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

----- X

In the Matter of

BRENNAN GASPARINI

1064 Route 32, Wallkill
Section 2; Block 2; Lot 3
RR Zone

----- X

Date: March 28, 2019
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman
JOHN McKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
DARRELL BELL
PETER OLYMPIA

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

APPLICANT'S REPRESENTATIVE: MARISSA WEISS, ESQ.

----- X

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

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CHAIRMAN SCALZO: I'd like to call the meeting of the ZBA to order. The first order of business are the public hearings scheduled for this evening. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have, and then any questions or comments from the public will be entertained. After all of the public hearings have been completed, the Board may adjourn to confer with counsel regarding any legal questions it may have. The Board will then consider the applications in the order heard and will try to render a decision this evening but may take up to sixty-two days to reach a determination. I would ask if you have a cell phone, to please turn it off or put it on silent. When speaking, speak directly into the microphone as it is being recorded.

Siobhan, are the microphones working this evening?

MS. JABLESNIK: Yes.

CHAIRMAN SCALZO: Very good. Roll

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BRENNAN GASPARINI

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call, please.

MS. JABLESNIK: Darryl Bell?

MR. BELL: Present.

MS. JABLESNIK: Richard Levin?

MR. LEVIN: Present.

MS. JABLESNIK: Anthony Marino?

MR. MARINO: Here.

MS. JABLESNIK: John Masten?

MR. MASTEN: Here.

MS. JABLESNIK: John McKelvey?

MR. MCKELVEY: Present.

MS. JABLESNIK: Peter Olympia?

MR. OLYMPIA: Present.

MS. JABLESNIK: Darrin Scalzo?

CHAIRMAN SCALZO: Here.

MS. JABLESNIK: Also present are David
Donovan, our attorney; Gerald Canfield from Code
Compliance; and our Stenographer, Michelle
Conero.

CHAIRMAN SCALZO: Thank you very much.

If we could all rise for the Pledge of
Allegiance.

(Pledge of Allegiance.)

CHAIRMAN SCALZO: Our first applicant

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BRENNAN GASPARINI

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this evening is Brennan Gasparini at 1064 Route 32 in Wallkill. They're seeking an area variance and use variance to reinstate a nonconforming use of a second single-family dwelling unit on a single lot. The bulk table schedule 1 permits only one dwelling per lot; 2, nonconforming buildings shall have one year to be restored after damage; and the use shall not be reestablished if discontinued for one year or more. There is an existing 2.3 feet on the side yard where 50 feet is required.

If you could please identify yourself.

MS. WEISS: Sure. My name is Marissa Weiss, and I'm the attorney for the applicant, of Jacobowitz & Gubits.

MR. DONOVAN: Before you start, just for clarification, I think there's also a request for an interpretation in addition to the use variance.

CHAIRMAN SCALZO: Dave, you could be right. I was reading what our agenda says.

MR. DONOVAN: I'm looking at the application.

MS. WEISS: There's also a request of

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BRENNAN GASPARINI

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-- a secondary request, if everything else is denied, for an additional area variance of the five-year principal dwelling requirement for an accessory apartment as well. That should be number 4 on our application.

CHAIRMAN SCALZO: Before we begin I'd like to mention to all of the applicants this evening, all of our Board Members have visited the properties so we are all personally familiar with what's going on on the site.

Please carry on.

MS. WEISS: Great.

CHAIRMAN SCALZO: Pardon me. Siobhan, the mailings on this?

MS. JABLESNIK: This applicant sent out eight letters. They were also sent to the County but we haven't received notice back yet.

CHAIRMAN SCALZO: Please understand when we send things out to the County for referral, they have thirty days to act on that. Since they have not given us their information back we can not render a determination this evening. Please feel free to proceed with your presentation to us but just know that we can't

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make our determination this evening.

MS. WEISS: Okay, great. Understood.

Good evening everyone. I'm here tonight on behalf of Brennan Gasparini for, as was already mentioned, 1064 Route 32. This is in a Reservoir Residential Zone.

Mr. Gasparini did buy this property back in August of 2018 knowing that there were two historic single-family dwellings on site. They're in a little bit of disrepair. He furthermore knew that he wanted to go to the building inspector in order to get a building permit. When he did so he was told that he would be denied until he came to this Board for a variance because this was a lapsed nonconforming use. We're here tonight to remedy that issue and go through and -- either go for an interpretation of the Zoning Code for the definition of use, which we have submitted under the definition itself. Under 185-38 the definition of use is a specific purpose for which a building is used or occupied or maintained. We would maintain ourselves that the term or maintained specifically does not require actual use or

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occupancy of the land. So although that this nonconforming use was in fact not occupied for awhile or actually used as a dwelling, the building was never knocked down, it was never demolished. It continued to be maintained in that existing state, which actually further is refined by Miriam Webster's dictionary of what maintained means, which is to keep in existing state. As I said, the buildings are still standing, they haven't been demolished.

Furthermore, taxes were paid by Mr. Gasparini at an amount assessed for two single-family dwellings, which we have submitted to the Board.

Furthermore, if that interpretation were favorably granted, obviously the nonconforming use status would be continued and reinstated, although it never actually did cease to exist at that point. Under 185-19(d), normal maintenance and repair can still continue on this property with the addition of a building permit that Mr. Gasparini would go and obtain from the building inspector. If that interpretation is not favorably granted, we would then move on to

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our use variance argument which would be a use variance, as was already stated by Mr. Scalzo, to permit the reinstated use of two single-family dwellings on the property in an RR Zone that only allows one single-family dwelling on the property.

Without this use variance we are in a position, we would state, that a strict application of the law would present unnecessary hardship for Mr. Gasparini.

Going through the factors briefly, but I can explain in more detail if anyone needs that or would like to hear that. The applicant can not receive a reasonable return on the use of these existing buildings. Mr. Gasparini has already incurred substantial costs toward making sure that some of these buildings do not fall down and do not cause a public safety concern for the rest of the community and surrounding neighborhood. I do have documentation that would support that that I will give to Siobhan at the end of this meeting -- the end of this public hearing.

We also would submit that it's very

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cost prohibitive for him to be able to subdivide the land for any other use permitted in the RR Zone.

And also, furthermore, that all of these uses, which would either be a residential use or a municipal use, can not occur without another permitted use within that lot itself. So we're just perpetuating the issue here.

Furthermore, he doesn't have enough acreage to subdivide anyway, so he would be back before this Board for another variance for that.

The building itself, both of them do have useful purposes for the Town as residential dwellings if they were allowed to be reused and rehabilitated.

The alleged hardship is not unique -- is unique. Sorry. Is unique. It's not substantial either. The dwelling has always existed on this lot and residential uses are permitted in an RR Zone. This is not us going into a commercial zone asking for a residential use or vice versa. These are residential uses in a residential zone.

It will also not subsequently alter the

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character of the neighborhood, similarly residential zone, residential uses.

There is development pressure, as we're all aware of, in Orange County, and in Newburgh specifically, for more residential housing. There's no need to knock down perfectly good buildings that do need some care and some attending to. There's no reason to knock them down if that's not actually something that's needed.

Furthermore, nothing is going to change these buildings that are pre-existing there. They're just being enhanced and making them safer and improving the public health, safety and welfare of this neighborhood.

Again, this is also not self-created. The applicant bought this property in August. He has every intention of rehabilitating these properties if he's able to do so. He has never strayed from that intention, and it's always been made clear to the Town that was his intention when he bought the property.

Moving forward. So the third thing we are requesting tonight is an area variance of the

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side yard requirements for the existing dwelling. If you look on the site plan over there, the existing dwelling that is most north actually only has a side yard lot line right now of 2.3 feet. In the RR Zone it's supposed to be 50 feet. So this area variance request actually applies to everything that we're asking for tonight. It's more of an asterisk than another option that is in opposite to the other things we're asking for. It applies to all of them. It applies to the interpretation if it were favorably granted, the use variance as well as the accessory apartment area variance that we're also asking for.

Going quickly through those factors. Again, if that area variance were granted there would be no undesirable change in the character of the neighborhood. This is a pre-existing building. There are no changes proposed to the existing lot line at this point. If he were able to go forward and complete the necessary repair work, the alterations would benefit the neighborhood. Like I said before, it would improve public safety, it would improve the

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aesthetics, it potentially would improve the property values in the surrounding neighborhood.

Mr. Gasparini also can not achieve this variance via some other method. Per the building inspector himself, he did tell Mr. Gasparini he can not maintain this existing building without significant repair and alteration work, which is why we're before you tonight. There's no proposal to move the building or change any side lot lines. The area variance is necessary for this work.

It's not substantial. I will not lie to this Board. Obviously it's numerically substantial to go from a 2.3 to a 50 requirement. A variance of 47.7 feet is substantial numerically. We would submit that it's not actually substantial in practice and in actuality. Nothing -- again, nothing is changing. The building already exists and has existed for decades. We're just bringing it into compliance so that he can improve the neighborhood.

Finally, going off again, this is not -- there will be no adverse affect on the

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physical or environmental conditions of the neighborhood, the public safety.

It's also not self-created because the applicant didn't create this problem at the location. He inherited it and he's trying to do his best with it.

Finally, the area variance requirement for an accessory apartment is our secondary argument here. If the interpretation and the use variance are not favorably granted with the area variance that I just described as an asterisk on all of those applications, the applicant does seek an area variance of the five-year principal dwelling requirement found in 185-38 B(4) and the associated special use permit that goes along with that accessory apartment that is also needed in an RR Zone.

So in this case the applicant proposes to demolish the building that is on the east side facing Route 32. The building that is closest to that he would propose to demolish so that there would be only one single-family dwelling still existing, but then he would use that existing building to house an accessory apartment that in

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order to do so you would need a principal dwelling to be built. Within the Town Zoning Code, whatever your principal building is, it needs to have existed for five years prior to you creating a permitted accessory apartment. So we would like to request a variance of that temporal time restriction.

Going through the factors again very quickly, and I can go into more detail if anybody wishes. There's going to be no undesirable change to the neighborhood if that occurred. The same number of residential dwellings will exist if that is granted. The applicant merely wishes not to wait five years to go forward with his plan.

As noted previously, the principal dwelling and the accessory apartment are both permitted uses within the Town's Zoning Code. There's nothing other than the temporal change that's requested here.

Again, he can not achieve the variance via any other method because that's written into the Code. Other than waiting five years, this is the only option the applicant would have.

The variance request is also not

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substantial. The Town has determined via the enactment of this provision that accessory apartments are permitted and an acceptable use within the Town. If you go through the accessory apartment provision in the Code, 185-38, it does detail all the benefits that accessory apartments provide to the Town. They provide additional housing stock, a different type of housing stock for needy populations that might not be able to afford their own home or even a more expensive apartment at a complex or something like that. It's something that's needed in Newburgh as well.

All standards listed will also be adhered to within the accessory apartment provision of the Code itself as well.

As I just stated and went through, those same details also apply to the third factor -- the fourth factor, no adverse affect on physical or environmental conditions in the neighborhood. This will be a beneficial supplemented use to a permitted primary use for the single-family dwelling. It will provide additional affordable housing, as I stated before, to the needy population and also improve

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BRENNAN GASPARINI

16

the feasibility of Mr. Gasparini maintaining his larger principal dwelling.

Again, it's also not self-created. It's simply replacing the existing dwelling with another. The same amount of dwellings will continue to exist, just in a slightly different format.

With that, if the Board has any questions I'm very open to answering them. Thank you.

CHAIRMAN SCALZO: Thank you very much.

MS. WEISS: That was a lot. I tried to go fast.

CHAIRMAN SCALZO: I actually had to take notes during that. I'm going to back you up way to the beginning.

MS. WEISS: Sure.

CHAIRMAN SCALZO: I think you mentioned that you categorized this as historical. Did you refer to this as historical?

MS. WEISS: Historic in that it's been here for multiple years. Not historic as --

CHAIRMAN SCALZO: There's a difference when you categorize something as historic.

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MS. WEISS: Not a historic property with any statewide significance.

CHAIRMAN SCALZO: Also, more than once you referred to improving the public safety. Can you elaborate on that, please?

MS. WEISS: Sure. These properties, you have all been there, they're clearly not habitable right now. If anybody were to go on the property, children, any population that may not realize the issue with going near a building that is in disrepair, we would like to prevent any issue like that from happening. It would also help improve the welfare of the general population. It's nice to see buildings that are in good repair as your neighbor and not falling down. That is our position.

CHAIRMAN SCALZO: Okay.

MR. McKELVEY: All the Board Members visited the property.

MR. OLYMPIA: These are all rental properties? Will be rental properties?

MS. WEISS: No. The applicant proposes to live in one of the buildings at least. If the accessory apartment did happen, then one of them

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BRENNAN GASPARINI

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would be rented out.

CHAIRMAN SCALZO: As it appears before us, proposed house number 1, which is the one that would be demolished and rebuilt, that will be a single-family dwelling?

MS. WEISS: Yes.

CHAIRMAN SCALZO: No accessory apartment in that building?

MS. WEISS: No.

CHAIRMAN SCALZO: As Mr. McKelvey mentioned, we've all been to the site. It appears that construction has been ongoing on the site at this point.

Actually, I'll look to Jerry. Jerry, is this something that we -- is this something that had been ongoing and there was -- how did it get as far as it did before it landed on our laps is my question?

MR. CANFIELD: As the applicant's representative reported, the applicant did file for a building permit. It was at that time that that permit was denied. That's what I believe brought the applicant to this Board.

I see the pictures. It looks like

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there's some demolition work or stripping of the siding or what not that's taken place on one of the structures. I don't believe there are any permits that have been issued for that.

CHAIRMAN SCALZO: Jerry, actually my next question for you, should this meet all the criteria that we would normally need to approve such an application, does this need to appear back before the Planning Board? Does this need to appear before the Planning Board at all or does it just filter through your office?

MR. CANFIELD: The only thing that would send it to the Planning Board is if it were a site plan. Listen closely, Dave, to me if I'm wrong. As we looked at it initially, we see two structures that have not been in use for many years. That's what prompted us to make that determination that it was existing nonconforming. Because of the lack of occupancy for greater than one year, that's what lost it's existing nonconforming protection and that's what brought it here.

I think there's many options that have been laid out for you should the Board choose not

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to interpret the section of the Code that way.
First and foremost that's what's brought it here,
our determination that it's existing
nonconforming and we believe it has lost it's
existing nonconforming protection.

MR. DONOVAN: I think that's an
important part. That's the first aspect of the
application is the argument that it has not lost
it's protection even though it hasn't been used
for an extended period of time. Based on the
definition of the word use in our Code, which is
as follows, "The specific purpose for which land
or a building is used or occupied or maintained."
Not to make the applicant's argument but I think
their position is it's been maintained.

Right?

MS. WEISS: That's our position.

MR. DONOVAN: Therefore the use is
continued to be allowed. If you say yes to that,
you pass go, you collect \$200, you don't need to
go any further. You have to buy that argument
first, though. I don't know whether you do or
you don't. Historically if something hasn't been
used, people physically in the structure, it's

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BRENNAN GASPARINI

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been deemed to be abandoned. That's the first issue that's before you.

CHAIRMAN SCALZO: Thank you.

MR. OLYMPIA: When I viewed the property I can not honestly say that it's been maintained. I mean the property --

CHAIRMAN SCALZO: If you look up through the blue tarp covering the roof I would agree with you, Mr. Olympia.

MR. OLYMPIA: Not only that but the building is collapsing. There is a lot of structural damage there also. Obviously it's not been habitable for a number of years.

I see they also brought in some services, too. There's some electrical service coming in underground. It hasn't been connected yet but it's been brought in. It's new service.

CHAIRMAN SCALZO: That I can understand for the existing dwelling, not having fully grasped the existing dwelling would be demolished.

You mentioned services. I'm going to look to Jerry again. I look at the site plan here and I see the purported septic field and I

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see a septic tank which I looked at, lifted the lid, took a look at. There's got to be another one missing engineering wise unless this septic field is servicing both dwellings. The septic size is based on bedrooms. If that septic tank is the only one for both dwellings, then the pipe for the existing dwelling that's going to be demolished and rebuilt needs to pass underneath existing dwelling number 2. There's something missing to me.

Jerry, I don't know if that is something your group would look at.

MR. CANFIELD: Again, the initial phase of this is to determine whether these two buildings can be rebuilt. If in fact we get past that and that determination is made by your Board, then of course there would be building permits required and septic permits. There would have to be a today's standard compliant Orange County Department of Health septic system designed for both dwellings, if that answers your question.

CHAIRMAN SCALZO: I'm putting the cart before the horse. Thank you, Jerry.

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Okay. Also with existing dwelling number 2, as you look at it from the driveway it appears as though to the left-hand side there used to be a garage entrance there. Did anybody else pick that up as they were --

MR. MASTEN: Yes.

CHAIRMAN SCALZO: It appears it used to be a garage, which would lead me to believe, in seeing the finished floors in there, which aren't really finished anymore, but it appears that it used to be perhaps an accessory building, a shed. Was there a kitchen? I don't know.

Jerry, we have a magical number of 700 square feet for accessory apartments which we established at previous meetings that that would be the case. I'm looking here that they're looking for 1,200 square feet. Am I heading in the right direction, Jerry?

MR. CANFIELD: Section 185-38 deals with accessory apartments, and there is criteria for it. I believe it's a minimum 450, maximum 750. I don't believe we're at that point in this process.

CHAIRMAN SCALZO: Putting the cart

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before the horse again.

MR. DONOVAN: Although, if you click down to number 3 or 4, I believe one aspect of the application is if you have an adverse determination on the interpretation and adverse determination on the use variance, they would like to have an accessory apartment in one of the structures. Correct?

MS. WEISS: That's correct.

MR. DONOVAN: This Board would need to then, if you get to that part of the checklist, address the issue of the square footage.

I think I'm right, Jerry?

MR. CANFIELD: I don't know the square footage was the issue that was brought before you. It was the five year. In 185-38, in that criteria there's a limitation that the structure can't be less than five years old for the application for the accessory structure.

MR. DONOVAN: Correct. That is part of the application. What would occur if this Board were -- we're way premature here. If they were inclined to grant relief and it was going to be -- if we got to that stage, are both structures

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proposed to be demolished?

MS. WEISS: No. This one would be demolished. No. This one would be demolished. This one would exist. The existing one would house the accessory apartment. A new building would be built very similarly to this one, obviously up to today's standards, and there would be no accessory apartment obviously.

MR. DONOVAN: But there would be in the other one?

MS. WEISS: In the other one, yes.

MR. CANFIELD: Could you repeat that again?

MS. WEISS: Sure. So if that was the route that we wanted to go and the Board seemed more appropriate for this, we would be demolishing this dwelling and keeping this one, rehabbing it, how ever it needed to be up to code and local standards, and that would house the accessory apartment. This new building would be built sort of in the footprint. That hasn't been determined yet. That would house the principal dwelling, which is why we need the area variance from the five-year requirement, if that was the

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BRENNAN GASPARINI

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route we decided to go, because it will be newly existing and obviously not five years in existence.

MR. CANFIELD: In that scenario, we're talking about a total of three dwelling units?

MS. WEISS: No. Well, two. That would -- Brennan, do you want to have the entire second building that's existing? Is that entire building going to be just an apartment or is only a portion of it going to be an apartment?

MR. GASPARINI: The rear building will be an apartment.

CHAIRMAN SCALZO: Sir, you're actually going to need to step up to the microphone, identify yourself for our records.

MR. GASPARINI: Good evening. My name is Brennan Gasparini.

The rear building would be an apartment and the front building would be the principal dwelling. Is there anything else?

MS. WEISS: It will only be two dwellings. I didn't want to put words in the applicant's mouth.

MR. LEVIN: Mr. Gasparini, when did you

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buy this?

MR. GASPARINI: August 3, 2018.

MR. LEVIN: What was that?

MR. GASPARINI: August 3, 2018.

CHAIRMAN SCALZO: I'm going to look to the Members of the Board. Mr. Marino, any questions on this?

MR. MARINO: That was one of my questions. Were you aware of some of the problems you would be facing when you wanted to do what you wanted to do?

MR. GASPARINI: Honestly, before purchasing the property and after purchasing the property, I stopped into the Building Department during those times and asked them what I could do with the property since it was preexisting dwellings. I was told I could renovate and build on the footprint of the other. That's what made me go through with the process.

MR. MARINO: You bought it based on what you were told?

MR. GASPARINI: Yes. After sitting down in January at a meeting with Mr. Canfield, I found out it was a one-family house now.

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BRENNAN GASPARINI

28

MR. MARINO: And you bought it based on the assumption you had two dwellings there?

MR. GASPARINI: Yes.

CHAIRMAN SCALZO: Thank you. Mr. Masten?

MR. MASTEN: Not at this time, Darrin.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: The proposed garage that you have on the side, already the foundation is in there?

MR. GASPARINI: There's a foundation there. I was going to make it a little bit bigger and put a pole barn for a gym or poolroom, work on my cars, things like that.

CHAIRMAN SCALZO: It doesn't appear -- the block foundation that's semi-destroyed at this point appears to be closer to the road than your proposed garage location. It doesn't appear that the proposed garage would be where the actual foundation is.

MR. GASPARINI: Actually the foundation that's there is 14 feet in front of the principal dwelling, therefore I'll be moving it back so it would be within the setbacks.

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BRENNAN GASPARINI

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CHAIRMAN SCALZO: But the foundation does not appear on your existing survey; correct?

MR. GASPARINI: The existing survey --

MR. OLYMPIA: It's on there.

MR. GASPARINI: The very first survey. That's the plot plan. That's the recent plot plan.

MS. WEISS: There's a survey underneath that.

CHAIRMAN SCALZO: I don't recall seeing that in our -- we don't actually have that in our package. I just wanted to verify it was shown accurately on the survey.

Did you provide that too, Siobhan, as part of the application?

MS. JABLESNIK: Whatever they had given us in their application was what was provided.

MS. WEISS: We can submit to the Board if that would help make a decision.

CHAIRMAN SCALZO: It helps me understand a little better the layout of the property. Thank you very much.

Mr. McKelvey?

MR. MCKELVEY: My question was asked.

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CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: I have no questions.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: I'm good.

CHAIRMAN SCALZO: At this point I'm going to open it up to any members of the public that are here to speak about this application.

Please step forward and identify yourself, sir.

MR. REGALIA: My name is Donald Regalia, I live at 1078 Route 32 which is two houses just on the other side of Brennan's property.

He's doing whatever he can to spruce up this property. I've lived over there for twenty-two years. The people who used to own it moved out because of divorce or whatever going on. In the past I know my neighbors and myself had made complaints about that property, about having rats and stuff like that. Something has to be done about it. A good thing is Mr. Brennan bought the property and he is trying to do something with it. I think what he's doing is really good and it would make it better and safer

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BRENNAN GASPARINI

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for the community and, you know, make our home values a little more profitable.

I propose that, you know, let him do what he needs to do to get it done.

CHAIRMAN SCALZO: Thank you. Sir, just so I can understand a little better where you're located with regard to this property, are you one of the lots on Pella Court or are you actually closer to the Ulster County line?

MR. REGALIA: I'm right on the Ulster County line. I'm the second house from his property.

CHAIRMAN SCALZO: You're the 1 acre lot or the 47 acre lot?

MR. REGALIA: I'm the 1 acre lot. I'm the little guy.

CHAIRMAN SCALZO: Very good.

MR. REGALIA: That property has been in disrepair. Mr. Brennan has been making it better. I haven't seen any rodents around since he's been there. That's the best thing for me. I lost two cats so far.

CHAIRMAN SCALZO: Thank you for your comments, sir.

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MR. REGALIA: I just think, you know, in the past complaints have been made of the place being in disrepair and it is getting fixed now. Whoever had the property since then, I think there is where the problem lies. Twenty-two years have gone by and nothing has been done when there's other properties around that have been even longer, you know. Those buildings ought to be condemned and mowed down by the County, State, whoever, you know.

That's all I've got to say.

CHAIRMAN SCALZO: Thank you very much.

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

(No response.)

CHAIRMAN SCALZO: I'll turn back to the Board. Any other comments?

(No response.)

CHAIRMAN SCALZO: Okay. As I mentioned at the beginning of your presentation, because we have not heard back from the County we are prohibited from closing the public hearing.

MS. WEISS: Okay.

CHAIRMAN SCALZO: I'll look to the

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BRENNAN GASPARINI

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Board at this point to make a motion.

MR. McKELVEY: I'll make a motion to hold it off.

MR. OLYMPIA: Second.

CHAIRMAN SCALZO: I have a motion from Mr. McKelvey and a second from Mr. Olympia.

MR. DONOVAN: Just for clarification, that's to the fourth Thursday in April which is the next meeting of the Board. No mailings will be sent out. Leave the notice that's posted on the property up. This is everyone's notification this matter will be back on next month.

MS. WEISS: Thank you. I will submit a copy of that survey as well as I'm going to submit to Siobhan right now a copy of the receipts.

CHAIRMAN SCALZO: Thank you very much. We had a motion from Mr. McKelvey, a second from Mr. Olympia. Roll call from Siobhan, please.

MR. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MR. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

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MR. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MR. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MR. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MR. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MR. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing remains open until
the April meeting.

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

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 8th day of April 2019.

Michelle Conero

MICHELLE CONERO

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

----- X
In the Matter of

NORMAN BELL

319 Lakeside Road, Newburgh
Section 50; Block 1; Lot 10
R-1 Zone

----- X

Date: March 28, 2019
Time: 7:35 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman
JOHN McKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
DARRELL BELL
PETER OLYMPIA

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

APPLICANT'S REPRESENTATIVE: DONALD BERNARD

----- X

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

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NORMAN BELL

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CHAIRMAN SCALZO: Our second applicant this evening is Norman Bell, 319 Lakeside Road, seeking an area variance to increase the degree of nonconformity of the rear yard, side yard and combined yard setbacks with a minimum of 40 feet where there is an existing 19.1 feet in the front yard, a minimum of 30 feet where there is an existing 5 feet side yard, and a minimum of 80 feet where there is an existing 23.1 feet for the combined side yards. The habitable floor area proposed is 915 square feet where 1,500 square feet is required.

Siobhan, mailings?

MS. JABLESNIK: This applicant sent out thirty-six mailings. All mailings, postings and publications are in order.

CHAIRMAN SCALZO: Thank you very much.

Do we have anyone here this evening representing Mr. Bell?

MR. BERNARD: Yes. My name is Don Bernard. I have a proxy from Norman Bell. I've known Norm Bell a while. I will be the contractor also if we get this project rolling.

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NORMAN BELL

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CHAIRMAN SCALZO: Very good. I'm going to help you out. Just so I understand what's going on, currently there exists a two-story dwelling, a small footprint area?

MR. BERNARD: Yes.

CHAIRMAN SCALZO: Mr. Bell is seeking to replace it, because it's fire damaged, with a single-story dwelling?

MR. BERNARD: A single story, yes. And enclosing a portion of the porch, which is the close side of the property line, to make a second bedroom. There's a covered porch on the existing property and he's going to enclose half of that to make a bedroom on the first floor.

CHAIRMAN SCALZO: Okay. While I'm digging up some of the information I'm going to look to the Board for comments. I'll start with Mr. Bell.

MR. BELL: So the front porch area is going to be enclosed for the bedroom?

MR. BERNARD: Yes, for a bedroom.

MR. BELL: Okay.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: The footprint is

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NORMAN BELL

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essentially --

MR. BERNARD: The footprint is going to stay exactly where it is.

MR. OLYMPIA: Thank you.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: That was my question, too.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: You beat me.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: No.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: I have no questions. I called Mr. Bell. I didn't realize he was in Florida. We had a discussion about the property then.

CHAIRMAN SCALZO: I myself have no comments.

We actually did a -- the adjoining neighbor, Hendrickson, had been before us a few years back for variances as well. Boy, oh boy, it's interesting to see what we allow in variances up there.

MR. BERNARD: Yeah.

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NORMAN BELL

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CHAIRMAN SCALZO: Okay. At this point I'm going to open it up to any members --

MR. BERNARD: Did you receive the letter from the neighbor that's closest to where the property -- the bedroom is going to be? Did you get that?

MS. JABLESNIK: It's in your pile of stuff.

CHAIRMAN SCALZO: Very good. If it's in the package it's part of the records.

MR. BERNARD: She approved and basically said she did not have a problem with it.

CHAIRMAN SCALZO: She concurred with your building.

MR. BERNARD: Okay.

MR. McKELVEY: The problem there is everything is close together anyhow.

MR. BERNARD: Yeah. I mean you asked for 80 foot wide. The whole lot is not 80 feet wide.

CHAIRMAN SCALZO: Very good. Okay. At this point I'm going to open it up to any members of the public that wish to speak about this

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NORMAN BELL

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application.

Sir, please identify yourself for the record.

MR. TOPOROWSKI: Good evening. John Toporowski, I live at 318, across the street from Mr. Bell and his wife Gladys. I just want to say for the record that the reason they went with such a low square footage is because they're both in their eighties and the stairs would be too much for them. A single story is what he's looking to do on the same footprint, like his builder said. These are houses that are old cottages, been on Orange Lake for a hundred years. My house is 1929. Back in those days they were close together. They don't fit in today's planning and zoning, but there are variances that have been granted by this Board to a lot of those buildings on the lake.

Mr. Bell has been in that community, that house has been in his family for probably over a hundred years. They owned quite a bit of the property years ago. Him and his wife are both upstanding citizens. I think it should be granted, the variances he needs.

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NORMAN BELL

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CHAIRMAN SCALZO: Thank you very much.

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

Please state your name for the record.

MR. LANGER: I'm Greg Langer, president of the Orange Lake Civic Association. I think we sent a letter to the Board.

CHAIRMAN SCALZO: I did receive a letter. It was forwarded to Siobhan as well as myself. We also got a lot of the that-a-boys from everybody that likes to respond to all of those.

MR. LANGER: Sorry about that.

Mr. Bell went through the process and came to the board and reviewed his plans. We discussed it with the neighbors. Everybody is fine with it. We support it. That's basically all I need to say about it.

CHAIRMAN SCALZO: You have no objections is what you're saying?

MR. LANGER: I have no objections.

CHAIRMAN SCALZO: Thank you very much.

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

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NORMAN BELL

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MR. HARRIS: My name is Robert Harris, I live at 316 Lakeside Road, just down from the Bell property.

I mean Norman is a fixture of the community. It sounds like he just wants to use the place now in the summertime, you know. He's not a year-round resident. He's down in Florida now.

As everybody knows, the lots back then, they don't conform to anything in today's, you know, zoning.

I think he should be granted the variance, you know, to put the small house up.

CHAIRMAN SCALZO: Thank you for your comments.

I will state for the record we have received information from the Orange Lake Homeowners Association and their recommendations on it, however our zoning is our zoning. We are not bound by their recommendations. The code is the code.

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

(No response.)

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NORMAN BELL

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CHAIRMAN SCALZO: Hearing none, I'll
turn to the Board for one more opportunity. Mr.
Bell?

MR. BELL: I'm good.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: No.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: No.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: I'm good.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: No.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: No.

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

MR. MASTEN: I'll make a motion.

MR. BELL: Second.

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

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

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NORMAN BELL

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MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed. We will do our best to render a determination by the end of the meeting tonight but we have up to sixty-two days if we can't.

(Time noted: 7:44 p.m.)

(Time resumed: 8:33 p.m.)

CHAIRMAN SCALZO: I'm going to call the meeting back to order.

At this point the applicant we're looking at is Norman Bell, 319 Lakeside Road, seeking an area variance to increase the degree of nonconformity of the rear yard, side yard and combined yard setbacks with a minimum of 40 feet

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NORMAN BELL

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where there's an existing 19.1 in the front yard, a minimum of 30 where there's an existing 5 on the side yard, a minimum of 80 where there's an existing 23.1. The habitable floor area is 915 square feet where 1,500 is required.

I'm going to roll through the area variance questions to be completed, however this is a Type 2 action under SEQRA.

MR. DONOVAN: That is correct.

CHAIRMAN SCALZO: We're going to go through the area variance criteria and discuss the five factors that we're weighing.

The first one, whether or not the benefit can be achieved by other means feasible to the applicant. As we all noticed, this is a replacement of a burned out building. I don't think we're looking at anything there. Actually, it's better. It's lower and smaller.

Second, if there's an undesirable change in the neighborhood character or a detriment to nearby properties. I don't see it here. It's on the same footprint.

The third, whether the request is substantial. Again, it's on the same footprint,

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NORMAN BELL

47

lower than before. I don't see it either.

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

MR. MASTEN: No.

MR. MARINO: No.

MR. McKELVEY: No.

CHAIRMAN SCALZO: It's a replacement.

Fifth, whether the alleged difficulty is self-created, relevant but not determinative. I'm sure they didn't plan on having a fire.

At this point I'm going to look for any final discussion from the Board?

(No response.)

CHAIRMAN SCALZO: At this point I'll look to the pleasure of the Board. Does anybody want to move --

MR. OLYMPIA: I'll move.

MR. MASTEN: I'll second.

CHAIRMAN SCALZO: We have a move for approval from Mr. Olympia. We have a second from Mr. Masten. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

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NORMAN BELL

48

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Motion carried. The variances are approved.

MR. BERNARD: What's the next step? Do we pick it up tonight?

CHAIRMAN SCALZO: You can't pick it up tonight. It has to be prepared, reviewed, signed.

Jerry, do you need my decision signed to act or to allow them to --

MR. CANFIELD: We can proceed with the permit.

CHAIRMAN SCALZO: Go see Mr. Canfield.

MR. CANFIELD: Stop over to the office

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NORMAN BELL

for the permit to be issued.

MR. BERNARD: Thank you very much.

(Time noted: 8:37 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 8th day of April 2019.

Michelle Conero

MICHELLE CONERO

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

----- X
In the Matter of

RICHARD ALLEN MONKS

4 Novelty Way, Walden
Section 11; Block 1; Lot 114.4
AR Zone

----- X

Date: March 28, 2019
Time: 7:45 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman
JOHN McKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
DARRELL BELL
PETER OLYMPIA

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

APPLICANT'S REPRESENTATIVE: RICHARD ALLEN MONKS

----- X

MICHELLE L. CONERO
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CHAIRMAN SCALZO: Our next applicant this evening is Richard Allen Monks, 4 Novelty Way in Walden, seeking an area variance to build an intermediate deck that connects the house deck to the pool deck with a 12 foot side yard setback where 30 feet is required.

Siobhan, mailings?

MS. JABLESNIK: This applicant sent out twenty-seven mailings. The application also went to the County. We have not received anything back from them yet.

CHAIRMAN SCALZO: Is that for Route 300?

MS. JABLESNIK: Yes. It's right behind them.

CHAIRMAN SCALZO: Just the 500 feet?

MS. JABLESNIK: Yes.

CHAIRMAN SCALZO: I don't know if you heard what I had said to one of the earlier applicants. Because we have not heard back from the County, that prevents us from rendering a decision this evening. We have all visited the properties and we can certainly ask any questions

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this evening we may have of you, and the members of the public are also allowed to ask.

If you could state your name and tell us what you're trying to do.

MR. MONKS: My name is Richard Allen Monks. I go by Allen. My wife Deb and I bought this property on Novelty Way two years ago. Last year we got a permit to put a pool up with a deck around part of the pool. We were kind of obsessed with the placing of the deck and the pool because of the proximity of the property line. As construction got going, we realized that there was no way to connect the deck that we were building to the existing deck on the house. We found out that the house has -- there has to be a setback of 50 feet from the property line. We presumed erroneously that that 50 feet was the house and not the corner of the existing deck which is only 44 feet from the property line.

CHAIRMAN SCALZO: Which is connected to your house?

MR. MONKS: Which is connected to our house. There's the conundrum.

So what we're asking for is a variance

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RICHARD ALLEN MONKS

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to connect the pool deck that is under construction, now that we have a permit, to the house deck so we can make them one continuous, contiguous nice place.

CHAIRMAN SCALZO: Thank you.

MR. MONKS: That's it.

CHAIRMAN SCALZO: As I say, we've all visited the site and know exactly what you're trying to do. I personally have no comments. It makes a lot of sense to me.

I'm going to look to the Members of the Board. I'll start at the other end there. Mr. Marino?

MR. MARINO: No questions.

MR. MASTEN: No questions.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: Is that a permanent pool there?

MR. MONKS: No. It's above ground.

MR. LEVIN: You didn't think about moving the pool closer to the house?

MR. MONKS: I think we got into the problem with the pool was too close to the house and we moved it the other way. The property is

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almost a full acre but the house -- as you saw, the house sits way back on the property, and of course at the time people were worried about the 50 foot setbacks.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. McKELVEY: No.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: No.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: No.

CHAIRMAN SCALZO: As I mentioned, we're prevented from closing the public hearing because we have not heard back from the County. If we haven't heard back from them for the next meeting, their time has run out, so we can certainly wrap this up at the next meeting.

MR. MONKS: Understood.

CHAIRMAN SCALZO: Thank you very much.

I'll look to the Board for --

MR. DONOVAN: Did you ask the public?

CHAIRMAN SCALZO: I'm sorry. I'll open this to any members of the public that wish to speak about this application.

(No response.)

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CHAIRMAN SCALZO: I must be psychic.

Now I'll look to the Board for a recommendation.

MR. DONOVAN: We're waiting for the County so we need to continue.

CHAIRMAN SCALZO: A recommendation to hold the public hearing open.

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

MR. McKELVEY: I'll second that.

CHAIRMAN SCALZO: A motion from Mr. Levin, a second from Mr. McKelvey. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

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MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing remains open. No one else will be noticed. This is your notice here. No other future mailings are required, however you are required to keep the posting up in front of your property. See you next month.

MR. MONKS: Thank you very much.

(Time noted: 7:50 p.m.)

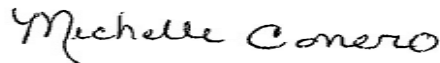
C E R T I F I C A T I O N

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of April 2019.



MICHELLE CONERO

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

----- X
In the Matter of

DP66, LLC

14 Crossroads Court, Newburgh
Section 95; Block 1; Lot 74
IB Zone

----- X

Date: March 28, 2019
Time: 7:50 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman
JOHN McKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
DARRELL BELL
PETER OLYMPIA

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

APPLICANT'S REPRESENTATIVE: NANCY FORREST
SANTOS LOPEZ

----- X

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

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DP66, LLC

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CHAIRMAN SCALZO: Our next applicant this evening is DP66, LLC, 14 Crossroads Court, Newburgh, seeking an area variance to keep the window graphics that were installed without permit, an existing 855.7 square feet where 309.2 square feet is the maximum allowed.

Siobhan, mailings?

MS. JABLESNIK: This applicant sent out ten letters. They also went to the County and there's nothing back.

CHAIRMAN SCALZO: So this one also needs to remain open.

MS. JABLESNIK: Also.

CHAIRMAN SCALZO: We're going to have a busy month of April.

If you could just state your name and state your case and we'll go from there.

MS. FORREST: My name is Nancy Forrest and I'm with GNS Group. I'm here to represent for 14 Crossroads Court.

For the record, I did not install the window signage but I have been retained to work with them because I have done other work for

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them.

If I could, first I would like to explain the additional square footage I find questionable based on the ordinance because -- can I hand these out to you?

CHAIRMAN SCALZO: Absolutely.

Siobhan, please hold on to one for our records.

MS. FORREST: The reason I printed these out, on the first page is where you compute your -- how you figure sign area. If you look through that you'll see everything that is mentioned, wall signs, free-standing signs, three-dimensional signs, marquee signs. Everything is there. The second page is the section of your ordinance for windows which only has two items on there stating that only 25 percent of the window can be covered based on the square footage of that particular window, and then it has the lighting.

So based on the drawings that you have, in actuality using that 25 percent, both of those window vinyls are less than 25 percent.

The large front entrance, the actual

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sign is 506 square feet where 606 should be allowed if we calculate 25 percent of the square footage because the window is 22,424 in glass.

The side one, the sign is 394 square feet and the square footage of the window is 2,699.

I think that's where the confusion came in when the original person who did it calculated what would be allowed in the windows. I understand they did not get a permit. I wanted to kind of let the Board look at that as well because that's how it was done.

Second, there are a couple things I want to mention to the Board. Removing that vinyl not only is a huge job but may also create issues. Second, even if it is possible to get it removed, you're still going to see them almost like you're seeing them now because they've been up so many years and you have the faded -- the fade of -- when vinyl is up for that long on a window, and this is the shaded windows, there's a very good possibility that you're still going to see it because of the difference in the glass and where the vinyl had been applied for so many

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DP66, LLC

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years. It may not be as smooth and even when it comes off. Some might be -- parts might be a little darker than others. It pretty much might look almost the same as it is.

The ordinance the way it's written is really what I'm thinking I'm not sure why it needed a variance in the first place.

CHAIRMAN SCALZO: Did you hand these to Jerry as well?

Jerry, have you seen these?

MS. FORREST: I have one more.

CHAIRMAN SCALZO: If you can hand that to Jerry, please.

MR. OLYMPIA: Can I ask a question? As a matter of semantics, when they talk about 25 percent of window area, are they talking about cumulative window area? There are multi windows here, and panes. Are they talking about one window?

CHAIRMAN SCALZO: That's why we have Jerry.

MS. FORREST: I think it says of the window area.

MR. CANFIELD: If I can back up a

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little bit. I'm a little bit confused by your presentation. As I understand this, this signage was installed many years ago --

MS. FORREST: Quite a few.

MR. CANFIELD: -- when Orange County Choppers was built.

MS. FORREST: Correct.

MR. CANFIELD: At that time the signage was installed without a permit.

MS. FORREST: Yes, I understand that.

MR. CANFIELD: After a period of time we finally got the applicant to come before this Board, which they did back in 2012 for the exact same square footage that you're looking for.

MS. FORREST: Right.

MR. CANFIELD: That application was denied.

MS. FORREST: Right.

MR. CANFIELD: What confuses me is what's changed from 2012 until now, the Town has updated it's signage ordinance and become more definitive and more receptive to commercial needs in signage.

MS. FORREST: Right.

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MR. CANFIELD: But the signage on the building and the dimensions have not changed.

MS. FORREST: Right.

MR. CANFIELD: Okay. So you're here tonight based on your application of the new signage ordinance? Is that why you're here now?

MS. FORREST: Yes. What you have in there now, I don't think -- I think it's always been 25 percent for the window.

MR. CANFIELD: The glazing area was not included in the original. The original signage ordinance was based on linear footage of the frontage for the lot.

MS. FORREST: Right. For everything.

MR. CANFIELD: It was 50 percent of the linear footage. At that time the signage well exceeded what was allowable.

MS. FORREST: You're talking the window signage?

MR. CANFIELD: Correct. Everything. With what was presented at that time using those numbers moving forward to today, Mr. Metina has done his calculations, and that's what's before you. We're still way over what is the

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permissible --

MS. FORREST: So you're counting the building sign, the window signs the pylon sign?

MR. CANFIELD: Per the ordinance.

MS. FORREST: I tried discussing it with Joe and I caught him on a busy day. I was going with just window square footage.

MR. CANFIELD: No. The 25 percent of window square footage is a cumulative number of the total signage that's allowed for the site. So with that --

MS. FORREST: So that's part of that but it can still not exceed 25 percent of the window space?

MR. CANFIELD: That's correct. It's cumulative.

MS. FORREST: Right.

MR. CANFIELD: You're allowed 1.5 square foot of signage for every 1 linear foot of building. That's the way the new ordinance is written. Included in that is 25 percent of the glazed areas.

MS. FORREST: Okay. When I got all the things back from Joe I don't think I picked up on

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that. I just had the one sheet of paper saying that we were 800 and some square feet over. He's talking about cumulative, all the signs together?

MR. CANFIELD: Correct.

MS. FORREST: The one that had been on the road, and the one on the building, and the window signage?

MR. CANFIELD: That's correct.

I believe what's before you is essentially the same application for the same square footage based on the new signage ordinance.

MS. FORREST: Okay. It was just numbers, 800 some square feet. I was just associating it with the window.

MR. DONOVAN: It looks a little different. Not dramatically different but a little different. It looks like the variance that the Board denied back in 2012 looked for a total of -- the applicant looked for a total of 1,210 square feet where at the time only 75.79 was permitted, if I'm reading that correctly Jerry. Now there's apparently 855.7 existing whereas the maximum allowed is 309.2, looking at

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DP66, LLC

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a variance for 546 square feet -- 546.5 square feet or about 177 percent over, as opposed to under the old code it was about 1,500 percent.

Do I have that right, Jerry.

MR. CANFIELD: Yes. According to the variance numbers, correct, and what Joe has calculated. So there has been a change. I misspoke. It appears that there's been a reduction in the signage. Originally proposed was the 1,210 square foot and now proposed is the 855. So at some point in four years or five years time they lost --

MS. FORREST: Some building signage I believe.

MR. CANFIELD: -- some signage somewhere.

MS. FORREST: Also for the record, there are lit signs that you can see outside the building. They're not in the window but they're within the window. They come out. They have agreed to get rid of those so that they wouldn't be a part of it as well.

CHAIRMAN SCALZO: Thank you.

Jerry, did you get a look at this, what

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DP66, LLC

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was just handed over?

MR. CANFIELD: I did. I've got to be honest with you, I don't find it acceptable. There's no code reference. What is it? Where is it from?

MS. FORREST: That's yours.

MR. CANFIELD: There's no code reference. This appears to be retyped from something.

MS. FORREST: I just printed it off your ordinance on E-Code 360.

MR. DONOVAN: You having done this before, I'm not saying this is what happened, if you go into -- if you access the code by E-Code, you've got to copy and paste. It shows up like that.

MR. CANFIELD: If you copy and paste. Okay. What you're missing is the preface to this.

MS. FORREST: 18-14.

MR. CANFIELD: It's got to be 185 something.

MS. FORREST: I know it's on the written application for the Zoning Board.

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CHAIRMAN SCALZO: Signage has always been something that baffles me. On the first sheet, sign measurement letter B with the etching, the applicant directed us to the second sheet. Why wouldn't this fit letter B of number 1 if it's when sign is on base material and attached without a frame, such as wood or a Plexiglass panel, the dimensions of the base material would be used unless part of the base contains no sign. I don't understand why that wouldn't apply here.

MR. CANFIELD: I'm confused on what your question is.

CHAIRMAN SCALZO: You directed us to the second sheet. The way I interpret this is it actually could fit the first sheet, letter B.

MS. FORREST: But it doesn't state windows. If you see on the first sheet, it's telling you if it's a free-standing sign this is how you compute it, if it's a three-dimensional this is how you compute it, if it's a wall sign this is how you compute it. I would prefer that it did have if it's a window sign this is how we compute it. That was prior to you explaining

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that those numbers that I was just giving is being over by X amount of hundred square feet. I was associating that with just a window because it wasn't broken down on the paperwork that I got back. It was just this is what you're looking for. That was my fault.

CHAIRMAN SCALZO: Jerry, again if you could just educate me on this. I'm going to look at the one photo here. The inside of the first C on OCC, the clear glass portion of that, is that part of the calculation or is it just the etching portion that we're calculating?

MR. CANFIELD: The way you calculate symbols and letters and numbers like this is you square them off. To answer your question; yes, the interior part --

CHAIRMAN SCALZO: The interior is included?

MR. CANFIELD: -- is included. Yes.

CHAIRMAN SCALZO: Even though it's completely transparent?

MR. CANFIELD: Right.

CHAIRMAN SCALZO: Thank you. Like I say --

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MS. FORREST: That's why I wanted it like on the first page, because it just has separate for the window 25 percent of. If that was on that first page it would be clearer to everyone involved that for window signage, again squared off top to bottom, side to side, because like he said the center of it comes up and then I have tons of square footage that has nothing. I have to square it off and I didn't know that because of the way it's separated.

MR. CANFIELD: Just a point of interest. The verbiage of the way these codes are written is not the purview of this Board. That would be the Town Board. If you have a suggestion for them to amend, an amendment to a code, it would go before the Town Board.

MS. FORREST: I know it now.

MR. DONOVAN: You stated before you weren't involved. I guess the answer to that question is if you get a permit, then you're always going to know that answer.

MS. FORREST: I've been doing permits in Newburgh for forty-three years. I always do my permits, always. I've been through a lot of

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DP66, LLC

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boards and inspectors.

CHAIRMAN SCALZO: Thank you.

At this point I'm going to turn to the Board --

MS. FORREST: I have someone else that would like to speak.

MR. LOPEZ: My name is Santos Lopez, vice president of marketing for Orange County Choppers. I wasn't around for the install of the signs. I actually joined the team about a year ago to rebuild the brand globally.

I want to submit our reasons why we want to keep the signage.

CHAIRMAN SCALZO: Please pass them out.

MR. LOPEZ: One of the reasons we would like to keep the sign is because the signs have been around for awhile. For us it's not just a sign, it's actually a work of art. It's recognized globally, 182 countries. The TV show returned last year. That was one of the reasons for my job, it's to bring the brand back. It's also a tourist attraction. It's also represents America. As a former Navy foreman myself, years ago when I was active duty that was part of home

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as well. That isn't just a sign. To us it's a work of art and home.

Part of what I do is to rebuild the brand, the American brand. When you look at the American persona globally, the biker persona is part of who we are. The two brands that most people think about globally is Harley Davidson and Orange County Choppers.

We're here to support not just the U.S. but also Orange County. We'd like to keep our building here, continue what we do and help build the American brand. If we can keep the sign it would be great. That's what we'd like to do. It's not only just a sign to us, it's a work of art. It's also followed by millions of people globally. We have, like I said, 182 countries. Discovery Channel has 38 million followers in the U.S., 8 million in Europe, 4 million in Australia and I think 7 million in Asia. That's how many people are recognizing Orange County Choppers, Orange County and the United States. We're not just a sign, I think we're part of America. If we can keep the sign, that would be great.

CHAIRMAN SCALZO: Thank you for your

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DP66, LLC

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comments.

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

(No response.)

CHAIRMAN SCALZO: Hearing none, I'll look to the Board for one more go.

Mr. Bell?

MR. BELL: I'm good.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: I'm fine.

Thank you for your service.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: No.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: I'm fine.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: Not right now.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: I'm good.

CHAIRMAN SCALZO: At this point, as we can not close the public hearing because we have not heard back from the County, I'll look to the Board for a motion to keep the public hearing open until April.

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MR. MASTEN: I'll make the motion.

MR. BELL: I'll second it.

CHAIRMAN SCALZO: Motion from Mr. Masten, second from Mr. Bell. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing remains open until the April meeting. No one will be re-noticed. See you back here in a month.

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

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 8th day of April 2019.

Michelle Conero

MICHELLE CONERO

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

----- X
In the Matter of

HUDSON LAND DESIGN
SHAWN JACKSON

317 North Plank Road, Newburgh
Section 35; Block 3; Lots 6 & 7
B Zone

----- X

Date: March 28, 2019
Time: 8:06 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman
JOHN McKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
DARRELL BELL
PETER OLYMPIA

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

APPLICANT'S REPRESENTATIVE: ADAM GASPARRE

----- X

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

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CHAIRMAN SCALZO: Moving on to what was left open from the February 28th meeting. We have Rona Chambers, 16 Odell Circle. The public hearing for that is closed. We will not be entertaining any comments this evening. I received some information from legal counsel which I will share with you during our time discussing any legal questions that we have.

I'm going to move on in this case to --

MR. DONOVAN: We generally do it after the public hearings. You're the Chairman.

CHAIRMAN SCALZO: Hudson Land Design remained open. We could not vote on it because we hadn't heard back. In this case we have.

The next application would be for Shawn Jackson, Hudson Land Design, 317 North Plank Road, seeking an area variance allowing a front yard setback of 10.1 where 60 is required and a side yard of 10.1 where 15 is required.

We had a presentation last month. We could not close the public hearing due to not hearing back from the County.

You do not look like the gentleman that represented the project last month, so please

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introduce yourself. If you want to go through a brief overview.

MR. GASPARRE: Yes, sir. I'm Adam Gasparre, Hudson Land Design on behalf of the applicant, Mr. Shawn Jackson.

Mr. Jackson is proposing to consolidate parcel 35-3-6 and 35-3-7 into one parcel and repurpose the existing structure into an office building for his contracting company.

We appeared before the January Planning Board, they referred us to you, to this Board. Mr. Michael Bodendorf was here last month. Obviously it was carried over to this month.

The parcel is proposed to be serviced by water and a private sewage disposal system.

There will be a minor commercial entrance installed with appropriate parking. We are currently in conversation with the New York State Department of Transportation since it is on North Plank Road. We are trying to get a meeting with them to nail down their requirements for the actual entrance.

CHAIRMAN SCALZO: Very good. Thank you very much. It's very similar in nature to the

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presentation we had last month.

Since that time we have received notification from the County which was a Local determination. I believe all of our questions were answered in the last meeting.

At this point we'll open it to any members of the public that wish to speak about this application.

(No response.)

CHAIRMAN SCALZO: Hearing none, I'll look to the Board for a final shot at any questions. Mr. Marino?

MR. MARINO: No.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: No.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: No.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: No.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: No.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: No.

CHAIRMAN SCALZO: Hearing none, I'll

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look for a motion to close the public hearing.

MR. McKELVEY: I'll make that motion.

MR. MASTEN: I'll second it.

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

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

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

MR. GASPARRE: Thank you.

CHAIRMAN SCALZO: That's going to

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conclude what we have as far as the public hearing section.

At this point, before proceeding, the Board will take a short adjournment to confer with counsel regarding legal questions raised by tonight's and last month's applications. If I can ask, in the interest of time, if you could wait in the hallway and we will call you in very shortly.

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

(Time resumed: 8:55 p.m.)

CHAIRMAN SCALZO: Moving on to Hudson Land Design, Shawn Jackson. The applicant is seeking an area variance allowing a front yard setback of 10.1 feet where 60 feet is required and a side yard setback of 10.1 where 15 feet is required.

Dave, this is a Type 2 action under SEQRA?

MR. DONOVAN: Yes, it is.

CHAIRMAN SCALZO: We'll go through the area variance criteria and discuss the five factors we are weighing.

The first one being whether or not the

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benefit can be achieved by other means feasible to the applicant. It's a pre-existing nonconforming as far as I can see.

MR. MARINO: Yes.

MR. MASTEN: Yes.

CHAIRMAN SCALZO: Second, if there's an undesirable change to the neighborhood character or detriment to nearby properties. Nothing is changing regarding the footprint or the layout. I don't see it.

Third, whether the request is substantial. I don't believe so.

Fourth, whether the request will have adverse physical or environmental affects. There's no change for the variances being requested.

Fifth, whether the alleged difficulty is self-created. This is relevant but not determinative. It's pre-existing nonconforming. I don't know how we can say it's self-created. The building predates zoning I assume.

MR. CANFIELD: Yes.

CHAIRMAN SCALZO: So that being said, I'll look to the Board.

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

MR. BELL: Second.

CHAIRMAN SCALZO: We have a motion to
approve by Mr. Levin. I heard Mr. Bell second.
Roll call please.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Motion carried. The variances are
approved.

MR. GASPARRE: I'd like to thank the
Board for their time and Ms. Siobhan for the

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help, helping me get all the applications together correctly. She was very patient.

Thank you.

(Time noted: 8:59 p.m.)

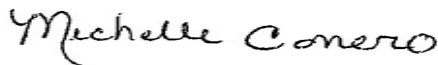
C E R T I F I C A T I O N

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of April 2019.



MICHELLE CONERO

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

----- X
In the Matter of

RONA CHAMBERS

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

----- X

Date: March 28, 2019
Time: 8:38 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman
JOHN McKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
DARRELL BELL
PETER OLYMPIA

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

APPLICANT'S REPRESENTATIVE: RONA CHAMBERS

----- X

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

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CHAIRMAN SCALZO: Now we're going to go to the held-overs from 2/28. Rona Chambers, 16 Odell Circle in Newburgh, seeking an area variance to rebuild the front porch and a second story addition, raise the roof line and rebuild the decks and pergolas, requires a front yard minimum setback of 50 where 25.4 is proposed, one side yard minimum setback of 30 feet where 1.5 is proposed, combined side yard 80 feet where 12 is proposed, and a rear yard of 40 where 0 is proposed. The maximum building lot coverage is 10 percent where 45 percent is proposed. The maximum surface lot coverage of 20 percent where 54 percent is proposed.

This is also a Type 2 action under SEQRA; correct, Dave?

MR. DONOVAN: That is correct.

CHAIRMAN SCALZO: Thank you very much. We're going to go through the area variance criteria and discuss the five factors.

The first one, whether or not the benefit can be achieved by other means feasible to the applicant. Now, we had delayed this determination for legal counsel and I with regard

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to historical things that have gone on. I visited the site again, myself as well as Mr. Masten did.

Some of the observations here. As the application is in front of us, I'm not sure that it meets what we're looking for. If the benefit can be achieved by other means feasible to the applicant, I would say yes, there are other means feasible to the applicant. Now, again I visited the site.

Gentlemen, please jump in when you have any opinions on this.

My observations were, looking at the plans, if the upper deck off the second floor was not a consideration here, the second story going straight up from the first floor as it sits now, my opinion is that's a benefit that would suit what we're looking to do here, or what the applicant is looking to do here. It may not be exactly as the application sits before us but that's my take on it.

Another issue that I observed when I was out there, and it had been discussed in our meeting, and actually in my opinion it had been

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omitted in the meeting, the value of bringing that deck that overhangs the lake back to the concrete retaining wall. That is going to be a benefit to the viewshed of the adjoining properties.

The other thing that I observed while I was there yesterday is that none of the other contiguous properties or ones one removed from there had second floor decks.

So as I look at this, if I'm reading factor number 1, the first one being whether or not the benefit can be achieved by other means feasible to the applicant, my opinion is it can. If we were to allow the structure to remain exactly where it is but not allow the deck that overhangs from the second floor, I believe we have something here.

Discussion? Mr. Marino, do you have any comments on that?

MR. MARINO: No. I'm thinking on it.

CHAIRMAN SCALZO: I'm going to come back to you. That's fine.

Mr. Masten?

MR. MASTEN: I have nothing.

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CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: I think it makes sense.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: I'm fine with that.

CHAIRMAN SCALZO: Let's exchange ideas,
folks.

Mr. Bell?

MR. BELL: Does it have to be 5 feet?
Could it be 3?

CHAIRMAN SCALZO: Now we're looking at
voting on the application as it sits. I don't
want to modify it that way. It's either in or
out.

MR. BELL: I got you.

MR. DONOVAN: If I can, while the Board
is deliberating, as you all know the Board is
guided by the balancing test that's set forth in
Section 267(b) of the New York State Town Law.
You started to go through that balancing test.

One of the items that the Board also
should bear in mind, and I'll just cite 267(b)
Subdivision 3(c) of the New York State Town Law
provides that the Board of Appeals, in granting
area variances, shall grant the minimum variance

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that they shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community. Subdivision 4 indicates that you also have the ability to impose conditions so long as they are directly related to and incidental to the proposed use of the property. So what that means is you do have, under appropriate circumstances, if you determine that the variance being requested is not the minimum variance that you deem necessary to protect the character of the neighborhood, you can modify the variance application to that extent by imposing a condition that something be removed or minimized. I just want to make that clear.

CHAIRMAN SCALZO: Thank you, Dave.

MR. BELL: I'm good.

CHAIRMAN SCALZO: Mr. Marino, I don't want to put you on the spot. You asked for a couple minutes. Do you have any other discussion?

MR. MARINO: Not yet. No, I don't.

CHAIRMAN SCALZO: I can come back.

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The second is if there's an undesirable change in the neighborhood character or a detriment to nearby properties. Well, of course that's also a subjective question. In this case I'll reiterate that I was out there yesterday. The parcel, the applicant that we're discussing here, is the furthest away from the lake. When I stand -- I stood with my back to the wall, I looked to my left, everything else was forward. I looked to my right, everything else was forward.

Regarding that, I don't believe there's an undesirable change at that point because we have the one story is existing.

MR. LEVIN: I agree.

CHAIRMAN SCALZO: I'm not trying to convince you gentlemen. What I'm trying to do is exchange ideas and hear your opinions.

MR. LEVIN: I agree.

CHAIRMAN SCALZO: Okay. The third is whether the request is substantial. Well, the request is substantial.

MR. LEVIN: Absolutely.

CHAIRMAN SCALZO: However, every

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variance application that we have had in this string of homes according to our code and the setbacks has been substantial. If we are to be consistent amongst ourselves and the variances that we have granted through this area, we're still there.

Any comments?

MR. BELL: That's good.

MR. MARINO: I agree.

CHAIRMAN SCALZO: Dave? I don't know that I'm stepping out of line at this point.

MR. DONOVAN: You are going through the factors required by law. I don't know whether any other Board Member concurs, disagrees or has an opinion but --

CHAIRMAN SCALZO: Okay.

MR. DONOVAN: It's not a wedding. You're going to get pretty soon to forever hold your peace. If you have anything to say, now is the time to say it.

CHAIRMAN SCALZO: I want to exchange ideas with the fellow Members of the Board so we can put this to bed.

The fourth is whether the request will

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have adverse physical and environmental affects. With the footprint going straight up, I'm not seeing that. What I would consider to be an environmental affect would be the removal of those trees. I think that would be a detriment. I think that would be -- I don't agree with the removal of those mature trees. That is my own opinion.

Please, you know, Tony, Dave, Richard.

MR. LEVIN: I agree.

MR. MASTEN: I agree.

MR. MARINO: Those trees have been there for ages.

CHAIRMAN SCALZO: It has been offered to us through the applicant's representative that there was an offer to remove those. Should we get to the point where we're voting on this, I'm not inclined to make that a condition of whatever our determination is.

MR. BELL: Okay. Agreed.

CHAIRMAN SCALZO: However, anybody can say anything they want to me.

The fifth, whether the alleged difficulty is self-created. This is relevant but

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RONA CHAMBERS

94

not determinative. Certainly it is self-created, but every other variance on this string of homes has been self-created.

Just so I'm clear on what we have heard from the design professional representing this, the offer was to remove the gables, the two false gables, so as you look to the house you're looking at a gable, you're not looking at a billboard type -- you're not looking at the shingles, you're looking at the gable. So that's one of the concessions that I recall. They did lower the roof line.

Please help me out, gentlemen. Is there anything else I missed that is part of this?

MR. DONOVAN: Do you want to ask and confirm that with Ms. Chambers?

CHAIRMAN SCALZO: Ms. Chambers, although the public hearing is closed, could you confirm what I just reiterated as far as the concessions that were offered --

MS. CHAMBERS: You are correct.

CHAIRMAN SCALZO: -- with regard to lowering the house?

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MS. CHAMBERS: Yup.

CHAIRMAN SCALZO: As well as the gable ends -- the false gables being removed? As you look at the house from Odell you would be looking at a gable end?

MS. CHAMBERS: Correct.

CHAIRMAN SCALZO: I've read them all.

MR. DONOVAN: The Board has now gone through the five factors. If anybody has anything to say, they can do that. What would be appropriate now, should the Board be so inclined, is a motion. That motion could be to grant the application as submitted, it could be to deny the application as submitted, or it could be to approve the application with appropriate conditions as authorized by law that would reflect the minimum variance that you deem necessary and adequate to preserve and protect the character of the neighborhood. I can only tell you what you can do, I can't tell you what to do.

CHAIRMAN SCALZO: So I will look to the Board because I'm not the guy to make the motions. I'll look to the Board. Does anyone

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want to put that into words, whether we are voting on the application as submitted or are we voting on the application as modified as we just discussed? I'm looking to you, gentlemen.

MR. OLYMPIA: I'll move we accept the application as amended.

CHAIRMAN SCALZO: As amended?

MR. OLYMPIA: As amended.

MR. MASTEN: I'll second that.

MR. DONOVAN: Just clarify as amended --

MR. OLYMPIA: As amended removing the upper deck --

MR. DONOVAN: The modifications.

MR. OLYMPIA: The modifications that were discussed.

We don't have any new set of plans, do we?

CHAIRMAN SCALZO: We do not have a new set of plans to verify that. However, Mr. Canfield, should it come to a vote which is approved, you would expect that the plans that would be approved for building would be the ones modified as we are discussing this evening?

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MR. CANFIELD: What I would suggest is if that's the route the Board chooses to go, once I did receive modified plans I would submit them to the Board for their review prior to issuance of a permit to make sure that it is what you think you're getting or what you're approving.

MR. OLYMPIA: Can we just defer to the Chairman, let him take a look at the plans rather than reconvening the Board again?

MR. DONOVAN: So I think if the Board is so inclined, subject to submittal of plans as described tonight and as represented in a prior public hearing, if Code Compliance has any issue with that, because this has happened before where a general standard condition of approval is that the Board is approving what's been submitted only and any deviations from that need to come back to the Board. So it would be appropriate for Code Compliance to certainly confer with the Chair, but if you had any questions at all, not only do you have the right, you have the obligation to bring it back to the Board. That's happened in the past.

MR. CANFIELD: Right. I would feel

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more comfortable -- I agree with what you're saying, Dave. I would feel more comfortable that the Chair have the opportunity to examine it. If by chance there's something that's on the plan that you did not agree to or think that you agreed to, then the responsibility falls on our department after we issue the permit. If someone is not happy with what they see being constructed, it could turn into a lot of problems for the applicant as well as our department. So I would just like to have the opportunity to have the Chair take a look at them, okay this is what we're looking at, absolutely, then let's move forward.

MR. BELL: Is there an additional cost for additional plans?

CHAIRMAN SCALZO: They pay me the same every month, Darryl.

MR. BELL: Not you. Is it an additional cost for Ms. Chambers?

MR. CANFIELD: We're going to need to see a revised plan anyway. It's no additional cost.

CHAIRMAN SCALZO: There needs to be

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revised plans reflective of -- should we accept this and vote on it positively, there would need to be plans that would need to be approved by the building department.

MR. CANFIELD: Also what I would suggest is to make sure the applicant is clear so she can convey that to her design professional. I believe it was Mr. Brown.

MS. CHAMBERS: Yes.

CHAIRMAN SCALZO: Jerry, now you're the cart before the horse. That was me earlier. We still need to vote. We're not sure.

MR. CANFIELD: Touché.

MR. DONOVAN: So my suggestion would be if the Board is so inclined, subject to the submission of plans that are consistent with what Mr. Brown has represented and what's been confirmed this evening, if you want, if the Chair is okay with review and approval by the Chair, if that's okay. That's up to the Board. That gives you the opportunity to bring it back to the Board.

MR. OLYMPIA: If you want.

CHAIRMAN SCALZO: That's fine. I would

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RONA CHAMBERS

100

be happy to.

MR. MARINO: How much time are we talking about here where you want plans from Mr. Brown and you want to consult with Darrin to decide?

MR. CANFIELD: As soon as Darrin can get in the office and look at them.

MR. DONOVAN: Tony, any variance that this Board issues when site plan approval is not required has a six-month life. They can ask for a six-month extension after that.

MR. MARINO: We're not aiming for that? I hope not.

CHAIRMAN SCALZO: It's not up to us. Should this move forward, that's entirely up to the applicant and their design professional. I will review it as timely as I can. I'm going away in May. Hopefully I'll get something before that. That being said --

MR. MARINO: Would Mr. Olympia repeat his proposal?

MR. OLYMPIA: I move that we approve the application as amended per the changes and modifications to the original submission and

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101

subject to the review of the new modifications
and changes in the plans by the Chair.

MR. MARINO: We've only made one
suggestion; correct?

MR. OLYMPIA: It's only one.

MR. MARINO: One suggestion for a
change?

MR. DONOVAN: No. No. There was -- if
I may.

CHAIRMAN SCALZO: Please.

MR. DONOVAN: Tonight the suggestion is
to remove the upper deck. I think that's part of
Mr. Olympia's motion. Also his motion includes
the prior representations regarding -- I'm not a
construction expert but it's the removal of the
gable ends.

MR. MARINO: Which was proposed by Mr.
Brown.

CHAIRMAN SCALZO: Just so I'm clear, my
review of this is not as an engineer, my review
of this is just to confirm what we are putting --

MR. DONOVAN: Right.

CHAIRMAN SCALZO: That's fine. Is
everybody clear?

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MR. MARINO: Yes.

MR. MASTEN: Yes.

MR. McKELVEY: Yes.

MR. OLYMPIA: Yes.

MR. BELL: Yes.

CHAIRMAN SCALZO: So we have a motion
from Mr. Olympia.

MR. MASTEN: I'll second it.

CHAIRMAN SCALZO: Motion from Mr.
Olympia. We have a second from Mr. Masten. Roll
call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

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CHAIRMAN SCALZO: Yes.
Motion carried with modifications.
MS. CHAMBERS: Thank you.
(Time noted: 8:55 p.m.)

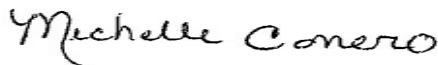
C E R T I F I C A T I O N

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 8th day of April 2019.



MICHELLE CONERO

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

----- X

In the Matter of

DANIEL DARRIGO

84 Lakeside Road, Newburgh
Section 6; Block 1; Lot 96
R-1 Zone

----- X

Date: March 28, 2019
Time: 8:56 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman (Recused)
JOHN MCKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
DARRELL BELL
PETER OLYMPIA

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

APPLICANT'S REPRESENTATIVE: DANIEL DARRIGO
JEFFREY LEASE

----- X

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

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DANIEL DARRIGO

105

CHAIRMAN SCALZO: We have some other Board Business. Daniel Darrigo, 84 Lakeside Road, Newburgh. We received a letter on March 8, 2019 requesting an extension for the variance granted for the solar farm at 84 Lakeside Road.

I need to recuse myself from any part of this action.

Mr. McKelvey, if you could take over please.

MR. MCKELVEY: I have some questions. Jerry, do they need permits for anything else on the property?

MR. CANFIELD: No. There are no permits. The only permit there for the property is for the Terror Dome. I believe that's what it's called.

MR. DARRIGO: Yes.

MR. MCKELVEY: At the original hearings you said you were farming but that's false.

MR. DARRIGO: I do farming. I was under the impression that under agricultural the Terror Dome --

MR. CANFIELD: I think what Mr. McKelvey is referring to is there are some other

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DANIEL DARRIGO

106

outbuildings and landscaping companies.

MR. DARRIGO: Yeah. I had a fire in my shop and I needed, you know, the garage. I still need a place to fix the tractors and stuff. I was told that under the Ag that it would be okay.

MR. McKELVEY: What are all the other buildings used for?

MR. DARRIGO: Just storage. You know, tractors and things like that. I mean supplies too. Fertilizer. I also do a supply yard at the same time. I'm not sure where we're going with the solar farm part of this.

MR. McKELVEY: Have you been before the Planning Board?

MR. DARRIGO: Excuse me?

MR. McKELVEY: You haven't been before the Planning Board?

MR. DARRIGO: No. I would refer Jeff Lease. He's kind of handling that. I just came to let the Board know he can speak on my behalf.

MS. CONERO: Can I have your name, please?

MR. DARRIGO: I'm Daniel Darrigo. I'm the trustee of the Frank Darrigo Revocable Trust.

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DANIEL DARRIGO

107

MR. McKELVEY: You're not running any business other than the farm?

MR. DARRIGO: I have the supply yard. I mean we've had that for decades.

MR. McKELVEY: Without a permit?

MR. DARRIGO: It was before zoning. I mean my father's been doing both. He passed away a couple years ago. Since probably the '40s I believe.

MR. McKELVEY: Jerry, under the present zoning does he have to clear this up?

MR. CANFIELD: Repeat that, John.

MR. McKELVEY: Does he have to clear this up for permits?

MR. CANFIELD: We can do an inspection to see what is actually there. I think the applicant has presented to the Board that he has the Terror Dome business, the farm and his supply business that he's claiming is existing. It's been there forever.

I think your question, John, may be relative to the other businesses that are alleged to be there. I think he thinks that there are some landscape businesses that are there and a

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DANIEL DARRIGO

108

repair business.

MR. DARRIGO: I kind of count on them to help me do farming and things like that, if that's what you're --

MR. CANFIELD: I think the question is then they do exist? Is that what your answer is?

MR. DARRIGO: Yes. I mean there's people there.

MR. McKELVEY: I just want to clear the matter up. That's all.

MR. DARRIGO: They keep their equipment there.

MR. CANFIELD: Without permits. What Mr. McKelvey is saying, and he's correct, without permits they're not permitted. Each time you have a separate business there needs to be a permit for that to see if it is a permitted use in that zone.

MR. DARRIGO: Oh, okay. So should I see you or --

MR. CANFIELD: We could inspect and see and report back to the Board what exactly is there, if that's what the question is.

MR. McKELVEY: Would we grant the

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DANIEL DARRIGO

109

extension of six months until they clear that up?

MR. DONOVAN: Well, they're separate issues. If there's a code compliance issue there's a code compliance issue and Jerry's department can figure that out.

Tonight will this Board issue a variance to allow the solar array.

I don't know where you stand. If you're in front of the Planning Board your time period doesn't begin to run. If you're not, you have six months. I don't know when the six months would expire.

If you want to hear from Mr. Lease.

MR. LEASE: I'm Jeff Lease. We should be before the Planning Board in May of this year. We're very close. We got held up because there is a change in the way that the solar array was being designed with Central Hudson. Central Hudson kind of reconfigured the array. It had to be reengineered.

MR. DONOVAN: When is your six months up? I didn't track this.

MR. LEASE: The six months is up as of February 27th I think.

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DANIEL DARRIGO

110

MR. DONOVAN: What I recommended to the Board before, because you get another six-month extension so long as you request for that in the year. Now I get to use fancy Latin. You would give the extension, if you were so inclined, nunc pro tunc. That means now you make believe we gave it in February and it's good for six months. If you get in front of the Planning Board, that six-month period stops until you get done with the Planning Board.

MR. LEASE: We're very close. We're very close at this point. I'm sorry.

MR. DONOVAN: If the Board is so inclined, you could grant an extension nunc pro tunc to February.

MR. McKELVEY: I just want to clear this up. That's all.

MR. MARINO: Dave, do you need a motion?

MR. DONOVAN: Yes.

MR. MARINO: I would make a motion to give them the six-month extension.

MR. LEVIN: I'll second it.

MR. McKELVEY: Roll call.

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DANIEL DARRIGO

111

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

CHAIRMAN SCALZO: The only thing I can think of is the minutes distributed by Siobhan by e-mail. We want to make a motion to accept the meeting minutes for the February meeting.

MR. MARINO: I'll make a motion.

MR. BELL: Second.

CHAIRMAN SCALZO: We have a motion from Mr. Levin, a second from Mr. Bell. Do I hear a motion to adjourn?

MR. DONOVAN: They need to vote on the approval of the minutes.

CHAIRMAN SCALZO: So we have a motion

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DANIEL DARRIGO

112

and a second. All in favor of approving the minutes?

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

I'll look for a motion to adjourn.

MR. MASTEN: I'll make the motion.

MR. MARINO: Second.

CHAIRMAN SCALZO: A motion from Mr.

Masten, a second from Mr. Marino. All in favor?

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

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DANIEL DARRIGO

113

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

(Time noted: 9:06 p.m.)

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

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set my hand this 8th day of April 2019.

Michelle Conero

MICHELLE CONERO