

ZONING BOARD OF APPEALS

There was a regular meeting of the Zoning Board of Appeals on Thursday Evening, February 11, 2016, at 8:00 p.m., in the Court Room of the Municipal Building.

Members Present
Mark I. Fisher, Chairman
Paul Katz
Ernest Fiore
Michael Strone
Steven Lowenthal
Paul Valentine
Tom Foristel


Members Absent

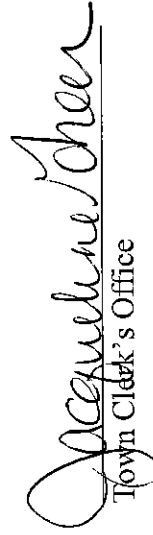
The Chairman called the meeting to order at 8:00 p.m.

<u>Cal. #</u>	<u>Applicant</u>	<u>Block</u>	<u>Lot</u>	<u>Decision</u>
Z15-020	Aron & Robin Ponticelli	651	22	Heard – Adjourned to the March Meeting
Z15-022	Harrison Real Estate Group, LLC	131	17	Variance Granted
Z15-023A	Anthony Pastore	874	25	Heard – Adjourned to the March Meeting
Z15-024	233 Highland Road R.E. Corp.	523	38	Heard – Adjourned to the March Meeting
Z15-025	Ronen Israel & Mindy Nagorsky	981	60	Variance Granted
Z15-028	Houlan-Parnes	621	10.01	Not Heard – Adjourned to the March Meeting
Z15-029	Michael & Courtney Monahan	541	7	Variance Granted
Z15-031	Mark & Theresa Stagg	651	42	Heard – Adjourned to the March Meeting
Z16-001	3040 Westchester Avenue	602	2.05	Heard – Adjourned to the March Meeting

The next meeting was scheduled to March 10, 2016.

There being no further business to come before the Board, on a Motion duly made and seconded, the meeting was declared adjourned.


Rosemarie Cusumano, Secretary


Town Clerk's Office

2016 FEB 17 AM 9:25

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**BOARD OF ZONING APPEALS
TOWN/VILLAGE OF HARRISON, NEW YORK**

Calendar No.Z15-022

Date: February 11, 2016

Property Owner: Harrison Real Estate Group, LLC (the "Applicant")

Property Address: 241-247 Halstead Avenue (Block 131, Lot 17) (the "Property")

WHEREAS, the Applicant filed with the Town/Village of Harrison (the "Town") an application for a building permit to construct a new mixed-use building which application was denied by a determination of the Town's Building Inspector (the administrative official charged with the enforcement of the Town's Town Code (the "Code"), Chapter 235 (Zoning)) to the effect that the application did not strictly comply with the Code's requirements; and

WHEREAS, Seth Mandelbaum, Esq. of McCullough, Goldberger & Stoudt, on behalf of the Applicant, filed an application (the "Application") on October 15, 2015 for variances from the following provisions of the Code's Zoning Ordinance for property located partially in a CBD Zoning District and partially in a B Zoning District:

- a) Pursuant to §235-12(B) of the Table of Dimensional Regulations of the Zoning Ordinance of the Town/Village of Harrison the maximum allowable height is 45 feet and the maximum allowable stories is 4.
- b) Pursuant to §235-25(A) (entitled "Park & Useable Open Space Requirements for Multiple Dwellings"): "Usable open space shall be provided on the site of multiple dwellings at 200 square feet per dwelling unit."
- c) Pursuant to §235-35 (Schedule of Off-Street Parking Spaces; Requirements for Residential Use): "Multiple dwelling for parcels within the Downtown Revitalization Target Area, the requirements shall be 1.25 per dwelling."
- d) Pursuant to §235-7(J): "When a District boundary line divides a lot in a single ownership at the effective date of this chapter or any subsequent amendment thereto, except as provided in §235-71, the Board of Appeals may permit an extension into one district of a lawful conforming use existing in the other district, as hereinafter provided in §235-61A."
- e) Pursuant to §235-18(C)(1) (Accessory Off-Street Parking; Off-Street Parking in a Business District): "Accessory off-street parking areas may be located in required front and rear yards and in required front yards which do not adjoin a residence district, provided that they are setback at least 10 feet from all property lines and further provided that they do not encroach on required landscape buffer strips."
- f) Pursuant to §235-24(F): in PB, NB and CBD Business Districts, there is required a 10-foot setback for all landscaping for any off-street parking area which shall include a continuous landscape strip, except at access points, of not less than 5 feet wide and designed to partially screen such off-street parking areas.

This Application requires 7 variances:

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Variance #1 (Building Height): the height of the proposed new building is indicated to be 55 feet thus requiring a variance of **10 feet**.

Variance #2 (Number of Stories): the number of stories of the proposed building is indicated to be 5 stories thus requiring a variance for **1 story**.

Variance #3 (Open Space Requirement): the provided open space is 2,980 square feet where 3,800 square feet is required, thus requiring a variance for the remaining required open space of **820 square feet**.

Variance #4 (Parking Spaces): the proposed number of parking spaces provided is 19, as compared to the 24 spaces required (based on the requirement of 1.25 parking spaces per dwelling unit), thus requiring a variance for 5 parking spaces.

Variance #5 (Zoning for Contiguous Property): a variance is needed to have the CBD district continued through the B zone portion of the lot.

Variance #6 (Setbacks):

a) The proposed parking area indicates a side yard setback at the South West portion of the parking lot to be 2.5 feet, thus requiring the maximum variance of **7.5 feet**.

b) The portion of the parking area located at the South East portion of the lot indicates a setback from the side yard property line of 0 feet, thus requiring a maximum variance of **10 feet**.

c) The proposed setback at the property line along Fremont Street is 7 feet, thus requiring a variance of **3 feet**.

Variance #7 (Buffer Strips):

a) the proposed parking area indicates a buffer strip located at the South West side of the lot is indicated to be 2.5 feet thus requiring a variance of **2.5 feet**.

b) The buffer strip located at the South East side of the lot is indicated to be 9 feet thus requiring the maximum variance of **5 feet**.

WHEREAS, Public Hearings on this Application (the "Hearings") were duly scheduled and held by the Town's Board of Zoning Appeals (the "Board") at the Municipal Building, 1 Heineman Place, Harrison, New York, at 8:00 p.m., November 11, 2015, December 10, 2015 and January 14, 2016 after due notice and publication pursuant to Town Law 267-a (7) at which the following members of the Board either were present or have indicated that they have listened to recordings of the meeting: Mark Fisher, Paul Katz, Ernest Fiore, Michael Strone, Steven Lowenthal, Thomas Foristel and Paul Valentine

WHEREAS, the Board has reviewed the Short Environmental Assessment Form submitted by the Applicant, has declared itself to be Lead Agency within the meaning of New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, §§8-0101 et seq., and the regulations thereunder, 6 N.Y.C.R.R. Part 617, and has determined that the action was a Type II Action for which no Environmental Impact Statement is required; and

WHEREAS, Board members have inspected the site; and

WHEREAS, at said Hearings, the Applicant and its representatives appeared in support of the variances and those in opposition were given a full opportunity to present

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any arguments and/or documentation to support their position. All those who desired to be heard were heard; and

WHEREAS, the Board has reviewed all testimony and documents submitted and has carefully considered:

- (A) The benefits to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant;
- (B) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance;
- (C) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than a variance;
- (D) Whether the requested variance is substantial;
- (E) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (F) Whether the alleged difficulty was self-created.

WHEREUPON, the Board has found, after due deliberation, based upon the testimony and documents submitted and its site visit, pursuant to Town Law §§267-a and 267-b and Harrison Town Code §§235-56 et seq., that it has jurisdiction to grant the requested variances and that the variances sought were the minimum variances necessary and adequate and at the same time preserved and protected the character of the neighborhood and the health, safety and welfare of the community.

The Board found that:

1. There is no question that:
 - a. the requested variances are substantial;
 - b. the alleged difficulty is self-created;
 - c. there is no other method for the Applicant to pursue to achieve the benefit sought (the construction of a mixed-used multi-storied development) other than the variances that are the subject of this application.
2. With respect to **Variance #1 (Building Height)** and **Variance #2 (Number of Stories)**:
 - a. In the past, most recently in Z15-003 (Verco Properties LLC), in granting height and story variances, this Board has reviewed and taken into consideration not only the height from street level but also the height of nearby buildings, the height taking into consideration the topography of the site, as well as the visual impact of the proposed structure from various vantage points. In response to initial concerns voiced by several Board members, the Applicant amended its Application, thereby reducing the square footage of the top story and stepping back (recessing) such story so as to minimize the visual impact of the additional story.

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- b. On the one hand, Halstead Avenue slopes upward from its intersection with Harrison Avenue and the property, is located at the crest of the hill. As a result, the top of the roof of the proposed structure will be 131 feet above the base elevation. On the other hand, The Executive House apartment building is located diagonally across Halstead Avenue from the Property is 6 stories in height and has a base elevation higher than that of the proposed building. From that perspective, the proposed structure can be viewed as consistent with the neighborhood. Accordingly, we find that the height of the building will not produce an undesirable change in the neighborhood nor be a detriment to the surrounding area;
3. With respect to **Variance #3 (Open Space Requirement)**: the actual amount of open space is in excess of 5,000 sq. ft., well in excess of any minimum. However, because a substantial amount of the open space is contained in a roof garden, the Code reduces by 50% the square footage that counts toward the required minimum. Insofar as the roof garden is accessible for all tenants, it is appropriate to apply a more generous standard than an arbitrary 50% reduction.
4. With respect to **Variance #4 (Parking Spaces)**: the Applicant commissioned a parking study which concluded that, after studying similar developments in Yonkers, Scarsdale, White Plains and New Rochelle, for an apartment building within easy walking distance from the railroad station, a more appropriate standard would be 1.00 parking spaces per unit; that the demographics of likely tenants of the units in the proposed building would not require more than one vehicle per unit. The commercial units on Halstead Avenue do not require a parking space allocation. Some street parking exits on Fremont Street and municipal parking exists within reasonable walking distance from the Property.
5. With respect to **Variance #5 (Zoning for Contiguous Property)**:
- a. The property is a through-lot in single ownership bounded on the north by Halstead Avenue and on the south by Fremont Street.
 - b. The Code provides that when a District boundary line divides a lot in a single ownership, the Board may permit an extension into one district of a lawful conforming use existing in the other district..
 - c. We have previously granted a variance to an adjacent property that borders on Halstead Avenue (CBD) and Fremont Street (B District) to permit the extension of the CBD zone into the portion of the property that borders on Fremont Street (Calendar Z09-041).
 - d. This result is particularly appropriate where the B District portion is to be used for a private auxiliary use as a parking lot which, in the instant case is the current legal use of that portion of the Property. Research has disclosed that the use of the Fremont Street portion of the Property as a parking lot was approved in the mid-1950's and that it has been used for that purpose continuously since that time.
6. With respect to **Variance #6 (Setback)**: Each of these is related to the parking area abutting Fremont Street. This area has been paved up to the property line at least for the past 60 years. These variances are necessary due to the proposed construction of walls, a gate and by the planting of trees and shrubs

to secure, beautify and screen an area that today is an eyesore. The parking area will be improved significantly from its current dilapidated condition.

- a. The variance sought for the SW portion of the Property is necessary by reason of specific negotiations with the adjacent property owner who has requested changes in the original plan to which the Applicant has agreed.
- b. The variance sought for the Fremont Street portion of the Property will result in the installation of walls and a gate which are necessary to secure the tenant-only area from unauthorized parking. Additionally, there is the appearance of a conforming setback by reason of the ownership by the Town of the sidewalk strip between the Property line at Fremont Street and the road bed of Fremont Street.
- c. The variance sought for the SE portion of the parking area will improve the look of the area which already has paving up to the lot line of the Property which has existed for at least 60 years and is necessary to further secure the proposed tenant-only parking area. No objection was received from the owner of the property adjoining the Property on the SE.

7. With respect to **Variance #7 (Buffer Strips)**:

- a. The proposed buffer strip at the SW property line is the result of specific negotiations and concessions made to the adjacent property owner and will likewise significantly improve the aesthetics of the parking area and secure the area from unauthorized use.
- b. The proposed buffer strip at the SE property line will enhance the aesthetics of the proposed parking area and received no objections from the owner of the property adjoining the Property on the SE.

We are cognizant of the fact that following the granting of these variances the applicant will be required to obtain a specific exception permit from the Town Board. While we have taken into consideration the provisions of the Master Plan in connection with the granting of the variances, we believe that the Town Board is in the best position to evaluate whether this project is consistent with the provisions of the Master Plan relating to the development of the Central Business District.

NOW THEREFORE BE IT RESOLVED, that the aforesaid Application for 7 variances to allow construction of a new mixed use building in accordance with the plans submitted with this Application be, and the same is hereby granted, subject to the following conditions.

The variances are specifically granted on the conditions that (i) a gate is erected, and continuously maintained, at the Fremont Street entrance with access being afforded only to residential tenants, and (ii) all deliveries to commercial tenants be made on Halstead Avenue.

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Except as specifically set forth above, nothing herein shall be construed to indicate this Board's approval of any architectural, design, or structural elements of the submitted plans.

These variances shall lapse (i) if construction does not begin within one year from the date this decision of the Board is recorded in the Clerk's Office and (ii) if construction is not completed within two years from said date.

Construction shall be deemed to have begun when all required footings and foundations have been completed, or when actual work of a substantial nature has begun on projects that do not require footings or foundations. Site preparation shall not satisfy the terms of this condition. Construction shall be deemed to have been completed when the Building Department has issued a Certificate of Occupancy.

An application for an extension of these periods may be granted by the Board of Zoning Appeals if good cause is shown by the Applicant and, if in the Board's judgment, the facts and circumstances which existed at the time of the original Application have not materially changed.


Foregoing Resolution submitted by Michael Strone, seconded by Steven Lowenthal at the February 11, 2016 meeting.

ADOPTED: AYES: Ernest Fiore, Paul Katz, Michael Strone,
Steven Lowenthal, Paul Valentine, and Tom Foristel

NAYS: Mark Fisher

ABSTAINED: None

ABSENT: None


Secretary, Board of Zoning Appeals


Chairman, Board of Zoning Appeals

THIS IS NOT A BUILDING PERMIT. A BUILDING PERMIT MUST BE OBTAINED FROM THE BUILDING INSPECTOR BEFORE ANY WORK IS STARTED. OTHER PERMITS OR APPROVALS MAY ALSO BE REQUIRED BEFORE WORK STARTS. IF YOU HAVE ANY QUESTIONS, PLEASE CALL THE BUILDING DEPARTMENT AT (914) 670-3054, 670-3055, OR 670-3056.

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BOARD OF ZONING APPEALS
TOWN/VILLAGE OF HARRISON, NEW YORK

Calendar No. Z15-025

Date: February 11, 2016

Property Owner: Ronen Israel & Mindy Nagorsky

Property Address: 8 Oak Valley Lane.

Block 981 Lot 60

WHEREAS, the applicant, the property owner, applied for a Building Permit and that application was denied by a determination of Harrison's Building Inspector (the administrative official charged with the enforcement of Harrison's Town Code, Chapter 235 (Zoning)) that the application did not strictly comply with the Code's requirements; and

WHEREAS, Ronen Israel & Mindy Nagorsky filed an application for a variance on November 13, 2015 to construct a tennis court that encroaches into the rear and side yard setbacks. The property is located in an R-2 Zoning District that is part of the Oak Valley subdivision. The Zoning Ordinance requires a minimum rear yard and side yard setback for an accessory structure of 50 feet. Therefore, two variances are required: The tennis court is shown to have (1) a rear yard setback of 10 feet requiring a variance of 40 feet and (2) a side yard setback of 20 feet requiring a variance of 30 feet; and

WHEREAS, a Public Hearing on this application was duly scheduled and held by the Board of Zoning Appeals, at the Municipal Building, 1 Heineman Place, Harrison, New York, at 8:00 p.m., on December 10, 2015 and January 14, 2016 after due notice and publication pursuant to Town Law 267-a (7) at which the following members were present in person or listened to tapes of the meeting: Thomas Foristal, Michael Strone, Paul Katz, Mark Fisher, Ernest Fiore, Steve Lowenthal and Paul Valentine; and

WHEREAS, the Board reviewed the Short Environmental Assessment Form submitted by the applicant, declared itself to be Lead Agency within the meaning of New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, §§8-0101 et seq., and the regulations there under, 6 N.Y.C.R.R. Part 617, and determined that the action was a Type II Action for which no Environmental Impact Statement was required; and

WHEREAS, Board Members had inspected the site; and

WHEREAS, at said Hearing, the applicant appeared in support of the variance and no one appeared in opposition. All those who desired to be heard were heard and the Board reviewed the documents submitted to it; and

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Israel-Nagorsky
2/11/16

WHEREAS, the Board reviewed all testimony and documents submitted and have carefully considered:

- (A) The benefits to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant;
- (B) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance;
- (C) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than a variance;
- (D) Whether the requested variance is substantial;
- (E) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (F) Whether the alleged difficulty was self-created.

WHEREUPON, the Board found, after due deliberation, based upon the testimony and documents submitted and its site visit, pursuant to Town Law §§267-a and 267-b and Harrison Town Code §§235-56 et seq., it has jurisdiction to grant the requested variance and that the variance sought was the minimum variance necessary and adequate and at the same time preserved and protected the character of the neighborhood and the health, safety and welfare of the community.

The Board found that:

- A) The location of the tennis court is recessed. The recessing of the court, together with existing screening, limits visibility of the court by the neighbor whose property borders the rear yard.
- B) The Board required the applicant to submit an affirmative letter from the neighbor to the rear with their support to erect the tennis court. The letter was submitted and is on file.
- C) There would be no apparent detriment to any other surrounding properties or to the neighborhood.
- D) There would be no change in the character of the neighborhood.
- E) There was no opposition from neighbors.

NOW THEREFORE BE IT RESOLVED, that the application for a side and rear yard variance to allow the construction of a tennis court as indicated in the plans submitted with this application be, and the same is hereby granted:

Except as specifically set forth above, nothing herein shall be construed to indicate this Board's approval of any architectural, design, or structural elements of the submitted plans.

Z15-025
Israel-Nagorsky
2/11/16

This variance shall lapse unless construction begins within one year from the date this variance is recorded in the Clerk's Office and is completed no more than two years from said date.

Construction shall be deemed to have begun when all required footings and foundations have been completed, or when actual work of a substantial nature has begun on projects that do not require footings or foundations. Site preparation shall not satisfy the terms of this condition. Construction shall be deemed to have been completed when the Building Department has issued a Certificate of Occupancy.

An application for an extension of these periods may be granted by the Board of Zoning Appeals if the applicant shows good cause and, if in the Board's judgment, the facts and circumstances, which existed at the time of the original application, have not materially changed.

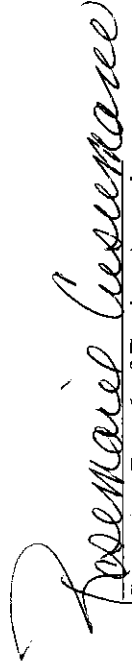
Foregoing Resolution submitted by Ernest Fiore, seconded by Steven Lowenthal at the 2/11/2016 meeting.

ADOPTED: AYES: Mark Fisher, Ernest Fiore, Paul Katz, Michael Strone,
Steven Lowenthal, Paul Valentine, and Tom Foristel

NAYS: None

ABSTAINED: None

ABSENT: None


Secretary, Board of Zoning Appeals


Chairman, Board of Zoning Appeals

THIS IS NOT A BUILDING PERMIT. A Building Permit must be obtained from the Building Inspector before any work is started. Other permits or approvals may also be required before work starts. If you have any questions, please call the Building Department at (914) 670-3054, 670-3055, or 670-3056.

Z15-025
Israel-Nagorsky
2/11/16

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**BOARD OF ZONING APPEALS
TOWN/VILLAGE OF HARRISON, NEW YORK**

Calendar No. Z15-029

Date: February 11, 2016

Property Owner: Michael & Courtney Monahan

Property Address: 73 Park Drive South

Block 541 Lot 7

WHEREAS, the applicant, the property owner, filed an application for an in-ground pool and that application was denied by a determination of Harrison's Building Inspector (the administrative official charged with the enforcement of Harrison's Town Code, Chapter 235 (Zoning)) that the application did not strictly comply with the Code's requirements; and

WHEREAS, Elizabeth Gonzalez-Guillot, on behalf of the property owner, filed an application on November 25, 2015 for a variance from the Zoning Ordinance for an in-ground pool. The property is located in an R-1 Zoning District and pursuant to §235-9B of the Table of Dimensional Regulations of the Town/Village of Harrison, Accessory Structures require a 20 feet side yard setback. The final survey shows that the pool has a side yard setback of 19 feet 1 inch thus requiring a variance of 11 inches; and

WHEREAS, a Public Hearing on this application was duly scheduled and held by the Board of Zoning Appeals, at the Municipal Building, 1 Heineman Place, Harrison, New York, at 8:00 p.m., on January 14, 2016 after due notice and publication pursuant to Town Law 267-a (7) at which the following members were either present or indicated that they had listened to tapes of the meeting: Mark Fisher, Paul Katz, Ernest Fiore, Michael Strone, Steve Lowenthal, Paul Valentine, and Thomas Foristel

WHEREAS, the Board reviewed the Short Environmental Assessment Form submitted by the applicant, declared itself to be Lead Agency within the meaning of New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, §§8-0101 et seq., and the regulations there under, 6 N.Y.C.R.R. Part 617, and determined that the action was a Type II Action for which no Environmental Impact Statement was required; and

WHEREAS, Board Members had inspected the site; and

WHEREAS, at said Hearing, the applicant appeared in support of the variance and no one appeared in opposition. All those who desired to be heard were heard and the Board reviewed the documents submitted to it; and

WHEREAS, the Board reviewed all testimony and documents submitted and have carefully considered:

*Z15-029
Monahan
2/11/16*

- (A) The benefits to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant;
- (B) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance;
- (C) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than a variance;
- (D) Whether the requested variance is substantial;
- (E) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (F) Whether the alleged difficulty was self-created.

WHEREUPON, the Board found, after due deliberation, based upon the testimony and documents submitted and its site visit, pursuant to Town Law §§267-a and 267-b and Harrison Town Code §§235-56 et seq., it has jurisdiction to grant the requested variance and that the variance sought was the minimum variance necessary and adequate and at the same time preserved and protected the character of the neighborhood and the health, safety and welfare of the community.

The Board found that:

- A) The requested variance is de minimis and does not change the character of the neighborhood.
- B) The pool is located a substantial distance away from the adjacent neighbor's residence and, accordingly, will not be a detriment to that property.
- C) There were no objections from neighbors.

NOW THEREFORE BE IT RESOLVED, that the application for a side yard variance for a pool constructed in accordance with the plans submitted with this application be, and the same is hereby granted.

Except as specifically set forth above, nothing herein shall be construed to indicate this Board's approval of any architectural, design, or structural elements of the submitted plans.

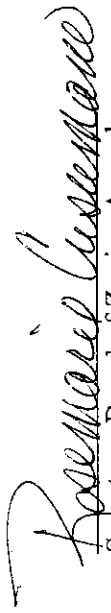
Foregoing Resolution submitted by Steven Lowenthal, seconded by Ernest Fiore at the February 11, 2015 meeting.

ADOPTED: AYES: Mark Fisher, Ernest Fiore, Paul Katz, Michael Strone,
Steven Lowenthal, Paul Valentine, and Tom Foristel

NAYS: None

ABSTAINED: None

ABSENT: None


Secretary, Board of Zoning Appeals


Chairman, Board of Zoning Appeals

Z15-029
Monahan
2/11/16

TOWN CLERK
HARRISON, N.Y.

2016 FEB 17 AM 9:26

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