

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

----- X

In the Matter of

PERCY DIXON

3 Percy Path, Wallkill  
Section 3; Block 1; Lot 103.311  
AR Zone

----- X

Date: May 23, 2019  
Time: 7:00 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: JOHN McKELVEY, Acting Chairman  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO

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

APPLICANT'S REPRESENTATIVE: PERCY DIXON

----- X

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PERCY DIXON

2

MR. McKELVEY: I'd like to call the Zoning Board meeting to order.

MS. JABLESNIK: The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted relief under the code. The Board will then ask the applicant any questions it may have, and then any questions or comments from the public will be entertained. After all the public hearings have been completed, the Board may adjourn to confer with counsel regarding any legal questions it may have. The Board will then consider the applications in the order heard, and the Board will then try to render a decision this evening but it may take up to 62 days to reach a determination.

I would like to ask that if you have a cell phone, please put it on silent or turn them off. When speaking, speak directly into the microphone as it is being recorded.

Roll call. Darrell Bell is absent.

Richard Levin.

MR. LEVIN: Present.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PERCY DIXON

3

MS. JABLESNIK: Anthony Marino.

MR. MARINO: Here.

MS. JABLESNIK: John Masten.

MR. MASTEN: Here.

MS. JABLESNIK: John McKelvey.

MR. MCKELVEY: Here.

MS. JABLESNIK: Peter Olympia is  
absent. Darrin Scalzo is absent.

We also have present our attorney,  
David Donovan; and from Code Compliance Gerald  
Canfield; and our Stenographer, Michelle Conero.

MR. DONOVAN: We have two applications  
tonight where the applicants have requested that  
the matter be held over until the June meeting,  
that's Gasparini and GDPBJ, otherwise known as  
BJ's.

If the Board wants to make a motion, it  
would be appropriate to hold the matters over to  
the June meeting. You can do one motion.

MR. LEVIN: I'll make a motion to hold  
them over.

MR. MASTEN: I'll second it.

MR. MCKELVEY: Roll call.

MS. JABLESNIK: Mr. Levin?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PERCY DIXON

4

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

If there's anyone here for those two  
hearings, they won't be heard tonight.

John Masten, will you lead the Pledge?

MR. MASTEN: Sure.

(Pledge of Allegiance.)

MS. JABLESNIK: Our first applicant is  
Percy Dixon at 3 Percy Path in Wallkill,  
otherwise known as 85 Forest Road. He is seeking  
an area variance to keep a 24 foot by 32 foot by  
14.11 foot detached two-car garage built without  
a permit with an existing three-car garage in the  
dwelling.

This applicant sent out 15 letters.  
All the mailings, postings and publications are  
in order.

This applicant also had to be sent to  
the County, and we have not received word back

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PERCY DIXON

5

yet.

MR. McKELVEY: So we won't be voting on that tonight. We can have the hearing.

Is there anyone here?

MR. DIXON: That's me.

MR. McKELVEY: Come up. You understand we can't vote on it tonight but you can hold your hearing in front of the Board.

MR. DIXON: What do we need from the County?

MR. DONOVAN: If I can, Mr. Chairman. Section 239 of the General Municipal Law requires a referral to the Orange County Department of Planning for certain applications within 500 feet of the municipal boundary, within 500 feet of a State or County highway or a County park. If you fall within those parameters there has to be a referral. The County has 30 days from the referral to respond, and we can not act until either they respond or the 30-day period has passed.

MR. DIXON: Is that the structure or the property? My structure is 1,000 feet off the road.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PERCY DIXON

6

MR. DONOVAN: It's the property.

MR. DIXON: It's the property. Okay.

MR. DONOVAN: It's the measurement of  
the property.

MR. DIXON: The property touches the  
County road.

MR. McKELVEY: Do you want give your  
name and explain what you want?

MR. DIXON: Percy Dixon. I just want  
to get through this process. I have all of my  
blueprints, everything is done.

MR. McKELVEY: Do you want to keep this  
building?

MR. DIXON: Yes, I want to keep the  
building.

MR. McKELVEY: Any questions from the  
Board?

MR. MARINO: I was out there yesterday.

MR. DONOVAN: If I could just ask, Mr.  
Dixon -- not ask Mr. Dixon. Everyone wants to  
get through the process but there's -- I come  
because I'm the lawyer, so there's some legal  
requirements. If you remember when you filled  
out the application, there were like five

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PERCY DIXON

7

different questions you needed to answer, will this cause an undesirable affect on the character of the neighborhood, can you do it any other way, what you're requesting that would require a variance. Those types of things. Is it consistent with the neighborhood. I know you're not a professional but that's kind of what the Board has to weigh.

MR. DIXON: Right.

MR. DONOVAN: If you can give the Board a little information.

MR. DIXON: The house, it's not an eyesore to anybody. Nobody can even see it. There's like three houses that can see it. I'm surrounded by woods. It don't affect anyone.

MR. McKELVEY: Okay. Once again, any questions from the Board?

MR. MARINO: I have nothing. It's very secluded.

MR. McKELVEY: I guess we can move on.

MR. DONOVAN: If there's no one from the public, you haven't heard from the County, you need a motion to hold this open to June.

MR. MARINO: I'll make a motion to hold

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PERCY DIXON

8

it over until June.

MR. MASTEN: I'll second it.

MR. McKELVEY: Roll call.

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.

MR. DONOVAN: You don't have to do any new mailing. The time period for the County will have lapsed and either we'll have their report, which likely is going to say Local determination. It's not going to be a problem for you. The Board will be in a position to act. Unfortunately they're not allowed to tonight.

MR. DIXON: I have somebody buying my house, so what do I tell them? They're supposed to close now. What do I tell the bank?

MR. DONOVAN: I don't have a good answer for you. I understand your concern.

MR. McKELVEY: We're bound by law.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PERCY DIXON

9

MR. DIXON: There's nothing? All right. That's it?

MR. DONOVAN: Yes, sir.

MR. McKELVEY: That's it.

MR. DONOVAN: Until next month. The Board will act next month.

If I can briefly, while we're on the topic, because Chairman Scalzo had asked at the last meeting. You may recall he's going to a meeting of the County people that chair zoning boards and planning boards. He asked me how he could go about bringing up this issue because it's become an issue as the Board knows, especially recently where the County has not turned around their municipal reports, and it's held this gentleman up and it's held other people up. There is a provision in the law that allows an opt out. County Planning can opt out of certain referrals. I've given Chairman Scalzo some information to bring to this meeting. Maybe if the Orange County Municipal Planning Federation can ask the County Planning Department if they can opt out, especially residential area variances. What I've told Darrin is I've been

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PERCY DIXON

10

doing this 32 years and I've never seen the County make a comment other than Local determination, which means they don't have any input on the subject. By State Law we're required to refer to them. The Chairman is going to ask if he can get some support to get County Planning to opt out of these things so this gentleman won't be put through what he's being put through and other people have to be put through.

MR. DIXON: What happens if I lose the sale on the house now? And the people that are supposed to be in there, what happens to them?

MR. DONOVAN: I'm not unsympathetic. There is no other answer, though.

MR. DIXON: All right.

MR. DONOVAN: I'm sorry.

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 10th day of June 2019.

*Michelle Conero*

---

MICHELLE CONERO

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

----- X

In the Matter of

FROHLING SIGN COMPANY

1217 Route 300, Newburgh  
Section 96; Block 1; Lot 11.1  
IB Zone

----- X

Date: May 23, 2019  
Time: 7:10 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: JOHN McKELVEY, Acting Chairman  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO

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

APPLICANT'S REPRESENTATIVE: BRIAN O'CONNOR

----- X

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

1  
2 MS. JABLESNIK: The next applicant on  
3 the agenda is Frohling Sign Company at 1217 Route  
4 300. They're seeking an area variance to install  
5 a 4 foot by 4.925 V shaped sign for Vitamin  
6 Shoppe on the front tower where there is an  
7 existing 79.75 square feet and 19 square feet is  
8 proposed. Maximum allowed square footage is 86  
9 square feet.

10 I promise the next one I'm going to get  
11 it right.

12 MR. McKELVEY: Introduce yourself,  
13 please.

14 MR. O'CONNOR: Good evening. My name  
15 is Brian O'Connor with Frohling Sign in Valley  
16 Cottage, New York. I'm here tonight representing  
17 Vitamin Shoppe which is located at 1217 Route  
18 300.

19 We're requesting an area variance to  
20 install a 4 by 4.925 logo on the east front  
21 elevation of the building facing Route 300.

22 The code allows a maximum on that  
23 elevation of 86 square feet and 79.75 square feet  
24 is existing. We're requesting an area variance  
25 of 12.75 square feet.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Vitamin Shoppe is a major tenant in the center, in addition to Cosimo's.

The proposed logo is going to match the logo that's presently installed on the north elevation of the building. There's a tower there. The north elevation has one sign. This would match what's on the other side.

Due to a misunderstanding between our office and the Building Department, all on our part, the logo has actually already been installed on that side of the building. We received a permit for another part of the project and did not realize that the permit did not include that sign. The actual denial for this particular sign did not go to us, it's procedure that it goes to the property owner. We were not aware that that one sign had been denied. When we did realize it we self reported it to the Building Department, told them the mistake and, you know, proceeded to put the application in to the Zoning Board.

We ask that you approve the variance as it's minor in nature, it does not have any adverse impact on the environment and is in

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

keeping with the overall appearance of the shopping center and the surrounding area which is all commercial.

Thank you.

MR. McKELVEY: Questions from the Board Members?

(No response.)

MR. McKELVEY: No questions? Any questions from the public?

(No response.)

MR. McKELVEY: It is a very hard place to see that building from the road, too.

MR. DONOVAN: Did this go to County?

MS. JABLESNIK: It did and we received it back.

MR. McKELVEY: If we vote tonight you have to have the unanimous four votes, otherwise we have to hold it over.

MR. O'CONNOR: Okay.

MR. McKELVEY: It's up to you.

MR. O'CONNOR: I'd like to proceed.

MR. McKELVEY: I'd like to what?

MR. O'CONNOR: I'd like to proceed.

MR. McKELVEY: Do I have a motion?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. LEVIN: Motion to close the public hearing.

MR. MARINO: Second.

MR. McKELVEY: Roll call.

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.

MR. O'CONNOR: Thank you.

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

(Time resumed: 7:43 p.m.)

MS. JABLESNIK: Frohling Sign Company at 1217 Route 300, seeking an area variance to install a 4 foot by 4.925 foot V shaped sign for Vitamin Shoppe on the front tower where there's an existing 79.75 square feet and 19 square feet is proposed. Maximum allowed square footage is 86 square feet.

MR. DONOVAN: Mr. Chairman, this is actually an Unlisted action under SEQRA, so



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

the Board will need a negative declaration.

MR. McKELVEY: We need a negative dec.  
Does somebody want to make a negative dec?

MR. LEVIN: You want a negative  
declaration?

MR. DONOVAN: This is an Unlisted  
action under SEQRA. It's not a Type 2 action.  
We need a negative declaration saying this action  
will not have an adverse impact on the  
environment.

MR. LEVIN: I'll move for a negative  
declaration that this will not have an adverse  
effect on the environment.

MR. McKELVEY: May I have a second?

MR. MARINO: I'll second that.

MR. McKELVEY: Roll call.

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.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. DONOVAN: Fortunately that's the only one tonight.

MS. JABLESNIK: So we'll go through the area variance criteria and discuss the five factors that you are weighing, the first one being whether or not the benefit can be achieved by other means feasible to the applicant.

MR. McKELVEY: No.

MR. MARINO: No.

MR. LEVIN: No.

MS. JABLESNIK: The second, if there's an undesirable change in the neighborhood character or detriment to nearby properties.

MR. LEVIN: No.

MR. MARINO: No.

MR. MASTEN: No.

MR. McKELVEY: No.

MS. JABLESNIK: The third, whether the request is substantial.

MR. MARINO: No.

MR. LEVIN: I don't believe it is.

MS. JABLESNIK: The fourth, whether the request will have an adverse physical and environmental effect.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. MASTEN: No.

MR. LEVIN: No.

MS. JABLESNIK: Fifth, whether the alleged difficulty is self-created.

MR. McKELVEY: They're all self-created.

MR. DONOVAN: If it is self-created it's not a bar to relief as a use variance. This is frankly self-created because they put it up and they weren't supposed to. It's got self-created hardships.

MR. McKELVEY: I need a motion.

MR. LEVIN: I'll make a motion to approve.

MR. MARINO: I'll second it.

MR. McKELVEY: Roll call.

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.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(Time noted: 7:47 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 10th day of June 2019.

*Michelle Conero*

---

MICHELLE CONERO

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

----- X  
In the Matter of

JENNIFER CANNIZZARO & BENNY HATTON

11 Hollenbeck Drive, Newburgh  
Section 37; Block 1; Lot 3  
R-3 Zone

----- X

Date: May 23, 2019  
Time: 7:15 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: JOHN McKELVEY, Acting Chairman  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO

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

APPLICANT'S REPRESENTATIVE: JENNIFER CANNIZZARO &  
BENNY HATTON

----- X

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

1  
2 MS. JABLESNIK: The next applicant  
3 on the agenda are Jennifer Cannizzaro and  
4 Benny Hatton. They're seeking an area  
5 variance to keep a 24 foot by 28 foot by 22.8  
6 foot accessory building with an existing  
7 height of 22.67 feet where 15 feet is the  
8 maximum allowed and in the front yard; a 16  
9 foot by 24 foot rear deck with an existing  
10 Thruway front yard setback of 22 feet where  
11 40 feet is required; a 10 foot by 14 foot  
12 accessory building; and a 9 foot by 16 foot  
13 accessory building built without permits with  
14 1,069 square feet of maximum allowed  
15 accessory structures where 370.08 square feet  
16 is allowed; 765 square feet of side yard  
17 where 280 square feet is allowed; proposed  
18 building coverage of 3,137 square feet where  
19 2,869.14 square feet is allowed; and 5,930  
20 square feet of surface coverage where  
21 5,738.28 square feet is allowed.

22 MR. McKELVEY: Do we have a  
23 representative here?

24 MR. HATTON: Yes.

25 MR. McKELVEY: Please introduce

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

yourself for the record.

MS. CANNIZZARO: Good evening.  
Jennifer Cannizzaro.

MR. HATTON: I'm Benny Hatton.

MS. CANNIZZARO: We are looking for  
variances for several items.

The setback for the deck in the back of  
the house is actually only 2 feet closer to the  
Thruway than it was before.

The garage and the deck were both built  
without permits but it was our understanding with  
the contractor that we had, Derrick Loughran with  
Remodeling Concepts, that he had obtained  
everything that was necessary. He has since  
abandoned our project and left quite a few items  
unfinished.

The maximum lot coverage is 1.4 percent  
over, but the way the buildings are laid out I  
think it's tasteful and in keeping with the  
neighborhood.

The two other outbuildings have  
actually been there -- the one had been there for  
40 plus years and the second building was  
actually one that was moved after we had

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

demolished one that was already there for 40 plus years.

There's been no environmental impact.

Our neighbor also has a detached garage, so it's in keeping with the neighborhood. I don't think there's been any complaints or anything at all from our neighbors.

The garage also hopefully is a little bit of a buffer for the neighborhood for the sound from the Thruway, which is horrendous.

MR. McKELVEY: You had the building built?

MS. CANNIZZARO: We had it built by a contractor.

MR. HATTON: He was supposed to, which was our understanding, that everything was going to be done. He said he would take care of all the permits. That's what our understanding was. Apparently that's not the case. We received a letter in the mail stating --

MS. CANNIZZARO: In January.

MR. HATTON: -- in January, a demolition permit. That's when I came back in to the Zoning Board and that's when I found out we



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

had nothing. But everything has been built.  
That's why we proceeded to try to rectify  
everything.

MR. McKELVEY: You're not going to have  
anybody living up there?

MR. HATTON: No. It's just storage.

MS. CANNIZZARO: It's just storage.

MR. McKELVEY: Any questions from the  
Board Members?

MR. LEVIN: Did you ever check to see  
if the permits were out on this with the Town of  
Newburgh? You never went?

MS. CANNIZZARO: It didn't even occur  
to us. We had had our kitchen remodeled two  
years before that and had no problems with the  
contractors doing what they were supposed to do.  
We had our roof done and had no problems.

MR. HATTON: He's local, and most of  
the other ones --

MS. CANNIZZARO: He had good references  
at the time. In the middle of our project he got  
divorced and let just about every other project  
he's working on go belly up. His reviews now on  
all the different sites are pretty much the same

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

thing we've been going through, no permits obtained.

MR. LEVIN: I'm not sure but is there a law about being close to the Thruway? I mean you have the Thruway that they're up to. Don't you have to be a certain distance away from it?

MR. CANFIELD: That's one of the setback variances that they're requesting.

MR. HATTON: That's for the deck or for the garage?

MR. CANFIELD: The garage is detached, it's 15 feet from the property line.

MR. HATTON: Yes.

MR. CANFIELD: The deck is I believe what the variance is for.

MS. CANNIZZARO: That deck replaced an existing deck. It is really only 2 feet closer to the property line. Again, he never checked.

MR. LEVIN: Are we allowed to overrule that? The Thruway is a different entity.

MR. CANFIELD: It's a local requirement, the setbacks.

MR. DONOVAN: So it's the Town of Newburgh requirement they're asking for a

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

variance from.

MR. LEVIN: Okay. It's not the Thruway?

MR. DONOVAN: That's correct.

MR. McKELVEY: Any other questions?

MR. MARINO: They're both very attractive buildings. Nothing behind them except the Thruway, which is a noisy neighbor. Very noisy.

MR. McKELVEY: I don't know how you sit out on the deck.

MR. HATTON: We usually don't. The old deck was falling apart, so that's why we went ahead --

MR. McKELVEY: I meant to tell everybody before, all the Members have visited the properties.

Is there anybody from the public that would like to speak?

MR. MERCIER: I'm Bernard Mercier, I'm their neighbor on Walnut Avenue.

Those two sheds that I'm mentioning here, they've been in existence ever since I lived there, and they've been there at least 37

1 years. I have no objections to the shed. I walk  
2 in my backyard and they're painted and they're up  
3 to date. They're not rotting away. He maintains  
4 them and he's been painting them as well. I look  
5 at that from my backyard and I say it's okay. We  
6 plant on my side flowers against it and it blends  
7 right in. That's how long I've been living  
8 there.

9  
10 MR. McKELVEY: Thank you.

11 Anyone else?

12 (No response.)

13 MR. McKELVEY: It's a big piece of  
14 property, too. The sheds sit back quite a  
15 distance from the house.

16 MS. CANNIZZARO: We were horrified to  
17 find out that he didn't do what he was supposed  
18 to on top of what we've been through. Apologies.

19 MR. McKELVEY: Once again, any more  
20 questions from the Board?

21 MR. MASTEN: Nothing.

22 MR. McKELVEY: If not, I'll look for a  
23 motion.

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. MASTEN: I'll second it.

MS. CANNIZZARO: Thank you.

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.

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

(Time resumed: 7:47 p.m.)

MS. JABLESNIK: The next applicant is Jennifer Cannizzaro and Benny Hatton, seeking an area variance to keep a 24 by 28 by 22.8 foot accessory building with an existing height of 22.67 feet where 15 feet is the maximum allowed and in the front yard; a 16 foot by 24 foot rear deck with an existing Thruway front yard setback of 22 feet where 40 feet is required; a 10 foot by 14 foot accessory building; a 9 foot by 16 foot accessory building built without permits with 1,069 square feet of maximum allowed accessory structures where 370.08 square feet is

1 allowed; 765 square feet of side yard where 280  
2 square feet is allowed; proposed building  
3 coverage of 3,137 square feet where 2,869.14 feet  
4 is allowed; and 5,930 square feet of surface  
5 coverage where 5,738.28 square feet is allowed.  
6

7 I'll be very happy to not have to read  
8 that again.

9 MR. MCKELVEY: This is a Type 2?

10 MR. DONOVAN: This is a Type 2 action  
11 under SEQRA. Correct.

12 MS. JABLESNIK: We'll go through the  
13 area variance criteria and discuss the five  
14 factors you are weighing, the first being whether  
15 or not the benefit can be achieved by other means  
16 feasible to the applicant.

17 MR. LEVIN: No.

18 MR. MASTEN: No.

19 MR. LEVIN: I don't believe it can.  
20 They'd have to take it down.

21 MS. JABLESNIK: The second, if there's  
22 an undesirable change in the neighborhood  
23 character or detriment to nearby properties.

24 MR. LEVIN: No.

25 MR. MARINO: No.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. MASTEN: No.

MR. McKELVEY: No.

MR. LEVIN: Even the neighbor said it was no problem.

MS. JABLESNIK: The third, whether the request is substantial.

MR. DONOVAN: As you consider that factor, frequently the Board looks at the mathematical calculation, and we see it on the chart, that they are substantially over from a mathematical calculation on several of the requirements. The Board also should consider the overall effect or impact, whether it has a substantial impact on the neighborhood. That's part of your deliberation as the overall effect or impact of the side yards, not just the mathematical calculation. My point being you're not just tied in to that.

MR. McKELVEY: The one neighbor approved it.

MS. JABLESNIK: The fourth, whether the request will have adverse physical or environmental effects.

MR. MARINO: No.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. MASTEN: No.

MS. JABLESNIK: The fifth, whether the  
alleged difficulty is self-created.

MR. McKELVEY: Yes.

MR. MARINO: We can probably say it  
was. It's irrelevant, though.

MR. McKELVEY: It's irrelevant.

MR. LEVIN: Irrelevant.

I'll make a motion to approve.

MR. MARINO: I'll second it.

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.

(Time noted: 7:50 p.m.)



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

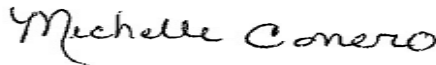
C E R T I F I C A T I O N

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 10th day of June 2019.



---

MICHELLE CONERO

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

----- X

In the Matter of

MICHAEL FERRETTI

294 Lakeside Road, Newburgh  
Section 50; Block 1; Lot 52  
R-1 Zone

----- X

Date: May 23, 2019  
Time: 7:22 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: JOHN McKELVEY, Acting Chairman  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO

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

APPLICANT'S REPRESENTATIVE: MICHAEL FERRETTI

----- X

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MS. JABLESNIK: The next applicant is Michael Ferretti at 294 Lakeside Road seeking an area variance to build a 10 foot by 10 foot rear deck and increasing the degree of nonconformity of the side yard with an existing 6.8 feet where 30 feet is required, and increasing the degree of nonconformity of the combined side yards with an existing 24.3 feet where 80 feet is required.

MR. FERRETTI: Good evening. My name is Michael Ferretti. I've lived in my house for about 20 years. It's a little piece of property, nice woods behind my house. I'd just like to build a 10 by 10 deck to sit out there and look at the woods.

A couple of you gentlemen have been there, you've seen it.

As far as my neighbors, I did explain that they're mostly renters there. I live on Orange Lake. I just wish they would take half as much pride in where they are living as I do. I'm trying to do the right thing.

MR. McKELVEY: And on the setbacks, the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MICHAEL FERRETTI

36

side yard setbacks, they're all close on Orange Lake.

MR. FERRETTI: Yes. I think one side of my house is 6 foot 8 inches from the property line. That's what it says on there.

MR. McKELVEY: And you're going to build this deck up so you can walk out --

MR. FERRETTI: Straight out the back door. Yes, sir.

MR. McKELVEY: And have a set of stairs?

MR. FERRETTI: My wife hasn't decided if she wants them on the side or the front yet. That's her job.

MR. McKELVEY: Any questions?

(No response.)

MR. McKELVEY: Does anybody in the public want to speak?

MR. LONDON: Yes.

MR. McKELVEY: Your name, please?

MR. LONDON: Eon London, 304 Lakeside Road. I just want to say that I'm for Mr. Ferretti's deck.

I own a piece of property over there.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MICHAEL FERRETTI

37

It's probably my woods he's looking at. I'm with him with developing Town of Newburgh to look a lot better and be a lot better.

I have four houses that I have to maintain and I'm doing it all by myself. I might not be able to get to everything when I need to but I do want to make it look even better than it already is.

Thank you.

MR. McKELVEY: Thank you.

MR. LANGER: Greg Langer, Lakeside Road. I am the property across the street from Michael.

He's been doing a good job. He's been spending a lot of money. Please help him spend some more money.

MR. FERRETTI: Thanks, Greg.

MR. McKELVEY: The house is in good shape.

MR. MARINO: Yes.

MR. FERRETTI: You all mostly know the Monti's, the farm. Catherine and Frank have passed. That's who I bought the house from. I've actually lived in that house since 2001.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MICHAEL FERRETTI

38

Just doing minor things, minor things, and now we're going to start really enjoying it.

I've got a year-a-half left. I actually work for the Town. I've got a year-and-a-half left. Not that I want to leave that bad but I do want to leave.

MR. McKELVEY: Once again, any questions from the Board?

MR. MARINO: I have nothing.

MR. MASTEN: No.

MR. McKELVEY: A motion?

MR. MASTEN: I'll make a motion.

MR. MARINO: I'll second it.

MR. McKELVEY: Motion for what?

MR. MASTEN: To close the public hearing.

MR. McKELVEY: Roll call.

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?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MICHAEL FERRETTI

39

MR. McKELVEY: Yes.

MR. FERRETTI: Thank you, gentleman.  
Thank you, ma'am.

What do I do now?

MR. DONOVAN: They just closed the  
public hearing. They vote on everything at the  
end. Don't thank them yet.

MR. FERRETTI: Thank you for the  
consideration.

(Time noted: 7:26 p.m.)

(Time resumed: 7:50 p.m.)

MS. JABLESNIK: The next applicant  
is Michael Ferretti, 294 Lakeside Road,  
seeking an area variance to build a 10 foot  
by ten foot rear deck and increasing the  
degree of nonconformity of the side yard with  
an existing 6.8 feet where 30 feet is  
required, and increasing the degree of  
nonconformity of the combined side yards with  
an existing 24.3 feet where 80 is required.

We'll go through the area variance  
criteria and discuss the five factors that  
you are weighing, the first one being whether  
or not the benefit can be achieved by other

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MICHAEL FERRETTI

40

means feasible to the applicant.

MR. LEVIN: No.

MR. MARINO: No.

MR. MASTEN: No.

MR. McKELVEY: No.

MS. JABLESNIK: The second, if there's  
an undesirable change in the neighborhood  
character or detriment to nearby properties.

MR. LEVIN: No.

MR. MARINO: No.

MR. MASTEN: No.

MR. McKELVEY: No.

MS. JABLESNIK: The third, whether the  
request is substantial.

MR. LEVIN: No.

MR. MARINO: No.

MR. MASTEN: No.

MR. McKELVEY: No.

MS. JABLESNIK: The fourth, whether the  
request will have adverse physical or  
environmental effects.

MR. LEVIN: No.

MR. MARINO: No.

MR. MASTEN: No.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. McKELVEY: Not at all.

MS. JABLESNIK: The fifth, whether the  
alleged difficulty is self-created.

MR. MARINO: I don't think so. There's  
a deck there now.

MR. McKELVEY: I'll ask for a motion.

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

MR. MARINO: I'll second it.

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.

(Time noted: 7:52 p.m.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 10th day of June 2019.

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

----- X  
In the Matter of

SERAPIO & JULIE ROLO

373 Lakeside Road, Newburgh  
Section 33; Block 1; Lot 19  
R-1 Zone

----- X

Date: May 23, 2019  
Time: 7:27 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: JOHN McKELVEY, Acting Chairman  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO

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

APPLICANT'S REPRESENTATIVE: JONATHAN CELLA &  
SERAPIO ROLO

----- X

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MS. JABLESNIK: The next item on the agenda is Mr. and Mrs. Rolo. I'm going to butcher your first name. How do you pronounce it?

MR. ROLO: Call me Sam.

MS. JABLESNIK: Sam, okay. Residing at 373 Lakeside Road, seeking an area variance to enlarge the second floor of a nonconforming dwelling unit and keep the rear deck and side sunroom built without permits with a rear yard setback of 1.6 feet where 40 is required, one side yard setback of 1.3 feet where 30 is required, combined side yard of 11.9 feet where 80 is required, and 42 percent proposed surface lot coverage where 20 percent is the minimum.

MR. CELLA: Good evening. I'm Jonathan Cella. This is the owner.

MR. ROLO: My name is Sam Rolo.

MR. CELLA: We're seeking the area variances as you summarized for an existing deck which requires the rear yard setbacks and some side yard setbacks, and also for an existing sunroom on the west side of the property. The deck and the sunroom are existing.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

The proposal is to remove the existing second floor of the residence and construct a new second floor on top of the existing footprint.

The existing building is serviced by municipal sewer and an individual well.

MR. ROLO: Municipal water.

MR. CELLA: I'm sorry. Municipal water and well. So there will be no requirements for increasing the septic system.

We've submitted several pictures of the site showing that the building has very low visibility from the street.

Again, the area variances we're requesting are for pre-existing conditions. We're not going to increase any further encroachment other than the third dimension.

MR. McKELVEY: Again, the setbacks are close at Orange Lake.

MR. CELLA: Yes. As you see, the lot is very narrow and deep. The side yards are nonexistent and we can't produce any more.

MR. McKELVEY: The view is going to --

MR. CELLA: We feel that there will be no detriment to anyone else's view. From the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

street, the front of the property, the existing trees are taller than the proposed building.

MR. McKELVEY: Questions from the Board?

MR. LEVIN: Are you changing the staircase?

MR. CELLA: We're changing everything. The first floor and the second floor as well. So yes. People have been in the house. There's I think a two-foot wide staircase with a 90 degree turn in it. Yes, with the new construction we'd be up to the IRC, International Residential Code. We submitted some building plans. We submitted them as 80 to 90 percent plans as we knew we'd have to come for these variances before we got a building permit.

MR. McKELVEY: Where the staircase is you wouldn't be able to move anything up there anyhow.

MR. CELLA: No. We'd have to assemble anything upstairs.

MR. McKELVEY: Is there anybody from the public that would like to speak?

MR. LANGER: Greg Langer from the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Orange Lake Homeowners Association.

Frequently we ask that applicants come in front of us to present their plans so we can discuss them. This applicant did not. I left him a note but they never got in touch with me.

Typically we ask if people are bothered by this. Basically nobody in the neighborhood said they are, however they are the closest house to the water on Lakeside Road. As you go down into the cove, which you guys are familiar with, down in Sunset, Ten Broeck, Odel, there are a lot of houses close to the water. Only a few of these houses have a second floor that is within 10 feet of the water line. Some of them are set back further but a lot of them have one story close to the water and the second story is further back, similar to this residence.

What we're concerned about is that by allowing everybody to extent their second floor all the way out to the first floor, all within 8 to 10 feet of the water line, you're changing the character of Orange Lake. That's something we wish wouldn't happen. That's all I have to say.

MR. ROLO: I have a question for you.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SERAPIO & JULIE ROLO

48

When was that?

MR. McKELVEY: Speak to the Board  
please.

MR. LANGER: Two weeks ago I left a  
note asking you to call me.

MR. McKELVEY: Please speak so we can  
hear it, too.

MR. ROLO: My question for the  
gentleman was the only persons in and out of our  
home is my wife and myself. I never saw the  
note. I mean I would have loved to have  
responded.

MR. LANGER: I put it right in your  
door.

MR. ROLO: To be honest with you, I  
never even knew.

MR. CANFIELD: Gentlemen, you're before  
the Board. You need to discuss it with the  
Board.

MR. ROLO: I never even knew that there  
was a lake association, for one thing. Number  
two, I never saw a business card nor any note on  
my door. We're pretty responsible people. I'm a  
business owner and I really want to do the right



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

thing. How ever we can resolve this, I'd love the opportunity to do that.

MR. McKELVEY: Do you want to meet with him -- with the association?

MR. ROLO: Yeah. Absolutely.

MR. McKELVEY: We have to hold this over then.

MR. DONOVAN: So if you're willing to do that, this Board can't make you but if you're willing to do that, then it would be appropriate for the Board to adjourn the hearing until next month so you have the opportunity to meet with them and come back in June, see us again.

MR. ROLO: Absolutely.

MR. DONOVAN: You're always welcome.

MR. ROLO: The whole issue is there is an existing second level at the home which was being used as a bedroom. There's a 7 foot ceiling in the center which gables down approximately 5.5 feet. It is an existing second level. We're just basically looking to make another one. We're not looking to break any laws. We actually want to do the right thing and get the right variances and permits, et cetera.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. McKELVEY: Does anybody else want to speak?

(No response.)

MR. McKELVEY: We'll look for a motion to hold it over then.

MR. MARINO: I'll make a motion we hold it over until next month. It seems like the two gentlemen are willing to sit down together and hash out any questions or concerns they have, which is good.

MR. MASTEN: I'll second that.

MR. McKELVEY: We have a motion and a second. Roll call.

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.

It will be held over until next month.

MR. ROLO: Thank you.

MR. CELLA: No mailings?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. McKELVEY: No mailings.

(Time noted: 7:35 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 10th day of June 2019.

*Michelle Conero*

---

MICHELLE CONERO

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

----- X

In the Matter of

SUSAN SCHULTZ

9 Ben's Way, Newburgh  
Section 40; Block 1; Lot 8  
R-3 Zone

----- X

Date: May 23, 2019  
Time: 7:35 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: JOHN McKELVEY, Acting Chairman  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO

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

APPLICANT'S REPRESENTATIVE: SUSAN SCHULTZ &  
JONATHAN MILLEN

----- X

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SUSAN SCHULTZ

53

MS. JABLESNIK: The next application on the agenda was held over from last meeting in April, Susan Schultz residing at 9 Ben's Way in Newburgh, seeking an area variance of a 12 foot by 40 foot rear deck with one side yard of 19.7 feet where 30 feet is required, combined side yards of 49.5 feet where 80 feet is required, a 12 foot by 20 foot rear screened-in porch with a 26.8 foot rear yard setback where 40 feet is required, and a 20 foot by 12 foot accessory building 2.8 feet off the property line where 5 feet is required, and the maximum surface lot coverage of 37.1 percent where the minimum is 30 percent.

MR. McKELVEY: Do you want to identify yourself, please?

MS. SCHULTZ: Susan Schultz. I was waiting to come back this month because Goshen had to see everything and I was -- I don't know if the papers came back or not from Goshen. They did? Okay.

MR. DONOVAN: For clarification, being a Goshen boy, it's from the County.

MS. SCHULTZ: I'm sorry.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SUSAN SCHULTZ

54

MR. McKELVEY: It's a Local  
determination.

MS. JABLESNIK: Yes.

MR. MILLEN: My name is Jonathan  
Millen, I'm a licensed land surveyor and I  
performed the survey and the map that was  
presented.

It was our understanding per the last  
meeting that because of the proximity to the  
County road, that it had to go to the County  
before the Board could rule on it. We're curious  
to find out what that determination is.

MS. JABLESNIK: It was a Local  
determination.

MR. McKELVEY: It's a Local  
determination from the County.

MS. SCHULTZ: Okay.

MR. DONOVAN: The County can give  
recommendations, mandatory recommendations, they  
can disapprove a project or they can find what's  
called a Local determination which means they  
have no comments.

MS. SCHULTZ: Okay.

MR. MILLEN: Okay.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SUSAN SCHULTZ

55

MS. SCHULTZ: It's up to you?

MR. DONOVAN: That's correct. That's  
where we are.

MR. MILLEN: Okay.

MR. McKELVEY: Any questions?

MR. MASTEN: No.

MR. LEVIN: No.

MR. MARINO: No.

MR. McKELVEY: Does anybody from the  
public want to speak?

(No response.)

MR. McKELVEY: If not, I'll look for a  
motion.

MR. LEVIN: Motion to close the public  
hearing.

MR. MARINO: I'll second that.

MR. McKELVEY: Roll call.

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?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SUSAN SCHULTZ

56

MR. McKELVEY: Yes.

MS. SCHULTZ: Thank you.

MR. McKELVEY: We'll take a slight adjournment to speak to counsel about any legal matters. In order to help us, would you please go out in the hall and we'll call you back.

(Time noted: 7:38 p.m.)

(Time resumed: 7:52 p.m.)

MS. JABLESNIK: And last but not least on the agenda tonight is Susan Schultz at 9 Ben's Way, seeking an area variance of a 12 foot by 40 foot rear deck with one side yard of 19.7 feet where 30 is required, combined side yards of 49.5 feet where 80 feet is required, a 12 foot by 20 foot rear screened-in porch with a 26.8 foot rear yard setback where 40 feet is required, and a 20 foot by 12 foot accessory building 2.8 feet off the property line where 5 feet is required, and maximum surface lot coverage of 37.1 percent where the maximum is 30 percent.

MR. McKELVEY: We'll go through the five factors.

MS. JABLESNIK: The five factors, the first one being whether or not the benefit can be



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SUSAN SCHULTZ

57

achieved by other means feasible to the  
applicant.

MR. LEVIN: No.

MR. MARINO: No.

MR. MASTEN: No.

MR. McKELVEY: No.

MS. JABLESNIK: If there's an  
undesirable change to the neighborhood character  
or detriment to nearby properties.

MR. LEVIN: No.

MR. MARINO: No.

MR. MASTEN: No.

MR. McKELVEY: No.

MS. JABLESNIK: Third, whether the  
request is substantial.

MR. LEVIN: No.

MR. MARINO: No.

MR. MASTEN: No.

MR. McKELVEY: No.

MR. MASTEN: I don't think so.

MS. JABLESNIK: Fourth, whether the  
request will have adverse physical or  
environmental effects.

MR. LEVIN: I don't believe so.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SUSAN SCHULTZ

58

MR. McKELVEY: This is a Type 2 also under SEQRA.

MS. JABLESNIK: Fifth, whether the alleged difficulty is self-created.

MR. McKELVEY: It's irrelevant.

MR. DONOVAN: Just to talk about self-created, even if your lot doesn't comply then you're charged with the knowledge. If you apply for a variance, it's self-created. If you buy the property you're imputed with the knowledge of the zoning requirements. If it's not permitted it's self-created. Virtually every area variance is self-created. It's not the end of the world. You have five factors that you're balancing and that's just one of the factors. It's okay to say self-created.

MR. McKELVEY: Can I have a motion?

MR. MARINO: I'll make a motion we approve it.

MR. MASTEN: I'll second it.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SUSAN SCHULTZ

59

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

Has everybody read the minutes from the  
last meeting?

MR. LEVIN: Yes.

MR. MARINO: Yes.

MR. MASTEN: Yes.

MR. MCKELVEY: I'll look for a motion  
to approve the minutes from the last meeting.

MR. LEVIN: I'll make a motion to  
approve the minutes from the last meeting.

MR. MASTEN: I'll second it.

MR. MCKELVEY: All in favor?

MR. LEVIN: Aye.

MR. MARINO: Aye.

MR. MASTEN: Aye.

MR. MCKELVEY: Aye.

I need a motion to adjourn.

MR. LEVIN: I'll make a motion to  
adjourn.

MR. MASTEN: I'll second it.

MR. MCKELVEY: All in favor?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. LEVIN: Aye.

MR. MARINO: Aye.

MR. MASTEN: Aye.

MR. McKELVEY: Aye.

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

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

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 10th day of June 2019.

*Michelle Conero*

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