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

- - - - - X  
In the Matter of

LITE BRITE SIGNS

1425 Route 300, Newburgh  
Section 60; Block 3; Lot 32.11  
IB Zone

- - - - - X

Date: January 25, 2024  
Time: 7:00 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

BOARD MEMBERS: DARRELL BELL, Acting Chairman  
JAMES EBERHART, JR.  
JOHN MASTEN  
JAMES POLITI  
DONNA REIN (Present at 7:03 p.m.)

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

APPLICANT'S REPRESENTATIVE: MARIA ROTUNDO

- - - - - X

MICHELLE L. CONERO  
Court Reporter  
Michelleconero@hotmail.com  
(845) 541-4163

2 MR. BELL: Good evening. I  
3 would like to call the meeting of the  
4 ZBA to order. The Chairman, Darrin,  
5 is not going to be present this  
6 evening. He has a medical emergency  
7 going on.

8 MS. JABLESNIK: Not himself.

9 MR. BELL: A family emergency  
10 going on. I will be sitting in for  
11 him this evening.

12 The first order of business are  
13 the public hearings scheduled today.  
14 The procedure of the Board is that  
15 all applicants will be called upon to  
16 step forward, state your request and  
17 explain why it should be granted.  
18 The Board would also ask the  
19 applicant any questions that it may  
20 have, and then comments from the  
21 public will be entertained. After  
22 the public hearing has been  
23 completed, the Board -- well, we  
24 don't adjourn anymore, but we will  
25 confer with our counsel if we have

2 any legal issues or questions that we  
3 might have. The Board will then  
4 consider the applications in the  
5 order heard. We will try to render a  
6 decision, but we could take up to 62  
7 days to reach a determination.

8 I would ask that all cellphones  
9 be put on silent. When asked to  
10 speak, step forward and speak  
11 clearly. Our stenographer is  
12 recording the meeting.

13 Roll call, please.

14 MS. JABLESNIK: Darrell Bell.

15 MR. BELL: Present.

16 MS. JABLESNIK: James Eberhart.

17 MR. EBERHART: Present.

18 MS. JABLESNIK: Greg Hermance is  
19 absent.

20 John Masten.

21 MR. MASTEN: Here.

22 MS. JABLESNIK: James Politi.

23 MR. POLITI: Present.

24 MS. JABLESNIK: Donna Rein and  
25 Darrin Scalzo are also absent this

2 evening.

3 Present is our Attorney, Dave  
4 Donovan; from Code Compliance, Joseph  
5 Mattina; and our Stenographer is  
6 Michelle Conero.

7 MR. BELL: We can stand and do  
8 the Pledge of Allegiance.

9 (Pledge of Allegiance.)

10 MR. DONOVAN: Mr. Chairman,  
11 before we begin, everybody here that  
12 has an application tonight, we are a  
13 seven Member Board. The law requires  
14 that four affirmative votes are  
15 necessary for your application to be  
16 approved. That means everyone  
17 sitting up here tonight will need to  
18 vote in favor of your application for  
19 your application to be approved.  
20 Unfortunately, the Chairman had a  
21 death in the family, one member had  
22 dental surgery and one member  
23 obviously is not here.

24 When we have a circumstance like  
25 this, which happens infrequently, but

2 when we do, we do offer everyone the  
3 ability, if you wish to defer a vote  
4 this evening, you can do that or you  
5 can go forward with your application.  
6 It's up to you. The Board thinks in  
7 the interest of fairness, if you need  
8 unanimity of all four Board Members,  
9 that you have the option to request  
10 that your vote be deferred. I just  
11 want to let everyone know that.

12 (Whereupon, Ms. Rein joined the  
13 meeting.)

14 MR. DONOVAN: While I'm speaking,  
15 we now are up to five Members. I'll  
16 keep talking so Ms. Rein doesn't get  
17 out of breath on the way up to the  
18 front.

19 MS. REIN: I left my bag home  
20 halfway here.

21 MR. DONOVAN: Nevertheless, even  
22 though we're now at five Members, you  
23 need four of five for an affirmative  
24 vote. Since we don't have a full  
25 compliment of Members, the Board

2 gives you the ability to defer if you  
3 want to. I just wanted everyone to  
4 be aware of that.

5 MR. BELL: I'll give you a  
6 moment.

7 MS. REIN: I'm good. Did we do  
8 the Pledge yet?

9 MS. JABLESNIK: Yes.

10 Donna Rein is present this  
11 evening.

12 MR. BELL: The first order of  
13 business is Lite Brite Signs, 1425  
14 Route 300, Newburgh. It's a variance  
15 for an area variance of maximum  
16 square footage to install side and  
17 the rear wall signs larger than  
18 permitted.

19 MS. ROTUNDO: I'm Maria Rotundo  
20 with Lite Brite Signs. That is  
21 correct, we're asking for an area  
22 variance for side and rear signage.

23 I don't know if the Board is  
24 familiar with the site.

25 MR. BELL: We've all been there.

2 MS. ROTUNDO: It's on 300, a  
3 very busy road, a lot of traffic.  
4 They want to maximize the visibility  
5 and ease of seeing their property, as  
6 it's an urgent care center, by having  
7 signs on the side and rear elevation.  
8 The rear would help them with the  
9 plaza. The sides would help with the  
10 side road on one side and just the  
11 flow of Route 300 in each direction.

12 They actually built it, it's a  
13 facility, the signage with the high  
14 soffits. They would really like the  
15 most visibility they could get.

16 MR. BELL: And I did -- I  
17 apologize. I failed to mention that  
18 we all are required, the Board, by  
19 law to go out and visit each site.

20 MS. ROTUNDO: That's great.

21 MR. BELL: Okay. I drove up and  
22 down 300 looking at various other  
23 buildings with signage to see what  
24 was going on there. I don't have any  
25 questions.

2 MR. POLITI: I went by during  
3 the day, and I just went by tonight,  
4 too. To me, the proportions look  
5 fine based on your drawings.

6 MS. ROTUNDO: Thank you.

7 MR. POLITI: I don't have any  
8 questions.

9 MR. BELL: Mr. Eberhart?

10 MR. EBERHART: I, as well, have  
11 driven by many times. I can  
12 understand what you're trying to  
13 achieve.

14 MS. ROTUNDO: Thank you.

15 MR. BELL: Mr. Masten?

16 MR. MASTEN: I have no questions.

17 MR. BELL: Okay. Donna?

18 MS. REIN: I'm good.

19 MR. BELL: Okay. Is there  
20 anyone here from the public who  
21 wishes to speak on this?

22 MR. FETTER: Bill Fetter,  
23 Rockwood Drive. To see a sign at the  
24 rear, they would have had to have  
25 passed one or two other signs to get



2 into the parking lot. I'm not sure  
3 what the necessity is of having the  
4 sign at the rear of the building,  
5 which is a parking lot. If you're  
6 coming there for that purpose, you  
7 wouldn't -- there would have been  
8 plenty of opportunity to see a sign.  
9 That's my only comment.

10 MR. BELL: It's my understanding  
11 that you're looking to have signs on  
12 all four --

13 MS. ROTUNDO: Yes. That's correct.

14 MR. BELL: Okay. There's no one  
15 else from the public?

16 (No response.)

17 MR. BELL: All right. At this  
18 time if we can make a motion to close  
19 the public hearing.

20 MR. MASTEN: I'll make a motion  
21 to close the public hearing.

22 MR. EBERHART: I'll second it.

23 MR. BELL: I've got a motion  
24 from Mr. Masten. I've got a second  
25 from Mr. Eberhart. All in favor?

2 MR. POLITI: Aye.

3 MR. EBERHART: Aye.

4 MR. MASTEN: Aye.

5 MS. REIN: Aye.

6 MR. BELL: Aye.

7 You can have a seat.

8 MS. JABLESNIK: There were 23  
9 mailings.

10 MR. BELL: 23 mailings. Okay.

11 One more time. Do any Members  
12 of the Board have any objections?

13 MR. DONOVAN: This is an  
14 Unlisted action, actually. We need a  
15 negative declaration. If anyone has  
16 a motion for a negative declaration  
17 under SEQRA.

18 MR. POLITI: I'll make it.

19 MR. BELL: We have a first from  
20 Mr. James.

21 MR. MASTEN: Second.

22 MR. BELL: And John. All in  
23 favor?

24 MR. POLITI: Aye.

25 MR. EBERHART: Aye.

2 MR. MASTEN: Aye.

3 MS. REIN: Aye.

4 MR. BELL: Aye.

5 Okay. This is a Type 2?

6 MR. DONOVAN: Actually, this is  
7 an Unlisted action. If you remember  
8 we've had a number of gas stations  
9 that come through replacing the  
10 signage. That's a replacement in  
11 kind, so that's a Type 2 action. A  
12 Type 2 action does not require review  
13 under SEQRA. Otherwise, a sign  
14 variance is ordinarily an Unlisted  
15 action. That's why we went through  
16 the SEQRA negative declaration. Now  
17 you can go through your five factors.

18 MR. BELL: Okay. The first  
19 factor that we'll go through is  
20 whether or not the benefit can be  
21 achieved by any other means feasible  
22 to the applicant.

23 MR. POLITI: No.

24 MR. EBERHART: No.

25 MR. MASTEN: No.

2 MS. REIN: No.

3 MR. BELL: No.

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

7 MR. POLITI: No.

8 MR. EBERHART: No.

9 MR. MASTEN: No.

10 MS. REIN: No.

11 MR. BELL: No.

12 Third, whether the request is  
13 substantial. No.

14 MR. MASTEN: No.

15 MR. BELL: Number 4 is whether  
16 the request will have adverse or  
17 physical environmental effects. I  
18 don't think so.

19 MS. REIN: No.

20 MR. BELL: Fifth, whether the  
21 alleged difficulty is self-created, which  
22 is relevant but not determinative.

23 With that being said, do we have  
24 a motion from the Board?

25 MS. REIN: I'll make a motion to

2 approve.

3 MR. BELL: We have a motion for  
4 approval from Ms. Donna.

5 MR. EBERHART: I'll second.

6 MR. BELL: A second from Mr.  
7 Eberhart. Roll call, please.

8 MS. JABLESNIK: Mr. Bell?

9 MR. BELL: Yes.

10 MS. JABLESNIK: Mr. Eberhart?

11 MR. EBERHART: Yes.

12 MS. JABLESNIK: Mr. Masten?

13 MR. MASTEN: Yes.

14 MS. JABLESNIK: Mr. Politi?

15 MR. POLITI: Yes.

16 MS. JABLESNIK: Ms. Rein?

17 MS. REIN: Yes.

18 MR. BELL: It's been approved.

19 You have a good evening.

20 MS. ROTUNDO: Thank you.

21 They're going to be so happy.

22

23 (Time noted: 7:10 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 5th day of February 2024.

*Michelle Conero*  
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MICHELLE CONERO

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

RIEGER HOMES, INC.  
2 Mariners Court, Newburgh  
Section 121; Block 1; Lot 1  
R-1 Zone

----- X

Date: January 25, 2024  
Time: 7:10 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

BOARD MEMBERS: DARRELL BELL, Acting Chairman  
JAMES EBERHART, JR.  
JOHN MASTEN  
JAMES POLITI  
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: DANIEL RIEGER

----- X

MICHELLE L. CONERO  
Court Reporter  
Michelleconero@hotmail.com  
(845) 541-4163

2 MR. BELL: The second applicant,  
3 I hope I'm pronouncing this  
4 correctly, is Rieger Homes, Incorporated,  
5 2 Mariners Court in Newburgh

6 MR. RIEGER: Hi. I'm Dan  
7 Rieger, Rieger Homes, requesting that  
8 the height of a single-family home be  
9 higher than the code currently  
10 allows.

11 The home site in question is  
12 located just off of River Road. It's  
13 significantly below grade on River  
14 Road. The road, Mariners Court, we  
15 would be coming off of, is 20 feet  
16 below River Road.

17 The request, based on the design  
18 of the home, would be to give it a  
19 little bit of a higher roof so that  
20 the backside of the home could have  
21 appropriate river views from this  
22 location and also be aesthetically  
23 pleasing so that as driving down  
24 River Road, the house looks correct  
25 for the location.



2 MR. BELL: Okay. Are there any  
3 questions from the Board? I'll start  
4 with Donna, on your end.

5 MS. REIN: I have no questions.

6 MR. BELL: John?

7 MR. MASTEN: I have no questions.

8 MR. EBERHART: No questions for  
9 me.

10 MR. BELL: Mr. Politi?

11 MR. POLITI: The height  
12 variance, correct, is over 7 feet,  
13 which is 21 percent higher? The  
14 standard height or the maximum height  
15 is 35 feet. Correct?

16 MR. DONOVAN: Correct.

17 MR. POLITI: In my mind it's  
18 significantly higher, taller. I  
19 don't know if anyone has asked that  
20 before.

21 MR. BELL: Yes.

22 MR. POLITI: They have. Okay.

23 I visited the site. I've been  
24 there a couple of times. I understand  
25 what --

2 MR. RIEGER: For scale, where  
3 the home is actually going to sit is  
4 -- at the highest point on the lot is  
5 over 20 feet below where River Road  
6 is. The feeling is just that you're  
7 going to be sitting in a hole  
8 otherwise. This was the way to get  
9 the second floor windows at that  
10 height. That's kind of where the  
11 height came from. Now the second  
12 floor window will pretty much sit at  
13 the height of where River Road is.

14 MS. REIN: Siobhan, did we have  
15 one or two letters from the public  
16 regarding this?

17 MS. JABLESNIK: Two.

18 MR. POLITI: Do they go into the  
19 minutes?

20 MR. DONOVAN: Sometimes they're  
21 read. Anything that's submitted to  
22 the Board is part of the record. I  
23 think we received -- the Board  
24 received two letters in opposition to  
25 this, which, Mr. Chairman, do you

2 want me to read them? I'm happy to  
3 do that.

4 MR. BELL: Can you, please.

5 MR. DONOVAN: Do you have  
6 copies, Siobhan?

7 MS. JABLESNIK: Yes.

8 MR. DONOVAN: So we have a  
9 letter from, and I apologize if I  
10 mispronounce this gentleman's name,  
11 David Eisenman. "I'm reaching out to  
12 express my concerns regarding the  
13 application submitted by Rieger Homes  
14 for an adjustment in the permissible  
15 structure height at the property  
16 located at 2 Mariners Court within  
17 our beloved Town of Newburgh.  
18 Unfortunately, circumstances prevent  
19 my attendance at the scheduled  
20 hearing on January 25th. Nevertheless,  
21 I find it imperative to convey my  
22 significant concern about the  
23 proposed height variance. Our  
24 community is distinguished by single-  
25 family homes, generously separated

2 and enhanced by the picturesque  
3 surroundings. The scenic vistas  
4 contribute not only to the quality of  
5 life, but also substantially impact  
6 the market value and, as a result,  
7 the taxation of these properties.  
8 Historically, granting variances to  
9 one entity has unintentionally set a  
10 benchmark, influencing subsequent  
11 construction endeavors to bypass  
12 established community standards. The  
13 panoramic views cherished by the  
14 residents are invaluable. Any  
15 disruption caused by alterations in  
16 the building height restrictions  
17 could diminish this desirable  
18 attribute. It is crucial for lot  
19 purchasers to respect and adhere to  
20 the existing community guidelines.  
21 The proposition by Rieger Homes, Inc.  
22 raises concerns about potential  
23 future constructions, it may  
24 compromise the aesthetic harmony and  
25 value of our neighborhood. I place

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my confidence in the Board to carefully consider the implications of this variance request and uphold the integrity of our community standards. Thank you for your attention to this matter.

Respectfully, David Eisenman."

The second letter is from Michael R. McGarvey, M.D. "I'm writing in response to your recently received notice of application by Rieger Homes for an area variance for the maximum building height for a structure to be built on property located at 2 Mariners Court in the Town of Newburgh. Regrettably I shall not be able to attend the hearing on January 25th in person. I do, however, wish to register my very strong objections to the requested maximum height variance. This is a neighborhood of well-spaced, single-family homes. Many homes have attractive views, and that is a

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significant part of their appeal, including the resale value and tax assessments. In the past, variances granted to one builder have seemingly set precedent for future builders seeking to modify general existing norms not to have to seek previously required approvals. Because the views from homes in the neighborhood are such an important asset for these properties, any application for a variance to curb restrictions to built height are to be firmly denied. Individuals who buy lots should be aware of what they are buying and should not attempt to violate importantly established area norms or requirements. Rieger Homes would appear to be a home building company, and permission for this variance would likely lead to other structures that would negatively affect this attractive neighborhood. I sincerely trust this Board will reject the

2 application. Very sincerely yours,  
3 Michael R. McGarvey."

4 MR. BELL: Thank you.

5 Is there anyone from the  
6 community that would love to come up  
7 and speak first? Ma'am, come  
8 forward, please.

9 MS. HYMAN: I would like to --

10 MR. DONOVAN: Tell us who you  
11 are, please, ma'am.

12 MS. HYMAN: Mimica Taczena  
13 Hyman.

14 MR. DONOVAN: Could you do us a  
15 big favor, ma'am. If you could spell  
16 that for the stenographer.

17 MS. HYMAN: Oh, boy. Mimica,  
18 M-I-M-I-C-A, Taczana, T-A-C-Z-A-N-A,  
19 Hyman, H-Y-M-A-N.

20 MR. DONOVAN: Thank you, ma'am.

21 MS. HYMAN: We are neighbors  
22 from the two letters that you get.  
23 We agree with them a hundred percent.  
24 The two letters you got and us, we  
25 are the three homes that overlook the

2 Anchorage.

3 Our view is very important,  
4 obviously, but it is affected by  
5 anything that happens in the  
6 Anchorage. We would rather not have  
7 anything that would compromise our  
8 view and would compromise the value  
9 of our property, the resale value,  
10 and the taxes will keep on going up.

11 MR. BELL: So where are you  
12 adjacent to the property they're  
13 trying to build on?

14 MS. HYMAN: We are right on top.

15 MR. BELL: On top.

16 MS. HYMAN: River Road is here.  
17 River Road is here and Mariners  
18 Court. We are right on top.

19 MR. BELL: Okay.

20 MS. HYMAN: We are right on top.  
21 We see every house that is being  
22 built in the Anchorage.

23 MR. BELL: You're actually on  
24 the other side of River Road, up on  
25 the hill?



2 MS. HYMAN: Exactly. On the  
3 hill. Yeah.

4 MR. BELL: Okay.

5 MS. HYMAN: Thank you very much.

6 MR. BELL: Thank you. Yes, sir.

7 MR. HYMAN: My name is Barry  
8 Hyman. I happen to be married to  
9 that lovely lady over there.

10 Basically most of you, many of  
11 you, I hope, know River Road. River  
12 Road has two sides. There's the  
13 river side and the side away from the  
14 river. We're on the side away from  
15 the river, a little higher up. We  
16 actually will be overlooking those  
17 homes. That's our property. We've  
18 lived there for almost thirty years.  
19 The whole reason for us to move to  
20 that area is, I've loved river views  
21 my whole life. Before I moved here I  
22 was in Connecticut with a river view.  
23 We enjoy that every day. We don't  
24 want to lose that view that we have.

25 We've paid really high taxes.

2 First of all, we don't mind so much  
3 helping the Town of Newburgh with our  
4 high taxes. We would rather not pay  
5 that much. It was worth it for that  
6 view. We don't want to lose our  
7 view.

8 I think that Rieger Homes, the  
9 builders, they knew, when they  
10 purchased that property, exactly what  
11 they could do with that home. They  
12 purchased it because they knew they  
13 could get a nice river view, building  
14 it without making it higher.

15 I just don't think it's fair for  
16 people on our side, the upper side of  
17 -- the non river side, to lose our  
18 view and change the variance.

19 Thank you for your considerations.

20 MR. BELL: Thank you.

21 Is there anyone else from the  
22 public that wishes to speak?

23 (No response.)

24 MR. BELL: Okay. Come back up.

25 Do you have a sketch of what the

2 house looks like? Do you have  
3 anything to show?

4 MR. RIEGER: I have a sketch of  
5 the house (indicating).

6 MR. BELL: We do have that. I  
7 just wonder if you have something you  
8 can put on the board that the public  
9 can see.

10 MR. RIEGER: I have an actual  
11 model of the home in the car. I can  
12 run and get it. It's right outside.

13 MR. BELL: That's okay.

14 MR. RIEGER: The larger sketch  
15 that I have is this, which I can put  
16 up there and people can come look.

17 I think the most important  
18 factor, though, is that when  
19 comparing this house lot compared to  
20 the other house lots along River  
21 Road, it's going to be less than 25  
22 feet above the River Road -- actual  
23 where River Road is, there's going to  
24 be less than 25 feet of the house  
25 visible. It doesn't impact the same

2 way as even a house built on River  
3 Road at that height. The other homes  
4 in the subdivision adhering to the  
5 same zoning laws are going to  
6 actually impact the views in a  
7 significantly greater way than this  
8 home would because it's so low on  
9 that actual home site. I think the  
10 context of what the actual impact  
11 will be is important, because when  
12 you go to the site, you can pretty  
13 well see what -- you know, what it's  
14 actually going to be.

15 I'll put this up there. I have  
16 some other architectural drawings.  
17 If anybody does want to see, I'm  
18 happy to show --

19 MR. DONOVAN: Mr. Rieger, if I  
20 can ask, do you have anything --  
21 there's no topography in any of the  
22 information that you've given us. Do  
23 you have anything to indicate line of  
24 sight, that would indicate line of  
25 sight from the objecting neighbors?

2 MR. RIEGER: We took a number of  
3 pictures from River Road that we  
4 submitted, but I also have a  
5 topography plan of the site that  
6 shows where the house would actually  
7 start is at least 20 feet below the  
8 River Road height. I can provide  
9 that as well.

10 MS. REIN: Counsel, if this is  
11 approved, it will set a precedent for  
12 any future buildings?

13 MR. DONOVAN: So generally  
14 speaking, we've been through this  
15 before, anything that the Board does  
16 sets a precedent. You are required  
17 to follow your precedent unless there  
18 are certain unique circumstances. I  
19 don't know what circumstances -- we  
20 don't have a lot of necessary  
21 information before us. We don't have  
22 the topography. If this was a  
23 situation where there was a 21  
24 percent variance but it was given  
25 because relative to the height of

2 other homes in the neighborhood,  
3 given the topography of this  
4 particular lot, it was in line with  
5 other homes in the neighborhood and  
6 it didn't obstruct any viewsheds from  
7 the back because it's -- we have a 7-  
8 foot variance, but I don't know,  
9 based on the information you have, if  
10 you could really tell what impact  
11 that's going to have to somebody  
12 behind. A house that's 35 feet high  
13 could go there. I don't know what  
14 that 7-foot difference is. I don't  
15 think you have -- I don't think. If  
16 you think you have enough in front of  
17 you to decide, that's fine. I don't  
18 know if you have anything in front of  
19 you that says really what is the view  
20 -- if we're going to give a 7-foot  
21 variance, what is the view from the  
22 other folks that are impacted and  
23 that are objecting.

24 MR. BELL: That's where I was  
25 kind of going when I was asking if

2 you have a drawing. If you can  
3 provide something for us --

4 MR. RIEGER: I have a topography  
5 map to show where River Road is  
6 versus where the house will go to  
7 show the height. I took a number of  
8 pictures from River Road looking  
9 down. It's hard, unless you're  
10 there, to see how grand that drop  
11 really is. I did take a picture of  
12 somebody standing in front of a 10-  
13 foot high wall that is 15 feet  
14 higher, above where the lot is. You  
15 can see how low where the actual  
16 house is going to be is in comparison  
17 to River Road. That was kind of the  
18 best that we could do without, you  
19 know -- the only other way would be  
20 to maybe put something the height of  
21 the house while everybody was there  
22 to actually view it.

23 MR. DONOVAN: I don't know if  
24 you want to do this for a house.  
25 It's not uncommon for a cell tower or

2 a large building to do a balloon  
3 test. You show the corners of the  
4 building with the balloon at the  
5 height of the top of the building and  
6 you get an idea, and the neighbors  
7 get to see as well, where that height  
8 is really going to be. It's up to  
9 the Board if you want to do something  
10 similar to that. You can do a line  
11 of sight drawing where an engineer  
12 actually plots out what they are  
13 going to see.

14 MR. RIEGER: We would have to  
15 have access, I think, to the homes to  
16 be able to kind of draw that out.

17 MR. BELL: To the homes on the  
18 other side of River Road.

19 MR. RIEGER: To see how their  
20 view would be impacted. I believe  
21 the way it would work is we would  
22 take a picture from there and we  
23 would be able to kind of superimpose  
24 it.

25 MR. BELL: Is there a way to



2 drop that 7 feet that you're looking  
3 for? The additional 7.3?

4 MR. RIEGER: I believe that it  
5 would actually negatively impact the  
6 design of the home. You know, the  
7 7.3, I think, is the absolute  
8 maximum. That's us being conservative.  
9 I don't believe it will actually be  
10 the full 7.3. In coming here, we  
11 figured that's the absolute kind of  
12 worst-case scenario to ask for. I  
13 think there's a modification that can  
14 be done to drop it by 2 feet or so,  
15 and that would work. Other than  
16 that, I think it would have to be a  
17 hundred percent redesigned, and that  
18 would -- I think that that would  
19 actually make the house less valuable  
20 and less impressive, which is not as  
21 good for the overall neighborhood,  
22 personally.

23 MR. BELL: Okay. Yes, sir.

24 MR. FETTER: Again, Bill Fetter,  
25 Rockwood Drive. Do we know the

2 elevation of the first floor versus  
3 River Road?

4 MR. RIEGER: Yes.

5 MR. FETTER: How much higher is  
6 the elevation of your house, Mr.  
7 Hyman, versus that of River Road?  
8 Are you much above River Road?

9 MR. HYMAN: We are above River  
10 Road by a fair amount. One of our  
11 neighbors is lower than us and their  
12 view is already blocked by one of the  
13 homes that was there. The gentleman  
14 -- not Mr. McGarvey, the other one,  
15 was blocked by that. He doesn't want  
16 to, obviously, have another one. His  
17 is lower than ours, but ours is  
18 higher than his. Still, it's a view.

19 MR. DONOVAN: If I can make a  
20 comment to the public. No building  
21 on the lot is not really an option.  
22 If the house was 35 feet in height,  
23 they wouldn't be here to get a  
24 building permit to move forward.  
25 They're here for the extra 7 feet.

2 Just so that's clear.

3 MR. POLITI: May I ask? I don't  
4 want to get into the whole design  
5 concept. This print you gave us, is  
6 this the second floor you're talking  
7 about?

8 MR. RIEGER: Do you mind if I  
9 step up?

10 MR. POLITI: Just for my clarity.

11 MR. RIEGER: I drew this out.  
12 The basement is going to be dug 2  
13 feet into the ground, and then  
14 there's going to be 7 feet of  
15 basement, and then the grade is going  
16 to be brought up. The first 10 feet  
17 is the first floor, which is right  
18 here, and then this is basically  
19 where you hit River Road. This is  
20 what's going to --

21 MR. BELL: Excuse me. Could you  
22 put that on the board so we get an  
23 idea?

24 MR. POLITI: You're saying the  
25 basement is going to be out of the

2 ground 7 feet?

3 MR. RIEGER: No. The grade is  
4 going to be brought up. You're only  
5 allowed to show 8 inches to 10 inches  
6 -- you're required to show 8 inches.  
7 We're saying it might be 8 to 12  
8 inches of the basement actually  
9 showing, but we're only able to dig  
10 in a few feet because the grade is so  
11 low into the backyard. The lot kind  
12 of goes down, so it restricts how  
13 much you can dig into the ground.

14 I'll show it to them, or  
15 everybody. So the first floor will  
16 come up to this set of windows where  
17 this roof line is here. This is what  
18 will be visible above River Road,  
19 which is actually only 19 feet. The  
20 other home that was just recently  
21 built on River Road was 35 feet from  
22 where River Road is. We'll still be  
23 about 16 feet below where that house  
24 is currently built, because we're  
25 going to be digging into the ground

2 and we're 20 feet below grade at that  
3 point.

4 MR. BELL: That's back up on the  
5 hillside?

6 MR. RIEGER: Yes. This is from  
7 the River Road side. As you drive  
8 into Mariners Court, everything goes  
9 down.

10 MR. BELL: Everything goes down.

11 MR. RIEGER: The other house was  
12 built with access from River Road on  
13 top of River Road, at least if it's  
14 the house I believe they're talking  
15 about which was just built in the  
16 past year or so.

17 MR. BELL: Okay.

18 MR. POLITI: My issue is you  
19 have a box to design in, and that's  
20 20 percent bigger than that box.  
21 That's what's holding my concern. If  
22 there's a way to drop that grade.  
23 I'm not telling you how to design.  
24 I'm not even going to do that  
25 discussion. That roof line is so

2 high. Will it affect -- it's a big  
3 difference, 20 percent, within our  
4 35-foot code. That's my opinion.

5 MR. BELL: That's good.

6 MR. DONOVAN: The gentleman in  
7 the back wants to speak.

8 MR. HYMAN: There are other  
9 empty lots also in front of us. If  
10 you change it for one, now that means  
11 that you have to change it for others.

12 Again, as I said, the gentleman  
13 just south of us, his house is lower  
14 so there's one blocking his. There  
15 would be one necessarily -- they'll  
16 all be blocking his soon, and maybe  
17 ours as well. I think that has to be  
18 considered as well.

19 MS. REIN: That's my concern  
20 also. My concern is whatever goes up  
21 after this, if it's approved, how  
22 it's going to affect the rest of the  
23 neighborhood.

24 MR. RIEGER: We're looking at  
25 this house specifically from the

2 front when you're talking about the  
3 roof line. If you look at either  
4 side of how it's built and what the  
5 back looks like, it's more in -- the  
6 way that it's designed, like into the  
7 back of the hill kind of going down,  
8 it looks more in proportion. That's  
9 going to be what's actually more  
10 visible for everybody driving down.  
11 The majority of the front of this  
12 house is actually covered by that  
13 hill. That's just how it kind of  
14 came into its design.

15 MR. BELL: I believe that we had  
16 a home about a year ago that was down  
17 on the next street from Mariners that  
18 we granted that gazebo, swimming  
19 pool. That was a height variance.

20 MS. JABLESNIK: That didn't go  
21 for height. I think one of the  
22 houses went for height, possibly.

23 MR. BELL: That was the one that  
24 was next to it. When I drove the  
25 other day, I went back down that way.

2 I looked like that's kind of tall.

3 MR. RIEGER: I think that house  
4 is going to be graded back in. At  
5 least that's my understanding,  
6 they're going to grade that back in.  
7 It is very tall.

8 MR. BELL: It was. Okay.

9 Anyone else from the public?

10 MS. BATCHELOR: My name is  
11 Jennifer Batchelor. Just based on  
12 what has been said so far, my main  
13 concern is that you are opening a  
14 precedent for this builder and other  
15 future builders that -- you know,  
16 they see -- whoever buys the land and  
17 then, oh, we'll push a little, we'll  
18 go a little higher, we'll go a little  
19 higher, and then you change the  
20 entire makeup of all the homes. Just  
21 little by little, now all of a sudden  
22 you have all these huge homes.

23 The people that do live there  
24 already, it sounds like there will be  
25 a negative impact.



2 I understand houses and  
3 development. It's great. We also do  
4 move to certain neighborhoods to try  
5 to get country.

6 I would say, you know, to try to  
7 really think if it's worth it to  
8 still open it up little by little and  
9 now all the developers come in and  
10 build these huge mansions that look  
11 so out of place.

12 MR. BELL: Where do you live?

13 MS. BATCHELOR: I live not on  
14 River Road, but I am a Town resident.  
15 I see all these large buildings going  
16 up left and right and developers  
17 coming in from all over the country,  
18 not just locally. For a developer or  
19 a buyer to see land -- a plot of land  
20 and still decide to buy it and say,  
21 well, maybe we'll just -- we can  
22 design a house this way and we'll  
23 just ask if they can move it up, move  
24 it up, move it up, pretty soon you  
25 have, like I said, all these mansions

2 that look out of place.

3 Thank you for your time.

4 MR. BELL: Is there anyone else  
5 from the public?

6 MR. FETTER: One more comment.  
7 Bill Fetter. I don't think people  
8 driving by on River Road are going to  
9 worry about the aesthetics of a  
10 house. They're not going to have  
11 time to appreciate the aesthetics of  
12 a rooftop or a ridge line, what they  
13 are seeing. I don't understand the  
14 justification of the roadside  
15 appearance of the house to raise it.  
16 Just my opinion. Maybe for the owner  
17 it might be nice to present something  
18 better to somebody driving by, but I  
19 don't think the person driving by is  
20 going to really appreciate --

21 MR. RIEGER: The other owners in  
22 the neighborhood, they're going to  
23 want the best value for their house.

24 MR. FETTER: I haven't heard  
25 that opinion as of yet.

2 MR. BELL: First, let's make a  
3 motion to close --

4 MR. DONOVAN: Let me just say,  
5 Mr. Chairman, I don't know if the  
6 Board wants any more information  
7 relative to line of sight or  
8 topography.

9 MR. EBERHART: I would like to  
10 see something.

11 MR. DONOVAN: If you want to see  
12 something else, you should leave the  
13 public hearing open so people can  
14 comment. If you don't want anything  
15 else and you're ready to vote, you  
16 can close the public hearing.

17 MR. BELL: Starting with James.

18 MR. POLITI: Which James? Me?  
19 Yes, I would like to know about  
20 the line of sight.

21 MR. BELL: Mr. Eberhart?

22 MR. EBERHART: The line of sight  
23 is important to me.

24 MR. BELL: Mr. Masten, do you  
25 have anything? Nothing?

2 MR. MASTEN: Nothing right now.

3 MR. BELL: Donna?

4 MS. REIN: I think I have all  
5 the information I need.

6 MR. BELL: Okay.

7 MR. DONOVAN: Let's ask the  
8 applicant. You have at least two  
9 Board Members, the Chairman has  
10 indicated, but they indicated they  
11 want more information because they  
12 are really interested to see what  
13 will this extra 7 feet do to the  
14 neighbors' view. The character of  
15 the neighborhood is one of the  
16 important things, in addition to the  
17 magnitude of the variance, for the  
18 Board to consider. If you would like  
19 to ask the Board to continue the  
20 public hearing so you can provide  
21 that information --

22 MR. RIEGER: I believe that  
23 that's probably the best course of  
24 action, seeing as how, without the  
25 two Members, we won't be able to

2 get --

3 MR. BELL: I do want that as  
4 well.

5 MR. RIEGER: Without three  
6 Members, we won't be able to get the  
7 answer I'm looking for. I will look  
8 into getting something for you.

9 Is it preferred -- if we are  
10 able to get images and superimpose a  
11 photo of what the home will look like  
12 and how it will impact the three  
13 homes in closest proximity above, is  
14 that acceptable?

15 MR. DONOVAN: I don't want to  
16 speak for the Board, but I think what  
17 would be helpful is if you can, and  
18 I've seen it before, there's a line  
19 of sight that engineers can prepare  
20 on the topography of the houses  
21 behind you, what they would look at.  
22 You can show it at 35 feet versus 42  
23 feet, what they will actually see.

24 MR. RIEGER: Okay.

25 MR. DONOVAN: Is that okay?

2 MS. REIN: That's good.

3 MR. BELL: That's exactly what  
4 we would need. I am in agreement  
5 with my other Board Members.

6 MR. DONOVAN: The Chairman gets  
7 to go last. That's the best part of  
8 being the Chairman.

9 MR. BELL: I think so, because I  
10 really -- what I would love to see is  
11 that, because we want to make sure we  
12 keep the character.

13 MR. RIEGER: I'm happy to  
14 provide it, because the homes on the  
15 other side of River Road are well  
16 over 50 feet above River Road. I  
17 don't think that's going to have any  
18 impact whatsoever. I'll get that for  
19 you.

20 Just so I'm clear, we're leaving  
21 it open and then we will provide  
22 those pictures to you. You would let  
23 us know when to come back for a vote?

24 MR. BELL: You'll come back to  
25 the next meeting in February.

2 MS. JABLESNIK: February 28th.  
3 If you can provide them --

4 MR. RIEGER: Within the next two  
5 weeks?

6 MS. JABLESNIK: -- two weeks  
7 prior to that meeting, just so I can  
8 give it to the Board Members and they  
9 have time to review it.

10 MR. DONOVAN: You can post it  
11 online as well.

12 MS. JABLESNIK: Yes. The  
13 members of the public will be able to  
14 see it as well.

15 MR. DONOVAN: For the folks here  
16 tonight on this application, there's  
17 not a new notice. Follow the  
18 website. The Board will make a  
19 motion to adjourn this until February  
20 28th. We welcome you all back on  
21 February 28th.

22 MR. POLITI: I just want to  
23 reiterate, I'd like to see, as  
24 Counsel said --

25 MS. JABLESNIK: I'm sorry. The

2 22nd. John was right. I'm so sorry.

3 MR. POLITI: For me it's  
4 important to see the 35-foot height,  
5 the design box. Again, I'm not here  
6 to tell you how to design your home,  
7 but I need to see that concept. I  
8 just think it's quite a push. I just  
9 want to reiterate.

10 MR. DONOVAN: Show the magnitude  
11 of the variance, the difference  
12 between what is permitted --

13 MR. RIEGER: 35 versus 42.

14 MR. DONOVAN: Mr. Chairman, we  
15 need a motion to continue the public  
16 hearing until February 22nd.

17 MR. BELL: Somebody make a  
18 motion to continue.

19 MR. POLITI: I'll make the  
20 motion.

21 MS. REIN: I'll second.

22 MR. BELL: Who was first?

23 MR. POLITI: I was.

24 MR. BELL: James Politi was  
25 first and Donna was second. All in



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Rieger Homes, Inc.

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favor?

MR. POLITI: Aye.

MR. EBERHART: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

MR. BELL: Aye.

See you on the 22nd.

(Time noted: 7:42 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 5th day of February 2024.

*Michelle Conero*  
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MICHELLE CONERO

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

PRIMAX PROPERTIES, LLC  
242 South Plank Road, Newburgh  
Section 60; Block 2; Lot 65  
B & IB Zones

----- X

Date: January 25, 2024  
Time: 7:42 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

BOARD MEMBERS: DARRELL BELL, Acting Chairman  
JAMES EBERHART, JR.  
JOHN MASTEN  
JAMES POLITI  
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: RYAN SMITHEM

----- X

MICHELLE L. CONERO  
Court Reporter  
Michelleconero@hotmail.com  
(845) 541-4163

2 MR. BELL: The next one is Primax  
3 Properties, LLC, 242 South Plank  
4 Road, Newburgh. This was a Planning  
5 Board referral for variances of the  
6 rear yard setback and minimum  
7 required off-street parking spaces  
8 for the proposed Dollar General  
9 project.

10 Did we hear back from the County?

11 MS. JABLESNIK: We have not  
12 heard back from the County. They  
13 can't vote on this application this  
14 evening.

15 This applicant sent out 202  
16 mailings. Winner, winner.

17 MR. BELL: With that said, we  
18 cannot vote on that this evening.

19 MS. JABLESNIK: Correct.

20 MR. BELL: That's in accordance  
21 with General Municipal Law 239 that  
22 we cannot.

23 You feel free, if you want to --

24 MR. SMITHEM: I think I'd like  
25 to get some feedback from the Board

2                   and at least get --

3                   MS. REIN:   Counselor, is this a  
4                   Type 2?

5                   MR. DONOVAN:   This is an  
6                   Unlisted action.   The parking portion  
7                   is Unlisted.   The other is a Type 2.

8                   MS. REIN:   Okay.   I have a  
9                   couple of questions.

10                  MR. SMITHEM:   For the record,  
11                  Ryan Smithem with Mercurio, Norton,  
12                  Tarolli, Marshall, engineer for the  
13                  applicant.

14                  If you'd like, I can give a  
15                  brief overview and maybe it will  
16                  answer some of the questions.

17                  MS. REIN:   It won't.

18                  MR. SMITHEM:   You're all set.  
19                  Okay.   Does anybody else from the  
20                  Board want a brief overview?

21                  MS. JABLESNIK:   We have to let  
22                  him present.

23                  MS. REIN:   He said it won't  
24                  answer my questions.

25                  MS. JABLESNIK:   We have to let

2 him present first.

3 MS. REIN: Okay.

4 MR. SMITHEM: The project site  
5 is located on the northeasterly side  
6 of New York State Route 52. It's  
7 located just east of the underpass  
8 under 87. The project site is 2.2  
9 acres in size. It's located in both  
10 the B and IB Zoning Districts.

11 The project will be accessed via  
12 an existing drive which accesses the  
13 self-storage to the rear of the  
14 property through an existing access  
15 easement for the parcel.

16 We're requesting two variances.  
17 The first variance is for a parking  
18 variance. Town of Newburgh parking  
19 requirements are based on square  
20 footage. Based on the square footage  
21 of the proposed building, which is  
22 10,900 square feet, 73 parking spaces  
23 are required. Dollar General has  
24 approximately 18,000 locations  
25 nationwide. Based on their analytics, .

2 they need 30 parking spaces. That's  
3 all they need. We're looking for a  
4 reduction in those. We've shown 30  
5 parking spaces on this plan. We  
6 could probably fit a few more, but 30  
7 is what they need. The regulations  
8 behind parking are generally twofold.  
9 One, to make sure that you have  
10 enough parking and, two, to make  
11 sure you don't have a sea of parking.  
12 If you've ever been to a Home Depot,  
13 even if there are a hundred parking  
14 spaces filled, there's still hundreds  
15 more from these older parking areas  
16 that aren't ever utilized. A similar  
17 store which is constructed in the  
18 Town of Newburgh on 9W also has 30  
19 spaces. It's a comparably sized  
20 site.

21 The other variance is for a rear  
22 yard setback from the river side --  
23 I'm sorry, from the stream side.

24 This project is a commercial  
25 project on New York State Route 52.

2 The Town of Newburgh code requires a  
3 sidewalk be installed along the  
4 frontage of the property. DOT's  
5 regulations recently require that  
6 that area be deeded to DOT. This  
7 area in the front where the sidewalk  
8 is is going to be -- actually will be  
9 taken over by DOT. As a result of  
10 that, the front yard setback has been  
11 pushed back from that proposed  
12 sidewalk, and that has, in turn,  
13 pushed the building further back.

14 There was a previously approved  
15 site plan for this property proposing  
16 two similar size buildings -- one  
17 similar size building, also 10,900  
18 square feet, and a 4,050 square foot  
19 on the northwesterly side.

20 The proposed plan actually is  
21 further -- while the building is  
22 further back than this building, the  
23 actual disturbance associated with  
24 the project will actually pull it  
25 away and actually have less of an



2            impact than the existing approved  
3            site plan for the site.

4            I'm hear to answer any questions.  
5            I'm sorry I didn't get yours.

6            MR. BELL:    You said that it was  
7            previously approved for?

8            MR. SMITHEM:    For a 10,900  
9            square foot building on the site.  
10           I'll show you the previous site plan.  
11           I only have the drainage plans, but  
12           it's from '07.

13           MR. BELL:    '07.    Okay.    I didn't  
14           remember that.    Okay.

15           Starting with Ms. Donna.

16           MS. REIN:    Well Counselor,  
17           before I ask this question, I just  
18           want to know if this, being in the  
19           wetlands and in the 100-year  
20           floodplain, is that an issue we need  
21           to address?

22           MR. DONOVAN:    So this project  
23           will need site plan approval.

24           Can you show us where the  
25           wetlands -- the floodplain is

2 generally a Building Department  
3 issue, so they'll need a floodplain  
4 development permit, I'm sure, from  
5 the Building Department. There are  
6 certain construction requirements  
7 that are imposed.

8 Can you show us where the  
9 wetlands are relative to the  
10 improvements that are proposed?

11 MR. SMITHEM: The only wetlands  
12 that are associated with the project,  
13 to my knowledge, are the stream  
14 itself, which is not actually on the  
15 project site. It's just to the north  
16 of the project site.

17 The floodplain is this dark line  
18 which kind of cuts up here, comes  
19 back down and goes behind the  
20 building. We're actually not in the  
21 floodplain.

22 MR. DONOVAN: So while there are  
23 both floodplains and wetlands on the  
24 property, no impervious areas, no  
25 parking, no building is proposed in

2 either?

3 MR. SMITHEM: Correct. This is  
4 a sketch plan. Those things will  
5 have to be evaluated in the final  
6 design as far as grading and the rest  
7 of it. As it's shown, no part of the  
8 building or the proposed parking  
9 areas will be located within the  
10 floodplain or wetland areas.

11 MR. DONOVAN: Important for us,  
12 critical for the Planning Board.

13 MS. REIN: The next question  
14 was, will the proposed action create  
15 stormwater discharge either from  
16 point or non-point sources. Yes.  
17 Will stormwater discharges be  
18 directed to establish conveyance  
19 systems, runoff and storm drains.  
20 Yes. Then it says, if yes, briefly  
21 describe, and there's nothing there.

22 MR. SMITHEM: So this will  
23 absolutely --

24 MR. DONOVAN: What's your  
25 disturbance? How much property are

2 you disturbing?

3 MR. SMITHEM: Right now it's  
4 estimated under an acre. That's  
5 going to be the crux. If it winds up  
6 being over an acre, we're going to  
7 have to provide stormwater facilities  
8 for the property. That is part of  
9 the planning process. We don't want  
10 to go through the entire design if  
11 this plan is not going to --

12 MR. DONOVAN: There are  
13 requirements that the DEC has for  
14 stormwater management. If you  
15 disturb over an acre, you have a  
16 different set of rules and  
17 regulations. Again, while it's  
18 important for us to know that's going  
19 to happen, the Planning Board, Pat  
20 Hines, will decide what needs to be  
21 done or what doesn't need to be done.

22 MS. REIN: So then our decision  
23 either way is not going to impact  
24 that?

25 MR. DONOVAN: That's correct.

2 MR. SMITHEM: It will actually  
3 reduce the impacts to the stormwater  
4 by reducing the parking areas.

5 MR. DONOVAN: In terms of the  
6 ZBA's review, that doesn't --

7 MS. REIN: Okay. Thank you.

8 MR. BELL: Is anyone here from  
9 the public --

10 MR. DONOVAN: Do you want to ask  
11 anyone else on the Board to speak?

12 MR. BELL: I'm sorry.

13 MR. MASTEN: I have nothing  
14 right now.

15 MR. EBERHART: Nothing.

16 MR. POLITI: I'm not sure if  
17 this is -- has fire looked at any of  
18 this?

19 MR. SMITHEM: I don't believe  
20 so. I don't think we're quite there  
21 yet.

22 MR. POLITI: Are there egress  
23 points out of the back of the  
24 building?

25 MR. SMITHEM: I'm not sure on

2           that. I don't believe so. I believe  
3           that all of the egress points are on  
4           the front.

5                     MR. POLITI: I don't see any  
6           driving capability behind the  
7           building. I'm thinking from a fire/  
8           EMS standpoint.

9                     MR. SMITHEM: I believe the  
10          requirement is 150 feet. I think  
11          that's how far they can reach. The  
12          building is 140 feet long.

13                    MR. POLITI: So they should be  
14          able to --

15                    MR. SMITHEM: Yes.

16                    MR. DONOVAN: These are all  
17          important questions, but generally  
18          what happens is the applicant makes  
19          their first pass through to the  
20          Planning Board, they identify any  
21          variances that need to be  
22          accomplished and send them to us,  
23          because there's no point in the  
24          Planning Board going forward, there's  
25          no point in the applicant spending a

2            whole bunch of money on developing a  
3            project that's going to come here and  
4            get denied. That's really why you  
5            don't have some of these issues that  
6            are developed.

7            MR. BELL: Okay. Is there  
8            anyone here from the public who  
9            wishes to speak on this matter?

10           MR. PELLEGRINO: Joe Pellegrino,  
11           243-245 South Plank Road. I'm right  
12           across the street from this project.

13           My big concern is the traffic  
14           coming down South Plank Road, heading  
15           east right before the overpass there.  
16           They come down there like 50, 60  
17           miles-an-hour. We can't even get out  
18           of the driveway, all right. If  
19           you're backing out -- whether you're  
20           backing out or going forward, you  
21           have to go quick because they come  
22           around there and they jam on their  
23           brakes. You know, it's just  
24           dangerous.

25           What are you going to do to

2 address the visual effects that are  
3 going to happen over there?

4 Also the stormwater. We  
5 recently had floods over there, these  
6 last rains. They had to close the  
7 road down. I don't know if you know.  
8 Now we're going to have more  
9 stormwater. How are you addressing  
10 that?

11 Those are the two big issues  
12 that I'm concerned about.

13 MR. SMITHEM: These are  
14 generally Planning Board questions.  
15 The stormwater requirements, as Dave  
16 outlined, are under the DEC's  
17 jurisdiction. We're going to have to  
18 meet those. Generally what you're  
19 doing is you're either meeting or  
20 reducing the peak runoff from the  
21 site. Either through basins or  
22 routing or some way, you're reducing  
23 or equalling the peak runoff from the  
24 predevelopment conditions.

25 MR. PELLEGRINO: Do you have



2 detention areas in that design?

3 MR. SMITHEM: We haven't gotten  
4 to that point.

5 MR. PELLEGRINO: Also that  
6 stream, what is that -- that's  
7 designated -- they designate the  
8 streams, the DEC. The impact that  
9 it's going to have on that. That's  
10 another concern.

11 These are all the concerns that  
12 I have.

13 MR. BELL: Right now we are here  
14 to basically address the parking and  
15 the rear yard setback variance.  
16 Those issues that you're talking  
17 about are good, --

18 MR. PELLEGRINO: I understand.

19 MR. BELL: -- and most likely  
20 they'll come back to us --

21 MR. DONOVAN: They wouldn't come  
22 back to us. It would go to the  
23 Planning Board.

24 You never like to say to anybody  
25 that takes time out of their busy day

2 to come to the ZBA to make comments,  
3 that the Board is not interested.  
4 The Board is, of course, interested.  
5 They do have limited jurisdiction.  
6 The weird thing is, if the building  
7 was 10 feet closer and they had  
8 another 37 parking spaces, they  
9 wouldn't be here, they would be in  
10 front of the Planning Board. They're  
11 here for a reduction in parking,  
12 which would be less cars, and because  
13 they have the building close to the  
14 back.

15 This Board is not really  
16 involved in the issues that are  
17 important to you, but they're  
18 important to you so this is a forum  
19 to let the Board know that this is  
20 how you feel about it.

21 MR. BELL: They're actually  
22 required 73 parking spots. They're  
23 going down to a total of -- 30?

24 MR. SMITHEM: 30.

25 MR. BELL: 30. They're trying

2 to reduce it.

3 MR. PELLEGRINO: Whatever is  
4 done to the site before the ZBA or  
5 the Planning Board, it's going to  
6 impact the road over there.

7 MR. BELL: I agree with you.

8 MR. PELLEGRINO: That's my  
9 concern.

10 MR. BELL: I agree with you.

11 MR. SMITHEM: I've taken down  
12 notes. Thank you, sir.

13 MR. BELL: I drive that road  
14 everyday, back and forth, so I  
15 understand what you're saying.

16 UNIDENTIFIED SPEAKER: I'm at  
17 241, so I know what he's talking about.

18 MR. BELL: Anyone else who  
19 wishes to speak? Yes, ma'am.

20 MS. ZIMEL: Hello. I'm JoAnn  
21 Zimel, I live at 1081 Maggie Road in  
22 Meadow Winds. I just worry about the  
23 traffic, because during rush hour and  
24 at lunchtime -- you know, rush hour  
25 morning and afternoon, the traffic

2 builds up. There's already so many  
3 cars pulling in and out to get fast  
4 food, you know, on their way home.  
5 The more -- to have more cars, you  
6 know, maybe 30, 40 other cars there,  
7 pulling in and out, it's really a  
8 safety hazard. I just don't think,  
9 you know, we need more stores going  
10 up 52. I think we have so many  
11 already on 300. It's going to be  
12 like New Jersey, Route 17 and Route  
13 35. It's just like urban sprawl just  
14 to keep building more stores and more  
15 stores. I mean, why can't they find  
16 a place on 300 where there's already  
17 plenty of space and a wide road?  
18 This is a single road where, you  
19 know, all these stores don't belong.  
20 It's not meant for that.

21 MR. BELL: Okay.

22 MS. ZIMEL: That's my concern.  
23 I agree with the people that live  
24 there, too. It's very difficult to  
25 get out. Thank you.

2                   MR. BELL:   Anyone else on the  
3           Board?   Anything else?

4                   MS. REIN:   Was there another  
5           person?

6                   MR. BELL:   I didn't see a hand.

7                   MS. REIN:   Is there anybody  
8           else?

9                   MR. BELL:   Come on up.

10                  MS. ALLEN:   Debra Allen.   I live  
11           on Maggie Road, too.   I agree with  
12           the gentleman saying how much  
13           traffic.   We all have children that  
14           walk down that road.   When these cars  
15           are coming into this store that  
16           they're trying to build, it's going  
17           to be even more dangerous because  
18           they ride their little bikes and come  
19           up and down that road.   It's just  
20           going to get more crowded and even  
21           unsafe for them even more.

22                  MS. REIN:   Thank you.

23                  MR. BELL:   Thank you.

24                  Anyone else from the public?

25                  MR. FETTER:   Bill Fetter,

2 Rockwood Drive. You said you're  
3 going to add a sidewalk?

4 MR. SMITHEM: Yes.

5 MS. ALLEN: How far is it?

6 MR. SMITHEM: Just along the  
7 front.

8 MR. BELL: Okay.

9 MR. DONOVAN: We haven't heard  
10 from the County, so there will be a  
11 motion to hold it open until February  
12 22nd.

13 MR. SMITHEM: Can I request a  
14 stronghold so --

15 MR. DONOVAN: You can. I'm not  
16 going to let the Board --

17 MR. BELL: We're going to wait  
18 until next time.

19 UNIDENTIFIED SPEAKER: Where is  
20 that shed place?

21 MR. PELLEGRINO: You're using  
22 the same road as the Storage Stop?  
23 They might be coming in and out.

24 MR. SMITHEM: There's an  
25 existing access in and out right

2 before this.

3 MR. BELL: The storage is  
4 behind. It's going to continue  
5 behind.

6 MR. DONOVAN: So if I can, if  
7 you want to get this on the record,  
8 you need to speak louder. If you  
9 don't want to get it on the record --

10 MR. BELL: Sir, go ahead and  
11 take your picture. You can't have a  
12 private conversation.

13 With that said, we'll make a  
14 motion to keep the public hearing  
15 open until the 22nd of February.

16 MR. POLITI: I'll make the motion.

17 MR. MASTEN: Second.

18 MR. BELL: We have a motion from  
19 Mr. Politi and a second from Mr. Masten.  
20 All in favor?

21 MR. POLITI: Aye.

22 MR. EBERHART: Aye.

23 MR. MASTEN: Aye.

24 MS. REIN: Aye.

25 MR. BELL: Aye.

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MR. DONOVAN: Like I repeated for the last application, there are no new mailings, there's no new notice. Follow the website. This is continued until February 22nd.

MS. JABLESNIK: Not the 28th. That's a Wednesday.

MS. ZIMEL: Can I ask a question?

MR. BELL: We're closed.

MS. ZIMEL: Was this building approved, though, already?

MR. BELL: It's not approved.

MR. DONOVAN: Not this building.

MR. BELL: We'll see you on the 22nd of February.

(Time noted: 8:01 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 5th day of February 2024.

*Michelle Conero*  
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MICHELLE CONERO

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

HUMBERTO RESTREPO  
(CAMP INTEGRITY)

576 Rock Cut Road, Walden  
Section 11; Block 1; Lot 61  
R-1 Zone

----- X

Date: January 25, 2024  
Time: 8:01 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

BOARD MEMBERS: DARRELL BELL, Acting Chairman  
JAMES EBERHART, JR.  
JOHN MASTEN  
JAMES POLITI  
DONNA REIN

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

APPLICANT'S REPRESENTATIVES: MARK DAY,  
JOSEPH DOCETI & JOSEPH PEREZ

----- X

MICHELLE L. CONERO  
Court Reporter  
Michelleconero@hotmail.com  
(845) 541-4163

2 MR. BELL: The next one is  
3 Humberto Restrepo for a variance from  
4 a Planning Board referral for an area  
5 variance of an existing nonconformity  
6 of the front, one side yard and  
7 building height to convert an  
8 existing 12,000 square foot structure  
9 to house equipment for training  
10 personnel for oceanic rescue of  
11 persons working on wind turbines.

12 MR. DONOVAN: Why don't you give  
13 the Board -- the Vice Chairman wasn't  
14 here. Give us an oversight of what  
15 you're doing.

16 MR. DAY: Mark Day, Day &  
17 Stokosa. With me is Joe Perez and  
18 Mr. Doceti.

19 This property is better known as  
20 Camp Integrity. It's on Rock Cut  
21 Road. We're here this evening to  
22 request variances for basically  
23 existing nonconforming conditions,  
24 such as front yard setbacks, side  
25 yard setbacks. We're also looking to

2 convert one of the existing 12,000  
3 square foot buildings into a building  
4 which will house this equipment.  
5 This equipment is basically used for  
6 training personnel in oceanic rescues  
7 for persons that work on turbines.

8 Basically we're not changing the  
9 site in any way. We are widening a  
10 roadway to get into it so we can add  
11 parking. It is currently paved or is  
12 impervious tennis courts. Really  
13 that's the only change we're making.

14 Tonight the variances we're  
15 asking for are for existing  
16 nonconforming conditions, one of  
17 which I failed to mention is the  
18 height of the existing building in  
19 which this equipment will be housed.

20 MR. BELL: Okay. I know I was  
21 not here, but I read the minutes and  
22 the ruling on nonconforming.

23 MR. DONOVAN: There's an increase  
24 in the degree of nonconformity as a  
25 result of the approval being requested.

2 MR. BELL: With that said, do we  
3 have anybody here from the public who  
4 wishes to speak on this matter?

5 (No response.)

6 MR. BELL: No. Okay.  
7 We'll start down at that end.

8 MR. POLITI: Nothing.

9 MR. EBERHART: I'm good.

10 MR. BELL: Are you good?

11 MR. MASTEN: Yes.

12 MS. REIN: Yes.

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

15 MR. MASTEN: I'll second it.

16 MR. BELL: Who was first?

17 MR. DONOVAN: You. You said  
18 you'll make a motion. Be careful  
19 what you say, we'll hold you to it.

20 MR. BELL: All in favor?

21 MR. POLITI: Aye.

22 MR. EBERHART: Aye.

23 MR. MASTEN: Aye.

24 MS. REIN: Aye.

25 MR. BELL: Aye.

2 MR. DONOVAN: The height  
3 component is an Unlisted action. You  
4 need to issue a negative declaration  
5 under SEQRA.

6 MR. BELL: We'll make a motion  
7 for a negative declaration.

8 MR. POLITI: I'll make it.

9 MR. EBERHART: I'll second.

10 MR. BELL: We've got a first by  
11 Mr. Politi and a second by Mr. Eberhart.  
12 All in favor?

13 MR. POLITI: Aye.

14 MR. EBERHART: Aye.

15 MR. MASTEN: Aye.

16 MS. REIN: Aye.

17 MR. BELL: Aye.

18 MR. DONOVAN: You have to just  
19 go through the five factors and  
20 you're good.

21 MR. BELL: The first being  
22 whether or not a benefit can be  
23 achieved by any other means feasible  
24 to the applicant.

25 MS. REIN: No.

2 MR. BELL: No.

3 The second, is there an undesirable  
4 change in the neighborhood character or a  
5 detriment to nearby properties.

6 MR. POLITI: No.

7 MR. EBERHART: No.

8 MR. MASTEN: No.

9 MS. REIN: No.

10 MR. BELL: No.

11 Third, whether the request is  
12 substantial. It is but it's not.

13 The fourth is whether the  
14 request will have adverse physical or  
15 environmental effects.

16 MR. POLITI: No.

17 MR. EBERHART: No.

18 MR. MASTEN: No.

19 MS. REIN: No.

20 MR. BELL: No.

21 Okay. Fifth, whether the  
22 alleged difficulty is self-created,  
23 which is relevant but not determinative.

24 With that said, is there a motion  
25 by the Board?

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

MR. BELL: We have a motion for approval by Mr. Eberhart.

MS. REIN: Second.

MR. BELL: A second by Ms. Donna. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Eberhart?

MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Politi?

MR. POLITI: Yes.

MS. JABLESNIK: Ms. Rein?

MS. REIN: Yes.

MR. BELL: Motion approved.

MR. DAY: Thank you very much.

(Time noted: 8:07 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 5th day of February 2024.

*Michelle Conero*  
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MICHELLE CONERO

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

- - - - - X  
In the Matter of

CASTLE USA CORP/JULY 4EVER  
382 Rock Cut Road, Walden  
Section 11; Block 1; Lot 60.2  
R-2 Zone

- - - - - X

Date: January 25, 2024  
Time: 8:07 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

BOARD MEMBERS: DARRELL BELL, Acting Chairman  
JAMES EBERHART, JR.  
JOHN MASTEN  
JAMES POLITI  
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: GERALD JACOBOWITZ

- - - - - X

MICHELLE L. CONERO  
Court Reporter  
Michelleconero@hotmail.com  
(845) 541-4163

2                   MR. BELL: We have Castle USA  
3                   Corp/July 4Ever back here. This has  
4                   been held over since July.

5                   MR. DONOVAN: The hearing has  
6                   been continued. You're up, Jerry, if  
7                   you want. Do you wish the Board to  
8                   proceed tonight with the short  
9                   membership?

10                  MR. JACOBOWITZ: I'd like the  
11                  Board to proceed to listen to me.

12                  MR. DONOVAN: We're always happy  
13                  to listen to you.

14                  MR. JACOBOWITZ: Then I'm going  
15                  to look at every one of them and make  
16                  the judgment whether or not I want to  
17                  shoot the dice.

18                  I would like to bring some  
19                  things -- I would like to bring a few  
20                  things to the attention of the Board.  
21                  There's been a lot of paperwork  
22                  submitted to you, quite a bit of it,  
23                  and I apologize for some of it.  
24                  There are so many ways of approaching  
25                  this situation, that a fertile mind

2 and a creative mind comes up with  
3 lots of thoughts and ideas, and  
4 sometimes it's hard to harness those.  
5 I'm in the position of being a Monday  
6 morning quarterback. I don't want to  
7 be in that position because Monday  
8 morning quarterbacks always say  
9 somebody did something wrong,  
10 somebody didn't do something they  
11 should have and therefore it would  
12 have been a different result. I'd  
13 rather say that I'm a 20/20 hindsight  
14 analyst. The hindsight we have here  
15 is 42 years. The original use  
16 variance was granted in 1982. This  
17 is 2024. We've had 42 years of  
18 experience with this particular  
19 property and this particular use.

20 What brings us here to the  
21 attention of the Zoning Board of  
22 Appeals in view of the fact it's had  
23 such a long history? Well, if you  
24 read the history of this, and I sat  
25 at the ZBA office with the files --

2 actually, no. I sat at the town  
3 clerk's office with the files. I  
4 went through them all and it became  
5 extremely clear that there's a lot of  
6 confusion, a tremendous amount of  
7 confusion.

8 We're here because of three  
9 reasons. One is that the Building  
10 Department, when confronted with the  
11 issue of violations on this property  
12 at a meeting that was held between  
13 Mr. Sagaria, who was the trespasser  
14 on the property, and with the  
15 Building Department, the Building  
16 Department expressly said they are  
17 not going to take any action because  
18 it's so confusing, they need you.  
19 They need the ZBA to hone in on some  
20 of the issues. In a transcript of a  
21 meeting that was held between -- a  
22 meeting that was held between Mr.  
23 Sagaria and Mr. Campbell on June 22,  
24 2023, there are five different pages,  
25 all of which say in them that it is

2 too confusing and that the Building  
3 Department wants to get the ZBA  
4 involved to get clarification. I  
5 think Mr. Campbell thought that  
6 Sagaria was going to make an  
7 application to you, but he didn't.  
8 My client, who is the owner of the  
9 property, made this application that  
10 is now before you.

11 One of the main purposes of us  
12 being here is to clarify what it is  
13 that is and isn't allowed on this  
14 property. That decision of the  
15 Building Department was based on six  
16 alleged violations, three of which  
17 you've already dealt with previously.  
18 There are three other items still  
19 outstanding.

20 The owners want to comply. They  
21 don't want to have property that's  
22 subject to notices of violation.  
23 They have an impetus to be here to  
24 try to resolve these ambiguities.

25 The third thing is that time

2 flies when you're having fun. 42  
3 years have gone by. This property is  
4 not going to move. It's going to  
5 stay right where it is. It is in the  
6 interest of the owner, as well as the  
7 Town, to have more definite standards  
8 about what this use variance says  
9 that was granted originally in 1982  
10 and then subsequently two other times  
11 was amended and extended. So that's  
12 the reason we're here.

13 What is it that we want from you  
14 folks in order to satisfy these three  
15 points that I've just made. The 1982  
16 decision had one limitation. Only  
17 one. Any structure had to be  
18 submitted back to your Board for  
19 consideration. It didn't say  
20 anything about other uses, accessory  
21 uses, parking, storage, trailers,  
22 tractor trailers. It said nothing  
23 about any of that. However, this is  
24 an ongoing business. They have  
25 trucks that come there. They have

2 cargo containers. They have  
3 trailers. Over the years they used  
4 the property in a way that they  
5 believe was reasonable and necessary  
6 in order to carry out their business  
7 of wholesaling and storage of class  
8 C, class C, fireworks. Not class B.  
9 Class C.

10 A structure was put on the  
11 property, and it was a manufactured  
12 home. It's been used as an office.  
13 Our position is we're in an R Zone.  
14 If we want to use this structure as a  
15 residence, we have a right to do that  
16 under your zoning. It's a permitted  
17 use in this zone to have a  
18 residential dwelling. We're going to  
19 use this structure as a residential  
20 structure, a residence. Now,  
21 somebody says the septic may not be  
22 big enough or there should be a rail  
23 on the stairs. All of those are  
24 Building Department matters that they  
25 will inspect and give us notice of



2 what it is that they think we need in  
3 order to satisfy the New York State  
4 Fire Prevention and Building Code.  
5 That's not for your Board. We're not  
6 asking you to decide whether we need  
7 a rail on a front step. That's not  
8 your job. It is the job of the  
9 Building Department to do that. They  
10 have to know what the structure is,  
11 and we will provide whatever the  
12 Building Department wants to assure  
13 them that this is going to be a  
14 residence going forward, which is a  
15 permitted use. We're converting from  
16 an office to a residence in a  
17 residential zone.

18 MS. REIN: May I say something?  
19 I read through everything and it was  
20 very confusing. It seems that the  
21 narrative keeps changing to support  
22 whatever the company wants. As you  
23 said, a manufactured home where it  
24 was an office. Now it's going to be  
25 a mobile home where a person can

2 live. You've got to pick one.

3 MR. JACOBOWITZ: We're not  
4 changing the characterization of this  
5 building. It's a manufactured home  
6 is what the Building Department  
7 called it. We're taking their  
8 language and saying that's what we  
9 have. They determined it's a  
10 manufactured home. Okay. When the  
11 original application was made, it was  
12 for a mobile home. The Building  
13 Department has characterized it as a  
14 manufactured home. We'll use it as a  
15 manufactured home. Tell us what we  
16 need to do to comply with the state  
17 code for this building, this  
18 structure, which you approved, your  
19 predecessors approved that, and we  
20 will then do what is necessary to  
21 satisfy those state codes and your  
22 own local building codes as they may  
23 apply.

24 MS. REIN: Excuse me. I can see  
25 calling it a manufactured home, but

2 it was also used -- it was used as an  
3 office. It was never called a  
4 residence.

5 MR. JACOBOWITZ: The building  
6 itself is a residential building.  
7 It's got three bedrooms, a bathroom,  
8 a kitchen and a living room.

9 MS. REIN: But that's not what  
10 the company said it was for.

11 MR. JACOBOWITZ: But that was  
12 then. Right today, in 2024, your  
13 zoning allows a residence in that  
14 zone. We are going to use it as a  
15 residence. The fact that it was  
16 historically used as an office is not  
17 relevant at this point. We're  
18 abandoning the use of it as an  
19 office. We want to live in it. If  
20 it's a permitted use under the  
21 zoning, then why can't we do it?  
22 We're complying with the zoning.

23 MR. BELL: That's always been  
24 R-1 in that area?

25 MR. JACOBOWITZ: Yes.

2 MR. BELL: It's always been R-1?

3 MR. MATTINA: It's always been  
4 an R-1, but that's not the issue.

5 MR. BELL: Right. I'm just  
6 asking. Okay.

7 MR. JACOBOWITZ: So that's the  
8 residential. Your point is a good  
9 point. You said why have I thrown so  
10 many arguments out. There's many  
11 reasons why this is permitted. If  
12 you say, well, it's not a residence  
13 per se. Okay. You can have it lived  
14 in by someone who is a resident  
15 employee of the company. As a  
16 security device that person can live  
17 in that structure. Mr. Esposito is a  
18 principal of the company who would be  
19 living in the house as a condition of  
20 his employment. That's another  
21 theory on which you could say that  
22 this house -- that this building can  
23 be used as a residence. I think the  
24 simplest one is it's in an R Zone and  
25 it's a residence.

2 MR. DONOVAN: Jerry, if I can  
3 ask this question. So back in  
4 September, you know, as the Board has  
5 done their best and I've done my best  
6 to read through what's happened in  
7 the last 42 years, we asked you to  
8 tell us what you really wanted us to  
9 consider, right. On October 16th you  
10 wrote a very excellent letter,  
11 exactly what the Board was asking  
12 for. We want your opinion, your  
13 interpretation of six separate items,  
14 three of which the Board answered,  
15 three of which still are a conundrum.

16 The first one, because that's  
17 what we're talking about right now,  
18 the question that you wanted this  
19 Board to answer was, is the mobile  
20 home approved by the 2003 variance a  
21 habitable residence in an R-1 Zoning  
22 District with accessory office use  
23 provided occupancy is required as a  
24 term of employment. I'm going to  
25 tell you just my view where I

2 struggle with that, because once the  
3 use variance is issued, it's a  
4 permitted use. I don't read the 1982  
5 use variance, the 2003 area variance  
6 or the 2004 area variance to say  
7 anything about a residence. I don't  
8 know how the Board could interpret  
9 those as saying you're allowed to  
10 have a residence. I'm not saying  
11 that you can't. I'm saying it's a  
12 Building Department determination as  
13 to whether or not that permitted use  
14 is permitted now on this property.

15 MR. JACOBOWITZ: Our position is  
16 that our use of that building is --  
17 we're announcing it publicly. We're  
18 committing to whatever it is that's  
19 necessary, that that building is  
20 going to be used as a residence, and  
21 a residence is allowed in that zone.  
22 Whether it was used for 42 years as a  
23 barn or as whatever else it was used,  
24 an office, doesn't mean we lost our  
25 right today to have a residence in a

2 residential zone.

3 MR. DONOVAN: Just bringing it  
4 back. As I read the Code Compliance  
5 determination back this summer, it  
6 said a manufactured home is not  
7 permitted on a single lot, citing  
8 Code Section 185-37. You did not ask  
9 for a variance, either a use variance  
10 or an area variance. You asked for  
11 an interpretation. You asked did the  
12 1982 or 2003, specifically, allow for  
13 a habitable residence with accessory  
14 office use provided occupancy is  
15 required as a term of employment. I  
16 don't see that -- I'm just giving you  
17 my opinion. I don't see that  
18 anywhere in the 2003 or 1982 or 2004  
19 variances. I don't see residence.

20 Does anybody else on the Board  
21 see residence anyplace?

22 MR. POLITI: No.

23 MR. EBERHART: No.

24 MR. BELL: No.

25 MR. MASTEN: No.

2 MS. REIN: No.

3 MR. JACOBOWITZ: It was a  
4 residence back in 1982. It was a  
5 residence in -- excuse me. A  
6 residence was allowed in 1982. A  
7 residence was allowed in 2003. A  
8 residence was allowed in 2004. A  
9 residence is allowed in 2024.

10 What we want from your Board is  
11 to -- so that the Building Department  
12 knows, you're saying that a  
13 residential use in a residential zone  
14 is a permitted use, and this property  
15 is a residential zone. We don't need  
16 any more. That's it. They're going  
17 to look at the state Construction  
18 Code and the Fire Prevention Code to  
19 see that we comply with whatever the  
20 applicable requirements are.

21 MR. DONOVAN: You want an  
22 interpretation of the code, not of  
23 the prior variance. If you're asking  
24 me to advise the Board was this  
25 discussed in the prior variance, I'd



2 love to see it. I don't see it  
3 anywhere, though.

4 MR. JACOBOWITZ: We're asking  
5 the Board to say that it's a  
6 residential use -- that it can be a  
7 residential use in a residential  
8 zone, notwithstanding whatever it was  
9 characterized as in 1982, 2002, 2003.  
10 Whatever those were do not prevent it  
11 from being a residence today. That's  
12 the decision, because otherwise the  
13 Building Department says, well, the  
14 ZBA says it's not a residence because  
15 of the arguments you just made, Mr.  
16 Donovan. You're reading what was  
17 done for 42 years. Well, this is 42  
18 years later. We want to change the  
19 use to a residence. It's allowed in  
20 that zone. That's what we would like  
21 to have.

22 MR. DONOVAN: So that's a little  
23 different than what you asked us on  
24 October 16th, though.

25 MR. JACOBOWITZ: Yes, it is,

2 because as I looked at the map and I  
3 looked at the table --

4 MR. DONOVAN: You never come  
5 without leaving my head spinning  
6 somehow, Jerry, I have to tell you.

7 MR. JACOBOWITZ: I looked at the  
8 table of uses and the first use  
9 allowed is a residence. I said why  
10 are we fighting about whether we can  
11 put a residence in a residential  
12 zone. The only issue is it was  
13 originally not a residence. Well,  
14 it's converted from an office to a  
15 residence.

16 MR. BELL: You were using it as  
17 an office?

18 MR. JACOBOWITZ: I'm sorry?

19 MR. BELL: You were using it as  
20 an office?

21 MR. JACOBOWITZ: That's right.

22 MR. BELL: Now you want to get  
23 it converted to a residence?

24 MR. JACOBOWITZ: Correct.

25 MR. BELL: We're talking about a

2 mobile home?

3 MR. JACOBOWITZ: We're talking  
4 about a manufactured home.

5 MR. BELL: What's the difference  
6 between a manufactured home and a  
7 mobile home?

8 MR. JACOBOWITZ: There's a  
9 section of the state law --

10 MR. BELL: I'm looking at  
11 185-37, individual mobile homes on  
12 individual lots. "Mobile homes on  
13 individual lots shall not be  
14 permitted in any district."

15 MR. JACOBOWITZ: But the  
16 Building Department said it's a  
17 manufactured home. It doesn't matter  
18 what we called it. They called this  
19 a manufactured home.

20 MR. BELL: In the beginning it  
21 was -- they called it a mobile home,  
22 then it moved to manufactured.

23 MR. DONOVAN: I don't mean to  
24 put you on the spot, Joe. You say  
25 the manufactured home is not

2 permitted. Could you let the Board  
3 know what the basis of your opinion  
4 is?

5 MR. MATTINA: Basically 185-37  
6 says mobile homes are not permitted.  
7 The federal manufactured home HUD, in  
8 1974, said a mobile home is  
9 considered a manufactured home. You  
10 can call it a manufactured home. You  
11 can call it a trailer. You can call  
12 it a mobile home. It's the same  
13 thing. It's a name that HUD said --

14 MR. BELL: Everywhere I've been,  
15 I thought it was the same.

16 MR. DONOVAN: Joe, if they built a  
17 single-family residential home --

18 MR. MATTINA: It would be fine.  
19 That's not the issue. It can be a  
20 residence. You just can't have a  
21 mobile home there.

22 MR. EBERHART: If we change the  
23 terminology and we say it's a  
24 manufactured home, is it allowed?

25 MR. MATTINA: No. A manufactured

2 is still a mobile home.

3 MR. BELL: Right there it says a  
4 mobile home is not allowed.

5 MR. EBERHART: I'm saying call  
6 it a manufactured home. Is it allowable  
7 now?

8 MR. BELL: No.

9 MR. MATTINA: No. It has to be  
10 a modular home. Modular homes are  
11 regulated by New York State.  
12 Manufactured homes are regulated by  
13 HUD. HUD says they don't call them  
14 mobile homes anymore, they call them  
15 manufactured homes. It's the same  
16 thing.

17 MR. JACOBOWITZ: I can't put my  
18 hands right on it, but I believe I  
19 sent it through to Mr. Donovan. In  
20 this executive law of the State of  
21 New York, there's a definition of  
22 manufactured home. It provides that  
23 it cannot be excluded from any zoning  
24 district in the state.

25 MR. BELL: Where did you get

2 that from?

3 MR. JACOBOWITZ: Is my memory  
4 correct that I sent it to you?

5 MR. DONOVAN: I don't remember  
6 exactly what it said, Jerry, but that  
7 does sound right to me. You did send  
8 me something about manufactured  
9 homes.

10 MR. JACOBOWITZ: If that section  
11 says what I just said it says, with  
12 all due respect to your  
13 interpretation and characterization,  
14 the state law takes precedence over  
15 the local Building Department's  
16 characterization of the property. He  
17 is characterizing it as a manufactured  
18 home, that puts us within the  
19 protection of the state law.

20 MS. REIN: Joe, is that the  
21 case, what he just said?

22 MR. DONOVAN: That's above his  
23 pay grade.

24 MR. MATTINA: Exactly.

25 MR. BELL: I was going to ask

2 where we could find it to read it.

3 MR. JACOBOWITZ: You need to see  
4 that section. I thought I had it  
5 here, but I don't see it offhand.  
6 It's a provision of the state law. I  
7 think it's in the Executive Law  
8 Section 6 something. It defines a  
9 manufactured home and says you cannot  
10 exclude them from anyplace by a  
11 zoning provision. That takes  
12 precedence over whatever your law  
13 says -- whatever the building  
14 inspector says your law says.

15 MR. DONOVAN: I don't know the  
16 answer to that. I believe that Jerry  
17 has sent me, because he sent me a  
18 number of e-mails. I'm not in a  
19 position to answer that question.

20 MR. JACOBOWITZ: I understand.  
21 I didn't know we were going to get to  
22 that point tonight, otherwise I would  
23 have flagged it for you.

24 MS. REIN: If that's the case,  
25 why are we even here? Why is this an

2 issue?

3 MR. JACOBOWITZ: Because the  
4 Building Department --

5 MR. DONOVAN: The Building  
6 Department has said mobile homes and  
7 manufactured homes are the same and  
8 they are not permitted. That's what  
9 our code says. Listen, I could say  
10 I'm 6'2".

11 MR. BELL: If that's the case,  
12 it needs to be presented in writing  
13 to us to see.

14 MR. DONOVAN: Jerry, maybe you  
15 want to present it to the Board  
16 instead of an e-mail to me.

17 MR. BELL: If that's the case,  
18 if it's the law and it takes  
19 precedence over what he's saying, I  
20 agree.

21 MR. POLITI: You would have to  
22 see the law first. If it can't be  
23 excluded in your code -- are you  
24 talking about the entire code or a  
25 section of the code?



2 MR. DONOVAN: I don't know the  
3 answer to that.

4 MR. POLITI: You're still  
5 allowing it, but it has to be, I  
6 believe --

7 MR. EBERHART: I was under the  
8 understanding that -- he's saying it  
9 supercedes local code, but I was  
10 under the understanding that a  
11 municipality can --

12 MR. DONOVAN: We're a home rule  
13 state, so we could. Unless the state  
14 has pre-exempted it. There is a  
15 preemption -- I don't know the answer  
16 to these questions because I was  
17 focused on the question that we asked  
18 Jerry to answer. He changed that  
19 question because the 2003 variance  
20 doesn't make any reference to  
21 habitable space at all. You know, I  
22 could say a residence is permitted in  
23 the zone, but the 2003 variance  
24 doesn't mention it so we can answer  
25 that question in the affirmative. If

2 you want to change the question  
3 you're asking, I can't give the Board  
4 good advice on this tonight.

5 MR. BELL: I understand.

6 MR. JACOBOWITZ: To answer the  
7 question about why are we talking  
8 about this, in the June 22, '23  
9 transcript, on page 18, the third  
10 line down, Mr. Campbell, "Yeah,  
11 because, like I said, that the big  
12 thing is to, you know, to really  
13 clarify what is supposed to be there,  
14 what is allowed to be there as far as  
15 the approvals or are they going to  
16 grant a new approval or, you know,  
17 what." That was the official  
18 position of the Building Department.

19 MR. DONOVAN: I think that is  
20 kind of unofficial in a phone call.  
21 I don't know when you put it in  
22 writing it's official. When you tape  
23 a guy that doesn't know he's being  
24 taped, I don't know if that's an  
25 official decision.

2 MR. JACOBOWITZ: We didn't do  
3 this. This came --

4 MR. DONOVAN: I know it's from  
5 somebody else. I can't imagine Jim  
6 Campbell knew he was being taped.

7 MR. JACOBOWITZ: This came to us  
8 from a Supreme Court case where this  
9 transcript was used. We weren't  
10 party.

11 MR. DONOVAN: That wasn't  
12 testimony in court. Jim didn't  
13 testify in court. That's what he  
14 said that was introduced in evidence.

15 MR. JACOBOWITZ: They submitted  
16 this to the court. That's how we got  
17 it. There are other pages where  
18 there's similar kind of references to  
19 the need to have this come before  
20 your Board.

21 The other two items, one is  
22 off-street parking. The Building  
23 Department said we can't have off-  
24 street parking of trucks. Our use  
25 variance didn't prohibit it. It's a

2 reasonable and necessary use of the  
3 property to use the property in the  
4 manner that you approved, and  
5 therefore it should be allowed as an  
6 accessory use.

7 As to containers and cargo  
8 containers, your law went into effect  
9 on February 10, 2014. There have  
10 been trailers and cargo units on this  
11 property since 2001. In the Town's  
12 file, of which you may take judicial  
13 notice, there's a photograph taken in  
14 2003 that shows containers on the  
15 property. The reason that that  
16 picture is in your file is because  
17 the application was made to build a  
18 building and somebody in the Building  
19 Department went out, took a  
20 photograph of the site and also took  
21 a photograph of the driveway that  
22 abuts the site for that 3,000 square  
23 foot new building which never got  
24 built. In the picture it shows  
25 containers. We took the Google Maps,

2 and in 2001, 2004, 2007, 2011 all  
3 have pictures of the site, and there  
4 are cargo and storage trailers on the  
5 site in all of those pictures. That  
6 goes back to 2001, which all predate  
7 your law that says you can't have  
8 cargo trailers in this zone. We  
9 pre-exist.

10 Now, what we put on the wall  
11 over here, and I'm almost finished,  
12 because I'm taking advantage of your  
13 goodwill, and I appreciate it very  
14 much. As I said, we were trying to  
15 get rid of the confusion because  
16 there is no description of what area  
17 is to be used or not used and how  
18 much is to be used. We had the  
19 Minuta architecture firm use a Google  
20 Map and survey. On this map we have  
21 shown in hatch marks the areas that  
22 are used for the trailers and the  
23 storage containers. Our suggestion  
24 is that your interpretation is that  
25 we're allowed to continue to use it,

2 but it must be limited in space to  
3 what we're showing on the plan.  
4 You're not approving a site plan.  
5 You're saying that the condition of  
6 your interpretation is that we cannot  
7 use any area not hatch marked for the  
8 placement of trailers or containers  
9 for parking and storage purposes.

10 MR. DONOVAN: But you could fill  
11 it up? You're saying that you could  
12 fill up that hatched space?

13 MR. JACOBOWITZ: Some of it is  
14 roadway. We designated an area  
15 within which it would be permitted.

16 MR. POLITI: Everything beyond  
17 that is a hill anyway. From the  
18 front, when I went on the site, you  
19 wouldn't be able to use the other  
20 areas anyway.

21 MR. JACOBOWITZ: There are more  
22 areas that could be used.

23 MR. POLITI: It's minimal  
24 because a lot of that is hill. Even  
25 the house is up on the hill. The

2 mobile home. Sorry.

3 MR. JACOBOWITZ: Manufactured  
4 home. You're talking about over  
5 here?

6 MR. POLITI: That's all hill.

7 MR. JACOBOWITZ: Right here  
8 there's a building that shouldn't be  
9 there. There's another building, I  
10 think, next to it that shouldn't be  
11 there. Our plan is getting rid of  
12 those when we get an order from the  
13 Supreme Court evicting the trespasser.

14 MR. POLITI: You've gone to  
15 three -- to see the site, you have  
16 three units of office, if you will,  
17 instead of one. That being one of  
18 them.

19 MR. JACOBOWITZ: There are two  
20 structures there that never got  
21 approved. Those have to be removed.  
22 We're trying to get them removed.  
23 The Google Map things all show -- if  
24 you want to pass that around -- all  
25 show the containers. The dates are

2 on the edge. I think they are also  
3 embossed on the corner. The last two  
4 pictures are in 2003 when the  
5 Building Department went there. The  
6 last two pictures. The other  
7 pictures are all photos of the Google  
8 Maps.

9 MR. DONOVAN: Jerry, on that  
10 topic, I tried to cull out from the  
11 2003 approval exactly what the Board  
12 approved. It's not necessarily  
13 particularly helpful because the  
14 resolution authorized the placement  
15 of the existing office facility  
16 structure at one end of the property,  
17 near the entrance, and the unsecured  
18 removable storage facilities for the  
19 maintenance of equipment onsite,  
20 loading equipment as well as the  
21 boxing that is used to package  
22 fireworks, were taken out of storage  
23 as part of the sale to users.

24 Early on, Jim Raab, when he  
25 spoke, indicated two trailers and the



2 pads upon which the shipping  
3 containers are located, five are  
4 permanent and there could be as many  
5 as eight on the site at one time. I  
6 don't know how this compares to what  
7 Jim Raab said in 2003. Those appear  
8 to be the numbers from 2003, at least  
9 that I could find.

10 MR. JACOBOWITZ: In the December  
11 20th letter to your Board, on the, it  
12 looks like the third page -- fourth  
13 page -- third page, under number 6,  
14 there are four places I pulled out of  
15 the minutes where there was  
16 discussion about the concrete pads,  
17 the construction trailer and the  
18 fireworks storage. The minutes of  
19 September 26th discuss the containers  
20 onsite as between five and eight. On  
21 page 1 of the minutes of August 28,  
22 2003, the last two paragraphs and on  
23 page 2 at various places, the  
24 trailers were identified in the first  
25 three paragraphs. In the minutes of

2 March 2004, the retention of the  
3 trailers was disclosed at page 1,  
4 paragraphs 4 to 7. So these are all  
5 consistent with what the Google Maps  
6 reflect is where these units were  
7 placed and existed at that time.

8 For the record, the Section 616  
9 of the Executive Law, Chapter 18,  
10 Article 21-B, Title 2, Section 616,  
11 "Manufactured homes as single-family  
12 dwellings in residential districts.  
13 A manufactured home that is affixed  
14 to a permanent foundation and conforms  
15 with the identical development  
16 specifications and standards,  
17 including general aesthetic and  
18 architectural standards applicable to  
19 conventional site built single-family  
20 dwellings in the residential district  
21 in which the manufactured home is to  
22 be sited shall be deemed to be a  
23 conforming single-family dwelling for  
24 purposes of the applicable local  
25 zoning law or ordinance." We've been

2 characterized as a manufactured home.  
3 Thank you. We're protected by  
4 Section 616. It's not a new  
5 structure. We're not asking to add  
6 anything. We're just telling you we  
7 want to change the use from office to  
8 a residence, which we're entitled to  
9 do under your zoning law and under  
10 the state law.

11 MR. POLITI: When you read that,  
12 it's affixed to a foundation.

13 MR. JACOBOWITZ: Yes.

14 MR. POLITI: Your building is  
15 not fixed?

16 MR. ESPOSITO: Yes. It's on a  
17 pad.

18 MR. POLITI: It's a pad, not a  
19 foundation?

20 MR. ESPOSITO: It's a concrete  
21 pad.

22 MR. POLITI: That's a concrete  
23 pad. I'm just saying, as a  
24 foundation I would argue the point.  
25 I don't know from building --

2 MR. DONOVAN: I don't think  
3 we're going to resolve that tonight.  
4 I think I need to take a closer look  
5 so I can advise the Board better on  
6 that.

7 MR. BELL: I was thinking the  
8 same thing. It's a slab that you're  
9 setting something on. It's not a  
10 foundation.

11 MR. POLITI: I don't know if it  
12 would be defined that way.

13 MR. MATTINA: That's spot on.

14 MR. DONOVAN: Have you looked at  
15 everyone's eyes? Remember what I  
16 said at the beginning of the meeting,  
17 we'd give you the opportunity to get  
18 a full Board. We did have a few  
19 unexpected absences. The Chairman  
20 did have a death in his family. I'm  
21 sure Greg didn't want his tooth  
22 pulled today.

23 MR. JACOBOWITZ: I understand.  
24 For them to take action, would they  
25 want a resolution from you?

2 MR. DONOVAN: Frequently what  
3 happens is the Board votes and then I  
4 prepare the resolution. They may  
5 want input from me on the issue that  
6 you have raised tonight, which I  
7 acknowledge that I'm fairly certain  
8 you did send to me. As I read  
9 through all of this for the third and  
10 fourth time, I didn't focus on that  
11 specific issue. If the Board wants  
12 to hear from me on that issue --

13 MR. POLITI: Yes.

14 MR. EBERHART: Yes.

15 MR. MASTEN: Yes.

16 MR. BELL: Yes.

17 MS. REIN: Always.

18 MR. BELL: Then we'll make a  
19 motion to keep this hearing --

20 MR. DONOVAN: February 22nd will  
21 be a repeat of January 25th. The  
22 Chairman will be glad to hear that. The public  
23 hearing has been  
24 closed. The applicant has,  
25 accordingly, given us -- subject to

2 the 30-day, they've given us extra  
3 time.

4 MR. JACOBOWITZ: I think that  
5 time may be up. We did it in  
6 December. I'm willing to extend the  
7 time for the Board to consider and  
8 take their action. I think you said  
9 February 22nd.

10 MR. BELL: Correct.

11 MR. JACOBOWITZ: Can we make it  
12 to February 23rd? Is that okay?

13 MR. DONOVAN: Sure. I'll review  
14 what Mr. Jacobowitz sent to me and I  
15 will communicate with the Board.

16 MR. BELL: Is there a motion to  
17 keep this public hearing open?

18 MR. DONOVAN: To hold the  
19 application over is what you do. The  
20 public hearing is closed.

21 MR. BELL: A motion to hold this  
22 over to continue until the 22nd of  
23 February.

24 MR. POLITI: I'll make that  
25 motion.

2 MR. BELL: We have a motion.

3 MS. REIN: I'll second it.

4 MR. BELL: A second from Donna.

5 All in favor?

6 MR. POLITI: Aye.

7 MR. EBERHART: Aye.

8 MR. MASTEN: Aye.

9 MS. REIN: Aye.

10 MR. BELL: Aye.

11 MR. DONOVAN: We look forward to  
12 seeing you in February.

13 MR. JACOBOWITZ: Thank you.  
14 Obviously not being here tonight,  
15 they'll have to read the minutes.

16 MR. BELL: Is there a motion to  
17 approve the minutes from the last  
18 month's meeting?

19 MR. MASTEN: I'll make a motion  
20 to approve the minutes from last  
21 month.

22 MS. REIN: I'll second.

23 MR. BELL: All in favor?

24 MR. POLITI: Aye.

25 MR. EBERHART: Aye.

2 MR. MASTEN: Aye.

3 MS. REIN: Aye.

4 MR. BELL: Aye.

5 The ayes have it.

6 We're going to hold the other  
7 agenda item because Greg is not here.  
8 We'll do that next month as well.

9 MR. BELL: A motion to adjourn.

10 MR. EBERHART: Second.

11 MR. BELL: All in favor?

12 MR. POLITI: Aye.

13 MR. EBERHART: Aye.

14 MR. MASTEN: Aye.

15 MS. REIN: Aye.

16 MR. BELL: Aye.

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18 (Time noted: 8:46 p.m.)

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



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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 5th day of February 2024.

*Michelle Conero*  
\_\_\_\_\_  
MICHELLE CONERO