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2 STATE OF NEW YORK
3 CITY OF YONKERS

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4 Minutes of
5 The City of Yonkers Zoning Board
6 August 27, 2019 - 6:00 p.m.
7 at
8 City Hall
9 40 South Broadway
10 Yonkers, New York 10701-3892

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11 B E F O R E:

12 JOSEPH CIANCIULLI, Chairman
13 JAMES BLANCHARD, Member
14 DIANE PEARSON, Member
15 HARRY SINGH, Member
16 JEFFREY LANDSMAN, Member
17 HECTOR LOPEZ, Member
18 VINCENT GIORGIO, Member

19 P R E S E N T:

20 DAVID BARBUTI, Building Department
21 ALAIN NATCHEV, Assistant Corporation
22 Counsel

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DECISIONS

#5659 - John R. Coogan, 72 Palisade Ave. 5
#5649 - Brown & Altman, 1200 Nepperhan Ave. 10
#5647 - Mark W. Blanchard, 40-60 McLean Ave. 17

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THE CHAIRMAN: Good evening. The

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meeting of the August, 2019 Zoning

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Board of Appeals is now in session.

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Would the members introduce themselves

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starting with Ms. Pearson.

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MS. PEARSON: Diane Pearson.

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MR. GIORGIO: Vincent Giorgio.

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MR. BLANCHARD: James Blanchard.

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MR. SINGH: Harry Singh

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MR. LOPEZ: Hector Lopez.

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MR. LANDSMAN: Jeffrey Landsman.

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THE CHAIRMAN: I am Joseph

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Cianciulli. I am Chairman of the

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Board. To my immediate left is Mr.

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Alain Natchev, Corporation Counsel

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representing the Board, and to my right

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is Mr. Dave Barbuti from the Building

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Department, represents the Building

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Department to the Board.

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Do I have a motion to accept the

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minutes of the last hearing? I have a

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second? I have a second. Everybody in

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favor say aye.

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(A chorus of ayes.)

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THE CHAIRMAN: Anybody opposed?

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Okay.

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Everybody please stand for the

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Pledge of Allegiance led by

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Commissioner Barbuti.

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(Pledge of Allegiance.)

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THE CHAIRMAN: Thank you. We have

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three decisions here tonight. One

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decision is going to be 5647, 40-60

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McLean Avenue. Another decision is

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case 5649, 1200 Nepperhan Avenue, and

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another decision is going to be 5659,

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72 Palisade Avenue.

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Case number 5660 and 5661, I make

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a motion to put those two cases over.

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One is 540 Nepperhan Avenue, one is 578

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Nepperhan Avenue. Do I have a second?

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MR. GIORGIO: Second.

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THE CHAIRMAN: Everybody in favor

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says aye.

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(A chorus of ayes.)

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THE CHAIRMAN: Anybody opposed?

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Those two cases are put over.

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I see Mr. Blanchard is here. Is

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there anybody here tonight on 1200

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Nepperhan Avenue? Anybody here on 72

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Palisade Avenue? Come on up here so

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you can hear. Sit down. You can't say

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anything. You have to sit down.

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Okay. The first decision will be

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case 5659, 72 Palisade Avenue. Mr.

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Lopez.

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MR. LOPEZ: Yes.

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THE CHAIRMAN: Don't read that

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first paragraph, please.

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MR. LOPEZ: Thank you. Mr.

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Chairman.

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Mr. Chairman, I make a motion to

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approve the requested area variance,

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subject to conditions, based on facts,

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findings, information, and testimony

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presented to this Board at the public

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hearing, site visits by members of the

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Zoning Board of Appeals, or otherwise

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obtained.

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In approving this variance, the

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Zoning Board of Appeals has taken into

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consideration the hardship faced by the

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applicant as weighed against the

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detriment to the health, safety, and

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welfare of the neighborhood and

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community.

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Specifically, the Board finds:

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1. That the benefit sought cannot

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be achieved by other feasible means.

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As testified, the applicant's proposed

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relocation of the compactor will create

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more playground area for the tenants

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and eliminate the need for sanitation

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trucks to collect garbage in or around

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the playground areas.

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2. Granting the requested variance

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would not result in an undesirable

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change in neighborhood character or a

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detriment to nearby properties. In

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fact, the relocation of the compactor

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would be beneficial in that it would

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provide area residents with a safer

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environment for their children to play.

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Further, the location of the

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compactor will be in an unused space

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away from the buildings and playground

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areas.

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3. That while the requested variances are numerically substantial, the Board does not believe that they will have any negative effect with regard to any potential impacts, as noted herein.

4. That the variances will not have a negative impact to physical or environmental conditions in the neighborhood.

As previously mentioned, the location of the compactor will be located away from the buildings and will be screened with a 9 foot wall and greenery, with the height of the screen being significantly lower than the street curb elevation.

5. That while the alleged difficulty may be considered self-created since the applicant had actual or constructive notice of the restrictions under the zoning ordinance, this factor is merely one

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consideration and does not preclude the Board from granting the application.

The disposal of bulk items by the residents is unavoidable and expected given the number of apartments in the complex which total 415.

The proposal looks to manage as efficiently as possible the disposal of these bulk items in a central location that will easily be accessed by the Department of Transportation.

In approving these variances, the Board imposes the following conditions:

1. All fire, health, environmental, safety, building and zoning codes shall be adhered to at all times.

2. The proposal submitted to the Board be adhered to.

3. Any changes in use shall come back to the Zoning Board of Appeals for further consideration and decision.

4. These conditions shall be specified on the Certificate of

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Occupancy and the owner shall permit
periodic inspections at the discretion
of the City of Yonkers, Department of
Housing and Buildings, at least once
every calendar year to determine that
the conditions are being satisfied.

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4. This approval shall be
immediately rescinded should the owner
violate any of these conditions at any
time, and;

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5. This approval shall be
immediately rescinded should the owner
violate any of these conditions at any
time; and;

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6. All expenses associated with
these conditions shall be the
responsibility of the owner.

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THE CHAIRMAN: Do I have a second
on the motion?

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MR. LANDSMAN: Second.

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THE CHAIRMAN: For the motion, Ms.
Pearson.

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MS. PEARSON: For the motion.

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THE CHAIRMAN: Mr. Blanchard.

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MR. BLANCHARD: For the motion.

THE CHAIRMAN: Mr. Giorgio.

MR. GIORGIO: For the motion.

THE CHAIRMAN: Mr. Landsman.

MR. LANDSMAN: For the motion.

THE CHAIRMAN: Mr. Singh.

MR. SINGH: For the motion.

THE CHAIRMAN: Mr. Lopez.

MR. LOPEZ: For the motion.

THE CHAIRMAN: The Chairman votes
for the motion, the motion is carried
seven-zero.

The next case is 5649, 1200
Nepperhan Avenue, McDonald's. Mr.
Giorgio.

MR. GIORGIO: Mr. Chairman, I make
a motion to approve the requested
improvements to a non-conforming use
and ara variances subject to conditions
based on facts, findings, information,
and testimony presented to this Board
at the public hearing, site visits by
members of the Zoning Board of Appeals,
or otherwise obtained.

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In granting these variances, the Zoning Board of Appeals has taken into consideration the hardship faced by the applicant as weighed against the detriment to the health, safety, and welfare of the neighborhood and community.

With regard to the proposed improvement to a non-conforming use, Section 43-21G of the City Zoning Code authorizes the Zoning Board of Appeals to approve, or approve with modifications, limited changes to a non-conforming building, structure, or use as appropriate such that said use may gradually be brought into greater conformity with the code and the adverse external effects of such nonconforming uses may be reduced.

The Board finds that the proposed addition and other modifications would serve to improve patron and traffic flow such that adverse effects associated with the non-conformity

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would likely remain unchanged or even improve.

With regard to the area variances, the Board has considered the required five points of law as follows:

1. Whether the benefit sought by the applicant can be achieved by some other feasible means.

The Board concurs with the applicant's contention that the site has been designed in a manner that best utilizes the property for its intended use and provides for safe and efficient flow of on-site traffic. Also, given the configuration of the site and surrounding development, it would not be feasible for the applicant to acquire additional land as to less or obviate the need for the proposed variances.

2. Whether the requested variances would cause an undesirable change in the neighborhood character or a detriment to nearby properties.

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Members of the Zoning Board of Appeals have visited the site multiple times and find no apparent detriment in granting the applicant's request.

The proposed site has been used as a fast food restaurant with drive through for many years with no known issues.

The proposed action would likely serve to improve conditions in the neighborhood by making restaurant operations more efficient and improving internal traffic flow, as outlined in the applicant's traffic submittal from Atlantic Traffic Design dated April 9, 2019. Any changes to the building would not significantly alter the aesthetics of the site.

3. Whether the requested variances are substantial. The Board finds that while some of the proposed variances may be numerically substantial, they are not substantial when considering the impact to the neighborhood as

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previously noted.

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4. Whether the proposed variances will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

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The site is already developed such that the proposed action would not result in significant changes to impervious surfaces, vegetation, drainage, aesthetics, traffic, or other physical or environmental conditions.

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5. Whether the alleged difficulty was self-created. While the difficulty can be considered self-created, it does not preclude the Board from granting the request.

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In granting these variances the Board imposes the following conditions:

1. All fire, health, safety, environmental, building and zoning codes shall be adhered to at all times;

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2. Fire, smoke and carbon monoxide detectors and a fire sprinkler system

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shall be installed throughout the building, connected to an outside 24-hour monitoring system prior to the certificate of occupancy being issued;

3. All taxes or fines, if owed, must be paid in full within 60 days from today's date;

4. Any repairs or replacement required by the City Engineer to the sidewalks or curbs in front of the property along Nepperhan Avenue shall be repaired or replaced by the owner and/or lessee prior to the Certificate of Occupancy being issued;

5. The two existing sign frames affixed to the roof and all existing window signage shall be removed and there shall be no future roof or window signage of any type'.

6. These conditions shall be specified on the Certificate of Occupancy and the applicant and/or property owner shall permit periodic inspections at the discretion of the

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City of Yonkers, Department of Housing and Buildings, at least once every calendar year to determine that the conditions are being satisfied;

7. This approval shall be immediately rescinded should the property owner violate any condition of this variance at any time; and

8. All expenses associated with these conditions shall be the responsibility of the applicant and/or property owner.

THE CHAIRMAN: Can I see you, please?

MR. GIORGIO: Yes.

(Short pause.)

THE CHAIRMAN: Do I have a second on the motion, please?

MR. LANDSMAN: Yes.

THE CHAIRMAN: On the motion, Ms. Pearson.

MS. PEARSON: For the motion.

THE CHAIRMAN: Mr. Blanchard.

MR. BLANCHARD: For the motion.

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THE CHAIRMAN: Mr. Giorgio.

MR. GIORGIO: For the motion.

THE CHAIRMAN: Mr. Landsman.

MR. LANDSMAN: For the motion.

THE CHAIRMAN: Mr. Singh.

MR. SINGH: For the motion.

THE CHAIRMAN: Mr. Lopez.

MR. LOPEZ: For the motion.

THE CHAIRMAN: The Chairman votes for the motion, the motion is carried seven-zero.

The next case is 5647. It is a variance at 40-60 McLean Avenue. Do I have a motion, please?

MR. LANDSMAN: Yes, Mr. Chairman.

THE CHAIRMAN: Mr. Landsman.

I make a motion to approve the request for the area variances subject to conditions, based on facts, findings, information and testimony presented to this Board at the public hearings, site visits by members of the Zoning Board and otherwise obtained.

In making this determination, the

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Zoning Board of Appeals shall take into

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consideration the benefit to the

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applicant and/or owner if the variance

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is granted as weighed against the

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detriment to the health, safety and

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welfare of the neighborhood or

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community by such grant.

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The subject property is on the

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northeast corner of Mclean Avenue at

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the corner of Van Cortlandt Park

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Avenue. The property currently has a

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pizza store and several different

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automotive businesses operating at the

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same time.

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In making such determination the

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Board shall also consider the

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following:

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1. Whether any undesirable change

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will be produced in the neighborhood or

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a detriment to nearby properties will

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be created by granting of the area

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variances.

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The area variances sought will not

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have any impact because the building

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footprint will remain the same as it has been since 1924.

2. The benefit sought by the applicant or owner can be achieved by some other method feasible for the applicant or owner to pursue other than the area variance.

The benefit sought cannot be achieved any other way as there is no adjoining land available to create the additional parking space and setbacks required.

3. Whether the requested variances are substantial. The variances requested do seem to be substantial numerically, but because of the lot layout the variances will not have any impact on other properties. The entire property is surrounded by City of Yonkers park land with no other neighbors being adjacent to this property.

4. Whether the proposed variances will have an adverse effect on the

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physical or environmental conditions of the neighborhood or district.

There will be no adverse effect on the physical or environmental conditions of the neighborhood or district by the granting of these variances.

The applicant's rendering of the finished building shows it to be much more aesthetically pleasing than the building's current condition.

The numerous curb-cuts in front of the building will be reduced to two, adding street parking to the neighborhood. As stated at the public hearing on June 18th 2019 by Mr. Mark Blanchard, Esq., this will add 7-8 additional street parking spots.

5. Whether the alleged difficulty was self-created. The difficulty is self-created as the applicant submitted the requests, knowing of the potential of needing the requested variances, but this is only one factor for the Board

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has considered in rendering its decision.

The board imposes the following conditions:

1. All health, safety, fire, building and environmental codes shall be adhered to at all times by the applicant and/or owner.

2. Fire, smoke, carbon monoxide detectors and a sprinkler system shall be installed and hard wired throughout the building and connected to an outside 24 hour monitoring system such as ADT.

3. If any sidewalk or curbs adjacent to the property need repair or replacing as per the City Engineer, then the applicant and or owner must make all required repairs or replacements before a certificate of completion will be issued.

4. All taxes and fines, if owed, must be paid in full 60 days from today's date.

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5. All 11 parking spots in the building must be clearly marked. The handicapped space shall also be clearly marked as shown on the plan.

6. Bollards shall be installed on the sidewalks in front of the building on Mclean Avenue as to not allow people to park on the sidewalk. These shall be installed as per the City Engineer's approval.

7. These conditions shall be listed on the certificate of occupancy and the applicant and/or tenant(s) shall permit inspections at the discretion of the Department of Housing and Buildings, City of Yonkers, at least once per year to determine that conditions are being met.

8. Access to the self-storage building shall be appropriately supervised and/or monitored, at all times, to assure patrons' complete security. The building will not have any access to by customers without an

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employee of the operator on staff.

9. Any change of use to this building must come back to the Zoning Board of Appeals for a new hearing and decision.

10. Should the applicant and/or tenant not comply with, breach or violate any of these conditions at any time, the variances granted will be rescinded, without recourse, and the Zoning Board authorizes the City of Yonkers Department of Housing and Buildings to take all appropriate action.

11. All expenses associated with these conditions shall be the responsibility of the applicant and or owner.

12. Signs shall be posted in the lobby and every floor of the storage building that no flammable or combustible materials shall be stored on site.

13. Exterior of the building is to

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look exactly like rendering submitted
to the board.

Thank you.

THE CHAIRMAN: Number 8, they have
to have somebody there on a 24 hour
basis seven days a week, am I correct?

MR. LANDSMAN: The building may
not be open 24 hours.

THE CHAIRMAN: When it is open 24
hours they have to have somebody there
24 hours a day seven days a week.

MR. LANDSMAN: Somebody has to be
on staff. It says that.

THE CHAIRMAN: Correct. Do I have
a second on the motion?

MS. PEARSON: Second the motion.

THE CHAIRMAN: For the motion, Ms.
Pearson.

MS. PEARSON: For the motion.

THE CHAIRMAN: Mr. Blanchard.

MR. BLANCHARD: For the motion.

THE CHAIRMAN: Mr. Giorgio.

MR. GIORGIO: For the motion.

THE CHAIRMAN: Mr. Landsman.

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MR. LANDSMAN: For the motion.

THE CHAIRMAN: Mr. Singh.

MR. SINGH: For the motion.

THE CHAIRMAN: Mr. Lopez.

MR. LOPEZ: For the motion.

THE CHAIRMAN: The Chairman votes for the motion, the motion is carried seven-zero.

MR. M. BLANCHARD: Thank you, Mr. Chairman, members of the Board.

THE CHAIRMAN: You are welcome.

We have a couple of things that came to the Board. We'll not take these up tonight because they got here tonight and we are just not going to do it.

One is something from Delbello, Donnellan and Weingarten and one is from Veneruso. There is one here, another one from Veneruso we'll take that up, St. Joseph's Hospital. So we are not going to take up the other two, is that okay with the members of the Board? Anybody have a problem with

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that? Okay.

The next one is St. Joseph's Hospital, asking for a year's extension in order to get their financing complete. This is a case right over here that we took up and they came back for another variance. We gave them that also, so I am going to make a motion that on case number 5606 that we give them a year's extension starting September 26th, 2019 to pay the fee. Do I have a second?

MR. SINGH: Second.

THE CHAIRMAN: Everybody in favor say aye.

(A chorus of ayes.)

THE CHAIRMAN: Make a motion to adjourn.

(Proceedings concluded.)

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C E R T I F I C A T I O N

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

I, HOWARD BRESHIN, a Court Reporter
and Notary Public within and for the State of New
York, do hereby certify:

That I reported the proceedings that
are hereinbefore set forth, and that such
transcript is a true and accurate record of said
proceedings.

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.

HOWARD BRESHIN,
COURT REPORTER

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