

A scheduled meeting of the Zoning Board of Appeals of the Incorporated Village of Freeport was held on April 18, 2024 in the Municipal Building, Main Conference Room, 46 North Ocean Avenue, Freeport, NY at 6:00 P.M. with the following present:

Rosa Rhoden	Chairperson	Excused
Jennifer Carey	Deputy Chairperson	
Charles Hawkins	Member	Excused
Ben Jackson	Member	
Anthony J. Mineo	Member	
Drew Scopelitis	Alternate Member	Absent

The meeting was also attended by:

Robert McLaughlin	Deputy Village Attorney
Lisa DeBourg	Deputy Village Clerk
Remy Watts	Secretary to the Zoning Board of Appeals
Scott Braun	Building Department representative

At 6:07 P.M. the Board convened in the Main Conference Room and Deputy Chairperson Carey led in the pledge of Allegiance.

Eight individuals were present in the audience.

At 6:08 P.M. motion was made by Member Mineo, seconded by Member Jackson and carried to adjourn this portion of the Legislative Session to enter in Executive Session to consult with counsel.

The Clerk polled the Board as follows:

Member Hawkins	Excused
Member Jackson	In Favor
Member Mineo	In Favor
Deputy Chairperson Carey	In Favor
Chairperson Rhoden	Excused

At 6:35 P.M. motion was made by Member Mineo, seconded by Member Jackson and carried to reconvene in Legislative Session.

The Clerk polled the Board as follows:

Member Hawkins	Excused
Member Jackson	In Favor
Member Mineo	In Favor
Deputy Chairperson Carey	In Favor
Chairperson Rhoden	Excused

At 6:37 P.M. Deputy Chairperson Carey convened in the Main Conference Room and led in the pledge of Allegiance. The Public Hearing was called to order for which a full stenographic record was taken.

Nineteen individuals were present.

Motion was made by Member Jackson, seconded by Member Mineo and carried to approve the March 21, 2024 minutes.

The Clerk polled the Board as follows:

Member Hawkins	Excused
Member Jackson	In Favor
Member Mineo	In Favor
Deputy Chairperson Carey	In Favor
Chairperson Rhoden	Excused

One (1) Affidavit of Publication and one (1) Affidavit of Posting, were marked into evidence as Board Exhibits.

Application #2024-4 – 368 Wallace St, Residence AA- Section 55/ Block 396/ Lot 363 – Maria Gonzalez – Legalize existing 80.5’ x 5’ high and 50’ x 6’ high closed fence Variances: *Village Ordinance §210-6A, §210-171. Fences and Enclosures.* One Affidavit of Mailing was marked into evidence as a Board Exhibit. The Interpreter presented the application on behalf of the homeowners Mr. Perez and Mrs. Gonzalez, who were present.

Motion was made by Member Jackson, seconded by Member Mineo and carried to close the public hearing to further evidence and testimony and reserve decision.

The Clerk polled the Board as follows:

Member Hawkins	Excused
Member Jackson	In Favor
Member Mineo	In Favor
Deputy Chairperson Carey	In Favor
Chairperson Rhoden	Excused

Application #2024-6 – 49 Madison Avenue, Residence A – Section 54/ Block 084/ Lot 1 – Jonathan Guardado – New 234’ x 6’ PVC fence. Full privacy on rear of property. 5’ Solid, 1’ lattice on side and front of home. Variances: *Village Ordinance §210-6A, §210-171. Fences and Enclosures.* One Affidavit of Mailing was marked into evidence as a Board Exhibit. Jonathan Guardado, the homeowner, presented the application.

Motion was made by Member Jackson, seconded by Member Mineo and carried to close the public hearing to further evidence and testimony and reserve decision.

The Clerk polled the Board as follows:

Member Hawkins	Excused
Member Jackson	In Favor
Member Mineo	In Favor
Deputy Chairperson Carey	In Favor
Chairperson Rhoden	Excused

Application #2024-5 – 106 Broadway, Apartment/Golden Age - Section 55/Block 232/Lot 201 – 106 Associates – New Family multi residence 80 apartment building (21,545 SF) with onsite parking. Variances: *Village Ordinance §210-6A, §210-280 Building Area, §210-281 Front Yards, §210-282 Side Yard, §210-290 Parking and Garage Facilities, §210-291 Population Density*. One Affidavit of Mailing and One Nassau County Planning Commission Recommendation was marked into evidence as Board Exhibits. Chris Browne, the Attorney, presented the application, followed by Peter Florey, the Co-Developer, Salvatore Coco, BHC Architect, and Tanya Carter, the owner of 106 Broadway.

Motion was made by Member Jackson, seconded by Member Mineo and carried to close the public hearing to further evidence and testimony and reserve decision.

The Clerk polled the Board as follows:

Member Hawkins	Excused
Member Jackson	In Favor
Member Mineo	In Favor
Deputy Chairperson Carey	In Favor
Chairperson Rhoden	Excused

DECISIONS:

Application #2024-2 – 159 Hanse Avenue, Industrial B - Section 62/Block 230/Lot 65 – Oscar Molatti – Proposed roof raised (match existing height 19.42’), new 15 Loading docks, walkway 308 SF and rebuild 2 retaining walls. Variances: *Village Ordinance §210-6A, §210-172A (10). Required parking spaces, §210-153 vehicular access for loading and unloading.*

Anthony Mineo moved that this Board make the following findings of fact:

A public hearing was held on February 15, 2024 wherein applicant was represented by architect Mark Anthony Munisteri. He explained he is there on behalf of his clients of Natural Foods, Oscar Molatti and Brian Cardoza. They run a large egg distribution business, with a facility currently in Inwood. However, they need more space.

Based on the building size, 64 parking spaces are required, but only 33 are provided. Mr. Munisteri explained that there are a maximum of about 30 employees who would work at that facility. Typically however, it is about 15 people there at a time, moving trucks, and loading trucks. The truck drivers are in trucks. Workers load the trucks with eggs, and the trucks leave.

This process occurs between 4:00am and 6:00am. Then the other shift is at the end of the day when eggs are delivered to the warehouse, which is basically a giant refrigerator. These deliveries occur after 7:30pm. During the morning shift, refrigerated box trucks are loaded up with eggs for distribution. Those trucks are a maximum of 24-26 feet long. During the evening shift, there are 53-foot tractor trailers that deliver eggs. They are willing to un-attach and move the truck to unload the trailer if necessary, according to Mr. Cardoza.

The shortest of the 15 loading docks is 34.9 feet, at the north side of the property. The longest loading docks at the south end of the property is about 55 feet. They plan on a maximum of four or five tractor trailers at one time, utilizing the four south-most loading docks. However, with a 53-foot unit and a cab, the vehicle will extend onto the roadway. However, Mr. Munisteri opined that most of the units are 43 feet and not 53 feet, which is 68 feet, when connected to a 25-foot cab. Concerns were raised about emergency vehicles such as firetrucks making it down the street when there were large trucks in the street. Mr. Munisteri explained that it was possible to unhook, but as Mr. Cardoza explained, it only takes a maximum of 25 minutes to unload a truck.

The Board asked if the applicant was open to restrictions on the time for operation. Mr. Cardoza said yes, that they were ok with restrictions on receiving tractors only between 7:00pm to 4:00am.

The applicant returned to the Board the following month after the variance for the required vehicular access at the side or rear of the building set back at least 60 feet from the street was omitted from the denial letter.

Mr. Munisteri reiterated some of what he had previously explained, as well as some new additional information, including that tractor trailers make deliveries 6 days a week, and it is one or two tractor trailers each day.

Mr. Munisteri confirmed that he consents to limitations on the hours tractor trailers are permitted to park. He also consented to limitations on tractor trailers only being at the 4 southern most loading docks.

Regarding the parking variance:

1. On balance, the benefit to the applicant by the granting of this variance is not outweighed by the detriment to the health, safety and welfare of the neighborhood or community if such variance were to be granted. The Board has 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. Applicant's testimony is that there are never more than 30 employees at the warehouse at a time. 31 parking spaces will accommodate this load.
 - 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;
 - c. that the requested area variance is insubstantial. In light of the proposed use of the building, the 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 is an existing building in a built-up industrial park with no way to create more parking.

Regarding the variance regarding the location and distance from the street of the loading dock.

2. On balance, the benefit to the applicant by the granting of this variance is not outweighed by the detriment to the health, safety and welfare of the neighborhood or community if such variance were to be granted. The Board has 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. As long as applicant uses the southern most loading docks for deliveries, including detaching of the cabs, impact on the surrounding neighborhood should be minimal.
 - 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. The loading dock locations have been in place since the construction of the building. Applicant is before the Board because the roof is being raised and there is a walkway being constructed. There are no alternatives with an existing building.
 - 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 is a pre-existing building, constructed over 50 years ago. The location of the loading dock is fixed. The distance from the street is fixed.
3. The Board, as lead agency, has determined that this action is an unlisted action under SEQRA. A short environmental assessment form has been completed by the applicant and this Board. The Board finds no environmental impact under SEQRA, issues a negative declaration, and no further review is required.

It was further moved that this application be granted subject to the 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 variance(s) is being granted on the basis of the specific use proposed. If anything in this application or the use of the property is to change, the applicant or owner must return to the Board for further review. Applicant presented testimony that this is a business that only has about 40 employees, with a maximum of 30 workers at any

given time, and only for limited periods of time. That is why the Board is granting the variance for parking and for loading dock location. However, should this operation ever become a more typical warehouse operation with different hours, more employees, more trucks being used, this variance is no longer valid, and the owner of the property would have to return to the zoning board for further hearings

- 4. Nothing in this decision should be viewed as giving applicant a right to park tractor trailers extending into the street. Should tractor trailers with their cabs extend into the street, they will be subject to tickets issued by the Freeport Police Department. Mr. Munisteri mentioned that the truck drivers have the ability to detach, which applicant may strongly want to consider. Applicant may want to consider using the smallest tractor trailers available to them, whenever possible.
- 5. Applicant is limited to tractor trailers in the 4 southern-most loading docks, which are the largest. At no time should a tractor trailer be in any other loading dock.
- 6. Applicant is limited to tractor trailer deliveries (or pickups should that ever occur) between 7:00pm and 4:00am.
- 7. Box truck loading of eggs is limited to 3:00am to 7:00am.

Second by: Ben Jackson

The Clerk polled the Board as follows:

Member Hawkins	Excused
Member Jackson	In Favor
Member Mineo	In Favor
Deputy Chairperson Carey	In Favor
Chairperson Rhoden	Excused

Application #2024-1 – 261 S. Long Beach Avenue, Residence AA - Section 62/Block 122/Lot 13 – Jiereh Bowen – Legalize existing 12’ X 24’ in-ground pool and 8’ X 8’ hot tub. Variances: *Village Ordinance §210-6A, §210-35C (2) & (3). Required yards, §210-223D. Location; fencing; water supply.*

Ben Jackson moved that this Board make the following findings of fact:

A public hearing originally scheduled for February 15, 2024 was adjourned to March 21, 2024 to allow for an amended letter of denial to be prepared by the building department. At the hearing on March 21, 2024, the applicant Jiereh Bowen spoke on behalf of his own application. He explained that he was before the Board to legalize a pool and hot tub that had been installed by his parents, who are now deceased. He explained that from the time he can remember, his parents always had a pool. He was replacing the existing pool, when the building department showed up, and ultimately informed him that there were no permits for the pool. He was 75% complete with installing the new pool. The original pool was semi in ground, and the new one is fully in ground. The old pool was about 4 feet deep and the new one is 5 feet deep. The pool is the same size as that which had always existed. The issue is that the pool violates the general setback requirement

of 5 feet, and also violates the pool specific setback requirement of five feet. The Board discussed concerns about the location of the pool 3.5 feet from the rear property line, including concerns that a child could jump the fence and end up in the pool.

The hot tub has been in existence for about five years, and is located right on the property line, at the fence, without the required 5-foot setback. Mr. Bowen acknowledged that he would be able to move the hot tub because it is a self-contained unit.

The Board has serious safety concerns about the pool and hot tub being too close to the property line. These are serious safety issues. As such, the Board will not grant variances for these setback issues.

1. On balance, the benefit to the applicant by the granting of this variance is far outweighed by the detriment to the health, safety and welfare of the neighborhood or community if such variance were to be granted. The Board has determined:
 - a. that 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 area variance. Setbacks of hot tubs and pools are primarily for safety purposes. Without an adequate setback, applicant runs the risk of a serious accident occurring.
 - b. that the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance. Applicant can move the hot tub, with relative ease. Regarding the pool, perhaps the additional 1.5 feet can be filled in to create the full 5-foot setback.
 - c. that the requested area variance is substantial. Not only is the variance substantial, but it is a safety issue.
 - d. that the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - e. that the alleged difficulty was self-created. While this pool is pre-existing to the applicant, pools have always required permits, and this issue would have been caught had a permit been filed. Either way, this factor is not dispositive.

It was further moved that this application be **DENIED** based upon the foregoing findings.

Second by: Anthony Mineo

The Clerk polled the Board as follows:

Member Hawkins	Excused
Member Jackson	In Favor
Member Mineo	In Favor
Deputy Chairperson Carey	In Favor
Chairperson Rhoden	Excused

Application #2024-3 – 51 Forest Avenue, Residence A- Section 55/ Block 348/ Lot 14 – Dennis Marti Code Compliance for apportionment to create a new buildable lot B 44.42'X 193.94' (8,614.81 sq. ft.) Variances: *Village Ordinance §210-6A, §210-40. Lot area; street frontage; lot width*

Anthony Mineo moved that the Board make the following findings of fact:

A public hearing was held on March 21, 2024 wherein applicant was represented by Michael Gregory of Permits-R-Us, LLC. He explained that the applicant, Dennis Marti is proposing to subdivide a parcel at 51 Forest Avenue. Mr. Marti proposes to construct two single family homes that are approximately 2,200-2,300 square feet with four bedrooms and three bathrooms. Each lot will be in excess of the 5,000 square feet required, at 9,673 and 9,146 square feet.

The code requires a lot be 50 feet wide at the rear of the dwelling. At the proposed rear point of the dwelling, the lot is 47.56 feet wide, so a 2.44 foot variance is required.

Mr. Gregory relayed some questions that the neighbors had asked. Would the properties be rentals? No, they will be for sale. What will the setbacks be? The proposed houses are centered within the lots.

Mr. Marti also spoke on behalf of his application. He was unaware the property would need a variance to subdivide when he purchased the property because the frontage is 100 feet. However the property narrows as it moves back. Each house will provide an attached garage and a 4 car driveway.

A neighbor, Aaron Lloyd, spoke on the application. He explained that he came out because he was concerned that the property might be rentals. His family has been on the block for 70 years. His grandmother is 102, living at their home. Mr. Marti's assertions about offering the houses for sale alleviated his concerns. He also had concerns about the setbacks because the proposed house will be closer than the previous house, however, he concluded that as long as it is a quality dwelling, he does not have a problem. His concerns about parking were also alleviated with the ample driveway space proposed. He explained that the original house, which has now been demolished, was in great disrepair and was unlivable.

4. On balance, the benefit to the applicant by the granting of this variance is not outweighed by the detriment to the health, safety and welfare of the neighborhood or community if such variance were to be granted. The Board has 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;
 - 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;
 - 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 may be considered self-created, but this factor is not dispositive.
5. The Board, as lead agency has determined that this action is a Type II action and under SEQRA and no further review is required.

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

- 8. Applicant/Owner must comply with all the Rules and Regulations of the Village of Freeport.
- 9. Applicant must obtain the required permits from the Building Department.
- 10. This application for variance(s) 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.

Second by: Ben Jackson

The Clerk polled the Board as follows:

Member Hawkins	Excused
Member Jackson	In Favor
Member Mineo	In Favor
Deputy Chairperson Carey	In Favor
Chairperson Rhoden	Excused

At 8:26 P.M motion was made by Member Jackson, seconded by Member Mineo and carried to close the meeting.

The Clerk polled the Board as follows:

Member Hawkins	Excused
Member Jackson	In Favor
Member Mineo	In Favor
Deputy Chairperson Carey	In Favor
Chairperson Rhoden	Excused



Remy M. Watts
Secretary to the Zoning Board of Appeals

April 18, 2024