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

RIVER LINK HOTELS, LLC

Route 17K, Newburgh
Section 95; Block 1; Lots 49.122 & 80
IB Zone

----- X

Date: September 22, 2022
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
(Recused from application)
DARRELL BELL
JAMES EBERHART, JR.
ROBERT GRAMSTAD
GREGORY M. HERMANC
(Recused from application)
JOHN MASTEN
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: JOHN FURST

----- X

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

1 RIVER LINK HOTELS, LLC

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 that
8 the applicant will be called upon to
9 step forward, state their request and
10 explain why it should be granted.
11 The Board will then ask the applicant
12 any questions it may have, and then
13 any questions or comments from the
14 public will be entertained. The
15 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 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 as it
23 is being recorded by our stenographer.

24 Roll call, please.

25 MS. JABLESNIK: Darrell Bell.

1 RIVER LINK HOTELS, LLC

2 MR. BELL: Here.

3 MS. JABLESNIK: James Eberhart.

4 MR. EBERHART: Here.

5 MS. JABLESNIK: Robert Gramstad.

6 MR. GRAMSTAD: Here.

7 MS. JABLESNIK: Greg Hermance.

8 MR. HERMANCENCE: Here.

9 MS. JABLESNIK: John Masten.

10 MR. MASTEN: Yes.

11 MS. JABLESNIK: Donna Rein.

12 MS. REIN: Here.

13 MS. JABLESNIK: Darren Scalzo.

14 CHAIRMAN SCALZO: Here.

15 MS. JABLESNIK: Also present is
16 our Attorney, Dave Donovan, and from
17 Code Compliance, Joe Mattina.

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

21 (Pledge of Allegiance.)

22 MS. JABLESNIK: I forgot our
23 Stenographer, Michelle Conero.

24 CHAIRMAN SCALZO: Our first
25 applicant this evening is actually a

1 RIVER LINK HOTELS, LLC

2 holdover. If you've been looking at
3 the agenda on the Town of Newburgh's
4 website, we switched it up a little
5 bit today just for a little
6 accommodation here. In this case
7 we're going to have River Link
8 Hotels, LLC, Route 17K in Newburgh,
9 an interpretation of Section
10 185-27-D(1) for kitchen facilities in
11 hotel/motel units.

12 I will add that Mr. Hermance
13 and I need to recuse ourselves from
14 this application. Our employer has
15 lands contiguous with this application.

16 Mr. Bell, if you could take it
17 from there.

18 (Chairman Scalzo and Mr.
19 Hermance left the room.)

20 MR. DONOVAN: Mr. Bell, you
21 weren't here last time for this
22 application.

23 Mr. Furst, you're representing
24 the applicant?

25 MR. FURST: Correct.

1 RIVER LINK HOTELS, LLC

2 MR. DONOVAN: This is a
3 continuation of the public hearing.
4 If you want to quickly summarize for
5 the folks here in the public what
6 your request is, then we'll hear from
7 Mr. Cantor and the public.

8 MR. FURST: My name is John
9 Furst. I'm an attorney at Catania,
10 Mahon & Rider. I represent the
11 applicant in this case, River Link
12 Hotels.

13 They're looking to -- they're
14 proposing two hotels off of 17K.
15 Each hotel will have its own central
16 kitchen. 50 percent of the rooms
17 will be suites, the other 50 percent
18 will be typical rooms that you see in
19 a normal situation. The suites will
20 not have any ovens or stoves. The
21 only difference with the suites is
22 that they'll have a larger fridge, a
23 dishwasher and an extra sink.

24 The building inspector has
25 issued a determination. I know there

1 RIVER LINK HOTELS, LLC

2 was a question at the hearing back in
3 July about some jurisdictional
4 issues. As part of that
5 determination, the building inspector
6 did acknowledge that the units can
7 have kitchen facilities. The section
8 in question with respect to the 25
9 percent cap, that's the issue here.
10 We're looking to have these special
11 suites within 50 percent of the
12 hotel. Your code says 25 percent.
13 That section specifically talks about
14 25 percent of the hotel units.

15 I know there was a letter
16 submitted by the opposing hotel
17 across the street. They kind of want
18 to expand it. They want to argue
19 that it's only 25 percent -- the
20 central kitchen can only be 25
21 percent. They're basically arguing
22 you can't have anything within any
23 types of suites or any kitchen
24 facilities in any percentage. Zero
25 percent. I just want to point out

1 RIVER LINK HOTELS, LLC

2 the code specifically says hotel
3 units -- the cap is 25 percent of the
4 hotel units. Obviously they want to
5 take this a step further. Not only
6 are they fighting against us on this
7 interpretation, this further enhances
8 their monopoly. This is purely a
9 business and economic reason. They
10 have shown no environmental or land
11 use harms. They really have no
12 standing to be here. In any event,
13 this is a public hearing. Anyone
14 from the public is allowed to speak.

15 So again, the issue at hand is
16 what does kitchen facilities mean.
17 That's really the issue. Again, it's
18 25 percent of the kitchen facilities
19 as stated in the code. So what does
20 that mean? We had submitted a letter
21 from a New York State licensed
22 architect. There was really no
23 direction in the code. Kitchen
24 facilities is not defined in the
25 local zoning code. We did the next

1 RIVER LINK HOTELS, LLC

2 logical thing. We went to the State
3 Building Code, and we're kind of
4 using that as guidance. That's why
5 we submitted a letter from this
6 architect. They deal with the State
7 Building Code on a daily basis.
8 That's their job. The architect took
9 a look at this. Based upon her
10 analysis, she came to the conclusion
11 that these are certainly not dwelling
12 units, they don't have full kitchen
13 cooking facilities, and that they're
14 still considered sleeping units under
15 the State Building Code.

16 I believe there may be some
17 concern that these units could be
18 rented out on a long-term basis.
19 Again, these are not dwelling units.
20 They cannot support permanent living
21 conditions. They have no cooking
22 facilities. They have no cooking --
23 they have no stoves, no ovens.
24 There's no chance that this could be
25 utilized for long-term, permanent

1 RIVER LINK HOTELS, LLC

2 occupation. These are all
3 transitory, people coming from out of
4 town, whether it's the weekend for a
5 sporting event, whether it's for
6 business. They're here not for a
7 couple days. Maybe they're here for
8 four or five nights, maybe a week.
9 That's what these suites are catered
10 towards. This is a new concept.
11 It's very popular with all the hotels
12 right now. It's very important.

13 So again, I also want to make
14 sure, these are not your typical
15 extended stay hotels because there
16 are -- I believe there are extended
17 stay hotels that do have ovens.
18 These will not. They will not have
19 any cooking appliances within these
20 suites.

21 In addition, the code actually
22 doesn't even bar kitchen appliances
23 from the rooms. There's no language
24 in the code that says you can't have
25 a kitchen appliance. In fact, the

1 RIVER LINK HOTELS, LLC

2 neighboring hotel across the street
3 has many units that have kitchen
4 appliances in them, microwaves and
5 fridges. That is not the issue. The
6 issue is really -- your job is to try
7 to interpret what kitchen facilities
8 means. I'm arguing that what we
9 have, which is a larger fridge, an
10 extra sink, a dishwasher and a
11 microwave, does not constitute a
12 kitchen facility and shouldn't be
13 subject to the 25 percent limitation.
14 Thank you.

15 MR. DONOVAN: Not to interrupt.
16 Just to be clear; Mr. Furst, we're
17 talking about 185-27-D(1)?

18 MR. FURST: Yes.

19 MR. DONOVAN: I'm smart because
20 it's in front of me.

21 Maybe just for the Board's
22 edification, I'll read that briefly.
23 What it says is, "Hotel and motel
24 units shall not contain kitchen
25 facilities of any type in more than

1 RIVER LINK HOTELS, LLC

2 25 percent in a particular hotel or
3 motel complex. It shall not be used
4 as apartments for non-transient
5 tenants and shall not be connected by
6 interior doors in groups of more than
7 two."

8 To summarize -- Mr. Furst, you
9 can do it yourself, of course -- your
10 position is what you're proposing,
11 the amenities in the rooms, would not
12 be kitchen facilities so you don't
13 run afoul of the 25 percent in the
14 hotel/motel complex?

15 MR. FURST: Correct.

16 MS. REIN: Excuse me. If it
17 serves me correct, wasn't there a
18 question about the hotel giving out
19 hot pots to people who request them?

20 MR. FURST: Right. That came
21 up in the initial meeting back in
22 July. Since then the applicant has
23 talked to some of the brands. I
24 think Hilton was one of them,
25 Marriott was the other one. You can

1 RIVER LINK HOTELS, LLC

2 certainly add a condition that there
3 shall be no stovetops or hot plates
4 available. At first they were going
5 to propose some. They noticed there
6 was some concern amongst the Board
7 Members. They will not be offering
8 any stovetops or portable cooktops of
9 any form. You can certainly make
10 that a condition of any
11 interpretation, and that would run
12 with the land.

13 MS. REIN: There won't be
14 anything like that available?

15 MR. FURST: No.

16 MS. REIN: Just the microwaves?

17 MR. EBERHART: I'll take issue
18 with that. A microwave, in effect,
19 is an oven. It's microwave oven.

20 MR. FURST: Many standard hotel
21 rooms come with microwaves and small
22 fridges.

23 MR. EBERHART: It's a microwave
24 oven. You could interpret that. I
25 see what the architect placed in

1 RIVER LINK HOTELS, LLC

2 there. I also look at -- as an
3 engineer I look at the State Code
4 also.

5 MR. FURST: I think the idea
6 with the kitchen is to kind of take
7 ingredients and put something
8 together, whereas a microwave you're
9 just throwing something in to heat it
10 up.

11 MR. EBERHART: You can cook in
12 a microwave.

13 MR. FURST: Again, there's no
14 bar against having appliances within
15 hotel rooms. The issue is kitchen
16 facilities.

17 MR. EBERHART: Okay.

18 MR. BELL: So you're saying
19 that -- I didn't myself check with
20 the Marriott or the surrounding
21 hotels. They do issue out hotplates
22 or they do not?

23 MR. FURST: I don't know about
24 the surrounding hotels. I'm saying
25 for the proposed hotel that we're

1 RIVER LINK HOTELS, LLC

2 going to be occupying on this
3 specific property -- they have done
4 it on other sites -- they have agreed
5 not to do it on this site.

6 MR. BELL: And you're saying
7 that this is not like the extended
8 stays, which I know what they are.

9 I'm just curious. What is the
10 max number of days someone can
11 utilize these facilities?

12 MR. FURST: Well I think it's
13 really -- well, the price point
14 itself. In fact, I'll have Bobby, if
15 you can come up, based upon your
16 experience, and talk about price
17 points.

18 MR. PATEL: I'm Bobby Patel.
19 Price point, usually in the market we
20 look at revenue per available room.
21 It's over \$100 a night. We'll
22 probably be charging between \$125 to
23 \$200 a night depending on the demand.

24 As far as length of stay, they
25 average from three to five days.

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2 It's not a long-term stay hotel where
3 someone is coming to stay for longer
4 than a month, two months or something
5 like that. It's for government
6 travelers or business travelers,
7 consultants that are working through
8 the week. We gear towards, you know,
9 sports families on the weekends that
10 come maybe on a Thursday night,
11 Friday night, come for a tournament
12 in town, and they're out Sunday
13 evening or Monday.

14 MS. REIN: Is there a provision
15 anywhere that says that they can't
16 stay more than a specific amount of
17 time or they stay seven days and then
18 they can't come back for a day or
19 two? I know some hotels have that.

20 MR. PATEL: As far as the brand
21 is concerned?

22 MS. REIN: As far as this hotel
23 specifically is concerned.

24 MR. PATEL: We haven't set a
25 provision like that as far as staying

1 RIVER LINK HOTELS, LLC

2 a week and then they have to check
3 out.

4 MS. REIN: Or you have so many
5 days that you can stay consistently.

6 MR. FURST: I think, again,
7 it's kind of dictated by the market.
8 I think there's only so many days
9 somebody is going to stay there. A
10 typical stay is about a week.

11 MS. REIN: That's the typical
12 stay. There's no provision or
13 anything that says they can't stay
14 longer? If somebody is willing to
15 pay \$100 a night, they can stay for
16 as long as they want?

17 MR. FURST: I guess
18 theoretically they could. It's not a
19 dwelling facility so you can't really
20 live there.

21 I don't know if you would be
22 amenable to cap --

23 MR. PATEL: Yes.

24 MR. FURST: If the Board would
25 like to cap it at a couple of weeks

1 RIVER LINK HOTELS, LLC

2 or three weeks, we would certainly
3 consider that.

4 MS. REIN: Thank you. I think
5 we should add that. That and the
6 stovetops.

7 MR. BELL: Okay. Anyone else?

8 MR. MASTEN: I have no questions.

9 MR. DONOVAN: Do any members of
10 the public wish to address the Board?

11 MR. CANTOR: Good evening.
12 Richard Cantor with the firm of
13 Teahan & Constantino.

14 The first question is does
15 someone who lives in Poughkeepsie
16 come to a public hearing in Newburgh?
17 That's just a bad joke.

18 The narrow goal of the ZBA is
19 to agree, disagree or modify the
20 determination made on August 16th by
21 Mr. Mattina. Mr. Mattina said that
22 the proposed units exceed the limits
23 in Section 185-27-D and are not
24 permitted. Your job is to say we
25 agree, we disagree, or come up with

1 RIVER LINK HOTELS, LLC

2 some different version.

3 I think it's crystal clear as
4 to the specific section that Mr.
5 Mattina is correct. As Mr. Eberhart
6 pointed out, a kitchen is a kitchen.
7 It sounds like a duck, walks like a
8 duck, it's a duck. It's a kitchen.
9 You can cook there, wash dishes
10 there, refrigerate your food there.
11 It's a kitchen. The code doesn't say
12 a kitchen facility. It talks about a
13 kitchen of any type. This is a
14 kitchen of some type, whether or not
15 it's a kitchen under the construction
16 code. We're talking about the zoning
17 code, not a construction code.

18 I have never been at a hotel
19 that says after a certain number of
20 days you have to get out. It was
21 pretty clear from the nonanswer you
22 received that they don't have a limit
23 either.

24 When we started looking at
25 this, and as we pointed out in

1 RIVER LINK HOTELS, LLC

2 written form to the Board and to Mr.
3 Donovan, we think that this code goes
4 one step beyond the section in
5 question. We think that the code, in
6 the definition of hotel, says a hotel
7 can have a central kitchen only. It
8 says it right there, black and white.
9 A central kitchen only.

10 The Zoning Board has the
11 authority, when it's considering a
12 matter, to advise the Town Board of
13 its opinion about the code. We would
14 ask that you affirm Mr. Mattina on
15 the specific question of the section
16 before you, and that you add that in
17 your opinion the code says that
18 hotels can have central kitchens
19 only.

20 Mr. Rosinski, who is the
21 operator of the hotel which has been
22 characterized in a sinister way as
23 keeping a monopoly, would also like
24 to address you.

25 MR. ROSINSKI: Thank you,

1 RIVER LINK HOTELS, LLC

2 Richard.

3 I'm Mark Rosinski. I am a
4 partner in the Hampton Inn & Suites
5 in Newburgh, which is directly across
6 the street from the proposed property
7 or properties. I've been in the
8 hotel business about 43 years, but
9 who's counting.

10 Basically there are some things
11 I'm confused about in this matter and
12 some things that are very clear.
13 What's clear to me is, as has been
14 mentioned, when you have a full size
15 refrigerator, you have a sink, you
16 have a dishwasher, you have a
17 microwave oven, which I agree it's an
18 oven by definition, whether or not
19 you have a cooktop, you basically
20 have a kitchen.

21 The other thing is that there
22 was a discussion last time, and maybe
23 things have changed, about the
24 cooktops. I believe the gentleman
25 got up here and said oh, we wouldn't

1 RIVER LINK HOTELS, LLC

2 have cooktops in the rooms but there
3 would be one or two or three, I don't
4 recall the number, but a de minimus
5 number for sure, of cooktops.

6 They also mentioned at that
7 time, and again this may have
8 changed, that they were interested in
9 franchises from Marriott and Hilton,
10 Marriott being TownPlace Suites and
11 Hilton being Home2 Suites.

12 I did a little research and I
13 contacted both Marriott and Hilton.
14 Hilton is a little lenient, they
15 allow 10 percent cooktops to be
16 available at the front desk. So if
17 you're building 100, you have to have
18 10 -- a minimum of 10. If you're
19 building more than 100, you have to
20 have more than 10. TownPlace Suites
21 by Marriott was very clear that every
22 room has to have a stovetop. Not a
23 portable cooktop but a stovetop. I
24 have e-mails back and forth with both
25 Marriott and Hilton to prove that.

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2 So maybe their plans evolved,
3 maybe they're thinking different
4 hotels. Regardless, 50 percent of
5 the rooms is what they're proposing
6 at current to have kitchens, period,
7 end of story. It's that simple.

8 I'd be glad to answer any
9 questions or give you any other
10 observations. Thank you.

11 MR. DONOVAN: Do any other
12 members of the public wish to speak?

13 (No response.)

14 MR. DONOVAN: Mr. Bell, do you
15 want to go back to the Board one more
16 time?

17 Actually, before you do that,
18 if I could kind of orient things.
19 There's been some conversation about
20 maybe we would have cooktops or maybe
21 we won't, they won't stay too long,
22 we'll put a cap on it. The
23 application is for an interpretation.
24 The interpretation is that rooms with
25 refrigerators -- we're talking about

1 RIVER LINK HOTELS, LLC

2 a mini-fridge, I would assume, or a
3 regular refrigerator?

4 MR. FURST: Standard fridge.

5 MR. DONOVAN: A standard fridge
6 is --

7 MR. FURST: If you look in the
8 architectural drawings and the floor
9 plans we submitted, there is a size.

10 MR. DONOVAN: It's not a
11 mini-fridge. It's a regular --

12 MR. PATEL: It's not a
13 mini-fridge.

14 MR. DONOVAN: The request is a
15 room with a fridge -- a standard
16 refrigerator, microwave, sink and
17 dishwasher does not constitute a
18 kitchen facility.

19 MR. FURST: Correct.

20 MR. DONOVAN: So you wouldn't
21 attach any conditions to that because
22 it's not like an area variance where
23 you may attach reasonable conditions.
24 It's just your interpretation as to
25 whether or not a room with those

1 RIVER LINK HOTELS, LLC

2 amenities is a kitchen or not.

3 So with that, do any other
4 Members of the Board have any
5 questions?

6 MR. BELL: Do you have any
7 questions?

8 MR. MASTEN: I have no questions.

9 MR. GRAMSTAD: None.

10 MR. EBERHART: None.

11 MS. REIN: So some of the rooms
12 are going to have microwaves? Are
13 all of the rooms going to have
14 microwaves?

15 MR. PATEL: All of them.

16 MR. FURST: All the standard
17 rooms.

18 MS. REIN: All the standard
19 rooms and the suites are going to
20 have microwaves?

21 MR. FURST: That's typical.

22 MS. REIN: I understand that.

23 MR. FURST: My son's dorm room
24 has a microwave and a fridge. I
25 don't think that constitutes a kitchen.

1 RIVER LINK HOTELS, LLC

2 MS. REIN: You had to bring
3 that with you?

4 MR. FURST: Excuse me?

5 MS. REIN: You had to bring
6 that with you?

7 MR. FURST: The microwaves
8 actually come with the fridges in the
9 rooms.

10 MS. REIN: A lot has changed
11 since my daughter was in college.

12 MR. FURST: Many hotels offer
13 microwaves and fridges. In fact, Mr.
14 Rosinski's hotel, I believe, offers
15 rooms with microwaves and fridges.

16 MS. REIN: That's not the
17 issue. They will all have microwaves
18 and fridges?

19 MR. FURST: Correct.

20 MS. REIN: And there would be
21 no cooktops offered?

22 MR. FURST: No cooktops offered
23 at the central desk. No cooktops at
24 all.

25 MR. BELL: But then when you

1 RIVER LINK HOTELS, LLC

2 look at what's written, it's 25
3 percent. So why are you looking to do
4 50? Why are you trying to do 50?

5 MR. FURST: That's just the way
6 the numbers -- the demand. It's a
7 supply and demand thing. There's
8 more demand for these type of suites,
9 so they would like to do 50 percent
10 instead of 25 percent.

11 MR. BELL: How many rooms are
12 there?

13 MR. FURST: 166?

14 MR. PATEL: 160.

15 MR. FURST: 160 rooms. 80
16 would be regular, 80 would be suites.

17 MS. REIN: Those 80 would have
18 an oven?

19 MR. FURST: The suites would
20 have a microwave oven as well as the
21 regular rooms. Correct?

22 MR. PATEL: Yes.

23 MR. FURST: But again, that's
24 standard in most hotels. That's not
25 unusual.

1 RIVER LINK HOTELS, LLC

2 MR. BELL: Right, but not a
3 full size refrigerator.

4 MR. FURST: Correct. That's
5 where we get to --

6 MS. REIN: Or a dishwasher.

7 MR. BELL: I was going to go
8 there next. A dishwasher.

9 MR. FURST: Correct. This is a
10 suite. We're not disputing the fact
11 that there are some appliances that
12 are included. The question is do
13 these assemblage of appliances
14 constitute a kitchen facility of any
15 type. Not of some type. Of any
16 type.

17 MR. EBERHART: Any type is very
18 broad.

19 MR. FURST: It is. What does
20 that mean? I mean do you picture
21 people preparing food and going to
22 the grocery store and making stuff in
23 these places? No. I mean I think
24 the onus behind this regulation is
25 they don't want to have people living

1 RIVER LINK HOTELS, LLC

2 in these full term. They don't want
3 permanent residents living in these
4 hotels. That would absolutely not be
5 the case here. I think that's the
6 kind of premise behind this
7 regulation.

8 MS. REIN: I understand what
9 you're saying. I don't think you can
10 make that statement. There's nothing
11 that says that they can't stay as
12 long as they want. There's nothing.
13 There is a microwave and there is all
14 this other stuff, if they want to use
15 that, especially people that want to
16 live like that. You can't stand
17 there and say well that will never
18 happen, unless you have it in writing
19 that it's never going to happen.

20 MR. FURST: If it's a regular
21 room, somebody could stay there as
22 long as they want. Correct?

23 MS. REIN: That's not the
24 issue.

25 MR. FURST: You have the same

1 RIVER LINK HOTELS, LLC

2 problem in all the hotels. The issue
3 you're pointing out applies to every
4 single hotel across the nation,
5 including Mr. Rosinski's.

6 MS. REIN: We're talking about
7 this one.

8 MR. FURST: Are you going to
9 put a cap on all hotels and say you
10 can only have a certain amount of
11 time?

12 MS. REIN: I don't know. They
13 have to come before us and ask.

14 MR. FURST: I think that's a
15 bigger issue beyond this decision
16 here, as your attorney pointed out.
17 I mean every hotel has that problem.
18 No matter what they have in the room,
19 somebody can live there.

20 MR. BELL: We're sticking to
21 the rule of interpretation here.

22 MR. EBERHART: I don't know too
23 many hotels that have a dishwasher, a
24 sink, a fridge and a microwave oven
25 and it's not a kitchen facility.

1 RIVER LINK HOTELS, LLC

2 MR. DONOVAN: Any other members
3 of the public?

4 (No response.)

5 MR. DONOVAN: It's up to the
6 Board. If you're ready to close the
7 public hearing, that would be the
8 next order of business.

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

11 MR. EBERHART: I'll second.

12 MR. DONOVAN: Roll on that,
13 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. Masten?

21 MR. MASTEN: Yes.

22 MS. JABLESNIK: Ms. Rein?

23 MS. REIN: Yes.

24 MR. DONOVAN: The public
25 hearing is now closed.

1 RIVER LINK HOTELS, LLC

2 Board, you can make a decision
3 tonight. You have 62 days if you
4 want to think about it. If you want
5 to decide, this is not the five-part
6 balancing test that we're so used to.
7 This would just be a motion to
8 approve the request as to say that
9 those amenities do not constitute
10 kitchen facilities or to deny the
11 request, if someone wants to make a
12 motion. You don't have to. If
13 you're prepared to do so, you may do
14 so.

15 MR. MASTEN: I'll make a motion.

16 MR. DONOVAN: To?

17 MR. MASTEN: For the 62 days.

18 MR. DONOVAN: You want to wait?

19 MR. MASTEN: I'll wait.

20 MR. DONOVAN: You don't need to
21 make a motion to do that. You don't
22 need to make a motion. You can just
23 wait. If someone has a motion to
24 approve or deny the interpretation as
25 requested, they can do that.

1 RIVER LINK HOTELS, LLC

2 MS. REIN: I'll make a motion
3 to approve or deny.

4 MR. DONOVAN: You have to pick
5 one of those.

6 MS. REIN: Deny.

7 MR. BELL: I'll second that.

8 MR. DONOVAN: Do you want to
9 roll on that, Siobhan.

10 MS. JABLESNIK: Mr. Bell?

11 MR. BELL: Yes.

12 MS. JABLESNIK: Mr. Eberhart?

13 MR. EBERHART: Yes.

14 MS. JABLESNIK: Mr. Gramstad?

15 MR. GRAMSTAD: Yes.

16 MS. JABLESNIK: Mr. Masten?

17 MR. MASTEN: Yes.

18 MS. JABLESNIK: Ms. Rein?

19 MS. REIN: Yes.

20 MR. FURST: Thank you very
21 much.

22 MR. CANTOR: Thank you for your
23 courtesy in rearranging your agenda.
24 I appreciate that. Thank you,
25 Siobhan.

1 RIVER LINK HOTELS, LLC

2 MS. JABLESNIK: You're so welcome.

3

4 (Time noted: 7:27 p.m.)

5

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

7

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

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

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

18 IN WITNESS WHEREOF, I have hereunto
19 set my hand this 4th day of October 2022.

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Michelle Conero

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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

WILLIAM & STACEY LYNN

272 Lakeside Road, Newburgh
Section 51; Block 10; Lot 1
R-1 Zone

----- X

Date: September 22, 2022
Time: 7:30 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: WILLIAM LYNN

----- X

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

1 WILLIAM & STACEY LYNN

2 CHAIRMAN SCALZO: Our new
3 application business this evening is
4 William and Stacey Lynn, 272 Lakeside
5 Road, Newburgh. This is a Planning
6 Board referral for area variances of
7 two front yards, which is Gardnertown
8 Road and Lakeside Road, lot area on
9 the existing nonconforming
10 residential lot for a proposed
11 project that involves a realignment
12 of lot lines and transfer of property
13 to the fire district for the existing
14 fire training center.

15 Do we have mailings on that,
16 Siobhan?

17 MS. JABLESNIK: This applicant
18 sent out 26 mailings. We received
19 the County referral back as a Local
20 determination.

21 CHAIRMAN SCALZO: Very good.

22 Who do we have here this
23 evening?

24 MR. LYNN: I'm Bill Lynn, owner
25 of 272 Lakeside Road. I'm also chief

1 WILLIAM & STACEY LYNN

2 of the Orange Lake Fire Department,
3 so I can do both.

4 CHAIRMAN SCALZO: All right.
5 So we have your package, we have a
6 map.

7 MR. LYNN: What brought us here
8 tonight is I own the property
9 adjoining the training center right
10 now. We're selling off a chunk of
11 the property and moving property
12 lines. We're selling a chunk of the
13 Orange Lake Fire property to the
14 district, the Orange Lake Fire
15 District. The property that I own is
16 encroaching on the existing fire
17 department property as our driveway
18 goes through the property line on 272
19 Lakeside. As we're moving all the
20 property lines, we're going to move
21 -- we want to move 272's property
22 line so that our driveway is not
23 encroaching on the property anymore.
24 We're going to purchase it from the
25 Orange Lake Fire Department for a

1 WILLIAM & STACEY LYNN

2 fee, but we're adding to a
3 nonconforming piece of property so we
4 need the approval to move these lines
5 around.

6 MR. DONOVAN: Just for my
7 clarification, the referral indicated
8 that the fire district was getting
9 the property.

10 MR. LYNN: Right now --

11 MR. DONOVAN: The property
12 owner, I guess that's you, is getting
13 the property?

14 MR. LYNN: Right now Orange
15 Lake Fire Department owns it. We
16 have to move the lines.

17 MR. DONOVAN: Who is going to
18 own the little piece ultimately?

19 MR. LYNN: I will. 272
20 Lakeside.

21 MS. JABLESNIK: So I wasn't
22 wrong.

23 MR. DONOVAN: No. You copied
24 something else that was wrong. I
25 don't know what that makes you.

1 WILLIAM & STACEY LYNN

2 MS. JABLESNIK: A cheater.

3 MR. DONOVAN: The referral said
4 the property goes to the fire
5 district. It's going to you?

6 MR. LYNN: The small chunk.

7 CHAIRMAN SCALZO: The 6-acre
8 parcel is being conveyed to the fire
9 department?

10 MR. LYNN: We're breaking it up
11 and then eventually selling off the
12 training center to the district. The
13 district will own all the equipment
14 on it. That's in terms of the fire
15 department. I'm sorry. I'm the
16 chief and the owner of the property,
17 so it gets confusing when I'm talking
18 in terms of we.

19 CHAIRMAN SCALZO: I understand.
20 All right. Really the map is pretty
21 descriptive here. It's easy to
22 understand the dashed lines and the
23 solid line.

24 The existing shed is going to
25 be relocated, obviously, somewhere

1 WILLIAM & STACEY LYNN

2 out of the area, although I'm going
3 to look at Mr. Mattina perhaps to ask
4 if there's any particular
5 restrictions with that shed. It's
6 not a dwelling on that lot and you
7 can't have an accessory building in
8 front of the main structure.
9 Correct?

10 MR. MATTINA: That structure
11 goes to the fire department. That
12 doesn't go to 272.

13 CHAIRMAN SCALZO: Really all
14 we're here for is because he's got
15 two front yards and we need some
16 relief from that?

17 MR. MATTINA: Correct.

18 MR. DONOVAN: They're pre-
19 existing conditions on the
20 residential lot. It's not going to
21 be made worse. It may be made
22 better. It's still preexisting
23 nonconforming.

24 CHAIRMAN SCALZO: I don't know
25 how they're going to be made better,

1 WILLIAM & STACEY LYNN

2 but they won't change.

3 MR. DONOVAN: They'll be made
4 different.

5 CHAIRMAN SCALZO: I don't have
6 any questions regarding this
7 application myself, but I'm going to
8 turn to Ms. Rein. I know she and I
9 had a brief conversation about this
10 particular application the other day.
11 Have all of your questions been
12 answered with the narrative the
13 applicant has provided?

14 MS. REIN: My concern was the
15 wetlands and was anything going to be
16 done in that area.

17 MR. SPAMPINATO: Good evening,
18 folks. My name is Vince Spampinato.
19 I represent the fire company in this
20 overall project. It's three projects
21 into one. We are selling off the
22 small parcel to the fire district so
23 they can develop it as a training
24 center to avoid any future boundary
25 disputes. We're entering into a

1 WILLIAM & STACEY LYNN

2 contract with Mr. Lynn to move that
3 line so that driveway is conforming.

4 The answer about the wetlands
5 is no, and the reason is we do not
6 plan on future development on the
7 rest of that lot. That is going to
8 remain as is. It is actually going
9 to be conjoined with the neighboring
10 parcel which is being donated to the
11 fire department. We're going to have
12 a larger parcel of wetlands, which at
13 this point we have no intention on
14 developing. We're using it as a
15 buffer and, again, our training
16 grounds and just owning the property.

17 MS. REIN: Thank you.

18 MR. BELL: I'm good.

19 CHAIRMAN SCALZO: Mr. Masten?

20 MR. MASTEN: I have no questions.

21 CHAIRMAN SCALZO: Very good.

22 Mr. Bell?

23 MR. BELL: No.

24 CHAIRMAN SCALZO: Mr. Hermance?

25 MR. HERMANCE: I have no

1 WILLIAM & STACEY LYNN

2 questions.

3 CHAIRMAN SCALZO: Mr. Eberhart?

4 MR. EBERHART: No questions.

5 CHAIRMAN SCALZO: Mr. Gramstad?

6 MR. GRAMSTAD: None at all.

7 CHAIRMAN SCALZO: At this point
8 I'll open it up to any members of the
9 public that wish to speak about this
10 application.

11 (No response.)

12 CHAIRMAN SCALZO: Apparently
13 there are no people here from the
14 public wishing to speak about this
15 application.

16 One last chance, looking at the
17 Members of the Board. Any other
18 Member comments on this application?

19 MR. BELL: None.

20 MS. REIN: No.

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

24 MR. MASTEN: I'll make a motion
25 to close the public hearing.

1 WILLIAM & STACEY LYNN

2 MR. BELL: I'll second it.

3 CHAIRMAN SCALZO: We have a
4 motion to close the public hearing
5 from Mr. Masten. We have a second
6 from Mr. Bell. All in favor?

7 MR. BELL: Aye.

8 MR. EBERHART: Aye.

9 MR. GRAMSTAD: Aye.

10 MR. HERMANCE: Aye.

11 MR. MASTEN: Aye.

12 MS. REIN: Aye.

13 CHAIRMAN SCALZO: Aye.

14 Those opposed?

15 (No response.)

16 CHAIRMAN SCALZO: Very good.

17 The public hearing is now closed.

18 Counselor, this is a Type 2
19 action?

20 MR. DONOVAN: This is a Type 2
21 action under SEQRA.

22 CHAIRMAN SCALZO: Thank you,
23 sir.

24 We're going to go through the
25 area variance criteria and discuss

1 WILLIAM & STACEY LYNN

2 the five factors, the first one being
3 whether or not the benefit can be
4 achieved by other means feasible.
5 The benefit is going to be achieved
6 by this application because currently
7 there are -- with the driveway issue.
8 Regarding the front yards, things
9 won't change.

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

15 The third, whether the request
16 is substantial. It's preexisting
17 nonconforming. It's going to remain
18 the same.

19 The fourth, whether the request
20 will have adverse physical or
21 environmental effects. It does not
22 appear so.

23 The fifth, whether the alleged
24 difficulty is self-created which is
25 relevant but not determinative.

1 WILLIAM & STACEY LYNN

2 We're making it better out there,
3 folks, if we move to approve.

4 Having gone through the
5 balancing tests, does the Board have
6 a motion of some sort?

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

9 MR. MASTEN: I'll second it.

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

15 MS. JABLESNIK: Mr. Bell?

16 MR. BELL: Yes.

17 MS. JABLESNIK: Mr. Eberhart?

18 MR. EBERHART: Yes.

19 MS. JABLESNIK: Mr. Gramstad?

20 MR. GRAMSTAD: Yes.

21 MS. JABLESNIK: Mr. Hermance?

22 MR. HERMANCE: Yes.

23 MS. JABLESNIK: Mr. Masten?

24 MR. MASTEN: Yes.

25 MS. JABLESNIK: Ms. Rein?

1 WILLIAM & STACEY LYNN

2 MS. REIN: Yes.

3 MS. JABLESNIK: Mr. Scalzo?

4 CHAIRMAN SCALZO: Yes.

5 The motion is carried. The
6 variances are approved.

7 You're all set.

8 MR. LYNN: Thank you very much.

9

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

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1 WILLIAM & STACEY LYNN

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

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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 4th day of October 2022.

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Michelle Conero

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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

SAM NEWBURGH, LLC

1420 Route 300, Newburgh
Section 60; Block 3; Lot 22.222
IB Zone

----- X

Date: September 22, 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: DARREN DOCE

----- X

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

1 S A M N E W B U R G H , L L C

2 CHAIRMAN SCALZO: Our next
3 applicant is SAM Newburgh, LLC, 1420
4 Route 300 in Newburgh. This is also
5 a Planning Board referral for area
6 variances of lot coverage, height and
7 fencing (the applicant proposes no
8 fencing where it is required) to
9 change the use of the existing
10 Showtime Cinema to a self-storage
11 unit.

12 Do we have mailings on that,
13 Siobhan?

14 MS. JABLESNIK: This applicant
15 sent out 59 letters. The County has
16 not responded. I e-mailed them today
17 and they did not get back to me. I
18 even checked my e-mail before the
19 meeting started and I have nothing.
20 I'm really sorry.

21 CHAIRMAN SCALZO: You've been
22 here. You're a frequent flyer. You
23 understand exactly what that means.

24 For the folks here who don't
25 know what that means, if the County

1 S A M N E W B U R G H , L L C

2 does not weigh in on an application
3 that's within 500 feet of a County or
4 a State road, then we as a Board
5 cannot vote on it until their time to
6 review has expired. Therefore, since
7 we haven't heard from them, their
8 time has not expired.

9 We still want to hear your
10 story, though.

11 MR. DOCE: Okay. I'm Darren
12 Doce representing SAM Newburgh. We
13 have an application before the
14 Planning Board for a change of use.
15 The existing theater is proposed to
16 be converted into an indoor self-
17 storage facility. We're asking for a
18 variance on building height. We have
19 a building height of 23 feet. The
20 code limits that to 15 feet based on
21 the old standards of the garage type
22 self-storage unit. We also have an
23 existing paved area, obviously
24 because it's an existing site, of 73
25 percent coverage where 60 is allowed.

1 SAM NEWBURGH, LLC

2 Our position is that this is an
3 existing site, these are existing
4 conditions. We're not going to be
5 making the neighborhood -- the
6 character of the neighborhood or the
7 physical or environmental conditions
8 in the neighborhood any different
9 than what exists. We're only here
10 because of the change of use from the
11 theater to a self-storage facility.

12 We're asking also for a waiver.
13 The Code requires that the entire
14 site be fenced. This is an indoor,
15 secure, 24/7 video surveilled
16 building. I believe the fencing
17 requirement in the Code is to
18 prevent, they say, criminal activity
19 and vandalism. Since this is an
20 indoor facility, no outdoor storage
21 is proposed, we feel that the fencing
22 is not required. It would also be an
23 enormous amount of fencing which
24 could be unsightly, and that would
25 change the character of the

1 SAM NEWBURGH, LLC

2 neighborhood if all that fencing was
3 installed.

4 I just want to add that there
5 are no site improvements proposed
6 other than within the building. All
7 of the work is going to be performed
8 within the building. The site is not
9 going to change at all on the
10 outside.

11 If I can answer any questions
12 that the Board has now.

13 CHAIRMAN SCALZO: Thank you
14 very much.

15 I'm going to start at the other
16 end here. Mr. Gramstad, do you have
17 any questions or comments on this?

18 MR. GRAMSTAD: Not at this
19 time, no.

20 CHAIRMAN SCALZO: How about Mr.
21 Eberhart?

22 MR. EBERHART: No questions.

23 CHAIRMAN SCALZO: Mr. Hermance?

24 MR. HERMANCE: With the change
25 of use going from the 73 percent to

1 SAM NEWBURGH, LLC

2 the 60, are you going to utilize the
3 end of the parking lot for -- what is
4 that going to be used for, coming in
5 say from the 52 side?

6 MR. DOCE: It's existing at 73
7 percent coverage. The pavement is
8 existing. The Code limits that to 60
9 percent. The outside parking, other
10 than for the limited parking to the
11 building, it's not going to be
12 utilized at this time. I mean I
13 suppose possibly in the future if
14 they ever wanted to do outdoor
15 storage, but then we'd have to
16 reapply again.

17 CHAIRMAN SCALZO: Come before
18 us again.

19 MR. HERMANCENCE: Any thought on
20 eliminating some of the blacktop
21 surface area and turning it into --

22 MR. DOCE: We discussed that.
23 We don't want to do that if we don't
24 have to. If the Board prefers that,
25 we can take that down to the 60

1 SAM NEWBURGH, LLC

2 percent. There are areas coming in
3 from Union Avenue. There's three
4 sections there that -- I have a map.

5 MR. HERMANCE: I see this up here.

6 MR. DOCE: We're asking for the
7 variance but we're willing to do that
8 if necessary.

9 MR. HERMANCE: Thank you.

10 CHAIRMAN SCALZO: Is that it,
11 Mr. Hermance?

12 MR. HERMANCE: Yes.

13 CHAIRMAN SCALZO: You stole my
14 idea, Mr. Hermance.

15 We have an opportunity here to
16 bring you into conformance. I don't
17 know if you saw me sketching. I just
18 hit with the blue areas there. I
19 know, Michelle, you can't see that.
20 The first area that you mentioned was
21 on the Union Avenue side over here.
22 There's also another area down on the
23 other side which may be possible.
24 Because we cannot vote on this this
25 evening, that's actually --

1 SAM NEWBURGH, LLC

2 MR. DOCE: I actually have
3 outlined areas, too, which I would
4 propose.

5 CHAIRMAN SCALZO: All right.
6 You're thinking about it. I'm right
7 in line there with Mr. Hermance. At
8 the time your proposal does not
9 indicate any outdoor storage. The
10 fencing, it's just unsightly in some
11 cases, and I think in this case it
12 would be. If you're not planning for
13 any outdoor storage at this time, the
14 environmentalists would love you if
15 you were to remove this asphalt,
16 topsoil and seed. It would be one of
17 those projects that the Town of
18 Newburgh would talk about and say
19 look at those good guys, they're
20 making it green. That's all I have.
21 Other than that, everything is
22 existing heights. You're not
23 changing anything. I imagine there
24 will probably be perhaps a
25 modification to the building, bigger

1 SAM NEWBURGH, LLC

2 entrances or something like that.

3 That's not under our eye in this

4 case. Thank you.

5 Mr. Bell, do you have anything?

6 MR. BELL: No.

7 CHAIRMAN SCALZO: I think we

8 just stole all of your ideas.

9 How about you, Mr. Masten?

10 MR. MASTEN: Not right now.

11 That's a good size piece of property

12 there.

13 CHAIRMAN SCALZO: There's a lot

14 of asphalt out there.

15 Ms. Rein?

16 MS. REIN: For once, no.

17 CHAIRMAN SCALZO: You're still

18 new here.

19 This is a public hearing. At

20 this point I'm going to ask anyone

21 here from the public that wishes to

22 speak about this application.

23 MR. BISTOR: Christopher

24 Bistor, I reside at 17 Colden Hill

25 Road.

1 SAM NEWBURGH, LLC

2 I have a question in regards to
3 the construction inside the building.
4 You said that there are no
5 renovations being done outside. How
6 are you handling the change in
7 elevation on the inside from the
8 outside and for it to be affected
9 with the ground being dug down?

10 CHAIRMAN SCALZO: Sir, we're
11 here for a very specific reason.
12 That's really a Planning Board --
13 you'll have to appear for site plan
14 in front of the Planning Board.

15 MR. DOCE: I'm not the
16 architect. There is an architect
17 that's designing the inside of the
18 building.

19 MR. BISTOR: I have another
20 question also.

21 CHAIRMAN SCALZO: Okay.

22 MR. BISTOR: It's in regards to
23 the no fencing aspect of the
24 property. As you are aware, it is a
25 theater now. There's plenty of

1 SAM NEWBURGH, LLC

2 parking, entranceways from both
3 highways. During the closure of
4 COVID, I will say, the parking lot
5 was occupied by many passerbys from
6 the area, residents that would just
7 sit in the lot at night, play loud
8 music and things like that. That had
9 to be addressed. As a theater, and I
10 represent the theater also, we were
11 asked to close off one of the
12 entranceways by the Town in order to
13 limit that entrance in and out of the
14 property. However, that also brought
15 up another question from the fire
16 department, because they use that as
17 -- you know, between the two
18 roadways, being that the fire
19 department is down on the other end.

20 My question is if there are
21 going to be fencing lines on the
22 property, how are you going to stop
23 all of that nightlife happening on
24 the property in front of the building?

25 CHAIRMAN SCALZO: Well, I

1 SAM NEWBURGH, LLC

2 actually can let the applicant
3 answer. I'm going to let the
4 applicant talk about that. My
5 interpretation of the fencing is it
6 necessarily does not have to follow
7 the property lines. It could have
8 certainly surrounded the building and
9 the self-storage area, and the
10 accesses from Route 52 and Route 300
11 would remain open. Your question,
12 sir, can be better answered at the
13 Planning Board meeting where you can
14 ask about security issues. They're
15 more in line to be able to perhaps
16 ask the applicant to address those.

17 MR. BISTOR: So the fencing
18 lines would not necessarily restrict
19 the property itself, only around the
20 building? They could go 10 feet away
21 from the building to meet that?

22 CHAIRMAN SCALZO: Mr. Mattina,
23 is that an appropriate understanding?

24 MR. MATTINA: Yes. It doesn't
25 give you where it has to go.

1 SAM NEWBURGH, LLC

2 MR. BISTOR: Okay.

3 CHAIRMAN SCALZO: Very good.

4 Thank you very much.

5 Does anyone else from the
6 public have any questions regarding
7 this application?

8 (No response.)

9 CHAIRMAN SCALZO: Hearing none,
10 looking back to the Board.

11 MR. BELL: No.

12 CHAIRMAN SCALZO: So because we
13 have not heard back from the County,
14 we need to give them at least another
15 -- I don't know how many days, but
16 it's going to take us to the next
17 meeting. If they don't respond by
18 the time the next meeting occurs, we
19 can vote then.

20 I'm going to look to the
21 Members of the Board for a motion to
22 keep the public hearing open.

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

25 CHAIRMAN SCALZO: To October.

1 SAM NEWBURGH, LLC

2 MS. REIN: I'll second.

3 CHAIRMAN SCALZO: We have a
4 motion to keep the public hearing
5 open from Mr. Masten. We have a
6 second from Ms. Rein. All in favor?

7 MR. BELL: Aye.

8 MR. EBERHART: Aye.

9 MR. GRAMSTAD: Aye.

10 MR. HERMANCE: Aye.

11 MR. MASTEN: Aye.

12 MS. REIN: Aye.

13 CHAIRMAN SCALZO: Aye.

14 Those opposed?

15 (No response.)

16 CHAIRMAN SCALZO: Thank you.

17 Mr. Doce, I marked up mine here
18 with some colorful areas. For your
19 next submission can you at least show
20 us a revised map that would show
21 where --

22 MR. DOCE: I'll take out the
23 green.

24 CHAIRMAN SCALZO: That looks
25 appropriate, too. As long as we're

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SAM NEWBURGH, LLC

getting down close to that 60 percent, that's great. Thank you.

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

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

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of October 2022.

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

STEVEN MOREAU

54 Old South Plank Road, Newburgh
Section 52; Block 1; Lot 13
R-1 Zone

----- X

Date: September 22, 2022
Time: 7:50 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: JONATHAN MILLEN

----- X

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

1 S T E V E N M O R E A U

2 CHAIRMAN SCALZO: Our next
3 applicant is Steven Moreau, 54 Old
4 South Plank Road, seeking area
5 variances of the front yard to keep a
6 prior built gazebo and for increasing
7 the degree of nonconformity of the
8 lot area, lot depth, front yard and
9 rear yard to keep a prior built 6 by
10 10 addition that was originally an
11 open porch.

12 Siobhan, do we have mailings on
13 this?

14 MS. JABLESNIK: This applicant
15 sent out 45 letters. The same with
16 the County, we have not received
17 anything back.

18 CHAIRMAN SCALZO: We have not
19 received anything back from the
20 County. You just heard my guidance
21 to our previous applicant. We would
22 like to hear you present this
23 evening, but we can't vote on your
24 application this evening because we
25 have not heard back from the County.

1 S T E V E N M O R E A U

2 Rest assured the time limit will be
3 up by the time the next meeting rolls
4 around so we can. Unfortunately, we
5 can't tonight. We will keep the
6 hearing open. I do want to hear what
7 you have to say.

8 MR. MILLEN: My name is
9 Jonathan Millen, I'm a land surveyor.

10 The first thing I'd like to
11 point out is that when Mr. Moreau
12 bought this property, everything was
13 exactly the way it is now. It wasn't
14 Mr. Moreau that enclosed the porch.
15 We anticipate, through some pictures,
16 that it had been at least ten years
17 that the porch had been closed. No
18 additions were made to the property
19 at all with respect to doing anything
20 that created more habitable space
21 during that time.

22 The other concern is whether or
23 not the Board is going to consider it
24 being a year-round as opposed to a
25 seasonal.

1 S T E V E N M O R E A U

2 CHAIRMAN SCALZO: Right. And
3 forgive me for bringing in a
4 conversation that happened outside
5 during our joke-telling session. Mr.
6 Mattina, the applicant had indicated
7 that this is one property that is
8 considered a seasonal residence
9 amongst all the others around it.

10 MR. MATTINA: Correct.

11 CHAIRMAN SCALZO: Okay. I
12 don't recall seeing in my package
13 here that there was an issue with a
14 denial.

15 MR. MATTINA: There is nothing
16 in the Code that differentiates
17 between seasonal and full time.
18 That's why they're coming for the
19 porch. The porch in '06 was
20 converted by the previous owners
21 which increased the degree of non-
22 conformity. As far as seasonal and
23 full time, there's no distinguishing,
24 there's no definitions. There's
25 nothing that says they can't.

1 STEVEN MOREAU

2 CHAIRMAN SCALZO: I don't want
3 to say this in a nonchalant way.
4 There's no concern there?

5 MR. MATTINA: Correct.

6 CHAIRMAN SCALZO: So one of
7 your issues is no longer an issue.

8 MR. MILLEN: All right. So
9 again, the part about having it
10 enclosed, the porch, was the
11 situation before Mr. Moreau bought
12 the property. His application for
13 the building permit was for doing
14 cosmetic work to the outside and then
15 bringing the inside up to code,
16 whatever was necessary.

17 So our position is with respect
18 to the enclosed porch, this was a
19 situation that was nonconforming
20 before Mr. Moreau bought it.

21 CHAIRMAN SCALZO: Okay. So at
22 this point you're claiming that it
23 was preexisting nonconforming?

24 MR. MILLEN: Yes, sir.

25 CHAIRMAN SCALZO: Okay. So

1 STEVEN MOREAU

2 that concludes your narrative on this?

3 MR. MILLEN: With respect to
4 the part about the comment regarding
5 the habitable space being increased
6 because of the porch being enclosed.
7 So it would be an existing
8 nonconforming condition. It wasn't
9 something that Mr. Moreau added to.
10 He bought it the way it is right now
11 and --

12 CHAIRMAN SCALZO: So as we saw
13 the property, --

14 MR. MILLEN: Yes.

15 CHAIRMAN SCALZO: -- Mr. Moreau
16 has done nothing to the exterior?

17 MR. MILLEN: Other than putting
18 some siding on and increasing its
19 viability and the appearance to the
20 community at large.

21 CHAIRMAN SCALZO: Okay. It's
22 actually one of the larger lots in
23 the area.

24 MR. MILLEN: That's the other
25 thing, too. It is a rather large lot

1 STEVEN MOREAU

2 for the area.

3 CHAIRMAN SCALZO: I'm helping
4 you out here. Yeah, it is. I mean,
5 comparatively speaking, the lot
6 that's directly contiguous with it,
7 it's five to six times the size.

8 I don't have any questions.
9 Perhaps when we hear anything else
10 from the rest of the Board.

11 Because we cannot vote on it
12 this evening, I'll revisit the
13 property just to see if I feel any
14 differently.

15 At this point I'll look down to
16 Mr. Gramstad. Do you have any
17 comments on this?

18 MR. GRAMSTAD: None at all.

19 CHAIRMAN SCALZO: Mr. Eberhart?

20 MR. EBERHART: None at all.

21 CHAIRMAN SCALZO: Mr. Hermance?

22 MR. HERMANCE: No.

23 CHAIRMAN SCALZO: Mr. Bell?

24 MR. BELL: No.

25 CHAIRMAN SCALZO: Mr. Masten?

1 STEVEN MOREAU

2 MR. MASTEN: No.

3 CHAIRMAN SCALZO: Ms. Rein?

4 MS. REIN: I do. I have a few
5 questions. I'm not sure if these
6 answers were just incorrect --
7 checked off incorrectly, but I would
8 like to clear them up. This is on
9 the assessment form, page 3 of 3. On
10 number 10 it says will the proposed
11 action connect to an existing public
12 - private water supply, and you said
13 yes. I made a note it's a gazebo.

14 MR. MILLEN: We were speaking
15 of the actual house itself, --

16 MS. REIN: Okay. Well --

17 MR. MILLEN: -- which does have
18 Town water and sewer for some time.

19 MS. REIN: Okay. Will the
20 proposed action connect to existing
21 wastewater utilities, it says yes.

22 MR. MOREAU: It already does.

23 MR. MILLEN: Again, that's not
24 relative to the gazebo.

25 MS. REIN: Right. I thought we

1 S T E V E N M O R E A U

2 were just, Darrin, speaking specifically
3 about this one structure.

4 CHAIRMAN SCALZO: The degree of
5 nonconformity for the structure and
6 the gazebo is what we're considering
7 here.

8 MR. MATTINA: That's the
9 question I was reading.

10 CHAIRMAN SCALZO: We're just
11 looking at increasing -- well, we're
12 looking at a preexisting non-
13 conforming condition, therefore,
14 because they are in front of us, we
15 need to look at everything, the house
16 and the gazebo.

17 MR. MATTINA: I have two
18 different permit applications. The
19 gazebo is in the front yard all by
20 itself. During the plan review it
21 was revealed in '06, the assessor
22 picked up the porch being enclosed
23 around 2006. We've got to clear it
24 up now.

25 MS. REIN: The next question

1 S T E V E N M O R E A U

2 that I didn't get was does any
3 portion of the site of the proposed
4 action or lands adjoining the
5 proposed action contain wetlands or
6 other water bodies regulated by a
7 federal, state or local agency. You
8 said yes and then there's nothing
9 under there to explain that.

10 MR. MILLEN: All right. Well
11 basically the entire lake -- the
12 perimeter around the entire lake is
13 considered a portion of the wetlands.

14 MS. REIN: Okay.

15 MR. MILLEN: There isn't any
16 real distinguished wetland perimeter
17 in this area particular.

18 MS. REIN: Okay. There just
19 wasn't anything down there so it
20 didn't make any sense to me.

21 There's one more. Has the site
22 of the proposed action or adjoining
23 property been the subject of
24 remediation ongoing and completed for
25 the hazardous waste. You said yes.

1 S T E V E N M O R E A U

2 MR. MILLEN: I don't believe
3 that that's --

4 MR. MOREAU: That should be no.

5 MS. REIN: That should be no?

6 MR. MOREAU: Yes.

7 MS. REIN: I'll change it. I
8 don't know -- if you're coming back
9 again, you might want to change that.

10 MR. MOREAU: Sure. No problem.

11 CHAIRMAN SCALZO: Ms. Rein,
12 they are coming back. They have an
13 opportunity to revise anything.
14 You're picking up here because I
15 didn't, that's for sure.

16 Okay. At this time do any
17 members of the publish wish to speak
18 about this application?

19 (No response.)

20 CHAIRMAN SCALZO: It does not
21 appear so. Very good.

22 Looking back to the Board.
23 I'll look to the Board for a motion
24 to keep the public hearing open until
25 the October meeting.

1 S T E V E N M O R E A U

2 MR. MASTEN: I'll make the
3 motion to keep the public hearing
4 open until October.

5 MS. REIN: I'll second it.

6 CHAIRMAN SCALZO: We have a
7 motion from Mr. Masten. We have a
8 second from Ms. Rein. All in favor?

9 MR. BELL: Aye.

10 MR. EBERHART: Aye.

11 MR. GRAMSTAD: Aye.

12 MR. HERMANCE: Aye.

13 MR. MASTEN: Aye.

14 MS. REIN: Aye.

15 CHAIRMAN SCALZO: Aye.

16 Those opposed?

17 (No response.)

18 CHAIRMAN SCALZO: None. We'll
19 see you next month.

20 MR. MILLEN: Can we address the
21 gazebo particularly?

22 CHAIRMAN SCALZO: I was using
23 your narrative as to everything that
24 we were looking for.

25 MR. MOREAU: It falls within

1 S T E V E N M O R E A U

2 that. Right?

3 CHAIRMAN SCALZO: It's the
4 front yard on 52, but it sits further
5 back from the dwelling on Old South
6 Plank Road. I know by definition you
7 have two front yards, but the face of
8 the house is towards Old South Plank
9 Road. We can't act on either of them
10 tonight anyway, so --

11 MR. MILLEN: Okay.

12 MR. MOREAU: I guess if there's
13 a question, you can just bring it up
14 at the next meeting.

15 CHAIRMAN SCALZO: That's correct.

16 MR. MOREAU: Thank you.

17 MR. MILLEN: Thank you for your
18 time.

19

20 (Time noted: 7:58 p.m.)

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25

1 S T E V E N M O R E A U

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 4th day of October 2022.

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Michelle Conero

22

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

2102 PARTNERS, LLC

2102 Route 300, Wallkill
Section 3; Block 1; Lot 21.31
AR Zone

----- X

Date: September 22, 2022
Time: 8:00 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: JOHN FURST

----- X

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

1 2102 PARTNERS, LLC

2 CHAIRMAN SCALZO: Our next
3 applicant is a holdover from last
4 month, 2102 Partners, LLC at 2102
5 Route 300 in Wallkill, seeking an
6 interpretation of Section 185-54-A-1,
7 is this proposed use permitted under
8 the previously approved use variance
9 from 1982, and an interpretation from
10 2018. The applicant seeks a change
11 of occupancy from WCC Tank to
12 BlackRock Excavating.

13 We left the public hearing open
14 last month. We were, I'll call it,
15 short staffed. We've got a full
16 compliment of Board Members this
17 evening. I'm sure they've read the
18 meeting minutes from last month.

19 Since you're here, --

20 MR. FURST: Thank you.

21 CHAIRMAN SCALZO: -- it would
22 be great if you could just go ahead
23 right through it.

24 MR. FURST: Thank you. Again,
25 my name is John Furst, I'm an

1 2102 PARTNERS, LLC

2 attorney at Catania, Mahon & Rider.
3 I represent the applicant, BlackRock
4 Excavating Corporation. They're here
5 seeking an interpretation of a 1982
6 use variance that the Zoning Board
7 had granted for a commercial use that
8 still exists to this day. This is
9 not a change of use, it's not an
10 expansion of a use, nor is it an
11 addition of a use. It's not a new,
12 it's not a different use. The
13 applicant is proposing to use the
14 property in the same manner,
15 indoor/outdoor storage, offices, a
16 meeting place for people so that
17 their crew can perform their job
18 offsite. It's essentially a
19 contractor's yard. That's what it's
20 been used as by WCC. That's what
21 BlackRock Excavating is proposing.
22 The use is not changing. The
23 business is different. This is not
24 WCC. This is not tank lining.
25 They're very similar. They both

1 2102 PARTNERS, LLC

2 ironically deal with tanks.
3 BlackRock deals with septic tanks.
4 WCC deals with fuel tanks. Again,
5 it's a different business. Both
6 businesses operate offsite. They
7 both contract with people offsite to
8 work on different and various
9 components of somebody's property.
10 The use on the property is not
11 changing. It's all consistent with
12 the 1982 variance which did permit a
13 commercial use and a business on this
14 property.

15 The ZBA cannot regulate the
16 use. That's black letter law. I'm
17 sure your attorney has probably told
18 you that in the past. You regulate
19 the use, not the user. Just because
20 the user is changing doesn't mean it
21 falls under the 1982 use variance.
22 It's because the use is the same,
23 that's why it still falls under the
24 use variance. In fact, if you look
25 at page 5 of that variance from 1982,

1 2102 PARTNERS, LLC

2 it specifically authorizes a business
3 use of the building. It doesn't have
4 a condition that says this has to be
5 a tank lining business. It doesn't
6 have a condition that limits it just
7 to a tank lining business. If it
8 did, that would be illegal, by the
9 way, because, again, you regulate the
10 use on the property, not the user.

11 The conditions cannot be
12 related to operational components.
13 The conditions have to be related to
14 the land. Whether it's tank lining,
15 whether it's septic, there's no
16 change in the use on the property.
17 Offsite, yes, it's different. We're
18 not hiding that fact. On site it's
19 exactly the same.

20 So again, the fact that these
21 businesses are slightly different,
22 it's irrelevant. You need to focus
23 on what's happening on the site, the
24 use on the site. The conditions have
25 to be related to on site, not what

1 2102 PARTNERS, LLC

2 they do offsite.

3 Again, we open our arms to any
4 discussion as far as cleaning up the
5 site, adding screening, adding
6 whatever conditions that are
7 reasonable in working on this
8 property.

9 Mr. Casscles, who is the owner,
10 a single owner of BlackRock, would
11 love to get in the Town of Newburgh.
12 He's excited to be here. He wants to
13 be here. He wants to be in the Town
14 of Newburgh. It's a great location.
15 He's trying to work with the
16 neighbors. He's reached out on
17 several occasions to the neighbors.
18 We're willing to address their
19 concerns within reason. This, I
20 think, is a great opportunity for the
21 Board, once and for all, to kind of
22 clarify things.

23 Again, we're missing that site
24 plan from 1982. Although the use
25 variance does talk about specific

1 2102 PARTNERS, LLC

2 uses or specific components of that
3 use variance; again, there is no
4 restriction that it has to be a tank
5 lining business. Page 5 says any
6 business. It would be nice to have a
7 site plan. I'm sure it would make it
8 easier for the Building Department.
9 It would make it easier for my client
10 because he wants to know what he can
11 or cannot do on this property.

12 So if you have any questions,
13 we're here. Thank you very much.

14 CHAIRMAN SCALZO: Thank you,
15 Counselor, for your presentation.

16 For you fellow Board Members
17 that weren't here last month --

18 MR. MASTEN: I wasn't here.

19 CHAIRMAN SCALZO: That's why we
20 had him go through it there, Mr.
21 Masten, so you can be right up to
22 speed. Mr. Masten, you were here in
23 2018 --

24 MR. MASTEN: Yes.

25 CHAIRMAN SCALZO: -- for the --

1 2102 PARTNERS, LLC

2 MR. MASTEN: Conklin.

3 CHAIRMAN SCALZO: --

4 interpretation of WCC Tank when they
5 were looking to do hydro-excavating.
6 Furthermore, I believe it almost came
7 down to all they wanted to do was
8 just park their trucks there. They
9 weren't going to do any discharges.
10 Mr. Masten, do you recall how the
11 Board interpreted that?

12 MR. MASTEN: No. Not word for
13 word I don't remember. We didn't
14 have a stenographer back then either.

15 CHAIRMAN SCALZO: Sure we did.
16 Mr. Masten, I'm not picking on you
17 when I say this. The applicant is
18 standing here this evening because we
19 denied that variance back in 2018.
20 We denied it based on the
21 interpretation of the 1982 variance.

22 The applicant's representation
23 does give a compelling narrative on
24 what the applicant is trying to do.
25 I've heard that the applicant is a

1 2102 PARTNERS, LLC

2 very genuine businessman. I've heard
3 wonderful things about his business
4 and what he's trying to do. The fact
5 of the matter is we denied something
6 less restrictive than what this
7 applicant is asking for tonight.

8 Now, I am one of seven of you.
9 My position is if we were to move
10 this forward, we're opening ourselves
11 up to review beyond here.

12 MR. MASTEN: Yeah.

13 CHAIRMAN SCALZO: I'm just back
14 and forth with you. I probably said
15 too much.

16 I know Counsel is sitting next
17 to me with some highlighted areas of
18 things. Feel free to kick me in the
19 shin when --

20 MR. DONOVAN: That I will not
21 do. I was just going to -- let me
22 back up for a second. After the last
23 meeting I did send the Board some
24 information, a little homework. Mr.
25 Chairman, I was going to read from

1 2102 PARTNERS, LLC

2 the Court decision of the Appellate
3 Division.

4 CHAIRMAN SCALZO: I love people
5 reading.

6 MR. DONOVAN: Bear with me.
7 Rather than summarizing my
8 characterization of what the Court
9 said, not relative to Mr. Furst's
10 application but relative to the
11 previous application --

12 CHAIRMAN SCALZO: 2018.

13 MR. DONOVAN: 2018. Correct.
14 We ended up in the Appellate Division
15 and the Court -- the Appellate
16 Division said, "A use for which a use
17 variance has been granted as a
18 conforming use and as a result no
19 further use variance is required for
20 its expansion, unlike a use that is
21 permitted to continue only by virtue
22 of a prior lawful nonconforming use.
23 The fact that the property may be
24 used for commercial purposes,
25 however, does not leave the

1 2102 PARTNERS, LLC

2 development of the property
3 unrestrained. The use of the
4 property remains subject to the terms
5 of the use variance. Where a board
6 of appeals has previously determined
7 that the development is limited only
8 to a certain extent by the terms of
9 the variance, the board of appeals is
10 not free to later disregard that
11 determination. Here the terms of the
12 1982 use variance were very specific
13 and limited to the operation of a
14 fuel tank lining business only.
15 While the petitioners claim," again
16 different from Mr. Furst's client.
17 This is the prior petitioner. "The
18 petitioners claim that they would be
19 using the hydro-vac vehicles in
20 connection with the fuel tank lining
21 business, the testimony of the
22 petitioners' representatives at the
23 public hearing was clear that the
24 petitioners were proposing to use the
25 hydro-vac vehicles in connection with

1 2102 PARTNERS, LLC

2 an entirely different business, to
3 wit a hydro-excavation business that
4 is not permitted under the terms of
5 the 1982 use variance."

6 CHAIRMAN SCALZO: Thank you,
7 Counsel.

8 Do any of the Members of the
9 Board have any questions for Counsel
10 regarding what we just heard?

11 MS. REIN: No.

12 CHAIRMAN SCALZO: Okay. Mr.
13 Furst, I see you're waiting
14 patiently.

15 MR. FURST: Just a couple of
16 things. Back in 2018, I think some of
17 the issues there were -- there were
18 two issues. It was kind of an
19 expansion of a use that was coming on
20 the property. This is more of a
21 replacement. One use is leaving,
22 another one is coming in. I think
23 one of the issues back in 2018 was
24 the fact that you're kind of adding
25 on, increasing the usage.

1 2102 PARTNERS, LLC

2 The other thing is this is a
3 completely different application. As
4 you said, it's subject to the terms
5 of the variance. There's nowhere
6 that I read in the decision that says
7 this has to be a fuel tank lining
8 business. It says that the applicant
9 is requesting to operate a fuel tank
10 lining business on the property.
11 There's nowhere in the terms or
12 conditions on the last couple of
13 pages that say it has to be a fuel
14 tank lining business. In fact, as I
15 specifically pointed out on page 5,
16 it says that the building inspector
17 should issue permits, and it goes
18 through a list, and one of the last
19 ones on the list is for a business.
20 A business. Not specifically a tank
21 lining business.

22 I think you're approaching a
23 slippery slope here because in
24 essence what you're doing here is
25 you're controlling the use and the

1 2102 PARTNERS, LLC

2 operation. It's almost as if I had a
3 client come in and obtain a use
4 variance for a Mexican restaurant.
5 Somebody wants to buy it and put in
6 an Italian restaurant. Are you
7 telling me that under the use
8 variance somebody couldn't come in
9 and put in an Italian restaurant? If
10 you have that restriction that it can
11 only be a Mexican restaurant, you're
12 regulating the operations which you
13 cannot do. I don't see the
14 distinction. You're making a
15 distinction between essentially what
16 they're serving. What is this
17 business serving. Who do they
18 service. That is the distinction.
19 The use is exactly the same.

20 CHAIRMAN SCALZO: Thank you.

21 Okay. Does anyone else on the
22 Board have any questions on this?

23 (No response.)

24 CHAIRMAN SCALZO: I'm going to
25 open it back up to any members of the

1 2102 PARTNERS, LLC

2 public that wish to speak about this
3 application. If anyone wishes to
4 speak, please step forward.

5 MR. WOJCIECHOWSKI: Good
6 evening, Board. My name is Joe
7 Wojciechowski. I'm the chief
8 financial officer for BlackRock
9 Excavating. I thank you, first and
10 foremost, for your time and energy
11 and the respect you've given us so
12 far. It goes a long way.

13 I've personally met with all
14 the neighbors. Again, they're
15 wonderful people and they've said the
16 same about us. That's really what
17 we're here to do, is to make a union
18 between us and the neighbors.

19 We don't want that property to
20 sit or do anything -- again, we don't
21 want to change the use of that
22 property. We want to maintain the
23 use of that property exactly as it's
24 being used, categorized as other
25 storage. That's all we would do, use

1 2102 PARTNERS, LLC

2 it exactly the same as it's being
3 used. As Mr. Furst had mentioned,
4 we're not -- we really don't
5 understand how it associates to the
6 type of business using the building.
7 It is really just for us to use it as
8 a storage yard, office space, and a
9 place to mobilize.

10 I did have a chance to meet
11 with all the neighbors. I heard
12 their stories. I understand that
13 this has been a property of
14 contention, but we want to move it
15 forward. We want to get on record
16 what is able to be used at the
17 property. We want a clear site plan
18 for you folks so you know what's
19 available for us to do and for you to
20 have us kind of conform to.

21 The neighbors also didn't have
22 much concern of the property as it
23 sits. I didn't -- not to say if
24 we're approved for this we wouldn't
25 go back again, because we will

1 2102 PARTNERS, LLC

2 continue forever to go back to them
3 and listen to their needs and do what
4 we need to do. As of today nobody
5 has anything substantial to change
6 about the property. No screening, no
7 fences, no trees, no pavement.
8 Nothing there.

9 Yes, there have been concerns
10 about noise. There's been concerns
11 about wetlands. Again, we are not
12 here to change anything.

13 So that's my position. I
14 didn't speak last time but I did want
15 to speak this time as I really was
16 the main point of contact for all the
17 neighbors. I will continue to do
18 that. Mr. Casscles and I, we work
19 very closely together and we would
20 love to do that for the neighbors.
21 It's just -- for us it's very -- it's
22 important for us to do this for our
23 families and for our business. It's
24 something that we strived for for a
25 long time. We've been in business

1 2102 PARTNERS, LLC

2 for ten years. This is a natural
3 step for us.

4 Again, we don't have any
5 history there. We're new. We're
6 looking to see that you can agree
7 with us that we're just trying to use
8 the building the way it is. Thank
9 you again.

10 CHAIRMAN SCALZO: Thank you.

11 MS. REIN: I have a question
12 for our --

13 CHAIRMAN SCALZO: Counsel?

14 MS. REIN: Yes. For our amazing
15 counsel.

16 CHAIRMAN SCALZO: She called
17 you amazing, Dave.

18 MR. DONOVAN: I think you're
19 confusing me with Siobhan.

20 MS. REIN: Siobhan is
21 spectacular. I understood what you
22 said and I understood what was sent
23 to us. Given what Mr. Furst said
24 today, does that change the Board's
25 liability?

1 2102 PARTNERS, LLC

2 MR. DONOVAN: As far as -- I'm
3 not sure what you mean by liability.

4 MS. REIN: Well, because there
5 was one decision made and now we're
6 being asked to make a totally different
7 decision.

8 MR. DONOVAN: I don't think so.
9 I don't want to make Mr. Furst's case
10 for him. He's very capable of doing
11 that. All I wanted to do was make
12 clear that the decisions made before
13 by this Board were very specific
14 about what was permitted and what was
15 not permitted. Those decisions were
16 upheld by the Court. Mr. Furst's
17 argument, again, is that his client's
18 business is the same business as
19 what's there now.

20 Correct? I don't want to --

21 MR. FURST: The use is the
22 same, a contractor's yard. That's
23 what it's being used for now. Let's
24 call it what it is. That's what it's
25 being used for now. That's what my

1 2102 PARTNERS, LLC

2 client is proposing to use it for.
3 The business is not exactly the same.
4 They are very close as far as
5 contractors go.

6 MR. DONOVAN: So putting this
7 in a total legal realm right now, how
8 do we square that with the Appellate
9 Division saying that the prior
10 determination that is limited to a
11 fuel tank lining business, how do you
12 square that? The Appellate Division
13 upheld that.

14 MR. FURST: Right. Again, I
15 think one of the issues back in 2018
16 was the addition of a use. It was
17 bringing in hydro-vac.

18 MR. DONOVAN: There's no
19 question at the time. There was
20 testimony this is an entirely
21 different use that's coming in.

22 MR. FURST: Okay. The other
23 distinction is -- I don't know if you
24 guys looked closely at the decision.
25 I don't see any language in the

1 2102 PARTNERS, LLC

2 decision, in the terms and
3 conditions, that say it has to be a
4 tank lining business. Yes, the
5 application was for a fuel tank
6 lining business. Where is it in the
7 terms and conditions that -- at the
8 end of that decision where does it
9 say it has to be a fuel tank lining
10 business? If it did, that would be
11 illegal, arbitrary and capricious
12 because you're regulating the user,
13 not the use, and you're imposing
14 conditions that are operational in
15 nature.

16 MR. DONOVAN: This is a great
17 conversation to have over a cup of
18 coffee sometime. So the Appellate
19 Division
20 said --

21 MR. FURST: I'm sorry. Those
22 issues were not brought up. I went
23 through the briefs in the
24 Appellate Division. Nice job,
25 David.

1 2102 PARTNERS, LLC

2 MR. DONOVAN: They're always
3 good when you win.

4 MR. FURST: Those issues, I
5 didn't see them in the Appellate
6 briefs. I think the Appellate
7 Division didn't have the full
8 picture.

9 MR. BELL: What you're saying
10 is that if they were to have that,
11 that might have painted a different
12 picture?

13 MR. FURST: I think so. I mean
14 I'm looking at the 1982 decision. I
15 don't see anything in the terms and
16 conditions towards the end that say
17 it has to be a tank lining business.
18 What I read is it said issue a permit
19 for any business in the accessory
20 structure or accessory building.
21 That's what I read. The applicant
22 happened to be a fuel tank lining
23 business. Like I said, if an
24 applicant comes in for a use variance
25 for a Mexican restaurant, is he stuck

1 2102 PARTNERS, LLC

2 doing a Mexican restaurant for the
3 rest of his life? Can somebody buy
4 it and put in an Italian restaurant?
5 What's the difference? There is
6 none. Business wise, a difference.
7 Use wise, the same.

8 MS. REIN: My concern was how
9 does that affect the Board? If we
10 decide to approve it, what position
11 does that put us in? How does that
12 affect us?

13 MR. DONOVAN: Do you have
14 substantial liability insurance?
15 That's a joke. You have none
16 whatsoever. None whatsoever. That
17 shouldn't even enter into your
18 deliberations.

19 MS. REIN: Okay. So we won't
20 be held accountable for something --

21 MR. DONOVAN: I'm not saying
22 you won't be held accountable. I'm
23 saying you're not going to be held
24 monetarily liable.

25 MS. REIN: That's what I wanted

1 2102 PARTNERS, LLC

2 to know.

3 CHAIRMAN SCALZO: We have a new
4 face.

5 MR. PALMER: If I may, Mr.
6 Chairman, Members of the Board. I'm
7 Taylor Palmer, I'm a partner with the
8 law firm of Cuddy & Feder. We do
9 represent the property owner and
10 seller of the property that's before
11 you this evening.

12 I wanted to make one anecdotal
13 sort of reference. I appreciate Mr.
14 Furst because I used an Italian
15 restaurant and Chinese. So you can't
16 make it up, but it's in my notes.
17 It's there.

18 Anecdotally we've had other
19 issues and other instances where
20 specifically we've had prior use
21 variances granted. We're talking
22 about accessory apartments. I just
23 want to make a situation for the
24 Board to consider. That accessory
25 apartment was saying Taylor and his

1 2102 PARTNERS, LLC

2 family were given that use variance.
3 We're going to say a single-family
4 home can be two family for Taylor and
5 his relatives. That's not
6 appropriate because it runs with the
7 land. That's the similar -- that's
8 what Mr. Furst is expressing, and
9 that's what the applicant is putting
10 forth before you. This use runs with
11 the land. It's not saying only WCC
12 Tank can be on the site.

13 I just wanted to make one sort
14 of comment to Mr. Donovan's feedback.
15 The Board isn't bound by that
16 precedent because it's a different
17 application. It's a different use
18 that's before you. It's the same use
19 that's existing on the property.
20 This is a wholly different
21 application. Counsel, God bless
22 them, I believe they're Planning
23 Board counsel now for the Town,
24 didn't make all the arguments that
25 we're making before you this evening,

1 2102 PARTNERS, LLC

2 specifically what was in that use
3 variance. The fact that it says any
4 business, that wasn't brought up
5 anywhere during those deliberations,
6 at least in what we can find in the
7 minutes. That was totally different
8 than what the Court looked at. The
9 Court looked at really, as Mr. Furst
10 mentioned, those multiple users or
11 those multiple uses or the tank
12 lining -- other components that led
13 to saying that that business wasn't
14 right. You know what, now that
15 business is in the Town of
16 Montgomery. That's their problem.
17 It's a different situation entirely.

18 Before you is an applicant
19 that's coming and trying, as the
20 Chairman said, to be the good guys.
21 They want to put up the screening.
22 They want to do good for the
23 neighbors. They want to do what's
24 right. They just want to do what
25 that use variance originally said,

1 2102 PARTNERS, LLC

2 and effectively that's what this is.

3 To your point, Ms. Rein, with
4 respect to liabilities. The
5 applicant has the same ability to
6 bring a challenge of a denial as does
7 a neighbor bring a challenge of that
8 rule.

9 Effectively we're here because
10 we're trying to put a good tenant and
11 someone that wants to be here in the
12 Town of Newburgh and wants to do
13 what's right by the property, and
14 also wants to do what's right by the
15 neighbors, and that's something to be
16 said as a good guy or otherwise.
17 Really it's just consistent with what
18 that use variance allowed and
19 continues to allow because it runs
20 with the land, not with WCC Tank.

21 I appreciate your time. I
22 reserve the right to make a couple
23 more comments. We just wanted to
24 highlight those.

25 CHAIRMAN SCALZO: Are you

1 2102 PARTNERS, LLC

2 familiar with the history of the
3 property?

4 MR. PALMER: Very much so. We
5 represent the property owner. I
6 actually had historically worked for
7 Drake, Loeb in my past life. In any
8 event, that wasn't related to this
9 application. I'm quite familiar,
10 I've read all the briefs. We read
11 the application and the
12 distinguishing materials, which is
13 why we're highlighting what Mr. Furst
14 brought up, which is what the actual
15 variance itself said, which is any
16 business, not just the tank lining
17 business. So the Court in that
18 position and that application focused
19 on that, but this Board is not bound
20 by that precedent. This is a new
21 application that's before you and
22 we're presenting new evidence to
23 support it.

24 CHAIRMAN SCALZO: I understand.
25 This is where Counsel probably wants

1 2102 PARTNERS, LLC

2 to choke me. Going back to the '70s,
3 I believe it was a four-lot
4 subdivision that was prepared by a
5 surveyor named George Stevenson.
6 Somehow along the way it became a
7 business, which is smack dab in the
8 middle of a residential, agricultural
9 area.

10 MR. PALMER: That's a very good
11 point you bring up, Mr. Chairman.

12 CHAIRMAN SCALZO: I don't even
13 know the closest business to that.

14 MR. PALMER: Anecdotally you
15 actually have a section in your Code
16 which is unique. Again, this is a
17 permitted use. WCC Tank can be there
18 heretofore forever. They are a
19 permitted use. A use variance means
20 I'm permitted. I'm now part of the
21 Code as being a permitted use. That
22 doesn't go away. You actually have a
23 section in your Code, 185-19(a), as
24 Mr. Donovan said, that says the
25 changes in use: A nonconforming use

1 2102 PARTNERS, LLC

2 shall not be changed to another
3 nonconforming use without a special
4 permit from your Board, from the
5 Board of Appeals, and to only a use
6 which, in the opinion of the Board,
7 is the same or more restrictive in
8 nature. To your point, you're trying
9 to zone out or get rid of the
10 nonconforming use to something less
11 nonconforming or less obnoxious to
12 the neighbors. Like you said, it
13 doesn't necessarily fit in that
14 neighborhood. Here we're a permitted
15 use. WCC Tank is a permitted use on
16 this property. These new tenants
17 that are operating, as Mr. Furst
18 said, the same use, different
19 business, same use, are willing to do
20 more than what is even required of
21 the current owners. More screening,
22 more -- just more betterment of that
23 area to make it more consistent with
24 the character of that neighborhood.
25 The use doesn't go away with the new

1 2102 PARTNERS, LLC

2 tenant. All we're trying to do is
3 find the right tenant, and this seems
4 to be that by having the same use on
5 the property because it assumes that
6 use variance. They just happen to
7 also want to do a lot to better the
8 area because they care about their
9 neighbors, they care about the Town,
10 and they want to be a part of your
11 Town.

12 Tonight we're here, and I think
13 Mr. Canter said it, walks like a
14 duck, quacks like a duck, smells like
15 a duck, it's a duck. That's what
16 we're here to say. It's the use,
17 it's not the business.

18 CHAIRMAN SCALZO: Thank you.
19 Is there anyone else from the public
20 that wishes to speak about this
21 application?

22 UNIDENTIFIED SPEAKER: If we
23 spoke at the last one do we have to
24 speak at this one?

25 CHAIRMAN SCALZO: Not at all.

1 2102 PARTNERS, LLC

2 There have been meeting minutes which
3 the Members have read. All of the
4 concerns that were brought up in the
5 previous meeting have been read and
6 hopefully digested by the Members of
7 the Board.

8 UNIDENTIFIED SPEAKER: Thank
9 you.

10 MS. PESSICK: How are you? So
11 you mentioned that there are no other
12 businesses near this particular
13 business. I will tell you that
14 probably not a door but maybe two to
15 the left of it there is an archery
16 business. If you go the other way
17 about a mile, there's Polar which
18 took over for Antonelli's oil
19 business. So there are other
20 businesses.

21 I will tell you again, living
22 right there in the neighborhood, I
23 don't hear anything now. I don't
24 know that I'm going to hear
25 anything --

1 2102 PARTNERS, LLC

2 MR. HERMANCE: Can I interrupt
3 for one second? Can you state your
4 name?

5 MS. PESSICK: Liz Pessick.

6 MR. HERMANCE: Thank you.

7 MS. PESSICK: So what I want to
8 say really is, again, we have to
9 think about the dollars that this
10 company is going to bring to our
11 neighborhood to offset the taxes that
12 we already pay that are high. Right.
13 I pay a lot of high taxes. I don't
14 even have young children that go to
15 school, but I'm part of this
16 community. These guys could go
17 anywhere and put their business, but
18 they want to put it in our Town
19 because we're that good. Because
20 we're that good, right. So if they
21 want to be part of our community, in
22 my opinion we should let them.
23 They've already come and knocked on
24 our doors several times to ask us
25 what can I do for you, how do you

1 2102 PARTNERS, LLC

2 want this to look. That's good.
3 That's better than a lot of other
4 businesses, right. I've never had
5 anybody knock on my door to ask me
6 what do you think this should look
7 like, give me your opinion. So I just
8 want you to consider that.

9 Again, as a taxpayer, I'm a
10 hard working individual.

11 You know, we talked about noise
12 and all that before. At nighttime
13 it's very quiet in our neighborhood.
14 They're working business hours,
15 business hours that you and I are
16 working, that children are in school.
17 What noises are we going to hear?
18 We're not going to hear much of
19 anything. I hear children screaming
20 and crying and playing. I hear my
21 neighbors riding their bikes on their
22 lawn. Am I going to knock and say
23 don't do that, it bothers me? I mean
24 we have to live cohesively and
25 together. If these guys want to be

1 2102 PARTNERS, LLC

2 in our neighborhood, let's bring them
3 in.

4 CHAIRMAN SCALZO: Do you hear
5 the archery?

6 MS. PESSICK: You know what, --

7 CHAIRMAN SCALZO: I had to ask.

8 MS. PESSICK: -- I don't. I
9 hear gunshots. We know that there are
10 a lot of properties. 16 acres. I
11 have a lot of acreage. We do hear
12 gunshots and things of that sort, and
13 people riding their dirt bikes.
14 That's part of the community we live
15 in.

16 If we're so great, why are we
17 denying a company who wants to be in
18 our Town? Why? We shouldn't. Give
19 them the opportunity and let them
20 bring in those tax dollars and those
21 jobs that we talk about all the time.

22 I'm sure everyone here has had
23 a conversation about nobody wants to
24 work. They want to work.

25 Mind you, I don't know these

1 2102 PARTNERS, LLC

2 people, but I know business and I
3 know what it means to bring money
4 into our community.

5 I ask you to consider that.

6 Thank you.

7 CHAIRMAN SCALZO: Thank you for
8 your comments.

9 MR. DONOVAN: Mr. Chairman, I
10 don't want this to be dueling
11 attorneys. If I could make a point
12 relative to something Mr. Palmer said
13 which is we don't have to follow a
14 precedent. We actually do, right.
15 The law requires us to follow a
16 precedent unless we establish a
17 reason not to, right. If there's a
18 reason to depart from a precedent, we
19 need to set that forth in the record
20 and then we can depart from our
21 precedent, otherwise we have to
22 follow our precedent if the
23 application is the same, as we
24 attorneys say, on all fours, if it's
25 the same application. If you thought

1 2102 PARTNERS, LLC

2 in this case that perhaps the
3 business being described is kind of a
4 logical outgrowth of a fuel tank
5 lining business, then maybe that
6 would be a reason to deviate from a
7 prior decision. Not that I want to
8 influence you one way or another.
9 It's a matter of example as to how,
10 in my view, you would need to have
11 some reason to depart from a prior
12 precedent.

13 CHAIRMAN SCALZO: Thank you,
14 Counsel.

15 All right. One more look out
16 to the members of the public. Does
17 anyone wish to speak?

18 MS. VANDEMARK: My name is
19 Claudia Vandemark. I don't know
20 where the lady prior to me speaking
21 lives in regards to this place. It's
22 right in my backyard, and it's been a
23 nightmare. Every person that has
24 owned it previously has not done what
25 they said that they were going to do

1 2102 PARTNERS, LLC

2 with it. So like I said, I don't
3 know where in regards to the building
4 she lives, how close, how far away,
5 but it's in my backyard and I don't
6 like it.

7 CHAIRMAN SCALZO: Thank you.

8 MS. CARROLL: Susan Carroll,
9 2116 and 2122 Route 300. The entire
10 west side of 2102.

11 Knock & Feather is no longer
12 there. They folded up. That was the
13 archery place.

14 I don't know where this lady
15 lives either. Children riding bikes
16 is a normal neighborhood thing.
17 Banging of truck bodies and things
18 like that is not.

19 I would just -- you know, the
20 Board forty years ago doomed us to
21 have to keep coming here every time
22 somebody wants to go in there. I'd
23 like you all to think about if it was
24 in your backyard. Thank you.

25 CHAIRMAN SCALZO: Thank you.

1 2102 PARTNERS, LLC

2 MR. PALMER: Mr. Donovan is one
3 of the fastest in the west. I guess
4 we're on the west side of the river.

5 To that end, the only point
6 we'd make, just as distinguishing and
7 referring to the precedent, we're
8 saying that they focused on a
9 specific issue without relying on the
10 information that we provided to you,
11 which is that the actual use variance
12 itself provided for any business use
13 in that determination. That wasn't
14 the focus of that prior decision.
15 That's an important distinction and I
16 think an important piece of clarity.
17 Not faulting other prior applicants'
18 counsel or otherwise, that's what we
19 want the Board to be aware of. That
20 is what the use variance says.
21 That's the information we're
22 highlighting here tonight, is we're
23 looking at any business use. Again,
24 we are making a very different
25 argument than what the tank lining

1 2102 PARTNERS, LLC

2 business or hydro-vac, who is out of
3 the picture, was saying. We're
4 saying this is the same use,
5 different business, but also that the
6 use variance at that time, which
7 again wasn't highlighted in the
8 initial presentation by the prior
9 completely different business. This
10 is a use variance itself that says
11 any business. We're hopeful that
12 that is a very distinguishing factor.

13 There was also a mention of
14 past instances or concerns of the
15 current property owners. They're
16 trying to move on to new, different
17 pastures. This is now in contract to
18 sell to the new user. We're here
19 before you in the hopes that they can
20 be on the site and better it for the
21 neighbors as well.

22 MS. REIN: I have a question.
23 The neighbors are so uncomfortable
24 with this happening, is there a way
25 for the company to -- the company

1 2102 PARTNERS, LLC

2 supposedly has been going from door
3 to door asking the neighbors what
4 they want. This is their home. Is
5 there any way for the company to
6 guarantee that what they're offering
7 will actually happen?

8 MR. FURST: I've said it many
9 times. We've offered to sit down and
10 put a site plan together as far as
11 screening, as far as conditions,
12 where they want things to go.
13 Listen, if you deny our request, this
14 issue is not going to go away.

15 MS. REIN: That's not the
16 problem.

17 MR. FURST: If you approve the
18 request, if we have a site plan
19 that's specific, I think the problem
20 will go away.

21 MS. REIN: What I'm saying, Mr.
22 Furst --

23 MR. FURST: Denying this is
24 just kicking the can down the curb.

25 CHAIRMAN SCALZO: Mr. Furst, I

1 2102 PARTNERS, LLC

2 am not an attorney, I'm an engineer.
3 As I look at that and listen to you
4 say it's not the same business but it
5 is the same business, and because the
6 decision was not so specific in 1982
7 that it didn't say it has to be a
8 tank lining business, it can be any
9 business, so our 2018 decision, in
10 your opinion, was that erroneous?

11 MR. FURST: Correct. Based
12 upon what you have in front of you,
13 it's not erroneous. The fact is you
14 didn't consider the fact that the
15 decision specifically calls out any
16 business. Listen, Supreme Courts
17 change their decisions. I mean that
18 stuff happens. Information that's
19 before you now was not before you, or
20 at least it wasn't pointed out.

21 CHAIRMAN SCALZO: I'm having a
22 tough time with this because I don't
23 know what a duck smells like, first
24 of all. If an applicant comes in
25 with a tank lining business and

1 2102 PARTNERS, LLC

2 that's what the application says, and
3 at the end of the action they get
4 their variance for that, but because
5 the decision didn't say tank lining
6 but the duck still smells like an
7 application that says tank lining
8 business.

9 MR. FURST: The issue here is
10 tank lining happens offsite. The
11 tank lining is happening offsite.
12 The contractor's yard, the use is
13 onsite. The operation is the tank
14 lining, and that is offsite. I mean
15 I don't want to harp back to the
16 restaurant, but I mean you're
17 splitting hairs here. You're making
18 a distinction between the Italian
19 restaurant and the Chinese
20 restaurant. You're getting into the
21 operations and this wasn't brought up
22 back in 2018. It's inconsistent with
23 the 1982 use variance which wasn't
24 pointed out to you as far as what I
25 saw in the record in 2018. There is

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2 a distinction there. I know it's
3 easy to say this is not a tank lining
4 business, we're denying the variance,
5 but it's not that simple. You've
6 really got to look at it. What is
7 the use, not the business. You as a
8 Board regulate the use, you don't
9 regulate the user, you don't regulate
10 the operation. Saying that we're
11 going to deny this because this is
12 not a tank lining business, which
13 business happens to operate offsite,
14 that's regulated -- that's illegal.
15 That's regulating the use and the
16 operations, which you can't do as a
17 Board.

18 MS. REIN: Again, my concern is
19 still the people that live there.

20 MR. PALMER: Absolutely.

21 MS. REIN: Now, from what I've
22 heard, they've had a lot of promises
23 from a lot of people prior to this
24 organization coming in. Now there
25 has to be something that makes this

1 2102 PARTNERS, LLC

2 organization different. There has to
3 be something that the organization
4 can do to guarantee them that if this
5 business goes in there, they're going
6 to make good on their promises. You
7 can't just promise people --

8 MR. FURST: Exactly. That's
9 why you put it down on the site plan,
10 and that way everybody knows what can
11 and cannot happen. That's one of the
12 issues here. Nobody can find that
13 site plan from 1982. My guy has been
14 out to the property owners twice --
15 at least twice. He's reached out.
16 He's been proactive. He's trying to
17 right a wrong. He's trying to fix a
18 mess and not just, you know, kick the
19 can down the --

20 MS. REIN: Can you put together
21 some kind of a plan and give it --

22 CHAIRMAN SCALZO: We have one.
23 We have a plan right in front of us
24 that shows proposed Mafia block.
25 I'll tell you what the word proposed

1 2102 PARTNERS, LLC

2 means. It means it's not there now.

3 MS. REIN: Right.

4 MR. PALMER: If I may. As the
5 owners of the property, these are not
6 there because they weren't required
7 to be. The new tenants, the new
8 operators are looking to better the
9 property, looking to better the
10 community, looking to improve this.
11 The current owners are not required
12 to do that, period. It's not any
13 other reason. It's just that is not
14 a requirement of their existing
15 conditions on the site. They have a
16 use variance to occupy and utilize
17 the site. These new tenants are
18 proposing to do the exact -- a very
19 similar use, and, as a consequence,
20 they're also trying to address public
21 comments that have been brought up,
22 not related to the uses before you.
23 The public comments, respectfully,
24 are concerned about the character.
25 Those are not the questions that are

1 2102 PARTNERS, LLC

2 before this Board.

3 MS. REIN: I understand. That's
4 their home.

5 MR. PALMER: We understand
6 that. That's why, as Mr. Furst
7 mentioned, approving this request and
8 this interpretation will improve --
9 respectfully improve their
10 conditions. They're committing to
11 improving them through the use and
12 through the design, the landscaping.
13 Again, it's consistent with Mr. Furst
14 stating that this is kicking the can.
15 This applicant, the owner, has the
16 right to use this property for the
17 uses that are there. Just because
18 the Court made a decision, maybe
19 without the benefit of the
20 information we're providing to you
21 about the use and the circumstances.
22 Mr. Furst's analogy of the Mexican
23 restaurant and Italian restaurant.
24 We mentioned to you tonight it can't
25 just be by user. A use variance

1 2102 PARTNERS, LLC

2 can't be specific to the user. It
3 has to be about the use. That's why
4 we're here before you and that's the
5 real distinguisher. Your use
6 variance from '82 did say any
7 business.

8 CHAIRMAN SCALZO: Ms. Rein, I
9 know exactly where you're going. We
10 see what's on the site plan. What
11 assurances would there be should this
12 move forward. I think you just
13 described the difference between
14 dating and getting married. I don't
15 want to make fun of it, but that's
16 exactly what it is. During the
17 dating period you're getting a lot of
18 great promises, and then you find out
19 when you're married that perhaps
20 they're exactly like that or perhaps
21 they're not.

22 MR. CASSCLES: Good evening.
23 My name is Doug with BlackRock
24 Excavating. I'm the owner. The
25 difference you're getting between

1 2102 PARTNERS, LLC

2 previous owners and me is if I tell
3 you I'm going to do something, I'm
4 going to do it. If it's on that
5 paper, it's going to be done. It's
6 probably going to be done better than
7 anything else.

8 Our specialty is residential
9 work. We know how to operate heavy
10 equipment, trucks, manpower,
11 logistics in residential settings.
12 This is what we do. You have my word
13 that it will be done right. Thank
14 you.

15 CHAIRMAN SCALZO: Thanks.

16 Okay. I'm going to -- let's
17 get some meaningful comments. I've
18 heard representation for the
19 applicant. I saw a hand up in the
20 back.

21 MR. MANLEY: I'm Jim Manley
22 from 19 Forest Road. I want to add
23 one item, and that is I did review
24 some of the documents further on the
25 website. There were submittals that

1 2102 PARTNERS, LLC

2 indicated that there would be some
3 work being done on premises to, you
4 know, do work on trucks, perhaps some
5 repair of trucks. That is not
6 something -- I don't believe that was
7 part of the original use variance in
8 1982. There's not supposed to be any
9 work being performed at the location.
10 That is, again, one issue that in the
11 submittals -- I believe it was with
12 the submittals from the attorney in
13 the original submittals for the
14 introduction to the Zoning Board that
15 indicated that, you know, there would
16 be some, you know, light work being
17 done on the premises. What does that
18 mean? Does that mean, you know, the
19 changing of tires? Changing oil?
20 That to me is work being done on the
21 premises. So when their counsel
22 indicates that everything is being
23 done off premises, that's not exactly
24 a hundred percent, you know, true
25 based on what was submitted.

1 2102 PARTNERS, LLC

2 your trucks, you're going to plow out
3 your lot so you can get in and out.
4 Correct?

5 MR. CASSCLES: Yes.

6 CHAIRMAN SCALZO: Are you going
7 to take those trucks and go plow
8 somewhere else, too?

9 MR. CASSCLES: No.

10 CHAIRMAN SCALZO: Have you ever
11 done it in the past?

12 MR. CASSCLES: We don't plow
13 snow now. We've been out of the
14 snowplowing business for almost five
15 years. I promise you I'm not looking
16 to go back.

17 To Mr. Manley's point, most
18 people have oil stains in their
19 driveways. Most people change their
20 own oil.

21 CHAIRMAN SCALZO: I used to and
22 then I got old.

23 MR. CASCLES: The dealer does
24 it all, but --

25 CHAIRMAN SCALZO: Thank you.

1 2102 PARTNERS, LLC

2 MR. PALMER: I did just want to
3 point one other thing out. It wasn't
4 about the duck comment, but I do take
5 my son to the farm a lot.

6 Besides ducks, ducks aside,
7 really -- of course now I lost my
8 whole point.

9 One other point I was
10 discussing with counsel relates to
11 the concern, again, about whether
12 it's landscaping. I take Mr. Furst
13 may have mentioned it at the prior
14 meeting. Again, there are means and
15 other ways to have these types of
16 things, whether it's a maintenance
17 agreement or landscape agreement,
18 recorded, those kind of things put an
19 additional layer beyond the
20 enforcement of a site plan. There
21 are ways to also control and put
22 these things into effect where if
23 they're not done, there's a tool to
24 come in and say that tree is dead,
25 you have to put it back. There are

1 2102 PARTNERS, LLC

2 ways to do that beyond the site plan.
3 The site plan is enforceable by your
4 code enforcement officer, but there
5 are other ways to --

6 CHAIRMAN SCALZO: I appreciate
7 what you're saying. As we all sit
8 here, we throw enough at the Code
9 Compliance guys. They don't have
10 time to go out and police whether or
11 not your tree is dead.

12 MR. PALMER: Mr. Chairman,
13 that's why we're saying you can add a
14 layer on top of that which would be
15 some type of an agreement that would
16 give the enforceability beyond the
17 code enforcement officer, because it
18 would be the applicant is saying if
19 this dies there's a way for either
20 the Town or otherwise to come in and
21 enforce it. It's on top of what
22 would normally be a site plan
23 enforcement issue.

24 MS. REIN: Does BlackRock agree
25 to that?

1 2102 PARTNERS, LLC

2 MR. FURST: I think what Taylor
3 is trying to say is if you record a
4 document, then the neighbors can
5 potentially enforce it. It just
6 wouldn't be left to the code
7 enforcement officer.

8 MR. BELL: Can we add certain
9 -- can we add those into --

10 CHAIRMAN SCALZO: I hear where
11 you're going, Mr. Bell. I want to
12 get to a certain point here tonight.

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

16 (No response.)

17 CHAIRMAN SCALZO: All right.
18 I'm going to look to the Board for a
19 motion. I think we've heard plenty.
20 My opinion is this is very
21 interesting. We've heard Counsel's
22 position. We've heard other
23 Counsels' positions.

24 MR. DONOVAN: You've had five
25 opinions from three attorneys.

1 2102 PARTNERS, LLC

2 CHAIRMAN SCALZO: Do you guys
3 get paid by the word?

4 MR. PALMER: Absolutely. That
5 was F.D. Clarke.

6 CHAIRMAN SCALZO: Before a lot
7 of you members were here, the Board
8 used to actually take a recess and
9 confer with Counsel and then pull
10 everybody back in. We haven't done
11 that in awhile. Actually, since
12 COVID. There are certainly some
13 legal questions that I would prefer
14 to pose to our Counsel privately.

15 I'm going to look to the Board
16 for a motion to close the public
17 hearing, unless you feel as though
18 there's other information that can be
19 provided. Then I'm also going to ask
20 the Board if we can defer a decision
21 this evening, because I would really
22 like to hear Counsel's position here.

23 MR. DONOVAN: So one at a time.
24 You want to take a motion to close
25 the public hearing?

1 2102 PARTNERS, LLC

2 CHAIRMAN SCALZO: That is
3 correct.

4 MS. REIN: I'll make a motion
5 to close the public hearing.

6 MR. EBERHART: I'll second it.

7 CHAIRMAN SCALZO: We have a
8 motion to close from Ms. Rein. We
9 have a second from Mr. Eberhart I
10 believe. All in favor?

11 MR. BELL: Aye.

12 MR. EBERHART: Aye.

13 MR. GRAMSTAD: Aye.

14 MR. HERMANCENCE: Aye.

15 MR. MASTEN: Aye.

16 MS. REIN: Aye.

17 CHAIRMAN SCALZO: Aye.

18 The public hearing is now
19 closed.

20 MR. DONOVAN: Mr. Chairman, the
21 Board sometimes makes a motion to
22 defer. You don't need to do that.
23 You have 62 days to make a decision,
24 if that's what you want to do. If
25 you want to get legal advice from me,

1 2102 PARTNERS, LLC

2 you are entitled to do that for a
3 legal opinion only.

4 CHAIRMAN SCALZO: Yes.

5 MR. DONOVAN: That's an
6 attorney/ client privileged session.
7 It's actually not an executive
8 session. It's an attorney/client
9 only for legal advice. You don't
10 deliberate.

11 CHAIRMAN SCALZO: We understand
12 that. We understand that. That is
13 not how are you voting in that
14 situation. It's purely pointed legal
15 questions.

16 MR. DONOVAN: Correct. And
17 legal advice.

18 CHAIRMAN SCALZO: And legal
19 advice.

20 MS. REIN: You can't have one
21 without the other.

22 CHAIRMAN SCALZO: Thank you.

23 MR. DONOVAN: You can always
24 ask legal questions, like do we need
25 to follow a precedent. That's a

1 2102 PARTNERS, LLC

2 legal question. That's not subject
3 to an attorney/client because what
4 we're talking about is advice on the
5 legal issues relative to this
6 particular application. I just want
7 to be clear that's now focused in
8 terms of any kind of legal advice and
9 a privileged communication.

10 CHAIRMAN SCALZO: Very good.
11 All right. So any other discussion
12 here?

13 (No response.)

14 CHAIRMAN SCALZO: I believe
15 I've asked all the questions in the
16 public forum that I need to. If
17 anyone else has any questions that
18 are appropriate for a public forum,
19 let's ask them now, otherwise --

20 MR. DONOVAN: I think you just
21 closed the public hearing.

22 CHAIRMAN SCALZO: It just
23 allows you to hear what we're saying.
24 As a Board we can discuss and you can
25 hear. You're not allowed to comment

1 2102 PARTNERS, LLC

2 back to us.

3 MR. BELL: I thought we were
4 going to step out.

5 CHAIRMAN SCALZO: Not at this
6 moment.

7 At this point I would prefer to
8 make an appointment with Counsel, and
9 it could be immediately following
10 this meeting, to have him go over
11 with us some of the finer points of
12 what we're talking about.

13 MS. REIN: I think that's an
14 excellent idea.

15 CHAIRMAN SCALZO: Thank you.
16 Sometimes I come up with them.

17 MS. REIN: Every once in
18 awhile.

19 CHAIRMAN SCALZO: Very good.
20 So this application for this evening
21 is going to sit right where it is.

22 MR. FURST: Okay. So I guess
23 just one point of clarification for
24 me is if you go into the closed
25 attorney/client privileged session

1 2102 PARTNERS, LLC

2 tonight, will you be coming back into
3 the public meeting and issuing a
4 decision or you don't know, or are
5 you just --

6 CHAIRMAN SCALZO: I would say I
7 don't know, but I will tell you I
8 severely doubt it.

9 MR. FURST: I just want to know
10 if I need to stick around or not.
11 I'll stick around. Don't worry.

12 CHAIRMAN SCALZO: Sometimes I
13 don't think as quickly as I should,
14 which is why I rarely win an argument
15 at home. I need time to digest,
16 think, and perhaps whatever legal
17 advice -- not advice but legal
18 information that our Counsel provides
19 to us, it may sink in. Tomorrow I
20 may call him and say I thought of
21 something else, and then he'll have
22 to respond via e-mail, and to the
23 rest of the Board.

24 MR. FURST: So it doesn't sound
25 like you're going to make a decision

1 2102 PARTNERS, LLC

2 tonight.

3 CHAIRMAN SCALZO: If you're
4 looking for my opinion, I would not.
5 I would prefer -- if the Board calls
6 for a vote, I'm going to abstain.

7 MR. FURST: Okay. Fair enough.
8 Thank you.

9 CHAIRMAN SCALZO: Thank you.
10 All right. I believe the public
11 hearing is closed.

12 MR. DONOVAN: I would just say
13 fair is fair. You have a lot of
14 folks here for this application. If
15 you're going to deliberate later, I
16 think you should let them know
17 whether you think you're going to
18 take action or not take action. If
19 you say you're not going to take
20 action, you're not going to take
21 action. Otherwise folks are just
22 hanging out. I don't know what
23 everyone is doing tonight.

24 CHAIRMAN SCALZO: If I
25 understood Counsel right, I am very

1 2102 PARTNERS, LLC

2 confident that we will not be acting
3 upon this this evening. Once we go
4 into our attorney/ client session, I
5 believe that's going to be at the end
6 of the meeting and no members of the
7 public will be here for that.

8 MR. FURST: That's fine.

9 That's what I was trying to ask.

10 Dave was more eloquent than I was.

11 CHAIRMAN SCALZO: I apologize.

12 This is a lengthy process, folks.

13 We're going to be back here in

14 October. No one will be re-noticed.

15 MR. FURST: Correct.

16 CHAIRMAN SCALZO: Thank you.

17 MR. FURST: Thank you very

18 much.

19 MR. PALMER: Thank you all.

20

21 (Time noted: 8:49 p.m.)

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2102 PARTNERS, LLC

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 4th day of October 2022.

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

MAGDALINI ZACHARIA
(CURALEAF)

8 North Plank Road, Newburgh
Section 80; Block 5; Lot 19
B Zone

----- X

OTHER BOARD BUSINESS

Date: September 22, 2022
Time: 8:50 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. HERMANC
JOHN MASTEN
DONNA REIN

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

----- X

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

1 MAGDALINI ZACHARIA

2 CHAIRMAN SCALZO: Moving on.

3 We have Magdalini Zacharia which is 8
4 North Plank Road. They have a
5 request for a six-month extension.

6 Our Board Members may recall
7 that is the Curaleaf property over
8 there by the Alexis Diner.

9 I'll look to the Board for a
10 motion to extend -- to grant the six-
11 month extension.

12 MR. GRAMSTAD: I'll make the
13 motion.

14 MR. EBERHART: Second.

15 CHAIRMAN SCALZO: I think Mr.
16 Gramstad got it all in first, and
17 then I think Mr. Eberhart got the
18 second there. All in favor?

19 MR. BELL: Aye.

20 MR. EBERHART: Aye.

21 MR. GRAMSTAD: Aye.

22 MR. HERMANCE: Aye.

23 MR. MASTEN: Aye.

24 MS. REIN: Aye.

25 CHAIRMAN SCALZO: Aye.

1 MAGDALINI ZACHARIA

2 Those opposed?

3 (No response.)

4 CHAIRMAN SCALZO: Very good.

5 The motion is carried.

6 (Time noted: 8:51 p.m.)

7

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

9

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

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

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

20 IN WITNESS WHEREOF, I have hereunto
21 set my hand this 4th day of October 2022.

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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

BGB WEST MOBILE PARK

----- X

OTHER BOARD BUSINESS

Date: September 22, 2022
Time: 8:52 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

----- X

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

1 BGB WEST MOBILE PARK

2 CHAIRMAN SCALZO: We have one
3 more thing, BGB West Mobile Park
4 which is under other Board business.

5 Discussion on this, Counsel.
6 If you could lead the Board.

7 MR. DONOVAN: We talked about
8 this at the last meeting. This was
9 an instance where some folks wanted
10 to get a building permit to make some
11 modifications to their BGB West
12 Mobile Home Park. They were denied
13 by Code Compliance. Instead of
14 appealing to this Board, they
15 commenced a lawsuit. Ultimately it
16 ended up in two different decisions
17 from the Court, the latest of which
18 directed BGB to come to this Board.

19 I wrote a letter -- I think we
20 talked about this at the August
21 meeting. I wrote a letter to counsel
22 for BGB and told them that they would
23 be on tonight's agenda and they
24 should submit any information that
25 they think would allow the Board to

1 B G B W E S T M O B I L E P A R K

2 make a determination. According to
3 the Court's directive, we could only
4 impose pertinent conditions or
5 requirements on the new location of
6 the mobile homes. We have heard
7 nothing.

8 CHAIRMAN SCALZO: Other than
9 empty chairs, Mr. Mattina and
10 Michelle, I don't see anyone here
11 representing them this evening.

12 MR. DONOVAN: I will take this
13 up with the town attorney's office,
14 because they've handled the
15 litigation, and just let them know
16 they were given notice to be here
17 tonight and they did not come.

18 Joe, if you're aware, have
19 these folks approached Code
20 Compliance for anything?

21 MR. MATTINA: Nothing. Just a
22 letter saying give me my permit.

23 MR. DONOVAN: They did write to
24 me, their attorney, August 24th
25 saying that they were unsure of how

1 B G B W E S T M O B I L E P A R K

2 to proceed. I told them how they
3 should proceed. They elected,
4 apparently, not to do that.

5 MS. JABLESNIK: I haven't
6 received anything.

7 CHAIRMAN SCALZO: That's that
8 for them.

9 I believe if we go into the
10 attorney/client privileged session,
11 does that relieve Michelle of
12 recording minutes?

13 MR. DONOVAN: You can take
14 minutes, you don't have to. You're
15 going to get legal advice and you're
16 not going to take any action. You
17 ought to adjourn.

18 CHAIRMAN SCALZO: And get legal
19 counsel.

20 MR. DONOVAN: You should
21 probably make a motion to have an
22 attorney/client privileged session to
23 discuss legal issues presented by the
24 2102 application.

25 CHAIRMAN SCALZO: I'll make

1 B G B W E S T M O B I L E P A R K

2 that motion and mimic exactly what
3 Counsel just said. I make the
4 motion. Do we have a second?

5 MR. HERMANCE: I'll second.

6 CHAIRMAN SCALZO: We have a
7 second from Mr. Hermance. All in
8 favor?

9 MR. BELL: Aye.

10 MR. EBERHART: Aye.

11 MR. GRAMSTAD: Aye.

12 MR. HERMANCE: Aye.

13 MR. MASTEN: Aye.

14 MS. REIN: Aye.

15 CHAIRMAN SCALZO: Aye.

16 Those opposed?

17 (No response.)

18

19 (Time noted: 8:56 p.m.)

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BGB WEST MOBILE PARK

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

I, MICHELLE CONERO, a Notary Public
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That hereinbefore set forth is a true
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IN WITNESS WHEREOF, I have hereunto
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Michelle Conero

MICHELLE CONERO