

PUBLIC HEARING
TOWN OF OSSINING ZONING BOARD OF APPEALS
Abel Magana, 512 North State Road
SECTION 90.19 BLOCK 2 LOT 15

In person & Zoom Meeting

December 1, 2025

7:30 p.m.

PRESENT:	SALVATORE CARRERA	- Chairman
	DAVID KRIEGER	- Member
	TOM WILLS	- Member
ABSENT:	LYNN FARRELL	- Member
ALSO PRESENT:	CHRISTIE ADDONA	- Town Attorney
	JON TURNQUIST	- Building Inspector
	SANDY ANELLI	- Secretary
	MARGARET CONN	- Zoom Secretary

Sal Carrera, Chairman: Good evening, ladies and gentlemen. This is the December 1, 2025 meeting of the Zoning Board of Appeals for the Town of Ossining. My name is Sal Carrera, Chairman, and joining me this evening are members of the Zoning Board of Appeals, Town Attorney Building Inspector, and secretary. For the record, please introduce yourself.

David Krieger: Member, David Krieger.

Tom Wills: Member, Tom Wills.

Christie Addona: Christie Addona, Town Attorney.

Jon Turnquist: Jon Turnquist, Building Inspector.

Sandy Anelli: Sandy Anelli, Secretary.

Margaret Conn: Margaret Conn, Zoom Secretary.

Chairman: Thank you ladies and gentlemen. I will read the public notice and then I'll request the applicant or the representative to give a brief explanation of the relief sought. Anyone that has a comment should raise their hands and state their full name and address. After the comments are received, the Board will try to render a decision this evening.

Notice is hereby given that a Public Hearing of the Town of Ossining Zoning Board of Appeals will be held on Monday, December 1, 2025 at 7:30 pm in person at the John Paul Rodrigues Ossining Operations Center, 101 Route 9A, Ossining NY 10562 on the application of Abel Magana, 512 North State Road, Briarcliff Manor, Town of Ossining, NY, in accordance with the Zoning Code of Town of Ossining, Chapter 200-50, Approval of Site Plans and Chapter 200-41, Certificates of Occupancy. Members of the Public and Applicants are able to attend in person, or join the meeting via computer or mobile app as follows:

<https://us02web.zoom.us/j/84738267397?pwd=hKMEbj3bmtMNZQpEf2P7EARLyMGoNj.1>

Passcode:729423

Phone one-tap:

+19292056099,,84738267397#,,,,*729423# US (New York)

+16469313860,,84738267397#,,,,*729423# US

The applicant is seeking a variance from the terms of the Zoning Code of the Town of Ossining for two feet along the back area of the site for a parking area already constructed. Major improvements to the site have been completed. The rear parking lot line was altered reducing the size of existing curb by approximately 2 feet.

The property is located at 512 North State Road, in the unincorporated area of The Town of Ossining, NY, owned by 512 North Inc., 512 North State Road, Briarcliff Manor, NY 10510 and is identified on the Tax Map of the Town of Ossining as Section 90.19, Block 2, Lot 15, located in the GB - General Business District.

Application materials and plans are on file at the Town of Ossining Building Department, 101 Route 9A, Ossining, NY 10562 and on our website at: <https://www.townofossining.com/cms/publications/all-documents/zoning-board/zoning-board-projects/zbproj-under-review>

All interested persons are invited to attend the Public Hearing and/or send comments by email to: www.building@townofossiningny.gov or regular mail to Town of Ossining Zoning Board of Appeals, P.O. Box 1166, Ossining, NY 10562.

BY ORDER OF THE ZONING BOARD OF APPEALS
Sal Carrera, Chairman
DATED: November 20, 2025

Chairman: The criteria for the area variance that we all have to take under consideration is:

Whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by the granting of the area variance;

Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance;

Whether the requested area variance is substantial;

Whether the proposed variance will have an adverse effect on the physical or environmental conditions in the neighborhood or district;

Whether the alleged difficulty was self-created - this factor is relevant to the decision, but the fact that the difficulty was self-created does not preclude granting the area variance.

Chairman: with regard to the first application in front of us, we do have a letter dated December 1, 2025 from Clifford L. Davis, Attorney At Law, 44 Church St., White Plains, NY 10601 as follows:

December 1, 2025

*Zoning Board of Appeals Town of
Ossining*

101 Route 9A

Ossining, NY 10562

Re: 512 North State Road

Dear Honorable Members of the Zoning Board of Appeals:

I am counsel for the Rose Marie Miller, regarding her adjoining property at 2 Blue Lantern Road, Ossining, NY, adjacent to the property of 512 North State Road (the "Applicant"). The application of 512 North State Road should be denied in full.

This Board has no jurisdiction here. It is a board of appellate review and can only hear appeals from an order, requirement, decision or determination made by an administrative official. Town Code 200-44.A. Here, there is nothing to be appealed from. The Applicant has not made any application, which led to a determination that can be appealed from.

There are presently outstanding violations as to this application, which are pending before the Town of Ossining Justice Court. The matter was supposed to have been heard on December 1, 2025. The Applicant represented to the Court earlier that it was going to make application to the Planning Board for site plan approval to address the violations.

The site plan, attached to the application, is dated August 16, 2007. Notably that site plan required 10-20 feet high white pines, 7-8 feet high white pines and an eight feet high stockade fence. Nor was any lighting approved on that site plan; lighting must come out.

The applicant has made no attempt to comply with the 2007 site plan.

As to the zoning code Section 200-18.D.(2) and(4) addresses screening, as here, where there is a nonresidential zone which backs up to the residential zone of my clients. It requires a buffer area of at least 20 feet in which there needs to be a mix of evergreen shrubs and coniferous and deciduous tree species. Further, all vegetation not properly maintained has to be replaced with new comparable vegetation at the beginning of the next growing season. The Applicant removed all of that vegetation and must restore it.

Clifford Davis Letter continued:

Changes to the gate were not on the existing site plan. That also should be restored. My client confirmed with the Highway Department that the gate was not required by the Town to access the brook.

Attached hereto is the February 7, 2025 expert letter of our engineer, Eliot Senior. As explained by Expert Engineer Senior, the site plan required a rear lot setback of 10 feet. The parking lot as built is as close to 5 feet from the property line, and the applicant apparently wants that to be amended to only 2 feet. The Applicant is before the wrong Board. Its application should be for a site plan amendment to the Planning Board. Only if the Planning Board turns down the Applicant can the Applicant seek the assistance of this Board. The Applicant can comply with the 2007 site plan or comply with the present law as set forth below.

As set forth in this GB zone where the commercial restaurant backs up to a residential use, my client, pursuant to Town Code 200-18.D{2) and (4) the "parking areas for any nonresidential use shall be located at least 20 feet from a residentially used lot or residentially zoned lot." The Applicant ignores this requirement and wants to be as close as 2 feet to my clients. That same statute requires screening from adjoining lots "with a mix of native, noninvasive evergreen shrubs, and coniferous and deciduous tree species." The Applicant here ignores this requirement and provides no screening whatsoever and has taken out screening that existed. Further, all vegetation must be maintained and replaced at the beginning of the next growing season.

Attached hereto are photos that show what existed and what the Applicant took out without any permission. The photos demonstrate that previously the restaurant was screened, and now there is virtually no screening, and that my clients can see the busy commercial restaurant and parking lot in full.

For the Board's convenience, I attach the appropriate documents that this Board should consider, including the outstanding violations issued by the Building Inspector.

On balance the variance sought here will create great harm to my client, and create an undesirable change in the character of the neighborhood and will be a detriment to nearby properties. As set forth above, the Code protects my residential client from the impacts of the neighboring commercial use. Yet the Applicant wishes to destroy that protection. It does so by ignoring the law, ignoring the required setback, eliminating required screenings. At only 2 feet the cars will park virtually on top of my clients.

The variance sought is self-created; the applicant agreed to the 2007 site plan. Further, the Applicant can properly run its restaurant if it complied with its 2007 site plan. Yet, the Applicant wants more, and does not even seek modification from the Planning Board. There is no need for this variance. The Applicant

Letter Continued:

has not demonstrated that it cannot operate its restaurant unless it receives this variance.

For the following reasons the application should be denied.

Respectfully,

Clifford L. Davis

Attachments were copied and given to the Board and are on file.

End of Letter.

Chairman: May I have the applicant or representative give us an explanation of what they are seeking?

Jose Cotto: I'm the attorney for Abel Magana. He, along with his wife in the back, are owners of 512 North Inc, which, everybody knows, is 512 Bistro. Obviously, the address is 512 North State Road. It's a restaurant that opened a couple of years ago. He's well known in the community, as he also is owner of Terra Rustica and he's made many improvements and changes there. Likewise, he did the same here. So, his intent has always been to comply and work in good faith with the village. This zoning variance is to basically, approve what's there already. He had major construction on the site. I was there before, if you remember, it's not like what it is now.

He had to do a lot of major construction to the structure itself and the parking area. What happened was, in the back of the parking lot, on advice of the highway personnel by the name of Mr. Peter. He recommended to push back the boundaries, the curb of the back of the parking lot of the business.

It's only a 10 to 12 foot long area. And I notated with the application, I submitted. I have a larger map, but it scaled down the area in question and the dotted line showed what was there before, where the curve was before. I could pass this around to make it more clear. Now, you can see that there's a dotted line that says approximate location of the old curve, and now the new curb extends a little bit more into the boundary, but it's only about approximately Two feet, at most. That's there already, and it was done because, apparently, in the bigger survey here, it shows that along there, there's a grate, a drain and Peter, the highway person, warned that we better, if we did that, push back the curb to make it easier for the Town to do cleanup on that particular area... So that was the whole intention of doing the curb.

Jose Cotto: Moving it back. And that's what he did, at a great expense. He added trees and other items there and put a door for the... for the village to gain access to that drain. I'm sorry, to the town, I'm sorry. you know, he did everything accordingly, and, you know, so he's surprised that he's here. I understand that the adjoining neighbor was complaining about some light issues regarding the restaurant, now that it's an active restaurant, it's open, here there's lighting for parking. I believe their complaint, which I guess is the basis of the letter that I haven't read. I believe some trees were taken down that was there before, and that's why they have that lighting coming in, apparently affecting their property. But my client, Mr. Magana has indicated that he'll put in whatever trees or anything to block the lighting.

Abel Magana: One of the things I did already.

Jose Cotto: And you did a new fence along the curb there of the parking lot. So, we just want the zoning board to approve what's there already. He's hardworking and he's compliant, as a matter of fact, I did, 20 years ago, I believe, his restaurant when he purchased Terra Rustica and he's a good person. He's just following what he was told to do and we just want the board to approve this small two-foot variance.

Chairman: Thank you. I'm very familiar with the, site, and I made sure that the members of the board visited the complex to see what this applicant was basically, looking for. I Did notice the new drain in the back and it's also my understanding, Mr. Cotto, can you come back up here again? The other thing is that the new drainage he put in the parking lot also, helps with the drainage area for the parking and the stream that goes through the site in the back. And, you know, I've lived in my house for 55 years, I know what Briar's was before, during, and after and the accomplishments that I've seen here, really excel as compared to what was there before, besides the drainage and the taking out of, and trimming of the trees that were there that were basically overhanging on the house that was there. The lighting, and I passed there at night, the lighting basically is facing the restaurant, so it's lighting the parking area and I guess that would be a safety issue if there weren't any lights out there in the parking area.

From what I've seen at night, and I've driven through, because the lights are facing out. There are some additional trees that your client did put in, but nowhere near what the original, site plan called for in the early, 2005, 2007.

Chairman: As far as I am concerned, from what I've seen here, and this is the first time I've experienced an applicant asking for a couple of feet in my 30, 40 years on the board here. It'll be up to members of my board to ask additional questions, and then we'll get some additional comments from the public that are here or online. David, do you have any questions or comment?

David Krieger: There's a couple of issues to this, trees, which is... we're basically here for a two-foot variance. So, there's other issues afloat, but I don't think that's what we're here for tonight. The two feet, I have no problem with it.

Drew Miller: Could you say that again? I didn't hear you.

David Krieger: I have no problem with the two feet.

Chairman: Okay, Tom?

Tom Wills: The only sequence I'm not clear about, Jon, maybe you can clarify, how did this building come about?

Did you receive a plan or did the town receive a plan about the parking lot, and how it was to be built and were there any questions raised at that time?

Jon Turnquist: No. There was no site plan. It's the existing...

Chairman: It's a pre-existing condition, the building was there. Yes. The building was completely redone from roof to the basement. Yeah, and a whole new parking lot, and the cleanup of the, property line in the rear was, you know, part of the complete renovation of the site. Prior to selling it, there was hardly any parking lot there other than broken up, blacktop, a stick fence in the back facing the neighbor in the rear, trees that hadn't been attended to probably for decades, and that was all part of a new site plan of cleaning up. The whole area, besides redoing the restaurant, as it is, as you see it right now.

Tom Wills: I still want to understand, do... I understand that the builders of the parking lot did not clarify with you the curb and the details. That's all I'm trying to understand.

Jon Turnquist: That's correct.

Christie Addona: So, what it seems like, what the applicant is saying is that, They're saying that they got some direction from Pete Connolly, the Superintendent of Highways, as to what should be put there. We don't have anything from Pete Connolly to corroborate that. So, the board would be relying upon the representation the applicant is making. If you wanted to, we could ask for something in writing from the superintendent of highways, because that seems to be the basis of the justification for why they're seeking the variance.

Chairman: Yes, I mean, I could answer to that, since I've been there, I've lived there, and I've been to Briars when it was, and the area in the back there, as compared to what it was when Briars was there. The drainage that was put in was... if it was requested by Peter, which I have to assume he's telling the truth, is that he would not have gone through the expense of putting the drainage in and redoing the parking lot to the way it is and also taking out some trees that were basically on Town property. Again, as I understand it, because I was there during the course of construction of the site.

Abel Magana: So, can I say something?

Chairman: Yes.

Abel Magana: So, the big tree, right on the right corner, very close to the neighbor's house. It Wasn't my tree. That's on Blue Lantern. Mr. Jon said to me, if I can cut it because I had applied to them to trim the trees. So, I said to him, well, if I bring the trucks here, why not but it wasn't my tree it was a Town tree. It was the big one. It was, I believe, it was the street tree that gave it more privacy to the highway, but it wasn't safe and it wasn't healthy. The guy went there and checked it out. The highway, when my guy was doing to the parking lot, Mr. Peter stopped by, he said that drain gave a lot of problems to them because all the water comes from neighbor and from my side go to there and the drain was a little higher. The draining wasn't do anything there. So, he asked me if my guy can put the machine to do the drain to do the pitch to that way, that way the water goes to that draining and keeps the draining clean.

Abel Magana: And also, when they go and vacuum that draining. He asked me if I can put in a new fence, So, I did the doors for access there for them. Cost me more money, but I did. So, the only thing I did is listen to him, because he said to me, it will help to clean up the branches there. So that's was the reason... I don't know why, but I didn't touch anything else, other than what he told me to do.

Chairman: It was a request, a recommendation, it definitely helped the drainage in the area. It doesn't happen that often but North State Road has been underwater just a few times in my 55 years of living there, where you couldn't even go into any of the stores along North State Road and it is because of the river that we have that goes into the Saw Mill but, putting that aside, any other questions?

Tom Wills: No, I'm very familiar. I've been in this restaurant for 30 years, so I know how... what's going on.

Abel Magana: It looks very much better for all the community. That's what I think about it.

Chairman: Okay, so I'd, like to ask, people in the audience for comment.

Clifford Davis: Good evening, members of the Zoning Board of Appeals staff. My name is Clifford Davis. I represent Mrs. Miller who owns the property on Blue Lantern Road. I've submitted a very exhaustive letter Mr. Wills, is that correct? I think the issue that you were addressing was, How did this application get here? Because what the applicant has not told the board. Is that the building inspector has violated the applicant, because there is a 2007 site plan And in the 2007 site plan, the applicant was supposed to comply with that site plan.

In my package, I have a letter from an expert, New York State Licensed engineer, PE, Elliot Senor, who will, after I speak, he will address how... The applicant has not complied with the 2007 plan. So, the applicant, what he did, and we're not here to discuss the restaurant, we're here to discuss the parking lot, and how it negatively impacts my client, because they took down all these trees, they took down all the screening, and as you can see from the photographs, and that's not hearsay, you're looking at the photographs. I gave you the before, I gave you the after, and Ms. Miller will explain to you They did it without going back to the planning board and trying to amend the site plan.

Clifford Davis: Now, when you have a site plan, if you want to make changes. You don't go to the Zoning Board of Appeals. You go to the planning board, and they had a violation, and Mr. Cotto was supposed to be in court today in Ossining to explain to the Town judge why they still have not come to the planning board.

Clifford Davis: I've spoken with Ms. Addona, and she advised me that they were supposed to go back to the planning board. The building inspector has said that, and that's the violation. So, the first issue is, What are they doing before the Zoning Board of Appeals? Appeals is a quasi-adjudicatory Board. It's a legal Board. You just can't go here to the Zoning Board of Appeals and say, forget about the planning board, we just want two feet. You don't even know what the 2 feet is.

What's the requirement?

Did he tell this esteemed board what the requirement is?

Well, in the GB zone, what it says is that when you have a commercial property that backs up To a residential property of my client you have to be 20 feet back. So, when he says it's only 2 feet. What he's asking this board is not for 2 feet. He's asking them for an 18-foot variance. Because he wants to be 2 feet on top of my client, on the property line. So, he needs a 90% variance.

One, Is it a substantial variance? It's 90%.

Is it self-created? Of-course it's self-created.

He went there, he had a 2007 site plan, he had to comply with the site plan and he ignored it and that's why the building inspector said, you have to be accountable to the planning board and to this Town and you're in violation and those violations are in my package.

Mr. Turnquist can advise you, and I hope you ask him about those violations. They have not been remedied. And I don't know any board that would ever grant an approval when there are outstanding violations.

So, it's self-created, it's substantial. Then you have a balancing test. Why does he have to be so close To my client's property.

Clifford Davis: Nobody's saying you can't run a restaurant. Nobody's saying that he's not hardworking and he's a nice man and everything like that but, he has to comply with the law. The law says you have 20 feet. Now, if he came in to the planning board, and he said, I need 20 feet. and, but I'm only going to give you 2 feet, then the building inspector would have given a denial letter. I don't know... I mean, how many times do you see a denial letter? You always see a denial letter. There's always a denial letter. You just can't come to this board, and set it forth.

Clifford Davis: It's Town Code 200-44-A, and it tells you what your jurisdiction is. It's the zoning board of Appeals. What is the appeal from? His appeal is that he wants to appeal to you and say, it's only 2 feet but it's got to be a decision that Mr. Turnquist made, the planning board made, somebody else made. There's no decision, so we should not be here, and this matter should end right now. There are outstanding violations. Like I said, on the site plan from 2007. He's not in compliance and he modified it and that's why he had to come back. There were changes made to the gate. There were changes made to the lighting. Nobody's saying he can't operate his restaurant, but can my clients enjoy their house?

When you look at the photographs, the before, it was heavily wooded, and my clients wouldn't see anything. Now, you took down all the trees, and Mr. Chairman, that was your first reaction about how many trees you noticed were taken down.

Chairman: Now, don't put words in my mouth. I didn't say taken down. I said they were trimmed and they're allowed to do so in my regulations. My regulation, okay? since I live right off of North State Road, is that the condition of that parking lot, putting aside these 2 feet, or 10 feet, you know the trees, the fence, they were... there was nothing left, and haven't been maintained for decades and I even was worried about the trees and the branches going over to the house that if a branch fell off would go right through the roof. So, the trees were on his property and... to take away from that problem, he had them trimmed back when he was doing the parking lot.

Clifford Davis: this is in my package. It has the photographs that were before, and you can barely see my client's house. And that's what my client's sees. You know, they're looking out of their... the second floor of the house, and they see a very big commercial area.

Chairman: So, let me ask you a question with regards to that, okay? Where does your client live?

Clifford Davis: Where do they physically live?

Chairman: Yes.

Clifford Davis: They live in Yorktown. However, ...

Chairman: So, when you say to this board that it's not grossly, but it's affecting them, they don't live there. Is that correct?

Clifford Davis: I'm going to answer your question, and then I'm going to respond to it. What you're saying is completely irrelevant. And the reason for that, you're the one that brought it up, let me explain. Zoning runs with the land. I could buy... like, how many times have somebody has come to you, and they say, we need this variance because somebody, is older, or younger, or disabled? It runs with the land. So, my clients... Sometimes they rent it out, they might want to sell it, it impacts their property They lived there for a time. Right now, they're living in Yorktown. I believe her mother lived there until she passed away. Yes. And it impacts them. So, you cannot... you cannot say it doesn't have an impact, it's their real estate. They could move back there at any time. But, as of right now, it's being liked. So that is an issue that, if that was raised in your decision, any court would like that down. Zoning runs with the land.

So again, with the photographs, In the package towards the back, it shows how much everything is screened. Then what they did, without any modification, without going back to the planning board, They removed the trees. They cut them back. You know, it's in the package, they did put up a fence, but the fence doesn't block the light from coming into that house.

Chairman: The light from where?

Clifford Davis: The light from the restaurant, and there are also lights that were put in in the parking lot without any permission from the building department for modifications from the planning board. They were just put in.

Chairman: There were always lights in that parking lot when Briars was there. There were always lights in that parking lot working or not working in that parking lot. How do you have a parking lot with absolutely no lighting?

Clifford Davis: I'm going to allow my client to address that. Okay. Then, you have this drone photograph, which shows how it's... this is from the applicant and it shows how it's exposed my client's property is.

Chairman: I went through your whole package today.

Clifford Davis: So, all that I'm saying is that, on balance, my client, real estate, is being injured because it was properly screened And the code requires a 20-foot setback. And the reason for that 20-foot setback, it's in the GB zone.

Clifford Davis: Now, if they wanted to comply with 2007, they could comply with the 2007 site plan, but they haven't. So, they have a choice. Comply with the 2007 site plan or comply with that law which exists right now.

Chairman: But if I'm not mistaken, and correct me if I'm wrong, yes, the 20-foot is a new requirement, not... this is a pre-existing condition.

Clifford Davis: No, no, no. Let me explain what a grandfathering existing means.

Christie Addona: So, I think the issue is that what... and the applicant may be able to address this, but 2 feet is beyond what already... what was... existing. So, yes, it's 2 feet off of that. Is it 2 feet with what the code now requires? No.

Clifford Davis: If he didn't change anything, and was in compliance With the site plan from 2007, we wouldn't have a beef. Once you're looking to change and deviate from the 2007 site plan, as Ms. Addona can attest to, you now have to comply with what the code says now, and you have to put a certain number of trees in, and every year, if a tree dies, you have to replace it, and that has to be 20 feet from the property and that is what the applicant is doing so, he has to comply with those 20 feet.

If he's not complying with the 20 feet, he has to come in and... And again, this is going to set a terrible precedent if anybody who wants to change something comes before this board without it going to the zoning board. As Mr. Krieger said, well, he's only coming in for 2 feet, the trees are not my problem. If you went before the planning board, the planning board would look at the whole package. We'd look at everything, and then say. You have to go to the zoning board, and they're only going to look at the 2 feet. And also, you know, the balancing test. But the planning board is then going to look at the big picture. So, he's got it wrong. He's got to go to the planning board first, and he's got to get it denied. And then, you look at the denial letter, or the analysis by the building inspector, or the attorney, and say, these are the reasons why it was denied, and that is what I'm appealing. Okay, at this point in time, my, my, expert engineer, Elliot Zeno, would like to testify by, by Zoom. If... if you can let him in, Sandy.

Christie Addona: As it relates to the planning board, before we move on to another issue, it is the Town's practice to have applications come to the zoning board, because, yes, there are site plan issues here, and no one's denying that, and there are pending violations related to the deviations from the site plan, but the planning board cannot modify the code. Only you can grant variances, and so the planning board cannot say it can only be 2 feet from the property line, or it can deviate 2 feet. That's within the purview of this board.

Clifford Davis: However, just to add to that. The normal practice is you go to the planning board, and the planning board advises the applicant...

Christie Addona: That is not... that is not the case here. That is not the case in Ossining. There are a lot of applications where it goes to the zoning board first, before it goes to the planning board.

Clifford Davis: Well, considering the way this application was put forth, there is no site plan. Before this board. There's no analysis, there's a survey, and with regarding the two feet, you don't even know what's the requirement.

Chairman: Okay, so... I'll listen to him and then I'll take it from there.

Eliot Senor: Yeah, good evening, Elliot Senor, Office of Gabrielle Senor at 90 North Central Avenue in Hartsdale. So, I guess why I'm here is that the line that says approximate location of the old curb is hearsay. They didn't survey it at the time. They existed a condition prior to the current pavement, so I'm not really sure how they got that line on there. But, as far as, just the overall site plan is concerned, yeah, the parking lot is now just a couple of feet, 5 feet or so off of the property line in places. All the trees have been removed that were required by the original site plan. And as far as the planning board, as far as the parking is concerned, none of the parking spaces in that area comply With any of the regulations from the village as far as parking, space size, aisle space, backup areas, and things like that. So, you know, it really does need a new site plan that complies with the code, just moving the curb line, you know, without permission, and it sounded to me, as sitting there, when what he was explaining the DPW guy said, the DPW guy was saying, well, can you lower and make this flow better? He wasn't saying, you know, expand your parking lot, put up new curbs and lighting, etc. So, I'm just here to say that none of the parking space that is striped now complies with any of the village code, the town code. And things have to be improved And approved Planning board.

Chairman: Thank you. A question I have for the building inspector is Are the parking spaces that are lined Legal parking spaces?

Jon Turnquist: I have to check the dimensions on that. The new ones or the old ones?

Chairman: No, the ones that are there.

Jon Turnquist: I'd have to check the dimensions on that and that backup and so forth with I'd have to go over that.

Eliot Senor: Yeah, the dimension, the building offset from the building to the property line, I think I... I don't have it in front of me, I think it's 80 feet, and when you start adding up all of the, parking aisles and parking space widths, you get more than 80 feet.

Eliot Senor: So, just on the surface of it, it doesn't comply. But some of those spaces are only 10 or 12 feet long, and the aisle is less than 10... 10 feet in some cases. So, none of it really complies. But I'll leave it to the billing inspector to check that. Thank you.

Chairman: So, he has a C.O. on the building, is that correct?

Jon Turnquist: On the building, he does, yes.

Chairman: There's no C.O. on a parking lot, or you break it up between a parking lot and a building?

Jon Turnquist: It was a separate filing. The building was filed for, the restaurant was filed for, there was a stair filed for on the side, but he did not file the plan of the parking. In the beginning, we had gone With what we had, which was the original.

Chairman: Okay, so we're still going back to...

Jon Turnquist: Yes, there is a C.O. on the building.

Chairman: We're still going... this is a pre-existing condition from, basically, Briars 2007 In the parking lot. Is that correct?

Jon Turnquist: Yes.

Chairman: Okay. Anybody else on...

Eliot Senor: That was the parking lot as shown on that site plan, not the parking lot as shown now. Yeah, I'm done. You're waiting for me.

Sandy Anelli: Is there anybody else that would like to speak, you could raise your virtual hand?

Margaret Conn: There are no hands up. No, no comments from any of the attendees.

Chairman: Thank you.

Clifford Davis: Clifford Davis again, I'll be very quick. I think what the building inspector was trying to say is that in 2007, the 2007 plan, which is in the package, that reflected what was pre-existing. But what exists now is completely different from the 2007 plan. So, they changed it. They never went to the planning board. They never made the changes. As a result of that, and I think your Town council will agree with that, they have to comply with the law as it exists now, which requires a 20-foot setback and if they want to be as close to 2 feet, then they're asking the Board for a 90% variance. So, if Ms. Miller could address the board. Property owner.

Rosemary Miller: Hi, I'm Rosemary Miller, and hi, neighbor.

Drew Miller: Drew Miller, her husband.

Rosemary Miller: We've been there 40 years, like you said, 50 years. Yes, from years since the house was built. My father built the house. He was a hard worker too and we've never had any problems with the Town of Ossining, they've always been good to us.

We remember when there was just a stream there, and rocks, and there was... there weren't any fences And, we got along with the neighbors, never had a problem. We loved the Briars and then they did close up and there was grass and trees around and that was great which I guess cleaned the pollutants before they went down the drain. The trees, even though they looked overgrown to everybody, they provided screening. And 20-foot pine trees were planted at one time and the picket fence was added in addition to provide screening because when cars pull up with the headlights, they hit the house, and the bedrooms are on that side of the house.

It's about 15 feet from the house to the fence, but there was always that buffer and that setback from the fence to where the car is parked up against the fence. I think they might have found angles instead of parking straight on. There weren't that many and I know the parking lot was never finished before and additional trees were supposed to be planted in the past and there was a lot of the crazy vines would grow because the brook is underneath the ground and but it did provide screening, so we barely could see the restaurant.

Rosemary Miller: The only meeting that they had about any changes to this restaurant was about two years ago, June. I think about adding stairs and an apartment of upstairs and we had no problem with that, because we couldn't see it. Everything was screened.

Now we could see the stairs. We could see the apartment. Now, even the lights from the side of the restaurant, they hit you right in the face if you're on the front stairs and the lights even though they're pointing down. There were never lights along the fence. There was a big light in the back corner. There could have been some between the Briars and the building next door. I'm not sure about that, but there have been trees that have fallen between those two properties because the stores itself. But still, as messy as it looked, it still provided screening. Because of this grate, the two grates, the one grate in the back corner, the picket fence at one time went around it, so sometimes pieces would fall down, but then we would tell the building inspector at the time, not this Jon, the other one, John Hamilton, or whatever, and he would talk to the Briars, and if they could fix it or whatever. But, there still with the fence there. It blended it with the trees, even though it was a mess. It was screened. So, my whole question was, when this all started, if they were going to add more trees, and what was going on? And it was called a site plan. So, they... they told me they would just follow the existing site plan.

I got a copy of the site plan from the building department, and I watched them do everything. I kept calling, and everything looked like they were following the site plan until the end when they took out more trees. They took out a few little ones that were marked with green spots and I know the one Town tree by the street was taken out, which is fine. But the closest spot, like, right by the bedroom, is really an issue, because if you open up the window, you can see the people sitting in the car, see the people sitting in the restaurant, lights in the restaurant can really see the people talking.

I took pictures to show how close it was, and somebody was sitting in the car and, like, beeped at me, so it's scary, and I was there alone. I'm not there now, but I might make that my permanent residence. I lived there when I was in high school. I went to Ossining High School. My parents loved it there, we never had a problem. And we even, like Abel. We went to his other restaurant many times, and at that other meeting, he said he would put whatever trees or do whatever is needed.

Rosemary Miller: I talked to Pete Connolly at the highway department and asked him if he needed a gate and a fence. Anybody could come through there. He said he didn't need the gate in order to clean the drain. It's in two pieces, I think. It could be taken apart.

We just want screening and a setback. It buffers the noise and the talking, and we want him to do well at the restaurant, but...I want to know what the zoning codes are for that restaurant in case I want to live there, or sell it, or whatever. It's just noisy, like, you don't realize, unless you live there, you hear the cars, doors open and closing, but you still could hear them. There's one waiter that has a car that is very loud at 11:00 pm at night he takes off and the whole neighborhood feels that.

But, but that's it. Just, you know, we would like to have it done the right way, follow the law and have some screening. And also, like, pollutants, I heard in the parking lot, like, runoff from oil and gas, that's not running through, like, grass or anything before, it's just going straight off the blacktop into the drain. I mean, before it was protected with the grass and the trees, even though it looked messy.

Chairman: Okay, thank you. I Appreciate it.

Jose Cotto: Just briefly, I have the impression that, Counsel, Mr. Davis, I believe it was last statement, trying to make... trying to imply here, or... not even imply directly, trying to say that my client sidestepped the whole procedure to do this. No, we didn't sidestep any... anybody or anything. We did everything properly. He invested a lot of monies. You're right, this is not about him being a nice guy or hardworking but he did do what he needed to do. He has another restaurant, does the same thing with the other restaurant. He complies, he calls a building department and we're here because of the recommendation of the building department, to file this zoning variance. And Mr. Davis, don't I ever state, you know, where I should be at 5 o'clock today, okay? You're not a party to that action.

Christie Addona: Please address the board.

Jose Cotto: Thank you. So... I wasn't there, I'm on a trial. A Week-long trial, with another jurisdiction, not this one here, regarding, zoning issues. And you're right, Council's correct zoning board deals in variances. We're in the proper... you're in a place to do this. And we've explained it properly, we're not sidestepping anybody, we're doing it properly, okay? And it's not a 90-foot variance, it's a 2-foot barrier. Okay, so that's all I have to say in response.

Christie Addona: And the distinction is it's two-foot over what was previously existing as shown on the plans, versus 2 foot over what would be required by the code now. So those are... those are the two different ways of thinking about it. This is a complex situation as to what Nonconformity, if anything, is being increased within what this board's jurisdiction is. But those are the two concepts that you're looking at when you're thinking about this.

Jose Cotto: Lastly, I'll say that the criteria that you must follow, we followed. It's going to be a tremendous hardship on my client if this board where he's asked remove the curb. There's no detriment to public interest. 2 foot is minimal, doesn't encroach on the neighboring property, and as you heard here, I think the main complaint is the trees, the noise, a successful restaurant. Before I was there in Briars, you know, it was dying down towards the end. It wasn't as successful as it is now. They don't like that. That's, you know, that's not our problem and they're using all this as a guise to get their way.

Chairman: Anyone else in the audience?

Drew Miller: Yeah, can I say something?

Chairman: Just give you a name and address?

Drew Miller: Drew Miller. Mrs. Miller's husband. I've lived in this town my whole life.

Chairman: Where do you live now?

Drew Miller: Oh, I live in Yorktown Heights. I own property all my life. I own multiple properties in Ossining. I've been part of this community a long time. A lot of people know. I know who you are, too. All I want to know is, being part of the community, people can just do what they want, or do you have to go by the law?

Like I said, my wife was there one night when I wasn't there, and she looked out the window, and somebody beeped the horn because they didn't like her looking out in the parking lot. I could raise my voice and this is how it sounds in the parking lot to the house. We're just saying the bedrooms are right there. I don't know, by you showing up on the property, if you understand what the problem is. If it was set back over this way, where it was before, fine. You want to bring it to a foot by the front? Who cares? Nobody's there. The driveway. Yeah. I just don't understand the... Psychological.

Rosemary Miller: Can I speak one more time?

Rosemary Miller, again, 2 Blue Lantern Road. The two-foot that's there is right by the bedroom, but they left a wider space, I don't know if it's 15 to 20 feet by the road, by 2 Blue Lantern Road. Why didn't they go two feet over there? You know, the whole length is supposed to be the same. along the fence. I mean, how it was before, it went in and out, it looks less than a problem. And then the branches that were trimmed off the 20-foot pines down... There's no screening there, yeah. So, if some type of pines, tall pines can be planted in front of those to provide screening, it would work, but right now there's no dirt. All the dirt is covered with rocks, you know. You need dirt for things to grab, also, in space. I tried to prevent all this from happening in the beginning, but no one wanted to stop this.

Clifford Davis: From a legal standpoint, Mr. Davis again, the record.

The board has to also look as to whether there are alternatives, and the board, as the Zoning Board of Appeals knows, we have to give the smallest variance possible. Are there alternatives?

One alternative is that not only do they not get the two feet, but they have to move it back and comply with what the planning board is going to do. So, I haven't heard any testimony as to why they need these two feet, other than that it will be, quote, annoying Or it cost money to move it back when they should never have done it, because it wasn't in compliance with the 2007 site plan.

Clifford Davis: So, you can't come before this board and say it's going to cost us money when you didn't comply with the plan and you just did it when it's going to be to the detriment of a neighbor. If this two-feet was somewhere else, we wouldn't be here tonight, but it's right on top of them. You shouldn't have a commercial parking lot just two feet away from...

Chairman: It's more than two feet. The parking lot is more than two feet away from the house.

Clifford Davis: At this location?

Chairman: At the whole location. Now, I believe this application, I understand about what they're requesting, but the cars that are parked facing that house, basically, those headlights hit into that new fence that he put up. If you take those parking spaces and bring them back into the middle of the lot people that would be parking there, every headlight would hit that house more than what it is right now.

Rosemary Miller: That's why you need trees.

Chairman: I understand that. But that's our decision. Okay.

So, anything else, sir?

Clifford Davis: Well, again, I would just reiterate what your Town Council was saying on the issue of pre-existing use in the building inspector. It's our position that what was on the 2007 plan was pre-existing. After 2007, they completely changed the game, and when you completely change the game, you now have to comply with what the law is now which is the 20-foot setback. Which I attached as part of my package. Thank you.

Chairman: Anybody else in the audience have anything with regards to this application?

A question I have for the building inspector, were any violations given to the applicant with regards to removal of trees and or cutting back trees that are on his property.

Jon Turnquist: No. We did not give a violation for that. We did have a meeting there with the arborist and the trees that were cut down were dead. They were trimmed. I'm not the arborist, but I did meet there while he was there and listen there was one that was dead down by the road, but that was obscured, and that was agreed to cut down. It was also hazardous to the wires and everything.

Chairman: So... I've listened to all of this testimony like Mr. Miller knows, I've been living there for 55 years, so I know this site inside and out and... yes, what I was listening to was that, you know, this... applicant basically cut down anything and everything that they shouldn't have done. It's trees on his property, and if you did the right thing, which you did, and brought an arborist there, and what he did was legally done, that really has no bearing on how many trees were there, the dead ones he took out, and the ones that... and there were many that were overhanging over the house. He cut back. He has a right to do that. Is that correct?

Jon Turnquist: Yes, that's what the point of the meeting was, was to trim them, and they're supposed to, it might take them a while, but they have to branch out.

Chairman: Okay, I'd like to have a motion to close the Public Hearing. All in favor?

David Krieger: Aye.

Tom Wills: Aye.

[A motion was made by David Krieger, seconded by Tom Wills and unanimously passed by the Board to Close the Public Hearing for Abel Magana, 512 North State Road]

Chairman: It is the unanimous decision that the public hearing is closed.

As was discussed at the beginning of the meeting, the criteria of an area variance is:

Whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby property will be created by the granting of the area variance.

Whether the benefits sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than an area variance.

Whether the requested area variance is substantial.

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

Whether it alleged difficulty was self-created.

This factor is relevant to the decision, but the fact that the difficulty was self-created does not preclude granting the area variance.

Chairman: Okay, so, I'm going to ask this board, I'm going to come up with a recommendation and you can just say, yay or nay. I'm in favor of granting the variance for the application that was brought to our attention with the scenario that the applicant has to install, whether it's enough time this year or early spring, fast-growing arborvitaes along the whole back piece of that property so that in the very near future, since some of these arborvitaes, and I'm not an arborist, but

Chairman: I would request that a fast-growing screening that is green all year round to be planted besides the 4 or 5 Pine trees that he currently has in place so that the whole length of the area will be completely screened from the restaurant as was previously done with the trees that were there, even though most of them were dead and should have been taken care of and he had every right, basically, to trim them and to take out the dead ones. That is my recommendation to this board for this very complicated zoning variance.

David Krieger: I would agree with that, as he is.

Tom Wills: I have a point of question here relative to the conference. I'm... The lawyer representing the complainant, says that we may not be acting correctly on this, and I would like your opinion on it.

Christie Addona: Only this board can grant a variance. The planning board cannot grant a variance from the provisions of the zoning code. This is complicated by the fact that there was a site plan on file.

Tom Wills: And I'm seeing it right here.

Christie Addona: Yes. That there are violations related to compliance with that site plan. The applicant has indicated in the past that they were going to go back to the planning board. That, as of yet, has not happened. If they were to go back to the planning board, the issue of screening would absolutely be addressed before the planning board so there is an overlap in terms of what the two boards are looking at. You're looking at the variance for the setbacks, and certainly screening is a factor.

Chairman: That's the biggest factor.

Christie Addona: Exactly.

Chairman: So, if you grant this with the scenario that he has to put in, current arborist, okay Screening that will cover up that whole length of the site which would circumvent any of the problems that are associated with this or the 2007 application.

Christie Addona: I mean, that's not a determination I can make. That would be what your board is considering.

Chairman: As far as I... I'm looking at this a little differently than most others, is that if this was not an application That should not have been in front of us. It wouldn't be here you would have said, or someone would have said to this board, they have to do this, this, and this, it

can't come to you. That's not the case. We are now, you know Discussing this I think that the biggest complaint here was the screening, and that's why I asked whether or not he had the right to go take care of the trees that were on his property. I'm also very happy to hear that our building inspector took an arborist there and they agreed to what he had to go do and he did it.

I recommend with this application in front of us that whatever necessary screening and I personally feel, since I have it at my property, arborvitaes that screen in, I can't see my next-door neighbor in the backyard because of the trees that I planted. And I think The owners of that property have, you know, the right to ask for that, and I have no problem in granting this application with regards to putting up screening along that whole length of the parking lot in the back. That's what you're voting on.

Christie Addona: So, what I would also say is, I think if that's the direction the board wants to go, there should be some sort of enforcement mechanism because this issue with the site plan and the screening...

Chairman: So, I would give a timeline. Is that whether or not he could get it done before the winter, okay, or definitely by early spring, depending on when you could buy the trees and plant them before the ground freezes.

Christie Addona: But I guess the question then becomes, what happens, or what is the penalty if he does not? Because these issues related to the site plan have been existing for over a year.

Chairman: Then I would take this variance away and let him go back to his 2007 site plan approval.

Christie Addona: So, the variance is only valid if the screening is installed by, I mean, we're talking about the spring at that point.

Chairman: I think we really are. Listen, if you can get a landscaper, There's machines that dig holes and put the trees in. You don't have to dig it by hand. You could put it in now or spring. I'm not a landscaper or an arborist. I'm just saying that by spring... Do you want to date? May 31, 2026.

Jon Turnquist: That's realistic. I think that's realistic. We don't know. The weather's changing.

Chairman: Yes, or no?

Tom Wills: Well, I want to say before I say I'm... I go along with this, is that I've been to that site a couple times and there clearly has been some miscommunication, but they've done a fine job in that they're agreeable to do what we're asking them.

Tom Wills: It's the best we can do under what you say is a complicated application but that they have tried to work with the city on this parking lot drainage, I think is in admirable. I mean I just can't see where... We're not representing correctly, the Town. I vote for the variance.

Chairman: If anything per the area variance criteria for the area of variance is that it's not changing the character of the neighborhood and it's definitely improving what is a constant problem of flooding in the area with the new drainage and the new parking lot and the pitch of the parking lot that the applicant put in. So, taking that all into consideration, is that I think everybody wins and during the course of this whole hearing there was never a mention of what it's going to cost him to go do this, so I don't think that is the criteria to fall back on, that it only costs money. That wasn't brought up at all by anyone, so that's why... I'm in favor and it's unanimous, with regards to granting this and putting in screening with trees fast growing, so that by May 31st of 2026, you will have whatever's necessary of every 5 or 8 feet, trees that can grow, and protect the house and the privacy of the tenants that are there or the current owners that may go back and live there.

Christie Addona: Can I suggest that we put that the screening be, signed off on or, consented to by the Town's arborist or landscape architect. That's something that they, using your recommendations as a starting off point, if they think there's a different type of tree that would work better, or, you know, if it's going to grow too wide...

Chairman: I'm in favor of a fast-growing evergreen arborvitae because I've had a lot of experience with it, other than what they've put back there right now that are going to be growing into the fence and over the fence very shortly. whoever recommended that, and I'm not an arborist But whoever recommended those wasn't the right thing to do. You have to bring it out further, so they have a chance to grow with his sun. Sun is very important to arborvitae. I mean, I could see they want to 10, 20 different types of pines put back there, and when they recommended, you know, trees back there. I'm not an arborist, but I think a fast growing for the benefit of the owners of the house, not something that's going to grow 3 inches a year. You've got arborvitaes that are screening, that could grow 3 feet a year.

Jon Turnquist: The initial height of height of the tree starting?

Chairman: Minimum 6 feet.

David Krieger: Good point.

Tom Wills: Yeah, I think the minimum..

Chairman: Okay. All in favor?

Clifford Davis: If I could just raise one point.

Chairman: Excuse me, we're taking a vote. I will make a motion.

David Krieger: Yes.

Tom Wills: Yes.

Chairman: Okay, it's unanimous.

David Krieger: And given all the things you've said, yes.

[A motion was made by Sal Carrera, Chairman, seconded by David Krieger and unanimously approved by the Board to vote in favor of granting the requested variance with tree planting and screening conditions as described. Screening to be signed off on, or consented to by the Town's Arborist or Landscape Architect]

Chairman: Yes. Thank you. Have a good evening.