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

In the Matter of:

LAURA CHAPMAN
8 Pacer Drive
Section 56; Block 3; Lot 30
R-2 Zone

-----X

VARIANCE

Date: August 26, 2021
Time: 7:01 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York 12550

BOARD MEMBERS: DARRIN SCALZO, Chair
DARRELL W. BELL
GREG HERMANCE, SR.
JOHN D. MASTEN

ALSO PRESENT: DAVID A. DONOVAN, ESQ., Board Counsel
SIOBHAN JABLESNIK, Board Secretary
GERALD CANFIELD, Building Inspector

APPLICANT: LAURA CHAPMAN

Reported by: Kari L. Reed

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

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Proceedings

CHAIR SCALZO: I'd like to call the meeting of the ZBA to order. The order of business this evening are the public hearings as scheduled. The procedure of the Board is that the applicant will be called on to step forward, state the request and explain why it should be granted. The Board will then ask the applicant any questions they may have, and then any questions or comments from the public will be entertained.

I'm going to switch up the order tonight, because we have some very basic applications and then we have a little more sophisticated applications. So after the public hearings have been completed, the Board, we may adjourn to confer with counsel regarding any legal questions we may have. The Board will then consider the applications in the order heard, and we'll try to render a decision this evening, but it may take up to 62 days to reach a determination.

I would ask if you have a cell phone to please turn it off or put it on silent. And when speaking, speak directly into the

1 Proceedings

2 microphone, as it is being recorded.

3 Roll call, please.

4 MS. JABLESNIK: Darrell Bell?

5 MR. BELL: Here.

6 MS. JABLESNIK: Greg Hermance?

7 MR. HERMANCE: Here.

8 MS. JABLESNIK: Anthony Marino is
9 absent. John Masten?

10 MR. MASTEN: Here.

11 MS. JABLESNIK: Darrin Scalzo?

12 CHAIR SCALZO: Here.

13 MS. JABLESNIK: Also present is our
14 attorney, Dave Donovan; from code compliance,
15 Gerry Canfield; and our stenographer this
16 evening is Kari Reed.

17 CHAIR SCALZO: Thank you.

18 Okay. As I mentioned, we are not
19 actually going to follow the order that's
20 posted on the agenda, we have a few -- oh,
21 thank you. Pardon me. Please rise for the
22 Pledge.

23 (Pledge of Allegiance recited.)

24 CHAIR SCALZO: So Gas Land Petroleum
25 and Farrell Industrial Park, we are going to

1 Proceedings

2 hold those for a moment. The applicant that we
3 would like to hear from at this point is Laura
4 Chapman, 8 Pacer Drive, Newburgh, seeking area
5 variances of the rear yard and increasing the
6 degree of nonconformity of the front yard to
7 build a 12 by 12 rear deck because it is a
8 corner lot.

9 Siobhan, we have mailings?

10 MS. JABLESNIK: Yeah. The applicant
11 sent out 56 mailings.

12 CHAIR SCALZO: Fifty-six?

13 MS. JABLESNIK: Fifty-six.

14 MS. CHAPMAN: I got a lot of receipts.
15 There's a lot of houses.

16 CHAIR SCALZO: There's a lot of houses,
17 yeah. I was actually just by there tonight,
18 earlier this evening.

19 I hope I captured what you're seeking
20 here. Feel free to add anything that I may
21 have missed.

22 MS. CHAPMAN: You covered everything.
23 I just need the access to get to the yard from
24 the living space out from the deck there. And
25 unfortunately with a corner lot it can't be

1 Proceedings

2 coded on any of the frontage or width from the
3 neighbor behind me.

4 CHAIR SCALZO: So as I read the Town of
5 Newburgh code compliance information provided
6 to us, the front yard, the required minimum is
7 40 feet, existing is 36.7, so that is a
8 preexisting nonconformity. The rear yard is 40
9 feet, proposing 22.3 feet, the variance is 17
10 feet. But again, it's a corner lot.

11 So at this time I would look to any
12 members of the Board here. Mr. Masten, do you
13 have any comments on this application?

14 MR. MASTEN: I have none.

15 CHAIR SCALZO: Nope. Mr. Hermance?

16 MR. HERMANCE: No. I notice it's a
17 fenced in area also, so it doesn't appear that
18 the deck would cause adverse conditions to the
19 rest of the community.

20 CHAIR SCALZO: Mr. Bell?

21 MR. BELL: No, it's all good.

22 CHAIR SCALZO: Very good. I have no
23 comments myself. I actually just said them.

24 Is there anyone here from the public
25 who wishes to speak about this application?

1 Proceedings

2 (No response.)

3 CHAIR SCALZO: All right then. One
4 last opportunity for the Board?

5 (No response.)

6 CHAIR SCALZO: Nothing, all right.
7 Then I'll look to the Board for a motion to
8 close the public hearing.

9 MR. MASTEN: I make a motion we close
10 the public hearing.

11 MR. BELL: Second.

12 CHAIR SCALZO: We have a motion from
13 Mr. Masten, we have a second from Mr. Bell.
14 All in favor?

15 (Chorus of ayes.)

16 CHAIR SCALZO: Very good. Now we are
17 going to move on to our criteria. This is a
18 Type II action under SEQRA, that is correct,
19 counsel?

20 MR. DONOVAN: Correct, Mr. Chairman.

21 CHAIR SCALZO: Thank you. The first
22 factor being whether or not the benefit could
23 be achieved by other means feasible to the
24 applicant. We're sure she doesn't do it;
25 however, the applicant explained why it's a

1 Proceedings

2 benefit here.

3 Second is an undesirable change in the
4 neighborhood character or a detriment to nearby
5 properties. However, it appears there are
6 other ones there with rear decks.

7 Third, whether the request is
8 substantial. Because it's a corner lot, it
9 appears substantial; however, if this were
10 anywhere else, it would not be.

11 Fourth, whether the request will have
12 adverse physical or environmental effects.

13 MR. MASTEN: No.

14 CHAIR SCALZO: It does not appear so.

15 And the fifth, whether the alleged
16 difficulty is self-created, which is relevant
17 but not determinative. Of course it's
18 self-created, but we can overlook that in this
19 case.

20 Having gone through the balance of
21 tests of the area variances, does the Board
22 have a motion of some sort?

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

25 MR. HERMANCE: I'll second.

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Proceedings

CHAIR SCALZO: We have a motion for approval from Mr. Bell, we have a second from Mr. Hermance. Roll call, Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIR SCALZO: Yes. Motion carried.
Your variances are approved. Good luck.

MS. CHAPMAN: Thank you.

(Time noted: 7:07 p.m)

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C E R T I F I C A T E

STATE OF NEW YORK)
) SS:
COUNTY OF ORANGE)

I, KARI L. REED, a Shorthand Reporter
(Stenotype) and Notary Public with and for the
State of New York, do hereby certify:

I reported the proceedings in the
within-entitled matter and that the within
transcript is a true record of such
proceedings.

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

IN WITNESS WHEREOF, I have hereunto set
my hand this 25th day of September, 2021.

Kari L. Reed

KARI L. REED

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

In the Matter of:

MUGHEN NAKAMURA
575 River Road, Newburgh
Section 20, Block 2; Lot 24
R-1 Zone

-----X

VARIANCE

Date: August 26, 2021
Time: 7:08 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York 12550

BOARD MEMBERS: DARRIN SCALZO, Chair
DARRELL W. BELL
GREG HERMANCE, SR.
JOHN D. MASTEN

ALSO PRESENT: DAVID A. DONOVAN, ESQ., Board Counsel
SIOBHAN JABLESNIK, Board Secretary
GERALD CANFIELD, Building Inspector

APPLICANT: MUGHEN NAKAMURA

Reported by: Kari L. Reed

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

1 Proceedings

2 CHAIR SCALZO: And again, we are going
3 to go out of order. If there is anyone here
4 representing Mughen Nakamura at 575 River Road,
5 seeking an area variance to install a 4' by 12'
6 shed in the front yard.

7 Siobhan, mailings on that?

8 MS. JABLESNIK: This applicant sent out
9 41.

10 CHAIR SCALZO: Forty-one, you're not
11 the winner tonight. It's going to be tough to
12 beat the first one, that's for sure.

13 Mr. Nakamura, please state your name.

14 MR. NAKAMURA: Mughen Nakamura.

15 CHAIR SCALZO: Perfect. And you're
16 seeking an area variance to install a 4' by 12'
17 shed on the property in the front yard.

18 MR. NAKAMURA: Yes.

19 CHAIR SCALZO: Now, obviously we've
20 been past your lot. It is topographically
21 challenging --

22 MR. NAKAMURA: Yes.

23 CHAIR SCALZO: -- to say the least.

24 MR. NAKAMURA: That's true.

25 MR. BELL: That's true it is.

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Proceedings

CHAIR SCALZO: If I've captured what your application is all about, we can move from there. If you would like to add any additional information, please do.

MR. NAKAMURA: I believe that's pretty apparent. I don't -- haven't had any yard besides what's in the front yard, due to the topo, I guess the topography of the land. And it really is going over one side of each house I can put a garden shed, which would be considered the front yard, and that shows the location which would be the least obstructive, it's behind the fence. Due to the elevation it would be not visible at all from any other property. So that would be my request.

CHAIR SCALZO: Very good, thank you. At this point, Mr. Bell, do you have any comments on the application?

MR. BELL: No, I'm good with it.

CHAIR SCALZO: Mr. Hermance?

MR. HERMANCE: No, I made the same observation, you can't see it with the fence on the side and the hill in the front.

THE ARBITRATOR: Yeah.

1 Proceedings

2 MR. HERMANCE: I don't even think it
3 would be visible from the road.

4 CHAIR SCALZO: At least not this time
5 of year.

6 Mr. Masten?

7 MR. MASTEN: No, I have none.

8 CHAIR SCALZO: Very good. At this time
9 I'd like to open it to any members of the
10 public that wish to speak about the Nakamura
11 application at 575 River Road.

12 (No response.)

13 CHAIR SCALZO: I thought we had one,
14 he's just finding a seat. Very good, okay.
15 Hearing none, I'll turn back to the Board for
16 one last opportunity. No? Then I'll look for
17 a motion to close the public hearing.

18 MR. BELL: I make a motion to close the
19 public hearing.

20 MR. MASTEN: I'll second it.

21 CHAIR SCALZO: We have a motion from
22 Mr. Bell, we have a second from Mr. Masten.
23 All in favor, say aye.

24 (Chorus of ayes.)

25 CHAIR SCALZO: Opposed?

1 Proceedings

2 (No response.)

3 THE ARBITRATOR: I didn't think so.

4 Very good. So again, just like the previous
5 application, we'll go through our area variance
6 questions. The first one, whether or not the
7 benefit can be achieved by other means feasible
8 to the applicant. Well, it may be but it's a
9 very difficult, challenging lot.

10 So the second, if there's an
11 undesirable change to the neighborhood
12 character or a detriment to nearby properties.
13 I honestly don't think you're going to see it.
14 You've got to look hard as you drive by on
15 River Road.

16 Third, whether the request is
17 substantial. It's a 4' by 12' shed. It's not
18 a very big one.

19 MR. BELL: No.

20 CHAIR SCALZO: The fourth, whether the
21 request will have adverse physical or
22 environmental effects. It doesn't appear so.

23 And the fifth, whether the alleged
24 difficulty is self-created, which is relevant
25 but not determinative. Of course it's

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Proceedings

self-created, but again, we can still move forward on that.

Now, having gone through the balance of the tests, does the Board have a motion of some sort?

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

MR. BELL: Second.

CHAIR SCALZO: We have a motion for approval from Mr. Hermance, a second from Mr. Bell. Can you roll on that, Siobhan?

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIR SCALZO: Yes.

The variances are approved. Good luck.

MR. NAKAMURA: Thank you, guys.

CHAIR SCALZO: Thanks.

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

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C E R T I F I C A T E

STATE OF NEW YORK)
) SS:
COUNTY OF ORANGE)

I, KARI L. REED, a Shorthand Reporter
(Stenotype) and Notary Public with and for the
State of New York, do hereby certify:

I reported the proceedings in the
within-entitled matter and that the within
transcript is a true record of such
proceedings.

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

IN WITNESS WHEREOF, I have hereunto set
my hand this 25th day of September, 2021.

Kari L. Reed

KARI L. REED

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

In the Matter of:

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

-----X

VARIANCE

Date: August 26, 2021
Time: 7:11 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York 12550

BOARD MEMBERS: DARRIN SCALZO, Chair
DARRELL W. BELL
GREG HERMANCE, SR.
JOHN D. MASTEN

ALSO PRESENT: DAVID A. DONOVAN, ESQ., Board Counsel
SIOBHAN JABLESNIK, Board Secretary
GERALD CANFIELD, Building Inspector

APPLICANT'S REPRESENTATIVE: DANIEL BLOOM, ESQ.

Reported by: Kari L. Reed

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

1 Proceedings

2 CHAIR SCALZO: And, well, I'm actually
3 going to go to, the next application is going
4 to be one that was held open, the Menendez
5 property at 856 River Road in Newburgh, not too
6 far from the application we just heard, seeking
7 an area variance of the rear yard for new decks
8 and, well, actually it's not to raise the roof
9 anymore, and a use variance to restore and
10 reestablish the use of a nonconforming three
11 family dwelling.

12 Siobhan, we didn't, or counsel, we
13 didn't need to renote on this; correct?

14 MR. DONOVAN: It's a continuation of
15 the public hearing.

16 CHAIR SCALZO: Very good.

17 Okay, I saw Mr. Bloom in the back of
18 the room.

19 MR. BLOOM: I'm right here.

20 CHAIR SCALZO: He's on the side of the
21 room now.

22 MR. BLOOM: I'm here, Mr. Scalzo.

23 CHAIR SCALZO: Very good.

24 MR. BLOOM: Good evening, gentlemen.
25 My name is Dan Bloom, and I represent the

1 Proceedings

2 applicant, Menendez Property. And this evening
3 I just, I have my appraiser present, and with
4 the Board's permission I'd like him to make
5 some comments to the Board. And I also have
6 the appraiser, I also have the reports,
7 financial reports from the accountant. I would
8 like to know, Mr. Scalzo, may I approach and
9 give you copies of the synopses of the
10 testimony this evening?

11 CHAIR SCALZO: Oh, you certainly can,
12 counselor.

13 MR. BLOOM: Okay. Here's the
14 testimony.

15 CHAIR SCALZO: Okay.

16 THE ARBITRATOR: This is the report for
17 the ZBA.

18 CHAIR SCALZO: Very good.

19 MR. BLOOM: And the rest of the medical
20 backdrop.

21 CHAIR SCALZO: Okay.

22 MR. BLOOM: I have a specific time line
23 coming in that time.

24 CHAIR SCALZO: Okay. Counselor, I
25 assume there were, you've anticipated seven

1 Proceedings

2 copies, but we only have --

3 MR. BLOOM: I did, I anticipated more
4 than are here.

5 CHAIR SCALZO: Okay.

6 MR. BLOOM: But certainly we'll make a
7 notation if we do.

8 CHAIR SCALZO: All right, that's fine.
9 So I'm just going to take one and pass them.

10 MR. DONOVAN: If I can, just for the
11 record, so Mr. Bloom, the counsel for the
12 applicant, has delivered to the Board four
13 different documents, the first of which is a
14 time line relative to the acquisition of the
15 property and certain things that were done at
16 certain times. He's also submitted a
17 communication from Devlin, M.D., it's some sort
18 of medical information that Mr. Bloom wants
19 into the record. There is communication from
20 Nugent & Haeussler, certified public
21 accountants, relative to this financial
22 information that Mr. Bloom wants submitted in
23 the record. And there's also an appraisal
24 prepared by Eldred Carhart relative to the
25 value of the property, all of which have been

1 Proceedings

2 submitted for distribution to the Board.

3 MR. BLOOM: Okay.

4 CHAIR SCALZO: Give me one moment, sir,

5 MR. BLOOM: Absolutely.

6 CHAIR SCALZO: I'm just going to pass
7 these out.

8 There might be two there, but you're
9 okay, you can hang onto them.

10 MR. MASTEN: All right.

11 CHAIR SCALZO: All right, Mr. Bloom, we
12 appear to have everything in our hands. Please
13 proceed.

14 MR. BLOOM: Yes, thank you very much.
15 As you know, this is the application of my
16 client, Menendez Property. My client actually
17 is, yeah, she was a member of the LLC. And
18 she's seeking a use variance this evening, as
19 the record will indicate, to restore the three
20 family classification of the property in
21 question, which was lost, according to the
22 Notice of Violation she received, because she
23 purchased the property in August of 2018 and
24 did not construct or renovate the three family
25 within the one year period necessary, so the

1 Proceedings

2 position of the town was that that constituted
3 a violation and it lost its preexisting
4 nonconforming three family use in a one family
5 zone. So with that I contacted our appraiser,
6 Eldred Carhart. I asked him to do an appraisal
7 of the property in order that we could make an
8 application for this use variance, which, as
9 everyone knows, we have the burden of proving
10 that my client cannot obtain a reasonable
11 return on her investment unless that three
12 family classification is reinstated. So with
13 that in view, and with your permission,
14 Mr. Chairman, I was going to call Mr. Carhart
15 to testify at this time as to by way of
16 summarizing his report and his findings
17 contained in his appraisal.

18 CHAIR SCALZO: Certainly.

19 Mr. Carhart.

20 MR. BLOOM: Oh, Mr. Scalzo, may I
21 remain next to the expert?

22 CHAIR SCALZO: Absolutely.

23 MR. BLOOM: And counsel him as
24 necessary? Thank you.

25 CHAIR SCALZO: Not a problem.

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Proceedings

MR. CARHART: Good evening. My name is Eldred Carhart. And I'm 81 years old. And I was born and raised in the Town of Newburgh in the hamlet of Balmville. We lived on Balmville Road, a couple doors away from the church. Well, it's not a little church anymore. And I'm very familiar with the property in question. And I would like to say that as a young man I spent a lot of time on the Rose Road or what's now River Road. And we used to ride on down through Roseton, where it was, the Rose Brick Company was built and the surrounding neighborhood was built for the Rose employees. And we have been by the Menendez property countless times. Went to the Beau Rivage restaurant there. I know some of you recognize the name. And that's, Passau ran that. And I'd just like to say that before we get started that I'm really familiar with the area. And so I'll leave it at that.

On page one of my report here there's a survey. This shows it's 1.995 acres. But effectively there really isn't 9.9, or 1.995 acres, there's really only about 15 or 20,000

1 Proceedings

2 square feet. And the rest of it is such a
3 downhill, steep downhill grade that it's really
4 not even usable. I'll get to that in a second.

5 The next page is on the photos of the
6 front and rear. And you can see from the rear
7 of that photo that that is very steeply graded.

8 The third page is a property
9 description. I don't think that you need me to
10 worry you with the details of that. But the
11 first level would have -- of the layout would
12 have two duplex apartments consisting of a
13 living room, kitchen, three bedrooms and bath
14 each, and the second level would have one
15 apartment consisting of a living room, kitchen,
16 three bedrooms and bath. And the real estate
17 value estimates that I have placed on these
18 apartments are 2,500 a month for each apartment
19 on the first floor, and the second floor would
20 be 3,000 a month. So the rent would be 8,000
21 total, \$96,000 a year, excluding vacancies.

22 On the next page I have indicated where
23 the property is, in an RA, R-1 zone, and just
24 where that property is. And in the R-1 zone
25 the permitted uses are a single family dwelling

1 Proceedings

2 not to exceed one dwelling per lot. And that
3 is a -- the only, other than the municipal
4 building, town activities, that is the only use
5 that's permitted in the zone. Accessories uses
6 are listed.

7 And then on the next page, the use is
8 subject to site plan review by the Planning
9 Board, include the conversion of existing
10 dwellings for multifamily use in accordance
11 with subsection 185-25, cluster developments in
12 accordance with 185-26, and membership clubs
13 providing recreational facilities in accordance
14 with 185-29, places of worship, related parish
15 houses, seminaries, dormitories, and related
16 activities; prior substance abuse,
17 rehabilitation homes; six is community
18 residences for disabled. Seven is for marinas.
19 In accordance with 185-34, public utilities
20 structures and right-of-way. I never did
21 figure out what that was all about, but I
22 listed it anyway. Two family dwellings not to
23 exceed two dwelling units per lot. And ten is
24 a semi-detached building not to exceed two
25 dwellings per lot.

1 Proceedings

2 And then the next page has got the
3 dwellings --

4 CHAIR SCALZO: Regulations.

5 MR. CARHART: Regulations. And they're
6 pretty hard to put on eight and a half by
7 eleven pages, but I tried to do the best I
8 could.

9 Okay. And then we now go to proof of
10 unnecessary hardship. The application could
11 not -- the applicant could not realize a
12 reasonable return provided the lack of rent is
13 substantial as demonstrated by competent
14 financial evidence. A single family residence
15 is the only use permitted by right in an R-1
16 zoning district.

17 The Menendez Property LLC purchased
18 this property on July 31st, 2018 for \$210,000
19 and have owned it for the last three years.
20 Including the purchase price, they now have
21 \$447,931 invested in the property, and so far
22 have not had a single cent of income.
23 Potentially it will have an income of \$96,000,
24 which is a reasonable return on the investment.
25 To me that demonstrates a substantial lack of

1 Proceedings

2 return. Nor will they, nor will they even if
3 this, even if this variance is not granted.

4 The following analysis was prepared or
5 provided by the owner's accountants, Nugent &
6 Haeussler, Christopher E. Melley, CPA, 101
7 Bracken Road, Montgomery, New York. I have
8 reviewed this analysis and I concur with the
9 findings and hereby incorporate it in the
10 testimony this evening. I have a cover letter
11 from Nugent & Haeussler, Chris Melley. And in
12 the last, this next, second paragraph they have
13 used a six percent capitalization rate to
14 determine cash, the value of the property based
15 on its cash flow. And they have attached a
16 summary of projected revenue with expenses as a
17 single family property as well as a three
18 family property. And these, these summaries
19 are reflected in the attached document to
20 determine an estimated value. The calculation
21 shows a devaluation of over \$800,000, a
22 substantially inadequate return on per
23 investment. And the analysis here is a single
24 family home which rents, would rent for about
25 \$3,500 a month or \$42,000 a year, versus the

1 Proceedings

2 \$96,000 that I had projected. And then
3 operating expenses of \$31,000 and 241,292 for
4 the second single family home and \$36,029 for
5 the three family home, showing net cash flows
6 for the two of them of 10,708 for the one
7 family house, and 59,971 for the three family,
8 capitalized at six percent is 140 -- or
9 \$178,467 for the single family home, and
10 999,508 -- 17 dollars for the three family
11 home. That's how they came up with a value of
12 the \$800,000 figure.

13 This is the subject of site plan
14 approval by the Planning Board. Conversions of
15 existing dwellings for multifamily use in
16 accordance with paragraph 185-25, which calls
17 for a minimum lot size of \$40,000 for the first
18 house and/or unit, and \$20,000 for each
19 additional unit.

20 The three family dwelling actually
21 exists, and there does not need to be converted
22 from any other structure. In addition, it
23 meets the square foot requirements in paragraph
24 185-25.

25 By paragraph five and paragraph six, I

1 Proceedings

2 have lumped them together, both of these uses
3 require 60,000 square foot minimums, which the
4 subject property has. However, both of these
5 uses require renovations to the structure for
6 handicap access, apartment doorways, bathrooms,
7 et cetera, and by the rules and regulations of
8 New York State and Orange County, creating more
9 of a financial hardship to the property if they
10 grant the requested variance.

11 In addition to these complications, the
12 location itself creates a hardship for these
13 uses. The steep decline of the rear yard,
14 reference that photo, effectively reduces the
15 usability of the site to approximately 15 to
16 20,000 square feet. In addition, the sharp
17 turns, if you're familiar with Rose Road,
18 there's some very sharp turns. In fact, they
19 have 20 mile an hour speed limits on the turn
20 past the subject property. And the property
21 right across the street is very steep rock, so,
22 the bedrock. In addition to the sharp turns on
23 Rose and Gross Street and the steep banks
24 opposite the subject, also combine to make this
25 location undesirable for the substance abuse

1 Proceedings

2 rehabilitation or to community residences for
3 the disabled. The associated uses do not
4 effect the use of -- the use as a three family
5 residence.

6 The following number of paragraphs do
7 not meet the minimum lot requirements.

8 Three, do you want me to read these?

9 CHAIR SCALZO: Actually, no. We were
10 just about to say, this is actually very
11 comprehensive, it's one of the best ones I've
12 seen. So for our purposes --

13 MR. CARHART: Okay.

14 CHAIR SCALZO: -- honestly, just your
15 going through the brief paragraph that you
16 started with is good enough for me. But I do
17 appreciate hearing it and it allows me to
18 understand it better and I do appreciate that.

19 MR. CARHART: These are the ones that
20 are listed are not applicable.

21 CHAIR SCALZO: Sure.

22 MR. CARHART: And then I have my
23 signature and a copy of my appraiser's license.

24 CHAIR SCALZO: Very good.

25 MR. CARHART: So if you have any

1 Proceedings

2 questions for me, I would be more than happy to
3 try to answer them.

4 CHAIR SCALZO: well, thank you very
5 much. I don't any questions myself. Anyone
6 from the Board have any questions for Mr.
7 Carhart?

8 MR. MASTEN: I have nothing.

9 MR. BELL: No, I'm good.

10 MR. HERMANCE: No.

11 CHAIR SCALZO: Okay. Thank you, sir.
12 Mr. Bloom.

13 MR. BLOOM: Yes. Mr. Scalzo, based
14 upon the testimony of Eldred Carhart, who
15 incorporated into his report the report of my
16 client's CPAs, Nugent & Haeussler, I would just
17 request five minutes to summarize for the Board
18 and then entertain any additional questions
19 that you may have.

20 CHAIR SCALZO: Regarding the appraisal
21 or --

22 MR. BLOOM: Regarding the entire
23 presentation.

24 CHAIR SCALZO: Oh, okay. Mr. Bloom,
25 that would be fine, keeping in mind that we

1 Proceedings

2 have heard a few months ago we were --

3 MR. BLOOM: I know you were totally
4 familiar with that, correct.

5 CHAIR SCALZO: Okay.

6 MR. BLOOM: And that's why I was --
7 this is going to be a long night for you
8 gentlemen, I'll shorten it as much as I can.
9 Again, I do want to cover the bases.

10 CHAIR SCALZO: Very good.

11 MR. BLOOM: So I just want to
12 respectfully submit that the testimony that you
13 just heard from Mr. Carhart, and he outlined it
14 I think in very great detail in his report,
15 substantiates the fact that my client has
16 complied with the requirements of the use
17 variance in New York State and that it was
18 something that occurred beyond her control.
19 She was not responsible for changing it from a
20 three family to a two. It was a three family
21 when they purchased it in August of 2018. And
22 then she, as you can see by the chronological
23 time line I submitted on her behalf, from that
24 date, August of 2018, until March of this year,
25 she and her husband were in town hall and out

1 Proceedings
2 of town hall for one permit after another, and
3 never once were they told that the clock was
4 ticking on the loss of the preexisting
5 nonconforming use as a three family. Now, I
6 make that statement not for the purpose of
7 casting any aspersions on anyone. You've got
8 to realize the context. This occurred at a
9 time when COVID came into play. Town hall was
10 open on a minimal basis. I know from my own
11 experience and my own practice there were days
12 when I'd go home and I couldn't even remember
13 what I did that day. It was that type of an
14 existence for everyone. And so all I'm
15 suggesting to the Board is that it was the
16 perfect storm. It was COVID. It was the fact
17 that they weren't notified that the clock was
18 ticking, and why should they be, the town
19 itself was trying to survive and serve the rest
20 of the public at the same time. They're not
21 combing over details about when houses were
22 built and when they went vacant, et cetera.
23 But the fact is, it happened. And the fact is,
24 my client didn't realize it was happening.
25 when they did, they immediately came to this

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Board and they're seeking relief from this Board in these unusual circumstances.

And I respectfully submit to the Board that she has met all of her obligations under the requirements for the issuance of the use variance, if that's the position of the Board. And included in the documentation is a report from her physician which documents that in this whole period of time, nine months of it my client was dealing with brain cancer. It's been a terrible ordeal for them. And placing that in, and I realize that's not a for a use variance, but taking that and placing what else has happened here in the context of that, of those facts, I respectfully suggest that it would justify the Board granting a use variance under these circumstances. They didn't create the problem. They received the problem. It doesn't change the character of the neighborhood, as noted by the appraisal of Mr. Carhart. In fact, it's been there for over a hundred, almost a hundred years. It's a beautiful portion, part of the culture of Newburgh and will be if my client is allowed to

1 Proceedings

2 complete the renovations that they would like
3 to. Thank you.

4 CHAIR SCALZO: Thank you. Stay right
5 there, Mr. Bloom. So I have a few questions
6 for you.

7 MR. BLOOM: Sure.

8 CHAIR SCALZO: What we're looking at
9 here is there was a three family use let's just
10 say three years ago. We're looking for a
11 continuation of that use even though the lapse
12 of a year has created the issue that we are
13 standing here for. The initial application had
14 also included that the applicant was looking to
15 put a fourth, an additional story on this
16 building. That, as far as I was to know, that
17 was the --

18 MR. BLOOM: Withdrawn, it's withdrawn.

19 CHAIR SCALZO: Okay, very good. And so
20 that was one of my -- I mean, we've got
21 testimony and we've got plenty of information
22 here, that in my opinion substantiates
23 everything that you're saying.

24 MR. DONOVAN: Mr. Chairman, may I just
25 interrupt for a second?

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CHAIR SCALZO: Please do.

MR. DONOVAN: Gerry, I haven't seen you in over a year, so am I allowed to ask you a question tonight?

MR. CANFIELD: Absolutely.

MR. DONOVAN: Do we know with certainty when the preexisting nonconforming use lapsed, do we know exactly? Mr. Bloom has indicated that it was a legal three family when his client purchased the property in August 2018. Do we know if that's true?

MR. CANFIELD: We would have to go by the assessor's records, what they were at that time. The deed and everything that's here indicates it was a three family. The applicant has testified, the applicant's representative has testified they purchased it as a three family. I don't have in front me of the assessor's card to see, back in 1900 when the house was built they didn't keep records as we do today. There probably wasn't even a building permit or a C of O for it.

I know this has been held over several months because of several different delays.

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However, to answer in short I don't have the answer to that question at 2018 what it actually was, other than the testimony that we've heard.

MR. DONOVAN: So the reason, I'm sorry, Mr. Chairman, the reason I asked that question is obviously, as this Board knows, you've been down this road before, what a difficult standard a use variance is. It's not the balancing test for area variances. It's four criteria, each of which have to be satisfied. If one of which is not satisfied, you cannot issue the use variance. Another alternative is an interpretation that perhaps the preexisting status did not lapse because there were good faith efforts, if in fact when the property was purchased it was a legal three family. I'm sorry, I'm looking at you Gerry, and then there were good faith efforts to do work that were trumped, truncated, whatever the right word is, by health and COVID. Is there a reasonable interpretation that could be reached that there was a total or a continuance of the status. I just leave that as a suggestion only because,

1 Proceedings

2 as I told you before, anything you do does set
3 a precedent, so you always need to be careful,
4 you know, so, and you need to really be careful
5 on the four criteria. You know, we've had
6 these variances before. I think in my years
7 here we've granted one. So I just, I put that
8 out there as an alternative. And then I think
9 the date would be important, I think. My
10 suggestion to you.

11 CHAIR SCALZO: I would agree with you,
12 counselor. And we've all been to the site.
13 Actually Mr. Hermance and I were there at the
14 same time, and both of us took notice that were
15 multiple, I want to say probably upwards of
16 five, meters, electric meters on the side. So
17 obviously that to me would indicate that
18 obviously it was multifamily dwelling to begin
19 with. Plus the sheer size of it. However, if
20 code compliance, the building department can
21 supply us with that, with the most recent
22 information that they have on it, that would
23 certainly be helpful to us.

24 MR. BLOOM: Mr. Scalzo, may I make a
25 remark at this point?

1 Proceedings

2 CHAIR SCALZO: Absolutely.

3 MR. BLOOM: My clients have been paying
4 three family taxes on it from the date they
5 bought it, and they pay four utility bills for
6 those separate meters to Central Hudson, since
7 they bought it.

8 CHAIR SCALZO: Thank you.

9 MS. MENENDEZ: Do you want to see?

10 MR. BLOOM: It's all right.

11 MR. DONOVAN: We believe you, Dan.

12 CHAIR SCALZO: Okay, in this instance
13 I, counselor, thank you very much for the
14 counsel, but I would really, my opinion is that
15 I prefer to see what the building and code
16 compliance can come up with for us. So does
17 anyone from the Board have anything to add to
18 that?

19 MR. HERMANCE: I believe that if they
20 can provide us with better information to make
21 a decision on it, certainly, absolutely.

22 CHAIR SCALZO: This is a public
23 hearing. Is there anyone here from the public
24 that wishes to speak about this application?

25 (No response.)

1 Proceedings

2 CHAIR SCALZO: All right. I'm going to
3 look to the Board in this case. I feel as
4 though I would need a little bit more
5 information, but I'm not sure that it still
6 needs to maintain that the public hearing
7 remains open. Counselor, am I right?

8 MR. DONOVAN: Well, so my suggestion if
9 there's new information coming in that the
10 public should have the ability to comment on
11 new information, that's all.

12 CHAIR SCALZO: Very good.

13 MR. DONOVAN: I mean, no one has been
14 here yet.

15 CHAIR SCALZO: No.

16 MR. DONOVAN: So I, you know.

17 CHAIR SCALZO: Well, it's only a small
18 additional step.

19 MR. DONOVAN: Correct.

20 CHAIR SCALZO: So I'm going to look to
21 the Board for a motion perhaps to keep the
22 public hearing open.

23 MR. MASTEN: I'll make the motion.

24 MR. DONOVAN: And just to be clear,
25 that's the September the fourth, I can't

1 Proceedings

2 believe it's September already, the fourth
3 Thursday in September.

4 CHAIR SCALZO: Correct.

5 MS. JABLESNIK: I think it's the 23rd.

6 MR. DONOVAN: September 23rd?

7 MS. JABLESNIK: Yes.

8 CHAIR SCALZO: We have a motion from
9 Mr. Masten to keep the public hearing open.

10 MR. HERMANCE: I'll second it.

11 CHAIR SCALZO: We have a second from
12 Mr. Hermance. All in favor?

13 (Chorus of ayes.)

14 CHAIR SCALZO: Mr. Bloom, I appreciate
15 you being here this evening, thank you.

16 MR. BLOOM: Thank you, thank you very
17 much.

18 CHAIR SCALZO: We will see you in
19 September.

20 MR. BLOOM: Thank you, we'll see you
21 then.

22 CHAIR SCALZO: Obviously the meeting
23 minutes will be online shortly, but I'm sure
24 you --

25 MR. BLOOM: Absolutely.

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CHAIR SCALZO: There's no action required on your part. We need to touch base with our side.

MR. BLOOM: I understand that.

CHAIR SCALZO: Thank you.

MR. BLOOM: Thank you, sir, thank you very much. Thank you.

(Time noted: 7:42 p.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)
) SS:
COUNTY OF ORANGE)

I, KARI L. REED, a Shorthand Reporter
(Stenotype) and Notary Public with and for the
State of New York, do hereby certify:

I reported the proceedings in the
within-entitled matter and that the within
transcript is a true record of such
proceedings.

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

IN WITNESS WHEREOF, I have hereunto set
my hand this 30th day of September, 2021.

Kari L. Reed

KARI L. REED

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

In the Matter of:

FARRELL INDUSTRIAL PARK

Route 300, Newburgh
Section 34; Block 2; Lot 45
IB Zone

-----X

VARIANCE

Date: August 26, 2021
Time: 8:26 p.m.

Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York 12550

BOARD MEMBERS: DARRIN SCALZO, Chair
DARRELL W. BELL
GREG HERMANCE, SR.
JOHN D. MASTEN

ALSO PRESENT: DAVID A. DONOVAN, ESQ., Board Counsel
SIOBHAN JABLESNIK, Board Secretary
GERALD CANFIELD, Building Inspector

APPLICANT'S REPRESENTATIVE: JOE MODAFFERI

Reported by: Kari L. Reed

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

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Proceedings

CHAIR SCALZO: All right, the next applicant is Farrell Industrial Park, Route 300, seeking a, we're rehearing this, to continue the application for area variances for height for buildings A and B. Maximum height in the IB district is 40 feet. All right, so this was renoticed as well, Siobhan?

MS. JABLESNIK: Yes, I'm sorry. This applicant sent out 52 mailings.

CHAIR SCALZO: Fifty-two. Almost. Almost. Very good, okay. We got a slew of information from you, you have the biggest package. So please introduce yourselves, this is being recorded, and let's get started.

MR. MODAFFERI: Okay. Good evening, Chairman, Members of the Board. For the record, my name is Joe Modafferi with JMC. We're the civil engineers and landscape architects on the project. I'm here tonight with the project attorney, Dan Schuchman, and the project architect, Phil Clark, with Claris Design Build.

And, as you stated, we made a substantial submission to you for this project.

1 Proceedings

2 And we were here previously in front of you, I
3 believe it was in January, if I remember
4 correctly, but I'm not a hundred percent sure.
5 And we are here tonight to request a building
6 height variance.

7 We have two buildings on the site.
8 It's an industrial warehouse use. One building
9 would have a height, requested variance height
10 of 43.8 and the other one would have a variance
11 height of 46.8 feet.

12 We have, as you were all discussing
13 SEQRA before, this a Type I action, which is
14 the reason why we came to you to present the
15 project and then left to go deal with the
16 Planning Board. We needed to get our neg dec
17 before we could come back in front of you to
18 get a decision. I was emailed a neg dec just
19 before I left the office today. I have one
20 copy that I'd like to give to the Board.

21 MR. DONOVAN: Pat Hines sent me a copy
22 as well, I don't know --

23 MS. JABLESNIK: I need it, yeah,
24 because I didn't get one.

25 MR. DONOVAN: You can tell Pat it

1 Proceedings

2 should have gone to you.

3 MS. JABLESNIK: Yeah, right.

4 MR. MODAFFERI: I apologize on his
5 behalf.

6 MS. JABLESNIK: Thank you.

7 MR. MODAFFERI: So just for the record,
8 the negative declaration references the
9 building heights that we were requesting
10 originally when we were here. Since we were
11 here we have reduced the building heights by
12 two feet. So the negative declaration
13 indicates a higher variance, higher building
14 heights than we originally had.

15 So again, we made a submission to you
16 with some presentation on responding to some of
17 your comments and addressing some of the
18 issues. And just to go over a few of those
19 items. You know, this project is now
20 presenting a minimum variance that will make
21 possible the reasonable warehouse use of the
22 land, building, and structure based upon the
23 current state of the industry and the planned
24 user's business operations. So now we have an
25 end user. Before when we were here in front of

1 Proceedings

2 you previously we did not.

3 Granting the variance would not be
4 detrimental to the public welfare or injurious
5 to other properties. Other property
6 improvements in the neighborhood, it will not
7 impair an adequate supply of light and air to
8 adjacent properties. It will not increase
9 hazard or fire or other dangers. It will not
10 impair public health, safety and welfare of the
11 inhabitants of the town. And it will not
12 unduly increase traffic congestion. And in
13 support of that, as part of the Planning Board
14 process, prior to getting our neg dec, negative
15 declaration, the applicant had agreed to make
16 their fair share contribution to some
17 improvements that are down the road from us,
18 Gardnertown Road and 300, is that the
19 intersection, I believe.

20 MR. SCHUCHMAN: Exactly.

21 MR. MODAFFERI: So that will be a
22 condition of our site plan approval when it is
23 granted. So again, we have an end user.

24 I want to point out that all access to
25 the site, commercial access will be via the

1 Proceedings

2 access on Route 300, whether it's during
3 construction or post construction.

4 And we talked a little bit about the
5 activity within the site previously, that it is
6 all basically centralized for the site where
7 the loading docks are facing the middle of the
8 site, which is the reason for the need for the
9 higher variance on the second building. So the
10 variance is measured from the building facade
11 facing the road based on average grades. The
12 building closer, which is the bigger building,
13 is the one that has the variance request of
14 43.8 feet, and the one behind it, because of
15 the nature of the use and the need for loading
16 docks in that area, the variance there is 46.8
17 feet.

18 And, you know, at this point we would
19 like to, you know, if the Board has any
20 questions or, you know --

21 CHAIR SCALZO: Okay.

22 MR. MODAFFERI: All right.

23 CHAIR SCALZO: Okay, all right, well,
24 that's great. In regards to the shelving plan
25 as you call it, otherwise known as the grading

1 Proceedings

2 plan, which I'm sure is what I'm looking at,
3 right?

4 MR. MODAFFERI: Mm-hmm.

5 CHAIR SCALZO: I drove around the
6 neighborhood again. And I drove down Jeanne
7 Drive, I don't know if you are familiar with
8 Jeanne Drive, it's a thousand feet from your
9 yard.

10 MR. MODAFFERI: Yeah.

11 CHAIR SCALZO: There's nothing closer.
12 The firehouse across the street, it's -- you're
13 going to be the biggest facility in the area.
14 And I know you went through all your criteria
15 that we had you do when you checked into it,
16 and you even gave us the Matrix points, which
17 were great, you know, as a reference, because I
18 had mentioned that project in the previous
19 meeting.

20 MR. MODAFFERI: Mm-hmm.

21 CHAIR SCALZO: Again, I went down the
22 cul-de-sac of Berry Lane today. It's a nice
23 quiet little street. You know, the leaves are
24 all going to drop, and I know you have a
25 landscape plan that goes along with this as

1 Proceedings

2 well. what industry standard, by granting
3 these variances we've created a new one. And
4 then everything in that neighborhood is going
5 to base their new proposals on yours. And
6 it's -- I'm struggling with it. I don't live
7 in that neighborhood, but I did stop there, and
8 I actually saw, one of the homeowners asked
9 what I was doing. I explained that I was out
10 there looking.

11 But it's a substantial development.
12 It's a -- the height is substantial. And, you
13 know, I appreciate that you folks went back and
14 looked at different grading plans. You know, I
15 don't -- I'm struggling with this. And I'm
16 going to actually think about that as I ask
17 Mr. Masten do you have any comments on this?

18 MR. MASTEN: The height is what?

19 CHAIR SCALZO: well, that's why they're
20 here.

21 MR. MASTEN: Yes. It's 40 feet?

22 CHAIR SCALZO: More, over 40 feet.

23 MR. MASTEN: Yeah.

24 CHAIR SCALZO: I mean, I don't know if
25 you did, I'm not the guy who expects you to go

1 Proceedings

2 around the neighborhood, you guys are down in
3 westchester, but there's a crane on a lot not
4 to far from there, I think that might be 40
5 feet. And that was sticking up, you know,
6 quite a bit. I see some nodding in the back
7 there.

8 MR. MASTEN: The only thing that comes
9 close to it is across the street where the
10 storage place is. The building is not that
11 high but there's a building behind it.

12 CHAIR SCALZO: Yes.

13 MR. MASTEN: That's the only thing that
14 comes close to it.

15 CHAIR SCALZO: Yeah.

16 MR. MASTEN: But it's substantial.

17 CHAIR SCALZO: Yeah, I don't know. So,
18 Mr. Masten, is that the extent of your
19 comments?

20 MR. MASTEN: Right now.

21 CHAIR SCALZO: Okay. Mr. Hermance?

22 MR. HERMANCE: So There was no other
23 means you can achieve what you're looking for
24 without this variance as far as height? why
25 so, why would it need to be that height I guess

1 Proceedings

2 is my question.

3 CHAIR SCALZO: Actually, one of the
4 pieces of correspondence that we got from the
5 design-build firm explained, you know, many
6 things, and there's new technology now,
7 forklifts can go that high. But they don't go
8 that high, there is a factor of safety involved
9 in that, I'm sure you're aware of that.

10 MR. MODAFFERI: Mm-hmm.

11 CHAIR SCALZO: But there's quite a bit
12 of cubic feet that was also mentioned in the --
13 we are adding quite a bit of cubic feet by
14 allowing this variance. They, not that it
15 matters to us, but they have not identified who
16 the client is that needs this additional height
17 to function as they want to.

18 MR. BELL: That's my question.

19 CHAIR SCALZO: As I said, you know, the
20 matrix is quite tall. I'm not sure how I voted
21 on that one. But every day when I get on the
22 Thruway I shake my head, going sheesh, that's
23 high.

24 All right, so Mr. Bell, do you have any
25 comments?

1 Proceedings

2 MR. BELL: I was curious as far as who
3 is going in there as well.

4 CHAIR SCALZO: Yeah, if this was in a
5 different spot I probably wouldn't have any
6 comments. But just it's -- around the entire
7 neighborhood there is just nothing that high,
8 not even close.

9 Mr. Hermance, I'm sorry, I cut you off.

10 MR. HERMANCE: Oh, no, that's my
11 comments also. You answered that one.

12 CHAIR SCALZO: Very good. Okay. You
13 look like you're ready to -- no, okay. No, no,
14 I wasn't sure, I thought I captured the
15 correspondence that you did provide.

16 Please identify yourself, sir.

17 MR. CLARK: My name is Phil Clark, I'm
18 the project architect. Yeah, what I was trying
19 to put up here was a section giving a why they
20 need it. This is a lighting manufacturer, it's
21 a distribution center for a lighting
22 manufacturer.

23 MR. DONOVAN: Sir, I'm going to
24 interrupt you for a second and ask you to speak
25 up just because the stenographer is taking the

1 Proceedings

2 minutes, so.

3 MR. CLARK: Yeah, I'm sorry.

4 CHAIR SCALZO: Now you're good.

5 MR. CLARK: I'm soft-spoken, I
6 apologize. So Phil Clark with Claris
7 Construction.

8 So it's a lighting manufacturer or
9 distribution company that -- and the exact type
10 of racking system they're using is actually
11 laid out on that, that drawing. And, you know,
12 so it's a clear height of 38 feet they need to
13 make it work. And as far as industry
14 standards, everything we design, we're in
15 Suffern right now doing a 51 foot high
16 building. I know that's another town, but the
17 point is --

18 CHAIR SCALZO: It's another county.

19 MR. CLARK: -- it's all going that way.
20 And it is that way. But that's why they need
21 it, to be frank. It's what they store and how
22 they store it.

23 CHAIR SCALZO: Right, okay. The one
24 you just mentioned engaged in Rockland County
25 that's 51 feet, is that an industrial

1 Proceedings

2 neighborhood, is there, you know, are you that
3 close to contiguous with residential lots?

4 MR. CLARK: They're on a very busy
5 highway on one side, industrial on the other,
6 and there is a residential zone on the opposite
7 side of the street past the next industrial
8 building. But yeah, your point is well taken.

9 CHAIR SCALZO: Thank you.

10 MR. CLARK: But the question about
11 where the industry is going to get -- and the
12 reason it is it's just, it's safe now. It's a
13 totally automated racking system or
14 semi-automated racking system to make it safe
15 and efficient to store up instead of out. So
16 that's why they're doing it.

17 CHAIR SCALZO: So to do the same thing
18 in the same amount of cubic feet that you need,
19 your buildings could be bigger but lower;
20 correct?

21 MR. CLARK: Correct.

22 CHAIR SCALZO: At this time I'm going
23 to open it up to any members of the public that
24 wish to comment on this application. Anyone
25 here from the public? Mr. Feder?

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MR. FEDER: Hi, I'm Bill Feder from -- I'll get to the microphone. The requirements are the average grade, and I was wondering what the range of grade is. Is the site relatively flat from one end of the building to the other? That one end could be literally ten feet up if you're using average grades, but what is the grade for the length of the building, does anybody know that, for the grade?

CHAIR SCALZO: Mr. Feder, just, I mean let me, perhaps I can rephrase what you're saying.

MR. FEDER: Sorry.

CHAIR SCALZO: The grading of the site, are you talking about post grading or current?

MR. FEDER: Well, however it's evaluated, whatever the code calls for, whether it's existing grade or, I would imagine it would be finished grade.

CHAIR SCALZO: Sorry.

MR. FEDER: I'm assuming that.

CHAIR SCALZO: Post grading plan, okay.

MR. FEDER: And the fact that there's going to be loading docks, it's going to be

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2 relatively level I guess.

3 CHAIR SCALZO: Right. But Mr. Feder,
4 if you recall what they said during the
5 presentation, the loading docks are on the
6 interior portion. So the exterior portion is
7 where we measure the buildings heights from are
8 on the outside.

9 MR. FEDER: Right, okay. Which to the
10 road then would be the back side.

11 CHAIR SCALZO: Yes.

12 MR. MODAFFERI: So if I may, the
13 building in the front, the larger building,
14 building A, which is in the application, which
15 is the closer one to Route 300, that is,
16 there's a road, an access drive that parallels
17 Route 300. And that road kind of is mostly
18 level, it's a little bit lower on the top and
19 the bottom because -- or on the far side of the
20 building because we're meeting the grade as we
21 are coming up the hill, and then we have to get
22 down to the loading dock elevation as we get to
23 the end of the building. So the central
24 portion of the building, essentially between
25 like here and here, is flat. You know, a

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2 little, the road wobbles a little bit, but it's
3 basically at elevation 54 in the middle here,
4 and then it pitches down and pitches down,
5 which is why it goes from 43, which is the
6 actual building height of the building. So the
7 actual height of the building, never mind your
8 code, from finished floor to top of the parapet
9 is 43 feet. So that gives us a 38 foot
10 interior height and four foot structure for
11 the, for the roof. Am I correct?

12 MR. CLARK: Yeah.

13 MR. MODAFFERI: Okay. And then,
14 because we have two buildings, there are two
15 variances that we're requesting as we
16 understand it, but maybe, based on what you
17 said, maybe we don't have to request a variance
18 for the second building, which is higher.

19 CHAIR SCALZO: well, hang on.

20 Gerry, when we measure building height
21 it's not necessarily from the finished floor,
22 am I correct?

23 MR. CANFIELD: Building height, the
24 definition is average grade measured from the
25 street side of the building.

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MR. MODAFFERI: So that's why our variance for building A is 43.8, because at each end of the building the grade pitches down a little bit to meet the road and to meet the loading dock area. And building B, which is the smaller building in the back, we have a facade that faces the roadway. And again, that's blocked by the other building from Route 300, but because it's a separate building we're identifying a variance of 46.8 feet because of the loading dock. So essentially the loading dock area, in this tan area from here to here, is all four feet below the grade. And we're picking up grade a little bit in this island, and picking up grade a little bit on this side, so that gives us that point four feet of, you know, not meeting 47. But, you know, and so if we don't, if it's only the building that faces the road or that's on the road frontage, then we would need a variance of the 43.8, not the 46 point, depending on how it's -- or do we need two variances?

CHAIR SCALZO: Gerry is shaking his head. You can't pick that up on the --

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2 MR. CANFIELD: I know you can't hear my
3 head rattling. But with all due respect, I
4 disagree with you. I believe you need a
5 variance for both buildings. The front on --

6 CHAIR SCALZO: Right.

7 MR. CANFIELD: -- both buildings, the
8 front to street.

9 MR. MODAFFERI: I was just reacting to
10 something the chairman said and the way he said
11 it.

12 MR. CANFIELD: Right.

13 MR. MODAFFERI: Because he had said
14 well, it's measured at the front of the
15 building and the back is not --

16 CHAIR SCALZO: Right. So the building
17 in the front, building A, the larger building,
18 you may be able to measure it from the, I guess
19 it's the back side of the building, not the
20 loading dock side, the other side, that would
21 be, you know, if you pitch that up and down
22 there's your average. But building two I
23 suppose, because the loading dock portion is
24 the one that faces 300.

25 MR. CANFIELD: Correct.

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2 CHAIR SCALZO: That's where you're
3 measuring your building height.

4 MR. MODAFFERI: Measuring building
5 height on both, from both those walls. So
6 building A only requires a 43.8 foot height and
7 building B is a 46.3.

8 CHAIR SCALZO: I understand better.
9 Thank you. Okay.

10 Mr. Feder, did that answer your
11 question?

12 MR. FEDER: Not really. What's the
13 corner elevation grade, what's the ground
14 elevation at the north and south corners of the
15 one closer to the road?

16 MR. MODAFFERI: The grade at the road
17 here is probably 48, and we're, as I recall,
18 we're -- I have the grading plan, we have a
19 slope going up. And I think for the grade
20 pedestrian.

21 MR. FEDER: The elevation grade is 48?

22 MR. MODAFFERI: Four forty-eight.

23 MR. FEDER: And you are going up 40
24 feet from there. We don't need to scale it.
25 My point is that is any corner going to look

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2 higher because the ground is really lower in
3 there in that corner.

4 MR. MODAFFERI: So finished pour
5 elevation is 455.5. This corner will be at
6 450, and this corner will be at 450. And then
7 it climbs up to 455.5 generally in this area to
8 this area. So each of the four corners look a
9 little bit higher.

10 MR. FEDER: Fifty-five feet, okay.

11 MR. MODAFFERI: But both buildings,
12 again, are at the same finished floor
13 elevation. So from the road this, if you were
14 looking at a flat site, both of these buildings
15 would be at the same height visually. So you
16 won't be able to see this building from behind
17 this building.

18 CHAIR SCALZO: Right, but as I look at
19 it here, and it just occurred to me, you're not
20 going to see that from Route 300 at all. It's
21 the poor folks that have the building in front
22 of them that are going to be looking at it.

23 MR. MODAFFERI: Yeah.

24 CHAIR SCALZO: Okay. Anyone else from
25 the public who wishes to speak about this

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2 application?

3 (No response.)

4 CHAIR SCALZO: I'm going to look to the
5 Board one more time. Mr. Masten?

6 MR. MASTEN: Not right now.

7 CHAIR SCALZO: Okay. Mr. Hermance?

8 MR. HERMANCE: No, I have nothing
9 further.

10 CHAIR SCALZO: Nothing. Mr. Bell?

11 MR. BELL: No.

12 CHAIR SCALZO: So before we move
13 anywheres forward with this, members of the
14 Board, is there anything else that you feel as
15 though would help you better understand this or
16 do you want to get a better look in the field,
17 do you want -- I'm just, I'm fishing here, but
18 I'm --

19 (No response.)

20 CHAIR SCALZO: So, having heard none,
21 I'm going to look to the Board, you know, if
22 you don't think there's anything else that
23 would be helpful to you, then I'd look for a
24 motion to close the public hearing. Again, we
25 don't have to vote on it this evening.

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2 MR. BELL: Right.

3 CHAIR SCALZO: well, that's up to you
4 folks.

5 MR. BELL: Let me make a motion to
6 close the public hearing.

7 MR. HERMANCE: I'll second it.

8 CHAIR SCALZO: We have a motion from
9 Mr. Bell, we have a second from Mr. Hermance.
10 All in favor?

11 (Chorus of ayes.)

12 CHAIR SCALZO: Opposed?

13 (No response.)

14 CHAIR SCALZO: All right. So
15 discussion on this, gentlemen. There's quite a
16 bit to digest here, right. We have, I mean,
17 we've had this information. They did supply
18 even the Matrix information, although I had put
19 it in our previous meeting in January. What do
20 you think?

21 MR. HERMANCE: well, it just seems the
22 same square footage could be obtained just by
23 changing the dimensions of the building. You
24 wouldn't need a height variance by adding some
25 square footage to the building.

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2 CHAIR SCALZO: well, that would change,
3 you know, should that occur, you know, there
4 would be an increase in the impervious surface,
5 so that's something to consider.

6 MR. HERMANCE: Yeah.

7 MR. DONOVAN: well, you have 62 days.

8 CHAIR SCALZO: That we do.

9 MR. DONOVAN: Or you can proceed ahead.
10 There are only four members here.

11 MR. BELL: Yes. As I mentioned, I'd
12 like to see the rest of us here.

13 CHAIR SCALZO: Yeah, even Mr. Winfield.

14 MR. BELL: Yes.

15 CHAIR SCALZO: Listen, that's entirely
16 within our wheelhouse.

17 MR. BELL: I'd like to keep it open.

18 MR. DONOVAN: well, it's closed.

19 CHAIR SCALZO: Oh, the public hearing
20 is closed.

21 MR. BELL: But I'd like to --

22 CHAIR SCALZO: All right, we can hold
23 it over for further discussion and further
24 evaluation of the site.

25 MR. BELL: Sure.

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2 CHAIR SCALZO: Is that out of the
3 ordinary, counsel?

4 MR. DONOVAN: No. State law is very
5 clear, you have 62 days from the close of the
6 public hearing to render a determination. You
7 need to do it by 62 days.

8 CHAIR SCALZO: Sure, sure.

9 So Mr. Bell, do you have a motion to
10 defer?

11 MR. BELL: I have a motion to defer it
12 until next September.

13 MR. DONOVAN: The September meeting.

14 MR. BELL: Yeah, September.

15 MR. HERMANCE: I'll second.

16 CHAIR SCALZO: We have a motion to
17 defer the determination to the September
18 meeting. And we will still go through all the
19 criteria in that September meeting, of course.

20 MR. DONOVAN: Well, you need to do that
21 before it can occur.

22 CHAIR SCALZO: Sure.

23 MR. DONOVAN: Yeah.

24 CHAIR SCALZO: But there's going to be
25 multiple -- we're going to site visit this

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again.

MR. BELL: Yes.

CHAIR SCALZO: Get out there and get a look and flavor. Also visit any other areas that could be pertinent to our decision.

So we have a motion from Mr. Bell, we have a second from Mr. Hermance. Roll call then to defer to the September meeting.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIR SCALZO: Yes. All right, so we are going to see you folks next month. We just need to, I mean it's, as I mentioned, Mr. Modafferi, yours was the thickest package we received. So I appreciate your patience, and we'll see you next month.

MR. MODAFFERI: No problem, we understand.

CHAIR SCALZO: Thank you.

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MR. SCHUCHMAN: what is the date of
that meeting?

CHAIR SCALZO: September 23.

MR. SCHUCHMAN: Seven o'clock call?

CHAIR SCALZO: That's correct.

(Time noted: 8:50 p.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)
) SS:
COUNTY OF ORANGE)

I, KARI L. REED, a Shorthand Reporter
(Stenotype) and Notary Public with and for the
State of New York, do hereby certify:

I reported the proceedings in the
within-entitled matter and that the within
transcript is a true record of such
proceedings.

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

IN WITNESS WHEREOF, I have hereunto set
my hand this 1st day of October, 2021.

Kari L. Reed

KARI L. REED

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

In the Matter of:

GAS LAND PETROLEUM
Route 300, Newburgh
Section 43; Block 5; Lot 1
B Zone

-----X

VARIANCE

Date: August 26, 2021
Time: 7:44 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York 12550

BOARD MEMBERS: DARRIN SCALZO, Chair
DARRELL W. BELL
GREG HERMANCE, SR.
JOHN D. MASTEN

ALSO PRESENT: DAVID A. DONOVAN, ESQ., Board Counsel
SIOBHAN JABLESNIK, Board Secretary
GERALD CANFIELD, Building Inspector

APPLICANT'S REPRESENTATIVE: NICHOLAS M. WARD-WILLIS,
ESQ.

Reported by: Kari L. Reed

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

1 Proceedings

2 CHAIR SCALZO: Now on to our regularly
3 scheduled programming. Our next applicant this
4 evening is Gas Land Petroleum, 5200 Route 9W in
5 Newburgh. They're seeking a, it's a Planning
6 Board referral for a rehearing from the May
7 27th, 2021 meeting for area variances of relief
8 from the 1,000 foot requirement to the nearest
9 motor vehicle station, and an existing barn
10 with an apartment requiring variances for front
11 yard, side yard, height, and maximum yard area.

12 This was a prehearing. Did we ask for
13 this to be ---

14 MR. DONOVAN: This was, yes.

15 CHAIR SCALZO: All right. So mailings
16 on this, Siobhan?

17 MS. JABLESNIK: Thirty-nine mailings
18 went out.

19 CHAIR SCALZO: Thirty-nine mailings,
20 very good.

21 Okay, please introduce yourself and let
22 us know why you're here.

23 MR. WARD-WILLIS: Thank you. Good
24 evening, Mr. Chairman, members of the Board.
25 Nicholas Ward-Willis, Keane & Beane, attorney

1 Proceedings

2 for the applicant, Gas Land Petroleum. We're
3 also joined by the vice president of Gas Land
4 Petroleum, Zeidan Neshiewat, and our site civil
5 engineer, Chris Lapine, from Chazen
6 Engineering, who you're familiar with who
7 appeared before this Board on the prior two
8 occasions this application was before your
9 Board, in June of 2020 and then in May and June
10 earlier this year in 2021. So we're before you
11 tonight, as you said, Mr. Chairman, for the six
12 area variances that Mr. Lapine is going to go
13 through.

14 What I want to do first and why we are
15 here, again, is because on May 27th you granted
16 our variances as you had done a year
17 previously, you kept to your precedent. There
18 was, however, an Article 78 petition filed, and
19 that raised some procedural and substantive
20 questions. We did not agree with any of the
21 substantive questions, we did not feel that the
22 arguments had any merit. We did agree there
23 was a question as to whether there was a
24 procedural issue. We decided it was the best
25 use of the petitioner's resources as well as

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2 our respective client's resources to clear that
3 up, and so we agreed with the ZBA's attorney,
4 with the petitioner's attorney, to hold that
5 Article 78 in abeyance and to reapply for the
6 area variances, and that's why we're here
7 before you tonight. You will recall that this
8 Board at your July meeting you unanimously
9 voted to rehear our application, and thank you.
10 And then in accordance with your code
11 requirements we have renoticed the public
12 hearing. In accordance with the code we have
13 provided you with new application materials,
14 explaining again why the six variances should
15 be granted, as they have been granted twice
16 before, and that's why we're here before you
17 tonight.

18 CHAIR SCALZO: Thank you very much.

19 MR. WARD-WILLIS: You're welcome. I'm
20 going to ask our civil engineer, Mr. Lapine, to
21 walk you through our presentation. Thank you.

22 MR. LAPINE: Good evening. Christopher
23 Lapine with the Chazen Companies.

24 The applicant, Gas Land, is looking to
25 purchase the 4.5 acre site located along 5200

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2 is an enhancement to the existing character of
3 the neighborhood. The existing parcel is,
4 consists of three entrances along Route 9W,
5 which creates hazards for all the units
6 created. We are looking to reduce that down to
7 one location, point of access for the entire
8 site.

9 Additionally, we are looking to
10 decrease the overall impervious area on the
11 site and create some landscape and create
12 orderly parking. That doesn't exist on this
13 property. As we indicated, the property is
14 inundated with trailers, tow trucks and cars
15 from the existing operation. We're looking to
16 create a landscaped buffer along the Route 9W
17 corridor. That also not only creates an
18 attractive look along 9W, but also provides
19 additional screening for the motor vehicles.
20 So that's also going to help with the
21 landscaping of the site.

22 We believe this is good for the
23 neighborhood. This is not out of character
24 with the use that's currently existing out
25 there. The commercial uses that go to the

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2 north of this consists of a hotel or motel,
3 there's a Stewart's gas station which is part
4 of the subject of this application for the
5 variance needed. It's approximately 900 feet
6 to the north. We've got residences to the east
7 of us, we've got some residences to the west,
8 and we have other commercial uses to the south
9 of us.

10 The particular project itself requires
11 variances in order to move forward with it.
12 Those variances, as we've indicated, are a
13 1,000 foot setback, including the motor vehicle
14 service station and another motor vehicle
15 service station. The existing property as
16 shown has two uses that are considered motor
17 vehicles service stations. One is the existing
18 towing and repair facilities in the rear of the
19 property. The other is the existing fueling
20 operation in the front of the property. The
21 applicant's intention is to continue the use of
22 both. But since it's a new site plan
23 application, we have to come before the Zoning
24 Board to get a variance for the continued use
25 of the fueling operation and the motor vehicle

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2 operation, because we are making improvements
3 to the site plan.

4 We are not changing the setback that
5 currently exists between the property lines for
6 these fueling operations and the motor vehicle
7 service station to the nearest Stewart's
8 facility. Whether we develop this or not, you
9 still have the same type of facilities that
10 exist with the same setbacks. We are doing an
11 enhancement to the site, which is going to be a
12 benefit to the community, but we're not
13 creating anything that's anymore nonconforming
14 than what it is. What we've done, when we gave
15 you the original application, we've used
16 partial access in our actual survey to
17 interpret the distance between Stewart's and
18 our site. We did it in two setbacks. We gave
19 one to our property line, but it may go over
20 the boarder. We gave one to this property line
21 here, which is closest to -- we gave a distance
22 from this property line here to the Stewart's
23 operation, which is 900 feet. We then did
24 another distance from where the existing garage
25 is in the rear, and that was approximately 950

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2 feet. We gave you both distances on our
3 variance application. We did receive some
4 feedback from a concerned member of the public
5 that only one separation distance should be
6 used, the closest distance to your property to
7 the nearest Stewart's. That distance is 900
8 feet. I just want to clarify that for the
9 record, because we included 900 and 950 for
10 those two uses. If I may approach the Board,
11 I'd like to give you a sketch that we have
12 prepared which depicts those measurements for
13 everybody.

14 CHAIR SCALZO: Come on up.

15 MR. WARD-WILLIS: I don't know if I
16 have enough for everybody.

17 CHAIR SCALZO: Man, we're short tonight
18 too.

19 MR. WARD-WILLIS: I did actually, I
20 think I might have the right number. So we
21 have shown the 900 feet to the Stewart's
22 property.

23 When we did our application, we were
24 under the impression that we also needed a
25 variance for the internal separation between

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2 the two motor vehicle service stations, for the
3 garage in the back and the fueling facility.

4 It's my understanding that the attorney for the
5 applicant and the counsel for the town has
6 since had some further dialogue and determined
7 that that variance is no longer required
8 because both uses occur on the same site. So
9 I'd say we're withdrawing that variance request
10 because we have determined it's not necessary.

11 with regards to the existing barn,
12 there are a few variances which are currently
13 existing nonconforming. As we indicated, the
14 intent is to preserve the barn with the single
15 family apartment above it. It's actually a one
16 bedroom apartment. The intent is to refurbish
17 the entire outside of it, and make some
18 interior modifications and modernize that as
19 well. The barn itself requires three
20 variances, I'm sorry, four. Rebuilding
21 distance from Route 9W, we're not making a
22 modification to that. It's currently
23 nonconforming. It's going to continue to be
24 nonconforming because it's in front of the, one
25 of the principal uses on the site, which is the

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2 garage in the rear. Currently existing, it's
3 going to continue to exist.

4 Maximum building height. The maximum
5 building height of 15 feet or below for the
6 accessory structure. The existing barn which
7 was built there is 20 feet in height. Once
8 again, it's an existing nonconformity. We
9 don't have any intention on modifying that.

10 Maximum coverage requirement in the
11 front yard is ten percent. The existing is
12 twelve percent, proposed is twelve percent.
13 Once again, it's an existing nonconformity.
14 We're not making a modification to that.

15 Accessory building minimum side yard
16 setback is 15 feet. What's existing here is
17 nine feet. We're not making a modification to
18 that. But since we're redeveloping the site we
19 have to get -- bring the site into conformance
20 because there's already a variance for a
21 nonconformity.

22 So, as Nick mentioned earlier, this is
23 the third time you've heard this application.
24 And the same reasoning that applied when you
25 were hearing the original subdivision, the same

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2 reasoning that applied when we came before you
3 in May, applies this evening. This project
4 itself is not going to be in terms of creating
5 a change in the neighborhood. Actually, let me
6 take that back. It's going to create a change,
7 it's going to create a change for the better.
8 If I may approach the Board, I'd like to give
9 you some pictures of what is existing out there
10 in terms of what's been deemed we've been
11 informed that we're changing the nature of the
12 neighborhood by the project.

13 CHAIR SCALZO: Feel free. We are
14 obliged by our position to go and visit all
15 these properties, so we have seen them, but
16 we'll certainly -- thank you. I was not at the
17 last meeting, I was absent for that, so this is
18 my first time hearing your presentation.

19 MR. WARD-WILLIS: Okay. I want to
20 commend the members of the Board who served
21 here while you were absent. They did a great
22 job.

23 CHAIR SCALZO: Thank you, counselor.

24 MR. LAPINE: So when you're looking at
25 the five criteria in terms of will the variance

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produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties, I'd say what's existing right now is both a detriment and undesirable view to the neighbors.

The benefit sought by the applicant cannot be achieved by some other method feasible for the applicant to pursue. As we have indicated, we are modernizing the site. We are enhancing the access on the site, we're eliminating the parking on the site, we are providing pedestrian amenities along Route 9W in terms of a new sidewalk. We're providing landscaping along Route 9W. We are creating an orderly, structured development, while eliminating the towing operations which have been an eyesore for not only the Town of Newburgh but a number of individuals that utilize the 9W corridor.

The requested variance is not substantial. It's not substantial because it's existing. We're not trying to make anything anymore nonconforming in terms of the setbacks. All we're doing is, once again, modernizing and

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2 creating an aesthetically pleasing site.

3 The proposed variance will not have an
4 adverse effect or impact on the physical or
5 environmental condition in the neighborhood. I
6 think the improvements speak for itself. And I
7 think the pictures that I provided the Board
8 speak for the current impact that the existing
9 development has on the neighboring properties.
10 I think any sort of investment in this property
11 is going to be positive resulting from the
12 environmental and physical impacts. Not only
13 will we have all the aesthetic improvements
14 that we spoke of before, but proper stormwater
15 management that doesn't currently exist on the
16 site for the motor vehicle repair operations.

17 Lastly, the hardship has not been
18 self-created. The applicant looks to modernize
19 this existing facility, which currently has a
20 fueling station, motor vehicle repair facility,
21 single family home, barn with a single family.
22 we are eliminating the single family here. We
23 are modernizing the existing fueling station.
24 we're developing a design that supports the
25 functionality needed to support the use of this

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2 site based on its existing constraints in terms
3 of its existing nonconformity. As I said, once
4 again, the proposed development is going to
5 result in an improvement on the site, including
6 lining 9W with street trees, providing a
7 sidewalk, replacing a great amount of asphalt
8 on the site. You will have architecturally
9 pleasing buildings. Landscaping to the site.
10 I also want to mention that along the 9W
11 corridor we are going to have a series of
12 fieldstone walls, that's going to blend into
13 the landscaping. And, one again, we are going
14 to eliminate the current detriment to the
15 community, which is the vast amount of cars
16 from the towing operations. So I'm more than
17 willing to answer any questions that the Board
18 may have at this time.

19 CHAIR SCALZO: I think you've covered
20 everything I want to hear. Mr. Bell, any
21 questions for the applicant?

22 MR. BELL: Yeah. You said that you're
23 going to eliminate what again, would you repeat
24 what you are going to eliminate again?

25 MR. LAPINE: We are going to, just to

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2 kind of give you a broad view.

3 MR. BELL: Yeah.

4 MR. LAPINE: We are going to eliminate
5 three -- there are currently three entrances,
6 we're eliminating two of the entrances.

7 MR. BELL: Okay.

8 MR. LAPINE: We are going to eliminate
9 the towing operations from the property. And
10 we are going to eliminate the single family
11 home.

12 MR. BELL: Okay.

13 CHAIR SCALZO: The single family home
14 he's talking about is that.

15 MR. BELL: Yeah, okay. Because what
16 I'm reading, because what I was reading here in
17 the letter, in your letter in the last
18 paragraph it says the towing business, single
19 family home and the barn with apartment will
20 remain, will remain on the proposed lot two.
21 So which is lot two? So I'm just --

22 MR. DONOVAN: I think that's the old
23 application.

24 CHAIR SCALZO: That was the old --

25 MR. BELL: Okay.

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2 MR. DONOVAN: Because there was a
3 subdivision before.

4 MR. BELL: Okay. Go ahead, I'm sorry.

5 MR. LAPINE: That was the former
6 subdivision.

7 MR. BELL: Okay.

8 MR. LAPINE: That was in June of 2020.

9 MR. BELL: I'm good. Okay. I just
10 wanted to make sure I understood.

11 CHAIR SCALZO: No, that's fine. Just a
12 little history here.

13 Mr. Hermance?

14 MR. HERMANCE: I had that same
15 question. I was wondering if the towing
16 business was going to remain.

17 MR. BELL: Yeah.

18 MR. HERMANCE: But that answers my
19 question.

20 CHAIR SCALZO: Okay, good. Mr. Masten?

21 MR. MASTEN: I had the same thing as
22 Darrell was saying. I'm otherwise okay.

23 CHAIR SCALZO: Okay. At this time I'd
24 like to open the public hearing up to any
25 members of the public that wish to comment on

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2 this application. Please step forward. You're
3 going to state your name because this is being
4 recorded in the minutes.

5 MR. BACON: Thank you, Mr. Chairman.
6 My name is Jim Bacon, and I'm the petitioner's
7 attorney. I appreciate that the Board is
8 rehearing this project.

9 I'd like to start I think by talking
10 about SEQRA in support of our petition before
11 the court. And the ZBA is sort of in the
12 unenviable position of taking the lead because
13 the Planning Board didn't really do that in
14 this project. And so because it's not a
15 coordinated review, each agency has to go
16 through SEQRA on its own independently. And so
17 in the petition we directed the court's
18 attention and the Board's attention to the fact
19 that Part I, Part II and Part III need to be
20 completed for the project. And, as I said,
21 it's usually the ZBA is not a lead agency for a
22 project. It's usually the Planning Board. But
23 under these circumstances the Board has no real
24 choice but to go through SEQRA and go through
25 Part I, and Part II and make sure all the I's

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2 are dotted and the T's are crossed.

3 And, you know, in looking at this
4 project, in the beginning I really tried to
5 figure out what the history of this project
6 was, and the secretary was so helpful in trying
7 to help me understand it. Because there's so
8 many uses on the site and they don't seem to
9 conform to the code. And so the origination of
10 the nonconformity was an important issue, but I
11 don't think that was ever determined. And as I
12 hear from the applicant, they're intending to
13 withdraw the thousand foot application for the
14 variance, which makes sense because that really
15 only involves two different lots, and that was
16 a subject in our petition as well. But they're
17 increasing the nonconformity of what's there
18 now by adding a gasoline service station and a
19 convenience store. And so really what is
20 happening on the site is that the use, you have
21 two of these uses on a single site, which I
22 think pushes it into the category of a use
23 variance as opposed to an area variance where
24 you have separate lots. And so I think it's
25 important that the Board discuss that and look

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2 at that issue. And also in the context of the
3 town code's requirements, the Town of Newburgh
4 has its own requirements concerning variances.
5 And I think with regard to this project
6 probably the most significant section is the
7 one that the variance needs to be granted,
8 because otherwise it would deprive the
9 applicant of a reasonable use of the property.
10 And given that the property already has a
11 diesel fueling station and an office building,
12 a towing business and a repair shop, a single
13 family home and a barn with an accessory
14 apartment, it seems as though the applicant is
15 already maximizing the monetary return from
16 this property. And so that there's no hardship
17 and there's no showing that could be made that
18 he's being deprived of a reasonable use of the
19 property. So we wish that the Board would look
20 at that issue carefully.

21 CHAIR SCALZO: Just help me out. What
22 you had just stated applies to use variances.
23 Up to now we have been viewing this as an area
24 variance.

25 MR. MASTEN: Yes.

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MR. BACON: well, I might have misread the codes too, but I thought that the section that I was referring to, that 185-54(B)(1) A through C dealt with area variances. I don't think the code made a distinction between area or use variances, but I could be wrong and I'd certainly look at it again to see if I had made an error in that regard. It's a very important point. I think that in the previous application with Mr. Bloom you went through a long process to try to prove that hardship by monetary dollars and cents.

So we also have tonight here Tony Stellato, our engineer, to just quickly go over some of the points he made in his letter that we submitted earlier this morning.

So also I can't leave without saying what a good job of organization this Board does. I've been before many, many, many boards throughout this state and represented boards, but you have the minutes posted very quickly, your agendas are there for everybody to see to get onto the documents, and the secretary is very -- deserves a gold star for interfacing

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2 with the public. So for that I give high marks
3 on those regards.

4 CHAIR SCALZO: I am not authorized to
5 give her a raise.

6 MR. BACON: All right.

7 MR. WARD-WILLIS: Mr. Chairman, if I
8 may, I didn't want to interrupt earlier, I did
9 not hear for the record him state who he
10 represents in his application.

11 MR. BACON: Well, I represent the
12 petitioners, that's Solomon Jang, Harshidhi
13 Inc., Phillip Kimball and George North. And I
14 think Mr. Stellato is here tonight to -- oh,
15 he's there, to get some -- there he is. All
16 right, so I'd like to bring him up. And again,
17 thank you for the Board's attention to this
18 because it's very important issues. The
19 nonconformity is going to increase
20 substantially and impact the neighbors who, you
21 know, although it may not be the best looking
22 site in town, it's going to be a much more
23 aggressive use of that site and it's something
24 that's going to impact their quality of life.
25 Thank you.

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MR. STELLATO: Good evening.

CHAIR SCALZO: Just one more time, sir,
state your name for the recording minutes.

MR. STELLATO: My name is Tony
Stellato. I'm an engineer with CHA Companies.
And I am working with Mr. Bacon. And I would
like to disclose that I also work for Stewart's
as an engineer on numerous matters.

I wrote a review letter to this, well,
to Mr. Bacon that was submitted to this Board
back in May. It identified a number of, well,
first of all, I presented my credentials, which
I won't go into tonight unless you want me to.
But I did identify a number of concerns with
the application in I really felt a few
categories. The first of which was engineering
deficiencies or engineering data that was
missing that we feel is relevant to the SEQRA
determination. So the most significant of
those issues we feel a traffic. The town's
engineer has recommended to the Planning Board
that a traffic impact study be done. We feel
there are some significant traffic concerns.
We feel that the lack of a left turn lane, you

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2 know, in front of this property is going to be
3 a significant issue that is going to need to be
4 mitigated. We also feel that the applicant,
5 that the application materials have
6 underestimated the trip generation for this
7 facility.

8 The second part of our -- of my review
9 dealt with the variance criteria that, the
10 explanations that were entered into the record
11 relative to the area variance. And we'll stick
12 with the area variances for now because that's
13 what's been submitted to the Board. But I'd
14 like to just make note that the applicant's
15 engineer has stated that, you know, this is --
16 this is an existing use, we're making a slight
17 modification to an existing use, the condition
18 is already there; so therefore, there's no
19 detriment to nearby properties. But that's an
20 inaccuracy. What's there today is a diesel
21 fueling station. And it's a very, very
22 different use than a gasoline filling with a C
23 store. The entire operation of the proposed
24 site is much more intensive than the diesel
25 fueling station that's there now. So, you

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2 know, the argument that it's existing we think
3 is not relevant.

4 I think what is relevant is that 1,000
5 foot buffer that is code required and code
6 protected is a significant benefit that
7 Stewart's enjoys. And removing that or
8 infringing upon that harms them. It's a
9 detriment to their nearby property. So by
10 definition we have an injured property owner
11 nearby, potentially injured property owner
12 that's going to suffer a detriment to their
13 property. We think that's relevant to this
14 argument and we think this Board should weigh
15 that heavily.

16 My comments are in the record. I
17 understand you have the letter that I wrote
18 yesterday, so I won't go through them in
19 detail. I think I've covered a couple of the
20 important points, but I can answer any
21 questions that you have. Thank you.

22 CHAIR SCALZO: Thank you.

23 Any other members of the public that
24 wish to speak about this application? In the
25 black, come on up. Please state your name

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2 toward for the record.

3 MR. NORTH: My name is George North. I
4 live at 34 Albany Post Road. I'm literally a
5 stone's throw away from this property. And I
6 am here to register my opposition to this
7 application.

8 My partner and I, we live on a nearby
9 property, and every winter from November to
10 April to the end of March, when the leaves have
11 fallen from the trees, I can see this, this
12 property clearly from my house. I can even see
13 the "open" sign clicking in the window. But
14 that's not the problem to us. What is a
15 problem is that if a -- the problem is if we
16 have a full gas station and convenience store
17 down there, potentially it will be open 24
18 hours a day, although I can't confirm that,
19 spilling light into our bedroom window. That
20 would be reason enough that we'd be adversely
21 affected by this development. There's other
22 reasons, though they wouldn't affect us nearly
23 as much as this. And I'm glad that the Zoning
24 Board takes into consideration the residents
25 and the residential character of my

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2 neighborhood and also the natural character of
3 it. Since there are already three service
4 stations serving our neighborhood, I question
5 the need for another one.

6 Thank you for giving me the opportunity
7 to speak on this.

8 CHAIR SCALZO: Thank you, sir.

9 Mr. Feder.

10 MR. FEDER: Bill Feder, Rockland Drive.
11 I live just around the corner off of Chestnut,
12 and I'll be happy to see the tow trucks gone
13 from Chestnut. They are constantly in use and
14 cut off, and we don't really need it. Thank
15 you.

16 CHAIR SCALZO: I'm sorry, Mr. Feder so
17 your position on this is that you are in
18 support?

19 MR. FEDER: I'm in support of the
20 project because the towing operation will be --

21 MR. BELL: Removed.

22 MR. FEDER: -- removed.

23 CHAIR SCALZO: Thank you for clarifying
24 that.

25 MR. FEDER: And I'm sure that's -- I

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2 think they have a Thruway contract, I believe.

3 CHAIR SCALZO: Pats Towing, no longer.

4 MR. FEDER: It does not, okay.

5 CHAIR SCALZO: No, right?

6 MR. HERMANCE: Correct.

7 MR. FEDER: Thank you.

8 CHAIR SCALZO: Sir, please state your
9 name for the record.

10 MR. JANG: Yeah. Solomon Jang,
11 (phonetic), one of the petitioners. And I
12 would like to state I don't want my child to
13 grow up next to gas station. So I can't
14 imagine having that be put up. So we're
15 opposed to that. If the Board can look into it
16 and protect that, that would be helpful to us.
17 Phillip, my neighbor, stated a while ago you
18 already have Stewart's, and we already have
19 about two more gas stations around. And
20 bringing this, another reason would be security
21 threats, to me in particular, because I can
22 just see everything. And I have a back yard
23 too, which for two reasons, I don't want to be
24 using the pool and somebody at the gas station
25 can just peek and see whatever is going on in

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2 my pool. So I won't be happy, and I hope this
3 cannot be constructed, because already we are
4 living with the diesel and the garage, it's not
5 helping me. Because when fall comes and the
6 leaves are dropping, they can see whatever is
7 going on into my back yard, which I don't want
8 to get more threats from that. Thank you.

9 CHAIR SCALZO: Thank you, sir.

10 In the back, sir, come on up. Please
11 state your name for the record.

12 MR. MOPUJA: My name is villa Mopuja
13 (phonetic). I'm one of the petitioners. Let's
14 go to this case. Right now there's if you want
15 to make a left turn in the afternoon, it takes
16 twenty minutes. And how you can bring the cars
17 and that many trucks. Every time it goes in
18 and out, and we have always to worry about too
19 many accidents down there. And that's enough.
20 we already have three gas stations, 1,000 feet
21 we have Stewart's, we have Quick Check, we have
22 one other. So why do we need one more gas
23 station and the traffic?

24 CHAIR SCALZO: Well, sir, your comments
25 are very important, and we're here to hear all

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2 these comments. But what you are talking about
3 with regards to traffic --

4 MR. MOPUJA: Yeah.

5 CHAIR SCALZO: -- that, should it get
6 that far, is something that would be addressed
7 by the Planning Board. Our job here tonight is
8 not a traffic mitigation conversation.

9 MR. MOPUJA: Thank you. Thank you very
10 much.

11 CHAIR SCALZO: Thank you.

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

14 (No response)

15 MR. LAPINE: Chris Lapine again, the
16 Chazen Companies. I just want to clarify a few
17 points here. I heard two individuals speak
18 that it's a use variance for the property. I
19 just want to make the Board aware that the
20 property is split between the business district
21 and the R3 zoning district. Here's the
22 property, here's the zoning district right
23 here, the line right here.

24 CHAIR SCALZO: Yeah, I can see it on
25 the map, yup.

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2 MR. LAPINE: So the business district
3 here has an LHR overlay, which permits motor
4 vehicle service stations to include fueling
5 operations, and light and heavy industrial
6 uses. So to say it's a use variance is not an
7 accurate statement when it's permitted under
8 the zoning, and I wanted to make that
9 clarification for the Board.

10 The other clarification I wanted to
11 make was we are requesting a 1,000 foot setback
12 to the Stewart's. The ones that I am
13 eliminating is the internal setback that we
14 thought was required between the enhanced
15 fueling station, convenience store and on-site
16 auto body shop. That's the one that I am
17 removing from the record. But there was a
18 comment made that we're removing the thousand
19 foot setback and that was not an accurate
20 statement. I just want to clarify that for the
21 Board.

22 And Mr. Chairman, you made a valid
23 point where you said the traffic is subject to
24 the Planning Board review. Traffic is subject
25 to DOT review as well. A left turn is most

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2 likely going to be required here.

3 In terms of screening, there is
4 screening that's being proposed between the
5 existing gasoline facility and the existing
6 auto shop in the back. That screening is going
7 to be coniferous so that, I believe one
8 gentleman talked about people from the gas
9 station being able to look into his back yard.
10 One is there's a steep topography change, but
11 two is that's also going to provide the
12 screening that's being sought after that
13 currently doesn't exist in today's environment.
14 That additional screening can be provided. And
15 once again, the landscaping is subject to the
16 Planning Board. It can also be provided on the
17 southeast corner of the property because the
18 existing neighbors right now during the fall
19 don't have screening to the property. But that
20 can be provided as well.

21 The lighting plan in front of the
22 Board, once again there's going to be a review
23 by the Planning Board. It's going to be all
24 downward pointed lights, it's going to have
25 full cut off fixtures on the shields, and each

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2 light fixtures there's going to be a minimum of
3 3,000K, Kelvin, so that the intention is to
4 minimize any of the impact on neighboring
5 properties. Once again, that review takes
6 place before the Planning Board, and a number
7 of comments so far have made their way into our
8 letter.

9 Detailed grading, detailed stormwater
10 pollution prevention plan, erosion sediment
11 control plan. It's also always been the
12 practice of the Town of Newburgh that a project
13 of this nature, a project of any nature before
14 the Planning Board comes before the Zoning
15 Board as for consideration of the variances
16 being sought before an applicant spends
17 \$150,000 on detailed engineering to then come
18 to the Planning Board, I mean then come to the
19 Zoning Board. We're not asking for anything
20 that hasn't been done before in the past here
21 in the Town of Newburgh with the requested
22 variances this evening.

23 The other comment I did want to add is,
24 someone talked about the detriment to
25 Stewart's. This is our third time we have been

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2 before you. We haven't had a representative
3 from Stewart's come to this meeting and talk
4 about the impact to their operations. So
5 that's something that the Board should take
6 into consideration as well. Thank you.

7 MR. WARD-WILLIS: And in closing,
8 Mr. Chairman, what I'd like to research back to
9 is the variances that are before you. Number
10 one is that Mr. Bacon announced they should be
11 here. Twice before you determined these
12 variances are area variances. You got it right
13 those two times, you got it right this third
14 time. What's before you is the separation.
15 It's a distance requirement. The Court of
16 Appeals has held in gas station separation
17 requirements that it's a -- it's a distance
18 requirement, it's an area variance, not a use
19 variance. This very Board when it's been faced
20 with distance separation requirements has
21 precedents that you must follow where those
22 distance requirements are separate -- or are
23 area variances, not use variances. And that's
24 being upheld by the Supreme Court here in
25 Orange County and the 2d Department as well,

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2 which binds this Board as well. So it's very
3 clear that the variances before you are area
4 variances. Mr. Lapine went through the area
5 variance criteria. It's the same criteria that
6 you applied twice before in granting the
7 variances. Mr. Bacon was referring to use
8 variance criterias that are not applicable
9 here. And the record clearly demonstrates that
10 we've satisfied those criteria for granting the
11 variances.

12 We hear the comments of the public with
13 respect to criticism or comments on the plans.
14 Those are appropriately before the Planning
15 Board, as Mr. Lapine has said, and he gave an
16 example of how those would be addressed before
17 the Planning Board, so we're prepared to
18 address those at the Planning Board. As far as
19 the variances before you, it's on the record
20 that it's been submitted twice before and again
21 tonight, that was the basis to grant those
22 variances. We thank you for your time, and we
23 request that the hearing be closed tonight.
24 Thank you.

25 CHAIR SCALZO: Thank you.

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2 Anyone else from the public who hopes
3 to speak about this application?

4 (No response.)

5 CHAIR SCALZO: All right, back to the
6 members of the Board here. We've got an awful
7 lot of information before us.

8 MR. DONOVAN: Mr. Chairman, as you do
9 that, would you mind?

10 CHAIR SCALZO: Oh, no, counselor,
11 please.

12 MR. DONOVAN: I think probably everyone
13 agrees the only thing worse than dueling banjos
14 is dueling attorneys. So I don't want to get
15 into like a legal dissertation here. Certain
16 things that were said I disagree with, certain
17 things I agree with. And most significantly is
18 the SEQRA requirements, the SEQRA analysis, and
19 what was pointed out in the litigation papers,
20 quite frankly. Because what wasn't made clear
21 as I guided the Board through this application
22 before is on paper how exactly this was going
23 to work. So what we're doing is an
24 uncoordinated segmented review. Now,
25 segmentation is typically a very dirty word in

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2 SEQRA regulations. You don't want to segment a
3 project. However, if the segmented review will
4 be no less protective of the environment, it is
5 allowed.

6 In this circumstance this project can't
7 pass go until they get variances. So what will
8 occur or what I'm suggesting you can properly
9 do is to segment the review on the proposed
10 action before you. That action is the variance
11 application, most of which are existing
12 conditions. And then you will defer the full
13 SEQRA review for many of the issues that were
14 pointed out in the Barber letter or have been
15 discussed, they are particularly the Planning
16 Board. Traffic, drainage, visuals, flora,
17 fauna, everything that's impacted that's been
18 recited is going to be a Planning Board review.
19 And before the Planning Board closes out SEQRA
20 for site plan approval, there can be no
21 construction on the site.

22 So in this case what I am suggesting
23 that you can do, it's obviously up to you, is
24 that you can segment the SEQRA review and make
25 your uncoordinated segmented review on the

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2 application, the variances before you, and then
3 the application goes to the Planning Board and
4 the Planning Board conducts their uncoordinated
5 SEQRA review. This is an unlisted action,
6 right, just to kind of -- we don't do this a
7 lot here. A Type I action is an action more
8 likely to cause an adverse environmental impact
9 than an unlisted action, and it has a different
10 level of review. And we'll talk about that
11 when John Cappello wakes up and comes up with
12 his application because he's -- the Planning
13 Board is the lead agency on that, and they're
14 not on this. But that's the way that I suggest
15 that you can handle SEQRA, which would push
16 this to the Planning Board, where the Planning
17 Board is typically, we don't have an engineer
18 on staff, they're more quick to handle these
19 issues.

20 CHAIR SCALZO: Thank you, counselor.

21 well, having heard that, I had
22 mentioned as the meeting kicked off that we may
23 take a short break to confer with legal
24 counsel, and I'm going to probably recommend
25 that to the Board. We're going to have Dave

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2 say exactly what he just said to us again.

3 MR. DONOVAN: Well, if you're going to
4 do that, just to be clear, you're entitled to
5 have an attorney-client session to get legal
6 advice, we're in pending litigation, but
7 understand at that session, and I want to be
8 clear for the record, that session is for legal
9 advice only.

10 CHAIR SCALZO: Correct.

11 MR. DONOVAN: There are no
12 deliberations, you don't say hey, how are you
13 going to vote.

14 CHAIR SCALZO: No, we know. We are
15 fully aware of that, counselor.

16 MR. DONOVAN: Well, I just want to make
17 it clear on the record, and there are attorneys
18 in the room who are paying attention to what
19 I'm saying. But it's for legal advice only,
20 not for deliberation.

21 CHAIR SCALZO: Okay. That being said,
22 one last time, any members of the public that
23 wish to speak about this application?

24 (No response)

25 CHAIR SCALZO: No one is jumping up,

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2 that's great. I'll look to the Board one last
3 time.

4 MR. MASTEN: I don't have anything
5 else.

6 CHAIR SCALZO: All right. So that
7 being said, I don't know that anything else
8 that we would -- I'm not sure that I'm looking
9 for anything else in here. So I am comfortable
10 if the Board would make a motion to close the
11 public hearing. It doesn't necessarily mean we
12 need to act this evening. We can still receive
13 written correspondence beyond that, so.

14 MR. DONOVAN: Well, you've got to be
15 careful with that. It can't be correspondence
16 that someone that you're going to base your
17 decision on, that someone is deprived of the
18 opportunity of commenting on.

19 CHAIR SCALZO: well --

20 MR. DONOVAN: So if you're going to
21 close the public hearing, I don't want you to
22 take anymore information.

23 CHAIR SCALZO: That's great advice,
24 counselor, and we will do just that. This is
25 the third time we have seen this application,

1 Proceedings

2 so I will err on that side.

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

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

7 MR. BELL: I second that.

8 CHAIR SCALZO: We have a motion from
9 Mr. Masten, we have a second from Mr. Bell.
10 All in favor?

11 (Chorus of ayes)

12 CHAIR SCALZO: Opposed?

13 (No response)

14 CHAIR SCALZO: All right, the public
15 hearing is closed.

16 This particular application you can
17 stay seated, we are going to hear our next one.
18 That may go quickly, it may not. But sit
19 tight. And if we end up going to take a short
20 break for any legal counsel, then we may do
21 that.

22 MR. WARD-WILLIS: Thank you.

23 (Whereupon, these proceedings were
24 paused at 8:26 p.m. for the next item on the
25 Board agenda.)

1 Proceedings

2 (whereupon, the following proceedings
3 were had, commencing at 9:29 p.m.):)

4 CHAIR SCALZO: So the folks that are in
5 the hallway, they need to stay there. We're
6 going to go into a little conversation with our
7 attorney.

8 MR. DONOVAN: So let's be clear. You
9 need to make a motion to go into an
10 attorney-client session to discuss the pending
11 litigation regarding the Gas Land application.

12 CHAIR SCALZO: Okay. And I would like
13 to make that motion. Do we have a second?

14 MR. HERMANCE: I will second it.

15 CHAIR SCALZO: We have a second from
16 Mr. Hermance. All in favor?

17 (Chorus of ayes)

18 CHAIR SCALZO: Very good.

19 (whereupon, a recess was taken at 9:30
20 p.m. for an executive session)

21 (whereupon, the following proceedings
22 were had, commencing at 9:38 p.m.):)

23 CHAIR SCALZO: All right, we are back
24 online. That's not the way to say it, but the
25 meeting is now reopen, regarding the Gas Land

Proceedings

1
2 Petroleum rehearing from May 27, meeting for
3 extra variance relief, or area variance, pardon
4 me, of relief of the 1,000 foot requirement to
5 nearest motor vehicle station, and an existing
6 barn with apartment requiring variances for
7 front yard, side yard, height and maximum yard
8 area. We have met with counsel regarding this,
9 and counsel is going to guide us through the
10 rest of the process.

11 MR. DONOVAN: Thank you, Mr. Chairman.

12 So the Board has received a draft copy
13 of a completed Part II from the full
14 Environmental Assessment Form that goes through
15 various potential environmental issues. I've
16 summarized for the Board what this Part II
17 says. It indicates that there will be no
18 impact on land, no impact on geological
19 features, no impact on surface water, small or
20 moderate impact on groundwater, no impact on
21 flooding, no impact on air, no impact on
22 agricultural resources, no impact on aesthetic
23 resources, no impact on historic or
24 archaeological resources, no impact on open
25 space and recreation, no impact on any critical

1 Proceedings

2 environmental areas, no impact on
3 transportation, a moderate impact on energy, a
4 moderate impact on noise corridor and light, a
5 moderate impact on human health, except it does
6 reference that there was a remediation, prior
7 remediation on the site relative to the spill
8 that's been resolved. This is consistent with
9 community plans, consistent with the community
10 character. And I should say, I should have
11 said this at the beginning, I'll say it now,
12 this only relates to the variances. This does
13 not relate to the site plan application. These
14 are, the proposed actions before the Board is
15 for the variances. And this Part II only
16 addresses those issues relative to the
17 variances.

18 CHAIR SCALZO: So we have segmented it.

19 MR. DONOVAN: We have, and I'm going to
20 get to that in a second. But is the Board okay
21 with the draft Part II that you've seen thus
22 far?

23 MR. BELL: Yes.

24 CHAIR SCALZO: Yes, we are.

25 MR. HERMANCE: Yes.

1 Proceedings

2 CHAIR SCALZO: Okay.

3 MR. DONOVAN: So you've also previously
4 received a draft negative declaration that
5 describes the action, and the action is the
6 request for area variances. It describes the
7 project. It provides a background by reciting
8 all the different variances. It provides a
9 rationale for issuing a negative declaration.
10 It goes through all of the impacts that I
11 previously summarized from Part II. And it
12 makes very clear that there will be a
13 subsequent environmental review done by the
14 Planning Board. The Planning Board has
15 jurisdiction over site plans. This Board only
16 has jurisdiction over area variances. And what
17 I'm going to do for the Board is read a
18 resolution, and then if the Board is so
19 inclined, they can adopt the resolution.

20 This is a resolution authorizing an
21 uncoordinated segmented environmental review of
22 the application of Gas Land Petroleum, Inc. and
23 the issuance of a negative declaration pursuant
24 -- spell "pursuant" correctly -- pursuant to
25 the SEQRA regulations, all in conjunction with

1 Proceedings

2 the application of Gas Land Petroleum in
3 connection with its request for area variances.
4 The resolution reads as follows:

5 Whereas, Gas Land Petroleum,
6 hereinafter Gas Land, has made application to
7 the Town of Newburgh Planning Board seeking
8 site plan approval in connection with certain
9 development proposed on property located at
10 5200 Route 9W in the Town of Newburgh; and

11 whereas, the project is an unlisted
12 action with respect to the State Environmental
13 Quality Review Act; and

14 whereas, pursuant to correspondence
15 with the attorney for the Planning Board dated
16 March 25th, 2021, the Gas Land project would be
17 referred to the Town of Newburgh Zoning Board
18 of Appeals (the ZBA) for consideration of
19 certain area variances; and

20 whereas, in addition to the standard
21 practice of referral to the Planning Board for
22 any variances that may be required in
23 connection with a site plan application, the
24 direct application to the ZBA for area variance
25 is clearly permitted by New York State Town Law

1 Proceedings

2 Section 274-a 3; and

3 whereas, the variances sought by Gas
4 Land were previously considered and granted
5 pursuant to a prior determination, I'm sorry,
6 pursuant to a prior determination by the ZBA
7 dated June 25th, 2020 and July 29th, 2021; and

8 whereas, the jurisdiction of the ZBA is
9 limited to consideration of the area variances
10 requested by Gas Land; and

11 whereas, the project proposed by Gas
12 Land cannot commence and no construction can be
13 authorized unless and until site plan approval
14 is issued by the Planning Board; and

15 whereas, the Planning Board has advised
16 the ZBA in correspondence from their counsel
17 that the Planning Board has not commenced their
18 SEQRA analysis; and, therefore, the ZBA is
19 authorized to review the variances requested on
20 an uncoordinated review basis as authorized by
21 SEQRA regulations; and

22 whereas, for the reasons set forth in
23 the attached determination, it is the opinion
24 of the ZBA that an uncoordinated segmented
25 review of the project is appropriate and there

1 Proceedings

2 will be no less effect on the environment than
3 would a coordinated review; and

4 Whereas, acting as lead agency for the
5 environmental review of the project, and after
6 taking a hard look at all of the potential
7 environmental impacts that might result from
8 the proposed action, and after reviewing Part I
9 of the full Environmental Assessment Form and
10 completing Part II of the full Environmental
11 Assessment Form, the ZBA has concluded for the
12 reasons set forth in the negative declaration
13 that there will be no significant environmental
14 impact or effect caused or occasioned by the
15 issuance of the requested variances; and

16 Now, Therefore, it's Hereby Resolved,
17 pursuant to the State Environmental Quality
18 Review Act, that the ZBA hereby adopts the
19 attached negative declaration for the reasons
20 stated therein; and

21 It's Further Resolved that the ZBA
22 Chairman is authorized to affix his signature
23 to Part III of the full Environmental
24 Assessment Form submitted with the Gas Land
25 application.

1 Proceedings

2 Does anyone wish to make that motion?

3 CHAIR SCALZO: I make a motion for a
4 negative declaration.

5 MR. MASTEN: I'll second it.

6 CHAIR SCALZO: We have a motion by me,
7 we have a second by Mr. Masten. All in favor?

8 (Chorus of ayes)

9 CHAIR SCALZO: Opposed?

10 (No response)

11 MR. DONOVAN: Mr. Chairman, I'm going
12 to ask you to affix your signature to Part III.

13 CHAIR SCALZO: Part III.

14 MR. DONOVAN: Part III.

15 CHAIR SCALZO: Signature of
16 responsible, oh, chairman.

17 MR. DONOVAN: That's this.

18 CHAIR SCALZO: Oh, right there.

19 MR. DONOVAN: And if you could just put
20 today's date, which is still the 26th.

21 MR. DONOVAN: The Board also has
22 heretofore received a draft decision granting
23 the variances as requested. And to summarize
24 that decision for you, it goes through the
25 background, prior applications, the specific

1 Proceedings

2 variances being requested, the fact that these
3 variances were granted before, and the fact
4 that this is going to go back to the Planning
5 Board for site plan review and approval, and
6 that no application, or I'm sorry, no
7 construction can commence until site plan
8 approval is granted. It also recites that the
9 variance that was requested by the applicant,
10 which is the distance between fueling stations
11 on the lot, is not necessary. It is my opinion
12 to the Board, just to clarify, that it's
13 between lots, so you don't need a variance from
14 fueling stations on the same lot.

15 CHAIR SCALZO: Correct.

16 MR. DONOVAN: So that variance is not
17 required.

18 The decision goes through the five part
19 balancing test as required by law, and finds,
20 and you'll recall you've reviewed this, there
21 is no undesirable change in the character of
22 the neighborhood for the reasons stated
23 therein; that because I think five of the six
24 variances are existing conditions, there is no
25 alternative benefit for the applicant to pursue

1 Proceedings

2 other than to request a variance; that the
3 variance, while moderately substantial, the
4 overall impact on the neighborhood is de
5 minimis. We've issued a negative declaration
6 finding no adverse physical environmental
7 effects. And while the difficulty is
8 self-created, that is not a bar to the granting
9 of the relief.

10 If the Board is in agreement with the
11 decision as they see, you need a motion to
12 adopt the decision and authorize the chairman
13 to sign.

14 MR. BELL: I make a motion to adopt and
15 sign.

16 MR. HERMANCE: I'll second.

17 CHAIR SCALZO: We have a motion from
18 Mr. Bell, we have a second from Mr. Hermance.
19 All in favor?

20 (Chorus of ayes)

21 CHAIR SCALZO: Opposed?

22 (No response)

23 CHAIR SCALZO: The motion is carried.
24 And does that conclude our --

25 MR. DONOVAN: I believe that concludes

1 Proceedings

2 the proceedings for this evening.

3 CHAIR SCALZO: For this evening and for
4 this application.

5 Members of the Board, have you had a
6 chance to look at the meeting minutes for
7 July's meeting?

8 MR. BELL: Yeah.

9 CHAIR SCALZO: I make a motion we
10 approve the meeting minutes for July's meeting.

11 MR. BELL: I second.

12 CHAIR SCALZO: Mr. Bell seconds. All
13 in favor?

14 (Chorus of ayes)

15 CHAIR SCALZO: And a motion to adjourn?

16 MR. BELL: I make a motion to adjourn.

17 MR. MASTEN: I second it.

18 CHAIR SCALZO: Mr. Bell makes a motion,
19 Mr. Masten seconds it. All in favor?

20 (Chorus of ayes)

21 (Time noted: 9:47 p.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)
) SS:
COUNTY OF ORANGE)

I, KARI L. REED, a Shorthand Reporter
(Stenotype) and Notary Public with and for the
State of New York, do hereby certify:

I reported the proceedings in the
within-entitled matter and that the within
transcript is a true record of such
proceedings.

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

IN WITNESS WHEREOF, I have hereunto set
my hand this 5th day of October, 2021.

Kari L Reed

KARI L. REED

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

In the Matter of:

MONARCH DEVELOPMENT INC.

Route 52 and Monarch Drive
Section 103; Block 7; Lot 1
Section 47; Block 1; Lot 46
IB Zone

----- X

VARIANCE

Date: August 26, 2021
Time: 8:50 p.m.

Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York 12550

BOARD MEMBERS: DARRIN SCALZO, Chair
DARRELL W. BELL
GREG HERMANCE, SR.
JOHN D. MASTEN

ALSO PRESENT: DAVID A. DONOVAN, ESQ., Board Counsel
SIOBHAN JABLESNIK, Board Secretary
GERALD CANFIELD, Building Inspector

APPLICANT: JOHN CAPPELLO, ESQ.

Reported by: Kari L. Reed

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

1 Proceedings

2 CHAIR SCALZO: All right, dare I say
3 it, well, this is our last, and look it,
4 they're already coming up, how about that.

5 MR. DONOVAN: Not to, well, maybe try
6 to shorten things up, I just want to be clear,
7 so this, the Planning Board is the lead agency
8 on this so they have the SEQRA determination,
9 so the variance applications we can't make a
10 determination on it, all right.

11 CHAIR SCALZO: well, we would like some
12 indication, and we'll go through it because,
13 actually the interpretation you have I believe
14 because that's not subject to --

15 MR. DONOVAN: I just wanted to be
16 clear. All right, so the Board is all keyed in
17 on that? Darrell is not here.

18 CHAIR SCALZO: He'll be back in a
19 moment.

20 MR. DONOVAN: Then he walked away.

21 CHAIR SCALZO: So we just have to wait
22 for one of our members to come back. But while
23 we're waiting I'm going to say our next
24 applicant is 52 Monarch Development Inc., Route
25 52 and Monarch Drive in Newburgh, seeking an

1 Proceedings

2 interpretation of a height limitation in the B
3 Zone for senior housing, and area variances of
4 the maximum size of the one and two bedroom
5 units and maximum building height. This is a
6 Planning Board referral.

7 Siobhan, do we have mailings?

8 MS. JABLESNIK: Where are we, on
9 Monarch Drive. This applicant sent out 46
10 mailings.

11 CHAIR SCALZO: Forty-six.

12 MS. JABLESNIK: You had me all out of
13 order so I didn't know where I was.

14 CHAIR SCALZO: Yeah, sorry.

15 MR. DONOVAN: Just to repeat what I
16 said before. So on the various applications
17 the Planning Board is the lead agency. They
18 haven't rendered a decision on this so we can't
19 act on the variances tonight. The
20 interpretation is a Type II action, which means
21 it's not subject to SEQRA. So you can render a
22 determination on the interpretation question if
23 you want.

24 CHAIR SCALZO: Okay. The
25 interpretation applies only to the building

1 Proceedings

2 height; however, the other variances

3 regarding --

4 MR. DONOVAN: Are code decisions.

5 CHAIR SCALZO: Okay.

6 MR. DONOVAN: Correct.

7 CHAIR SCALZO: All right. Please
8 introduce yourself and let's get started.

9 MR. CAPPELLO: Good evening, everyone.
10 My name is John Cappello. I'm an attorney with
11 Jacobowitz & Gubits. I'm here with Michael
12 Lockwood, the project architect, and Michael
13 Maher, one of the principals of the developer,
14 Monarch Development, to discuss our
15 application. If I could give you a brief
16 overview and then introduce Michael, because we
17 are here for really two very discrete issues as
18 it relates to this development.

19 The property is located on the south,
20 at the intersection of the south side of New
21 York State Route 52 and the east side of
22 Monarch Drive. It's located in the B zoning
23 district. And as part of this development,
24 it's a senior citizen development, the lots,
25 there's two lots, they total about ten acres.

1 Proceedings

2 we're resubdividing and reconfiguring those two
3 lots, which will leave a lot of a little less
4 than an acre, kind of right near the
5 intersection, which we designated for a bank
6 building or office building, some type of
7 commercial use, and then the majority of the
8 property, nine and a half plus acres, will be
9 for a senior citizen development of
10 approximately 100 units, mixed one and two
11 bedroom units.

12 Now, in the town, given the dire need
13 for senior housing and affordable housing,
14 there's two separate overlays you could
15 approach the town for. So the applicant did
16 approach the town requesting a senior overlay
17 for a market rate senior development, which is
18 what we're proposing. It would be a three
19 story building. And as part of that we had to
20 demonstrate to the Town Board, we went to the
21 Planning Board, we were referred back to the
22 Town Board to demonstrate a need for senior
23 housing. So we went to the Town Board,
24 prepared a report to demonstrate there is still
25 a real need in this town for senior

1 Proceedings

2 developments. And during that course the town
3 asked us to hold, asked the applicant to hold a
4 couple of informational meetings, which they
5 did at a local hotel, and we canvassed the
6 neighbors to try to get them to the meeting
7 along with the Town Board to hear the questions
8 and concerns so we could incorporate it into
9 the design. Based upon that, the Town Board
10 did approve and authorize an overlay.

11 Now, the overlay zoning allows, this is
12 section 185-48, in that if a -- it authorizes
13 the Planning Board to modify sections of the
14 zoning code relevant to lot dimensions,
15 building setbacks and density. And if you look
16 at the table in the B zoning district, it lists
17 senior citizen development pursuant to 185-48,
18 but it has no bulk requirements whatsoever. So
19 when you get to the height -- the lot on it,
20 any of it -- so when you get to the height
21 there's no height listed at all. So there are
22 other heights in the B zoning district. For
23 instance, if this was a hotel, which is a
24 permitted use in the B zoning district, the
25 height of that building could be 50 feet. So

1 Proceedings

2 we believe that lot dimension includes and
3 provides the Planning Board the ability to
4 determine, based upon the SEQRA review, based
5 upon elevations, based upon listening to the
6 public, to determine what the appropriate
7 height of the building would be based upon the
8 lot limitations, based upon the site review of
9 any of the issues you were discussing.

10 So we're here, though, because it's not
11 crystal clear, asking for an interpretation on
12 the issue, interpreting that it is in the
13 Planning Board's purview to determine the final
14 site as part of the SEQRA review. So that
15 would be in the interpretation. If the Board
16 determined for some reason that that's not the
17 purview in what -- if there is a necessity for
18 the height variance, I don't know what number
19 we would be varying to get to 45, but I have
20 the architect here to present. The height we
21 would be asking for is that the very peak of
22 the eave would be a little over 46 feet.
23 That's just the very peak. And then the wings
24 would be at 45. The reason we need that, and
25 Michael will explain a little more if we get to

1 Proceedings

2 the need to do that is one of the things that
3 the Planning Board and Town Board encouraged
4 was some garage parking so there's not as much
5 pavement in the area, so that lifted the
6 elevation up, so, but the property sits a
7 little low. So overall you will have that
8 grade. But once again, I would posit that the
9 appropriate board to hear that would be the
10 Planning Board, you know, as part of its review
11 and part of its modification of the lot
12 dimensions to determine the overall best
13 development of this project.

14 The second variance we're looking for I
15 think is a little, and this is a clear
16 variance, the overlay zoning districts have
17 limitations on the size of the units. This is
18 the first time I've ever saw -- usually I'm
19 used to seeing minimum sizes of units. This
20 has a maximum size.

21 CHAIR SCALZO: Yes.

22 MR. CAPPELLO: The maximum size of the
23 one bedroom provided is 700 square feet, and
24 the maximum size of the two bedroom I believe
25 is 900. The way the building laid out in the

1 Proceedings

2 design and the utilization of space, and this
3 is where Michael is going to take you through,
4 there are some of the units in there that are
5 designed on a one bedroom we could provide --

6 CHAIR SCALZO: Office space.

7 MR. CAPPELLO: -- an additional, yeah,
8 100 square feet to get to 806 to provide a
9 little alcove for, as many of us have been at
10 home over the course of last year, to have a
11 computer, some internet, and be able to sit and
12 get a little privacy to have to do some work.
13 And the same would be in a certain number of
14 the two bedroom units. That we absolutely do
15 need a variance for.

16 So, having said that, I'm going to turn
17 it over to Michael to just explain to you a
18 little more in detail the reasons for the
19 request and how we believe it doesn't really
20 change the design of the building, the size of
21 the building or any of the, you know, other
22 aspects.

23 CHAIR SCALZO: Well, before we get that
24 far.

25 MR. CAPPELLO: Okay, sure.

1 Proceedings

2 CHAIR SCALZO: The area variance for
3 the size of the apartments themselves is
4 something that I'm sure we could probably act
5 on. With regards to the building height where
6 no data exists when it comes to the zoning
7 Board of Appeals, we grant variances from an
8 established code. There is no code in this
9 case, or at least the height that we can, you
10 said it yourself, what is the -- what is the
11 maximum that we would allow you. So there is
12 no information that we would be varying, giving
13 a variance against. Stop me if I'm going over.

14 MR. DONOVAN: Stop.

15 CHAIR SCALZO: Stop it.

16 MR. DONOVAN: Stop. So relative to the
17 area variance you can't act on it, right,
18 because the Planning Board --

19 CHAIR SCALZO: I'm sorry.

20 MR. DONOVAN: -- is the lead agency.

21 CHAIR SCALZO: I've heard a lot of
22 stuff tonight.

23 MR. DONOVAN: So the Planning Board
24 hasn't acted, they're the lead agency, so you
25 can't -- you could give input, right, you can

1 Proceedings

2 give how you feel, but you can't take action.
3 Relative to the interpretation you can, because
4 that's not subject, it's called a Type II
5 action, so that's not subject to SEQRA. You
6 know, you're, you've got some options, right.
7 You can say there's no limitation because it's
8 not in the code and they can build 40 feet
9 high, right. You could pick one of the ones in
10 the zone, that doesn't seem to make a lot of
11 sense. The interpretation you could render,
12 should you so choose, I think the applicant is
13 suggesting it, is that 140, I'm sorry,
14 185-48(b) says that the Town Board, upon
15 recommendation of the Planning Board, may
16 authorize the Planning Board to modify those
17 sections of the chapter relative to lot
18 dimensions, building setbacks and density.
19 When you talk lot dimensions you could render
20 an interpretation that that includes height.
21 Right, I think that's what you are asking this
22 Board to do, right?

23 MR. CAPPELLO: Exactly.

24 MR. DONOVAN: You know, that's up to
25 the Board, but that's a reasonable

1 Proceedings

2 interpretation. If the Town Board can allow
3 the Planning Board to pick building setbacks,
4 density, lot dimensions, is it reasonable to
5 infer that height would be included in that? I
6 think that's a reasonable inference. But
7 that's what you could do on that if you were so
8 inclined.

9 CHAIR SCALZO: Thanks, counsel. I --

10 MR. DONOVAN: That's why I'm here.

11 CHAIR SCALZO: well, then continue.

12 MR. CAPPELLO: well, having said that,
13 then I will, since we have Michael here on the,
14 you know, get some indication on the lot sizes
15 or if you have any questions I'll let him just
16 explain in more technical terms, in real terms
17 because I'm not exactly sure what I'm talking
18 about when it comes to architecture, exactly
19 what the reasons for and the impact of the unit
20 size.

21 MR. LOCKWOOD: So Michael Lockwood,
22 Lockwood Architecture. I would like to just
23 talk about the height of the building. You
24 know, right now we have a ten foot floor to
25 floor for the first to second, second to third,

1 Proceedings

2 then we have only eight foot ceiling on the
3 third floor. The, you know, the need for that,
4 you know, was pretty much at our -- was pretty
5 much as tight as we could get due to the floor
6 framing system and then the mechanicals and
7 fire protection systems that need to be in
8 place. So you really can't change the heights
9 of, you know, the floors at this point.

10 The, you know, the roof, we have the
11 roof design to go in a residential like setting
12 like with the traditional look, peaked roofs
13 too, you know. And, you know, there's a -- the
14 building starts to look odd if you were to
15 lower the pitch too much on the roof. It's
16 just, you know, it doesn't, it just defeats the
17 purpose of the design, so. And we also need,
18 there is some needed space down the center of
19 the attic as well for the upper floor units for
20 sprinkler protection and so forth. So that's,
21 I don't, you know, that's all I have to say
22 about the height. Okay.

23 And then the rooms, I mean, you guys
24 obviously know what we are facing with COVID
25 and the additional office space. And we have

1 Proceedings

2 not increased the footprint of what we
3 originally proposed to the Board, we've just
4 taken away some balcony space. And these units
5 that we add the office space had very large
6 balconies, so we're able to encroach on the
7 balconies and just reduce the size of the
8 balconies a little bit to provide the office
9 space needed for the units. Which is, as you
10 know, required us to go for a variance on those
11 units. There are, yeah, there's fourteen two
12 bedrooms units that we are changing and four
13 one bedroom units that are -- would be having
14 office space, so.

15 CHAIR SCALZO: Earlier in the
16 presentation you mentioned that there's going
17 to be some garage under parking, right?

18 MR. LOCKWOOD: Yes.

19 CHAIR SCALZO: To decrease the, you
20 know, paved surfaces, which is great. In those
21 particular -- well, are they assigned to an
22 apartment? And would that make it in essence
23 from that side of the building four story, or
24 will it always be a three?

25 MR. LOCKWOOD: No, it's cut into the

1 Proceedings

2 retaining walls, it's just that just for the
3 entrances to the lower level of the garage
4 there's some natural grade changes there, so it
5 actually reduces the cut and fill a little bit
6 on that side of the building, and it's closer
7 to the entrance. But I guess if you're taking
8 an average on all sides of the building it may
9 have to be added in as an average technically.

10 CHAIR SCALZO: Okay. So does the
11 height that you're talking about include that
12 or no?

13 MR. LOCKWOOD: Mike, do you have
14 anything to add on this?

15 CHAIR SCALZO: Please introduce
16 yourself, sir, we're not familiar with you.

17 MR. MAHER: Mike Maher, I'm with we're
18 one of the co-partners in this project.

19 So in essence the, again, like the Town
20 Board and the Planning Board asked for us to
21 give some thoughts on the parking, which we
22 did, to Mike's point. The idea that the
23 sloping property allows us to sync it to a
24 section of the property so that if I was to
25 drop in the building as low as we possibly

1 Proceedings

2 could, keep the retaining walls not too high in
3 the back side to allow for into ground, less of
4 a visual impact, but also less rear yard
5 parking. So I think on that end of the
6 building, and again, the final plans aren't
7 concluded yet, there may be a couple feet of
8 additional area, but it's only going to be that
9 width of the driveway itself. So there'll be
10 retaining walls on the sides of the driveway
11 into the underground parking, but it's not
12 going to be underground parking to the point
13 where -- it's above ground parking really.
14 It's actually going to be sunk in the ground,
15 the majority of it. So the only access area
16 will be the driveway itself, it will be that
17 12, 15 foot, or, I'm sorry, 25 foot wide or so
18 area that may be actually less than the actual
19 core length of the building.

20 On the, as far as the size of the units
21 go, so to the point, I don't want to classify
22 it as office space, it's not actually an
23 office, it's more of an alcove, as you can see
24 in the plans that we have submitted. It's more
25 of an alcove or desk area in each of the units.

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2 Out of the 100 units that are there, each of
3 those buildings are 50, each building will have
4 18 units, and each building will have a
5 foundation of office area. So it's not the
6 entire project, it's only 36 of the 100 units
7 will have that area. And again, the footprint
8 remains the same as we had originally submitted
9 last year to the Planning Board and we have
10 submitted to the Town Board. So no larger
11 footprint at all in building size.

12 CHAIR SCALZO: Thanks.

13 MR. MAHER: Questions?

14 CHAIR SCALZO: Well, actually I do.
15 You've laid out a whole bunch of things in the
16 front here, but we can't see them.

17 MR. MAHER: Well, that's for the
18 public, obviously the public are here looking
19 at it. We wanted to make sure we show them and
20 show you, similar to what we had, basically the
21 same thing we had last year when we had it here
22 for the public to look at. So what did you
23 want to see, the elevation part of it?

24 CHAIR SCALZO: Sure.

25 MR. MAHER: I'd be glad to, I'll be

1 Proceedings

2 glad to show, let's put it up there for you.

3 That's one view. And in addition some

4 interpretations of the potential --

5 MR. LOCKWOOD: From the neighbor's lot.

6 MR. MAHER: Correct. There's one
7 potential of some -- some shrubbery. Here's an
8 actual view from the -- from the parking area.
9 The way the property --

10 MR. LOCKWOOD: So put them side by
11 side.

12 CHAIR SCALZO: This is, and now I'm
13 going to -- I'm a big visual guy, so that's
14 definitely helping me. Mike, do you have one
15 where I can see where the parking is so I can
16 understand how the parking goes?

17 MR. MAHER: So the parking itself,
18 yeah, give me a second. So basically if you
19 want to -- I do have it, sorry.

20 CHAIR SCALZO: Yeah.

21 MR. MAHER: So in essence this is --

22 CHAIR SCALZO: He's pointing.

23 MR. MAHER: This is a corner lot.

24 CHAIR SCALZO: Yes.

25 MR. MAHER: So basically at the end of

1 Proceedings

2 Monarch, and then basically you see the two
3 areas. On the low side you've got roughly a
4 about 16 foot elevation change from end to end
5 in that section, then you use the grade to
6 benefit us to drop the building in then the
7 underground parking. So we'll go from this.

8 CHAIR SCALZO: Okay. Thank you.

9 MR. HERMANCE: Will each unit have a
10 parking garage or it's only certain units?

11 MR. MAHER: So this will be discussed
12 further. I mean, we have I think 22 on each
13 building at 50 units, so, you know, it will
14 part of a, I guess a package put together if
15 you want underground, part of the parking
16 underground. How we do it I'm not sure yet.
17 But we can get 22 out of each side to
18 accommodate some of the requests from the
19 Planning Board, and obviously you can eliminate
20 some of the paved area. So 44 units out the
21 units will have parking underground.

22 CHAIR SCALZO: Well worth it. No
23 pushing snow off your car in the winter,
24 really. Okay. You know, I don't have any
25 questions in this case.

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2 MR. HERMANCE: I don't either.

3 CHAIR SCALZO: Counsel straightened me
4 out on the whole thing, so.

5 MR. HERMANCE: Back to the original
6 question, would the underground parking
7 constitute a four story?

8 CHAIR SCALZO: It does not appear so,
9 no. You know, help me out, folks. As I'm
10 looking at that, the parking would be
11 underground.

12 MR. LOCKWOOD: Yeah.

13 MR. MAHER: Yeah, basically if you look
14 at, if you look at the picture on top, that's,
15 when you're pulling into Monarch it's basically
16 on the other right side hand end of that
17 building is where you have an entrance to the
18 parking.

19 MR. BELL: To underground?

20 MR. MAHER: Correct.

21 MR. BELL: It doesn't raise anything?

22 MR. MAHER: I mean, it may vary
23 slightly, the final grade, that's why we're not
24 sure exactly what the final grade would be.
25 But again, with the 16 foot elevation

1 Proceedings

2 difference from end to end where the building
3 goes, that gives us a lot of area to drop it
4 down so it doesn't impede the neighbors so
5 much. The back section might have an eight or
6 twelve foot drop. So that 43 foot height is
7 actually 31 feet.

8 MR. DONOVAN: And pursuant to their
9 request you wouldn't be establishing the height
10 as you have in other applications. You would
11 be saying, granting the interpretation giving
12 the Planning Board the authority to set the
13 height, being that that's included in the lot.

14 MR. CAPPELLO: So all of the details
15 would be put before the Planning Board, you
16 know, doing the SEQRA review for everything.
17 You know, they'll take into account the
18 aesthetics, you know, where it comes in,
19 traffic, stormwater, all of that would be, you
20 know, gets examined as part of the site plan
21 review.

22 CHAIR SCALZO: Sure.

23 MR. CAPPELLO: So the final height
24 would be determined based on all of those
25 issues, and we believe the Planning Board has

1 Proceedings

2 that authorization to hear us on that.

3 CHAIR SCALZO: Okay. Mr. Bell, any
4 other comments?

5 MR. BELL: No, I'm good.

6 CHAIR SCALZO: Mr. Hermance?

7 MR. HERMANCE: No.

8 CHAIR SCALZO: Mr. Masten?

9 MR. MASTEN: No.

10 CHAIR SCALZO: At this time I'll open
11 it up to any members of the public that wish to
12 comment.

13 MR. COLUMBO: Would there be only one
14 entrance from the road to --

15 CHAIR SCALZO: Sir, if you could
16 identify yourself for the record.

17 MR. COLUMBO: Excuse me?

18 CHAIR SCALZO: If you can identify
19 yourself, this is being recorded.

20 MR. COLUMBO: My name is Bill Columbo,
21 I live alongside this property. I'm just, the
22 only question I have is there's only, I only
23 see one road coming into this.

24 CHAIR SCALZO: One entrance off Monarch
25 is all I'm seeing here.

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2 MR. COLUMBO: Yeah.

3 CHAIR SCALZO: And that prevents you
4 from having to talk to the DOT for a state
5 highway entrance; correct?

6 MR. MAHER: Well, again, my engineer is
7 not here tonight, but in essence, because of
8 the curve that be will likely to -- and again,
9 this is part of our discussion with the
10 Planning Board what the request was, basically
11 a single entrance, well, a double entrance
12 basically not along that curve so you have the
13 access.

14 MR. COLUMBO: Well, I'm just looking at
15 what happens with the fire trucks, ambulances,
16 with 100 hundred units there, you could have
17 200 people.

18 CHAIR SCALZO: You're correct. And if
19 I go wrong, Mr. Maher, let me know. I believe
20 what Mr. Maher just said as far as not on the
21 curve between the entrance and the exit, so
22 there will never be a chance of a head-on
23 collision in that entrance; is that correct?

24 MR. MAHER: Correct. The Planning
25 Board request here discussed was having the

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2 split entrance so you have access for emergency
3 vehicles in case of -- in case of an emergency.

4 MR. CAPPELLO: The Planning Board does
5 have an independent, you know, their own
6 traffic engineer.

7 CHAIR SCALZO: Yes.

8 MR. CAPPELLO: And they've already
9 given some initial comments, but the final
10 decision will be up to him. We'll seek
11 Mr. Canfield's, you know, comments on that as
12 well, as all emergency. Right now we're really
13 here, you know, for interpretation on height
14 and, you know, your initial concerns regarding
15 that additional level.

16 CHAIR SCALZO: Sir, did that answer
17 your question? Or you'll have another
18 opportunity really is the answer, because the
19 Planning Board will continue to hold meetings
20 on this action.

21 AUDIENCE MEMBER: So it hasn't been
22 approved yet?

23 CHAIR SCALZO: No.

24 MR. BETCHER: The bigger question would
25 be the traffic.

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2 CHAIR SCALZO: I'm sorry, I didn't ask
3 you but I have to ask you, can you identify
4 yourself, please?

5 MR. BETCHER: I'm sorry. My name is
6 Charles Betcher. I live at 5 Royal Circle.
7 The one picture over here that you're seeing,
8 that is the view from my backyard. It might be
9 they used my tree over there. But I would like
10 to ask what the depth of perception is here
11 from my backyard to go 20 feet in and then
12 another 20 feet you're going to put a picnic
13 area that's not on that picture. What is the
14 depth of perception from my point from my
15 property to that picture? Because it doesn't,
16 that picture is a lot smaller than what this
17 building is going to be.

18 MR. LOCKWOOD: That was taken from
19 someone who actually took a shot from someone
20 standing right near your backyard near your
21 property.

22 MR. BETCHER: Well, they're welcome to
23 come back and take another picture after that
24 thing is done and see how right he was.

25 MR. LOCKWOOD: Okay.

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2 MR. BETCHER: Because that building is
3 going to be a lot bigger. Because this is --
4 this property is surrounded by single family
5 homes, entirely around there it's all single
6 family homes. That's going to tower over every
7 house that's on that line.

8 AUDIENCE MEMBER: Right.

9 MR. BETCHER: And that's what our
10 question is.

11 AUDIENCE MEMBER: Yes.

12 MR. BETCHER: Okay, we want -- we've
13 enjoyed a great life, we're not, I'm not
14 objecting to progress, we have to have
15 progress. Good, controlled progress is a must.
16 And protecting people's rights in the sense
17 that what they enjoyed as life.

18 CHAIR SCALZO: Sure.

19 MR. BETCHER: I've been there for 41
20 years.

21 CHAIR SCALZO: Thank you for your
22 comments, that's actually very good.

23 Mr. Lockwood, have you ever heard of a
24 balloon float test? No, all right. You get
25 balloons filled with helium or something that's

1 Proceedings

2 lighter than air at the height that you're
3 going to have of your building, first floor,
4 second floor, third floor, and you take
5 photographs and you see the balloons at each
6 height where everything will be. So perhaps a
7 balloon float test might satisfy some of your
8 neighbors' concerns.

9 MR. CAPPELLO: To reiterate, we have to
10 go through a full SEQRA process with the
11 Planning Board, and we met with the neighbors
12 and had informational meetings, and we'll
13 continue to, you know, meet with them and do
14 some testing and mitigation. But, and with all
15 due respect, this property has been zoned in
16 the B zoning district where there are several
17 commercials, including a hotel that has a
18 height of, you know, a 50 foot height. So we
19 are with working with them to, you know,
20 address the issues and to address the
21 transition, and we'll continue working. We'll,
22 you know, any further information we'll provide
23 and try to get a better position as we go
24 through the Planning Board.

25 MR. BETCHER: This is going to be 20

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2 feet in from my property.

3 MR. CAPPELLO: They're just picnic
4 tables.

5 CHAIR SCALZO: Someone is waiting
6 patiently to speak. Just identify yourself,
7 please.

8 MS. SIERODZINSKI: Yes. I'm Marcia
9 Sierodzinski. I live at 7 Royal Circle, right
10 next door to Charlie. And my concern is the
11 height variance. We talked about this before,
12 the lighting structure. The lighting will be
13 right in our backyard. I've been there for 51
14 years. And we've had the luxury of having the
15 privacy and the animals, and this was this will
16 disrupt that, but I know it's progress going
17 forward, that's fine. But I really believe
18 that we still need our privacy. And the
19 lighting, we had mentioned they had several
20 public meetings. I think there was only one,
21 to my knowledge anyway.

22 MR. BETCHER: They had two meetings,
23 two at the hotel I think.

24 MS. SIERODZINSKI: Oh, did they have
25 two?

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2 MR. BETCHER: They had two.

3 MS. SIERODZINSKI: Oh, maybe I missed
4 one.

5 MR. BETCHER: As far as public
6 hearings, I think there's only been one.

7 CHAIR SCALZO: The process is not done
8 yet. And that's --

9 MS. SIERODZINSKI: Okay.

10 CHAIR SCALZO: I apologize, I should
11 have jumped in to say this is not a, some
12 people refer to them as done deals. This is by
13 no means in its final stages or it could be.
14 But this is not the approval that ends it.

15 MS. SIERODZINSKI: Okay.

16 CHAIR SCALZO: So you're going to have
17 other opportunities to comment on this.

18 MS. SIERODZINSKI: Okay. I just wanted
19 to be sure, because I know the lighting and the
20 privacy was a big part of my particular
21 feelings, as I think my neighbors, three of us
22 right in a row.

23 MR. BETCHER: Yeah. We want to
24 preserve it as best we can.

25 MS. SIERODZINSKI: Okay. Thank you.

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2 There are still people outside. Is there
3 somebody from out there?

4 CHAIR SCALZO: Okay, anyone else from
5 the public? I thought I saw your hand up, no.

6 MR. CAPPELLO: If anyone wants to give
7 us their name and number, I would be happy to
8 reach out to them, we'll reach out personally
9 and, you know, advise them of when we are
10 planning to have a meeting. I'd rather address
11 your issues to the best that we can and make
12 you happy.

13 MR. MAHER: Look, let me just add, help
14 out here a little bit. At the meeting we did
15 last year somebody brought up the lighting and
16 such and the privacy part of it. So we did
17 discuss that. The Town Board members were at
18 the meeting, so that they're aware of the
19 conversation with the residents. So two
20 points. One, with the parking in the center of
21 the buildings and the majority of the lake
22 between the buildings, so you don't have
23 parking around the periphery. So basically the
24 majority of the lighting, down lighting as it
25 is nowadays, will be in the buildings. So that

1 Proceedings

2 kind of should alleviate most of the fears as
3 far as the lighting goes. And then the other
4 thing that we discussed at the public meeting,
5 as I say, was the request for the privacy. So
6 we talked to the Town Board and the engineer
7 and we discussed the point of the setbacks to,
8 again, include some of the berm and also some
9 privacy fencing along this line to minimize the
10 visual impacts. That's all within the
11 discussion, and that again, that will be before
12 the Planning Board.

13 CHAIR SCALZO: Any other questions from
14 the public?

15 (No response)

16 CHAIR SCALZO: Well, back to the Board.

17 MR. BELL: I have a question just based
18 on what I heard from you. You said that you
19 are 20 feet from your backyard to the property?

20 MR. BETCHER: From my property line
21 it's 20 feet. And then I'm not sure what the
22 footage is after that 20 feet to the building
23 itself.

24 MR. BELL: Got you.

25 MR. BETCHER: All right, but after that

1 Proceedings

2 20 feet, maybe five feet more is going to be a
3 picnic area.

4 MR. BELL: Oh, okay.

5 MR. BETCHER: With tables, I don't
6 know, chairs there, I have no idea. But that's
7 a concern.

8 CHAIR SCALZO: Right. And just looking
9 at the plan here, it appears that the building,
10 the closest the building will be to any
11 property line there appears to be a little bit
12 over 75 feet.

13 MR. BETCHER: That's not much, not when
14 you're talking a three story building.

15 CHAIR SCALZO: So anyway, that's all
16 Planning Board issues. But a berm, a berm is
17 certainly helpful.

18 MR. BETCHER: No, I'm only joking.

19 CHAIR SCALZO: well, if you plant a
20 berm and then put plantings on top of it, the
21 next thing you know you can't see a thing. But
22 okay.

23 Counselor, help me out here. Where are
24 we?

25 MR. DONOVAN: So you're, so what we've

1 Proceedings

2 got, let's go back and look at what we did with
3 Farrell. So with Farrell we adjourned the
4 public hearing without date, right, and then we
5 had the applicant renotice it. It will be in
6 planning for some time relative to the variance
7 applications. Now, you could close the public
8 hearing relative to the interpretation, and if
9 you issue the interpretation as I outlined
10 before, it has to be requested, understand,
11 that's not granting a height variance. That's
12 just saying that the Planning Board is
13 authorized, you interpret the code to say the
14 Planning Board is authorized to establish the
15 height. That's all you'd be doing.

16 CHAIR SCALZO: Okay.

17 MR. DONOVAN: And then we'd reconvene
18 at some time in the future on the variance.

19 CHAIR SCALZO: Okay. So what ends up
20 happening is we are not determining height.
21 I'm just reiterating what you are saying.

22 MR. DONOVAN: Correct.

23 CHAIR SCALZO: That is up to the
24 planning Board.

25 MR. DONOVAN: You're interpreting that

1 Proceedings

2 provision in the code to say it's up to the
3 Planning Board to determine height.

4 CHAIR SCALZO: Okay.

5 Yes, ma'am?

6 MS. SIERODZINSKI: Is the public
7 invited to the Planning Board meeting?

8 CHAIR SCALZO: They certainly are.
9 Now, they are invited to the Planning Board
10 meetings, but unless it is a public hearing
11 you'll just have to sit and listen.

12 MR. BETCHER: We went that one time.
13 But, you know, it's --

14 CHAIR SCALZO: And if you are as close
15 to the property as you indicated, they will
16 mail you --

17 MR. BETCHER: We got them.

18 CHAIR SCALZO: -- letters saying when
19 the next, I don't know if it will be renoticed
20 or not because it's an ongoing action, but keep
21 your eyes on the website for the Town of
22 Newburgh.

23 MS. SIERODZINSKI: Okay.

24 MR. DONOVAN: So the easy thing is to
25 adjourn the public hearing regarding the

1 Proceedings

2 variance applications without date, subject to
3 a future notice.

4 CHAIR SCALZO: Yes. This is the latest
5 we've been here in a long time.

6 So okay, I'll look to the Board for a
7 motion to adjourn --

8 MR. DONOVAN: The variance.

9 CHAIR SCALZO: -- the variance.

10 MR. DONOVAN: And then you are going to
11 close the application relative to the
12 interpretations. So it's two separate motions.
13 That's okay.

14 CHAIR SCALZO: That's fine.

15 MR. BELL: So the first motion is to?

16 MR. DONOVAN: Close the public hearing.

17 MR. BELL: Close the public hearing.

18 MR. DONOVAN: Wait, don't answer, let
19 me take that back. Continue the public hearing
20 to an unknown date regarding the variance
21 application.

22 CHAIR SCALZO: That's the first one.

23 MR. HERMANCE: I'll make that motion.

24 CHAIR SCALZO: All right, so Greg
25 Hermance made that motion. We had a second --

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2 MR. BELL: I'll second that.

3 CHAIR SCALZO: -- from Mr. Bell.

4 MR. BELL: Yes. I got you.

5 CHAIR SCALZO: All in favor?

6 (Chorus of ayes.)

7 CHAIR SCALZO: Opposed?

8 (No response.)

9 MR. DONOVAN: All right. And to close
10 the public hearing regarding the
11 interpretation. That's got to be the next one.

12 CHAIR SCALZO: So the next motion?

13 MR. BELL: To close the public hearing.

14 CHAIR SCALZO: No, no, no.

15 MR. DONOVAN: To close the public
16 hearing regarding the interpretation.

17 CHAIR SCALZO: Yeah, regarding the
18 interpretation, yeah.

19 MR. BELL: To close the public hearing
20 based on waiting, waiting for the approval,
21 waiting for the --

22 MR. DONOVAN: No, no, just close the
23 public hearing regarding the interpretation.

24 MR. BELL: Close the public hearing
25 regarding the interpretation, okay, got you.

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2 This is complicated.

3 CHAIR SCALZO: Do you make that motion,
4 Mr. Bell?

5 MR. BELL: Yes.

6 CHAIR SCALZO: This is the most
7 unusual --

8 MR. BELL: It's good, it's good. Okay.
9 All right, so I got you. I said it. That's
10 what I said.

11 CHAIR SCALZO: Is there a second?

12 MR. HERMANCE: Second.

13 CHAIR SCALZO: And Mr. Hermance, a
14 second. All in favor?

15 (Chorus of ayes)

16 CHAIR SCALZO: Opposed?

17 (No response)

18 CHAIR SCALZO: Dave, next.

19 MR. DONOVAN: So my suggestion, it's up
20 to the Board, but if you interpret Section
21 185-48(b) of the code to authorize the Planning
22 Board to set the height of the building.

23 MR. BELL: Yes. I make a motion that
24 the Planning Board, it be sent to the Planning
25 Board so they can determine the height.

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2 MR. DONOVAN: What we're saying is that
3 height is included --

4 MR. BELL: The that height is included.

5 MR. DONOVAN: -- in lot dimension of
6 185-48(b).

7 MR. BELL: Okay. So I make a motion to
8 send this to the Planning Board for height
9 based on 185-48(b). There you go.

10 MR. HERMANCE: I'll second.

11 CHAIR SCALZO: All right. We have a
12 motion from Mr. Bell, we have a second from
13 Mr. Hermance. All in favor?

14 (Chorus of ayes)

15 CHAIR SCALZO: Opposed?

16 (No response)

17 MR. BELL: It's painful but it's
18 educational. It's good, it's good, it's good.

19 CHAIR SCALZO: All right, so I believe
20 that takes care of this applicant; correct?

21 MR. DONOVAN: That's correct.

22 MR. CAPPELLO: So we'll be back to
23 attend this for the alcoves to establish the
24 variance.

25 MR. BELL: Yes. Yes.

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2 CHAIR SCALZO: Okay.

3 MR. CAPPELLO: Anybody have any
4 questions just on the design, if there's any
5 comments or questions or concerns that you want
6 to address between now and then --

7 CHAIR SCALZO: With the alcoves?

8 MR. CAPPELLO: Yes.

9 CHAIR SCALZO: Listen, you could never
10 get enough space, in my opinion. They should,
11 they should -- and I do find it unusual that
12 there's a maximum, or a minimum not a maximum,
13 or a maximum not a minimum.

14 MR. CAPPELLO: I think for the
15 affordable there's some sense to it to make
16 sure that you keep it as if you're going to
17 make it an affordable unit. And then just so,
18 you know, for the affordable units the state
19 won't fund them that small, so.

20 CHAIR SCALZO: That's interesting, wow.

21 MR. CAPPELLO: Thank you very much.
22 Thanks for your patience.

23 MR. MAHER: Thank you.

24 (Time noted: 9:28 p.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)
) SS:
COUNTY OF ORANGE)

I, KARI L. REED, a Shorthand Reporter
(Stenotype) and Notary Public with and for the
State of New York, do hereby certify:

I reported the proceedings in the
within-entitled matter and that the within
transcript is a true record of such
proceedings.

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

IN WITNESS WHEREOF, I have hereunto set
my hand this 5th day of October, 2021.

Kari L Reed

KARI L. REED