

Minutes of the **Regular Meeting** of the Zoning Board of Appeals of the Village/Town of Mount Kisco held on **Tuesday, December 21, 2021 at 7:00 pm** at the Frank J. DiMicco Board Room and via Zoom Teleconference

Members Present: Chairman Harold Boxer (via Zoom)
George Hoyt
Jacqueline Broth
Wayne Spector
Ralph Alfano

Members Absent: Arthur Weise

Staff Present: Whitney Singleton, Board Counsel (via Zoom)
Peter J. Miley, Building Inspector
Lisa Cobb, Special Counsel (via Zoom)

Chairman Boxer stated hi everybody, sorry I'm not there one more time. This is the December 21st meeting of the Mount Kisco Zoning Board of Appeals. Our first case is ZBA# 21-22, 2 Morgan Drive. Who is here for the applicant?

**1. 2 Morgan Drive, LLC
2 Morgan Drive
Mount Kisco, NY 10549
(SBL 80.55-1-2.1)**

**ZBA# 21-22
Area**

Mr. Tyler Sweet and Mr. Mark Millspaugh of Sterling Environmental were present via Zoom.

Mr. Millspaugh stated Mark Millspaugh is here from Sterling Environmental.

Chairman Boxer stated okay.

Mr. Sweet stated and I'm Tyler Sweet from Sterling Environmental as well.

Chairman Boxer stated okay, so go right ahead.

Mr. Millspaugh stated sure, I'll start and Tyler can fill in some of the details. The applications for a variance dated November 23rd, was submitted with a cover letter outlining the need for the variance and providing the Board with a summary of the issues that you typically go for evaluating variances of this nature. Tyler, if you could share the view of the site so we can point to the setback condition that exists. This is the plat, at the last meeting of the Planning Board which was a week ago tonight, the Planning Board provided their approval of the subdivision plat and the accompanying site plan with certain conditions, one of which was to appear before the ZBA and provide the details for the requested variance. Tyler, if you could expand it slightly, so that its easier to see. The property is the former waste water treatment plant located off of Morgan Drive, the structures that are shown here and labeled one-story concrete structure, concrete and steel frame, concrete structure and concrete steel frame structure. Appearing from left to right in the middle of the screen, those are components of the former waste water treatment plant. That portion of the site is the subject of ongoing investigations by the New York State Department of Environmental Conservation. We have proposed a subdivision line to split this existing parcel known as lot 3, into parcel A at the bottom of the screen and parcel B at the upper part of the screen which will encompass the former waste water treatment plant components. Parcel A is upland that is higher in elevations than parcel B and it's previously undeveloped and investigations conducted on parcel A to date have confirmed that it does not have any contamination of significance to the point where the New York State Department of Environmental Conservation has released parcel A from the need for any further investigations or remedial action. So, we have prepared a site plan for development of parcel A with a commercial building which will, the purpose of which is to house a private auto collection and we can provide some more detail on that. If you look at the middle of the screen, there's the dividing line between parcels A and B which is the bolder line, Tyler, if you could point to it.

Mr. Sweet stated let me change to this other figure here.

Mr. Millspaugh stated so this has some of the background information removed and it points to the setback distances from the demising line between parcels A and B. And the Code requires a 20 foot setback and we have labeled the setbacks that are actually provided as a result of the subdivision, so it is the intent that these structures will all be demolished to grade and that that will occur when DEC completes their investigation and approves a remedial program for the project and at the time that the DEC signed off on the dividing line between parcels A and B, there was no apparent restriction on removing those structures as part of the development of lot A, however DEC has since determined that additional investigations need

to be completed before the DEC is in the position to approve the remedial plan and while the concrete that extends above grade is not controversial, DEC won't allow any ground disturbing activities, including traversing the site with excavators and demolition equipment. So we can't remove those structures at this time but it is the intent that they will be removed as soon as the DEC approves the remedial program. Tyler, if you could just point out the individual setbacks and just make mention of the structure that is within the setback.

Mr. Sweet stated yes, so there are four structures that are along the proposed property line that would encroach on the 20 foot setback. Two of these structures are former tanks, they extend only a couple feet above grade, there's fences around them that are integral to these walls but they are not buildings, they are just literally just tanks that were part of the treatment plant. The first one, located, I'll just use the term south, it is to the southwest, that would be primary tank two, that is, that one would be 18 feet 9 inches from the property line and then the other tank which is primary tank one, would be 17 feet 2 inches from the property line. The other two buildings was a concrete storage building, this again is a concrete wall and steel framed building, I do not believe it has a roof on it anymore, I believe the roof has completely collapsed in on this structure, so it's really just four concrete walls and that one would be 12 feet 8 inches from the proposed property line and the final building is the sprinkling filter bed structure, again this one has, I don't even think this one has concrete walls, it is an elevated pad and concrete that extends around a filter bed with a steel frame, almost like a greenhouse structure over top of it. Again, it is in poor condition and is collapsing in on itself, that structure actually already extends beyond the rear property line, when those lines were drawn up as part of the original subdivision when the Town took ownership of the property, the line was actually placed within that structure's footprint.

Mr. Millspaugh stated I would add that on the lot A portion of the site, following subdivision, the proposed building and amenities will fully conform to the Village's Code requirements and setbacks...

Mr. Sweet stated yes.

Mr. Millspaugh stated and on lot B, the condition that best is temporary and we are just awaiting DEC's completion of the site investigation so that their remedial program can continue, at a minimum DEC's remediation would be to demolish the concrete that extends above the grade and then to cap the entire site with a soil cap that provides a separation layer from the underlying soils where there's some residual contamination from the years that this property operated as a waste water treatment plant. The State also has not ruled out the possibility of redeveloping lot B but until the investigations are complete, a development plan for lot B cannot be prepared and any development, such as proposed would meet the setback requirements of the Code. That's an overview of the situation and Tyler and I are certainly available to answer any questions. We did try in the submission to step through the evaluation you need to go through and we can elaborate on that, those are set forth in the last three pages of my letter dated November 23.

Mr. Hoyt stated Peter, is the fact that there's no more, on lot A, the variances requested are only due to the setbacks, is the fact that the lot A is being used for, as a private warehouse, if that use changed in the future to a commercial use, would that require additional parking? Is that a condition of lot A or is it off scope?

Mr. Miley stated yeah, that's a good question, so this is a private car collection, so the use and the parking was determined and it was predicated on the type of use, it was determined by the Planning Board that the parking was adequate. If there was another, if a furniture warehouse was to go in there, they would have to go back to Planning and comply with the Zoning parking requirements at that time.

Mr. Millspaugh stated that is correct.

Mr. Miley stated this is specific to the use.

Mr. Millspaugh stated that is correct.

Chairman Boxer stated and it is my understanding that once the buildings come down, then there will be no violation of the setback.

Mr. Miley stated that's correct Chairman.

Mr. Sweet stated yup.

Mr. Miley stated hey Chairman, let me just elaborate a little bit. We preferred that these dilapidated structures come down but the DEC prohibited it, they were willing to take them down at least to ground level, so they wouldn't be visible but unfortunately the DEC is preventing that, hence the reason, they were determined as structures, whether they're structures in good condition or not, they're still structures. But at

some point, I believe and I'm just shooting from the hip that the resolution included that once it's approved, they would come down and the site will comply.

Chairman Boxer stated okay.

Ms. Cobb stated so I think one of the things that, hello Board, my name is Lisa Cobb, I am the attorney for the ZBA on this matter since Whitney had a conflict. I think of the things that the Board should discuss is the applicant has indicated a willingness to have the owner of lot B take the structures down as soon as practicable, I think as soon as practicable would be the term we would use but once the DEC allows that to happen and I think that is a fair condition for the Board to consider on this variance. And the other question is you questioned when the structures come down, will the setbacks be met or there'd be no violation. The answer is that once the structures come down, then the setback violation will be eliminated and any new structures or proposals for lot B, assuming the lot can be remediated and they would be allowed, would have to conform to the then current zoning code. So if any of lot B were to be used to anything, then that would be when there would need to be conformance.

Chairman Boxer stated did you say you want to make a condition that lot B will, I'm not sure how we can force lot B to do anything. I don't see how the applicant is responsible for lot B.

Ms. Cobb stated the application before you is for to permit, technically, the subdivision of the lot which is now one lot, into two lots, the structures that we're talking about being violative of the setback requirements are on lot B. Lot A is the lot which is the private warehouse, what the Board would be granting, what they are being asked to grant tonight is four setback variances for the structures that exist on lot B and, but what's before you right now, technically, those are the variances your sought to allow the subdivision to go forward. The entire lot is part of the subdivision application, the entire big 5.7 acre lot that is not yet subdivided because it can't be technically subdivided until this Board grants that approval for the variances.

Chairman Boxer stated okay.

Ms. Cobb stated the granting of the variances was made an express condition of the Planning Board's site plan and subdivision approvals that were granted last week.

Mr. Alfano stated Lisa, thank you for that clarification, I was wondering why a variance was needed for something that was temporary, at least in the short term.

Ms. Cobb stated well the other thing, this is DEC and is remediation and contamination and temporary if we use that in the most relative of terms, it's a temporary thing because at some point, everyone is optimistic that the remediation will, the contamination will be remediated and these structures will be able to come down but we are not able yet to get a date from DEC or DEP when that might happen. And so if you use temporary in the most loose sense, that's a fair statement.

Mr. Alfano stated question for Tyler and Mark, Tyler on the PDF you were showing, I was just curious, the square footage was listed as like 36,000 but on the plans we have in front of us its listed at 70,000. Why is there a factor of almost 2 different, almost?

Mr. Sweet stated it's a two-story building, the footprint of the building is a 36,000 square foot footprint building with 70,000 useable square feet of space.

Mr. Alfano stated got it, okay, thank you.

Mr. Sweet stated yup.

Chairman Boxer stated will all of the equipment for the, to keep the inside cold and dust free, will that all be within the building?

Mr. Millspaugh stated yes, the DEC has established some conditions for proceeding and as has the Planning Board. One is that the very first order of business following subdivision approval and approval by your Board is the establishment of a temporary construction fence along the demising line between lots A and B and that's to assure that no activity occurs on lot B until such time as DEC is comfortable that conditions have been thoroughly investigated and an approved remedial plan developed. So all of the development activities and the construction of the building, associated grading, stormwater management will occur on lot A and there isn't even any temporary lay down or storage proposed for lot B. Lot A will be the full extent of the construction site.

Chairman Boxer stated will the building be visible from the road?

Mr. Millspaugh stated Tyler, do we have a view in the submission that you can put up?

Mr. Sweet stated I don't believe I have a street view rendering of what this building is going to look like from Morgan. I, Mark, correct me if I'm wrong, the ARB reviewed and approved the architectural renderings and plans last week.

Mr. Millspaugh stated that was last Wednesday. To answer your question, the end of the building is visible from Morgan but we have proposed landscaping on the street side and on the perimeter to minimize any visual impact.

Chairman Boxer stated nothing can be seen from Lexington?

Mr. Millspaugh stated I think its blocked by the adjacent existing building.

Chairman Boxer stated okay, that's what I thought.

Mr. Millspaugh stated in the record, I just wanted to point that there's a letter from the current property owner of lot 3 at 2 Morgan Drive, following subdivision the plan is that lot A will be developed and sold and then lot B will continue to be retained by the owner and he has submitted the letter pointing to the fact that he has no objection to these setbacks, that they don't affect his plans or in the future and that's really with the understanding that once DEC approves the remedial program those structures are going to be removed.

Chairman Boxer stated any other questions from the Board? Is there anybody in the audience or online that wants to make a comment?

Mr. Miley stated we'll confirm, Chairman, give us a minute.

Chairman Boxer stated thank you.

Mr. Miley stated there's nobody at Town Hall, Facebook there are no comments and we're just going to check if there any hands raised in the Zoom.

The Secretary stated just applicants in the Zoom.

Chairman Boxer stated okay.

Mr. Miley stated nobody is here to make a comment Chairman.

Chairman Boxer stated okay, then at this point, I think someone can make a motion to close the public hearing. Okay...

Mr. Spector introduced a motion to close the public hearing. Seconded by Mr. Alfano.

Mr. Miley stated you'll need a vote.

Chairman Boxer stated you'll need a vote.

Mr. Miley stated on the closing of the public hearing.

Chairman Boxer stated I always get it backwards. Okay, we can, before we take the vote does anybody on the Board want to comment on it?

Ms. Cobb stated first you need, we have a motion and second to close the public hearing. So the first thing we need is a roll call vote by the members to approve the closing of the public hearing and then we can do the deliberation. So, Michelle, can we have a roll call vote, please.

The Secretary stated ZBA doesn't roll call vote, so Chairman Boxer will ask...

Ms. Cobb stated okay, can we have an aye or a nay.

Chairman Boxer stated does everybody agree with closing the public hearing?

The motion carried by a vote of 5 to 0.

Chairman Boxer stated okay, there you go.

Mr. Miley stated we are closed.

Ms. Cobb stated thank you. Okay, now if the Board is going to deliberate this evening, I have only one thing I'd like to say, I've reviewed the applicant's submissions on the five criteria that the Board is to take into account and the only one I have a minor, legal disagreement with is whether the hardship is self-created and I think the answer to that should be yes because it's the applicant's decision where to place the lot line. Obviously the contamination is not self-created but I think the hardship is technically self-created but I don't think that's a reason that's not a bar to the Board's granting the variance where its so inclined to do so.

Chairman Boxer stated okay. So, we do not have Whitney here, so we may actually have to go through the five factors all by ourselves. I will read from their submissions. Granting of the variance will benefit the applicant but will pose no detriment to the neighborhood or community, does anybody have an objection to that?

Board members respond no.

Chairman Boxer stated okay, the benefit cannot be achieved by a method feasible by the applicant. Any comment? Okay. Variance is not substantial. Can you tell us the size of the lot and the size of the building, so we can decide that.

Ms. Cobb stated in this instance, Mr. Chair, you're being asked to grant four variances, they're based on a 20 foot setback. So the largest of the variances you're being asked to grant is 10 feet 5 inches, which is mathematically substantial but given the context of this building and the temporary nature of the variances you're being asked to grant, it's not, the Board could find that the variances are not substantial.

Chairman Boxer stated okay, no, I agree with that. It's one of the first times we've had something where the variances will be cured by taking down part of the other buildings. The variance will have no adverse effect or impact on the physical or environmental conditions. And I think we've gone through that. And then the questions of whether or not it was self-created, it may be or it may be not but as well know, that is not a reason to deny the application.

Ms. Cobb stated and one more legal thing, if I could just interrupt Mr. Chair. I think the Board should find that this is a Type II action under SEQRA because it is granting of setback variances on one individual property and therefore no further environmental review is required.

Chairman Boxer stated sounds good to me. I think at this point, we could take a vote to grant the four variances as requested. All in favor, please say aye.

Mr. Hoyt stated I think we should also include the conditions that Lisa had mentioned.

Chairman Boxer stated okay, that's fine. We can just...

Ms. Cobb stated sure...

Chairman Boxer stated tell us what they are and let Whitney know what they are later on.

Ms. Cobb stated well actually, I'll be draft, Whitney won't have any involved with this because he has a conflict. So you'll be getting the draft resolution from me and the condition of approval that I propose is that the property owner of lot B shall be responsible for the removal of the above grade structures as soon as practicable following authorization to do so by New York State DEC.

Chairman Boxer stated okay. I know that I wouldn't want to be a developer to have to wait for DEC to make a decision but...

Ms. Cobb stated that's probably why the property is proposed to be subdivided.

Chairman Boxer stated I agree. Okay, so then the application is passed as with all the notes that we put in...

Mr. Miley stated Chairman, we need someone to make a motion and a second and...

Mr. Hoyt introduced a motion to accept the proposal with the conditions as outlined by Lisa.

Mr. Miley stated you have a motion by George, Chairman.

Mr. Spector seconded the motion.

Mr. Miley stated and a second by Wayne.

Chairman Boxer asked for all in favor. The motion carried by a vote of 5 to 0.

Chairman Boxer asked for an opposition. Hearing none.

Chairman Boxer stated okay, there you go.

Ms. Cobb stated and just for the clarification on the record, can I have who was the motion to close the public hearing and the second for my notes?

The Secretary stated Wayne Spector was the motion to close the public hearing, seconded by Ralph Alfano.

Ms. Cobb stated thank you so much.

Mr. Miley stated you're welcome Lisa. If we don't speak, have a great holiday.

Ms. Cobb stated thank you. And thank you Chair and Board, it was very nice to meet you informally. Have a great holiday.

Chairman Boxer stated nice to meet you.

Mr. Miley stated have a good night.

Mr. Millspaugh stated thank you very much.

Mr. Sweet stated thank you.

Chairman Boxer stated okay, hold overs. Bagnato, ZBA21-8.

**2. Bagnato 205 Lexington Ave Corp
215 Lexington Avenue
Mount Kisco, NY 10549
(SBL 80.32-4-6)**

**ZBA# 21-8
Area**

Mr. Kory Salomone of Zarin & Steinmetz; Mr. Anthony Crecco, property owner; Mr. Ralph Alfonzetti, Engineer, all appeared via Zoom.

Mr. Salomone stated good evening Mr. Chair, for the record Kory Salomone from Zarin & Steinmetz, here on behalf of Bagnato 205 Lexington Ave Corp, in connection with the area variance. Here with me this evening are Anthony Crecco, the principal of Bagnato 205 and Ralph Alfonzetti, our project engineer.

Chairman Boxer stated okay.

Mr. Salomone stated as you will recall, the property is located at 215 Lexington Avenue, approximately .26 acres, in the CN, Neighborhood Commercial Zone. It is currently improved with a 4,300 square foot structure, it's a mixed use building, we have retail on the first floor and four apartments on the second floor. The applicant is proposing to retain this existing building and add three new attached townhomes with associated parking in the rear. So as you will recall, we've been before you a couple times before, back in March, the Planning Board approved our site plan application subject receipt several variances from your Board, we appeared before you on May 18th and June 15th to discuss the plans and while during this meetings, your Board seemed generally comfortable with the requested variances, you made a request of us to see if we could add a couple of additional parking spaces and we were able to do that. We went from 10 parking spaces, needing a variance for 8 to 12 parking spaces, so we only need a variance for 6 parking spaces now. That necessitated us going back to the Planning Board for amended site plan approval, which we received on September 14th. So now we're back here before you to discuss the four variances that we need, the first is sort front yard setback, here 20 feet is required and we're providing three, so we need a variance of 17 feet and what's really driving the location of the building is the existing structure is setback just .5 feet from the road, so we're trying to avoid any sort of saw tooth effect, so we kind of lined it up with this building and I guess that's the building to the south. We also need a variance from the parking aisle width, 25 feet is required and while 60% of spaces meet that requirement, spaces 7,

8, 9 and 10 have only a 19.2 foot aisle width, so we need a variance of 5.8 feet. We've discussed the parking, 18 spaces are required, we're providing...

Chairman Boxer stated let me ask you a question, on the parking are you trying to count the grandfathered spot to the building that now no longer exists?

Mr. Salomone stated well all throughout this process we've been advised that we have credit for four spaces, grandfathered in four spaces for the building that no longer exists.

Chairman Boxer stated but that building no longer exists, so how can it now be considered to be used for the parking?

Mr. Salomone stated that has been noted in the Building Inspector's memos, so I would defer...

Mr. Miley stated Chairman, I think there's a little confusion Chairman. So we gave a historical parking calculation based on the construction of the originally building which is a four family on the corner, at the time of construction it did not required any parking whatsoever. This was later constructed, excuse me, converted from a two- to a four-family at the time it was converted to a four-family, the requirement was only one space per structure. So that was all incorporated into this site plan and then the additional three structures, that are attached townhome required 2 per unit, those are being provided. So all in all, the entire count with the credit, it still resulted in a need for a variance for the total calculation. I hope that helps you. So he did get a historical parking credit because it wasn't required at the time that building was constructed, that is the premise of the reduction in the parking need.

Chairman Boxer stated okay, now we also had a problem with greenspace, do you have any diagram that will show what the greenspace after all the construction and parking is put in?

Mr. Alfonzetti stated we don't have a specific plan to show that but this whole area where my cursor is here, is greenspace and this area here on the left and right of the islands, of the main entrance there and just to note that we are transferring this strip here, that's a large concrete apron, into greenspace and we're planting some street trees. In fact, we're not taking credit for this, it's off-site but it is greenspace that we're adding.

Chairman Boxer stated but it's not to be counted though.

Mr. Alfonzetti stated correct.

Chairman Boxer stated you have more or less greenspace than when you were before us before?

Mr. Alfonzetti stated we have slightly less because we did add two parking spaces.

Chairman Boxer stated can you give us numbers and percentages, how much less?

Mr. Salomone stated 188 square feet less.

Mr. Alfonzetti stated yup, there you go.

Chairman Boxer stated and okay, so someone do the math for me, 188 feet against the whole property is what percent?

Mr. Alfonzetti stated give me a moment and I'll do that math for you.

Chairman Boxer stated okay.

Mr. Alfonzetti stated so its between 1 and 2%, it's approximately 1.6, almost 1.7%.

Chairman Boxer stated okay. Okay, I don't know if any of us have papers from last time you were here. What about the fact that at this point, the buildings are no longer connected, so now you are asking us and I think, you haven't requested it but I think you need to make a request for a variance to the law that you can only have one principal building on a lot.

Mr. Miley stated no, Chairman, that was not an objection. They can have two structures on one lot.

Chairman Boxer stated says who?

Mr. Miley stated the Code says it.

Chairman Boxer stated okay.

Mr. Miley stated I'll read you the section as they go through.

Chairman Boxer stated because I don't have that in front of me, I always thought it was not allowed and if you can show where that is, that's fine.

Mr. Miley stated I would have put it in my memo if it required a variance for it.

Chairman Boxer stated okay. Does anyone on the Board have questions for the applicant?

Mr. Hoyt stated I've forgotten, did this go back, I'm sorry if you said this, after we last spoke, did you go back to the Planning Board to add, I know they had initially objected to the additional spots, if I recall.

Mr. Salomone stated yes, we did go back to the Planning Board, we appeared before them at least two times again, I believe it was in August and again on September 14th and we received an amended site plan approval on September 14th, subject to receipt of the four required variances from your Board.

Mr. Alfano stated our initial concern was that there was a lack of street parking, that's why we pushed for more parking spaces, knowing that there would be less greenspace.

Mr. Spector stated necessary tradeoff.

Mr. Alfano stated right.

Mr. Hoyt stated and there was some talk early on about parking on Lexington, that's no longer part of this plan at all...

Mr. Salomone stated well I think that parking may still be available on the street, that's just not something that we can take any credit for. Again, there is an existing driveway there where the proposed buildings are, so you know, it's a dangerous situation with cars backing into the street, so we are moving that which will open up, how many space Ralph, two or three spaces on the street?

Mr. Alfonzetti stated three spaces.

Chairman Boxer stated and that's where you're going to be putting more greenspace, where the current driveway is in the front?

Mr. Alfonzetti stated between the curb and the newly, the sidewalk, between the curb and the sidewalk, right where the cursor is.

Chairman Boxer stated on Lexington Avenue, correct?

Mr. Alfonzetti stated correct.

Mr. Spector stated there will be no curb cuts on Lexington Avenue, is what you're saying?

Mr. Alfonzetti stated correct.

Chairman Boxer stated sounds good.

Mr. Miley stated Chairman...

Chairman Boxer stated yes.

Mr. Miley stated I'll read you that section, 110-31 Supplemental Development Regulations of lot for every building, so it's partially accurate except for designed multi-structure development such as but not limited to, shopping centers, office parks, or multi-family or townhomes, townhouse developments. Not more than one principal building herein after shall be permitted on any lot. So it permits multi-family townhome developments to have multiple structures on one lot.

Chairman Boxer stated thank you.

Mr. Miley stated you're welcome.

Mr. Hoyt stated is part of the proposal to limit each resident to one spot, was that part of it? I don't recall.

Mr. Salomone stated yes, we were going to assign certain spaces, you know one spot to each unit and that would free up some guest parking as well.

Chairman Boxer stated okay. I, we can't bring up the prior application so, what variances exactly are you requested.

Mr. Salomone stated we need a front yard variance, 20 feet is required, 3 is being provided, so we need a 17 foot variance. We have a deficient parking aisle width for spaces 7, 8, 9, 10, 25 feet is required, 19.2 is being provided, so for those spaces we need a variance of 5.8 feet. Again as we have discussed, we are deficient in parking, 18 are required, we're providing 12, so we need a variance for 6 spaces. And the max development coverage is 65% and we are currently at 80.9%, so we would need a variance of 15.9%.

Chairman Boxer stated okay. Board members, any other questions?

Mr. Hoyt stated not from me.

Chairman Boxer stated is that a no?

Mr. Spector stated the only question I have is regarding the, I guess the issue with the parking, I guess the lane width, whether or not that creates some kind of a difficulty in terms of the deliveries or emergency vehicles or anything along those lines. I wonder if Peter knows...

Mr. Salomone stated it would just make getting in and out of the spaces a little bit more difficult. In order to alleviate that, we've widened the spaces from 9 feet to 11 feet, to give a little more room for maneuvering.

Mr. Spector stated its going to be tight, for sure.

Chairman Boxer stated are you willing to put up a sign on the smaller spaces that they are for compact cars only, if those kind of cars exist anymore...

Mr. Salomone stated I'm sure that wouldn't be an issue but I would, Mr. Crecco is on the meeting, so I would defer to him on that.

Mr. Crecco stated that's fine, my video is not coming on but that's fine.

Chairman Boxer stated okay.

Mr. Spector stated and the Planning Board was okay with that?

Mr. Alfonzetti stated yes, we had a maneuvering plan that we submitted to the Planning Board, some of the spaces re tight but you can get in and out.

Chairman Boxer stated but we're going to make a condition though that on those spaces only compact cars can park there.

Mr. Crecco stated okay.

Chairman Boxer stated I don't know how the Town enforces it but that's what one of your conditions will be.

Mr. Salomone stated we'll post it.

Chairman Boxer stated okay, thank you. And just to reiterate, there is only going to one spot per unit and I think we discussed that you would put it in the lease maybe that the tenant can only get one spot, so they're aware of it.

Mr. Salomone stated we can do that.

Mr. Alfano stated are the spots going to be assigned to residents?

Mr. Crecco stated yes.

Mr. Alfano stated so Harold, I don't see how can enforce a compact car sign, you don't know what kind of cars people will have.

Mr. Spector stated that's true.

Chairman Boxer stated but can you change, couldn't the allocation of the spots be change so that, can you point out on the diagram where exactly the unit owners will park and where the deficiencies are?

Mr. Spector stated are these units going to be rented or purchased.

Mr. Crecco stated rented, so then there will be a lease and they can be managed in accordance with the lease agreement.

Mr. Crecco stated Ralph, how many spaces are at the [inaudible] four?

Mr. Salomone stated four, 7, 8, 9, and 10.

Mr. Crecco stated so there are seven spaces for the apartment, so we'll make the ones that tight compact and the other 7, 11, yeah that's how we'll separate it.

Mr. Miley stated yeah, Chairman, there's also retail space so some of the parking spaces need to remain open for the retail space.

Chairman Boxer stated I understand.

Mr. Alfano stated yeah, I just don't know if I'm in agreement about putting in a condition for spaces for compact cars because you just don't, you know what kind of cars are going to park in those spaces.

Mr. Miley stated if this is any example, we have compact spaces out at 90, 100 and 110 South Bedford Road and now you have SUV's taking two spaces.

Chairman Boxer stated that's happening all over the place.

Mr. Miley stated we're not going to be able to enforce and drive by all the time and see whether a compact car is in a space.

Mr. Spector stated yeah, I agree, I don't believe in putting conditions in that can't be enforced.

Mr. Hoyt stated I mean, ultimately, if the parking is unsatisfactory, the tenant will just go elsewhere, right, that's what's going to happen if they can't park in a spot.

Mr. Spector stated one car per unit is probably not practical either because people today couples...

Mr. Alfano stated that part I don't have a problem with because that's part of the lease agreement.

Mr. Spector stated no, no, I'm just saying that you still have, extra vehicles are going to have to go somewhere because you know, if you have a couple, they both have two different jobs, they're going to need two cars, that's just the reality of the world, they'll have to find another place to put their cars.

Mr. Alfano stated that is the reality.

Mr. Crecco stated but the retail store closes at some point, so those spaces are all going to be available for the tenants.

Mr. Hoyt stated also, don't forget Wayne, presumably in the advertising of this, they'll see one spot and realize that they need two and presumably...

Mr. Alfano stated I don't think its unreasonable to say hey, you have a lease and you have one spot.

Mr. Spector stated I agree with you, I don't think its unreasonable to put it in the lease, I just think it becomes down the road, problematic when people start expanding their car ownership.

Mr. Alfano stated that's their choice.

Mr. Spector stated that's true.

Mr. Miley stated Chairman, just let me add...

Mr. Spector stated the conflict is between the retail and the, eventually at some point that the property is going to have manage.

Mr. Miley stated yeah, Chairman, as well, part of this application, I know its not part of the parking calc and I'm not here to enhance his application but the enormous 30 foot curb cut is going to be curbed now, there's going to be parking where a person could pull up in front of the retail store which they do now with or without a curb cut, I don't see anybody pulling around the block to park in a residential area to walk to the store but we are, they are creating at least two, if not three spots that's going to be directly in front of the retail store, the entrance to.

Chairman Boxer stated okay, right.

Mr. Crecco stated consider that a win, right?

Mr. Miley stated there is currently an unlawful parking area where people are backing out, while people are walking by with carriages, I mean it's a pretty dangerous area. So it's going to be beneficial to the Village that there is a curb installed there and a sidewalk without anybody backing out of a space.

Chairman Boxer stated no, I agree. It gets hairy sometimes because a lot of the times the people pulling up, they see a minimal space and they just gun it to get out into the street.

Mr. Miley stated I almost got taken out at least two or three, I think it's purposefully done, but at least two or three times I saw people backing out at a high rate of speed towards with the Village car.

Mr. Salomone stated they were just waiting for you.

Mr. Miley stated I feel like I was a target, honestly. I can't wait until it goes away.

Chairman Boxer stated okay, anything else? Any comments from, I guess there's nobody there.

Mr. Miley stated there's nobody in Town Hall, let me check Facebook, hold on Chairman.

The Secretary stated nobody on Facebook.

Mr. Miley stated nobody on Facebook and let's check to see if there's anybody on Zoom.

The Secretary stated nobody on Zoom, just us.

Mr. Miley stated nobody in the Zoom, nobody here to make a comment Chairman, or online.

Chairman Boxer stated okay and we can close the public meeting, can I have a motion please.

Mr. Miley stated if that's your desire.

Chairman Boxer stated pardon me?

Mr. Miley stated you're good to go Chairman.

Chairman Boxer stated can I have a motion to close the public hearing?

Mr. Alfano introduced a motion to close the public hearing. Seconded by Mr. Spector.

Chairman Boxer asked for all in favor. The motion carried by a vote of 5 to 0.

Chairman Boxer asked for any opposition? Hearing none.

Chairman Boxer stated okay, I don't, do one of you guys on the Board have the five factors in front of you?

Mr. Spector stated we have it from the other application, if necessary.

Chairman Boxer stated that's true.

Mr. Salomone stated the factors are laid out in my letter, if you have that with you.

Mr. Spector stated unfortunately we don't have that with us, it's not...

Mr. Miley stated Chairman, do you want the applicant to read to you the five factors?

Chairman Boxer stated that would be good, thank you.

Mr. Salomone stated we're happy to. Whether an undesirable change will be produced in the character in the neighborhood, or a detriment to nearby properties will be created by the granting of the area variances.

Chairman Boxer stated any comments?

Mr. Spector stated no, I think we meet that factor.

Chairman Boxer stated okay.

Mr. Salomone stated the second factor is whether the benefit sought by the applicant can be achieved by some method feasible for the applicant other to pursue other than an area variance.

Chairman Boxer stated you're pushing so much in there, I don't think there's any other way to do, so I agree. Anybody else opposed to it? Next...

Mr. Salomone stated whether the requested area variance is substantial.

Chairman Boxer stated it is, anybody have a comment on that.

Mr. Alfano stated no.

Mr. Spector stated I don't think its substantial enough to justify denying the application.

Mr. Hoyt stated I think the proposal is in harmony with the area around it, as well, so.

Chairman Boxer stated okay.

Mr. Salomone stated whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district.

Chairman Boxer stated comments?

Mr. Spector stated no, I don't feel that way.

Chairman Boxer stated okay, next.

Mr. Salomone stated the final one is whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance.

Mr. Spector stated it is self-created but it's not precluding the variance from being approved, as far as I'm concerned.

Chairman Boxer stated okay, so then the conditions that I noted is they're going to have the lease state that the tenant only gets one spot and you're going to do your best to get compact cars into the smaller spaces. Anybody have anything else they'd like to put in?

Mr. Alfano stated all good, Harold.

Chairman Boxer stated okay, all in favor...

Mr. Alfano stated we have to make a motion.

Mr. Spector stated we have to make a motion.

Chairman Boxer stated sorry, someone make a motion.

Mr. Alfano stated okay.

Mr. Spector introduced a motion to approve with conditions noted. Seconded by Mr. Alfano.

Chairman Boxer asked for all in favor. The motion carried by a vote of 4 to 1.

Chairman Boxer stated I'm going to oppose this one. Okay.

Mr. Salomone stated thank you very much for your time, we really appreciate and hope everyone has a Happy Holidays and a Healthy, Happy New Year.

Chairman Boxer stated thank you.

Mr. Alfonzetti stated thank you, Happy Holidays.

Chairman Boxer stated okay, you want to make Michelle happy and approve our prior minutes? We have two, they go back a while, the first one is February 16th, any changes anybody wants to put in? Okay. The second one is October 19th, any comments or changes?

Mr. Miley stated that was October 21st, Chairman.

Chairman Boxer stated it says October 19th on my minutes here.

Mr. Miley stated we have February 16, 2021 and October 21, 2021, that's correct Michelle.

The Secretary stated I may have the heading wrong, I'll have to check.

Mr. Miley stated you are correct Chairman, on the minutes, it does indicated on the 19th on the agenda it says the 21st, so we'll make that correct. February 16, 2021, October 19, 2021.

Chairman Boxer stated alright, can I get a motion to accept the minutes?

Mr. Alfano introduced a motion to accept the minutes of February 16, 2021 and October 19, 2021. Seconded by Mr. Spector.

Chairman Boxer asked for all in favor. The motion carried by a vote of 5 to 0.

Chairman Boxer asked for any opposed. Hearing none.

Chairman Boxer stated and, Michelle, is there anything else you'd like me to do.

The Secretary stated you have your 2022 Meeting Schedule, I'm not sure if anybody has had the opportunity to review, make sure it doesn't coincide with any holidays for anyone...

Mr. Miley stated any conflicts...

The Secretary stated yeah, any conflicts. If anybody wants to hold it over, you can do that too, otherwise you can vote on it if you are ready.

Chairman Boxer stated only a little bit of it will affect me because as you all know, I'm going to be out of here but not too quickly because I can't get out until construction in my unit is done and everything is backed up two, three months.

Mr. Spector stated the only meeting that I probably can't make is the February meeting, as of now, I may be out of town but I don't think that should...

Mr. Alfano stated I would say I would have a conflict with the February meeting as well.

Ms. Broth stated I have a conflict with the February meeting as well.

Chairman Boxer stated then I think we have to do something with it.

The Secretary stated I will look into that and try to find an alternate date and then I'll get your schedule out again for your January meeting.

Chairman Boxer stated so we're going to put the approval until we get the February decided, Michelle?

The Secretary stated yes, sir.

Chairman Boxer stated okay, anything else anybody wants to say?

Mr. Miley stated you have two adjournments, Chairman.

Chairman Boxer stated anybody want to be Chairman?

Mr. Spector stated we want you to stay on.

Mr. Miley stated Chairman, you just have two cases that need to be adjourned to a date certain.

Chairman Boxer stated right. We have ZBA21-21 and the old ZBA20-14 which who knows what's going to happen with that. Peter, just off the record, do you know how they're going, pardon me, then we have to...

Mr. Miley stated I don't know if we can participate in off the record conversations and still be live.

Chairman Boxer stated never mind, I'll speak to you on my own.

Mr. Miley stated so we have no information on whether these two applications are going to continue to adjourn or appear but you have a date certain before you that motion should be taken to push into the next meeting.

Chairman Boxer introduced a motion to adjourn cases ZBA# 21-21 Smoller/2.5 Leonard Street and ZBA# 20-14 Homeland Towers 180 South Bedford Road to January 18, 2022. Seconded by Mr. Spector.

Chairman Boxer asked for all in favor. The motion carried by a vote of 5 to 0.

Chairman Boxer asked for opposition. Hearing none.

The Secretary stated that's it, you're done.

The meeting adjourned at 8:00 pm.