

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

CROSSCUT CONSTRUCTION
70 Frozen Ridge Road, Newburgh
Section 21; Block 1; Lot 1
R-2 Zone

----- X

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

BOARD MEMBERS: DARRIN SCALZO, Chairman
ROBERT GRAMSTAD
GREGORY M. HERMANCE
JOHN MASTEN

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

APPLICANT'S REPRESENTATIVE: STEVEN WAGNER

----- X

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

1 CROSSCUT CONSTRUCTION

2 CHAIRMAN SCALZO: I'd like to
3 call the meeting of the ZBA to order.
4 The order of business are the public
5 hearings scheduled for this evening.

6 The procedure of the Board is
7 that the applicant will be called
8 upon to step forward, state their
9 request and explain why it should be
10 granted. The Board will then ask the
11 applicant any questions it may have,
12 and then any questions or comments
13 from the public will be entertained.
14 The Board will then consider the
15 applications and will try to render a
16 decision this evening but may take up
17 to 62 days to reach a determination.
18 I would ask if you have a cellphone,
19 to please turn it off or put it on
20 silent. When speaking, speak
21 directly into the microphone. We
22 don't have our stenographer this
23 evening but we do have a recording
24 device which hopefully will pick up
25 everything that everyone is saying.

1 CROSSCUT CONSTRUCTION

2 Roll call, please.

3 MS. JABLESNIK: Darrell Bell is
4 absent.

5 James Eberhart is absent.

6 Robert Gramstad.

7 MR. GRAMSTAD: Here.

8 MS. JABLESNIK: Greg Hermance.

9 MR. HERMANCE: Here.

10 MS. JABLESNIK: John Masten.

11 MR. MASTEN: Here.

12 MS. JABLESNIK: Darrin Scalzo.

13 CHAIRMAN SCALZO: Present.

14 MS. JABLESNIK: Also present is
15 our attorney, Dave Donovan, and from
16 Code Compliance, Joseph Mattina.

17 CHAIRMAN SCALZO: Very good.

18 If I could ask you to please rise for
19 the Pledge. Mr. Gramstad, you're
20 closest.

21 (Pledge of Allegiance.)

22 CHAIRMAN SCALZO: Okay. Before
23 we get started with our formal
24 meeting this evening, I've got a
25 couple of housekeeping items. The

1 CROSSCUT CONSTRUCTION

2 first item is, while not a member of
3 any board in the Town of Newburgh, we
4 recently learned of the passing of
5 Charles Brown, an engineer. He was a
6 frequent flyer here in front of the
7 ZBA. Our condolences to Charles'
8 family. We'll miss him.

9 The second item is, as you can
10 see, we have a lot of elbow room up
11 here because we're down two members.
12 Any applicant that wishes to defer a
13 vote this evening, if we choose to
14 move that far, please indicate that
15 and we will entertain it.

16 MR. DONOVAN: Can I, just for
17 clarification, Mr. Chairman?

18 CHAIRMAN SCALZO: Please.

19 MR. DONOVAN: So this is a
20 seven-member Board. There is one
21 vacancy currently on the Board. Two
22 Members are absent. What that means
23 is for those of you who have
24 applications this evening, you would
25 need a unanimous vote of all Members

1 CROSSCUT CONSTRUCTION

2 present for your application to pass.
3 So when this has happened, though it
4 happens infrequently, when it's
5 happened in the past, the Board has
6 afforded applicants the opportunity
7 to ask the Board to defer their vote
8 to a meeting at which additional
9 Members or more Members are present.

10 So just to be clear for any
11 applicants, you would need all four
12 Members present to vote in favor of
13 your application tonight for it to
14 pass.

15 CHAIRMAN SCALZO: Thank you,
16 Counselor.

17 Our first applicant this
18 evening is Crosscut Construction, 70
19 Frozen Ridge Road in Newburgh,
20 seeking area variances of increasing
21 the degree of nonconformity of the
22 front, side and combined side yards
23 to rebuild and raise the height of an
24 existing nonconforming building.

25 Do we have mailings on that,

1 CROSSCUT CONSTRUCTION

2 Siobhan?

3 MS. JABLESNIK: Yes. This
4 applicant sent out 25 letters.

5 CHAIRMAN SCALZO: 25 letters.
6 Very good.

7 Do we have someone here
8 representing this application?
9 Please state your name for the
10 record, please.

11 MR. WAGNER: Steve Wagner.

12 CHAIRMAN SCALZO: Mr. Wagner.

13 MR. WAGNER: I'm the owner of
14 Crosscut Construction.

15 CHAIRMAN SCALZO: Very good.
16 Okay. We've all been to the site.
17 If I have captured what it is that
18 you're looking to do here in my very
19 short narrative and that's
20 satisfactory to you, then we can go
21 ahead and have Board discussion. If
22 there's anything else that you'd like
23 to add to what I had said, feel free.

24 MR. WAGNER: I am not adding
25 any footage to the house. Actually,

1 CROSSCUT CONSTRUCTION

2 it's smaller. The original house was
3 48 feet deep. It's only 40 feet deep
4 now because during the demo process 8
5 feet of it fell down in the back,
6 which was only cinder block. So the
7 main house is correct and built
8 properly, but it was just the 8 feet
9 that fell down in the back. So it's
10 actually smaller than what it was.
11 But I am -- I'm raising the height of
12 the roof by 3 feet because the
13 exterior walls had 5 foot knee walls.
14 I'm raising those to 8 feet so we
15 have a full 8 foot around the
16 perimeter of the house.

17 CHAIRMAN SCALZO: Very good.
18 Thank you. Mr. Wagner, I actually
19 was by the site today -- you're going
20 to stay right here for a couple
21 minutes. I was by the site today and
22 I saw some stockpiles or fill.
23 What's that for?

24 MR. WAGNER: I was told that if
25 there's 50 percent or more of the

1 CROSSCUT CONSTRUCTION

2 foundation sticking out of the
3 property, they consider the basement
4 the first level. Then there's the
5 first floor which would be the second
6 level, and then the second floor
7 would be the third level. Three
8 levels needs a sprinkler system. So
9 I was also told to bring in fill to
10 raise -- you know, raise it all up so
11 there's less than 50 percent of the
12 foundation showing.

13 CHAIRMAN SCALZO: Thank you.
14 From reading your application,
15 stopping at the site, looking at the
16 survey map, it appears what you're
17 asking for pertains to preexisting
18 nonconforming conditions. You're not
19 looking at expanding outward, --

20 MR. WAGNER: Correct.

21 CHAIRMAN SCALZO: -- just
22 upward.

23 MR. WAGNER: Correct.

24 CHAIRMAN SCALZO: Something
25 else that I did notice on your survey

1 CROSSCUT CONSTRUCTION

2 is, I'm not sure if you're aware of
3 this or not, but you are in for a lot
4 of fun with one of your neighbors.
5 You happen to be contiguous with the
6 properties owned by Mr. Hughes --

7 MR. WAGNER: Yes.

8 CHAIRMAN SCALZO: -- who used
9 to be a member of the Zoning Board of
10 Appeals himself, who happens to be
11 here this evening.

12 MR. WAGNER: I am aware.

13 CHAIRMAN SCALZO: So Mr. Hughes
14 is certainly a very intelligent man,
15 as we've heard many comments from him
16 here previously. That's all I have.

17 So at this point I'm going to
18 look to the other Members of the
19 Board. I'll start down at Mr.
20 Gramstad's end of the table.

21 MR. GRAMSTAD: No, I have no
22 questions. I talked to him on the
23 phone and visited the site.

24 CHAIRMAN SCALZO: Very good.

25 Mr. Hermance?

1 CROSSCUT CONSTRUCTION

2 MR. HERMANCE: Are you seeking
3 a height variance also?

4 CHAIRMAN SCALZO: I don't
5 believe that's required.

6 MR. HERMANCE: You are just as
7 in the description, raising --

8 MR. WAGNER: Yes.

9 CHAIRMAN SCALZO: I don't think
10 you're exceeding 35 feet.

11 MR. WAGNER: No, I'm not.

12 CHAIRMAN SCALZO: Very good.

13 Mr. Masten, do you have any
14 comments on this?

15 MR. MASTEN: I have no comment.
16 I was up there. I always drove by
17 and always admired that piece of
18 property there.

19 CHAIRMAN SCALZO: I think we're
20 going to admire it even more when the
21 house is done, because I've been past
22 there myself plenty of times.

23 At this time I'm going to open
24 it up to any members of the public
25 wishing to speak about this

1 CROSSCUT CONSTRUCTION

2 application. Mr. Hughes.

3 MR. HUGHES: Steve, you can sit
4 down now.

5 MR. WAGNER: Thanks.

6 MR. HUGHES: So we already
7 talked over the fence. We're trying
8 to come up with something that
9 everybody in the neighborhood can
10 live with.

11 CHAIRMAN SCALZO: You mean you
12 don't like what's there now?

13 MR. HUGHES: I'm all right with
14 anything. My house is not ready for
15 Better Homes & Gardens.

16 The beautiful ladies, Ms.
17 Sanchez and her daughter Judy, are
18 the house next to it downhill. We
19 have a very unusual situation here,
20 and I talked at length with
21 everybody, all three properties, and
22 everybody that has something to do
23 with the three properties is in the
24 room right now.

25 Before we move ahead, there's

1 CROSSCUT CONSTRUCTION

2 many things that need to be known
3 here. The two houses, as it is right
4 now, are on one well. We have a way
5 that we can remedy that, because in
6 modern times you can't have two
7 houses on one well. So I'd like the
8 Board, the Building Department and
9 everybody to have as much understanding and
10 knowledge as we do about what's there.

11 Now, my well is 29 feet from
12 the property line. Steve would like
13 to put his new system not more than
14 150 feet away from my well, and
15 that's not real good from where I sit
16 because, you know, it's very steep
17 there and it's all bedrock 10 feet
18 down. The water doesn't get a chance
19 to go out and disperse like it does
20 in most places around here.

21 We've got sight distance.
22 We've got a right-of-way drive next
23 to the Sanchez house that makes it
24 difficult on Frozen Ridge Road to see
25 what's going on. Sight distances are

1 CROSSCUT CONSTRUCTION

2 tight, and they're coming down Frozen
3 Ridge Road 50 miles-an-hour.

4 I have three properties there
5 and one of them has a well on it. I
6 can have him make the well feed
7 Sanchez' house and they'll be
8 independent onto themselves. He can
9 keep the well that he has and
10 eliminate the second pump that's in
11 the casing and separate that. The
12 well house is on his property. The
13 well that I'm willing to transfer is
14 -- will become part of their property
15 with just a lot line change. No
16 subdivision. No nothing. It's 12
17 feet from our contiguous property
18 line. I'll give them 10 feet so they
19 can get in and out of there if they
20 need to repair it. It's a brand new
21 well.

22 So we've got the well, we've
23 got the septic, we've got the
24 setback separations that are most
25 important for everybody, including

1 CROSSCUT CONSTRUCTION

2 the Sanchez well and Crosscut well.

3 It's very steep there. The
4 fill that was brought in doesn't look
5 good to me for fill of any sort
6 that's going to do anything except
7 maybe cause a mudslide, because
8 there's a lot of big bowling balls in
9 there and basketballs and things and
10 that won't compact. I'd really like
11 the Building Department to take a
12 better look at what's being brought
13 in there, and I'd really like to see
14 a diagram, a methodology and an
15 engineer's stamp on what the new
16 septic system is supposed to consist
17 of. My well is downhill. Their new
18 well will be sideways. His well will
19 be on the other side of the house.

20 I have no problems with him
21 doing what he's doing. He and I have
22 had lengthy discussions about how we
23 can get there. I've spoken with the
24 Sanchez ladies as well. I'm not
25 against this project but I want to

1 CROSSCUT CONSTRUCTION

2 make sure it's clean and that the guy
3 next door isn't pissing in my well.

4 General confusion, asking
5 permission --

6 CHAIRMAN SCALZO: Well Mr.
7 Hughes, all of your comments are very
8 important and we appreciate them.
9 They will be recorded in the meeting
10 minutes for the meeting, although
11 everything that you brought up, sir,
12 is not why the application is in
13 front of us.

14 MR. HUGHES: I understand that
15 we're here to rule on that, and I
16 have no problem with that. Let him
17 build up to 35 feet and do what he
18 wants to do now.

19 CHAIRMAN SCALZO: And I'm
20 certain that anything they do
21 regarding wells and septics will be
22 in accordance with the Orange County
23 Health Department rules.

24 MR. HUGHES: I just wanted it
25 on the record. I didn't mean to

1 CROSSCUT CONSTRUCTION

2 impose on your meeting. I know it's
3 a planning issue.

4 CHAIRMAN SCALZO: Very good.
5 Thank you for your comments, Mr.
6 Hughes.

7 MR. HUGHES: Thank you.

8 CHAIRMAN SCALZO: Is there
9 anyone else here that wishes to speak
10 about the application for Crosscut
11 Construction?

12 (No response.)

13 CHAIRMAN SCALZO: There's a lot
14 of people in the room. No one wants
15 to talk about it. Very good.

16 In that case I'll look to the
17 Board for any further comments?

18 MR. GRAMSTAD: I have nothing.

19 CHAIRMAN SCALZO: No. In that
20 case I'll look to the Board for a
21 motion to close the public hearing.

22 MR. MASTEN: I'll make a motion
23 to close the public hearing.

24 MR. GRAMSTAD: I'll second it.

25 CHAIRMAN SCALZO: We have a

1 CROSSCUT CONSTRUCTION

2 motion from Mr. Masten. We have a
3 second from Mr. Gramstad. Roll on
4 that, Siobhan, because there's only
5 four of us.

6 MS. JABLESNIK: Mr. Gramstad?

7 MR. GRAMSTAD: Yes.

8 MS. JABLESNIK: Mr. Hermance?

9 MR. HERMANCE: Yes.

10 MS. JABLESNIK: Mr. Masten?

11 MR. MASTEN: Yes.

12 MS. JABLESNIK: Mr. Scalzo?

13 CHAIRMAN SCALZO: Yes.

14 The public hearing is now
15 closed.

16 This is a Type 2 action under
17 SEQRA, therefore we will go through
18 the area variance criteria and
19 discuss the five factors we are
20 weighing, the first one being whether
21 or not the benefit can be achieved by
22 other means feasible to the applicant.
23 The structure is existing -- pre-
24 existing nonconforming, so I would
25 say no.

1 CROSSCUT CONSTRUCTION

2 The second, if there's an
3 undesirable change in the neighborhood
4 character or a detriment to nearby
5 properties. For the variances that
6 we are reviewing this evening, I
7 would say it is a desirable change to
8 the neighborhood because it's going
9 to allow the structure to be a little
10 more appealing than it is now.

11 Third, whether the request is
12 substantial. Again, it's preexisting
13 nonconforming. It's no more
14 substantial than it is today.

15 The fourth, whether the request
16 will have adverse physical or
17 environmental effects. For the
18 variances that we are looking for
19 today, no. Or that the applicant is
20 looking for today.

21 And the fifth, whether the
22 alleged difficulty is self-created
23 which is relevant but not determinative.
24 Obviously we've heard testimony that
25 this is a preexisting nonconforming

1 CROSSCUT CONSTRUCTION

2 condition.

3 Therefore, having gone through
4 the balancing test, does the Board
5 have a motion of some sort?

6 MR. HERMANCE: I'll make a
7 motion to approve the variances.

8 CHAIRMAN SCALZO: We have a
9 motion from Mr. Hermance.

10 MR. GRAMSTAD: I'll second it.

11 CHAIRMAN SCALZO: We have a
12 second from Mr. Gramstad.

13 Now Counselor, could you just,
14 one more time, go over the -- since
15 we are short staffed this evening,
16 because I see other people have
17 filtered in --

18 MR. DONOVAN: Sure. Just to
19 repeat what was said earlier, --

20 CHAIRMAN SCALZO: Yes.

21 MR. DONOVAN: -- this is a
22 seven-member Board. There's one
23 vacancy, two absences this evening.
24 That means all four Board Members who
25 sit here this evening must vote in

1 CROSSCUT CONSTRUCTION

2 the affirmative for any application
3 to pass. The circumstance in front
4 of the ZBA, standing in appellate
5 jurisdiction over the Building
6 Department, if any vote is 3 to 1,
7 then the motion is denied -- the
8 application is denied. Everyone
9 needs to vote in favor for this to
10 pass.

11 CHAIRMAN SCALZO: Thank you
12 again, Counselor.

13 All right. So we have a motion
14 from Mr. Hermance. We have a second
15 from Mr. Gramstad. Can you roll on
16 that please, Siobhan.

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 CROSSCUT CONSTRUCTION

2 variances are approved. Good luck.

3

4 (Time noted: 7:16 p.m.)

5

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

7

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

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

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

18 IN WITNESS WHEREOF, I have hereunto
19 set my hand this 8th day of April 2022.

20

21

Michelle Conero

22

MICHELLE CONERO

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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: March 24, 2022
Time: 7:16 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
ROBERT GRAMSTAD
GREGORY M. HERMANCE
JOHN MASTEN

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

APPLICANT'S REPRESENTATIVE: KENNETH LYTTLE

----- 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: Well that
3 concludes our new business for this
4 evening. Held open from the February
5 24th meeting we have applicant SNK
6 Petroleum Wholesalers, 747 Boulevard
7 in Newburgh. It's a Planning Board
8 referral for area variances of the
9 front yard for a canopy, side yard
10 for a west canopy, rear yard for the
11 proposed building, rear and side yard
12 for east canopy, and variances for
13 any proposed signage on the canopy,
14 which is a resubmission from January
15 of 2021.

16 We saw you here three months
17 ago. Last month you had asked for an
18 extension, and you had supplied some
19 additional information in that time.

20 For the record, that is Mr.
21 Lytle who is standing over by the
22 easel for Michelle Conero's purposes.

23 So Mr. Lytle, if you could
24 bring us up to speed with what we
25 didn't know before.

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 out and it shouldn't be visible from
3 the property. The property is 100
4 feet away, crossing over the aqueduct
5 and through all the trees and woods.
6 That's the only thing that's changed
7 since last time.

8 CHAIRMAN SCALZO: Okay. Mr.
9 Lytle, one of the other issues that
10 we had asked for was a little more
11 definition on the right-of-way that
12 was crossing over the aqueduct. You
13 did supply some information to us.
14 You supplied some mapping prior to
15 the installation of I-84. It was
16 difficult for us to find out where it
17 was, although we were successful in
18 understanding where it is.

19 You also supplied some filed
20 information from the County regarding
21 the easements. It's very nondescriptive.
22 I'm pretty okay in understanding
23 reading metes and bounds descriptions,
24 but it appears, and I'm going to
25 speak for the Members of the Board in

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 this case too, you're leaving a lot
3 for us to figure out here. I'm not
4 sure that that's fair to us. Quite
5 possibly, maybe later this evening,
6 not fair to you. So that's my
7 position on this, just for what we
8 had asked for in the last meeting.
9 Then as we go through what the
10 Members of the Board have to say and
11 entertain any more comments from the
12 public, we can go from there.

13 As the Counselor did mention
14 before, this evening we are short
15 staffed. If we should make it to a
16 vote this evening, you're going to
17 need unanimous voting. I just want
18 to remind you of that.

19 MR. LYTTLE: Thank you very much.

20 CHAIRMAN SCALZO: At that point
21 I'm going to start with Mr. Masten.
22 Do you have any comments on this
23 application?

24 MR. MASTEN: I do and I don't.

25 CHAIRMAN SCALZO: Let's hear

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 the ones you do have.

3 MR. MASTEN: All right. On the
4 property, is the height going to come
5 down or --

6 CHAIRMAN SCALZO: Hang on, Mr.
7 Masten. I just want to remind you,
8 it is a nice sentiment that we're
9 going to be driving by this, but
10 that's not one of the items that's on
11 the application this evening.

12 MR. MASTEN: All right. I'll
13 hold off.

14 CHAIRMAN SCALZO: Very good.

15 Okay. Mr. Hermance, do you
16 have anything that you'd like to add
17 to this?

18 MR. HERMANCE: Yeah. Could you
19 better explain the access to the back
20 part of your neighboring properties?

21 MR. LYTLE: On the east side of
22 the map there's actually a right-of-
23 way that goes across the aqueduct. I
24 believe it was actually farm access.
25 We have correspondence from the DEC.

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 We're waiting to hear back from them
3 to get a confirmation on what that
4 actually is for.

5 We're working with the
6 adjoining owner who this parcel was
7 sold to from the owners of these two
8 parcels. There is actually a right-
9 of-way that comes across giving him
10 some access. So we talked to them
11 during their closing and re-closing
12 about actually modifying the
13 retaining wall there to give him
14 access across. Nothing to be built
15 by us, just to modify the retaining
16 wall so he would have access to that
17 property. Again, I believe from the
18 DEP talking to them, we're waiting
19 for actually written confirmation.
20 It was set aside at one time years
21 ago for farm access, although not for
22 any type of construction, but that
23 would be up to them.

24 CHAIRMAN SCALZO: Keeping in
25 mind 1908 --

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 MR. LYTLE: Exactly. That's
3 what the original intent was
4 regarding the actual property.

5 We have a permanent easement
6 crossing from parcel A to parcel B.
7 This is the only one with a question.

8 MR. HERMANCENCE: It's not cutting
9 off access to that other property
10 behind you?

11 MR. LYTLE: The property is on
12 the other side of the aqueduct.

13 MR. HERMANCENCE: Right.

14 MR. LYTLE: The right-of-way
15 actually is there. We've actually
16 noted on the plans going to parcel C,
17 which is no longer owned by the
18 applicant, and we're going to modify
19 the retaining wall so he would have
20 access. That we worked out. He had
21 to get permission from the DEP to do
22 that. That was a separate application.
23 That was nothing to do with us.

24 MR. HERMANCENCE: Okay. That's
25 all I have, Darrin.

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: Very good.

3 Mr. Gramstad?

4 MR. GRAMSTAD: I've got my
5 questions answered.

6 CHAIRMAN SCALZO: Okay. I did
7 go revisit the site. The variances
8 that you're asking for, I'm going to
9 go back to a letter that you had
10 submitted to the Board in January
11 2021, so over a year ago. My
12 assumption by reading this is the
13 variances remain the same. You list
14 six that are on here.

15 MR. LYTLE: Right.

16 CHAIRMAN SCALZO: The second
17 one is the west canopy side yard, 38
18 proposed where 50 is required. I'm
19 having a difficult time locating that
20 on the map, where your 38 feet is.

21 MR. LYTLE: I believe it's
22 actually in the front. It's along
23 the front side here. What was the
24 final number? I apologize.

25 CHAIRMAN SCALZO: 38 is

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 proposed where 50 is required.

3 MR. LYTLE: Yes. I believe
4 it's actually on the west side right
5 over here. Right in the middle. The
6 property line zigzags. This is
7 really the closest spot further down.
8 I believe Pat from the Planning Board
9 actually noted that on there also.

10 CHAIRMAN SCALZO: Just so I'm
11 clear, that first variance request
12 was also on the west canopy front
13 yard for 25 feet. So if you're
14 looking for a 25 foot -- and that one
15 is very easy to identify. So if
16 you're looking for that 25 foot --
17 Counselor, actually would the 38 foot
18 be required if he was already asking
19 for a 25, because of the zigzag in
20 the property?

21 MR. DONOVAN: You know what,
22 Mr. Chairman. I'm not sure because I
23 was reading something else and I
24 wasn't paying attention.

25 CHAIRMAN SCALZO: Okay. That's

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 something we can revisit, certainly.

3 Okay. Like I say, I've been
4 back out to the site and looked
5 around and, you know, 747, it's more
6 or less -- you know, it's wide. I
7 understand there's a big subdivision
8 going in a little north of this.

9 MR. LYTLE: I believe so.

10 CHAIRMAN SCALZO: You've got
11 the Amazon service center down the
12 street, the entrance to Stewart down
13 that way. Everything on the front
14 side, you know, I can understand.

15 We have historically on the
16 Board accepted variances for
17 canopies, especially with a right-
18 of-way as wide as what 747 is.

19 The rear of the property is a
20 different story. The rear, other
21 than the aqueduct, adjoins residential
22 properties. So I'm looking at that
23 differently.

24 You have a vacant piece of
25 land. If we were looking at a piece

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 of land that had previously been
3 developed and we were improving that,
4 I might see it differently. But we
5 have an empty canvas here. As I look
6 at the variances that you're
7 requesting on the rear portion, the
8 ones that are closest to the
9 residential end of it, I struggle to
10 understand why you couldn't make
11 modifications to your design to meet
12 the setbacks. That's just one
13 person's observation on this Board.

14 I believe I'm the last one to
15 speak as far as the Members of the
16 Board goes. At this point I'm going
17 to open it back up to any members of
18 the public that wish to speak about
19 this application. If anyone is here
20 to speak about this application,
21 please step forward, state your name.

22 MR. THOMAS WEDDELL: Good
23 evening. Thomas Weddell. I'm the
24 property owner that's on the other
25 side of this.

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 It's nothing really you have to
3 read here, it's just a picture of
4 what my neighborhood looks like and
5 where this easement -- really, the
6 truth, okay. He said a few things
7 here that were circumstantial without
8 proof. That was all about farming
9 and that's the only the right-of-way
10 that's there. This is clearly a
11 right-of-way that's valid. I checked
12 it out myself. He's saying
13 circumstantial things but I'll show
14 you -- I'll give you the proof of
15 that, if that's all right with you.

16 CHAIRMAN SCALZO: Step forward.
17 I hope you brought enough copies for
18 everybody.

19 MR. THOMAS WEDDELL: I brought
20 enough copies for everybody. Let me
21 just walk you through that if I can.

22 CHAIRMAN SCALZO: Do you
23 actually have a copy for the
24 applicant's representative?

25 MR. THOMAS WEDDELL: I do. So

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 this first one -- this first page
3 that I gave you -- I'll hold this up
4 like this here for you, okay. This
5 is my neighborhood. This is what it
6 looks like. The yellow represents
7 currently residential property that's
8 there now. The two parcels that are
9 down here are zoned IB but there's
10 two residences. They have specific
11 problems because this piece of
12 property is across here. This is
13 also zoned IB. The orange portion
14 represents wetlands. You're not going
15 to build there. If you follow that
16 little dotted line over, you'll see
17 that most of that property that's
18 residential there will be in the
19 wetlands and it will stay
20 residential. It will never be IB. It
21 won't be big enough to be anything
22 IB. So that's what I want to show
23 you, the yellow and what my
24 neighborhood looks like right now.

25 The next page represents an

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 agreement so that they can transfer
3 the property back into their name,
4 but they were going to take care of
5 my right-of-way.

6 The next was the picture of
7 where you can see my house, just to
8 show you you can see my house from
9 where you enter that property.

10 I guess the biggest part of
11 this is my right-of-way which is on
12 here. There's the right-of-way.
13 Now, what's going to happen is I'm
14 going to have to drive through this
15 piece of property, drive through a
16 set of gas pumps, probably two sets
17 of gas pumps, and go around the back
18 of the building to get onto my piece
19 of property. This right-of-way from
20 the aqueduct from the State will not
21 change. It can't move to the right.
22 It can't move to the left. That's
23 where it is. That can be developed
24 like all the other pieces that are
25 off the road that go across the

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 aqueduct. Wentzel Drive, Heritage
3 Lane goes across that. This can
4 certainly be developed.

5 Now, my interest is to develop
6 that piece of property in the back
7 there. My only right-of-way is right
8 there. So now I'm going to have to
9 drive -- I don't know of any place in
10 the Town of Newburgh where you have
11 to drive through gas pumps and drive
12 to the back of the building to enter
13 my property. That is the only part
14 that has the right-of-way to get to
15 that piece of property.

16 Now, I don't know why the Town
17 made that -- that was residential at
18 one time. They made it intermittent
19 business. I'm sure 747 had something
20 to do with it. But it's a very
21 little sliver, okay, on this whole
22 map that I showed you, the first map.
23 It's a very little sliver that's there.

24 Now we'll go to the variances
25 that he's requesting. A 58 percent

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 change, a 24 percent change, a .59
3 percent change, a .57 percent change,
4 a .27 percent change. So this tells
5 me one thing. We're trying to put on
6 a postage stamp, okay, something that
7 belongs on a bigger piece of property.

8 So the next piece -- thing that
9 I have here is the piece of property
10 is right across the street, if they
11 want to build on that, it's 18 plus
12 acres there. Of course 75 percent of
13 it is under water. They can build
14 across the street. There is an
15 alternative to this to do it.

16 It changes our neighborhood
17 because I can't get to that piece of
18 property. After this, that's it.
19 I'm going to have to drive through
20 gas pumps and around the back of the
21 building.

22 CHAIRMAN SCALZO: Sir, I
23 certainly understand the points that
24 you're making here, however you don't
25 hold title to that property. It is

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 an IB. You'd have to pass through
3 someone else's property no matter
4 what was there.

5 MR. THOMAS WEDDELL: Yeah, but
6 it wasn't IB and all of a sudden it
7 became IB. Okay. So it was
8 residential. I could pass through
9 there and I could drive through
10 there, okay. So that's where the
11 issue is. So all of a sudden. But
12 now -- if it's an office building or
13 something else like that, that's not
14 a problem. Driving through gas pumps
15 and behind the building to get to my
16 piece of property, okay, that's kind
17 of a strange setup that the Town put
18 me in here.

19 CHAIRMAN SCALZO: Thank you.
20 As I said --

21 MR. THOMAS WEDDELL: The variances
22 that are here, because he's asking
23 for something, you're trying to put
24 on a postage stamp, obviously in
25 order to reduce the size of all these

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 things just because he's trying to
3 cram it in on a little piece of
4 property.

5 CHAIRMAN SCALZO: Correct.

6 Sir, if you heard my comment earlier,
7 I said he's got a blank canvas here.
8 These variances that he's asking for
9 on a vacant piece of land I look at
10 differently than if he was
11 reestablishing an existing structure
12 or something of that sort. So I
13 understand exactly what you're
14 saying.

15 MR. THOMAS WEDDELL: And the
16 right-of-way over the aqueduct is
17 real. It's not just make believe.
18 It's from 1908. It's a real right-
19 of-way to go over the aqueduct. If
20 he did his homework like you
21 requested, he would have got you that
22 information from --

23 CHAIRMAN SCALZO: We did
24 receive information regarding --

25 MR. THOMAS WEDDELL: I went

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 through the information.

3 CHAIRMAN SCALZO: It's not very
4 specific. We did receive it.

5 MR. THOMAS WEDDELL: It's
6 specific enough for me.

7 CHAIRMAN SCALZO: I understand.
8 Okay. Mr. Weddell, do you have more?

9 MR. THOMAS WEDDELL: I don't.
10 That's my points.

11 Do you have anything to say?

12 This is my son. He lives on
13 the property.

14 CHAIRMAN SCALZO: Very good.

15 MR. MICHAEL WEDDELL: Michael
16 Weddell. I live also on the back
17 side there. With the canvases, I
18 know you said before that the height
19 of it --

20 CHAIRMAN SCALZO: Canopies.

21 MR. MICHAEL WEDDELL: The
22 canopies there. My problem is yes, I
23 will see this whole thing from my
24 second story house, my bedrooms. The
25 lights -- even the traffic light

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 that's right there shines into my
3 house. No matter how much you lower
4 or widen or change, it's all going to
5 be visible from my piece of property
6 no matter what the picture shows.

7 CHAIRMAN SCALZO: Mr. Masten
8 did make mention of the height after
9 the applicant had mentioned --

10 MR. MICHAEL WEDDELL: Even the
11 whole existence of it there.

12 CHAIRMAN SCALZO: Right. But
13 the height is not part of the application.

14 MR. MICHAEL WEDDELL: I understand
15 that. Also the size is going back
16 and forth. The width of it and all
17 that. The pure existence of it, I'm
18 going to see it no matter what it is.
19 I just wanted to --

20 CHAIRMAN SCALZO: Your comments
21 are very important. They are a
22 matter of record now. Thank you.

23 MR. THOMAS WEDDELL: One other
24 thing. After the last meeting in
25 January the contractor came and spoke

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 to me. He spoke about number 6, the
3 signage, and he said he didn't need
4 the signage. I asked him why he
5 wasn't -- just take that off of
6 there. If you don't need the sign,
7 why are you putting it on here. He
8 said I won't need it. I said that's
9 okay, but then take it off of there.
10 But it's still on the request to have
11 the signage there. So I'm sitting
12 there saying all right, so I say okay
13 and it's still on there, he's going
14 to put the signs there. So I guess
15 I'm just pointing out that he said he
16 did not need number 6.

17 CHAIRMAN SCALZO: Duly noted.
18 And sir, I might add that part of our
19 job here, if you will, is to grant
20 the minimum variances necessary. If
21 it were to be found that that's not
22 required, then we don't have to
23 address that in whatever determination
24 we make.

25 Is there anyone else here that

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 wishes to speak about this application?

3 (No response.)

4 MR. DONOVAN: Mr. Chairman, is
5 it okay if I ask a question or two?

6 CHAIRMAN SCALZO: Please, Counselor.

7 MR. DONOVAN: So what I was
8 reading before, and I apologize for
9 that, last time you were here I had
10 spoke about the distinction between a
11 private covenant and the ZBA's ability to
12 exercise their jurisdiction.

13 I do have a question about
14 paragraph number 2 on the settlement
15 stipulation between Mr. Weddell and
16 Newburgh Park Associates from who
17 your client acquired the property.
18 There is -- paragraph 2 says,
19 "Newburgh Park Associates agrees that
20 any plans submitted to the Town of
21 Newburgh for approval in connection
22 with tax parcel 89-1-80.2", which is
23 you, "shall not include any retaining
24 walls or other obstructions which may
25 obstruct or block access -- the

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 access right-of-way as indicated on
3 the filed maps recorded", and Mr.
4 Weddell provided a copy of those this
5 evening.

6 MR. LYTLE: That is correct. I
7 did mention that. Actually, where
8 that right-of-way comes across, we
9 actually talked to him and actually
10 we're going to remove the retaining
11 wall. So that would not be an issue
12 for him per that agreement. I wasn't
13 involved in the agreement. I know of
14 it.

15 MR. DONOVAN: Well it's a court
16 ordered settlement stipulation, so
17 it's a little bit more than an
18 agreement.

19 MR. LYTLE: Again, we're
20 removing the retaining walls from
21 that on our next submission back to
22 the Planning Board for that reason.

23 CHAIRMAN SCALZO: Okay. It
24 certainly may be -- keeping in mind
25 should we get to that point where

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 we're looking at voting on issues,
3 we're voting on what's been submitted
4 to us, which at this point it does
5 not indicate that. So I'm just
6 bringing that to your attention.

7 MR. LYTLE: The settlement
8 agreement actually happened after we
9 had already submitted --

10 MR. DONOVAN: If I may, Mr.
11 Chairman. Ken, you provided us with
12 your additional information. There's
13 a deed from Nichols and Mulholland to
14 Newburgh Park Associates dated
15 December 31, 1991 which makes
16 reference to such right-of-way. The
17 first part has the property herein
18 described over and across said
19 Catskill Aqueduct property to the
20 public highway. Where is that
21 located? What public highway is it?

22 MR. LYTLE: The access is
23 coming across and comes up through
24 actually over 747 Boulevard.

25 MR. DONOVAN: And just so I'm

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 clear on this, your position is
3 because access is provided through
4 the -- the retaining wall would be
5 removed -- through the gas station,
6 that that's consistent with the
7 intent of the easement. Am I
8 paraphrasing that correctly?

9 MR. LYTTLE: My understanding,
10 exactly correct. And we're getting a
11 letter again from the DEP regarding
12 that access.

13 CHAIRMAN SCALZO: Counselor, I
14 happened to look -- there's a filed
15 map prior to this prepared by John
16 Dragon.

17 MR. DONOVAN: God rest his
18 soul. Good man.

19 CHAIRMAN SCALZO: But the
20 easement also stops at that very same
21 property line. I happened to look
22 myself. It does not continue out to
23 even the former location of Drury
24 Lane. So it's -- I'll say it
25 appeared to be problematic then.

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 MR. DONOVAN: Interesting.

3 MR. THOMAS WEDDELL: On the map
4 it says it goes from parcel A to
5 parcel B to parcel C. On the one map
6 that I gave you there, it's written.
7 It's where the highlighted is.

8 CHAIRMAN SCALZO: Right, but
9 it's not described by course or distance.

10 MR. DONOVAN: It does say a
11 public highway.

12 CHAIRMAN SCALZO: Yes. As it
13 twists and turns, we're not quite
14 sure.

15 MR. DONOVAN: Thank you, Mr.
16 Chairman.

17 CHAIRMAN SCALZO: Thank you,
18 Counselor.

19 Anyone else from the public?
20 Mr. Hughes, please step forward.

21 MR. HUGHES: I really didn't
22 come here prepared to talk on this
23 application, however --

24 MR. DONOVAN: You just can't
25 help yourself.

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 MR. HUGHES: I can't help
3 myself. The realignment of Drury
4 Lane and lots of other stuff that
5 went on over the years shifted and
6 rocked that thing back and forth, the
7 old mansion that was picked up and
8 moved and a lot of stuff that went on
9 in that same area. I'd bet a little
10 bit of money that the DEP or EPA or
11 New York City has a map that tells
12 you how that right-of-way evaporated
13 with all of those shifts going on
14 back and forth over the last thirty
15 years. I happen to know all the guys
16 that were farming in there for
17 centuries. You know, there was a lot
18 of crazy stuff that went on in there
19 when they changed, and then the
20 aqueduct ended up on the other side
21 of the road.

22 I can get you in touch with the
23 guy that runs the division down there
24 that knows all about the aqueducts.
25 They will have a copy of the original

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 deeds and anything that went
3 subsequent to that. Don't miss the
4 show.

5 CHAIRMAN SCALZO: Well I
6 believe when I-84 was placed, they
7 probably shifted Drury Lane at that
8 point just so they could find the
9 best crossing area for it. So I
10 could probably reference my 1905 FW
11 Beers Atlas and see where the
12 original alignment was as well.

13 MR. HUGHES: But that was in
14 `60. What I'm talking about is
15 thirty years after that. But yes, I
16 concur that they've got stuff in
17 there. We used to steal bulldozers
18 at night back there.

19 CHAIRMAN SCALZO: Thank you,
20 Mr. Hughes. We miss you here, Mr.
21 Hughes.

22 MR. HUGHES: I miss coming
23 here. The floor show is never the
24 same twice.

25 CHAIRMAN SCALZO: Very good.

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 Do any other members of the
3 public wish to speak about this
4 application?

5 (No response.)

6 CHAIRMAN SCALZO: Very good.
7 I'm going to look back to the Members
8 of the Board. Any other comments?

9 If you have none, I would like
10 you to consider whether or not you
11 would -- if you feel as though we
12 have enough information to close the
13 public hearing. I do believe I've
14 heard a few items that would lead me
15 to believe we should not, however
16 I'll look to the Members of the Board
17 for their opinion.

18 MR. HERMANCE: With the new
19 information I don't think we should
20 close the public hearing and be
21 provided with some more information.

22 CHAIRMAN SCALZO: Right. I
23 think we're giving the applicant's
24 representative instructions that we
25 would like to see the latest and

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 greatest of the plans. We'd like to
3 see a little more definition with
4 regard to what that right-of-way is.

5 I appreciate what you've done
6 getting us to this point, but I don't
7 want to have to search for things on
8 your behalf. So please, give me a
9 complete package.

10 MR. HERMANCE: Something that
11 the retaining wall --

12 MR. LYTLE: We modified it.

13 CHAIRMAN SCALZO: So that being
14 said; Mr. Hermance, was that a motion?

15 MR. HERMANCE: Yeah, that's a
16 motion to keep the public hearing
17 open.

18 CHAIRMAN SCALZO: Very good.

19 MR. GRAMSTAD: I'll second it.

20 CHAIRMAN SCALZO: We have a
21 motion from Mr. Hermance. We have a
22 second from Mr. Gramstad. Can you
23 roll on that please, Siobhan.

24 MS. JABLESNIK: Mr. Gramstad?

25 MR. GRAMSTAD: Yes.

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: Mr. Hermance?

3 MR. HERMANCE: Yes.

4 MS. JABLESNIK: Mr. Masten?

5 MR. MASTEN: Yes.

6 MS. JABLESNIK: Mr. Scalzo?

7 CHAIRMAN SCALZO: Yes.

8 The public hearing is going to
9 remain open. You will not be
10 re-noticed.

11 Please prepare and get your
12 stuff in on time, Mr. Lytle.

13 Mr. Weddell, I'm sure you'll
14 have time to review that as well.

15 And anyone else who is here for
16 this application but was afraid to
17 speak, you'll have another
18 opportunity in the month of April.

19 Thank you very much.

20

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

22

23

24

25

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

3

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

4

5

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 8th day of April 2022.

18

19

20

21

Michelle Conero

22

MICHELLE CONERO

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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: March 24, 2022
Time: 7:45 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
ROBERT GRAMSTAD
GREGORY M. HERMANCE
JOHN MASTEN

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

APPLICANT'S REPRESENTATIVE: WAYNE ST. OMER

----- X

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

1 WAYNE ST. OMER

2 CHAIRMAN SCALZO: Moving on.

3 We have Wayne St. Omer -- I believe I
4 pronounced it correctly this time --
5 4 Noah Place in Newburgh, seeking an
6 area variance of the side yard to
7 build a 26 by 30 two-story addition.

8 Mr. St. Omer, I believe we
9 could not take any action on your
10 application last because you were on
11 a County highway and we had not heard
12 back from Orange County Planning.

13 MS. JABLESNIK: We still haven't.

14 CHAIRMAN SCALZO: But their time
15 limit has expired.

16 So Mr. St. Omer, --

17 MR. ST. OMER: Yes, sir.

18 CHAIRMAN SCALZO: -- we heard
19 your testimony at the last meeting.
20 If would you like to just recap what
21 we've got going on here. I see you
22 don't have your architect with you.

23 MR. ST. OMER: It's like almost
24 an hour and ten minutes away. It's
25 like he just came to be here with me

1 WAYNE ST. OMER

2 but he doesn't need to be here.

3 CHAIRMAN SCALZO: If could you
4 give us the Reader's Digest version
5 of why we're here again.

6 MR. ST. OMER: Yes. Basically
7 they said it's 36 feet on the side
8 line.

9 CHAIRMAN SCALZO: Currently
10 there's 36.3 feet from --

11 MR. ST. OMER: Right.

12 CHAIRMAN SCALZO: -- your house
13 corner to the property line.

14 MR. ST. OMER: Right.

15 CHAIRMAN SCALZO: And your
16 addition dimension going in that
17 direction --

18 MR. ST. OMER: Yes. It's going
19 to leave me with 11 feet.

20 CHAIRMAN SCALZO: 11 feet.

21 MR. ST. OMER: Yes.

22 MR. DONOVAN: You need a
23 minimum of 30.

24 CHAIRMAN SCALZO: You need a
25 minimum of 30. At the last meeting

1 WAYNE ST. OMER

2 we had asked if you explored any
3 other layouts.

4 MR. ST. OMER: I actually took
5 some measurements and I was thinking
6 about the L shape because I said
7 maybe that would save me from having
8 to try to re-plum the whole house,
9 because I'm trying to do it as
10 minimum as possible. I took the
11 measurements and I'm going back and
12 I'm going to still have that well
13 actually going into the driveway. If
14 I take the L shape back, I would have
15 the well coming in.

16 CHAIRMAN SCALZO: Meaning where
17 it pierces your foundation wall?

18 MR. ST. OMER: It would land
19 actually in the driveway. I
20 basically already want to eliminate
21 that turn because four times --

22 CHAIRMAN SCALZO: You've told
23 us and it was on record. I hope your
24 wife didn't read the meeting minutes
25 from last time.

1 WAYNE ST. OMER

2 MR. ST. OMER: We're going to
3 keep that a secret.

4 CHAIRMAN SCALZO: So the public
5 hearing is still open on this. Is
6 there anyone here from the public
7 that wishes to speak about this
8 application?

9 (No response.)

10 CHAIRMAN SCALZO: No. I'm
11 going to look to the Members of the
12 Board. It's been awhile. Mr.
13 Masten, do you have any comments on
14 this?

15 MR. MASTEN: I have none, Darrin.

16 CHAIRMAN SCALZO: Mr. Gramstad,
17 do you have any comments on this?

18 MR. GRAMSTAD: None at all.

19 CHAIRMAN SCALZO: Mr. Hermance?

20 MR. HERMANCE: No additional
21 comments.

22 CHAIRMAN SCALZO: All right. I
23 don't have comments myself at this
24 point.

25 I will look to the Members of

1 WAYNE ST. OMER

2 the Board for a motion to close the
3 public hearing.

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

6 MR. GRAMSTAD: I'll second it.

7 CHAIRMAN SCALZO: We have a
8 motion from Mr. Masten and a second
9 from Mr. Gramstad. Can you roll on
10 that, Siobhan.

11 MS. JABLESNIK: Mr. Gramstad?

12 MR. GRAMSTAD: Yes.

13 MS. JABLESNIK: Mr. Hermance?

14 MR. HERMANCENCE: Yes.

15 MS. JABLESNIK: Mr. Masten?

16 MR. MASTEN: Yes.

17 MS. JABLESNIK: Mr. Scalzo?

18 CHAIRMAN SCALZO: Yes.

19 All right. So the public
20 hearing is closed.

21 We are going to go through the
22 variance balancing test. As we had
23 mentioned to all the other applicants, this
24 evening we are short staffed by two
25 Members. We also have one vacancy.

1 WAYNE ST. OMER

2 MR. ST. OMER: Okay.

3 CHAIRMAN SCALZO: At this point
4 I'm going to give you the option.
5 Would you like us to continue and
6 vote this evening on your application
7 as it sits in front of us or would
8 you prefer to ask us to hold out for
9 next meeting when we have possibly
10 two other Members here, because you
11 need a unanimous decision this
12 evening for --

13 MR. ST. OMER: Go ahead.

14 CHAIRMAN SCALZO: Very good,
15 sir.

16 All right. This is a Type 2
17 action under SEQRA.

18 We're going to discuss the five
19 factors we're weighing, the first one
20 being whether or not the benefit can
21 be achieved by other means feasible
22 to the applicant. I'm not -- I'm not
23 convinced. I'm not convinced that
24 some other alternative can come up.
25 I didn't see any sketches that would

1 WAYNE ST. OMER

2 indicate the well wouldn't be in
3 conflict with the proposed area. I
4 am one of four.

5 The second, whether there's an
6 undesirable change in the neighborhood
7 character or a detriment to nearby
8 properties. I don't believe that's --

9 MR. HERMANCE: I don't believe
10 so.

11 CHAIRMAN SCALZO: I don't
12 believe so.

13 Third, whether the request is
14 substantial. By the numbers, it is.
15 You know, as Mr. Hermance had brought
16 up, when you have something that's
17 that tall and you have to access your
18 siding that's very high up on the
19 roof, the base of your ladder may not
20 even be on your property. For the
21 maintenance of that it becomes a
22 challenge.

23 MR. ST. OMER: I spoke to my
24 neighbor too and he's like -- you
25 know, he's okay with it.

1 WAYNE ST. OMER

2 CHAIRMAN SCALZO: As long as
3 that neighbor lives there. Right.

4 MR. ST. OMER: Yeah, you know.

5 CHAIRMAN SCALZO: I understand.

6 MR. ST. OMER: They're pretty
7 good. It's like -- I mean it's --
8 you can really see like a community.
9 They really help out. It's like, you
10 know, if you don't get outside in the
11 morning early enough to plow the
12 snow, somebody is doing it for you.
13 And the same thing with me, too.
14 It's like, you know, if I'm plowing
15 and I'm finished with mine, I start
16 theirs.

17 CHAIRMAN SCALZO: Very good.

18 The fourth, whether the request
19 will have adverse physical or
20 environmental effects. I don't
21 believe so myself.

22 The fifth, whether the alleged
23 difficulty is self-created which is
24 relevant but not determinative. Of
25 course it's self-created.

1 WAYNE ST. OMER

2 If the Board does approve, it
3 shall grant the minimum variance
4 necessary and we may impose
5 reasonable conditions.

6 Having gone through the
7 balancing test of the area variance,
8 what is the pleasure of the Board?
9 Does the Board have a motion of some
10 sort?

11 You know what, Mr. Hermance.
12 If you choose, we can defer our
13 voting. Are we too late in the
14 process?

15 MR. DONOVAN: You are not too
16 late in the process. You have 62
17 days. You closed the public hearing.
18 You've gone through the balancing
19 test. There's no motion on the
20 floor. There are a lot of people
21 staring at their shoes. So if you
22 choose not to take any action, you
23 have until 62 days.

24 CHAIRMAN SCALZO: Very good.
25 15 seconds of silence here is an

1 WAYNE ST. OMER

2 eternity.

3 Again I'm looking to the Board
4 for any motion of some sort. That
5 motion can be defer.

6 MR. HERMANCE: Motion to defer
7 our decision.

8 CHAIRMAN SCALZO: We have a
9 motion to defer our decision to next
10 month's meeting from Mr. Hermance.

11 MR. GRAMSTAD: I'll second it.

12 CHAIRMAN SCALZO: Couldn't have
13 said that fast enough. Very good. I
14 think Mr. Gramstad is the second on
15 that. Can we roll on that please,
16 Siobhan.

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 Mr. St. Omer, we're going to

1 WAYNE ST. OMER

2 defer our decision on your property
3 until next month's meeting --

4 MR. ST. OMER: Okay.

5 CHAIRMAN SCALZO: -- that way
6 we have the opportunity to have all
7 of our Members here.

8 MR. ST. OMER: Okay.

9 CHAIRMAN SCALZO: Very good.
10 Thank you.

11 MR. ST. OMER: Thank you guys.
12 Have a good night.

13

14 (Time noted: 7:54 p.m.)

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 8th day of April 2022.

Michelle Conero

MICHELLE CONERO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

----- X
In the Matter of

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

----- X

Date: March 24, 2022
Time: 7:55 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
ROBERT GRAMSTAD
GREGORY M. HERMANCE
JOHN MASTEN

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

APPLICANT'S REPRESENTATIVE: KELLY LIBOLT,
JEFFREY DeGRAW & MICHELLE RIDER

----- X

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

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

2 CHAIRMAN SCALZO: There's only
3 one left on the agenda and the room
4 is still pretty full. I have a
5 feeling I know what everyone is here
6 for.

7 All right. Our final order of
8 business this evening is the Nicholas
9 DiBrizzi, 13 Anchor Drive, Newburgh,
10 seeking an area variance to continue
11 building an accessory structure
12 previously approved by the ZBA. The
13 height of the new structure is 31
14 feet. The previously approved was 13
15 feet 6 inches -- or 6/10s.

16 We sent you away last month and
17 asked you to do a little bit of homework.
18 I received the information, looked
19 over the packages.

20 MS. LIBOLT: Good evening, Mr.
21 Chairman. I'm Kelly Libolt.

22 CHAIRMAN SCALZO: I was going
23 to ask you. This one is so good, I'm
24 going to ask you to almost go through
25 your entire presentation from last

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

2 month.

3 MS. LIBOLT: Oh, I wasn't
4 prepared to do that. I just wanted
5 to actually start. This is Michelle
6 Rider.

7 MS. RIDER: Michelle Rider,
8 attorney, counsel for the applicant.

9 MR. DeGRAW: Jeff DeGraw,
10 architect.

11 CHAIRMAN SCALZO: Thank you.

12 MS. LIBOLT: So we're here
13 tonight to seek an area variance for
14 the height of a structure. So this
15 is an accessory structure consisting
16 of a pool and associated canopy
17 related to the pool cabana.

18 We did provide you last month
19 with a complete application. We did
20 provide you with the application, the
21 short form EAF and the supporting
22 information for the five-threshold
23 test for the submission of the area
24 variance.

25 At the last meeting this Board

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

2 asked us to go home, we had some
3 homework to do, and the Board asked
4 us to provide you with three very
5 distinct submission documents.

6 So the first was a topo survey.
7 Sorry, I'm not used to using a chair
8 for the easel. The first was the
9 topo survey which was stamped and
10 sealed by a licensed surveyor. So
11 this drawing -- all of these are in
12 your package. There's nothing new
13 presented.

14 CHAIRMAN SCALZO: Yes.

15 MS. LIBOLT: This was completed
16 by the applicant's licensed land
17 surveyor.

18 MR. DONOVAN: May I ask you to
19 stop for a second there?

20 MS. LIBOLT: Mm'hm'.

21 MR. DONOVAN: You can use the
22 easel.

23 CHAIRMAN SCALZO: You can use
24 the easel. That's just fine.

25 MR. DONOVAN: If it's okay,

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

2 maybe just to turn it a little bit so
3 the public gets the benefit of it as
4 well, then you won't have to use the
5 chair.

6 MS. LIBOLT: That's so much
7 easier.

8 MR. DONOVAN: Maybe just turn
9 it a little bit so the folks in the
10 audience can see it, too. Thank you
11 very much.

12 CHAIRMAN SCALZO: And the
13 topography that's up on the easel at
14 this point, that is the original
15 condition?

16 MS. LIBOLT: This is the
17 original conditions. So this is
18 Anchor Drive. This is the driveway
19 coming into the site. The brown is
20 the existing house. So these sort of
21 curvilinear lines that you see was a
22 former retaining wall. It's a nice,
23 level plateau. We did provide you
24 with a photograph of that at the last
25 meeting that we had. I do have all

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

2 the originals stamped and sealed by
3 the surveyor if you want.

4 The second drawing was -- it's
5 upside down. The second document was
6 -- this is the same surveyor -- or
7 the same survey but this shows the
8 current conditions. So this is kind
9 of free and clear of all the
10 documentation that shows you the
11 house and the related structure. So
12 this was signed and sealed by the
13 surveyor.

14 The last drawing was -- we were
15 asked to send the surveyor to go out
16 to the site and survey the top of the
17 wall and the bottom of the wall of
18 the existing structures. We
19 acknowledge that this is somewhat of
20 a complicated building and it was
21 hard for the Board to understand
22 which walls we were talking about
23 when we were talking about how they
24 determined average grade and then the
25 height of the overall structure. So

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

2 we sent the surveyor out. It's kind
3 of a complicated drawing to look at,
4 but all the spot elevations, so the
5 bottom of the wall and the top of the
6 wall there.

7 Last but not least is we
8 extrapolated all of the data that was
9 provided to us by the licensed
10 surveyor and added it to the
11 architect's plan. What we did is we
12 utilized the drone photograph that
13 the Board asked us to take. We keyed
14 each of the locations on the wall
15 with a letter. So we took
16 measurements every 5 feet across the
17 face of the wall. We have the bottom
18 of the wall which is the BOW, the top
19 of the wall which is TOW. We
20 extrapolated all of that data onto
21 the aerial photograph and also onto
22 the architect's rendering, which we
23 previously provided to you, and we
24 provided all of our calculations as
25 to how we determined the height of

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

2 the structure.

3 I'm going to let Jeff go over
4 those calculations and how that was
5 determined.

6 I just want to remind the Board
7 that again at the last meeting we did
8 provide you with the five-threshold
9 test. We also provided you with the
10 letters from the neighbors, all of
11 the support letters from the
12 neighbors. There's 21 parcels in
13 there. We provided you with 11
14 letters from the neighboring
15 properties supporting this application.

16 Jeff, do you want to go on how
17 you did the calculations?

18 MR. DeGRAW: Absolutely. I
19 think Kelly actually kind of touched
20 on it already. With the existing
21 grades here, this drawing shows --
22 between these two drawings, it shows
23 what the proposed finished grade is.
24 On the recommendation of the Board,
25 we realized that we could go back in

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

2 and add approximately 2 feet to the
3 grade, thus lessening the height of
4 the structure.

5 So in this drawing here you can
6 see the shaded in area. That's where
7 we did bring the grade up. We
8 brought it up about 2 feet from where
9 it was.

10 So we now go through all the
11 proposed grades. You take them and
12 add them all up and get your average
13 grade. We take that to the height.
14 That's how we end up at the final
15 height of the structure. So we end
16 up at approximately 23.2 I think it
17 is. 23 -- we're used to thinking in
18 inches, so 23 foot 4.5 inches or so
19 is the height to the top of the
20 pergola.

21 So a couple of things to think
22 about with this whole structure. You
23 know, it's kind of overwhelming when
24 you're out there on the site and you
25 see everything that's going on. When

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

2 too, when you're out there and you
3 see the structure, you're essentially
4 seeing a retaining wall from the back
5 side. It hasn't been filled in yet.
6 So you are seeing a tremendous amount
7 of concrete which will not be visible
8 once the whole area is, you know,
9 graded back to its natural state.

10 So hopefully that makes sense.

11 CHAIRMAN SCALZO: Thank you for
12 the explanation. You make a great
13 point with noting that if you had put
14 a gazebo on top of the second one.
15 The fact of the matter is now you
16 have dropped the elevation, and
17 that's the condition that we have to
18 evaluate it against.

19 MR. DeGRAW: I think the reason
20 for that is just to kind of understand
21 where the heights sort of ended up in
22 terms of had we done that. So it's
23 just kind of trying to keep it in
24 perspective where it actually is.
25 But you're correct.

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

2 CHAIRMAN SCALZO: Right. Also,
3 your calculations show you have a
4 building height of 45.0 minus the
5 21.8. I hope you're talking an
6 engineering foot, not an architect's
7 foot in this case. So you're looking
8 at a building height of 23.4. The
9 spot elevations that I'm looking at
10 on the map prepared by Mr. Rich, the
11 top portion of the block I'm looking
12 at is 43.6. 43.6, 43.7 are the
13 highest points that I see. So 43 --
14 so you're looking at -- on top of
15 that top course of concrete masonry
16 units, we're looking at 1.5 feet.
17 What's going on top of -- what's
18 going to be there?

19 MR. DeGRAW: It's about 6.5
20 feet.

21 CHAIRMAN SCALZO: We're going
22 up from there. So if he's at -- if
23 I'm -- if what I understood you just
24 said, if we're at 43.6 and we're
25 going up 6 more feet, 43 and 6 to me

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

2 is 49.6 and you're showing 45.

3 MS. LIBOLT: He misunderstood
4 the question. When you go out and
5 look at the wall that's there now,
6 the poured wall, it's 43.6. He's
7 saying how much taller is the pergola
8 when you add the pergola to the top
9 of that poured wall. He was saying
10 it's another 18 inches.

11 CHAIRMAN SCALZO: I'm guessing.
12 I haven't seen the architectural.

13 MS. LIBOLT: He's asking you.
14 So the height --

15 MR. DeGRAW: The height of the
16 wall is right here.

17 MS. LIBOLT: Yup. And so we
18 don't see the pergola. When the
19 Board was out today, they didn't see
20 the pergola. How much more does the
21 pergola add to the height of the
22 wall?

23 MR. DeGRAW: Approximately 6
24 feet.

25 CHAIRMAN SCALZO: Okay. So in

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

2 this case, help me out, Mr. Mattina.

3 MS. LIBOLT: So what is the --

4 MR. DeGRAW: Oh, you're talking
5 about the wall back here? Sorry. I
6 misunderstood the question.

7 MS. LIBOLT: Yes. Only 6 or 8
8 inches.

9 MR. DeGRAW: It's about 6 or 8
10 inches to that.

11 CHAIRMAN SCALZO: So your top
12 joists that are running across from
13 that 43.6 elevation --

14 MR. DeGRAW: I was going to the
15 wrong wall. I was going to the wall
16 that's closest to the driveway in my
17 estimation. So that's where I was
18 off.

19 CHAIRMAN SCALZO: So just so
20 I'm clear, can you say again what the
21 top of the roof is going to be?

22 MR. DeGRAW: The top of the
23 roof is 4 -- excuse me. It's a
24 little small. 45.0.

25 CHAIRMAN SCALZO: 45.0?

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

2 MR. DeGRAW: Yes.

3 CHAIRMAN SCALZO: Okay. Thank you.

4 I'm going to look to the Members of
5 the Board here.

6 MR. DONOVAN: Mr. Mattina from
7 Code Compliance. Joe, not to put you
8 on the spot. So there's an appeal of your
9 determination that it's 31 feet; --

10 MR. MATTINA: Correct.

11 MR. DONOVAN: -- right? So as
12 opposed to the maximum of 15, we're
13 being asked -- now the applicant is
14 saying it's really 23.4. Do you
15 concur, Joe, or no?

16 MR. MATTINA: Well, with all
17 the elevation, as long as they're
18 certified. That's what got us here
19 in the first place, because they were
20 certified 36 before when --

21 CHAIRMAN SCALZO: They claimed
22 at the last meeting or they gave
23 testimony that they had
24 misinterpreted what our code was.

25 MR. MATTINA: Right. I have a

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

2 set of plans and a ruler. That's
3 what I base mine on.

4 CHAIRMAN SCALZO: Right.

5 MR. MATTINA: They have actual
6 field elevations. I wouldn't have a
7 problem using their field elevations
8 as long as we get, you know, by
9 definition where they're taking the
10 measurements from.

11 CHAIRMAN SCALZO: Mr. Mattina,
12 had the applicant reached out prior
13 to any construction going on or
14 during the approval process here, was
15 there ever any misunderstandings
16 regarding how to determine building
17 -- accessory building heights?

18 MR. MATTINA: I did two plan
19 reviews before the permit was issued.
20 It was brought up each time and each
21 time he sent back stamped plans that
22 it would be no higher than 13.6. You
23 know, there's multiple elevations you
24 can go by. So after two shots we
25 figured 13.6 was the finished

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

2 elevation.

3 CHAIRMAN SCALZO: Okay.

4 MR. DONOVAN: But just relative
5 to the magnitude of the variance. So
6 we're going to go with 23.4 as
7 opposed to the requirement of 15, not
8 31. I just want the Board to
9 understand the magnitude.

10 MR. MATTINA: Correct. Now
11 they said they raised it 2 feet.
12 They have actual measurements and
13 stuff, yes. 23.4.

14 CHAIRMAN SCALZO: Thank you.

15 And for any members of the
16 public that are here, which apparently
17 is all of you, for this application,
18 the Zoning Board of Appeals this
19 evening is voting on a height
20 variance only. There are other
21 activities that are going on on the
22 site that are not under our jurisdiction.

23 So Counselor, is that a true
24 statement?

25 MR. DONOVAN: That is a true

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

2 statement, Mr. Chairman.

3 CHAIRMAN SCALZO: Accurate
4 enough. Very good.

5 Okay. So I talk way too much.
6 I think I'm done. So I think I'm
7 going to look to Mr. Gramstad. Do
8 you have any comments on this?

9 MR. GRAMSTAD: No. Not right
10 now.

11 CHAIRMAN SCALZO: How about Mr.
12 Hermance?

13 MR. HERMANCE: With the raised
14 2 feet of elevation, that eliminates
15 some of our concerns.

16 CHAIRMAN SCALZO: Mr. Masten?

17 MR. MASTEN: Not at this time,
18 Darrin.

19 CHAIRMAN SCALZO: Very good.
20 Okay. At this point I will open it
21 up to any members of the public that
22 wish to speak about this application.
23 Please introduce yourself for our
24 recording of the minutes.

25 MR. MACRON: Good evening. I'm

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

2 John Macron, I represent Larry
3 Rothstein and Gina Mazzarelli, the
4 neighbors to the north of the
5 property most directly impacted by
6 this.

7 The zoning is really designed
8 to preserve the character of the
9 neighborhood in the Town. The five
10 tests that come into play in this are
11 designed to make sure that happens.

12 Now, while the application page
13 1-A states that there are no -- there
14 is compliance and no standard
15 deviation from these, it really will
16 produce an undesirable change in the
17 neighborhood. My clients can speak
18 to that and they can show you pictures
19 of that and how that will impact
20 them.

21 Further, the benefit is clearly
22 at the expense of my client's property.
23 There will be a structure next to it,
24 and whether the structure is 23.6 or
25 24, that is more than 50 percent --

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

2 it's almost 60 percent or 60 percent
3 of an increase over the variance that
4 -- what is permitted by the Town.
5 It's clear it's a substantial
6 variance.

7 The claim there's no adverse
8 impact, it's probably 15 feet higher,
9 is not clear because the proposed
10 structure is at least 24 feet -- I
11 believe it's 23.6. The chimney or
12 anything else has not been calculated
13 into this as far as I can tell. I
14 have not seen any plans --

15 CHAIRMAN SCALZO: Correct.
16 Town code -- Mr. Mattina, just
17 confirm. Chimneys do not contribute
18 to any height of a building. Correct?

19 MR. MATTINA: Correct. Chimneys are
20 exempt.

21 MR. MACRON: The claim that the
22 embedding in the hillside will help
23 the Rothsteins with their property
24 and protection, that embedding the
25 property in the hillside caused the

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

2 severe erosion and collapse of the
3 Rothstein's property.

4 It's clearly a self-created
5 issue. There's nothing here that is
6 not created by the DiBrizzi family in
7 proceeding based upon erroneous
8 interpretation of the architect, or
9 based upon a misunderstanding of the
10 rules, or based upon the elevations.
11 They chose to proceed with this.

12 I would like to have Patricia
13 Brooks, a licensed surveyor, speak to
14 these issues as well. She is here.

15 CHAIRMAN SCALZO: Mrs. Brooks,
16 the floor is yours.

17 MS. BROOKS: Good evening. My
18 name is Patti Brooks and I am a
19 licensed land surveyor representing
20 the Mazzarelli/Rothstein.

21 I also have some maps that I'd
22 like to hand out to the Board if I
23 could.

24 CHAIRMAN SCALZO: That would be
25 great. I will at least inform you

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

2 that what we receive this evening, I
3 don't know how much we can -- we
4 don't have time to study them is the
5 short story.

6 MS. BROOKS: Understood. It's
7 just to assist with the narrative,
8 actually, more than anything.

9 CHAIRMAN SCALZO: Thank you.

10 MS. BROOKS: And these are
11 reduced copies of our overall survey
12 map.

13 CHAIRMAN SCALZO: Thank you.
14 Mrs. Brooks, do you have an
15 additional copy for the applicants?
16 Thank you.

17 MS. BROOKS: I do.

18 MS. JABLESNIK: Do you actually
19 have an extra copy for the Building
20 Department?

21 MS. BROOKS: I have a copy of
22 the survey.

23 So I'm very happy to report
24 that both the surveyors in this
25 application on both sides agree on

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

2 where the boundary line is and agree
3 with all of the elevations relative
4 to the site. So there are no issues
5 with regard to that at all.

6 CHAIRMAN SCALZO: Thank you.
7 That gives us a level of confidence.

8 MS. BROOKS: So there were just
9 a couple of points that I did want to
10 bring out. I do understand that
11 there were several variances that
12 were granted already to this property
13 in 2021 and that they are not in
14 consideration this evening, although
15 in reading through the minutes I do
16 recognize that they were substantial
17 in nature.

18 The building permit that was
19 issued in June of 2021 lists very
20 specific proposed buildings with
21 associated sizes. Unfortunately,
22 none of the materials that have been
23 submitted by the applicant have shown
24 anywhere on the plan where each of
25 those individual buildings are

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

2 relative to the maps that they
3 presented for this application. So
4 it's a little bit unclear, actually,
5 of what is really being constructed
6 on the site.

7 CHAIRMAN SCALZO: Would that be
8 in consideration of building coverage
9 as well as lot coverage itself? Is
10 that what you're referring to?

11 MS. BROOKS: Building coverage,
12 lot coverage and setbacks.

13 CHAIRMAN SCALZO: Thank you.
14 Okay.

15 MS. BROOKS: So the other
16 clarification, which I think was
17 discussed a bit this evening, is that
18 the Town of Newburgh had a letter
19 stating that the proposed building
20 was 31 feet, the ZBA application
21 stated 24, and map sheet S-105 stated
22 23.4. So we just -- we need to
23 clarify that. I think that the
24 applicants did clarify that tonight,
25 to the 23.4 for the record.

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

2 Sheet S-105 states that based
3 on Town Code the chimney is not
4 included in the building height. I
5 don't want to contradict the code
6 enforcement officer, but when I was
7 reading the code, Section 185-18(B)
8 states under height regulations, "The
9 height limitation of these
10 regulations may be waived for
11 structures such as but not limited to
12 silos and private home antennas and
13 for the following roof-mounted
14 facilities provided that such
15 facilities do not cover in excess of
16 10 percent of the total area of the
17 roof on which they're situated, being
18 flag poles, spires, belfries
19 chimneys, transmission towers, et
20 cetera. So they're saying that the
21 regulations may be waived. They're
22 not stipulating who they may be
23 waived by. They can't cover more
24 than 10 percent of the total area of
25 the roof.

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

2 Unfortunately we have a couple
3 of different maps and only one of
4 them I believe is showing the
5 location of the chimney without a
6 square footage. It's not shown on
7 this plan so it's difficult to figure
8 out where exactly on that site the
9 chimney is going to be, or how much
10 roof coverage it's going to have, or
11 what roof it's actually situate on
12 top of or through. So I don't think
13 that at this point in time we can
14 decide whether a waiver can be
15 granted because we don't know if it's
16 covering 10 percent of the roof or
17 not.

18 There is another section of the
19 code, and again I do note that we are
20 only discussing this evening what the
21 applicant has applied for, but in
22 accordance with 185-43, garden
23 houses, tool sheds, wading and
24 swimming pools, there is a notation
25 that pools in excess of 200 square

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

2 feet shall be located at least 10
3 feet from any lot line. Scaling what
4 their proposal is, it's only 6 feet.

5 There's also a provision that
6 pools shall be enclosed in accordance
7 with the requirements of New York
8 State Uniform Building Code, which I
9 know requires fencing. They haven't
10 shown any proposed fencing on their
11 site plan.

12 So I think that these are a
13 couple of items that perhaps the
14 applicants might want to take into
15 consideration and address.

16 In reviewing this plan right
17 here with regard to the section view,
18 I will note that we can always play
19 games with scales on maps. I know
20 that our horizontal scale is 1 inch
21 in 10 feet where our vertical scale
22 is 1 foot -- 1 on 1 vertical which
23 makes it a little bit difficult to
24 see because of course a house is not
25 going to be that tall and that wide.

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

2 So the scale is a little bit skewed
3 on this.

4 One of the things that I want
5 to point out is that they're showing
6 the proposed house on my client's
7 property as being this gray shaded
8 area, where in fact the house can't
9 be constructed there or it would be
10 too close to the property line on the
11 other side of the neighbors. So this
12 green shaded area is more the
13 proximity of where the house actually
14 will be.

15 The reporting that the house
16 elevation is at 50 which would
17 overlook the pergola, I do not have
18 an argument with that at all. What
19 they are not recognizing is this is
20 the boundary line and the 50 foot
21 elevation is approximately 19 feet
22 into the applicant's property. So at
23 the property line the proposed
24 elevation that they're proposing for
25 the regrading for the excavation as

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

2 they encroached onto my client's
3 property, they're going to bring that
4 elevation back up to 40 feet which is
5 going to be 5 feet below where the
6 pergola height is.

7 Additionally, they're showing
8 that the top of the wall of the 43.6
9 feet, I'm scaling a distance of about
10 10 to 10.5 feet from the boundary
11 line when we know that the closest
12 point of the top of the wall is
13 actually only 6.3 feet.

14 So again, that's where clarity
15 would come in, to understand what
16 structures are actually being
17 constructed, because we already have
18 a top of the wall elevation,
19 certified by their surveyor and
20 agreed upon by our firm, of 43.7 feet
21 at a distance of only 6.3 feet from
22 the boundary line.

23 CHAIRMAN SCALZO: I'm sorry.
24 Can you repeat that, please? I was
25 shuffling my papers.

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

2 MS. BROOKS: Sure. I guess it
3 shows up on this plan here that we
4 have an elevation of 43.7 feet here.

5 CHAIRMAN SCALZO: I understand.

6 MS. BROOKS: On the plan view,
7 this one here, this point that
8 they're showing is 10 feet from the
9 boundary, which is at an elevation of
10 43.6 feet, which is actually this
11 corner back here. So they're not
12 showing the wall that's closest to
13 the property line --

14 CHAIRMAN SCALZO: Okay.

15 MS. BROOKS: -- which is a
16 tenth higher. It's nothing. It's
17 pretty much the same elevation. But
18 there's no indication of what's going
19 to happen in that space, or what
20 actually it's going to look like, or
21 what the construction facing
22 materials are, or what the colors are
23 going to be, or what the uses are
24 going to be inside the space.

25 CHAIRMAN SCALZO: Mrs. Brooks,

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

2 do you happen to know the original
3 elevation at the property line and
4 what the proposed elevation -- are
5 they restoring it to the original
6 elevation?

7 MS. BROOKS: I do not know that.

8 CHAIRMAN SCALZO: Okay.

9 MS. BROOKS: We came into the
10 project after the encroachment had
11 already occurred. After the silt
12 failure had already occurred.

13 CHAIRMAN SCALZO: I just might
14 add that my question really has
15 nothing to do with -- you know, I
16 just am curious.

17 MS. BROOKS: I don't know. I
18 apologize.

19 I guess one of the other points
20 I do want to bring up, from my
21 applicant's standpoint, this again is
22 going back to the original
23 application but if it's something
24 that could be addressed at this point
25 in time and we can find some kind of

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

2 a solution to move forward.
3 Basically the original application
4 said in order to conceal the pool
5 equipment from neighboring
6 properties, the mechanical equipment
7 is housed in a room at the back of
8 the pool cabana. This adds to the
9 square footage of the accessory
10 structure as well as the building and
11 lot coverage but removes the
12 unsightly equipment from public view.
13 Well, it might take away from public
14 view but it's putting it right in the
15 adjacent side yard of my clients.
16 Not only the unsightliness but then
17 of course the concern over the noise.
18 If all the mechanicals are going to
19 be 6.3 feet from the boundary line,
20 that obviously could have quite a
21 negative impact on the applicants.

22 So I just think we need, you
23 know, maybe some more information,
24 some clarity. We have a lovely
25 drawing here but it doesn't say what

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

2 any of the uses are going to be in
3 any of the locations. It's just a
4 little bit difficult to discern it.

5 CHAIRMAN SCALZO: Thank you,
6 Mrs. Brooks.

7 Okay. I've got a feeling
8 you're probably going to need to stay
9 there for a moment. I see your hand
10 up.

11 MS. RIDER: Thank you. I just
12 want to raise the point that the only
13 issue in front of the Board tonight
14 is the height variance. There were
15 several questions raised and mentioned.

16 To your question, Mr. Scalzo,
17 the parties have been discussing as
18 best they can. My client has made a
19 proposal for how to rectify the
20 grading issue on the neighboring
21 property. It's in front of the
22 neighbor's engineers. We haven't
23 received a response yet despite
24 several follow ups. So I don't think
25 that's an issue for the Board

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

2 tonight, with all due respect. We'd
3 like to stay focused on the height
4 variance. To the extent other issues
5 arise, you know, we'll take them up
6 in the proper course.

7 CHAIRMAN SCALZO: Normally I
8 would agree with you. This evening
9 we're back here for a height variance
10 that actually existed last year.
11 Mrs. Brooks just brought up, you
12 know, there may be fencing proposed
13 that we just don't see in any other
14 thing. The Building Department would
15 take care of that.

16 But the offset distance to the
17 pool edge. Mr. Mattina, while we've
18 had many with the pool. So that's a
19 question that's very important here
20 this evening.

21 MS. RIDER: We can answer some
22 of those questions.

23 CHAIRMAN SCALZO: Okay. Like I
24 say, we've got you here now. Like I
25 say, we shouldn't be here now for the

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

2 reason we're here. So if we have the
3 opportunity to not see you again,
4 that makes it better for everyone,
5 I'm sorry to say.

6 MS. RIDER: Thank you.

7 CHAIRMAN SCALZO: Just one more
8 time for the recording please.

9 MR. MACRON: John Macron,
10 counsel for Rothstein and Mazzarelli.

11 Mr. Patton would like to speak.
12 He's the surveyor/engineer. He has
13 been to the site.

14 MR. PATTON: Hi. My name is
15 Kevin Patton. I'm a geological
16 engineer. I visited the site earlier
17 this month. I reviewed the proposed
18 regrading from the general contractor
19 next door. It's a very general plan.

20 My client's property forms a
21 bluff along the property line. The
22 work they've done has caused that to
23 erode or collapse. Now the slope has
24 failed into my client's property.
25 What they're proposing to do is

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

2 basically take that failed slope and
3 grade it to a 2 to 1 and put a swale
4 at the bottom. That results in the
5 edge of the bluff being pulled quite
6 a ways back into my client's
7 property. It basically takes the
8 edge of the horizon and moves it much
9 closer. So he's got a view that
10 looks much more down into the active
11 construction site.

12 The plan that was provided was
13 very general. It basically said we
14 will reconstruct the slope in
15 conformance with New York DOT
16 specifications, everything will be
17 compacted to 95 percent, and when
18 we're done we'll put erosion control
19 netting over the slope and do
20 landscaping. That doesn't leave out
21 very much of what the details were in
22 the plan.

23 The proposed regrading is not
24 acceptable to my client. It results
25 in a substantial loss of lawn. He

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

2 ends up with a 2 to 1 slope that's
3 basically unusable. It gives him a
4 better view of the pool house and
5 pool equipment and all that's
6 associated with it.

7 So I have reviewed that
8 information. My client doesn't find
9 the regrading plan concept acceptable.
10 When we do get an acceptable plan, we
11 expect it to have a lot more details
12 on the technical specifications on
13 the materials to be used, how the
14 existing site is going to be prepared
15 before putting the fill materials in.
16 So we did a review. The concept is
17 not acceptable to us.

18 CHAIRMAN SCALZO: I thank you
19 for your comments. Just so I'm
20 clear, your statements regarding
21 grading, again that's not why we're
22 here. However, if you're tying that
23 to the visibility of something else,
24 then --

25 MR. PATTON: It's immediately

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

2 adjacent to the construction. It
3 directly affects the view from just
4 my client's property of this work.

5 CHAIRMAN SCALZO: I had asked
6 Ms. Brooks and she didn't have the
7 answer. I'm going to go over with
8 the applicant in this case, will you
9 be restoring the elevation at the
10 property line that existed before the
11 construction started?

12 MS. LIBOLT: Yes.

13 MR. PATTON: That's not what
14 the proposed regrading shows.

15 MS. LIBOLT: Mr. Chairman, if I
16 could.

17 CHAIRMAN SCALZO: Please. I
18 need to understand -- we need to
19 understand this so we can make an
20 educated decision.

21 MS. LIBOLT: So this is -- I
22 think Patti, is this the drawing you
23 had up before?

24 CHAIRMAN SCALZO: The one where
25 she indicated that the gray house is

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

2 not where the gray house should be.

3 MS. LIBOLT: The gray house was
4 for illustrative purposes.

5 CHAIRMAN SCALZO: That's fine.

6 MS. LIBOLT: We're just trying
7 to give a perspective.

8 It's important to note that,
9 again, much of what you see is going
10 to be backfilled. So the large wall
11 that everyone is speaking of that's
12 closest to the neighboring property
13 to the south is a wall that's a
14 retaining wall. All of that wall is
15 going to be backfilled. The area
16 where we saw the slope failure, all
17 that area is proposed to be regraded
18 and reclaimed.

19 We have tried to work with the
20 adjoining property owner's team. I'm
21 sure that we will come up with a
22 solution to be able to determine what
23 that finished grade is. No one is
24 objecting to working with them. We
25 just haven't been able to get in the

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

2 same room. We're just kind of
3 paddling back and forth. If we can
4 sit down and have a conversation,
5 we're happy to work with them to try
6 to reclaim this area.

7 I think it's important to note
8 what Jeff had said is if we had not
9 removed that area, that curvilinear
10 wall, we had just put a pergola
11 there, it would have been so much
12 more visible. But we actually
13 removed that wall and we're tucking
14 this into the side of the slope. So
15 it's important to note that that wall
16 that you see is going to be backfilled.

17 CHAIRMAN SCALZO: You know, I
18 read our meeting minutes from January
19 2021. Mr. Hermance and I both had
20 mentioned, you know, boy that's quite
21 a cut. That's quite a cut. That's
22 quite a cut. So I understand what
23 you're saying with the pergola being
24 there, but the intent was to cut. So
25 we're all aware that your intent was

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

2 to drop it down. You can tell me
3 that the pergola was going to sit on
4 the second tier --

5 MS. LIBOLT: No, no. I'm just
6 saying if it was. If we had never
7 built this structure, we had just put
8 a pergola there, from a visibility
9 standpoint and from the neighbor's
10 perspective you probably would have
11 seen more because you would have seen
12 that whole pergola.

13 CHAIRMAN SCALZO: Okay.

14 MS. LIBOLT: That's the point.

15 So we'd love to work with the
16 neighboring property to reclaim the
17 site, and I'm confident that we will.
18 We all have fairly smart people on
19 both sides. We just have to get in
20 the same room.

21 But in order for us to reclaim
22 this site, we have to get past this
23 retaining wall and be able to pour
24 this wall. So the wall that you see
25 that everyone is so concerned about

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

2 is limited to the path where you see
3 the driveway. So from the area to
4 the north, it's very limited because
5 it's tucked into the wall. The
6 applicant owns the property to the
7 south and it's on a cul-de-sac. So
8 the property that actually has the
9 most impact is the neighbor that
10 lives across the street. There's no
11 house there yet. We do have a
12 supporting letter from that neighbor
13 saying that they support the
14 application, they think it's going to
15 be well designed and they're asking
16 for the Board to proceed with the
17 area variance. So it is very, very
18 limited views that you'll see of this
19 structure.

20 CHAIRMAN SCALZO: Okay. Thank
21 you.

22 MS. LIBOLT: I know that was a
23 long-winded question.

24 CHAIRMAN SCALZO: I followed
25 right along with you.

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

2 MS. LIBOLT: The reclamation we
3 proposed -- we believe, obviously, we
4 can work with the neighbors to adjust
5 that accordingly. We proposed what
6 we thought was reasonable, but we'd
7 love to sit down with them and be
8 able to have that conversation so we
9 can pull this together.

10 CHAIRMAN SCALZO: So if I can
11 summarize what you've said in two
12 sentences, you will be reestablishing
13 the elevation that existed prior to --

14 MS. LIBOLT: Yes.

15 CHAIRMAN SCALZO: -- any activity
16 on the site to --

17 MS. LIBOLT: Yes. That or
18 better.

19 CHAIRMAN SCALZO: Okay. Better
20 is --

21 MS. LIBOLT: Better would be
22 great, but we just need to be able to
23 sit down with them and determine --

24 CHAIRMAN SCALZO: Better
25 according to who? That's also

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

2 subjective. Very good. Thank you.
3 Thank you.

4 The other counselor.

5 MR. MACRON: Being a lawyer, I
6 always have to say something. John
7 Macron again for the record.

8 I'd like Mr. Larry Rothstein to
9 speak for a few minutes as to what --

10 CHAIRMAN SCALZO: This is the
11 owner of the property?

12 MR. MACRON: The owner of the
13 property. Larry.

14 CHAIRMAN SCALZO: Everybody has
15 brought a lot of goodies for us to
16 look at tonight.

17 MS. LIBOLT: A lot of visuals.

18 MR. ROTHSTEIN: Good evening.
19 My name is Lawrence Rothstein. On
20 behalf of my wife Gina Mazzarelli and
21 myself, I would like to thank the
22 Board for allowing me the opportunity
23 to voice my objections to Mr. DiBrizzi's
24 application for a variance.

25 We had purchased this property

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

2 some fifteen years ago, as I
3 mentioned before, with the idea that
4 we would work hard and some day we
5 would be able to build our dream home
6 and retire there.

7 I have brought with me some
8 pictorials, and I'm going to allow my
9 team -- this is the picture of the
10 DiBrizzi residence provided by the
11 DiBrizzi team. As you can see, that
12 is a very pristine, beautiful wall
13 done tastefully, structurally sound.

14 CHAIRMAN SCALZO: Second career
15 coming here. I feel like I'm on the
16 Price is Right.

17 MS. BROOKS: I'm going to put
18 these together.

19 CHAIRMAN SCALZO: I follow. Sure.

20 MR. ROTHSTEIN: Everybody has
21 seen these pictures. I hate to be
22 redundant but I think that it is
23 pertinent to this situation. Again I
24 will not bring up anything to the
25 Board that is not under its

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

2 jurisdiction and will not mention
3 that in respect to the Board.

4 This is a picture of the
5 encroachment onto our property, the
6 erosion as well as the unsafe conduct.
7 I am not a professional. I am not a
8 very smart guy. I do believe that if
9 you take something from the bottom of
10 a hill, what remains above will
11 probably come down. That was the
12 case in this situation.

13 I would like you to think that
14 this is the structure as it exists
15 now. This is not a pool house. This
16 is not an ancillary building. This,
17 from my perspective, definitely
18 devaluates what it is that I bought
19 this property for.

20 The team of Mr. DiBrizzi says
21 that they would like to backfill the
22 property, permanently altering the
23 landscape of this property, which I
24 believe is one of the magic five
25 questions of which the Board is going

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

2 to ask.

3 CHAIRMAN SCALZO: Please keep
4 in mind, again your comments, right
5 along with everyone else's, are very
6 important. The balancing test is not
7 a you need them all. It is everything
8 that is under consideration. So
9 please don't misunderstand when we go
10 through the balancing test --

11 MR. ROTHSTEIN: I understand.

12 CHAIRMAN SCALZO: -- that if
13 you don't meet them all -- it's not a
14 use variance. It's a very different
15 set of criteria. Let me allow you to
16 continue.

17 MR. ROTHSTEIN: I brought
18 together my team of experts that are
19 here in order to answer any and all
20 questions. If any of my team have
21 anything else in which to add to
22 this. I would like to thank you very
23 much for your time.

24 MR. MAIN: My name is Charles
25 Main. We are the site engineers,

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

2 landscape architects for Larry.

3 We've been working on this property
4 for fifteen years.

5 The concern that I have is when
6 they say they're going to restore the
7 property, they're going to have to
8 come in on Larry's property in order
9 to be able to backfill this site.
10 I've talked to Larry about it and
11 pointed on the plan to exactly what
12 we would need. We would need a
13 mobilization/demobilization plan to
14 see that there's no further
15 destruction to the site when they are
16 trying to backfill this particular
17 area. I have an illustration that I
18 can show you where they would
19 probably have to travel to get to
20 backfill this area.

21 CHAIRMAN SCALZO: Mr. Main,
22 though I completely understand where
23 you're headed, however I think we're
24 diverging from --

25 MR. MAIN: I know we're

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

2 diverging, but -- I apologize but
3 it's on everybody's mind. We want to
4 bring it up to you so that you can
5 understand where we're all coming
6 from.

7 CHAIRMAN SCALZO: I'll give you
8 a short, you know, minute here if
9 that --

10 MR. MAIN: I'm finished. It's
11 just a matter of we haven't seen that
12 plan, to be honest with you. We have
13 a plan which states we're going to
14 backfill, but there's more to it.
15 There's inspections. There's soils.
16 There's structural soils that have to
17 be placed on the site. We would need
18 to have sieve analysis. We would
19 need to have tickets signed off when
20 the trucks come in. We would have to
21 have probably either Kevin or myself
22 inspecting on behalf of Larry to see
23 that the soil is structurally
24 backfill soil. That's the point that
25 I'm trying to make.

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

2 CHAIRMAN SCALZO: Thank you.

3 MR. MACRON: John Macron again.
4 I think one point that might be being
5 missed right now, Ms. Brooks brought
6 up, off the property line is under 10
7 feet. I believe it's 6.5 feet. From
8 her description, that would mean
9 they're not in compliance with that
10 code either. So I think --

11 CHAIRMAN SCALZO: Well accessory
12 structures, I believe Joe Mattina
13 confirmed it to me before the
14 meeting, it starts at 5 feet.

15 MR. MACRON: Except the pool
16 house.

17 MS. BROOKS: The pool needs to
18 be 10 feet. That's a different code.

19 CHAIRMAN SCALZO: That's a
20 different code for a different facility.

21 MR. MACRON: Do you feel they
22 can go ahead with this at 6 feet?

23 MS. BROOKS: With the pool
24 structure? With the pool house
25 structure? Again, what we haven't

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

2 received yet is an explanation of
3 what is going in each part. You
4 know, we have a foundation plan but
5 it doesn't say what's going in each
6 component.

7 Again, there was a June 2021
8 building permit that had very
9 specific sizes and size of structures
10 that were being built. It's not laid
11 out at all on the plan where each of
12 those structures are. A 1,426 square
13 foot pool house, a 360 square foot
14 gazebo and the in-ground pool. I
15 guess at some point I would hope that
16 we're going to get a plan showing
17 where the actual structures are.

18 CHAIRMAN SCALZO: Right. The
19 Building Department may already have
20 that. I'm not sure. The outline of
21 what I'll call, as you refer to it
22 as, the pool may not actually be the
23 pool. It may be, you know, some type
24 of hardscape around the pool. I'm
25 not sure.

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

2 MS. BROOKS: And the applicants
3 have not submitted that for this
4 Board to consider with regard to the
5 height. Again, it goes back to the
6 chimney and what is the footprint
7 going to look like and who waives the
8 height --

9 CHAIRMAN SCALZO: Well that's
10 -- are you folks -- do you happen to
11 know the square footage of the roof
12 structure and then how many square
13 feet the 10 percent --

14 MR. DeGRAW: The roof structure
15 I have to go back and calculate. The
16 chimney is approximately 3 foot by 5
17 foot. 15 square feet.

18 CHAIRMAN SCALZO: All right.
19 So if you're under 150 square feet on
20 the roof you're fine. Or your over
21 150 -- pardon me. Yeah.

22 MR. DeGRAW: It's a normal size
23 chimney.

24 MR. DONOVAN: If I can. So
25 while we're doing a deep dive into

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

2 the minutia, just kind of understand
3 from a big picture, we're an
4 appellate board in this case.
5 There's been a determination by Code
6 Compliance that you didn't meet the
7 height requirement. You've appealed
8 that. So this Board's jurisdiction
9 is over the height variance being
10 requested and appealing from Code
11 Compliance. Other things can come up
12 during the course of the hearing, and
13 even setback is an important one.
14 Many of the other issues, even
15 whether the chimney is included or
16 not included, that's not why this
17 application is here. Code Compliance
18 has made a determination, it's being
19 appealed by the applicant to the ZBA
20 on the height. So that's what's
21 before the Board.

22 CHAIRMAN SCALZO: Thanks,
23 Counselor. Sometimes I lose myself.

24 MR. DONOVAN: It's easy to do.

25 CHAIRMAN SCALZO: Yup. Is

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

2 anyone else here to speak about the
3 DiBrizzi application?

4 (No response.)

5 CHAIRMAN SCALZO: I'm going to
6 go back to the Board now. We've
7 heard an awful lot of stuff.

8 Mr. Gramstad, do you have any
9 questions that you feel haven't been
10 answered yet?

11 MR. GRAMSTAD: I don't think
12 so. My head is kind of spinning.

13 CHAIRMAN SCALZO: We've
14 certainly got a lot to chew on.

15 Counselor, you simplified it
16 for us really. We're really here
17 looking at one thing. There's a lot
18 of other background noise going on,
19 if you will.

20 Mr. Hermance?

21 MR. HERMANCE: It's just
22 unfortunate that they haven't been
23 able to come to an agreement between
24 the two sides, because when you read
25 through the five criteria, it's going

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

2 to ask if it has a negative impact,
3 in which case it looks like it does.
4 Like you said, we're here to vote on
5 the height variance.

6 CHAIRMAN SCALZO: It's also
7 going to ask if it was self-created.
8 There are certainly -- I'm sorry, Mr.
9 Hermance. I cut you off.

10 MR. HERMANCE: That was it.

11 CHAIRMAN SCALZO: Mr. Masten?

12 MR. MASTEN: We went over a lot
13 of information. The main thing was
14 basically the height and whatnot.
15 There's a lot of information that was
16 presented and --

17 CHAIRMAN SCALZO: Okay.

18 MR. MASTEN: That's where I
19 stand right now.

20 CHAIRMAN SCALZO: No problem.

21 MS. RIDER: Mr. Scalzo, may I
22 just mention one thing on the point
23 that Mr. Hermance just raised, which
24 is, you know, we're more than ready
25 to move forward with rectifying, you

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

2 know, the slope. Unfortunately some
3 of the things that we heard tonight,
4 this is the first we've heard as a
5 response to the proposal that was put
6 forth. We're more than ready to get
7 into more detail on it. The items
8 that the gentleman spoke about that
9 would have to be incorporated, we're
10 open to that. Anything reasonable
11 we're open to. We just haven't heard
12 back until tonight.

13 CHAIRMAN SCALZO: Right.

14 MS. RIDER: So we're ready. We
15 do have some concerns that if it goes
16 on and on forever, the slope --

17 CHAIRMAN SCALZO: I understand.

18 MS. RIDER: -- lacks integrity.
19 So we would like to move forward with
20 that as well as the rest of the project.

21 CHAIRMAN SCALZO: We did receive --
22 as it was mentioned earlier, there
23 were 21 lots in that subdivision. We
24 got 9 letters for 11 properties in
25 support of it. We had one clearly in

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

2 opposition, which is the one that it
3 impacts the most. So I hear what
4 you're saying.

5 Please help me. Unless I'm
6 misunderstanding what you're saying,
7 is this -- are you looking to perhaps
8 continue dialogue with --

9 MS. RIDER: We are open, yes.

10 CHAIRMAN SCALZO: Okay. All
11 right.

12 MS. RIDER: I spoke to Mr.
13 Macron earlier. We're going to do
14 what we can do. At this point, you
15 know, we hope that the engineers can
16 sort of move that ball forward.
17 We've encouraged open meetings. We
18 hadn't received any detailed response
19 before tonight. So you heard what --
20 we heard what you read.

21 CHAIRMAN SCALZO: Okay.

22 MS. RIDER: We'll take it from
23 there.

24 CHAIRMAN SCALZO: Very good.
25 All right. I was -- you know, if

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

2 anyone else -- any other comments
3 before I look to -- Mr. Hughes, you
4 want back here, I know you do.

5 MR. HUGHES: No. What does the
6 County 239 report tell you?

7 CHAIRMAN SCALZO: This is not
8 under -- that's not the GML 239. No.

9 MR. HUGHES: You don't have a
10 recommendation from the County on
11 this project?

12 CHAIRMAN SCALZO: River Road I
13 don't believe is 500 feet. I believe
14 we're further than 500 feet even if
15 it was a County road. It's not.

16 MR. HUGHES: There's one other
17 feature. There's a watershed at the
18 bottom of this subdivision that
19 covers quite a bit of territory. Is
20 anybody in the room aware of it?

21 Councilman, you might have a
22 whiff of it. The Building Department
23 might.

24 CHAIRMAN SCALZO: Is that the
25 big canal called the Hudson River?

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

2 MR. HUGHES: No, no. You're
3 too far south. At the base of the
4 subdivision, in the left in the
5 Cardarpoli subdivision, in this
6 particular area there's some very
7 unusual geomorphological things that
8 took place next to the river.

9 CHAIRMAN SCALZO: Can you spell
10 that, please?

11 MR. HUGHES: I couldn't. The
12 lime deposit and the water that's
13 underneath the area at the bottom of
14 the anchorage and many, many other
15 things.

16 CHAIRMAN SCALZO: I'm actually
17 going to let the Building Department
18 handle that, Mr. Hughes. That's not
19 something that -- that's very far
20 away from a height variance.

21 MR. HUGHES: Okay. What I had
22 my eye on is there are these things
23 that are settling and washing down.
24 Is all of that residue and what's
25 been done already going to end up in

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

2 that watershed?

3 CHAIRMAN SCALZO: You know
4 what, your comments are very
5 important to us and it's certainly on
6 record.

7 MR. HUGHES: Okay. That's why
8 I put it there. There's a lot of
9 critical stuff there, including the
10 lagoon you spoke about which is
11 tidaled and has lots and lots and
12 lots of stuff in it. We need to keep
13 an eye on all this stuff.

14 I have no problem with what
15 they are trying to do. If they can
16 work it out with the neighbors,
17 that's up to them.

18 CHAIRMAN SCALZO: Right. Thank
19 you for your comments, Mr. Hughes.

20 Does anyone else wish to speak
21 about this application?

22 (No response.)

23 CHAIRMAN SCALZO: Does anyone
24 want to answer their phone? That's
25 it, Mr. Wagner. We're not going to

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

2 consider you for a Member now.

3 I'm going to look to the Board
4 here. Have we heard -- do we feel as
5 though we have enough information to
6 close the public hearing, and, if so,
7 someone please make a motion. If not,
8 you know, I'd like to know what it is
9 that we're waiting for. There were a
10 couple of comments that certainly
11 made me take notice, or at least
12 allow me to think a little
13 differently.

14 Again, we're here for a height
15 variance. Keep in mind too, we can
16 close the public hearing and still
17 not render a decision for 62 days.

18 MR. DONOVAN: Depending on what
19 you do with the public hearing. If
20 you decide to close the public hearing --

21 CHAIRMAN SCALZO: Then we have
22 62 days.

23 MR. DONOVAN: Correct. I would
24 just repeat what we said a couple
25 times tonight, whether the applicant

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

2 wants to move forward or not move
3 forward with the vote being that
4 there's only four Members present.

5 CHAIRMAN SCALZO: Correct.
6 Shall we give them that option first?

7 MR. DONOVAN: That's up to you.
8 I think they are two separate issues.
9 So generally the idea of the public
10 hearing, we kind of reviewed this, is
11 for the Board to get -- the public
12 hearing is for the Board. The public
13 hearing is not for the public. The
14 public doesn't vote. The public
15 hearing is for the Board, for you to
16 gather information to assist you in
17 making your decision. If you feel
18 like you have enough information, you
19 don't need any more information but
20 you need more time, or you're ready
21 to make your decision, then I would
22 suggest you close the public hearing.
23 If you think that you want more
24 information from the applicant, more
25 information from the neighbors, if

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

2 you could articulate what that
3 information is, then you would keep
4 the public hearing open so whatever
5 was presented was presented and the
6 public would have an opportunity to
7 comment on it. If there's no
8 additional information that you think
9 you need, then I would suggest to you
10 there's not a reason to keep the
11 public hearing open.

12 CHAIRMAN SCALZO: Okay. Thank
13 you, Counsel.

14 As I mentioned, we've got 21
15 lots. We have 9 letters from 11
16 properties in support of it. We've
17 got one very hard no that we all
18 heard testimony regarding,
19 professional and otherwise.

20 In that case --

21 MS. MAZZARELLI: There's only 4
22 houses even on the whole property.

23 CHAIRMAN SCALZO: You need to
24 step forward, state your name for the
25 record, please.

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

2 MS. MAZZARELLI: Gina Mazzarelli.

3 I don't know all these letters,
4 but there's literally only 4 houses
5 in the entire 21-lot subdivision, and
6 one of them is Mr. DiBrizzi, that's
7 even built. So nobody has any -- has
8 any problem with anything other than
9 our lot. It affects our lot. There's
10 not even people who have houses there.
11 They're just empty lots.

12 CHAIRMAN SCALZO: Thank you for
13 your comments.

14 MS. MAZZARELLI: You're welcome.

15 CHAIRMAN SCALZO: Before I look
16 to the Board for a motion to close
17 the public hearing, I'm going to look
18 at the applicant and ask if you would
19 prefer us to defer to next month?

20 MS. RIDER: Would you be willing to
21 take a (inaudible) tonight?

22 MR. DONOVAN: So I generally
23 recommend against that.

24 CHAIRMAN SCALZO: We usually
25 follow Counsel's advice very closely.

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

2 MS. LIBOLT: I would just add,
3 if the Board has no additional
4 information that they're asking from
5 us, we're happy to answer any
6 questions. We have a very nice
7 illustrated diagram that explains how
8 the height of the height variance was
9 issued, which is really the subject
10 of this information before you. If
11 you'd like us to go through those
12 calculations, we're happy to do that,
13 but they are all certified by a
14 licensed surveyor and extrapolated
15 onto a licensed architect's plan.
16 That's really the heart of the area
17 variance. We're happy to go through
18 those calculations if you'd like us
19 to. If there's no additional
20 information, we're hoping that the
21 Board would consider closing the
22 public hearing and acting tonight.

23 CHAIRMAN SCALZO: I thought I
24 heard an offer there.

25 MS. LIBOLT: How about I offer

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

2 to sit over there and be --

3 CHAIRMAN SCALZO: Are you new
4 in Town?

5 I would like those calculations
6 but I'm not sure that we need -- it
7 would actually almost be a benefit to
8 receive those calculations but still
9 close the public hearing. But, I am
10 one of four.

11 MR. HERMANCE: I would agree
12 with that.

13 CHAIRMAN SCALZO: Okay.

14 MR. HERMANCE: I'll make a
15 motion to close the public hearing.

16 CHAIRMAN SCALZO: Okay. We
17 have a motion to close the public
18 hearing from Mr. Hermance.

19 MR. GRAMSTAD: I will second it.

20 CHAIRMAN SCALZO: We have a
21 second from Mr. Gramstad. Can you
22 roll on that, please, Siobhan.

23 MS. JABLESNIK: Mr. Gramstad?

24 MR. GRAMSTAD: Yes.

25 MS. JABLESNIK: Mr. Hermance?

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

2 MR. HERMANCENCE: Yes.

3 MS. JABLESNIK: Mr. Masten?

4 MR. MASTEN: Yes.

5 MS. JABLESNIK: Mr. Scalzo?

6 CHAIRMAN SCALZO: Yes.

7 The public hearing is closed.

8 Therefore, we have in the past
9 received written comments but the
10 public portion to speak in a meeting
11 is over.

12 Now moving forward to that. Is
13 the Board prepared to vote this
14 evening? If they are, then I'll
15 entertain a motion. If the Board
16 feels as though we would rather wait
17 for the calculations that the
18 applicant so graciously offered to
19 provide, then we can defer our
20 determination.

21 MS. LIBOLT: Mr. Chairman, the
22 calculations are provided. We could
23 go through those. They were provided
24 on the submission that you have. So
25 they're on the drawings. I just

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

2 wanted to clarify.

3 CHAIRMAN SCALZO: For some
4 reason I was thinking about the other
5 confirmation about the elevations,
6 although that doesn't -- well, it
7 helps but it doesn't help. So I've
8 heard about the 2 on 1. I've heard
9 it was exactly as it was going to be.
10 Again, it's not part of the height
11 variance. Those calculations for the
12 building height, I'm not disputing
13 those. I don't have any questions --

14 MS. LIBOLT: Very well. Thank
15 you.

16 CHAIRMAN SCALZO: -- regarding
17 how you determined that.

18 MS. LIBOLT: Okay.

19 MR. DONOVAN: So my father had
20 an expression. If everyone were
21 looking down at their shoes, you're a
22 carpet salesman. I would say either
23 -- you can't be carpet salesmen all
24 night. You've got 62 days to decide
25 or you can roll with it tonight.

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

2 MR. GRAMSTAD: I'll make a
3 motion to defer decision.

4 CHAIRMAN SCALZO: We have a
5 motion from Mr. Gramstad. Do we have
6 a second?

7 MR. MASTEN: I'll second that.

8 CHAIRMAN SCALZO: We have a
9 second from Mr. Masten. Can you roll
10 on that, please, Siobhan.

11 MS. JABLESNIK: Mr. Gramstad?

12 MR. GRAMSTAD: Yes.

13 MS. JABLESNIK: Mr. Hermance?

14 MR. HERMANCENCE: Yes.

15 MS. JABLESNIK: Mr. Masten?

16 MR. MASTEN: Yes.

17 MS. JABLESNIK: Mr. Scalzo?

18 CHAIRMAN SCALZO: Yes.

19 We're going to defer our
20 decision until next month. We'll see
21 you next month. I'm hoping in the
22 interim that your engineers can get
23 together and make the decision for us
24 much easier.

25 MS. LIBOLT: Mr. Chairman, just

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

2 for clarity, is there any additional
3 information that the Board is looking
4 for?

5 CHAIRMAN SCALZO: At this point
6 I'm not sure. We've been fed quite a
7 bit of information this evening.
8 Sometimes I don't process things so
9 quickly, which is why I rarely get in
10 an argument at my house. I would
11 like a little time to digest
12 everything we've heard.

13 MS. LIBOLT: So someone will
14 let us know if there's additional
15 information that we need for the next
16 meeting?

17 CHAIRMAN SCALZO: Yes, we will.

18 MS. LIBOLT: Very well. Thank
19 you very much.

20 CHAIRMAN SCALZO: Thank you.

21 I'll look to the Board for a
22 motion to close the public hearing --
23 close the meeting, the March meeting.

24 MR. GRAMSTAD: I'll make a
25 motion to close the meeting.

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

2 MR. HERMANCE: I'll second it.

3 CHAIRMAN SCALZO: We have a
4 motion from Mr. Gramstad. We have a
5 second from Mr. Hermance. All in
6 favor?

7 MR. GRAMSTAD: Aye.

8 MR. HERMANCE: Aye.

9 MR. MASTEN: Aye.

10 CHAIRMAN SCALZO: Aye.

11 The meeting is adjourned.

12

13 (Time noted: 8:52 p.m.)

14

15

16

17

18

19

20

21

22

23

24

25

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

2

3

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

4

5

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 8th day of April 2022.

18

19

20

21

Michelle Conero

22

MICHELLE CONERO

23

24

25