

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

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

BRADY QUINN

307 Sunrise Drive, Newburgh
Section 63; Block 1; Lot 2
R-3 Zone

----- X

Date: June 23, 2022
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: BRADY QUINN

----- X

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

1 B r a d y Q u i n n

2 CHAIRMAN SCALZO: I'd like to
3 call the meeting of the Zoning Board
4 of Appeals to order. The order of
5 business this evening are the public
6 hearings which have been scheduled.

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

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

25 Roll call, please, Siobhan.

1 B r a d y Q u i n n

2 MS. JABLESNIK: Darrell Bell.

3 MR. BELL: Here.

4 MS. JABLESNIK: James Eberhart.

5 MR. EBERHART: Here.

6 MS. JABLESNIK: Robert Gramstad.

7 MR. GRAMSTAD: Here.

8 MS. JABLESNIK: Greg Hermance.

9 MR. HERMANCE: Here.

10 MS. JABLESNIK: John Masten.

11 MR. MASTEN: Here.

12 MS. JABLESNIK: Donna Rein.

13 MS. REIN: Here.

14 MS. JABLESNIK: Darrin Scalzo.

15 CHAIRMAN SCALZO: Here.

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

20 CHAIRMAN SCALZO: If you could
21 please rise for the Pledge. Siobhan,
22 if you could lead us, please.

23 (Pledge of Allegiance.)

24 CHAIRMAN SCALZO: Our first
25 applicant this evening is Brady

1 B r a d y Q u i n n

2 Quinn, 307 Sunrise Drive in Newburgh,
3 right around the corner. They're
4 seeking an area variance of
5 increasing the degree of
6 nonconformity of the front yard to
7 replace an existing nonconforming 12
8 by 20 by 10 accessory structure with
9 a new 14 by 22 by 14.6 accessory
10 structure.

11 Siobhan, do we have mailing on
12 this?

13 MS. JABLESNIK: This applicant
14 sent out 42 letters.

15 We also had to mail to the
16 County because of Route 300. We have
17 not received --

18 CHAIRMAN SCALZO: Nothing back
19 on the GML 239.

20 MS. JABLESNIK: Not yet.

21 CHAIRMAN SCALZO: What Siobhan
22 just said, that might not mean
23 anything to you but it means
24 something to us. Any time any
25 application comes within 500 feet of

1 B r a d y Q u i n n

2 a State or a County road we need to
3 send it to the Orange County Planning
4 Department for their -- to weigh in
5 on it. If they do not respond within
6 30 days, then we can act. If they do
7 -- they need to respond within 30
8 days. If they haven't had it for 30
9 days, we can't vote on your
10 application this evening.

11 MR. QUINN: All right.

12 CHAIRMAN SCALZO: Have they had
13 their 30 days?

14 MS. JABLESNIK: Not yet,
15 because this is an early-in-the-month
16 meeting.

17 CHAIRMAN SCALZO: Yes. There's
18 one more Thursday. So what that
19 means to us is we would like you to
20 present but there's no action we can
21 take this evening. We're going to
22 need to keep the public hearing open
23 until we hear from the County. If we
24 don't hear from the County by the
25 next meeting, we can close the public

1 B r a d y Q u i n n

2 hearing because their time will have
3 expired for comment.

4 Please state your name and
5 let's go over what your application
6 is intending on you to do.

7 MR. QUINN: My name is Brady
8 Quinn. I'm at 307 Sunrise Drive, as
9 you said.

10 I do have an existing accessory
11 building in the front of my yard --
12 in front of my house. I would like
13 to tear that down.

14 MR. DONOVAN: Hold on a second.

15 CHAIRMAN SCALZO: Gentleman, I
16 don't mind that you're having a
17 conversation but please do it out in
18 the hallway.

19 MR. DONOVAN: We can hear you.
20 It's distracting up front and rude to
21 the gentleman speaking.

22 MR. QUINN: Thank you. So I'd
23 like to tear down the existing
24 accessory building and replace it
25 with a new one that is slightly

1 B r a d y Q u i n n

2 larger. I would like to align it
3 better with the side yard. I believe
4 that will bring that into conformity
5 with the side yard that I'm currently
6 not in conformity with. I will just
7 be increasing the front yard setback
8 in nonconformity a little bit.

9 CHAIRMAN SCALZO: Very good.
10 We are all obliged by our positions
11 here to go visit your site. You may
12 see us, you may not.

13 When I met you out there you
14 clearly explained what you just
15 explained again, that with the skew
16 of the current location of the garage
17 you will now be paralleling the
18 property line. You will maintain the
19 5 foot setback required for accessory
20 structures. You're actually kicking
21 it back further from the front
22 property line, but it still is not in
23 conformance with the required setback.

24 MR. QUINN: Correct.

25 CHAIRMAN SCALZO: I don't have

1 B r a d y Q u i n n

2 any questions for you. I understand
3 exactly what it is you're trying to
4 do.

5 I'm going to look to my left.
6 Ms. Rein had a question regarding
7 your application.

8 MS. REIN: How do I turn this
9 on, first of all? I'm feeling new at
10 this.

11 MR. QUINN: That's all right.
12 So am I.

13 MS. REIN: On your paperwork it
14 says will the proposed action create
15 stormwater discharge at some other
16 point or non-point source and will
17 stormwater discharges flow to
18 adjacent properties. You have a yes.
19 I looked at the affidavits from your
20 neighbors who say they have no
21 problem with this. Are they aware
22 that that's going to be an issue?

23 MR. QUINN: I was just looking
24 at it considering that it is a brook
25 and water will run off. It will be

1 B r a d y Q u i n n

2 within 500 yards of that. If we do
3 have a hurricane, water will be
4 running over onto their yard. I
5 wasn't quite sure how to answer that
6 question on the form.

7 MS. REIN: Is it an issue now?

8 MR. QUINN: No.

9 MS. REIN: Thank you.

10 CHAIRMAN SCALZO: That's a
11 great question. A lot of times I
12 kind of glaze over the SEQRA document
13 myself. He is increasing the size of
14 the garage a tad, if you will, so
15 therefore his roof impervious is
16 going to also increase whatever is
17 going to catch -- are you planning to
18 put gutters on that?

19 MR. QUINN: I probably will be
20 putting gutters on.

21 The neighbor who it will affect
22 is in attendance tonight. If she has
23 an issue with it, she can speak up.

24 CHAIRMAN SCALZO: Very good.
25 Thank you.

1 B r a d y Q u i n n

2 Mr. Masten, do you have any
3 comments?

4 MR. MASTEN: I have no comments.

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

7 MR. BELL: Nothing.

8 CHAIRMAN SCALZO: How about Mr.
9 Hermance?

10 MR. HERMANCE: No. I have no
11 comment.

12 CHAIRMAN SCALZO: Mr. Eberhart?

13 MR. EBERHART: No comment.

14 CHAIRMAN SCALZO: Mr. Gramstad?

15 MR. GRAMSTAD: No comment.

16 CHAIRMAN SCALZO: At this time
17 I'd like to open it up to any members
18 of the public that are here to speak
19 about this application.

20 Ma'am, please step forward and
21 state your name and --

22 MS. FRANKLIN: To the mic?

23 CHAIRMAN SCALZO: Yes, please.

24 MS. FRANKLIN: Good evening.

25 I'm Carol Franklin, I'm Brady's next

1 B r a d y Q u i n n

2 door neighbor. I'm very excited and
3 looking forward to a new garage there.

4 CHAIRMAN SCALZO: That was very
5 well stated. Your comments are very
6 important. Actually, they are a
7 matter of public record. Thank you
8 very much for taking the time to come
9 here.

10 Is there anyone else from the
11 public that wishes to speak about
12 this application?

13 (No response.)

14 CHAIRMAN SCALZO: No. Hearing
15 none, I will look back to the Board.
16 I'll remind the Board, since we have
17 not heard back from the County, we
18 are not allowed to vote on this.

19 I'll look to the Members of the
20 Board for a motion to keep the public
21 hearing open.

22 MR. BELL: I'll make a motion
23 to keep the public hearing open.

24 MR. EBERHART: Second.

25 CHAIRMAN SCALZO: We have a

1 B r a d y Q u i n n

2 motion from Mr. Bell. We have a
3 second from Mr. Eberhart. Roll on
4 that, please, Siobhan.

5 MS. JABLESNIK: Mr. Bell?

6 MR. BELL: Yes.

7 MS. JABLESNIK: Mr. Eberhart?

8 MR. EBERHART: Yes.

9 MS. JABLESNIK: Mr. Gramstad?

10 MR. GRAMSTAD: Yes.

11 MS. JABLESNIK: Mr. Hermance?

12 MR. HERMANCE: Yes.

13 MS. JABLESNIK: Mr. Masten?

14 MR. MASTEN: Yes.

15 MS. JABLESNIK: Ms. Rein?

16 MS. REIN: Yes.

17 MS. JABLESNIK: Mr. Scalzo?

18 CHAIRMAN SCALZO: Yes.

19 The public hearing is going to
20 remain open. Our July meeting is the
21 28th of July. Anyone that's here,
22 you will not be re-noticed. We can
23 act on this application on the 28th
24 regardless of whether the County
25 responds or not.

1 B r a d y Q u i n n

2 MR. QUINN: So it's tabled
3 until the 28th of July?

4 CHAIRMAN SCALZO: That's correct.

5 MR. QUINN: Do you need
6 anything else from me?

7 CHAIRMAN SCALZO: I don't
8 believe so.

9 Siobhan, is the application
10 complete?

11 MS. JABLESNIK: It's complete.

12 MR. QUINN: Thank you.

13

14 (Time noted: 7:11 p.m.)

15

16

17

18

19

20

21

22

23

24

25

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

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 6th day of July 2022.

Michelle Conero

MICHELLE CONERO

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

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

SCOTT PERRI LANDSCAPING, INC.
5 Nobles Way, Newburgh
Section 11; Block 1; Lot 119
R-1 Zone

----- X

Date: June 23, 2022
Time: 7:11 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: SCOTT PERRI

----- X

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

1 SCOTT PERRI LANDSCAPING, INC.

2 CHAIRMAN SCALZO: Our second
3 applicant this evening is Scott Perri
4 Landscaping, 5 Nobles Way in
5 Newburgh, seeking area variances of
6 height and increasing the degree of
7 nonconformity to add an additional
8 110 feet by 50 feet by 22 foot
9 accessory building to an existing
10 nonconforming business.

11 Siobhan, do we have mailings on
12 this?

13 MS. JABLESNIK: Yes. This
14 applicant sent out 55 letters.

15 Also it was mailed to the
16 County and we have not received a
17 response.

18 CHAIRMAN SCALZO: Okay. Do we
19 have anyone here representing this
20 application? Please state your name.

21 MR. PERRI: My name is Scott
22 Perri. That's it, just my name?

23 CHAIRMAN SCALZO: Please.

24 MR. PERRI: I own a landscaping
25 company right now. I am interested

1 SCOTT PERRI LANDSCAPING, INC.

2 in purchasing the nursery from the
3 current owner.

4 CHAIRMAN SCALZO: Okay. Let me
5 back up a second. If you heard what
6 I had said to the previous applicant,
7 this went to Orange County Planning
8 for their review. They have not
9 responded and their time is not up
10 yet, therefore we can hear your
11 presentation, which I think we just
12 did. We're going to ask you a few
13 questions I'm sure from this side of
14 the table. We are not allowed to
15 close the public hearing this evening
16 on your application. You're going to
17 be out to July 28th as well.

18 MR. PERRI: I understand.

19 CHAIRMAN SCALZO: Moving
20 forward here, I have a few questions.
21 This is an existing nonconforming
22 business. What you're proposing as
23 per the plan, I see you have a new
24 structure that's going in. If you're
25 increasing the square footage of the

1 SCOTT PERRI LANDSCAPING, INC.

2 structures that are on the
3 nonconforming business, then you may
4 have to take a different approach to
5 this. If you are going to be
6 removing structures and increasing
7 the amount of square footage that's
8 currently utilized there, I don't
9 think that there will be an issue.

10 Counsel, is that correct?

11 MR. DONOVAN: So if I can. I
12 don't mean to put Joe on the spot.
13 Joe, I couldn't tell from the
14 paperwork. Is this a preexisting
15 nonconforming use? Is that what this
16 is?

17 MR. MATTINA: Yes. It's a
18 commercial business in an R-1
19 residential zone.

20 MR. DONOVAN: So here's your
21 issue. I'm going to unfortunately
22 throw a couple legal things at you.
23 You'll have a month to look at the
24 code. 185-19-A(1) says -- Town
25 Zoning Code -- a nonconforming use

1 SCOTT PERRI LANDSCAPING, INC.

2 may continue indefinitely subject to
3 the following: Nonconforming use
4 shall not be enlarged, extended,
5 reconstructed or restored except in
6 accordance with something that
7 doesn't apply. So you can't enlarge
8 it. There's also case law, and I
9 just brought a case and I'm just
10 going to quote what it says. It's
11 well settled that a use variance is
12 necessary to expand a business
13 conducted as a prior nonconforming
14 use. A use variance is a different
15 standard. You applied for an area
16 variance which is easier to obtain.
17 A use variance is very difficult to
18 obtain.

19 I think for this Board to
20 obviously consider the application,
21 and the public, but for them to
22 proceed under the area variance there
23 needs to be an argument made that
24 you're not increasing the
25 nonconforming business. So it's a

1 SCOTT PERRI LANDSCAPING, INC.

2 little bit -- if I'm reading it
3 correctly, you have like a 10,000
4 square foot addition proposed net?

5 MR. PERRI: 4,600.

6 MR. DONOVAN: 4,600?

7 MR. PERRI: Yeah. It's 50 by
8 80 and a 30 by 30 section. I actually
9 submitted building plans and
10 everything to the Town Building
11 Department. I don't know if you have
12 that or not.

13 MR. DONOVAN: Just the
14 expansion of a preexisting
15 nonconforming use is problematic.
16 Generally speaking, the law doesn't
17 favor nonconforming uses. They make
18 it a little more difficult to expand
19 them.

20 I think you're all familiar
21 with WCC Tank. That was a use
22 variance. Obviously it was a use
23 that's not necessarily favored in the
24 neighborhood where it is.

25 I have no idea what the story

1 SCOTT PERRI LANDSCAPING, INC.

2 is with this use. Legally if you're
3 expanding a nonconforming use you
4 need a use variance, which is a
5 difficult standard to satisfy.

6 You've got a month to figure it
7 out. I just put it out there.

8 MR. PERRI: Can I ask a
9 question?

10 CHAIRMAN SCALZO: This is the
11 forum to do that.

12 MR. PERRI: So you said unless
13 I was removing structures. There are
14 some structures there that I would be
15 removing, obviously that we would no
16 longer need for storage.

17 MR. DONOVAN: What would the
18 net be?

19 CHAIRMAN SCALZO: You have to
20 have a net zero or a net minus.

21 MR. PERRI: I can tell you in
22 another month. I have to go back to
23 my engineer --

24 CHAIRMAN SCALZO: That's fine.

25 MR. PERRI: -- and have him

1 SCOTT PERRI LANDSCAPING, INC.

2 figure it out and put it on the bulk
3 table.

4 MR. DONOVAN: If it's net zero,
5 I have no issue telling the Board, if
6 you took from column A and you took
7 from column B and you ended up with
8 the same, that's not an expansion.

9 MR. PERRI: Also you brought up
10 between an area variance versus a use
11 variance. When I submitted everything
12 to the Building Department, they were
13 the ones that told me I just needed
14 to go for the area variance because
15 the height of the building was 18
16 feet.

17 MR. DONOVAN: So you definitely
18 need an area variance for that. The
19 concern that I'm expressing to the
20 Board is the expansion of the use
21 which requires a use variance. If
22 you're not expanding the use, you
23 need an area variance for the height.

24 MR. PERRI: When you say
25 expanding the use, the use of the

1 SCOTT PERRI LANDSCAPING, INC.

2 property or the use of the building?
3 It's already an existing nursery.
4 Nothing is really changing besides
5 we're going to get rid of some older
6 greenhouses, a bunch of sheds, some
7 old trailers that are there, and use
8 this storage building in place of
9 that. The business being used on the
10 property will remain the same. It's
11 been the same since the `60s.

12 MR. DONOVAN: I can't make your
13 case for you, right. There's an
14 argument to be made, and it's an easy
15 argument if there's no net increase
16 in the buildings, right, if you took
17 some down and took some away and
18 added some. You may also be able to
19 fashion an argument that the extra
20 space isn't increasing the business.
21 I can't make that argument for you.
22 That's for you to consider.

23 I think the only advice I can
24 give you is you want to stay in the
25 area variance category. That's

1 SCOTT PERRI LANDSCAPING, INC.

2 easier for you than the use variance.

3 MR. PERRI: Okay. I have one
4 more question. Sorry.

5 MR. DONOVAN: You said that
6 before.

7 MR. PERRI: Do the greenhouses
8 count as structures, because they're
9 not permanent structures?

10 CHAIRMAN SCALZO: I'm going to
11 look over to Code Compliance.

12 MR. MATTINA: Yes. An
13 accessory building is an accessory
14 building. We don't have garages,
15 sheds, greenhouses.

16 CHAIRMAN SCALZO: Thank you, Joe.

17 MR. PERRI: That's it.

18 CHAIRMAN SCALZO: Stay right
19 here. That was just one aspect of
20 what we're doing.

21 At this point I'm going to open
22 it up to my Board and then any
23 members of the public that may have
24 any questions. That may help you
25 even further on the 28th of July.

1 SCOTT PERRI LANDSCAPING, INC.

2 Mr. Gramstad, do you have any
3 comments regarding this application?

4 MR. GRAMSTAD: No. He had
5 explained what was going on yesterday
6 pretty well. I get the idea of what
7 he wants to do. He wants to take
8 down some of the older buildings and
9 replace them with the newer one.

10 CHAIRMAN SCALZO: Thank you,
11 Mr. Gramstad.

12 Mr. Eberhart?

13 MR. EBERHART: It's clear.
14 That's what I thought also.

15 CHAIRMAN SCALZO: Thank you.

16 Mr. Hermance?

17 MR. HERMANCE: On your drawing
18 you have the existing greenhouses to
19 be relocated, but in lieu of the new
20 information, perhaps you don't -- I'm
21 not --

22 MR. PERRI: You mean there's
23 two on there. TBR, to be removed.

24 MR. HERMANCE: To be relocated.

25 MR. PERRI: There should be two

1 SCOTT PERRI LANDSCAPING, INC.

2 other ones. Again, I can fix that
3 and address it.

4 MR. HERMANCE: I'm just saying
5 you would have to go for the --

6 MR. PERRI: No problem.

7 MR. HERMANCE: It may be an
8 option to reduce your footprint.

9 MR. PERRI: A hundred percent.

10 CHAIRMAN SCALZO: We're looking
11 at the existing greenhouses that were
12 on here. You had mentioned sheds and
13 other storage type containers.
14 Perhaps if they were on there as a
15 balance to what you're looking to do,
16 that may help you as well.

17 MR. PERRI: Okay.

18 CHAIRMAN SCALZO: That's just
19 my thought on that.

20 That was Mr. Hermance.

21 Mr. Bell?

22 MR. BELL: That was a good
23 thought. I'm clear right now.

24 CHAIRMAN SCALZO: Mr. Masten?

25 MR. MASTEN: I understand you

1 SCOTT PERRI LANDSCAPING, INC.

2 want to remove two and --

3 CHAIRMAN SCALZO: The current
4 plan says relocate.

5 MR. MASTEN: Relocate. I'm all
6 for it.

7 CHAIRMAN SCALZO: Very good.

8 Ms. Rein?

9 MS. REIN: I'm good.

10 CHAIRMAN SCALZO: Okay. At
11 this time I'd like to open it up to
12 any members of the public that wish
13 to speak about this application.
14 Does anyone have any comment?

15 Please state your name for the
16 record.

17 MS. ANDERSON: I'm Michelle
18 Anderson. I live at 540 Lakeside
19 Road. My property backs up to the
20 nursery right now.

21 I was just curious, because I
22 hadn't seen a plan, nor would I have,
23 of where the building is going to be.

24 CHAIRMAN SCALZO: Ma'am,
25 actually the Town's website, if you

1 SCOTT PERRI LANDSCAPING, INC.

2 go to meetings --

3 MS. ANDERSON: It's on there?

4 CHAIRMAN SCALZO: Yes.

5 MS. ANDERSON: You mean to say
6 I didn't do my homework?

7 CHAIRMAN SCALZO: I didn't mean
8 to embarrass you.

9 MS. ANDERSON: I'm not
10 embarrassed. Believe me, at my age --

11 CHAIRMAN SCALZO: The complete
12 application as well as the materials.
13 If you click on meetings for today,
14 you go over to the right-hand side,
15 the agenda is there as well as all
16 the other information.

17 MS. ANDERSON: Thank you very
18 much. Interesting.

19 CHAIRMAN SCALZO: Sir.

20 MR. IBBS: Good evening. I'm
21 Brian Ibbs, I live at 1912 Route 300,
22 right across the road from the
23 nursery.

24 Just to offer some aesthetic
25 perspective. I've lived across there

1 SCOTT PERRI LANDSCAPING, INC.

2 for a little over a decade now. I
3 appreciate the fact it's landscaped,
4 it looks nice. I hope he continues
5 that tradition that Jim and Kathy
6 have kept going.

7 As far as the visual impact of
8 the increased height, it doesn't
9 really impact me. Maybe a resident
10 on Lakeside Road might have a better
11 view of that.

12 I think as mentioned, if you're
13 just running a simple Excel
14 spreadsheet and have a net zero
15 increase in the area, the only issue
16 to overcome is the height it sounds
17 like.

18 Just from a general perspective
19 of a neighbor, I'm supportive of it
20 and looking forward to it continuing
21 to be run as a successful business.

22 I just wanted to offer another
23 perspective.

24 CHAIRMAN SCALZO: Thank you for
25 your comments, sir.

1 SCOTT PERRI LANDSCAPING, INC.

2 Is anyone else here to speak
3 about this application? Please step
4 forward and state your name.

5 MR. MILLER: I'm Walt Miller,
6 I'm at 548 Lakeside Road. My
7 property backs up to the nursery
8 also.

9 I have no qualms with him
10 building that building. You won't
11 even see it.

12 One of the problems I do have
13 is there's another business there.
14 It's a tree cutting business. It's
15 quite large. Backhoes, front end
16 loaders, shredders, piles of wood.
17 Is that part of the --

18 MR. PERRI: So I'm not the
19 current owner right now. I can tell
20 you there are some people there that
21 rent. If this goes through, I can't
22 say a hundred percent that they're
23 all leaving but it's going to be a
24 landscape nursery. It's going to be
25 cleaned up. There's going to be a

1 SCOTT PERRI LANDSCAPING, INC.

2 lot less --

3 MR. MILLER: That's really my
4 complaint.

5 MR. PERRI: A lot of the piles
6 of wood will be gone. As a nursery,
7 I do sell firewood which is a nursery
8 product.

9 MR. MILLER: That's fine.

10 CHAIRMAN SCALZO: Actually, I
11 think I can help here. What we had
12 discussed early on for this
13 application was any expansion of the
14 use would require a use variance.
15 What you just described and what you
16 confirmed by saying that there are
17 other renters in there is not allowed
18 by code. So they would need to
19 vacate.

20 MR. PERRI: They would. Okay.

21 CHAIRMAN SCALZO: Quite
22 honestly, the way the code reads,
23 they're not supposed to be there now.

24 MR. PERRI: Okay.

25 CHAIRMAN SCALZO: Counsel, am I

1 SCOTT PERRI LANDSCAPING, INC.

2 correct?

3 MR. DONOVAN: I think the only
4 exception would be if that was a
5 preexisting nonconforming use. It's
6 a use that's legal when established.
7 Either it was established prior to
8 zoning or at a time when the zoning
9 permitted it. So there needs to be
10 an evaluation as to whether or not
11 that other business was in existence
12 either before the zoning of the Town
13 of Newburgh or was allowed at the
14 time it was established. If not,
15 it's not permitted.

16 MR. MILLER: I've been there 27
17 years. I believe he bought it 22
18 years ago. The place, everybody
19 knows it. It's been there forever.

20 CHAIRMAN SCALZO: I buy my
21 plants there.

22 MR. MILLER: There has always
23 been something back there. For the
24 longest time it was one guy with a
25 chain saw. It seemed like years.

1 SCOTT PERRI LANDSCAPING, INC.

2 The past three, four years it's just
3 gotten bigger and bigger and bigger
4 and bigger. Now it's, you know,
5 bucket trucks, front end loaders,
6 backhoes.

7 CHAIRMAN SCALZO: Perhaps for
8 the 28th we can have a little more
9 information from the applicant, the
10 owner on that.

11 MR. PERRI: I'm looking at
12 making it one business. Like I said,
13 I own a landscaping company. I'll be
14 honest -- can I speak from here?

15 CHAIRMAN SCALZO: Please.

16 MR. PERRI: I own a landscaping
17 company right now. My son is here
18 with me. He's in college. I have
19 three other kids that are in ninth
20 grade. Yes, I have triplets. I'm
21 looking to make a family-owned and
22 run business. I'm a landscaping
23 company. I started my company in
24 2004. It's just been growing,
25 growing, growing. Now that my family

1 SCOTT PERRI LANDSCAPING, INC.

2 is showing interest in it and so on
3 and so forth, a nursery is something
4 that we go to and deal with three to
5 four times a week on a weekly basis
6 to buy material, use material. I do
7 some of my own material, topsoil and
8 stuff now, out of my yard that I'm in
9 now. Again, I'm looking to move
10 Scott Perri. It's going to stay
11 Leptondale Nursery but Scott Perri
12 Landscaping is also going to be
13 there. Realistically the other
14 people that are there are going to go
15 bye bye.

16 MR. MILLER: That's good.

17 MR. PERRI: I do have one
18 thing. It is a nursery. As far as
19 wheel loaders and bucket loaders and
20 stuff like that, if you go to any
21 nursery there's two or three wheel
22 loaders or skid steers running around
23 that are loading mulch, loading
24 trees, loading stone, picking up, you
25 know, pallets of block and stuff to

1 SCOTT PERRI LANDSCAPING, INC.

2 load on trucks. I don't think the
3 wheel loaders and equipment is
4 nonconforming to a landscape nursery
5 business. I believe that business
6 has been there, and I believe when
7 John gets up to speak to help me with
8 this, since the mid `60s.

9 MR. MILLER: Not this guy.

10 MR. LEGHORN: That guy that's
11 there now. I'll get up and discuss
12 it.

13 MR. MILLER: I guess I'm good.

14 CHAIRMAN SCALZO: Thank you for
15 your comments, sir.

16 Does anyone else from the
17 public wish to speak about this
18 application? Please step forward.
19 We knew you were coming.

20 MR. LEGHORN: My name is Jim
21 Leghorn. I'm the present owner of
22 Leptondale Nursery. I bought it in
23 2000. The place has been there since
24 the `60s. I started working there in
25 `73. It's always been a greenhouse

1 S C O T T P E R R I L A N D S C A P I N G , I N C .

2 business since `62. They expanded it
3 to the nursery business. Bob Noble
4 who owned the property was in
5 excavating, Robert Noble Excavating.
6 His son took over and had Advanced
7 Excavating. They all worked out of
8 that place.

9 There's been a guy there doing
10 trees for the last -- as long as I
11 can remember. Now, it was smaller.
12 It was a smaller operation. That's
13 what was -- they did it to bring in
14 extra money to pay the taxes, and I
15 just continued it on. We never had
16 an issue.

17 Now, I agree -- I talked to the
18 gentleman today on the phone for the
19 first time. I wish I had talked to
20 him in person. Yeah, there's a lot
21 more wood down there than there used
22 to be. He got behind on splitting
23 wood, doing other jobs. Like Scott
24 said, he's probably going to end up
25 leaving anyway. But it is a nursery

1 SCOTT PERRI LANDSCAPING, INC.

2 operation. There's equipment there,
3 the equipment to plant trees.

4 Actually, when I bought it in
5 2000 I actually rescued the
6 greenhouse business. She was going
7 to close it. I had my own
8 landscaping business. I was like I
9 don't know if I can run two
10 businesses at the same time. I
11 brought my business in there and
12 saved the greenhouse. She was
13 getting ready to close.

14 I'm getting tired. I got out
15 of the landscaping business. I just
16 need somebody else to come in if
17 we're going to save the greenhouses.

18 The problem with the greenhouse
19 business is there's not a lot of
20 money in it anymore. It's getting
21 hard to make a profit. To sell that
22 to somebody who is going to come in
23 and run the greenhouses, it's not
24 going to happen. It's going to end
25 up being houses.

1 SCOTT PERRI LANDSCAPING, INC.

2 Talking to Scott, he's got his
3 landscaping business. He can
4 continue it going, get back into
5 doing trees and shrubs and doing
6 landscaping work in conjunction with
7 keeping the greenhouses and stuff
8 going.

9 Like I said, that place has
10 been there forever. Everybody in the
11 neighborhood knows it's been in
12 business. It's pretty much seasonal
13 to the point where it's busy in the
14 spring for a few months and the rest
15 of the time it's slow. In the winter
16 it's not even open. Whether Scott
17 would stay open or not, I don't know.
18 It's really one of the only ways to
19 keep the greenhouse business here.
20 It's a dying business. The small mom
21 and pop greenhouse businesses are
22 going out of business left and right.
23 A lot of it is because the younger
24 generation doesn't want to do it and
25 lack of being profitable.

1 SCOTT PERRI LANDSCAPING, INC.

2 As far as running firewood out
3 of there, that's been going on
4 forever, before I even bought it. It
5 has gotten to be a bigger operation.
6 You know, like I said, there's never
7 been any issues with anybody
8 complaining except for this year, and
9 I kind of found that out from the
10 Town, not from the homeowner.

11 In talks with the guy that's
12 there now, we're pretty sure he's
13 going to end up leaving and it's
14 going to go back to the operation of
15 the nursery.

16 CHAIRMAN SCALZO: I appreciate
17 your comments.

18 Counsel, regarding when you
19 discuss people -- the applicant was
20 discussing people were renting as
21 opposed to his landscape business
22 which utilizes nurseries for this
23 type of stuff. The rentals would
24 certainly be an expansion of the
25 business, unless they were pre-

1 SCOTT PERRI LANDSCAPING, INC.

2 established. Correct?

3 MR. DONOVAN: Yeah. I think we
4 might be able to say that to a
5 reasonable degree of certainty but
6 not a hundred percent. I mean if it
7 got to that stage, maybe the
8 gentleman who is saying what he's
9 saying now could develop more proof
10 that it was there at the time in some
11 degree or another. I don't mean to --

12 CHAIRMAN SCALZO: We're at the
13 information gathering portion right
14 now.

15 MR. LEGHORN: The other thing
16 is my inspector comes in every year.
17 He said why don't you get an ag
18 exemption for the property, then you
19 can do so much more. You're not
20 under constraints as much as if you
21 did have an ag exemption. I said I
22 never thought about it because there
23 wasn't an issue. Sixty years in
24 business and there's never been a
25 problem. Maybe it's something that

1 SCOTT PERRI LANDSCAPING, INC.

2 should be looked into in the future
3 because it is agricultural. That's
4 what I was told when I bought the
5 place, talking to the Town. They
6 said as long as it's agriculture.
7 Firewood, wood, cutting trees, it
8 falls under agriculture. We never
9 thought it was an issue. If there's
10 something we have to change or look
11 into doing, if that's even going to
12 stay. Like I said, I think that he's
13 probably going to be leaving when
14 this sale goes through.

15 MR. PERRI: The business of it
16 will stay but the people that are
17 there doing it will not be staying,
18 if that makes sense. Meaning I do it
19 myself. It's part of my business but
20 it won't be people that are there now
21 staying as, if you want to say,
22 renters to do it.

23 CHAIRMAN SCALZO: Okay.

24 MS. ANDERSON: Michelle
25 Anderson may not have done her

1 SCOTT PERRI LANDSCAPING, INC.

2 homework for this meeting but I do
3 know my history about this. I've
4 lived in this house since 1976. That
5 wood cutting is the only problem. We
6 don't have any problem with the
7 nursery. The fact that you're in a
8 residential neighborhood and the
9 back-up alarms on the trucks and the
10 wood splitting equipment and things
11 like that is disturbing. Even in the
12 wintertime sometimes it goes on
13 through the night. I can look in the
14 dark through the trees that no longer
15 have leaves on them and I can see
16 them working over there, even from
17 where I am, and I'm not right behind
18 them. So expanding that, fine.
19 Nursery, that sounds all well and
20 good. That wood cutting is not
21 something that was there in 1976 or
22 1996. I just wanted to say that part
23 of it.

24 CHAIRMAN SCALZO: Thank you.

25 MS. ANDERSON: That was really

1 SCOTT PERRI LANDSCAPING, INC.

2 the only reason I was here. If
3 they're going to expand all of that,
4 I have problems with that in a
5 residential neighborhood.

6 CHAIRMAN SCALZO: Thank you
7 very much.

8 Anyone else from the public?
9 Please step forward.

10 MS. ROSADO: Hello. I'm
11 Jennifer Rosado, I live at 55
12 Lakeside road. The nursery is right
13 behind our property. You can clearly
14 see it from our property.

15 Sometimes -- actually, in the
16 wintertime when all the trees are
17 gone, it almost looks like we're
18 running a landscaping company. You
19 see all the trucks and everything.

20 They did mention about the wood
21 cutting, the wood splitting. That
22 kind of goes like year around. It
23 really does. Even during COVID when
24 nobody else was working, they were
25 sure working. It was like 10:00 at

1 SCOTT PERRI LANDSCAPING, INC.

2 night, 11:00 at night and you see
3 lights. It was loud. So I think
4 that's one of the things that, you
5 know, if they do -- if you guys do
6 plan on continuing --

7 MR. PERRI: I don't work until
8 10 or 11 at night unless there's a
9 broken water main somewhere, and it's
10 not on my property. It's usually in
11 the Town of Blooming Grove or
12 Washingtonville and I'm in the middle
13 of the road fixing it.

14 MS. ROSADO: I was wondering
15 what your actual working hours are.

16 CHAIRMAN SCALZO: That's
17 actually something we can --

18 MR. PERRI: The Town has codes
19 for --

20 CHAIRMAN SCALZO: We're getting
21 into details that are out of what the
22 application is here for at this
23 point. Knowing that we cannot vote
24 on this and we need to keep the
25 public hearing open, I'm sure the

1 SCOTT PERRI LANDSCAPING, INC.

2 applicant is going to have answers to
3 some of the questions we've asked
4 this evening. No one is going to be
5 re-noticed. Please come back on the
6 28th of July. The applicant I'm sure
7 will have a lot of these -- I'm sure
8 he's going to have a lot of these
9 things ironed out.

10 MS. ROSADO: I did take a look
11 at the plans and everything that were
12 online. I'm not an expert at this --

13 MR. PERRI: I didn't know they
14 were online either.

15 MS. ROSADO: The location of
16 the building, so where the wood
17 cutting is now, is that where the
18 building is going to be or is it
19 going to be further --

20 MR. PERRI: It's on the other
21 side of the property where there's an
22 existing greenhouse and there's an
23 open field in the middle that he
24 plants in. It's on the other side of
25 the property, away from the houses.

1 SCOTT PERRI LANDSCAPING, INC.

2 It's moving further away from the
3 houses. There's an existing
4 greenhouse there that's coming down.
5 There's a trailer that's coming down.
6 Again, I didn't know -- I'm new to
7 this. I didn't know -- when he asked
8 me what you wanted on the bulk table,
9 I didn't know what a bulk table is
10 until this gentleman started
11 questioning me.

12 CHAIRMAN SCALZO: Very good.
13 As I mentioned, it would be helpful
14 to the Board, as well as the public,
15 if a little more information or
16 planimetrics were to appear on the
17 map. It would be helpful if you
18 wanted to show an area where the
19 current wood cutting area is.

20 MR. PERRI: It's moving.

21 CHAIRMAN SCALZO: That's not
22 required but it's helpful for people.

23 MR. PERRI: It's moving.

24 MS. ROSADO: They did open a
25 lot of space. When all that was

1 SCOTT PERRI LANDSCAPING, INC.

2 opened up, we were like ut-oh, is
3 this where this giant --

4 CHAIRMAN SCALZO: We're hearing
5 these things are moving.

6 MR. PERRI: There is a bunch of
7 stuff back there now. Piles of
8 stuff. It's all getting cleared out.
9 It's all going to be cleared out.
10 It's going to be open area for the
11 nursery to grow because I am going to
12 sell bushes and shrubs and trees and
13 mulch and whatever else everyone
14 plants at their house.

15 CHAIRMAN SCALZO: Very good.
16 Thank you.

17 MS. ROSADO: Thank you.

18 CHAIRMAN SCALZO: Does anyone
19 else from the public wish to add any
20 new information to this application?

21 (No response.)

22 CHAIRMAN SCALZO: We will have
23 the opportunity again on July 28th.

24 Any other questions from the
25 Board?

1 SCOTT PERRI LANDSCAPING, INC.

2 MR. BELL: No.

3 MR. EBERHART: No.

4 MR. GRAMSTAD: No.

5 MR. HERMANCE: No.

6 MR. MASTEN: No.

7 MS. REIN: No.

8 CHAIRMAN SCALZO: I'll look to
9 the Board for a motion to keep the
10 public hearing open.

11 MR. MASTEN: I'll make a motion
12 to keep the public hearing open.

13 CHAIRMAN SCALZO: Until the
14 July 28th date.

15 MR. GRAMSTAD: I'll second it.

16 CHAIRMAN SCALZO: We have a
17 motion from Mr. Masten. Was that Mr.
18 Gramstad?

19 MR. GRAMSTAD: Yes.

20 CHAIRMAN SCALZO: Roll on that,
21 please, Siobhan.

22 MS. JABLESNIK: Mr. Bell?

23 MR. BELL: Yes.

24 MS. JABLESNIK: Mr. Eberhart?

25 MR. EBERHART: Yes.

1 SCOTT PERRI LANDSCAPING, INC.

2 MS. JABLESNIK: Mr. Gramstad?

3 MR. GRAMSTAD: Yes.

4 MS. JABLESNIK: Mr. Hermance?

5 MR. HERMANCE: Yes.

6 MS. JABLESNIK: Mr. Masten?

7 MR. MASTEN: Yes.

8 MS. JABLESNIK: Ms. Rein?

9 MS. REIN: Yes.

10 MS. JABLESNIK: Mr. Scalzo?

11 CHAIRMAN SCALZO: Yes.

12 The public hearing will remain
13 open until July 28th.

14 MS. JABLESNIK: Mr. Perri, if
15 you submit anything, can you just try
16 to get it to me by July 5th or 6th?
17 Thank you.

18 MR. PERRI: Yes, I will.

19 MS. JABLESNIK: Thank you.

20

21 (Time noted: 7:40 p.m.)

22

23

24

25

1 SCOTT PERRI LANDSCAPING, INC.

2

3

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

4

5

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

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

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

16 IN WITNESS WHEREOF, I have hereunto
17 set my hand this 6th day of July 2022.

18

19

20

21

Michelle Conero

22

MICHELLE CONERO

23

24

25

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

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

KAITLYN ROMANO

1 Strider Road, Wallkill
Section 2; Block 1; Lot 9.2
AR Zone

----- X

Date: June 23, 2022
Time: 7:40 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: MICHELLE SCHAUT

----- X

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

1 KAITLYN ROMANO

2 CHAIRMAN SCALZO: Our next
3 applicant this evening Kaitlyn
4 Romano, 1 Strider Road in Wallkill,
5 seeking an area variance of the rear
6 yard to build a new 20 by 20 rear
7 deck.

8 Siobhan, do we have mailings on
9 this?

10 MS. JABLESNIK: Yes. This
11 applicant sent out 7 letters.

12 CHAIRMAN SCALZO: Very good.

13 Do we have anyone here
14 representing this application?
15 Please step forward.

16 Quaker Street is not a County
17 road?

18 MS. JABLESNIK: No.

19 CHAIRMAN SCALZO: Guess what,
20 we do not have to wait for the County
21 to weigh in on this one.

22 Please state your name for the
23 record.

24 MS. SCHAUT: Michelle Schaut,
25 Kaitlyn Romano's mother.

1 KAITLYN ROMANO

2 CHAIRMAN SCALZO: Very good.

3 If I have captured what it is you're
4 looking to do in my one sentence,
5 that's fine. If you would like to
6 expand on that, feel free.

7 MS. SCHAUT: That's okay.

8 CHAIRMAN SCALZO: It's pretty
9 straightforward. We have all visited
10 the site. I'm sorry the fellow that
11 owns the nursery just walked out
12 because I will tell you, the hanging
13 plants on that front porch, they look
14 great.

15 MS. SCHAUT: I didn't get them
16 there.

17 CHAIRMAN SCALZO: Anyway, this
18 is pretty straightforward to me. I
19 really have no issues. The current
20 deck, in its place you're expanding
21 that deck going further out and, I'm
22 assuming, further towards the middle
23 of the house.

24 MS. SCHAUT: Yes.

25 CHAIRMAN SCALZO: I don't have

1 K A I T L Y N R O M A N O

2 anything else.

3 I'm going to go down to Mr.
4 Gramstad.

5 MR. GRAMSTAD: Nothing at all.

6 CHAIRMAN SCALZO: How about Mr.
7 Eberhart?

8 MR. EBERHART: No.

9 CHAIRMAN SCALZO: Mr. Hermance?

10 MR. HERMANCE: No.

11 CHAIRMAN SCALZO: Mr. Bell?

12 MR. BELL: No.

13 CHAIRMAN SCALZO: Mr. Masten?

14 MR. MASTEN: No.

15 CHAIRMAN SCALZO: Ms. Rein?

16 MS. REIN: No.

17 CHAIRMAN SCALZO: Very good.

18 At this point I'm going to open
19 it up to any members of the public
20 that wish to speak about this
21 application for Romano, 1 Strider
22 Road.

23 (No response.)

24 CHAIRMAN SCALZO: Hearing none,
25 I'll look back to the Board for one

1 KAITLYN ROMANO

2 last chance to comment.

3 (No response.)

4 CHAIRMAN SCALZO: Very good.
5 I'll look to the Board for a motion
6 to close the public hearing.

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

9 MR. MASTEN: I'll second it.

10 CHAIRMAN SCALZO: We have a
11 motion from Mr. Bell. We have a
12 second from Mr. Masten. Can you roll
13 on that, please, Siobhan.

14 MS. JABLESNIK: Mr. Bell?

15 MR. BELL: Yes.

16 MS. JABLESNIK: Mr. Eberhart?

17 MR. EBERHART: Yes.

18 MS. JABLESNIK: Mr. Gramstad?

19 MR. GRAMSTAD: Yes.

20 MS. JABLESNIK: Mr. Hermance?

21 MR. HERMANCE: Yes.

22 MS. JABLESNIK: Mr. Masten?

23 MR. MASTEN: Yes.

24 MS. JABLESNIK: Ms. Rein?

25 MS. REIN: Yes.

1 KAITLYN ROMANO

2 MS. JABLESNIK: Mr. Scalzo?

3 CHAIRMAN SCALZO: Yes.

4 The public hearing is now
5 closed.

6 You can have a seat for a
7 second. We're going to go through
8 some procedural stuff.

9 This is a Type 2 action under
10 SEQRA. Correct, Counsel?

11 MR. DONOVAN: Correct, Mr.
12 Chairman.

13 CHAIRMAN SCALZO: Thank you
14 very much.

15 We're going through the area
16 variance criteria to discuss the five
17 factors we are weighing. The first,
18 whether or not the benefit can be
19 achieved by other means feasible to
20 the applicant. No. If they want the
21 benefit of the deck, then the benefit
22 can't be achieved any other way.

23 The second, whether there's an
24 undesirable change in the
25 neighborhood character or a detriment

1 KAITLYN ROMANO

2 to nearby properties.

3 MR. BELL: No.

4 MR. EBERHART: No.

5 MR. GRAMSTAD: No.

6 MR. HERMANCE: No.

7 MR. MASTEN: No.

8 MS. REIN: No.

9 CHAIRMAN SCALZO: It does not
10 appear so.

11 The third, whether the request
12 is substantial. By the numbers, it
13 landed here because it's substantial
14 enough. In the grand scheme of
15 things, in that location I don't
16 believe it is.

17 The fourth, whether the request
18 will have adverse physical or
19 environmental effects.

20 MR. BELL: No.

21 MR. EBERHART: No.

22 MR. GRAMSTAD: No.

23 MR. HERMANCE: No.

24 MR. MASTEN: No.

25 MS. REIN: No.

1 KAITLYN ROMANO

2 CHAIRMAN SCALZO: I don't
3 believe so.

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

7 MR. BELL: Not relevant. Right.

8 CHAIRMAN SCALZO: Of course
9 it's self-created. However, that's
10 one factor of five. We don't need
11 all of them to move forward.

12 If the Board approves, it shall
13 grant the minimum variances necessary
14 or may impose reasonable conditions.

15 Having gone through the
16 balancing test of the area variance,
17 what's the pleasure of the Board? Do
18 we have a motion of some sort?

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

21 MR. GRAMSTAD: I'll second it.

22 CHAIRMAN SCALZO: We have a
23 motion for approval from Mr. Bell.
24 We have a second, I believe from Mr.
25 Gramstad. Can you roll on that,

1 KAITLYN ROMANO

2 please, Siobhan.

3 MS. JABLESNIK: Mr. Bell?

4 MR. BELL: Yes.

5 MS. JABLESNIK: Mr. Eberhart?

6 MR. EBERHART: Yes.

7 MS. JABLESNIK: Mr. Gramstad?

8 MR. GRAMSTAD: Yes.

9 MS. JABLESNIK: Mr. Hermance?

10 MR. HERMANCE: Yes.

11 MS. JABLESNIK: Mr. Masten?

12 MR. MASTEN: Yes.

13 MS. JABLESNIK: Ms. Rein?

14 MS. REIN: Yes.

15 MS. JABLESNIK: Mr. Scalzo?

16 CHAIRMAN SCALZO: Yes.

17 The motion is carried. The
18 variances are approved. Good luck.

19 MS. SCHAUT: Thank you very
20 much. Have a good night.

21

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

23

24

25

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

K A I T L Y N R O M A N O

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 6th day of July 2022.

Michelle Conero

MICHELLE CONERO

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

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

In the Matter of

SNK PETROLEUM WHOLESALERS

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

Date: June 23, 2022
Time: 7:49 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: KENNETH LYTLE,
JERRY BUNTING & MARK DOMBAL

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

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

2 CHAIRMAN SCALZO: Okay. Our
3 next order of business is the hearing
4 which was held open from May 26th,
5 which was held open from the one
6 before that, which was held open from
7 the one before that, SNK Petroleum
8 Wholesalers, 747 Boulevard, Newburgh,
9 which was a Planning Board referral
10 for area variances of the front yard
11 for a canopy, the side yard for a
12 west canopy, the rear yard for the
13 proposed building, the rear and side
14 yard for the east canopy and
15 variances for any proposed signage of
16 the canopy, resubmitting from January
17 2021.

18 As I read this description, I
19 want to think that some of our
20 values, meaning dimensional values,
21 have changed since that original
22 description.

23 Also, the first thing that I
24 read there, which was a Planning
25 Board referral, have we located the

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

2 Planning Board referral letter for
3 this, the 2022 application?

4 MR. DONOVAN: So I think it's
5 only one referral from before. I
6 have a recollection -- I have a
7 memory that's so good I can remember
8 things that never happened. I
9 believe that we've verified the only
10 referral letter is September 10, 2021
11 from the Planning Board attorney. I
12 thought there was another one but I
13 was mistaken.

14 CHAIRMAN SCALZO: Mr. Lytle, I
15 have in front of me a plan. I
16 believe last time we sent you away we
17 had requested some information, some
18 official information. I don't
19 remember seeing anything new in my
20 package this month. What do you got?

21 MR. LYTLE: So Jerry Bunting is
22 actually here on behalf of SNK to
23 talk about that. He's had a lot of
24 correspondence back and forth with
25 the DEP directly.

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

2 MR. BUNTING: Mr. Chairman,
3 Members of the Board, the question or
4 the task that you requested was to
5 reach out to the New York City DEP to
6 find out the nature of the right-of-
7 way across the aqueduct. It's a 10-
8 foot right-of-way. I spoke at length
9 with Dave Donovan -- Dave Tobias --
10 I'm looking at that. I didn't talk
11 to you.

12 MR. DONOVAN: I don't remember
13 that at all.

14 MR. BUNTING: I remember like
15 it was yesterday.

16 Dave Tobias. He got together
17 with his team to say well there's a
18 whole bunch of things we have to look
19 at here, and that's why we weren't
20 able to come back in May, they
21 couldn't really get back to us with a
22 definitive response. I was then
23 referred to Matthew Castro, who is, I
24 guess, his over boss, and we had a
25 series of discussions. Basically

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

2 what he said is that right-of-way is
3 for farm access and that we can't
4 guess at what a homeowner might or
5 might not want to do. He said we
6 evaluate all of these things
7 separately. They just have a map
8 showing the right-of-way for farm
9 access. Obviously that was a long
10 time ago.

11 We went back and forth with
12 discussions and he said one of the
13 things they look at is whether this
14 is a landlocked parcel. The parcel
15 isn't landlocked. The owner of the
16 adjacent property, who keeps
17 objecting to this, could just walk
18 out his back door, across his lawn
19 and onto this lot.

20 So again, like I said, we had
21 back and forth. I finally said Mr.
22 Castro, could I send you an e-mail,
23 you know, summarizing what we've been
24 discussing. He said sure. I said if
25 there's any changes, I just said tell

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

2 me where I'm wrong.

3 What I've done is I prepared --
4 I printed out the e-mails. The last
5 one is from him saying what he has
6 struck out. He says very clearly the
7 intended use of the right-of-way is a
8 farm crossing. Nothing more, nothing
9 less. So that's the sum and
10 substance of the discussion.

11 I've made a whole bunch of
12 copies which I'll hand out. You can
13 look and see for yourself what the
14 DEP said.

15 CHAIRMAN SCALZO: I appreciate
16 the legwork. You can't drop it on us
17 right here, right now and ask us to
18 evaluate it right here, right now.

19 MR. BUNTING: Understood.

20 CHAIRMAN SCALZO: This is not a
21 surprise to you. That's why --

22 MR. BUNTING: Right. This
23 conversation was yesterday --
24 yesterday evening and I was out of
25 town, so --

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

2 CHAIRMAN SCALZO: I just want
3 to remind you you were here last on
4 May 28th, or at least your
5 representation was.

6 MR. DONOVAN: April 28th.

7 CHAIRMAN SCALZO: Thank you.
8 We'll accept it and we'll evaluate it
9 as best we can today, but I'm not
10 going to guarantee anything.

11 MR. BUNTING: I didn't expect
12 anything. I'm just here to turn it
13 in.

14 Mr. Mulholland sent a letter
15 also. I don't know if you received
16 it, so I made copies of that as well.

17 MR. WEDDELL: It should have
18 been on the website.

19 CHAIRMAN SCALZO: I agree with
20 you, sir.

21 That's Mr. Weddell speaking,
22 Michelle.

23 CHAIRMAN SCALZO: Let's just
24 see where we go. Is there an extra
25 copy there? I have no issue with Mr.

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

2 Weddell, if he can get a look at that
3 as well.

4 Members of the Board, not that
5 we're pressed for time here because
6 this is our last action of the
7 evening, but I myself don't do well
8 to not have time to read, digest,
9 evaluate, prepare questions. This is
10 helpful for the application. I
11 myself, and I'm just speaking as me,
12 I'm not prepared to do anything
13 regarding this new information myself
14 this evening. However, that doesn't
15 prevent us from also -- I am but one
16 of seven. We have time to poll the
17 Board on their thoughts on this.

18 Looking back at the plans --
19 because this has been such a lengthy
20 process, I've been to this site five
21 times in the last three months. I
22 had other errands to run in the area
23 so pulled in and stopped and looked
24 at things. Sometimes having
25 applications go on for a long time is

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

2 a bad thing because you think of
3 things you never thought of before.

4 One of the things, Mr. Lytle,
5 I'm just going to point out to you,
6 we have the box up on the top, the
7 required separation distances from a
8 wastewater system component. This is
9 on sheet 2 of 5. You may want to
10 reference the 2012 manual because
11 you're referencing the 1996 manual.
12 It's been updated.

13 MR. LYTTLE: Okay.

14 CHAIRMAN SCALZO: In my
15 industry outside of this Board, I'm
16 looking at it. Do you have a septic
17 system designed that's adequate for
18 this?

19 MR. LYTTLE: Yes.

20 CHAIRMAN SCALZO: That's not
21 anything that you're here talking to
22 us about but I just was curious where
23 that was going to be.

24 MR. LYTTLE: That goes actually
25 on the property on the other side.

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

2 It's actually before the Board of
3 Health for the final okay to finalize
4 with them.

5 CHAIRMAN SCALZO: Again, on the
6 last submission I noticed that you
7 removed a substantial portion of the
8 building from the rear setback
9 requirement and you just shoved it
10 right down towards 84.

11 MR. LYTTLE: Yup.

12 CHAIRMAN SCALZO: Comparatively
13 speaking, we've had two other
14 applications in here for gas stations
15 within the last year. One was on
16 Route 9W, the other one on Route 52.
17 This application is proposing 2,448
18 square feet. The one on Route 52 and
19 Fifth Avenue is 2,300 square feet.
20 The one on Route 9W I want to say is
21 around 2,600 square feet. This is,
22 I'll say, right in the ballpark of
23 what the standard -- for the three
24 that we've seen, this is -- I guess
25 it's right there.

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

2 It is an odd, odd shaped lot.
3 It's a tough parcel to do what the
4 applicant wants to do there. That's
5 an observation. That's me talking.

6 I'm going to spare Ms. Rein.
7 Do you even have this application in
8 front of you at all? This is before
9 your time.

10 MS. REIN: Okay.

11 CHAIRMAN SCALZO: I didn't know
12 if you had been supplied with plans
13 or anything for it. It might have
14 went away with Tony Marino.

15 MS. JABLESNIK: It's all online.

16 CHAIRMAN SCALZO: Perhaps
17 should we continue this evening,
18 we'll get you a set of plans and have
19 you go out and take a look.

20 In that case I'm going to flip
21 to the other side of the table here.
22 Mr. Gramstad, not that I'm putting
23 you on the spot but I'm putting you
24 on the spot, as I'm going to do with
25 all the other Members of the Board

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

2 here. Do you have comments? Even if
3 you want to address some of the
4 things in here --

5 MR. GRAMSTAD: I would like to
6 take this back and read it.

7 CHAIRMAN SCALZO: Sure. I
8 believe we all do.

9 MR. GRAMSTAD: Read into it a
10 little more --

11 CHAIRMAN SCALZO: Going back to
12 the plan, were there any
13 observations? Just observations,
14 opinions?

15 MR. GRAMSTAD: I don't know. I
16 mean I understand gas stations need
17 to be built. To me, I don't know.
18 It's going to be flashy and showy.
19 It's not going to be what the area is
20 right now. That's my feeling.

21 CHAIRMAN SCALZO: Flashy and
22 showy. Thanks. I hadn't thought of
23 that until you just said that.

24 Mr. Lytle, I see you have four
25 pumps for regular gasoline and then I

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

2 see three for diesel. Sometimes they
3 combine. Do you need that separation?

4 MR. DOMBAL: Yes.

5 CHAIRMAN SCALZO: Thank you for
6 that detailed answer.

7 MR. DONOVAN: For the record
8 just let us know who you are.

9 MR. DOMBAL: Mark Dombal,
10 D-O-M-B-A-L.

11 These dispensers are truck
12 dispensers. You don't want to mix
13 tractor trailers with regular cars.

14 CHAIRMAN SCALZO: Sure. Okay.
15 Thank you.

16 Mr. Eberhart?

17 MR. EBERHART: I think we
18 should delay this so we have an
19 opportunity to review this.

20 CHAIRMAN SCALZO: Okay. That's
21 fair enough. Regarding comments on
22 the plan, anything?

23 MR. EBERHART: I didn't bring
24 the set with me.

25 CHAIRMAN SCALZO: They were

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

2 gathering dust in the bottom of my
3 bin.

4 Mr. Hermance?

5 MR. HERMANCE: The diesel
6 pumps, it doesn't look like the flow
7 for a tractor trailer would be too
8 easy to maneuver through this area as
9 we're looking at the plans.

10 MR. LYTLE: We actually did the
11 turning radius based on the large
12 trucks. Like I said, see the three
13 pump stations or islands for tractor
14 trailers, there's a pump in between
15 them. They can fill up from either
16 side.

17 MR. HERMANCE: When a truck
18 comes in this access road, it has to
19 go around the back of the building?

20 MR. LYTLE: All the way around
21 the back, goes straight in and they
22 can pull straight out.

23 MR. DOMBAL: Even though there
24 are three dispensers, the way those
25 trucks are fueled there's only

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

2 actually two lanes that are in
3 between those dispensers. There's no
4 fueling on the outside of those
5 dispensers. There's only two lanes.

6 MR. HERMANCE: The way it
7 looks, it may be like a congestion --

8 MR. DOMBAL: There's just the
9 two lanes. What it is is it's called
10 master satellite on the hoses.

11 Because the tractor trailers have
12 tanks on both sides, so what they do
13 is they pull down the lane and they
14 utilize both hoses. The outside of
15 the two dispensers, they don't have
16 hoses on them.

17 MR. HERMANCE: Basically two
18 lanes. Not that they can afford to
19 fill both tanks now.

20 That's what I had.

21 CHAIRMAN SCALZO: Mr. Bell?

22 MR. BELL: I had the same
23 question. I just wrote it down on
24 tractor trailers.

25 My question to that too now is

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

2 which way are the cars going in? Do
3 they loop in or do they just --

4 CHAIRMAN SCALZO: Mr. Bell, and
5 believe me I was curious about that
6 same thing, but I'm not sure that
7 that's part of our overview on this.

8 MR. BELL: Okay.

9 CHAIRMAN SCALZO: However, the
10 variances that are being requested do
11 include the canopies which have the
12 pumps underneath them. If it were
13 something that could be reduced.

14 So now I'm back to ask your
15 question, Mr. Bell. How about that.

16 MR. BELL: That I see, too.
17 I'm good right now. Let me --

18 CHAIRMAN SCALZO: Think about
19 this.

20 CHAIRMAN SCALZO: Mr. Masten?

21 MR. MASTEN: Bob and James,
22 they asked what questions I had.

23 CHAIRMAN SCALZO: Okay. So you
24 also would like to take a bit of time
25 to review the information that was

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

2 provided to us?

3 MR. MASTEN: Yes.

4 CHAIRMAN SCALZO: I think as we
5 all do.

6 MR. MASTEN: Excuse me. That
7 similar layout is what Valero has
8 over on 17K. Similar.

9 MR. BELL: That's a good point.

10 MR. MASTEN: On the other side
11 of the aqueduct.

12 MR. BELL: It goes around the
13 back side, too.

14 CHAIRMAN SCALZO: Ms. Rein,
15 you're off the hook on this one.

16 MS. REIN: Thank you.

17 CHAIRMAN SCALZO: So the public
18 hearing is still open. Is there
19 anyone here from the public that
20 wishes to speak about this
21 application? Please identify
22 yourself, as if we don't know you.

23 MR. WEDDELL: Tom Weddell. I
24 had a little bit of better luck when
25 I spoke to DEP. I started my

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

2 questioning of DEP on May 2nd, and
3 I'll give you the documentation I
4 have here from the DEP. I spoke to
5 Matthew Castro, the person he claimed
6 he spoke to. There's a question as
7 to what that right-of-way really is,
8 which will be determined by Newburgh
9 Park Associates' deed and my deed as
10 to whether it's an access just for
11 farming or not. The only part that
12 would not be clear is when they made
13 those right-of-ways, when they wrote
14 those deeds, which again goes back to
15 my family owning, in the beginning,
16 all this property, they needed access
17 for the farm. When they built the
18 aqueduct they made concrete where I
19 go over the aqueduct to get to my
20 house. They reinforced the aqueduct
21 with concrete so that they could have
22 heavier vehicles, like farm
23 equipment, to go over the aqueduct.
24 So that was the only question Mr.
25 Castro really had. They have to go

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

2 back and review what was done on that
3 particular thing. He has not
4 responded back to me by tonight. He
5 says the way it sits right now, I
6 have a right-of-way to that piece of
7 property.

8 So the question is whether it's
9 just for farming or I can actually
10 build on that has to be answered,
11 because they have to know whether the
12 concrete is set in there.

13 CHAIRMAN SCALZO: Well, I'm
14 going back four meetings, five
15 meetings, I don't know how many
16 meetings. When the aqueduct was
17 placed there, it was all farms.

18 MR. WEDDELL: Correct. I can
19 come over that same piece of aqueduct
20 to my house right now. This is just
21 another third leg that was there.

22 There's another right-of-way
23 that does come to one of the houses
24 that are there, but that right-of-way
25 has three posts on it and it was only

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

2 for farm use to go across there.
3 That was only to allow livestock to
4 go back and forth over the aqueduct.

5 CHAIRMAN SCALZO: We're only
6 interested in the one that's here.

7 MR. WEDDELL: There's a
8 distinction between the right-of-ways
9 that go over there. The DEP really
10 has to come down.

11 I put in my application to the
12 DEP, and I worked with Mr. Castro.
13 I'll give you that information. So
14 that's question number one.

15 The second thing is the comment
16 that he mentioned is I can step out
17 my door and go to this piece of
18 property. Not true. The piece of
19 property I own does not allow me to
20 go to that piece of property. My
21 father owns a piece of property. I
22 can go to that piece of property but
23 I don't own it. That's whether my
24 parents wanted to give me the
25 right-of-way to actually go there.

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

2 They're 87. They're thinking about
3 selling their house. To do that
4 would be harmful to them and possibly
5 to the value of the house.

6 CHAIRMAN SCALZO: Mr. Weddell,
7 I didn't necessarily agree with the
8 statement that it was not landlocked.
9 I understand it is a separate tax
10 lot. The only access to it, in my
11 opinion, is through this right-of-way.

12 MR. WEDDELL: Correct.

13 Now, there's another issue
14 there. I don't know if the fire
15 company or EMT has decided that a
16 fire truck, if they had to get back
17 there over this right-of-way, would
18 work with all this gas station, drive
19 around behind it, pull up. It
20 appears to be an 8 foot hill to get
21 onto the right-of-way.

22 Is that 8 foot?

23 MR. LYTTLE: I have no idea.

24 MR. WEDDELL: Count the little
25 ribs you have on the draft there.

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

2 So that was a question I had.

3 Then you brought up an
4 interesting thing about the septic,
5 which happens to go from property B
6 to property A, which happens to go
7 through the little creek that runs
8 through there. So I don't know how
9 you --

10 CHAIRMAN SCALZO: You know
11 what, that's not under our review.
12 I, as an engineer, was just curious
13 how the other engineer was going to
14 approach it. It's under the review
15 of the Orange County Health
16 Department. That's something that
17 they --

18 MR. WEDDELL: It will also be
19 in the review of the DEP. We'll find
20 out about that from the DEP as well.

21 I did a little bit of my
22 homework. I'm still fighting this
23 thing. I have a right to get to my
24 piece of property.

25 Again, as far as the value,

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

2 once it's landlocked and once that
3 gas station is there, there's no
4 value in that piece of property.

5 CHAIRMAN SCALZO: We understand
6 that. Did you have information that
7 you wanted to hand off to us?

8 MR. WEDDELL: Yes, I do.

9 CHAIRMAN SCALZO: Mr. Weddell,
10 thank you for your comments.

11 Is there anyone else here?
12 Sir.

13 MR. MULHOLLAND: My name is
14 Patrick Mulholland.

15 CHAIRMAN SCALZO: We have a
16 letter from you.

17 MR. MULHOLLAND: Yeah. We've
18 been doing this since 2016. Now
19 we're going to keep looking at the
20 property, reviewing it. If we don't
21 have it now, we ain't never going to
22 get it.

23 The property Mr. Weddell wanted
24 -- his father and him kept hounding
25 me for that property because it

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

2 borders his property -- his father's
3 property. They wanted to have a
4 buffer to whatever is being built,
5 which would be the gas station, on
6 the other side of the aqueduct.

7 Why would I sell a piece of 3.5
8 acres for \$10,000 to jeopardize a
9 \$1,000,000 piece of property? You're
10 all businessmen. Would you do that?
11 No.

12 When he bought it there was no
13 -- he took me in his office, his
14 accounting office with the
15 convenience of his attorney in there,
16 that he would handle it, no problem,
17 as a friend and a neighbor for twenty
18 years. So they put my old deed when
19 they filed it --

20 CHAIRMAN SCALZO: We saw the
21 corrections. Sir, your comments are
22 very valuable.

23 MR. MULHOLLAND: He did not buy
24 -- what do you call it -- the
25 right-of-way. I did not have -- he

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

2 had no paper showing I sold him the
3 right-of-way. I just sold him the
4 3.5 acres, and I had a right to that
5 because I own both sides. When I sold
6 him that side, that belonged to him
7 and access to his side. Nothing to
8 do with my side. Why would he want
9 to come to my side in the first
10 place?

11 He said the value of his
12 property. I didn't sell him that to
13 build houses and put a road through.
14 He wanted it for his family and to
15 maybe build a little house back there
16 for his son, his daughter, whoever.
17 The minute I sold him that property
18 he turned like a rattlesnake and he
19 did this.

20 CHAIRMAN SCALZO: Sir, we're
21 getting a little beyond --

22 MR. MULHOLLAND: I know.

23 CHAIRMAN SCALZO: -- what we
24 need to hear here. I do
25 appreciate --

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

2 MR. MULHOLLAND: I'm 80 years
3 old. I shouldn't be going through
4 this. This was 2016. We've been
5 before this Board. We've been back
6 and forth, back and forth. I hope
7 some day we can get this resolved. I
8 tried to retire in 2016 and I'm still
9 here, 80 years old. With people like
10 him, dishonest, because I had --

11 CHAIRMAN SCALZO: I'm going to
12 stop you right there. I think we've
13 heard enough. Thank you.

14 MR. MULHOLLAND: I had to go to
15 court to get my property back.

16 Thank you for your time.

17 MR. WEDDELL: You didn't go to
18 court.

19 CHAIRMAN SCALZO: Gentlemen,
20 this is not the forum for this. I
21 want factual information. I want
22 information relative to the
23 application and that's it.

24 MR. DOMBAL: Can I just speak?

25 CHAIRMAN SCALZO: Yes, sir.

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

2 MR. DOMBAL: My name is Mark
3 Dombal. I'm from SNK Petroleum. I'm
4 not an engineer so I'm kind of a
5 little bit lost on this. We
6 recognize the fact that there's a
7 right-of-way across the DEP land. We
8 also recognize the fact that Mr.
9 Weddell has a right-of-way, not a
10 defined right-of-way but a
11 right-of-way, through our property.
12 So if I recognize both of those
13 facts, we're leaving the access back
14 there, we're not causing any
15 constraints to his right-of-way,
16 what's the issue? Is there really an
17 issue?

18 CHAIRMAN SCALZO: I'll leave it
19 up to Counsel.

20 MR. DONOVAN: So Mark, what
21 happens is the ZBA, in an area
22 variance, is guided by the five-part
23 balancing test. That's the beacon by
24 which the Board has to abide by. We
25 talked about this as a Board. They

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

2 evaluate all five factors and they
3 weigh them and they make their
4 determination. Among those factors
5 is whether or not an undesirable
6 change in the neighborhood character
7 or a detriment to nearby properties
8 will be caused, and also whether the
9 request will have adverse physical or
10 environmental effects. There's five
11 other factors. Relative to the
12 location of the easement and what
13 will happen to this easement when the
14 gas station is built is relevant to
15 the determination of those factors.

16 MR. DOMBAL: Okay. If there's
17 normal grade access to the easement,
18 what -- if there's a normal grade
19 access to his easement, then it
20 wouldn't be detrimental, would it?

21 MR. DONOVAN: We can't guess.
22 We can't guess. I'll just go back,
23 because I spent some time with the
24 file today. I know everyone tried to
25 do this. What the Chairman asked for

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

2 back in April was I still want a
3 little clear understanding of what
4 the easement is, how the easement
5 also passes through the front of the
6 property, which I know will be
7 difficult to find. Ken then asked
8 isn't it a Planning Board issue. I
9 said I think the location, the extent
10 of the variances, there are a number
11 of variances that would impact the
12 location of the building. In terms
13 of the ZBA jurisdiction, I went over
14 the factors that we just discussed.
15 Ken said if we're not able to get
16 paperwork, then what do we do. I
17 responded we can't tell you how to do
18 your job. The Chairman indicated
19 that we're not going to do your job.
20 If you spoke to somebody at DEP, it
21 would be helpful if you got an e-mail
22 or something. That's what we're
23 going through tonight. The Board
24 received the information tonight.
25 They're going to need to evaluate

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

2 whether there's going to be an
3 adverse impact to the neighbor or an
4 adverse physical impact. So if
5 you're able to say how a car could
6 navigate around there, that would be
7 helpful. Again, we can't make your
8 case for you.

9 MR. DOMBAL: Understood. Thank
10 you so much. Thank you.

11 CHAIRMAN SCALZO: Thank you,
12 Counsel.

13 Okay. Does anyone else from
14 the public wish to speak about this
15 application?

16 (No response.)

17 CHAIRMAN SCALZO: I'm going to
18 look to the Members of the Board.
19 Any other comments?

20 MR. BELL: No.

21 CHAIRMAN SCALZO: Now I'm going
22 to look to the Members of the Board
23 for a motion to keep the public
24 hearing open.

25 I hope we can get everything we

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

2 need in place to at least vote on
3 this by the 28th of July.

4 That being said --

5 MR. MASTEN: I'll make a motion
6 to keep the public hearing open.

7 MR. BELL: I'll second it.

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

12 MS. JABLESNIK: Mr. Bell?

13 MR. BELL: Yes.

14 MS. JABLESNIK: Mr. Eberhart?

15 MR. EBERHART: Yes.

16 MS. JABLESNIK: Mr. Gramstad?

17 MR. GRAMSTAD: Yes.

18 MS. JABLESNIK: Mr. Hermance?

19 MR. HERMANCE: Yes.

20 MS. JABLESNIK: Mr. Masten?

21 MR. MASTEN: Yes.

22 MS. JABLESNIK: Ms. Rein?

23 MS. REIN: Yes.

24 MS. JABLESNIK: Mr. Scalzo?

25 CHAIRMAN SCALZO: Yes.

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

2 The public hearing will remain
3 open. No one will be re-noticed.
4 See you in July.

5 MR. LYTLE: Thank you.

6 MR. DOMBAL: Thank you.

7 MS. JABLESNIK: If you have to
8 submit anything, please get it to me
9 by like the 5th or the 6th.

10 CHAIRMAN SCALZO: Any
11 additional information, we need it
12 ten days in advance.

13 MS. JABLESNIK: It's a little
14 different because I'm on vacation.

15 CHAIRMAN SCALZO: By July 5th.

16

17 (Time noted: 8:15 p.m.)

18

19

20

21

22

23

24

25

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

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

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 6th day of July 2022.

Michelle Conero

MICHELLE CONERO

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

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

MOSSGARDEN PROPERTIES

12 Hinchcliffe Drive, Newburgh
Section 18; Block 1; Lot 4.2
R-3 Zone

----- X

Date: June 23, 2022
Time: 8:15 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE:

----- X

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

1 M O S S G A R D E N P R O P E R T I E S

2 CHAIRMAN SCALZO: Our Board
3 Business this evening is Mossgarden
4 Properties, 12 Hinchcliffe Drive in
5 Newburgh. They're requesting a six-
6 month extension for variances issued
7 for this property.

8 There are many factors with a
9 lot of the variances that we have
10 approved. Supplies are in short
11 supply, if you will.

12 Myself, I have no issues with
13 granting a six-month extension for
14 the variances issued for the property.

15 Does anyone else have discussion?

16 MR. BELL: No.

17 MR. EBERHART: No.

18 MR. GRAMSTAD: No.

19 MR. HERMANCE: No.

20 MR. MASTEN: No.

21 MS. REIN: No.

22 CHAIRMAN SCALZO: I'll look to
23 the Board for a motion to extend the
24 variances for six months for the
25 Mossgarden Properties.

1 M O S S G A R D E N P R O P E R T I E S

2 MR. BELL: I'll make a motion
3 to extend it for six months for the
4 property.

5 CHAIRMAN SCALZO: Motion from
6 Mr. Bell.

7 MR. GRAMSTAD: Second.

8 CHAIRMAN SCALZO: We have a
9 motion and a second. Roll on that,
10 please, Siobhan.

11 MS. JABLESNIK: Mr. Bell?

12 MR. BELL: Yes.

13 MS. JABLESNIK: Mr. Eberhart?

14 MR. EBERHART: Yes.

15 MS. JABLESNIK: Mr. Gramstad?

16 MR. GRAMSTAD: Yes.

17 MS. JABLESNIK: Mr. Hermance?

18 MR. HERMANCE: Yes.

19 MS. JABLESNIK: Mr. Masten?

20 MR. MASTEN: Yes.

21 MS. JABLESNIK: Ms. Rein?

22 MS. REIN: Yes.

23 MS. JABLESNIK: Mr. Scalzo?

24 CHAIRMAN SCALZO: Yes.

25 The request for a six-month

1 M O S S G A R D E N P R O P E R T I E S

2 extension for Mossgarden Properties
3 is approved.

4 The last order of business is
5 the review of the meeting minutes for
6 last month. They had been provided
7 like a long time ago. Do I hear a
8 motion to approve the meeting minutes
9 from last month?

10 MR. GRAMSTAD: I'll make a
11 motion to approve the meeting minutes.

12 MR. EBERHART: I'll second it.

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

17 MR. BELL: Aye.

18 MR. EBERHART: Aye.

19 MR. GRAMSTAD: Aye.

20 MR. HERMANCE: Aye.

21 MR. MASTEN: Aye.

22 MS. REIN: Aye.

23 CHAIRMAN SCALZO: Aye.

24 Any opposed?

25 (No response.)

1 M O S S G A R D E N P R O P E R T I E S

2 CHAIRMAN SCALZO: I'll look for
3 a motion to adjourn.

4 Ms. Rein made a hand motion. I
5 can't hear a hand motion.

6 MS. REIN: I'll make the motion
7 to adjourn.

8 CHAIRMAN SCALZO: I will second
9 that. All in favor?

10 MR. BELL: Aye.

11 MR. EBERHART: Aye.

12 MR. GRAMSTAD: Aye.

13 MR. HERMANCE: Aye.

14 MR. MASTEN: Aye.

15 MS. REIN: Aye.

16 CHAIRMAN SCALZO: Aye.

17

18 (Time noted: 8:22 p.m.)

19

20

21

22

23

24

25

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

M O S S G A R D E N P R O P E R T I E S

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 6th day of July 2022.

Michelle Conero

MICHELLE CONERO