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INCORPORATED VILLAGE OF FREEPORT
ZONING BOARD

MUNICIPAL BUILDING
46 North Ocean Avenue
Freeport, NY 11520

July 20, 2023
6:00 p.m.

M E M B E R S:

| | |
|-------------------|--------------|
| ROSA RHODEN | CHAIRPERSON |
| JENNIFER L. CAREY | DEPUTY CHAIR |
| ANTHONY J. MINEO | MEMBER |
| CHARLES HAWKINS | MEMBER |

* * *

| | |
|----------------|------------------------------|
| ROBIN CANTELLI | SECRETARY |
| JENNIFER UNGAR | DEPUTY VILLAGE ATTORNEY |
| SCOTT BRAUN | BUILDING DEPT REPRESENTATIVE |

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July 20, 2023

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-----EXHIBITS-----

| <u>BOARD'S FOR I.D.</u> | <u>PAGE</u> |
|----------------------------|-------------|
| 1 Affidavit of Publication | 5 |
| 2 Affidavit of Posting | 5 |

APPLICATION 2023-12

| <u>BOARD'S FOR I.D.</u> | <u>PAGE</u> |
|-------------------------|-------------|
| 1 Affidavit of Mailing | 7 |

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July 20, 2023

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-----I N D E X-----

| APPLICATION# | ADDRESS | PAGE |
|--------------|------------------------|------|
| 2023-7 | 65 Porterfield Place | 6 |
| 2023-12 | 129-131 S. Main Street | 7-18 |

* * *

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2 CHAIRPERSON RHODEN: Good evening
3 everyone. I'd like to open up the Zoning
4 Board of Appeals meeting for July 20th. If
5 everyone could please join me for the Pledge
6 of Allegiance.

7 (Pledge of Allegiance recited.)

8 CHAIRPERSON RHODEN: Can I please
9 have a motion to enter into executive session
10 to consult with counsel, please.

11 MEMBER HAWKINS: So moved.

12 MEMBER MINEO: Second.

13 THE SECRETARY: All in favor.

14 MEMBER HAWKINS: Aye.

15 MEMBER MINEO: Aye.

16 CHAIRPERSON RHODEN: Aye.

17 THE SECRETARY: Any opposed?

18 (No response was heard.)

19 (WHEREUPON, the Board entered into
20 executive session from 6:09 p.m. to
21 6:46 p.m., after which the following
22 transpired:)

23 CHAIRPERSON RHODEN: Good evening.
24 If everyone could please join me in the
25 Pledge of Allegiance.

(Pledge of Allegiance recited.)

CHAIRPERSON RHODEN: Could I please have a motion to approve the minutes from June 15th.

MEMBER HAWKINS: So moved.

MEMBER MINEO: Second.

THE SECRETARY: All in favor.

MEMBER HAWKINS: Aye.

MEMBER MINEO: Aye.

DEPUTY CHAIR CAREY: Aye.

CHAIRPERSON RHODEN: Aye.

THE SECRETARY: Any opposed?

(No response was heard.)

CHAIRPERSON RHODEN: Do we have any Affidavit of Publication or Posting to be entered into the record as exhibits this evening?

THE SECRETARY: Yes. I have one Affidavit of Publication and one Affidavit of Posting to be entered into the record as Board exhibits. These will be Board Exhibit Number 1 and 2.

(WHEREUPON, the above-referred to documents were marked as Board's Exhibits 1

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and 2, for identification, as of this date.)

CHAIRPERSON RHODEN: Do we have any requests for adjournment this evening.

THE SECRETARY: Yes. Application 2023-7, 65 Porterfield Place has requested an adjournment.

MS. UNGAR: Madame Chair, we need a motion.

CHAIRPERSON RHODEN: Can I have a motion, please, for the adjournment?

MEMBER HAWKINS: So moved.

DEPUTY CHAIR CAREY: Second.

THE SECRETARY: All in favor.

MEMBER HAWKINS: Aye.

MEMBER MINEO: Aye.

DEPUTY CHAIR CAREY: Aye.

CHAIRPERSON RHODEN: Aye.

THE SECRETARY: Any opposed?

(No response was heard.)

CHAIRPERSON RHODEN: If anyone here is going to speak for or against an application this evening, they have to -- besides the applicant -- they have to fill out a form that's in the back and submit it

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to the Clerk.

Can we call the first application on tonight's calendar, please?

THE SECRETARY: Yes. Application 2023-12, 129-131 South Main Street, Manufacturing. Section 62, Block 198, Lot 318. Rosa Galdamez. New opening to existing wall to join both stores, additional 1,420 square feet. Variances: Village Ordinance 210-6(A), 210-172(12) - required parking spaces.

I have one Affidavit of mailing to be entered into the record as a board exhibit. This will be Board Exhibit Number 1 for this individual public hearing.

(WHEREUPON, the above-referred to document was marked as Board's Exhibit 1, for identification, as of this date.)

J E F F R E Y U V E Z I A N,
having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

COURT REPORTER: Please state your name and address for the record.

July 20, 2023

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2 MR. UVEZIAN: Jeffrey Uvezian. 200
3 Pine Street, Apartment 203, Glen Cove,
4 New York 11542.

5 We made the application to the
6 benefit of Ms. Galdamez. She has a store
7 called La Cabana. She's been operating there
8 for seven years already. All she is looking
9 to do is expand next door into the existing
10 adjoining space. It's exactly the same
11 operation that she has. They were operating
12 there in the name of PK Coffee Shop. The
13 coffee shop went out about a year and a half
14 ago. She leased the space next door. She's
15 been paying rent since February of 2022. She
16 put her application in to take that space to
17 use it basically as a grocery deli for
18 Central American food and for the community.
19 She understands that she is not looking to
20 change any -- need any additional police
21 resource in the area. She is simply looking
22 to expand next door and have the Central
23 American food for the community.

24 We reapplied because there was an
25 issuance with a variance on the parking.

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That's why we're here tonight.

CHAIRPERSON RHODEN: So, the new deli will have seating for how many people?

MR. UVEZIAN: It's going to be just display for food products. I can show you the board here. The board here will show you it's exactly the same as the previous operation. There's no seating or new tables. It's basically display racks.

DEPUTY CHAIR CAREY: Everything to the right on the drawing is the new store. It looks like it's a bunch of display racks; is that correct?

MR. UVEZIAN: Correct. Let me introduce Mr. Zambrano. He's the architect working on this project also.

W I L L Y Z A M B R A N O,
having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

COURT REPORTER: Please state your name and address for the record.

MR. ZAMBRANO: Willy Zambrano. 410 Atlantic Avenue, Freeport.

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2 Good evening. Thank you. I was
3 brought to this project just recently. I'm
4 not the original architect, but I wanted to
5 assist Mr. Jeffrey and the client as well on
6 this hardship that they have. Being that she
7 only is expanding her deli that she owns
8 right now, the plan you see there are only
9 display racks. There's no additional
10 seating. And we're only using the existing
11 store as an additional space for her to show
12 Central American products that she will be
13 selling as part of the store, her original
14 store.

15 She also has told me that she has
16 approval for 20 tables and seating
17 arrangements in the original store, but as
18 you can see, it's very compact. She only has
19 about two tables. She's not really adding
20 anymore tables and seating arrangements.
21 She's expanding. She's also lessening the
22 impact on parking in a certain aspect,
23 because she is actually taking over an
24 existing store that actually had more
25 parking.

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DEPUTY CHAIR CAREY: What was in that building prior to her taking over? A coffee shop, you said? People were sitting in there before.

MR. ZAMBRANO: Yes. Actually, if you notice the picture that we see here, this is what was existing, and that establish had shelving and also tables originally. Ms. Rosa is not going to have that. It's all shelving. We're actually decreasing the impact on the parking.

DEPUTY CHAIR CAREY: I'm trying to see the drawings. Where is -- so, the people who are buying something in the deli might want to go get something to take home. Where is the connection between the two?

MR. ZAMBRANO: So, the connection will be right here (indicating).

DEPUTY CHAIR CAREY: In the back.

MR. ZAMBRANO: No, this is the front.

DEPUTY CHAIR CAREY: So that's the front?

MR. ZAMBRANO: Yeah. This is the street, and there is an existing store.

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2 Obviously, we'll leave it there as an
3 additional door for means of egress. But the
4 connection will be here. Any other place in
5 the store, it's impossible to connect.

6 So, it will be all concentrated on
7 the front and then they can actually enter
8 through the front. But everything else here
9 will be all shelving and display. That's all
10 she wants to do. It's another -- it's part
11 of her deli, just in addition to what she
12 actually sells.

13 MEMBER HAWKINS: She's looking to
14 remove the entire wall or just part?

15 MR. ZAMBRANO: No, just partial wall.
16 A very small portion of the wall to actually
17 be able to go to that space.

18 DEPUTY CHAIR CAREY: Does the
19 variance run with the land? Does the
20 variance run with the property or does it
21 expire, once this person moved on and came in
22 the future in the long term?

23 MS. UNGAR: Correct. For example, if
24 it became two businesses again, there
25 wouldn't be any kind of variance need or the

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requirement to have two spaces for each employee. It still would have to return to zoning.

MEMBER HAWKINS: She's been there for a year and a half?

MR. UVEZIAN: She's taken the new space and paying rent on it.

DEPUTY CHAIR CAREY: She's been at her own space for many years?

MR. UVEZIAN: Correct.

DEPUTY CHAIR CAREY: I don't know. I guess there are specialty type of stores around. I guess there must be a need for it. Is that a big need?

MR. UVEZIAN: Absolutely.

MS. UNGAR: Also, I have a question in terms of the denial letter. It talks about an additional 1,420 square feet. If I'm looking at the plans right, it's only 660 feet. That's the new area?

MR. ZAMBRANO: Yeah. But it's not a new area, per se. It's an existing area that she's expanding onto. If you think about existing space, you're talking about the

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entire building. There's three stores in this building. There's an existing store in every space of that building.

DEPUTY CHAIR CAREY: What is the footprint? How big is the building again?

MR. UVEZIAN: It's about 7,000 square foot lot.

MR. ZAMBRANO: Seventy-five.

MR. UVEZIAN: I have written in my notes.

DEPUTY CHAIR CAREY: Each of those are spaces is 4,000 square feet?

MR. ZAMBRANO: About.

DEPUTY CHAIR CAREY: What was your question again?

MR. UVEZIAN: The 1,400 square foot was the gross occupancy analysis.

MR. ZAMBRANO: You're talking about also the fact that you're utilizing most of the space for display area. Literally, you have the spaces in the aisle.

DEPUTY CHAIR CAREY: You figured out 600 plus feet for the space.

MR. ZAMBRANO: I'm not the original

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architect. If I was, you're going to have a lot less than what the original architect put in.

MS. UNGAR: I'm still trying to understand this. That diagram there, that is showing the two different storefronts joined together.

MR. ZAMBRANO: Correct.

MS. UNGAR: She is already taking up almost 800 square feet of it with her current existing business.

MR. ZAMBRANO: Yes.

MS. UNGAR: She's only moving into an additional 660.

MR. ZAMBRANO: Approximately.

MS. UNGAR: The way the denial reads, it's starting from square one, which she already is existing with the 800 and change square feet.

MR. ZAMBRANO: Correct.

MS. UNGAR: So, the addition that she's taking over, her store is only 660. Even that would only be one and a half parking spaces, under the one parking space

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for every employee.

MR. UVEZIAN: Exactly.

MR. ZAMBRANO: Yes. We believe that whoever did the application from the beginning was completely off. I would have done it differently, as an architect. We're here to help clarify what's happened.

MS. UNGAR: I do understand your point that it also was existing. There was a business there. The way the denial letter reads, the way the original plans were submitted, makes it look like she's coming in with an existing store plus another 1,400 square feet.

MR. ZAMBRANO: If I would have filed it, I would have filed it with the way that it should be: Existing condition. You have existing noncompliance conditions. We're only here utilizing the space for the same use as it was before. We're not changing the use. Existing condition, existing use.

MS. UNGAR: Understood.

MR. UVEZIAN: This was the PK Coffee.

MR. ZAMBRANO: Actually, we're

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lessening the fact that we're not providing seating for patrons and customers.

DEPUTY CHAIR CAREY: You might need to be in front of the microphone, just because we're recording everyone for the Village watching at a later date.

My question to you is: There's a need for this? You have -- how many people are foot traffic? Do you have any clue how many people come there in cars or is it a lot of foot traffic?

MR. ZAMBRANO: I can ask my client. She doesn't speak English. I can ask.

R O S A G A L D A M E Z,
having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

COURT REPORTER: Please state your name and address for the record.

MS. GALDAMEZ: Rosa Galdamez. 35 James Wood Avenue, Hempstead 11550.

DEPUTY CHAIR CAREY: My question is: If you could, ask her how many -- how much do you think business is based on foot traffic

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or car traffic.

MR. ZAMBRANO: Mostly foot traffic.

DEPUTY CHAIR CAREY: Thank you.

CHAIRPERSON RHODEN: Thank you very much. We don't have any further questions right now.

MR. ZAMBRANO: Thank you. Do we have any anyone that would like to speak for or against this application this evening?

THE SECRETARY: We do not, Madame Chair.

CHAIRPERSON RHODEN: Can I please have a motion to close to further evidence and testimony and to reserve decision.

DEPUTY CHAIR CAREY: So moved.

MEMBER HAWKINS: Second.

THE SECRETARY: All in favor.

MEMBER HAWKINS: Aye.

MEMBER MINEO: Aye.

DEPUTY CHAIR CAREY: Aye.

CHAIRPERSON RHODEN: Aye.

THE SECRETARY: Any opposed?

(No response was heard.)

CHAIRPERSON RHODEN: Do we have --

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you can leave. You'll be notified in the mail of our decision. You'll receive a notification in the mail. Thank you so much.

Do we have any decisions tonight that need to be read into the calendar?

THE SECRETARY: Yes, Madame Chair. The first decision is Application 2023-6. 23 Harding Place, Residence A, Section 55, Block 236-1, Lot 83. Carlos Sanchez. Proposed second floor rear addition and interior alterations.

CHAIRPERSON RHODEN: I'm sorry, was there a question?

MR. UVEZIAN: Yes. The decision for the first denial letter was sent to the wrong address. I just want to make sure it's sent to her right address.

MS. UNGAR: I'll get the address.

MEMBER HAWKINS: Madame Chairman, regarding Application 2023-6 for the premises located at 23 Harding Place, Freeport, the applicant comes before this Board seeking a variance from Village Ordinances 210-6(A), 210-21A seeking approval for a proposed

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second floor rear addition and interior alterations.

I, Charles Hawkins, move that this Board make the following findings of fact:

A public hearing was held on May 18, 2023 wherein applicant was represented by architect/designer Randolph Santana on behalf of Carlos Sanchez, the owner of the building. This existing property is a nonconforming two family house. The second floor is very small, so the owner wants to enlarge it. The house is compliant with all other zoning requirements, and the footprint of the house will remain the same. Floor area ratio is currently 30 percent and it will go to 34 percent. They are increasing the kitchen, dining room, and living room for the second floor family. There will be no additional bedrooms on the second floor. Mr. Sanchez currently rents the first floor out, and the second floor is vacant.

This extension of the nonconforming use can be seen as an area variance.

1. On balance, the benefit to the

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2 applicant by the granting of this variance is
3 not outweighed by the detriment to the
4 health, safety and welfare of the
5 neighborhood or community, if such variance
6 were to be granted. The Board has
7 determined:

8 a. that an undesirable change will
9 not be produced in the character of the
10 neighborhood and a detriment to nearby
11 properties will not be created by the
12 granting of the area variance. The property
13 already is a two family property and will
14 remain that way.

15 b. that the benefit sought by the
16 applicant cannot be achieved by some method,
17 feasible for the applicant to pursue, other
18 than an area variance. As the second floor
19 is small, squaring it off and making it cover
20 the same footprint as the first floor will
21 allow for an adequate sized second floor
22 dwelling unit.

23 c. that the requested area variance
24 is insubstantial. This proposed extension is
25 compliant with all other zoning requirements.

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d. that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

e. that the alleged difficulty was not self-created. This may be considered self-created, but that alone by itself is not dispositive.

2. The Board, as lead agency, has determined that this action is a Type II action under SEQRA and no further review is required.

I further move that the application be granted subject following conditions:

1. Applicant/Owner must comply with all the Rules and Regulations of the Village of Freeport.

2. Applicant must obtain the required permits from the Building Department.

3. This application for variances is being granted on the basis of the specific use proposed. If anything in this application is to change, the applicant must

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return to the Board for further review.

MEMBER MINEO: Second.

THE SECRETARY: All in favor.

MEMBER HAWKING: Aye.

MEMBER MINEO: Aye.

DEPUTY CHAIR CAREY: Aye.

CHAIRPERSON RHODEN: Aye.

THE SECRETARY: Any opposed?

(No response was heard.)

THE SECRETARY: The next decision is Application 2023-2, 307 Guy Lombardo Avenue, Business B, Section 62, Block 80, Lot 6. Jude Derivois. Use building for church assembly.

MEMBER MINEO: Madame Chairwoman, regarding Application 2023-2 for the premises located at 307 Guy Lombardo Avenue, Freeport, New York, the applicant comes before this Board seeking a variance from Village Ordinances 210-6A and 210-172(A)3 for require parking, seeking approval to use building for church assembly.

I, Anthony Mineo, move that this Board make the following findings of fact

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2 based on the application, exhibits entered
3 into the record, and testimony given at the
4 public hearings held on March 16, 2023;
5 May 18, 2023; and June 15, 2023.

6 At the public hearing on March 16,
7 2023, Jeffrey Reid and Michael Bailey of
8 Meldan Group, LLC, the architect/engineers,
9 appeared on behalf of the tenant, Jude
10 Derivois, of the Peace Family Worship Center.
11 Mr. Reid explained that the church had been
12 at the location for three years. There are
13 five parking spaces directly in front of the
14 storefront that is being used as a church.
15 On the north of the same lot, at the deli,
16 there are six additional spaces. The parking
17 requirement is one seat for every three seats
18 provided, based on maximum seating capacity.
19 With the size of the space, the maximum
20 seating capacity is 345; meaning, 115 spaces
21 are required when five are provided.
22 Mr. Reid explained, however, that the
23 congregation is only 30 members. Mr. Bailey
24 said that the church was willing to split
25 their services, morning and afternoon, to

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2 accommodate parking available. The
3 congregation has not increased in over three
4 years, according to the pastor. He explained
5 that currently church is on Sundays from
6 10:00 to 12:00, with refreshments after that
7 could go for approximately one and a half
8 hours, and occasional a Wednesday evening
9 prayer service where there might be ten
10 congregants. There are no after school,
11 daycare or other activities offered. When
12 asked about a van to transport congregants,
13 Mr. Bailey said that is something he could
14 work with the pastor.

15 Concern was raised about the
16 availability of the deli spaces for the
17 church to use. The Board asked for a
18 proposal to show what spaces are offered to
19 the church, including authorization from the
20 owner, and a calculation of parking spaces
21 needed to make sure that the deli would not
22 run afoul of their our parking requirement.
23 Mr. Bailey spoke of the desire to capture
24 parking elsewhere in the deli's lot. It was
25 explained that the spaces must be legal

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2 spaces, that meet the requirements, and
3 without a site plan that extends beyond the
4 boundaries of the church itself, it is
5 impossible for the Board to say what spaces
6 might be available. Mr. Bailey agreed to
7 provide the items requested and planned to
8 bring the pastor to the next hearing date.

9 The public hearing was resumed on
10 May 18, 2023, wherein Jude Derivois, the
11 applicant and the pastor of the church
12 appeared. Mr. Derivois showed the Board a
13 copy of his lease, signed the week before,
14 and he explained shows that the parking is
15 shared among the deli, church, and liquor
16 store. He only had his own copy and did not
17 have a copy to provide the Board at that
18 time. He was told that his architect was
19 also asked to find out how many spaces the
20 deli needed in order to confirm that there
21 was excess the church could use.

22 Mr. Derivois confirmed there was
23 church on Sundays but no prayer service on
24 Wednesday nights. He explained that there is
25 an administration on Monday evenings for one

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2 hour with one or two cars, but that is it.

3 Enoch Jean-Julian, a Board member and
4 deacon at the church testified. He explained
5 that their landlord owns the deli and the
6 liquor store and all of the parking lots
7 connect and there has been sufficient
8 parking. Church can be in session on Sundays
9 from 9:30 a.m. to 2:00 p.m. or 4:00 p.m.
10 being the latest. When asked how large the
11 congregation is, Mr. Derivois said 60. When
12 asked about how the Board was previously told
13 30, he said 60 is the capacity of the sating.
14 They are growing, but they do not have 60
15 right now. Right now there are about a total
16 of 30 adults and children. Mr. Jean-Julian
17 explained that people carpool. Mr. Derivois
18 arrives with his four or five family members,
19 that he, himself, attends church with his and
20 three daughters in a single car.
21 Mr. Derivois said they have been there for
22 five years and have not had an issue with
23 parking.

24 Jeffrey Reid appeared again as well.
25 He said that the deli parking could

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2 accommodate the church parking. However,
3 Mr. Reid could not say how many spaces were
4 required for the deli and liquor stores. He
5 said use of the spaces was in the contract.
6 Mr. Reid said that there is enough space,
7 that he is capped at 30 people. However,
8 while that is the church's current
9 membership, the pastor had indicated the plan
10 to grow. Mr. Reid indicated that the pastor
11 would confirm with the landlord and the code
12 what the parking requirements are. A diagram
13 of the parking for all three buildings was
14 request to show all parking available.

15 The hearing was resumed on June 15,
16 2023. Jude Derivois appeared on the
17 application. He brought copies of the
18 contract and survey. Mr. Jean-Julian
19 explained that the church itself has five
20 spaces in front. There are 18 spaces for the
21 deli, and seven are required under the code.
22 The liquor store appears to have 11 spaces
23 with nine required under the code.
24 Therefore, there are 13 extra parking spaces
25 not required by code for the deli and liquor

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store. Mr. Jean-Julian explained that there are occasional meetings on Saturdays, bible study on Mondays with five or six people.

When asked what the largest capacity the church has had, Mr. Derivois said 45 to 50.

Finding by the Board as to required parking spaces.

The Board finds the overall Building Department calculation of a potential capacity of 345 people and 115 parking spaces to be accurate. If 115 were required, then this application would have do be denied as the applicant only provided proof of five spaces on site, and an additional 13 at the deli and liquor store.

However, the Board recognizes as a church, the Village is required to be flexible in order to allow the religious organization to use property for religious purposes, while minimizing impact on the surrounding neighborhood. Therefore, for the purpose of following prior Court precedents, the requirements of RLUIPA, and for the

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2 purposes of this application only, this Board
3 will use the maximum attendance at church as
4 the basis for determining the parking
5 requirement. Therefore, the Board adopts a
6 maximum capacity of 50 people for public
7 assembly. This would mean that 17 parking
8 spaces are required. With the 18 spaces
9 available between the site itself and the
10 deli and liquor store, there is sufficient
11 parking. The permission required is a
12 permission pursuant to 210-12K to permit
13 parking spaces for non-residential use to be
14 located elsewhere than as required, provided
15 that such other location is no more than 500
16 feet distance from the location.

17 While religious institutions are not
18 exempt from local zoning laws, greater
19 flexibility is required in evaluating an
20 application for a religious use than an
21 application for another use and every effort
22 to accommodate the religious use must be
23 made. Genesis Assembly of God versus Davies,
24 208 A.D.2d 627 (Appellate Division Second
25 Department 1994.) In order to operation as a

1 church with the 50 seat maximum occupancy as
2 applicant testified has been the maximum size
3 the date. 12 additional parking spaces are
4 required. Therefore, this Board grants
5 permission pursuant to 210-12K to allow for
6 the parking to be provided at a location
7 other than the church itself, specifically at
8 the neighboring deli (305 Atlantic Avenue)
9 and liquor store (150 Atlantic Avenue), to
10 the extent that the permission is in effect
11 only at those times specifically mentioned by
12 the pastor and deacon during the multiple
13 public hearings. As stated, the only
14 meetings with any number of people are church
15 services on Sundays from 9:30 to 4:00 p.m.
16 There is also bible study on Monday nights
17 with five or six people, according to
18 Mr. Jean-Julian, or there are administration
19 meetings on Monday nights, according to
20 Mr. Derivois. There are also meetings
21 Saturdays. However, none of those other
22 activities are anywhere near the size of a
23 typical Sunday church service which has about
24 20 to 30 people. There was also testimony
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2 that there are no after school activities or
3 daycare programs of any type. The Board has
4 serious concerns about parking issues.
5 However, this Board is mindful of its
6 affirmative duty to suggest measures to be
7 taken by the applicant to mitigate the
8 adverse impact on the surrounding
9 neighborhood while permitting the religious
10 use.

11 Therefore, I further move that the
12 Board grant permission pursuant to Freeport
13 Village Code 210-12K that the parking
14 requirement be able to be met by use of
15 off-site spaces, specifically the deli and
16 the liquor store with the following
17 conditions:

18 1. The maximum usage of the church
19 to date has been 45 to 50 people with normal
20 attendance on Sundays of about 20 to 30. The
21 Board adopts this occupancy as a condition of
22 approval. At no time may there be occupancy
23 of more than 50 people in the building.

24 2. The pastor and deacon testified
25 to small usage on Saturdays and Monday

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2 (Administration and bible study), in addition
3 to the church services on Sundays. The Board
4 adopts this as a condition to approval of the
5 variance, specifically limiting the number of
6 meetings held per week, days, and times to
7 Saturdays and Mondays for small groups and
8 Sunday from 9:30 to 4:00 p.m. for church
9 services.

10 3. The pastor testified that
11 currently members carpool to church. This is
12 a condition which must continue. In the
13 event members stop carpooling in their
14 individual vehicles, a church van must be
15 purchased to allow for carpooling. The Board
16 adopts this as a condition for the approval
17 of the variance. Carpooling must be utilized
18 on all Sunday mornings and at any other
19 occasion where larger than average attendance
20 is expected.

21 4. As no other activities, including
22 daycare or after school activities are
23 currently occurring, it is a condition that
24 these activities are not permitted to occur.

25 5. The church must post signs on the

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2 church directing members to park in the deli
3 or liquor store, and that parking on the
4 street by church members is not permitted.

5 6. If the size of the congregation
6 changes, such that 50 people is no longer
7 sufficient capacity or the church wishes to
8 expand activities, then the applicant must
9 return to the Board for further review, as
10 there has not been testimony reflecting
11 availability or more spaces, and there may be
12 more conditions that would be added in order
13 to ensure a balance between the needs of
14 church and that of surrounding community.

15 7. Applicant/Owner must comply with
16 all the Rules and Regulations of the Village
17 of Freeport.

18 8. Applicant/Owner must obtain the
19 required permits from the Building
20 Department.

21 These conditions accommodate the
22 exact religious uses proposed by the pastor,
23 deacon, architect and engineer during the
24 three dates of public hearings, while
25 mitigating the adverse effects on the

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2 surrounding community. These conditions are
3 consistent with those that the Second
4 Department Appellate Division suggested are
5 enforceable. In *Harrison Orthodox Minyan,*
6 *Inc. versus the Town Board of Harrison,* the
7 Court court said:

8 Buy way of example, we observe that
9 the accommodation of the religious use and
10 maintenance of the public's safety, health,
11 and welfare could have been achieved by
12 limiting the number of persons who could
13 attend services or meetings at any given
14 time, and by posting "no parking" signs along
15 the street to prevent hazardous road
16 conditions, and by limiting the hours during
17 which meetings or instruction could be held,
18 in conformity with the petitioner's religious
19 practices.

20 159 A.D. 2d 572, 573 (Appellate Division Second
21 Department 1990), the Court further said:

22 Thus, we have modified the language
23 of the judgement to recite that the Town
24 Board is directed to issue the permit upon
25 such reasonable conditions as will allow the

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2 petitioner to establish its house of worship,
3 while mitigating any detriment or adverse
4 effects on the surrounding community.

5 Id. at 573.

6 Some later examples of appropriate
7 conditions can be found in *Tabernacle of
8 Victory Pentecostal Church versus Weiss*,
9 where the petitioner had proposed.

10 Only 105 people would be allowed to
11 enter the sanctuary, and that two church vans
12 would transport half of the petitioners,
13 approximately 60 members, to the site,
14 resulting in the need for off-site parking
15 for at least eight to ten vehicles during its
16 peak hours of operation.

17 101 A.D. 3d 738, 739 (Appellate
18 Division Second Department 2012), the Court
19 reversed the denial by the Board stating,
20 "Despite the conditions proposed by the
21 petitioner, the Board denied the petitioner's
22 application in their entirety, even though
23 the proposed religious use could have been
24 substantially accommodated." Id. at 740. In
25 *Genesis Assembly of God versus Davies*, the

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2 Court said that the "record indicates that
3 the proposed religious use could have been
4 accommodated by granting the variance subject
5 to conditions limiting, inter alia, the
6 number of persons attending services and the
7 number of services or meetings per week."
8 208 A.D. 2d 627, 628 (Appellate Division
9 Second Department 1994) In Gospel Faith
10 Mission International, Inc. versus Weiss.

11 The petitioner proposed that only 90
12 people would be allowed to enter the
13 sanctuary, and that two church vans would
14 transport 32 of the petitioner's
15 approximately 75 members to the site,
16 resulting in the need for at most seven to
17 ten vehicles during its peak hours of
18 operation.

19 112 A.D. 3d 824, 825 (Appellate Division Second
20 Department 2013) in overturning the denial by the
21 Board, the Court found that

22 Petitioner suggested conditions for
23 the limitation of its use in order to
24 mitigate the impact on the surrounding
25 community. However, despite the conditions

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2 proposed by the petitioner, the Board denied
3 the petitioner's applications in their
4 entirety, even though the proposed religious
5 use could have been substantially
6 accommodated. Further the Board failed to
7 fulfill its obligation to suggest such
8 measures (internal citations omitted.)

9 Id at 826

10 This Board is granting this request
11 for permission to use 12 spaces off-site
12 towards the required parking necessary for
13 the church to operate. This will allow the
14 full religious use requested by the pastor
15 and deacon, as heard during three public
16 hearing, while mitigating adverse impact on
17 the surrounding community. These conditions
18 are consistent with prior Board decisions.

19 The Board, as lead agency, has
20 determined this is an unlisted action under
21 SEQRA. A short EAF has been completed by the
22 applicant and Board. The Board finds no
23 environmental impact, issues a negative
24 declaration, and no further review is
25 required.

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MEMBER HAWKINS: Second.

THE SECRETARY: All in favor.

MEMBER HAWKINS: Aye.

MEMBER MINEO: Aye.

DEPUTY CHAIR CAREY: Aye.

CHAIRPERSON RHODEN: Aye.

THE SECRETARY: Any opposed?

(No response was heard.)

THE SECRETARY: The next decision is Application 2023-9, 27 Lenox Place, Residence A, Section 62, Block 58, Lot 16. Joseph Argueta. Maintain a 23 by 23 foot detached wood frame garage.

DEPUTY CHAIR CAREY: Regarding Building Department Permit Application 20233171.

Madame Chair, regarding Application 2023-9 for the premises located at 27 Lenox Place, Freeport, the applicant comes before this Board seeking a variance from Village Ordinance 210-6A, 210-39A seeking approval to maintain a 23 by 23 foot wood frame garage.

I, Jennifer Carey, move that this Board make the following findings of fact:

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2 A public hearing was held on June 15,
3 2023 wherein applicant was represented by
4 Luis Rodriguez. Mr. Rodriguez explained that
5 the applicant purchased the house in November
6 of 2020 and has made numerous repairs since
7 then. The garage was falling apart and
8 Mr. Argueta attempted to rebuild it without a
9 permit. He has constructed a garage which
10 has a sky exposure plane violation. The
11 garage is permitted to be 20 feet and is 20
12 feet nine inches, and it can be six units
13 vertically, and it is seven units vertically.
14 Just south of this property is 74 Atlantic
15 Avenue, which has a home with a larger garage
16 than the proposed garage. The garage is used
17 for storage purposes and possible by gym
18 equipment in the future. The garage meets
19 rear and side yard setbacks.

20 1. On balance, the benefit to the
21 applicant by the granting of this variance is
22 not outweighed by the detriment to the
23 health, safety and welfare of the
24 neighborhood or community if such variance
25 were to be granted. The Board has

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determined:

a. That an undesirable change will not be produced in the character of the neighborhood and a detriment to nearby properties will not be created by the granting of the area variance. There is a larger garage on the property abutting the subject property.

b. That the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. As the garage is built, there is no easy way to reduce the height by nine inches.

c. That the requested area variance is insubstantial.

d. That the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

e. That the alleged difficulty was not self-created. This issue is self-created, but that is not dispositive.

2. The Board, as lead agency, has

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determined that this action is a Type II action under SEQRA and no further review is required.

I further move that the application be granted subject to the following conditions:

Applicant/Owner must comply with all the Rules and Regulations of the Village of Freeport.

Applicant must obtain the required permits from the Building Department.

This application for variances is being granted on the basis of the specific use proposed. If anything in this application is to change, the applicant must return to the Board for further review.

MEMBER HAWKINS: Second.

THE SECRETARY: All in favor.

MEMBER HAWKINS: Aye.

MEMBER MINEO: Aye.

DEPUTY CHAIR CAREY: Aye.

CHAIRPERSON RHODEN: Aye.

THE SECRETARY: Any opposed?

(No response was heard.)

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2 THE SECRETARY: The next decision is
3 Application -- read together -- 2023-10 and
4 2023-11. 131 West Merrick Road, Business B,
5 Section 62, Block 108, Lot 23, Freeport
6 Realty, LLC.

7 MEMBER MINEO: Madame Chair,
8 regarding Application 2023-10 and 2023-11 for
9 the premises located at 131 West Merrick
10 Road, Freeport, the applicant comes before
11 this Board seeking a variance from Village
12 Ordinances 210-6A, 210-212, 210-325 and
13 210-86A seeking approval for the installation
14 of four ground signs and to remove the
15 existing canopy over existing dispensers and
16 install a 49 by 42 foot canopy over four new
17 dispensers, convert existing service station
18 building to convenience store with drive thru
19 and associated site improvements.

20 I, Anthony Mineo, move that this
21 Board make the following findings of fact:

22 A public hearing was held on June 15,
23 2023 wherein applicant was represented by
24 attorney Matthew Ingber, Nick Buscemi,
25 project engineer, and Aaron Roberts, project

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2 engineer. They are before the zoning board
3 on behalf of Bolla to redevelop the gasoline
4 fueling station and develop the Bolla Market
5 with a Tim Horton's drive-thru at the
6 property. The site plan that is before this
7 Zoning Board was previously approved by site
8 plan on February 28, 2023. The property has
9 been a gasoline fueling station since 1958,
10 in a neighborhood with commercial and office
11 uses.

12 The gas station currently has six
13 fueling positions and a canopy that is 11.9
14 feet from Merrick Road and a 2,365 square
15 foot three bay auto service facility. The
16 proposal will allow for eight fueling
17 positions with a canopy that runs parallel to
18 Merrick Road, with a 2,040 square foot Bolla
19 Market with a Tim Horton's drive-thru with
20 two lanes. The project was first proposed as
21 a single lane drive-thru, but Nassau County
22 Public Works recommended a change to a
23 drive-thru with two ordering lanes. Nassau
24 County also changed the fueling canopy to a
25 north/south configuration that violates the

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2 front yard setback. This change allows for
3 vehicles to not block the entrance on Merrick
4 Road. In order to do this, however, they had
5 to remove one parking space, so they have six
6 spaces instead of seven required. However,
7 with eight fueling positions, people getting
8 gas will often stay parked at a fueling
9 position while they run in to grab an item
10 from the store, such that the expected
11 parking demand will be met.

12 Regarding the signs, the site has a
13 pylon sign that will be in the northwest
14 corner of the site as well as three
15 directional signs for drive-thru use. When
16 looking at the size of the signs, given that
17 the ground sign proposed was 184.95 square
18 feet, the Board asked if it could be made
19 smaller. Mr. Ingber said yes, and
20 Mr. Buscemi presented an alternative sign,
21 which was marked as Applicant's Exhibit A.
22 The original sign was an eight foot system,
23 which means the shell design is eight feet by
24 eight feet alone. He proposed a six foot
25 system where the main shell design is about

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2 six feet by six feet. This design removes a
3 panel and reduces the Tim Horton's logo.
4 They also increased the clearance beneath the
5 sign to allow seven feet underneath for
6 motorists to be able to see. The overall
7 sign size was reduced by about 75 square
8 feet. The ground sign is nonconforming as to
9 the height and size.

10 Regarding the variances required for
11 front yard setback parking and signs:

12 1. On balance, the benefit to the
13 applicant by the granting of this variance is
14 not outweighed by the detriment to the
15 health, safety and welfare of the
16 neighborhood or community if such variance
17 were to be granted. The Board has
18 determined:

19 a. That an undesirable change will
20 not be produced in the character of the
21 neighborhood and a detriment to nearby
22 properties will not be created by the
23 granting of the area variance.

24 b. That the benefit sought by the
25 applicant cannot be achieved by some method,

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2 feasible for the applicant to pursue, other
3 than an area variance.

4 c. That the requested area variance
5 is insubstantial.

6 d. That the proposed variance will
7 not have an adverse effect or impact on the
8 physical or environmental conditions in the
9 neighborhood or district. To the contrary,
10 the design of the site was created
11 specifically in conjunction with input from
12 Nassau County so as to minimize any
13 disruption to the surrounding neighborhood.

14 e. That the alleged difficult was
15 not self-created. The original site plan did
16 not require parking and front yard setback
17 variances, but Nassau County required changes
18 to make the site flow more functional.

19 I further move that this application
20 be granted subject to the following
21 conditions:

22 Applicant/Owner must comply with all
23 the Rules and Regulations of the Village of
24 Freeport.

25 Applicant must obtain the required

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permits from the Building Department.

This application for variances is being granted on the basis of the specific use proposed. If anything in this application is to change, the applicant must return to the Board for further review.

Applicant must use the signage as proposed in Applicant's Exhibit A, the six foot system, as opposed to the eight foot system originally proposed, labeled SN-1, Freestanding ID sign Atl 1A.

DEPUTY CHAIR CAREY: So moved.

THE SECRETARY: All in favor.

MEMBER HAWKINS: Aye.

MEMBER MINEO: Aye.

DEPUTY CHAIR CAREY: Aye.

CHAIRPERSON RHODEN: Aye.

THE SECRETARY: Any opposed?

(No response was heard.)

CHAIRPERSON RHODEN: Can I please have a motion to close the legislative session.

DEPUTY CHAIR CAREY: So moved.

MEMBER HAWKINS: Second.

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July 20, 2023

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THE SECRETARY: All in favor.

MEMBER HAWKINS: Aye.

MEMBER MINEO: Aye.

DEPUTY CHAIR CAREY: Aye.

CHAIRPERSON RHODEN: Aye.

THE SECRETARY: Any opposed?

(Time Ended: 7:33 p.m.)

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July 20, 2023

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C E R T I F I C A T E

I, BETHANNE MENNONNA, a Notary Public within and for the State of New York do hereby certify that the foregoing is a true and accurate transcript of the proceedings, as taken stenographically by myself to the best of my ability, at the time and place aforementioned.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of July, 2023.


BETHANNE MENNONNA