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

MICHAEL HOLENESS

3 Lenape Road, Newburgh  
Section 54; Block 1; Lot 17  
R-2 Zone

----- X

Date: September 23, 2021  
Time: 7:00 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: MICHAEL HOLENESS

----- X

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

1           MICHAEL HOLENESS

2                           CHAIRMAN SCALZO: I'd like to  
3           call the meeting of the ZBA to order.  
4           The first order of business this  
5           evening are the public hearings  
6           scheduled.

7                           The procedure of the Board  
8           is that the applicants will be called  
9           upon to step forward, state their  
10          request and explain why it should be  
11          granted. The Board will then ask the  
12          applicant any questions it may have,  
13          and then any questions or comments  
14          from the public will be entertained.

15                          We are going to roll the  
16          public hearings in order, and  
17          hopefully we'll be able to make  
18          determinations as they occur. The  
19          Board will again consider the  
20          applications in the order heard and  
21          attempt to render a decision this  
22          evening but may take up to 62 days to  
23          reach a determination.

24                          I would ask if you have a  
25          cellphone, to please turn it off or

1           MICHAEL HOLENESS

2           put it on silent. And when speaking,  
3           speak directly into the microphone as  
4           it is being recorded.

5           Roll call, please.

6           MS. JABLESNIK: Darrell Bell.

7           MR. BELL: Here.

8           MS. JABLESNIK: James Eberhart.

9           MR. EBERHART: Present.

10          MS. JABLESNIK: Robert Gramstad.

11          MR. GRAMSTAD: Here.

12          MS. JABLESNIK: Greg Hermance.

13          MR. HERMANCENCE: Here.

14          MS. JABLESNIK: Anthony Marino.

15          MR. MARINO: Here.

16          MS. JABLESNIK: John Masten.

17          MR. MASTEN: Here.

18          MS. JABLESNIK: Darrin Scalzo.

19          CHAIRMAN SCALZO: Here.

20          MS. JABLESNIK: Also present  
21          is our attorney, Dave Donovan; from  
22          Code Compliance, Joe Mattina; and our  
23          Stenographer, Michelle Conero.

24          CHAIRMAN SCALZO: If I could  
25          ask you to all please rise for the

1           MICHAEL HOLENESS

2           Pledge.

3                     Mr. Bell, if you would lead us.

4                     (Pledge of Allegiance.)

5                     CHAIRMAN SCALZO: As I

6                     mentioned, the order of business are

7                     the public hearings scheduled for

8                     this evening. However, before we

9                     begin I'd like to welcome our two

10                    newest members, Mr. Gramstad and Mr.

11                    Eberhart. This is their first

12                    meeting, and they are in for a treat.

13                    We're happy to have them here.

14                    Gentlemen, welcome, welcome.

15                    We're happy to have you. It's going

16                    to make everybody's job a little

17                    easier having two extra seats filled.

18                    The first item on the agenda

19                    this evening is Michael Holeness from

20                    Lenape Road in Newburgh, seeking an

21                    area variance to keep a 21 foot above

22                    ground pool less than 10 feet away

23                    from the property line where the

24                    actual is 7.

25                    Siobhan, do we have mailings on

1           MICHAEL HOLENESS

2           this?

3                   MS. JABLESNIK: This applicant  
4           sent out 77 letters.

5                   CHAIRMAN SCALZO: 77. I have a  
6           feeling that's going to be the winner  
7           for the night. Very good.

8                   Do we have anyone here for the  
9           Holeness application? Sir, step  
10          forward, please.

11                   As I had mentioned in the  
12          variance request, you're looking to  
13          keep a 21 foot above ground pool less  
14          than 10 feet away from the property  
15          line where the actual is 7. I don't  
16          know how much more there is to say.

17                   Actually, there is a little bit  
18          more to say. We are obligated by  
19          position to go and visit all of these  
20          sites, so every one of us on the  
21          Board, except our counsel and  
22          secretary, we have all seen the site.

23                   If you could just introduce  
24          yourself. If I have captured what  
25          you're trying to accomplish here,

1           MICHAEL HOLENESS

2           that's fine.  If you have anything  
3           that you'd like to add.  Start off by  
4           introducing yourself.

5                     MR. HOLENESS:  My name is  
6           Michael Holeness.  Yes, I am the  
7           applicant.

8                     I actually measured the  
9           distance from the fence twice, and I  
10          guess I didn't do it properly.  
11          Measure twice, cut once.  Sorry about  
12          that.

13                    CHAIRMAN SCALZO:  Very good.  
14          For some reason when I was at your  
15          property I didn't think you were  
16          going to be in attendance.

17                    MR. HOLENESS:  I just got back  
18          last week.

19                    CHAIRMAN SCALZO:  Okay.  Thank  
20          you.

21                    At this point I'll look for  
22          comments from -- actually, I have one  
23          comment myself, which is to Code  
24          Compliance.  Mr. Mattina, I'll say  
25          the 7 feet -- this was denied by Code

1           MICHAEL HOLENESS

2           Compliance because it's 7 feet. We  
3           don't actually have a survey. I'm  
4           going to call it eye engineering, if  
5           you will. If you align yourself with  
6           the house, is that how you determine  
7           where --

8                   MR. MATTINA: Yes. We sent  
9           another inspector out there. He eyed  
10          up the house, he measured over and --

11                   CHAIRMAN SCALZO: All right.  
12          So we're here talking about a pool.  
13          I'm not going to talk about a fence.  
14          It appears the fence is further than  
15          7 feet away.

16                   MR. MATTINA: Correct.

17                   CHAIRMAN SCALZO: We're only  
18          talking about a pool right now. I  
19          just wanted to clarify that.

20                   I'm going to start down the  
21          other side there. Mr. Bell, do you  
22          have any comments on this  
23          application?

24                   MR. BELL: What made you come  
25          to the Zoning Board? Was it for a

1           MICHAEL HOLENESS

2           permit?

3                   MR. HOLENESS:  Yes, sir.

4                   MR. BELL:  Were you not aware  
5           that you needed a permit when you had  
6           the pool installed?

7                   MR. HOLENESS:  No.

8                   MR. BELL:  When did you have  
9           the pool installed?

10                  MR. HOLENESS:  A couple months  
11           ago.

12                  MR. BELL:  Okay.  I noticed  
13           that, which is irrelevant to why  
14           you're here.

15                  The childcare center in the  
16           backyard, --

17                  MR. HOLENESS:  Yes, sir.

18                  MR. BELL:  -- one of my big  
19           concerns was walking around the pool  
20           to see the safety of that pool versus  
21           the childcare for kids.  Hopefully it  
22           never happens that one gets into the  
23           pool.

24                  MR. HOLENESS:  We have a pool  
25           alarm and we always lock the gate.



1           MICHAEL HOLENESS

2                   MR. BELL: I saw the gate  
3 attached. There is a lock on it?

4                   MR. HOLENESS: Yes.

5                   MR. BELL: Did you say a pool  
6 alarm?

7                   MR. HOLENESS: Yes, sir.

8                   CHAIRMAN SCALZO: That's  
9 actually required. Isn't it, Mr.  
10 Mattina? Alarms for pools as well as  
11 locking gates for the ladders?

12                   MR. MATTINA: Yes. Any above  
13 ground pool, they make them at 54.  
14 As long as you have the lock and  
15 ladder, your pool alarm, you're fine.

16                   CHAIRMAN SCALZO: Thank you  
17 very much, Mr. Mattina.

18                   Mr. Bell, something else came  
19 to mind. Should this applicant get  
20 far enough where we're entertaining  
21 approving the variances, they still  
22 have to meet all code requirements.

23                   MR. BELL: Of course. Of  
24 course. Very good. I'm good.

25                   CHAIRMAN SCALZO: Mr. Hermance?

1           MICHAEL HOLENESS

2                   MR. HERMANCE: Did you have the  
3 pool installed or did you install it  
4 yourself?

5                   MR. HOLENESS: I had it  
6 installed.

7                   MR. HERMANCE: You installed  
8 it?

9                   MR. HOLENESS: I had it  
10 installed.

11                   MR. HERMANCE: So they weren't  
12 aware of the pool permit?

13                   MR. HOLENESS: No.

14                   CHAIRMAN SCALZO: Actually Mr.  
15 Gramstad is probably going to say  
16 this later. One of the reasons why  
17 he ended up landing here is he's  
18 actually a former applicant. When he  
19 had solicited bids for the project at  
20 his house, many of the contractors  
21 told him that he didn't need permits  
22 for what he was doing. It's a common  
23 thing.

24                   Any other comments, Mr.  
25 Hermance?

1           MICHAEL HOLENESS

2                   MR. HERMANCE:  No.

3                   CHAIRMAN SCALZO:  Mr. Eberhart,  
4           do you have any comments on this  
5           application?

6                   MR. EBERHART:  No comments.

7                   CHAIRMAN SCALZO:  How about Mr.  
8           Gramstad?

9                   MR. GRAMSTAD:  None at all.

10                  CHAIRMAN SCALZO:  Mr. Masten?

11                  MR. MASTEN:  I have none.

12                  CHAIRMAN SCALZO:  Mr. Marino?

13                  MR. MARINO:  The only comment I  
14           had -- you and I spoke.  I called him  
15           on the phone.  You told me you were  
16           in Guam?

17                  MR. HOLENESS:  Yes.

18                  MR. MARINO:  I was kind of  
19           shocked to hear that.

20                  CHAIRMAN SCALZO:  That's why I  
21           didn't expect to see him this  
22           evening.

23                  MR. MARINO:  I'm fine.  I saw  
24           the site as well.

25                  CHAIRMAN SCALZO:  I'm stunned

1           MICHAEL HOLENESS

2           the Ring app worked as well as it  
3           did.

4           MR. DONOVAN: Are you military?

5           MR. HOLENESS: Yes, sir.

6           CHAIRMAN SCALZO: Thank you for  
7           your service.

8           MR. HOLENESS: You're welcome.

9           CHAIRMAN SCALZO: Are there any  
10          members of the public here that wish  
11          to speak about this application?  
12          Please step forward and state your  
13          name for the record.

14          MS. RADLER: My name is Lillian  
15          Radler. I live at 4 Lenape Road.

16          CHAIRMAN SCALZO: I'm sorry. I  
17          mispronounced the way -- Lenape?

18          MS. RADLER: Yeah, Lenape. You  
19          were close, though.

20          CHAIRMAN SCALZO: Okay. And  
21          your comments, ma'am?

22          MS. RADLER: I'm just -- I got  
23          this letter in the mail to come here.  
24          I'm just wondering, because I've  
25          lived at my house for thirty years,

1           MICHAEL HOLENESS

2           how often do you guys just like  
3           approve things for people just doing  
4           things outside of the realm of having  
5           to do it properly, --- -

6                   CHAIRMAN SCALZO: Unfortunately --

7                   MS. RADLER: -- because I built  
8           a shed in my backyard and I had to  
9           move it? I'm trying to figure out  
10          like are we just letting people  
11          slide?

12                   CHAIRMAN SCALZO: Unfortunately  
13          a lot of times what we get here are  
14          people asking for forgiveness rather  
15          than permission. However, the  
16          applicant indicated that when he  
17          solicited the company that installed  
18          his pool, I don't want to say they  
19          misled him but it appears they may  
20          have misled him. You would think  
21          someone that does contracting work  
22          such as that would be aware of local  
23          codes if they're going to be doing  
24          something like that. Unfortunately I  
25          don't necessarily know if I've

1           MICHAEL HOLENESS

2           answered your question, but in most  
3           cases -- well, often we get people in  
4           here that are asking for forgiveness  
5           rather than permission because they  
6           were unaware.

7           MS. RADLER: So how does that  
8           usually work? You just forgive  
9           everyone?

10          MR. DONOVAN: If I may. There  
11          are rules. There a law, New York  
12          State law, that requires that for an  
13          area variance, which this is, that  
14          the Board engage in a five-part  
15          balancing test. The Board weighs  
16          five different factors and at the end  
17          of the day makes a determination  
18          whether or not the variance request  
19          should be granted.

20          CHAIRMAN SCALZO: Something  
21          I'll give you as an example.  
22          Accessory structures, such as a shed,  
23          the minimum offset to a property line  
24          is 5 feet. In this case the  
25          applicant is asking for -- his pool

1           MICHAEL HOLENESS

2           is now 7 feet from the property line.  
3           So it's still further away than an  
4           accessory structure would be but it's  
5           not the 10 feet required that a pool  
6           is. So that's what we're here for.

7           If you have anything else that  
8           you'd like to add, we're here to  
9           listen.

10           MS. RADLER: No. That's it.

11           CHAIRMAN SCALZO: Thank you  
12           very much. Your comments will be  
13           part of the record.

14           MS. RADLER: Thank you.

15           CHAIRMAN SCALZO: Thank you.

16           Is there anyone else from the  
17           public here to speak about this  
18           application?

19           (No response.)

20           CHAIRMAN SCALZO: Seeing none,  
21           I'm going to look to the Board for  
22           one last opportunity. Does anyone  
23           have any other comments?

24           (No response.)

25           CHAIRMAN SCALZO: Okay. In

1           MICHAEL HOLENESS

2           that case I will look to the Board  
3           for a motion to close the public  
4           hearing.

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

7           MR. MARINO: Second.

8           CHAIRMAN SCALZO: We have a  
9           motion from Mr. Masten. We have a  
10          second from Mr. Marino. Roll on  
11          that, Siobhan.

12          MS. JABLESNIK: Mr. Bell?

13          MR. BELL: Yes.

14          MS. JABLESNIK: Mr. Eberhart?

15          MR. EBERHART: Yes.

16          MS. JABLESNIK: Mr. Gramstad?

17          MR. GRAMSTAD: Yes.

18          MS. JABLESNIK: Mr. Hermance?

19          MR. HERMANCE: Yes.

20          MS. JABLESNIK: Mr. Marino?

21          MR. MARINO: Yes.

22          MS. JABLESNIK: Mr. Masten?

23          MR. MASTEN: Yes.

24          MS. JABLESNIK: Mr. Scalzo?

25          CHAIRMAN SCALZO: Yes.



1 MICHAEL HOLENESS

2 The motion is carried. The  
3 public hearing is now closed.

4 Moving on. This is a Type 2  
5 action under SEQRA. Is that correct,  
6 Counselor?

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

9 CHAIRMAN SCALZO: Thank you.  
10 Therefore we'll go through the area  
11 variance criteria and discuss the  
12 five factors that we are weighing,  
13 the first one being whether or not  
14 the benefit can be achieved by other  
15 means feasible to the applicant. As  
16 one member of the public did note,  
17 here we are looking at a -- can it be  
18 achieved by other means feasible?  
19 Sure. We can have the applicant take  
20 the pool down and move the pool 3  
21 feet and then they wouldn't be here  
22 at all.

23 Looking to the Board, can the  
24 benefit be achieved by other means  
25 feasible to the applicant. Yes and

1           MICHAEL HOLENESS

2           no.

3                       Second, if there's an  
4           undesirable change in the  
5           neighborhood character or a detriment  
6           to nearby properties.

7                       MR. BELL: No.

8                       MR. MASTEN: No.

9                       CHAIRMAN SCALZO: No.

10                      The third, whether the request  
11           is substantial. We're looking at  
12           from 10 feet to 7 feet. As far as  
13           percentage wise, it may appear big  
14           but -- as my example with the  
15           accessory structure compared to the  
16           pool, I don't believe it's  
17           substantial.

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

21                      MR. BELL: No.

22                      MR. HERMANCENCE: No.

23                      MR. MASTEN: No.

24                      CHAIRMAN SCALZO: And the  
25           fifth, whether the alleged difficulty

1           MICHAEL HOLENESS

2           is self-created which is relevant but  
3           not determinative. It is self-  
4           created. He was misled, it appears,  
5           by his contractor.

6                         Now, if we approve we shall  
7           grant the minimum variance necessary,  
8           although the structure is in place.

9                         Having gone through the  
10          balancing tests of the area variance,  
11          what is the pleasure of the Board?  
12          Do we have a motion of some sort?

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

15                        MR. HERMANCE: I'll second.

16                        CHAIRMAN SCALZO: We have a  
17          motion for approval from Mr. Bell.  
18          We have a second from Mr. Hermance.  
19          Roll call on that.

20                        MS. JABLESNIK: Mr. Bell?

21                        MR. BELL: Yes.

22                        MS. JABLESNIK: Mr. Eberhart?

23                        MR. EBERHART: Yes.

24                        MS. JABLESNIK: Mr. Gramstad?

25                        MR. GRAMSTAD: Yes.

1           M I C H A E L   H O L E N E S S

2                           MS. JABLESNIK:   Mr. Hermance?

3                           MR. HERMANCE:   Yes.

4                           MS. JABLESNIK:   Mr. Marino?

5                           MR. MARINO:     Yes.

6                           MS. JABLESNIK:   Mr. Masten?

7                           MR. MASTEN:     Yes.

8                           MS. JABLESNIK:   Mr. Scalzo?

9                           CHAIRMAN SCALZO:  Yes.

10                          The motion is carried.  The  
11                          variances are approved.

12

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

14

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

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 12th day of October 2021.

*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

G. WILLIAMS GROUP, LLC  
1431 Route 300, Newburgh  
Section 60; Block 3; Lot 29.11  
IB Zone

----- X

Date: September 23, 2021  
Time: 7:15 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

BOARD MEMBERS: DARRELL BELL  
JAMES EBERHART, JR.  
ROBERT GRAMSTAD  
ANTHONY MARINO  
JOHN MASTEN

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

APPLICANT'S REPRESENTATIVE: THOMAS  
SHEPARDSON, SUMEET DESAI & JUSTIN DATES

----- X

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

1 G. WILLIAMS GROUP, LLC

2 CHAIRMAN SCALZO: Our second  
3 applicant this evening would be the  
4 G. Williams Group, LLC, 1431 Route  
5 300 in Newburgh, which was a Planning  
6 Board referral for area variances of  
7 one side yard and the combined side  
8 yards to build a new loading dock on  
9 the rear of the building to  
10 accommodate Home Goods.

11 Mr. Hermance and I need to  
12 recuse ourselves from this because it  
13 is contiguous to the Thruway.

14 Counselor, if you could take it  
15 from here.

16 (Whereupon, Chairman Scalzo and  
17 Mr. Hermance left the meeting room.)

18 MR. DONOVAN: Siobhan, would  
19 you let us know the mailings for  
20 this?

21 MS. JABLESNIK: This applicant  
22 sent out 30 letters.

23 MR. DONOVAN: Could you just  
24 identify yourselves and let us know  
25 what you're looking for.

1 G. WILLIAMS GROUP, LLC

2 MR. SHEPARDSON: Certainly. My  
3 name is Tom Shepardson, I'm an  
4 attorney with White, Osterman &  
5 Hanna. I'm here tonight with a  
6 representative of the applicant,  
7 which is G. Williams, Sumeet Desai.

8 MR. DESAI: Sumeet Desai, G.  
9 Williams.

10 MR. SHEPARDSON: And our  
11 engineer, Justin Dates with Colliers.

12 MR. DATES: Justin Dates with  
13 Colliers Engineering & Design.

14 MR. SHEPARDSON: I've got a  
15 mini-version of the site plan if the  
16 Board would like to have a copy of  
17 it. It's very small.

18 MR. DATES: That is a copy of  
19 the same site plan that was  
20 submitted. We just added some color  
21 to the copy lines.

22 MS. JABLESNIK: If that's in  
23 the packet, I don't need it for the  
24 file. It's in the packet?

25 MR. DATES: Yes.



1 G. WILLIAMS GROUP, LLC

2 MR. SHEPARDSON: I can give a  
3 quick presentation of what the  
4 application entails. So this is the  
5 Newburgh Towne Center. It's located  
6 in an IB Zoning District. The entire  
7 site is made up of three tax parcels  
8 totalling about 22 acres.

9 The subject parcel at issue is  
10 the Marshall's building, which you'll  
11 note there's a lot of vacancy in that  
12 building at this point. The owner  
13 has struck a deal with a national  
14 major tenant called Home Goods and is  
15 very excited to bring that tenant to  
16 the Town of Newburgh, not only for  
17 the benefit of the mall but obviously  
18 the benefit of the residents in the  
19 Town. It's a great quality tenant.

20 They're going to take  
21 approximately 22,000 square feet of  
22 the vacant space in the mall. So  
23 it's a major tenant.

24 When Justin went to prepare the  
25 site plan for Home Goods, in the back

1 G. WILLIAMS GROUP, LLC

2 we had a little issue with the  
3 loading dock, therefore that's why  
4 we're here tonight. The loading dock  
5 area approaches in the side yard  
6 setback by approximately 9 feet.

7 Its companion sister area  
8 variance is the total side yard of  
9 100 feet that we also do not meet.  
10 It's approximately another 9 feet  
11 we're lacking on that.

12 So as Counsel indicated,  
13 there's a three-part test. We think  
14 in weighing the benefit to the  
15 applicant versus the detriment to the  
16 health, safety and welfare of the  
17 public, we meet all the five prongs  
18 of the test.

19 The first one is will there be  
20 an undesirable change or a detriment  
21 to the area. This loading dock is in  
22 the back of the shopping center.  
23 Nobody is going to see it unless  
24 you're lost. At the end of the day,  
25 if the variance is approved and site

1 G. WILLIAMS GROUP, LLC

2 plan approval is granted, it will be  
3 imperceptible, the difference in the  
4 loading area in the back of the  
5 center. There won't be, we don't  
6 believe, any substantial or  
7 undesirable change or detriment.

8 Alternatives. We have to  
9 build a loading dock in the back of  
10 the building. We can't put it on the  
11 side. We're not going to put it in  
12 the front. It needs to go in the  
13 back. We think we're limited in the  
14 alternatives department.

15 Substantiality. Like the  
16 Chairman had indicated, it's more  
17 than just looking at numbers. We  
18 think in the overall context where  
19 this is in this established shopping  
20 center, again when we're done it will  
21 be an imperceptible change to the  
22 area.

23 I think we're going to tweak  
24 the road a little bit in the back.  
25 It's been looked at already by the

1 G. WILLIAMS GROUP, LLC

2 Planning Board and they're okay with  
3 the configuration of moving --  
4 relocating the road to make room for  
5 the loading dock.

6 So in context, we have a 13-  
7 acre site in an area that nobody is  
8 ever going to see.

9 Adverse impacts to the  
10 environment. It's a Type 2 action.  
11 DEC has already said Type 2 actions  
12 won't have an impact on the  
13 environment.

14 A self-created hardship is a  
15 consideration. It doesn't dictate  
16 whether or not this area variance is  
17 granted. We don't think that it's  
18 really self-created. The loading  
19 dock is necessary for this major  
20 tenant to successfully operate its  
21 business at this needed space in the  
22 shopping center.

23 That's pretty much what the  
24 application summary is. If you have  
25 any questions, the team is here to

1 G. WILLIAMS GROUP, LLC

2 answer questions. We'd ask that you  
3 approve the variance.

4 MR. DONOVAN: Thank you. I'll  
5 open it up to the Board. Any  
6 questions, Mr. Marino?

7 MR. MARINO: No. Obviously  
8 another business going into that  
9 plaza is going to revitalize that  
10 plaza.

11 Where in the back would you  
12 actually be located? Near what other  
13 store that fronts the parking lot?

14 MR. DESAI: We would be to the  
15 left of Leo's Pizza that's there.  
16 The existing nail salon is no longer  
17 going to be there, they're relocating  
18 into the Dollar General. So that  
19 space where the buffet was, the bagel  
20 place. There's like five stores we're  
21 going to combine into one. The end  
22 stays the same. We're going to clean  
23 up the middle.

24 MR. MARINO: I'm good.

25 MR. DONOVAN: Mr. Masten?

1 G. WILLIAMS GROUP, LLC

2 MR. MASTEN: I'm fine.

3 MR. DONOVAN: Mr. Gramstad?

4 MR. GRAMSTAD: I'm good.

5 MR. DONOVAN: Mr. Eberhart?

6 MR. EBERHART: Good.

7 MR. DONOVAN: Mr. Bell?

8 MR. BELL: One question was  
9 where was the location. Since you  
10 mentioned that, right next to Leo's  
11 Pizza.

12 How long is the dock going to  
13 be? What's the size of it, do we  
14 know?

15 MR. DESAI: I have renderings  
16 if you want to look at them.

17 MR. DATES: It's 70 feet. It  
18 runs parallel to the building.

19 MR. BELL: Parallel to the  
20 building. So 70 feet parallel. And  
21 how far out? 5 or 10?

22 MR. DATES: I don't know the  
23 exact measurement.

24 MR. BELL: Let me ask you this  
25 question. If you'd come up for a

1 G. WILLIAMS GROUP, LLC

2 second. I'm just trying to use this  
3 as an idea. Would it be the length  
4 of the dumpsters that are there now  
5 going out like that or smaller?

6 MR. DATES: It does start --  
7 the backside --

8 MR. DONOVAN: Speak up a little  
9 bit. We do have a stenographer.

10 MR. DATES: The very tail end  
11 of where the docks -- where the  
12 trailers would back up to starts  
13 where the bollards are for the gas  
14 meters, and then we would go towards  
15 Route 300. It stops before that  
16 door, which is --

17 MR. BELL: Which is that way.  
18 Length wise it's coming up --

19 MR. DATES: The overall width  
20 is --

21 MR. DESAI: It's two trucks.

22 MR. DATES: -- 24 feet.

23 MR. BELL: Okay. So when you  
24 said that the Planning Board has  
25 already agreed to adjust the road,

1 G. WILLIAMS GROUP, LLC

2 how is the road adjusted?

3 MR. DATES: Can I bring this  
4 up?

5 MR. BELL: Sure.

6 MR. DATES: On the plan --

7 MR. BELL: Just make sure  
8 Michelle can hear you.

9 MR. DATES: So what's actually  
10 happening in the back of the  
11 building, we're adjusting the outside  
12 wall of the building. So it's not  
13 staying exactly where it is right  
14 today. There's a slight change to  
15 that. You can see that this is the  
16 existing face that you're looking at.  
17 So it would be coming out that  
18 roughly 24 feet to establish the  
19 whole loading dock.

20 MR. BELL: Okay.

21 MR. DATES: It's got two bays.  
22 With that, we also extended the  
23 roadway or the drive aisle back there  
24 24 feet from the loading dock. We've  
25 maintained the two-way circulation



1 G. WILLIAMS GROUP, LLC

2 outside of the loading dock area.

3 MR. BELL: Okay. I know when I  
4 drove back there there were a couple  
5 vehicles.

6 MR. DESAI: It's complicated.

7 MR. BELL: It was. When you  
8 said adjusting the road, I'm like  
9 okay, how is it going to be.

10 MR. DESAI: It took me awhile  
11 to grasp it myself.

12 MR. BELL: I'm good. I'm good.

13 MR. DONOVAN: All right. At  
14 this time I'll open it up to any  
15 members of the public that have any  
16 comment on this application.

17 UNIDENTIFIED SPEAKER: I'm here  
18 for a different variance but I love  
19 Home Goods.

20 MR. SHEPARDSON: Thank you.

21 UNIDENTIFIED SPEAKER: I'll  
22 second that, too. Newburgh needs  
23 some more good shopping, then we  
24 don't have to drive far. Keep it in  
25 our Town and shop local. You can get

1 G. WILLIAMS GROUP, LLC

2 a slice of pizza when you're done.

3 MR. BELL: Mr. Chairman --

4 UNIDENTIFIED SPEAKER: Then you  
5 can zoom down and get a Dairy Queen.

6 MR. DONOVAN: Do we have any  
7 motions relative to the public  
8 hearing?

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

11 MR. MASTEN: I'll second it.

12 MR. DONOVAN: Motion by Mr.  
13 Bell. Second by Mr. Masten.  
14 Siobhan, roll call, please.

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. Marino?

22 MR. MARINO: Yes.

23 MS. JABLESNIK: Mr. Masten?

24 MR. MASTEN: Yes.

25 MR. DONOVAN: The public

1 G. WILLIAMS GROUP, LLC

2 hearing is closed.

3 As indicated by counsel for  
4 the applicant, this is a Type 2  
5 action under SEQRA, an individual  
6 setback or lot line variance. We'll  
7 go through the five-part area  
8 variance criteria for this  
9 application.

10 The first is whether or not  
11 the benefit can be achieved by other  
12 means feasible for the applicant to  
13 pursue.

14 MR. BELL: No. I don't think  
15 so.

16 MR. DONOVAN: The second is  
17 whether it will cause an undesirable  
18 change in the neighborhood character  
19 or a detriment to nearby properties.

20 MR. BELL: No.

21 MR. MARINO: No.

22 MR. BELL: It will make it  
23 better.

24 MR. DONOVAN: The third is  
25 whether the request is substantial

1 G. WILLIAMS GROUP, LLC

2 viewed in context with the overall  
3 development.

4 MR. BELL: No.

5 MR. MARINO: No.

6 MR. MASTEN: No.

7 MR. DONOVAN: The fourth is  
8 whether the request would have  
9 adverse physical or environmental  
10 effects.

11 MR. BELL: No.

12 MR. MARINO: No.

13 MR. DONOVAN: The last is  
14 whether the alleged difficulty is  
15 self-created, which is relevant but  
16 not determinative. This is  
17 self-created to an extent, but it's  
18 just one of the factors you need to  
19 consider.

20 With that in mind, does  
21 anybody have a motion relative to the  
22 application?

23 MR. MARINO: I'd make a motion  
24 that we approve the application.

25 MR. BELL: Second.

1 G. WILLIAMS GROUP, LLC

2 MR. MASTEN: I'll second that.

3 MR. DONOVAN: Mr. Marino and  
4 stereo by Mr. Bell and Mr. Masten.  
5 Roll call, please.

6 MS. JABLESNIK: Mr. Bell?

7 MR. BELL: Yes.

8 MS. JABLESNIK: Mr. Eberhart?

9 MR. EBERHART: Yes.

10 MS. JABLESNIK: Mr. Gramstad?

11 MR. GRAMSTAD: Yes.

12 MS. JABLESNIK: Mr. Marino?

13 MR. MARINO: Yes.

14 MS. JABLESNIK: Mr. Masten?

15 MR. MASTEN: Yes.

16 MR. DONOVAN: Motion carried.

17 MR. BELL: When is this going  
18 to take place, may I ask?

19 MR. DESAI: As soon as  
20 possible. The tenant wants to come  
21 in the first quarter of next year if  
22 everything goes well with our  
23 paperwork on our side. We're ready.

24

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

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G . W I L L I A M S   G R O U P ,   L L C

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 12th day of October 2021.

*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

JAND REALTY

2 Stillwater Lane, Newburgh  
Section 19; Block 1; Lot 20  
R-2 Zone

----- X

Date: September 23, 2021  
Time: 7:27 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: TIMOTHY DEXTER

----- X

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

1 J A N D R E A L T Y

2 CHAIRMAN SCALZO: Our next  
3 applicant this evening is Jand  
4 Realty, 2 Stillwater Lane in  
5 Newburgh, seeking an area variance of  
6 the front yard to construct a new  
7 single-family residence on an  
8 existing foundation.

9 Mailings on this, Siobhan?

10 MS. JABLESNIK: This applicant  
11 sent out 55 letters.

12 CHAIRMAN SCALZO: 55. All  
13 right.

14 If you could introduce  
15 yourself, sir, and let us know why  
16 you're here, unless I missed  
17 something.

18 MR. DEXTER: No, you didn't.  
19 My name is Tim Dexter. I work for Art  
20 Glynn who owns Hudson View  
21 Construction and Jand Realty.

22 Hudson View Construction, we  
23 are primarily fire reconstruction  
24 specialists so we deal with people  
25 who had fires. This house was



1           J A N D   R E A L T Y

2           destroyed by a fire in April of last  
3           year. A gentleman by the name of  
4           Leigh Benton owned it and we were  
5           working with him to rebuild the  
6           house. We also negotiate with the  
7           insurance companies to try to get the  
8           most for the customer.

9                     After going through all that  
10           process, Mr. Benton decided he  
11           enjoyed the relocated apartment that  
12           he was in and he chose not to rebuild  
13           the house. We purchased it from him.

14                    It was our understanding at the  
15           time, and my understanding of the  
16           zoning law, is that if we had rebuilt  
17           the house on the existing foundation  
18           within one year of the loss we  
19           wouldn't need any variances. Due to  
20           the lengthy negotiations and  
21           everything else, including COVID, we  
22           did not make that deadline. So we  
23           developed our plans, applied for the  
24           building permit.

25                    We're obviously here -- the

1 J A N D R E A L T Y

2 foundation was built. Mr. Benton was  
3 the original owner. He tells us he  
4 was the first house in that  
5 subdivision. So the house and the  
6 foundation has been there for over  
7 fifty years. The house we're looking  
8 just to rebuild on the existing  
9 footprint.

10 CHAIRMAN SCALZO: Very good.  
11 Thank you. We've all been there.  
12 We've seen it. The lot cleaned up  
13 kind of nice.

14 I just have an observation from  
15 the map that was provided to us. It  
16 appears that the filed map and the  
17 deeds just don't quite match up.  
18 There's a deed line and then there's  
19 the property line and a couple of  
20 inconsistencies. It has nothing to  
21 do with why we're here.

22 MR. DEXTER: I know at the  
23 closing there were some issues with  
24 that too because there was a  
25 right-of-way or a taking or something

1 J A N D R E A L T Y

2 with the utility years ago. They  
3 worked that out at the closing.

4 CHAIRMAN SCALZO: They  
5 determined the boundary is what the  
6 boundary is. It's not actually for  
7 the front yard anyway, so it's no big  
8 deal.

9 I, again, have seen it. It's  
10 my opinion, but there's six more  
11 people that have opinions here, it's  
12 preexisting nonconforming, although  
13 you did lose that when the house  
14 burnt down over a year ago.

15 So anyway, I'm going to start  
16 on the other end. Mr. Marino, do you  
17 have any comments on this  
18 application?

19 MR. MARINO: I'm good.

20 CHAIRMAN SCALZO: Mr. Masten?

21 MR. MASTEN: I have nothing.

22 CHAIRMAN SCALZO: Mr. Gramstad?

23 MR. GRAMSTAD: Nothing at all.

24 CHAIRMAN SCALZO: Mr. Eberhart?

25 MR. EBERHART: Nothing for me.

1 J A N D R E A L T Y

2 CHAIRMAN SCALZO: Mr. Hermance?

3 MR. HERMANCE: No. You  
4 answered my question, it was already  
5 preexisting.

6 CHAIRMAN SCALZO: Mr. Bell?

7 MR. BELL: None.

8 CHAIRMAN SCALZO: This is  
9 really flying here. At this time I'd  
10 like to open it up to any members of  
11 the public that wish to speak about  
12 this application. One at a time,  
13 please come up and introduce yourself  
14 and give us your comments and we'll  
15 do our best to --

16 MS. LEE: My name is Shelly  
17 Lee, I live in the neighborhood. I  
18 support the variance because we drive  
19 by that empty lot on our way to work.  
20 We drive by it on our way from work.  
21 We walk our dogs. My husband jogs  
22 past there. I said stay away, don't  
23 get ticks or poison ivy there. We're  
24 tired of looking at an eyesore. We  
25 were so excited when the construction

1 J A N D R E A L T Y

2 started. We were like hey, a nice  
3 new house, new neighbors. Our  
4 property values -- we're a fun group  
5 of people. We're looking forward to  
6 new neighbors, to bake brownies and  
7 welcome them. We just want a nice  
8 new house instead of an eyesore.  
9 It's in a nice area to walk past in  
10 our neighborhood.

11 CHAIRMAN SCALZO: So you're in  
12 favor of it?

13 MS. LEE: And then I'll go to  
14 Home Goods after that.

15 CHAIRMAN SCALZO: Is the house  
16 sold yet, sir?

17 MR. DEXTER: No.

18 CHAIRMAN SCALZO: I might want  
19 to live there if the neighbors are  
20 like that.

21 MS. LEE: I bake brownies to  
22 welcome the neighbors.

23 CHAIRMAN SCALZO: I saw a  
24 second hand up. Come on up and  
25 introduce yourself.

1 J A N D R E A L T Y

2 MS. MILLER: I'm Ann Miller. I  
3 live in the neighborhood too, right  
4 around the corner from the Stillwater  
5 house. I'm here on behalf of myself  
6 and a ton, like a bazillion  
7 neighbors. Lots of them.

8 CHAIRMAN SCALZO: I'm an  
9 engineer. That means a lot to me.

10 MS. MILLER: Because it's just  
11 been such an eyesore for the past  
12 year-and-a-half. We walk by it. We  
13 stare at it. We drive by it a  
14 million times a day and you have to  
15 look at this delapidated -- now it's  
16 nicer that the builders started  
17 taking care of it, which is very  
18 encouraging. A few months back when  
19 they did start, you walk by it and  
20 see everybody there working and  
21 you're like oh, a new house is going  
22 up, this is great, because it's ugly.  
23 It's ugly looking at that property,  
24 that half foundation. It's nicer  
25 than when it was the burnt building

1 J A N D R E A L T Y

2 as somebody said. When you have  
3 friends and family come and visit,  
4 what's up with the neighborhood.  
5 It's embarrassing. You want to live  
6 somewhere nice, you know. I'm  
7 speaking for all of us. Everybody is  
8 always asking Shelly and myself,  
9 because we're big walkers, did you  
10 talk to the builders, did you know  
11 this, did you know that. I'm sure  
12 whatever they put up is going to be  
13 beautiful. It's going to be a huge  
14 improvement to the street as well as  
15 the whole neighborhood. It will make  
16 a bazillion of us happy. We're very  
17 much in support of this.

18 CHAIRMAN SCALZO: I didn't hear  
19 anything about cookies or brownies  
20 out of you, though.

21 MS. MILLER: I make drop dead  
22 cookies. And I do shop at Home  
23 Goods, which is a great thing. You  
24 have to approve that as well. That's  
25 all I have to say.

1 J A N D R E A L T Y

2 CHAIRMAN SCALZO: Thank you  
3 very much. Actually, your comments  
4 are meaningful to us and they are  
5 recorded in the meeting minutes.

6 MS. MILLER: I hope you take  
7 them into consideration because we  
8 live there.

9 CHAIRMAN SCALZO: We do.

10 MS. MILLER: You have to look  
11 at that. So I'm counting on you  
12 guys. Thank you.

13 CHAIRMAN SCALZO: Thank you.

14 Michelle, you could just note  
15 she pointed at every one of us.

16 Any other comments from the  
17 public on this application?

18 MR. MATTINA: I do.

19 CHAIRMAN SCALZO: Mr. Mattina,  
20 you're acting in the capacity of the  
21 Town.

22 MR. MATTINA: Just to square it  
23 up. The repair of the damaged house,  
24 that wasn't the reason I sent it to  
25 Zoning. The reason is a new front



1 J A N D R E A L T Y

2 yard setback is being created because  
3 they are putting a 4-foot covered  
4 porch on the front. That's the  
5 reason we're here for a variance.  
6 And even if it wasn't for the porch,  
7 them having a two-story house would  
8 increase the degree. But the 4-foot  
9 front porch is why they're here for  
10 the variance.

11 CHAIRMAN SCALZO: Thank you,  
12 Joe. That makes a little more sense.  
13 Okay. So you've seen architectural  
14 for this?

15 MR. MATTINA: Yes.

16 MR. DEXTER: I've got them.

17 CHAIRMAN SCALZO: Actually,  
18 throw them on the easel.

19 MR. BELL: That's not what we  
20 were talking about.

21 CHAIRMAN SCALZO: Let me look  
22 back at the application. Did I miss  
23 that?

24 MR. BELL: I didn't see that as  
25 the reason why.

1 J A N D R E A L T Y

2 MR. DEXTER: I'll pass it  
3 around.

4 CHAIRMAN SCALZO: Joe, the  
5 variance right now is 5.1 feet. If  
6 the porch was not there it would be  
7 1.1. So we'd still be looking for a  
8 variance no matter how you slice it.

9 MR. MATTINA: Even if it wasn't  
10 for the porch, where the garage used  
11 to be was a single level, now it's a  
12 double level.

13 CHAIRMAN SCALZO: So we're  
14 increasing the degree of  
15 nonconformity.

16 MR. MATTINA: Just opened a new  
17 setback.

18 CHAIRMAN SCALZO: I understand.

19 MR. HERMANCE: Was the previous  
20 structure a single story or double?

21 MR. MATTINA: It was a double  
22 on the right side with a single  
23 garage on the left side. Now the  
24 whole thing is going to be double, so  
25 we've increased the nonconformity.

1 J A N D R E A L T Y

2 CHAIRMAN SCALZO: Okay. So  
3 obviously this is a newer design in  
4 an older subdivision.

5 MR. MATTINA: Yes.

6 CHAIRMAN SCALZO: You're going  
7 to make everybody else jealous.

8 Thank you you for the  
9 clarification, Joe. I do appreciate  
10 it. Thank you.

11 So we will have a chance to  
12 look at the architectural on the  
13 front there. It's certainly an  
14 enhancement to just a straight  
15 colonial. That's for sure.

16 Back to the Members of the  
17 Board. Any comments on this after  
18 seeing it?

19 MR. BELL: No.

20 MR. HERMANC: No.

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

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

1 J A N D R E A L T Y

2 MR. EBERHART: Second.

3 CHAIRMAN SCALZO: We have a  
4 motion from Mr. Masten. We have a  
5 second from Mr. Eberhart. Roll call  
6 on it.

7 MS. JABLESNIK: Mr. Bell?

8 MR. BELL: Yes.

9 MS. JABLESNIK: Mr. Eberhart?

10 MR. EBERHART: Yes.

11 MS. JABLESNIK: Mr. Gramstad?

12 MR. GRAMSTAD: Yes.

13 MS. JABLESNIK: Mr. Hermance?

14 MR. HERMANCENCE: Yes.

15 MS. JABLESNIK: Mr. Marino?

16 MR. MARINO: Yes.

17 MS. JABLESNIK: Mr. Masten?

18 MR. MASTEN: Yes.

19 MS. JABLESNIK: Mr. Scalzo?

20 CHAIRMAN SCALZO: Yes.

21 The public hearing is closed.

22 This is a Type 2, Dave?

23 MR. DONOVAN: This is a Type 2  
24 action.

25 CHAIRMAN SCALZO: Type 2

1 J A N D R E A L T Y

2 action under SEQRA. Very good.

3 So the first factor being  
4 whether or not the benefit can be  
5 achieved by other means feasible to  
6 the applicant. Well yeah. It  
7 certainly wouldn't have the aesthetic  
8 value it would when he's done.

9 Second, if there's an  
10 undesirable change in the  
11 neighborhood character or a detriment  
12 to nearby properties. We've heard  
13 testimony from the public that they  
14 think that this would be quite the  
15 opposite. It would be a desirable  
16 change. I was listening.

17 MS. LEE: Thank you.

18 CHAIRMAN SCALZO: The third,  
19 whether the request is substantial.  
20 No, it does not appear so.

21 Fourth, whether the request  
22 will have adverse physical or  
23 environmental effects. I would say  
24 quite the opposite.

25 MR. BELL: No.

1 J A N D R E A L T Y

2 CHAIRMAN SCALZO: The fifth,  
3 whether the alleged difficulty is  
4 self-created which is relevant but  
5 not determinative. Just because he's  
6 putting the front entry on there, it  
7 is self-created. However, it's not  
8 determinative to what we're doing  
9 here.

10 So that being said, do I hear  
11 a motion from the Board?

12 MR. BELL: I'll make the  
13 motion for approval.

14 MR. GRAMSTAD: I'll second it.

15 CHAIRMAN SCALZO: We got the  
16 other new guy. We have a motion for  
17 approval from Mr. Bell. We have a  
18 second from Mr. Gramstad. Roll on  
19 that, please.

20 MS. JABLESNIK: Mr. Bell?

21 MR. BELL: Yes.

22 MS. JABLESNIK: Mr. Eberhart?

23 MR. EBERHART: Yes.

24 MS. JABLESNIK: Mr. Gramstad?

25 MR. GRAMSTAD: Yes.

1 J A N D R E A L T Y

2 MS. JABLESNIK: Mr. Hermance?

3 MR. HERMANCE: Yes.

4 MS. JABLESNIK: Mr. Marino?

5 MR. MARINO: I like brownies

6 so I'm voting yes.

7 MS. JABLESNIK: Mr. Masten?

8 MR. MASTEN: Yes.

9 MS. JABLESNIK: Mr. Scalzo?

10 CHAIRMAN SCALZO: Yes.

11 The variances are approved.

12 Good luck, sir.

13

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

15

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J A N D R E A L T Y

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 12th day of October 2021.

*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

THOMAS MURPHY

13 Flamingo Drive, Newburgh  
Section 90; Block 5; Lot 12  
R-1 Zone

----- X

Date: September 23, 2021  
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.  
ROBRET GRAMSTAD  
GREGORY M. HERMANCE  
ANTHONY MARINO  
JOHN MASTEN

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

APPLICANT'S REPRESENTATIVE: THOMAS MURPHY

----- X

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

1           T H O M A S   M U R P H Y

2                   CHAIRMAN SCALZO:  Our next  
3           applicant this evening is Thomas  
4           Murphy at 13 Flamingo Drive in  
5           Newburgh, seeking an area variance of  
6           the front yard to build a 24 by 24 by  
7           15 foot accessory building.

8                   Siobhan, mailings on this one?

9                   MS. JABLESNIK:  This applicant  
10          sent out 67.

11                  CHAIRMAN SCALZO:  67.

12                  MS. JABLESNIK:  Second place.

13                  CHAIRMAN SCALZO:  That was only  
14          second place for a short time.

15                  Mr. Murphy, as I mentioned  
16          earlier in the meeting, we've all  
17          been to your site.  We've all looked  
18          around.  You are, I'm not going to  
19          say burdened with, but you're on the  
20          corner lot so you have front yards on  
21          two sides of you.

22                  MR. MURPHY:  And a big swale.

23                  CHAIRMAN SCALZO:  You have a  
24          swale on the left side of your house.  
25          When I was out there I did notice you

1           T H O M A S   M U R P H Y

2           had the paint marks on the ground  
3           where your proposed garage siting was  
4           going to be.

5                     You tried to hand off a little  
6           schematic to me of what we were  
7           looking at here. The 15 foot did or  
8           did not include the cupola?

9                     MR. MURPHY: 15 feet does not  
10          include the cupola.

11                    CHAIRMAN SCALZO: Does not. So  
12          in this case now he's looking for an  
13          area variance for height of 18 feet  
14          or -- so we're looking for 18 feet.  
15          Mr. Mattina is chomping at the bit.  
16          I can see it right now.

17                    So Mr. Murphy, if I've captured  
18          what it is that you're trying to do  
19          -- please, go ahead.

20                    MR. MURPHY: I'm trying to make  
21          it look residential. I have the  
22          eaves -- one foot overhang but on the  
23          eaves on the gable end it makes it  
24          look for residential. Can I --

25                    CHAIRMAN SCALZO: Go ahead,

1        T H O M A S   M U R P H Y

2            distribute them. You can step up on  
3            there.

4            So Mr. Murphy, the current  
5            height without the cupola on is what?

6            MR. MURPHY: 15 feet. I'm not  
7            tied to anything. I'm kind of  
8            looking for guidance also. Initially  
9            I wanted to put it up against the  
10           fence in the back corner, close to  
11           the roadway, when I first applied for  
12           the variance, and I which switched  
13           that. I talked it over with my wife.  
14           The people behind me, the roof line  
15           going this way instead of this way,  
16           it would be a lot less in their view.  
17           Taking it away from their fence would  
18           block less of their view by putting  
19           it next to the house.

20           The first page is just a  
21           picture. The second and third pages,  
22           a contractor came to my house to --  
23           possibly he's the guy I'm going to  
24           hire when the time comes. He  
25           suggested that I take the building

1           T H O M A S   M U R P H Y

2                   and turn it a notch to face the  
3                   driveway.

4                   CHAIRMAN SCALZO:   So you can  
5                   access the front of the garage where  
6                   the door would be with minimal  
7                   interruption to your current driveway  
8                   location.  You take a little bit of  
9                   that retaining wall down and just aim  
10                  it that way, if you will.

11                  MR. MURPHY:   Yes.

12                  CHAIRMAN SCALZO:   And you know  
13                  what I'm looking at.  Here again  
14                  we're talking about your front yard.  
15                  As far as rear yards go, and side  
16                  yards, your accessory structure can  
17                  be 5 feet from the property line.  It  
18                  needs to be a minimum of 10 feet from  
19                  the dwelling.

20                  Is that correct, Joe?

21                  MR. MATTINA:   Yes.

22                  CHAIRMAN SCALZO:   I see that  
23                  you have that as well.  So really  
24                  what we're here talking about is  
25                  because you will have two front

1           T H O M A S   M U R P H Y

2           yards, that's why we're here.

3                   And maximum building height,  
4           Mr. Mattina, in this case should be  
5           15 feet?

6                   MR. MATTINA:   Yes.   15 feet.

7                   MR. DONOVAN:   No exemption for  
8           the cupola.   I'm looking at  
9           185-18(b).   It doesn't include  
10          cupola.

11                  MR. MATTINA:   We've had people  
12          on Orange Lake have to take the  
13          cupolas off for height variances.  
14          We've always been under the  
15          impression that cupolas do count.

16                  CHAIRMAN SCALZO:   The height is  
17          the height is the height.

18                  MR. DONOVAN:   There are some  
19          exceptions.

20                  MR. MURPHY:   I was told -- did  
21          they have a variance before they had  
22          the cupola or was it already there?

23                  MR. MATTINA:   They were  
24          applying for variances at the time.  
25          Cupolas have always been an issue.

1           T H O M A S   M U R P H Y

2                   CHAIRMAN SCALZO: Do not cover  
3                   in excess of 10 percent of the total  
4                   area of the roof which they are  
5                   situated. It doesn't mention  
6                   specifically cupolas but it does say  
7                   roof-mounted facilities.

8                   I almost -- the way I  
9                   interpret that, Counselor, is that's  
10                  a cupola in this case.

11                  MR. DONOVAN: I think it  
12                  probably, and I hate to -- I haven't  
13                  seen Joe in a year-and-a-half -- put  
14                  you on the spot. Normally you would  
15                  include a cupola. Is that what  
16                  you're saying? That's Code  
17                  Compliance's interpretation?

18                  MR. MATTINA: Yes, we would.

19                  CHAIRMAN SCALZO: Mr. Mattina,  
20                  that's perfect. For consistency  
21                  sake, let's call it that that cupola  
22                  is 3 feet tall.

23                  MR. MURPHY: Yes.

24                  CHAIRMAN SCALZO: We're looking  
25                  for a height variance of 3 feet for

1           T H O M A S   M U R P H Y

2           the cupola only.  Should we get to  
3           that point in the application process  
4           here, we can say it's specifically  
5           applied to the cupola for that 3  
6           feet.  We don't necessarily have to  
7           go any further.

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

10                    MR. MURPHY:  Okay.

11                    CHAIRMAN SCALZO:  So what I'm  
12           saying is should we get that far,  
13           your 18 feet total height now can't  
14           be applied to the entire building.  
15           It can only be applied to the 3 feet  
16           for the cupola.

17                    MR. MURPHY:  Yes.

18                    CHAIRMAN SCALZO:  That will  
19           take care of any inconsistency that  
20           we may run into in the future.

21                    That being said, I thought you  
22           have a nice, neat setup out there.  
23           It appears everybody needs more space  
24           to play with.  You want to work on  
25           your vehicles, as you indicated, in



1           T H O M A S   M U R P H Y

2           the new structure that you're  
3           proposing here.  Again, it's just  
4           because you're on a corner lot.  We  
5           wouldn't have this conversation if  
6           you were one lot in.

7                     I've got nothing else.  I'm  
8           going to look to Mr. Marino.

9                     MR. MARINO:  Mr. Murphy, would  
10          you be taking anything down or  
11          removing anything on the property  
12          that's there now if you got  
13          permission to build this building?

14                    MR. MURPHY:  I do have a tree  
15          that's dying in the middle between  
16          two trees.

17                    MR. MARINO:  Do you have  
18          another storage shed on the property?

19                    MR. MURPHY:  I do have a  
20          storage shed on the property.  That's  
21          for the lawn mower, like rakes and  
22          leaves and shovels and things.  I  
23          would like to leave it.  I'm not  
24          exceeding my limit of --

25                    CHAIRMAN SCALZO:  Lot coverage

1           T H O M A S   M U R P H Y

2           he's not exceeding, Mr. Marino. It's  
3           not required.

4           MR. MURPHY: If it's required I  
5           probably could take it down.

6           MR. MARINO: He did indicate  
7           he's willing to sort of work with us  
8           and compromise on some issues, if we  
9           had any suggestions that way.

10          MR. MURPHY: It's where I keep  
11          my rakes. I don't want them to be in  
12          the garage. It's not that I couldn't  
13          do it. I just have rakes and shovels  
14          and tires. Two sets of winter tires  
15          for my wife's car and my car.

16          MR. MARINO: Yup.

17          CHAIRMAN SCALZO: Thanks. Mr.  
18          Masten, any comments?

19          MR. MASTEN: Tony asked the  
20          same questions I was going to ask.

21          CHAIRMAN SCALZO: Very good.  
22          Mr. Gramstad?

23          MR. GRAMSTAD: No questions.

24          CHAIRMAN SCALZO: Mr. Eberhart?

25          MR. EBERHART: No.

1           T H O M A S   M U R P H Y

2                   CHAIRMAN SCALZO:   Mr. Hermance?

3                   MR. HERMANCE:   So how much  
4                   distance would that leave between the  
5                   existing structure you have there and  
6                   the new garage?

7                   MR. MURPHY:    The house?

8                   MR. HERMANCE:   No.   This  
9                   building next to the house.   How much  
10                   room --

11                   MR. MURPHY:    The shed in the  
12                   back?

13                   MR. HERMANCE:   Yes.

14                   MR. MURPHY:    That's up against  
15                   the fence in the middle of the house.

16                   CHAIRMAN SCALZO:   He's talking  
17                   about -- you're talking about the  
18                   temporary structure?

19                   MR. HERMANCE:   That's what you  
20                   were saying you were keeping.

21                   CHAIRMAN SCALZO:   No.   It's on  
22                   the other side of the pool.   The  
23                   little shed.

24                   MR. HERMANCE:   Okay.   Strike  
25                   that then.

1           T H O M A S   M U R P H Y

2                   CHAIRMAN SCALZO:   Very good.

3           Mr. Bell?

4                   MR. BELL:   I'm good.

5                   CHAIRMAN SCALZO:   All right.

6           Do any members of the public have any  
7           comments on this application?

8                   Ma'am, please step forward.

9           Please state your name for the  
10          record.

11                  MS. RINALDO:   Lisa Rinaldo.

12          I'm behind Mr. Murphy, or in front  
13          of.

14                  So my only concern is I had a  
15          question about the surface coverage  
16          because we have a large issue with  
17          that. We have a smaller shed. This  
18          is a garage or a shed?

19                  CHAIRMAN SCALZO:   It's a single  
20          car garage, sir?

21                  MR. MURPHY:   Yes.

22                  MS. RINALDO:   That eliminates a  
23          lot of my questions. It's really the  
24          height that would be the biggest  
25          issue for us because that's going to

1           T H O M A S   M U R P H Y

2           block a significant part of our view  
3           over the fence. I heard some  
4           discussion about that.

5                        Since the surface coverage is  
6           within limits, that eliminates all of  
7           that.

8                        It's a garage, so I assume he  
9           can have a garage door, unlike a  
10          shed?

11                       CHAIRMAN SCALZO: Correct.

12                       MS. RINALDO: So that  
13          eliminated that issue.

14                       CHAIRMAN SCALZO: Actually, you  
15          know what, I'd be willing to give you  
16          -- you can have this. This is what  
17          was provided to us.

18                       MS. RINALDO: Okay.

19                       CHAIRMAN SCALZO: That's what  
20          we're looking to do here.

21                       MS. RINALDO: Really our only  
22          issue is the height, because that  
23          would be -- but if it's in code it's  
24          in code. I'm not here to give him a  
25          hard time.

1           T H O M A S   M U R P H Y

2                   CHAIRMAN SCALZO: Without the  
3                   cupola he's within the code. In that  
4                   case all he's here for is because of  
5                   the front yard. He's on a corner  
6                   lot, he has two front yards. That's  
7                   really why he's here. The cupola --  
8                   you can see the cupola in the  
9                   diagram. It's just that little small  
10                  thing on the top.

11                  MS. RINALDO: Which really  
12                  wouldn't be horrendous.

13                  CHAIRMAN SCALZO: Only because  
14                  we were out in the field speaking  
15                  with Mr. Murphy when we were  
16                  reviewing all these, Mr. Murphy  
17                  indicated that this is going to  
18                  aesthetically match his house. He's  
19                  going for -- apparently it cost him a  
20                  couple extra bucks to get the same  
21                  lot of --

22                  MR. MURPHY: Siding.

23                  CHAIRMAN SCALZO: -- siding.  
24                  So it's not going to be like --

25                  MS. RINALDO: I'm not worried

1           T H O M A S   M U R P H Y

2           about that. He's takes very good  
3           care of his property. I'm not  
4           concerned about that at all.

5                     And it's for personal use?

6                     MR. MURPHY: Yeah.

7                     MS. RINALDO: So those are  
8           really my issues. It's nice to see  
9           some positivity on this Board.

10                    CHAIRMAN SCALZO: We've always  
11           been positive.

12                    MS. RINALDO: Not to us you  
13           weren't.

14                    CHAIRMAN SCALZO: You're right  
15           behind. Actually, when I was talking  
16           to Mr. Murphy I actually recalled  
17           yours. That was a different issue.

18                    MS. RINALDO: I know what the  
19           issues were. Anyway, it's nice to  
20           see positivity all around. We wish  
21           Mr. Murphy the best. We're not here  
22           to give him a hard time. We have  
23           concerns because the few trees we can  
24           see out back. That was it. Making  
25           sure that all the rules apply fairly.

1           T H O M A S   M U R P H Y

2           If he has surface coverage, then it's  
3           fair.

4                   CHAIRMAN SCALZO:   Okay.  Thank  
5           you very much for your comments.

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

9                   (No response.)

10                   CHAIRMAN SCALZO:  At this point  
11           -- let me look to the Board for one  
12           last opportunity here.  Does anyone  
13           else on the Board have anything?  
14           Shout it out, please.

15                   (No response.)

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

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

21                   MR. BELL:  Second.

22                   CHAIRMAN SCALZO:  We have a  
23           motion to close the public hearing  
24           from Mr. Gramstad.  We have a second  
25           from Mr. Bell.  Roll call on that,



1           T H O M A S   M U R P H Y

2           Siobhan.

3                   MS. JABLESNIK:  Mr. Bell?

4                   MR. BELL:  Yes.

5                   MS. JABLESNIK:  Mr. Eberhart?

6                   MR. EBERHART:  Yes.

7                   MS. JABLESNIK:  Mr.  Gramstad?

8                   MR. GRAMSTAD:  Yes.

9                   MS. JABLESNIK:  Mr. Hermance?

10                  MR. HERMANCE:  Yes.

11                  MS. JABLESNIK:  Mr. Marino?

12                  MR. MARINO:  Yes.

13                  MS. JABLESNIK:  Mr. Masten?

14                  MR. MASTEN:  Yes.

15                  MS. JABLESNIK:  Mr. Scalzo?

16                  CHAIRMAN SCALZO:  Yes.

17                   The public hearing is now  
18                   closed.  You can actually sit there.  
19                   We're not done yet.

20                   So now we're going to move on  
21                   to -- it's a Type 2 action under  
22                   SEQRA.  We're going to go through our  
23                   balancing factors, the first one  
24                   being whether or not the benefit can  
25                   be achieved by other means feasible

1           T H O M A S   M U R P H Y

2           to the applicant. As we were all out  
3           on site, Mr. Murphy did take us to  
4           the other side of his lot where he  
5           showed us the drainage swale, which  
6           is what's preventing him from putting  
7           it there, which would have eliminated  
8           this variance completely. I agree  
9           with him not wanting to disturb that  
10          swale. You don't want to impede the  
11          flow because it drains multiples,  
12          it's not just his.

13                 Second, if there's an  
14          undesirable change in the  
15          neighborhood character or a detriment  
16          to nearby properties. We have in  
17          Colden Park granted some variances  
18          for garages. Again, this is just  
19          because of that two front yards. So  
20          I don't believe it's an undesirable  
21          change in the neighborhood.

22                 I see everyone else is nodding  
23          their heads in unison with me.

24                 The third, whether the request  
25          is substantial. I don't believe it

1           T H O M A S   M U R P H Y

2           is.

3                   The fourth, whether the request  
4           will have adverse physical or  
5           environmental effects. Actually by  
6           the placement where it is and not on  
7           the opposite side of his house, he's  
8           certainly eliminating or minimizing  
9           any environmental effects that may  
10          have been realized if it was on the  
11          other side of the house.

12                   Fifth, whether the alleged  
13          difficulty is self-created which is  
14          relevant but not determinative.  
15          Again, because he lives on a corner  
16          lot, by nature of purchasing the lot  
17          he's going to have a balancing act  
18          for anything that he wants to do on  
19          either side of his house.

20                   Now, if the Board approves, it  
21          shall grant the minimum variance  
22          necessary and may impose reasonable  
23          conditions. When we're saying  
24          reasonable conditions here, the  
25          building height at 15 feet is within

1           T H O M A S   M U R P H Y

2           tolerance, however the 3 feet for the  
3           cupola is not. I would like to  
4           recommend that we grant the variances  
5           conditioned upon that the only area  
6           that can exceed the building height  
7           would be the cupola area.

8                        So do we have a motion from the  
9           Board similar to that?

10                      MR. MARINO: What you're saying  
11           is everything else should be the  
12           house level, house height?

13                      CHAIRMAN SCALZO: No. He's  
14           allowed 15 feet, which is the height  
15           he's showing on there, but the cupola  
16           will be 3 feet higher. He needs a  
17           variance for that 3 feet. What I'm  
18           recommending is that we do give him a  
19           variance but that variance can only  
20           be for the cupola. We don't want him  
21           to raise the entire roof 3 feet.

22                      MR. MARINO: I agree.

23                      MR. BELL: I'll make a motion  
24           that the new structure stays at the  
25           height of 15 feet and the cupola can

1           T H O M A S   M U R P H Y

2           not exceed 18 --

3                   CHAIRMAN SCALZO:  Thank you,  
4           Mr. Bell.

5                   MR. BELL:  -- I'm getting there  
6           -- 18 feet.

7                   CHAIRMAN SCALZO:  That's your  
8           motion?

9                   MR. BELL:  That's my motion.

10                   MR. GRAMSTAD:  I'll second  
11           that.

12                   CHAIRMAN SCALZO:  We have a  
13           second from Mr. Gramstad.  Can you  
14           roll call that, please?

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. Marino?

24                   MR. MARINO:  Yes.

25                   MS. JABLESNIK:  Mr. Masten?

1           T H O M A S   M U R P H Y

2                   MR. MASTEN:   Yes.

3                   MS. JABLESNIK:  Mr. Scalzo?

4                   CHAIRMAN SCALZO:  Yes.

5                   The variances are approved.

6                   Good luck, sir.

7                   Joe, for future cupolas, I  
8                   think we just found out how we're  
9                   going to handle them.

10                   (Time noted:   7:55 p.m.)

11                   (Time resumed:  8:10 p.m.)

12                   CHAIRMAN EWASUTYN:  Mr.

13                   Murphy?

14                   MR. MURPHY:   I just want to be  
15                   sure that I'm showing it correctly.  
16                   I want to kick the building a little  
17                   bit.

18                   CHAIRMAN SCALZO:  Here's  
19                   what's going on, Mr. Murphy.  We  
20                   approved you for the variance that  
21                   you requested.  That corner that's  
22                   closest to the road can't go any  
23                   closer to the road.  You can rotate  
24                   your building a little bit but you  
25                   can't have that building corner be

1        T H O M A S   M U R P H Y

2                    any closer to the road.

3                    MR. MURPHY: Of course. I just  
4                    wanted to make sure.

5                    CHAIRMAN SCALZO: Actually,  
6                    with that rear corner, which is what  
7                    you're talking about, when you rotate  
8                    it closer to your driveway, that's  
9                    your pivot point.

10                   MR. MURPHY: Thank you.

11                   CHAIRMAN SCALZO: You're  
12                   welcome.

13                   I'll look to the Board for a  
14                   motion to close the meeting.

15                   MR. BELL: I'll make a motion  
16                   to close the meeting.

17                   MR. MARINO: Second.

18                   CHAIRMAN SCALZO: We have a  
19                   motion from Mr. Bell. We have a  
20                   second from Mr. Marino. All in  
21                   favor?

22                   MR. BELL: Aye.

23                   MR. EBERHART: Aye.

24                   MR. GRAMSTAD: Aye.

25                   MR. HERMANCENCE: Aye.

1           T H O M A S   M U R P H Y

2                           MR. MARINO:   Aye.

3                           MR. MASTEN:   Aye.

4                           CHAIRMAN SCALZO:   Aye.

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

6

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

8

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

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

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

19                   IN WITNESS WHEREOF, I have hereunto  
20           set my hand this 12th day of October 2021.

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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

FARRELL INDUSTRIAL PARK  
  
Route 300, Newburgh  
Section 34; Block 2; Lot 45  
IB Zone

----- X

Date: September 23, 2021  
Time: 7:55 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE:

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

1           F A R R E L L   I N D U S T R I A L   P A R K

2                   CHAIRMAN SCALZO:  Next on our  
3           agenda this evening is Farrell  
4           Industrial Park.

5                   We received a letter from  
6           Farrell.  It appears from the  
7           correspondence, "We have written a  
8           letter to inform you that the  
9           applicant for the above-referenced  
10          project, Farrell Building Company,  
11          has decided to pull the application  
12          currently in front of the Board for a  
13          building height variance."

14                   Farrell has now recalled their  
15          application.

16

17                   (Time noted:  7:56 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 12th day of October 2021.

*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

MENENDEZ PROPERTY, LLC  
856 River Road, Newburgh  
Section 9; Block 1; Lot 40  
R-1 Zone

----- X

Date: September 23, 2021  
Time: 7:56 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: DANIEL BLOOM

----- X

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

1           M E N E N D E Z   P R O P E R T Y ,   L L C

2                   CHAIRMAN SCALZO:  Moving on to  
3           the last item on the agenda this  
4           evening, and I apologize for making  
5           you wait Mr. Bloom, it's the Menendez  
6           Property, LLC, 856 River Road,  
7           Newburgh.  They're seeking an area  
8           variance for the rear yard for all  
9           new decks.  The original application  
10          had indicated that they were going to  
11          raise the roof on the fourth floor,  
12          however that portion of the  
13          application has been removed; and a  
14          use variance to restore and  
15          reestablish the use of a  
16          nonconforming three-family dwelling.

17                 We heard testimony.  We heard  
18          expert testimony last month from Mr.  
19          Carhart.  We also had received  
20          correspondence from the Town of  
21          Newburgh Code Compliance Department,  
22          Mr. Canfield:  "The above mentioned  
23          structure", which is referring to 856  
24          River Road "is listed in the Code  
25          Compliance Department records as an

1           M E N E N D E Z   P R O P E R T Y ,   L L C

2           existing nonconforming three-family  
3           residence. Our department has been  
4           inspecting this residence as a  
5           multiple family dwelling for several  
6           years. Multiple family dwellings are  
7           considered as three or more families  
8           within a structure." And then if we  
9           have any further questions we can  
10          reach out to the Code Compliance  
11          Department.

12                         Counselor, I do believe that  
13          would satisfy our inquiry last month,  
14          but, please, if you could help guide  
15          us here.

16                         MR. DONOVAN: So Joe, do you  
17          have anything to add or do you stand  
18          on Jerry's --

19                         MR. BLOOM: If I may, Mr.  
20          Chairman. May I submit an affidavit?  
21          Last time we were here, part of the  
22          presentation consisted of my handing  
23          in some exhibits. One of the  
24          exhibits consisted of a timeline my  
25          client had prepared based upon her

1           M E N E N D E Z   P R O P E R T Y ,   L L C

2           experiences at the site with the Town  
3           officials, and then she attached  
4           certain backup to it, but it wasn't  
5           under penalty of perjury. I since  
6           then prepared an affidavit and  
7           attached it as an exhibit so that  
8           those statements would be before the  
9           Board under oath.

10                   CHAIRMAN SCALZO: Very good.

11                   MR. BLOOM: May I present that?

12                   CHAIRMAN SCALZO: Would you  
13           hand that to Siobhan, please. She  
14           will certainly add that to the  
15           record.

16                   MS. JABLESNIK: Thank you.

17                   MR. BLOOM: Thank you.

18                   MR. DONOVAN: Is there anything  
19           you want to add, Joe?

20                   MR. MATTINA: No.

21                   MR. DONOVAN: What was before  
22           the Board last was a request for a  
23           use variance relative to the three-  
24           family. We had extensive testimony  
25           from an expert about sustaining their

1           M E N E N D E Z   P R O P E R T Y ,   L L C

2           burden of proof. We also had  
3           substantial information provided, now  
4           which is in affidavit form, setting  
5           forth the chronology of events. Now  
6           we also have information from Code  
7           Compliance which the Chairman has  
8           just read.

9                     It is my suggestion to the  
10           Board, knowing that the use variance  
11           standard is a very, very difficult  
12           standard, however I think that the  
13           information in front of the Board, if  
14           you wanted to render an  
15           interpretation that the preexisting  
16           nonconforming status has not lapsed,  
17           meaning that they continue as a  
18           three-family based upon the  
19           information that has been submitted  
20           both by the applicant and by Code  
21           Compliance, you wouldn't have to rule  
22           on the use variance, you would just  
23           have to indicate that you've given an  
24           interpretation that the use can  
25           continue as a three-family.



1           M E N E N D E Z   P R O P E R T Y ,   L L C

2                   CHAIRMAN SCALZO:  Counselor,  
3           thank you very much.  This differs  
4           from other applicants that we've seen  
5           before because this was constructed  
6           and utilized -- as far as the Town  
7           has had records of it, that it has  
8           functioned as a multi-family  
9           dwelling.  This is not something that  
10          has been recently converted, it is  
11          something that has been longstanding  
12          as it is.

13                   MR. DONOVAN:  Right.

14                   CHAIRMAN SCALZO:  So as far as  
15          an interpretation goes, I don't  
16          believe that we actually -- do we  
17          vote on an interpretation?

18                   MR. DONOVAN:  You would vote --  
19          interpretations are Type 2 actions  
20          under SEQRA.  You would vote to grant  
21          a favorable interpretation, allowing  
22          the existing nonconforming status of  
23          the three-family to continue.

24                   CHAIRMAN SCALZO:  That's  
25          wonderful.  I would recommend that one

1           M E N E N D E Z   P R O P E R T Y ,   L L C

2           of our Board Members say exactly what  
3           Dave just said so someone can second  
4           it and we can move on.

5           MR. BELL:   So I'll make a  
6           motion under Type 2 that we allow the  
7           preexisting condition, nonconforming,  
8           to stay the same to be approved.

9           MR. DONOVAN:  I'll write it up,  
10          Darrell.

11          CHAIRMAN SCALZO:  We have a  
12          motion from Mr. Bell.  Do we have a  
13          second?

14          MR. EBERHART:  Second.

15          CHAIRMAN SCALZO:  Mr. Eberhart  
16          was jumping in on you.  Can we have a  
17          roll call on that, please, Siobhan.

18          MS. JABLESNIK:  Mr. Bell?

19          MR. BELL:  Yes.

20          MS. JABLESNIK:  Mr. Eberhart?

21          MR. EBERHART:  Yes.

22          MS. JABLESNIK:  Mr. Gramstad?

23          MR. GRAMSTAD:  Yes.

24          MS. JABLESNIK:  Mr. Hermance?

25          MR. HERMANCE:  Yes.

1           M E N E N D E Z   P R O P E R T Y ,   L L C

2                           MS. JABLESNIK:   Mr. Marino?

3                           MR. MARINO:    Yes.

4                           MS. JABLESNIK:   Mr. Masten?

5                           MR. MASTEN:    Yes.

6                           MS. JABLESNIK:   Mr. Scalzo?

7                           CHAIRMAN SCALZO:   Yes.

8                           The interpretation has been in  
9           your favor.   Good luck.

10                          MR. BLOOM:    Thank you.   Thank  
11           you very much.

12                          MR. DONOVAN:   Do we still have  
13           the variances?

14                          CHAIRMAN SCALZO:   Sorry, Mr.  
15           Bloom.  You're reaching for your  
16           stuff.

17                          So now we're here also to talk  
18           about the rear yard variances for the  
19           decks, which the only people who can  
20           see those are the people on boats in  
21           the river and if any hobos are riding  
22           on the train.

23                          Actually, did we close the  
24           public hearing?

25                          MR. DONOVAN:   We did not.

1           M E N E N D E Z   P R O P E R T Y ,   L L C

2                   CHAIRMAN SCALZO: Thank you.

3           Somebody read the meeting minutes.

4                   In this case, is there anyone  
5           from the public here to discuss this  
6           application?

7                   (No response.)

8                   CHAIRMAN SCALZO: It does not  
9           appear so.

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

12                   MR. BELL: I'll second it.

13                   CHAIRMAN SCALZO: Very good.

14           Roll call.

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. Marino?

24                   MR. MARINO: Yes.

25                   MS. JABLESNIK: Mr. Masten?

1           M E N E N D E Z   P R O P E R T Y ,   L L C

2                   MR. MASTEN:   Yes.

3                   MS. JABLESNIK:   Mr. Scalzo?

4                   CHAIRMAN SCALZO:   Yes.

5                   The public hearing is closed.

6                   Now moving on to the balancing  
7           factors, the first one being whether  
8           or not the benefit can be achieved by  
9           other means feasible to the  
10          applicant.  If they didn't put the  
11          rear decks on.  However, that would  
12          take away from the beautiful view  
13          that they have available to them.

14                  The second, if there's an  
15          undesirable change to the  
16          neighborhood character or a detriment  
17          to nearby properties.  No, because  
18          it's exactly as it was standing  
19          before.  These decks that we're  
20          talking about won't be seen by anyone  
21          in the neighborhood.

22                  The third, whether the request  
23          is substantial.  These are not  
24          substantial decks, if you've seen the  
25          sketches of them.

1           M E N E N D E Z   P R O P E R T Y ,   L L C

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

5                   MR. BELL:   No.

6                   CHAIRMAN SCALZO:   No.

7                   And the fifth, whether the  
8                   alleged difficulty is self-created  
9                   which is relevant but not  
10                  determinative. Of course it's self-  
11                  created, however I do believe I saw  
12                  on the back of the house there are  
13                  already doors leading out to that.  
14                  Actually, it would be difficult to  
15                  not. They would have to close that  
16                  off.

17                  Having gone through the  
18                  balancing tests, does the Board have  
19                  a motion of some sort?

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

22                  MR. MASTEN:   I'll second it.

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

1           M E N E N D E Z   P R O P E R T Y ,   L L C

2                   Can you roll that, please, Siobhan.

3                   MS. JABLESNIK:   Mr. Bell?

4                   MR. BELL:    Yes.

5                   MS. JABLESNIK:   Mr. Eberhart?

6                   MR. EBERHART:   Yes.

7                   MS. JABLESNIK:   Mr. Gramstad?

8                   MR. GRAMSTAD:   Yes.

9                   MS. JABLESNIK:   Mr. Hermance?

10                  MR. HERMANCE:   Yes.

11                  MS. JABLESNIK:   Mr. Marino?

12                  MR. MARINO:    Yes.

13                  MS. JABLESNIK:   Mr. Masten?

14                  MR. MASTEN:    Yes.

15                  MS. JABLESNIK:   Mr. Scalzo?

16                  CHAIRMAN SCALZO:   Yes.

17                   The variances are approved.

18                   Motion carried.   We're really done.

19                   MR. BLOOM:    Thank you.   Thank  
20                   you, gentlemen.   Have a good night.

21                   CHAIRMAN SCALZO:   You, too.

22

23                   (Time noted:   8:10 p.m.)

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M E N E N D E Z   P R O P E R T Y ,   L L C

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 12th day of October 2021.

*Michelle Conero*

\_\_\_\_\_  
MICHELLE CONERO