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

- - - - - X
In the Matter of

JIN GRABEK

349 Meadow Avenue, Newburgh
Section 66; Block 2; Lot 3
IB Zone

- - - - - X

Date: July 27, 2023
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.
GREGORY M. HERMANCE
JOHN MASTEN

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

APPLICANT'S REPRESENTATIVE: JIN GRABEK

- - - - - X

MICHELLE L. CONERO
Post Office Box 816
Dover Plains, New York 12522
(845) 541-4163

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CHAIRMAN SCALZO: I'd like to call the meeting of the Zoning Board of Appeals to order. The order of business this evening are the public hearings scheduled for today. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have, and then any questions or comments from the public will be entertained. The Board will then consider the applications and will try to render a decision this evening, but may take up to 62 days to reach a determination.

I would ask that if you have a cellphone, to please turn it off or put it on silent. When speaking, please speak directly into the microphone. We do have a stenographer recording the meeting for the minutes.

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Roll call, please.

MS. JABLESNIK: Darrell Bell.

MR. BELL: Here.

MS. JABLESNIK: James Eberhart.

MR. EBERHART: Here.

MS. JABLESNIK: Robert Gramstad
is absent.

Greg Hermance.

MR. HERMANCE: Here.

MS. JABLESNIK: John Masten.

MR. MASTEN: Here.

MS. JABLESNIK: Donna Rein is
also absent this evening.

Darrin Scalzo.

CHAIRMAN SCALZO: Here.

MS. JABLESNIK: Also present is
our Attorney, Dave Donovan. From
Code Compliance we have Gerald
Canfield --

MR. CANFIELD: Present.

MS. JABLESNIK: -- and Joseph
Mattina. We also have our
Stenographer, Michelle Conero.

CHAIRMAN SCALZO: Very good.

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J I N G R A B E K

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Thank you.

If you could all please rise
for the Pledge.

(Pledge of Allegiance.)

CHAIRMAN SCALZO: Our first
applicant this evening is Jin Grabek,
349 Meadow Avenue in Newburgh,
seeking a use variance to keep
chickens in the IB Zone.

Do we have Ms. Grabek with us
this evening?

MS. GRABEK: Yes.

CHAIRMAN SCALZO: If I have
captured pretty much everything that
you would like to do with that, then
we can just open the meeting up to
the Board Members for comments. If
there's something else that you would
like to add to that, please feel free
to do it right now.

MS. GRABEK: I didn't want to
ask anything else. Just because my
friend, she let go of the house
because she couldn't afford it

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anymore. The chickens is like a gift to give to me. I have to take it like a pet. She even come to take a look to see how it is, that it's safe and, you know, it's okay. That's her pet and I have to take care. I'm not going to have any more.

CHAIRMAN SCALZO: Okay. We did drive by and see that there is a pen.

MS. GRABEK: I keep it clean, though. I keep it clean. It's just something -- I'm not going to have any more. That's all. Just to take care of my friend's pet.

CHAIRMAN SCALZO: Thank you.

At this point I'm going to --

MR. HERMANCENCE: The mailings.

CHAIRMAN SCALZO: Oh, Siobhan, do we have mailings on this one.

MS. JABLESNIK: This applicant mailed 38 letters.

MS. GRABEK: And nobody testified against me.

CHAIRMAN SCALZO: That's what

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the public hearing is for, for anyone that has any comments, positive or negative, to come in and be heard.

So, thank you, Mr. Hermance, for reeling me back in with the mailings.

At this point I'm going to look to any Members of the Board. I'll start with Mr. Eberhart.

Well, first of all, you're seeking a use variance. Use variances differ from area variances in that the criteria that use variances are weighed against, there's four, whereas an area variance, you don't have to meet all of the criteria and you can still be granted an area variance. With a use variance, there are other factors involved. Most notably, the one that's very difficult to prove, the dollars and cents of why the use variance should be granted. The application in this case didn't

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include that information for us to evaluate. Unfortunately, with use variances, you need to meet all four criteria for us to be able to grant the variance. Actually, you were here ten years ago, close to ten years ago, when they changed your -- you were just opening a shop. I believe you were looking for a use variance at that time, and then they ended up changing the zoning line to include your property into IB so you could have the standalone beauty salon.

MS. GRABEK: Right.

CHAIRMAN SCALZO: We're really hitting the same circumstances here today that we did almost ten years ago with the reasons why you need to prove a use variance. As I mentioned, the use variance was not granted nine and a half, ten years ago, but you ended up getting the zoning line moved one more lot to include you.

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As I say, it's very difficult -- in my time, in ten years at the Zoning Board of Appeals here, I think we've only granted a handful of use variances. It's an uphill climb. I'm not saying it can't be achieved. I just wanted to at least inform you of that.

I'm going to now talk to the Members of the Board, you're going to be able to comment along the way, and then we're going to open it up to the members of the public.

Mr. Eberhart?

MR. EBERHART: Can I defer? The use variance, I'm not quite clear on it.

CHAIRMAN SCALZO: Okay. That's fine.

Mr. Hermance?

MR. HERMANCE: So this is on your property, you said, your friend's chickens?

MS. GRABEK: Yes.

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MR. HERMANCENCE: How many chickens?

MS. GRABEK: One died and I only have five left. When they're gone -- they're going to live until they die, and I won't have any more. It's just my friend's pet. She have to let go. She couldn't afford the house anymore. She gave it back to the bank and now she's traveling to Greece. She's not there anymore. I tried to help her.

CHAIRMAN SCALZO: We understand. Thank you.

Mr. Hermance, is that all you've got here?

MR. HERMANCENCE: Yes.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: Well --

CHAIRMAN SCALZO: I'm going to let Counsel speak after we hit it.

MR. BELL: Doesn't it require 2 acres?

CHAIRMAN SCALZO: Well --

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MR. DONOVAN: This is in the IB Zone. It's not permitted at all. The other application was in the AR Zone where it is permitted, but you need 2 acres.

CHAIRMAN SCALZO: And they had 1.

MR. BELL: They had 1. Right.

CHAIRMAN SCALZO: Not as big a reach.

MR. BELL: No. I drove by there. I went in the back and looked at it. I have no comments.

CHAIRMAN SCALZO: How about Mr. Masten?

MR. MASTEN: I was a little concerned, and then I realized it's possibly a gift. I was going by what the law was reading. Right now I have nothing.

CHAIRMAN SCALZO: Okay. That's fine.

If I could, Counsel, to put you on the spot, can you help out Mr.

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Eberhart with distinguishing the difference between an area variance and a use variance with the criteria I had mentioned earlier and what challenges need to be overcome for that to occur?

MR. DONOVAN: Sure. Very briefly, there's four criteria for a use variance. I think in my seventeen years here, we granted one. The first criteria is there has to be -- I'll read it for you. "The applicant has to demonstrate that they can't get a reasonable return on their investment without the use variance." In other words, they have to show, by dollars and cents, proof. If you remember, we had -- I think it was for the solar panels. Yeah, the solar panels. They submitted a bunch of documentary evidence. They had information from an accountant, financials, but it wasn't good enough. We denied it. It went to

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court. The court said there was no appraisal, there was no before and after if you got the solar panels, if you didn't. There was a profit and loss statement, but it was insufficient to constitute dollars and cents proof. There has to be a demonstration by the applicant, through competent financial evidence, that she can't get any return on her investment on the property unless she's allowed to have chickens.

The other thing, the other criteria that I will emphasize, is the self-created nature. With an area variance, self-created is just one thing for you to consider. In a use variance context, the variance is -- I'm sorry. If the hardship is self-created. In other words, if you buy a property in a zone that you know, where you're imputed to have the knowledge that chickens are not allowed, the hardship is self-created

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and you can't get a use variance.

MR. EBERHART: Can I ask this question? If you are accepting the gift -- she said it was a gift. You accepted that gift, that's self-created?

MR. DONOVAN: One hundred percent.

CHAIRMAN SCALZO: Okay. Thank you, Counsel.

Ms. Grabek, what you just heard with discussions here is, by law we can't --

MR. DONOVAN: I was getting hand signals from the audience. I don't think we need to go to the other two.

CHAIRMAN SCALZO: You're seeking a use variance in this case. By law, we can't approve that with the information that you have provided us today.

MS. GRABEK: When the time -- the time that I want to have my house to be a hair salon, I was assured by everyone, because the survey guy, my

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survey, went into the land, and
that's the right one. The guy that
my land went into their land, it was
-- what do you call it -- into my
land. The survey guy make a mistake
and mine was right. It was actually
short by one. You have a difficulty.
You didn't bother to ask me how many
people are going to be cutting
people's hair. I don't know why you
have to follow the zone. Yards,
foot, it has to be exact. Because I
only one person cut hair. Then they
say, no, no, no one person, because
they know. I don't get it. Until I
get the lawyer and the lawyer came
in, told the Zoning do I have anybody
against, anybody here. Nobody
testify against me. You closed your
hearing. That's an example right
there. I know you follow the law,
but I follow the law, too. I ask for
permission. It's only going to be
temporary. When the chickens die,

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I'm not going to have any more.

CHAIRMAN SCALZO: And you have already -- you've certainly expressed that that's what your intent is.

MS. GRABEK: Right.

CHAIRMAN SCALZO: But we do need to follow in this case --

MS. GRABEK: You've been following that.

CHAIRMAN SCALZO: But we can't -- let's say, for example, that we were to grant you this use variance until the death of those chickens. We're going to get flooded with applicants that are going to give us time limits on whatever it is that they are seeking. We can't make exceptions based on the lifespan of a chicken.

Counsel, am I -- kick me when I'm going wrong here.

MR. DONOVAN: Let me just say this, Mr. Chairman. I don't know how the applicant overcomes the self-

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created nature of the hardship, A.
B, you don't have any financial
evidence, never mind competent
financial evidence. I'm not
unsympathetic, but the law is very
clear.

MS. GRABEK: The law last time
wouldn't let me have the hair salon
either.

MR. DONOVAN: Right. You got
the zone changed.

CHAIRMAN SCALZO: You got the
zone changed where you can
accommodate --

MS. GRABEK: I bring the lawyer
and then the lawyer tell them to
close the hearing now and I got it.
Why that can change and why cannot
this?

CHAIRMAN SCALZO: It's apples
and oranges in this case. You were
looking to put a --

MS. GRABEK: It's the same
thing. I have a pet. I have a dog.

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CHAIRMAN SCALZO: Jin, it's different.

MR. BELL: It's different.

CHAIRMAN SCALZO: At this point I'm going to open it up to any members of the public that wish to speak about this application. Is there anyone here that wants to speak about the application of Jin Grabek?

(No response.)

CHAIRMAN SCALZO: I'm going to look back to the Board here. Any other comments or questions?

MR. BELL: No.

MR. HERMANCE: No.

MR. EBERHART: No.

CHAIRMAN SCALZO: At this point, you, as the applicant, can still converse with the Board, but I'm going to look to the Board for a motion to close the public hearing.

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

MR. BELL: Second.

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CHAIRMAN SCALZO: We had a motion from Mr. Eberhart. We had a second from Mr. Bell. All in favor?

MR. EBERHART: Aye.

MR. HERMANCE: Yes.

MR. BELL: Aye.

MR. MASTEN: Aye.

CHAIRMAN SCALZO: Aye.

Those opposed?

(No response.)

CHAIRMAN SCALZO: Very good.

The motion carried. The public hearing is now closed.

Discussion on this.

Unfortunately, and I am very sympathetic to what it is that you're looking for. I happen to like chickens. The law will not allow us --

MS. GRABEK: Laws do change.

You know, in the future, according to the Bible, it will be short on the food because -- I saw all the development being built, built,

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built, built. There's no such thing as land anymore.

CHAIRMAN SCALZO: I don't disagree with you. What I'm going to recommend is, for you to pursue this any further, what you're looking to achieve can be best addressed by the Town Board, with them perhaps making a change to what's allowed in certain zones, or perhaps a zoning change -- zoning line change in itself. Again, that's a difficult thing. We, as this Board, cannot approve this application.

MS. GRABEK: Can I bring a lawyer, because last time I did? I had to pay the lawyer to come in and to get my hair salon. To open, to get it.

CHAIRMAN SCALZO: If that's what you're asking, then, you know, perhaps what we can do is we can -- the public hearing is closed, but we can defer a vote.

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MS. GRABEK: He came in and he said nobody testified against me, why don't you close the hearing. That's what he said. That cost me about \$1,000 that time, to have the lawyer come in and talk for me. They did close it and I got my hair salon.

CHAIRMAN SCALZO: After a zoning change. There was a zoning change that took place with the Town Board.

MS. GRABEK: But then how about this one, the same thing. It's a simple thing.

CHAIRMAN SCALZO: It may be simple, and it was simple with the application we had last month because they were in the AR District which allows chickens if you have 2 acres. The applicant had 1 acre, but they were in the correct zone.

MS. GRABEK: That's a lot of work.

MR. DONOVAN: Mr. Chairman, the

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public hearing is closed. If you want to -- you either need to vote within 62 days, unless there's an extension.

CHAIRMAN SCALZO: Ms. Grabek, I'll ask you if this is satisfactory to you. We can defer our vote this evening --

MS. GRABEK: Please.

CHAIRMAN SCALZO: -- and not vote. I would recommend that you reach out for professional assistance for the pursuit of this. So if that's what you're --

MS. GRABEK: Yeah. I want the public to vote for me.

CHAIRMAN SCALZO: Okay. I'll look to the Board for a motion to --

MR. DONOVAN: You don't really need to do anything. You can put it on next month's agenda. I just need you to track it so you don't exceed the 62 days.

CHAIRMAN SCALZO: Very good.

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J I N G R A B E K

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So that's it for today. We're done with this application. We'll see you next month.

MS. GRABEK: Then I bring a lawyer?

CHAIRMAN SCALZO: That's entirely up to you.

MS. GRABEK: Okay.

CHAIRMAN SCALZO: Very good. Thank you.

(Time noted: 7:15 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 9th day of August 2023.

Michelle Conero

MICHELLE CONERO

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

- - - - - X
In the Matter of

JOAN & ROBERT BOZEMAN

13 Bridle Path, Newburgh
Section 58; Block 2; Lot 3
R-2 Zone

- - - - - X

Date: July 27, 2023
Time: 7:15 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: JOAN & ROBERT
BOZEMAN

- - - - - X

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CHAIRMAN SCALZO: Our second applicants this evening are Joan and Robert Bozeman, 13 Bridle Path in an R-2 Zone, seeking an area variance of the rear yard setback to keep a 12 by 26 rear deck built by the previous owners.

Do we have mailings on that, Siobhan?

MS. JABLESNIK: This applicant sent out 67 letters. They did a lot of work.

CHAIRMAN SCALZO: That's quite a few.

Who do we have with us?

MR. BOZEMAN: I'm Robert Bozeman. This is my wife, Joan.

MS. BOZEMAN: I'm Joan Bozeman.

CHAIRMAN SCALZO: Very good. That's for our stenographer to record.

If I have captured exactly what it is that you're looking to do in that one sentence, we can just go

2 ahead and move through the Board. If
3 you want to add anything else, feel
4 free.

5 MR. BOZEMAN: No.

6 CHAIRMAN SCALZO: Very good.
7 This is, I'll call it, one of the
8 more simple applications. When we
9 get to the criteria later, we will
10 find that they did not self-create
11 this issue.

12 Anyway, I have no comments.
13 It's in kind with what the neighborhood
14 is.

15 I'm going to start down to my
16 left and ask Mr. Masten, do you have
17 any comments on this?

18 MR. MASTEN: No, I don't.

19 CHAIRMAN SCALZO: How about Mr.
20 Bell?

21 MR. BELL: Nothing.

22 CHAIRMAN SCALZO: It's pretty
23 straightforward.

24 Mr. Hermance?

25 MR. HERMANCE: Agreed.

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CHAIRMAN SCALZO: Mr. Eberhart?

MR. EBERHART: It's pretty simple. I just want to say, if I recall talking to you, you don't like chickens. Right?

MR. BOZEMAN: I don't have any. We have Chihuahuas.

CHAIRMAN SCALZO: They don't like chickens either.

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

MR. BREYER: Sam and Scarlet Breyer. We're the neighbors just to the right. We just want to say we support the application.

CHAIRMAN SCALZO: Thank you very much.

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

(No response.)

CHAIRMAN SCALZO: No. Very good. I'll look to the Board one more

2 time.

3 MR. BELL: No.

4 MR. EBERHART: No.

5 MR. HERMANCE: No.

6 MR. MASTEN: No.

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

10 MR. MASTEN: I'll make a motion
11 to close the public hearing.

12 MR. EBERHART: I'll second it.

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

17 MR. EBERHART: Aye.

18 MR. HERMANCE: Aye.

19 MR. BELL: Aye.

20 MR. MASTEN: Aye.

21 CHAIRMAN SCALZO: Aye.

22 Those opposed?

23 (No response.)

24 CHAIRMAN SCALZO: Nothing.

25 This is a Type 2 action under

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SEQRA. Correct, Counsel?

MR. DONOVAN: Correct, Mr. Chairman.

CHAIRMAN SCALZO: I just like to hear you say it.

We'll go through the area variance criteria and discuss the five factors which we are weighing, the first one being whether or not the benefit can be achieved by other means feasible to the applicant. It's already up. It's there. They didn't make it, somebody made it for them.

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

MR. BELL: None.

MR. HERMANCE: No.

CHAIRMAN SCALZO: The third, whether the request is substantial. Perhaps by the numbers it may be considered substantial, but it's pre-

2 existing. It's been there and
3 doesn't seem substantial when you're
4 looking at it.

5 The fourth, whether the request
6 will have adverse physical or
7 environmental effects.

8 MR. MASTEN: No.

9 CHAIRMAN SCALZO: The fifth,
10 whether the alleged difficulty is
11 self-created, which is relevant but
12 not determinative. In this case it
13 is not self-created. They purchased
14 it that way.

15 So, having gone through the
16 balancing tests of the area variance,
17 does the Board have a motion of some
18 sort?

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

21 MR. MASTEN: I'll second it.

22 CHAIRMAN SCALZO: We have a
23 motion from Mr. Bell and we have a
24 second from Mr. Masten.

25 Can you roll on that, please,

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Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Eberhart?

MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCENCE: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The motion is carried. The
variances are approved.

Continue to enjoy your deck.

MR. BOZEMAN: Thank you.

MS. BOZEMAN: Thank you all so
much.

(Time noted: 7:22 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 9th day of August 2023.

Michelle Conero

MICHELLE CONERO

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

- - - - - X
In the Matter of

ARTHUR MAMAZZA

20 Rockwood Drive, Newburgh
Section 109; Block 1; Lot 24
R-3 Zone

- - - - - X

Date: July 27, 2023
Time: 7:22 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: ARTHUR & NANCY
MAMAZZA

- - - - - X

MICHELLE L. CONERO
Post Office Box 816
Dover Plains, New York 12522
(845) 541-4163

2 CHAIRMAN SCALZO: Our next
3 applicant for this evening is Arthur
4 Mamazza, 20 Rockwood Drive in
5 Newburgh, seeking a variance to
6 increase the degree of nonconformity
7 of the side yard to keep an existing
8 nonconforming enclosed room.

9 Do we have mailings on this one?

10 MS. JABLESNIK: This applicant
11 sent out 54 letters.

12 CHAIRMAN SCALZO: You're not
13 the winner.

14 MR. MAMAZZA: One to ourselves.

15 CHAIRMAN SCALZO: They really
16 made you do that?

17 MR. MAMAZZA: We're on Dogwood,
18 which was within the 500 feet.

19 CHAIRMAN SCALZO: Very good. I
20 say this to all the applicants
21 standing in front of us, I'm assuming
22 you are the Mamazzas.

23 MR. MAMAZZA: Arthur Mamazza.

24 MS. MAMAZZA: Nancy.

25 CHAIRMAN SCALZO: If I have

2 captured everything it is you're
3 looking to do in that one sentence
4 statement, fine. If you have
5 anything you'd like to add, please do
6 so.

7 MR. MAMAZZA: That's --

8 CHAIRMAN SCALZO: That's about
9 it?

10 MR. MAMAZZA: That's it.

11 CHAIRMAN SCALZO: These are
12 simple. I just like to talk.

13 I'm going to start on my right
14 with Mr. Eberhart. Do you have any
15 comments regarding this?

16 MR. EBERHART: No.

17 CHAIRMAN SCALZO: How about
18 you, Mr. Hermance?

19 MR. HERMANCE: Who enclosed the
20 screened porch? Was that done by you
21 or the previous owners?

22 MS. MAMAZZA: We had that done.
23 We had a permit. Dave Hensworth did
24 the original permit to put on the
25 screened-in porch. We wanted to move

2 from one season to three seasons, so
3 we put up walls and a roof.

4 MR. HERMANCE: You don't want
5 to sit out in the winter. That's the
6 only question I have.

7 CHAIRMAN SCALZO: Thank you,
8 Mr. Hermance.

9 Mr. Bell?

10 MR. BELL: So you only had a
11 permit for the screened portion but
12 not the enclosed portion. Correct?

13 MS. MAMAZZA: Correct. We
14 didn't think we needed one to just,
15 you know --

16 MR. BELL: Okay.

17 CHAIRMAN SCALZO: Mr. Masten?

18 MR. MASTEN: I have no questions.

19 CHAIRMAN SCALZO: I actually
20 have a question for Code Compliance.
21 Mr. Mattina, if you could, I'm
22 reading here that they had a permit
23 for the deck and the screened-in
24 porch previously.

25 MR. MATTINA: Yes.

2 CHAIRMAN SCALZO: And from what
3 I understand, they have not expanded
4 the limits of that any closer to any
5 property line. If it was a screened-
6 in porch before, now that the walls
7 are solid, is that where this
8 variance is coming from?

9 MR. MATTINA: Correct. That's
10 why it's increasing the degree.
11 They've added sheetrock, they've
12 added the siding, they've added
13 insulation. They made it a habitable
14 space instead of just a screened-in
15 room.

16 CHAIRMAN SCALZO: That code
17 really picks it, doesn't it?

18 MR. MATTINA: Yes, it does.

19 CHAIRMAN SCALZO: Wholly
20 smokes. So they're 11 feet as
21 opposed to 15 feet. They didn't go
22 to 10 feet. It's just --

23 MR. MATTINA: Correct. That's
24 why it's increasing the degree, not
25 creating a new.

2 CHAIRMAN SCALZO: The screens
3 are screens. They must have been
4 supported in some way. The sheetrock
5 and insulation makes this --

6 MR. MATTINA: You turn a
7 screened-in porch into habitable
8 space.

9 CHAIRMAN SCALZO: I just want
10 to be clear.

11 MR. MAMAZZA: I'm sorry. The
12 outside of the screened-in porch is
13 the same.

14 MS. MAMAZZA: There's no heat
15 out there.

16 MR. MAMAZZA: There's no heat.
17 It was texture 1-11 that was there
18 originally when it was permitted. We
19 simply put up sheetrock on the inside
20 and windows where the screens were.

21 CHAIRMAN SCALZO: I think I
22 know where we're going here. I'm
23 much more comfortable now, because I
24 was scratching my head on this
25 myself. Mr. Mattina is always a

2 wealth of information, and he didn't
3 let me down again. I think we've
4 been through all of that.

5 Is there anyone here from the
6 public that wishes to speak about
7 this application? Mr. Fetter.

8 MR. FETTER: Bill Fetter,
9 Rockwood Drive. I'm just curious if
10 the structure has been rated or
11 evaluated structurally by an
12 engineer? I don't know if it's --
13 it's behind a fence. You can't see
14 it. It's elevated.

15 CHAIRMAN SCALZO: I saw it
16 myself. Mr. Fetter, I am going to
17 defer that. Should a variance be
18 granted, it becomes Code Compliance's
19 responsibility to have evaluations
20 done of any structure to ensure its
21 compliance with --

22 MR. MATTINA: I think we
23 already have an engineer's letter in
24 the file for the room being enclosed.

25 MR. FETTER: With the new added

2 load?

3 MR. MATTINA: Yes.

4 CHAIRMAN SCALZO: Very good.

5 Thank you.

6 MR. FETTER: Oh, the soffits?

7 MS. MAMAZZA: They're fixed.

8 MR. MAMAZZA: We had our guy do
9 it.

10 MS. MAMAZZA: He replaced it
11 and it's all cleaned up.

12 CHAIRMAN SCALZO: Is there
13 anyone else from the public that
14 wishes to speak about this application?

15 (No response.)

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

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

21 MR. MASTEN: Second.

22 CHAIRMAN SCALZO: I think we
23 had a motion from Mr. Bell, and I
24 think we had a second from Mr. Masten.
25 I think he beat you to it.

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MR. EBERHART: Yes, he did.

CHAIRMAN SCALZO: All in favor?

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

CHAIRMAN SCALZO: Aye.

Those opposed?

(No response.)

CHAIRMAN SCALZO: All right.

So again, this is a Type 2 action under SEQRA. Correct, Counsel?

MR. DONOVAN: Correct, Mr. Chairman. You just like to hear me say correct, Mr. Chairman.

CHAIRMAN SCALZO: I don't get that a lot.

We're going to go through the balancing tests again, the first being whether or not the benefit can be achieved by other means feasible to the applicant. This is unique to me. I would say no because it was exactly where it was before with wind

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blowing through it. Now the wind
doesn't blow through it.

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

MR. BELL: No.

MR. EBERHART: No.

MR. HERMANCE: No.

MR. MASTEN: No.

CHAIRMAN SCALZO: No.

The third, whether the request
is substantial. Well, no. No more
substantial than the original one was.

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

MR. BELL: No.

MR. EBERHART: No.

MR. HERMANCE: No.

MR. MASTEN: No.

CHAIRMAN SCALZO: Only for the
squirrels.

The fifth, whether the alleged

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difficulty is self-created, which is relevant but not determinative. It's been up forever. It's just enclosed now as opposed to having windows.

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

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

MR. HERMANCE: I'll second.

CHAIRMAN SCALZO: We have a motion for approval from Mr. Eberhart. We have a second from Mr. Hermance.

Can you roll on that, please, Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Eberhart?

MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

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MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The motions are approved. The
variances are granted. Continue to
enjoy your three-season room.

MR. MAMAZZA: Thank you.

MS. MAMAZZA: Thank you.

(Time noted: 7:28 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 9th day of August 2023.

Michelle Conero

MICHELLE CONERO

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

- - - - - X
In the Matter of

CHRIS TIMMONS

16 Saratoga Road, Newburgh
Section 19; Block 5; Lot 9
R-2 Zone

- - - - - X

Date: July 27, 2023
Time: 7:28 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: CHRIS TIMMONS

- - - - - X

MICHELLE L. CONERO
Post Office Box 816
Dover Plains, New York 12522
(845) 541-4163

2 CHAIRMAN SCALZO: Our next
3 applicant this evening is Chris
4 Timmons, 16 Saratoga Road in
5 Newburgh, seeking an area variance of
6 the rear yard to build a 16 by 21
7 rear deck.

8 Do we have mailings on this
9 one, Siobhan?

10 MS. JABLESNIK: This applicant
11 sent out 43 letters.

12 CHAIRMAN SCALZO: You're not
13 the winner. You could be a winner.

14 MR. TIMMONS: I'm not worried
15 about winning that one.

16 CHAIRMAN SCALZO: Again, a
17 single sentence on what it is. I
18 actually drove past your place forty
19 minutes ago. You have a bunch of
20 stuff, lumber out in the front yard,
21 a bunch of holes in the backyard.
22 It's almost as if you're anticipating
23 we're going to say yes. You know
24 what's nice is you're here asking for
25 permission rather than forgiveness,

2 which is what most people come in to
3 do.

4 So having captured that one-
5 sentence narrative, do you have
6 anything else you want to add?

7 MR. TIMMONS: I do not.

8 CHAIRMAN SCALZO: All right.
9 Siobhan went over the mailings with
10 me.

11 I'm going to start with Mr.
12 Masten.

13 MR. MASTEN: I have no questions.

14 CHAIRMAN SCALZO: Were you in
15 here a couple years back for another
16 variance?

17 MR. TIMMONS: No, sir.

18 CHAIRMAN SCALZO: This property
19 didn't have --

20 MR. TIMMONS: The original
21 owners asked for the same variance
22 that I'm asking for. You might
23 recognize the address.

24 CHAIRMAN SCALZO: I'd swear I
25 was there before.

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MR. TIMMONS: I have a copy of their application. It's the same exact variance I asked for.

CHAIRMAN SCALZO: Did we not grant it?

MR. TIMMONS: You did.

CHAIRMAN SCALZO: You're adding to it?

MR. TIMMONS: I'm adding to it.

CHAIRMAN SCALZO: I'm sorry. Mr. Masten, you had no comments?

MR. MASTEN: I have nothing.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: No. I'm good.

CHAIRMAN SCALZO: I mean, as I drove around, it looks, I'll say, screened pretty much from Saratoga.

Do you have any plans for any other screening around it? I mean, you're not here to talk about screening, you're here to talk about your deck. I'm just curious if you had any other plans for any type of foliage?

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MR. TIMMONS: It's the very last thing I'm doing to that house.

CHAIRMAN SCALZO: This deck is the very last thing?

MR. TIMMONS: Ever.

CHAIRMAN SCALZO: I said that when I bought mine.

MR. TIMMONS: I'll move before I do this again.

CHAIRMAN SCALZO: All right. The bulk table schedule requires a 40-foot minimum setback. That's not what we're having here. It looks like 21.42 is what it's going be. Nearly half. 18.58. That's some exact numbers.

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

MR. HERMANCE: No. I have no questions.

CHAIRMAN SCALZO: How about you, Mr. Eberhart?

MR. EBERHART: No questions.

CHAIRMAN SCALZO: Okay. So in

2 this case, I'm going to open it up to
3 any members of the public that may
4 want to discuss or comment on this
5 application.

6 (No response.)

7 CHAIRMAN SCALZO: It doesn't
8 look that way.

9 I will, in that case, look to
10 the Board for a motion to close the
11 public hearing.

12 MR. HERMANCE: I'll make a
13 motion to close the public hearing.

14 MR. EBERHART: I'll second it.

15 CHAIRMAN SCALZO: We have a
16 motion from Mr. Hermance. We have a
17 second from Mr. Eberhart. All in
18 favor?

19 MR. EBERHART: Aye.

20 MR. HERMANCE: Aye.

21 MR. BELL: Aye.

22 MR. MASTEN: Aye.

23 CHAIRMAN SCALZO: Aye.

24 Those opposed?

25 (No response.)

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CHAIRMAN SCALZO: Hearing none, we're going to move on. Again, this is a Type 2 action under SEQRA?

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

CHAIRMAN SCALZO: Thank you. You're making my day, Counselor.

All right. The first one being whether or not this benefit can be achieved by other means feasible to the applicant. He could not do it, but the benefit that he's seeking couldn't be achieved that way.

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

MR. BELL: No.

MR. EBERHART: No.

MR. HERMANCE: No.

MR. MASTEN: No.

CHAIRMAN SCALZO: It doesn't appear so. At that point your deck will be substantial, comparatively

2 speaking. It's just going to run the
3 entire length of the back of the
4 house.

5 MR. TIMMONS: It's only about 6
6 feet further out than the current
7 deck is. It's almost no difference
8 to what I already have.

9 CHAIRMAN SCALZO: The third,
10 whether the request is substantial.

11 What type of decking are you
12 putting on there?

13 MR. TIMMONS: Fiberon.

14 CHAIRMAN SCALZO: There's going
15 to be spaces. You're not going to
16 capture the water and send it in any
17 one direction, a stream or anything.
18 You're going to allow it to flow
19 through the deck. I'm thinking of
20 the environmental impacts there. I
21 want it to absorb into the ground.
22 Replenish.

23 I'll move on to the fifth,
24 whether the alleged difficulty is
25 self-created, which in this case it

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is. That's relevant but not
determinative.

So having gone through those
balancing tests, does the Board have
a motion of some sort or any
conditions it may want to impose?

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

MR. MASTEN: I'll second it.

CHAIRMAN SCALZO: We have a
motion for approval from Mr. Bell.
We have a second from Mr. Masten.

Roll on that please, Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Eberhart?

MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The motion is carried. The

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variances are approved. You were the winner.

MR. TIMMONS: Thank you, guys.
(Time noted: 7:35 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 9th day of August 2023.

Michelle Conero

MICHELLE CONERO

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

- - - - - X
In the Matter of

CASTLE USA CORP/JULY 4EVER

382 Rock Cut Road, Walden
Section 11; Block 1; Lot 60.2
R-2 Zone

- - - - - X

Date: July 27, 2023
Time: 7:35 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVES: GERALD JACOBOWITZ,
MARCIA JACOBOWITZ, VINCENT ESPOSITO &
ANTHONY ESPOSITO

- - - - - X

MICHELLE L. CONERO
Post Office Box 816
Dover Plains, New York 12522
(845) 541-4163

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CHAIRMAN SCALZO: Moving on to our last new applicant for this evening, which is Castle USA Corp/ July 4Ever, 382 Rock Cut Road. They are seeking an interpretation of the Zoning Board of Appeals' decisions from November 10th of 1982, September 25th of 2003 and March of 2004, and an appeal of Code Compliance's notice of disapproval dated June 9th of 2023.

Do we have mailings on this, Siobhan?

MS. JABLESNIK: Are you ready? One. One.

CHAIRMAN SCALZO: Because that property is so deep in that big lot.

MS. JABLESNIK: I was so excited to say that.

CHAIRMAN SCALZO: Did they mail it to themselves? Probably.

MS. JABLESNIK: It was whoever was outside.

CHAIRMAN SCALZO: This one is the thickest of the applications this

2 evening. I'm sure there's going to
3 be quite a bit of discussion on this.

4 If you could just start with
5 introducing yourself to us and then
6 give us the narrative behind why
7 we're here.

8 MR. JACOBOWITZ: Thank you, Mr.
9 Chairman. My name is Gerry
10 Jacobowitz. I'm an attorney in
11 Walden, New York. My partner, Marcia
12 Jacobowitz, is here as well. This is
13 Mr. Vincent Esposito who is the
14 principal, the applicant, and in the
15 audience is his brother, Anthony.

16 This is an unusual application,
17 I think. I've been doing this for a
18 few years, and this is something that
19 was fairly new to me.

20 I understand that you all went
21 out to the property, so I think I
22 should commend you for being able to
23 get there and get back and having
24 found it, because it's ideally
25 located for this kind of use.

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The Code Enforcement folks issued notices to us. They were summarized in one notice. There are six items. What I've tried to do is deal with them in three groups.

The first group is the use of the existing mobile home on the property that was approved in 2002. The Code Enforcement folks think it's a modular home or a manufactured home. It's neither. It's a mobile home. It was expressly asked for in 2002 and granted. In the records of the Building Department, they keep talking about it as a manufactured home and/or a modular home. That's really not accurate at all. It's a mobile home. It's being used as a residence and a home office. Under your zoning, this is in an R-2 Zone, which is a residential zone, and a residence is permitted. If it's being used as a residence, we don't need a variance. We're using it the

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way that the zoning requires, and that's the way it is being used, with a home office that is accessory to the main use of the property, which is storage and vending of fireworks materials.

Your zoning code has a provision that allows a caretaker who is required to -- who is working at the property but required to live in the home. That can be done under your zoning. So that's an alternate theory on why this mobile home should be allowed to be used partially as a residence and partially as an office.

The second group of things involve conditions that we don't support. The unusual part of it is, we're going to be asking you to find that they're not allowed. What are they? One is that when this was approved originally, it was for class C fireworks. It has been used for class B fireworks by someone, and

2 that is not allowed as we read the
3 variances that have been granted to
4 this property over the years. You
5 say, well, what's the difference
6 between a B and a C. B is much more
7 regulated, more dimensional
8 requirements, more operational
9 requirements. We're not interested
10 in being a class B. We're very happy
11 to be a class C fireworks site.

12 So the question before you is,
13 can this be used as a class B
14 fireworks vending and storage facility.
15 We're suggesting to you that we don't
16 want it, we don't need it, but we
17 need somebody to say that, that it's
18 not usable for class B.

19 The other two things involve
20 structures. One is a modular used as
21 an office. The other is a dome-
22 shaped, fabric-roofed storage
23 building. Neither of those ever were
24 approved by your Board. The original
25 approval in 1982 expressly says there

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can be no structures on the property that have not been approved by your Board. Those two structures are there and they shouldn't be there. We don't want them there. The issue is, is that a violation, because, if it is, then we have a basis on which to remove them. We can't remove them without a definitive statement that they're not allowed. We don't want them, we don't need them, and we want them removed from the property. We will take whatever steps are necessary to do that if there's a finding by you that those buildings are not appropriately there.

The third group are two items that deal with operational conditions. They're somewhat confusing and ambiguous, because the variances that were granted never got into the level of detail that is needed to regulate accessory uses to a main use. For example, tractor trailers, cargo

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boxes, exterior storage, those kinds of things were never addressed in the use variances that were granted. We want to have the operations there done in a more disciplined way, and for that purpose we are looking at getting a site plan done that we can then designate the areas for accessory uses that are accessory to the main use, which, right now, there is no definitive determination about that. We would then be able to regulate this site much better than we can now. We need to have some discipline. We're willing to accept it and we're willing to propose how the accessory uses for this property can be located on the property in the proper manner.

So those are the three categories of things that are before you. What I would hope to be able to get is a determination that the mobile home can be used as a home and as an

2 office if the home is occupied by a
3 principal of the company who is
4 employed by the company on the site.
5 That's what Mr. Esposito had been
6 doing before. The issues had come up
7 with your Building Department that
8 that's not allowed because of all the
9 comments I've already made. I don't
10 have to repeat those. They're in the
11 papers in more detail.

12 The second thing is we want to
13 have a determination that the two
14 buildings that are there, that --
15 the structures, rather. The two
16 structures. One is the modular
17 office, the other is the dome-shaped
18 storage building. That those have
19 not been approved by you, your Board,
20 your predecessor Boards, and you're
21 not approving them now; therefore,
22 those should be eliminated.

23 The class C fireworks I think
24 I've covered already. We don't need
25 class B. Class B is a whole other

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level of exposure, of issues, of security. We don't need that. We only need to be the class C. We don't believe the approval variances have given us the broad right to do anything there with fireworks or explosives. We think it's limited to class C, and we're willing to live with that part of it.

The last part, the cargo and the trailers, I'd like to defer on that and not ask for a formal interpretation of whether it's an accessory use so that we can come back in with a plan that is going to indicate where those uses will be as accessory to the main use.

I've read the three variances quite frequently now. The Board granted the approvals. They asked a lot of good questions. They got the answers. They took action and approved, but it wasn't detailed enough for our purposes, and, I

2 believe, for your purposes and the
3 purposes of the Code Enforcement
4 people.

5 CHAIRMAN SCALZO: Thank you
6 very much, sir, --

7 MR. JACOBOWITZ: Yes, sir.

8 CHAIRMAN SCALZO: -- for that
9 comprehensive narrative. I'm going
10 to apologize already, because I had
11 asked Siobhan early in the week to
12 send me the meeting minutes from
13 1982, the one from the `90s and the
14 one from later. I did get through
15 them at least once, but I'm the kind
16 of guy that needs to read things a
17 few times before they really sink in.
18 I might ask some questions that you
19 might think you should know that
20 because you read the stuff.

21 MR. JACOBOWITZ: I wouldn't
22 dare make such a comment.

23 CHAIRMAN SCALZO: I'm really
24 struggling here. Who is in control
25 of this property that you're asking

2 us to tell you what you can do with
3 your property? It's almost as if --
4 I'm having a tough time figuring out
5 why you need us to tell you that.

6 The other thing is, wouldn't
7 Code Compliance's determinations and
8 letters to the applicants, shouldn't
9 they be enough? Why would they need
10 the Zoning Board of Appeals to
11 reinforce their decision if that's
12 exactly what you're looking for, is
13 probably what you got from Code
14 Compliance?

15 MR. JACOBOWITZ: They withdrew
16 the notices of violation with respect
17 to these two buildings.

18 CHAIRMAN SCALZO: Luckily we've
19 got a plethora of Building Department
20 people here tonight.

21 MR. JACOBOWITZ: I think his
22 name is Mr. Campbell.

23 CHAIRMAN SCALZO: Mr. Campbell.
24 We have Canfield.

25 MR. DONOVAN: I think Mr. Campbell

2 is in the back of the room. I don't
3 want to give him up.

4 CHAIRMAN SCALZO: He wasn't
5 announced as being here.

6 MR. DONOVAN: Sorry about that.

7 MR. JACOBOWITZ: The confusion
8 is that -- let me answer your first
9 question, okay, because that will
10 give you a base for it. The property
11 is owned by Castle USA Corp. They
12 have leased it under a 99-year lease
13 that was entered into in 2000 with
14 July 4Ever as a tenant. July 4Ever
15 allowed another gentleman to come on
16 the property to operate a business,
17 and it has become a civil war with
18 that particular tenant. There's
19 litigation pending in Supreme Court,
20 Orange about the possessory rights of
21 this other tenant. The tenant is the
22 one who put up the dome-shaped
23 building and the modular office. We
24 know that that's a violation, and we
25 are telling him it's a violation, and

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we want him to remove them. He refuses. We need to have a very clear position that we're able to use for purposes of evicting him and removing those buildings. The way the record is, as you read through it, there's some confusion about what building and so on, because in 2004 the present tenant went and got permission to build a 3,000 square foot structure. It never was built. We don't want confusion about what's there now to be claiming that they got -- they're doing it under the permission that came in 2004, because it wasn't. That was a separate variance that was granted by your Board to allow the 3,000 square foot building for a different storage. We need a clear record here about what it is that is expected of us as the owner of this property, and with adequate clarity so we are able to go forward and accomplish what it is

2 that the use variance says and we
3 interpret it and, I believe, your
4 staff all interpreted it.

5 A notice of violation was
6 issued to the tenant, but then it was
7 withdrawn. For whatever reason, I'm
8 not sure.

9 CHAIRMAN SCALZO: Okay.

10 MR. DONOVAN: If I can, who was
11 the tenant?

12 MR. JACOBOWITZ: His name is --

13 MR. DONOVAN: Is it July 4Ever?

14 MR. JACOBOWITZ: July 4Ever is
15 the 99-year lease tenant. That's Mr.
16 Esposito.

17 MR. DONOVAN: The application,
18 just I want to make clear, shows
19 Castle USA/July 4Ever. Is that
20 correct?

21 MR. JACOBOWITZ: That's correct.

22 MR. DONOVAN: So the entity
23 that you would prefer to remove
24 certain things is not one of those
25 entities?

2 MR. JACOBOWITZ: Correct.
3 Correct. Third-party. It's a third-
4 party. Yes.

5 MR. DONOVAN: I don't know that
6 this Board has the authority to say
7 remove structures.

8 MR. JACOBOWITZ: No, you don't.

9 MR. DONOVAN: The Board may
10 have the authority to say it's not
11 consistent with the prior
12 determination, but I think that's
13 our --

14 MR. JACOBOWITZ: I agree with
15 you, Mr. Donovan. I don't expect
16 that this Board has the inclination
17 or the power to go ahead and remove
18 these buildings. We just need a
19 determination that these buildings
20 are not allowed under the use
21 variances that you have already given
22 us.

23 This is a noose around our
24 neck, that we have violations on this
25 property. We want to get rid of

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them. We're trying to be a good property owner and obey the terms of your resolutions and your approvals. We have trouble getting that done, and so the procedural step here, I think, probably, Mr. Donovan, is I'm asking you to interpret that we can't have these buildings. You'll make your determination whether we can have them or not. We're saying to you, if you say we can't have them, we're not angry.

CHAIRMAN SCALZO: Okay. Again I'm going to back up and apologize again, because I only read through the stuff briefly. A residential dwelling as an accessory use, this would be the first time I'm hearing of that.

MR. DONOVAN: The Board doesn't want the battle of the lawyers here. I do have another question for you. The original use variance back in '82 made a finding that the property was

2 not compatible for development in the
3 R-2 Zone and granted a use variance
4 for this commercial use. As I
5 understand it, you're now looking for
6 a -- well, I shouldn't say that. Are
7 you looking for a mixed use,
8 residential and commercial?

9 MR. JACOBOWITZ: Well, there
10 are different theories that allow the
11 residence to be there. One is it's a
12 permitted use under the R-2 Zone.
13 The second is that it's a caretaker's
14 habitation. A caretaker is required
15 to live on site as a condition of his
16 employment. He's living in that
17 mobile home. That's a second way of
18 dealing with it. The third is that
19 the resolution, I think it was the
20 '82, one of the conditions, I think
21 it was number 2, said that there had
22 to be security provided. Now,
23 there's been different ways of doing
24 the security.

25 CHAIRMAN SCALZO: There's been

2 video security mentioned in those
3 meeting minutes. There was also
4 double gate security, a gate at
5 Forest Road and then a gate as you
6 enter the compound.

7 MR. JACOBOWITZ: The connection
8 somehow telephonically is gone.
9 Things like that were tried,
10 unfortunately they didn't all work
11 out correctly, as we would have liked
12 them, as the way the Town staff was
13 happy with. Mr. Esposito started
14 living in the house as a matter of
15 providing security, because the
16 resolution says we have to provide
17 security. So that's the third
18 approach that would help justify
19 using the mobile home as a residence
20 and an office.

21 CHAIRMAN SCALZO: I had another
22 curious question, which is, typically
23 if we see a subdivision come in here,
24 New York State Subdivision Code
25 280-A, which, if you're leading to a

2 residential area, 280-A requires you
3 to have road frontage on the street
4 you're coming in from. I did read
5 the easement leading to the compound,
6 I'll call it, and they did have
7 provisions in there for it to some
8 day possibly be a Town road, because
9 there is now a second -- there's a
10 real dwelling that's off it, I don't
11 know, a few hundred feet in. I'm
12 confused as to how we are looking at
13 this isolated lot that's, in essence,
14 landlocked to have -- the easement
15 does allow access out, but do we meet
16 the criteria for 280-A, Counselor?
17 There's a whole bunch of stuff.

18 MR. DONOVAN: If it was before
19 us today, I would think they would
20 need a 280-A variance. I don't know
21 what happened forty years ago. I
22 don't know how this occurred. I
23 don't know if you know.

24 MR. JACOBOWITZ: How what
25 occurred, Mr. Donovan?

2 MR. DONOVAN: How this 6-acre
3 parcel is totally landlocked.

4 MR. JACOBOWITZ: Yeah.

5 MR. DONOVAN: So that's why the
6 Chairman raises the 280-A issue,
7 because it's accessed by easement,
8 not fee ownership, which is generally
9 required by 280-A.

10 MR. JACOBOWITZ: This maybe was
11 the father and the mother and the
12 midwife was the United States
13 Government. They acquired 6 acres
14 for these underground bunkers. The
15 road that's in there is under an
16 easement. That's all that they
17 needed, I guess, for their purposes.
18 When this was purchased by the
19 present owner, Castle USA, when they
20 bought it, they bought it with
21 whatever the right, title and
22 interest was that that parcel
23 enjoyed. So the 280-A -- you don't
24 need to deal with 280-A if it's an
25 accessory use to the main use.

2 CHAIRMAN SCALZO: The main use
3 being the --

4 MR. JACOBOWITZ: Fireworks.

5 CHAIRMAN SCALZO: -- storage of
6 the fireworks?

7 MR. JACOBOWITZ: Storage and
8 vending is what I believe the 1982
9 variance said.

10 CHAIRMAN SCALZO: Okay. And
11 then you had mentioned also earlier
12 there were different classes of
13 explosives there. B and C I believe
14 is what you said.

15 Now, regarding the -- back to
16 you're trying to get the other entity
17 out of there. Wouldn't ATF be able
18 to help you with that if they are
19 using a class of fireworks that are --

20 MR. JACOBOWITZ: Here's the
21 expert.

22 MR. VINCENT ESPOSITO: Not so
23 much. Basically --

24 CHAIRMAN SCALZO: It's Mr.
25 Esposito?

2 MR. VINCENT ESPOSITO: Vincent
3 Esposito. The ATF doesn't regulate
4 what the -- the Town would have to
5 say what's allowed. If the Town said
6 that there is no class B fireworks
7 allowed, then the ATF would come in
8 and tell the licensee that they would
9 have to remove that product or they
10 would give them a violation. It's
11 not something the ATF determines.
12 It's something that the Town determines.

13 CHAIRMAN SCALZO: Thank you. I
14 did see your name plastered all over
15 the meeting minutes from '82. You've
16 obviously been here for a long time.

17 MR. VINCENT ESPOSITO: Yes.
18 I've been living in a hotel for the
19 last two or three months, so I'm
20 hoping --

21 CHAIRMAN SCALZO: I might have
22 skimmed over it too quickly. I
23 didn't see in those meeting minutes
24 where it was defined what class of
25 fireworks were in there.

2 MR. DONOVAN: It was in the '82
3 variance.

4 MR. VINCENT ESPOSITO: It was
5 class C.

6 CHAIRMAN SCALZO: I apologize
7 for not really absorbing everything.
8 It's been a lot of reading for the
9 last few applications.

10 Mr. Hermance, go ahead.

11 MR. HERMANCE: Are there two
12 different fireworks operators on the
13 same premises?

14 MR. JACOBOWITZ: Yes. The
15 tenant that we allowed on the
16 property is the one who is operating
17 there, his business, in addition to
18 Mr. Esposito's business, but he is
19 doing what I just described, and that
20 is the problem.

21 MR. HERMANCE: But neither
22 tenant is the actual owner? The
23 actual owner is --

24 MR. JACOBOWITZ: The actual
25 owner of record, the title is in

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Castle USA Corp. Mr. Esposito's company has a 99-year lease entered into in the year 2000 for the use and possession, occupancy of the property. They allowed this other user to come on the site, and that's what's created --

MR. HERMANCE: Do they have a lease, the other tenant?

MR. JACOBOWITZ: Originally, yes, but it expired, I think, five years ago.

MR. BELL: So why can't they evict them?

CHAIRMAN SCALZO: That's not us. That's a civil matter.

MR. BELL: We don't do that. I was just asking. Just get rid of them and make it easy.

MR. JACOBOWITZ: We're trying.

CHAIRMAN SCALZO: I'm going to jump back and throw a what-if situation at you. What if Mr. Esposito actually took me out, didn't

2 want me to muck up my truck and hit a
3 bunch of potholes, but I said, gee,
4 this is a really long driveway, it's
5 nine-tenths of a mile long. I want
6 to say the fire code.

7 I'm going to look over to our
8 Code Compliance guys. How many
9 turnarounds would you need in almost
10 a 5,000 foot driveway for emergency
11 services? Like I say, my mind is
12 filled with --

13 MR. JACOBOWITZ: There's a
14 risk, of course, in any business that
15 somebody can get hurt.

16 CHAIRMAN SCALZO: Especially
17 one with fireworks.

18 MR. JACOBOWITZ: There's
19 nothing particularly inherently
20 dangerous about someone living in the
21 house. All day long there are people
22 working there. If there were
23 dangers, those dangers are there
24 twenty-four hours a day. They don't
25 get accentuated after 5:00 when the

2 employees have all gone home and
3 there's just one person living in the
4 house on the premises. There's no
5 higher risk --

6 CHAIRMAN SCALZO: Okay.

7 MR. JACOBOWITZ: -- of a
8 condition that would require
9 emergency services because someone
10 lives in the house. Those dangers
11 and those issues are there all day
12 long, and they deal with them all day
13 long.

14 CHAIRMAN SCALZO: Right.
15 Perhaps it was out of the ability of
16 the Zoning Board of Appeals to act on
17 it. It was just a thought, a safety
18 concern as I was driving.

19 Another concern, which is not
20 relative to the application, is the
21 other tenant that's in the small box
22 there, if you're pulling into the
23 compound, on the right-hand side, the
24 one that's also -- is there a
25 bathroom in that trailer?

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MR. VINCENT ESPOSITO: Yes.

CHAIRMAN SCALZO: All right.

So the environmental concern would be unless they had a company that comes in and, you know, takes care of whatever it is that they flush, I did see a temporary setup that perhaps may not be to Health Department standards, which that's not yours. I know that's the tenant, or the other tenant that's in there. You know, I'm not sure if DEC is aware of any potential pollution that's going on.

MR. JACOBOWITZ: Mr. Esposito's use has been vetted for sewer and water compliance. I believe it was Vince Doce that was the engineer. There's a whole file here in the Town of all of what was done concerning water service, sewer service. Those were all things asked for back, I think, in '82. If not in '82, than in 2002. There's a whole pack of things here documenting that the

2 sanitary and potable water provisions
3 were made satisfactory to all
4 regulatory authorities.

5 CHAIRMAN SCALZO: Thank you.
6 Okay. I feel as though I've talked
7 enough.

8 I'm going to -- Mr. Masten,
9 there's a whole bunch to absorb here,
10 to the extent where I know I'm not
11 going to be able to fully grasp it
12 myself for this evening. Do you have
13 any questions at the moment?

14 MR. MASTEN: I remember back in
15 2002 or '03 when they had the fire
16 out there. I was in the department
17 when we got called there. We thought
18 we were going to hell when we were
19 going down that road. I knew that
20 the government had been there,
21 Steward Field, since the late '40s
22 with contamination and stuff stored
23 there in the bunkers. I didn't
24 realize what the magnitude of that
25 property was and how far back off the

2 main road it was. That's about it
3 right now.

4 CHAIRMAN SCALZO: Okay. I'm
5 just trying to -- the information is
6 just flowing here.

7 I'll tell you what. I'm going
8 to move on to Mr. Bell. Do you have
9 any questions, comments, observations?

10 MR. BELL: I'm absorbing all
11 this right now.

12 CHAIRMAN SCALZO: Sure. Thank
13 you.

14 Mr. Hermance, anything else?

15 MR. HERMANCE: So the other
16 tenant, if they have no lease
17 agreement -- it's probably beyond my
18 -- I have a hard time understanding
19 how they even remain there.

20 MR. JACOBOWITZ: There's a
21 proceeding pending to get rid of the
22 tenant. They have a very creative
23 attorney and have raised all kinds of
24 issues, some relevant, some not
25 relevant whatsoever, but enough of a

2 smokescreen that it needs to go
3 through the process and procedures of
4 a Supreme Court proceeding, which is
5 ongoing now. Hopefully it's going to
6 get resolved in a reasonable time.

7 What we're trying to do is to
8 show the Town and show the court that
9 we're doing whatever we should be
10 doing in order to be in compliance,
11 because that's really what the object
12 is of your regulations, the terms and
13 conditions of your approvals, what
14 the State's law is, what the Town's
15 law is. We want to be on the right
16 side of that so that in the Supreme
17 Court action, we can just very
18 confidently say we're doing what
19 needs to be done, the tenant is not
20 doing what he's supposed to be doing.
21 The ex-tenant.

22 MR. HERMANCIE: The current law,
23 Counselor, does that allow the class B?

24 CHAIRMAN SCALZO: The variance
25 allowed the class B.

2 MR. HERMANCE: The variance
3 does.

4 CHAIRMAN SCALZO: The '82
5 variance defined the class.

6 MR. DONOVAN: It was class C.

7 MR. HERMANCE: But is class B
8 -- they brought up --

9 MR. DONOVAN: That's something
10 you have to interpret.

11 I just want to kind of get back
12 to a little bit of focus. Jerry,
13 I'll just tell you what I'm having a
14 hard time kind of getting straight in
15 my head. As I read through stuff
16 that happened starting when I was in
17 college, believe it or not. It seems
18 like only yesterday.

19 MR. JACOBOWITZ: You have a
20 good memory if you can remember back
21 that far.

22 MR. DONOVAN: A variance was
23 issued to allow the storage of
24 fireworks --

25 MR. JACOBOWITZ: And vending.

2 MR. DONOVAN: -- and vending.
3 You got a use variance. That becomes
4 a permitted use. I see where Code
5 Compliance talks about expansion of a
6 nonconforming use. That's not what
7 this is. This is a use variance, so
8 it becomes a permitted use for that
9 storage and vending.

10 What I can't get my arms around
11 is, now I think you're asking for a
12 mixed use that's residential. I
13 don't see a residential component in
14 any of the prior determinations. The
15 question in my mind is whether you
16 need an additional use variance for
17 the mixed use residential and the
18 storage and vending. I put that out
19 there. As the Chairman said, there's
20 an awful lot of material. You can
21 tell that there's a lot of stuff we
22 read, there's a lot of stuff we don't
23 know. The Board is never going to
24 appreciate it because no one on this
25 Board was here in '82 and 2002. I

2 read names, blasts from the past.
3 The late Steve Reineke was here, Jim
4 Sweeney now retired. Lots of people
5 I knew way back when that I miss now.
6 That's an issue that I have that I
7 put out there for how ever you think
8 you can address that.

9 MR. JACOBOWITZ: That's a good
10 point. I didn't think of that. That
11 would be a mixed use. I considered
12 it to be an accessory use and,
13 therefore, it wouldn't be a mixed
14 use.

15 I think what you'd like me to
16 do, probably, is hone in on the
17 distinction between those.

18 MR. DONOVAN: If you and your
19 staff can do that.

20 MR. JACOBOWITZ: My staff.
21 That's a good point.

22 CHAIRMAN SCALZO: Mr. Bell, you
23 looked like you had something else,
24 or did Counsel just cover that?

25 MR. BELL: I'm good.

2 CHAIRMAN SCALZO: Mr. Eberhart?

3 MR. EBERHART: I'm just trying
4 to figure out why you can't evict the
5 people.

6 MR. BELL: That's my point
7 right there.

8 MR. EBERHART: The owner of the
9 property, the lease is up.

10 CHAIRMAN SCALZO: 66 acres in
11 the middle of 150 acres. We have two
12 military guys here.

13 MR. VINCENT ESPOSITO: I'm just
14 trying to get my house back. That's
15 all I'm trying to do.

16 MR. BELL: It seems like you
17 want to do what's right.

18 MR. VINCENT ESPOSITO: Yes.

19 MR. BELL: You have a bad seed
20 on the property that's not doing what
21 they're supposed to be doing that's
22 causing issues here.

23 Again, I go back to saying the
24 same thing. Again, why can't they
25 just be evicted? We're not here to

2 evict. We don't have the right. I'm
3 not saying we. I'm just saying why
4 can't they be. Someone else -- the
5 owners of the property that gave you
6 the 99-year lease should go in and
7 say your time is up, go.

8 MR. VINCENT ESPOSITO: We're
9 trying to do that.

10 CHAIRMAN SCALZO: Mr. Bell, I
11 appreciate everything you're saying.
12 We're kind of off our authority here.

13 MR. BELL: I'm saying he's
14 looking for us to --

15 CHAIRMAN SCALZO: Confirm what
16 is allowed and what is not allowed.

17 MR. BELL: Exactly. Yes,
18 that's where I'm going. It just took
19 me a little while to get there. I'm
20 setting it up.

21 MR. EBERHART: Wouldn't this
22 not be a Code Compliance issue?

23 CHAIRMAN SCALZO: Luckily we
24 have not one, but two Code Compliance
25 folks. I don't want to put you on

2 the spot, Mr. Canfield, but it's
3 pretty rare we get to see you here.
4 I'm happy to see you tonight.
5 Usually we get Mr. Mattina.

6 MR. DONOVAN: We're always
7 happy to see Joe.

8 CHAIRMAN SCALZO: Is there
9 anything you can offer us on this?
10 Perhaps enlighten us.

11 MR. CANFIELD: Yes. Thank you
12 for remembering me.

13 I do have a statement I would
14 like to make and have entered into
15 the record, if the Chairman would
16 allow it.

17 CHAIRMAN SCALZO: Please.

18 MR. CANFIELD: The Code
19 Compliance Department's primary
20 objective and duty is to protect the
21 public safety. In making decisions,
22 the ZBA must typically also consider
23 detriments to the health, safety and
24 welfare of the neighborhood and
25 community as balanced with the

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benefits of the applicant. Given the risks posed by explosive materials, safety likely may play a very important role in the Board's prior decisions granting a variance, an amended variance for the subject property which are the subject of tonight's hearing.

One of the aspects of the storage operations that have been conducted at the site, pursuant to the previously granted variance and amended, has been the disposal of unused and spent fireworks products. In that regard, I am asking the Board to request the applicant submit documentation regarding the site's condition, including any on-site disposal.

I ask that the Board consider whether the residential and retail uses which the applicant is requesting the Board to interpret to have been part of its prior variance

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determinations are compatible with the site conditions that may have arisen from the operations described in this document.

Along with that, in response to Mr. Jacobowitz' summation, the '82 variance, which I have in front of me, as well as the Board Members do also, it states, "The application of East Coast Novelty, Incorporated seeks a use variance to permit the storage of fireworks upon premises located at Rock Cut and East Rock Cut Road in an R-2 Zone in the Town of Newburgh." It does not mention vending at all. The reason why retail is included in this statement is that on site there is retail sales going on, which also circles back to Dave's statement that this may be very much applicable to a mixed use site, being storage, residential and retail sales.

I ask the Board to take all of

2 that into consideration in making
3 their determination.

4 Also, if I might ask Joe
5 Mattina to explain the zone and the
6 table -- the bulk use table
7 requirements with respect to
8 accessory use and a residence
9 regarding this.

10 MR. MATTINA: The current zone
11 now is an R-1, not an R-2 as it was
12 in 1982. That would put us on bulk
13 table schedule 3. Column A, separate
14 living quarters permitted within the
15 structures for person employed on the
16 premises. It only allows it -- a
17 single-family dwelling, a multi-
18 family dwelling, cluster development,
19 membership clubs or places of worship
20 are the only places that are
21 permitted to have a separate living
22 person employed on the premises.

23 CHAIRMAN SCALZO: Thank you,
24 Mr. Mattina.

25 MR. CANFIELD: In addition,

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with respect to the comments made regarding Mr. Doce's report to the Zoning Board in the 2000 edition, I believe it was, it was specifically stated that the septic system that is existing was for office use only, not residential. Okay. I believe that the order to remedy that was withdrawn with respect to the septic.

Again going back to the classification of the residential, again I'll ask Mr. Mattina to explain what is the determination of a trailer, mobile home and its permitted areas.

MR. MATTINA: In 1974 the United States Congress said any mobile home will now be considered a manufactured home. That's why we keep referring to them as manufactured homes. There's technically no such thing as a mobile home. The definition of a manufactured home is it's got to be

2 30 foot long, it's on a steel frame,
3 it has wheels, it's driven to the
4 site with a trailer. A modular home
5 is a -- the manufactured home is also
6 controlled by HUD, the Federal
7 Government. The modular homes are
8 controlled by the State of New York,
9 but they are one hundred percent
10 factory built dwelling units only.
11 There are no metal frames, there are
12 no wheels on them.

13 CHAIRMAN SCALZO: Do they have
14 a foundation?

15 MR. MATTINA: They're set on a
16 foundation. They're made in a
17 controlled environment. They're
18 trucked to the site and set on a
19 permanent foundation. Manufactured
20 homes, mobile homes are trailers with
21 wheels and steel frames.

22 CHAIRMAN SCALZO: Thank you,
23 Mr. Mattina and Mr. Canfield.

24 MR. JACOBOWITZ: There are a
25 lot of things that just came out that

2 we want to address, of course.

3 The first one, in the 1982
4 application, in the ZBA's decision,
5 paragraph 4, "The applicant proposes
6 to utilize the existing improvements
7 for storage of class C fireworks in
8 connection with its business of
9 vending." So that's in the paragraph
10 numbered 4 of the decision. I think
11 that addresses that. I didn't like
12 the tone of that because it sounded
13 like I was trying to mislead you in
14 some way. I don't think he meant it
15 that way, but I want to make sure you
16 understand, I didn't have any --

17 CHAIRMAN SCALZO: We read the
18 minutes. There's no vocal inflection.
19 We're just reading words.

20 MR. JACOBOWITZ: The words are
21 here.

22 Okay. Some of the other points
23 that he raises, we would like a
24 chance to respond to. I'm not sure
25 procedurally how you function when

2 the applicant has questions asked
3 that the applicant needs some time to
4 respond to.

5 CHAIRMAN SCALZO: How we would
6 address that is we vote to keep the
7 public hearing open so we can all
8 better understand what's going on
9 here. Unfortunately, what that does
10 to the applicant is it prevents them
11 from achieving whatever it is that
12 they're trying to achieve by an
13 additional month. I see where we're
14 going tonight, and I definitely think
15 that's going to happen.

16 MR. JACOBOWITZ: I have to
17 respond to Mr. Donovan's point, which
18 is something important. These
19 comments that have been made from the
20 staff, we want to try to deal with
21 that.

22 CHAIRMAN SCALZO: Very good.
23 Have we opened this up to the
24 public at this point?

25 MR. BELL: Not yet.

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CHAIRMAN SCALZO: I'll say the general presentation and our questions from the Board are at this time where they're at. I'm going to open this up to any members of the public that wish to comment or question this application.

(No response.)

CHAIRMAN SCALZO: Okay then. Looking back to the Board. I myself, I absolutely know I need to dig into the application deeper. What's going to help me tremendously is reading the meeting minutes from tonight, because Mr. Canfield, his statement there, there's a lot of information that's in that that we're going to look to have resolved before we can continue.

My take on this, gentlemen on the Board, is that we make a motion to keep the public hearing open to next month, when Siobhan is not here to really appreciate what's going on.

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

MR. EBERHART: Second.

CHAIRMAN SCALZO: We have a motion from Mr. Bell to keep the public hearing open.

MR. DONOVAN: And to continue the meeting to whatever the fourth Thursday is in August.

CHAIRMAN SCALZO: That is correct. So we have a motion and we have a second. All in favor?

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

CHAIRMAN SCALZO: Aye.

Those opposed?

(No response.)

CHAIRMAN SCALZO: All right. So folks, we're going to see you next month. Thank you very much.

MR. JACOBOWITZ: Thank you, Mr. Chairman. I would like to express my

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gratitude publicly to your able
secretary.

CHAIRMAN SCALZO: It wouldn't
happen without her.

MR. JACOBOWITZ: It's much
appreciated.

(Time noted: 8:20 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 9th day of August 2023.

Michelle Conero

MICHELLE CONERO

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

CLINTON DAUSWELL FOR BRIAN BARBERA
273 Route 17K, Newburgh
Section 90; Block 6; Lot 1
B Zone

----- X

Date: July 27, 2023
Time: 8:20 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: MICHAEL HENDERSON

----- X

MICHELLE L. CONERO
Post Office Box 816
Dover Plains, New York 12522
(845) 541-4163

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CHAIRMAN SCALZO: We are in the home stretch. We have one item held open from the June 2023 meeting. The applicant is Clinton Dauswell for Brian Barbera, 273 Route 17K in Newburgh. This is a Planning Board referral for area variances of the existing front yard setback and a 35-foot landscape buffer along Route 17K for a restaurant conversion.

The reason why this public hearing stayed open was that we -- I believe we did not hear back from the County yet. Is that correct?

MR. BELL: Correct.

CHAIRMAN SCALZO: Therefore, we did get a presentation from the applicant. I'm hoping we're beyond our time for the County. Did they have any show stoppers?

MS. JABLESNIK: No.

CHAIRMAN SCALZO: The public hearing is still open. At this point, you're the applicant's

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representative. We have the applicant here. He presented last time.

If you don't mind, how about giving us the Reader's Digest version of what we're doing here.

MR. HENDERSON: We're just converting a dry cleaners into a restaurant. It's an existing building. We are not doing any exterior work to the building besides adding a canopy. We just need those two variances to comply.

CHAIRMAN SCALZO: I have to back pedal a little bit. Just for the record, can you state your name?

MR. HENDERSON: Michael Henderson with Henessy Architects.

MR. DONOVAN: You still need to go to the Planning Board for site plan approval?

MR. HENDERSON: Yes.

CHAIRMAN SCALZO: You need to go back?

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MR. HENDERSON: We need to go back, yes.

CHAIRMAN SCALZO: I thought last time we asked some questions. Does anyone from the Board have any additional questions for this applicant?

MR. BELL: No.

MR. EBERHART: No.

MR. HERMANCE: No.

MR. MASTEN: No.

CHAIRMAN SCALZO: No.

Back to the public. I see we have Mr. Vega in the back. He wouldn't come here unless he has something to say.

MR. VEGA: I do enjoy coming here.

CHAIRMAN SCALZO: We do cool stuff. When there's a vacancy, I hope you apply.

MR. VEGA: Good evening, Chairman and Members of the Board. George Vega, 1 Arbor Drive.

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So last time, after the presentation, we did meet outside with the owner and consultant. We talked a little bit about my concerns. We spoke about the drainage issues, my concerns, and the screening issues.

I was just curious -- we sketched some berms and trees on paper. I was just curious if you guys put anything on paper for that?

CHAIRMAN SCALZO: Mr. Vega, hang on. You're going to have another opportunity when he has to go back to the Planning Board. They have a little more persuasion power than we do when it comes to berms and screening and everything like that. All we are here to talk about are the variances for the landscape buffer and the setbacks.

MR. VEGA: Understood. I guess my question now for the Board is, if you're going to grant this landscape

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buffer along 17K, pre-existing, they can't make it work, is it in the Board's power to, maybe in lieu of, supplement the rear yard landscaping which we know is an issue?

CHAIRMAN SCALZO: I had never thought of that. I'm not sure that we --

MR. VEGA: As a condition or a recommendation.

MR. DONOVAN: You can make -- you can impose reasonable conditions that are somehow related to the granting of the variance.

CHAIRMAN SCALZO: Being consistent, because when it comes to a landscape buffer on Route 17K, we actually had another application a few years back that we allowed that. We gave relief from that. Mr. Vega has a great point. Reasonable conditions.

I'll look to the applicant's representative here. Have you come

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up with potential screening and --

MR. HENDERSON: Yes. When we get to the Planning Board, we're going to do some screening in the back that we had talked about that was similar to the office building.

CHAIRMAN SCALZO: Very good. Should we get to the point where we're going to grant these variances, a condition of that approval would be, could be, I mean, there are five of us here. That is something that we're going to have the Planning Board certainly investigate.

MR. HENDERSON: Mm'hm'.

CHAIRMAN SCALZO: You're fine with that?

MR. HENDERSON: Yes. I met him out there. The landlord -- the owner of the property was on board with it.

CHAIRMAN SCALZO: Great.

MR. HENDERSON: He's on top of it.

CHAIRMAN SCALZO: If everybody

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is a big happy family in that neighborhood, it would be good. Very good.

Is there anyone else from the public here? Mr. Fedder.

MR. FEDDER: Bill Fedder, Rockwood Drive. I'm just curious. I'm not sure of the location. Could you give me a landmark?

CHAIRMAN SCALZO: I'm sorry. It is the entrance to Colden Park off 17K.

MR. FEDDER: Got it. Okay. Thanks.

CHAIRMAN SCALZO: Mr. Canfield.

MR. CANFIELD: Just one comment for Mr. Vega's benefit. The Planning Board has the option of having a public hearing or not. I'm not sure if they made that determination yet. For your benefit, if they do not have a public hearing, you may not have the opportunity to be heard at the meeting. Whatever communication

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you're having with the applicant and whatever is settled, you may want to put that in writing to the Planning Board, or perhaps address any questions in writing to the Planning Board.

MR. VEGA: I guess that's why if you can make it a condition of this approval, it's on paper.

CHAIRMAN SCALZO: Mr. Canfield, I believe that we can recommend to the Planning Board that they do hold a public hearing for this. They don't have to. We can recommend that they do.

MR. CANFIELD: That's the point I wanted to make.

MR. DONOVAN: Mr. Chairman, how about this. How about the condition of the approval is screening as deemed appropriate by the Planning Board?

CHAIRMAN SCALZO: That sounds very good to me.

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MR. DONOVAN: Whether there's a public hearing or not, that condition gets passed to the Planning Board.

CHAIRMAN SCALZO: At this point, Mr. Vega, you could give your own narrative with perhaps some sketches, or if you were to even work with the applicant's representative, and if that's the plan that makes it to the Planning Board, then I think everybody is going to be happy.

MR. DONOVAN: I can't imagine, if screening is proposed, the Planning Board will say no, we don't want that screening.

MR. HENDERSON: He wants everybody happy. They have our word that we'll do it.

CHAIRMAN SCALZO: I hope he's successful. I will try myself, when he's established, to check it out.

MR. CANFIELD: Given the location in the neighborhood, I've had some experience with the Planning

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Board, I can't imagine them not having a public hearing. Again, it is at their discretion. Just to make sure that your concerns get heard and addressed, that's why I suggest to do it in writing.

MR. VEGA: It's going to be a higher intensity use. I'm just trying to protect myself.

CHAIRMAN SCALZO: I understand. So does anyone else from the public wish to comment?

(No response.)

CHAIRMAN SCALZO: One last shot at the Board here.

MR. EBERHART: No.

MR. HERMANCE: No.

MR. BELL: No.

MR. MASTEN: No.

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

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

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MR. MASTEN: I'll second it.

CHAIRMAN SCALZO: We have a motion from Mr. Bell and we have a second from Mr. Masten. All in favor?

MR. EBERHART: Aye.

MR. HERMANCENCE: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

CHAIRMAN SCALZO: Aye.

Those opposed?

(No response.)

CHAIRMAN SCALZO: Very good.

This is also a Type 2 action under SEQRA. Correct, counsel?

MR. DONOVAN: For the final time tonight; correct, Mr. Chairman.

CHAIRMAN SCALZO: Thank you. It's the little things.

All right. So we're going to hit the area variance criteria, the first one being whether or not the benefit can be achieved by other means feasible to the applicant.

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Everything right now is pre-existing that's going on there.

Second, if there's an undesirable change in the neighborhood character or a detriment to nearby properties. Well, there may be, but they're looking to mitigate that with the conditions that we're going to impose upon this applicant.

The third, whether the request is substantial. Nothing is changing outside. They're going to spruce up the paved parking lot. I would say no.

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

The fifth, whether the alleged difficulty is self-created, which is relevant but not determinative. In this case, no, it is not self-created. They are pre-existing nonconforming conditions.

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Having gone through the balancing tests, the Board shall grant the minimum variance and may impose reasonable conditions. The reasonable conditions would be the screening, vegetation types, perhaps a berm. Some type of plan that would protect the contiguous adjoiner from any type of activity that may harm his way of living.

MR. VEGA: May I speak to the berm? The berm is really just to cut off the water and let it go where it's supposed to go. It's kind of a drainage.

CHAIRMAN SCALZO: Unfortunately I did close the public hearing, but I did hear you.

Having gone through the balancing tests, do we have a motion of some sort, with reasonable conditions perhaps?

MR. BELL: I'll make a motion for approval with the conditions of

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screening as deemed appropriate by
the Planning Board to include
landscape screening and proper
drainage.

CHAIRMAN SCALZO: Thank you,
Mr. Bell. So we have a motion from
Mr. Bell.

MR. HERMANCE: I'll second.

CHAIRMAN SCALZO: We have a
second from Mr. Hermance.

Can you roll on that, please,
Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Eberhart?

MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The motion is carried. The
variances are approved. Thank you

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very much.

Please work with Mr. Vega there.

MR. HENDERSON: Yes.

CHAIRMAN SCALZO: That concludes all the applicants for this evening.

The only other order of business would be the approval of the meeting minutes for last month.

MR. MASTEN: I'll make the motion.

MR. BELL: Second.

CHAIRMAN SCALZO: The motion was made by Mr. Masten and seconded by Mr. Bell. All in favor?

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

CHAIRMAN SCALZO: Aye.

I believe that concludes the business. I'll look for a motion to adjourn.

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MR. BELL: I'll make the motion
to adjourn.

MR. MASTEN: Second.

CHAIRMAN SCALZO: I have a
motion from Mr. Bell and a second
from Mr. Masten. All in favor?

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

CHAIRMAN SCALZO: Aye.

(Time noted: 8:34 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 9th day of August 2023.

Michelle Conero

MICHELLE CONERO