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

AUDLEY JOHNSON

85 Wintergreen Avenue, Newburgh
Section 67; Block 2; Lot 4
R-3 Zone

----- X

Date: June 22, 2023
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: AUDLEY JOHNSON

----- X

MICHELLE L. CONERO
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Dover Plains, New York 12522
(845) 541-4163

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CHAIRMAN SCALZO: I'd like to call the meeting of the Zoning Board of Appeals to order. The first order of business this evening are the public hearings which have been scheduled. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have, and then any questions or comments from the public will be entertained. The Board will then consider the applications, and will try to render a decision this evening but may take up to 62 days to reach a determination. I'll ask, if you have a cellphone, to please turn it off or put it on silent. When speaking, please use your outside voice because we don't have a microphone this evening.

Roll call, please.

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MS. JABLESNIK: Darrell Bell.

MR. BELL: Here.

MS. JABLESNIK: James Eberhart.

MR. EBERHART: Here.

MS. JABLESNIK: Richard Gramstad.

MR. GRAMSTAD: Here.

MS. JABLESNIK: Greg Hermance.

MR. HERMANCE: Here.

MS. JABLESNIK: John Masten.

MR. MASTEN: Here.

MS. JABLESNIK: Donna Rein.

MS. REIN: Here.

MS. JABLESNIK: Darrin Scalzo.

CHAIRMAN SCALZO: Here.

MS. JABLESNIK: Also present is our Attorney, Dave Donovan; from Code Compliance is Joe Mattina; and our Stenographer is Michelle Conero.

CHAIRMAN SCALZO: All please rise.

(Pledge of Allegiance.)

CHAIRMAN SCALZO: Our first applicant this evening is Audley Johnson, 85 Wintergreen Avenue in Newburgh, an R-3 Zone, seeking area

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variances of the front yard, which is South Plank Road, and maximum square footage to keep an 8 by 12 foot shed installed by the previous owner.

Do we have mailings on this, Siobhan?

MS. JABLESNIK: Yes. This applicant sent out 54 letters.

CHAIRMAN SCALZO: 5-4. That's quite a bit.

MS. JABLESNIK: They were also mailed to the County and we received the letter back.

CHAIRMAN SCALZO: A local determination?

MS. JABLESNIK: Yes.

CHAIRMAN SCALZO: Very good. Who do we have here for this application?

MR. BELL: Come forward.

CHAIRMAN SCALZO: Good evening, sir. Would you happen to be Mr. Johnson?

MR. JOHNSON: Yes.

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CHAIRMAN SCALZO: Very good.
Mr. Johnson, it was a one-sentence narrative of what it is that you're looking to accomplish here. If you feel as though that sums it up, or if you have other comments you want to add to that narrative, what it is you're looking for, feel free to speak right now, or we can just start with throwing questions to the Board and then opening this meeting up to the public.

MR. JOHNSON: I would like to retain the shed in question that's on the property. The property was mortgaged with the shed on it. The property was mortgaged as is. I did not know that there was any problem in regards to any construction on the property, otherwise I would have had the situation rectified before I accepted the mortgage. I've lived on the property for a year-and-a-half before this issue in regards to

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construction came up.

As I said before, I would like to retain the property -- the shed on the property. I don't think I should be held accountable for prior construction by the prior owner before I mortgaged the property.

CHAIRMAN SCALZO: Very good. Thank you, sir. You know, this condition that you bought into, we're going to address that later, if we make our way to the balancing tests. Thank you very much. Please sit tight.

At this point I'm going to open it up to the Members of the Board, if they have any questions regarding your application. I'm going to start with Ms. Rein.

MS. REIN: No, I don't. I just want to say that the shed looked very well taken care of. It looks solid. You can't see it from the road because it's on the other side of the

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garage. It's a front yard, but it's also a backyard.

CHAIRMAN SCALZO: He's got frontage on New York State Route 52 as well.

MS. REIN: Right. It's kind of tucked away in there. Just my own feeling on it is that I think that it would be a real financial hardship for these folks to have to move that shed that's been there.

CHAIRMAN SCALZO: Thank you for your comments.

Mr. Masten?

MR. MASTEN: I have no comment, because I know -- I used to know the people that lived in that area. I remember when they first built that without a permit back then. It's a well-built shed.

CHAIRMAN SCALZO: Very good. Thank you.

Mr. Bell?

MR. BELL: No comments.

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CHAIRMAN SCALZO: Mr. Hermance?

MR. HERMANCE: When you purchased this property, was a title search done?

MR. JOHNSON: The title search was done.

MR. HERMANCE: It didn't reveal that during the title search?

MR. JOHNSON: No, sir.

CHAIRMAN SCALZO: Actually, Mr. Hermance, since Mr. Mattina is sitting here, he can tell you that when they get the applications in from the title insurance companies, they typically -- Joe, you guys don't do a field visit to confirm if any -- all you do is look in the files and see if there's any outstanding violations or permits?

MR. MATTINA: Correct. What happened with this one, the previous owner, it did come up in the title letter. They filed a permit, it was denied. They were sent a referral to

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come to Zoning. They didn't. They had their closing, they moved on. We clean our files out a year later, we have the previous owner's paperwork still there. The new homeowners get stuck with it.

MR. DONOVAN: That's even worse then. They knew and they stuck this gentleman.

MR. MATTINA: Exactly.

CHAIRMAN SCALZO: Okay. Mr. Eberhart?

MR. EBERHART: I understand the circumstances. I have no questions.

CHAIRMAN SCALZO: Mr. Gramstad?

MR. GRAMSTAD: None whatsoever.

CHAIRMAN SCALZO: I myself don't have any questions regarding it. Again, I'll agree with Ms. Rein, you can't see it from Wintergreen. You certainly can't see it from Route 52. Very good.

So at this point I'd like to open the meeting up to members of the

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public that wish to speak about this application. Anyone, please come forward.

MS. DODERER: My name is Eleanor Doderer. I live next door to Mr. and Mrs. Johnson. The shed is not visible from the road, it's well constructed, and personally I think they should be able to keep it.

CHAIRMAN SCALZO: Thank you very much for your comments.

Does anyone else here from the public wish to speak about this application?

(No response.)

CHAIRMAN SCALZO: It does not appear so.

One last look at the Board. Anyone? Any further comments?

(No response.)

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

MR. MASTEN: I'll make a motion

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to close the public hearing.

MR. EBERHART: I'll second it.

CHAIRMAN SCALZO: We have a motion from Mr. Masten. We have a second, it sounded like Mr. Eberhart. Very good. All in favor?

MR. GRAMSTAD: Aye.

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Aye.

Those opposed?

(No response.)

CHAIRMAN SCALZO: Very good.

We're going to move on here.

This is a Type 2 action under SEQRA.

Correct, Counselor?

MR. DONOVAN: Correct, Mr. Chairman.

CHAIRMAN SCALZO: We will go through the variance criteria, the five factors which we are weighing,

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the first one being whether or not
the benefit can be achieved by other
means feasible to the applicant.

This gentleman bought into a
situation that he was unaware was in
violation. I would say no.

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

MS. REIN: No.

MR. BELL: No.

MR. MASTEN: No.

MR. HERMANCE: No.

MR. EBERHART: No.

MR. GRAMSTAD: No.

CHAIRMAN SCALZO: We actually
heard testimony from one of his
neighbors that she thinks it's very
nice.

The third, whether the request
is substantial. We all know by the
numbers, it wouldn't have landed here
unless it was. In this situation, it

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does not appear so.

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

MR. BELL: No.

MR. EBERHART: No.

MR. GRAMSTAD: No.

MR. HERMANCE: No.

MR. MASTEN: No.

MS. REIN: No.

CHAIRMAN SCALZO: No. It does not appear that way.

The fifth, this is what I was going to get to earlier, whether the alleged difficulty is self-created, which is relevant but not determinative. We have confirmation from Code Compliance that the applicant did not cause this problem. He inherited this problem.

Having gone through the balancing tests, does the Board have a motion of some sort?

MR. BELL: I'll make a motion

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for approval.

MR. GRAMSTAD: I'll second it.

CHAIRMAN SCALZO: We have a motion for approval from Mr. Bell. It sounded like Mr. Gramstad. I didn't turn my head quick enough.

If you could roll on that, please, Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Eberhart?

MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Gramstad?

MR. GRAMSTAD: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Ms. Rein?

MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

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

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You're all set, sir.

MR. JOHNSON: Thank you.

(Time noted: 7:11 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 7th day of July 2023.

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

SCARLET BREYER (BONITTO)

11 Bridle Path, Newburgh
Section 58; Block 2; Lot 2
R-2 Zone

----- X

Date: June 22, 2023
Time: 7:12 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: SAM BREYER &
SCARLET BREYER

----- X

MICHELLE L. CONERO
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CHAIRMAN SCALZO: Our second applicant is Scarlet Breyer, 11 Bridle Path in Newburgh, seeking area variances of the front and rear yards to build a 6 by 9 front deck and a 12 by 26 rear deck with a sunroom.

Do we have mailings on that, Siobhan?

MS. JABLESNIK: This applicant sent out 64 mailings.

CHAIRMAN SCALZO: So far you're the winner.

Very good. Who do we have with us?

MR. BREYER: I'm the husband. The wife. We own the property.

CHAIRMAN SCALZO: Excellent. If we had your names, that would be even better.

MR. BREYER: Sam and Scarlet Breyer.

CHAIRMAN SCALZO: Now we're rolling.

I gave a one-sentence narrative

2 of what it is you're looking for.
3 We've been there. We've seen it.
4 We've seen the sketches and
5 everything else that goes with it.
6 Do you have anything you'd like to
7 add to that before I start --

8 MR. BREYER: The only thing I
9 would add is, it's part of a bigger
10 project to re-side the house and redo
11 the roof.

12 CHAIRMAN SCALZO: Okay.

13 MR. BREYER: It won't look funny.

14 CHAIRMAN SCALZO: Very good. I
15 started to my right -- left before,
16 so I'll start at the other side.

17 Mr. Gramstad, do you have any
18 comments regarding this application?

19 MR. GRAMSTAD: No. I went to
20 the house. He explained what he was
21 looking to do. I get it.

22 CHAIRMAN SCALZO: Mr. Gramstad,
23 since you went out there, what do you
24 think. Character? Matching?

25 MR. GRAMSTAD: Absolutely.

2 CHAIRMAN SCALZO: There's a lot
3 of things going on there, very
4 similar in nature.

5 Mr. Eberhart, do you have any
6 comments?

7 MR. EBERHART: No comments.
8 The cages that are on the side of the
9 house --

10 MR. BREYER: The garden. A few
11 years ago we tried to do a garden and
12 it just --

13 MS. BREYER: We haven't had
14 luck with that.

15 MR. BREYER: Work just took
16 over and that was the end of that.

17 CHAIRMAN SCALZO: You need a
18 better story, like some type of
19 animals were eating it. Very good.

20 Mr. Hermance?

21 MR. HERMANCE: I have no
22 questions.

23 CHAIRMAN SCALZO: Mr. Bell?

24 MR. BELL: I think it's going
25 to be very -- what they plan on doing

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is going to be very good. It's in the same character with the neighborhood as well.

CHAIRMAN SCALZO: Thank you.

MR. BELL: I had to drive up and down the street to see what else is going on around it. I think it's going to be very good. I did hear the stories about the garden. That's it.

MS. JABLESNIK: What do these cages look like?

MR. BELL: I thought they were dog cages.

MR. EBERHART: I thought they were chicken cages.

CHAIRMAN SCALZO: Mr. Masten, any comments?

MR. MASTEN: I have nothing. There was a nice, beautiful deer walking through the yard when I was there.

CHAIRMAN SCALZO: Ms. Rein?

MS. REIN: I think that it's only going to make everything look

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better.

CHAIRMAN SCALZO: I would agree. I would agree. I have no comments myself.

At this point, I'll open it up to any members of the public that wish to speak about this application.

(No response.)

CHAIRMAN SCALZO: Nobody is moving.

All right. One last look at the Board?

MR. BELL: No.

MR. EBERHART: No.

MR. GRAMSTAD: No.

MR. HERMANCE: No.

MR. MASTEN: No.

MS. REIN: No.

CHAIRMAN SCALZO: No. Very good.

I'll look to the Board for a motion to close the public hearing.

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

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MS. REIN: I'll second.

CHAIRMAN SCALZO: We have a motion from Mr. Masten. It sounded like Ms. Rein had the second. All in favor?

MR. GRAMSTAD: Aye.

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Aye.

Those opposed?

(No response.)

CHAIRMAN SCALZO: Very good. This is also a Type 2 action under SEQRA. Correct, Counsel?

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

CHAIRMAN SCALZO: I just like the reassurance.

MR. DONOVAN: You want me on the record confirming.

CHAIRMAN SCALZO: As you heard

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in the previous application when we went through the five factors that will allow us to make a decision; the first one being whether the benefit can be achieved by other means feasible to the applicant.

MR. BELL: No.

MR. EBERHART: No.

MR. GRAMSTAD: No.

MR. HERMANCE: No.

MR. MASTEN: No.

MS. REIN: No.

CHAIRMAN SCALZO: No. Very good. Thank you.

The second, if there's an undesirable change in the neighborhood character or a detriment to nearby properties. I set you guys up before and you fell right into my setup there.

Third, whether the request is substantial. You know, you look at it. The lots up there are small. This front yard setback, the rear yard setbacks, it's really -- it's

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difficult. Anyway, it might be substantial, but I don't think it's substantial enough that it's going to move me in any other direction.

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

MR. BELL: No.

MR. EBERHART: No.

MR. GRAMSTAD: No.

MR. HERMANCE: No.

MR. MASTEN: No.

MS. REIN: No.

CHAIRMAN SCALZO: I would agree.

The fifth, whether the alleged difficulty is self-created, which is relevant but not determinative. Of course it's self-created. You could not do it. But again, that's relative but not determinative.

So having gone through the balancing tests, does the Board have a motion of some sort?

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MR. EBERHART: I'll motion to approve.

MR. HERMANCE: I'll second.

CHAIRMAN SCALZO: We have a motion for approval from Mr. Eberhart. We have a second from Mr. Hermance.

Can you roll on that, Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Eberhart?

MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Gramstad?

MR. GRAMSTAD: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Ms. Rein?

MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

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

MS. BREYER: Thank you.

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MR. BREYER: Thank you.

(Time noted: 7:16 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 7th day of July 2023.



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

CLINTON DAUSWELL FOR BRIAN BARBERA

273 Route 17K, Newburgh
Section 90; Block 6; Lot 1
B Zone

----- X

Date: June 22, 2023
Time: 7:17 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: MICHAEL HENDERSON

----- X

MICHELLE L. CONERO
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Dover Plains, New York 12522
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CHAIRMAN SCALZO: Our next applicant is Clinton Dauswell for Brian Barbera, which is a Planning Board referral for area variances of the existing front yard setback and a 35-foot landscape buffer along Route 17K for restaurant conversion.

Siobhan, do we have mailings on this?

MS. JABLESNIK: This applicant sent out 31 mailings.

We have not received from the County yet. I contacted them today and it wasn't done.

CHAIRMAN SCALZO: Very good. Could you identify yourself, please?

MR. HENDERSON: Michael Henderson from Hennessy Architects.

CHAIRMAN SCALZO: Very good. What Siobhan just said is we sent it to the County and we have not received any information back from them. Do you understand what that

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means?

MR. HENDERSON: Yes.

CHAIRMAN SCALZO: I'll tell everybody else then. It means that we submit anything that's within 500 feet of a County road or a State highway to the County for them to review and provide comment. We give them thirty days for that. That thirty days starts from the day we send it, I believe. In this case, the applicant -- the County still has a few more days to go. We cannot act on this application this evening, vote on it by any means, but we can have the applicant's representative present to us, because I'm sure a few of you are here to hear about this.

So, please, the floor is yours.

MR. HENDERSON: So the existing building is currently -- was a shop for cleaning clothes, a dry cleaner. It is in the B Zone for converting it to a restaurant, which is a permitted

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use.

There are two variances we need because of the front yard setback and the landscaping, which are all existing and nonconforming. Basically any business that would take over this building would need those two variances to get a use -- a change of use or to occupy it.

CHAIRMAN SCALZO: Okay. That's all you've got?

MR. HENDERSON: Yes. There's no exterior work to be done. They're just changing the canopies, just to get the business name on them. That's the only exterior work.

CHAIRMAN SCALZO: No physical changes to the parking lot?

MR. HENDERSON: We're going to pave it. The Planning Board, they want it paved.

CHAIRMAN SCALZO: I was actually at that Planning Board meeting. I think it might have been

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you that said we're going to patch it
and --

MR. HENDERSON: Just a little
bit. That's what they wanted. And
to fix the fence for the garbage
enclosure.

CHAIRMAN SCALZO: Okay. Very
good. So we've got a lot of pre-
existing nonconforming issues here,
is what you're saying. It's not like
you're trying to add on. You're not
going up, you're not going out,
you're not adding more parking
spaces. Okay. Thank you.

I'm going to start back on my
left here. Ms. Rein, do you have
comments or questions about this
application?

MS. REIN: The paving of the
parking lot, will that information be
in writing somewhere?

MR. HENDERSON: Yes. During
the Planning Board, that will be on
the plan.

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MS. REIN: It would be a
commitment?

MR. HENDERSON: Yeah. Mr.
Ewasutyn, he's pushing for that.

CHAIRMAN SCALZO: Very good.
Ms. Rein, I'm kind of glad you went
there, because we are here for the
variances that they are applying for.
Paving of the parking lot, that's
just gravy, and that's the Planning
Board's --

MR. MASTEN: Deal.

CHAIRMAN SCALZO: -- deal, not
ours. I do appreciate you asking.
We're here looking at the variances
that they are applying for only.
We're looking at the pre-existing
nonconforming. They don't fit within
the footprint of the building envelope,
and whatever else we've got in there.
Thank you.

Mr. Masten?

MR. MASTEN: I have nothing.

CHAIRMAN SCALZO: Okay. Mr. Bell?

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MR. BELL: I don't have anything at this time.

CHAIRMAN SCALZO: Mr. Hermance?

MR. HERMANCE: So you're keeping the existing buffer, landscaping buffer? You're not changing or adding --

MR. HENDERSON: No.

MR. HERMANCE: -- or removing?

CHAIRMAN SCALZO: The code requires -- Mr. Mattina, help me out here. How many feet is it? 60?

MR. MATTINA: I would have to look at that.

CHAIRMAN SCALZO: I didn't mean to put you on the spot, Joe.

MR. HENDERSON: I think it was 35.

CHAIRMAN SCALZO: 35 for a landscape buffer.

MR. DONOVAN: 60 feet in depth from the State highway.

CHAIRMAN SCALZO: So 35. We currently don't have that. Again, if this was still in existence as the

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business that used to be there, we wouldn't be talking about it. Any business, as the applicant said, that comes in would be standing here looking for exactly the same thing.

Mr. Hermance, did I cut you off?

MR. HERMANCE: That was it.

CHAIRMAN SCALZO: How about you, Mr. Eberhart?

MR. EBERHART: No questions.

CHAIRMAN SCALZO: Mr. Gramstad? This is your neighborhood.

MR. GRAMSTAD: I know. I'm hoping it's a good restaurant. I can walk to it.

CHAIRMAN SCALZO: All right. So I'll say it again for the benefit of the public. We cannot vote on this tonight. We will certainly hear your comments, which will be a matter of record. If we have anyone in the public that would like to discuss or ask questions of the applicant, we're going to keep those questions

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relative to the variances that are being requested, and that's that. So if anyone has any questions, please step forward, state your name and we'll go from there.

Mr. Vega. I only know that because he's a frequent flyer here. He was here for the other parcel across the street. This happens to fall in a different zone. This one is also contiguous with your house.

MR. VEGA: Yes, sir.

CHAIRMAN SCALZO: He is right next door.

MR. VEGA: George Vega, 1 Arbor Drive. I'm the rear neighbor to Route 17K Cleaners.

A general question. I understand we're here for the variances requested. My question to the Board is, is the buffer and screening against or to adjoin districts? I know it's pre-existing. I guess my question is, at what point -- are they here for a

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variance for that? What are the requirements?

CHAIRMAN SCALZO: The buffer, you understand, is from 17K. The buffer is not on your side.

MR. VEGA: My question is, when you adjoin a residential district with the B Zone, there are buffer and screening requirements between the two different zones.

CHAIRMAN SCALZO: I'm going to have to defer to Mr. Mattina on this.

MR. MATTINA: You're really catching me off guard tonight.

MR. DONOVAN: While Joe looks, basically this Board has what's called appellate jurisdiction. When something gets referred to us, we generally don't have the ability, or the Board doesn't have the ability to identify other things. As a general rule, the Board just rules on what is referred to here or appealed here. In this case, just those two

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variances are before us. That's not to say something may not have been discovered earlier, or it could be that they comply.

MR. VEGA: That's my question. Was it already discussed and resolved and that's why they're not requesting a variance?

CHAIRMAN SCALZO: Keep in mind, too, Mr. Vega, they're here and this is not the end of the process. They need to go back to the Planning Board after we're done here, should they be successful here. Your opportunity to speak about exactly what you're talking about, you're going to have that ability at the Planning Board.

MR. VEGA: I understand that.

MR. DONOVAN: Typically it's pretty closely vetted at the Planning Board before it gets here relative to any zoning deficiencies. The Planning Board engineer looks at it pretty carefully.

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MR. VEGA: I'm here. I have a few concerns. I totally support the local business. I will be eating there, I promise you that. I do have screening and some drainage concerns.

CHAIRMAN SCALZO: Mr. Vega --

MR. VEGA: So they're talking about the parking lot paving. I'd like you to look at the plan, because as it exists now, there's a little pathway that goes around the back door, which is going to be the back of the restaurant. The plan shows it 18 feet wide, and that's not the case. If they're going pave -- I'd like to show you some pictures.

CHAIRMAN SCALZO: You have photos. Sure.

MR. VEGA: Just for reference.

CHAIRMAN SCALZO: We have seen it.

MR. VEGA: That's the back of the house. That's not 18 feet. I have a couple more. I just want to be clear, because they do have drainage

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problems. I get at least half of the roof and 25 percent of the parking lot sheet flow into my backyard. It's been a historic problem, I understand. I feel this is the only chance I have to speak my peace.

CHAIRMAN SCALZO: These are also great concerns when it comes to the Planning Board meeting, which I hope you'll attend.

MR. VEGA: Yes, sir.

CHAIRMAN SCALZO: I understand the industry you're in. I understand by you saying sheet flow, you know exactly what you're talking about.

MR. VEGA: The previous owner, they tried putting in curb stops. It flows. There's no diversion. It could be easily fixed.

CHAIRMAN SCALZO: Perhaps with the paving, they could, you know, perhaps reverse crown something and direct it away from the edge of the property and more towards the street.

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That's something that is out of our ability to impose upon.

MR. VEGA: Understood.

CHAIRMAN SCALZO: It appears from your photo here, and I wasn't looking at that particularly when I was at the property, but maybe expanding a little bit with their paving.

MR. VEGA: If that gets repaved the way it's shown, that looks like a perfect drive-thru.

My other question to the Board is, by changing the use to a restaurant use, let's say there are no substantial changes that need to be done, this applicant then leaves, can a Dunkin Donuts or a McDonald's occupy it without having to do anything to the property to protect my property?

CHAIRMAN SCALZO: I'm going to direct that question to the gentleman to my right.

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MR. DONOVAN: I'm looking at
buffer strips. What was the question?

CHAIRMAN SCALZO: Mr. Vega,
could you repeat it, please?

MR. VEGA: They get the change
of use to the restaurant use and they
don't have to do much to the
property. They're not proposing to
do anything to the property besides
repave. Now it's a permitted use, a
conforming use, no variances. Can
now it be reoccupied by McDonald's or
Dunkin Donuts with a drive-thru in
the back? That's what worries me.
It's screening and privacy. I know
they're probably permitted to do a
lot of things. I also think I have
to try to protect myself a little
bit, because if that does get
repaved, Dunkin Donuts can come.
That's a drive-thru window and that's
in my backyard.

MR. DONOVAN: I can't give you
a clear answer on that. If there's

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going to be a change from one to the other, it's going to have to go to the Building Department. They would flag it. I'm not sure going from -- I don't know what kind of restaurant is here. This could be a Dunkin Donuts. I don't know.

CHAIRMAN SCALZO: I thought at the Planning Board meeting they mentioned Jamaican cuisine.

MR. GALLI: The property is too small.

MR. VEGA: That's my concern if the pavement does get expanded. I have to try to protect my investment.

CHAIRMAN SCALZO: Should McDonald's, Dunkin Donuts or something else come in, I believe it would require a new site plan, which would also land in front of the Planning Board.

MR. VEGA: I'm just worried that it wouldn't. If it's a permitted use, a restaurant use --

CHAIRMAN SCALZO: They still

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need a site plan.

MR. VEGA: Once it's in --

CHAIRMAN SCALZO: Perhaps if it went from a Jamaican to an Italian to an Asian, they may not need something. For a substantial project such as McDonald's --

MR. VEGA: I understand it's to be continued.

CHAIRMAN SCALZO: Yes. We're going to be back here next month.

MR. VEGA: Screening and drainage are my concerns.

CHAIRMAN SCALZO: Perfect. Mr. Vega, I also want to call your attention, our Town of Newburgh website does have the code right on it. It's very easy to search.

MR. VEGA: I'm trying my best.

CHAIRMAN SCALZO: You already knew the answer to the question before you asked the question. Anyway, I encourage you to go ahead and research our code online. If you

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do find something -- we're human. If you find something that you may interpret as requirements for buffering that --

MR. MATTINA: I can answer a little bit. I think 185-21(C)(4), basically it's up to the discretion of the Planning Board on existing vegetation, whether it complies or not. It's up to the discretion of the Planning Board.

MR. VEGA: So you all know, they're overgrown weeds that turned into trees. I tried to put the 6-foot fence with the slats. With the elevation change between the two properties, you know, it's not much privacy for me or any neighbor down the block.

CHAIRMAN SCALZO: I understand that. The trees that you're talking about, they actually do provide -- I don't know what you want or don't want. I don't know if I'd like to

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see them come in and rip those out.
They do provide some screening for
you.

MR. VEGA: So as they grow,
they have a canopy up top, but you
can see from the pictures they're
just sticks. It doesn't give me any
sound or visual.

CHAIRMAN SCALZO: It falls in
your pool. Anyway, as you're aware,
we're going to be back here next
month with this. I recommend you
certainly attend the Planning Board
meeting. Your comments and concerns
you could convey to them.

MR. VEGA: Okay.

CHAIRMAN SCALZO: Thanks, Mr. Vega.

MR. VEGA: Thank you very much.

CHAIRMAN SCALZO: Is there anyone
else from the public that wishes to
speak about this application?

(No response.)

CHAIRMAN SCALZO: It does not
appear so.

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So Members of the Board, we have not heard back from the County of Orange with their determination, so I'll look to the Board for a motion to keep the public hearing open.

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

MR. BELL: I'll second.

CHAIRMAN SCALZO: We have a motion from Mr. Masten. We have a second from Mr. Bell.

MR. DONOVAN: To be clear, that's to continue to the fourth Thursday of July, whatever date that is. For anyone who is interested, there will not be another mailing. Just check the website. It will be on the fourth Thursday in July.

CHAIRMAN SCALZO: Thank you.

So we had a motion from Mr. Masten, a second from Mr. Bell. All in favor?

MR. GRAMSTAD: Aye.

MR. EBERHART: Aye.

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MR. HERMANCE: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Aye.

Those opposed?

(No response.)

CHAIRMAN SCALZO: Very good.

We'll see you next month.

(Time noted: 7:30 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 7th day of July 2023.

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

LAKEVIEW ENTERPRISES, LLC

343 Lakeside Road, Newburgh
Section 33; Block 1; Lot 26.1
R-1 Zone

----- X

Date: June 22, 2023
Time: 7:30 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: JOSEPH FLYNN &
HEATHER KAHN

----- X

MICHELLE L. CONERO
Post Office Box 816
Dover Plains, New York 12522
(845) 541-4163

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CHAIRMAN SCALZO: Our last applicant for new business this evening is Lakeview Enterprises, LLC, 343 Lakeside Road in Newburgh, seeking a use variance to allow for the expansion of a nonconforming business and nonconforming building on the property.

Do we have mailings on this, Siobhan?

MS. JABLESNIK: This applicant sent 31 letters.

CHAIRMAN SCALZO: 31 letters out. Very good.

Okay. It was a very short statement. If you could please introduce yourselves.

MR. FLYNN: I'm Joe Flynn and this is Heather Kahn. Heather is the architect. We're here, hopefully, to get this approved.

CHAIRMAN SCALZO: Okay. There was no requirement -- Lakeside Road is not a County road. We're not that

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close to 52 here.

MS. KAHN: I'm sure you're familiar with the property. There was an upper patio, a canopy installed, I believe twelve years ago.

MR. FLYNN: Twelve years ago. Somewhere around there.

MS. KAHN: A couple years ago there was a lower patio, it's a concrete slab, that was installed. None of these were done with permits.

We were directed we need a use variance. However, I think that's a little gray. We are not looking to change the use. It's a pre-existing nonconforming restaurant. It's been such since the 1800s. We're also not looking to intensify the use. The kitchen is not being enlarged. There's no additional parking. It's just an alternate location to sit. I'm sure you're aware, with COVID, everybody wants outdoor dining. This provides -- the one was done before

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that, but it's also on the lake.
Everybody wants to take advantage of
that.

We are requesting variances to
allow for these. They are in the
rear setback, however the property is
along the lake. There's many more
that are closer or also within the
setback. We feel like it's not a
change to the use or the character,
and would not negatively impact the
area.

CHAIRMAN SCALZO: Thank you.
Having eaten there many times, out on
that patio no less. It's one of my
favorite local restaurants.

My comments are going to be a
little odd to you. Included in the
package was a survey, and then
there's a portion up there that says
restricted property. Do we know what
that refers to?

MR. FLYNN: No.

CHAIRMAN SCALZO: Okay. And

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then I was also looking at -- I'm assuming that the improvements that are on the architectural plan, which are based off the survey from a 1996 survey.

MS. KAHN: There is one thing that's incorrect on those drawings. That lower paved area is not as close as it's shown on your drawing. It's actually 32.9 back from the water. It's not quite what it shows there.

CHAIRMAN SCALZO: Okay. I have a surveying and engineering background, so this stuff is very important to me. I don't know about these other guys. My question really was going to be, I see -- I don't use architect scales. I was curious how you arrived at the 21.4 without the benefit of a survey.

You just kind of hung me up, too, a little bit with the concrete patio is not actually where it shows on the map. They're the maps we

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have. I'm going to assume, as far as we make it with this, we're going to get that copy and not this copy.

MS. KAHN: Yes. So that was determined -- so we have the survey that shows the existing buildings, and then we measured from that.

CHAIRMAN SCALZO: Assuming the lines were straight and the building was square and all that other --

MS. KAHN: I'm sure it's-

CHAIRMAN SCALZO: I'm sure you've seen square buildings that are --

MS. KAHN: There are some potential variations there.

CHAIRMAN SCALZO: Like I say, it's kind of an odd comment on my end. Other than that, it's an enhancement to the character of the neighborhood, in my opinion. That's just me.

I'm going to look down to Mr. Gramstad. Do you have any comments

2 on this, sir?

3 MR. GRAMSTAD: No. It's a nice
4 restaurant.

5 CHAIRMAN SCALZO: And like I
6 say, it was done, it's lovely outside.

7 MR. GRAMSTAD: Yes.

8 CHAIRMAN SCALZO: I don't know
9 if that's how we should be looking at
10 it as a Board.

11 Mr. Eberhart?

12 MR. EBERHART: No comment.

13 CHAIRMAN SCALZO: Mr. Hermance?

14 MR. HERMANCE: I have no questions.

15 CHAIRMAN SCALZO: Mr. Bell?

16 MR. BELL: None. I think it's
17 very nice.

18 CHAIRMAN SCALZO: It's been
19 there for twelve years.

20 MR. BELL: It's been there
21 forever, you know.

22 CHAIRMAN SCALZO: Just the
23 patio is what we're talking about.

24 MR. BELL: Yes, the patio.

25 It's only there during the summer

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months. Correct. It's taken down.

MR. FLYNN: It's not closed in
and heated.

CHAIRMAN SCALZO: A permanent
roof, but no sides.

MR. BELL: Exactly.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: I have no questions.

CHAIRMAN SCALZO: Ms. Rein?

MS. REIN: I'm good.

CHAIRMAN SCALZO: Counsel, I'm
going to turn to you on this. There
were questions regarding the use
variance. I think they might have
captured it right.

MR. DONOVAN: As I understand
it, the property, Joe, is in the R-1
District. Correct?

MR. MATTINA: Yes.

MR. DONOVAN: R-1 Districts
don't allow restaurants. You're
what's known as a preexisting
nonconforming use. The general rule
is, an expansion of a preexisting

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nonconforming use requires a use variance because you're limited to what you had when you became a nonconforming use. So that is where they got dinged by the Code Compliance Department, because the code says a nonconforming use shall not be enlarged, extended or reconstructed as a general principle. The law, of course -- that's the general principle of the law. Any kind of extension or enlargement would require a use variance because it's not a conforming use. As you may know, the law is not always what you think it may be.

I spent a little extra time on this particular file. I have what I call a tale of three cases about what constitutes an expansion of a nonconforming use. There's a case from the Village of Piermont back in 2008 where there was outdoor seating and a canopy was put over the outdoor

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seating. What the court found is that's not an increase in the use because it's the same use. Right. So the general principle is that a distinction be drawn where there's been a purposeful expansion of the nature of the operation. So in this case, when you put an awning or a canopy over existing seating, that's not an expansion of the use.

There's a case from 2016 where the owner of a -- these next two cases are about marinas with outdoor seating. In this case, there were several decks, an awning, a gazebo with an attached shed and alterations to the existing restaurant. That was found to be an increase in the operation itself.

You're describing the circumstance. There's no additional parking, the kitchen is not any bigger, you're not really serving any more people. Essentially it's just a

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different place to sit.

Then there was a case earlier this month where the court said, you know what, we really can't say that the ZBA was correct because there was, again, a substantial expansion of docks and their use as a marina, but you have to go back to the ZBA to see if it has been an expansion of the use.

So as you also know, you don't have proof here of a use variance. However, if the Board is comfortable that this is just an increase in the volume of one's business and does not change the use, you can render an interpretation that this does not require a variance because it is just an increase in the volume of the use.

CHAIRMAN SCALZO: It doesn't require a use variance.

MR. DONOVAN: It doesn't require any variance. It would just be an interpretation.

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CHAIRMAN SCALZO: Got you.
Okay.

The outdoor seating -- I've eaten there in many seasons. It appears that the inside dining room has a little more elbow room when that happens. I don't know that they really increased the seats that much.

MR. DONOVAN: That becomes a matter of degree. You have a restaurant with a hundred seats and you put two more seats in, that's not an increase in the intensity of the use. If you have a restaurant with ten seats and you build an addition and make it a catering facility for a hundred and fifty people, that's an increase in the intensity of the operation. Right?

MR. BELL: Right.

CHAIRMAN SCALZO: Thank you, Counselor.

MR. BELL: Well spoken.

CHAIRMAN SCALZO: That's why we

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pay him the big bucks.

So for us to render a determination or -- not a determination but an interpretation this evening, do we still have to go through the --

MR. DONOVAN: You would not. You would not have to go through the balancing tests. It's a Type 2 action under SEQRA. You have to render an interpretation, and I'm going to read from my notes, that there's just an increase in the volume of the business but it's not a change in the use and it's not a purposeful expansion of the nature of the operation.

CHAIRMAN SCALZO: Okay.

MR. HERMANCE: A variance wouldn't be needed?

MR. DONOVAN: It would be an interpretation.

MR. EBERHART: We would vote on the interpretation.

CHAIRMAN SCALZO: We have a

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little ways to go, Mr. Eberhart. We still need to open this up to the public.

So thank you, Counselor. That was certainly helpful.

I think I got through us all. I didn't have any comments. I gave you my comments in the beginning.

At this point, I'll open it up to any members of the public that wish to speak about this application. If you could step forward, please. State your name and use your outside voice.

MR. GAYDOS: Michael Gaydos, Town of Newburgh, Orange Lake resident. When I bought my house I was twenty-three. I just turned sixty.

That restaurant has been there forever. Before my time. It employs many people, supports a lot of local businesses. The only thing they ever did there was enhance what they had.

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If you know where that thing lies,
it's a hill. You couldn't put more
parking there. It couldn't serve
anything else but what they put
there. It's a beautiful place.

I support the establishment and
I hope your consideration is to go
forward with it.

CHAIRMAN SCALZO: Thank you,
Mr. Gaydos.

As Mr. Gaydos walks away, we
did receive correspondence from the
Orange Lake Homeowners Association in
support of this as well.

I do believe -- help me out
here, Counsel. We did have an
application for the property
contiguous to this same owner, Rowan
Realty. They did a wonderful job on
that. It appears that, in association
with this, it's all quality work. It
all looks great.

MS. REIN: Darrin, what we're
saying is that if we do this

2 interpretation, it negates everything
3 else, so they didn't even have to be
4 here?

5 CHAIRMAN SCALZO: I'm not sure
6 of that. They did decrease the side
7 yards. I'll refer back to the
8 application.

9 MS. KAHN: I believe we would
10 still need an area variance for the
11 rear yard setback and also lot coverage.

12 MR. DONOVAN: I didn't see that
13 called out in the application.

14 MR. MATTINA: I'll respond.
15 Really, there are no setbacks to go
16 against because it's not a permitted
17 use there. There are no setbacks to
18 go by.

19 CHAIRMAN SCALZO: So this could
20 be really easy or really hard. Right?

21 MR. MATTINA: What's why I bring
22 it here.

23 Just one other thing. Outdoor
24 seating needs to be approved by the
25 Planning Board. When they get

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approved here, they will be referred to the Planning Board, because they're the ones that approve outdoor dining, just so you know.

MR. BELL: Okay.

MR. MATTINA: If they needed a use variance, it's harder to obtain a use variance. That's why we sent them here first.

CHAIRMAN SCALZO: I understand that, Mr. Mattina. Thank you.

Anyone else from -- please step forward and speak with your outside voice, please.

MS. DAIGLE: My name is Lynn Daigle. I live at 349 Lakeside Road, and have lived there since 1994.

Nothing has happened with the Lakeview House that hasn't improved the area. It's well thought of. It's not loud. It's a family restaurant. We walk along the wonderful outside patio that they've done daily.

2 I would hope that they would be
3 approved for whatever it is they have
4 to do now, because it's only going to
5 get better.

6 CHAIRMAN SCALZO: Thank you for
7 your comments.

8 Anyone else from the public?
9 Please step forward.

10 MR. FARNELL: Jeff Farnell.
11 I'm the current president of the
12 association. You did get my letter?

13 CHAIRMAN SCALZO: I saw your
14 letter.

15 MR. FARNELL: I appreciate that.

16 A couple of things that were in
17 the letter that I didn't bring up
18 was, in the advent of COVID and
19 everything else, it was nice to have
20 something close to home that did have
21 some kind of outdoor seating. A lot
22 of other companies, restaurants
23 seemed to put concrete barriers in
24 their parking lot and kind of work
25 around it. They were already

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prepared for that, and it was because of that over thinking. At least in my opinion, it was gratuitous, but I really enjoyed it. To see those sunsets, that's what makes it. It brings a lot of people from around to the Town of Newburgh.

CHAIRMAN SCALZO: Thank you for your comments.

Anyone else from the public?

(No response.)

CHAIRMAN SCALZO: It does not appear so.

I'm going to look back to the Board.

MS. REIN: I'm good.

CHAIRMAN SCALZO: All right. I'll look to the Board for a motion to close the public hearing.

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

MR. GRAMSTAD: I'll second it.

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

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second from Mr. Gramstad. I didn't
turn my head fast enough. All in
favor?

MR. GRAMSTAD: Aye.

MR. EBERHART: Aye.

MR. HERMANCENCE: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Aye.

Those opposed?

(No response.)

CHAIRMAN SCALZO: Very good.

So with regard to the
interpretation, and this is for
Michelle, I would like to have
Counsel paraphrase, or even
completely phrase what it is that he
had said before regarding the
interpretation, unless there's any
other discussion that the Members of
the Board would like to add to that.
I thought it was very clear to me,
the way Counsel had described it,

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that I don't believe a use variance is necessary.

MR. BELL: I agree. It was already there. I mean, they're not expanding anything.

CHAIRMAN SCALZO: A couple extra chairs.

MR. BELL: Just an overhead canopy.

CHAIRMAN SCALZO: Counsel, do we vote on that?

MR. DONOVAN: My suggestion, if you're so inclined, is someone make a motion to determine that the outdoor seating is an increase in the volume of the business only and is not an expansion of the nature of the operation itself, and is, therefore, permitted and no use variance is required.

CHAIRMAN SCALZO: Very good. I'm going to summarize that by saying what he said. Do we have a motion for that?

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MR. BELL: I'll make a motion.

MR. DONOVAN: You're allowed to say I make that motion.

MR. BELL: I'm going to say I make that motion which you spoke so eloquently.

MR. EBERHART: Second.

CHAIRMAN SCALZO: We have a motion from Mr. Bell. We have a second from Mr. Eberhart. All in favor?

MR. GRAMSTAD: Aye.

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Aye.

Those opposed?

(No response.)

CHAIRMAN SCALZO: Step one is done.

There are no setbacks, Joe, because this is in a zone that's --

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MR. MATTINA: That doesn't
address it.

CHAIRMAN SCALZO: So I believe
at that point we're done.

MR. FLYNN: Thank you very
much.

CHAIRMAN SCALZO: You still
have to go to the Planning Board.

(Time noted: 7:50 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 7th day of July 2023.

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

ELYSIA AND TODD NESPOLI
23 Sommerfield Drive, Wallkill
Section 3; Block 1; Lot 133
AR Zone

----- X

Date: June 22, 2023
Time: 7:50 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: TODD NESPOLI &
ELYSIA NESPOLI

----- X

MICHELLE L. CONERO
Post Office Box 816
Dover Plains, New York 12522
(845) 541-4163

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CHAIRMAN SCALZO: It appears we only have one remaining applicant which is a holdover from the May 25, 2023 meeting, which I was not in attendance at, which, after I read the meeting minutes, I'm kind of surprised it's still here. Thank you, fellow Board Members. More specifically, Mr. Hermance.

It was for an area variance to keep chickens on a 1.1 acre lot where 2 acres is the minimum. It's 23 Sommerfield Drive. You folks heard testimony last month.

I read the meeting minutes, if you're looking for my opinion.

The public hearing is still open. So, how about this. Are there any members of the public that wish to speak about this application?

MR. BELL: That didn't speak the last time.

CHAIRMAN SCALZO: That didn't speak the last time.

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(No response.)

CHAIRMAN SCALZO: All right.

MS. REIN: I want to say something. I wasn't here for that meeting either, but I did read pretty much everything I could.

CHAIRMAN SCALZO: If you did a drive-by and read the meeting minutes, you're good to go.

MS. REIN: I was there. There was a problem with the chickens exploring on their own.

CHAIRMAN SCALZO: This is where we become effective.

MS. REIN: Well, I was there at the home. It's a lovely home. Lovely property. Nobody was home. I rang the bell, I knocked on the door. I went around the back to see if anybody was there. There was nobody there. While I was in the back, a little chicken came up to meet me. What I saw was a small wire, three-sided enclosure. The chickens were

2 allowed to roam.

3 From what I understand from
4 what I read, because I wasn't here,
5 was that the chickens were only
6 allowed to be out for one hour
7 supervised. I think that's what Ms.
8 Nespoli said.

9 MR. NESPOLI: We --

10 CHAIRMAN SCALZO: Hang on.
11 You're going to have -- I know you
12 spoke last month. You're still going
13 to have to stand up and say your name.

14 MR. NESPOLI: No problem.

15 MS. REIN: I didn't see anybody
16 around, and the chickens were roaming
17 free. I know that was an issue.
18 Again, I wasn't here for the meeting,
19 but I thought I'd bring that up.
20 There was nobody there.

21 CHAIRMAN SCALZO: Right. I'm
22 going to put Mr. Mattina on the spot,
23 yet again.

24 MR. MATTINA: Not this time.
25 I'm well aware of chickens. They

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must be caged.

CHAIRMAN SCALZO: So they happen to be in the right zone, they just don't have the right acreage.

MR. MATTINA: Correct.

CHAIRMAN SCALZO: Had I been here last month, my only concern would have been all of the code rules that apply to a 2-acre in this case, because it's 1 acre. It's not like it's a boxcar. It's a big piece of property. That's it. They need to apply. That's my opinion. But other than that, I didn't have -- I thought, you know, you were appropriate in your procedures last month. You did a great job, Darrell.

When the chicken came up to you, did you pet it and give it a little love?

MS. REIN: I ran like hell.

MR. EBERHART: Scared of chickens.

MS. REIN: I'm a city girl. I can't help it.

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CHAIRMAN SCALZO: I would have loved to have seen that.

MS. REIN: It was something to see.

CHAIRMAN SCALZO: Very good. So having no one else from the public that wishes to speak about this, I'll make a motion, or have someone on the Board make a motion, to close the public hearing.

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

MR. MASTEN: Motion to close --

CHAIRMAN SCALZO: Mr. Eberhart got it all out first. I'll take it from him, but I'll take a second from that guy, Mr. Masten. All in favor?

MR. GRAMSTAD: Aye.

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Aye.

2 Those opposed?

3 (No response.)

4 CHAIRMAN SCALZO: Very good.

5 So Counsel, in this case, this is an
6 area variance. Correct?

7 MR. DONOVAN: That is correct.

8 CHAIRMAN SCALZO: So it is a
9 Type 2 under SEQRA.

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

12 CHAIRMAN SCALZO: So before we
13 -- we're going to roll through these
14 factors here, but we may impose
15 reasonable conditions here. So what
16 reasonable conditions do we have in
17 mind here? I'm not opposed to them
18 having chickens. I think it's -- you
19 know, they could be wonderful pets
20 for some people. Maybe perhaps not
21 city girls.

22 Mr. Bell.

23 MR. BELL: I noticed that on
24 Lakeside Road, right across from the
25 restaurant, there's a house on the

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corner that has chickens, and they are enclosed. So the condition is that they have to be enclosed. They can't roam free.

MS. REIN: A full enclosure. Not just a three-side enclosure.

CHAIRMAN SCALZO: A top on it? You want a top on it, too?

MS. REIN: It had a top and it had three sides, but it was open.

MR. BELL: Because it has to fall within the guidelines.

MR. NESPOLI: Excuse me. That's not our house. We have a full chicken coop. We do not have a three-sided open anything. That's not our home.

MS. REIN: I looked at the pictures and I went there. That's what I saw.

MR. NESPOLI: No, no. We sent pictures. That might have been the add-on. That might have been the add-on. I was adding to it and I didn't finish it yet.

2 CHAIRMAN SCALZO: Okay.

3 MR. NESPOLI: I have a complete
4 chicken coop.

5 CHAIRMAN SCALZO: It looks like --

6 MS. REIN: I didn't see another
7 enclosure.

8 MR. NESPOLI: I have two
9 enclosures, ma'am. Two connected.

10 MS. REIN: They're connected.
11 There's one piece there. I saw that
12 other door was open. I mean, the
13 chicken came over to me. I didn't
14 let it out.

15 MR. NESPOLI: When you said
16 there's only three sides, if there
17 was only three sides --

18 MS. REIN: Three enclosed sides.

19 MR. NESPOLI: You need four for
20 a home.

21 MS. REIN: You need four sides.
22 One of them wasn't enclosed.

23 MR. NESPOLI: I don't understand.
24 Ma'am, you show me the pictures,
25 please. I don't understand what you're

2 saying.

3 MR. BELL: Did I just hear you
4 say --

5 CHAIRMAN SCALZO: Settle down.

6 MR. NESPOLI: I don't understand.

7 CHAIRMAN SCALZO: State your
8 name first.

9 MR. NESPOLI: Todd Nespoli, the
10 homeowner.

11 MR. BELL: Did I hear you say
12 you were working on it but it was not
13 finished?

14 MS. NESPOLI: It is now.

15 MR. BELL: You just said a minute
16 ago --

17 MR. NESPOLI: We have a complete
18 one. We bought it, we built it, we
19 got chickens, then we got the complaint.
20 I felt bad for the chickens, so I
21 made it bigger, because we weren't
22 letting them out any more. That I
23 was building only on Sundays because
24 I work six days a week. I come home,
25 do a little bit, go to sleep,

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whatever, eat, come out, and then I put it together. It is completely closed.

MR. BELL: What I'm getting at is, maybe, as you stated that you were still working on it, that she came out and it wasn't completely finished.

MS. NESPOLI: That's what I'm wondering.

MR. NESPOLI: We had one that was already completed.

MR. BELL: I can only go with what Donna said.

MR. NESPOLI: I'll show you.

MR. BELL: I've seen your pictures.

MR. NESPOLI: I'll show you what I mean. This I built a year ago. One, two, three, completely enclosed.

CHAIRMAN SCALZO: Hang on. I understand your point. I understand what you're saying. We're going to

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impose a reasonable condition upon you that they are in an enclosure. We don't need to continue this conversation.

MR. BELL: Just make sure there's four sides and a top.

MS. REIN: Four enclosed sides.

CHAIRMAN SCALZO: Mr. Mattina, are there any -- I don't own chickens myself. Is there a certain amount of square feet per chicken that you really should -- where I'm going with this is, the enclosure is the enclosure. Is there a maximum amount of chickens that were --

MR. MATTINA: Building Code-wise, no. Zoning Code-wise, no. New York State law, I'm not familiar with it. I know you have to buy certain fowl six at time or three at a time. I'm not sure what the laws are.

CHAIRMAN SCALZO: So obviously, the other reasonable condition would be any state law, which is a state

2 law. We don't have any local law
3 regarding the amount of chickens.

4 MR. NESPOLI: Wallkill is --

5 CHAIRMAN SCALZO: You're not
6 going to put them in a shoebox.

7 MR. DONOVAN: Twenty-five on 2
8 acres?

9 CHAIRMAN SCALZO: How many
10 chickens do you have, sir?

11 MR. NESPOLI: Eight. We had
12 more, but with the chicken math, they
13 get eaten. You do chicken math.

14 CHAIRMAN SCALZO: If we allow
15 twenty-five chickens on 2 acres, do
16 we want to cap them at a dozen on 1?

17 MR. BELL: That's where I was
18 going to go.

19 CHAIRMAN SCALZO: Are you okay
20 with a dozen on 1?

21 MR. NESPOLI: I don't have a
22 dozen. That's great. I'd be happy,
23 grateful.

24 CHAIRMAN SCALZO: We're going
25 to cap you then.

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MS. REIN: That sounds reasonable.

CHAIRMAN SCALZO: Anyone else
on the Board?

MR. EBERHART: Cap it at twelve
and they're enclosed.

MR. BELL: Completely enclosed.

MR. HERMANCE: There is already
a stipulation that you can't have
roosters. Correct?

MR. MATTINA: Our code doesn't
say that, but you guys can.

MR. NESPOLI: We don't have that.

CHAIRMAN SCALZO: You don't have
one now, and you'll never be allowed
to have one. That's going to be in
your --

MR. NESPOLI: Can we get this
in writing?

CHAIRMAN SCALZO: Yeah.

MR. NESPOLI: I'm just making
sure.

CHAIRMAN SCALZO: It becomes
the decision that is filed with the
Town.

2 MR. DONOVAN: When I'm quiet,
3 I'm making notes.

4 CHAIRMAN SCALZO: Very good.
5 All right. So now, here we are going
6 to -- if there's -- so we talked
7 about full enclosure, capped at
8 twelve chickens. Was there something
9 else?

10 MR. BELL: No roosters.

11 CHAIRMAN SCALZO: No roosters.
12 Compliance with any state laws.
13 That's relatively simple.

14 Now we're going to roll through
15 our five factors here. The benefit
16 can be achieved by other means
17 feasible to the applicant. Fresh
18 eggs is fresh eggs.

19 Second, if there's an undesirable
20 change in the neighborhood character
21 or a detriment to nearby properties.
22 With the chickens being caged, I
23 think that will alleviate some of the
24 concerns. Would you folks agree?

25 MR. GRAMSTAD: Yes.

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MR. EBERHART: Yes.

MR. HERMANCE: Yes.

MR. BELL: Yes.

MR. MASTEN: Yes.

MS. REIN: Yes.

CHAIRMAN SCALZO: Very good.

The third, whether the request is substantial. Well, when you talk about the acreage being a 1-acre lot, it's still a decent size lot, which is why we're going to restrict the amount of chickens.

Fourth, whether the request will have adverse physical or environmental effects. Not after they're caged. They'll just have to hope the ticks go in the caged area.

MR. NESPOLI: They make moveable cages. That's our next option.

CHAIRMAN SCALZO: The fifth, whether the alleged difficulty is self-created, which is relevant but not determinative. Of course it's self-created. Again, it's relative

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but not determinative. This is a self-created problem. I'll explain it after we're done here.

MR. BELL: I'm just hearing him say moveable cages. They need to be in the same spot.

CHAIRMAN SCALZO: I'll hit that in a minute. Let's get through this.

We have gone through and we have imposed reasonable conditions. Does the Board have a motion of some sort?

MR. HERMANCENCE: I'll make a motion to approve with the conditions that have been read.

MR. GRAMSTAD: I'll second it.

CHAIRMAN SCALZO: We have a motion from Mr. Hermance. We have a second from Mr. Gramstad. I saw you nodding, Mr. Eberhart. I didn't see your lips moving.

Can you roll on that, Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

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MS. JABLESNIK: Mr. Eberhart?

MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Gramstad?

MR. GRAMSTAD: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Ms. Rein?

MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

All right. The motions are carried. Your variances are approved with the reasonable conditions that we just talked about.

MR. NESPOLI: Can I have one more question, though, --

CHAIRMAN SCALZO: Sure.

MR. NESPOLI: -- since he's taking notes? We plan -- if I have somebody come to fence in our property with a six-foot fence, if we do that and the backyard is

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contained, are they allowed to come out of the coop? That's what I want to know.

MR. HERMANCE: They'll always fly over the six-foot fence.

MR. BELL: They have to stay in the cage.

MR. NESPOLI: That's why I figured I'd ask you guys now.

MR. BELL: They could fly and get over. They have to be in the cage.

MR. NESPOLI: No problem.

CHAIRMAN SCALZO: Very good. Motion approved.

That's it. We're done with normal Board business.

The last thing is for approval of last month's meeting minutes. A motion to approve?

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

MR. EBERHART: I'll second.

CHAIRMAN SCALZO: We have a

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motion from Mr. Gramstad and a second
from Mr. Eberhart. All in favor?

MR. BELL: Aye.

MR. EBERHART: Aye.

MR. GRAMSTAD: Aye.

MR. HERMANCE: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Aye.

Motion to adjourn.

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

CHAIRMAN SCALZO: I'll second
that.

All in favor?

MR. GRAMSTAD: Aye.

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Aye.

(Time noted: 8:03 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 7th day of July 2023.

Michelle Conero

MICHELLE CONERO