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

----- X

In the Matter of

LEWIS SIGN COMPANY

11 Racquet Road, Newburgh  
Section 86; Block 1; Lot 26.22  
IB Zone

----- X

Date: June 27, 2019  
Time: 7:00 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: LIZ MANNING

----- X

MICHELLE L. CONERO  
PMB #276  
56 North Plank Road, Suite 1  
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 first order of business are the public hearings scheduled for this evening.

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

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

Roll call please.

MS. JABLESNIK: Darryl Bell?

MR. BELL: Here.

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LEWIS SIGN COMPANY

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MS. JABLESNIK: Richard Levin is  
absent.

Anthony Marino.

MR. MARINO: Here.

MS. JABLESNIK: John Masten.

MR. MASTEN: Here.

MS. JABLESNIK: John McKelvey.

MR. MCKELVEY: Here.

MS. JABLESNIK: Peter Olympia.

MR. OLYMPIA: Here.

MS. JABLESNIK: Darrin Scalzo.

CHAIRMAN SCALZO: Here.

MS. JABLESNIK: Also present is our  
Attorney, David Donovan, and our Stenographer,  
Michelle Conero.

CHAIRMAN SCALZO: Okay. If I could ask  
you all to please rise for the Pledge. Mr.  
Marino will lead us, please.

(Pledge of Allegiance.)

CHAIRMAN SCALZO: The first applicant  
this evening is Lewis Sign Company, 11 Racquet  
Road, Newburgh, for Racquet Road Office Park,  
Inc. for an area variance to install 34.8 square  
feet of wall signage for Spectrum Services and

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LEWIS SIGN COMPANY

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21.8 square feet of wall signage for Advent Services. This building has an existing 120 square feet of signage and the maximum allowed is 70 square feet.

Siobhan, mailings?

MS. JABLESNIK: This applicant was sent to the County and we received notice back. They sent out 19 mailings.

CHAIRMAN SCALZO: Very good.

If you could step forward please, introduce yourself and let us know what you're looking for.

MS. MANNING: I'm Liz Manning with Lewis Sign Company. We're the representative for the customer.

The building in question is a large office building, 300 feet long on one dimension and 70 feet on the other dimension. The side that faces the road is the 70 foot wall. The side that includes all the office entrances, which are individual suites, is the 300 foot wall that faces the parking lot.

We feel that the long side should be considered the front of the building for code

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calculation purposes because it faces a parking lot where all the customers will arrive. Also that's where all the individual entrances to the offices are. If that were the case, then there would be ample allowance for the signs that we're asking. If 70 feet is considered the baseline for sign area, it's woefully inadequate for such a large building. It would allow only 70 square feet of sign area to be shared among all the customers in that building -- all the tenants in that building.

There's an illustration -- I believe there are photographs --

CHAIRMAN SCALZO: There are in the application packet.

MS. MANNING: -- showing the various walls and the justification for why the 300 foot side has been used in the past for calculating sign area.

If it's a question of merely an area variance, the two proposed signs are 34.8 square feet and 21.8 square feet. They are moderate sized signs for the businesses. It's not an extreme request.

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Again, if we use the 300 foot side we aren't even using up all the allowance that would apply. It's a reasonable request.

CHAIRMAN SCALZO: Thank you very much.

MS. MANNING: You're welcome.

CHAIRMAN SCALZO: At this point I'm going to turn to the Members of the Board for comments. Mr. Bell, any comments?

MR. BELL: I'm good.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: No.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: I'm fine.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: It's fine with me.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: Good.

CHAIRMAN SCALZO: I have no comments myself.

At this point I will look to any members of the audience that are here to comment on this application?

(No response.)

MR. MCKELVEY: Before we go any

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LEWIS SIGN COMPANY

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further, all the Members have been to all the properties.

CHAIRMAN SCALZO: Thank you.

Hearing nothing from the public, I'll look to the Board for one last opportunity for any comments?

(No response.)

CHAIRMAN SCALZO: No. Then I will entertain a motion to close the public hearing.

MR. OLYMPIA: I'll move.

MR. McKELVEY: I'll second.

CHAIRMAN SCALZO: Mr. Olympia made the motion, Mr. McKelvey seconded. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

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CHAIRMAN SCALZO: Yes.

The public hearing is closed. We will do our best to render a determination this evening.

MS. MANNING: Thank you.

CHAIRMAN SCALZO: We're going to take a short break. It will probably be an hour from now. Hopefully less time than that.

MS. MANNING: Thank you.

(Time noted: 7:07 p.m.)

(Time resumed: 8:51 p.m.)

CHAIRMAN SCALZO: We're going to roll through the applicants as they appear on the agenda. The applicant Lewis Sign Company, 11 Racquet Road for Racquet Road Office Park, Inc. for an area variance to install 34.8 square feet of wall signage for Spectrum Services and 21.8 square feet of wall signage for Advent Services. This building has an existing 120 square feet of signage and the maximum allowed is 70.

This is an Unlisted action under SEQRA.

MR. DONOVAN: Correct. The Board has in front of it a short environmental assessment form that's been prepared by the applicant. The



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LEWIS SIGN COMPANY

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Board I assume has reviewed that. Correct?  
You've reviewed the EAF? It indicates there will  
be no adverse environmental impacts.

I'm just going to ask you a few  
questions. Does the Board see that there's going  
to be any issues with any land use or zoning  
regulations? The answer to that is?

MR. OLYMPIA: No.

MR. BELL: No.

CHAIRMAN SCALZO: No.

MR. DONOVAN: Will result in a change  
of use. We're talking about signage.

MR. MARINO: No.

MR. MASTEN: No.

MR. McKELVEY: No.

MR. DONOVAN: Will it change the  
quality or character of the existing community?

CHAIRMAN SCALZO: No.

MR. BELL: No.

MR. MASTEN: No.

MR. DONOVAN: Is it near a critical  
environmental area? We know it's not.

Is it going to have any adverse change  
in the level of traffic?

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MR. McKELVEY: No.

MR. OLYMPIA: No.

MR. BELL: No.

MR. MARINO: No.

MR. MASTEN: No.

CHAIRMAN SCALZO: It might draw people  
in. It's an advertising device.

MR. DONOVAN: That's not adverse.  
That's positive; right?

Increase in the use of energy? No?

CHAIRMAN SCALZO: If it is it's  
negligible.

MR. DONOVAN: Any impact on private or  
public water supply or wastewater treatment  
facilities?

MR. McKELVEY: No.

MR. MARINO: No.

MR. DONOVAN: Will it impair the  
quality or character of any historical,  
archeological or aesthetic resources?

MR. BELL: No.

MR. OLYMPIA: No.

MR. MARINO: No.

MR. DONOVAN: Any adverse change in

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LEWIS SIGN COMPANY

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any natural resources?

MR. MARINO: No.

MR. DONOVAN: Any adverse change to any water bodies, groundwater, air quality, flora or fauna?

MR. MARINO: No.

MR. MASTEN: No.

MR. OLYMPIA: No.

MR. DONOVAN: Will it increase the potential for erosion or flooding?

CHAIRMAN SCALZO: No.

MR. DONOVAN: Create a hazard to any environmental resources or human health?

CHAIRMAN SCALZO: No.

MR. MARINO: No.

MR. MASTEN: No.

MR. DONOVAN: If someone wants to make a motion for a negative declaration.

MR. McKELVEY: I'll make the motion for the negative dec.

MR. MASTEN: I'll second it.

CHAIRMAN SCALZO: We have a motion for a negative declaration from Mr. McKelvey, we have a second from Mr. Masten. Roll call.

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MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Motion carried. It's a negative  
declaration under the Unlisted action.

Now on to the actual application. Is  
there any further discussion on this?

MR. BELL: No.

MR. MARINO: No.

CHAIRMAN SCALZO: We'll go through the  
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?

MR. MARINO: No.

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MR. McKELVEY: No.

MR. OLYMPIA: No.

MR. BELL: No.

CHAIRMAN SCALZO: The second, if there's an undesirable change in the neighborhood character or detriment to nearby properties?

MR. MARINO: No.

MR. MASTEN: No.

MR. McKELVEY: No.

MR. OLYMPIA: No.

MR. BELL: No.

CHAIRMAN SCALZO: Third, whether the request is substantial? If you're in the parking lot it's not. If you're on the street maybe. No is my opinion.

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

MR. MARINO: No.

MR. MASTEN: No.

MR. McKELVEY: No.

MR. OLYMPIA: No.

MR. BELL: No.

CHAIRMAN SCALZO: The fifth, whether the alleged difficulty is self-created? It's

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relevant but not determinative. Yes, it's self-created but it's not a detriment.

If the Board approves, it shall grant the minimum variance necessary and we may impose reasonable conditions.

Does anyone have any motions to make?

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

MR. McKELVEY: Second.

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

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

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Motion carried. The application is approved.

(Time noted: 8:56 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 12th day of July 2019.

  
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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

JESSICA GUELBERG-DUNLOP

259 Fostertown Road, Newburgh  
Section 39; Block 1; Lot 23  
R-2 Zone

----- X

Date: June 27, 2019  
Time: 7:07 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: JESSICA GUELBERG-DUNLOP

----- X

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



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CHAIRMAN SCALZO: Our second applicant this evening is Jessica Guelberg-Dunlop, 259 Fostertown Road, Newburgh, seeking an area variance to build a 14 by 30 foot rear open deck with a 17 foot proposed rear yard setback where 40 is required.

Siobhan, mailings?

MS. JABLESNIK: This applicant also went to the County and we received notice back. She sent out 26 mailings.

CHAIRMAN SCALZO: Thank you.

Hopefully I pronounced your name okay.

MS. GUELBERG-DUNLOP: You did.

CHAIRMAN SCALZO: If you can introduce yourself, please, and let us know what you're here for. Actually, we know what you're here for but state it as well.

MS. GUELBERG-DUNLOP: I'm Jessica Guelberg-Dunlop and I live at 259 Fostertown. We just want to build a deck in the backyard, 14 by 30, just so we can enjoy the backyard. Fostertown Road is not a good road to hang out in the front. It's a busy road, especially with a baby.

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CHAIRMAN SCALZO: Okay. At this point I'll look to any Members of the Board for comment. Mr. Bell?

MR. BELL: I have no comments.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: I was there yesterday. It's fine.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: I have no problem.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: No.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: No problem.

CHAIRMAN SCALZO: I have no comments.

At this point are there any members of the public here that wish to discuss or comment on this application?

(No response.)

CHAIRMAN SCALZO: Hearing none, I'll look to the Board for one more opportunity.

(No response.)

CHAIRMAN SCALZO: Nothing. At this point, if it's the Board's pleasure, we can make a motion to close the public hearing.

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MR. MASTEN: I'll make the motion.

MR. BELL: Second.

CHAIRMAN SCALZO: We have a motion to close the public hearing from Mr. Masten and a second from Mr. Bell. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed. We will do our best to render a decision this evening. I see you're having some help with you tonight. You don't necessarily have to stick around to hear it. You can call Siobhan tomorrow to find out what the determination is.

MS. GUELBERG-DUNLOP: Thank you.

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

(Time resumed: 8:56 p.m.)

CHAIRMAN SCALZO: The second applicant is Jessica Guelberg-Dunlop, 259 Fostertown Road, Newburgh, seeking an area variance to build a 14 by 30 rear open deck with a 17 foot proposed rear yard setback where 40 foot is required.

Is there any further discussion on this application?

(No response.)

CHAIRMAN SCALZO: We do not, therefore we will hit the factors, the first one being whether or not the benefit can be achieved by other means feasible to the applicant? No.

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

MR. MASTEN: No.

MR. MARINO: No.

MR. McKELVEY: No.

CHAIRMAN SCALZO: Third, whether the request is substantial?

MR. BELL: I don't think so.

MR. McKELVEY: No.

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MR. MARINO: No.

CHAIRMAN SCALZO: Fourth, whether the request will have adverse physical or environmental effects?

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

CHAIRMAN SCALZO: And the fifth is whether the alleged difficulty is self-created, relevant but not determinative? Of course it's self-created but not determinative.

If we approve we shall grant them the minimum variance necessary and may impose reasonable conditions.

What's the pleasure of the Board?

MR. OLYMPIA: I'll move that we approve the application.

MR. MARINO: I'll second it.

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

MS. JABLESNIK: Mr. Bell?

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MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The application is approved, however I neglected to mention that this is a Type 2 action under SEQRA.

MR. DONOVAN: Well done.

(Time noted: 8:58 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 12th day of July 2019.

*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

YVONNE FREEMAN

27 Odell Circle, Newburgh  
Section 51; Block 2; Lot 16  
R-1 Zone

----- X

Date: June 27, 2019  
Time: 7:10 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: YVONNE FREEMAN

----- X

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



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YVONNE FREEMAN

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CHAIRMAN SCALZO: Our next applicant is Yvonne Freeman, 27 Odell Circle in Newburgh, seeking an area variance to build a 10 by 11 front deck with a 27 foot front yard setback where 50 feet is required.

Siobhan, mailings?

MS. JABLESNIK: This applicant sent out 39 mailings.

CHAIRMAN SCALZO: Okay. I will go on record to say we have received correspondence from the Orange Lake Homeowners Association which is now a matter of public record. In reference to the subject application, the Orange Lake Homeowners Association informally reviewed the plans. The proposal as presented is consistent with structures in the community and this board believes it would provide a pleasing replacement to the damaged steps currently in place. In addition, members of this board have contacted the immediately adjacent neighbors and have received positive support from the same. The Orange Lake Homeowners Association recommends this application be approved as submitted.

This is supplemental to the code. The

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YVONNE FREEMAN

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code -- pardon me. It's not supplemental to the code. The code is the code is the short story. It is nice to get the support from organizations such as this, however we interpret every application on how it's stated.

Please introduce yourself.

MS. FREEMAN: I'm Yvonne Freeman and I bought the house last year. The front steps are a disaster. I think that what I want to put up, which is very small, it's not going to be a whole big thing, would only enhance the neighborhood. I can't see that it would harm it at all.

CHAIRMAN SCALZO: Very good. We're going to actually go through the criteria later this evening to support or not support that. Thank you very much.

I'm going to look to the Members of the Board for any comment. Mr. Marino?

MR. MARINO: It looks very similar to the house next door.

MS. FREEMAN: Exactly. Yes.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: No.

MR. McKELVEY: They're all the same

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YVONNE FREEMAN

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around that area.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: One question. There is a cement manhole to the right of the existing porch. Is that a cistern or is that your well?

MS. FREEMAN: I have no idea.

MR. OLYMPIA: Are you going to cover that?

MS. FREEMAN: Probably. I would assume so, yes. If it's to the right, yes. It sounds like it's right where the thing would be.

CHAIRMAN SCALZO: If you want to solicit some help, that would be fine. Just please introduce yourself.

MR. LASTOWSKI: I'm Pete Lastowski, I'm friends with Yvonne.

No, I believe the deck is not going as far as what you're talking about, the cover. I don't know if it was an old well. I believe it's not being used any more, but still it's not going to be covered.

MR. OLYMPIA: Thank you.

MS. FREEMAN: Should it be?

MR. LASTOWSKI: No.

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YVONNE FREEMAN

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MS. FREEMAN: Okay.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: No. I think what they're doing is going to increase the safety as well.

CHAIRMAN SCALZO: Very well. I agree.

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

Please step forward and state your name.

MR. HENDRICKSON: John Hendrickson, I'm a member of the Orange County Lake Association Board -- I'm sorry. Orange Lake Association Board.

I just came to give support to one of our neighbors. The porch seems consistent with the rest of the neighborhood and we're all on board. It's an improvement.

CHAIRMAN SCALZO: Thank you for the comments.

MR. HENDRICKSON: Thank you.

CHAIRMAN SCALZO: State your name.

MS. CHAMBERS: Rona Chambers, I reside at 16 Odell Circle.

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YVONNE FREEMAN

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I'm all for the renovation. I just want to remind the Board that the homeowners association is a fraudulent association and they are supposed to be calling themselves a civic association.

I hope you're not giving them any money.

MS. FREEMAN: Giving who money?

MS. CHAMBERS: The Orange Lake Homeowners Association. It's not a legitimate homeowners association. They come here and they say they are. I just think it's important that everybody is aware of that.

CHAIRMAN SCALZO: Thank you for your comments.

Is there anyone else from the public here to speak about this application?

(No response.)

CHAIRMAN SCALZO: Hearing none, I'll look to the Board. Any other comments?

(No response.)

CHAIRMAN SCALZO: Then if the Board should entertain a motion to close the public hearing.

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MR. BELL: I'll make the motion.

MR. MASTEN: I'll second.

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

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed. We will do our best to render a determination later this evening.

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

(Time resumed: 8:58 p.m.)

CHAIRMAN SCALZO: Our third applicant is Yvonne Freeman, Odell Circle, for an area

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YVONNE FREEMAN

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variance to build a 10 by 11 front deck with a 27 foot front yard setback where 50 feet is required.

This also is a Type 2 action under SEQRA.

Any discussion from the Board?

MR. McKELVEY: It's an improvement.

CHAIRMAN SCALZO: Therefore the criteria, the first one being whether or not the benefit can be achieved by other means feasible?

MR. MASTEN: No.

MR. McKELVEY: No.

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

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

CHAIRMAN SCALZO: Third, whether the request is substantial?

MR. BELL: No.

MR. OLYMPIA: No.

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YVONNE FREEMAN

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MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

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

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

CHAIRMAN SCALZO: And the fifth, whether the alleged difficulty is self-created. This is relevant but not determinative. Of course it's self-created but it's not determinative.

If the Board approves, it shall grant the minimum variance necessary and may impose reasonable conditions.

What's the pleasure of the Board?

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

MR. OLYMPIA: I'll second.

CHAIRMAN SCALZO: We have a motion from



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YVONNE FREEMAN

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Mr. Bell and we have a second from Mr. Olympia.  
Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Motion carried. The application is  
approved.

(Time noted: 9:00 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 12th day of July 2019.

  
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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

PAUL & CHERYL REDNER

6 Old Mill Road, Wallkill  
Section 2; Block 1; Lot 73  
AR Zone

----- X

Date: June 27, 2019  
Time: 7:15 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: JOHN McKELVEY, Acting Chairman  
JOHN MASTEN  
ANTHONY MARINO  
DARRELL BELL  
PETER OLYMPIA

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: CHERYL REDNER

----- X

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CHAIRMAN SCALZO: Our next applicant this evening are Paul and Cheryl Redner, 6 Old Mill Road in Wallkill. They are seeking an area variance to install a 27 foot above-ground pool in the front yard.

Siobhan, mailings?

MS. JABLESNIK: This applicant sent out 18 mailings.

CHAIRMAN SCALZO: Okay. I actually need to recuse myself from this.

MS. JABLESNIK: Okay.

CHAIRMAN SCALZO: Mr. McKelvey, if you could take over.

MR. MCKELVEY: Please state your name.

MS. REDNER: My name is Cheryl Redner, I reside at 6 Old Mill Road. I'm here to look for a variance to install a 27 foot above-ground pool. It's in my rear yard but it's considered a front yard because I have an adjacent road that's a private lane that runs behind my property.

MR. MCKELVEY: Is that a private road?

MS. REDNER: I think it says private lane.

MS. JABLESNIK: It is a road but I

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think it's a private road.

MS. REDNER: I believe there's like  
four residences behind there.

MR. McKELVEY: You can't see it?

MS. REDNER: I can't see it. I have a  
fenced in yard and there's probably about 25 to  
30 foot of woods between my line and where the  
road is.

MR. McKELVEY: I was going to say the  
woods kind of cover it up.

MS. REDNER: And there's a rock wall  
back there between the two.

MR. McKELVEY: You have what I would  
call a backyard, too.

MS. REDNER: Yes.

MR. McKELVEY: It's a big backyard.

Do you have any questions, Mr. Bell?

MR. BELL: No. It's good to me.

MR. McKELVEY: Mr. Olympia?

MR. OLYMPIA: No.

MR. McKELVEY: Mr. Masten?

MR. MASTEN: No questions.

MR. MARINO: I'm good with it.

MR. McKELVEY: Is there anybody from

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the audience on this case?

(No response.)

MR. McKELVEY: I'll look for a motion then.

MR. OLYMPIA: I'll move it.

MR. BELL: I'll second it.

MR. DONOVAN: That is a motion to close the public hearing?

MR. BELL: Motion to close the public hearing. I seconded it.

MR. McKELVEY: Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

CHAIRMAN SCALZO: As a matter of record, I had to step away. The organization that I work for is in close proximity to the last

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PAUL & CHERYL REDNER

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applicant, therefore I am not allowed to violate any ethics laws so I must step away.

(Time noted: 7:18 p.m.)

(Time resumed: 9:00 p.m.)

CHAIRMAN SCALZO: The next applicant is Paul and Cheryl Redner.

I will read everything I need to read but I will abstain from voting.

They're seeking an area variance to install a 27 foot above-ground pool in the front yard.

This is a Type 2 action under SEQRA.

Any discussion from the Board?

MR. MARINO: No.

MR. MASTEN: No.

CHAIRMAN SCALZO: The criteria, the first one being whether or not this benefit can be achieved by other means feasible to the applicant?

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

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

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

CHAIRMAN SCALZO: The third, whether the request is substantial?

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

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

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

CHAIRMAN SCALZO: And the fifth,



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whether the alleged difficulty is self-created,  
this is relevant but not determinative?

If the Board approves, it shall grant  
the minimum variance necessary and may impose  
reasonable conditions.

What's the pleasure of the Board?

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

MR. MASTEN: Second.

CHAIRMAN SCALZO: Motion for approval  
from Mr. Bell, second from Mr. Masten. Roll  
call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

CHAIRMAN SCALZO: Motion carried. The  
application is approved.

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(Time noted: 9:02 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 12th day of July 2019.

*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

JEFFREY FARNELL

42 Tenbrouck Lane, Newburgh  
Section 51; Block 5; Lot 26  
R-1 Zone

----- X

Date: June 27, 2019  
Time: 7:18 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: JEFFREY FARNELL

----- X

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CHAIRMAN SCALZO: Our next applicant this evening is Jeffrey Farnell, 42 Tenbrouck Lane, seeking an area variance to convert a covered porch into habitable space and increasing the degree of nonconformity of the rear yard with an existing 1.7 feet where 40 is required, one side yard with an existing 2.8 feet where 30 feet is required, and combined side yards with an existing 13.3 feet where 80 is required.

Siobhan, mailings?

MS. JABLESNIK: This applicant sent out 40 letters.

CHAIRMAN SCALZO: Thank you very much.

If you could state your name and give us an overview of what it is we're here for.

MR. FARNELL: My name is Jeffrey Farnell, I live at 42 Tenbrouck. I'm looking to get a variance for -- I have an enclosed porch that's about 260 square feet. It's been there since the 1940s, so it's 79 years it's been in existence without any kind of heat, air conditioning other than just natural sunlight. That's it. I want to make it habitable space and add it on to the 740 square feet we do have

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JEFFREY FARNELL

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that's habitable. This puts it closer to the setback.

I just want to be able to change the windows and put in thermal windows rather than storms and screens. You can really only use it two seasons of the year. The summertime is too hot and the wintertime is too cold. I want to enclose the space for habitable space.

CHAIRMAN SCALZO: Okay. As a matter of record, we did receive correspondence from the Orange Lake Homeowners Association. Short story is in support of this applicant.

Just if I could ask a question first. What you're proposing to do, will you increase or decrease your dimension from your house to the lake?

MR. FARNELL: No. It's pre-existing. It's existing right now. It's exactly the same footprint, same everything. It's not going up, it's not going out, it's not going back. The existing same footprint. The top to bottom stays exactly the same.

CHAIRMAN SCALZO: Is there a need to do any footings or foundation work?

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MR. FARNELL: The footings are right there. It's cinder block up to this high now. It all existing now. The enclosed porch is above it and it supports it now. I have architectural drawings.

CHAIRMAN SCALZO: We've got those. Thank you very much.

I'll look to the Members of the Board here for comments. Mr. Marino?

MR. MARINO: I didn't see any problem with the neighbors on either side. There's no obstruction. It's a beautiful location.

CHAIRMAN SCALZO: Thank you. Mr. Masten?

MR. MASTEN: I don't see any problem. They're all similar in size.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: There's no problem with setbacks. Everything is close.

MR. FARNELL: It's pre-existing.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: I'm fine with it.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: I'm good.

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CHAIRMAN SCALZO: At this time I'd like to open it up to any members of the public who are here to speak about this application.

Come on up, sir. Please state your name for the record.

MR. HENDRICKSON: Hello again. John Hendrickson, Orange County Homeowners Lake Association. I'm just here to give full support to Jeff. It's not going to do anything inconsistent with the views that we have with our neighbors. It looks like it's good.

CHAIRMAN SCALZO: Thank you, sir. Are there any other members of the public here to speak about this application? Please step forward and state your name.

MS. CHAMBERS: Rona Chambers, 16 Odell Circle. I'm strongly opposed to this renovation. Our houses look directly at each other. As he had mentioned previously, we have a direct view. I feel like it will be an eyesore to me. It's not habitable space, it's a lakeside porch.

I'm not a hundred percent sure about the footings or the foundation, if any.

I think that there's a suitable

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JEFFREY FARNELL

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solution but I do think that there needs to be a compromise in the plans.

CHAIRMAN SCALZO: Thank you for your comments.

MS. CHAMBERS: Thank you.

CHAIRMAN SCALZO: Are there any other members of the public here to speak about this application?

(No response.)

CHAIRMAN SCALZO: I'm going to look to the Board for any other comments. Mr. Marino?

MR. MARINO: Nothing.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: No.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: No.

CHAIRMAN OLYMPIA: Mr. Olympia?

MR. OLYMPIA: I have none.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: No.

CHAIRMAN SCALZO: I don't have any comments myself.

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



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MR. McKELVEY: I'll make that motion.

MR. MASTEN: I'll second it.

CHAIRMAN SCALZO: We have a motion from Mr. McKelvey. We have a second from Mr. Masten. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

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

MR. FARNELL: Thank you.

(Time noted: 7:24 p.m.)

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

CHAIRMAN SCALZO: The next applicant is Jeffrey Farnell, 42 Tenbrouck Lane, Newburgh,

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seeking an area variance to convert a covered porch into habitable space and increasing the degree of nonconformity of the rear yard with an existing 1.7 feet where 40 feet is required, one side yard with an existing 2.8 feet where 30 foot is required, and combined side yards with an existing 13.3 where 80 is required.

This is also a Type 2 action under SEQRA.

Do we have Board discussion here?

MR. BELL: No.

CHAIRMAN SCALZO: We did hear testimony from one member of the public regarding the possibility of an alternative solution, although I personally don't see that. All we're doing is enclosing a porch. I have nothing other than that.

MR. McKELVEY: I don't have a problem.

CHAIRMAN SCALZO: Therefore we're going to go through the factors, the first one being whether or not the benefit can be achieved by other means feasible to the applicant?

MR. BELL: No.

MR. OLYMPIA: No.

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MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

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

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

CHAIRMAN SCALZO: The third, whether the request is substantial?

MR. MARINO: No.

MR. MASTEN: No.

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

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

CHAIRMAN SCALZO: And the fifth,

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whether the alleged difficulty is self-created.  
This is relevant but not determinative?

If the Board approves, it shall grant  
the minimum variance necessary and may impose  
reasonable conditions.

What's the pleasure of the Board?

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

MR. BELL: I'll second.

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

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

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Motion carried. The application is approved.

(Time noted: 9:04 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 12th day of July 2019.

*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

RICHARD & TONI ROTH  
  
160 Oak Street, Newburgh  
Section 9; Block 3; Lot 28  
R-3 Zone

----- X

Date: June 27, 2019  
Time: 7:24 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: STEVEN GABA, ESQ.  
JUSTIN DATES

----- X

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

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CHAIRMAN SCALZO: Our next applicant is Richard and Toni Roth, 160 Oak Street in Newburgh, seeking an area variance to build a 40 by 60 by 23.5 accessory building with a proposed building height 23.5 where 15 is required.

Siobhan, mailings?

MS. JABLESNIK: This applicant sent out 13 mailings.

CHAIRMAN SCALZO: Thank you very much. If you could state your name and tell us why you're here.

MR. GABA: Good evening. I'm Steven Gaba, I'm at attorney with the Drake, Loeb firm. We represent the applicants, Rick and Toni Roth, the property owners, as well as the tenants, Peter and Leslie Scott.

We're here tonight, as read in the notice, for variances to maximum square footage and building height for an accessory garage building.

Additionally, technically the Building Department referred us for a variance for the limited maximum of four vehicles parked in the

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building. No more than four vehicles are being proposed to be parked in this building. I guess they sent us because the square footage would accommodate more if we wanted to. To address that we're proposing a condition be imposed by the variance granted that the parking be limited to no more than four vehicles. We're proposing three cars and one boat. That's how we would state it in our application.

The property is located at 160 Oak Street. It's 1.6 acres. It's improved by a single-family dwelling with four sheds. You should have in the application packet a survey. Yeah, a survey. The thing about it is that because the property is on the south side of Oak Street, really the best way to read it is to turn it upside down. You can see pretty clearly on it that here to the right and the left are the sheds and behind that is the two-story single-family dwelling that's improved on the property. The driveway comes in here from Oak Street. Over here on the other side of the property you can see a shaded area where the proposed garage building is going to be, and there's going to be



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a branch driveway leading over to that.

    About a year ago Mr. Roth came here -- to the Building Department for this garage and was referred to this Board for a variance. That application was for a 40 by 72 by 28 accessory building, maintaining all the sheds. No conditions were imposed -- were proposed I should say. Now he's modified the plans, so what's being proposed is a 40 by 60 by 23.5 building. Three of the sheds along the front here are to be removed which will decrease the total square footage of accessory structures by almost 1,000 feet.

    As I said earlier, we want to place a condition on the use of the building so no more than three vehicles can be parked at any given time.

    We've modified the design, which I'll get to in a second, of the garage building so it will be softer and more residential in appearance, earth tone, windows in it.

    Further, we're proposing to plant some White Pines, do some landscaping to minimize any potential visual impacts. As I'll discuss in a

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second, there are really hardly any visual impacts from this proposed building. This will certainly put a cap on it.

I think to help the Board understand it would be helpful if we could have the building plans. Would it be all right if I passed those out?

CHAIRMAN SCALZO: Sure.

MR. GABA: The first page is the floor plan. The two dotted rectangles are the proposed garage doors.

The second page isn't terribly helpful, it's the back and the side which gives you an idea of the shape of the building.

The third page is helpful. This is the front and the side of it facing the road. As you can see, there's windows in there, the two doors for vehicles going in and out, and also an entrance door.

Just the gable alteration on the next page. Another gable alteration. The east side. Another east side. Then you've got the building cross section with the proposed dimensions.

By looking at the elevations, I'll give

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you a little bit of flavor of what the building is going to look like. In considering the building I think it's important to consider the setting in which it's going to be constructed. In your packets there's a colored Google Earth photograph. This is a really good satellite overhead of the property. What you can see is -- well it's better if you look at your own -- in the center left is that kind of cleared out area with the house in it. That is the subject property. All the way to -- if you're looking at the right-hand side, that's the west, you can see it's undeveloped, very heavily forested area, there are a lot of trees. The same thing behind the property. It's solid from the top to the bottom. It's undeveloped, made up of trees. To the east is an adjoining property. It is developed. You can see there's a buffer of trees between the house on the subject property and the adjoining property. Across the street is again more undeveloped property. That property, if you've been there I'm sure you know, slopes steeply downward. I'm not sure if it is developable. If it is developable, any house or

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any structure that's built on there is going to be substantially below the road grade when it's put in. There's one other house slightly again to the east across from the house.

There's also two photos, black and white photos, overheads, in the package of the subject property. They're not Google Earth. One of them is. The other one is just an overhead. You can really see in there the trees and how they're surrounding the property. Like I said, there's trees to the east, trees to the west, trees to the side, undeveloped property across the street. There's even a little stand of trees down the center of the property which is going to be between the house and the proposed accessory garage. So the screening on this property is extraordinary. The only place there isn't is here. You can see Oak Street, there's a little spot. That's where we're proposing to plant the White Pines. In the event that somebody would see the building from the street, it will be screened out by the White Pines.

Now, since the property is screened so well, we went to our neighbors and we asked them

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about the project and the variances that we would need. They provided us letters to this Board stating that they're not opposed to it, and in fact are in favor of it. I'll read one of them. This is from the adjoining property owner, Daniel and Nancy Rabe. It says we own and reside at 168 Oak Street, Newburgh, New York which is the property adjoining Mr. and Mrs. Roth's property at 160 Oak Street on the east. We've been advised of the plans to build a new garage on the Roth's property and the fact that they need variances for the project. We have no objection to the construction of the new garage or granting of the requested variance.

We have two other ones, one from the people across the street to the east and one further down. Can I hand those in?

CHAIRMAN SCALZO: Sure.

MR. GABA: So not to belabor the matter, I'm sure the Board is familiar with the five factors as far as area variances go. The first one is whether or not a change will occur to the character of the neighborhood or be a detriment to nearby properties. Given the amount

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of screening on this lot and the fact that this will be almost unseen if not completely unseen, I don't see how it could have any impact on nearby properties or the neighborhood. Further, I'm sure you're familiar with Oak Street. It's kind of an eclectic neighborhood. The houses are an unusual collection of some larger buildings and smaller buildings. I won't say most but a number of them have garages that are prominent, or second buildings or outbuildings on them. The addition of a larger building with this building is going to have no change whatsoever.

CHAIRMAN SCALZO: Mr. Gaba, you provided us with area photos. That's great. How many other structures of this size height wise are there in this general vicinity?

MR. GABA: There's a very large garage down the street to the west on the north side of the road and there's two very large structures. One is not a garage but the appearance would be pretty much the same as far as that goes. Large garages, I can't speak to the exact size but certainly larger than is allowed by code. I know this Board granted variances before. Since

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you're all residents I'm sure you've seen them.

CHAIRMAN SCALZO: A little further east and on the other side of the road there is a large barn. It's an old wooden barn, probably historical. I think this may fit in with what you're looking to do.

My concern, as we all get concerned here, is that this 23 foot height could potentially turn into something developed later. Is there water proposed to go into this building?

MR. GABA: It's a well and a septic.

CHAIRMAN SCALZO: I would assume electricity.

MR. GABA: No water. It's not going to be habitable space. The nature of the building is such that --

CHAIRMAN SCALZO: The school is also in close proximity.

I interrupted you, sir. I'm sorry.

MR. GABA: I won't be much longer as far as that goes.

Whether the benefit can be achieved by other than the variance. Because of the sheds they are already over the amount of square

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footage allowed for accessory buildings. No garage can be built on this property without a variance, whatever the size.

Whether the variance is substantial. That is a bit of an issue I have to admit. It's arguable the building height, we're looking for 8.5 feet. It's not a small variance but it certainly isn't the largest of variances that you see for building height. In regard to square footage it's a big number. It is a big number that we're looking for. Let me say this. It doesn't mean it's not substantial, it's just one more thing to consider. It's a balancing test. The reason the 1,000 feet was proposed in the first place -- why limit it to 1,000 feet with accessory structure space. The reason is because the Town doesn't want property developed with too many structures on it and it doesn't want a lot that can only accommodate a certain amount of structures. Allowing accessory structures to populate might be unsightly in appearance. This property is almost double the minimum required acreage size for the R-3 district. It can easily accommodate the proposed shed, or garage I should



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say. It has the whole open swath. I'm sure you've seen it. It's a fairway. Putting this garage on that property is not going to defeat the underlying purpose that the maximum square footage provision was put in to cover.

CHAIRMAN SCALZO: Could you help me out. You mentioned earlier in the application the three accessory structures will be removed. You may have said it but I forgot. Can you give me the square footage on those?

MR. GABA: I didn't. 480 for the first one, 340 for the second, and 99 for the third.

CHAIRMAN SCALZO: I apologize.

MR. DONOVAN: Steve, could you just go back to the size? I know as part of the packet, the documentation with Code Compliance, it indicates with specificity the amount of square footage. I would assume the Board is going to want to know exactly where we end up or where they end up with those three removed. If you could just repeat that again for each.

MR. GABA: We're going to remove a 480 square foot shed, a 340 square foot shed, and a 99 square foot shed.

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CHAIRMAN SCALZO: 99, not 100?

MR. GABA: That's the numbers I was given. I would assume it's kind of a thumbnail sketch.

Notwithstanding that, it would be over the 1,000 foot limit by 1,595. That's the size.

CHAIRMAN SCALZO: Thank you.

MR. GABA: Lastly, whether it's self-created or not. I'm sure the Board is aware of the New York State law on self-created. There are a few exceptions. If you purchase the property there's no way in the world you could have known. In regard to an area variance however, it's just one factor and doesn't require denial of it. It could happen to anybody if they purchase property.

Lastly, there is one more consideration in regard to area variances, and that's whether it will have an adverse environmental impact on the physical or environmental conditions in the neighborhood. We've hired Mr. Justin Dates to come in and comment on the environmental impacts the building and shed might have just to satisfy you.

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MR. DATES: Good evening. Justin Dates with Maser Consulting. I have some photos that I would like to share with the Board as well.

CHAIRMAN SCALZO: Please.

MR. DATES: I had an opportunity this week to walk the subject property with Mr. Roth and look at a few things, and also take a look at some of the components of the R-3 Zoning District.

The R-3 Zone has a minimum lot area with well and septic of 40,000 square feet. Mr. Gaba emphasized we're almost double that requirement.

Within that zone as well for that well and septic lot, 15 percent max is the building coverage. So taking into account the proposed garage, the existing dwelling and that last remaining shed, we're at about 33 percent over of the max allowed on his parcel.

The other requirement in the zone is 30 percent max lot surface coverage. That's your buildings, your driveway, things of that impervious surface type of nature.

Again, with the proposed garage,

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dwelling, driveway, proposed gravel driveway leading to the garage, we're at about 15 percent. So again, 50 percent of what's permitted on a 40,000 square foot lot, which we're almost double that. He's well below the max allowed on his parcel for this particular zone.

On the pictures, I believe it's the second page there, I mentioned existing evergreen screening. That's along the eastern property line. That's to our closest neighbor. Again, so you have a pretty substantial hedgerow of Norway Spruce, upwards of 60 feet. Again, the proposed is 23.5 for the building. So there is substantially an evergreen year-round screening of the structure to the neighbor that's closest to us.

The building itself from Oak Street, the proposed building is about 150 feet away. As Mr. Gaba mentioned, we put a couple White Pines up along Oak Street for screening. That first page of photos I gave you, I'm standing about where the proposed garage is going to be and I'm looking out towards Oak Street. That telephone pole is kind of right in the middle of the photo

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there. You can see that there's a relatively small swath of view that's open if you're driving along Oak Street and looking into the property. That's where we're looking to put those pines to supplement some screening from that view shed.

Page 3 of the photos, so that's the existing driveway into the parcel. Those shrubs just to the left of that beautiful Dodge Ram, that's mine, there are a couple of Forsythias. One of those will be coming out to kind of weave the garage driveway through there. Again on the left-hand side we have a pretty mature Maple tree, and then just in front of that truck there is a large Oak tree. That's all going to remain. It's really establishing some of that vegetation that Mr. Gaba mentioned coming down the center of the site.

Then lastly picture 4. I'm standing right off the edge of Oak Street looking into that open lawn area. The building is going to be placed more towards the rear of that. Again, we're not clearing woods. There may be small shrubbery in the back of the building that would have to come out but we're not clear cutting.

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This is a well manicured, established lawn this building would be constructed on.

This was Tuesday at about 5 o'clock. Tuesday morning through about lunchtime we got a pretty substantial rainfall. I was out there shortly after that and the ground was not saturated, it was not spongy. The ground appeared to drain well. That's something to consider while working on building the driveway.

That's all I have.

MR. GABA: You said there would be lighting?

MR. DATES: I believe there's just a door side light on there.

MR. GABA: That's all there is?

MR. DATES: There's no pole lights or any fixtures of that nature. Just something you would have next to your front door, a small accent light.

CHAIRMAN SCALZO: Thank you. If I could just state this back to you so I understand it completely. As the applicant is proposing this new structure, he's proposing also some White Pines to screen it from the road, the

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demolition and removal of the accessory buildings  
as noted on the map.

Is this going to be a hobby garage or  
is any business going to occur?

MR. GABA: No business whatsoever.  
It's personal to the property owner.

CHAIRMAN SCALZO: So if we were to move  
towards a favorable response to this applicant,  
there would be conditions of the variance that  
there be no business conducted out of that  
garage.

MR. GABA: That's absolutely  
reasonable.

CHAIRMAN SCALZO: Thank you.  
So at this point I'm going to open this  
up to Members of the Board here. Mr. Bell, any  
comments on this?

MR. BELL: You were hitting right on  
what I was going to ask about business, about  
being heated, bathroom, plumbing, electric,  
lighting.

I guess one of the things I was kind of  
puzzled about is you said up to four vehicles  
stored. Are these doors double -- each double

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RICHARD & TONI ROTH

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car garages or single? If they're single I can't picture -- it's going to be difficult to get four cars in and out.

MR. GABA: You can stack them one behind the other for storage. It's not side by side.

MR. BELL: For storage?

MR. GABA: Yes. I don't believe there's a bathroom in the building.

MR. BELL: No bathroom?

CHAIRMAN SCALZO: No plumbing?

MR. GABA: No.

MR. BELL: I'm just asking.

MR. McKELVEY: Is the house occupied?

MR. GABA: Yes. The house is occupied by the tenants, Pete and Leslie Scott.

MR. BELL: I'm good.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: The only question I had was given what you plan on storing in there and restricting the number of the vehicles and the size of the overall building, it seems excessive for what you want, unless you are going to have storage in there also.



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MR. GABA: It's personal article storage. They have quite a bit of personal property, among other things, and a jukebox collection. They're quite valuable as far as that goes. It's not only for the property owner's storage, it's personal to whatever terms may become of the lease. It could also be for the people who are occupying the house.

CHAIRMAN SCALZO: Thank you. Mr. McKelvey?

MR. McKELVEY: You said four cars. Four cars would be the max?

MR. GABA: Well yeah, four vehicles. It will be three cars and one boat.

MR. McKELVEY: Okay.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: They've already asked most of my questions.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: Is there going to be an attic, a top floor to this garage?

MR. GABA: There is a second floor to the garage. That's correct. It's for storage space. You have to go up that high anyway in

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order to accommodate the doors that you need for the boats. There's no choice because you need a certain amount of square footage. Because you have to be that high anyway, it would look almost like a warehouse. They thought since they have to go that high anyway to accommodate the doors, to put a small second story because the roof is angled down.

MR. MARINO: Are these classic automobiles or just --

MR. GABA: Yes.

MR. MARINO: They are. What is behind the property? In other words, if you were to look south at the edge of the property, what's behind it?

MR. GABA: Just trees.

MR. MARINO: Just trees, no homes?

MR. GABA: No homes.

CHAIRMAN SCALZO: I believe that's part of the gravel bank.

MR. GABA: All that property is.

MR. DONOVAN: You mentioned that there would be screening of some number of White Pines. Is there a sketch or something, even if it's hand

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drawn? If the Board gets to the point where they are going to approve this, I'm not asking for a site plan but something so Code Compliance knows where they are supposed to go. Is that something you could provide?

MR. DATES: I could mark the location on the plan right now if you'd like. The plan that you have.

CHAIRMAN SCALZO: Sure.

MR. DONOVAN: I'm more thinking in the future when you go for a building permit and Code Compliance wants to know where were these supposed to go. I'm being optimistic. I have no idea how the Board is going to vote. That may be a question that Code Compliance would ask.

CHAIRMAN SCALZO: If you have an extra copy of the survey and you want to mark it, give it to Siobhan, she can scan it and give it to all the Members.

MR. DONOVAN: You're welcome to my copy.

CHAIRMAN SCALZO: Give it to Siobhan, please. Thank you very much for supplying that.

At this point I'll open the meeting to

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any members of the public that wish to comment on this application. Please step forward and state your name.

MR. FARKAS: My name is Jim Farkas, I live at 161 Oak Street. I've been there most of my life. I just want to say I have no problem with it.

CHAIRMAN SCALZO: Thank you, Mr. Farkas. Is this your letter you had supplied also?

MR. FARKAS: Yes.

CHAIRMAN SCALZO: Very good. Thank you.

Do any other members of the public wish to speak about this application?

MS. REED: Hi. I'm Clare Reed, I live on Alta Drive which is right off Oak Street.

First of all, I'm not necessarily for or against this building but I have some questions and concerns. The first question I have is really a procedural one, which is I notice -- I wasn't one of the people that got a letter. I just saw the sign and looked up things online. I haven't seen any rendition of the

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building. I do appreciate the documents I read said they are attempting to make it look more residential by putting windows in street side, which is great.

I notice in the application there were four proxies. I'm under the impression the owner makes the request for a variance. I was just wondering if there was a reason why the tenant, instead of writing say a letter of support, is making a request. Is there something different about this particular application?

CHAIRMAN SCALZO: I'll have to turn to our counsel on that.

MR. DONOVAN: Since the tenant resides there it's appropriate to have the tenant join in the application, which I think has been indicated. There's also proxies required to allow Mr. Gaba and Mr. Dates to appear on behalf of the owner.

MR. REED: Understood. Thank you.

I guess my concern -- I've been here before for another building on Oak Street -- is an accessory building this size. In looking up the average size of garages, this certainly seems

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excessive. I understand that it's the three cars and a boat. I saw it mentioned in the application it's 32 feet. It's not a high boat, so I'm not sure why that boat would require larger doors or anything. He did say boats so maybe there are other boats.

My concern is a couple things. One, it's excessive and with the second floor. The application was here last time and they had to knock it down to 19 feet I think with the reason being, obviously, the second floor.

The application, unless I read it incorrectly, says it will be -- the box was checked yes for attached to water -- connected to water and connected to wastewater utilities. Obviously that's a concern for me. Obviously I would assume it has electricity, lights in the garage. So given that it will have at least the ability for these things, that's a concern.

I also think that -- first of all, you've been there, you've seen it's wide open. It's a very beautiful lot. You go down the street and you see the lawn. The application said that they would plant two White Pines, which is fine.

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I know my neighbor wanted to plant trees to screen and she got saplings. That's an issue too, what's going in there. Let's face it, trees take a long time to grow. I think something of this size is not going to be hidden, or it's not going to be hidden quickly or completely by two White Pines. As we know on Oak Street, we got hit by that tornado. Many of the trees that were screening my neighbor's accessory building from my property are now down. You can't help that, that's nature.

My concern is a couple things. One, one of the buildings mentioned was on two properties. As you said it's a very, very old building. The acreage on those two properties is vastly different. I think having a building of that size on many acres is quite different than having it on a circle or an older barn or a new building on much less acreage.

I think one of the concerns in the application, it said the height was not really an issue because "it's so well screened." That is not what I understand the application to be. Height, it doesn't matter. The issue with height

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isn't how well it can be seen from somewhere, the issue is the second floor of living space. I think the argument in the letter is it's so well screened it's not important.

I would ask is the Board -- is it even within the purview of the Board, I don't see you would have the time, when somebody says I'm going to plant these trees, do people check? Once they're there, that's it, we're done? We're going to only put four cars in it. Who knows what's in the garage once it's built. It's not your job to go check what's in the garage, is it?

CHAIRMAN SCALZO: Unfortunately that's Code Enforcement.

MS. REED: I mean people don't go in and just knock on the door and say can I see how many cars are in the garage; right?

CHAIRMAN SCALZO: As far as I know, no. They may be responding to a complaint, an investigation, that way.

MS. REED: I guess my last concern is the idea of the hardship, is it self-created. Yes, I understand the argument given by the attorney, however I'm just concerned that



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hardship is created because the residence that the applicants mentioned on 9W is for sale. It's a very large property. It has a commercial building for boats, it has a residence on it. I'm wondering if this is either a warehouse or if this is a need created by getting rid of this property. I'm just concerned what is it going to be.

I think I covered everything. Thank you.

CHAIRMAN SCALZO: Thank you very much for your comments.

MR. BELL: Can I ask a question?  
Excuse me, ma'am. Is your house on this --

MS. REED: Alta Drive.

MR. BELL: Is it on Google Earth?

MS. REED: Can you tell me where 9W is?

MR. BELL: It's off of this map.

MS. REED: If you keep going down, there's Wright's Farm.

MR. BELL: I just wanted you to point out if you see your house on the picture.

MS. REED: I don't believe you can see my house from that picture you have.

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MR. BELL: Okay.

MS. REED: I'm on Alta Drive which is down toward the river. Thank you.

CHAIRMAN SCALZO: If I could ask, there is no Town water or Town sewer there. It's not available. The application does not show that they will have water service in that building. We definitely heard some very good points there.

Gentlemen, if you could enlighten us, you did propose White Pines. Are we talking eight footers, ten footers, two footers?

MR. GABA: What do you want?

CHAIRMAN SCALZO: What are you offering?

MR. GABA: Eight to ten.

CHAIRMAN SCALZO: That's a good size tree. White Pines are fast growing as well.

MR. GABA: Deer like them.

CHAIRMAN SCALZO: Are there any other members of the public that wish to speak about this application?

MS. REED: I'm just looking at the application. It says will the proposed action connect to existing public/private water supply,

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yes. Will the proposed action connect to existing wastewater utilities, yes. This is what's online.

MR. DONOVAN: Tell us what you're looking at.

MS. REED: An application online, on the website.

MR. DONOVAN: That's the EAF.

MR. GABA: If it said that, that's a misstatement. This is not going to be connected to water.

MS. REED: I'm just going by what I see.

MR. GABA: I understand. I'm not saying you're mistaken, I'm just saying if that's what it says in the application it was mistaken.

MR. DONOVAN: Just for clarification, the information that the Board gets from Code Compliance indicates that there's no Town water nor Town sewer available.

MS. REED: It says private.

CHAIRMAN SCALZO: Private well, private septic.

MS. REED: I'm saying that's still

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water and septic.

CHAIRMAN SCALZO: The environmental assessment form is inaccurate. Thank you for pointing that out.

MS. REED: Thank you.

MR. McKELVEY: You'll have electrical in there?

MR. GABA: Yes.

CHAIRMAN SCALZO: If you could amend the EAF short form for our records as a matter of record.

MR. BELL: There's no water and sewer?

CHAIRMAN SCALZO: No water and sewer. It's well and septic.

MR. GABA: The property with the residence on it is connected to a private well and a private septic. When the EAF got filled out they said it's connected to a water source and sanitary sewer. On the building plans there's no intention, no proposal to connect this to water. We'll amend the EAF.

CHAIRMAN SCALZO: As you drive up Oak Street there's no hydrants.

Are there any other members of the

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public here that wish to comment on this application?

(No response.)

CHAIRMAN SCALZO: Hearing none, I'll look to the Board. Any more comments, Mr. Marino?

MR. MARINO: No.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: No.

MR. McKELVEY: I have a question. You're saying three cars and a boat. Is there space to put anything else in there, another car or anything else? What I'm saying is can we stipulate that you can't rent any space out to somebody to put a car in there?

MR. GABA: Yes, we can stipulate that vehicles will all be either the tenant's or the property owner's. We can set that as a condition.

MR. McKELVEY: Fine.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: I have no comments.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: I'm good.

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CHAIRMAN SCALZO: At this point I'll look to the Board to entertain a motion.

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

MR. MARINO: I'll second.

CHAIRMAN SCALZO: We have a motion to close the public hearing from Mr. Bell. We have a second from Mr. Marino. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed. We will do our best to render a determination this evening.

(Time noted: 8:04 p.m.)

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(Time resumed: 9:04 p.m.)

CHAIRMAN SCALZO: The next applicants are Richard and Toni Roth, 160 Oak Street, Newburgh, seeking an area variance to build a 40 by 60 by 23.5 accessory building with a proposed building height of 23.5 where 15 feet is required.

This is also a Type 2 action under SEQRA.

Discussion from the Board?

MR. MASTEN: The height, requesting 23.5 feet.

CHAIRMAN SCALZO: The statement Mr. Masten made is he's questioning the 23.5 height.

MR. MASTEN: The height of the building, he wants 23.5 and the Town --

CHAIRMAN SCALZO: The Town Code is 15. He's looking for 8.5 feet higher than what the code allows.

MR. MASTEN: Yeah.

CHAIRMAN SCALZO: You make a solid point, Mr. Masten. We heard testimony this evening that there are older structures, although they're much older structures.

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MR. MASTEN: If we make a requisite for this, what about in the future with people coming in for accessory buildings? The law says 15 feet and everybody wants a larger building. If you do one you've got to do them all.

CHAIRMAN SCALZO: You make a solid point, Mr. Masten. If you recall, we did approve a very similar size structure on a contiguous property, although it has road frontage on 9W. So it's not out of the realm of what we do maintaining consistency. However, that part of Oak Street that this applicant is on is much more rural comparatively speaking than that part of 9W that we approved the other structure on.

MR. OLYMPIA: Was that a commercial structure on 9W?

CHAIRMAN SCALZO: He was going to store an RV there. Prior to that there was a fellow out there fixing lawnmowers.

MR. OLYMPIA: Right next to the Middlehope store?

CHAIRMAN SCALZO: Yes.

MR. McKELVEY: That's a big building.

MR. DONOVAN: I will just point out to



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the Board that to a degree everything you do does establish a precedent but also each applicant has to be judged on it's merits. If there are unique features in one application versus another, that would give you a basis to deviate from a prior determination. If all the facts are the same, then you need to follow your prior precedent. If the factors are somewhat different, you can distinguish and make different findings with respect to different facts.

CHAIRMAN SCALZO: We had heard this evening the applicant has offered to remove the other accessory structures from the lot. We have heard the applicant also offer 8 to 10 foot White Pines which would be a condition of whatever we chose to move forward with. They also are willing to include that there will be no business conducted out of that area, and three cars and a boat. They also have indicated that they will revise the short form EAF because it had contained incorrect information regarding municipal water and sewer.

MR. BELL: If I'm not mistaken, it did come down. I should have asked this earlier.

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The original was 42 by 28.

CHAIRMAN SCALZO: The original application last year was 5 feet higher.

MR. BELL: Okay.

I guess we're going to go through the criteria here, the first one being whether or not the benefit can be achieved by other means feasible to the applicant? It could be smaller.

MR. BELL: It could be.

CHAIRMAN SCALZO: The second, if there's an undesirable change in the neighborhood character or detriment to nearby properties? We had testimony from one neighbor supporting it. We heard testimony from another neighbor questioning the size. We had written communication from three adjoiners -- not adjoiners but relatively close property owners. Okay.

The third, whether the request is substantial? Categorically speaking I suppose it is, however with the size of the lot -- Mr. Dates did go through information of similar sized lots.

The fourth, whether the request will have adverse physical and environmental effects?

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I don't believe so.

The fifth, whether the alleged difficulty is self-created? This is relevant but not determinative. Yes, it's self-created.

If the Board approves, it shall grant the minimum variance necessary and may impose reasonable conditions.

MR. BELL: No business --

CHAIRMAN SCALZO: So no business dealings. No business operating there at all. The other accessory structures shall be removed.

MR. McKELVEY: Three cars and a boat.

CHAIRMAN SCALZO: Three cars and a boat.

MR. MARINO: No living quarters upstairs.

CHAIRMAN SCALZO: It's not going to have -- there's no water to the building. It will have electric.

The White Pines which are proposed to be planted will be between 8 and 10 feet tall.

MR. McKELVEY: There's a lot of other growth around the property.

CHAIRMAN SCALZO: So based on the

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conditions that I just stated, what's the Board's pleasure?

MR. BELL: I recommend approval.

CHAIRMAN SCALZO: We have a motion for approval from Mr. Bell.

MR. MARINO: I'll second it.

CHAIRMAN SCALZO: We have a second from Mr. Marino. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: No.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Motion carried.

MR. GABA: Could I ask a question? The removal of the accessory buildings, was that all four or just the three that were proposed?

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MR. DONOVAN: If you want to remove the fourth they'll go for it. It was just the three that you proposed.

MR. GABA: Thank you. I just wanted to be clear.

(Time noted: 9:09 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 12th day of July 2019.

*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

BRENNAN GASPARINI

1064 Route 32, Wallkill  
Section 2; Block 2; Lot 3  
RR Zone

----- X

Date: June 27, 2019  
Time: 8:04 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: MARISSA WEISS, ESQ.

----- X

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

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CHAIRMAN SCALZO: We are now moving on to applicants held open from the May 23, 2019 meeting. Applicant Brennan Gasparini, 1064 Route 32 in Wallkill, seeking an area variance and a use variance to reinstate a nonconforming use of a second single-family dwelling unit on a single lot. Bulk table schedule 1 permits only one dwelling unit per lot. Two, nonconforming buildings shall have one year to be restored after damage. Three, the use shall not be reestablished if discontinued for one year or more. There's an existing 2.3 foot side yard where 50 is required.

Please state your name. If you're going to stand in front of the easel you can grab that microphone if you need to point.

Introduce yourself, please, for the record.

MS. WEISS: Marissa Weiss of Jacobowitz & Gubits for the applicant, Brennan Gasparini.

We're back tonight after a couple months of adjournment to present some new

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supplemental information on the previous requests that were submitted. I won't belabor the point. We went through this extensively with all the three different variance requests that were requested and then the fourth which was for an area variance that would function as more of an asterisk as I explained at the last meeting -- a couple months ago but the last meeting for us during March.

Just to reiterate, those requests were submitted in terms of preference for the applicant if the Board were so inclined to favorably grant any of those requests. So the interpretation would be preferential of course for the use variance, the accessory apartment variance.

Going after that, the accessory apartment variance for the setback would also be needed for any of those requests that were previously made as well.

Tonight we've also submitted in response to some comments that were made from the Board as to the accessory apartment



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variance, there was a discussion about whether or not the gross floor area limitation was being exceeded. It is so we decided to submit some supplemental information as to that to request an area variance from that provision of the code. It's 185-38(c)(5) which requires that all accessory apartments are not larger than a maximum of 700 square feet in gross floor area. This would be the rear building here. The rear building back here is an existing building and it's 1,234 square feet, so that would be a variance from the 700 square feet. Again, that was to address the Board's concern last time. Mr. Canfield also brought that up. We wanted to make sure the Board had everything before it before we proceeded with the application tonight.

In addition to that, we have also submitted additional information as to the no reasonable return on investment factor of the use variance that was previously requested. That new information includes an affidavit from the applicant which explains how he is

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unable to receive a reasonable return on investment for the property if he is not granted this use variance, and also the factors as to if he was granted the accessory apartment variance how that wouldn't give him as much of a rate of return on investment as well and would also create quite a loss. Those numbers are extensively drawn out throughout the affidavit itself but I've also -- if the Board will permit me to make it a little bit easier for the Board to understand, there are a lot of numbers in there when it's written out like that, I do have a schematic little spreadsheet of the costs that were itemized that Mr. Gasparini describes in his affidavit. If the Board will permit me to pass that out?

CHAIRMAN SCALZO: Let's see it.

MS. WEISS: Sure.

CHAIRMAN SCALZO: If you could just give me --

MS. WEISS: Sure.

CHAIRMAN SCALZO: Unless you want to walk through it from top to bottom.

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MS. WEISS: Because it's very long, I won't subject the Board to that. If they have specific questions about the numbers that are listed in there I will answer them. Really the point of this is to explain that with the use variance the applicant -- the difference between the use variance and the accessory apartment variance that we are requesting, and the several that go along with that as well, is the fact that of course with the accessory apartment there needs to be an owner occupied unit on the property. With the use variance that technically doesn't need to happen. It may happen but it doesn't need to. He could rent out one or both of the buildings if he wanted to in the future. Again, it may not happen. It's respective at this point. It would be advantageous for the applicant to have that flexibility.

As you can tell from this affidavit and this spreadsheet, he's spent a lot of money on getting to this point with anticipation that he would have been able to do this from the beginning, as we've explained to the Board previously, and there are a lot of anticipated

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future costs to bring the property into compliance as the Board discussed at the last meeting.

With that, I will open this up to additional questions from the Board.

CHAIRMAN SCALZO: I'll tell you what we're going to do. Because this is a lot to look at for now, at this point I'm going to open this up to any members of the public that wish to comment on this application. Is there anyone here to speak about this?

(No response.)

CHAIRMAN SCALZO: Great. I thought it would give me some time here.

MS. WEISS: I want to reiterate that everything that is on this spreadsheet is within the affidavit itself, it's just more broken down. So all of the bolded amounts are in there and most of the other amounts are in there. It's just to give the Board more clarity as to some of the numbers that were expressed so it doesn't look like they're just being made up. There's a lot of support that went into this. Mr. Gasparini is a contractor himself, he's very well

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aware of the surrounding area, what it costs to demolish buildings, take out foundations, do all the work that's going to encompass making this property a more productive piece of property for the Town of Newburgh.

CHAIRMAN SCALZO: I understand. I did see the e-mail that you had had this submitted on the 17th. We had already received our packages. Siobhan had to do a supplemental for us all. I'm not sure that everyone has had the time to digest this like we want to.

At this point I'm going to look to the Members of the Board. Mr. Bell, do you have any comments on this application?

MR. BELL: No.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: I do have some comments. I wasn't at the last meeting.

Your purpose of providing this is to demonstrate financial hardship?

MS. WEISS: Yes. The factor of the use variance application that goes to not being able to make a reasonable return on the investment.

MR. DONOVAN: Maybe it might be helpful

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if we took a step back. I know you don't want to go through everything that you went through before. Your first request is an interpretation that you're allowed to have two single-family homes on the lot.

MS. WEISS: The definition --

MR. DONOVAN: That's the first one?

MS. WEISS: Yeah.

MR. DONOVAN: The second request in the alternative is a use variance to allow two principal uses on the lot; correct?

MS. WEISS: Yes, that's correct.

MR. DONOVAN: The third request would be an area variance to allow the front building, for lack of a better phrase, to operate as the principal use, a single-family dwelling, and the rear building to act as the accessory apartment?

MS. WEISS: Yes. The variance says there's a five-year principal dwelling existence requirement within the Town of Newburgh's code for accessory apartments. The front building, as we went through during the March meeting, is in more disrepair than the other. That would need to be completely redone and demolished. There

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would be no principal building if you knocked that down in order to have the back building be the accessory apartment. We need a variance from that requirement so that they could be rehabbed and built at the same time.

MR. DONOVAN: Is there a fourth alternative?

MS. WEISS: There's no fourth alternative.

MR. DONOVAN: I thought there was and I couldn't remember what it was.

MS. WEISS: It's an area variance for the setback for the back building that would be the accessory apartment. That fourth variance has to go with everything because that building doesn't meet setback requirements.

CHAIRMAN SCALZO: Not that it's necessarily part of the application but the claim is that the existing dwelling, the front building, is in worse condition than the accessory building in the back?

MS. WEISS: Structurally there's more that needs to be done there than in the back building. Because that is a larger building,

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that area, that footprint is what we would like to be able to keep of course. Obviously the back as well if permitted. It's important to the applicant to be able to salvage that house as well.

CHAIRMAN SCALZO: The rear building, is the applicant proposing a second floor on that?

MS. WEISS: No. Not that I'm aware of. He says no.

CHAIRMAN SCALZO: I'm going to move over to Mr. McKelvey. Any comments?

MR. MCKELVEY: Not right now.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: No.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: I do have a question. Both buildings are badly in need of repairs. How did that come about? Was there a fire?

MS. WEISS: They've been abandoned for a very long time and not taken care of which is why the state of the property when Mr. Gasparini purchased it was as that. He's been trying to bring it back to a reputable condition and back to code, however --



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MR. MARINO: Is he going to take down one building and build it from scratch new or he's going to renovate the two as they stand now?

MS. WEISS: The back one is proposed to be renovated. The two foundations and the foundation for the garage, which we had discussed previously, which is just a foundation in the ground at this point, all are going to be taken out. The foundation for both of the buildings will be rebuilt in situ, so where they exactly sit now. In order to rehab the back building, this building back here, that's where the accessory apartment would be if that did occur. Rehab that one. The front building, as I said, would need to be demolished and completely rebuilt but it would be on it's footprint itself.

CHAIRMAN SCALZO: Mr. Marino, actually I recall testimony from the March or April meeting, one of the adjoiners that showed up just to say -- I believe his take was that the property, as a result of a divorce, that's when they ended up vacating the property and that's what happened there. Also we had Code Compliance here at that meeting that stated really what has

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happened here is they ran out of time. It was basically an existing condition that had just not been kept.

MR. McKELVEY: The property hasn't been kept up to the standard today.

MS. WEISS: Exactly. That's why we're before you tonight, to figure out a way that works for the Town and for the Board in order to do so.

CHAIRMAN SCALZO: Yes. At the last meeting also we heard the term health, safety and welfare plenty of times.

MS. WEISS: Quite a few times.

CHAIRMAN SCALZO: I don't have any other comments.

Again I'm going to lean on Peter for this one. Peter, only because when it comes to the financial aspect of this, do you feel as though you have enough information to evaluate what -- if you need more time you can certainly ask for that.

MR. DONOVAN: We don't have to ask for it. We can get more time. If you close the public hearing you have 62 days.

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CHAIRMAN SCALZO: Correct. If we close the public hearing we can still ask for information.

MR. DONOVAN: Well you have information.

CHAIRMAN SCALZO: We have quite a bit of information. It's just sorting through it is the tough part. I don't want to put you on the spot.

MR. OLYMPIA: You did put me on the spot.

CHAIRMAN SCALZO: After I put you on the spot I don't want to put you on the spot.

Any other comments from the Board?

(No response.)

CHAIRMAN SCALZO: At this point, any other comments from the public?

(No response.)

CHAIRMAN SCALZO: At this point I'll look to the Board. What's the Board's pleasure here? Do you want to maintain this public hearing open if we feel as though we haven't gotten enough information or do we want to close the public hearing?

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MR. OLYMPIA: Could I ask another question, please?

CHAIRMAN SCALZO: Absolutely.

MR. OLYMPIA: The residential appraisal report here, what property is included? Was it just --

MS. WEISS: Just this property.

MR. OLYMPIA: No, no. Is it just including the house to be improved or is it including all the accessory buildings?

MS. WEISS: At this point it's just including the two homes. There's two different appraisals in there. They might be stapled together. There's one that has just the single family, one single family, as the Zoning Code exists now what is permitted on any lot within the Reservoir Residential Zone. The second appraisal, which should be behind it hopefully, it may be in front, that is for two single-family dwellings on the same lot, which is what we would be asking for with the use variance and with the accessory apartment. It's just not looking at whether or not one is an accessory apartment or not. That second appraisal also has in there

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information about if those properties -- those two houses could be rented out, what the approximate rental value for each would be. That adds to the possible income that could be recouped for the loss that is currently anticipated to occur no matter what.

Mr. Gasparini is just trying to figure out a way to recoup the investment as best as he possibly can.

MR. OLYMPIA: Thank you.

CHAIRMAN SCALZO: Okay. I'll look to the Board for a motion to either keep the public hearing open or close the public hearing.

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

CHAIRMAN SCALZO: Motion from Mr. Marino.

MR. BELL: I'll second.

CHAIRMAN SCALZO: A second from Mr. Bell. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

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MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed. We will do our best to render a determination this evening, however we have up to 62 days to render a decision.

MS. WEISS: I understand. Thank you.

(Time noted: 8:21 p.m.)

(Time resumed: 9:09 p.m.)

CHAIRMAN SCALZO: Moving on to the items held over from the May 23rd meeting. We have the applicant Brennan Gasparini, 1064 Route 32, Wallkill, seeking an area variance and use variance to reinstate a nonconforming use of a second single-family dwelling on a single lot. One, bulk table schedule 1 permits only one dwelling unit per lot. Two, nonconforming buildings shall have one year to be restored

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after damage. Three, the use shall not be reestablished if discontinued for one year or more. There is an existing 2.3 foot on the side yard where 50 foot is required.

This is a Type 2 action under SEQRA.

MR. DONOVAN: No. This would be an Unlisted action.

CHAIRMAN SCALZO: It's an Unlisted action. Thank you, Dave. I'm sorry.

MR. DONOVAN: Is the Board inclined to --

CHAIRMAN SCALZO: How about any Board discussion in this case. Rather than jump to any of the criteria, discussion from me, I know we received it ten calendar days prior to our meeting date. I am not comfortable myself. I haven't wrapped my head around all of this yet. That's just me.

I'll look to the rest of the Board Members here to see what they feel on that.

MR. OLYMPIA: I'd like to have the opportunity to review some of the information provided to us.

CHAIRMAN SCALZO: I believe we've had a

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summary sheet this evening handed to us. Again,  
I still need to wrap my head around this.

MR. OLYMPIA: I concur.

CHAIRMAN SCALZO: Mr. Bell, any  
thoughts on this?

MR. BELL: Agreed.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: Agreed.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: Yes.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: I'll go along with it.

CHAIRMAN SCALZO: The public hearing is  
closed.

MR. DONOVAN: That's correct.

CHAIRMAN SCALZO: However, I would like  
to defer -- I say I'd like to. It's up to the  
Board to defer determination until our next  
meeting.

MR. DONOVAN: Historically you've voted  
to hold the matter over to your next meeting. If  
you want to do that -- the public hearing is  
closed. If you want to call a deferral or you  
just want to put it on the July agenda, you can



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do that.

MR. McKELVEY: I'll make a motion to put it on the July agenda.

CHAIRMAN SCALZO: We have that motion from Mr. McKelvey. Do we have a second?

MR. BELL: Second.

MR. MARINO: Would there be any additional discussion at that next meeting pertaining to that issue?

MR. DONOVAN: I hope so. You should always discuss it before you vote.

MR. MARINO: The public can't do anything.

CHAIRMAN SCALZO: No more public comment. It's the Board in front of the public with discussion.

MR. MARINO: I understand that.

CHAIRMAN SCALZO: We will defer our determination to the July meeting.

MS. JABLESNIK: Anything else that comes in for next month, I have to have it by the 11th because I won't be present.

MS. WEISS: Okay.

MS. JABLESNIK: It has to be in by the

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11th if anything else comes in.

CHAIRMAN SCALZO: Thank you, Siobhan.

The motion was to put it on the July agenda. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

This will be on our July agenda.

(Time noted: 9:14 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 12th day of July 2019.

*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

GDPBJ, LLC

Route 17K & Auto Park Place, Newburgh  
Section 97; Block 2; Lots 44, 45 & 46.2  
IB Zone

----- X

Date: June 27, 2019  
Time: 8:21 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: JOHN McKELVEY, Acting Chairman  
JOHN MASTEN  
ANTHONY MARINO  
DARRELL BELL  
PETER OLYMPIA

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: LARRY WOLINSKY, ESQ.  
JUSTIN DATES

----- X

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

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GDPBJ, LLC

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CHAIRMAN SCALZO: Our next applicant this evening held over is GDPBJ, LLC, Route 17K and Auto Park Plaza, seeking an area variance of BJ's Wholesale Club for a front yard setback of 52.02 where 60 is required; B, the fuel canopy with a front yard setback of 36.5 feet where 60 is required; and C, landscaping requiring a 45 foot landscaped area for frontage within 350 feet of an intersection. The applicant also proposes parking and display of vehicles in this area.

I need to step away from this action. Mr. McKelvey will take it from here.

MR. WOLINSKY: Good evening, Members of the Board. My name is Larry Wolinsky, I'm here on behalf of the applicant. We have been here before at which time we made a full presentation of the variances that are requested.

Where we left off is that we had informed you that we were continuing to work with a portion of the site plan that might render the variance that's associated with the requirement for 45 feet of green space from Route 17K to be rendered less of a variance than was shown to you

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that night. We have in fact achieved that. I'm going to ask Justin Dates from Maser to just explain that to you so you know where we are, and then we can take it from that point.

MR. DATES: Good evening. Justin Dates from Maser Consulting. As Larry mentioned, we have a 45 foot landscape area along the frontage of our parcel. 17K has the frontage that we're looking at on the top of the page here. I just highlighted that orange line, and that's that 45 foot offset from our property line.

In the previous plan that was presented to the Board we had a substantial amount of parking spaces and drive aisles. We've also got the vehicle display pads that are in that area. At that time we encroached into that 45 feet. About 50 percent of it was occupied by those drive aisles and parking spaces and display pads. The plan before you is the one that we've developed to date and just recently presented to the Planning Board last week. We've reduced that encroachment to about 28 percent. We knocked off about 22 percent of that encroachment by adjustments to our parking and circulation.

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A couple of points just to reiterate from our prior meeting. From our parcel property line out to the edge of pavement on 17K there's about 40 feet of green space there at minimum. That runs almost the entire parcel and then it starts to peel away as we get up to outwards of 70 feet. There's substantial green space that is part of the right-of-way of 17K. It's New York State DOT property.

Our parking is now between 25 and 35 feet from our property in. We've got quite a substantial green space from the edge of pavement of 17K to our proposed parking on the site. We have landscaping within that area.

The display pads have stone retaining walls.

We're really dressing up the whole area that I'm speaking of for the landscape buffer.

MR. WOLINSKY: I should mention that the front yard variances that were requested previously were exactly the same, so you're familiar with those already.

I believe that since the last time we were here the County has now reported and just

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left it to a Local determination.

The only other nuance is with regard to the State Environmental Quality Review Act, the Planning Board, which originally indicated that it was going to be lead agency for the project, did not do the circulation so that we are in what is known as an uncoordinated rather than a coordinated review, and that if the Board were so able to render a determination tonight it could do so under that uncoordinated review status.

MR. DONOVAN: As I understand it, the Newburgh Planning Board at their last meeting indicated that -- I think they either withdrew or rescinded the prior resolution, even though they never circulated, just so the record is clear that there was a recision of their intent to be lead agency which frees this Board up to act on an uncoordinated review basis.

Larry, I did want to ask you, late today we did receive correspondence from an attorney representing Route 17K Real Estate. I don't know if you've seen this.

MR. WOLINSKY: I have not.

MR. DONOVAN: Do you want to take a



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GDPBJ, LLC

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look? Not to put you on the spot. I don't know whether you want the opportunity to reply to that.

Has the Board seen a copy of that letter? I know it came in late. I was not in the office. I picked it up on my way over tonight.

MR. WOLINSKY: I don't see -- with a very quick review of this, I don't see anything here that controverts the rationale or the reasoning that we've given to the Board which we believe justifies the variance.

MR. DONOVAN: Understood. I don't know whether the Board is inclined to close the public hearing. If they were, prior to them doing that I just wanted to make sure you had the opportunity, if you wanted, to put something on the record in response to that.

MR. WOLINSKY: I would need some time to look at that. The arguments there are what they are. It's really up to the Board whether the Board wants a formal response to this document or -- I mean this has been submitted, to the best of my knowledge, by an attorney who

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represents a competitor of one of the principals of this project and is seeking to cause issues in order to slow down or stop the project in order to extract something totally different. So it is what it is. Again, we're going to stand on the merits of our application. It's really up to the Board as to whether the Board believes that something in this letter raises any issue of substance that the Board either needs us to respond to or whether it feels that it can proceed forward to close the public hearing and get us a decision.

MR. McKELVEY: Do you feel you want to respond to it?

MR. WOLINSKY: I don't, quite frankly. I feel that our application stands on it's own. It's really whether you guys want us to respond to it. I mean if you close the public hearing, I can look at it in more detail during the deliberation period and let you know if there's any additional -- anything that I feel that needs a response. I mean this is just -- we need to move this project forward, quite frankly. The tenant is quite anxious. This is just a tactic

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GDPBJ, LLC

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submitted at the last possible time to slow down  
and delay the project. It's up to you guys.

MR. DONOVAN: Well I don't know that I  
necessarily agree with that.

MR. WOLINSKY: I mean that's my  
opinion.

MR. DONOVAN: Right. I just think fair  
is fair. You should be afforded the opportunity  
to respond if you want to.

MR. WOLINSKY: I'm happy to respond.  
What I'm saying is I don't want to delay the  
process.

MR. DONOVAN: Understood. Then you get  
involved in kind of the never-ending story.

MR. WOLINSKY: Exactly. Exactly. I  
mean I'm happy to provide a response for the  
record, and I can do that quickly, but I would  
also ask the Board to continue on with processing  
this application for a conclusion, if it believes  
it can.

MR. McKELVEY: Any comments from the  
Board? Mr. Bell?

MR. BELL: I'm good.

MR. OLYMPIA: No.

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MR. McKELVEY: Mr. Masten?

MR. MASTEN: I have nothing.

MR. MARINO: No.

MR. McKELVEY: I have nothing right now.

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

MR. OLYMPIA: I'll second that.

MR. McKELVEY: Motion by Mr. Bell and second by Mr. Olympia to close the public hearing. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

MR. McKELVEY: Wait. We haven't heard from the public.

Is there anyone from the public that wants to speak on this?

(No response.)

MR. McKELVEY: I guess not. Go ahead with the roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

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MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MR. WOLINSKY: Thank you.

(Time noted: 8:34 p.m.)

(Time resumed: 9:14 p.m.)

CHAIRMAN SCALZO: The next

applicant, which I will read everything but will abstain from voting, is GDPBJ, LLC, Route 17K and Auto Park Place in Newburgh, seeking an area variance of BJ's Wholesale Club for a front yard setback of 52.02 where 60 is required; B, a fuel canopy with a front yard setback of 36.5 where 60 is required; and C, landscaping requiring a 45 foot landscaped area for frontage within 350 feet of an intersection. The applicant also proposes parking and display of vehicles in this area.

I believe, Dave, this is an Unlisted

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action.

MR. DONOVAN: This is an Unlisted action under SEQRA.

As we discussed before, the Planning Board at one time declared their intent to be lead agency. They rescinded that allowing us to proceed on an uncoordinated basis. The Board is free to act this evening.

I just want to go over briefly the fact that the Board has in front of it a short environmental assessment form prepared by Andrew Fetherston of Maser Consulting.

The Board should also be aware the Planning Board will conduct a review relative to the site plan application, and that review can be no less protective of the environment than our review or the two together would be.

The short EAF prepared by Maser indicates that there's not going to be any adverse environmental impacts. I just want to confirm the Board's review of the EAF.

As we said before, and relative to the action in front of the Board which is the two front yard variances and the landscape variance,

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I just ask the Board will the proposed action, those three variances, create a material conflict with the adopted land use plan of the Town of Newburgh or the zoning regulations? The answer is?

CHAIRMAN SCALZO: Gentleman, I can't answer on this. I have to abstain from voting.

MR. McKELVEY: Say that again.

MR. DONOVAN: Sure. Will the three variances requested create a material conflict with the adopted land use plan of the Town of Newburgh?

MR. BELL: No.

MR. OLYMPIA: No.

MR. MASTEN: No.

MR. McKELVEY: No.

MR. MARINO: No.

MR. DONOVAN: Will the proposed action result, the action being the variances, in a change in the use or intensity of the use of the land?

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

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MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: Is it going to impair the character and quality of the community?

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: Will it have an impact on any critical environmental area which we know it's not adjacent to?

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: Will it result in an adverse change to the existing level of traffic or existing infrastructure for mass transit, biking or walkways?

MR. MARINO: Was there a study done about the increased traffic that's going to be there on that road?



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MR. DONOVAN: To the extent it's required it will be done by the Planning Board. They have to be satisfied. I don't know what they'll do but they have to be satisfied.

Any impact on private or public water or sewer supplies?

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: Any increase in the use of energy?

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: Will it impair the quality of important historic, archeological, architectural or aesthetic resources?

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

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MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: Any adverse change to any natural resources?

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: Any potential for erosion, flooding or drainage problems?

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: Any hazard to environmental resources or human health?

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

MR. DONOVAN: That being said, you're

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GDPBJ, LLC

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free to make a motion relative to SEQRA.

MR. DATES: I have a question about the traffic. We have done a traffic study for the project and it's been provided to the Planning Board.

MR. MARINO: It's been provided to the Planning Board?

MR. WOLINSKY: That's correct.

MR. DONOVAN: As I indicated before, the Planning Board will undertake their own SEQRA review which can be no less protective of the environment combined with our review. The traffic study wouldn't be triggered by the front yard variances anyway.

CHAIRMAN SCALZO: We're all set?

MR. DONOVAN: Yes.

CHAIRMAN SCALZO: Someone?

MR. McKELVEY: I'll make a motion for a negative dec.

MR. BELL: I'll second it.

CHAIRMAN SCALZO: We have a motion from Mr. McKelvey and we have a second from Mr. Bell. Roll call.

MS. JABLESNIK: Mr. Bell?

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MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

CHAIRMAN SCALZO: The criteria here, the first one being whether or not the benefit can be achieved by other means feasible to the applicant?

MR. BELL: No.

MR. OLYMPIA: No.

MR. MCKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

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

MR. BELL: No.

MR. OLYMPIA: No.

MR. MCKELVEY: No.

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GDPBJ, LLC

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MR. MASTEN: No.

MR. MARINO: No.

CHAIRMAN SCALZO: Third, whether the request is substantial?

MR. BELL: It is but --

CHAIRMAN SCALZO: Fourth, whether the request will have adverse physical or environmental effects?

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

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

If the Board approves, it shall grant the minimum variance necessary and may impose reasonable conditions.

What is the pleasure of the Board?

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

CHAIRMAN SCALZO: We have a motion for approval from Mr. Bell.

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MR. McKELVEY: I'll second it.

CHAIRMAN SCALZO: A second from Mr. McKelvey. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: No.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

CHAIRMAN SCALZO: Motion carried. The variance is granted.

(Time noted: 9:20 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 12th day of July 2019.

*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

PERCY DIXON

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

----- X

Date: June 27, 2019  
Time: 8:34 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: PERCY DIXON

----- X

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



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PERCY DIXON

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CHAIRMAN SCALZO: The next applicant this evening, a hold over from last month, is Percy Dixon, 3 Percy Path in Wallkill, seeking an area variance to keep a 24 by 32 by 14.11 detached two-car garage built without a permit with an existing three-car garage in the dwelling.

From what I recall with this applicant, we just had not heard back from the County.

MS. JABLESNIK: We received it.

CHAIRMAN SCALZO: You folks asked the appropriate amount of questions.

However, since the public hearing is still open, is there anyone here from the public that wants to speak about this application?

(No response.)

CHAIRMAN SCALZO: Hearing none, I'll look to the Board. Does anybody have any last comments?

(No response.)

CHAIRMAN SCALZO: I'll entertain a motion.

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

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PERCY DIXON

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MR. MARINO: Second.

CHAIRMAN SCALZO: We have a motion from Mr. Bell and we have a second from Mr. Marino. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed.

(Time noted: 8:36 p.m.)

(Time resumed: 9:20 p.m.)

CHAIRMAN SCALZO: The next applicant this evening is Percy Dixon, 3 Percy Path, Wallkill, seeking an area variance to keep a 24 by 32 by 14.1 detached two-car garage built without a permit with an existing three-car

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PERCY DIXON

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garage in the dwelling.

This is a Type 2 action under SEQRA.

Do we have any Board discussion?

(No response.)

CHAIRMAN SCALZO: Apparently not, therefore we will move to the criteria, the first one being whether or not the benefit can be achieved by other means feasible to the applicant?

MR. McKELVEY: No.

CHAIRMAN SCALZO: The second, if there's an undesirable change in the neighborhood character or any detriment to nearby properties?

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

CHAIRMAN SCALZO: Third, whether the request is substantial?

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

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PERCY DIXON

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MR. MARINO: No.

CHAIRMAN SCALZO: Fourth, whether the request will have adverse physical or environmental effects?

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

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

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. MARINO: Second.

CHAIRMAN SCALZO: Motion for approval

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PERCY DIXON

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from Mr. Bell, a second from Mr. Marino. Roll  
call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Motion carried. The variance is  
approved.

(Time noted: 9:22 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 12th day of July 2019.

  
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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

SERAPIO & JULIE ROLO

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

----- X

Date: June 27, 2019  
Time: 8:36 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: JONATHAN CELLA  
SERAPIO & JULIE ROLO

----- X

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

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CHAIRMAN SCALZO: The final item on the docket this evening is Serapio and Julie Rolo, or as I read in the meeting minutes Sam, 373 Lakeside Road, Newburgh, seeking an area variance to enlarge the second floor of a nonconforming dwelling unit and keep the rear deck and side sunroom built without permits with a rear yard setback of 1.6 feet where 40 feet is required, one side of 1.3 where 30 is required, a combined side yard of 11.9 where 80 is required, and 42 percent proposed surface lot coverage where 20 percent in the minimum.

MR. DONOVAN: Maximum.

MS. JABLESNIK: Sorry about that.

CHAIRMAN SCALZO: Please introduce yourself.

MR. CELLA: I'm Jonathan Cella.

MR. ROLO: I'm Sam Rolo.

MS. ROLO: I'm Julie Rolo.

MR. CELLA: We're here to request the stated area variances for the existing building at 373 Lakeside Road. This is located in an R-1 Zoning District and it's serviced by Town water and sewer.



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The applicant is a new owner of the property and they are looking to -- they're seeking area variances for a previously constructed deck by the old owner as well as the sunroom on the left side of the building if you're looking at it from the road. They're also requesting the area variances for reconstruction of the second floor of the home. Apparently the second floor of the home, if you're upstairs, is about 6.5 to 7 feet tall on the inside. They want to construct a second floor that's a standard 8 feet tall. The overall height of the building will be less than 35 feet. There will be no additional impervious coverage since the building is already there.

CHAIRMAN SCALZO: I was not at the May meeting but I did read the minutes on this. Has the plan changed?

MR. ROLO: Yes.

MR. CELLA: We changed the plan. Previously we were proposing to construct the second floor of the building on top of the whole existing first floor. The current proposal is to cut it back to where the existing rear of the

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building is now so we're no closer to the water's edge of Orange Lake. It will be more square because we're going to remove the chimney and square up the rear of the building as we're proposing currently, the second floor. Where the existing two windows are, that will be the rear of the building. That will span the whole width.

MR. McKELVEY: Did you meet with the Orange Lake Association?

MR. ROLO: Yes, we did.

CHAIRMAN SCALZO: We do have correspondence from them. With reference to the subject application, Orange Lake Homeowners Association invited the applicant and their professional representatives to our June 3rd meeting. The purpose was to go over the application. Orange Lake Homeowners Association requested to limit any extension of either the first or second floors from coming closer to the lake as we feel this affects the character of the neighborhood. They agreed to not extend the second floor any further than what it currently was. The Orange Lake Homeowners Association at that point had no objections.

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Although I will remind everyone here the code is the code. This is just like an adjoining support letter.

MR. McKELVEY: They just like being involved in everything because everything is so close.

CHAIRMAN SCALZO: I understand that. Although this is on the other side.

MR. BELL: It's on the lake side.

MR. CELLA: The existing building -- it's a very narrow lot and the existing building is set far back from the road. Because it's so far back we won't be obstructing other views from residents or the street. It's set far back and also very wooded.

CHAIRMAN SCALZO: Thank you very much.

I'll look to the Members of the Board.

Mr. Marino?

MR. MARINO: I'm good with it.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: I'm fine.

MR. McKELVEY: I'm good.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: I'm fine.

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CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: I'm good.

CHAIRMAN SCALZO: At this point the public hearing is still open. Is there anyone here from the public that wishes to speak about this application? Please step forward and state your name.

MS. LEASE: My name is Margaret Lease, I live south of the Rolo's property, and we've lived there for 30 years -- 39 years.

The existing structure will not change -- the Rolo's plans will not change our view at all, which is the most important thing living on the water. My husband and I feel that their plan is fine and we have no objection.

CHAIRMAN SCALZO: Thank you very much.

Is there anyone else here to speak about this application?

MR. HENDRICKSON: John Hendrickson, I'm on the board as well, Orange Lake Homeowners.

They have the full support of the board. They're in compliance with the way we like to see people move in on the lake. They get a thumbs up -- two thumbs up.

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MR. McKELVEY: We've been busy with Orange Lake this year.

CHAIRMAN SCALZO: Would anyone else like to speak about this application?

(No response.)

CHAIRMAN SCALZO: Hearing none, I'll look to the Board for one last opportunity?

MR. BELL: I'm good.

MR. McKELVEY: Nothing.

CHAIRMAN SCALZO: Would anyone entertain a motion?

MR. McKELVEY: I'll make a motion.

MR. MASTEN: I'll second it.

CHAIRMAN SCALZO: We have a motion from Mr. McKelvey to close the public hearing. We have a second from Mr. Masten. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. McKELVEY: Yes.

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MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed. We will do our best to render a decision this evening. We have up to 62 days to do so.

MR. ROLO: Thank you.

CHAIRMAN SCALZO: Before proceeding the Board is going to take a short adjournment to confer with counsel regarding any legal questions raised by tonight's applicants. If I could ask, in the interest of time, if you folks could wait out in the hallway and we'll call you back in very shortly.

(Time noted: 8:43 p.m.)

(Time resumed: 9:22 p.m.)

CHAIRMAN SCALZO: The final application this evening is Sam and Julie Rolo, 373 Lakeside Road, seeking an area variance to enlarge the second floor of a nonconforming dwelling unit and keep the rear deck and side sunroom built without permits with a rear yard setback of 1.6 feet where 40 is required, one side yard setback of

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1.3 where 30 is required, combined side yards of 11.9 where 80 is required, and 42 percent surface lot coverage where 20 percent is the maximum.

Do we have discussion on this application?

(No response.)

CHAIRMAN SCALZO: I do recall hearing testimony in support of it from multiple sources.

MR. BELL: I just want to -- just the upper part --

CHAIRMAN SCALZO: It will make it a little easier to walk upstairs.

MR. BELL: Yes.

MR. MASTEN: That was a hazard.

CHAIRMAN SCALZO: For the tall people. The criteria, the first one being whether or not the benefit can be achieved by other means feasible to the applicant?

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

CHAIRMAN SCALZO: Second, if there's an

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undesirable change in the neighborhood character  
or a detriment to nearby properties?

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

CHAIRMAN SCALZO: The third, whether  
the request is substantial?

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

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

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

CHAIRMAN SCALZO: The fifth, whether  
the alleged difficulty is self-created. This is



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relevant but not determinative.

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

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

Having gone through the balancing tests of the area variance, what is the pleasure of the Board? Do we have a motion of some sort?

MR. OLYMPIA: I'll move for approval.

MR. MARINO: I'll second it.

CHAIRMAN SCALZO: We have a motion from Mr. Olympia. It was a race but I think Mr. Marino beat him for second. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

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MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Motion carried. The variance is  
approved.

That concludes our agenda for the  
evening.

Motion to adjourn. All in favor?

MR. BELL: Aye.

MR. MARINO: Aye.

MR. MASTEN: Aye.

MR. MCKELVEY: Aye.

MR. OLYMPIA: Aye.

CHAIRMAN SCALZO: Aye.

(Time noted: 9:25 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 12th day of July 2019.

*Michelle Conero*

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MICHELLE CONERO