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

In the Matter of

John and Carol Hudelson
200 Oak Street, Newburgh, NY
(9-3-50.11)

Date: October 25, 2018
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 30
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman
JOHN McKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
DARRELL BELL

ALSO PRESENT: DAVID DONOVAN, ESQ.
GERALD CANFIELD
SIOBHAN JABLESNIK

MICHELLE L. CONERO
PMB #276
56 North Plank Road, Suite 1
Newburgh, New York 12550
(845) 541-4163

1 - PROCEEDINGS -

2 THE CHAIRMAN: We have held open from
3 our September 27 meeting, the applicant is John
4 and Carol Hudelson, 200 Oak Street. They are
5 seeking an area variance to keep an accessory
6 building 8.25 X 33 built without a permit for
7 the mounting of solar panels on the roof.

8 This was held for discussion from our
9 last meeting. One of the conversations that
10 was brought up during the public hearing,
11 testimony that we had heard, was the roof
12 dominant structure was set that way for the
13 intent to place solar panels on it. I don't
14 know how that works its way into the area
15 variance that's being requested. However --

16 MR. McKELVEY: We are not dealing with a
17 solar panel?

18 THE CHAIRMAN: No. It was an ancillary
19 piece of information. Solar panels are quite
20 easy to attach to a metal roof, which the other
21 two structures on the building have, although
22 they are not aligned appropriately or for the
23 best benefit of the solar.

24 But let's go back to, we are here to
25 discuss just the overage in the areas on the

1 - PROCEEDINGS -

2 shed, which when coupled with the previous
3 variance that we had granted three years ago,
4 brings the area to approximately over
5 40 percent.

6 MR. DONOVAN: Yes.

7 THE CHAIRMAN: Do we have discussion on
8 this, gentleman?

9 (No Response.)

10 THE CHAIRMAN: If anyone needs more time
11 to evaluate this, we have 62 days. Our next
12 meeting is November 20. We will be within our
13 62 days if we want to evaluate this anymore.

14 (No response.)

15 THE CHAIRMAN: If not, I look to the
16 Board to either ask to extend the discussion to
17 the November meeting or for a motion to approve
18 or disapprove.

19 MR. DONOVAN: Did we go through the
20 criteria.

21 THE CHAIRMAN: Thank you. This is a
22 Type II action, as all of our applicants were
23 this evening.

24 MR. LEVIN: Didn't with go through this
25 last meeting?

1 - PROCEEDINGS -

2 MR. DONOVAN: We did go through the
3 criteria at the last meeting. You closed the
4 hearing. You did go through the criteria and
5 then you decided to take some time.

6 Yes, you did go through the criteria and
7 decided to take some time to evaluate what you
8 wanted to do. So having gone through them
9 once, you don't need to go through them.
10 Again, unless you chose to.

11 MR. BELL: No.

12 THE CHAIRMAN: Okay. Well, then there I
13 am back to, gentleman, if we are in the need of
14 more time, so state or if someone is so
15 inclined to present a motion to the Board.

16 MR. MARINO: I will make a motion we
17 approve the variance.

18 THE CHAIRMAN: We have a motion for
19 approval from Mr. Marino.

20 MR. BELL: I will second.

21 THE CHAIRMAN: We have a second from
22 Mr. Bell.

23 Roll call.

24 MS. JABLESNIK: Mr. Bell?

25 MR. BELL: Yes.

1 - PROCEEDINGS -

2 MS. JABLESNIK: Mr. Levin?

3 MR. LEVIN: No.

4 MS. JABLESNIK: Mr. Marino?

5 MR. MARINO: Yes.

6 MS. JABLESNIK: Mr. Masten?

7 MR. MASTEN: No.

8 MS. JABLESNIK: Mr. McKelvey?

9 MR. MCKELVEY: No.

10 MS. JABLESNIK: And Mr. Scalzo?

11 THE CHAIRMAN: Yes.

12 It's a tie. Mr. Donovan, what do we do?

13 MR. DONOVAN: So an interesting twist in
14 the Zoning Board Rules, a less than -- let me
15 back up a second.

16 So this is a seven-member Board. So you
17 need four votes to carry a motion. In certain
18 circumstances four votes is no action. The ZBA
19 points to historical in the case that
20 precipitated this, the statute is that it is a
21 denial.

22 However, the applicant has the ability to
23 request a reconsideration, not a rehearing,
24 within 62 days of tonight.

25 THE CHAIRMAN: Okay. Would it be in the

1 - PROCEEDINGS -

2 best interest of the applicant to wait until we
3 have a full Board?

4 MR. DONOVAN: Well, you already voted.
5 The applicant could request reconsideration
6 when there is a full Board, correct.

7 THE CHAIRMAN: Okay. So in this case
8 the motion is denied.

9 MR. DONOVAN: That's correct.

10 MR. LEVIN: Would that require a hundred
11 percent on the --

12 MR. DONOVAN: No. If you want to go
13 back a little bit, in the name -- the name
14 escapes me -- Darrigo. On the Darrigo
15 application, for reasons that are not clear to
16 me, they requested a rehearing, which requires
17 both a unanimous vote of the Board to rehearing
18 and unanimous vote of the Board to approve.

19 There is a provision in the law for ZBAs
20 when there is insufficient votes, like we had
21 tonight, three votes, for the applicant to
22 request within 62 days a new vote. For reasons
23 that are not clear to me, the counsel for
24 Darrigo elected not to do that, because then he
25 would not have needed to be unanimous. But in

1 - PROCEEDINGS -

2 this case, it would not be unanimous.

3 MR. McKELVEY: Does it have to be
4 notified?

5 MR. DONOVAN: Well, the applicant has to
6 be notified of the vote. It's their
7 determination -- I mean, they will have the
8 minutes. So they will be able to see what we
9 say tonight. I can't give legal advice. My
10 job is to give legal advice to the Board. So
11 what does that mean to the Hudelsons regarding
12 the shed?

13 MR. DONOVAN: Within 62 days of tonight
14 they can ask for reconsideration.

15 MR. MARINO: But they don't have to tear
16 down the shed and we are not discussing solar
17 panels. So --

18 THE CHAIRMAN: Not for 62 days they
19 don't.

20 MR. DONOVAN: So let's assume that they
21 chose not to do that. So the determination of
22 this Board is a denial. Then it's got to be up
23 to Code Compliance in the town to determine if
24 they want to bring in an enforcement proceeding
25 to compel the structure be removed, which then

1 - PROCEEDINGS -

2 morphs into a whole other situation, which is
3 conversation for another time, which I won't
4 get into right now.

5 THE CHAIRMAN: Okay. We have -- do I
6 need to make any other type of announcement on
7 this?

8 MR. DONOVAN: You do not.

9
10 (Whereupon the above matter was concluded.)

11
12 * * * *

13
14 THE CHAIRMAN: We have one other piece
15 of business which did not appear on the agenda.
16 We received a letter from Wendy Afron (ph)
17 Keller considering a formal request to extend
18 the variance approval granted on June 28, 2018
19 for the property at Section 80 Block 2 Lot 10
20 in the R1 zone.

21 "The scope of work permitted, which was
22 Permit Number 18-0204, is significant and our
23 contractor is unable to schedule it until after
24 the holidays. They are concerned that the
25 weather will not be optimal to initiate the

1 - PROCEEDINGS -

2 work of this nature at this time.

3 "I am therefore requesting the variance
4 approval be extended for six months so that we
5 may begin work as soon as weather permits
6 following the winter months.

7 "Thank you for your consideration. I
8 look forward to hearing from you. Sincerely
9 Wendy Afron Keller.

10 They got the approval on June 28. They
11 have until December 28. So they are within the
12 time limit required.

13 Any discussion on this?

14 Personally, I have no issue with that.

15 MR. McKELVEY: I make a motion we
16 approve.

17 MR. LEVIN: I will second.

18 THE CHAIRMAN: We have a motion from
19 Mr. McKelvey. We have a second from Mr. Levin.

20 Roll call.

21 MS. JABLESNIK: Mr. Bell?

22 MR. BELL: Yes.

23 MS. JABLESNIK: Mr. Levin?

24 MR. LEVIN: Yes.

25 MS. JABLESNIK: Mr. Marino?

1 - PROCEEDINGS -

2 MR. MARINO: Yes.

3 MS. JABLESNIK: Mr. Masten?

4 MR. MASTEN: Yes.

5 MS. JABLESNIK: Mr. McKelvey?

6 MR. MCKELVEY: Yes.

7 MS. JABLESNIK: And Mr. Scalzo?

8 THE CHAIRMAN: Yes.

9

10 (Whereupon the above matter was concluded.)

11

12 * * END OF MEETING * *

13

14 THE CHAIRMAN: The last order of
15 business I believe for the evening is the
16 approval of the meeting minutes for the
17 September meeting.

18 Anyone want to make a motion for approval
19 of those?

20 MR. BELL: I make a motion to approve.

21 THE CHAIRMAN: A motion from Mr. Bell.

22 Do we have a second?

23 MR. LEVIN: Second.

24 THE CHAIRMAN: We have a second from

25 Mr. Levin. All in favor of that?

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

3

4 I, MARIE A. MARTIN, a Court Reporter
5 and Notary Public within and for the State
6 of New York, do hereby certify:

7 That the witness whose deposition
8 is herein before set forth, was duly sworn
9 by me, and that the within transcript is a
10 true record of the testimony given by such
11 witness.

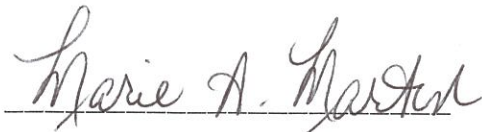
12 I further certify that I am not
13 related to any of the parties to this action
14 by blood or marriage, and that I am in no way
15 interested in the outcome of this matter.

16 IN WITNESS WHEREOF, I have hereunto
17 set my hand this 4th day of November 2016.

18

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A handwritten signature in cursive script that reads "Marie A. Martin". The signature is written in dark ink and is positioned above a horizontal line.

21

MARIE A. MARTIN

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

4 In the Matter of

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6

Steven Cruver
522 Park Avenue, Newburgh, NY
(38-3-14)

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Date: October 25, 2018
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 30
Newburgh, NY 12550

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BOARD MEMBERS: DARRIN SCALZO, Chairman
JOHN McKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
DARRELL BELL

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ALSO PRESENT: DAVID DONOVAN, ESQ.
GERALD CANFIELD
SIOBHAN JABLESNIK

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MICHELLE L. CONERO
PMB #276
56 North Plank Road, Suite 1
Newburgh, New York 12550
(845) 541-4163

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1 - PROCEEDINGS -

2 THE CHAIRMAN: Our next applicant this
3 evening is Steven Cruver, seeking an area
4 variance to build a 24 X 24 accessory building
5 with the maximum square footage permitted by
6 the formula is 369.29 square feet.

7 Variance (B) to keep a 4 X 20 wood shed
8 built without permits, all structures shall be
9 setback 5 feet from the rear property line.

10 Ms. Jablesnik?

11 MS. JABLESNIK: This applicant sent out
12 74 letters. All the mailings, postings and
13 publications are in order.

14 THE CHAIRMAN: Seventy-four, you are the
15 winner for the evening. That's quite a bit.
16 Sir, if you could state your name and tell us
17 what you want to do?

18 MR. CRUVER: My name is Steven Cruver
19 and I would like to get approval for a 24 x 24
20 garage to put my car and motorcycles in.

21 THE CHAIRMAN: As I mentioned, we have
22 all been to the site. I was there last week,
23 looked around the neighbor and I happen to
24 notice that two of your neighbors right across
25 the street from you have garages just about the

1 - PROCEEDINGS -

2 size you want to build.

3 MR. CRUVER: Yes. And they have smaller
4 lots than I do.

5 THE CHAIRMAN: You have, actually,
6 probably one of the larger lots in that
7 subdivision. I did notice that as well. Your
8 lot and dwelling and everything around it is
9 very neat. It appears that you do take pride
10 in what you do. I have no other comments.

11 Regarding the wood shed in the back, the
12 stone wall, it mentions in the application that
13 it needs to be 5 feet from the property line.
14 Do we have confirmation that you are a minimum
15 of 5 feet away?

16 MS. GERSTNER: Yeah. I measured it.

17 THE CHAIRMAN: Gerry, that was the item
18 that came from your department. Was it just a
19 confirmation that they are looking for?

20 MR. CANFIELD: Yes.

21 THE CHAIRMAN: At this point I will turn
22 to the Board.

23 Mr. Marino, any comments?

24 MR. MARINO: No. I looked at the area.
25 I think it would enhance the property. It's

1 - PROCEEDINGS -

2 well kept, very clean.

3 THE CHAIRMAN: Mr. Masten?

4 MR. MASTEN: I agree.

5 THE CHAIRMAN: Mr. Levin?

6 MR. LEVIN: I agree with him.

7 THE CHAIRMAN: Mr. McKelvey?

8 MR. MCKELVEY: I agree.

9 THE CHAIRMAN: Mr. Bell?

10 MR. BELL: Very good.

11 THE CHAIRMAN: My only -- I don't take
12 issue with it. I notice that your neighbors
13 have it. Your wood shed, if I am the guy that
14 lives behind you and I got to look at that
15 green board, I might be upset about it. So do
16 you have any plans to --

17 MR. CRUVER: Yes. Paint it.

18 THE CHAIRMAN: At this point I am going
19 to open this up to any members of the public
20 that may want to speak about this application.

21 (No response.)

22 THE CHAIRMAN: Hearing none, I will give
23 a last opportunity to the Board. If not, may I
24 hear a motion?

25 MR. LEVIN: I make a motion to approve

1 - PROCEEDINGS -

2 to close the public hearing.

3 MR. MARINO: Second.

4 THE CHAIRMAN: So we have a motion from
5 Mr. Levin. We have a second from Mr. Marino.

6 Roll call.

7 MS. JABLESNIK: Mr. Bell?

8 MR. BELL: Yes.

9 MS. JABLESNIK: Mr. Levin?

10 MR. LEVIN: Yes.

11 MS. JABLESNIK: Mr. Marino?

12 MR. MARINO: Yes.

13 MS. JABLESNIK: Mr. Masten?

14 MR. MASTEN: Yes.

15 MS. JABLESNIK: Mr. McKelvey?

16 MR. MCKELVEY: Yes.

17 MS. JABLESNIK: And Mr. Scalzo?

18 THE CHAIRMAN: Yes.

19 The public hearing is closed. Thank
20 you. We will try to render a decision this
21 evening.

22 (Time noted: 7:57 p.m.)

23 * * * *

24 (Time resumed for decision: 8:09 p.m.)

25 THE CHAIRMAN: The next applicant is

1 - PROCEEDINGS -

2 Steven Cruver, 522 Park Avenue, Variance (A),
3 an area variance to build a 24 X 24 accessory
4 building where the maximum square footage
5 permitted by the formula is 369.29 feet.

6 Variance (B), to keep a 4 X 20 wood shed
7 built without permits, all structures shall be
8 setback 5 feet from the rear property line.

9 Any discussion on this applicant?

10 MR. BELL: No.

11 THE CHAIRMAN: All right. The first
12 criteria, whether or not the benefit can be
13 achieved by other means feasible to the
14 applicant?

15 Second, if there is an undesirable change
16 to the neighborhood character or a detriment to
17 nearby properties? I don't believe so.

18 MR. McKELVEY: No.

19 THE CHAIRMAN: Third, whether the
20 request is substantial? He is the largest lot
21 in the subdivision. I don't believe,
22 comparatively speaking, he is.

23 The fourth, whether the request will have
24 an adverse physical or environmental affect?

25 MR. MARINO: No.

1 - PROCEEDINGS -

2 THE CHAIRMAN: I don't believe so.

3 The fifth, whether the alleged difficulty
4 is self-created, relevant but not
5 determinative? Yes, it's self-created, but as
6 I mentioned, he is the largest lot in the
7 subdivision with other lots around him that
8 already have similar structures for that
9 purpose.

10 Therefore, I will look to the Board for a
11 motion.

12 MR. BELL: I make motion to approve.

13 MR. McKELVEY: I will second.

14 THE CHAIRMAN: We have a motion to
15 approve from Mr. Bell, a second from
16 Mr. McKelvey.

17 Roll call.

18 MS. JABLESNIK: Mr. Bell?

19 MR. BELL: Yes.

20 MS. JABLESNIK: Mr. Levin?

21 MR. LEVIN: Yes.

22 MS. JABLESNIK: Mr. Marino?

23 MR. MARINO: Yes.

24 MS. JABLESNIK: Mr. Masten?

25 MR. MASTEN: Yes.

- PROCEEDINGS -

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MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: And Mr. Scalzo?

THE CHAIRMAN: Yes.

The motion is approved.

MR. BROWN: Thank you.

(Whereupon the above matter was concluded.)

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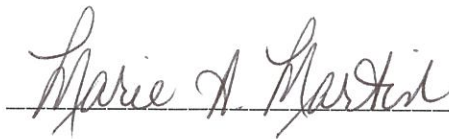
C E R T I F I C A T I O N

I, MARIE A. MARTIN, a Court Reporter and Notary Public within and for the State of New York, do hereby certify:

That the witness whose deposition is herein before set forth, was duly sworn by me, and that the within transcript is a true record of the testimony given by such witness.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of November 2016.



MARIE A. MARTIN

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

In the Matter of

Daniel Dickinson
Tarben Way, Newburgh, NY
(6-1-12)

Date: October 25, 2018
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 30
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman
JOHN McKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
DARRELL BELL

ALSO PRESENT: DAVID DONOVAN, ESQ.
GERALD CANFIELD
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: CHARLES BROWN, Engineer

MICHELLE L. CONERO
PMB #276
56 North Plank Road, Suite 1
Newburgh, New York 12550
(845) 541-4163

1 - PROCEEDINGS -

2 THE CHAIRMAN: Our third applicant this
3 evening is Daniel Dickinson, Tarben Way,
4 seeking an area variance to construct a single
5 family residence on the premises located off
6 Tarben Way and to conform with New York State
7 Town Law 280-A.

8 1) No permit for the erection of any
9 building shall be issued unless a street or
10 highway giving access to such proposed
11 structure has been duly placed on the official
12 map or plans.

13 2) The official roadway must be suitably
14 improved to town specifications.

15 Mr. Jablesknik?

16 MS. JABLESNIK: This applicant sent out
17 ten letters. All the mailings, publications
18 and postings are in order.

19 THE CHAIRMAN: Thank you very much.

20 Mr. Brown?

21 MR. BROWN: Charles Brown, engineer for
22 the applicant. We were before this Board
23 before for the same issue. It's a 280-A
24 variance. At that time this Board requested
25 documentation that my client was allowed to use

1 - PROCEEDINGS -

2 Tarben Way. We have since provided that and
3 withdrew the application. We provided that now
4 with this reapplication.

5 And it asked my client, and anybody else
6 that's going to be using the road, to join in
7 the maintenance agreement for the duration of
8 the road still being in Tarben's name. It is
9 scheduled to be a town road to be taken over.
10 But at this time, it's not. It's a private
11 road. And it's improved.

12 THE CHAIRMAN: Yes, I agree. We have
13 seen this one plenty of times. To the extent
14 of -- I don't want to put you on the spot,
15 Dave, but most of what Mr. Brown is referring
16 to is the 280-A section. Have you had a chance
17 to review this?

18 MR. DONOVAN: So when last this
19 application was here I made a point of saying
20 provide something to demonstrate your legal
21 ability to use the right-of-way to get to
22 Tarben Way.

23 Tarben Way is private?

24 MR. BROWN: It's going to be a town
25 road, but at this time it's still in Tarsio's

1 - PROCEEDINGS -

2 name.

3 MR. DONOVAN: So 280-A you need a
4 qualifying road and you need it to be suitably
5 improved. Now, the only thing, Charlie, and I
6 was reading this at 6:30 tonight, I came across
7 a case from about ten years ago where the court
8 was interpreting a request for a 280-A
9 variance. What they held is that if access is
10 by the right-of-way or easement, a permit can
11 only issue a building permit upon the town
12 board's passage of a resolution establishing an
13 open development area.

14 That's not consistent with my
15 recollection of 280-A. But I think it's
16 something that I need to take a closer look at.
17 You provided the legal proof that I requested
18 when you were here before demonstrating that
19 this property had the right to access the
20 right-of-way to reach Tarben Way, whatever it
21 is.

22 This case does give me pause though,
23 because as I understand it, Charlie, so your
24 access to Tarben is going to be over a
25 right-of-way or easement?

1 - PROCEEDINGS -

2 MR. BROWN: Correct.

3 MR. DONOVAN: And this case seemed to
4 say that -- and this was a request for a 280-A
5 variance, which the Court said the ZBA couldn't
6 issue because he had to get an open area
7 development.

8 Now, I don't know if this case is an
9 outliner. And by that I mean, if it's
10 inconsistent with my recollection and my advice
11 to other ZBAs that I represent relevant to
12 280-A. But I would like the opportunity to
13 make sure we get this right.

14 MR. BROWN: Several times I brought
15 three houses on a common driveway to the Town
16 Board for a 280-A exemption and they granted
17 them. So historically this town --

18 MR. DONOVAN: To the Town Board or to
19 the ZBA?

20 MR. BROWN: Three on a common driveway,
21 go to the Town Board.

22 MR. DONOVAN: But no less than three?

23 MR. BROWN: No, two you don't have to go
24 to the Town Board.

25 MR. DONOVAN: I don't know if that's the

1 - PROCEEDINGS -

2 answer you wanted, Darrin. But the answer in
3 my mind, it's not clear in my mind if we have
4 the right to issue a variance in accordance
5 with 280-A, because this case seems to indicate
6 there needs to be an open development area,
7 which is another component of Section 280-A of
8 the town law.

9 THE CHAIRMAN: Recognizing -- I know we
10 have been here plenty on this, Charlie, and I
11 appreciate your patience in this case.

12 But, David, you are telling me that you
13 feel as though you would like to do a little
14 more research in this for us. I will defer to
15 your expertise in this case.

16 MR. DONOVAN: If I was that much of an
17 expert, I would know the answer tonight.

18 THE CHAIRMAN: Well, not that we are
19 setting precedent here, but we are following
20 precedent.

21 MR. DONOVAN: That's correct. So as I
22 spent some time going through the statute in
23 preparation for tonight and reviewing cases,
24 because that's what we do, we look at the
25 statute, we look at court interpretations of

1 - PROCEEDINGS -

2 the statute, I came across this case from about
3 ten years ago that said if you are only going
4 to use a right-of-way, you need an open area
5 and the ZBA can't issue a 280-A.

6 MR. BROWN: I was actually surprised
7 that the Building Department referred me to you
8 rather than the Town board.

9 MR. DONOVAN: Well, I think it's clear
10 that the Town Board can issue an open
11 development order. What I am not clear is
12 whether or not we can issue the 280-A variance
13 to allow you to cross by right-of-way to get to
14 Tarben. That's not clear to me now.

15 MR. BROWN: Okay.

16 MR. DONOVAN: Sorry.

17 THE CHAIRMAN: So in this case do we
18 continue with the public hearing? Well, it's
19 been noticed, so --

20 MR. DONOVAN: So I think you should
21 encourage comment from the public. And then I
22 would suggest that you not take any action and
23 keep the public hearing open. The applicant
24 can make a -- I will have an answer. In ten
25 days, two weeks I will have an answer to this.

1 - PROCEEDINGS -

2 After you come back, go to the Town
3 Board, whatever you ultimately decide is
4 appropriate.

5 THE CHAIRMAN: Now, this has actually
6 been before the Board. I think we entertained
7 this applicant probably three, four times
8 within the last 15 months.

9 Tony, you may be newer than this
10 applicant the first time?

11 MR. MARINO: I have been here for at
12 least two hearings on this applicant.

13 THE CHAIRMAN: Very good. Quite
14 honestly, I thought we as a Board had asked all
15 the appropriate questions. However, I am going
16 to start with Mr. Marino, do you have any
17 comments on this applicant?

18 MR. MARINO: I really don't. It was a
19 little difficult to find. But that's
20 irrelevant to the question here. It's a nice
21 piece of property. If we can get it solved for
22 his benefit, I'd like to see that happen.

23 THE CHAIRMAN: You bet.

24 Mr. Masten?

25 MR. MASTEN: I remember the spot and I

1 - PROCEEDINGS -

2 have been there, and this time everything seems
3 to be okay.

4 THE CHAIRMAN: Mr. Levin, do you have
5 any comments you want to get in, in front of
6 Mr. McKelvey?

7 MR. LEVIN: I think it's a lovely piece
8 of property. And it certainly has been coming
9 before us a number of times to try to get a
10 house on that property. My only question is,
11 who do you go to when you are building a bridge
12 over the wetlands? We don't handle that here;
13 do we?

14 THE CHAIRMAN: As far as the bridge over
15 the wetlands, I don't believe you are
16 disturbing enough of the wetlands that you
17 would need the bridge. It's just a fill
18 section; correct?

19 MR. BROWN: Correct. We have a culvert
20 in there. I brought it down to Brian Orso,
21 the engineers. He essentially said I'm too
22 busy to look at this; it's fine.

23 THE CHAIRMAN: I've heard that myself.

24 MR. BROWN: And we were under the tenth
25 of an acre. So it's a federal, not a state.

1 - PROCEEDINGS -

2 So there is no buffer. So we are within the
3 nationwide permit, the criteria.

4 THE CHAIRMAN: Mr. McKelvey?

5 MR. McKELVEY: It's a nice piece of
6 property.

7 THE CHAIRMAN: Charlie, since you did
8 mention Mr. Orso, do we have any issues with
9 flagging or delineation determination being
10 expired at this point?

11 MR. BROWN: What he said was once he
12 approved it, that it's good for ever. They
13 can't go back and take something away from you
14 once they approve it.

15 THE CHAIRMAN: Okay. Very good.

16 Mr. Bell?

17 MR. BELL: Like I said, it's a beautiful
18 piece of property. It's a beautiful home
19 you're trying to subcontract.

20 THE CHAIRMAN: Thank you.

21 At this point I would like to open the
22 meeting up to any members of the public that
23 are here to speak about this application.

24 Please state your name for our
25 stenographer?

1 - PROCEEDINGS -

2 MR. LEROY: Mike Leroy, 36 South Dix
3 Avenue. I am speaking on behalf of my son, who
4 owns the adjoining property. He lives at 19
5 Still Hollow Road. So I just had a few
6 questions.

7 You have got a road maintenance agreement
8 set up now that is going to include, I guess,
9 five different lots?

10 MR. BROWN: Yes.

11 MR. LEROY: That's going to open it up
12 to about 50-acres of property. So how do they
13 subdivide it? So you are opening that up to
14 many houses.

15 Lot 12 I guess is not part of the road
16 maintenance agreement. Probably because they
17 are paying for the taxes, so they don't have to
18 pay for any road maintenance. Is that the
19 reason?

20 MR. BROWN: Well, the way the road
21 maintenance agreement is written is you don't
22 have to pay until you build a house.

23 MR. LEROY: So when they build a house?
24 It says in here that they are not going to be
25 included in that. That's why?

1 - PROCEEDINGS -

2 MR. BROWN: Lot 12 of the Tarben
3 subdivision?

4 MR. LEROY: Yes.

5 MR. BROWN: Maybe Mr. Tarsio is keeping
6 that for himself.

7 MR. LEROY: If you are paying taxes on
8 it the whole time, somebody else is using it.

9 What about Lot 10 that's next to it? The
10 50-foot right-of-way is on Lot 12, but running
11 along Lot 10. Are they going to have access to
12 them?

13 MR. BROWN: Well, they have access to
14 Tarben Way.

15 MR. LEROY: Right.

16 MR. BROWN: So that's what they would
17 use.

18 MR. LEROY: But if there is a
19 right-of-way that's running alongside your
20 property, do you have a right to use that
21 right-of-way?

22 MR. BROWN: If it's written that you do,
23 you do. I don't know in this case. I doubt
24 it.

25 THE CHAIRMAN: Can you point on that map

1 - PROCEEDINGS -

2 where you are discussing here?

3 MR. LEROY: This is Lot 12 here. This
4 is Lot 10. So I can see the right-of-way goes
5 right alongside Lot 10. So maybe he is showing
6 his driveway, whether it's here, he might want
7 to come straight in rather than go all the way
8 through this front yard and turn right into the
9 house. They are not showing a house on this
10 here. This is not the subdivision map for
11 Tarben?

12 THE CHAIRMAN: The other subdivision
13 that you are referring to is Lot 10 and was
14 prepared by another design professional. So I
15 don't think we have an obligation to show that
16 here. And that's also -- I am not sure that
17 that's something that we could -- you can
18 certainly ask the question, but we have no
19 influence over that.

20 MR. LEROY: Okay. So that would be
21 Lot 10, whether they have any right to use that
22 or not.

23 THE CHAIRMAN: Once it became a town
24 road, they certainly would.

25 Correct, Charlie?

1 - PROCEEDINGS -

2 MR. BROWN: If it was approved a private
3 road even they would.

4 MR. LEROY: There is supposed to be a
5 cul de sac, a 100-foot cul de sac. Wouldn't
6 you put that on the right-of-way, or at least
7 show it on the plans where it might be?

8 MR. BROWN: This is a driveway. You
9 don't need 100-foot cul de sac on the driveway.

10 MR. LEROY: You show it on the property,
11 but not on the right-of-way.

12 I am just thinking of the future. You
13 are opening this up for 50-acres. There is a
14 lot.

15 THE CHAIRMAN: They are very valid
16 questions that you are asking, but that's more
17 of a Code Compliance or Planning Board or
18 perhaps fire code may be an issue when it comes
19 to the turn-arounds that are required for
20 certain length driveway.

21 Correct, Mr. Canfield?

22 MR. CANFIELD: Well, there is a
23 turn-round at the end of Tarben Road. I don't
24 know if that's what you are referring to.

25 MR. LEROY: Well, there is another one

1 - PROCEEDINGS -

2 on the right-of-way.

3 THE CHAIRMAN: Well, the driveway
4 leading to this house is how many feet long,
5 Charlie?

6 MR. BROWN: 600 feet maybe.

7 THE CHAIRMAN: Mr. Canfield, what is the
8 threshold that you need to have an emergency
9 access turn-around or pull over, length
10 driveway?

11 MR. CANFIELD: For a single-family, such
12 as this driveway, there is no requirement.

13 MR. BROWN: We do show a 20 X 50
14 pull-off.

15 THE CHAIRMAN: I did see that. It
16 wasn't label. So I didn't know what it was.

17 MR. CANFIELD: If I may, for this
18 gentleman's benefit, what this Board is looking
19 at is one house. What you indicate 50-acres,
20 you are a hundred percent right. However, if
21 and when that were to be subdivided, that would
22 go before the Planning Board and those access
23 issues that you mentioned will be addressed at
24 that Planning Board level.

25 MR. BROWN: And it would be also another

1 - PROCEEDINGS -

2 public hearing.

3 MR. LEROY: Well, he is asking for a
4 variance for not bringing it up to a private
5 road.

6 THE CHAIRMAN: You should direct that to
7 the Zoning Board. I'm sorry.

8 MR. LEROY: Whether it's going to be
9 brought up to spec as a private road?

10 THE CHAIRMAN: Well, I think that may
11 tie into what Mr. Donovan said.

12 MR. DONOVAN: So one of the components
13 is that the road, or the driveway in this case,
14 providing access to Tarben Way needs to be
15 suitably improved. So suitably improved
16 doesn't necessarily mean private road specs.

17 That's a question that I guess we have
18 never really gotten to because we have always
19 been a little bit short of that question.

20 I don't know, Charlie, if you are going
21 to pave that or if there is going to be item
22 there or what your thought or proposal is.
23 What I am looking at, I don't know what the
24 grade is. I don't know if we need to do
25 anything there.

1 - PROCEEDINGS -

2 But that is an issue whether this Board
3 rules on the 280-A or whether you get an open
4 development area, right? How that's going to
5 be improved up to the house, or at least up to
6 the property line has to be developed.

7 MR. BROWN: Yeah. Well, you mean paved
8 or just Item #4?

9 MR. DONOVAN: Suitably improved. I gave
10 a long explanation that it needs to be
11 suitable. That doesn't mean it needs to be
12 paved. But it shouldn't be two ruts like in
13 1787 going from Boston to the Constitutional
14 Convention. It should be better than that.

15 MR. BROWN: If memory serves me, the
16 Town of Newburgh zoning -- maybe it's in the
17 street specs -- but they require driveways to
18 be paved if they are over, I think, 8 percent.

19 MR. CANFIELD: I am not sure on the
20 driveway specs.

21 MR. BROWN: That would have to be built
22 to town driveway specs.

23 MR. DONOVAN: Either this Board or the
24 Town Board needs to make a determination as to
25 whether that's suitably improved. That's kind

1 - PROCEEDINGS -

2 of the second part of the 280-A task.

3 MR. BROWN: Okay.

4 MR. LEVIN: If you subdivide it, you
5 would have to build it to different specs;
6 right?

7 MR. BROWN: If we were just subdividing
8 for two lots, no. If we were doing three lots,
9 again, we could take the option of going to the
10 Town Board for a 280-A waiver, three lots on a
11 common driveway. Anything more than three, we
12 would have to bring it up to either private
13 road or town road specifications.

14 MR. LEROY: So the third person would
15 have to bring it up to code?

16 MR. BROWN: Yeah.

17 MR. LEROY: Not the first?

18 I'm little confused at this point. We
19 are talking about access.

20 MR. BROWN: The driveway, yes.

21 MR. LEROY: 280-A access, one driveway
22 for one single residence. What is before you
23 is not a subdivision or access to any lots,
24 other than one lot for one house; is that
25 correct?

1 - PROCEEDINGS -

2 MR. BROWN: Correct.

3 MR. DONOVAN: That's correct. I think
4 that the unknown though, because this is a
5 fairly lengthy right-of-way, is -- and it's not
6 before us specifically, but I think the
7 question on the floor is, well, what about the
8 other properties that have frontage along the
9 right-of-way, what happens to them? Right, I
10 think that's your question?

11 MR. LEROY: Basically.

12 MR. DONOVAN: I don't know that we can
13 answer that question here, but it's a valid
14 question.

15 MR. BROWN: I don't know the answer to
16 that either. Again, the answer I gave before
17 is my understanding. The other three lots that
18 are adjacent to this right-of-way, they also
19 had to sign the road maintenance agreement for
20 Tarben Way.

21 MR. LEROY: Moving on to other question,
22 you show two houses on there. Why is that?

23 MR. BROWN: No, it's one house with one
24 septic system.

25 MR. LEROY: Why is there others on

1 - PROCEEDINGS -

2 there? That's been on there every time you
3 come.

4 THE CHAIRMAN: Sir, actually, if you are
5 looking at the one that is towards the
6 right-hand side of the lot, that's a proposed
7 septic location, which was probably done during
8 the original subdivision. The engineer found a
9 more suitable location closer to the proposed
10 dwelling, which prevents them from using that.
11 However, I believe it's a requirement to show
12 where the original location was.

13 MR. BROWN: We did the soil testing
14 there and have a valid design. That was placed
15 there when we were attempting to get access
16 through Still Hollow Road, which is on the
17 other side of the property. So we had the
18 house much closer to that.

19 Now that we are coming off Tarben Way, we
20 moved the house over and we still have to go
21 back and do the soil testing for the septic
22 system. But there is a viable septic on there.
23 That's why I left it on the map. You would
24 have to pump to get to it. But I am pretty
25 sure we will be able to get a septic where that

1 - PROCEEDINGS -

2 big X is shown. That's pretty close to the
3 house and it's down there.

4 THE CHAIRMAN: One thing, as you are
5 questioning, made the light bulb go off in my
6 head. What this does do to Lot No. 10 is now
7 it's creating two front yards for them. So
8 their setbacks are going to change.

9 MR. LEROY: Well, that's a driveway. So
10 it's not --

11 MR. BROWN: Not yet.

12 MR. LEROY: It's only a roadway. If
13 it's just a driveway --

14 MR. BROWN: If it ever gets approved to
15 the town or private road specifications, then
16 yes.

17 MR. DONOVAN: With other properties
18 having access to it.

19 MR. BROWN: Right.

20 MR. DONOVAN: Charlie, not to put you on
21 the spot, but is that a potential?

22 MR. BROWN: I have no idea. I know Ron
23 Calandry (ph) owns the lot at the other end. I
24 don't know the other owners. They are all
25 different owners.

1 - PROCEEDINGS -

2 MR. DONOVAN: The only reason I asked is
3 it makes sense to get the open development
4 area. Last time I spoke to the Planning Board
5 attorney his recollection of the subdivision
6 was, that was specifically left, this
7 right-of-way, for access for these properties
8 to get to Tarben Way.

9 MR. BROWN: Right.

10 MR. DONOVAN: So I think we are only
11 talking about the mechanism -- what's the
12 proper mechanism by which to accomplish that,
13 whether it's a 208-A from this Board or an open
14 development area from the Town Board. Because
15 presumably there is no intention to make that
16 an extension of the town road; right?

17 MR. BROWN: No.

18 MR. LEROY: Very good. Thank you.

19 THE CHAIRMAN: Thank you.

20 Anyone else here from the public to speak
21 about this application?

22 (No response.)

23 Okay. I am going to turn back to the
24 Board.

25 Mr. Marino, any questions?

1 - PROCEEDINGS -

2 MR. MARINO: Well, what are we going to
3 do?

4 THE CHAIRMAN: We're going to make a
5 motion to hold.

6 MR. DONOVAN: That's my suggestion. You
7 don't have to follow my suggestion.

8 MR. MARINO: It's a valid suggestion.

9 MR. BROWN: Excuse me. Can I waive the
10 62 days and have the public hearing closed and
11 that way there is no clock running?

12 THE CHAIRMAN: Can you do that?

13 MR. DONOVAN: Sure. It's up to the
14 Board. What you are waiting for from me is a
15 legal opinion.

16 THE CHAIRMAN: That's correct.

17 MR. DONOVAN: And we had one comment
18 from a member of the public. So we could close
19 the public hearing.

20 MR. BROWN: We'll waive the 62 days.

21 THE CHAIRMAN: The applicant is offering
22 to waive the 62 days.

23 So in that case I look to the Board for a
24 motion to close the public hearing.

25 MR. McKELVEY: I make a motion to close

1 - PROCEEDINGS -

2 the hearing.

3 MR. MASTEN: I will second it.

4 THE CHAIRMAN: We have a motion to close
5 the public hearing from Mr. McKelvey. A second
6 from Mr. Masten.

7 Roll call.

8 MS. JABLESNIK: Mr. Bell?

9 MR. BELL: Yes.

10 MS. JABLESNIK: Mr. Levin?

11 MR. LEVIN: Yes.

12 MS. JABLESNIK: Mr. Marino?

13 MR. MARINO: Yes.

14 MS. JABLESNIK: Mr. Masten?

15 MR. MASTEN: Yes.

16 MS. JABLESNIK: Mr. McKelvey?

17 MR. MCKELVEY: Yes.

18 MS. JABLESNIK: And Mr. Scalzo?

19 THE CHAIRMAN: Yes.

20 MR. BROWN: Thank you.

21 THE CHAIRMAN: Thank you, Charlie.

22 (Time noted: 7:57 p.m.)

23 * * * *

24 (Time resumed for decision: 8:09 p.m.)

25 THE CHAIRMAN: The next applicant,

- PROCEEDINGS -

1
2 Dickinson, is remaining open. Actually it's
3 not remaining open. We have 62 days to act
4 upon it.

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6 (Whereupon the above matter was concluded.)
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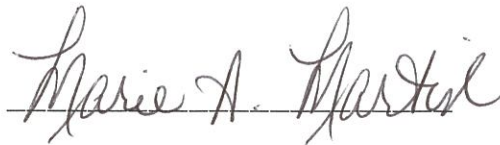
C E R T I F I C A T I O N

I, MARIE A. MARTIN, a Court Reporter and Notary Public within and for the State of New York, do hereby certify:

That the witness whose deposition is herein before set forth, was duly sworn by me, and that the within transcript is a true record of the testimony given by such witness.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of November 2016.



MARIE A. MARTIN

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

In the Matter of

Kevin Gerstner
Nine Smith Avenue, Newburgh, NY
(32-7-3)

Date: October 25, 2018
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 30
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman
JOHN McKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
DARRELL BELL

ALSO PRESENT: DAVID DONOVAN, ESQ.
GERALD CANFIELD
SIOBHAN JABLESNIK

MICHELLE L. CONERO
PMB #276
56 North Plank Road, Suite 1
Newburgh, New York 12550
(845) 541-4163

1 - PROCEEDINGS -

2 THE CHAIRMAN: Our next applicant is
3 Kenneth Duxberry seeking an area variance to
4 construct a 13 X 6 front deck and a 5 X 6
5 landing. There is an existing combined side
6 yard of 61 where 80 is required, and a front
7 yard of 17 where 50 is required.

8 Ms. Jablesnik?

9 MS. JABLESNIK: This application
10 actually had to go to the Orange County
11 Department of Planning and I have yet to
12 receive a response. But they sent out 29
13 letters and all the mailings and publications
14 and postings are in order.

15 THE CHAIRMAN: Thank you very much.

16 That being said, unfortunately we cannot
17 render our decision this evening until we here
18 back from the County on this.

19 However, because everyone is here we can
20 hold the hearing.

21 Will we be allowed to close the public
22 hearing in this case, Dave?

23 MR. DONOVAN: The better course of
24 action, leave the public hearing open just in
25 case the County just issue a determination or

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- PROCEEDINGS -

report or recommendation that would invite public input.

THE CHAIRMAN: Okay. So we can continue with the action, but we can't close it tonight because we have not heard back from the County.

MS. GERSTNER: I guess I don't understand.

MR. DONOVAN: So applications for certain approvals, which include area variances, are required by Section 239L of the General Municipal Law to be referred to the Orange County Department of Planning. The Department of Planning has 30 days, and I assume we are not passed the 30 day threshold, they have 30 days to issue a comment.

They can recommend approval. They can recommend disapproval, or they can issue something called a local determination. If they recommend a disapproval, then this Board needs a supermajority to override that recommendation. But the law is clear that until either the 30 days runs or we get the report, the Board can't issue a determination.

And I will editorialize for a second.

1 - PROCEEDINGS -

2 It's absolutely absurd that they can opt out
3 that they are required for area variances. But
4 that's an editorial.

5 THE CHAIRMAN: I agree with you, Dave.
6 So, unfortunately, you are here and we are all
7 here for this. We can't give you what you are
8 looking for this evening, but we'll try to be
9 as expeditious as we can for the following
10 meeting.

11 So if you could just state your name?

12 MS. GERSTNER: My name is Ellen
13 Gerstner. It's actually my boyfriend's
14 property. He is deceased. It's in the estate.
15 I have been trying to purchase the property
16 from the estate.

17 He bought the house in 2008 with this
18 existing deck on it. It went through no
19 problem, no issue, until we tried to have the
20 deed in my name and all of a sudden now there
21 is an existing issue with the deck. And we
22 want to take it down. We want it to be
23 compliant. So that's where we stand.

24 THE CHAIRMAN: As I mentioned at the
25 start of the meeting, we have all been there.

1 - PROCEEDINGS -

2 We have all seen it. It doesn't appear as
3 though you are looking to do anything
4 outrageous to us.

5 MS. GERSTNER: To make it compliant with
6 the codes.

7 THE CHAIRMAN: So I myself I don't have
8 any comments. One, I am familiar with your
9 neighborhood. It must be nice to actually look
10 out on the house across the street now and not
11 have to see the block that used to be there.
12 It looks very nice.

13 MS. GERSTNER: It's very nice, yes.

14 THE CHAIRMAN: At that point I will turn
15 to the Board.

16 Mr. Marino, any comments?

17 MR. MARINO: I have no questions.

18 THE CHAIRMAN: Mr. Masten?

19 MR. MASTEN: No.

20 THE CHAIRMAN: Mr. Levin?

21 MR. LEVIN: No comments.

22 THE CHAIRMAN: Mr. McKelvey?

23 MR. MCKELVEY: No comments.

24 THE CHAIRMAN: Mr. Bell?

25 MR. BELL: Nope.

1 - PROCEEDINGS -

2 THE CHAIRMAN: I have nothing.

3 At this point open I will it up to any
4 members of the public, if you want to comment
5 on this application.

6 (No response.)

7 THE CHAIRMAN: Hearing none, I apologize
8 that we have to follow the rules, but we have
9 to follow the rules in this case. The public
10 hearing will remain open to next month, which
11 is the Tuesday before Thanksgiving. It's not
12 the fourth Thursday of the month in this case.
13 It's going to be the Tuesday before
14 Thanksgiving. I don't know that you are
15 required to be here.

16 Dave?

17 MR. DONOVAN: Not required to be here,
18 though I would ask the Board to make a motion
19 to continue until that date.

20 MR. McKELVEY: What is the date?

21 THE CHAIRMAN: November 20. So we are
22 looking for a motion to hold the public hearing
23 open 'til the 20th.

24 MR. McKELVEY: I will make that motion.

25 MR. MASTEN: I second.

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- PROCEEDINGS -

THE CHAIRMAN: We have a motion to keep the public hearing open 'til November 20 from Mr. McKelvey. A second from Mr. Masten.

Role call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: And Mr. Scalzo?

THE CHAIRMAN: Yes.

The public hearing remains open.

MR. DONOVAN: So you don't need to be here. You are, of course, welcomed.

MS. GERSTNER: Okay. Thank you.

(Time noted: 7:57 p.m.)

* * * *

(Time resumed for decision: 8:09 p.m.)

1 - PROCEEDINGS -

2 THE CHAIRMAN: Duxberry is also going to
3 remain open on the agenda for next month.

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5 (Whereupon the above matter was concluded.)
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2 C E R T I F I C A T I O N

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4 I, MARIE A. MARTIN, a Court Reporter
5 and Notary Public within and for the State
6 of New York, do hereby certify:

7 That the witness whose deposition
8 is herein before set forth, was duly sworn
9 by me, and that the within transcript is a
10 true record of the testimony given by such
11 witness.

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

16 IN WITNESS WHEREOF, I have hereunto
17 set my hand this 4th day of November 2016.

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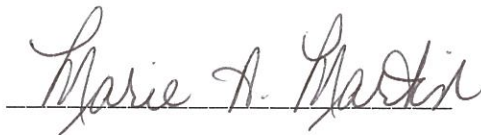
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MARIE A. MARTIN

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

In the Matter of

Frank Muthig
Eleven Cedar Court, Newburgh, NY
(8-2-4)

Date: October 25, 2018
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 30
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman
JOHN McKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
DARRELL BELL

ALSO PRESENT: DAVID DONOVAN, ESQ.
GERALD CANFIELD
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: CHARLES BROWN, Engineer

MICHELLE L. CONERO
PMB #276
56 North Plank Road, Suite 1
Newburgh, New York 12550
(845) 541-4163

1 - PROCEEDINGS -

2 THE CHAIRMAN: Our next applicant, out
3 of order, is Frank Muthig, 11 Cedar Court,
4 seeking an area variance to construct a
5 single-family residence on a lot with an
6 existing 15,001 square feet where 40,000 square
7 feet is required.

8 Ms. Jablesnik?

9 MS. JABLESNIK: This applicant sent out
10 25 letters. All the mailings, postings and
11 publications are in order.

12 THE CHAIRMAN: Thank you very much.

13 Mr. Brown?

14 MR. BROWN: Thank you. Again, I am the
15 engineer for the applicant. This is the only
16 lot left in a subdivision from 1957. The lots
17 are all generated pretty much the same size.
18 And the houses are similar too to what's
19 proposed here.

20 Frank is doing this -- that's my
21 client -- Frank is doing this so that he can
22 build a house for his daughter. And he has a
23 pre-existing lot and it's not going to be out
24 of character with the neighborhood.

25 THE CHAIRMAN: Thank you.

1 - PROCEEDINGS -

2 MR. MUTHIG: I would just like to
3 interject.

4 THE CHAIRMAN: You need to identify
5 yourself for the stenographer?

6 MR. MUTHIG: Hi, Board Members. I met
7 Anthony Marino at the site there Saturday.
8 Thanks.

9 But I bought the lot back in 1995 from
10 Re/Max. And it has a partially dug foundation.
11 And at that time all the lots there are based
12 on a third of an acre. But what I had gotten
13 with the property and the engineering was done
14 back then by Cuomo Engineering.

15 Also, there was a septic design and it
16 was approved by the town back then. So I sat
17 on it. So that was 23 years ago. And I have
18 this surveying here and an actual note from
19 realtor, if you would like to have it?

20 THE CHAIRMAN: If you would like to
21 present it to us.

22 MR. MUTHIG: Yeah, if it's possible. I
23 appreciate it. It's a little history.

24 THE CHAIRMAN: Are you willing to give
25 us those or do you need them back?

1 - PROCEEDINGS -

2 MR. MUTHIG: You can have that. I have
3 copies.

4 THE CHAIRMAN: Very good. Thank you.

5 MR. MUTHIG: Thank you.

6 Unfortunately, it was only done for a
7 certain amount of years as far as the
8 engineering. And I wanted to get in touch with
9 Cuomo and they said he is out of business.

10 THE CHAIRMAN: Very good. If anyone
11 would like to take a look at this. We have a
12 more recent sanitary design created by
13 Mr. Brown's office. That is a great resource
14 that can be in the town files when we are done.

15 Mr. Muthig, you actually answered my
16 question. I saw the hole and I was kind of
17 curious if at one point it had been a house
18 that perhaps burned down.

19 MR. MUTHIG: The nice thing about the
20 footprint of the foundation, it's a modest home
21 that actually we took the size of the hole and
22 went with that between the planning and the
23 engineering design from Mr. Brown.

24 THE CHAIRMAN: Okay. As I look at the
25 way, are you going to have a garage under it,

1 - PROCEEDINGS -

2 because it's quite the hill?

3 MR. BROWN: Yes, we are.

4 THE CHAIRMAN: I have no comments.

5 Mr. Bell?

6 MR. BELL: No.

7 THE CHAIRMAN: Mr. McKelvey?

8 MR. MCKELVEY: No.

9 THE CHAIRMAN: Mr. Levin?

10 MR. LEVIN: Absolutely no problem.

11 THE CHAIRMAN: Mr. Masten?

12 MR. MASTEN: No problem either.

13 THE CHAIRMAN: Mr. Marino?

14 MR. MARINO: No problem.

15 THE CHAIRMAN: You can't zone yourself
16 out of a building lot. It was approved at one
17 point.

18 MR. MUTHIG: Thank you.

19 THE CHAIRMAN: At this point I will open
20 it up to the any members of the public that
21 want to speak about this application.

22 (No response.)

23 THE CHAIRMAN: Hearing none, I will give
24 the Board one last opportunity to comment. If
25 not, I would like to hear a motion to close the

1 - PROCEEDINGS -

2 public hearing.

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

5 MR. LEVIN: I will second.

6 THE CHAIRMAN: We have a motion from
7 Mr. Masten. We have a second from Mr. Levin.

8 Roll call.

9 MS. JABLESNIK: Mr. Bell?

10 MR. BELL: Yes.

11 MS. JABLESNIK: Mr. Levin?

12 MR. LEVIN: Yes.

13 MS. JABLESNIK: Mr. Marino?

14 MR. MARINO: Yes.

15 MS. JABLESNIK: Mr. Masten?

16 MR. MASTEN: Yes.

17 MS. JABLESNIK: Mr. McKelvey?

18 MR. MCKELVEY: Yes.

19 MS. JABLESNIK: And Mr. Scalzo?

20 THE CHAIRMAN: Yes.

21 The public hearing is closed. Thank you
22 very much.

23 MR. BROWN: Thank you.

24 THE CHAIRMAN: At this point before
25 proceeding, the Court is going to take a short

1 - PROCEEDINGS -

2 adjournment to confer with counsel regarding
3 legal questions raised by tonight's applicants.
4 If I could ask in the interest of time if you
5 folks could wait out in the hallway and we'll
6 call you back in very shortly.

7 (Time noted: 7:57 p.m.)

8 * * * *

9 (Time resumed for decision: 8:09 p.m.)

10 THE CHAIRMAN: The next applicant is
11 Frank Muthig, 11 Cedar Court, seeking an area
12 variance to construct a single-family residence
13 on a lot with an existing 15,001 square feet
14 where 40,000 square feet is required.

15 I will look to the Board for any
16 discussion.

17 (No response.)

18 THE CHAIRMAN: We are going to discuss
19 the five factors weighing. The first one being
20 whether or not the benefit can be achieved by
21 other means feasible to the applicant? With
22 the lot size, I believe the small footprint of
23 the house, they are doing all they can already.

24 The second, if there is an undesirable
25 change in the neighborhood character or a

1 - PROCEEDINGS -

2 detriment to nearby properties?

3 MR. McKELVEY: No.

4 MR. LEVIN: No.

5 MR. MARINO: No.

6 MR. BELL: No.

7 MR. MASTEN: No.

8 THE CHAIRMAN: The lot was created
9 similar in size to the others in the
10 neighborhood.

11 Third, whether the request was
12 substantial?

13 MR. McKELVEY: No.

14 MR. BELL: No.

15 THE CHAIRMAN: Forth, whether the
16 request will have adverse physical or
17 environmental affects?

18 MR. McKELVEY: No.

19 THE CHAIRMAN: And the fifth, whether
20 the alleged difficulty is self-created,
21 relevant but not determinative?

22 Actually the difficulty was not
23 self-created, in my opinion, because the lot
24 was existing from a previous settlement.

25 Am I right on that, Dave?

1 - PROCEEDINGS -

2 MR. DONOVAN: Fair enough. Depending on
3 when he bought it, it could be self-created.
4 If he bought it with the knowledge that it
5 didn't conform with the zoning in effect at the
6 time of the Board.

7 THE CHAIRMAN: Okay, thank you.

8 Okay, in that case I will look to the
9 Board for a motion.

10 MR. MARINO: I make a motion to approve.

11 MR. BELL: I will second.

12 THE CHAIRMAN: We have a motion for
13 approval from Mr. Marino, a second from
14 Mr. Bell.

15 Roll call.

16 MS. JABLESNIK: Mr. Bell?

17 MR. BELL: Yes.

18 MS. JABLESNIK: Mr. Levin?

19 MR. LEVIN: Yes.

20 MS. JABLESNIK: Mr. Marino?

21 MR. MARINO: Yes.

22 MS. JABLESNIK: Mr. Masten?

23 MR. MASTEN: Yes.

24 MS. JABLESNIK: Mr. McKelvey?

25 MR. MCKELVEY: Yes.

1 - PROCEEDINGS -

2

MS. JABLESNIK: And Mr. Scalzo?

3

THE CHAIRMAN: Yes.

4

The motion is carried. Thank you.

5

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(Whereupon the above matter was concluded.)

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

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4 I, MARIE A. MARTIN, a Court Reporter
5 and Notary Public within and for the State
6 of New York, do hereby certify:

7 That the witness whose deposition
8 is herein before set forth, was duly sworn
9 by me, and that the within transcript is a
10 true record of the testimony given by such
11 witness.

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

16 IN WITNESS WHEREOF, I have hereunto
17 set my hand this 4th day of November 2016.

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MARIE A. MARTIN

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

In the Matter of

Ralph Hurlburt

Seven White Birch Drive, Newburgh, NY

Date: October 25, 2018
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 30
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman
JOHN McKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
DARRELL BELL

ALSO PRESENT: DAVID DONOVAN, ESQ.
GERALD CANFIELD
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: CHARLES BROWN, Engineer

MICHELLE L. CONERO
PMB #276
56 North Plank Road, Suite 1
Newburgh, New York 12550
(845) 541-4163

- PROCEEDINGS -

1
2 THE CHAIRMAN: Our second applicant this
3 evening is Ralph Hurlburt, which is Seven White
4 Birch Drive. And there are a few.

5 Variance (A) is an area variance for
6 increasing the degree of non-conformity of the
7 rear yard setback to keep a 15 X 30
8 above-ground pool built without a permit.

9 Variance (B) Accessory buildings; to keep
10 a 28 X 16 shed built without a permit. Area
11 variances for the maximum allowed 1,000 square
12 feet of accessory buildings and shall be
13 setback 5 feet back from the property line.

14 Variance (C) to keep a 7 X 7 shed built
15 without a permit. The maximum allowed 1,000
16 square feet of accessory buildings.

17 Variance (D) to keep a 10 X 20 shed built
18 without a permit. Again, the maximum allowed
19 1,000 square foot of accessory buildings. And
20 no building shall project closer to the street
21 than the main building.

22 Variance (E) an area variance for
23 increasing the degree of non-conformity of the
24 rear yard setback to keep two enclosed decks
25 that were converted into habitable space

1 - PROCEEDINGS -

2 without permits.

3 Mr. Jablesnik?

4 MS. JABLESNIK: This applicant sent out
5 30 letters. All the mailings, publications and
6 postings are in order.

7 THE CHAIRMAN: Thank you.

8 Mr. Brown?

9 MR. BROWN: Charles Brown, the engineer
10 for the applicant. All the structures are
11 prior-built. The deck and the pool were built
12 in 1988. It's a flag lot. So the setbacks are
13 a little confusing. The lot is well screened
14 by vegetation and terrain. It's not a
15 detriment to the environment. I don't see it
16 as a detriment to the neighborhood either.

17 THE CHAIRMAN: Thank you. As I
18 mentioned, we have all been to the site. Boy,
19 it's almost as if you are on your way into the
20 40s with all the stacked stone.

21 Charlie, I have a couple of questions. I
22 saw some photos. The house actually was for
23 sale in August of 2015 and the pool was not
24 there in August of 2015. So it was there in
25 '88, it was down and then they put it back up?

1 - PROCEEDINGS -

2 MR. BROWN: He's actually had three of
3 them. When they wear out, he replaces them.

4 THE CHAIRMAN: The shed that's out in
5 the front, the one that's closest to the street
6 line, that is on an elevated retaining wall
7 section there, which appeared to be bowing to
8 me. Is there -- well, the side that's closest
9 to the street line.

10 Did you evaluate that, investigate that?
11 Is there something with the stack stone? I
12 know it's difficult to put a dead man in there
13 or anything else.

14 The area of influence, which I am sure
15 you understand what I mean, with the shed and
16 the load of the shed on there, is that
17 something we may have concerns about at a later
18 date if they were to load that shed up with
19 gold and it was very heavy?

20 MR. BROWN: Well, I would certainly
21 surcharge the soil and it could affect the
22 wall. So I would have to reserve judgment and
23 take a look at it.

24 THE CHAIRMAN: Gerry, is that something
25 your group would evaluate as well, as we are

1 - PROCEEDINGS -

2 talking about this?

3 MR. CANFIELD: Absolutely. If these
4 variances are granted, the next step for
5 Mr. Brown and the applicant is to file for
6 building permits. At that point the structure
7 will be evaluated. And I'm sure we'll need
8 Mr. Brown's input as to the soil bearing
9 capacity.

10 THE CHAIRMAN: Perfect. I just wanted
11 to make that a matter of the record so when you
12 are seeking your building permits it's
13 something that is brought to the attention of
14 the building department.

15 MR. BROWN: Understood.

16 THE CHAIRMAN: It's very neat.
17 Obviously, they do take care of the lot.

18 MR. BROWN: They are all well built
19 structures.

20 THE CHAIRMAN: Another issue that I have
21 is, should they ever need to maintain that side
22 of the shed that is on the property line, I am
23 certain that they probably have a wonderful
24 relationship with their contiguous adjoiner at
25 the moment. But eventually if someone were to

1 - PROCEEDINGS -

2 sell or they get a new neighbor, they have no
3 right to be on the other person's property to
4 paint the side of the shed or do any type of
5 maintenance to that side of the shed.

6 MR. BROWN: That's a good point.

7 THE CHAIRMAN: So I will ask, I don't
8 know if your clients are here or not, but
9 that's, for me, an issue. Maintenance is an
10 issue. So I don't know how that shed can
11 remain in that spot. Personally, I don't see
12 how that shed can remain in the spot. So I
13 think the shed may have to move.

14 MR. McKELVEY: I agree with you.

15 MR. DONOVAN: Yes.

16 MR. BROWN: Ralph?

17 (Whereupon Mr. Hurlburt comes forward.)

18 MR. BROWN: This is my client, Ralph
19 Hurlburt.

20 MR. HURLBURT: What shed are you talking
21 about?

22 MR. BROWN: The one right on the
23 property line.

24 MR. HURLBURT: I am Ralph Hurlburt, the
25 property owner. That shed was actually put in

1 - PROCEEDINGS -

2 there for a wood shed, just to throw wood in.
3 Once I got done with the wood it became
4 enclosed. But it's no big deal to get it out
5 of there.

6 MR. BROWN: We are talking about this
7 one. How do you maintain that side of it?

8 MR. HURLBURT: I come this way around.
9 You can't get in there anyway. So I have to do
10 everything by hand. This is right on the line.

11 THE CHAIRMAN: Are you willing to move
12 it?

13 MR. HURLBURT: Yes, of course.

14 THE CHAIRMAN: Or take it down?

15 MR. HURLBURT: Okay.

16 THE CHAIRMAN: Okay. All it needs to be
17 is 5 feet away from the property line.

18 MR. HURLBURT: That's not a problem.

19 THE CHAIRMAN: Which brings me to my
20 next question for you, Mr. Brown. Your map
21 references existing property lines house set
22 for locations per a plan performed by Paul
23 Cuomo, last revised August 22, 1988.

24 Mr. Cuomo is an engineer. Is this based
25 off a land surveyors plot plan? Do we have

1 - PROCEEDINGS -

2 that somewhere?

3 MR. BROWN: I am sure he did. The map
4 he created was a septic as-built. That was all
5 we could find. So that's what we used.

6 THE CHAIRMAN: So the shed number three
7 that's on there, the offset 36.52, is that
8 something your office produced, that offset.

9 MR. BROWN: Yes.

10 THE CHAIRMAN: Field located with
11 instrumentation or is it a really good guess?

12 MR. BROWN: No, we would have put plus
13 or minus if it wasn't instrumentation.

14 THE CHAIRMAN: It looks pretty good.

15 MR. BROWN: Yeah.

16 THE CHAIRMAN: That's all the questions
17 I have. I will turn to the Board on this case.

18 Mr. Bell?

19 MR. BELL: I am good. Thank you.

20 THE CHAIRMAN: Mr. McKelvey?

21 MR. MCKELVEY: I just want to know what
22 brought you here? How did you get here with
23 all these without permits?

24 MR. BROWN: Well, me or my client?

25 MR. MCKELVEY: Yeah, your client.

1 - PROCEEDINGS -

2 THE CHAIRMAN: If he were to carry on,
3 we would never know about it. That's --

4 MR. BROWN: He wants to get everything
5 legal so that when he does go to sell it, it's
6 saleable.

7 MR. McKELVEY: That's understandable.

8 THE CHAIRMAN: Okay. Thank you.

9 Mr. Levin?

10 MR. LEVIN: That was a question I was
11 going to ask.

12 THE CHAIRMAN: I will ask you first next
13 time.

14 Mr. Masten?

15 MR. MASTEN: I have no other questions.

16 THE CHAIRMAN: Mr. Marino?

17 MR. MARINO: It's a very clean property.

18 THE CHAIRMAN: Yes. You certainly have
19 pride in what you take care of and it shows.

20 MR. HURLBURT: Thank you.

21 THE CHAIRMAN: It's a good size piece of
22 property.

23 At this point I will open it up to the
24 members of the public. Does anyone want to
25 comment on this application?

1 - PROCEEDINGS -

2 (No response.)

3 THE CHAIRMAN: Hearing none, I will give
4 one more opportunity to the Board.

5 Mr. Marino?

6 MR. MARINO: No. I am satisfied.

7 THE CHAIRMAN: Mr. Masten?

8 MR. MASTEN: No.

9 THE CHAIRMAN: Mr. Levin?

10 MR. LEVIN: No.

11 THE CHAIRMAN: Mr. McKelvey?

12 MR. MCKELVEY: Uh-huh.

13 THE CHAIRMAN: Mr. Bell?

14 MR. BELL: No.

15 THE CHAIRMAN: So at that point, just to
16 confirm, the moving of shed number one, which
17 is going to require the moving of shed number
18 two. So both of those sheds will be moved so
19 they do comply with the side yard setbacks --

20 MR. BROWN: Correct.

21 THE CHAIRMAN: -- for accessory
22 buildings?

23 MR. BROWN: Correct.

24 THE CHAIRMAN: So I will look to the
25 Board now for a motion.

1 - PROCEEDINGS -

2 MR. MASTEN: I will make a motion.

3 THE CHAIRMAN: To close the public
4 hearing?

5 MR. MASTEN: Yes.

6 MR. MARINO: I second.

7 THE CHAIRMAN: All right. We have a
8 motion to close the public hearing from
9 Mr. Masten. And we have a second from
10 Mr. Marino.

11 Roll call.

12 MS. JABLESNIK: Mr. Bell?

13 MR. BELL: Yes.

14 MS. JABLESNIK: Mr. Levin?

15 MR. LEVIN: Yes.

16 MS. JABLESNIK: Mr. Marino?

17 MR. MARINO: Yes.

18 MS. JABLESNIK: Mr. Masten?

19 MR. MASTEN: Yes.

20 MS. JABLESNIK: Mr. McKelvey?

21 MR. MCKELVEY: Yes.

22 MS. JABLESNIK: And Mr. Scalzo?

23 THE CHAIRMAN: Yes.

24 The public hearing is closed. We'll do
25 our best to render a decision this evening.

1 - PROCEEDINGS -

2 MR. BROWN: Thank you.

3 (Time noted: 7:57 p.m.)

4 * * * *

5 (Time resumed for decision: 8:09 p.m.)

6 MR. BROWN: If you remember my client,
7 he is willing to actually cut 5 feet off that
8 shed, which eliminates the overage on the
9 accessory structures. So that variance
10 wouldn't be required.

11 MR. DONOVAN: Say that again.

12 MR. BROWN: My client is willing to
13 shorten the shed by 5 feet, which eliminates
14 the need for a variance for the accessory
15 structures in excess of 1,000 square feet.

16 MR. DONOVAN: Charlie, just so the
17 record is clear, I don't know if you can figure
18 this out, so we have shed B, C, D.

19 MR. BROWN: A. A is one.

20 MR. DONOVAN: A is an area variance for
21 increasing the degree of non-conformity of the
22 rear yard setback to keep a 15 X 30
23 above-ground pool. So it's probably not in
24 there.

25 MR. BROWN: No. There is actually two

1 - PROCEEDINGS -

2 applications.

3 THE CHAIRMAN: If you follow along with
4 us, we have Variance A, which is a pool
5 variance. B is the 28 X 16 shed. That's
6 probably the one you are talking about.

7 MR. BROWN: Yes, 28 x 16.

8 MR. DONOVAN: I am reading from the
9 agenda. So Variance A was about an
10 above-ground pool. So it's not Variance A that
11 you are going to reduce the size of the
12 accessory building. It's Variance B?

13 MR. BROWN: Correct.

14 MR. DONOVAN: So the 28 X 16 shed will
15 become what?

16 MR. BROWN: Less than 23 x 16.

17 MR. DONOVAN: Okay.

18 MR. CANFIELD: 23 X 26?

19 MR. BROWN: Yes. We're going to go at
20 least 5 feet off the property. Again, that
21 5 X 16 square feet, now we don't need the
22 variance for being in excess of 1,000 square
23 feet on an accessory structure. So that goes
24 away.

25 THE CHAIRMAN: Are you clear on that,

1 - PROCEEDINGS -

2 Dave? So when I go to read what you are
3 preparing.

4 MR. DONOVAN: You are going to take a
5 sawzall? How is that shed going to get
6 smaller?

7 MR. BROWN: He built it. He knows how
8 to do it.

9 MR. DONOVAN: I think it would be easier
10 to just move it, to be honest.

11 MR. BROWN: There is a steel beam in
12 there. So he will take it back to the steel
13 beam.

14 Okay. Thank you.

15 THE CHAIRMAN: The second applicant for
16 this evening is Ralph Hurlburt, who is seeking
17 an area variance for increasing the degree of
18 nonconformity of rear yard setback to keep a
19 15 X 30 above-ground pool built without a
20 permit.

21 And also an area variance --

22 MR. DONOVAN: He is not going to need B
23 at all.

24 THE CHAIRMAN: No, he is not going to
25 need B at all. He wouldn't need C.

1 - PROCEEDINGS -

2 He will need D, which is to keep a
3 10 X 20 shed built without a permit. No
4 building shall project closer to the street
5 than the main building.

6 MR. DONOVAN: Mr. Chairman, you don't
7 need C if you follow our agenda?

8 MR. BROWN: Correct.

9 THE CHAIRMAN: I believe we also need
10 Variance E, which is an area variance for
11 increasing the degree of non-conformity of the
12 rear yard setback to keep two enclosed decks
13 that were converted to habitable space without
14 permits, which is referred to as the poker
15 room.

16 MR. BROWN: Yes.

17 THE CHAIRMAN: Or the man cave.

18 MR. BROWN: Exactly.

19 THE CHAIRMAN: Do we have any discussion
20 on this application?

21 MR. BELL: No.

22 THE CHAIRMAN: Then we'll go through the
23 area variance criteria discussing the five
24 factors.

25 The first one being whether or not the

1 - PROCEEDINGS -

2 benefit can be achieved by other means feasible
3 to the applicant? Well, the applicant has
4 already shown that he is willing to -- we have
5 eliminated some of the variances because of his
6 proposed actions.

7 Does everyone concur?

8 MR. McKELVEY: Yes.

9 THE CHAIRMAN: Second, if there is an
10 undesirable change in the neighborhood
11 character or a detriment to nearby properties?

12 MR. McKELVEY: No.

13 THE CHAIRMAN: I don't believe so.

14 The third is whether the request is
15 substantial? It doesn't sound that way
16 anymore.

17 The fourth, whether the request will have
18 adverse physical or environmental affects?

19 MR. MARINO: No.

20 THE CHAIRMAN: The fifth, whether the
21 alleged difficulty is self-created, relevant
22 but not determinative? I don't feel that
23 that's preventing us from moving forward.

24 Therefore, I will look to the Board for a
25 motion.

1 - PROCEEDINGS -

2 MR. BELL: I make a motion for approval.

3 MR. MASTEN: I will second.

4 THE CHAIRMAN: We have a motion from
5 Mr. Bell for approval. We have a second from
6 Mr. Masten.

7 Role call.

8 MS. JABLESNIK: Mr. Bell?

9 MR. BELL: Yes.

10 MS. JABLESNIK: Mr. Levin?

11 MR. LEVIN: Yes.

12 MS. JABLESNIK: Mr. Marino?

13 MR. MARINO: Yes.

14 MS. JABLESNIK: Mr. Masten?

15 MR. MASTEN: Yes.

16 MS. JABLESNIK: Mr. McKelvey?

17 MR. MCKELVEY: Yes.

18 MS. JABLESNIK: And Mr. Scalzo?

19 THE CHAIRMAN: Yes.

20 The motion is approved under the
21 condition that the applicant removes five plus
22 feet, could be 5 feet one inch. Thank you very
23 much.

24 And Mr. Canfield, from the meeting
25 minutes if you could somehow have someone from

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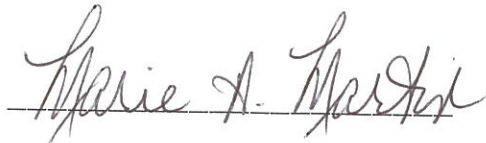
C E R T I F I C A T I O N

I, MARIE A. MARTIN, a Court Reporter
and Notary Public within and for the State
of New York, do hereby certify:

That the witness whose deposition
is herein before set forth, was duly sworn
by me, and that the within transcript is a
true record of the testimony given by such
witness.

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 4th day of November 2016.



MARIE A. MARTIN

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

In the Matter of

Michael and Sheila Fricker
42 Westwood Drive, Newburgh, NY

Date: October 25, 2018
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 30
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman
JOHN McKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
DARRELL BELL

ALSO PRESENT: DAVID DONOVAN, ESQ.
GERALD CANFIELD
SIOBHAN JABLESNIK

MICHELLE L. CONERO
PMB #276
56 North Plank Road, Suite 1
Newburgh, New York 12550
(845) 541-4163

1 - PROCEEDINGS -

2 THE CHAIRMAN: The first order of
3 business are the public hearings scheduled for
4 this evening. The procedure of the Board is
5 that the applicant will be called upon to step
6 forward, state the request and explain why it
7 should be granted. The Board will then ask the
8 applicant any questions it may have and then
9 any questions or comments from the public will
10 be entertained.

11 After all the public hearings have been
12 completed the Board may adjourn to confer with
13 legal counsel regarding any legal questions it
14 may have. The Board will then consider the
15 applications in the order heard and will try to
16 render a decision this evening, but may take up
17 to 62 days to reach a determination.

18 I would ask that if you have a cell phone
19 to please turn it off or put it on silence.
20 And when speaking, speak directly into the
21 microphone. This evening we have a
22 stenographer here that will be recording all
23 the minutes. It's an assistance to the
24 stenographer to be able to hear well.

25 Roll call, please.

1 - PROCEEDINGS -

2 MS. JABLESNIK: Present are Darrell
3 Bell.

4 MR. BELL: Yes.

5 MS. JABLESNIK: Richard Levin.

6 MR. LEVIN: Yes.

7 MS. JABLESNIK: Anthony Marino.

8 MR. MARINO: Yes.

9 MS. JABLESNIK: John Masten.

10 MR. MASTEN: Here.

11 MS. JABLESNIK: John McKelvey.

12 MR. MCKELVEY: Yes. Here.

13 MS. JABLESNIK: And Darrin Scalzo.

14 THE CHAIRMAN: Present.

15 Absent is Peter Olympia.

16 Also present are ZBA Attorney, David
17 Donovan. And Code Compliance, Gerald Canfield
18 and Marie Martin.

19 If we could all rise for the Pledge?
20 Mr. Bell, if you could lead us please?

21 (Whereupon the Pledge of Allegiance is recited.)

22 THE CHAIRMAN: Our first applicants this
23 evening are Michael and Sheila Fricker at 42
24 Westwood Drive. They are seeking an area
25 variance to construct a 10' X 22' wood deck on

1 - PROCEEDINGS -

2 the front of the house with an existing 28.8'
3 in the front yard, where a 50-foot is required,
4 and a combined 74' on the side yard where
5 80-foot is required.

6 Ms. Jablesnik, mailing?

7 MS. JABLESNIK: The public hearing
8 notices for all the new applications being
9 heard this evening were published in the
10 Mid-Hudson Times on Wednesday, October 17 and
11 the Orange County Post on Friday, October 19th.
12 All the mailings and publications are in order.
13 This applicant sent out 25 letters.

14 THE CHAIRMAN: Thank you very much.

15 Do we have anyone here this evening
16 representing the Frickers?

17 MR. FRICKER: Yes.

18 THE CHAIRMAN: Come forward, please.

19 I would like to let the members of the
20 audience know that every member of the Zoning
21 Board of Appeals is obligated to come visit
22 your properties. Therefore, we are all
23 personally familiar with the sites.

24 If you could introduce yourselves please
25 and let us know why you are here?

1 - PROCEEDINGS -

2 MR. FRICKER: I'm Michael Fricker. This
3 is my wife, Sheila Fricker. I'm trying to
4 build this 10 X 22 deck to get rid of the old
5 10 X 10 concrete deck. It's been there since
6 1957. I want to put Trek wood and make my
7 house look --

8 MRS. FRICKER: Enhance it.

9 MR. FRICKER: Yes. We love sitting
10 outside.

11 MRS. FRICKER: My granddaughter loves
12 being out there.

13 THE CHAIRMAN: It's a great neighbor.
14 We were cruising through there to check it out.
15 We saw the existing porch as it is. When you
16 get rid of that are you going to bring it over
17 to that slight jog in the house? Is that the
18 intent of that?

19 MR. FRICKER: No. I'm going to get rid
20 of the concrete and just go another 10 feet.

21 THE CHAIRMAN: But doesn't your house
22 stick out like a foot at one point? Is it flat
23 across the front?

24 MR. FRICKER: Yeah, it's flat.

25 THE CHAIRMAN: Okay.

1 - PROCEEDINGS -

2 MR. FRICKER: I have no problem with it.

3 THE CHAIRMAN: Okay, I'm going to turn
4 to the Board at this time.

5 Mr. Bell, do you have any comments?

6 MR. BELL: No, I'm good.

7 THE CHAIRMAN: Mr. McKelvey?

8 MR. MCKELVEY: Yes, I do. It's harder
9 now because it used to be R3, it's R1. And it
10 used to 40 feet to the road. Now it's 50. But
11 I don't see any problem. There are others
12 that's been done since they changed.

13 THE CHAIRMAN: Mr. Levin?

14 MR. LEVIN: I agree with John. I don't
15 see any problems with this.

16 THE CHAIRMAN: Mr. Masten?

17 MR. MASTEN: I concur with the same.

18 THE CHAIRMAN: Mr. Marino?

19 MR. MARINO: I agree.

20 THE CHAIRMAN: Were you looking to get
21 it all the way passed the big window in the
22 front?

23 MR. FRICKER: Just about six inches.

24 THE CHAIRMAN: Not that that should
25 matter. I was just curious. The esthetic look

1 - PROCEEDINGS -

2 matters. I have no comments myself.

3 Anyone from the audience like to speak
4 about the application?

5 (No Response.)

6 THE CHAIRMAN: Hearing none, I will go
7 to the Board for one last opportunity.

8 Mr. Bell?

9 MR. BELL: No.

10 THE CHAIRMAN: Mr. McKelvey? Levin?

11 MR. LEVIN: No.

12 THE CHAIRMAN: Mr. Masten?

13 MR. MASTEN: No.

14 THE CHAIRMAN: In that case --

15 MR. MCKELVEY: I make a motion we close
16 the public hearing.

17 MR. BELL: I second.

18 THE CHAIRMAN: We have a motion to close
19 the hearing from Mr. McKelvey. A second from
20 Mr. Bell.

21 Roll call, please.

22 MS. JABLESNIK: Mr. Bell?

23 MR. BELL: Yes.

24 MS. JABLESNIK: Mr. Levin?

25 MR. LEVIN: Yes.

1 - PROCEEDINGS -

2 MS. JABLESNIK: Mr. Marino?

3 MR. MARINO: Yes.

4 MS. JABLESNIK: Mr. Masten?

5 MR. MASTEN: Yes.

6 MS. JABLESNIK: Mr. McKelvey?

7 MR. MCKELVEY: Yes.

8 MS. JABLESNIK: And Mr. Scalzo?

9 THE CHAIRMAN: Yes.

10 Thank you. We will try our very best to
11 render a decision this evening.

12 MR. FRICKER: Thank you.

13 MRS. FRICKER: Thank you, everyone.

14 (Time noted: 7:57 p.m.)

15 * * * *

16 (Time resumed for decision: 8:09 p.m.)

17 THE CHAIRMAN: I would like to call the
18 meeting back to order. All of the actions in
19 front of us this evening are Type II actions
20 under SEQRA. At this point we will try to
21 render our decisions on each applicant.

22 The first applicant being Michael and
23 Sheila Fricker, an area variance to construct a
24 10 X 22 wood deck on the front of the house
25 where an existing 28.8 in the front yard where

1 - PROCEEDINGS -

2 50 is required and a combined 74 on the side
3 yard where an 80 is required.

4 Do I have any discussion on this
5 application?

6 MR. McKELVEY: We have granted porches
7 like this before. And it's not going to affect
8 the neighborhood either.

9 THE CHAIRMAN: We are going to go
10 through the area variance criteria and discuss
11 the five factors that we are going to weigh.

12 The first one being whether or not the
13 benefit can be achieved by other means
14 achievable by the applicant?

15 MR. McKELVEY: No.

16 MR. BELL: No.

17 THE CHAIRMAN: The second, if there is
18 an undesirable change in the neighborhood
19 character or a detriment to nearby properties?

20 MR. LEVIN: No.

21 MR. BELL: No.

22 THE CHAIRMAN: The third, whether the
23 request is substantial?

24 MR. McKELVEY: I would say no.

25 MR. BELL: No.

1 - PROCEEDINGS -

2 THE CHAIRMAN: The fourth, whether the
3 request will have adverse physical or
4 environmental affects?

5 MR. McKELVEY: No.

6 MR. BELL: No.

7 MR. LEVIN: No.

8 THE CHAIRMAN: The fifth, whether the
9 alleged difficulty is self-created? This is
10 relevant, but not determinative. So it is
11 self-created. However, we can run with the
12 other way.

13 So, in that case, I look to the Board for
14 a motion.

15 MR. McKELVEY: I make a motion we
16 approve.

17 MR. MASTEN: I second it.

18 THE CHAIRMAN: We have a motion for
19 approval from Mr. McKelvey. We have a second
20 from Mr. Masten.

21 Role call.

22 MS. JABLESNIK: Mr. Bell?

23 MR. BELL: Yes.

24 MS. JABLESNIK: Mr. Levin?

25 MR. LEVIN: Yes.

1 - PROCEEDINGS -

2 MS. JABLESNIK: Mr. Marino?

3 MR. MARINO: Yes.

4 MS. JABLESNIK: Mr. Masten?

5 MR. MASTEN: Yes.

6 MS. JABLESNIK: Mr. McKelvey?

7 MR. MCKELVEY: Yes.

8 MS. JABLESNIK: And Mr. Scalzo?

9 THE CHAIRMAN: Yes.

10 The motion is approved. The variance is
11 granted.

12 MR. FRICKER: Thank you.

13 MRS. FRICKER: Thank you for your time.

14

15 (Whereupon the above matter was concluded.)

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

I, MARIE A. MARTIN, a Court Reporter and Notary Public within and for the State of New York, do hereby certify:

That the witness whose deposition is herein before set forth, was duly sworn by me, and that the within transcript is a true record of the testimony given by such witness.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of November 2016.



MARIE A. MARTIN