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HELD REMOTELY VIA ZOOM

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

----- X
In the Matter of

AUBREY & DEENA HARDMAN

579 Lakeside Road, Newburgh
Section 13; Block 1; Lot 18
R-1 Zone

----- X

Date: May 28, 2020
Time: 7:00 p.m.

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

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

APPLICANT'S REPRESENTATIVE: AUBREY & DEENA HARDMAN

----- X

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

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CHAIRMAN SCALZO: I'd like to call the meeting of the ZBA to order. The first order of business this evening are the public hearings that are scheduled on the ZBA agenda which has been posted on the Town of Newburgh website.

The procedure of the Board has been modified to a video format due to social distancing requirements adopted by the Town of Newburgh and in accordance with New York State guidance. The Chairman or his designee will read the announcement as it appears on the agenda. The Chairman or his designee will summarize the applicant's request, and then the applicant will be called upon to add any additional information pertinent to the application as to why the variances sought should be granted relief under the code. The Board will then ask the applicant any questions it may have, and then any questions or comments from the public will be entertained. It's important for the public to be aware that the applications and supporting documents are all available for viewing on the Town of Newburgh website under the meetings tab.

The Board will consider each

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application in its entirety and will try to render a decision this evening but may take up to 62 days to reach a determination.

We will have the public muted during the Board and applicant discussion period. The Board will then unmute the meeting and any member of the public will be allowed to speak regarding the application. Members of the public who choose to speak will need to identify themselves as the meeting is a matter of public record. We will be constantly monitoring the video feed. Once a member of the public is designated to speak, we will mute all the other members of the public but will leave the applicant or the representative unmuted to respond on the record. Please consider your comments as they relate to the application and the Town code.

Roll call.

MS. JABLESNIK: Darrell Bell.

MR. BELL: Here.

MS. JABLESNIK: Richard Levin.

MR. LEVIN: Here.

MS. JABLESNIK: Anthony Marino.

MR. MARINO: Here.

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MS. JABLESNIK: John Masten is not present at this time.

John McKelvey is also absent.
Peter Olympia.

MR. OLYMPIA: Present.

MS. JABLESNIK: Darrin Scalzo.

CHAIRMAN SCALZO: Present.

MS. JABLESNIK: Also present is Dave Donovan, our Attorney; Gerald Canfield from Code Compliance; and Michelle Conero, our Stenographer.

CHAIRMAN SCALZO: Very good. Thank you.

Our first applicant this evening are Aubrey and Deena Hardman, 579 Lakeside Road, Newburgh. They're seeking an area variance lot area, lot width, front yard and floor area to convert the detached garage into a 17 by 23 detached accessory apartment.

Siobhan, do we have mailings on this?

MS. JABLESNIK: Yes. The applicant mailed out 27 letters.

CHAIRMAN SCALZO: Very good. Thank you.

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I'm going to summarize here. The Hardmans are seeking multiple area variances. Their lot is 110 feet wide by 165 feet deep or 18,150 square feet. The code requires 40,000 square feet area and 150 foot lot width. These are pre-existing nonconforming conditions. Their lot is at the corner of Lakeside Road and Beaver Court which is a private road. As Town code indicates, this lot now has two front yards. The accessory -- the existing accessory building along Beaver Court is approximately 3 feet from the property line. Town code requires 50 feet on the front yard. This is also now a pre-existing nonconforming condition due to the construction of Beaver Court.

The applicants purchased the home in August of 2019 with an unpermitted finished apartment on the back of the garage. They wish to bring the accessory apartment up to code but it does not meet the minimum square footage required. The minimum requirement is 450 square feet and the current application provides 392 square feet. Just to note, that means the proposed apartment is smaller than required.

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I visited the site. I had a decent conversation with the applicants. They have a great dog. They indicated that the area variances that they're seeking were in support of a plan for relocating a family member.

At this point I'm going to open it up to the applicants to add anything that I may have missed, and then we will open it up to members of the public, although we did receive some correspondence, which, after the applicants speak, I will review the correspondence here.

So Siobhan, if you could open up the microphone to the Hardmans, please.

MS. JABLESNIK: We're good.

MR. HARDMAN: Mr. Chairman, thank you very much. Like we said, when we purchased this property we had no idea about the issues that were connected with it. They were brought to our attention. So from that point forward we were trying to do the right thing and get it corrected. I don't know of any other information I can add to that.

I know that there are some concerns, but I think after the letters are read I could

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address those concerns.

CHAIRMAN SCALZO: Very good. Okay.

Siobhan, if you could mute the
Hardmans, please.

At this point we received, I believe,
more than two letters. When I had prepared my
narrative we had only received two, one from Mark
Ruggeri at 6 Beaver Court and one from Dennis
Piaquadio at 4 Beaver Court. They both, in their
letters, indicate that Beaver Court is a private
road without access to the applicant's property.
Additionally, Mr. Piaquadio's letter indicates
concerns over the ability of the septic to
accommodate this applicant's request as there
have been septic issues in the past.

Regarding the access off Beaver Court,
that's something that's not something for the
Zoning Board of Appeals to address on this at
this point. That would be a civil matter should
this proceed.

At first glance I really wanted a real
survey to verify that 3-foot setback on the
sketch that was provided. After reading the
letter from Mr. Piaquadio indicating that there

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were septic issues on that, my personal opinion as a member of the ZBA is I would like to confirm that engineering wise this lot could sustain what the Hardmans are attempting to achieve through this application. So that's what I have.

Actually, I'll look to any other Members of the Board in this case. Mr. Marino?

MR. MARINO: There was a question about maintenance of the private road. Would the Hardmans be willing to participate in the expense of maintaining that road with their neighbors?

CHAIRMAN SCALZO: Mr. Marino, I'm not sure that we can actually go that way.

Dave Donovan, do you want to step in here?

MR. DONOVAN: Yeah. As indicated by the Chairman previously, that is a private matter. I understand how the people who live on the private road feel, but it's not a matter that's properly within the jurisdiction of the ZBA. The ZBA is here to rule solely on the variances that are before us since we're taking the appeal from the Code Compliance Department.

MR. MARINO: So we could, in effect,

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give them permission through the variance that they're asking for, but then they could be turned down for putting the apartment there and the detached garage. Correct?

MR. DONOVAN: No. I think if the Board granted the variance they have the ability to use the garage. Whether the neighbors then say you no longer -- you should not have the ability to use the private road, that becomes a matter between -- a private matter between the applicants and the other users of the private road.

CHAIRMAN SCALZO: Tony, to access the proposed apartment they would use the existing driveway access off Lakeside Road. They would not utilize Beaver Court.

MR. MARINO: They wouldn't have to go on this private road?

CHAIRMAN SCALZO: That's correct.

MR. MARINO: Okay. One other question. Did the Hardmans know in advance when they purchased the property that there was the potential for an apartment above the garage or had they been told they have permission to go

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ahead and complete the project?

CHAIRMAN SCALZO: Siobhan, can you unmute the Hardmans, please?

MR. HARDMAN: We did not know that the apartment -- we had no issue about -- we did not know any of the issues surrounding the apartment. We didn't -- I did not think that it was an apartment. I did realize that it needed something in advance.

There was a couple of weird property classes when we looked back on our property that said multi-residence and it wasn't. I was trying to figure that part out. That's what led to this. So I had no idea that it was used previously for an apartment or anything like that.

CHAIRMAN SCALZO: Thank you.

Mr. Olympia, do you have any comments on this application?

MR. OLYMPIA: No, I don't.

CHAIRMAN SCALZO: Mr. Bell, do you have any comments?

MR. BELL: I did take a ride out there today and look at the apartment. I looked at the

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area. You are right, they do have a nice dog. But one of the things that -- you're right. I don't foresee there being a parking issue at all because, as you mentioned, they can park in the driveway that is attached.

When you mentioned -- did I just understand that you said that you didn't know that this was an apartment or it was -- that this was to be used for an apartment? Maybe I misunderstood what you just said, sir. Can you repeat that, please?

MR. HARDMAN: I'm sorry. It was probably a little confusing. Yes, I did not know that it was to be used as an apartment. It was a nice space back there. Our idea was well maybe this is available to us to be able to turn it into an apartment.

MR. BELL: So then the attached deck on the rear, that was already there when you purchased it as well?

MR. HARDMAN: Yes, sir.

MR. BELL: Okay. I'm good, sir.

I'm good Dave -- I mean --

CHAIRMAN SCALZO: Thank you, Darrell.

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Mr. Bell.

Mr. Levin, do you have any comments on this?

MR. LEVIN: I just wonder if the Hardmans realize they can't use the driveway on the -- for the other houses? Are they aware of that?

MR. HARDMAN: I'm sorry.

CHAIRMAN SCALZO: Go ahead, Mr. Hardman.

MR. HARDMAN: When we purchased the home we were not aware that we could not use it. A representative of the neighborhood approached us and let us know that, and so now we are aware that we are not to use that driveway.

MR. LEVIN: Would it be to your advantage to use it and ask them if you can join?

MR. HARDMAN: I would -- it would be to the advantage to be able to ask them to join, and I would not be opposed to that.

CHAIRMAN SCALZO: Siobhan, if you could, I've been locked out of being able to show photographs. In the file there should be an aerial, which it actually wouldn't be a bad idea

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-- well, actually it appears that we're all aware of where this is.

At this point I believe we should open it up to the public for any comments.

Siobhan, could you unmute.

Is there anyone here to speak about this application? I do see we have a Robert Piaquadio, one of the letter writers.

MS. JABLESNIK: Hold on a second. It's not letting me unmute all for some reason. Unmute Robert Piaquadio.

CHAIRMAN SCALZO: He may be muted himself.

MS. JABLESNIK: Oh, maybe.

CHAIRMAN SCALZO: Siobhan, there's no option here to unmute all?

MS. JABLESNIK: No. It's not popping up. Hold on. Let me see if I can do it over here. Unmute all. It allows me to do that.

CHAIRMAN SCALZO: Let's give it a go. If you unmuted all, I still see that Mr. Piaquadio is still muted.

MS. JABLESNIK: He's unmuted.

CHAIRMAN SCALZO: Is there anyone else

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AUBREY & DEENA HARDMAN

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here from the public that wants to speak about
this application? Please speak up.

(No response.)

CHAIRMAN SCALZO: Going once.

(No response.)

CHAIRMAN SCALZO: For those who are
actually looking at me on video, I keep looking
up to my left. I have a large screen. I'm not
looking for the answers in the ceiling. My
attention is between two places.

Who else do we have that wants to speak
about the Hardman application?

MR. PANETO: Can you hear me?

CHAIRMAN SCALZO: Yes.

MR. PANETO: My name is Pascual Paneto,
I live at 581 Lakeside Road.

For the apartment, to me I have no
problem for them to use it as an apartment. To me
it's okay. I personally meet the guys. They
look and act like they are very nice guys, so I
have no problem with that.

CHAIRMAN SCALZO: Thank you.

Is there anyone else here to speak
about this application, the application of Aubrey

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and Deena Hardman, 579 Lakeside Road?

(No response.)

CHAIRMAN SCALZO: Okay. Hearing none, I'm going to turn back to the Members of the Board. Mr. Levin, any final comments on this?

MR. LEVIN: I have one question. In an emergency -- I'm looking at their property. How do you get out of there if you had an emergency and there's a car parked in the driveway? You can't get out, or can you?

MR. HARDMAN: There's an apartment -- there's a front door to the apartment. Is that what you mean? I'm sorry.

MR. LEVIN: Well there's a driveway, and the door comes up to the driveway that I'm looking at. The car, would you be able to get around that and get somebody out of the apartment?

MR. HARDMAN: Yes. There's -- yes. There's room to be able to get around that. Oh, you're looking inside the existing garage and the apartment?

MR. LEVIN: Looking at the front of the existing garage.

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MR. HARDMAN: Yes. There's a front door on the apartment that's not in the garage or on the side or anything. It has its own entryway.

MR. LEVIN: Okay.

CHAIRMAN SCALZO: Thank you, Mr. Levin.

Mr. Bell, any other comments on this?

MR. BELL: No. I'm good.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: I don't have any questions.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: Yeah, I do have one more question. There was a comment made earlier about septic problems there on the property.

CHAIRMAN SCALZO: We had a letter, one letter from one of the adjoining neighbors, or one neighbor within 500 feet that had concerns. They had suggested that the septic had failed during a previous owner's time there.

MR. MARINO: Well in order to complete the project would they have to get the permission and the okay from the Town stating that the septic system is adequate to handle the apartment?

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CHAIRMAN SCALZO: Tony, thank you for looking at it that way. When I gave my first comment, the way I look at it we've got two things. If we were to grant any variances -- we did have a sketch provided by the homeowner. It was a pretty detailed sketch. But if we're granting a variance, we're not exactly sure what the side yards and front yards that we're going to be granting variances are for. I would like to see a real survey with real numbers on it. My position had changed in the last week or so since we saw those letters.

The other thing too, before we went ahead and granted a variance, and this is as a Member of the Board, this is not the position of anybody else, just me, I would like to see that they could -- the lot could sustain what they're trying to do in a sanitary way.

MR. MARINO: That would be good.

CHAIRMAN SCALZO: Dave Donovan, am I out of my realm of abilities on this?

MR. DONOVAN: No, Mr. Chairman. It would be helpful, I think, if the Board took a look -- let me just back up a second. Obviously

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2 we have to weigh the five factors or the criteria
3 for an area variance. In terms of the accessory
4 apartment, I think it would be helpful to review
5 the criteria, Section 185-38 which deals with
6 accessory apartments. One of the standards that
7 the Code Compliance Department would need to be
8 satisfied with is adequate water supply and
9 sewage disposal. So I do think that that is a
10 proper issue for the Board in this situation.

11 Also I think the Board should review
12 Section 185-38(A)(1) which sets forth the reasons
13 for the -- the purpose behind accessory
14 apartments. I'll just summarize briefly. To
15 provide housing for senior citizens, to increase
16 the stock of affordable housing in the Town, to
17 improve the feasibility of maintaining larger
18 existing homes. These are all the criteria that
19 are applied for accessory apartments. I would
20 suggest that the Board may want to consider those
21 as they weigh the five factors.

22 CHAIRMAN SCALZO: Mr. Hardman.

23 MR. HARDMAN: After I saw the letters
24 that that was a concern, I did some research.
25 There are some systems that are available for

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smaller lots that handle more capacity. I did reach out to a local vendor that those kind of systems are available here in this area. That's something that we would be looking at to improve.

CHAIRMAN SCALZO: Eljen is one of them. I'm familiar with the design of those myself. They do make it in a smaller footprint than a standard in-ground system.

I'm going to go back to my position, that I really want to know that your lot could sustain this prior to us moving forward with this application. However, I am but one Member.

At this point I'm going to open -- one last opportunity for the public to join in on this conversation regarding the Hardman application. Anyone else out there from the public that wishes to speak about this?

MR. CANFIELD: Darrin.

CHAIRMAN SCALZO: Yes, Mr. Canfield.

MR. CANFIELD: I'm not with the public but I do have a few questions or comments.

On the drawings that were submitted to the Building Department, and also the somewhat survey or plot plan, if you would, that was

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submitted, there is a proposed studio depicted on the plan. I'm not certain what that is or how that fits into this mix. I don't know if those calculations and square footage were taken into consideration, if they are part of that or not.

Also a comment on the septic system. Should the Board choose to approve this application, the applicant will have to display to us the functionality and capability of the system. It should be, or must be designed to the capacity to withstand the house and the apartment as they're two separate structures, and I'm assuming they're both going to go into the same system. In any event, there's some options out there. The applicant is correct, but they need to depict to us what exactly they're doing.

If the Board chooses to approve this application, there will also need to be a building permit secured for this structure. I'm sure we're going to need a lot of information with respect to how this is constructed, window sizes, exiting as Mr. Levin has referred to.

CHAIRMAN SCALZO: Thank you, Jerry.

I think I'm actually trying to help out

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the Building Department when I'm asking what I'm asking here, although we'll see in a few moments how we're going to look at that.

Is there anyone else from the public here to discuss this application, or anyone else on the Board or one of the Board attendees?

MR. CORBETT: Hello.

CHAIRMAN SCALZO: Hello. Phone number 914-805-2489, would you like to speak?

MR. CORBETT: No. I have no problems with that going through.

CHAIRMAN SCALZO: Can you identify yourself, please?

MR. CORBETT: John Corbett,
C-O-R-B-E-T-T.

CHAIRMAN SCALZO: Thank you very much. Michelle, did you get that?

MS. CONERO: I did. Thank you.

CHAIRMAN SCALZO: Thank you.

MR. CORBETT: You're welcome.

CHAIRMAN SCALZO: Anyone else here from the public that would like to speak about this application?

(No response.)

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CHAIRMAN SCALZO: Hearing none, I'll look to the Board. Do you have a motion here as far as the public hearing goes? Any motion to close or keep the public hearing open?

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

MR. BELL: I'll second.

CHAIRMAN SCALZO: We have a motion from Mr. Levin and a second from Mr. Bell. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed.

Now, we're doing things a little differently because we're in a Zoom meeting situation. We are going to complete this application in its entirety right now. Or

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perhaps right now.

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

MR. DONOVAN: That is correct.

CHAIRMAN SCALZO: Thank you.

At this point we'll go through the area
variance criteria and discuss the five factors
that we are weighing, the first one being whether
or not the benefit can be achieved by other means
feasible to the applicant.

Mr. Levin?

MR. LEVIN: I don't believe it can.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: Yes.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: I have no comment.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: I'm good.

CHAIRMAN SCALZO: No. Second, if
there's an undesirable change in the neighborhood
character or a detriment to nearby properties.

The structure itself is existing, so I
don't believe it would change the character of
the neighborhood. However, of course with an

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apartment there you might see a couple of extra trips in and out of the driveway.

Mr. Levin, any comments to that?

MR. LEVIN: How many people are going to be living in the apartment?

CHAIRMAN SCALZO: Richard, I don't believe that's relevant at this point.

MR. LEVIN: Okay. I think it's okay.

CHAIRMAN SCALZO: All right. Mr. Bell?

MR. BELL: Yes, I'm good.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: I'm fine.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: I'm good.

CHAIRMAN SCALZO: The third, whether the request is substantial. Actually, the request for the apartment size is smaller than the minimum requirement. The studio is at 392. Although Mr. Canfield did mention before he's not quite sure where those values came from. They would need to be verified at a later time.

So whether the request is substantial, I don't think that is regarding the square footage of the apartment, however the

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pre-existing nonconforming conditions of front yard and side yard, lot width, there's nothing we can do about those.

Mr. Levin, would you concur?

MR. LEVIN: I don't feel it's substantial.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: No, it's not substantial.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: I agree.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: I agree also.

CHAIRMAN SCALZO: Very good. Thank you.

The fourth, whether the request will have adverse physical and environmental effects. This is where I want to speak to my position regarding I'm not quite sure that this would not have an environmental effect. I believe, should the applicant return with that information in hand that the lot can sustain what they are looking for, I may have a different position. In my case this would have an environmental effect.

Mr. Levin, do you concur?

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MR. LEVIN: I concur with you.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: Yes, I concur. Would that have to do with the septic issue?

CHAIRMAN SCALZO: It would have to have a professional design at least substantiate that they can do what they want to do.

MR. BELL: Exactly. I agree with you.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: I agree.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: I agree with that.

CHAIRMAN SCALZO: Thank you.

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

Now, we have heard testimony from the applicants that they purchased the dwelling in this condition with the accessory building already there. I don't believe this alleged difficulty is self-created for that aspect, however them trying to improve the apartment, which they admitted that they were unaware that -- they didn't purchase the home with the intent

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that it was an apartment to begin with.

My position is of course it's self-created, not for the structures themselves but the accessory apartment portion is self-created.

Mr. Levin, I just said a mouthful.
Sorry.

MR. LEVIN: I agree. They're doing it the right way.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: I agree. Yes.

CHAIRMAN SCALZO: Mr. Levin, I agree with you. They're coming in here trying to right a wrong. I do agree with you on that.

Mr. Bell?

MR. BELL: Yes.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: I agree.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: I agree, too.

CHAIRMAN SCALZO: All right. If the Board approves, it shall grant the minimum variance necessary and may impose reasonable conditions. Having gone through the balancing test of the area variance, what is the pleasure

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of the Board? Do we have a motion of some sort?

MR. MARINO: I would make a motion that we approve the request based on the positive findings of the engineer regarding the septic system, and also their willingness to cooperate with the homeowners to maintain the private road to the apartment. That's not as important as the septic system but it's important to have good neighbors and a good relationship. So if they can work that out, that would be good.

CHAIRMAN SCALZO: Mr. Marino, I'm respectfully going to -- I appreciate what you have to say. I would prefer to have them have that all in place before they return to us.

MR. MARINO: That's fine. I can go along with that. That's fine.

CHAIRMAN SCALZO: I don't want to sway you either, Tony.

MR. MARINO: No, no. Those are two important issues.

CHAIRMAN SCALZO: All right. I'm sorry, I'm going to jump back to do we have a motion from the Board? It's either for approval or denial in this case.

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MR. LEVIN: I'll second Tony's motion.

MR. DONOVAN: Before we proceed Mr. Chairman, let me be clear on what the second part of that -- Mr. Marino's motion is because it deals with the private road.

MR. BELL: Yeah, the private road.

MR. DONOVAN: So as indicated before, we can impose reasonable conditions that are related to the variance. I think, as we established at the outset, the private road is a private issue.

MR. LEVIN: Right. Personally I don't think it's fair if they apply for the private road and they get turned down. I don't think it has anything to do with what we're talking about right now.

MR. DONOVAN: I would suggest to the Board that it's not an appropriate condition to try to attach to the variance.

MR. BELL: I agree with that.

MR. MARINO: I bow to Mr. Donovan's comments.

MR. DONOVAN: Michelle, do you have that?

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MS. CONERO: I do.

MR. DONOVAN: Very important.

MS. CONERO: Yes.

MR. BELL: Yes.

CHAIRMAN SCALZO: Okay. So if I could ask Mr. Marino, who had initially made a motion for approval with conditions, is that still the approach that we're taking here?

MR. MARINO: If the feeling is that the private road issue should remain private and not part of the condition, I would just simply ask that we approve based on the septic system being proven adequate to handle the two homes.

MR. DONOVAN: That would be an appropriate condition.

MR. BELL: Yes. I'll second that.

CHAIRMAN SCALZO: We have a motion for approval from Mr. Marino. We have a second from Mr. Bell. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

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MR. MARINO: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: No.

It's four to one. The motion does
carry.

That concludes the Aubrey and Deena
Hardman application for this evening. If anyone
is here for that, we're complete there. You can
check out but you're also more than able to stick
around for the rest of the meeting.

MS. HARDMAN: Thank you, Mr. Chairman
and the Board.

(Time noted: 7:34 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 4th day of May 2020.



MICHELLE CONERO

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HELD REMOTELY VIA ZOOM

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

----- X
In the Matter of

1110 72nd ASSOCIATES, LLC
15 Brooker Drive, Newburgh
Section 22; Block 10; Lot 5
R-3 Zone

----- X

Date: May 28, 2020
Time: 7:34 p.m.

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

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

APPLICANT'S REPRESENTATIVE: ANTHONY MELUSO

----- X

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

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1110 72nd ASSOCIATES, LLC

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CHAIRMAN SCALZO: The second application this evening is 1110 72nd Associates, LLC, 15 Brooker Drive in Newburgh. They're seeking an area variance to keep a 16 by 22 attached garage with a side yard setback of 1.75 where 15 is required and combined side yards of 14.33 feet where 30 feet is required.

Siobhan, mailings on this?

MS. JABLESNIK: This applicant sent out 28 letters.

CHAIRMAN SCALZO: Very good. Thank you.

Again I'll just summarize. The applicant is requesting a variance for the attached garage on the right side of the house. The claim is the construction was the simple reconstruction from a 2007 build.

I did visit the site. The dwelling is currently unoccupied. It was purchased in May 2019 via transaction from the Secretary of Housing & Urban Development which was a foreclosure. That information is provided in the application.

Now, there are risks associated with

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purchasing foreclosures. We're all aware of that.

The garage maintains a side yard setback of 12 feet 7 inches from the property line. Town code requires a minimum of 15 foot side yard setback with a combined 30 foot setback.

The porch on the easterly side of the house currently has a 1.75 foot setback.

The foundation the garage sits upon appears to be in satisfactory condition, although it's not very straight. This will be confirmed through the Building Department's office if and when they request an independent engineer's report for the garage.

My greatest concerns here are for the pre-existing nonconforming porch on the left side of the house. There's currently a 1.75 foot side yard setback on that property line. Now, 1.75 feet, I'm a big guy, if I was to try to -- if I was to own that house and I was trying to do maintenance, some parging on the block on the side of that, my back end would most likely be sticking into my neighbor's property. When we

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continue through this application, I would like everybody that's listening to think of that. There's really no way to maintain that side of the structure without encroaching on a neighbor.

The applicant, again, is here for a minimum side yard setback of 15 feet and a combined side yard setback of 30. That's my position on this.

At this point I'm going to open it up to the Members of the Board for their comments. Mr. Levin?

MR. LEVIN: I thought it was very, very tight on that side, like you. I'm bigger than you are.

The garage, I think somebody would have to look at it. That was all swerving around. You think that's substantial?

CHAIRMAN SCALZO: Mr. Levin, I did recognize that the foundation did have a bow in it, but that's not what that application -- that's not part of the application. That's something that the Building Department will verify at a later date. So we're just here looking at the variances as presented in the

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application. We're looking linear here, not structural here.

Mr. Marino, any comments on that?

MR. MARINO: I would ask, were those two barriers there when you purchased the home, the short space on the left side of the deck on the other side? Were they there when you bought the home or did you build them yourself?

CHAIRMAN SCALZO: Mr. Marino, it appears through the application that the porch on the left-hand side, they're actually calling it pre-existing nonconforming. Looking at the structure in person, it appears it's been there for quite a long time. I did look at a couple aerial photos and it looks like it's been there for a while.

MR. MARINO: It looked pretty bad.

CHAIRMAN SCALZO: Yup. Any other comments, Mr. Marino?

MR. MARINO: No. That's it for now.

CHAIRMAN SCALZO: How about Mr. Olympia. Do you have anything for us?

MR. OLYMPIA: No. I had the same comments that the other Members have already

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voiced.

Well, I guess one question. Has Mr. Canfield been to this site yet?

CHAIRMAN SCALZO: I don't know that he's obliged to go there.

MR. OLYMPIA: But I asked if he has been for any reason.

CHAIRMAN SCALZO: Jerry?

MR. CANFIELD: No. Tony, I have not -- Peter, I have not been out there myself. I'm familiar with that neighborhood. What is your question regarding the site?

MR. OLYMPIA: I just wanted to comment on the general conditions there, if you had an opportunity to observe them. If you haven't been there, that's a moot question.

MR. CANFIELD: General conditions regarding the site or potential deficiencies or --

CHAIRMAN SCALZO: I'll help you out, Mr. Olympia. I think I know where you're going with this.

Jerry, when I was at the site -- obviously I performed a site visit. I walked

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around the entire structure. The access underneath that porch on the left-hand side, the door was open, it was very available to see, and it is in extremely poor condition. But that's -- again, that's not why we're here, however. It's something to note for the Building Department for a later date.

MR. CANFIELD: If I may. Peter, thank you for that. We will look into that and those conditions, and if there's -- like Darrin said, it's other than this application. If there are other deficiencies with the property, we can address that.

MR. OLYMPIA: Thank you.

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

MR. BELL: He said everything that I was thinking. I'm good.

CHAIRMAN SCALZO: Very good.

Siobhan, I know the applicant has a proxy. Do you happen to know or can you unmute everybody and see who we have as far as the applicant goes to speak about this?

MR. MELUSO: This is Anthony Meluso.

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Mr. Chairman, can you hear me?

CHAIRMAN SCALZO: Yes, we can hear you.

MR. MELUSO: I'm the engineer from Gardiner that represents the client, 1110 72nd Street Associates.

Just a couple of things first. As a point of information, the home was constructed in 1956 before the building code. The house has always occupied most of the 85 foot width on the 100 foot wide lot, including the dilapidated porch and the pre-existing garage. I don't know if Jerry remembers, he inspected it in 2006, and he was the one who said they needed to fix it. They took him at his word. They repaired the garage without a permit, and that left them subject to obtaining a variance at this point in time. But the house has always been 85 feet wide, plus or minus, on a 100 wide lot, so the most critical variance is that 1.75 feet.

What we were really seeking a variance and to discuss how the garage was reinstated on the existing foundation in 2007, after first being constructed in 1956. That's on the lot card. I showed all this to Mr. Canfield. He's

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aware of the situation. They would still need to get a building permit to complete the construction of the garage and get a C of O for that.

CHAIRMAN SCALZO: Okay. So just to summarize, your intention for this application is purely on the garage on the right-hand side?

MR. MELUSO: Well it's to obtain a variance for the lot for not having 30 feet combined side setbacks. You have to consider the left side also, only numerically, because it's pre-existing nonconforming. Most of this falls under 185-19(C)(1) which speaks to whether or not pre-existing structures that don't conform with the code can be maintained in place.

CHAIRMAN SCALZO: If I could --

MR. MELUSO: I've got it right here. I'll trade places with the screen. Can you see it? It's right here. Nonconformity with bulk requirements. Maintenance, repair, structural alteration, relocation, reconstruction, normal maintenance and repair, blah, blah, blah, of a building which does not house a nonconforming use but is nonconforming as to district regulations

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for area width, depth, front, side or rear yards. Building height lot coverage, blah, blah, blah is permitted if the same does not increase the degree or create any new nonconformity with regulations.

I think that pretty well sums it up. I don't think they could ever enlarge it, but I think it can stay the way it is and be consistent with the code.

MR. CANFIELD: If I may. I just have one question. This garage was attempted to be repaired or rebuilt back in 2007. What was that with regard to what it was, or if it even was there in 1956 when the house was constructed? Do you know that?

MR. MELUSO: Yeah. Actually the footprint is smaller than you had shown on the lot card at the building assessor's office. You had it as like 16 by 24. I think it's only 16 by 22. I tried to point that out on the drawings. Let me go to AutoCAD. There it is. Here's the house. Can you see that?

CHAIRMAN SCALZO: Actually, you know what. Hang on, sir.

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Siobhan, can you go to the split screen? We have some photos of this application that are going to be helpful. I tried but it locked me out of split screen. You didn't give me permission, Siobhan.

MS. JABLESNIK: I didn't. I'm sorry.

CHAIRMAN SCALZO: You can probably pick any of them. Go with the first one.

MR. MELUSO: Do you have the drawings I submitted available? So that's a good picture of the existing garage as it sits now on the existing foundation, but it was always shown to be larger on the lot card. On my drawing I say reconstructed 16 by 22 on existing foundation per property maintenance code, basically to satisfy the Building Department's request to repair it. So I have it shown as constructed in 1956 as 352 square feet and reconstructed in 2007. So it actually occupies less of the footprint than it did in 1956. I think it's just really due to somebody measuring the overhangs on the roof instead of just the foundation. Let me show you that.

CHAIRMAN SCALZO: Jerry Canfield, can

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you confirm that section of the code that the applicant's representative had quoted earlier? And he spun the screen around but I can't see it from here. Jerry, I can't put my hands on it quickly.

MR. CANFIELD: I'm a little confused. He was quoting 185-19. Is it his contention that he doesn't need the variances or that --

MR. MELUSO: No, no, Jerry. Not at all.

MR. CANFIELD: That's the section of the code that you believe applies --

MR. MELUSO: Right. 19(C)(1). It's only because they repaired it in 2007 per the Building Department's direction that it needed some work and tender love and care.

MR. CANFIELD: In 2007 they didn't even get a building permit.

MR. MELUSO: That's why we're here now.

MR. CANFIELD: I don't believe it was under the Building Department's direction in 2007. That's all I'm saying.

MR. MELUSO: I talked to Joe and he went out and looked at it at one point in time.

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Joe Mattina. Somebody wrote them up for not having followed the property maintenance code as they might have. So they took the Building Department's letter and just went ahead and fixed it without a permit.

MR. CANFIELD: I believe that there was a violation against the property since 2007 for not doing the work with a permit. Perhaps when the property changed hands, or something happened with the property, that resurfaced that violation. So I think that's what brought you here.

MR. MELUSO: Correct.

MR. CANFIELD: I mean I don't dispute -- 185-19, yes, it does permit what's existing nonconforming, and it does permit you to come to this Board, but those area variances are still required.

MR. MELUSO: I agree. I think the steps we took were to first apply for a building permit, it was rejected, and then to come here.

CHAIRMAN SCALZO: Thank you, Mr. Canfield.

At this point I'll open it up to any

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Members of the Board here that want to -- do you have a comment, Mr. Levin?

MR. LEVIN: I only question the porch. I, too, walked around that. It looks like it's falling down. It's in bad shape.

CHAIRMAN SCALZO: Believe me, Richard, I agree with you.

Mr. Bell?

MR. BELL: I feel the same. I'm good.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: I have no other comments.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: I'm good with everything.

CHAIRMAN SCALZO: Now we're going to open it up to any members of the public that wish to speak about this application.

Siobhan, can you unmute everybody.

MS. JABLESNIK: Unmuted.

CHAIRMAN SCALZO: Very good. Regarding the application of 1170 72nd Association, LLC at 15 Brooker Drive in Newburgh, anyone on the line that wants to speak about this application?

(No response.)

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CHAIRMAN SCALZO: One last opportunity.
The 15 Brooker Drive application, is there anyone
here from the public to speak about this?

(No response.)

CHAIRMAN SCALZO: Very good. Okay.
Siobhan, you can mute them all again.
Unmute us.

At this point I'll look to the Members
of the Board. Any final comments?

(No response.)

CHAIRMAN SCALZO: Any final comments
from the applicant?

(No response.)

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

MR. OLYMPIA: I'll move that we close
the public hearing.

MR. BELL: Second.

CHAIRMAN SCALZO: We have a motion from
Mr. Olympia. We have a second from Mr. Bell.
Roll call on that.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

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MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is now closed.

All right. At this point we will move through the area variance criteria and discuss the five factors we're weighing, the first one being whether or not the benefit can be achieved by other means feasible to the applicant. It's already there. That's a tough one. The other means that it could be done would be for us to request it to come down.

At this point, Mr. Levin, any comments on that?

MR. LEVIN: I don't know -- I'd have to ask does the garage -- I mean the porch, can that come under our jurisdiction or is that not in ours?

CHAIRMAN SCALZO: Absolutely, Richard. We're here -- the variance is looking for a

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single side yard of 15 feet or a 30 foot combined. Currently they have less than that. As I say, on the one side there's 12 feet. On the other side there's 1.75 feet. Looking at the criteria, like I say, can this be achieved by other means feasible to the applicant?

MR. LEVIN: I think it's fair to ask them to take down that porch. It's a wreck.

CHAIRMAN SCALZO: Thank you, Mr. Levin. Mr. Marino, any comments to that?

MR. MARINO: No. The property does need some work. Hopefully they'll get it done if they do the garage.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: No.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: None.

CHAIRMAN SCALZO: Very good. The second criteria, if there's an undesirable change in the neighborhood character or a detriment to nearby properties. In this case everybody has been looking at it for quite a while. I would imagine that any improvements to the structure would actually be a benefit to the character of

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the neighborhood.

Mr. Levin, would you concur?

MR. LEVIN: Yes.

CHAIRMAN SCALZO: Mr. Bell, would you
concur?

MR. BELL: Yes.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: I concur.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: I agree.

CHAIRMAN SCALZO: I'm going to jump to
Dave Donovan for a second here. Dave, just the
way I'm approaching this, is this appropriate?
This is my first big Zoom meeting. Can I ask for
concurrence out of each Member or do I look for
independent comments?

MR. DONOVAN: For each factor?

CHAIRMAN SCALZO: That's correct.

MR. DONOVAN: So the better course of
action is to do what you're doing, I hate to tell
you.

CHAIRMAN SCALZO: Okay. Very good.
Thank you. At least I'm in line, I'm good.

All right then. The third, whether the

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request is substantial. Well that's -- 1.75 feet is substantial to me.

I will look to -- I'm going to go in reverse here. Mr. Bell, what do you think?

MR. BELL: Yeah, it is an issue.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: It's substantial.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: I agree, it is substantial.

CHAIRMAN SCALZO: And Mr. Levin?

MR. LEVIN: I already said it's substantial.

CHAIRMAN SCALZO: Very good.

The fourth criteria, whether the request will have adverse physical or environmental effects. I can't put my finger on one but I'll ask Mr. Bell.

MR. BELL: None.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: None.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: I think it would improve the neighborhood.

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CHAIRMAN SCALZO: Very good.

Mr. Levin?

MR. LEVIN: I'm still worried about that porch.

CHAIRMAN SCALZO: Very good. Okay.

The fifth, whether the alleged difficulty is self-created. This is relevant but not determinative. My opinion is they purchased this dwelling in this condition, so I don't believe it's self-created, although when you do buy a foreclosure, what's the old adage there, let the buyer beware.

At this point I'll mix it up. Mr. Olympia, what are you thinking?

MR. OLYMPIA: I'm fine.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: I'm okay.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: Okay. I'm good.

CHAIRMAN SCALZO: And Mr. Levin?

MR. LEVIN: I'm okay.

CHAIRMAN SCALZO: All right. So having gone through the balancing test of the area variance, does the Board have a motion of some

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sort, keeping in mind if approved the Board shall grant the minimum variance necessary and may impose reasonable conditions.

We'll look to the Board. Do we have a motion of some sort?

MR. MELUSO: Can I be heard?

CHAIRMAN SCALZO: Please identify yourself.

MR. MELUSO: This is Anthony Meluso again. I'm the engineer.

CHAIRMAN SCALZO: I'm sorry. You know what, a different box lit up.

MR. MELUSO: If I were on the Board I'd say let's make a motion to approve it consistent with 185-19(C)(1) because it was pre-existing nonconforming, that they need to get a building permit to repair the garage, and in the future your inspections might uncover that the porch needs some work. That would be work that would be required under the property maintenance code.

CHAIRMAN SCALZO: Okay. We heard at least that portion from the applicant prior to us rendering a determination here. I'm going to go back to the Board.

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MR. DONOVAN: Mr. Chairman, if I can just interrupt for one second. I understand what Mr. Meluso is saying, but I'm looking at the Code Compliance denial. That indicates that the new garage, if you will, was enlarged. So this is an increase in degree of nonconformity. Correct? It's not exactly the same.

MR. MELUSO: It's actually smaller. If you look at the property card that's in the assessor's office, it lists the garage as being much bigger because it was measured incorrectly, not because it ever was any bigger or any smaller. I measured it and I can attest to the fact that it is exactly 16 feet by 22 feet.

MR. DONOVAN: So the Code Compliance information that we get indicates that the property owner at the time enlarged an existing nonconforming attached garage.

MR. MELUSO: No.

MR. DONOVAN: I understand what your position is. I'm talking to the Board now.

So if in fact there is an enlargement, right, that's an increase in the degree of nonconformity which would give the Board the

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ability to make some finding or condition relative to the porch because there's been an increase in the degree of nonconformity of the side yard setback. If, however, it stays the same as is being argued, right, then 185-19(C)(1) would apply and you could indicate that Code Compliance needs to evaluate the structural integrity of what I'll call the left side, but you wouldn't be able to require it be removed.

Do you understand, Darrin?

CHAIRMAN SCALZO: I follow you, Dave.

Now going back to the Board. Do we have a motion? We either have a motion for approval or a motion for denial.

MR. BELL: I'll make a motion for denial.

MR. MELUSO: Excuse me?

MR. LEVIN: I'll second that.

MR. DONOVAN: Let me just interject one more time. Do we want to ask for more information from Code Compliance as to whether or not there's been an enlargement or if it's the same? It's a boy on one side and a girl on the other. Either it was enlarged or it wasn't.

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Right?

MR. MELUSO: It was made smaller, sir.

MR. DONOVAN: Mr. Meluso, I'm actually asking the Town. I know what your position is.

MR. MELUSO: I would like Jerry to pull out the property card and you'll see that it's smaller now.

CHAIRMAN SCALZO: Okay. In this case, Mr. Meluso, I do appreciate that you're adding comments to this, however at this point we are far enough in this. We can actually defer our decision, perhaps pending more information from Code Compliance, or vote to approve or vote to deny.

MR. OLYMPIA: Could I make a suggestion that we withdraw the current motion on the table and ask the applicant to provide us with a level of information that we would be comfortable with with regard to not only the variance here but also some of the issues that have been raised with regard to the property?

CHAIRMAN SCALZO: Actually Peter Olympia, I agree with your assessment, although I believe the information we're seeking should come

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from Code Compliance, or verification from Code Compliance.

Am I correct with that?

MR. DONOVAN: So we're sitting in review of a Code Compliance determination that there's been an enlargement of an existing nonconforming garage. The applicant's representative has indicated that that's not accurate. So, you know, as I said before, if one side says it's a boy and the other side says it's a girl. I think we need confirmation as to whether there's been an enlargement or not an enlargement because it makes a world of difference.

CHAIRMAN SCALZO: Very good. So would it be appropriate for us to defer a determination to next month's meeting? I just need a motion for that.

MR. BELL: I'll make a motion, yes. I will retract and say I'll make a motion for deferral.

MR. OLYMPIA: I'll second that.

CHAIRMAN SCALZO: All right. So we have a motion for deferral to the June meeting.

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We have a second from Mr. Olympia. Roll call on that.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

We're going to -- this will be falling under the 62 days. Mr. Meluso, are you following us on that?

MR. MELUSO: No. I'm not clear as to why we're taking this route, but it's the Board's determination. I don't think you have all the information in front of you. If you had it you could see it.

CHAIRMAN SCALZO: Mr. Meluso, we will see you at the June meeting.

MR. MELUSO: Thank you, sir.

CHAIRMAN SCALZO: Thank you.

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(Time noted: 8:05 p.m.)

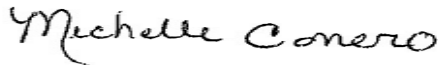
C E R T I F I C A T I O N

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 4th day of June 2020.



MICHELLE CONERO

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HELD REMOTELY VIA ZOOM

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

----- X
In the Matter of

BLACK DOG DESIGN & CONSTRUCTION

133 Oak Street, Newburgh
Section 9; Block 1; Lot 50
R-3 Zone

----- X

Date: May 28, 2020
Time: 8:05 p.m.

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

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

APPLICANT'S REPRESENTATIVE: DAVID FEENEY

----- X

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

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CHAIRMAN SCALZO: We are moving on now to Black Dog Design & Construction at 133 Oak Street, Newburgh. They are seeking an area variance to increase the degree of nonconformity of the side yard and combined side yards to build a 12 by 16 year deck.

Siobhan, in this case mailings. What do we got?

MS. JABLESNIK: This applicant sent out eleven letters.

CHAIRMAN SCALZO: Very good. Okay. Knowing that my voice can still be heard while there's a picture on the screen; Siobhan, if you could go to this file.

MS. JABLESNIK: Hold on.

CHAIRMAN SCALZO: No problem. We'll wait. Why don't you go to the 133 Oak Street aerial, please. All right. Very good. As we're looking at this; Siobhan, if you could hold the pointer over the house at the very top of the screen. Yup. All right. That is the application.

The house that you're seeing there is pre-fire. Anyway, here's what -- I'm going to

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summarize what we've got here. The applicant is seeking a variance from side yard setbacks as noted in the Town Code 185-19(C)(1), required one side yard of 30 feet, a combined side yard of 80 feet. The applicant is seeking an increase in the degree of nonconformity to provide one side yard of 15 feet and a combined side yard of 56 feet.

The dwelling is a reconstruction from a fire. They had replaced the dwelling in the footprint of the original dwelling which is why this is only an increase in the degree of nonconformity for the deck and it's not subject to the side yard setbacks for the dwelling itself. The aerial photo kind of explains what we're looking at here.

We did receive an e-mail from the adjoining property owner who had some concerns which were variance related but also interested in maintaining the current privacy. I can read through what that e-mail had said. "In reference to" -- this is recited from the e-mail. "In reference to the meeting of April 23, 2020 regarding an area variance to increase the degree

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2 of nonconformity on the side yard and combined
3 side yard to build a 12 by 16 deck, I hereby
4 reject said variance. Our houses are extremely
5 close together with very little land between
6 them. By building such a large deck on the back
7 of the house, this will offer no privacy for me
8 or future homeowner. Mr. Feeney should have
9 thought about this when designing the house he
10 built. If he had put the back door on the other
11 end of the house there would have been no
12 problem. Both homes would have had better
13 privacy. Therefore, I am requesting that this
14 deck be made a little smaller and that it not
15 come to the end of the house but start a little
16 closer to the back door. Don't start at the end
17 of the house. Start closer to the back door.
18 This would help out immensely on the privacy
19 issue. The official 15 foot should remain
20 intact. It was put there for a reason. You
21 shouldn't be able to change this just because a
22 contractor wants to. Contractors should be held
23 accountable for the houses they build and the
24 amount of land that they have to build on. If
25 Mr. Feeney would like to discuss this issue, I

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would be more than happy to do so. Thank you for hearing my concerns about this issue. I would have preferred coming to this meeting in person but unfortunately circumstances warrant us not to." They did send a few photos.

In my visit to the site, another one of her concerns was her domestic water well which is close to the property line between the two properties. The concern was it being potentially contaminated by root drain runoff as the downspouts are facing that property.

Siobhan, at this point did we already discuss how many mailings went out on this?

MS. JABLESNIK: Yes. Eleven.

CHAIRMAN SCALZO: Very good. Okay.

Thank you.

MS. JABLESNIK: Do you want me to take this off?

CHAIRMAN SCALZO: Yes. If you could, please. Actually, if you can open the photos. I'm just seeing a bunch of people on the screen right now.

MS. JABLESNIK: Hold on a second. Hold on. Hold on a second. Sorry, guys.

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CHAIRMAN SCALZO: Okay. I'll tell you what. Then let's move on in this case.

As I say, I visited the site. I spoke with actually the builder as well as the contiguous homeowner next door. Her concerns are exactly as laid out in her e-mail.

One thing I will note. Her deck comes off her house exactly on the same house line as the applicant is looking to do as well.

Siobhan, now I'm looking back at the aerial.

MS. JABLESNIK: I know. I'm sorry.

CHAIRMAN SCALZO: That's okay. Let's just leave it as it is.

Again, at this point I'm going to open it up to any Members of the Board that may have a comment on this. Mr. Bell?

MR. BELL: I'm looking at the photos and I see what you're saying about the neighbor's deck is basically in the same line as where the new homeowners are looking to put theirs at.

You mentioned about the downspout runoff. Are you speaking of the neighbor there with the deck and a well close to the property

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line there? Is that what you're speaking of, Darrin?

CHAIRMAN SCALZO: Mr. Bell, that was just an observation. That is not -- it's not part of the application but it was just an observation while I was out there. Actually, when I did meet with the builder that was out there, he had offered to turn the downspouts in the opposite direction. I think that -- again, that's not something that we're here to discuss in this application. It was a concern that the neighbor had expressed to me.

MR. FEENEY: Chairman --

MR. BELL: I wanted to make sure that that's what -- I was making sure I was just understanding. I'm good. I'm good.

MR. FEENEY: Chairman, those downspouts have been redirected to the rear and to the front.

CHAIRMAN SCALZO: Very good. Mr. Feeney, if I could just have you hang on just for a second. Let me get through the Members of the Board and I'll bring it right back to you.

Mr. Olympia, any comments on this?

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MR. OLYMPIA: I don't have any
comments.

CHAIRMAN SCALZO: How about you, Mr.
Marino?

MR. MARINO: I'm good with it.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: In the picture that I'm
looking at, blueprints of properties, the one on
the left is set back. It's not directly in line
with the one on the right. Am I correct?

CHAIRMAN SCALZO: Richard, I don't know
which photo. I'm looking at plans. Mr. Levin,
are you looking at the survey?

MR. LEVIN: Yes.

CHAIRMAN SCALZO: Okay. Yes, it does
appear that the applicant of -- the dwelling that
sits on the applicant's property here, it does
sit a little further back from that property
line. But just as an observation here Mr. Levin,
that property line is quite askew. If you were
to measure the front yard -- the perpendicular
offset from the front yard to the property line,
they're probably very similar.

MR. LEVIN: Okay. I did look at the

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property from the gentleman on the left, and he does have a platform built on it and it's not -- it doesn't seem to be in the corner.

CHAIRMAN SCALZO: Okay. We're going to get back to that. We're going to open up here to Mr. Feeney.

Mr. Feeney, did you -- can you speak to what Mr. Levin had just said? Do you already have a deck on there or no?

MR. FEENEY: I have a 3 by 3 landing for egress out of the dining room. At the time, you know, that the whole COVID thing hit and this application process was delayed, to move the project forward I went ahead and just recently constructed the landing, not knowing what the timing of this meeting would be and/or the outcome of this variance hearing, so I could move ahead with the construction and completion of the house.

CHAIRMAN SCALZO: I understand.

MR. FEENEY: I have not withdrawn the application for the deck.

CHAIRMAN SCALZO: No, no.

MR. FEENEY: It was just a timing

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issue.

CHAIRMAN SCALZO: I understand. So what is there is potentially permanent; correct?

MR. FEENEY: Excuse me?

CHAIRMAN SCALZO: It's potentially permanent? It's not a temporary structure just for access?

MR. FEENEY: No. It was built to be permanent. You know, if we get approval for the deck, it potentially would be removed and replaced with the deck.

CHAIRMAN SCALZO: Very good. Mr. Feeney, we're going to review this application as it has been presented. Just before we move forward with this, would it be possible if -- would you potentially kick that deck 1 foot off the corner of the house so it stays the same size but it starts 1 foot in?

MR. FEENEY: Yes, I'll do that.

CHAIRMAN SCALZO: You can do that?

MR. FEENEY: Yes, I'll do that.

CHAIRMAN SCALZO: That is a great compromise, sir. I appreciate that.

MR. FEENEY: Thank you.

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And just to address the earlier comment. I did answer before. I don't know if you heard it. The leader -- the downspout leaders have been redirected to the front and rear, so they're not pointing, you know, directly at the neighbor's property line.

MR. LEVIN: When I was at the site I noticed that.

CHAIRMAN SCALZO: Excellent. Thank you.

Okay. At this point I'd like to open it up to any members of the public that want to speak about this application.

Siobhan, if you could unmute everybody.

CHAIRMAN SCALZO: Is there anyone here to speak about the application of 133 Oak Street in Newburgh?

(No response.)

CHAIRMAN SCALZO: Anyone here for Black Dog Design & Construction, 133 Oak Street, Newburgh, seeking an area variance? Is there anyone from the public that wishes to speak about this application?

(No response.)

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CHAIRMAN SCALZO: Hearing none, I'm going to go back to the Board. Any further comments from anyone? Just shout them out.

MR. MARINO: I think the builder's willingness to compromise is definitely very helpful.

MR. LEVIN: Something that doesn't have anything to do with the variance that he's seeking, but the front of the house, the stonework was excellent.

CHAIRMAN SCALZO: Very good.

You know what, it seems as though phone number 845-309-7176 may be trying to speak. Is this correct?

UNIDENTIFIED SPEAKER: No. I'll wait for the next case. Thank you.

CHAIRMAN SCALZO: Very good. Thank you. You were breaking up and you were highlighted on my screen. I thought you may have been trying to speak about this one.

All right. So the last opportunity for anyone from the public that wants to speak about 133 Oak Street?

(No response.)

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CHAIRMAN SCALZO: Hearing none, I'll look to the Board for a motion to close the public hearing.

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

MR. MARINO: I'll second it.

CHAIRMAN SCALZO: We have a motion from Mr. Bell. A second from Mr. Marino. Roll on that.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed.

Siobhan, if you could mute the other folks out there at this point so it will be a little easier to continue.

This is a Type 2 action under SEQRA.

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Correct, Dave?

MR. DONOVAN: That's correct, Mr. Chairman.

CHAIRMAN SCALZO: Thank you, Dave. I saw you slide back there. I'm just checking to make sure you're here.

MR. DONOVAN: I'm looking at papers on my desk. Don't worry.

CHAIRMAN SCALZO: Okay. As I say, a Type 2 action under SEQRA. We're going to go through the variance and discuss the five factors, the first one being whether or not the benefit can be achieved by other means feasible to the applicant. It's replacing from a fire-damaged dwelling. It's in the same footprint that it was. I would say in my opinion it's not.

Mr. Bell on that?

MR. BELL: Yes.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: I don't think it could be done any better way.

CHAIRMAN SCALZO: And Mr. Marino?

MR. MARINO: I'm good with it.

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CHAIRMAN SCALZO: And Mr. Olympia's
lamp?

MR. OLYMPIA: I'm fine.

CHAIRMAN SCALZO: Very good. Thank you,
Peter.

Second, if there's an undesirable
change to the neighborhood character or a
detriment to nearby properties. Again, it's new
construction compared to old construction. I'm
sure it's actually an upgrade to what was
previously there. I don't believe it's a
detriment to a nearby property.

Mr. Levin, would you concur?

MR. LEVIN: I agree with you.

CHAIRMAN SCALZO: Mr. Bell, would you
concur?

MR. BELL: Yes, I concur.

CHAIRMAN SCALZO: Mr. Marino, would you
concur?

MR. MARINO: Yes, I would.

CHAIRMAN SCALZO: And Mr. Olympia,
would you concur?

MR. OLYMPIA: I'm back. Yes, I will.

CHAIRMAN SCALZO: Very good. Thank

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you.

The third, whether the request is substantial. Well, it is a 15-foot side yard, but the applicant has agreed to kick his deck in 1 foot, so that offset would be 16 feet, 1 full foot greater than what the house is going to be. So I don't believe that that makes this -- I don't believe that's substantial.

Mr. Bell, would you agree?

MR. BELL: I agree.

CHAIRMAN SCALZO: Mr. Olympia, would you agree?

MR. OLYMPIA: I agree.

CHAIRMAN SCALZO: Mr. Marino, would you agree?

MR. MARINO: I agree with you.

CHAIRMAN SCALZO: And Mr. Levin, would you agree?

MR. LEVIN: I agree.

CHAIRMAN SCALZO: Thank you.

The fourth, whether the request will have any adverse physical or environmental effects. I don't believe so.

Mr. Levin?

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MR. LEVIN: I don't believe so either.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: No.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: None.

CHAIRMAN SCALZO: And Mr. Marino?

MR. MARINO: No adverse effects.

CHAIRMAN SCALZO: Very good. Thank
you.

And the fifth, whether the alleged
difficulty is self-created which is relevant but
not determinative. Well, he's reconstructing.
He's putting a nice deck on there. Of course
it's self-created, however the second portion is
not determinative. So it's -- I believe it's
fine.

Mr. Levin?

MR. LEVIN: I agree with you.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: I agree.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: Yes.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: I agree.

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CHAIRMAN SCALZO: Very good. Having gone through the balancing test of the area variance, what is the pleasure of the Board? Do we have a motion of some sort?

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

MR. BELL: I'll second.

CHAIRMAN SCALZO: We have a motion for approval from Mr. Levin. We have a second from Mr. Bell. However, as part of the approval and decision on this it will be noted in the decision, Dave, that the applicant has offered to move the deck 1 foot in from the corner of the house.

That being said, we're going to go through the roll call here.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

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MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Motion carried. The variances are approved. Thank you very much, Mr. Feeney.

MR. FEENEY: Thank you, everyone.

CHAIRMAN SCALZO: That concludes the application for 133 Oak Street, Newburgh.

(Time noted: 8:22 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 4th day of June 2020.

Michelle Conero

MICHELLE CONERO

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HELD REMOTELY VIA ZOOM

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

----- X
In the Matter of

THE ESTATE OF THOMAS PIRGER
111 Lakeside Road, Newburgh
Section 47; Block 1; Lot 30.1
R-1 Zone

----- X

Date: May 28, 2020
Time: 8:22 p.m.

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

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

APPLICANT'S REPRESENTATIVE: ANDREA PAWLICZEK

----- X

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

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CHAIRMAN SCALZO: We are moving on. We're moving on to the Estate of Thomas Pirger, 111 Lakeside Road in Newburgh. John Corbett is the executor. We are seeking -- the applicant is seeking an area variance to keep a 6.4 by 45 foot covered front porch that has a 26.5 foot front yard setback where a 50 foot is required.

Siobhan, mailings on this?

MS. JABLESNIK: This applicant sent out nine letters.

CHAIRMAN SCALZO: Very good. All right. This is one of the more straightforward applications that we're going to hear tonight. The applicant is seeking a variance for the front porch which extends into the front yard setback. Current Town code requires 50 feet. The front yard setback with a dwelling and porch currently are at 26.5 from the front property line, therefore the applicant is seeking a 23.5 foot variance. The claim is that the porch was built in approximately 1995, prior to the current owner's occupancy. However, even if the porch were not present, the house would encroach upon the front yard setback as well. That's just

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important to note for the application in my opinion. The porch is 6 feet 6 inches wide and spans the length of the dwelling.

From my visit there, there aren't many homes around it for neighborhood character comparison purposes, however the one across the street from it does have a very similar front porch, just as far as character of the neighborhood goes. That's all the comments that I have for this. As I say, I feel it's a pretty straightforward application.

Mr. Bell, do you have any comments on this?

MR. BELL: No. I agree.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: No. I think it's a pretty straightforward application.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: No. I agree with you.

CHAIRMAN SCALZO: And Mr. Levin?

MR. LEVIN: I agree.

CHAIRMAN SCALZO: Very good. Okay.
That makes things a little easier.

At this point we're going to open it up

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to any members of the public that would like to speak about this application.

Siobhan, if you would unmute everyone, please.

MS. PAWLICZEK: Good evening, everyone. My name is Andrea Pawliczek. I'm an attorney representing the estate of Thomas Pirger. If anyone has any questions for me, I'd be glad to answer.

CHAIRMAN SCALZO: Thank you. Did I capture the flavor of what we're trying to do?

MS. PAWLICZEK: You absolutely did, Mr. Chairman.

CHAIRMAN SCALZO: Thank you very much. Okay. Is there anyone from the public here to speak about this application?

(No response.)

CHAIRMAN SCALZO: Going once.

(No response.)

CHAIRMAN SCALZO: Okay. Going back to the Board. Any comments from any of the Board Members?

MR. OLYMPIA: No.

CHAIRMAN SCALZO: Siobhan, could you

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mute, please.

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

MR. OLYMPIA: I'll make a motion to close the public hearing.

MR. BELL: I'll second.

CHAIRMAN SCALZO: We have a motion from Mr. Olympia and a second from Mr. Bell. Let's roll on that.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed. Very good.

Now we are going to move into the area variance questions. This is a Type 2 action

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under SEQRA. That is correct, Mr. Donovan?

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

CHAIRMAN SCALZO: Thank you, sir.

We're going to go through the criteria and discuss the five factors, the first one being whether or not the benefit can be achieved by other means feasible to the applicant. In this case I don't believe so, unless we're going to ask them to rip the front porch off.

Mr. Bell, would you agree?

MR. BELL: Yes, I agree.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: Yes.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: Leave it there.

CHAIRMAN SCALZO: And Mr. Levin?

MR. LEVIN: I'm okay.

CHAIRMAN SCALZO: Very good.

Second, whether there's an undesirable change in the neighborhood character or a detriment to nearby properties. That would remain virtually unchanged.

Mr. Levin, do you concur?

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MR. LEVIN: Yes. No change in the neighborhood.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: Yes, I agree.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: Yes.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: No change at all.

CHAIRMAN SCALZO: Very good. Thank you.

The third, whether the request is substantial. I do not believe so.

Mr. Levin?

MR. LEVIN: I do not believe so.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: No, I do not believe.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: It's not substantial.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: Not substantial. I agree with you.

CHAIRMAN SCALZO: Very good. Thank you.

The fourth, whether the request will

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have adverse physical or environmental effects.
I'm going to say what I said to the other, I
believe there's going to be no change.

So Mr. Levin?

MR. LEVIN: No change.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: No change.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: No change.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: No change.

CHAIRMAN SCALZO: And the fifth,
whether the alleged difficulty is self-created.
This is relevant but not determinative. I believe
the deed that I looked at, I think there has been
an owner or two between the construction and now,
so I don't believe this difficulty is self-
created.

Mr. Bell?

MR. BELL: No.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: No.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: No.

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CHAIRMAN SCALZO: And Mr. Levin?

MR. LEVIN: No.

CHAIRMAN SCALZO: Very good.

All right. Having gone through the balancing test here of the area variance, what is the pleasure of the Board? Do we have a motion of some sort?

MR. OLYMPIA: I'll make a motion that we approve the application.

MR. MARINO: I'll second that.

CHAIRMAN SCALZO: We have a motion from Mr. Olympia and Mr. Marino was the second. Roll.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The motion has carried. The variance is approved. Thank you very much. That

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concludes the application for 111 Lakeside Road,
Newburgh.

(Time noted: 8:28 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 4th day of June 2020.

Michelle Conero

MICHELLE CONERO

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HELD REMOTELY VIA ZOOM

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

----- X
In the Matter of

ARTHUR FOWLER

6 Snider Avenue, Walden
Section 32; Block 5; Lot 18
R-1 Zone

----- X

Date: May 28, 2020
Time: 8:28 p.m.

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

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

APPLICANT'S REPRESENTATIVE: DARREN DOCE

----- X

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

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CHAIRMAN SCALZO: Siobhan, I'm going to ask you to try to do the split screen again. In this case I don't know if there's an aerial up there. Or actually, if you would want to do the survey provided in the application. Either one of the two, if you could get those up on split screen.

You're going to have to excuse me for about 45 seconds while I go fill up my water glass.

MS. JABLESNIK: The survey for the Fowler application?

CHAIRMAN SCALZO: That is correct.
(Pause in the proceedings.)

CHAIRMAN SCALZO: Go to the Fowler plot plan.

MS. JABLESNIK: I did it.

CHAIRMAN SCALZO: Perfect. Okay. I've got my water. I'm good.

So the next applicant was a holdover from the February 27, 2020 meeting, actually. This applicant was first introduced to us, I believe, in December of 2019. The applicant seeks a use variance to install an accessory

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ARTHUR FOWLER

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building on a vacant lot. If the use variance is granted, then area variances for height and side yard setback.

Siobhan, do we have mailings on this?

MS. JABLESNIK: This applicant sent out twenty-six letters.

CHAIRMAN SCALZO: Okay. I'm going to run through. Mr. Fowler owns two adjoining parcels with a single-family dwelling on them. One dwelling is in very good condition and the other is in poor condition. Mr. Fowler's application indicates he would like to demolish the poor condition dwelling and replace it with an accessory building. The variance is required because the proposed building is an accessory to nothing because it's on its own lot. The Code Compliance Department issued their denial based on side yard setbacks of 2.1 feet where 5 is required on the right side and a negative 2.4 feet on the left side where 5 feet is required.

Now, to help some of you follow along here, the applicant is proposing to build the accessory structure over the current property line and onto his other lot.

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The applicant is also petitioning for relief from a proposed accessory building height of 22 feet to be able to accommodate an office and storage space above the garage portion of the structure.

We do have a couple of renderings towards the end of the application package, if you wanted to get a look at those.

While the application also states that if this were to be a dwelling on a single lot, then a 35 foot building height would be within Town code, however the side yard setbacks would need to be met for that to be the case. As a degree of the -- the degree of nonconformity applies, that actually increases when the structure goes up in elevation as well. That statement in the application wasn't necessarily spot on. This would also apply to any accessory structure.

The application also states that if -- or once the variances are approved, Mr. Fowler will seek a lot consolidation to combine the two lots.

Now, my position here as one Member of

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the Zoning Board of Appeals is that the applicant is putting the cart before the horse, and, if approved, it sets a poor precedent that the Zoning Board of Appeals could not defend should a similar application be presented in the future that we may deny. My position also is that the applicant process the lot line consolidation prior to this application. That's my position on it.

So in this case I'm going to jump to the Members of the Board for any comments that they may have, and then we're going to hear from the applicant's representative.

So I'm going to go to Mr. Bell. Do you have any comments on this?

MR. BELL: No, I don't.

CHAIRMAN SCALZO: How about Mr. Olympia?

MR. OLYMPIA: I think a lot consolidation would make sense.

CHAIRMAN SCALZO: Very good.

Mr. Marino?

MR. MARINO: No comments right now.

CHAIRMAN SCALZO: Very good.

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Mr. Levin?

MR. LEVIN: No comments right now.

CHAIRMAN SCALZO: Very good. Thank
you.

Okay. Now Siobhan, if you could, in
this case unmute the applicant's representative
and we can start hearing from them.

I'll also ask the applicant's
representative if he wants this plot up while he
discusses what he's talking about?

MS. JABLESNIK: I think they can unmute
themselves. When I have the shared screen thing I
don't have the opportunity to do that.

MR. DOCE: Can you hear me?

CHAIRMAN SCALZO: Yes.

MR. DOCE: I'm Darren Doce. I'm
representing Art Fowler. He's also in the
meeting. If he wants to say anything, he can
at a later time.

But our intention was to combine the
lots so that the use variance would not be
needed. We obviously didn't want to do that
without getting an indication that this might be
approved because then Mr. Fowler would obviously

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lose that lot. It would be part of the other lot. And then if he ever wanted to regain it, he'd have to subdivide and then we'd be back before the Board for -- to get a variance for a lot that's undersized.

I told the Building Department that we were always going to combine the lots, but they said they could not review it based on like a future event that has not happened yet.

CHAIRMAN SCALZO: Correct. I understand your position. Everybody has got great intentions, but if something had occurred where the Fowlers had to leave the state or leave town prior to, you know, consolidating these lots, then we're left with a nonconforming condition that we approved.

MR. DOCE: Can't that be a condition on getting the building permit, that these lots be combined prior to our -- or a condition of this approval that this building can't be built? If you do grant the area variances, that it can't be built without those lots being consolidated? We're not trying to really circumvent anything. We just didn't want to combine those lots and

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then lose that lot. He could sell that house. If the variance wasn't granted, he didn't want to lose the ability to eventually market the house if he couldn't build the garage.

CHAIRMAN SCALZO: I understand the position there, but I -- Mr. Doce, I'm but one Member of the Board. I know where my head is on this. We can certainly proceed, but it's your job in this case to convince the other Members that that's the way to go.

MR. DOCE: That's understood.

MR. LEVIN: I'm wondering the value of a garage if he sells the house separate.

MR. DOCE: Well if it was a condition that these lots be consolidated before he would construct the garage, the garage and the house would be on the combined lot. It would become one tax parcel.

MR. OLYMPIA: Mr. Chairman, I wouldn't have a problem if that became a condition of the approval. It would seem to make sense for everybody.

CHAIRMAN SCALZO: Siobhan, we did receive letters on this. Is it possible for you

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to share screens with those?

MS. JABLESNIK: Hold on.

CHAIRMAN SCALZO: I think the first one we received was from Mr. Tierney.

MR. TIERNEY: I am here.

CHAIRMAN SCALZO: Very good.

MR. TIERNEY: Can you hear me?

CHAIRMAN SCALZO: Yes, we can.

MR. TIERNEY: Thank you.

CHAIRMAN SCALZO: Rather than us reading your letter verbatim, would you like to just convey your thoughts to us here?

MR. TIERNEY: Yes. Thank you so much.

CHAIRMAN SCALZO: The floor is yours.

MR. TIERNEY: Okay, thanks. Could you confirm that all the Members got my e-mail of Tuesday morning, May 26th?

CHAIRMAN SCALZO: I know I did. Mr. Marino, did you receive the correspondence from Mr. Tierney?

MR. MARINO: I certainly did. I got it.

CHAIRMAN SCALZO: Mr. Olympia, did you?

MR. OLYMPIA: I received it.

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CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: Yes.

CHAIRMAN SCALZO: And Mr. Levin?

MR. LEVIN: Yes.

CHAIRMAN SCALZO: Very good.

MR. TIERNEY: Thank you very much for
that.

I'm in support of the Fowlers improving
the property. I think everyone should be able to
improve their property. The work that he's done
and the house he's built is stellar.

The proximity to my house is so highly
unusual that I was hoping in the process of
approving his two variances we could install some
conditions which would make it more tolerable for
my home and my family and my heirs. These two
buildings are 100 inches apart. The change is
going to be so dramatic that I made those eight
conditions. Do you all have that list of the
eight conditions that I submitted on Tuesday?

MR. BELL: Yes.

CHAIRMAN SCALZO: Please feel free to
-- please understand that other Members of the
public that may not have identified themselves

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ARTHUR FOWLER

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yet, they may not have seen it. If you could actually go ahead and roll through all of your bullet points, that's helpful to all involved.

MR. TIERNEY: I will. Thank you. I have been looking forward to Mr. Scalzo playing that drum set that's behind him. I'm wondering if that's going to happen at all.

CHAIRMAN SCALZO: Not tonight.

MR. TIERNEY: Drum roll please type of thing.

Mr. Fowler has agreed to most of the points. The first point was the setback. He has agreed to honor the survey that I have submitted via surveyor Steve Drabick who is very, very good. So the survey that Mr. Fowler and I are going to use is slightly different than the site plan that you have in front of you. Meaning that the current cottage that's going to be removed varies from 1.5 feet from my property line to 2.4 feet from my property line, meaning that the cottage is not parallel to the line. So I'm asking that the new structure be parallel and be pushed back about 8 inches so that it's parallel at 3.2 feet from the property line. Mr. Fowler

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has agreed to attempt that. But I'm asking the Board that we make a firm condition that the foundation is 3.2 inches from my property line. I think --

CHAIRMAN SCALZO: Let me -- we can hit these bullets one at a time.

MR. TIERNEY: That would be fine.

CHAIRMAN SCALZO: Mr. Doce, is your client willing to do that?

MR. DOCE: Yes. He had a survey done by Howard Weeden and Mr. Tierney had a survey done by Mr. Drabick and there's about 1 foot overlap along that line. We've agreed to keep the garage 3 feet from the line that Mr. Drabick has surveyed, which would make it actually 4 feet from the Weeden line. But yeah, we've agreed to keep that 3 feet off Mr. Tierney's property line.

MR. TIERNEY: Thank you very much.

CHAIRMAN SCALZO: I thank you, sir. Should we get through this whole process, that will end up being a condition of the variance should it be approved.

Mr. Tierney, back to you, sir. If you could move on to your next bullet.

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MR. TIERNEY: Thank you so much.

Item number 2 Mr. Fowler has agreed to, the new structure's roof overhang will not reach beyond the property line and have seamless gutters with downspouts at the downhill east end of the building, channeling the water flow from and away from my parcel. He's agreed to that. You have that verbatim.

So I'll go on to number 3.

CHAIRMAN SCALZO: Actually Mr. Tierney, just give me one second.

Mr. Doce, I did see the schematic of the building at the end. I haven't actually seen building plans. What's your soffit length on this? Is your soffit length --

MR. DOCE: 12 inches.

CHAIRMAN SCALZO: That's perfect. Okay. Very good.

Mr. Tierney, back to you, sir.

MR. TIERNEY: Number 3, the new structure will have no windows on the south side, which is the side facing me. Mr. Fowler has agreed to that.

Mr. Doce?

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ARTHUR FOWLER

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MR. DOCE: Yes, he's agreed to that. There's no windows on the side facing Mr. Tierney.

CHAIRMAN SCALZO: Excellent. There's some privacy there.

Mr. Tierney.

MR. TIERNEY: I'm losing the lake view from two of the windows. But like I said, Fowler should have the ability to improve their property.

Number 4, he sort of agreed. The new structure will have no air conditioner, or heat units, or vents, or fuel tanks on the south side, which is facing my house, or on the east side. He's basically agreed to that in an e-mail. He said he might have the electric meter on my side. That's a tiny bit confusing because the electric feed is closer to the northwest corner than my north -- my southwest corner. So I don't see why you would need the electric meter on that south side.

CHAIRMAN SCALZO: Mr. Doce, are you looking for underground utilities here for the house?

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MR. DOCE: I believe so. If Mr. Fowler wants to answer that question. He's also here. I know we've agreed not to put any AC units or fuel tanks on the Tierney side of the house.

MR. TIERNEY: Can we also eliminate the electric meter?

MR. FOWLER: I'm not going to eliminate the electric meter. Central Hudson won't allow me to do that. The reason I said it might have to go on that side of the house is to accommodate Mr. Tierney's request to do the building closer to my house, and I have a drive that goes down between and it goes to the lake where we launch our boats, including his, and I didn't want the meter sticking in the driveway that could be clipped by a backing up truck or car. I'm not sure yet if I'm going underground or overhead.

MR. TIERNEY: Well we could put the electric meter on the front or the back of the building perhaps.

MR. FOWLER: I wouldn't run electric all the way down to the back of the house at all. I would consider putting it on the front if I had room.

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CHAIRMAN SCALZO: Mr. Tierney, again this is -- I don't want to say this is not a list of demands but it's all exchanging ideas so we can continue to hear about this application. Mr. Tierney, if you could please continue.

MR. TIERNEY: Thank you very much.

Number 6, it talks about the grading. There's going to be a lot of disturbance, of course, in the land, the soil. My proposal is that Mr. Fowler includes blacktopping the front of my house when he blacktops the front of his house for a couple of reasons. To conjoin the stormwater drainage. And he's going to have a beautiful, brand new surface and he's going to be looking at my forty, fifty year old wretched blacktop. It would look a whole lot nicer for both of us. It's mostly about the drainage. Let me read how I wrote it. The grading of the front, the west side, of the subject parcel to be conjoined with the grading of the front, the west side, of my parcel with new asphalt on both, shaped to deliver stormwater towards the street or to the north side of the new structure.

CHAIRMAN SCALZO: I understand your

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concern there, Mr. Tierney. That's definitely something that's not -- I don't know how I would address that in this application. So that's something that I'm going to throw my hands up and say that's a hands off for me.

MR. TIERNEY: Okay. Let me go to number 7.

CHAIRMAN SCALZO: Hold on there, Mr. Tierney. Mr. Fowler is on. Is that something you would entertain, sir?

MR. FOWLER: I agree that no stormwater should be delivered to his property. We'll take care of that. Either go down my -- down the north side of my house or to some other drainage. I have not agreed to take the stormwater from his side of the drive. Also I have not agreed to pay for his blacktop. It can be done at the same time. I don't know what that's going to cost and I'm not committing to it until I know because when I commit to something I do it. So I'm not committing to that.

CHAIRMAN SCALZO: I understand. I do know, having visited the site, if the drainage was to be pushed out to the road, the road

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doesn't appear to really have a great pitch to it to take the water somewhere. I don't live there so I don't watch it when it rains, but it just didn't appear to be all that accommodating for the drainage on the road.

MR. TIERNEY: No, it doesn't. It could go down to some drainage on the property, my property.

CHAIRMAN SCALZO: Mr. Tierney, moving on to your next point, please.

MR. TIERNEY: Number 7, the new building not extend to the east beyond the current footprint. He's agreed to that.

CHAIRMAN SCALZO: Okay. Which means, and Mr. Doce or Mr. Fowler, either/or who wants to respond, currently the proposed garage dimensions are 24 by 32. Am I to understand with moving this away from Mr. Tierney's lot, according to this survey, now would be up to 4 feet and then maintaining the original footprint of the house, I have to imagine this proposed garage is now shrinking down to at least 22 by 32. Is that correct?

MR. DOCE: No. We are moving the

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garage 3 feet off the property line, keeping the rear of the garage along the rear of the existing cottage. It shrinks down -- there's a pillar beneath the deck that we can still stay 12 feet with the garage part of the driveway. It's not going to affect the driveway really on that side.

CHAIRMAN SCALZO: Okay. I'm going to jump to Jerry Canfield quickly. Jerry, are you still on?

MR. CANFIELD: Yes, I am.

CHAIRMAN SCALZO: Only because I don't have it in front of me, what is the minimum distance between buildings, between a primary structure and an accessory building?

MR. CANFIELD: The requirement is 10 feet.

CHAIRMAN SCALZO: 10 feet. With your 12 you've got it.

Okay. Back to Mr. Tierney, please.

MR. TIERNEY: Thank you so much. My last point was I was asking that the garage -- he's applying for building the garage -- to be permanently banned from residential use now or forever in the future regardless of the hardship.

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In other words, not become an apartment.

CHAIRMAN SCALZO: Okay. Let's just put it this way. We certainly hear what your request is. I'm sure there would be plenty of requirements from our Building Department before that could happen.

Let me ask Mr. Doce in this case, or Mr. Fowler. Are you intending on bringing water into this building?

MR. DOCE: Yes, I believe he's going to have water to that building.

CHAIRMAN SCALZO: Okay. So if you're going to have water in, there's going to be water out. That's also something that's going to end up being reviewed by the Town Code Compliance Department. Mr. Doce, you're an engineer. That's an awfully small footprint there for -- and with the water's edge, you're really confined with what you can do there.

MR. DOCE: In regards to --

CHAIRMAN SCALZO: If you're going to have water in there, what are you going to have? A dry well? It's something to be answered later.

MR. DOCE: Right. I mean our intention

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is to connect to the existing system. It's not going to increase the flow because it's not a bedroom, it's just an extra bathroom. It shouldn't increase the size of the system required.

CHAIRMAN SCALZO: Okay. I'm going to leave that one up to the Code Compliance folks. I wanted to bring it up as part of the meeting minutes. Very good.

Mr. Tierney, are you through with your list or do we have one more item?

MR. TIERNEY: I just have one more comment. Remembering that I am in support of the Fowler's project, the irony is that their project will be long-term, very long-term change to the physical dynamics of the two structures. It's just such a big change that we'll have to live with and they benefit from, and they deserve to benefit from it, but things like the setback that I asked for which they've agreed to. You know, just little things to help me live with it a little bit easier. Blacktopping the front, you know, if you amortize that over the length of this project, it would probably be like \$3 a

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month. So I would just ask that the Fowlers have future consideration to conjoining the blacktop in the front without making a clear commitment right now.

But Art and I were talking about something that we could bring Jerry Canfield in on this question. Because the Town had attempted to install a little bit of a hump along our road to try to carry the rainwater to the south. The hump, it was just marginal. It does help marginally --

CHAIRMAN SCALZO: Mr. Tierney, I can certainly appreciate where you're going with this, but we do have other items on the agenda tonight. I'd like to stick to --

MR. TIERNEY: We have Jerry here. Art and I were wondering if we could do it. It's just a tiny little -- you know what I mean, like a little berm to help carry. Maybe we can pursue that offline.

CHAIRMAN SCALZO: Very good.

MR. CANFIELD: If I may, Darrin. That question, Mark, is something that should be addressed to the Engineering and the Highway

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Department. You can contact Jim Osborne and I'm sure he'll be more than glad to discuss it with you.

MR. TIERNEY: That's really good.

Last, I just got a text from one of the neighbors. He just wanted me to just double check, Mr. Scalzo, Russell Sprague. He just wanted to make sure that you got his e-mail. He's tied up in work. He couldn't attend the meeting.

CHAIRMAN SCALZO: Does he live across the street, originally from Queens, moved up here?

MR. TIERNEY: Yes, yes, yes.

CHAIRMAN SCALZO: I didn't get that one, no. I got that one.

MR. TIERNEY: Very good. I thank you and I thank the Fowlers for listening. I really appreciate these conditions. It will help in the long term. Thank you.

CHAIRMAN SCALZO: Very good. Now, are there any other members of the public here to speak about the Fowler application?

MR. LANGER: I'm Greg Langer.

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CHAIRMAN SCALZO: Mr. Langer, how are you?

MR. LANGER: Good. I'm with the Orange Lake Homeowners Association. We sent a letter over expressing the fact that we had -- Art had come to the board. In the issue of transparency, I want to let you know that Art is on our board of directors, so everybody is aware of that.

But he did bring his plans to us. We canvassed the board members and those neighbors responded to us. We think this is a really good project and it will improve the lake, so we are in favor of it. So thank you.

CHAIRMAN SCALZO: Thank you, Mr. Langer.

Anyone else that wants to speak about the application of Arthur Fowler?

MR. O'DONNELL: Well if I may, I just want to say we're in full support of the Fowlers.

And I've just got to say that, you know, thinking about they're going to have a lot line change that can confine or conjoin the two properties, it will actually have the benefit environmentally because now you're going to be on

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one system for the sewage. Now it is a single-family dwelling. So it's only going to have a positive impact on that. And aesthetically it's going to greatly improve the whole neighborhood.

So the property they own, the house they live in now is just beautiful. I'm sure that any improvement will be just as beautiful. So I'm in full support.

CHAIRMAN SCALZO: Thank you, Mr. O'Donnell.

Anyone else from the public here to speak about the Arthur Fowler application?

MR. STERLING: I'm Kevin Sterling. I'm 5 Snider, across the street.

I also support the project. From where I'm sitting, that's directly where my view to the lake is. I'm happy to see an improvement over what is there currently.

CHAIRMAN SCALZO: Thank you, Mr. Sterling.

MR. TRIFILO: My name is Rob Trifilo, I live at 10 Snider, right next door to Mr. Fowler.

I'd like to concur. The structure

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that's there now definitely needs improvement,
and with Mr. Fowler's plans it's going to make a
large impact on the neighborhood.

MS. TRIFILO: Beautification. They do
everything beautiful, and it will definitely help
the neighborhood. We're all for it.

CHAIRMAN SCALZO: Okay. I don't know
where that was coming from.

MR. TRIFILO: That was my wife.

MS. CABE: I live at 12 Snider Avenue,
two houses from Art and Phyllis. I am also in
full support. I think Art was very good about
presenting his plans to all of us in the
neighborhood. I think it would be a beautiful
addition to the west side of the lake.

CHAIRMAN SCALZO: Thank you very much.

Anyone else from the public here to
speak about this application?

MR. HAMELIN: My name is Bob Hamelin.
I'm about six houses down the block. I'm just in
total support of whatever Art wants to do. He
always does things right.

One of the thoughts that I had, being
down the straight-of-way, is if this comes up in

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the future, what the height restrictions are.
And I'm just wondering what that might be if
someone happens to develop something in front of
me. And where does the height restriction start?
Does it start at the roadway or does it start at
the lakeside?

CHAIRMAN SCALZO: The height is
measured on the roadside of the structure. I see
Mr. Canfield nodding in approval to my --

MR. CANFIELD: Yes. Correct.

CHAIRMAN SCALZO: So yes. And I
understand that they're looking for a variance
for height. We're looking for I believe -- what
is it, Mr. Doce? 24 feet or 22?

MR. DOCE: 22 feet.

CHAIRMAN SCALZO: 22 feet. The current
code allows 15 feet.

MR. DOCE: Correct.

CHAIRMAN SCALZO: So that is 7 feet
higher than what current code allows.

I understand that you're looking to put
storage and office space above that. Is there
any way to lower that? 22 is -- historically the
Board is pretty consistent with character of the

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neighborhoods. I do understand that if this was to be a structure, 22 feet wouldn't seem all that imposing. This is now an accessory building and 22 feet is kind of high. Is there a way to knock that down a foot or two?

MR. DOCE: I believe Mr. Fowler spoke with the builder or the designer of the garage, and I don't believe -- well, if he wants the second floor, obviously no, he can't lower that height, other than eliminating it.

CHAIRMAN SCALZO: Okay.

MR. HAMELIN: Again, I'm not in any way opposing anything that he's doing. I was just curious to know what those restrictions were.

CHAIRMAN SCALZO: Very good.

MR. O'DONNELL: Is that height restriction because it's an accessory building? What is the height restriction on a single-family residence? Is it different?

CHAIRMAN SCALZO: That's an interesting question, Mr. O'Donnell. Because we do not meet the minimum side yard setback, that is a variance that's required. Once you exceed -- the further up you go, you are increasing the degree of

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nonconformity. So I know it sounds a little odd, however that's -- it is one of our limiting factors as far as the code goes. The code says 15 feet, which at 4 feet off the property line is in violation of the code which is why a variance needs to be sought. However, it's subjective to the Board in this case.

MR. O'DONNELL: I guess my question was if they weren't going for an accessory and they weren't going to change the footprint but they wanted to go up as a single-family residence, is it still 22 feet or is there a different -- is it 32 feet if it was a single-family home or is it just --

CHAIRMAN SCALZO: I'm going to go right back to that. Let's say they were going to just put a second floor on the existing structure that's there. They would be required to come in for a variance because currently the side yard requirement is not met and they are increasing the degree of nonconformity.

MR. O'DONNELL: Okay.

CHAIRMAN SCALZO: I've been on the Board for six years. That's one of those things

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that's a head scratcher for me, too. I hope I explained it well enough.

MR. O'DONNELL: Okay.

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

MR. TIERNEY: Are you going to play the drums now?

CHAIRMAN SCALZO: No, sir.

MR. TIERNEY: Come on.

CHAIRMAN SCALZO: Anyone else?

(No response.)

CHAIRMAN SCALZO: I'm going to look to the Members of the Board for one last opportunity. Mr. Levin?

MR. LEVIN: I like hearing friends talk about and solve problems, Tierney and Fowler. But I do think that if they're okay with the height, I'm okay with it.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: Yes, I do agree. I have no questions.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: I'm fine.

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CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: Mr. Fowler's willingness to compromise is definitely pleasant. The neighbors are all pleased and satisfied with what he's going to do. I'm okay with it, too.

CHAIRMAN SCALZO: That's all good to hear. Now I'm going to go back to my original thought here. It sounds like there's tremendous support for this, which when you're on a Board you really like hearing that, that way it's a little less controversial. It sounds as though there's plenty of support surrounding this structure, the offsets off the property line as well as the property height.

Now I'm going to go back to we're still -- should this move forward, and I'm going to look to Dave Donovan for help on this one. The way it has been described as a condition of this approval, that no construction starts on this structure until a lot line consolidation is in place and filed with the Town. Is that something that we could condition an approval on this for?

MR. DONOVAN: Yes, Mr. Chairman, you can. Especially in this case because it removes

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the requirement for a use variance. So you can condition the approval that no building permit can be issued, no construction can be commenced until such time as the lot is consolidated with the adjoining lot in the same ownership.

CHAIRMAN SCALZO: Correct. And then as I say, just have it filed with the County because until it's filed with the County it is not official.

MR. DONOVAN: That's correct. It would have to go to the Tax Map Department. You could go through the Town assessor. It has to go to County Tax Maps to consolidate the two tax parcels.

CHAIRMAN SCALZO: Very good. You know what then, I don't have any more. I'll just say it puts my mind at ease.

One last opportunity for the Board?

(No response.)

CHAIRMAN SCALZO: Nobody is raising their hand. That's great.

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

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

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the public hearing.

MR. OLYMPIA: I'll second.

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

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed.

Siobhan, I'm sorry if I asked this
earlier. I feel as though I did. The mailings
went out on this. How many do we have?

MS. JABLESNIK: There were twenty-six
letters that went out.

CHAIRMAN SCALZO: I know I didn't ask
that question because that's a number I haven't
heard tonight. Very good.

We are going to now -- Dave, this is a

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Type 2 action under SEQRA?

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

CHAIRMAN SCALZO: Thank you very much. We're going to work through the criteria. You've all heard them all night. You can probably recite them right along with me.

The factors that we are weighing, the first one, whether or not the benefit can be achieved by other means feasible to the applicant. Well yeah, but it doesn't appear there's a ton of opposition to this.

I'm going to look to Mr. Levin. I just lost him. He's out of his chair.

Mr. Marino, do you concur?

MR. MARINO: Yes, I do.

CHAIRMAN SCALZO: Mr. Olympia, do you concur?

MR. OLYMPIA: Yes.

CHAIRMAN SCALZO: Mr. Bell, do you concur?

MR. BELL: Yes.

CHAIRMAN SCALZO: Mr. Levin's chair. Okay.

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Well we'll still move forward. The second, if there's an undesirable change in the neighborhood character or a detriment to nearby properties. We have heard, through testimony of support by neighbors, although we did get one letter from someone that was concerned with their own view shed. I would have to say from what we've heard pro to con is probably eight to one in this case. So therefore, undesirable change in the neighborhood character or a detriment to nearby properties, we've heard testimony that Mr. Fowler does great work with whatever he touches. I would say no, there's not an undesirable change in the neighborhood.

Mr. Marino, would you concur?

MR. MARINO: Yes, I would.

CHAIRMAN SCALZO: Mr. Olympia, would you concur?

MR. OLYMPIA: I would.

CHAIRMAN SCALZO: Mr. Bell, would you concur?

MR. BELL: Yes.

CHAIRMAN SCALZO: Very good.

Moving on to the next, whether the

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request is substantial. Well regarding an accessory structure 22 feet in height is substantial, however there has been no pushback from any of the testimony that we heard regarding that except for the one letter that we got, someone interested in maintaining their view shed.

Mr. Marino, would you concur?

MR. MARINO: Yes, I would.

CHAIRMAN SCALZO: Mr. Olympia, would you concur?

MR. OLYMPIA: Yes, sir.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: Yes.

CHAIRMAN SCALZO: And Mr. Levin, would you concur?

MR. LEVIN: I don't know where you actually are. My wife fell down and that's why I ran away for a second.

CHAIRMAN SCALZO: I'll give you a pass on that, Richard. If you want to go ahead and do anything more, please do.

MR. LEVIN: No, no. She's okay. She tripped.

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CHAIRMAN SCALZO: Richard, we were on the third criteria which is whether the request is substantial.

MR. LEVIN: I'll say no.

CHAIRMAN SCALZO: Very good. Thank you, sir.

The fourth, whether the request will have adverse physical or environmental effects. I don't believe so. There's going to be an engineer that's going to be designing anything to go along with this to mitigate any environmental effects which will be reviewed by the Code Compliance Department.

So Mr. Levin, would you concur?

MR. LEVIN: Yes.

CHAIRMAN SCALZO: Very good.

Mr. Bell, would you concur?

MR. BELL: Yes.

CHAIRMAN SCALZO: Mr. Olympia, would you concur?

MR. OLYMPIA: Yes.

CHAIRMAN SCALZO: Mr. Marino, would you concur?

MR. MARINO: Yes, I would.

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CHAIRMAN SCALZO: Very good.

The fifth, is the alleged difficulty self-created, it's relevant but not determinative. Of course it's self-created, but, you know, it's not determinative. It's going to look a lot better than the shanty that's there right now. That's for sure.

Mr. Levin, would you concur?

MR. LEVIN: Yes, I would.

CHAIRMAN SCALZO: Mr. Bell, would you concur?

MR. BELL: Yes.

CHAIRMAN SCALZO: Mr. Olympia, would you concur?

MR. OLYMPIA: Yes.

CHAIRMAN SCALZO: Mr. Marino, would you concur?

MR. MARINO: Yes, I would.

CHAIRMAN SCALZO: Okay. Having gone through the balancing test for the area variance, I want the Board Members to consider the criteria -- not the criteria but the points that Mr. Tierney had brought up during his testimony. There were eight bullets there. I'm going to ask

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Mr. Doce if you could lean forward here, and could you give us the rundown of what it is that your client is willing to accommodate for Mr. Tierney's bullet list?

MR. DOCE: Number one, that the building will be kept 3 feet off the property line. The roof structure will not overhang and all the downspouts will be directed to the east and away from Mr. Tierney's parcel. No windows will be on the Tierney side of the structure. There will be no AC, or heat units, or fuel tanks on the Tierney side of the structure. Grading in the front will divert stormwater away from the Tierney parcel.

He has not agreed to pave Mr. Tierney's driveway.

CHAIRMAN SCALZO: That's a private issue. We'll leave that one alone.

MR. DOCE: The new building is going -- the rear of the new building will flow along the rear of the existing building so it won't extend any further east. I don't know if I have to address the residential aspect of the garage. I believe we said that it was a Planning --

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Building Department issue if that ever came up.

CHAIRMAN SCALZO: Right.

MR. DOCE: I know he has no plans to put an apartment in there. If it gets sold and somebody else wants to try something, I can't speak to that.

CHAIRMAN SCALZO: Just to set Mr. Tierney's mind at ease in this case --

MR. DOCE: The upstairs is not going to be large enough for an apartment.

CHAIRMAN SCALZO: Okay. Like I said, I'm going to go back to Mr. Tierney. To set your mind at ease, should some time in time someone choose to or pursue putting an apartment in that building, accessory apartments are also subject to a section of the code. Mr. Canfield could probably shout that out at you right now. However, it can't be done without somebody knowing about it. Let's just put it that way.

Now Mr. Canfield, would that have to come in front of us, accessory structures?

MR. CANFIELD: Not necessarily. The section of the code --

CHAIRMAN SCALZO: If they meet the

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criteria, then they don't have to; correct?

MR. CANFIELD: Correct. The section of the code is 185-38 as we discussed in a previous application. And there is a criteria for accessory apartments. Also, the minimum square footage is 450 feet -- 450 square feet. So that's something to consider. If the application for an accessory structure can not comply with any of the requirements; then yes, the application would be referred back to the ZBA.

CHAIRMAN SCALZO: Thank you, Mr. Canfield.

Okay. Now we have made it through all of the criteria. What's the pleasure of the Board here? Are we looking to make a motion with the consideration of the conditions that Mr. Doce just spelled out?

MR. DONOVAN: Mr. Chairman, if I may. The requirement to consolidate the tax parcels.

CHAIRMAN SCALZO: Thank you, Mr. Donovan. Yes. That's the biggest one.

MR. OLYMPIA: I'll attempt to do this. I'll move the application be approved subject to, first, the lot line -- lot consolidation be

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affected prior to the issuance of a building permit or start of construction. In addition, that the building be a minimum of 3 feet from the back property line, the neighbor's adjoining line. The roof structure of the new building not to overhang onto the neighbor's property. No windows on the south side or facing the neighbor. No air conditioning or tanks on the east or the south side of the building. Appropriate grading to handle any runoff of water. No accessory apartment to be approved. What do you think? Did I cover them?

MR. DONOVAN: I think you may have flipped 7 and 8.

CHAIRMAN SCALZO: So that's the motion as it stands from Mr. Olympia. Do I have a second?

MR. LEVIN: I'll second it.

MR. DONOVAN: Mr. Chairman, just for clarification. I think Mr. Olympia's motion said no apartment, which I thought we were going to defer to the Building Department in the future, but didn't include that the new building not to extend east beyond the current footprint.

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CHAIRMAN SCALZO: You know what. I believe you're correct.

Mr. Olympia, do you want to just revise --

MR. OLYMPIA: I would amend it to reflect those changes.

CHAIRMAN SCALZO: Thank you.

So we have a motion from Mr. Olympia as amended and then a second by Mr. Levin. Roll call on that.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The motion is approved. The variances are granted. That's a pretty tricky one.

Before we actually completely close this up, just for recording purposes, for

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ARTHUR FOWLER

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Michelle Conero in this case, during some of the testimony, during the chats we got, and this I guess needs to be in the record from somewhere, we got it from Robert's iPad, which I guess would be Mr. Trifilo. Just a statement that said, "Yes, it is." Do you happen to -- I don't know what you were referring to at the time. You're mute.

Siobhan --

MR. TRIFILO: I didn't understand the question.

CHAIRMAN SCALZO: During the testimony, during one of the -- perhaps it was Mr. Tierney's testimony, you gave a group chat from Robert's iPad to everyone "Yes, it is."

MR. TRIFILO: It was probably going to somebody else. I don't recall doing that.

CHAIRMAN SCALZO: Very good. I'm sorry. I just wanted to verify we're good.

MR. TRIFILO: Okay. No problem. Thank you.

CHAIRMAN SCALZO: So I believe that closes out the application for Arthur Fowler, 6 Snider Avenue.

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Thank you very much. Feel free to stick around for the final applicant this evening. Other than that, if anybody wants to check out, that's okay too.

(Time noted: 9:15 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 4th day of June 2020.

Michelle Conero

MICHELLE CONERO

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HELD REMOTELY VIA ZOOM

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

----- X
In the Matter of

EMMA GASPARINI

125 Mill Street, Wallkill
Section 2; Block 1; Lot 64
RR Zone

----- X

Date: May 28, 2020
Time: 9:15 p.m.

BOARD MEMBERS: DARRIN SCALZO, Chairman
RICHARD LEVIN (present until 9:16
p.m.)
ANTHONY MARINO
DARRELL BELL
PETER OLYMPIA

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

APPLICANT'S REPRESENTATIVE: ASHLEY TORRE

----- X

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

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CHAIRMAN SCALZO: We are moving on to our final application for the evening. It's also a holdover from the February 27, 2020 meeting. Emma Gasparini, 125 Mill Street, Wallkill, seeking a use variance to install a 100 amp landlord meter and panel on a two-family. Bulk table schedule 1 does not permit two-family dwelling units in an RR Zone. Any use not permitted shall be deemed prohibited.

As I say, this is a continuation from our February meeting. We received quite a bit of correspondence on this in the last few days. I did not print out what we have from the latest. We're all aware of what this is. As I say, we've heard this before.

The last thing I can recall from the meeting is that we were looking for testimony from the -- that appeared in the application package that were in the form of form letters. I'm hoping that's part of it.

In this case I see Ashley Torre is on. She actually prepared an additional letter, I want to say dated May 22nd, which she addressed a bunch of items that were part of the last

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meeting.

Before we get to Ms. Torre, do any Members of the Board have any comments that they would like to make or do we want to -- like I say, this one has been around for a little bit. Do we want to hear another brief synopsis?

MR. LEVIN: Darrin, can I butt in for one second? I have to leave the meeting. My wife is sick and she fell down again. I can't be in two places at once. Thank you.

CHAIRMAN SCALZO: I hope everything is all right.

MR LEVIN: Something is wrong.

(Mr. Levin left the meeting.)

CHAIRMAN SCALZO: Mr. Donovan, we are now down to four. What does that mean for our voting this evening?

MR. DONOVAN: We have a quorum of the Board, so the Board can proceed. What has been the practice of this Board for the number of years that I've represented you is that any time you have less than a full compliment of Board Members, that we afford the applicant the ability to defer the vote because there would need to be

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a unanimous vote of the Members present. There would be a quorum of the Board of four Members. Each Member present would have to vote in favor of either the interpretation or the alternative use variance for the application to be granted. So that one no vote would mean the application would fail. We afford the applicant the opportunity to ask the Board to defer the matter under these circumstances.

CHAIRMAN SCALZO: All right. So in this case -- thank you very much, Dave.

I'm going to look to Ms. Torre perhaps. I see your clients are online as well. Just before we proceed, I would like to know what your position is on that. We can proceed, that's for sure, or you can ask for a push out to next month where we probably would have more Board Members participating.

MS. TORRE: Hi, all. So I would like to speak with my client about that. I'm inclined, though, to ask to hold it over to the next meeting when there is a full Board present to be able to take action. But I would like to, again, speak to my client. I don't know if --

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CHAIRMAN SCALZO: I'm sure it would probably be a private matter. I can see them on screen. I don't know if you can or not.

MS. TORRE: It's a little awkward, obviously, in the current --

MR. DONOVAN: So my suggestion -- Ashley, I don't know if you have your client's phone number.

MS. TORRE: I can step away and call them.

MR. DONOVAN: We can listen to -- Jerry can sing a song for us and Ashley can confer with your clients.

CHAIRMAN SCALZO: Dave, that's a wonderful idea. What do you say we go on a two-minute mute. I'm going to fill my water glass up again.

We can see you, Ashley. When you are ready to speak to us, if you just want to raise your hand, everybody will be unmuted again. That's going to give me a chance to get a glass of water.

Thank you, everybody, for your patience.

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Siobhan, mute us all.

(Pause in the proceedings.)

MS. TORRE: Thank you. I appreciate that. I would ask to wait until next month. I don't know whether it's possible. I know you always have a very busy agenda. If at all possible, I know you usually do your newer applications first, if we can maybe be earlier up because we were waiting for a while tonight.

CHAIRMAN SCALZO: I'm not opposed to it but it's out of the ordinary. Typically we hear all new applications first, as you're aware.

MS. TORRE: Mm'hm'.

CHAIRMAN SCALZO: Currently Siobhan, I think we only have -- Siobhan, you're still muted. At least it looks that way on mine. I think right now there are only three applications.

MS. JABLESNIK: Right now I only have three so far, and the other holdover from Brooker Drive. Now.

CHAIRMAN SCALZO: Right. Ashley, I'm not sure that we can accommodate that. We'll do our best.

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EMMA GASPARINI

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MS. TORRE: Sure. Just figured I'd ask.

CHAIRMAN SCALZO: All I can say is check back in with the agenda and I'll confer with the other Members of the Board. Not that I would assume that's a problem, but all I can ask is that you check back in once we post the agenda.

MS. TORRE: Certainly. Thank you. I appreciate it.

CHAIRMAN SCALZO: In this case, Dave, how do I -- Dave, you're muted on my screen.

MS. JABLESNIK: I unmuted everyone.

MR. DONOVAN: How about now?

CHAIRMAN SCALZO: You're great. There we go. Dave, how do we approach this? They're choosing to defer to next month. I know we have members of the public that are here. I'm glad they're here. I apologize that they sat here for as long as they have waiting to comment, but, you know, that's what makes these meetings great. Everybody hears some great stuff.

Anyway; Dave, how do we move forward here?

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MR. DONOVAN: It's up to the discretion of the Board. If you want to hear anything additional, you can certainly do that, or you can just continue the public hearing to the next meeting.

CHAIRMAN SCALZO: All right. My own opinion is as much as this is very interesting, I don't want to extend the meeting any longer than it has if we're going to hear it with additional Members next month. So I would actually prefer to look to the Board for a motion to extend the public hearing to the June meeting, and that way Ms. Torre can give her presentation to closer to a full membership Board.

Does that sound appropriate, Dave?

MR. DONOVAN: That's entirely appropriate, Mr. Chairman.

CHAIRMAN SCALZO: Very good. I'm going to look to the Board. Do we have a motion to extend the public hearing to the June meeting?

MR. BELL: I'll make a motion to extend it to the June meeting.

MR. MARINO: I'll second that.

CHAIRMAN SCALZO: We have a motion from

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EMMA GASPARINI

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Mr. Bell, a second from Mr. Marino. Roll on that.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin is now absent.

Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing will be extended until the June meeting. Thank you very much.

In this case, as I say, I see Debra Deegan is on the line. Debra, thank you for showing up.

Siobhan, what is the -- we also have Greg Nasmar is also on there.

Siobhan, what is the date of our next meeting?

MS. JABLESNIK: The next meeting will be held on June 25th.

CHAIRMAN SCALZO: Very good. No one

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EMMA GASPARINI

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will be re-noticed. There's no re-notice for this. June 25th. Hopefully we see all the same members plus a couple of more of ours.

Very good. That concludes all the applications for this evening. What we're looking to do now is I'll make a motion -- we're also down to approve the meeting minutes from the last meeting. I'll make that -- I'll look to the Board for a motion to approve the meeting minutes from the last meeting.

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

CHAIRMAN SCALZO: I have a motion from Mr. Bell. Second?

MR. MARINO: I'll second.

CHAIRMAN SCALZO: Very good. Mr. Marino jumped in first. All in favor? Aye.

MR. BELL: Aye.

MR. MARINO: Aye.

MR. OLYMPIA: Aye.

CHAIRMAN SCALZO: So now the only other thing is to make a motion to close the meeting.

MR. OLYMPIA: I'll make a motion that we close the meeting.

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MR. BELL: Second.

CHAIRMAN SCALZO: I got you, Mr.

Olympia. I heard from Mr. Bell. All in favor?

MR. BELL: Aye.

MR. MARINO: Aye.

MR. OLYMPIA: Aye.

CHAIRMAN SCALZO: Aye.

The meeting of the Zoning Board of
Appeals for May 2020 is closed. Thank you, all.

(Time noted: 9:30 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 4th day of June 2020.



MICHELLE CONERO