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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH ZONING BOARD OF APPEALS
----- X
In the Matter of

SNK PETROLEUM WHOLESALERS
747 Boulevard, Newburgh
Section 89; Block 1; Lots 80.1 & 80.2
IB Zone

----- X

Date: February 24, 2022
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
DARRELL BELL
JAMES EBERHART, JR.
ROBERT GRAMSTAD
GREGORY M. HERMANCE
JOHN MASTEN

ALSO PRESENT: JOSEPH MATTINA
SIOBHAN JABLESNIK

----- X

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

1 S N K P E T R O L E U M W H O L E S A L E R S

2 CHAIRMAN SCALZO: I'd like to
3 call the meeting of the ZBA to order.

4 The order of business this
5 evening are the public hearings which
6 have been scheduled. The procedure
7 of the Board is that the applicant
8 will be called upon to step forward,
9 state their request and explain why
10 it should be granted. The Board will
11 then ask the applicant any questions
12 it may have, and then any questions
13 or comments from the public will be
14 entertained. The Board will then
15 consider the applications and will
16 try to render a decision this evening
17 but may take up to 62 days to reach a
18 determination.

19 I would ask if you have a
20 cellphone, to please turn it off or
21 put it on silent. When speaking,
22 speak directly into the microphone as
23 our stenographer needs to hear what
24 you have to say.

25 Roll call, please.

1 S N K P E T R O L E U M W H O L E S A L E R S

2 MS. JABLESNIK: Slowly.

3 Darrell Bell.

4 MR. BELL: Here.

5 MS. JABLESNIK: James Eberhart.

6 MR. EBERHART: Present.

7 MS. JABLESNIK: Robert Gramstad.

8 MR. GRAMSTAD: Here.

9 MS. JABLESNIK: Greg Hermance.

10 MR. HERMANCE: Here.

11 MS. JABLESNIK: John Masten.

12 MR. MASTEN: Here.

13 MS. JABLESNIK: Darrin Scalzo.

14 CHAIRMAN SCALZO: Here.

15 MS. JABLESNIK: Also present is
16 our Stenographer, Michelle Conero.
17 From Code Compliance, Joe Mattina.
18 Our attorney, Dave Donovan, is absent
19 this evening.

20 CHAIRMAN SCALZO: All right.

21 If you could all please rise.

22 Mr. Eberhart, if you would lead
23 us.

24 (Pledge of Allegiance.)

25 CHAIRMAN SCALZO: Before our

1 S N K P E T R O L E U M W H O L E S A L E R S

2 first applicant steps forward, we did
3 have one request from SNK Petroleum.
4 SNK Petroleum Wholesalers, 747
5 Boulevard in Newburgh, their
6 representation e-mailed us earlier
7 this week asking for a postponement.
8 Therefore, we will be hearing them
9 again for the March meeting.

10 So if there's anyone here for
11 SNK Petroleum Wholesalers, Route 747
12 in Newburgh, at the intersection of
13 84 and 747, we will be hearing them
14 next month. You will not be
15 re-noticed. So if you're here for
16 that, I just wanted to cut you loose
17 now.

18 UNIDENTIFIED SPEAKER: That's
19 the sixth time.

20 CHAIRMAN SCALZO: Not for this
21 application, sir.

22 UNIDENTIFIED SPEAKER: It's the
23 sixth time.

24 CHAIRMAN SCALZO: I understand.

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

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S N K P E T R O L E U M W H O L E S A L E R S

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 2022.

Michelle Conero

MICHELLE CONERO

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH ZONING BOARD OF APPEALS
----- X
In the Matter of

CATANIA , MAHON & RIDER, PLLC
FOR ANTHONY MORIELLO LIVING TRUST

45 Old Post Road, Newburgh
Section 8; Block 2; Lot 14
AR Zone

----- X

Date: February 24, 2022
Time: 7:03 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
DARRELL BELL
JAMES EBERHART, JR.
ROBERT GRAMSTAD
GREGORY M. HERMANCE
JOHN MASTEN

ALSO PRESENT: JOSEPH MATTINA
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: JONATHAN DeJOY

----- X

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

1 ANTHONY MORIELLO LIVING TRUST

2 CHAIRMAN SCALZO: All right.
3 Our first applicant this evening is
4 for the Anthony Moriello Living
5 Trust, 45 Old Post Road in Newburgh,
6 seeking area variances of increasing
7 the degree of nonconformity of both
8 side yards to keep an 8 by 22
9 addition and a 24.8 by 11.9 deck
10 built without permits.

11 Siobhan, do we have mailings on
12 this?

13 MS. JABLESNIK: This applicant
14 sent out 23 letters.

15 CHAIRMAN SCALZO: Very good.
16 Who do we have with us this
17 evening?

18 MR. DeJOY: Good evening,
19 everyone. My name is Jonathan DeJoy.
20 I'm an attorney with the law firm
21 Catania, Mahon & Rider, here on
22 behalf of the Anthony C. Moriello
23 Living Trust.

24 As the Chairman described, we
25 are seeking three area variances, a

1 ANTHONY MORIELLO LIVING TRUST

2 rear yard setback, a side yard
3 setback and combined side yard
4 setbacks.

5 This application is a little
6 bit unique because the applicant is
7 not actually constructing anything
8 new. They are just seeking to
9 legalize existing nonconformities in
10 the form of a shed -- excuse me, an
11 addition and a deck that were built
12 in the '80s and '90s.

13 With that being said, I'd like
14 to go through the five factors for
15 the area variance test. The first,
16 whether an undesirable change will be
17 produced in the character of the
18 neighborhood or other detriments will
19 be created to nearby properties by
20 the granting of the area variances.
21 Because these are existing
22 nonconformities, granting of the
23 variances will not actually have any
24 impacts on the neighborhood. With
25 that being said though, in our

1 ANTHONY MORIELLO LIVING TRUST

2 submission on page 3 we included a
3 table of the nearby properties and
4 their lot sizes, and our applicant's
5 property is actually slightly larger.
6 So I think it's fair to assume that
7 even if these -- the deck and the
8 addition will be added, they would be
9 consistent with the surrounding
10 properties because almost any addition
11 is going to require variances.

12 Moving to the second factor,
13 whether the benefit sought by the
14 applicant can be achieved by some
15 method feasible for the applicant to
16 pursue other than area variances.
17 Again, since these are existing
18 nonconformities, there's really no
19 way to change them or remove them.
20 Oftentimes it's worth considering
21 whether a neighboring property can be
22 purchased. Here there's only one
23 vacant lot to the east of the
24 property which would help to reduce
25 the size of the combined yard

1 ANTHONY MORIELLO LIVING TRUST

2 setback. Given the existing nature
3 of the nonconformities and the fact
4 that it would make such a little
5 difference in all practical aspects,
6 we would argue that it's not feasible
7 for the applicant to pursue that.

8 The third factor, whether the
9 requested variances are substantial.
10 Two of the variances, the side yard
11 setbacks, are mathematically
12 substantial, but for all practical
13 purposes, because they won't have any
14 impact they're not practically
15 substantial. The rear yard setback
16 is not even mathematically
17 substantial because it's only a few
18 feet.

19 Number four, whether the
20 variances will have an adverse effect
21 or impact on physical or
22 environmental conditions of the
23 neighborhood. Again, they're
24 existing. There won't be any change.
25 And even if we were seeking to add

1 ANTHONY MORIELLO LIVING TRUST

2 this addition and shed, as far as
3 noise, traffic, light pollution,
4 they're so minor it wouldn't have any
5 impact.

6 And finally, whether the
7 alleged difficulty is self-created.
8 Here it is, as it is with most area
9 variances, but we would ask the Board
10 to not give significant weight to
11 this factor given there are minimal
12 impacts and the other impacts are in
13 favor of the applicant.

14 So I will end there unless the
15 Board has any questions.

16 CHAIRMAN SCALZO: Well, I
17 appreciate everything that you said.
18 Actually, you're putting me out of a
19 job by going through all of the
20 factors which we typically read when
21 we do our balancing test. You're way
22 ahead of it.

23 This is a Type 2 action if you
24 wanted to mention that.

25 MR. DeJOY: Sure. Yes.

1 ANTHONY MORIELLO LIVING TRUST

2 CHAIRMAN SCALZO: Anyway, I
3 appreciate you addressing the factors
4 in order.

5 But at this time what I'll do
6 is I'll open it up to any Members of
7 the Board and then I'll open it up to
8 any members of the public.

9 What do you say we start with
10 Mr. Gramstad. Do you have any
11 comments on this application?

12 MR. GRAMSTAD: Not at this
13 time, no.

14 CHAIRMAN SCALZO: Mr. Eberhart?

15 MR. EBERHART: No questions.

16 CHAIRMAN SCALZO: How about
17 Mr. Hermance?

18 MR. HERMANCE: The addition and
19 deck were built without a permit by
20 the past owner?

21 MR. DeJOY: Yeah. That's my
22 understanding.

23 MR. HERMANCE: And has it been
24 looked at by Code Compliance?

25 CHAIRMAN SCALZO: Code Compliance

1 ANTHONY MORIELLO LIVING TRUST

2 will weigh in on this. I believe we'll
3 ask Mr. Mattina when we're done with
4 the Board.

5 Mr. Bell, do you have any
6 questions?

7 I'm sorry. Mr. Hermance, did
8 you have anything else?

9 MR. HERMANCE: No.

10 CHAIRMAN SCALZO: Mr. Bell?

11 MR. BELL: I'm good.

12 CHAIRMAN SCALZO: Mr. Masten?

13 MR. MASTEN: I have no questions.

14 CHAIRMAN SCALZO: I don't have
15 questions, either.

16 Mr. Mattina, if you could, help
17 explain the process, and let's be as
18 basic as we can. Should this make it
19 through, what is Code Compliance's
20 obligation at that point? Do you go
21 out and ask for, I'll say destructive
22 testing or do you have verifications
23 that footings are as deep as they
24 should be? What's your role after
25 this?

1 ANTHONY MORIELLO LIVING TRUST

2 MR. MATTINA: If a variance is
3 granted, we'll send a field inspector
4 out there. We have three inspectors.
5 We leave it up to their opinion.
6 They'll do a site inspection. If
7 they can see a majority of the
8 structure, everything will be fine.
9 If there's things we can't see or
10 it's not within the scope of the
11 code, then we'll require an engineer
12 evaluation.

13 CHAIRMAN SCALZO: Thank you
14 very much, Mr. Mattina.

15 Is there anyone here, members
16 of the public, that wish to speak
17 about this application?

18 Sir, please step forward, state
19 your name for the record.

20 MR. FETTER: I'm Bill Fetter,
21 Rockwood Drive.

22 I'm just curious. Did the
23 applicant say that the structure was
24 built before the current resident,
25 the applicant, moved into the house

1 ANTHONY MORIELLO LIVING TRUST

2 or was it built when -- after the
3 resident moved in?

4 CHAIRMAN SCALZO: The way I
5 understood the answer to that, it was
6 kind of how Mr. Hermance had asked
7 it, it was built by the estate or the
8 current owner -- not the current
9 owner. Am I understanding that
10 correctly?

11 MR. DeJOY: This is actually
12 the representative of the trust here,
13 Mr. Moriello. He may be able to
14 answer that question.

15 CHAIRMAN SCALZO: Very good.
16 If you could, step forward and state
17 your name, sir.

18 MR. MORIELLO: My name is
19 Matthew Moriello. Anthony Moriello
20 was my father. My mother and father
21 built the addition back in 1981 and
22 they built a deck I think sometime
23 back in '99 or 2000. So yes, they
24 are the residents still. There is
25 not a new person owning the home.

1 ANTHONY MORIELLO LIVING TRUST

2 CHAIRMAN SCALZO: Very good.

3 Thank you very much.

4 Does anyone else from the
5 public wish to speak about this
6 application?

7 (No response.)

8 CHAIRMAN SCALZO: Hearing none,
9 I'll turn to the Board for one final
10 opportunity?

11 (No response.)

12 CHAIRMAN SCALZO: In that case
13 I'll look to the Board for a motion
14 to close the public hearing.

15 MR. MASTEN: I'll make a motion
16 to close the public hearing.

17 MR. GRAMSTAD: I'll second it.

18 CHAIRMAN SCALZO: We have a
19 motion from Mr. Masten. We have a
20 second from Mr. Gramstad. All in
21 favor?

22 MR. BELL: Aye.

23 MR. EBERHART: Aye.

24 MR. GRAMSTAD: Aye.

25 MR. HERMANCENCE: Aye.

1 ANTHONY MORIELLO LIVING TRUST

2 MR. MASTEN: Aye.

3 CHAIRMAN SCALZO: Aye.

4 Very good. And at this point
5 we're going to go through the
6 balancing test which is going to
7 sound quite familiar to what you
8 heard a few moments ago. The area
9 variance criteria discusses the five
10 factors, the first one being whether
11 or not the benefit can be achieved by
12 other means feasible to the
13 applicant. As we were made aware
14 during the process, I'm not going to
15 say it's pre-existing nonconforming
16 but it's been there since '81.

17 The second, if there's an
18 undesirable change in the
19 neighborhood character or a detriment
20 to nearby properties. I would say
21 not at all.

22 MR. BELL: It's not.

23 CHAIRMAN SCALZO: We've all
24 been around there and it appears to
25 fit right in.

1 ANTHONY MORIELLO LIVING TRUST

2 The third, whether the request
3 is substantial. By the numbers it
4 could be. However, again, nothing is
5 out of character with what we're
6 seeing there.

7 The fourth, will the request
8 have adverse physical or
9 environmental effects. That would be
10 unchanged because there's no proposed
11 improvements from there.

12 And the fifth, whether the
13 alleged difficulty is self-created
14 which is relevant but not
15 determinative. As the representative
16 had stated, this is self-created. As
17 we all know, it's not necessarily
18 determinative.

19 Having gone through the
20 balancing test of the area variance,
21 what is the pleasure of the Board?
22 Actually, pardon me. As I had
23 mentioned earlier, this is a Type 2
24 action under SEQRA.

25 Now I can say having gone

1 ANTHONY MORIELLO LIVING TRUST

2 through the balancing test of the
3 area variance, does the Board have a
4 motion of some sort?

5 MR. HERMANCE: I'll make a
6 motion to approve.

7 MR. EBERHART: I'll second it.

8 CHAIRMAN SCALZO: We have a
9 motion for approval from Mr.
10 Hermance. We have a second from Mr.
11 Eberhart. Roll on that, please,
12 Siobhan.

13 MS. JABLESNIK: Mr. Bell?

14 MR. BELL: Yes.

15 MS. JABLESNIK: Mr. Eberhart?

16 MR. EBERHART: Yes.

17 MS. JABLESNIK: Mr. Gramstad?

18 MR. GRAMSTAD: Yes.

19 MS. JABLESNIK: Mr. Hermance?

20 MR. HERMANCE: Yes.

21 MS. JABLESNIK: Mr. Masten?

22 MR. MASTEN: Yes.

23 MS. JABLESNIK: Mr. Scalzo?

24 CHAIRMAN SCALZO: Yes.

25 The motion is carried. The

1 ANTHONY MORIELLO LIVING TRUST

2 variances are approved. Good luck.

3 MR. DeJOY: Great. Thank you
4 very much. Have a good night.

5 (Time noted: 7:13 p.m.)

6

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

8

9

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

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

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

20 IN WITNESS WHEREOF, I have hereunto
21 set my hand this 3rd day of March 2022.

22

23

24

25

Michelle Conero

MICHELLE CONERO

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH ZONING BOARD OF APPEALS
----- X
In the Matter of

WAYNE ST. OMER
4 Noah Place, Newburgh
Section 86; Block 1; Lot 95.5
R-1 Zone

----- X

Date: February 24, 2022
Time: 7:13 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
DARRELL BELL
JAMES EBERHART, JR.
ROBERT GRAMSTAD
GREGORY M. HERMANCE
JOHN MASTEN

ALSO PRESENT: JOSEPH MATTINA
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: WAYNE ST. OMER
& CHRISTIAN FEKETE

----- X

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

1 WAYNE ST. OMER

2 CHAIRMAN SCALZO: Our second
3 applicant this evening is Wayne St. Omer,
4 4 Noah Place in Newburgh, seeking an
5 area variance of the side yard to
6 build a 26 by 30 two-story addition.

7 Mailings on that, Siobhan?

8 MS. JABLESNIK: This applicant
9 sent out 33 mailings. I have not
10 received comment from the County yet,
11 because they're right on Rock Cut
12 Road.

13 CHAIRMAN SCALZO: Okay.

14 MS. JABLESNIK: I e-mailed her
15 today and she didn't have anything.

16 CHAIRMAN SCALZO: I'll explain
17 what that means to you. Anything
18 that is contiguous or within 500 feet
19 of a State highway or a County
20 highway, which this is, we have to
21 allow the County an opportunity to
22 comment on it. In most cases it
23 comes back that they recommend a
24 Local determination, but we have to
25 allow them to do that.

1 WAYNE ST. OMER

2 So the application hasn't met
3 the thirty days. They haven't had it
4 for thirty days. If it was over
5 thirty days we could act on it
6 without them having responded, but
7 because we haven't hit that deadline
8 yet, unfortunately, we can't vote on
9 this.
10 application tonight. We would like
11 for you to present this evening, that
12 way next month when you're in,
13 whether we've heard from the County
14 or not, we are still allowed to
15 vote.

16 So do you want to take us
17 through it or would you prefer to
18 take us through it next
19 month? That's entirely up
20 to you.

21 MR. ST. OMER: My name is Wayne
22 St. Omer. We bought the house five
23 years ago, you know. The kids were a
24 little smaller. We upgraded it a
25 little bit furniture wise. They

1 WAYNE ST. OMER

2 really don't have room. The same
3 thing with my wife.

4 So I can't really build on the
5 right side. In the back I have a
6 well and in the front is a septic.
7 So like the only place I can really
8 go is the driveway. So that's all I
9 was really asking for the variance
10 for, you know, just to make them a
11 little more happier.

12 I'm not trying to go nowhere.
13 I'll probably die in the house.

14 CHAIRMAN SCALZO: Good for you.
15 We all need more space for more
16 stuff.

17 You just mentioned, though,
18 sir, that you didn't have the option
19 to put it on the other side of the
20 house which actually has the larger
21 of the side yards. So what's
22 preventing you from exploring the
23 addition to be on the right side of
24 the house if you're facing the house?

25 MR. ST. OMER: Well, the

1 WAYNE ST. OMER

2 bedrooms are all on the left side
3 and --

4 MR. FEKETE: The bathroom is
5 also on that side.

6 CHAIRMAN SCALZO: Okay. All
7 right. So thank you for the
8 presentation.

9 At this point I'm going to turn
10 to the Members of the Board for any
11 comments that they have.

12 And again, we cannot vote on
13 this application this evening.
14 However, I'm assuming you're going to
15 hear some comments other than the one
16 I just gave you. I'll say I'm going
17 to give you some homework. Those
18 same questions will probably be asked
19 at next month's meeting. If you can,
20 prepare yourself for whatever you're
21 going to hear now.

22 Mr. Gramstad?

23 MR. GRAMSTAD: You're going to
24 build a two story?

25 MR. ST. OMER: Yes. Basically

1 WAYNE ST. OMER

2 extend the bedrooms and put a garage
3 because the garage -- the driveway,
4 you come down, you turn. My wife
5 already hit both of the doors four
6 times.

7 MS. JABLESNIK: I've done that
8 before.

9 MR. ST. OMER: I thought it was
10 because she was in the first garage
11 so I told her, you know what, take
12 the second one, give you a little
13 more room.

14 CHAIRMAN SCALZO: Now you have
15 damage in two.

16 MR. ST. OMER: That didn't work.

17 MR. GRAMSTAD: So the garage
18 that you have there now you're going
19 to close off and make them -- extend
20 your bedrooms or whatever?

21 MR. ST. OMER: Well, the two
22 story I want to have a garage.

23 CHAIRMAN SCALZO: I haven't
24 seen architecturals.

25 MR. BELL: That's what I want

1 WAYNE ST. OMER

2 to see.

3 CHAIRMAN SCALZO: Unfortunately
4 the disadvantage for you is we can't
5 vote until next month, but the
6 advantage for us is we'll actually
7 get a chance to see a set of plans.
8 I don't even have a sketch.

9 Without speaking with other
10 Board Members or knowing what's
11 really going on --

12 MS. JABLESNIK: I can copy what
13 Code Compliance got, too.

14 MR. FEKETE: Do you need more
15 drawings?

16 MS. JABLESNIK: I can send them
17 what was given to Code Compliance.

18 MR. ST. OMER: I have a copy
19 that I could leave for you guys in
20 the car, actually.

21 MS. JABLESNIK: Whatever you
22 want to do. That's fine, too.

23 CHAIRMAN SCALZO: Obviously we
24 can't act on that this evening.

25 Siobhan, do you have the

1 WAYNE ST. OMER

2 ability to scan those and e-mail them
3 to us?

4 MS. JABLESNIK: I do.

5 CHAIRMAN SCALZO: Very good.
6 One good copy would be good enough.

7 MR. ST. OMER: I've got a copy
8 in the car. I'll get the copy out of
9 the car.

10 CHAIRMAN SCALZO: Thank you.

11 Mr. Gramstad, have your
12 questions been answered?

13 MR. ST. OMER: Basically --
14 sorry. The driveway is at the bottom
15 and we would extend the bedrooms on
16 top. The existing garage right now
17 I'd keep as my wood shop because I
18 have tons of tools. I'm a carpenter.
19 I have so many tools it's like -- you
20 know, right now I have one side of
21 the garage full. So I'll just keep
22 that where I can do my little
23 projects on my own and just -- it's
24 basically upstairs I want to do
25 living space and give her a garage

1 WAYNE ST. OMER

2 hopefully that she doesn't hit when
3 she drives.

4 MS. JABLESNIK: Tell her it's
5 fine.

6 CHAIRMAN SCALZO: She's not
7 aware that she can read these meeting
8 minutes online, is she?

9 Okay. Thank you. I'm sorry,
10 I'm going to back peddle a moment,
11 Mr. St. Omer.

12 Your representation here, can
13 you identify yourself for our stenographer?

14 MR. FEKETE: Sure. My name is
15 Christian Fekete. I'm an architect.

16 CHAIRMAN SCALZO: Thank you.

17 Mr. Gramstad, have your
18 questions been answered?

19 MR. GRAMSTAD: Yes.

20 CHAIRMAN SCALZO: Thank you.

21 Mr. Eberhart, do you have any
22 questions.

23 MR. EBERHART: No questions.

24 CHAIRMAN SCALZO: Mr. Hermance?

25 MR. HERMANCE: With the

1 WAYNE ST. OMER

2 addition it just appears it's going
3 to be extremely close to that fence
4 line. I'm thinking down the road for
5 maintenance or whatnot, if you have
6 to get a ladder up on that side, it's
7 going to be difficult to even extend
8 the ladder being that close to that
9 fence line.

10 MR. ST. OMER: Yeah.

11 MR. HERMANCE: As Darrin had
12 said earlier, the other side would
13 afford you more room. But I
14 understand the driveway is on this
15 side. You are going to be very close
16 to the property line, and there is
17 not a lot of room to get around in
18 between that fence and the proposed
19 addition.

20 MR. ST. OMER: Yeah, because
21 basically I'm going to have at least
22 14 feet from the fence line because
23 the neighbor's fence is set at 3
24 feet.

25 MR. FEKETE: And the fire

1 WAYNE ST. OMER

2 escape where the bedrooms are is on
3 the far side of the house. Safety
4 wise they'll be able to access the
5 second floor if needed.

6 CHAIRMAN SCALZO: Mr. Hermance,
7 are you all set?

8 MR. HERMANCE: Yes.

9 CHAIRMAN SCALZO: I don't want
10 to beat this any further so I'll move
11 off of putting it on the right side
12 of the house.

13 What about if you were to
14 perhaps pursue making the house L
15 shaped with it deeper off the same
16 side of the house as the garage but
17 maintaining that same side yard?

18 MR. ST. OMER: I have a well in
19 the back.

20 CHAIRMAN SCALZO: I actually
21 see that. That's noted on the
22 survey. However, if it were a
23 continuous line from your garage line
24 straight back, perhaps you understand
25 what I mean.

1 WAYNE ST. OMER

2 MR. ST. OMER: Mm'hm'.

3 CHAIRMAN SCALZO: It's just
4 something I'm making a comment about.
5 We're not talking about voting this
6 evening. It's just, you know --

7 MR. FEKETE: I can look at
8 that. Sure.

9 MR. BELL: L shaped in the
10 back.

11 MR. FEKETE: The well is going
12 to be in the way, unfortunately.

13 CHAIRMAN SCALZO: It doesn't
14 appear that way from the survey.

15 MR. FEKETE: You mean like
16 going back behind the house?

17 CHAIRMAN SCALZO: Yes.

18 MR. BELL: Right. He's talking
19 about going back behind the house.

20 CHAIRMAN SCALZO: Again, it's
21 just a comment.

22 Mr. Bell, do you have any
23 comments?

24 MR. BELL: Okay. So you're
25 going two stories?

1 W A Y N E S T . O M E R

2 MR. ST. OMER: Yeah.

3 MR. BELL: And you're going to
4 come out over the existing garage; --

5 MR. ST. OMER: Yeah.

6 MR. BELL: -- correct?

7 MR. ST. OMER: Yeah.

8 MR. BELL: So these two current
9 garages are not going to be
10 accessible at all from the outside;
11 correct?

12 MR. ST. OMER: No. They're
13 going to be closed off.

14 MR. BELL: And you mentioned
15 that you have about 14 feet between
16 the side of the new construction and
17 the current fence?

18 MR. ST. OMER: Yeah.

19 MR. BELL: And you said that
20 there are 3 feet on your property or
21 3 feet --

22 MR. ST. OMER: No. The fence
23 is set back 3 feet from the property line.

24 MR. BELL: On their side?

25 MR. ST. OMER: Yeah.

1 W A Y N E S T . O M E R

2 MR. BELL: Okay.

3 MR. ST. OMER: I'm actually
4 leaving 11 feet. I have 14 feet in
5 between the addition and the fence.

6 CHAIRMAN SCALZO: But the fence
7 is not yours?

8 MR. ST. OMER: No.

9 MR. BELL: The fence is not
10 yours?

11 MR. ST. OMER: No. That was
12 there. 13 years ago he put that up.

13 MR. BELL: Because I noticed
14 that when I went back today I
15 couldn't even find the address on the
16 mailbox or the house, the house next
17 to you.

18 I went back over there and I
19 took some pictures because I wanted
20 to know about the existing -- what is
21 that, a pool house that they have
22 there?

23 MR. ST. OMER: Yeah.

24 MR. BELL: It's next to the
25 fence. It was probably about 5 feet

1 WAYNE ST. OMER

2 off the property line.

3 MR. ST. OMER: Yeah.

4 MR. BELL: I went back to take
5 a look at that again today.

6 All right. I'm good here right
7 now. I just want to see better plans
8 other than what we have.

9 CHAIRMAN SCALZO: We have a
10 survey. Again, when we get the
11 architecturals, that may explain it.
12 We don't need them right at the
13 moment. Very good.

14 Mr. Masten, do you have any
15 comments?

16 MR. MASTEN: The only thing
17 that I can say is what Darrell just
18 said, get a clearer picture of
19 everything.

20 CHAIRMAN SCALZO: Very good.
21 Thank you, Mr. Masten.

22 MR. MASTEN: I went by the
23 place twice and I saw the other
24 number and I said that's got to be
25 the house.

1 WAYNE ST. OMER

2 CHAIRMAN SCALZO: Do any
3 members of the public here wish to
4 speak about this application?

5 (No response.)

6 CHAIRMAN SCALZO: Hearing none,
7 okay.

8 What I'll do is look to the
9 Board for a motion to keep the public
10 hearing open to the March meeting.

11 MR. BELL: I'll make a motion
12 to keep the public hearing open until
13 the next meeting in March.

14 MR. GRAMSTAD: I'll second it.

15 CHAIRMAN SCALZO: We have a
16 motion from Mr. Bell. We have a
17 second from Mr. Gramstad. Very good.
18 All in favor?

19 MR. BELL: Aye.

20 MR. EBERHART: Aye.

21 MR. GRAMSTAD: Aye.

22 MR. HERMANCE: Aye.

23 MR. MASTEN: Aye.

24 CHAIRMAN SCALZO: Aye.

25 Very good. You can even bring

1 WAYNE ST. OMER

2 down that copy to Siobhan, tomorrow
3 is probably a snow day so sometime
4 next week. As long as we get it ten
5 days prior.

6 MR. FEKETE: I can leave this
7 with you.

8 I just wanted to mention that
9 the bathroom is on the left side of
10 the house on the back of the house.
11 So if we add the -- if we make this
12 addition in the back of the house,
13 all this -- you know, the bathroom
14 will have to be changed and so, you
15 know --

16 CHAIRMAN SCALZO: It will be
17 quite an undertaking I'm sure.

18 MR. FEKETE: Yeah.

19 CHAIRMAN SCALZO: And you're
20 adding bedrooms to the current
21 structure. Correct?

22 MR. ST. OMER: No. Just
23 extending them.

24 CHAIRMAN SCALZO: I was going
25 to ask engineering, septic related

1 WAYNE ST. OMER

2 questions, but I guess I don't have
3 to.

4 Thank you. Siobhan will take
5 that.

6 MR. BELL: The septic is in the
7 front of the house.

8 CHAIRMAN SCALZO: That's
9 correct, but the amount of linear
10 feet in the tile field is based upon
11 bedrooms. If they were increasing
12 the bedrooms, they would possibly
13 have to modify that.

14 Gentlemen, thank you very much.
15 We'll see you next month.

16 MR. ST. OMER: Thank you.

17 MR. FEKETE: Thank you.

18

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

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WAYNE ST. OMER

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 2022.

Michelle Conero

MICHELLE CONERO

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH ZONING BOARD OF APPEALS
----- X
In the Matter of

BRIAN AGNEW
7 Beech Street, Newburgh
Section 83; Block 2; Lot 7.1
R-1 Zone

----- X

Date: February 24, 2022
Time: 7:26 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
DARRELL BELL
JAMES EBERHART, JR.
ROBERT GRAMSTAD
GREGORY M. HERMANCE
JOHN MASTEN

ALSO PRESENT: JOSEPH MATTINA
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: STEPHEN WHALEN

----- X

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

1 B R I A N A G N E W

2 CHAIRMAN SCALZO: Our next
3 applicant is Brian Agnew, 7 Beech
4 Street in Newburgh, seeking area
5 variances of increasing the degree of
6 nonconformity of the front and side
7 yards to raise the roof and add a
8 dormer to an existing nonconforming
9 structure.

10 Do we have mailings on that,
11 Siobhan?

12 MS. JABLESNIK: Yes. This
13 applicant sent 44 letters.

14 CHAIRMAN SCALZO: 44. You're
15 the winner this evening.

16 Wholly smokes, that house is
17 awfully close to the road.

18 MR. WHALEN: I'll take credit
19 for it. I'm Steve Whalen of Whalen
20 Architecture. I'm representing Brian
21 Agnew. He couldn't attend tonight.

22 CHAIRMAN SCALZO: Not a
23 problem. Thank you very much.

24 MR. WHALEN: And I'll take the
25 credit for the 44 mailings.

1 B R I A N A G N E W

2 CHAIRMAN SCALZO: Okay.

3 Usually when I recite something about
4 raising the roof, I go like this.

5 But not in this case.

6 MS. JABLESNIK: The kids don't
7 do that anymore.

8 CHAIRMAN SCALZO: The kids
9 don't do that anymore. I was
10 thinking when I was young.

11 Anyway, I appreciate you being
12 here. If you could, go ahead and
13 I'll say review what I just -- is
14 there anything else that you would
15 like me to discuss? My impression is
16 this is very straightforward.

17 You're dressed pretty well
18 tonight so I'll let you talk.

19 MR. WHALEN: Just to give you a
20 brief overview, we're looking just to
21 construct what's approximately about
22 12 feet wide, about 8 feet high, a
23 dormer on the existing residence.

24 We're not looking to increase
25 the footprint. We're not looking to

1 B R I A N A G N E W

2 increase the overall height of the
3 house.

4 As you can see, the entire
5 house, including the rear porch, it's
6 all in the 50-foot front yard
7 setback. So we can't make a move
8 without requiring a variance.

9 CHAIRMAN SCALZO: Just about
10 everything here is pre-existing
11 nonconforming.

12 MR. WHALEN: Exactly. It's
13 right on the property line.

14 CHAIRMAN SCALZO: It's just
15 because, because, because.

16 MR. WHALEN: Yup.

17 CHAIRMAN SCALZO: So I don't
18 have any comments at all on this.

19 I'm going to start at the other
20 end of the table, though. Mr.
21 Masten, do you have any comments?

22 MR. MASTEN: I have no comment
23 on it.

24 CHAIRMAN SCALZO: Mr. Bell, do
25 you have any comments on this?

1 B R I A N A G N E W

2 MR. BELL: No. Not at all.

3 CHAIRMAN SCALZO: Mr. Hermance?

4 MR. HERMANCE: My guess is the
5 house was probably built back when
6 the road wasn't paved.

7 MR. WHALEN: I think it was
8 back in 18 -- they gave me the date.
9 It was back in the 1800s.

10 MR. HERMANCE: That's why it's
11 so close to the road.

12 CHAIRMAN SCALZO: Mr. Eberhart?

13 MR. EBERHART: No questions.

14 CHAIRMAN SCALZO: Pardon me?

15 MR. BELL: She told me it used
16 to be a carriage house.

17 CHAIRMAN SCALZO: Mr. Gramstad,
18 do you have any comments on it?

19 MR. GRAMSTAD: None at all.

20 CHAIRMAN SCALZO: Very good.

21 At this point I'm going to open
22 this up to any members of the public
23 that wish to comment on this
24 application.

25 Mr. Fetter.

1 B R I A N A G N E W

2 MR. FETTER: Pre-existing, is
3 that before today or is it before the
4 person took ownership of the
5 residence? Is it before a zoning
6 change? What is pre-existing?

7 CHAIRMAN SCALZO: I'm going to
8 look to our Code Compliance
9 representative here.

10 MR. MATTINA: Pre-existing
11 would be a legal structure at the
12 time of the adoption of a code
13 change. So if that was built before
14 zoning legally, then it's
15 grandfathered in, which means legally
16 nonconforming.

17 CHAIRMAN SCALZO: Thank you,
18 Mr. Mattina.

19 Mr. Fetter, does that satisfy
20 your inquiry?

21 MR. FETTER: Yes. Thank you.

22 CHAIRMAN SCALZO: Thank you.

23 Do any other members of the
24 public wish to talk about this
25 application?

1 B R I A N A G N E W

2 MR. FETTER: Can I get a
3 clarification. So it was zoned into
4 nonconformance then? Through zoning
5 it became nonconforming?

6 MR. MATTINA: It was there
7 before the zoning was established.
8 Once they established the zoning --

9 MR. FETTER: The zoning made it
10 nonconforming?

11 MR. MATTINA: Yes.

12 MR. FETTER: The new zoning
13 made it nonconforming?

14 MR. MATTINA: Correct.

15 CHAIRMAN SCALZO: Mr. Fetter,
16 we've heard testimony that the house
17 was built pre 1900.

18 When did the code finally
19 arrive here in the Town of Newburgh,
20 Joe? Any idea?

21 MS. JABLESNIK: I know.

22 CHAIRMAN SCALZO: Siobhan?

23 MS. JABLESNIK: 1956.

24 CHAIRMAN SCALZO: Okay. Very
25 good.

1 B R I A N A G N E W

2 I'll look to the Board for one
3 last opportunity.

4 (No response.)

5 CHAIRMAN SCALZO: Very good.

6 So in this case I'll look to
7 the Board for a motion to close the
8 public hearing?

9 MR. GRAMSTAD: I'll make a
10 motion to close the public hearing.

11 MR. EBERHART: I'll second it.

12 CHAIRMAN SCALZO: We have a
13 motion from Mr. Gramstad. We have a
14 second from Mr. Eberhart. All in
15 favor?

16 MR. BELL: Aye.

17 MR. EBERHART: Aye.

18 MR. GRAMSTAD: Aye.

19 MR. HERMANCE: Aye.

20 MR. MASTEN: Aye.

21 CHAIRMAN SCALZO: Aye.

22 Very good. This is also a Type
23 2 action under SEQRA.

24 We're going to discuss the five
25 factors, the first one being whether

1 B R I A N A G N E W

2 or not the benefit can be achieved by
3 other means feasible to the
4 applicant. No, it's just a dormer.
5 It's not expanding the dwelling
6 footprint at all.

7 Second, if there's an
8 undesirable change in the
9 neighborhood character or a detriment
10 to nearby properties.

11 MR. BELL: No.

12 MR. EBERHART: No.

13 MR. GRAMSTAD: No.

14 MR. HERMANCENCE: No.

15 MR. MASTEN: No.

16 CHAIRMAN SCALZO: No. I think
17 it's going to be virtually unnoticed.
18 Actually, it could be an improvement
19 with the new roof on it.

20 Third, if the request is
21 substantial. Only because it's
22 currently nonconforming, you know,
23 zoning won't allow it. So by the
24 numbers it's substantial. However,
25 the existing condition is not. At

1 B R I A N A G N E W

2 least that's my position here.

3 Fourth, whether the request
4 will have adverse physical or
5 environmental effects.

6 MR. BELL: No.

7 MR. EBERHART: No.

8 MR. GRAMSTAD: No.

9 MR. HERMANCE: No.

10 MR. MASTEN: No.

11 CHAIRMAN SCALZO: No.

12 And the fifth, whether the
13 alleged difficulty is self-created
14 which is relevant but not
15 determinative. But it's not. It's
16 not self-created.

17 So having gone through the
18 balancing test of the area variance,
19 does the Board have a motion of some
20 sort?

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

23 MR. MASTEN: I'll second it.

24 CHAIRMAN SCALZO: We have a
25 motion from Mr. Bell. We have a

1 B R I A N A G N E W

2 second from Mr. Masten. Roll on
3 that, Siobhan.

4 MS. JABLESNIK: Mr. Bell?

5 MR. BELL: Yes.

6 MS. JABLESNIK: Mr. Eberhart?

7 MR. EBERHART: Yes.

8 MS. JABLESNIK: Mr. Gramstad?

9 MR. GRAMSTAD: Yes.

10 MS. JABLESNIK: Mr. Hermance?

11 MR. HERMANCE: Yes.

12 MS. JABLESNIK: Mr. Masten?

13 MR. MASTEN: Yes.

14 MS. JABLESNIK: Mr. Scalzo?

15 CHAIRMAN SCALZO: Yes.

16 The motion is carried. The
17 variances are approved. Thank you
18 very much.

19 MR. WHALEN: Thank you very
20 much.

21

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

23

24

25

1 B R I A N A G N E W

2

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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
7 for and within the State of New York, do
8 hereby certify:

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

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

16 IN WITNESS WHEREOF, I have hereunto
17 set my hand this 3rd day of March 2022.

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Michelle Conero

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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

NICOLAS DiBRIZZI
13 Anchor Drive, Newburgh
Section 121; Block 1; Lot 15
R-1 Zone

----- X

Date: February 24, 2022
Time: 7:32 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
DARRELL BELL
JAMES EBERHART, JR.
ROBERT GRAMSTAD
GREGORY M. HERMANCE
JOHN MASTEN

ALSO PRESENT: JOSEPH MATTINA
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: JEFF DeGRAW &
KELLY LIBOLT

----- X

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

1 N I C O L A S D I B R I Z Z I

2 CHAIRMAN SCALZO: Our next
3 applicant this evening is Nicolas
4 DiBrizzi, 13 Anchor Drive, to
5 continue building an accessory
6 structure previously approved by the
7 ZBA. The height of the new structure
8 is 31 feet. The previously approved
9 was 13.3.

10 Is that inches or tenths, Joe?
11 I'm an engineer, I work in tenths of
12 a foot.

13 MR. MATTINA: Well, it wasn't
14 an issue because 15 --

15 CHAIRMAN SCALZO: I understand.

16 MR. MATTINA: Right. I'm going
17 to say it was tenths.

18 CHAIRMAN SCALZO: It was below?

19 MR. MATTINA: Correct. So that
20 wasn't even an issue back in the
21 original --

22 CHAIRMAN SCALZO: Right.

23 So Siobhan, do we have mailings
24 on this?

25 MS. JABLESNIK: Yes. This

1 N I C O L A S D I B R I Z Z I

2 applicant sent 18 letters.

3 CHAIRMAN SCALZO: 18. There's
4 not a lot of homes down there. Very
5 good.

6 I will allow you to introduce
7 yourselves and present your position,
8 and then we're going to ask a lot of
9 questions.

10 MR. DeGRAW: I am Jeff DeGraw
11 from DeGraw & DeHaan Architects.

12 MS. LIBOLT: I am Kelly Libolt
13 with KARC Planning Consultants.

14 Mr. Chairman, I have a
15 presentation. I think sometimes a
16 picture is worth a thousand words.
17 Is it okay if I hand this out to you?

18 CHAIRMAN SCALZO: Well, you
19 certainly can. Typically we get all
20 of our information ten days prior to
21 our meetings which gives us time to
22 go through them. The only thing that
23 we have gone through at this point is
24 everything that's in the application.

25 MS. LIBOLT: These are copies

1 NICOLAS DiBRIZZI

2 of what's in the application. It's
3 the sequence of the presentation that
4 I'm going to provide to you tonight.
5 Rather than providing multiple
6 boards, I just put it on paper.

7 CHAIRMAN SCALZO: That would be
8 fine. I hope you ran off enough
9 copies for all of us.

10 MS. LIBOLT: I think there
11 should be enough.

12 CHAIRMAN SCALZO: I apologize.
13 I'm going to say this. I'm guilty of
14 speaking quickly and it ends up being
15 tough for Michelle to capture all of
16 our words. As you're going to
17 present, please keep in mind that
18 she'll be recording us, so speak --

19 MS. LIBOLT: Understood.

20 CHAIRMAN SCALZO: -- clearly
21 and --

22 MS. LIBOLT: Slowly.

23 CHAIRMAN SCALZO: Well, not
24 that slowly.

25 MS. LIBOLT: I'll do it as slow

1 N I C O L A S D i B R I Z Z I

2 as I can.

3 CHAIRMAN SCALZO: Thank you.

4 MS. LIBOLT: So again, I'm
5 Kelly Libolt with KARC Planning
6 Consultants. We're here representing
7 the applicant, Nicolas DiBrizzi, for
8 the property that's located on 13
9 Anchor Drive. I think everyone knows
10 where that property is. This
11 property is in the R-1 Zoning
12 District. We're here to seek your
13 review of an area variance for the
14 height of an accessory structure.

15 This is a Type 2 action under
16 SEQRA. At issue is the maximum
17 height of an accessory structure.
18 What's permitted is 15 feet and we're
19 here tonight to seek your permission
20 to exceed that height.

21 As you had indicated, this
22 applicant was before this Board for
23 other area variances when they were
24 seeking a permit for this particular
25 application. At the time the

1 N I C O L A S D I B R I Z Z I

2 methodology that they used to measure
3 the height of the structure is
4 different than the methodology that
5 we're using tonight, and that's why
6 we're here to present to you.

7 CHAIRMAN SCALZO: Correct. The
8 methodology that they used last time
9 didn't land you in front of us, or
10 the project in front of us. We had
11 no need to review the height at the
12 time.

13 MS. LIBOLT: Correct. Yes.
14 Exactly.

15 So the first few pages that you
16 have here really are just photos of
17 the existing site. In case any of
18 you weren't able to go down to the
19 property, so you could see the
20 backyard.

21 And when you see the aerial
22 photographs, you'll see a curvilinear
23 retaining wall. That's the subject
24 area where the pool and the pool
25 house are being constructed.

1 N I C O L A S D I B R I Z Z I

2 The architect here tonight has
3 done a very good job of actually
4 tucking this structure into the hill,
5 so that's why we're showing you these
6 aerial photographs, so you can get a
7 sense of it. One side of the
8 structure is actually built into the
9 hill with the pool area facing the
10 river.

11 So as I indicated, when the
12 applicant was before you previously
13 to tonight, they measured the height
14 of the structure from the adjoining
15 property line. They felt as if that
16 was dimensionally the location that
17 they were supposed to measure the
18 height of the building.

19 I just put the definition of
20 the code in here. I know everyone
21 probably knows this. In order to
22 measure the building height in the
23 Town of Newburgh code it's the
24 vertical distance measured from the
25 average elevation of the finished

1 N I C O L A S D I B R I Z Z I

2 grade. This is the issue along the
3 side of the structure fronting the
4 nearest street to the highest point
5 of the structure.

6 And so when this property was
7 previously presented to you, the
8 applicant measured the property line
9 that's actually perpendicular, next
10 to the adjoining property. I did
11 provide in this illustration and in
12 the application material that I gave
13 you, this is not new information,
14 just dimensionally showing you where
15 that measurement was from.

16 And so if you're looking at the
17 information I gave you, it's on this
18 line that says height of permitted.
19 So when they measured the structure
20 from that side of the property,
21 because in their opinion that was the
22 side of the property that was closest
23 to the street, the height of the
24 structure was 11 feet 6 inches. When
25 we received the notice from the Town

1 N I C O L A S D I B R I Z Z I

2 indicating that the work had to stop
3 on the site, we were notified that
4 the correct way to measure the height
5 of the structure is actually from
6 Anchor Drive, which is really
7 directly across from the driveway. I
8 provided you with a photo showing you
9 where that measurement would be taken
10 from.

11 It's important to note that
12 from the time that the applicant
13 submitted their permits to the Town
14 to today, there's been no change in
15 the overall top height of the
16 structure. They haven't increased
17 the height. They haven't increased
18 the height of the space inside of the
19 structure. There's been no design
20 modification to the overall height.

21 We're here tonight because
22 we're measuring from one side of the
23 property to the other side of the
24 property. Some municipalities
25 measure height differently. It's

1 N I C O L A S D I B R I Z Z I

2 just -- it's the height at the
3 tallest part of the structure. Some
4 municipalities measure height on an
5 average grade.

6 So the reason that there's a
7 difference is because the average
8 grade from the side of the property
9 and the average grade along the
10 driveway are different, and so that's
11 why you have a different height of
12 the structure.

13 It's important to note, and I
14 just want to make this notation, that
15 between the time that the original
16 permit drawings were submitted to you
17 and today there was another
18 sub-terrain space that was added to
19 the plans. When you look at the
20 section, and I provided a rectangle
21 around that so you could understand
22 that, again there's been no changes
23 to the overall above grade height of
24 the structure.

25 So when we took the

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2 measurements of the building using
3 the methodology that was provided to
4 us by the Town, accurately measuring
5 the height of the structure from
6 Anchor Drive, the height of the
7 building was 24 feet, again where 15
8 is permitted.

9 In the application and also on
10 the plans that I'm showing you I did
11 just provide you some overall views
12 of if you were standing on Anchor
13 Drive and you were looking towards
14 the site, what you would see from the
15 driveway.

16 We did appropriately notice
17 this project as you had indicated,
18 placed the signage out in front of
19 the building. We provided you with a
20 photograph of that.

21 We also have received support
22 letters from many of the neighboring
23 properties. I'm happy to provide
24 those to you tonight. These are just
25 letters that were prepared by the

1 N I C O L A S D I B R I Z Z I

2 neighbors because they couldn't
3 attend the meeting tonight. If I'm
4 allowed, Mr. Chairman, I could give
5 those to you.

6 CHAIRMAN SCALZO: Yes. Please
7 bring them up.

8 MS. LIBOLT: As you will see,
9 we did provide you with nine letters
10 representing thirteen parcels of the
11 twenty-one parcels that are
12 collectively in this area.

13 We did provide you with a
14 lengthy narrative addressing the five
15 questions for the issuance of an area
16 variance. I'm happy to go through
17 those if you'd like.

18 Essentially this property has
19 very limited use. Again, as I
20 indicated, the architect has done a
21 very good job of tucking this
22 structure into the hillside.

23 When you ask the question of
24 whether or not the benefit sought by
25 the applicant can be achieved by some

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2 other means, unfortunately this is a
3 situation where the applicant did
4 receive a permit and there was no
5 malice or bad intent. The drawings
6 were submitted and there was a
7 misunderstanding with respect to how
8 the height of the structure was
9 supposed to be measured. They have
10 commenced construction on the
11 property.

12 I just want to make sure I go
13 through all of your questions. It's
14 important to note that there have not
15 been any design changes from the
16 permitted drawings to today resulting
17 in the overall height of the
18 structure.

19 We did provide you with
20 substantial information from the
21 neighbors summarizing that there is
22 not going to be a negative impact
23 from their perspective on the
24 neighborhood and on the community
25 character, and this is not unlike

1 N I C O L A S D I B R I Z Z I

2 some of the other structures that are
3 in that area.

4 And finally, the threshold test
5 of whether or not the area variance
6 was self-created. Again, we did
7 provide you with permit drawings and
8 it was a misunderstanding of how the
9 measurement was supposed to be taken.
10 Unfortunately we're here today with
11 an existing structure, hoping that
12 you'll approve this area variance and
13 we can move forward with reclamation
14 and the continuation of the
15 construction.

16 CHAIRMAN SCALZO: Thank you
17 very much.

18 The first thing I have is a
19 question really for Code Compliance
20 to start with. The applicant is
21 claiming a 24-foot building
22 elevation. Code Compliance is
23 identifying it as 31.

24 MR. MATTINA: Correct. I was
25 going to bring it up.

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2 She said there's no structural
3 changes, but we got a second set of
4 plans in that started this whole mess
5 showing a peaked roof on top of the
6 structure where there was originally
7 just the arbors. That's what made us
8 look deeper into the height and
9 restrictions of this gazebo. The
10 plans we got lately have a peaked
11 roof on it that these do not show.

12 CHAIRMAN SCALZO: So they're at
13 this time proposing a solid roof as
14 opposed to an open roof?

15 MR. MATTINA: That was the last
16 set of plans we got. Correct.

17 MR. DeGRAW: That's true. We
18 were looking to change it from an
19 open pergola to a roof pergola. It's
20 just a normal roof on it. But I
21 think under the circumstances right
22 now we're not looking to do that.
23 We're just leaving it as the original
24 pergola.

25 MR. MATTINA: And my

1 N I C O L A S D I B R I Z Z I

2 measurement came from the peak roof
3 down. So if you take off the 7-foot
4 roof, now we're down to the 24 foot.

5 CHAIRMAN SCALZO: So we're back
6 to the 24?

7 MR. MATTINA: Correct.

8 CHAIRMAN SCALZO: Okay.

9 MR. MATTINA: Back to the
10 original layout but not the original
11 numbers.

12 As you can see, this site is
13 very tricky on how to get your
14 elevations. There's rear and side
15 and front elevations. It's very
16 difficult to get.

17 CHAIRMAN SCALZO: Correct.

18 And the applicant did state
19 that they misinterpreted the code.
20 They measured from the north property
21 line, or in this case the west
22 property line which would have been
23 the appropriate property line to
24 measure from.

25 I've walked the site. I'm

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2 pretty sure most of the Members of
3 the ZBA have also walked the site.

4 There's other issues going on
5 there. The surveyors have been out
6 there and laid out the property line,
7 but some of the excavation has
8 exceeded the limits of the property.

9 There is really nice looking
10 sand in there. There would be no
11 issues with the septic design if
12 that's what everything looks like.
13 You could sell that stuff. But
14 anyway, it's not yours. And I'm just
15 thinking out loud, if you will.

16 The information that you're
17 providing is fantastic. The hill
18 that you're measuring this stuff off
19 isn't even your hill, if you know
20 what I mean.

21 And I just mention that soil
22 for fill. Not that this is going to
23 happen, but that's a valuable
24 commodity. They could actually sell
25 that.

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2 They could drop the level of
3 that site, you know, 10 feet. Maybe
4 not. But anyway, it's an interesting
5 way to look at things.

6 Your presentation was fantastic
7 for the way you evaluated it. I can
8 understand how that would happen.
9 Again, I'm just talking out loud or
10 thinking out loud.

11 MS. LIBOLT: Can I just address
12 your comments?

13 CHAIRMAN SCALZO: Yes, please.

14 MS. LIBOLT: You did raise the
15 issue. I wasn't going to bring it up
16 tonight, but I'm happy to do that.

17 So there was a collapse, and
18 you can probably understand why,
19 because of the type of soil. It was
20 an emergency situation. As many of
21 you know, when the lower portion of
22 that hill collapsed, we needed to
23 pull away the upper portion of the
24 hill. You are correct, that area did
25 encroach onto the neighbors. I know

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2 they're here tonight. We have been
3 working very closely with them.

4 Our engineer is here in the
5 back. He can answer any questions
6 you may have.

7 We've been working very closely
8 with their engineer to come up with a
9 plan that's acceptable to both
10 parties, and will continue to do
11 that.

12 You are correct, that did, in
13 fact, occur and it was an emergency
14 situation.

15 With respect to how those
16 dimensions are calculated, the
17 engineer is here and the architect is
18 here so we can answer that. But it
19 is the average grade. So when we
20 complete the reclamation plan and we
21 know what those grades are going to
22 be once this property is complete,
23 that is how the height is measured.

24 CHAIRMAN SCALZO: Correct.

25 I'm going to jump back to

1 NICOLAS DiBRIZZI

2 Mr. Mattina. Looking at it as I was
3 standing in the driveway, you know,
4 you're looking up quite a bit. Are
5 there retaining walls proposed in
6 front of that? That could alter what
7 we're looking at here. Would there
8 be ground next to it or --

9 MS. LIBOLT: Yeah. Actually,
10 if you were standing in the driveway
11 and you're looking across the river
12 and you see the structure in front of
13 you, everything to the left of that
14 structure is going to be backfilled.
15 You can sort of walk around now. I
16 don't know if you walked around. All
17 of that is going to be backfilled.

18 We're very anxious to try to
19 get it backfilled before spring
20 occurs for obvious reasons. That's
21 why you're not going to see those
22 exterior walls. There are no
23 retaining walls proposed now at this
24 time.

25 We are working with the

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2 adjoining property owner, and perhaps
3 may work with them if that's what
4 they desire, to bring the grades over
5 further so that they can have some
6 additional ground area on their
7 property. We're bringing the grades
8 back to where they were.

9 MR. MATTINA: As far as the
10 retaining walls to the left side,
11 that's not going to help our
12 measurements because that's not how
13 we're measuring our height.

14 CHAIRMAN SCALZO: Right.
15 That's why I asked about a retaining
16 wall.

17 If I was standing at the road
18 looking down the driveway, if there
19 was a retaining wall and a few feet
20 of soil in front of that, that, in
21 essence, sort of takes care of some
22 of your height issue.

23 MR. MATTINA: Right. Which it
24 won't.

25 CHAIRMAN SCALZO: That's an

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2 engineering issue, not us.

3 All right. So thank you. Is
4 there something else that you wanted
5 to add?

6 MS. LIBOLT: No. There's
7 nothing else.

8 CHAIRMAN SCALZO: Very good.

9 This is one challenging
10 application, I'll tell you that.

11 So I'm going to actually turn
12 to the Members of the Board for any
13 comments that they may have.

14 Why don't we start with
15 Mr. Masten. Do you have any
16 comments?

17 MR. MASTEN: I stood in the
18 driveway, too, and looked at the
19 proposed height of that just like you
20 did, Darrin.

21 I was concerned about anything
22 being washed out. Otherwise, that's
23 all I've got to say on it right now.

24 CHAIRMAN SCALZO: Thank you,
25 Mr. Masten.

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2 Mr. Bell?

3 MR. BELL: Well, it is a busy
4 site. There is a lot going on.

5 I was trying to understand the
6 measurement, how it was being
7 measured. Now I've got a little bit
8 more of a clear picture.

9 And I do agree that retaining
10 walls in the front would help.

11 CHAIRMAN SCALZO: Right.

12 MR. BELL: I'm going to refrain
13 for right now.

14 CHAIRMAN SCALZO: That's fine,
15 Mr. Bell. Thank you so much.

16 Mr. Hermance, do you have any
17 comments?

18 MR. HERMANCE: So the proposed
19 addition is designed to hold back
20 that soil?

21 MR. DeGRAW: That's correct.

22 MR. HERMANCE: And then when
23 it's restored, it's going to be
24 restored to what it was prior?

25 MS. LIBOLT: Correct. Unless

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2 the adjoining neighbors want some
3 modification, our intent is to bring
4 it back to where it was originally.

5 MR. HERMANCE: And it won't be
6 higher than the existing --

7 MS. LIBOLT: Correct. That's
8 why we provided this section, so you
9 could see it.

10 MR. HERMANCE: So the line of
11 sight for people to have a view down
12 towards the river --

13 MS. LIBOLT: Their line of
14 sight will not be blocked. That
15 illustration is in your presentation
16 and in my submission, my original
17 submission.

18 MR. HERMANCE: That's all I
19 had.

20 CHAIRMAN SCALZO: Mr. Eberhart?

21 MR. EBERHART: I don't have any
22 questions now.

23 Just as Mr. Bell said, we need
24 more clarity on how the height
25 measurements were determined.

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2 MR. DeGRAW: So just with
3 regards to the height measurements,
4 when we're trying to find the average
5 grade, we take along the side of the
6 building. In our situation we picked
7 the long side which we thought had
8 the greatest frontage to acreage and
9 also was the side that was probably
10 affecting the neighbor the most.
11 That's why we chose that side
12 originally.

13 So we take every 5 feet and
14 then we take the finished grade,
15 that's where it's measured from, and
16 then we take that finished grade up
17 to the height of the structure, we
18 add them all up and we get the
19 average.

20 That's why when you measure on
21 the high side of the property -- when
22 you're measuring down from the
23 driveway, you, obviously, get a much
24 smaller number because the driveway
25 is flat. That's why you're getting

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2 varied differences on the grades or
3 the heights.

4 CHAIRMAN SCALZO: I wouldn't
5 expect that you would have the answer
6 to this right here and now, but the
7 elevation from the driveway as it
8 currently exists to the top course of
9 the masonry that's on there right
10 now, do you happen to know what that
11 is?

12 MR. DeGRAW: I'm going to --
13 I'm not sure offhand. 24 feet or
14 less.

15 CHAIRMAN SCALZO: If we're
16 going to get comments from the back,
17 then I need to know who this is.

18 MR. DeGRAW: Sorry. This is
19 Michael Marsala, another architect in
20 our office from DeGraw & DeHaan.

21 CHAIRMAN SCALZO: Thank you.

22 MR. DeGRAW: I don't think
23 we're prepared to answer that right
24 now. There are some grades we're not
25 quite sure of right now.

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2 CHAIRMAN SCALZO: What's most
3 important to us as you're hearing,
4 because this is now purely a height
5 variance that we're looking at, is we
6 need to know when we are done exactly
7 what it's going to be and how that
8 differs.

9 As I say, as I stood in the
10 driveway and looked up, I'm 5 foot
11 10, it looks greater than 24 feet to
12 me. That's why I was hoping for some
13 real number verification. That was
14 just the top course, the concrete or
15 masonry top that I was looking at.

16 MR. DeGRAW: And that's 24
17 feet.

18 CHAIRMAN SCALZO: That's
19 exactly 24?

20 MR. DeGRAW: Yeah, because your
21 24 feet is going to be from the
22 finished average grade and that's to
23 the top of the pergola. So the
24 pergola is actually --

25 CHAIRMAN SCALZO: Recessed

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2 within that concrete?

3 MR. DeGRAW: Actually it's just
4 right on top of it.

5 CHAIRMAN SCALZO: So the
6 pergola, I'm assuming, is 2 by 12s?

7 MR. DeGRAW: About that.
8 You're probably roughly about 16
9 inches above that block course.

10 CHAIRMAN SCALZO: Thank you.

11 I cut Mr. Gramstad off.

12 MR. GRAMSTAD: No. You cut him
13 off.

14 CHAIRMAN SCALZO: Sometimes
15 it's a benefit of going last.

16 MR. GRAMSTAD: My questions
17 were answered about the height.
18 That's what I was looking for.

19 CHAIRMAN SCALZO: Very good.

20 Again, this is one of the more
21 challenging applications we've seen.

22 At this time I'm going to open
23 it up to any members of the public
24 that wish to speak about this
25 application.

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2 Please step forward, state your
3 name and express your concerns or
4 comments.

5 MR. MACRON: Good evening. My
6 name is John Macron. I'm the
7 attorney representing Larry Rothstein
8 and Gina Mazzarelli, neighbors of the
9 project.

10 CHAIRMAN SCALZO: So that's the
11 hill that we're talking about?

12 MR. MACRON: Exactly.

13 There are a couple things here.
14 We did not receive any of these
15 documents that were presented
16 tonight. They will be available
17 online ultimately?

18 CHAIRMAN SCALZO: As you heard
19 me say to the applicant, the package
20 that we received right here, we have
21 not had the benefit of reviewing any
22 of this before this evening.

23 So the short answer is I don't
24 know if we can have this scanned and
25 put online or make it available to

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2 the public at the Town office.

3 MR. MACRON: I was just given
4 one.

5 CHAIRMAN SCALZO: Okay. You
6 may not be the only one that's
7 looking for it.

8 MR. MACRON: Exactly. So
9 that's the first issue.

10 You indicated there are many
11 other issues here, and I believe
12 Mr. Bell said it's a busy site. It
13 really is. There's the encroachment
14 on the property, there is the
15 collapse of the wall. Rather than go
16 to war over all this, the two
17 engineers I believe are talking. My
18 understanding was tonight this actual
19 variance was going to be withdrawn
20 and then they were going to go
21 forward with the engineers and talk.
22 If we reach an agreement, then we
23 will withdraw any of our objections.
24 So I would like to have the
25 opportunity for the two engineers to

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2 talk before we go ahead with the
3 project.

4 CHAIRMAN SCALZO: We can take
5 that under advisement. If we hear
6 from our applicant that -- the
7 applicant is the one that presented
8 this. If that is what their desire
9 is by the end of this public hearing,
10 then that's what we'll probably look
11 at.

12 MR. MACRON: The architect is
13 Mr. Adler. I believe he's talking to
14 Mr. Casamino. They tell me I believe
15 we can work it out. The two people
16 are neighbors and they do seem to
17 agree.

18 Like I said, I have not
19 reviewed the recent submissions but I
20 believe several people on the block
21 are related to the applicant.

22 I know there is the stop work
23 order which goes beyond the actual
24 variance that's here tonight.

25 So as Mr. Bell said, it's a

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2 busy site. As you said, there's a
3 lot of issues, and we'd like the
4 opportunity for those to be heard.

5 Mr. May is here and he can
6 describe some of the problems he's
7 seen.

8 MR. MAY: Good evening. My
9 name is Charles May. We're the
10 engineers and landscape architects
11 for Larry Rothstein.

12 We have been working with Ken
13 Casamino. He's been presenting
14 schematic drawings to us as far as
15 his impression of what the walls
16 should look like. Unfortunately we
17 haven't really resolved any issues
18 with the design of the walls.

19 Ultimately what we'll do is we
20 have a geotechnic structural engineer
21 that will be reviewing his plans
22 prior to our client approving any
23 submissions that are going to be
24 approved by him.

25 So in my opinion, with the

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2 grading, with the walls, with the
3 visual impacts, I think we have a
4 long way to go before my client can
5 actually resolve any concerns that he
6 has with this particular application.

7 Thank you.

8 CHAIRMAN SCALZO: Thank you.

9 MR. ROTHSTEIN: Good evening.
10 Thank you for the opportunity. My
11 name is Lawrence Rothstein and I am
12 the owner of the adjacent property.

13 I'd like to thank you again and
14 just say we are, indeed, trying to
15 work this out so that it's an
16 amenable situation.

17 It has been an impact on both
18 myself and my wife. It has been a
19 stressful situation to say the least.
20 We have worked a long time to get to
21 this point to be able to build this
22 house. We bought this property
23 fifteen years ago, approximately, and
24 we look forward to living there and
25 being good neighbors. That's our

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2 hopes.

3 But at this time I think that
4 this takes some further review and
5 allow us to at least work this out.

6 That's pretty much what I've
7 got. So I thank you so much.

8 CHAIRMAN SCALZO: Your comments
9 are very important. All of your
10 comments are very important. I thank
11 you very much for being here.

12 Is there anyone else from the
13 public that wishes to speak?

14 MR. MACRON: Would you like to
15 say anything?

16 CHAIRMAN SCALZO: Thank you for
17 being here.

18 Are there any other members of
19 the public that wish to speak about
20 this application?

21 (No response.)

22 CHAIRMAN SCALZO: So from what
23 I just heard, it sounds as though --
24 is there an opportunity here for a
25 withdrawal of this particular

1 N I C O L A S D I B R I Z Z I

2 application as it sits in front
3 of us to entertain further discussion
4 amongst the engineers or are
5 we moving forward with your
6 presentation and perhaps making a
7 determination this evening?

8 MS. LIBOLT: Thank you,
9 Mr. Chairman. We are not withdrawing
10 the application. That was the first
11 time that I had heard of this, that
12 this application was being withdrawn.

13 We are actively trying to work
14 with the neighbors, and I think the
15 results of this issuance or
16 non-issuance of this permit will not
17 affect or change our relationship
18 with the neighbors. We will continue
19 to work with them to try to resolve
20 this matter.

21 Much of what's occurred on this
22 property, although it is extremely
23 stressful I'm sure, is unrelated to
24 the dimensional measuring of this
25 area variance, and so we're asking

1 NICOLAS DiBRIZZI

2 the Board to please continue your
3 review. It will not limit or dismay
4 our continued work with the neighbors
5 to try to resolve this, and we're
6 very confident that we're going to be
7 able to come up with a resolution.
8 They want to be good neighbors. I
9 think both parties want to work
10 together. I think their issues to
11 some extent are outside the purview
12 of the Board. We would like the
13 opportunity to continue to work with
14 them.

15 CHAIRMAN SCALZO: Thank you.

16 It appears that someone is in
17 the on-deck circle.

18 MR. MACRON: John Macron again.

19 Just a small point. We have
20 not seen any of these plans. We have
21 not seen any of the letters. We have
22 not seen anything. To allow this to
23 go forward with half information --
24 I'm trying to avoid a confrontational
25 discussion here, but with half

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2 information being presented, being on
3 file, I think it would be a mistake.

4 Adjourning it to the March 24th
5 meeting is not an imposition on
6 anybody and it gives us an
7 opportunity to see what is truly
8 being intended to be done.

9 CHAIRMAN SCALZO: Thank you for
10 your comments.

11 MR. MACRON: Thank you.

12 CHAIRMAN SCALZO: Does anyone
13 else from the public wish to speak
14 about this application?

15 (No response.)

16 CHAIRMAN SCALZO: I'll look
17 back to the Board here. Are you
18 folks satisfied with everything that
19 you've heard this evening or do you
20 feel as though additional
21 information, perhaps relating to
22 defined heights a little more clearly
23 so we all can understand them easily,
24 are in order?

25 If you feel that way, then I

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2 would look to the Board for some type
3 of motion. First and foremost, just
4 whether or not we should close the
5 public hearing or leave it open to
6 March 24th?

7 MR. EBERHART: Leave it open to
8 March 24th.

9 CHAIRMAN SCALZO: Mr. Eberhart,
10 is that your motion?

11 MR. EBERHART: Yes, it is.

12 MR. BELL: I'll second that.

13 CHAIRMAN SCALZO: The motion is
14 we maintain the public hearing open
15 until March 24th. We have a motion
16 from Mr. Eberhart. I thought I heard
17 a second from Mr. Bell.

18 MR. BELL: Yes.

19 CHAIRMAN SCALZO: All in favor?

20 MR. BELL: Aye.

21 MR. EBERHART: Aye.

22 MR. GRAMSTAD: Aye.

23 MR. HERMANCE: Aye.

24 MR. MASTEN: Aye.

25 CHAIRMAN SCALZO: Aye.

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2 Very good. What this means to
3 us this evening is we are not going
4 to vote on this application this
5 evening.

6 I would like the applicants to
7 provide us with some very clear
8 numbers for heights from the
9 driveway, from whatever finished
10 surface there would be on the roads,
11 looking from the west property line.

12 Like I say, there's a bit much
13 here to digest with the additional
14 information.

15 No one that's here this evening
16 will be re-noticed for this.

17 MR. BELL: I have one more
18 question.

19 CHAIRMAN SCALZO: Mr. Bell.

20 MR. BELL: In conjunction with
21 that, can we get an aerial shot of
22 how it currently looks? I know when
23 I looked at this, this is not what I
24 saw today.

25 CHAIRMAN SCALZO: Correct.

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2 MR. BELL: It's nowhere near
3 what I saw today. When I look at
4 this, I see a beautiful --

5 CHAIRMAN SCALZO: I love the
6 word curvilinear retaining walls.
7 With probably the Drone operator in
8 the yard.

9 Mr. Bell, I think that's a
10 wonderful idea.

11 Would it be possible for you to
12 provide us with a current, very
13 recent aerial?

14 MS. LIBOLT: Yes, we can
15 provide that. That was just using
16 Google Docs.

17 MR. BELL: I understand. I
18 know that I didn't walk up this
19 perfectly pictured hill today when I
20 was there. I was like this doesn't
21 look like it when I got out of my car
22 and went there. It's kind of
23 confusing to me right now.

24 MS. LIBOLT: Understood.

25 Just for clarification,

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2 Mr. Chairman, you want specific
3 dimensional information on how we
4 calculated the height of the
5 structure?

6 CHAIRMAN SCALZO: Yes.

7 MS. LIBOLT: So the spot
8 elevations on the average grade so
9 that someone could easily add and
10 divide?

11 CHAIRMAN SCALZO: Sure. As you
12 heard me say, and this is all
13 recorded in the meeting minutes, I
14 want to know from the driveway
15 elevation to the top course of the
16 block or masonry what we have now and
17 if there's any other treatment that's
18 going to happen between the edge of
19 the driveway and the actual structure
20 itself which is what will help with
21 the average ground in front of it.
22 That's what we want to see. At least
23 that's what I want to see.

24 MR. BELL: I agree.

25 CHAIRMAN SCALZO: Mr. Bell

1 N I C O L A S D I B R I Z Z I

2 wants the Drone aerial, which would
3 be very helpful to us all.

4 MR. BELL: I guess because
5 listening to the other side, the
6 property I guess where the hill is,
7 it's like you're not intruding on
8 someone else's property, but there's
9 other --

10 CHAIRMAN SCALZO: Well, right
11 now they are. They're trying to
12 mitigate that.

13 MR. BELL: But you are
14 intruding upon someone's property and
15 I just want to see how that looks
16 based on the aerial shot.

17 CHAIRMAN SCALZO: Having the
18 surveyor's stake out there was huge
19 for me. There was no -- I understood
20 where I was completely.

21 MS. LIBOLT: Very well. Okay.

22 CHAIRMAN SCALZO: And they even
23 had offsets from the front property
24 corners. I knew exactly how deep in
25 the lot was. That was great.

1 N I C O L A S D I B R I Z Z I

2 MS. LIBOLT: Anything else?

3 CHAIRMAN SCALZO: We will see
4 you in March.

5 MS. JABLESNIK: Anything that
6 you submit, though, I would need
7 prior to March 10th, just so that the
8 Members can have everything in their
9 packets and they have time to review
10 everything.

11 MS. LIBOLT: I will do that.

12 I'll probably follow the same
13 process next month. All of the
14 information that I gave you is not
15 new. This is existing information
16 that you have in your package. It's
17 just reinforcing the presentation so
18 it's easy to understand. It's just
19 so everyone understands. There's
20 nothing new that was submitted
21 tonight.

22 CHAIRMAN SCALZO: Okay.

23 MR. MACRON: One quick
24 question, if I may.

25 CHAIRMAN SCALZO: Sure.

1 N I C O L A S D I B R I Z Z I

2 MR. MACRON: The elevations
3 will be established by a licensed
4 surveyor?

5 CHAIRMAN SCALZO: A design
6 professional. Surveyors are the
7 masters of measurement. It would
8 probably be beneficial for it to be
9 certified by a surveyor.

10 MR. DeGRAW: If I may on that
11 one. I agree on the surveyors as far
12 as anything on a horizontal
13 measurement. Now we're talking about
14 vertical measurements as well.

15 CHAIRMAN SCALZO: I believe
16 they're qualified to do that as well.

17 MR. DeGRAW: So we would have
18 to have them -- since the finished
19 grade is not in place yet, there's
20 going to have to be sort of --

21 CHAIRMAN SCALZO: I see that
22 the cap said Brooks & Brooks. Have
23 Brooks & Brooks out there and they
24 can give the elevation right at the
25 driveway, they can give the elevation

1 N I C O L A S D I B R I Z Z I

2 on the top, and then whatever
3 treatments that you are going to put
4 between the driveway and the
5 structure. It would be beneficial
6 for us to understand that.

7 MR. DeGRAW: Got it.

8 MR. MACRON: Thank you very
9 much.

10 CHAIRMAN SCALZO: Thank you.

11

12 (Time noted: 8:06 p.m.)

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N I C O L A S D I B R I Z Z I

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 2022.

Michelle Conero

MICHELLE CONERO

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH ZONING BOARD OF APPEALS
----- X
In the Matter of

JEAN LUBERA & FRANK TIRABOSCO
71 Williams Avenue, Newburgh
Section 101; Block 5; Lot 6
R-2 Zone

----- X

Date: February 24, 2022
Time: 8:06 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
DARRELL BELL
JAMES EBERHART, JR.
ROBERT GRAMSTAD
GREGORY M. HERMANCANCE
JOHN MASTEN

ALSO PRESENT: JOSEPH MATTINA
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: JEAN LUBERA &
FRANK TIRABOSCO

----- X

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

1 J E A N L U B E R A & F R A N K T I R A B O S C O

2 CHAIRMAN SCALZO: I'm going to
3 jump off the agenda just for a
4 second. We did get one additional
5 letter this evening. I believe I see
6 someone waiting patiently.

7 We have a letter dated 31
8 January 2022 for a variance
9 extension. "Dear Members of the
10 Board, the Town of Newburgh Zoning
11 Board approved a 7-0 vote for a
12 variance allowing a rear yard setback
13 of 16.08 feet and a variance for lot
14 depth of 100 feet to construct a
15 single-family home at 71
16 Williams Avenue as identified on the
17 Town of Newburgh tax maps as Section
18 101-5-6, R-2 Zoning."

19 I could read the whole letter,
20 but I would probably read it quick.
21 What I'm going to summarize here is
22 the applicant has now secured a
23 builder. They are looking for an
24 extension.

25 Typically, Mr. Mattina, we go

1 J E A N L U B E R A & F R A N K T I R A B O S C O

2 in six-month increments with that I
3 believe?

4 MR. MATTINA: Yes.

5 CHAIRMAN SCALZO: So the
6 applicant is Jean Lubera and Frank
7 Tirabosco, if I'm saying that
8 correctly, and they are looking for a
9 six-month extension on their variance
10 that we granted them.

11 Is there any discussion on
12 that?

13 MR. BELL: No.

14 MR. EBERHART: No.

15 MR. GRAMSTAD: No.

16 MR. HERMANCE: No.

17 MR. MASTEN: No.

18 CHAIRMAN SCALZO: I don't have
19 anything to say. We all understand
20 that building materials, qualified
21 individuals are very difficult to
22 come by these days.

23 So myself, I would make a
24 motion to approve a six-month
25 extension for this. So I'll make

1 J E A N L U B E R A & F R A N K T I R A B O S C O

2 that motion.

3 MR. BELL: I'll make a motion
4 to extend it.

5 CHAIRMAN SCALZO: And Mr. Bell
6 will make another motion right behind
7 me. I think Mr. Bell was going to
8 second that.

9 MR. BELL: I'll second your
10 motion.

11 CHAIRMAN SCALZO: All in favor?

12 MR. BELL: Aye.

13 MR. EBERHART: Aye.

14 MR. GRAMSTAD: Aye.

15 MR. HERMANCE: Aye.

16 MR. MASTEN: Aye.

17 CHAIRMAN SCALZO: Aye.

18 Very good. Thank you. You're
19 all set.

20 MR. TIRABOSCO: Six months from
21 today?

22 CHAIRMAN SCALZO: Yes. Thank
23 you.

24

25 (Time noted: 8:09 p.m.)

1 JEAN LUBERA & FRANK TIRABOSCO

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

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

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Michelle Conero

MICHELLE CONERO

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH ZONING BOARD OF APPEALS
----- X
In the Matter of

KEVIN GAGLIANO

55 S Plank Rd & 17 Brookside Ave, Newburgh
Section 71; Block 5; Lots 8 & 18.1
R-3 Zone

----- X

Date: February 24, 2022
Time: 8:09 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
DARRELL BELL
JAMES EBERHART, JR.
ROBERT GRAMSTAD
GREGORY M. HERMANCE
JOHN MASTEN

ALSO PRESENT: JOSEPH MATTINA
SIOBHAN JABLESNIK

----- X

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

1 KEVIN GAGLIANO

2 CHAIRMAN SCALZO: All right.
3 We have held open from January 27th
4 -- as I mentioned at the start of the
5 meeting, SNK Petroleum is pushed
6 until March.

7 Now we have Kevin Gagliano at
8 55 South Plank Road and 18 Brookside
9 Avenue seeking a lot line change
10 between parcel 71-5-8 and 71-5-18.1.
11 Area variances for lot 8 are lot
12 size, lot width, front yard and both
13 side yards. Lot 18.1 requires a
14 front yard variance.

15 This was held open purely
16 because the County had not gotten
17 back to us.

18 MS. JABLESNIK: They still have
19 not.

20 CHAIRMAN SCALZO: They still
21 have not, therefore we are allowed to
22 vote on this application this
23 evening.

24 The applicant did present last
25 time. My opinion is it was cleaning

1 KEVIN GAGLIANO

2 up the property lines. If anything,
3 it was basically pre-existing
4 nonconforming. So although we did
5 not go through -- we couldn't close
6 the public hearing at the time.

7 So this is a Type 2 action
8 under SEQRA. We can discuss the five
9 factors we're weighing. The first
10 one, whether the benefit can be
11 achieved by other means feasible to
12 the applicant. As I recall, there
13 was no proposed additional
14 improvements. So that would be no.

15 Second, if there's an
16 undesirable change in the
17 neighborhood character or a detriment
18 to nearby properties. I don't
19 believe anyone in the neighborhood
20 would notice these lot lines moving.

21 MR. BELL: No.

22 CHAIRMAN SCALZO: Third,
23 whether the request is substantial.
24 There's again no improvements, so no.

25 Fourth, whether the request has

1 KEVIN GAGLIANO

2 adverse physical or environmental
3 effects. That would be none.

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

7 Before I move on to ask if the
8 Board has a motion for approval or
9 not, I'm going to ask the Board for a
10 motion to close the public hearing.

11 MR. HERMANCE: I'll make a
12 motion to close the public hearing.

13 MR. EBERHART: I'll second it.

14 CHAIRMAN SCALZO: Thank you.
15 We have a motion from Mr. Hermance.
16 We have a second from Mr. Eberhart.

17 All in favor?

18 MR. BELL: Aye.

19 MR. EBERHART: Aye.

20 MR. GRAMSTAD: Aye.

21 MR. HERMANCE: Aye.

22 MR. MASTEN: Aye.

23 CHAIRMAN SCALZO: Aye.

24 Having gone through the
25 balancing test of the area variance,

1 KEVIN GAGLIANO

2 does the Board have a motion of some
3 sort?

4 MR. GRAMSTAD: I'll make a
5 motion to approve.

6 MR. MASTEN: I'll second it.

7 CHAIRMAN SCALZO: Very good.
8 We have a motion from Mr. Gramstad.
9 We have a second from Mr. Masten.
10 Roll on that, please, Siobhan.

11 MS. JABLESNIK: Mr. Bell?

12 MR. BELL: Yes.

13 MS. JABLESNIK: Mr. Eberhart?

14 MR. EBERHART: Yes.

15 MS. JABLESNIK: Mr. Gramstad?

16 MR. GRAMSTAD: Yes.

17 MS. JABLESNIK: Mr. Hermance?

18 MR. HERMANCE: Yes.

19 MS. JABLESNIK: Mr. Masten?

20 MR. MASTEN: Yes.

21 MS. JABLESNIK: Mr. Scalzo?

22 CHAIRMAN SCALZO: Yes.

23 The motion is carried. The
24 variances are approved. I don't
25 think anybody is here to appreciate

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KEVIN GAGLIANO

it.

(Time noted: 8:11 p.m.)

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

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

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

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Michelle Conero

MICHELLE CONERO

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

- - - - - X
In the Matter of

MAGDALINI ZACHARIA

8 North Plank Road, Newburgh
Section 80; Block 5; Lot 19
B Zone

- - - - - X

Date: February 24, 2022
Time: 8:11 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
DARRELL BELL
JAMES EBERHART, JR.
ROBERT GRAMSTAD
GREGORY M. HERMANCANCE
JOHN MASTEN

ALSO PRESENT: JOSEPH MATTINA
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: DARREN DOCE

- - - - - X

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

1 MAGDALINI ZACHARIA

2 CHAIRMAN SCALZO: Our last
3 applicant for this evening is
4 Magdalini Zacharia, 8 North Plank
5 Road in Newburgh, which was a
6 Planning Board referral for area
7 variances of front yard and for lot
8 surface coverage to expand the
9 existing Curaleaf.

10 This also remained open because
11 the County did not get back to us
12 with their comments. Did we receive
13 any comments from the County?

14 MS. JABLESNIK: Yes.

15 CHAIRMAN SCALZO: And the
16 County's recommendation was a Local
17 determination which means it's all in
18 our hands.

19 In this case, this is an
20 Unlisted action under SEQRA. I don't
21 get to say that very often. So we
22 still need to go through the variance
23 questions. The application doesn't
24 appear to present any significant
25 issues for us, in my opinion.

1 MAGDALINI ZACHARIA

2 Anyway, the five factors, the
3 first one being whether the benefit
4 can be achieved by other means
5 feasible to the applicant. Does
6 anyone have any comment?

7 MR. BELL: I don't think so.
8 No.

9 CHAIRMAN SCALZO: Second,
10 whether there's an undesirable change
11 in the neighborhood character or a
12 detriment to nearby properties.

13 MR. BELL: No.

14 MR. MASTEN: No.

15 CHAIRMAN SCALZO: It's a highly
16 commercial area.

17 Third, whether the request is
18 substantial. Not when it comes to
19 this lot where it is.

20 MR. BELL: Mm'hm'.

21 CHAIRMAN SCALZO: The fourth,
22 whether the request will have adverse
23 physical or environmental effects.

24 MR. BELL: No.

25 CHAIRMAN SCALZO: No. They're

1 MAGDALINI ZACHARIA

2 putting a roof where pavement was.
3 The curb numbers I don't believe are
4 going to change.

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

9 And I'm going to do it again.
10 Can I have a motion from the Board to
11 close the public hearing on this?

12 MR. GRAMSTAD: I'll make a
13 motion to close the public hearing.

14 MR. BELL: I'll second it.

15 CHAIRMAN SCALZO: Thanks,
16 Mr. Gramstad, for bailing me out. We
17 have a second from Mr. Bell. All in
18 favor?

19 MR. BELL: Aye.

20 MR. EBERHART: Aye.

21 MR. GRAMSTAD: Aye.

22 MR. HERMANCE: Aye.

23 MR. MASTEN: Aye.

24 CHAIRMAN SCALZO: Aye.

25 Having gone through the

1 MAGDALINI ZACHARIA

2 balancing test of the area variance,
3 what's the pleasure of the Board?

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

6 MR. MASTEN: I'll second it.

7 CHAIRMAN SCALZO: We have a
8 motion for approval from Mr. Bell.
9 We have a second from Mr. Masten.
10 Roll on that, Siobhan, please.

11 MS. JABLESNIK: Mr. Bell?

12 MR. BELL: Yes.

13 MS. JABLESNIK: Mr. Eberhart?

14 MR. EBERHART: Yes.

15 MS. JABLESNIK: Mr. Gramstad?

16 MR. GRAMSTAD: Yes.

17 MS. JABLESNIK: Mr. Hermance?

18 MR. HERMANCE: Yes.

19 MS. JABLESNIK: Mr. Masten?

20 MR. MASTEN: Yes.

21 MS. JABLESNIK: Mr. Scalzo?

22 CHAIRMAN SCALZO: Yes.

23 The motions are carried. The
24 variance is also approved.

25 Looking at my agenda, 71

1 MAGDALINI ZACHARIA

2 Williams Avenue, I just cut them
3 loose.

4 I'm looking for a motion to
5 adjourn.

6 MR. GRAMSTAD: I'll make the
7 motion to adjourn.

8 MR. BELL: I'll second it.

9 CHAIRMAN SCALZO: We have a
10 motion from Mr. Gramstad. We have a
11 second from Mr. Bell. All in favor?

12 MR. BELL: Aye.

13 MR. EBERHART: Aye.

14 MR. GRAMSTAD: Aye.

15 MR. HERMANCE: Aye.

16 MR. MASTEN: Aye.

17 CHAIRMAN SCALZO: Aye.

18

19 (Time noted: 8:14 p.m.)

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1 MAGDALINI ZACHARIA

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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
7 for and within the State of New York, do
8 hereby certify:

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11 I further certify that I am not
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14 I am in no way interested in the outcome of
15 this matter.

16 IN WITNESS WHEREOF, I have hereunto
17 set my hand this 3rd day of March 2022.

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Michelle Conero

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MICHELLE CONERO

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