THE CHAIRMAN: Mr. DeMarco?
18 MR. DE MARCO: Nothing.
19 THE CHAIRMAN: I have a question, and
20 it was in conjunction with some commentary from
21 Board Member Cahalin with respect to the
22 mitigation, and this is, of course, not
23 foreshadowing any ruling I may have or any
24 vote, I should say, I may have on the
25 interpretation. Is the applicant amenable to
26 mitigating the impervious surface coverage?
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a non-conforming that has quite a bit of
3 impervious surface, and, you know, respectfully
4 to the attorney, I disagree. The area that the
5 house is in is in a beautiful area that has
6 much green space. Many of the properties have
7 much green space in that area. Asking for
8 10,000 of impervious on a property of this size
9 that's already non-conforming, I understand the
10 applicant -- I mean, it's a gorgeous home as it
11 is, and they're only going to add to the value,
12 absolutely, and it's definitely within keeping
13 with the character of the neighborhood, but the
14 impervious surface calculation is huge on this
15 thing, whether the interpretation is there or
16 not. I would think that they could mitigate,
17 you know, a couple of hundred square feet of
18 something to give back on this application
19 because they're covering almost every piece of
20 grass except as it goes to out to the lake,
21 from what I could see. Changing the home or
22 adding some green space would be in keeping
23 with the neighborhood, not without keeping in
24 the neighborhood.
25 THE CHAIRMAN: Counselor, would you
26 want to reply?
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like to reply?
3 MR. ACCINELLI: I'm certainly willing
4 to speak to my client about reconsidering
5 mitigation measures that are in keeping with
6 the character of the proposed improvements. I
7 would like to point out just as a point for the
8 record, that the discussion as it relates to
9 existing non-conforming, I think that that
10 conclusion and that interpretation is, again,
11 part of the application for the interpretation.
12 I think that statement arises and is rooted out
13 of the policy of the Building Department and
14 its interpretation under the code. To say that
15 it's currently pre-existing non-conforming --
16 MR. CAHALIN: It is.
17 MR. ACCINELLI: But based on a policy,
18 not language in the code because that number
19 results from lands under water.
20 THE CHAIRMAN: If I may, counselor.
21 What you're saying is that the calculation of
22 the pre-existing non-conformity runs into the
23 same legal issue you're raising as it relates
24 to the interpretation?
25 MR. ACCINELLI: That's correct, Mr.
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Chairman.
THE CHAIRMAN: My commentary earlier
was simply that the site conditions reflect a
greater impervious surface than the application
reflects as per the area variance. Not
minimizing but just stating that in actuality
the variation is less than the 32 percent. I'm
not foreshadowing that I'm for the application,
what I'm saying to you is that -- and the
reason why I raised it is that in case the
interpretation is not in favor of the
application, that what you're really talking
about here is less than what your application
states. The reason why I asked you that
question about mitigation, is that the
architect raised it. Mr. Cahalin had a comment
and a question, and the architect raised it,
and that's why I asked you. I'm not suggesting
that it's something you have to do, but if it's
something that you're going to consider, then
we may want to revisit -- not may want to -- we
will be revisiting -- the public hearing would
have to be open on any supplement to the
application. Then what we could do

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procedurally is rule on the interpretation at
the next meeting. If the applicant is not
going to supplement the application, we may
very well also rule on the variance
application. I'm going to leave that to the
applicant. Counselor, your thoughts on that.
MR. ACCINELLI: Understood. I'll go
back to my client. So procedurally if my
client is willing to mitigate to some degree,
then would it be possible, should that present
itself, to make a supplemental submission to
the Board in advance of the next meeting so
that it could be discussed and decided upon at
the next meeting as well?
THE CHAIRMAN: That's a good question.
Mrs. Uhle, would we be required to reopen the
public hearing because, actually, this is a
diminishment, not an expansion?
MS. UHLE: I think you could do a
couple of things. You could close the public
hearing, and then obviously if you rule in
favor of the applicant for an interpretation,
the amount of impervious surface is a moot
point. If you rule in favor of the Building

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Department's interpretation, then the next step
is to rule on the area variance. Some members
may think the amount of impervious surface
under the circumstances is perfectly
appropriate, so you could vote in favor of the
area variance as presented. If you felt
uncomfortable with it, you could rule in favor
of an area variance with a condition that a
certain amount of impervious surface be
removed. Another option is to ask the
applicant to come back with a plan that shows
diminished impervious surfaces. I don't know,
there may be some members that feel comfortable
with it as proposed.

Like I said, one option would be to
vote on the application itself; one option
would be to vote on it and if you were to
approve it, approve it subject to a condition
where you could impose that itself without even
seeing it, or to ask the applicant to come back
with an alternative plan.

MR. TUDISCO: Margaret, my concern is
that if the public hearing is closed and
they're going to come back with an amended

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those pathways are going to be removed or redesigned?

MR. MASTROMONACO: At the moment, no.

MS. UHLE: Okay. So those paths will remain, and there’s grass and landscaping at that portion of the property; correct?

MR. MASTROMONACO: Those are gravel walkways.

MR. CAHALIN: They’re not grass.

MS. UHLE: Gravel, but then the parts that aren’t walkway, I’m assuming that’s landscaping or grass?

MR. MASTROMONACO: Yes, it’s all grass.

THE CHAIRMAN: If I may, let’s leave aside the interpretation, I’m going to make a motion at this time to adjourn that portion of the application for resolution at the next board meeting; is there a second?

MR. CAHALIN: Second.

THE CHAIRMAN: Mr. Cahalin. All in favor.

(AYE)

THE CHAIRMAN: Okay. Assuming DINA M. MORGAN, REPORTER

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	augurando that the interpretation of Building Department is upheld and the applicant is denied, I would like to ask the Board whether they are seeking a supplemental to the application as it relates to mitigation. Mr. DeMarco, does that matter to you?

MS. UHLE: Mark?

MR. MILLER: He dropped off.

MR. TUDISCO: He might be muted.

THE CHAIRMAN: Okay, I’ll start on the left side. Mr. Cahalin, would you want to see a mitigation?

MR. CAHALIN: If they’re going to reduce it, I mean, I would be interested in seeing what they’re going to do, but, you know --

THE CHAIRMAN: If I may interrupt you. I’m sorry to ambush the Board with this question. The reason why I’m saying this is because what I don’t know to do in a circumstance like this is impose a condition which is, I guess, my interpretation of what should be lobbed off when it may not make sense. For instance, the architect made a DINA M. MORGAN, REPORTER
any further hearing from the public on this.

Mrs. Uhle, do you agree with me or disagree with me?

MS. UHLE: If you're going to have them come back, I would just keep it open.

THE CHAIRMAN: I closed it.

MS. UHLE: I thought you just closed it on the interpretation.

THE CHAIRMAN: Actually, I moved to --

MS. UHLE: In any case, that's fine.

You're right, as long as they're diminishing the extent of the variance and there has not been anyone attending this particular public hearing, I think that's fine.

THE CHAIRMAN: Counselor, what I think we're going to cull together here is, that if the applicant has any interest in supplementing to diminish the impervious coverage in any way, however small it is, we would request that you do that in advance of the meeting. If you say that that is acceptable, then I'm going to make a motion to put this over for resolution.

You've heard what the Board thought, you hear my, I guess, suggestion, what is your thoughts?

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MR. ACCINELLI: I have no problem with that, Mr. Chairman. I can certainly speak to my client. I could get either in writing either a formal notification to the town or to the board, that the applicant is not going to supplement, or, yes, we will mitigate and see the attached revised plans. I can certainly do that sooner rather than later after speaking with my client and the architect -- the engineer, excuse me.

THE CHAIRMAN: Counselor, that is very concise. That is exactly the way to do it.

Hearing that we're all on the same page, so-to-speak, I'm going to make a motion to adjourn this matter for resolution at the next meet; is there a second?

MR. CAHALIN: Second.

THE CHAIRMAN: Mr. Cahalin. All in favor.

(AYE)

THE CHAIRMAN: Thank you, counselor, for your presentation.

MR. ACCINELLI: Thank you, Mr.

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MR. BARBUTI: I can't, but okay, no problem. That's a problem, I can't see it.
So as you can see in the back of the property, the above ground pool, which is basically adjacent to the small shed in the back, the property is an existing grass area. I don't understand what just happened here.
THE CHAIRMAN: Have we lost the applicant, Mrs. Uhle?
MS. UHLE: No. I think he just muted himself for a minute while he's figuring some things out.
MR. BARBUTI: Yes. I'm trying to figure out how do I get -- I see all the people on the screen, but I do not see my screen share. Can you see my cursor?
MS. UHLE: Yes, we can.
MR. BARBUTI: So it might be better if I started with the survey. So here's the existing survey, existing parcel. There's an existing patio that's in the rear, and this is a raised grass area adjacent to the shed. The area in question is back here where it says Lot 31 and 32. So there's an existing stone.

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retaining wall here, the patio is over here.
Basically what they had done is, they dug out the soils at this area to drop the pool. The property slopes up towards the back towards this rear stockade fence. It's basically a gradual incline.
I do have photos as well of what this looks like. Here is a Google Earth from above so basically you can get an idea. There's a one story addition, there's the gravel patio area, back here is where the pool is. As you can see, it's recessed into the ground. The existing retaining wall is approximately 2 feet tall, so they dug out about 2 feet of soil, put some railroad ties up around to support that as a retaining wall, and they had to construct a wood deck around it. That's looking west to east. The deck in the back is roughly 4 and a half to 5 feet. That right there is the stockade fence.
The pool itself requires a 10 foot setback to the side and rear property lines, and as constructed it is 4.9 feet, so that's a deficiency or 5.1 feet or a 51 percent.

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<td>MR. CAHALIN: Second.</td>
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<td>THE CHAIRMAN: Mr. Cahalin. All in favor.</td>
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<td>(AYE)</td>
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<td>THE CHAIRMAN: Mr. Tudisco, do your thing.</td>
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<td>MR. TUDISCO: Mr. Chairman, looking at the members of public attending the meeting, if anyone wishes to address the Board on this application, please use your raise your hand feature. Mr. Chairman, at this time I don't see anyone indicating they wish to address the Board on the application.</td>
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<td>THE CHAIRMAN: Okay. Having heard that, I make a motion to close the public hearing on this matter; is there a second?</td>
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<td>MR. CAHALIN: Second.</td>
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<td>THE CHAIRMAN: Mr. Cahalin. All in favor.</td>
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<td>(AYE)</td>
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<td>THE CHAIRMAN: We'll go through the Board, but just one comment.</td>
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<td>MR. TUDISCO: Mr. Chairman, after you closed the public hearing, a hand did go up. I closed the public hearing, a hand did go up.</td>
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<td>MS. UHLE: That's actually the applicant. That's the applicant.</td>
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<td>MR. TUDISCO: Okay.</td>
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<td>THE CHAIRMAN: So then does the applicant want to be heard on this? Even though the public hearing has been closed, the applicant can supplement or comment on its application before we go back to a round with the Board. Would the applicant like to be heard on this?</td>
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<td>MR. TUDISCO: I'm going to invite the applicant to un-mute herself. Please un-mute yourself and address the Board. Just give your name and address before your comments.</td>
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<td>MS. RIDULFO: Can you see me?</td>
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<td>MR. TUDISCO: Yes.</td>
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<td>MS. RIDULFO: Hi. I'm Lucy Ridulfo, 48 Harney Road, Scarsdale 10583. I am the applicant. My husband and I and my son and my mom live here and my grandchildren who come often. I just hope that you have an open mind and approve this application. It's a tiny pool. It's a pretty big yard. It does have a DINA M. MORGAN, REPORTER</td>
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<td>patio. I understand the concern of the Building Inspector saying it's tight, but it's a tiny pool. I'm not asking for an in-ground pool. We have locks on the gates, we have fences all around, we'll have an alarm with the pool. The only thing I wanted to speak about was, he said it was a safety issue. There will absolutely be no safety issues. I have two small grandchildren who will be enjoying the pool, and there will be absolutely every precaution taken that this will be a safe pool. So I'm hoping that you guys approve the plan. It's not a big project. It's a tiny pool with a small deck around it. That's all I had to say. Thank you.</td>
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<td>THE CHAIRMAN: Thank you. Before I go back to the Board, just as I guess a point of -- it's not a point of order, but I guess my commentary is that side, front and rear yard setbacks are there for a reason, and they're essentially buffer zones. When structures are built on a lot line without approval, what you're doing is, you're pushing the buffer zone to the neighboring properties beyond their DINA M. MORGAN, REPORTER</td>
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<td>buffer zone if they want to have what was intended by the law. Now, you have every right to ask for relief from that law, but my commentary is very simple, and that is, there's a five part test, and several of those prongs in that test include self creation, the character of the neighborhood and detriment to other properties. As far as I'm concerned, I have your submission, I've read it thoroughly, and I've listened to your presentation. Let's see what the Board has to say with any questions or comments. Mr. Cahalin, anything?</td>
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<td>MR. CAHALIN: I've said my comments.</td>
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<td>THE CHAIRMAN: Mr. Miller, anything?</td>
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<td>MR. MILLER: No, no comments.</td>
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<td>THE CHAIRMAN: Mr. Nurzia?</td>
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<td>MR. NURZIA: None.</td>
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<td>THE CHAIRMAN: Mr. DeMarco?</td>
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<td>MR. DE MARCO: No.</td>
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<td>THE CHAIRMAN: I have nothing further. I make a motion to adjourn this matter for resolution at the next meeting; is there a second?</td>
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DINA M. MORGAN, REPORTER
MR. CAHALIN: Second.
The CHAIRMAN: All in favor.

(AYE)
The CHAIRMAN: Thank you for your presentation.

MR. BARBUTI: Thank you.
The CHAIRMAN: Before we adjourn for our next meeting, our next meeting is February 9th, I believe. Let me just make sure. Yes. So sometimes when I adjourn, I don't let people know what the next meeting is. It's on our master calendar and it's a public record.

Having said that, I make a motion to adjourn our meeting tonight; is there a second?

MR. CAHALIN: Second.
The CHAIRMAN: Mr. Cahalin. All in favor.

(AYE)
The CHAIRMAN: Thank you.

MS. UHLE: Thank you.
The CHAIRMAN: Thank you, Mrs. Uhle.