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

----- X  
In the Matter of

BOARD BUSINESS

ACCEPTANCE OF MEETING DATES FOR 2021

----- X

Date: January 28, 2021  
Time: 7:00 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
GREGORY M. HERMANCE  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
JOHN MCKELVEY

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

----- X

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

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CHAIRMAN SCALZO: I'd like to call the meeting of the ZBA to order. Our first order of business this evening are the public hearings 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. We are running a hybrid meeting these days. The applicants and representation are here with us. Members of the public are invited to participate via Zoom. We will certainly give everyone their chance to speak. After all the public hearings have been completed, the Board may adjourn -- actually, we won't. We're going to do it all while we're sitting here. We may confer with counsel regarding legal questions. However, the Board will then consider the applications in the order heard and will try to render a decision this evening but may take up to 62 days to make a determination. I would ask that if you have a cellphone, to please turn it off or put it on

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silent. For the applicants or representation that's here; when speaking, speak directly into the microphone. We have new technology tonight with us. We think we have overcome the issues in previous ZBA meetings with the Zoom connection.

Roll call, please.

MS. JABLESNIK: Darrell Bell is absent.  
Greg Hermance.

MR. HERMANCE: Here.

MS. JABLESNIK: Richard Levin.

MR. LEVIN: Here.

MS. JABLESNIK: Anthony Marino.

MR. MARINO: Here.

MS. JABLESNIK: John Masten.

MR. MASTEN: Here.

MS. JABLESNIK: John McKelvey.

MR. MCKELVEY: Here.

MS. JABLESNIK: Darrin Scalzo.

CHAIRMAN SCALZO: Here.

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

CHAIRMAN SCALZO: Thank you very much.

If I could ask you to all please rise

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for the Pledge.

Mr. Masten, you're standing close. If you could lead us, please.

(Pledge of Allegiance.)

CHAIRMAN SCALZO: Thank you.

Our first order of business this evening is actually not a public hearing. The Board must accept the proposed meeting dates which were circulated by e-mail and should be in your packages, folks.

Could I have a motion to accept those meeting dates for the year 2021?

MR. MARINO: I'll make a motion to accept it.

MR. MASTEN: I'll second it.

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

MR. HERMANCE: Aye.

MR. LEVIN: Aye.

MR. MARINO: Aye.

MR. MASTEN: Aye.

MR. MCKELVEY: Aye.

CHAIRMAN SCALZO: Aye.

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Siobhan, that takes care of that.

MS. JABLESNIK: Good enough for me.

CHAIRMAN SCALZO: Very good.

Just for the sake of being able to hear me clearly, I'm going to do my best to stay socially distant but speak into the microphone.

(Time noted: 7:03 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 10th day of February 2021.

  
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MICHELLE CONERO

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

----- X

In the Matter of

JACK & KAREN CHASTAIN

75 Old Mill Road, Wallkill  
Section 2; Block 1; Lot 23.81  
RR Zone

----- X

Date: January 28, 2021  
Time: 7:03 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
GREGORY M. HERMANC  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
JOHN MCKELVEY

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: JACK CHASTAIN

----- X

MICHELLE L. CONERO  
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Newburgh, New York 12550  
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CHAIRMAN SCALZO: Our first applicants this evening are Jack and Karen Chastain, 75 Old Mill Road in Wallkill. They're seeking an area variance of the front yard to build a 12 by 34.2 covered front porch.

Mailings, Siobhan.

MS. JABLESNIK: This applicant sent out 21 letters.

CHAIRMAN SCALZO: All right. 21 mailings; correct?

MS. JABLESNIK: Yes.

CHAIRMAN SCALZO: Very good. Do we have anyone here representing this application? Could you step forward, sir.

MR. CHASTAIN: Thank you.

CHAIRMAN SCALZO: We have seen your property. We have your application in front of us.

Quite honestly, the short summary that I just said, you're looking for an area advance for the front yard to build a 12 by 34.2 covered front porch. I don't think it's any more tricky than that. Am I correct?

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MR. CHASTAIN: No.

CHAIRMAN SCALZO: As I say, we've seen your place on Old Mill Road.

MR. CHASTAIN: You didn't get scared by the dogs?

CHAIRMAN SCALZO: No. I could take it all in from the windshield.

At this point I'm actually going to turn to the Members of the Board.

MR. DONOVAN: Mr. Chairman, if I could. If you could just state your name for the record.

MR. CHASTAIN: Jack Chastain.

MR. DONOVAN: We figured that but --

CHAIRMAN SCALZO: I would like to say I recognize him but I don't. Thank you, Counselor. It's been a while since we did this. Two months.

I'm going to look to Mr. Hermance. Do you have any comments on this application?

MR. HERMANCE: I do not.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: No.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: No.

CHAIRMAN SCALZO: Mr. McKelvey?



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MR. MCKELVEY: No.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: No.

CHAIRMAN SCALZO: My comment is, you know what, I can see why you want to do it. It appears to fit the character of the neighborhood. You sit up high, so really -- I don't know. Unless you purposely are trying to look at it, I think it's going to be missed by most of the people. Maybe the one fellow across the street.

MR. CHASTAIN: He's going to be here later for his own porch.

CHAIRMAN SCALZO: Very good. Okay. So I have no other comments.

At this point I'm going to turn it over to any members of the public that wish to speak about the Jack and Karen Chastain, 75 Old Mill Road application. If you are here from the public to speak, please raise your hand and we'll call on you one at a time, or at least Siobhan will.

(No response.)

MS. JABLESNIK: No.

CHAIRMAN SCALZO: Hearing none, I'll go

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back to the Members of the Board. Any last opportunities for comment?

MR. MCKELVEY: You said it all.

CHAIRMAN SCALZO: Very good. Thank you.

So I will look to the Board for a motion to close the public hearing.

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

MR. MCKELVEY: Second.

CHAIRMAN SCALZO: I think we heard from Mr. Masten in a complete sentence. Mr. McKelvey seconded it. Roll call for closing the public hearing.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

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MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes. The public hearing is closed.

Moving forward through our criteria. This is a Type 2 action under SEQRA.

That is correct, Counselor?

MR. DONOVAN: That is correct.

CHAIRMAN SCALZO: I always ask.

MR. DONOVAN: I do appreciate that.

CHAIRMAN SCALZO: Thank you. Our area variance criteria, we shall consider whether the benefit can be achieved by other means feasible to the applicant. Well if he's looking for shade in his front, I don't think so.

An undesirable change in the neighborhood character or a detriment to nearby properties. I think it's actually going to be an enhancement to the neighborhood.

Whether the request is substantial. I don't think so. As it applies where his road frontage is, no.

Whether the request will have adverse physical or environmental effects.

MR. HERMANCENCE: No.

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MR. MCKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

CHAIRMAN SCALZO: It does not appear  
so.

Whether the alleged difficulty is self-  
created which is relevant but not determinative.  
Of course it's self-created, however that is not  
determinative for what we're looking to do.

Having gone through the criteria, I'll  
look to the Board for a motion of some sort.

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

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

MR. LEVIN: Second.

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

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

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MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Motion carried. The variance is approved.

We try to make it as painless as possible for you.

MR. CHASTAIN: Thank you.

CHAIRMAN SCALZO: Thank you. Good luck.

MR. CHASTAIN: Quick question. I need to wait for a physical response or something from the office, or can I tell my contractor to start in April?

MS. JABLESNIK: No, don't do that. So your application goes back to the Building Department. If he's needing any more information he'll contact you probably through a letter. If not, then you'll get your permit. Wait for the Building Department.

MR. CHASTAIN: That's what I need.

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Thank you. Have a good evening.

CHAIRMAN SCALZO: Thank you very much.

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

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

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 10th day of February 2021.

*Michelle Conero*

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MICHELLE CONERO

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

----- X  
In the Matter of

JOHN & CELESTE BLOOMER

66 Winona Avenue, Newburgh  
Section 69; Block 4; Lot 19  
R-3 Zone

----- X

Date: January 28, 2021  
Time: 7:10 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
GREGORY M. HERMANCE  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
JOHN MCKELVEY

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: STEVEN WHALEN

----- X

MICHELLE L. CONERO  
3 Francis Street  
Newburgh, New York 12550  
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CHAIRMAN SCALZO: Our second applicants this evening are John and Celeste Bloomer, 66 Winona Avenue in Newburgh, seeking an area variance of, A, increasing the degree of nonconformity of the front yard to build an 18.6 by 21.2 screened side porch and, B, a side yard variance to keep 45 by 9 and 10 by 25 rear decks.

Siobhan, mailings?

MS. JABLESNIK: This applicant sent out 26 mailings.

CHAIRMAN SCALZO: 26 mailings. Thank you very much.

Sir, if you could identify yourself and tell us why you're here.

MR. WHALEN: Absolutely. I'm Steve Whalen of Whalen Architecture. I'm representing both of the owners.

CHAIRMAN SCALZO: Although I did read a brief summary of what you're looking to do; as I say, we've all been there. We do have a set of plans here in case anyone is confused.

In the interim, I'm actually going to go right to the Board in this case. I'll start



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with Mr. Marino.

Mr. Marino, do you have any comments regarding this application?

MR. MARINO: No. Not at all.

CHAIRMAN SCALZO: Mr. McKelvey, do you have any comments?

MR. MCKELVEY: No.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: No.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: No.

CHAIRMAN SCALZO: Mr. Hermance?

MR. HERMANCE: No.

CHAIRMAN SCALZO: Obviously it's an old established neighborhood. The property lines are what they are. As you can see, the one corner of the front of the house is 7.2 feet from the property line. Actually, half of the house is probably outside of the building envelop, so therefore it makes anything that you're going to do in this area challenging.

I have no comments myself.

In this case I'm going to turn it to any members of the public that wish to speak

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about this application. Does anyone from the public wish to speak about the Bloomer application on 66 Winona Avenue?

(No response.)

MS. JABLESNIK: No.

CHAIRMAN SCALZO: No. Hearing none, I'll go back to the Board for one last opportunity to comment.

MR. MASTEN: No.

CHAIRMAN SCALZO: I see a whole bunch of shaking heads.

Okay then. So in this case I'm going to look to the Board for a motion to close the public hearing.

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

MR. MARINO: I'll second that.

CHAIRMAN SCALZO: Thank you. We have a motion from Mr. Levin. We have a second from Mr. Marino. All in favor?

MR. HERMANCE: Aye.

MR. LEVIN: Aye.

MR. MARINO: Aye.

MR. MASTEN: Aye.

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MR. MCKELVEY: Aye.

CHAIRMAN SCALZO: Aye.

In this case we are looking again at a Type 2 action under SEQRA. We're going to go through our balancing criteria. The first one is whether or not the benefit can be achieved by other means feasible to the applicant. It is a challenge with the property lines as they are, so I think it would be challenging.

Does anyone have any comments to that?

MR. LEVIN: No.

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

MR. MCKELVEY: No.

MR. MARINO: No.

CHAIRMAN SCALZO: Very good. The third, whether the request is substantial. By the numbers it is substantial. However, looking at what's existing there now, it's really not. Would you agree?

MR. HERMANCE: Yes.

MR. LEVIN: Yes.

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MR. MARINO: Yes.

MR. MASTEN: Yes.

MR. MCKELVEY: It will be an improvement.

CHAIRMAN SCALZO: I agree.

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

MR. HERMANCE: No.

MR. MCKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

CHAIRMAN SCALZO: I don't believe anything is going to change.

The fifth, whether the alleged difficulty is self-created. This is relevant but not determinative. Of course it's self-created. But again, it may not be determinative.

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

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

MR. MASTEN: I'll second it.

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

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All in favor?

MR. HERMANCE: Aye.

MR. LEVIN: Aye.

MR. MARINO: Aye.

MR. MASTEN: Aye.

MR. MCKELVEY: Aye.

CHAIRMAN SCALZO: Aye.

Opposed?

(No response.)

CHAIRMAN SCALZO: Motion carried.

MR. WHALEN: Great. Thank you.

CHAIRMAN SCALZO: Thank you.

(Time noted: 7:15 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 10th day of February 2021.

*Michelle Conero*  
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MICHELLE CONERO

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

----- X  
In the Matter of

JOHN MATARAZA

1460 Route 300, Newburgh  
Section 63; Block 1; Lot 27  
B Zone

----- X

Date: January 28, 2021  
Time: 7:15 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
GREGORY M. HERMANC  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
JOHN MCKELVEY

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: JOHN MATARAZA

----- X

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CHAIRMAN SCALZO: Okay. Our next applicant this evening is John Mataraza, 1460 Route 300, seeking area variances of the front yard and center line on Union Avenue to build an 8 by 33.3 covered front porch.

Siobhan, mailings?

MS. JABLESNIK: This applicant sent out 31 letters. It was sent to the County and I still haven't heard back yet.

CHAIRMAN SCALZO: Okay. So we have 31 letters out. The last part of the conversation, I don't know if you understood what Siobhan was saying, General Municipal Law 239 requires that any applicant that is on a State road or a County road has to have the opportunity -- the County has to have the opportunity to comment on it. They have thirty days to comment.

Siobhan, was this in the first package for December or was this a January --

MS. JABLESNIK: January.

CHAIRMAN SCALZO: So we have not heard back from the County yet. In this case we need to keep the public hearing open. We can not close it until the February meeting. If we



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haven't heard back from the County between now and then -- they only have a thirty-day time limit, so their time will expire if we don't hear from them and we can proceed as we do.

MR. MATARAZA: Okay.

CHAIRMAN SCALZO: So that being said, if I could ask you to introduce yourself, if I haven't already.

MR. MATARAZA: John Mataraza.

CHAIRMAN SCALZO: Very good. Obviously you're here for the short synopsis that I gave, which is just how it appears on the application. You want to build an 8 by 33.3 deck on the front of your house, which I admire every time I drive down. It's beautiful. I love the stonewall out front. Much like the first applicant that we had this evening, my assumption is that you're looking to gain a little shade out front if you want to sit out there.

Although we can not vote on your application this evening, if there's anything else that you'd like to present to support what you're trying to do.

We did get one piece of correspondence

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from a neighbor in support of this application.  
All the Board Members are nodding their heads  
that they've seen it as well.

Does anyone from the Board have any  
comments on this application?

(No response.)

CHAIRMAN SCALZO: A whole bunch of  
shaking heads.

MR. LEVIN: It's straightforward.

CHAIRMAN SCALZO: Straightforward.  
Very good.

I have no comments. I already gave  
them.

At this point I'm going to open it up  
to any members of the public. Does anybody have  
any comments on the application of John Mataraza?

(No response.)

CHAIRMAN SCALZO: Hearing none, I'm  
going to go back to the Board. We're going to  
have to, as I said, keep the public hearing open.  
If I could look to the Board for a motion to keep  
the public hearing open.

MR. LEVIN: I'll make the motion.

MR. McKELVEY: Second.

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CHAIRMAN SCALZO: Very good. I heard it from Mr. Levin first. I heard a second from Mr. McKelvey. All in favor?

MR. HERMANCE: Aye.

MR. LEVIN: Aye.

MR. MARINO: Aye.

MR. MASTEN: Aye.

MR. MCKELVEY: Aye.

CHAIRMAN SCALZO: Aye.

Opposed?

(No response.)

CHAIRMAN SCALZO: Sir, I apologize that we can't have any action on your application this evening. We'll see you in February.

Anyone here for this application, you will not be re-noticed. Any members of the public, although no one spoke up, no new notices will be sent out. This will be on the February agenda.

Thank you.

MR. MATARAZA: Thank you.

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

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

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 10th day of February 2021.

*Michelle Conero*  
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MICHELLE CONERO

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

----- X  
In the Matter of

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

----- X

Date: January 28, 2021  
Time: 7:19 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
GREGORY M. HERMANCE  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
JOHN MCKELVEY

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: JOSEPH MODAFFERI &  
STANLEY SCHUTZMAN

----- X

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

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CHAIRMAN SCALZO: Our next applicant this evening is Farrell Industrial Park, Route 300 in Newburgh. It's Farrell Industrial Park for an area variance of height for buildings A and B.

Siobhan, do we have mailings on this?

MS. JABLESNIK: This applicant sent out 56 letters. They obviously went to the County. No response.

CHAIRMAN SCALZO: 56 letters out. It went to the County. We have not heard a response from the County. As you probably just heard me say to the previous applicant, we're going to need to keep the public hearing open this evening. We can not take action on your application. However, since you're here, we would like you to present.

MR. DONOVAN: Mr. Chairman, if I could interject. As these folks know, this is a Type 1 action under SEQRA. The Planning Board has declared their intent to be lead agency and conduct what's called a coordinated review. What that means is that this Board cannot act until such time as the Planning Board closes out SEQRA.

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We couldn't act anyway. It's in your cover letter. I'm not telling you guys anything you don't already know.

CHAIRMAN SCALZO: Thank you very much, Counselor.

Okay. So the other ones were a little more simple than what you're looking to do, so therefore I'm not going to try and capture what you're trying to do in my words. I'm going to let you do it in your words. If you could first start by introducing yourself and we'll go from there.

MR. MODAFFERI: Certainly. For the record, my name is Joseph Modafferi, I'm a project manager with JMC. We've the civil engineers, landscape architects, site planners for the project. I'm here with Stanley Schutzman, the project attorney, tonight. The architect may or may not walk through the door in a few minutes. If he doesn't, I think we'll be okay.

As was stated, we're here for a building height variance or building height variances. Because of the grading on the site,

1  
2 they are two different heights. You may want to  
3 -- I don't know if you want to give it one  
4 variance or two variances, one for each building.

5 The approval for the height variance is  
6 basically based on -- it's a need based on  
7 marketability of the site and for the loading  
8 docks that we need for operation of the site.

9 As you said, we have been to the  
10 Planning Board. The initial meeting was December  
11 17th. They declared their intent for lead  
12 agency. That was all gone through, so I'll skip  
13 the rest of that.

14 The site is about 35 acres, two tax  
15 lots, two parcels -- one tax lot, two parcels.  
16 It's on the east side of Route 300, north of  
17 Little Brook Lane. It's in the Zoning District  
18 of IB. To the north is the R-1 District right  
19 along -- it abuts the R-1 District. It's  
20 encompassed by Route 300 to the west, again  
21 residential to the north, some vacant land to the  
22 east, and some industrial uses to the south.

23 We are proposing two warehouse  
24 buildings for a total of 290,000 square feet.  
25 Building A, which is the one to the west, the



1  
2 larger one shown on the plan, is 185,000 square  
3 feet. Building B is 105,000 square feet. Each  
4 will have about 10 to 15 percent office depending  
5 on who uses the space that will support the space  
6 there.

7 The project includes the parking  
8 required, the loading required, truck and trailer  
9 parking, site access as shown on the plan as via  
10 Route 300.

11 In terms of the building heights, the  
12 maximum permitted in the IB Zone is 40 feet. As  
13 I'm sure you're all aware, it's based on average  
14 grade of the facade facing the street. Our two  
15 buildings, when you look at them from finished  
16 floor to the height of the -- the top height of  
17 the parapet, the maximum height of the parapets  
18 are 45 feet. That's related to providing the 38  
19 foot ceilings which is the operational issue on  
20 the site here. That height is basically typical  
21 of all warehouses in today's world. It's the  
22 structure of the roof to make that large span  
23 across the building. It gives you a 42 foot roof  
24 height and then a 3 foot parapet.

25 Now, the zoning, as I said , is based

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on average grade. Our site -- the warehouses themselves are higher off of Route 300. The road coming up goes up at about 6.5, 7 percent to get up to the site.

Building A is at roughly -- a little bit more than 45 because we have the emergency access road on the west side of it that has to meet the grade of the access drive coming into the site and then meet the grade of the loading dock or trailer truck parking spaces to the south. Building B is 48.8 feet, simply because the facade facing the street, although it's blocked by building A, has to have an additional 4 feet so that the truck, when it backs up, can align with the finished floor of the building. So the height of the building is that extra 4 feet.

When you look at it, the loading docks are encompassed in the middle. That was designed to, you know, keep the loading docks integral to the space. So it's really when you look at it, the buildings themselves are all going to look like they're the same height around the site because they're both at the same finished floor

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elevation.

You know, that's really just the explanation of the variances we're looking for. If anybody has any questions or --

CHAIRMAN SCALZO: Okay. Thank you very much.

MR. MODAFFERI: No problem.

CHAIRMAN SCALZO: I'm going to look to the Members of the Board for comments. Mr. Marino, do you have anything?

MR. MARINO: No. Not at this time.

CHAIRMAN SCALZO: Not at this time. We will have -- the way I understand it, we will have an opportunity to discuss this at a future meeting.

MR. DONOVAN: That's correct. Actually, we're going to continue the public hearing probably to a date unknown.

CHAIRMAN SCALZO: First and foremost, regarding the no County receipt yet.

Mr. McKelvey?

MR. MCKELVEY: Behind the building are there houses?

MR. MODAFFERI: Not that I'm aware of,

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no. It's all vacant land on the east side.

MR. MCKELVEY: The east side.

MR. MODAFFERI: On the north side, yes.  
There is -- I should have mentioned that Berry Lane does end at the north property line, and, you know, there are some residences at the end of that street.

MR. MCKELVEY: Thank you.

CHAIRMAN SCALZO: Thank you. Mr. Masten?

MR. MASTEN: I have nothing right now, Darrin.

CHAIRMAN SCALZO: How about you, Mr. Levin?

MR. LEVIN: I have a few. I must admit I didn't get on your property. I was off the property. I saw no way to get on your property. I came home and I read about it and there is -- it's Berry Lane that you're talking about. I didn't see that. I'm happy that it's being held over so I'll have a chance to see it when I go back.

My second question is you say the height is a standard height for the industry?

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MR. MODAFFERI: Yes.

MR. LEVIN: There must be other buildings that are that height in this area that you're aware of. Are there?

MR. MODAFFERI: Yes. I believe it's the Matrix site that your Board approved a 45-foot building height recently. I don't know the date, but it's my understanding that -- it's the Amscan and --

CHAIRMAN SCALZO: We know exactly the one you're talking about. You can't miss it if you're getting on the Thruway.

MR. MODAFFERI: Essentially the difference between them and us is the facade facing the street, we have to make some grade changes. Our finished floor to the height of the building is 45 feet. If we could have those facades that are facing the street, due to site constraints it would be 45s, the same as them.

MR. LEVIN: There are no other buildings?

MR. MODAFFERI: That I'm aware of?

MR. LEVIN: Yes.

MR. MODAFFERI: That's the only one

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that I'm currently aware of. We could do some research, I guess, and see if there are any others.

CHAIRMAN SCALZO: How about the self-storage across the street? It seems high because it's down in a hole.

MR. MODAFFERI: I don't know.

CHAIRMAN SCALZO: Over on Jeanne Drive.

MR. MODAFFERI: I don't know.

CHAIRMAN SCALZO: Mr. Levin --

MR. LEVIN: I'm talking about New Windsor perhaps.

CHAIRMAN SCALZO: We're trying to stay in our municipality.

MR. LEVIN: Okay. How about the one --

CHAIRMAN SCALZO: Oh, the industry standard.

MR. MODAFFERI: Industry standard. We're building one in -- the campus. I forget the name of the municipality. We're proposing a much larger facility than this. It's all basically --

MR. LEVIN: What I'm trying to do is go look at it, the one I asked you to see another

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building, to judge the size of it. It's hard for me, I'm not a builder or anything, to see how big this is going to be.

MR. MODAFFERI: Okay. So the only one nearby that I could say for sure is the same or similar is the Amscan site --

MR. LEVIN: Okay.

MR. MODAFFERI: -- because the other one I was talking about is still in the approval process.

MR. LEVIN: I can drive up there and see it; right?

CHAIRMAN SCALZO: Up to the Matrix up on top. I'm sure you could.

MR. MASTEN: They have a lot of security up there right now.

CHAIRMAN SCALZO: If you flash your badge. Tell them we're here from the ZBA and we're here to help. That's what you should say. Exactly that.

MR. LEVIN: I'd like to see it.

CHAIRMAN SCALZO: Richard, if you're on I-84 heading towards Newburgh, you can see a lot of it.

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MR. LEVIN: I know. I've never been close to it. I'd like to just judge it.

CHAIRMAN SCALZO: Thank you.

Mr. Hermance, do you have anything?

MR. HERMANCE: Just a question about if you're going to be doing the excavation, is it possible to lower the building down and adjust some of the surrounding area so you wouldn't even need the variance?

MR. MODAFFERI: It's really not because the height variance is the 45 feet from the finished floor to the top of the parapet. It's 45.8 I think for building A, and that's only for the reason of trying to meet the grade where we have the loading areas on the south end at that same 4 foot below grade, and then meeting the height of the road that's coming up from the site, and that's at somewhere between 6 and 7 percent. We don't really want to go any steeper than that to try to build that up because we have the big trucks.

MR. HERMANCE: Okay.

MR. MODAFFERI: And the other side, obviously, as I said, that's the loading docks.



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That's the extra 3 or 4 feet that we need there.

CHAIRMAN SCALZO: Mr. Hermance, you're good?

MR. HERMANCE: Yes.

CHAIRMAN SCALZO: Very good. You went right to the Matrix which I pulled out the decision that we had come up with in 2015 or '16 or '17 on that. I read what we had discussed. There's a few differences here. Matrix is not contiguous with any R-1 District, which you are.

MR. MODAFFERI: Understood.

CHAIRMAN SCALZO: R-1 obviously is Residential. So the Matrix complex up there, nobody really cares what's going on. You know, the Thruway entrance is right there. 84. It's a lot of vehicular traffic, where vehicular traffic that's going to be coming out of this project is probably going to be coming from your site.

Now, Mr. Levin had asked, you know, heights -- the standard heights in different areas. If you could investigate into that, that would be great.

I heard in your narrative to begin with that you don't have defined tenants yet,

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2 therefore when you say the industry standard,  
3 which in your application, number 6, the area  
4 variances required, B, which is the benefit  
5 sought by applicant can not be achieved by some  
6 other method, you recite the industry standard.  
7 C, the requested height variance is not  
8 substantial because, you recite the industry  
9 standard. D, the hardship has not been self-  
10 created because internal operations. I  
11 understand that. But if you don't have defined  
12 tenants, how do you know that? The proposed  
13 variance will not have adverse effects. You  
14 know, you're going to screen -- from what I  
15 understand about screening, it's a natural  
16 screening that you're going to do. A lot of  
17 times there's been studies regarding sound  
18 mitigation. You do need a fence 100 feet to get  
19 any mitigation, which I see you have a number of  
20 241 here. I don't know how much vegetation  
21 there's going to be between it.

22 So I'm just -- as I look at your  
23 application, you do recite the industry standard.  
24 Now, Medline and Amazon out in Montgomery, are  
25 you aware of their building heights? 45 feet and

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46 feet. You've got your building B at 48. Those are some huge manufacturing -- not manufacturing but storage facilities out there. They found a way to do it. So I don't know -- Mr. Hermance said possibly dropping the whole site is very challenging and you're going to generate so much fill or excavation.

MR. MODAFFERI: Mm'hm'.

CHAIRMAN SCALZO: I am glad, too, that we're going to have an opportunity to speak about this one again. If you could also just re-review your application and why your area variances are requested. The industry standard is not an acceptable answer to some of these questions.

MR. MODAFFERI: All right.

CHAIRMAN SCALZO: Give me something better than that.

MR. MODAFFERI: Okay.

CHAIRMAN SCALZO: That's all I have for this, actually, at this point.

MR. MODAFFERI: Could I just ask again, the two sites that you mentioned, the Amazon and --

CHAIRMAN SCALZO: Medline. Town of

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Montgomery.

MR. MODAFFERI: Montgomery.

CHAIRMAN SCALZO: Yup.

At this point does anybody from the public have any comments on this application? I see a hand up.

MS. JABLESNIK: Mr. Fetter, go ahead.

MR. FETTER: Hi. Bill Fetter from Rockwood Drive. I believe at the Planning Board that it was presented that this would meet the height requirements in the Town Code. Has something changed that that's not the case? If I'm wrong I apologize.

MR. SCHUTZMAN: If I may. Stanley Schutzman. That's not the case. We presented the fact that a height variance was going to be required. As a result of that, the Planning Board actually gave us a written referral to the Zoning Board on that. That's, I think, part of the file here.

CHAIRMAN SCALZO: Mr. Fetter, I believe you might be thinking about -- there is another warehouse facility that's being proposed in the Town at the old Loop site. Perhaps that's the

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one you're thinking of.

MR. FETTER: No. This is up near  
Jeanne Drive that you're talking now; right?

Regardless, the Matrix is unfortunately  
something we have to live with forever. I don't  
think we need to have this throughout the Town.  
Find a tenant that can live with the required  
height. Otherwise, you know, find a site that's  
more suitable where you can excavate. Here  
you're probably going to hit shallow bedrock  
pretty shallow. To dig down there would be  
pretty difficult. Unless you lowered the  
finished floor and put the ramps -- you know, I'm  
getting into design. Enough said.

I oppose it. There are other options.  
There's probably plenty of existing warehouses in  
the area. Maybe not plenty but some. I'd rather  
see another option. Thank you.

CHAIRMAN SCALZO: Thank you, Mr.  
Fetter. Mr. Fetter, be advised we will be  
hearing this applicant again at the ZBA, so you  
will have another opportunity.

MR. FETTER: Thanks. Enough said I  
think.

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CHAIRMAN SCALZO: Thank you.

Anyone else from the public that wishes to speak about this application?

MS. COLLINS: Yes. Hello?

CHAIRMAN SCALZO: Yes. The floor is yours.

Hi. We just -- I live actually on Berry Lane. My name is Jeanine Collins. We just recently became aware of what's going on at the end of our road. It seems like they're accessing this site on our road -- off of our road. It is a dead-end road. There are children that play on this road. I'm just concerned how this will affect us. And is it correct that they're accessing this site off of our road?

CHAIRMAN SCALZO: Mr. Modafferi.

MR. MODAFFERI: We are proposing an emergency access drive from Berry Lane that would be gated. It is not a primary access. It's only for emergency purposes.

CHAIRMAN SCALZO: That's for emergency purposes after the site is matured. What is your intent for during the actual construction processes?

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2 MR. MODAFFERI: Well right now during  
3 construction we're showing a construction  
4 entrance at Route 300. The site -- I will say  
5 that the dead end of Berry Lane, the big  
6 turnaround area, that is actually within the  
7 project site. There is an old house that was  
8 there. There was access to that for some -- the  
9 house is abandoned.

10 CHAIRMAN SCALZO: Residential access,  
11 yes.

12 MR. MODAFFERI: Yes.

13 MS. COLLINS: My concern is residential  
14 access and construction access are two different  
15 things in my eyes. We've had a lot of traffic up  
16 and down this road with this project going on.  
17 I'm not sure -- like I'm not familiar with the  
18 rules or the laws. I am more concerned about the  
19 children. My son, he's a 14 year old kid, rides  
20 his bike sometimes. It's just a little  
21 concerning to me. I mean even if you were to put  
22 a gate, how do we know -- like who is going to  
23 monitor when it is really open and not open?  
24 What are the laws when it comes to that?

25 CHAIRMAN SCALZO: As far as laws when

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it comes to that, that's something I believe that would be monitored by Code Compliance and the Building Department. I am unsure of any mitigative efforts they have in place to prevent construction vehicles from running on Berry Lane. However, perhaps a call to the Building Department to ask that question may give you some answers that I can't.

MR. COLLINS: My name is Alex Collins. This is Jeanine's wife -- or husband. I'm sorry. My question is how does this impact, you know, the residents all together? Even besides the construction, once this is done. Is there a fence going to be put up to, you know, prevent noise and things that you mentioned? I mean this is the first time I'm hearing about this so I don't know what's proposed. I don't know what's being done.

CHAIRMAN SCALZO: One moment, sir. Siobhan, were we able to scan these drawings and get them on the internet for anyone to see?

MS. JABLESNIK: No.

CHAIRMAN SCALZO: Mr. Modafferi, could



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we ask you to PDF all of your drawings and forward them to Siobhan, please?

MR. MODAFFERI: The Planning Board already has them.

MS. JABLESNIK: They should be on the Planning Board, under their website link.

MR. MODAFFERI: Our Planning Board application was provided in PDF form in full.

CHAIRMAN SCALZO: Very good. Siobhan, can you reach out -- you know, it's electronic. Duplicate information is not bad in this case.

MS. JABLESNIK: That's fine.

CHAIRMAN SCALZO: Great. Thank you.

MR. COLLINS: I mean my concern is having -- you know, I don't know the size of this building. I don't know what it's being used for. You know, this is 100 feet from our house. I mean I'm definitely opposed to this no matter what it's used for. We don't need a warehouse in our backyard. I mean -- I don't know. I just -- like I said, this is all new to us because the posting that was posted about this meeting is the first one we've seen on the property.

Again, there's a lot of traffic. We

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see a lot of people working back there, or whatever they're doing.

MR. MCKELVEY: It's zoned for this?

CHAIRMAN SCALZO: This is in an IB Zone?

MR. MODAFFERI: It is.

CHAIRMAN SCALZO: Sir, with regard to -- it is an acceptable use in this zone. So with regard to why the applicant is here this evening is purely to ask us for relief from building heights. When it comes to the other development criteria and items of the site, the Planning Board will also be holding a public hearing for this. Many of your concerns that you just brought up would probably be better addressed by the Planning Board. They have different criteria -- they have different things that they look at than we do. We are purely here this evening because the applicant has asked for buildings higher than the code allows.

MR. COLLINS: Okay. Understood. So there will be another meeting that I can address these concerns?

CHAIRMAN SCALZO: That is correct. And

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feel free -- actually, you can also write -- if you were to write to the Planning Board or write to the Town Supervisor, all of your correspondence will find its way to the proper Board.

MR. COLLINS: Okay. Thank you very much.

CHAIRMAN SCALZO: Thank you.

MR. DONOVAN: If I may ask, Berry Lane, what zoning district is that in?

MR. MODAFFERI: The R-1.

MR. DONOVAN: The R-1. So whether this applies or not, it just kind of dawned on me for the first time, I'm looking at Mr. Schutzman, there is a case cited at the bar like fifteen years ago that holds, and this is not where your primary access is, but you can not access a different zone. So in other words, going from the IB through the R-1, certainly primary access, there's a case that doesn't permit that. Whether this is distinguished because your primary access is going to be 300. I don't want you to get down the road and not kind of cover that base.

MR. MODAFFERI: Okay.

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MR. DONOVAN: It just came to my head,  
so I point it out to you.

CHAIRMAN SCALZO: Thank you.

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

MS. JABLESNIK: You can unmute  
yourself. Can you unmute yourself, Lauren.

CHAIRMAN SCALZO: Lauren, can you  
unmute yourself?

MS. MANDEL: I wasn't sure if it was my  
turn or not. I just wanted to voice my  
opposition to the approval of the extension of  
the height variance, simply because it will be an  
additional eyesore that we do not need in the  
Town of Newburgh. It's not congruent with the  
community. It's definitely not something that we  
need in terms of additional visual deterrent from  
our beautiful Town. I just wanted to voice my  
opposition to this.

CHAIRMAN SCALZO: Thank you. Your  
comments are being recorded.

Is there anyone else from the public,  
please raise your hand and we'll call on you.

(No response.)

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MS. JABLESNIK: Nothing.

CHAIRMAN SCALZO: Very good. All right. I'm going to look back to the Board. Any -- Mr. Levin.

MR. LEVIN: One more question. When you go on the property, what entrance do you take? How do you go on the property?

MR. MODAFFERI: How have I gotten on the property?

MR. LEVIN: Yes.

MR. MODAFFERI: I have parked on the side of 300 at times and I've driven up Berry Lane and parked on the property.

MR. LEVIN: Berry Lane?

MR. MODAFFERI: I've done both. I've parked on the side of 300 and left my vehicle on the side of 300 and walked up the hill, and I've also driven on Berry Lane and parked on my site property and walked through the site.

MR. LEVIN: Okay. Berry Lane is not a private road?

MR. MODAFFERI: It is not as far as I'm aware.

MR. LEVIN: Thank you.

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CHAIRMAN SCALZO: Thank you.

Mr. Modafferi, I did see you were taking notes. In the application, number 6-B, C and E where you mentioned industry standard, I'm not saying you need to, you may want to revisit that just to come up with a different narrative for that.

MR. MODAFFERI: Or expand on it and explain it. We'll find a way to -- we'll find a way to evaluate that and --

CHAIRMAN SCALZO: Thank you.

MR. MODAFFERI: -- do what we can.

CHAIRMAN SCALZO: Okay. Anyone else from the Board?

MR. MCKELVEY: Your entrance is going to be off of 300?

MR. MODAFFERI: Yes. Primary entrance off 300. We're proposing, again, an emergency access off of Berry Lane. That primarily came from the firehouse being right at the end of Berry Lane. If there was a problem at this site, we would want the fire trucks to be getting there --

CHAIRMAN SCALZO: As fast as they can.

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MR. MODAFFERI: That's it. That was the only reason. And it exists there today. The connection exists there today.

MR. COLLINS: Can I chime in again?

CHAIRMAN SCALZO: Just state your name please.

MR. COLLINS: Alex Collins, I live on Berry Lane. I mean I understand that this is an emergency exit. But this road, Berry Lane, is not -- I mean it's a very narrow road. This is not a two-way traffic road. It's a dead-end cul-de-sac. So, you know, it's not a -- I mean to act like it's an access, you know, like a regular road, it's not. I mean it's not lined. Nothing. There's no streetlights. There's nothing on this road. Just so you're aware of that. I don't want you to think that this is some type of main road.

CHAIRMAN SCALZO: Right. Mr. Modafferi, in his presentation, did state that it will be gated. So it will not be a thoroughfare for anything other than emergency access.

MR. COLLINS: Okay. And for construction, like again, they're actually using

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this road now. Right now we've seen small trucks and things like that. I don't know what the future holds, whether there will be big dump trucks and things like that coming down this road.

CHAIRMAN SCALZO: Sir, that's a very good question. Again, here we're to discuss the height variances that they're requesting. These questions with regard to the actual construction activity itself are better addressed at the Planning Board level.

MR. COLLINS: Okay.

CHAIRMAN SCALZO: Thank you.

MR. COLLINS: Thank you.

CHAIRMAN SCALZO: Anyone else from the public?

(No response.)

CHAIRMAN SCALZO: No. Mr. Marino, I thought I saw your hand up.

MR. MARINO: A little late getting it up. Are you presently moving any dirt from this site?

MR. MODAFFERI: Currently right now?

MR. MARINO: Yes.



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MR. MODAFFERI: Small samples maybe for our SEQRA analysis. That's it. We're doing the phase 1.

CHAIRMAN SCALZO: Testing samples?

MR. MODAFFERI: Yeah. We're doing a phase 1 right now.

MR. MARINO: You don't have any dump trucks loading up and moving out of the area with the dirt?

MR. MODAFFERI: No. Not that I'm aware of.

MR. MARINO: Do you anticipate that, if you were to get approval, you might be moving a lot of dirt? Are you going to have a lot of dump trucks coming in and out of the area? We have that now with some other streets in the Town and the neighbors don't like it at all. Too much noise, too much traffic. Do you anticipate that possibly happening at your location?

MR. MODAFFERI: It's our intention to balance the site. Obviously it will be a construction site and there will be some trucks in and out. You know, I don't know that we've gotten into that specific detail of those

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2 numbers. I mean we're looking to balance the  
3 site. If we can balance the site with earthwork  
4 and all the material happens to be good enough to  
5 be used for fill, then we're just moving it  
6 around the site, we're not trucking it in or out.

7 MR. MARINO: Is there a formula that  
8 you have to use in removing dirt from the area as  
9 to what routes the trucks should use? Is there  
10 anything in State law or Town law that says  
11 you've got to use certain roads depending on  
12 their access, depending on their location? In  
13 other words, so you wouldn't have massive dump  
14 trucks, which we've had on Union Avenue over the  
15 past year or so, coming with a lot of dirt out of  
16 the area. Of course the neighbors don't like it  
17 because it's a quiet road and you have this heavy  
18 traffic. If you were to go that way, is there a  
19 formula that you have to use as to the roads the  
20 trucks have to take to get the dirt out of the  
21 area that they're working on?

22 MR. MODAFFERI: I don't believe so.

23 CHAIRMAN SCALZO: Mr. Marino, if I  
24 could actually help with this. They don't  
25 necessarily have a formula. Some larger sites

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2 have say haul roads. What you need to keep in  
3 mind is with very large construction, the longer  
4 a truck has to drive somewhere, the more  
5 expensive it is. They're going to do their best  
6 -- when he says balance the site, if his cuts  
7 equal his fills, they have a winner. They don't  
8 want to get out on the road. The longer it stays  
9 on site, the less expensive the activity becomes.

10 MR. MARINO: I know the people who live  
11 on the roads that are being used also don't like  
12 it.

13 CHAIRMAN SCALZO: Right. They do have  
14 access to New York State Route 300, which, you  
15 know, it was designed for highway traffic  
16 loading. It's heavy traffic.

17 Did I answer your question for you?

18 MR. MODAFFERI: Yes, you did. Thank  
19 you.

20 CHAIRMAN SCALZO: Sometimes it's easier  
21 to -- I don't know if they understood what you  
22 said when you said balances.

23 MR. MODAFFERI: That's fine.

24 CHAIRMAN SCALZO: Thank you, Mr.  
25 Marino.

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Does anyone else from the public have any questions?

(No response.)

CHAIRMAN SCALZO: One more time from the Board?

MR. LEVIN: No.

CHAIRMAN SCALZO: So I'll look from the Board for a motion to keep the public hearing open.

MR. DONOVAN: I assume we're going to adjourn without a date.

MR. SCHUTZMAN: We're not certain when --

MR. DONOVAN: It may be some time. Just bear in mind we're going to ask you to re-notice just so folks know. We typically don't do that, but you have to get through the Planning Board, get through the SEQRA process. It could be a couple months before you're back. I mean you hope not but it could be.

MR. MODAFFERI: I'm not going to speculate on anything.

MR. SCHUTZMAN: Acknowledging the agency status, we hope it will be soon.

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MR. DONOVAN: The motion would be to adjourn without a date.

CHAIRMAN SCALZO: We can do that. So keeping the public hearing open, is that how I approach this?

MR. DONOVAN: Yes.

CHAIRMAN SCALZO: I'm looking for a motion to keep the public hearing open with an undetermined date.

MR. MASTEN: I'll make the motion.

CHAIRMAN SCALZO: Mr. Masten made the motion for keeping the hearing open with an undetermined closing date.

MR. HERMANCE: Second.

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

MR. HERMANCE: Aye.

MR. LEVIN: Aye.

MR. MARINO: Aye.

MR. MASTEN: Aye.

MR. MCKELVEY: Aye.

CHAIRMAN SCALZO: Aye.

Opposed?

(No response.)

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CHAIRMAN SCALZO: We'll see you when we see you. Thank you.

MR. MODAFFERI: Thank you very much.

(Time noted: 7:50 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 10th day of February 2021.

*Michelle Conero*  
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MICHELLE CONERO

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

----- X  
In the Matter of

GIFFORD & IFETAYO AUSTIN  
48 Jennifer Rose Way, Wallkill  
Section 5; Block 1; Lot 12  
RR Zone

----- X

Date: January 28, 2021  
Time: 7:50 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
GREGORY M. HERMANCE  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
JOHN MCKELVEY

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: GIFFORD & IFETAYO AUSTIN

----- X

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

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CHAIRMAN SCALZO: Our next applicant this evening are Mr. and Mrs. Austin, 48 Jennifer Rose Way, Wallkill, seeking area variances for the rear yard to keep a 10 by 12 lower rear deck. The second one is the rear yard, to keep a 10 by 12 upper rear deck. The third one is the side and combined side yards, to keep a 16 by 16 side deck.

Siobhan, do we have mailings on this?

MS. JABLESNIK: Yes. This applicant sent out 18 mailings.

CHAIRMAN SCALZO: 18 mailings. Very good.

This is not affected by any County referrals?

MS. JABLESNIK: No.

CHAIRMAN SCALZO: Very good. All right. As I mentioned the first couple of applications, we have all seen your site. Great place. I didn't realize just how private that road is. It's very nice to see. You've got nothing but woods behind you. That's great.

Now, from just the way it was stated on



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the agenda here, that pretty much captures everything about your application. Having visited the site, speaking with the applicant, it's my understanding, and let me know when I go wrong here, that you purchased the home with these decks already in place?

MS. AUSTIN: That is correct.

CHAIRMAN SCALZO: You are at this time trying to make it right?

MR. AUSTIN: Correct.

MS. AUSTIN: Correct.

CHAIRMAN SCALZO: When we get to the criteria later, if this was self-inflicted, well it wasn't.

Anyway, I looked around. The applicant is patiently waiting for whatever variance that we grant for him to start putting it all back together. So those are all of my comments on this.

I'm going to look to Mr. Hermance. Do you have anything?

MR. HERMANCE: I have no comments.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: I didn't realize -- what

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you were saying makes a lot of sense to me.

CHAIRMAN SCALZO: Sure. Mr. Masten?

MR. MASTEN: I was talking to the owner and we both agreed, they want to bring everything up to where it belongs.

CHAIRMAN SCALZO: And I think that's admirable. I think this is the way to do it. Most people come in looking for forgiveness after they did it. You bought it that way.

Mr. McKelvey?

MR. MCKELVEY: You bought it that way.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: It's a very quiet, rural area. I see no problem with it.

CHAIRMAN SCALZO: Very good. I'm going to look now to any members of the public that wish to speak about the application for the Austins on Jennifer Rose Way. Please raise your hand.

(No response.)

CHAIRMAN SCALZO: We have nothing. Very good.

I'll look back to the Members of the Board. Any comments?

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MR. HERMANCE: No.

MR. LEVIN: No.

MR. MCKELVEY: No.

MR. MASTEN: No.

MR. MARINO: No.

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

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

MR. HERMANCE: Second.

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

MR. HERMANCE: Aye.

MR. LEVIN: Aye.

MR. MARINO: Aye.

MR. MASTEN: Aye.

MR. MCKELVEY: Aye.

CHAIRMAN SCALZO: Aye.

Any opposed?

(No response.)

CHAIRMAN SCALZO: I didn't think so.

Very good.

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Moving on. We're going to go through our variance questions here.

This is a Type 2 action under SEQRA; isn't that right?

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

CHAIRMAN SCALZO: Very good. Thank you.

The first one being whether or not the benefit can be achieved by other means feasible to the applicant. As stated earlier, they inherited this problem. I would say no.

The second, if there's an undesirable change in the neighborhood character or a detriment to nearby properties. If they are replacing in kind I don't believe there's going to be -- actually, it's going to improve the neighborhood because you're not going to see that one deck sloping.

They're nodding in agreement, Michelle, for the minutes.

The third, whether the request is substantial. No. It appears to be replacing in kind.

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

MR. HERMANCE: No.

MR. LEVIN: No.

MR. McKELVEY: No.

MR. MASTEN: No.

CHAIRMAN SCALZO: No.

The fifth, whether the alleged difficulty is self-created. It is not. They purchased it this way.

So if we approve, we'll grant the minimum variances. Having gone through the balancing tests, does the Board have a motion of some sort?

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

MR. McKELVEY: I'll second it.

CHAIRMAN SCALZO: We have a motion for approval from Mr. Masten. We have a second from Mr. McKelvey. All in favor?

MR. HERMANCE: Aye.

MR. LEVIN: Aye.

MR. MASTEN: Aye.

MR. McKELVEY: Aye.

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CHAIRMAN SCALZO: Aye.

Any opposed?

(No response.)

CHAIRMAN SCALZO: Mr. Marino did  
abstain from this, purely because he wasn't in  
the room.

The variances are granted. Good luck.

MS. AUSTIN: Thank you.

MR. AUSTIN: Thank you.

(Time noted: 7:55 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 10th day of February 2021.

*Michelle Conero*  
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MICHELLE CONERO

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

----- X

In the Matter of

SNK PETROLEUM WHOLESALERS

747 Boulevard (Drury Lane), Newburgh  
Section 89; Block 1; Lots 80.1 & 80.2  
IB Zone

----- X

Date: January 28, 2021  
Time: 7:55 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
GREGORY M. HERMANCE  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
JOHN MCKELVEY

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

----- X

MICHELLE L. CONERO  
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CHAIRMAN SCALZO: Our next applicant this evening is SNK Petroleum Wholesalers, 747 Boulevard, which is also known as Drury Lane, in Newburgh.

They have made communication with the Board that they wish to defer to next month because we have not heard back from the County for the GML 239, so therefore we would not be able to close the public hearing anyway.

Do I have to make a motion to --

MR. DONOVAN: We should make a motion to hold it over to the February meeting.

CHAIRMAN SCALZO: Very good. I'll look to any Members of the Board --

MR. MCKELVEY: I'll make the motion.

CHAIRMAN SCALZO: -- to hold the public hearing open to the February meeting.

By Mr. McKelvey.

MR. HERMANCE: Second.

CHAIRMAN SCALZO: We have a second by Mr. Hermance. All in favor?

MR. HERMANCE: Aye.

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MR. LEVIN: Aye.

MR. MARINO: Aye.

MR. MASTEN: Aye.

MR. MCKELVEY: Aye.

CHAIRMAN SCALZO: Aye.

Opposed?

(No response.)

CHAIRMAN SCALZO: None. Therefore SNK  
Petroleum will be on the February agenda.

(Time noted: 7:57 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 10th day of February 2021.

*Michelle Conero*  
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MICHELLE CONERO

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

----- X  
In the Matter of

TALCOTT ENGINEERING FOR MILLER ENVIRONMENTAL

6 Ridgeview Drive, Newburgh  
Section 98; Block 1; Lot 20.1  
IB Zone

10 Ridgeview Drive, Newburgh  
Section 98; Block 1; Lot 18  
R-3 Zone

----- X

Date: January 28, 2021  
Time: 7:57 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
GREGORY M. HERMANCE  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
JOHN MCKELVEY

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

----- X

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

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CHAIRMAN SCALZO: Moving on. The next applicant was Talcott Engineering for Miller Environmental, 6 Ridgeview Drive in Newburgh.

This did not receive County -- we didn't hear back from the County from the last time.

Mr. Hermance and I both stepped out of the room for this. We recused ourselves. However, it's my understanding that the approvals -- the Board had acted favorably in this case. We were just waiting for --

MR. DONOVAN: You're not really allowed to do that but I wasn't aware. I was carried away with power right to the approval. I think I would ask that the Board simply -- do we have a quorum? Yes. Just a motion to reaffirm their approval.

CHAIRMAN SCALZO: Very good. Mr. Hermance and I will be abstaining. I'm acting as the mouthpiece here.

Mr. Marino, to catch you up, Talcott Engineering for Miller Environmental, 6 Ridgeview Drive, Newburgh. The Board had acted on it in

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November, although apparently we acted -- we were a little ahead of -- the cart ahead of the horse type of situation there.

So we are looking to reaffirm your --

MR. DONOVAN: Approval of the application.

CHAIRMAN SCALZO: -- approval of the application. I cannot vote. Mr. Hermance cannot vote. I'm looking for anyone --

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

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

MR. MASTEN: I'll second that.

CHAIRMAN SCALZO: We have a second from Mr. Masten. All in favor in this case?

MR. LEVIN: Aye.

MR. MARINO: Aye.

MR. MASTEN: Aye.

MR. MCKELVEY: Aye.

CHAIRMAN SCALZO: We have the four ayes and the two abstentions of Mr. Hermance and myself.

Motion carried.

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(Time noted: 8:00 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 10th day of February 2021.

*Michelle Conero*  
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MICHELLE CONERO

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

----- X  
In the Matter of

ALEJANDRO RIVERA

28 Rockwood Drive, Newburgh  
Section 109; Block 1; Lot 28  
R-3 Zone

----- X

Date: January 28, 2021  
Time: 8:00 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
GREGORY M. HERMANCE  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
JOHN MCKELVEY

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: ALEJANDRO RIVERA

----- X

MICHELLE L. CONERO  
3 Francis Street  
Newburgh, New York 12550  
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CHAIRMAN SCALZO: The next applicant this evening is Alejandro Rivera, 28 Rockwood Drive, Newburgh. They are seeking a special permit for a home occupancy -- for a home occupation subject to a special use permit to operate a small firearms dealer business in the basement of the dwelling.

Please recall, the public hearing is closed. We allowed for a ten-day comment period of which we did receive quite a few comments in that ten-day period. It was an awful lot of reading.

So in this case there is discussion amongst the Board Members here and then we hope to come to a resolution this evening. Again, the public hearing is closed. We will not be soliciting any comments from the applicant or the public in this case.

So that being said, going back to the Members of the Board. This is an unusual special permit request. I'm going to start over with Mr. Marino. Mr. Marino, have you digested all the information that was provided in the November meeting? Have you looked at the petitions? Have

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you looked at the letters of support? Have you looked at the letters that do not support this application? Do you have any comments at this time?

MR. MARINO: Probably nothing to add to the solution to the problem. Apparently a business is allowed there in that area with certain stipulations. It's a question now of this Board trying to decide do we want to go ahead and allow that to be there or do we prefer something more docile and quiet and not with the impression that guns are going to be available there. At this point I can't really say one way or the other.

CHAIRMAN SCALZO: Okay. I want to exchange ideas here so we all get a feeling for what's going on here.

MR. DONOVAN: Mr. Chairman, would the Board find it helpful if I kind of reviewed the special permit criteria?

CHAIRMAN SCALZO: That would be very helpful, Counselor. Thank you.

MR. DONOVAN: Basically what's proposed is a home occupation. The code says that a home

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occupation can be permitted upon the issuance of a special permit by the Zoning Board. Our code calls out, in this instance, for residential use basically three general standards that need to be taken into consideration. I'm going to read each of them for you.

The first one is that each special permit use shall be of such a character, intensity, size and location that in general will be in harmony with the orderly development of the district in which the property concerned is situated and will not be detrimental to the orderly development of adjacent districts.

The second is that each special permit use sought in a residence district shall be so located on the lot involved that it shall not impair the use, enjoyment and value of adjacent properties.

The third is the nature and intensity of the special permit use sought in a residence district and the traffic generated shall not be hazardous or detrimental to the prevailing residential character of the neighborhood.

Those are the three general standards

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that the code calls out for you to take a look at.

There's also another provision in the code. This falls under Section 185-48.6 which is home occupations. We've had this before. That provides it's appropriate for the ZBA, if you should grant an approval, to be a finite time period subject to reapplication to the Zoning Board.

So those are kind of -- there's a timeframe and there's the three guiding standards for the issuance of a special permit, obviously different than what we look at for a use or an area variance. Hopefully that's helpful

CHAIRMAN SCALZO: It is very helpful. Thank you, Counselor. Your last sentence is the one that -- I have reviewed this. I've read everything that's been submitted to us. I still, as a guide, fall back to the criteria of an area variance as that's my guide. That is in addition to. Is my thought process flawed if I'm looking at the same criteria?

MR. DONOVAN: So you're not necessarily flawed but the area variance criteria is a

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five-part balancing test. This is three standards. You have certainly overlap between the standard and the area variance, whether or not granting the variance would alter the essential character of the neighborhood versus the special permit shall be of such character, intensity, size and location that in general will be in harmony in the orderly development in this district. So it bears similar language.

CHAIRMAN SCALZO: Okay. Thank you.

Thank you very much.

Mr. McKelvey, were we done? Were you finished with your comment? Am I moving on?

MR. MCKELVEY: Yes.

CHAIRMAN SCALZO: Very good. Mr. Masten?

MR. MASTEN: I have nothing right now.

CHAIRMAN SCALZO: Nothing right now.

Mr. Levin, do you have anything to add to this?

MR. LEVIN: I read everything.

CHAIRMAN SCALZO: It was quite a bit of reading.

Mr. Hermance?

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MR. HERMANCE: Like he said, there was a lot of reading during this.

They just brought up the point is it in harmony with the surrounding area. I have to have some thoughts about that also that I have to contemplate. I have no other comments than to take the new information under consideration.

CHAIRMAN SCALZO: Very good. It was lopsided with support as opposed to support for the FFL to have a business in the basement in this case.

As you've heard me say to our counselor here, when I look at this application, and believe me when I tell you, I know -- I've used the services of an FFL myself, so I know the value of what we have here. However, like I say, I go back to my guidance. You know, we had mentioned or talked about in the first meeting, which we heard, the benefit, can it be achieved by other means feasible to the applicant. Dave, you can stop me when I'm going wrong here. One of our Board Members or multiple Board Members had mentioned, you know, why not find a brick and mortar storefront in this case.

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The second, if there's an undesirable change in the neighborhood character or a detriment to nearby properties. The detriment to nearby properties is certainly subjective by a professional that could determine that, perhaps an appraiser, but not us. Certainly not us.

Neighborhood character. I necessarily wouldn't think it would be a change in the neighborhood character.

If the request is substantial. Well, if you look at the outpouring of comments that we got for and against on this, I would say that is substantial.

Whether the request has adverse physical or environmental effects. I'm not sure about that.

Is the difficulty self-created. Sure it is.

I'm going to go back to the character of the neighborhood. What I've read in the petition is that there is certainly an anxiety that's going on there that wasn't there before.

So as far as my thoughts on this application, that's where my head is.

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So we've been through us all. The public hearing is closed. We've had our counselor give us guidance. He's read us the code. We're all aware of what's going on.

MR. MARINO: Could I have the first point of that three-point standard read to us again, Mr. Donovan?

MR. DONOVAN: Sure. Each special permit use shall be of such character, intensity, size and location that in general it will be in harmony with the orderly development of the district in which the property concerned is situated and will not be detrimental to the orderly development of adjacent districts.

CHAIRMAN SCALZO: We did grant a special permit four or five months ago.

MR. MCKELVEY: But it wasn't in a residential --

CHAIRMAN SCALZO: It wasn't in a neighborhood as residential as this one. We didn't have -- we had one comment during that meeting. It was -- you know, the applicant had, for lack of a better term, explained away what the concerns were of the one person that had



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asked questions.

This is not easy. It's not a -- it's not cut and dry. This isn't somebody's deck is a little too big. This is something different.

I'm going to look again one by one. Mr. Hermance, do you have anything else to add?

MR. HERMANCE: No.

CHAIRMAN SCALZO: Mr. Levin, do you have anything to add?

MR. LEVIN: No.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: No.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: No.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: No.

CHAIRMAN SCALZO: No. All right. At this point, as I say, the public hearing is closed. We do not go through the area variance questions because this is not an area variance. It is a special permit. So Mr. Donovan --

MR. DONOVAN: So it would be appropriate, someone needs to make a motion to approve or deny the project.

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CHAIRMAN SCALZO: So at this point we will look to the Members of the Board for either approval or denial of the special permit.

MR. LEVIN: Go name by name.

CHAIRMAN SCALZO: Somebody needs to make a motion.

MR. DONOVAN: Motion to approve, motion to deny.

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

CHAIRMAN SCALZO: We have a motion to deny from Mr. Levin. Do we have a second?

MR. MASTEN: I'll second it.

CHAIRMAN SCALZO: We have a second from Mr. Masten. Now it's going to be a roll call.

MR. DONOVAN: For clarification, yes is a denial.

CHAIRMAN SCALZO: Yes is a denial, for clarification.

Roll call on that.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

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MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Sir, my apologies. However, your special use permit has been denied for this application.

UNIDENTIFIED SPEAKER ON ZOOM: Text that person we won.

UNIDENTIFIED SPEAKER ON ZOOM: That's good. I'm glad to hear that.

UNIDENTIFIED SPEAKER ON ZOOM: Thank God. Thank everybody.

UNIDENTIFIED SPEAKER ON ZOOM: Thank you.

UNIDENTIFIED SPEAKER ON ZOOM: Great job, guys.

UNIDENTIFIED SPEAKER ON ZOOM: Thank you.

CHAIRMAN SCALZO: Siobhan, can you mute them?

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MS. JABLESNIK: You're supposed to be muted, guys. I'm really sorry.

UNIDENTIFIED SPEAKER ON ZOOM:  
(Inaudible.)

MS. JABLESNIK: This is really inappropriate.

UNIDENTIFIED SPEAKER ON ZOOM: Is that right?

CHAIRMAN SCALZO: Even if you have to, hit the speaker.

MR. DONOVAN: It's not the way applications are decided. You get public input but then you're guided by what the law is. We have standards in the law and that's what you guide your decision by. This is not a show of hands. This is not people are opposed to it. It's whether or not the Board determines that the criteria was satisfied. Public input is important to that but at the end of the day it's not because twelve people were opposed and one was in favor. That's not what your decision is about. That's not how boards decide things. That's not how the system works.

CHAIRMAN SCALZO: Okay. Thank you.

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(Time noted: 8:10 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of February 2021.

*Michelle Conero*  
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MICHELLE CONERO

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

----- X  
In the Matter of

BOHLER ENGINEERING FOR HSC BALMVILLE, LLC

1 North Hill Lane, Newburgh  
Section 24; Block 4; Lot 1.12  
B Zone

----- X

Date: January 28, 2021  
Time: 8:10 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
GREGORY M. HERMANCE  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
JOHN MCKELVEY

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: CARYN MLODZIANOWSKI,  
KEN FIORETTI

----- X

MICHELLE L. CONERO  
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CHAIRMAN SCALZO: Our last applicant for the evening is Bohler Engineering for HSC Balmville, LLC, 1 North Hill Lane in Newburgh. This remained open from the November meeting. We had not heard back from County I believe.

That's correct, Siobhan?

MS. JABLESNIK: Correct. We have now.

CHAIRMAN SCALZO: The County's timetable has expired, therefore there's nothing holding us back. So it's been two months. Happy new year.

If you don't mind, if you could reintroduce yourself and reintroduce the project, please.

MS. MLODZIANOWSKI: Certainly.

CHAIRMAN SCALZO: Now we actually have real good equipment and people can hear very well.

MS. MLODZIANOWSKI: It's a new year. For the record, I'm Caryn Mlodzianowski from Bohler Engineering, here with Ken Fioretti from HSC Balmville, LLC, the applicant for the project.

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As a reminder, we were here on November 24th for a proposed area variance for our parking count for a proposed Dollar General retail store at 1 North Hill Lane at the intersection of New York State Route 9W here in the Town.

The criteria for the code is 1 parking space for 150 square feet which would result in 61 parking spaces for this retail store. We submitted an application for 26 proposed parking spaces based on other Dollar General retail stores we've designed and built in similar markets.

We were asked about parking counts at other stores. The store in Montgomery has about 31 spaces. We are currently permitting and designing a store in the Town of Marlborough, and their criteria is actually 1 space per 300 square feet, which would be 31 spaces, which is more in line with what we're proposing here as well.

Lastly, comments we received in November. We were asked to consider is it possible to add any more parking spaces than the 26 here. As I mentioned, other stores do have those 31 spaces. We did take a look at that and



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it is possible to add 4 more spaces, if the Board so desires, to put us in that realm between 26 and 30 spaces, or anywhere in between by adding 4 more spaces up in front as well. So we did want to present that this evening as an option should you feel those extra spaces are necessary.

CHAIRMAN SCALZO: Thank you. And again, Members of the Board, all we're here for is the parking spaces. But what it is, it's certainly an open forum to ask a couple extra questions.

I visited -- you had mentioned you're also designing one in Marlborough. Where in Marlborough?

MS. MLODZIANOWSKI: On Route 9W.

CHAIRMAN SCALZO: Is it in the shopping center, the preexisting shopping center, or it's a standalone new building?

MS. MLODZIANOWSKI: A standalone new building.

CHAIRMAN SCALZO: In the village, north of the village?

MS. MLODZIANOWSKI: In the Milton area.

CHAIRMAN SCALZO: Okay. In that area,

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is that a four-lane section of highway or a two-lane section of highway?

MS. MLODZIANOWSKI: Two-lane.

CHAIRMAN SCALZO: Two lanes in each direction?

MS. MLODZIANOWSKI: One lane in each direction.

CHAIRMAN SCALZO: One lane in each direction. Okay. Just so I'm clear.

Obviously down in this area it's challenging traffic wise. I visited the Dollar General in Plattekill. I visited the Dollar General in Modena. Two facilities that you did not build. I counted 31 and 36 in both of those. So they are more in line with the 31, 36. I sat in the post office at the one in Plattekill and people were in and out like bees. It was just quite a commotion, if you will. That was even off peak when I was there. There's quite a bit of activity that I never anticipated. I drove up the street to the one in Modena, and that one was quite interesting because they were actually accepting deliveries at the time, which there were two tractor trailers in there which made --

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the parking lot was very difficult. I don't know if they were intended to be there at the same time or not but they were.

So, you know, I see -- your layout here to me is more similar to the Modena layout because you have -- well, you come in and you can make an immediate right. I'm assuming that's where they're going to load in and out of. That did muck up the parking lot a little bit in Modena for people trying to jockey their way around.

I certainly think having that extra parking in there, or at least just to move turning radiuses in a parking lot, I think -- this is just my opinion, but there's five other people you've got to convince here, I think it would be beneficial for those additional spots myself. Having seen the tractor trailers in the one in Modena trying to jockey around, the Planning Board I'm certain is going to ask you about turning radiuses for when you accept deliveries there. Looking at this, looking at the Patty Cake Playhouse across the street and the short distance between your access to the

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parking lot to 9W, if you're trying to get out of there with a tractor trailer you're going to be blocking North Hill Road completely. These are all things that I'm hoping the Planning Board is going to address with you.

The road that's right behind you, which is Midway, that's a residential neighborhood. Counselor had mentioned before something about you can't travel through a -- well that's construction, it's something different. But that would certainly change the character of that neighborhood for your deliveries. These are all things that the Planning Board, I'm hoping, will address.

Something else that I picked up, just because your project really interested me after our last meeting. I looked at the trip generation manuals. I believe that they came up with a new criteria now for buildings between 8,000 and 17,000 square feet because they weren't really addressed. I might have not been looking at the publication that the Town of Newburgh Planning Board traffic engineer uses, but I do see there's a lot of interesting stuff going on

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with buildings exactly this size.

So the short story, I'm one guy sitting here, I think the 4 spots that you're proposing over there would certainly be beneficial to it. I didn't see anything more with the other sites, the 36.

I also think the traffic corridor on 9W is much more active than the Route 32 sites that I looked at. So how that -- you know, your trip generation is based on your square footage, not necessarily on traffic. However, if they're there, it's a bear to get out. I'm certain both of you have been to the site. Did you try to come out of North Hill Lane and take a left on 9W? How did you make out? Not very well. Again, that's a Planning Board issue. You know, the way I look at this from a transportation standpoint, that intersection needs to be signalized. It's out of my control but I certainly wanted to put that in so the meeting minutes would capture it so when Ken Wersted was reading this he could come to me and say what are you talking about.

MR. McKELVEY: Especially 9W at rush

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hour.

CHAIRMAN SCALZO: Oh, yeah. It's awful.

MR. MCKELVEY: A lot of people on rush hour are going to be in and out. They're just going to stop for a few things and go.

CHAIRMAN SCALZO: Right. Like I say, it was like bees. They were very transient. I didn't watch a full cycle of somebody coming and going, but it was more active than I thought, that's for sure. That's my comments.

Mr. Hermance, how about you? What do you got?

MR. HERMANCE: You pretty much covered --

CHAIRMAN SCALZO: I talk a lot.

MR. HERMANCE: -- what I was thinking. It would be a tough spot to get in and out for deliveries.

I like the fact that you're increasing the parking spots. That's a good thing.

MS. MLODZIANOWSKI: Thank you.

CHAIRMAN SCALZO: Very good. Mr. Levin?

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MR. LEVIN: I think it's most important that you increase that parking. You have a school on the other side of you, a nursery. I'm nervous that if it spills over, if you ever get so many cars that you're parking outside of it, it would be a bit of a disaster.

CHAIRMAN SCALZO: Very good. Thank you, Mr. Levin. Mr. Masten?

MR. MASTEN: I've got nothing, Darrin.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: The extra parking spaces are good.

CHAIRMAN SCALZO: Mr. Marino, you got anything over there?

MR. MARINO: The only thing I would say is I support the 4 extra spaces. If parking becomes a problem, your customers will simply stop going to the store. It will be a nuisance for them to try to get a parking space to get in and out of the parking lot and they'll simply say let's go someplace else. I hope you thought about that. That could be a problem down the road. The 4 extra spaces would be helpful.

MS. MLODZIANOWSKI: Thank you. Yes,

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they are. They want to be in the business to succeed. Based on other stores, they feel that that 30 spaces would be adequate.

CHAIRMAN SCALZO: Thank you. At this point we're going to open it up to any members -- Siobhan, did we get any correspondence on this? I don't recall seeing any. Did anything come in via e-mail?

MS. JABLESNIK: No.

CHAIRMAN SCALZO: No. Okay.

At this point I'm going to open it up to any members of the public that wish to speak about this application. Anybody there, raise your hand and we'll call on you.

Siobhan, who is it?

MS. JABLESNIK: Go ahead.

MS. MANDEL: Lauren Mandel, 7 Rockwood Drive. You know, I have a love/hate relationship with Dollar General. I feel like they do have their place in very rural environments like Plattekill where there's really no place for the local residents to get milk, or shoes, or a shovel, or makeup. Anything at Dollar General. However, in our area, Town of Newburgh, we have



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multiple, multiple shopping places and multiple places to stop to get milk or whatever you need. Dollar General is the last thing we need. I know this is not the Planning Board. The Planning Board, your colleague, does not Zoom his meetings for whatever reason. I just wanted these comments to also be on the record.

I think the traffic on 9W is completely busy enough without a Dollar General, again an unnecessary scar to our visual sight, right along with the Mansion there.

I think the extra parking spaces, you know -- I guess, you know, people at Dollar General don't go in and stay for hours at a time. You know, they go in, they go out. I don't even think the extra parking spaces are going to matter. I don't think people are going to be parking on 9W, waiting to get in. I can't see that happening.

So I just don't think the parking spaces are relevant. I think Dollar General shouldn't even be there. I think more asphalt is not anything that we need in the Town of Newburgh. Thank you.

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CHAIRMAN SCALZO: Thank you for your comments.

Does anyone else from the public wish to speak about this application?

(No response.)

CHAIRMAN SCALZO: It does not appear so.

I had one more comment. This is, I'll call it housekeeping. Your vicinity map that you show here is from 2008. What it does show is North Hill Lane, Devito Drive, there's Midway and one the one behind it. There was a brand new development -- I say brand new. Newer than 2008 -- that's got to have 50 more homes in it. So not that -- I know when I tried to hone in on where it was, I noticed that it was missing. So with that new development -- and also, actually we had an application that we heard here, I don't know, within the last year, somebody was looking to combine a lot but there's a one way in from there, which my assumption was to keep traffic off entering back onto 9W through that subdivision. There's traffic. That's not why you're here. It's just a consideration hopefully

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that the Planning Board picks up on. So if you could update your vicinity map.

MS. MLODZIANOWSKI: Certainly.

MR. FIORETTI: Certainly.

MR. LEVIN: Can I ask a question?

CHAIRMAN SCALZO: Sure.

MR. LEVIN: What's the reason, besides financially, not to put more parking spots in? Why are you holding back on that? Is there a reason you can't have more than 4 more?

MS. MLODZIANOWSKI: So historically and typically around 30 is the sweet spot for Dollar General. That's what we've done at multiple locations.

MR. LEVIN: What would be bad if you put 2 more in, 3 more in, 4 more in?

MS. MLODZIANOWSKI: So we felt comfortable with 26. We can get 4 more. What we're trying to do here is preserve all of the wetlands that are on site, which is basically -- I mean pretty much all this existing green you see here are wetlands today. So we're trying to keep the development at the corner which is a non-wetland area. As we keep adding impervious

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surface, we keep pushing into the wetlands.

MR. LEVIN: You're not going to bring harm to the wetlands, are you?

MS. MLODZIANOWSKI: I'm sorry?

MR. LEVIN: That's not the question that you're going to put some in wetlands?

CHAIRMAN SCALZO: They're allowed to disturb up to 3,000 square feet -- one tenth of one acre, 4,356 square feet.

MS. MLODZIANOWSKI: This layout does account for up to a tenth of an acre.

CHAIRMAN SCALZO: Right. As far as -- we don't have to see these plans. They probably have underground storage chambers with an outlet that releases water at a rate that's acceptable for the wetlands to handle.

MS. MLODZIANOWSKI: (Nodding.)

CHAIRMAN SCALZO: She's nodding, Michelle.

MS. MLODZIANOWSKI: Correct.

CHAIRMAN SCALZO: I put a lot of information in here that really isn't applicable to what we're talking about.

Does anybody else from the Board have

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anything else to add?

(No response.)

CHAIRMAN SCALZO: Okay. In that case I'll look to the Board for a motion to close the public hearing.

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

MR. McKELVEY: I'll second.

CHAIRMAN SCALZO: We have a motion from Mr. Levin, a second from Mr. McKelvey. All in favor?

MR. HERMANCE: Aye.

MR. LEVIN: Aye.

MR. MARINO: Aye.

MR. MASTEN: Aye.

MR. McKELVEY: Aye.

CHAIRMAN SCALZO: Aye.

Counselor, this is not a Type 2 action?

MR. DONOVAN: This is an Unlisted action. The Planning Board has indicated that they have not declared their intent -- at least by Dominic's letter I assume that they have not declared their intent to be lead agency.

MS. MLODZIANOWSKI: They have not.

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MR. DONOVAN: They're reviewing it on an uncoordinated review basis. That means for you guys that you could issue a negative declaration for this Unlisted action.

CHAIRMAN SCALZO: Right. So we're going to need a Board Member to make a motion for a negative declaration.

MR. McKELVEY: I'll make that motion.

MR. MASTEN: I'll second it.

CHAIRMAN SCALZO: We have a motion from Mr. McKelvey. We have a second from Mr. Masten. All in favor of the negative dec?

MR. HERMANCE: Aye.

MR. LEVIN: Aye.

MR. MARINO: Aye.

MR. MASTEN: Aye.

MR. McKELVEY: Aye.

CHAIRMAN SCALZO: Aye.

Very good.

And then we don't have the balancing criteria in this case, however --

MR. DONOVAN: Sure you do.

CHAIRMAN SCALZO: Well I'm looking at something different here. Sorry.

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The five factors, here we go.

MR. DONOVAN: The five factors, there you go. Correct.

CHAIRMAN SCALZO: The first one being whether or not the benefit can be achieved by other means feasible to the applicant. Well they're confined in this case by the site, wetlands, highway, right-of-way.

MR. MCKELVEY: They have no choice.

CHAIRMAN SCALZO: Well they could reduce the size of the building. They could do a bunch of other things. That doesn't meet the model of what they do apparently.

MR. DONOVAN: They couldn't achieve their objective without a variance.

CHAIRMAN SCALZO: Thank you, Dave.

Second, if there's an undesirable change in the neighborhood character or a detriment to nearby properties. I don't know that either. An undesirable change in the neighborhood. It is a business district. There are businesses in that corridor. This would just be another one. Detriment to nearby properties, I don't know about that. I do know it's going to

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be more difficult with traffic considerations.

The third, whether the request is substantial. Reducing from 60 down to 30, because we're going to get to the variance that we grant very shortly, it is substantial. However, we have heard testimony from the applicant's representation that they feel as though the reduction is not overwhelming to allow the facility to function as designed.

MR. MCKELVEY: They will add 4 spots.

CHAIRMAN SCALZO: They will, yes.

The fifth, whether the alleged difficulty is self-created. It's relative but not determinative. Well, for the lot I don't know how much more they could do. Currently the applicant is offering 4 additional parking spaces in addition to the 26 that were originally in the plan.

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

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



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CHAIRMAN SCALZO: With or without the 4 additional spaces?

MR. DONOVAN: Modified to provide for 30 spaces; correct?

MR. MARINO: Absolutely. You've got it.

CHAIRMAN SCALZO: So we have a motion to approve the variance with 30 parking spaces.

MR. LEVIN: I'll second it.

CHAIRMAN SCALZO: We have a second from Mr. Levin. All in favor?

MR. HERMANCE: Aye.

MR. LEVIN: Aye.

MR. MARINO: Aye.

MR. MASTEN: Aye.

MR. MCKELVEY: Aye.

CHAIRMAN SCALZO: Aye.

Any opposed?

(No response.)

CHAIRMAN SCALZO: The motions are carried. The variances are approved.

MS. MLODZIANOWSKI: Thank you.

MR. FIORETTI: Thank you very much.

(Time noted: 8:28 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 10th day of February 2021.

*Michelle Conero*

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MICHELLE CONERO

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

----- X  
In the Matter of

DAVID KOHL

125 Powelton Circle, Newburgh  
Section 80; Block 4; Lot 3

----- X

Date: January 28, 2021  
Time: 8:28 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
GREGORY M. HERMANCE  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
JOHN MCKELVEY

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

----- X

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

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CHAIRMAN SCALZO: One other piece of Board business. We had, let's see, Dave Kohl, 125 Powelton Circle, was granted a variance by the Town of Newburgh Zoning Board of Appeals on June 25th for his project at 125 Powelton Circle. The variance is about to expire. He's been delayed starting construction longer than he anticipated. Some of the delay is due to COVID-related matters. His contractor hopes to get started soon. He's asking for a six-month extension to his original request.

Therefore, I'm looking --

MR. McKELVEY: I'll make a motion we grant it.

CHAIRMAN SCALZO: Very good. Mr. McKelvey made a motion for the granting of a six-month extension.

MR. HERMANCE: I'll second it.

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

MR. HERMANCE: Aye.

MR. LEVIN: Aye.

MR. MARINO: Aye.

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DAVID KOHL

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MR. MASTEN: Aye.

MR. McKELVEY: Aye.

CHAIRMAN SCALZO: Aye.

Motion carried.

Siobhan, please let Mr. Kohl know that he will get that.

The last thing I believe is the meeting minutes for the November meeting. Have all of you had a chance to read them?

(Board Members nodding.)

CHAIRMAN SCALZO: Yes. Everyone is nodding I see. Can someone make a motion?

MR. MASTEN: I'll make a motion we approve the November minutes.

CHAIRMAN SCALZO: Thank you, Mr. Masten. Do we have a second?

MR. LEVIN: I'll second.

CHAIRMAN SCALZO: Very good, Mr. Levin. All in favor?

MR. HERMANCE: Aye.

MR. LEVIN: Aye.

MR. MARINO: Aye.

MR. MASTEN: Aye.

MR. McKELVEY: Aye.

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DAVID KOHL

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CHAIRMAN SCALZO: Aye.

Very good. If there's no other Board business, I suppose we can adjourn.

MR. MASTEN: When I stepped out to the men's room before I missed the vote on Austin. Was that a yes vote?

MR. DONOVAN: A yes vote.

CHAIRMAN SCALZO: A yes vote. We called you abstain.

MR. MASTEN: I've been called worse. Thank you.

CHAIRMAN SCALZO: Very good. I'm honestly very surprised that it's 8:30 and we're about to call the meeting. Very good.

MR. LEVIN: I thought it would be a lot longer.

CHAIRMAN SCALZO: Motion to adjourn?

MR. MASTEN: I'll make a motion we adjourn.

MR. McKELVEY: I'll second it.

CHAIRMAN SCALZO: Motion from Mr. Masten. A second from Mr. McKelvey. All in favor?

MR. HERMANCENCE: Aye.

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MR. LEVIN: Aye.

MR. MARINO: Aye.

MR. MASTEN: Aye.

MR. MCKELVEY: Aye.

CHAIRMAN SCALZO: Aye.

We'll see you in February, folks.

(Time noted: 8:32 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 10th day of February 2021.

  
\_\_\_\_\_  
MICHELLE CONERO