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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH ZONING BOARD OF APPEALS

----- X

In the Matter of

PAUL BROTHE

1 Genna Way, Newburgh
Section 79; Block 4; Lot 1.2
R-1 Zone

----- X

Date: January 24, 2019
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman
JOHN MCKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
DARRELL BELL

ALSO PRESENT: DAVID DONOVAN, ESQ.
GERALD CANFIELD
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: PAUL BROTHE

----- X

MICHELLE L. CONERO
PMB #276
56 North Plank Road, Suite 1
Newburgh, New York 12550
(845)541-4163

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PAUL BROTHE

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CHAIRMAN SCALZO: Good evening. I'd like to call the meeting of the ZBA to order.

The first order of business are the public hearings scheduled for this evening. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have, and then any questions or comments from the public will be entertained. After all the public hearings have been completed, the Board may adjourn to confer with Counsel regarding any legal questions it may have. The Board will then consider the applications in the order heard and will try to render a decision this evening but may take up to 62 days to reach a determination.

I would ask that if you have a cell phone, please turn it off or put it on silent. When speaking, speak directly into the microphone as it is being recorded.

Roll call, please.

MS. JABLESNIK: Present are Darrell Bell.

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PAUL BROTHE

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MR. BELL: Here.

MS. JABLESNIK: Richard Levin.

MR. LEVIN: Here.

MS. JABLESNIK: Anthony Marino.

MR. MARINO: Here.

MS. JABLESNIK: John Masten.

MR. MASTEN: Here.

MS. JABLESNIK: John McKelvey.

MR. MCKELVEY: Here.

MS. JABLESNIK: Peter Olympia is
absent.

Darrin Scalzo.

CHAIRMAN SCALZO: Present.

MS. JABLESNIK: Also present, Gerald
Canfield, Code Compliance.

MR. CANFIELD: Here.

MS. JABLESNIK: David Donovan.

MR. DONOVAN: Here.

MS. JABLESNIK: And myself, Siobhan
Jablesnik.

CHAIRMAN SCALZO: If we could all
please rise for the Pledge. Mr. Bell, if you
could lead us.

(Pledge of Allegiance.)

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PAUL BROTHE

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CHAIRMAN SCALZO: This evening we are conducting our reorganization meeting. At this point all we need is a motion to appoint someone as the Vice Chairman of the Zoning Board of Appeals.

May I have a motion from the Board?

MR. LEVIN: I'll make the motion.

CHAIRMAN SCALZO: To nominate?

MR. LEVIN: John McKelvey.

MR. MASTEN: I'll second it.

CHAIRMAN SCALZO: Okay. We have a motion from Mr. Levin and a second from Mr. Masten. Roll, please.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey? Abstain?

MR. MCKELVEY: Abstain.

MS. JABLESNIK: Mr. Scalzo?

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PAUL BROTHE

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CHAIRMAN SCALZO: Yes. Motion carried.
Congratulations, John. This is your 34th year as
the Vice Chairman.

Our first applicant this evening is
Paul Brothe, 1 Genna Way, Newburgh in the R-1
Zone. The applicant is seeking an area variance
to install 30 ground mounted solar panels in the
front yard. Town Municipal Code states solar
collectors shall not be located in the front
yard. That's from Section 185-81-D(3)(c)(3).
The applicant has road frontage on multiple
streets.

Public hearing notices for all new
applications being heard this evening were
published in The Mid-Hudson Times and The Orange
County Post on, Siobhan?

MS. JABLESNIK: Wednesday, January 16th
for The Mid-Hudson Times and January 18th for The
Orange County Post.

CHAIRMAN SCALZO: How many mailings?

MS. JABLESNIK: 24. The mailings and
postings are in order.

This applicant actually had to go to
the County and we haven't received that one back

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PAUL BROTHE

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yet.

CHAIRMAN SCALZO: Okay. We got no response from the County.

Do we have the applicant here?

MR. BROTHE: Yes.

CHAIRMAN SCALZO: Very good. What Siobhan just said is because we have not heard back from the County we are obligated to leave the public hearing open. We can not vote on it this evening.

MR. BROTHE: I understand.

CHAIRMAN SCALZO: Very good. We would like you to present so if we have any questions we may ask, and members of the public. If you could start off by stating your name and letting us know what you're looking to do.

MR. BROTHE: Good evening. Paul Brothe. Thank you for the opportunity to speak with you. I spoke with Mr. Marino the other evening on the telephone. I anticipated someone from the solar company to be here to explain a little bit about the siting of the solar panel. I don't see that they made it, so it's just me this evening.

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PAUL BROTHE

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I am requesting to install a ground-mount solar panel behind my garage. I live in a house that was built in the 1930s. It has a slate roof. It's not possible to put a solar panel on a slate roof, so the solar company looked at the property and determined the best place to put the solar panel was behind the garage.

As was noted, I have more than one street frontage.

CHAIRMAN SCALZO: You're surrounded by streets it appears.

MR. BROTHE: Yeah. I'm literally surrounded by streets, one being a private drive, and there's 9W and then Powelton Farms Road.

So for me the siting is actually in the rear of my actual house. I understand why it would appear to be frontage on 9W.

CHAIRMAN SCALZO: Correct. Mr. Brothe, I must add that all of us have visited the site. You may not have seen us but we were there and we did look at your site with regard to the character of the neighborhood around it, so I appreciate what you had to say. We all also have

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PAUL BROTHE

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the package which has schematics and drawings of where you would like to place these.

At this point I'm going to look to Members of the Board -- if your presentation is completed, I'll look to Members of the Board for comments.

Mr. Bell, anything.

MR. BELL: No. I'm good.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: It's a beautiful location, first of all. A little difficult to find at first. Once I found it, it's beautiful.

MR. BROTHE: Thank you.

MR. MARINO: I guess the argument is the Town is saying it's the front of the house, you're maintaining that because of the other road it's not the front of the house. You want to put it on your garage.

MR. BROTHE: Well it won't be on the garage, it will be behind the garage. From my purposes that's the rear of my house. I'm not saying, you know, it's not the front as far as the Town is looking at it. I understand that.

There was a question one of my

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PAUL BROTHE

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neighbors just asked me this evening. If you visited the site you will have noticed there were a large number of trees that were taken down on 9W. That was not in preparation for this. I'd just like to clarify. Central Hudson contacted me last fall. I acquired the house and moved in in May of last year. Central Hudson contacted me in the fall to say that that stretch of 9W was one of their worst areas for trees falling over and causing power line problems. They asked if they could come in and cut down all the trees. So the trees cut on 9W were something that they cut. Frankly they were Ailanthus trees, they had weak root systems. They're not particular good growing along a right-of-way. I agreed to have Central Hudson do that.

MR. MARINO: Am I right in assuming that from 9W none of that would be visible?

MR. BROTHE: You mean the solar panels?

MR. MARINO: If you're driving north or south on 9W.

MR. BROTHE: If you're driving south you would have to look backwards in order to see it. If you're driving north you would see it as

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PAUL BROTHE

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you drive and you look on your left, but it will be only for a brief period of time that you would see it. I will be landscaping along 9W to replace those trees with evergreen trees, so eventually you will not see it.

CHAIRMAN SCALZO: The parcel is substantial for Newburgh. It's substantial at 5.7 acres in the area that you're in. You have plenty of area there. Looking at it, I don't think your solar array would be any less appealing than the overhead VMS sign that the DOT has installed on 9W.

MR. BROTHE: I appreciate that. I mean I will be landscaping around the sign to try to mitigate people seeing it. I don't think it will stand out all that much. You know, it's hard to say until you actually see it.

MR. LEVIN: When you say the maximum height is 11 feet 5 inches of the panels, how many are at -- are they all at that height?

MR. BROTHE: Well I mean if this were the framework, it has two supports on each end and then it will be tilted toward the south.

MR. LEVIN: The highest point would be

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PAUL BROTHE

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11 feet 5 inches?

MR. BROTHE: To my knowledge, yes.

Yes, it will be.

CHAIRMAN SCALZO: Mr. McKelvey, any questions?

MR. MCKELVEY: I think we should have the solar company here.

CHAIRMAN SCALZO: Okay. At this point I'm going to open this up to any members of the public that would like to comment on this. If there's anyone here to speak about this applicant, please step forward.

Please state your name for the record.

MR. FETTER: Bill Fetter, 29 Rockwood Drive.

CHAIRMAN SCALZO: Thank you.

MR. FETTER: Do we have the height off the ground of these?

CHAIRMAN SCALZO: 11 feet 5 inches is what --

MR. FETTER: The top of the bracket or the top of the tilted panel?

MR. MCKELVEY: I would think it would be the top of the panel.

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PAUL BROTHE

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MR. BELL: The panel. You see it will be similar like this. This is your highest point. This is 11 feet up here.

MR. FETTER: That's exhibited on the submittals? The detail is clear?

I personally have no objection as long as there could be a buffer to some degree. It's a shame how it was a nice little corridor there. Some controlled buffer at the road or near the road to block the view of the whole thing there, and then something to obscure it up close where it's not, you know, a trellis looking feature.

Is there a way to limit either the quantity or the acreage that can be developed so this can't be expanded to be ultimately a large solar farm? I don't know what portion of the property it's going to cover at this point.

CHAIRMAN SCALZO: Very good question, sir.

Because we need to keep this public hearing open, we're assuming hopefully your solar installer will be here at the next meeting to answer any questions.

MR. BROTHE: I would assume they would

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PAUL BROTHE

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be. I mean --

MR. FETTER: Is it ten percent, roughly, of the open area? Is it fifty percent of the open area?

MR. BROTHE: It's a space of about 10 feet by 20 feet.

CHAIRMAN SCALZO: Relatively small, comparatively speaking, to the lot acreage. It is 152 feet away from the right-of-way from 9W.

MR. LEVIN: Where is your house?

MR. FETTER: I'm Rockwood Drive, behind Ethan Allen Furniture.

MR. LEVIN: You don't see it?

MR. FETTER: I don't see it. It's home. It's fine. I have no objection.

CHAIRMAN SCALZO: Thank you very much.

MR. FETTER: Thank you.

CHAIRMAN SCALZO: Mr. Canfield?

MR. CANFIELD: For the Board's benefit, the Town of Newburgh Zoning Code does have Section 185-81 that deals specifically with solar panels and the installation thereof.

Mr. Marino, there is a section in there that does require screening. I would suggest

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PAUL BROTHE

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that the applicant and/or it's design professional present what type of landscaping for the Board, for their review, so they have that option.

Also with respect to the question on the height of the panels, there's a maximum of 20 feet. The drawings indicate 11 foot 5, but it does not clearly depict these panels are angled and they may move mechanically. A suggestion would be at the next presentation to have a drawing that would depict the clear height to help the Board with their determination.

CHAIRMAN SCALZO: Perhaps another detail of a profile on the drawings would be helpful.

MR. BROTHE: Okay.

CHAIRMAN SCALZO: Thank you very much. Is anyone else from the public here to speak about this action?

(No response.)

CHAIRMAN SCALZO: Thank you very much.

MR. McKELVEY: I'll make a motion to hold it over to the February meeting.

MR. MASTEN: Second.

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CHAIRMAN SCALZO: We have a motion to hold the meeting open from Mr. McKelvey. I have a second from Mr. Masten.

Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing remains open.

(Time noted: 7:15 p.m.)

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C E R T I F I C A T I O N

I, MICHELLE CONERO, a Notary Public
for and within the State of New York, do hereby
certify:

That hereinbefore set forth is a
true record of the proceedings.

I further certify that I am not
related to any of the parties to this proceeding by
blood or by marriage and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 5th day of February 2019.

Michelle Conero

MICHELLE CONERO

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH ZONING BOARD OF APPEALS

----- X

In the Matter of

CARLOS HERNANDEZ

13 Terry Avenue, Newburgh
Section 27; Block 1; Lot 3
R-3 Zone

----- X

Date: January 24, 2019
Time: 7:15 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman
JOHN MCKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
DARRELL BELL

ALSO PRESENT: DAVID DONOVAN, ESQ.
GERALD CANFIELD
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: JONATHAN CELLA

----- X

MICHELLE L. CONERO
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Newburgh, New York 12550
(845)541-4163

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CARLOS HERNANDEZ

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CHAIRMAN SCALZO: Our second applicant this evening, Carlos Hernandez, 13 Terry Avenue, R-3 Zone. The applicant is seeking an area variance to increase the degree of nonconformity of the front yard setback where an existing 17 foot 6 exists and 40 feet is required to raise the roof to create a bedroom on the second floor.

The public hearing notices for all new applications being heard this evening were published in The Mid-Hudson Times and The Orange County Post on, Siobhan?

MS. JABLESNIK: January 16th and January 18th.

CHAIRMAN SCALZO: How many mailings?

MS. JABLESNIK: 53.

CHAIRMAN SCALZO: All right. All the mailings, publications and postings appear to be in order.

This is up on the hill away from 9W. Is this within 500 feet of 9W? Did we require --

MS. JABLESNIK: Yes. We did receive this one back from the County. This is one we did.

CHAIRMAN SCALZO: Good. I have from

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CARLOS HERNANDEZ

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the County, they have reviewed it and they recommend a Local determination, so we can continue.

If you could introduce yourself and let's get started.

MR. CELLA: Jonathan Cella representing the applicant.

MR. HERNANDEZ: That's me, Carlos Hernandez.

CHAIRMAN SCALZO: Very good.

MR. CELLA: We're here for two area variances for 13 Terry Avenue to construct a second story addition off the rear of the residence. We need a lot area -- I'm sorry, a front yard setback and a side yard setback.

The second story addition was already constructed as the applicant was not aware that it was -- a permit was needed. What you see now is what he's requesting the variances for.

The addition is not visible from the street so we don't feel there will be a change in any character of the neighborhood. We feel that the requested variances are minor. We're not changing the footprint of the building, we're not

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CARLOS HERNANDEZ

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increasing any impervious area.

The construction will also include redoing the exterior of the house to make it look better.

CHAIRMAN SCALZO: Okay.

MR. McKELVEY: As far as the setback, that's preexisting?

MR. CELLA: Preexisting nonconforming. We're increasing the degree of it vertically.

CHAIRMAN SCALZO: As I mentioned, we all have visited the site. I didn't notice it until I actually walked around the house. You really can't see it from the road.

At this point I'll open it up. Do any Members of the Board want to comment on this? Mr. Bell?

MR. BELL: No. I'm good.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: No.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: No.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: I'm fine.

MR. McKELVEY: I'm fine.

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CARLOS HERNANDEZ

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CHAIRMAN SCALZO: Are any members of
the public here to speak about this applicant?

(No response.)

CHAIRMAN SCALZO: Hearing none, I'll
look to the Board for a motion to close the
public hearing.

MR. LEVIN: I'll make a motion to close
the public hearing.

MR. BELL: I'll second it.

CHAIRMAN SCALZO: We have a motion from
Mr. Levin, a second from Mr. Bell. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey:

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Motion carried. The public hearing is

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closed.

We will do our best to render a determination later tonight.

MR. CELLA: Thank you.

(Time noted: 7:20 p.m.)

(Time resumed: 8:40 p.m.)

CHAIRMAN SCALZO: At this time we're going to open it back up and see if we can make some determinations for the applicants this evening.

The first applicant that we can make a determination on would be Carlos Hernandez, 13 Terry Avenue, an R-3 Zone. The applicant is seeking an area variance to increase the degree of nonconformity of the front yard setback with an existing 17.6 where 40 is required to raise the roof to create a bedroom on the second floor.

This is a Type 2 action under SEQRA.

Do we have any discussion from the Board before we move on to the criteria?

(No response.)

CHAIRMAN SCALZO: The first one being whether or not a benefit can be achieved by other means feasible to the applicant.

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MR. LEVIN: No.

MR. McKELVEY: No.

CHAIRMAN SCALZO: The second, if there's an undesirable change in the neighborhood character or detriment to nearby properties. As I mentioned earlier, I didn't even see it until I actually got out and walked around.

MR. MASTEN: Right.

CHAIRMAN SCALZO: I would say no. The third, whether the request is substantial. No.

MR. MASTEN: No.

MR. MARINO: No.

CHAIRMAN SCALZO: The fourth, whether the request will have adverse physical and environmental affects. I don't see it.

The fifth, whether the alleged difficulty is self-created, relevant but not determinative. I don't believe -- well it was self-created, sure, but --

MR. MARINO: No.

CHAIRMAN SCALZO: So that being said, do I have a motion from the Board?

MR. McKELVEY: I'll make a motion that

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CARLOS HERNANDEZ

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we approve.

CHAIRMAN SCALZO: We have a motion for approval by Mr. McKelvey.

MR. MARINO: Second.

CHAIRMAN SCALZO: We have a second -- we have a whole bunch of seconds. I'm going to go for Mr. Marino.

Roll call. Mr. Bell?

MR. BELL: Yes.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: Yes.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: Yes.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: Yes.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. McKELVEY: Yes.

CHAIRMAN SCALZO: I vote yes as well. You're approved. Motion carried.

(Time noted: 8:43 p.m.)

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C E R T I F I C A T I O N

I, MICHELLE CONERO, a Notary Public
for and within the State of New York, do hereby
certify:

That hereinbefore set forth is a
true record of the proceedings.

I further certify that I am not
related to any of the parties to this proceeding by
blood or by marriage and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 5th day of February 2019.

Michelle Conero

MICHELLE CONERO

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH ZONING BOARD OF APPEALS

----- X
In the Matter of

MICHAEL MUELLER

8 Pilla Drive, Newburgh
Section 7; Block 1; Lot 18.12
AR Zone

----- X

Date: January 24, 2019
Time: 7:20 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman
JOHN MCKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
DARRELL BELL

ALSO PRESENT: DAVID DONOVAN, ESQ.
GERALD CANFIELD
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: MS. MUELLER

----- X

MICHELLE L. CONERO
PMB #276
56 North Plank Road, Suite 1
Newburgh, New York 12550
(845)541-4163

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MICHAEL MUELLER

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CHAIRMAN SCALZO: Our next applicant this evening is Michael Mueller, 8 Pilla Drive which is in an AR Zone. The applicant seeks variances to build a 21 by 25 foot pool house in the front yard where the code states no building shall project closer to the fronting street than the front of the main building; and also, secondary is to keep a 20 by 43 in-ground pool that was installed in an unapproved location. The code states no pool shall be located in the front yard.

Public hearing notices for the applicants being heard this evening were published in The Mid-Hudson Times and The Orange County Post.

The same date again, Siobhan?

MS. JABLESNIK: The same date, January 16th and Friday, January 18th.

CHAIRMAN SCALZO: Thank you. And how many mailings?

MS. JABLESNIK: 13 mailings went out. All the mailings and publications and postings are in order.

CHAIRMAN SCALZO: Thank you very much.

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MICHAEL MUELLER

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Is Lattintown a County road?

MS. JABLESNIK: I don't think so.

CHAIRMAN SCALZO: Then we had no County input?

MS. JABLESNIK: No.

CHAIRMAN SCALZO: Do we have the applicant here this evening? Please state your name.

MS. MUELLER: I'm Michael Mueller's wife. I am here for the variance for the pool house and also for the in-ground pool that was installed, it says in an unapproved location.

We were unaware when the permit went in. We didn't see the drawing. The drawing of the pool was put on the back of our house and for all intents and purposes it's on the side of our house.

The pool does not extend the front of the house but where we want to put the pool house it does. Between the pool house and Lattintown Road there's another residence. It's still to the side.

CHAIRMAN SCALZO: Correct. Thank you. There are two trees, evergreens, are they yours,

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MICHAEL MUELLER

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are they your neighbor's, are they coming down?

MS. MUELLER: So they're all Blue Spruces and those are all ours. Those are going to stay.

CHAIRMAN SCALZO: Those are going to stay. Okay. So the pool house will actually -- the pool house will be further back behind those?

MS. MUELLER: Yes. So we have the Blue Spruces come up from Lattintown Road, but not all the way from Lattintown Road, and then cut across to the back of the neighbor's house.

CHAIRMAN SCALZO: Very good. Okay. Before I ask the Board for any comments; Mr. Canfield, you had a look at this as well. Was there any issue with the pool location and any septic fields or --

MR. CANFIELD: No. No issue with the pool and the septic. No conflicts in that respect.

What brings this application here is that this also is a corner lot. Even though it appears to be somewhat of a flag with the residence, the Tuttle residence in the front, it's still a corner lot. So if the lines are

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MICHAEL MUELLER

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drawn for the two front yards, the proposed pool house and a small portion of the pool end up in that front yard. That's what brings the application here.

CHAIRMAN SCALZO: Thank you very much.

At this point I'll look to the Board.

Any comments, Mr. Marino?

MR. MARINO: No comment except it's a beautiful location. Really lovely.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: No comments.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: No comments.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: No comments.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: None.

CHAIRMAN SCALZO: I have none myself.

At this point I'll open it up to anyone from the public that's here to speak about this application.

MR. MOREHEAD: My name is John Morehead and I'm the next door neighbor on 14 Pilla Drive.

I really see no reason why there should

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MICHAEL MUELLER

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be a problem here from what I can see. I mean they take fantastic care of their property. It's certainly an asset to the neighborhood. What they've done, it has only improved the neighborhood. I can't see why there should be a problem here. That's all I can say. I wish we had more neighbors like them.

CHAIRMAN SCALZO: Thank you very much.

Okay. We have one more coming. Mr. Fetter?

MR. FETTER: Bill Fetter, Rockwood Drive. The only question I would have is the slope. I'm not familiar with the exact lot. Is there any concern for slope stability with the pool?

An unpermitted pool? Is that true, the pool is permitted or not?

CHAIRMAN SCALZO: It's already established. Everything is in there and it's established. It doesn't appear to be on any slope greater than 15 percent at this point where the pool house is going to be.

MR. FETTER: I know there were some steep spots up there.

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MICHAEL MUELLER

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MR. McKELVEY: It's a beautiful piece of property.

MS. MUELLER: Thank you.

CHAIRMAN SCALZO: Thank you very much. One more chance for the Board, any comments?

(No response.)

CHAIRMAN SCALZO: No. One last opportunity for members of the public?

(No response.)

CHAIRMAN SCALZO: No. I will look to the Board for a motion to close the public hearing.

MR. McKELVEY: I'll make that motion.

MR. MASTEN: I'll second it.

CHAIRMAN SCALZO: I have a motion to close from Mr. McKelvey, a second from Mr. Masten. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

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MICHAEL MUELLER

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MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes. Motion carried.

We closed the public hearing and we'll do our best to render a decision this evening.

MS. MUELLER: Thank you.

(Time noted: 7:26 p.m.)

(Time resumed: 8:43 p.m.)

CHAIRMAN SCALZO: The next applicant would be Michael Mueller, 8 Pilla Drive, AR Zone. The applicant seeks a variance to build a 21 by 25 pool house in the front yard where the code states no building shall project closer to the fronting street than the front of the main building; and B, to keep a 20 by 43 in-ground pool that was installed in a non-approved location. The code states no pool shall be located in the front yard.

This is also a Type 2 action under SEQRA.

Do we have any discussion from the

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MICHAEL MUELLER

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Board?

MR. McKELVEY: We had a neighbor that said he was in favor of it.

CHAIRMAN SCALZO: That was very good testimony. We had support from the neighborhood.

First, whether or not the benefit can be achieved by other means feasible to the applicant?

MR. LEVIN: No.

MR. MASTIN: No.

MR. MARINO: No.

MR. McKELVEY: No.

MR. BELL: No.

CHAIRMAN SCALZO: Second, if there's an undesirable change in the neighborhood character or detriment to nearby properties?

MR. MARINO: No.

MR. MASTEN: No.

CHAIRMAN SCALZO: Third, whether the request is substantial? I don't feel that way.

Fourth, whether the request will have an adverse physical or environmental affect?

MR. BELL: No.

MR. MASTEN: No.

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MR. McKELVEY: No.

CHAIRMAN SCALZO: Fifth, whether the alleged difficulty is self-created, relevant but not determinative? Of course it's self-created but it's not going to factor the way I'm looking at it.

In that case, may I have a motion from the Board?

MR. BELL: I'll make that motion.

MR. MASTEN: I'll second it.

CHAIRMAN SCALZO: We have a motion from Mr. Bell, a second from Mr. Masten. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

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Motion carried. The application is approved. The variance is granted.

(Time noted: 8:45 p.m.)

C E R T I F I C A T I O N

I, MICHELLE CONERO, a Notary Public for and within the State of New York, do hereby certify:

That hereinbefore set forth is a true record of the proceedings.

I further certify that I am not related to any of the parties to this proceeding by blood or by marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of February 2019.

Michelle Conero

MICHELLE CONERO

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH ZONING BOARD OF APPEALS

----- X
In the Matter of

JAMES & ELIZABETH HOPKINS

24 Gould Place, Wallkill
Section 2; Block 3; Lot 15.22
RR Zone

----- X

Date: January 24, 2019
Time: 7:26 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman
JOHN MCKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
DARRELL BELL

ALSO PRESENT: DAVID DONOVAN, ESQ.
GERALD CANFIELD
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: CHARLES BROWN

----- X

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CHAIRMAN SCALZO: Our next applicants this evening are James and Elizabeth Hopkins, 24 Gould Place, Wallkill, which is in the RR Zone. The applicant seeks a variance to -- an area variance to keep a single-family residence foundation that was placed in the wrong location with a 55.94 front yard setback where 60 is required.

The public hearing notices were published in The Mid-Hudson Times and the Orange County Post.

How many mailings, Siobhan?

MS. JABLESNIK: 11.

CHAIRMAN SCALZO: Everything is good. All the mailings, publications and postings appear to be in order.

Mr. Brown, please introduce yourself and let us know.

MR. BROWN: I'm Charles Brown, the engineer for the applicant.

This is an oversized lot. It has a lot of trees on it so it's well screened. It's not significant, it's less than 5 feet. It's just the corner of the garage right there.

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What happened is the excavator over-excavated the area for the foundation and then the basement -- he slid it a little forward and they didn't follow the survey stakes.

It's not going to change the character of the neighborhood. The same house is proposed. It's just forward a little, by 6 feet. Thank you.

CHAIRMAN SCALZO: Charlie, do you still maintain your 10 foot setback off the property line for the septic system?

MR. BROWN: Yes.

CHAIRMAN SCALZO: As well as 20 feet -- I mean it's a slab, so --

MR. BROWN: Correct.

CHAIRMAN SCALZO: And you maintain all that?

MR. BROWN: Yes.

CHAIRMAN SCALZO: I was in there today and I was still tracking mud in the parking lot.

MR. BROWN: It is a muddy site.

MR. LEVIN: I went in when it was frozen and I was bouncing all over the place. You owe me for shocks. My shock absorbers are

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going.

CHAIRMAN SCALZO: Mistakes happen. I understand that. I've got nothing as far as comments.

Mr. Bell?

MR. BELL: No.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: Are there any other houses going to be built in that area that you know of?

MR. BROWN: This over here is a pond, so no house can be built here. There is building area further beyond the pond. This is the proposed septic for this lot, so nothing will be built in that area. This house goes over here. There are trees in there.

MR. MCKELVEY: The other houses, the setbacks will be all right?

MR. BROWN: Yes.

MR. LEVIN: How much land is that out there?

MR. BROWN: This is 4.08 acres.

CHAIRMAN SCALZO: Charlie, one other question here. Code Compliance, in their notes it

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says the dwelling is under construction and is under a stop work order as the dwelling was moved about 40 feet from where it was proposed during the permit. The original site plan, did it show it -- I mean 4 feet I can understand. 40 feet, they must have been really hugging the margins here.

MR. BROWN: No. That's pretty close to where we put it on the original plot plan to be submitted for a permit.

CHAIRMAN SCALZO: I wouldn't expect you would have the file in front of you, Mr. Canfield. Does this sound familiar to you?

MR. CANFIELD: No. I believe Mr. Campbell was our inspector that handled that. I don't have that in front of me.

What you're saying, Charlie, it wasn't moved 40 feet?

MR. BROWN: No.

MR. CANFIELD: How much was it moved?

MR. BROWN: Maybe 10.

MR. CANFIELD: 8 to 10?

MR. BROWN: Yeah.

MR. CANFIELD: What prompted the

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moving? Did you encounter rock or something?

MR. BROWN: The excavator over-excavated for the foundation, the mason misinterpreted that excavation and he put it in there. It was the mason that formed it up and poured it.

MR. CANFIELD: And the septic, was that shifted also?

MR. BROWN: We shifted that slightly to make sure that we maintained the required setbacks, yes.

MR. CANFIELD: Those are the re-percs and all that?

MR. BROWN: It's still on the original percs.

MR. CANFIELD: It is. Okay.

MR. BROWN: Yes.

MR. CANFIELD: I have no issue with it.

CHAIRMAN SCALZO: Okay. Who was the mason, if you want to throw him under the bus?

MR. BROWN: Do you want to answer that?

MR. HOPKINS: Bill Dori.

CHAIRMAN SCALZO: Thank you.

Mistakes happen. I've got nothing. I'm

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going to open it up to any members of the public
that wish to speak about this application.

(No response.)

CHAIRMAN SCALZO: Hearing none, back to
the Board for one last opportunity?

(No response.)

CHAIRMAN SCALZO: Then I will look to
the Board for a motion to close the public
hearing.

MR. MASTEN: I'll make that motion.

MR. MARINO: Second.

CHAIRMAN SCALZO: We have a motion from
Mr. Masten, a second from Mr. Marino. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

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CHAIRMAN SCALZO: Yes. This public hearing is closed. Charlie, we'll do our best to render a decision this evening.

MR. BROWN: Thank you.

(Time noted: 7:31 p.m.)

(Time resumed: 8:45 p.m.)

CHAIRMAN SCALZO: The third applicant was James and Elizabeth Hopkins, 24 Gould Place, Wallkill in the RR Zone. The applicant seeks an area variance to keep a single-family residence foundation that was placed in the wrong location with a 55.94 front yard setback where 60 is required.

This is a Type 2 action under SEQRA.

MR. BROWN: Mr. Chairman, I have to throw somebody else under the bus on this one.

Jerry was correct. Our original plot plan showed the house further back. The surveyor moved the location of the house and staked it out right at 60 feet.

CHAIRMAN SCALZO: He staked it out right at 60 feet. He's not leaving a lot of room for error. That's how these things happen. Thank you for your honesty on that, Charlie.

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MR. BROWN: Thank you.

CHAIRMAN SCALZO: That being said, the five criteria, the first one being whether or not the benefit can be achieved by other means feasible to the applicant? It could be but it would be awfully expensive.

MR. BELL: Very expensive.

CHAIRMAN SCALZO: Second, if there's an undesirable change in the neighborhood character or a detriment to nearby properties? You really can't see anything when you're back there.

MR. McKELVEY: It's all woods.

CHAIRMAN SCALZO: Third, whether the request is substantial? Four feet, I don't really think so.

CHAIRMAN SCALZO: The fourth one, whether the request will have adverse physical, environmental affects? I don't believe so. The engineer indicated that he did modify the sanitary field to accommodate the setbacks required.

Fifth, whether the alleged difficulty is self-created, relevant but not determinative? We established it's self-created.

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That being said, do I have a motion
from the Board?

MR. MASTEN: I'll make the motion.

MR. MARINO: Second.

CHAIRMAN SCALZO: We have a motion from
Mr. Masten. We have a second from Mr. Marino.
Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Motion carried. The variance is
granted.

MR. BROWN: Thank you.

(Time noted: 8:47 p.m.)

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C E R T I F I C A T I O N

I, MICHELLE CONERO, a Notary Public
for and within the State of New York, do hereby
certify:

That hereinbefore set forth is a
true record of the proceedings.

I further certify that I am not
related to any of the parties to this proceeding by
blood or by marriage and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 5th day of February 2019.

Michelle Conero

MICHELLE CONERO

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH ZONING BOARD OF APPEALS

----- X
In the Matter of

KENNETH BABCOCK

12 Taft Avenue, Newburgh
Section 72; Block 9; Lot 30
R-3 Zone

----- X

Date: January 24, 2019
Time: 7:31 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman
JOHN MCKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
DARRELL BELL

ALSO PRESENT: DAVID DONOVAN, ESQ.
GERALD CANFIELD
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: KENNETH BABCOCK

----- X

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KENNETH BABCOCK

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CHAIRMAN SCALZO: Our next applicant is Kenneth Babcock, 12 Taft Avenue in Newburgh, R-3 Zone. The applicant seeks an area variance to keep a 12 by 18 deck built without a permit with an 8 foot side yard setback where a 15 is required.

As stated before, all public hearing notices have been posted as appropriate.

Siobhan, how many mailings on this one?

MS. JABLESNIK: 48 mailings.

CHAIRMAN SCALZO: That's the winner for the night. Everything seems to be in order.

If you could please let us know who you are and why you're here.

MR. BABCOCK: Sure. Good evening. My name is Kenny Babcock. I purchased the home probably nine or so years ago. I'm selling the house now which is when I learned of the violation. I went through the process, I hired an engineer to do an assessment on the deck, submitted the paperwork, and that's when I realized it had a zoning violation. That's why I'm here, to hopefully get that approved so I can move forward with selling my house.

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KENNETH BABCOCK

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CHAIRMAN SCALZO: Okay. Jerry, the violation prevents them from getting a CO on the deck; is that correct?

MR. CANFIELD: That's correct.

CHAIRMAN SCALZO: I'll look to the Board. Any comments, Mr. Marino?

MR. MARINO: No comments.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: No.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: No.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: The setbacks, the houses are close together.

MR. BELL: They are close.

CHAIRMAN SCALZO: I certainly don't think it's out of character.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: They're very close.

CHAIRMAN SCALZO: At this point I'll open it up to any members of the public who wish to speak about this application.

(No response.)

CHAIRMAN SCALZO: Hearing none, I'll

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KENNETH BABCOCK

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look to the Board for a motion to close the public hearing.

MR. BELL: I'll make a motion to close the public hearing.

MR. MASTEN: I'll second it.

CHAIRMAN SCALZO: We have a motion from Mr. Bell and we have a second from Mr. Masten. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed. We'll do our best to render a decision this evening.

MR. BABCOCK: Thank you.

(Time noted: 7:34 p.m.)

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KENNETH BABCOCK

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(Time resumed: 8:47 p.m.)

CHAIRMAN SCALZO: The next applicant is Kenneth Babcock, 12 Taft Avenue, Newburgh, R-3 Zone. The applicant seeks an area variance to keep a 12 by 18 deck built without a permit with an 8 foot side yard setback where 15 is required.

This is a Type 2 action under SEQRA.

Any discussion from the Board?

(No response.)

CHAIRMAN SCALZO: The first factor, whether or not the benefit can be achieved by other means feasible to the applicant?

MR. McKELVEY: That's tough.

CHAIRMAN SCALZO: It's tough when it's already up there.

The second one -- well we could have him rip it down, but I don't think that's practical here.

The second, if there's an undesirable change in the neighborhood character or a detriment to nearby properties? I think it's in kind with the neighborhood.

MR. McKELVEY: It's been there, too.

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CHAIRMAN SCALZO: Third, whether the request is substantial? Again, when I was in the neighborhood I didn't see it.

Fourth, whether the request would have adverse physical and environmental affects? No.

Fifth, whether the alleged difficulty is self-created, relevant but not determinative? Of course it's self-created, but it's not going to be a determinative factor here.

That being said, I'll look to the Board for a motion.

MR. BELL: I'll make a motion for approval.

CHAIRMAN SCALZO: We have a motion for approval by Mr. Bell.

MR. McKELVEY: Second.

CHAIRMAN SCALZO: I have a second by Mr. McKelvey. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

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KENNETH BABCOCK

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MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Motion carried. The variance is
approved.

(Time noted: 8:49 p.m.)

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C E R T I F I C A T I O N

I, MICHELLE CONERO, a Notary Public
for and within the State of New York, do hereby
certify:

That hereinbefore set forth is a
true record of the proceedings.

I further certify that I am not
related to any of the parties to this proceeding by
blood or by marriage and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 5th day of February 2019.

Michelle Conero

MICHELLE CONERO

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH ZONING BOARD OF APPEALS

----- X
In the Matter of

RHONA CHAMBERS

16 Odell Circle, Newburgh
Section 51; Block 5; Lot 5
R-1 Zone

----- X

Date: January 24, 2019
Time: 7:34 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman
JOHN MCKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
DARRELL BELL

ALSO PRESENT: DAVID DONOVAN, ESQ.
GERALD CANFIELD
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVES: CHARLES BROWN,
MICHELLE ANDERSON, RHONA CHAMBERS

----- X

MICHELLE L. CONERO
PMB #276
56 North Plank Road, Suite 1
Newburgh, New York 12550
(845)541-4163

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CHAIRMAN SCALZO: Now we are moving on to applicants that were held over from our December 27, 2018 meeting.

Our applicant is Rhona Chambers seeking an area variance to rebuild the front porch, add a second story addition, raise the roof line, rebuild the decks and pergolas, requires a front yard minimum setback of 50 feet where 25.4 is proposed, one side yard minimum setback of 30 feet where 1.5 is proposed, combined side yard of 80 feet where 12 is proposed, and a rear yard of 40 where 0 is proposed, the maximum building lot coverage is 10 percent where 45 percent is proposed and the maximum surface lot coverage is 20 percent where 54 percent is proposed.

Now, at the close of the last meeting, Charlie, we had asked you to reach out to the Orange Lake Homeowners Association. I understand you did, but I also spoke with one of the representatives there and they were going to do their best to meet and discuss this. I'm not sure if they did. Hopefully when I open this up to the public they'll get a chance to talk about that.

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MR. BROWN: They did not. Their next meeting is February 4th I believe.

My client -- we already made some adjustments here. We dropped the roof pitch down so that the ridge is lower than the existing house, we took off the dormers. So the profile of the house from the street is actually much smaller. Right now the roof --

MR. CANFIELD: Excuse me, Mr. Chairman. Is that microphone on?

MR. BROWN: Now it is.

So we believe that this -- we made the concessions that address all the concerns of the members of the association.

In addition to this, my client has made a deal with her neighbor to cut down some very big deciduous trees that are between the two houses that do block a lot of the view.

CHAIRMAN SCALZO: Okay. Obviously Orange Lake is a very unique area in the Town and, you know, the lake frontage lots are at a premium. They're all undersized. We're all aware of that. Most of the community started off as cottages and summer homes.

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Charlie, I did get the opportunity to dig up some meeting minutes from December and January of 2007. I don't know if you've had a chance to get a look at those or not. Much of the same comments that we had heard in last month's meeting were almost identical to what we were hearing in 2007. I was not on the Board at the time. Mr. McKelvey was. There were quite a few comments regarding, I'll call it the viewshed of the neighbors.

I myself have no comments. I would like to look to the Board first for any comments that they have, realizing that we will have the opportunity to hear from members of the public.

Mr. Bell, anything?

MR. BELL: No.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. McKELVEY: I guess we can't block the viewshed.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: I'm waiting to hear the comments.

CHAIRMAN SCALZO: Very good. That will prompt some exchanging of ideas, that's for sure.

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CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: I remember the minutes from '07 and it was -- similar statements were made then, too.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: What Mr. Brown said, concessions have been made by the buyer and he feels they will be approved by the homeowners association.

My question is what's the problem then? Where are we now? Maybe that will come out when we have --

CHAIRMAN SCALZO: I'm sure when we start hearing from members of the public.

I'm going to paraphrase what I had read, some of the suggestions in the 2007 meeting minutes, which were -- they would be -- they would develop the lot, almost demolish the old house and move it forward 10 feet, but that would require a substantial retaining wall and they are not cheap. That was one of the suggestions.

I don't know, Charlie, if you had even conferred with your client on that as an option.

I did reach out to our Code Compliance

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RHONA CHAMBERS

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folks and asked to take a look at the foundation plan. It appears that the screened in front porch that's lakeside, that sits on no foundation at all which is why you had proposed in your plan to have it sit on piles.

The other thing that I do recognize is we did have one of the contiguous adjoiners provide us photos. I don't know if you got a look at those or if they were --

MR. BROWN: No, I haven't seen those. These minutes you're referring to from '07, that's for the same lot?

CHAIRMAN SCALZO: Exactly. Exactly the same lot.

So anyway, there's quite a bit to digest here. At this point I'd like to open it up to any members of the public that want to speak about this application.

MR. LANGER: Greg Langer, president of the Orange Lake Homeowners Association.

Basically when we came here last time you suggested we get together. Charles did call me the following week and we scheduled to get together on February 4th, which was our next

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prearranged board meeting because it was just hard to get everybody together in January. We already had a meeting scheduled for then. So we did see a revised plan. It answered some of the concerns but not all of them.

At this point we still would like to get together with them on February 4th and discuss this matter. We still don't think that somebody should improve their view at the expense of somebody else's view. So that's kind of where we're at.

We're here. We can speak to things in front of you. If you don't mind us all to come up and talk, we're ready to do that, or can you just postpone and keep this open until the next meeting?

CHAIRMAN SCALZO: Just let me reiterate to you what I think I just heard. You're hoping that we can extend the public hearing one additional month so you and your full board can meet with the engineer and the homeowner?

MR. LANGER: Correct.

CHAIRMAN SCALZO: I just wanted to make sure I heard it correctly. Thank you.

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Do you have any other comments regarding this application?

MR. LANGER: I don't for now.

CHAIRMAN SCALZO: Very good. Thank you. We will certainly take your plea under advisement.

MR. LANGER: So you're not going to do that now? You need to hear --

CHAIRMAN SCALZO: I would say within the next ten minutes we're going to know.

MR. LANGER: Okay.

CHAIRMAN SCALZO: Any other members of the public that would like to speak about this application?

MS. TURNER DUBOIS: I would. Good evening. I'm Natasha Turner Dubois. I'm both the vice president of the Orange Lake Homeowners Association but I also want to speak as a member of the public.

The home that I live in essentially looks directly at Ms. Chambers' property. From my home you can see a row of approximately five houses, Ms. Chambers being in the middle of about five houses that I look at. I look at the

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property. I appreciate that it's in a state of disrepair, and I certainly would like to see it improved, but not at the expense of the neighbors mainly to the left of her from the view of my house.

The way all five of those houses have been constructed, essentially they either are one-story homes, like the one on the end -- the two on the end really, and then moving down Odell Circle you begin to see some homes that have second stories but they are all set back further than the outer most portion of the home. So while there's a second story on the homes, they're set back, the roof lines. Because they are all staggered in that way, each of the homes has a nice view of the lake looking, I guess that would be west.

MR. LANGER: North.

MS. TURNER DUBOIS: I'm directionally challenged. Each of those homes -- because of the staggered construction, each of the homes does have a rather nice view.

For those of us that look onto that, it's actually the character of the neighborhood

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that they're built in that way, sort of hugging along the cove line.

The proposed construction in my opinion would destroy the character of that entire row of homes. I think it would be a bit of an eyesore. Even if it's a lovely construction, I just think it would be a bit of an eyesore the way it would jut out just essentially too close to the lake.

I think we as a board have always advocated for any homeowner who would have their view obstructed. I think there's no question at all that this would affect the view of the homeowner between 14 and 12 Odell Circle. For that reason, even with the modifications that were made to the plans, I would strongly oppose it.

MR. LEVIN: Are you saying you've seen the new plans?

MS. TURNER DUBOIS: I have. Yes, I've had an opportunity to review them.

CHAIRMAN SCALZO: As far as encroaching any closer to the lake, where the existing front face of the three-season room is is exactly where it would be; correct?

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MR. BROWN: Correct.

CHAIRMAN SCALZO: In that case it's just the elevation change?

MS. TURNER DUBOIS: Correct. My concern would be the second story would now also jut out. This house, you can kind of see it's built like an L right now.

CHAIRMAN SCALZO: We've all seen it.

MS. TURNER DUBOIS: So the second story is very recessed back. If the plan went closer to the road front, to Odell Circle, I think there would be a lot less objection.

I would also note in the way of a hardship, I grew up in 18 Odell Circle. I'm a local real estate attorney and real estate agent. I showed this property to several people. I think the history of this property is sort of well known with any due diligence, the limitations. Not just this particular lot but a lot of this size. I think any expectation that a construction of that size would be allowed, I think with any level of due diligence a homeowner should have known that that would not likely be approved.

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CHAIRMAN SCALZO: Thank you very much for your comments.

MS. TURNER DUBOIS: Sure.

CHAIRMAN SCALZO: Would any other members of the public like to speak about this?

MS. ANDERSON: Hi. My name is Michelle Anderson from Safiotti & Anderson on behalf of my client, Rhona.

Natasha, I'm not quite getting what you're saying because my client's house sits back. I didn't really understand -- maybe you want to come up here. I don't understand what you're talking about. My client's house sits back further than the neighbor's house.

MS. TURNER DUBOIS: Right. So this is actually a great photo to kind of show the way the cove -- the cove kind of comes in on an angle and each of the homes are kind of staggered.

MS. ANDERSON: Her's is right on the water. That's not staggered.

MS. TURNER DUBOIS: Right. This one sits even further up. There's a setback and a further --

MS. ANDERSON: Right. If she just

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RHONA CHAMBERS

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raised the roof on this, how would that jut out?

MS. TURNER DUBOIS: I don't know if you've had an opportunity to see the one photograph that -- I can provide it. I think it essentially shows pictures from her bedroom.

MS. ANDERSON: The side window.

MS. TURNER DUBOIS: And if this house extends to here it will absolutely impact --

MS. ANDERSON: From her one side window.

MS. TURNER DUBOIS: Correct.

MS. ANDERSON: Right. Which would impact it -- which is covered by a tree anyway. This is what she -- this is my client's house. So it's obstructed anyway by the huge tree.

MS. TURNER DUBOIS: Yeah. I mean --

MS. ANDERSON: Right?

MS. CHAMBERS: Yes. My house is behind those trees. We have some drawn pictures.

CHAIRMAN SCALZO: You know what, I appreciate that you folks are trying to work it out right here in front of us, however that's not benefiting us very much. What I'm going to ask is -- that's a wonderful photo. If you want to

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give it to us and indicate which of those homes is your client's, that would be helpful. I've seen it from the road. Looking at it from the sky is a little different. The photos that --

MS. TURNER DUBOIS: May I?

CHAIRMAN SCALZO: -- yes, please -- that were turned in at the last meeting are right there.

MS. TURNER DUBOIS: This is the view from the neighboring home. Essentially what you're proposing to do is extend this roof line all the way out over here.

MR. DONOVAN: If I may be permitted to just interrupt for a second. The people you need to speak to are kind of up here. A conversation between the two of you is not going to accomplish anything.

MS. TURNER DUBOIS: I just wanted to answer the question Ms. Anderson had so perhaps that would help her determine --

CHAIRMAN SCALZO: I appreciate your comments.

Ms. Anderson, are you finished with the presentation that you wanted to --

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MS. ANDERSON: No.

CHAIRMAN SCALZO: Then please continue.

MS. ANDERSON: Thank you. From my understanding, we are not changing the footprint. Her house is a nonconforming preexisting use.

CHAIRMAN SCALZO: Correct.

MS. ANDERSON: It's lower than -- the roof is 2 foot lower, the roof line? Is it 2 feet? It's a 35 foot max; right?

MR. BROWN: We're at 22.2.

MS. ANDERSON: So it's lower. Again, she's not changing the footprint. I believe my client is just asking for the same relief that the Board has granted to other applicants.

We tried to meet with the board, the homeowners association. As they said, it wasn't until the 4th.

CHAIRMAN SCALZO: Correct.

MS. ANDERSON: I believe the head of the homeowners requested that it go out another month, but meanwhile my client is --

CHAIRMAN SCALZO: I understand there's financial implications for the --

MS. ANDERSON: Yes.

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CHAIRMAN SCALZO: When things get extended it inevitably costs more money. I understand that. As a Board we're actually not obliged to heed the advice of the homeowners association. However, I'm a big fan of if your good time impacts my good time, then -- you know, we all have to live together. There needs to be some working together here.

I understand that there was a meeting already but that was not at the full board of the homeowners association, which your client will be living amongst these people. I would prefer to hear that the board has had a full opportunity to review these, however I'm just one voice here.

MS. ANDERSON: I understand.

CHAIRMAN SCALZO: I'm going to leave this open to the Board how they decide, whether we close the public hearing this evening and vote on the application exactly as it's presented to us or if perhaps your client may want to exercise her right to ask us to keep it open just so they can meet with the full board so the board can have an opportunity to comment and perhaps guide something that would be mutually agreeable

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between everybody. So as I say, I'm just one voice here.

MS. ANDERSON: I just want to add one more comment. This Board is not -- this is a -- there's no legal impact on the title or there's no restrictions in the title regarding this Board.

CHAIRMAN SCALZO: You're correct.

MS. ANDERSON: Okay.

CHAIRMAN SCALZO: We're not obliged to follow their -- the code is the code. Your client is here looking for variances and that's why we're here.

MS. ANDERSON: Yes.

MR. DONOVAN: To kind of summarize, there's a balancing test for area variances. There's five factors that the Board has to consider in reaching their determination, and that's what the Board's obligation is. I mean for just about every application that I've been involved in in my eleven or twelve years representing the Board, on Orange Lake, the homeowners association of Orange Lake, their input has been solicited. The Board doesn't

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decide based upon what Orange Lake says, the homeowners association. The Board may agree or not agree. Ultimately the Board likes the input. It likes to have the property owner confer with the homeowners association. The Board will be bound and guided by the balancing test of the New York State Law.

MR. BOKNELL: Good evening. My name is Alfie Bocknell, I'm the past president of the Orange Lake Homeowners Association.

I wanted to share some comments because I think it's important that the Board understand the position of our board in determining if they are going to hold the public hearing open. It's my opinion that this addition is unreasonably oversized in comparison to the neighboring houses and the character of the houses in that particular neighborhood. The addition as proposed is a significant encroachment on the lake and the lakefront. It's a vertical addition. As demonstrated by the photos, it has an impact on the view of the adjacent neighbors. It compromises the view of those neighbors. In my opinion it's a significant reconstruction

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that's proposed. I think that a reconstruction could be performed that maintains the existing footprint and profile of the house but has better utilization of that footprint and accomplishes the goal that I understand that they have with this application to have more room in the house. Just my opinions.

I think that it would be great to hold this open so that we can meet and share our thoughts. However, I recognize that you guys get to make that decision after we make our comments, so I wanted to speak.

CHAIRMAN SCALZO: Are there any other members of the public here to discuss this application?

MS. CHAMBERS: I'll speak. I'm trying to be a good neighbor. I want to be a good neighbor. It's been a rocky start. I understand everybody's concern about their property value. I really want to make a beautiful improvement to this area. It's a beautiful lake. I want to live there, I want to be part of the community.

The cost of renovating a house that's in this kind of state is so expensive, I have to

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be able to live in it. Charlie has done a very modest design. This is only a two-bedroom home and a one-and-a-half bathroom. It is a small home compared to some of McMansions a couple doors down. I mean I don't know how they ever got building permits or variances. I mean there's one that's four stories high right on the water's edge.

I get it. It's a very tight knit community, I'm not from here, I don't have friends to show up and support me. But, you know, everybody taking a little chip off the top, a little chip off the side, I'm not going to be able to do an entire other design.

I get it. I know you all know this but the worst thing for your property value is to live next to a dilapidated structure like this one, and it seems like this has been going on since 2007. I understand why. It's very difficult to make any kind of positive change.

You know, I want to get off on the right foot with these neighbors and live there happily. I even have a lot of things in common with some of them and have friends that work in

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the same place. You know, I just -- this is a very modest design and I can't keep making changes to suit everybody.

Just keep in mind that 14 Odell, it's her side view that she is talking about. She has a beautiful view from the front, from upstairs and downstairs. We are talking about the side view window that has an air conditioner in it, and I have a picture of that. You know, her side view window looks directly at my bedroom window. If you look a little bit this way you see the roof line, like what your pictures show. If you really stick your head out, you know, you can see the lake. This is a side view window.

Thank you.

CHAIRMAN SCALZO: Thank you.

MS. BRANGACCIO: Jodi Brangaccio, 14 Odell Circle. Thank you. I just wanted to comment on some of the things that have been said since it is impacting me. And actually, you transitioned me perfectly.

So I think I was very upfront and clear at the last meeting about how some of my views have already been blocked by virtual fences

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once she was told she couldn't build a bigger fence and how my existing views will further be blocked.

 Actually, one statement you did say is correct, it is my side view. I'd just like an opportunity to explain that a little bit. We live on a part of the lake -- I don't know how familiar you are -- called the south cove. What that means is it's like the furthest southern finger of the lake. So basically your main vastest views of the lake and the mountains are to the side. They're to your left, northward up the lake. Yes, you do have views in front of you. I'm not going to say that you don't. Primarily your front views, you're looking at like 50 yards to the houses right in front of you that are also in the finger. To see the best part of the lake, which is the main reason we're all here, you really have to turn sideways and look up the lake, which is why we people on the cove covet the side views so much.

 As far as windows are concerned, there's two windows there. They both have great views. They don't have an air conditioner in

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them. You can come and see that for yourself. I don't expect anybody to believe me.

CHAIRMAN SCALZO: Certainly not this time of year.

MS. BRANGACCIO: Right. I mean one can say well, you know, you knew that when you bought the property that your best views were side views. You do. You know that. But you also know that there are Town and lake zoning ordinances and laws, and you rely on the code of the Town to protect you. You know that there's a Zoning Board. You know there's a Code Compliance officer. You don't worry about losing your views. You certainly don't worry about someone building out in front of you.

There's a few things proposed there. She's not only building up, she's also building a cantilevered deck off of it. That seems to never get brought up here.

I have another question also about what they keep calling the original footprint. I took a look at the Town report card sketch of 16. Technically that porch towards Lakeside was added many -- illegally added without permit and

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variance, by the way, many years later, first as a screened in porch. So well after the 1920 date. And then beyond that later enclosed illegally in the `80s. So to me it isn't actually part of the original footprint. Being however that is, that's up to you guys to decide. It's still a nonconforming structure. Building an addition on it and then a cantilevered deck off it is just further increasing the nonconformity that already exists.

Additionally, it's in complete disregard to the ordinance 185-48.3 Subsection J of the Orange Lake laws which states building accessory structures within 10 feet of a rear property and water line should not obstruct any views from any existing dwelling or adjoining yard. So I'm asking how is this not a detriment to myself?

CHAIRMAN SCALZO: Can you give me that code section again, please?

MS. BRANGACCIO: 185-48.3 Subsection J. Additionally, I have concerns about the proposed max building surface and buildable area. They say it's a modest house. My house is a

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modest house, it's 1,200 square feet. This is doubling the size of what's there. She's building on nearly 55 percent of her property and asking to have just a 1.5 foot setback to me. If you just take a second and think about that, being that close to someone and taking up that much property, it's like a giant wall in your face. Imagine beyond that, the best views of your life are on the other side of that and how it would feel.

I know you say they're saying it goes with the community, but as Natasha said it really doesn't. Most of the houses are built back or they have the single story and then a double story. That is to preserve our views and our rights.

Finally, I would just like to address the five areas that you guys look at. One, whether there will be an undesirable change or detriment to the nearby properties. I think there will be. I'll be left with a loss of a majority of my views as well as the neighbors south of me. I'll be at risk for devaluation of my property because I will have half the views

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that I had before. Actually, probably eighty percent less of the views that I had before. So that will leave me with financial hardship. I'll have to either then come to the Zoning Board and try to do something ridiculous, like build towards the lake, and then further blocking my neighbors, and then the neighbor after me will do the same, and the neighbor after me will do the same. You're setting up a pattern of encroachment in the community and on the lake. It just doesn't seem fair. Option two would be we'd all have to get lawyers and appeal the decision. Who wants to do that and incur legal fees. The worst case option would be we'd have to like sell our properties at a loss and be forced to move because we no longer have the beautiful views we have.

The second consideration is can this benefit be achieved any other way. I believe it can. It's a big house for that property size. I'm not saying it's a gigantic house. It's a big house for that property size. If that's what they truly want, that's fine. Nobody is saying they can't build a house, they can't improve it. We're

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just asking that they take into consideration our rights and our views and consider possibly leaving the lakefront porch as it is. Perhaps you can put the deck on the roof on top of that, a nice open deck, and then build from where the second story begins back. We already know you have to rebuild that front porch. We already know you have to do the foundation. We already know you have to redo the steps. It would just be a continuation of building in that direction and keeping it further away from the lake, therefore not impeding any lake views.

You already addressed the roof line issue. You would get the setbacks, the variances and the exact house you want but you're not doing it at the expense and onus of the existing property owners.

Number three, is the variance substantial. If I'm understanding correctly, it's 55 percent of the surface lot coverage and 45 percent building lot coverage on what is like a 4,000 square foot home. If I read some of the dimensions right, you're asking for, in some parts, a 350 percent area variance change. So to

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me that seems substantial, especially when this person is now going to be within a foot-and-a-half of you.

Was the proposed variance -- whether the proposed variance will have a physical or environmental impact. To this question I don't know the answer because there wasn't an environmental impact study provided. I think there should be some concerns regarding the volume of construction that's happening so close to the lake, as well as some basic fire and safety and egress issues that have to occur in emergencies with the properties being so close.

CHAIRMAN SCALZO: That would be handled under Code Compliance.

MS. BRANGACCIO: Correct.

Was the difficulty self-created. In my opinion it was. She bought the property at a bank sale at a third of the price the rest of us paid for our houses. You knew the land, you knew the views you were getting and immediately you wanted to build, which was fine. Totally understandable. But you immediately wanted us to conform to your rules and change so that you got

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the views that you wanted. Nobody said you can't build a house or renovate it, we're just asking you to exert some courtesy to the neighbors' views and rights.

However, trying to build without consulting neighbors and lake boards and then putting the onus on your neighbors to try to figure out how we're going to live with it, with this new construction, just isn't right, especially when there are other options that haven't even been explored.

I am closing. I know it may seem like I'm being difficult. I'm not a difficult person. This is my one and only property. Thirteen years ago I spent 400,000 to have a 1,200 square foot fixer-upper. Let's face it, if I bought it anywhere else in Newburgh it would have been a third of that price. I bought it solely for the beautiful views it provided, and I bought it because I knew I would be protected by the code and the laws. Since then I've worked two jobs consistently to pay for it, I've tried to fix it up, I've tried to maintain it, I've tried to do it all without infringing on my neighbors, on the

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lake and abiding by all the laws and codes as they've been put in place. It's taken me almost twelve years to even afford the siding and the roof that I had put on, but that was okay because I love where I live and I love waking up and seeing those views.

I'm not an unreasonable person, I'm open to a fair and equal compromise, but I'm not going to allow it at the complete expense of my views and my property value.

I'm asking the members of the Board again for the consideration and to help enforce the zoning laws that are already in place for the existing lake owners, their views and living conditions that will be forever impacted by this decision. Thank you.

CHAIRMAN SCALZO: Thank you.

MS. LINET: Good evening. I bet you were hoping she was the last one. I've got a lot of paperwork here, too.

CHAIRMAN SCALZO: I read the meeting minutes from 2007 and this meeting lasted until 10:30 for the very same property.

MS. LINET: We're going to try to do a

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filibuster then. Get ready.

Good evening, Board. My name is Jennifer Linet, I reside at 20 Odell Circle. I spoke at the last meeting as well.

I just want to make a quick comment. After Mr. Brown presented the plans again at this meeting, Mr. Marino said okay, concessions have been made, what's the problem. The concession made was cutting down a tree, just to note. There weren't a lot of concessions made.

MR. MARINO: I think he said more than that. I don't like your taking me and putting me in the middle of your discussion.

MS. LINET: I'm sorry but it was just a note. I just want the Board to be aware that concession weren't really made, and that was my point. I'm sorry if you take offense to that. I apologize.

I am one of the second-story houses that Natasha described that's set back. I am in a two-story house, a modest 1,200 square foot house. I'm set back from the lake.

On July 26, 2018 I stood in front of this Board to request a partial closure of my

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front porch and to rebuild my deck. I took the application process very seriously, researched each question and how to best fill it out. I'm not sure how much weight these questions bear. It sounds like these five questions on the application are a large part of it. I reread the answers on the application for 16 Odell. You know, I don't want to make this too long. I'll go through it rather quickly. I ask that you maybe reread those questions and see if they really are answered accurately.

The first one, the variance will not produce undesirable change in the character of the neighborhood or a detriment to nearby properties. The answer was the existing property is rundown. The renovation addition will be an improvement to nearby properties. It's true, but they didn't answer the detriment part, and that's where the views come in. So again, you know, if this hearing stays open, I ask that you really look at that question again where it will cause a detriment to nearby properties.

Just as a side note, when I was in front of this Board you asked me if my front

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porch enclosure was going to block anyone's views. It was a big part of the discussion, and of course I wasn't blocking views. It's just something to keep in mind.

The next question, the benefit sought by the applicant can not be achieved by some method feasible for the applicant to pursue other than the area variance because. The answer was the lot is only 44 feet wide, setbacks overlap so there is no buildable area. I don't know how you interpret that. They're saying there's no buildable area. As someone stated at our December meeting, the lots on the lake are small and the applicant is proposing to build a house that's too big for the lot purchased.

I'm going to skip the requested variance is not substantial because we already know that the coverage is increased. You guys can see the percents.

The proposed variance will not have an adverse affect or impact on physical or environmental conditions. It says setbacks and coverage are consistent with the neighborhood. Again, I don't know if that's a hundred percent

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true based on if you look at the rest of our homes. I don't think I take up 54 percent of my property.

The hardship has not been self-created. They answered the applicant/owner purchased the property as is. Again, you purchased a small house on a small piece of property and you're trying to build a house that's really big.

Obviously this is just my opinion. I ask that you take the time to really reread these questions and see if they were answered accurately.

I also read that you guys have appellate jurisdiction. You guys have a lot of power. The power -- your decisions can positively or negatively affect the lives of those before you. We're a small community. Imagine if you come home and your neighbor's house was 7 inches from your house and whatever view you had was impacted. How does that make you feel? What do you do? You know, you fight for what you believe in, and that's what we're all doing.

Additionally, I also read the Zoning

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Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted as weighted against the detriment to the health, safety and welfare of the neighborhood or community by such grant. That really struck me. This is the power that you all have to take in, and you have to really weigh the pros and cons of allowing this versus what's already existing.

You asked Ms. Chambers to find a compromise with her neighbors. It does not sound like she found a compromise with 14 Odell, and I believe that's what the lake board is asking. She offered to cut down a tree that's between 16 and 18 Odell. The person at 18 Odell is a part-time neighbor. That tree, I don't know, maybe it benefits the view of 14 Odell. It doesn't have an impact.

Orange Lake is a unique community where neighbors help each other out. As you can see, our homes are all on top of each other. You inadvertently traipse through each others yards. You know, you're right on top of each other. If someone is out barbecuing, they're like hey, come over, have a bite to eat, have a drink. It's

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just who we are. We live on the lake for our community. We look out for each other. We're there for the activities and of course for our views. Each and every one of us wakes up in the morning, looks out our window, smiles and starts our day.

You have the power, Board, to interpret the zoning laws and grant special use permits. I ask that you consider all the voices that you heard tonight and that you don't just take the easy route, that you continue to ask applicants to perform their due diligence and that, as you can see by this turnout, that you care about our neighbors and communities as much as we do.

Thank you for your time.

CHAIRMAN SCALZO: Thank you.

MS. CHAMBERS: Can I give you the pictures I took?

CHAIRMAN SCALZO: Absolutely.

MS. CHAMBERS: The tree being cut down was for the benefit of the neighbor across the street, the man who complained about the roof being high. Just so you know, it's that tree. That's the view from across the street that they

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said was blocking the view. So anyway, that's the tree.

CHAIRMAN SCALZO: It's the one in the foreground or the one in the distance?

MS. CHAMBERS: It's this one up here. This whole thing. I mean --

CHAIRMAN SCALZO: The one near the utility pole?

MS. CHAMBERS: I'm sorry. I don't know the name. Jodi's window that has the air conditioner in it. That was before she put on the new siding and took down the chimney, and now she put in two windows. One is closer to the lake and there was a permit pulled for that.

MS. BRANGACCIO: I have a permit for everything.

CHAIRMAN SCALZO: If you'd like to speak about that.

MS. CHAMBERS: The file request is there.

MS. BRANGACCIO: I'm sorry. It sounded like she said I don't have a permit.

CHAIRMAN SCALZO: She said there was.

MS. CHAMBERS: No. There was not for

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the window and chimney being taken down. That's a permit for the redoing of her steps. That does not include the new window that was just recently put in and the removal of the chimney. So actually now she should have better views.

MS. BRANGACCIO: Any work that required a permit -- required permits were done through the Town. That included the roof work and the stairs. Does a new window require a permit?

MR. CANFIELD: Technically in today's code, yes. There are new window sizes.

MS. BRANGACCIO: So that is correct then, I don't have one. I can get a permit for a window.

CHAIRMAN SCALZO: I'm going to pass these down. I'll start with Mr. Marino and send them back this way.

Is there anyone else from the public here to speak about this application?

(No response.)

CHAIRMAN SCALZO: Okay. At this time, Charlie, if you want to come back up.

Any members of the Board, any comments?

MR. LEVIN: I'd like to make a comment.

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CHAIRMAN SCALZO: Please, Mr. Levin.

MR. LEVIN: Ms. Chambers, you're not going to really like what I have to say. I think this is important and I'd like to go look at it again.

MS. CHAMBERS: Please.

MR. LEVIN: I'm only one vote.

MS. CHAMBERS: I would appreciate that. The door is open, literally. It won't close.

MR. LEVIN: I would love to see it and walk around and take a look at it --

MS. CHAMBERS: Okay.

MR. LEVIN: -- for a better view of everything.

MS. BRANGACCIO: I'm offering to allow you to look through my property too.

CHAIRMAN SCALZO: I apologize. This is being recorded. If you could -- I know it's a pain, if you could come up just so we know who is talking.

MR. LEVIN: What is your lot number?

MS. BRANGACCIO: 14 Odell. I'd like to offer anyone that would like to look at my views too.

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UNIDENTIFIED SPEAKER: I would offer up access to 10 Mace Circle. I think from my property you would see the way the houses are staggered. My house is the one that looks onto that row of five houses. You'd be welcome to access our property to view that row of houses.

MR. BELL: The address again?

UNIDENTIFIED SPEAKER: 10 Mace Circle.

MR. MARINO: Can I make a suggestion?

In order to follow up with all of these invitations that are being given now, why don't we plan a group tour, Members of this Board, some members of the homeowners association and Ms. Chambers, and we go through all the properties in question, the changes that are being proposed and perhaps give some discussion back and forth as to what's happening rather than going in bits and pieces, who goes here and who goes there. Does that make sense?

CHAIRMAN SCALZO: I think it's a wonderful idea. I don't know --

MR. DONOVAN: So relative to that issue, so the law allows you to perform site visits. The law allows you to perform site

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visits as a Board. If you are going to deliberate and have a discussion relative to the merits of the application while you are together as a Board, the meeting needs to be advertised and you need to make accommodations for the public to be present.

My suggestion to you is if you wish to do it collectively or individually at different times, that you do that. I would recommend against having individual conversations with individual residents any place, okay, outside of this Board, outside of the meeting where everyone can hear what's said, where it's recorded, it's part of the record. It's not a good idea to speak to one person. That one person may, while you're in someone's living room having a cup of coffee or perhaps something else, influence your vote. I say that jokingly but I mean seriously, it's a very good idea to visit. It's a very bad idea to have individual conversations.

MR. MARINO: I understand.

CHAIRMAN SCALZO: Sir, please introduce yourself. You're a new face.

MR. SQUIRES: Raymond Squires, the lot

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across the street, 21 Spencer Avenue.

I just would like to open up my property also to your tour.

CHAIRMAN SCALZO: Thank you very much.

Anyone else from the public that would like to speak?

(No response.)

MR. McKELVEY: I don't know if the Board would want to wait until this homeowners meeting in February.

CHAIRMAN SCALZO: That's what I was going to -- why I called Charlie back up. I didn't realize we still had other members of the public that wanted to speak.

Charlie, before we actually vote, would you like to confer with your client to ask us to leave the public hearing open or -- before we vote? No matter what happens there's going to be a motion made or something, whether it's open or closed. If you choose to leave it open we don't have to vote.

MR. BROWN: We would like to leave it open.

MS. CHAMBERS: We can leave it open for

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you to look at it again.

CHAIRMAN SCALZO: If it stays open it stays open for an additional month. We'll have another gathering such as this on February 28th.

MR. BROWN: Okay. That will give me a chance --

CHAIRMAN SCALZO: You have another interested party in the back.

MR. BOCKNELL: I apologize but I think this may be good information for you as the applicant. The Murphy application had three, if not four visits to this Board and in the end could not come to a compromise.

We're asking to keep it open, to have that meeting, to try to come to a compromise for everybody's benefit.

MS. CHAMBERS: Yeah, but --

MR. BOCKNELL: In the end the Murphy application was denied. If you are denied you have to wait eight months I think before you can reapply.

CHAIRMAN SCALZO: Dave, help me with that.

MR. DONOVAN: The answer is it depends.

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If it's the same application you need a unanimous vote of the Board. That could happen in a month or it could happen in years for the same application. For a modified application you can come back as soon as you get a denial from Code Compliance.

MR. BOCKNELL: The definition of a modification is where it becomes a gray area. I personally had to wait eight months before I could come back on my application.

MR. BROWN: We'll leave it open until next month.

CHAIRMAN SCALZO: I still need a motion on that. I'll look to the Board for a motion to keep the public hearing open.

MS. MASTEN: I'll make the motion.

MR. McKELVEY: Second.

MR. DONOVAN: Until February 28th.

CHAIRMAN SCALZO: And we will do our best to wrap it up.

MS. CHAMBERS: To see it again?

CHAIRMAN SCALZO: I'm certainly going to see it again during good daylight hours.

MS. CHAMBERS: Keep in mind the winter

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views, summer views.

CHAIRMAN SCALZO: Leaves, no leaves,
air conditioners, no air conditioners.

MR. DONOVAN: Before you leave --

CHAIRMAN SCALZO: We don't need
permission. We just got invitations from, it
sounds like everybody. We will be out there
checking it out.

We have a motion from --

MS. CHAMBERS: Be careful on those
stairs.

CHAIRMAN SCALZO: They're not a
consistent rise.

Who did we have a motion from? Mr.
Masten. A second from Mr. McKelvey. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

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MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes. Motion carried.
We'll keep it open.

MR. DONOVAN: Two things. Number one,
just to clarify for the public, there are no
additional notices mailed. This is your notice
tonight that this public hearing will be
continued on February 28th.

The second thing that I say to Mr.
Brown as well as to the members of the public, we
talked earlier that the Board has five factors to
weigh. The most significant factor is the
character of the neighborhood. Will this have an
adverse or detrimental impact on the character of
the neighborhood. I think what would be helpful
to the Board is if -- I put this out there for
Mr. Brown and members of the public. There are
one, two, three, four, five, six -- seven
variances being requested. The neighborhood, it
would be, I think, helpful for the Board to know
how the neighborhood measures up to these seven
variances. I'll just pick the first one, the
front yard set back of 25 feet where 50 feet is

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required. Does every other house in the neighborhood have a 50 foot or a 40 foot setback and this is the only one that's 25 or do they all have 25 foot setbacks. That type of information. The Board has been there. Some objective kind of metrics for the Board to take a look at, to get a feel objectively what the character of the neighborhood is and what the impact will be if these variances are granted.

CHAIRMAN SCALZO: Thank you, Dave.

Charlie, I don't believe that means have a surveyor go out there and locate the faces of the houses relative to the right-of-way lines. It's an observation.

MR. BROWN: I have a laser. Thank you.

CHAIRMAN SCALZO: Jerry, if I could, we did have one of the members of the public recite a section of the code which I'm still struggling to find.

MR. CANFIELD: I did briefly peruse through the code. The book that I have, that section that was cited, according to what I'm looking at, deals with the boat houses. I would like to get that section, if I could, and we can

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RHONA CHAMBERS

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research that and provide that for the Board's
benefit.

CHAIRMAN SCALZO: The meeting minutes
from 2007, I think that was the same section that
was quoted. I dug through the code book last
night and I couldn't find it.

Thank you very much.

(Time noted: 8:24 p.m.)

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C E R T I F I C A T I O N

I, MICHELLE CONERO, a Notary Public
for and within the State of New York, do hereby
certify:

That hereinbefore set forth is a
true record of the proceedings.

I further certify that I am not
related to any of the parties to this proceeding by
blood or by marriage and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 5th day of February 2019.

Michelle Conero

MICHELLE CONERO

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH ZONING BOARD OF APPEALS

----- X

In the Matter of

A PLUS AUTO

12 Little Lane Road, Newburgh
Section 54; Block 4; Lot 4.21
B Zone

----- X

Date: January 24, 2019
Time: 8:25 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman
JOHN MCKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
DARRELL BELL

ALSO PRESENT: DAVID DONOVAN, ESQ.
GERALD CANFIELD
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: MICHAEL LYNCH

----- X

MICHELLE L. CONERO
PMB #276
56 North Plank Road, Suite 1
Newburgh, New York 12550
(845)541-4163

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CHAIRMAN SCALZO: We have the last one here. This is again held over from the December 27th meeting. We have the applicant is A Plus Auto seeking an area variance to utilize the existing commercial building on the premises for an auto repair garage and requesting area variances for the two structures on the site. The A variance is an area variance for the front structure allowed in the front yard setback of 25.2 where 60 is required; and B, a rear yard variance for the structure in the rear. This is again held over from December 27th.

We had some other information that was provided to us by the County. The County found -- the recommendation was a Local determination.

We also had brought up during our last meeting that there was an order to remedy.

Let me let you go ahead and reintroduce yourself so we can get started and see if we can wrap this up.

MR. LYNCH: Mike Lynch from Engineering Properties representing A Plus Auto.

Just to point out, in your introduction

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there, we're no longer seeking the rear yard variance for the rear building. I know we discussed it at last meeting but not at length. The owner of the property owns the adjoining lot to the rear. As part of the site planning process he has agreed to do a lot combination which would remove the need for a rear yard variance. If we can remove that from the application, that would be preferred.

What we're seeking now is a front yard variance for the preexisting nonconforming residential unit which is in the front of the property.

As I brought up at the last meeting, our applicant is here. He's in front of the Planning Board for the use of the rear building. We're strictly asking for an area variance at this time.

MR. DONOVAN: What was brought up at the last meeting was the fact that there's an order to remedy issued by the Code Compliance Department relative to the use of the residential property. I'll defer to Mr. Canfield if I say anything incorrect.

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MR. CANFIELD: You are 100 percent correct. In December the Code Compliance Department did discover that the front residential structure is being utilized as a three-family which is not permitted in a B Zone. An order to remedy was issued on December 21st. As of this date we have not heard anything back from the owner. There's been no resolution to that order to remedy. We do have indication that he has received it. The next step for us to take is to issue a court appearance for the owner and let the local courts deal with it.

MR. DONOVAN: So the issue for this Board is what does that mean to us in deliberating on this request. The answer briefly is we're what's called -- someone pointed that out earlier tonight very correctly -- a Board of appellate jurisdiction for the most part. There are certain exceptions. Relative to this application, we're a Board of appellate jurisdiction. That means we sit to review the determination of the Planning Board. Because of the change in use on the property there is a need for new site plan application. The need for a

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new site plan application generates the fact that prior preexisting nonconformities are no longer protected.

This application is simply here for the location of the residential building. You are in a position -- we're not prohibited, in fact we're required to act on this application.

Our approval, if the Board is inclined to approve the application, doesn't have any impact on what Code Compliance does. It doesn't infer any approval or it doesn't avoid any enforcement application by Code Compliance. That continues. That's not before us. The applicant could appeal the determination of Code Compliance, that order to remedy, and ask this Board to issue a interpretation that it's three family or two family or whatever. That's not before you. What's before you is basically leaving that structure in it's location, not the use of the structure. So you can and should act on the application.

MR. LYNCH: Thank you.

CHAIRMAN SCALZO: Thank you, Dave.

At this point I'll look to the Board.

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If anybody had any questions for the applicant here to discuss his preexisting nonconforming condition. Mr. Marino?

MR. MARINO: No.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: No.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: No.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: No.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: No.

CHAIRMAN SCALZO: At this point I'll open it up to any members of the public that would like to comment on this application.

(No response.)

CHAIRMAN SCALZO: Hearing none, I'll look to the Board for a motion to close the public hearing.

MR. LEVIN: I'll make the motion.

MR. MASTEN: I'll second it.

CHAIRMAN SCALZO: We have a motion from Mr. Levin, a second from Mr. Masten. Roll call.

MS. JABLESNIK: Mr. Bell?

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MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed.

Now, before proceeding the Board is going to take a short adjournment to confer with Counsel regarding the legal questions raised by tonight's application.

If I could ask, in the interest of time, if you could wait in the hallway and we'll call you in shortly.

(Time noted: 8:21 p.m.)

(Time resumed: 8:50 p.m.)

CHAIRMAN SCALZO: Now we're working on the application for A Plus Auto. It's for an area variance to -- actually, it's only the area

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variance for the front structure, allowing a front yard setback of 25.2 where 60 is required. The other variance requested had been removed by the applicant, therefore we are only looking at the setback of the house, the preexisting nonconforming condition.

This is a Type 2 action under SEQRA.

Whether or not this benefit can be achieved by other means feasible to the applicant? Again, preexisting, nonconforming. I can't see it.

Second, if there's an undesirable change in the neighborhood character or detriment to nearby properties? Again, it's been there a long time.

The third, whether the request is substantial? I don't believe so.

Fourth, whether the request will have adverse physical or environmental affects? Everything will remain the same, so no.

The fifth, whether the alleged difficulty is self-created? In this case it is not. This is relevant but not determinative.

Therefore, do I have a motion from the

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Board?

MR. BELL: I'll make a motion to
approve.

MR. MASTEN: Second.

CHAIRMAN SCALZO: We have a motion from
Mr. Bell. We have a second from Mr. Masten.
Roll call.

MR. DONOVAN: Before you vote, just
note that we do have the order to remedy that's
been served by Code Compliance relative to the
use of the dwelling. Your vote tonight approving
the application has no impact, it doesn't confer
any approval on the use of that dwelling.

CHAIRMAN SCALZO: Thank you, Dave.

Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

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MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Motion carried. The variance is granted.

The last item on the agenda, but it's not on agenda, is the approval of the meeting minutes for the December meeting.

Do I have a motion to approve meeting minutes, the last one? Motion to approve?

MR. BELL: I'll make a motion to approve the minutes.

CHAIRMAN SCALZO: Thank you. A second?

MR. MARINO: Second.

CHAIRMAN SCALZO: We have a motion to approve from Mr. Bell, a second from Mr. Marino. All in favor of that?

MR. BELL: Aye.

MR. LEVIN: Aye.

MR. MASTEN: Aye.

MR. MARINO: Aye.

MR. McKELVEY: Aye.

CHAIRMAN SCALZO: Aye.

Is there any other business before we

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move to close the meeting?

(No response.)

CHAIRMAN SCALZO: I don't believe so.

Can I hear a motion to close the meeting for this evening?

MR. MASTEN: I'll make a motion to close the meeting.

MR. McKELVEY: Second.

CHAIRMAN SCALZO: We have a motion from Mr. Masten, a second from Mr. McKelvey. All in favor?

MR. BELL: Aye.

MR. LEVIN: Aye.

MR. MASTEN: Aye.

MR. MARINO: Aye.

MR. McKELVEY: Aye.

CHAIRMAN SCALZO: Aye.

(Time noted: 8:53 p.m.)

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C E R T I F I C A T I O N

I, MICHELLE CONERO, a Notary Public
for and within the State of New York, do hereby
certify:

That hereinbefore set forth is a
true record of the proceedings.

I further certify that I am not
related to any of the parties to this proceeding by
blood or by marriage and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 5th day of February 2019.

Michelle Conero

MICHELLE CONERO