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THE CHAIRMAN: Good evening, and welcome to the Zoning Board of Appeals for the town of Eastchester meeting for June, this is Tuesday, June 8, 2021. Tonight's meeting will be conducted remotely via Zoom. What that means is, that there will be certain items and protocol that when we conduct meetings in person transpire, which will not be happening tonight, like a roll call or a Pledge of Allegiance. Announcing at this point, we anticipate that our next meeting in September will be conducted in person, old school down in the auditorium.

Anyway, getting to the ground rules. Firstly, we observe Robert's Rules of Parliamentary Order, which means, among other things, that if anyone would like to be heard, whether it's board members or anyone else, for that matter, in the public, you will be recognized by the Chair. We also, as it relates to new applications, if someone wants to participate in the public hearing, you're going to use the raise your hand feature on your computer. You'll use star 9 if you're calling from a phone. Our Deputy Town Attorney, Robert Tudisco will acknowledge you and invite you to speak, and then you'll un-mute your microphone and state your name and address for the record. Tonight on the calendar there is only new business item, and that would apply once the public hearing is open.

For that applicant, just keep in mind, as all applicant's know, firstly, that as a term and condition to any new application, your matter is not decided upon tonight. It is deliberated upon and would not be decided upon until the next meeting would be the earliest. Also, all of the documents that are part of that application are marked submitted, they're a public record as of now, so you don't need to read your application in its entirety. You could do that. It's not going to either help or hurt your application. I would probably ask for purposes of presentation, that you just highlight what your application is all about.

So having stated all the ground rules, I have a couple of motions to make. The first

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is, that a make a motion to approve the minutes of the April 13, 2021 meeting. Is there a second?

M. CAHALIN: I'll second.

THE CHAIRMAN: Mr. Cahalin. All in favor.

(AYE)

THE CHAIRMAN: Secondly, I make a motion to cancel the special meeting of July 2021 for calendar purposes. Is there a second to my motion?

M. CAHALIN: I second that.

THE CHAIRMAN: Mr. Cahalin. All in favor.

(AYE)

THE CHAIRMAN: The following application has been adjourned to the September 14, 2021 ZBA meeting, and that's Application 20-19, Kidz Korner, 189-191 Brook Street. Now, next set of items on the calendar tonight are items on for Resolution. The first item, I make a motion to approve Application 21-90, 2 Pasadena Road. Is there a second to my motion?
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1 MR. CAHALIN: I'll second.
2 THE CHAIRMAN: Mr. Cahalin. To the vote. Mr. Cahalin.
3 MR. CAHALIN: I'll vote yes.
4 THE CHAIRMAN: Mr. Nurzia.
5 MR. NURZIA: Yes.
6 THE CHAIRMAN: Mr. DeMarco.
7 MR. DE MARCO: Yes.
8 THE CHAIRMAN: I vote yes. That application has been approved four to zero.
9 Item 2, I make a motion to approve Application 21-18, 84 Lakeview Avenue. Is there a second?
10 MR. CAHALIN: I'll second.
11 THE CHAIRMAN: Mr. Cahalin. To the vote. Mr. Cahalin.
12 MR. CAHALIN: Yes.
13 THE CHAIRMAN: Mr. Nurzia.
14 MR. NURZIA: Yes.
15 THE CHAIRMAN: Mr. DeMarco.
16 MR. DE MARCO: Yes.
17 THE CHAIRMAN: I vote yes. That application has been approved four to zero.
18 Third, and last item on the Resolution

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1 calendar, I make a motion to deny Application 21-13, 4 Sprague Road. Just as a reminder, a yes vote means a member is in favor of the denial. Is there a second to my motion?
2 MR. CAHALIN: Second.
3 THE CHAIRMAN: Mr. Cahalin. To the vote. Mr. Cahalin.
4 MR. CAHALIN: Yes.
5 THE CHAIRMAN: Mr. Nurzia.
6 MR. NURZIA: Yes.
7 THE CHAIRMAN: Mr. DeMarco.
8 MR. DE MARCO: Yes.
9 THE CHAIRMAN: I vote yes. The application has been denied four to zero.
10 On to our last item, which is of new business, 21-24, 97 Tuckahoe Avenue. If the applicant would like to give their presentation, you may proceed.
11 MS. UHLE: They're just getting on board here.
12 THE CHAIRMAN: Sure.
13 MS. UHLE: Do you guys have video or are you just audio?
14 MR. COMMRADE: There we are.

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THE CHAIRMAN: Thank you for your presentation. At this time, what I generally do is allot the board an opportunity to ask questions and possibly even make comments. So I'll start with the board. Mr. Cahalin?

MR. CAHALIN: None.

THE CHAIRMAN: Mr. Nurzia?

MR. NURZIA: No questions.

THE CHAIRMAN: Mr. DeMarco?

MR. DE MARCO: Nothing.

THE CHAIRMAN: I have nothing further at this time. I will 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, if there is anyone from the public that would like to be heard on this application, tell them to come forward and be heard, state their name and address for the record.

MR. TUDISCO: I see, Mr. Chairman, DINA M. MORGAN, REPORTER

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that a hand is raised. It appears to be a Mr. Sean Dweck. Mr. Dweck, I'm going to invite you to un-mute yourself, if I can.

MS. UHLE: Hold on. I'm sorry, Rob, can you do it? There you go.

MR. TUDISCO: Yes. Mr. Dweck, if you can un-mute yourself and please address the board.

MR. DWECK: Good afternoon, folks.

Will I be on the screen as well because I don't see myself? Can you hear me?

MS. UHLE: We can hear you.

MR. DWECK: There is no video. I don't know if that makes a difference to anybody.

THE CHAIRMAN: If I may, it doesn't, but if --

MR. DWECK: I would prefer to be seen if I could.

THE CHAIRMAN: We can give you a second to see if you could iron that on.

MR. DWECK: Is that on my end?

MS. UHLE: Yes, that would be on your end if you have a camera on your computer.

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MR. DWECK: I do have a camera, but I'm not seeing any option to --

MR. TUDISCO: Scroll to the bottom of your screen, Mr. Dweck. There should be a little picture of a microphone where you can mute or un-mute, and next to it is a picture of a camera. It says like stop video or turn on video.

MR. DWECK: There is the mute button, but there is no camera there.

MS. UHLE: Also, Rob, I'm not seeing a camera icon by his name, where as most people if they have that option have the camera icon. That would be totally on your end.

MR. TUDISCO: Hold on, let me see if I can --

MS. UHLE: That's totally on Mr. Dweck.

MR. TUDISCO: I'm looking at the options that I have.

MS. UHLE: Mr. Dweck, that would be on one of your settings.

MR. DWECK: I don't seem to see any -- bear with me for a second and let me see if I can --

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can -- you know what, I'll just make the presentation verbally. I don't want to hold everybody up with this.

So I submitted, this afternoon, a letter to the Town. I was advised by Ms. Uhle -- is that correct?

MS. UHLE: Uhle, but close enough.

MR. DWECK: I was advised that it was distributed to the members of the board, so I would respectfully refer the members of the board to my letter.

Without going through each item in the letter because you have it in front of you, what I would point out is that part of the application for the area variance contains a five question questionnaire, and that's really what I would like to focus on for the purpose of my client, Mr. Marrocco, who lives next door at 99 Tuckahoe Avenue.

Question number 1 is, whether there is any undesirable change or detriment to the nearby properties. In conclusory fashion, the applicant has said that there isn't and the application says that there isn't, but there

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1 actually is. As I'm sure this board is or will
2 now be aware, there is a serious water
3 infiltration problem, which has only emanated
4 from the time that the applicant has started
5 doing construction to his property. There has
6 been construction done on the property before,
7 including an addition which was done. There
8 was a plan for a patio to be redone. While I
9 understand that the only issue that we're
10 dealing with here today is the issue of the
11 driveway, it's relevant because the area where
12 the properties align with each other, are
13 contiguous with each other, is where Mr.
14 Marrocco is having all the issues.
15 I submitted photographs, which are
16 just illustrative of what the problems are.
17 Every time that there's a significant rainfall,
18 his property floods in the back. Mr. Marrocco
19 has been a resident in that house for over 50
20 years, and it wasn't until the time that Mr.
21 Cornmard, the applicant, started their
22 construction, that he started having issues.
23 We're very mindful of the efforts that the Town
24 has made to try to address these issues with
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1 certain testing and whatnot, the issue still
2 remains. Pure logic dictates that it's
3 something that the applicant has done with
4 their construction, that is causing this
5 problem. It just doesn't happen out of
6 nowhere.
7
8 With respect to question number 2, is
9 there some other method that can be achieved
10 other than a variance. The short answer is,
11 yes, have him narrow the driveway back to what
12 it should have been done. This was done in a
13 backwards fashion. The construction that was
14 done on the property, you know, there was a
15 plan to file for the house and for the addition
16 that they put on, and I think it's, you know,
17 for lack of a better legal term, a lame excuse
18 to say that the construction workers just
19 didn't know. There had been a fence there that
20 was taken down, and I can speculate that the
21 fence was removed because it really was the
22 only thing discerning the property lines. As a
23 result of the fence being removed, you really
24 can't tell where the property starts and ends
25 between the two neighbors. If the fence had
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1 lastly, the question is whether this
2 was self-created. There is no question that
3 this was self-created. This could have been
4 done properly in the first place. The
5 application for a permit for a driveway, you
6 know, which is available to the individuals
7 doing construction, whether they're
8 contractors, architects, or the individual home
9 owner, it's available to them, and in clear
10 language it says right on the application page
11 what the zoning law is. It says, driveway
12 regulations, and item 3 it very clearly says
13 that driveway pavement or any pavement, stones
14 or gravel adjacent to the driveway may not be
15 closer than 3 feet to any side yard property
16 line. So I would suggest to the board
17 respectfully, that the questionnaire fails on
18 every count with respect to this application.
19 Now, let's look at this from the
20 realistic standpoint as opposed to just the
21 technical standpoint. From a pure technical
22 standpoint, I think that the application ought
23 to be denied because they haven't met the
24 requirements, and I think that if the
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requirements -- if this board were to vote in favor of the variance, I think the decision, essentially, would be arbitrary because they haven't shown with satisfactory evidence, that they've met the criteria required in order to get a variance.

Let's look at it practically speaking.

What is Mr. Commrade doing? He wants to get his driveway approved. What does Mr. Marrocco want? Honestly, he just wants peace. He wants his property, and he wants it where it's not having water leakage and seepage ruining his plantings and causing aggravation to him.

That's what he wants. We're not looking to cause harm to the applicant, and we're not looking to necessarily have his application denied. What we want is to have the issue resolved. Whether that means having the appropriate catch basins that are sized accordingly and appropriately, whether it means having the driveway pitched in the specific areas that it abuts my client's property or whether it's having appropriate leaders installed, whatever it is, if Mr. Marrocco's

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property can go back to the condition that it was in, meaning no water leakage and seepage from the neighboring property, which occurred when the construction was done, then he doesn't have any issue with them having a variance.

But if that isn't rectified, then he vehemently objects to it.

That is essentially the presentation, and I'm happy to answer any questions that the board may have.

THE CHAIRMAN: Thank you for your commentary, counselor. The board does not have questions for the public.

Is there anyone else from the public that would like to be heard, Mr. Tudisco?

MR. TUDISCO: I am looking at this point, Mr. Chairman, and I do not see any hands at this time, which indicates to me -- it appears that there is a hand up from a panelist. Is there a Mr. Nodiff?

MR. NODIFF: Yes.

MR. TUDISCO: Are you representing the applicant?

MR. NODIFF: I am.

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of Mr. Commrade. So it's my position, and I
hope your position and understanding, that the
application filed in support of the variance is
all accurate, and it all should be ruled
favorably for the reasons stated right in
there, and for the reasons that are stated in
Frank's response to Mr. Dweck's letter, which
you could read through.

I know that I can't question Mr. Dweck
right now, so I'm actually going to ask Frank
some questions, if you'll indulge me.

THE CHAIRMAN: Actually, I will not.
If you could make your comments, please, and
then Frank can also make his commentary. It's
not a trial. You could reply to Mr. Dweck's
commentary or add anything to the presentation
that you would like.

MR. NODIFF: Sure. Thank you. I
understand.
First off, in terms of the assertion
that water is going from the driveway to Mr.
Marrocco's property, there has been no evidence
presented at all, that's the case. If you
look at the photos supplied by Mr. Dweck, I
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didn't see any photos of water going from the
driveway to Mr. Dweck's property.

In terms of water going from Mr.
Commrade's property into the back of Mr.
Marrocco's property, number 1, I don't think
that's relevant even slightly to your
consideration of the variance. And if it was,
I think what Frank would tell you is, that he
was told that before -- he was told by a
neighbor soon after he moved in before there
was any complaint at all, a neighbor from
across the street told Frank that Mr. Marrocco
had complained, in fact, about a water issue
with a prior owner of 97 Tuckahoe Avenue. This
had nothing to do with anything that Frank did,
construction or otherwise.

In addition, the Commrades had people
from the town of Eastchester come over, look at
the property. He had independent engineers
come and look at the property. They all said
the thing, that the Commrades were totally
within code, they provided whatever remediation
was required, and went beyond that. As you'll
see in the letter, they put in and spent their
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own money on putting in things that would
mitigate against any potential water problem.
If you look at the land, the contour of the
land, you'll see the way the land contours. So
water naturally, as we know, flows downhill,
okay. That's the contour of the land, and it's
not the responsibility of the neighbor to do
anything about that.

The other thing I want to mention is,
that the complaints about the water did not
commence until 2019, yet, Mr. Marrocco
complained initially about the water back in
2015. So for years he was complaining about
water in the backyard area, never complaining
about the driveway until 2019. So it was
clearly out of vengeance for what was going on
on the property.

Further, I'll mention that -- and you
say this is not a court of law, and I will
limit the discussions we had to try to resolve
this, I don't know, nine months or so ago when
Mr. Dweck contacted me. We had numerous
conversations. We both agreed we wanted to
resolve this amicably. Mr. Dweck suggested and
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proposed that Frank allow an engineer provided
by Mr. Marrocco onto his property for roughly
an hour to inspect the property, to look at
water flows, and to try to determine whether
there would be a proposal to remediate any
issue. Frank said, yes, you can come onto the
property, and then it was crickets, radio
silence. They asked about dates and times that
the engineer could come. We provided that
information and made ourselves available, and
yet, there was silence. Mr. Dweck never
responded to that, other than when I followed
up several weeks later, he said, we're
considering our options.

So again, I think that Frank has made
every effort to work with his neighbor to try
to mitigate any issue, to try to resolve it in
an amicable way, and so, we believe that the
variance should be approved. These water
issues are irrelevant, but even if they were
relevant, to the reasons I stated, Frank acted
in good faith.

One final point I'll make is on the
fence issue. Mr. Dweck had the audacity to
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suggest that Frank somehow did this in an
underhanded, bad faith way to somehow hide the
property line. The fact is, and you could
cHECK with Mr. Dweck's client, he agreed with
Frank that he could remove the fence. Frank
indicated to him that it would make the
construction work on the driveway a lot easier
if the fence were removed, given the proximity
of the fence to the driveway. Mr. Marrocco
approved the removal of the fence, which made a
lot of sense. It wasn't to hide anything. Had
Frank known about the 3 foot requirement,
obviously he would have done that, complied
with it. To think that he somehow purposely
did this is ridiculous. If you look at the
driveway, you'll see an extra foot did not need
to be added to the driveway. The guys who did
the paving put it in. I understand ignorance
is no excuse, but the fact is that he did not
know about it, and certainly never would have
done it purposely.

Then talking about the variance, the
argument by Mr. Dweck that there is a violation
of the code, and therefore, the variance should
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be denied, well, why do people file variances?
They are filed when people are in violation of
the code. They either need an exception made
to it or an approval that otherwise they
couldn't do. So that's the very essence of the
variance process.

I thank you for your time. Frank, if
you have comments.

THE CHAIRMAN: Thank you for your
presentation, counselor. Does the applicant
have anything else to add?

MR. COMMRADE: Just a couple of points
just for clarification and some background on
this driveway.

The removal of the fence, as was
brought up, and the driveway that's currently
there now, was originally -- all took place in
2014 when we put the addition on the back of
the house, during that construction phase,
which we applied for multiple variances at that
time in order to proceed with the construction.
As was stated in regards to this driveway, it
was unknown, otherwise, we would have, of
course, applied for a variance then, as we
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To the board for comments or questions. Mr. Cahalin?

MR. CAHALIN: Yes. I mean, to me, we just spent, I don't know, 25 minutes on stuff that has no relevance to the application. This is about a variance for a driveway, not about drainage. I'm amazed -- this is my, I think, eleventh year on the Zoning Board, and I've never seen anything like this before. People forget, we volunteer, we put time in, we go to the properties. This, you know, was, you know -- when I saw the variance, yes, 30 percent is a lot. You go look at the property, and it doesn't look like a lot and it doesn't look like that on paper. We're talking about a driveway. We just spent a lot of time on stuff that I didn't want to hear about. I had to read last minute letters being submitted that, you know, I don't know about everybody else, but I'm employed someplace else, and I'm happy to do this with the town, but getting something at a quarter to 7 on a Tuesday night isn't right, when it really doesn't pertain to the issue. The issue is, this man could remove

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13 inches and he has no issue and his neighbor has no case, in my mind. He's asking for 13 inches. 13 inches. 13 inches. Albeit, it's 30 percent, but it's 13 inches. I'm just a little upset that we had to listen to, I'll it shenanigans, about water, when it doesn't pertain to the variance that's being asked for. That's my comment for tonight, Mr. Chairman.

THE CHAIRMAN: Thank you, Mr. Cahalin. Again, I'm certainly sensitive to your commentary because I made this comment on more than one occasions, that we want to keep good board members and we try to be pithy and to point, but under Robert's Rules I do allow some latitude when it applies to the five part test. That fault doesn't lie with the stars, it lies with me.

Mr. Nurzia?

MR. NURZIA: Yes, thank you. One question. There was a note and a comment about six or nine months ago the parties had talked about getting an engineer to take another look at it. Why wasn't that followed up on? No matter how we rule on this, one party is going

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MR. NURZIA: No, that's it.

THE CHAIRMAN: Mr. DeMarco?

MR. DE MARCO: I have nothing.

THE CHAIRMAN: I don't have anything either, other than I've reviewed the application and the answers to the five part test, and I am ready to make a motion to adjourn this matter to the September meeting for Resolution. Is there a second?

MR. CAHALIN: Second.

THE CHAIRMAN: Mr. Cahalin. All in favor.

(AYE)

THE CHAIRMAN: Thank you. Having nothing else before me, I make a motion to adjourn the meeting. Before I ask for a second to my motion, I'll just add a reminder that the next meeting is September 14th, and that meeting, so far, is going to be in person, the way we conducted all meetings until the pandemic. They'll be notice in advance if that has changed. Is there a second to my motion?

MR. CAHALIN: Second.

THE CHAIRMAN: Mr. Cahalin. All in favor.

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

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of July, 2021.

DINA M. MORGAN
Court Reporter

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(AYE)

THE CHAIRMAN: Thank you.

MR. CAHALIN: Have a nice summer.

MS. UHLE: Thank you.

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