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

----- X

In the Matter of

KELLY ROMERO

66 Rock Cut Road  
Section 86; Block 1; Lot 85.32  
R-1 Zone

----- X

Date: September 24, 2020  
Time: 7:00 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JOHN McKELVEY  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
DARRELL BELL (Present remotely)

ALSO PRESENT: DAVID DONOVAN, ESQ.  
GERALD CANFIELD  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: KELLY ROMERO

----- X

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

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KELLY ROMERO

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CHAIRMAN SCALZO: I'd like to call the meeting of the ZBA to order. The order of business this evening are the public hearings scheduled for today. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have, and then any questions or comments from the public will be entertained. Then we will turn to -- public comments are from the Zoom platform.

Mr. Bell, you happen to be on the Zoom platform. Can you hear me okay?

MS. JABLESNIK: He's on mute, but I think he said yes.

CHAIRMAN SCALZO: Just give us a thumbs up.

MS. JABLESNIK: You're good.

CHAIRMAN SCALZO: Very good. Thank you.

After all the public hearings have been completed, the Board may adjourn to confer with Counsel regarding any legal questions it may have. The Board will then consider the applications in the order heard, and will try to

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KELLY ROMERO

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

I would ask if you have a cellphone, to please turn it off or put it on silent. When speaking, speak directly into the microphone as it is being recorded as well as we have a Stenographer here.

Roll call, please.

MS. JABLESNIK: Darrell Bell is present.

Richard Levin.

MR. LEVIN: Present.

MS. JABLESNIK: Anthony Marino.

MR. MARINO: Here.

MS. JABLESNIK: John Masten.

MR. MASTEN: Here.

MS. JABLESNIK: John McKelvey.

MR. McKELVEY: Here.

MS. JABLESNIK: Darrin Scalzo.

CHAIRMAN SCALZO: Here.

MS. JABLESNIK: Also present is our Attorney, David Donovan; Michelle Conero, our Stenographer; and from Code Compliance, Gerald Canfield.

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KELLY ROMERO

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CHAIRMAN SCALZO: Very good. Thank you.

If we could all please rise for the  
Pledge of Allegiance.

(Pledge of Allegiance.)

CHAIRMAN SCALZO: Before I begin I  
would like to let any members of the public and  
applicants know typically the Board does go visit  
each site. So when you speak to us about the  
applications, just keep in mind that we actually  
have been there.

The first item on the agenda this  
evening is Kelly Romero at 66 Rock Cut Road in  
Newburgh, in an R-1 Zone, seeking an area  
variance of the front yard to keep a 6x12 front  
deck built without a permit.

Siobhan, do we have mailings on this?

MS. JABLESNIK: We do. This applicant  
sent out 27 mailings. And we received the County  
response, Local determination.

CHAIRMAN SCALZO: Very good. Thank you  
very much.

Do we have a representative for Kelly  
Romero here this evening? Very good. If you  
could just go ahead.

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As I say, we've been there, we've seen it. Actually, if you want me to summarize for you what we saw.

There's a new deck that's placed on the front of the building. It is on Rock Cut Road, which happens to be a County road. It's a higher traffic road. The house sits far enough back off the road you really can't see the neighbors from the house.

I personally don't think it's out of character with the neighborhood.

From there, please take it away.

MS. ROMERO: In addition to that, I also feel -- I mean we built the deck. I didn't realize we needed a permit just because I had a pre-existing structure there. It was a smaller version of the deck. So I do apologize for building that without the permit. It was falling apart. It wasn't safe to get in and out of the house.

The only change I did in size was I did increase it by 2 feet closer to the road, and I did increase the width of it. But we are here because of the distance from the road.

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KELLY ROMERO

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CHAIRMAN SCALZO: Correct.

MS. ROMERO: So it is 2 feet closer than the original one was.

CHAIRMAN SCALZO: Very good.

MS. ROMERO: Yup.

CHAIRMAN SCALZO: Thank you. As I say, we've all been to the site. I gave my comments earlier.

I'm going to look to the Board at this point. Mr. Marino, do you have any comments on this application?

MR. MARINO: It looks compatible to the neighborhood as far as I can tell. I see no problem with it.

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

Mr. McKelvey?

MR. MCKELVEY: It makes the house look much nicer.

CHAIRMAN SCALZO: Thank you.

Mr. Levin?

MR. LEVIN: I see no problem at all.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: I don't see a problem with

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KELLY ROMERO

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it.

CHAIRMAN SCALZO: Very good. Mr. Bell?

MS. JABLESNIK: Hold on. I don't think the volume is up. It says your volume is all the way up.

CHAIRMAN SCALZO: We may have to go into some settings. If we can just take a break.

(Pause in the proceedings.)

MR. BELL: She sounded like she was speaking under water.

MS. JABLESNIK: We'll try to do better next time.

CHAIRMAN SCALZO: She does have a mask on and she is not facing him. Actually, that's a lesson for us.

For the next applicants that come up, if you could also face the Town of Newburgh zoning map, that way the microphone will pick it up on the Zoom end of things. We can all still hear you just fine.

Mr. Bell, we were out to you. Do you have any comments on this application?

MR. BELL: No, I don't. It looks very good.

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KELLY ROMERO

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CHAIRMAN SCALZO: Very good.

Okay. At this point I'll open it up to any members of the public that want to speak about this application. Anyone in the room with me or anyone on Zoom?

(No response.)

CHAIRMAN SCALZO: Going once.

(No response.)

CHAIRMAN SCALZO: All right. Good enough.

Back to the Board for any final comments.

(No response.)

CHAIRMAN SCALZO: No. Then I'll look to the Board for a motion to close the public hearing.

MR. McKELVEY: I'll make that motion.

MR. MASTEN: I'll second it.

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

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?



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KELLY ROMERO

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MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed.

We don't necessarily have to break for this particular application. It's very straightforward. I don't want to set a precedent here.

MR. DONOVAN: Breaking from tradition is a good thing to do sometimes.

CHAIRMAN SCALZO: Very good. I would just like to wrap this one up right now.

In this case, this is a Type 2 action under SEQRA, Mr. --

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

CHAIRMAN SCALZO: Thank you.

Therefore, area variance questions.

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KELLY ROMERO

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We'll go through the area variance criteria and discuss the five factors we are weighing, the first one being whether or not the benefit can be achieved by other means feasible to the applicant.

In this case, because it's already up, no.

MR. McKELVEY: No.

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

MR. McKELVEY: No.

CHAIRMAN SCALZO: Third, whether the request is substantial. I don't believe 2 feet on that road is substantial.

The fourth, whether the request will have adverse physical or environmental effects. I do not believe so.

The fifth, whether the alleged difficulty is self-created, which is relevant but not determinative. Of course it's self-created. However, as I say, it's not determinative.

Therefore, if the Board approves the minimum variances necessary, it may impose

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KELLY ROMERO

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reasonable conditions.

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

MR. LEVIN: Motion to approve.

MR. McKELVEY: Second.

CHAIRMAN SCALZO: I heard Mr. Levin first. Mr. McKelvey second. Roll on that, please.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Motion carried. The variance is approved.

MS. ROMERO: Thank you.

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

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

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 16th day of October 2020.

Michelle Conero

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

----- X  
In the Matter of

BHAI ENTERPRISES, LLC

67 North Plank Road, Newburgh  
Section 76; Block 1; Lot 1.2  
B Zone

----- X

Date: September 24, 2020  
Time: 7:10 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JOHN MCKELVEY  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
DARRELL BELL (Present remotely)

ALSO PRESENT: DAVID DONOVAN, ESQ.  
GERALD CANFIELD  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: EVAN STANKUNAS

----- X

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

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CHAIRMAN SCALZO: Our second applicant this evening is B-H-A-I, Bhai Enterprises, LLC, 67 North Plank Road in Newburgh, for area variances of height, side yard and the front yard to replace the existing signage on the property.

Siobhan, do we have mailings on that?

MS. JABLESNIK: Yes. This applicant sent out 30 letters. We received comments from the County, and it's a Local determination.

CHAIRMAN SCALZO: Very good.

If you could introduce yourself, please. Actually face that way as you do it.

It appears to me that you may be 6 feet away from all interested people, that way it's a little easier to understand you.

MR. STANKUNAS: I appreciate that. Good evening. My name is Evan Stankunas, I'm the consultant for Bhai Enterprises.

The applicant is seeking area variances for a pre-existing nonconforming sign under the Town of Newburgh Sign Law. The applicant seeks to replace the placard signage with a different brand. He's changing the gas station from a Citgo to a BP. There's no actual changes in the

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structure of the sign. The existing nonconforming sign does not meet the side yard setbacks and the front yard setbacks, as well as the height. He seeks to change the signage on his building and the canopies from the Citgo to the BP.

CHAIRMAN SCALZO: We certainly have some issues with signage in the code. Thank you very much.

I don't want to Reader's Digest this, but you're not putting up any new -- no new signs?

MR. STANKUNAS: No.

CHAIRMAN SCALZO: You're replacing panels?

MR. STANKUNAS: Exactly. The structure is remaining the same.

CHAIRMAN SCALZO: The square footage remains the same?

MR. STANKUNAS: The square footage remains the same.

CHAIRMAN SCALZO: I'm looking at the picture. I don't think that's the color of the roof of the building. It certainly grabs you as

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you drive by.

MR. STANKUNAS: Absolutely.

CHAIRMAN SCALZO: Very good. At this point I'm going to look to the members of the Board. Mr. Levin, do you have any comments on this?

MR. LEVIN: No.

CHAIRMAN SCALZO: Mr. McKelvey, any comments on this?

MR. MCKELVEY: No.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: No.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: No comment.

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

MR. BELL: No. It looks good to me.

CHAIRMAN SCALZO: Very good.

And Counsel, I might go wrong when I say this, but even if the variance was denied, the sign still stays. Correct?

MR. DONOVAN: That is correct.

CHAIRMAN SCALZO: Okay. That's just what I wanted to clarify.



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MR. DONOVAN: The price will change;  
right?

CHAIRMAN SCALZO: I just wanted all the  
Board Members to understand that as well.

So at this point I'll open it up to any  
members of the public that wish to speak about  
this application. Anybody in the room?

(No response.)

CHAIRMAN SCALZO: No. Do any of our  
Zoom participants want to speak about this  
application?

(No response.)

CHAIRMAN SCALZO: Siobhan, how many  
participants do we have?

MS. JABLESNIK: Six.

CHAIRMAN SCALZO: Okay. That's better  
than I thought. Very good.

Mr. Canfield, you don't have anything  
to add to this; do you, sir?

MR. CANFIELD: Nothing. One thing I  
should add is that the application was referred  
for the Planning Board Chairman to review. The  
signage package has the option for the Planning  
Board to review the signage. He didn't feel his

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Board needed to see it, so we passed it on to your Board.

CHAIRMAN SCALZO: Very good. Thank you. That's important information.

Okay. In this case, one last look to the Board. Anyone with comments?

(No response.)

CHAIRMAN SCALZO: If that's the case, then do I have a motion from the Board to close the public hearing?

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

MR. MARINO: Second.

CHAIRMAN SCALZO: We have a motion from Mr. Masten, a second from Mr. Marino. Roll on that, please.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

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MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed.

And just like the last one, we may as well go ahead and continue.

MR. DONOVAN: Mr. Chairman, this is an Unlisted action.

CHAIRMAN SCALZO: Unlisted action under SEQRA. Yes. Thank you very much.

So do we also need a motion for a negative dec?

MR. DONOVAN: That's correct.

MR. MCKELVEY: I'll make the motion.

CHAIRMAN SCALZO: We have a motion for a negative declaration from John McKelvey. Do we have a second?

MR. LEVIN: I'll second it.

CHAIRMAN SCALZO: Very good. That's for SEQRA. So roll on that, please.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

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MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

All right. So we have a neg dec.

Other than that, Counsel, I can go  
through the same --

MR. DONOVAN: Yes.

CHAIRMAN SCALZO: -- as for the Type 2?

MR. DONOVAN: That's correct.

CHAIRMAN SCALZO: First of all, can the  
benefit be achieved by other means feasible to  
the applicant.

MR. BELL: No.

MR. MCKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

CHAIRMAN SCALZO: No.

Second, if there's an undesirable

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change in the neighborhood character or a  
detriment to nearby properties.

MR. BELL: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

CHAIRMAN SCALZO: No.

Third, whether the request is  
substantial. No.

You're not changing any of the bulb  
wattages in this, are you? The lumens are going  
to remain the same or --

MR. STANKUNAS: I believe so. I can't  
say yes.

CHAIRMAN SCALZO: I should have asked  
that before, shouldn't I?

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

MR. BELL: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

CHAIRMAN SCALZO: No.

The fifth, whether the alleged

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difficulty is self-created. This is relevant but not determinative. Obviously if it's changing, not vendors, but if it's changing ownership or representation, then it kind of needs to be done.

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

MR. MARINO: I'll make a motion we approve.

MR. BELL: Second.

CHAIRMAN SCALZO: We have a motion from Mr. Marino and a second from Mr. Bell. Roll on that, please.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

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BHAI ENTERPRISES, LLC

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The motion is carried. The variance is approved.

Good luck.

MR. STANKUNAS: Thank you, Chairman and the Board.

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

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

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of October 2020.

*Michelle Conero*

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MICHELLE CONERO

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

----- X  
In the Matter of

OMAR CHIHUAHUA

10 Little Lane Road, Newburgh  
Section 53; Block 4; Lot 5  
B Zone

----- X

Date: September 24, 2020  
Time: 7:16 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JOHN MCKELVEY  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
DARRELL BELL (Present remotely)

ALSO PRESENT: DAVID DONOVAN, ESQ.  
GERALD CANFIELD  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: OMAR CHIHUAHUA

----- X

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



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OMAR CHIHUAHUA

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CHAIRMAN SCALZO: The next applicant this evening is Omar Chihuahua, 10 Little Lane in Newburgh, seeking a maximum square footage of an accessory structure and increasing the degree of nonconformity on the side yard to keep a 12x18 addition built onto an existing accessory structure.

Siobhan, do we have mailings on that?

MS. JABLESNIK: Yes. This applicant sent out 40 letters.

CHAIRMAN SCALZO: 4-0.

MS. JABLESNIK: 4-0. The County came back on that as well.

CHAIRMAN SCALZO: Thank you.

I see an applicant is up here. Sir, as I say, we've all been to the site. What you have the benefit of here is we actually acted on an action on A Plus Auto which is right next to your parcel. They had supplied a survey map to us approximately 18, 19 months ago. The garage that you have attached onto the back is shown on that survey, and it's shown as currently eight-tenths clear on the backside, which is where you put

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OMAR CHIHUAHUA

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your addition. So we have that information.  
Actually, I printed out this map. I don't know if  
you have it. You can have this if you'd like.

MR. CHIHUAHUA: That would be great.

CHAIRMAN SCALZO: As I say, we've all  
visited the site.

So as I see in the application here,  
you're looking at replacement of a storage shed  
behind the garage. The survey there shows that  
that replacement was not there a little over a  
year ago. Obviously it's there now. We all saw  
that. I did look at Google Maps from just about a  
year ago. The shed does not appear to have been  
there then either.

My concern with this is -- listen,  
everybody needs more storage. I know I have a  
nice shed in my backyard, too. How are you going  
to -- let's say you need to paint the back of  
that shed. How are you going to do that without  
stepping on your neighbor's property? Those are  
things that I think of when I go to look at  
parcels.

I kind of jumped ahead of myself in  
this case. If you'd like to go ahead and present

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OMAR CHIHUAHUA

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what it is that you'd like to do.

As far as the lot coverage goes, I necessarily don't have an issue with that. I'd just like to know where your septic is. Hopefully you're not putting the shed on top of the septic. You are central water there but septic, not sewer; correct?

MR. CHIHUAHUA: Yes. Correct.

MR. DONOVAN: I'm sorry, sir. Just for the record, could you tell us who you are?

MR. CHIHUAHUA: Yes.

CHAIRMAN SCALZO: Your name?

MR. CHIHUAHUA: My name is Omar Chihuahua.

A long time ago I got a little bit of damage and --

CHAIRMAN SCALZO: This is being recorded. That's why it's difficult to -- with the mask things are challenging.

MR. CHIHUAHUA: I don't know what to say to you guys. I tried to make a nice storage for my tools and everything. A long time I had a shelf. I have the shed. It's makes it nice.

CHAIRMAN SCALZO: It's beautiful. We

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OMAR CHIHUAHUA

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were all there. We saw it. That's not the issue.  
It's very nice. Nicely done.

The issue we're looking at here is the  
side yard requirement is 5 feet. Now the garage  
that's there, the block garage, that was pre-  
existing. We can't do anything about that.  
It's the new one or the one that you're saying  
you replaced, that's why we're here. Okay.

At this point, if you're done with your  
presentation, I'll look to the Members of the  
Board for any questions that they have.

MR. CHIHUAHUA: Yes.

CHAIRMAN SCALZO: Okay. Mr. Levin, do  
you have any comments or questions on this?

MR. LEVIN: No, I don't.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: You said something about  
painting the back; right?

CHAIRMAN SCALZO: I'm just -- because  
the offset to the property line is less than 1  
foot -- I mean I'm a big guy. I couldn't get back  
there and paint it if I wanted to paint the back.

MR. MCKELVEY: Right.

CHAIRMAN SCALZO: You might be able to,

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OMAR CHIHUAHUA

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John, but not I. Not I with my tools.

MR. McKELVEY: I didn't know how he was going to do it.

CHAIRMAN SCALZO: That's one of the reasons why -- that's just how I look at things.

MR. McKELVEY: You might have to go on the neighbor's property.

CHAIRMAN SCALZO: You probably get along with him fine now.

MR. LEVIN: I hope he's friendly with his neighbors.

CHAIRMAN SCALZO: Exactly.

MR. MARINO: Or never paint it.

CHAIRMAN SCALZO: Mr. Marino, any other comments?

MR. MARINO: Did you build that shed yourself?

MR. CHIHUAHUA: Yes.

MR. MARINO: How long ago was that?

MR. CHIHUAHUA: April.

CHAIRMAN SCALZO: So April of this year?

MR. CHIHUAHUA: Yes.

CHAIRMAN SCALZO: Anything else, Mr.

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OMAR CHIHUAHUA

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Marino?

MR. MARINO: You want to replace it?

CHAIRMAN SCALZO: No. It's there.

MR. MARINO: I know it's there.

CHAIRMAN SCALZO: It's there  
unpermitted.

Mr. Bell, do you have any comment on  
this?

MS. JABLESNIK: You have to unmute  
yourself. You're muted.

MR. BELL: Can you walk between those  
sheds? Are they both connected on the inside?  
There's a wall with an opening to walk through?

MS. JABLESNIK: Can you walk through it  
to get from the one shed to the other? Can you  
walk through the whole building?

MR. CHIHUAHUA: Yes.

MR. BELL: You can. Okay. Is it for  
storage?

MR. CHIHUAHUA: Just for storage for  
tools.

MR. BELL: So what is the total  
dimensions going to be when you connect both?  
You are going to reconnect it back when you

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OMAR CHIHUAHUA

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rebuild it; correct?

MR. CHIHUAHUA: That's correct.

MR. BELL: The same way it is now?  
What's the overall size? What's the overall size  
going to be?

MR. CHIHUAHUA: It's block. I have the  
big window in the back where I connect with the  
other storage. That's right where I put the door  
to connect the storage with the garage.

MR. BELL: Okay. I'm good.

CHAIRMAN SCALZO: Okay. At this point  
I'll open it up to any members of the public that  
want to speak about this application. Anyone in  
this room?

(No response.)

CHAIRMAN SCALZO: Hearing none, looking  
to the participants on Zoom. Do we have any  
comments from the public on Zoom?

(No response.)

CHAIRMAN SCALZO: Apparently not.  
I'll look to the Board for one last  
opportunity to speak about this application.

(No response.)

CHAIRMAN SCALZO: Nope. In that case

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

MR. McKELVEY: I'll make that motion.

MR. MASTEN: I'll second it.

CHAIRMAN SCALZO: We have a motion from Mr. McKelvey. We have a second from Mr. Masten. Roll call on that, Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed.

MR. DONOVAN: People get to leave the room as well.

CHAIRMAN SCALZO: It frees it up for social distancing. Thank you. Great observation.



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So this is a Type 2 action under SEQRA, therefore we're going to go to the variance criteria and discuss the five factors we're weighing, the first being whether or not the benefit can be achieved by other means feasible to the applicant.

MR. BELL: No.

MR. LEVIN: No.

MR. MARINO: No.

MR. MASTEN: No.

MR. McKELVEY: No.

CHAIRMAN SCALZO: No.

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

MR. BELL: No.

MR. LEVIN: No.

MR. MARINO: No.

MR. MASTEN: No.

MR. McKELVEY: No.

CHAIRMAN SCALZO: No.

The third, whether the request is substantial.

MR. McKELVEY: I don't think so.

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CHAIRMAN SCALZO: As far as side yard setbacks, he's eight-tenths of a foot off the property. Myself, I think that's substantial, but I am one Member.

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

MR. BELL: No.

MR. McKELVEY: No.

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

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

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

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

MR. MARINO: Second.

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

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OMAR CHIHUAHUA

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call, please.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: No.

Motion carried. The variances are approved. Good luck.

MR. CHIHUAHUA: Thank you, sir.

(Time noted: 7:26 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 16th day of October 2020.

*Michelle Conero*

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MICHELLE CONERO

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

----- X  
In the Matter of

MALCOM MEYERSON

2 Filiberti Lane, Newburgh  
Section 23; Block 2; Lot 19.2  
R-1 Zone

4 Filiberti Lane, Newburgh  
Section 23; Block 2; Lot 18.2

----- X

Date: September 24, 2020  
Time: 7:26 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JOHN McKELVEY  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
DARRELL BELL (Present remotely)

ALSO PRESENT: DAVID DONOVAN, ESQ.  
GERALD CANFIELD  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: MALCOM MEYERSON  
LARRY MARSHALL

----- X

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MALCOM MEYERSON

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CHAIRMAN SCALZO: Our next applicant this evening is Malcom Meyerson, 2 and 4 Filiberti Lane, for both lots seeking an area variance of minimum lot size to build new single-family dwellings.

Siobhan, do we have mailings on this?

MS. JABLESNIK: Yes. This applicant sent out 39 mailings for each application.

CHAIRMAN SCALZO: Oh, wow.

MS. JABLESNIK: I felt terrible doing it.

CHAIRMAN SCALZO: Okay. So you sent out 39 letters to the same people.

MS. JABLESNIK: Yes. Two times.

MR. DONOVAN: Actually 78.

MR. MEYERSON: Keeps the post office in business.

CHAIRMAN SCALZO: For the record folks, we did receive some correspondence dated September 24th from Malmark Construction Corp. It's quite lengthy, so I will not read it into the record. However, because it has been submitted to us, it will make its way into the file.

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MALCOM MEYERSON

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That being said; sir, if you could --

MR. MEYERSON: Can I take my mask off?

CHAIRMAN SCALZO: Yes, please. If you could actually almost face the Town of Newburgh zoning map as you're speaking, that way the people online can hear you.

MR. MEYERSON: Good evening, Chairman Scalzo and Members of the Board. My name is Malcom Meyerson. I'm the owner of Malmark Construction. I purchased the two lots on Filiberti Lane that are the subject of tonight's review.

I'm here this evening with Lawrence Marshall, my engineer, from Mercurio-Norton-Tarolli-Marshall.

Most of what I was going to say is contained in the letter, so it's not necessary to repeat all of it.

CHAIRMAN SCALZO: Thank you.

MR. MEYERSON: The main points in the letter are pretty straightforward.

CHAIRMAN SCALZO: If you could, like I say, turn. We have one Member that's -- the microphone is there and we have one Board Member

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MALCOM MEYERSON

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participating via Zoom.

MR. MEYERSON: I just feel so rude.

CHAIRMAN SCALZO: I'm not offended.

MR. MEYERSON: So these are the main points that you'll find in this letter that I submitted.

Prior to purchasing these lots I did my usual due diligence, and that included many things. In addition to locations, and soils, and a number of other things, I conditioned my purchase of these lots with the Filiberti sisters on doing soil logs to make sure that the two lots would go ahead and be capable of producing standard, in-the-ground absorption trench and septics. The soil was excellent.

I also went to the Water Department and the Highway Department to make sure that permits were available for municipal water service, because the R-3 Zone of 15,000 square feet was only allowed if municipal water or sewer was available. So both of those permits were available, and I obtained them as part of the submission that had to be handed in with the building permit.



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I also, of course, had my title company do a title search to make sure that the succession of ownership was proper. That was Hill-N-Dale who I've used for thirty years.

I had my attorney, John Coster, who had been a town attorney in Clarkstown for 25 years, review all the paperwork.

In addition, I spent quite a bit of time consulting with Lawrence Marshall, my engineer, who produced a copy of the filed subdivision map to make sure that I was aware of all the notes on the map and anything that related to these two lots.

Once I did all of this due diligence to make sure the soils were good, that permits were available for the driveway and water, that the filed map was correct, I also, of course, double checked everything and went to the Town code. I brought copies of everything with me. The Town code had a statement in it where any lot that was filed prior to 2010 was grandfathered in as far as having an area variance. Also the Town code, looking over the humongous number of pages, showed that these two lots never underwent any

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zone change.

So in short, my due diligence showed lots that were in a great location, good soils, all the permits necessary, no zone changes, and grandfathering to cover anything I may have missed.

Based on that, I completed the purchase from the Filiberti sisters and I submitted my permits to the Building Department. I've dealt with Joseph Mattina a great number of years. I've lived in Newburgh since 2008 on Stanley Road when I began my first subdivision called Borden Ridge off Frozen Ridge Road. Approximately two weeks after I submitted my permits, I ended up getting back a rejection review letter. It mentioned a couple minor things that my architect took care of, but I also was a little startled because it stated that these two lots, and I'll ask at this point for my engineer, Lawrence, to give to you -- right now I think all you have are plot plans. Once you see these two maps -- open them up to these two maps which show up as lots 39 and 40 on the map, it will show very clearly, when you look at the dividing line between the

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MALCOM MEYERSON

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R-1 and the R-3 zones, that these lots are clearly in an R-3 zone, not in an R-1 zone. So if you open them up and look where it says -- I'll give you a minute to find them.

CHAIRMAN SCALZO: I have to tell you, what a wonderful presentation. You have certainly laid out everything. Even if I hadn't read your application, I know it now.

MR. MEYERSON: I've done 605 houses --

CHAIRMAN SCALZO: I saw that.

MR. MEYERSON: -- since 1986. I'm 75 now. I tried very hard to retire. I can't. I love building. My transition, after batting a few things around, was to continue building one or two houses here in Newburgh where I feel that the Highway Department and Building Department are a pleasure to work with. So I build one or two houses a year and it keeps me out of the house and allows me to have a good --

CHAIRMAN SCALZO: Siobhan, what was that comment?

MS. JABLESNIK: They can't hear. Maybe if we take this microphone --

CHAIRMAN SCALZO: Quite honestly, I

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MALCOM MEYERSON

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almost would prefer you almost go over there and speak right to that computer and that microphone. We can hear you fine.

MR. MEYERSON: I just feel so not nice.

CHAIRMAN SCALZO: Give us your best Elvis impersonation.

MR. MEYERSON: Should I talk into this?

CHAIRMAN SCALZO: You should be fine right there.

MR. MEYERSON: So -- I forgot half of what I was going to say. So where we are is I obviously did all my due diligence. When Mr. Mattina said to me this is in an R-1 zone, not an R-3, submit new plot plans showing that these houses will fit, I had my engineer resubmit plot plans, instead of arguing, and the houses easily fit within the R-1 setbacks as far as side yards, front yards and rear yards. I resubmitted that and the very same day it got rejected again, the applications, because now I was told it's not meeting the 40,000 square foot required area.

The houses I propose are single-family homes that fit in with the existing neighborhood, which, by the way, is a beautiful subdivision

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with the homes very well maintained. These two lots particularly appealed to me because they were sloped lots which were perfect for walk-out rear basements like the last two houses I built, and they're sort of stepchild lots because they're at the very end of the subdivision on Filiberti Lane, which is a one-way street. So they're pretty much off to the side.

When I looked at the square footages of these lots, I did a careful analysis of the subdivision map and there are 39 lots there besides my 2. Of the 39 lots, 22 of them, which is more than 50 percent, are less than 40,000 square feet, less than the R-1 zone, and 2 of those are less than 30,000 square feet.

So my feeling is since I'm proposing single-family homes that are compatible with the existing houses, and because the lots which were already approved by the Planning Board and therefore they felt they were fine, and these lots are similar in size to the existing lots, the variances I'm asking for would do nothing to take away from the neighborhood. It's not like I was building a retail shop, or a two-family

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house, or an apartment building.

So I put \$135,000 into these two lots and I have one person who -- the Peruckis live on Ashley Drive who were in contract, and then I found out that the map, I was told by Mr. Mattina as well as the Planning Board Chairman, I can't remember his last name, it was John, I spoke to him and he confirmed that what Mr. Mattina said was correct, that this map was signed and filed in 2005 incorrectly. That the design engineer, Eustace & Horowitz, drew the line showing R-1/R-3 zones. And even though clearly my two lots are in R-3, Mr. Mattina said that the engineer made a mistake, that the line was drawn incorrectly.

What really I found amazing is this happened in 2005 and the Planning Board Chairman was aware of this, and nothing has been done to correct the maps. So when you do a title search -- I went back to John Wood from Hill-N-Dale Abstract. I said please go back to the County Clerk's office. There were no amendments, no revised maps, no notations added. The original October 2005 map exists 15 years later not corrected. That's what attorneys, and title

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MALCOM MEYERSON

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companies, and builders depend upon to make sure that what they are buying is good.

So in spite of all my due diligence, it's pretty hard to make a correct decision when the legal documents you're depending upon are wrong.

CHAIRMAN SCALZO: Mr. Meyerson, again I appreciate your very detailed information on this. All we're looking here for is the variance for lot area of 9,812 square feet. We are where we are, whether there was an error that occurred in 2005 or `06. That's why we're here. So we have the ability to grant you relief from that. I believe we all get the idea of what we're trying to accomplish here.

The bulk table on the plans that were supplied are excellent with laying everything out.

The required variance, the column only has one item in it, which is the 9,800 square feet.

Although, Mr. Marshall, I do have one question for you on the habitable floor area. Required is 1,500 square feet and then you have

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MALCOM MEYERSON

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less than 900 square feet.

MR. MARSHALL: Greater than 900.

CHAIRMAN SCALZO: I'm sorry.

MR. DONOVAN: You never could get that right.

CHAIRMAN SCALZO: It's the L or something like that.

I had no comments. There were two lots created back then and, you know, that's it. So I have no comments. I think what you're actually looking to do is fairly straightforward.

MR. MEYERSON: Yeah.

CHAIRMAN SCALZO: So at this point I'm going to look to any Members of the Board. Do you have any comments?

MR. LEVIN: I think he explained everything beautifully.

CHAIRMAN SCALZO: I agree.

MR. LEVIN: I don't have any questions.

CHAIRMAN SCALZO: You captured everything so clearly, I can't imagine anybody has anything else.

Mr. McKelvey?

MR. MCKELVEY: Very clear.



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CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: No.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: I feel fine with it.

CHAIRMAN SCALZO: Mr. Bell, any  
questions?

MR. MEYERSON: He's saying something.

MS. JABLESNIK: You're muted.

MR. BELL: I'm good.

CHAIRMAN SCALZO: Great.

Okay. So in this instance I'll open it  
up to any members of the public that wish to  
speak about this application. Anybody in this  
room?

(No response.)

CHAIRMAN SCALZO: It appears not.

Anybody that's participating via Zoom?

MS. JABLESNIK: Hold on.

MS. WILKINSON: Yes. Yes. We are the  
neighbor. Actually, I have a few questions. So  
is it decided to approve the variance for the  
houses?

CHAIRMAN SCALZO: We're not there yet.  
This is all part of the presentation. We have not

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MALCOM MEYERSON

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reached a conclusion yet.

MS. WILKINSON: Okay. So he's cutting down the trees and then we were wondering what is going on?

MR. MEYERSON: I cracked the lot.

CHAIRMAN SCALZO: Sure. Mr. Canfield, help me out. The person that owns the piece of land is allowed to cut their trees down as long as they don't exceed certain thresholds. Is that correct?

MR. CANFIELD: That's correct.

MR. MEYERSON: I maintained what I wanted, which was the whole back uncut and the whole side uncut for privacy from the two neighbors next door. I maintained the buffer zone.

CHAIRMAN SCALZO: Very good. Ma'am, did you hear that response?

MS. WILKINSON: No. We can't hear him.

CHAIRMAN SCALZO: Sir, you're going to have to present to the people on the computer.

MR. MEYERSON: Good evening. My name is Malcom Meyerson. I'm the owner of the lots.

CHAIRMAN SCALZO: Just with regard to

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MALCOM MEYERSON

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the tree cutting.

MR. MEYERSON: So I cleared the few trees that were in the open, and the brush, in order to get prepared to build the houses. I left all the trees in the back by the septic system for the rear neighbors. The trees on the left side, I left them as buffer zones so that the people in those existing houses would have privacy. That's it.

CHAIRMAN SCALZO: And again, for the folks that are participating via Zoom, all we are here for is for a lot area. The presented applications, the placement of the dwellings within the lots all meet current code setbacks. So any house that would be going in there would be within what the Town code allows for in the R-1 district. The only reason why we're here is there was an identified error in 2005 or '06 which made these lots 10,000 square feet -- less than 10,000 square feet smaller than what they should have been.

Are there any other questions from the public on Zoom?

MS. WILKINSON: I have a question. I'm

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MALCOM MEYERSON

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a little confused. Was the property originally sold to this gentleman as two lots or a single lot that he subdivided?

CHAIRMAN SCALZO: Two lots. The original filed map from -- Dave, what year is that?

MR. DONOVAN: 2005.

CHAIRMAN SCALZO: The 2005 subdivision map clearly indicates there are two separate parcels there.

MS. WILKINSON: There really can't be any argument. I think all the neighbors have some questions.

CHAIRMAN SCALZO: This is the forum for that.

MS. WILKINSON: We'd love to address with him maybe outside this meeting.

CHAIRMAN SCALZO: That would be just fine.

Mr. Meyerson, would you be willing to --

MR. MEYERSON: I'd be happy to meet with you right at the subdivision if that's convenient. I've always done that. I've done 25

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subdivisions and I've always maintained good relations.

MS. WILKINSON: That would be great.  
Thank you.

MR. MEYERSON: You're welcome.

CHAIRMAN SCALZO: Siobhan, can you identify who is speaking, please?

MS. JABLESNIK: Ma'am, what's your name?

MS. WILKINSON: My name is Ann Wilkinson.

MS. JABLESNIK: Thank you.

CHAIRMAN SCALZO: Any other questions from the public?

MS. YELURI: This is Lakshmi Yeluri. We are down the hill from them. The houses there, we get all the water and stuff. That's why we were having these questions, to see how -- what's being done. That's all.

MR. MEYERSON: I couldn't understand.

CHAIRMAN SCALZO: Could you repeat that, please?

MS. YELURI: Our property is down the hill from these lots, so we were wondering if

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there's houses there, if we're going to get more flooding coming in, because we already have water coming from up there.

MR. MEYERSON: No. Actually these houses are -- these two lots are actually the lowest lots in the subdivision on that part of the subdivision. These all are lots that slope to --

MS. YELURI: Our house is behind that subdivision.

MR. MEYERSON: Okay. I understand where you are. These two lots are -- the position they are in, the water that goes down hill actually, number one, crosses the entire backyard of these lots, goes towards the septic system. There's a swale that's put in these lots to divert the water. And also, you have approximately 40 to 50 feet of trees, and woods, and growth that I've left untouched, and a rock wall is the property line. So anything going towards your lot is actually cut off by the trees and by the rock wall. So there's no change.

MR. MARSHALL: There's no alteration to the drainage patterns that are currently

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occurring on the two lots.

MR. MEYERSON: No alteration to the drainage pattern.

CHAIRMAN SCALZO: There might be a slight increase in impervious surfaces, but I believe the curve number at the back of the lot is not going to change at all.

MR. MARSHALL: Right.

CHAIRMAN SCALZO: So the anticipation is that any runoff from the construction of the dwelling will be dissipated over sheet flow by the time it gets back down to the stonewall.

Is that correct, Mr. Marshal?

MR. MARSHALL: I'll agree with that.  
Yes.

CHAIRMAN SCALZO: Very good.

Any more questions, ma'am?

MS. YELURI: No. I'm good. These are not complaints at all. I'm just asking questions.

CHAIRMAN SCALZO: Very good. Thank you.  
Any other questions from the public on Zoom?

(No response.)

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

MR. LEVIN: I have a question. It really doesn't do that much with this. Why is that street a one-way street next to you?

CHAIRMAN SCALZO: We wouldn't know that. That may have been a condition of the subdivision.

MR. MEYERSON: Filiberti is a one-way street that comes from --

MR. LEVIN: I'm wondering why it's there.

MR. MEYERSON: I can't answer that. I have to assume probably when the original -- based on the past subdivisions that I've done, probably it was there, number one, because that street is another access for emergency equipment. It was probably made one way, I think probably to limit traffic, that's my guess, for the people existing in the McCall houses so they wouldn't have a huge amount of traffic from the new subdivision disturbing them. That's my guess, but I didn't do the original --



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CHAIRMAN SCALZO: Richard, we could probably find that out with the minutes from the Planning Board. I think that's a great question. If you're very interested in that, we can certainly find that out.

MR. LEVIN: No further.

CHAIRMAN SCALZO: That being said, one last opportunity to the Board.

(No response.)

CHAIRMAN SCALZO: Any members of the public, any other questions?

MR. MARSHALL: One comment that I would like to make, Mr. Chairman. You did reference that the variance is just under 10,000 square feet. That's just for lot 39. Lot 40 is under 1,400 square feet.

CHAIRMAN SCALZO: It's very small.

MR. MARSHALL: I just wanted that on the record that the two variances are for lot 39, 9,812; and for lot 40, 1,367.

CHAIRMAN SCALZO: Thank you very much. Actually, I should have started off stating this to begin with.

If you wouldn't mind, Mr. Meyerson, I'd

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MALCOM MEYERSON

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like to combine these two. These are two  
separate --

MR. DONOVAN: So right now, the answer  
to that is yes.

CHAIRMAN SCALZO: Great. We're going  
to vote on this as one action and not two  
separate applications. Very good.

So I'll look to the Members of the  
Board. Do we have a motion to close the public  
hearing?

MR. MASTEN: I'll make that motion.

MR. MARINO: Second.

CHAIRMAN SCALZO: We have a motion from  
Mr. Masten and a second from Mr. Marino. Roll on  
that, Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

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MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed.

In this case we're going to move on.

This is a Type 2 action under SEQRA.

We are going to weigh the criteria, the first one being whether or not the benefit can be achieved by other means feasible to the applicant. Absolutely not. He bought it in this condition.

The second, if there's an undesirable change to the neighborhood character or a detriment to nearby properties. The only change in character is going to be there were no houses there and now there is going to be houses there. I'm certain that your construction would be in character with what's in the neighborhood currently.

MR. MEYERSON: Yes.

CHAIRMAN SCALZO: The third, whether the request is substantial. I don't see it that way, especially after Mr. Marshall pointed out the one that I had been discussing was the larger

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MALCOM MEYERSON

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of the two variances required.

The fourth, whether the request will have adverse physical or environmental effects. I don't believe so.

The fifth, whether the alleged difficulty is self-created. It is not self-created.

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

MR. LEVIN: I'll make a motion to approve it.

MR. MARINO: Second.

CHAIRMAN SCALZO: We have a motion from Mr. Levin. We have a second from Mr. Marino. Roll call, please.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

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MALCOM MEYERSON

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MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The motion is carried. The variances  
are approved. Thank you very much.

MR. MEYERSON: Thank you very much. I  
really appreciate that.

(Time noted: 7:52 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 16th day of October 2020.

  
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MICHELLE CONERO

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

----- X  
In the Matter of

ERIC DiLEO  
VALENZA PLUMBING & HEATING

42 Old North Plank Road, Newburgh  
Section 39; Block 1; Lot 47.1  
R-2 Zone

----- X

Date: September 24, 2020  
Time: 7:52 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JOHN McKELVEY  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
DARRELL BELL (Present remotely)

ALSO PRESENT: DAVID DONOVAN, ESQ.  
GERALD CANFIELD  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: ERIC DiLEO

----- X

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

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ERIC DiLEO

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CHAIRMAN SCALZO: The next applicant is Eric DiLeo, Valenza Plumbing & Heating, 42 Old North Plank Road in Newburgh for area variances of setback, size and height of a 4 x 8 x 7.6 freestanding sign.

Siobhan, do we have mailings on this?

MS. JABLESNIK: This applicant sent out 18 mailings, and they received the County response, Local determination.

CHAIRMAN SCALZO: Very good.

Okay. As I mentioned, we've all been to the site. Let me tell you how surprised I was. That's an old right-of-way. I'm assuming that if you maintain that, you've been mowing a lot of grass.

MR. DiLEO: Yes. I have been, yeah. For about 15 years since my father owned before I did, and then myself the last 10. It's probably been 20 years I've been mowing that.

CHAIRMAN SCALZO: If you could just step forward. Actually, stay right there. We can hear you just fine. It's the people online that need to hear you best. If you could just go head and walk us through what it is you're looking to



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ERIC DiLEO

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accomplish here.

MR. DiLEO: I'm looking to put a business sign for my business on that corner where -- you guys have all been there. It's kind of hard to explain. The dimensions that you guys have written down, I guess I exceed the setbacks as well as the size, probably based on the setbacks and my road frontage, which the lot is kind of odd. It's kind of hard to determine the road frontage there because of the way Old North Plank Road used to cut through there.

I don't know what else to say.

CHAIRMAN SCALZO: I understand. Like I say, it's a very odd -- obviously the State had done some highway realignment in that area, and there's a whole bunch of leftover land that you're charged with maintaining if you want it to look nice.

It was difficult to quite understand exactly where you wanted to put this sign, only because are you looking for this sign to actually be within the right-of-way and not on your property?

MR. DiLEO: No. It's going to be right

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ERIC DiLEO

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on my property line. Right on my property line based on the way the property line is. My property doesn't go actually into where Old North Plank Road used to be. My property line is the curbing there right next to where Old -- you know what I mean? When you pull into my lot, you have to pull into where the old road used to be, then you pull into my parking lot.

CHAIRMAN SCALZO: Right.

MR. DiLEO: So the road frontage is kind of odd. If you look at the property, it looks like I own that whole grassy knoll that's in front there when actually I don't, although I've been mowing it for decades. I try and keep the whole place nice.

CHAIRMAN SCALZO: This is also one of those sign issues that zoning kind of -- just because of the unique circumstances of the State right-of-way that's in front of your house. I don't have any issues with what I see.

I'm going to start with Mr. Masten this time. Mr. Masten, do you have any comments on this application?

MR. MASTEN: I have nothing on it,

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ERIC DiLEO

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CHAIRMAN SCALZO: Mr. Bell, do you have any comments on this?

MR. BELL: No. I'm good.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: Just one question. Will the sign be illuminated?

MR. DiLEO: No.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. McKELVEY: Nothing.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: No.

CHAIRMAN SCALZO: Okay. At this point I'll open it up to any members of the public that wish to speak about this application. Anyone in the room?

(No response.)

CHAIRMAN SCALZO: It does not appear so.

Do any one of our Zoom participants want to speak about this application?

(No response.)

CHAIRMAN SCALZO: We have three left?

MS. JABLESNIK: Yes.

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ERIC DiLEO

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CHAIRMAN SCALZO: Okay. That's fine.

One last chance, any Members of the Board?

MR. McKELVEY: No.

MR. MARINO: No.

CHAIRMAN SCALZO: Mr. Canfield, I'm just reaching out. Do you have any comments you want to add to this?

MR. CANFIELD: Nothing. You're doing just fine.

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

MR. McKELVEY: I'll make the motion.

MR. MASTEN: Second.

CHAIRMAN SCALZO: Mr. McKelvey. We have Mr. Masten seconded. Roll on that.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

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ERIC DiLEO

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MS. JABLESNIK: Mr. McKelvey?

MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed.

In this case we are going to move on.

This is an Unlisted action under SEQRA, therefore we need a negative declaration from the Board. Can I have a motion for a negative declaration under SEQRA?

MR. McKELVEY: I'll make the motion.

MR. MASTEN: I'll second it.

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

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

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ERIC DiLEO

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MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The neg dec is approved.

Moving on to the criteria, the first one being whether or not the benefit can be achieved by other means feasible to the applicant. Unless he didn't put up a sign. So no. I would say no.

The second, if there's an undesirable change in the neighborhood character or a detriment to nearby properties. Obviously we all drove around there. It's on a State highway. Not too far from there there's advertising devices that are much closer to the road than the applicant is proposing here.

The third, whether the request is substantial. It's only substantial because it's near the property line, or very close to the property line. However, the State right-of-way is very unique in its shape, so therefore you've got to be 75 feet off Route 32 at that point.

Let's see. The fourth, whether the request will have adverse physical or

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ERIC DiLEO

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environmental effects.

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

CHAIRMAN SCALZO: I don't believe so.

The fifth, whether the alleged difficulty is self-created which is relevant but not determinative. Of course it is self-created. However, if you want to advertise for your business, it's kind of an economic thing I believe.

Therefore, going through the balancing test, does the Board have a motion of some sort?

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

MR. BELL: I'll second.

CHAIRMAN SCALZO: We have a motion from Mr. Levin. We have a second from Mr. Bell. Roll, please.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

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ERIC DiLEO

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MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The motion is carried. The variance is  
approved. Good luck.

MR. DiLEO: Thank you guys.

(Time noted: 7:58 p.m.)



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

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 16th day of October 2020.

*Michelle Conero*

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MICHELLE CONERO

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

----- X

In the Matter of

EFRAIN OYOLA

425 Quaker Street, Wallkill  
Section 11; Block 1; Lot 19  
AR Zone

----- X

Date: September 24, 2020  
Time: 7:58 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JOHN MCKELVEY  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
DARRELL BELL (Present remotely)

ALSO PRESENT: DAVID DONOVAN, ESQ.  
GERALD CANFIELD  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: EFRAIN OYOLA

----- X

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

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EFRAIN OYOLA

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CHAIRMAN SCALZO: Our next applicant is Efrain Oyola, seeking a special use permit to create a home occupancy to be an FFL, Federal Firearms Licensed dealer, which would have online sales, store and transition of firearms.

Mailings on this?

MS. JABLESNIK: This applicant sent out 21 mailings.

CHAIRMAN SCALZO: 21 mailings. Very good. Quaker Street is not a County road; correct?

MS. JABLESNIK: No.

CHAIRMAN SCALZO: Sir, we have your application in front of us. We've all seen the site. Great looking house.

MR. OYOLA: Thank you.

CHAIRMAN SCALZO: I've been on the Board for six years. This is my first time through one of these. I'm going to actually seek the help here of Counsel to make sure we don't fall in any holes. This is a special use permit to --

MR. DONOVAN: For a home occupation. It's not regulated by the balancing test of 267-B

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EFRAIN OYOLA

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of the New York State Town Law but rather by Section 185-48.6 of the Town of Newburgh Code, which is a little different.

I don't know whether Code Compliance has a full application in terms of what's being proposed. The only reason I say that is because this is not here for a variance. The Zoning Board can play different roles. Mostly you grant area variances. Every now and again it's a use variance. Every now and again it's an interpretation. You are also permitted by law to issue special use permits. The Town Board has decided that home occupations should have a special use permit from the Zoning Board.

Code Compliance, to my knowledge, I hate to put Jerry on the spot but I haven't done it now since pre-pandemic days, I don't think he identified any code issues. It would just be the issuance of a special permit.

Some of the things to bear in mind with a special use permit is the work has to be done wholly with inside the house, which I assume the mail order would be in any event.

MR. OYOLA: Yes.

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MR. DONOVAN: You're only permitted one non-resident employee. I think the important thing for the Board to focus on, because this is new, or it's new to this Board even though the code looks like it was adopted about six years ago, you need to approve -- let me just read the code to you. "It's accordingly appropriate that the Zoning Board of Appeals requires as a condition of the granting of all home occupations special permits, that the permit be for a finite period of time and subject to application by the applicant at the stated interval for renewal upon review of the Zoning Board of Appeals." So you issue this permit for a specific period. Whether that period is 30 days or 30 years, I can't say. I don't know what the --

CHAIRMAN SCALZO: Could that period coincide with the ownership of the dwelling?

MR. DONOVAN: It could. We don't have any precedent to follow that I recall. I've been here now 13 years, so I predate this. So this provision of the code, that would seem to be a reasonable -- if you're going to impose a finite period of time, you ought to have some rationale

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EFRAIN OYOLA

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relationship to an legitimate objective such as sale of the home. Or I believe there's also a license requirement. You needed an ATF?

MR. OYOLA: One is from ATF and one is from the County issued by the State.

MR. DONOVAN: Those licenses, do they have a duration?

MR. OYOLA: ATF is three years. The County is two years. The State license is two years. The State dealer permit is three years. Every three years I have to renew the FFL through the ATF.

MR. DONOVAN: Just a suggestion of some other time period if you want to tie into that.

It looks like, according to the code, they have to come back anyway. Whatever time period you decide, it says a finite period of time subject to application by the applicant at the stated interval for renewal following review. So this envisions whatever the time period may be, that this gentleman would come back and apply for the relief again for the home occupation.

CHAIRMAN SCALZO: I understand. Much like me getting my enhanced driver's license,

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they need to take your picture every time you do it. I found that out the hard way.

In this case, Counselor, do we just discuss -- is it just that we're determining a time limit? Is there any -- we're not in the position in this case to approve or deny; correct?

MR. DONOVAN: Absolutely you approve it tonight. So there are certain things that are prohibited. I do not believe the applicant falls into that category. There are a number of uses called out, clinic, hospital, barbershop, beauty parlor, restaurant, animal hospital, commercial, animal breeding, uses in residential zones which include outdoor use, maintenance, servicing, testing. So if it was any of those items, taxi or ambulance, you would be in a position to deny the request for home occupation.

In this position, if you choose to grant it, you would establish the finite period of time at which you would have to come back to renew it. It's limited to what the code says.

We can't have more than one non-resident employee. He can't generate undo

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EFRAIN OYOLA

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traffic, noise, odor impacts. Those types of things. That's what the code says.

CHAIRMAN SCALZO: Thank you very much.

I want to tackle this in two separate ways, the first one being is this a home occupancy that we are willing to accept? We need to get an answer on that prior to moving on to the second portion, which would be --

MR. DONOVAN: You may want to ask the applicant to tell us how you're going to transact business.

CHAIRMAN SCALZO: As I say, we've been there. My only observation about it was if you are having customers deliver a firearm to you to hold, they deliver it to you or do you come to them? I tried to back out of your driveway and that was a little challenging.

MR. OYOLA: It's a circle driveway.

CHAIRMAN SCALZO: I only pulled in to one side.

MR. McKELVEY: He has plenty of parking, too.

MR. DONOVAN: You said that on the record, too. Everyone else figured how to get



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out.

CHAIRMAN SCALZO: Okay. As far as the employees go, Counsel had mentioned the one non-resident employee. Is that something that you're also --

MR. OYOLA: I'm basically a sole proprietor.

CHAIRMAN SCALZO: Very good. As Counsel mentioned, perhaps you can just go over with us how the business operates.

MR. OYOLA: The U.S. Federal -- the only way legal firearms are sold in the U.S. is through a Federal Firearms, gun shops. I've been doing this 12 years. I'm retired NYPD. I've been dealing with firearms for 30 some years. It's well regulated. Like I said, you need two licenses. The main one is your Federal Firearms License, which is up for renewal every three years, and your State dealers license, which is up for renewal every two years.

The way I conduct my business is it's by appointment only. I don't have a typical shop where people walk in, you want to see this or see that. Somebody is going to come to my property,

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EFRAIN OYOLA

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I know who is coming and I regulate how many people come. Usually it's one person at a time.

Most of the shipments I get are either UPS, FedEx or the Post Office, which is how firearms are shipped in the U.S. There's no private carriers. If somebody has a firearm that needs to be delivered to me, they deliver it personally. Everything has to be done on the property. The permits are issued to the property. Business can only be conducted on the property listed on the license. It's on the property. Since this is basically my home, I would vet who comes to my house. Just because I'm the dealer and I have a license doesn't mean I need to conduct the transaction. If I don't feel comfortable with the individual -- I've denied a couple transactions before because I didn't feel comfortable with it. I do not have to do the transaction whatsoever. I just tell them find another dealer, I can't conduct the transaction. For whatever reason it brought up red flags.

CHAIRMAN SCALZO: Very good. Thank you.

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EFRAIN OYOLA

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MR. DONOVAN: Maybe, Mr. Chairman, I can just run through a couple things just to make sure.

You're not going to have any outdoor machinery, or equipment, or anything like that?

MR. OYOLA: No.

MR. DONOVAN: In terms of you indicated how your inventory arrives at the house. There's a requirement that you can't exceed commercial vehicle trips of 20 vehicles per week or 20 trips per week.

MR. OYOLA: Commercial vehicles?

MR. DONOVAN: People making deliveries.

MR. OYOLA: No, no.

MR. DONOVAN: So you're not going to be under that. You're not going to produce any odor, noise, vibration, smoke, dust, heat or glare discernible at the property line?

MR. OYOLA: No. No firing shots.

MR. DONOVAN: You don't have like a neon glowing sign with an AK-47?

MR. OYOLA: My wife wouldn't accept that. It's not going to happen. Plus I try to avoid the advertising. Most of my contacts are

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EFRAIN OYOLA

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word of mouth. If you're able to buy a firearm, you have to ship it to somebody, you put a zip code in and it gives you a list of dealers in the area. I don't need people walking in, coming up the road saying can I see this, can I see that. If you come to me, you know who I am. Not just drive up the street, see a gun shop and you're going to come up to me. That's not going to happen.

MR. DONOVAN: There's another code requirement that indicates shall provide off-street parking for any and all anticipated increase in vehicles at the premises above and beyond parking already required, and it can't be in the front yard.

MR. OYOLA: There's plenty of -- somebody came by.

MR. McKELVEY: They're parking in the back; right?

MR. OYOLA: Yes. There's a circle driveway. You come in, you can do a 360 around the house. So pull in, pull out the same way. There's plenty of parking. You can not see it from the street.

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EFRAIN OYOLA

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MR. McKELVEY: Are you going to operate out of the house or the back building?

MR. OYOLA: The house itself. My biggest concern is the security of the firearms, which is in the safes. Everything is conducted -- I use a laptop and a tabletop. All the background checks are done online. I do it myself, background checks online with the FBI. Everything is done through a computer. I share the tabletop. It usually takes 5 minutes, if that, the transaction.

MR. LEVIN: I couldn't come to your house and knock on the door and buy a gun?

MR. OYOLA: You could but I would ask a lot of questions, how did you find me, so and so forth. If you knew I was there, yeah, you could, but it wouldn't be -- it wouldn't be like you're going to Thruway Sports. You wouldn't expect to find what you're looking for there. Usually you'll reach out to me first and I'll ask you what are you looking for exactly. I may have it in inventory. You may order it yourself, send it to me. I may order it myself and provide it to you. Usually beforehand, like I know who's

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EFRAIN OYOLA

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coming and what they're looking for, whether to buy, sell, transfer, whatever the case may be.

MR. McKELVEY: Are you going to advertise?

MR. OYOLA: My advertising is basically online, Google, major gun sites, a gun broker, Tombstone Tactical, Gun Folks. There's a database. You put in your zip code and they give you a list of dealers. Usually in the 12589 zip code it will show up. There's two of us. Wallkill Arms and myself would show up on the database with different manufacturers of different dealers themselves as far as who --

MR. MARINO: Do you have any plans to have a firing range, indoor or outdoor?

MR. OYOLA: No. The logistics are too high, too much. I have access to a private range if we want to do a test fire.

MR. MARINO: Will there be any shooting on the grounds? If somebody said I want to practice with a gun --

MR. OYOLA: No. Absolutely not.

MR. MARINO: No shots?

MR. OYOLA: No live fire whatsoever on

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the property itself. I've been doing it for 12 years. If somebody needs to familiarize themselves, I would invite them to my range. If you want to find out what this feels like -- the best way to buy is firearm is you try it. If you want to test fire it, we have to go to a legitimate range. You can not shoot it on the property.

MR. DONOVAN: Anything else from Code Compliance?

MR. CANFIELD: Just a couple items. Dave, to your question; yes, we received a building permit application also with inquiries from the ATF questioning our local zoning and regulations. That's how the application got before this Board. In that review process Mr. Mattina did ask from the applicant some questions with respect to what he has, how you store it and what not. He agreeably answered those questions. I'll just read them.

MR. DONOVAN: I think it's in our packet. It's the letter from August 18th.

MR. CANFIELD: Yes. You have that. Just a couple other questions, though,

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EFRAIN OYOLA

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that I have. I know you're Federally and State regulated --

MR. OYOLA: Yes.

MR. CANFIELD: -- but who has the authority to do random inspections as to your inventory and how it's stored?

MR. OYOLA: Any law enforcement agency. So if Town of Newburgh decides they want to check the inventory, they can. Obviously within reason. They notify me. You can come in, check my inventory. The State Police, the Feds. Whenever I'm up for renewal the Feds come in and do an audit, make sure my books and my guns match. You've got to have the guns listed in the book. The guns got to be in the safe. If the gun isn't in the safe, I have to have a 473 where the gun went. If I shipped it to another dealer. The books got to match.

MR. CANFIELD: And then one other question is some of the guns -- that was one of Mr. Mattina's questions. He questioned how the guns would be stored and you correctly answered that.

My question added is is your inventory



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EFRAIN OYOLA

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restricted to just handguns, rifles and shotguns?  
Are there any automatic weapons and that type  
thing.

MR. OYOLA: Like full automatics? No.  
That would require another special permit from  
the ATF. Fully automatic weapons are not allowed  
in New York State. The cost of maintaining the  
permit is not feasible because the amount of  
business I would gain from getting a class B  
permit doesn't justify the cost of getting a  
permit. So to answer your question, fully  
automatic weapons, no. There wouldn't be any  
fully automatic weapons.

MR. CANFIELD: That's all I have.  
Thank you.

CHAIRMAN SCALZO: Counselor, where do I  
go?

MR. DONOVAN: If the Board is inclined  
to move forward, you would issue a negative  
declaration, since it's an Unlisted action under  
SEQRA, and you would vote to issue a special use  
permit for the home occupation as requested.

MR. LEVIN: Do we discuss the five --

MR. DONOVAN: You know what, Richard.

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EFRAIN OYOLA

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I was just seeing if you guys were paying attention. Yes.

CHAIRMAN SCALZO: Sir, when is your latest renewal? You had one that's a two- and one that's a three-year; correct?

MR. OYOLA: Yes.

CHAIRMAN SCALZO: So when was your last renewal of your three years? The two years for that matter?

MR. OYOLA: The latest renewal was last week.

CHAIRMAN SCALZO: That's the three-year?

MR. OYOLA: That's the three.

CHAIRMAN SCALZO: The latest renewal for the two-year?

MR. OYOLA: The latest renewal with the State, which takes longer, believe it or not, than the Feds. So that's in the process right now. You would need the present FFL to be submitted with the application to the State through the County. It's like applying for a pistol permit. It's the exact same application. It goes to the County, the State Police issues my

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EFRAIN OYOLA

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location, the dealer's number. I would need a copy of the FFL, which I just received last week, before the permit can go out to the State.

CHAIRMAN SCALZO: Thank you.

Fellow Board Members, my opinion on this, initially I had mentioned to Counsel perhaps we could issue -- should we find this to be agreeable -- for the length that the applicant had owned the home. However, because this is our first time running through this, I would like the opportunity to see how it works, if you will. So my personal feeling is three years to coincide with the rotation of his license.

MR. LEVIN: He would come back to us.

MR. McKELVEY: That sounds good.

MR. MASTEN: I agree.

MR. DONOVAN: So it would be September 2023.

CHAIRMAN SCALZO: Correct. As I say, this is my first time through one of these. It will give us an opportunity, and perhaps you come back in three years and we understand how --

MR. OYOLA: It works.

CHAIRMAN SCALZO: I've got a feeling

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EFRAIN OYOLA

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between then and now you might not be the only one we see for this.

MR. OYOLA: We just bought the house. What you suggested for the length of time I own the property?

CHAIRMAN SCALZO: It very well may.

MR. OYOLA: Okay.

CHAIRMAN SCALZO: But I'd like to start with a shorter duration at this point, just with the three-year.

MR. OYOLA: I appreciate that.

CHAIRMAN SCALZO: So in that instance, I'm seeing nods of approval.

Mr. Bell, did you hear all that?

MR. BELL: Yes, I did.

CHAIRMAN SCALZO: Do you have any comments on that?

MR. BELL: No. This is new. I do agree there should be a time for renewal. I do agree at the same time with the license. I think that's a good idea.

CHAIRMAN SCALZO: Very good. Thank you.

So in this case do we need to vote on that time limit?

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MR. DONOVAN: You need first to do a negative declaration. Why don't we do one at a time.

CHAIRMAN SCALZO: I'm sorry I'm fumbling through this. It's my first time doing one of these.

MR. OYOLA: I just want to add one thing. During the renewal process, the chief of the Town Police, he has the renewal application. That's required by the Feds. So when I submit the application, the chief officer of the area that I'm in, which in this case would be the Town of Newburgh chief, he would get automatically a copy of the renewal. He would know the time of renewal. The chief would know.

CHAIRMAN SCALZO: Okay. So that's perfect. It's almost like a reminder.

MR. OYOLA: Yeah.

CHAIRMAN SCALZO: Okay. So in this case; yes, this is an Unlisted action under SEQRA. So in this case we're looking for a motion for a negative declaration.

MR. MASTEN: I'll make a motion.

MR. McKELVEY: I'll second that.

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CHAIRMAN SCALZO: A neg dec from Mr. Masten. We have a second from Mr. McKelvey. Roll call for the Unlisted action under SEQRA.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

We have an approval on the neg dec.

Now we're moving on to --

MR. DONOVAN: So it would be to issue the special permit for a three-year period to be renewed in September of 2023.

CHAIRMAN SCALZO: Yes. What Mr. Donovan said.

MR. MARINO: Does that apply to this gentleman? If he should sell out in a

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EFRAIN OYOLA

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year-and-a-half and a new owner comes in --

CHAIRMAN SCALZO: It doesn't go with the house. It goes with the person.

MR. MARINO: Do we have to include that in the resolution?

CHAIRMAN SCALZO: No. I believe the Federal law would cover that.

MR. OYOLA: Federal and State. It's nontransferable. I bought my license from Walden. It was a premises in Walden. Now it's a premises in Wallkill. If I leave Wallkill I have to reapply to whatever the location is. The wife loves the house, so --

MR. DONOVAN: You're not going anywhere.

MR. OYOLA: We're not going anywhere.

CHAIRMAN SCALZO: Very good.

Counsel, should his wife not like the house in a year-and-a-half and he wants to still relocate within the Town of Newburgh, he still needs to come back?

MR. DONOVAN: That's correct. It's a home occupation. This is different from a variance which runs with the land. The home

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EFRAIN OYOLA

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occupation is granted to the applicant for that use in this property.

CHAIRMAN SCALZO: Very good. I understand it completely now.

So therefore we have the neg dec on the Unlisted action for SEQRA. We have established it's a three-year period. What's there left to do?

MR. DONOVAN: Vote to issue the special permit.

CHAIRMAN SCALZO: All right then.

Is this something that we're going to open to the public?

MR. DONOVAN: So there is no -- did we have to send out notices?

MS. JABLESNIK: We sent notices, yes.

CHAIRMAN SCALZO: Okay then. Do we have any members of the public that wish to speak about this application?

(No response.)

CHAIRMAN SCALZO: It doesn't appear so.

MR. McKELVEY: I didn't hear anything.

CHAIRMAN SCALZO: I don't even know that I closed the public hearing. Did I?



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MR. DONOVAN: I don't see anything in 185-48.6 that requires a public hearing, unless I missed it. I don't know if there's anywhere else in the code. A long time ago when I started this, this Board had gave special permits for accessory apartments.

Jerry, do you know, is there any provision in the code for a public hearing for a special permit?

MR. CANFIELD: I thought every applicant on the agenda was a public hearing.

MR. DONOVAN: So the portion of the code that deals with area variances, use variances, interpretations requires a public hearing. I'd have to read it again. Next time we have a home occupation we'll be better at this.

I think in terms of tonight, the public hearing was scheduled. You've issued a negative declaration. The world is not going to end. Close the public hearing and issue the approval.

CHAIRMAN SCALZO: There you have it. Does the Board have a motion to close the public hearing?

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EFRAIN OYOLA

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MR. McKELVEY: I'll make that motion.

MR. MARINO: Second.

CHAIRMAN SCALZO: We have a motion from Mr. McKelvey. We have a second from Mr. Marino. Roll call on that.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed.

Now moving on to approval of the home occupancy special permit. Do we have a motion from the Board?

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

MR. MASTEN: Second.

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

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The special permit is approved.

I guess we'll see you back here in three years.

MR. OYOLA: Thank you.

(Time noted: 8:24 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 16th day of October 2020.

*Michelle Conero*

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MICHELLE CONERO

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

----- X

In the Matter of

GEORGE LIPPI

4 Linden Drive, Newburgh  
Section 90; Block 3; Lot 6  
R-1 Zone

----- X

Date: September 24, 2020  
Time: 8:24 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JOHN MCKELVEY  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
DARRELL BELL (Present remotely)

ALSO PRESENT: DAVID DONOVAN, ESQ.  
GERALD CANFIELD  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: GEORGE LIPPI

----- X

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

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GEORGE LIPPI

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CHAIRMAN SCALZO: Our final applicant of new business this evening is George Lippi, 4 Linden Drive, Newburgh, seeking area variances for the front yard, one side yard, combined side yards to build a 10 x 21.33 covered front porch.

Siobhan, mailings on this?

MS. JABLESNIK: This applicant sent out 63 letters.

CHAIRMAN SCALZO: You're the winner for the evening, sir. Not only that, the gentleman showed up at 6:30, so he's been waiting patiently.

MR. LIPPI: Right from work.

CHAIRMAN SCALZO: Mr. Lippi, it appears -- as I say, we've all seen your site. One of our Members actually lives in your subdivision, so he's probably driven past it many times.

It appears as though you are looking to put a covered front entry on your place, which, you know, in the character of the neighborhood it's going to make it stand out. I'm sure it's going to be appealing. We actually issued a variance to your neighbor directly contiguous with you at the corner there for a garage. It

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GEORGE LIPPI

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was nice to see him actually doing his work,  
wrapping it up. I don't remember when we issued  
that variance. It looks perfect.

So my opinion of what I saw there of  
what you're looking to do would be in character  
with the neighborhood. It doesn't look like it's  
really outrageous, what you're asking for.

MR. McKELVEY: We've also granted other  
porches like that.

CHAIRMAN SCALZO: Correct. I kind of  
sidelined if you had a presentation in mind. If  
there's something you'd like to add, please.

MR. LIPPI: I mean --

MR. DONOVAN: You're doing really well  
so far. Don't screw it up.

MR. LIPPI: I'm going to leave it at  
that. I'm all right. Thank you very much.

CHAIRMAN SCALZO: Very good. Like I  
say, we've all seen it. Like I say, I think it's  
going to add character to your house and it's in  
character with the neighborhood.

I'll look to Mr. Levin here. Any  
comments?

MR. LEVIN: No.

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GEORGE LIPPI

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CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: No.

CHAIRMAN SCALZO: You'll think it's  
okay in your neighborhood?

MR. MCKELVEY: Yup.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: I'm good.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: I'm fine.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: I'm good.

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

(No response.)

MR. LIPPI: That's my wife.

CHAIRMAN SCALZO: I hope she's in  
favor.

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

(No response.)

CHAIRMAN SCALZO: I'll look to the  
Board for closing the public hearing.

MR. MASTEN: I'll make a motion to



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GEORGE LIPPI

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close the public hearing.

MR. McKELVEY: I'll second it.

CHAIRMAN SCALZO: Motion from Mr. Masten. Second from Mr. McKelvey. Roll call, please.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed.

Moving forward with that, this is a Type 2 action under SEQRA. In this case we are going to go through the balancing test, the first one being whether the benefit can be achieved by other means feasible to the applicant.

MR. BELL: No.

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MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

CHAIRMAN SCALZO: No.

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

MR. BELL: No.

MR. McKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

CHAIRMAN SCALZO: No.

MR. McKELVEY: There's a lot of houses in the neighborhood with porches like this.

CHAIRMAN SCALZO: The third, whether the request is substantial. I don't believe so. It kind of sits back. He's on the curve there. I don't think it's going to look so intrusive where he is.

Fourth, whether the request will have adverse physical or environmental effects. It does not appear so.

The fifth, whether the alleged difficulty is self-created. This is relevant but

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GEORGE LIPPI

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not determinative. Of course it's self-created,  
but I think it's going to be overridden with how  
it looks when it's done.

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

MR. McKELVEY: I'll make the motion.

MR. MARINO: Second.

CHAIRMAN SCALZO: I heard it from Mr.  
McKelvey first. I heard some mumbling, Mr. Bell.  
It could have been you but I'm giving it to Mr.  
Marino. Roll on that, please, Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The motion is carried. The variances

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GEORGE LIPPI

are approved. Good luck, sir.

MR. LIPPI: Thank you everyone.

(Time noted: 8:29 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 16th day of October 2020.

*Michelle Conero*

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MICHELLE CONERO

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

----- X

In the Matter of

DANIEL DARRIGO

84 Lakeside Road, Newburgh  
Section 86; Block 1; Lot 96  
R-1 Zone

----- X

Date: September 24, 2020  
Time: 8:29 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: JOHN McKELVEY, Acting Chairman  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
DARRELL BELL (Present remotely)

ALSO PRESENT: DAVID DONOVAN, ESQ.  
GERALD CANFIELD  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: JEFFREY LEASE

----- X

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

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DANIEL DARRIGO

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CHAIRMAN SCALZO: The next applicant is Daniel Darrigo, 84 Lakeside Road, Newburgh, seeking an interpretation of a previously granted variance for a solar array.

I need to step away from this application. Mr. McKelvey, the floor is yours.

MR. MCKELVEY: Is anybody here to represent?

MR. LEASE: I'm Jeff lease. I'm here representing Dan Darrigo.

MR. DONOVAN: Sorry, I took my son to school so I wasn't here last month.

MR. MCKELVEY: I was going to ask him to review.

MR. DONOVAN: I want to make sure we're focused. I looked at the minutes from last month. This matter comes to the ZBA under a referral from the Planning Board.

MR. LEASE: Mm'hm'.

MR. DONOVAN: The Planning Board's Counsel has written a letter which says that -- he identified two areas of relief. I want to deal with the second one first. I'll read from Mr. Cordisco's letter of February 12th. It says,

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DANIEL DARRIGO

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"The applicant has identified several existing nonconforming uses of the property which are proposed to continue even after the development of the site as a solar farm. The Planning Board refers this aspect to the ZBA for its interpretation or consideration of a use variance to allow multiple nonconforming uses of the site."

I know when this application was in front of the Board originally there was a question of existing violations. I think that issue was addressed. The Planning Board is raising, in my view, a different issue, and that's the existence of multiple nonconforming uses and whether that is permitted. I don't know whether -- is there a list somewhere of the various nonconforming uses?

MR. LEASE: It's in the application and on the approved ZBA plan. Those uses are actually on the --

MR. DONOVAN: They're called out as separate uses?

MR. LEASE: Yes, sir.

MR. DONOVAN: Has everybody seen that?

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MR. LEASE: On the application on the 8.5 x 11 sheet I listed the four or five nonconforming uses for the farm, one of which is farming. The supply yard, the farming operation. Maybe I can pull up that individual sheet. It was a single sheet.

MR. DONOVAN: So where it says the four farm uses will remain the same -- I'm looking at -- is that the single sheet that you're referring to?

MR. LEASE: One moment, please.

MR. DONOVAN: My objective here is not to give anyone a hard time, it's to make sure when you go back to the Planning Board this issue is not raised as to whether or not it was discussed and resolved by the ZBA.

MR. LEASE: Right. You are correct, the 8.5 x 11 sheet says the four farm uses. The farm fields under cultivation, the supply yard for buying farming and landscape supplies, vehicle-related storage of tractors and farm supply equipment, and the annual Halloween event.

MR. DONOVAN: Are there any other nonconforming uses going on on the property?



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DANIEL DARRIGO

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MR. LEASE: No.

MR. McKELVEY: This includes all the buildings on the property?

MR. LEASE: Yes.

MR. McKELVEY: Okay.

MR. LEASE: Yes, sir.

MR. McKELVEY: I did ask you, were permits issued for all of them, Jerry?

MR. DONOVAN: I think the question is whether or not there are permits for the uses that are permitted. Put it that way.

MR. CANFIELD: To be quite honest with you, I'm not certain since so much time has elapsed. I'm not current with where we're at with it. I know originally we started in the line of compliance, but so much since then has happened. I'm not prepared to say yes, it is or no, it isn't. I don't know for sure where we're at.

MR. LEASE: I don't understand the question.

MR. DONOVAN: So the issue that the Planning Board is raising is hey, you know, you have -- you're allowed certain uses. Certain uses are not allowed. Now, if you have multiple

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nonconforming uses, does the Board issue an interpretation that that's permitted or does the Board require a use variance. The Board required a use variance for the application. It was a use variance for the solar farm. The Board approved the solar farm. Understand, when you issue a use variance you're allowing a use that's not otherwise permitted. This Board has to establish the bulk requirements, the setbacks. What you did, that made the most sense, is that you said what's shown on the map is what we're approving and that's what's allowed.

The separate issue is that the Planning Board identified that there was an additional area of disturbance. Right? The solar array got bigger so you disturbed more.

MR. LEASE: Now we're going back --

MR. DONOVAN: We're going back to the first issue. I understand that.

MR. LEASE: Can we deal with the farm uses first? We went from farm uses to buildings that may not have had building permits. I just thought we would just stay with the farm uses first.

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MR. McKELVEY: I just want to know, does this include the whole property?

MR. DONOVAN: Well that's what the Planning Board is asking us. I'll read from Mr. Cordisco's letter again. "The applicant identifies several existing nonconforming uses of the property which are proposed to continue even after the development of the solar farm. The Planning Board refers this aspect to the ZBA for its interpretation or consideration of a use variance to allow multiple nonconforming uses of the site." In other words, when you issued your original use variance, was it the determination that all these other uses were allowed to continue because you met the four criteria of the use area variance. That's the Planning Board's question.

MR. MARINO: Those uses are going on now.

MR. DONOVAN: Right. What happens now is you have a use variance and other nonconforming uses as I understand it. That's what the Planning Board is saying to us. Is that what you originally intended to approve?

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MR. LEASE: Essentially the farm and the solar array are occurring on the same property.

MR. MARINO: I think we understood that.

MR. LEASE: It's in all the meetings. In almost every one of the meetings that was here, both of those uses were there. I have the meeting minutes.

MR. McKELVEY: All those buildings out towards 84, are they being used just for farming?

MR. LEASE: For farm and supply yard. Yes. Actually, I have included a new plan in here, which is the farm plan here, so that if you would like to add that plan to your approval saying that -- what I'm getting from Mr. Donovan here is that we don't want the farm use to expand beyond or to commingle with the solar array or for it to become aggressively larger than what they are. If you wanted to say that separate farm plan is a separate sheet, that shall be the limiting factor by which we approve the existing farm uses. Part of that is already included on the approved ZBA map. So all of those farm uses

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were on that map and they showed where they were.

MR. McKELVEY: You don't run businesses in those buildings?

MR. LEASE: There's a farm business there and a supply yard business. Nothing else other than that. Right.

MR. CANFIELD: Excuse me. Jeff, I think what Mr. McKelvey was referring to is the Terror Dome, which is not farm, and the landscapers that are not farm. There was also a repair business in one of those garages.

MR. LEASE: Well the repair business has to do with the farm business. The trucks and vehicles on the property have to do with the supply house and/or the farm. The third thing, the Terror Dome was a farm-related use. So when that came there was like hayrides and then the hayrides became kind of a Halloween scare thing. So they were related to the farm uses as they are, you know, like Eggbert is to --

MR. CANFIELD: I believe that's what the Planning Board is looking for the interpretation and clarification on. If the ZBA is of the same opinion that the Terror Dome and

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that type of business is ancillary to the farm --

MR. LEASE: To the farm business.

Right.

MR. McKELVEY: That's what I wanted to  
get straight.

MR. LEASE: Yeah, yeah. It's been  
there. It was discussed. It was on the original  
ZBA plan. And now I have a new plan.

MR. DONOVAN: Can I just say something?  
It would be helpful to stop doing that.

MR. LEASE: Stop doing?

MR. DONOVAN: Issuing new plans.  
That's causing a little bit of a problem.

MR. LEASE: Well the last time I came  
here I got that the plan was not at the right  
scale, so I submitted a new plan which is now at  
the right scale. So again, we're going off of  
the conversation.

MR. CANFIELD: Just another question,  
Jeff, on the plan.

MR. LEASE: I'm sorry. Is that okay?  
I mean am I -- the plans that I'm submitting, are  
they confusing because there's too many?

MR. DONOVAN: You left here with an

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approval. Then you went to the Planning Board and you showed them a slightly different map.

MR. LEASE: Right.

MR. DONOVAN: That's what I'm indicating. If you're showing an expansion, or a different type use of the property, or a larger use or expanded use, it's not helpful because the ZBA approves a map --

MR. LEASE: Right.

MR. DONOVAN: We said this is what we've approved.

MR. LEASE: Yes.

MR. DONOVAN: That changed at the Planning Board. I didn't realize you were bringing back a map with a different scale. I thought you were proposing a different map showing different uses in different locations.

MR. LEASE: No.

MR. DONOVAN: I was suggesting to you that that may be something you want to avoid.

MR. LEASE: Okay.

MR. McKELVEY: They've also increased from 4 megawatts to 5.

MR. LEASE: Right. It did. The

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increases I presented last week -- the last time I was here.

So separate from the farm uses; with respect to the size of the solar array, when it was originally before the ZBA the cap on a single property was 4 megawatts. As it went along, the State changed the law so that it could go as much as 5 megawatts. So it did increase in size.

But to that point, the point that I made before is that I have shown on the original approved ZBA plan 100-foot setback. So 50 feet of tree buffer and 50 feet of grass. In going to the ZBA -- the Planning Board rather, they asked me to increase that on the north and east sides of the property to 150. So the current solar law requests 50-foot setbacks in most cases. In this case, when I went before the ZBA here, I showed 100 foot. Now they're asking for 150. So some of the realignment and change to the plan has to do with the fact that the whole solar array kind of got bumped on two sides, bumped from the east and bumped from the north down. It did get larger . It went from 4 to 5. That's something that is under review.



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MR. DONOVAN: So is this what's proposed, what's in front of the Board now?

MR. LEASE: Yes.

MR. DONOVAN: The only other comment I'll make relative to the map is someone is writing on Arden Consulting Engineer's maps. That should really only be Arden Consulting.

MR. LEASE: Right.

MR. DONOVAN: Right?

MR. LEASE: Right. It was me.

MR. DONOVAN: I know. You shouldn't do that.

MR. LEASE: Okay.

MR. DONOVAN: It's like an Educational violation. You can't write on another professional's map and present it as -- It's not a big deal but it's something that someone crossed out and has written things. You're not supposed to do that.

MR. LEASE: Got it.

MR. DONOVAN: Sorry, Mr. Chairman.

MR. MASTEN: John, I have a question. All these buildings on the property are related to the farm?

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MR. LEASE: And the supply yard.

MR. MASTEN: I've been out there a few times. There are some other businesses there. Are they related to the farm?

MR. LEASE: Yes.

MR. MASTEN: They are?

MR. LEASE: Yes. The farm and supply yard.

MR. MASTEN: There were different names on it. It said Darrigo. They were different companies. I don't want to lose --

MR. LEASE: Okay.

MR. MASTEN: The business is there or what?

MR. LEASE: Dan, do you want to speak to some part of this?

MR. MASTEN: I saw at least two to three different lawn businesses there.

MR. LEASE: Right.

MR. DARRIGO: They're there mainly to help me with the farming, and also they're for customers. I allow them to keep their stuff on the property. I'm kind of a one-man show, so I kind of lean on them to help me with different

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aspects, whether it's helping clearing some brush, maybe taking rocks out of the field. Just odds and ends, you know. Like I said, I'm kind of a one-man show. I mean other farmers also have people on their property, you know, helping them out, just doing simple things.

MR. McKELVEY: Would you give your name?

MR. DARRIGO: Dan Darrigo. I'm the trustee of the farm.

MR. McKELVEY: Just for the record. Does anybody else have a question?

MR. LEVIN: No.

MR. LEASE: So the issue here are two points from the Cordisco letter, whether the uses -- the four uses of the farm shall remain on the property, and I would further add that they shall be contained as per the supplemental map that was shown for the farm uses. They're already on the original approved ZBA map. They should continue. I'm not sure that Dominick saw the map when he looked at the issue of the thing. I think what he wanted to see was these individual uses listed in the approval for the application. I'm not

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sure that he took a look at the maps as closely as it was and saw all those uses on that map.

And then the second one, of course, is the change in the way that the solar array is arranged on the property. As I presented last week, it has larger buffers so that we now rendered 2.5 acres unusable in terms of the area along Amber Fields and along Meadow Avenue. And there is a landscape buffer, which is in the plan, going along 84, blocking the view of 84 of the farm and the farm operations, which I think are important. There's also entry gateways coming in off of Lakeside Road as well as Monarch Drive and Meadow Hill. There's going to be landscape buffer material that's going to be needed along Amber Fields as well.

The two solar fields have kind of come together a little bit narrower. There will be shrubbery on the landscaped hill for soil retention between the two solar fields.

MR. McKELVEY: I think another question we asked is that little indentation where it looks like a junk yard, that's going to be cleaned up?

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MR. LEASE: Yes. I don't know exact --  
where was that?

MR. McKELVEY: That little indentation  
that was dug out in there on the road going in.

MR. LEASE: The road going in to the  
right-hand side?

MR. McKELVEY: Yes.

MR. LEASE: Actually one of those  
little areas is going to be removed. One of  
those parking areas is going to stay but one is  
going to be removed.

MR. McKELVEY: I think it should be  
made a little neater.

MR. LEASE: Okay.

MR. MARINO: So what do we do now?

MR. LEVIN: He's looking for approval  
on the array. The larger array.

MR. DONOVAN: So if the Board is  
inclined to move forward in a fashion granting  
the application, you've got to close the public  
hearing.

A question from Code Compliance?

MR. CANFIELD: I do. I'm sorry. This  
plan that was dropped off today --

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MR. LEASE: Yes.

MR. CANFIELD: -- is dated 9/22.

MR. LEASE: It's the original ZBA plan.  
The scale has changed.

MR. CANFIELD: But it's different,  
Jeff. The total panel array is at a different  
megawatt count.

MR. LEASE: Yeah. It went 4, 5.

MR. CANFIELD: This is the smaller one?

MR. LEASE: Yes.

MR. CANFIELD: The map doesn't say  
that. It's just whited out. Here it says 5 and  
then it's whited out, and then we see in this  
area they're not there.

MR. LEASE: Right. This is much larger  
than this here.

MR. CANFIELD: The road changes as  
well. This road over here, the second access.

MR. LEASE: There was no road here.  
Yeah. There's no road here. What happened is  
that these two fields got -- this one stayed  
about the same. It dropped down a little bit,  
came into this area over here. This field pushed  
over this way and went down here. It stayed

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pretty much the same. You can see that is about where that is right there. So really it became a little larger here and a section came down to there.

I'm sorry. One other thing. I'm sorry, Jerry. Excuse me. This distance is 100 feet where over here it was incorrect at 50 feet. So the fields kind of came in together like that.

MR. DONOVAN: You're not asking us to approve the map that's dated 9/22/20; correct? That's the previously approved map. You're asking us to --

MR. CANFIELD: That's the previously submitted map, the 9/22 map.

MR. DONOVAN: It shows apples to apples. What you want approved is the map last dated June 19, 2020 because it shows the larger array?

MR. LEASE: Yes. That's exactly so.

MR. CANFIELD: But that map is different than this 9/20 map.

MR. DONOVAN: Which is the entire point. That's how it got here.

I suggested last time -- there was 150

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scale that visually they appeared different. So it would be better to have apples to apples, to have them on the same scale. What he's presented is the map that got approved from the ZBA just for reference point. Tonight probably doesn't help anybody. But he did. The map he really wants approved is the one that went to the Planning Board.

MR. LEASE: Yes.

MR. CANFIELD: But that's not what's before you right here. Even though the scale is different, they are different.

MR. LEASE: They are different.

MR. CANFIELD: It's a lesser amount of panel arrays.

MR. DONOVAN: But Jerry, that's what we approved before. Right? The Planning Board said hey, what's in front of us now in the last revised June 19th is what he wants approved. That's what he has at the Planning Board. He's trying to show us for illustrative purposes the map that was approved by the ZBA at the same scale.

MR. LEASE: Right.



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MR. DONOVAN: So you could really throw this away. What's in front of us is this.

MR. CANFIELD: Just for hahas, why was it submitted then?

MR. DONOVAN: Because I was a pain in the neck and I said the new one at the Planning Board and the old one at the Zoning Board are different scales.

MR. LEASE: Exactly.

MR. DONOVAN: In other words, comparing the one that got approved a couple years ago versus the new one at the Planning Board were different scales.

MR. CANFIELD: Even if you changed the scales, the footprint will be the same but smaller.

MR. DONOVAN: I think the footprint is larger.

MR. LEASE: It's larger.

MR. CANFIELD: The footprint is --

MR. LEASE: This is the old one, this is the new one.

MR. CANFIELD: That's not what the dates say. It's just the opposite from what the

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dates say. This says June 20, this says 9/20.

MR. DONOVAN: Right. As I said before, we'll go back to my prior comment, perhaps he's not helping himself by bringing all these maps.

MR. CANFIELD: If you take this out of the picture --

MR. DONOVAN: Yes. Totally out the picture.

MR. LEASE: I'm sorry. I tried to do a good job and I tried to answer the questions of the misaligned scale. So what happened is when we submitted the plan to the ZBA it was at one scale, but as the drawings began to go on, we now have something like 9 or 15 drawings, it changed to a different scale.

MR. DONOVAN: It would be a motion to close the public hearing. I guess the Chairman is going to come back in.

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

MR. MASTEN: Second.

MR. DONOVAN: Is anyone on Zoom?

MS. JABLESNIK: I don't think so. There are a couple people on Zoom. Darrell is

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here. Let's not forget him.

MR. DONOVAN: Are there any members of the public on Zoom who wish to comment?

MR. McKELVEY: Does anybody on Zoom want to comment?

(No response.)

MS. JABLESNIK: No.

MR. BELL: I don't believe there is.

MR. DONOVAN: Does Mr. Bloom want to comment? I'd like to hear from him.

MR. BLOOM: I'm sitting here listening.

MR. McKELVEY: Identify yourself for the record.

MR. BLOOM: Dan Bloom. I'm here to support the application of Jeff Lease.

First of all, I want to comment and say I'm duly impressed by the observations of your Counsel in maintaining control over what was getting out of control here quickly in terms of the presentation. That's not an adverse reflection on Jeff Lease, so much as it is the complexity of the issues and how they seem to have grown without limitation here.

The last time I was in front of this

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Board and the approval was granted, it seemed to be pretty clear, and then something happened at the Planning Board. My client, being the diligent applicant that he is in my opinion, I think your Counsel would agree, presented I think too much to the Planning Board, herein trying to achieve too much. I think if we go back, as Counsel suggested, Mr. Donovan suggested, to the simple map that was originally approved, the only difference is the scale, and obviously it has more megawatts than it had before because that's permitted now. It wasn't permitted at the time. But the compensation was, at least in my opinion, I'll respectfully submit, that the overall affect to the community is better because the buffers have been increased. The buffers have been increased. I understand the farm has physically been improved in terms of cleanup, and continues to be physically improved in terms of cleanup.

I respectfully submit that I think my client has done his best to accommodate the Board and to make a presentation that will be beneficial to the Town and the neighbors. I think the very fact that we haven't heard on the

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Zoom audience from anyone feeling aggrieved by the presentation, by what's proposed, I submit would be beneficial to the community because if this is granted, when it is constructed we will now have a back-up, an environmentally sound back-up for the electrical grid in this area, which is always a good thing in my opinion.

So thank you for the opportunity. I appreciate it.

Mr. Donovan, if you have any questions --

MR. DONOVAN: Good to see you, Dan.

MR. BLOOM: Good to see you. Thank you very much.

MR. DONOVAN: Was there a motion to close? Was it voted on or no?

MR. MARINO: We didn't vote, did we?

MR. McKELVEY: Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

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MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MR. DONOVAN: So this is an interpretation.

CHAIRMAN SCALZO: I'm just a mouthpiece here. I'm not a participant.

MR. DONOVAN: It might be easier, Mr. Chairman, if it's okay with you, if I just kind of run through this.

CHAIRMAN SCALZO: Please.

MR. DONOVAN: It's a Type 2 action under SEQRA because it's an interpretation.

I just want to verify with the applicant that the map you're looking to approve, if the Board votes for an approval, they're going to approve what's shown on the map prepared by Arden Consulting Engineers dated November 12, 2019, last revised June 19, 2020.

MR. LEASE: Correct. Thank you.

MR. DONOVAN: If the Board is inclined to move forward, it will be a motion to find that the increased land disturbance is consistent with

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the prior use variance granted by this Board, approving the bulk area shown on the map last revised June 19, 2020, and to allow all uses shown on the map as outlined in the applicant's application dated July 6, 2020 to continue as presently constituted.

MR. McKELVEY: As farm use.

MR. DONOVAN: Correct. Correct.

If you want to approve it, that's the motion. If that's what the Board wants to approve, that's the application. If you don't want to approve it, that's a different motion.

MR. MARINO: If I understand right, I want to approve it. What do I have to do?

MR. DONOVAN: Say you want to make the motion.

MR. MARINO: I want to make a motion to approve.

MR. LEVIN: I'll second it.

CHAIRMAN SCALZO: So we have a motion from Mr. Marino. We have a second from Mr. Levin. Roll on that, Siobhan.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

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MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

CHAIRMAN SCALZO: It sounds like the  
motion carried to me.

MR. MCKELVEY: Motion carried.

CHAIRMAN SCALZO: Very good.

MR. DARRIGO: That's it?

MR. DONOVAN: Until we meet again.

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



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

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 16th day of October 2020.

*Michelle Conero*

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MICHELLE CONERO

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

----- X

In the Matter of

GNS GROUP LTD FOR 7 ELEVEN, INC.

78 Route 17K, Newburgh  
Section 95; Block 1; Lot 25  
IB Zone

----- X

Date: September 24, 2020  
Time: 9:00 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JOHN MCKELVEY  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
DARRELL BELL (Present remotely)

ALSO PRESENT: DAVID DONOVAN, ESQ.  
GERALD CANFIELD  
SIOBHAN JABLESNIK

----- X

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

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GNS GROUP LTD FOR 7 ELEVEN, INC.

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CHAIRMAN SCALZO: Our final applicant this evening is the GNS Group for 7 Eleven, Inc., which is 78 Route 17K in Newburgh. They are seeking an area variance for two front yards to replace four faces on an existing nonconforming pylon sign.

We had heard the applicant in the last meeting. All we were waiting for in that case was the County referral.

MS. JABLESNIK: We actually still haven't received it.

CHAIRMAN SCALZO: We are over the allotted time, --

MS. JABLESNIK: We're over.

CHAIRMAN SCALZO: -- therefore we are allowed to vote this evening.

Board Members, if you recall, if this application was denied the sign that's currently there would remain in place anyway, much like the other application we had earlier this evening.

So therefore, hearing that, I'll make a motion that we close the public hearing.

MR. LEVIN: I'll second it.

CHAIRMAN SCALZO: Roll on that.

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MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Motion carried to close the public hearing.

I will also make a motion for approval for these variances for the sign.

MR. BELL: Second.

CHAIRMAN SCALZO: I got a second from Mr. Bell. Roll on that.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

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MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The motion is carried. The variance is approved.

There was no one here representing the applicant this evening.

MS. JABLESNIK: No. Nancy contacted me multiple times the past couple weeks. She said she wasn't going to make it today.

CHAIRMAN SCALZO: That's fine.

MS. JABLESNIK: She's going to call me tomorrow.

CHAIRMAN SCALZO: We're allowed to do that.

The next order of business is approval of the meeting minutes for the last meeting. Do I have a motion for approval of those?

MR. MARINO: I'll make the motion.

MR. MASTEN: Second.

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CHAIRMAN SCALZO: Very good. Mr. Marino. We have a second from Mr. Masten. All in favor?

MR. BELL: Aye.

MR. LEVIN: Aye.

MR. MARINO: Aye.

MR. MASTEN: Aye.

MR. McKELVEY: Aye.

CHAIRMAN SCALZO: Aye.

And then the last order of business is the adjournment. Motion to adjourn.

Mr. Masten. Second.

CHAIRMAN SCALZO: Mr. Masten.

All in favor?

MR. BELL: Aye.

MR. LEVIN: Aye.

MR. MARINO: Aye.

MR. MASTEN: Aye.

MR. McKELVEY: Aye.

CHAIRMAN SCALZO: Aye.

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

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

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 16th day of October 2020.

*Michelle Conero*

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MICHELLE CONERO