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HELD REMOTELY VIA ZOOM

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

----- X

In the Matter of

FRANCIS SPINELLI

64 Holmes Road, Newburgh  
Section 20; Block 4; Lot 3.2  
AR Zone

----- X

Date: June 25, 2020  
Time: 7:00 p.m.

BOARD MEMBERS: DARRIN SCALZO, Chairman  
RICHARD LEVIN  
JOHN MASTEN (Present at 7:05 p.m.)  
ANTHONY MARINO  
DARRELL BELL  
PETER OLYMPIA

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

APPLICANT'S REPRESENTATIVE: FRANCIS SPINELLI

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

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CHAIRMAN SCALZO: I'd like to call the meeting of the ZBA to order. The order of business this evening are the public hearings as scheduled on the ZBA agenda which has been posted on the Town of Newburgh website. The procedure of the Board has recently been modified to a video format due to social distancing requirements as adopted by the Town of Newburgh and in accordance with New York State guidance. The Chairman or his designee will read the announcement as it appears on the agenda. The Chairman or his designee will summarize the applicant's request and then the applicant will be called upon to add any additional information pertinent to the application as to why the variances sought should be granted relief under the Code. The Board will then ask the applicant any questions it may have, and then any questions or comments from the public will be entertained. It is important for the public to be aware that applications and supporting documents are all available for viewing on the Town of Newburgh website under the meetings tab. The Board will consider each application in its entirety and will try to

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render a decision this evening but may take up to 62 days to reach a determination.

We'll have the public muted during the Board and applicant discussion period. The Board will then unmute the meeting and any member of the public will be allowed to speak regarding any application. Members of the public who choose to speak will need to identify themselves as the meeting is a matter of public record. We will constantly monitor the video feed. And once a member of the public is designated to speak, we will attempt to mute all other members of the public but we'll leave the applicant or the representatives unmuted to respond to any questions directly. Please consider your comments as they relate to the application and to Town Code.

Roll call, Siobhan.

MS. JABLESNIK: Darrell Bell.

MR. BELL: Here.

MS. JABLESNIK: Richard Levin.

MR. LEVIN: (No response.)

MS. JABLESNIK: He's here too, somewhere.

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Anthony Marino.

MR. MARINO: (No response.)

MS. JABLESNIK: I saw him. He's here.

John Masten. I did not see him.

John McKelvey is absent.

Peter Olympia.

MR. OLYMPIA: Here.

MS. JABLESNIK: Darrin Scalzo.

CHAIRMAN SCALZO: Here.

MS. JABLESNIK: We have Dave Donovan;  
our Stenographer, Michelle Conero; and from Code  
Compliance we have Joe Mattina.

CHAIRMAN SCALZO: All right. Very good.  
Thank you.

Our first applicant this evening is  
Francis Spinelli, 64 Holmes Road in Newburgh. The  
applicant is seeking an area variance of storage  
of vehicles to build an 80 by 60, which is 4,800  
square feet, four plus car garage.

Siobhan, do we have mailings?

MS. JABLESNIK: We do. This applicant  
sent out 42 mailings.

CHAIRMAN SCALZO: Okay. Town Code  
Section 185-55 states such notice shall be by

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first class mail in envelopes which have been addressed on and which require first-class postage as been paid for and affixed by the applicant, to be mailed by the secretary of the Zoning Board of Appeals or another employee or officer of the Town who shall complete and file an affidavit of mailing with the Board listing each address to which the notice was sent.

Siobhan, did you sign the affidavit as required by Section 185-55?

Tony --

MR. MARINO: Yes.

CHAIRMAN SCALZO: -- we can still hear you, sir.

MR. MARINO: You don't want to hear me; right?

CHAIRMAN SCALZO: Not at this moment, but we're going to get to you.

Siobhan, you did sign the affidavit as required by Section 185-55?

MS. JABLESNIK: I did, yes.

CHAIRMAN SCALZO: Very good. Dave Donovan, I'm just going to reach out to you at this moment. Dave, because one of the

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applications this evening there was concern regarding the public notice. Dave, could you expand upon that a little more, please?

MR. DONOVAN: Certainly, Mr. Chairman. So the requirement for public notice actually has three different areas of law that have jurisdiction. The first two are New York State Law which is Section 104 of the Public Officers Law and Section 267-A the New York State Town Law. Both State law provisions require only publication in a newspaper of general circulation and publication in or posting in a public place. So State law does not require any mailings. Our local Code, however, does require mailing as you've just indicated.

So just relative to the point, I know someone had submitted some communication to the Board questioning whether our mailing and our public notification was accurate. It is a hundred percent accurate. Any allegation to the contrary is false.

CHAIRMAN SCALZO: Thank you, Dave.

Okay. Moving on to the body of the application. As mentioned, the applicant seeks to

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build quite a structure on 23 acres. A single-family at 60 by 42, which is 2,520 square feet, with an attached garage for an additional 4,800 square feet.

Why this was referred to the ZBA was Code provides for garages with a maximum of four-vehicle storage and the dimensions of the attached garage could potentially allow for more than four vehicles.

I'm going to look to Joe Mattina. Joe Mattina, that is the gist of this applications; correct? That is the one item in the Code that this applicant needs to meet?

MR. MATTINA: That's it.

CHAIRMAN SCALZO: Thank you, Joe.

Let's see. The property is in the AR district, which stands for Agricultural Residential. All of the lots in front of it up to Holmes Road are in the AR district.

Is the applicant or the representative here this evening to speak about this application? Is that Mr. Spinelli?

MR. SPINELLI: Yes.

CHAIRMAN SCALZO: Very good. And sir,

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have I summarized it adequately or are there additional items that you'd like to add?

MR. SPINELLI: No. Actually that's exactly what we're up to.

CHAIRMAN SCALZO: Okay. In that case we have some correspondence from the public which I'm going to read into the minutes. It's not as lengthy as some of the correspondence we have for other applications this evening, but I'm going to do my best.

All right. This correspondence is from Joe Costanzo, but he also had support from Ricky Hull as well as Chris Costanzo. Although it's authored by Joe Costanzo, there are two others that are supporting it. I do see some names up here on the screen, so hopefully they can jump in if they feel necessary.

The e-mail: "Gentlemen, I hope today finds you well. I am seeking explanation and resolve for all matters and concerns as factually described below.

I am writing to you today with great concern for the following reasons pertaining to the accepted incomplete Zoning Board of Appeals



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application for variance to be in front of the ZBA Board this Thursday evening.

First and foremost, when did the State neighbor notification law change? Why is the Town relying on snail mail only and not staying with the traditional return receipt for such important vital matters pertaining to the direct adverse impact to our Town's neighborhoods such as this? Several of my neighbors as well as myself did not receive any notification at all."

I'm going to break away from the actual body of the e-mail. Just as we had discussed in the opening for this application, notifications were published in the appropriate local publication and mailings were distributed in accordance with Town Code 185-55.

Back to the body of the e-mail. "Most importantly, the application is incomplete and should not move forward. Please see page 3, section 5, part D."

Breaking away from the body of the e-mail. Page 3, section 5, part D of section 5 reads, "If a use variance is requested," and I end quotes there. The applicant before us this

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evening is seeking an area variance, therefore section 5 does not apply to this application.

Back to the body of the e-mail. "Also see short environmental assessment form part 2 has not been completed by the lead agency. It is blank. Who is lead agency?"

Breaking away from the e-mail. The response: In this application the Zoning Board of Appeals is the lead agency. I'm going to jump to Dave Donovan just to weigh in on this regarding lead agency and the procedure of the Board.

MR. DONOVAN: So thank you, Mr. Chairman. So typically, in an action such as this, the ZBA would be the lead agency. After the application was heard and before a determination of significance was made, part 2 of the EAF would be completed by us as the lead agency, and then a determination of significance, negative declaration or a positive declaration would be issued. What is different about this application, though, is this application is what's called a Type 2 action. Under the State Environmental Quality Review Act a Type 2 action

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is exempt from the SEQRA requirements. I'll just quote, it's under 6 NYCRR Part 617, Subdivisions 11, 12 and 17. So therefore there is no further action under SEQRA required. And while we wouldn't normally fill out this form at this stage, at the applicant stage -- the application stage, it does need to be completed in any event.

CHAIRMAN SCALZO: Thank you, Dave.

Moving back to the body of the e-mail.

"And the environmental assessment form part 3, determination of significance is missing as well."

Dave, I'm going to defer to you on this.

MR. DONOVAN: So again Mr. Chairman, you don't make that determination until after you've considered the application. But again, this is a Type 2 action and therefore no determination of significance is required as this matter is exempt from SEQRA regulations.

CHAIRMAN SCALZO: Thank you, Dave.

And then moving back into the body of the e-mail. "These items as well as the five obvious misleading answers to question number 6

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on the applicant's variance application. Number 6, the variance will grossly produce an undesirable change of the neighborhood and will be a detriment to nearby properties. B, the benefit sought by the applicant most certainly can be achieved by some other method feasible for the applicant while keeping the aesthetics of the existing surrounding residential neighborhood. C, the requested variance is grossly substantial. The allowable size of a garage structure is 20 by 50. The applicant is asking for an 80 by 60, that's almost a 500 percent overage, to keep an RV out of the weather. Remember, this property was going to be residential. That would have brought a substantial amount of tax revenue for the Town, but now we have a tree farm. Perhaps it should be of the ZBA's requested opinion that the applicant needs to put more emphasis on farming and not housing his recreational vehicle."

We are going to allow -- moving away from the body of the e-mail. We are going to allow the public to comment on this, but just one short response is tax revenue is not a consideration of this application.

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"The proposed variance" -- back to the body of the e-mail. "The proposed variance will have an adverse effect and impact on the physical and environmental condition of the neighborhood and district because although the property is being used as agricultural, it lies within a residential zone as well as a floodplain."

As I mentioned in the beginning of this application, it is in the AR Zone, which is Agricultural Residential. I did look at any public records available to me and I did not find any verification that this lot was in a floodplain. But perhaps when we open it up to the public to speak, someone can clarify where they obtained the information that this property is in a flood zone.

Back to the body of the e-mail. "The hardship has been self-created because the applicant would not need a variance and would not be in front of the Appeals Board if the applicant would just simply prioritize the use of the land in which it was intended for, i.e. farming.

In closing, there's been no consideration for stormwater runoff and control

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or any guidelines or plan for current MS-4 provisions. For the Board's information, the previous proposed subdivision plan shows a donated parcel of land to be used as retention for drainage on this very same property which the parcel recently has been filled in by the applicant in its entirety. Those plans are still available for the Board and any other interested parties so you can see the exact location which I believe is in the vicinity of the proposed garage warehouse that the applicant seeks permission to build.

Please respond accordingly to all above matters. I understand the meeting is tomorrow. I urge this application to be removed from the agenda until all matters have been resolved.

Thank you in advance for your cooperation in this matter. Please distribute this e-mail to all Zoning Board Members as well. Best regards, Joe Costanzo."

That is the conclusion of Mr. Costanzo's e-mail.

I'm going to go back to the e-mail regarding Mr. Costanzo's implication that this is

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grossly substantial. As I mentioned, the tax revenue is not a consideration of this application. A 20 by 50 structure which Mr. Costanzo references applies to detached garages. I agree that an 80 by 60 is a large structure, and I'm going to let Mr. Costanzo think about the answer to this when we open it up to the public. What would you consider to be a reasonably sized structure?

The second one, whether the proposed variance will have adverse effects and impact on the physical and environmental condition of the neighborhood. The applicant's property, as well as all the properties in front of it to Holmes Road, are in the Agricultural Residential district. Again the floodplain, I couldn't find where that was mentioned.

The hardship has been self-created. A great many of the applications before the ZBA have a difficulty that has been self-created. That portion of our balancing test, which will be done at the end of the application, is considered relevant but not necessarily determinative. Although, we'll get to that again with the public

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comment section.

Again, there has been no consideration for stormwater runoff or control or any guidelines or plan for current MS-4. Stormwater pollution prevention plans and the like from single residential are typically developed by professionals and monitored by the Code Compliance Department. An MS-4 is a municipal separate storm sewer system and may have been part of the previous development plans, but this application doesn't require a permit under GP 0-10-002.

And then let's see. The other information regarding the Board's information about a proposed subdivision plan, donated parcel of land to be used as retention for the drainage. That proposed subdivision was never finalized and therefore the stormwater management plan is no longer required.

So moving on from that, I'm going to go back to the actual application here. Public comments are very helpful. Mr. Costanzo's comments were very helpful. In most applications it helps the Board Members understand elements of



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an application that they may have overlooked or not considered. We encourage commentary. But I'll ask anyone who does choose to speak to keep the comments related to the application as it is before the Board.

So now at this point I'm going to open it up to any Members of the Board for any comments that they may have. We have all been to the site. We have all seen it. We have all driven the street. We're familiar with the character of the neighborhood.

In this case I'm going to start with Mr. Bell. Mr. Bell, do you have any comments regarding this application?

MR. BELL: No, I don't at this time.

CHAIRMAN SCALZO: All right. Siobhan, if you could unmute Mr. Levin.

MS. JABLESNIK: He has to unmute himself.

CHAIRMAN SCALZO: Very good. Mr. Levin, you need to unmute yourself. I still can't hear you, Richard.

Okay. I'm going to move on to Mr. Olympia while -- there we go.

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Mr. Olympia, do you have any comments on this?

MR. OLYMPIA: No. Not at this time.

CHAIRMAN SCALZO: All right. Mr. Levin, we're back to you now.

MR. LEVIN: I'm going to listen to people, but I think the size of this building is huge.

CHAIRMAN SCALZO: Very good. Okay.

Mr. Marino, if you could unmute yourself if you have any comments. I still can't hear you, Mr. Marino. Not yet. No luck, Mr. Marino. I'll tell you what, Mr. Marino. What we're going to do now is we're going to open it up to members of the public. I'm going to give you an opportunity after we hear from members of the public. Hopefully you can find the button.

At this point Siobhan, if you could open it up to any members of the public here. I will try to recognize whoever is speaking by either phone number, or e-mail address, or call sign.

MS. JABLESNIK: They have to unmute themselves if they want to speak. For some reason

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I can't do it.

CHAIRMAN SCALZO: Down on the bottom right corner I see RA Hull. That was a name that I recognized from the e-mail from Mr. Costanzo.

Mr. Hull, do you have anything you'd like to add to this? If so, you're going to need to unmute yourself.

MR. HULL: Can you hear me now?

CHAIRMAN SCALZO: Yes, I can.

MR. HULL: Okay. Sorry about that. The only thing I'm concerned about is what is the building really going to be used for? I just don't believe it's going to be used to house an RV and a couple cars or trucks or whatever. I think it's a front and it's going to be used for other stuff than that. I really do. I mean it's a beautiful building. I mean I have a fifth wheel too and I'd love to have it inside. That building just looks like it's commercial use.

CHAIRMAN SCALZO: You know what, Mr. Hull. That's a great comment. Thank you very much for that. If there are other activities that are going to be going on at that site other than for storage of vehicles that may require permission

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from the Town, then the applicant would have to go before -- first they would have to see if it would fit within the requirements of Town Code. If it's anything other than that, they would need a plan for approval, which may have to be in front of the Planning Board.

Mr. Donovan, if you can stop me when I go wrong on that.

MR. DONOVAN: Mr. Chairman, it would depend upon the use. Obviously what's in front of the Board tonight is just the variance to permit storage of more than four cars. That's the only flag that Code Compliance fits in with this. If it is being used for a reason other than what is allowed in that zone pursuant to this use, that's a matter for Code Compliance, enforcement by the Town.

CHAIRMAN SCALZO: Thank you, Mr. Donovan.

Mr. Hull, Mr. Donovan said it so much better than I did. Anything that's not allowed by Code, then they would have to come back in to seek permission for that. All we can look at in this case this evening is for the four-car

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storage, or more than four-car storage.

MR. HULL: I mean what if you give him permission to go ahead and build it and then later on he does whatever he wants with it? Then what happens?

CHAIRMAN SCALZO: Well that's a Code enforcement issue that the ZBA -- that's not our position. Code Compliance, Joe Mattina is on here at this point, and Joe just heard your comment, as well as it will be a matter of public record in the meeting minutes. What happens, and I'm sure Mr. Mattina can attest to this, a lot of times they're brought in to violations by unhappy neighbors. So if you see something going on that you feel is not in line with the Code, then you can certainly reach out to the Town Code Compliance Department and see if it is allowed.

MR. HULL: Yeah. I mean, you know, as far as storage, that's fine. I just don't want to see some kind of business or -- you know, like a business going in. I mean I've been in this house for over 33 years now, and I moved here because it's a nice, quiet, residential area. I just don't want to see a business popping up down

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the street.

CHAIRMAN SCALZO: Very good. Mr. Hull, that's, again, an excellent question.

I'm going to ask Mr. Spinelli. Can you unmute yourself, please, and perhaps respond to Mr. Hull's comments?

MR. SPINELLI: This is a single-family residence. This is a single-family residence that happens to be tall. That's why the building looks superior -- imposing. Mr. Levin said before wow, it's big. Yes, sir, it's very large. It's very large in height and in stature. The actual living space of the house is only about 2,400 square feet, give or take -- if you give or take utility building -- the utility portion of the building. It has a single heating plan. It has radiant heat. It's environmentally friendly when it comes to meeting the Energy Code.

This structure is being used to store our vehicles. The vehicles that I own are extremely large. I drive a crew cab dully pick-up truck. It's about 25 feet long and just under 8 feet wide. If you look at the materials that I gave you guys as part of this application, you'll

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see that the actual model numbers of the vehicles are listed on the application and the dimensions of the vehicles are listed on the application. We're not trying to pull something here. We have no intention of running a business. I don't know what kind of business RA Hull is worried about. This is a tree farm. There are trees outside. There will be a tree stand -- I mean a farm stand at the other end of the property located where I have electric and a well. That's what's going on here. There's no hidden agenda. There's no hidden, you know, Lowe's or anything else, or Devitt's like someone once characterized this as. This is my retirement. I retire at the end of July. I was supposed to already be in my house. We are currently -- our current house is on the market. When my house is sold I will have no place to live. It's a single-family residence and this is for the storage of our personal vehicles. Nothing more.

CHAIRMAN SCALZO: Thank you, Mr.

Spinelli.

Mr. Hull -- hang on. I see -- is it Seiersen with her hand up? You have to unmute

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yourself. There you go. The floor is yours.

MS. SEIERSEN: All right. So I have a couple of concerns. I understand you live in Phillipstown -- Phillipstown somewhere. Are you moving to this area as a permanent residence and live on the street?

MR. SPINELLI: This house is directly across from my daughter's house. We are -- my daughter lives on Holmes Road. We are moving to Holmes Road. This is going to be our primary residence.

MS. SEIERSEN: If you can understand, you want to live here for a long time, you have to respect that you're going to be a neighbor of all of us and to realize that we have large pieces of property. I grew up in Rockland County. I moved here to live in a nice neighborhood that was private, and I have, you know, 7 acres. I want to keep it quiet.

My concern also is I see you built this big fancy road behind all these other homes. You also -- this tree farm, I already have a farmer next to me who has apples, and every night at night I have spraying chemicals, and I have the



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spraying at 3:00 in the morning. Are you -- what is your intention with this tree farm? Will you be having trucks? Is this something -- what kind of trees? Is it Christmas trees? Is it seasonal? Is it something that you will have trucks starting in the middle of the night? You'll be spraying and noises? Traffic will be going up and down our street? The construction?

CHAIRMAN SCALZO: Ms. Seiersen, I'm going to have to just back you up. We need to keep our comments to what the application is actually for. It's for the storage of vehicles. When it comes to the issues of vehicular traffic, I understand what you're saying but we need to keep this focused on exactly where the application is.

MS. SEIERSEN: Okay. But I still --

CHAIRMAN SCALZO: Thank you very much. Do we have anyone else from the public that would like to speak about this application? We have someone just identified as iPhone. Can you please identify yourself?

MR. COSTANZO: This is Joe Costanzo, 78 Holmes Road.

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CHAIRMAN SCALZO: Perfect. The author of the e-mail. Thank you.

MR. COSTANZO: Mr. Spinelli says that he's not running a business but yet he contradicts himself and says he's putting a farm stand at the opposite side of the property. That is a business.

First and foremost, this is an inherent hardship. He created the hardship. If he stayed in the parameters of the zoning we wouldn't be here right now, okay. And although he sits in the Agricultural district, he is abutting to residential properties and has made no effort -- has made no effort in buffering or giving relief to any of the neighbors whatsoever. I mean this is detrimental to the entire neighborhood. There's been zero attempt here. It's just to house an RV. He's made no mention to put any vehicles for the farm inside the garage.

CHAIRMAN SCALZO: Actually, on the sketch there is --

MR. COSTANZO: Yeah. He's got a couple tractors. The emphasis on the entire garage is to house a large RV.

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CHAIRMAN SCALZO: And three pick-up trucks.

MR. COSTANZO: Right. And three pick-up trucks. Where's all the equipment going, or is that another surprise down the road when he wants to build another structure and put everything inside? Is he even subject to a site plan?

CHAIRMAN SCALZO: Well, if his -- what he is proposing to do beyond this would obviously be submitted to the Building Department. If it meets Code, then site plan, that's up to Mr. Mattina's group to answer to. But please take a look at what the allowances are in the AR district, which, sir, you're actually in the AR district. I know you live in a residential home and there are residential homes to the left of you and to the right of you, but you are still in the AR district. The AR district does allow many things. If you actually read what the bulk requirements will allow, he can have a storage building for fruit packaging.

MR. COSTANZO: Right. Understood.

CHAIRMAN SCALZO: There's a number

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there that would be available.

MR. COSTANZO: Understood, Mr. Scalzo.

But what must be proven before the variance is granted is that the property is capable of earning a reasonable return on its initial investment if used for any of the allowed uses in the district.

CHAIRMAN SCALZO: Mr. Costanzo, you are quoting information that's required for a use variance. We're not here for a use variance. This is an area variance.

MR. COSTANZO: Okay.

CHAIRMAN SCALZO: Return on investment is purely for a use variance.

MR. COSTANZO: Right. So the health and well-being of the residents means nothing?

CHAIRMAN SCALZO: You know, that's -- I read your e-mail and this is -- I'm so glad that you're on. Public input is very helpful. You mentioned in your e-mail that there was going to be a large residential subdivision. We're looking at 23 acres with one dwelling with a very large garage. So you think that a large residential subdivision is less taxing on that lot than one

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dwelling?

MR. COSTANZO: Yeah. Yeah, I do. You know what. Without getting into the financial aspects that you told us not to get into, we all know it would have been a hell of a lot more beneficial to an ailing community that needs the money.

CHAIRMAN SCALZO: Again sir, tax revenue is not part of this application.

MR. COSTANZO: Well, okay. But you asked me and I told you. I feel that the residential neighborhood would have been better, okay.

MR. DONOVAN: Mr. Chairman, if I could just interject for a second.

MR. COSTANZO: No. Don't interject for a minute. Put yourself in these houses, okay. I don't need any legal advice here, okay. This is moral ethics. You brought this land back from Residential permit and put it back in AR. Really? After the population grew? Because the soil was so good. Really?

CHAIRMAN SCALZO: I'm not aware that the Agricultural Residential district lines have

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changed, so --

MR. COSTANZO: Before this person was in front of you, okay, this was approved for Residential. He went to County to change the use back to AR, and now it's in front of you, okay. So the residents here should be the concern, not the concern of a garage to put an RV in it. He can operate here under all the laws that let's him do whatever he wants. He's a farmer, okay. I don't need to walk inside my house because I can't use my pool because the dust is billowing over my fence. And don't tell me that you live next to a farm, okay. That doesn't go anymore. Maybe in 1930, okay. Things change.

CHAIRMAN SCALZO: Mr. Mattina, are you aware of any district changes in the last ten years in that area?

MR. MATTINA: As far as I know it's always been AR.

CHAIRMAN SCALZO: Thank you.

MR. COSTANZO: Why do you let houses be built in AR?

MR. MATTINA: You're allowed houses in the AR.

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MR. COSTANZO: Why?

CHAIRMAN SCALZO: Mr. Costanzo, all I can say at this point is I don't know that your comments are productive if you're not going to read what the zoning allows. So I would recommend that you actually --

MR. COSTANZO: I apologize. You're right. Emotions take me over.

Let me ask you a question. Is there any buffering that has to happen?

CHAIRMAN SCALZO: In the application I had read that the closest distance to any property line would be 156 feet.

Mr. Spinelli, is that correct? Mr. Spinelli, are there plans to buffer your property lines with trees?

MR. SPINELLI: The property is already buffered with trees, and with the planting of Christmas trees it will be further buffered.

CHAIRMAN SCALZO: Mr. Spinelli, I was actually on the site the other day. I drove -- well, I drove from the small driveway, I'll call it, down towards the gate and towards the back side, and it probably was Mr. Costanzo's house, I

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saw a stockade fence. I didn't see any trees there. Is that what you're referring to?

MR. SPINELLI: That's what Mr. Costanzo is referring to.

MR. COSTANZO: Mr. Spinelli gave me the fence. There's no hardship here for finance, as the farmers always say. You could have put trees or left the berm and just the trees on the berm.

MR. SPINELLI: I'm sorry, Mr. Scalzo. Do you want to know if I'm going to be planting trees down at that end as well?

CHAIRMAN SCALZO: That's correct, sir.

MR. SPINELLI: The answer is yes.

CHAIRMAN SCALZO: Okay. Now I did see a cage there -- I call it a cage -- a gated area that there appeared to be a bunch of nursery trees in.

MR. SPINELLI: Yes, sir.

CHAIRMAN SCALZO: Is that the area that the intent to plant those was in?

MR. SPINELLI: Yes. Most of those are going up in there, yes.

CHAIRMAN SCALZO: Mr. Costanzo, it appears that that's almost directly behind your



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place.

MR. COSTANZO: Yeah.

CHAIRMAN SCALZO: Okay. As I say Mr. Costanzo, these hearings are very valuable to the Board because they allow us to consider things that we may not have considered at the time or overlooked. If you don't mind, I'm actually going to ask for any other members of the public at this time to add their comments.

MR. CORRADO: Can you hear me? It's Michael Corrado.

CHAIRMAN SCALZO: Yes, Mr. Corrado. We can hear you.

MR. CORRADO: I share a driveway with Mr. Spinelli at 60 Holmes Road.

I do think that the building he's proposing is pretty large and out of character. I would just say that already we've had a lot of extra vehicular traffic on the road, from ATVs and motorcycles and other assorted equipment. At a time when people are using Lattintown, and Frozen Ridge, and Holmes Road instead of 9W, you know, it's resulting in a lot of extra traffic. I would like the Board to keep that in mind, that

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there's already a lot of traffic.

And I think the building is large and way out of character.

CHAIRMAN SCALZO: It is a large structure. Although it's attached to the dwelling, the height of that does not come into play. If it were detached, then the height would come into play.

MR. CORRADO: My first impression was there was going to be a simple pole barn structure that was going to serve as his dwelling and house some of the vehicles. Now it seems like it's becoming much more commercial in nature, in my impression.

MR. SPINELLI: I can answer some of that question for you, Mike. The truth of the matter is that the house is going to be well shielded from all of it. If you look at the topography of where the house is going, and it's set back just over the rise from your dad's house. With a couple of trees planted on the berm along where the electric meter is, you won't even see the structure from your house -- from your dad's house.

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MR. SPINELLI: Fair enough. You spent a lot of time clearing and cutting and I wasn't sure what was going to be planted. It seems like you took away a lot of the natural barrier.

MR. SPINELLI: Well that's because most of it was garbage, and the electric had to be run. So we got rid of the scrap maples and stuff. But I hope that answers your question.

MR. CORRADO: It does. Just you've got to keep the motorcycles and ATVs -- you come across the road from your daughter's house and it's a constant stream. It's just out of character.

MR. SPINELLI: It's that one neighbor's kid. We'll have a discussion with him.

MR. CORRADO: Thank you.

CHAIRMAN SCALZO: Thank you.

Any other members of the -- Ms. Seiersen, you have to unmute yourself.

MS. SEIERSEN: The ATVs have been running through the backyard of the houses here.

I still am concerned. You say you're putting a tree farm and you're going to put a little stand. What are you going to put your

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grandson to sell the trees? Are you having trucks coming in there? Are they going to be running at night? I mean how much noise level are we talking about? The trucks boom, boom, boom, boom, boom, boom, boom.

CHAIRMAN SCALZO: Ms. Seiersen, I'm going to bring you right back to the application that we're discussing here. If a tree -- if he can sell trees as part of the Agricultural Residential district, if that is an allowed activity, then he's allowed to do it. However, I don't know that. That's not why he's here. The application is here this evening just to discuss this large garage.

MS. SEIERSEN: Okay. The large property cleaned out all behind me in the purpose of having a tree farm to keep -- I understand that. There's a structure. Are you still going to -- I don't want this street to become trucks all day long, running back and forth and making noises. Different kinds of machinery and whatever else there may be. This is a residential area. I understand it's zoned Agricultural. At the same time I want to make a note that's what I would

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like to keep it. I understand you want to put trees. That's fine. We don't want to have noise. We want to have quiet. And I understand he's coming here to live and whatever else.

There was something else I wanted to ask you but -- I've been through this before. I have been through this before. I opposed property in Goshen where they subdivided and they built twenty, thirty homes behind, and I don't --

MR. SEIERSEN: That subdivision started out as a tree farm and then all of a sudden the owner came in and started carving it up. Do you have any intention --

CHAIRMAN SCALZO: Sir, from what I understand, the previous subdivision which is now no longer a subdivision, this had been pretty far through the approval process at one point. I still need to steer you back to this application has everything to do with a four-car garage -- or more than a four-car garage.

MS. SEIERSEN: That's all it will be? Whatever this tree farm will be, we'll have nice and quiet and peace and be there in harmony. That's all.

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CHAIRMAN SCALZO: Thank you.

Any other members of the public that want to speak about this application?

MR. TAMBURRI: Yes, I do. My name is Gene Tamburri. Can everybody hear me?

So I just have a couple concerns or whatever. I'm on 87 Holmes Road. When we first talked about the tree farm, I didn't know it was only a garage but we kind of welcomed it at the time and the Ag went through. However, we also -- and it's not Mr. Costanzo, it's other neighbors who have complained about the fencing that he had put up there, that it's not very aesthetic. I know everything on here -- on the application refers to aesthetics and what it looks like. That kind of concerned me in the beginning, what it actually is going to look like. I thought we had a discussion where there was going to be a tree buffer there as well. I'm on the opposite side. I've had other people complain about it.

The issue with the traffic, I know that's not yours but it's a very serious matter, and that's where the farm stand is going to go. I

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hope the farm stand doesn't look like the fence.  
Again, I know that's agricultural and we're  
talking about this garage.

The garage, again -- I didn't see -- I  
apologize. I didn't see the height of the garage.  
Can somebody tell me the height of the garage?

CHAIRMAN SCALZO: Mr. Spinelli, is it  
35 feet or less?

MR. SPINELLI: To tell you the truth, I  
have to look at the stuff I sent you, the  
profiles of what I sent you. I do not recall the  
total height of the building.

CHAIRMAN SCALZO: Mr. Mattina?

MR. SPINELLI: It's on the far  
right-hand side of what I sent you.

MR. MATTINA: It's 31.8. If it was 35  
or over he'd be here for a height variance.

CHAIRMAN SCALZO: Okay. Mr. Tamburri,  
that's what we have. We're less than 35. Code  
allows 35 maximum.

MR. TAMBURRI: Most road crossings and  
what not, and bridges, are around 12, 13 I  
believe anyway. 31 feet is close to double that.

My only other question is if other

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neighbors or whatever -- I'm not saying I'm against this thing or not. But if other neighbors have RVs and whatever, what's to say -- listen, I get it. He doesn't want to listen. Nobody wants to look at RVs sitting out. It's nice to have the buildings. What happens if the next neighbor wants to put one up and they don't have that much space or whatever and they ask for it and they say well Spinelli has a garage that he had gotten to house his RV and we have these structures up all over. I think it's something that the Board should consider. 31 feet is awfully high.

Mr. Spinelli, I don't want to put a damper on it but I have concerns about some of the other items that happened, and specifically the traffic. It's 40 miles-an-hour. 9W is 40 miles-an-hour. I know that's not the Board but I want to make sure -- I stopped at the Town and talked to them about it a couple times. I think we need to do something.

And I also think, as I had said, there should be some sort of signage regarding what's going on.



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That's pretty much what I have to add to the meeting tonight.

CHAIRMAN SCALZO: Thank you very much. Is there anyone else from the public here to speak about this application?

MR. COSTANZO: I have some more comments. Joe Costanzo.

CHAIRMAN SCALZO: Mr. Costanzo.

MR. COSTANZO: This is a question for Mr. Mattina. If the farm stand does go up will it be subject to an EIS for environmental study based on the -- what Mr. Tamburri just mentioned? Because there's a dip in the road there. It's line of sight. It's been a problem before I even moved here. It is huge. Will that come into play if he opens the farm stand on that end, which will draw traffic, parking, et cetera? That's the --

CHAIRMAN SCALZO: That may not be a question for Mr. Mattina. Actually Mr. Donovan might be able to weigh in on that one. An environmental impact statement, is that what you're talking about, Mr. Costanzo?

MR. COSTANZO: Yeah. Based on the road

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and the traffic.

CHAIRMAN SCALZO: Okay. I just wanted to clarify that. If it's an approved use, then there may be something required. This is where I'm going to let Dave take over.

MR. DONOVAN: So Mr. Chairman, I just want to say what we're here for tonight, I understand it's very limited circumstances. The Zoning Board of Appeals is a Board of what's called appellate jurisdiction. What that means is we rule on whether or not to sustain or overrule the determination of the Building Department which says that if you want to have more than four vehicles in the structure, you need an area variance. That's the issue that we're here for tonight. That's the limited issue we're here for tonight. That's all we have jurisdiction over. Relative to what approvals may be required if certain things or businesses come in the future is speculation. You have to take them as they come. If it's an increase in intensity of use, there may be a new application required, and that would be a determination made, in the first instance, by Code Compliance, perhaps subsequent

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the Planning Board, perhaps not. It's difficult, if not impossible, to answer a question in a vacuum about what would happen if perhaps something else happened.

My suggestion to the Board is that you're not going to get --

MR. COSTANZO: Excuse me, sir. We're not speculating. He's already told us that he wants --

MR. DONOVAN: You know what, Mr. Costanzo. I'm not talking to you. I'm talking to the Board. They're my client, you're not.

MR. COSTANZO: You're talking to everybody.

MR. DONOVAN: No, no. Everybody can hear me. I'm advising my client, not you.

MR. COSTANZO: Your client. Who is your client?

MR. DONOVAN: Members of the Board, if you understand the goal this evening is not to speculate on what may happen if some unforeseen contingency or unknown contingency may happen in the future.

MR. COSTANZO: Yeah. So thank you very

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much, Mr. Donovan.

In closing on my comment, we're not speculating but we'll leave that for later because there is going to be a tree stand there and they will be having a business on the other end. We'll leave that for later, as Mr. Donovan states.

I'd like to leave the Board with this. I'd like to ask the Board for substantial buffering before this application is approved.

CHAIRMAN SCALZO: We have the ability to impart conditions on certain things. We may take that under consideration.

MR. COSTANZO: Thank you very much.

CHAIRMAN SCALZO: All right. I'm going to give one last shot to the members of the public. Anyone that we have not heard from yet regarding this, pertaining to the four-car garage?

MS. HULL: Hi. I'm Wendy Hull. I live up the street.

On the Town of Newburgh Code Compliance application it says more than four vehicles, it says yes. So how many vehicles is he planning on

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storing there? And what is he using it for?

CHAIRMAN SCALZO: Mr. Mattina's assessment was that that structure size could house more than four. Mr. Spinelli's application shows that he intends on having four. But Mr. Mattina was cautious here and recognized that a building of that size could potentially house more than four vehicles.

MS. HULL: And what's going to be done about that? So he can house as many vehicles as he wants?

CHAIRMAN SCALZO: I don't know what to say about that other than if you see more than four vehicle storage in there, then I suppose you can call Code Compliance.

MS. HULL: And what will be done? Anything?

CHAIRMAN SCALZO: That's a question I can't answer. We're on the Zoning Board of Appeals. I'm not in Code Compliance.

MS. HULL: Okay.

UNIDENTIFIED SPEAKER: We're going to be left to police this for the rest of our lives.

MS. HULL: I mean I live right up the

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street and I've noticed the increase in traffic. The rate of traffic is insane. I have a child and I don't want her getting hit by one of these cars.

Now, how are they going to -- if they're using this as a farm stand, what are they going to use for a driveway? Parking or --

CHAIRMAN SCALZO: Ma'am, we are sticking to the four-car garage here. Anything future is -- that's subject to any site plan or review by the Town's Building Department.

MS. HULL: Okay. Why does he need -- I have a fifth wheel. I also have a Ram 2500 plus a two-car garage. Why does he need such a huge garage? I don't understand that.

CHAIRMAN SCALZO: That's a question that I can't answer.

MS. HULL: Mr. Spinelli, can you answer that? Mr. Spinelli?

MR. SPINELLI: Ms. Hull, if you look at the dimensions of building and you look at the dimensions of the things that are going to be stored in the building, including my vehicles, the height of my trailer runs at 13 foot 6

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inches --

MS. HULL: I have a fifth wheel.

MR. SPINELLI: Ms. Hull, I'm going to answer your question and then I'm going to mute myself. The vehicle itself sits at 13 foot 6 inches. It's 42, almost 43 feet long. With the slides out it's well over 10 foot wide. It's a very expensive toy hauler and it costs a lot of money. It costs a lot of money to maintain. I'm trying to protect this vehicle --

MS. HULL: So does mine.

MR. SPINELLI: -- from further decay. I have a number of pick-up trucks which also cost scandalous sums of money. I want to get my vehicles inside the building. I have farm tractors, two, that you see all the time if you're along Holmes Road. They need to be inside. They need to be under a covered porch. I have farm implements that are sitting outside in the rain. They need a place to be as well. So that is the purpose for this building. This building is very --

MS. HULL: How many vehicles?

MR. SPINELLI: May I finish?

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MS. HULL: Sure.

MR. SPINELLI: This building is very common throughout the midwest, throughout agricultural areas in this entire country. If you go to Morton Buildings and go to residential, you'll see numerous buildings just like this. This is nothing new. This is nothing commercial. This is nothing crazy. It's a single-family house.

MS. HULL: We're not talking about your house. We're talking about the garage, sir.

MR. SPINELLI: The garage is attached to my house. This is my personal property. This is my garage.

MS. HULL: How many vehicles are you planning on storing there?

MR. SPINELLI: No more than four vehicles.

CHAIRMAN SCALZO: The application shows four vehicles, the fifth wheel plus three pick-up trucks.

MS. HULL: You just said that you had farm equipment and all this other stuff that you planned on storing in there.



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MR. SPINELLI: If you look at the handout -- you do realize I can also have a tool bench; correct?

MS. HULL: What does that have to do with anything?

MR. SPINELLI: That again, it's square footage.

MS. HULL: What does that have to do with anything? I'm talking about vehicles, sir.

MR. SPINELLI: Ma'am, there will be no more than four vehicles in my garage.

MS. HULL: Well you just said you have trucks, your RV, and then you had your farm equipment. That's more than four vehicles, sir.

MR. SPINELLI: Ma'am, I'm not going to --

CHAIRMAN SCALZO: Hang on, Mr. Spinelli. Let's go to Joe Mattina for this.

MR. MATTINA: Our municipal code may not have the best description of vehicles. Registered does. Vehicle is a transportation -- mode of carrying transportation, a motor vehicle or mechanicalized equipment. So mechanicalized equipment, I take tractor to mean vehicle.

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MS. HULL: Exactly.

MR. MATTINA: It doesn't say cars,  
trucks.

MS. HULL: Thank you.

MR. MATTINA: In his application he has  
one large RV, one tractor, three personal  
vehicles, which equals five. That's the premise  
of why he's here. Five vehicles. It doesn't say  
cars or trucks.

MS. HULL: But it was supposed to be on  
the application four vehicles.

Correct me if I'm wrong, Mr. Spinelli.

CHAIRMAN SCALZO: If it was four  
vehicles only, four vehicles are allowed.

MS. HULL: Right. But that doesn't --

CHAIRMAN SCALZO: Five are not.

MS. HULL: He said it's going to be an  
RV, three trucks, plus farm equipment. That adds  
up to a lot more than four vehicles.

MR. SPINELLI: An RV is not a vehicle.

MS. HULL: Sir, I have --

MR. SPINELLI: It is not a motor  
vehicle.

MS. HULL: Okay. So how many vehicles

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are you planning on storing there?

CHAIRMAN SCALZO: All right. You know what, Ms. Hull. I see where you're going but I'm going to respectfully actually ask you if you can just set aside for one moment.

I'm going to go to anyone else from the public here who wants to speak about this application.

MS. COSTANZO: Yes. My name is Lori Costanzo. I live at 78 --

CHAIRMAN SCALZO: You have a lot of echo.

MS. COSTANZO: My house is the one with the fence that I can pretty much still see everything that's going on. So there really is no privacy. That was just a personal comment.

To get back to something else. June 27th we were present for a meeting, and the other applicant that was there, you had offered -- not you. The Town had offered -- the applicant had offered screening and a fence, and he went into details about what he was going to do, and he was only building a 40 by 60 accessory building.

So what will you be doing, Mr.

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Spinelli, to be improving the neighborhood for the neighbors that will be watching because we are not buffered and screened from view? You can see me. I see you every day. You've mowed that lawn. I don't know what you're mowing. You're growing trees. Now I've got a whole watering system that's going on behind my house. I've got quads back and forth every day, dust flying up. What are you putting in your pesticides? I have two small dogs. I'm five feet off that fence with my pool. I would appreciate some buffers and screening and some more comments in regards to our safety and health and well-being, more than a four-car garage that's so prioritized at this moment. The big picture, the goal, Mr. Spinelli, you should be ashamed of yourself for not showing all of the neighbors the respect and showing what you are up to in the future, not right this second with your four-car garage.

CHAIRMAN SCALZO: All right.

MS. COSTANZO: I'm sorry. This is a part of a business. You have a four-car garage and then you're going to have another garage to house how many tractors and equipment that I hear

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going beep, beep, beep, beep, going backwards every day. Now I've got everybody coming to my house and property. There is no sanctuary.

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

CHAIRMAN SCALZO: All right. We did pick up your comments regarding a buffer. I did pick that out.

Anyone else from the public?

(No response.)

CHAIRMAN SCALZO: All right. I'm going to go back to the Members of the Board. Mr. Marino, you were not available to speak before because your microphone was off. Now you're on. Do you have any comments, Mr. Marino?

MR. MARINO: A lot of the questions I would have asked have been brought up by other people that spoke tonight, the neighbors and Mr. Spinelli. I'm good for now.

CHAIRMAN SCALZO: Got you.

Back to Mr. Olympia. Anything?

MR. OLYMPIA: I have no questions.

CHAIRMAN SCALZO: Mr. Levin, anything?

MR. LEVIN: No.

CHAIRMAN SCALZO: Mr. Bell, any

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comments?

MR. BELL: No. Everything I was thinking about has been asked. I'm good right now.

CHAIRMAN SCALZO: Very good. Can I have a motion of some sort regarding the status of the public hearing from the Board?

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

MR. OLYMPIA: I'll second it.

CHAIRMAN SCALZO: We have a motion from Mr. Bell. We have a second from Mr. Olympia. Roll call on that.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

I'm sorry, Siobhan. You were very low

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volume.

MS. JABLESNIK: I'm sorry.

MR. MASTEN: Darrin, can you hear me?

MS. JABLESNIK: Oh, Mr. Masten. Where  
are you?

CHAIRMAN SCALZO: Is that Mr. Masten?

MR. MASTEN: Yeah, but I can't -- I'm  
watching you and listening to it all but I can't  
get my visual face on there. I can talk.

MR. DONOVAN: It looks like Mr. Masten  
is the Samsung.

CHAIRMAN SCALZO: There you go. I  
think I'm looking at your tablecloth there, Mr.  
Masten.

Mr. Masten, you had heard all these  
comments. So in this case we just closed the  
public hearing. In this instance now, at 8 p.m.  
the public hearing is closed.

This is a Type 2 action under SEQRA,  
Mr. Donovan?

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

CHAIRMAN SCALZO: Very good. At this  
point we're going to go through the balancing

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test. Actually, before we go through the balancing test, I have a question for Mr. Spinelli.

Mr. Spinelli, if you could unmute, please.

MR. SPINELLI: Yes, sir.

CHAIRMAN SCALZO: Mr. Spinelli, there's been a common theme that I've heard from some of the residents -- if any of the Board Members want to jump in on this as well -- regarding a buffer. I understand that you're going to be planting some trees. I'm not going to go into a number. Mr. Spinelli, you are confirming that you intend on planting a buffer between your property line and -- along the property line that is parallel with Holmes Road. Is this correct?

MR. SPINELLI: That is absolutely correct, sir. There's currently -- there's currently about 1,000 trees planted. Granted right now they're about 24 inches tall. Some a little bit taller, thanks to watering. But that is the intention for this entire piece of property is to be growing Christmas trees. So the answer is yes.



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UNIDENTIFIED SPEAKER: Christmas trees  
get cut down.

UNIDENTIFIED SPEAKER: That's not a  
buffering tree.

CHAIRMAN SCALZO: Siobhan, if you could  
mute everyone but the Board Members, please.

MS. JABLESNIK: Everybody is muted.

CHAIRMAN SCALZO: I'm having a tough  
time hearing you.

MS. JABLESNIK: Everybody seems muted.  
I don't know why --

CHAIRMAN SCALZO: Now we're good.  
We're going to go through the area  
variance criteria and discuss the five factors  
we're weighing, the first one being whether or  
not the benefit can be achieved by other means  
feasible to the applicant.

I'm going to go one by one in this  
case. Mr. Bell, what are you thinking?

MR. BELL: Well yes, it can be.

CHAIRMAN SCALZO: Could you expand on  
that a little bit? The structure is substantial.  
I'm not going to disagree with you.

MR. BELL: Right. It is a very big

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structure. I think that buffers are very much going to be needed.

I did have one question, though.

CHAIRMAN SCALZO: Please.

MR. BELL: Am I able to ask that now?

CHAIRMAN SCALZO: Sure.

MR. BELL: Okay. When you said you was going to plant trees as a buffer and then cut them down as Christmas trees, I don't --

CHAIRMAN SCALZO: Hold it. The comment about cutting them down came from the public.

MR. BELL: Okay.

CHAIRMAN SCALZO: I understand that Christmas tree farms, they do end up getting cut down, however they are replaced. They don't take them all down at once.

MR. BELL: True. True.

CHAIRMAN SCALZO: All right. So in this case Mr. Levin, do you have any -- what's your -- can the benefit be achieved by other means feasible to the applicant?

MR. LEVIN: I said earlier that no. It's a big building.

CHAIRMAN SCALZO: Mr. Olympia?

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MR. OLYMPIA: No.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: There were several people who objected and wanted a buffer created. Is he willing to put a buffer by all the properties owned by the different speakers tonight who voiced opposition to this project?

CHAIRMAN SCALZO: I see Mr. Spinelli nodding.

MR. SPINELLI: Yes. Absolutely. And again sir, we're not clear cutting trees. This will be a cut-your-own farm when they get big enough to be cut. There will always be a replacement of the trees that get cut. So there will be a huge buffer around the entire structure.

MR. MARINO: Will it also affect the neighbors that will be near you?

MR. SPINELLI: There's -- the only two properties that actually abut onto us that have a clear view are Mr. Costanzo and the house that's occupied by Mr. Nebel. There is a buffer of trees between us and the Hull's structure and a number of the other neighbors. So there's a tree buffer.

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The only place that I'm actually going to build a berm is actually on the driveway that you guys went up at 64 Holmes. That's going to be so that I can block my view as well from the back of Mr. Corrado's house. So there will be no visual impact.

CHAIRMAN SCALZO: Thank you.

Mr. Masten, do you want to weigh in on this?

MR. MASTEN: I looked at the property and I can see where Mr. Spinelli there wants to build it. I have no problem with it. But when he replaces those trees, they're going to take awhile to come back and -- but otherwise I'll go along with what he -- the rest of the Board goes with.

CHAIRMAN SCALZO: Very good.

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

Now I'm going to weigh in first on that. This is a very large structure on a very large piece of property. In my opinion it's going to be well hidden, especially after these -- the

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buffer is in place.

The other lots -- I drove through. The character of the neighborhood, some of the lots have expanded pretty well on their own lots, smaller lots that have a single-family dwelling plus a detached garage and a pool. So as far as open space, I don't believe that there would be an undesirable change to the neighborhood character.

I'm going to actually go to Mr. Levin now. Mr. Levin, comments on that?

MR. LEVIN: I don't think there would be a change in the character of the area.

CHAIRMAN SCALZO: How about Mr. Bell?

MR. BELL: It can be but I don't think that it's going to affect too much with the buffers in place. I'm good.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: I think given the size of the property it's not going to have a major impact.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: Yeah, I feel that the height of the building and the size of the

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building will blend in with the rest of the houses on that Holmes Road, because in the vicinity they are now there are some large houses that have been put up over the years and they all blend in with the tree lines and stuff so you don't notice them when you go up and down Holmes Road.

CHAIRMAN SCALZO: Thank you.

Mr. Marino?

MR. MARINO: I think with the fact that this building is probably going to be built and the tree farm will be there, I think the Town ought to look at reclassifying the speed limit, the weight of certain vehicles on that road, and do something in that respect to help the homeowners live up -- live with what is going to be quite a change -- I think it's going to be a change in the neighborhood.

CHAIRMAN SCALZO: Mr. Marino, those are great comments. Perhaps one of the members of the public that's listening to this can arrive at the next Town Board meeting, because any action such as those would actually happen at the Town Board level, not at the Zoning Board of Appeals level.

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The third, whether the request is substantial. Of course this structure is a substantial structure.

My own opinion, again it's a large piece of property. The building is large. Depending on where you look at it from, you're going to see a building height of 31, 32 feet tall. I don't know the deck is going to make it into perception. That's my position.

I'm going to actually go to Mr. Masten in this case.

MR. MASTEN: What was the question again, Darrin?

CHAIRMAN SCALZO: Whether the request is substantial.

MR. MASTEN: I don't feel so. Like I said before, the size of that structure and everything will blend in with everything else in the area.

CHAIRMAN SCALZO: Thank you.

Mr. Bell?

MR. BELL: I agree with that. I agree with what you said there, that it meets the height requirement, and the property is very

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large. So I'm good with that.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: Relative to the size of the property, I don't think it's substantial.

CHAIRMAN SCALZO: Right. As I mentioned early on in the application, it's in the AR Zone. If you look at what's allowed in the AR Zone, the applicant at one point could ask for warehouse for storage of fruit crops, barns, silos. All allowable in the AR Zone.

Mr. Marino?

MR. MARINO: I think it's going to have a change, but overall I'm okay with it.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: I think there will be a change overall. I'm in agreement, the same as Andy.

CHAIRMAN SCALZO: All right. The fourth, whether the request will have adverse physical or environmental effects.

Well we certainly heard some testimony from members of the public that feel as though it will have adverse physical and environmental effects. I'm going to go back to it's a 23-acre



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lot which is going to end up having trees on it, one very large structure. I don't know that I can put this into perspective another way.

From my point of -- my position is had this been a residential subdivision of five, six or seven lots, the adverse physical and environmental effects would have been greatly enhanced due to runoff, whereas a single-family dwelling on 23 acres, I don't feel as though it meets that.

Mr. Bell, I'm going to go to you.

Comments on that?

MR. BELL: No. I agree with that. I was a little bit concerned with hearing about the spraying of the property, the chemicals, but that will probably be the only environmental effect that I see. Other than that, I'm good.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: I agree with it. I don't know exactly how it's going to turn out with people coming in, cars going in, picking up trees and everything. What's legal is legal.

CHAIRMAN SCALZO: If it meets the Code.

MR. LEVIN: Yes.

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CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: I don't think it has an adverse effect.

CHAIRMAN SCALZO: Mr. Marino, did we already talk to you about this?

MR. MARINO: You may have. I agree with the comments of Mr. Olympia.

CHAIRMAN SCALZO: Very good.

Mr. Masten?

MR. MASTEN: I feel fine with it, Darrin.

CHAIRMAN SCALZO: Very good. The fifth criteria, whether the alleged difficulty is self-created. This is relevant but not determinative.

Now, we're all aware that most of the applications that come before the Zoning Board of Appeals, most of them are self-created. As I said, that's relative but not determinative.

Mr. Bell?

MR. BELL: I agree.

CHAIRMAN SCALZO: Mr. Levin, do you agree?

MR. LEVIN: I agree, sir.

CHAIRMAN SCALZO: Mr. Olympia, do you

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agree?

MR. OLYMPIA: I agree.

CHAIRMAN SCALZO: Mr. Marino, do you  
agree?

MR. MARINO: I agree also.

CHAIRMAN SCALZO: Mr. Masten, do you  
agree?

MR. MASTEN: Yes, I do.

CHAIRMAN SCALZO: Okay. Having gone  
through the balancing test of the area variance,  
what is the pleasure of the Board? Does the  
Board have a motion of some sort? Keeping in  
mind, if approved the Board shall grant the  
minimum variance necessary and may impose  
reasonable conditions.

MR. OLYMPIA: I'll move for approval so  
long as it's understood that we're sympathetic to  
the issues raised by the residents in the area  
that relate to the application itself, and I  
would hope that Mr. Spinelli can get together  
with those residents and understand those  
sympathies and perhaps address them.

CHAIRMAN SCALZO: Okay. Before I  
continue on this, is Mr. Spinelli still there?

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Yes, he is.

Mr. Spinelli, as you mentioned, there are quite a few trees out there that eventually will be a buffer. Would you be adverse to throwing a few trees in there that are 6, 7 feet tall right now?

MR. SPINELLI: Quite frankly, I don't have the money to do it right now. They're running about \$75 apiece if I buy them at wholesale. Where would you propose that they go?

CHAIRMAN SCALZO: Just in the bare spots.

MR. SPINELLI: If you look at where the site was -- you guys were all there. You saw where the electric meter is. So I'm going to build a berm right where the electric meter is that blocks my view of the driveway and blocks the view for Mike's house. There's a tree buffer that already exists between the backs of the next two houses going up the street. The next house is Ray Nebel's house. He currently has nothing there other than the -- other than the small seedlings that are there, but has no issue. In front of Mr. Costanzo's house I have a 6-foot tall stockade

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fence. So there's really no other visual impact right now.

CHAIRMAN SCALZO: Thank you.

All right. So now I'm going to go back. We are on the final -- again, if approved the Board shall grant the minimum variance necessary and may impose reasonable conditions.

Mr. Olympia, I cut you off before. If you could restate your motion.

MR. OLYMPIA: Yeah. I would move that it be approved as presented, understanding that we're sympathetic to the needs and requirements of the neighbors, and that Mr. Spinelli try to address those requirements in an amicable manner. He's not required to but try to address them.

CHAIRMAN SCALZO: I think we have a motion there. In this case I'm going to second the motion just so we can move forward on this.

Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: No.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

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MR. MARINO: No.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes. Is that 4-2?

MR. DONOVAN: 4-2, Mr. Chairman. The resolution passes.

CHAIRMAN SCALZO: Thank you very much.

All right, Mr. Spinelli.

MR. SPINELLI: Thank you all. Thank you for opening up to the public, and thank you for facilitating this via Zoom. You guys are the exception, not the rule right now in local government.

CHAIRMAN SCALZO: I just received a text from Councilman Manley that it appears that our next meeting in July may actually be in the Town Hall.

MR. SPINELLI: That would be awesome.

CHAIRMAN SCALZO: Thank you.

(Time noted: 8:18 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 6th day of July 2020.

*Michelle Conero*

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MICHELLE CONERO

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HELD REMOTELY VIA ZOOM

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

----- X  
In the Matter of

DAVID KOHL

125 Powelton Circle, Newburgh  
Section 80; Block 4; Lot 3  
R-1 Zone

----- X

Date: June 25, 2020  
Time: 8:18 p.m.

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

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

APPLICANT'S REPRESENTATIVE: DAVID KOHL

----- X

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



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DAVID KOHL

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CHAIRMAN SCALZO: We're going to move on to the next application. Our next applicant this evening is David Kohl, 125 Powelton Circle, Newburgh, He's seeking an area variance of the front yard to build a 10 by 30.8 addition with a setback of 39.75 feet where 50 feet is required.

Siobhan, do we have mailings?

MS. JABLESNIK: The applicant sent out 30.

CHAIRMAN SCALZO: You've got to face the camera when you say that.

MS. JABLESNIK: 30. This applicant sent out 30 mailings.

CHAIRMAN SCALZO: Thank you, Siobhan.

Did you mail in accordance with Section 185-55 and sign the affidavit as required?

MS. JABLESNIK: Yes.

CHAIRMAN SCALZO: Thank you.

This is a little more straightforward application than the one we just heard. Powelton Circle Drive is a quiet street of single-family dwellings. Mr. Kohl is looking to make multiple modifications to the property, but the referral from the Building Department only applies to the

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DAVID KOHL

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addition on the front of the dwelling. The required front yard is 50 feet and the addition on the front of the house will reduce that front yard setback to just under 40 feet.

Is the applicant or their representative here this evening to speak about this application?

MR. KOHL: Yes, I'm here. And so is my architect.

CHAIRMAN SCALZO: Very good. Mr. Kohl, have I summarized it adequately or are there additional items you would like to add?

MR. KOHL: I think you've done a good job. I mean we're trying to renovate the house and make a better entrance to the property, to the front of the property, and to enlarge the living room area. It's up on a hill. I'm sure if you went by the property you saw. We're really not asking for much.

CHAIRMAN SCALZO: Yes, we did go by the property. Thank you very much. I don't want to cut you off. Is there anything else you would like to add, Mr. Kohl?

MR. KOHL: No. I think that's it. Any

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DAVID KOHL

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other questions, I'd be happy to answer.

CHAIRMAN SCALZO: Very good. Sir, I have just one question. What a great street.

The mature oak trees in the front, is your intent to leave those in place?

MR. KOHL: Yes. It's only a bump out of about 9 feet. It's only going to be a crawl space, so --

CHAIRMAN SCALZO: It's only a --

MR. KOHL: I have no intention of taking down those oak trees.

CHAIRMAN SCALZO: The crawl space wouldn't really be a big deal for the roof system.

MR. KOHL: Yes.

CHAIRMAN SCALZO: Very good. Thank you. At this point I'm going to open it up to the Board here. Mr. Levin, do you have any comments on this application?

MR. LEVIN: No, I don't.

CHAIRMAN SCALZO: No. Mr. Bell?

MR. BELL: No. I'm good.

CHAIRMAN SCALZO: No. Mr. Olympia?

MR. OLYMPIA: No comments.

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DAVID KOHL

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CHAIRMAN SCALZO: Very good. Mr.

Marino?

MR. MARINO: It's a lovely area. I don't see it having a negative effect at all.

CHAIRMAN SCALZO: How about you, Mr. Masten? Have you gone to look at the property?

MR. MASTEN: I have no problem with it, Darrin.

CHAIRMAN SCALZO: Thank you very much.

I obviously went around the back because the plan did show a proposed garage. That's a great rock in the backyard. I hope you shine some lights on it.

MR. KOHL: I'm trying to do my best.

CHAIRMAN SCALZO: Okay. At this point I'm going to open it up to any members of the public that would like to speak about this application. Any members of the public that would like to speak about the David Kohl application at 125 Powelton Circle?

(No response.)

CHAIRMAN SCALZO: Hearing none, I'll open it up one more time for the Board. Any Board Members, just shout out if you have something.

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DAVID KOHL

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(No response.)

CHAIRMAN SCALZO: Very good. Do I have a motion of some sort regarding the status of the public hearing?

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

MR. LEVIN: Second.

CHAIRMAN SCALZO: I think it was Mr. Bell who had the motion. Mr. Levin was the second. Roll call on that.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed. Very good.

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DAVID KOHL

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Mr. Donovan, this is a Type 2 action under SEQRA?

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

CHAIRMAN SCALZO: Thank you very much.

I'll go through the area variance criteria and discuss the five factors we're weighing, the first one being whether or not the benefit can be achieved by other means feasible to the applicant. The only one I can think of is if he didn't do it.

Mr. Bell, any comments or do you agree?

MR. BELL: I agree with you.

CHAIRMAN SCALZO: Mr. Olympia, do you concur?

MR. OLYMPIA: Yes.

CHAIRMAN SCALZO: Mr. Levin, do you concur?

MR. LEVIN: I agree. I concur.

CHAIRMAN SCALZO: Mr. Olympia, do you concur?

MR. OLYMPIA: Yes.

CHAIRMAN SCALZO: Mr. Marino, do you concur?

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DAVID KOHL

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MR. MARINO: Yes, I do.

CHAIRMAN SCALZO: Mr. Masten, do you concur?

MR. MASTEN: Yes.

CHAIRMAN SCALZO: Very good. Second, if there's an undesirable change in the neighborhood character or a detriment to nearby properties.

It does not appear so in my opinion.

Mr. Bell, do you concur?

MR. BELL: Yes, I concur.

CHAIRMAN SCALZO: Mr. Levin, do you concur? Mr. Levin, do you concur?

MR. LEVIN: Yes, I do.

CHAIRMAN SCALZO: Very good. Mr. Olympia, do you concur?

MR. OLYMPIA: I concur.

CHAIRMAN SCALZO: Mr. Marino, do you concur?

MR. MARINO: Yes, I do.

CHAIRMAN SCALZO: And Mr. Masten, do you concur?

MR. MASTEN: Yes.

CHAIRMAN SCALZO: Very good. The third factor, whether the request is substantial.

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DAVID KOHL

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It does not appear so.

Mr. Levin, do you concur?

MR. LEVIN: Yes, I do.

CHAIRMAN SCALZO: Mr. Bell, do you  
concur?

MR. BELL: Yes.

CHAIRMAN SCALZO: Mr. Olympia, do you  
concur?

MR. OLYMPIA: I do.

CHAIRMAN SCALZO: Mr. Marino, do you  
concur?

MR. MARINO: Yes.

CHAIRMAN SCALZO: And Mr. Masten, do  
you concur?

MR. MASTEN: Yes.

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

I don't believe so.

Mr. Levin, do you concur?

MR. LEVIN: I don't believe so either.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: I concur.

CHAIRMAN SCALZO: Very good. Mr.



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DAVID KOHL

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Olympia, do you concur?

MR. OLYMPIA: I do.

CHAIRMAN SCALZO: Mr. Marino, do you  
concur?

MR. MARINO: Yes, I do.

CHAIRMAN SCALZO: And Mr. Masten, do  
you concur?

MR. MASTEN: Yes.

CHAIRMAN SCALZO: Very good. The fifth,  
whether the alleged difficulty is self-created.  
This is relevant but not determinative.

Of course it's self-created. Again,  
it's not -- it's relative but not determinative.

Mr. Bell?

MR. BELL: Yes.

CHAIRMAN SCALZO: Do you concur, Mr.  
Levin?

MR. LEVIN: Yes.

CHAIRMAN SCALZO: Mr. Olympia, do you  
concur?

MR. OLYMPIA: I agree.

CHAIRMAN SCALZO: Thank you. Mr.  
Masten, do you concur?

MR. MASTEN: Yes.

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DAVID KOHL

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CHAIRMAN SCALZO: And Mr. Marino, do you concur?

MR. MARINO: Yes, I do.

CHAIRMAN SCALZO: Very good. If the Board approves, it shall grant the minimum variance necessary and may impose reasonable conditions.

Having gone through the balancing test of the area variance, what is the pleasure of the Board? Does the Board have a motion of some sort?

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

MR. OLYMPIA: Second.

CHAIRMAN SCALZO: We have a motion for approval from Mr. Bell. A second from Mr. Olympia. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

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DAVID KOHL

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MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Motion carried. The variance is approved.

MR. KOHL: Thank you very much.

CHAIRMAN SCALZO: Thank you.

MR. BELL: I need a bathroom pause.

CHAIRMAN SCALZO: You know what. Can we take a two-minute break here, folks? I need to fill my water glass up as well. We're just going to take two minutes.

Siobhan, do you want to mute everybody.

(Time noted: 8:27 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 6th day of July 2020.

*Michelle Conero*

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MICHELLE CONERO

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HELD REMOTELY VIA ZOOM

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: June 25, 2020  
Time: 8:35 p.m.

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

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

APPLICANT'S REPRESENTATIVE: CHRISTOPHER LAPINE &  
ZEIDAN NESHEIWAT

----- X

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

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GAS LAND PETROLEUM, INC.

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CHAIRMAN SCALZO: Okay. Moving forward. The next application this evening is Gas Land Petroleum, Inc., 5200 Route 9W, Newburgh. It's in the B Zone. The applicant seeks variances for relief from the 1,000 foot requirement to the nearest motor vehicle service station, an area variance for the front yard, side yard, building height and yard area for the existing accessory building with the apartment.

Siobhan, mailings?

MS. JABLESNIK: This applicant sent out 37 letters.

CHAIRMAN SCALZO: 37. Siobhan, did you mail in accordance with Section 185-55 and sign the affidavit as required?

MS. JABLESNIK: I did, yes.

CHAIRMAN SCALZO: Very good. Thank you. This application was a referral from the Planning Board. Is the applicant or their representative here this evening to speak about this application?

MR. NESHEIWAT: Yes. I'm Zeidan Nesheiwat from Gas Land Petroleum. Chris from

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GAS LAND PETROLEUM, INC.

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Chazen Companies is supposed to be on. I see he's logged on but we don't hear him. Can you guys hear me good?

CHAIRMAN SCALZO: I can hear you fine. You know what. I did give a brief summary of the other applications but yours is a little different. I figured I would let you go ahead and describe yours.

MR. NESHEIWAT: Our engineer from Chazen Companies, I saw he was part of the participants but now I don't see him signed in. Can I have a second to give him a call?

CHAIRMAN SCALZO: Sure.

MR. NESHEIWAT: He's dialing in right now.

CHAIRMAN SCALZO: Very good. Thank you.

MR. NESHEIWAT: I apologize. He has connection issues.

CHAIRMAN SCALZO: I understand.

(Pause in the proceedings.)

MR. LAPINE: This is Chris Lapine from Chazen Companies.

CHAIRMAN SCALZO: Very good. That's the 914-474 number?

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MR. LAPINE: Yes. I apologize. I got disconnected at your break and I can't get back on.

CHAIRMAN SCALZO: Got you. Well you're here now. If you could state your name one more time, please.

MR. LAPINE: Christopher Lapine,  
L-A-P-I-N-E.

CHAIRMAN SCALZO: Thank you very much. Mr. Lapine, if you could go ahead and tell us what the Gas Land Petroleum application is all about.

MR. LAPINE: I will do my best as I don't have the application up in front of me. What we're looking to do is Gas Land is under contract to purchase a parcel of land to be subdivided from the existing Pat's Towing facility along Route 9W in the Town of Newburgh. The site itself is a little over a 4-acre site. They're looking to break off approximately 1.1 acres of the site for a gasoline fueling station and convenience store.

The site itself has an existing auto repair shop on it in the back. It has a single-



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family home and a barn. Both of those are rentals. And there's an existing diesel operation facility on the property.

There are three entrances to the site along Route 9W. The Route 9W corridor in the vicinity of the property contains multiple commercial uses. We have an adjacent hotel to us. We have a Stewart's facility to the north of us, gasoline fueling station and convenience store. We have commercial businesses to the south of us.

The project has appeared before the Town of Newburgh Planning Board and we've been referred to the Zoning Board due to the variances being sought as part of the proposed subdivision. Three of them deal with the 1,000 foot setback between an existing gasoline or motor vehicle service facility, being the Stewart's, and the proposed gasoline convenience store, as well as the separation between the existing Stewart's and the existing auto body shop at the rear of the property. And also the separation between what will be a modernized gas station replacing the existing gas station and the auto body shop adjoining it.

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2           The existing barn on the southern  
3 portion of the property also has some existing  
4 nonconformities that, as a result of the  
5 subdivision, we would need to obtain variances  
6 for those. Those being the encroachment on the  
7 side yard setback, a height variance as you're  
8 limited to 15 feet in height from accessory  
9 building. The existing building I believe is 20  
10 feet. The building is also in the front of the  
11 primary building which isn't permitted within the  
12 Town of Newburgh's Zoning Code for this district  
13 as well. So we're seeking those particular  
14 variances.

15           We don't believe that the variances set  
16 forth are going to be a hardship. With regards  
17 to the setback between the existing Stewart's  
18 operation and the site, approximately a 900 foot  
19 separation where 1,000 feet is required. We have  
20 an existing diesel -- gasoline/diesel facility  
21 that's within that 900 foot separation already.  
22 What we're doing here is we're replacing that  
23 facility with a modernized gasoline and  
24 convenience store. Since we're subdividing the  
25 property, it's a new use on a new property that

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2 we have to get a variance for. As a result, we  
3 would also have to be 1,000 feet away from the  
4 existing Pat's Auto Body Shop, which, if the  
5 property wasn't subdivided, we'd still maintain  
6 the same separation distance.

7           And lastly, because we're creating a  
8 new lot which the Pat's Towing operation will be  
9 located on, as well as the existing two  
10 dwellings, they don't meet the existing  
11 separation. They're approximately 900 feet away.  
12 We're really not changing the separation  
13 distances, we're just creating a subdivision to  
14 modernize the front portion of the property with  
15 an architecturally pleasing building, new  
16 landscaping. We're also reducing the number of  
17 entrances to the site. We're going to create an  
18 entire pedestrian walkway along the corridor of  
19 the property and new landscaping. It also  
20 provides us the opportunity to clean up the  
21 vehicles that are stored on the site and also  
22 kind of the appearance of the site as you drive  
23 by from Route 9W. So from that standpoint we  
24 don't think it's, you know, going to be an impact  
25 to the neighborhood. We don't think the hardship

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2 -- the variance is substantial as a result of the  
3 fact that they're existing already in terms of  
4 the setbacks from the Stewart's facility to our  
5 proposed site, whether it's related to the auto  
6 body facility, or the proposed gas station, or  
7 the separation between the two of us.

8           Regardless of the position, whether  
9 it's subdivided or not subdivided, the existing  
10 barn as it is is nonconforming. We're not making  
11 a modification to it, but since we're creating a  
12 separate lot and we have an application before  
13 the Town, we have to get a variance for this  
14 existing nonconformity that the building is  
15 operating in.

16           As I said, we're not making any impacts  
17 on anything. We are cleaning up that portion of  
18 the property. We're reducing it down to one  
19 entryway. Other than that, there's no  
20 modifications being made to the barn facility.

21           So we don't think there's any hardships  
22 for the variances being requested, substantial.  
23 Either way, if it's kept in its existing  
24 condition it will continue to exist. If it's  
25 subdivided, it's not changing its setback, or its

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height, or its location as it relates to its principal use on the site.

CHAIRMAN SCALZO: Thank you very much. I'm going to oversimplify this. The current diesel gas islands come down and the building to the north of that comes down. Everything else is pre-existing nonconforming. Am I correct?

MR. LAPINE: You are correct.

CHAIRMAN SCALZO: Thank you.

Okay. Again, this is a referral from the Planning Board.

I've been to the site. I'm sure the improvements are going to make everything less dusty. I do appreciate that you're going to have defined entrances in and out of there, which right now it's not. I don't have any other comments other than that.

If the Members of the Board want to unmute themselves. Mr. Levin, do you have any comments on this? Richard, you have to unmute yourself.

We're going to go to Peter Olympia because Mr. Levin still has to find his button.

MR. OLYMPIA: I think the improvements

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as they are presented will be a positive enhancement to the property.

CHAIRMAN SCALZO: Thank you, Mr. Olympia. I agree.

Mr. Bell?

MR. BELL: I agree with that. After walking the area I think this proposal is going to help greatly in that area, too.

CHAIRMAN SCALZO: Very good.

Mr. Levin, I see you're with us now.

MR. LEVIN: I'm here. The cars that you have going around the -- many cars, is that your business?

MR. LAPINE: Well, what they currently have stored along the front is Pat's Towing and what they share with the Town of Newburgh. This facility also is their dispatching facility and one of their main businesses. They're looking to -- this business is looking to be downsized. They're going to be limiting themselves to six tow trucks at this location, and they're defining their car parking in the rear of their facility where they would have twelve enclosed within the fence area. I believe, and I apologize but I'm

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going off memory, I don't have the plans in front of me, there are five additional parking spaces in the back. There will no longer be any parking along the front of Route 9 or storage of vehicles that are currently there. That would be abandoned.

CHAIRMAN SCALZO: Very good. Thank you.

Mr. Marino, do you have any comments on this application?

(No response.)

CHAIRMAN SCALZO: We're going to wait for Mr. Marino to find his mute button.

How about Mr. Masten? Mr. Masten, you have to unmute yourself.

Okay. Mr. Marino, do you want to try it again?

(No response.)

CHAIRMAN SCALZO: Mr. Masten, you're with us now. Mr. Masten, do you have any comment on that?

MR. MASTEN: No. I'll go along with Darrin and everybody else on the Board.

CHAIRMAN SCALZO: Very good. Mr. Marino, if you don't have comments and you just

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want to give us a thumbs up, I'll take that.

MR. MARINO: (Indicating thumbs up.)

CHAIRMAN SCALZO: Okay. I saw the thumbs up there. Very good.

Mr. Donovan, is that acceptable?

Michelle Conero, please note that Mr. Marino's thumb was up.

MR. DONOVAN: Under these unique circumstance Mr. Chairman, we will make that acceptable.

CHAIRMAN SCALZO: Thank you.

At this point I'm going to open it up to any members of the public that want to speak about this application.

Siobhan, if you can unmute everybody. Actually, they probably are. They just need to unmute themselves.

Is there anyone from the public here to speak about Gas Land Petroleum at 5200 Route 9W in Newburgh?

(No response.)

CHAIRMAN SCALZO: Do any members of the public wish to speak about the Gas Land Petroleum application at 5200 Route 9W in Newburgh?



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(No response.)

CHAIRMAN SCALZO: Hearing none, I'm going to go back to the Board one more time. Does anybody have a comment?

MR. BELL: No. I'm good.

CHAIRMAN SCALZO: Very good. All right. Do I have a motion of some sort regarding the status of the public hearing?

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

MR. MASTEN: I'll second it.

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

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino? He's muted.

MR. MARINO: (Indicating thumbs up.)

MS. JABLESNIK: Thumbs up.

CHAIRMAN SCALZO: He gave us the thumbs up again.

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MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed. Thank  
you.

Mr. Donovan, I know this is still a  
Type 2 action under SEQRA. Am I correct?

MR. DONOVAN: So Mr. Chairman, this can  
be viewed as a Type 2 action. Under the  
circumstances, though, I would recommend to the  
Board that you treat it as an Unlisted action --

CHAIRMAN SCALZO: Okay.

MR. DONOVAN: -- and issue a negative  
declaration.

CHAIRMAN SCALZO: Okay. So the negative  
declaration would need to be put to a vote.  
Correct?

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

CHAIRMAN SCALZO: All right. So I'm  
looking. Do any Members of the Board have a

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motion for a negative declaration for this application?

MR. BELL: I'll make a motion for a negative declaration for this application.

CHAIRMAN SCALZO: We have a motion from Mr. Bell. Do we have a second? I will second it. Roll on that.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

CHAIRMAN SCALZO: Thumbs up, Mr. Marino.

MR. MARINO: (Indicating thumbs up.)

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

All right. So we have confirmed the negative declaration there, Mr. Donovan.

Now our variance criteria. We're still

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following what would be a Type 2 for the  
balancing questions. Correct, Mr. Donovan?

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

CHAIRMAN SCALZO: Thank you.

The first one, whether or not the  
benefit can be achieved by other means feasible  
to the applicant. If they didn't subdivide, that  
would be it. However, most of the items that  
require a variance here, in my opinion, are pre-  
existing nonconforming. The application itself  
states that a diesel fueling station has been in  
existence since 1995 which is within 900 feet of  
the Stewart's. So, you know, I don't feel as  
though the benefit can be achieved because  
already everything is pre-existing nonconforming.

Mr. Bell, would you concur?

MR. BELL: I agree.

CHAIRMAN SCALZO: Mr. Levin, would you  
concur?

MR. LEVIN: Yes, I do.

CHAIRMAN SCALZO: Mr. Olympia, would  
you concur?

MR. OLYMPIA: Yes.

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CHAIRMAN SCALZO: Mr. Masten, would you concur?

MR. MASTEN: I concur.

CHAIRMAN SCALZO: And Mr. Marino? We have audio now.

MR. MARINO: Yes.

CHAIRMAN SCALZO: Very good. Thank you. The second, whether there's an undesirable change in the neighborhood character or a detriment to nearby properties. I think quite to the contrary. I think it's going to be an improvement to the neighborhood character.

Mr. Bell?

MR. BELL: I agree. Yes, I do agree.

CHAIRMAN SCALZO: Mr. Olympia, would you agree?

MR. OLYMPIA: I agree.

CHAIRMAN SCALZO: Mr. Levin, would you agree?

MR. LEVIN: I agree with you on that.

CHAIRMAN SCALZO: Thank you.

Mr. Marino, would you agree?

MR. MARINO: I agree.

CHAIRMAN SCALZO: And Mr. Masten, would

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you agree?

MR. MASTEN: Yes.

CHAIRMAN SCALZO: Very good. The third, whether the request is substantial. I don't believe so. As I say, they're pulling down the old diesel and putting up new gas islands. The building is going to be probably a little larger than the existing one but I think it's negligible. I don't think it's substantial.

Mr. Bell, do you concur?

MR. BELL: I concur.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: I concur.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: I concur.

CHAIRMAN SCALZO: Very good. Mr. Marino?

MR. MARINO: Yes.

CHAIRMAN SCALZO: And Mr. Masten?

MR. MASTEN: Yes.

CHAIRMAN SCALZO: Very good. The fourth, whether the request will have adverse physical or environmental effects. None that won't be mitigated. I would say no.

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Mr. Bell, would you concur?

MR. BELL: I agree.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: I concur.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: I concur.

CHAIRMAN SCALZO: And Mr. Marino?

MR. MARINO: Yes, I do.

CHAIRMAN SCALZO: And Mr. Masten?

MR. MASTEN: I agree.

CHAIRMAN SCALZO: Now the fifth,  
whether the alleged difficulty is self-created.  
Relative but not determinative. Of course it's  
self-created because if they did nothing they  
wouldn't need any of this. However, I don't  
believe it's going to make our determination any  
different.

Does anybody disagree with me, please  
speak up? I'm not going to poll you all.

MR. BELL: No.

CHAIRMAN SCALZO: Very good. If the  
Board approves, it shall grant the minimum  
variance necessary. We may impose reasonable  
conditions.

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Having gone through the balancing test of the area variance, what is the pleasure of the Board? Does the Board have a motion of some sort?

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

CHAIRMAN SCALZO: We have a motion of approval from Mr. Bell. I'll second that.

Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Motion carried. The variance is approved. Thank you very much.

MR. LAPINE: Thank you very much, Mr.



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Chairman, Members of the Board. Thank you for  
your patience as I got disconnected.

Mr. Bell, go Buckeye.

MR. BELL: That's my man.

(Time noted: 8:53 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 6th day of July 2020.

*Michelle Conero*

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MICHELLE CONERO

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

----- X  
In the Matter of

1110 72nd ASSOCIATES, LLC  
15 Brooker Drive, Newburgh  
Section 22; Block 10; Lot 5  
R-3 Zone

----- X

Date: June 25, 2020  
Time: 8:53 p.m.

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

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

APPLICANT'S REPRESENTATIVE: ANTHONY MELUSO

----- X

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

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1110 72nd ASSOCIATES, LLC

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CHAIRMAN SCALZO: Now we're going to move on to items held open from the May 28th meeting. We have 1110 72nd Associates, LLC which is 15 Brooker Drive in Newburgh, seeking an area variance to keep a 16 by 22 attached garage with a side yard setback of 1.75 where 15 is required and a combined side yard of 14.33 where 30 is required.

We have received additional correspondence from the applicant's engineer. Two outstanding items were for the size of the garage on the right side of the house.

Code Compliance, if we can get a little help here for the first part.

Mr. Meluso, are you unmuted? No. You're still muted.

MR. MELUSO: How's that?

CHAIRMAN SCALZO: Much better. Very good. Thank you.

Good evening. We did receive your correspondence, and thank you. You can teach an old dog new tricks. I read your quotation of the Code. 185-18(a)(1) applies, in my opinion, to unimproved lots. That's immaterial. It appears

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1110 72nd ASSOCIATES, LLC

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that you're not creating a new nonconformity, so therefore it does appear that you get the benefit of 185-19(c)(1).

MR. MELUSO: Right.

CHAIRMAN SCALZO: Members of the Board, I actually reached out to Mr. Donovan on this. In this case the only thing I was looking for was confirmation now from Mr. Mattina regarding the size of the garage on the right side of the property.

I can't hear you, Joe.

MR. MATTINA: How about now?

CHAIRMAN SCALZO: Got you now.

MR. MATTINA: Basically the previous owners in 2007 rebuilt this without a permit, so we have no documentation of what the size should be. The only thing we have to go by is assessment records that says in 2007 it was enlarged by 5 feet. That's all we have. We have no building permits. We have no other previous approvals. That's all we have to go by.

CHAIRMAN SCALZO: Thank you very much, Mr. Mattina.

We have all -- we've been to the site.

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Actually, some Members have not been to the site but I supplied them with photographs. It does not appear as though the garage was built on a foundation or walls that were expanded. So it appears that the garage was replaced just about in kind from what it had originally been. Again, as I opened it up, as much as I don't like the way that the porch looks on the left-hand side of the property, the Code does allow for this to remain in place under 185-19(c)(1). So I believe all of my concerns have been met in this case.

Mr. Meluso, have I adequately summarized what we've got going on here?

MR. MELUSO: I agree with you. And Joe has plans that I signed as an engineer with the dimensions.

MR. DONOVAN: Mr. Chairman, if I could just chime in on that. Mr. Meluso, as a professional engineer, has submitted correspondence. The correspondence specifically dated March -- I guess it would be June 4th. It says March 4th -- where he indicates that the garage now is smaller than it was before. So we have a certification from a professional, and I

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think the Board should rely upon that. He does  
get the benefit of 185-19(c)(1).

CHAIRMAN SCALZO: Very good. Thank you.

In this case I'll look -- do any  
Members of the Board have any comments on this  
application?

As I say, the porch on the left-hand  
side is out of the discussion at this point.

MR. BELL: Right. I'm good.

CHAIRMAN SCALZO: Okay. And the public  
hearing is still open. Are there any members of  
the public that are here to speak about this  
application?

Susan Walski, you're going to have to  
unmute yourself. I can see that you're trying to  
talk but your mute button is still on. There you  
go.

MS. WALSKI: Thank you, Mr. Chairman.  
Actually, I represent the seller of this  
property. I did want this Board to know that we  
have a buyer that has been ever so patiently  
waiting for this house. It is a lovely young  
couple who is looking to make this their home,  
bring back the gardens, bring back some life to

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1110 72nd ASSOCIATES, LLC

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the exterior of this house to make it an asset to the neighborhood.

CHAIRMAN SCALZO: Thank you very much for your input.

Okay. Anyone else from the public here to speak about this application?

(No response.)

CHAIRMAN SCALZO: Hearing none, back to the Members of the Board. Does anybody have anything they want to add?

MR. BELL: No.

CHAIRMAN SCALZO: Very good. In this case I'll look to the Board. Does the Board have a motion in mind?

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

CHAIRMAN SCALZO: Actually, I'm sorry Mr. Bell. We have to close the public hearing.

MR. BELL: Yes, sir.

CHAIRMAN SCALZO: With regard to the public hearing; Mr. Bell, you're making a motion to close the public hearing?

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

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CHAIRMAN SCALZO: Very good. I'll  
second that. Roll on that.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed.

Mr. Donovan, this is a Type 2 action  
under SEQRA; correct?

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

CHAIRMAN SCALZO: Very good. We're  
going to go through our area variance criteria  
and discuss the five factors, the first one being  
whether or not the benefit can be achieved by  
other means feasible to the applicant. Well it



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appears -- I'm not going to call it -- well I guess you can call it preexisting. It does not appear so.

Mr. Bell, would you concur?

MR. BELL: I agree.

CHAIRMAN SCALZO: Mr. Levin, would you concur? Mr. Levin?

MR. LEVIN: I concur.

CHAIRMAN SCALZO: Very good. Mr. Olympia?

MR. OLYMPIA: I concur.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: I concur.

CHAIRMAN SCALZO: And Mr. Marino?

MR. MARINO: I agree.

CHAIRMAN SCALZO: Very good. The second, if there's an undesirable change in the neighborhood character or a detriment to nearby properties. Well, it appears that they're on their way to improving it. So I would say the change to the neighborhood would be a change for the better.

Mr. Bell, would you agree?

MR. BELL: I agree.

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CHAIRMAN SCALZO: Mr. Levin, would you agree?

MR. LEVIN: I definitely agree.

CHAIRMAN SCALZO: Mr. Olympia, would you agree?

MR. OLYMPIA: I agree.

CHAIRMAN SCALZO: Mr. Masten, would you agree?

MR. MASTEN: Yes.

CHAIRMAN SCALZO: Mr. Marino, would you agree?

MR. MARINO: Yes.

CHAIRMAN SCALZO: Thank you very much. Third, whether the request is substantial. I don't think so when we're talking about the garage on the right-hand side.

Mr. Bell?

MR. BELL: I agree.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: I agree.

CHAIRMAN SCALZO: Very good. Mr. Olympia?

MR. OLYMPIA: I agree.

CHAIRMAN SCALZO: Mr. Marino?

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(No response.)

CHAIRMAN SCALZO: He's muted again.

Mr. Masten, --

MR. MASTEN: Yes.

CHAIRMAN SCALZO: -- do you agree?

MR. MASTEN: Yes.

CHAIRMAN SCALZO: Very good. Mr.

Marino, do you agree?

MR. MARINO: Yes.

CHAIRMAN SCALZO: Very good.

All right. The fourth, whether the request will have adverse physical or environmental effects. I'm going to go to Mr. Marino first. I don't believe there are.

Do you agree?

MR. MARINO: I agree.

CHAIRMAN SCALZO: Very good. Mr.

Masten, do you agree?

MR. MASTEN: I agree.

CHAIRMAN SCALZO: Mr. Olympia, do you agree?

MR. OLYMPIA: I agree.

CHAIRMAN SCALZO: Mr. Bell, do you agree?

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MR. BELL: Yes, I agree.

CHAIRMAN SCALZO: And Mr. Levin, do you agree?

MR. LEVIN: I agree.

CHAIRMAN SCALZO: Very good. Fifth, whether the alleged difficulty is self-created. This is relevant but not determinative. Well, it's not self-created by this particular applicant. It may not have been created by the applicant -- the owner before. Even still.

So if anybody has any disagreement to that, please shout out.

(No response.)

CHAIRMAN SCALZO: All right. Having gone through the balancing test of the area variance, what's the pleasure of the Board? Does the Board have a motion of some sort?

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

MR. OLYMPIA: I'll second it.

CHAIRMAN SCALZO: Very good. We have a motion from Mr. Bell. We have a second from Mr. Olympia. Roll on that.

MS. JABLESNIK: Mr. Bell?

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MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

CHAIRMAN SCALZO: Mr. Marino is muted again. Can we move to the next.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Mr. Donovan, do we need to -- I mean at this point we have all ayes and no nays. Mr. Marino is online but we can't seem to reach him.

MR. DONOVAN: So you have sufficient votes to pass the application. I think Mr. Marino, I don't know -- generally it's yes, no or abstain. I'm not quite sure where this falls.

CHAIRMAN SCALZO: It would probably be an abstain. That's correct?

MR. DONOVAN: Well a new category of unable to connect to Zoom. It's not a yes or a no, it's just a --

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CHAIRMAN SCALZO: Very good. It appears the motion has carried. In this case the variances are granted.

Thank you very much.

MR. MELUSO: Thank you. Have a good evening. Stay safe.

CHAIRMAN SCALZO: Thanks very much. You, too.

(Time noted: 9:02 p.m.)

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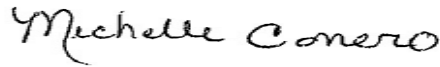
C E R T I F I C A T I O N

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 6th day of July 2020.



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MICHELLE CONERO

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HELD REMOTELY VIA ZOOM

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

----- X  
In the Matter of

EMMA GASPARINI

125 Mill Street, Wallkill  
Section 2; Block 1; Lot 64  
RR Zone

----- X

Date: June 25, 2020  
Time: 9:02 p.m.

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

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

APPLICANT'S REPRESENTATIVE: ASHLEY TORRE

----- X

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



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CHAIRMAN SCALZO: All right. That's it. We are moving on to our final application this evening, Emma Gasparini at 125 Mill Street in Wallkill, seeking a use variance to install a 100 amp landlord meter and panel on a two-family. Bulk table schedule 1 does not permit two-family dwelling units in an RR Zone. Any use not permitted shall be deemed prohibited.

This is carried over more than once.

Is Ms. Torre with us this evening? I see her up. You're going to have to unmute.

MS. TORRE: Hello.

CHAIRMAN SCALZO: Very good. Ms. Torre, it's been a bit. I know you actually deferred to this meeting.

MS. TORRE: Yes.

CHAIRMAN SCALZO: We actually have one more Member than we did last time. It was a good call on your part.

So if I could just ask you for the Reader's Digest version on what it is we're looking to do here. I do know we have correspondence that came in since -- in the last few days, as well as you see we have a bunch of

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people up on screen that are probably waiting to talk. So Ms. Torre, if you could give us the Reader's Digest version, that would be great.

MS. TORRE: Sure. So again, the application is twofold. The first thing we're asking for is a determination that the home is a pre-existing nonconforming legal two-family home. So primarily that's based on the assessment records. Since 1984 the assessment records have classified the home as a two-family. So the Building Department based their determination that it wasn't a two-family on assessment records. So that's why the assessment records are especially relevant to this case. Also because the 1984 assessment records, it's been classified as two-family since then, and that was before the zoning law was amended to prohibit the two-family use in this district.

So I do note that application that was just before you I believe had some issues where the assessment records were the only type of evidence, or they were something that was relied on by the applicant, and I would submit that it's only fair to consider them across the board, not

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just for one application. They're definitely relevant here. It appears there might be some inaccurate or maybe inadequate or vague Building Department records, and my client should not be penalized for any such poor recordkeeping.

So this second -- that again was the first basis of this application. The second is for a use variance. In the alternative, if the Board finds that it is not a legal two-family home, then we're asking for a use variance.

We did submit the details of the four factors for this test previously, so I'm not going to go into all that here. I would remind you that we did have letters from four neighbors who did not object to the use. I know we had some opposition, and I did see those submissions. We did also have four neighbors that said they didn't object and that they believe it would not change the character of the neighborhood. All of that is definitely, of course, relevant to the use variance request.

So just a few comments on those neighbors' submissions because those have been made since we were last with you. I just wanted

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some global comments, not to go into, you know, everything that was claimed in those letters but just to -- as the Board knows, zoning regulates the use and not the user. It's really a constant theme in the letters I've seen is there are objections based on the fact that the property is rented or there's tenants. That's really more towards the user versus the use. So what's before you is the use is a two-family. Whether or not it's rented, that is not relevant.

The opposition generally does focus on things that are not really related to the two-family use. Again, the presence of tenants and the fact that it's rented is something that's mentioned throughout.

Also with respect to impacts to water or impacts to traffic or the septic, we're not increasing the size of the home at all. My client hasn't added any bedrooms. She's not increasing the size of the home. For one, there's no evidence that any of those impacts are anything more than, you know, speculation. There's no actual proof of any of those impacts. It would be arbitrary and capricious for the Board to rely on

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such generalized comments.

Also it's important that the use is a two-family but that the size of the home hasn't changed. Those impacts, they don't lend themselves to the two-family use. Those are -- any claims are really related just simply to the size of the house, and that hasn't changed.

And simply because -- I understand some people submitted more than one submission. That makes those letters and statements deserving of no more credence than any others. They need to be considered of course with the whole record and everything we presented to you and will still present. I believe we tried to figure out -- we did have at least one of the members of the public that -- one of the neighbors that submitted a letter on our behalf that was supposed to attend, so I'm trying to make sure they're able to get on.

One other thing that was kind of raised in these later submissions was some comments dealing with engineering and construction type issues. I would also submit to the Board that it would be arbitrary and capricious to rely upon

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those types of engineering and other comments when they're not made by -- when they're made by a non-expert.

Again, in conclusion, again the application is twofold. The first part is for the interpretation that it's a preexisting nonconforming two-family, and then a use variance in the alternative.

I thank the Board for your time and being accommodating with the schedule.

CHAIRMAN SCALZO: Thank you. Ms. Torre, I heard you in last month's meeting asking to be put towards the front of the agenda. I apologize but I can't do that for one and not do it for all. Typically Board business, new business occurs first and then holdovers appear later in the meeting. I just want you to understand that I did hear what you said last time but I apologize that I couldn't accommodate your request.

MS. TORRE: Understood. Thank you. I do appreciate it.

CHAIRMAN SCALZO: Very good. Okay. I'm going to jump back to I want to say the first time we met you was probably in February. The

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EMMA GASPARINI

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February meeting. Am I correct?

MS. TORRE: I believe it may have been actually January because I think right when we were retained I might have come just simply to ask --

CHAIRMAN SCALZO: That's correct. You are correct. Yes. And then the second meeting in February was when you actually gave a presentation.

My recollection is -- and a lot has happened between now and then. My recollection of that February meeting and presentation was we had left the public hearing open. Mr. Marino actually had requested that we leave the public hearing open so we could hear from some of the folks that had signed the letters in your application that did not -- that weren't opposed to this application. That's the first thing that I recall from our February meeting that you were looking for. Do you have any of those folks chime in yet? Are they available?

MS. TORRE: So I'm actually working on getting one of them here now. Just getting them the information. They were having trouble

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connecting. So if I could just have a minute.

CHAIRMAN SCALZO: Apparently we've got a few.

I do want to mention into the records we did receive two letters this week, one from Greg Hermance Senior at 142 Mill Street and one from Debbie Deegan. Ms. Deegan's letter was just about eleven pages long, but the font is nice and big for my tired eyes, and that's wonderful. Mr. Hermance's narrative was two pages, but he also included a bunch of photos.

Ms. Torre, did you get a chance to get a look at those two presentations or those two letters?

MS. TORRE: Yes, I did.

CHAIRMAN SCALZO: Very good. Okay. So while you're trying to contact your client -- not your client, the support information that you're going to be providing, I'm actually going to jump to -- we're going to leave this now and go to the public. I'm going to actually go to Ms. Deegan first.

If I could, you had written some very comprehensive letters. If I could ask you to also



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give us the Reader's Digest version and try to capture what you had in the letter that you sent. I can't hear you very well. You may have to get closer to your mic.

MS. DEEGAN: Okay.

CHAIRMAN SCALZO: That's better. Thank you.

MS. DEEGAN: Can you hear me?

CHAIRMAN SCALZO: Yup.

MS. DEEGAN: Okay. First of all, we shouldn't be here. This house was never a two-family house. And I FOIL'd the file. In the file it said the assessor assessed it in 1981 as a one-family house. An addition was put on a one-family house. There's nothing in this file about changing. We all know that -- or let me back up and let's not -- let me not assume everyone knows. But according to the Building Department, this is a one-family house. The Building Department has the final word.

The Gasparinis, when they looked at this house, they had their title company contact the Town of Newburgh and ask if there were any violations. The Building Department said there

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were no violations, but no inspection of the premises was done. So you can't rely on their files.

CHAIRMAN SCALZO: Ms. Deegan, that's a standard letter that the Building Department puts out for --

MS. DEEGAN: They could have easily asked for the Building Department to take a look at this.

CHAIRMAN SCALZO: Very good. Thank you.

MS. DEEGAN: And the four letters they got were a form letter that the Gasparinis wrote and went to neighbors door to door asking them -- soliciting them to sign. It's not that four people all of a sudden decided to create a letter in their defense. They were form letters created.

CHAIRMAN SCALZO: Ms. Deegan, that's exactly why we asked Ms. Torre if she could just have someone that had signed those participate.

MS. DEEGAN: I've been on this street since 1966. I knew Herbie. I was in that house. That house was never a two-family house. The Gasparinis got a permit when they first bought that house to turn on the electricity. The permit

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was signed by Mr. Mattina, and the permit says to restore power to the property and to install smoke detectors only. They turned around, illegally installed a second meter and never closed out this first permit, rented it, waited two years to ask for a landlord meter, and now they're trying to say well this is preexisting. It was not pre-existing. It never was. It never was a two-family house.

CHAIRMAN SCALZO: Okay. Thank you. And again, sticking to why the application is here this evening, they're seeking clarification or interpretation that it was pre-existing as a two-family. It's your position that it was not.

MS. DEEGAN: It was not. It was not. And I think Mr. Hermance can speak to this next because he was in the house also, and we have all the listing pictures. The upstairs was never completed. No one could -- there couldn't have been two families living in that house. And I think I sent to you, in one of my correspondence, a picture of Herbie's cats on the stairs in the house. Herbie and I stayed friends on Facebook. We both graduated from Wallkill High. He

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graduated in 1971. So granted we haven't seen each other -- before he passed we had not seen each other often, but we stayed friends on Facebook. This house was never a two-family house until the Gasparinis illegally changed it, waited two years, and then are coming to you to ask you to grandfather it in when they created this.

CHAIRMAN SCALZO: Okay. Ms. Deegan, do you have -- I understand your position there. Can we move on to any other support information that you may have?

MS. DEEGAN: Besides being an eyewitness?

CHAIRMAN SCALZO: Okay. That's fine. Very good. Ms. Deegan, obviously this public hearing is going to remain open until we close it, which may be this evening. Hopefully this evening. I'm actually going to -- if you don't mind, I'm going to give someone else from the public a chance.

I'm actually going to check back with Ms. Torre to see if her contact has reached out to her yet.

MS. TORRE: So they are trying to call

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in and say that it keeps hanging up when they're trying to access it. I don't know if it's something to do with the phone. They don't have internet service where they are so they're trying to -- I don't know whether they can access the Zoom link. I'm going to try that. I don't know if anyone else has had trouble with the telephone connection at all.

CHAIRMAN SCALZO: Well Mr. Marino struggled tonight. We all saw that. I'll tell you what, Ms. Torre. If you don't mind, while we're waiting for you to connect to your source, I'm going to jump to any other members of the public.

I see Mr. Hermance did write a letter. Is Mr. Hermance on this line tonight? I see something --

MR. HERMANCE: I'm on the line tonight.

CHAIRMAN SCALZO: All right. Could you identify yourself, please?

MR. HERMANCE: I'm Greg Hermance Senior. I live at 142 Mill Street.

CHAIRMAN SCALZO: Very good. Mr. Hermance, we have your letter here.

MR. HERMANCE: Yes.

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CHAIRMAN SCALZO: I don't know that I'm going to read through the entire letter. You do jump to what are the five criteria for what determinations on these things are.

MR. HERMANCE: Right.

CHAIRMAN SCALZO: And I see benefit achieved by other means. You feel they can. If it were a five-bedroom, single-family rental at 2,250 per month they would recoup their investment in five years or they could sell now.

Second, an undesirable change in the character of the neighborhood. You say you drive down Mill Street and find it difficult to see any other home with seven cars in the driveway that are very visible and close to the road.

Substantial. You say yes because there's no other two-families like it.

Adverse physical or environmental effects. You say when you built your house your engineer told you about a Health Department standard that I should have my septic tank pumped every five years as a minimum. Mr. Gasparini stated he has no issues and there's no moisture around his. That septic now has to support twelve

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people living in the house. How about an engineer confirming the septic is sufficient to support that. The attorney for Mr. Gasparini doesn't want to seem to want to notice that as an environmental issue because Mr. Gasparini tells his tenants to use Rid-X.

The self-created hardship, and you refer to photos that you've attached to your letter, the photos and links. Mr. Gasparini started modifying the home to suit his own desires without any permit.

MR. HERMANCE: Correct.

CHAIRMAN SCALZO: Did anybody else here see -- there are photos attached Mr. Hermance's letter. It doesn't appear -- well going back to Mr. Hermance's letter. It says, "I find it hard to believe the accuracy of Mr. Gasparini's tale of what he did upstairs. He stated he took down paneling, replaced it with sheetrock and only had to paint the upstairs bathroom."

In another section here you say, "Look carefully at the photos of the unfinished upstairs and you'll see a board nailed over a portion of the rear entry door to prevent someone

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from opening the door and falling a full story to the ground. I would be curious to know how the Gasparinis gained entry to the upstairs with that board in place."

You also mentioned two websites, one [www.stately.com](http://www.stately.com) that says these were listing photos in July of 2017.

MR. HERMANCE: Correct.

CHAIRMAN SCALZO: You also noted what I had said in the previous meeting about the Zillow listing, about the second story was never finished.

Mr. Hermance, do you have other items you want to add to this?

MR. HERMANCE: No. Just to reiterate what Ms. Deegan had stated. As I said, I've been a resident here for 54 years and was in the house many times. My children were babysat there. There were interior stairs. As you can see in the photo, there's no -- if there's no rear stairs or deck on the back of the house, with no interior stairs how would you even get to the second story? So it's kind of -- it goes against what they're saying.



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And in the photos you can clearly see a portion of the house upstairs was unfinished and the door was screwed shut so nobody could fall out to a nonexistent deck.

So I can personally attest I was in the house, there were stairs to the second story to refute what they're claiming that it was always a two-family. It was not always a two-family. It was just recently turned into a two-family. That's our argument. And I stated in my five statements how it does impact the neighborhood.

CHAIRMAN SCALZO: Thank you, Mr. Hermance.

Ms. Torre, I'm going to give you another shot here.

MS. TORRE: Yes. So actually Jorge I believe just got connected by the phone.

CHAIRMAN SCALZO: Very good. If they could just identify themselves, please.

MR. RIVERA: My name is Jorge Rivera.

CHAIRMAN SCALZO: Okay, Mr. Rivera. I don't know if Ms. Torre filled you in on why she had asked you to participate in this meeting. What's going on is the house at 125 Mill Street,

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the big red house, the applicants are claiming that the house had been a two-family house before they purchased it in 2017. You had signed a document that stated that you had no issues with the house being a two-family. I don't have your letter in front of me that you signed. Are you -- is your position that the house was a two-family as long as you've been in your residence?

MR. RIVERA: As far as I can recall, I've always seen several cars there, different people living upstairs as well as downstairs. I don't pry too much into other people's, you know, business.

As far as having an issue with it being a two-family, I have no issues at all. Speaking to my neighbor across the street and next door and their take, the information that I got is just, you know, just third-party hearsay as of this point. They always said it was always a two-family. I've been there living at my dwelling for seventeen years and I don't have an issue for it being a two-family.

CHAIRMAN SCALZO: And thank you for your comments, Mr. Rivera. The issue is not if

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you have an issue with it being a two-family. Did you recognize that it was always a two-family in your seventeen years there or are you not sure?

MR. RIVERA: Seeing other vehicles there, I was led to believe it was always a two-family.

CHAIRMAN SCALZO: Okay. Have you ever been in the home, sir?

MR. RIVERA: Negative.

CHAIRMAN SCALZO: Okay. Thank you very much.

Do you have anything you may want to add to this, Ms. Torre? Has your support --

MS. TORRE: Just if I could on the comments. Mr. Rivera was speaking about not having, you know, any objection to the two-family, and that's certainly relevant to the alternative request in the application for a use variance. So that is definitely still relevant to the second part of the application.

I believe that -- I don't believe anyone else is here to speak.

CHAIRMAN SCALZO: Okay. All right. We can certainly -- again, the public hearing is

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still open. At this point we heard from Ms. Deegan. We heard from Mr. Hermance. Is there anyone else here that would like to speak that we haven't heard from yet?

Ms. Deegan, I'll get to you. I saw your hand up.

CHAIRMAN SCALZO: I see Mr. Salvatore's iPhone. I see his lips are moving but he's on mute.

MR. MORELLO: Can you hear me now?

CHAIRMAN SCALZO: Now we can, yes. Please identify yourself, sir.

MR. MORELLO: My name is Salvatore Morello. I'm the brother of Ms. Deegan.

It's true that we moved to Mill Street in 1966. I was personal friends with Herbie Trubenbach, the son of Harry Trubenbach. You know, we were into minibikes and dirt bikes. I've been in that house hundreds of times, around that house on the outside. That house was always a one-family from when I was a kid until 2017. From when my mother lived there, my parents lived there and now my sister lives there, I've never seen more than one car in that driveway.

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Also, there was a center set of stairs. You walk through the front door and through the front porch, through a storm door on the little porch and then there was a main door of the house. To the left was a bedroom. To the right was like a living room. The back was a bathroom. Right in front of you was a set of stairs that went up.

I'd also like to disclose that I am a New York State building code official. I've been doing it for twenty-six years. I have a lot of issues with -- well, you know, there's a lot of falsehoods, and accusations, and assumptions that aren't predicated on facts here with this. In all due respect to Ms. Torre, she keeps on relying on the assessor's records. Well, Mr. Mattina is a hundred percent correct when he mentioned in one of his letters that when the assessors go out to look at a property, they're only there for tax purposes. If they go to a house with fifteen rooms and they don't have beds in them, they're going to call it an eight-bedroom house. That's just the way it works. The County gets all the information from the assessor's records -- from

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the assessor's office. Excuse me. So, you know, the only way you're going to get a true classification and use of a building or -- commercial or residential is the building department.

There was also mention about the bedrooms. Here you have a house built in the early 1900s with a poor septic system at best. Now you've got --

CHAIRMAN SCALZO: Actually, you know what, with regard to the septic, I appreciate what you're saying but we're going to try to stick to the use of what we're doing here.

MR. MORELLO: Okay. I understand one hundred percent, Mr. Chairman. I will stick to that.

So I can testify -- I mean you have three people here with fifty something years of knowing the history of that house. I can tell you that it's never been a two-family. It's always been used as a one-family in all the years I've known it, since 1966.

CHAIRMAN SCALZO: Thank you, sir.

I'm going to actually ask if anybody

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else from the public here wants to speak again?  
I see Mr. Rivera's phone just lit up.

MR. RIVERA: No. I spoke already.

CHAIRMAN SCALZO: Okay. Very good.

Ms. Torre, are you still trying to make  
contact with anyone else?

MS. TORRE: No. Not -- no.

CHAIRMAN SCALZO: All right. I'm going  
to be a little out of the ordinary here. Anybody  
from the Board have any questions that may want  
to -- that may have been answered or -- anybody  
got anything?

(No response.)

CHAIRMAN SCALZO: No. I'm going to go  
back to any members of the public. Ms. Torre,  
does your client wish to speak or he's okay with  
your representation?

MS. TORRE: If you have anything to  
add, please feel free to unmute yourself and add  
that.

UNIDENTIFIED SPEAKER: Mr. Chairman,  
can you hear me?

CHAIRMAN SCALZO: Yes. Hang on one  
second, sir. The owner -- the applicant is

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actually going to speak.

Mr. Gasparini, the floor is yours.

MR. GASPARINI: Yes. I just want to state that I bought several houses in the same shape that I bought this house and I have never had a problem with any house that I've ever bought, through the title company or anything else. This is the first incident that I have ever come up against with a Town so outrageously against rentals, like it was a disease.

Now, if you's all know that house, then you know there were two meter boxes in that house, you know there were two separates. Don't tell me no, sir. Okay. Because you say you've been in that house since 1966. Don't tell me I put an electrical box in that house because I did no electrical work in that house. Everything that that house has is how it was left. Yes, I could have did things like recessed lighting and everything else, but I didn't. I left all the outlets, everything the way it was. So how ever it was, whatever you feel you did -- and nobody has identified where that staircase was because you as a carpenter and a code enforcer, well you



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should know that if a house is built, it's built with a designed staircase somewhere centering the house. Okay. So I don't know what you's feel but I did everything right and I did (inaudible). I bought it as a two-family and I went to the County -- please let me finish. I went to the County, I went to the Town office, I went everywhere to make sure that house was a coded 220 and a two-family house. It just needed -- certain things needed to be updated.

That's all I want to say. So I did what I was supposed to do. My title company sent your Town a letter and you should have looked and seen that there was a code 220 on that -- that it was coded 220, so that should have been a violation and this problem wouldn't be sitting here right now and I wouldn't have this problem.

CHAIRMAN SCALZO: Mr. Gasparini, if I could ask, did you get a look at the photos that Mr. Hermance provided in his letter?

MR. GASPARINI: No, I did not. Those don't mean nothing to me. I know what I bought. I know what I walked into.

CHAIRMAN SCALZO: Okay.

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MR. GASPARINI: People can make up photos. Ms. Debbie claims that she knew Herbie so much. You know what, everybody knows everybody but nobody really knows what goes on in somebody's house, okay.

CHAIRMAN SCALZO: You know what. I can appreciate what you're saying. Again, we're going to steer back to the reason for the application.

MR. GASPARINI: Thank you.

CHAIRMAN SCALZO: Thank you.

All right. I see -- you know what. Ms. Deegan, I see your hand up and I'm going to let you speak. But please, this is not a he said/she said situation. This is we need to stick to why we're here. It has to have everything to do with the application. Please Ms. Deegan, unmute yourself.

MS. DEEGAN: As far as the electric goes, I called Central Hudson and I asked them if it was -- if there were ever two meters at that house. I called myself. It's in my notes and it's in one of the letters that I wrote to you. The last submission, not this past one. The last

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submission. I asked -- I told Central Hudson I was interested in the house. I was. I asked if there were ever two meters and I was told no, not until it changed hands when the Gasparinis bought it. Also, in the listing pictures there's a picture of the electrical panel inside. There was only one electrical panel. But regardless, Central Hudson told me that there was never two meters on that house.

And as far as anybody living upstairs, we all saw all the listing pictures. The insulation was falling down. It was never finished. Nothing was complete.

I was in that house, too. I used to go in the front door, walk upstairs. As I said in my last submission, we used to develop film and Herbie had a dark room upstairs. So I was in that house many times, the stairs. But it was a single-family house. It was always a single-family house.

What Mr. Morello was saying before about only seeing one car, while herbie lived there there was always only one car in the driveway. Sometimes two. After they bought it,

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there's sometimes ten cars in that driveway. It's ridiculous. It has changed. It does change the character of the neighborhood. It's not the same open space, beautiful. It's just not.

CHAIRMAN SCALZO: All right. I thank you, Ms. Deegan. I think we got your point.

MS. DEEGAN: Okay.

MR. MORELLO: Mr. Chairman --

CHAIRMAN SCALZO: Yes.

MR. MORELLO: -- I'd just like to add one thing. I know we're here for one reason, and Ms. Torre keeps on mentioning the phrase pre-existing nonconforming. It can't be pre-existing nonconforming if it was never used as a two-family. So, you know, that negates that whole theory. It's not a pre-existing nonconforming. Thank you.

CHAIRMAN SCALZO: That was part 1. Part 2 is if we didn't find it was pre-existing nonconforming, they're actually seeking a use variance.

Ms. Torre, am I correct in that?

MS. TORRE: (Inaudible.)

CHAIRMAN SCALZO: You know what, folks.

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I don't --

MR. DONOVAN: Mr. Chairman, if I could just briefly on the issue of pre-existing nonconforming. The key date for the Board is 1991. That's when the local law was adopted by the Town of Newburgh which required -- which disallowed two-family homes in the zone. So in order to find that the applicant has stated their burden of proof to demonstrate this is a pre-existing nonconforming protection, the Board would have to be satisfied that in December of 1991 when the local law was adopted, that this home was a two-family, it was legally established, and that that home was maintained as a two-family from 1991 uninterrupted to the present. If you find that that's the case, you should issue a favorable interpretation. If you find that that's not the case, then you should not issue a favorable interpretation. That's basically what the law says. It has to be legally established and then it's protected so long as it's continued.

CHAIRMAN SCALZO: Thank you, Mr. Donovan.

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I do want to wrap this up. If anyone from the public has any other comments on it that we perhaps -- a concept or idea that we have not heard, I welcome you to speak.

(No response.)

CHAIRMAN SCALZO: Very good. At this point I'm going to look to the Board for a motion to close the public hearing.

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

MR. OLYMPIA: I'll second.

CHAIRMAN SCALZO: We had a motion from Mr. Levin. We had a second, it sounded like from Mr. Olympia. Roll call on closing the public hearing.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: Yes.

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MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed. Thank  
you.

All right. In this case, now we can  
accept no more comments from the public. We may  
ask the applicant a question or two.

Mr. Donovan, can you help me through  
this at this point. What are we -- are we  
handling this in two ways? Are we first trying  
to determine pre-existing?

MR. DONOVAN: So the application is  
twofold. It's in the alternative. The first  
request is that the Board determine that this is  
a pre-existing nonconforming --

CHAIRMAN SCALZO: Ms. Deegan, if you  
could tell your brother to mute his phone.

MR. MORELLO: I'm sorry, Mr. Chairman.

CHAIRMAN SCALZO: Every time you move  
it we get wind noise. Very good. Thank you.

MR. DONOVAN: So the first part that  
the Board needs to determine is whether or not to

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grant the interpretation. The interpretation would be it was a legal two-family in 1991 and it remains a legal two-family. So my advice to the Board is you would need to vote on that in the first instance. If you vote in favor of the interpretation, then that's the end of the matter. If you vote against the interpretation, then you would need to proceed to consider the use variance.

CHAIRMAN SCALZO: Very good. Thank you, Mr. Donovan.

MR. DONOVAN: If I can, Mr. Chairman. Interpretations are Type 2 actions under SEQRA.

CHAIRMAN SCALZO: Thank you.

So discussion on the Board regarding whether the testimony that we've heard along with the support information provided from the applicant as well as from others, do we feel as though we are compelled to call 1991 the year that this was a -- if it were in fact a two-family? I did not say that very well.

Mr. Donovan, I don't want to ask you to put words in my mouth but if you could help me. I believe you said it all. It's just we're looking



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for a discussion here. How about this. I'm going to go Member by Member.

Mr. Levin, do you feel as though the evidence that's been provided to us would indicate that the house has been a two-family house since 1991?

MR. LEVIN: No, I don't think so.

CHAIRMAN SCALZO: Mr. Olympia, the same question?

MR. OLYMPIA: I do not think so.

CHAIRMAN SCALZO: Mr. Bell, the same question?

MR. BELL: No.

CHAIRMAN SCALZO: Mr. Masten, the same question?

MR. MASTEN: Not right now.

CHAIRMAN SCALZO: Nope. And Mr. Marino?

MR. MARINO: No, I don't.

CHAIRMAN SCALZO: Okay. So I feel the same way.

Therefore, Dave, should we vote on that?

MR. DONOVAN: So there would be -- if that's the direction the Board is proceeding in,

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it would be a vote to deny the interpretation.

CHAIRMAN SCALZO: Okay. So I'll look to the Board for a motion to deny the interpretation.

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

MR. LEVIN: I'll second it.

CHAIRMAN SCALZO: We have a motion from Mr. Bell. We have a second from Mr. Levin. Roll call on that.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

CHAIRMAN SCALZO: Siobhan, you have to speak up.

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

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So the motion carried. The interpretation is that the dwelling was not a two-family dwelling beyond 1991. Is that correct, Dave?

MR. DONOVAN: You denied the -- the request was to determine whether or not the two-family was entitled to pre-existing nonconforming protection. You determined that it's not.

CHAIRMAN SCALZO: Very good. Okay. That's part 1. Now part 2 would be a use variance.

MR. DONOVAN: Part 2 is the request to grant the application a use variance to allow it to continue as a two-family. You have the four-part test, as you're aware.

CHAIRMAN SCALZO: That's correct.

MR. DONOVAN: If I can, Mr. Chairman. So unlike an area variance, the area variance is a five-part balancing test where just no one factor is more important than the other. You just balance the relevant factors as set forth by law and reach a determination as to whether or not the variance should be granted. Relative to the use variance criteria, if you believe any one of

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those four criteria have not been satisfied, then the application is denied. I would suggest, though Mr. Chairman, that you go through all four criteria even if you reach a negative determination at any one of them before you reach all four.

CHAIRMAN SCALZO: Thank you, Mr.

Donovan.

I'm going to use my cheat sheet here. I have use variance questions. We will go through the test of the four questions for a use variance application. All four of these criteria must be met or the Zoning Board is barred by New York State Town Law from granting an approval.

To allow a use not otherwise allowed in zoning, an applicant must demonstrate to the Board unnecessary hardship satisfied by competent proof. Such demonstration includes all of the following for each and every use permitted in that zone.

First, the land can not realize a reasonable return in dollars and cents substantial as shown by competent financial evidence. That was not provided as part of this

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application. There were inferences in some of the correspondence that were received. I don't believe any of those individuals were a certified appraiser that could actually determine that. However, we are lacking any evidence from the applicant about a reasonable return in dollars and cents. That is my position.

Mr. Levin, do you feel as though the applicant has provided enough information that they -- that supports that they can not realize a reasonable return?

MR. LEVIN: I think they have not supplied that information.

CHAIRMAN SCALZO: Mr. Olympia, the same question?

MR. OLYMPIA: I do not.

CHAIRMAN SCALZO: Mr. Bell, the same question?

MR. BELL: No.

CHAIRMAN SCALZO: Mr. Marino, the same question?

MR. MARINO: No.

CHAIRMAN SCALZO: And Mr. Masten, the same question?

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MR. MASTEN: No.

CHAIRMAN SCALZO: The second is the alleged hardship is unique and does not apply to substantial portion of district or neighborhood.

Well Dave Donovan, help me out on this. If we have determined that we did not feel that this house was in fact a two-family, then the alleged hardship is not unique?

MR. DONOVAN: That's your determination to make, Mr. Chairman.

CHAIRMAN SCALZO: So I'll just call it as it is. The alleged hardship is unique and does not apply to the neighborhood. Do you agree with that statement or disagree with that statement. I believe if we disagree that the hardship is unique -- if we disagree that the hardship is unique, that is a denial of that particular item.

Mr. Levin, do you agree?

MR. LEVIN: I agree.

CHAIRMAN SCALZO: Mr. Olympia, do you agree?

MR. OLYMPIA: I agree.

CHAIRMAN SCALZO: Mr. Bell, do you agree?

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MR. BELL: Yes, I do.

CHAIRMAN SCALZO: Mr. Masten, do you agree?

MR. MASTEN: I agree.

CHAIRMAN SCALZO: Mr. Marino, do you agree?

MR. MARINO: I don't agree, no.

CHAIRMAN SCALZO: Okay. The third is the requested variance will not alter the essential character of the neighborhood. My position on this is the dwelling is a dwelling and the dwelling is not going to change. From the exterior the dwelling is going to look the same no matter how you slice it. Although if it were a single-family home with one, two, perhaps three cars in the driveway. Now we've heard testimony or read in letters that there's upwards of seven cars in the driveway that's very close to the road, that's an alteration to the character of the neighborhood. That's my opinion.

Mr. Levin, do you have anything to add to that?

MR. LEVIN: I agree with you, it is an alteration to the character of the neighborhood.

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CHAIRMAN SCALZO: Mr. Olympia, do you have anything to add to that?

MR. OLYMPIA: I do not.

CHAIRMAN SCALZO: Mr. Bell, do you have anything to add to that?

MR. BELL: No, I do not. I agree.

CHAIRMAN SCALZO: Mr. Marino, do you have anything to add to that?

MR. MARINO: No. I guess I disagree with your statement about the negative impact on the neighborhood.

CHAIRMAN SCALZO: Okay. And now Mr. Masten?

MR. MASTEN: Yes.

CHAIRMAN SCALZO: So you're saying the requested variance will not alter the essential character of the neighborhood?

MR. MASTEN: Well, I know I go by there every day and there's six or eight cars in that driveway. There's more than there should be if it's a one-family house.

CHAIRMAN SCALZO: So it's your position that it would alter the character of the neighborhood?



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MR. MASTEN: Yes.

CHAIRMAN SCALZO: Okay. And lastly, the alleged hardship has not been self-created. That's a tough one. We've heard testimony all around. There's a lot of history in the folks that have given testimony. I just don't believe that the photos that Mr. Hermance had supplied showing the upstairs in it's unfinished condition from a website, I'm not sure if that website is reputable or not. I have to believe so. I did visit the site myself. It appears legitimate. There are other homes on it. So it appears to me that the hardship is self-created.

Mr. Levin, do you have anything to add to that?

MR. LEVIN: No. I agree with you.

CHAIRMAN SCALZO: Mr. Olympia, do you have anything to add to that?

MR. OLYMPIA: No. I agree.

CHAIRMAN SCALZO: Mr. Bell, do you have anything to add to that?

MR. BELL: No. I agree.

CHAIRMAN SCALZO: Mr. Masten, do you have anything to add to that?

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MR. MASTEN: No, I don't, Darrin.

CHAIRMAN SCALZO: Mr. Marino, do you have anything to add to that?

MR. MARINO: No, I don't.

CHAIRMAN SCALZO: All right. Keeping in mind all four of these criteria must be met for the Zoning Board as required by the Town Law from granting approval, do we have anything further from the Board on this application?

(No response.)

CHAIRMAN SCALZO: I don't see any.

So in this case does the Board have a motion of some sort? Having heard all four -- and listen, I can count to four. Two out of three doesn't work. Three out of four doesn't work. It's got to be four out of four, folks. I'm looking for you guys to make a motion here. We either make a motion for approval or make a motion for denial.

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

MR. OLYMPIA: I'll agree. Second.

CHAIRMAN SCALZO: Motion from Mr. Bell to deny. We have a second from Mr. Olympia. Roll call.

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MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: No.

MS. JABLESNIK: Mr. Masten?

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

We had six votes. We had five no votes.

We had one yes. Motion denied.

Therefore Mr. Donovan, what is our next step?

MR. DONOVAN: There is no next step. The application has been denied. Both branches of the application. The matter is concluded as far as this Board is concerned.

CHAIRMAN SCALZO: Okay. That concludes all Board business this evening.

I myself have not looked at the meeting

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minutes from last month. I don't know if any of the other Board Members have. I make a motion to defer voting on acceptance of the last month's meeting minutes to next month.

MR. LEVIN: I'll second that.

CHAIRMAN SCALZO: Thank you, Mr. Levin.  
Roll on that, please.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

All right. So we will defer the meeting minutes until July.

I have one other piece of information which is I will not be present at the July

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meeting, therefore I hope Mr. McKelvey is available to join us as the Vice Chairman.

Other than that, if there's no other Board business, I look forward to a motion to adjourn.

MR. OLYMPIA: Darrin, I will not be at the July meeting also. I'll be off sailing.

CHAIRMAN SCALZO: Good for you. Okay. Sounds like Siobhan is going to be doing a lot of reading.

We're looking for a motion to adjourn.

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

MR. MARINO: Second.

CHAIRMAN SCALZO: I have a motion from Mr. Bell and a second from Mr. Marino. All in favor?

MR. BELL: Aye.

MR. LEVIN: Aye.

MR. MARINO: Aye.

MR. MASTEN: Aye.

MR. OLYMPIA: Aye.

CHAIRMAN SCALZO: Aye.

(Time noted: 9:50 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 6th day of July 2020.

*Michelle Conero*

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MICHELLE CONERO