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

----- X
In the Matter of

1400 ROUTE 300, LLC

1400 Route 300, Newburgh
Section 60; Block 3; Lot 43
IB Zone

----- X

Date: February 22, 2024
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRELL BELL, Acting Chairman
JAMES EBERHART, JR.
GREG HERMANCE
JOHN MASTEN
JAMES POLITI
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: EDWARD GARRITY

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

1 1400 Route 300, LLC

2 MR. BELL: Good evening. The
3 first order of business is the public
4 hearings that are scheduled for
5 today.

6 First I want to say that the
7 chairman is out sick this evening,
8 he's not here, so I'm sitting in in
9 his place this evening.

10 The procedure of the Board is
11 that the applicant will be called
12 upon to step forward, state their
13 request and explain why it should be
14 granted. The Board will then ask the
15 applicant any questions it may have,
16 and then questions or comments from
17 the public will be entertained. The
18 Board will consider all applicants in
19 the order heard. We will try to
20 render a decision, but we have up to
21 62 days to reach a determination.

22 I ask that if anyone has a
23 cellphone, to please put it on
24 silent. When you are called upon,
25 step forward and -- we don't have a

1 1400 Route 300, LLC

2 mic tonight. When you're called
3 upon -- when each applicant is called
4 upon, please step forward and speak --

5 MS. JABLESNIK: There is a mic.
6 It works tonight.

7 MR. BELL: Make sure that when you
8 step forward, speak into the mic because
9 our stenographer is recording the
10 meeting.

11 At this time, give me a roll call.

12 MS. JABLESNIK: Darrell Bell.

13 MR. BELL: Present.

14 MS. JABLESNIK: James Eberhart.

15 MR. EBERHART: Present.

16 MS. JABLESNIK: Greg Hermance.

17 MR. HERMANCE: Present.

18 MS. JABLESNIK: John Masten.

19 MR. MASTEN: Here.

20 MS. JABLESNIK: James Politi.

21 MR. POLITI: Present.

22 MS. JABLESNIK: Donna Rein.

23 MS. REIN: Here.

24 MS. JABLESNIK: Darrin Scalzo is
25 absent this evening.

1 1400 Route 300, LLC

2 Also present is our Attorney, Dave
3 Donovan; from Code Compliance is Joseph
4 Mattina; and our Stenographer this
5 evening is Michelle Conero.

6 MR. BELL: If we would all stand,
7 please.

8 (Pledge of Allegiance.)

9 MR. BELL: The first order of
10 business this evening is 1400 Route 300,
11 LLC in Newburgh. It's an area variance
12 of maximum height of an existing
13 nonconforming freestanding sign.

14 Who is here this evening to
15 represent?

16 (No response.)

17 MR. DONOVAN: As the judge likes to
18 say, second call.

19 (Time noted: 7:03 p.m.)

20 (Time resumed: 7:15 p.m.)

21 MR. BELL: This is an area
22 variance, again, for the maximum height
23 of an existing nonconforming free-
24 standing sign at 1400 Route 300, LLC. Go
25 ahead.

1 1400 Route 300, LLC

2 MR. DONOVAN: Tell us who you are
3 for the record and why you think you're
4 entitled to the variance.

5 MR. GARRITY: Edward Garrity. My
6 family, we have owned that mall for, I
7 think about thirteen years now. The
8 sign, from my understanding, is there for
9 as long as we've owned it.

10 At this point really what we're
11 looking to do is to try to just change
12 the existing pylon signs that are there
13 to conform with the new tenants that have
14 moved in over the past couple years.

15 We have had a change over the past
16 three years. We've had a couple new
17 tenants move in. We have done what we
18 could with them for the time being. My
19 mother and I are hoping that we can get
20 this variance, that way we can get them
21 all up there. All small businesses,
22 aside from Mattress Firm.

23 MR. DONOVAN: The size and location
24 is going to be the same?

25 MR. GARRITY: Just different signs.

1 1400 Route 300, LLC

2 We want to interchange the existing signs
3 so it conforms with the new occupancy.

4 MR. DONOVAN: Joe, so I'm clear,
5 it's too close to the road? The height
6 needs to be relative to the distance to
7 the road?

8 MR. MATTINA: Correct.

9 MR. GARRITY: From my understanding --

10 MR. MATTINA: The new sign law, the
11 sign has to set back the distance from
12 the height of the sign, which is 18 feet.

13 MR. GARRITY: From my understanding,
14 that changed a couple years ago.

15 MR. MATTINA: About two years ago.

16 MR. GARRITY: It would be really --
17 we would be really grateful if we could
18 just adjust the existing signs that are
19 there for our new tenants. You want to
20 give them the best chance to run a
21 business. You know, besides Mattress
22 Firm, they're all small businesses. I
23 think you already know Pizza Union has
24 been there. Hannoush Jewelers just moved
25 in two years ago or so. We have a new

1 1400 Route 300, LLC

2 salon, she's been in the area for quite
3 sometime as well. Then Saxon Hall, and
4 they've been there for a couple years,
5 too. We would like to change so they
6 have their own signs on the existing
7 structure.

8 MS. REIN: The signs are going to
9 just be the ladder signs that they are
10 now?

11 MR. GARRITY: For the new tenants
12 to put their new signs in. We have
13 someone we use to interchange the signs.

14 Yes, to answer your question.

15 MR. POLITI: The structure stays
16 the same?

17 MR. GARRITY: The structure stays
18 the same.

19 MR. EBERHART: You're changing the
20 size of the placards?

21 MR. GARRITY: What they would do is
22 they would get a new sign. We have
23 someone we use up here. They would get
24 the sign approved by us, the same size
25 for all the tenants in there, and they

1 1400 Route 300, LLC

2 would just be input in place.

3 There's one tenant who is a
4 physical therapist who had been there for
5 quite sometime. I don't know if -- a
6 Polish man. He's been out of there for a
7 number of years now.

8 Understanding what it is, we're
9 just trying to help our tenants to the
10 best of our ability.

11 MR. BELL: So basically overall
12 what you're trying to do, you have new
13 businesses that are occupied --

14 MR. GARRITY: Correct.

15 MR. BELL: -- and you want to put
16 their business on the current post?

17 MR. GARRITY: Correct.

18 MR. BELL: Okay. All right. Is
19 there anyone here from the public who
20 wishes to speak on this?

21 (No response.)

22 MR. BELL: No one from the public.
23 Okay. Anything else?

24 MS. REIN: I'm good.

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

1 1400 Route 300, LLC

2 close the public hearing.

3 MR. POLITI: I'll second.

4 MR. BELL: Okay. All in favor?

5 MR. POLITI: Aye.

6 MR. EBERHART: Aye.

7 MR. HERMANCE: Aye.

8 MR. BELL: Aye.

9 MR. MASTEN: Aye.

10 MS. REIN: Aye.

11 MR. BELL: This is a --

12 MR. DONOVAN: Type 2 action under
13 SEQRA. It is replacement in kind.

14 MR. BELL: We'll go through the
15 five factors, the first one being whether
16 or not the benefit can be achieved by any
17 other means feasible to the applicant.
18 No.

19 MS. REIN: No.

20 MR. BELL: Second, is there an
21 undesirable change in the neighborhood
22 character or a detriment --

23 MS. REIN: No.

24 MR. MASTEN: No.

25 MR. BELL: -- to nearby properties.

1 1400 Route 300, LLC

2 Third, whether the request is
3 substantial.

4 MR. POLITI: No.

5 MR. EBERHART: No.

6 MR. HERMANCE: No.

7 MR. BELL: No.

8 MR. MASTEN: No.

9 MS. REIN: No.

10 MR. BELL: Fourth, whether the
11 request will have adverse physical or
12 environmental effects.

13 MR. POLITI: No.

14 MR. EBERHART: No.

15 MR. HERMANCE: No.

16 MR. BELL: No.

17 MR. MASTEN: No.

18 MS. REIN: No.

19 MR. BELL: Fifth, whether the
20 alleged difficulty is self-created. This
21 is relevant but not determinative.

22 Is there a motion from the Board?

23 MS. REIN: I'll make a motion to
24 vote for approval.

25 MR. MASTEN: I'll second it.

1 1400 Route 300, LLC

2 MR. BELL: We have a first from Ms.
3 Rein and a second from Mr. Masten. Roll
4 call on that.

5 MS. JABLESNIK: Mr. Bell?

6 MR. BELL: Yes.

7 MS. JABLESNIK: Mr. Eberhart?

8 MR. EBERHART: Yes.

9 MS. JABLESNIK: Mr. Hermance?

10 MR. HERMANCE: Yes.

11 MS. JABLESNIK: Mr. Masten?

12 MR. MASTEN: Yes.

13 MS. JABLESNIK: Mr. Politi?

14 MR. POLITI: Yes.

15 MS. JABLESNIK: Ms. Rein?

16 MS. REIN: Yes.

17 MR. BELL: The variance is
18 approved.

19 MR. GARRITY: Thank you. I
20 appreciate it. I apologize for my
21 tardiness. Have a great night.

22

23 (Time noted: 7:23 p.m.)

24

25

1 1400 Route 300, LLC

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

4

5

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

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

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

15 IN WITNESS WHEREOF, I have hereunto set
16 my hand this 3rd day of March 2024.

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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

DEBORAH HANLON & GREG KOPF
5 Wellington Court, Wallkill
Section 4; Block 2; Lot 50.52
RR Zone

----- X

Date: February 22, 2024
Time: 7:03 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRELL BELL, Acting Chairman
JAMES EBERHART, JR.
GREG HERMANCE
JOHN MASTEN
JAMES POLITI
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVES: DEBORAH HANLON
& GREG KOPF

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

1 D e b o r a h H a n l o n & G r e g K o p f

2 MR. BELL: Moving on. The next
3 applicant is Deborah Hanlon. Step
4 forward. It's an area variance of the
5 rear yard setback to build a pool deck.

6 So everyone knows, we are all
7 required to visit each site.

8 If you want to tell us what your
9 request is, what you are trying to do.

10 MS. HANLON: Just a pool deck. I
11 have an aboveground pool. Not even
12 around the whole thing. Mostly one side.
13 Not that I'm not sure why I'm here, but
14 I'm not sure why I'm here.

15 MR. BELL: Okay. Well, like I
16 said, we are required to go out -- I'm
17 sorry. Did you state your name and
18 address?

19 MS. HANLON: Deborah Hanlon, 5
20 Wellington Court in Wallkill, New York.

21 MR. BELL: Thank you.

22 How many mailings did we have?

23 MS. JABLESNIK: 26.

24 MR. BELL: 26 mailings. Okay.

25 MR. DONOVAN: Why you're here is

1 D e b o r a h H a n l o n & G r e g K o p f

2 Code Compliance has made a determination
3 that you be a certain number of feet away
4 from your rear yard lot line. When you
5 put the deck up, you won't be.

6 Is it going to be attached to the
7 house?

8 MR. MATTINA: It's attached to the
9 house deck. There's no separation
10 between the house deck and the pool deck.

11 MS. HANLON: This is the back and
12 forth.

13 MR. KOPF: My name is Greg Kopf, 5
14 Wellington Court, Wallkill, New York.

15 This is what we've been going back
16 and forth with from the beginning.

17 First of all, it's only an
18 aboveground pool deck. There is a
19 separation. There's not 10 feet
20 separation. The pool was already built
21 and approved. There were no issues with
22 it. Now we want to put a deck between
23 our pool and the deck we already have on
24 our house. The one deck is going right
25 up to the other deck. If you want to go

1 D e b o r a h H a n l o n & G r e g K o p f

2 technicalities, you can lay on the ground
3 and look straight up to the sky and
4 there's nothing blocking it. There is
5 separation.

6 We paid an architect to draw it, to
7 do it the way you guys require.

8 MR. BELL: When you say it was
9 built and approved, are you saying a deck
10 you --

11 MR. KOPF: The pool was applied for
12 three or four years ago. We did all the
13 permits, inspections. That's done. Now,
14 since we're really not using the pool
15 because to access an aboveground pool
16 from a ladder isn't the best way, we want
17 to build a deck between our pool and our
18 existing deck. It's at a different
19 level. It's not connected to it. I just
20 -- it's been like -- I don't understand
21 since we started this process.

22 MR. BELL: Okay.

23 MS. REIN: Excuse me. The stuff
24 that was in the backyard, the sticks, you
25 weren't in the house so I wasn't able to

1 D e b o r a h H a n l o n & G r e g K o p f

2 ask you, is that where the deck is going?

3 MR. KOPF: Yes.

4 MS. REIN: That's very close to
5 your house.

6 MR. KOPF: Those are the footings I
7 started marking out, not thinking it
8 would take two years to get a permit.
9 They're pretty much rotted out and have
10 to be redone.

11 MR. BELL: Okay.

12 MR. POLITI: How do you access the
13 deck you want to build?

14 MS. HANLON: There will be a
15 staircase.

16 MR. KOPF: There's a staircase off
17 the deck we already have. You have to
18 walk into the yard and go to the
19 staircase to the pool.

20 MR. POLITI: It is different than
21 when I talked to you on the phone. I saw
22 that there's an elevation difference.
23 There won't be a direct connection?

24 MR. KOPF: There's no connection.

25 MR. BELL: Mr. Eberhart?

1 D e b o r a h H a n l o n & G r e g K o p f

2 MR. EBERHART: No questions.

3 MR. HERMANCE: You walk down your
4 existing deck to the ground level, walk
5 around and walk to another set of stairs?

6 MR. KOPF: There's an existing pad
7 -- not pad. There's existing stepping
8 stones already there that would go to the
9 ladder of the pool. It would be the same
10 idea to get to the pool.

11 MS. HANLON: We probably are not
12 going to do -- we're not going to build
13 another thing on our property because of
14 this process. Originally it was the pool
15 and we were going to do a patio, a big
16 gazebo and an outdoor kitchen. Our
17 original deck design didn't come off our
18 house. It was really kind of going to
19 the additional, like, outdoor kitchen,
20 which we're not even attempting at this
21 point.

22 MR. KOPF: We won't spend another
23 dime.

24 MR. BELL: Why did it take so long?

25 MR. KOPF: Why?

1 D e b o r a h H a n l o n & G r e g K o p f

2 MR. BELL: Yes.

3 MR. KOPF: Well, that's what our
4 architect and engineer would like to
5 know. I know they went back and forth
6 with, I guess, the Building Department
7 saying there's no space. It's got to be
8 a 10-foot space between the existing deck
9 and the new deck, which I don't know. If
10 you drive around Town, most people have
11 their pool deck -- their back door
12 connects to their deck which goes right
13 to the pool. I have no idea what the
14 pissing match has been, but it's been
15 ridiculous.

16 MS. REIN: Unfortunately we have to
17 abide by the same rules you do. We don't
18 make them.

19 MR. KOPF: That's fine. That's why
20 we paid a professional to do it.

21 I've been applying for permits for
22 thirty years doing HVAC and I've never
23 had this problem. Twice I've had to
24 show, you know, more information, but
25 this was almost like maybe somebody

1 D e b o r a h H a n l o n & G r e g K o p f

2 doesn't like our architect. I don't
3 know.

4 MS. REIN: I don't think that's the
5 case.

6 MR. BELL: John?

7 MR. MASTEN: I have no questions.
8 I was up there and I saw two coyotes run
9 through your yard.

10 MR. KOPF: Hopefully our dogs are
11 bigger than them.

12 MR. MASTEN: They were good size
13 coyotes.

14 MR. BELL: Your dog greeted me at
15 the front door.

16 MR. KOPF: They're nice.

17 MR. BELL: Joe, do you know the
18 history of why this was an issue?

19 MR. MATTINA: Basically the minimum
20 required rear yard setback by definition
21 says occupied ground area to the rear
22 yard line. It doesn't matter if it's one
23 inch away or one foot away. You don't
24 have unoccupied area to the rear property
25 line. You have the house deck, you've

1 D e b o r a h H a n l o n & G r e g K o p f

2 got the pool deck, you've got the pool.
3 That is occupied ground area. It doesn't
4 fit our definition.

5 MR. KOPF: There's a space between
6 deck 1 and deck 2. That's open area.
7 What I think the Town was saying, whoever
8 was saying it, was that it has to be 10
9 feet of space between one deck and
10 another deck, then they're saying the
11 setback of the property, we're going to
12 be too close to the back of our property.
13 Our pool is already there and at that
14 distance from the back of the pool to the
15 back of the property, which is like 80
16 something feet. We're not getting any
17 closer to the back of our property by
18 building this deck.

19 MS. REIN: Joe, was the pool
20 approved?

21 MR. MATTINA: Yes. The pool was a
22 standalone structure by itself that was
23 separated by 20 feet.

24 MS. JABLESNIK: Just so you can
25 understand, you're required to --

1 D e b o r a h H a n l o n & G r e g K o p f

2 anything that's not connected to your
3 house, you're required to be 10 feet
4 away. When you're not 10 feet away, it
5 becomes -- it's so close now, it becomes
6 the setback to the property line. That's
7 where their issue is.

8 MR. DONOVAN: Code Compliance has
9 made a determination. These folks have
10 appeared. You have an area variance in
11 front of you. That's what you have.

12 MR. EBERHART: Personally I don't
13 see why it would be an issue for them.
14 In my mind this should be approved.

15 MR. BELL: Is there anyone from the
16 public who wishes to speak on this
17 matter?

18 Ma'am, come forward and state your
19 name.

20 MS. BROWNE: I'm Susan Browne.
21 Everyone should have wonderful neighbors
22 like this. Our backyard looks into where
23 there pool is and I have absolutely no
24 objection at all.

25 MR. KOPF: Thank you.

1 D e b o r a h H a n l o n & G r e g K o p f

2 MR. BELL: Is anyone else here from
3 the public?

4 (No response.)

5 MR. BELL: Okay. At this time
6 we'll make a motion to close the public
7 hearing.

8 MR. MASTEN: I'll make a motion to
9 close the public hearing.

10 MR. EBERHART: Second.

11 MR. BELL: I have a first from Mr.
12 Masten and a second from Mr. Eberhart.
13 All in favor?

14 MR. POLITI: Aye.

15 MR. EBERHART: Aye.

16 MR. HERMANCE: Aye.

17 MR. MASTEN: Aye.

18 MS. REIN: Aye.

19 MR. BELL: Aye.

20 MR. DONOVAN: Mr. Chairman, this is
21 a Type 2 action under SEQRA. You can go
22 through the five-part balancing tests.

23 MR. BELL: That's exactly where I
24 was going. This is a Type 2 action under
25 SEQRA.

1 D e b o r a h H a n l o n & G r e g K o p f

2 Okay. The first one being whether
3 or not the benefit can be achieved by any
4 other means feasible to the applicant.
5 As we're hearing, the space between the
6 deck and the pool, the pool is already
7 there aboveground, so no.

8 Okay. Number two, is there any
9 undesirable change in the neighborhood
10 character or a detriment to nearby
11 properties. I don't see that.

12 MR. POLITI: No.

13 MR. EBERHART: No.

14 MR. HERMANCE: No.

15 MR. MASTEN: No.

16 MS. REIN: No.

17 MR. BELL: The third, whether the
18 request is substantial.

19 Fourth, whether the request will
20 have adverse physical or environmental
21 effects, which it won't.

22 The fifth one, whether the alleged
23 difficulty is self-created. This is
24 relevant but not determinative.

25 Is there a motion at this time from

1 D e b o r a h H a n l o n & G r e g K o p f

2 the Board?

3 MR. HERMANCE: I'll make a motion
4 to approve.

5 MR. EBERHART: I'll second it.

6 MR. BELL: I've got a motion to
7 approve by Mr. Hermance, Greg, and a
8 second by Mr. Eberhart.

9 Siobhan, roll on that, please.

10 MS. JABLESNIK: Mr. Bell?

11 MR. BELL: Yes.

12 MS. JABLESNIK: Mr. Eberhart?

13 MR. EBERHART: Yes.

14 MS. JABLESNIK: Mr. Hermance?

15 MR. HERMANCE: Yes.

16 MS. JABLESNIK: Mr. Masten?

17 MR. MASTEN: Yes.

18 MS. JABLESNIK: Mr. Politi?

19 MR. POLITI: Yes.

20 MS. JABLESNIK: Ms. Rein?

21 MS. REIN: Yes.

22 MR. BELL: Approved.

23 MR. KOPF: Thank you.

24

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

1 D e b o r a h H a n l o n & G r e g K o p f

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

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5

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

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

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

15 IN WITNESS WHEREOF, I have hereunto set
16 my hand this 3rd day of March 2024.

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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 PURPURA

32 North Fostertown Drive, Newburgh
Section 17; Block 2; Lot 59
R-2 Zone

----- X

Date: February 22, 2024
Time: 7:23 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRELL BELL, Acting Chairman
JAMES EBERHART, JR.
GREG HERMANCE
JOHN MASTEN
JAMES POLITI
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: JAMES PURPURA

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

1 J a m e s P u r p u r a

2 MR. BELL: The third one is James
3 Purpura, 32 North Fostertown Drive,
4 Newburgh for an area variance of the
5 maximum square footage and an accessory
6 structure in the front yard to install an
7 18 x 26 carport.

8 State your name and address.

9 MR. PURPURA: James Purpura, 32
10 North Fostertown Drive.

11 I'd like to put a carport up. It
12 won't be for a car, it will be for a
13 camper. The backyard is not accessible,
14 so I'd like to get a variance for the
15 front yard.

16 MR. BELL: We have all been out to
17 take a look. We've seen your temporary
18 carport for your camper and all.

19 MR. PURPURA: I don't have a
20 temporary carport. That's just a picture
21 of what it would look like without the
22 camper.

23 MR. BELL: Without the camper.
24 Okay.

25 MR. PURPURA: I can't afford one of

1 James Purpura

2 them.

3 MR. BELL: This is what you're
4 trying to build?

5 MR. PURPURA: Yes, sir.

6 MR. BELL: Okay. I'll start down
7 to my right there.

8 MR. EBERHART: I just had some
9 concerns in terms of the type of facility
10 he's looking to put there.

11 MR. BELL: Okay.

12 MR. EBERHART: I think it would be
13 out of character.

14 MS. REIN: When I went around the
15 corner to that property, there was
16 another one just like that. It had a
17 carport just like that. All of the other
18 RVs in that area are positioned exactly
19 where this gentleman's RV is positioned.
20 There's no room to go anywhere else. He
21 can't get into the backyard.

22 MR. EBERHART: There are
23 alternatives, though.

24 MS. REIN: I can't hear you.

25 MR. EBERHART: There was an

1 J a m e s P u r p u r a

2 alternative that you could put it in a
3 location, a storage location that rents
4 out for RVs.

5 MS. REIN: Those are very
6 expensive.

7 MR. EBERHART: I don't know. I
8 think it's out of character.

9 MR. BELL: Mr. Politi?

10 MR. POLITI: I did go out and see.
11 It is in the front yard. I had the same
12 concern. Yes, there are other
13 alternatives. If you could find a
14 storage facility for it. Again, I know
15 they're in the other areas. It's in the
16 front yard and it's -- you have a pretty
17 good size that you're putting in --

18 MR. PURPURA: It's 20 feet.

19 MR. POLITI: -- with the unit
20 itself. Those are my concerns. There
21 are alternatives.

22 MR. PURPURA: We don't have that
23 type of camper.

24 MR. POLITI: I was there. That's
25 the same type of system.

1 James Purpura

2 There are no walls on it?

3 MR. PURPURA: No walls.

4 MR. POLITI: It's just a cover?

5 MR. PURPURA: It's open on four
6 sides. The camper is sitting right there
7 right now. I mean, I could keep it
8 there. The problem is, these campers
9 have rubber roofs. They don't like the
10 weather. They don't like hot, they don't
11 like cold, they don't like ice. I've
12 been on that roof many, many times
13 putting the cover on. Since I hit my
14 eighties, the wind is going to take me
15 off that roof one of these days. It's
16 going to hurt when I hit the ground. I
17 just can't put that big cover up on there
18 anymore. Not myself anyway.

19 MS. REIN: I think if we change
20 anything and the camper can't be there in
21 the front yard, you're going to have to
22 go to all of his neighbors and tell them
23 the same thing, because they're all right
24 next to their garages in the front yard.

25 The way it's set up, there really

1 J a m e s P u r p u r a

2 is no place to go. I mean, this
3 gentleman has some woods back there that
4 I thought I was going to sink in. It's
5 very, very wet and muddy.

6 Some of the other folks on the
7 road, they don't really have a backyard.

8 I mean, there's no other place to
9 put it. I don't know. Outside of having
10 this man go and spend a lot more money to
11 house it somewhere. He's talking about
12 just a cover on top, just to make sure
13 that the weather doesn't get to it. As I
14 said, I went through that property and
15 there is no place to move that. No
16 place. The other properties as well. If
17 we tell him no, what do we do about the
18 other properties?

19 MR. HERMANCE: They all have
20 structures, the other properties?

21 MS. REIN: Yes. All of the garages
22 are out front, again because the way the
23 properties are laid out. Everyone that
24 has an RV on those two roads and around
25 the corner have the RV in their front

1 J a m e s P u r p u r a

2 yard, right next to the garage.

3 MR. BELL: You're saying it's in
4 character with the neighborhood?

5 MS. REIN: Yes, it is in character.
6 There's another gentleman right around
7 the corner who has the same carport as
8 Mr. Purpura wants. If we don't -- if we
9 deny it, we're going to have other issues
10 with all those other people.

11 MR. BELL: John?

12 MR. MASTEN: I know that area
13 because five years ago it was all flooded
14 out. Where Jim wants his carport would
15 be the proper place because there's so
16 much water that goes through that area.

17 MR. BELL: Okay.

18 MR. PURPURA: A lot of it comes in
19 my backyard. I do have a coyote once in
20 awhile.

21 MR. HERMANCE: However, the Town
22 doesn't allow structures built in the
23 front of the properties. That's the
24 issue.

25 MR. BELL: Okay. Is there anyone

1 James Purpura

2 here from the public who wishes to speak
3 on this matter?

4 MR. WARREN: I'm Lynn Warren. I'm
5 his neighbor for probably thirty years.

6 MR. BELL: State your name.

7 MR. WARREN: The camper has been
8 there forever.

9 Lynn Warren, 18 North Fostertown
10 Drive. How are you?

11 He's been there forever. The
12 camper has been there forever. I don't
13 think any of our neighbors -- it's a
14 little community we have. We've all been
15 there forever. I mean, it's not a big
16 deal. It really isn't. I mean, it's not
17 really a big deal. It's just what you
18 have to do. There are no backyards over
19 there. My backyard is a swamp. The
20 water that streams, it overflows, it
21 comes up and there's no other place this
22 gentleman could put it.

23 For me, to have him go out, take
24 out another bill just to have something
25 he enjoys in his life, I think we might

1 J a m e s P u r p u r a

2 want to think twice about that. That's
3 it.

4 MR. PURPURA: Thank you.

5 MR. BELL: Is there anybody else
6 from the public?

7 (No response.)

8 MR. PURPURA: That camper is our
9 vacation. That's it. We don't go
10 anywhere else. We enjoy it.

11 MR. BELL: Okay. Well, is there a
12 motion to close the public hearing?

13 MR. EBERHART: I'll make a motion
14 that we close the public hearing.

15 MR. MASTEN: I'll second it.

16 MR. BELL: We have a first from Mr.
17 Eberhart and a second from Mr. Masten.
18 All in favor?

19 MR. POLITI: Aye.

20 MR. EBERHART: Aye.

21 MR. HERMANCENCE: Aye.

22 MR. BELL: Aye.

23 MR. MASTEN: Aye.

24 MS. REIN: Aye.

25 MR. BELL: So this is a Type 2

1 J a m e s P u r p u r a

2 action?

3 MR. DONOVAN: Correct, Mr. Chairman
4 -- Mr. Vice Chairman.

5 MR. BELL: Thank you. We'll go
6 through the five factors here, the first
7 one being whether or not the benefits can
8 be achieved by any other means feasible
9 to the applicant.

10 MR. MASTEN: No.

11 MS. REIN: No.

12 MR. BELL: The second, is there an
13 undesirable change in the neighborhood
14 character or a detriment to nearby
15 properties.

16 MS. REIN: No.

17 MR. MASTEN: No.

18 MR. BELL: Third, whether the
19 request is substantial.

20 MS. REIN: No.

21 MR. MASTEN: No.

22 MR. BELL: Fourth, whether the
23 request will have adverse physical or
24 environmental effects.

25 MS. REIN: No.

1 James Purpura

2 MR. BELL: The fifth is whether the
3 alleged difficulty is self-created. This
4 is relevant but not determinative.

5 With that said, what is the motion
6 from the Board?

7 MS. REIN: I'll make a motion to
8 approve.

9 MR. MASTEN: I'll second it.

10 MR. BELL: We have a motion to
11 approve by Ms. Rein and a second by Mr.
12 Masten. Roll call.

13 MS. JABLESNIK: Mr. Bell?

14 MR. BELL: Yes.

15 MS. JABLESNIK: Mr. Eberhart?

16 MR. EBERHART: No.

17 MS. JABLESNIK: Mr. Hermance?

18 MR. HERMANCE: No.

19 MS. JABLESNIK: Mr. Masten?

20 MR. MASTEN: Yes.

21 MS. JABLESNIK: Mr. Politi?

22 MR. POLITI: No.

23 MS. JABLESNIK: Ms. Rein?

24 MS. REIN: Yes.

25 MR. DONOVAN: It's a three-three

1 James Purpura

2 vote. It's a seven-member Board. You
3 need four votes. That is a denial.

4 MR. PURPURA: Okay. Can I vote?

5 MR. BELL: I'm sorry.

6 MR. DONOVAN: You have the ability
7 to request that the Board hear it again.
8 We're short a member. The chairman is
9 sick tonight. I have no idea how he
10 would vote.

11 MR. PURPURA: Can we do that?

12 MR. DONOVAN: We can't do anything.

13 MR. BELL: You have to do it.

14 MR. DONOVAN: You can't do it now.
15 You have to make a request in writing.

16 MR. PURPURA: All right.

17 MR. BELL: That would come through
18 you. Correct? You would make --

19 MS. JABLESNIK: Write me a letter.

20 MR. PURPURA: That's it?

21 MR. BELL: Yes.

22 MR. PURPURA: Thank you.

23

24 (Time noted: 7:32 p.m.)

25

1 James Purpura

2

3

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

4

5

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

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

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

15 IN WITNESS WHEREOF, I have hereunto set
16 my hand this 3rd day of March 2024.

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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

ILENE & TERRENCE OSBOURNE
4 Virginia Circle, Newburgh
Section 105; Block 7; Lot 14
R-3 Zone

----- X

Date: February 22, 2024
Time: 7:32 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRELL BELL, Acting Chairman
JAMES EBERHART, JR.
GREG HERMANCE
JOHN MASTEN
JAMES POLITI
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVES: ILENE OSBOURNE &
TERRENCE OSBOURNE

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

1 I l e n e & T e r r e n c e O s b o u r n e

2 MR. BELL: Moving along. We have
3 Ilene and Terrence Osbourne, 4 Virginia
4 Circle in Newburgh, an area variance of
5 the minimum front yard setback to build a
6 4.8 x 6 covered front porch.

7 MR. OSBOURNE: Terrene and Ilene
8 Osbourne.

9 We're just requesting a cover at
10 the front steps/entrance to our house.

11 MR. BELL: Okay. We have all been
12 out there to see that. I did take a look
13 around the neighborhood to see if it
14 would be out of character, which it's
15 not.

16 I'll go over to Mr. James.

17 MR. POLITI: Yes. There are a
18 number of them in the neighborhood.

19 It is just covering the platform.
20 Correct?

21 MR. OSBOURNE: Yes.

22 MR. EBERHART: No questions for me.

23 MR. BELL: Greg?

24 MR. HERMANCE: I have none.

25 MR. BELL: John, do you have any

1 I l e n e & T e r r e n c e O s b o u r n e

2 questions?

3 MR. MASTEN: I'm day dreaming.

4 MR. BELL: I saw that.

5 MS. REIN: I think it's a
6 reasonable request. It's a small little
7 portico like everybody has.

8 MR. BELL: Is there anyone here
9 from the public who wishes to speak on
10 this matter?

11 (No response.)

12 MR. BELL: None. Okay. With that
13 said, is there a motion to close the
14 public hearing?

15 MR. POLITI: I'll make a motion.

16 MS. REIN: I'll second.

17 MR. BELL: We have a motion and a
18 second. All in favor?

19 MR. POLITI: Aye.

20 MR. EBERHART: Aye.

21 MR. HERMANCE: Aye.

22 MR. BELL: Aye.

23 MR. MASTEN: Aye.

24 MS. REIN: Aye.

25 MR. BELL: Let's go through the

1 I l e n e & T e r r e n c e O s b o u r n e

2 balancing tests here, the first one being
3 whether or not the benefits can be
4 achieved by any other means feasible to
5 the applicant. No.

6 Is there an undesirable change in
7 the neighborhood character or a detriment
8 to nearby properties.

9 MS. REIN: No.

10 MR. BELL: No.

11 Whether the request is substantial.

12 MR. POLITI: No.

13 MR. EBERHART: No.

14 MR. HERMANCE: No.

15 MR. BELL: No.

16 MR. MASTEN: No.

17 MS. REIN: No.

18 MR. BELL: Whether the request
19 would have adverse physical or
20 environmental effects.

21 MR. POLITI: No.

22 MR. EBERHART: No.

23 MR. HERMANCE: No.

24 MR. BELL: No.

25 MR. MASTEN: No.

1 I l e n e & T e r r e n c e O s b o u r n e

2 MS. REIN: No.

3 MR. BELL: Whether the alleged
4 difficulty is self-created, but that's
5 not relevant. Whether the alleged
6 difficulty -- hold on. I missed one.
7 Whether the request would have adverse
8 physical or environmental effects.

9 MR. POLITI: No.

10 MR. EBERHART: No.

11 MR. HERMANCE: No.

12 MR. BELL: No.

13 MR. MASTEN: No.

14 MS. REIN: No.

15 MR. BELL: With that said, what is
16 the motion of the Board?

17 MR. EBERHART: I'll make a motion
18 to approve.

19 MS. REIN: Second.

20 MR. BELL: Roll call.

21 MS. JABLESNIK: Mr. Bell?

22 MR. BELL: Yes.

23 MS. JABLESNIK: Mr. Eberhart?

24 MR. EBERHART: Yes.

25 MS. JABLESNIK: Mr. Hermance?

1 I l e n e & T e r r e n c e O s b o u r n e

2 MR. HERMANCE: Yes.

3 MS. JABLESNIK: Mr. Masten?

4 MR. MASTEN: Yes.

5 MS. JABLESNIK: Mr. Politi?

6 MR. POLITI: Yes.

7 MS. JABLESNIK: Ms. Rein?

8 MS. REIN: Yes.

9 MR. BELL: How many letters were
10 sent out? I missed the last two.

11 MS. JABLESNIK: For the Purpura
12 application, there were 28 letters. The
13 Osbourne application was 62.

14 MR. BELL: 62.

15 It's approved.

16 MR. OSBOURNE: Thank you.

17

18 (Time noted: 7:35 p.m.)

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1 I l e n e & T e r r e n c e O s b o u r n e

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

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5

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

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

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

15 IN WITNESS WHEREOF, I have hereunto set
16 my hand this 3rd day of March 2024.

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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

5450 ROUTE 9W, LLC

5430 & 5450 Route 9W, Newburgh
Section 9; Block 1; Lot 53.1 & 13
B Zone

----- X

Date: February 22, 2024
Time: 7:35 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRELL BELL, Acting Chairman
JAMES EBERHART, JR.
GREG HERMANCE
JOHN MASTEN
JAMES POLITI
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVES: STANLEY SCHUTZMAN
& ANTHONY GUCCIONE

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

1 5 4 5 0 R o u t e 9 W , L L C

2 MR. BELL: The next applicant is
3 5450 Route 9W, LLC. This is a
4 Planning Board referral for area
5 variances of the rear yard setback of
6 the canopy to a state highway,
7 minimum off-street parking and the
8 buffer area between a B and an R-3
9 zone.

10 MR. SCHUTZMAN: Good evening. My
11 name is Stan Schutzman. I'm a local
12 attorney here today on behalf of the
13 applicant, 5450 Route 9W, LLC.

14 I just want to note at the outset
15 for the record, the minimum off-street
16 parking request, although it was made on
17 referral from the Planning Board, the
18 applicant chose not to make it. In my
19 submittal letter I was specific to
20 withdraw that part of it.

21 MR. BELL: Which part again?

22 MR. SCHUTZMAN: In my submittal
23 letter of February 5th, I made a
24 withdrawal of that request. That is, the
25 applicant redesigned the project so as to

1 5 4 5 0 R o u t e 9 W , L L C

2 not need a variance with respect to the
3 Oak Street access.

4 In doing so, I should also note
5 that the property, from a development
6 standpoint -- I have with me Mr. Anthony
7 Guccione who is here from JMC
8 Engineering, should the Board or its
9 members have any questions concerning the
10 development opportunity that we have.
11 We've put some sketches up on the board,
12 if the Board should have any questions.

13 MR. DONOVAN: Stan, I should tell
14 you, we have not heard back from the
15 County. The 239 referral, we haven't
16 heard back, so we can't make a
17 determination -- the Board can't make a
18 determination. I'm sure they'll be more
19 than happy to hear from you.

20 MR. SCHUTZMAN: Okay. Since we're
21 here. Basically we're here for a request
22 on three variances, two of which we
23 question some interpretation that has
24 been proffered by the Planning Board's
25 counsel. That's with respect to the rear

1 5 4 5 0 R o u t e 9 W , L L C

2 yard setback. We acknowledge the need
3 for that, so an application has been made
4 for that variance.

5 With respect to the buffer area,
6 it's our reading of the statute that
7 since we're between the R-3 Zone and the
8 B Zone, we have a lesser standard to
9 meet. It's been outlined in detail in
10 our submittal.

11 With respect to the canopy setback,
12 we questioned the issue of whether it's a
13 structure. Alternatively, we've
14 requested that the Board consider
15 approving a variance.

16 MR. BELL: Okay. I'll start down
17 here. I'm going to start on this end.
18 Donna?

19 MS. REIN: Isn't he coming back?

20 MR. DONOVAN: Yes. They have to
21 come back because we don't have the
22 County. Since they're here, they can
23 tell us what it's about and if you have
24 any questions.

25 MR. SCHUTZMAN: We'd appreciate any

1 5 4 5 0 R o u t e 9 W , L L C

2 guidance.

3 MS. REIN: I have nothing. Thank
4 you.

5 MR. BELL: John?

6 MR. MASTEN: I don't have any
7 questions right now.

8 MR. BELL: Okay. Greg?

9 MR. HERMANCE: I have nothing right
10 now.

11 MR. BELL: James Eberhart?

12 MR. EBERHART: I don't have
13 anything right now.

14 MR. BELL: James Politi?

15 MR. POLITI: When you come back
16 I'll be --

17 MR. DONOVAN: Before you leave, I
18 have a question, if I can. I don't mean
19 to put Code Compliance on the spot. I
20 think I want to get a little
21 clarification on the buffer area. When I
22 read the application, I went back and I
23 looked at Pat Hines' letter to the
24 Planning Board where he talked about a
25 rear yard setback variance. I know

1 5 4 5 0 R o u t e 9 W , L L C

2 Dominic, in his referral from the
3 Planning Board to the Zoning Board,
4 talked about the buffer area. I wasn't
5 sure where that came from. Looking at
6 the minutes from the December 7th
7 Planning Board meeting, it looks like Jim
8 Campbell from Code Compliance identified
9 the need for the 70-foot buffer. I guess
10 I did put you on the spot. I'm sorry,
11 Joe.

12 MR. MATTINA: It's from the
13 Planning Board.

14 MR. DONOVAN: Right. We do have
15 another shot. I didn't see it. It
16 wasn't in Pat's letter. Generally he's
17 very thorough when he calls out the
18 variances. I didn't see that. It comes
19 from Jim Campbell, Joe. Maybe between
20 now and next time, since the applicant is
21 questioning the need for it. The buffer,
22 not the --

23 MR. SCHUTZMAN: Right.

24 MR. MATTINA: Which note is that
25 under?

1 5 4 5 0 R o u t e 9 W , L L C

2 MR. DONOVAN: You know what, Joe.
3 I don't want you to do this on the fly.
4 I'm going to give you the transcript from
5 the Planning Board so you'll be able to
6 pull it out, what Jim said. It's not in
7 Pat Hines' letter, though.

8 MR. MATTINA: Okay.

9 MR. SCHUTZMAN: Thank you. I just
10 wanted to also note that we did speak to
11 the principal neighbor, which is Orchard
12 Hills Landing, a very big residential
13 development, and we have the support that
14 we just recently submitted to the Board.

15 MS. REIN: We got their letter.

16 MR. SCHUTZMAN: Thank you very
17 much.

18 MR. BELL: With that said, you will
19 come back next month.

20 MR. DONOVAN: Any public comment?

21 MR. BELL: You'll come back next
22 month.

23 Is there anyone from the public
24 that wishes to come up?

25 MS. BEATTY: Thank you. I wasn't

1 5 4 5 0 R o u t e 9 W , L L C

2 sure because he was coming back.

3 Barbara Beatty. I live at Par
4 Valley.

5 I just have a question. I did my
6 due diligence, I hope. On March 16th of
7 2017, the Planning Board had denied the
8 same property owners a gas station. It
9 was stated there are three prohibitions
10 to the use of the property as part of
11 that easement. They include a gas
12 station, a repair garage and a truck
13 stop. That was denied. According to
14 what's on your website, they want to put
15 in a convenience store/gas station with
16 six gasoline pumps.

17 My question is, what's changed?
18 It's along the same corridor where they
19 have Cortland Commons right now where it
20 was denied.

21 My other concern is sewage. We
22 know in your paperwork you talk about the
23 environmental issue with the bald eagle
24 and the Indiana bat.

25 Again, I really want to know what

1 5 4 5 0 R o u t e 9 W , L L C

2 changed that now they put in a request
3 for the gas station. It doesn't matter
4 how many gas stations we have, I get it,
5 but what changed?

6 MR. SCHUTZMAN: May I respond to
7 that?

8 MR. BELL: Is there anyone else?

9 MR. SCHUTZMAN: There may be some
10 confusion on behalf of the person. There
11 is a deed restriction with respect to the
12 property on the north side of Cortland
13 Drive where the building is already up.
14 That is a deed restriction relative to
15 car repair, gasoline stations and
16 whatnot. This lot across the street has
17 no such deed restriction. We are free
18 and clear to develop the property
19 consistent with the compliance
20 requirements of the Town without any
21 prohibition with respect to any deed
22 restriction.

23 MR. DONOVAN: This is in the B
24 Zone. Correct?

25 MR. MATTINA: Yes.

1 5 4 5 0 R o u t e 9 W , L L C

2 MR. DONOVAN: Just looking at the
3 code, convenience stores with or without
4 gasoline filling stations are permitted
5 uses, with Planning Board approval, in
6 the B Zone.

7 MR. SCHUTZMAN: I noted again in my
8 submittal letter that we are consistent
9 in the zone in terms of the uses
10 permitted. Thank you.

11 MR. BELL: Which page is that on?

12 MS. REIN: Also, I didn't see
13 anything in the paperwork, I'm looking
14 again, about the Indiana bat and the bald
15 eagle. I know we have six million
16 Indiana bats, but bald eagles, not so
17 much.

18 MR. GUCCIONE: Anthony Guccione
19 with JMC.

20 As far as the bald eagle, you do an
21 environmental assessment if you're in a
22 potential habitat where the bald eagle
23 lives. There's a certain distance from
24 the nest you need to keep certain
25 activities.

1 5 4 5 0 R o u t e 9 W , L L C

2 As far as the Indiana bat, the only
3 restriction typically is that you just
4 clear the forest and the trees in the
5 winter. There are months that you can
6 clear. They don't want you to clear when
7 the bats are nesting. That's really just
8 raising an awareness that those items
9 could exist in this area.

10 MS. REIN: Will there be something
11 you bring to us next time to state what
12 you just said and how you will handle it?

13 MR. GUCCIONE: We can do that.

14 MS. REIN: Thank you.

15 MR. MATTINA: The buffer that Jim
16 was talking about is 185-21-D(2).

17 MR. BELL: Say that again.

18 MR. MATTINA: 185.21-D(2). That
19 requires the buffer in the rear yard.

20 MR. DONOVAN: I'm impressed.

21 MR. MATTINA: You give me five
22 minutes and I can find anything.

23 MR. GUCCIONE: We're not
24 disagreeing that a buffer is required.
25 It's the size of the buffer. Mr.

1 5 4 5 0 R o u t e 9 W , L L C

2 Cordisco's letter said the 75-foot buffer
3 is required. If you read the code,
4 there's a table that identifies the
5 buffer adjacent to different districts.
6 They're in an R-3 District. We're a B
7 District. When you're in a B District,
8 it says you need to be half the required
9 setback distance. 30 feet is the
10 setback. That would be the required
11 buffer, not the 75 if we were in a
12 different district. That's a
13 clarification we're seeking. We're
14 agreeing that we need a rear yard
15 setback.

16 MR. DONOVAN: We'll clarify whether
17 it's 75.

18 MR. MATTINA: We can. I'm thinking
19 it's 30 myself. I'll clarify with Jim.

20 MR. DONOVAN: It would be 30, half
21 of that.

22 MR. MATTINA: Half of 30. Correct.

23 MR. DONOVAN: I'm only a lawyer,
24 but that's what it looks like to me.

25 MR. BELL: Is there anyone else

1 5 4 5 0 R o u t e 9 W , L L C

2 here from the public?

3 (No response.)

4 MR. DONOVAN: You need a motion to
5 continue this to the March meeting.

6 MR. BELL: Did you want to say
7 something?

8 MR. DONOVAN: He wanted to say
9 thank you.

10 MR. SCHUTZMAN: Thank you.

11 MR. BELL: Would someone make a
12 motion to keep the public hearing open?

13 MR. EBERHART: I'll make a motion.

14 MR. POLITI: Second.

15 MR. BELL: We have a motion from
16 Mr. Eberhart and a second from Mr. Politi.
17 All in favor?

18 MR. POLITI: Aye.

19 MR. EBERHART: Aye.

20 MR. HERMANCE: Aye.

21 MR. BELL: Aye.

22 MR. MASTEN: Aye.

23 MS. REIN: Aye.

24 MR. DONOVAN: For the folks that
25 were interested in this, there won't be

1 5 4 5 0 R o u t e 9 W , L L C

2 another mailing. This is continued to
3 the fourth Thursday in March. Pay
4 attention to the website in case there's
5 an adjournment.

6 Nobody wants to make another 309
7 mailings.

8 MR. SCHUTZMAN: 309 letters. Thank
9 you.

10

11 (Time noted: 7:45 p.m.)

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5 4 5 0 R o u t e 9 W , L L C

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 3rd day of March 2024.

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

RAM HOTELS, INC.

Unity Place & Auto Park Place, Newburgh
Section 97; Block 2; Lot 37
IB Zone

----- X

Date: February 22, 2024
Time: 7:46 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRELL BELL, Acting Chairman
JAMES EBERHART, JR.
GREG HERMANCE
JOHN MASTEN
JAMES POLITI
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: DOMINIQUE ALBANO

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

1 R A M H o t e l s , I n c .

2 MR. BELL: Next is RAM Hotels in
3 Newburgh for area variances of the
4 maximum building height and frontage
5 on a State highway to construct a
6 five-story, 112-room hotel. This
7 applicant was previously approved by
8 the ZBA on October 27, 2016.

9 How many letters went out?

10 MS. JABLESNIK: This applicant
11 sent 15. If you want to go the
12 winner that way.

13 MR. BELL: 15.

14 MS. ALBANO: Good evening. My name
15 is Dominique Albano with Whiteman,
16 Osterman & Hanna representing RAM Hotels
17 in their application for two variances,
18 one for a height variance for 69.4 feet
19 where 50 feet is permitted and a variance
20 for not having frontage on a State or a
21 County highway.

22 Like I just said, this variance was
23 approved in 2016. We also received site
24 plan approval on July 20, 2017 and then
25 amended on October 4, 2018.

1 R A M H o t e l s , I n c .

2 It was brought to our attention,
3 when our client sought a building permit,
4 that the variances had expired. We're
5 just seeking the same exact variances
6 that were approved in 2016.

7 MR. BELL: They expired?

8 MS. ALBANO: Yes.

9 MR. BELL: Okay.

10 MS. REIN: I have to say I was
11 impressed with the paperwork and the fact
12 that everything in it was smack out of
13 the SEQRA handbook.

14 MS. ALBANO: Thank you. I worked
15 really hard on that.

16 MS. REIN: You must know the SEQRA
17 handbook.

18 MS. ALBANO: No admin was used in
19 the making of these pamphlets. I take
20 pride in that.

21 MR. BELL: With that said --

22 MR. DONOVAN: It's all in the
23 application. This is new to all of you,
24 not new to me. This was before the Board
25 in 2016. The exact variances --

1 RAM Hotels, Inc.

2 actually, John, you were here.

3 They're requesting the same
4 variances as were granted before. There
5 was litigation before. Both the Supreme
6 Court and the Appellate Division upheld
7 what you did, the ZBA. It wasn't you in
8 particular, but Darrin was on the Board.

9 The point I want to make, we talk
10 all the time about whether or not what
11 you do establishes a precedent. I always
12 tell you that whatever you do establishes
13 a precedent.

14 You have established, you, Board
15 Members, the ZBA, has established a
16 precedent relative to this case. You
17 have approved these exact same variances.
18 It's the exact same plan. They're only
19 back because the variance expired. If
20 you decide you want to change your mind,
21 you need a really, really, really good
22 reason to do that.

23 MR. BELL: Would we need to have
24 the public speak?

25 MR. DONOVAN: Absolutely. If the

1 RAM Hotels, Inc.

2 public decided to come, they're
3 absolutely entitled to speak.

4 MS. REIN: Wasn't there a letter?

5 MR. DONOVAN: I think there were
6 two e-mails.

7 MR. BELL: Two e-mails. One was
8 very strong and one was straight to the
9 point.

10 MR. DONOVAN: You should open it up
11 to any questions from the Board. Not to
12 short circuit.

13 MR. BELL: Is there anyone here
14 from the public that wishes to speak on
15 this matter?

16 MS. EBERHART: Hi. My name is Asia
17 Eberhart, for the record.

18 Just thinking about it. You were
19 saying it's five stories and I'm thinking
20 about the placement. One of the best
21 things about the Hudson Valley is the
22 open space and being able to see the sky.
23 I feel like when we get into building
24 really big buildings, we're getting that
25 New York City affect and it's just going

1 RAM Hotels, Inc.

2 to be sitting there, especially where
3 it's at. That's pretty much open space.

4 MS. REIN: Thank you.

5 MR. BELL: Anyone else from the
6 public?

7 (No response.)

8 MR. BELL: Okay. With that said --

9 MR. HERMANCE: I do have a
10 question. The previous variance was for
11 the same height?

12 MR. DONOVAN: The same height. Not
13 to make the case for them. Most of the
14 roof is 61 feet. It's a very small
15 portion that goes up to whatever, 67.

16 MS. ALBANO: 69.

17 MR. DONOVAN: I have the decision
18 that was written back in 2016. I'm just
19 reading from the prior Board decision.
20 This is what the ZBA said in connection
21 with the height variance requested: "The
22 Board takes note of the fact that only a
23 small portion of the proposed hotel
24 building reaches the 69 feet 4 inch
25 maximum. According to testimony given at

1 RAM Hotels, Inc.

2 the hearing, the majority of the roof
3 portion of the building will be
4 approximately 61 feet which represents
5 less than a 20 percent differential over
6 the maximum permitted height." So
7 there's only a small portion of the roof
8 that goes up to the 69. That's what the
9 Board determined when they granted the
10 variance for this height back in 2016.

11 MR. BELL: Was the Jehovah Witness
12 building there at the time? I know BJs
13 wasn't there, of course. The Chevrolet,
14 the Honda.

15 MR. MATTINA: I'm going to say they
16 were. I don't know for sure, but I'm
17 pretty sure they were.

18 MR. BELL: It's before my time.

19 MR. MASTEN: Darrell, BJs wasn't
20 there. The only one that was there was
21 Park Motors and Barton.

22 MR. BELL: Okay.

23 MR. MASTEN: They were building
24 Morehead.

25 MR. BELL: There's no one else from

1 RAM Hotels, Inc.

2 the public, so I'll need a motion to
3 close the public hearing.

4 MR. EBERHART: I'll make a motion
5 to close the public hearing.

6 MR. HERMANCE: I'll second.

7 MR. BELL: All in favor?

8 MR. POLITI: Aye.

9 MR. EBERHART: Aye.

10 MR. HERMANCE: Aye.

11 MR. BELL: Aye.

12 MR. MASTEN: Aye.

13 MS. REIN: Aye.

14 MR. BELL: Are there any more
15 questions from the Board? I'll start
16 with Mr. Politi.

17 MR. POLITI: Go ahead.

18 MR. EBERHART: I was just thinking;
19 Counsel, you made the point that we
20 really can't stray from --

21 MR. DONOVAN: So I would never tell
22 you or any Board Member how to vote. You
23 should always vote your conscience and do
24 what you think is right. I will tell you
25 that if you vote against this, you would

1 RAM Hotels, Inc.

2 lose any lawsuit. I would tell you that.

3 MR. EBERHART: We don't want a
4 lawsuit. I got you.

5 MR. BELL: It's already approved.
6 It's just the variance expired.

7 MS. ALBANO: The litigation was
8 what led us to the expiration.

9 MR. BELL: This is a Type 2?

10 MR. DONOVAN: This is actually an
11 Unlisted action. You issued a negative
12 declaration.

13 One other point I want to make. So
14 in terms of the GML-239, I sent you an
15 e-mail late today.

16 MS. ALBANO: I literally saw it
17 when I walked in.

18 MR. DONOVAN: Eight years ago we
19 sent this to the County because I think
20 the Board thought it was within 500 feet
21 of the State highway. Siobhan scaled it
22 out and it's actually closer to 700 feet.
23 It doesn't meet the trigger.

24 I also looked at the Planning
25 Board, because the Planning Board issued

1 RAM Hotels, Inc.

2 site plan approval for this, and the
3 Planning Board indicated it did not need
4 to go to the County. It appears that the
5 referral to the ZBA eight years ago was
6 in error. This does not need to go to
7 the County, so there's no County
8 referral.

9 We do need to adopt a negative
10 declaration.

11 What I do want to make clear to the
12 Board as well is, in 2017 the Planning
13 Board did a full SEQRA analysis of this
14 and issued a negative declaration. We're
15 just -- we issue a negative declaration
16 just reaffirming what this Board did in
17 2016. It would just be a motion for a
18 negative dec. That's all you need to
19 start.

20 MS. REIN: I'll make a motion for a
21 negative declaration.

22 MR. EBERHART: I'll second.

23 MR. BELL: We have a motion from
24 Ms. Rein and a second from Mr. Eberhart.
25 All in favor?

1 R A M H o t e l s , I n c .

2 MR. POLITI: Aye.

3 MR. EBERHART: Aye.

4 MR. HERMANCE: Aye.

5 MR. BELL: Aye.

6 MR. MASTEN: Aye.

7 MS. REIN: Aye.

8 MR. BELL: Okay. So with that
9 being said, the first being whether or
10 not the benefits can be achieved by any
11 other means feasible to the applicant.

12 MS. REIN: No.

13 MR. BELL: Second, is there an
14 undesirable change in the neighborhood
15 character or a detriment to nearby
16 properties.

17 MR. POLITI: No.

18 MR. EBERHART: No.

19 MR. HERMANCE: No.

20 MR. BELL: No.

21 MR. MASTEN: No.

22 MS. REIN: No.

23 MR. BELL: Third, whether the
24 request is substantial.

25 Fourth, whether the request will

1 RAM Hotels, Inc.

2 have adverse physical or environmental
3 effects. I don't think so.

4 Fifth, whether the alleged
5 difficulty is self-created. This is
6 relevant but not determinative.

7 So with that said, what is the
8 motion of the Board?

9 MR. EBERHART: I'll make a motion
10 for approval.

11 MR. DONOVAN: If I can, just a
12 suggestion that you could adopt, in the
13 motion, the approval resolution issued in
14 2016 so it remains the same, so there's
15 no discrepancy between the approval
16 resolutions, if that's okay with you.

17 MR. EBERHART: That's fine with me.

18 MR. BELL: Roll call, Siobhan.

19 MR. DONOVAN: Did we get a second?

20 I interrupted Mr. Eberhart.

21 MR. POLITI: I'll second.

22 MR. BELL: Roll call, Siobhan.

23 MS. JABLESNIK: Mr. Bell?

24 MR. BELL: Yes.

25 MS. JABLESNIK: Mr. Eberhart?

1 R A M H o t e l s , I n c .

2 M R . E B E R H A R T : Y e s .

3 M S . J A B L E S N I K : M r . H e r m a n c e ?

4 M R . H E R M A N C E : Y e s .

5 M S . J A B L E S N I K : M r . M a s t e n ?

6 M R . M A S T E N : Y e s .

7 M S . J A B L E S N I K : M r . P o l i t i ?

8 M R . P O L I T I : Y e s .

9 M S . J A B L E S N I K : M s . R e i n ?

10 M S . R E I N : Y e s .

11 M S . A L B A N O : T h a n k y o u . H a v e a
12 g o o d n i g h t .

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14 (T i m e n o t e d : 7 : 5 5 p . m .)

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1 R A M H o t e l s , I n c .

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

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

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

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

15 IN WITNESS WHEREOF, I have hereunto set
16 my hand this 3rd day of March 2024.

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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

RIEGER HOMES, INC.
2 Mariners Court, Newburgh
Section 121; Block 1; Lot 1
R-1 Zone

----- X

Date: February 22, 2024
Time: 7:55 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRELL BELL, Acting Chairman
JAMES EBERHART, JR.
GREG HERMANCE
JOHN MASTEN
JAMES POLITI
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: IAN RIEGER

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

1 R i e g e r H o m e s , I n c .

2 MR. BELL: Hold overs. Okay. The
3 first one is Rieger Homes, 2 Mariners
4 Court in Newburgh. This was the area
5 variance of maximum building height to
6 construct a new single-family residence
7 on the property.

8 If I'm not mistaken, one of the
9 things we were looking for was a line of
10 sight to kind of give us a picture of the
11 height.

12 MR. DONOVAN: Tell us who you are.

13 MR. RIEGER: My name is Ian Rieger.
14 The application says Rieger Homes, but
15 this is a personal house for my wife and
16 myself. Our personal residence. We're
17 Town of Newburgh residents for a long,
18 long time.

19 I was not here last month. My son
20 was here. I understand not all the Board
21 Members were here as well. I don't know
22 if you want me to give some background or
23 you just want me to go right to the line
24 of sight.

25 MR. BELL: Give us the background.

1 R i e g e r H o m e s , I n c .

2 The only two Board Members that were
3 missing were the chairman and Greg
4 himself.

5 MR. RIEGER: Okay. The last time I
6 came in to request was for the 35 max. I
7 had almost 42. Since that time, as a
8 result of some of the comments at the
9 meeting, I've reduced that to about 38.5
10 feet or 39 feet. So I've reduced the
11 amount of the variance that I'm
12 requesting.

13 MR. BELL: Okay.

14 MR. RIEGER: The lot has some
15 unique characteristics. That's some of
16 the reason why I feel that the height is
17 important. We front on --

18 MR. BELL: Go ahead.

19 MR. RIEGER: We front on three
20 streets, River Road, Anchorage Drive and
21 Mariners Court. I'm 20 to 25 feet below
22 the grade where the house is going to go.
23 That little orange thing is the house.
24 This is the lot. This is the subdivision
25 map for the Anchorage. I'm on lot 1.

1 R i e g e r H o m e s , I n c .

2 We're talking about putting a house
3 there. There's about a 25-foot
4 difference in grade from here to here.
5 You see this heavy dark line? That's
6 regrading. There's a big bank. They
7 have the entry feature, a big stonewall.
8 We wanted to put the house here, bring a
9 driveway in from below so we're well
10 below the road. We want to do something
11 that's aesthetically pleasing, so we're
12 trying to get some height so that it
13 doesn't look out of place.

14 Some of the neighbors had concerns.
15 I wanted to see if I could illustrate how
16 my house is going to be different than
17 those other houses. Here we have some
18 photos. This house is on lot 4. This is
19 my house. This is lot 4. This is River
20 Road. This house is under construction.
21 It's on lot 4. They opted to build it
22 closer to the road. The subdivision
23 actually calls for driveways coming in
24 off of the new road, but they're in the
25 building envelop and they opted to build

1 R i e g e r H o m e s , I n c .

2 it closer to the road. To do that, to
3 deal with the grade, they have a huge
4 retaining wall behind the house. I did
5 an illustration with the elevation. So
6 you have that. That's the new height.

7 This is a different illustration
8 showing grades. This illustration shows
9 that we're going to start the house and
10 the basement floor is going to be at 111.
11 The ridge is going to be at 158.

12 MR. EBERHART: Is this
13 representative of a slab right here?

14 MR. RIEGER: No. It's a basement.
15 Here is the basement down here. This is
16 buried in the ground.

17 MR. POLITI: No windows?

18 MR. RIEGER: No windows in the
19 front.

20 This is a house built close to the
21 River Road elevation. The retaining wall
22 is in the back. My house I have at 158.
23 This red line here is 160.

24 This plan here, this is the
25 subdivision for Anchorage. This is the

1 R i e g e r H o m e s , I n c .

2 subdivision that was done years ago
3 across the street. These are --

4 MS. REIN: Excuse me, Mr. Rieger.
5 Can you just --

6 MR. RIEGER: I'll bring it over.

7 MR. BELL: Just move that other
8 one.

9 MR. RIEGER: Anchorage, this is the
10 subdivision across the street. I went
11 the to County and I got the copies of the
12 subdivision map. We kind of Photoshopped
13 them together. I also did a Google Earth
14 overlay on top of that. This is River
15 Road. This is Anchor Drive. This is
16 Mariners Court. This is my lot with a
17 house here. I'm going to be at 158.
18 This red mark is 160.

19 We had two letters written and we
20 had audience participation, a neighbor
21 questioning what was going on. That's
22 these three houses. This driveway is
23 right around 160. The house ends up plus
24 or minus 200, the grade at the house.
25 The house is on top of it.

1 R i e g e r H o m e s , I n c .

2 This one, 717 River Road, the
3 people are here in the audience, their
4 driveway is at 153 and their house is at
5 210. This is 160. The orange mark which
6 you can barely see, that's 200. These
7 are the three.

8 We have two letters and we have
9 people in the audience. This is the
10 height of my roof. These are steep
11 banks. This driveway, 717, is at 153.
12 The grade at the house is 210. The house
13 is on top of it.

14 This one at 725, the house is at
15 225, way up there. You can't see it on
16 here, but the driveway goes up and
17 there's a switchback and around. I mean,
18 it's beautiful up there, but it's high.

19 MR. BELL: Okay.

20 MR. RIEGER: This is what it looks
21 like across the street. This is looking
22 towards the river. This is the existing
23 house. I'm not building along River
24 Road. This black line is approximately
25 where my roof would be.

1 R i e g e r H o m e s , I n c .

2 MR. BELL: Where your roof would
3 be?

4 MR. RIEGER: Yes. This black line
5 is about where my roof would be.

6 MR. BELL: Okay.

7 MR. RIEGER: This is 725. That's
8 still under construction.

9 MR. POLITI: It's still under
10 construction?

11 MR. RIEGER: This is 725. This is
12 the one to the north. This is 717. I
13 tried to take a picture of 709. If you
14 look closely, I was standing on River
15 Road, I'm looking up the bank, across
16 this lot, and that's what I can see of
17 the house. I don't think we're going to
18 impact them.

19 MR. BELL: Okay.

20 MR. RIEGER: So yesterday I wasn't
21 sure I was going to be able to do it
22 because of the snow. I did have a lift
23 out on the site. You can see I had a
24 lift and that's what we measured from.
25 There are some pipes up there. You can

1 R i e g e r H o m e s , I n c .

2 see that. This one --

3 MR. BELL: Make sure she sees down
4 there.

5 MR. RIEGER: It starts here, but
6 this is a lift and that's the height of
7 the roof. I put a sticky here, a sticky
8 note here, to reflect that.

9 I took these pictures from
10 different vantage points. I'll show you
11 where I took these pictures from. This
12 is the lift. That's the high point.
13 This is about the corner of the roof.
14 From where I was standing here, you can
15 see the house up on the hill entirely.
16 We're not going to block -- the river is
17 the view. We're not blocking the river
18 view.

19 These were taken from -- these
20 first two pictures were taken from here,
21 the lift up the hill. I could see the
22 entire house and some of their front
23 lawn.

24 The second two pictures were taken
25 from over here, more at an angle. Again

1 R i e g e r H o m e s , I n c .

2 we raised the lift.

3 The first two pictures we had the
4 lift at the roof height. We raised the
5 lift to the maximum and I took a couple
6 of shots from here. You can still see --
7 you can still see lawn on the upper side.

8 I had asked permission to go onto
9 the -- across the street to take shots.
10 I did get permission, but I didn't -- I
11 asked -- I didn't get it until it was too
12 late. I did go up today and just took a
13 couple of pictures. This picture is from
14 here. I took it from -- you can see it's
15 right at that bend and I'm looking down.
16 I put a couple of lines through here
17 where the lift was because I transposed
18 them from the trees.

19 MR. POLITI: You have a line.

20 MR. RIEGER: I went up to this
21 point here and took a picture down. This
22 is River Road.

23 MS. REIN: I get that.

24 MR. RIEGER: I went up -- this
25 point is about 200. This house is up --

1 R i e g e r H o m e s , I n c .

2 MS. REIN: Where is your house
3 going to be?

4 MR. RIEGER: Over here.

5 MS. REIN: The same place. The
6 land around that, are there more plots
7 available?

8 MR. RIEGER: So you can kind of see
9 on this one. This is lot 1, lot 2, lot
10 3. This is lot 4. Lot 4 is --

11 MS. REIN: Are there any homes on
12 those?

13 MR. RIEGER: No. Not yet.

14 MS. REIN: The issue then, too, is
15 if we approve this, it's going to set a
16 precedent, and those other folks that
17 come in --

18 MR. DONOVAN: Just to kind of
19 orient, I want to make sure I understand
20 exactly. 35 feet is the maximum allowed.
21 You're asking for 39 feet. Correct? So
22 it's a 4-foot variance.

23 MR. RIEGER: The ironic thing is,
24 if I chose to build a house on the road
25 like they did on lot 4 and kept it at 35

1 R i e g e r H o m e s , I n c .

2 feet, my house would be 18 feet higher
3 than I'm asking.

4 MR. DONOVAN: Because of the
5 definition of height.

6 MR. RIEGER: I'm taking into
7 account -- I'm trying to work with the
8 land and I'm trying to have less impact
9 and less retaining walls, unlike a lot of
10 the other houses. I'm trying to be
11 sensitive to the situation. If I can't
12 do this, I'm going to have to be
13 considerate by design, if that's an
14 option, build it on the road, keep it at
15 35 feet, because I don't need to make the
16 roof high because I'm up high. I don't
17 need to come in and feel like I'm in a
18 hole. I can be 15 or 18 feet higher as
19 of right.

20 MR. BELL: Okay.

21 MR. RIEGER: That's where I am.

22 MR. BELL: All right. Is there
23 anyone here from the public that wishes
24 to speak? Step up, sir.

25 MR. MCGARVEY: I'm Michael

1 R i e g e r H o m e s , I n c .

2 McGarvey, 725 River Road. I'm one of the
3 homes that Mr. Rieger referred to in his
4 presentation, which I'm afraid I couldn't
5 actually see.

6 I previously sent the Board a
7 letter which expressed my concerns. I'm
8 appreciative that the Board is having a
9 second hearing on this which gave me an
10 opportunity to be here in person.

11 I'm familiar with this lot that's
12 under discussion. It's in a bit of a
13 swale. If you had an opportunity to go
14 out and see, I think it's reasonable to
15 say that whoever buys or bought that lot
16 would probably not have any expectation
17 of a dazzling river view.

18 I guess my concern is that I
19 assumed that when this development was
20 originally approved, the specifications
21 and restrictions were done after good and
22 careful thought and that there was a
23 substantial reasoning and thinking and
24 consideration that went into those
25 specifications.

1 R i e g e r H o m e s , I n c .

2 Going to one of Mr. Donovan's
3 earlier comments, when the Board makes a
4 decision, that does set a precedent.
5 Because there are still unbuilt lots in
6 that development, I am somewhat
7 concerned, though I don't think my
8 particular view is going to be impaired,
9 but I am concerned about the general
10 affect on that development and the
11 neighborhood, which is quite a nice
12 neighborhood.

13 I would urge the Board to err on
14 the side of conservatism in considering
15 this request. I'm certainly not trying
16 to impair my potential new neighbor's
17 ability to optimize the attractiveness of
18 his own lot and residence, but I just
19 would urge careful consideration. I am
20 concerned about the possibility of
21 precedence.

22 Thanks for your consideration.

23 MR. BELL: Okay. Is there anyone
24 else?

25 MR. HYMAN: I'm Barry Hyman. I'm

1 R i e g e r H o m e s , I n c .

2 at 717.

3 I also did not get a chance to see
4 the pictures. I would like to see them,
5 if that's possible.

6 MR. RIEGER: This is from your --
7 this would be the height of the house.
8 Your house is up 20 to 25 feet higher
9 than this point. This would be my roof
10 line. It doesn't impact your view. This
11 is looking up from inside the
12 subdivision. You can see it's not even
13 from the river, it's inside the
14 subdivision. Looking over my roof, you
15 can see a large part. You're talking 4
16 feet. It doesn't hurt my view. This is
17 the view from my lot.

18 MR. MCGARVEY: That's beautiful.

19 MR. BELL: It's nice that the
20 gentlemen get along.

21 MR. RIEGER: I don't need the
22 height for the view. I need the height
23 because I'm in a hole. It's not going to
24 impact anybody else's view.

25 MR. HYMAN: At the last meeting we

1 R i e g e r H o m e s , I n c .

2 were surprised and we didn't know what to
3 expect. We do appreciate the Board
4 suggesting further information.

5 From our standpoint, from our house
6 I can see the river and it won't be a
7 problem. From the pictures that he did
8 show of the other homes, that one home on
9 the fourth lot, that one they built and
10 instead of having the driveway come from
11 the bottom, they put their driveway up on
12 River Road, which may not be allowed. I
13 know that house blocks our neighbor's
14 view a lot because of the height on that.
15 I'm certain that that's a problem. I
16 don't think that was meant. I think it
17 was supposed to be from below and they
18 did it that way. I don't know who gave
19 permission for that. I hope that's not a
20 precedent either.

21 Those were our concerns. Since we
22 didn't really know what was being built,
23 that's why we came. I'm not objecting.

24 I'm more concerned about the other
25 two lots that are open and the same idea.

1 R i e g e r H o m e s , I n c .

2 I don't know if you're allowed to set
3 precedence and that's it or you look at
4 each one individually as they come,
5 because we might be back with concerns
6 when those other two are built. We don't
7 want to think about that one over there,
8 which seems to be --

9 MR. RIEGER: It was built to code
10 and they didn't need to come for a
11 variance.

12 MR. DONOVAN: I think it's a great
13 point that's been raised as we talked
14 about precedent. We had a precedent
15 tonight.

16 If you are inclined to grant this
17 variance, you certainly could see that
18 what is critical to your thinking was the
19 topography of the lot and the fact that
20 this was well below the road and would
21 not have an impact on any adjacent
22 neighbor's view of the river. If there
23 were different facts and circumstances,
24 you may rule differently.

25 MS. REIN: That wouldn't set a

1 R i e g e r H o m e s , I n c .

2 precedent?

3 MR. DONOVAN: If you had somebody
4 else in the same topography on their lot,
5 it might. You're looking for a 4-foot
6 variance. If you had someone else with
7 the same topography looking for a 4-foot
8 variance, they would not likely impact
9 anyone else's view.

10 MS. REIN: Dr. Hyman, are you okay
11 with this now? Have you rescinded your --

12 MR. HYMAN: I have to ask my wife.

13 MR. DONOVAN: That is a very wise
14 man.

15 MR. RIEGER: Can I call my wife?

16 MS. HYMAN: Personally I have to
17 tell you that I have a big problem
18 because I see everybody's roof.
19 Everybody's roof. I will see Ian's roof
20 also.

21 Last week it was 7 feet difference.
22 Now it's 4 feet difference. I feel a
23 little better about it.

24 My taxes are not going down because
25 it goes up, right? That's another

1 R i e g e r H o m e s , I n c .

2 problem. The value of all the homes in
3 that area are dependent on the view,
4 they're dependent on the beauty of the
5 area and everything. That's something
6 that is very important to us. That's why
7 we are paying all these taxes. That's
8 why we paid so much money to have the
9 house there.

10 MR. RIEGER: That's why they asked
11 me to do a visual, to protect your
12 interest.

13 MS. HYMAN: To protect each other's
14 property. If your property goes under,
15 mine will. If mine goes under, yours
16 will, too.

17 MR. DONOVAN: If I can make a
18 point. What you do in the context of an
19 area variance is guided by balancing the
20 five factors. Whether people in the
21 neighborhood, or anyone else, thinks it's
22 a good idea or a bad idea, it's nice to
23 hear, that's why you have public comment.
24 That's not the guiding beacon for your
25 decision. It's got to be the balancing

1 R i e g e r H o m e s , I n c .

2 of the five factors and where you come
3 down on that.

4 MS. HYMAN: Thank you.

5 MR. BELL: With that said, I'll
6 make a motion to close the public
7 hearing.

8 MR. EBERHART: I'll second it.

9 MR. BELL: All in favor?

10 MR. POLITI: Aye.

11 MR. EBERHART: Aye.

12 MR. HERMANCE: Aye.

13 MR. BELL: Aye.

14 MR. MASTEN: Aye.

15 MS. REIN: Aye.

16 MR. DONOVAN: This is a Type 2
17 action under SEQRA, Mr. Chairman.

18 MR. BELL: I'll go through the
19 balancing act here, the first one being
20 whether or not the benefits can be
21 achieved by any other means feasible to
22 the applicant. I think he's really shown
23 us the line of sight. Bringing it down 4
24 feet from his original request, he's
25 trying to work within the guideline and

1 R i e g e r H o m e s , I n c .

2 with the rest of the community. Agreed?

3 MR. POLITI: Agreed.

4 MR. EBERHART: Yes.

5 MR. HERMANCE: Agreed.

6 MR. MASTEN: Yes.

7 MS. REIN: Yes.

8 MR. BELL: Is there an undesirable
9 change in the neighborhood character or a
10 detriment to nearby properties.

11 MR. EBERHART: No.

12 MR. BELL: Whether the request is
13 substantial.

14 The fourth one is whether the
15 request will have adverse physical or
16 environmental effects. I don't think so.

17 Fifth, whether the alleged
18 difficulty is self-created, which it is,
19 but it's not relevant and not
20 determinative.

21 With that said, what is the motion
22 from the Board?

23 MR. EBERHART: I move for approval.

24 MR. DONOVAN: Approval based upon
25 the specific circumstances of this lot,

1 R i e g e r H o m e s , I n c .

2 given the topography and the fact that
3 it's lower than other lots in the area,
4 it's not going to have any adverse impact
5 on any neighbor's viewshed of the river
6 or anything else.

7 MS. REIN: That's a condition we're
8 putting in?

9 MR. DONOVAN: It's not a condition.
10 It's the basis for your determination.
11 The decision will say that if a different
12 lot came in with a different set of
13 circumstances, you may rule differently.
14 You're identifying the reason why you're
15 treating this potentially different than
16 another lot in this area.

17 I didn't mean to put words in your
18 mouth.

19 MR. EBERHART: I couldn't have said
20 it better.

21 MR. BELL: Which is good because it
22 does leave it open for a different
23 determination if one comes in differently
24 before us.

25 MS. REIN: A precedent isn't set.

1 R i e g e r H o m e s , I n c .

2 A precedent has not been set and written
3 in stone.

4 MR. BELL: Okay.

5 MR. DONOVAN: There was a motion to
6 approve and I interrupted.

7 MR. BELL: We had a first by Mr.
8 Eberhart. Who seconded?

9 MR. POLITI: Second.

10 MR. BELL: A second by Mr. Politi.
11 Roll on that, please.

12 MS. JABLESNIK: Mr. Bell?

13 MR. BELL: Yes.

14 MS. JABLESNIK: Mr. Eberhart?

15 MR. EBERHART: Yes.

16 MS. JABLESNIK: Mr. Hermance?

17 MR. HERMANCE: Yes.

18 MS. JABLESNIK: Mr. Masten?

19 MR. MASTEN: Yes.

20 MS. JABLESNIK: Mr. Politi?

21 MR. POLITI: Yes.

22 MS. JABLESNIK: Ms. Rein?

23 MS. REIN: Yes.

24 MR. RIEGER: Thank you.

25 (Time noted: 8:18 p.m.)

1 R i e g e r H o m e s , I n c .

2

3

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

4

5

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

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

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

15 IN WITNESS WHEREOF, I have hereunto set
16 my hand this 3rd day of March 2024.

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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

PRIMAX PROPERTIES, LLC

282 South Plank Road, Newburgh
Section 60; Block 2; Lot 65
B & IB Zones

- - - - - X

Date: February 22, 2024
Time: 8:18 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRELL BELL, Acting Chairman
JAMES EBERHART, JR.
GREG HERMANCE
JOHN MASTEN
JAMES POLITI
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: ZACHARY PETERS

- - - - - X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

1 P r i m a x P r o p e r t i e s , L L C

2 MR. BELL: Next on the agenda is
3 Primax Properties, LLC, coming back from
4 last month. This is a Planning Board
5 referral for area variances of the rear
6 yard setback and minimum required
7 off-street parking spaces for the
8 proposed Dollar General project.

9 MR. PETERS: My name is Zachary
10 Peters from Mercurio-Norton-Tarolli-
11 Marshall. We're the engineers and
12 surveyors. My colleague, Ryan Smithem,
13 was here last month and gave an initial
14 presentation to the Board. I'll just
15 touch on that briefly. It sounds like
16 most of you were all here. I'll catch
17 everyone up to speed.

18 This is the proposed Dollar General
19 retail store. We are requesting two
20 variances. The first is a rear yard
21 variance. I'll step away and try to talk
22 loud. At the back here, the zoning
23 setback line to the rear, 30 feet is
24 what's required. We're showing 21.2 feet.

25 We went in with a sketch plan and

1 P r i m a x P r o p e r t i e s , L L C

2 had an initial appearance before the
3 Planning Board. There was a discussion
4 at that meeting that the Planning Board
5 is going to require sidewalks along the
6 site frontage. Based on past experience
7 with DOT, which this is a DOT road, we
8 know they're going to require that they
9 actually take ownership of that land
10 where the sidewalk is. That's going to
11 kick our front setback back and shift the
12 building back. That will shift the
13 building back into the rear setback
14 slightly. That's the purpose for that
15 variance.

16 The second variance that we're
17 requesting is for the number of parking
18 spaces. The Town code requirement for
19 this size building, which is
20 approximately 11,000 square feet, is 73
21 parking spaces. Dollar General is
22 requesting to have 30 parking spaces.
23 That's based on their study and their
24 usage of their buildings. They've got
25 18,000 stores nationwide. Obviously as a

1 P r i m a x P r o p e r t i e s , L L C

2 retail store, they need to have parking
3 spaces so that people can come in, get
4 their merchandise and leave. Not having
5 enough parking is detrimental to their
6 business. 30 parking spaces is the
7 number they feel is appropriate. It
8 works for their stores. It's worked at
9 most of the locations that they have,
10 I'll say. That's basically the synopsis
11 of why we're here.

12 I think we were waiting on comments
13 from the County from the last meeting.

14 MR. BELL: Yes. We hadn't heard
15 back from the County.

16 One of the questions that I have is
17 the stream that runs back there, you seem
18 to be so close to that stream.

19 MR. PETERS: I mean, the building
20 is close to the stream. There was a
21 prior approved site plan for this lot. I
22 believe it was, I don't know the zoning
23 definition, like a mini-mall with two
24 buildings there and parking. Those
25 improvements actually went right up to

1 P r i m a x P r o p e r t i e s , L L C

2 the bank of the stream. We're showing
3 the building is actually farther away
4 from where that parking area was going to
5 be. That was the Trinity Square project,
6 I believe, several years ago.

7 MR. BELL: Was that something that
8 was proposed there? When was this?

9 MR. MATTINA: I don't know if it
10 ever received Planning Board approval or
11 not. Not that I'm aware of.

12 MR. BELL: This is the first I
13 heard.

14 MR. MATTINA: That elevation from
15 the stream is quite high. It's not like
16 the stream runs through the back door.
17 The elevation is quite higher than the
18 stream.

19 MR. PETERS: I'll say 5-ish feet
20 from the flat area down to where the
21 actual stream elevation is there.

22 MR. BELL: Okay. Is there anyone
23 here from the public that wishes to speak
24 on this? I know we had quite a few last
25 month.

1 P r i m a x P r o p e r t i e s , L L C

2 (No response.)

3 MR. BELL: Nobody. Okay.

4 MR. PETERS: One more thing I'll
5 touch on, just regarding the parking and
6 the impervious cover. This is something
7 as part of the site plan design and the
8 stormwater design with the New York State
9 DEC. One of the things that they are
10 looking for is to reduce the impervious
11 coverage on sites as much as possible.
12 Following the regulations that DEC sets
13 forth, a reduction in parking is actually
14 one of the items in their design manual
15 that they require that you look at from a
16 site plan perspective.

17 MR. BELL: With that said, we'll
18 start back down here. Mr. Politi?

19 MR. POLITI: No. You've answered
20 the questions. I visited some other
21 sites that are similar. I'm fine.

22 MR. BELL: James?

23 MR. EBERHART: I'm fine.

24 MR. BELL: Greg?

25 MR. HERMANCENCE: With that rear being

1 P r i m a x P r o p e r t i e s , L L C

2 so close, does that affect -- what about
3 fire access?

4 MR. PETERS: It will be accessible
5 on the side here. The front and on this
6 side. The building is only -- it's 140
7 feet long, so it will be accessible from
8 the sides and around the back. There
9 will be space between the building and
10 the bank of the stream to get around
11 that.

12 MR. POLITI: I think last time we
13 were asking if there's egress from the
14 back of this building. One of your other
15 sites does not have any doors in the
16 back.

17 MR. PETERS: I haven't seen the
18 floor plan. I believe there's an
19 emergency egress door on the side.
20 There's absolutely a door on this side.
21 I don't believe there's a door in the
22 back.

23 MR. POLITI: You have another
24 building close where the back wall is and
25 there are no exits. It looks similar to

1 P r i m a x P r o p e r t i e s , L L C

2 that scale.

3 MR. PETERS: My firm has done
4 probably --

5 MR. POLITI: I don't want to fight
6 for you.

7 MR. PETERS: We've done probably
8 site plans for twenty or twenty-five
9 Dollar Generals in the last fifteen
10 years. I don't believe any of them have
11 an emergency access door on the back
12 wall.

13 MR. BELL: John, any questions?

14 MR. MASTEN: No questions.

15 MR. BELL: Donna?

16 MS. REIN: I just want to see where
17 the parking is going to be. I can't wrap
18 my head around it.

19 MR. PETERS: So the parking is
20 along here.

21 MS. REIN: It's nowhere near the
22 water, the stream?

23 MR. PETERS: No. Essentially the
24 building is going to be sort of a buffer
25 between the parking and the stream.

1 P r i m a x P r o p e r t i e s , L L C

2 We're going to have stormwater treatment
3 facilities, everything from the
4 impervious coverage, to meet the DEC
5 requirements.

6 MS. REIN: Will the public be able
7 to get to the stream? Is that a concern?

8 MR. PETERS: I don't think it's a
9 concern. I mean, realistically if they
10 wanted, they can leave the parking
11 area --

12 MS. REIN: You're going to have
13 kids running around.

14 MR. PETERS: I don't think that's a
15 concern, but --

16 MR. BELL: Okay. With that said,
17 we can make a motion to close the public
18 hearing.

19 MR. POLITI: I'll make a motion.

20 MR. EBERHART: Second.

21 MR. BELL: How many mailings were
22 sent out?

23 MS. JABLESNIK: It was in last
24 month's minutes.

25 MR. BELL: Great.

1 P r i m a x P r o p e r t i e s , L L C

2 MR. DONOVAN: It's an Unlisted
3 action, so you need a negative declaration.

4 MR. BELL: Do I have a motion?

5 MR. HERMANCE: I'll make a motion
6 for a negative declaration.

7 MR. BELL: First. I'll make a
8 second. All in favor?

9 MR. POLITI: Aye.

10 MR. EBERHART: Aye.

11 MR. HERMANCE: Aye.

12 MR. BELL: Aye.

13 MR. MASTEN: Aye.

14 MS. REIN: Aye.

15 MR. BELL: Okay. So this is a Type
16 2 action under SEQRA?

17 MR. DONOVAN: An Unlisted. Now you
18 have to go through the five factors.

19 MR. BELL: The first being whether
20 or not the benefit can be achieved by
21 other means feasible to the applicant.
22 No.

23 MS. REIN: I'm sorry to interrupt
24 you. I had some notes that I forgot I
25 had. It says, "Will the proposed action

1 P r i m a x P r o p e r t i e s , L L C

2 create stormwater discharge either from
3 point or non-point sources," and it says,
4 "Yes." "Will stormwater discharge flow
5 to adjacent properties?" "Yes." "Will
6 stormwater discharges be directed to
7 establish conveyance systems, runoff and
8 storm drains." It says, "Yes." It says,
9 "If yes, briefly describe," and there's
10 nothing there.

11 MR. PETERS: It must have been an
12 oversight. That's from the EAF.
13 Essentially the summary of those
14 questions, will there be runoff generated
15 from the proposed impervious building and
16 parking area. Runoff from the roof is
17 going to be collected in roof leaders.
18 As I said previously, all the runoff from
19 the site is going to be directed to a
20 proposed stormwater treatment detention
21 system designed in accordance with DEC
22 regulations. Runoff is going to
23 ultimately be discharged and flow to the
24 adjacent property to the northeast and
25 into the stream. The answer to those

1 P r i m a x P r o p e r t i e s , L L C

2 questions is yes, but essentially runoff
3 from the site is going to follow the
4 existing drainage patterns.

5 MR. DONOVAN: I think important is
6 that this is called an uncoordinated
7 review. That means we do our SEQRA
8 review for the two variances that are in
9 front of us. At site plan a
10 comprehensive SEQRA review will be done
11 by the Planning Board. All the
12 stormwater design has to be approved by
13 the Planning Board engineer. They'll
14 obviously put the applicant through their
15 paces at that time.

16 MS. REIN: Thank you. Got to love
17 SEQRA.

18 MR. DONOVAN: Or not, but you have
19 to deal with it.

20 MR. BELL: Let's go back to number
21 two. Is there an undesirable change in
22 the neighborhood's character or a
23 detriment to nearby properties. No.

24 Third, whether the request is
25 substantial.

1 P r i m a x P r o p e r t i e s , L L C

2 Fourth, whether the request will
3 have adverse physical or environmental
4 effects. That's what you asked. No.

5 Fifth, whether the alleged
6 difficulty is self-created. This is
7 relevant but not determinative.

8 With that said, what is the motion
9 of the Board?

10 MR. HERMANCE: I'll make a motion
11 to approve.

12 MR. MASTEN: I'll second it.

13 MR. BELL: Roll on that, Siobhan.

14 MS. JABLESNIK: Mr. Bell?

15 MR. BELL: Yes.

16 MS. JABLESNIK: Mr. Eberhart?

17 MR. EBERHART: Yes.

18 MS. JABLESNIK: Mr. Hermance?

19 MR. HERMANCE: Yes.

20 MS. JABLESNIK: Mr. Masten?

21 MR. MASTEN: Yes.

22 MS. JABLESNIK: Mr. Politi?

23 MR. POLITI: Yes.

24 MS. JABLESNIK: Ms. Rein?

25 MS. REIN: Yes.

1 P r i m a x P r o p e r t i e s , L L C

2 M R . P E T E R S : T h a n k y o u v e r y m u c h .
3 I a p p r e c i a t e a l l o f y o u r t i m e .

4
5 (T i m e n o t e d : 8 : 3 5 p . m .)

6
7 C E R T I F I C A T I O N

8
9 I , M I C H E L L E C O N E R O , a N o t a r y P u b l i c f o r
10 a n d w i t h i n t h e S t a t e o f N e w Y o r k , d o h e r e b y
11 c e r t i f y :

12 T h a t h e r e i n b e f o r e s e t f o r t h i s a t r u e
13 r e c o r d o f t h e p r o c e e d i n g s .

14 I f u r t h e r c e r t i f y t h a t I a m n o t r e l a t e d
15 t o a n y o f t h e p a r t i e s t o t h i s p r o c e e d i n g b y
16 b l o o d o r b y m a r r i a g e a n d t h a t I a m i n n o w a y
17 i n t e r e s t e d i n t h e o u t c o m e o f t h i s m a t t e r .

18 I N W I T N E S S W H E R E O F , I h a v e h e r e u n t o s e t
19 m y h a n d t h i s 3 r d d a y o f M a r c h 2 0 2 4 .

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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

CASTLE USA CORP/JULY 4EVER

382 Rock Cut Road, Walden
Section 11; Block 1; Lot 60.2
R-2 Zone

- - - - - X

Date: February 22, 2024
Time: 8:35 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRELL BELL, Acting Chairman
JAMES EBERHART, JR.
GREG HERMANCE
JOHN MASTEN
JAMES POLITI
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: GERALD JACOBOWITZ
and VINCENT ESPOSITO

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MICHELLE L. CONERO
Court Reporter
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1 C a s t l e U S A C o r p / J u l y 4 E v e r

2 MR. BELL: Next is Castle USA/
3 Fourth of July. We have been going back
4 and forth with this one. We know that at
5 the last meeting we captured a lot. We
6 don't have to go back through a lot of
7 that again.

8 I know one of the things last time
9 was -- I recall, and correct me if I'm
10 missing this, we were talking about that
11 616 code. There was a rule that mobile
12 homes and --

13 MR. HERMANCENCE: Modulars.

14 MR. BELL: -- yes -- were
15 considered a residence now. They can be
16 considered residential, if I'm not
17 mistaken.

18 MR. POLITI: On a single lot.

19 MR. BELL: It was on a slab. It's
20 supposed to be on a slab foundation.

21 Okay. Joe, did you find anything
22 on that as well?

23 MR. MATTINA: I have no idea where
24 that ruling comes from. It's not in our
25 zoning code.

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2 MR. BELL: Okay.

3 MR. JACOBOWITZ: Thank you, Mr.
4 Chairman.

5 MR. BELL: I just want to move this
6 along.

7 MR. JACOBOWITZ: I'm Jerry
8 Jacobowitz of Jacobowitz & Associates law
9 firm. Mr. Vincent Esposito is here as
10 the representative and principal of the
11 applicant.

12 As we finished the last time we
13 met, which I think was in December, the
14 issue came up about satisfying the New
15 York State Building Construction Code
16 with this structure. My suggestion to
17 you is that is not a matter for your
18 Board. That is not a land use issue.
19 That's a Building Code issue. If you
20 choose to give us an interpretation that
21 that building can be used as a residence
22 provided it complies with the New York
23 State Building Construction and Fire
24 Code, that's all that we need to obtain
25 from you. That gets the ball over to the

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2 Building Department and for Mr. Esposito
3 to go in and establish what he has to as
4 a matter of meeting the code requirements.

5 This property has a history from
6 1982 I believe. At someplace along the
7 way, an issue came up about this
8 structure. The Building Department gave
9 a list of about twenty items that they
10 thought needed to be taken care of. A
11 submission was made through, I think, Mr.
12 Minuta's office addressing those things.
13 They weren't complete. There's more to
14 be addressed that the Building Department
15 has on its mind with respect to this
16 particular structure.

17 For your Board, it's a land use
18 issue, it's a zoning issue. It's not a
19 New York State Construction Code.

20 We would hopefully have you vote to
21 interpret the circumstances that we have
22 to allow the structure to be used as a
23 residence since it is in a residential
24 zone. That gives the least precedence
25 for any theory about other people coming

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2 and trying to do something similar to
3 that. It's very narrow. We don't need
4 to go into whether there's a house for a
5 custodian. We don't have to go into
6 issues of that type. It's a very simple
7 one, can the structure be used as a
8 residence in a residential zone? That's
9 the point that I wanted to make about
10 that.

11 There were two other issues open.
12 One is, can we have off-street parking.

13 The second is, can we have trailers
14 and cargo containers.

15 As to both of those, we respectfully
16 refer you to the decision that your
17 Board was involved in a number of years
18 ago where you had granted a variance
19 for use and the applicant came back
20 later and asked to change it to do
21 certain other things. You ruled
22 against them, they sued you, the court
23 upheld your decision on the basis that
24 the expansion was not consistent with
25 what the original approval was. Our

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2 suggestion to you here is that as a
3 wholesale distribution and trading
4 company, it's a normal, usual accessory
5 use to have trailers and cargo
6 containers and off-street parking for
7 trucks. So that, again, is a very
8 narrow interpretation. It relies on
9 the decision that previously confirmed
10 your view of that other particular
11 situation that you didn't think was a
12 usual and natural or customary
13 accessory use to that original use you
14 approved.

15 So that's our pitch. We hope
16 that you'll feel comfortable enough
17 that you're willing to adopt those
18 interpretations, then the Building
19 Department can do its job.

20 As you recall, I think it was at
21 the October meeting, we had a
22 transcript that we got from the Supreme
23 Court action that the tenant was
24 involved in. He had a conversation
25 with your Building Department and he

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2 recorded it. They typed it up in a
3 written transcript and filed it with
4 the Supreme Court. In that, the
5 Building Department said that they need
6 you folks to do what we're asking you
7 to do, to make a decision so that they
8 can do their job.

9 The first three actions you took
10 are a big step in the direction we all
11 want to go. You determined that the
12 dome-shaped building was not proper
13 because they did not get an approval
14 for the construction of that structure
15 which is required by your 1982 variance
16 decision. No further structures
17 without approval of your Board. That
18 structure was put up without your
19 approval, therefore it should come
20 down. You ruled on that already. Now
21 the Building Department has the power
22 to enforce the zoning law to have that
23 building removed. We are also doing
24 that in Supreme Court in an action by
25 the owner of the property against the

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2 tenant who put that dome structure up.
3 So one way or another, we're going to
4 get compliance with respect to that.

5 A second item was, what are we
6 allowed to do there. Your Board
7 approved us for class C fireworks. The
8 tenant brought in class B fireworks.
9 It's not just a change of a letter in
10 the alphabet. It means a lot of things
11 with respect to setbacks, controls,
12 inspections, licensing. We don't want
13 class B, and so we need you folks to
14 clarify that you never approved class
15 B, you approved class C. That's all
16 that we want to do there. That gave us
17 the second basis on which to straighten
18 things out.

19 The third is that they brought in
20 a trailer and made it into an office.
21 That building is a structure. Under
22 the interpretation of your definitions
23 and your zoning law, it is a structure.
24 Back to 1982 it said no structure
25 without your approval. They didn't get

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2 your approval, therefore that building
3 is illegal and should be removed from
4 the property. Again, you now gave the
5 Building Department the power to do
6 that, and we're doing that in the
7 Supreme Court action.

8 The last three items are the
9 three that I started out with, cargo
10 trailer, off-street parking and using
11 the structure that was an office for a
12 residence. The enforcement of that, if
13 you agree to those interpretations, is
14 up to the Building Department.

15 We've also suggested, in the
16 interpretation language, that you
17 specifically refer to the plan that we
18 gave you that limits the area that we
19 can use for storage of trailers or
20 cargo containers. We don't want them
21 all over the property. That's not the
22 way we want to conduct our business.
23 We said we'll confine our use of those
24 types of things to the area we
25 designate on the plan that we had given

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2 to you, I think back in October. So
3 that, again, gives the Building
4 Department teeth which to enforce,
5 because there are lines, and those
6 lines are established clearly. If
7 they're exceeded, that's a violation.

8 We're hopeful that we'll be able
9 to get past this and get to start doing
10 the things that we promise you that
11 we're trying to do.

12 MR. BELL: Okay. With that said,
13 we'll start with you first.

14 MS. REIN: I'm just thinking.

15 MR. BELL: John?

16 MS. REIN: Well, you know, it is a
17 structure. I think the question of is it
18 a residence is still up in the air. I
19 mean, it is a structure. I'll give you
20 that.

21 MR. DONOVAN: I don't mean to
22 interrupt. I think we all know that Mr.
23 Jacobowitz made an application. We had
24 an October 16th letter, a December 20th
25 letter, January 25th minutes, a February

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2 14th and a February 21st letter. Maybe
3 we'll try to parse these out for the
4 three things. Maybe we can address the
5 first one.

6 I'll go from your February 21st
7 letter, Jerry. The question can the use
8 of the office structure be converted to a
9 residence as a permitted use in the R-1
10 Zone. Reserving the building code
11 matters to be addressed by the Building
12 Department, --

13 MR. JACOBOWITZ: That's correct.

14 MR. DONOVAN: -- that's the
15 question you want answered?

16 The only thing I would say to the
17 Board on that is, it's in the R-2 Zone so
18 residential uses are permitted. Your
19 authority doesn't extend to the building
20 code as to whether or not that structure
21 is a permitted residential use. I don't
22 think you can say that, in my view. I
23 think you can say residential uses are
24 permitted, but I don't want to put words
25 in your mouth.

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2 MR. EBERHART: Why can't we just
3 say residential use? Why can't we just
4 confine that residential use is
5 acceptable and we can define by Code
6 Compliance if it meets the requirements
7 as a residence?

8 MR. DONOVAN: For that structure.
9 I don't think we can do that. I think we
10 can say residential uses are permitted.
11 Whether this structure qualifies for
12 that, I think, is beyond the purview of
13 the ZBA.

14 MR. JACOBOWITZ: Okay. In other
15 words, that's for the Building Department
16 to determine when they look at what's
17 there as against the code. That's fair
18 enough.

19 MR. DONOVAN: If we want to get --
20 someone could make a motion that says we
21 render an interpretation that residential
22 uses are permitted and issues relative to
23 the usability of the trailer are up to
24 the Code Compliance department.

25 MS. REIN: What he said.

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2 MR. BELL: I agree with that
3 wholeheartedly. It sounds good.

4 MR. MATTINA: I just want to clear
5 something up. The reason I sent it to
6 the Zoning Board was not for whether
7 there could be a residence or not. The
8 code says mobile homes are not permitted
9 on individual lots. That's what I sent
10 it for. Not whether it's a home or not.
11 Whether it's permitted to be there.

12 MR. DONOVAN: Right. You didn't
13 send it. You made a determination. The
14 applicant has asked us for an
15 interpretation.

16 MR. MATTINA: Correct.

17 MR. DONOVAN: That's what I'm
18 suggesting. I understand there may be a
19 disconnect, Joe. We can only rule on the
20 application in front of us, which was for
21 an interpretation.

22 MR. MATTINA: Okay.

23 MS. REIN: What happens from here,
24 Joe?

25 MR. MATTINA: I denied it based on

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2 it not being permitted. Whether the
3 applicant sent it for an interpretation,
4 he'll come back a second time. I denied
5 it as mobile homes are not permitted on
6 an individual lot. That was my denial.

7 MR. DONOVAN: That's not the appeal
8 to us. It's for an interpretation.
9 Right?

10 MR. JACOBOWITZ: That's correct.
11 Our argument with the Building Department
12 is about that issue, whether it's a
13 mobile home or not based on the code.
14 It's defined in the code. It's defined
15 in the Executive Law. It's defined by
16 the Federal Housing Administration.
17 Whether it's a mobile home, a modular
18 home or a manufactured home, the records
19 of the Building Department have called it
20 all three at one point or another.
21 That's something we can resolve with them
22 across the table, looking at technical
23 requirements and specifications as to
24 what's required under those codes,
25 because those codes have to be met

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2 regardless of what anybody else says
3 about the use of those.

4 MS. REIN: So Joe, if we approve
5 this, is it going to come back again from
6 you?

7 MR. MATTINA: As far as I'm
8 concerned, yes. It didn't answer my
9 denial. My denial was you can't have a
10 mobile home. I understand what you can
11 do, but that's not what he applied for.
12 Whatever verdict you render, I'm going to
13 send him right back here.

14 MR. JACOBOWITZ: Whether it comes
15 back or not will depend on whether we
16 satisfy him. If we don't satisfy him, he
17 can render an appeal to you folks, a
18 notice to us and we'll be back to see all
19 of you nice people. I don't want you to
20 miss us too much.

21 MS. REIN: Don't worry about that.

22 MR. BELL: Back to the first. Our
23 interpretation, we have to vote on each.

24 MR. DONOVAN: So there were six
25 questions that came before you. We voted

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2 on three. Now you have three more to
3 vote on. If the Board is okay with the
4 motion, I think there's a motion on the
5 floor.

6 MR. BELL: Yes. Let's finish that
7 motion. Where were we?

8 MR. DONOVAN: It's a Type 2 action
9 under SEQRA. It's an interpretation.
10 The motion on the floor is to say that
11 residential uses are permitted in the
12 zone, and any issues -- building code
13 issues for the usability of this trailer
14 are up to Code Compliance.

15 MR. BELL: Mr. Eberhart --

16 MR. DONOVAN: He didn't make the
17 motion because I would have interrupted
18 him if he did.

19 MR. BELL: Okay. Is there a motion
20 -- what is the motion?

21 MR. DONOVAN: I think Mr. Politi
22 made the motion.

23 MR. POLITI: I made the motion as
24 presented by counsel.

25 MR. BELL: To approve the

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2 interpretation?

3 MR. POLITI: Correct.

4 MR. HERMANCE: I'll second.

5 MR. BELL: Roll call, Siobhan.

6 MS. JABLESNIK: Mr. Bell?

7 MR. BELL: Yes.

8 MS. JABLESNIK: Mr. Eberhart?

9 MR. EBERHART: Yes.

10 MS. JABLESNIK: Mr. Hermance?

11 MR. HERMANCE: Yes.

12 MS. JABLESNIK: Mr. Masten?

13 MR. MASTEN: Yes.

14 MS. JABLESNIK: Mr. Politi?

15 MR. POLITI: Yes.

16 MS. JABLESNIK: Ms. Rein?

17 MS. REIN: Yes.

18 We'll see you next month.

19 MR. DONOVAN: We have two more to

20 go.

21 MS. REIN: I'm here.

22 MR. DONOVAN: The second one is,
23 can the business use include, as usual
24 and customary, the reasonable placement
25 of trailers and cargo containers as an

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2 accessory use, limited to the area
3 depicted on the site plan dated 12/19/23.

4 MR. BELL: What's the motion of the
5 Board for that?

6 MR. DONOVAN: I don't know --
7 Jerry, how many are usual and customary?
8 We have to put a number. There was a
9 number on it before I think.

10 MR. JACOBOWITZ: In one of the
11 letters I sent you I cited to specific
12 minutes of your Board's meeting at which
13 they discussed the trailers and the cargo
14 containers. In one instance it was seven
15 to nine. In another place it was a
16 different number. I don't remember which
17 one. Some are big and some are small, so
18 rather than have a number, limit the
19 space that they can occupy, and then
20 whether they're big or small is
21 irrelevant as long as we don't go outside
22 the territory that you have designated as
23 the limit.

24 MR. DONOVAN: Jerry, can you show
25 us on the site plan? There's been so

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2 much paperwork. Can you show on the site
3 plan where that area would be? If you
4 have a bigger copy, that would be even
5 better.

6 MS. REIN: Where is the area?

7 MR. JACOBOWITZ: This area here.

8 MS. REIN: What does that measure?

9 MR. JACOBOWITZ: That's the area
10 that will be limited to parking of
11 vehicles.

12 MS. REIN: What's the measurement?

13 MR. JACOBOWITZ: I don't see too
14 well. It looks like 300 and -- this is
15 315. This is 729. This is shorter.

16 MS. REIN: The gray area. That
17 would be just for trucks or cars also?

18 MR. JACOBOWITZ: Both. Everybody.
19 Cargo containers and trailers are limited
20 to that area.

21 MS. REIN: Thank you.

22 MR. JACOBOWITZ: We'll get
23 dimensions and make sure that the
24 dimensions are on the one that's made
25 part of your record.

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2 MR. HERMANCE: The aerial view
3 shown here, that's a lot of trailers.

4 MR. BELL: That's a lot of
5 trailers. That's more than seven.

6 MR. JACOBOWITZ: You see they're
7 off the pad. That's the tenant's doing.

8 MR. HERMANCE: Your pad would be
9 restricted to --

10 MR. JACOBOWITZ: The pad is pretty
11 much this gray area that you see. We
12 want to turn them sideways to make it
13 nice and neat. We're trying to turn them
14 to make everything aesthetically
15 pleasing.

16 MR. DONOVAN: When you say them, do
17 you mean the storage trailers?

18 MR. JACOBOWITZ: Right. Even the
19 truck parking, the same thing. We don't
20 want everything spread out all over the
21 place.

22 MR. EBERHART: Did you get
23 compliance from your tenant?

24 MR. JACOBOWITZ: We have another
25 court date on March 14th.

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2 We'll have Mr. Minuta put the
3 dimensions on the parking area.

4 MR. BELL: It's been so long.
5 You're trying to evict the tenant?

6 MR. JACOBOWITZ: It's been a very
7 long process. It's not as easy as
8 everybody thinks it is.

9 MR. EBERHART: You just can't evict
10 them.

11 MR. JACOBOWITZ: No. Hopefully
12 with the Board now, we'll have, like he
13 said, more teeth to get this done
14 properly.

15 MR. BELL: I see. Okay. We need
16 to make a motion on the second one.

17 MR. DONOVAN: The question was can
18 the business use include, as usual and
19 customary, the reasonable placement of
20 trailers and cargo containers as
21 accessory use limited to the area
22 depicted on the site plan.

23 MR. BELL: We can't specify the
24 number of trailers they can have.

25 MR. HERMANCENCE: If we specify the

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2 area, you can only fit so many in that
3 area.

4 MS. REIN: We need to get the
5 measurements.

6 MR. HERMANCE: We need to determine
7 the size.

8 MR. POLITI: You can't do it
9 contingent.

10 MR. DONOVAN: Do you really want to
11 come back, Jerry?

12 MR. BELL: No.

13 MR. DONOVAN: You sound just like
14 Jerry.

15 MR. BELL: This has been going on
16 for a long time. I'm not at liberty to
17 say that.

18 What's the motion of the Board?

19 MR. POLITI: If we don't have
20 dimensions, does that stop the vote?

21 MR. JACOBOWITZ: We're limiting it
22 to the hatched gray area as shown on the
23 map. We will provide the dimensions of
24 what is on that map so that there's no
25 issue about it. We can actually --

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2 MR. DONOVAN: That would be the
3 condition.

4 MR. JACOBOWITZ: We'll do one other
5 thing. In the field we'll stake the
6 corners. You can see it.

7 MR. EBERHART: What would be the
8 condition?

9 MR. JACOBOWITZ: Make that a
10 condition of the motion, Mr. Attorney.

11 MR. DONOVAN: I've never been so
12 insulted in my life.

13 The question is, can the business
14 use include, as usual and customary, the
15 reasonable placement of trailers and
16 cargo containers as accessory use limited
17 to the area depicted on the site plan.
18 If you want to answer that inquiry yes
19 with the condition that the exact
20 dimensions of the parking area -- I'm
21 sorry. The exact dimensions of the
22 placement of the trailers and cargo
23 containers be designated on the site plan
24 and staked in the field.

25 MR. POLITI: That's the motion?

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2 That's how we should frame it?

3 MR. DONOVAN: That's what I'm
4 suggesting.

5 MR. POLITI: So we can get it
6 passed and submit it to the office. I
7 would make that motion.

8 MR. BELL: Okay.

9 MR. POLITI: I'll make the motion
10 as read.

11 MR. EBERHART: I'll second.

12 MR. BELL: Roll call on that.

13 MS. JABLESNIK: Mr. Bell?

14 MR. BELL: Yes.

15 MS. JABLESNIK: Mr. Eberhart?

16 MR. EBERHART: Yes.

17 MS. JABLESNIK: Mr. Hermance?

18 MR. HERMANCE: Yes.

19 MS. JABLESNIK: Mr. Masten?

20 MR. MASTEN: Yes.

21 MS. JABLESNIK: Mr. Politi?

22 MR. POLITI: Yes.

23 MS. JABLESNIK: Ms. Rein?

24 MS. REIN: Yes.

25 MR. DONOVAN: Next is, can the

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2 business use include, as usual and
3 customary, the reasonable parking off
4 street of motor vehicles as accessory use
5 limited to the area depicted on the plan.
6 If you're inclined to grant that, I would
7 suggest the same condition.

8 MR. BELL: I'll make a motion to --

9 MR. POLITI: I'll make a motion.

10 MR. BELL: You make a motion to
11 approve based on those conditions, as the
12 last one?

13 MR. POLITI: Correct.

14 MR. BELL: With the last one.

15 Okay. Who seconded it?

16 MR. EBERHART: I'll second it.

17 MR. BELL: Roll on that, Siobhan.

18 MS. JABLESNIK: Mr. Bell?

19 MR. BELL: Yes.

20 MS. JABLESNIK: Mr. Eberhart?

21 MR. EBERHART: Yes.

22 MS. JABLESNIK: Mr. Hermance?

23 MR. HERMANCE: Yes.

24 MS. JABLESNIK: Mr. Masten?

25 MR. MASTEN: Yes.

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2 MS. JABLESNIK: Mr. Politi?

3 MR. POLITI: Yes.

4 MS. JABLESNIK: Ms. Rein?

5 MS. REIN: Yes.

6 MR. BELL: Approved.

7 MR. DONOVAN: We're going to miss
8 you, Jerry. Maybe not.

9 MR. BELL: We have to approve the
10 minutes from the last time. I'll make a
11 motion to approve the minutes.

12 MR. EBERHART: I'll second.

13 MR. BELL: All in favor?

14 MR. POLITI: Aye.

15 MR. EBERHART: Aye.

16 MR. HERMANCE: Aye.

17 MR. BELL: Aye.

18 MR. MASTEN: Aye.

19 MS. REIN: Aye.

20 MR. BELL: Is there a motion to
21 close the meeting?

22 MR. MASTEN: I'll make a motion.

23 MR. EBERHART: Second.

24 MR. BELL: All in favor?

25 MR. POLITI: Aye.

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2 MR. EBERHART: Aye.

3 MR. HERMANCE: Aye.

4 MR. BELL: Aye.

5 MR. MASTEN: Aye.

6 MS. REIN: Aye.

7 MR. BELL: Aye.

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9 (Time noted: 9:03 p.m.)

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

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

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

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

15 IN WITNESS WHEREOF, I have hereunto set
16 my hand this 3rd day of March 2024.

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MICHELLE CONERO

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