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

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

----- X

Date: July 28, 2022  
Time: 7:00 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman (recused)  
JAMES EBERHART, JR.  
ROBERT GRAMSTAD  
GREGORY M. HERMANCE (recused)  
JOHN MASTEN  
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVES: JOHN FURST,  
VINNIE PATEL & SAMIR PATEL

----- X

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

1 RIVER LINK HOTELS, LLC

2 CHAIRMAN SCALZO: I'd like to  
3 call the meeting of the Zoning Board  
4 of Appeals to order.

5 The order of business this  
6 evening are the public hearings which  
7 are scheduled. The procedure of the  
8 Board is that the applicant will be  
9 called upon to step forward, state  
10 their request and explain why it  
11 should be granted. The Board will  
12 then ask the applicant any questions  
13 it may have, and then any questions  
14 or comments from the public will be  
15 entertained. The Board will then  
16 consider the applications and will  
17 try to render a decision this evening  
18 but may take up to 62 days to reach a  
19 determination. I would ask that if  
20 you have a cellphone, to please turn  
21 it off or put it on a silent. When  
22 speaking, speak directly into the  
23 microphone. We have our stenographer  
24 recording the meeting minutes.

25 Roll call, please, Siobhan.

1 R I V E R L I N K H O T E L S , L L C

2 MS. JABLESNIK: Darrell Bell is  
3 absent.

4 James Eberhart.

5 MR. EBERHART: Present.

6 MS. JABLESNIK: Robert Gramstad.

7 MR. GRAMSTAD: Here.

8 MS. JABLESNIK: Greg Hermance.

9 MR. HERMANCE: Here.

10 MS. JABLESNIK: John Masten.

11 MR. MASTEN: Here.

12 MS. JABLESNIK: Donna Rein.

13 MS. REIN: Here.

14 MS. JABLESNIK: Darrin Scalzo.

15 CHAIRMAN SCALZO: Here.

16 MS. JABLESNIK: Also present is  
17 our Attorney, Dave Donovan, and our  
18 Stenographer, Michelle Conero.

19 CHAIRMAN SCALZO: Thank you.

20 If you could all please rise for the  
21 Pledge. Mr. Gramstad, if you could  
22 lead us.

23 (Pledge of Allegiance.)

24 CHAIRMAN SCALZO: For those of  
25 you who took a look at the agenda

1 R I V E R L I N K H O T E L S , L L C

2 last week, it has changed. We  
3 changed -- we mixed up the order.

4 Our first applicant this  
5 evening now is River Link Hotels,  
6 LLC, Route 17K in Newburgh. They're  
7 seeking an interpretation of Section  
8 185-27D(1) for kitchen facilities in  
9 hotel and motel units.

10 Is this actually a mail-out  
11 situation, Siobhan?

12 MS. JABLESNIK: I did, actually.  
13 They sent me a letter back but then  
14 said that it's not a referable action  
15 interpretation. Either way, they  
16 said a Local determination.

17 CHAIRMAN SCALZO: Very good.  
18 Thank you.

19 That's a great lead into -- I'm  
20 going to ask Counsel to weigh in on  
21 this one. Counsel, this is an unusual  
22 request for an interpretation. I  
23 don't recall seeing a denial from the  
24 Building Department.

25 MR. DONOVAN: So the Board will

1 R I V E R L I N K H O T E L S , L L C

2 remember from prior conversations  
3 that we're a Board of appellate  
4 jurisdiction. So generally, unless  
5 there's a special permit, we've had  
6 some accessory apartments, but the  
7 case doesn't get to here unless Code  
8 Compliance denies something. Code  
9 Compliance can ask for an  
10 interpretation or they can issue a  
11 denial, and then the denial is  
12 appealed and it gets to us. That's  
13 how 99.9 percent of our cases work.

14 In this case there has not been  
15 a denial. I did speak with Jerry  
16 Canfield from Code Compliance today.  
17 Jerry couldn't be present. He just  
18 actually sent an e-mail. He had a  
19 medical issue and he will not be  
20 here. What he indicated to me in our  
21 conversation is that the information  
22 from the applicant is basically  
23 complete. There's not a building  
24 permit application. He's going to  
25 ask for that application -- first

1 R I V E R L I N K H O T E L S , L L C

2 when we spoke he said he submitted  
3 the application. Jerry told me there  
4 wasn't one. The upshot would be  
5 Jerry is going to issue a denial  
6 letter. That's how this case is  
7 going to get to us procedurally. So  
8 we're covered procedurally.

9 My suggestion to the Board is  
10 that -- Mr. Furst is here. You guys  
11 will meet Mr. Cantor who represents  
12 some folks who are going to object to  
13 it. We open the public hearing,  
14 listen to Mr. Furst's presentation,  
15 if you have any feedback you can give  
16 that feedback, listen to Mr. Cantor's  
17 objection and anyone else's objection,  
18 and then adjourn the matter until  
19 next month when we'll have a formal  
20 denial from Code Compliance.

21 CHAIRMAN SCALZO: Very good.  
22 Thank you, Counsel.

23 That being said, do we have  
24 anyone here from River Link Hotels,  
25 LLC presenting? Please identify

1 R I V E R L I N K H O T E L S , L L C

2 yourself and present your application.

3 MR. FURST: Good evening. My  
4 name is John Furst. I'm an attorney  
5 at Catania, Mahon & Rider in Newburgh,  
6 New York. I represent the applicant,  
7 River Link Hotels. With me here  
8 tonight also is Vinnie Patel and  
9 Samir Patel. They are with the  
10 developers. They're trying to put in  
11 some high-end hotels in the Town of  
12 Newburgh.

13 So as your Attorney had noted,  
14 this is a little bit of an unusual  
15 situation. Just to clarify, I did  
16 receive a referral letter from Jerry  
17 Canfield's office after submitting a  
18 short form building permit application.  
19 That's how I proceeded before the  
20 Zoning Board and I got on the agenda  
21 and whatnot. Although he may not  
22 have officially issued a denial  
23 letter, he certainly referred it over  
24 to the Zoning Board. If you'll  
25 notice in your code, there is a

1 R I V E R L I N K H O T E L S , L L C

2 provision in your code that says even  
3 if you substantially comply with the  
4 procedural requirements, it should  
5 not deny an applicant the ability to  
6 be heard. I thank the Board for  
7 hearing us tonight and understanding  
8 that this will be adjourned until  
9 next month. That's fine. We have  
10 nothing to hide. We're really just  
11 trying to get some answers. I've  
12 been trying to get a hold of Jerry  
13 for a few months now on this one  
14 particular issue, and maybe not --  
15 it's probably not a simple answer.  
16 That's why we're here. That's why  
17 you guys are here. You guys are the  
18 lucky ones I guess.

19 So the site -- the potential  
20 site for the hotel is on the north  
21 side of 17K. It's between the gas  
22 station and the warehouse, just, I  
23 guess, west of 87. Matrix has the  
24 big warehouse there. So there's a  
25 site in between there and the gas



1 RIVER LINK HOTELS, LLC

2 station on 17K, across from the  
3 Orange County Choppers old  
4 restaurant.

5 So we are seeking an  
6 interpretation. We were referred by  
7 the Code Compliance Department to go  
8 to the Zoning Board. It is, as you  
9 noted, Section 185-27D(1) which are  
10 your hotel regulations. I'll read it  
11 real quick. So essentially "Hotel  
12 and motel units shall not contain  
13 kitchen facilities of any type in  
14 more than 25 percent in a particular  
15 hotel or motel complex; shall not be  
16 used as apartments for non-transient  
17 tenants; and shall not be connected  
18 by interior doors in groups of more  
19 than two." So the bottom line here  
20 is only 25 percent of the hotel units  
21 in the Town of Newburgh can contain  
22 kitchen facilities.

23 My client would like to  
24 propose -- they work with this new  
25 concept where it's called suites

1 R I V E R L I N K H O T E L S , L L C

2 where you have a lot of extended  
3 travelers who have work, are staying  
4 not for a night or two but a few  
5 days. Traveling for sports on the  
6 weekends, they're spending a long  
7 weekend in these units, so they'd  
8 like to offer a little bit more than  
9 your typical room. They would like  
10 to propose 50 percent of the units.  
11 These units will contain a sink, a  
12 microwave, a dishwasher and a fridge.  
13 There's no stove, there's no oven and  
14 there's no stovetop. You cannot cook  
15 within the facility, at least not by  
16 an oven.

17 They will charge nightly.

18 Samir can talk a little bit more  
19 about the clientele and the prices.

20 Most guests, like I said, stay  
21 a few days, up to a week. The price  
22 points that we're going to be  
23 charging are really not conducive for  
24 long-term stays. As your code notes,  
25 it's not to be used as an apartment.

1 RIVER LINK HOTELS, LLC

2 It's not to be used for non-transient  
3 guests. These are for guests, again,  
4 that are staying more than a couple  
5 of nights. They're staying a week,  
6 maybe a little bit longer, because of  
7 business or travel sports. The  
8 suites are not considered a dwelling  
9 unit. A dwelling unit has to have a  
10 functional stove in order to be an  
11 independent dwelling unit. Again,  
12 there's just a sink, a microwave, a  
13 dishwasher and a fridge.

14 So the question is does having  
15 a sink, microwave, dishwasher and  
16 fridge constitute kitchen facilities.  
17 We argue that since there's no stove,  
18 that 25 percent requirement should  
19 not apply because we don't have  
20 kitchen facilities.

21 So Samir, if you want to talk a  
22 little bit about the hotel itself.

23 CHAIRMAN SCALZO: Actually, Mr.  
24 Furst, you were doing so well and I  
25 didn't want to interrupt as you were

1 RIVER LINK HOTELS, LLC

2 speaking.

3 Counsel, I have reviewed the  
4 package partially and it occurred to  
5 me, Mr. Hermance and myself need to  
6 recuse ourselves from this  
7 application due to our employer --

8 MR. DONOVAN: Is it something  
9 he said?

10 CHAIRMAN SCALZO: -- having  
11 lands contiguous with the  
12 application. So Mr. Hermance and I  
13 have to go. Our vice chair is absent  
14 this evening. If you could take it  
15 from here. I apologize.

16 MR. DONOVAN: You just  
17 descended down. Vice Chairman Bell  
18 is not here so the Board relies upon  
19 me to organize things.

20 (Chairman Scalzo and Mr.  
21 Hermance left the room.)

22 MR. DONOVAN: Four. We do have  
23 a quorum to proceed. Just so you're  
24 aware, I'm not going to tell any  
25 tales, but Mr. Hermance and Mr.

1 R I V E R L I N K H O T E L S , L L C

2 Scalzo are employed by the New York  
3 State Thruway Authority. The New  
4 York State Thruway Authority has  
5 given an opinion to them that if the  
6 New York State Thruway Authority is  
7 notified of any -- within the mailing  
8 requirements, they are to recuse  
9 themselves. I see the Chairman just  
10 noticed that, so here we are.

11 If you want to have your client  
12 come back up.

13 MR. SAMIR PATEL: Hello,  
14 everyone. My name is Samir Patel, I  
15 am the director of development. We  
16 are the owner and developer of the  
17 two hotels in question along with  
18 River Link Hotels.

19 I just wanted to give a brief  
20 background on who we are and what we  
21 do before I dig into the two hotels.  
22 We're a family-owned group. We are  
23 an integrated development, ownership  
24 and management company. We're based  
25 in Ohio, just outside of Iowa City.

1 RIVER LINK HOTELS, LLC

2 The company started with some pretty  
3 humble beginnings. It was founded in  
4 1982 by Bob and Angie Patel. They  
5 immigrated here from India. They  
6 bought a roadside motel in Argenia,  
7 Arkansas. That was their first  
8 introduction into the hospitality  
9 industry. That was an 18-unit hotel.  
10 It was shutdown at the time. Bob and  
11 Angie worked around the clock, they  
12 renovated it themselves, they opened  
13 it back up one room at a time, made  
14 it profitable, eventually sold it for  
15 a larger property, and that's how  
16 they kind of grew their business in  
17 the late '80s throughout Mississippi  
18 valley. In the early '90s they got  
19 into the world of franchising. In  
20 1994 they were actually the first  
21 minority franchisee within the  
22 Marriott system. I'll fast forward  
23 through a couple of decades of  
24 history for the sake of time. Today  
25 we own and operate 60 hotels across

1 R I V E R L I N K H O T E L S , L L C

2 20 states. We have 12 hotels under  
3 active construction, an additional 40  
4 in our pipeline. We're pretty  
5 experienced developers. Forty years  
6 of history. The next generation of  
7 the family has kind of taken the  
8 reigns of the company now. We're  
9 just trying to build on our previous  
10 generation's legacy.

11 These two hotels that are in  
12 front of you today, they're TownePlace  
13 Suites which is with the Marriott  
14 brand family, and Home2 Suites which  
15 is with the Hilton brand family.

16 Like John said earlier, they're  
17 a little bit larger than your typical  
18 hotel room. The reason for that,  
19 like he said, these are more catered  
20 to traveling nurses, doctors,  
21 businessmen that are in town. They  
22 come in on Sunday, usually check out  
23 on Thursday, Friday, so like three to  
24 five nights. It's meant for those  
25 road warriors, the guys who are maybe

1 R I V E R L I N K H O T E L S , L L C

2 on the road 200 nights during the  
3 year, they don't want to really go  
4 out and eat every night so they want  
5 to have a refrigerator, a microwave,  
6 utensils in their room so they can,  
7 you know, maybe make a meal at home  
8 or just have groceries instead of  
9 eating out every time. Then on the  
10 weekends there might be some sports  
11 teams that are in town. Again,  
12 families that want to maybe save some  
13 money, they're spending so much money  
14 on traveling and whatnot.

15 Like he said, we rent rooms  
16 nightly. Typical rates can go  
17 anywhere from 150 to 300 plus on a  
18 peak night. It's not really meant  
19 for an extended stay term. It's  
20 really meant for like three to five  
21 nights.

22 So thank you guys for letting  
23 me come up here and present and tell  
24 you a little bit more about my  
25 company. I thank you guys for



1 RIVER LINK HOTELS, LLC

2 considering this.

3 MR. FURST: Thank you. So  
4 we're here for any questions, or if  
5 the Board wants to turn it over to  
6 the public.

7 MR. DONOVAN: Typically what we  
8 do at this time is ask Board Members  
9 if they have any questions or comments  
10 and then open it up to the public.

11 Mr. Gramstad?

12 MR. GRAMSTAD: In your paper-  
13 work here it says cook tops will be  
14 available. Doesn't that now turn it  
15 into a kitchen?

16 MR. FURST: They're available  
17 at the front desk if requested.

18 MR. GRAMSTAD: Wouldn't that  
19 now turn it into a kitchen?

20 MR. FURST: It's not installed.  
21 It's really at the front desk if a  
22 guest wants it. I don't believe --  
23 percentage wise how many people  
24 really ask for them?

25 MR. SAMIR PATEL: Very rarely.

1 R I V E R L I N K H O T E L S , L L C

2 We only have two or three on hand.

3 MR. FURST: There's only two or  
4 three cook tops for all 100 plus  
5 rooms.

6 MR. GRAMSTAD: That's all right  
7 now.

8 MR. DONOVAN: Mr. Eberhart?

9 MR. EBERHART: No questions.

10 MR. DONOVAN: Mr. Masten?

11 MR. MASTEN: I have nothing  
12 right now.

13 MR. DONOVAN: Ms. Rein?

14 MS. REIN: I was going to ask  
15 about the cook top also because  
16 that's a concern. Will they be given  
17 the cook top for the length of their  
18 stay? How does that work?

19 MR. SAMIR PATEL: No. It would  
20 only be on request. I mean, like I  
21 said, there would only be two to  
22 three. They have to come down to the  
23 front desk, take it up to their room  
24 for whatever they need to use it for  
25 and bring it back down.

1 RIVER LINK HOTELS, LLC

2 MS. REIN: It's electric?

3 MR. SAMIR PATEL: Yes. You  
4 plug it in. It's portable.

5 MS. REIN: Thank you.

6 MR. DONOVAN: Can you describe  
7 it for us? How big is it? Does it  
8 have burners? What does it have?

9 MR. SAMIR PATEL: Yeah. It's  
10 just an electric cook top, only one  
11 burner. Size wise I don't know. It  
12 would be just one cook top.

13 MR. DONOVAN: The fridge, what  
14 kind of size is that?

15 MR. SAMIR PATEL: It would be a  
16 full size fridge.

17 MR. DONOVAN: It's not a  
18 mini-fridge?

19 MR. SAMIR PATEL: No, it's not  
20 a mini-fridge.

21 MR. DONOVAN: With that -- I'm  
22 sorry. Do you have anything else  
23 you want to say?

24 MR. FURST: No.

25 MR. DONOVAN: We'll open it up

1 R I V E R L I N K H O T E L S , L L C

2 to members of the public for any  
3 questions or comments, which we would  
4 ask if you could state your name  
5 clearly so Michelle can identify who  
6 you are.

7 MR. CANTOR: Good evening,  
8 Members of the Board. My name is  
9 Richard Cantor. I'm with the firm of  
10 Teahan & Constantino in Poughkeepsie.  
11 We're those people up north and east  
12 of here, not too far away. I am here  
13 on behalf of people who operate 1  
14 Crossroads Court.

15 I'm sure you will hear at some  
16 point from Mr. Furst that you  
17 shouldn't listen to us because we're  
18 competitors and we don't have what is  
19 called standing. Let me address that  
20 at the beginning. This is a public  
21 hearing, first of all, so anybody can  
22 speak, assuming they are polite and  
23 appropriate. You don't need standing  
24 to speak at a public hearing. When  
25 we -- if we get far enough to look at

1 R I V E R L I N K H O T E L S , L L C

2 the application, presumably at the  
3 Planning Board, we will determine  
4 whether we have objections, traffic,  
5 environmental, other objections. The  
6 fact that somebody is a competitor  
7 doesn't mean that they can't be  
8 heard, it means that if they have  
9 legitimate planning and zoning issues  
10 they may be heard.

11 I guess it was Mr. Gramstad  
12 that picked up on the point that,  
13 notwithstanding the fine line that  
14 the applicant is treading, there is a  
15 cook top that's available at request.  
16 Initially I wrote to the Board on the  
17 procedural issue that tonight the  
18 Board didn't have -- doesn't have  
19 jurisdiction because the building  
20 inspector or zoning officer hasn't  
21 made any decision yet. Having heard  
22 Mr. Donovan, I understand that by  
23 next month the building inspector  
24 will have issued whatever he chooses  
25 to issue and so the procedural issue

1 R I V E R L I N K H O T E L S , L L C

2 may go away. We will be prepared at  
3 your next meeting to address the  
4 merits of this application.

5 We believe that the applicant  
6 is proposing not one but two hotels  
7 in the configuration that's being  
8 presented, and that the computation  
9 of percentages needs to be taken into  
10 account, the fact that the applicant  
11 is really proposing two hotels.  
12 That's for next month.

13 We appreciate the courtesy of  
14 putting this on early. As you can  
15 see, I'm not ready for the Olympics  
16 at the present moment. It sounds,  
17 based on Mr. Donovan's statement,  
18 that the procedural issue will go  
19 away by your next meeting, and so at  
20 the moment I'm just going to say  
21 thank you for your courtesy. Thank  
22 you for the opportunity to be heard.  
23 We will be here at your next meeting.

24 We will review the application  
25 as it sits in the office of the

1 R I V E R L I N K H O T E L S , L L C

2 Building Department and we will share  
3 with you our thoughts on this issue  
4 of whether or not the applicant is  
5 proposing kitchens and how many  
6 kitchens the applicant is proposing.

7 So it is not a point tonight  
8 going into the merits. Again as I  
9 say, the procedural issue, based on  
10 Mr. Donovan's statement, seems to be  
11 going away.

12 I will again say thank you,  
13 we'll see you next month, and we will  
14 await whatever determination you make  
15 on the application when you receive  
16 it with some action by the Building  
17 Department before you act. Again,  
18 thank you and have a good evening.

19 MR. DONOVAN: Thank you, Mr.  
20 Cantor.

21 Do any other members of the  
22 public wish to speak?

23 (No response.)

24 MR. DONOVAN: Mr. Furst, any  
25 other comments? You don't have to

1 R I V E R L I N K H O T E L S , L L C

2 but I figured I'd ask.

3 MR. FURST: No. We'll look  
4 forward to seeing you guys next month.

5 MR. DONOVAN: Do any Members of  
6 the Board have anything further?

7 MR. MASTEN: I have nothing.

8 MR. DONOVAN: I'll take a  
9 motion to continue the public hearing  
10 until the fourth Thursday in August.

11 MR. MASTEN: I'll make a motion  
12 to continue the public hearing in August.

13 MR. EBERHART: Second.

14 MS. JABLESNIK: August 25th the  
15 meeting is.

16 MR. CANTOR: Can you say that  
17 one more time?

18 MS. JABLESNIK: August 25th.

19 MR. CANTOR: 2-5?

20 MS. JABLESNIK: 2-5.

21 MR. DONOVAN: We have a motion  
22 and a second. All in favor?

23 MR. EBERHART: Aye.

24 MR. GRAMSTAD: Aye.

25 MR. HERMANCENCE: Aye.



1 R I V E R L I N K H O T E L S , L L C

2 MR. MASTEN: Aye.

3 MS. REIN: Aye.

4

5 (Time noted: 7:22 p.m.)

6

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

8

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

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

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

19 IN WITNESS WHEREOF, I have hereunto  
20 set my hand this 6th day of August 2022.

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24

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*Michelle Conero*

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MICHELLE CONERO

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

LAXMI ESTATES II, LLC  
5277 Route 9W, Newburgh  
Section 20; Block 2; Lot 40  
B Zone

----- X

Date: July 28, 2022  
Time: 7:22 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JAMES EBERHART, JR.  
ROBERT GRAMSTAD  
GREGORY M. HERMANCE  
JOHN MASTEN  
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVES: JOHN FURST

----- X

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

1 LAXMI ESTATES II, LLC

2 CHAIRMAN SCALZO: Our second  
3 applicant this evening is Laxmi  
4 Estates II, LLC, 5277 Route 9W in  
5 Newburgh for an interpretation for a  
6 drive-through window usage and the  
7 removal of the restriction of no  
8 drive-through window is permitted in  
9 the decision and resolution by the  
10 ZBA dated April 2005.

11 Siobhan, again is this a  
12 mail-out or --

13 MS. JABLESNIK: Well so I did  
14 -- with the last application too,  
15 they did do the mailings for the  
16 notices but also the same  
17 interpretation, the 239.

18 So the last application sent  
19 out 17 mailings. This one sent out  
20 37 mailings.

21 CHAIRMAN SCALZO: Have we heard  
22 back from County?

23 MR. DONOVAN: We don't need to.  
24 That's what she said first.

25 MS. JABLESNIK: That was my

1 LAXMI ESTATES II, LLC

2 confusing run-on.

3 CHAIRMAN SCALZO: Who do we  
4 have here this evening? I promise I  
5 won't walk out on you. Please state  
6 your name for the record.

7 MR. FURST: Good evening again.  
8 My name is John Furst, I'm an  
9 attorney at Catania, Mahon & Rider in  
10 Newburgh, New York representing the  
11 applicant here, Laxmi, this evening.

12 They're looking to develop a  
13 Dunkin Donuts with a drive-through  
14 along 9W. The actual address is 5277  
15 Route 9W. It's an old car wash  
16 that's been abandoned for awhile.  
17 It's across the street from The  
18 Garden Center near Devito Drive.  
19 It's zoned business.

20 What my client is asking is for  
21 the ZBA to revisit a prior  
22 interpretation it made almost twenty  
23 years ago regarding a Dunkin Donuts.  
24 Essentially he's asking that you guys  
25 remove a condition of that approval/

1 LAXMI ESTATES II, LLC

2 interpretation.

3           You guys made an interpretation  
4 in 2005. Let me go into a little  
5 more detail. So in 2005 there was an  
6 interpretation determination. The  
7 ZBA's determination at that time was  
8 that a Dunkin Donuts constituted a  
9 retail use with an accessory food  
10 preparation shop. The interpretation  
11 said this is not fast food. The  
12 Dunkin Donuts in 2005 was not fast  
13 food. This is important because fast  
14 food is only permitted in your Town's  
15 IB Zone. We're in the B Zone. In  
16 2005, as part of that interpretation  
17 or determination, they made a  
18 condition that said no drive-throughs  
19 can be installed. We're giving you a  
20 favorable interpretation. We agree  
21 with you that it's not fast food,  
22 that it's food preparation, however  
23 the ZBA in 2005 conditioned that on  
24 not having a drive-through installed.

25           So fast forward. In 2008 the

1           L A X M I   E S T A T E S   I I ,   L L C

2           client took that interpretation from  
3           the ZBA, went to the Planning Board  
4           and then obtained Planning Board  
5           approval without a drive-through for  
6           a Dunkin Donuts. However, he never  
7           built the Dunkin Donuts.

8                        As you know, especially with  
9           COVID and everything that's gone on  
10          in the last couple of years,  
11          drive-throughs are essential for many  
12          businesses, especially Dunkin Donuts.

13                       So this is why he's coming back  
14          before the Planning Board, asking  
15          them to remove that condition  
16          regarding the no drive-throughs.

17                       Some highlights. Again, in  
18          this day and age drive-throughs are  
19          very important. Also, the  
20          drive-through definition in your code  
21          talks about any business facilities.  
22          So any business facility can have a  
23          drive-through. I don't believe it's  
24          limited to fast food.

25                       In addition, since 2008 or so,

1 LAXMI ESTATES II, LLC

2 when my client was approved for a  
3 Dunkin Donuts without a drive-  
4 through, there's been two subsequent  
5 approvals for coffee shops with  
6 drive-throughs. The Planning Board  
7 approved Cortland Commons in 2017 and  
8 it has a proposed or was proposed for  
9 a Dunkin Donuts. No use variance was  
10 needed. In addition, in 2020 there  
11 was a Ready Coffee that was approved  
12 within an existing shopping plaza on  
13 North Plank Road. Again, that was  
14 found not to be fast food. It didn't  
15 need a use variance. Both of those  
16 properties are also in the same B  
17 Zone where my client's property is.  
18 So something must have changed since  
19 2008.

20 Obviously with COVID and the  
21 pandemic, drive-throughs are very  
22 vital and important. That is why my  
23 client is here now, almost twenty  
24 years later, asking this Board to  
25 remove that condition.

1 LAXMI ESTATES II, LLC

2 CHAIRMAN SCALZO: Thank you,  
3 Mr. Furst.

4 This, again, is another unusual  
5 application in front of the Board  
6 just because of the interpretation,  
7 or the request to remove that.  
8 There's a gap between where you're  
9 discussing. We had the same property  
10 in front of us four years ago, five  
11 years ago. I believe the issue at the  
12 time was not a drive-through at all.  
13 The issue was what the building or  
14 the business was categorized as.

15 I reviewed this a little later  
16 in the day. Siobhan couldn't dig up  
17 the property file for me, for me to  
18 review that. I believe the issue was  
19 the service of food. That's where it  
20 came in. I understand from other  
21 Dunkin Donut models that the food is  
22 not actually prepared on site, it's  
23 prepared somewhere else and then  
24 brought. I'm not sure if this  
25 facility would be the same. I need



1 LAXMI ESTATES II, LLC

2 to do a little more digging into the  
3 last application, because, again,  
4 there's quite a gap between 2004 and  
5 the other application.

6 MR. FURST: There was an  
7 application. I think they ended up  
8 withdrawing that application because  
9 it was for a use variance. You all  
10 know how difficult it is to obtain a  
11 use variance.

12 CHAIRMAN SCALZO: Anyway,  
13 Counselor, I'm going to lean on you  
14 here to help us with a little  
15 direction. What are we looking for  
16 here to --

17 MR. DONOVAN: Well I have my  
18 own confusion, Mr. Chairman, because  
19 obviously the Board issued the  
20 variance in 2005. None of us were  
21 here. I have no idea if -- you know,  
22 the condition no drive-through window  
23 be installed in the future drops in  
24 out of nowhere. I mean there's no  
25 finding. There's no underlying

1 LAXMI ESTATES II, LLC

2 reason why this is not permitted. I  
3 don't see it, unless the code was  
4 different back in 2005.

5 CHAIRMAN SCALZO: Perhaps  
6 there's meeting minutes from the  
7 Planning Board.

8 MR. FURST: I reviewed those  
9 minutes surrounding that  
10 interpretation and I couldn't find a  
11 reason why. It seemed almost like  
12 one of the board members kind of just  
13 threw it out there, like hey, why  
14 don't we have a condition there's no  
15 drive-through, and everyone else was  
16 like okay, sure, and next thing you  
17 know there's that condition. I  
18 couldn't find it from the minutes, at  
19 least based upon the minutes that  
20 were --

21 MR. DONOVAN: I don't see  
22 anything in the bulk table, unless I  
23 missed it, prohibiting a  
24 drive-through as accessory to the  
25 Dunkin Donuts. Our definition talks

1 LAXMI ESTATES II, LLC

2 about any business facility, as you  
3 quoted before, including fast food  
4 and convenience, or all or any part  
5 of the business based on customers  
6 driving through to obtain orders or  
7 walk-in facility to a window to pick  
8 up a small number of items. That may  
9 not include food preparation but it  
10 doesn't say that they're excluded.  
11 It says any business facility,  
12 including, by example, fast food or  
13 convenience stores. It doesn't  
14 eliminate food preparation shops. I  
15 don't understand the condition. I  
16 don't understand why the condition is  
17 there. I think as we all know, you  
18 can impose reasonable conditions when  
19 you issue a variance. That condition  
20 needs to be related to some  
21 legitimate objective of the board.  
22 You know, we infer maybe it was  
23 stacking on 9W.

24 CHAIRMAN SCALZO: That would be  
25 a Planning Board issue, not a Zoning

1 LAXMI ESTATES II, LLC

2 Board issue.

3 MR. DONOVAN: There's no  
4 underlying --

5 MR. FURST: It's also 9W, so we  
6 have to go to New York State  
7 Department of Transportation. They  
8 are going to really drive the bus on  
9 this one as far as traffic concerns.

10 CHAIRMAN SCALZO: Right.  
11 Especially with the Dollar General  
12 going in right across the street.  
13 It's definitely a distressed  
14 property. Boy, would this improve  
15 that area, that's for sure.

16 Back to Counsel. I'm sorry I  
17 kind of interrupted your thought  
18 process.

19 MR. DONOVAN: My thought  
20 process is, listen, so we can say it  
21 happened a long time ago so the  
22 statute of limitations has lapsed.  
23 That's not really relevant to what's  
24 a good idea or not a good idea. I  
25 personally would like to know why was

1 LAXMI ESTATES II, LLC

2 the condition for no drive-through  
3 window proposed. There's nothing in  
4 the record before us that shows that.  
5 If you want to go back and take a  
6 look at the other -- was there one or  
7 two of them?

8 CHAIRMAN SCALZO: This  
9 particular site was totally separate  
10 from the other application. The last  
11 time we saw this property, there was  
12 another proposed Dunkin Donuts, and  
13 that determination was reconsidered  
14 or -- it was considered a convenience  
15 store because not only they had food  
16 prepared somewhere else and sold  
17 there, but they had gum, soda, iced  
18 tea.

19 I need to dig in a little more,  
20 with the assistance of Counsel,  
21 myself. Now I'll look to the Members  
22 of the Board here. I appreciate your  
23 presentation.

24 While we are here, I will, in  
25 this case, open this up to any

1 LAXMI ESTATES II, LLC

2 members of the public that wish to  
3 speak about this application.

4 (No response.)

5 CHAIRMAN SCALZO: All right.  
6 So I'll look to any Members of the  
7 Board that have any other questions,  
8 or our preference is to wait for a  
9 little more guidance from Counsel.

10 MS. REIN: I just don't even  
11 understand why this is a condition.

12 CHAIRMAN SCALZO: That's what  
13 we need to figure out.

14 MR. DONOVAN: It would be nice  
15 to hear from Code Compliance as to --  
16 Jerry has been here awhile. Maybe he  
17 has some idea. Mr. Furst is telling  
18 us there's nothing he's found in the  
19 record.

20 MR. FURST: I actually met with  
21 Jerry, Mark Taylor and Pat Hines back  
22 in January of 2022 trying to kind of  
23 decipher not only the history on this  
24 specific property but also the other  
25 approvals that I mentioned with the

1 LAXMI ESTATES II, LLC

2 Dunkin Donuts and Ready Coffee. I've  
3 got to be honest with you, everyone  
4 seemed a little confused after our  
5 meeting. Again, I guess you guys are  
6 the lucky ones. That's why you get  
7 paid big bucks, right.

8 CHAIRMAN SCALZO: One of us maybe.

9 MR. DONOVAN: Maybe, Mr.  
10 Chairman, if we want to dig back. Do  
11 we have those minutes available back  
12 in 2005?

13 MS. JABLESNIK: I'm sure they're  
14 in the file.

15 MR. DONOVAN: Do you want to  
16 dig into the minutes and provide them  
17 to the Board to see if there is any  
18 basis? If the Chairman wants to look  
19 at the other application --

20 CHAIRMAN SCALZO: I'm not sure  
21 if that's -- I'll look at it but I'm  
22 not sure that really -- the other  
23 application, when they came in they  
24 didn't present the determination from  
25 2004. That would have made that one

1 LAXMI ESTATES II, LLC

2 probably end a little differently.

3 MR. DONOVAN: From the decision  
4 itself you cannot come up with a  
5 reason as to why there's no drive-  
6 through window. It's all speculation  
7 on why that may be. If you want to  
8 do your due diligence before you take  
9 any action, there's certainly nothing  
10 wrong with that. If you want to say  
11 our agendas are just going to get  
12 longer and longer and longer if we  
13 put everything over to the following  
14 meeting --

15 CHAIRMAN SCALZO: I thank you,  
16 Counsel.

17 I'm going to look to the Board  
18 for a motion to keep the public  
19 hearing open while we can gather more  
20 information.

21 MR. HERMANC: I'll make a  
22 motion to keep the public hearing open.

23 MR. MASTEN: I'll second it.

24 CHAIRMAN SCALZO: We have a  
25 motion from Mr. Hermance. We have a



1 LAXMI ESTATES II, LLC

2 second from Mr. Masten. Roll on  
3 that, please, Siobhan.

4 MS. JABLESNIK: Mr. Eberhart?

5 MR. EBERHART: Yes.

6 MS. JABLESNIK: Mr. Gramstad?

7 MR. GRAMSTAD: Yes.

8 MS. JABLESNIK: Mr. Hermance?

9 MR. HERMANCE: Yes.

10 MS. JABLESNIK: Mr. Masten?

11 MR. MASTEN: Yes.

12 MS. JABLESNIK: Ms. Rein?

13 MS. REIN: Yes.

14 MS. JABLESNIK: Mr. Scalzo?

15 CHAIRMAN SCALZO: Yes.

16 The public hearing will remain  
17 open --

18 MR. DONOVAN: Until the August  
19 meeting.

20 MR. FURST: Anything I have  
21 with respect to the 2005  
22 interpretation I'll forward to Dave.

23 MR. DONOVAN: Forward it to  
24 Siobhan and she'll circulate it to  
25 everybody. If you have meeting

1 LAXMI ESTATES II, LLC

2 minutes or notes from your meetings  
3 with the town engineer, as well as  
4 anyone else, that may be helpful too.

5 MR. FURST: Correct. My review  
6 of the minutes, my recollection is I  
7 couldn't find a rhyme or reason why  
8 they attached that condition. I'll  
9 certainly share what I have and we'll  
10 reconvene next month.

11 CHAIRMAN SCALZO: Thank you.

12 MR. DONOVAN: Not to muddy the  
13 waters, this was never built?

14 MR. FURST: No. Again, it was  
15 approved. Without having the  
16 drive-through, it's really a no go.  
17 That's why I was trying to get this  
18 question answered before even going  
19 and spending the time and money on  
20 construction drawings, site plans for  
21 a Dunkin Donuts. If you can't have a  
22 drive-through --

23 MR. DONOVAN: Is there any  
24 thought of treating this as a new  
25 application? The variance would have

1 LAXMI ESTATES II, LLC

2 lapsed.

3 MR. FURST: Essentially what I  
4 was told through Mark Taylor and  
5 Jerry is if you get that restriction  
6 lifted from the 2005 interpretation,  
7 then you're free to go to the  
8 Planning Board and then duke it out  
9 with the Planning Board.

10 MR. DONOVAN: Otherwise you  
11 would be --

12 MR. FURST: Otherwise the  
13 Planning Board says we can't give you  
14 a drive-through because of this  
15 restriction.

16 MR. DONOVAN: It wasn't an area  
17 variance, it was an interpretation.

18 MR. FURST: It was just an  
19 interpretation. Again, it was a favorable  
20 interpretation but it had --

21 MR. DONOVAN: This oddball  
22 condition.

23 MR. FURST: Correct. So the  
24 Planning Board essentially -- today  
25 they can't approve it because they've

1 LAXMI ESTATES II, LLC

2 got this condition on this property  
3 that you can't have a drive-through.  
4 So if we can get that lifted, then we  
5 will go before the Planning Board,  
6 iron out all the traffic stuff, go  
7 before the New York State DOT and  
8 make sure everybody is happy with the  
9 traffic concerns. We're just looking  
10 to step up to the plate and get in  
11 the game, but we can't do that until  
12 we get this restriction lifted.

13 CHAIRMAN SCALZO: Thank you  
14 very much.

15

16 (Time noted: 7:37 p.m.)

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L A X M I E S T A T E S I I , L L C

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

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 6th day of August 2022.

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

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

JOHN TILL, ARCHITECT  
FOR KEITH PEREZ

50 O'Dell Circle, Newburgh  
Section 51; Block 1; Lot 25  
R-1 Zone

----- X

Date: July 28, 2022  
Time: 7:37 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JAMES EBERHART, JR.  
ROBERT GRAMSTAD  
GREGORY M. HERMANCE  
JOHN MASTEN  
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVES: JOHN TILL

----- X

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

1           JOHN TILL / KEITH PEREZ

2                   CHAIRMAN SCALZO:  Our next  
3           applicant this evening is John Till,  
4           Architect, for Keith Perez, 50 O'Dell  
5           Circle, Newburgh, out on Orange Lake,  
6           seeking an area variance of  
7           increasing the degree of non-  
8           conformity of the combined side yards  
9           to build a roof over an existing  
10          nonconforming rear deck.

11                   Do we have mailings on this,  
12          Siobhan?

13                   MS. JABLESNIK:  This applicant  
14          sent out 62 letters.

15                   CHAIRMAN SCALZO:  62 letters.  
16          Very good.

17                   Who do we have here?

18                   MR. TILL:  John Till, Architect  
19          for Keith Perez.

20                   I'm here tonight for our  
21          project.  We've submitted to the  
22          Building Department for construction  
23          approval.  He referred us to the ZBA  
24          based on the -- he's looking for a  
25          combination of both side yards.  It's

1 JOHN TILL / KEITH PEREZ

2 required to be 80 feet and ours is  
3 shy of that.

4 It's currently an existing  
5 single-family residence on 50 O'Dell.  
6 The current scope of work is that  
7 we're going to be covering an  
8 existing -- a portion of the existing  
9 deck on the rear of the building.

10 We provided a survey that shows  
11 -- an existing survey that shows the  
12 existing deck line across the rear of  
13 the property. The architectural  
14 plans and site plans show a portion  
15 of that in the center of the building  
16 to be covered. The addition is  
17 within the existing -- within the  
18 confines of the existing building,  
19 but because they have this bulk table  
20 requirement of 80 feet and ours is  
21 just shy of that, they've referred us  
22 to the ZBA. We aren't increasing our  
23 degree of nonconformity. As you can  
24 see from the survey, our current  
25 setbacks are close to 15 and 20 feet.



1           JOHN TILL / KEITH PEREZ

2           The lot is nonconforming to the  
3           current bulk table.

4                   MR. DONOVAN: Mr. Chairman, if  
5           I can maybe, they're not changing any  
6           of the setbacks. Putting a roof on  
7           the nonconforming -- putting a roof  
8           on increases the degree of non-  
9           conformity because it changes the  
10          mass, increases the mass of the  
11          structure.

12                   You're not changing any of your  
13          setbacks?

14                   MR. TILL: Correct.

15                   MR. DONOVAN: It's just the  
16          roof that increases the degree of  
17          nonconformity.

18                   MR. TILL: Correct. The one  
19          section in the bulk table that the  
20          building inspector is focusing on is  
21          the combination of both side yards  
22          have to equal 80 feet. Our addition  
23          is just shy of that. The existing  
24          conditions are even less than that.  
25          So we're still within the existing

1           JOHN TILL / KEITH PEREZ

2           nonconforming side yards currently.

3                   I talked to the building  
4           inspector. There was an exception in  
5           the Zoning Code that does allow --  
6           that would allow this addition  
7           without a variance, but the lot size  
8           is nonconforming. I think it's  
9           slightly under an acre. The  
10          requirement for that zone is 1 acre.  
11          The exception in the code doesn't  
12          apply to us because our lot is too  
13          small. He had sent us to the ZBA for  
14          that reason, to work out the total  
15          side yard variance.

16                   CHAIRMAN SCALZO: Very good.  
17          Thank you. We are all very familiar  
18          with the very small lot sizes out in  
19          the Orange Lake area. I don't know  
20          of any homes out there that are not  
21          preexisting nonconforming, although  
22          one thing I was struggling to find on  
23          the survey that was prepared is -- I  
24          mean boy, it's got a lot of  
25          information. Everything I ever

1           JOHN TILL / KEITH PEREZ

2           wanted to know about the lot is on  
3           there, except there are no offset  
4           distances from the existing house to  
5           any of the side yards, rear yard or  
6           front yard. That being said, you're  
7           not expanding on the house, so  
8           honestly it really doesn't matter to  
9           me. The area that you want to cover  
10          with this roof, I'll call it the rear  
11          U portion --

12                   MR. TILL: Center portion.

13                   CHAIRMAN SCALZO: This is,  
14           believe it or not, one of the larger  
15           lots out on Orange Lake. I get it.  
16           This is not a very challenging  
17           application in my opinion. You're  
18           putting a roof on an existing deck  
19           area. You might be lucky if one of  
20           your neighbors sees it. That would  
21           be the one -- that would be the south  
22           side. They may be able to see it.  
23           Other than that, nobody else is going  
24           to be able to see it unless they're  
25           on the lake. My opinion is you're

1 JOHN TILL / KEITH PEREZ

2 really not changing the character of  
3 the neighborhood. I've admired that  
4 house plenty. It's lovely what  
5 they're doing to it. It's going to  
6 be an improvement in the neighborhood.

7 Looking at your architecturals,  
8 I do see where it says proposed deck  
9 over existing deck, I see your stair  
10 detail there. They're changing it up  
11 a little bit. We've all visited the  
12 site. I was just kind of curious. I  
13 didn't step on the boards that would  
14 have led to the old tree stump.

15 MR. TILL: And certainly -- we  
16 feel it's certainly the least degree  
17 of variance that would be needed to  
18 complete the cover in that area. The  
19 cover is situated in the center of  
20 the house. We're not extending it  
21 beyond the existing edges of the  
22 house right or left, just towards the  
23 rear.

24 CHAIRMAN SCALZO: Very good.

25 I'm going to look to the Board

1 JOHN TILL / KEITH PEREZ

2 at this point. Ms. Rein, because I  
3 didn't coordinate any reviews with  
4 you, I'm going to give you a pass if  
5 you'd like. If you have reviewed the  
6 property --

7 MS. REIN: I've read everything  
8 I could.

9 CHAIRMAN SCALZO: Okay. If you  
10 have any questions of the applicant's  
11 representative, feel free.

12 MS. REIN: No. I have no  
13 questions at all.

14 CHAIRMAN SCALZO: Very good.  
15 How about you, Mr. Masten?

16 MR. MASTEN: I have none. It's  
17 a beautiful property. Like you say,  
18 the existing properties, they can't  
19 expand too much because of their  
20 proximity to the lake. They were  
21 built years ago.

22 CHAIRMAN SCALZO: Okay. Very good.  
23 Mr. Hermance?

24 MR. HERMANCE: We're not going  
25 to be ruling on the preexisting

1 JOHN TILL / KEITH PEREZ

2 nonconformity of the side lots?

3 CHAIRMAN SCALZO: Right.

4 MR. DONOVAN: That's increasing  
5 the degree because they're changing  
6 the mass of the structure.

7 MR. HERMANCENCE: Okay. I have  
8 nothing further.

9 CHAIRMAN SCALZO: Mr. Eberhart?

10 MR. EBERHART: Nothing.

11 CHAIRMAN SCALZO: How about  
12 you, Mr. Gramstad?

13 MR. GRAMSTAD: Nothing at all.

14 CHAIRMAN SCALZO: At this time  
15 I'm going to look to any members of  
16 the public. Does anyone want to  
17 speak about this application?

18 (No response.)

19 CHAIRMAN SCALZO: It does not  
20 appear so.

21 One last opportunity for the  
22 Board?

23 (No response.)

24 CHAIRMAN SCALZO: No. All  
25 right. So I'll look to the Board for

1 JOHN TILL / KEITH PEREZ

2 a motion to close the public hearing.

3 MR. MASTEN: I'll make a motion  
4 to close the public hearing.

5 MR. EBERHART: I'll second it.

6 CHAIRMAN SCALZO: We have a  
7 motion from Mr. Masten. Was that Mr.  
8 Eberhart? Thank you very much.

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

11 MS. JABLESNIK: Sure. No  
12 problem.

13 Mr. Eberhart?

14 MR. EBERHART: Yes.

15 MS. JABLESNIK: Mr. Gramstad?

16 MR. GRAMSTAD: Yes.

17 MS. JABLESNIK: Mr. Hermance?

18 MR. HERMANCE: Yes.

19 MS. JABLESNIK: Mr. Masten?

20 MR. MASTEN: Yes.

21 MS. JABLESNIK: Ms. Rein?

22 MS. REIN: Yes.

23 MS. JABLESNIK: Mr. Scalzo?

24 CHAIRMAN SCALZO: Yes.

25 Very good. The public hearing

1 JOHN TILL / KEITH PEREZ

2 is now closed.

3 This is a Type 2 action under  
4 SEQRA. Correct, Counselor?

5 MR. DONOVAN: That is correct,  
6 Mr. Chairman.

7 CHAIRMAN SCALZO: Very good.  
8 In this case we are going to go  
9 through our variance criteria, the  
10 first criteria being whether or not  
11 the benefit can be achieved by other  
12 means feasible to the applicant. So  
13 again, can the benefit that they are  
14 trying to achieve be achieved by  
15 other means?

16 MR. EBERHART: No.

17 MR. GRAMSTAD: No.

18 MR. HERMANCE: No.

19 MR. MASTEN: No.

20 MS. REIN: No.

21 CHAIRMAN SCALZO: Well they can  
22 not put it on. Then they wouldn't  
23 have covered outdoor enjoyment.

24 The second, if there's an  
25 undesirable change in the



1 JOHN TILL / KEITH PEREZ

2 neighborhood character or a detriment  
3 to nearby properties.

4 MR. EBERHART: No.

5 MR. GRAMSTAD: No.

6 MR. HERMANCE: No.

7 CHAIRMAN SCALZO: No. I think  
8 it's going to be unseen, unless  
9 you're out on the lake.

10 The third, whether the request  
11 is substantial. By the numbers, just  
12 because we are on a preexisting  
13 nonconforming lot, it seems big. The  
14 improvement is going in the middle of  
15 the structure, so I would say no.

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

20 And the fifth, whether the  
21 difficulty is self-created. This is  
22 relevant but not determinative. Of  
23 course it's self-created, but they're  
24 doing a wonderful job at the  
25 renovation of the dwelling.

1 JOHN TILL / KEITH PEREZ

2 Having gone through the  
3 balancing tests of the area variance,  
4 does the Board have a motion of some  
5 sort?

6 MR. GRAMSTAD: I'll make a  
7 motion to approve.

8 MS. REIN: Second.

9 CHAIRMAN SCALZO: We have a  
10 motion from Mr. Gramstad. We have a  
11 second from Ms. Rein.

12 MS. JABLESNIK: Mr. Eberhart?

13 MR. EBERHART: Yes.

14 MS. JABLESNIK: Mr. Gramstad?

15 MR. GRAMSTAD: Yes.

16 MS. JABLESNIK: Mr. Hermance?

17 MR. HERMANCE: Yes.

18 MS. JABLESNIK: Mr. Masten?

19 MR. MASTEN: Yes.

20 MS. JABLESNIK: Ms. Rein?

21 MS. REIN: Yes.

22 MS. JABLESNIK: Mr. Scalzo?

23 CHAIRMAN SCALZO: Yes.

24 The motions are approved. The  
25 variances are granted. Good luck.

1 JOHN TILL / KEITH PEREZ

2 MR. TILL: Thank you very much.

3 Have a good evening.

4

5 (Time noted: 7:49 p.m.)

6

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

8

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

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

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

19 IN WITNESS WHEREOF, I have hereunto  
20 set my hand this 6th day of August 2022.

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*Michelle Conero*

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MICHELLE CONERO

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

In the Matter of

XIANG ZHEN CHEN

101 North Plank Road, Newburgh  
Section 75; Block 1; Lot 8  
B Zone

----- X

Date: July 28, 2022  
Time: 7:49 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JAMES EBERHART, JR.  
ROBERT GRAMSTAD  
GREGORY M. HERMANCE  
JOHN MASTEN  
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVES: STEVEN BURNS

----- X

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

1 X I A N G Z H E N C H E N

2 CHAIRMAN SCALZO: Next up we  
3 have Mr. Chen, 101 North Plank Road,  
4 Newburgh, a Planning Board referral  
5 for an area variance of an existing  
6 side yard setback of 13.54 feet where  
7 15 is required. The applicant is  
8 looking to expand the seating  
9 capacity with a new 1,465 square foot  
10 addition.

11 Do we have mailings on that,  
12 Siobhan?

13 MS. JABLESNIK: This applicant  
14 sent out 98 mailings. It was sent to  
15 the County and it came back a Local  
16 determination.

17 CHAIRMAN SCALZO: Very good.  
18 That means we can continue.

19 If you would introduce  
20 yourself, please, and let's go  
21 through it.

22 MR. BURNS: My name is Steven  
23 Burns, I'm an engineer with Burns  
24 Engineering Services. I represent  
25 Mr. Chen.

1 X I A N G Z H E N C H E N

2 CHAIRMAN SCALZO: Very good,  
3 Mr. Burns. Good to see you.

4 MR. BURNS: Nice to see you.

5 So we're here this evening to  
6 legalize a nonconforming side yard  
7 setback. We have an existing side  
8 yard setback at the Iron Chef  
9 restaurant of 13.5 feet where a 15  
10 foot minimum is required.

11 The reason that we've been sent  
12 here is because we're currently at  
13 the Planning Board to add a just  
14 under 1,500 square foot addition to  
15 the structure on the other side of  
16 the building. Actually, this area  
17 here, there's a side yard setback --  
18 right there, 13.5 is the back corner  
19 of the kitchen actually.

20 We're here to legalize this and  
21 continue with our site plan -- our  
22 amended site plan and hopefully build  
23 an addition.

24 CHAIRMAN SCALZO: Very good.  
25 Mr. Burns, just so I can summarize,

1 X I A N G Z H E N C H E N

2 you have a preexisting nonconforming  
3 condition at your side yard of 13.5  
4 where 15 is required. Your proposed  
5 addition is not on that side of the  
6 building?

7 MR. BURNS: Yes.

8 CHAIRMAN SCALZO: It's not  
9 going to be increasing that number at  
10 all?

11 MR. BURNS: The number is going  
12 to stay the same.

13 CHAIRMAN SCALZO: The number is  
14 going to stay the same. That's  
15 exactly what I thought it was going  
16 to be. Thank you very much.

17 I'm going to look to the  
18 members of the Board in this case.  
19 Mr. Gramstad, do you have any comments?

20 MR. GRAMSTAD: Not right now.

21 CHAIRMAN SCALZO: How about  
22 you, Mr. Eberhart?

23 MR. EBERHART: Nothing.

24 CHAIRMAN SCALZO: Mr. Hermance?

25 MR. HERMANCE: Nothing.

1 X I A N G Z H E N C H E N

2 CHAIRMAN SCALZO: Mr. Masten?

3 MR. MASTEN: No.

4 CHAIRMAN SCALZO: Ms. Rein?

5 MS. REIN: Well, there are a  
6 couple of things here that weren't  
7 filled out. I don't know if they're  
8 really relevant or it's an issue. On  
9 the assessment form, page 5 of 13,  
10 would the proposed action generate  
11 liquid waste, it says yes and there's  
12 really no information about how much  
13 or what's going to be done with it.  
14 There's no -- it doesn't look like  
15 there's a plan.

16 CHAIRMAN SCALZO: That's a very  
17 good point that you bring up,  
18 although that would be addressed by  
19 the Planning Board. Any type of  
20 discharge from the site, be it  
21 discharge of water which may end up  
22 being an issue, I'm not sure. I  
23 believe seating capacity may play  
24 into this.

25 It's municipal water and sewer.



1 X I A N G Z H E N C H E N

2 Yes?

3 MR. BURNS: Yes.

4 CHAIRMAN SCALZO: It ends up --  
5 great point you're bringing up. With  
6 municipal water and sewer, it's not  
7 as critical as it would be if it were  
8 a private well and septic.

9 MS. REIN: So then if this  
10 stuff is left blank on here, we don't  
11 address it at all then?

12 MR. DONOVAN: So if I may  
13 discuss this a little bit. So SEQRA  
14 we talk about sometimes, not often,  
15 because -- let me just kind of give a  
16 quick overview if I can. So SEQRA is  
17 an acronym for the State  
18 Environmental Quality Review Act. It  
19 regulates actions. Site plans,  
20 subdivisions are actions.  
21 Applications in front of the Zoning  
22 Board can be actions. There are  
23 three types of actions. There's a  
24 Type 1 action. A Type 1 action is an  
25 action that's more likely to have at

1           X I A N G   Z H E N   C H E N

2           least one significant environmental  
3           impact. Unlisted action -- there's a  
4           list of Type 1 actions. I want to  
5           say Type 2 actions are actions not  
6           subject to SEQRA, and there's a whole  
7           list of those. Side yard setbacks  
8           are not subject to SEQRA. Unlisted  
9           actions are all actions that are not  
10          covered in Type 1 or Type 2. So the  
11          applicant has to fill out the EAF.  
12          Obviously they did it for the  
13          Planning Board. This action actually  
14          in front of the ZBA is a Type 2  
15          action, which means once we make that  
16          determination, we can put this in the  
17          shredder.

18                       MS. REIN: Okay.

19                       CHAIRMAN SCALZO: I apologize  
20                       for stepping on what you were saying.  
21                       Typically we won't see a long form in  
22                       here either. We just see the short  
23                       form EAF.

24                       MR. DONOVAN: This happens to  
25                       be the full. This is what you gave

1 X I A N G Z H E N C H E N

2 the Planning Board. Right?

3 MR. BURNS: Yes.

4 MR. DONOVAN: It's important to  
5 the Planning Board as a Type 2  
6 action. It's not important to us.  
7 However, you get an A plus for  
8 reading all of your material.

9 MS. REIN: I always read all of  
10 my material.

11 MR. BURNS: That was a lot to  
12 go through, too.

13 MS. REIN: Yes, it was.

14 CHAIRMAN SCALZO: Ms. Rein,  
15 again thank you. Great comment. Was  
16 there anything else that you wanted  
17 to ask the applicant?

18 MS. REIN: No. The other  
19 question was right in there with it.  
20 I have a feeling it's going to fall  
21 right in there with everything else  
22 that has been told, so I'm good.

23 CHAIRMAN SCALZO: Thank you.

24 Are there any members of the  
25 public that wish to speak about this

1 X I A N G Z H E N C H E N

2 application?

3 (No response.)

4 CHAIRMAN SCALZO: I'm going to  
5 look back to the Board for any more  
6 comments about this preexisting  
7 nonconforming 13.5 where 15 is  
8 required variance.

9 (No response.)

10 CHAIRMAN SCALZO: Very good.  
11 All right. I'll look to the Board  
12 for a motion to close the public  
13 hearing.

14 MR. MASTEN: I'll make a motion  
15 to close the public hearing.

16 CHAIRMAN SCALZO: He got it all  
17 out first. It would be Mr. Masten.  
18 Who was the second?

19 MR. GRAMSTAD: I'll second it.

20 CHAIRMAN SCALZO: Very good.  
21 Mr. Gramstad seconded it. Siobhan,  
22 can you roll on that, please?

23 MS. JABLESNIK: No problem.

24 Mr. Eberhart?

25 MR. EBERHART: Yes.

1 X I A N G Z H E N C H E N

2 MS. JABLESNIK: Mr. Gramstad?

3 MR. GRAMSTAD: Yes.

4 MS. JABLESNIK: Mr. Hermance?

5 MR. HERMANCE: Yes.

6 MS. JABLESNIK: Mr. Masten?

7 MR. MASTEN: Yes.

8 MS. JABLESNIK: Ms. Rein?

9 MS. REIN? Yes.

10 MS. JABLESNIK: Mr. Scalzo?

11 CHAIRMAN SCALZO: Yes.

12 The public hearing is closed.

13 This is a Type 2 action under  
14 SEQRA, which Counsel just explained.

15 I'm going to discuss our factors  
16 which we're weighing, the first one  
17 being whether or not the benefit can  
18 be achieved by other means feasible  
19 to the applicant. With regard to  
20 that side yard that's preexisting  
21 nonconforming, I don't believe we'd  
22 ask him to take a foot and-a-half off  
23 the building.

24 Second, whether there's an  
25 undesirable change in the

1           X I A N G   Z H E N   C H E N

2           neighborhood character or a detriment  
3           to nearby properties by that 13.5  
4           instead of 15 foot offset  
5           requirement. I don't believe so.

6                     The third, whether the request  
7           is substantial. In this case, no.

8                     The fourth, whether the request  
9           will have adverse physical or  
10          environmental effects. What we're  
11          looking at is unchanged.

12                    The fifth, whether the alleged  
13          difficulty is self-created which is  
14          relevant but not determinative. I  
15          believe the applicant purchased the  
16          building in this condition.

17                    MR. BURNS: Yes.

18                    CHAIRMAN SCALZO: Having gone  
19          through the balancing tests, does the  
20          Board have a motion of some sort?

21                    MR. HERMANCE: I'll make a  
22          motion to approve.

23                    MR. EBERHART: Second.

24                    CHAIRMAN SCALZO: We have a  
25          motion from Mr. Hermance. We have a

1           X I A N G   Z H E N   C H E N

2                   second from Mr. Eberhart. Can you  
3                   roll on that, please, Siobhan?

4                   MS. JABLESNIK: Mr. Eberhart?

5                   MR. EBERHART: Yes.

6                   MS. JABLESNIK: Mr. Gramstad?

7                   MR. GRAMSTAD: Yes.

8                   MS. JABLESNIK: Mr. Hermance?

9                   MR. HERMANCE: Yes.

10                  MS. JABLESNIK: Mr. Masten?

11                  MR. MASTEN: Yes.

12                  MS. JABLESNIK: Ms. Rein?

13                  MS. REIN: Yes.

14                  MS. JABLESNIK: Mr. Scalzo?

15                  CHAIRMAN SCALZO: Yes.

16                   The variance is approved. Good  
17                   luck. Nice to meet you face to face,  
18                   Mr. Burns.

19                   MR. BURNS: Thank you. You, too.

20

21                   (Time noted: 7:58 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 6th day of August 2022.

*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

AARON & SUZANNE MAZUREK  
580 Lakeside Road, Newburgh  
Section 13; Block 2; Lot 1  
R-1 Zone

- - - - - X

Date: July 28, 2022  
Time: 7:58 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JAMES EBERHART, JR.  
ROBERT GRAMSTAD  
GREGORY M. HERMANCE  
JOHN MASTEN  
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVES: AARON & SUZANNE  
MAZUREK

- - - - - X

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

1           A A R O N   &   S U Z A N N E   M A Z U R E K

2                   CHAIRMAN SCALZO:   Our next  
3           applicant is Aaron and Suzanne  
4           Mazurek, 580 Lakeside Road in  
5           Newburgh, seeking an area variance of  
6           the front yard, Lakeside Road, to  
7           build a 24 by 24 accessory structure.  
8           This property is a corner lot and has  
9           two front yards.

10                   Siobhan, how many mailings do  
11           we have on this?

12                   MS. JABLESNIK:   This applicant  
13           sent out 36 letters.   The County came  
14           back with a Local determination.

15                   CHAIRMAN SCALZO:   So we can  
16           continue.   We got them all back.

17                   MS. JABLESNIK:   I was very  
18           excited.

19                   CHAIRMAN SCALZO:   That means  
20           nothing to you.   It means a lot to  
21           us.   If the County doesn't send us  
22           back with their review comments, then  
23           we are not allowed by law to finish  
24           up tonight.   Not to say we will or  
25           won't, but we are allowed to in this

1           A A R O N   &   S U Z A N N E   M A Z U R E K

2           case.

3                     Who do we have here with us?

4                     MS. MAZUREK: I'm Susan Mazurek.

5                     This is my husband, Aaron Mazurek.

6                     CHAIRMAN SCALZO: If I've  
7                     captured just about everything that  
8                     you want to say in my brief  
9                     narrative, then we can just go from  
10                    there. If you just stand there and  
11                    if we have any questions for you,  
12                    we'll go from there.

13                    What I'm going to do in this  
14                    case is I'm going to go to Ms. Rein  
15                    and ask if she has any comments  
16                    regarding this?

17                    MS. REIN: No.

18                    CHAIRMAN SCALZO: Okay. Mr.  
19                    Masten, do you have any comments?

20                    MR. MASTEN: I have nothing.

21                    CHAIRMAN SCALZO: You have  
22                    nothing. Okay.

23                    Mr. Hermance, do you have anything?

24                    MR. HERMANCE: No. I visited  
25                    the site and Suzanne explained what

1           A A R O N   &   S U Z A N N E   M A Z U R E K

2           they're trying to do there.  It's  
3           pretty reasonable.

4                   CHAIRMAN SCALZO:  Mr. Eberhart?

5                   MR. EBERHART:  No questions.

6                   CHAIRMAN SCALZO:  Mr. Gramstad?

7                   MR. GRAMSTAD:  No.  None at all.

8                   CHAIRMAN SCALZO:  If somebody  
9           would say something, it would give me  
10          an extra minute to do what I'm trying  
11          to do here.  I couldn't let you get  
12          away with no comments at all.  I was  
13          out there parked in your driveway,  
14          looked around for a little bit.  
15          Thank you for placing it on the  
16          dwelling where -- the garage where  
17          you want it to be.

18                   In looking from that, you're  
19          going 27 feet off the edge of  
20          pavement but your deed goes to the  
21          center of the road.  Right?

22                   MR. MAZUREK:  Yes.

23                   CHAIRMAN SCALZO:  That's what  
24          I'm looking at.  The edge of road is  
25          listed on the survey.  It's kind of a

1           A A R O N   &   S U Z A N N E   M A Z U R E K

2           light line. Looking at that, my  
3           assumption would be that you don't  
4           want to be any closer. I wish Code  
5           Compliance was here. Front yard  
6           setback is what required?

7                   MR. DONOVAN: What district are  
8           we in?

9                   CHAIRMAN SCALZO: R-1. Typically  
10          you've got to assume 25 feet from the  
11          center line for if the Town were to  
12          ever come through, eminent domain.  
13          Really your front property line is 25  
14          feet off the center line of the road.  
15          You're paying taxes for that. I just  
16          want to let you know

17                   MS. MAZUREK: We knew that when  
18          we bought it.

19                   MR. DONOVAN: Your front yard,  
20          that's an accessory structure. 50  
21          feet is the --

22                   CHAIRMAN SCALZO: That's the  
23          primary dwelling.

24                   MR. DONOVAN: Correct.

25                   CHAIRMAN SCALZO: Scaling at 27

1           A A R O N   &   S U Z A N N E   M A Z U R E K

2           from the edge of pavement would  
3           probably put you about 35 feet off  
4           center line. So really 10 feet off  
5           your property line. Do you follow  
6           where I'm going with this?

7                     MS. MAZUREK: Right. I understand.

8                     CHAIRMAN SCALZO: Should the  
9           Town want to come through and edge or  
10          something like that, they need a  
11          little room to work within that 25  
12          feet of the center line. For what  
13          you're trying to do, I have no  
14          objections.

15                    How would you feel if we were  
16          to say that you needed to be a  
17          minimum of 35 feet off the center of  
18          the road?

19                    MS. MAZUREK: That's fine. We  
20          can move it.

21                    MR. MAZUREK: We can probably  
22          do that.

23                    MS. MAZUREK: We have room.

24                    CHAIRMAN SCALZO: You're not  
25          opposed to that?

1           A A R O N   &   S U Z A N N E   M A Z U R E K

2                   MS. MAZUREK:   No.

3                   CHAIRMAN SCALZO:   That was my  
4                   only comment.   So now that the Board  
5                   has heard me say that, that kind of  
6                   stirs up some things.   Does anyone  
7                   else have any comments?

8                   MS. REIN:   No.

9                   CHAIRMAN SCALZO:   Very good.   So  
10                   now I'm going to open it up to any  
11                   members of the public that may want  
12                   to speak about this application.   Is  
13                   there anybody here for this?

14                           (No response.)

15                   CHAIRMAN SCALZO:   No.   Okay.  
16                   One last opportunity for the Board?

17                           (No response.)

18                   CHAIRMAN SCALZO:   No.   Okay.  
19                   Then I'll look to the Board for a  
20                   motion to close the public hearing.

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

23                   MR. GRAMSTAD:   I'll second it.

24                   CHAIRMAN SCALZO:   We have a  
25                   motion from Mr. Masten.   We have a

1           A A R O N   &   S U Z A N N E   M A Z U R E K

2                   second from Mr. Gramstad. Can you  
3                   roll on that, please, Siobhan?

4                   MS. JABLESNIK: Mr. Eberhart?

5                   MR. EBERHART: Yes.

6                   MS. JABLESNIK: Mr. Gramstad?

7                   MR. GRAMSTAD: Yes.

8                   MS. JABLESNIK: Mr. Hermance?

9                   MR. HERMANCE: Yes.

10                  MS. JABLESNIK: Mr. Masten?

11                  MR. MASTEN: Yes.

12                  MS. JABLESNIK: Ms. Rein?

13                  MS. REIN: Yes.

14                  MS. JABLESNIK: Mr. Scalzo?

15                  CHAIRMAN SCALZO: Yes.

16                         So the public hearing is  
17                         closed. You can actually sit right  
18                         down. We're not going to ask you any  
19                         more questions in this case.

20                         So we're going to go through  
21                         our balancing test. Again, this is a  
22                         Type 2 action under SEQRA. The first  
23                         one being whether or not the benefit  
24                         can be achieved by other means  
25                         feasible to the applicant. The



1           A A R O N   &   S U Z A N N E   M A Z U R E K

2           benefit being everybody wants to park  
3           their car in the garage. I know I do.  
4           I would say not really.

5                     The second, if there's an  
6           undesirable change in the  
7           neighborhood character or a detriment  
8           to nearby properties. We all drove  
9           around the neighborhood. Did anybody  
10          see anything that would make you  
11          think that this is going to be out of  
12          character? I did not.

13                    MR. EBERHART: No.

14                    MR. GRAMSTAD: No.

15                    MR. HERMANCE: No.

16                    MR. MASTEN: No.

17                    MS. REIN: No.

18                    CHAIRMAN SCALZO: I'm assuming  
19          with new construction it's going to  
20          be sided and look nice. You probably  
21          have some architectural doors on the  
22          front or something like that.

23                    The third, whether the request  
24          is substantial. It's only  
25          substantial because they have two

1           A A R O N   &   S U Z A N N E   M A Z U R E K

2           front yards. They have a front yard  
3           on North Plank Road and they have a  
4           front yard on Lakeside Road.

5           However, the applicant has agreed to  
6           be at least a minimum of 35 feet off  
7           the center of the road. If we get  
8           that far, then a condition of the  
9           variance approval would be that.

10                   The fourth, whether the request  
11           will have adverse physical or  
12           environmental effects.

13                   MR. EBERHART: No.

14                   MR. GRAMSTAD: No.

15                   MR. HERMANCE: No.

16                   MR. MASTEN: No.

17                   CHAIRMAN SCALZO: No.

18                   I'm getting a whole bunch of  
19           nos.

20                   The fifth, whether the alleged  
21           difficulty is self-created which is  
22           relevant but not determinative. Of  
23           course it's self-created. They don't  
24           have one and they want one. Again,  
25           I'll say I wish I could park in the

1       A A R O N   &   S U Z A N N E   M A Z U R E K

2               garage.

3                       Having gone through the  
4               balancing test, does the Board have a  
5               motion of some sort with any conditions?

6                       MR. GRAMSTAD:   I'll make a  
7               motion to approve it with the 35 foot  
8               setback.

9                       CHAIRMAN SCALZO:   From the  
10              center of the pavement.

11                      MR. GRAMSTAD:   From the center  
12              of the pavement.

13                      MR. DONOVAN:   Of what road?

14                      CHAIRMAN SCALZO:   That would be  
15              Lakeside Road.   Thank you.   I never  
16              said that.

17                      We have a motion from Mr.  
18              Gramstad.

19                      MR. EBERHART:   I'll second.

20                      CHAIRMAN SCALZO:   We have a  
21              second from Mr. Eberhart.   Can you  
22              roll on that, please, Siobhan?

23                      MS. JABLESNIK:   Mr. Eberhart?

24                      MR. EBERHART:   Yes.

25                      MS. JABLESNIK:   Mr. Gramstad?

1           A A R O N   &   S U Z A N N E   M A Z U R E K

2                           MR. GRAMSTAD:   Yes.

3                           MS. JABLESNIK:   Mr. Hermance?

4                           MR. HERMANCE:   Yes.

5                           MS. JABLESNIK:   Mr. Masten?

6                           MR. MASTEN:    Yes.

7                           MS. JABLESNIK:   Ms. Rein?

8                           MS. REIN:       Yes.

9                           MS. JABLESNIK:   Mr. Scalzo?

10                          CHAIRMAN SCALZO:  Yes.

11                          There you have it, folks.  The  
12                          motions are approved.  Your variances  
13                          are granted.  Good luck.

14                          MS. MAZUREK:    Thank you.

15                          MR. MAZUREK:    Thank you.

16

17                          (Time noted:    8:05 p.m.)

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A A R O N   &   S U Z A N N E   M A Z U R E K

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 6th day of August 2022.

*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

GARY VANVLEIT  
122 Rock Cut Road, Newburgh  
Section 47; Block 1; Lot 28.21  
R-1 Zone

----- X

Date: July 28, 2022  
Time: 8:05 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JAMES EBERHART, JR.  
ROBERT GRAMSTAD  
GREGORY M. HERMANCE  
JOHN MASTEN  
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: GARY VANVLEIT

----- X

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

1 GARY VANVLEIT

2 CHAIRMAN SCALZO: The last item  
3 is Gary VanVleit, 122 Rock Cut Road  
4 in Newburgh, seeking area variances  
5 on the side yard and rear yard to  
6 build a 16 by 20 foot pool deck that  
7 connects the existing house deck to  
8 the pool.

9 Do we have mailings on that?

10 MS. JABLESNIK: This applicant  
11 sent out 25 letters.

12 We also received County back on  
13 this one, a Local determination.

14 MR. VANVLEIT: I want to thank  
15 Siobhan first for helping me out with  
16 this. She was trying to get me in  
17 very quickly. I appreciate everyone  
18 for hearing me tonight. My name is  
19 Gary VanVleit, I live at 122 Rock  
20 Cut. I was here about two years ago.  
21 Some of you may recognize the  
22 property. I did a variance for the  
23 deck off the back of my house. I had  
24 to do a side variance. There's an  
25 easement going -- the property

1 GARY VANVLEIT

2 originally was the entire lot. They  
3 subdivided it into three houses, two  
4 behind me, one to the right. We  
5 created an easement before I bought  
6 the property. This was already done  
7 with you guys, I'm assuming.

8 So the deck that I wanted to  
9 put on the house, we were able to get  
10 it approved by the ZBA. We put the  
11 deck on the house. My wife decided  
12 she wanted a pool at the house. We  
13 took out a permit for the pool which  
14 I think required a 10 foot setback  
15 from my neighbors' properties. We  
16 did that. She said it would be  
17 really great if we could put a deck  
18 at the bottom by the pool. I said no  
19 problem, let's do it. Once we  
20 decided we were going to put the deck  
21 on and attach it to the top deck, we  
22 were told by the building inspector  
23 that because the top deck is attached  
24 to the house and the lower deck would  
25 be attached to the top deck and the



1           G A R Y   V A N V L E I T

2           pool is attached to the lower deck,  
3           now you need a 50-foot setback from  
4           the rear and 30 feet from the side.  
5           That's why I'm seeking this variance.  
6           The deck setback would be more than  
7           the 50 feet. Because the pool is  
8           attached to it, it's bringing me  
9           closer to the rear side of the  
10          property. I think it puts me at 25  
11          feet from the edge of the pool to my  
12          neighbor's front property and 27 feet  
13          from the center -- I'm sorry. 27  
14          feet from the driveway on the right  
15          to the side of the deck.

16                   CHAIRMAN SCALZO: Very good.  
17           Thank you. You've captured quite a  
18           bit about what your wife wants.

19                   MR. VANVLEIT: Yes. Yes. Yes.

20                   CHAIRMAN SCALZO: Then I won't  
21           ask you what you want.

22                   MR. DONOVAN: We all know what  
23           he wants is irrelevant.

24                   CHAIRMAN SCALZO: Very good.  
25           You captured the process pretty well.

1 GARY VANVLEIT

2 Thank you.

3 MR. VANVLEIT: Thank you.

4 CHAIRMAN SCALZO: Before I --  
5 actually, let me start with Mr.  
6 Gramstad this time. Mr. Gramstad, do  
7 you have any comments?

8 MR. GRAMSTAD: No. I was out  
9 there. He explained everything he  
10 wanted to do. I understand it.

11 CHAIRMAN SCALZO: Very good.  
12 Mr. Eberhart?

13 MR. EBERHART: I'm all for what  
14 he wants to do, if his wife wants to  
15 do it.

16 MR. VANVLEIT: She appreciates  
17 that.

18 CHAIRMAN SCALZO: This is great.  
19 Mr. Hermance?

20 MR. HERMANCE: This is needed  
21 because of being attached to the  
22 upper deck?

23 MR. DONOVAN: The ankle bone is  
24 connected to the knee bone.

25 MR. HERMANCE: That's all I have.

1 GARY VANVLEIT

2 CHAIRMAN SCALZO: This rear  
3 yard setback is to the pool?

4 MR. VANVLEIT: Yes. The deck  
5 would be well over the 50-foot  
6 setback that's needed.

7 CHAIRMAN SCALZO: Okay. And  
8 the deck is elevated? It's not  
9 ground level? You're not interfering  
10 with your septic?

11 MR. VANVLEIT: No, no, no.

12 CHAIRMAN SCALZO: In this case,  
13 Counsel, if the applicant were ever  
14 to decide, because we are potentially  
15 granting a variance to actually  
16 enclose that completely, he'd have to  
17 be back here again. So we really  
18 don't run much of a risk here by  
19 granting or looking at a variance for  
20 a pool deck?

21 MR. DONOVAN: Correct. It  
22 would be an increase to the degree. Yes.

23 CHAIRMAN SCALZO: Very good.  
24 That was the only concern that I had.

25 Mr. Masten?

1 GARY VANVLEIT

2 MR. MASTEN: I have no  
3 questions. I could see how he wants  
4 to extend the existing deck to the  
5 pool. It's feasible.

6 CHAIRMAN SCALZO: Or his wife.

7 Ms. Rein?

8 MS. REIN: That was an easy  
9 reading. No problem.

10 CHAIRMAN SCALZO: At this point  
11 I'm going to open it up to any  
12 members of the public that wish to  
13 speak about this application. The  
14 father-in-law perhaps.

15 (No response.)

16 CHAIRMAN SCALZO: Very good.

17 I'm going to come back to the  
18 Members of the Board for one more  
19 opportunity.

20 (No response.)

21 CHAIRMAN SCALZO: If not, then  
22 I'm going to look to the Board for a  
23 motion to close the public hearing.

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

1 GARY VANVLEIT

2 MR. EBERHART: I'll second it.

3 CHAIRMAN SCALZO: We have a  
4 motion from Mr. Gramstad. We have a  
5 second from Mr. Eberhart. Can you  
6 roll on that, please, Siobhan?

7 MS. JABLESNIK: Mr. Eberhart?

8 MR. EBERHART: Yes.

9 MS. JABLESNIK: Mr. Gramstad?

10 MR. GRAMSTAD: Yes.

11 MS. JABLESNIK: Mr. Hermance?

12 MR. HERMANCE: Yes.

13 MS. JABLESNIK: Mr. Masten?

14 MR. MASTEN: Yes.

15 MS. JABLESNIK: Ms. Rein?

16 MS. REIN: Yes.

17 MS. JABLESNIK: Mr. Scalzo?

18 CHAIRMAN SCALZO: Yes.

19 All right. So the public  
20 hearing is closed.

21 This is also a Type 2 action  
22 under SEQRA. I'm going to go through  
23 the balancing criteria and discuss  
24 our five, the first one being whether  
25 or not the benefit can be achieved by

1 GARY VANVLEIT

2 other means feasible to the applicant.

3 MR. EBERHART: No.

4 MR. GRAMSTAD: No.

5 MR. HERMANCE: No.

6 MR. MASTEN: No.

7 MS. REIN: No.

8 CHAIRMAN SCALZO: No. Thank

9 you.

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

14 MR. EBERHART: No.

15 MR. GRAMSTAD: No.

16 MR. HERMANCE: No.

17 MR. MASTEN: No.

18 MS. REIN: No.

19 CHAIRMAN SCALZO: No.

20 The third, whether the request  
21 is substantial. By the numbers it  
22 is, but it's a pool. He's not  
23 building a block garage right there.

24 The fourth, whether the request  
25 will have adverse physical or

1 GARY VANVLEIT

2 environmental effects.

3 MR. EBERHART: No.

4 MR. GRAMSTAD: No.

5 MR. HERMANCE: No.

6 MR. MASTEN: No.

7 MS. REIN: No.

8 CHAIRMAN SCALZO: No.

9 The fifth, whether the alleged  
10 difficulty is self-created which is  
11 relevant but not determinative. Yes,  
12 it is self-created. Most of them are.

13 So if the Board approves, it  
14 shall grant the minimum variance  
15 necessary and may impose any  
16 conditions.

17 Does anybody have any  
18 discussion before I look for a motion  
19 from the Board?

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

22 MS. REIN: I'll second it.

23 CHAIRMAN SCALZO: From the  
24 other side of the table we have a  
25 motion from Mr. Masten and a second

1           G A R Y   V A N V L E I T

2           from Ms. Rein. Can you roll on that,  
3           please, Siobhan?

4                   MS. JABLESNIK: Mr. Eberhart?

5                   MR. EBERHART: Yes.

6                   MS. JABLESNIK: Mr. Gramstad?

7                   MR. GRAMSTAD: Yes.

8                   MS. JABLESNIK: Mr. Hermance?

9                   MR. HERMANCE: Yes.

10                  MS. JABLESNIK: Mr. Masten?

11                  MR. MASTEN: Yes.

12                  MS. JABLESNIK: Ms. Rein?

13                  MS. REIN: Yes.

14                  MS. JABLESNIK: Mr. Scalzo?

15                  CHAIRMAN SCALZO: Yes.

16                   The motion is carried. The  
17           variances are approved. Good luck to  
18           you and your wife putting that deck  
19           up.

20                   MR. VANVLEIT: Thank you very  
21           much.

22

23                   (Time noted: 8:12 p.m.)

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G A R Y V A N V L E I T

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 6th day of August 2022.

*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

BRADY QUINN

307 Sunrise Drive, Newburgh  
Section 63; Block 1; Lot 2  
R-3 Zone

- - - - - X

Date: July 28, 2022  
Time: 8:12 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JAMES EBERHART, JR.  
ROBERT GRAMSTAD  
GREGORY M. HERMANCE  
JOHN MASTEN  
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: BRADY QUINN

- - - - - X

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

1           B R A D Y   Q U I N N

2                   CHAIRMAN SCALZO:  We're moving  
3           on to items that were held open from  
4           our June 23rd meeting.  Brady Quinn,  
5           307 Sunrise Drive in Newburgh,  
6           seeking an area variance of increasing  
7           the degree of nonconformity to  
8           replace an existing nonconforming  
9           12 by 20 by 10 accessory structure  
10          with a new 14 by 22 by 14.6 accessory  
11          structure.

12                   Board Members, please recall  
13          that we heard the applicant last  
14          month but we had not heard back from  
15          County.  Now their time has expired.

16                   I believe the applicant  
17          adequately expressed what they were  
18          trying to do with the project.  I  
19          have no further questions of the  
20          applicant.

21                   Is there anyone here from the  
22          public that wishes to speak about  
23          this application?

24                   (No response.)

25                   CHAIRMAN SCALZO:  Any other

1 BRADY QUINN

2 comments from the Board?

3 MR. EBERHART: No.

4 MR. GRAMSTAD: No.

5 MR. HERMANCE: No.

6 MR. MASTEN: No.

7 MS. REIN: No.

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

11 MR. GRAMSTAD: I'll make a  
12 motion to close the public hearing.

13 MR. EBERHART: Second.

14 CHAIRMAN SCALZO: We have a  
15 motion from Mr. Gramstad. We have a  
16 second from Mr. Eberhart. Can you  
17 roll on that, please, Siobhan?

18 MS. JABLESNIK: Mr. Eberhart?

19 MR. EBERHART: Yes.

20 MS. JABLESNIK: Mr. Gramstad?

21 MR. GRAMSTAD: Yes.

22 MS. JABLESNIK: Mr. Hermance?

23 MR. HERMANCE: Yes.

24 MS. JABLESNIK: Mr. Masten?

25 MR. MASTEN: Yes.

1           B R A D Y   Q U I N N

2                           MS. JABLESNIK:   Ms. Rein?

3                           MS. REIN:    Yes.

4                           MS. JABLESNIK:   Mr. Scalzo?

5                           CHAIRMAN SCALZO:   Yes.

6                           The public hearing is now  
7                           closed.

8                           This is a Type 2 action under  
9                           SEQRA.  Our balancing act is as  
10                          follows:  The first one being whether  
11                          or not the benefit can be achieved by  
12                          other means.  Actually, this  
13                          applicant is cleaning it up, making  
14                          it a little more parallel with the  
15                          property lines.  I would say no.

16                          The second, if there's an  
17                          undesirable change in the neighborhood  
18                          character or a detriment to nearby  
19                          properties.  Again, that would be a  
20                          no.  They're putting up a nice new  
21                          structure a little bit larger than  
22                          the existing one and becoming  
23                          parallel with the property lines  
24                          where it currently is not.

25                          The third, whether the request

1       B R A D Y   Q U I N N

2               is substantial.

3                       MR. EBERHART:   No.

4                       MR. GRAMSTAD:   No.

5                       MR. HERMANCE:   No.

6                       MR. MASTEN:    No.

7                       MS. REIN:    I have something.

8               I'm sorry.  I noticed it in my notes  
9               from last time.

10                      CHAIRMAN SCALZO:   About the water?

11                      MS. REIN:    Well this is secondary.

12               This is about the gutter that was  
13               probably going to be put up.  I was  
14               curious as to whether or not there's  
15               going to be a gutter?

16                      CHAIRMAN SCALZO:   Are you going  
17               to put gutters on the roof of your  
18               garage?

19                      MR. QUINN:    My name is Brady  
20               Quinn.  Yes, I will put gutters on.

21                      CHAIRMAN SCALZO:   With downspouts  
22               that direct the water appropriately  
23               away from your neighbors?

24                      MR. QUINN:    Yes.

25                      CHAIRMAN SCALZO:   Thank you,

1 BRADY QUINN

2 Ms. Rein. That was the physical or  
3 environmental effect question I'm  
4 assuming. Very good.

5 The fifth, whether the alleged  
6 difficult is self-created which is  
7 relevant but not determinative. Of  
8 course it's self-created, as most of  
9 them are. Again, it's not determinative.

10 Having gone through the five  
11 factors, does the Board have a motion  
12 of some sort?

13 MR. HERMANCE: I'll make a  
14 motion to approve the variance.

15 MS. REIN: I'll second it.

16 CHAIRMAN SCALZO: Thank you for  
17 not mumbling, Ms. Rein. Is your  
18 microphone on? It's difficult for  
19 Michelle to hear.

20 Very good. So we have a motion  
21 from Mr. Hermance. We have a second  
22 from Ms. Rein. Can you roll on that,  
23 please, Siobhan?

24 MS. JABLESNIK: Mr. Eberhart?

25 MR. EBERHART: Yes.

1 BRADY QUINN

2 MS. JABLESNIK: Mr. Gramstad?

3 MR. GRAMSTAD: Yes.

4 MS. JABLESNIK: Mr. Hermance?

5 MR. HERMANCE: Yes.

6 MS. JABLESNIK: Mr. Masten?

7 MR. MASTEN: Yes.

8 MS. JABLESNIK: Ms. Rein?

9 MS. REIN: Yes.

10 MS. JABLESNIK: Mr. Scalzo?

11 CHAIRMAN SCALZO: Yes.

12 The motion is carried. The  
13 variances are approved.

14 I'm sorry to hold you out so  
15 long but that's just how we do  
16 business. We end up doing holdovers  
17 at the end of the meeting.

18 MR. QUINN: Thank you,  
19 everyone.

20

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

22

23

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25



1 BRADY QUINN

2

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

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5

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

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

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

16 IN WITNESS WHEREOF, I have hereunto  
17 set my hand this 6th day of August 2022.

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*Michelle Conero*

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MICHELLE CONERO

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

SCOTT PERRI LANDSCAPING, INC.  
5 Nobles Way, Newburgh  
Section 11; Block 1; Lot 119  
R-1 Zone

----- X

Date: July 28, 2022  
Time: 8:15 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JAMES EBERHART, JR.  
ROBERT GRAMSTAD  
GREGORY M. HERMANCE  
JOHN MASTEN  
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: SCOTT PERRI

----- X

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

1 SCOTT PERRI LANDSCAPING

2 CHAIRMAN SCALZO: Our next  
3 applicant is Scott Perri Landscaping,  
4 5 Nobles Way, Newburgh. This one  
5 also was held open for County  
6 referral. That's also been received.

7 We had a few questions for the  
8 applicant. We did receive additional  
9 information from the applicant from,  
10 Pat Brady I believe. I'm hoping the  
11 Members of the Board have had an  
12 opportunity to look at that.

13 Mr. Perri, it appears that your  
14 engineer is indicating that it's  
15 going to be a net zero change or less.

16 MR. PERRI: Yes. 800 or so  
17 square foot less.

18 CHAIRMAN SCALZO: Because it is  
19 a decrease; Counsel, we are no longer --

20 MR. DONOVAN: Concerned about  
21 the increase of the existing nonconforming.

22 CHAIRMAN SCALZO: Correct.  
23 Okay. I believe you accomplished  
24 exactly what we had asked you at the  
25 last meeting. I have no additional

1 SCOTT PERRI LANDSCAPING

2 questions.

3 Mr. Gramstad?

4 MR. GRAMSTAD: None at all.

5 CHAIRMAN SCALZO: Mr. Eberhart?

6 MR. EBERHART: No questions.

7 CHAIRMAN SCALZO: Mr. Hermance?

8 MR. HERMANCE: No.

9 CHAIRMAN SCALZO: Mr. Masten?

10 MR. MASTEN: No.

11 CHAIRMAN SCALZO: Ms. Rein?

12 MS. REIN: No.

13 CHAIRMAN SCALZO: Are there any  
14 members of the public here that wish  
15 to speak about this application?

16 (No response.)

17 CHAIRMAN SCALZO: It appears  
18 not.

19 Please recall, Members of the  
20 Board, we did have a few members of  
21 the public that did give testimony in  
22 support of this, although there were  
23 a couple questions regarding the wood  
24 storage.

25 I believe that you were going

1 SCOTT PERRI LANDSCAPING

2 to either reduce that or somebody was  
3 moving out of there.

4 MR. PERRI: It's going to be  
5 reduced.

6 CHAIRMAN SCALZO: That's what I  
7 recall.

8 MR. PERRI: A hundred percent  
9 reduced.

10 CHAIRMAN SCALZO: I did read  
11 the meeting minutes from last month  
12 about three hours ago. That's what I  
13 recall seeing. Very good.

14 In this case, Counsel, is this --

15 MR. DONOVAN: Type 2.

16 CHAIRMAN SCALZO: It is Type 2.  
17 Okay. So we're going to run through  
18 -- actually, we're going to close the  
19 public hearing. Can I have a motion  
20 to close the public hearing?

21 MR. GRAMSTAD: I'll make a  
22 motion to close the public hearing.

23 MR. EBERHART: I'll second it.

24 CHAIRMAN SCALZO: We have a  
25 motion to close the public hearing

1 SCOTT PERRI LANDSCAPING

2 from Mr. Gramstad. We have a second  
3 from Mr. Eberhart. All in favor?

4 MR. EBERHART: Aye.

5 MR. GRAMSTAD: Aye.

6 MR. HERMANCE: Aye.

7 MR. MASTEN: Aye.

8 MS. REIN: Aye.

9 CHAIRMAN SCALZO: Aye.

10 Those opposed?

11 (No response.)

12 CHAIRMAN SCALZO: So this is a  
13 Type 2 action under SEQRA. We're  
14 going to go through the variance  
15 criteria, the five factors we're  
16 weighing, the first one being whether  
17 or not the benefit can be achieved by  
18 other means feasible to the  
19 applicant. The applicant has now  
20 reduced the size of what he was  
21 looking to do earlier.

22 Second, if there's an undesirable  
23 change in the neighborhood character.

24 MR. EBERHART: No.

25 MR. GRAMSTAD: No.

1 SCOTT PERRI LANDSCAPING

2 MR. HERMANCE: No.

3 MR. MASTEN: No.

4 MS. REIN: No.

5 CHAIRMAN SCALZO: No.

6 Third, whether the request is  
7 substantial. Since he's removing  
8 some of the buildings, it's almost  
9 less than substantial if you want to  
10 play on words.

11 The fourth, whether the request  
12 will have adverse physical or  
13 environmental effects.

14 MR. EBERHART: No.

15 MR. GRAMSTAD: No.

16 MR. HERMANCE: No.

17 MR. MASTEN: No.

18 MS. REIN: No.

19 CHAIRMAN SCALZO: No.

20 The fifth, whether the alleged  
21 difficulty is self-created, which it  
22 is, but, as I said, they all are.

23 Having gone through the  
24 balancing tests of the area variance,  
25 does the Board have a motion of some

1 SCOTT PERRI LANDSCAPING

2 sort?

3 MR. MASTEN: I'll make a motion  
4 for approval.

5 MS. REIN: I'll second.

6 CHAIRMAN SCALZO: We have a  
7 motion from Mr. Masten. We have a  
8 second from Ms. Rein. I've got to  
9 have you roll on this one, Siobhan.

10 MS. JABLESNIK: Mr. Eberhart?

11 MR. EBERHART: Yes.

12 MS. JABLESNIK: Mr. Gramstad?

13 MR. GRAMSTAD: Yes.

14 MS. JABLESNIK: Mr. Hermance?

15 MR. HERMANCE: Yes.

16 MS. JABLESNIK: Mr. Masten?

17 MR. MASTEN: Yes.

18 MS. JABLESNIK: Ms. Rein?

19 MS. REIN: Yes.

20 MS. JABLESNIK: Mr. Scalzo?

21 CHAIRMAN SCALZO: Yes.

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

24

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



1 SCOTT PERRI LANDSCAPING

2

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

4

5

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

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

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

16 IN WITNESS WHEREOF, I have hereunto  
17 set my hand this 6th day of August 2022.

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*Michelle Conero*

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MICHELLE CONERO

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

- - - - - X  
In the Matter of

SNK PETROLEUM WHOLESALERS

747 Boulevard, Newburgh  
Section 89; Block 1; Lots 80.1 & 80.2  
IB Zone

- - - - - X

Date: July 28, 2022  
Time: 8:19 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JAMES EBERHART, JR.  
ROBERT GRAMSTAD  
GREGORY M. HERMANCE  
JOHN MASTEN  
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVES: KENNETH LYTLE,  
GERALD A. BUNTING, MARK DOMBAL

- - - - - X

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

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2                   CHAIRMAN SCALZO:  Our final  
3           applicant for the evening is a  
4           holdover from a holdover from a  
5           holdover.  It is SNK Petroleum  
6           Wholesalers, 747 Boulevard in  
7           Newburgh, otherwise known as the old  
8           Drury Lane, which is a Planning Board  
9           referral for area variances of front  
10          yard for a canopy, side yard for a  
11          west canopy, rear yard for the  
12          proposed building, rear and side yard  
13          for each canopy, and variances for  
14          any proposed signage on the canopy.  
15          Resubmitting from January 2021.

16                   The narrative that I just read,  
17          Mr. Lytle, may not be exactly accurate  
18          after your latest submission.  Some  
19          of those variances, which you  
20          actually did give us a breakdown  
21          here, we have a summation of what's  
22          being presented.  Now the gas  
23          canopy front yard, 747 Boulevard, 25  
24          feet is proposed where 60 is  
25          required.  It's a 35-foot variance,

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           which is the same as the original  
3           application. A gas canopy in the  
4           front yard, which is Route 84, 31  
5           feet proposed where 60 is required, a  
6           29-foot variance. The diesel canopy  
7           in the rear yard, 60 is proposed  
8           where 60 is required which is now a 0  
9           variance. We shifted on the plans so  
10          no variance was required. The diesel  
11          canopy side yard, 13 feet is proposed  
12          where 50 feet is required, a 37-foot  
13          variance, helping out Mr. Lytle, and  
14          that is where the gap in the property  
15          is.

16                   MR. LYTTLE: That's correct.

17                   CHAIRMAN SCALZO: And then a  
18          building rear yard, 54 feet is  
19          proposed where 60 is required, a  
20          6-foot variance. They shifted the  
21          building closer to 747 but shifted it  
22          further from a residential area. Now  
23          the building front yard with regard  
24          to I-84, 35 feet is proposed where 60  
25          feet is required, a 25-foot variance

1       S N K   P E T R O L E U M   W H O L E S A L E R S

2               required because they shifted the  
3               structure -- proposed structure  
4               further from the residential area and  
5               just slid it down towards 84.

6               Okay. Mr. Lytle, have I  
7               captured all of the variances that  
8               you're standing there for?

9               MR. LYTLE: You did a great job.

10              CHAIRMAN SCALZO: Thank you.  
11              We received information from you  
12              folks. We received information last  
13              month. This does include a few  
14              architecturals.

15              We got direct correspondence  
16              from the New York City DEP.

17              MR. LYTLE: All right.

18              CHAIRMAN SCALZO: If I could  
19              ask Siobhan to read that.

20              MS. JABLESNIK: So we received  
21              an e-mail from a Matthew Castro  
22              today, late this afternoon. He says,  
23              "Good afternoon, Siobhan. Generally  
24              I'm trying to avoid the city being  
25              caught in the middle of a dispute

1       S N K   P E T R O L E U M   W H O L E S A L E R S

2           between private landowners. Newburgh  
3           Park Associates is seeking an opinion  
4           from the DEP on whether Weddell has  
5           rights over the aqueduct through MTA  
6           land. Weddell has submitted a  
7           request to the DEP seeking permission  
8           to cross over the aqueduct and  
9           through MTA land. The request came  
10          last month but I received a copy of  
11          this deed on 7/26. Given our  
12          staffing, this review will take some  
13          time. DEP will review the deeds  
14          provided along with our own records  
15          to determine whether a right has been  
16          retained to cross over the aqueduct.  
17          We will also consider whether  
18          aqueduct protection, such as concrete  
19          weight distribution pads, would be  
20          needed if a crossing was retained.  
21          In this scenario, if the individuals  
22          have questions on their property  
23          rights in relation to other  
24          landowners, they should seek  
25          independent legal opinions. DEP is

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           not in a position to make a legal  
3           determination between private  
4           landowners and has not yet completed  
5           its review regarding Weddell's  
6           request, so it will be unable to  
7           provide feedback as is related to the  
8           discussion this evening. Thank you,  
9           Matt."

10                   CHAIRMAN SCALZO: Thank you,  
11           Siobhan.

12                   MS.JABLESNIK: You're welcome.

13                   CHAIRMAN SCALZO: Okay. I'm  
14           going to lean on Counsel here. You  
15           just heard, and I believe you saw,  
16           the correspondence yourself on this.  
17           Is this going to keep us in our  
18           holding pattern until we get --

19                   MR. DONOVAN: That's going to  
20           be an issue for the Board. I think  
21           one of the issues that's gone on here  
22           is if you grant the variance to allow  
23           this project to proceed, is that  
24           going to have an adverse impact on  
25           any neighboring property owners,

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           specifically Mr. Weddell who has been  
3           at the meetings. That's what we were  
4           trying to find out. We don't have a  
5           specific location for the easement.  
6           Right?

7                     MR. LYTLE: Yes, we do. It's  
8           been surveyed and we have that.

9                     MR. DONOVAN: Over your  
10          property to get to 747?

11                    MR. LYTLE: To get to this  
12          property.

13                    MR. DONOVAN: But not over your  
14          property. I think that is the issue.

15                    MS. REIN: Can you move that up  
16          a little, please?

17                    MR. LYTLE: Sure.

18                    CHAIRMAN SCALZO: Actually, you  
19          can take the whole easel over by Ms.  
20          Rein.

21                    MS. REIN: Thank you.

22                    CHAIRMAN SCALZO: So I can't  
23          say it any better than Counsel.  
24          Really what we're looking for -- yes,  
25          we're aware the access ROW on the



1       S N K   P E T R O L E U M   W H O L E S A L E R S

2           existing lane, see note 3 on sheet 2  
3           of 2. There's no note on sheet --  
4           there's a sheet 2 of 5.

5           MR. LYTTLE: It's actually a  
6           note from when the previous  
7           subdivision was done. It's actually  
8           sheet number 1 that refers to the  
9           deeds. I'll clarify, though.

10          CHAIRMAN SCALZO: Again, I  
11          don't believe there's ever been a  
12          dispute that there's that access  
13          right-of-way across the aqueduct.

14          MR. DONOVAN: That's correct.

15          CHAIRMAN SCALZO: It's the  
16          access from old Drury Lane to that  
17          access that's --

18          MR. DONOVAN: It's undefined.  
19          What impact would this project have,  
20          if any. Right. I think we've been  
21          kind of kicking this around. I did  
22          my own kind of calendar of events  
23          going back to January of 2021, to  
24          February of 2021, to March of 2021,  
25          and then the application went

1       S N K   P E T R O L E U M   W H O L E S A L E R S

2           dormant, then it was back on the  
3           agenda January of 2022 with new  
4           notices, then February there was a  
5           deferral to March. The applicant  
6           appeared in March and we were looking  
7           for more -- the Board was looking for  
8           more information regarding the  
9           specific delineation of the  
10          easement. Back again in April. May  
11          it was adjourned to June for more  
12          information. June, July, and here we  
13          are. The Board, you have it within  
14          your purview to further adjourn for  
15          more information. You do because  
16          it's the same issue that you've been  
17          seeking. If you say listen, we're  
18          like, depending on how you calculate  
19          it, a year-and-a-half into it, we  
20          don't have it, we're going to close  
21          the public hearing and make our  
22          decision, you have the ability to do  
23          that as well.

24                   CHAIRMAN SCALZO: Thank you,  
25                   Counsel.

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2                   Mr. Lytle, is there a complete  
3           abstract title for this property that  
4           shows anything regarding rights to  
5           get to the access right-of-way?

6                   MR. WEDDELL:   There is.

7                   MR. LYTLE:   I'll defer to the  
8           attorney for that.

9                   CHAIRMAN SCALZO:   We have an  
10          attorney here?

11                   MR. LYTLE:   Gerald Bunting.

12                   MR. BUNTING:   The description --

13                   MR. DONOVAN:   Can you tell us  
14          who you are?

15                   MR. BUNTING:   Gerald A.  
16          Bunting, house counsel for SNK  
17          Petroleum.

18                   The description in the deed is  
19          that the adjoining property owner has  
20          the right to cross the right-of-way  
21          for the aqueduct, and it's marked on  
22          the map as to where the entrance is  
23          off of the -- onto our property.  
24          There's no metes and bounds  
25          description of a 10-foot right-of-way

1       S N K   P E T R O L E U M   W H O L E S A L E R S

2           that is 5 paces from here.  It's just  
3           that he has the right to get from  
4           point A to point B, which was old  
5           Drury Lane, which that was taken away  
6           when there was the eminent domain.  
7           So that right-of-way, I believe by  
8           flaw, now goes to the adjacent parcel  
9           that we're using for our drive access  
10          here because this is - right here is  
11          what's in the deed.  There's nothing  
12          describing does it go here, does it  
13          go here, does it go here.  It just  
14          says he has a right to get from here  
15          to this road here somehow.

16                 Now, since that's been taken  
17                 away by the State, we're just  
18                 assuming by operation of law that he  
19                 has the right to go to this parcel  
20                 and that he would be able to follow  
21                 through here and around the gas  
22                 station.

23                 In terms of adverse effect,  
24                 there is none because this is only  
25                 right here an application for a

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           variance of the canopy. He would  
3           still have to go around gas station  
4           dispensers regardless of the  
5           variance.

6                     We have no problem with the  
7           property owner accessing this. Mr.  
8           Lytle will describe the grade and  
9           everything else. Whatever the DEP  
10          will allow him to build across here  
11          will not be affected because this  
12          will remain open and accessible to him.

13                    CHAIRMAN SCALZO: Thank you  
14          very much.

15                    Counsel for the applicant just  
16          said that Mr. Lytle was going to  
17          explain some things with grading. I  
18          would like Mr. Lytle to explain some  
19          things with grading.

20                    MR. LYTTLE: There were some  
21          questions about how we would get from  
22          the parking lot to the easement.  
23          What we had done is we had shown an  
24          area hatched in and put notes  
25          regarding 14 percent max grade for

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           the area and revised the grade to  
3           allow it to happen. We pulled  
4           retaining walls back so there would  
5           be no possible interference for  
6           anything that would happen in that  
7           right-of-way, giving him the same  
8           width coming across without a  
9           problem.

10                   CHAIRMAN SCALZO: Thank you.  
11           It makes sense. It even has a 14  
12           percent max slope.

13                   MR. LYTTLE: There should be no  
14           issues.

15                   CHAIRMAN SCALZO: Let me ask  
16           you a question, only because I don't  
17           have the code in front of me. What's  
18           the maximum grade allowed for  
19           driveways in the Town of Newburgh?

20                   MR. LYTTLE: 15. I didn't want  
21           to be too close.

22                   CHAIRMAN SCALZO: A little  
23           wiggle room, if you will.

24                   All right. The public hearing  
25           is still open. We have received

1       S N K   P E T R O L E U M   W H O L E S A L E R S

2               additional information.  This has  
3               gone on quite a bit.

4               Do we have comments from the  
5               Board regarding everything we have in  
6               front of us?

7               MS. REIN:  I think we should  
8               close it.

9               CHAIRMAN SCALZO:  Hang on.  
10              Hang on.  We'll get there, --

11              MS. REIN:  Okay.

12              CHAIRMAN SCALZO:  -- maybe.

13              Mr. Masten, do you have any  
14              comments on this?

15              MR. MASTEN:  Like you say, it's  
16              been going on for awhile.  It's a  
17              little confusing right now.

18              CHAIRMAN SCALZO:  It's been  
19              confusing for a long time.  Counsel  
20              actually put it quite nicely, should  
21              we choose to close the public  
22              hearing, we're going to give some  
23              type of action tonight.  If we keep  
24              it open, then we're just -- the blood  
25              keeps flowing.





1       S N K   P E T R O L E U M   W H O L E S A L E R S

2               is going to want to say something.

3               Mr. Gramstad?

4               MR. GRAMSTAD:   Nothing.

5               CHAIRMAN SCALZO:   Is there  
6               anybody from the public that wishes  
7               to speak about this application?  Mr.  
8               Weddell.

9               MR. WEDDELL:   I do.  I feel  
10              like I'm being snickered here.  
11              However, there is quite a description  
12              on where that goes.  If I could just --

13              CHAIRMAN SCALZO:   Sure.

14              MR. WEDDELL:   You've got to go  
15              -- you're here.  This is written in.  
16              This right here is written in, and  
17              that was given to them by the  
18              Department of Environmental  
19              Protection because they -- we did  
20              that driveway when they redid 747.  
21              They built a concrete pad that goes  
22              over -- there's a creek that goes  
23              through this piece of property.  If  
24              you've been there, you saw the creek.

25              CHAIRMAN SCALZO:   Multiple times.

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2                   MR. WEDDELL: This is clearly  
3 my right-of-way, right here, to get  
4 from here to this piece of property.

5                   CHAIRMAN SCALZO: I believe we  
6 heard testimony agreeing on that.

7                   MR. WEDDELL: So now when I go  
8 to the easement -- so we're going to  
9 shrink everything down so that Tom  
10 Weddell, if he wants to go through,  
11 he's got to go through a pump. If  
12 this was the required 37 feet  
13 additional more -- that's 13 feet  
14 there. If that additional amount,  
15 the 37 foot variance wasn't there,  
16 I'd have 37 feet to go, which would  
17 be wide enough to go through. I  
18 won't have to drive through these  
19 pumps. There is no gas station in  
20 the Town of Newburgh where a  
21 right-of-way goes through, where a  
22 person that has to go to their  
23 property will drive through them.  
24 You mentioned at the last meeting  
25 there were several gas stations over

1       S N K   P E T R O L E U M   W H O L E S A L E R S

2           2,600 square foot.  If you read the  
3           minutes, that's what you said.  On  
4           those properties there's not a  
5           right-of-way where somebody will have  
6           to drive through these pumps.  Every  
7           one of these easements you're giving  
8           shrinks it down for me to make sure I  
9           have to drive through pumps and I  
10          have to go around the back of this  
11          building to get to where I'm at.

12                 My point is you should take  
13                 some consideration for me.  You don't  
14                 have to grant these easements to  
15                 allow that to happen so I don't lose  
16                 that right.

17                 When I spoke to the DEP, to  
18                 Matt, and my attorney from Albany,  
19                 they're saying that there's a problem  
20                 here because they can't land lock  
21                 this piece of property.  They have to  
22                 work with me to do something to get a  
23                 right-of-way.  So that's between me  
24                 and the DEP.  I also do have the  
25                 right-of-way to get there.

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2                   They're forcing me to drive  
3           through pumps by granting these  
4           additional easements. They're not  
5           like a 1 1/2 foot that was requested  
6           tonight, or 5 feet that was requested  
7           tonight. 35 feet on one, 29 feet on  
8           another one, 37 feet on the other  
9           one, 6 feet on one, 25 feet on  
10          another one. If they were all in  
11          place and I had that, there would be  
12          a lot of space for me to get to my  
13          easement without having to drive  
14          through gas pumps. You know that's  
15          not going to be the only thing that's  
16          going to be on here. There's going  
17          to be garbage and all this other  
18          stuff. The garbage containers,  
19          parking.

20                   You shrunk it down. This piece  
21          of property is not really conducive  
22          to put this gas station on. You  
23          grant them the right, you grant them  
24          the right. That's my argument, that  
25          I lose that right by you granting

1       S N K   P E T R O L E U M   W H O L E S A L E R S

2               those variances.  Again, it's not  
3               1 1/2, it's not 5 feet and it's not  
4               10 feet.

5                       CHAIRMAN SCALZO:  Mr. Lytle,  
6               going back to sheet 2.

7                       MR. LYTLE:  Sheet 2.

8                       CHAIRMAN SCALZO:  Sheet 2 just  
9               with the improvements.  The outlines  
10              that we're looking at over the pump,  
11              those outlines are the canopy?

12                      MR. LYTLE:  That is correct.

13                      CHAIRMAN SCALZO:  All right.

14                      MR. LYTLE:  The dimensions are  
15              on the top.

16                      CHAIRMAN SCALZO:  Also the  
17              indication of where the pumps are,  
18              are they single or are they double?  
19              You know, sometimes you'll pull into  
20              a gas station -- or is that the  
21              actual island?  There's a black  
22              square in each one of those.

23                      MR. LYTLE:  The little  
24              rectangle is actually the pump  
25              island.  You'll see it across the

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           front.  There's actually four of  
3           them.  Where the diesel is, there's  
4           actually three of them.

5                   CHAIRMAN SCALZO:  I understand  
6           that.  The most outer dimensions are  
7           the canopy lines.  Correct?

8                   MR. LYTLE:  That's correct.

9                   CHAIRMAN SCALZO:  All right.  
10          Inside they look like a tube, inside  
11          each of those on an angle.  That is the  
12          island that the dispenser sits on?

13                   MR. LYTLE:  That's right.

14                   CHAIRMAN SCALZO:  How many  
15          dispensers per island?  One, two?

16                   MR. LYTLE:  Just one.

17                   CHAIRMAN SCALZO:  The front  
18          yard setback from I-84, looking at  
19          the grading plan here, that's not  
20          even at the top of the hill.  That's  
21          off the property that we're  
22          discussing here.

23                   I mentioned in previous  
24          meetings the other gas stations, the  
25          other two that we approved, they were

1       S N K   P E T R O L E U M   W H O L E S A L E R S

2           similar in size but they were also  
3           currently sized to almost replace  
4           what was there. This is a brand new  
5           piece of property. It's a white  
6           canvas, if you will.

7                   That building, while I do  
8           appreciate you're moving it to the  
9           south, a reduction on that side yard  
10          may be helpful. I thought you were  
11          pretty successful with overcoming the  
12          other variances. The one, you're  
13          only looking at a little more than 5  
14          feet on the back corner now.

15                   MR. LYTLE: Right.

16                   CHAIRMAN SCALZO: Is there any  
17          possibility of reducing the size of  
18          that building on the southerly side?  
19          If so, what magnitude?

20                   MR. LYTLE: We prefer not to.  
21          It works with the site.

22                   CHAIRMAN SCALZO: I'm sure you  
23          wouldn't.

24                   MR. LYTLE: We have the  
25          retaining wall. Again, we shifted it

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           in this direction to be further away  
3           from the residential concerns and  
4           more towards the commercial area.

5                   CHAIRMAN SCALZO:  We're having  
6           a discussion here.  Let me also ask  
7           too, looking at the retaining wall  
8           coming in on the 747 side, you come  
9           in, you cross over that parcel that's  
10          still retained by the -- you cross  
11          over the split, and then I see the  
12          retaining wall kicks off closer to  
13          747 and then it squares up behind the  
14          parking areas.  What would prevent  
15          you from building that retaining wall  
16          closer to the property line therefore  
17          opening up that front a little more?  
18          Do you follow me?  Ken, if you were  
19          to move that retaining wall -- do you  
20          see where the 17.6 dimension is?

21                   MR. LYTLE:  Yeah.

22                   CHAIRMAN SCALZO:  What's  
23          preventing you from starting that  
24          retaining wall say 2 feet off the  
25          property line?  I'd say that would



1       S N K   P E T R O L E U M   W H O L E S A L E R S

2           open up the area a little more,  
3           because -- I mean it's tight. You've  
4           got parking stables there. It's  
5           probably -- scale wise it's probably  
6           15 to 18 feet. That's just to the  
7           top of the canopy, which I'm assuming  
8           underneath the canopy is probably  
9           going to be concrete which is  
10          different than you paving it the rest  
11          of the way. I haven't seen the plans  
12          but that's typically the way they  
13          are. I'm just asking. That would  
14          increase your flow. That might  
15          alleviate a concern that I just heard  
16          from Mr. Weddell about you're trying  
17          to get him to drive through a very  
18          tight corridor there. There might be  
19          some room there to open that up. I  
20          know it's a little extra expense in  
21          pavement, but with the relocation of  
22          that retaining wall, you know, that  
23          might help with the flow through the  
24          lot itself. It's very constrained.  
25          We're all aware of that. I'm not

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           telling you what to do but I'm just  
3           making an observation that you may  
4           consider it.

5                     Was there a reason why you held  
6           that retaining wall so far off the  
7           front property line?

8                     MR. LYTLE:   The DOT, during  
9           this whole construction process,  
10          built this commercial entrance for  
11          the owner.  We wanted the least  
12          amount of disturbance going through  
13          that area, through the area of the  
14          front yard pulling in the site up  
15          here.  If you want to pull out --

16                    CHAIRMAN SCALZO:  I don't want  
17          to --

18                    MR. LYTLE:   If it made a  
19          difference we would easily have the  
20          room to pull that out, again to bring  
21          it closer to the property line.  It  
22          wouldn't affect too many other  
23          things.  We have to be a certain distance  
24          from the retaining wall to --

25                    CHAIRMAN SCALZO:  Right, but if

1       SNK   PETROLEUM   WHOLESALEERS

2           you were to do that, your parking  
3           stalls would also be pushed up closer  
4           to the front property line. Like I  
5           say, the difference between the end  
6           of the striping on your parking  
7           stalls and the canopy would be  
8           reduced. You might get an extra 7, 8  
9           feet there.

10                 MR. LYTLE: We could easily  
11           pull this parking section forward to  
12           make that happen.

13                 CHAIRMAN SCALZO: I'm just asking  
14           if that would be a possibility?

15                 MR. LYTLE: That's absolutely a  
16           possibility.

17                 CHAIRMAN SCALZO: All right.  
18           Still I'm not going to say on the  
19           table, but my question about reducing  
20           the size of the building, I'm not  
21           sure if that's on your -- please step  
22           forward and identify yourself.

23                 MR. DOMBAL: My name is Mark  
24           Dombal from SNK. The size of the  
25           building is reduced to 2,450 square

1       S N K   P E T R O L E U M   W H O L E S A L E R S

2           feet. Our original application in  
3           front of the Planning Board was 2,800  
4           square feet. We've already done a  
5           big reduction. Typically a brand new  
6           build, you're not building a 2,400  
7           square foot location. You take a  
8           look at the new Cumberland Farms on  
9           17K, the Quickchek, you're talking  
10          5,000, 6,000 square feet. You've got  
11          a 2,450 building. You're only going  
12          to have room for like a coffee thing,  
13          maybe one or two gondolas. That's  
14          going to be it by the time you have  
15          the mechanical room, you have your  
16          restroom, cashier area. We have to  
17          have some type of store there, that's  
18          the only way the project can be  
19          successful. We already have done a  
20          reduction on it by like 400 square  
21          feet. We can't make it any smaller  
22          than what it is now, unfortunately,  
23          and be able to have a successful, you  
24          know, operation. We want something  
25          that's not closed. Right?

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2                   CHAIRMAN SCALZO:  Thank you for  
3           your clarification.

4                   MR. DOMBAL:  No problem.  
5           Anything to help the traffic flow,  
6           I'm all for it.

7                   CHAIRMAN SCALZO:  As I'm  
8           looking at this, the other retaining  
9           wall on the southbound -- the south  
10          property line, you know, perhaps you  
11          can investigate whether or not that  
12          can be pushed close to that property  
13          line.  A retaining wall is a solid  
14          object.  Just the appearance that it  
15          confines your flow.

16                   MR. DOMBAL:  If it's going to  
17          help open up the flow, I'm more than  
18          happy with that.

19                   CHAIRMAN SCALZO:  You say Ken  
20          Wersted -- well, this has not been  
21          reviewed by the Planning Board yet.  
22          Mr. Wersted has not --

23                   MR. LYTTLE:  He has not seen  
24          this.

25                   CHAIRMAN SCALZO:  He has not

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           done a traffic analysis.

3           MR. LYTTLE:  Once we get through  
4           this procedure, assuming everything  
5           goes well tonight, we'll go back to  
6           the Planning Board.  The Planning  
7           Board asked to continue along with  
8           the variance and go back to them with  
9           changes.

10          CHAIRMAN SCALZO:  I feel like  
11          I've been dominating this  
12          conversation.  Did anybody else from  
13          the Board have any ideas creeping up?

14          MS. REIN:  That was a good idea.

15          CHAIRMAN SCALZO:  I'm just  
16          asking the question.  I'm not  
17          directing or -- I'm just asking.

18          MS. REIN:  It sounds reasonable.

19          CHAIRMAN SCALZO:  That's a 30  
20          scale.  Currently that retaining wall  
21          scales at about 14 feet off the front  
22          property line.  You could really get  
23          that back quite a bit.  Then the  
24          south retaining wall scales at 5.

25          MR. LYTTLE:  We left room for

1       S N K   P E T R O L E U M   W H O L E S A L E R S

2               construction, backhoe, grading.

3               CHAIRMAN SCALZO:  Should this  
4               move any more forward, you could  
5               probably reach out to the DOT for  
6               just a temporary grading easement.

7               MR. DONOVAN:  Mr. Chairman,  
8               when we move the retaining wall back,  
9               what's moving?

10              CHAIRMAN SCALZO:  The parking  
11              stalls.

12              MR. DONOVAN:  I know we have an  
13              issue with the front yard setback  
14              with the canopy.

15              MR. LYTLE:  That's going to  
16              stay where it is.

17              MR. DONOVAN:  No issues with  
18              the parking spaces?

19              CHAIRMAN SCALZO:  Not as far as  
20              I'm aware.

21              MR. DONOVAN:  I just want to  
22              make sure we don't create any new  
23              nonconformance.

24              CHAIRMAN SCALZO:  Okay.  Board,  
25              anything?

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2                           (No response.)

3                   CHAIRMAN SCALZO:   Mr. Weddell,  
4           did you just have your hand up?

5                   MR. WEDDELL:   No.

6                   CHAIRMAN SCALZO:   Mr. Weddell,  
7           I'm not telling them what to do, I'm  
8           just asking for suggestions. I'm  
9           making observations here. The  
10          opening up of that area that was of  
11          great concern to you, would that  
12          alleviate some of your concerns?

13                   MR. WEDDELL:   Certainly I'm  
14          still crowded by the pumps. I'm  
15          still driving through pumps. I can  
16          go all the way around now, yes.  
17          Potentially I could, yes. That's if  
18          they actually move the walls.

19                   CHAIRMAN SCALZO:   Well, if  
20          you've heard the way we go through  
21          the balancing criteria, we can impose  
22          certain restrictions on any  
23          variances, should we come to the  
24          point where we're granting them. So  
25          if we were to impose that type of



1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           condition on that, perhaps that would  
3           help with some of your concerns. I  
4           mean you do have to get through  
5           there. I understand that. As with  
6           all the patrons of the establishment  
7           once they're up and running.

8           MR. DOMBAL: Can I just make a  
9           statement?

10          CHAIRMAN SCALZO: Absolutely.

11          MR. DOMBAL: So the variance is  
12          for the canopy, not the gas pumps.  
13          Right?

14          CHAIRMAN SCALZO: That's correct.

15          MR. DOMBAL: I just wanted to  
16          make sure that everybody --

17          CHAIRMAN SCALZO: The canopy is  
18          not going to move.

19          MR. DOMBAL: The canopy is not  
20          going to move. No matter what, the  
21          maneuvering, we're talking about the  
22          variances for the canopy, not the gas  
23          pumps.

24          CHAIRMAN SCALZO: Right. But  
25          we can grant reasonable conditions

1       S N K   P E T R O L E U M   W H O L E S A L E R S

2           upon you because you are asking for a  
3           variance. If that alleviates some of  
4           the ancillary issues behind it, then  
5           perhaps that might be something we  
6           can visit.

7           MR. DONOVAN: It's obvious but  
8           I'm going to state it anyway. This  
9           is a unique situation. It's not  
10          every day that you have property  
11          that's gone through what this  
12          property has gone through in terms of  
13          the relocation of the road over a  
14          period of time. It's not every day  
15          that there's an access easement from  
16          a residential property over a  
17          commercial property to a public  
18          right-of-way. It's not every day  
19          that the easement -- the location of  
20          the easement is not defined by a  
21          metes and bounds description.  
22          There's a lot. Part of what you've  
23          been struggling -- the Board has been  
24          struggling with, the public has been  
25          struggling with, you don't come

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           across this every day. This  
3           typically does not happen. If you  
4           think you have everything you need to  
5           make a decision, then it's time to  
6           make a decision.

7           MR. WEDDELL: The other part of  
8           that that you didn't mention is that  
9           this property was residential. When  
10          747 was done, the Town of Newburgh  
11          decided this should be an intermittent  
12          business and we'll put that on that  
13          piece of property. So all of a  
14          sudden it changes from what it really  
15          was. There was a driveway. There  
16          were two houses on this. I  
17          remember them living in those  
18          houses. Carol, and I forgot her last  
19          name, it was his daughter, they lived  
20          on this piece of property. They  
21          continued right on through back to  
22          that property in the back to build  
23          another house. He died and Carol  
24          moved with her husband to North  
25          Carolina. So the issue is -- what

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2           makes it more unique is that  
3           somewhere in 2015 somebody decided we  
4           should just make it intermittent  
5           business. It's all residential  
6           around. I showed you all those maps.  
7           Everything around it is residential  
8           except for across the street. For  
9           some reason it goes down the road and  
10          there's the intermittent use.  
11          Everyone has a residential house.  
12          They're not going to all of a sudden  
13          decide to sell to some other gas  
14          station. It's not going to be  
15          anything other than those residential  
16          houses. You're building all sorts of  
17          new residential houses up the circle.  
18          They're really nice, high-end houses.  
19          All of a sudden you stick a gas  
20          station in the middle of nowhere on a  
21          little postage stamp. That changes  
22          the environment of, yes, our  
23          community that we live in.

24                   MR. DONOVAN: I know it's  
25                   important because you mentioned it to

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           the Board before. You brought this  
3           up before. I understand it's  
4           important to you. That ship has  
5           sailed. The ZBA has nothing to do  
6           with that. It is what it is now.  
7           That's what the Board has to evaluate.

8                   MR. WEDDELL: What made the  
9           unique part of having the right-of-  
10          way through this is that it was  
11          residential at one time. What  
12          happened then is nobody paid  
13          attention to the fact that there was  
14          a right-of-way.

15                   MR. DONOVAN: Just for  
16          clarification, IB is Interchange  
17          Business District. That's the  
18          correct name for the district.

19                   MR. WEDDELL: Isn't that what I  
20          said?

21                   CHAIRMAN SCALZO: Intermittent  
22          you said. I've even, on my own,  
23          looked at deeds for this just to see  
24          if I saw anything. I didn't see  
25          anything relative to metes and bounds

1       S N K   P E T R O L E U M   W H O L E S A L E R S

2           descriptions that got you anywhere.  
3           Even the original subdivision by John  
4           Greg, it was undefined after that.  
5           In a perfect world it would be a  
6           straight line from your access  
7           easement out to 747. In this case,  
8           as I look, they're not denying you  
9           access at all. It may not be -- it's  
10          a little longer if you're walking  
11          and navigating through the gas pumps  
12          and past parking stalls. You're just  
13          going to have to be careful.

14                 MR. WEDDELL: You don't have to  
15                 approve the variances also. They're  
16                 substantial variances. They're all  
17                 substantial.

18                 MR. BUNTING: The variances  
19                 have nothing to do with the  
20                 dispensers. It has nothing to do  
21                 with the fact that it's a gas  
22                 station. It's just for the canopy.

23                 CHAIRMAN SCALZO: It's the  
24                 canopy on the southerly side of the  
25                 building.

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2                   MR. WEDDELL:  They require 60  
3           feet.

4                   CHAIRMAN SCALZO:  Right,  
5           because it is -- it's considered a  
6           front yard.  If this were next to  
7           another parcel, that side yard would  
8           be severely decreased.  It's an  
9           interstate highway.  It's severely --  
10          well, this parcel is elevated from  
11          the highway.  I understand why when  
12          you have some of the other instances  
13          that we've had in front of us, corner  
14          lots when you're dealing with  
15          residential, it's a big difference.  
16          I-84 is a limited access highway.  I  
17          don't know if you understand what  
18          limited access means.  Limited access  
19          means that no one is going to  
20          petition the DOT to get their own  
21          exit on this particular side.  They  
22          already built it on the other side.  
23          It's a Federal requirement and would  
24          have to be reviewed by the Feds.  So  
25          limited access, the likelihood of

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           anyone needing that extra parcel or  
3           that extra side, which is why we have  
4           a 60-foot requirement, or whatever  
5           the case may be, for State roads.  
6           It's highly unlikely. They won't be  
7           going past the property line with  
8           what they're proposing. Again, I'm  
9           making observations.

10                  I'm going to go back again to  
11                  the Board. There's been quite a bit  
12                  of dialogue here back and forth.  
13                  Anyone?

14                                  (No response.)

15                  CHAIRMAN SCALZO: Mr. Weddell,  
16                  any more comments?

17                  MR. WEDDELL: No.

18                  CHAIRMAN SCALZO: The gentleman  
19                  in the back, please introduce  
20                  yourself.

21                  MR. MULHOLLAND: My name is  
22                  Patrick Mulholland.

23                  CHAIRMAN SCALZO: Mr.  
24                  Mulholland, I did read the meeting  
25                  minutes from the last time and there



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2               was behavior from a couple people  
3               that I did not appreciate. Let's  
4               keep it to the facts and to the  
5               application.

6               MR. MULHOLLAND: Mr. Weddell is  
7               right, that was residential property.  
8               Commercial property -- residential  
9               property on Drury Lane. I lost two  
10              homes, two wells, two septic and had  
11              to move from there because Town of  
12              Newburgh changed the zone. I had to  
13              go buy a house somewhere else. I was  
14              promised a good deal, but that's here  
15              nor there, from the DOT. I had the  
16              letters and so forth. They were  
17              trying like heck to get that road  
18              through. I lost quite a bit on this.

19              When I sold Mr. Weddell that  
20              property, Pamela Morales was at the  
21              Adams parking lot and he approached  
22              us and said I'd really like to have  
23              that for a buffer between -- so  
24              people from the gas station or  
25              whatever can't come onto my land. I

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           said fine.   \$10,000 for 3.5 acres.  
3           It wasn't building lots or I would  
4           have got \$250,000.   So no good deed  
5           goes unpunished is what's happening  
6           here.

7                       CHAIRMAN SCALZO:   You had a  
8           similar sentiment in our last meeting  
9           which I had refreshed myself with the  
10          meeting minutes.   I understand  
11          everything you said.   What you're  
12          saying is important.   To say it  
13          twice, perhaps some of my fellow  
14          Board Members haven't had a chance to  
15          refresh themselves on the meeting  
16          minutes.

17                      MR. MULHOLLAND:   I think the  
18          buyers are going overboard trying to  
19          help him, which I'm totally against  
20          it but I have to go along with them.

21                      I spoke to the DEP today and so  
22          forth.   They wouldn't let me move my  
23          house back there because they  
24          wouldn't allow me to put a road from  
25          there across the commercial property.

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           They said we can't have residential  
3           on an interchange highway. I had to  
4           leave. I was forced to leave. He is  
5           take advantage of something that he  
6           did not --

7                   CHAIRMAN SCALZO: I'm going to  
8           stop you, Mr. Mulholland. This is  
9           not about he said/she said. If you  
10          have a comment that's relevant to the  
11          application, then please so state.  
12          If not, thank you for your comments.

13                   MR. MULHOLLAND: I just had a  
14          lot of losses here. This is where I  
15          got my hat in my hand, you know.

16                   CHAIRMAN SCALZO: I understand.

17                   MR. MULHOLLAND: Thank you very  
18          much.

19                   CHAIRMAN SCALZO: Thank you.

20                   Does anyone else from the  
21          public wish to speak about this  
22          application and only this application?

23                   (No response.)

24                   CHAIRMAN SCALZO: All right.

25                   I'm going to give the Board one last

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2           opportunity and then I'm going to ask  
3           if we're ready to close the public  
4           hearing.

5           Ms. Rein, is there anything  
6           else you'd like to hear this evening  
7           from any members of the public or --

8           MS. REIN: I think what you  
9           were speaking about makes sense. It  
10          sounds reasonable. Before we close  
11          the meeting I would want to know if  
12          there was a commitment to change that.

13          CHAIRMAN SCALZO: As I had  
14          mentioned, we can -- should we get  
15          that far to granting any variances,  
16          we can impose conditions.

17          MS. REIN: Right. You did say  
18          that.

19          CHAIRMAN SCALZO: Does that  
20          satisfy your inquiry?

21          MS. REIN: Yes.

22          CHAIRMAN SCALZO: Very good.

23          Mr. Masten?

24          MR. MASTEN: She answered my  
25          questions.

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2                   CHAIRMAN SCALZO:   Very good.

3                   Mr. Hermance, anything more?

4                   MR. HERMANCE:   I have nothing  
5           further.

6                   CHAIRMAN SCALZO:   Mr. Everhart,  
7           you look deep in thought.

8                   MR. EBERHART:   I agree with the  
9           conditions.

10                  CHAIRMAN SCALZO:   Okay.   Mr.  
11           Gramstad?

12                  MR. GRAMSTAD:   Nothing.

13                  CHAIRMAN SCALZO:   All right.  
14           That being the case, I'm going to  
15           look to the Board for a motion to  
16           close the public hearing.

17                  MS. REIN:   I'll make a motion  
18           to close the public hearing.

19                  MR. EBERHART:   I'll second it.

20                  CHAIRMAN SCALZO:   We have a  
21           motion from Ms. Rein.   We have a  
22           second, was that Mr. Eberhart?

23                  MR. EBERHART:   Yes, sir.

24                  CHAIRMAN SCALZO:   Roll on that,  
25           please, Siobhan.

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2                   MS. JABLESNIK:   Mr. Eberhart?

3                   MR. EBERHART:   Yes.

4                   MS. JABLESNIK:   Mr. Gramstad?

5                   MR. GRAMSTAD:   Yes.

6                   MS. JABLESNIK:   Mr. Hermance?

7                   MR. HERMANCENCE:   Yes.

8                   MS. JABLESNIK:   Mr. Masten?

9                   MR. MASTEN:   Yes.

10                  MS. JABLESNIK:   Ms. Rein?

11                  MS. REIN:   Yes.

12                  MS. JABLESNIK:   Mr. Scalzo?

13                  CHAIRMAN SCALZO:   Yes.

14                  All right.   So the public  
15                  hearing is now closed.

16                  This is an Unlisted action  
17                  under SEQRA.

18                  Ms. Rein, are you okay with us  
19                  moving the easel now?   I haven't been  
20                  able to see Michelle.

21                  MS. REIN:   Absolutely.

22                  CHAIRMAN SCALZO:   If the Board  
23                  is going to make a motion to approve  
24                  this application, then we will also  
25                  need a motion for a negative declaration.

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2                   MR. DONOVAN:  That's correct.

3           A negative declaration indicating  
4           that the issuance of the variances --  
5           this application must go to the  
6           Planning Board for traffic, site  
7           issues, drainage, but for the  
8           variance you need to issue a negative  
9           declaration indicating the issuance  
10          of the variances would not cause an  
11          adverse environmental impact.

12                   CHAIRMAN SCALZO:  If the Board  
13          is not going to approve this  
14          application, then we do not need the  
15          negative declaration, we just need a  
16          motion to disapprove.

17                   With that in mind, do we have a  
18          motion one way or the other?

19                   MS. REIN:  I have a motion to  
20          approve.

21                   CHAIRMAN SCALZO:  We have a  
22          motion to approve.

23                   MR. DONOVAN:  Then we need to  
24          do the negative dec first.

25                   CHAIRMAN SCALZO:  Okay.  With

1       S N K   P E T R O L E U M   W H O L E S A L E R S

2               regard to a negative declaration --

3               MR. DONOVAN:  You're out of  
4               sequence.

5               CHAIRMAN SCALZO:  Thanks, Dave.

6               MR. DONOVAN:  The SEQRA motion  
7               needs to come first.

8               CHAIRMAN SCALZO:  What I need is  
9               a motion for a negative declaration.

10              MS. REIN:  I'll make a motion  
11              for a negative declaration.

12              MR. HERMANCE:  I'll second it.

13              CHAIRMAN SCALZO:  We have a  
14              motion for a negative declaration  
15              from Ms. Rein.  We have a second from  
16              Mr. Hermance.  Can we have a roll call  
17              vote on that, please?

18              MS. JABLESNIK:  Mr. Eberhart?

19              MR. EBERHART:  Yes.

20              MS. JABLESNIK:  Mr. Gramstad?

21              MR. GRAMSTAD:  Yes.

22              MS. JABLESNIK:  Mr. Hermance?

23              MR. HERMANCE:  Yes.

24              MS. JABLESNIK:  Mr. Masten?

25              MR. MASTEN:  No.



1           S N K   P E T R O L E U M   W H O L E S A L E R S

2                   MS. JABLESNIK:  Ms. Rein?

3                   MS. REIN:  Yes.

4                   MS. JABLESNIK:  Mr. Scalzo?

5                   CHAIRMAN SCALZO:  Yes.

6                   Therefore the negative dec --

7                   MR. DONOVAN:  You go through  
8                   the balancing test.

9                   CHAIRMAN SCALZO:  We're going  
10                   to hit the balancing test here.  
11                   We're discussing the five factors  
12                   we're weighing, the first one being  
13                   whether or not the benefit can be  
14                   achieved by other means feasible to  
15                   the applicant.  Regarding the size of  
16                   the property, the size of the  
17                   proposed improvements to it -- I'm  
18                   going to stop right here for one  
19                   second.  Before we continue, is there  
20                   anything else that the Board feels as  
21                   though they need more time to review  
22                   or we're there?

23                   MS. REIN:  No.

24                   CHAIRMAN SCALZO:  I just wanted  
25                   to make sure before I continue.

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2                       So back to whether or not the  
3           benefit can be achieved by other  
4           means feasible to the applicant.  
5           When we talk about that, I almost  
6           think the conditions, if we were to  
7           do that -- let's look to the  
8           applicants here.

9                       One of the questions during the  
10          narrative this evening were would you  
11          be willing to reduce the building by  
12          say 5 feet on the south. I believe  
13          the applicant is not willing to do  
14          that. Am I correct?

15                      MR. LYTLE: Correct.

16                      CHAIRMAN SCALZO: I threw 5 out  
17          as an arbitrary number. I don't have  
18          a certain value in mind.

19                      MR. LYTLE: You guys had asked  
20          to look into taking the retaining  
21          wall on the south side, move that  
22          closer to the property line.

23                      CHAIRMAN SCALZO: You only have  
24          5 feet there, Ken.

25                      MR. LYTLE: We would be able to

1       S N K   P E T R O L E U M   W H O L E S A L E R S

2               shift that building down 5 feet also.  
3               It wouldn't give us any more width  
4               but it would make the variance for  
5               the building a little bit less.

6               CHAIRMAN SCALZO: Can you say  
7               that again, please?

8               MR. LYTLE: If we take the  
9               retaining wall from the south side,  
10              move it closer to the property line,  
11              shifting it down the page, take the  
12              building and everything involved with  
13              the building, shift it down with it.

14              CHAIRMAN SCALZO: That's not  
15              what I was looking for. I was  
16              looking at a building reduction which  
17              would increase because you're offset  
18              of 35 is your offset of 35. What  
19              you're saying would actually decrease  
20              that, or increase the request for a  
21              variance. It's either a yes or no.  
22              Like I said, I'm throwing an  
23              arbitrary number out there. If you  
24              don't like 5, pick a different  
25              number. I'm just looking for some way

1       S N K   P E T R O L E U M   W H O L E S A L E R S

2               to --

3               MR. LYTLE:   We can knock 4 feet  
4               off the building.  Somewhere in the  
5               middle, is that okay, 4 feet?

6               CHAIRMAN SCALZO:  I am one  
7               person of six here.

8               MR. LYTLE:   We are proposing to  
9               shrink the building in size.

10              CHAIRMAN SCALZO:  Therefore the  
11              area variance for the side yard --  
12              front yard that faces I-84 would then  
13              increase to 39 feet.

14              MR. LYTLE:   If you want to move  
15              it in that direction, yes.

16              CHAIRMAN SCALZO:  I'm not  
17              moving it.  It would be exactly where  
18              you're proposing it, just 4 feet  
19              shorter.

20              MR. LYTLE:   That would work.

21              CHAIRMAN SCALZO:  All right.  
22              Do the Board Members understand what  
23              just happened here?

24              MR. HERMANCE:  Yes.

25              MR. GRAMSTAD:  Yes.

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2                   MR. MASTEN:   Yes.

3                   MS. REIN:    Yes.

4                   MR. EBERHART:  Explain that.

5                   MR. LYTLE:    So we're going to  
6                   shorten the building by 4 feet.  The  
7                   bottom side of the building is going  
8                   to shore up towards the front of the  
9                   building, the left side, and the  
10                   parking would stay where it was,  
11                   increasing the variance from where we  
12                   had it at 35 feet, now we actually go  
13                   to --

14                   MR. DONOVAN:  You're decreasing  
15                   the variance.

16                   MR. LYTLE:    Right.

17                   CHAIRMAN SCALZO:  Currently  
18                   you're at -- you're proposed at 35.  
19                   You will then be at 39.

20                   MR. LYTLE:    That's correct.

21                   CHAIRMAN SCALZO:  The applicant  
22                   has indicated that they are willing  
23                   to do what they can to move that  
24                   retaining wall on the south side as  
25                   close to the property line as possible, --

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2                   MR. LYTLE:   Yes.

3                   CHAIRMAN SCALZO:  -- increasing  
4                   the flow of traffic around the  
5                   building.

6                   MR. LYTLE:   That's correct.

7                   CHAIRMAN SCALZO:  All right.  
8                   Additionally, since we're talking  
9                   about retaining walls, we're also  
10                  talking about the retaining wall that  
11                  fronts on New York State Route 747.  
12                  Currently at your 30 scale it varies  
13                  in offset from approximately 11 feet  
14                  to 15 feet.  There's an analysis  
15                  involved in your footings as well,  
16                  but I would assume you can grab at  
17                  least a minimum of 5 feet.

18                  MR. LYTLE:   We'll shift that  
19                  and the parking.

20                  CHAIRMAN SCALZO:  And the  
21                  parking stalls as well.  I'm assuming  
22                  your underground storage tanks would  
23                  move right along with it.

24                  MR. WEDDELL:  What about the 25  
25                  feet?

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2                   CHAIRMAN SCALZO:  Mr. Weddell,  
3           the public hearing is now closed.  
4           I'm questioning the applicant.

5                   MR. LYTLE:  I'll confirm that,  
6           if we can move the tanks.

7                   CHAIRMAN SCALZO:  All right.  
8           So now we're going --

9                   MR. LYTLE:  That's underground  
10          stuff anyway.

11                   CHAIRMAN SCALZO:  You don't see  
12          it.  I got it.  Canopies will not  
13          move.  Gas islands will not move.  
14          Everything stays where it is.

15                   Are we all together?  This is  
16          just me.  If you guys have a  
17          different suggestion or a condition  
18          you may find more acceptable, please  
19          speak up.

20                   (No response.)

21                   CHAIRMAN SCALZO:  All right.  I  
22          believe we're through criteria number  
23          one.

24                   Second, if there's an  
25          undesirable change in the

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           neighborhood character or a detriment  
3           to nearby properties. We have heard  
4           testimony that there would be an  
5           undesirable change in the  
6           neighborhood character. This would  
7           be the first of its kind in that area  
8           really. Not considering the building  
9           across street, which I think is  
10          commercial uses, and plus the Amazon  
11          distribution facility that's half a  
12          mile down the road, but you can't see  
13          it from there. It is an allowed use  
14          in that area. It really confines what  
15          we're doing. However, just my  
16          opinion, undesirable change in the  
17          neighborhood character, for what the  
18          neighborhood character is right now,  
19          it is an undesirable change.

20                    Keep in mind we're going to go  
21                    through the criteria. You don't have  
22                    to meet every one.

23                    MR. LYTTLE: Can I say something  
24                    about that?

25                    CHAIRMAN SCALZO: Yes.



1           S N K   P E T R O L E U M   W H O L E S A L E R S

2                   MR. LYTLE:   When Newburgh did  
3                   the rezoning, they rezoned this whole  
4                   area to bring these kinds of  
5                   businesses to the area.

6                   CHAIRMAN SCALZO:   The second  
7                   one that comes in like that, then it  
8                   won't be a change to the  
9                   neighborhood.   The first one, in my  
10                  opinion it is.

11                  MR. DONOVAN:   So the law -- the  
12                  inference is if it fits within the  
13                  zone, it's consistent with the  
14                  character of the neighborhood.  
15                  That's your general criteria.   If  
16                  it's permitted by the zone, then it's  
17                  consistent with the character of the  
18                  neighborhood.   We do have, as I said,  
19                  a unique situation with the proximity  
20                  of residential uses to this property.

21                  The Chairman has indicated that  
22                  he thinks it's a detriment to the  
23                  neighborhood.   I don't know whether  
24                  any other Board Members have a  
25                  different --

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2                   MR. EBERHART:  As of now, the  
3           way it's zoned, it's not a detriment.

4                   CHAIRMAN SCALZO:  Mr. Eberhart,  
5           there are six of us sitting here.  
6           Each one of us can lend our own  
7           opinion here.  Mr. Eberhart, thank  
8           you for yours.

9                   Mr. Gramstad, what's your  
10          opinion on if it's an undesirable  
11          change in the neighborhood character  
12          or a detriment to nearby properties?

13                   MR. GRAMSTAD:  Absolutely it is  
14          because it is the first one.

15                   CHAIRMAN SCALZO:  This is what  
16          makes this Board work.  We don't all  
17          necessarily agree.

18                   How about you, Mr. Hermance.  
19          What are you thinking?

20                   MR. HERMANCE:  It is a  
21          detriment but it's the first of its  
22          kind, as you said, and the second one  
23          wouldn't be a detriment.

24                   CHAIRMAN SCALZO:  Mr. Masten?

25                   MR. MASTEN:  It would be a big

1       S N K   P E T R O L E U M   W H O L E S A L E R S

2           change in that area because nothing  
3           has ever been like that in that area.

4           CHAIRMAN SCALZO:  Nope.

5           MR. MASTEN:  The only thing  
6           that big that was different is down  
7           on the corner, that steel place.

8           CHAIRMAN SCALZO:  That's art.

9           MR. MASTEN:  That was a steel  
10          manufacturing plant at one time.  It  
11          was never --

12          CHAIRMAN SCALZO:  Okay.  Ms.  
13          Rein?

14          MS. REIN:  It's a change.  I  
15          don't know that it's a detriment.  A  
16          detriment has very negative connotations.

17          CHAIRMAN SCALZO:  The word is  
18          undesirable.  As Counsel put it, with  
19          the change of zone, that's the  
20          indication that it is an accepted  
21          practice in that area.

22          MS. REIN:  So if we say that  
23          it's undesirable and it's a  
24          detriment --

25          CHAIRMAN SCALZO:  You don't

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           have to meet every criteria. This is  
3           an area variance. This is not a use  
4           variance. With use variances you  
5           need to get all the criteria in a  
6           positive way. Three out of four  
7           doesn't work. In this case, not  
8           necessarily so.

9                       MS. REIN: Thank you.

10                      CHAIRMAN SCALZO: Thank you.  
11           Okay. So moving on to the third,  
12           whether the request is substantial.  
13           By the numbers the request is  
14           substantial. With what we've  
15           discussed with the applicant here  
16           about reducing the size of the  
17           building, moving the retaining walls,  
18           the one substantial variance that  
19           they are seeking for the building,  
20           they just have given us 4 more feet.  
21           I say given us. They've increased  
22           the offset distance, therefore  
23           decreasing the variance requested  
24           from 60 to 39 now.

25                      Again, my position on this is

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           because it's front yarding a limited  
3           access highway, it's not as critical  
4           as it would be say in a residential  
5           neighborhood. That's me.

6                     Mr. Gramstad, what are your  
7           thoughts on that?

8                     MR. GRAMSTAD: I like the idea  
9           that they've made the building a  
10          little smaller.

11                    CHAIRMAN SCALZO: And they're  
12          going to move the retaining walls.

13                    MR. GRAMSTAD: Yes.

14                    CHAIRMAN SCALZO: How about  
15          you, Mr. Eberhart?

16                    MR. EBERHART: I agree with that.

17                    CHAIRMAN SCALZO: Mr. Hermance?

18                    MR. HERMANCE: Being that it's  
19          facing I-84, as you said there would  
20          be no further access permitted from  
21          84 to that area. It's a lot better.

22                    CHAIRMAN SCALZO: Thank you,  
23          Mr. Hermance.

24                    Mr. Masten?

25                    MR. MASTEN: I lost the question.

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2                   CHAIRMAN SCALZO:  These are  
3           super difficult.  This is a very  
4           unique application.  Whether this  
5           request is substantial.  I have to  
6           apologize.  I keep looking that way.  
7           I should be look this way.

8                   MR. MASTEN:  I say it is.

9                   CHAIRMAN SCALZO:  Ms. Rein?

10                   MR. DONOVAN:  Before you  
11           answer, just remember substantiality  
12           is not necessarily just a  
13           mathematical computation.  It's also  
14           the overall effect or impact compared  
15           to the variance when you determine  
16           substantiality.  You just don't have  
17           to look at if it's a 70 percent  
18           expansion.  You can look at it in the  
19           context of what's the overall effect  
20           on the neighborhood.  I just wanted  
21           to put that out there.

22                   CHAIRMAN SCALZO:  Thank you,  
23           Dave, for saying it that way.  Again,  
24           kick me when I start to go wrong.

25                   The variances that they are

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           looking at is the canopy. Keep in  
3           mind the canopy is 18 feet, 20 feet  
4           high. So it's not -- you can drive  
5           under it.

6                   MS. REIN: Right.

7                   CHAIRMAN SCALZO: It's not a  
8           solid object but it is still an  
9           object that you can see.

10                   With regard to the building,  
11           and again I'm not trying to sway  
12           anybody, my position is but 84 is a  
13           limited access highway and requiring  
14           the 60 feet setback from that is a  
15           reach, in my opinion, in this  
16           application.

17                   So as Counsel just said, is the  
18           request substantial. When I look at  
19           it as a whole, I don't think it is.  
20           The numbers say so. As Counsel  
21           pointed out, it's not necessarily a  
22           mathematical calculation.

23                   MS. REIN: I agree.

24                   CHAIRMAN SCALZO: The fourth,  
25           whether the request will have adverse

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           physical or environmental effects.  
3           Well, right now it's one driveway in  
4           with a lot of grass.  When they're  
5           done it's going to be a lot of  
6           pavement, concrete and a building.  
7           They're also going to have to go  
8           through the Planning Board which will  
9           have requirements for them to handle  
10          all of the physical, the water,  
11          everything else that goes with it,  
12          the environmental effects there.  The  
13          Orange County Health Department would  
14          be in charge of reviewing their  
15          sanitary facilities as they proposed.  
16          That's not our setup.  So when it  
17          looks at adverse physical or  
18          environmental effects, it will be a  
19          change but there's going to be  
20          mitigated efforts to overcome those.

21                   Ms. Rein, what's your opinion  
22                   on that?

23                   MS. REIN:  It seems like  
24                   there's going to be quite a bit of  
25                   overseeing, so --



1           S N K   P E T R O L E U M   W H O L E S A L E R S

2                   CHAIRMAN SCALZO: All right.

3                   Mr. Masten?

4                   MR. MASTEN: I agree with Donna.

5                   CHAIRMAN SCALZO: Okay. Mr.

6                   Hermance?

7                   MR. HERMANCE: Yeah, being that  
8                   we're here to rule on the canopies --

9                   CHAIRMAN SCALZO: Adverse  
10                  physical or environmental effects to  
11                  the canopies and the buildings.  
12                  Thank you, Greg, for reminding me of  
13                  that.

14                  Mr. Eberhart?

15                  MR. EBERHART: So again the  
16                  question is is there an adverse  
17                  environmental effect?

18                  CHAIRMAN SCALZO: Physical or  
19                  environmental effects for the area  
20                  with regard to the variances.

21                  MR. EBERHART: The variances.

22                  CHAIRMAN SCALZO: Variances  
23                  only. I had mentioned asphalt where  
24                  grass is. I shouldn't have said that  
25                  because that's really not what we're

1       S N K   P E T R O L E U M   W H O L E S A L E R S

2               here to talk about. We're here to  
3               talk about variances for a building  
4               and variances for a canopy.

5               MR. EBERHART: In terms of the  
6               canopy, no.

7               MS. REIN: What?

8               MR. EBERHART: I don't believe  
9               there's an adverse environmental  
10              effect in terms of the canopy.

11              CHAIRMAN SCALZO: Mr. Gramstad?

12              MR. GRAMSTAD: No.

13              CHAIRMAN SCALZO: All right.

14              The fifth, whether the alleged  
15              difficulty is self-created. We all  
16              know that this is self-created.

17              MR. HERMANCE: Yes.

18              MR. EBERHART: Yes.

19              MR. GRAMSTAD: Yes.

20              MR. MASTEN: Yes.

21              MS. REIN: Yes.

22              CHAIRMAN SCALZO: Which is  
23              relevant but not determinative.

24              So if the Board approves, it  
25              shall grant the minimum variance

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           necessary and may impose reasonable  
3           conditions.

4                       Now, we had discussed in  
5           criteria 1 and 2 about some  
6           reasonable conditions. If the Board  
7           is prepared to move on this  
8           application this evening, which we  
9           don't have to, we have 62 days from  
10          the closure of the public hearing.  
11          Correct?

12                      MR. DONOVAN:   Correct, Mr.  
13          Chairman.

14                      CHAIRMAN SCALZO:   So if the  
15          Board approves, we may impose  
16          reasonable conditions.

17                      Just looking at the applicant  
18          to confirm, the offer to reduce the  
19          building south by 4 feet?

20                      MR. LYTLE:    Yes.

21                      CHAIRMAN SCALZO:   Therefore the  
22          variance requested, instead of 35  
23          feet becomes 39.

24                      MR. LYTLE:    That's correct.

25                      CHAIRMAN SCALZO:   To push the

1       S N K   P E T R O L E U M   W H O L E S A L E R S

2             retaining wall on the south side as  
3             close to the property line as  
4             possible. You have 5 feet. Even  
5             perhaps if you were to reach out to  
6             DOT and --

7                     MR. LYTTLE: Yes.

8                     CHAIRMAN SCALZO: -- they may  
9             allow you to put the top of that wall  
10            right on the line, therefore  
11            increasing -- I think you're going to  
12            need every bit of swing room you can  
13            get, because even though a truck  
14            driver has a professional license,  
15            not all of them are created equal.  
16            As well as the front retaining wall.

17                    MR. LYTTLE: That's correct.

18                    CHAIRMAN SCALZO: A minimum of  
19            5 feet, desirable would be 7 to 8.

20                    MR. LYTTLE: Okay.

21                    CHAIRMAN SCALZO: Does anybody  
22            on the Board have any comments to go  
23            with that?

24                    MS. REIN: No.

25                    CHAIRMAN SCALZO: Do you feel

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           as though what we just discussed are  
3           reasonable conditions?

4                   MS. REIN:   I do.

5                   MR. GRAMSTAD:  I do.

6                   CHAIRMAN SCALZO:  Now,  
7           something that we haven't hit is the  
8           canopy signs and lighting.  There  
9           were no canopy signs or lighting on  
10          any -- on the rear portion of that at  
11          all.

12                   MR. LYTLE:  Correct.

13                   MR. DOMBAL:  No signage on the  
14          canopy.  Just a regular colonial  
15          looking canopy.

16                   CHAIRMAN SCALZO:  Very good.  
17          I've talked entirely too much.

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

21                   MR. EBERHART:  I'll make a  
22          motion that we approve with the  
23          conditions.

24                   MS. REIN:  I'll second.

25                   CHAIRMAN SCALZO:  We have a

1       S N K   P E T R O L E U M   W H O L E S A L E R S

2               motion for approval from Mr.  
3               Eberhart. We have a second from Ms.  
4               Rein.

5                       MR. DONOVAN: To be clear Mr.  
6               Chairman, those are the conditions  
7               that you outlined?

8                       MR. EBERHART: Yes.

9                       CHAIRMAN SCALZO: I did capture  
10              them all other than what we had  
11              discussed.

12                      MR. WEDDELL: Can I clarify on  
13              the conditions, because I heard it  
14              could be 5 to 7 feet?

15                      CHAIRMAN SCALZO: A minimum of  
16              5. Desired is more. There's going  
17              to be an engineering analysis that  
18              requires them -- there may be  
19              circumstance that will prevent them  
20              because the front is retaining  
21              holding the parking lot whereas the  
22              side is retaining an existing slope.  
23              There's different criteria when  
24              you're designing a retaining wall for  
25              that. I would like you to get as

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2           much as you can but I want a minimum  
3           of 5. That I know you can. It's 10  
4           feet, the shortest dimension on the  
5           north side where it comes into that  
6           second parcel. 5 is a minimum. If  
7           you can get 8, I would prefer 8.  
8           It's going to be an engineering  
9           calculation for you, Mr. Lytle.

10                   MR. LYTLE: 5 will work.

11                   CHAIRMAN SCALZO: Does that  
12           make sense? Mr. Weddell, I did  
13           indulge your question there.

14                   All right. So we have a motion  
15           from Mr. Eberhart. We have a second  
16           from Ms. Rein. Now please, Siobhan,  
17           roll on that.

18                   MS. JABLESNIK: Mr. Eberhart?

19                   MR. EBERHART: Yes.

20                   MS. JABLESNIK: Mr. Gramstad?

21                   MR. GRAMSTAD: Yes.

22                   MS. JABLESNIK: Mr. Hermance?

23                   MR. HERMANCE: Yes.

24                   MS. JABLESNIK: Mr. Masten?

25                   MR. MASTEN: Yes.

1           S N K   P E T R O L E U M   W H O L E S A L E R S

2                   MS. JABLESNIK:   Ms. Rein?

3                   MS. REIN:   Yes.

4                   MS. JABLESNIK:   Mr. Scalzo?

5                   CHAIRMAN SCALZO:   Yes.

6                   All right.   The motion is

7                   carried.

8                   MR. LYTTLE:   Thank you.

9                   CHAIRMAN SCALZO:   The modified  
10                   variances are approved.   Thank you  
11                   very much.

12                   MR. DOMBAL:   Thank you.

13                   CHAIRMAN SCALZO:   Our last  
14                   order of business now are the  
15                   acceptance of the meeting minutes  
16                   from last month.   I know I poured  
17                   over them myself.   I would like to  
18                   make a recommendation that we approve  
19                   the meeting minutes for June.

20                   MR. GRAMSTAD:   I'll make that  
21                   motion to approve the meeting minutes  
22                   from June.

23                   CHAIRMAN SCALZO:   We have a  
24                   motion from Mr. Gramstad.

25                   MR. HERMANC:   I'll second it.



1           S N K   P E T R O L E U M   W H O L E S A L E R S

2                   CHAIRMAN SCALZO: We have a  
3           second from Mr. Hermance. All in  
4           favor?

5                   MR. EBERHART: Aye.

6                   MR. GRAMSTAD: Aye.

7                   MR. HERMANCE: Aye.

8                   MR. MASTEN: Aye.

9                   MS. REIN: Aye.

10                  CHAIRMAN SCALZO: Aye.

11                  All opposed?

12                  (No response.)

13                  CHAIRMAN SCALZO: Okay. Good  
14           night, everybody.

15                  (Time noted: 9:21 p.m.)

16

17

18

19

20

21

22

23

24

25

1       S N K   P E T R O L E U M   W H O L E S A L E R S

2

3

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

4

5

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

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

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

16           IN WITNESS WHEREOF, I have hereunto  
17       set my hand this 6th day of August 2022.

18

19

20

21

*Michelle Conero*

22

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

23

24

25