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

WILLIAM FLYNN & LORI FRANK
48 Odell Circle, Newburgh
Section 51; Block 1; Lot 24
R-1 Zone

----- X

Date: April 24, 2025
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
LATWAN BANKS
DARRELL BELL
JAMES EBERHART, JR.
GREGORY M. HERMANC
JOHN MASTEN
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: CHARLES BAZYDLO
WILLIAM LYNN

----- X

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

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

18 I would ask that if you have a
19 cellphone, to please turn it off or
20 put it on silent. When speaking, speak
21 directly into the microphone as this
22 is being recorded by our stenographer.

23 Roll call, please.

24 MS. JABLESNIK: Latwan Banks.

25 MS. BANKS: Here.

2 MS. JABLESNIK: Darrell Bell.

3 MR. BELL: Here.

4 MS. JABLESNIK: James Eberhart.

5 MR. EBERHART: Here.

6 MS. JABLESNIK: Greg Hermance.

7 MR. HERMANCE: Here.

8 MS. JABLESNIK: John Masten.

9 MR. MASTEN: Here.

10 MS. JABLESNIK: Donna Rein.

11 MS. REIN: Here.

12 MS. JABLESNIK: Darrin Scalzo.

13 CHAIRMAN SCALZO: Here.

14 MS. JABLESNIK: Also present is our
15 Attorney, Dave Donovan; from Code
16 Compliance, Joseph Mattina; and our
17 Stenographer, Michelle Conero.

18 CHAIRMAN SCALZO: Very good. If
19 you could all please rise for the Pledge.

20 (Pledge of Allegiance.)

21 CHAIRMAN SCALZO: Before we
22 actually get started with the regular
23 business of the meeting, I would like to
24 recognize that we have a new Member. We
25 have a full compliment of ZBA Members.

2 Our newest member is Latwan Banks.
3 Welcome. We're looking forward to
4 working with you.

5 MS. BANKS: Thank you.

6 CHAIRMAN SCALZO: Because you were
7 appointed mid month, I know you and I
8 have had a handful of conversations
9 regarding the applications. You had many
10 questions. To put you at ease, if you
11 are uncomfortable this evening voting on
12 any action that we have in front of us,
13 you can certainly abstain from any vote.
14 That is perfectly acceptable. I just
15 wanted to give you that out if you wanted
16 it. Very good.

17 Moving on. Our first applicant
18 this evening was actually from last month
19 but asked to be deferred because we
20 didn't have a full compliment of ZBA
21 Members. It is William Lynn and Lori
22 Frank at 48 Odell Circle. They are in
23 for area variances of the minimum front
24 yard setback, lot building coverage, lot
25 surface coverage and increasing the

2 degree of nonconformity of one side yard
3 and the combined side yards to build a
4 21.5 x 26 attached garage.

5 Siobhan, do we have mailings on
6 this?

7 MS. JABLESNIK: We do. This
8 applicant sent 53 letters.

9 CHAIRMAN SCALZO: 53 letters.
10 That's quite a substantial amount of
11 letters. Very good.

12 Who do we have with us?

13 MR. BAZYDLO: My name is Charlie
14 Bazydlo for the applicant, representing
15 Bill Lynn and Lori Frank, the homeowners.

16 Some Members of the Board may be
17 familiar with this application, but I'll
18 go over it. It's different than when.
19 you heard it last time. Mr. Lynn and
20 Ms. Frank own the house at 48 Odell
21 Circle. There are a series of lots
22 down by Orange Lake. The lots are all
23 probably -- down there, most of them
24 are existing nonconforming in size.

25 Bill and Lori would like to

2 build a garage in the front of their
3 house. The main reason for doing
4 that, he'll hit me but I'll say it,
5 we're all getting older and, you
6 know, snow removal, I'm with you on
7 this, it's hard as you get older.
8 With the dimensions of their house,
9 even to remove the snow from the
10 front, there's really no place to put
11 it. Things are a little tight in
12 that area.

13 They would like to build a
14 garage, 26 feet x 21.5 feet, onto the
15 front of the house. It would be
16 attached to the house.

17 The issue here is that that
18 distance coming out brings them right
19 up -- pretty close up to the property
20 line, that property line being the
21 right-of-way that the Town has in
22 front.

23 The issue here really is that
24 where the right-of-way is is not
25 really where the road is. The pavement

2 for the existing road is probably
3 another 15 feet or so out from there.
4 When you look at this, it looks a lot
5 narrower than it may look.

6 What we're looking to do is we
7 would have the garage constructed and
8 it would come up within 1.2 feet of
9 that right-of-way line. Why we
10 consider that not to be a significant
11 issue, though it sounds really close
12 -- I'll admit that it sounds close.
13 The issue being, when you look at the
14 road out there, this is the kind of
15 road in the Town where the water and
16 the sewer is already in there. This
17 road is not going to be widened for
18 any practical reason. There will
19 probably be no reason for the Town to
20 use that right-of-way. Essentially
21 the distance from the edge of pavement
22 over to where the right-of-way line
23 is really is a buffer anyway.

24 There are also, in the neighborhood,
25 houses around it. Quite a bit of

2 landscaping has been put in the same
3 area with some of the other homes
4 around there.

5 There actually is a house up the
6 street from us, a few doors down, that
7 has a garage, I think it's an attached
8 garage, that is up right against the
9 property line -- right against this
10 right-of-way, a little bit closer
11 than us.

12 Last time when Mr. Lynn was here,
13 the Board had asked him to take a look
14 at it to see if the garage could be
15 brought down any. The original
16 application, probably about a year or
17 so ago, was for 22 feet in width off
18 the house, which is still pretty small.
19 We were able to go back, take a look
20 at the design and shrink that down to
21 21.5 feet. That takes us from what
22 was .7 feet to 1.2 feet inches as
23 things go. That basically is the
24 application.

25 The height would match the house.

2 The architecture would match the
3 house. We don't believe it blocks
4 anybody's view from the view of the
5 lake. We do believe it would blend
6 into the neighborhood as it would --
7 it really is not a large structure
8 and it would blend into the character
9 of the neighborhood. That's basically
10 our application.

11 I know the plans might be a
12 little hard to read. I did bring a
13 blowup of the area that we're talking
14 about. I can give that to the Board
15 Members if you'd like to take a look
16 at it.

17 CHAIRMAN SCALZO: Sure.

18 MR. BAZYDLO: It's not very high
19 tech, but it gets the point across.

20 CHAIRMAN SCALZO: Is it what came
21 with the application?

22 MR. BAZYDLO: What I did is I blew
23 it up. It is part of the record already.
24 What I presented to the Board was a
25 reduced version of the plan that you

2 have, the site plan that you have --
3 excuse me, the survey that you have.
4 What I did is blew up the section of
5 where the garage is with the dimension.

6 As I said, the garage would come
7 19.5 feet out from the narrowest part of
8 the -- where the right-of-way comes
9 closest. It would still be 26 feet wide.
10 So 19.5 feet on one side, 21.5 feet on
11 the other. We feel this is enough just
12 to be able to get the cars in. There
13 might be a slight area of storage. Maybe
14 one shelf width wide, if even that. It's
15 very little in the front. We believe
16 this is probably about the smallest we
17 can make it.

18 We have listened to what the Board
19 has said and reduced the plan down from
20 the previous application.

21 With that, I'll be quiet.

22 CHAIRMAN SCALZO: Thank you so
23 much. This one I recall from a year ago.
24 I probably drove around Odell Circle no
25 less than six times, just so I could

2 really get a flavor for the neighborhood
3 again. I pulled in and I went
4 counterclockwise. I would approach this
5 property from, I'll say, the south. No.
6 That's north. The north. I was taking a
7 bunch of left-hand turns.

8 On the opposite side where you make
9 a big swing, there's a house that's kind
10 of close to the road and cars are parked
11 out there. Somebody has a little thing
12 out there to avoid you hitting the tail
13 end of their cars. All I can think is if
14 they have their cars in the garage, they
15 have a guest, the same situation is going
16 to happen with that.

17 The other thing is, the garage you
18 said is on the right-of-way, which is
19 only two houses away, again most likely a
20 preexisting nonconforming condition.

21 MR. BAZYDLO: They actually --
22 excuse me. They actually did get a
23 variance for that garage.

24 CHAIRMAN SCALZO: Really?

25 MR. BAZYDLO: Yes.

2 CHAIRMAN SCALZO: Do you happen to
3 know the year?

4 MR. LYNN: It was about 2000.
5 Right around the year 2000. There was a
6 variance for that one, and two doors the
7 other way there's a variance for one.
8 It's underground, but that's right on the
9 property line. Actually, the survey
10 shows it over the property line in two
11 spots. I have those drawings.

12 CHAIRMAN SCALZO: That would have
13 been helpful for me.

14 MR. LYNN: I didn't know that the
15 last time or I would have brought it up.
16 I FOIL'd the information because someone
17 told me. In fact, the one on the corner,
18 those people came to me and said that
19 house, they had bought it since then.
20 They told me that --

21 CHAIRMAN SCALZO: Hang on one
22 second. Could you just state your name
23 for the stenographer?

24 MR. LYNN: I'm Bill Lynn.

25 They told me that they had -- they

2 knew there was a variance on that house
3 before they bought it because they had
4 the paperwork. I FOIL'd that information
5 and got the minutes and got the drawings.

6 The one two doors away used to be
7 Dave Noble's house. It's now Cullen's
8 house. They have one that's under the
9 ground, but that's the one that's over
10 the property line in two spots. They got
11 a variance for that, too.

12 CHAIRMAN SCALZO: At approximately
13 the same time?

14 MR. LYNN: Yes. Those two were
15 done --

16 CHAIRMAN SCALZO: Twenty-four years
17 ago. I was just allowed to enter bars
18 legally then.

19 MR. BAZYDLO: I'd like to have
20 those last twenty-four years back, too.

21 Chairman, the question about the
22 idea if they had guests over, they do
23 have the ability to have a car park on
24 the side of the property. There is some
25 pavement area there. It probably slopes

2 down to the lake, but there is room there
3 that if a guest came and they had both
4 cars in the garage, you could park a car
5 over there.

6 CHAIRMAN SCALZO: Sure. All right.
7 You've been here before. You know I love
8 to talk. In this instance I'm going to
9 let the rest of the Board do some
10 talking.

11 Ms. Rein, do you have any questions
12 or comments about this?

13 MS. REIN: No. I'm good.

14 CHAIRMAN SCALZO: Mr. Masten.

15 MR. MASTEN: I have nothing.

16 CHAIRMAN SCALZO: Mr. Bell.

17 MR. BELL: You're saying that the
18 2000 variance was not preexisting
19 nonconforming?

20 MR. LYNN: Correct. Neither one of
21 them were.

22 MR. BELL: You also stated that
23 there's only going to be a difference of,
24 what, you said 19.5 times --

25 CHAIRMAN SCALZO: Actually, Mr.

2 Bell, if you look at the second sheet,
3 it's pretty easy to see what they did.

4 MR. BELL: Thank you. Okay. I'll
5 reserve.

6 CHAIRMAN SCALZO: We'll come back
7 to you.

8 Mr. Hermance, do you have any
9 comments or questions on this?

10 MR. HERMANCE: I just have a
11 comment about the snow removal. The
12 Town plows this road. Correct? My
13 concern is being so close to that
14 line, if any damage were to occur to
15 the building.

16 MR. LYNN: I've been there five
17 years. When they plow, they do -- it
18 doesn't actually come onto -- barely
19 onto the edge off the pavement. It's
20 not a lot --

21 MR. BAZYDLO: That ties back to the
22 issue of where the road is. When you
23 look at it, it's a lot narrower than what
24 the right-of-way is. There is a buffer
25 there for snow, the overflow from the

2 plow.

3 MR. HERMANCE: Wouldn't that be
4 piled up right in front of your door?

5 MR. LYNN: No. Like I said, if I
6 was at the edge of the road now, I don't
7 think the snow goes more than there, at
8 least as long as I've been there. Now we
9 park our cars up there where there is no
10 garage. There is a lot there right now
11 paved. With that, I've got to move the
12 cars to try to get all that snow out from
13 in between them. There's hardly any room
14 after you try to get it off of that paved
15 area. That's basically where the garage
16 would go, so then I wouldn't have to deal
17 with that.

18 The parking for alternate cars, the
19 driveway goes down toward the lake.
20 That's quite long. You can put maybe
21 four cars, five cars there. That would
22 also eliminate people from parking in
23 front of the garage and up by the road.

24 MR. HERMANCE: Would they be
25 blocking the street?

2 MR. LYNN: The garage itself, the
3 closest part is like 15 feet off of the
4 road. There's plenty of room for any --
5 even in a blizzard it would be -- the
6 snow wouldn't be a problem.

7 MR. HERMANCE: Thank you.

8 CHAIRMAN SCALZO: Mr. Eberhart.

9 MR. EBERHART: My issue was just
10 the proximity to the right-of-way. I
11 have nothing beyond that.

12 CHAIRMAN SCALZO: Ms. Banks, did
13 you have a chance to drive past the
14 property?

15 MS. BANKS: I did.

16 CHAIRMAN SCALZO: Do you have any
17 comments you would like to make at this
18 time?

19 MS. BANKS: I do not have any
20 comments.

21 CHAIRMAN SCALZO: Very good. Thank
22 you.

23 I guess it's come back to me. At
24 the last meeting, and I did review the
25 meeting minutes, we had asked Mr. Lynn

2 why he wasn't considering perhaps having
3 the garage put down where -- I know
4 there's a hard turn underneath the
5 dwelling, which is really for garden
6 tools, tractors and stuff like that.

7 In the year since Mr. Lynn has been
8 here -- actually, it was probably right
9 around that time, we had another
10 applicant on Orange Lake, has a Walden
11 mailing address, that built a house that
12 has a garage that has a door that opens
13 to the street and a door that opens to
14 the lake. His concern at the time was
15 cutting off his access to the lake by
16 putting a garage there. We had an
17 applicant show us that you can actually
18 take care of that. There is room on that
19 side of the house. Would you need a
20 variance? Sure.

21 We also had an applicant, Steve
22 Moreau, who did something at the other
23 end, a little section that goes from
24 Odell Circle out to 52. We gave him a
25 variance. He adjusted the property line

2 just so he had 5 foot of setback on one
3 side for emergency access, for people to
4 be able to run around the side of the
5 house if they had to. We do it. He made
6 it fit to what the property was.

7 Now, something that my predecessor
8 Jim Manley, I remember him saying, and it
9 was amazing to me at the time, when
10 someone buys a piece of property, it is
11 incumbent upon them to know what the code
12 allows for them to do with their property.
13 Mr. Lynn purchased this property in 2019.
14 Theoretically he should know what he's
15 able to do with the property. Me being
16 in this position for over twelve years
17 now, allowing someone to propose a
18 structure that's going to be within a
19 foot and-a-half of any property line
20 is just bad design, even if it is a
21 Town right-of-way. That's just my
22 opinion. You have the beauty of
23 having a seven-member Board. I'm
24 just one voice here in this instance.

25 I recall from my comments last

2 time, I don't feel as though Mr. Lynn
3 truly explored having a garage on the
4 side of the house with a double door
5 so he wouldn't restrict his lake
6 access. He just wants it in the
7 front. Again, we have a seven-member
8 Board. That's just how I'm looking
9 at things.

10 MR. BAZYDLO: If I could offer a
11 comment to that.

12 CHAIRMAN SCALZO: Sure.

13 MR. BAZYDLO: Putting the garage --
14 right now the proposal lines up with the
15 width of the house as it is right now.
16 If you were to shift the garage to the
17 right side, I think that actually does
18 tend to -- I think that would not -- it
19 would affect the character of the area
20 because that driveway, along with the one
21 at the property next door, does offer a
22 view out to the lake. You may end up in
23 a situation that may end up blocking
24 someone's existing view and what they
25 normally see out their window. Where

2 this extends out from the front of the
3 house, it would not block anybody's view.

4 CHAIRMAN SCALZO: As I mentioned, I
5 drove around that loop a half dozen
6 times. Did you happen to drive that?

7 MR. BAZYDLO: I just did on the way
8 down, as a matter of fact.

9 CHAIRMAN SCALZO: So you understand
10 that if you were to come the same way
11 I did, that house, other than looking
12 at the garage that got the variance
13 in 2000, would certainly be sticking
14 out more than anything that's next to
15 it.

16 MR. BAZYDLO: I guess it's in the
17 eye of the beholder.

18 CHAIRMAN SCALZO: Sure it is.
19 Also, mathematically you've given us
20 finite numbers on paper that are very
21 easy to understand. When I go like that,
22 that's what you're talking about being
23 off the right-of-way, whereas to the side
24 of the property where the current garage
25 is, amazingly there are no side yard

2 offsets for me to be able to tell you by
3 scale whether or not a garage would fit.

4 My wife and I are looking for a
5 home. One we just looked at had a double
6 stacked garage, a car in front of a car.
7 It can be done. I've seen it done.

8 I've talked enough. At this point --

9 MR. LYNN: Can I say --

10 CHAIRMAN SCALZO: Mr. Lynn.

11 MR. LYNN: That one side where
12 you're talking about, that's a huge incline.

13 CHAIRMAN SCALZO: Which is paved,
14 which means you already drive it.

15 MR. LYNN: I'm saying, in the
16 wintertime that's the other issue. Now
17 you have this thing that's totally full
18 of snow. It's a big incline and there's
19 not a lot of room left to right. The
20 right side of that driveway is right on
21 the property line at the top.

22 CHAIRMAN SCALZO: Believe me, I
23 admire Orange Lake. At one point my wife
24 and I were looking at purchasing on
25 Orange Lake. I have too many loud

2 hobbies. I play the drums. People
3 wouldn't like me. I wasn't a good fit
4 for the area. I understand what you're
5 saying.

6 At this time I want to open it up
7 to any members of the public that wish to
8 speak regarding this application. I do
9 recognize some faces. Some folks from
10 the Orange Lake area are here. If anyone
11 wants to speak about this application,
12 please come up and state your name.

13 MR. LANGER: I'm Greg Langer, 281
14 Lakeside Road. I'm on the Orange Lake
15 Homeowners Association Board of
16 Directors.

17 Congratulations on your appointment.
18 Hopefully you'll last longer than the last
19 guy.

20 MS. JABLESNIK: He moved on to
21 bigger and better things.

22 MR. DONOVAN: He moved on to
23 different things.

24 CHAIRMAN SCALZO: He keeps better
25 company now.

2 MR. LANGER: I was just teasing.

3 I sent something last month. I
4 don't know if you got it.

5 CHAIRMAN SCALZO: I actually wasn't
6 here last month, and that's why they
7 asked to push.

8 I didn't see that in the
9 application, Siobhan.

10 MR. LANGER: I didn't bring enough
11 copies for everybody.

12 CHAIRMAN SCALZO: This is short
13 enough where I'll read it. "Dear
14 Chairman Scalzo and ZBA Board Members.
15 This is in regards to the William Lynn,
16 48 Odell Circle. At the July 27, 2024,"
17 that's the one from last time, "ZBA
18 meeting, William Lynn appeared requesting
19 variances for the construction of an
20 attached garage. After much discussion,
21 particularly concerning the 1 foot
22 setback from the Town right-of-way, the
23 variances were not approved. Subsequent
24 to the denial, William Lynn appeared at
25 the September 4, 2024 meeting of the

2 Orange Lake Homeowners Association Board
3 of Directors requesting support for the
4 variances. Follow-up discussion was
5 centered on nearby existing garages close
6 to the road or the right-of-way nearby.
7 Mr. Lynn, as well as a nearby board
8 member, indicated strong support within
9 the neighborhood for this project. While
10 the Orange Lake Board has strong concerns
11 about setting a precedent for proximity
12 to the right-of-way, we feel this is a
13 special request where the overall effect
14 and impact to the neighborhood is minimal
15 in comparison to the benefit to Mr. Lynn.
16 So with reservations going forward, the
17 Orange Lake Homeowners Association Board
18 of Directors supports these variance
19 requests. Thank you for the opportunity
20 to present our view."

21 Thank you, Mr. Langer. We'll
22 certainly keep this in the records. We
23 appreciate your input. I recall at the
24 last one you didn't say anything. I was
25 very surprised. All right.

2 Let me help Ms. Banks out. While
3 the Orange Lake Homeowners Association,
4 they are a group, a formed group, the
5 community -- actually, perhaps since you
6 are a board member, chairman, president,
7 you can explain what it is that that
8 board does.

9 MR. LANGER: So the homeowners
10 association is basically concerned about
11 the land, what happens at the lake and
12 the water and around it. We're very
13 cognizant of any application that comes
14 in front of you. All of them have to
15 because of the zoning out there. We're
16 always trying to protect the adjoining
17 homeowners from things that could happen
18 that might influence their property
19 negatively or might influence the lake
20 negatively. We don't want it to look
21 like Malibu Beach where all the homes are
22 a straight line up and down and then they
23 all burnt down. We're just trying to
24 protect the lake, protect the homeowners.

25 CHAIRMAN SCALZO: I appreciate you.

2 Honestly, I didn't know what the
3 homeowners association -- I appreciate
4 the knowledge now. Thank you very much
5 for that.

6 Latwan, as we hear the testimony
7 from Mr. Langer as, for lack of a better
8 word, the mouthpiece for the organization,
9 we treat them as just members of the
10 public. We receive their testimony,
11 although them as a homeowners group
12 should not have influence on the
13 determinations that we make.

14 Thank you. I appreciate that.

15 Since I have your attention at
16 this point, we have Mr. Lynn here.
17 There's got to be nine homes before
18 him if you take the loop the way I
19 described that I took it. If you
20 have nine homes and you have nine
21 more people come in that say I want
22 to build up to the right-of-way line
23 because the actual improvement of the
24 right-of-way is not close to that,
25 I'm curious if we're going to get the

2 same letter. It's a difficult
3 position that we're in.

4 MR. LANGER: It is a difficult
5 position. The letter sort of reflects
6 that, that we realize that this is a
7 precedent that could backfire. I
8 don't know. It could cause problems
9 down the road.

10 CHAIRMAN SCALZO: Okay.

11 MR. LANGER: If you look at those
12 homes and how they're set up and where
13 most of the garages are, unlike his
14 garage, they're normal garages. His
15 present garage is, you know, not like a
16 normal --

17 CHAIRMAN SCALZO: Well, it's
18 underneath the house. I wouldn't call it
19 a garage.

20 MR. LANGER: It's sideways.

21 CHAIRMAN SCALZO: That's a 72-point
22 turn to get out.

23 MR. LANGER: If you look at those
24 other houses heading north along there,
25 they all pretty much have normal garages.

2 It would seem unlikely that too many of
3 those would be wanting to put a garage in
4 front of a garage.

5 CHAIRMAN SCALZO: It seems unlikely.
6 Thank you very much for the education.
7 Thank you.

8 MS. REIN: I have a question. You
9 mentioned that you're supporting this
10 with reservations. What are those
11 specific reservations that you have?

12 MR. LANGER: Well, the reservation
13 is about the proximity to the right-of-way.
14 It's not something that we want to encourage
15 people to do. That's our reservation. I'm
16 trying to explain that because there are
17 other garages that are close to the road,
18 his circumstances seem to warrant it
19 because of where his garage is. In the
20 future we probably wouldn't be as
21 supportive if somebody wanted to be
22 Within 1 foot of the right-of-way.

23 MS. REIN: If a precedent is set,
24 then a precedent is set.

25 CHAIRMAN SCALZO: The people that

2 live there now might come to this Board
3 in 2040, almost the same amount of time
4 between the 2000 variance that was
5 granted, and say, you know, that Board in
6 2025 granted a variance for this.

7 MR. LANGER: We're perfectly aware
8 of that. That's kind of why we hedged
9 our comments on it.

10 As I said, if you look at all of
11 those other houses and see what the
12 likelihood is of somebody wanting to go
13 to the 1 foot right-of-way, it seems
14 unlikely that that would happen.

15 CHAIRMAN SCALZO: I understand your
16 point. Thank you very much.

17 Ms. Rein.

18 MS. REIN: I'm good.

19 CHAIRMAN SCALZO: Thank you so
20 much. I appreciate it.

21 MR. LANGER: You're welcome.

22 CHAIRMAN SCALZO: Does anyone else
23 from the public wish to comment on this
24 application?

25 MS. JABLESNIK: Mr. Langer, you

2 mentioned that you sent this letter in.
3 Did you e-mail it to me or did you bring
4 it in? I don't have anything in my
5 inbox.

6 MR. LANGER: So what happened, this
7 technology thing kind of passed me by. I
8 was out of town and I sent it to you, to
9 the Zoning Board, this letter.

10 MS. JABLESNIK: I don't have
11 anything in my inbox. I wanted to make
12 sure everything was all right. I just
13 researched it.

14 MR. LANGER: I used to have people,
15 but --

16 MS. JABLESNIK: All right.

17 CHAIRMAN SCALZO: Very good. We
18 have Mr. Bockemuhl approaching the
19 microphone.

20 MR. BOCKEMUHL: Do I still have to
21 introduce myself? My name is Alfred
22 Bockemuhl, I live at 35 Old South Plank
23 Road.

24 I guess a couple things. I was the
25 benefactor of a 1-foot front yard

2 variance in 2005, so I sympathize with
3 trying to get creative and fit things
4 onto these tiny little pieces of property
5 that we're dealing with. I applaud you
6 for trying to improve your house.

7 Given the size of the footprint of
8 the property, you don't have a lot of
9 options. I recognize that.

10 Greg, was it you that said
11 something about burning down houses? It
12 might be a little too soon for that.

13 That brings me to the applicant,
14 right, and what the house looks like. I
15 guess I have a question. How high would
16 the garage be in relationship to the
17 balance of the house?

18 MR. LYNN: It's 1 foot higher.

19 MR. BOCKEMULH: 1 foot higher than
20 the current roof line. Okay.

21 I've seen things that you've done
22 to the house. You've really cleaned it
23 up.

24 Based on what you've said, and I
25 don't know if there's a way to limit the

2 variance -- the height of the variance as
3 a compromise for the future, not for you
4 maybe, but for a homeowner in the future
5 where they can't put a second story on a
6 garage. Maybe that would be a compromise
7 that we could arrive at. Not me, but you
8 could arrive at. I would be in favor of
9 some type of -- what would that be? That
10 would be some type of --

11 CHAIRMAN SCALZO: Condition.

12 MR. BOCKEMUHL: -- condition.
13 There's the word I'm looking for. Thank
14 you. That's my two cents on it.

15 CHAIRMAN SCALZO: Thank you, sir.

16 MR. BOCKEMUHL: Thank you.

17 CHAIRMAN SCALZO: Does anyone else
18 from the public have any comments
19 regarding this application? Please step
20 forward, sir.

21 MR. SOMOGYI: Pete Somogyi, 32 Old
22 South Plank Road.

23 I just wanted to say for Mr. Lynn's
24 benefit that half of the garages on our
25 street and Odell are pretty darn close to

2 the property lines and the roads. In
3 fact, the garage across the street from
4 my house is half on Town property. It's
5 too close to the road.

6 I think him putting his garage on
7 the side of the house isn't going to work
8 because we're getting too old to go down
9 those steep driveways. Mr. Lynn is
10 looking for convenience, pull off the
11 road into your garage and walk in the
12 house, because in another five years,
13 look at him, he's not going to be able to
14 walk.

15 I feel that if you look at the
16 entire neighborhood, the Espositos,
17 yatta, yatta, nobody is going to ask for
18 another garage in front. They all have
19 two and three-car garages. They're not
20 going to impede on their property lines
21 or whatnot. I don't think this setting a
22 precedent is an issue.

23 CHAIRMAN SCALZO: I appreciate your
24 point of view, sir. My mother-in-law is
25 82 years old and we're moving her out of

2 her place because she has stairs. We're
3 moving her into a flat spot where she
4 doesn't have to take any stairs. It
5 could be coming for all of us.

6 MR. SOMOGYI: Of course. Mr. Lynn,
7 he's improved the house immensely. It's
8 not going to be an eyesore.

9 CHAIRMAN SCALZO: Thank you for
10 your testimony.

11 Does anyone else from the public
12 wish to speak about this application?

13 (No response.)

14 CHAIRMAN SCALZO: Perfect. I'm
15 going to go back to the Board. This time
16 I'll start with Ms. Banks.

17 Ms. Banks, having heard the testimony
18 and the comments of the Board, do you
19 have any input that you'd like to add?

20 MS. BANKS: Not at this time.

21 CHAIRMAN SCALZO: That's fine. Thank
22 you.

23 Mr. Eberhart, did that stir anything
24 up for you?

25 MR. EBERHART: I'm still in the

2 same position I was before, concerned
3 about the right-of-way.

4 CHAIRMAN SCALZO: Mr. Hermance.

5 MR. HERMANCE: I have no further
6 questions.

7 CHAIRMAN SCALZO: Mr. Bell.

8 MR. BELL: None.

9 CHAIRMAN SCALZO: Mr. Masten.

10 MR. MASTEN: No.

11 CHAIRMAN SCALZO: And Ms. Rein.

12 MS. REIN: I'm still concerned
13 about the right-of-way.

14 CHAIRMAN SCALZO: There's --

15 MS. REIN: I get it.

16 CHAIRMAN SCALZO: It's the right-of-
17 way. Counsel for the applicant did say
18 their water and sewer are already in
19 and what are the chances of the Town
20 needing to relocate the water line.
21 You know, who knows. We don't know
22 this. Should the Town have to excavate
23 somewhere up to their right-of-way line,
24 which, guess what, they're allowed to,
25 now they have to protect his house,

2 they have to protect his foundation,
3 which is more than just digging a
4 hole. Now they have to do shields
5 and shoring, which, for us construction
6 folks, we understand what shields and
7 shoring are.

8 Thank you for nodding your head,
9 Mr. Bockemuhl.

10 There are unintended consequences
11 of any decision that we make really.

12 The condition as it is right
13 now, will they have to put in water
14 or sewer? Probably not. Will they
15 do it in my lifetime? Probably not.
16 Will everybody that lives on that
17 street want to do a variance this
18 month? Nope. Next month? Nope. In
19 twenty-five years? Maybe. In 2000,
20 2009, whatever it was that they
21 granted variances, and it's being
22 brought up right now, guess what,
23 they did set a precedent.

24 MS. REIN: I was going to ask you
25 if that's already been done, why are we

2 here?

3 MR. DONOVAN: Donna, what we don't
4 know is what the basis for that decision
5 was. As I said before, everything you do
6 to one degree or another establishes a
7 precedent. However, if there are
8 different circumstances, different
9 conditions, the Board can say we decide
10 this case differently than the other case
11 because of the following circumstances,
12 whatever those circumstances may be.

13 While you heard from Mr. Langer,
14 you've heard from the applicant and
15 you've heard Darrin get all excited about
16 shoring and all sorts of technical stuff,
17 remember that your guiding light so to
18 speak are the five factors. You need to
19 go through those five factors and
20 determine whether the benefit to the
21 applicant outweighs any detriment to the
22 community or the neighborhood, whether
23 the benefit can be achieved by any other
24 method feasible to the applicant to
25 pursue, whether there will be any

2 undesirable change in the neighborhood as
3 a result of the variance, whether the
4 variance request is substantial, whether
5 there will be adverse physical or
6 environmental effects. That's your
7 criteria to evaluate when you're trying
8 to determine whether to grant a variance
9 or not.

10 CHAIRMAN SCALZO: Thank you.

11 MR. DONOVAN: That's the big
12 picture. I'm making sure we're complying
13 with the regulations.

14 CHAIRMAN SCALZO: We did hear
15 testimony about a garage that may be in
16 the right-of-way. I can almost guarantee
17 you that a variance was not granted to
18 put something in a right-of-way. In my
19 time on the Board, I've never seen a
20 variance granted for something proposed
21 One foot away from a right-of-way, or
22 a foot and-a-half. I've never seen it.
23 There's always a first time.

24 Anyway, the last opportunity,
25 any members of the public?

2 (No response.)

3 CHAIRMAN SCALZO: No.

4 Members of the Board, any last
5 words before I ask you for a motion to
6 close the public hearing?

7 MS. BANKS: No.

8 MR. EBERHART: No.

9 MR. HERMANCE: No.

10 MR. BELL: No.

11 MR. MASTEN: No.

12 MS. REIN: No.

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

15 MR. EBERHART: I'll second it.

16 CHAIRMAN SCALZO: I think Mr. Bell
17 had a motion, and I think you spoke a
18 little quicker, Mr. Eberhart. We have a
19 second from Mr. Eberhart. All in favor?

20 MS. BANKS: Aye.

21 MR. EBERHART: Aye.

22 MR. HERMANCE: Aye.

23 CHAIRMAN SCALZO: Aye.

24 MR. BELL: Aye.

25 MR. MASTEN: Aye.

2 MS. REIN: Aye.

3 CHAIRMAN SCALZO: Those opposed?

4 (No response.)

5 CHAIRMAN SCALZO: Very good. The
6 public hearing is closed.

7 Counsel, this is a Type 2 action
8 under SEQRA. Correct?

9 MR. DONOVAN: That is correct,
10 Mr. Chairman.

11 What I do want to remind the
12 Board is that you have 62 days to make
13 a determination, if you should wish
14 to look at that other variance
15 determination. It was before my time,
16 so I don't know what it may say. If
17 you're interested in that or if you're
18 ready to vote. If you're ready to
19 vote, you're ready to vote. You do
20 have 62 days.

21 CHAIRMAN SCALZO: Thank you,
22 Counsel, for reminding us.

23 As mentioned, this is a Type 2
24 action under SEQRA. We're going to
25 go through the area variance criteria.

2 We have the five factors. Counsel
3 actually mentioned them a couple
4 minutes back. The first one being
5 whether or not the benefit can be
6 achieved by other means feasible to
7 the applicant. Can the benefit be
8 achieved by other means feasible to
9 the applicant?

10 MS. REIN: I don't think so.

11 MR. MASTEN: No.

12 CHAIRMAN SCALZO: That's why we're
13 a seven-member Board. We heard I don't
14 think so, we heard no, we heard other
15 means.

16 Second, if there's an undesirable
17 change in the neighborhood character or a
18 detriment to nearby properties.

19 MS. REIN: No.

20 MR. BELL: No.

21 CHAIRMAN SCALZO: We're getting a
22 bunch of nos.

23 The third, whether the request is
24 substantial. Of course it is.

25 MR. BELL: It is.

2 CHAIRMAN SCALZO: The fourth,
3 whether the request will have adverse
4 physical or environmental effects. I
5 think that one is pretty easy to say no
6 to.

7 MR. BELL: No.

8 CHAIRMAN SCALZO: The fifth,
9 whether the alleged difficulty is self-
10 created which is relevant but not
11 determinative. Of course it's self-
12 created because it's proposed.

13 If we approve, we shall grant the
14 minimum variance necessary and we may
15 impose reasonable conditions.

16 We heard testimony from one of the
17 members of the public about a suggestion
18 for a condition.

19 I'll also remind the Board that we
20 have 62 days to make a decision if we
21 want to look at the variances that were
22 granted previously.

23 Having gone through the balancing
24 tests of the area variance, does the
25 Board have a motion of some sort?

2 MS. BANKS: I would love to see --

3 CHAIRMAN SCALZO: The previous
4 variances and the conditions they were
5 approved under?

6 MS. BANKS: Yes.

7 CHAIRMAN SCALZO: Thank you, Ms.
8 Banks.

9 MR. BELL: I agree. I was going to
10 say the same thing. We need to see the
11 2005.

12 CHAIRMAN SCALZO: It sounds to me
13 that what we're looking at is, we're
14 looking at a motion to defer our
15 determination for up to 62 days.

16 Siobhan, if we could ask you to dig
17 out those minutes. They were from --

18 MR. BELL: 2005.

19 MR. DONOVAN: You said you have
20 them?

21 MR. BAZYDLO: We'll supply copies
22 to the Board.

23 MR. BELL: There were two. It was
24 2000 and 2005?

25 MR. BAZYDLO: We'll find out.

2 CHAIRMAN SCALZO: Any support that
3 you can lend to your cause, of course
4 we'll look at it.

5 The public hearing is closed.
6 Anybody that's going to come next month
7 to hear about this, you won't have an
8 opportunity to speak, but you can
9 certainly listen.

10 Again, thank you, Mr. Langer. I
11 think when there's an open seat here, I
12 think we've got our guy sitting right in
13 the back row.

14 Very good. Would someone make a
15 motion to defer to a future meeting?

16 MR. DONOVAN: Let's not do that.
17 Let's make a motion to defer it to the
18 May meeting. You don't have to decide
19 then. Make it whatever the fourth
20 Thursday is in May so it's clear when
21 everybody leaves tonight when the meeting
22 is.

23 CHAIRMAN SCALZO: Very good. Thank
24 you, Counsel.

25 The motion is to defer to the May

2 meeting.

3 MR. BELL: I'll make a motion to
4 defer this request to the May meeting.

5 MS. REIN: I'll second it.

6 CHAIRMAN SCALZO: We have a motion
7 to defer from Mr. Bell. We have a second
8 from Ms. Rein. That would be the 22nd of
9 May. All in favor?

10 MS. BANKS: Aye.

11 MR. EBERHART: Aye.

12 MR. HERMANCE: Aye.

13 CHAIRMAN SCALZO: Aye.

14 MR. BELL: Aye.

15 MR. MASTEN: Aye.

16 MS. REIN: Aye.

17 CHAIRMAN SCALZO: Those opposed?

18 (No response.)

19 CHAIRMAN SCALZO: We'll see you
20 next month.

21

22 (Time noted: 7:46 p.m.)

23

24

25

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 5th day of May 2025.

Michelle Conero

MICHELLE CONERO

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

PETER C. MARTINEZ

23 Pommel Drive, Newburgh
Section 57; Block 3; Lot 25
R-2 Zone

----- X

Date: April 24, 2025
Time: 7:46 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
LATWAN BANKS
DARRELL BELL
JAMES EBERHART, JR.
GREGORY M. HERMANCE
JOHN MASTEN
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: PETER C. MARTINEZ

----- X

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

2 CHAIRMAN SCALZO: Our next
3 applicant this evening is Peter Martinez,
4 23 Pommel Drive in Newburgh, seeking area
5 variances of, A, which means there's
6 multiple, maximum square footage and an
7 accessory structure in the front yard to
8 keep an 8 x 10 accessory structure and,
9 B, maximum square footage to build a
10 22 x 25 foot garage.

11 Do we have mailings on this, Siobhan?

12 MS. JABLESNIK: This applicant sent
13 68 letters.

14 CHAIRMAN SCALZO: 68. So far you're
15 the winner.

16 MR. MARTINEZ: My name is Peter
17 Carlos Martinez and this is my wife,
18 Elizabeth Martinez. I want to say
19 thank you for allowing me to be here
20 to hear my request for a variance.

21 CHAIRMAN SCALZO: Very good. Mr.
22 Martinez, if I have captured everything
23 that you're here for in that one run-on
24 sentence, we can just go ahead and
25 continue from here. If you'd like to add

2 some color commentary to what I just
3 said, feel free.

4 MR. MARTINEZ: Sure. We're
5 requesting the opportunity to build a
6 two-car garage, primarily because it's a
7 little difficult to get into our current
8 garage. It's on the smaller side. There
9 are several other reasons why. The
10 primary reason is we've been in this home
11 for one year, approximately, and we've
12 already had our car broken into and the
13 catalytic converter stolen. We're
14 looking to protect our vehicles, not only
15 from vandalism and theft but also from
16 the elements, the hail, and even mice or
17 other animals that can get inside of our
18 vehicles. Those are some of the reasons
19 why we're hoping to be able to build a
20 two-car garage.

21 CHAIRMAN SCALZO: Very good. Thank
22 you very much. Stay right there. We've
23 all driven past your property, took a
24 look.

25 There's a fence around the pool as

2 well?

3 MR. MARTINEZ: Yes, there is.

4 CHAIRMAN SCALZO: I did see you
5 took some trees down --

6 MR. MARTINEZ: Yes.

7 CHAIRMAN SCALZO: -- where the
8 proposed garage is going to go.

9 The first variance, maximum square
10 footage of an accessory structure in the
11 front yard to keep an 8 x 10 accessory
12 structure, that's the shed?

13 MR. MARTINEZ: Yes. There's a
14 plastic storage shed.

15 CHAIRMAN SCALZO: That's great.
16 Having gone through the neighborhood, the
17 two-car garage that you're proposing, I
18 didn't see any other two-car garages in
19 your general vicinity. As I was driving
20 down on the other side of the street,
21 somebody has one of the longest sheds
22 I've ever seen in the backyard. There
23 are structures of probably similar square
24 footage there. It's not a normal two-car
25 garage-looking structure. It appears you

2 keep your lot very neat, which certainly
3 scores points.

4 MR. MARTINEZ: Thank you.

5 CHAIRMAN SCALZO: Let me ask you, I
6 don't know where this is going to land
7 because it's a seven-member Board, if one
8 of the conditions for the structure
9 staying in place was that it can only
10 remain in place with a fence up, would
11 that be something that would be
12 acceptable to you? Meaning if the fence
13 comes down, the shed has to come down.
14 The fence stays up because it screens
15 people from seeing the shed.

16 MR. MARTINEZ: Of course. We have
17 no plans on removing the fence.

18 CHAIRMAN SCALZO: That's me talking
19 out loud. I've talked enough. This is
20 going to be shorter than the last
21 application.

22 I'm going to start with Ms. Banks.
23 Ms. Banks, if you haven't had a chance to
24 drive by the property or take a look, you
25 can certainly abstain from this

2 application. If you'd like to add
3 comment, please do.

4 MS. BANKS: I did not see this
5 property.

6 CHAIRMAN SCALZO: Mr. Eberhart.

7 MR. EBERHART: No questions.

8 CHAIRMAN SCALZO: Mr. Hermance.

9 MR. HERMANCE: I have a question.
10 The placement of the garage, why so far
11 away from the existing structure? Is
12 there like septic or a well or --

13 CHAIRMAN SCALZO: It's central
14 water and sewer.

15 MR. HERMANCE: Why so tight to the
16 property line instead of shifting it
17 towards the structure more?

18 MR. MARTINEZ: Good question. We
19 did consider having it closer to the
20 structure at first for convenience
21 reasons. With the slope of the hill, it
22 was recommended by our contractor to move
23 it over. That's primarily the reason.

24 CHAIRMAN SCALZO: Less excavation.

25 MR. HERMANCE: Did you consider

2 adding onto the existing house? Instead
3 of having a detached garage, having it
4 attached?

5 MR. MARTINEZ: No, that didn't
6 cross my mind because of the way the lot
7 sits.

8 MR. HERMANCE: It is a little
9 tight, actually.

10 MR. MARTINEZ: It's a straight
11 shot, pretty much, from the driveway up
12 to this new structure that we want to
13 build.

14 MR. HERMANCE: Like we've always
15 brought up before, maintenance of the
16 structure up against the side of the
17 house and being that close to the
18 property line.

19 CHAIRMAN SCALZO: Mr. Hermance, let
20 me help you out. The minimum offset on
21 an accessory structure in this zone is 5
22 feet. He's not seeking a variance for
23 that.

24 MR. HERMANCE: Okay.

25 CHAIRMAN SCALZO: Is that correct,

2 Mr. Mattina?

3 MR. MATTINA: Yes.

4 CHAIRMAN SCALZO: Thank you.

5 MR. HERMANCE: You've answered my
6 question about why it's located there.

7 MR. MARTINEZ: Thank you.

8 CHAIRMAN SCALZO: Mr. Bell.

9 MR. BELL: No. I'm good.

10 CHAIRMAN SCALZO: Very good.

11 Mr. Masten.

12 MR. MASTEN: No. When I was there
13 I talked to the owner and he explained
14 everything to me. After talking to him
15 and everything, I have no other questions.

16 CHAIRMAN SCALZO: Very good, Mr.
17 Masten. Thank you.

18 Ms. Rein.

19 MS. REIN: One question. I was a
20 little confused. The 8 x 10 structure
21 you're talking about, is that the shed
22 that's already there?

23 MR. MARTINEZ: Correct.

24 MS. REIN: So it's already there
25 and you just want to be able to keep it?

2 MR. MARTINEZ: Yes, I would.

3 MR. DONOVAN: Presumably in this
4 process you've discovered it wasn't
5 permitted?

6 MR. MARTINEZ: Correct. I put the
7 shed up. I didn't know I needed a
8 permit.

9 MR. DONOVAN: Worse things have
10 happened.

11 CHAIRMAN SCALZO: You're good, Ms.
12 Rein?

13 MS. REIN: I am. Thank you.

14 CHAIRMAN SCALZO: At this time I'm
15 going to open it up to any members of the
16 public that wish to speak about this
17 application. We have one coming.

18 Mr. Martinez, you can just step
19 aside or have a seat.

20 MR. WILCOX: I couldn't hear too
21 well in the back. My name is John
22 Wilcox, I live down the street at 17.

23 My question is about the shed in
24 the front yard. Was that still going to
25 go there or did I miss something?

2 CHAIRMAN SCALZO: He's applying for
3 a variance to keep it there. Right now
4 it's not legal to have it there.

5 MR. WILCOX: In the front yard?

6 CHAIRMAN SCALZO: You can't see it,
7 though, from --

8 MR. WILCOX: You can see it from my
9 house. You can see his whole front yard.
10 If the shed is going to go in the front
11 yard, it's not a very good thing.

12 MR. HERMANCE: He actually has two
13 front yards.

14 MR. BELL: He has two front yards
15 -- what you consider two front yards.
16 He's right on the corner. You can see,
17 more or less, the A-frame portion on top.
18 You can see that.

19 Is that one of those plastic style
20 sheds?

21 MR. MARTINEZ: It is.

22 CHAIRMAN SCALZO: Let me ask you,
23 Mr. Martinez, whatever is stored in that,
24 could that end up making its way into
25 your garage?

2 MR. MARTINEZ: Yes, it could.

3 CHAIRMAN SCALZO: As I say, because
4 the fence was there and I couldn't see
5 the shed from the street, I had asked --
6 not as a condition, but perhaps it could
7 be a condition that the fence stay up.
8 However, there are also other conditions
9 that could be requested or required.

10 MR. WILCOX: Could it go in the
11 backyard?

12 MR. MARTINEZ: There's not enough
13 room because there's a swimming pool and
14 a deck.

15 MR. WILCOX: Between the deck and
16 where you're going to put the garage?

17 CHAIRMAN SCALZO: Sir, can I ask
18 you to step forward. You do know how
19 we're talking about this. Correct?
20 That's where the shed is right now with
21 the stockade fence in front of it.

22 MR. WILCOX: This is the side yard?

23 CHAIRMAN SCALZO: No. Okay. Now
24 I've got you. Because he's on a corner,
25 by code they call that two front yards.

2 Even though the front of his house faces
3 Pommel, the side of his house faces --

4 MR. WILCOX: He's not going to put
5 the shed on Pommel?

6 CHAIRMAN SCALZO: It's going to
7 stay where it is, which is right there.

8 MR. WILCOX: I have no problem with
9 that.

10 CHAIRMAN SCALZO: Thank you, sir.

11 MR. WILCOX: I have another
12 question. The two-car garage, there's a
13 one-car garage there now.

14 CHAIRMAN SCALZO: Yes.

15 MR. WILCOX: According to my deed,
16 which is almost sixty years old now,
17 you're not allowed to have more than a
18 two-car -- a garage that takes more than
19 two cars.

20 CHAIRMAN SCALZO: That's most
21 likely a deed restriction. I don't know
22 if that ended up making it to the filed
23 map or not.

24 Mr. Mattina, help me out. Code
25 currently allows a two-car garage,

2 doesn't it?

3 MR. MATTINA: Yes. We don't
4 enforce deed restrictions.

5 MR. WILCOX: No more than two cars.
6 They've got a garage and the house.

7 MR. DONOVAN: The deed restriction
8 doesn't apply to the Town. If that's a
9 private covenant, than that's a private
10 issue. The Town of Newburgh doesn't
11 enforce the deed restrictions. I don't
12 know if it's on Mr. Martinez's deed or
13 not. It doesn't impact what the ZBA
14 does.

15 MR. WILCOX: Okay. That's all I've
16 got.

17 CHAIRMAN SCALZO: Is there anyone
18 else from the public that wishes to speak
19 about this application?

20 (No response.)

21 MS. REIN: I think what the
22 gentleman was asking is, since there's
23 already a one-car garage, is this going
24 to be a three-car garage?

25 CHAIRMAN SCALZO: No. The one car

2 is under the house.

3 MS. REIN: Okay. So we're not
4 bringing anything up now?

5 MR. DONOVAN: We're allowed to go
6 to four.

7 MR. MATTINA: You're allowed to
8 have four.

9 MR. DONOVAN: You're allowed four
10 in the code.

11 MS. REIN: Okay.

12 CHAIRMAN SCALZO: Looking to the
13 public, it doesn't appear as though
14 anyone else has any comments.

15 I'll look to the Board. Any other
16 comments from the Board?

17 MS. BANKS: No.

18 MR. EBERHART: No.

19 MR. HERMANCE: No.

20 MR. BELL: No.

21 MR. MASTEN: No.

22 MS. REIN: No.

23 CHAIRMAN SCALZO: I'll look to the
24 Board for a motion to close the public
25 hearing.

2 MR. EBERHART: I'll make a motion
3 to close the public hearing.

4 MR. BELL: I'll second it.

5 CHAIRMAN SCALZO: We have a motion
6 to close from Mr. Eberhart. We have a
7 second from Mr. Bell. All in favor?

8 MS. BANKS: Aye.

9 MR. EBERHART: Aye.

10 MR. HERMANCE: Aye.

11 CHAIRMAN SCALZO: Aye.

12 MR. BELL: Aye.

13 MR. MASTEN: Aye.

14 MS. REIN: Aye.

15 CHAIRMAN SCALZO: Those opposed?

16 (No response.)

17 CHAIRMAN SCALZO: Very good. You
18 can have a seat, Mr. Martinez.

19 The public hearing is now closed.

20 This is also a Type 2 action under
21 SEQRA. Correct, Counsel?

22 MR. DONOVAN: That is correct, Mr.
23 Chairman.

24 CHAIRMAN SCALZO: We'll go through
25 the area variance criteria and discuss

2 the five factors, the first one being
3 whether or not the benefit can be
4 achieved by other means feasible to the
5 applicant. It does not appear so. He
6 does meet the side yard setbacks. It was
7 just the lot coverage on the side yard
8 because he's on a corner lot with the
9 shed.

10 The second, if there's an
11 undesirable change in the neighborhood
12 character or a detriment to nearby
13 properties.

14 MR. BELL: No.

15 MS. REIN: No.

16 CHAIRMAN SCALZO: It does not
17 appear so.

18 The third, whether the request is
19 substantial. Well, by the numbers I'm
20 not sure that it's substantial.

21 As far as lot coverage goes, Mr.
22 Mattina, what is the percentage there?

23 MR. DONOVAN: I think it's fairly
24 substantial.

25 CHAIRMAN SCALZO: There it is. 58

2 percent. A variance of 290 square feet.

3 MR. DONOVAN: If I recall, it's the
4 overall effect.

5 CHAIRMAN SCALZO: It's the overall
6 effect. Thank you.

7 MR. MATTINA: That's both of them,
8 the small shed and the garage added
9 together.

10 CHAIRMAN SCALZO: I understand now.
11 The fourth, whether the request
12 will have adverse physical or
13 environmental effects.

14 MR. EBERHART: No.

15 MR. HERMANCE: No.

16 MR. BELL: No.

17 CHAIRMAN SCALZO: The fifth,
18 whether the alleged difficulty is self-
19 created which is relevant but not
20 determinative.

21 MR. BELL: It is, but it's okay.

22 CHAIRMAN SCALZO: It appears that
23 way.

24 Okay. So having gone through the
25 five factors, if the Board approves we

2 can grant the minimum variance necessary
3 and may impose reasonable conditions.

4 Does the Board have a motion of
5 some sort? Any conditions? I like the
6 condition of should we move forward with
7 this, as long as that shed is on the side
8 yard, the fence must remain up and in
9 good condition.

10 MR. HERMANCE: If the fence is
11 removed, then the shed goes with it.

12 CHAIRMAN SCALZO: If the fence is
13 removed, then the shed gets removed.
14 That seems reasonable to me.

15 MS. REIN: I'll make a motion.

16 CHAIRMAN SCALZO: To approve with
17 that condition?

18 MS. REIN: Absolutely.

19 MS. BANKS: Second.

20 CHAIRMAN SCALZO: We have a motion
21 from Ms. Rein. We have a second from?

22 MS. BANKS: The second was from me.

23 CHAIRMAN SCALZO: I don't know that
24 you can.

25 MR. DONOVAN: Legally she absolutely

2 can. She's a Member. She's sworn
3 in. The law doesn't presuppose that
4 any of you are prepared. You're duly
5 appointed Members, you've taken your
6 oath and you can participate and
7 vote. You may be more prepared than
8 other members. Who knows. Right?
9 You're supposed to be prepared, but,
10 believe it or not, you're not required
11 to be.

12 CHAIRMAN SCALZO: Then we have a
13 second from Ms. Banks.

14 Can you roll on that, Siobhan.

15 MS. JABLESNIK: Ms. Banks.

16 MS. BANKS: Yes.

17 CHAIRMAN SCALZO: It's motion for
18 approval, yes or no.

19 MS. BANKS: Yes.

20 MS. JABLESNIK: Mr. Bell.

21 MR. BELL: Yes.

22 MS. JABLESNIK: Mr. Eberhart.

23 MR. EBERHART: Yes.

24 MS. JABLESNIK: Mr. Hermance.

25 MR. HERMANCE: Yes.

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

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

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

5 M S . R E I N : I s t h i s m o t i o n f o r
6 e v e r y t h i n g w i t h t h e c o n d i t i o n s ?

7 M R . B E L L : Y e s .

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

9 M S . J A B L E S N I K : M r . S c a l z o .

10 C H A I R M A N S C A L Z O : Y e s .

11 T h e m o t i o n i s c a r r i e d . T h e
12 v a r i a n c e s a r e a p p r o v e d . G o o d l u c k .

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 5th day of May 2025.



MICHELLE CONERO

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

MANHEIM REMARKETING, INC.
2000 Dealer Drive, Newburgh
Section 89; Block 1; Lot 83
IB Zone

----- X

Date: April 24, 2025
Time: 8:03 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
LATWAN BANKS
DARRELL BELL
JAMES EBERHART, JR.
GREGORY M. HERMANC
JOHN MASTEN
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: TYLER WEBB

----- X

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

2 CHAIRMAN SCALZO: Our next
3 applicant is Manheim Remarketing, Inc.,
4 2000 Dealer Drive in Newburgh. This is
5 a Planning Board referral for an area
6 variance to exclude any interior
7 landscaping within the parking areas
8 for a proposed expansion of the
9 existing motor vehicle storage area
10 of the Manheim Auto Auction facility.

11 Do we have mailings on this,
12 Siobhan?

13 MS. JABLESNIK: This applicant sent
14 65 letters.

15 CHAIRMAN SCALZO: That was a little
16 difficult getting in there, but I did
17 actually get the phone call that I
18 needed. I looked at the hill from 84 and
19 looked at a bunch of aerial photos.
20 Things haven't changed there in many
21 years.

22 Who do we have with us today?

23 MR. WEBB: Thank you, Mr. Chair.
24 My name is Tyler Webb, I'm a civil
25 engineer with Kimley Horn. I'm

2 representing the applicant and the owner
3 of Manheim Remarketing. They're the
4 owner/operator of the Manheim Newburgh
5 facility. I also have with me Darryl
6 Vrooman, the assistant manager at Manheim
7 Newburgh.

8 You took my spiel away from me on
9 why we're here tonight, so thank you.

10 CHAIRMAN SCALZO: Listen, I took an
11 awful lot of time on the first applicant.
12 If you want to add minimal, the Reader's
13 Digest version of your commentary, we're
14 happy to hear it. I don't want to miss
15 anything that you want to point out to
16 us.

17 MR. WEBB: Thank you very much.
18 It's my understanding as well that
19 there's been enough review time from the
20 County for the Board to act, if they
21 decide to.

22 CHAIRMAN SCALZO: I'm glad you
23 asked that question. I forgot to ask
24 Siobhan. We did hear back from County?

25 MS. JABLESNIK: Yes.

2 CHAIRMAN SCALZO: A Local
3 determination?

4 MS. JABLESNIK: It was very quick
5 this month. Yes, a Local determination.

6 CHAIRMAN SCALZO: Which means we
7 can continue.

8 MR. WEBB: Our project in front of
9 the Planning Board is the expansion of
10 the Manheim auto storage facility. The
11 current property is about 159 acres.
12 We're proposing about a 13.5 acre
13 expansion of impervious auto storage area
14 for a total of 93 acres of impervious,
15 which is below the allowed impervious,
16 the 80 percent maximum in the IB Zoning
17 District.

18 CHAIRMAN SCALZO: Okay. That's it?

19 MR. WEBB: That's it, yes.

20 CHAIRMAN SCALZO: All right. Are
21 you treating that water in any way at
22 all?

23 MR. WEBB: Yes. As part of the
24 site plan review, we are preparing a
25 SWPPP, a stormwater pollution prevention

2 plan, that gives us the latest 2024
3 regulations.

4 CHAIRMAN SCALZO: Very good. As I
5 drove past on 84, it's up a hill, the
6 section where the proposed expansion is
7 happening. Driving in Dealer Drive, I
8 only got to a certain point where I
9 couldn't see either. When I did drive on
10 North Fletcher, I don't believe I could
11 see it from there either. It is pretty
12 tucked away in this area. With the
13 mitigative efforts with your SWPPP, I
14 don't have any other comments.

15 I'm going to look down. Ms. Banks,
16 have you had a chance or would you like
17 to comment on this?

18 MS. BANKS: So I did visit. It
19 seems pretty straightforward.

20 The one thing that I did notice is
21 there's forest that you're planning to
22 clear?

23 MR. WEBB: That's correct, yes.

24 MS. BANKS: There's going to be
25 wildlife and stuff like that. How are

2 you addressing the potential disruption
3 to wildlife?

4 MR. WEBB: As part of our wildlife
5 mitigation, we are only cutting trees
6 during the fall -- the winter season for
7 the Northern Long Eared Bat mitigation.

8 CHAIRMAN SCALZO: What about the
9 Indiana Bat? How about him?

10 MR. WEBB: All the bats.

11 CHAIRMAN SCALZO: There are two
12 protected bats.

13 MR. DONOVAN: Actually, this might
14 be a good time to just -- so a number of
15 the applications we get are referred to
16 us from the Planning Board. This
17 application is here tonight just for the
18 parking landscaping part of it.

19 The issue that you raised is an
20 important issue, but they're going to
21 have to demonstrate to the Planning Board
22 that they've either mitigated to the
23 maximum extent possible or it will have
24 no adverse impact on the habitat. That's
25 something they need to demonstrate to the

Planning Board.

I'm going to tell you, when the Chairman asks me is this an Unlisted action, because he knows it's an Unlisted action, you're going to have to issue a negative declaration under SEQRA. That's the State Environmental Quality Review Act. All you're saying when you do that is the fact that there being no landscaping in this parking area expansion will not have an adverse impact on the neighborhood. Understanding when they go back to the Planning Board, the Planning Board is going to do their full -- if you went through the packet, you'll see the full environmental assessment form. It's a lot longer than the short, two-page thing that you usually get. There's going to be a full environmental review by the Planning Board.

CHAIRMAN SCALZO: Thank you. Great question. None of us would have heard that unless you asked it.

MR. EBERHART: What about

stormwater drainage?

CHAIRMAN SCALZO: That would also be a Planning Board issue as well.

MR. DONOVAN: There again, talking about shoring, stormwater management here and the SWPPP and all kinds of interesting stuff.

MR. WEBB: Maybe we can do a lunch and learn for the Board.

MS. REIN: I don't think we need any more Indiana Bats. I think we're good.

CHAIRMAN SCALZO: He can probably tell you where their caves are in the winter. Most of them are in Rosendale.

MR. WEBB: I do not know.

CHAIRMAN SCALZO: That's a lunch and learn for me.

Mr. Eberhart, any other questions?

MR. EBERHART: No.

CHAIRMAN SCALZO: Mr. Hermance.

MR. HERMANCE: No.

CHAIRMAN SCALZO: Mr. Bell.

MR. BELL: No.

2 CHAIRMAN SCALZO: Mr. Masten.

3 MR. MASTEN: No.

4 CHAIRMAN SCALZO: Ms. Rein.

5 MS. REIN: No.

6 CHAIRMAN SCALZO: Very good.

7 At this point I'm going to open it
8 up to any members of the public that wish
9 to comment on this application for Manheim.

10 (No response.)

11 CHAIRMAN SCALZO: At this point I'll
12 look to the Board one more time.

13 MS. BANKS: No.

14 MR. EBERHART: No.

15 MR. HERMANCE: No.

16 MR. BELL: No.

17 MR. MASTEN: No.

18 MS. REIN: No.

19 CHAIRMAN SCALZO: One last chance
20 for the public.

21 (No response.)

22 CHAIRMAN SCALZO: Very good.

23 I'll look to the Board for a motion
24 to close the public hearing.

25 MS. REIN: I'll make a motion to

close the public hearing.

MR. EBERHART: I'll second it.

CHAIRMAN SCALZO: We have a motion to close from Ms. Rein. We have a second from Mr. Eberhart. All in favor?

MS. BANKS: Aye.

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

CHAIRMAN SCALZO: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Those opposed?

(No response.)

CHAIRMAN SCALZO: Very good.

This is an Unlisted action under SEQRA. If the Board is going to make a motion to approve this application, we also need a motion for a negative declaration. What we need from the Board is for a Board Member to make a motion for a negative declaration.

Before I ask for that, in addition to that we need a second, and then we're

going to have that motion. The roll call vote is making a motion to approve or --

MR. DONOVAN: To adopt a negative declaration saying that the variance allowing the parking without landscaping will not have an adverse environmental impact. That's the Reader's Digest version of that.

CHAIRMAN SCALZO: Thank you, Counsel.

At this point I'll look to the Board to make a motion for a negative declaration.

MR. HERMANCE: I'll make a motion for the negative dec.

MS. REIN: I'll second it.

CHAIRMAN SCALZO: We have a motion for a negative declaration from Mr. Hermance. We have a second from Ms. Rein. All in favor?

MS. BANKS: Aye.

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

CHAIRMAN SCALZO: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Those opposed?

(No response.)

CHAIRMAN SCALZO: Very good. Now we're going to move on to our criteria, which are very close to the same ones for the area variance.

MR. DONOVAN: The exact same ones.

CHAIRMAN SCALZO: Remarkably. I'm going to switch up a word or two.

The first one being whether or not the benefit can be achieved by other means feasible to the applicant. If he wants to expand, that's kind of how you have to do it.

MR. BELL: None.

CHAIRMAN SCALZO: Second, if there's an undesirable change in the neighborhood character or a detriment to nearby properties. As we all determined, you can't see it from anywhere.

The third, whether the request is

2 substantial. It does not appear so when
3 you talk about the site.

4 How many total acres, the total
5 site?

6 MR. WEBB: 159.

7 CHAIRMAN SCALZO: How many acres of
8 impervious?

9 MR. WEBB: I've got my notes. 9.6
10 acres.

11 CHAIRMAN SCALZO: 90.6?

12 MR. WEBB: 9.6.

13 CHAIRMAN SCALZO: 9. That's small.
14 Very good. Thank you.

15 Fourth, whether the request will
16 have adverse physical or environmental
17 effects.

18 MR. EBERHART: No.

19 MR. BELL: No.

20 MR. MASTEN: No.

21 MS. REIN: No.

22 CHAIRMAN SCALZO: None that won't
23 be mitigated.

24 Fifth, whether the alleged
25 difficulty is self-created, which of

2 course it is.

3 If the Board approves, it shall
4 grant the minimum variance necessary with
5 reasonable conditions, although I'm not
6 sure we have to have any conditions
7 attached to this.

8 Having gone through the balancing
9 tests, does the Board have a motion of
10 some sort?

11 MS. REIN: I'll make a motion to
12 approve.

13 MS. BANKS: I'll second it.

14 CHAIRMAN SCALZO: We have a motion
15 for approval from Ms. Rein. We have a
16 second down there from Ms. Banks.

17 Can you roll on that, Siobhan.

18 MS. JABLESNIK: Ms. Banks.

19 MS. BANKS: Yes.

20 MS. JABLESNIK: Mr. Bell.

21 MR. BELL: Yes.

22 MS. JABLESNIK: Mr. Eberhart.

23 MR. EBERHART: Yes.

24 MS. JABLESNIK: Mr. Hermance.

25 MR. HERMANCE: Yes.

2 MS. JABLESNIK: Mr. Masten.

3 MR. MASTEN: Yes.

4 MS. JABLESNIK: Ms. Rein.

5 MS. REIN: Yes.

6 MS. JABLESNIK: Mr. Scalzo.

7 CHAIRMAN SCALZO: Yes.

8 The motion is carried. The
9 variances are approved. Thank you very
10 much.

11 MR. WEBB: Thank you.

12

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

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 5th day of May 2025.



MICHELLE CONERO

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

RONALD WILSON

26 Greenwood Drive, Newburgh
Section 43; Block 3; Lot 58
R-1 Zone

----- X

Date: April 24, 2025
Time: 8:14 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
LATWAN BANKS
DARRELL BELL
JAMES EBERHART, JR.
GREGORY M. HERMANC
JOHN MASTEN
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: RONALD WILSON

----- X

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

2 CHAIRMAN SCALZO: Our next
3 applicant is Ronald Wilson, 26 Greenwood
4 Drive, seeking an area variance to build
5 a 20 x 24 x 28 accessory building in the
6 front yard.

7 Siobhan, do we have mailings on
8 this?

9 MS. JABLESNIK: This applicant sent
10 27 letters.

11 CHAIRMAN SCALZO: All right. Who
12 do we have with us?

13 MR. WILSON: Ron Wilson.

14 CHAIRMAN SCALZO: How are you, Mr.
15 Wilson?

16 MR. WILSON: Outstanding. Thanks.

17 CHAIRMAN SCALZO: Boy, that was way
18 too short. A 20 x 24 x 28 accessory
19 building in the front yard.

20 MR. WILSON: No.

21 CHAIRMAN SCALZO: It's only 8 feet.

22 MS. JABLESNIK: That's the one that
23 I changed.

24 CHAIRMAN SCALZO: I didn't get the
25 new agenda.

2 I was out there sometime in the
3 last week. I never knew that road
4 existed. That's great.

5 MR. WILSON: That's a good thing.

6 CHAIRMAN SCALZO: A little piece of
7 paradise back there.

8 I saw a couple of covered vehicles.
9 I'm going to assume they might have been
10 Corvettes.

11 MR. WILSON: That's a good
12 assumption.

13 CHAIRMAN SCALZO: It's a nice,
14 quiet street. I also noticed no one else
15 has a garage unless it's attached to
16 their house in their front yard. Looking
17 from my perspective, with some creative
18 grading you might be able to fit this in
19 the backyard. That's just an observation
20 on my part.

21 At this point I'm going to turn it
22 over to my left. Ms. Rein, questions or
23 comments?

24 MS. REIN: Not yet.

25 CHAIRMAN SCALZO: Okay. That's

2 good.

3 Mr. Masten.

4 MR. MASTEN: No. Not right now.

5 CHAIRMAN SCALZO: Mr. Bell.

6 MR. BELL: No.

7 CHAIRMAN SCALZO: Way too quick.

8 You guys are making up the time that I
9 wasted on the first application. Not
10 wasted, but took on the first application.

11 Mr. Hermance.

12 MR. HERMANCE: The exact position
13 of this structure would be over your
14 existing driveway?

15 MR. WILSON: Looking at the house,
16 to the right of the existing driveway.

17 MR. HERMANCE: Just to the right of
18 the existing driveway.

19 CHAIRMAN SCALZO: It is sketched on
20 the survey here. There are a lot of
21 numbers on that.

22 MR. WILSON: It was a lot of work.
23 It's 13 and-a-half feet from the corner
24 of the dwelling, 23 feet from the closest
25 property line. The furthest end of the

2 building would be 71 feet back from the
3 road. Our house sits about 100 feet
4 back.

5 MR. HERMANCE: I noticed you sit
6 back quite a ways.

7 CHAIRMAN SCALZO: I'm going to ask
8 a question that Mr. Hermance asked of an
9 earlier applicant. Did you ever consider
10 trying to connect it to the house? That
11 makes some things go away.

12 MR. WILSON: I considered it, but I
13 think the only way to go would be
14 backwards into the backyard. I think
15 that would take some extensive digging
16 and restructuring.

17 CHAIRMAN SCALZO: Creative grading.

18 MR. WILSON: Creative grading.
19 Dollar signs are attached to that.

20 CHAIRMAN SCALZO: Dollar signs are
21 attached to any --

22 MR. WILSON: A lot more dollar
23 signs.

24 CHAIRMAN SCALZO: Mr. Eberhart, any
25 questions or comments?

2 MR. EBERHART: No. Like you, my
3 concern is there's nothing comparable.

4 CHAIRMAN SCALZO: It's far enough
5 away, but sort of in your neighborhood.

6 MR. EBERHART: Real close, actually.
7 That was my only issue.

8 CHAIRMAN SCALZO: Ms. Banks.

9 MS. BANKS: I had the same issue, I
10 didn't see any other properties with
11 similar structures.

12 Are you aware of other properties
13 in the nearby community?

14 MR. WILSON: Not at all. Due to
15 the fact that our house sits almost 100
16 feet off the main road and the shed
17 itself will be tucked away where you
18 can't really see it. It's a cul-de-sac
19 there anyway.

20 CHAIRMAN SCALZO: Right. You
21 probably have the architecturals here.
22 The entrance to that would be off the
23 driveway, not --

24 MR. WILSON: Correct.

25 CHAIRMAN SCALZO: At this point I

2 want to open it up to any members of the
3 public that wish to speak about this
4 application or have any questions about
5 this application. Anyone?

6 (No response.)

7 CHAIRMAN SCALZO: No. There are no
8 questions or comments from the public for
9 the 26 Greenwood Drive application.

10 You've been here for the entire
11 meeting. You heard us about setting
12 precedents with garages in the front
13 yard.

14 Last chance for the public.

15 (No response.)

16 CHAIRMAN SCALZO: No. I'll look to
17 the Board for a motion to close the
18 public hearing.

19 MR. MASTEN: I'll make a motion to
20 close the public hearing.

21 MS. REIN: I'll second it.

22 CHAIRMAN SCALZO: We have a motion
23 to close from Mr. Masten. We have a
24 second from Ms. Rein. All in favor?

25 MS. BANKS: Aye.

2 MR. EBERHART: Aye.

3 MR. HERMANCE: Aye.

4 CHAIRMAN SCALZO: Aye.

5 MR. BELL: Aye.

6 MR. MASTEN: Aye.

7 MS. REIN: Aye.

8 CHAIRMAN SCALZO: Those opposed?

9 (No response.)

10 CHAIRMAN SCALZO: Discussion on
11 this, folks. Like I say, it just seems
12 that it's a little out of character with
13 what's going on.

14 Mr. Wilson, have you explored other
15 options other than the more expensive
16 option?

17 MR. WILSON: I can't come up with
18 anything. We have a pool on the north
19 side of the house, so you can't get back
20 there. The location on the south side of
21 the house where I'm proposing to put this
22 structure, there's a gigantic -- if
23 you've been out there you've seen the
24 rock that's there. There's one little
25 pathway to get to the back and up the

2 hill into the backyard. It wouldn't be
3 cost efficient to do that.

4 CHAIRMAN SCALZO: Are you removing
5 any trees to do this?

6 MR. WILSON: There's one tree in
7 the front yard. I may take that because
8 it's being overwhelmed by the other trees
9 next to it anyway.

10 MR. BELL: What is this going to be
11 used for?

12 MR. WILSON: It's a metal carport/
13 shed to put my -- all the way to the back
14 of the property for all the lawn
15 equipment, all the winter stuff gets
16 stored in there. Back and forth up that
17 hill to do all that. Anything else to
18 get it off the driveway and keep it from
19 the elements.

20 CHAIRMAN SCALZO: I would have
21 figured it would be for the cars that are
22 covered.

23 MR. WILSON: Absolutely. They're
24 going to go in there as well.

25 CHAIRMAN SCALZO: One last time

2 going through here. Ms. Rein.

3 MS. REIN: I have a concern about
4 setting a precedent.

5 CHAIRMAN SCALZO: I hear you.

6 Mr. Masten, do you have any
7 concerns about this?

8 MR. MASTEN: No.

9 CHAIRMAN SCALZO: Mr. Bell, do you
10 have concerns or any comments?

11 MR. BELL: No. I'm good.

12 CHAIRMAN SCALZO: Mr. Hermance, one
13 last time.

14 MR. HERMANCE: I'm just thinking
15 maybe you'll be able to explore some
16 alternate options. It's a big ask.
17 Accessory structures aren't allowed in
18 the front yard. It's in our zoning laws.
19 You may want to explore different options
20 even though they may be a little more
21 costly. I think there's some available
22 to you.

23 CHAIRMAN SCALZO: Mr. Eberhart.

24 MR. EBERHART: I completely agree
25 with Mr. Hermance, that he should look at

2 some other options.

3 CHAIRMAN SCALZO: Ms. Banks.

4 MS. BANKS: Definitely alternative
5 options.

6 CHAIRMAN SCALZO: Mr. Bell, I heard
7 you.

8 MR. BELL: I guess I found the
9 height.

10 CHAIRMAN SCALZO: It's 8, not 28.
11 Everyone is good?

12 MS. BANKS: Yes.

13 MR. EBERHART: Yes.

14 MR. HERMANCENCE: Yes.

15 MR. BELL: Yes.

16 MR. MASTEN: Yes.

17 MS. REIN: Yes.

18 MR. WILSON: If I may, I have
19 spoken to the neighbors and they walked
20 it. We spent a lot of time together in
21 that cul-de-sac. They've come over,
22 they've looked. They received the
23 letter. The day they all received it,
24 they all came over.

25 CHAIRMAN SCALZO: Apparently the

2 day they received them, it wasn't online
3 yet. They had to ask about it because it
4 wasn't online yet.

5 MR. WILSON: They have no problem
6 with it because we're so offset from the
7 street and it's not in anyone's line of
8 view back there. There's no lake to look
9 at. It's up against trees on the 23 foot
10 side and it's at least 300 feet from the
11 house to the right. It's tucked away
12 back along the side of the house.

13 CHAIRMAN SCALZO: Let's talk about
14 the exterior. Are you going to match --

15 MR. WILSON: It's going to be earth
16 tones, yes. It's going to disappear back
17 there.

18 MR. BELL: I was going to ask, is
19 it going to be the same color as your
20 home?

21 MR. WILSON: They couldn't match
22 the exact same color. It's going to be
23 very similar to that, just to make it
24 disappear back there.

25 CHAIRMAN SCALZO: This is a Type 2

2 action under SEQRA. We're going to go
3 through our area variance factors here,
4 the first one being whether or not the
5 benefit can be achieved by other means
6 feasible to the applicant. Could it?
7 Sure. If they did some creative grading
8 and got it around the back of the house.
9 People build retaining walls all the
10 time.

11 Second, if there's an undesirable
12 change to the neighborhood character or a
13 detriment to nearby properties. That's a
14 subjective statement in this instance,
15 only because there are no other homes
16 with a detached accessory structure in
17 the front yard.

18 The third, whether the request is
19 substantial. Well, when it says
20 substantial, Counsel, would that mean if
21 there are no other accessory structures
22 in the front yards?

23 MR. DONOVAN: You have to balance
24 is it substantial because the prohibition
25 is absolute. In that degree it is

2 substantial. You also have to weigh
3 what's the impact on the neighborhood in
4 terms of visibility of the structure in
5 the front yard. I think you need to look
6 at both of those things in terms of
7 substantiality.

8 CHAIRMAN SCALZO: When you say it
9 that way, all I can say is how many --
10 you're looking at, what, five other
11 houses beyond you to get to the end of
12 the cul-de-sac.

13 MR. WILSON: One really. The
14 others are down --

15 CHAIRMAN SCALZO: The other side.
16 There's the fellow that has the work
17 trucks in his driveway that you almost
18 wish he had a garage.

19 MR. WILSON: Right.

20 MS. REIN: I have a question for
21 you. If this is approved and it sets a
22 precedent, if other folks in that
23 cul-de-sac want to do it, do they have to
24 come for a variance?

25 CHAIRMAN SCALZO: Absolutely.

2 MR. DONOVAN: Absolutely.

3 MS. REIN: Even though it's a
4 precedent, they still have to come before
5 us?

6 MR. DONOVAN: I'm not going to
7 presuppose what anyone is going to do in
8 terms of how you vote or what your motion
9 is going to be. If you wanted to say
10 something along the lines of if there
11 were different circumstances. This
12 property is on a cul-de-sac. If the
13 property was not on a cul-de-sac, if it
14 was more visible, then say we would very
15 well decide differently.

16 MS. REIN: Okay.

17 MR. DONOVAN: You could establish
18 -- assuming that you wanted to grant the
19 variance, right, you could establish the
20 reason why you do. What makes this
21 application unique that might not make
22 another application with an accessory
23 structure in the front yard the same as
24 this. When you set a precedent, if
25 something comes in, and we attorneys use

2 the phrase on all fours. If it's exactly
3 the same. If you set forth the reason
4 why it might be different, than you're
5 okay.

6 MS. REIN: Okay. Thank you. That
7 makes sense.

8 CHAIRMAN SCALZO: If he was two
9 houses away, everybody would be talking
10 about the huge rock in the neighborhood
11 and not the one he's talking about on the
12 side yard.

13 The fifth, whether the alleged
14 difficulty is self-created which is
15 relevant but not determinative. Of
16 course it's self-created. Just about
17 everybody that comes in here has a self-
18 created issue. Well, not just about.
19 You know what I mean.

20 So we're at that time. Should a
21 variance be granted, it can come with
22 conditions. What's the pleasure of the
23 Board?

24 MS. REIN: I'll make a motion to
25 approve with those conditions.

2 CHAIRMAN SCALZO: Now I'm waiting
3 for Dave. This is going to be good.

4 MR. DONOVAN: You might say you're
5 being persuaded because the property is
6 on a cul-de-sac or a dead-end street.

7 CHAIRMAN SCALZO: It hangs a left
8 after his house and goes down to a
9 cul-de-sac.

10 MR. DONOVAN: I don't mean to put
11 words in your mouth. Put words in my
12 mouth.

13 MR. WILSON: There's no through
14 traffic.

15 CHAIRMAN SCALZO: How many homes
16 are -- once you pull onto your street,
17 how many homes are on the street all the
18 way to the cul-de-sac? You didn't know
19 there would be a quiz, did you? I can't
20 imagine there's more than eleven.

21 MR. WILSON: Nine on my side. On
22 the other side -- probably about eleven
23 total.

24 MR. MASTEN: Twelve, fifteen.

25 CHAIRMAN SCALZO: I mean, you enter

2 the subdivision, you go up the little
3 hill and then come back down.

4 MR. WILSON: I run it quite often.
5 It's two very long hills. It sits way
6 back.

7 MR. DONOVAN: This doesn't appear
8 to be necessarily by a licensed engineer,
9 but it is indicating it's 71 feet from
10 the property line.

11 MR. WILSON: Yes.

12 MR. DONOVAN: It's not like it's 5
13 feet away.

14 CHAIRMAN SCALZO: If it were
15 attached to the house, it would meet the
16 minimum front yard setback. Correct,
17 Mr. Mattina?

18 MR. MATTINA: Yes.

19 CHAIRMAN SCALZO: If you put a
20 connecting roof from that to there, boy
21 we wouldn't be having this conversation.

22 MR. MATTINA: We still would have
23 the side yard setback issue, 30 feet.

24 MR. DONOVAN: A bigger check to
25 write, too.

2 CHAIRMAN SCALZO: Accessory
3 structures are only 5.

4 MS. REIN: Would a breezeway do it?

5 CHAIRMAN SCALZO: No. Joe Mattina
6 cleared me up on that. A breezeway would
7 now connect it to the house and he has a
8 side yard setback of 30 feet.

9 MR. MATTINA: He would need 30 feet.

10 MR. DONOVAN: What other mitigating
11 circumstances can you think of? Is it a
12 treed area? A restricted view?

13 MR. WILSON: No.

14 CHAIRMAN SCALZO: Counsel, there's
15 a lovely photo, an aerial. That one, is
16 it a big maple tree? Some type of
17 deciduous tree.

18 MR. WILSON: Off to the side, yes.
19 The house to our left is raised up on the
20 hill, so it's higher than our house. The
21 neighbor to our right is tucked back and
22 away and you can't even see. She came
23 over and said I can't even see on that
24 side.

25 MR. DONOVAN: There's limited

2 visibility, there's limited traffic. Is
3 that enough? Do you want more?

4 CHAIRMAN SCALZO: Let me throw this
5 one out there. The applicant indicated
6 that this is for the storage of yard
7 equipment, yard tools and vehicles.
8 There will be no business run out of
9 this?

10 MR. WILSON: Absolutely not. No.

11 CHAIRMAN SCALZO: No auto repair
12 other than your own?

13 MR. WILSON: My own personal stuff.

14 CHAIRMAN SCALZO: I don't know that
15 we need to have that as a condition
16 because that's not allowed in that zone.

17 MR. WILSON: Right. I have no
18 plans or desire to do that.

19 CHAIRMAN SCALZO: You appear to be
20 a young enough fellow, younger than me.
21 Say you sell your house to somebody else
22 and they say I've got a great garage and
23 I can do all kinds of great stuff in
24 here.

25 How can we clear that, Counsel, or

2 we don't have to?

3 MR. DONOVAN: We have included that
4 condition in others, even though Code
5 Compliance -- it's a belt and suspenders.
6 We've included it in other variances
7 you've granted for accessory structures.

8 CHAIRMAN SCALZO: Mr. Mattina.

9 MR. MATTINA: If you do put it in
10 the resolution, it's a lot easier to
11 enforce.

12 CHAIRMAN SCALZO: Thank you, Mr.
13 Mattina.

14 Then of course they are limited to
15 the amount of vehicles they can have,
16 four cars?

17 MR. MATTINA: Correct.

18 CHAIRMAN SCALZO: When it comes to
19 unregistered vehicles, how many are
20 allowed there?

21 MR. MATTINA: Well, the Zoning Code
22 says one, but New York State Property
23 Maintenance Code says none.

24 CHAIRMAN SCALZO: Do you have any
25 vehicles that you're currently working on

2 that are not registered?

3 MR. WILSON: No. They're all
4 registered.

5 CHAIRMAN SCALZO: All registered.

6 Okay. Did we have a motion from
7 Ms. Rein?

8 MS. REIN: We did.

9 MR. DONOVAN: Are those conditions
10 sufficient for you?

11 MS. REIN: Yes.

12 CHAIRMAN SCALZO: Okay. So we have
13 a motion on the floor. We can either
14 have a second or we can let that die
15 right where it is.

16 MR. EBERHART: I'll second it.

17 CHAIRMAN SCALZO: We have a second
18 from Mr. Eberhart which now forces a
19 vote, which is wonderful.

20 Can you roll on that, please,
21 Siobhan.

22 MS. JABLESNIK: Ms. Banks.

23 MS. BANKS: No.

24 MS. JABLESNIK: Mr. Bell.

25 MR. BELL: No.

2 MS. JABLESNIK: Mr. Eberhart.

3 MR. EBERHART: Yes.

4 MS. JABLESNIK: Mr. Hermance.

5 MR. HERMANCE: No.

6 MS. JABLESNIK: Mr. Masten.

7 MR. MASTEN: Yes.

8 MS. JABLESNIK: Ms. Rein.

9 MS. REIN: Yes.

10 MS. JABLESNIK: Mr. Scalzo.

11 MR. DONOVAN: It's three-three.

12 CHAIRMAN SCALZO: I know. Do you
13 know how often this happens. Not very.

14 MS. REIN: You have the deciding
15 vote.

16 CHAIRMAN SCALZO: You know what, I
17 want to see you come back with some
18 grading plans for the back. I'm a no.

19 Apologies, but the motion did not
20 carry.

21 MR. WILSON: Okay.

22

23 (Time noted: 8:30 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 5th day of May 2025.



MICHELLE CONERO

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

NICK DiLEMME

12 Deer Run Road, Newburgh
Section 14; Block 3; Lot 22.11
R-1 Zone

----- X

Date: April 24, 2025
Time: 8:30 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
LATWAN BANKS
DARRELL BELL
JAMES EBERHART, JR.
GREGORY M. HERMANC
JOHN MASTEN
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: NICK DiLEMME

----- X

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

2 CHAIRMAN SCALZO: Moving on, we
3 have Nick DiLemme, 12 Deer Run Road,
4 Newburgh, area variances of maximum
5 height, maximum square footage and
6 maximum storage of vehicles to build a
7 42 x 48 x 30.75 accessory building on
8 the property.

9 Do we have mailings on this?

10 MS. JABLESNIK: Yes. This
11 applicant sent 19 letters.

12 CHAIRMAN SCALZO: 19 letters.

13 Who do we have with us?

14 MR. DiLEMME: Nick DiLemme. Thank
15 you for having the meeting tonight.

16 CHAIRMAN SCALZO: For all of us
17 being here. We have a full compliment.

18 Sir, I did a very brief sentence
19 there. We were all out. Beautiful
20 property.

21 MR. DiLEMME: Thank you.

22 CHAIRMAN SCALZO: Big house, --

23 MR. DiLEMME: Thank you.

24 CHAIRMAN SCALZO: -- nice pool,
25 concrete driveway, two doorbells. I rang

2 them both.

3 MR. DiLEMME: I'm sorry. I had an
4 issue and they're disabled. I apologize.

5 CHAIRMAN SCALZO: I was going to
6 say, no one answered.

7 MR. DiLEMME: I'm sorry. I'd be
8 happy to answer the door if I was there.

9 CHAIRMAN SCALZO: There were a
10 couple vehicles.

11 Sir, this one I don't believe
12 Siobhan mistyped. What's the height of
13 this building?

14 MR. DiLEMME: It's 30 some odd feet
15 high.

16 CHAIRMAN SCALZO: The maximum
17 allowed by code is 15, Joe Mattina?

18 MR. MATTINA: Yes, 15.

19 CHAIRMAN SCALZO: We're more than
20 double.

21 MR. DiLEMME: I could try to
22 explain what I'm trying to do --

23 CHAIRMAN SCALZO: Please do.

24 MR. DiLEMME: -- when you feel it's
25 time for me to do that.

2 CHAIRMAN SCALZO: It's time right
3 now.

4 MR. DiLEMME: Well, I'm trying to
5 position the building with the roof line
6 the way it is for the best solar gain to
7 have solar panels on that side of the
8 roof. I need a large roof. I'm trying
9 to kind of match the character of the
10 house. The house is very large. The
11 roof lines are very high. Actually, the
12 house has a steeper roof than what I'm
13 proposing to do here.

14 My neighbors' houses are fairly
15 large, too. I have support from my
16 neighbors, but I don't believe any of
17 them are here. I don't have anyone that
18 opposes it that I know of as of yet.

19 I know I'm asking for a lot. I
20 have reasons for it. There's the height
21 variance, then there's the square footage
22 variance, and then there's the parking
23 spaces or doors. I don't know how you
24 say that.

25 Joe, if you can help with that.

2 CHAIRMAN SCALZO: Feel free, Joe.

3 MR. MATTINA: I was reading. I
4 wasn't paying attention.

5 CHAIRMAN SCALZO: The applicant was
6 looking for a little help.

7 MR. DiLEMME: I don't know if it's
8 for parking spaces or garage doors.

9 MR. MATTINA: It has to do with the
10 square footage of parking spaces. You can
11 have one door and still fit thirty cars
12 in there.

13 MS. REIN: What is the use of this
14 structure?

15 MR. DiLEMME: I have a lot of cars,
16 collectible cars, that I really want to
17 keep inside. It's self-created, you
18 know. I'm not a mechanic. Most of the
19 cars are all newer. One is an older one.
20 I don't do any mechanical work on them.
21 It's storage. There will be no water.
22 There will be no bathroom, no septic. I
23 will heat it with mini-splits for air
24 conditioning and heat for it to be
25 climate controlled. It's to preserve and

2 protect the cars.

3 MS. REIN: Thank you.

4 MR. DiLEMMME: Thank you.

5 CHAIRMAN SCALZO: That's a really
6 tall building. I understand exactly why
7 you explained what you explained. You
8 have 9 foot ceilings in the attic.
9 That's higher than the ceilings in my
10 house. Actually, this structure is
11 bigger than my house, at least my first
12 one. Not that I would expect that you
13 read meeting minutes from the ZBA for
14 pleasure, but here you go. Thank you,
15 Mr. Bell. Mr. Bell sat next to me for
16 long enough. I think the highest
17 variance that I myself have ever agreed
18 to, I think, was 22 feet.

19 You don't have a lift in there so
20 it's not like you're putting cars on the
21 second floor.

22 I'm hoping to hear that there's
23 something you can do to reduce the height
24 of that. That's big. I mean, think
25 about it. 31 feet. That's almost two

2 and-a-half stories.

3 The building code for a main
4 structure is, what, 35?

5 MR. MATTINA: 35.

6 MS. REIN: Why do you need it to be
7 that tall?

8 CHAIRMAN SCALZO: He wants to match
9 the roof line of the house.

10 MR. DiLEMME: The building is big
11 square footage wise. For the roof to
12 look right, I kind of have to go tall.
13 Just say the square footage isn't an
14 issue, just hypothetically. The roof, it
15 just wouldn't look right with the house.
16 I just don't think it would look right.
17 I also kind of need the roof for the
18 solar panels. The roof line of my house
19 doesn't work for solar panels. The house
20 isn't positioned quite right. The way
21 I'm positioning it, it would work really
22 good.

23 If you were to look at the drawings
24 of the house, facing my neighbor I have
25 the dormer side where the stairs come up.

2 There are windows facing them to give
3 them a little more character for look, to
4 look nice. On the other side it's flat.
5 Well, not flat. It's clean.

6 MS. REIN: How tall is your house?

7 MR. DiLEMME: It's 45 feet. It's a
8 two story. It's got high ceilings. It's
9 fairly large. My neighbor's house is
10 fairly large.

11 CHAIRMAN SCALZO: I've lived in
12 Newburgh my whole life and I've never
13 driven down that street.

14 MR. DiLEMME: It's quiet.

15 CHAIRMAN SCALZO: You know who
16 needs a garage is your neighbor.

17 MR. DiLEMME: Yeah.

18 CHAIRMAN SCALZO: As I did drive
19 by, I think he's got six cars outside.

20 MR. DiLEMME: Yeah, he does. He
21 definitely does. He's got some issues to
22 work out.

23 CHAIRMAN SCALZO: I feel like I've
24 talked a lot. I'm going to look to my
25 right.

2 Ms. Banks, do you have comments on
3 this?

4 MS. BANKS: Not at this time.

5 CHAIRMAN SCALZO: Okay. Mr. Eberhart.

6 MR. EBERHART: No. Just the general
7 height concerns.

8 CHAIRMAN SCALZO: Mr. DiLemme, you
9 did say no water, no sewer?

10 MR. DiLEMME: Yes.

11 CHAIRMAN SCALZO: Boy, oh boy.
12 Should you decide one day to do what a
13 lot of people do, they throw it in there,
14 let me just put the stub out and the
15 conduit in just so it can be there if it
16 ever needs to. Next thing you know,
17 you've got an accessory apartment that
18 your grand kids are living in in ten
19 years and now it's not what it's supposed
20 to be. If the ceiling height was 6
21 and-a-half feet, I'd feel better, or
22 something like that on the inside.
23 That's not what we're looking at here.

24 Mr. Hermance.

25 MR. HERMANCE: I was just going to

2 say, are you really married to that
3 dimension of the house? Maybe if it's
4 smaller width wise you wouldn't need that
5 kind of roof line.

6 MR. DiLEMME: Well, if I brought it
7 in, it would make the pitch -- if I
8 brought it in and I dropped the roof, I'm
9 still kind of not getting -- bringing it
10 in would help the roof look steeper.
11 Dropping the roof, it's just not -- the
12 roof line is going to be more standard
13 where I have the high ceilings in my
14 house.

15 If I can comment. I understand
16 what you're saying about the apartment.
17 I totally get that. Can it be done?
18 Yes. It's not easy to be done. It's
19 something I don't want to do. My
20 leachfield is in the front yard of the
21 house towards my neighbor with all the
22 cars. I'd have to go across the concrete
23 driveway, the sidewalk and across to get
24 to the tank, and it would have to be a
25 pump up system. My well is on the other

2 side of the pool. I'd have to dig around
3 the pool and I'd have to go through
4 irrigation to get to it. It's not an
5 easy task for me to get water there.
6 It's not an easy task for me to get sewer
7 to go out. I don't want something like
8 that because I'm trying to have, you
9 know, a controlled environment in there
10 with temperature for preserving the cars.

11 MS. REIN: Could it be approved
12 with that condition, the condition that
13 it can't be used as something else?

14 CHAIRMAN SCALZO: Mr. Mattina said
15 it makes it easier for them in Code
16 Compliance to enforce something like
17 that. I've just got to keep pecking at
18 this.

19 MR. DiLEMMME: That's fine.

20 CHAIRMAN SCALZO: What if you were
21 to drop it that entire 9 feet so you
22 actually lost your attic storage and the
23 shape of your roof stayed exactly the
24 same, it just wouldn't be as high?

25 MR. DiLEMMME: Can you repeat that,

2 please?

3 CHAIRMAN SCALZO: Let's see. What
4 is your ceiling height?

5 MR. DiLEMME: On the ground floor
6 it's --

7 CHAIRMAN SCALZO: 12 feet.

8 MR. DiLEMME: I believe it's 13.

9 CHAIRMAN SCALZO: I'm looking for
10 the sill. It's 13 feet. Do you need a
11 13 foot in there?

12 MR. DiLEMME: That's to get
13 storage. Yes. To have double stacked
14 cars. That's the reason for the 13.

15 MS. BANKS: I just want to clarify.

16 CHAIRMAN SCALZO: Please.

17 MS. BANKS: I'm just curious. I
18 thought I understood initially that the
19 height was because of the solar. You
20 wanted to install solar energy.

21 MR. DiLEMME: There are multiple
22 things.

23 MS. BANKS: There also seems to be
24 an aesthetic aspect to this. You want
25 the peak of the house to kind of be

2 level.

3 Considering the question about
4 maybe like an alternative way to do this,
5 is there a way to achieve some type of
6 aesthetic design but kind of bring the
7 height of the ceiling down and put the
8 solar panels somewhere else?

9 MR. DiLEMME: The solar panels, if
10 they don't go there I won't have it.
11 They won't work on the house the way the
12 roof line is. If I was to try to do them
13 on the front, it really wouldn't look
14 good and it wouldn't be -- the sun starts
15 in the front and ends up in the back.
16 Most of the sunlight is over that pool
17 area, which that would work with that
18 there. Trying to reduce the height of
19 the roof, I probably would have to
20 decrease the structure -- the size of the
21 structure. If I decrease the size of the
22 structure, I'm not going to get what I
23 need to store the cars. I'm at the
24 mercy of what you're going to allow.
25 Aesthetically the most important thing

2 to me is that it fits the character
3 of my house. I don't have a standard
4 12 on 12 roof in my house. I have a
5 12 on 12 roof pitch. If I remember
6 correctly, I think I'm 7 on 12, which
7 is less than my house. If I just try
8 to like, say, leave that footprint
9 and drop it, I'm probably not --
10 obviously I'm only going to be able
11 to do what you're going to allow me
12 to do. I'll have to -- if you're
13 going to downsize me, I'll have to
14 try to find the design that's going
15 to work.

16 MS. BANKS: Okay.

17 MR. DONOVAN: So you're aware, the
18 Board is generally not going to say make
19 it 22 feet. They may ask you to reduce
20 it. At the end of the day, they're going
21 to vote on your application.

22 CHAIRMAN SCALZO: As it's been
23 presented to us. Which means it came in
24 with a garage height of 30 feet. With
25 you having to adjust anything based on if

2 we said we'll give you a maximum of X,
3 there are still other factors that we're
4 going to look at beyond that. If you had
5 to widen it out or reduce the footprint,
6 the variances end up changing when that
7 happens.

8 MR. DiLEMMME: I don't think I would
9 be making it wider or longer.

10 CHAIRMAN SCALZO: We wouldn't know
11 that.

12 MR. DiLEMMME: I wouldn't be doing
13 that.

14 MR. BELL: Did you mention about
15 stacking the cars?

16 MR. DiLEMMME: Yes, I did.

17 MR. BELL: Okay.

18 MR. DiLEMMME: That's the reason for
19 the 13-foot ceilings on the inside. I
20 already have a garage that has 11 foot
21 and it doesn't work.

22 MR. HERMANCE: If you were to
23 eliminate, say, the attic storage, you'd
24 be able to get more cars in stackable to
25 utilize the entire garage.

2 MR. DiLEMME: Well, here's the
3 thing. If you kept the ground floor the
4 way it is and you drop the roof line,
5 you're going to go probably into
6 something that's not going to look --
7 it's not going to have the look I want.
8 It may not hurt the solar part of it
9 because now the roof, instead of being
10 steeper, it's flatter. I don't think
11 it's going to hurt that. It would still
12 be relative -- assuming we're not talking
13 about reducing the size, I think
14 relatively it may be a little bit less
15 roof, not in length but from the peak to
16 the gable end. To that end, I probably
17 have a little less square footage in
18 shingles so I'd have a little less area
19 for solar.

20 CHAIRMAN SCALZO: I'm looking at
21 one of the details here. It says 6 x 6 x
22 10.10 WWM. What is WWM? It's in regards
23 to the floor.

24 MR. MATTINA: Wire mesh.

25 CHAIRMAN SCALZO: Thanks, Joe.

2 MR. DiLEMME: It has to do with the
3 structure.

4 CHAIRMAN SCALZO: Now you've
5 intrigued me with these lifts. A six-
6 inch concrete floor with the mesh, that
7 will support the lifting?

8 MR. DiLEMME: Yes. I'm probably
9 going to beef that up. That's what I do
10 for a living, concrete.

11 The plans are probably ninety
12 percent done because there's no sense of
13 completing them until I get through this
14 point. You know, the design is what I
15 was looking for.

16 CHAIRMAN SCALZO: Did I open it up
17 to any members of the public yet?

18 MR. DONOVAN: No.

19 CHAIRMAN SCALZO: Do any members of
20 the public wish to speak about this
21 application?

22 MR. CARIAS: I have a question.

23 CHAIRMAN SCALZO: Please step
24 forward and state your name.

25 MR. CARIAS: Al Carias. I'm Nick's

2 neighbor. I just want to ask, it's not
3 for commercial?

4 MR. DiLEMME: No.

5 MR. CARIAS: Just residential. I'm
6 done.

7 MR. DiLEMME: Were you in support?

8 CHAIRMAN SCALZO: That's not the
9 guy I said needed a garage, is it?

10 MR. DiLEMME: No. When you look
11 out my front porch, you see the back of
12 his. His house is directly --

13 CHAIRMAN SCALZO: As you come up
14 the hill?

15 MR. DiLEMME: Yes.

16 CHAIRMAN SCALZO: Is there anyone
17 else from the public that wishes to speak
18 about this application?

19 (No response.)

20 CHAIRMAN SCALZO: No. At this
21 point I feel as though we can close the
22 public hearing on this.

23 MR. BELL: I believe so.

24 CHAIRMAN SCALZO: I'll look to the
25 Board for a motion to close the public

2 hearing.

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

5 MR. EBERHART: Second.

6 CHAIRMAN SCALZO: We have a motion
7 to close the public hearing from Mr. Bell.
8 We have a second from Mr. Eberhart. All
9 in favor?

10 MS. BANKS: Aye.

11 MR. EBERHART: Aye.

12 MR. HERMANCE: Aye.

13 CHAIRMAN SCALZO: Aye.

14 MR. BELL: Aye.

15 MR. MASTEN: Aye.

16 MS. REIN: Aye.

17 CHAIRMAN SCALZO: Those opposed?

18 (No response.)

19 CHAIRMAN SCALZO: All right. This
20 is a Type 2 action under SEQRA. I guess
21 we've got to do what we've got to do here
22 and work our way through the five factors,
23 the first one being whether or not the
24 benefit can be achieved by other means
25 feasible to the applicant.

MS. BANKS: It seems possible.

CHAIRMAN SCALZO: It seems
ple. It's the aesthetic that the
cant is concerned with. Are there
ways? Perhaps there are. It's the
etic that's the hang up here.

Second, is there an undesirable change in the neighborhood character or a detriment to nearby properties. The applicant's home is beautiful. No matter what happens over there, it wouldn't be a detriment to the neighborhood.

MR. BELL: No.

CHAIRMAN SCALZO: That's for sure.

MR. DILEMME: It will increase value. Al didn't comment. The poor to the left and right, they like cause it increases the value of homes.

CHAIRMAN SCALZO: I'm not an appraiser. We hear that it's going to increase or decrease my property values. How do people know that? Because my neighbor has a big garage, that's going

2 to help me?

3 MR. DONOVAN: You should have asked
4 Greg Langer. He can tell you it's all
5 voodoo. It's someone's best estimate at
6 a snapshot in time.

7 CHAIRMAN SCALZO: Like realtors
8 saying it's a corner lot, isn't that
9 great. If they sat in on a ZBA meeting,
10 they would know it's not great at all.

11 MR. DiLEMMME: Privacy.

12 CHAIRMAN SCALZO: Sorry. I got
13 sidetracked there. It happens.

14 The third, whether the request is
15 substantial. Well, with regard to
16 height, it's the most substantial request
17 I've seen in my time on the Board.

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

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

25 We've been through the five of

2 them. Does the Board have a motion of
3 some sort?

4 MS. REIN: I'll make a motion to
5 approve.

6 CHAIRMAN SCALZO: We have a motion
7 for approval from Ms. Rein.

8 MR. MASTEN: I'll second it.

9 CHAIRMAN SCALZO: We have a second
10 from Mr. Masten.

11 Siobhan, you can roll on that now.

12 MS. JABLESNIK: Ms. Banks.

13 MS. BANKS: I think I'd like to see
14 some alternatives before voting. I don't
15 know if that's possible.

16 CHAIRMAN SCALZO: In that instance
17 your answer would be no.

18 MR. DONOVAN: It could be abstain.
19 You could vote no or you could abstain.

20 MS. BANKS: I'll vote no for now.

21 MS. JABLESNIK: Mr. Bell.

22 MR. BELL: No.

23 MS. JABLESNIK: Mr. Eberhart.

24 MR. EBERHART: No.

25 MS. JABLESNIK: Mr. Hermance.

2 MR. HERMANCANCE: Yes.

3 MS. JABLESNIK: Mr. Masten.

4 MR. MASTEN: Yes.

5 MS. JABLESNIK: Ms. Rein.

6 MS. REIN: Yes.

7 MS. JABLESNIK: Mr. Scalzo.

8 CHAIRMAN SCALZO: Did this just
9 happen again?

10 MR. DONOVAN: It's déjà vu all over
11 again.

12 CHAIRMAN SCALZO: My apologies,
13 sir. I want to see an alternative. My
14 vote is no. Your motion does not carry.

15 MR. DiLEMME: I'm sorry you feel
16 that way.

17 MR. BELL: It's the height.

18 CHAIRMAN SCALZO: That's the killer.

19 MR. DiLEMME: Where do I go from
20 here?

21 CHAIRMAN SCALZO: That I can't help
22 you with.

23 MR. DiLEMME: Does that mean I sent
24 plans to Joe to deny --

25 CHAIRMAN SCALZO: That's the

2 process.

3 MR. DiLEMME: Okay. We didn't talk
4 about square footage. We didn't talk
5 about garage spaces either.

6 CHAIRMAN SCALZO: Nope. I think
7 you understand where the hang up is.

8 MR. DiLEMME: Why didn't we get to
9 that point?

10 MR. DONOVAN: It's one application
11 pursuant to which there were three
12 variances. The application is denied.

13 MR. DiLEMME: We don't even talk
14 about the other parts?

15 MR. DONOVAN: In theory, while they
16 spent all their time -- not in theory.
17 Your application asks for three different
18 variances. Your application was denied.
19 The majority of the discussion was on
20 height. Your entire application has been
21 denied.

22 MR. DiLEMME: I understand that. I
23 just thought maybe I'd get something out
24 of the rest of it. Now I don't know -- I
25 mean, would I come back with a 25 foot

2 one and get denied again? Say I come
3 back with 25 foot and you agree to it, I
4 don't know where I stand -- I don't know
5 where I stand on the square footage. I
6 don't know where I stand on the parking
7 spaces. You see what I'm getting at?

8 MR. DONOVAN: We can't give you
9 advice. You have to --

10 MR. DiLEMME: I'm not asking for
11 advice.

12 MR. DONOVAN: I think you are.

13 MR. DiLEMME: Not really. It's in
14 the variance and we didn't -- I just
15 thought maybe --

16 CHAIRMAN SCALZO: I think you're
17 asking for a tiered decision which we
18 can't give you. We can't say we're okay
19 with the square footage, we're okay with
20 the cars, but we don't like the height.
21 We vote on the application as the
22 application sits.

23 MR. DiLEMME: Okay. Well, thank
24 you. I'm sorry for my ignorance.

25 MR. BELL: You're not ignorant.

2 CHAIRMAN SCALZO: You presented
3 yourself very well. You certainly gave
4 us great stuff to think about.
5 Unfortunately, as I say, you don't read
6 the ZBA minutes in your spare time. When
7 we approve things with heights like that,
8 they turn into things -- they eventually
9 turn into --

10 MR. DiLEMME: I understand what
11 you're saying.

12 CHAIRMAN SCALZO: They turn into
13 things the Board doesn't want.

14 MR. DONOVAN: We voted. I would
15 suggest maybe you don't --

16 CHAIRMAN SCALZO: Very good.

17 MR. DiLEMME: Thank you.

18

19 (Time noted: 8:54 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 5th day of May 2025.



MICHELLE CONERO

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

HAPPY TREE DISPENSARY
99 Route 17K, Newburgh
Section 95; Block 1; Lot 33
IB Zone

----- X

Date: April 24, 2025
Time: 8:55 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
LATWAN BANKS
DARRELL BELL
JAMES EBERHART, JR.
GREGORY M. HERMANC
JOHN MASTEN
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: JOHN MOSS
TIFFANY McPHAIL

----- X

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

2 CHAIRMAN SCALZO: Our next applicant
3 is Happy Tree Dispensary, 99 Route 17K.
4 This is a Planning Board referral for
5 a use variance of a 1,000 foot separation
6 requirement. The project encroaches on
7 the former Pier 1 building which has
8 been approved by the Planning Board
9 as the Kush Factory Retail Cannabis
10 Dispensary. If the use variance is
11 granted, then the area variances of
12 the existing lot area, front yard,
13 both side yards, lot surface coverage
14 and landscaping in the front yard
15 will be required for a proposed
16 change of use and a special use
17 permit of a cannabis dispensary.

18 Do we have mailings on this,
19 Siobhan?

20 MS. JABLESNIK: This applicant sent
21 14 letters.

22 CHAIRMAN SCALZO: 14. Not too
23 many. Just enough. Very good.

24 Who do we have?

25 MR. MOSS: I'm John Moss from Moss

2 Architects.

3 In terms of the use variance, I
4 think that actually it was a clarification,
5 not a variance. We have a letter from
6 the State saying it does meet the
7 distance between the two. I think this
8 was e-mailed to you. This is a letter
9 verifying that it is more than 1,000
10 feet. You can see in our drawing, we
11 showed it as 1,000 feet. The door is
12 on this side of the building.

13 CHAIRMAN SCALZO: You're going door
14 to door, not lot line to lot line?

15 MR. MOSS: You go door to door.
16 That's what the State said. We've got
17 the letter stating that.

18 CHAIRMAN SCALZO: I Google mapped
19 it and got like 971.

20 MR. MOSS: The State says it's
21 okay. I assume they're the governing
22 authority.

23 MR. DONOVAN: What does your plan
24 show?

25 MR. MOSS: Our plan shows that the

-- we show a circle with a 1,000 foot radius. It goes through the building, the Pier 1 building, but the door is on the other side. It's from main entrance to main entrance is what the State requires for the 1,000 foot distance. We show that and the State confirmed that.

MR. DONOVAN: The Planning Board referral says the project proposes a change in use, a special use permit for the cannabis facility. The 1,000 foot radius identified by the project plan encroaches on the former Pier 1 building which has been approved by the Planning Board as the Kush Factory Retail Cannabis Dispensary. Code Section 185-48.9(A)(3) requires that cannabis retail dispensaries shall be separated from another premises used for the same category of licensed use by at least 1,000 feet measured from the center of the nearest walkway or stairs leading to the entrance where it meets the building line or public thoroughfare, unless there's

no setback, in which case the measurements shall be from the center of the entrance.

The referral comes from the Planning Board. We now have apparently some other letter. I don't know, frankly Mr. Chairman, that I'm comfortable overriding the use variance referral.

CHAIRMAN SCALZO: Counsel, is that something that you could dig into for us and get some clarity?

MR. DONOVAN: Sure. Not right now.

CHAIRMAN SCALZO: I didn't want to put you on the spot like that.

That leads me to, did the County weigh in on this?

MS. JABLESNIK: Yes. Local determination.

CHAIRMAN SCALZO: The County is on the ball.

MS. JABLESNIK: Fast this month.

CHAIRMAN SCALZO: We're going to continue to allow you to present. Counsel is going to -- I just gave him

some homework to do.

MR. MOSS: Okay. I don't know if it's helpful. The State definition of the distances is substantially similar to the city's, if that's useful.

CHAIRMAN SCALZO: City of Newburgh?

MR. MOSS: The Town.

MR. DONOVAN: My concern is the State says to further assist, the office has provided an e-mail. They're saying it meets all distance requirements established in law or regulations, whereas the Planning Board referral references a specific provision of the Town Code.

MR. MOSS: This is the regulation that they're referring to, the 1,000 foot distance measured from the door, which is similar to what you have. It's very similar wording to the door. As a matter of fact --

MR. DONOVAN: I think we need the Planning Board to confirm.

MR. MOSS: Okay.

2 MR. DONOVAN: This is their
3 referral to us. I would feel more
4 comfortable if we had confirmation from
5 the Planning Board.

6 MR. MOSS: We didn't have that
7 letter when --

8 MR. DONOVAN: I'm looking at the
9 dates. That's April 22nd. The referral
10 is March 13th.

11 MR. MOSS: We didn't have that
12 letter. That's our thing.

13 The other variances --

14 CHAIRMAN SCALZO: The other
15 variances are all area variances on a
16 preexisting nonconforming building.
17 Correct?

18 MR. MOSS: We're assuming that that
19 wouldn't be an issue for you guys.

20 CHAIRMAN SCALZO: Ms. Banks, just
21 because you're our newest Member, it
22 gives me an opportunity to talk about a
23 preexisting nonconforming condition.

24 With this applicant, they want to
25 perform their business at a building

2 that's there. They're not proposing
3 anything new. They're not changing the
4 outside. They're not putting an awning
5 up or signs in the windows. The code
6 does not allow -- if that building were
7 to be built today, it wouldn't be allowed
8 to be placed where it is. Since the
9 building preexisted the zoning in that
10 area, a preexisting nonconforming
11 condition, we're not typically asking
12 anyone to pick the building up and move
13 it. I was hoping to give you some clarity
14 on what a preexisting nonconforming
15 condition is.

16 With regard to the area variances
17 that this application brings with it,
18 I myself have zero comments on that
19 because they're not changing anything.
20 Any business that came in there that
21 wanted to -- well, that didn't need
22 any type of variance would be in front
23 of us for something.

24 MS. BANKS: Okay.

25 CHAIRMAN SCALZO: Preexisting

1 nonconforming. In the history of the
2 Board, preexisting nonconforming
3 conditions -- Counsel, help me out. When
4 is the last time you remember us denying
5 something that was a preexisting
6 nonconforming condition?
7

8 MR. DONOVAN: Not in my eighteen
9 years here.

10 MR. MOSS: You mentioned that
11 everybody who comes here has a self-
12 created problem. In this particular
13 case, --

14 CHAIRMAN SCALZO: I didn't say
15 everybody.

16 MR. MOSS: -- it's not us. I'm
17 wondering if we can get -- if Counsel can
18 make -- if you guys can make some sort of
19 preliminary thing saying if Counsel comes
20 back with something that -- we're trying
21 to avoid having to come back to you guys
22 again.

23 MR. DONOVAN: This is a very
24 enjoyable experience.

25 MR. MOSS: You guys are actually

the happiest Zoning Board of Appeals.

MR. DONOVAN: Ask the last two applicants.

MR. MOSS: I'm just saying as a Board.

CHAIRMAN SCALZO: I appreciate where you're trying to get. I'll tell you, you're not the first applicant that's asked us to do that, a conditional final based on the findings of what our Counsel confirms or does not confirm with the Planning Board. We're not in the habit of doing that.

Counsel, I don't remember ever doing that.

MR. DONOVAN: No. I would not recommend you doing that.

CHAIRMAN SCALZO: Where I think we're landing here, we can at least close the public hearing. Actually, I haven't asked anyone.

Does anyone in the public want to speak about this application?

Sir.

2 MR. VACURA: Monty Vacura. I guess
3 just from my perspective, I find that
4 it's interesting that the State, the OCM
5 office, Office of Cannabis Management,
6 has verified those two site locations,
7 they've approved them for the distance
8 variance. Everything is beyond that
9 1,000 foot. The OCM has already approved
10 that. The municipality is questioning
11 that, what the State has already
12 approved. My fear is that if the
13 municipality can come in and question the
14 State that had already approved it, could
15 they question the Federal? Could they
16 question different levels? That's, I
17 guess, my concern. The State already
18 approved the variance for the 1,000 feet.
19 The sites are identified by the State as
20 approved.

21 CHAIRMAN SCALZO: Excellent question.

22 I'm going to ask the municipal
23 attorney. Counsel, can a municipality
24 further restrict a State law?

25 MR. DONOVAN: In many circumstances,

yes. I'm not going to pretend to be a cannabis industry expert. Recently New York State has made a determination legislatively through the Office of Cannabis Management to encourage this type of industry.

What we have here is a letter from the Planning Board Attorney citing a very specific Town Code. By the way, I don't take one -- I only want to be right. If I'm right, if I cost you a month here, it saves you from going back to the Planning Board to find out that they disagree and sending you back here to lose more time.

Where I started was, the Planning Board Attorney identified Section 185-48.9(A)(3) as the statute at issue. The e-mail from the State doesn't identify that. I don't know that they could override -- they may perhaps say we've preempted. The preemption would be, for example, the five factors. If you wanted to bury the

2 five factors, we could not do that
3 because the State legislature has
4 preempted the field, saying in the
5 area variance realm you must evaluate
6 the five factors. I don't know if
7 there has been a preemption with
8 cannabis. I just want to get this
9 right.

10 You know what. Let me just
11 say this, too. I don't know if it's
12 a use variance. It's 1,000 foot
13 requirement. It's dimensional, not
14 use. I was going to ask you --

15 MR. MOSS: That was triggered by --
16 the cannabis thing triggered the 1,000
17 foot. It's to grant the cannabis use
18 there. I think that's why they said
19 that. In the actual meeting they just
20 said gee, it looks awfully close, we'd
21 like the Zoning Board to verify it. I
22 think it got translated when it was
23 actually typed to be we need a variance.
24 I don't think anybody has actually done a
25 calibrated measurement and said I

measured it at 1,003 feet. It's difficult to do. That's why we relied on the State letter.

MR. VACURA: We also have proximity protection. That was a long -- you were in '23 I believe. That was for 99 Route 17K being approved through the State.

CHAIRMAN SCALZO: I don't know if you picked up my lack of resistance against your application.

Counsel, if this in fact is not a use variance and we find that out, do they even need to be here?

MR. VACURA: That was my question.

MR. MOSS: We need to be here for the area variances which we know --

CHAIRMAN SCALZO: The existing nonconforming?

MR. DONOVAN: Correct. It's a change of use.

CHAIRMAN SCALZO: A change of use.

MR. MOSS: It is a change of use.

CHAIRMAN SCALZO: I thought it was

1 retail before.

2 MR. MOSS: Cannabis is a special
3 use permit.

4 CHAIRMAN SCALZO: I just got
5 educated.

6 MR. MOSS: Cannabis is the special
7 use permit. That's what triggered the
8 nonconforming existing building. It's
9 not actually retail.

10 CHAIRMAN SCALZO: All right. I
11 understand. You're hearing the flavor of
12 what's going on.

13 MR. DONOVAN: I'm not trying to
14 make your life difficult. I just want to
15 make sure we're doing it the right way.

16 MR. MOSS: What I'm hearing is, I
17 don't think an issue is denying it.

18 MR. DONOVAN: That's up to the
19 Board. I would recommend that they not
20 vote.

21 MR. MOSS: I think we're going to
22 have to defer it. We'll come back.

23 CHAIRMAN SCALZO: Let us
24 procedurally get to that point where we
25

2 tell you that you're coming back.

3 MR. MOSS: It's not what we want,
4 but yeah.

5 CHAIRMAN SCALZO: Do any other
6 members of the public wish to speak about
7 this application?

8 Please.

9 MS. McPHAIL: I'm Tiffany McPhail,
10 founder and CEO of Happy Tree Dispensary.

11 My question really is, I was
12 approved by the State and I notified the
13 municipality about two years ago that I
14 was intending to put a dispensary in that
15 location. Then again, Newburgh Kush
16 Factory had to actually go to the State,
17 get approval to be there, because my
18 proximity was already protected and that
19 location was protected for me.

20 My question is, retrospectively,
21 because they were able to go to the
22 Planning Board before I could, now they
23 have gotten that approval and now they're
24 questioning my approval and my location
25 when I've already been approved. They

2 had to go to the State, they had to give
3 them their coordinates and make sure that
4 they were far enough away from my
5 protected location. I guess we have to
6 come back.

7 CHAIRMAN SCALZO: That is fascinating
8 to me.

9 MS. McPHAIL: The protection for the
10 marijuana regulations act said that once
11 I apply with a location, that that
12 location is protected and nobody can
13 come within that 1,000 feet range. For
14 her to be able to move into Newburgh
15 Kush Factory, it had to be an approved
16 location that was far enough away from
17 where I was already protected.

18 MR. MOSS: You filed with the Town
19 before --

20 MS. McPHAIL: It was two years ago
21 when I applied for my application in
22 2023. It was 2023. I actually have a
23 copy of that as well. I think I sent it
24 in an e-mail of when I -- I have a stamp
25 from the town clerk giving the

2 municipality notice that I intended to
3 put the dispensary there.

4 CHAIRMAN SCALZO: Thank you. All
5 of that helps.

6 Is there anyone else from the
7 public that wishes to speak about this
8 application?

9 (No response.)

10 CHAIRMAN SCALZO: It does not
11 appear so.

12 I'm going to look to the Board for
13 a motion to close the public hearing.

14 MS. REIN: I'll make a motion to
15 close the public hearing.

16 MR. BELL: I'll second it.

17 CHAIRMAN SCALZO: We have a motion
18 to close from Ms. Rein. We have a second
19 from Mr. Bell. All in favor?

20 MS. BANKS: Aye.

21 MR. EBERHART: Aye.

22 MR. HERMANCE: Aye.

23 CHAIRMAN SCALZO: Aye.

24 MR. BELL: Aye.

25 MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Those opposed?

(No response.)

CHAIRMAN SCALZO: Very good.

Discussion. Just with Counsel's comments here, I'm going to look to the Board for a motion to defer to the May meeting while he can do some additional research, get some clarifications through the Planning Board's Attorney. Would somebody make a motion for that, please.

MS. BANKS: I'll make a motion.

MR. BELL: Second.

CHAIRMAN SCALZO: We have a motion from Ms. Banks. We have a second from Mr. Bell. All in favor?

MS. BANKS: Aye.

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

CHAIRMAN SCALZO: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: We'll see you

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Happy Tree Dispensary

next month.

(Time noted: 9:10 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 5th day of May 2025.



MICHELLE CONERO

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

ANTONIO VINCIGUERRA

18 Winding Lane, Newburgh
Section 80; Block 2; Lot 12
R-1 Zone

----- X

Date: April 24, 2025
Time: 9:10 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
LATWAN BANKS
DARRELL BELL
JAMES EBERHART, JR.
GREGORY M. HERMANC
JOHN MASTEN
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: JOSEPH FLYNN
ANTONIO VINCIGUERRA

----- X

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

2 CHAIRMAN SCALZO: Antonio
3 Vinciguerra, 18 Winding Lane in
4 Newburgh, seeking area variances of
5 maximum height and lot surface coverage
6 to construct a 24 x 24 x 26.5 accessory
7 building.

8 Do we have mailings on this,
9 Siobhan?

10 MS. JABLESNIK: It's 24 x 30.

11 CHAIRMAN SCALZO: What did I say?

12 MS. JABLESNIK: 24 x 24.

13 MS. REIN: It's getting late.

14 CHAIRMAN SCALZO: Do we have
15 mailings?

16 MS. JABLESNIK: This applicant sent
17 47 letters.

18 CHAIRMAN SCALZO: Not quite the
19 winner.

20 Who do we have with us?

21 MR. FLYNN: I'm Joseph Flynn. I'm
22 the contractor.

23 CHAIRMAN SCALZO: The name sounds
24 familiar.

25 MR. FLYNN: Yes.

2 MR. VINCIGUERRA: Antonio
3 Vinciguerra.

4 CHAIRMAN SCALZO: You're the fellow
5 that owns the joint.

6 MR. VINCIGUERRA: And my wife.

7 CHAIRMAN SCALZO: My wife owns my
8 house, too. Very nice. Well kept. Nice
9 job.

10 MR. VINCIGUERRA: Thank you.

11 CHAIRMAN SCALZO: We were there,
12 took a look around. At least I know I
13 was. I can't speak for everybody.

14 MR. VINCIGUERRA: I met some and my
15 son told me about others.

16 CHAIRMAN SCALZO: I was down,
17 poking around, pacing off your house to
18 make sure I could place it.

19 MR. MASTEN: I saw him working on
20 his quad.

21 CHAIRMAN SCALZO: My big question
22 is, do you intend on having this fit in
23 front of your Ringed tree or are you
24 intending on taking that Ringed tree out?

25 MR. FLYNN: It's going to go.

2 MR. VINCIGUERRA: He says it's
3 going to go. I did so much work, can I
4 just tighten the ring. If I'm actually
5 only a foot or two off, my goal would be
6 to send my son back out there and tighten
7 that ring. I am so far from that ring.

8 Just a note for everybody, the
9 trees on the left -- to the left or
10 towards that property to the left, that
11 brick home, that happens to also be mine.
12 Those trees are -- they're not exactly
13 trees. They are, but they're from an
14 original tree called a Royal Empress that
15 I planted nineteen years ago with my
16 daughter. That is just a byproduct that
17 just keeps coming. So she's a constant
18 reminder.

19 CHAIRMAN SCALZO: Okay. From what
20 I understand, you run the risk of killing
21 a tree by building within the drip line.
22 Anyway, that's just a random thought for
23 you.

24 MR. VINCIGUERRA: No problem.
25 Thank you.

2 CHAIRMAN SCALZO: You've got a lot
3 of action going on on that. You've used
4 a lot of space up. That's for sure.

5 You've obviously sat here and heard
6 me talking about height with accessory
7 structures.

8 MR. VINCIGUERRA: I have, and in
9 front of lawns and so forth. It was a
10 great learning experience tonight.

11 CHAIRMAN SCALZO: We have fun here.
12 When I leave there's going to be a vacant
13 seat. It could be you next.

14 What do you need that height for?

15 MR. VINCIGUERRA: So honestly, the
16 height for me serves two purposes.
17 Number one, it provides me storage on the
18 second level. I'm looking for 10 feet for
19 the garage. The second floor for me is
20 nothing more than storage. I am a
21 collector. I'm a former president of
22 Motorcyclepedia's board in the City of
23 Newburgh. I'm also an avid collector.
24 I've run the risk of taking as much
25 storage in my house as I can. That's met

2 its life expectancy. It's now time to
3 move on. I have a series of motorcycles
4 that are collectibles. Those are going
5 to be going in my garage. Albeit I have
6 a 750LI that's going to be going in that
7 garage, too. For me it's more about
8 collections and all the parts that can
9 never make a motorcycle again are things
10 that I'm just holding onto that I'll pass
11 on in succession for my son who has no
12 interest right now. He's not looking to
13 sell anything I have to make money.
14 Literally that's all it's for, the second
15 floor. I figured I'd have a man dorm in
16 the back, a set of stairs, my stuff is up
17 there, it's out of everybody else's way,
18 it's out of harm's way, because I have a
19 lot of beautiful paint work and artwork
20 on some of these bikes. That's really
21 where that came down to. The bikes will
22 obviously go on the first floor with my
23 car that I never drive.

24 CHAIRMAN SCALZO: Do you plan on
25 putting water in that garage?

2 MR. VINCIGUERRA: I don't need to,
3 no.

4 MR. FLYNN: No.

5 MR. VINCIGUERRA: I need electricity
6 for lights. There's plenty of spigots.
7 I have a spigot for the pool. If you've
8 been to the property, you've seen that.
9 I have water by the end of the pool.

10 MS. REIN: We just want to make
11 sure you don't run water in there and
12 turn it into an apartment.

13 MR. VINCIGUERRA: No. I obviously
14 -- no, no. Unless that's where I go with
15 my motorcycle parts.

16 Truth be known, it's her birthday.
17 We spent a lot of time here.

18 CHAIRMAN SCALZO: What is your
19 second floor ceiling height?

20 MR. FLYNN: I don't remember
21 exactly what the dimensions were. It's
22 pretty high. The architect, when she
23 drew it, she drew it probably a little
24 bigger than it needed to be. I haven't
25 had a chance to change it.

2 MR. VINCIGUERRA: He's not going to
3 the same floor. I'm going to the same
4 floor. I'll be honest with you, one or
5 two feet is not changing my life.
6 Aesthetically, I will tell you, I
7 probably shouldn't say this out loud, but
8 I've already bought the siding for this.
9 I didn't want to run the risk of
10 Certainteed eliminating the color on me
11 because I bought that siding so many
12 years ago. It's still available. I
13 already took -- I placed the order with
14 ABC. I want the place to look the same.
15 Aesthetically, if it comes down to a foot
16 or two, it's meaningless to me.

17 MR. BELL: You'll come down?

18 MR. VINCIGUERRA: Yeah. Whether
19 it's upstairs 9 feet or 7 and-a-half,
20 it's not changing my life. For me, it
21 was just -- I'm assuming they did it just
22 for aesthetics. My charge to Joe and to
23 the architect was to make it look the
24 same as my house. As you can see, it's
25 important to me. Thank you for the

2 compliment. I want everything to look
3 the same as far as when you look at it
4 from a plain view from the top of the
5 road.

6 CHAIRMAN SCALZO: I'll be honest
7 with you, I don't think you're going to
8 see much.

9 MR. VINCIGUERRA: It's never even
10 going to make the 26.5 feet. It never
11 makes the T on the back, on the T part.

12 CHAIRMAN SCALZO: I'm looking at
13 26'6" currently. That's as you drive in.

14 I hear you thinking out loud,
15 Mr. Bell. What are you thinking?

16 MR. BELL: I'm good. I'm just
17 looking at the height.

18 CHAIRMAN SCALZO: Let me start off
19 to my left. Ms. Rein, do you have comments
20 on this?

21 MS. REIN: No.

22 CHAIRMAN SCALZO: Mr. Masten.

23 MR. MASTEN: I have nothing.

24 CHAIRMAN SCALZO: Mr. Bell.

25 MR. BELL: He covered mine.

2 CHAIRMAN SCALZO: Mr. Hermance.

3 MR. HERMANCE: As far as the
4 aesthetics with the roof line, it looks
5 like the main house would have a lesser
6 slope than your accessory structure.

7 CHAIRMAN SCALZO: It looks like --
8 is that 5 on 12?

9 MR. FLYNN: It is steeper than the
10 house.

11 MR. HERMANCE: If you kept that
12 same roof line, it would lower your
13 height.

14 MR. VINCIGUERRA: We could, or I
15 can make it wider and reduce it.

16 MR. FLYNN: No.

17 MR. VINCIGUERRA: Which is not
18 going to happen.

19 MR. BELL: He said no.

20 MR. VINCIGUERRA: More room, more
21 bikes.

22 MR. HERMANCE: If we were to
23 approve it, we'd probably put conditions
24 that it can't be used as an apartment for
25 the future, this way --

2 MR. BELL: Business, repair shop.

3 MR. HERMANCE: -- our Building
4 Department, in the future, say if you
5 sold the place and somebody else took it
6 over --

7 MR. VINCIGUERRA: I understand.

8 CHAIRMAN SCALZO: Do you have a
9 number in your head, Mr. Hermance? I'm
10 looking at 26'6". I think the highest --
11 in my career here, I think the highest I
12 ever went was 23 and-a-half.

13 MR. BELL: He's willing to bring it
14 down.

15 CHAIRMAN SCALZO: That's what I'm
16 hearing. The footprint stays the same.
17 The height might change due to the second
18 floor ceiling height or the roof. We're
19 still having that discussion.

20 Mr. Eberhart.

21 MR. EBERHART: I'm good with the
22 conditions.

23 CHAIRMAN SCALZO: Those are just
24 ideas right now.

25 Ms. Banks.

2 MS. BANKS: No questions.

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

6 (No response.)

7 CHAIRMAN SCALZO: I'll look back to
8 the Board for a motion to close the
9 public hearing.

10 MR. MASTEN: I'll make a motion to
11 close the public hearing.

12 MR. BELL: Second.

13 CHAIRMAN SCALZO: We have a motion
14 to close the public hearing from Mr.
15 Masten. We have a second from Mr. Bell
16 at 9:22. All in favor?

17 MS. BANKS: Aye.

18 MR. EBERHART: Aye.

19 MR. HERMANCE: Aye.

20 CHAIRMAN SCALZO: Aye.

21 MR. BELL: Aye.

22 MR. MASTEN: Aye.

23 MS. REIN: Aye.

24 CHAIRMAN SCALZO: Those opposed?

25 (No response.)

2 CHAIRMAN SCALZO: Very good. Here
3 we go, folks. We're going to run through
4 our factors.

5 This is a Type 2 action under
6 SEQRA. Correct, Counsel?

7 MR. DONOVAN: That is correct, Mr.
8 Chairman.

9 CHAIRMAN SCALZO: Our first one
10 being whether or not the benefit can be
11 achieved by other means feasible to the
12 applicant. We heard a great motorcycle
13 story. I'm just letting you get caught
14 up.

15 Second, if there's an undesirable
16 change in the neighborhood character or a
17 detriment to nearby properties.

18 MR. EBERHART: No.

19 MR. HERMANCE: No.

20 MR. BELL: No.

21 CHAIRMAN SCALZO: I found it
22 interesting, folks, ZBA Members, you
23 heard the applicant say he owns property
24 next door, the one that would be most
25 affected other than his. Not that it

2 matters, but it does.

3 MR. DONOVAN: Should I ask the
4 stenographer to read that back? Not that
5 it matters, but it does.

6 CHAIRMAN SCALZO: Third, whether
7 the request is substantial. Everybody
8 knows I've got a thing for heights.
9 Other than that, I'm not sure.

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

13 MR. BELL: No.

14 MS. REIN: No.

15 CHAIRMAN SCALZO: It does not
16 appear so.

17 Fifth, whether the alleged
18 difficulty is self-created. Of course it
19 is. That's relevant but not necessarily
20 determinative.

21 If the Board approves, it shall
22 grant the minimum variance necessary and
23 may impose reasonable conditions.

24 Do we have a motion of some sort?
25 If so, do we have any conditions that we

2 would like to attach to that?

3 MR. BELL: I'll make a motion for
4 approval with conditions.

5 MR. EBERHART: Second.

6 MR. BELL: First I'd like to ask,
7 what's the lowest height that you would
8 feel comfortable with?

9 CHAIRMAN SCALZO: Right now you're
10 at 26'6".

11 MR. VINCIGUERRA: My mind doesn't
12 work that way. If you did 18 to the
13 side, what does that get me on the
14 peak?

15 MR. FLYNN: You can easily take 4
16 feet off.

17 MR. BELL: You can come down around
18 22?

19 MR. VINCIGUERRA: He said he could
20 take 2 feet off.

21 MR. BELL: 24.

22 CHAIRMAN SCALZO: He said 4. That's
23 22 and-a-half.

24 MR. BELL: That's 22 and-a-half.
25 We're looking at lowering the height to

2 22 and-a-half. We're looking at a
3 condition that it would not be used as
4 a rental property. Another condition
5 is it is not to be used as a repair
6 shop and not to be used as a type of
7 business.

8 MR. DONOVAN: Or occupied.

9 MR. BELL: Occupied.

10 MR. DONOVAN: Occupied by a
11 resident.

12 MR. BELL: We'll change that word.
13 Thank you, Counsel.

14 CHAIRMAN SCALZO: Are we okay?

15 MR. VINCIGUERRA: I'm just asking.

16 CHAIRMAN SCALZO: Here's the rub.

17 MR. VINCIGUERRA: Once you say it,
18 it's over.

19 CHAIRMAN SCALZO: We just went
20 through the conditions. If that's
21 something that's not acceptable to you,
22 you just say I want to have you vote on
23 the application as presented.

24 MR. VINCIGUERRA: I just want to
25 make sure we can make it work.

2 MR. FLYNN: We can change the pitch
3 of the roof to match the house.

4 MR. VINCIGUERRA: I'm good.

5 MR. FLYNN: You're going to get it
6 from there.

7 MR. VINCIGUERRA: All the other
8 stuff doesn't matter.

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

11 MR. BELL: That's my motion.

12 CHAIRMAN SCALZO: We have a motion
13 from Mr. Bell with conditions. We have a
14 second from Mr. Eberhart.

15 Can you roll on that, please,
16 Siobhan.

17 MS. JABLESNIK: Ms. Banks.

18 MS. BANKS: Yes.

19 MS. JABLESNIK: Mr. Bell.

20 MR. BELL: Yes.

21 MS. JABLESNIK: Mr. Eberhart.

22 MR. EBERHART: Yes.

23 MS. JABLESNIK: Mr. Hermance.

24 MR. HERMANCE: Yes.

25 MS. JABLESNIK: Mr. Masten.

2 MR. MASTEN: Yes.

3 MS. JABLESNIK: Ms. Rein.

4 MS. REIN: Yes.

5 MS. JABLESNIK: Mr. Scalzo.

6 CHAIRMAN SCALZO: Yes.

7 The motion is carried. The
8 variances are approved.

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10 (Time noted: 9:26 p.m.)

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

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

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

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

16 IN WITNESS WHEREOF, I have hereunto
17 set my hand this 5th day of May 2025.

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Michelle Conero

MICHELLE CONERO

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

JAMES & ALETHIA EBERHART
10 Virginia Circle, Newburgh
Section 105; Block 7; Lot 17
R-3 Zone

----- X

Date: April 24, 2025
Time: 9:27 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
LATWAN BANKS
DARRELL BELL
GREGORY M. HERMANCE
JOHN MASTEN
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: ALETHIA EBERHART
AJIA EBERHART

----- X

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

2 CHAIRMAN SCALZO: Next is James
3 and Alethia Eberhart. The name
4 sounds familiar.

5 You actually need to step out.

6 (Mr. Eberhart left the room.)

7 CHAIRMAN SCALZO: Here we have the
8 Eberhart application at 10 Virginia
9 Circle, seeking an area variance of the
10 minimum front yard setback to build a
11 10 x 50.16 covered front porch.

12 Do we have mailings on this,
13 Siobhan?

14 MS. JABLESNIK: Yes. This
15 applicant sent out 73 letters. Winner,
16 winner.

17 CHAIRMAN SCALZO: That's the winner
18 for the evening. Very good.

19 Who do we have with?

20 MS. AJIA EBERHART: I am Ajia
21 Eberhart. I'm standing in for my dad.

22 MS. ALETHIA EBERHART: Alethia
23 Eberhart, the wife.

24 CHAIRMAN SCALZO: Very good. If I
25 have captured exactly what you're looking

2 to do in that single sentence, we can
3 move forward. If you have any commentary
4 you'd like to add to that --

5 MS. ALETHIA EBERHART: We're good.

6 MS. AJIA EBERHART: No commentary,
7 unless you've got questions.

8 CHAIRMAN SCALZO: That's why you're
9 going to stay right where you are.

10 We've all been out there. It's
11 nice that you live on a cul-de-sac. Not
12 a lot of action going on. It doesn't
13 appear to be out of character with what's
14 going on. We have an applicant three or
15 four doors down from you --

16 MS. ALETHIA EBERHART: The Osbornes.

17 CHAIRMAN SCALZO: -- and they did a
18 very nice job on that.

19 What you're looking to do, in my
20 mind, you're probably just looking to do
21 a covered front porch, put a couple
22 rocking chairs out there --

23 MS. ALETHIA EBERHART: Exactly.

24 CHAIRMAN SCALZO: -- and enjoy
25 what's going on.

2 MS. AJIA EBERHART: Yes.

3 CHAIRMAN SCALZO: I have no
4 comments, if you can believe that.

5 I'm going to look to my right.
6 Ms. Banks, any comments?

7 MS. BANKS: No.

8 CHAIRMAN SCALZO: Mr. Hermance.

9 MR. HERMANCE: I have no questions.

10 CHAIRMAN SCALZO: Mr. Bell.

11 MR. BELL: No.

12 CHAIRMAN SCALZO: Mr. Masten.

13 MR. MASTEN: I have no questions.

14 CHAIRMAN SCALZO: Ms. Rein.

15 MS. REIN: I'm good.

16 CHAIRMAN SCALZO: Does anyone from
17 the public wish to speak about this
18 application?

19 (No response.)

20 CHAIRMAN SCALZO: Very good. I'll
21 look to the Board for a motion to close
22 the public hearing.

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

25 MS. REIN: I'll second it.

2 CHAIRMAN SCALZO: We have a motion
3 to close from Mr. Bell. We have a second
4 from Ms. Rein. All in favor?

5 MS. BANKS: Aye.

6 MR. HERMANCE: Aye.

7 CHAIRMAN SCALZO: Aye.

8 MR. BELL: Aye.

9 MR. MASTEN: Aye.

10 MS. REIN: Aye.

11 CHAIRMAN SCALZO: Those opposed?

12 (No response.)

13 CHAIRMAN SCALZO: Very good. I'm
14 going to run through our factors here.
15 This is probably the most straightforward
16 application we've had all night. It is a
17 Type 2 action under SEQRA.

18 We're going to go through our five
19 factors, the first one being whether or
20 not the benefit can be achieved by other
21 means feasible to the applicant.

22 MS. BANKS: No.

23 MR. HERMANCE: No.

24 MR. BELL: No.

25 MR. MASTEN: No.

2 MS. REIN: No.

3 CHAIRMAN SCALZO: No.

4 Second, if there's an undesirable
5 change in the neighborhood character or
6 a detriment to nearby properties.

7 MS. BANKS: No.

8 MR. HERMAN: No.

9 MR. BELL: No.

10 MR. MASTEN: No.

11 MS. REIN: No.

12 CHAIRMAN SCALZO: Third, whether
13 the request is substantial. The answer
14 would be no as well.

15 Fourth, whether the request will
16 have adverse physical or environmental
17 effects. It will not.

18 Fifth, whether the alleged
19 difficulty is self-created which is
20 relevant but not determinative. Of
21 course it's self-created, however not
22 determinative to the application process
23 or determination.

24 If the Board approves, it shall
25 granted the minimum variances necessary.

2 Having gone through the balancing
3 tests, does the Board have a motion of
4 some sort?

5 MS. REIN: I'll make a motion to
6 approve.

7 MS. BANKS: Second.

8 CHAIRMAN SCALZO: We have a motion
9 for approval from Ms. Rein. We have a
10 second from Ms. Banks.

11 Can you roll on that, please,
12 Siobhan.

13 MS. JABLESNIK: Ms. Banks.

14 MS. BANKS: Yes.

15 MS. JABLESNIK: Mr. Bell.

16 MR. BELL: Yes.

17 MS. JABLESNIK: Mr. Hermance.

18 MR. HERMANCE: Yes.

19 MS. JABLESNIK: Mr. Masten.

20 MR. MASTEN: Yes.

21 MS. JABLESNIK: Ms. Rein.

22 MS. REIN: Yes.

23 MS. JABLESNIK: Mr. Scalzo?

24 CHAIRMAN SCALZO: Yes.

25 The motion is carried. The

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J a m e s & A l e t h i a E b e r h a r t

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variances are approved.

(Time noted: 9:32 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 5th day of May 2025.

Michelle Conero

MICHELLE CONERO

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

ROSS & DONNA HUBERT
29 Wildwood Drive, Rock Tavern
Section 126; Block 1; Lot 15
R-3/Cluster Zone

----- X

Date: April 24, 2025
Time: 9:32 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
LATWAN BANKS
DARRELL BELL
JAMES EBERHART, JR.
GREGORY M. HERMANC
JOHN MASTEN
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: ROSS HUBERT
DONNA HUBERT

----- X

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

2 CHAIRMAN SCALZO: Moving on to the
3 applicants from the March meeting. We
4 have Ross and Donna Hubert, 29 Wildwood
5 Drive, Rock Tavern, an interpretation.
6 Actually, all they're looking for this
7 evening is a revote because we were light
8 on our membership last month.

9 They want to install a 16 x 32
10 inground pool in a cluster development.
11 The applicant is requesting a revote
12 with a full Board. We have a full Board.

13 Mr. Eberhart, pardon me for just
14 getting the applicant up here.

15 This is an applicant that you did
16 hear before that we're just looking
17 for the revote out on Wildwood Drive
18 for the inground pool.

19 I did get a chance to get out
20 there, rang your bell --

21 MS. HUBERT: We saw you on the Ring
22 camera. We're so sorry.

23 CHAIRMAN SCALZO: Now you're
24 wondering, should I have --

25 MS. HUBERT: It wasn't --

2 CHAIRMAN SCALZO: I saw little kid
3 rocking chairs out there, so I'm sure you
4 were busy.

5 Counsel, help me out. I did read
6 the meeting minutes. I feel as though
7 I'm in a position where I could vote in
8 this instance, having seen it and looked
9 at the neighborhood.

10 MR. DONOVAN: You are absolutely
11 empowered to vote, as is Ms. Banks if
12 she chooses to.

13 CHAIRMAN SCALZO: Counsel, can you
14 just drag me through this. They already
15 went through the --

16 MR. DONOVAN: There's a very
17 limited provision in New York State Town
18 Law that allows for a revote, and this
19 fits in. This is when an item comes to
20 you and you're acting in your appellate
21 jurisdiction. That means Code Compliance
22 has basically said you can't do this,
23 right. It's referred to you. There was
24 a motion to approve that failed to gather
25 four votes. As a result of that, you are

2 authorized by law to revote, should you
3 want to, on the failed motion, or you can
4 amend the motion. Someone can make a
5 motion to deny and you can vote on that.
6 Someone can make a motion to approve and
7 you can vote on that.

8 The motion would be, in this
9 instance, to render an interpretation to
10 allow a pool in this cluster development
11 subject to compliance with all Building
12 Code -- Town and State Building Code
13 requirements.

14 CHAIRMAN SCALZO: Thank you,
15 Counsel.

16 From what I understand, the vote
17 failed, but it was a three-two positive.

18 MR. DONOVAN: That's correct. It
19 was three-two positive.

20 CHAIRMAN SCALZO: They asked for a
21 revote.

22 MR. DONOVAN: It's a seven-member
23 Board. You need four votes for it to
24 pass.

25 CHAIRMAN SCALZO: I'm going to

2 actually look to the Board. We all know
3 why we're here in this instance. Counsel
4 described it very well.

5 I'll look to the Board for a motion
6 of some sort.

7 MR. EBERHART: I'll make a motion
8 to approve.

9 MR. BELL: Do we also need to just
10 explain so Ms. Banks knows what a cluster
11 development is? Do we need to --

12 MR. HUBERT: Can we speak to that
13 as well?

14 MR. BELL: Hold on.

15 MR. DONOVAN: That's for Ms. Banks
16 to ask.

17 MR. BELL: I'm sorry.

18 MR. DONOVAN: She may know more
19 than you do.

20 MR. BELL: Do you know what a
21 cluster development is?

22 MS. BANKS: I'm going to guess. I
23 know what a cluster development is, where
24 there's a development of homes and there's
25 like a shared understanding of how the

2 community is going to look, what's
3 permitted. Do I have that right?

4 MR. DONOVAN: That's one element.
5 The other element of a cluster is, let's
6 assume the zoning requires it to be 3
7 acres. You would be able to cluster and
8 build on a 1 acre parcel and leave a
9 large portion of the tract of land vacant
10 forever. You preserve open space.
11 That's the idea. I'm pretty sure that's
12 what happened in this development.

13 MR. BELL: I just want to make sure
14 that she's on board, on track. This
15 application was not -- this area is not
16 allowed to have a pool.

17 MR. DONOVAN: I don't know that
18 that's what it says. I don't want to put
19 Joe on the spot. It doesn't say one way
20 or another.

21 CHAIRMAN SCALZO: Before we continue,
22 I actually looked at the filed maps in
23 the County. I read all the notes on
24 every page. There makes no mention
25 of any restrictions of not allowing

2 pools. I couldn't find it.

3 Counsel, I believe you were
4 going to check with your old partner.

5 MR. DONOVAN: My old partner is in
6 West Hampton. He's not interested.
7 He's enjoying retirement. I did
8 read the resolution. The resolution
9 doesn't mention pools at all.

10 CHAIRMAN SCALZO: Mr. Mattina, I
11 thought I read in the meeting minutes
12 that when you're talking about a cluster
13 development, the way you calculate the
14 area for that is based on the entire
15 subdivision.

16 MR. MATTINA: The entire lot is
17 based on lot surface coverage. The
18 entire cluster.

19 MR. DONOVAN: Even though they're
20 individual lots. These folks bought one
21 lot.

22 MR. MATTINA: Yes.

23 MS. HUBERT: They're all single-
24 family homes.

25 MR. MATTINA: Note number 3 in the

2 bulk table says the lot applies to the
3 overall parcel. It's in the bulk table.

4 MR. DONOVAN: I think that's how
5 you get down to the size lot.

6 CHAIRMAN SCALZO: Okay. So having
7 had that discussion, I'm sure we're all
8 thoroughly confused, let's move forward.
9 We had a three-two vote.

10 MR. DONOVAN: Mr. Eberhart made a
11 motion.

12 CHAIRMAN SCALZO: He made a motion
13 for approval.

14 MS. REIN: Second.

15 CHAIRMAN SCALZO: We have a second
16 from Ms. Rein.

17 Can you roll on that, please,
18 Siobhan.

19 MS. JABLESNIK: Ms. Banks.

20 MS. BANKS: I'm going to abstain.

21 MS. JABLESNIK: Mr. Bell.

22 MR. BELL: No.

23 MS. JABLESNIK: Mr. Eberhart.

24 MR. EBERHART: Yes.

25 MS. JABLESNIK: Mr. Hermance.

2 MR. HERMANCE: No.

3 MS. JABLESNIK: Mr. Masten.

4 MR. MASTEN: No.

5 MS. JABLESNIK: Ms. Rein.

6 MS. REIN: Yes.

7 MS. JABLESNIK: Mr. Scalzo.

8 CHAIRMAN SCALZO: Yes.

9 What do we got there?

10 MR. DONOVAN: Three-three.

11 CHAIRMAN SCALZO: That means the
12 motion is denied.

13 MS. HUBERT: We do have neighbors'
14 support here. We have our neighbors
15 supporting this.

16 MR. HUBERT: Also, the other
17 cluster development that this is being
18 compared to is not the same at all.
19 There are apartments, condos, townhouses
20 and single-family homes.

21 MR. BELL: Where is this located?

22 MS. HUBERT: Meadow Winds.

23 MR. HUBERT: Meadow Winds is the
24 other cluster development in the Town.

25 MS. HUBERT: I actually drove

2 through it on my way here. It's two-
3 story condo buildings, a bunch of
4 townhouses.

5 MR. HUBERT: Researching this,
6 three different developers built this.
7 It looks like there were some errors when
8 it was Drury Heights in our development
9 before Aerie got it. We would meet --
10 Code Compliance never reviewed our
11 application per the communication to us.

12 MS. HUBERT: We've been to Code
13 Compliance.

14 MR. HUBERT: We're quite sure it
15 fits with Code Compliance. It seems like
16 every other applicant had a pool. They
17 mentioned they had a pool. Every other
18 person that spoke here already has a
19 pool.

20 MS. HUBERT: We have our neighbors'
21 support here.

22 MR. HUBERT: We're improving our
23 living space.

24 CHAIRMAN SCALZO: You folks closed
25 the public hearing at the last meeting?

2 MR. DONOVAN: Yes, because they
3 voted.

4 MR. HUBERT: I mean, it just seems
5 -- it seems like there was -- we were
6 told --

7 UNIDENTIFIED SPEAKER: We were all
8 told we could have pools when we bought
9 our homes.

10 CHAIRMAN SCALZO: As much as I
11 appreciate you folks being in the back
12 for support, the public hearing is
13 closed.

14 It ended up three-three with one
15 abstention. I don't know what I can do
16 in this case.

17 MR. DONOVAN: It's up to the Board.
18 Listen, if you don't want to stay here
19 all night -- I don't know if anybody is
20 going to change their mind. There was a
21 request to revote --

22 MR. BELL: You know what. I'll
23 change. I'll go back to my original.

24 CHAIRMAN SCALZO: So Mr. Bell --
25 Counsel, how do we --

2 MR. DONOVAN: Let's look at it this
3 way. What you had said before is your
4 property is different than other clusters
5 which consist of townhouses or condominiums.

6 MS. HUBERT: I actually have pictures.

7 MR. DONOVAN: What's the size of the
8 lots in the subdivision?

9 MS. HUBERT: In ours?

10 MR. HUBERT: About a quarter acre
11 each.

12 MR. DONOVAN: If the Board was
13 interested in a motion to approve, to
14 allow an interpretation that lots in a
15 cluster subdivision being of a quarter
16 acre or more, meeting all other Town and
17 State building requirements, could have a
18 pool, does that help you or hurt you,
19 Joe?

20 MR. MATTINA: It doesn't matter
21 either way.

22 MR. DONOVAN: That's a different --
23 it's a suggestion for a different motion,
24 if that makes --

25 MS. REIN: We can vote on that.

2 I'll make that motion.

3 MR. HUBERT: Our lot is .23 acres.
4 I don't want it to come down to .02.

5 MR. BELL: I think you do have the
6 biggest size lot in there. There are a
7 couple --

8 MR. HUBERT: A couple on the
9 corners.

10 MR. BELL: Not many.

11 MR. DONOVAN: That's less than a
12 quarter.

13 MR. HUBERT: It's .23.

14 CHAIRMAN SCALZO: I almost think we
15 need to go by square footage. Do you
16 happen to know how many square feet your
17 lot is?

18 MS. HUBERT: We do have lots in the
19 neighborhood that also would meet the
20 code. We believe we'll meet the code.

21 MR. HUBERT: Does it say on here?

22 CHAIRMAN SCALZO: Is that your
23 survey?

24 MR. HUBERT: Yes.

25 CHAIRMAN SCALZO: Let me help you

2 out.

3 MS. HUBERT: We're not looking to
4 do anything crazy. It is an inground
5 pool, but it's four feet, a small patio.

6 CHAIRMAN SCALZO: He's saying
7 2.32-- .232. 10,105.9 square feet. Over
8 10,000. 10,000 is the magic number.

9 MR. HERMANCE: I believe one of our
10 concerns was bank stabilization as the
11 pool is being -- you're on a steep --

12 MS. HUBERT: We do have a little
13 slope. Our contractor did -- we actually
14 talked to three or four of them. Even
15 the 10 foot property line. We didn't go
16 to our property line because our property
17 line goes down the slope. We're 10 feet
18 away from the top of the slope.

19 MR. BELL: Back to the house.

20 MS. HUBERT: We thought that, too,
21 would this be possible. We asked that.
22 They're like no, this is totally fine.
23 It's back enough.

24 CHAIRMAN SCALZO: Is it a one-
25 piece pool?

2 MR. HUBERT: It's not fiberglass.

3 MS. HUBERT: There's no deep end.

4 It's one level, 4 and-a-half feet. We'll
5 do all the safety stuff, the fence and
6 the alarm.

7 MR. HUBERT: We submitted all that.

8 MS. HUBERT: We have two small
9 kids. We want to be there for a long
10 time. We bought our house a year ago.
11 We love our neighborhood.

12 CHAIRMAN SCALZO: This is going to
13 be the first time in my career we've done
14 three votes on the same property.

15 MR. DONOVAN: There's a motion from
16 Ms. Rein and there was a second.

17 MR. BELL: The second came from --

18 CHAIRMAN SCALZO: A second from Mr.
19 Eberhart.

20 Now you can roll on that again,
21 Siobhan.

22 MS. JABLESNIK: Ms. Banks.

23 MS. BANKS: I'm going to abstain
24 again.

25 MS. JABLESNIK: Mr. Bell.

2 MR. BELL: Yes.

3 MS. JABLESNIK: Mr. Eberhart.

4 MR. EBERHART: Yes.

5 MS. JABLESNIK: Mr. Hermance.

6 MR. HERMANCE: No.

7 MS. JABLESNIK: Mr. Masten.

8 MR. MASTEN: No.

9 MS. JABLESNIK: Ms. Rein.

10 MS. REIN: Yes.

11 MS. JABLESNIK: Mr. Scalzo.

12 CHAIRMAN SCALZO: Yes.

13 They're going to be in your pool.

14 MR. BELL: Moving forward, we're
15 good with that square feet --

16 CHAIRMAN SCALZO: We landed on the
17 10,000 square foot. That's what the
18 conditions are. It means nothing to you,
19 but it means when someone comes in
20 looking for a pool, they're going to have
21 to have a minimum of 10,000 square feet.
22 There are lots that are 9,000 square feet.

23 MS. HUBERT: Thank you very much.

24 MR. HUBERT: Thank you, folks.

25 (Time noted: 9:45 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 5th day of May 2025.



MICHELLE CONERO

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

JOHN J. LEASE III

North Plank Road, Newburgh
Section 42; Block 1; Lot 2.222
R-3 Zone

----- X

Date: April 24, 2025
Time: 9:45 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
LATWAN BANKS
DARRELL BELL
JAMES EBERHART, JR.
GREGORY M. HERMANCE
JOHN MASTEN
DONNA REIN

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

----- X

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

2 CHAIRMAN SCALZO: Our last one was
3 John J. Lease, North Plank Road. They
4 withdrew.

5 That's it tonight, folks.

6 Did you get a chance to review last
7 month's meeting minutes? Would someone
8 make a motion to approve?

9 MR. MASTEN: I'll make a motion to
10 approve the minutes.

11 MR. BELL: I'll second.

12 CHAIRMAN SCALZO: We have a motion
13 from Mr. Masten. We have a second from
14 Mr. Bell. All in favor?

15 MS. BANKS: Aye.

16 MR. EBERHART: Aye.

17 MR. HERMANCE: Aye.

18 CHAIRMAN SCALZO: Aye.

19 MR. BELL: Aye.

20 MR. MASTEN: Aye.

21 MS. REIN: Aye.

22 CHAIRMAN SCALZO: A motion to
23 adjourn.

24 MS. REIN: I'll make a motion to
25 adjourn.

2 MR. BELL: Second.

3 CHAIRMAN SCALZO: We have a motion
4 from Ms. Rein and a second from Mr. Bell.
5 All in favor?

6 MS. BANKS: Aye.

7 MR. EBERHART: Aye.

8 MR. HERMANCE: Aye.

9 CHAIRMAN SCALZO: Aye.

10 MR. BELL: Aye.

11 MR. MASTEN: Aye.

12 MS. REIN: Aye.

13

14 (Time noted: 9:47 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 5th day of May 2025.



MICHELLE CONERO