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

----- X
In the Matter of

MENENDEZ PROPERTY, LLC

856 River Road, Newburgh
Section 9; Block 1; Lot 40
R-1 Zone

----- X

Date: May 27, 2021
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRELL BELL
GREGORY M. HERMANCE
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
JOHN McKELVEY

ALSO PRESENT: DAVID DONOVAN, ESQ.
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: MICHAEL HENDERSON
& JENNI MENENDEZ

----- X

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

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MR. DONOVAN: Folks, good evening. My name is Dave Donovan. I am the Attorney for the Town of Newburgh Zoning Board of Appeals. Chairman Scalzo, who generally chairs and runs the meeting, is ill and absent tonight, so in his absence I will be doing the administrative facilitation for the meeting.

I'd like to welcome you all to the May 27th meeting of the Town of Newburgh Zoning Board of Appeals. Just the way this works, you all have seen the agenda, where you are on the agenda. Obviously you're all here, the Board is here, the public is present by Zoom.

The procedure of the Board is to go through the agenda. We'll call you up to speak. We will ask you to explain why your application should be granted, the reasons why it should be granted. I will then turn to each individual Board Member and ask if they have any questions, comments or observations. We

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will then go to the public and ask if there's any public comment on your application. After that public comment occurs, you may wish to say something again or not. It's your option. I will then ask the Board Members again if they wish to say anything, any questions, comments or anything of that nature, and then I'll ask whether or not there's a motion to close the public hearing or continue the public hearing. If the public hearing is closed, the Board has up until 62 days from the close of the public hearing to render a decision. We generally try to render a decision this evening, but just be aware that the Board has a 62-day time period.

With that in place, I would also ask if anybody has a cellphone, either turn them off or put them on silent so we're not disturbed this evening.

I would ask our wonderful clerk, Siobhan, to call the roll.

MS. JABLESNIK: Darrel Bell.

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MR. BELL: Here.

MS. JABLESNIK: Greg Hermance.

MR. HERMANCE: Here.

MS. JABLESNIK: Richard Levin.

MR. LEVIN: Here.

MS. JABLESNIK: Anthony Marino.

MR. MARINO: Here.

MS. JABLESNIK: John Masten.

MR. MASTEN: Here.

MS. JABLESNIK: John McKelvey.

MR. MCKELVEY: Here.

MS. JABLESNIK: Darrin Scalzo is
absent this evening.

Also present is Dave Donovan, our
Attorney, and our Stenographer, Michelle
Conero.

MR. DONOVAN: At this time I
would ask everyone to rise for the Pledge
of Allegiance. I would ask Mr. Hermance
to lead us in the Pledge.

(Pledge of Allegiance.)

MR. DONOVAN: The first
application this evening is the
application of Menendez Property, LLC

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located at 856 River Road, seeking a variance of the rear yard for all new decks to raise the roof to add a fourth floor, as well as a use variance to restore and reestablish the use of a nonconforming three-family dwelling.

Is anybody present on behalf of Menendez?

MS. JABLESNIK: This applicant also sent out five mailings. They are the winner of the least amount of mailings.

MR. DONOVAN: If you could, please state your name for the record and tell us what you want to tell us.

MR. HENDERSON: I'm Michael Henderson from Hennessey Architects.

So for this project, it's changed. We didn't get updated drawings in for the 10 days prior. So the entire building is going to stay as is. There's no fourth floor. There is nothing with the decks. We're just looking for the reinstatement of the three-family.

MR. DONOVAN: Okay. So your

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application is simply a reinstatement of the three-family?

MR. HENDERSON: Yes. Correct.

MR. DONOVAN: If it's okay with the Board, just from the application it appears that your client acquired the property in August of 2018.

MR. HENDERSON: The client did, yes.

MR. DONOVAN: So what was the status of the property at that time?

MR. HENDERSON: It was just bought as -- purchased as a three-family.

MR. DONOVAN: No, no. Was anybody living there? Were there three families living there?

MS. MENENDEZ: Nobody lived there.

MR. HENDERSON: At the time there was no one living there when they purchased it.

MR. DONOVAN: Okay. Turning to the Members of the Board. Mr. Hermance, any questions?

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MR. HERMANCE: It was sold as a three-family. It was just advertised in the listing as a three-family? Was it ever listed as a three-family with the Town?

MR. HENDERSON: I believe it was, yeah. I think it was.

MS. MENENDEZ: It was --

MS. JABLESNIK: Speak a little louder.

MS. MENENDEZ: Sure. My name is Jenni Menendez.

MR. DONOVAN: Hold on one second, ma'am. Could you spell that for us, please, for the Stenographer?

MS. MENENDEZ: Sure. Jenni, J-E-N-N-I, Menendez.

MR. DONOVAN: Thank you. Go ahead.

MS. MENENDEZ: When we purchased this property it was a legal three-family. We have a record from the Town to show it's a legal three-family. We've paid three-family property tax starting when we

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purchased in 2018 until now, and we pay the electric bill as a three-family, plus the landlord's meter from when we purchased the first day until now.

MR. HERMANCE: So the septic design and leach field was designed for a three-family unit?

MS. MENENDEZ: Yes. That three-family has been there from 1900 until right now.

MR. DONOVAN: Anything else?

MR. HERMANCE: That's all I have.

MR. DONOVAN: Mr. Bell, any questions?

MR. BELL: It's my understanding that it has been occupied in the past as a three-family?

MS. MENENDEZ: Yes. Everything on the record.

MR. BELL: Okay.

MR. DONOVAN: Anything else?

MR. BELL: I'm good.

MR. DONOVAN: Before I pass myself, I'm unclear as to when it was last

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occupied as a three-family. Can you tell us that?

MS. MENENDEZ: When we purchased this property, this previous owner lived next door and rented all the units. So she passed away so we took as a stay. Also, at that time they have tenants that live there.

MR. DONOVAN: But when is the last time there has been three -- it's been used as a three-family?

MS. MENENDEZ: August when we purchased it. August 14, 2018.

MR. DONOVAN: And it's been vacant since then?

MS. MENENDEZ: Yes. Yes. Actually, when we just purchased my sister would live there a few months, then we started to do the renovation, then I got sick, I got a brain tumor, and then I got to recover, then we hit COVID. All this time we were delayed.

But we do apply -- we purchased this building August 14, 2018 and in

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January 2019 we were doing outside cleanup work. At that time my sister was living there. Then on February 14, 2019 we got a permit for the demolition of the garage. The garage was an older building. We cleaned it up. By September 2019 I got sick so everything was delayed.

So by December 6, 2019 we got a permit again to finish. We finished the retaining wall. So we got a permit. We just waited for the sign-off.

MR. DONOVAN: Okay. Just so you know, before I go down to the rest of the Board, the Town code requires -- I'm sure you have this information. The Town Code Compliance is saying this is a nonconforming use. Three families are not permitted in the zone. It was permitted as a nonconforming use, but that use cannot be reestablished if it's been discontinued for any reason for a period of one year. Right.

So if tonight you're seeking a use variance to reestablish that, I don't

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know if you're aware of the requirements for a use variance.

MS. MENENDEZ: Do you know?

MR. HENDERSON: It's in the bulk regs and everything?

MR. DONOVAN: Well, there's a State Law, Section 267-B of the New York State Town Law, that sets forth four separate factors that you have to prove to be entitled to a use variance.

MS. MENENDEZ: What is it?

MR. DONOVAN: Well ma'am, tonight was your night to kind of tell us how you satisfied that criteria. I can say that you don't. So that's a bit of a problem for you.

That being said, any questions from Mr. McKelvey?

MR. MCKELVEY: Have you paid taxes as a three-family?

MS. MENENDEZ: Three-family, yes. I have all the records here, too.

MR. MCKELVEY: They're paying taxes for a three-family.

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MR. DONOVAN: Well, I'll refresh the Board's recollection for the application of Gasparini where their claim was they had paid as a two-family, and they had paid as a two-family, and the Board determined that they were not a legal two-family because the facts were against them. That matter was litigated and the Court ruled in our favor. The matter is on appeal, but just so the Board is aware of that.

Anything else, John?

MR. McKELVEY: No.

MR. DONOVAN: Mr. Levin?

MR. LEVIN: No.

MR. DONOVAN: Mr. Masten?

MR. MASTEN: I have nothing.

MR. DONOVAN: Mr. Marino?

MR. MARINO: Yes. I want to understand this. You purchased the home as a three-family. You've been paying taxes on it to the Town of Newburgh for three years?

MS. MENENDEZ: Yes.

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MR. MARINO: And prior to now, no one ever came to you and said this is not a three-family, we're going to give you back the tax money you were paying on the three-family house?

MS. MENENDEZ: No.

MR. MARINO: So you continue to pay on the three-family?

MS. MENENDEZ: Yes.

MR. MARINO: And it's the Town that's telling you now it's not a legal three-family?

MR. DONOVAN: If I may, I think there was a pre-existing nonconforming use. It was allowed as that. Now that they have come in for a permit on the renovations, Code Compliance is saying well, it's been discontinued for a period of one year or more so under the code you can't reestablish it. There's been a lapse. There's been a lapse in the use.

MR. MARINO: So you're saying they can't reestablish it ever or without our permission they can't?

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MR. DONOVAN: Well, they're asking for a use variance. I'll just go through the criteria.

So the four criteria. The first is the applicant cannot realize a reasonable return provided that lack of return is substantial as demonstrated by competent financial evidence. We've been through this before. It's called dollars and cents proof. We've had appraisal reports. We've had CPA reports that actually have been deemed to be not enough. It's a very stringent standard.

You may not know this, but you need to submit it to the Board. You need to present this competent proof that you couldn't have a reasonable economic return on your investment for any use that's allowed in the zone but for this three-family. You have to demonstrate that to the Board.

You also have to prove that the alleged hardship relating to the property is unique and does not apply to a

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substantial portion of the neighborhood.

You also have to show that the requested use variance, if granted, will not alter the essential character of the neighborhood.

You also have to show that the alleged hardship was not self-created. So those are the rules.

MR. MARINO: One other question.

MR. McKELVEY: Code Compliance has been issuing them permits to fix the three places?

MR. HERMANCE: The retaining wall.

MS. MENENDEZ: The retaining wall and we knocked down the garage. We deal with Tom from Newburgh and the Building Department. Not even one person mentioned to me this is not a legal three-family. Even when I purchased this building, our title insurance is insuring for the three-family. So that means --

MR. DONOVAN: Just for clarification, title insurance doesn't

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insure that. Title insurance, for informational purposes, will provide you a copy of the report from Code Compliance. If you read your policy carefully, there is an exclusion in your policy. There's no insurance for the municipal report.

MS. MENENDEZ: But with the previous owner, when we signed the contract they sell us a three-family. We pay the price for a three-family.

MR. DONOVAN: Well, we have a notice of disapproval from Code Compliance of March 24, 2021, and that's what brings you here this evening.

Is there anyone from the public who wishes to speak?

MS. JABLESNIK: If there's anyone from the public that wants to speak about this application, you can just unmute yourself.

(No response.)

MR. McKELVEY: There's not too many houses in the area. There is nothing in the area.

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MS. JABLESNIK: They only had five mailings.

MR. DONOVAN: So I don't want to be presumptuous, but I will tell you from a legal point of view, and I'm in a dual role tonight, but I'm the Board's legal advisor, you haven't met your burden of proof.

You have two options. You can ask the Board to vote knowing that or you can say perhaps I'd like the matter to be adjourned so we can try to submit the appropriate proof. If that's okay with the Board.

MR. BELL: Yes.

MR. HERMANCE: Yes.

MS. MENENDEZ: We'll get the proof.

MR. DONOVAN: Right. Okay. So does any Member of the Board wish to make a motion to continue the public hearing until June?

MR. McKELVEY: I'll make that motion.

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MR. BELL: I'll second the motion that we hold it over until June, provided that she brings forth the proof to make a decision.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: 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.

MR. DONOVAN: All right. See you next month. Again, I can't give you any specific advice, but you may want to reach out to somebody who has a law degree that can kind of walk you through this process. It is a heavy burden that you have. Right?

MS. MENENDEZ: Yes.

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MR. DONOVAN: So I don't want you to fall short because you didn't put your proof in.

MS. MENENDEZ: Sure. All right. Thank you.

MR. MARINO: One question. Who is going to tell her what she needs to do to make the property legal?

MS. MENENDEZ: Yes.

MR. MARINO: Does the Town tell her that?

MR. DONOVAN: Well, all this Board can do is grant a use variance to permit it to be used as a three-family.

You have to weigh the four factors. Actually, each factor is weighed on its own. As distinct from an area variance, all four factors of the use variance must be satisfied. So this Board determines whether or not they have satisfied their burden of proof.

If they are granted a use variance, then it would go back to the Code Compliance Department to get their

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permits for building.

MR. MARINO: Okay. As long as she understands what she has to do.

MS. MENENDEZ: So you're going to send me like a detailed --

MR. DONOVAN: I'm not, no. I can't do that. I advise the Board. Write down this.

MS. MENENDEZ: Okay.

MR. DONOVAN: Section 267-B.

MS. MENENDEZ: Section 2 --
Section B?

MR. DONOVAN: Section 267 --

MS. MENENDEZ: 267.

MR. DONOVAN: -- B of the New York State Town Law.

MS. MENENDEZ: New York State Town Law.

MR. DONOVAN: And if you look or if you engage the services of a professional who will look, they will know exactly what they need to do.

MS. MENENDEZ: Okay.

MR. DONOVAN: I do caution you

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it's not easy. It's a difficult burden of proof. You have to give the Board something.

MS. MENENDEZ: Sure. All right. Do you have any attorney you can recommend?

MR. DONOVAN: No. No. But, you know, if you went downtown and hit a golf ball in any direction, you're going to hit one.

MS. MENENDEZ: Okay. Thank you.

(Time noted: 7:15 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have
hereunto set my hand this 13th day of June
2021.

Michelle Conero

MICHELLE CONERO

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

----- X
In the Matter of

LUIS QUIZHPI LLIHUICHUZHCA
659 Gardnertown Road, Newburgh
Section 53; Block 4; Lot 14
R-1 Zone

----- X

Date: May 27, 2021
Time: 7:15 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRELL BELL
GREGORY M. HERMANCE
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
JOHN McKELVEY

ALSO PRESENT: DAVID DONOVAN, ESQ.
SIOBHAN JABLESNIK

----- X

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

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MR. DONOVAN: Our next application is Luis from 659 Gardnertown Road. All right. I will make an attempt. Siobhan, can you handle this name?

MS. JABLESNIK: I'm not sure how to pronounce this name, but the address is 659 Gardnertown Road.

MR. DONOVAN: Is anyone here present for that application? It's an area variance in the front yard to keep a 16 x 15 shed. Sound familiar to anybody?

(No response.)

MR. DONOVAN: We're going to do what we lawyers call put that on a second call.

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

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

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

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

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

IN WITNESS WHEREOF, I have
hereunto set my hand this 13th day of June
2021.

Michelle Conero

MICHELLE CONERO

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

----- X

In the Matter of

GLEN SHEELEY

1295 Route 300, Newburgh
Section 95; Block 1; Lot 14.1
IB Zone

----- X

Date: May 27, 2021
Time: 7:16 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRELL BELL
GREGORY M. HERMANCE
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
JOHN MCKELVEY

ALSO PRESENT: DAVID DONOVAN, ESQ.
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: NICHOLAS RUGNETTA,
WAYNE SHEELEY & GLEN SHEELEY

----- X

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MR. DONOVAN: The next application on the agenda is listed as Glen Sheeley. The property is at 1295 Route 300. The applicant is seeking area variances of lot area, both side yards and the rear yard for an application to the Planning Board for an automated car wash and associated site improvements.

Tell us who you are, please.

MR. RUGNETTA: My name is Nick Rugnetta from Pietrzak & Pfau Engineering. I'm with the applicant, Glen Sheeley, and his father, Wayne Sheeley.

Just to give you a little background of the parcel, the section, block and lot is Section 95; Block 1; Lot 14.1. The address is 1295 Route 300/Union Avenue. The site is about 1,100 feet north of the intersection with Route 17K. The area of the parcel is approximately .62 acres.

So currently this is a Meineke auto repair shop, and it's located in the Interchange Business Zoning District.

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It's serviced by central water and sewer facilities.

So for our proposal we're proposing a 2,500 square foot car wash, automated car wash, with 14 proposed vacuum spaces near the front of the site and an emergency access on the back of the building for any vehicles that may need to, you know, go around the car wash for any reason, and also for an emergency.

We're in front of the Zoning Board tonight for variances for the total side yards requirement, the rear yard and the lot area.

I just want to mention for the Board that the lot area isn't changing. As far as the rear yard is concerned, the existing building doesn't meet the rear yard setback. Really we're pushing the building back so that we can accommodate for the way they operate in other areas of the County with their other car washes, and that's having the vacuum spaces for customers that go through the wash and

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then can access that, rather than people that just come in and want to get their car vacuumed. You have to go through the wash first.

Then the third variance is for the both side yards requirement.

MR. DONOVAN: Anything you want to tell us or you're just Vanna White?

MR. GLEN SHEELEY: The reason we're saying that the vacuums are there, they're for free. That's why we run them through there. That's the way we set it up here with the gate, so all the people that wash can vacuum for free. Otherwise, if it was for free for the public, everybody and their brother is going to --

MR. BELL: Can you state your name, please?

MR. GLEN SHEELEY: Glen Sheeley from ADS Properties.

We do have an emergency lane for whatever reason. If somebody pulls up and pays at the automated gate, their window doesn't open or whatever, you know, it

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doesn't cause chaos, you can circle them around the building.

My father and I have done quite a few of these setups here. We just finished one in White Plains. We would love to get one started here in the Town of Newburgh.

MR. DONOVAN: Great. Thanks.

I'll start down at this end.

Mr. Marino, any questions or comments?

MR. MARINO: Right now my biggest concern is parking. Are you going to have cars backed up onto the road waiting to get into the car wash or is there enough room for them to come off the road?

MR. GLEN SHEELEY: Do you want to take that?

MR. RUGNETTA: Yes, sure. So right now we have a total of 14 vacuum spaces. We've been in front of the Planning Board and got the referral to the Zoning Board.

We've actually proceeded and done a traffic study. What we've done is we

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GLEN SHEELEY

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have -- it might be hard to see from there. On the plan there's a cut here for the vacuum spaces, so if need be, if there's any circumstance where it's, you know, very, very busy, they can stack cars, come in here through the vacuum areas, and then it will be wash only for that amount of time that they're really at a peak hour.

MR. GLEN SHEELEY: But we can stack up to almost 40 cars on the property. If they do get busy -- we've done this at our other sites, closed off the free vacuum area. Usually in the wintertime is when you would get that big draw, if there was, you know, salt and sand after a snowstorm. Not many people are using --

MR. DONOVAN: I bet you would be thrilled if you could stack 40 cars on there. That's if you get 40 cars.

MR. GLEN SHEELEY: If we can get 40 cars. Once in a while you would get a peak time. At least we can do it and

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GLEN SHEELEY

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we're not interrupting the traffic on the road, which is not what we want to do. I think normal is 20 cars stacked.

MR. RUGNETTA: I think it's around 20.

MR. GLEN SHEELEY: Because we're dual cashiers pulling in. So there's actually two lanes pulling into the car wash. They pay, an automated system will open which gate for whoever pays first, almost like an E-Z Pass, and then they'll go through the wash.

This isn't a full service wash where we're washing three cars a minute. It's not like we're vacuuming or drying off where it's taking four, five, six minutes a car. We can kick them through pretty quickly.

MR. DONOVAN: Mr. Masten?

MR. MASTEN: My question, Dave, is can it interfere anywhere with Meineke at all?

MR. GLEN SHEELEY: Meineke is -- this is going to take the place of

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GLEN SHEELEY

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Meineke.

MR. MASTEN: What's that?

MR. GLEN SHEELEY: It's taking
the place of it.

MR. MASTEN: They're finished? I
didn't understand what you said.

MR. RUGNETTA: The Meineke
building is proposed to be taken down and
the car wash --

MR. MASTEN: Meineke is going.
Oh.

MR. RUGNETTA: The overhang
that's there right now --

MR. MASTEN: That's what I was
wondering. Okay.

MR. DONOVAN: Mr. Levin?

MR. LEVIN: That was my question.

MR. GLEN SHEELEY: Great minds
think alike.

MR. DONOVAN: Mr. McKelvey?

MR. MCKELVEY: You say the
Planning Board has been through a traffic
study?

MR. RUGNETTA: Not yet. We had

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our initial presentation at the Planning Board. We realized that we had to come to the Zoning Board for variances. We proceeded to have the traffic study completed. We're waiting to get through this step of the process and then go back to the Planning Board to review the traffic study.

MR. McKELVEY: I see a problem with cars coming from 17K that would have to make a left-hand turn into your place.

MR. GLEN SHEELEY: This road doesn't have a chicken leg on this road?

MR. RUGNETTA: So running north you're saying?

MR. McKELVEY: Running north.

MR. RUGNETTA: So I think in the traffic study, and I will have to review it again, but I believe there's a center lane that's a turning lane. That can be used for both ways. But I would have to check and see if that's --

MR. McKELVEY: I don't know if that's both ways.

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MR. GLEN SHEELEY: We've been taking a lot of pictures of the site.

MR. McKELVEY: I understand. I'm just concerned about the left-hand turn.

MR. LEVIN: Don't you think they should have gone to the Planning Board before they came here?

MR. DONOVAN: Well, they did go to the Planning Board.

MR. LEVIN: Is it approved at all?

MR. DONOVAN: No, this is not approved. You have a referral from the Planning Board. They're going to need site plan approval from the Planning Board. Typically the Planning Board is going to analyze and look very closely at the traffic. That's why they didn't prepare a traffic study, because they're interested. I'm sure the Planning Board required it.

The referral, if you look at the Planning Board Attorney's referral letter from March 25th, is for the three

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GLEN SHEELEY

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variances, the lot area, the side yard and the rear yard. That's what's before us. That's not to say traffic is not important because traffic is always important.

MR. LEVIN: That traffic can be brutal.

MR. DONOVAN: Anything else, John?

MR. McKELVEY: No.

MR. DONOVAN: Mr. Bell?

MR. BELL: One of my questions was dealing with that traffic coming from the 17 side, because there's no lane -- no turning lane there to make a left turn. That's going to be addressed later?

MR. DONOVAN: Correct.

MR. BELL: I don't see any problems. I'm good.

MR. DONOVAN: Mr. Hermance?

MR. HERMANCENCE: This is already a pre-existing nonconforming structure.

MR. GLEN SHEELEY: Yes.

MR. RUGNETTA: As far as the area of the parcel, it's remaining the same.

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It's not changing. The existing parcel I believe is around 30 feet from the rear yard. So similar to the other sites we stated, we are trying to push the building as far back as possible.

You can see pictures of the site there. You can see that there's actually a retaining wall back here. We think it will look nice and it will also help facilitate, you know, how the car wash operates with the vacuum area being in front, similar to their other sites.

MR. HERMANCE: It will give you more room for people to pull in.

MR. RUGNETTA: Mm'hm'.

MR. BELL: I do have a question. So, again, I'm looking at the photo. You will have access to the street side leading into Denny's and into the hotel in the rear. Right now there's just all grass between that Meineke and Denny's right now. There's no out. All that's going to be moved and there will be an exit out that side as well?

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GLEN SHEELEY

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MR. RUGNETTA: No. The only entrance and exit --

MR. BELL: Do you see right here? Maybe this will help. Right here, the Denny's side. There's a road actually to go up.

MR. GLEN SHEELEY: We're on the other side.

MR. RUGNETTA: Our only access is going to be to Union Ave.

MR. DONOVAN: Can you just go back to the microphone? We have Michelle who is pretty good, but not that good.

MR. RUGNETTA: So the only access, if you look at the plan, is going to be to State Route 300/Union Avenue. There's going to be no connection to the Denny's entrance. It's just going to be that one entrance and exit on the southern side of the site. Currently there's two. There's actually in here and out. There's two access points here and here.

For traffic, getting cars to come in and then not cross over the cars going

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GLEN SHEELEY

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out, we put it on this side so that they can come in and just hang a right and stack up as many as possible.

MR. DONOVAN: Did you submit a current conditions plan?

MR. RUGNETTA: No.

MR. DONOVAN: Can you just -- maybe the Board knows this. Can you just kind of outline or show us where the existing Meineke building is?

MR. RUGNETTA: Yes. I do have a survey here. You can pass this around. So the existing building is about 37 feet from the rear. It would come to about here, the rear of that building. It doesn't span that long. It's more so like this.

MR. GLEN SHEELEY: And this would be the gas station.

MR. RUGNETTA: The overhang awning.

MR. GLEN SHEELEY: The awning system from the old previous gas station.

MR. DONOVAN: Is the Board okay

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GLEN SHEELEY

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with that?

MR. McKELVEY: Mm'hm'.

MR. DONOVAN: Siobhan, any public comments on this application?

MS. JABLESNIK: Does anyone from the public wish to speak about this application? You can unmute yourself.

(No response.)

MS. JABLESNIK: No.

MR. DONOVAN: That being the case, does anybody on the Board have any other additional questions, comments?

(No response.)

MR. DONOVAN: Does someone want to make a motion relative to the public hearing?

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

MR. HERMANCENCE: I'll second it.

MR. DONOVAN: Motion to close by Mr. Masten, a second by Mr. Hermance.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Hermance?

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MR. HERMANCE: 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.

MR. DONOVAN: The public hearing
is closed.

Does the Board wish to proceed
this evening?

MR. BELL: Yes.

MR. HERMANCE: Yes.

MR. LEVIN: Yes.

MR. MASTEN: Yes.

MR. MARINO: Yes.

MR. MCKELVEY: Yes.

MR. DONOVAN: So this is an
Unlisted action under SEQRA so we'd need a
negative declaration.

MR. MCKELVEY: I'll make a
negative dec.

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MR. MASTEN: I'll second it.

MS. JABLESNIK: Just for the record, too, this applicant sent out ten mailings. I did send it to the County, but they've been over thirty days, just so you know.

MR. DONOVAN: Thank you. I just need a roll call on the neg dec.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: 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.

MR. DONOVAN: All right. So we'll now go through the five-part balancing test. The first issue is whether an undesirable change will be

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produced to the character of the neighborhood or a detriment to nearby properties will be created by the granting of the requested variances.

MR. MARINO: I say no.

MR. BELL: I say no.

MR. HERMANCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. DONOVAN: The second is whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than the requested variances.

MR. BELL: No.

MR. HERMANCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: The third is whether the requested area variance is substantial.

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MR. BELL: It is but it's not.

No.

MR. HERMANCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: Non-relative to the existing conditions.

MR. BELL: Exactly.

MR. DONOVAN: The fourth is whether or not the proposed variance will have an adverse impact on the physical or environmental conditions in the neighborhood.

I should emphasize that's only for the three variances. Issues related to the site, drainage, traffic, parking, would all be taken up by the Planning Board in their SEQRA review. It's just relative to the lot area, side yard and rear yard variances.

MR. BELL: Yes.

MR. HERMANCE: Yes.

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MR. LEVIN: Yes.

MR. DONOVAN: The last is whether or not the alleged difficulty was self-created which does not necessarily preclude granting the variance. Obviously, it is.

With that being said, are there any motions relative to the application?

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

MR. McKELVEY: I'll second.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: 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.

MR. DONOVAN: You're good.

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MR. RUGNETTA: All right. Thank
you, everyone. Have a good night.

(Time noted: 7:30 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 13th day of June
2021.

Michelle Conero

MICHELLE CONERO

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

----- X
In the Matter of

ORCHARD HILLS LANDINGS, LLC
1 Kayla Court, Newburgh
Section 9; Block 1; Lot 45.21
R-3 Zone

----- X

Date: May 27, 2021
Time: 7:30 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRELL BELL
GREGORY M. HERMANCE
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
JOHN McKELVEY

ALSO PRESENT: DAVID DONOVAN, ESQ.
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: BRENDON PETRELLA &
CHRIS VETRO

----- X

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

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MR. DONOVAN: The next application is Orchard Hills Landings, 1 Kayla Court, Newburgh, seeking area variances for maximum square footage, maximum height and a front yard to build a 30 x 40 x 23.8 accessory building.

MR. PETRELLA: Good evening. First do we do CDC stuff here with the mask? Am I welcome to take this off? I am vaccinated. Excellent.

My name is Brendon Petrella, I'm with Mauri Architects and I'm representing the owner who is with me today, Chris Vetro. He is with Orchard Hills Landings.

Our application is to construct a storage and maintenance garage on the 50-acre parcel, Orchard Hills Landings, which you probably are all familiar with. The proposed location is in about the middle of the parcel. The new building is 1,200 square feet which is 200 square feet more than an accessory building is allowed, so that is one of the area variances we are requesting.

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The second is the height of the building. We are at 23'6" to the top of this cupola and the permitted is 15 feet. I would like to point out, though, that the ridge of this building is at 18.6 which is significantly shorter and is really only 3'6" higher than what would be permitted for an accessory building.

Lastly is the distance to a fronting street relative to a principal building. This one I have -- we contend this one a little bit. The building official indicated that Kayla Court, which is solely on our parcel, is what that dimension should be taken to, but the zoning law actually interprets a street as a roadway to two or more parcels. So the closest roadway that that would actually apply to would be Cortland. We're about 800 feet away from Cortland, and our nearest principal building is 118 feet away. Once again, I contend this interpretation, but we are 20 feet away from Kayla Court. Once again, I think

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it's a private drive, not a street. Our nearest principal building would be our clubhouse which is 22 feet away from Kayla Court.

Other than that, you know, the scale of this building, while larger than a typical accessory building, really fits within this property. This property's scale is much larger than a typical property. You're surrounded by two-story townhouses and you are surrounded by two or three story on some of the walk-out apartment buildings. So this being a little bit taller doesn't hurt the community.

We designed it so it fits in the fabric of the community. It's also located where it's completely screened. Neighboring properties can barely see this property. They can't see this building. It's really minimal in its impact to our site, let alone neighboring sites.

I will let Chris kind of tell you what he'll be storing and using the

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building for, and then we'll take your comments.

MR. DONOVAN: Okay.

MR. VETRO: Thanks for the efficient meeting. Just to let you know, this whole plan was originally approved in 2010. We're not adding a building. This was a previously approved building in the entire site. All we're doing is we delayed building it until we finished the community, and now we have the funds so now we're building this building. It's set in the middle of the property.

We'll be storing appliances. It's equally distanced to the apartments, about 128 apartments and 132 town homes.

Right now we are storing our appliances on the second floor with no elevator in our clubhouse. The maintenance guys are just having to break their backs to bring it down. We're now building an accessory building. Mostly appliances, hot water tanks. It's dry storage. There's no plumbing in the

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building. It does have electricity. It has lights, no heat. It's a dry storage building. It just allows our maintenance guys to pull their trucks up, load up and then get to the properties.

MR. DONOVAN: Mr. Hermance, any questions?

MR. HERMANCE: No. He's answered the questions I had already.

MR. DONOVAN: Mr. Bell?

MR. BELL: I'm just surprised there's no heat. There are going to be some cold appliances up there.

MR. VETRO: I'm sure they'll have an electric heater in there.

MR. BELL: I was going to say I think that there would be something like that up there. I'm good.

MR. DONOVAN: Mr. McKelvey?

MR. MCKELVEY: No. He's answered the questions.

MR. DONOVAN: Mr. Levin?

MR. LEVIN: Are you planning on adding on to this at all? Is this all

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you're building there?

MR. VETRO: I'm sorry? What's that?

MR. LEVIN: Are you adding on to the buildings that you have here?

MR. VETRO: No.

MR. LEVIN: It's all built out?

MR. VETRO: It's all built out. This is the last building that just wasn't built at the time. We're actually finishing the project with the construction of this accessory building.

MR. DONOVAN: Mr. Masten?

MR. MASTEN: I have nothing.

MR. DONOVAN: Mr. Marino?

MR. MARINO: The appearance of the building will probably look like the other buildings on the property?

MR. VETRO: Exactly the same. It has a stone ribbon. That's why we have the cupola and that's why it would rise a little bit above the ridge, up to 23 feet, so the building looks exactly like the other buildings to fit into the community.

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MR. PETRELLA: He's even gone a little further and added a metal accent roof over the top. It fits the other buildings. It doesn't look utilitarian at all.

MR. DONOVAN: Siobhan, are there any members of the public interested in this application?

MS. JABLESNIK: Are there any members of the public that wish to speak about this application? You can unmute yourself.

(No response.)

MS. JABLESNIK: No.

MR. DONOVAN: I assume there's no other questions. Any motions relative to the public hearing?

MR. McKELVEY: Did we get the mailings?

MS. JABLESNIK: Yes. They sent out 172 mailings. They were sent to the County as well because of 9W, but we received the -- we received it.

MR. DONOVAN: A Local

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determination?

MS. JABLESNIK: Yes.

MR. DONOVAN: Thanks, John. I overlooked that.

MR. McKELVEY: I didn't hear it. I figured there had to be a lot of mailings.

MR. DONOVAN: Any motion relative to the public hearing?

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

MR. BELL: I'll second it.

MR. DONOVAN: Roll call, Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: 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?

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MR. McKELVEY: Yes.

MR. DONOVAN: This is a Type 2 action under SEQRA, so we'll go through the balancing test. The first issue is whether or not an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the area variances.

MR. BELL: No.

MR. HERMANCENCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: The second is whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance.

MR. BELL: No.

MR. HERMANCENCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

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MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: The third is whether the requested variance is substantial.

MR. BELL: No.

MR. HERMANCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: I guess you could say the height. Given that it's in a complex surrounded by buildings of the same or higher --

MR. PETRELLA: 35, 38 feet.

MR. DONOVAN: The fourth is whether the proposed variance will have an adverse affect or impact on the physical or environmental conditions of the neighborhood.

MR. BELL: No.

MR. HERMANCE: No.

MR. LEVIN: No.

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MR. MCKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: And the last is whether the alleged difficulty is self-created, which of course it is but that's not a bar to grant you relief.

Having gone through the balancing test, are there any motions relative to the application?

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

MR. MASTEN: I'll second it.

MR. DONOVAN: Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

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MS. JABLESNIK: Mr. McKelvey?

MR. McKELVEY: Yes.

MR. DONOVAN: You're good.

MR. PETRELLA: Thank you all very
much.

MR. VETRO: Thank you very much.

(Time noted: 7:40 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have
hereunto set my hand this 13th day of June
2021.

Michelle Conero

MICHELLE CONERO

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

----- X
In the Matter of

JOHN ETRI

42 Rockwood Drive, Newburgh
Section 109; Block 1; Lot 52
R-3 Zone

----- X

Date: May 27, 2021
Time: 7:40 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRELL BELL
GREGORY M. HERMANCE
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
JOHN MCKELVEY

ALSO PRESENT: DAVID DONOVAN, ESQ.
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: JOHN ETRI

----- X

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

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MR. DONOVAN: Next is the application of John Etri. Did I pronounce that correctly, sir?

MR. ETRI: Yes, you did, actually. That was pretty good. Nobody usually does.

I live at 42 Rockwood Drive. I'm here because I had built a shed -- I had a shed built on my property about 18 years ago. I thought the person that built it had filed the correct paperwork. They did not even though they said they had so I'm here looking today. And the shed partially shows that it's in my front yard and that is something I just learned of myself.

MR. DONOVAN: All right. Any questions from the Board? I'll start with Mr. Marino.

MR. MARINO: None.

MR. DONOVAN: Mr. Masten?

MR. MASTEN: I have none.

MR. DONOVAN: Mr. Levin?

MR. LEVIN: None.

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MR. DONOVAN: Mr. McKelvey?

MR. McKELVEY: None.

MR. DONOVAN: Mr. Bell?

MR. BELL: None.

MR. DONOVAN: Mr. Hermance?

MR. HERMANCE: Well, it looks like you have two front yards being the corner lot.

MR. ETRI: I had no idea. It's so funny. We joked about that.

MR. HERMANCE: No, I have no other questions about it.

MR. ETRI: Thank you.

MR. DONOVAN: Do any members of the public wish to speak, Siobhan?

MS. JABLESNIK: If any members of the public are here to speak about this application, you can unmute yourself.

(No response.)

MS. JABLESNIK: No.

MR. DONOVAN: That being the case, I'll ask if the Board has any motions relative to the public hearing?

MR. BELL: I'll make a motion to

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close the public hearing.

MR. HERMANCE: I'll second it.

MR. DONOVAN: Siobhan, roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: 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.

MR. DONOVAN: All right. At this point we'll go through the five-part balancing test. The first issue is whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance.

MR. BELL: No.

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MR. HERMANCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: The second is whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance.

MR. BELL: No.

MR. HERMANCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: The third is whether the requested area variance is substantial.

MR. BELL: No.

MR. HERMANCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

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MR. MARINO: No.

MR. DONOVAN: The fourth is whether the variance would have an adverse impact on the physical or environmental conditions of the neighborhood.

MR. BELL: No.

MR. HERMANCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: And the last is whether or not the variance -- the difficulty is self-created, which is not potentially so, but it is, actually, legally.

That being said, we're going through the process. Any motions relative to the application?

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

MR. McKELVEY: I'll second.

MR. DONOVAN: Roll call.

MS. JABLESNIK: Just for the

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record, too, this applicant sent out 127 mailings.

Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: 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.

MR. DONOVAN: You're good.

MR. ETRI: Okay. Thank you.

(Time noted: 7:45 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have
hereunto set my hand this 13th day of June
2021.

Michelle Conero

MICHELLE CONERO

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

----- X

In the Matter of

WILMINGTON REO, LLC

14 Buckingham Drive, Newburgh
Section 108; Block 3; Lot 14
R-1 Zone

----- X

Date: May 27, 2021
Time: 7:45 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRELL BELL
GREGORY M. HERMANCE
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
JOHN McKELVEY

ALSO PRESENT: DAVID DONOVAN, ESQ.
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: MATTHEW ALBANESE

----- X

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

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MR. DONOVAN: The next application is Wilmington REO, LLC. The property is at 14 Buckingham Drive. They're seeking an area variance to increase the degree of nonconformity of the side yard to keep a 12.1 foot x 27.6 foot enclosed rear porch built without a permit.

Siobhan, mailings?

MS. JABLESNIK: This applicant sent out 62 letters.

MR. ALBANESE: I thought that was bad and then I heard everyone else. Good evening, everyone. Thank you.

MR. DONOVAN: Tell us who you are.

MR. ALBANESE: Matt Albanese from Mary Jane Pastor Realty, presenting for Wilmington REO.

Wilmington REO is a foreclosing lender that took possession of the property through a deed in lieu from an estate. They weren't aware that the back porch was illegal until they were now in

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contract to sell it.

When the municipal search came in, we saw that it was not legal. Siobhan actually helped dig up old microfilm to see it. I guess the prior owner had pulled a permit to build a 12 x 20 foot covered porch in 1982, but I don't think they ever completed it or got the CO. We're just looking to legalize it so we can sell the property.

MR. DONOVAN: Thank you. I'll start with Mr. Hermance, any questions?

MR. HERMANCE: I notice there's all new footings being dug under that.

MR. ALBANESE: Yeah.

MR. HERMANCE: It's not stable as it is or --

MR. ALBANESE: Yeah. I guess, one, we wanted to see once we knew we had to get a permit to legalize it. The contractor was like I don't know if there are footings or not, I have to dig. So he dug up one and saw there wasn't. He figured he might as well bring it out. He

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said something about also putting a girder right below the support columns. He felt it would be stronger there. So, you know, improper hangers, bolts. He just really wanted to make it safer I guess, and I guess to pass because you're going to inspect it.

MR. HERMANCE: For the building inspector.

MR. ALBANESE: What's that?

MR. HERMANCE: For the building inspector to approve it.

MR. ALBANESE: Exactly.

MR. HERMANCE: So you're just increasing towards the back?

MR. ALBANESE: So the back is fine. For the rear yard setback there's plenty of room. Actually, they sort of added onto this because it was 20 and now it's 26 I believe. On that side, that side yard setback is fine, but the original one from '82 was so close to that side that the combined isn't, you know, conforming.

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MR. DONOVAN: Mr. Bell?

MR. BELL: I'm good.

MR. DONOVAN: Mr. McKelvey?

MR. MCKELVEY: I'm good.

MR. DONOVAN: Mr. Levin?

MR. LEVIN: I'm good.

MR. DONOVAN: Mr. Masten?

MR. MASTEN: I'm good.

MR. DONOVAN: Mr. Marino?

MR. MARINO: I'm good.

MR. DONOVAN: Siobhan, do any members of the public wish to speak on this application?

MS. JABLESNIK: If you wish to speak about this application, you can unmute yourself.

(No response.)

MS. JABLESNIK: No.

MR. DONOVAN: Thank you. That being the case, any motions relative to the public hearing?

MR. MCKELVEY: I'll make a motion we close it.

MR. MASTEN: I'll second it.

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MR. DONOVAN: Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: 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.

MR. DONOVAN: At this point we'll go through the five-part balancing test. The first issue is whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of these variances.

MR. BELL: No.

MR. HERMANCE: No.

MR. LEVIN: No.

MR. MCKELVEY: No.

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MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: The second is whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than the requested area variances.

MR. BELL: No.

MR. HERMANCENCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: The third is whether the requested area variances are substantial.

MR. BELL: No.

MR. HERMANCENCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. McKELVEY: Pre-existing.

MR. DONOVAN: The fourth is

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whether the proposed variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood.

MR. BELL: No.

MR. HERMANCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: And the last is whether the alleged difficulty was self-created, which they almost always are, and this one is, but it's not a bar to granting of relief.

Having gone through the five-part balancing test, any motions relative to the application?

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

MR. DONOVAN: How about a second?

MR. LEVIN: I'll second.

MR. DONOVAN: Roll call, Siobhan.

MS. JABLESNIK: Mr. Bell?

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MR. BELL: Yes.
MS. JABLESNIK: Mr. Hermance?
MR. HERMANCE: 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.
MR. ALBANESE: Thanks, everyone.

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

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

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

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

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

IN WITNESS WHEREOF, I have
hereunto set my hand this 13th day of June
2021.

Michelle Conero

MICHELLE CONERO

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

----- X

In the Matter of

SHARON & GARY McCALLA

10 Copper Rock Road, Walden
Section 125; Block 1; Lot 5
R-1 Zone

----- X

Date: May 27, 2021
Time: 7:55 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRELL BELL
GREGORY M. HERMANCE
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
JOHN McKELVEY

ALSO PRESENT: DAVID DONOVAN, ESQ.
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: SHARON McCALLA

----- X

MICHELLE L. CONERO
3 Francis Street
Newburgh, New York 12550
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MR. DONOVAN: The next application this evening is the application of Sharon and Gary McCalla, 10 Copper Rock Road, seeking an area variance for the front yard to install a 10 x 12 shed.

MS. JABLESNIK: She sent out 23 letters. This also went to the County because of Rock Cut Road, and we have not received that back yet.

MR. DONOVAN: And their time period has not lapsed?

MS. JABLESNIK: No. This was submitted on the 14th I think.

MR. DONOVAN: So first, ma'am, did I pronounce your name correctly?

MS. McCALLA: McCalla. Yes.

MR. DONOVAN: Thank you. So here's the requirement. If you live within 500 feet of certain things, this being Rock Cut Road, your application has to go to the Orange County Department of Planning. The application did go there, but they have a minimum of 30 days to

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respond. The 30-day period has not passed and they have not yet responded.

What it means for you is we certainly can listen to you this evening, but the Board can't take any action on your application until next month, unfortunately.

MS. McCALLA: Okay. So I, like I guess several other people, have learned that I have two front yards. I was shocked by knowing that there's two front yards.

So my home is elevated from Rock Cut Road. So from that road, yes, you can see the house, but there's a wooded area and an elevation and -- I don't know. The shed that we purchased is going to match the house. It's going to look nice because I like nice things. It's not going to bother anybody. It's going to hold my tractor that's sitting outside, getting all dusty, and my snowblower. It's taking a beating.

So I'm just buying a shed. I'm

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really shocked that I'm going through all of this. But I paid for the shed and then I couldn't move forward. At this point I had to push back my delivery date. They were actually supposed to install for me on May 18th. They pushed me back now to June 1st.

I got excited after I heard everybody else, thinking oh, this is okay, and now you're telling me I have to wait. So I don't know what's going to happen with me because the shed is paid for. I don't know if I can go backwards on the purchase now because I went over the legal amount of days to pull out of the deal for it. So that's why I continued with this process.

So now I'm in the midst of this process and I still don't know whether you're going to authorize me to have the shed or not.

MR. DONOVAN: Well, certainly I have no objection to poll the Board this evening. Unfortunately, the law doesn't

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allow them to vote. I don't have any objection to the Board indicating how -- I mean this is a pretty straightforward application.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: 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.

MR. DONOVAN: I feel bad for you, quite honestly, ma'am.

MS. McCALLA: You should. I feel bad for me, too.

MR. DONOVAN: Not as bad as you feel for yourself.

MS. McCALLA: And you should keep Siobhan and find other people like her.

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I'm telling you, she had to calm me down and walk me through this. I can laugh a little, but I can't laugh fully because now I'm still hearing that I can't have a shed yet.

MR. McKELVEY: It's going to come back from the County a Local determination, anyhow.

MR. BELL: You mentioned that you had to move it back to June 1st?

MS. McCALLA: July 1st.

MR. BELL: Okay.

MS. McCALLA: My only problem is I have to have preparation of the ground. I can't move forward with doing that until I know that it's okay with the Town. So I had to stop.

MR. DONOVAN: So here's the problem. Right. I'll tell you what the problem is. You're really not allowed to grant an application if you're waiting to hear from the County.

Now, there's a phrase that's like hard cases make bad law. If there was

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ever an instance where you might want to ignore my advice, it's this case. You can almost guarantee that next month or the month after we're going to have an application that says you've got to vote on me because, and then the County is going to come back with some response that causes a problem for us.

That being said, I mean my advice to you is you need to wait. If you say to me that you don't want to wait, I can't stop you from moving forward, but my advice is that you don't.

I've said this to another representative that was before the Board tonight and I'll say it again. I want my job in my next life to be telling people what they want to hear. Unfortunately, my job in this life is to tell people what they don't want to hear.

MR. McKELVEY: You said July 1st?

MS. McCALLA: That's the date I pushed it back to. I need time to get the prep done which means it would need to be

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done in June.

MR. BELL: In other words, she has to get the foundation set to set the shed on.

MS. McCALLA: Right.

MR. McKELVEY: We should have the return of the County by the June meeting.

MS. JABLESNIK: Yes.

MR. McKELVEY: That's the end of the month.

MS. JABLESNIK: Even if I don't receive the County, they have already gone over their 30 days.

MR. BELL: So June 1st they'll be --

MS. JABLESNIK: On June 1st they will not be over their 30 days.

MR. BELL: When is the 30 days?

MS. JABLESNIK: The 30 days will -- it was sent out on the 14th, so by like the 13th, 14th. That would be their Local determination.

MR. McKELVEY: We're pretty sure what the County is going to say.

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MR. DONOVAN: So let's do this.
Let's see, Siobhan, if there's anyone from
the -- does anybody on the Board have any
questions at all?

MR. BELL: No.

MR. HERMANCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: See if there's any
public comment.

MS. JABLESNIK: Is anyone from
the public here to speak about 10 Copper
Rock Road?

(No response.)

MS. JABLESNIK: No.

MR. LEVIN: I wouldn't think
anybody would be here.

MR. DONOVAN: So --

MR. LEVIN: We're caught between
a rock and a hard place.

MR. DONOVAN: On Rock Cut Road.
I don't know whether the Board would be

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interested in something that I'm making up on the fly called a springing variance which you would authorize to be issued on June 15th, assuming that you got -- so there would be no approval granted until June 15th or after, but a variance could be issued on June 15th once the 30-day period has passed. You would authorize the preparation of that decision which would be given to Code Compliance -- signed by the Chairman and given to Code Compliance, so that this young woman could put up a shed.

It technically wouldn't be approved until June 15th. Do you understand?

MS. McCALLA: Yeah. I just need to know can I move forward with my prep or is there a chance that the decision that comes would be adverse and then I would -- I don't want to start with this foundation and then be told --

MR. DONOVAN: Sure. So Orange County Department of Planning has two

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options, essentially. They can issue what's called a Local determination which means they don't have anything to say. The Orange County Department of Planning only gets involved in certain applications. Unfortunately, yours is one of them. Their other alternative is to issue a binding letter which either has comments or denies the application. If they deny the application, this Board can override it by a supermajority vote which is a vote of 5 to 2. It's a seven-member Board.

So for better or worse, I've been doing this a long time, I've never seen the Orange County Department of Planning issue anything other than a Local determination for a shed.

MS. McCALLA: Okay.

MR. McKELVEY: That's what I said.

MS. McCALLA: Works for me.

MR. DONOVAN: If the Board is interested in proceeding in that fashion,

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we can go through the five-part balancing test.

MR. BELL: Let's do it.

MR. McKELVEY: First we have to close the public hearing.

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

MR. McKELVEY: I'll second it.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: 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.

MR. DONOVAN: Proceeding to the five-part balancing test. The first is whether an undesirable change will be produced in the character of the

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neighborhood or a detriment caused to nearby properties by the granting of the requested variance.

MR. BELL: No.

MR. HERMANCE: No.

MR. LEVIN: Absolutely not.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: The second is whether the benefit can be sought by the applicant by some other method that's feasible for the applicant to pursue other than the requested variance.

MR. BELL: No.

MR. HERMANCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: The third is whether the requested variance is substantial.

MR. BELL: No.

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MR. HERMANCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: The fourth is whether the proposed variance will have an adverse impact on the physical or environmental conditions in the neighborhood.

MR. BELL: No.

MR. HERMANCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: And the last is whether the alleged difficulty was self-created, which, believe it or not, it was. You're charged with the knowledge that you had two front yards.

We've gone through the five-part balancing test. Does the Board wish to issue any motion that would come into

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effect on June 15th?

MR. MASTEN: I'll make a motion
for June 15th.

MR. BELL: I'll second.

MR. DONOVAN: Roll call, Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: 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.

MR. DONOVAN: Okay. So you
understand?

MS. McCALLA: Yes. I can proceed
with the prep.

MR. DONOVAN: So as of June 15th
the variance will be effective. Even if
the County Planning issued something, a

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denial, which I can't imagine they're
going to do, this Board can override that,
anyway.

MS. McCALLA: Thank you so much.

(Time noted: 8:10 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have
hereunto set my hand this 13th day of June
2021.

Michelle Conero

MICHELLE CONERO

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

----- X

In the Matter of

STEVEN WAIS

40 Susan Drive, Newburgh
Section 46; Block 5; Lot 24
R-1 Zone

----- X

Date: May 27, 2021
Time: 8:10 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRELL BELL
GREGORY M. HERMANCE
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
JOHN MCKELVEY

ALSO PRESENT: DAVID DONOVAN, ESQ.
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: STEVEN WAIS

----- X

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

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MR. DONOVAN: The next application is the application of Steven Wais.

MR. WAIS: Yes. Good evening. I'm double vaccinated. Thank you for taking the time to hear my case.

I live at 40 Susan Drive. My wife and I just bought the property in October. What we're simply looking for is an area variance so that we can add to the back of the house a modest 12-foot deep sun room that's 16 feet wide.

The houses are pretty spread out on our street. I don't think anyone is going to be able to see the addition except our next door neighbor at 38. Their house is about 40 feet in front of ours. When I say in front, I mean behind us facing the river. Our street is on a river view -- has a river view, so we are very sensitive to not obstructing the view for any neighbors. Even people driving on the street will not see the sun room because it's very modest.

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MR. DONOVAN: Great. Any Members of the Board? I'll start with Mr. Hermance. Any questions?

MR. HERMANCE: No. I visited the site. What he's saying is accurate. It doesn't appear it's going to impact anybody's view at all.

MR. DONOVAN: Mr. Bell?

MR. BELL: No. I'm good.

MR. DONOVAN: Mr. McKelvey?

MR. MCKELVEY: It sounds like you have a nice view of the river.

MR. WAIS: It's beautiful.

MR. DONOVAN: Mr. Levin?

MR. LEVIN: No questions.

MR. DONOVAN: Mr. Masten?

MR. MASTEN: No.

MR. DONOVAN: Mr. Marino?

MR. MARINO: I'm good with it.

MR. DONOVAN: Any members of the public, Siobhan?

MS. JABLESNIK: Any members of the public here to speak about this application for 40 Susan Drive?

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STEVEN WAIS

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HADID: I'm at 34 Susan Drive. I
have no objection.

MS. JABLESNIK: What was your
name? I'm sorry.

HADID: H-A-D-I-D.

MS. JABLESNIK: Thank you.

MR. WAIS: Thank you, Hadid.

MS. JABLESNIK: Anyone else?

(No response.)

MR. DONOVAN: I'm going back to
the Board. Any further questions,
comments from the Board?

MR. BELL: No.

MR. HERMANCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: All right.

Mailings on this, Siobhan?

MS. JABLESNIK: He sent out 29
mailings.

MR. DONOVAN: Thank you. Any
motions relative to the public hearing?

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

MR. LEVIN: I'll second it.

MR. DONOVAN: Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: 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.

MR. DONOVAN: And we will go through now the five-part balancing test. I'm surprised I'm still reading it. I don't want to forget anything.

The first factor is whether or not an undesirable change will be produced in the character of the neighborhood or a detriment caused to nearby properties by

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the granting of the requested variance.

MR. BELL: No.

MR. HERMANCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: The second is whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than the requested variance.

MR. BELL: No.

MR. HERMANCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: The third is whether the requested variance is substantial.

MR. BELL: No.

MR. HERMANCE: No.

MR. LEVIN: No.

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MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: The fourth is whether the proposed variance will have an adverse affect or impact on the physical or environmental conditions of the neighborhood.

MR. BELL: No.

MR. HERMANCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: And the fifth is whether or not the difficulty is self-created, which it is, but that doesn't stop the Board from granting the application.

Having completed the five-part balancing test, are there any motions relative to the application?

MR. MASTEN: I'll make a motion that we approve the application.

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MR. MARINO: I'll second it.

MR. DONOVAN: Roll call, please,
Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: 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.

MR. DONOVAN: Okay.

MR. WAIS: Thank you all. Happy
holidays to you all.

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

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

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

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

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

IN WITNESS WHEREOF, I have
hereunto set my hand this 13th day of June
2021.

Michelle Conero

MICHELLE CONERO

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

----- X
In the Matter of

GAS LAND PETROLEUM, INC.

5200 Route 9W, Newburgh
Section 43; Block 5; Lot 1
B Zone

----- X

Date: May 27, 2021
Time: 8:15 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRELL BELL
GREGORY M. HERMANCE
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
JOHN MCKELVEY

ALSO PRESENT: DAVID DONOVAN, ESQ.
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: CHRISTOPHER LAPINE

----- X

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

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MR. DONOVAN: The next application held over from April 22nd is the application of Gas Land Petroleum, 5200 Route 9W, seeking area variances for relief from the 1,000 foot requirement to the nearest motor vehicle station and an existing barn with apartment requiring variances for front yard, side yard, height and maximum yard area.

MR. LAPINE: Good evening. My name is Christopher Lapine with the Chazen Companies. Let me start off by apologizing for not being present last month. Siobhan sent me an e-mail. I mistook April 22nd for April 27th. When I was informed the next day, I told everybody in my office they were wrong, but my calendar didn't match the e-mail. So I just want to apologize to the Board at this point in time.

MR. DONOVAN: If I can just interrupt for a second. I don't know -- there was correspondence received late this afternoon on this application from --

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are they still Clough Harbor Associates,
CHA? Are they still Clough Harbor
Associates? I think the Board got it at
like 3:00 this afternoon. I have not read
it. I don't know if --

MR. LAPINE: I haven't seen it.

MR. DONOVAN: I don't want to
throw you off. I just wanted to let you
know and reflect for the record that that
correspondence was received. You can go
ahead with your presentation.

MR. McKELVEY: Mailings?

MR. DONOVAN: Mailings, Siobhan?

MS. JABLESNIK: This applicant --
it was last month. I don't have last
month's. I know that it was the same
amount as when they came back -- when they
came the first time. I don't have last
month's.

MR. DONOVAN: I do. I do,
actually. This applicant sent out 37
letters. Actually, last month you didn't
need to be here because we had not heard
back from the County at that time.

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Anything back from the County?

MS. JABLESNIK: I actually called them and I received it today.

MR. DONOVAN: And it's --

MS. JABLESNIK: A Local determination.

MR. DONOVAN: Thank you.

MR. LAPINE: Thank you. So we were actually before the Board for this project last June. The application involves a 4.5-acre site along Route 9W near Pat's Towing facility. I think most people here on the Board know where that is.

At that time when we were before the Board Gas Land Petroleum was proposing -- they were going to subdivide the property and they were going to acquire a 1.2-acre piece of the property for a convenience store and gasoline pumps that are shown before you. We continued the application, but after receiving some feedback at both the Planning Board and a little bit of feedback by the Zoning

1 Board, the applicant was a bit concerned
2 about the existing towing operations and
3 its impact on its proposed intended use of
4 the property.
5

6 So the applicant has gone back
7 and has entered into an agreement to
8 purchase the overall property now with the
9 intent of abandoning the towing business.

10 It will no longer be a
11 subdivision of the property. The towing
12 business will be converted to just an auto
13 body shop. There will be an elimination
14 of the storage of the cars in front of the
15 site, and basically throughout the entire
16 site. It's going to be an auto body or
17 auto repair shop in the rear of the
18 property.

19 The gasoline filling station as
20 proposed would still operate as you
21 originally reviewed it last year. It's a
22 2,140 square foot facility with six pumps.
23 We also added two additional diesel pumps.

24 The variances that we're here for
25 are the same variances you granted last

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year.

The reason why we're here before you is the Planning Board said it is a new application because we've eliminated the subdivision that we were previously proposing for the project.

The variances that we're here for this evening, once again, are the same as last year. They consist of the relief from the 1,000 foot separation to the nearest motor vehicle service station. The existing diesel operation on the site is within 1,000 feet of the existing Stewart's operation. The existing auto repair facility in the back towing operation is within 1,000 feet of the Stewart's operation. We're going to continue that same use as is on the site, but since it's an existing nonconforming use, we have to get a zoning variance to bring it into conformity.

As part of this new project, we're also eliminating the one-family residential house that was on this

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2 property, but we're maintaining the
3 apartment -- you know, the barn/apartment.
4 So we're here before you seeking the same
5 variances as we sought last year for
6 maintaining that apartment, which is the
7 existing height can't exceed 15 feet and
8 the existing building is 20 feet in
9 height. The existing building has a
10 required side yard setback of 15 feet.
11 The existing building is 19 feet, just
12 like it was last year.

13 There's also a variance being
14 sought for the maximum coverage in a yard
15 area where 10 percent is allowed and 12
16 percent is proposed. That's for the
17 existing barn/apartment. That's the same
18 thing you granted last year.

19 And the accessory structure is
20 located closer to the fronting street than
21 the main structure on the lot which also
22 requires a variance. Same as last year.
23 This is no change.

24 But we're here to amend our
25 approval so that we can move forward with

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the new application. I don't think the variances before you are substantial.

This is going to be a modernization of this existing facility. It's going to eliminate what's been an eyesore, apparently, for a number of years with the storage of cars.

We're going to reduce three access points on the property down to one access point, making it safer for vehicular access.

We're going to include sidewalks along this to enhance the pedestrian corridor, which is in the comprehensive plan.

We're going to provide some landscaping screening which currently doesn't exist on the property. We're going to have the opportunity now with owning the property to screen the operations in the back which we didn't have before when it was previously just a subdivision.

Overall I believe this is an

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enhancement. This is not out of sync with the adjoining uses in the area where you have an energy company, you have a hotel, you have delis, office space and associated gas stations, convenience stores along this corridor.

And as I said, of course this was a diesel fueling operation. We're expanding this to both diesel and gas.

I'm willing to take any questions that the Board may have.

MR. DONOVAN: I'll start on the other side. Any questions, Mr. Marino?

MR. MARINO: No.

MR. DONOVAN: Mr. Masten?

MR. MASTEN: I have nothing.

MR. DONOVAN: Mr. Levin?

MR. LEVIN: No.

MR. DONOVAN: Mr. McKelvey?

MR. MCKELVEY: No.

MR. DONOVAN: Mr. Bell?

MR. BELL: No.

MR. DONOVAN: Mr. Hermance?

MR. HERMANCE: I just have one

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question. So the diesel dispensers now will be closest to the Stewart's?

MR. LAPINE: No. Actually, it's the opposite. The diesel dispensers are right here. They're going to be farther away.

MR. HERMANCE: Farther away. But the gas dispensers are within the 1,000 feet?

MR. LAPINE: Yes. The site itself is within 1,000 feet, what they base it on. So that's what we're seeking the variance for.

And also because as it was existing, you had two motor vehicle service uses on the same site. The interpretation was they had to be 1,000 feet apart for there to be a variance.

MR. DONOVAN: Siobhan, are there any members of the public who wish to speak on this application?

MS. JABLESNIK: If any members of the public wish to speak about this application, you can unmute yourself. Go

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ahead.

MR. BACON: Good evening,
Mr. Chairman and Members of the Board.
My name is James Bacon. I represent a
concerned neighbor. We were the party
that retained CHA to prepare a four-page
letter on this application.

I'm concerned with the hundred
percent variance request. Also, we're
looking at issues concerning the code and
the petroleum bulk storage requirements.

So we'd request some time to keep
looking at this. We'd ask that the Board
review our comments.

I did e-mail them to Mr. Hines,
Mr. Cordisco and Mr. Donovan. Your
secretary was very, very helpful and
advised that she would submit -- circulate
it to the Board. Hopefully the Board has
had a chance to look it over. I know you
just got it today, but it shouldn't take
you very much time at all.

It's a significant project and it
has significant impacts. I look forward

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to following the application and presenting the Board with more information on it as time goes on.

MR. DONOVAN: Thank you. Anyone else?

MR. BROWN: Charles Brown. I've been retained by Dan Bloom to monitor this project on behalf of Maseoso's which owns Pat's Towing.

I was the one that said that the original application would really eliminate the ability for Pat's to continue towing cars.

We are now in favor of the present application. Thank you.

MR. DONOVAN: Thank you. Any other members of the public?

(No response.)

MS. JABLESNIK: No.

MR. DONOVAN: So for the Members of the Board, we received -- the Zoning Board received late this afternoon communication as indicated by Mr. Bacon. I would note that the communication is

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fairly late. This matter was on the agenda back in April. It was received at 3:00 this afternoon.

I don't know whether the Board would like to have the applicant respond and leave the public hearing open until next month for that response or you wish to take any action to close the public hearing. It's in the discretion of the Board how you want to act this evening.

MR. LAPINE: Sir, if I may comment. I've taken a quick glance at these comments that I just received. You know, one of the first comments is that this is not a permitted use. The application before you is a permitted use. I wouldn't have come this far along in the process if it wasn't considered a permitted use.

MR. McKELVEY: Could you speak up a little bit?

MR. LAPINE: One of the comments in this letter that I received is the proposed use is not permitted on the

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project site.

The proposed business district and light heavy industrial overlay allows the motor vehicle service station on the site. That's within your Zoning Code.

As I indicated, this isn't our first rodeo on this particular project. We had a referral from the Planning Board, the Code Compliance office and the Planning Board Attorney.

We came here last year and we obtained variances for a similar use with the exception that it was involving a subdivision. So to say that this requires a use variance is not an accurate statement within this letter.

This is indicating -- it says new use on the site because they weren't previously dispensing fuel. They were dispensing, apparently, diesel fuel. They're dispensing fuel. It's a motor vehicle service station. The code doesn't specify whether -- you know, the difference between dispensing fuel and

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gasoline -- it's considered a motor vehicle service station. It's still dispensing fuel.

It does not sufficiently present compelling arguments on each of the required criteria for granting area variances for the side yard setback, the maximum percentage of the yard area, accessory building projecting into front yard. They say that it's less than 50 percent.

This is an existing building. This isn't a proposed building that we're obtaining variances for, the barn. It's an existing nonconforming. All we're looking to do is bring it into conformity with the proposed project.

We're eliminating one of the other nonconforming uses which is the residential building on the site.

We're also eliminating the eyesore in terms of the Pat's Towing operation.

And I think we've provided, as I

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said, significant justification as it relates to the barn. Now we're not in excess of 50 percent. We're talking about 10 to 12 percent for some of these variances being sought.

Secondly, they're getting into details that are part of a site plan review. As you're aware, as a Zoning Board the Town of Newburgh allows you, from the development of a conceptual site plan, to come to the Zoning Board to see whether or not you have the opportunity to obtain a variance for your project before you get into a detailed engineering design.

We didn't do a -- we haven't submitted to the Planning Board a detailed grading, stormwater management and septic disposal design. Most applicants don't invest that type of money unless there's viability of obtaining a zoning variance. That's why the Town of Newburgh allows a referral from the Planning Board to the Zoning Board. So to ask for that level of

1
2 information for a Zoning Board review,
3 which, quite frankly, and no offense to
4 anybody on the Zoning Board, I think the
5 Planning Board is going to take the hand
6 in reviewing that. They're going to look
7 at the grading, they're going to look at
8 the landscaping, they're going to look at
9 the septic disposal system design. So to
10 delay the meeting so that they can have
11 some more detailed information on the
12 septic disposal design, how we're
13 connecting the water system, all items
14 that fall outside of the purview of what
15 we're here for this evening, to me I don't
16 think there is justification.

17 I think you as a Board have
18 looked at this before. As I said, nothing
19 has changed. We had the same
20 justification as we had before. It's
21 really not a new application. This is an
22 improvement in the corridor here. What
23 we're looking to do is move forward with
24 the process.

25 MR. DONOVAN: So again, it's up

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to the Board. I mean you could move to close the public hearing or you could adjourn the public hearing. It's up to you this evening.

MR. HERMANCE: Well, being that we just received the letter this afternoon, this is the first we're seeing it, but a lot of things, as you say, don't pertain to the zoning. Other than the fuel types -- the differences in fuel types. Is the fire protection required for, you know, gasoline as opposed to diesel.

MR. LAPINE: Correct. And I think we're aware that the convenience store, the auto body shop, Town of Newburgh has a different review in terms of sprinkler system requirements than the State code. That will be sprinklered.

But the use itself, motor vehicle service station, it's still considered a motor vehicle service station. It's the same motor vehicle service station you reviewed last June. That hasn't changed.

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That's the separation setback to the Stewart's that I'm referring to. It's the separation setback from the existing auto shop to the Stewart's. There's no change to that. The auto shop is not changing. It's considered a motor vehicle service station, just like the contemplated use here. It's like the existing use of the facility.

MR. LEVIN: Sir, your voice is going down.

MR. LAPINE: I'm sorry. I'm getting a little further away.

What I was saying is the uses aren't changing. It's the same use. Whether you're dispensing diesel, you're dispensing gas and diesel, it's still a motor vehicle service station. That's what the variance is that's being sought, the separation to the adjoining Stewart's.

The same thing with the auto body shop. It's considered a motor vehicle service station. That's what's being sought, the separation to the existing

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Stewart's.

Once again, it's no different from the current operations. All we're doing is as we're moving forward with this application, we're being asked by the Planning Board to bring everything into conformance. Part of getting into conformance is getting the variances for existing nonconformance.

I just would like to reiterate there is no change in the variances being sought that you previously approved for this project in June of 2020.

The applicant -- as I said, we missed last month. We're here tonight. It's almost 60 days. On the 60th day someone has decided to submit comments on the last hour. A lot of these are really addressable at the Planning Board.

I don't think if you hold the public hearing open -- I'm coming back with the same plan and the same application because I'm not going to go into the detailed engineering design

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because I don't know if I'm going to have a variance for the project.

MR. McKELVEY: That's why I was going to say the Planning Board is going to have a lot to say about this.

MR. BELL: I agree.

MR. LAPINE: This might have been intended for the Planning Board.

MR. DONOVAN: The one issue -- if you could -- I gave you my copy. If you could just hand that back to me.

MR. LAPINE: I'm sorry.

MR. DONOVAN: The one issue that I did note as I looked through this quickly was the issue that the 1,000 feet requirement -- a variance for the 1,000 feet requirement would be a use variance, not an area variance.

Just to be clear, we've ruled on that in the past. This is not the first application we've had seeking relief from that. We've ruled that it's an area variance.

And if you recall, we did have

1
2 the issue not that long ago with the
3 access to a State or County road. That
4 project was going to access an interior
5 cul-de-sac and we had that issue of
6 whether or not that was a use or area
7 variance. We ruled that that was an area
8 variance. That case went to Supreme Court
9 and we were successful. With the
10 Appellate Division we were successful.
11 The Court of Appeals wouldn't take the
12 case.

13 So the 1,000 foot, just from my
14 point of view, is clearly dimensional.
15 It's clearly an area variance. To me it's
16 without question. And you have ruled on
17 this in the past, this same application.

18 I just put it to the Board since
19 the information came late this evening.
20 Certainly the applicant is correct, this
21 is not a new application, it's been
22 kicking around for a while.

23 It would have been nice to have
24 any questions beforehand. If you want a
25 response to the CHA letter from the

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applicant, you have the ability to ask for that. You also have the ability to close the public hearing and you have 62 days to decide. You can close the public hearing and vote. It's up to you guys.

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

MR. LEVIN: I'll second it.

MR. DONOVAN: Roll call, Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: 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.

MR. DONOVAN: Okay. The public hearing being closed, does the Board wish to proceed this evening?

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

MR. DONOVAN: Okay. Let's slow down a little bit.

So first let's deal with SEQRA. The Planning Board Attorney, Mr. Cordisco, has written a letter to us dated March 25, 2021 in which he states the Planning Board has not declared its intent to serve as lead agency so that the Zoning Board of Appeals may consider and process this application without the need to wait for the Planning Board to conclude its SEQRA review. We have a full environmental assessment form.

I would suggest to the Board that this is an Unlisted action and would require a negative declaration before proceeding.

MR. McKELVEY: I'll make a motion.

MR. BELL: For a negative declaration motion. I'll second it.

MR. DONOVAN: Roll call, Siobhan.

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MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: 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.

MR. DONOVAN: And if the Board is prepared, we'll go through the five-part balancing test. The first issue is whether an undesirable change would reduce the character of the neighborhood or a detriment to nearby properties will be created by the granting of the requested variances.

MR. MARINO: I'd say no.

MR. BELL: No.

MR. HERMANCE: No.

MR. LEVIN: No.

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MR. McKELVEY: No.

MR. MASTEN: No.

MR. DONOVAN: The second is whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than the requested variances.

MR. BELL: No.

MR. HERMANCENCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: The third is whether the requested area variances are substantial.

MR. MARINO: I don't think so.

MR. McKELVEY: I don't think so.

MR. DONOVAN: The fourth is whether the proposed variance will have an adverse affect or impact on the physical or environmental conditions of the neighborhood or district.

MR. BELL: No.

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MR. HERMANCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: And the fifth is whether the alleged difficulty is self-created, which, as we know from the past, this is self-created, but it's not a bar to issuing relief.

That being said, having gone through the five-part balancing test, are there any motions relative to the application?

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

MR. MARINO: I'll second it.

MR. DONOVAN: Roll call, Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

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MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MR. LAPINE: Thank you very much.

Enjoy your Memorial Day weekend.

(Time noted: 8:35 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have
hereunto set my hand this 13th day of June
2021.

Michelle Conero

MICHELLE CONERO

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

----- X

In the Matter of

JUNCHEN SHANG

87 Mill Street, Wallkill
Section 4; Block 1; Lot 74.2
RR Zone

----- X

Date: May 27, 2021
Time: 8:35 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRELL BELL
GREGORY M. HERMANCE
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
JOHN MCKELVEY

ALSO PRESENT: DAVID DONOVAN, ESQ.
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: CHARLES BROWN

----- X

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

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MR. DONOVAN: Last, but certainly not least, we have the application of Junchen Shang, 87 Mill Street, area variance for the maximum allowed dogs and accessory structure for a 10 x 164 foot kennel and 20 pet dogs, and to keep a 779.88 square foot and a 10.6 x a 10.6 accessory building.

Do I have that correct?

MR. BROWN: Yes. Thank you. We did present this last month. I can reiterate. It is a very large parcel, just under 30 acres, with the 5 dogs per lot. This is a 2-acre zoning area. You can see it would support 70 dogs on this property if you subdivided it into 15 lots.

I understand that some of the Members did finally get out to see the site. It is very well screened, particularly now that the trees have leafed out.

This is not going to be a kennel where the dogs don't know each other or

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are in unfamiliar territory, which is one of the biggest causes of dog stress and why they bark so much. These dogs are already used to living together so I don't foresee them making a lot of noise.

My client did send an e-mail to me which I forwarded to Siobhan here and she distributed it to the Board Members on why he wants so many dogs.

I did talk to him this afternoon. He has some flexibility. I did notice one thing in his e-mail, that he was talking about the puppies. Puppies are not included in the 5 dogs. 2 dogs could have a litter of up to 8 puppies. In the code they exclude puppies. It's adult dogs. So we said 14 adult dogs. I'm sure he'd be willing to accept that. He actually authorized me to offer that to you.

MR. DONOVAN: For the record, we do have a few items of correspondence. A letter dated May 10, 2021 from Sara Chanowitz, I apologize if I mispronounced that, in opposition. We also have another

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letter submitted by Dave Mucci, M-U-C-C-I.
I apologize if I mispronounced that.
They enclose a petition which has a number
of signatures, all in opposition to the
application. They are received and shall
remain in the Zoning Board's file on this
matter.

With that being said, I'll turn
to the Board Members for comments,
questions. Mr. Hermance, we'll start with
you.

MR. HERMANCE: My question to the
owner would be if they are for personal
pets, why are they placing it so far away
from the residence?

MR. BROWN: It happens to be near
the existing well. It's so that -- also,
there's a wetlands buffer that goes
between there. There's a well right near
that which he could use to wash down the
facility when needed. And again, we do
have wetlands and buffers on site, so, you
know, that's where he chose to locate it.

If the Board wanted him to move

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it closer to his house, I could run that by him, also.

MR. HERMANCE: Does he have any plan for handling the solid waste for that amount of dogs?

MR. BROWN: Well, I can ask him that, too, you know. I mean, typically you shovel out the pens and -- I don't know. Dog waste is a little different than goat waste. I did Hendrick Farms in Cornwall and they compost it all. You know, they have a yearly compost time when pet people come in with a pickup truck and we load them right up.

I hadn't really looked at the compost-ability of dog waste. I could certainly do that.

MR. HERMANCE: Well, just being it's in close proximity to the wetlands and the feeder streams to Chadwick Lake.

MR. BROWN: We could come up with a solution to that and include it in an amended submission.

MR. HERMANCE: Okay.

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MR. DONOVAN: Mr. Bell?

MR. BELL: That was one of the ones I was concerned about, was Chadwick Lake.

The second one is do they have any other kennels on another residence such as like this?

MR. BROWN: My client?

MR. BELL: Yes.

MR. BROWN: No.

MR. BELL: Not on this residence, but --

MR. BROWN: No. This is where he lives. He doesn't have any other kennels, no.

MR. BELL: No. Okay. Now, with so many dogs how do they plan on caring for up to 20 dogs? I mean I just see that being a problem, just one or two individuals trying to take care of 20 dogs.

Is he on Zoom? He mentioned that he was going to be on Zoom. Is he on Zoom?

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JUNCHEN SHANG

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MR. BROWN: Is he on what? I'm
sorry.

MR. BELL: Is he on Zoom tonight?
Is your client on Zoom? He mentioned to
me today that he was going to be on Zoom.

MS. JABLESNIK: Is the owner of
87 Mill Street on to answer any questions?
You can unmute.

MR. SHANG: Yes, I'm here.

MR. HERMANCE: I don't know if
you've heard us about the -- we were
asking how you're going to handle the
solid waste from 20 dogs and our concerns
are being its proximity to the feeder
stream for Chadwick Lake and the wetlands.

MR. SHANG: Well, for the solid
waste we're thinking that we will contact
like trash companies around and see if
they have any service to take in those
waste, solid waste. So they will be off
the land. They will stay out of the
wetlands and they will not be affecting
the environment.

MR. BELL: I guess one of the

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concerns with that is because it does run -- the wetlands does run into Chadwick Lake, when you go to hose and clean out these kennels, I mean how is that going to -- how are you going to protect the environment, you know, once they do that?

MR. SHANG: Well, if we pick up all the solid waste, like on time every day, the chances of like any kind of bad things for the environment will be, you know, taken out before it can be washed. Most of it probably will be taken out before it can be washed into the soils and stuff.

MR. BELL: Now, one other question is that if you go up to 20 dogs, I'm just going to use your max, or any dogs period, what type of climate control are you going to have out there during the wintertime for them?

MR. SHANG: Well, we will -- so if they are going to be outdoors, we will definitely stay with the coat and, you know, with their own individual houses and

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hay and stuff for their bed with like a wind break, as I believe the rules for the Town is. We will definitely have some -- well, all the dogs that can withstand the winter, they'll be outside. For the dogs that is like short coated, they will be indoors with us I guess.

MR. BELL: I'm good right now.

MR. HERMANCENCE: Can I go back to my earlier comment? I was asking why -- if these are for pets, why would the -- why would it be located so far away from the residence?

MR. SHANG: Well, thinking about like all the things, the variables, one is we want to not bother the neighbors as much as we can. So further -- and the further I guess is less noisy for the neighbors.

And another thing is, like Charlie said, we want to stay with the guidelines of the wetlands and the buffer zone. We find the location that we picked is, I guess, most suitable considering all

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the options.

MR. HERMANCE: Okay.

MR. DONOVAN: Mr. McKelvey?

MR. MCKELVEY: Do you plan on breeding?

MS. JABLESNIK: Go ahead. He said do you plan on breeding. Sorry.

MR. SHANG: Okay. Not as of right now, but we might in the future for ourselves. Like Charlie said as well, they're not like kennels for, you know, business purpose. Probably only for ourselves.

MR. MCKELVEY: How many dogs do you have now?

MR. SHANG: Right now I have a Spanish Mastiff, I have an Anatolian Shepherd, I have a Border Collie. Yeah. Three breeds right now.

MR. MCKELVEY: I know, of course, the dogs right now are close to the house, but they make a lot of noise when they bark.

MR. SHANG: Yeah. They only bark

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when they see like strangers come in
and -- they are pretty quiet otherwise.

MR. McKELVEY: What if there's
wild animals roaming out in that big
field?

MR. SHANG: They don't -- I don't
think they can see much throughout -- like
through the woods because it's pretty
thick. They might bark a couple of times
when they see something I guess. But
other times they -- they don't bark like
excessively.

MR. DONOVAN: Mr. Levin?

MR. LEVIN: I live in the City of
Newburgh and I have foxes and coyotes on
my property. I don't understand how he's
protecting these dogs.

The second question, I think the
Town of Newburgh allows only 5 dogs.

MR. DONOVAN: That's correct.
The requested variance is to go to 20.

MR. LEVIN: That's the variance.
Okay.

MR. DONOVAN: Mr. Masten?

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MR. MASTEN: What Greg said about the waste and stuff is one of the problems because of the wetlands all around that property. There's like 30 some acres there. You've got the wetlands. And like Darrell said, when they clean the kennels, where is -- they'll probably pick it up, a lot of it. A lot of it is going to be going out in drains someplace and into the groundwater. That groundwater is going to end up down in Chadwick Lake.

Plus out there there are coyotes, all kinds of wild dogs and bears.

MR. LEVIN: Bears, yeah.

MR. MASTEN: I know there's been a couple of bears running around in the last couple of weeks.

MR. BROWN: I can address some of that. I have a big dog and I know there's coyotes, I know there's fox. They won't go near them. He's a big dog. They won't go near him. He's 70 pounds.

As far as the waste going into the ground, I mean that's what a septic

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system is. So, you know, maybe we can look at infiltration. Surface runoff, I can see it definitely being a problem. As far as it going into the ground, that's not a problem. That's exactly what a septic system is and that's what it's designed for.

MR. DONOVAN: Mr. Marino?

MR. MASTEN: I've got another question.

MR. DONOVAN: I'm sorry.

MR. MARINO: Mine have all been answered.

MR. MASTEN: Also, some of these large dogs are very territorial. They only listen to one person basically all the time. If you try -- if you or I go in there and try to control them, they're not going to listen to you. They might turn on you.

MR. DONOVAN: Siobhan, do any members of the public wish to speak on this application?

MS. JABLESNIK: Go ahead. Just

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state your name first.

MR. MUCCI: David Mucci. I'm speaking on behalf of the Wallkill -- Mill Street/Mountain View area petition. We have 80 signatures on the petition strongly urging the Board not to grant this variance.

Our main concern is safety. These are very large dogs, Brazilian Mastiff or an Anatolian Shepherd. We don't know what they are. We don't know what he's going to have. God forbid any dogs get loose, go across the street to the elementary school.

I talked to the Wallkill School Board. I talked to Mr. Cahill. He had very many concerns. The kids are not -- if any or all dogs get loose and go across the street, we're going to have a tragedy. We have grandchildren. This is a family neighborhood. We have grandchildren. There's kids running around all the time. I don't think he's going to have 30 acres fenced in. That's my opinion.

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But also, we're also concerned about the waste going into Chadwick. We know that is a floodplain. There's a lot of water back there. We can't afford to lose our Chadwick Lake reservoir.

And the other reason, if you're going to have 20 large breed dogs, they're going to be barking. There's deer back there, there's coyote, there's bear.

The quality of life is not going to be the same. We want to keep this a family neighborhood.

We implore the Board, me representing the people that signed it and myself, you know, please don't grant this variance.

Thank you for having me on and have a good night, gentlemen.

MS. JABLESNIK: Does anyone else wish to speak about this application?

BRADY: I have a question. I was just wondering, does he know what breed of dog he plans to bring in there?

MS. JABLESNIK: Can you just

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state your name? I'm sorry.

BRADY: Yeah. Brady.

MR. MUCCI: This is Dave Mucci again. We have Kim Chanowitz here. She can use my seat.

MS. KIM CHANOWITZ: Hello? Am I on?

MS. JABLESNIK: Yes, you're on.

MS. KIM CHANOWITZ: I'm sorry. I just wanted to get on. I didn't mean to interrupt Brady. Does he want to go first or should I go?

MS. JABLESNIK: I don't know if anyone is --

MR. DONOVAN: I think the question was do you know what kind of breed of dogs are going to be there.

MS. KIM CHANOWITZ: I'm sorry. They hooked me -- I'm here with Dave. I'm a neighbor of Dave Mucci. I thought I hit you to speak on my iPad but it didn't work so I came back to his office. I realized Brady was trying to get on. If you want Brady to go first, that's fine. But I

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would like a chance to speak.

MR. DONOVAN: You will most certainly have that chance.

Charlie, can you tell us what type of breed or can your client tell us what type of breed he'll have in the 20 dogs?

MR. BROWN: In the e-mail he specified a couple of breeds. That is not all inclusive. I don't have a copy of that e-mail with me I don't think.

MR. McKELVEY: Is he still on?

BRADY: I do believe the homeowner was on and he was answering questions before. I don't know if he can directly answer himself. He did mention the three dogs are breeds that he currently has. I guess I was just asking what are the breeds that he's going to put in this building.

MR. SHANG: Yeah, I can answer. So I guess the three we have now and others. We were thinking it might be like Weimaraners and like German Short Hair

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Weiners and -- yeah. Those are the five breeds that we can think of now.

MR. DONOVAN: Ms. Chanowitz, it's your turn.

MS. KIM CHANOWITZ: Hi. How are you? My name is Kim Chanowitz. I have -- I sent a letter to you guys. I e-mailed the letter.

I am third of four generations living on Mountain View Avenue. I am also a licensed veterinary nurse, and have been so for over 20 years. I have a lot of experience with animals. So I have a lot of concerns that were all in the initial letter that was sent with the petition, and then I have other concerns personally about the dogs themselves and how they're going to be cared for and how they're going to be housed.

I also wanted to make a comment on a veterinarian that I've worked with previously who has serviced some of the dogs that are owned by I'm pretty sure the same people. She is very concerned about

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this. She couldn't come on. She works seven days a week. She is Dr. Acworth out of Modena. She's very concerned that these dogs are very aggressive. She couldn't even handle them to do what needed to be done for them. And I know that Anatolian Shepherds and Brazilian Mastiffs, they're very territorial dogs. She said that the handlers at those facilities that she went to, the farms that she went to, because there are other farms associated with these guys, that they couldn't handle the dogs. She said a handler is going to be killed by one of these dogs.

So my concern is the children across the street, Dave, and all the children that live around here. So I'm concerned about that.

Also about the waste material. Fecal matter is not a material that you can compost. So it's not an organic material. It's inorganic. So to collect it into a waste can, you're going to have

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flies and you're going to have bugs.
Urine from dogs carry Lithospirosis.
Feces and urine, they carry zoonotic
diseases that can come to us. Coccidia.
There's a bunch of them. Lithospirosis.
They can go from urine to feces and then
that's going to be going into our
wastewater.

Again, I've lived here a long
time. My family has been here over a
hundred years. I know that's always been
an issue in this area, the Chadwick Lake
reservoir. So to me that's really huge.

Not only do we have the safety of
our children, but we have health concerns
for us.

I would also like to say that
being in this business I think that we
have in my practice about 6,000 clients.
I would say I probably know, I would say
75 percent of them. I can honestly say I
know two families that have more than 5
dogs.

So what really peaked me when I

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got this was who has 20 dogs. Like how can you care for 20 dogs. Like how can you properly care for 20 dogs unless you're going to hire care people.

And if they're your pets, you don't really want them to be far away. I mean the animals that I take care of are in people's beds. You know, I realize not everybody does that, but I have a lot of concerns for the dogs.

Another thing, living outside, no animal can -- I mean animals like horses or whatever, you could see that. But dogs aren't meant to live outside year round in our climate.

You know, if they want to house them there, they really need to do it right. They need to be housed with proper fencing. These dogs can scale fences. They are territorial, if they are getting these types of dogs, the Anatolian Shepherds, the Brazilian Mastiffs.

Also, I have some acquaintances through my job that have told me that this

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applicant has applied in other towns and has withdrawn their applications. There is also -- there is a lot of history there behind all this.

It's a little scary to me to have 20 big, huge dogs near a school and then having all their waste and all that stuff in our water. I don't know. I just -- it doesn't sit well. So I just wanted to say that.

So thank you for letting me speak. Thank you very much. Have a good day.

MR. DONOVAN: Thank you. Anyone else, Siobhan?

MS. JABLESNIK: Anyone else from the public?

MR. SHANG: Can I reply to some of the --

MR. DONOVAN: Let's see if there's any other members of the public who wish to speak first.

MR. SHANG: Okay.

MS. JABLESNIK: Does anyone else

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wish to speak? You can unmute yourself.

JAMIE: Yes, I would like to.

MS. JABLESNIK: Go ahead. Just state your name.

JAMIE: My name is Jamie. I live on Mountain View Avenue.

I just want to ask you why you want 20 dogs as pets? We have a dog, we've had some cats and they are a lot of work.

I can't help but think that this would be -- you're asking for a variance to be granted saying that these are going to be your pets, but having different breeds. And you said yourself that in the future you might breed them. I can't help but think that that's the real purpose. And please forgive me if I'm wrong.

I also have another concern. We walk our dog on a leash on our street. I can tell you we're like one of the only people that pick up after our dog on our street.

We have dogs on our street that

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are behind fences but seem to be aggressive. These are, you know, two and three dogs at a time. So I do have concerns about that as well.

And I'm just curious about, you know, why 20 dogs for pets. Animals take -- who are taken care of properly, it's a lot of work.

I just, you know, wanted to get your thoughts on all of that. Thanks.

MS. JABLESNIK: Anyone else from the public?

MS. SARA CHANOWITZ: Yes. I would like to speak.

MS. JABLESNIK: Go ahead. Just state your name.

MS. SARA CHANOWITZ: My name is Sara Chanowitz. I e-mailed a letter to you guys.

I worked in a shelter environment with 20 plus dogs. There's no way that you can just pick up their fecal matter and just throw it away. Some stay on the ground. Like Kim, who is my mother, said,

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it's going to run all kinds of diseases.
If you shelter dogs in one big area,
there's no way to keep those diseases
separate from each other. So if one
contracts one thing, a bunch will. And
then that's going into Chadwick Lake.

I know taking care of 20 plus
dogs is not something easy for even two
people when we were understaffed. These
dogs need to be walked every day. They
need constant attention and training. If
you're just going to leave them in cages,
what kind of life is that for a dog?

I also drive down Mill Street
every day. In the past five days I've
seen three different families walking with
strollers and their babies right across
the street from where they are planning to
build this. I don't think it's very safe.
My neighbors -- there's children running
all around. If those dogs get out, who
knows what will happen.

But I really think that this is
not a safe place for the neighborhood, our

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animals, our children and the life of the dogs that you want to breed.

And let me tell you so many dogs like the ones you're saying end up in shelters and homeless for many years, and it's sickening, and they die because of people irresponsibly breeding.

That's all I have to say about that. Thank you.

MS. JABLESNIK: Anyone else from the public?

MS. SEAL: Yes. May I speak?

MS. JABLESNIK: Sure. Just state your name.

MS. SEAL: My name is Geneen Seal. I live on Mountain View Avenue.

I'm a parent so I'm coming from the perspective of a parent of a 13 year old. Also, a couple of our neighbors, there's an infant and there's a four year old across the street and another 13 year old. So there are younger kids in the neighborhood.

My biggest concern with what's

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been presented to us tonight is that there doesn't seem to be a plan. There's a lot of probabllys. There's a lot of well, maybe or we could do this. There doesn't seem to be a firm plan, and that doesn't bring a lot of comfort to me.

Especially if you're talking about Brazilian Mastiffs, those are dogs that have been banned in many places because they're very aggressive. So if that is the breed that is going to be there, then it's of great concern to me.

Also, 20 dogs kept in kennels aren't going to be very socialized so they're not going to be very friendly dogs. They're not going to be nice dogs that can be considered pets I wouldn't think. And if they got out and they are not socialized, then how are they going to react to people when they see them? And if there's a small infant in the neighborhood sitting out in the backyard or on a swing or something, or the four year old is running around playing on his

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playground and one of these dogs gets out,
what's going to happen to that child?
They'll have no chance.

The other thing is if they are
going to have 20 dogs, how is the Town
going to be able to keep track to make
sure that they only have 20 dogs going
forward in the future? What if they do
start breeding and then there's now 30
dogs or 40 dogs or 50 dogs? And how are
we going to know as neighbors if we're in
danger?

So I guess that's all I have to
say. Thank you.

MR. DONOVAN: Thank you. Anybody
else, Siobhan?

MS. JABLESNIK: Does anyone else
wish to speak about this application?

(No response.)

MS. JABLESNIK: No.

MR. DONOVAN: Charlie, do you or
your client have anything to say?

WENDY: Excuse me.

MS. JABLESNIK: Go ahead.

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WENDY: I'm sorry.

MS. JABLESNIK: That's okay.

What's your name?

WENDY: Am I on?

MS. JABLESNIK: You're on. Can you state your name, please?

WENDY: Yes. My name is Wendy. I live on Mill Street, right across from the property and the whole lake area here.

I was just wondering -- and it's just a bit of a concern, a little out of our agreement and all the things that have been discussed and surmised and questioned.

One other question is these breeds that are coming in are also very active breeds. They're very much of the herding, working dog breeds, so they really do need a lot of exercise. They really do need exercise pens. They need to run around in fields. They need a "job". They're also guard dogs.

Again, some of these breeds that are coming in that are very large and very

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aggressive are only recognized internationally for breeding purposes. Is he going to be dealing with international breeders from Brazil, et cetera, in Europe or other places, and, if so, is he going to be in compliance with the Fish and Wildlife, the U.S.D.A, the airport and transportation purposes as well as quarantining them and making sure that everything is going according to regulations whenever they are imported or exported for financial purposes and/or breeding purposes, and, if so, I think we all deserve to know how that's going to be carried out.

Also, there is the situation of the wetlands, Chadwick Lake, the Hudson River, parents, schoolchildren, neighbors across the street. We have had stray dogs come along.

If he's going to be doing this with breeds that are really dealt with for breeding purposes on an international scale, I think we're starting to reach

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into Federal Government regulations as well as State and local ones. So that's just my concern, too. I just wanted to put that out there.

I had attended last year the HAC Meet the Breeds at the Javits Center. I do know that the German Shorthaired Pointers and the Border Collies are very active. They really do need to jog. They need to run. You cannot enclose a lot of land out there to have them run. I'm sure he's not going to be having livestock or something for the Border Collies to herd, which is their job.

So I think that's also a concern, too, that the neighborhood around here and the Town of Newburgh as well as someplace perhaps by Stewart Airport need to know.

So thank you very much for your time. We look forward to hearing the outcome. We appreciate you letting me talk. Thank you.

MR. DONOVAN: Siobhan, any other members of the public?

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MS. JABLESNIK: Does anyone else wish to speak?

BRADY: This is Brady again. I guess I have two questions here.

One would be what would be the benefit or the positive to the community for him to put this up? And then a couple people keep mentioning a Brazilian dog. I don't know that he mentioned that when I asked about what kind of dogs he was going to put there. Is there something that everybody else knows that we don't know? I'm confused.

MR. DONOVAN: Charlie, I'll ask if you or your client have any response.

Just for everyone's edification, public hearings are information gathering. They're not really question and answer sessions. This forum doesn't lend itself to that. Certainly issues have been raised, questions have been asked about the types of breed, the number of dogs, other issues.

I don't know, Charlie, if you or

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your client have any responses that they can give to the Board this evening.

MR. BROWN: Well, in his e-mail, which I did forward, it says Border Collies, Spanish Mastiff, Weimaraner -- whatever that is -- Anatolian Shepherds, Asian Shepherd. That's what he listed.

BRADY: Could we have Charlie speak up a little bit? It's very hard to hear him.

MR. BROWN: I just lost it. I asked my client the question. He said Border Collies, Anatolian Shepherds, Weimaraner, Spanish Mastiff and Central Asian Shepherd. That was it.

BRADY: Thank you.

MR. BROWN: You're welcome.

Mike, do you want to say anything?

MR. SHANG: Yes. So firstly, I'm sorry to everyone to cause so many concerns. So I want to reply to some of the concerns.

One is that I believe the dogs

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that we're going to have, and I know from -- you guys did some research, just like basically research, and you guys see that they are working dogs, but a lot of I guess families in America do have the breeds that I'm looking to have as like family dogs kept in their house, and they are pretty friendly. Some of them are aggressive because they are working dogs, but if we raise them as our pets, I don't believe they'll be as aggressive as, you know, protecting livestock. So I believe like even -- by the way, it's not Brazilian Mastiff, it's Spanish Mastiff. They are very friendly as well. That's what I have right now. They do bark at strangers.

I mean we have a fence, a gate. About your concern of security, we would like to I guess put a double fence in for the dogs. One for their own kind of area and one for a larger area. We have probably I think two or three acres of open land. We will probably fence in I

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guess half of it for them to run in. Also as a double fence to, I guess, be more secure with the dogs. I believe that is the most we can do to secure the dogs.

And I understand your guys' concern about the numbers of dogs. We're not going to -- like the number 20 dogs is only like a number in our heart that we would like to reach, but I do understand your concerns and I am willing to kind of lower the number so you guys are, I guess, more -- I guess more calm and you feel more secure about it.

I believe we can take care of that many dogs and -- not right now. We will have like dogs, you know, step by step at a time, one by one. We're not going to have like a whole pack of them like come in like right after we apply or something. We're going to add a dog at a time to our pack, our family.

As for exercise, like I kind of said, we will have like a bigger fence for them to run in.

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Because we are raising them as pets, not working dogs, and so they won't be as aggressive and they will -- they will be kind of together, playing together and stuff. So they won't be kind of individual as much as we want to bring them together.

And I believe one of the neighbors talked about other people also applying in other towns. I'm not sure about that. I'm applying -- it doesn't sound like --

I'm just a little nervous talking in front of a crowd. So I believe someone talked about other people applying in other towns. I don't know much about that. I'm applying as myself the first time. I don't know where that might have come from.

And with the dogs that I have now, I take care of them. I don't see any aggressive -- I mean I don't see them getting out because we have -- right now, even right now, we have a gate, we have a

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fence in the front towards Mill Road, Mill Street, and they have never got out. I believe we can -- you know, with our -- we can take care of them and keep them safe, and it's also safe for the children across the street at the school and people walking across. Yeah.

That's all I wanted to reply.

MR. DONOVAN: All right. Perhaps at this stage we'll take a brief recess. We have two Members that have needed to recuse themselves -- excuse themselves from the auditorium, and we have perhaps more. So we'll take a brief recess and we'll reconvene in about three minutes.

(Whereupon, a brief recess was taken.)

MR. DONOVAN: Thank you, everyone. We are reconvening the meeting.

Mr. Brown, anything else that you want to tell us before the Board takes action on the public hearing?

MR. BROWN: No.

MR. DONOVAN: Turning to the

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Members of the Board. Do any Board Members have any questions or any comments?

MR. MASTEN: Yes. In proximity to where he wants to put those kennels and stuff, it's out in the middle of second field, and it's about 1,000 feet from the house. There are going to be no -- if any animals get loose or anything, how is he going to know when they're loose?

Also, in the proximity, less than a quarter mile, you've got an elementary school, right, and the kids are outside playing. God forbid if they got over there. And not too far away is the Thruway.

MR. DONOVAN: Do any Board Members have any motions relative to the public hearing?

MR. BELL: Motion to close the public hearing.

MR. MARINO: Second.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

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MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: 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.

MR. DONOVAN: Is the Board ready to proceed with the five-part balancing test?

This is a Type 2 action under SEQRA.

The first factor is whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variances requested.

MR. BELL: It could. It's a good possibility.

MR. LEVIN: I believe it will

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change the neighborhood.

MR. DONOVAN: So there's a consensus of the Board that it would change the neighborhood?

MR. BELL: Yes.

MR. HERMANCE: Yes.

MR. LEVIN: Yes.

MR. MARINO: Yes.

MR. MASTEN: Yes.

MR. McKELVEY: Yes.

MR. DONOVAN: The second factor is whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than the area variance.

MR. BELL: Yes.

MR. HERMANCE: Yes.

MR. LEVIN: Yes.

MR. MARINO: Yes.

MR. MASTEN: Yes.

MR. McKELVEY: Yes.

MR. DONOVAN: The third is whether the area variances are substantial.

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I would just point out that the number of dogs exceeds the requirement by 300 percent and the square footage is over by 174 percent.

Does the Board feel that that's substantial?

MR. BELL: Yes.

MR. HERMANCE: Yes.

MR. LEVIN: Yes.

MR. MARINO: Yes.

MR. MASTEN: Yes.

MR. McKELVEY: Yes.

MR. DONOVAN: The fourth is whether the proposed variance would have an adverse affect or impact on the physical or environmental conditions of the neighborhood.

MR. BELL: It's a possibility.

MR. LEVIN: It's possible.

MR. DONOVAN: And the fifth is whether the alleged difficulty was self-created --

MR. BELL: Yes.

MR. DONOVAN: -- which we know

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that it is.

Having gone through the five-part balancing test, does the Board have any motion either for or against the variance application?

MR. BELL: I'll make a motion to deny.

MR. DONOVAN: Motion to deny.

MR. MASTEN: I'll second it.

MR. DONOVAN: We have a second.

A yes vote is to deny the application.

Roll call, Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: 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.

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MR. DONOVAN: The variances are denied.

MR. BROWN: Thank you. Have a good weekend.

MR. DONOVAN: Any other business before the Board this evening?

MR. BELL: We read the minutes.

MR. DONOVAN: Do I have a motion to approve the minutes?

MR. BELL: I'll make a motion to approve the minutes.

MR. MASTEN: Second.

MR. DONOVAN: Seconded by John Masten. All in favor?

MR. BELL: Aye.

MR. HERMANCE: Aye.

MR. LEVIN: Aye.

MR. MARINO: Aye.

MR. MASTEN: Aye.

MR. McKELVEY: Aye.

MR. DONOVAN: Motion to adjourn?

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

MR. HERMANCE: Second.

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MR. DONOVAN: Seconded by
Mr. Hermance. All in favor?

- MR. BELL: Aye.
- MR. HERMANCE: Aye.
- MR. LEVIN: Aye.
- MR. MARINO: Aye.
- MR. MASTEN: Aye.
- MR. McKELVEY: Aye.

(Time noted: 9:15 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have
hereunto set my hand this 13th day of June
2021.

Michelle Conero

MICHELLE CONERO