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

- - - - - X
In the Matter of

JAMES BARKSDALE

1938 Route 300, Newburgh
Section 12; Block 1; Lot 15
AR Zone

- - - - - X

Date: September 28, 2023
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
GREGORY M. HERMANCE
JOHN MASTEN
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: JAMES BARKSDALE

- - - - - X

MICHELLE L. CONERO
Post Office Box 816
Dover Plains, New York 12522
(845) 541-4163

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CHAIRMAN SCALZO: Good evening.
I'd like to call the meeting of the
Zoning Board of Appeals to order.
The order of business are the public
hearings which have been scheduled.
The procedure of the Board is that
the applicant will be called upon to
step forward, state their request and
explain why it should be granted.
The Board will then ask the applicant
any questions it may have, and then
any questions or comments from the
public will be entertained. The
Board will then consider the
applications and will try to render a
decision this evening but may take up
to 62 days to reach a determination.
I would ask that 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 by our stenographer.
Roll call, please, Siobhan.
MS. JABLESNIK: Darrell Bell is

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absent, along with James Eberhart.
Greg Hermance.

MR. HERMANCE: Here.

MS. JABLESNIK: John Masten.

MR. MASTEN: Here.

MS. JABLESNIK: Donna Rein.

MS. REIN: Here.

MS. JABLESNIK: Darrin Scalzo.

CHAIRMAN SCALZO: Present.

MS. JABLESNIK: Also present is
our Attorney, Dave Donovan; from Code
Come Compliance is Joseph Mattina;
and our Stenographer, Michelle
Conero.

CHAIRMAN SCALZO: If you could
all please rise for the Pledge.

(Pledge of Allegiance.)

CHAIRMAN SCALZO: Before we get
started with the formal portion of
the meeting, you folks may notice
that we're a couple of empty chairs
up here. We had one member resign.
We have two other members that could
not be here this evening. We have

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JAMES BARKSDALE

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four voting members this evening, so any application that is heard this evening has to be a unanimous vote.

That's correct, Counsel?

MR. DONOVAN: Correct, Mr. Chairman.

CHAIRMAN SCALZO: So what we will do is give anyone the opportunity to defer voting. We're going to hear the applicants this evening, but we will give the applicants an opportunity to be pushed to next month when we have a full compliment here. That's just an option for anybody that's here.

That being said, let's move on. Our first applicant this evening is James Barksdale, 1938 Route 300. He's in an AR Zone. He's seeking an area variance to keep chickens on less than 2 acres.

Do we have mailings on that, Siobhan?

MS. JABLESNIK: This applicant

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sent out 31 letters.

CHAIRMAN SCALZO: Very good.
Do we have anyone here representing this application?

MR. BARKSDALE: Yes.

CHAIRMAN SCALZO: If you could step forward, please, and introduce yourselves.

MS. JABLESNIK: This was also a County referral and we did not receive it back yet. I sent it for chickens.

Are they in your backyard?

MR. BARKSDALE: Yes. At the end of the property.

CHAIRMAN SCALZO: I know it's an area variance.

MR. DONOVAN: We do have some opt outs now. The rear yard and side yard variance requirements are the only opt outs with the County. This is a bulk requirement. 2 acres are required. They have less than 2 acres. I would like to say that we

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can blow off the County. I really would like to say that, because in more years than I care to say, I've never seen a meaningful report from the Orange County Department of Planning. I'm sorry to say that.

CHAIRMAN SCALZO: I saw one.

MR. DONOVAN: I have not. The rules are the rules. Unfortunately, and this is a great place to be, you get to come back next month.

CHAIRMAN SCALZO: That being said, the County has the opportunity to review your applications right along with us. Because you're on a State or County road, or within 500 feet of one, as Counsel just said, they have to weigh in. They have a 30-day time limit. If they don't respond to us within 30 days, then we can discount anything and act without their input.

MR. BARKSDALE: Yes, sir.

CHAIRMAN SCALZO: Since you are

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here, if you would like to -- we've all been out, we've all seen what you've got going on.

I will tell you that a few months back, we had another applicant in here that was seeking a variance for chickens, to keep chickens on their lot, and they, like you, are in the AR Zone. Chickens are allowed in the AR Zone. The only thing you are missing is the acreage. The other applicant that was in here a few months back was also about 1 acre. They were successful with their variance application.

So that being said, I kind of put a lot of words out there for you. If you'd like to add anything that I haven't said, please feel free.

MR. BARKSDALE: No. I just -- you know, I was born on a farm, so I grew up doing this agricultural thing. It's been with me all my life. I came to Newburgh fifteen

2 years -- I've been here fifteen
3 years. I obtained the chickens. I
4 had them six years. They're like
5 part of the family. It's like a dog
6 or a cat to me.

7 CHAIRMAN SCALZO: Sure.

8 MR. BARKSDALE: That's it. The
9 other thing is they don't go on
10 properties. I have them trained.
11 They stay on my property only. I
12 never leave them unattended.

13 That's all I've got to say.

14 CHAIRMAN SCALZO: I imagine you
15 can't leave them unattended because
16 hawks love them.

17 MR. BARKSDALE: Yes. They all
18 stick together. They always stay
19 together. I never let them separate.
20 If you want to put them in at 2:00,
21 1:00, all I've got to do is tell them
22 to go in and they go in.

23 CHAIRMAN SCALZO: A lot of them
24 put themselves in.

25 Do you have any roosters?

2 MR. BARKSDALE: No. Oh, no. I
3 know that much.

4 CHAIRMAN SCALZO: That's good.
5 How many chickens are we talking
6 about?

7 MR. BARKSDALE: I had eight.
8 One of them, you know, passed. Now
9 we have six.

10 CHAIRMAN SCALZO: I myself
11 don't have any other questions
12 regarding this.

13 I'm going to start to my right.
14 Mr. Hermance, do you have any
15 questions?

16 MR. HERMANCE: You let them
17 free range?

18 MR. BARKSDALE: They are fenced
19 in. A fence was put up. They only
20 stay on my property. Even without
21 the fence, they would never go over
22 the boundaries because I never let
23 them. From two days old I trained
24 these chickens. The inspector came
25 out and he was shocked. He said, you

2 should have a circus, put them on
3 Youtube. When I tell them to go in
4 -- they're trained. They know all
5 their names. I get to spend time
6 with them. I'm retired, so you guys
7 can picture, you know.

8 CHAIRMAN SCALZO: Another thing
9 that I can do when I retire.

10 MR. BARKSDALE: It's therapeutic.
11 Gardening also I do.

12 CHAIRMAN SCALZO: Very good.
13 Thanks.

14 Mr. Masten, do you have any
15 questions?

16 MR. MASTEN: I have nothing.

17 CHAIRMAN SCALZO: Ms. Rein?

18 MS. REIN: I'm good.

19 CHAIRMAN SCALZO: At this point
20 I'm going to open it up to any
21 members of the public that wish to
22 speak about this application.

23 (No response.)

24 CHAIRMAN SCALZO: Very good.
25 Okay. Unfortunately, as we

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JAMES BARKSDALE

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said at the start of the meeting, we need to keep this public hearing open for the County to weigh in.

MR. BARKSDALE: Yes, sir.

CHAIRMAN SCALZO: I'll look to the Board for a motion to keep the public hearing open until the October meeting.

MR. HERMANCE: I'll make a motion to keep the public hearing open.

MR. MASTEN: I'll second it.

CHAIRMAN SCALZO: We have a motion from Mr. Hermance. We have a second from Mr. Masten. All in favor.

MR. HERMANCE: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Aye.

Those opposed.

(No response.)

CHAIRMAN SCALZO: Nothing.

We're going to see you folks next

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JAMES BARKSDALE

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month. I don't think you need to do anything between now and then.

MR. DONOVAN: The Board will be able to vote in October.

CHAIRMAN SCALZO: We will be able to vote in October.

MR. BARKSDALE: I appreciate you guys.

(Time noted: 7:09 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 13th day of October 2023.

Michelle Conero

MICHELLE CONERO

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

MARY DELGADO & STEPHANIE GALARZA
16 Flamingo Drive, Newburgh
Section 91; Block 4; Lot 3
R-1 Zone

----- X

Date: September 28, 2023
Time: 7:10 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
GREGORY M. HERMANCE
JOHN MASTEN
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: STEPHANIE GALARZA

----- X

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CHAIRMAN SCALZO: Moving on to the second applicant this evening, Mary Delgado and Stephanie Galarza, 16 Flamingo Drive, out on the west side there. They're seeking area variances of the front yard setback, rear yard setback and increasing the degree of nonconformity of the front yard to keep a 16 by 16 rear deck and construct a new 12 by 24 front deck.

Mailings on this, Siobhan?

MS. JABLESNIK: This applicant sent out 56 letters.

CHAIRMAN SCALZO: 56.

MS. JABLESNIK: Not even the winner.

CHAIRMAN SCALZO: Okay. Do we have anyone here this evening? Please introduce yourself as it is being recorded.

MS. GALARZA: My name is Stephanie Galarza. I'm speaking on behalf of my mother as well, Mary Delgado. She's currently at work.

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The reason we're here today is because we would like to keep the rear deck that we have. The rear deck was already constructed by the previous owner, and they had done it without any, like, permission. We were unaware of it. The house was sold the way it was. It was only when we were trying to apply -- make application for the front deck when we found out that they did not have a permit, therefore we had to apply as if we were constructing it just so we have authority to keep it.

As I said before, my family wanted to construct a front deck for the house, but unfortunately we came across that we needed an area variance to increase the nonconformity.

CHAIRMAN SCALZO: Very good. We've done a lot of stuff in your neighborhood, I'll say. The fellow around the corner just put up a garage.

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MS. GALARZA: He came up to us personally one time to tell us about his project.

CHAIRMAN SCALZO: It's a process. Thank you for stopping in. When we get to our balancing portion of the application, you just described you purchased the home with the rear deck already in place.

MS. GALARZA: Yes. That and also the shed.

CHAIRMAN SCALZO: That hardship was not created by you, which is actually something that we'll hit on.

I'm very familiar with the neighborhood. I don't think what you're asking to do will be out of character. That's just me.

In this case, I'm going to start down with Ms. Rein. Do you have any comments or questions on this application?

MS. REIN: No, I don't.

CHAIRMAN SCALZO: Mr. Masten?

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MR. MASTEN: I have nothing.

CHAIRMAN SCALZO: Mr. Hermance?

MR. HERMANCE: No. It's pretty cut and dry.

CHAIRMAN SCALZO: It's pretty straightforward. Very good.

At this point I'll open it up to any members of the public that wish to speak about this application. If anyone has any comments or questions for the applicant, now is your opportunity.

(No response.)

CHAIRMAN SCALZO: Hearing none, I'll look to the Board for a motion to close the public hearing.

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

MS. REIN: Second.

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

MR. HERMANCE: Aye.

MR. MASTEN: Aye.

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MS. REIN: Aye.

CHAIRMAN SCALZO: Aye.

Those opposed?

(No response.)

CHAIRMAN SCALZO: So at this point you can just have a seat right there. We're going to go through our -- we're going to discuss our five factors which we're weighing.

This is a Type 2 action?

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

CHAIRMAN SCALZO: Thank you, Counsel.

We're going to go through our 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. It does not appear so, the benefit that she's looking for, unless she doesn't do it.

Second, if there's an

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undesirable change in the neighborhood character or a detriment to nearby properties. It does not appear so.

Ms. Rein, Michelle can't hear you shaking or nodding.

MS. REIN: No, Michelle.

CHAIRMAN SCALZO: Thank you.

The third, whether the request is substantial, which I don't believe so.

The fourth, whether the request will have adverse physical or environmental effects. It doesn't appear to.

MR. MASTEN: No.

CHAIRMAN SCALZO: The fifth, whether the alleged difficulty is self-created, which is relevant but not determinative. The rear deck was not a self-created issue, although the front deck would be.

MR. DONOVAN: Although there is a theory that says you're charged

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with knowledge of the zoning ordinance when you buy a house.

CHAIRMAN SCALZO: Correct. That would be for the front. However, for the rear, they -- our Code Compliance folks don't go out and inspect homes prior to closings. It would not have shown up in that case.

Help me out, Counsel. Where am I going with this?

MR. DONOVAN: You want to say they didn't know because the Code Compliance letter said no violations of record without an inspection. There is a theory that says you are charged with the knowledge of the zoning, therefore you should have known, if you had a survey, that you were short in the rear to begin with. Almost everything is self-created, I guess is the point I want to make.

CHAIRMAN SCALZO: Okay. I'll refrain from saying it that way next

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time.

All right. So having gone through the balancing tests of the area variance, does the Board have a motion of some sort?

MS. REIN: I'll make a motion to end the hearing.

CHAIRMAN SCALZO: To close the public hearing. We did that.

MS. REIN: It's been a tough day.

CHAIRMAN SCALZO: I'm looking for a motion from the Board for either an approval or a denial.

MS. REIN: I'll make a motion to approve.

MR. MASTEN: Second.

CHAIRMAN SCALZO: We have a motion for approval from Ms. Rein. We have a second from Mr. Masten. Roll on that, please, Siobhan.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Masten?

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MR. MASTEN: Yes.

MS. JABLESNIK: Ms. Rein?

MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The motion is carried.

You're all set. Reach out to
Siobhan tomorrow if you have any
other questions or need anything from
us.

MS. GALARZA: Thank you.

(Time noted: 7:16 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 13th day of October 2023.

Michelle Conero

MICHELLE CONERO

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

- - - - - X
In the Matter of

JOHN & SAMANTHA ARCIUOLO

70 Old Little Britain Road, Newburgh
Section 101; Block 6; Lot 7.2
R-2 Zone

- - - - - X

Date: September 28, 2023
Time: 7:16 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
GREGORY M. HERMANCE
JOHN MASTEN
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: JOHN ARCIUOLO

- - - - - X

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CHAIRMAN SCALZO: The third applicant this evening is John and Samantha Arciuolo at 70 Old Little Britain Road, although you wouldn't know it because there are three streets that surround them, seeking an area variance of the front yard to install a 10 by 12 shed. This property has four front yards.

We're familiar with where you are. If I have captured everything that you wanted to say right there --

MR. ARCIUOLO: You did it for my pool and you did it now.

CHAIRMAN SCALZO: You're a frequent flyer, is what you're saying.

MR. ARCIUOLO: I still have four front yards.

CHAIRMAN SCALZO: You still have four front yards.

Again, I don't have any comments on this whatsoever.

Mr. Hermance?

2 MR. HERMANCE: I have none on
3 this.

4 CHAIRMAN SCALZO: Mr. Masten?

5 MR. MASTEN: I have nothing.

6 CHAIRMAN SCALZO: Ms. Rein?

7 MS. REIN: Nothing.

8 CHAIRMAN SCALZO: At this point
9 I'll open it up to any members of the
10 public that wish to speak about this
11 application.

12 UNIDENTIFIED SPEAKER: Is it
13 big enough?

14 CHAIRMAN SCALZO: If you're
15 going to comment, you have to come up
16 and identify yourself.

17 (No response.)

18 CHAIRMAN SCALZO: We heard
19 nothing is what you're saying.

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

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

24 MS. REIN: Second.

25 CHAIRMAN SCALZO: We have a

2 motion to close the public hearing
3 from Mr. Masten. We have a second
4 from Ms. Rein. All in favor?

5 MR. HERMANCE: Aye.

6 MR. MASTEN: Aye.

7 MS. REIN: Aye.

8 CHAIRMAN SCALZO: Aye.

9 Those opposed?

10 (No response.)

11 CHAIRMAN SCALZO: Very good.

12 This is also a Type 2 action
13 under SEQRA, so we are going to weigh
14 the five factors, the first one being
15 whether or not the benefit can be
16 achieved by other means feasible to
17 the applicant. Everybody needs a
18 shed or two, depending on the place.

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

22 MR. HERMANCE: No.

23 MR. MASTEN: No.

24 MS. REIN: No.

25 CHAIRMAN SCALZO: No.

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The third, whether the request is substantial. Again, he's got four front yards. It's difficult.

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

MR. HERMANCENCE: No.

MR. MASTEN: No.

MS. REIN: No.

CHAIRMAN SCALZO: No.

And the fifth, whether the alleged difficulty is self-created, which is relevant but not determinative. I'll keep my mouth shut.

Therefore, having gone through the balancing tests of the area variance, does the Board have a motion of some sort?

MR. HERMANCENCE: I'll make a motion to approve the variance.

MS. REIN: I'll second.

CHAIRMAN SCALZO: We have a motion from Mr. Hermance. We have a

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second from Ms. Rein.

Can you roll on that, Siobhan.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Ms. Rein?

MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The motion is carried. The
variance is approved.

MR. ARCIUOLO: Thank you, as
always.

CHAIRMAN SCALZO: We'll see you
when you're looking to do something
else.

MR. ARCIUOLO: I'll still have
four front yards.

(Time noted: 7:20 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 13th day of October 2023.

Michelle Conero

MICHELLE CONERO

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

- - - - - X
In the Matter of

JOHN LYTLE

115 Valley View Drive, Newburgh
Section 15; Block 2; Lot 7
R-1 Zone

- - - - - X

Date: September 28, 2023
Time: 7:20 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
GREGORY M. HERMANCE
JOHN MASTEN
DONNA REIN

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

- - - - - X

MICHELLE L. CONERO
Post Office Box 816
Dover Plains, New York 12522
(845) 541-4163

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CHAIRMAN SCALZO: Our next applicant is John Lytle. He's not available for the October meeting, so Mr. Lytle will be heard at the November meeting.

We are not going to be re-noticing this. If anyone is here for the John Lytle, 115 Valley View Drive application, we will not be hearing that this evening.

(Time noted: 7:21 p.m.)

(Time resumed: 7:30 p.m.)

MR. WONDSEL: Pardon me, Mr. Chairman. May I ask a quick question?

CHAIRMAN SCALZO: Come on up and identify yourself.

MR. WONDSEL: I will Jeff Wondsel. I was here with the Lytle situation on Valley View.

When you say there's no re-notification, does that mean it's going to happen in the November meeting but you're not sending

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letters out?

CHAIRMAN SCALZO: That's correct.

MR. WONDSEL: The only question I have is, do you know what date that is so I can put it --

CHAIRMAN SCALZO: It's the Tuesday before Thanksgiving, because the fourth Thursday in November happens to be Thanksgiving.

MS. JABLESNIK: Tuesday, November 21st.

CHAIRMAN SCALZO: Tuesday, November 21st.

MR. DONOVAN: Also check the Town website in case something happens. Any changes will be reflected on the website.

MR. WONDSEL: Very good. Thank you very much, all. Have a good evening.

(Time noted: 7:31 p.m.)

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Michelle Conero

MICHELLE CONERO

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

- - - - - X
In the Matter of

ROBERT & SUZANNE BARR

609 Gardnertown Road, Newburgh
Section 60; Block 1; Lot 1.24
R-1 Zone

- - - - - X

Date: September 28, 2023
Time: 7:21 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
GREGORY M. HERMANCE
JOHN MASTEN
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: KATHRYN DeCROSTA

- - - - - X

MICHELLE L. CONERO
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Dover Plains, New York 12522
(845) 541-4163

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CHAIRMAN SCALZO: Moving on to the next applicant, Robert and Suzanne Barr, 609 Gardnertown Road, seeking an area variance to keep a prior built 10 by 14 shed in the front yard.

Mailings on this, Siobhan?

MS. JABLESNIK: Yes. This applicant sent 16 letters.

CHAIRMAN SCALZO: 16 letters.

MS. JABLESNIK: If you want to go for a winner in that way, that's probably the least.

CHAIRMAN SCALZO: Very good.

I saw you walking. Who do we have with us?

MS. DeCROSTA: Kathy DeCrosta. I'm here for Robert and Suzanne Barr. They are out of town.

They're here for the variance because about twenty years ago this house was a cottage that they purchased. The shed was prior there, but I think it's -- since it being a

2 corner lot, it's probably two front
3 yards. The shed is actually between
4 the two-car garage and the house on
5 the side, if anybody went out there.
6 So it's been there. I'm selling the
7 house with the shed. We would like
8 to keep the shed.

9 CHAIRMAN SCALZO: I appreciate
10 your honesty. Actually, they were
11 here for a garage --

12 MS. DeCROSTA: Yes.

13 CHAIRMAN SCALZO: -- probably
14 three years ago.

15 MS. DeCROSTA: Right.

16 CHAIRMAN SCALZO: They did a
17 lovely job.

18 MS. DeCROSTA: The house is
19 beautiful. We're hoping to close in
20 two weeks.

21 CHAIRMAN SCALZO: You have your
22 fingers crossed, I can see.

23 Again, I don't have any
24 comments on this.

25 I'll start with Ms. Rein. Do

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you have any comments?

MS. REIN: I have one question. On page 2 of 5, number 16, it says, "The project is located in a 100 year floodplain." Is that an issue?

CHAIRMAN SCALZO: I don't know of --

MR. DONOVAN: In the EAF?

MS. DeCROSTA: There's a stream on 52.

CHAIRMAN SCALZO: There is a stream. I don't want to answer this the wrong way. It's not a new shed. They're not putting a shed where it would violate any --

MR. DONOVAN: The short answer is for our deliberations as the ZBA, it's not important.

MS. REIN: Okay. That was it.

MS. DeCROSTA: Thank you.

CHAIRMAN SCALZO: Ms. Rein, any other comments or questions?

MS. REIN: I'm good with that.

CHAIRMAN SCALZO: Mr. Masten?

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MR. MASTEN: I have nothing.

CHAIRMAN SCALZO: Mr. Hermance?
Did I start with you?

MR. HERMANCE: No. The shed
blends in with the house.

CHAIRMAN SCALZO: There's
nothing -- I don't want to say
nothing behind them. There are no
residences.

MS. DeCROSTA: There's actually
a commercial landscaping company
behind them.

CHAIRMAN SCALZO: I don't think
anybody is upset with an additional
accessory structure there.

At this point I'm going to open
it up to any members of the public
that wish to speak about this
application, Robert and Suzanne Barr.

(No response.)

CHAIRMAN SCALZO: Very good.
I'll look to the Board for a
motion to close the public hearing.

MR. MASTEN: I'll make a motion

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to close it.

MS. REIN: I'll second.

CHAIRMAN SCALZO: Very good.
We have a motion to close from Mr.
Masten. We have a second from Ms.
Rein. All in favor?

MR. HERMANCENCE: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Aye.

Those opposed?

(No response.)

CHAIRMAN SCALZO: Hearing none,
let's move on here to the balancing
factors.

This is a Type 2 action under
SEQRA?

MR. DONOVAN: Correct, Mr.
Chairman.

CHAIRMAN SCALZO: Thank you,
Counsel.

The first one being whether or
not the benefit can be achieved by
other means feasible to the

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applicant. The shed is here. It has been here. It may or may not have been stated to have been removed during their last application. I didn't dig into that. It blends into what they have going on on the property.

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

MR. HERMANCENCE: No.

MR. MASTEN: No.

MS. REIN: No.

CHAIRMAN SCALZO: No.

The third, whether the request is substantial.

MS. REIN: No.

CHAIRMAN SCALZO: It doesn't appear to be.

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

MR. HERMANCENCE: No.

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MR. MASTEN: No.

MS. REIN: No.

CHAIRMAN SCALZO: It does not appear so.

The fifth, whether the alleged difficulty is self-created, which it is, which is relevant but not determinative.

Therefore, having gone through the balancing tests, does the Board have a motion of some sort regarding this application?

MR. HERMANCE: I'll make a motion to approve the variance.

MS. REIN: I'll second.

CHAIRMAN SCALZO: We have a motion to approve from Mr. Hermance. We have a second from Ms. Rein.

Roll on that, please, Siobhan.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Ms. Rein?

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MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The motion is carried. The
variances are approved.

MS. DeCROSTA: Thank you very
much. Enjoy your meeting.

(Time noted: 7:30 p.m.)

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

2 & 4 MATRIX DRIVE, LLC
MATRIX PPF NEWBURGH

2 & 4 Matrix Drive, Newburgh
Section 60; Block 3; Lots 57 & 58
IB Zone

----- X

Date: September 28, 2023
Time: 7:31 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
GREGORY M. HERMANCE
JOHN MASTEN
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: DOMINIQUE ALBANO &
RAYMOND AQUINO

----- X

MICHELLE L. CONERO
Post Office Box 816
Dover Plains, New York 12522
(845) 541-4163

2 CHAIRMAN SCALZO: Moving on.

3 The next applicant is 2 & 4 Matrix
4 Drive, LLC, seeking area variances of
5 square footage and height to install
6 four total tenant directional signs
7 at 2 Matrix Drive and 4 Matrix Drive.

8 Siobhan, do we have mailings on
9 this?

10 MS. JABLESNIK: Yes. This
11 applicant sent out 134. They're the
12 winner.

13 CHAIRMAN SCALZO: I don't know
14 if I've ever heard that many.

15 MS. ALBANO: Don't give me the
16 credit. My administrators, they
17 carried the team on that one.

18 CHAIRMAN SCALZO: This is an
19 opportunity to say just how awesome
20 the Town of Newburgh is when it comes
21 to this stuff. Other municipalities
22 actually require certified mailings.
23 Can you imagine that many mailings at
24 4 bucks apiece?

25 MS. JABLESNIK: They're \$9

2 almost.

3 MS. ALBANO: Definitely a hefty
4 price. With the mail, I hand it to
5 my amazing administrator and she gets
6 it done for me every single time.

7 CHAIRMAN SCALZO: Great. So I
8 just gave a really short assessment
9 of what it is you're looking to do
10 here. Feel free, after you've
11 identified yourself to Michelle, to
12 go ahead. I see you have a page full
13 of notes.

14 MS. ALBANO: I do. This is
15 actually our application.

16 Good evening, Chairman Scalzo
17 and Members of the Board. My name is
18 Dominique Albano and I'm an attorney
19 at Whiteman, Osterman & Hanna. With
20 me today is Ray Aquino from Matrix
21 Development. We're here representing
22 the Matrix and PPF Newburgh, 2 Matrix
23 Drive, LLC, an application for area
24 variances.

25 So tonight we are requesting

2 the four directional signs at the
3 property located at 2 & 4 Matrix
4 Drive to have increased height and
5 area.

6 Just a background for the
7 Board. Our client received site plan
8 approval from the Town Planning Board
9 to develop two warehouse distribution
10 centers and related improvements back
11 on October 28, 2021. On April 20,
12 2023, Matrix reps met with the
13 Planning Board regarding proposed
14 signage at the site. The Planning
15 Board approved the signage subject to
16 review by the building inspector. On
17 August 7th of this year, Matrix
18 applied for a building permit for the
19 four directional signs. On August
20 8th the code compliance officer
21 issued a denial requesting that we
22 seek a variance for the four
23 directional signs.

24 Just to put it simply, the
25 reason we are seeking the increased

2 height and area for the four
3 directional signs is they enhance
4 public safety and improve the
5 operative efficiency of the project
6 site. Our goal is to have bigger
7 signs to direct, generally, like
8 trucks from further distances to know
9 where to go on the project site so
10 they can slow down more easily.

11 That's the short synopsis.

12 CHAIRMAN SCALZO: Wonderful.
13 The public doesn't have much business
14 being in this facility or in this
15 area at all.

16 MS. ALBANO: No. Not really.

17 CHAIRMAN SCALZO: It's for
18 deliveries.

19 MS. ALBANO: And trucks.

20 CHAIRMAN SCALZO: So in my
21 opinion, you're really not going to
22 see it from anywhere until you're
23 inside the site.

24 MS. ALBANO: No. Yeah, it's
25 not visible from adjacent properties.

2 CHAIRMAN SCALZO: Signs have
3 been a struggle for us. Not that
4 you're going to catch that, but I did
5 see Joe Mattina nodding.

6 I have no comments on this at
7 all.

8 Ms. Rein?

9 MS. REIN: I'm good.

10 MR. MASTEN: I have nothing.

11 MR. HERMANCE: I'm good.

12 CHAIRMAN SCALZO: At this point
13 I'm going to open it up to any
14 members of the public that wish to
15 comment on this application.

16 (No response.)

17 CHAIRMAN SCALZO: It doesn't
18 look like any.

19 Okay. As you heard me say at
20 the very beginning of the meeting, we
21 are short staffed, if you will,
22 today. We can move forward if you
23 feel as though you'd like to.

24 MS. ALBANO: I would. I think
25 there was -- we were still waiting to

2 hear back from the County.

3 MS. JABLESNIK: We got that
4 back.

5 CHAIRMAN SCALZO: You have a
6 record. It went out and came back
7 faster than anything we've ever seen.

8 MS. ALBANO: I've never heard
9 that.

10 MS. JABLESNIK: Does somebody
11 know someone or something?

12 MS. ALBANO: We were prepared
13 for a second meeting. You can move
14 forward as you wish.

15 CHAIRMAN SCALZO: Very good.

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

19 MS. REIN: I'll make a motion
20 to close the public hearing.

21 MR. MASTEN: I'll second it.

22 CHAIRMAN SCALZO: We have a
23 motion from Ms. Rein to close the
24 public hearing, with a second from
25 Mr. Masten. All in favor?

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MR. HERMAN: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Aye.

Those opposed?

(No response.)

CHAIRMAN SCALZO: Very good.

MR. DONOVAN: Unlisted action, negative declaration. The Planning Board has closed out their SEQRA review by issuing their approval. This is your own independent, uncoordinated SEQRA review. You need to issue a negative declaration before you can vote on the application.

CHAIRMAN SCALZO: I understand. What I'm going to ask Counsel to do in this case is, if you could frame as far as voting on a negative declaration for us.

MR. DONOVAN: So a negative declaration, in the parlance of the DEC, means that there will be -- is good, there will be no adverse

2 environmental impact. A positive
3 declaration would mean bad, there is
4 at least one adverse environmental
5 impact. A negative declaration would
6 basically mean that there's not going
7 to be any adverse impact,
8 environmental impact on the adopted
9 land use and zoning regulations of
10 the Town, the intensity of the use of
11 the land, the character and quality
12 of life of the existing community,
13 this is not contiguous to any
14 critical environmental area and so
15 on. There's no adverse environmental
16 impact as a result of the sign
17 variance.

18 Is that satisfactory, Mr.
19 Chairman?

20 CHAIRMAN SCALZO: Thank you.

21 MR. DONOVAN: I could go on.

22 CHAIRMAN SCALZO: As Counsel
23 said, if we're going to move forward
24 with approval of this application, we
25 also need a motion for the negative

2 declaration. Therefore, I'm looking
3 to the Board -- any Board Member to
4 make a motion for a negative declaration.

5 MS. REIN: I'll make a motion
6 for a negative declaration.

7 MR. MASTEN: Second.

8 CHAIRMAN SCALZO: Very good.
9 We have a motion for a negative dec
10 from Ms. Rein and we have a second
11 from Mr. Masten.

12 Can you roll on that, please,
13 Siobhan.

14 MS. JABLESNIK: Mr. Hermance?

15 MR. HERMANCE: Yes.

16 MS. JABLESNIK: Mr. Masten?

17 MR. MASTEN: Yes.

18 MS. JABLESNIK: Ms. Rein?

19 MS. REIN: Yes.

20 MS. JABLESNIK: Mr. Scalzo?

21 CHAIRMAN SCALZO: Yes.

22 We have moved through the
23 negative dec portion.

24 We also still need to go
25 through our balancing criteria.

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MR. DONOVAN: Yes, you do.

CHAIRMAN SCALZO: Again we'll discuss the five factors. Whether the benefit can be achieved by other means feasible to the applicant. This is out of -- typically it's outside of what the code allows, but I think with trucks moving in and out of there, it's actually a good thing.

Second, if there's an undesirable change in the neighborhood character or a detriment to nearby properties. When you say neighborhood, just what neighborhood are we talking about? There are a couple warehouses.

The third, whether the request is substantial. By facts and figures it may be, but in this case I think it's actually safer that way.

The fourth, whether the request will have adverse physical or environmental effects. I think it would actually have nothing.

MS. REIN: No.

2 CHAIRMAN SCALZO: The fifth,
3 whether the alleged difficulty is
4 self-created, which is relevant but
5 not determinative. Of course it's
6 self-created.

7 Having moved through those,
8 does the Board have a motion of some
9 sort regarding the sign variance?

10 MS. REIN: I'll make a motion
11 to approve.

12 MR. MASTEN: I'll second it.

13 CHAIRMAN SCALZO: We have a
14 motion for approval from Ms. Rein.
15 We have a second from Mr. Masten.

16 Can you roll on that, Siobhan.

17 MS. JABLESNIK: Mr. Hermance?

18 MR. HERMANCE: Yes.

19 MS. JABLESNIK: Mr. Masten?

20 MR. MASTEN: Yes.

21 MS. JABLESNIK: Ms. Rein?

22 MS. REIN: Yes.

23 MS. JABLESNIK: Mr. Scalzo?

24 CHAIRMAN SCALZO: Yes.

25 Thank you. For the thickness

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of this application, I'm thrilled
with how quickly we moved through it.

MS. ALBANO: Thank you, all.
Have a good night.

(Time noted: 7:43 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:

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

W&M HOMES, LLC
81 Wintergreen Avenue, Newburgh
Section 67; Block 2; Lot 2
R-3 Zone

----- X

Date: September 28, 2023
Time: 7:43 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
GREGORY M. HERMANCE
JOHN MASTEN
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: WILL HERNANDEZ

----- X

MICHELLE L. CONERO
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CHAIRMAN SCALZO: Our next applicant is W&M Homes, LLC, 81 Wintergreen Avenue in Newburgh, seeking an area variance of increasing the degree of nonconformity of the side yard to add a 240 square foot two-story rear addition.

Siobhan, do you have mailings on that?

MS. JABLESNIK: This applicant sent --

MR. HERNANDEZ: I didn't win.

MS. JABLESNIK: You didn't. 49 letters.

CHAIRMAN SCALZO: Very good.

MS. JABLESNIK: You're still a winner.

CHAIRMAN SCALZO: You're still a winner in our book.

As you heard me say to the other applicants, please identify yourself for the record. If I have captured what it is you're looking to do in that one sentence, that's fine.

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If not, if you have something you'd like to share with us, let's go ahead and hear you.

MR. HERNANDEZ: Good evening, Members of the Board. My name is Will Hernandez. I own W&M Homes, LLC, also 81 Wintergreen Avenue.

I took notes, because I have to make sure I explain what I'm doing.

The description is seeking an area variance for increasing the degree of nonconformity of the side yard to add a two-story addition.

The house is already in a pre-existing nonconforming condition. I am not asking to expand the house out of the limits for the property line. I just want to square off the house.

This is the side of Wintergreen Avenue. If you look at the second part of the survey in the application packet, you will see the house, it's not rectangular. Pretty much what I want to do is square it off.

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Squaring off the house will allow me to do some updates inside the house, which will also allow me to make the layout a little more modern.

The short form environmental did indicate that there were wetlands, but this project is actually on Route 52. I'm not doing anything with the project that -- it's not doing any -- it won't have any affect or impact on the wetlands because it's on the Wintergreen side.

What we're going to do is square it off.

That's pretty much what I wanted to explain to you guys. If you have anything, I can answer any questions.

MS. REIN: My concern was about the wetlands.

CHAIRMAN SCALZO: It's that huge swamp across Route 52. I mean, he happens to fall within the 100-foot buffer, but it's not --

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MS. REIN: It has no bearing.

CHAIRMAN SCALZO: It has no bearing on what the application is.

MS. REIN: Okay. I'm good.

CHAIRMAN SCALZO: Very good.

Mr. Masten?

MR. MASTEN: I have nothing.

CHAIRMAN SCALZO: Mr. Hermance?

MR. HERMANCE: You're staying within the existing footprint?

MR. HERNANDEZ: Correct.

MR. HERMANCE: What is that, 24.8 on the drawing?

MR. HERNANDEZ: It's staying pretty much in the outline of the house. I'm squaring it off.

MR. HERMANCE: So you would have a little jog?

MR. HERNANDEZ: Correct. That's pretty much it.

MR. HERMANCE: Okay. That's all I have.

CHAIRMAN SCALZO: I've got no questions myself.

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

(No response.)

CHAIRMAN SCALZO: I've got nothing.

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

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

MS. REIN: Second.

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

MR. HERMANCE: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Aye.

Those opposed?

(No response.)

CHAIRMAN SCALZO: Very good.

This is a Type 2 action under SEQRA?

MR. DONOVAN: Correct, Mr. Chairman.

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CHAIRMAN SCALZO: Thank you,
Counsel.

We're going to roll through the five factors we're weighing, the first one being whether or not the benefit can be achieved by other means feasible to the applicant. The only other thing would be to not do it. As he indicated -- the applicant indicated, it's going to allow for modernization and change the layout inside the house.

MR. HERNANDEZ: That's correct.

CHAIRMAN SCALZO: The second, if there's an undesirable change in the neighborhood character or a detriment to nearby properties. It does not appear so.

The third, whether the request is substantial. He's not increasing any side yard setbacks, or decreasing.

MS. REIN: So it's not.

CHAIRMAN SCALZO: I would say no.
Fourth, whether the request

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will have adverse physical or environmental effects. It does not appear so.

The fifth, whether the alleged difficulty is self-created, which is relevant but not determinative. Of course it's self-created. It's an older home. I have no comments on that.

Going through the balancing factors, does the Board have a motion of some sort?

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

MR. MASTEN: Second.

CHAIRMAN SCALZO: We have a motion for approval from Mr. Hermance. We have a second from Mr. Masten.

Can you roll on that, please, Siobhan.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCENCE: Yes.

MS. JABLESNIK: Mr. Masten?

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MR. MASTEN: Yes.

MS. JABLESNIK: Ms. Rein?

MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The motion is carried. The variances are approved.

You can reach out to Siobhan for further -- what's going to get you further along.

MR. HERNANDEZ: Very good. Thank you very much.

(Time noted: 7:49 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 13th day of October 2023.

Michelle Conero

MICHELLE CONERO

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

- - - - - X
In the Matter of

NEWBURGH CHICKEN, LLC
197 South Plank Road, Newburgh
Section 60; Block 3; Lot 6.1
B Zone

- - - - - X

Date: September 28, 2023
Time: 7:50 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
GREGORY M. HERMANCE
JOHN MASTEN
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: JENNIFER GRAY

- - - - - X

MICHELLE L. CONERO
Post Office Box 816
Dover Plains, New York 12522
(845) 541-4163

2 CHAIRMAN SCALZO: The next
3 applicant is Newburgh Chicken, LLC,
4 197 South Plank Road, seeking a
5 special permit. This is a Planning
6 Board referral for a special permit
7 for the ZBA's consideration of
8 variances required for the
9 redevelopment of the existing Dairy
10 Queen site.

11 Do we have mailings on this,
12 Siobhan?

13 MS. JABLESNIK: This applicant
14 sent 29 letters.

15 CHAIRMAN SCALZO: 29 letters.
16 Very good.

17 Who do we have with us this
18 evening?

19 MS. GRAY: Good evening,
20 Chairman. Jennifer Gray from the law
21 firm of Keane & Beane representing
22 Newburgh Chicken, LLC. Thank you for
23 hearing us tonight.

24 I have to say, I am very
25 impressed with the efficiency of your

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meeting. I thought I was in for a late night when I saw we were towards the end of the agenda.

CHAIRMAN SCALZO: We aim to please.

MS. GRAY: That's amazing. Thank you.

We are here tonight seeking a special permit for the continuation of a nonconforming use on the property at 197 South Plank Road. I'm sure you're all familiar with it, it's just down the road. It's the Dairy Queen site. That's specifically to convert the Dairy Queen to a Popeyes Chicken.

The conversion would involve the demolition of the existing structure and the construction of a new building to be set further back from the road, which we believe is going to improve the aesthetics of the area and improve traffic circulation.

2 We did appear before the
3 Planning Board in August. They
4 referred us to your Board.

5 The Town code does provide that
6 a nonconforming use can be changed to
7 another nonconforming use as long as
8 the new use is the same or more
9 restrictive, subject to the issuance
10 of a special permit by your Board.
11 So that's what we're here tonight to
12 seek from you, a special permit to
13 change the use from Dairy Queen to a
14 Popeyes Chicken.

15 We do believe that the nature
16 of the proposed use, also a fast food
17 establishment, is the same or more
18 restrictive in nature in that they
19 are both fast food establishments.

20 I can run through for you the
21 existing conditions, unless you want
22 me to skip that because you have the
23 existing conditions plan in your
24 packet. I'm sure you're familiar
25 with the site. I'll certainly touch

2 on why we believe the Zoning Board
3 should grant the special permit
4 application.

5 CHAIRMAN SCALZO: Hang on one
6 second.

7 Siobhan, did we hear back from
8 the County on this?

9 MS. JABLESNIK: No, we did not.

10 CHAIRMAN SCALZO: We did not.

11 MS. JABLESNIK: We did not.

12 CHAIRMAN SCALZO: So you're
13 familiar --

14 MS. GRAY: Absolutely. Yup.

15 CHAIRMAN SCALZO: We're happy
16 to hear you, but you're going to end
17 up back here next month.

18 MS. GRAY: That's fine. I
19 would like to proceed.

20 CHAIRMAN SCALZO: Please do.
21 The buildup has been great, and I
22 didn't want to let you down at the
23 end. Right in the middle is better.

24 MS. GRAY: I appreciate that.
25 Thank you for letting me know.

2 As you know, it is a corner lot
3 on the corner of the South Plank Road
4 and Union Avenue, in close proximity
5 to CVS. Also down the road from the
6 site is a Taco Bell, Wendy's, Perkins
7 restaurant. Those are all in the
8 Interchange Business District whereas
9 this is in the B, Business, District.

10 The existing building is 2,691
11 square feet with 26 parking spaces.
12 For the proposed condition, for the
13 Popeyes Chicken, as I mentioned, we
14 plan to demolish the existing
15 building and construct a new
16 building. That new building will be
17 smaller in size by over 100 square
18 feet. It's certainly smaller in
19 size. There will be less parking
20 spaces. There will be three less
21 than exists today.

22 There will also be a drive-
23 through as there is existing today as
24 well.

25 MS. REIN: Can you say a little

2 more about the drive-through? That
3 was going to be my question.

4 MS. GRAY: Sure. So the drive-
5 through is going to be located at the
6 rear of the building. I have a
7 board. If that's helpful, I can put
8 it up.

9 CHAIRMAN SCALZO: Ms. Rein, we
10 do have a full set of plans.

11 MS. REIN: Yeah.

12 MS. GRAY: This is my
13 colleague, George Alissandratos, as
14 well.

15 CHAIRMAN SCALZO: Next month
16 when you're back, we're hoping to
17 have a full compliment. Those guys
18 talk a lot, so it might be a lengthy
19 meeting.

20 MS. GRAY: Okay. Here is South
21 Plank, Union Avenue. The Town Hall
22 is down this way. Here's the
23 proposed new building.

24 You would enter from either
25 South Plank or Union. The drive-

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through is at the rear of the proposed building. There is a stacking lane right next to the building and a through lane, so you can -- cars can travel around the building to exit here or exit back onto South Plank. The stacking -- the queueing lane here is for the drive-through. There will be two lanes at the rear of the building to improve the stacking capacity. Right now the Dairy Queen building is located further towards the front of the site. The drive-through is also at the rear of the Dairy Queen building. Because of the shortened stacking distance, there's the potential for cars to back onto South Plank avenue when there's a high demand at the Dairy Queen drive-through. Here the drive-through will be located further back on the site so you won't have that backup on South Plank avenue.

2 MS. REIN: The entrance and the
3 exit will still be the same?

4 MS. GRAY: More or less. The
5 curb cut, I believe, is shifting
6 slightly, but there will still be a
7 curb cut on South Plank and still a
8 curb cut on Union Avenue.

9 CHAIRMAN SCALZO: Okay.
10 Looking at the plan, though, what
11 currently exists down there, the
12 ingress/egress onto Route 300 is
13 actually going to be shifted quite a
14 ways up.

15 MS. GRAY: Correct.

16 CHAIRMAN SCALZO: It's almost
17 going to be in line with where the
18 garage -- the shed sits in the back
19 right now. So that's going to be
20 interesting.

21 I've got a ton of questions,
22 but they have nothing to do with the
23 Zoning Board. We do have a member of
24 the Planning Board sitting in the
25 back, so I'm kind of curious if those

2 questions, if they come out of my
3 mouth, maybe they'll make their way
4 to his Board.

5 MS. GRAY: We have a site plan
6 application that needs to be
7 processed by the Planning Board. All
8 of those traffic circulation
9 questions will be answered at the
10 Planning Board.

11 CHAIRMAN SCALZO: I would love
12 to see the grading plan. I know it's
13 quite an elevation change from Route
14 52 all the way to the back side of
15 the property. There's going to be a
16 slew of retaining walls, I'm sure.

17 MS. GRAY: There will be
18 grading. Absolutely.

19 CHAIRMAN SCALZO: Your fixed
20 elevation of Route 300, you're not
21 dropping that. It's going to be like
22 an undulating green on the golf
23 course. I can't wait to see it.

24 Like I say, all of my questions
25 have nothing to do with what we're

2 here for. Maybe I'll come to that
3 meeting.

4 MS. GRAY: Absolutely.

5 CHAIRMAN SCALZO: I was kind of
6 rambling.

7 Ms. Rein, do you have other
8 comments?

9 MS. REIN: I do, but it's for
10 counselor because I'm not sure it's
11 even a problem. On page 2 of 3, 12-A
12 and 12-B where it talks about that
13 the site is substantially contiguous
14 to a building or site or district
15 which is on the national or state
16 register of historic places, I mean,
17 does anything -- the building is
18 already there. There is already a
19 building there. I don't know if that
20 was discussed when the original
21 building was put up or if this
22 impacts it in any way.

23 MR. DONOVAN: We're on page 2
24 of 3 in the SEAF. Have you gone to
25 SHPO?

2 MS. GRAY: Not to my knowledge.
3 The Planning Board has not done any
4 circulation. We believe it's a Type
5 2 action. The building is under
6 4,000 square feet, a nonresidential
7 building. We believe it falls within
8 the Type 2 category. The Planning
9 Board has not taken any action that
10 I'm aware of on SEQRA. I'm just
11 looking at the mapper to see if
12 there's any information. It just
13 says for archeological sites.

14 MR. DONOVAN: Donna, what's
15 going on here, obviously there are
16 Type 1 actions, actions more likely
17 than not to have one or more
18 significant adverse environmental
19 impacts. There are Type 2 actions,
20 which are most of our decks in the
21 rear yard, they are exempt from
22 SEQRA. There's Unlisted actions
23 which is everything else. Exempt
24 actions are listed out. Commercial
25 structures under 4,000 square feet

2 are exempt, and that's what they're
3 advancing in the letter that was
4 submitted with their application and
5 which has been stated now, they
6 believe that they are a Type 2
7 action. I would concur with that.

8 MS. REIN: Okay.

9 MR. DONOVAN: That doesn't mean
10 you can't ask that question. It
11 would mean it wouldn't be significant
12 for making an environmental
13 determination because we wouldn't
14 have to.

15 MS. REIN: All right.

16 MR. DONOVAN: It looks like I
17 may not have answered your question.

18 MS. REIN: No, no, no. It
19 does.

20 MS. GRAY: I can say --

21 MS. REIN: I didn't realize
22 that there was any exemption like
23 that.

24 MR. DONOVAN: Well, every Type
25 2 action that we have done means it's

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exempt from SEQRA.

MS. REIN: For this particular project?

MR. DONOVAN: Like tonight, on tonight's agenda, if you see the favorite thing for the chairman to have me say is that's correct, Mr. Chairman.

CHAIRMAN SCALZO: I don't hear it enough at home.

MR. DONOVAN: We voted on Delgado, a Type 2 action; Arciuolo, a Type 2 action; Barr, a Type 2 action. The Chairman would indicate this is a Type 2 action. Type 2 means exempt. Everyone submits a short EAF just because we don't know until we make a final determination. I'm not going to say it's not important, because if you're contiguous to a historic site, it's important to some degree. What the regulations say, basically, is if you're doing a replacement in kind, that's one of their arguments,

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there's already a building there, so putting another building -- taking down that building and putting another one up is not going to have an adverse environmental impact.

MS. REIN: Somewhere along the line this became a Type 2?

MR. DONOVAN: I think it's always been a Type 2.

MS. REIN: Okay.

MR. DONOVAN: I don't know if the Planning Board -- in the referral letter, counsel for the Planning Board didn't say one way or another. I don't know if they typed the action or not. It seems to me, they're pretty sophisticated over there, they kind of know what they're doing, so it's going to be a Type 2 action there, I assume, as well.

MS. GRAY: That's my understanding as well.

One other point that I want to make, in addition to the special

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permit that we're asking for, it's our understanding, based on communications we've had with the town consulting engineer, Patrick Hines, that since the use is nonconforming, the ZBA would also need to approve the proposed setbacks for the new construction since there aren't any setbacks in the code that would apply to this use in this district. We've provided, on the site plan in the package that we've provided to you, a zoning table that shows the applicable setbacks and dimensional requirements for the Interchange Business District where fast food establishments are permitted in the next district over. We are conforming with all of those with the exception of one, and that is that the front yard setback on Union Avenue, it requires 50 feet and we're proposing 32.5 feet. However, the existing is 25.3 feet. We're

2 reducing that nonconformity with the
3 IB standards, to the extent you'll
4 apply those IB standards to this use.
5 I didn't see anything in your code
6 that specifically spoke to that
7 setback determination.

8 CHAIRMAN SCALZO: Counsel,
9 didn't we have something similar to
10 that within the last year where the
11 Planning Board actually determined
12 setbacks because we didn't have that
13 criteria?

14 MR. DONOVAN: So my recollection
15 would be different. This is a
16 preexisting nonconforming use. We
17 had Black Rock excavating that came
18 in, WCC Tank, that had been a use
19 variance. The problem that we ran
20 into there, which may be a problem we
21 see with July 4Ever, is there was no
22 site plan. We had them prepare a
23 site plan, because when we grant a
24 use variance, we also, at that time,
25 establish the bulk requirements and

2 the setbacks. I don't know if that's
3 the application you're thinking of,
4 but we had them develop the site plan
5 and we established those as the
6 setbacks for that use variance. I
7 don't recall a preexisting
8 nonconforming use where we did
9 anything with the setbacks.

10 MS. JABLESNIK: You're thinking
11 of the Monarch Senior Housing.

12 MR. DONOVAN: We deferred that
13 to the Planning Board.

14 CHAIRMAN SCALZO: You guys have
15 great memories. Much better than me.

16 MR. DONOVAN: Joe, on a
17 nonconforming preexisting use like
18 this, would the ZBA establish the
19 setbacks?

20 MR. MATTINA: We just went
21 through that with the Lakeside house
22 in R-1. It didn't have any bulk
23 requirements.

24 MS. JABLESNIK: For a residential
25 zone.

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MR. DONOVAN: I concur. I think you would establish them by reference to the map that's in front of you -- the site plan map that's in front of you. I think that's the best way to handle it, because now when Code Compliance wants to know what am I supposed to use, it's on the map, it's been established by the ZBA.

MR. MATTINA: Correct.

CHAIRMAN SCALZO: Thank you.

MR. DONOVAN: So far so good. Don't go past 8:00. I'm no good then.

CHAIRMAN SCALZO: I'm going to need the meeting minutes before the next meeting so I can sound that good the next time.

Ms. Rein, are you covered now with all this stuff?

MS. REIN: Oh, yeah. I got it.

CHAIRMAN SCALZO: Mr. Masten, do you have any questions on this

2 application?

3 MR. MASTEN: I haven't.

4 CHAIRMAN SCALZO: How about
5 you, Mr. Hermance?

6 MR. HERMANCE: No. It looks
7 like it's going to improve the
8 traffic flow.

9 CHAIRMAN SCALZO: I'm probably
10 going to attend the Planning Board
11 meeting. I'm really curious to see
12 the signage to navigate through the
13 site and the grading. That has
14 nothing to do with why we're here.

15 MS. GRAY: We do think it will
16 improve traffic. We also think at
17 that corner whereas currently it's
18 asphalt sidewalk, there's going to be
19 grass or low-profile landscaping
20 there. I think it will improve the
21 aesthetics of that corner as well.

22 MR. DONOVAN: There's one more
23 kind of thing we have to talk about.
24 So 185-19 A(3) allows you to issue a
25 special permit to allow a

2 nonconforming use that's not more
3 intense than the existing
4 nonconforming use to happen. There's
5 also a provision, 185-19 A(1), that
6 says a nonconforming use shall not be
7 enlarged, extended or reconstructed
8 or put on a different portion of the
9 lot.

10 So one of the issues that has
11 been raised is whether or not we need
12 to issue a variance. If the argument
13 is that this doesn't say demolition,
14 and since it doesn't say demolition
15 we're allowed to have the
16 nonconforming use if we determine
17 it's a less intense use to be built
18 anywhere else on the lot that we
19 decide it should go. Alternatively,
20 do we need to grant a variance from
21 185-19 A(1) because we're putting it
22 in a different place on the lot. I
23 think that was the question that was
24 raised.

25 MS. GRAY: That is the alternative.

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We believe that the Board has the authority to issue the special permit pursuant to the section Mr. Donovan just raised.

In the alternative, in case Mr. Donovan or the rest of the Board does not agree with that, we did ask, in the alternative, for a variance from section A(1) to allow the proposed building to be located on a different portion of the lot than the existing building currently is. I think that -- you can obviously consult with Mr. Donovan. You could issue a special permit and also issue, in the alternative, the area variance and cover all of your bases. That's one option.

MR. DONOVAN: I don't mean to interrupt. We could say an area variance is not required.

MS. GRAY: Correct.

CHAIRMAN SCALZO: You talked about intensity of use. Did I

2 understand that correctly?

3 MR. DONOVAN: Yes.

4 CHAIRMAN SCALZO: Not to
5 nit-pick here. We're talking about
6 replacing the Dairy Queen, which is a
7 seasonal, whereas this would be
8 twelve months a year. Is that
9 considering --

10 MR. DONOVAN: It's a factor to
11 consider. I don't want to make the
12 argument for you, especially if I
13 lose. It's a smaller building with
14 less parking, otherwise it's the same
15 fast food use.

16 CHAIRMAN SCALZO: I agree.
17 They serve burgers there.

18 MR. DONOVAN: You could weigh
19 that against, you know, twelve months
20 versus nine months, or whatever it
21 is.

22 CHAIRMAN SCALZO: Got you.
23 Okay. Thank you. It didn't click
24 until you said intensity of use.

25 I have nothing more.

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Are there any members of the public that would -- are you acting as Joe public or Joe Mattina?

MR. MATTINA: When the public is done, I want to bring up a point. Even though there aren't bulk table requirements for this use, there is the requirement of 60-foot front setbacks for all State and County roads. It needs to be 60, not 50 on the chart.

MS. GRAY: Okay. We can update that. In that case, I don't believe we would need either of the front yard setbacks. Let me check that. I think it's 60 feet. We do. We need the front yard setback on South Plank. It's just Union Avenue that would be nonconforming, but less nonconforming than it currently is.

MS. REIN: On Union Avenue it would be what? 30, 31?

MS. GRAY: 32.5. It's currently 23.

2 CHAIRMAN SCALZO: Mr. Mattina,
3 52 -- Union Avenue and Plank Road --
4 52 and 300 are State roads, so we
5 need 60-foot setbacks on both?

6 MR. MATTINA: Correct.

7 MS. GRAY: We need that on
8 South Plank but not on Union.

9 CHAIRMAN SCALZO: Right.
10 Okay. So I'll look to the
11 Board for a motion to maintain the
12 public hearing open.

13 MR. DONOVAN: Until the October
14 meeting.

15 MR. HERMANCE: I'll make a
16 motion.

17 MR. MASTEN: I'll second it.

18 CHAIRMAN SCALZO: We have a
19 motion from Mr. Hermance and a second
20 from Mr. Masten to keep the public
21 hearing open to the October meeting.
22 All in favor?

23 MR. HERMANCE: Aye.

24 MR. MASTEN: Aye.

25 MS. REIN: Aye.

2 CHAIRMAN SCALZO: Aye.

3 Those opposed?

4 (No response.)

5 CHAIRMAN SCALZO: All right.

6 Thank you.

7 MS. GRAY: Thank you very much.

8 CHAIRMAN SCALZO: We'll try and
9 get through it as quickly next month
10 as we did this one. Again, we're
11 going to have three other people
12 here.

13 MS. GRAY: We look forward to
14 seeing you then.

15 MR. ALISSANDRATOS: Is there
16 any notice?

17 CHAIRMAN SCALZO: We won't
18 re-notice. It's not required.

19 MR. ALLISANDRATOS: The signs,
20 do we have to change the date on
21 them?

22 MS. JABLESNIK: No. Just keep
23 them up.

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25 (Time noted: 8:10 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 13th day of October 2023.

Michelle Conero

MICHELLE CONERO

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

CASTLE USA CORP/JULY 4EVER
382 Rock Cut Road, Newburgh
Section 11; Block 1; Lot 60.2
R-2 Zone

----- X

Date: September 28, 2023
Time: 8:10 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVES: GERALD JACOBOWITZ,
MARCIA JACOBOWITZ & VINCENT ESPOSITO

----- X

MICHELLE L. CONERO
Post Office Box 816
Dover Plains, New York 12522
(845) 541-4163

2 CHAIRMAN SCALZO: Our next
3 applicant, which is a holdover, is
4 Castle USA Corp/July 4Ever at 382
5 Rock Cut Road, seeking an
6 interpretation of the ZBA decision
7 from November 10, 1982, September 25,
8 2003 and March of 2004 and an appeal
9 of Code Compliance's notice of
10 disapproval dated 6/9/2023.

11 This is a continuation. I see
12 the only other applicant here and no
13 one else in the room. Is there
14 anyone here to represent that
15 application this evening?

16 (No response.)

17 CHAIRMAN SCALZO: Siobhan, do you
18 have any e-mails or correspondence
19 from these folks?

20 MS. JABLESNIK: No.

21 CHAIRMAN SCALZO: I wonder if
22 they felt we weren't going to be
23 efficient and they'd show up at 8:30.

24 MS. JABLESNIK: I don't think
25 that they knew. I don't think I told

2 them that we were down Board Members
3 or anything. Is that what you mean?

4 CHAIRMAN SCALZO: No. It's
5 just they may not --

6 MR. DONOVAN: If they looked at
7 the agenda, maybe they thought we'll
8 come in at 10:00.

9 MS. REIN: That's on them.

10 CHAIRMAN SCALZO: You're
11 absolutely right. We know this is
12 kind of a hot one, folks, so I'm
13 going to look to you guys. With no
14 one here at this point, I would say
15 we maintain the public hearing open.
16 That's just my suggestion.

17 Counsel, do I get in trouble
18 for suggesting -- how about that.

19 MS. JABLESNIK: Are your ears
20 ringing, Mr. Jacobowitz?

21 MR. DONOVAN: We don't fool
22 around here, Jerry.

23 MR. JACOBOWITZ: You're waiting
24 for me?

25 MR. DONOVAN: If you want to

2 catch your breath, we can take the
3 young lady that's here.

4 CHAIRMAN SCALZO: If you want
5 to sit down and collect yourself, we
6 can see the applicant behind you.

7 MR. JACOBOWITZ: Thank you.

8 (Time noted: 8:11 p.m.)

9 (Time resumed: 8:21 p.m.)

10 CHAIRMAN SCALZO: We're happy
11 you're here. We were almost wrapping
12 it up and we were going to turn the
13 lights off on you.

14 MR. DONOVAN: Jerry, there are
15 only four members here. It's a
16 seven-member Board. We have one
17 resignation and two are not here.
18 The Chairman tells me there's going
19 to be a new member appointed. We
20 expect to have a full compliment.
21 Obviously you need unanimity for a
22 vote tonight.

23 MR. JACOBOWITZ: Can I vote?
24 You need voters.

25 CHAIRMAN SCALZO: Do you live

2 in the Town?

3 MS. JABLESNIK: I'll vote, too.

4 MR. DONOVAN: I just don't know
5 what you want to do. One no vote --

6 MR. JACOBOWITZ: I'm going to
7 look each one of you in the eye and
8 make a judgment.

9 CHAIRMAN SCALZO: I'll put on
10 my sunglasses and act like I'm
11 playing poker.

12 MR. JACOBOWITZ: Thank you for
13 the warning.

14 CHAIRMAN SCALZO: It's very
15 important for any applicant this
16 evening.

17 MR. JACOBOWITZ: Mr. Chairman,
18 thank you. I'm Jerry Jacobowitz,
19 Jacobowitz & Associates law firm. My
20 partner Marcia is here, and Mr.
21 Vincent Esposito is here, who is the
22 principal of the applicant.

23 As you recall, we had a public
24 hearing that was left open. You
25 cordially allowed me to go over a

2 month so I could celebrate my 65th
3 wedding anniversary, which ended up
4 on a Thursday night when you usually
5 meet. You had time to think about
6 all of my wisdom that I tried to
7 instill in all of you last time. You
8 had time to think about it.

9 I've read the transcript of the
10 public hearing. I tried to glean
11 from it what it was that was of
12 concern to the Board and what
13 questions hadn't been adequately
14 answered.

15 If it is permissible, I would
16 attempt to address that in my remarks
17 this evening, or you may want to have
18 questions first before I say
19 anything. So whichever way you want
20 to do it is okay with me.

21 CHAIRMAN SCALZO: I would
22 prefer to hear you talk, because I
23 speak entirely too much in an evening.

24 MR. JACOBOWITZ: Okay. Thank
25 you. As I explained last time, there

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were three groups of things that were before you that we brought in this application.

One is as to the claim of illegal structures on the property, and there was some concern about what it was we were asking you to do, because you do not have enforcement power. You say what the law is with respect to a property under the zoning, but it's for others to administer the enforcement necessary to accomplish what your decisions have said. We're not asking you to take any enforcement action. What we're asking you to do is make a clear determination on the record that two structures on the property, the two that have been cited by the Building Department, are not allowed because they never received approval from your Board, which was a condition of the variance that you gave previously, your predecessors I

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think it would have been that would have done this in 1982 and in 2003. The condition of the use variance was no other structures without further approval of your Board. Two structures are there without approval of your Board. We don't want them there. They're there as a result of conduct by a tenant who we've been trying to evict.

I have, for the record, the verified petition that's been filed in Supreme Court by the applicant to evict and terminate possession of the property by John Sagaria, Fireworks Extravaganza, and J&J Computing, Inc., d/b/a Fireworks Extravaganza. The petition is in Orange County Supreme Court before Judge Sciortino. It's pending there for a hearing sometime in October. We're doing everything we can to comply with what the Building Department had cited with respect to these two illegal

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structures.

A second point that was made by, I think, Mr. Canfield was about the issue of any buried fireworks on the property, or any explosives. There is. They are the subject of a felony complaint brought by the Orange County District Attorney against Fireworks Extravaganza, Inc. for allegedly creating hazardous waste in the form of explosives on the property. We are unable to do anything while this criminal charge is pending, but the DA's office is pursuing this to accomplish a conviction and a remediation of any condition on the property. So we've done, again, everything that we can do, and we are encouraging and supporting and trying to get the wheels of justice moving in the right direction and promptly.

So those were -- we have some extra copies that we can hand out.

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CHAIRMAN SCALZO: We'll take anything.

MR. JACOBOWITZ: You may say why are we here asking you for anything about these two buildings. The reason is, and I mentioned this in the September 19th letter I sent to the Board, that notices of violation were issued to Mr. Sagaria and to us. Mr. Sagaria engaged in conversation with the Building Department, and he recorded that conversation and it was used in the Supreme Court action. In essence, what the conference talked about was the violations that he had gotten, and what was happening, and when would something be taken care of. In the transcript, and I gave you four pages, I think there's twenty some pages, but the four pages I gave you hone in on the conversation, which is we're not going to take the next step, we the Building Department,

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because we need the ZBA to hear what this is all about and give us some direction. I've summarized what four or five pages say, but I think I've made a fair summary of it.

In the absence of the Building Department enforcing and the apparent question about what it is that needs to be done here with respect to this property, we took the bull by the horns and filed an application with you, asking you for your review and for your decision so that there's a clear path for the Building Department to do its job.

So as I said, you have, as part of the September 19th letter, the pages that will support what I've just summarized for you.

So what is it we are asking? We want an interpretation that the two illegal structures were not given a use variance as the 1982 and 2003 decisions required. If you do that,

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it triggers two things. One, your Building Department no longer is up in the air about what's to happen and can go ahead and do its job. The second is that we're going to make a report to the Supreme Court, in our case in the Supreme Court, telling the court that what the tenant that we want to evict has done is in violation of the Town's requirements.

Another issue was the use of the premises for fireworks. The earlier decisions by your predecessor board clearly approved the sale of class C fireworks. The tenant is storing and selling class B fireworks. Now, you may feel, well, it's only one letter apart, it can't be too bad. No. There's a huge difference between C and B. B is much more dangerous and the requirements are much more stringent with respect to distances, area, the level of control and all kinds of

2 matters of security, whereas C are
3 consumer fireworks. These are the
4 sparklers that you see, the fireworks
5 that people do on their back lawn.
6 It's all -- they are fireworks, but
7 they're a whole different category.
8 They're called consumer fireworks.
9 We're only in the consumer fireworks
10 business on this property. The
11 tenant has introduced class B, and
12 that is something that is not
13 acceptable to us for sure, and
14 shouldn't be acceptable to the Town.

15 There's a letter, I think it's
16 the first exhibit in the September
17 letter to your Board, it's United
18 States Department of Justice, Bureau
19 of Firearms and Explosives, a letter
20 to the tenant explaining why we don't
21 have to abide by a particular
22 regulation but he does, and that's in
23 that two-page -- it's a two-page
24 letter that you have in the package.

25 So as to this item, what is it

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that we want your Board to do? We want an affirmation that it is class C fireworks is what you approved previously that's allowed here, and that doesn't include B, even though C comes after B. It will give more direction for your Building Department, because the nature of the use is a condition of our use approval, and a violation of our use approval is a violation of the zoning law, so your Planning Board -- your Building Department has the muscle to enforce zoning code. That should be clearly on the record so they know that.

We would also report this to the Supreme Court, because this is another instance of the tenant's violation of his possession. I don't think we need it for the Department of Justice. We've passed every one of their inspections, the state inspection also, because -- for our

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purposes. We don't need to go back to them for anything. They come annually. I think the last report isn't until -- May of 2024 is -- the last inspection report is good until May of 2024.

The other issue that we needed to talk to you about deals with the mobile home that was approved back in 2003. The Building Department keeps calling it something other than what it was approved as. What was approved was a mobile home, and whether it's a banana or an apple is irrelevant. It's a mobile home that got approved. That's what we have there. There are different descriptions of it in things issued by the Building Department where they've called it a manufactured home, they've called it a modular home. It's a mobile home, and a mobile home is what was approved by your predecessor board.

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Now, if you're not comfortable with that conclusion, there are other reasons why the mobile home should be allowed to remain there. Those are set forth in the letter also, in paragraph 4, A to D, paragraph 7 and paragraph 6. Those reasons are, there was a requirement for security under the approvals that the Board granted. We consider someone residing on the premises as a way to provide security for the property, and therefore it's an implied reasonable use of that building for that purpose. However, there's another argument that flies, and that is in a B District, which is what we were characterized as after the use variance was granted, an existing single-family dwelling without both public sewer and water systems is an allowable use if you consider this to be a B Zone. It's an R Zone. If the argument is once you change the use,

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you made it into a B use, then I cite you to the section that's in the letter in paragraph C. I gave the citation to your zoning code, and we would be allowed to have that. In all honesty, we're not arguing that, because while it gets us home free with the residence use on that basis, it creates other potential issues for us. I'd rather rely on the section in an R-1 Zoning District, 185 attachment 7, table of use schedule 3, column A, accessory uses at number 8, separate living quarters within the permitted structure for persons employed on the premises as permitted with UC-1 exhibit 7. Mr. Esposito has to be there as part of his employment by the company, and therefore we would claim that he's entitled to live there under the provision I just cited to you. Hopefully that's one other route to take to approve of the continued use

2 of the mobile home as a residence for
3 the caretaker and also as the office
4 for the company to operate its
5 business.

6 Now, at the last hearing your
7 able counsel raised a good question.
8 I admitted it was a good question. I
9 shouldn't have done that because I've
10 had trouble getting an answer put
11 together. The question was, once you
12 change -- once you allow a business
13 use in an R Zone, does that mean you
14 change the designation of that entire
15 property for a changed use. We're a
16 residential zone. You gave us a
17 variance for a business use. Does
18 that change our ability to use the
19 rest of the property as an R-1? In
20 an R-1, a residence is a permitted
21 use. So find authority for that
22 idea. I couldn't find any. On the
23 other hand, I didn't find any that
24 said that you couldn't. I didn't
25 find any that said you could, but we

2 didn't find any that said you
3 couldn't. So what else can I do. I
4 made two phone calls. One was to a
5 lady by the name of Patricia Sulkin
6 who is one of the outstanding zoning
7 lawyers in New York State. She
8 presently is the provost and the vice
9 president of Touro College of Law and
10 a professor of law there. I also
11 called on my former partner, J.
12 Benjamin Gailey, who I consider to be
13 an outstanding zoning and municipal
14 lawyer in the Hudson Valley. I posed
15 the question to both of them, and the
16 answer both of them said is, unless
17 there's an expressed prohibition as a
18 condition of the change of use, it
19 does not change the rest of the
20 ability to use the property in
21 accordance with what it's zoned for.
22 There's a certain logic to that in
23 this case, because your Board
24 reserved the right to agree to have
25 future structures. You didn't give a

2 carte blanche. You could have said
3 no more, but you didn't say that.
4 You said, if you want any, you better
5 come back and see us. So I think
6 it's implied in that condition that
7 the other uses of the property can be
8 done, provided they meet all the
9 other requirements of the zone. You
10 don't avoid regulation just because
11 of this argument. Our use has to
12 comply, it has to have setbacks, it
13 has to have a rear yard, a front
14 yard, side yard. There are other
15 requirements. So that's the best
16 answer I've been able to come up with
17 with respect to Mr. Donovan's good
18 question. I would be hopeful that
19 the logic of it would be appropriate.

20 I think I should probably stop
21 at this point. I've said a lot and I
22 know it's tough to hear it all and
23 digest it all at one time. Whatever
24 questions or comments, we're at your
25 disposal.

2 CHAIRMAN SCALZO: Okay. Let me
3 -- I'm going to super simplify. I
4 did take some notes last time.

5 Just to reiterate, Code
6 Compliance's determination is not
7 enough for you folks to get what you
8 need. Code Compliance is -- their
9 determination that the activities
10 that are going on there, the second
11 business having class B as opposed to
12 class C, has that been addressed by
13 Code Compliance?

14 MR. ESPOSITO: No.

15 MR. JACOBOWITZ: They withdrew
16 all the complaints that -- there were
17 complaints made to them, I'm not sure
18 by whom and when, but then they
19 issued notices of violation. Then,
20 in the transcript of the conversation
21 with Mr. Sagaria, it said that they
22 had withdrawn all the notices of
23 violation and that it was something
24 that had to come to the ZBA.

25 CHAIRMAN SCALZO: So also

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you're looking for us to affirm all of the other Zoning Board of Appeals' determinations leading to here, or perhaps taking some ambiguity out of them or -- I'm not going to speak to their intent, because in 1982 I wasn't even driving yet.

MR. JACOBOWITZ: I read it and I knew -- I thought I knew what the words said, but there seems to be some hang-up or confusion or need because of the age of it and all that's happened over -- I mean, we're talking about twenty years ago and thirty-eight years ago. 1982. It's even more. So during that time things have -- may have changed in other ways or attitudes change or whatever. As I read the transcript of that conversation, it was that they needed the ZBA. What did they need you for? I've suggested what it is based on the notice of violation that we did get, or the notice of

2 noncompliance. Non code compliance,
3 I think it was called.

4 CHAIRMAN SCALZO: Okay. I
5 appreciate everything you're saying.

6 Counsel, I'm going to need you
7 to lead us through the weeds here.

8 MR. DONOVAN: There's a lot of
9 weeds. I'm not going to say last
10 time, but this Board, within the last
11 few years -- when we went through the
12 WCC Tank ordeal, there were a series
13 -- it's a prior request, actually,
14 first from Code Compliance and
15 subsequently from a property owner,
16 for us to issue an interpretation,
17 coincidentally enough, of a 1982 use
18 variance, and we were asked specific
19 questions. If you remember --

20 CHAIRMAN SCALZO: We voted
21 question by question.

22 MR. DONOVAN: Question by
23 question.

24 Now, I think you've given us
25 categories, Jerry. Is that what

2 you're looking for us to do, to vote
3 -- for example, does the 1982 -- I
4 guess there's a 2003 and a 2004. I'm
5 not quite sure what accessory
6 structure you're talking about in
7 2004.

8 Would your question be we need
9 the Board to interpret whether or not
10 the 1982 use variance, subsequently
11 modified by 2003, 2004, allowed class
12 B fireworks, --

13 MR. JACOBOWITZ: Right.

14 MR. DONOVAN: -- for example?
15 That's one issue. Another issue
16 being, did these three decisions
17 permit the other two structures,
18 you're asking us? Do they permit the
19 -- if I understand correctly, there's
20 a third structure that's an office
21 for -- do I have that right -- for
22 the applicant? That's also occupied?

23 MS. REIN: Yes.

24 MR. JACOBOWITZ: The mobile
25 home is occupied by the applicant,

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where he resides and his office.
There's another building that is a modular building that the tenant put up, and then there's a dome-shaped, fabric-roofed structure for storage. The two cited in the notices from us -- from the department are the dome-shaped building and the modular office building.

MR. DONOVAN: Understood.

MR. JACOBOWITZ: They also raised the question of whether we can keep the mobile home that's there, that we've been living in from which we operate the office.

MR. DONOVAN: Would that be your question to the Board as well?

MR. JACOBOWITZ: Yes.

MR. DONOVAN: An interpretation as to whether or not -- it seems it was approved as an office. Would it be allowed, either by the variances or by the R-1 Zone, to be used as a residential use as well.

2 CHAIRMAN SCALZO: I thought the
3 residential --

4 MR. JACOBOWITZ: Under the
5 limitation that it has to be someone
6 who is employed there as a term of
7 employment to live there.

8 CHAIRMAN SCALZO: It was in
9 lieu of having them connected
10 directly to the Town, if I understood
11 that right.

12 MS. REIN: May I ask a
13 question? I'm not as learned as you
14 are. If you get rid of the two
15 structures that you don't want there,
16 do you want to turn that entire lot
17 into a residential area?

18 MR. ESPOSITO: No.

19 MR. JACOBOWITZ: What would we
20 do with that area if we had it? In
21 2004 there was -- you granted
22 approval for a 3,000 square foot
23 building that we never built. So
24 that area we might use to put up the
25 3,000 square foot building that was

2 previously approved in 2004.

3 MS. REIN: What would that be
4 for?

5 MR. JACOBOWITZ: Storage.

6 MS. REIN: You were talking
7 about the class B fireworks. How do
8 we know they're there? Do we have
9 proof that they are there?

10 MR. JACOBOWITZ: Do we have
11 proof that it's there?

12 MS. REIN: Yes.

13 MR. JACOBOWITZ: The Building
14 Department raised an issue about
15 whether we were allowed to sell
16 fireworks there.

17 MS. REIN: Right.

18 MR. JACOBOWITZ: Our answer is
19 two answers. One is, yes, we can
20 sell class C fireworks. No, we can't
21 sell class B fireworks there.

22 MS. REIN: Right. You're
23 saying they are selling class B
24 fireworks?

25 CHAIRMAN SCALZO: I'm not

2 sure --

3 MR. JACOBOWITZ: Yes.

4 CHAIRMAN SCALZO: As much as I
5 appreciate where you're going with
6 this, I don't know how that impacts
7 what we're being asked to do.

8 MS. REIN: I thought we were
9 being asked to support the fact that
10 B fireworks aren't supposed to be
11 there. I thought that was one of the
12 issues.

13 MR. DONOVAN: That's an issue,
14 but not whether or not they're in
15 fact there. That would be someone
16 else to investigate whether they're
17 there.

18 I think the question, I don't
19 want to ask your question for you,
20 but the question is, are B fireworks
21 permitted by the previous decisions
22 of this Board.

23 MR. JACOBOWITZ: Right.

24 CHAIRMAN SCALZO: They may be
25 there, they may not be there.

2 MS. REIN: I'm confused,
3 because why would it be an issue if
4 they're not there?

5 MR. DONOVAN: If they're there
6 or not there, it may be not germane
7 to the question, which is an
8 interpretation as to whether or not
9 they're allowed to be there. None of
10 us went out there. Listen, if you
11 had a class C firework there and a B
12 firework there, I wouldn't know which
13 was B or C.

14 CHAIRMAN SCALZO: I think you
15 might.

16 MR. DONOVAN: I don't know.

17 CHAIRMAN SCALZO: Counsel, I
18 think you were on the right track
19 there with perhaps having the
20 applicant almost come back with
21 bulleted questions, individual
22 questions that we could vote on
23 individually so we can get -- they'll
24 get the clarification that they need
25 and we'll also be affirming or not

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affirming previous ZBA decisions.

MR. DONOVAN: Right. I think that makes it easier for the Board.

MS. REIN: Much easier. We're looking -- we're discussing concepts here and what might be and what might not be. I think we need something a little more concrete to decide.

CHAIRMAN SCALZO: Okay. I don't know if you folks heard what we were just discussing back and forth. As our Counsel had mentioned with the previous applications, what I think would help us as a Board tremendously is for, and you've given a wonderful presentation, and I've tried my best to follow along, but if you were to -- unfortunately it requires more time. If you were to come back with an individual, single line sentence, does this apply, yes or no; does this apply, yes or no; is the interpretation including this, yes or no. I don't want to say you're going

2 to dumb it down for us, but I think I
3 need you to dumb it down for us.

4 MR. JACOBOWITZ: That will help
5 focus and help your analysis. Yeah,
6 we can do that.

7 CHAIRMAN SCALZO: I hate to
8 keep asking you to come back, but
9 it's -- I'm afraid that if you were
10 to ask us to move forward this
11 evening, you may not get the desired
12 result.

13 MR. JACOBOWITZ: I understand.
14 Another month -- we can live with it
15 another month. We don't want to take
16 a chance that there's not four votes.
17 It doesn't mean there will be four
18 votes at the next meeting, but
19 tonight there's a lot been said, a
20 lot of things for you to digest, and
21 so it's only fair to give you an
22 opportunity to do your job.

23 CHAIRMAN SCALZO: Wonderful.
24 Now the question becomes -- I'm
25 almost going to ask you -- well, you

2 as the applicant, you're going to
3 come up with these questions.

4 MR. JACOBOWITZ: Yes.

5 MR. DONOVAN: Just a bullet
6 point. Half a page, yes or no.

7 CHAIRMAN SCALZO: Like I say,
8 if you could rely on the Board to
9 just have to give yes or no answers,
10 that's going to make it easy.

11 MR. JACOBOWITZ: Not a problem.
12 Not a problem at all.

13 MR. DONOVAN: Great.

14 MR. JACOBOWITZ: We can submit
15 that through the office?

16 CHAIRMAN SCALZO: Through
17 Siobhan. I think that's great.

18 MR. JACOBOWITZ: Okay.

19 MR. DONOVAN: I came up with a
20 great idea after 8:00.

21 MR. JACOBOWITZ: Are you
22 closing the hearing tonight?

23 CHAIRMAN SCALZO: No, we're
24 not. I believe we're -- I'm not sure
25 of that. There are only four of us.

2 I'm going to recommend to the Board
3 that we maintain the public hearing
4 as open until October.

5 MS. REIN: I recommend that we
6 have the meeting stay open until
7 October.

8 MR. DONOVAN: You're able to
9 close the public hearing, obviously.
10 You have 62 days to vote. You can
11 keep it open as well.

12 CHAIRMAN SCALZO: What's the
13 harm in keeping it open, Counsel? I
14 know we haven't had much interaction
15 from the public on this, or any.

16 MR. DONOVAN: I mean, that's
17 the point. Sometimes I stand out
18 there. I know what the harm is out
19 there. On this side of the table,
20 there is no harm.

21 MS. REIN: If we close the
22 meeting tonight, can we still ask for
23 additional information?

24 CHAIRMAN SCALZO: We can ask
25 for plenty. What that does is --

2 Donna, the object of the game, in my
3 opinion, is to process applications,
4 you know, in a fair and reasonable
5 manner as quickly as possible. If we
6 close it tonight, we've jammed
7 ourselves into 62 days.

8 MR. JACOBOWITZ: We would
9 extend your 62 days for a decision.
10 I think you'll get it done in 62
11 days, but if not --

12 CHAIRMAN SCALZO: I would have
13 to believe so.

14 MR. DONOVAN: I always say it's
15 important to keep the public hearing
16 open if you think the public is going
17 to give you more information to help
18 you decide. The line I like to use
19 is the public hearing is not for the
20 public. I think that's a
21 misconception, that people show up,
22 they get their questions answered.
23 The public doesn't get to vote. The
24 public comes to bring up issues for
25 the Board to consider when they vote.

2 MS. REIN: Right.

3 MR. DONOVAN: So I think it's
4 important to keep the public hearing
5 open if you're going to get more
6 information.

7 CHAIRMAN SCALZO: Well, this
8 has been here and we've had no public
9 input. I suppose, Counsel, looking
10 at it that way --

11 MR. DONOVAN: I don't want to
12 twist your arm. I think the purpose
13 of the public hearing is to help the
14 Board.

15 CHAIRMAN SCALZO: I was just
16 looking at the 62 days, but the
17 applicant's representative just said,
18 in case we're jammed up, we may get
19 62 days plus. Again, I don't think
20 it's going to take us that long,
21 especially if you come back next
22 month with the --

23 MR. JACOBOWITZ: Particularly
24 if I can do what you've asked.
25 That's a fair comment.

2 CHAIRMAN SCALZO: So that being
3 said, does the Board have a motion of
4 some sort with regards to closing the
5 public hearing?

6 MR. HERMANCE: I'll make a
7 motion to close the public hearing.

8 CHAIRMAN SCALZO: We have a
9 motion to close the public hearing
10 from Mr. Hermance.

11 MR. MASTEN: I'll second it.

12 CHAIRMAN SCALZO: We have a
13 second from Mr. Masten. All in
14 favor?

15 MR. HERMANCE: Aye.

16 MR. MASTEN: Aye.

17 MS. REIN: Aye.

18 CHAIRMAN SCALZO: Aye.

19 Those opposed?

20 (No response.)

21 CHAIRMAN SCALZO: Hearing none,
22 the public hearing is closed.

23 MR. JACOBOWITZ: Thank you.
24 We'll be in touch shortly through
25 your office.

2 CHAIRMAN SCALZO: Very good.
3 Thank you.

4 That's going to wrap it up for
5 this evening.

6 The only other item is the
7 minutes which I have not looked at.
8 I have not looked at the meeting
9 minutes from last month.

10 MR. MASTEN: I haven't either.

11 CHAIRMAN SCALZO: We'll table
12 that.

13 Other than that, a motion to
14 adjourn.

15 MR. MASTEN: I'll make a motion
16 to adjourn.

17 MS. REIN: I'll second.

18 CHAIRMAN SCALZO: We have a
19 motion to adjourn from Mr. Masten and
20 a second from Ms. Rein. All in
21 favor?

22 MR. HERMANCE: Aye.

23 MR. MASTEN: Aye.

24 MS. REIN: Aye.

25 CHAIRMAN SCALZO: Aye.

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(Time noted: 8:52 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 13th day of October 2023.

Michelle Conero

MICHELLE CONERO

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

- - - - - X
In the Matter of

ANN HAIGHT

13 Princess Lane, Newburgh
Section 102; Block 7; Lot 3
R-2 Zone

- - - - - X

Date: September 28, 2023
Time: 8:11 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
GREGORY M. HERMANCE
JOHN MASTEN
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: DEBRA LUCCHESI

- - - - - X

MICHELLE L. CONERO
Post Office Box 816
Dover Plains, New York 12522
(845) 541-4163

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CHAIRMAN SCALZO: We also have, held open from the previous meeting, Ann Haight, 13 Princess Lane, seeking an area variance of the front yard setback to keep a 12 by 14 front deck.

We have Ms. Haight with us again.

MS. LUCCHESE: Ms. Lucchese. Ann Haight is my mom.

CHAIRMAN SCALZO: Ann Haight is your mom. Very good.

I'll go back to, it was only an hour ago that I said we only have four of us here. If we're going to get to a certain point, you'd need -- if we were going to get to a certain point, you'd need unanimous voting. I'm just going to preface --

MS. LUCCHESE: We can do it.

CHAIRMAN SCALZO: Please feel free to let us know what you've got.

MS. LUCCHESE: Okay. The last time that I was here, you wanted me to get a hold of a contractor and

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have him take a look at it, which I did do. He gave me information on that. He's pretty much going to redo the whole thing.

CHAIRMAN SCALZO: Okay.

MS. LUCCHESE: The issue was -- well, I think the issue was because of what was there already.

CHAIRMAN SCALZO: Well, that was certainly a concern of ours. That is actually a Code Compliance thing that they monitor. We don't. We just looked at it and became a little suspicious.

What you're here looking for is to keep that exact same size deck that we saw before. In essence, you're still looking for those variances from the front yard. Correct?

MS. LUCCHESE: Yes. What's existing there, I wouldn't be able to do my mother in a wheelchair should I have to.

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CHAIRMAN SCALZO: Right.

MS. LUCCHESE: What I'm trying to do is make it accessible, if it comes to that point that I have to put her in a wheelchair, I'll be able to maneuver the wheelchair. The little porch that's existing there now, I wouldn't be able to do that.

MS. REIN: You didn't want to put the ramp in this thing either?

MS. LUCCHESE: No, because at the last meeting they said I wouldn't need to put the ramp in because that would be on the sidewalk.

CHAIRMAN SCALZO: Ramps are exempt. Stairs and ramps, Joe. Correct?

MR. MATTINA: Correct.

CHAIRMAN SCALZO: That's not -- it's how far the deck sticks out that's still the issue.

MS. REIN: Right.

CHAIRMAN SCALZO: Let's continue.

MS. LUCCHESE: So the only way

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you really could do the porch so it lines up with the sidewalk is to have it at those measurements.

CHAIRMAN SCALZO: Okay. We had quite a bit of discussion. Unfortunately, we're down Members.

I'm going to -- I'll start on my right here. Mr. Hermance, do you have any comments, questions or anything else?

MR. HERMANCE: Being that it was going to be rebuilt, we were thinking it could possibly be shortened up, the deck. I know it doesn't line up exactly with the walkway, but the walkway could be shifted over in order so that the front deck wasn't as intrusive.

MS. LUCCHESE: How would you shift the sidewalk?

MR. HERMANCE: You would just basically angle it over to the --

MS. LUCCHESE: It's cement. It's a cement sidewalk.

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MR. HERMANCE: You would have to do some more cement work to bring it over to the end. Yes, it wouldn't line up exactly where it is if you shortened it up. You could always modify the sidewalk.

MS. LUCCHESE: Okay.

MR. HERMANCE: That's what we were thinking.

MS. LUCCHESE: What I'm trying to do is do it the easiest way. The easiest way would be to line it up with the existing sidewalk.

CHAIRMAN SCALZO: I understand exactly -- you're already going to have somebody come in and almost have to rebuild what your first guy did.

MS. LUCCHESE: Correct.

CHAIRMAN SCALZO: That stinks, and I understand that.

MS. LUCCHESE: Yes.

CHAIRMAN SCALZO: You don't want us to keep stinging you with asking you to move the sidewalk

2 either.

3 MS. LUCCHESE: Correct.

4 CHAIRMAN SCALZO: I do recall
5 from last month's meeting, the other
6 thing that I noticed is your neighbor
7 next door, if you're facing your
8 mother's house, the one to the left,
9 he does have a deck and we're not
10 quite sure how close he is to the
11 road because there's some information
12 that was left off. What you've got
13 going on here would be the biggest
14 one in the neighborhood. My fear for
15 us as a Board is you're the
16 trendsetter and everybody that comes
17 in asking for exactly what you've
18 got, we would be inconsistent if we
19 shot them down while we gave it to
20 you.

21 MS. LUCCHESE: Okay. I see
22 your point, but I'm going to disagree
23 with you. The reason I'm going to
24 disagree with you is because right on
25 our street there are two other houses

2 that have their porches enlarged. If
3 you go down the street from my
4 mother, you take a right and go up
5 the street, two houses up, which is
6 in the 500-foot radius, there's a
7 house that built a huge garage in
8 front of their existing garage. They
9 didn't get a variance for that.

10 CHAIRMAN SCALZO: That's very
11 helpful. Do you have addresses for
12 this?

13 MS. LUCCHESE: Sure.

14 CHAIRMAN SCALZO: Because you
15 know what, perhaps I missed those
16 when I was out there.

17 MS. LUCCHESE: You wouldn't
18 have seen the one with the garage
19 because that was on Queens Way, but
20 that's within the 500-foot radius.

21 Here's a picture of that one.

22 CHAIRMAN SCALZO: So this is on
23 Queens Way?

24 MS. LUCCHESE: That's on Queens
25 Way, which is, if you go down -- if

2 you come out of my mother's driveway,
3 you make a left, you go down two
4 houses, you make a right, go up, it's
5 the second house on the right.

6 CHAIRMAN SCALZO: Okay. And
7 then you said there's other --

8 MS. LUCCHESE: There's other
9 houses that have --

10 CHAIRMAN SCALZO: On Princess,
11 too?

12 MS. LUCCHESE: On Princess, yes.

13 CHAIRMAN SCALZO: Perhaps I
14 stood in front of yours and looked at
15 the one to the left and saw something
16 that was -- caught my eye.

17 MS. LUCCHESE: I mean, they're
18 not as big as what we're requesting,
19 but they are big.

20 CHAIRMAN SCALZO: There you
21 have it.

22 MS. LUCCHESE: I understand
23 that, but in the same thing, the
24 garage --

25 CHAIRMAN SCALZO: Okay. I

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think I see where you're going here,
and I'm going to try to understand
myself a little better. If I'm going
to evaluate this, I'm going to need a
little time to actually go back out
to the site. I'm just letting you
know that. Having four Members here
and needing unanimous votes tonight,
that's my position at this moment.

Greg, do you want to take a
look at those and then I'll hand them
the other way.

While we're waiting for those
photos to get sent down to you folks
at the other end of the table, any
other comments coming up? Anything,
Ms. Rein or Mr. Masten?

MS. REIN: This variance is
going to be bigger than what these
are. Correct?

CHAIRMAN SCALZO: Well, the
garage is a totally different story.
Boy, that's a substantial garage, and
it sticks out quite a ways. I think

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I need to expand what my consideration of the neighborhood is when we're talking about the character of the neighborhood, --

MS. REIN: Right.

CHAIRMAN SCALZO: -- which can only benefit you.

MS. LUCCHESE: Okay. Well, I know if you drive through the development, you will see --

CHAIRMAN SCALZO: Meadow Hill is Meadow Hill.

MS. LUCCHESE: -- there are other houses that have expanded.

CHAIRMAN SCALZO: Sometimes I put the blinders on when I'm out there. I want to get back out there and take a look.

MS. REIN: I agree.

CHAIRMAN SCALZO: I'm just going with where I'm at here. I would like to go back out and take a look, which, like I say, in my opinion can only benefit you.

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MS. LUCCHESE: Okay.

CHAIRMAN SCALZO: If you insist that we continue processing your application this evening, I will also do that.

MS. LUCCHESE: My only concern is, I really would like to get this done.

CHAIRMAN SCALZO: I understand.

MS. LUCCHESE: I mean, I've gone round and round with this.

CHAIRMAN SCALZO: I understand, and you're certainly patient. I get it. We also don't want to make a decision that would make us continue to have to make the same decision for other people that come in after you.

I myself, I need a little more time to reevaluate. I want to go out without blinders on. You made a great point with your 500 feet. I'm thinking your neighborhood and the character of your neighborhood. I'm only on Princess. I didn't go around

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the corner. I'm asking, you know,
for myself, I want to reevaluate your
neighborhood.

MS. LUCCHESI: Okay.

CHAIRMAN SCALZO: Folks on the
Board, whether you concur or not,
does anybody want to speak up to keep
the public hearing open for another
month while we go take a look?

MS. REIN: I would like to make
a motion.

CHAIRMAN SCALZO: I've got to
be honest with you, this was a great
exchange, in my opinion, because you
opened my eyes to something I didn't
necessarily consider before.

MS. REIN: When I looked at the
property, I only looked at the house.

CHAIRMAN SCALZO: I think
what's really important on this
application is we look at the
character of the neighborhood to see
if there are other dwellings in that
neighborhood that may -- I don't want

2 you to have the white elephant there,
3 because that makes us have to follow
4 that.

5 Anyway, I'm looking to the
6 Board.

7 MS. REIN: I'll make a motion
8 to keep the hearing open.

9 MR. MASTEN: I'll second it.

10 MR. DONOVAN: Until October.

11 MS. REIN: Until October.

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

16 MR. HERMANCE: Aye.

17 MR. MASTEN: Aye.

18 MS. REIN: Aye.

19 CHAIRMAN SCALZO: Aye.

20 I apologize. I know you wanted
21 some resolution this evening. We
22 just can't get you there. We're
23 going to see you the fourth Thursday
24 in October.

25 MS. LUCCHESI: Now there's

2 nothing else I would have to --

3 CHAIRMAN SCALZO: You know,
4 there's always -- I say always.
5 You're asking for a certain number of
6 variances. You can always reevaluate
7 your application to see if there's
8 anything that you could potentially
9 reduce. That's all I can give you at
10 the moment.

11 MS. LUCCHESI: Yeah. I
12 wouldn't know what else to do,
13 because the porch ends right at the
14 sidewalk. The end of our sidewalk.
15 I wouldn't know what else we could do
16 besides dig it up, and I don't really
17 want to do that.

18 CHAIRMAN SCALZO: I understand
19 that. Perhaps you -- you know, just
20 go home and put your thinking cap on.
21 Sit out there and take a look at
22 things. There's always a solution.

23 MS. LUCCHESI: Yes, there is.
24 Okay.

25 CHAIRMAN SCALZO: We'll see you

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next month. Thank you.

(Time noted: 8:22 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 13th day of October 2023.

Michelle Conero

MICHELLE CONERO