PRESENT: HON. MICHAEL R. CUEVAS
JUSTICE OF THE SUPREME COURT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SCHENECTADY

In the Matter of the Application of

MATTHEW WILLIAM WOOD and
PATRICIA DOYLE ,
Petitioners,

DECISION AND ORDER
Index No.: 2022-0855

RJI No.: 46-1-2022-0415

-against-

ZONING BOARD OF APPEALS FOR THE TOWN OF NISKAYUNA,
Respondent.

NOTICE:

PURSUANT TO ARTICLE 55 OF THE CIVIL PRACTICE LAW AND RULES, AN APPEAL FROM THIS JUDGMENT MUST BE TAKEN WITHIN 30 DAYS AFTER SERVICE BY A PARTY UPON THE APPELLANT OF A COPY OF THE JUDGMENT WITH PROOF OF ENTRY EXCEPT THAT WHERE SERVICE OF THE JUDGMENT IS BY MAIL PURSUANT TO RULE 2103 (B)(2) OR 2103 (B)(6), THE ADDITIONAL DAYS PROVIDED SHALL APPLY, REGARDLESS OF WHICH PARTY SERVES THE JUDGMENT WITH NOTICE OF ENTRY.

APPEARANCES

Matthew William Wood, *Pro Se*

Patricia Doyle, *Pro Se*

Michael Del Piano, Esq., Lewis Johs Avallone Aviles, LLP, Attorneys for Respondent

MICHAEL R. CUEVAS, J.S.C.

INTRODUCTION

Matthew William Wood and Patricia Doyle ("Petitioners") commenced this proceeding against the Town of Niskayuna Zoning Board of Appeals ("Respondent" or

"ZBA"), pursuant to *Civil Practice Law and Rules* ("*CPLR*") *Article 78*, alleging that the ZBA's April 27, 2022 decision granting an area variance to David Guest of 2275 Grand Boulevard, Niskayuna, New York was arbitrary and capricious and not supported by substantial evidence.

The underlying facts are as follows: on or about March 4, 2022, David Guest (Petitioners' next-door neighbor; hereinafter "Guest")) applied for a building permit to construct an "Addition to main House of 3 car garage w/care unit above". The accompanying hand drawn sketch showed a proposed 28 foot by 38 foot garage with a breezeway of undefined dimensions between the garage and his existing house on his property located at 2275 Grand Boulevard, in the Town of Niskayuna.[1] The Town's Zoning Enforcement Officer denied the application because Section 220-13 of the Town's Zoning Ordinance requires a 15 foot side yard setback for the proposed construction and Guest proposed to build within 5 feet of the side property line between his property and Petitioners'.[2]

Guest "appealed" the Zoning Enforcement Officer's decision by filing an application for an area variance with the ZBA, as permitted by the Zoning Ordinance. A notice of the ZBA's April 27, 2022, meeting[3], at which the application for a variance was to be heard, was mailed to Petitioners. Notably, the notice advises interested parties that if they wish to express an opinion regarding the proposed change, they *may* do so at the listed time and place or *may* request a virtual log-in to the meeting or they *may* send in a letter which will be made a part of the permanent record. Petitioners did not attend the meeting, nor did they submit any written opposition prior to the meeting. Petitioners assert that they mis-calendared the date of the meeting and attempted to appear at Town Hall on April 28, 2022, and then later exchanged phone calls and e-mails with town officials regarding

[1] *Return, Ex. A*
[2] *Return, Ex. B*
[3] *Return, Ex. C*

their opposition to the variance.[4] At the meeting, Guest advised the ZBA that his neighbors (Petitioners) did not support his application. After discussion and the public hearing, the ZBA voted unanimously to grant the variance.

The Petition was verified June 1, 2022 and is supported by the joint affidavit of Matthew William Wood and Patricia Doyle and various exhibits. On June 2, 2022, this Court signed an Order to Show Cause, directing Respondent to appear on June 23, 2022. On June 21, 2022, the Court received a request for an adjournment from Respondent's counsel. The Court conducted a videoconference that afternoon, with the parties appearing virtually. It was agreed that the proceeding would be adjourned until July 5, 2022, and that Respondent would have until June 30, 2022, to serve and file answering papers

In lieu of filing an Answer and Return, Respondent brought a pre-answer Motion to Dismiss the Petition. On July 6, 2022, the Court issued an Order denying Respondents' Motion to dismiss and directing Respondent to serve its Answer and Return within twenty (20) days of the date of the Decision and Order. An Answer and Return was filed on or about July 26, 2022. . On July 29, 2022, the Court Ordered that the matter would be deemed submitted on papers unless Petitioners' serve a reply by August 8, 2022. No Reply was submitted, and the Court deemed the Petition to be heard on submission.

A. THE PETITION

The Petition requests that the Decision Letter dated May 3, 2022 from the ZBA be determined void and annulled on the grounds that it was arbitrary and capricious and/or that the decision was not supported by substantial evidence in the record.[5] Despite his contentions to the contrary, Guest did not inform the neighbors directly affected by the variance about his construction plans.[6] Petitioners texted Guest on April 23, after

---

[4] *Petition* ¶4.
[5] *Petition* ¶3.
[6] *Petition* ¶4.

receiving notice on April 18 or April 19, and learned that the garage would be on their side of the property.[7] The proposed project would only be located 5 feet from the property line and 13.7 feet away from Petitioners' home.[8] The proposed new garage is 2 stories high, 38 feet by 28 feet wide, 26.1 feet, or more in height.[9] The structure would eliminate Petitioners' privacy, as it would put a first floor bedroom, bathroom, and office/study only 13.7 feet away from the new structure.[10] It would be 25.6 and 29.1 feet away from two second floor bedrooms.[11] It would devalue Petitioners' property.[12] Petitioners' assert that the project would block light and air as it is only slightly lower than the adjacent houses (Petitioners' home is 28 feet in height).[13]

Petitioners' further assert that Guest's hardship in accessing his current garage was self-inflicted as it results from another recent addition to the property.[14] Guest erroneously stated that Petitioners' maintain a 5 foot variance, but this is not true.[15] Petitioners' home and garage are located 8.7-9.7 feet from the property line.[16] When the home was constructed in 1931, there were no zoning regulations in the town of Niskayuna.[17] Petitioners' contend that Guest did not detail whether it would be feasible for him to pursue a plan that would not require a variance.[18] He also did not detail the need for such a large structure that a variance was required.[19] Petitioners' indicate that Guest's property is .49 acres with other site options that would not require an area

---

[7] *Petition ¶4.*
[8] *Petition ¶5, Ex. B.*
[9] *Petition ¶6.*
[10] *Petition ¶6.*
[11] *Petition ¶6, Ex. C.*
[12] *Petition ¶6.*
[13] *Petition ¶7, Ex. C.*
[14] *Petition ¶8.*
[15] *Petition ¶9, Exs. D, E.*
[16] *Petition ¶9.*
[17] *Petition ¶9.*
[18] *Petition ¶10.*
[19] *Petition ¶10.*

variance.[20] Guest could also build a smaller garage in the same area that does not require a variance.[21]

In its Decision, the ZBA admitted that the request for the area variance was substantial, and indicated that Guest provided strong reasons justifying it.[22] However, Guest never detailed why he needed such a large structure, and merely stated that he wanted to build something to put "anything that [he could] possibly think of."[23] Petitioners' further state that the ZBA did not confirm whether Petitioners had an issue with Guest's use of the driveway, as he insisted.[24] They do not have an issue with his use of the driveway.[25] Petitioners' argue that the ZBA's decision was not supported by substantial evidence in the record regarding the required questions it must answer.[26]

B. APRIL 27, 2022 ZBA MEETING[27]

Guest stated that he has lived in the house for 18 years.

Alternate sites

There is a carriage house/garage that fits one car but is difficult to access from the driveway. Guest noted that he considered demolishing the carriage house and replacing it with a larger structure but didn't want to because it is in their rear yard and the new garage would take most of that yard because it is a three-car garage. Guest has already installed a deck/patio in the backyard. Guest wants to use the side yard because he had prepared it for his family to use and it never was, and it is out of the way.

Guest has deeded rights to a driveway off Van Antwerp Road. Various owners of the shared driveway have requested that no one back out of the driveway for safety, which

---

[20] *Petition ¶10, Ex. C.*
[21] *Petition ¶10, Ex. E.*
[22] *Petition ¶11, Ex. E.*
[23] *Petition ¶11, Ex. E.*
[24] *Petition ¶12.*
[25] *Petition ¶12.*
[26] *Doyle Aff. ¶2.*
[27] *Answer, Exs. F, H.*

he agrees with, but causes his family to use their unpaved land to turn around, which results in mud.

Guest indicated that he could not buy the necessary land to allow him to come in off of Story Avenue. And it was noted that adding a driveway along Palmer Avenue would split the rear of his property. The side facing Grand Boulevard is too steep for any reasonable access by a vehicle.

The board noted that there "doesn't seem" to be other ways to accomplish what Guest wants to accomplish.

Guest Benefits

Guest would like his cars to be enclosed in the winter. When asked about building a smaller structure, Guest indicated that the has 5 vehicles, lawn maintenance equipment and at least two tractors to be stored.

Vague Details

Guest indicated that he is not sure of what height the structure will be. It will be anywhere between 21 and 35 feet (the towns height restriction is 35 feet), but probably 26 feet. Guest stated that the second story would not be used as living space, but maybe storage or an exercise room. It will be finished and have electricity, stairs, and possibly a bathroom with a shower (the drains will be installed in the foundation), or a dog shower. Guest stated that "if" he does a bath he will talk to the town for the separate permit. If he is approved he will have an architect figure out how the garage will be connected to the house. He stated that he "doesn't think" that it will have direct access to the house. There was an indication that at least one of the neighboring homes is only one-story.

Neighborhood Benefits

Guest indicates that he intends to use materials that complement the original build of the house. Guest stated that he is open to working with the Architectural Review Board for input on refining the design and ensuring that the structure is aesthetically pleasing, and that symmetry, weight, and scale is balanced.

The proposed garage allows for his vehicles to be parked inside the building, improving the view from Grand and Palmer. It will purportedly eliminate the glare of the headlights from Guest's house to the house across the street.

The board noted it would "end the car circus around Guest's yard.

Opposition

Guest indicated that Petitioners were not in favor of the addition. Guest stated that Petitioners' 1st floor addition is 5 feet off the property line just like this proposed addition. Guest noted that Petitioners were concerned about the resale value of their home. Guest also indicated that there is a fence on that side and Petitioners' HVAC condensers.

ZBA Rationale and Vote

At the conclusion of Guest's presentation, a motion was made and seconded to approve the application for a variance. ZBA member Richard Greene stated the basis for the motion in a summary manner. With little further comment, the ZBA members voted to approve the application.

C. MAY 3, 2022, DECISION AND LETTER[28]

By a May 3, 2022 letter, the ZBA Chairperson advised the Guests that the Zoning Board of Appeals granted the variance they requested. It stated that, "The Board based its decision on the findings of fact set forth in the applicant's appeal and the discussion between the applicant (or applicant's representative) and the Board members during the meeting." It then provided a link to view the meeting.

STANDARD OF LAW

Courts must generally give great deference to a zoning board's interpretation of a local ordinance. *Mack v. Board of Appeals, Town of Homer*, 25 A.D. 3d 977 (3d Dept. 2006). The Court shall only disturb the zoning board's determination if it is irrational, unreasonable, illegal, arbitrary, an abuse of discretion, or if the ZBA merely succumbed

[28] *Answer, Ex. G.*

to generalized community pressure. *Id.*; *see also, Matter of Pecoraro v. Board of Appeals of Town of Hempstead, 2 N.Y. 3d 608 (2004); Merlotto v. Town of Patterson Zoning Board of Appeals*, 43 A.D. 3d 926 (2d Dept. 2007). Deference is not required when the issue is one of pure legal interpretation of a statute or ordinance. *Id.* "Upon judicial review, the general rule is that, absent evidence of illegality, a court must sustain the determination if it has a rational basis in the record before the zoning board." *Merlotto, supra*, 43 A.D. 3d, at 926.[29] Even if the decision fails to set forth the ZBAs specific factual findings, the Court will not annul the determination or remit the matter if the record, including the ZBAs formal return in the *CPLR Article 78* proceeding, demonstrates that the ZBA did make specific factual findings supporting its determination." *Matter of Fund for Lake George, Inc. v. Town of Queensbury Zoning Board of Appeals*, 126 A.D. 3d 1152 (2015).[30] However, where the ZBA fails to cite to any particular evidence, its determination may not withstand judicial scrutiny. *Mengisopolous v. Bd. of Zoning Appeals of City of Glen Cove*, 168 A.D. 3d 943 (2d Dept. 2019)(where the court annulled the board's determination finding that its failure to cite to particular evidence with respect to the statutory factors indicated that it had failed to meaningfully consider those factors); *see also, 666 OCR TT, LLC v. Bd. of Zoning Appeals of Town of Hempstead*, 200 A.D. 3d 682 (2d Dept. 2021)(overturning the zoning boards decision because it lacked an objective factual basis or any evidence to show that the granting of the variance would have an undesirable

---

[29] *See, Sasso v. Osgood*, 86 N.Y. 2d 374 (1995) (a zoning board's determination must be supported by "substantial evidence." *See, Matter of Doyle v. Amster,* 79 N.Y.2d 592, 596, 584 N.Y.S.2d 417, 594 N.E.2d 911, *supra; Matter of Fuhst v. Foley,* 45 N.Y.2d 441, 444, 410 N.Y.S.2d 56, 382 N.E.2d 756, *supra; Conley v. Town of Brookhaven Zoning Bd. of Appeals,* 40 N.Y.2d 309, 314, 386 N.Y.S.2d 681, 353 N.E.2d 594, *supra* . However, a determination of a Zoning Board is administrative or quasi-legislative in character and rationality is the appropriate standard of review. The Board's actions are to be distinguished from quasi-judicial determinations reached upon a hearing involving sworn testimony (*compare, 300 Gramatan Ave. Assocs. v. State Div. of Human Rights,* 45 N.Y.2d 176, 408 N.Y.S.2d 54, 379 N.E.2d 1183; CPLR 7803[4]). When reviewing the determinations of a Zoning Board, courts consider "substantial evidence" only to determine whether the record contains sufficient evidence to support the rationality of the Board's determination).

[30] *Matter of Ohrenstein v. Zoning Bd. of Appeals of Town of Canaan*, 39 A.D. 3d 1041 (3d Dept. 2007); *see Matter of Iwan v. Zoning Bd. of Appeals of Town of Amsterdam*, 252 A.D. 2d 913 (1998).

effect on the character of the neighborhood, adversely impact physical and environmental conditions, or otherwise result in a detriment to the health, safety, and welfare of the neighborhood or community). The ZBA was not required to justify its determination with supporting evidence with respect to each of the five factors, so long as its ultimate determination balancing the relevant considerations was rational. *Merlotto, supra*, 43 A.D. 3d, at 926; *Matter of Ohrenstein v. Zoning Bd. of Appeals of Town of Canaan*, 39 A.D. 3d 1041 (3d Dept. 2007).

The *Town of Niskayuna Zoning Ordinance ("Town Code") Section 220-69* on area variances requires the ZBA to take into consideration the benefit 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. The ZBA shall consider:

1. 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 area variance.
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
3. Whether the requested area variance is substantial.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

Town Code Section 220-69 (D)(3). The code specifies that the ZBA, in the granting of area variance, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community. *Town Code Section 220-69 (D)(4).* The code also specifies that the ZBA shall specify the basis for the decision in detail.

Looking at the record, this court finds that the Board's Decision was in fact arbitrary and capricious.

First, as to 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 area variance, the Board addressed the first part of this inquiry by stating there was "a potentially desirable change" in that "we will end the car circus turning around in the yard in the winter, shining, inadvertently but unavoidably, headlights into the dining room of neighbors." In fact, only one neighbor was so affected, the neighbor directly across the street from the applicants, who wrote to the Board in favor of the application while advising the Board that he was a current member of the Planning Board and Zoning Commission. The Board did not address whether there was any possible detriment to the nearby properties, especially to the neighbors most affected, the Petitioners, who would obviously be affected by having a new, two-story (26 foot high) structure with a 28' x 38' (1,064 square foot) footprint, constructed within five (5) feet of their shared side lot line, despite Guest's admission that the neighbors were opposed.[31]

Second, as to whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, ZBA member Greene, in making the motion, stated, "...I'm thinking that there doesn't seem that there is other ways to do what this gentleman is trying to accomplish here given the particulars of the parcels and the desire to maintain the –Mr. Bee's carriage house." This statement is not stated as a finding of fact. In the sketch accompanying his application, [32] Guest labels the structure he refers to in the hearing as a carriage house as a "one-car garage". Guest testifies that he and his wife have four vehicles, but that his daughter who was staying with him temporarily has an additional vehicle. Guest states that his intent is to park all his vehicles and lawn

[31] Ex. F., ZBA hearing transcript, p.26-27
[32] Ex. C

equipment. "If I'm going to build, I ---I'm going to build something that's going to accommodate everything that I can possibly think of."[33]

As to whether the variance requested is substantial, the Board noted that the "request is substantial" but "not so substantial as to warrant denial." The Board undertakes no analysis and makes no finding of fact on this issue despite the court decisions that the more substantial the requested area variance is, the more likely it is that the application will be denied because of the greater effect it will have on the community. *National Merit, Inc. v. Weist*, 41 N.Y. 2d 438 (1977); *Affordable Homes of Long Island, LLC v. Monteverde*, 128 A.D. 3d 1060 (2d Dept. 2015); *Ifrah v. Utschig*, 98 N.Y. 2d 304 (2002); *Monte Carlo 1, LLC v. Weiss*, 142 A.D. 3d 1173 (2d Dept. 2016); *Conway v. Van Loan*, 152 A.D. 3d 768, *Beekman Delamter Properties, LLC v. Village of Rhinebeck Zoning Bd. of Appeals*, 150 A.D. 3d 1099 (2d Dept. 2017.

As to the fourth prong of the required analysis, the Board also indicated that they don't "believe" that there are any adverse physical or environmental issues. Again, not an affirmative finding of fact or a detailed basis in support of the application.

Lastly, the Board stated that whether the issue was self-created, in making the motion, Mr. Greene stated, "While in part and while relevant, not a necessarily determinative to a decision on the application." No analysis or reasoning was stated.

Here, Guest has not provided any clear indication of how high the proposed garage will be, was not definitive on whether it would be directly connected to his house, could not provide details as to what the second floor would be used for, and indicated that he would solicit an architect to help with the design should his request be granted. Despite these uncertainties, the original application referred to the structure as an addition to the main home and the ZBA continued to refer to it as an addition and not a new accessory structure.

---

[33] Ex. F., ZBA hearing transcript, p.16 - 20

The Board did not sufficiently consider (1) 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 area variance; or (2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance. The Board simply did not consider that negative impacts upon the neighboring properties such as Petitioners should this request be granted, or whether it will change the character of the neighborhood. Petitioners' property will be impacted by this garage, their privacy affected in some degree, and their air and light impacted, and possibly, their home value as well. The variance proposed for the garage is certainly not the minimum area variance that could be granted and by all accounts is a large space, not a small space (over 2000 square feet over the two floors). Additionally, there are other means by which the headlight issue could also resolved. While architecturally Guest has indicated an intention to blend with his current home, the use of a two-story garage, with proposed finished second-story space may very well change the character of the neighborhood. The application sought to construct a "care unit" on the second floor which was not discussed. Despite the fact that the effect of an area variance on the character of a neighborhood is considered the most significant of all of the enumerated factors. *Lopez v. Zoning Bd. of Appeals of the Inc. Village of Hempstead*, 2010 WL 2797908 (N.Y. Sup. 2010).

Whether the alleged difficulty was self-created, is clear, as Guest indicates that he "needs" an oversized, three-car garage to store 5 vehicles, 2 tractors, and lawn equipment. The vehicles will still traverse the same driveway easement and with rear garage doors will still require some "car jockeying" so whether there is evidence to support the claim that the garage will resolve the "car circus" is questionable. Moreover, the fact that Guest has already installed a patio/deck in his back yard that has eliminated his ability to put the garage in a space that would minimally impact his neighbors, is further indication of a self-created hardship, as it must be assumed he installed those accessory

structures knowing of his vehicle housing needs. His argument is that he doesn't want to affect his use of his backyard by siting the garage there, even if it is to the detriment of his neighbors.[34] Although a self-created hardship will not preclude the issuance of a hardship, it will weigh against it. *Human Development Services of Port Chester, Inc. v. Zoning Bd. of Appeals of Village of Port Chester*, 67 N.Y. 2d 702 (1986); *Sasso v. Osgood*, 86 N.Y. 2d 374 (1995); *Caspian Realty, Inc. v. Zoning Bd. of Appeals of Town of Greenburgh*, 68 A.D. 2d 62 (2d Dept. 2009). Since there was little or no discussion as to whether there would be negative physical or environmental impacts, the Board did not properly consider this factor as they should have. See, *East Hampton Library v. Zoning Bd. of Appeals of Village of East Hampton*, 31 Misc. 3d 1231 (A), 932 N.Y.S. 2d 760 (Sup. 2011); *Ifrah v. Utschig*, 98 N.Y. 2d 304 (2002); *Feinberg-Smith Associates, Inc. v. Town of Vestal Zoning Bd. of Appeals*, 167 A.D. 3d 1350 (3d Dept. 2018).

While here, an application for a variance had been submitted containing the applicant's argument why the variance should be granted and some discussion was had between the applicant and the ZBA, the letter advising the applicant of the ZBA's decision does not contain properly stated findings of fact to support the ZBA's decision. The decision does not state findings of fact by reference to the applicant's application, nor does it by referring the reader to board discussion in a 48-page transcript of a hearing. Simply put, a zoning board of appeals is required by statute to render a decision which must contain findings of fact. A copy of that decision must also be mailed to the applicant. *Town Law § 267-a(9).* The decision mailed to the applicant in this case did not comport with the statute. If anything in this record could constitute findings of fact, it would be the

[34] The Courts have found that even expensive alternatives involving demolition and reconstruction may be deemed reasonable. *Chou v. The Bd. of Zoning Appeals of the Town of North Hempstead,* 2010 WL 620644 (N.Y. Sup. 2010).

reasons given for the adoption of the motion to approve. As stated above, the Court finds those reasons insufficient as conclusory. A zoning board of appeals must, in each case, make findings that disclose the basis for its decision, and granting a variance without such findings would result in a remittal to the board. *Held v. Giuliano*, 46 A.D.2d 558, (3d Dept 1975). The requirement that the zoning board of appeals make findings which disclose the basis for its decision means more than that the board must state its conclusions. Findings which are merely conclusory in form are insufficient. *Frangella Mushroom Farms, Inc. v. Zoning Bd. of Appeals of Town of Coeymans,* 87 A.D.2d 962, (3d Dept 1982), *judgment aff'd*, 57 N.Y.2d 811 (1982); *Ouderkirk v. Board of Appeals of Town of Bethlehem*, 58 A.D.2d 667 (3d Dept 1977). The requirement that a board make appropriate findings is not met by a mere restatement of the terms of the applicable statute or ordinance. The board must, in addition, make findings of the facts essential to its conclusion that the standards of the statute or ordinance have been satisfied. Anything short of this will result in a reversal or a remand for further proceedings in the event the matter reaches a reviewing court. Morrone v. Bennett, 164 A.D.2d 887 (2d Dept 1990). Here, the Town of Niskayuna Zoning Board of Appeals failed to make findings of fact and merely stated on the record, in conclusory form, words parroting the statutorily required factors to be considered on a variance application. This lack of findings of fact, requires remand for further development of the record and a properly considered decision.

THE COURT'S RULING

For the reasons stated above, it is hereby

ORDERED, that the Decision Letter dated May 3, 2022, of the Town of Niskayuna's Zoning Board of Appeals is hereby annulled on the grounds that it did not

contain the statutorily required findings making the decision insufficient for intelligent judicial review; and it is further

ORDERED, that this matter is hereby remitted back to the Town of Niskayuna Zoning Board of Appeals for further development of the record and a decision containing proper findings of fact; and it is further

ORDERED, that this Decision constitutes the Order and Decision of this Court.

Dated: September 15, 2023
at Schenectady, New York

HON. MICHAEL R. CUEVAS
Supreme Court Justice

Papers Considered:

Petitioner

Petition

Affidavit in Support of Petition

Respondents

Verified Answer and Return

Memorandum of Law in Opposition to Verified Petition