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

- - - - - X
In the Matter of

SUNOCO

- 5004 Route 9W, Newburgh
Section 84; Block 2; Lot 2 - B Zone
- 300 Route 32, Newburgh
Section 17; Block 1; Lot 65.1 - B Zone
- 69 North Plank Road, Newburgh
Section 77; Block 1; Lot 2 - B Zone

- - - - - X

Date: October 26, 2023
 Time: 7:00 p.m.
 Place: Town of Newburgh
 Town Hall
 1496 Route 300
 Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
 DARRELL BELL
 JAMES EBERHART, JR.
 GREGORY M. HERMANCE
 JAMES POLITI
 DONNA REIN

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

APPLICANT'S REPRESENTATIVE: KAREN GREENLEE

- - - - - X

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

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

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

20 I would ask if you have a
21 cellphone, to please turn it off or
22 put it on silent. When speaking,
23 speak directly into the microphone,
24 which is not there --

25 MS. JABLESNIK: They're not

2 Compliance, Joseph Mattina; and our
3 Stenographer, Michelle Conero.

4 CHAIRMAN SCALZO: If you could
5 all please rise for the Pledge.

6 (Pledge of Allegiance.)

7 CHAIRMAN SCALZO: Before we get
8 started, I would like to welcome our
9 newest Zoning Board of Appeals
10 Member, Jim Politi.

11 What's nice is, last month we
12 really had a tough time because we
13 had three out. Any applicant that
14 was here needed a unanimous decision
15 to move forward. Now that we have
16 almost a full compliment of folks
17 behind the desk here today, things
18 will certainly go much better.

19 Mr. Politi and I viewed some
20 properties together. He asked me
21 some wonderful questions, so I
22 anticipate that we're going to hear a
23 little different look at things
24 tonight with our newest Member.

25 That being said, we're going to

2 move on. Our first applicant this
3 evening is Sunoco three times. We
4 have 5004 Route 9W in Newburgh, 300
5 Route 32 in Newburgh and 69 North
6 Plank Road in Newburgh. They're
7 seeking area variances to change the
8 signage on the canopy, freestanding
9 signs and service island pumps at
10 each location.

11 How many mailings do we have,
12 Siobhan?

13 MS. JABLESNIK: Do you want me
14 to do them all?

15 CHAIRMAN SCALZO: Yes, please.

16 MS. JABLESNIK: Route 9W had 69
17 mailings, North Plank Road had 27 and
18 Route 32 had 29.

19 CHAIRMAN SCALZO: Okay. Thank
20 you very much.

21 Who do we have with us tonight?

22 MS. GREENLEE: Hi. Good
23 evening. My name is Karen Greenlee.
24 I'm here to represent the contractor
25 doing these commercial properties.

2 We are a sign installer. I work for
3 Pro Signs. It's Upper Darby Sign
4 Company.

5 CHAIRMAN SCALZO: Your
6 application here is not unique.
7 We've seen it before. It's probably
8 a corporate thing to change out the
9 way the logos look and everything
10 else that goes with it.

11 MS. GREENLEE: Correct. Yes.

12 CHAIRMAN SCALZO: Not that I
13 want to quiz you, but I'm going to
14 ask you this. What you are taking
15 down and putting back up, is it the
16 same size?

17 MS. GREENLEE: Generally, yes.
18 So for the freestanding signs, that
19 is exactly the same size. We're not
20 changing that.

21 If you look at the building,
22 that half moon, the old APlus, that's
23 actually larger than what we want to
24 replace it with. It's generally about
25 the same.

2 CHAIRMAN SCALZO: So you want
3 to replace a little smaller?

4 MS. GREENLEE: Correct.

5 CHAIRMAN SCALZO: So you're
6 reducing what's currently there?

7 MS. GREENLEE: Yes. Yes. In
8 some instances.

9 MR. DONOVAN: For clarity, what
10 order of magnitude? Like how much
11 smaller? Can you tell us how big the
12 signs are now and what the size will
13 be?

14 MS. GREENLEE: There are quite
15 a few signs. Can I speak to a
16 property just in general?

17 CHAIRMAN SCALZO: Pick one.

18 MS. GREENLEE: Okay. This one
19 is Route 9W. It's 5004 Route 9W. If
20 you look, that property actually has
21 two freestanding signs. There is
22 what we call a high-rise sign, which
23 is the Sunoco diamond. We are not
24 touching that. That is staying as
25 is.

2 We have our freestanding MID,
3 which is the main ID sign with the
4 prices. That is staying exactly the
5 same. That is a reface only. It is
6 one hundred percent alike. We're not
7 changing the overall height, the
8 square footage, the appearance, the
9 electric, the foundation, the
10 structure. Nothing is changing, it's
11 just a face replacement.

12 If you move on to the canopies,
13 you'll see that the canopy that's
14 existing has what we call the horizon
15 image. That's our old image. We're
16 moving to the centennial image now.
17 There are two Sunoco sign boxes and
18 what we call the OFN, which is the
19 graphic that says Official Fuel of
20 Nascar. All of that together is
21 larger than what we're replacing,
22 because we're taking down the horizon
23 image. What looks like that
24 checkerboard pattern, that's coming
25 down. We're going to have one Sunoco

2 sign box, we call that the overt
3 mark, it's a cloud sign, and then the
4 arrow and a new diamond logo. That's
5 less square footage, and less signs
6 too, if you count them in quantity.

7 Let me move on to the building.
8 That has got, again, that horizon
9 image along the building band. We're
10 going to take that down. There's
11 that half moon APlus, that's going to
12 come down. What we'll put as the
13 replacement is the APlus channel
14 letter set. That is less square
15 footage than the half moon. It is
16 alike because we're taking down the
17 one sign and putting the new sign up.
18 It sort of depends on how you want to
19 quantify things. Generally if there
20 is a difference, it's less. It's
21 also less in colors. We're moving
22 toward a more streamlined, cleaner,
23 classic look. There's not that
24 horizon with the gradients and all of
25 that anymore.

2 CHAIRMAN SCALZO: Less colors.

3 MS. GREENLEE: Correct. Sorry.

4 CHAIRMAN SCALZO: That's okay.

5 MR. DONOVAN: Mr. Chairman,
6 I'll leave it to the Board's
7 deliberations, but typically you
8 would get a chart and the chart would
9 say existing, pick a number, 100
10 square feet, proposed 90 square feet
11 or 110 square feet, so the Board gets
12 a good sense of the order of magnitude.

13 CHAIRMAN SCALZO: What's nice
14 is this is not a new install. It's a
15 new install, but it's not being
16 installed on a new structure.

17 Counsel, I agree, a chart would
18 make it a little easier. With three
19 locations and canopies, freestanding
20 and building attachments --

21 MR. EBERHART: It does have
22 dimensioning.

23 MR. DONOVAN: There are
24 dimensions in the packet.

25 CHAIRMAN SCALZO: Yes. As far

2 as looking at it as a whole for
3 comparison sake, I don't see it.

4 Actually, I'm going to look
5 over to Mr. Mattina and ask Mr.
6 Mattina, you heard the testimony here
7 of the applicant's representative.
8 You followed right along with that.
9 Do you have anything?

10 MR. MATTINA: Not really. The
11 building sign is not the issue. Even
12 though that's smaller, different
13 colors, that's not the issue.

14 The issue is the canopy. I
15 don't think this signage had
16 permission to begin with, so we don't
17 have anything to base it on.

18 CHAIRMAN SCALZO: We'll take
19 care of that in the old comprehensive
20 plan or the new comprehensive plan.

21 MR. MATTINA: There was really
22 nothing to compare it against.

23 CHAIRMAN SCALZO: We've
24 struggled with these canopy signs
25 since I've been on the Board.

2 I myself don't have any
3 questions.

4 I am going to start at my left.
5 Ms. Rein, do you have any questions?

6 MS. REIN: No. I'm good.

7 CHAIRMAN SCALZO: Mr. Bell?

8 MR. BELL: No.

9 CHAIRMAN SCALZO: Mr. Hermance?

10 MR. HERMANCE: It's not the
11 canopy structure? You're not doing
12 anything with the structure, just
13 basically the skin around the --

14 MS. GREENLEE: Correct. It's
15 ACM, which is an aluminum composite
16 material. It's just a different
17 color because the other one is
18 digitally printed vinyl to make that
19 horizon. It will be re-skinned, and
20 then we -- the sign boxes just go
21 exactly where they were before.

22 Everything is existing
23 electric-wise. We're not doing any
24 structural or building. We're just
25 signs.

2 MS. REIN: I do have a
3 question, actually. Is any lighting
4 involved?

5 MS. GREENLEE: Nothing new.
6 Everything that's lit is lit already.
7 We don't run lines or do trenching or
8 anything like that. We connect new
9 signs to existing connections, but
10 that's it.

11 MS. REIN: Thank you.

12 CHAIRMAN SCALZO: No increase
13 in lumens?

14 MS. GREENLEE: No. In fact,
15 these are all LED signs. Sometimes
16 what will happen is, in the case of
17 these older neon freestanding signs,
18 they're actually the fluorescent
19 bulbs. They'll be retrofitted with
20 the LEDs. They have automatic
21 dimmers, so they are like black at
22 night. They're not super obnoxious.
23 Sometimes things are really, really
24 bright, but that's not the case here.

25 CHAIRMAN SCALZO: Thank you.

2 Mr. Hermance, does that answer
3 your question?

4 MR. HERMANCE: Yes.

5 CHAIRMAN SCALZO: Mr. Eberhart?

6 MR. EBERHART: No questions.

7 CHAIRMAN SCALZO: How about Mr.
8 Politi.

9 MR. POLITI: Everything is the
10 same size. You're replacing in kind.
11 It's a corporate look change. From
12 our standpoint, it's all the same
13 square footage or less.

14 MS. GREENLEE: As far as I
15 know, the freestanding sign is
16 limited to 75 square feet. These are
17 larger, but they are existing. We're
18 replacing existing signs.

19 MR. POLITI: Okay.

20 CHAIRMAN SCALZO: You're good,
21 Mr. Politi?

22 MR. POLITI: Yes.

23 CHAIRMAN SCALZO: Is there
24 anyone here from the public that
25 wishes to speak about this

2 application?

3 (No response.)

4 CHAIRMAN SCALZO: I'm not
5 seeing much there. Very good.

6 One last look. Any comments
7 from the Board?

8 MS. REIN: No.

9 CHAIRMAN SCALZO: Very good.
10 So I'll look to the Board for a
11 motion to close the public hearing.

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

14 MR. EBERHART: Second.

15 CHAIRMAN SCALZO: We have a
16 motion from Mr. Bell. It sounded
17 like we had a second first from Mr.
18 Eberhart. All in favor?

19 MR. POLITI: Aye.

20 MR. EBERHART: Aye.

21 MR. HERMANCE: Aye.

22 MR. BELL: Aye.

23 MS. REIN: Aye.

24 CHAIRMAN SCALZO: Aye.

25 Those opposed?

2 (No response.)

3 CHAIRMAN SCALZO: Nothing.

4 Very good.

5 Counsel, this is --

6 MR. DONOVAN: An Unlisted

7 action under SEQRA.

8 CHAIRMAN SCALZO: Thank you.

9 So if the Board is going to
10 make a motion to approve this, we
11 also need a motion for a negative
12 declaration in this case. What I'll
13 need is for any Board Member, should
14 we propose to move this forward, to
15 make a motion for a negative
16 declaration.

17 MR. DONOVAN: Mr. Chairman, a
18 little housekeeping. Have we heard
19 back from the County?

20 MS. JABLESNIK: We haven't
21 heard back from the County from last
22 month's applications or this month's
23 applications.

24 MR. DONOVAN: Has thirty days
25 lapsed since we sent this?

2 MS. JABLESNIK: No. Not this
3 one.

4 CHAIRMAN SCALZO: Oh, boy.
5 Thank you, Counsel.

6 MS. JABLESNIK: I'll double
7 check and make sure.

8 CHAIRMAN SCALZO: That's a
9 little fly in your ointment tonight.

10 MR. DONOVAN: I saw the
11 application was dated at the end of
12 August.

13 CHAIRMAN SCALZO: I don't know
14 if you understand what that means.

15 MS. GREENLEE: Not a clue.

16 CHAIRMAN SCALZO: Anything
17 that's on a State or County highway,
18 we are obligated to send the
19 applications out to the County for
20 their review under General Municipal
21 Law 239. They are allowed thirty
22 days from the date of receipt to
23 respond to us. We can't vote on it
24 until either thirty days passes or we
25 hear back from them.

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MS. GREENLEE: Understood.

CHAIRMAN SCALZO: In this case, we have not heard back from them and it hasn't been thirty days. We need to give them that thirty. The short story is, we have closed the public hearing, which we can do, but we cannot vote on your application until we hear back from the County or their time has expired.

MS. GREENLEE: Okay.

CHAIRMAN SCALZO: I don't know that you would need to reappear here. We kind of know what's going on. Your presentation was complete, in my opinion. No comments from the public were heard. We can't close you out tonight.

MS. GREENLEE: Understood.

CHAIRMAN SCALZO: So in this case, what I'm going to have to do is look to a Member of the Board to defer voting until the November 21st meeting.

2 MS. JABLESNIK: That's a
3 Tuesday. The Tuesday before
4 Thanksgiving.

5 CHAIRMAN SCALZO: That being
6 said, we won't even be able to go
7 through the -- we can still make a
8 negative declaration. Correct,
9 Counsel?

10 Okay. The face says it all.
11 We cannot.

12 Michelle, I know you can't
13 capture Dave's facial expressions,
14 but I'll tell you it was a clenched
15 lip --

16 MR. DONOVAN: It's an I would
17 rather you not.

18 CHAIRMAN SCALZO: It was an I
19 would rather you not look. That's
20 exactly what it was.

21 What we're going to do is --
22 unfortunately we can't complete this
23 tonight.

24 I'll look to the Members of the
25 Board to reserve determination to the

2 November meeting.

3 MR. HERMANCE: I'll make a
4 motion to reserve determination until
5 the next meeting.

6 MR. POLITI: I'll second.

7 CHAIRMAN SCALZO: We have a
8 motion from Mr. Hermance. We have a
9 second from Mr. Politi.

10 Can you roll on that, please,
11 Siobhan.

12 MS. JABLESNIK: Mr. Bell?

13 MR. BELL: Yes.

14 MS. JABLESNIK: Mr. Eberhart?

15 MR. EBERHART: Yes.

16 MS. JABLESNIK: Mr. Hermance?

17 MR. HERMANCE: Yes.

18 MS. JABLESNIK: Mr. Politi?

19 MR. POLITI: Yes.

20 MS. JABLESNIK: Ms. Rein?

21 MS. REIN: Yes.

22 MS. JABLESNIK: Mr. Scalzo?

23 CHAIRMAN SCALZO: Yes.

24 See you next month.

25 MS. GREENLEE: Okay. I'm so

2 sorry. Just to clarify, all three
3 properties are on County roads?

4 CHAIRMAN SCALZO: Yes.

5 MS. GREENLEE: The next month
6 it is required to be in person?

7 CHAIRMAN SCALZO: Well --

8 MS. GREENLEE: The only reason
9 why I ask is, I have a four-hour
10 drive.

11 MR. DONOVAN: You can always
12 contact the Orange County Department
13 of Tourism. You can come down,
14 there's lots of places to stay.

15 MS. GREENLEE: I love it here.
16 I'm having a great time so far.
17 We're doing a program in a lot of New
18 York, Pennsylvania and New Jersey, so
19 I've been traveling around a lot.

20 CHAIRMAN SCALZO: As I say, any
21 questions that the Board had have
22 been answered by you this evening.
23 No one from the public had brought
24 anything up. I'm not going to speak
25 for the County, but my guess is that

2 they are going to give us a Local
3 determination. You can roll the
4 dice, not show up and we'll still
5 continue with your application. I
6 don't see any --

7 MR. DONOVAN: If I can just
8 make a suggestion. Contact Siobhan
9 like the day before the meeting, just
10 to confirm, to see if anything --
11 confirm we heard from the County or
12 not, because the time would have
13 lapsed. Is that okay?

14 MS. JABLESNIK: Right. If
15 anything is more than a Local
16 determination, we'll let you know and
17 you can come back.

18 MS. GREENLEE: Sometimes they
19 won't even present the case, I guess
20 you could call it, if nobody is here
21 to talk about it. I just --

22 CHAIRMAN SCALZO: I will.
23 We'll move this forward. I don't
24 like dated things on the agenda.

25 MS. GREENLEE: Clear everything

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away. I like that.

CHAIRMAN SCALZO: You'll end up being thrown under last month's business at the end of the -- we'll hear your application again at the end of next month's, or we'll review it again.

MS. GREENLEE: No worries. That makes sense. Thank you so much for your help. You all have a great night.

(Time noted: 7:17 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 8th day of November 2023.

Michelle Conero

MICHELLE CONERO

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

- - - - - X
In the Matter of

STEVEN MOREAU

50 Old South Plank Road, Newburgh
Section 52; Block 1; Lot 12
R-1 Zone

- - - - - X

Date: October 26, 2023
Time: 7:17 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
DARRELL BELL
JAMES EBERHART, JR.
GREGORY M. HERMANCE
JAMES POLITI
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: JONATHAN MILLEN
and STEVEN MOREAU

- - - - - X

MICHELLE L. CONERO
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CHAIRMAN SCALZO: The second item on the agenda this evening is Steven Moreau, 50 Old South Plank Road in Newburgh, seeking area variances of lot area, lot width, lot depth, front yard, rear yard, one side yard, combined side yards, building surface coverage and lot surface coverage to construct a single-family residence on a nonconforming lot.

Siobhan, do we have mailings on this?

MS. JABLESNIK: Yes. This applicant sent out 45 letters.

CHAIRMAN SCALZO: 45. Okay.

MS. JABLESNIK: It also went to the County and we did not receive anything back.

CHAIRMAN SCALZO: He's close to Route 52.

We have standing in front of us Mr. Moreau. We have, over by the easel, Mr. Millen. Frequent flyers

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here at the Zoning Board of Appeals.

I don't know who is speaking this evening, but if I have captured everything about this lot that you're trying to do -- you can probably fit a doghouse on there with your current side yard, front yard and other setbacks. We are all familiar with the Orange Lake area, that it used to be summer cottages for folks, but now they've turned it to basically year-round residences.

I visited the site and took a look at some things. I saw an e-mail today, because Siobhan was nice enough to show it to me, that came in at about a quarter to 6. I don't read them when they come in that late. I'll ask excuse the Bills shirt, too.

MS. JABLESNIK: I'm deleting e-mails off my phone.

CHAIRMAN SCALZO: That's good. I'll try to get you out of here

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before the game.

If I've captured it, which I don't think I have, I want to hear your story. Mr. Millen, please.

MR. MILLEN: All right. Well, Mr. Moreau purchased the lot and would like to develop it now. We feel that what we're proposing is commensurate with the improvements in the neighborhood, the existing elements in the neighborhood, all of which don't meet any of the current zoning, unfortunately.

Mr. Moreau has invested in the lot and he would like to build this house, which you can see right there.

MR. MOREAU: This is a sample of something that would be close.

CHAIRMAN SCALZO: It almost seems reverse because of the topography. The way it's shown, the garage would be up on the street side. I know there was a concern, when I was in the field, some of the

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-- we actually met some of the neighbors out there. They pointed out a no parking sign that was right in front of your lot. Street parking, that is. Consideration for off-street parking was one of their concerns.

I see what you're doing there.

MR. MOREAU: This is not exactly what we would do, but this is a rendering of the type of house, something that would --

CHAIRMAN SCALZO: That blue is very popular these days.

MR. MOREAU: It could be. The idea would be to put the driveway across the whole lot and use that for parking.

CHAIRMAN SCALZO: Your site plan does show that. It almost appears that if a car would pull all the way up to the house, it's almost the length of a stall for a standard -- you know, a 10 by 20 stall for

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parking. You could probably get two cars. You've got, what, 29.5 feet.

MR. MOREAU: Which is the same as the next two houses. It sort of matches.

CHAIRMAN SCALZO: Okay. I'm sorry, I kind of took over your show. If you have anything else you'd like to add to this --

MR. MILLEN: I would just like to say that under the constraints that we have -- all the lots that are to the north of this are fairly much the same type of situation, very narrow. Virtually none of the houses are meeting any of the area requirements for zoning. In the current market, we feel this is commensurate with what Mr. Moreau would have to invest in order to make it a viable investment. We think it will improve the neighborhood for sure. Like I said, it is consistent with the other homes in the area.

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CHAIRMAN SCALZO: Okay. I don't disagree that it's consistent with the other homes in the area. The ten years I've been on the Board, I've crawled around the Orange Lake area quite a bit.

What I do personally struggle with is even accessories structures have a 5-foot setback. I see the proposed setbacks here, one is 2.6 feet and the other is 3.1 feet. I'll go back to the accessory structures are 5 feet.

Let me throw an odd scenario at you. Let's say you have an emergency there and emergency response folks have to show up. If the neighbors to either side install a fence, you're going to have to have emergency responders, perhaps firemen, that aren't wearing all their gear to get by there. I looked at it that way first.

The e-mail that we saw earlier

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stated that Mr. Moreau had pulled the house back, which, because the lot does converge as you head towards the lake, it makes perfect sense. I appreciate that it's pulled back. It's not going to interfere with the neighbor's viewshed, if you will, of that. It's a vacant lot now. I understand there used to be a house there many years ago, or maybe not so many years ago. We have an opportunity here to -- I'm throwing out the accessory structure setback. Even if you build a house and one of the pieces of molding around your window falls off, how do you get a ladder 2.6 feet away that's safe to climb? I'm struggling with this myself. That's just me. We have six other folks here, or five other folks that we can ask questions of.

I'm going to start with Mr. Politi. I go back and forth, you'll see. Mr. Politi, do you have any

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comments, questions, observations regarding this application?

MR. POLITI: I had the opportunity to visit the site. Looking at the site plan, I'm going to agree with the EMS response. If something were to happen to someone on the lake side of the house, how do you get them out if they can't get in with a stretcher?

MR. MILLEN: There's this area here which has 3.1 feet of space. There's no fence there. They could obviously come around the back, if they needed to.

MR. POLITI: Even DOT has a 5-foot sidewalk. Any type of sidewalk is 4 feet, 5 feet so you're able to pass through if you had to get a gurney or any kind of apparatus down there. If someone built next to you, I don't know if you could, you would be back here I suppose. If a fence goes up or you choose to put a fence

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up, that's quite a constraint. I know there's a fence on the other side.

CHAIRMAN SCALZO: The fence isn't -- the fence appears to be inside the property line.

MR. MILLEN: We can remove the fence. I would like to point out, the adjacent home also has the same situation.

CHAIRMAN SCALZO: Sure it does, and it's already there. We have an opportunity here, when it's a brand new lot --

MR. MILLEN: I understand.

CHAIRMAN SCALZO: Like I say, thanks, Mr. Politi, for recognizing that as well.

In this case, Mr. Millen, you're absolutely correct, there is no fence on that one side. Emergency responders, if they can't run through the house, they can certainly run around, if you're facing the house,

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the left side of the house, because Mr. Moreau happens to own the lot next door. We're not sure that's going to be the case in perpetuity or until we're all, I'll say pushing up daisies.

Thank you, Mr. Politi.

Mr. Eberhart?

MR. EBERHART: Mr. Scalzo and Mr. Politi raised a valid issue. Outside of that, I have no other questions or comments.

CHAIRMAN SCALZO: Very good.

Mr. Hermance?

MR. HERMANCE: I guess I'll have to defer to Mr. Mattina about the fire separation for the propane tanks between the structures. There looks to be three of them.

MR. MATTINA: Usually it's based on the type of tank, whether it's an ASTM tank or a DOT tank. It depends on the size of the tank. There are a lot of variables that go

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into it. Just looking at the site plan, you can't really tell.

CHAIRMAN SCALZO: Okay. Mr. Hermance, I see you picked that up.

Mr. Millen, your survey was dated when? So it was just this September. I didn't notice the propane tanks when I was there. I understand the house next door is currently unoccupied.

MR. MOREAU: Just closing.

MR. HERMANCE: That would be a concern, along with the access to the back.

CHAIRMAN SCALZO: That's a concern that's out of Mr. Moreau's control.

MR. HERMANCE: Correct.

CHAIRMAN SCALZO: I don't know that we can hold him to that. Thank you, Mr. Hermance.

Mr. Bell?

MR. BELL: You mentioned that the current houses do not meet the

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zoning requirements. What was
that --

CHAIRMAN SCALZO: Everything
out there on Orange Lake is pre-
existing nonconforming, however, this
being a vacant lot, when you box out
-- I'll say box out your side, front
and rear yard setbacks, he could
probably build a doghouse, if that.

MR. BELL: Okay.

CHAIRMAN SCALZO: Anything
else, sir?

MR. BELL: No other questions.

CHAIRMAN SCALZO: Ms. Rein?

MS. REIN: On page 2 of 3, does
the project site contain or is it
substantially contiguous to a
building, archeological site or
district which is listed on the
National or State Register of
Historic Places, blah, blah, blah.
You put yes.

The other one is does any
portion of the site of the proposed

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action or lands adjoining the proposed action contain wetlands or other water bodies regulated by a federal, state or local agency, and you put yes.

MR. MILLEN: Let me explain that. When you have these short environmental assessment forms, or the long one, you request the DEC to provide you with the form where they check off the items that have to be checked yes. Those were determined by the DEC. Anything that has any proximity to the lake is considered near wetlands, and then there are some historic sites in the area that it's referring to. So that's not something that we were answering. That's what the DEC is giving you automatically.

MS. REIN: Okay. Dave, is that an issue?

MR. DONOVAN: No, because ultimately this is a Type 2 action

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under SEQRA. Everyone fills out the form and then we make a SEQRA determination. Given that these are variances relative to residential construction for single-family homes, it would be a Type 2 action and not subject to SEQRA review.

MS. REIN: Thank you. I'm good.

CHAIRMAN SCALZO: At this point we'll open it up to anyone from the public that wishes to speak about this application. Please step forward and state your name for the record.

MR. LANGER: Good evening. Greg Langer, 281 Lakeside Road. I'm here representing the Orange Lake Homeowners Association, as I have in the past.

Welcome Jim. Good luck.

MR. POLITI: Thank you.

MR. LANGER: Thank you for being so efficient. The good weather

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got the best of me today.

CHAIRMAN SCALZO: I'm right along with you.

Mr. Politi, let me help you out. The Orange Lake Homeowners Association frequently sends representation just to express their support or not support for certain projects that are occurring on the lake. They are an organization that we can certainly take their position under advisement, but it has nothing -- has no bearing on how we vote.

Counselor, did I capture that correctly?

MR. DONOVAN: One hundred percent. They're a private entity. We're guided by state law and the five factors for an area variance. In terms of input from the neighborhood, members of the public, we're interested in what they have to say.

CHAIRMAN SCALZO: Thank you.

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Yes. Which is why we always entertain their comments. Usually they meet and speak about this, so a lot of thought goes into sending their representation here. He's standing as one, but I'm sure there have been probably a half dozen that have reviewed this. He's not just representing himself, he's representing the homeowners association.

MR. LANGER: Thank you.

Mr. Moreau did appear in front of our board of directors meeting on July 12th. We went over a lot of the -- some of the issues you've brought up. The house got moved back. The side yard is a little -- a little scary for some people here.

CHAIRMAN SCALZO: Scary, that's an interesting word to use. Is it a Halloween thing?

MR. LANGER: We like the idea of a new house on the lake. We're always looking to improve everything

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that's on the lake. He took down the old, derelict building that we were tired of looking at, obviously. Now we have a chance to improve it and just help move that whole section of the lake. We have gone over it and it's up to you.

CHAIRMAN SCALZO: I appreciate your input. It is very valuable to us, and it really does help.

Like I say, you've heard my concerns with the width of the side yard. I'll say it again, I struggle with that.

What's your front dimension on the lake side dimension of the house?

MR. MILLEN: I believe it's 20 feet.

MR. MOREAU: No. The property itself or the house?

CHAIRMAN SCALZO: The house.

MR. MOREAU: 20.

MR. MILLEN: Maybe we could propose a notch here where we would

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bring the width of the house --

CHAIRMAN SCALZO: That's a possibility.

MR. MILLEN: It would at least increase this clearance here.

CHAIRMAN SCALZO: That's a wonderful suggestion. So that would perhaps bring that 2.6 out to 5 -- 5.6. Perhaps an accessory structure setback. The other side at 3.1, because now, what if someone is storing something on that side and emergency folks can't run down there or something gets in the way. I don't know.

I mentioned it earlier, I am not recommending or suggesting, but as an observation, because Mr. Moreau does own the lot next door, perhaps a lot line change would give him everything he needs. That's just another option.

If you're recommending or suggesting a notching of the

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building, certainly that's something that we can take into consideration.

MR. MILLEN: That would be up to Mr. Moreau.

MR. MOREAU: I would talk about that if I can right now.

CHAIRMAN SCALZO: Sure.

MR. MOREAU: So at first, before -- I just want to say, before you vote, just think about in the Town of Newburgh there are plenty of condominiums and they are attached. Usually what separates them is a fire separation. Joe could speak to that more. These are definitely not attached, the houses. There's a space. They have ways where the firemen get through the house. I don't want to have an issue in the middle of January of my house burning. I'm in New Windsor. I'm technically living on the lake right now. That's a whole different story. I definitely don't want to have a

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fire.

As it relates to any changes here, I just would like to -- it's kind of like you get really pumped up for the vote, and of course if it looks like it's heading toward a no, you want to try to figure out how to head it towards a yes. That would be the idea, to see if anybody wanted to make a suggestion. I don't know if you can do a yes subject to --

MR. DONOVAN: I don't think you can vote tonight.

CHAIRMAN SCALZO: We didn't hear back from the County. We can all think a little more about this. We have that opportunity.

MR. MOREAU: I think the idea would be to try to keep the garage part wide enough to be able to pull into it and then drop it back in the back end. You can see technically the garage part would stop probably around here, therefore giving us

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space so we can narrow it down on that side, if that makes sense. We go from 20 to, I think we mentioned 17 or 18.

CHAIRMAN SCALZO: I'm a picture guy. We do have a month. Perhaps a sketch of what you're looking to do.

MR. MOREAU: We'll do that. We'll suggest a larger area.

CHAIRMAN SCALZO: You know what, I hate to say I think you're reading -- you're picking up what I'm putting down. I think you get it.

MR. MOREAU: Yup.

CHAIRMAN SCALZO: Good. Thanks.

So what we're going to do is -- in this case I think we're going to leave the public hearing -- I'm going to look to the Board.

MR. DONOVAN: See if anybody else from the public --

CHAIRMAN SCALZO: Is there anybody else from the public?

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MR. SOMOGYI: Yes. Steve Somogyi, 32 Old South Plank Road. I know you can make this house fit and all. My concern is, Mr. Moreau has been doing a lot of good things on the lake, but on the other hand, we have a lot of rentals, a lot of Airbnbs, and it's not conducive to a good community. If you keep throwing in rentals, it's going to really decimate the community. That's my issue.

Mr. Moreau is from New Windsor. He has to live in New Windsor because he's a councilman. As I said, he's doing good things on the lake, but we have a lot of rentals and I don't think it's good for the community.

CHAIRMAN SCALZO: Counsel, help me out. When we consider the character of the neighborhood, if we were -- we don't know what the intent is of this new building. Perhaps Mr. Moreau is going to build it and sell

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it right away to someone who would occupy it themselves. Would that factor in to the character of the neighborhood?

MR. DONOVAN: So a couple things. One, you mentioned Airbnb or VRBO. I don't know if the Town has any regulations regarding those.

MR. SOMOGYI: Has there been any discussion about the Airbnbs?

CHAIRMAN SCALZO: What a wonderful segue, sir. Right now the Town is going through revising their comprehensive plan. I don't know if you have the ability to look on the internet at the Town's website, but there is a comment -- you have the ability to comment through that. I know we've had other folks from the Orange Lake area that have come in, and their big concern with short-term rentals is that some of those folks bring their own boats, which they don't want boats from other water

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bodies coming in, possibly bringing
in --

MR. SOMOGYI: Number one, you
can bring in any plant, invasive
species. Number two, the lake is
busy enough as it is with the owners.

CHAIRMAN SCALZO: That's not
something that we can handle here,
but I'm just letting you know, right
now the comprehensive plan is being
updated and your opportunity to
comment on that is right now. If I
could recommend that you go ahead and
take a look at that. Your Airbnb
comments are actually more
appropriate for that forum. We hear
you.

MR. SOMOGYI: Thank you.

CHAIRMAN SCALZO: Anyone else
from the public?

MS. CULLEN: Hi. Christine
Cullen, 44 Odell. I'm also a member
of the Orange Lake Homeowners
Association board. I'm not in favor

2 of such a large structure on that
3 lot. I think the snow is going to be
4 an issue. There's nowhere to put it
5 as it is.

6 Parking is an issue as it is.

7 CHAIRMAN SCALZO: Thank you for
8 your comments.

9 With regard to the snow, and if
10 I could -- street plowing is the
11 responsibility of the Town. In
12 regards to where the lot snow goes,
13 is that where your concern would be?

14 MS. CULLEN: Yes, sir.

15 CHAIRMAN SCALZO: I don't know
16 how to answer that.

17 MS. CULLEN: I live at 44 and
18 we have a decent size lot. We're
19 blessed that we have a larger lot.
20 We even have issues at times on where
21 can we put the snow. We have to take
22 it all the way across the road,
23 because the DiStefanos are generous
24 enough to let us put it on their
25 hill. We have nowhere to put the

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snow so we can park our cars.

CHAIRMAN SCALZO: Perhaps Mr. Moreau would throw it on the lot next to him. It's pretty sizable. I hear your concerns.

We certainly hear that you're not in favor of this, and that testimony will be part of the public record. I'm not sure how we would address snow storage in any of our variance considerations.

MS. CULLEN: I'm just saying, for the size of the lot, now is the opportunity to make it something that is more appealing. I understand the houses there are very close together. I understand they always have been. That doesn't mean it was right. Now is the time to make a change to make it a little less narrow to give the neighbors elbow room, to give his property elbow room.

Yes, we are happy that there will potentially be a new house

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there. The old house was disgusting. It's going to be wonderful. I'm just suggesting that they revamp the square footage.

CHAIRMAN SCALZO: As you heard earlier, if you were to put all the side yard, rear yard, front yard setbacks in there, it would be a super small envelop to do it. My look at it with the 5-foot setbacks on either side to match what an accessory structure would be would shrink the front of his house down to 15 feet, the lake side. As far as it being back towards the street, that's where the conversation is currently open. We don't know what Mr. Moreau is going to come back with next month. I'm sure he's just heard everything you just said, he's heard everything I said and the Board said.

Mr. Moreau, if I could speak for you. In this case, I think he's going to roll the dice. He's going

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to propose something.

The public hearing is most likely going to stay open for another month, if you'd like to come back. Unfortunately, it's the Tuesday before Thanksgiving.

MS. CULLEN: Thank you.

CHAIRMAN SCALZO: Thank you very much for your comments. They're very important. We make our decisions based on testimony that we hear from the public as well.

MS. CULLEN: Thank you.

CHAIRMAN SCALZO: Any other comments from the public or the applicant?

MR. MOREAU: No.

CHAIRMAN SCALZO: Please step forward. We have a couple more coming.

MS. SOMOGYI: Donna Somogyi, 32 Old South Plank Road. Mr. Moreau has done some great things on the lake, as my husband said, and we're appreciative of that. It just

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increases the value of the lake.

My concerns are safety, parking being one of them. You all took a ride out there, so you see how narrow the road is. We have parking only on one side, as it should be.

We have had issues in the past, emergency situations out on the lake. A few years ago, a young boy fell in the lake and there was trouble getting to the lake to do a rescue. Having another house on that lot and closing that in more and making the road more narrow -- even if Mr. Moreau has a garage, if he has company and there are people staying over, where are they going to park? That's a concern for me.

Also, you mentioned propane tanks. Given the fact that those houses are so close together, the propane would certainly be a little scary for me.

CHAIRMAN SCALZO: They're not

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Mr. Moreau's propane tanks. They're on the house next door.

MS. SOMOGYI: Which may be vacant now, but I'm assuming won't be vacant forever. It's something to be concerned about, for Mr. Moreau as well.

CHAIRMAN SCALZO: Thank you very much for your comments.

I saw we have one more -- two more.

MR. GIZZI: My name is Frank Gizzi, I live at 14 Parkview Street. I have a view directly above where Mr. Moreau is planning on putting his house. We bought the house with lake views. We love our view of the lake, and we, frankly, don't want anything to block our view. We're really concerned about this.

Everybody I spoke to in the community, nobody wants this house there. It's at the swamp end of the lake where it's all algae and it's

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always backed up there. It's not really the prettiest part of the lake. It's still a lake that we prefer.

It's the only lake we've got in front of our house. We bought our house with lake views. The last thing we want is a house built there.

My other concerns are the valid concerns with the fire department, the parking and the snow. She's got a valid concern with the snow. When it snows a lot, being I have a small lot, it's very hard to put the snow anywhere, you know. There's no place to put the snow. All the lots are small there. If we get three, four feet of snow, there's no in and out there. It's a one-way street. It only comes in. It's very narrow and it's ridiculous for anyone to put a house there really. There's no room for it. There's just no room. It's tight and there's no room there.

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CHAIRMAN SCALZO: Okay. Thank you for your comments.

MR. GIZZI: You can see I'm a little upset. I worked all day and I had to come here at 7:00 at night. I missed my dinner, I missed my family and everything. I'm sorry if I seem a little --

CHAIRMAN SCALZO: That's okay.

MR. GIZZI: Thank you, Board. I appreciate it.

MR. BELL: We all worked all day.

MR. GIZZI: I know you all did, too.

CHAIRMAN SCALZO: Any other polite people?

MS. PILUS: My name is Jean Pilus, I live at 37 Old South Plank. I live directly across the lake from the lot.

I want to just echo all of my neighbors here that have expressed their concerns. I don't want to

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reiterate them because they have already been said on the record. However, I have the same exact concerns.

My daughter is three. We are on that street every single day. If you drive past our house, you will see chalk marks and everything like that. The road is narrow. There are many times people are going up and down the road the wrong way and pulling out. Adding more cars into that area, more traffic, especially with the construction that will be going on, is also a concern.

My other concern that has not been mentioned, I do not know much about the sewer system, but that is always my concern because our sewer system and our pumps are old. Can it support another household, a multiple person household without throwing off our current pumps and support it? So that would also be my concern.

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CHAIRMAN SCALZO: Thank you for your comments.

MS. PILUS: Yup.

CHAIRMAN SCALZO: Mr. Mattina, is there central sewer out in that area?

You're not proposing any septics out there. You would have a pump station leading up to --

MR. MOREAU: A pump pit to the line.

MR. MATTINA: It is Town sewer.

CHAIRMAN SCALZO: Sir in the back. No. All right. Very good.

Anyone else?

MR. SOMOGYI: One more quick.

CHAIRMAN SCALZO: Your name again?

MR. SOMOGYI: Steve Somogyi again. The pump system for the sewer system is a big --

CHAIRMAN SCALZO: I'm going to stop you right now. We're here to talk about the variances that Mr.

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Moreau is asking about.

MR. SOMOGYI: I just wonder where he would put that if there's only a couple feet on either side of the house.

CHAIRMAN SCALZO: That's his job to figure out.

MR. SOMOGYI: That will come up at the next meeting?

CHAIRMAN SCALZO: Actually, it won't, because he's going to have to fit it within his lot where it will work.

MR. SOMOGYI: Okay. I'm just curious.

CHAIRMAN SCALZO: That's not why we're here.

MR. SOMOGYI: All right.

CHAIRMAN SCALZO: Anyone else from the public that wishes to speak about this application?

(No response.)

CHAIRMAN SCALZO: Mr. Bell, I heard you mumble.

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MR. BELL: I'm good.

CHAIRMAN SCALZO: Very good.
Okay. At this point I'm going to
look to the Board.

MR. HERMANCE: I do have a
comment, or a question. Is there
required fire separation? Would that
have to be a fire-rated wall, being
so close to the other property?

MR. MATTINA: Correct. From 0
to 3 feet there would be a one-hour
fire-rated wall with no openings.
Once you get from 3 feet to 5 feet,
it allows 25 percent openings with a
one-hour rated wall. The R
requirements on the charts have to be
met.

CHAIRMAN SCALZO: Mr. Hermance,
just so I'm clear on why you just
asked that, it has to do with the
side yard setbacks for what you're
considering?

MR. HERMANCE: Right. If they
kept it as is, he would need that.

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You may still be able to put an opening there, but like Mr. Mattina said --

CHAIRMAN SCALZO: I just want to stay on track of why we're looking at this application, for side yard setbacks. Very good.

One last chance this evening for the public to comment on this.

(No response.)

CHAIRMAN SCALZO: I'm actually going to look to the Board here for a motion of some sort regarding the public hearing. If you would like it to remain open or to close it, my personal opinion aside, I think it should remain open in this case; however, I'll look to the Board for a motion.

MS. REIN: I'll make a motion to keep it open.

MR. POLITI: Second.

CHAIRMAN SCALZO: We have a motion from Ms. Rein. We have a

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second from Mr. Politi.

In addition, the County --

MR. DONOVAN: For clarification purposes, the motion is to hold it over until November 21st.

CHAIRMAN SCALZO: That is correct.

MR. DONOVAN: For the members of the public that are interested in this application, you will not receive another notice. What you heard tonight is it's held over to November 21st. Just to be clear, that's the Tuesday before Thanksgiving. It's a different night. It's not the fourth Thursday. You should continue to check the Town's website in case there are any modifications.

UNIDENTIFIED SPEAKER: 7 p.m.?

CHAIRMAN SCALZO: 7 p.m. That's correct.

We had a motion. We had a second. All in favor?

MR. POLITI: Aye.

MR. EBERHART: Aye.

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MR. HERMANCENCE: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Aye.

Those opposed?

(No response.)

CHAIRMAN SCALZO: Very good.

We'll see you folks the Tuesday
before Thanksgiving.

As I mentioned, if you can read
the meeting minutes, there are a
couple of suggestions I heard. I
heard bringing the house in. It was
out of my mouth, but the potential
for a lot line change to get you
everything you want so your house
wouldn't be modified. There is
plenty of room between that and the
little house next door.

MR. MILLEN: Thank you.

MR. MOREAU: Thank you.

CHAIRMAN SCALZO: Mr. Millen,
good to see you upright.

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(Time noted: 7:53 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 8th day of November 2023.

Michelle Conero

MICHELLE CONERO

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

- - - - - X
In the Matter of

EDWARD & DEBRA HALL
70 Holmes Road, Newburgh
Section 20; Block 4; Lot 6
AR Zone

- - - - - X

Date: October 26, 2023
Time: 7:54 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
DARRELL BELL
JAMES EBERHART, JR.
GREGORY M. HERMANCE
JAMES POLITI
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: EDWARD HALL

- - - - - X

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

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CHAIRMAN SCALZO: Our next application is Edward and Debra Hall, 70 Holmes Road, seeking area variances of height and maximum square footage to build a 28 foot by 32 foot by 22 foot high accessory building.

Siobhan, do we have mailings on that?

MS. JABLESNIK: This application sent out 14 mailings. They did not go to the County.

CHAIRMAN SCALZO: You did not go to the County. Guess what?

MS. JABLESNIK: You're the only one.

CHAIRMAN SCALZO: We can potentially get through this tonight.

So who do we have with us?

MR. HALL: Ed Hall.

CHAIRMAN SCALZO: Mr. Hall. Very good. Yours is a very interesting application because, from what I understand, this isn't the

2 first time that you're here asking
3 for this very same variance.

4 MR. HALL: I was here --

5 CHAIRMAN SCALZO: Two other
6 times. I want to say in the '90s and
7 again in 2006 or '08.

8 MR. HALL: In the '90s I was
9 approved and I didn't build it
10 because I didn't know if I was going
11 to have a job. In 2 --

12 CHAIRMAN SCALZO: '06 or '08.
13 I can't recall.

14 MR. HALL: Later than that,
15 actually. I wanted to build a 36
16 foot three-car garage. The Board
17 said there were too many garage doors.

18 CHAIRMAN SCALZO: The
19 interesting part, if I went wrong
20 with the description of what it is
21 you're trying to do, please help us
22 out with any other narrative
23 regarding what you're trying to do.

24 We saw. I've been there. I
25 was there actually with Mr. Politi,

2 poking around the house. I saw four
3 iron rods sticking up in the ground.
4 My assumption is that's where you
5 want to put this.

6 MR. HALL: Correct. I must not
7 have been home.

8 CHAIRMAN SCALZO: We poked
9 around for quite a while. Boy, how
10 old is that house?

11 MR. HALL: We have back to
12 1787. It goes back further but we
13 ran out of time. It's around 1750s
14 is what we're thinking.

15 CHAIRMAN SCALZO: Your
16 application did indicate that the
17 reason why you need this height is
18 because it's generally a saltbox type
19 roof.

20 MR. HALL: No. It's going to
21 be just a regular garage roof.

22 CHAIRMAN SCALZO: You want
23 storage above?

24 MR. HALL: Yes. The house now
25 has a stone foundation. It's

2 extremely draft, extremely damp. You
3 really can't store anything down
4 there. I have no attic. One half of
5 the house has a cathedral ceiling and
6 the other half has, I don't know,
7 maybe a four-foot attic.

8 CHAIRMAN SCALZO: Okay.

9 Listen, I'm a big fan of storage.
10 When I get storage, I fill it up, as
11 I'm sure most of us do.

12 Having been there, I did notice
13 that you do have a one-car garage,
14 and it looks like a 12 by 24 shed way
15 out back.

16 MR. HALL: I have a one-car
17 garage that the previous owner built
18 back in the '90s. The building in
19 the back is for all my garden tools
20 basically. A snowblower, spreader.
21 I can't get my tractor in there
22 because that's in the one-car garage.
23 The one-car garage, that's where I do
24 my woodworking. I like to woodwork,
25 refinish furniture and things like

2 that.

3 CHAIRMAN SCALZO: I understand.
4 Everybody needs a hobby. This is a
5 substantial structure. It's almost
6 the size of your house, or perhaps
7 even bigger.

8 MR. HALL: The house is 30 by
9 40, the original house. It's 23 feet
10 on one side and 19 feet on the other
11 side. It would be a little higher.

12 CHAIRMAN SCALZO: It appears
13 you're actually still working on the
14 house, too. Correct?

15 MR. HALL: Oh, yeah. I've been
16 working on that thing for twenty some
17 years. Slowly restoring it. It
18 looks much different on the inside
19 than the outside. Much, much
20 different.

21 CHAIRMAN SCALZO: Well, so
22 let's say we get that far. Are you
23 going to finish working on your house
24 first or are you going to build a
25 garage first?

2 MR. HALL: I need the garage.
3 We have one room inside that I
4 haven't done. I want to move the
5 stuff out of that room so I can
6 finish it, and then I'll have
7 somebody come in and finish the
8 outside of the house.

9 CHAIRMAN SCALZO: That has
10 nothing to do with what you're asking
11 for. That's just my own curiosity.

12 MR. HALL: It just takes a lot
13 of time when you're fussy.

14 CHAIRMAN SCALZO: Sure. Where
15 is your septic system?

16 MR. HALL: If you look at the
17 house, on the right-hand side.

18 CHAIRMAN SCALZO: I did see
19 your well casing to the left.

20 MR. HALL: To the left. Correct.

21 CHAIRMAN SCALZO: If you're
22 proposing to build your garage --

23 MR. HALL: I think it's on the
24 map that you have.

25 CHAIRMAN SCALZO: Okay. Your

2 three-car garage and then you want a
3 second story or a second floor for
4 storage at 22 feet.

5 MR. HALL: This one is going to
6 be a two-car garage. The last
7 application, --

8 CHAIRMAN SCALZO: I read them
9 all.

10 MR. HALL: -- that was a three-
11 car. This is a two-car because I
12 don't have three cars any more.
13 That's why it's four feet smaller.

14 CHAIRMAN SCALZO: Right. So
15 your one-car garage is for your wood-
16 working hobby. Your shed out back is
17 for your garden tools. Your proposed
18 two-car garage is for your two cars.
19 You want storage upstairs because you
20 don't have storage in your basement
21 or your attic.

22 MR. HALL: Two cars and my big
23 tractor for the new garage, and
24 upstairs will be for storage.

25 CHAIRMAN SCALZO: Okay. At

2 least myself, I think as I look here,
3 Mr. Masten is not here tonight, my
4 fear -- not my fear. My concern,
5 when we talk about granting variances
6 for accessory buildings over the 15
7 feet that's allowed, is that
8 eventually someone may consider putting
9 in an accessory apartment there.

10 MR. HALL: No.

11 CHAIRMAN SCALZO: Well, I hear
12 that. So, you know, should we get
13 that far, perhaps if we were to get
14 to an approval portion, a condition
15 may be that that is never to be --

16 MR. HALL: That's fine with me.

17 CHAIRMAN SCALZO: -- habitable
18 space.

19 MR. HALL: Yup.

20 CHAIRMAN SCALZO: All right.
21 Do you have any plumbing plans for
22 that, or electrical plans? I see
23 where the electric comes from your
24 house to the garage --

25 MR. HALL: Right.

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CHAIRMAN SCALZO: -- or hobby shed. You'd have to take that down.

MR. HALL: There were two potting sheds that had the same electric. Eventually I'll put underground electric in.

CHAIRMAN SCALZO: Very good. I think I've talked too much.

At this point I'm going to look to my left. Ms. Rein, what do you got?

MS. REIN: I really have nothing, except that I just wanted it noted that there was a letter of support from his neighbor.

CHAIRMAN SCALZO: Very good. Yes. His neighbor behind him has the farm. Correct?

MR. HALL: Yes.

MS. REIN: That's it.

CHAIRMAN SCALZO: He's got quite the structure back there.

MR. HALL: Yes.

CHAIRMAN SCALZO: The unique

2 thing about your lot is you are in
3 the agricultural district. Correct?

4 MR. HALL: AR.

5 CHAIRMAN SCALZO: If you were
6 actually farming, you could build a
7 huge barn and you wouldn't even be
8 here. It's a unique area that he's
9 in.

10 That's it, Ms. Rein?

11 MS. REIN: Yes.

12 CHAIRMAN SCALZO: Mr. Bell?

13 MR. BELL: You covered it all.

14 CHAIRMAN SCALZO: I talked too
15 much.

16 MR. BELL: You talked a lot
17 tonight. You did.

18 CHAIRMAN SCALZO: Mr. Hermance?

19 MR. HERMANCE: When I visited
20 there, he pointed out the surrounding
21 areas which had large garages all
22 around them. I think it wouldn't be
23 out of character with the neighborhood.

24 CHAIRMAN SCALZO: Mr. Hermance,
25 that's it for you?

2 MR. HERMANCENCE: Yes.

3 CHAIRMAN SCALZO: Mr. Eberhart?

4 MR. EBERHART: No questions or
5 comments.

6 CHAIRMAN SCALZO: Mr. Politi,
7 when you and I were out there, we had
8 -- we were talking about neighborhood
9 character. We both were admiring
10 your dwelling there. It's just -- I
11 love the stone.

12 MR. HALL: You're being kind.
13 It will be very nice when I get it
14 done.

15 CHAIRMAN SCALZO: It's great.
16 With regard to your historical home,
17 is your garage going to look like
18 it's kind of out of place for the
19 historical look of your home? You
20 know, Mr. Politi and I -- I don't
21 have your money, so we weren't going
22 to spend your money. As we were
23 looking at things, your plan with
24 this garage, have you considered
25 perhaps just expanding your wood shop

2 to add a two car onto that? You're
3 kind of mish-mosh. You've got the
4 shed in the back, you have the one
5 car wood shop and you're going to
6 have this two-car garage. It's kind
7 of --

8 MR. HALL: I didn't want three
9 garage doors facing the road. I was
10 trying to avoid that if possible.

11 CHAIRMAN SCALZO: The two
12 garage doors, is the plan to have
13 them --

14 MR. HALL: They're going to
15 face west, to the left.

16 CHAIRMAN SCALZO: Okay. Sorry,
17 Mr. Politi. I kind of stepped all
18 over. I got to you and then I cut
19 you off. Mr. Politi, any comments?

20 MR. POLITI: That's what we
21 were talking about, if there was a
22 way to expand on the woodshed.

23 There was a comment, I don't
24 know if it was in the minutes, that
25 you had wanted it to look similar.

2 MR. HALL: Originally I was
3 going to build a saltbox, but I
4 wanted a dormer on top to give us
5 more space. The dormer on the
6 saltbox doesn't -- it looks terrible.
7 It looks like it's top heavy. That's
8 why I went back to the regular
9 garage. From the road it will look
10 like a regular garage or a normal
11 house roof, not like the house -- not
12 a saltbox, like the house with a
13 dormer off the east side, the right
14 side. The garage doors will not be
15 seen from the road, you know.

16 MR. POLITI: Just from the
17 square footage, the variance, you're
18 jumping up to like 46 percent more.
19 If you were able to expand or
20 incorporate that building. That's
21 one of the thoughts as we were
22 walking around your property. You're
23 clear over there. There's no septic.
24 That's the clear area for you to work
25 in.

2 Again, I think the thought in
3 the back of my mind when I was
4 walking around was your comment that
5 you wanted to keep it as a saltbox.
6 I see where you're going.

7 CHAIRMAN SCALZO: Mr. Politi,
8 you and I got stuck in the same
9 thing. We were reading your previous
10 applications.

11 MR. HALL: That was the
12 original intent. When I had the
13 thing drawn up with the dormer on the
14 top with a saltbox look, you have a
15 knee wall almost on one end. It just
16 was a lot of wasted space that
17 couldn't be used. That's why I
18 changed back to a normal garage.

19 CHAIRMAN SCALZO: If you could
20 just have a seat for now.

21 MR. HALL: Sure.

22 CHAIRMAN SCALZO: We've hit
23 everyone here. At this point I'm
24 going to open it up to any members of
25 the public that wish to speak about

2 this application.

3 Sir, please step forward and
4 state your name.

5 MR. COMPETIELLO: I'm Nunzio
6 Competiello. I'm Mr. Hall's
7 immediate neighbor to the east.

8 I've known him for a number of
9 years. I fully support his effort to
10 build a two-car garage.

11 CHAIRMAN SCALZO: Thank you
12 very much, sir.

13 MR. COMPETIELLO: That's all I
14 wanted to say.

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

18 (No response.)

19 CHAIRMAN SCALZO: All right.
20 One more time, looking at the Board.
21 Any final thoughts?

22 MR. POLITI: No.

23 MR. EBERHART: No.

24 MR. HERMANCE: No.

25 MR. BELL: No.

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MS. REIN: No.

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

Hang on. We have someone in the back.

MR. COSTANZO: A general question. Is it code to have siding on your house in the Town of Newburgh?

MR. DONOVAN: If you could tell us who you are for the record, please.

MR. COSTANZO: I'm sorry. Y name is Joe Costanzo.

CHAIRMAN SCALZO: I have to defer that type question to our Building Department.

MR. MATTINA: Without seeing the house, it's impossible to tell. The protective -- there needs to be a protective coating on the exterior of a house.

MR. COSTANZO: I'm quite sure

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you've seen the house. It hasn't been sided in 22 years. I know you've been on the block because you've been to my house several times.

MR. DONOVAN: So we're here tonight for the application for the accessory --

MR. COSTANZO: It should be a stipulation, if you grant the garage, he might want to put siding on the house. Is that such a crazy request from the Board?

MR. DONOVAN: This is your time to speak. The application is not about the house, it's about the accessory structure. That's all I'm saying.

MR. COSTANZO: Okay. I mean, how could you get to be granted permission to build if the house isn't compliant?

CHAIRMAN SCALZO: Okay. Your comments are part of the record.

2 Thank you.

3 Any other comments from the
4 public?

5 (No response.)

6 CHAIRMAN SCALZO: No. All
7 right. I'm looking at the Board one
8 more time.

9 MR. POLITI: No.

10 MR. EBERHART: No.

11 MR. HERMANCE: No.

12 MR. BELL: No.

13 MS. REIN: No.

14 CHAIRMAN SCALZO: No.

15 All right. I'll look to the
16 Board for a motion to close the
17 public hearing.

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

20 MS. REIN: Second.

21 CHAIRMAN SCALZO: We have a
22 motion from Mr. Bell. It sounded
23 like Ms. Rein beat whoever was at the
24 end of the table.

25 MR. EBERHART: That was me.

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CHAIRMAN SCALZO: All in favor?

MR. POLITI: Aye.

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

MR. BELL: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Aye.

Those opposed?

(No response.)

CHAIRMAN SCALZO: Very good.

This is a Type 2 action under
SEQRA?

MR. DONOVAN: Correct, Mr.
Chairman.

CHAIRMAN SCALZO: Thank you,
Counsel.

So in this case, we're going to
go through the area variance criteria
and discuss the five factors that
we're weighing, the first one being
whether or not the benefit that the
applicant is seeking can be achieved
by other means feasible.

MR. BELL: No.

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MS. REIN: No.

CHAIRMAN SCALZO: No. The second, if there's an undesirable change in the neighborhood character or a detriment to nearby properties. Now again, undesirable change in the neighborhood character, we're confined to the application, which is for the garage.

MR. BELL: Agreed.

CHAIRMAN SCALZO: Michelle can't hear you nodding or shaking your head.

MS. REIN: No. I do that all the time.

CHAIRMAN SCALZO: The third, whether the request is substantial. Well, by the numbers it appears to be, although the lot is --

MR. HALL: 1.4 acres.

CHAIRMAN SCALZO: -- 1.4 acres. The fourth, whether the request will have adverse physical or environmental effects.

2 MR. POLITI: No.

3 MR. EBERHART: No.

4 MR. HERMANCE: No.

5 MR. BELL: No.

6 MS. REIN: No.

7 CHAIRMAN SCALZO: It does not
8 appear so.

9 The fifth, whether the alleged
10 difficulty is self-created, which is
11 relevant but not determinative. Of
12 course it's self-created. Again,
13 relevant but not determinative.

14 So if the Board approves, it
15 shall grant the minimum variance
16 necessary and may impose reasonable
17 conditions upon it. Any discussion
18 at this point?

19 MR. POLITI: No.

20 MR. EBERHART: No.

21 MR. HERMANCE: No.

22 MR. BELL: No.

23 MS. REIN: No.

24 CHAIRMAN SCALZO: Well, should
25 we move to an approval, I would

2 recommend in the decision that it was
3 clearly stated that the garage will
4 never have the ability to be an
5 accessory apartment.

6 MS. REIN: Yes.

7 MR. EBERHART: Agreed.

8 CHAIRMAN SCALZO: No living
9 space. That's just me.

10 Does anyone else have any other
11 conditions, should we move forward
12 with this?

13 MR. EBERHART: No. I agree
14 with that condition myself.

15 CHAIRMAN SCALZO: So that would
16 make Code Compliance's job very
17 simple. Should something come up
18 later, the decision included language
19 that prevents that from ever becoming
20 an accessory apartment.

21 So going through the balancing
22 tests of the area variance for the
23 garage, what is the pleasure of the
24 Board? Do we have a motion of some
25 sort?

2 MR. EBERHART: I'll make a
3 motion for approval.

4 MR. BELL: Second.

5 CHAIRMAN SCALZO: We have a
6 motion from Mr. Eberhart.

7 MR. DONOVAN: The motion to
8 approve, I'm not going to put words
9 in your mouth, do you wish to impose
10 any conditions?

11 MR. EBERHART: With the
12 condition that the space not be
13 utilized for occupation.

14 MR. DONOVAN: Occupancy. No
15 occupancy, no use as an accessory
16 apartment.

17 MR. EBERHART: Yes.

18 CHAIRMAN SCALZO: So that was
19 the motion by Mr. Eberhart. I
20 believe the second was by Mr. Bell.

21 Can you roll on that, please,
22 Siobhan.

23 MS. JABLESNIK: Mr. Bell?

24 MR. BELL: Yes.

25 MS. JABLESNIK: Mr. Eberhart?

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MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Politi?

MR. POLITI: Yes.

MS. JABLESNIK: Ms. Rein?

MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

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

MR. HALL: Thank you very much.

(Time noted: 8:11 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 8th day of November 2023.

Michelle Conero

MICHELLE CONERO

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

- - - - - X
In the Matter of

CASTLE USA CORP/JULY4EVER

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

- - - - - X

Date: October 26, 2023
Time: 8:11 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
DARRELL BELL
JAMES EBERHART, JR.
GREGORY M. HERMANCE
JAMES POLITI
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: GERALD JACOBOWITZ
and VINCENT ESPOSITO

- - - - - X

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(845) 541-4163

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CHAIRMAN SCALZO: That is it for our new applicants. Held open from the September meeting, and actually one previous to that, is Castle USA Corp/July 4Ever at 382 Rock Cut Road, for an interpretation of the ZBA decisions from November 10, 1982, September 25, 2003 and March of 2004, and an appeal of Code Compliance's notice of disapproval dated June 9, 2023.

Did we close the public hearing on this?

MR. DONOVAN: Yes.

MR. JACOBOWITZ: Yes.

CHAIRMAN SCALZO: And then we received supplemental information from the applicant's representative.

MR. DONOVAN: If I can. I don't know if it was supplemental information. At the meeting there was some question that the Board had, for lack of a better phrase, what is it exactly that you want us to do.

2 We asked if Mr. Jacobowitz would put
3 together what he wanted us to rule
4 on, to interpret relative to the
5 prior use variances. He's delivered
6 correspondence dated October 16, 2023
7 in which he has set forth the six
8 items that he is looking for a ruling
9 on for interpretation by this Board.
10 He has, very helpfully, suggested
11 certain answers. I don't know if the
12 Board is tied into those answers, but
13 those are the interpretations that
14 he's seeking from the prior use
15 variances.

16 CHAIRMAN SCALZO: Very good.
17 You all know I like to talk a lot.
18 In this case, I'm going to ask
19 counsel to help us a little more
20 extensively. So the correspondence
21 that we received in question form --
22 this is for all Members of the Board.

23 I know, Mr. Bell, you weren't
24 here last month.

25 Ms. Rein, you weren't here last

2 month either.

3 MS. REIN: I was here.

4 CHAIRMAN SCALZO: We were down
5 so many, I can't remember who it was.

6 Hopefully, Mr. Politi, you got
7 a chance to dig into the meeting
8 minutes for this. I know you were
9 itching to get to see the bunkers.
10 We couldn't get you up there. You
11 read everything and then some.

12 MR. POLITI: Yes.

13 CHAIRMAN SCALZO: Mr. Eberhart,
14 you were not here last month, but I'm
15 hoping you had a chance to read the
16 minutes.

17 MR. EBERHART: I read them and
18 got to ride out there and take a look
19 at the bunkers.

20 CHAIRMAN SCALZO: Very good.

21 You know what, Counsel. I
22 think the best approach here is if I
23 just read off the questions one by
24 one.

25 MR. DONOVAN: Not everyone, but

2 most people on the Board remember the
3 WCC Tank interpretation. What
4 happened there, Code Compliance asked
5 us, and they set forth certain
6 questions they wanted us to answer,
7 or they wanted the Board to answer.
8 I thought it was very helpful, and it
9 was helpful for the next decision
10 because you knew exactly the question
11 you were being asked to interpret.

12 I would suggest, Mr. Chairman,
13 to go ahead and do that. You don't
14 have to adopt the answers.

15 CHAIRMAN SCALZO: No. I'm
16 going to leave the answers blank,
17 even though -- I don't want to --

18 MR. DONOVAN: Unless the Board
19 has any questions for Mr. Jacobowitz
20 or anything that you want.

21 It's a Type 2 action. It's
22 also an interpretation. There are no
23 five factors to go through, there's
24 no SEQRA determination that you need
25 to make. Okay.

2 CHAIRMAN SCALZO: Thank you.

3 So here we go. The first
4 question, is the mobile home,
5 approved by the 2003 variance, a
6 habitable residence in an R-1 Zoning
7 District with accessory office use
8 provided occupancy is required as a
9 term of employment? As I read that,
10 a habitable residence in an R-1 Zone,
11 which this is in an R-1 Zone. There
12 are certain criteria for R-1
13 dwellings. For accessory office use,
14 providing occupancy is required. I
15 don't know that it is required. If
16 we were to review the original
17 application and decisions, I believe
18 that there was security required. I
19 don't believe they mentioned
20 specifically that it had to be
21 someone living there. Help me out
22 here.

23 MS. REIN: I think so. I think
24 you're right.

25 CHAIRMAN SCALZO: Mr. Bell, I

2 don't know if you recall that or not.

3 MR. BELL: No.

4 CHAIRMAN SCALZO: Mr. Hermance,
5 I'm not sure if you recall that.

6 MR. HERMANCE: Yes.

7 CHAIRMAN SCALZO: Mr. Eberhart.

8 MR. EBERHART: I'm still
9 wrestling. We had a conversation.

10 CHAIRMAN SCALZO: It's a little
11 twisted.

12 Mr. Politi, I know you're the
13 new guy here. Everything is in your
14 head because you've been just
15 inundated with all kinds of stuff.
16 From what you read in the other
17 applications as well as the other
18 decisions from other variances --

19 MR. POLITI: If you go back to
20 1982, just so I understand the
21 timeline, in 1982 you granted use of
22 the bunkers, and all business was to
23 be conducted inside the bunkers, if I
24 read that correctly the way it was
25 set up. After that, in 2003 is the

2 next --

3 MR. DONOVAN: Correct.

4 MR. POLITI: So the question of
5 the mobile home or modular home,
6 there's some back and forth on that,
7 what it actually is. Was that
8 approved? That was my question. Was
9 that building approved at some point
10 to be put out there? I never saw
11 that.

12 MR. ESPOSITO: Yes, it was.

13 CHAIRMAN SCALZO: I'm going to
14 look to Mr. Mattina on this rather
15 than the applicants in this case.

16 The mobile home -- we call it a
17 mobile home. I recall hearing
18 office, office, office. Office use.
19 I don't recall hearing anything about
20 a residence.

21 MR. MATTINA: That's the way I
22 understood it. Correct.

23 MR. BELL: That it was office
24 use.

25 CHAIRMAN SCALZO: Office use.

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MR. BELL: I remember that.

MR. POLITI: From that point, there was a septic system found. It sounded like there were just two bunkers there.

CHAIRMAN SCALZO: Three.

MR. ESPOSITO: Yes.

MR. POLITI: Three bunkers initially. I just don't know when the other pieces came in.

CHAIRMAN SCALZO: Like I said, I recall reading about an office structure or whatever.

MR. POLITI: That's what I remember as office.

CHAIRMAN SCALZO: I also recall hearing about security. There was supposed to be security around. That was supposed to be, from what I recall, tied into the Town -- Mr. Mattina, do you recall there was security tied into the Town somehow?

MR. MATTINA: Probably some kind of central monitoring required

2 that would go to a third party that
3 would rely on the police department.

4 CHAIRMAN SCALZO: So as I read
5 this, the R-1 Zone does allow
6 structures for living. With an
7 accessory office use, the office use
8 was, in my opinion, approved as part
9 of the -- so a structure, call it a
10 mobile home, call it whatever you
11 want, let's just say a structure that
12 was for office use.

13 MS. REIN: From my notes, I
14 have that it was an allowable use for
15 the employee to stay there. A
16 residence for caretaker and office.

17 CHAIRMAN SCALZO: Now, is that
18 from one of the decisions? Is that
19 written into a decision?

20 MS. REIN: That was from our --

21 CHAIRMAN SCALZO: That's
22 conversation. That's not necessarily
23 the --

24 MR. DONOVAN: If I can. Let's
25 roll back a little bit.

2 CHAIRMAN SCALZO: Thank you.

3 MR. DONOVAN: So the
4 determination we got from Code
5 Compliance talked about expansion of
6 a nonconforming use. That's not
7 exactly what we have here. That's
8 not what we have here. This kind of
9 use variance -- once you get a use
10 variance, the use is allowed. It
11 proceeds as a permitted use. What we
12 learned from WCC Tank, for those of
13 you that were on the Board then, it
14 was an interpretation that came to us
15 first from Code Compliance and then
16 from the property owner, is if a use
17 variance has limitations imposed,
18 those limitations survive. WCC Tank,
19 the Board, in 1982, I don't know what
20 was in the water in 1982, the same
21 day as this decision, but that
22 decision also said that the use of
23 the property was limited to a fuel
24 tank lining business. When the
25 applicants came and said they were

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doing something other than fuel tank lining, we denied the application. They sued, we won in Supreme Court and we were affirmed by the Appellate Division.

Not to make Mr. Jacobowitz's argument for him, because he's very capable, but I believe his argument is in the R-1 Zone you can have a residence, or in the R-1 Zone we're a permitted use, therefore we can have the residence. It's for consideration. It's not my job to tell you what to do. Did the 1982 or the 2003 use variance limit that to office only? If it limited it to office only, you are within your rights to say it's not permitted for residences even though it's a permitted use in the R-1 Zone. Did I make that clear?

MR. POLITI: Yes.

MR. EBERHART: Yes.

MR. HERMANCE: Yes.

MR. BELL: Yes.

2 MS. REIN: Yes.

3 MR. EBERHART: In my mind I
4 don't think it does.

5 MR. DONOVAN: You get to decide.

6 CHAIRMAN SCALZO: Mr. Eberhart,
7 thank you. That's why we're here.
8 It is in an R-1 District. They do
9 allow dwellings.

10 Mr. Mattina.

11 MR. MATTINA: We're kind of
12 veering off line a little bit,
13 because the variance that I sent him
14 for was mobile homes are not
15 permitted on individual lots. It has
16 nothing to do with single-family
17 dwellings in an R-1. It has to do
18 with a mobile home on an individual
19 lot, which is not a permitted use.

20 MS. REIN: But it could be a
21 mobile office?

22 MR. EBERHART: Modular versus
23 mobile. That's what the argument
24 was.

25 CHAIRMAN SCALZO: Modular

2 versus mobile. Modular is a
3 different -- if this thing showed up
4 on wheels, it's a mobile home.

5 MR. POLITI: It has a skirt on
6 it.

7 MR. MATTINA: A mobile home is
8 considered a manufactured home. A
9 modular home is a single-family built
10 within a factory. That's the difference.

11 CHAIRMAN SCALZO: Set on a
12 foundation.

13 MR. MATTINA: Correct. His is
14 a manufactured home.

15 CHAIRMAN SCALZO: So there are
16 -- the applicant is sitting here. Is
17 this on wheels?

18 MR. ESPOSITO: Yes.

19 CHAIRMAN SCALZO: So it is a
20 mobile home.

21 MR. ESPOSITO: It was approved
22 as a mobile -- I'm sorry.

23 MR. JACOBOWITZ: If I might
24 just clarify one thing. The
25 application that was made on which

2 your Board -- predecessor Board
3 granted the use variance expressly
4 asked for a mobile home. Your Board
5 approved it. It's in the application
6 and it's in the minutes of the
7 meeting of the ZBA that dealt with it
8 at that time.

9 While the Building Department
10 is saying you can't have something,
11 your predecessor Board said you
12 could, because the application was
13 for a mobile home as part of the use
14 variance, which your predecessor
15 Board granted.

16 MS. REIN: A mobile home for an
17 office?

18 MR. JACOBOWITZ: That's the end
19 of that discussion. The Building
20 Department keeps calling it a modular
21 home and a manufactured home. That's
22 not what your Board approved. Your
23 Board approved a mobile home, and
24 that's what's there.

25 MS. REIN: Wasn't the mobile

2 home just for office use?

3 MR. JACOBOWITZ: I'm sorry?

4 MS. REIN: Wasn't the mobile
5 home approved for office use?

6 MR. BELL: Office, not living.
7 Not as a residence. Office.

8 MR. JACOBOWITZ: Expressly, no.
9 Expressly it was not approved.

10 MS. REIN: It was just approved
11 as a structure? There was no use
12 involved?

13 MR. JACOBOWITZ: It was
14 approved as a mobile home that would
15 be occupied --

16 CHAIRMAN SCALZO: For office
17 use.

18 MR. JACOBOWITZ: -- as
19 habitable space.

20 MS. REIN: For office use?

21 MR. JACOBOWITZ: No. For
22 whatever use is allowed under the R-1
23 Zoning where this property is
24 located. A R-1 Zone allows a
25 residential use.

2 MS. REIN: If I remember --

3 MR. JACOBOWITZ: The Building
4 Department is saying we can't live in
5 this house because it's a modular or
6 manufactured, or whatever, and you're
7 not allowed to have one of those in
8 any zone on a lot.

9 MS. REIN: I understand that.
10 We're calling it a mobile home. It's
11 a mobile home. You got approval for
12 the mobile home. From what I
13 remember from the last meeting is
14 that the reason for the mobile home
15 was to make it an office and so that
16 a caretaker could stay there. It
17 wasn't a full residence. That was
18 from the last meeting.

19 MR. JACOBOWITZ: The building
20 itself is a habitable dwelling. What
21 is allowed in a habitable dwelling
22 under your zoning is an incidental
23 office use. Can it be occupied by
24 anybody? Yes. That's all we're
25 trying to say in the proposed

2 language that we suggested, because
3 the Building Department keeps saying
4 we're a modular manufactured home and
5 not allowed. We need to clarify
6 that.

7 MS. REIN: We've acknowledged
8 it is a mobile home. It's irrelevant.
9 The fact from the last meeting is
10 that this was used as an office, and
11 the only reason there was somebody
12 inhabiting it was as security for the
13 office. That's what was said at the
14 last meeting by you guys.

15 MR. JACOBOWITZ: I don't recall
16 it that way.

17 MS. REIN: That's what I have
18 in my notes. I recall it that way.

19 MR. JACOBOWITZ: The office use
20 is incidental to the major use, the
21 primary use of the home. It's
22 accessory to that.

23 If you're saying you can't have
24 a business use as an accessory to an
25 R-1 residence, I don't think that's

2 consistent with your zoning law.
3 Your zoning law allows home
4 occupations and professional offices
5 in a residential building, and that's
6 all we're doing. We're occupying --
7 that's where he lives. That's where
8 he wants to live, and has lived, and
9 he has an office there in a part of
10 the building in which he conducts the
11 business of that property. As the
12 fallback position, your zoning says
13 that you can have somebody in that
14 building if it's part of the terms of
15 their employment. That is his
16 responsibility. We can provide the
17 Town, for your records, with a
18 statement from the company that he is
19 required to live in the house as a
20 term of his employment. That's, in
21 essence, what we're trying to say.

22 MS. REIN: Thank you.

23 CHAIRMAN SCALZO: The 1982
24 decision doesn't mention --

25 MR. JACOBOWITZ: It talks about

2 the storage and vending of fireworks.

3 CHAIRMAN SCALZO: Right.

4 MR. JACOBOWITZ: That was the
5 use variance.

6 CHAIRMAN SCALZO: The six
7 conditions, the first one, fenced.
8 The second one, no new or additional
9 structures. Third, existing lighting
10 shall be repaired. Four, the
11 security alarm system shall be tied
12 to the Town of Newburgh Police
13 Department. The fifth one, the
14 property shall be posted and there
15 will be access gates at the Rock Cut
16 Road side. The sixth, there shall be
17 no other development of the
18 surrounding land. Those are the six
19 conditions in the 1982 variance.
20 That's how we all follow it.

21 Then when we get to 2003, the
22 decision -- we have minutes from
23 that. In those minutes, one of the
24 Board Members had asked what was the
25 building going to be for. The

2 response was storage. No one -- I'm
3 still trying to find where we're
4 talking about -- a Board Member asked
5 what the new building would be used
6 for. Mr. Bianco stated that it would
7 be used to store consumer items such
8 as party snappers, confetti, et cetera.

9 MR. ESPOSITO: That was the
10 second variance. That was a
11 separate-- we came back a second
12 time.

13 CHAIRMAN SCALZO: Michelle, you
14 have Mr. Esposito?

15 MS. CONERO: I do.

16 CHAIRMAN SCALZO: You're a
17 frequent flyer. We all know who you
18 are.

19 MR. ESPOSITO: Vincent Esposito.

20 CHAIRMAN SCALZO: There has always
21 been this gap that is hard to bridge.

22 MR. ESPOSITO: The '06 was for
23 a building and the '03 was home/
24 office. That was what was originally
25 applied for.

2 CHAIRMAN SCALZO: Okay. I
3 think I just read the '03.

4 MR. ESPOSITO: That was '06.
5 Bianco was '06.

6 MR. DONOVAN: Actually, it was
7 '04.

8 MR. ESPOSITO: '04. I'm sorry.

9 CHAIRMAN SCALZO: Do we have an
10 '03 as well?

11 MR. DONOVAN: I guess the
12 question is, where in any of the use
13 variances issued by the ZBA did it
14 say that this specific structure
15 could be used as a residence?

16 MR. ESPOSITO: It said home/
17 office.

18 MR. DONOVAN: I'm not finding
19 it.

20 MR. ESPOSITO: It was in the
21 application.

22 MR. DONOVAN: But not in the
23 approval issued by the Board.

24 MR. ESPOSITO: I don't know how
25 that --

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MR. JACOBOWITZ: The vote was to approve the application. That's what the vote was. The motion was to approve the application.

MR. DONOVAN: Mr. Harris made. Mrs. Eaton, God rest her soul, seconded the motion. I have no idea what the motion was. That's what it says in the minutes.

CHAIRMAN SCALZO: That's why you help us out when you say I make a motion for what.

MR. DONOVAN: Correct.

Jerry, do we have a copy of the application?

MR. JACOBOWITZ: Yes.

CHAIRMAN SCALZO: I'll tell you what. I didn't realize question 1 would be so difficult. How about for now we move on to question number 2. Is the erection of the blue modular building a structure that violates the limited structure use conditions of the 1982 and 2003 variances.

2 Unfortunately, Mr. Politi
3 wasn't there to see which building
4 was blue. There are pictures.

5 It does not appear that there
6 was an approval. That one, unless
7 somebody is going to kick me in the
8 shins on this, I believe that is yes.
9 The answer to that one is yes. Does
10 the erection of the blue modular
11 building violate the limited
12 structure use conditions of the 1982
13 and 2003 variances. I don't see a
14 whole lot of conversation about
15 structures in those two variances.
16 Is it supposed to be there? From any
17 variance I read, no.

18 Would you folks agree?

19 MS. REIN: Yes.

20 CHAIRMAN SCALZO: So that's
21 question 2. I wish we started with
22 that one.

23 MR. DONOVAN: If the Board is
24 so inclined, since I have something
25 to do on Saturday, we may be still

2 here, there could be a motion that
3 says the answer to question number 2
4 is in the affirmative.

5 CHAIRMAN SCALZO: Thank you.
6 We don't have to -- well, none of us
7 were in opposition to that question.
8 We don't vote on every one, do we?

9 MR. DONOVAN: I would vote on
10 every one.

11 CHAIRMAN SCALZO: Question
12 number 2, fellow Members of the
13 Zoning Board of Appeals, I believe
14 our answer to question number 2 is in
15 the affirmative.

16 MR. POLITI: Yes.

17 MR. EBERHART: Yes.

18 MR. HERMANCE: Yes.

19 MR. BELL: Yes.

20 MS. REIN: Yes.

21 MR. DONOVAN: Someone would
22 need to make a motion. I'm following
23 WCC Tank. Someone would make a
24 motion and the Board would vote on
25 that, please.

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CHAIRMAN SCALZO: I'll make that motion here. Question number 2, is the erection of the blue modular building a structure that violates the limited structure use conditions of the 1982 and 2003 variances. I'll make that motion.

MR. BELL: I'll second it.

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

Can you roll on that, Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Eberhart?

MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Politi?

MR. POLITI: Yes.

MS. JABLESNIK: Ms. Rein?

MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

So question 2 is done. We

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don't need to come back to that.

Question number 3, is the erection of the fabric domed storage building a structure that violates the limited structure use condition of the 1982 and 2003 variances. I would also say that that is in the affirmative. I see a bunch of nods.

I will make a motion that question 3, the erection of the fabric domed storage building structure that violates the limited structure use condition of the 1982 and 2003 variances, I would answer in the affirmative. That is my motion.

MR. BELL: Second.

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

Siobhan, roll on that, please.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Eberhart?

MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Hermance?

2 MR. HERMANCENCE: Yes.

3 MS. JABLESNIK: Mr. Politi?

4 MR. POLITI: Yes.

5 MS. JABLESNIK: Ms. Rein?

6 MS. REIN: Yes.

7 MS. JABLESNIK: Mr. Scalzo?

8 CHAIRMAN SCALZO: Yes.

9 So two out of three so far.

10 Question 4, does the variance
11 granted in 1982 to store and vend
12 class C fireworks explosives include
13 class B explosives. I think that one
14 is probably the easiest question
15 we've seen so far. The answer is no.

16 I would like to make a motion
17 for question number 4, that we affirm
18 the no answer.

19 Is that the way to say it,
20 Counselor?

21 MR. DONOVAN: Correct.

22 CHAIRMAN SCALZO: Does the
23 variance granted in 1982 to store and
24 vend class C fireworks explosives
25 include class B explosives. That is

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my motion. The answer is no.

MR. BELL: Second.

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

Can you roll on that, please, Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Eberhart?

MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Politi?

MR. POLITI: Yes.

MS. JABLESNIK: Ms. Rein?

MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Moving on to question number 5.

Are cargo containers for tractor trailers allowed on the property as an accessory use to the principal use of fireworks storage and vending. Well, hang on. That was, I believe,

2 in one of the --

3 MR. ESPOSITO: That was also
4 approved in the variance. I think it
5 was in '03.

6 CHAIRMAN SCALZO: I recall
7 seeing something about one of the
8 previous Board Members asking about
9 the storage of trailers. I thought I
10 recalled that it was something that
11 -- an accessory use, they come and
12 they go. When we say an accessory
13 use, that sounds to be more than just
14 a come and a go.

15 MS. REIN: Yes.

16 MR. BELL: Yes.

17 CHAIRMAN SCALZO: Mr. Mattina,
18 you wouldn't happen to have that
19 available to you, would you?

20 MR. MATTINA: No, I do not.

21 MS. REIN: What date is that?

22 CHAIRMAN SCALZO: That's the --
23 I'm not sure which one that is.
24 Neither cargo containers nor tractor
25 trailers are structures. They are

2 portable storage units, movable by
3 motor vehicles or other equipment.
4 All products arrive and depart in
5 cargo containers or tractor trailers.

6 MR. POLITI: Could I ask a
7 question?

8 CHAIRMAN SCALZO: Mr. Politi,
9 please.

10 MR. POLITI: Who regulates
11 that? ATF or --

12 MR. ESPOSITO: No. Since
13 there's no class B on the property,
14 it will just be the New York State
15 Department of Labor.

16 MR. POLITI: I thought there
17 was information from -- wasn't there
18 a letter -- oh, because they thought
19 it was class B.

20 MR. ESPOSITO: Now that we
21 clarified that there's no class B,
22 there will be no class B commercial
23 fireworks in those trailers. It will
24 just be the consumer type that you
25 see.

2 MR. BELL: Selling in the
3 parking lots or whatever.

4 MR. ESPOSITO: Yeah.

5 MR. POLITI: It sounds like two
6 things are being said. You obviously
7 have to bring those -- you need a
8 delivery, you need a truck. At the
9 same time, you're calling it storage.
10 Is that applicable under that state
11 law, --

12 MR. ESPOSITO: Yeah, yeah.

13 MR. POLITI: -- that you can
14 store fireworks in a tractor trailer?

15 MR. ESPOSITO: No. The tractor
16 trailers, you have to conform to a
17 certain standard.

18 MR. POLITI: That's what I'm
19 asking.

20 MR. ESPOSITO: You have to
21 conform to a certain standard. New
22 York State Department of Labor comes
23 in, they inspect them and they give
24 you a certificate once you meet that
25 standard. That's not all of the

2 containers. You'll see in some of
3 the parking lots we vend out of.

4 CHAIRMAN SCALZO: That almost
5 seems to defeat the purpose of having
6 the bunkers. Would you receive more
7 materials than your bunkers could
8 hold?

9 MR. ESPOSITO: Well, I'm just
10 going to use round numbers for you.
11 If you can only store 300,000 pounds
12 of explosives, it's much safer to
13 store them in, let's say, five or
14 six, you know, storage bunkers or
15 containers, whatever you want to call
16 it, than squashing them into three.

17 CHAIRMAN SCALZO: Into three
18 concrete-lined bunkers?

19 MR. ESPOSITO: Oh, yes. You
20 want the separation.

21 MR. POLITI: Does that
22 interfere with the --

23 MR. ESPOSITO: It doesn't
24 affect the -- the table of distance
25 -- we already have a table of

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distance, and it says 300,000 pounds. Within those 300,000 pounds, you can store them in one or you can store them in a hundred.

MR. POLITI: What was the 10,000 pound note?

MR. ESPOSITO: The 10,000 pounds was the ATF. That was a different type of explosive. That was a more volatile explosive.

MR. POLITI: Is that a B or a C?

MR. ESPOSITO: Class B.

MR. JACOBOWITZ: The other part is, the merchandise comes in, and you don't get it unloaded and transported out the same day the unit comes in. There's a timeframe between when it comes in, when it gets sorted, when it gets broken down and then repacked to be transported out. Technically we're maintaining this cargo trailer on the site, and we can't do it according to the Building Department.

2 That's one of the things they cited
3 here. We need to know that we are
4 allowed to have use of those for
5 purposes of the storage and
6 transmitting of the merchandise on
7 the site.

8 CHAIRMAN SCALZO: What would a
9 reasonable amount of time be to
10 offload these vehicles into the
11 bunkers? That's where I'm going.
12 Nothing that I read here -- you could
13 leave this tractor -- you could leave
14 a tractor trailer there for a year,
15 two years, five years. There's
16 nothing there that says -- you could
17 be using these for bunker storage. I
18 don't believe that was the intent of
19 any of the variances that were
20 granted before.

21 MR. ESPOSITO: It was. It was
22 specifically in -- I think it was '03
23 they talked about -- they didn't give
24 a definitive number of what we were
25 limited to, but you'll see at the

2 time it said eight or nine. There's
3 more than that in there now, but they
4 spoke about eight or nine. That was
5 specifically in the minutes.

6 CHAIRMAN SCALZO: Mr. Politi.
7 We got the new guy talking a lot,
8 folks. I want to point that out to
9 you. I have to up my game now.

10 MR. POLITI: That delay time
11 and storage time, that is a true
12 question, especially the units
13 themselves. The distance, especially
14 to the house or the modular home.
15 Whatever it's called.

16 MR. ESPOSITO: In order for us
17 to get a table of distance, the home/
18 office is all incorporated into that.
19 If the home/office violated a table
20 of distance, we couldn't have that
21 type of weight, whether it's 1,000
22 pounds. You have to meet a certain
23 table of distance to have that.

24 MR. POLITI: It's just another
25 piece of the -- there's multiple

2 pieces to it.

3 MR. ESPOSITO: It's a good
4 question, but you have to meet that
5 criteria. It's the enforcement
6 authority. They are the ones that
7 come in and determine what your
8 weight can be based upon your
9 surroundings.

10 MR. POLITI: I just think of a
11 bunker as --

12 MR. JACOBOWITZ: Mr. Chairman --

13 CHAIRMAN SCALZO: Yes.

14 MR. JACOBOWITZ: -- I have a
15 suggestion to make as to 5 and 6.

16 CHAIRMAN SCALZO: Okay.

17 MR. JACOBOWITZ: Make the
18 answer conditioned on us providing
19 the Building Department with a layout
20 of where the cargo containers and
21 tractor trailers will be located so
22 that there is something against which
23 to measure what's happening on the
24 property. We have no problem doing
25 that. There's more there now than we

2 ever wanted because of the tenant
3 that we're trying to evict. We have
4 no problem with defining the area
5 that these units are going to be
6 located and put the burden on us to
7 give it to the Building Department.
8 That becomes part of their
9 administrative review of the
10 activities on the site.

11 MR. DONOVAN: Not to make this
12 any more complicated. I think we
13 need, in addition to an area, a
14 number. How many? I would think the
15 Board would want to know how many are
16 going to be there.

17 MR. JACOBOWITZ: I'm sorry,
18 David.

19 MR. DONOVAN: How many.

20 MR. JACOBOWITZ: How many?

21 MR. DONOVAN: I think the Board
22 and Code Compliance would want to
23 know how many, assuming you get that
24 far.

25 MR. JACOBOWITZ: We will

2 provide a definition of the area that
3 they're going to be located in with
4 the numbers, and we'll be limited to
5 that space. Some of the trailers are
6 bigger than other trailers. It's not
7 a matter of six or seven. It's a
8 matter of how much area will you
9 occupy for the storage or for the
10 parking of these vehicles or these
11 containers. X square feet shown on a
12 plan that will give the Building
13 Department that, and that way there's
14 no issue of abusing and they have a
15 standard against which they can
16 enforce the rules.

17 MS. REIN: Was that pre-determined?

18 CHAIRMAN SCALZO: We're digging
19 through these --

20 MR. JACOBOWITZ: It's a
21 condition. You make that a condition
22 of your action, and then we have to
23 do it with the Building Department.

24 MR. HERMANCE: Are these
25 containers rated for explosives? Is

2 there any difference between these
3 containers and a tractor trailer?

4 MR. ESPOSITO: Yes. Some of
5 them -- there are several there now
6 that have magazine certificates from
7 the New York State Department of
8 Labor. The other ones there which
9 don't, they're not regulated, those
10 are just for the vending that you see
11 happening like in some of the parking
12 lots or gas stations or what have
13 you.

14 Just a little more background,
15 just to further enhance our point.
16 Again, I think it's '03, excuse me
17 with all these dates, but there were
18 concrete pads that were also approved
19 for these outdoor, you know, storage
20 containers to be placed upon. We're
21 speaking about eight or nine and
22 stuff like that.

23 MS. REIN: So there's more
24 containers than there are spaces?

25 MR. ESPOSITO: Yes, because

2 some of them are required to be put
3 on the concrete pads and the other
4 ones are on wheels. That would
5 defeat the purpose.

6 CHAIRMAN SCALZO: I almost feel
7 as though I need to see a real site
8 plan for what we're talking about
9 with these storage trailers. You say
10 storage trailers. Boy, just to me it
11 seems that we're getting beyond the
12 bunker -- why the bunkers were there.

13 MR. ESPOSITO: Well, that's why
14 we went in '03, was to expand the
15 storage. It was just a safer thing
16 to do. You don't -- I mean, the best
17 way I can explain it is you have a 64
18 ounce bottle of Pepsi, you can't
19 squeeze it into a 32 ounce thermos.
20 It's just not going to work. For
21 safety purposes, you would rather
22 have it spread out.

23 MR. POLITI: Can I ask the
24 attorney a question?

25 CHAIRMAN SCALZO: Please.

2 MR. POLITI: Are we allowed to
3 say can we see the Department of
4 Labor, --

5 MR. ESPOSITO: Yes.

6 MR. POLITI: -- request that
7 information just to see so we can
8 kind of understand -- I don't know if
9 it's relevant or not.

10 MR. DONOVAN: I'm sorry. I was
11 reading more of the voluminous
12 minutes. What exactly did you want
13 to see from the Labor Department?

14 MR. POLITI: There seems to be
15 a concern, and I don't want to put
16 you on the spot on that. There was
17 some concern, and I have that too,
18 about the trailers and their
19 capability to withstand or fall under
20 the Department of Labor's structure.

21 MR. ESPOSITO: That's two
22 different things.

23 MR. POLITI: Whatever --

24 MR. ESPOSITO: It's an industry
25 thing. Containers --

2 MR. POLITI: Let me just finish.

3 MR. ESPOSITO: I'm sorry.

4 MR. POLITI: There's tractor
5 trailers and there's containers. The
6 Department of Labor signs off on
7 those?

8 MR. ESPOSITO: On the containers.

9 MR. POLITI: Not the trailers?

10 MR. ESPOSITO: No. The
11 trailers don't hold explosives.

12 MR. POLITI: So the trailer
13 comes in, it goes to a container?

14 MR. ESPOSITO: The trailer has
15 equipment on it.

16 MR. BELL: I guess I'm confused.

17 MR. ESPOSITO: Fire extinguishers.

18 MR. DONOVAN: Was there ever a
19 site plan? Was there ever a site
20 plan?

21 MR. ESPOSITO: When you say
22 site plan --

23 MR. DONOVAN: I don't want to
24 harp on WCC Tank. I keep talking
25 about that. When a new purchaser

2 came, because there had been no site
3 plan in 1982, and Joe will tell you,
4 we had the new owner, whatever they
5 were, Black Rock, prepare a site plan
6 so there could be no misunderstanding
7 where the parking was, how many
8 spaces there were, where tractor
9 trailers were going, where their
10 landscaping equipment went. There
11 was no question at all.

12 MR. ESPOSITO: I would have no
13 problem doing that.

14 CHAIRMAN SCALZO: And fully
15 enforceable and easily checked.

16 MR. ESPOSITO: I would have no
17 problem doing that.

18 MR. DONOVAN: That makes
19 everybody's life easier.

20 MR. JACOBOWITZ: That was, in
21 effect, what I was suggesting by
22 defining these outside areas.

23 MR. DONOVAN: I thought maybe
24 it would be easier for the Board to
25 see a pictorial representation of

2 what's on the site plan.

3 MR. ESPOSITO: I have no
4 problem doing that. Sure.

5 CHAIRMAN SCALZO: Boy, thank
6 you, Counsel. That's wonderful.

7 You know what. You did exactly
8 what we asked you to with the
9 questions. I can't believe that I'm
10 still struggling with this, but I am.
11 I think we need to see a good site
12 plan with the amount of containers,
13 not trailers. When you say trailer,
14 I immediately think of an 8-foot wide
15 by 53 foot long trailer that I see on
16 the highway.

17 MR. ESPOSITO: Right.

18 CHAIRMAN SCALZO: Are you
19 talking about the Sea container? I
20 have no idea.

21 MR. ESPOSITO: That's why.
22 You're right. In the industry we
23 differentiate container versus
24 trailer. Trailer to us is something
25 on wheels. Container/magazine is

2 something that's placed, let's say on
3 the ground. That's the way we define
4 it. I have no problem showing
5 wheels, not wheels.

6 CHAIRMAN SCALZO: Depending on
7 what we're talking about, if you want
8 to show wheels or not wheels. When
9 we go back to question 1, you don't
10 want to talk about wheels. Where
11 does that leave us here?

12 MS. REIN: Next month.

13 CHAIRMAN SCALZO: Do you think
14 it's -- it's actually a short one,
15 too. Do you think you can get
16 someone out there that can give us an
17 accurate layout of what's currently
18 going on, because I'm looking at an
19 8.5 by 11 thing with yellow marks on
20 it for what's where. I'm going to
21 apologize, because if I had asked for
22 this from the start, we could probably
23 get through something tonight.

24 MR. ESPOSITO: I could ask Joe
25 to do it.

2 MR. JACOBOWITZ: Can we
3 bifurcate whatever it is we're
4 talking about so that -- you did take
5 action on three things.

6 MR. DONOVAN: That is correct.

7 MR. JACOBOWITZ: Those are
8 important.

9 We're admitting to violations,
10 Jim.

11 MR. POLITI: That I read.

12 MR. JACOBOWITZ: Why are we
13 doing that. It's not that we're
14 drunk. We're going to --

15 MR. DONOVAN: Right about now
16 it sounds like a pretty good idea.

17 CHAIRMAN SCALZO: What's in
18 that mug?

19 MR. JACOBOWITZ: We want to be
20 able to show that because the Supreme
21 Court judge who has the case that
22 we're trying to evict the tenant from
23 there. The fact that you determined
24 there are violations gives us the
25 basis for the judge to recognize that

2 the petition to evict the tenant is
3 rooted in sound basis, because so far
4 the judge hasn't been satisfied, by
5 virtue of discussions and
6 verbalizations. We want to be able
7 to -- I think it's Monday, isn't it?

8 MR. ESPOSITO: Yes.

9 MR. JACOBOWITZ: Monday is
10 court. We want --

11 CHAIRMAN SCALZO: You can go in
12 with those three items that we have
13 determined tonight.

14 MR. JACOBOWITZ: These three
15 things have been determined that
16 affect the case before the Supreme
17 Court judge.

18 CHAIRMAN SCALZO: We're
19 dragging you out, but we're still
20 helping you out.

21 Mr. Hall, I see you're still
22 sitting there. You don't have to.
23 This is so interesting, you don't
24 want to leave.

25 MR. HALL: This is interesting.

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MR. JACOBOWITZ: One other thing that Vincent just pointed out. On item number 1, there are really two things.

CHAIRMAN SCALZO: We might have a little bit of help here for item 1. I have the June 26, 2003, applicant is seeking to permit maintenance of an existing mobile home for office use on the premises as well as storage for property maintenance equipment not allowed to be stored within the bunkers. That's what the first paragraph says.

MR. BELL: There it is.

CHAIRMAN SCALZO: It says mobile home for office use.

MS. REIN: That's what I thought.

CHAIRMAN SCALZO: Then later on, let's see, he provided the Board with a memo clarifying what he had verbally discussed at the last meeting of the ZBA wherein request for storage of fireworks outside of

2 the bunkers onsite was totally
3 withdrawn. Obviously following from
4 that, the keeping of licensed,
5 registered magazines for the storage
6 of fireworks be withdrawn from that
7 part of the application as well.

8 So I'm still trying to find out
9 where it says that you can keep
10 fireworks in containers and not
11 bunkers, or is that in a subsequent --

12 MR. ESPOSITO: I don't know if
13 it's in a subsequent thing. I guess
14 I would have to go back and go over
15 -- I guess the devil is in the
16 details. I didn't bring that
17 paperwork with me. I just have --
18 you know, I guess it has doublewide
19 mobile home on it. I don't have --

20 MR. DONOVAN: I'm sorry.
21 What's that piece of paper that you
22 have?

23 MR. JACOBOWITZ: I'm sorry,
24 David?

25 MR. DONOVAN: What was the

2 piece of paper your client was
3 waiving? He wasn't waiving it. He
4 was holding it.

5 MR. JACOBOWITZ: A summary of
6 the application that was made.

7 MR. ESPOSITO: I'll bring it up.

8 MR. JACOBOWITZ: On the issue
9 of the storage units, our argument is
10 they are accessory to the use that's
11 been approved, and your counsel
12 before cited to a case that involved
13 your predecessor Board. That
14 decision expressly says a use for
15 which a use variance has been granted
16 is a conforming use and no further
17 use variance is required for its
18 expansion. That's in the decision
19 counsel cited as being governing to
20 what extent you can grant additional
21 rights once you grant a use variance.
22 This is the case that you won,
23 actually, David. David won that
24 case.

25 MR. DONOVAN: Don't sound

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surprised, Jerry. Every now and then.

MR. JACOBOWITZ: I didn't mean to sound surprised. I wanted to be congratulatory because it says things in it I like.

MR. BELL: To help your case.

MR. JACOBOWITZ: I think that the issue of the storage containers is resolved by an interpretation on your part that it's a reasonable and necessary use, accessory use to a main use of storage and vending of fireworks.

CHAIRMAN SCALZO: Okay. You know what, though. I'm going to go back to question 1 now, having reread that first paragraph from June 26th of 2003. The applicant is seeking to permit maintenance of an existing mobile home, an existing mobile home, for office use. When I go back to question 1, that says is the mobile home approved by the 2003 variance a

2 habitable residence in the R-1 Zoning
3 District with accessory office use,
4 provided occupancy is a required term
5 of employment. The same one that
6 you're quoting in your letter to us
7 as number 1 is, in my opinion,
8 resolved with that first paragraph
9 here, --

10 MR. BELL: I agree.

11 CHAIRMAN SCALZO: -- which the
12 answer is no.

13 MR. BELL: No. It's no.

14 CHAIRMAN SCALZO: Your number
15 1, is the mobile home approved for a
16 habitable residence. Right here, the
17 first paragraph, it says an existing
18 mobile home for office use.

19 MR. BELL: Office use, not
20 residence.

21 MR. JACOBOWITZ: Except we're
22 in an R-1 Zone. We didn't lose our
23 right to have a residence in an R-1
24 Zone.

25 CHAIRMAN SCALZO: You may be

2 right, but mobile homes are not
3 allowed for residences in R-1.

4 MR. ESPOSITO: It's specific on
5 the application. It says doublewide
6 mobile home. It's specific.

7 CHAIRMAN SCALZO: Joe Mattina
8 from Newburgh.

9 MR. MATTINA: The application I
10 think he's referring to is the
11 building permit application, not the
12 zoning application. The building
13 permit application says doublewide to
14 create an office. That's the
15 application I think he's referring
16 to.

17 MR. ESPOSITO: The application
18 for the zoning -- for the variance
19 said doublewide mobile home. I just
20 gave you --

21 CHAIRMAN SCALZO: We're going
22 to have to do some digging. Tonight
23 is not a total loss for you guys,
24 because we got through three things.
25 We can table number 1.

2 MR. ESPOSITO: That's the most
3 important. I've got nowhere to live.

4 MR. JACOBOWITZ: As to number
5 1, our application to you was for an
6 interpretation and/or a variance. We
7 can --

8 CHAIRMAN SCALZO: If we're
9 saying no, then you'd like the variance.

10 MR. JACOBOWITZ: Based on our
11 application and your notices, we can
12 ask for a variance as to item number
13 1 based on the information that we've
14 provided to you and anything else
15 that you may want us to provide to
16 allow that mobile home to be used as
17 a habitable residence and an
18 accessory office. That becomes our
19 application for a use variance. I
20 did it that way because I wasn't sure
21 whether we would get interpretations
22 exactly as we needed.

23 MR. DONOVAN: Jerry, you don't
24 mean use variance, you mean area
25 variance. You haven't submitted

2 anything for a use variance. You
3 said use variance. You didn't mean
4 that, did you?

5 MR. JACOBOWITZ: Well --

6 MR. DONOVAN: You might want to
7 think about it, because you don't
8 have any proof in front of us for a
9 use variance.

10 MR. JACOBOWITZ: I thought what
11 the Chairman said is he doesn't think
12 we can have a mobile home for
13 habitable use.

14 CHAIRMAN SCALZO: That's my
15 interpretation of the 2003.

16 MR. JACOBOWITZ: I'm saying in
17 an R-1 Zone, we don't need anybody's
18 approval to have a residential house
19 in an R-1 Zone. That's a principal
20 use.

21 CHAIRMAN SCALZO: For a house
22 that sits on a foundation.

23 MR. DONOVAN: We talked about
24 that before. The point being raised,
25 right, is that the use variance makes

2 the use a permitted use. Jerry read
3 from the decision which says that a
4 use for which the use variance has
5 been granted is a conforming use and,
6 as a result, no further use variance
7 is required for its expansion. The
8 case goes on to say, though, that the
9 use of the property remains subject
10 to the terms of the use variance.
11 Where a board of appeals has
12 previously determined that the
13 development is limited only to a
14 certain extent by the terms of the
15 variance, the board of appeals is not
16 free to later disregard that
17 determination.

18 So the point is -- again, I'm
19 not making Jerry's argument for him.
20 He says in an R-1 Zone you can have
21 this. The countervailing argument is
22 did -- the discussion is did the
23 original variance limit that to
24 office use only, and, if so, you have
25 to abide by that limitation.

2 MR. JACOBOWITZ: Except now
3 we're asking for a use variance to
4 use it as a residential use.

5 MR. DONOVAN: Then you want to
6 supplement your application? You
7 have no proof of the four factors for
8 a use variance. You haven't
9 submitted any proof.

10 MR. JACOBOWITZ: Okay. There
11 are other aspects of it that need to
12 be established. Wait a minute. Why
13 can't it be approved as a residential
14 use in an R-1 Zone?

15 MR. DONOVAN: I can't make your
16 application for you. I'm asking you,
17 do you really want to ask us for a
18 use variance?

19 MR. JACOBOWITZ: R-1 Zone, use
20 variance, we can do our business
21 there. That didn't mean we can't use
22 the rest of our property as it's
23 zoned. Under the zoning, a residence
24 is allowed. All we're doing is saying --

25 CHAIRMAN SCALZO: I understand

2 you completely.

3 MR. JACOBOWITZ: -- remember
4 us, we were here.

5 CHAIRMAN SCALZO: When we go
6 back to 2003 here, the first
7 paragraph states for office use, and
8 now you're saying you want it to be a
9 residential use. Well, I don't
10 believe the intent in 2003 was for a
11 residence there. You want a
12 residence, I believe with R-1 you
13 would need to at least fall into the
14 other requirements of R-1, which
15 would not be a dwelling that's on
16 wheels. An office on wheels is fine,
17 but a dwelling on wheels is not.

18 MR. ESPOSITO: It's not.

19 MR. JACOBOWITZ: It's on a
20 foundation.

21 MR. ESPOSITO: You can't -- you
22 can't have -- according to HUD, you
23 can't have solely an office on wheels
24 in a mobile home, or manufactured. I
25 don't know. Whatever it is. It's a

2 home and you're allowed to use it as
3 an office. It can't be the reverse.

4 MR. JACOBOWITZ: The variance
5 that you're addressing was to allow a
6 use not R-1 --

7 CHAIRMAN SCALZO: It was for
8 office. Office use.

9 MR. JACOBOWITZ: That was your
10 variance. Thank you very much. It
11 was a use variance for part of the
12 property. Thank you. That doesn't
13 mean we gave up our right to have a
14 use in that zone that's allowed.

15 CHAIRMAN SCALZO: But the part
16 that's not allowed is that it's on
17 wheels for a dwelling.

18 MR. DONOVAN: Let's circle
19 back. I think Joe Mattina said this
20 earlier, like 7:30, Section 185-37
21 says mobile homes on individual lots
22 shall not be permitted in any district.

23 MR. ESPOSITO: Right. We have
24 a specific variance that allows us to
25 do it.

2 CHAIRMAN SCALZO: For an office
3 use.

4 MR. BELL: Office.

5 MR. ESPOSITO: But it's not an
6 office.

7 CHAIRMAN SCALZO: I'm not the
8 guy that called it an office.

9 MR. ESPOSITO: We said mobile
10 home. It's right there in the
11 application. I gave it to Mr.
12 Donovan. It says doublewide mobile
13 home. It was doublewide mobile home/
14 office. We were going to use it as a
15 home and office.

16 CHAIRMAN SCALZO: This is why
17 we have to go back to the application.
18 I'm not sure that we're going to get
19 that resolution here right now.

20 Moving on. As Jerry mentioned,
21 we've kind of bifurcated the
22 questions which may be helpful to you
23 Monday.

24 I'm telling you, Members of
25 the Zoning Board of Appeals, I

2 certainly can't -- the public hearing
3 is closed on this, but I certainly
4 can't even begin to consider closing
5 this or voting on this as an
6 application.

7 Counsel, how do we help, at
8 least the applicant --

9 MR. DONOVAN: Step one. Jerry,
10 since we closed the public hearing,
11 we do have a clock running. I need
12 to know whether your client would
13 agree to extend the time. You can
14 pull that back at some point in time.
15 I don't want to be in a situation
16 where we ask for the site plan, we
17 ask -- we're going to consider it,
18 number one. You adjourn in November,
19 you come back in December and say
20 guess what, we're approved.

21 MR. JACOBOWITZ: We don't play
22 that game.

23 He wants to know whether we'll
24 extend their time beyond sixty-two
25 days from when the hearing was closed

2 to make a decision.

3 MR. ESPOSITO: Whatever --
4 that's fine. Whatever he says, I'm
5 good for. Too much mumbo jumbo.

6 MR. JACOBOWITZ: Can you put in
7 the record that the applicant waives
8 the sixty-two day limitation on the
9 decision power of the Board by
10 another sixty days.

11 CHAIRMAN SCALZO: I like it.
12 What would you need from us for those
13 -- not the first three, but the three
14 items that we had resolved, or would
15 the meeting minutes --

16 MR. DONOVAN: I don't know. I
17 don't want this to be the longest
18 legal brief you've ever written. A
19 site plan would be helpful to
20 everyone to find out how many, where
21 they're going to be.

22 With respect to item 1, whatever
23 other argument you want to make to
24 the Board. The minutes that we're
25 looking at here say storage. If you

2 have something else that says
3 residence, I think submit that to the
4 Board and that will help in their
5 deliberations.

6 MR. JACOBOWITZ: You can
7 definitively tonight -- we can
8 definitively, based on what you did
9 tonight, say items 2, 3 and 4 have
10 been answered by you?

11 MR. DONOVAN: That is correct.

12 CHAIRMAN SCALZO: That is correct.

13 MR. JACOBOWITZ: All right.
14 How we'll get it before the judge --
15 I mean, I think a sworn statement
16 from someone who has personal
17 knowledge should be adequate for the
18 court.

19 CHAIRMAN SCALZO: Okay. So
20 that being said, where do we go from
21 here? We're just going to defer?

22 MR. DONOVAN: I would make a
23 motion to put it on for November
24 21st. If you can't make November
25 21st, if you don't have your site

2 plan, you can ask for another
3 adjournment. We'll put it over until
4 November 21st.

5 CHAIRMAN SCALZO: Yes, Counsel.

6 I will make the motion that we
7 defer this application to the
8 November 21st meeting --

9 MR. BELL: I'll second.

10 CHAIRMAN SCALZO: -- pending
11 receipt of the materials that we're
12 discussing here today.

13 MS. REIN: Did you say pending
14 a site plan also?

15 CHAIRMAN SCALZO: The materials.
16 I just called it materials. We can
17 all refer to the meeting minutes to
18 see exactly what we were all talking
19 about.

20 I made the motion. Mr. Bell
21 had seconded the motion. All in
22 favor.

23 MR. POLITI: Aye.

24 MR. EBERHART: Aye.

25 MR. HERMANCENCE: Aye.

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MR. BELL: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Aye.

Very good. We're going to see
you guys next month I hope. I know
it's difficult to get people out
there to do site plan work.

(Time noted: 9:11 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 8th of November 2023.

Michelle Conero

MICHELLE CONERO

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

ANN HAIGHT
13 Princess Lane, Newburgh
Section 102; Block 7; Lot 3
R-2 Zone

----- X

Date: October 26, 2023
Time: 9:11 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
DARRELL BELL
JAMES EBERHART, JR.
GREGORY M. HERMANCE
JAMES POLITI
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: DEBRA LUCCHESI

----- X

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

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CHAIRMAN SCALZO: Next on the agenda for held over business is Ann Haight, 13 Princess Lane in Newburgh, area variance of the front yard setback to keep a 12 by 14 front deck.

Actually, can we just take two minutes? This is one of the more lengthy meetings. I need to stretch for a second.

(A recess was taken from 9:11 p.m. until 9:18 p.m.)

CHAIRMAN SCALZO: Back to the Ann Haight application, 13 Princess Lane, seeking an area variance of a front yard setback to keep a 12 by 14 front deck. We have Debra Lucchese here as representation.

We've been back out in the field. We asked you to also explore some ideas of your own. I was there with Mr. Politi, so he's fully up to speed with what is going on.

We did look in the neighborhood

2 for other front porches to see if we
3 could characterize the character of
4 the neighborhood.

5 We're still in discussions
6 here. Did anyone else make it back
7 out there?

8 MS. REIN: Yes. Down to
9 Princess Lane and then to Queens Way,
10 around the whole thing.

11 CHAIRMAN SCALZO: Ms. Rein,
12 what was your observation?

13 MS. REIN: I think it's half
14 and half. I think that it will be
15 fine.

16 CHAIRMAN SCALZO: Okay. Mr.
17 Bell, were you out and about?

18 MR. BELL: I took another trip
19 back out there. I don't have any
20 comments.

21 CHAIRMAN SCALZO: Nothing.

22 Mr. Hermance, did you get back
23 out there to take a look around the
24 neighborhood?

25 MR. HERMANCE: Yes. I didn't

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see any other decks that would fit
this.

CHAIRMAN SCALZO: How about
you, Mr. Eberhart?

MR. EBERHART: I did not have
the opportunity to make it out there.

CHAIRMAN SCALZO: Mr. Politi, I
was there with you. You've seen it,
too.

MR. POLITI: One of the
questions, I think it was in the
minutes, you mentioned the potential
for a ramp.

MS. LUCCHESI: Yes.

MR. POLITI: I think with ADA,
you need five feet. Pulling back the
deck -- I was sitting there going
okay, how do you make this work, how
can it work for you. If you line it
up with your neighbor and you cut
back that deck a few feet, it's about
four or five feet. That's all.
generalizations. You bring it back
to where the original steps are.

2 The consideration of a ramp, which is
3 not required --

4 CHAIRMAN SCALZO: Ramps and
5 stairs are not part of the setback.

6 MR. POLITI: -- you would still
7 have room for what you're thinking.
8 Is it your mom, potentially, on a
9 ramp system. That can certainly
10 handle it as a landing.

11 MS. LUCCHESI: The ramp, if you
12 bring from the existing -- I don't
13 know what you want to call it --
14 platform.

15 MR. POLITI: Elevation.

16 MS. LUCCHESI: I spoke with the
17 guy that I submitted the plans for
18 the porch to be redone. I spoke with
19 him and he said that if we were to
20 put -- even if we were to put a ramp
21 from the existing platform, it's
22 going to go into the grass.

23 MR. POLITI: You have steps
24 down at the end. You know an inch
25 for every --

2 CHAIRMAN SCALZO: The risers.

3 MS. LUCCHESE: I'm just going
4 by --

5 MR. POLITI: I think that deck
6 was about four feet high off the
7 ground. You're already at a forty-
8 eight foot ramp. You have to have
9 stops in between.

10 MS. LUCCHESE: All right.

11 MR. POLITI: It's really far
12 out there.

13 MS. LUCCHESE: I don't know.
14 I'm just going by what he said to me.

15 MR. POLITI: That's just a
16 point to consider. It's going to be
17 a lot more than what you're building
18 now. If you were to do a sight line
19 with your neighbor, if I'm looking --
20 I'm terrible with east and west.

21 CHAIRMAN SCALZO: Facing your
22 house, the neighbor to the left.

23 I don't know if you saw when we
24 were out there, we were both
25 squatting down and looking. I

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actually took a couple photos. The line that's your neighbor's porch, that's the only other bigger porch in the neighborhood -- well --

MS. LUCCHESI: It's not, but --

CHAIRMAN SCALZO: The other ones -- again, stairs don't count. Keep that in mind.

MS. LUCCHESI: Yeah, I know that. The porches are bigger, though. If you went on to the property, you would have saw it. You can see it from the pictures. Not including the stairs, the porches themselves are larger.

MR. POLITI: What I'm trying to say is, if you were to stay with the forty feet and not have to ask for that variance, you certainly have enough room -- you have a nice front deck. It's actually a good size small deck in front of the building, and it lines up with your neighbor. I'm not telling you how to build it,

2 and I'm not sure I'm going in the
3 right direction.

4 CHAIRMAN SCALZO: This is the
5 beauty. Now that you're here, this
6 is exchanging ideas and interpretation
7 of the code. That's why we're here.

8 MR. POLITI: I'm staying in my
9 lane. I don't think giving up that
10 space back to your -- what would be a
11 standard setback. You'd still be
12 able to achieve, I think, what you
13 were going after.

14 MS. LUCCHESI: Line it up with
15 the sidewalk?

16 MR. POLITI: Your sidewalk
17 still turns, though. You could still
18 come down on the steps to that. If
19 you were to come back, you're at the
20 old steps.

21 MS. LUCCHESI: Right. What I'm
22 trying to say is -- I see what you're
23 saying, but there's no way you can
24 maneuver a wheelchair on that small
25 of a platform.

2 MR. POLITI: On what's up top?

3 MS. LUCCHESI: On the original
4 platform that she has, which is very
5 small. I'm talking about the
6 original.

7 MR. POLITI: No, no. I'm
8 saying, what Darrin and I saw when we
9 went out, the deck you have, if you
10 push that back to the original -- the
11 forty feet -- that front deck is
12 fairly large. You can almost see it
13 on the picture here. You have a good
14 six, eight feet.

15 MS. LUCCHESI: It's large. I
16 know.

17 MR. POLITI: The steps are
18 right there.

19 CHAIRMAN SCALZO: To tack on to
20 where Jim is going, and I think in
21 the one picture I'm looking at --
22 as we stood on the other side of the
23 deck, not the side of the deck that
24 has the stairs but the other side,
25 and we looked -- as we looked through

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to your neighbor's deck, the width of your stairs is what is out beyond your neighbor. As I observed it, when you rebuild that, you were less the width of the stairs, which is probably four feet, maybe five. I don't know. You would be more in line, in my opinion, but there's six of us sitting here, more in line with what's going on around you. I know you've already got one up there. I know it's got to come down, too. That was my observation. I think what you've got here right now is -- -- yours would be the biggest one, sticking the furthest out into the street than any other one I saw.

MS. LUCCHESI: But the garage on Queens Way, that's okay. You know, this is my personal opinion, compared to what I'm asking for and what's there, mine is much more conforming than that, or I should say my mother's is much more conforming

2 than that.

3 CHAIRMAN SCALZO: That's where
4 I landed. Again, there's six of us
5 sitting here tonight.

6 The public hearing on this, I
7 believe, is closed. Well, there's
8 not anybody here anyway regarding
9 this. I know who the other
10 applicants are.

11 Discussion on this. Ms. Rein,
12 anything?

13 MS. REIN: No.

14 CHAIRMAN SCALZO: Mr. Bell?

15 MR. BELL: No.

16 CHAIRMAN SCALZO: Mr. Hermance?

17 MR. HERMANCE: No. I agree
18 with you.

19 CHAIRMAN SCALZO: Mr. Eberhart,
20 anything?

21 MR. EBERHART: I have nothing.

22 CHAIRMAN SCALZO: Mr. Politi?

23 MR. POLITI: One last question.

24 You have to take this down anyway?

25 This has to be rebuilt?

2 MS. LUCCHESI: Pretty much. He
3 said he could leave up parts of it,
4 but it would make it a little bit
5 difficult for him to --

6 CHAIRMAN SCALZO: I don't know
7 how he could leave any part of that
8 up because all the Sono tubes are all
9 undersized.

10 MS. LUCCHESI: I don't know.
11 I'm just going by what he says.

12 MR. BELL: He has to build on
13 top of the stairs as well. I don't
14 understand how he can do that without
15 taking it down.

16 CHAIRMAN SCALZO: This is a
17 Type 2 action under SEQRA?

18 MR. DONOVAN: Correct, Mr.
19 Chairman.

20 CHAIRMAN SCALZO: Thank you.
21 We'll go through the balancing
22 tests.

23 MR. DONOVAN: My suggestion is
24 you go through the balancing tests
25 and see where it takes you.

2 CHAIRMAN SCALZO: All right.
3 I'll go through the area variance
4 criteria. Here comes our five
5 factors, the first one being whether
6 or not the benefit can be achieved by
7 other means feasible to the
8 applicant. It is my position, but I
9 am merely one of six in this case,
10 that I think if the front was reduced
11 by approximately four feet, you could
12 still have a wheelchair out there.
13 That is just my position.

14 Do I need to poll on an
15 individual basis here, Counsel?

16 MR. DONOVAN: I think you
17 should have a discussion as to
18 whether or not -- if you understand
19 what the objective is of the applicant,
20 then you can have a discussion.

21 CHAIRMAN SCALZO: All right.
22 That's my position.

23 Is there a discussion on that?
24 I'll start with Mr. Politi. Do you
25 feel as though I'm out of my --

2 MR. POLITI: What is the --

3 CHAIRMAN SCALZO: I believe
4 that the --

5 MR. DONOVAN: Why don't you
6 repeat the factor that you're
7 discussing.

8 CHAIRMAN SCALZO: The first one
9 being whether or not the benefit can
10 be achieved by other means feasible
11 to the applicant. My position is
12 that the benefit could be achieved
13 with a reduction of the front of the
14 deck by approximately four feet.

15 MR. POLITI: If you're asking
16 me my opinion; certainly that can be
17 achieved, in my opinion.

18 CHAIRMAN SCALZO: Like I say,
19 that's why we're going through these
20 five factors. That's my position.

21 Mr. Politi, it sounds as if you
22 concur.

23 Mr. Eberhart, like I say, this
24 is where we land.

25 MR. EBERHART: My question is,

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that doesn't negate the fact that she is still seeking the variance. Right?

CHAIRMAN SCALZO: Quite honestly, if it goes back four feet, we can grant a portion of the variance that she's requesting.

MR. EBERHART: Okay. Then I concur.

CHAIRMAN SCALZO: Mr. Hermance?

MR. HERMANCE: Yes, I concur, being that the deck has to be taken down and rebuilt anyway.

CHAIRMAN SCALZO: That's not exactly what we're talking about here, but --

MR. HERMANCE: I concur.

CHAIRMAN SCALZO: Do you think the benefit can be achieved by removing four feet from the front of the deck?

MR. HERMANCE: Yes, I do.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: Yes.

CHAIRMAN SCALZO: Ms. Rein?

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MS. REIN: No.

CHAIRMAN SCALZO: Okay.

MS. REIN: I've worked in many hospitals and medical facilities and there are different size wheelchairs. Sometimes manipulating those wheelchairs is a real challenge. I think if we can give her as much room as she feels she needs. If her mother gets bigger and needs a bigger wheelchair, it may not work as well. That's why I say no.

CHAIRMAN SCALZO: You know what, I'm glad to hear you say that, because it's awful when everybody agrees on everything.

Okay. The second, if there's and undesirable change in the neighborhood character or a detriment to nearby properties. Here we go. My position is there's no detriment to nearby properties. As far as an undesirable change in the neighborhood character, this will be

2 the furthest deck sticking out. I
3 don't know if that is considered
4 undesirable to the neighbors.

5 MS. REIN: We haven't had
6 anybody complain. Right?

7 CHAIRMAN SCALZO: Moving down
8 to Mr. Hermance, do you think that is
9 an undesirable change in the
10 neighborhood character or a detriment
11 to nearby properties?

12 MR. HERMANCE: It's not a
13 detriment to the neighborhood. I
14 think we would be setting a precedent
15 of too large of a deck in the
16 neighborhood. It could be determined
17 as a detriment.

18 CHAIRMAN SCALZO: Okay. Mr.
19 Eberhart, your thoughts on it?

20 MR. EBERHART: I wouldn't think
21 it would be a detriment based upon
22 not having anyone here to make any
23 statement.

24 CHAIRMAN SCALZO: Mr. Politi,
25 again I'll say an undesirable change

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in the neighborhood character or a detriment to nearby properties.

MR. POLITI: If you're trying to keep consistency, at least you're matching your neighbor. I don't see it as a detriment, but -- I'm trying to make sure I'm answering it properly.

CHAIRMAN SCALZO: It's tough when they throw or in there.

MR. DONOVAN: It's not necessarily if you're answering it correctly or not. It's a balancing test. These are the five factors of state law that you balance. At the end of the day, someone is going to make a motion to either approve with conditions, approve or disapprove. It's just a discussion of the factors. That's all.

CHAIRMAN SCALZO: Thank you, Counsel.

The third, whether the request is substantial. By the numbers, that's why the applicant landed here.

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When I consider the substantial --
how this is substantial as the
application is presented, it would be
the closest deck to the street line
on that street. So like I say,
though, most applicants land in here
while the criteria does fall under
the substantial category. That's my
position.

I'll look to Ms. Rein. Any
thoughts on that? Is this request
substantial?

MS. REIN: Yes.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: I agree.

CHAIRMAN SCALZO: Mr. Hermance?

MR. HERMANCE: Yes.

CHAIRMAN SCALZO: Mr. Eberhart?

MR. EBERHART: Yes.

CHAIRMAN SCALZO: Mr. Politi?

MR. POLITI: Yes.

CHAIRMAN SCALZO: The fourth,
whether the request will have adverse
physical or environmental effects. I

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would say no.

MR. POLITI: No.

MR. EBERHART: No.

MR. HERMANCE: No.

MR. BELL: No.

MS. REIN: No.

CHAIRMAN SCALZO: On that one,
I think we all agree.

The fifth, whether the alleged difficulty is self-created, which is relevant but not determinative. Of course this is self-created. As we heard earlier with other balancing tests, it is relative but not determinative.

Moving through those criteria, if the Board approves, it shall grant the minimum variance necessary and may impose reasonable conditions on the application.

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

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MS. REIN: I'll make a motion
to approve with conditions.

CHAIRMAN SCALZO: And the
conditions would be what?

MS. REIN: I don't know.

MR. DONOVAN: They may have
done that in 1982, but we can't do it
now.

MS. REIN: I wasn't here then.

CHAIRMAN SCALZO: I didn't mean
to stump you on your own response.

MS. REIN: That's okay. I
personally think we need to get this
done for this lady and her mother.
Whatever we need to do to get there,
whatever conditions we need to put
in, I think we should. I'm coming
from a patient advocate point of
view, thinking it needs to be done.

CHAIRMAN SCALZO: We're going
to go back to -- that was a motion to
approve, but it sounds as though
you're not looking for any conditions
to be --

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MS. REIN: If the Board wants to put conditions in, that's fine. That's another way to get it done. I just want to get it done.

CHAIRMAN SCALZO: Okay. So we have a motion for approval with conditions without conditions. I haven't heard a second. If I did hear a second, I missed it. If the second came with conditions, speak up.

MS. REIN: What conditions?

MR. EBERHART: I have a second without conditions.

CHAIRMAN SCALZO: She's not defining her conditions.

MR. BELL: If you really don't want conditions, just say without conditions.

MS. REIN: I'm not sure what the conditions are.

MR. HERMANCE: Can I make a motion that the condition be that the deck is reduced by four feet? For

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approval, if it's reduced by four feet, that would be the condition.

MS. REIN: Then I make a motion to approve with no conditions, because she's going to need that for that wheelchair.

MR. DONOVAN: There are a lot of motions going on here.

CHAIRMAN SCALZO: Let's wipe the slate clean for a moment.

MR. DONOVAN: Just a suggestion, Mr. Chairman. Member Rein spoke first.

CHAIRMAN SCALZO: Yes.

MR. DONOVAN: If you would like to defer to her, and then if she wants to make whatever motion.

CHAIRMAN SCALZO: Ms. Rein, you had the initial motion and then you appeared to have revised your motion.

MS. REIN: I have.

CHAIRMAN SCALZO: Your motion currently stands at approval with no conditions?

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MS. REIN: Yes.

CHAIRMAN SCALZO: Very good.

Do I hear a second to that?

MR. BELL: I thought we did.

MR. EBERHART: I seconded.

CHAIRMAN SCALZO: With no conditions?

MR. EBERHART: No conditions.

MR. BELL: He said no conditions.

CHAIRMAN SCALZO: Let's roll on that.

MS. JABLESNIK: Mr. Bell?

MR. BELL: No.

MS. JABLESNIK: Mr. Eberhart?

MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: No.

MS. JABLESNIK: Mr. Politi?

MR. POLITI: No.

MS. JABLESNIK: Ms. Rein?

MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: No.

The motions are not approved.

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However, that's where we land.

Counsel, what are the chances
-- to move forward with a different
motion, we can do that. Correct?

MR. DONOVAN: Do it quickly.

CHAIRMAN SCALZO: I need to say
at least a hundred more words.

I, as Chair, am going to make a
motion for approval with the
condition of a four-foot reduction in
the front yard setback.

MR. HERMANC: I'll second it.

MR. DONOVAN: Just to be clear,
the variance would then be 4.3 feet?

CHAIRMAN SCALZO: That's correct.
Do you understand what's
happening at this time?

MS. LUCCHESI: Somewhat.

CHAIRMAN SCALZO: Right now it
stands as a no. Absolutely no.

MS. LUCCHESI: That I understand.

CHAIRMAN SCALZO: Right now you
have nothing. My current motion is
to grant you approval, but you've got

2 to reduce it by four feet.

3 MS. REIN: Can you live with
4 that?

5 MS. LUCCHESE: As long as I can
6 maneuver it, if I have to, then I
7 don't have a problem with it. My
8 main problem is is that garage was
9 approved and you're giving me a hard
10 time for this, when this is for a
11 handicap ramp and that's for a
12 garage. You're approving that garage
13 and you won't approve this for a
14 handicap ramp.

15 CHAIRMAN SCALZO: It was before
16 my time. I was not part of the
17 garage.

18 MS. LUCCHESE: Whether it's
19 before your time or not, it's there.
20 It's there and it's just around the
21 corner from my mother. That's out of
22 character from the whole neighborhood.
23 That I have a problem with. I do
24 have a problem with that.

25 MR. BELL: Good point.

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CHAIRMAN SCALZO: I hear you.
We currently have a motion with
a second from, was it Mr. Hermance?

MR. HERMANCE: Yes.

CHAIRMAN SCALZO: With a
four-foot reduction.

Can you roll on that, Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: No.

MS. JABLESNIK: Mr. Eberhart?

MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Politi?

MR. POLITI: Yes.

MS. JABLESNIK: Ms. Rein?

MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

We just granted you a variance,
but you have to reduce your size by
four feet.

MS. LUCCHESI: So that's from
the front? From the house towards

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the road, that's what we're talking?

CHAIRMAN SCALZO: Yes. Pretty much the stairs. Where the left rail of the stairs is is where the end of your deck is going to be now.

MR. POLITI: So you get that space.

MS. LUCCHESI: That's not four feet. That's less than four feet. If you're talking the left side of that railing --

MR. BELL: If you have to extend it out, don't go less than four feet.

CHAIRMAN SCALZO: That's where we landed.

MR. BELL: Don't go less than four feet.

CHAIRMAN SCALZO: Okay. That's that.

(Time noted: 9:38 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 8th day of November 2023.

Michelle Conero

MICHELLE CONERO

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

JAMES BARKSDALE
1938 Route 300, Newburgh
Section 12; Block 1; Lot 15
AR Zone

----- X

Date: October 26, 2023
Time: 9:38 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
DARRELL BELL
JAMES EBERHART, JR.
GREGORY M. HERMANCE
JAMES POLITI
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: JAMES BARKSDALE

----- X

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

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CHAIRMAN SCALZO: Moving on to the next application. We have James Barksale, 1938 Route 300, seeking an area variance to keep chickens on less than 2 acres.

Mr. Barksdale, last time you were in here, we didn't hear back from the County. At this point we don't care, because their time is expired.

You gave your presentation. You have chickens, they're trained, they're caged. We just didn't hear from the County.

The only thing you're deficient in is you don't have enough acreage as far as the code goes.

Have I captured everything that you wanted to talk about? I apologize that you had to stay here as long as you have.

MR. DONOVAN: I'm sure you really enjoyed it.

MR. BARKSDALE: Last time I

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stayed, it was interesting. I never had anything like this happen.

CHAIRMAN SCALZO: Do we have any discussion on this application?

MS. REIN: You do know that Popeyes is moving in. Right?

MR. BARKSDALE: Those are my pets. They're trained.

CHAIRMAN SCALZO: I have nothing further. Like I say, you're in a zone that allows it, just you're a little deficient with lot area.

Any other discussion here?

MR. DONOVAN: Was there a limitation?

CHAIRMAN SCALZO: Sir, you have how many chickens right now?

MR. BARKSDALE: I have six right now. I had eight.

CHAIRMAN SCALZO: We did not limit it. We did limit the last fellow.

MR. DONOVAN: To twelve.

CHAIRMAN SCALZO: He had 1 acre. You have 1.2.

2 MR. BARKSDALE: Something like
3 that.

4 CHAIRMAN SCALZO: In this case,
5 would you be okay if we limited your
6 amount of chickens to no more than
7 twelve?

8 MR. BARKSDALE: That's
9 beautiful. They do get old.

10 CHAIRMAN SCALZO: I don't
11 believe we closed the public hearing
12 on this.

13 MR. DONOVAN: We did not.

14 CHAIRMAN SCALZO: Do you
15 recall? We'll just close it again.

16 I'll look to the Board to close
17 the public hearing.

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

20 MR. EBERHART: Second.

21 CHAIRMAN SCALZO: We have a
22 motion from Mr. Bell. We have a
23 second from Mr. Eberhart. All in
24 favor?

25 MR. POLITI: Aye.

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MR. EBERHART: Aye.

MR. HERMANCE: Aye.

MR. BELL: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Aye.

Therefore, we are now going to go through the balancing tests.

Is this Type 2 or is it Unlisted?

MR. DONOVAN: It has to do with a single-family home. I didn't bring Parts 2 and 3.

CHAIRMAN SCALZO: I like how you think. We have to hit the five factors again, the first one being whether or not the benefit can be achieved by other means. No. You can't have chickens any other way.

The second, if there's an undesirable change in the neighborhood or a detriment to nearby properties. These are trained and corraled chickens. I would say no.

The third, whether the request

2 is substantial. By area, not having
3 enough, but I don't think it's -- 1.2
4 acres is still a good piece of
5 property. A good size.

6 Fourth, whether the request
7 has adverse physical or environmental
8 effects.

9 MR. POLITI: No.

10 MR. EBERHART: No.

11 MR. HERMANCE: Yes.

12 MR. BELL: No.

13 MS. REIN: No.

14 CHAIRMAN SCALZO: It does not
15 appear so.

16 The fifth, whether the alleged
17 difficulty is self-created, which is
18 relevant but not determinative. Of
19 course it's self-created.

20 However, having gone through
21 the balancing tests, does the Board
22 have a motion of some sort?

23 MS. REIN: I have a motion to
24 approve.

25 CHAIRMAN SCALZO: With a max of

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twelve chickens?

MS. REIN: With a max of twelve chickens.

MR. BELL: Second.

CHAIRMAN SCALZO: We have a second from Mr. Bell. Can you roll on that, Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Eberhart?

MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCENCE: Yes.

MS. JABLESNIK: Mr. Politi?

MR. POLITI: Yes.

MS. JABLESNIK: Ms. Rein?

MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Thank you for your patience.

(Time noted: 9:43 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 8th day of November 2023.

Michelle Conero

MICHELLE CONERO

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

- - - - - X
In the Matter of

NEWBURGH CHICKEN, LLC
197 South Plank Road, Newburgh
Section 60; Block 3; Lot 6.1
B Zone

- - - - - X

Date: October 26, 2023
Time: 9:44 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
DARRELL BELL
JAMES EBERHART, JR.
GREGORY M. HERMANCE
JAMES POLITI
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: NICHOLAS WARD-WILLIS
and GEORGE ALISSANDRATOS

- - - - - X

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

2 CHAIRMAN SCALZO: We have this
3 and one other for Board business.
4 This is Newburgh Chicken, 197 South
5 Plank Road. It's a special permit.
6 It's a Planning Board referral for a
7 special permit for the ZBA's
8 consideration of variances required
9 for the redevelopment of the existing
10 Dairy Queen site.

11 We had a presentation last
12 month on this. The County had not
13 gotten back to us, therefore we had
14 to maintain the public hearing open.

15 Siobhan, you say we have not
16 heard --

17 MS. JABLESNIK: We still haven't.

18 CHAIRMAN SCALZO: Not a thing
19 yet. So in an odd sort of way, I'm
20 kind of glad we had that extra time,
21 because we, I'll say, revisited some
22 things. Last month we had four
23 members here. I apologize to ask,
24 can you -- and I know it's late, can
25 you just give us the Reader's Digest

2 version of what we're looking to do
3 here?

4 MR. WARD-WILLIS: I can, Mr.
5 Chairman. Nicholas Ward-Willis with
6 Keane & Beane. I have my colleague,
7 George Alissandratos, from Keane &
8 Beane here on behalf of Newburgh
9 Chicken. For the record, not related
10 to the prior application with all the
11 chickens.

12 We're here for redevelopment of
13 the Dairy Queen. We're proposing a
14 new development for a Popeyes
15 Chicken.

16 It's a Type 2 action under
17 SEQRA, as the Board discussed at the
18 last meeting.

19 We're proposing a 2,537 square
20 foot building with a drive-through
21 with stacking spaces for fourteen
22 cars, twenty-three parking spaces.
23 It's located in the B Zoning
24 District. It's a fast food
25 restaurant use that is not permitted

2 in the B Zoning District. Under your
3 code, to continue a nonconforming
4 use, we need to come to the ZBA for a
5 special permit. We appeared before
6 the Planning Board. They referred us
7 here to the ZBA for the special
8 permit to continue the nonconforming
9 use, and also any associated
10 variances. Should you grant our
11 application, we will then return to
12 the Planning Board for the site
13 improvements, the site plan, traffic,
14 onsite parking, offsite traffic, any
15 improvements DOT may require, and
16 landscaping.

17 What we've provided the Board
18 with last time -- I'll start first
19 with the overlay. We provided the
20 Board with the overlay. In black is
21 the existing Dairy Queen building.
22 The overlay is shown in red, the new
23 building. As you can see, we pushed
24 the building back, respecting the
25 setbacks in the B District, allowing

2 for more queueing. Currently there's
3 queueing on the road. We put as much
4 traffic in the property. We have
5 stacking for fourteen vehicles.

6 We are also widening the
7 entrances. We have a lot of green
8 space that will be landscaped,
9 including the right-of-way, as well
10 as on our own property along the
11 street corner.

12 We're generally updating the
13 site with respect to the parking,
14 the parking layout and the onsite
15 traffic circulation.

16 We do understand DOT, we'll
17 have to have a discussion with them
18 about the turning movements, but
19 that's not before this Board.

20 The layout itself, the one
21 building, the handicap parking space,
22 access from the handicap parking
23 space to the building, and then the
24 drive-through lane for fourteen
25 vehicles with two order queues, if

2 you will.

3 Cars would come in off of South
4 Plank Road and are proposing to be
5 able to make the turn into as well as
6 a turn out. Also, cars coming off of
7 Union Avenue will be directed to
8 continue to circle here. This has
9 better circulation and better traffic
10 and parking than the existing building.

11 That is an overview of the
12 application.

13 I did prepare for the Board, if
14 I may hand these to your Members, Mr.
15 Chairman, a chart that just details
16 the variances and special permit that
17 we're seeking. I'll quickly walk
18 through each one with the Board.

19 I'll be quick. First is the
20 special permit to allow for the
21 demolition and construction of the
22 new building and allowing a nonconforming
23 use to continue.

24 The second variance is for
25 loading spaces. For commercial use

2 your code requires that there be one
3 loading space given the size of the
4 building. We're not proposing a
5 loading space. There is not one
6 currently. The reason is, and we
7 discussed this with the site plan, we
8 don't have deliveries, except for
9 overnight where they'll come and park
10 in the drive-through aisle. The
11 driver has a key, so all deliveries
12 are done overnight and not during the
13 day.

14 The third variance is for
15 access on South Plank Road. We're
16 required to be 150 feet from the
17 intersection. That would put us, I
18 believe, past where the lot is. So
19 we are 50.6 feet. We need a variance
20 of 99.4 feet. That has nothing to do
21 with the use. That just requires
22 that the entrance be located 150 feet
23 from an intersection. We're locating
24 it, if I go back to the overlay,
25 somewhere in the same place. It's a

2 little closer to the intersection,
3 but that's to allow for turning
4 movements, and we're also widening
5 this road a little bit. That's the
6 one variance we're requesting for
7 item 3.

8 The fourth variance is for --
9 you have a requirement that any
10 building be located 80 feet from
11 Union Avenue. We're located 68.3
12 feet, the proposed building,
13 further away from where the existing
14 Dairy Queen is. We're moving it
15 further away from Union Avenue. That
16 is a variance of 11.7 feet.

17 The code also requires that the
18 front yard on County roads be 60
19 feet. We're 36.5 feet. We need a
20 23.5 foot variance.

21 On both of those two prior
22 variances, we're still moving the
23 building back further from where it
24 is, so we're reducing that
25 nonconformity from the existing.

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The sixth variance is for a freestanding sign. We're proposing one sign to be located here, and that is an advertising sign, but it's also a sign, as you know, for way finding. You want motorists to know where they're going to turn. It's proposed at 20 feet because of the down slope from Union Avenue. Also, given where the entrance and exits are, we want people to know where the facility is before they get there. That's why it's at 20 feet.

The last variance I've indicated is just one for clarity. The seventh one, if you don't continue the nonconforming use for one year, the use is deemed to have expired. If you issue the special permit, you would be authorizing the nonconforming use. Because you're also authorizing the demolition, that construction demolition will take longer than eighteen months. Rather

2 than create any questions and the
3 building inspector would have to
4 issue an interpretation, we felt it
5 was best to bring that to your
6 attention and ask that, should you
7 grant the special permit, you would
8 also be granting us that ability to
9 continue the use after the construction
10 is completed, which will take longer
11 than a year.

12 That was not quite the Reader's
13 Digest version, but --

14 CHAIRMAN SCALZO: Very good.
15 As I say, we have a new Member here,
16 and then we have a couple of Members
17 that were not available last month.
18 I appreciate that. Thank you.

19 MR. DONOVAN: Nick, were these
20 called out before? I remember
21 seeing, generally speaking, variances.

22 MR. WARD-WILLIS: They were in
23 our September -- they were mentioned
24 generally in our September 11th. We
25 were hoping to have a meeting with

2 the Planning Board before and sort of
3 walk through these with the planner.
4 They did not want to until we had
5 come here. In our October 11th
6 submission, we indicated what the
7 variances were for, and they're
8 included on the site plan that we
9 submitted.

10 MS. REIN: From what I
11 remember, you're going to be limiting
12 the parking? You're going to take
13 some spots out?

14 MR. WARD-WILLIS: It will be a
15 reduction of two spots. Yes. It's
16 still in accordance with your code,
17 so we don't need a variance.

18 MS. REIN: Thank you.

19 CHAIRMAN SCALZO: Again, thank
20 you. The County not being available
21 to give us comments actually helped.

22 MR. WARD-WILLIS: Yes.

23 CHAIRMAN SCALZO: We have
24 reviewed the site. Everybody knows
25 what it is. The development of it

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looks great compared to what it is now. However, the initial reason why you're here is you're out of district. We've got a new Member who loves to read, and some of the information that he and I were just talking about, and this is great for all of the Board Members to hear and understand -- Mr. Politi, I'm going to put you on the spot in a minute -- but he has dug into our comprehensive plan and looked also at the ideology of the hamlets. Fast food does not fit the zone that this is proposed in, although Dairy Queen is a seasonal fast food place. They do serve burgers and dogs and everything else like that. It is a nonconforming use that they're looking to extend.

The other issue here is, if you look at where the other fast food restaurants are that are in the zones that are appropriate to them, how far away are they from this application.

2 The next closest one I believe is
3 Taco Bell.

4 MR. EBERHART: There's a Subway
5 in the plaza right across the street
6 from there.

7 CHAIRMAN SCALZO: There was.
8 Also, there's a Chinese place there.
9 There's a big pharmacy behind them up
10 on the hill.

11 It's kind of an unusual ask
12 here, but until we started talking
13 about the hamlet ideology, as well as
14 what we've got going on in that strip
15 of this zone that goes up 52. I
16 look, and it didn't occur to me until
17 I'm looking at this now, okay, you're
18 coming down the hill, already we're
19 in an area -- what's like this? If
20 you've seen other Popeye facilities,
21 what is like this? So you're going
22 to come down the hill and see a sign
23 that's really tall. I just want to
24 remind us, and I'll let you talk in a
25 second, Jim, we do this and the next

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thing you know, we're going to get,
you know, left and right on 52
because we've allowed this. I'm not
saying we shouldn't allow it. All
I'm saying is there are
considerations now that I hadn't
thought of last month. I think we
should proceed with caution. That's
why they're here. They're here
because they're asking to continue
something that has been in existence
seasonally, and now they're going to
-- they're requesting that this
Popeyes is going to come in, and it's
certainly going to have a different
look about it. Like I say, with the
proposed -- not that a freestanding
sign should really alarm me, but
really now you've got this great big
sign up in the air near this area.
It's not going to -- I don't think
there are any other signs, although
there is a canopy on the Valero. I
just wanted you to all think a little

2 differently than we usually do.

3 All of the variances for front
4 yard, side yard, they're improving
5 everything. Everything. I think the
6 flow of the site is going to be
7 fantastic.

8 Again, I lost that thought of
9 how our zoning ties into the
10 comprehensive plan, which is the
11 backbone, really, of what zoning is
12 for.

13 Mr. Politi, I know you've dug
14 deeper into the comprehensive plan
15 than I have. What can you add to
16 what I just said?

17 MR. POLITI: I looked at the --
18 I went to the New York State
19 Department of State and the zoning
20 comprehensive plan and how they tie
21 together. The backbone statement
22 that they bring up -- this is the
23 state. I'm sure you're aware of
24 these things. The comprehensive plan
25 should provide the backbone for the

2 local zoning law. The comp plan,
3 whether you move forward or not,
4 that's your choice. You did, and
5 that becomes law. The process of a
6 comprehensive plan, which I'm sure a
7 lot of you have been through, I'm
8 sure you've been through that, takes
9 a lot of time, takes a lot of effort
10 on the community. I think Saccardi &
11 Schiff was the consultant they used,
12 and they are capable. Those defined
13 areas along 52, it's a business zone.
14 If you look at it, it's Joe's, the
15 car wash.

16 You have a brand. You have a
17 corporate brand. Those things, I
18 think, are allowed in the interchange
19 area, in the IB.

20 One of the interesting things
21 that was in the minutes is that
22 you're asking us to -- you're asking
23 the Board, I was not here, to take
24 the IB regs and apply them here. Right?

25 MR. WARD-WILLIS: If I may. I

2 don't think we're asking for it to be
3 applied. We're using it as an
4 illustration. It was subsequently
5 discussed with the staff that this
6 Board sets the setbacks. We were
7 saying because your zoning is, not to
8 mention but referenced by use, there
9 was no dimension that we could apply.
10 We said here is how fast food is the
11 regulated beyond the district, which
12 is right next door. The next
13 property up Union is the IB District.

14 MR. POLITI: I know people who
15 -- if you live on the left, there's
16 two zones, somebody is on that line.
17 It is what it is.

18 I think the encroachment coming
19 down that way from the fast food --
20 there's two things, right,
21 nonconforming and then fast food.

22 MR. DONOVAN: I think it's
23 nonconforming to nonconforming.
24 That's the initial special permit.
25 The specific code in question that

2 they're asking is 185-19 A(3) which
3 says a nonconforming use, like Dairy
4 Queen, shall not be changed to
5 another nonconforming use, like
6 Popeyes, without a special permit
7 from the Board of Appeals, and then
8 only to a use which, in the opinion
9 of the Board, is of the same or a
10 more restrictive nature. So you have
11 this -- so less intense.

12 CHAIRMAN SCALZO: We're going
13 from seasonal to now year-round.

14 MR. DONOVAN: Again, it's up to
15 the Board. Nick can make his own
16 argument. He says less parking,
17 smaller building, better traffic
18 circulation.

19 MR. WARD-WILLIS: It's a
20 cumulative analysis. It's not just
21 one factor.

22 MR. DONOVAN: I want to bring
23 it around back to the comprehensive
24 plan, which is, you are designating a
25 certain area of the Town to be used

2 for a certain type of uses.
3 Industrial here, residential here,
4 retail here, commercial here.

5 The ZBA, if we get to it, as
6 Mr. Chairman is asking to speak
7 later, is like the relief valve. If
8 something doesn't quite fit, there's
9 a relief valve to allow -- say for
10 example the site as a Dairy Queen, is
11 it -- the relieve valve here is a
12 special permit if you guys think that
13 the Popeyes proposed is of the same
14 or a more restricted nature. That's
15 kind of the relief valve. It may be
16 a little contrary to the comprehensive.
17 plan, and that may come into your
18 decision making. You have to kind of
19 factor what you have there now,
20 what's proposed, and is it of the
21 same or a more restrictive nature.
22 All right.

23 CHAIRMAN SCALZO: Thank you,
24 Counsel.

25 MR. DONOVAN: I didn't mean to

2 interrupt you.

3 MR. POLITI: My dive into the
4 comp plan, it's that encroachment
5 into another zone. If you look at
6 those business zones, you can see it
7 visually on the wall. Again, you're
8 a national brand.

9 MR. WARD-WILLIS: Yes.

10 MR. POLITI: I see your
11 commercials. I do like going there.

12 I think that thought process
13 was that type of fast food by the
14 interchange to come into that area.

15 There's the hamlet concept,
16 too, that was raised in the comp
17 plan. You could almost call that
18 area a hamlet area with an identity
19 already. I just saw the sign when
20 you brought that up, that you'd have
21 this sign as you come over the
22 horizon, there's the Popeyes sign.
23 It's not Popeyes, it's fast food,
24 that type going in.

25 I just want the Board to know

2 that that piece of it, I have a big
3 question about bringing that in --

4 MR. WARD-WILLIS: I understand
5 the question.

6 MR. POLITI: -- as a Board
7 Member.

8 MR. WARD-WILLIS: I appreciate
9 your background, certainly in Nyack
10 and in other municipalities, and why
11 you have that. I think it's a good
12 one. You have a comprehensive plan.
13 It's meant to be your road map. This
14 doesn't create a precedent, because I
15 don't think there are other fast food
16 uses within that area. There's the
17 auto shop, there's other uses. This
18 is a fast food use. If we don't
19 change this use, it will likely
20 continue as a fast food use with
21 Dairy Queen. There's an opportunity
22 here to actually introduce elements
23 of the comprehensive plan with
24 greater setbacks, with better
25 landscaping, with better parking,

2 better traffic circulation. I think
3 we're being as true to the
4 comprehensive plan in the B District
5 as we can with the reality of the
6 facts on the ground, that this is a
7 fast food use.

8 The fact that it's seasonal
9 versus regular, I don't think it's a
10 material difference or a difference
11 that matters because it says look at
12 the use. It's a fast food use. Just
13 because one fast food use is sized to
14 operate 9 to 5 versus 7 to 7, I don't
15 think that comes into play. We're
16 looking at the use, not the operation
17 of it.

18 I agree with you entirely with
19 the comprehensive plan. I think in
20 our site plan we tried to respect
21 that.

22 We initially, in our prior
23 plan, had two signs. We were going
24 to go for a variance for two signs.
25 We said no, the comprehensive plan

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talks about reducing signage. We reduced it to one. If the sign is a concern for the Board, I can certainly withdraw from this application and go back to our client and have that discussion with them. If they still want to proceed, we would come back, should you grant our application, at a different time to have another discussion on the sign. I do think, from a traffic safety standpoint, signs are for way finding purposes as well. We want to make sure people don't, oh, there it is, slam the brakes on. That creates traffic concerns.

CHAIRMAN SCALZO: Mr. Politi and I spoke about this and he turned me on to something I had never considered before.

Discussion on this?

MR. WARD-WILLIS: May I bring up one other point?

CHAIRMAN SCALZO: Sure.

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MR. WARD-WILLIS: We will be going to the site plan review by the Planning Board. We also anticipate that DOT is going to look at that intersection and require a turning lane. This project is the type that supports where you have the ability to increase the roadway to create a turning lane.

CHAIRMAN SCALZO: On 300 or 52?

MR. WARD-WILLIS: Well, on South Plank Road.

CHAIRMAN SCALZO: That's 52.

MR. WARD-WILLIS: On 52. Create that turning lane here. That's part of the discussion. We anticipate -- the Town has looked at that before. You have a fair share mitigation.

The fast food use is the type of use that allows one to do the investment into this property. A guitar shop or any other business use isn't going to allow the types of

2 improvements that you want in that
3 key intersection in terms of the
4 landscaping, in terms of the building.

5 To Mr. Politi's point, it is a
6 balancing act.

7 CHAIRMAN SCALZO: Between Mr.
8 Politi's and my conversations and
9 what he turned me on to, it's a lot
10 for you folks to swallow. I'm
11 curious as to the feedback or
12 discussion.

13 MS. REIN: Are there going to
14 be signs that are going to
15 specifically say entrance and egress?

16 MR. WARD-WILLIS: Yes. We
17 would work with the Planning Board to
18 have the way finding signs that would
19 have the stop bars, the directions
20 this way. This would say entrance
21 and exit on both sides. I believe DOT
22 would want that as well. DOT's goal
23 is to get the customers off of the
24 road and into the site as quickly as
25 possible.

2 MS. REIN: You said on both
3 sides. It's only one way in and one
4 way out?

5 MR. WARD-WILLIS: No, no. Both
6 the entrance on Union Avenue and the
7 entrance on 52 are both in and out.

8 MR. BELL: It's beyond us here.
9 We're talking about a road expansion.
10 I don't see where that third lane is
11 going to come in unless you squeeze --

12 MR. WARD-WILLIS: The road
13 expansion, if DOT required it, would
14 be on South -- Route 52. Even
15 without that, this on Route 300 would
16 be a full lane, full in and full out,
17 and also on Route 52 it's proposed to
18 be an entrance and exit as well.

19 MR. BELL: Like I said, again,
20 we're not here to discuss the road
21 portion. Me visualizing coming down
22 that hill, trying to make a left turn
23 into there, it's just a big mess.
24 Dairy Queen is a mess.

25 CHAIRMAN SCALZO: Ken Wersted

2 from Creighton Manning is the
3 Planning Board's traffic guy.

4 MR. WARD-WILLIS: We've had
5 some initial conversations with
6 Creighton Manning about this. One of
7 the things we'll point out is we're
8 actually moving -- on Union Avenue,
9 you'll note the entranceway is
10 further away from the intersection,
11 which is an improvement.

12 MR. BELL: Further up towards
13 the CVS entry?

14 MR. WARD-WILLIS: That's
15 correct. Just about where the
16 left-turn lane starts now.

17 MS. REIN: I really think that
18 having two lanes on each side is a
19 disaster waiting to happen.

20 CHAIRMAN SCALZO: All of this
21 stuff that you're saying, I agree
22 with, and we should come to the
23 Planning Board meeting to say that.
24 Here is not -- we're not here for
25 that. We have to stick to what's

2 what.

3 MR. BELL: Dairy Queen is ice
4 cream, fast food.

5 MR. EBERHART: That's exactly
6 what it is.

7 MR. BELL: They sell everything,
8 hamburgers, hot dogs and you get a
9 dessert for ice cream. There's no
10 difference in what they are trying to
11 do.

12 CHAIRMAN SCALZO: My position
13 really is the linear variances that
14 the applicant is seeking are the side
15 yard, the front yard.

16 MR. BELL: I got you.

17 CHAIRMAN SCALZO: I think
18 they're improving everything that the
19 lot currently supports. I don't have
20 any issue.

21 Like I say, Mr. Politi, in my
22 conversations, made me look at this a
23 little differently. That's all I'm
24 saying. I don't know where else to
25 go. Like I say, the new guy is

2 making me up my game.

3 MR. WARD-WILLIS: Mr. Chairman,
4 I would ask, would the Board consider
5 closing the public hearing? You did
6 keep it open because you had not
7 heard from the County.

8 CHAIRMAN SCALZO: I think
9 that's easy enough.

10 Do any members of the public
11 wish to speak on this application?
12 We have one.

13 MR. GALLO: I've been very
14 quiet back there. I'm the owner of
15 the Dairy Queen, by the way. This is
16 my opportunity to retire.

17 MR. BELL: What's your name?

18 MR. GALLO: I'm Louis Gallo.
19 I've been there fifty years. It's
20 time for me to retire. The gentlemen
21 came to me. They want to improve the
22 site.

23 Right now I've got that road
24 backed up with my drive-through. I
25 can do that. I can open year-round

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if I want to. I choose to close in the wintertime. I can have a bigger menu.

They want to make the site better. They're going to improve the site. The signs they can work with. I'm sure they'll take the sign down. They have to work with DOT and the Planning Board. I want to get them through the Zoning Board of Appeals so they can carry on. They're going to make the site better than what it is right now. I've survived there for a long time. You know I back the traffic up from that one lane coming in. That's true. They can stack fourteen cars. Right now I can only stack a half a dozen cars. They're going to make it better. They make the site better, I retire and everybody is happy.

That's all I want to say. I've been sitting back there very quietly for two months, just watching. I

2 didn't want to say anything.

3 MR. DONOVAN: A very important
4 question. A number of years ago you
5 were here and you got a variance for
6 your lights. Do you remember that?

7 MR. GALLO: Yeah, the lights
8 that --

9 MR. DONOVAN: More importantly,
10 when the variance was issued,
11 everyone got tokens for free ice
12 cream. Do you remember? I remember
13 that very well.

14 MR. GALLO: That would be a
15 bribe. It's my opportunity to get
16 out very comfortably. I know people
17 are going to miss the Dairy Queen.

18 Can I put a plug in for
19 somebody else? My daughter happens
20 to own Mary Janes. It's in the
21 family. I leave, she continues and
22 we carry on. That's what's going on.

23 We want to make the site
24 better. It's a good opportunity for
25 me to get out. They're going to

2 improve the site.

3 As far as zoning is concerned,
4 right next to me is a different zone.
5 Right there. Just the next property
6 over.

7 The other thing is, the drug
8 store has an entrance right there,
9 right next to me, too. That drug
10 store, you can enter from the hill
11 where you're talking about. They're
12 going to make it better than it is
13 now. It's a no brainer if they're
14 going to make it better.

15 Fast food is -- you can't
16 really call that a hamlet, okay. I
17 think it's interchange business,
18 because the other fast food stores
19 are right up the road. They're less
20 than a mile away from me. They're
21 within a half a mile, the other fast
22 food operations, right up the road.
23 I mean, if you want to call it a
24 hamlet, fine. I think it's a
25 continuation of the business zone, is

2 what I think.

3 I've been there a long time.
4 Fifty years. That's how long I've
5 been there, just so you know. I've
6 been very quiet. Thank you.

7 MS. REIN: I just want to say
8 one thing that I find very positive.
9 This is going to be open twelve
10 months a year. That means more money
11 for us. More money for the area.

12 CHAIRMAN SCALZO: That is not a
13 factor.

14 MS. REIN: I'm just saying.
15 I'm just saying. I can see how this
16 is going to be better. I know it's
17 not a part of it. I know, but still
18 in all.

19 CHAIRMAN SCALZO: Are there any
20 other members of the public hearing
21 here to speak about this application?

22 (No response.)

23 CHAIRMAN SCALZO: I'm going to
24 look to the Board for a motion to
25 close the public hearing.

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

4 MR. EBERHART: Second.

5 CHAIRMAN SCALZO: We have a
6 motion from Mr. Bell. We have a
7 second from Mr. Eberhart. All in
8 favor?

9 MR. POLITI: Aye.

10 MR. EBERHART: Aye.

11 MR. HERMANCE: Aye.

12 MR. BELL: Aye.

13 MS. REIN: Aye.

14 CHAIRMAN SCALZO: Aye.

15 Those opposed?

16 (No response.)

17 CHAIRMAN SCALZO: Very good.

18 Is there any other discussion that
19 you folks want to entertain at this
20 point?

21 MR. POLITI: No.

22 MR. EBERHART: No.

23 MR. HERMANCE: No.

24 MR. BELL: No.

25 MS. REIN: No.

2 CHAIRMAN SCALZO: In this case,
3 Counsel, this is not a Type 2 action?

4 MR. DONOVAN: This is a Type 2
5 action. It's under 4,000 square
6 feet, commercial construction. It is
7 a Type 2 action.

8 If the Board is inclined to
9 move forward, what I would suggest is
10 that you vote first on the special
11 permit request, which would be, your
12 opinion if you choose to grant it, is
13 that the proposed use is of the same
14 or more restrictive nature as the
15 existing use. If that vote is
16 successful, I would suggest that you
17 proceed to the five-part balancing
18 tests for the requested area
19 variances. So two votes.

20 CHAIRMAN SCALZO: Two votes.
21 So we're looking for a motion on the
22 nonconforming use shall not be
23 changed to another nonconforming use
24 without a special permit from the
25 Board of Appeals, then only to a use

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in which the opinion of said Board is of the same or more restrictive nature. That's right from this part of the top sheet right there, in case anybody wants to follow along.

MR. DONOVAN: It would be a motion to issue a special permit.

MR. BELL: I'll make a motion for a special permit.

MS. REIN: I'll second.

CHAIRMAN SCALZO: We have a motion from Mr. Bell regarding the 185-19 A(3).

MR. BELL: 185-19 A(3).

CHAIRMAN SCALZO: We have a motion from Mr. Bell.

MR. BELL: Shall not be changed to another nonconforming use without a special permit. That category.

CHAIRMAN SCALZO: We have a motion from Mr. Bell. We have a second from Ms. Rein.

Siobhan, can you roll on that, please.

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MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Eberhart?

MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCENCE: Yes.

MS. JABLESNIK: Mr. Politi?

MR. POLITI: May I ask a question?

CHAIRMAN SCALZO: Sure.

MR. POLITI: This is granting --

CHAIRMAN SCALZO: The continuation
of a nonconforming use.

MR. DONOVAN: Of a nonconforming use.
That's correct. This would be a
nonconforming use. You're making a
determination, if you vote yes,
variety and disagreement is a healthy
thing despite what you may read
otherwise. I think, if you do it
correctly, it's a very healthy thing.
You would be saying that this use is
of the same or less restricted
nature. It's a special permit but
would remain a nonconforming use.

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MR. POLITI: If I say no --

CHAIRMAN SCALZO: What say you, sir?

MR. POLITI: I'm going to say no.

MS. JABLESNIK: Ms. Rein?

MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: No.

So we have four to two. The motion still carries.

Moving on to the other variances, which are area variances. We're discussing the five factors which we're weighing. If you guys don't mind, I'm going to lump all of these linear variances in the same conversation.

MR. EBERHART: Please do.

CHAIRMAN SCALZO: I'm with you, Mr. Eberhart. I'm sorry this meeting has been this long.

The first one being whether or not the benefit can be achieved by

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other means feasible to the applicant.

This isn't the first time you're hearing these. The first one under the five factors is whether the benefit can be achieved by other means feasible to the applicant.

MS. REIN: No.

MR. BELL: No.

CHAIRMAN SCALZO: She can't catch hand gestures on there. That's why we're going through this.

The second, if there's an undesirable change in the neighborhood character or a detriment to nearby properties. Yes and no. A detriment to nearby properties, I don't believe so. A change in the neighborhood character by the zoning line being on the other side of the property, I guess not.

The third, whether the request is substantial. By the numbers, sure it is.

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MR. BELL: By the numbers.

CHAIRMAN SCALZO: The fourth, whether the request will have adverse physical or environmental effects. I'm sure whatever environmental effects will be mitigated through the development that's reviewed by the Planning Board.

The fifth, whether the alleged difficulty is self-created, which is relevant but not determinative. I would say yes and no, because they are continuing a nonconforming use there.

Therefore, having gone through the balancing tests of the area variance, does the Board have a motion of some sort? This is relative to the area variances only.

We've already determined part 1, by a vote of four to two, that they can continue the use. We're only looking at the area variances.

Do we have a motion of some

2 sort?

3 MR. EBERHART: Motion for
4 approval.

5 MR. HERMANCE: I'll second it.

6 CHAIRMAN SCALZO: We have a
7 motion for approval from Mr.
8 Eberhart. We have a second from Mr.
9 Hermance.

10 Can you roll on that, Siobhan.

11 MS. JABLESNIK: Mr. Bell?

12 MR. BELL: Yes.

13 MS. JABLESNIK: Mr. Eberhart?

14 MR. EBERHART: Yes.

15 MS. JABLESNIK: Mr. Hermance?

16 MR. HERMANCE: Yes.

17 MS. JABLESNIK: Mr. Politi?

18 MR. POLITI: May I ask a question?

19 CHAIRMAN SCALZO: Of course.

20 We were talking about sign height
21 before. That was actually never
22 addressed. Perhaps with conditions.

23 MR. POLITI: I'm going to
24 answer no. How do I qualify that?
25 I'm going to answer no at this point.

2 CHAIRMAN SCALZO: Any conditions
3 on that?

4 MR. DONOVAN: There's already a
5 motion and you're voting on it.

6 CHAIRMAN SCALZO: All right.
7 At this point Mr. Politi was a no.

8 MS. JABLESNIK: Ms. Rein?

9 MS. REIN: Yes.

10 MS. JABLESNIK: Mr. Scalzo?

11 CHAIRMAN SCALZO: I'm going to
12 go with a no also.

13 The motion also carries four to
14 two.

15 Counsel, where do we go from
16 here? That's the end of it?

17 MR. DONOVAN: That is the end
18 of the process.

19 CHAIRMAN SCALZO: All right.
20 We're all welcome to go to the
21 Planning Board meeting and ask them
22 to reduce the height of that sign, or
23 they may want to try it on their own.
24 You have heard our concerns. It is
25 part of the minutes. I know the

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Planning Board does read our minutes,
or at least Pat Hines does.

MR. WARD-WILLIS: I understand
the objection. We'll discuss that
with our client as well and take that
into consideration.

CHAIRMAN SCALZO: Very good.
In this case you got what you needed
tonight.

MR. WARD-WILLIS: I appreciate
the Board, given the lateness, the
due consideration you gave us. Thank
you. The comments were well received
and appreciated.

(Time noted: 10:25 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 8th day of November 2023.

Michelle Conero

MICHELLE CONERO

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

IRON CHEF
101 North Plank Road, Newburgh
Request for an Extension of
Area Variance Approval

----- X

Date: October 26, 2023
Time: 10:25 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
DARRELL BELL
JAMES EBERHART, JR.
GREGORY M. HERMANCE
JAMES POLITI
DONNA REIN

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

----- X

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

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CHAIRMAN SCALZO: Folks, we've got one last thing that wasn't on the agenda. Over at Iron Chef, we gave them a permit over a year ago to make modifications to the building. They have not started that yet, but they expire after six months from the Planning Board's approval of it. They've exceeded their time limit. They are just looking for an extension. They want a six-month extension. That's what we've got.

I will make a motion that we grant a six-month extension to the amended site plan for Iron Chef, the area variance extension. I will make that motion for an extension of six months.

MR. HERMANCE: Second.

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

MR. POLITI: Aye.

MR. EBERHART: Aye.

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MR. HERMANCENCE: Aye.

MR. BELL: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Aye.

Those opposed?

(No response.)

CHAIRMAN SCALZO: All right.

Very good.

That concludes the business for this meeting.

I did ask Counsel to give us a quick one, but it's later than I anticipated. I don't want to muck anybody's night up.

Counsel, can you find out or let us know as soon as possible whether or not you're going to have that meeting in Walden next month? If you're not, perhaps you can come fifteen minutes early, because I'm shot.

MR. DONOVAN: Okay.

CHAIRMAN SCALZO: How about a motion to accept the meeting minutes

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from last month's meeting and the previous month. We're looking at September and August. A motion to accept?

MS. REIN: I'll make a motion to accept those minutes.

CHAIRMAN SCALZO: I'll second. All in favor?

MR. POLITI: Aye.

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

MR. BELL: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Aye.

Very good. A motion to adjourn?

MS. REIN: I'll make a motion to adjourn.

CHAIRMAN SCALZO: I will second.

All in favor?

MR. POLITI: Aye.

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

MR. BELL: Aye.

MS. REIN: Aye.

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CHAIRMAN SCALZO: Aye.

(Time noted: 10:28 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 8th day of November 2023.

Michelle Conero

MICHELLE CONERO