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

- - - - - X
In the Matter of

JAMIEE & STODDARD HILL
149 Mill Street, Wallkill
Section 2; Block 1; Lot 91
RR Zone

- - - - - X

Date: July 25, 2024
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA

APPLICANT'S REPRESENTATIVE: JAMIEE HILL &
STODDARD HILL

- - - - - X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

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CHAIRMAN SCALZO: I'd like to call the meeting of the Zoning Board of Appeals to order. The first order of business are the public hearings which have been scheduled. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have, and then any questions or comments from the public will be entertained. The Board will consider the applications and will try to render a decision this evening, but may take up to 62 days to reach a determination. I would ask if you have a cellphone, to please turn it off or put it on silent. When speaking, speak directly into the microphone as it is being recorded.

Roll call. Mr. Politi.

MR. POLITI: Here.

CHAIRMAN SCALZO: Mr. Eberhart.

MR. EBERHART: Here.

2 C H A I R M A N S C A L Z O : M r . H e r m a n c e .

3 M R . H E R M A N C E : H e r e .

4 C H A I R M A N S C A L Z O : M r . B e l l .

5 M R . B E L L : H e r e .

6 C H A I R M A N S C A L Z O : M r . M a s t e n .

7 M R . M A S T E N : H e r e .

8 C H A I R M A N S C A L Z O : M s . R e i n .

9 M S . R E I N : H e r e .

10 C H A I R M A N S C A L Z O : C h a i r m a n S c a l z o .

11 Y e s , I a m h e r e .

12 A l s o p r e s e n t i s M r . M a t t i n a f r o m
13 C o d e C o m p l i a n c e . W e h a v e D a v e D o n o v a n ,
14 o u r L e g a l C o u n s e l . W e a l s o h a v e M i c h e l l e
15 C o n e r o , o u r S t e n o g r a p h e r , t h i s e v e n i n g .

16 I f y o u c o u l d a l l p l e a s e r i s e f o r
17 t h e P l e d g e .

18 (P l e d g e o f A l l e g i a n c e .)

19 C H A I R M A N S C A L Z O : O u r f i r s t
20 a p p l i c a n t t h i s e v e n i n g i s J a m i e e a n d
21 S t o d d a r d H i l l a t 1 4 9 M i l l S t r e e t i n
22 W a l l k i l l . T h e y a r e s e e k i n g a n a r e a
23 v a r i a n c e o f t h e m i n i m u m f r o n t y a r d
24 s e t b a c k o f t h e e x i s t i n g r e s i d e n c e t o
25 c o n v e r t a 5 8 0 s q u a r e f o o t d e t a c h e d g a r a g e

2 into an accessory apartment.

3 We do not have our trusty secretary
4 with us this evening. However, she did
5 leave me with all of the important
6 information. The applicant sent out 20
7 letters. All the mailings, publications
8 and postings are in order.

9 Who do we have tonight for the Hill
10 application?

11 MS. REIN: Is this a Type 2?

12 CHAIRMAN SCALZO: We'll get to
13 that. Yes, it is.

14 MS. REIN: Thank you.

15 CHAIRMAN SCALZO: You're way ahead.

16 MR. HILL: My name is Todd Hill.
17 My legal name is Stoddard.

18 Basically we have a garage that's
19 been there for 200 -- probably 100 years.
20 We're just converting it to a mother/
21 daughter for my mother-in-law. They
22 moved to Florida and they come up a lot.

23 CHAIRMAN SCALZO: Okay.

24 MR. HILL: The garage is 100 feet
25 from the road. The house is 60 feet.

2 We're not doing anything on the house.

3 CHAIRMAN SCALZO: You said you have
4 a garage?

5 MR. HILL: We do.

6 CHAIRMAN SCALZO: I was just out
7 there one hour ago.

8 MR. HILL: Cool.

9 CHAIRMAN SCALZO: You have two
10 garages.

11 MR. HILL: We have a garage and a
12 huge barn next to it. Yes.

13 CHAIRMAN SCALZO: So it's the
14 smaller block garage --

15 MR. HILL: Yes.

16 CHAIRMAN SCALZO: -- that has the
17 shutters on the side, painted white?

18 MR. HILL: Correct.

19 CHAIRMAN SCALZO: It almost looks
20 like a story and-a-half?

21 MR. HILL: Yes.

22 CHAIRMAN SCALZO: And Joe, if you
23 could help me out here. The applicant is
24 in front of us because?

25 MR. MATTINA: Basically in the

2 zoning requirements, for an accessory
3 apartment it says the dwelling must meet
4 all the requirements for a single-family
5 dwelling. It doesn't meet the front yard
6 setbacks.

7 CHAIRMAN SCALZO: Okay. So if the
8 house was further from the street, the
9 applicant wouldn't be here?

10 MR. MATTINA: Correct.

11 CHAIRMAN SCALZO: It's the house
12 we're talking about, not the garage?

13 MR. MATTINA: Correct. It doesn't
14 differentiate in the definition. It says
15 the lot must meet all the requirements
16 for a single family.

17 MR. HILL: That's interesting.
18 I thought the same thing. Doing something
19 to the house, understood. We're not
20 doing anything to the house.

21 MR. MATTINA: Because historically
22 the apartments are in the houses.

23 CHAIRMAN SCALZO: Historically they
24 are. Our code currently allows for
25 accessory apartments outside the

1 dwelling.

2
3 MR. MATTINA: By definition,
4 correct.

5 CHAIRMAN SCALZO: By definition;
6 yes, it does.

7 How many square feet is this
8 garage?

9 MR. HILL: I think it's 20 by 20-
10 ish.

11 CHAIRMAN SCALZO: So 400. Joe, the
12 maximum is 700?

13 MR. MATTINA: 700.

14 CHAIRMAN SCALZO: It's actually
15 quite small.

16 MR. HILL: Yes.

17 CHAIRMAN SCALZO: I have to tell
18 you, your application was very
19 interesting to me because it almost
20 seemed as though you were having a
21 problem keeping vagrants out of the
22 garage.

23 MR. HILL: Originally when we
24 bought the house, yes. There was
25 graffiti all over the inside of it.

2 CHAIRMAN SCALZO: Some people call
3 that art, but okay.

4 MR. BELL: It depends what it says.

5 MR. HILL: That's a matter of
6 interpretation. Yeah, we've had people
7 in there in the years past.

8 CHAIRMAN SCALZO: How long have you
9 owned the property?

10 MR. HILL: 2017.

11 CHAIRMAN SCALZO: You're in there a
12 good six --

13 MR. HILL: We didn't move in until
14 '19. We did an extensive renovation on
15 the house.

16 CHAIRMAN SCALZO: And kicked those
17 vagrants to the curb.

18 MR. HILL: There were some
19 questionable occupants of the house. It
20 was rented. It kind of seemed that way.

21 CHAIRMAN SCALZO: That certainly
22 changes the questions that I was going to
23 ask.

24 Thank you, Joe, for helping me out
25 with explaining it to me.

2 I'm going to look to the Board.

3 Ms. Rein, do you have comments regarding
4 this Type 2 action application?

5 MS. REIN: I just have a question.
6 It really doesn't involve the applicant.
7 If there was a breezeway between the two
8 structures, would that still be an issue
9 or would it be considered part of the
10 house?

11 CHAIRMAN SCALZO: It would be
12 considered to be part of the house. Holy
13 moly, that would be quite a breezeway.

14 MR. HILL: 75 feet or so.

15 MR. BELL: That would be a long
16 breezeway.

17 CHAIRMAN SCALZO: Perhaps when your
18 mother-in-law lives there and doesn't
19 want to walk in the rain, you may end up
20 putting a covered walkway.

21 MS. REIN: I'm good.

22 CHAIRMAN SCALZO: Mr. Masten?

23 MR. MASTEN: I have no questions.

24 CHAIRMAN SCALZO: Mr. Bell?

25 MR. BELL: It's a good looking

2 property.

3 MR. HILL: Thank you.

4 CHAIRMAN SCALZO: Mr. Hermance?

5 MR. HERMANCE: I have no questions.

6 CHAIRMAN SCALZO: Mr. Eberhart?

7 MR. EBERHART: No questions.

8 CHAIRMAN SCALZO: Mr. Politi?

9 MR. POLITI: No.

10 CHAIRMAN SCALZO: At this time I
11 will open the meeting up to any members
12 of the public that wish to speak about
13 this application. Are there any members
14 of the public here that want to ask the
15 applicant any questions?

16 (No response.)

17 CHAIRMAN SCALZO: We do have
18 architectural renderings. Hopefully
19 you've all gotten a chance to take a look
20 at those.

21 Going once, going twice, members of
22 the public?

23 (No response.)

24 CHAIRMAN SCALZO: Okay. I'll look
25 to the Board for a motion to close the

2 public hearing.

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

5 MR. BELL: I'll second.

6 CHAIRMAN SCALZO: We have a motion
7 to close the public hearing from Mr.
8 Masten. We have a second from Mr. Bell.
9 All in favor?

10 MR. POLITI: Aye.

11 MR. EBERHART: Aye.

12 MR. HERMANCE: Aye.

13 CHAIRMAN SCALZO: Aye.

14 MR. BELL: Aye.

15 MR. MASTEN: Aye.

16 MS. REIN: Aye.

17 CHAIRMAN SCALZO: Those opposed?
18 (No response.)

19 CHAIRMAN SCALZO: There's no one
20 opposed.

21 This is a Type 2 action under
22 SEQRA, Ms. Rein. We are going to go
23 through the area variance criteria. We
24 will discuss the five factors which we're
25 weighing, the first one being whether or

2 not this benefit can be achieved by other
3 means feasible to the applicant.

4 MR. BELL: No.

5 CHAIRMAN SCALZO: He's not moving
6 his house back 40 feet.

7 The second, whether there's an
8 undesirable change in the neighborhood
9 character or a detriment to nearby
10 properties.

11 MR. POLITI: No.

12 MR. EBERHART: No.

13 MR. HERMANCE: No.

14 MR. BELL: No.

15 MR. MASTEN: No.

16 MS. REIN: No.

17 CHAIRMAN SCALZO: It wouldn't
18 appear so. Almost from the outside, it
19 looks -- do you have any plans on any
20 improvements to the outside?

21 MR. HILL: We're going to put board
22 and batten. It should be in the renderings.
23 Just board and batten, white.

24 CHAIRMAN SCALZO: You're outing me.
25 I didn't look at your renderings.

2 MR. HILL: It may not be. I'm not
3 sure. I think it was.

4 CHAIRMAN SCALZO: The third, whether
5 the request is substantial. Well, the
6 request really is based on his principal
7 dwelling. It really doesn't have
8 anything to do with the accessory
9 apartment.

10 The fourth, whether the request will
11 have adverse physical or environmental
12 effects. This will literally go unnoticed.

13 The fifth, whether the alleged
14 difficulty is self-created, which is
15 relevant but not determinative. I am
16 pretty confident that the home was built
17 prior to zone.

18 MR. HILL: 150 years prior to
19 zoning.

20 CHAIRMAN SCALZO: I would say this
21 difficulty is not self-created, which is
22 not something I say very often.

23 Having gone through the balancing
24 tests of the area variance, does the
25 Board have a motion of some sort?

2 MR. EBERHART: I'll make a motion
3 for approval.

4 MR. HERMANCENCE: I'll second it.

5 CHAIRMAN SCALZO: We have a motion
6 for approval from Mr. Eberhart. We have
7 a second from Mr. Hermance. I'm going to
8 roll on that.

9 CHAIRMAN SCALZO: Mr. Politi?

10 MR. POLITI: Yes.

11 CHAIRMAN SCALZO: Mr. Eberhart?

12 MR. EBERHART: Yes.

13 CHAIRMAN SCALZO: Mr. Hermance?

14 MR. HERMANCENCE: Yes.

15 CHAIRMAN SCALZO: Mr. Bell?

16 MR. BELL: Yes.

17 CHAIRMAN SCALZO: Mr. Masten?

18 MR. MASTEN: Yes.

19 CHAIRMAN SCALZO: Ms. Rein?

20 MS. REIN: Yes.

21 CHAIRMAN SCALZO: I am also
22 affirmative.

23 The variances are approved. Good
24 luck.

25 MR. HILL: Thank you.

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(Time noted: 7:12 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 6th day of August 2024.

Michelle Conero

MICHELLE CONERO

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

- - - - - X

In the Matter of

DOROTHY HALL (TRUST)

61 Albany Post Road, Newburgh
Section 27; Block 2; Lot 5
R-3 Zone

- - - - - X

Date: July 25, 2024
Time: 7:12 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA

APPLICANT'S REPRESENTATIVE: DOROTHY HALL &
JENNIFER HORAN

- - - - - X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

2 CHAIRMAN SCALZO: Our second
3 applicant is Dorothy Hall, or the trust
4 of Dorothy Hall, which is at 61 Albany
5 Post Road, seeking an area variance of
6 increasing the degree of nonconformity of
7 the front yard setback to build a 24 by
8 28 side yard addition.

9 My trusty secretary says that the
10 applicant sent out 49 letters. All the
11 mailings, publications and postings are
12 in order.

13 Who do we have with us?

14 MS. DOROTHY HALL: Dorothy Hall.

15 MS. JENNIFER HORAN: I'm Jennifer
16 Horan.

17 CHAIRMAN SCALZO: You trust her. I
18 like that.

19 If I have captured everything that
20 you want to do, and we've all been out
21 there and saw what you wanted to do, or
22 saw the existing conditions out there, if
23 I've captured what it is you're looking
24 for, plus us reading the application, if
25 that's satisfactory enough, I'll just

2 turn it back over to the Members of the
3 Board that want to ask questions, unless
4 you had any additional comments you want
5 to add to that.

6 MS. DOROTHY HALL: No.

7 CHAIRMAN SCALZO: The bad news is
8 that you are within 500 feet of New York
9 State Route 9W. You're nodding your
10 heads because I get the feeling somebody
11 might have told you about this. General
12 Municipal Law 239 requires the County of
13 Orange to have the opportunity to comment
14 on your application. I stopped at the
15 office today. Siobhan has been out for
16 four days. There were absolutely no
17 letters from the County regarding any
18 applicants that we're going to hear
19 tonight, for those of you who also are
20 going to be in front of us later.

21 What I can say to you is we would
22 certainly like to hear you or hear any
23 comments from the public on this. It
24 sounds as though you're happy with what I
25 said about your project. We're going to

2 move forward with this. Unfortunately we
3 cannot act on this this evening. I don't
4 know if you're aware, but there will be
5 no August meeting, therefore we will
6 throw you on the agenda for September,
7 which is shaping up to be quite a
8 meeting. I think I'm out that day.

9 In this instance I'm going to look
10 down to Ms. Rein. Ms. Rein, do you have
11 any comments regarding this application?

12 MS. REIN: No.

13 CHAIRMAN SCALZO: It is a Type 2
14 action when we get there in September.

15 Mr. Masten?

16 MR. MASTEN: I have nothing.

17 CHAIRMAN SCALZO: Mr. Bell?

18 MR. BELL: None.

19 CHAIRMAN SCALZO: Mr. Hermance?

20 MR. HERMANCE: Is this a daycare?

21 MS. JENNIFER HORAN: No. I have a
22 handicap daughter, so we need more room.
23 Now she's getting into a wheelchair
24 and --

25 CHAIRMAN SCALZO: Which explains

2 the ramp.

3 MS. JENNIFER HORAN: Yes. We need
4 more room for her.

5 MR. HERMANCE: That's all I had.

6 CHAIRMAN SCALZO: Mr. Eberhart?

7 MR. EBERHART: No.

8 CHAIRMAN SCALZO: Mr. Politi?

9 MR. POLITI: No.

10 CHAIRMAN SCALZO: I'm going to open
11 it up to any members of the public that
12 wish to speak about this application for
13 the Dorothy Hall Trust, 61 Albany Post
14 Road. If anyone would like to speak,
15 please step forward, state your name.

16 (No response.)

17 CHAIRMAN SCALZO: It does not
18 appear so. Very good.

19 I'm going to look to the Board for
20 a motion to keep the public hearing open
21 until September, the September meeting.
22 I can't recall the actual date, but it's
23 the fourth Thursday in September.

24 MR. MASTEN: The date is the 26th.

25 CHAIRMAN SCALZO: Thank you, Mr.

2 Masten.

3 I'll look to the Board for a motion
4 to keep the hearing open until September
5 26th.

6 MR. POLITI: I'll make the motion
7 to keep the public hearing open.

8 MR. EBERHART: I'll second it.

9 CHAIRMAN SCALZO: We have a motion
10 from Mr. Politi. We have a second from
11 Mr. Eberhart. All in favor?

12 MR. POLITI: Aye.

13 MR. EBERHART: Aye.

14 MR. HERMANCENCE: Aye.

15 CHAIRMAN SCALZO: Aye.

16 MR. BELL: Aye.

17 MR. MASTEN: Aye.

18 MS. REIN: Aye.

19 CHAIRMAN SCALZO: Those opposed?

20 (No response.)

21 CHAIRMAN SCALZO: Very good.

22 Motion carried.

23 Sorry to say, we'll see you in
24 September.

25 MS. DOROTHY HALL: Thank you.

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Dorothy Hall (Trust)

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

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 6th day of August 2024.

Michelle Conero

MICHELLE CONERO

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

- - - - - X

In the Matter of

DANIELLE CIAFFONE

2 & 4 Whisper Lane, Newburgh
Section 47; Block 1; Lots 72.1, 72.2 & 72.3
R-1 Zone

- - - - - X

Date: July 25, 2024
Time: 7:16 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA

APPLICANT'S REPRESENTATIVE: JONATHAN MILLEN

- - - - - X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

2 CHAIRMAN SCALZO: Our next
3 applicant is Danielle, I'm hoping it's
4 Ciaffone, 2 & 4 Whisper Lane in Newburgh.
5 This is in an R-1 Zone. This is a
6 Planning Board referral for area
7 variances to convert three existing lots
8 to two lots. Both lots will have an
9 existing two-family residence. Area
10 variances for the proposed new lots are:
11 Lot 1, lot area, side yard and lot
12 surface coverage. Lot 2, lot area, side
13 yard, lot width and both side yards.

14 My trusty secretary gives me an
15 indication that the applicant sent out
16 123 letters. I believe you're the winner
17 for the evening. All mailings, publications
18 and postings are in order.

19 I see in front of us we have Mr. Millen.
20 Mr. Millen, as you're aware, this is on a
21 State road.

22 MR. MILLEN: Yes, sir.

23 CHAIRMAN SCALZO: I did not hear
24 back from the County on this. Unfortunately,
25 GML 239 requires us to keep this public

2 hearing open. However, if you would like
3 to present, we would love to hear it,
4 unless you think I've captured just about
5 everything.

6 It's pretty rare we get a
7 consolidation in here, which helps
8 everything about those three parcels
9 consolidating into two.

10 It's the coolest setup with the
11 bridge over the stream. I didn't realize
12 it was actually its own lane. It's quite
13 the setup.

14 I myself don't have any questions.
15 I'm very in favor of what you've got going
16 on here. Unfortunately we can't act.

17 I'm going to actually start down
18 with Mr. Politi. Do you have any questions
19 regarding this application?

20 MR. POLITI: I do not.

21 CHAIRMAN SCALZO: Mr. Eberhart?

22 MR. EBERHART: No.

23 CHAIRMAN SCALZO: Mr. Hermance?

24 MR. HERMANCE: I have none.

25 CHAIRMAN SCALZO: Mr. Bell?

2 MR. BELL: None.

3 CHAIRMAN SCALZO: Mr. Masten?

4 MR. MASTEN: No.

5 CHAIRMAN SCALZO: Ms. Rein?

6 MS. REIN: I'm good.

7 CHAIRMAN SCALZO: Very good. At
8 this point I'll open it up to any members
9 of the public who wish to comment or speak
10 about this application.

11 (No response.)

12 CHAIRMAN SCALZO: Very good. At
13 this point I'll look to the Board for a
14 motion to keep the public hearing open
15 until the September 26th meeting.

16 MS. REIN: I'll make a motion to
17 keep it open.

18 MR. BELL: Second.

19 CHAIRMAN SCALZO: Very good. We
20 have a motion from Ms. Rein. We have a
21 second from Mr. Bell. All in favor?

22 MR. POLITI: Aye.

23 MR. EBERHART: Aye.

24 MR. HERMANCE: Aye.

25 CHAIRMAN SCALZO: Aye.

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MR. BELL: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Those opposed?

(No response.)

CHAIRMAN SCALZO: There were none.

Mr. Millen, I'm sorry to say, we'll
see you in September.

MR. MILLEN: Yes, sir.

(Time noted: 7:19 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 6th day of August 2024.

Michelle Conero

MICHELLE CONERO

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

- - - - - X

In the Matter of

MATTHEW GALLAGHER

409 Little Britain Road, Newburgh
Section 97; Block 1; Lot 42
R-3 Zone

- - - - - X

Date: July 25, 2024
Time: 7:20 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA

APPLICANT'S REPRESENTATIVE: MATTHEW GALLAGHER

- - - - - X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

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CHAIRMAN SCALZO: Our next applicant this evening is Matthew Gallagher at 409 Little Britain Road. They're seeking area variances of the front yard, maximum height and maximum square footage to add a two-story, 992 square foot addition onto an existing accessory structure.

Siobhan so kindly provided me with that the applicant has sent out nine letters. All the mailings, publications and postings are in order.

Who do we have with us this evening?

MR. GALLAGHER: Good evening. Matt Gallagher, 409 Little Britain Road.

CHAIRMAN SCALZO: Mr. Gallagher, if I have captured the nature of your application in those two short sentences -- we've been to your property. I spoke with you myself, conversed. It's a great looking place. You're plagued with an unusually shaped right-of-way taking by the State which kind of kicks into your property.

2 From what I gathered from your
3 application as well as our conversation,
4 you're looking at continuing the roof
5 line of the existing structure closer to
6 Route 207 while adding a bay, bay
7 and-a-half plus an opening architectural
8 feature, if you will. Have I captured
9 that accurately?

10 MR. GALLAGHER: Correct.

11 CHAIRMAN SCALZO: Would you like to
12 add anything else or shall I turn it over
13 to the Board?

14 MR. GALLAGHER: I'll point out,
15 just because there might be a couple
16 things that I wanted the Board to be
17 aware of, when we first submitted the
18 build application, our architect measured
19 the existing peak of the roof height at
20 22.5. That was the height as shown on
21 the original application that Mr. Mattina
22 saw. He came out and did a remeasurement
23 and that's actually 23 feet. That is how
24 it stands in the zoning application that
25 we submitted. In case anybody saw a

2 disparity there, I wanted to clarify that
3 it is a 23.5 foot current peak height.

4 Also, when we submitted the
5 original build application, there was a
6 cupola as shown in the pictures up on
7 top. That has since been removed. It
8 was unstable. We took it down before it
9 would fall on us. We have no plans for
10 adding a cupola. There's none shown on
11 the architectural renderings.

12 Essentially the extra space, we have
13 four cars, one small utility tractor, we
14 want to get things out of the elements so
15 our stuff lasts longer and we can focus
16 on better projects rather than taking
17 care of stuff that gets snowed on and
18 rained on.

19 We think the architectural renderings
20 show it will be aesthetically pleasing.
21 We don't believe it will disrupt valuable
22 sight lines of the neighbors on the City
23 of Newburgh, on the side that this would
24 be going towards. The bank is up the hill.

25 CHAIRMAN SCALZO: You're adjoining

2 commercial properties?

3 MR. GALLAGHER: Correct.

4 CHAIRMAN SCALZO: It's not as
5 though anyone is sitting in their office
6 worried about your garage height.

7 MR. GALLAGHER: That's right. I
8 understand everything about being on the
9 State highway and not hearing back from
10 the County yet. If the Board has any
11 other questions, I'm happy to answer
12 them.

13 CHAIRMAN SCALZO: Thank you.

14 Ms. Rein, do you have any questions
15 regarding this application?

16 MS. REIN: No.

17 CHAIRMAN SCALZO: Mr. Masten?

18 MR. MASTEN: I have none.

19 CHAIRMAN SCALZO: Mr. Bell?

20 MR. BELL: The height that you just
21 mentioned, the difference, it's no
22 different than what we talked about
23 earlier.

24 MR. GALLAGHER: That's correct.

25 CHAIRMAN SCALZO: Just so it's

2 memorialized in the meeting minutes,
3 currently there's a hose bit within your
4 barn now. You said it's currently
5 disconnected, although you may connect it
6 again. There is no outflow?

7 MR. GALLAGHER: That is correct.

8 CHAIRMAN SCALZO: The upstairs is
9 for storage. It's uninsulated and there
10 are no plans to make that any type of
11 living space?

12 MR. GALLAGHER: True statement.

13 CHAIRMAN SCALZO: Very good. Thank
14 you.

15 Mr. Hermance?

16 MR. HERMANCE: With that, I have no
17 questions.

18 CHAIRMAN SCALZO: Sorry.

19 Mr. Eberhart?

20 MR. EBERHART: Nothing.

21 CHAIRMAN SCALZO: And Mr. Politi?

22 MR. POLITI: We had a great
23 conversation. He explained it onsite
24 like we talked about tonight.

25 MR. GALLAGHER: Thank you.

2 CHAIRMAN SCALZO: I've lived in
3 Newburgh my entire life and have always
4 admired the home.

5 Unfortunately, Mr. Gallagher, we
6 have not heard from County, therefore we
7 cannot act this evening.

8 At this point I'm going to open
9 this up to any members of the public that
10 may wish to speak about this application
11 at 409 Little Britain Road. Are there
12 any members of the public that wish to
13 speak about this application?

14 (No response.)

15 CHAIRMAN SCALZO: It does not
16 appear so.

17 I will look to the Board for a
18 motion to keep the public hearing open
19 until the September 26th meeting.

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

22 MS. REIN: I'll second it.

23 CHAIRMAN SCALZO: We have a motion
24 from Mr. Masten and we have a second from
25 Ms. Rein. All in favor?

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MR. POLITI: Aye.

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

CHAIRMAN SCALZO: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Those opposed?

(No response.)

CHAIRMAN SCALZO: Motion carried.

Mr. Gallagher, we'll see you in
September.

MR. GALLAGHER: Thank you.

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

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 6th day of August 2024.

Michelle Conero

MICHELLE CONERO

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

In the Matter of

AVION VENTURES

Pomarico Drive, Newburgh
Section 86; Block 1; Lot 37.222
IB Zone

----- X

Date: July 25, 2024
Time: 7:25 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA

APPLICANT'S REPRESENTATIVE: JUSTIN DATES

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

2 CHAIRMAN SCALZO: Our next
3 applicant is Avion Ventures which is on
4 Pomarico Drive, a road I never knew
5 existed. It is also a Planning Board
6 referral for an area variance of the
7 maximum height of a proposed warehouse.
8 The proposed height is 55 feet where 40
9 feet is permitted.

10 Siobhan has indicated here the
11 applicant has sent out sixteen letters.
12 All the mailings, publications and
13 postings are in order.

14 Mr. Dates, how are you, sir?

15 MR. DATES: Good evening. How are
16 you, Mr. Chairman?

17 CHAIRMAN SCALZO: We've been there.
18 We've looked. We've looked, tasted,
19 touched and felt, if you will. That's
20 quite a small road leading down to that
21 area.

22 MR. DATES: Yes. There will be
23 some improvements to that road.

24 CHAIRMAN SCALZO: I would imagine
25 so. I'm going to ask the big question

2 that I always ask. You're looking for 55
3 feet and 40 is allowed?

4 MR. DATES: That's correct.

5 CHAIRMAN SCALZO: Why is that?

6 MR. DATES: Justin Dates, Colliers
7 Engineering & Design representing the
8 applicant, Avion Ventures.

9 UNIDENTIFIED SPEAKER: We can't
10 hear.

11 MR. DATES: I'll speak up.

12 CHAIRMAN SCALZO: Mr. Dates, if you
13 don't mind, I see you have your stuff up
14 on the board, why don't you take the
15 microphone and stand over there. You can
16 take the mic or the stand. It's up to
17 you. Speak as if you're facing the
18 public so they can hear you. We've seen
19 your application. We've seen it, we've
20 been to the site. We know what we're
21 looking at here, although the members of
22 the public are probably much more
23 interested in hearing what you have to
24 say today.

25 MR. DATES: Very well. Justin

2 Dates, Colliers Engineering & Design,
3 here on behalf of the applicant, Avion
4 Ventures.

5 So as mentioned, the subject parcel
6 that the applicant is in contract to
7 purchase is at the end of Pomarico Drive.
8 It is about a 12-acre site. On the north
9 and western sides of the site there are
10 wetland areas that encumber the parcel.
11 Roughly half I would say. They are DEC
12 wetlands and do have an associated buffer
13 on that.

14 The parcel is in the IB, or
15 Interchange Business, Zoning District.
16 Warehouse or a proposed warehouse, which
17 the applicant is seeking, is an allowed
18 use within the zone.

19 We do meet all the bulk requirements
20 for that use within the IB Zoning District
21 with the exception of the building height,
22 which, as Mr. Chairman mentioned, the
23 maximum within the zone for this use is
24 40 feet and the applicant is seeking a
25 maximum of 55 feet.

2 The facility itself is a
3 warehouse distribution facility, 62,500
4 square feet total. The applicant does
5 not have a tenant at this point, so they
6 are or will be building this on spec at
7 this point. The market today, the
8 industrial market lends to or seeks to
9 have larger, what they call interior
10 clear height for storage of goods.
11 This is a more efficient use of the
12 space as opposed to making the building
13 footprint larger. Going vertical is
14 more efficient in these types of
15 facilities.

16 With the project site that we're
17 looking at, we're not looking to incur
18 any additional environmental impacts
19 onto the wetlands, so hence the applicant
20 is looking to go vertical or go higher
21 with the building. 55 feet, that is
22 15 feet higher than the allowed maximum,
23 but there are factors built in. Building
24 height is measured to the top of the
25 structure.

2 Code Compliance, if I misspeak,
3 please jump in.

4 These types of facilities have a
5 parapet, they have the roof deck
6 thickness, as well as the roof structure
7 or the girders and the joists, which all
8 hinder that internal or vertical height
9 for the product to be stacked. From the
10 bottom of those roof structures there's
11 also about three feet that's needed
12 from a fire suppression system or a
13 sprinkler system to the actual product
14 storage itself.

15 In order to meet today's standards
16 or what tenants are looking for, they
17 are requesting this increase in height.
18 They feel that this will be more
19 marketable to a wider pool of tenants
20 out there and a more sustainable product
21 at this particular location.

22 MS. REIN: If I may ask a question.
23 This scenario is just in case?

24 MR. DATES: No, ma'am. It's not
25 just in case. This is what the industry

2 is pushing for. These tenants are
3 looking for this higher clear height
4 within the buildings.

5 MS. REIN: Who are these tenants?

6 CHAIRMAN SCALZO: That's a wonderful
7 question. They don't have any tenants,
8 but they're sure the tenants they get are
9 going to need this extra height.

10 MR. DATES: Ma'am, my firm, right
11 now we have several million square feet
12 of warehouse projects on our boards.
13 We've been all over Orange County with
14 them. This is a pretty standard height
15 for the other projects, what they were
16 looking for. In some other municipalities,
17 65 foot is the max. Obviously we wouldn't
18 have a problem there. Others are 35 where
19 we've gotten height variances. It's
20 something that's being sought throughout
21 this particular County, but also across
22 the country if the problem arises.

23 MS. REIN: Thank you.

24 CHAIRMAN SCALZO: Mr. Dates, as I
25 was driving in, there's a building, I'll

2 call it, as you're driving into Pomarico
3 Drive on the left-hand side on the hill.
4 Is that the Peterbilt? Any idea how high
5 that is? It's very warehousy looking.

6 MR. DATES: I do not, Mr. Chairman.

7 CHAIRMAN SCALZO: It's not 55 feet.
8 Something that kind of rung out to
9 me. You have eight stalls planned here
10 for tractor trailers. Correct?

11 MR. DATES: Yes. That would be on
12 the north side, eight loading docks.

13 CHAIRMAN SCALZO: I see the
14 configuration of your parking layout.
15 You verified that that layout can sustain
16 these guys getting in there and backing
17 into their stalls appropriately?

18 MR. DATES: Yeah. So the loading
19 dock facilities -- usually the dock or
20 dock apron itself is 60 foot, which we
21 provided, and then the 70 feet on there
22 would be for maneuvering. If you look to
23 the very northeast corner, we do have
24 that spur. That's where a truck can pull
25 up to get in that last dock position.

2 CHAIRMAN SCALZO: For some reason I
3 thought most tractor trailers were about
4 53 feet long.

5 MR. DATES: That's the box. A
6 WB-67 would have a 53-foot trailer. It's
7 roughly 73 feet long with the cab.

8 CHAIRMAN SCALZO: It would extend
9 beyond where your parking stall line
10 shows. Correct?

11 MR. DATES: That's incorrect. They
12 use that 70-foot aisle to maneuver and
13 back into the stall. The 60 feet
14 encompasses the 53-foot trailer as well
15 as a portion of the --

16 CHAIRMAN SCALZO: A portion, but
17 not all. The short story is probably
18 from the doors forward are going to be
19 sticking out, impeding the flow of --

20 MR. DATES: It depends what type of
21 tractor.

22 CHAIRMAN SCALZO: Again, you have
23 eight there, but then you have 39 parking
24 spaces out front.

25 MR. DATES: That's correct.

2 CHAIRMAN SCALZO: If you have
3 warehouse workers that you intend on
4 having 39 cars out there for, and of
5 course it's not going to be full all the
6 time, and only eight stalls for tractor
7 trailers coming in, something has to keep
8 these 39 people working. There's going
9 to be a lot of circulation of trucks with
10 only eight stalls. It just seems like an
11 awful lot of parking for workers or
12 whatever.

13 You know what, I know you're not
14 here to talk about that. We're only here
15 to talk about the height.

16 MR. DATES: I can respond to that.

17 CHAIRMAN SCALZO: I'm hoping that
18 the Planning Board does read our minutes,
19 much like we read theirs. Perhaps we're
20 asking questions they may not have
21 thought of.

22 Please go ahead.

23 MR. DATES: Regarding the parking,
24 we identified, yes, there are 39 spots.
25 We had estimated, in coordination with

2 the applicant, that there could be up to
3 20 people within a shift. What we're
4 trying to accommodate is 20 people are
5 there working, shift change, the next 20
6 come in, they can all park and the others
7 can exit without interfering or having
8 them park alongside the road, down
9 Pomarico. We're trying to maintain this
10 on our given site.

11 CHAIRMAN SCALZO: That's wonderful.
12 Again, I'm hoping the Planning Board
13 reads our meeting minutes.

14 You just mentioned shifts. As I
15 drove in, I passed three residential
16 dwellings. You're going to have shift
17 work going on in the warehouse. The
18 unknown applicant or unknown occupant of
19 this building, are they going to be a
20 twenty-four hour operation?

21 MR. DATES: Right now we haven't
22 listed any type of restriction on
23 operations.

24 CHAIRMAN SCALZO: That's the
25 Planning Board's -- I mean, the Planning

2 Board can put those restrictions on.
3 Again, I'm just -- for people here
4 listening about this application, I just
5 wanted you to all hear it and think about
6 things. When the Planning Board does get
7 this back in front of them, should it
8 happen, which even if they get denied
9 here today, they're allowed to build a
10 building 40 feet in height, so I assume
11 they'll end up back in front of the
12 Planning Board. These are just questions
13 for Mr. Dates. You hope people think of
14 things on their own, but I'm trying to
15 help people think.

16 Like I said, you have three
17 residential dwellings. On the way down I
18 see the one, the last one, the fellow has
19 perhaps overextended himself a little
20 bit, so he's going to have to pull back a
21 little.

22 MR. DATES: Those residential
23 dwellings are all within the IB,
24 Interchange Business, Zoning District,
25 just like this project application.

2 CHAIRMAN SCALZO: Sure. I know
3 it's an IB, but when you do look at the
4 character of the neighborhood and you're
5 driving past three residential dwellings,
6 that's kind of the character. It is a
7 character that you can't ignore.

8 MR. DATES: You're also driving
9 past other warehouses or industrial
10 commercial facilities.

11 CHAIRMAN SCALZO: That we are. The
12 Peterbilt building is actually quite
13 screened. Once you get passed it, you
14 really can't see it. In the winter I'm
15 sure they can.

16 When they purchased the homes
17 there, which I'm sure most of these
18 facilities were in place when they bought
19 their homes, they were probably aware of
20 what they were purchasing and where it was.

21 The other, just for my fellow Board
22 Members and perhaps anybody here to look
23 at this, your 62,500 square foot building,
24 that's a flat dimensional area. Correct?
25 That would also give you 2,500,000 at 40

2 feet. When you jump up to 55 feet,
3 you're looking at 3,437,500 feet, which
4 is a difference of 937,500 cubic feet
5 that you're asking for a variance for.
6 That is substantial.

7 MR. DATES: Got it.

8 CHAIRMAN SCALZO: I'm just putting
9 that out there. I've talked way too much.

10 MR. DATES: To that point, you're
11 doing it as if the whole building was
12 being used for that cubic volume, right,
13 which is not the case. The racking
14 systems within the building, they're not
15 going to --

16 CHAIRMAN SCALZO: Sure. They're
17 probably eight feet tall.

18 MR. DATES: Exactly. It's a
19 product of developing, as I said, the
20 maximum clear height that they have to
21 seek for the most potential tenants.

22 CHAIRMAN SCALZO: Which we don't
23 know who your tenants are yet. For sure
24 they need that 55-foot height.

25 MR. DATES: That's why I'm here.

2 CHAIRMAN SCALZO: I have a friend
3 who actually works in an industry, Unitex
4 in Newburgh. What's the interior of your
5 -- what's your maximum building height?
6 Do you need 40 feet? They're in a
7 different industry. What you're looking
8 for here is storage or just moving --
9 temporary transient goods come in here,
10 they sit, they go. We don't know what it
11 is.

12 MR. DATES: A warehouse distribution
13 facility is what is proposed.

14 CHAIRMAN SCALZO: Again, you are
15 correct, sir, it is in the IB Zone and
16 the use is allowed. That's not why we're
17 here. We're here for that extra 15 feet.

18 Again, I've spoken way too long.
19 I'm going to look down to Mr. Politi for
20 any questions he may have.

21 MR. POLITI: Industry standard is
22 what you keep using. We have a comp plan
23 that has been developed for a reason.
24 That's a long process. To me, that's
25 quite -- that's almost a third. I have

2 to look at the numbers.

3 MR. DATES: 37 percent.

4 CHAIRMAN SCALZO: 2,500,000 cubic
5 feet as opposed to 937,500. I keep
6 talking about heights here. It's kind of
7 a function of the height.

8 MR. POLITI: The height, that's
9 quite a difference or quite an ask. It's
10 a huge ask in terms of the percentage of
11 increase.

12 Plus I've been on that road. I know
13 you mentioned -- again, that's probably a
14 Planning Board question. That's a driveway
15 almost.

16 CHAIRMAN SCALZO: I'm certain they're
17 going to have improvements regardless.

18 MR. DATES: There will be widening.
19 We do need to do utility connections.
20 All that will need to be --

21 MR. POLITI: That's a lot of work.
22 To me it's a huge ask, the percentage.

23 Many times when I look at these, I
24 look at the percentage that's put
25 together of the ask. A couple percent.

2 That's, to me, quite a bit.

3 CHAIRMAN SCALZO: Mr. Politi, let
4 me ask you, you're the newest member of
5 the Zoning Board of Appeals. Of all the
6 warehouse applications that came in
7 asking for height variances, how many
8 have you seen pass here? That would be
9 zero.

10 MR. POLITI: I think it is zero.

11 CHAIRMAN SCALZO: It's a common
12 ask, Mr. Dates. Warehouses come in and
13 they're looking for it. The last one I
14 remember that got a height variance was
15 actually up on top of the hill there as
16 you're coming over the Thruway. It is
17 big.

18 MR. MASTEN: Matrix.

19 CHAIRMAN SCALZO: That's the last
20 one I recall getting a variance. That
21 was, again, an industrial area with --
22 it's up there.

23 MR. POLITI: I'm good.

24 CHAIRMAN SCALZO: Mr. Eberhart, do
25 you have any questions?

2 MR. EBERHART: No. Not right now.

3 CHAIRMAN SCALZO: Mr. Hermance?

4 MR. HERMANCE: Again, this would
5 probably be for the Town, but have you
6 considered the fire apparatus needed to
7 get to the higher elevations of that
8 building?

9 MR. DATES: Our application was
10 provided to the fire district. We just
11 recently got some comments back from them
12 that we need to meet on and go over. We
13 are in coordination with them and we'll
14 have some things to work out.

15 MR. HERMANCE: Even though it's
16 sprinklered, they still have to access --

17 MR. DATES: You're absolutely
18 correct.

19 MR. HERMANCE: That's all I had.

20 CHAIRMAN SCALZO: Thank you, Mr.
21 Hermance.

22 Mr. Bell?

23 MR. BELL: I'm good.

24 CHAIRMAN SCALZO: I talk too much.
25 I asked all of your questions for you.

2 MR. BELL: I wrote them down and
3 scratched them out.

4 CHAIRMAN SCALZO: Mr. Masten?

5 MR. MASTEN: The height of that
6 building, I can see the height with the
7 forklift running around in there. Down
8 the road is another set of warehouses off
9 Corporate Drive. They had lower ceilings,
10 roofs. One of the local fire departments
11 had calls there four times a week because
12 of low ceilings. They relocated all the
13 sprinkler systems and now they haven't
14 had a call there in six years. It's
15 ongoing.

16 This is for speculation?

17 MR. DATES: I'm sorry?

18 MR. POLITI: Speculation.

19 MR. DATES: Yes, it's on spec.

20 MR. MASTEN: Speculation. We're
21 getting a lot of places around that are
22 for speculation. There's nothing really
23 going on at Stewart right now.

24 That's all I have, Darrin.

25 CHAIRMAN SCALZO: Mr. Masten, thank

2 you so much.

3 Ms. Rein?

4 MS. REIN: I have to agree with Mr.
5 Politi. I think this is a really big
6 ask, especially considering there's no
7 tenant so we don't know what's going in
8 there. That's it. That's what I have to
9 say.

10 CHAIRMAN SCALZO: Thank you, Ms. Rein.

11 At this time I'm going to open the
12 meeting up to any members of the public
13 that wish to comment or ask any questions
14 on the application. Please step forward,
15 state your name and the floor is yours.

16 MR. GANCI: We didn't have access
17 to the Planning Board. I may be asking
18 some questions --

19 MR. BELL: Your name, please?

20 MR. GANCI: My name is Robert Ganci.
21 My wife and I own the middle house on
22 Pomarico Drive. It's not Bracken Road.
23 It's Pomarico Drive. We built our house
24 there in 1965. At the time my wife's
25 family owned the property all around,

2 the whole 20 acres. We tried to
3 subdivide it into building lots. We
4 were told if we exceeded five building
5 lots, we would have to build a road
6 to County spec and turn it over to
7 the Town, which stopped us. It wasn't
8 worth it.

9 Is this road going to be turned
10 over to the County?

11 CHAIRMAN SCALZO: Sir, we're here,
12 and unfortunately all we can answer to
13 is their request to make this building
14 very tall.

15 MR. GANCI: I realize that. We
16 weren't invited to the other meeting.

17 CHAIRMAN SCALZO: They can't have a
18 public hearing yet until they get past us.

19 MR. GANCI: I'd like to get some
20 things on the books. You've been to the
21 road?

22 CHAIRMAN SCALZO: Yes, we have.

23 MR. GANCI: It's dangerous. We
24 have trucks crossing the median from the
25 diner parking lot. We have trucks going

2 into Peterbilt. We have trucks that get
3 lost going down the road. Now we're
4 going to have trucks going twenty-four/
5 seven in front of three houses, one
6 containing small children who ride their
7 bikes on the road.

8 CHAIRMAN SCALZO: Sir, your comments
9 are very well pointed.

10 MR. GANCI: I know I'm digressing.

11 CHAIRMAN SCALZO: What I would
12 recommend to you, though, is these points
13 would be absolutely priceless for the
14 Planning Board to hear. You're going to
15 get an opportunity at a public hearing
16 with the Planning Board. They have an
17 opportunity to put different criteria or
18 restrictions, if you will, on an applicant.

19 MR. GANCI: Can I get some comments
20 into the minutes so they can look at the
21 minutes?

22 CHAIRMAN SCALZO: I will allow you
23 another moment or two to get it on there.

24 MR. GANCI: I'm talking safety.
25 Try getting out of that road onto 17K.

2 You can't make a left turn. You have to
3 make a right turn and go around because
4 of the traffic. You've got four lanes
5 converging into two.

6 CHAIRMAN SCALZO: Yes, you do. The
7 Planning Board has a traffic consultant
8 which will most likely -- Mr. Dates, have
9 you had a traffic study requested yet by
10 the Planning Board?

11 MR. DATES: We have started one.
12 We knew it would be required as part of
13 the project. The initial review, we are
14 looking at a left-turn lane eastbound on
15 17K. Also signal phasing and timing
16 improvements along the 17K corridor is
17 what we're anticipating.

18 CHAIRMAN SCALZO: Pardon me. It's
19 interesting you say that, because we have
20 another applicant that's here this
21 evening that's not too far from you. I'm
22 kind of curious if they're working with
23 you with their signal, because they are
24 proposing signal phasing to assist in
25 their project. Perhaps you guys can high

2 five on the way out and maybe talk to
3 each other about what's going on.

4 Your comments are very valuable.
5 We hear them. They are now memorialized
6 in the meeting minutes. I would
7 recommend that you --

8 MR. GANCI: I have one question
9 about the height. Has this been cleared
10 with the FAA?

11 CHAIRMAN SCALZO: I'm not sure that
12 that's a requirement. That's something
13 the Planning Board will investigate.

14 MR. GANCI: You stand there and
15 watch the airplanes go over our house.
16 You raise that building, you're going to
17 have a hazard with airplanes.

18 CHAIRMAN SCALZO: If it is
19 required, the Planning Board would make
20 that request to the applicant.

21 MR. GANCI: I'd like to get that on
22 the record as well. We've had C5s, C17s
23 coming over the house. You can count the
24 rivets. Raise the roof on that building,
25 you're putting an obstacle in the way of

2 airplanes.

3 CHAIRMAN SCALZO: Touch and go
4 Tuesdays.

5 MR. GANCI: I used to do it when I
6 was in the Air Force. Now I'm getting
7 the other end of it.

8 CHAIRMAN SCALZO: Thank you very
9 much for your comments, sir. We appreciate
10 them.

11 Is there anyone else here from the
12 public that wishes to speak about this
13 application?

14 (No response.)

15 CHAIRMAN SCALZO: Okay. I'm going
16 to look to the Board. Anything else that
17 we may want to touch upon?

18 Mr. Politi, any other questions?

19 MR. POLITI: No.

20 CHAIRMAN SCALZO: Mr. Eberhart, any
21 other questions?

22 MR. EBERHART: No.

23 CHAIRMAN SCALZO: Mr. Hermance?

24 MR. HERMANCE: No.

25 MR. BELL: No.

2 MR. MASTEN: Not right now.

3 MS. REIN: No.

4 CHAIRMAN SCALZO: Okay. Actually,
5 as I pulled in, it said private road.
6 It's not on a State highway or within 500
7 feet of a State highway, so there is no
8 GML 239. Lucky you tonight. That's a
9 common theme.

10 In this instance we can continue
11 with our meeting. I will look to the
12 Board for a motion to close the public
13 hearing.

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

16 MR. MASTEN: Second.

17 CHAIRMAN SCALZO: We have a motion
18 to close the public hearing from Mr. Bell.
19 We have a second from Mr. Masten. All in
20 favor?

21 MR. POLITI: Aye.

22 MR. EBERHART: Aye.

23 MR. HERMANCE: Aye.

24 CHAIRMAN SCALZO: Aye.

25 MR. BELL: Aye.

2 MR. MASTEN: Aye.

3 MS. REIN: Aye.

4 CHAIRMAN SCALZO: Those opposed?

5 (No response.)

6 CHAIRMAN SCALZO: Motion carried.

7 Very good. The public hearing is now
8 closed.

9 In this instance, this is a Type 2
10 action under SEQRA?

11 MR. DONOVAN: It's actually not a
12 Type 2 action. This is an Unlisted
13 action.

14 CHAIRMAN SCALZO: That's dimensional
15 to me. That's why I was confused.

16 MR. DONOVAN: It's a commercial
17 building, not a residential building.
18 It's a height variance, not a setback
19 variance.

20 If I can, this is an uncoordinated
21 review. You are the only agency reviewing
22 this. You need to act on SEQRA if you
23 think you're going to approve the
24 application. If you're going to deny
25 the application, it's not an action so

2 you wouldn't have to vote on SEQRA.
3 If you want to proceed, this would
4 need a negative declaration going
5 forward. You have to understand that
6 this is an Unlisted action. It's an
7 uncoordinated review. Your vote on
8 SEQRA doesn't authorize an approval,
9 or any construction rather. They
10 still need site plan approval from
11 the Planning Board before any
12 construction can be done. There
13 would be a further SEQRA analysis
14 done by the Planning Board that would
15 be no less protective of the environment
16 than your SEQRA review of this height
17 variance.

18 CHAIRMAN SCALZO: Thank you,
19 Counsel. One question I have for you
20 regarding that is, with regard to going
21 through the balancing tests on this, do
22 we have to make our SEQRA determination
23 first?

24 MR. DONOVAN: Well, great question,
25 Mr. Chairman, because there is case law

2 out there that would allow you to grant a
3 negative declaration and disapprove the
4 project. My preference is if you want to
5 disapprove the project, do not take
6 action under SEQRA because it just
7 complicates matters. You may want to go
8 through the balancing tests and see where
9 that brings you, and then, at that time,
10 make a determination if you want to vote
11 on SEQRA or vote on the application.

12 CHAIRMAN SCALZO: Okay. Thank you,
13 Counsel.

14 Does the Board have a preference to
15 the way you want -- which order we prefer?

16 Pardon me, Counsel. If I could
17 just ask you one more time. Case law has
18 supported or has not supported?

19 MR. DONOVAN: Case law has supported
20 the issuance of a negative declaration on
21 the denial of an application. I think it's
22 cleaner --

23 CHAIRMAN SCALZO: You can stop right
24 there.

25 In this instance I believe, fellow

2 Board Members, we're going to need a
3 motion for a negative declaration on
4 SEQRA.

5 MR. HERMANCE: I'll make a motion
6 on the negative --

7 CHAIRMAN SCALZO: Negative
8 declaration on SEQRA.

9 MR. EBERHART: I'll second.

10 CHAIRMAN SCALZO: We have a second
11 from Mr. Eberhart.

12 When I roll on you, the answer of
13 affirmative or yes means that you're in
14 agreement with the motion for a negative
15 declaration.

16 Rolling on that, Mr. Politi?

17 MR. POLITI: Yes.

18 CHAIRMAN SCALZO: Mr. Eberhart?

19 MR. EBERHART: Yes.

20 CHAIRMAN SCALZO: Mr. Hermance?

21 MR. HERMANCE: Yes.

22 CHAIRMAN SCALZO: Mr. Bell?

23 MR. BELL: Yes.

24 CHAIRMAN SCALZO: Mr. Masten?

25 MR. MASTEN: Yes.

2 CHAIRMAN SCALZO: Ms. Rein?

3 MS. REIN: Yes.

4 CHAIRMAN SCALZO: I am also
5 affirmative. Thank you.

6 So we have a negative declaration
7 now.

8 We will also need to discuss the
9 five factors we are weighing, much as we
10 do in a Type 2 action. Correct, Counsel?

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

13 CHAIRMAN SCALZO: Therefore,
14 discussing the five factors, the first
15 one being whether or not the benefit can
16 be achieved by other means feasible to
17 the applicant. This is one of those
18 questions that I always read. I get
19 through it and I'm saying can the benefit
20 be achieved by other means. The benefit
21 they are seeking is an additional 15
22 feet. I really haven't studied the plan
23 to see if the square footage they are
24 looking for may be expanded. However,
25 the applicant has indicated that it's

2 really not the square footage expansion
3 that they're looking for, it is in fact
4 the height. Can the benefit be achieved
5 by other means. I would say no, the
6 benefit can't be achieved by other means
7 because they're looking for height, not
8 width.

9 MR. BELL: Right.

10 CHAIRMAN SCALZO: The second, if
11 there's an undesirable change in the
12 neighborhood character or a detriment to
13 nearby properties. That's subjective
14 here. The neighborhood character does
15 have that Peterbilt building. It's got
16 the diner out front. It's got the gas
17 station as you pull in. It has three
18 pretty well manicured single-family
19 dwellings on the way in. How is that
20 going to affect these folks if they get
21 15 extra feet? It's not. However, the
22 actual entire project, in my opinion, is
23 going to have an impact on the character
24 of the neighborhood.

25 The third, whether the request is

2 substantial. Now, listen, I am but one
3 person on this Board. I gave you my
4 feelings on that amount of cubic feet.

5 MR. BELL: Yes, it is.

6 MS. REIN: I think it is.

7 CHAIRMAN SCALZO: The fourth,
8 whether the request will have adverse
9 physical or environmental effects. No
10 more than it would if it was still at 40
11 feet.

12 The fifth, whether the alleged
13 difficulty is self-created, which is
14 relevant but not determinative. Of course
15 it's self-created in this case.

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

19 Having gone through the balancing
20 tests of the area variance, does the
21 Board have a motion of some sort?

22 MR. BELL: I'll make a motion for
23 disapproval.

24 CHAIRMAN SCALZO: We have a motion
25 for disapproval from Mr. Bell.

2 MR. EBERHART: I'll second.

3 CHAIRMAN SCALZO: We have a second
4 from Mr. Eberhart. I'm going to roll on
5 that. Mr. Politi?

6 MR. POLITI: I want to say it the
7 right way.

8 CHAIRMAN SCALZO: We have a motion
9 and a second for disapproval.

10 MR. DONOVAN: Yes means disapproval.

11 MR. POLITI: Yes.

12 CHAIRMAN SCALZO: Mr. Politi is a
13 yes.

14 Mr. Eberhart?

15 MR. EBERHART: Yes.

16 CHAIRMAN SCALZO: Mr. Hermance?

17 MR. HERMANCE: Yes.

18 CHAIRMAN SCALZO: Mr. Bell?

19 MR. BELL: Yes.

20 CHAIRMAN SCALZO: Mr. Masten?

21 MR. MASTEN: Yes.

22 CHAIRMAN SCALZO: Ms. Rein?

23 MS. REIN: Yes.

24 CHAIRMAN SCALZO: I am affirmative
25 as well.

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I apologize to you, Mr. Dates.
Actually, I don't need to apologize.
The motion is carried and your
request was denied.

MR. DATES: Thank you.

(Time noted: 7:54 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 6th day of August 2024.

Michelle Conero

MICHELLE CONERO

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

SPARK CAR WASH

1227-1229 Route 300, Newburgh
Section 96; Block 1; Lots 4 & 5
IB Zone

----- X

Date: July 25, 2024
Time: 7:55 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA

APPLICANT'S REPRESENTATIVE: RAFAEL CORBALAN &
PAUL MUTCH

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

2 CHAIRMAN SCALZO: Moving on, the
3 next applicant this evening is Spark Car
4 Wash. Spark Car Wash is at 1227-1229
5 Route 300.

6 I'm going to give everyone a
7 second.

8 (Pause in the meeting.)

9 CHAIRMAN SCALZO: It appears as
10 though the room is clear at this point.

11 Moving on to the next applicant
12 which is Spark Car Wash, 1227-1229 Route
13 300. They are a Planning Board referral
14 for area variances of the rear yard
15 setback and the driveway setback to the
16 property line. The project proposes a
17 4,294 square foot car wash with a kiosk
18 and a canopy in the front yard that may
19 require variances.

20 My trusty secretary indicates that
21 the applicant had sent out 15 letters.
22 All the mailings, publications and
23 postings are in order.

24 Who do we have with us this
25 evening?

2 MR. CORBALAN: Can everyone hear
3 me?

4 CHAIRMAN SCALZO: Let me let you
5 introduce yourself and your sidekick.

6 MR. CORBALAN: I'm Rafael Corbalan
7 from CSG Law. I'm an attorney from
8 Newark, New Jersey here on behalf of the
9 applicant, Spark Car Wash for the
10 property at 1227-1229 Route 300.

11 CHAIRMAN SCALZO: Before I let you
12 continue, I neglected to mention that
13 this applicant is also subject to GML 239
14 and we have not heard from the County. I
15 encourage you to present this evening,
16 but bear in mind that we cannot act on
17 your application.

18 MR. CORBALAN: Of course. Thank
19 you.

20 So right now the property consists
21 of two lots. It's about 53,000 square
22 feet. We want to convert it into a
23 modern car wash. It's in the Interchange
24 Business, the IB District Zone.

25 We have, as you just mentioned, two

2 variances today, which is the rear yard
3 setback, 42.4 feet where 60 is required,
4 and the driveway into and out of the
5 property is 1.8 feet from the property
6 line where 10 feet is required. I can
7 give the Board the legal citations if
8 they want those.

9 The third one is subject to some
10 confusion about the front setbacks
11 because it's not a building, it's a
12 kiosk, it's a structure. We're ready to
13 provide testimony about that today and
14 include it as part of the application.
15 We have two witnesses today if you have
16 any questions.

17 MR. DONOVAN: You get a little
18 insight on how they do things in Jersey.
19 They're calling witnesses.

20 CHAIRMAN SCALZO: State highways
21 typically have a larger front yard
22 setback. I want to say this is 60 feet.

23 MR. CORBALAN: It's 50.

24 CHAIRMAN SCALZO: Joe, help me out.
25 I thought State highways are 60.

2 MR. MATTINA: It is.

3 MR. DONOVAN: If I may. A
4 colleague from your office did call me
5 today.

6 Joe, the Planning Board raised a
7 question as to whether or not the kiosk
8 and the canopy in the front yard setback
9 needed variances. They say they may need
10 variances. I hate to put you on the
11 spot. It was in the notice. I think we
12 just need clarification as to whether
13 that needs to be addressed by the ZBA.

14 MR. MATTINA: Let me find out what
15 they look like.

16 CHAIRMAN SCALZO: Perhaps you can
17 help me out. Are the kiosks on a
18 particular sheet that I can turn to
19 quickly?

20 MR. MUTCH: It's sheet C-4. I'm
21 not sure if the elevations -- those would
22 be in the architectural packet. The
23 smaller packet would have the elevations
24 and the look. The location is on C-4.

25 CHAIRMAN SCALZO: I see the order.

2 MR. CORBALAN: This is the civil
3 engine, Paul Mutch from Stonefield
4 Engineering & Design. He would be the
5 first person who will be presenting
6 tonight.

7 I wanted to start with a quick sort
8 of opening. As you know, there are two,
9 potentially three minor area variances
10 we're seeking in tonight's presentation
11 that will greatly benefit the car wash
12 operation on this property.

13 What we're proposing is actually an
14 improvement. It's in the IB District, so
15 it's got a commercial character we think
16 the car wash is going to be in harmony
17 and aligned with. There's no detriment
18 to any of the nearby properties. Our
19 engineers can get into that.

20 I just want to make sure -- I don't
21 know how exactly it works. At the end of
22 the presentation, we would like to make
23 some brief comments, but it shouldn't
24 take a long time. I want to start with
25 Stonefield.

2 MR. MUTCH: Good evening. I'll
3 briefly summarize. I have an aerial
4 exhibit here of the site to give the
5 Board an idea of what we're looking at.
6 Specifically I just want to highlight
7 that we have two commercial uses there
8 now, multi-tenant buildings. There are
9 different retail uses in there.

10 The site is basically constrained
11 on all sides by environmental factors.
12 There's a stormwater basin to the left
13 associated with the larger commercial
14 development to our north and west. There
15 is a stream that you can see that runs
16 down the edge of the property and in the
17 rear that essentially affords the
18 property a natural and permanent buffer
19 on all sides.

20 CHAIRMAN SCALZO: Do you know where
21 that stream leads?

22 MR. MUTCH: Where does it go?

23 CHAIRMAN SCALZO: Lake Washington,
24 which is the City of Newburgh's drinking
25 water source.

2 MR. MUTCH: I'll speak a little bit
3 about that. I think we have a good
4 application for what we're doing in
5 comparison to the existing site. If you
6 go to the existing site, it's overland
7 flow of pavement and roof runoff directly
8 into the stream. This development
9 certainly cleans that up in a positive
10 way.

11 I'll move right to the site plan so
12 we can get into the meat of the
13 application. We are proposing a car wash
14 that's 4,841 square feet. The plan that
15 you see here is slightly different than
16 the plan that was referred. We made some
17 refinements over time, improving the plan
18 based on the variances that we're seeking,
19 but also just operationally for Spark Car
20 Wash who will be the tenant here.

21 The rear yard setback has actually
22 increased. We had previously asked
23 for around 32 feet. That's been
24 increased to 44.2 feet in this situation.
25 We've shifted that building a little bit

2 closer to the front. That's mainly
3 driven by trying to keep or be
4 successful in keeping the footprint
5 of this development within the footprint
6 of the existing development to ensure
7 that we're maintaining all of the
8 natural features on site. All of those
9 mature trees associated with the stream
10 are going to remain in place as part
11 of this application.

12 We've also enhanced the curb cut,
13 which we're also seeking relief from
14 that I'll get into. That's based on
15 just dialogue and back and forth with
16 the DOT, establishing the radiuses they're
17 looking for and pulling that driveway a
18 little bit further onto our site. Right
19 now the existing driveway extends offsite.
20 We've pulled that over and established
21 the larger radius and pulled it on to
22 our site by 1.8 feet, a betterment of
23 that existing driveway.

24 We're also removing another
25 driveway on the northern side, on the

2 right side of the page.

3 Just a brief summary of how this
4 site operates. You turn into the site.
5 It's a counterclockwise operation where
6 you enter the driveway, turn into the
7 pay station, which we'll talk about as far
8 as zoning relief and what that looks like.
9 You make your way in a counterclockwise
10 motion from the pay station to the tunnel
11 and out to the vacuum spaces. It is an
12 express, fully automated car wash. It's
13 kind of a car wash of the future. All of
14 the features of this are fully automated.
15 The pay stations are very easy to use.
16 You pay for the wash you want, an arm
17 goes up and allows you to move forward.
18 Their employees are stationed at the
19 main point of the car wash. They will
20 have three or four employees onsite
21 at any one time. They're not going to
22 have the type of car wash where there's
23 people drying and washing the cars.
24 We have a person at the pay station
25 that makes sure that operates efficiently.

2 We have a person at the entrance to
3 the tunnel to make sure that that is
4 operating or processing cars in an
5 efficient way. We have other employees
6 that are manned to the vacuum park as
7 well as just overall operational and
8 cleanliness of the site.

9 Access is provided, again, in
10 what we'll call the southernmost or
11 the bottom left of this page. It's
12 an upgraded driveway to what's there
13 today. We've been through discussions
14 through stage 1. We're expecting comments
15 back from the DOT on stage 2 for that
16 driveway. They did look at and generally,
17 in a conceptual way, approve that. Any
18 day we'll have the remainder of the
19 comments. We'll be sure to comply with
20 those as we go.

21 Just to speak a little bit to the
22 relief. I don't want to belabor the
23 point. First is the rear yard setback.
24 We have a 60-foot requirement off the
25 rear yard. We're proposing 44 -- it's

2 actually 44.4 feet. We feel that
3 that is not substantial ask or a
4 substantial variance because we have
5 that permanent and natural buffer to
6 the rear. There's nothing that can
7 be built behind the site. We're not
8 pressing a building to a site that
9 could eventually be developed. We're
10 tucking it away in the back of the
11 site within the existing treeline.
12 You will not, other than on paper,
13 notice if this setback is granted.
14 We're not encroaching on anybody else's --

15 CHAIRMAN SCALZO: While you're
16 saying that, as I'm looking here, are
17 they federally regulated wetlands or do
18 you have -- they don't call it a buffer
19 anymore. They call it an adjacent area
20 for DEC. What categorization of wetlands
21 are they?

22 MR. MUTCH: We have an environmental
23 consultant working on that. They have
24 blessed this plan. I'm not exactly sure.

25 CHAIRMAN SCALZO: It's got to be

2 federal. There is no buffer.

3 MR. MUTCH: That's what I remember.
4 I don't want to speak out of turn. Yes,
5 there's no buffer required. Again, we're
6 not going past the existing pavement.
7 We're just maintaining that green space
8 in the rear.

9 We looked at feasible alternatives
10 for this as well. The problem that we
11 have and one of the constraints is we
12 have that stream on the right. The
13 ability for us to operate as a car wash
14 and shift that pay station around to the
15 side and pull that building forward, we
16 looked at it a hundred different ways and
17 we just couldn't get it. We made the
18 decision to ask for the rear yard setback
19 relief to make sure we can process cars
20 and also press it against a heavily
21 landscaped area so it doesn't detract
22 from the character of that neighborhood.
23 All of the natural features are
24 maintained. We don't believe that rear
25 yard setback specifically has any impact

2 on the neighborhood itself. It's going
3 to be tucked away and not noticed by the
4 traveling public.

5 The curb cut location. We do have
6 a traffic engineer this evening to
7 discuss a little bit about the traffic,
8 but we're improving on existing
9 conditions. We're complying with DEP
10 regulations and establishing a full
11 commercial driveway where today there's
12 kind of just two small lanes that allow
13 for exit and entrance to the site where
14 people are slipping out onto the State
15 highway. We're looking to establish a
16 full commercial driveway to serve this
17 commercial use.

18 Finally, we can talk about the pay
19 stations. They are on the architectural
20 plans. I see them open on some of your
21 desks as far as the elevations. It is a
22 small feature at the front of the site.
23 That small feature is less than 12 feet
24 in height. It pales in comparison to
25 some of the commercial signs that you'll

2 see in the area, certainly as you're
3 coming down that road and in that roadway
4 network. I don't think that detracts
5 from the overall character of the
6 neighborhood. It certainly doesn't
7 encroach the State highway. That would
8 be considered substantial in my opinion.

9 As far as the feasible
10 alternatives, it goes hand in hand on
11 that stream. There's no way to wrap that
12 pay station around the side of the site
13 with that stream there and still be able
14 to process cars and have this use. We
15 looked at different alternatives. We
16 made sure that we're not so close to the
17 road that we're detracting. We're
18 putting heavy landscaping there, greening
19 up the site as compared to today. It
20 will go hand in hand with the sign we
21 have at the driveway.

22 That summarizes the site. I'm
23 happy to answer any questions as we move
24 forward.

25 MS. REIN: Are you going to have

2 places where people can vacuum their car?
3 Where is that?

4 MR. MUTCH: The egress of the
5 tunnel, there are seventeen total vacuum
6 spaces as you come out of that building.
7 All of those are free. They provide all
8 the bells and whistles you would expect,
9 multiple types of nozzles, spray cans.
10 Everything you need to get a good, deep
11 cleaning. Those are free to customers.
12 As you exit the tunnel, you'll have the
13 option to go there.

14 There are also three employee
15 parking spaces.

16 That's a major feature of the
17 membership program that this use operates
18 on.

19 MS. REIN: Again, how many slots
20 are there?

21 MR. MUTCH: Seventeen vacuums,
22 three employees for a total of twenty
23 parking spaces.

24 MS. REIN: Thank you.

25 MR. HERMANCENCE: How many vehicles

2 can you fit -- you say you have the arm
3 that comes down to go to the pay station.
4 Is that going to eventually back out onto
5 the roadway?

6 MR. MUTCH: Not in our experience.
7 That was one of the tweaks we made from
8 the original plan, to expand that pay
9 station lane to three lanes. That allows
10 this use to operate efficiently.

11 MR. HERMANCE: It's not one single --

12 MR. MUTCH: No. We have three
13 lanes. A good feature of this is Spark
14 operates on a membership program. You'll
15 see fifty to sixty percent of their
16 customers are members. That outermost
17 lane is an automatic license plate reader
18 for members. It's extremely efficient to
19 process their members. The remainder of
20 the cars, in some cases we have a second
21 members lane depending on the customer
22 base. The other lanes are very easy-to-
23 use kiosks. It's a very quick
24 transaction. It's less than a minute to
25 get through there.

2 We're showing six cars stacked
3 right now because that's what we feel and
4 typically see. We have the room to stack
5 at least another nine or ten cars behind
6 that for any impact to that driveway.

7 In addition to that, we're able to
8 stack multiple cars on the way to the
9 tunnel. If things get really busy, the
10 conveyor belt in the tunnel can also be
11 sped up to process vehicles. That is a
12 function of our employees to make sure
13 this thing is processing vehicles really
14 efficiently. In all the experience that
15 Spark has in the industry, I feel
16 comfortable with that stacking and that
17 queue.

18 MS. REIN: Sir, it's all automatic?
19 There's not going to be a place to wash
20 pets or anything like that?

21 MR. MUTCH: Wash pets?

22 MS. REIN: Yes.

23 MR. MUTCH: No. It's all automatic.

24 CHAIRMAN SCALZO: It's a New York
25 thing. They don't do that in Jersey.

2 MR. MUTCH: You stay in your
3 vehicle for the duration. The only time
4 you're outside of your vehicle is to
5 vacuum your car or wash your floor mats.

6 MS. REIN: Foam & Wash Car Wash.

7 MR. POLITI: There is a car wash
8 with that.

9 CHAIRMAN SCALZO: It's just down
10 the street.

11 MR. MUTCH: I have to check it out.
12 I saw it.

13 MR. POLITI: There are times, as
14 spring hits and cars are out on 32, you
15 can see them stack out onto the road.

16 CHAIRMAN SCALZO: 17K, the one
17 close to the Thruway, they stack out onto
18 17K. They have the ability. There are
19 wide shoulders. I don't know if you have
20 the ability here.

21 MR. MUTCH: We do have a unique
22 site here. There's a large lane that
23 necks down as you go. There's a lot of
24 room out in front of us. It's kind of an
25 extra large shoulder.

2 Just in general, I can't speak to
3 the operation of those other car washes,
4 but we have nothing else going on on the
5 site. There are no bays. It's extremely
6 efficient with the automation and ease of
7 use of the pay station. We haven't seen
8 the stacking issue backing onto the road.

9 MR. POLITI: Say you're on the
10 express, how long does it take?

11 MR. MUTCH: You're in and out in 90
12 to 120 seconds to get to the end of the
13 tunnel. You're moving through there.
14 It's a quick process.

15 MR. BELL: That's in the tunnel?

16 MR. MUTCH: The overall process is
17 a little bit longer. You're coming
18 through the tunnel in that amount of time.

19 MR. BELL: You can't determine the
20 amount of cars that would be lined up.
21 I'd say there's like a half a lane as you
22 pass across Lowe's. It turns into the
23 Jersey Mike area there. Are you looking
24 at using that lane as well, take it away
25 or --

2 MR. MUTCH: No, no. Our operations
3 do not rely on the State highway at all.
4 It's entirely contained onsite.

5 CHAIRMAN SCALZO: You're not here
6 for this, but I'm assuming you're a right
7 in/right out only?

8 MR. MUTCH: We're working on that
9 with the -- right now it's a full
10 movement proposal to the DOT. I was
11 hoping to have them for you this evening,
12 whichever restrictions they come up with.
13 We'll discuss that with the Planning
14 Board, too. Absolutely. I don't have an
15 answer to that. I was hoping to. We'll
16 see what the DOT has to say.

17 CHAIRMAN SCALZO: Then we're just
18 going to look to Joe Mattina for the
19 canopy issue.

20 MR. MATTINA: I don't have a clear
21 picture of what it looks like. Usually
22 if it's a structure, it counts as a
23 canopy.

24 CHAIRMAN SCALZO: I'll tell you
25 what, which is awesome -- well, it's not

2 awesome for you folks. We have two
3 months to figure this out. We're not
4 going to be here in August. You guys
5 will be back here in September because
6 the County hasn't responded yet.

7 Not that this should have any
8 bearing on your project, but a
9 year-and-a-half, two years ago the parcel
10 to the right of you, they had applied and
11 the County actually recommended denial
12 for that for protection of the stream. I
13 just want to bring your attention to
14 that. I don't know what type of
15 chemicals are used in your facility. I'm
16 waiting to hear from the County on that.
17 I'm just letting you know, the one next
18 door, they shut them down.

19 MR. BELL: I was going to ask that
20 question. I remember that coming across.

21 MR. MUTCH: First of all, the pay
22 stations, you can kind of see what they
23 look like. They're 12 feet in height.
24 They extend over that lane. Not that
25 different than a sign. That is the look

2 of what our pay stations look like. We
3 have renderings as well.

4 As far as the chemicals, it's all
5 biodegradable, kitchen safe chemicals
6 that we use. I wouldn't even call them
7 chemicals. They're all run through a
8 reclaim system and discharged to
9 sanitary. I don't believe that --
10 certainly the car wash here is certainly
11 not going to have an impact from the
12 interior on that stream because we are --
13 all of that stays interior. It's sloped
14 in. We have a trench drain at the exit.
15 There are no car wash materials that are
16 going anywhere in the sanitary sewer
17 system.

18 CHAIRMAN SCALZO: I don't think we
19 have A drawings. We have C drawings in
20 front of us.

21 If I could ask, at the end of this
22 presentation, can you give that set to
23 Joe Mattina?

24 MR. MUTCH: Absolutely.

25 CHAIRMAN SCALZO: That will help

2 him better understand what we're talking
3 about.

4 MR. MUTCH: Absolutely.

5 MR. CORBALAN: I want to ask a
6 follow-up question. In terms of the
7 currently developed footprint and what
8 we're proposing, is there going to be an
9 enlargement?

10 MR. MUTCH: No. The existing
11 pavement footprint that's out there we're
12 staying within. We're not looking to
13 expand. No trees are coming down
14 associated with that stream. We're
15 keeping it tight to the existing
16 development.

17 MR. CORBALAN: I think Paul really
18 touched on everything.

19 As I mentioned before, we do have a
20 traffic engineer from Stonefield
21 available if the Board would like to ask
22 questions. We also have a representative
23 from Spark Car Wash if you have any
24 questions.

25 CHAIRMAN SCALZO: I think we're

2 going to pass on the traffic study.
3 That's something really -- for
4 certification the ZBA does request those.
5 We typically, if we're going to read
6 something, none of us are traffic
7 engineers, we prefer the Reader's Digest
8 version of those. When we get a big
9 stack of what a traffic study is, I don't
10 know about you folks, but I tend to lose
11 interest in those really thick ones. I
12 don't think we need to hear from your
13 traffic engineer, especially since we're
14 going to have the opportunity to hear you
15 again in a couple months.

16 I appreciate everything I've heard
17 so far. I don't know how much further
18 you want to go because you may end up
19 having to give us that very same
20 presentation.

21 MR. DONOVAN: We're all going to
22 forget come September.

23 CHAIRMAN SCALZO: It will be a very
24 lengthy, lengthy meeting.

25 MR. CORBALAN: I actually have a

2 comment. We do have a conflict for
3 September. It actually may be October.

4 CHAIRMAN SCALZO: That's okay.
5 We'll wait to hear from you. Or,
6 actually, we can probably -- if that's
7 what you're thinking, we can certainly
8 extend the public hearing to September
9 and you can reach out to our secretary if
10 you find out that conflict is realized
11 and you can ask to be pushed to the
12 October agenda.

13 That being said, I'm going to look
14 to any Members of the Board - actually, I
15 thought it's been pretty interactive
16 along the way.

17 I'll start with Ms. Rein. Anything
18 else?

19 MS. REIN: When I went through this
20 paperwork, I didn't see anything talking
21 about the wetlands, unless I missed it
22 completely. There was so much to go
23 through.

24 CHAIRMAN SCALZO: The applicant has
25 indicated that they are -- you're still

2 awaiting classification on those, but the
3 assumption is because of what's there
4 now, that it's federal wetlands, or Army
5 Corp of Engineers as they call it
6 sometimes. Quite honestly, if there was
7 an adjacent area required by the New York
8 State DEC, that would probably squash the
9 project completely.

10 MR. MUTCH: We feel comfortable
11 that's not the case.

12 CHAIRMAN SCALZO: I'm sorry, Ms.
13 Rein. I kind of stepped all over your
14 question.

15 MS. REIN: What type is this?

16 MR. DONOVAN: An Unlisted action.

17 MS. REIN: Okay. That answered my
18 question.

19 CHAIRMAN SCALZO: Very good.

20 Mr. Masten, do you have any
21 questions for the applicant?

22 MR. MASTEN: Not right now.

23 CHAIRMAN SCALZO: Mr. Bell?

24 MR. BELL: No.

25 CHAIRMAN SCALZO: Mr. Hermance?

2 MR. HERMANCE: All the water that's
3 used in the process is just recycled?

4 MR. MUTCH: Yeah. There's three
5 2,000 gallon tanks out front that allow
6 for the reuse of water in this. It
7 allows sediment to drop out. That water
8 is used throughout the building, not just
9 for re-wash. There are a lot of
10 components in there, in that reclaim
11 system. It's a state-of-the-art system.
12 It lowers the overall load of sewer and
13 water compared to a traditional car wash.

14 MR. HERMANCE: Your discharge would
15 be a lot less?

16 MR. MUTCH: Substantially less,
17 yes.

18 CHAIRMAN SCALZO: I don't want to
19 go out of order. Are you capturing any
20 rainwater from the roof? Are you
21 utilizing any of that at all?

22 MR. MUTCH: In the reclaim system
23 itself or just in general?

24 CHAIRMAN SCALZO: In general.

25 MR. MUTCH: We are taking the roof

2 leaders and putting them into a small
3 underground system.

4 CHAIRMAN SCALZO: Is that just for
5 absorption in the ground or are you going
6 to try to use that for your facility?

7 MR. MUTCH: It's actually not
8 feasible. We played around with that
9 idea with the provider of that reclaim
10 system. It's not a feasible option. We
11 wanted to. We can't in this situation.
12 That reclaim system keeps it pretty
13 efficient.

14 CHAIRMAN SCALZO: That's good. I
15 was hopeful perhaps you could. It might
16 be just to flush the toilets or whatever.

17 Mr. Eberhart, I apologize, I
18 stepped all over your question.

19 MR. EBERHART: I'm good.

20 CHAIRMAN SCALZO: Okay. Mr. Politi?

21 MR. POLITI: I'm good. Thank you.

22 CHAIRMAN SCALZO: At this time I'm
23 going to open it up to any questions from
24 any members of the public that wish to
25 speak about the application for Spark Car

2 Wash, keeping in mind that you'll have an
3 opportunity again in September, unless
4 they ask for a deferment until October.

5 (No response.)

6 CHAIRMAN SCALZO: It doesn't appear
7 so.

8 All right. At this point I'll look
9 to the Board for a motion to extend the
10 public hearing to the September meeting.

11 MR. MASTEN: I'll make a motion to
12 extend it to September 26th.

13 MS. REIN: I'll second.

14 CHAIRMAN SCALZO: We have a motion
15 from Mr. Masten. We have a second from
16 Ms. Rein. All in favor?

17 MR. POLITI: Aye.

18 MR. EBERHART: Aye.

19 MR. HERMANCE: Aye.

20 CHAIRMAN SCALZO: Aye.

21 MR. BELL: Aye.

22 MR. MASTEN: Aye.

23 MS. REIN: Aye.

24 CHAIRMAN SCALZO: Those opposed?

25 (No response.)

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CHAIRMAN SCALZO: Very good. We'll see you folks in September or October.
(Time noted: 8:20 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of August 2024.

Michelle Conero

MICHELLE CONERO

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

PRIME & TUVEL
2 Lakeside Road, Newburgh
Section 86; Block 1; Lot 39.3
IB Zone

----- X

Date: July 25, 2024
Time: 8:20 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA

APPLICANT'S REPRESENTATIVE: JUSTIN TUVEL,
ZACHARY CHAPLIN & MATTHEW SECKLER

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

2 CHAIRMAN SCALZO: We are now moving
3 on to items that were held open from the
4 June 27th meeting. We have applicant
5 Prime and Tuvel, 2 Lakeside Road, which
6 is a Planning Board referral for area
7 variances of a gasoline station located
8 within 1,000 feet of an existing gasoline
9 station. It is my understanding that the
10 applicant has modified their plans, so
11 that is the only variance that they are
12 currently seeking. Previously they were
13 looking for variances for landscape
14 buffers and additional freestanding
15 signs, maximum building signage.

16 Is it correct in my statement, sir,
17 that you're only seeking one variance
18 now?

19 MR. TUVEL: That's correct, Mr.
20 Chairman.

21 Good evening, everyone. Jason
22 Tuvel, attorney for the applicant.

23 Since the last meeting was held
24 over, we did amend the application and
25 modify the plans to eliminate the front

2 yard setback variance which resulted in
3 more impervious coverage and green space
4 on the property. We did actually need
5 two other variances. With the signage,
6 we had variances for the number of signs
7 and, as a result, the area of those two
8 signs also resulted in another variance.
9 Those have been withdrawn and there's
10 only one variance associated with the
11 application.

12 CHAIRMAN SCALZO: Very good.

13 MR. TUVEL: We did get our County
14 referral as well.

15 CHAIRMAN SCALZO: Actually, we give
16 them thirty days. If they don't respond,
17 then --

18 MR. DONOVAN: They did submit a
19 response.

20 CHAIRMAN SCALZO: I believe it was
21 a Local determination.

22 MR. DONOVAN: They actually recommended
23 denial on the signs, but those have been
24 removed.

25 Relative to the 1,000 foot variance

2 that remains, they recommended a Local
3 determination on that issue.

4 CHAIRMAN SCALZO: Thank you,
5 Counsel.

6 MR. TUVEL: Just to kind of refresh
7 everybody's memory on where we left off
8 at the last meeting, we had our civil
9 engineer present to the Board regarding
10 the site plan, or at least the variances
11 associated with the site plan, which were
12 the buffer and the signage. At the
13 conclusion of that, we heard from some
14 objectors from the public and the Board
15 requested that we submit a traffic study.
16 We did not just submit the Reader's
17 Digest version.

18 CHAIRMAN SCALZO: You were
19 listening to me. That's outstanding. We
20 got this book. Ask me how many pages I
21 read.

22 MR. TUVEL: There's an executive
23 summary, which we will go through during
24 our presentation.

25 The goal this evening, Mr. Chairman,

2 Members of the Board, is to have Mr.
3 Chaplin, our civil engineer, come back
4 and explain the changes that we made to
5 the plan, then we'll have Mr. Seckler,
6 our traffic engineer, go through his
7 analysis as it relates to the driveway,
8 as it relates to the intersection, as it
9 relates to some of the other properties
10 that are concerned with this application,
11 namely the Ice Time Sports and the Mobil
12 up the street, and also explain several
13 of the intersection and roadway
14 modifications and improvements that we're
15 making as part of this project.

16 Mr. Chairman, if it's okay with
17 you, if I could have Mr. Chaplin
18 represent, very briefly, the plan to show
19 what changed as a result of modifying it,
20 then I'll have Mr. Seckler --

21 CHAIRMAN SCALZO: Absolutely. You
22 have the benefit of having our seventh
23 Member here today who was not present for
24 last month's meeting.

25 MR. TUVEL: Thank you. So if I

2 could have Mr. Chaplin take the mic.

3 MR. CHAPLIN: Good evening. We
4 were here last month and received a lot
5 of good feedback. We went back to the
6 drawing board and of course made some
7 changes.

8 What we did essentially was kind of
9 condense the site. As you know, there
10 are wetlands on the property, so we can't
11 encroach to the east. What we did do is
12 remove the oversized vehicle parking
13 spaces. Those are no longer proposed.
14 Again, the intention is not to have
15 oversized vehicles or trucks use the
16 site. We actually gained about 8,000
17 square feet of landscaping or pervious
18 surfaces by removing that. That allows
19 us to provide the 50-foot buffer along
20 17K. As I mentioned last time, it's a
21 larger buffer when you take into account
22 the landscaping that's within the right-
23 of-way.

24 In addition, we removed the sign
25 that we proposed on I-84. Now there's

2 just one sign proposed at the corner, and
3 there are no variances being sought for
4 that sign.

5 I think just to sum up, from a site
6 layout, civil engineering standpoint,
7 while we're not fully there on the design
8 yet in terms of fully engineered plans,
9 the intention is to meet all Local and
10 State requirements.

11 Stormwater management, we have
12 infrastructure proposed.

13 Lighting will be LED, down lit and
14 shielded.

15 Of course we're going to have an
16 extensive landscaping plan that you can
17 see on the drawing.

18 I think the site is very well laid
19 out. There are sufficient drive aisles,
20 good access points. We're confident that
21 if we're able to get to the Planning
22 Board and get approved, it will be a safe
23 and efficient layout.

24 I'm happy to answer any questions.
25 Like I said, we're going to kick it to

2 our traffic engineer who will give some
3 discussion about the traffic.

4 MR. TUVEL: Zach, not only do we
5 meet all the requirements from an area
6 perspective, but we exceed many of them
7 substantially. Correct?

8 MR. CHAPLIN: That is correct.

9 MR. TUVEL: For example, building
10 coverage, we're allowed to have up to 40
11 percent and we have a little over 5
12 percent.

13 MR. CHAPLIN: Correct.

14 MR. TUVEL: All the setbacks are
15 substantially more than what's required.

16 MR. CHAPLIN: Pretty much all the
17 bulk requirements are met or exceed the
18 minimum requirements.

19 CHAIRMAN SCALZO: As I said, your
20 new application, all you're looking for
21 is relief from that 1,000 feet from the
22 Mobil.

23 MR. TUVEL: That's correct.

24 CHAIRMAN SCALZO: Before we get too
25 deep into this, do you have any idea how

2 many gas stations are within 1,000 feet
3 of each other in the Town of Newburgh?

4 MR. CHAPLIN: Well, we had the
5 condition right near us --

6 CHAIRMAN SCALZO: Actually, your
7 indication is that the Pilot Travel
8 Center really does not apply, so that
9 can't be considered in the criteria.
10 Really we're only talking about the
11 Mobil, or at least that's your position
12 is we're only talking about the Mobil.

13 MR. TUVEL: I can say the Pilot is
14 a similar type of facility in terms of
15 dispensing --

16 CHAIRMAN SCALZO: We're going to
17 discount that.

18 MR. TUVEL: It is a travel center
19 per the ordinance, not a gas station.

20 CHAIRMAN SCALZO: I've seen in many
21 situations where you do have gas stations
22 across the street from each other.

23 What you could do, engineer, is
24 take this and -- go to your easel and
25 take this scale. As I say, I've lived in

2 Newburgh all my life. I drive, I look, I
3 see. Two gas stations within 1,000 feet,
4 you know what, I've seen it a handful of
5 times in the Town of Newburgh. Three
6 I've never seen. You neglected to
7 consider on the other side of I-84 on
8 Route 17K there is a gas station which
9 has a Dunkin Donuts in it. If your
10 engineer can use my scale and scale one
11 inch equals 400. It's a 40 scale there.
12 I'm assuming you know how to use that.
13 It will tell you it is 800 feet away from
14 your application. Right now you're
15 looking at two gas stations existing
16 within 1,000 feet of where you want to
17 put yours. I didn't know if you picked
18 that up or not. I'm here to tell you we
19 did.

20 MR. CHAPLIN: I think, and maybe
21 this -- the intention was the closest
22 that we noted on the application.

23 CHAIRMAN SCALZO: Well, this is
24 going to lend into the character of the
25 neighborhood. There's no condition in

2 Newburgh at all, the Town of Newburgh,
3 that has three gas stations within 1,000
4 feet. We're not talking about the Pilot
5 Travel Center because that doesn't apply,
6 as you pointed out in your latest
7 responses. You're asking for something
8 that does not exist in the Town. I just
9 want to lay that out for you.

10 MR. TUVEL: I think that, based on
11 some of the case law that's out there on
12 these issues, competition, character of
13 the neighborhood are what are to be
14 considered. I think part -- I think it's
15 a positive thing. Part of the reason
16 that the Board asked for the traffic
17 impact analysis, which I think is
18 critical, is because the Town code
19 provision that talks about that 1,000
20 foot requirement really focuses on the
21 traffic analysis. I think if we can
22 demonstrate whether there's one within
23 1,000 feet or two within 1,000 feet, if
24 the traffic analysis demonstrates that
25 the intersection works and the driveway

2 works, which is, I agree, a good request
3 by the Board, I don't believe that that
4 would -- I think that would actually
5 facilitate the five criteria that we have
6 to meet. We'll go through that.

7 CHAIRMAN SCALZO: Okay.

8 MS. REIN: You don't see that
9 making a negative impact anywhere? You
10 don't see it making a negative impact on
11 the other gas stations?

12 MR. TUVEL: Actually, no. The case
13 law actually talks about how competition
14 can't be considered as part of it. The
15 fact that you have multiple uses that are
16 similar competing with one another is not
17 a basis for the Board to consider as part
18 of an application. I understand that
19 that intuitively would be something that
20 you would think about. We really have to
21 deal with the physical characteristics of
22 the area pursuant to the criteria. I
23 believe that's why Zach talked about us
24 demonstrating that we meet all the bulk
25 standards, that we meet all the

2 environmental requirements. I believe
3 that's why the Board requested that we
4 provide the traffic analysis, so you can
5 consider that as well.

6 MS. REIN: Let me ask you one other
7 question. What made you guys want to put
8 it there? What was the reasoning behind
9 that if there were three other ones
10 there?

11 MR. TUVEL: Sure. First of all, I
12 think that's more of a business decision
13 than anything else. Obviously if they
14 didn't think that they could succeed
15 there, they wouldn't go there. That's
16 number one.

17 Number two, as Mr. Chaplin indicated,
18 if the 1,000 foot requirement were not
19 there, we meet every single standard that
20 the Town code provides. It clearly fits.

21 Then I would say that the last item
22 -- it's a fair question. I would say the
23 last item is we have to demonstrate that
24 the intersection and the driveways are
25 going to work, knowing the traffic that

2 the QuickChek is going to provide.
3 That's why we did a very comprehensive
4 analysis that you're going to hear
5 from Mr. Seckler about. I think all
6 of those factors demonstrate why we
7 believe this is a very good site.

8 Also, it's a permitted use under
9 your Town code. Actually, gasoline
10 stations with or without convenience
11 stores are allowed, fast food restaurants
12 are allowed. It's a large site.

13 Zach, I think it's eight times the
14 size of what the ordinance requires.
15 Correct?

16 MR. CHAPLIN: Approximately.

17 MR. TUVEL: So for all of those
18 reasons, I think we believe it fits and
19 works perfectly. I think the Board
20 correctly needs to hear, in this specific
21 situation, the traffic testimony, the
22 traffic analysis from our expert.

23 MS. REIN: Everything can meet the
24 letter of the law, but that's not
25 necessarily the best thing for the

2 community. That's just my point.

3 MR. TUVEL: Okay. Obviously
4 everybody is entitled to their thoughts.

5 MS. REIN: Thank you.

6 MR. TUVEL: I will also add that
7 the fact it's permitted at this location
8 demonstrates that legislatively in this
9 area, in the IB Zone, the Town believes
10 it's proper. I understand the 1,000 foot
11 requirement.

12 CHAIRMAN SCALZO: I happen to be on
13 the Comprehensive Plan Committee, so I
14 understand how this works. Jim Politi
15 studies the comprehensive plan more than
16 anybody and he's not on the Comprehensive
17 Committee.

18 I also appreciate how you were here
19 for the 1,000 foot variance and now we're
20 shifting our focus to the traffic study.
21 I'm having a tough time wrapping my head
22 around this.

23 MR. TUVEL: Around what specifically,
24 Mr. Chairman?

25 MR. DONOVAN: Remember that the

2 prohibition -- let me read it so we can
3 orient on it. It says, "Before the
4 Planning Board shall approve the plans
5 for a car wash, motor vehicle service
6 station, the Board shall consider
7 potential interference with or danger to
8 traffic on all abutting streets."
9 Traffic is an issue. It goes on to say,
10 "The cumulative effect of all curb cuts
11 for any such new use shall also be
12 considered, and in no instance shall a
13 new motor vehicle service station or any
14 other establishment dispensing gasoline
15 be permitted to be established within
16 1,000 feet in any direction," et cetera.
17 So traffic, as set forth in that statute,
18 is what you need to take a look at.

19 CHAIRMAN SCALZO: Right. With
20 regard to me wrapping my head around it,
21 you mentioned case law before. What's
22 case law based on? Previous decisions.
23 Correct?

24 MR. TUVEL: Correct.

25 CHAIRMAN SCALZO: Let's say we move

2 forward and say we love what you're
3 doing, we're going to grant you whatever
4 it is you're looking for, go ahead and do
5 it. Now next month we have somebody
6 coming in that wants a third gas station
7 within 1,000 feet. You're asking us to
8 set a precedent here.

9 MR. TUVEL: I understand your
10 comment. This is how I respectfully
11 disagree with your concern. It's as
12 follows: Case law also talks about how
13 all of these variance requests,
14 specifically regarding magnitude, are all
15 fact specific and case specific. I don't
16 know where another gas station might come
17 in here, but they would have to reprove
18 that they can demonstrate that they could
19 meet the five criteria. Maybe we can.
20 Maybe they can't. It would be a fact
21 specific issue that this Board would have
22 to look at. I understand intuitively why
23 you would say that. I also would say
24 that every case is different and if you
25 just -- if you base it on conjecture, it

2 wouldn't be fair. I think if a new gas
3 station came in, I think you would just
4 have to look at it and base it on the
5 criteria. That's what the Board is for.

6 Also, one other thing about that
7 specific provision that Mr. Donovan read.
8 It talks about motor vehicle service
9 station in the 1,000 foot requirement.
10 Your ordinance -- excuse me. Your Town
11 code requirement regarding this is from
12 1996. We're almost thirty years out. If
13 you look at the definition of motor
14 vehicle service station in your Town
15 code, it really hones in on service, oil
16 changes, storing of cars on the site,
17 repairs, things that were more prevalent
18 with a gas station maybe thirty, forty
19 years ago. The QuickChek, which you're
20 all familiar with so I don't have to
21 explain to you what it is, is more of a
22 retail establishment that has gasoline
23 there or the dispensing of fuel there.

24 I would also say that when you're
25 judging the five criteria here, you

2 understand that the Town code provision
3 was really based on, at least in my
4 opinion, and you can decide for yourself,
5 something that was more prevalent in 1996
6 versus what's more prevalent in 2024.
7 That's for the Board to decide.

8 CHAIRMAN SCALZO: Thank you. I
9 appreciate you explaining it that way.

10 MR. TUVEL: If it's okay with you,
11 Mr. Chairman --

12 CHAIRMAN SCALZO: Sure. Let's hear
13 about traffic.

14 I don't know if you folks were here
15 or paying attention earlier, but you did
16 hear there's another project, a proposed
17 warehouse, that was actually denied.
18 However, they can still get away with
19 their 40 feet which is allowed by code.

20 You talk about signal phasing with
21 your project. I'm kind of curious if
22 their signal phasing would be in conflict
23 with what you folks have.

24 MR. TUVEL: I'll have Mr. Seckler
25 come up. We did submit the report.

2 CHAIRMAN SCALZO: I know.

3 MR. TUVEL: I'm sorry, you wanted
4 the Reader's Digest. That is an old-
5 school reference. I like that.

6 Matt, why don't you go through your
7 analysis. You obviously went through the
8 intersection, offsite improvements.

9 Just to be clear, as Mr. Seckler
10 presents, we did the typical traffic
11 analysis that you would consider. Also
12 what DOT would consider. Since we did
13 receive comments from some of the
14 properties nearby, he'll also address if
15 there are any impacts on those as well
16 during the presentation.

17 CHAIRMAN SCALZO: Traffic
18 engineering is based on projections?

19 MR. SECKLER: Correct.

20 CHAIRMAN SCALZO: Just on
21 projections?

22 MR. SECKLER: I'll discuss how I
23 believe I think we will be very
24 conservative with those projections in
25 order to account for the highest possible

2 levels of traffic to be generated.
3 Again, understanding that, again, the
4 report was probably about three inches in
5 thickness, I'll try to --

6 CHAIRMAN SCALZO: Half to three
7 quarters of an inch.

8 MR. SECKLER: -- I'll try to
9 summarize what we studied and, again, the
10 relevant aspects that I think to this
11 case in terms of the traffic impacts
12 related to the driveway, as well as the
13 offsite intersections in having a gas
14 station at this location, in close
15 proximity to other gas stations as it
16 relates to your code.

17 As part of this study we did study
18 six intersections. That included 17K at
19 both ramps of I-84, as well as Lakeside
20 Drive, Governor and Homewood Avenue, Rock
21 Cut Road and down Lakeside Road on Patton
22 Road which is back towards the residential
23 area. We studied all of those intersections
24 as part of this project. Some intersections
25 would see a lot more traffic from us than

2 others, and I'll discuss which ones
3 would be the ones that would generate
4 the most.

5 CHAIRMAN SCALZO: Thank you. If
6 you could be so kind as to explain to the
7 Board what level of service means.

8 MR. SECKLER: Certainly. I haven't
9 gotten there, but I will.

10 CHAIRMAN SCALZO: This will help
11 them.

12 MR. SECKLER: Level of service is a
13 measurement of delay in capacity in the
14 traffic engineering industry. Basically
15 each intersection gets a grade A to F, as
16 opposed to in school where you want your
17 kids to come home with an A every single
18 time. Level of service A means there's a
19 ton of capacity. You built a road and
20 it's basically barely being used, there's
21 barely any delay. Most roads are built
22 to a level of service that's a C or a
23 D range is typically what they experience
24 during peak hours. At really busy
25 intersections you may see E, potentially

2 F. F means there's not enough
3 capacity to process that amount of
4 cars in the period of time or the
5 delay is such that it's deemed to be
6 extensive. I compare it to a pipe.
7 Level of service A, you have a pipe
8 and a little bit of water going
9 through it in the busiest rainstorm.
10 F, the pipe can't fit the storm, it's
11 basically backing up. C and D are
12 kind of filling up the pipe, but
13 there's capacity there. That's it, I
14 would say, from an anecdotal way.

15 In the engineering industry there
16 are specific numbers that, if you hit
17 the amount of seconds in delay, it
18 will be determined that you're level
19 of service C, level of service D, level
20 of service F. There's a number associated
21 with it.

22 MR. TUVEL: Just to the Chairman's
23 point, so everyone sort of comprehends
24 the analysis, when you do these levels of
25 service analyses and other things, you

2 study in the peak hours, like the most
3 busy times. It's not a twenty-four hour
4 period. You look at worst-case scenario.
5 Correct?

6 MR. SECKLER: Correct. When we did
7 our counts out there, we studied in the
8 morning, from 7 in the morning to 9 in
9 the morning, and 4 p.m. to 7 p.m., and
10 Saturdays from 11 to 2 to study the
11 busiest time periods. We take those
12 hours and actually look at what's the
13 busiest hour during that time. We looked
14 in the morning. It was actually 7:30 to
15 8:30 in the morning, 4:00 to 5:00 in the
16 afternoon and 11:30 to 12:30 on Saturday.
17 What we basically look at is, we take the
18 whole day and we say what's traffic going
19 to be like during that worst time when
20 you see the most vehicles going through
21 this network.

22 Again, I think people here, if
23 you've driven through this interchange,
24 I'm sure you have, what you'll end up
25 seeing is a lot of heavy trucks. The

2 truck percentage on 17K, especially
3 turning into Pilot, is high. During rush
4 hour you may see that left turn, it's
5 about 300 feet in length, sometimes backs
6 up to the ramp coming off of westbound
7 I-84 during those busiest times. Again,
8 that's what we're studying. If you come
9 here -- when we leave this meeting,
10 hopefully at some point tonight, if you
11 drove by this intersection, it's probably
12 operating with very, very minimal delay,
13 levels of service A, maybe B. During
14 those rush hour time periods, as a
15 traffic engineer, that's what we're
16 studying. I'm looking at probably the
17 three worst hours of the entire week.
18 The other hours of the week, it's going
19 to work better than that.

20 We did our counts during those time
21 periods and came up with what the volumes
22 are during those hours at each one of
23 those six intersections up and down the
24 corridor. I'm going to focus most of my
25 attention to Lakeside Road and 17K. I'd

2 be happy to answer any questions about
3 those six intersections or anything else
4 along the corridor. This is the
5 intersection we are unpacking the most
6 because nearly every person going in and
7 out of our site is coming through this
8 intersection because we cannot have
9 access along 17K directly. The
10 Department of Transportation has a rule
11 that you cannot have any access within
12 300 feet of an interchange ramp. We do
13 not have any access along 17K. All of
14 the traffic coming from 17K or I-84 is
15 coming through the intersection at
16 Lakeside Road.

17 In addition to the counts that we
18 performed, we did consider other nearby
19 projects that have been approved but not
20 yet built to account for that traffic
21 going through this network and this
22 intersection. I did not take into
23 account that warehouse site because it
24 was not approved at the time we did our
25 study. Similarly, if we were months

2 later, that would be something that we
3 would have accounted for in our study.
4 Not only were we counting traffic that's
5 out there when we did our counts in
6 February, we're also adding other
7 projects that were approved in the area.
8 We also take a growth rate factor. We
9 take the volumes and increase them by one
10 percent over the next two years just to
11 account for general growth in the region.

12 MR. TUVEL: DOT recommends that.

13 MR. SECKLER: Actually, looking at
14 historic counts in the area, the volumes
15 are basically at or slightly less than
16 they were over the last three years. We
17 take conservatively a one-percent growth
18 rate factor over the next two years to
19 account for maybe a vacancy in the
20 shopping center nearby, maybe some houses
21 coming online in the area. We're not
22 looking at just the counts we performed
23 in February. We're adding in all of
24 these other traffic generators that may
25 be coming through this area unrelated to

2 the QuickChek. We basically set a
3 standard and say how are these
4 intersections operating two years in
5 the future with these other developments
6 with the counts that we did. We look
7 at that as a baseline. That's the
8 baseline of how does this intersection
9 operate. What we want to do is we
10 want to measure what impacts do we have,
11 what delays increasing are we having
12 beyond that baseline.

13 To come up with how much traffic
14 a site like this generates, I go to a
15 publication called the Institute of
16 Transportation Engineers Trip Generation
17 Manual. It is a compilation of data
18 in which the Department of Transportation
19 uses, counties use to project what future
20 sites may generate. Not only do they
21 have convenience stores and gas stations,
22 you would use it for a warehouse, you
23 would use it for a fast food restaurant.
24 You go to this book, you give the amount of
25 fueling positions or the size of the store

2 and it basically projects how much
3 traffic could you expect during the
4 morning, the evening and your
5 Saturday peak hours.

6 Now, the formulas, there are two
7 different formulas you could use, as
8 I mentioned. One is for the amount
9 of pumps you have, the other for the
10 size of the store. To be conservative,
11 we're using the one based on the store
12 size because it's about 20 percent
13 higher than if we use the pumps. Again,
14 we're using, being conservative here,
15 the highest level of trip generation
16 potentially that this book is saying
17 can be generated in a peak hour here.

18 To do some samples and kind of
19 measure how does the book compare to
20 sites in Newburgh, we actually counted
21 the Mobil station just down the road.
22 If we compare the book values, the
23 Mobil station is functioning somewhere
24 between 30 and 50 percent less than what
25 the book value would say for that

2 development. Again, I'm just stating
3 that in the sense that if we're using
4 book values, especially the higher one,
5 I'm expecting to be very, very
6 conservative in terms of how much
7 traffic this would generate.

8 CHAIRMAN SCALZO: Let me back you
9 up a second. You did your traffic study.
10 Was it DOT information that you used or
11 did you guys use your own?

12 MR. SECKLER: We did our own counts.

13 CHAIRMAN SCALZO: In February?

14 MR. SECKLER: It was February 8th,
15 which was the Thursday, and the 10th,
16 which was the Saturday, are the two days
17 we did the counts.

18 In addition, we do review the count
19 data. DOT does have published data on
20 17K. We used that as a check to make
21 sure we were looking at a normal day or
22 was there an accident or a closed road.
23 If we're getting numbers that are saying
24 there are 800 cars going westbound at
25 peak hour and the DOT, their report says

2 it's 1,200 cars in an hour, we know there
3 was something going on. We are, I think,
4 within three or four percent of what's
5 expected on 17K by the Department of
6 Transportation.

7 CHAIRMAN SCALZO: February to me,
8 cold weather keeps people in, compared to
9 say June, July or August.

10 MR. SECKLER: During the rush hours
11 I think it tends to be somewhat consistent.
12 If you look over the course of the day,
13 you want to measure not just the hour
14 but the day. Yes, a lot of times in the
15 summer months the day volumes are
16 higher. During the peak hours they
17 tend to be higher during, I would say,
18 the fall or spring season. We're kind
19 of in the end of the winter season.

20 MS. REIN: What does your report
21 card say?

22 MR. SECKLER: I haven't gotten to
23 that point yet. Love the report cards.

24 We added traffic to the QuickChek
25 to the way the intersection operates

2 today. There are movements that reach
3 failing levels, meaning there's not
4 enough capacity. Specifically, Lakeside
5 Road today has one left-turn lane and one
6 through and right-turn lane. Basically
7 there are two lanes on Lakeside Road
8 today. If we dump all the QuickChek
9 traffic onto that road, basically
10 everyone who wants to get back to 17K,
11 you experience delays that are extensive,
12 unacceptable levels of service, F --
13 beyond an F level of service.

14 As part of this development, there
15 are a number of improvements that we are
16 seeking to make, one of which is to the
17 Lakeside Road approach. I want to
18 highlight these improvements. Unfortunately
19 this printed black and white so I'm going
20 to need to be very descriptive in what
21 the improvements are.

22 We'll start first with Lakeside
23 Road. What we're doing is we're widening
24 Lakeside Road. As you approach the
25 intersection, it becomes three lanes

2 towards the intersection. You'll have
3 two lanes that you can turn left from and
4 then the additional lane that goes either
5 through to the Pilot or a right turn on
6 17K westbound.

7 MR. TUVEL: Matt, all of that
8 widening is within the public right-of-
9 way. Correct?

10 MR. SECKLER: Correct. There's no
11 need for taking. It's all public right-
12 of-way that can be widened.

13 Basically we've increased the
14 amount of capacity for left-turning
15 vehicles by about 110 percent. We can
16 process now double the amount of left-
17 turning cars every cycle. Every time that
18 light turns green, if it turns green for
19 ten seconds, you now could process -- in
20 the current case you can process about
21 five cars. You could process ten. What
22 this does, again, more efficient, it
23 allows for us to reduce that delay that
24 was an F at some points in the day better
25 than what's out there today because we

2 are more efficient and processing twice
3 as many left-turning cars at one time.

4 MR. TUVEL: That would be -- if it
5 ultimately gets approved, that would be
6 the applicant's responsibility to do?

7 MR. SECKLER: Correct.

8 MR. TUVEL: Not only will it
9 facilitate the traffic with respect to
10 the QuickChek, but it would also
11 facilitate traffic in the area of the
12 motorists not using the QuickChek.
13 Correct?

14 MR. SECKLER: Correct. It's not
15 like the road goes back to two lanes when
16 it's a non-QuickChek customer. It's
17 always these three lanes towards the
18 signal. The residents down on Lakeside
19 Road, they come here at 3:00 in the
20 afternoon, they get through the light
21 faster than they do today. If you come
22 from the ice rink and you just played a
23 men's hockey game that ends at 10:30 at
24 night, you get to come through this
25 intersection, the widening is there, you

2 process through the intersection more
3 efficiently.

4 CHAIRMAN SCALZO: Conversely, you
5 just turned a ten-second delay on 17K
6 eastbound to a twenty-second delay on 17K
7 eastbound, which is a level of service E
8 already. Correct?

9 MR. SECKLER: Which approach are
10 you referring to?

11 CHAIRMAN SCALZO: 17K eastbound.

12 MR. SECKLER: What we're doing as
13 part of this design, what this allows us
14 to do is -- actually, we are not taking
15 any green time away from 17K as part of
16 this development. What we're doing is
17 we're taking actually some green time
18 away from the through movement and the
19 left-turn movement from Pilot. I'll
20 explain how we get to that.

21 What's important for the Pilot is
22 that the vast majority of the traffic is
23 making a right turn out. I will not take
24 any green time away from the right-
25 turning traffic from Pilot. About ninety

2 percent of those trucks are going back
3 towards the interstate. We are taking it
4 from the through and the left. I'll
5 explain how we get to that as I walk
6 through each leg of the intersection.

7 Going towards 17K now in the
8 eastbound direction, what we're doing is
9 we're increasing the turn bay. Right now
10 the left-turn bay holds about four to
11 five cars before you have to line up on
12 the hatch, the striping. We're
13 increasing that to 200 feet, which fits
14 about eight, nine cars in the left-turn
15 lane. Again, any increased traffic
16 relating to the QuickChek would be
17 accommodated in its own left-turn lane
18 and not backing into the through lanes.
19 This, again, will allow for any potential
20 demand related to the QuickChek to be
21 accommodated within the proper lane.

22 Now I'm going to work myself to the
23 Pilot. This, I believe, was a suggestion
24 from the Department of Transportation, to
25 change the striping of the Pilot from --

2 basically they have a lane that is a
3 left-turn only and the other lane
4 basically goes through and right.
5 There's enough room for two lanes there.
6 By making the right most lane a right-
7 turn only, what that allows us to do is
8 to give them a right arrow when the
9 traffic making a left turn into the Pilot
10 is moving. These trucks or cars coming
11 out of the Pilot will have an opportunity
12 to make a right turn the entire time that
13 vehicles are making a left turn into
14 their site, which they do not have that
15 opportunity today. That helps keep that
16 right turn moving from the Pilot. It
17 gives them more green time than they have
18 today, again helping process them back to
19 the interstate. That's the improvement
20 along the northbound light, which is the
21 Pilot light. Again, this is the only
22 movement we're taking green time from.
23 We're going to add a little green time to
24 Lakeside Road and take some of it away
25 from the through and the left-turn

2 movement from the Pilot.

3 Going to the westbound direction,
4 what we're doing here is the radii, as
5 you make a right turn from 17K onto
6 Lakeside Road, it's a little bit of a --
7 not quite a ninety-degree turn. I notice
8 there's a lot of, kind of, vehicle tracks
9 in the gravel there and into the grass.
10 Potentially it may be the landscape
11 vehicles or some larger vehicles maybe
12 running into the grass there. We're
13 going to widen the radii in that area,
14 again to make it an easier right-hand
15 turn, understanding QuickChek customers
16 as well as anyone who is driving over
17 there today, we want to be able to make
18 sure they can make that turn efficiently
19 and they're not getting stuck in a rut in
20 the grass or slowing down anyone that's
21 going through at that intersection.

22 What we're doing is, again, making
23 improvements physically to four legs of
24 the intersection.

25 MR. BELL: Are you putting a lane

2 there? A turning lane there?

3 MR. SECKLER: No.

4 MR. BELL: I live on the other end
5 of Lakeside. I go there quite often.
6 I'm listening to you and trying to
7 understand. When you have the two lanes
8 -- you have the two lanes continually
9 going straight --

10 MR. SECKLER: We'll say westbound.

11 MR. BELL: It actually merges over
12 into one lane, which I see quite a bit of
13 fender benders there a lot. That happens
14 there going towards Gold's Gym where you
15 still have the left-turn lane going into
16 Pilot. Are you going to widen it so
17 people can move over to go around it? Is
18 that what you're saying?

19 CHAIRMAN SCALZO: Heavy to the
20 shoulder?

21 MR. BELL: The shoulder.

22 MR. SECKLER: Heavy to the shoulder
23 and the radii is going to be made easier.

24 There are times when you're driving
25 and you have to make -- if you have a

2 tight radii and you're trying to make a
3 right-hand turn, you have to slow down to
4 like 7 miles-an-hour or the car behind
5 you kind of runs up on you. By
6 increasing the radii, you could make that
7 right turn at higher speeds so that
8 you're not, again, having someone
9 basically run right up onto you. We're
10 increasing the radii.

11 MR. TUVEL: Basically the geometry
12 and the sight distance in that area will
13 improve.

14 CHAIRMAN SCALZO: There are traffic
15 movements there. Do you know what
16 building is the diner?

17 MR. SECKLER: Right here.

18 CHAIRMAN SCALZO: Can you see the
19 tractor trailers behind there?

20 MR. SECKLER: This guy and that
21 guy?

22 CHAIRMAN SCALZO: Exactly. We were
23 out there looking at the other
24 application and I saw no less than seven
25 tractor trailers behind that diner. I'm

2 pretty confident that the failing
3 shoulder that you were looking at is
4 because the tractor trailers access the
5 diner through that entrance off Lakeside
6 Road.

7 MR. SECKLER: They come straight
8 through.

9 CHAIRMAN SCALZO: Sure they do. I
10 don't know if there's been any
11 consideration in your study for that.

12 MR. SECKLER: I can't say we
13 specifically targeted that. By
14 rebuilding the shoulder near the
15 intersection and making a more gentle
16 radii I think will help them.

17 MR. BELL: I see them when they're
18 behind there trying to get back onto 17
19 to make that left, trying to come out on
20 Lakeside. That's a bad -- it's a bad
21 area. I've seen it too many times when
22 they're trying to come out of the diner,
23 coming this way to try to make the left.
24 I've heard nothing to rectify that since
25 you've been talking.

2 MR. SECKLER: What we can't do is
3 change the location of the driveway. The
4 biggest issue is their driveway is right
5 up on the intersection. This is not
6 something that would be permitted in
7 today's design. I don't know how long
8 that diner has been there. That predates
9 -- it's not a proper access design. What
10 I will say we're doing is, by adding more
11 time to the Lakeside Road traffic lane,
12 so they're going to have more green time,
13 and adding the additional lane, there
14 will be less queueing in front of their
15 site than exists today. I think that's
16 really what we're keying in on. Again, I
17 can't fix where the driveway is. I would
18 love it if it was further back. That
19 makes the hotel's property actually have
20 better access.

21 I want to get to one other item
22 that isn't physically shown here, but
23 it's a requirement as far as our
24 improvements. We are going to upgrade
25 the detection system that is at the

2 intersection. The way traffic lights
3 work, modern traffic lights work, is it
4 is constantly detecting whether cars are
5 at various legs of the intersection.
6 When you come there in the middle of the
7 night, there may be no cars there and you
8 come onto Lakeside Road, it will start
9 changing the light so you can get the
10 green light. We're upgrading the system
11 beyond what's out there to a more
12 efficient system. This is basically the
13 state-of-the-art NYS DOT camera system
14 that's going to be installed at this
15 intersection. Again, from an efficiency
16 standpoint, how this intersection
17 operates, it will also perform better
18 than it does today in terms of how it
19 detects the cars.

20 MR. BELL: Can you move that down
21 to Lakeside and Plank, too?

22 MS. REIN: These are great plans,
23 but are these recommendations or has the
24 company committed to doing this?

25 MR. SECKLER: We're committed to

2 everything that's on this plan.

3 MR. TUVEL: Obviously if the Board
4 were to approve them, these would be
5 conditions and part of the plans that
6 were approved. Also, as Mr. Seckler
7 indicated, DOT is requiring them as part
8 of our application to the State as well.
9 So the answer is yes.

10 MS. REIN: So they're set in stone?

11 MR. TUVEL: Should the project move
12 forward, correct.

13 MS. REIN: Thank you.

14 MR. SECKLER: I know you were
15 asking about the report card. I'm going
16 to focus on Lakeside Road, but I'm happy
17 to walk around the intersection.

18 Lakeside Road, if nothing happens
19 with the QuickChek, two years into the
20 future what you'd expect is to have the
21 average delay of a car on Lakeside Road
22 making a left would be 17.5 seconds.
23 You're basically waiting a little more
24 than a minute, on average, to make a left
25 turn. That's level of service E.

2 MR. TUVEL: That's if nothing were
3 to change.

4 MR. SECKLER: Even if QuickChek
5 doesn't show up. If QuickChek shows up
6 and you don't make those improvements as
7 mentioned, your delay is almost 500
8 seconds. It would be untenable. It
9 would be like going through the Holland
10 Tunnel in New York. The mitigation with
11 these changes, we bring that E, that 70.5
12 seconds, down to a D at 54 seconds with
13 these improvements to this left-hand turn
14 with the changes that we are suggesting.
15 Again, we knock off about 15 seconds of
16 time to anyone making this left-hand turn
17 that everyone gets the benefit of, not
18 just QuickChek customers. Everyone is
19 getting on average 15 seconds. That's
20 the morning peak hour. At 10 a.m. those
21 delays are obviously much less. This was
22 during those morning peak hours. Weekday
23 evening, it's basically a wash. If
24 nothing is built here, it's level of
25 service D, 54 seconds for the left turn.

2 We get to D, 53 seconds. Again, no
3 impact. You wouldn't notice the one
4 second benefit, but we are not making
5 that movement any worse in the future
6 condition. The same thing on Saturday.
7 It's actually 54 seconds two years in the
8 future without QuickChek, 54 seconds two
9 years in the future with these
10 improvements. Basically we're getting
11 back to the equilibrium there.

12 MR. BELL: What you're saying is
13 with this proposed change, people turning
14 out of QuickChek, making a left to go
15 back to 17, it's going to eliminate
16 backlog or somebody blocking the lane to
17 try to get over to the lane and get back
18 to 17?

19 MR. SECKLER: Are you referring to
20 a QuickChek customer?

21 MR. BELL: I'm talking about coming
22 out of QuickChek onto Lakeside.

23 MR. TUVEL: Matt, why don't you put
24 up the site plan --

25 MR. SECKLER: It's a little more

2 colorful.

3 MR. TUVEL: -- so you can see the
4 actual driveway.

5 MR. SECKLER: Where the driveway is
6 located, there will be no queueing back
7 towards -- there will be the same cars
8 there today, but it does not back up to
9 where the driveway is. Again I want to
10 reiterate, we have three driveways, one
11 in, that's the one closest to the
12 intersection; in and out which is the
13 middle one; and then one that goes --
14 it's a very narrow right-hand turn and
15 then a little bit larger left-hand turn,
16 again to ensure that our delivery
17 vehicles are not making a right turn down
18 Lakeside. Basically the right turn is to
19 stop the cars, the left is our delivery
20 vehicles so they can exit back out onto
21 Lakeside.

22 I do want to talk about those
23 driveways a bit because, as was mentioned,
24 I think one of the criteria related to
25 the code relates to driveway movements

2 and any other --

3 MR. TUVEL: Curb cuts.

4 MR. SECKLER: All the curb cuts as
5 designed have sufficient sight distance.
6 Lakeside Road is a 30 mile-per-hour road
7 which would typically require a sight
8 distance of about -- you want to be able
9 to see about 340 feet away. You would be
10 able to see 340 feet away if there's any
11 cars approaching the intersection. You
12 have sufficient distance of about 510
13 feet looking out towards your right when
14 you're at the QuickChek driveway. I've
15 been out there. Right now I think
16 there's a little, it kind of looks like a
17 gravel path. It looks like someone is
18 dumping garbage, actually, into the site.

19 CHAIRMAN SCALZO: Mr. Mattina is
20 going to actually have a comment for you
21 a little later.

22 MR. SECKLER: I stood at that
23 driveway and I can see -- again, field
24 check, I can see over 500 feet down the
25 road. I can't quite see the hockey rink

2 driveway just because of some of the
3 vegetation there. That's well beyond the
4 sight distance needed. We have sufficient
5 sight distance. You can see right and
6 left coming out of this driveway
7 appropriately. At any of our driveways.

8 Again, what we designed is that
9 first driveway we're pulling people
10 in to a nice wide driveway closest to
11 the intersection. The other driveways
12 are sufficiently far back.

13 MR. BELL: You cannot exit out of
14 there, but you can enter there?

15 MR. SECKLER: The first driveway
16 you can enter.

17 MR. BELL: Enter only?

18 MR. SECKLER: Correct. Again, that
19 goes to the fact that we want to make
20 sure we're entering in the back so we're
21 not interfering with the queue. We're
22 not getting into a condition like the
23 diner where once there's three cars,
24 you're stuck waiting. There's no queue
25 -- without improvements, no queue that

2 backs up to our exiting driveway.

3 CHAIRMAN SCALZO: I'm going to stop
4 you right there. I want the Board
5 Members to just understand that we're
6 here because of the one variance, which
7 is the 1,000 foot separation distance.
8 The traffic analysis and the presentation
9 that we just heard is in support of why
10 we should allow that variance to occur.

11 It's been great stuff. Again, I'll
12 say it's based on projections, historical
13 data, information from the month of
14 February, which I know is the most
15 vigorous driving month of the year. I
16 used to work for DOT myself as well as
17 the Thruway. We used to talk to the
18 traffic guys.

19 Anyway, I understand. I'm not
20 trying to rush you, but I think --

21 MS. REIN: We get it.

22 CHAIRMAN SCALZO: Do you folks have
23 a flavor for what's being presented here?

24 Were you just about wrapping it up.

25 MR. SECKLER: I can talk for ten

2 minutes or forty-five minutes.

3 CHAIRMAN SCALZO: We must be
4 related, you and I.

5 At this point I think I want to --
6 I'm going to poll the Board for any more
7 questions, then I'm going to open it back
8 up to the members of the public, unless
9 there's something you feel is very
10 important.

11 MR. TUVEL: I just wanted Mr. Seckler
12 to reiterate that in his professional
13 opinion, he does not feel that -- I just
14 want it on the record that there would
15 be no substantial negative impacts based
16 on all of the improvements that you're
17 making to the intersection, to the
18 adjacent roadways and incorporation
19 with the site design as part of this
20 project.

21 MR. SECKLER: Correct. Again, no
22 impact to the traveling public, and our
23 driveways are properly designed. Again,
24 no substantial impact negative to the six
25 intersections we studied or the

2 neighboring properties down the line.

3 MR. TUVEL: Also, just one other
4 thing. Ice Time also submitted a letter.
5 Did you look at the plan in conjunction
6 with how that facility functions? What's
7 your opinion in that regard?

8 MR. SECKLER: What we did is we
9 studied the sight distance to see how our
10 driveway relates to their driveway,
11 making sure we can see properly. If they
12 have people leaving their site, as they
13 come down the road, our customers can see
14 them before they turn out of the site.

15 Also, the amount of traffic from
16 our site that is going to the right on
17 Lakeside Road, only about three percent
18 of all the traffic we generate on the
19 site is going down Lakeside Road, likely
20 potential customers from that residential
21 neighborhood that are either going to go
22 this way anyway onto 17K and 84 or just
23 coming for a gallon of milk or filling up
24 the tank.

25 CHAIRMAN SCALZO: Again, the

2 presentation was spectacular. You almost
3 feel as though if you don't build it,
4 we're going to suffer because your
5 projections are saying with your
6 improvements it's going to be much better
7 than it is right now.

8 MR. TUVEL: I want the Board to
9 understand that we put a lot of effort
10 into this project.

11 CHAIRMAN SCALZO: I understand
12 that. You have some very comprehensive
13 plans here. I get it. Again, I really
14 appreciate it. It was a very good
15 presentation. We need to move on here.

16 MR. TUVEL: I understand.

17 MR. SECKLER: One last thing.

18 MR. DONOVAN: This won't be the
19 forty-five minute portion?

20 MR. SECKLER: No. I don't have a
21 history in Newburgh so I can't speak to
22 how things got developed. I did notice
23 on 17K there's a gas station at the
24 northwest corner of Route 300 and 17K,
25 then there's a gas station across from a

2 car wash. All of them are within 1,000
3 feet. I don't know if that relates to
4 the Town code requirement. I think car
5 washes and gas stations are those things
6 that can't be 1,000 feet, but there were
7 three of them within 1,000 feet. They're
8 not three gas stations, but it's two gas
9 stations and a car wash which are all in
10 that same --

11 CHAIRMAN SCALZO: I think there's
12 an applicant that just walked out that
13 wants to kick you in the shins right now.
14 I think Stonefield is the name on two of
15 them. I don't know. He'll go behind the
16 woodshed with you. You're talking about
17 preexisting conditions. We're only
18 talking about two gas stations in this
19 case. Two fuel dispensing areas. My
20 hang up is we're going to create a
21 precedent here with three gas stations.
22 I'm not counting the Pilot because it's a
23 travel center. We're creating a
24 situation that does not exist here in the
25 Town.

2 The traffic was wonderful. It
3 would be even better if you built it.
4 Success in your presentation.

5 Ms. Rein, questions regarding that?
6 We're going to have more opportunities to
7 do this.

8 MS. REIN: I have no questions
9 about that. Everybody keeps interjecting
10 that Pilot is not to be considered.

11 MR. BELL: That's where --

12 CHAIRMAN SCALZO: The way the code
13 reads --

14 MS. REIN: I realize that. I
15 realize that's the law. A rose by any
16 other name is still a rose.

17 CHAIRMAN SCALZO: I understand you
18 completely. However, the code is the
19 code. That's what we are here to either
20 apply or not apply. In this case we are
21 told by the code that we should not be
22 considering the Pilot Travel Center in
23 our determination, whether we like it or
24 not.

25 MS. REIN: I hear you.

2 MR. BELL: Even though they pump
3 gas. Go ahead.

4 CHAIRMAN SCALZO: Mr. Bell, I
5 understand where you're coming from. I'm
6 picking up what you're putting down.

7 CHAIRMAN SCALZO: Mr. Masten, any
8 questions?

9 MR. MASTEN: Not right now.

10 CHAIRMAN SCALZO: Mr. Bell?

11 MR. BELL: This has been --

12 MR. MASTEN: It's very interesting.

13 MR. BELL: I'm good right now.

14 CHAIRMAN SCALZO: Mr. Hermance?

15 MR. HERMANCE: I'm good for now.

16 CHAIRMAN SCALZO: Mr. Eberhart?

17 MR. EBERHART: I'm still stuck with
18 the Pilot thing also.

19 CHAIRMAN SCALZO: We've been spoon
20 fed a lot of information. It's not
21 something you can easily grab onto right
22 now.

23 Mr. Politi?

24 MR. POLITI: I'm good. Thank you
25 for that.

2 CHAIRMAN SCALZO: Before I open it
3 up to the public, I just want to -- we're
4 done with traffic for now. Is there
5 anything else that you wanted to touch on
6 that may help people in the public here?
7 Anything else?

8 MR. TUVEL: I was going to give a
9 closing statement, just to go through the
10 criteria that I felt was important, to
11 note some of the case law on some of the
12 issues, why we believe we met the prongs
13 of the test for the variance. I'd rather
14 do that at the end.

15 CHAIRMAN SCALZO: I'm actually
16 going to do it for you. We have to weigh
17 the five factors.

18 MR. TUVEL: I understand the Board
19 has to do it. I was going to put forth
20 our final argument as the applicant.

21 CHAIRMAN SCALZO: Feel free.

22 MR. TUVEL: Can I do that at the
23 end? Do you want to open it to the
24 public first?

25 CHAIRMAN SCALZO: I would actually

2 like to open it up to the public.

3 MR. TUVEL: That's fine. I want to
4 be able to do that at the end.

5 CHAIRMAN SCALZO: You can hang on
6 to that microphone. I have a feeling
7 you're going to be answering some
8 questions.

9 Is there anyone from the public
10 here to -- thank you. Please introduce
11 yourself, although we've seen your
12 correspondence. Don't flatter me again.

13 MR. BACON: Jim Bacon, representative
14 of CPD, the Mobil station.

15 I was able to read the July 19th
16 response from the applicant to my letter,
17 but I wanted to start off talking about
18 traffic a little bit. I used to have
19 my office in the City of Newburgh
20 between '92 and '99. You know, I think
21 about how the traffic has increased.
22 You know, I think -- now when I'm in a
23 traffic jam in Newburgh, I think, you
24 know, some traffic engineer projected
25 this would never happen. You look at

2 all the lights in front of you.

3 Now this intersection --

4 CHAIRMAN SCALZO: A lot of that is
5 people don't have situational awareness.
6 I can't remember the comedian's name. I
7 understand.

8 MR. BACON: I've seen a lot of
9 applicants and I've represented applicants.
10 You never see the applicant's traffic
11 engineer say this is going to be a mess,
12 this is going to be -- there's no way
13 around this. That's what they get paid
14 to do.

15 CHAIRMAN SCALZO: I do happen to
16 know that the Planning Board traffic
17 consultant, Ken Wersted, is a very
18 competent engineer, although I don't know
19 that I've ever seen him reject one.

20 MR. BACON: I know. I think the
21 larger picture, and you put your finger
22 on this, is that this legislation about
23 the 1,000 foot requirement was put into
24 effect in '96 at a time when these
25 supersized gas stations didn't exist.

2 QuickChek is well known. They have
3 good prices. To think that sixteen pumps
4 aren't going to draw a lot of traffic to
5 that area, it just goes against what the
6 historic levels of traffic are with
7 QuickChek.

8 To have this Board decide that they
9 are going to allow QuickChek here would
10 really re-legislate the code.

11 I think that the interpretation of
12 the Pilot Travel Center is that if a
13 travel center wants to go within 1,000
14 feet, they would be permitted to do it by
15 the Planning Board, but that's different
16 if a new gas station comes in and wants
17 to be next to the Pilot Center, then the
18 reciprocal is not true. I don't think
19 it's in the code that it's a reciprocal
20 situation.

21 CHAIRMAN SCALZO: I'm not quite
22 sure I understand what you're saying.

23 MR. BACON: What the code says, if
24 I'm understanding it correctly, is that
25 if the Planning Board decided, and they

2 did on the Pilot, that they are a travel
3 center, then the travel center can be
4 placed closer to other gas stations than
5 1,000 feet. Being a travel center
6 doesn't make you -- doesn't make them
7 immune from the 1,000 foot requirement
8 for a new gas station coming in and being
9 closer to them after they've been
10 designated as a travel center. I think
11 that makes sense because then it would
12 allow the clustering of these gas
13 stations around the travel center when
14 the travel center itself was to be the
15 only cluster of gas stations and have
16 that 1,000 foot radius to be clear from
17 other gas stations. I think that's the
18 way that is to be read. That's my
19 opinion. I think it makes more sense
20 from a legislative standpoint. What
21 they're trying to do is keep that
22 separation so there wouldn't be too much
23 congestion. Obviously gas stations bring
24 a lot of cars, they've got to fuel up. I
25 think that was the intent of that.

2 I did try to get a hold of the '96
3 minutes. The FOIL officer was very
4 cooperative. They found some minutes
5 from May 1996. I read them. They
6 couldn't find the June 1996 meeting where
7 this was adopted by the Town Board. I
8 believe that was the case, that it was
9 meant to allow flexibility for the
10 Planning Board to site gas stations
11 within a certain area, but then that
12 didn't mean to have a whole universe of
13 gas stations being able to move into that
14 area and have that kind of clustering
15 effect.

16 I think that it is sort of a double
17 variance that they are asking for to be
18 closer to -- only a couple hundred feet
19 from the Pilot, and then -- I can't
20 remember exactly how many feet -- 370
21 feet from the Mobil station. Something
22 like that. I think that's contrary to the
23 code.

24 CHAIRMAN SCALZO: Don't forget that
25 870 feet on the other side of --

2 MR. BACON: That, too.

3 MR. DONOVAN: Jim, I want to make
4 sure I understand your point. Let's
5 assume QuickChek was there, right. So
6 Pilot could move in across the street?

7 MR. BACON: No. I think that --
8 yeah. That's right. If the Planning
9 Board decided that Pilot was a travel
10 center, then they could be placed there.

11 MR. DONOVAN: You still end up with
12 whatever dispensing -- I understand the
13 argument, I just don't know if I follow
14 it.

15 MR. BACON: I mean, let's say the
16 Planning Board decided that QuickChek was
17 going to be a travel center, then they
18 would be permitted to break the 1,000
19 foot prohibition. Right?

20 CHAIRMAN SCALZO: I suppose.

21 MR. BACON: I suppose. I mean,
22 that would be a difficult --

23 CHAIRMAN SCALZO: As I mentioned
24 earlier, and I don't know if you heard me
25 say it, the Comprehensive Plan Committee

2 is currently meeting to iron out any
3 ambiguities in the code and perhaps
4 change some areas. To that end, you're
5 aware that the Comprehensive Plan
6 Committee is currently meeting. Did you
7 petition them to reevaluate that 1,000
8 foot separation between gas stations?

9 MR. TUVEL: I didn't think it was
10 necessary. I think that we met with the
11 Planning Board and the Planning Board had
12 some suggestions on the site plan that we
13 complied with. I felt that this Board
14 had some comments at the last meeting
15 that I believe we were responsive to. I
16 think that based on the comprehensive
17 analysis that we've done and the criteria,
18 I believe we've met it. I understand
19 your point which is legislative.

20 CHAIRMAN SCALZO: Legislative, then
21 we wouldn't be standing here.

22 MR. TUVEL: Sure. That can be the
23 case with any variance, with a setback
24 variance, with a buffer variance. That
25 could be the case with anything.

2 CHAIRMAN SCALZO: I appreciate your
3 response. All I wanted to know is if you
4 reached out to the --

5 MR. TUVEL: No.

6 CHAIRMAN SCALZO: Thank you so much.

7 MR. BACON: I did read the applicant's
8 response to me. I'm familiar with trying
9 to spin the straw in the gold. I've done
10 that spin many times. I stand by my
11 statutory analysis on that, that the code
12 book, in plain language, says in no
13 instance. It's called a prohibition. I
14 know the ZBA has granted variances on
15 this before. I think they did it a few
16 years ago with a Stewart's on Route 9.
17 There was a -- 9W. South of that there
18 was an application, but it was only about
19 25 feet.

20 CHAIRMAN SCALZO: You're correct.
21 971.

22 MR. BACON: Exactly. So this is a
23 whole different animal. Eighty percent,
24 if you include Pilot like I think should
25 be, or seventy-five percent with --

2 CHAIRMAN SCALZO: Mr. Bacon, we
3 have to get off the Pilot thing. We're
4 done.

5 MR. BACON: We're done with that.

6 So then just skipping last to the
7 issue about the criteria, we think that's
8 very, very substantial. It's a
9 substantial deviation from code. It's
10 not a good thing for the ZBA to
11 re-legislate when the Town Board is the
12 legislative body of the Town.

13 It's completely self-created.

14 There are plenty of other uses that
15 can be used for this site.

16 They decided that they wanted to
17 try to maximize their profits. That's
18 fine, but this Board doesn't have an
19 obligation to maximize their profits.
20 This Board has the obligation to follow
21 the code. I think if the Board did that,
22 they would have to come up with a
23 different use.

24 Thank you so much.

25 CHAIRMAN SCALZO: It is difficult

2 being a Member of the Zoning Board of
3 Appeals, because most applicants that
4 come in here, A, it's personal to them.
5 We, as a Board, we try to make it as not
6 personal to us as possible. Really what
7 it comes down to is, until you ask, the
8 answer is no, which is how most of our
9 applicants end up here.

10 The applicants in this case have
11 expended quite a bit into development of
12 these plans. It makes it challenging for
13 us as a Board to understand that they've
14 put a substantial investment into this.
15 I don't know how that weighs into the
16 factors, but we take what we do very
17 seriously. Your comments are appreciated
18 here. Your presentations are. We are
19 not in an easy position to be in today,
20 especially with this application.

21 Mr. Bacon, we appreciate your
22 comments. That's all I have to say.

23 MR. BACON: Thank you, Mr. Chairman.
24 I know the public appreciates the work
25 that you guys all do. It's a pretty

2 thankless job a lot of times.

3 CHAIRMAN SCALZO: I'd like to say
4 they pay us handsomely, but I think I
5 would be lying. I'm in this spot because
6 I'm nosey. Very good.

7 Are there any other members of the
8 public that wish to speak about this
9 application? You were too well dressed
10 sitting in the back.

11 MR. WEISS: Good evening. I was
12 here last time as well. Robert Weiss, I
13 represent the Mid-Hudson Civic Center who
14 owns Ice Time on Lakeside.

15 I had submitted a letter which is
16 document number 20 in the record. There
17 was no response by the applicant to my
18 letter. For that reason, I know I don't
19 want to belabor this, but I think the
20 public hearing should remain open until
21 there's a response to all the concerns we
22 raised in my letter, document 20. I'll
23 proceed. I made that request.

24 A service station is a service
25 station, but a place that dispenses fuel

2 is clear. I don't think there's any
3 ambiguity in the statute.

4 I also have to agree with the
5 interpretation. I think it's pretty clear
6 that the Pilot really does count.

7 CHAIRMAN SCALZO: You know what,
8 I'm going to stop you right there.

9 MR. WEISS: That's fair enough.

10 CHAIRMAN SCALZO: We're not going
11 to talk about the Pilot. The way I
12 interpret the code, and I am the Chairman
13 and this is my meeting.

14 MR. WEISS: That's fine. We raised
15 a bunch of concerns in the correspondence.
16 I guess I can just mention a few here,
17 although there was no response.

18 We've got a gateway to the Town
19 which is going to be now a cluster of gas
20 stations. The character of the neighborhood
21 obviously is something that's very important
22 to the Town. We discussed having a number
23 of gas stations close by with or without
24 the Pilot. This is the entryway to the
25 community. We're inviting trucks and

2 cars to come in. Many trucks and
3 many cars. While concerns over another
4 gas station going in is a business
5 concern, a business concern is not
6 something directly that we're
7 supposed to be considering.

8 We do have to consider an issue
9 we raised in our correspondence,
10 which is someone who is dispensing
11 gas with or without QuickChek, in the
12 future because we have electric cars,
13 is going to be going out of business.
14 We don't want to have another blight
15 in our community. Those abandoned,
16 closed gas stations are an issue.
17 Whether or not electric cars do take
18 hold or not, it's clear there's
19 legislation and a big move on federal
20 government's take on pushing those
21 things. We're adding a gas station
22 in a situation where someone is going
23 to go out of business. There's going
24 to be a gas station that's going to
25 be gone at some point in the not too

2 distant future. Those are difficult
3 to redevelop. We have another issue
4 in terms of a blight in the community
5 in that particular area.

6 CHAIRMAN SCALZO: If I could.
7 The correspondence you're referring
8 to is dated June 27th?

9 MR. WEISS: That is correct.

10 The other specific issues that
11 have not been given any voice in terms
12 of response are the issues that we
13 raised concerning environmental. We
14 understand the tanks have to be
15 approved and they're going to be EPA
16 approved tanks. We have, I think by
17 my math, 750,000 gallons of fuel that's
18 going to be going in and out in a given
19 year. There's going to be spills. Not
20 in terms of underground tank spills,
21 which is certainly a possibility, but
22 we have yet another gas station where
23 there's going to be gas and fumes
24 coming out of there in a neighborhood
25 which has been designated by our New

2 York State Department of Environmental
3 Conservation as an environmental
4 justice area.

5 Is it fair to grant the variance
6 for this gas station in an area populated
7 by, according to the statement -- I'm
8 not saying this is a wonderful. Why
9 should certain areas get the gas
10 stations? That's a fact that we have
11 to examine, because we're looking at
12 the impact upon the neighborhood.
13 Again, not addressed at all. I
14 suppose there is no answer because
15 it's a factor that we have to consider
16 and how they respond to that. They
17 haven't.

18 The other issue is that New York
19 State has designated this as a
20 disadvantaged community. It's a
21 beautiful area, yet it comes under
22 that definition. We lay that out in
23 our correspondence. It's an area
24 that was supposed to be, as a
25 government in a community, reducing

2 pollution in these areas, not adding
3 more cars, more trucks, more
4 pollution to the area. Land, sea,
5 air, water, the whole nine yards.

6 I already mentioned the future
7 blight. It's clear that with or without
8 regard to who wins or who is going to
9 have the busiest gas station, we're
10 adding another gas station to an area.

11 Again, based upon what we all know,
12 gasoline is federal. They want more
13 electric cars, so we're going to have
14 an issue there.

15 With that and, again, the other
16 issues in the letter were not
17 responded to, they were ignored.

18 I thank the Board for listening.

19 CHAIRMAN SCALZO: Thank you very
20 much.

21 I'm just going to turn to the
22 applicant for a second. Are you in
23 receipt of the June 27 --

24 MR. TUVEL: Yes.

25 CHAIRMAN SCALZO: Okay.

2 MR. TUVEL: I believe we did
3 respond. We provided the environmental
4 protocols that QuickChek follows and that
5 there would be compliance with DEC, EPA
6 and all regulatory requirements. We
7 provided those. In fact, QuickChek meets
8 or exceeds all of those.

9 CHAIRMAN SCALZO: Thank you.

10 Is there anyone else from the
11 public here that wishes to be heard for
12 this application for QuickChek?

13 (No response.)

14 MR. MATTINA: I would like to go
15 then.

16 CHAIRMAN SCALZO: Mr. Mattina.

17 MR. MATTINA: As you're aware, the
18 site has become a dumping ground. The
19 Town would like you to try to secure it
20 and get it clean as fast as possible.
21 We've received numerous complaints over
22 the last two weeks. Instead of starting
23 legal action, we're asking you outright
24 to please get it taken care of.

25 MR. TUVEL: We are not the owner of

2 the property. My client is the contract
3 purchaser. We have no control over the
4 property, only from a legal instrument
5 perspective. We can obviously convey
6 your message to the owner. That's not a
7 problem.

8 In terms of if we were to develop
9 the site, I'm sure everyone here is
10 familiar with QuickCheks. Their sites
11 are kept pristine, very nice, they're
12 welcoming to the public as opposed to
13 similar types of facilities. From both
14 an environmental perspective and a
15 cleanliness perspective, landscaping as
16 well.

17 I can't speak for the owner. It's
18 unfortunate that there are issues with
19 the property. I can assure you that if
20 QuickChek develops it, those will be
21 gone.

22 I will pass along your message to
23 the owner so that they are aware that you
24 have concerns. I'm happy to.

25 MR. MATTINA: You're representing

2 them --

3 MR. TUVEL: We're not representing
4 the owner. We represent the contract
5 purchaser. I will convey that concern.
6 It is a legitimate concern for the owner
7 and the Town. I promise I will convey
8 that.

9 CHAIRMAN SCALZO: Mr. Mattina, if I
10 could ask you to -- it's chilly in here.
11 Can you turn that off?

12 MR. MATTINA: Yes.

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

16 (No response.)

17 CHAIRMAN SCALZO: Boy, it's really
18 quiet.

19 I'm going to look back to the Board
20 here. We've heard some information.
21 Does anybody have any additional
22 questions? Do you feel as though we've
23 heard adequate information enough to move
24 this forward?

25 MR. DONOVAN: I do notice the

2 applicant's attorney wants to make a
3 closing statement. You can defer that.

4 CHAIRMAN SCALZO: Let me make my
5 way through my guys first and then --

6 MS. REIN: I'm good.

7 MR. BELL: I'm good.

8 CHAIRMAN SCALZO: -- I'll give the
9 applicant's attorney an opportunity to,
10 I'll say, summarize.

11 MR. TUVEL: Thank you very much. I
12 want to thank the Board and also the
13 members of the public. I know we spent
14 two meetings on this. Even if we have
15 differences of opinion, I appreciate
16 everybody's involvement in the application.

17 I just want to go through the
18 criteria, and I will be brief because I
19 know it's getting late.

20 With respect to the first item,
21 will an undesirable change be produced to
22 the detriment of nearby properties. I
23 would say that this application actually
24 fits nicely within the area. You have
25 another gas station, you have the Pilot,

2 you have a hotel, you have a diner.
3 It's very similar with respect to the
4 character of the neighborhood. In
5 fact, it provides somewhat of a --
6 more of a different service than the
7 other gas station which is smaller,
8 the Pilot which is much larger. It
9 provides something right in between
10 that can serve the community. I'll
11 point to some case law on the issue.
12 It says, "The determination of a board
13 zoning of appeals that a gasoline
14 station will alter the essential
15 character of the neighborhood lacks
16 support in the record where the site
17 is shown to be near a commercial
18 greenhouse and another gas station
19 and other uses that are similar." I
20 think that we would meet that
21 criteria, and I don't think we
22 produce an undesirable change. The
23 site will be very well landscaped.
24 The aesthetics will be very nice, as
25 you've seen from other QuickCheks. I

2 don't think it will produce an
3 undesirable change in the neighborhood.

4 I think you have to also factor
5 in the traffic testimony with respect
6 to that and the upgrades, the items
7 that were studied to ensure there
8 would be no degradation in the level
9 of service with traffic.

10 The next criteria, whether the
11 benefit sought by the applicant can
12 be achieved by other means other than
13 the variance. In this case, because
14 of that Town code requirement, there's
15 no other way to achieve the means.
16 We did eliminate the other variances
17 associated with the application. Unlike
18 other types of criteria where you might
19 have a setback, where a building could
20 be moved, or a buffer, where additional
21 landscaping can be changed, we can't
22 move the property and we can't move
23 other properties. I think in this
24 situation we meet that second prong
25 of the criteria.

2 Whether the request is substantial.
3 I understand a lot has been discussed
4 tonight about other gas stations in
5 the area and the fact that there might
6 be two or three within 1,000 feet. I
7 would suggest that the magnitude is
8 not substantial based on the fact
9 that we can fit this site here, meeting
10 all of the area and bulk standards
11 within the zone. Actually exceed
12 them tremendously. We can make the
13 traffic work and actually improve the
14 intersection for not only the property
15 itself but for all the other adjacent
16 properties and motorists traveling
17 through the area. I would look at
18 the magnitude. Not necessarily how
19 many gas stations are within the area,
20 but the development itself and how it
21 integrates within your Town code and
22 how it integrates with the surrounding
23 area. I would suggest that we would
24 meet that as well.

25 Whether the requested variance

2 will have an adverse impact on the
3 physical or environmental conditions
4 of the district or the area. I won't
5 reiterate all the traffic testimony.
6 We went into that in extreme detail.
7 You saw that. We have done extensive
8 studies. We promise to do significant
9 upgrades at the applicant's expense
10 to the intersection. Stormwater
11 management will be imposed here, as
12 Mr. Chaplin indicated. I did submit
13 documentation indicating Quickchek's
14 environmental protocol with respect
15 to their tanking systems, how things
16 are monitored, all the EPA and DEC
17 requirements that they follow. I
18 think evidence proof from other
19 QuickCheks and how well they keep
20 their sites with respect to landscaping
21 and building aesthetics, that it would
22 not have a negative impact to the
23 surrounding environment.

24 Whether the alleged difficulty
25 was self-created. Clearly the applicant

2 does know that there was a
3 prohibition on this. I'll admit
4 that. I think on balance, which is
5 what this Board has to do, the
6 balancing favors the granting of this
7 one variance. I would indicate, and
8 I know the Board is allowed to use
9 its own experience in the area in
10 terms of deciding whether the
11 variance should be approved or should
12 be denied, but I would say that we
13 put on an extensive presentation,
14 both civil and traffic engineering,
15 and there's nothing to refute that.
16 I'm not saying that the Board doesn't
17 know the area and can't use its
18 institutional knowledge, but we had
19 two objectors. Nobody provided any
20 sort of evidence to refute our
21 traffic testimony or our civil
22 engineering. I would say that the
23 record stands in the sense that it
24 has been un-rebutted. I think on
25 balance we met the test. We really

2 worked hard in making sure that the
3 property works.

4 Again, I really appreciate
5 everybody's time and consideration.
6 I would respectfully request that the
7 Board approve the one variance that
8 we're seeking in connection with this
9 matter. Thank you very much.

10 CHAIRMAN SCALZO: Thank you.

11 Last opportunity. Anyone from the
12 public? Mr. Bacon.

13 MR. BACON: Just quickly. I think
14 the calculus, if this was the owner,
15 that's a little bit of a different
16 calculus than a contractee. That's all
17 I'm going to say about that.

18 CHAIRMAN SCALZO: I don't understand
19 what point you're trying to make.

20 MR. BACON: I think from a
21 hardship standpoint, if you say there's
22 extraordinary circumstances, I'm the
23 owner of the property, you know, I'm
24 going to develop this myself, but then
25 it's a different thing if you have a

2 series of contractors that are open
3 to you. We don't know how many other
4 contractors are out there that would
5 have different uses for this property.
6 That's a calculus I think that goes
7 into the ZBA's determination.

8 MR. TUVEL: Am I allowed to respond?

9 CHAIRMAN SCALZO: I'm going to give
10 you a shot.

11 MR. TUVEL: This Board is well
12 aware of this, and I think Counsel is
13 aware of this, too. Almost every single
14 retail project where you have a name
15 brand, whether it be QuickChek, whether
16 it be McDonald's, whether it be any brand
17 we're used to, there are always contract
18 vendees that develop the property. Maybe
19 sometimes the owner does it. It's very
20 rare. It's either a developer or the
21 retailer themselves. No development
22 would take place if that was necessarily
23 the standard or if that was judged as
24 part of the criteria.

25 Also, just on the precedent factor

2 that Mr. Chairman mentioned earlier, I
3 understand the comment and I respect the
4 comment, but I would say that if we
5 didn't go to such great lengths to
6 demonstrate why this works here, I may
7 agree with you on it. Every applicant
8 that were to come forward, whether it's a
9 gas station, whether it's a fast food
10 restaurant, or whatever it might be that
11 would request a variance before this
12 Board, they would have to demonstrate
13 that they meet the criteria and go
14 through an analysis and make sure they've
15 dotted there is and crossed their Ts. I
16 believe we've done that. I don't think
17 the precedential argument -- I'm not
18 saying the Board is going to approve the
19 application or deny the application, but
20 I don't believe that the precedent issue
21 is a relevant or a fair one because each
22 application is judged on its own merits.

23 CHAIRMAN SCALZO: Thank you.

24 I think I'm going to look to the
25 Board in this instance for a motion if

2 you feel as though we have enough.

3 MR. DONOVAN: I want to make a
4 couple of comments, if I may, Mr. Chairman.

5 CHAIRMAN SCALZO: Please.

6 MR. DONOVAN: Last time when this
7 application was here, you had a couple
8 attorneys in the audience. They're
9 invited to make any other written
10 comments. The applicant's attorney was
11 invited to respond. That has happened.

12 I do want to just address a couple
13 things in Mr. Bacon's letter. One of his
14 main points is there's no discretion for
15 the ZBA to exercise authority, a
16 prohibition is a prohibition. I
17 respectfully disagree with Mr. Bacon on
18 that. The whole purpose of an area
19 variance is to vary requirements. You
20 are the relief valve. You do have the
21 ability to act, in my view. That would
22 be my advice to you.

23 The second point I want to make is
24 that pursuant to the code, the language
25 in the code, it seems to be the

2 controlling issue, to make a
3 determination on the 1,000 foot
4 requirement is traffic. You all have
5 your own experience. As members of the
6 community, you're familiar with that
7 area. You have the right to bring that,
8 the legal right to bring that knowledge
9 to the forefront, if you will. I do want
10 to point out that the only testimony on
11 the record from a professional consultant
12 for traffic is in favor of the project.
13 There are arguments that have been
14 raised, very good arguments, well laid
15 out, well established, but on the record
16 the only thing that you have as far as
17 traffic from a professional consultant
18 who recommends in favor of the variance
19 is now obviously employed by the
20 applicant and working for the applicant.
21 Nonetheless, a professional engineer/
22 traffic consultant. That's what you have
23 in the record.

24 The other point that I want to
25 make, Mr. Chairman, is going to the

2 public hearing. You have the right to
3 continue the public hearing or close the
4 public hearing. Generally what I say
5 about that is the public hearing is not
6 for the public, it's for the Board. You
7 get information from the public that
8 assists in decisionmaking. If you think
9 you have enough information, you should
10 close the public hearing. If you think
11 that the public can help you, then you
12 should keep the public hearing open.

13 The next point I want to make is we
14 have to deal with you have 62 days, but
15 we also know we have to deal with SEQRA.
16 This is an Unlisted action, so you're
17 going to have to do somewhat of an
18 analysis there relative to the 1,000 foot
19 requirement. You do have 62 days.
20 There's a lot of information.

21 You know, now that I've spoken
22 longer than the Chairman would like.
23 There's nothing worse than the battle of
24 the attorneys. You had one attorney, two
25 attorneys, three attorneys, four. You've

2 heard enough for tonight. You don't have
3 to vote. The law doesn't require you to
4 vote. If you want to go home and think
5 about it, remember that you have to come
6 back in September --

7 CHAIRMAN SCALZO: Which may be the
8 62 days.

9 MR. DONOVAN: You should do that
10 calculation before you make a decision on
11 that. You may have to ask Mr. Tuvel to
12 give us a day or two.

13 MR. BELL: I think that's pushing
14 the timetable.

15 MR. DONOVAN: Understand the 62
16 days. I don't want to get involved in
17 whether there's a SEQRA determination and
18 when that clock starts to run. I would
19 rather put that out in the forefront.

20 If the Board is inclined to wait,
21 we do ask you to give us some additional
22 time. I'm not asking you to decide right
23 now.

24 MR. TUVEL: I'll wait to hear what
25 the Board wants to do. Based on that, I

2 can always consult with my client.

3 CHAIRMAN SCALZO: Hang on. Counsel,
4 we're kind of getting hamstrung by not
5 having an August meeting.

6 MR. DONOVAN: You could have a
7 special meeting or you could ask Mr.
8 Tuvel to give us a day.

9 CHAIRMAN SCALZO: We're not there
10 yet.

11 Mr. Tuvel, would you be opposed to
12 giving the Board an additional day?

13 MR. TUVEL: I'll ask the client.
14 It's not up to me. That's more of a
15 business decision.

16 CHAIRMAN SCALZO: We have two
17 options. In this instance we can leave
18 the public hearing open, and in that
19 instance we'll get our day anyway.

20 MR. TUVEL: That's fine. We'd be
21 happy to consent to give you the extra
22 day.

23 CHAIRMAN SCALZO: We may finish
24 tonight. I'm not saying we're going to.

25 MR. TUVEL: Again, like I said, all

2 those extensions, I always confer with
3 the client. I don't think it's a
4 problem. It's not a problem. I don't
5 like answering it like that. It's not a
6 problem.

7 CHAIRMAN SCALZO: It's now
8 memorialized in our minutes.

9 You got that, Michelle?

10 MS. CONERO: I did.

11 CHAIRMAN SCALZO: Folks, my fellow
12 Board Members, I don't believe keeping
13 the public hearing open is going to give
14 us any additional information.

15 MS. REIN: I agree.

16 CHAIRMAN SCALZO: In that instance,
17 I'll look to the Board for a motion to
18 close the public hearing.

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

21 MR. MASTEN: I'll second it.

22 CHAIRMAN SCALZO: Only because I
23 was looking that way. We have a motion
24 from Mr. Bell. We have a second from Mr.
25 Masten. All in favor?

2 MR. POLITI: Aye.

3 MR. EBERHART: Aye.

4 MR. HERMANCE: Aye.

5 CHAIRMAN SCALZO: Aye.

6 MR. BELL: Aye.

7 MR. MASTEN: Aye.

8 MS. REIN: Aye.

9 CHAIRMAN SCALZO: Those opposed?

10 (No response.)

11 CHAIRMAN SCALZO: Not that Counsel
12 led us there. Before he even started his
13 statement, I had some legal questions
14 myself that I need some help with
15 clarifying with regard to portions of the
16 application as well as the SEQRA process
17 in this instance. I'm only one of seven
18 here.

19 I would make a motion that we defer
20 our determination for this evening to
21 September, and that's our 63rd day. The
22 applicant has offered to give us that
23 day. I make that motion myself.

24 MR. HERMANCE: I would second it.

25 CHAIRMAN SCALZO: I made the

2 motion. Mr. Hermance seconded it. I
3 will roll on that.

4 Mr. Politi?

5 MR. POLITI: Yes, I agree with you.

6 CHAIRMAN SCALZO: Thank you.

7 Mr. Eberhart?

8 MR. EBERHART: Yes.

9 CHAIRMAN SCALZO: Mr. Hermance?

10 MR. HERMANCE: Yes.

11 CHAIRMAN SCALZO: Mr. Bell?

12 MR. BELL: Yes.

13 CHAIRMAN SCALZO: Mr. Masten?

14 MR. MASTEN: Yes.

15 CHAIRMAN SCALZO: Ms. Rein?

16 MS. REIN: No.

17 CHAIRMAN SCALZO: I am affirmative.
18 That would be six to one. We will defer
19 our determination until the September
20 meeting.

21 MR. TUVEL: Thank you.

22 A clarification, Mr. Chairman. So
23 that's fine, deferring it to the
24 September meeting. I guess Mr. Donovan
25 will provide any --

2 CHAIRMAN SCALZO: Yes.

3 MR. TUVEL: Whatever questions you
4 may have from a legal perspective, you'll
5 get that --

6 MR. DONOVAN: You have to be
7 careful with that. The public hearing is
8 closed. Your communication with me is
9 your communication with me. Any kind of
10 substantive discussion would need to
11 be --

12 CHAIRMAN SCALZO: I understand
13 that. Much to the way we used to run our
14 meetings, we used to send the public out
15 and we would ask any legal questions for
16 legal guidance. We're not looking --
17 we're not talking about certain aspects
18 of testimony that we've heard. It's
19 legal questions that we have.

20 MR. DONOVAN: For me. Right.

21 MR. TUVEL: I just assumed the
22 Board may have questions for you that
23 they want to make sure that they
24 understand before they take their vote.
25 That's all that's happening between now

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and September? That's all?

CHAIRMAN SCALZO: That's it. I appreciate it. Thank you so much.

MR. TUVEL: What's the date again?

CHAIRMAN SCALZO: September 26th.

(Time noted: 9:45 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 6th day of August 2024.

Michelle Conero

MICHELLE CONERO

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

N&N UNION, LLC & CPK UNION, LLC
Route 300, Newburgh
Section 96; Block 1; Lot 6.2
IB Zone

----- X

Date: July 25, 2024
Time: 9:45 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
DARRELL BELL
JAMES EBERHART, JR.
GREGORY M. HERMANCE
JOHN MASTEN
JAMES POLITI (recused)
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA

APPLICANT'S REPRESENTATIVE: KELLY LIBOLT

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

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CHAIRMAN SCALZO: Our final old business this evening is N&N Union, LLC and CPK Union, LLC on Route 300. This is a Planning Board referral for area variances of maximum height, 40 feet is proposed where 15 feet is allowed; the rear yard setback, 40 feet is required, 30 feet is proposed; building orientation and building materials to build a new self-storage center on the lot.

We probably got GML 239 stuff back from the County, but it doesn't matter because their time is expired, therefore we can hear you.

Mr. Politi is going to recuse himself from this application.

Jim, we'll give you the high sign when we're ready to get you back here.

(Whereupon, Mr. Politi left the room.)

CHAIRMAN SCALZO: You weren't here last month, Donna, so let me help you

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out. This is in a zone that does not -- well, this is IB. As an example, if you drive up the Route 9W corridor, you will see facilities such as what they're trying to build now. However, that's a different zone. That's why they're here. They're looking for that.

I'm going to let you go through a quick one because Donna wasn't here last month.

MS. LIBOLT: You're going to applaud me for doing a two-minute presentation.

MS. REIN: I read all the information. A two-minute presentation will work.

MS. LIBOLT: Very good.

We're here to seek four area variances. I think everyone knows the property. This is behind Cosimo's.

Is it okay if I stand over there?

CHAIRMAN SCALZO: You can.

MS. LIBOLT: This is 300, this is Orr, this is Cosimo's, the little retail in the back. This is that piece that's in the back. It's heavily wooded right

2 now, so you wouldn't know that parcel was
3 there. It's about 11 acres.

4 We're seeking four variances. They
5 mostly pertain to side yard and rear yard
6 setbacks. All of these yards have changed
7 because we're proposing a subdivision of
8 this lot and this lot, therefore it
9 causes the front yard, the rear yard and
10 everything to change. Typically the
11 front yard would have been the yard on
12 300, but now the front yard is on Orr. I
13 just wanted to make that clarification.

14 The first two area variances that
15 we're seeking have to do with the
16 orientation of the small storage
17 buildings, the garage-style storage
18 buildings. The code reads that where
19 possible, the buildings that face the
20 street should be of masonry material and
21 the short side should also face the
22 street. In this particular scenario,
23 we're proposing the garage-style and
24 they're parallel to the street. We gave
25 you -- I'm not going to go through all

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the details. We gave you other examples in the area where it's a similar type of building.

They're 136 feet set off from Orr.

In addition, my client, the applicant, other than the truck stop, they own all the properties on Orr, and it's a dead end. I think that section of the code is if you're on a through road, there's a lot of traffic, people are looking at the buildings, they don't like the aluminum. In this scenario, Orr is a dead end and they own the balance of the property. They own both sides of the street. Those are the first two variances. In addition, in the code it says where possible. We thought to err on the side of caution, the code officer had indicated that we should seek a variance for this.

The second two area variances are for the rear yard setback and the height of the building. Again, Orr is the front. This side of the property that is

2 adjacent to Lowe's would be the rear
3 yard. 40 foot is required. We're
4 proposing 30 feet. Some of the evidence
5 that we provided was some pictures of
6 Lowe's. That side of the Lowe's is like
7 the backside of the building. It's
8 really just a parking lot. There's a
9 huge wall that they have there. There's a
10 concrete fence kind of wall that they
11 have there. Also, the grade difference
12 between the two properties is almost 9
13 feet. This is elevation 350 and we're at
14 341. There's a big drop. It's pretty
15 heavily wooded through there. Some of
16 the trees we're going to remove. There
17 are trees still on Lowe's property on the
18 bottom side that would afford them some
19 of that protection. That's the rear yard
20 setback. We're asking for a variance of
21 10 feet.

22 Lastly is the height of the
23 building. This particular building, your
24 code says that storage can only be 15
25 feet. I think you would probably know

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better than I. I think it was intended years ago, before these types of storage facilities were designed, where you have temperature-controlled self-storage. We're asking for 40 feet. That height restriction isn't in this zoning district, it just pertains to storage facilities. In the zoning district it's clear as you drive around that you can have 40-foot buildings. In fact, if this was an office building, if it was retail, it could be 40 feet. What we did is we tried to design the building so it mimics an office building. These colors didn't print well, but it would look like brick. This is the side that would face Orr. It is setback more than 150 feet from the road. There's going to be landscaping and so forth. We just wanted to provide you with this elevation so you could get a sense of what we're talking about. There are certainly other buildings in the area. This isn't out of character. We did provide you with some photos of

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some other buildings. Again, they're retail and other uses. We believe it's consistent with the character of the neighborhood.

I know that it's late. I'm not going to go into a ton of detail. We did provide you with the threshold test for all of these variances that we sought.

I'm happy to answer any questions that you have.

CHAIRMAN SCALZO: Thank you very much. This zone obviously, as was just presented to us, does not allow that building height for self-storage.

Mr. Mattina, I'm going to put you on the spot for a second. As I drive north on 9W, which is in a completely different zone, as you approach Mary Jane's Ice Cream, there's a brand new self-storage facility on the left. I want to say that building height is 31 or 32 feet. Does that sound familiar to you?

MR. MATTINA: It's been so long

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since I reviewed the plans.

CHAIRMAN SCALZO: I actually asked Siobhan to give me that information and she responded that it's 31 feet. I was hoping you would say yes.

MR. DONOVAN: Siobhan is not going to be wrong.

CHAIRMAN SCALZO: Never. As far as consistency goes, and I appreciate what we're looking at here with the way to make the building look as if it could be an office building. I'm a big fan of consistency myself. If there was another self-storage facility that was 40 feet in the Town and you could point to me it, I may think differently. Again, I'm one of seven people. I think you can name that tune, if you will, in less than 40 feet. I don't want to say I'm capping myself at 31, 32 feet. What can you do? Can you still maintain the three-story or three floors is my assumption.

MS. LIBOLT: It's three floors. I know the location you're talking about.

2 I think it's a U-Haul. I don't know what
3 the max height is permitted in that
4 district and what they did, so it's hard
5 for me to respond to that. I know you
6 know construction, and it's pretty tough
7 when you have HVAC units and so forth and
8 steel, this is going to be a steel
9 building, to try to get it under that
10 height. I think it would be pretty tough
11 for me to answer that tonight. The
12 architects have done their work to try to
13 keep this to the minimum that we could
14 present to you.

15 CHAIRMAN SCALZO: Are you looking
16 at 12-foot floor to ceiling on each
17 floor?

18 MS. LIBOLT: I think that's what it
19 is.

20 CHAIRMAN SCALZO: That bring it to
21 36.

22 MS. LIBOLT: In fact, there's a
23 little parapet here, just to give it some
24 presentation. This side is 38. I know
25 that you're probably exactly spot on, the

2 36 foot with the 12-foot floors.

3 CHAIRMAN SCALZO: Okay. Again, I'm
4 one of seven.

5 MS. LIBOLT: Also, in that area --
6 I know the area. I used to live in the
7 Town of Newburgh. That area that you're
8 talking about, there are a lot of lower
9 buildings in that particular area. What
10 we were trying to do is illustrate that
11 there are other buildings along 300 that
12 are higher and taller.

13 CHAIRMAN SCALZO: The vitamin joint
14 right out in front, any idea how tall
15 that is?

16 MS. LIBOLT: I think that's one
17 story. I don't know what the height is.

18 CHAIRMAN SCALZO: Other than that
19 and the other variances that you're
20 seeking, because you're backing up to
21 Lowe's on the other side, the elevation
22 change as well, they're just not
23 resonating with me. That's just me.

24 I'm going to actually look to Ms.
25 Rein. Do you have any questions or

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comments regarding any of the variances that are being asked for?

I'm just stuck on the height here.

MS. REIN: I don't. I'm just thinking back as to what I read. I don't have any questions.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: No.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: No.

CHAIRMAN SCALZO: Mr. Hermance?

MR. HERMANCE: No.

MR. EBERHART: I'm good.

CHAIRMAN SCALZO: Okay. You folks, I feel as though -- do any members of the public wish to speak about this application?

(No response.)

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

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

MR. EBERHART: I'll second it.

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

5 MR. EBERHART: Aye.

6 MR. HERMANCENCE: Aye.

7 CHAIRMAN SCALZO: Aye.

8 MR. BELL: Aye.

9 MR. MASTEN: Aye.

10 MS. REIN: Aye.

11 CHAIRMAN SCALZO: Those opposed?

12 (No response.)

13 CHAIRMAN SCALZO: Very good.

14 So these are, Counsel, Type 2?

15 MR. DONOVAN: This is an Unlisted
16 action.

17 CHAIRMAN SCALZO: Therefore we need
18 to issue a negative declaration for
19 SEQRA?

20 MR. DONOVAN: That's correct. It's
21 an Unlisted action. You're not approving
22 any building. Also, there will be a
23 separate SEQRA review by the Planning
24 Board which will be no less protective of
25 the environment than this review is.

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You're only voting on SEQRA relative to the variances in front of the Board.

CHAIRMAN SCALZO: Okay. So with regard to this Unlisted action under SEQRA, if the Board is going to make a motion to approve this application, we will need the motion for a negative declaration.

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

MR. MASTEN: I'll second it.

CHAIRMAN SCALZO: We have a motion for a negative declaration from Mr. Bell. We have a second from Mr. Masten. All in favor?

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

CHAIRMAN SCALZO: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Those opposed?

(No response.)

CHAIRMAN SCALZO: Now we can move

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on to our criteria and discuss the five factors we're weighing, the first being whether or not the benefit can be achieved by other means feasible to the applicant.

MR. BELL: No.

MS. REIN: Not for what they want.

MR. BELL: Not for what they're looking at, no.

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

MR. EBERHART: No.

MR. HERMANCE: No.

MR. BELL: No.

MR. MASTEN: No.

MS. REIN: No.

CHAIRMAN SCALZO: It doesn't seem that way, especially with where it is.

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

MS. REIN: Yes, I would think it's substantial.

2 CHAIRMAN SCALZO: Okay. Mr.
3 Eberhart has his eyebrows up.

4 MR. EBERHART: No.

5 CHAIRMAN SCALZO: That's the beauty
6 of being on a board of multiple people.

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

10 MR. EBERHART: No.

11 MR. HERMANCE: No.

12 MR. BELL: No.

13 MR. MASTEN: No.

14 MS. REIN: No.

15 CHAIRMAN SCALZO: I don't think so.
16 I'm sure they're going to mitigate that
17 with all kinds of drainage.

18 Fifth, whether the alleged
19 difficulty is self-created, which is
20 relevant but not determinative. Of
21 course it's self-created.

22 Now, if the Board approves, it
23 shall grant the minimum variance
24 necessary and may impose reasonable
25 conditions. Not that I'm lobbying for

2 anything. My observation of it being
3 taller than other facilities, I'm going
4 to look to the Board here. Are there any
5 restrictions that you'd like to impose on
6 this or do you want to let it fly as the
7 application states?

8 MS. REIN: I don't like the height.
9 I don't like the variance for it to be
10 higher.

11 CHAIRMAN SCALZO: What do you think
12 reasonable would be?

13 MS. REIN: Well, it should be
14 consistent with the other buildings
15 around it.

16 CHAIRMAN SCALZO: The other
17 buildings around it are taller. Lowe's,
18 as an example, is. The one I was talking
19 about on 9W is miles from there.

20 MS. REIN: The buildings out front
21 are smaller. The vitamin place, Spectrum.

22 MR. BELL: This is further back.
23 You won't be able to see it from that
24 location.

25 CHAIRMAN SCALZO: With that in

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mind, Ms. Rein, you can make a motion with certain restrictions with regard to height and we'll roll the dice. If it passes, it passes.

MR. DONOVAN: My only suggestion is there needs to be a reasonable -- I don't know that you can just pick a number, make it 38.5 feet, if you don't know how that can be built. They'd have to go back to the drawing board.

MS. REIN: I don't know what would be reasonable. I don't. I don't know what the buildings out front are. Everybody is saying this is back more towards Lowe's. The buildings out front are, what did you say, 31. I don't know.

CHAIRMAN SCALZO: I'm not sure of the buildings in front.

MR. BELL: No. That's totally miles and miles and miles away from here. He's talking about 9W versus 300. Bad comparison.

CHAIRMAN SCALZO: Perhaps my observation was misguided because that's

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not the neighborhood we're in.

MS. REIN: Because I live off 9W. I know what you're talking about and I know exactly where this is going. I was looking at it from a different perspective, that it should be consistent with the buildings on the outside. As you're saying, it's right near Lowe's. Lowe's is definitely much taller and it's hidden in the back. Maybe it's not an issue.

CHAIRMAN SCALZO: Okay. I appreciate your position.

Again I'll look to the Board for any type of motion.

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

CHAIRMAN SCALZO: As it stands?

MR. EBERHART: As it stands.

MR. BELL: Second.

CHAIRMAN SCALZO: We have a motion for approval from Mr. Eberhart. We have a second from Mr. Bell. I'm going to roll on that.

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Mr. Eberhart?

MR. EBERHART: Yes.

CHAIRMAN SCALZO: Mr. Hermance?

MR. HERMANCE: Yes.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: Yes.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: Yes.

CHAIRMAN SCALZO: Ms. Rein?

MS. REIN: Yes.

CHAIRMAN SCALZO: And Mr. Scalzo is
voting no.

The motion still carries. We are
good. You got what you needed.

MS. LIBOLT: Thank you very much.

(Time noted: 10:00 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 6th day of August 2024.

Michelle Conero

MICHELLE CONERO

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

ANA & RAFAEL AGUERO
4 Marlene Court, Newburgh
Section 111; Block 2; Lot 3
R-1 Zone

----- X

Date: July 25, 2024
Time: 10:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

2 CHAIRMAN SCALZO: Folks, I just
3 have a couple other items for other Board
4 business. We have Ana and Rafael Agüero,
5 4 Marlene Court in Newburgh, requesting a
6 variance extension. The variances were
7 approved at the December 2023 meeting.
8 They're running into issues.

9 My own opinion is granting an
10 extension is not detrimental to us in any
11 way, shape or form.

12 I will make a motion for granting
13 the extension for Ana and Rafael Agüero.

14 MS. REIN: I'll second.

15 CHAIRMAN SCALZO: Motion by me.
16 Second by Ms. Rein. All in favor?

17 MR. POLITI: Aye.

18 MR. EBERHART: Aye.

19 MR. HERMANCE: Aye.

20 CHAIRMAN SCALZO: Aye.

21 MR. BELL: Aye.

22 MR. MASTEN: Aye.

23 MS. REIN: Aye.

24 CHAIRMAN SCALZO: Those opposed?

25 (No response.)

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CHAIRMAN SCALZO: Motion carried.

(Time noted: 10:02 p.m.)

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

MARY DEGADO & STEPHANIE GALARZA
16 Flamingo Drive, Newburgh
Section 91; Block 4; Lot 3
R-1 Zone

----- X

Date: July 25, 2024
Time: 10:02 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

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CHAIRMAN SCALZO: The next one would be Mary Degado and Stephanie Galarza, 16 Flamingo Drive. They're requesting a variance extension. The variances were approved at the September 2023 meeting. There is no detriment to the Board by extending it.

I will make a motion for the extension.

MR. MASTEN: Second.

CHAIRMAN SCALZO: Motion by me. We have a motion and a second by Mr. Masten. All in favor?

MR. POLITI: Aye.

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

CHAIRMAN SCALZO: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

(Time noted: 10:03 p.m.)

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

WILLIAM LYNN
48 O'Dell Circle, Newburgh
Section 51; Block 1; Lot 24
R-1 Zone

----- X

Date: July 25, 2024
Time: 10:04 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

2 CHAIRMAN SCALZO: We have
3 another interesting one. I've got a
4 letter from Mr. Lynn. We heard Mr.
5 Lynn last month. Mr. Lynn is on
6 O'Dell Circle. Mr. Lynn wants to be
7 reheard.

8 Counsel, I need some guidance on
9 this. The application was denied at
10 the meeting. His letter says, "I am
11 writing to request to reappear in
12 front of the Zoning Board of Appeals
13 for the garage addition to my home.
14 I greatly appreciate the time and
15 effort the Board took to discuss my
16 application. Looking back, I realize
17 that I wasn't quite grasping the
18 option to hold the application for a
19 further meeting. With all the
20 details and questions, I feel it was
21 partially my own fault and the
22 decision was made in haste. I
23 understand there was a large list on
24 your agenda that night and I was just
25 the second of the applications to be

2 heard. I am also aware the full Board
3 was not present at the meeting, thus
4 potentially earning me less of a
5 chance for a fair vote. I have made
6 modifications to my project and I
7 hope you will consider my request to
8 bring my project in front of the
9 Board again."

10 Counsel, this one has been voted
11 upon and voted down. My black and
12 white interpretation of this would be
13 that they need to reapply, however, I
14 await your --

15 MR. DONOVAN: I'll skip to the end.
16 I agree. Do you remember we had the
17 other fellow whose name was so and so.
18 There's a little twist in the law. I
19 think it might be the same with this guy,
20 but he changed his application. If there
21 is a motion to approve that doesn't pass,
22 within 62 days the person can come back
23 and ask for a revote. It's got to be a
24 motion to approve that doesn't pass.
25 It's the same application.

2 CHAIRMAN SCALZO: This is not the
3 same application. They made modifications.

4 MR. DONOVAN: There's also a
5 provision -- let's say it was voted down.
6 They cannot make an application for a
7 rehearing in which you have to
8 unanimously approve the rehearing in
9 order for there to be a new hearing.
10 Skipping to the end again, this is
11 different. The guy said he made changes.
12 It's a new application.

13 CHAIRMAN SCALZO: That's exactly
14 what I was hoping to hear you say,
15 Counsel.

16 MS. REIN: He has to send us a new
17 application.

18 MR. DONOVAN: Pay a new fee.

19 CHAIRMAN SCALZO: However,
20 procedurally we need to vote to not
21 entertain a rehearing, and then Siobhan
22 will direct the applicant to reapply.

23 Does somebody want to say that?

24 MR. POLITI: I do.

25 CHAIRMAN SCALZO: Mr. Politi.

2 MS. REIN: I'll second it.

3 CHAIRMAN SCALZO: We have a second
4 from Ms. Rein. All in favor?

5 MR. POLITI: Aye.

6 MR. EBERHART: Aye.

7 MR. HERMANCENCE: Aye.

8 CHAIRMAN SCALZO: Aye.

9 MR. BELL: Aye.

10 MR. MASTEN: Aye.

11 MS. REIN: Aye.

12 CHAIRMAN SCALZO: Those opposed?

13 (No response.)

14 CHAIRMAN SCALZO: Motion to
15 adjourn.

16 MS. REIN: Yes.

17 MR. BELL: The minutes.

18 CHAIRMAN SCALZO: Michelle worked
19 so diligently on our minutes from last
20 month. I'll look to the Board for a
21 motion to approve the June meeting
22 minutes.

23 MR. POLITI: I'll make that motion.

24 MR. MASTEN: Second.

25 CHAIRMAN SCALZO: I'll call Mr.

2 Politi's motion and Mr. Masten's second.
3 All in favor?

4 MR. POLITI: Aye.

5 MR. EBERHART: Aye.

6 MR. HERMANCE: Aye.

7 CHAIRMAN SCALZO: Aye.

8 MR. BELL: Aye.

9 MR. MASTEN: Aye.

10 MS. REIN: Aye.

11 CHAIRMAN SCALZO: Motion to
12 adjourn.

13 MR. BELL: I'll make the motion to
14 adjourn.

15 MS. REIN: I'll second.

16 CHAIRMAN SCALZO: We have a motion
17 from Mr. Bell and a second from Ms. Rein.
18 All in favor ?

19 MR. POLITI: Aye.

20 MR. EBERHART: Aye.

21 MR. HERMANCE: Aye.

22 CHAIRMAN SCALZO: Aye.

23 MR. BELL: Aye.

24 MR. MASTEN: Aye.

25 MS. REIN: Aye.

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(Time noted: 10:07 p.m.)

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