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

----- X

In the Matter of

CARL PACELLA

1 Fleetwood Drive
Section 88; Block 1; Lot 16
R-1 Zone

----- X

Date: November 20, 2018
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: ROBERT J. DICKOVER, ESQ.
GERALD CANFIELD
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: ERIC SPENCER

----- X

MICHELLE L. CONERO
PMB #276
56 North Plank Road, Suite 1
Newburgh, New York 12550
(845)541-4163

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CARL PACELLA

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CHAIRMAN SCALZO: I'd like to call the meeting of the ZBA to order. The first order of business are the public hearings scheduled for this evening. 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. After all of the public hearings have been completed the Board may adjourn to confer with counsel regarding any legal questions it may have. The Board will then consider the applications in the order heard and will try to render a decision this evening but may take up to 62 days to reach a determination.

I would ask if you have a cell phone, to please turn it off or put it on silent. When speaking, speak directly into the microphone. It's being recorded. We have a stenographer recording the notes.

Roll call, please.

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CARL PACELLA

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MS. JABLESNIK: Present are Darrell
Bell.

MR. BELL: Present.

MS. JABLESNIK: Richard Levin.

MR. LEVIN: Present.

MS. JABLESNIK: Anthony Marino.

MR. MARINO: Here.

MS. JABLESNIK: John Masten.

MR. MASTEN: Here.

MS. JABLESNIK: John McKelvey.

MR. MCKELVEY: Here.

MS. JABLESNIK: Peter Olympia is
absent.

Darrin Scalzo.

CHAIRMAN SCALZO: Present.

MS. JABLESNIK: Also present is Code
Compliance, Gerald Canfield; our pretend Attorney
David Donovan who is Rob --

MR. DICKOVER: Robert Dickover.

MS. JABLESNIK: -- Robert Dickover; and
myself, Siobhan Jablesnik; and our new
Stenographer, Michelle Conero.

CHAIRMAN SCALZO: Thank you very much.

If we could all rise for the Pledge.

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CARL PACELLA

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Mr. McKelvey, if you would lead us.
(Pledge of Allegiance.)

CHAIRMAN SCALZO: Our first applicant this evening is under the name of Carl Pacella, 1 Fleetwood Drive, Newburgh. They are seeking an area variance for increasing the degree of nonconformity of the front yard on a corner lot to build a 12 by 20 rear deck. State roads require a minimum of 60 in the front yard and there's an existing 12.6 feet; an area variance to extend bulk table requirements of 20 percent building lot surface coverage where a 28.33 percent increase -- pardon me, a 28.3 increase is proposed.

If you could please come up, introduce yourself.

MR. SPENCER: I'm Eric Spencer. I want to put a deck on. I'm here for Carl.

CHAIRMAN SCALZO: Okay.

MR. SPENCER: It's a 12 by 20 deck.

CHAIRMAN SCALZO: I might add that all of us from the Board have visited every

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CARL PACELLA

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site. I saw you out there yesterday myself,
or a couple days ago. So we're all
personally familiar with the site. It's a
relatively straightforward application.

At this point I'm going to go to the
Board. Looking to my left; Mr. Marino, do
you have any comments on this application?

MR. MARINO: No, I don't. I was out
there today. That's fine.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: No. Do we have to have a
thing from the County on that?

CHAIRMAN SCALZO: I'll get to that.

MR. MASTEN: Okay.

CHAIRMAN SCALZO: You are correct
though, John.

Mr. Levin?

MR. LEVIN: No questions.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: No questions.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: No.

CHAIRMAN SCALZO: So as Mr. Masten had
just mentioned, this application had to go to the

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CARL PACELLA

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Orange County Department of Planning. What occurs in this case is that applications for certain approvals, which include area variances, are required by Section 239-1 of the General Municipal Law to be referred to the Orange County Department of Planning. The Department of Planning has 30 days, and I'm assuming at this point we have not passed the 30 days, Siobhan?

MS. JABLESNIK: No.

CHAIRMAN SCALZO: They have 30 days to issue a comment. They can recommend approval, they can recommend disapproval or they can issue something called a local determination. If they recommend a disapproval, then this Board needs a supermajority to override that recommendation. As Mr. Donovan informed me last month, the law is clear that until either the 30 days runs or we get the report, we as the Zoning Board of Appeals can not issue a determination.

So what we're going to end up having to do for you, sir, is we're going to open this up to any members of the public to comment on it but we can not render a decision this evening until we receive information back from the County.

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CARL PACELLA

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MR. SPENCER: How long is that?

CHAIRMAN SCALZO: Well the 30 days --
when did they go out?

MS. JABLESNIK: They went out right
after your application came in.

MR. SPENCER: About ten or twenty days
ago.

MS. JABLESNIK: About that.

CHAIRMAN SCALZO: The short story is
we're not going to convene between now and the
next meeting on the 27th of December, so I'm
going to recommend that the Board leave the
public hearing open because just in case the
County comes up with something that may require
members of the public or --

MR. SPENCER: What is the deal with
that from the County? What do they need?

CHAIRMAN SCALZO: All they need to do
is review the application. They don't need
anything from you.

MR. SPENCER: Okay.

CHAIRMAN SCALZO: We've sent them
everything that's required.

MR. SPENCER: All right.

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CARL PACELLA

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CHAIRMAN SCALZO: Have I covered it appropriately?

In this case I'm going to look -- I apologize that you had to come here. That's the process.

So I'll look to the Board for a motion here.

MR. MARINO: Can I ask a question?

CHAIRMAN SCALZO: Certainly.

MR. MARINO: How long does it normally take for the County to act upon such a request?

CHAIRMAN SCALZO: 30 days.

MR. MARINO: They have 30 days but do they normally do it sooner than that? This is the second one we've had in two months where the person has to come back and wait because the County hasn't acted.

MR. McKELVEY: They take 30 days.

CHAIRMAN SCALZO: Unfortunately it takes a bit. It's unfortunate for something as simple as this, but --

MR. SPENCER: Do you know -- I mean I just don't understand why the County has to have something --

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CARL PACELLA

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CHAIRMAN SCALZO: Route 17K, State, County. Unfortunately you're not the only one tonight that this is going to happen to.

MR. SPENCER: All right.

CHAIRMAN SCALZO: Unfortunately, as I said, we can't render a decision for you tonight. I will tell you this. I'm going to open this up to members of the public, if anyone would like to speak to this application.

MR. BELL: I have a question. Also it depends on when the applicant submits the application, if it's before the cutoff -- not the cutoff but before there's enough time to be reviewed by the County.

CHAIRMAN SCALZO: You're correct, Mr. Bell. Actually the cutoff is it, because if we receive an application --

MR. BELL: If you receive it too close to the timeframe, then that's what also -- that's why we have this issue as well, because if you don't submit it the 2nd or 1st of the month so you get it through in that 30 days, it won't be able to be --

MR. MARINO: It's unfortunate.

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CARL PACELLA

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MR. BELL: That's what the case is with this application. It was not his fault but it was right there at that time that they allow it to need to be in by.

MR. McKELVEY: The ones we do get, the applications are in maybe a couple weeks before the 30 days and we'd have them back. Our other secretary used to call them and try to get them and they just wouldn't send them.

MR. SPENCER: Okay.

CHAIRMAN SCALZO: Thank you.

However, do any members of the public here wish to speak about this application?

(No response.)

CHAIRMAN SCALZO: Hearing none, I'll go back to the Board. Does anyone have any comments on the Board?

(No response.)

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

MR. McKELVEY: You're just stuck being close to 17K.

MR. McKELVEY: I'll make a motion to hold the public hearing open.

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CARL PACELLA

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MR. LEVIN: I'll second that.

CHAIRMAN SCALZO: We have a motion to hold the public hearing open from Mr. McKelvey. We have a second from Mr. Levin. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is going to remain open. We will not re-notice for this. You don't need to appear. You can appear if you'd like to hear what happens but it's not a requirement for you to be here.

MR. SPENCER: That's on the 27th?

CHAIRMAN SCALZO: The 27th of December.

Thank you, very much.

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(Time noted 7:10 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 29th day of November 2018.

Michelle Conero

MICHELLE CONERO

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

----- X

In the Matter of

BRIAN CHEN & LIXIAO XIE

39 South Plank Road
Section 72; Block 13; Lot 5
B Zone

----- X

Date: November 20, 2018
Time: 7:10 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: ROBERT J. DICKOVER, ESQ.
GERALD CANFIELD
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: JUSTIN DATES

----- X

MICHELLE L. CONERO
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(845)541-4163

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CHAIRMAN SCALZO: Our second applicant this evening is Brian Chen and Lixiao Xie, 39 South Plank Road in Newburgh. The variance is to renovate an existing two-story building for use as a licensed massage therapy and cosmetologist office.

The existing building has a lot area of 13,335 square feet where 15,000 square feet is required; a lot width of 50 feet where 100 feet is required; a front yard setback of 30.1 feet where 60 feet is required; a side yard setback of 4.4 feet where 15 feet is required; and a combined side yard setback of 21.8 where 30 feet is required.

MS. JABLESNIK: All mailings and publications are in order. This applicant sent out 25 letters.

CHAIRMAN SCALZO: Mr. Dates, before I let you start I will also let you know this application had to go to the Orange County Department of Planning. Unfortunately we can't render our decision this evening until we have heard back from the County on this. I can go

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through exactly why but I just explained it to the previous applicant. Just be advised we're going to have to leave the public hearing open and we can not render a decision this evening.

Since you are here and you are prepared and the audience is here to give input on this application, so if you can start by introducing yourself and let's go.

MR. DATES: My name is Justin Dates, I work with Maser Consulting. I'm here to represent the applicant, Mr. Chen and Xie for the project.

The site is at 39 South Plank Road. It's substantially improved with an existing structure, parking areas in the front and rear of the building. The utilities, it's connected to the Town water, there's an on-site septic.

The current owner of this site purchased it back in 1989. From that point just until a few years ago it operated as an insurance office. Now they are looking to sell the site and the applicant here is looking, as Mr. Scalzo said, to put in a licensed massage therapy and cosmetologist office.

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For their business they're looking to renovate the interior.

The exterior has existed. It was bought in 1989 by Mrs. and Mr. Ritter. These variances which I'll present to you have been in place since that time.

The site is within the Town's B or Business Zoning District. A personal service use in that zone has the following bulk requirements which we comply with most. As we are here before your Board, there's five of them which we do not comply with, the first being lot area. The minimum lot area is 15,000 square feet, we're at 13,335 square feet. That's a difference of 1,665 square feet. That's a product of the existing parcel boundaries. It's an existing condition that's existed from the current owner and prior with those dimensions.

The next is lot width. The minimum is 100 feet and we have 50 feet. This is South Plank Road, Route 52 on the map. Here's our front boundary line, and that has a dimension of 50 feet. So we are deficient by 50 feet of that 100 foot requirement. Again, that's a product of

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the existing parcel dimensions.

The lot depth is 125 feet. We exceed that, 266 feet.

Front yard along the State highway within the Town is a 60 foot minimum. Right now the existing structure to the front, there's a porch on the front of the building there, we're at 30.1 feet. We're 29.9 feet deficient of that setback requirement, front yard setback.

Single side yard for this use in the zone is 15 feet. We are currently -- based on the existing location of the structure, we're at 4.4 feet. So there's 10.6 feet that we're deficient on that single side yard setback.

Both side yard setbacks in the zone are required to have 30 feet total. Combined we're at 21.8, so we're 8.2 deficient of that requirement.

Again, these are all products of the existing location of the house, the front and the two side yard setback variances. The structure has been there for quite some time and existed in this condition through until today.

So the remaining bulk requirements,

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rear yard, lot coverage, building coverage and building height, we comply within the zone.

As presented in the application, if these variances were granted it would not change the character of the neighborhood. If you were to drive by there today, whether or not they're noncompliant or if they are granted, you would not notice a difference in the physical character of this site. Some of the adjacent parcels are also in kind dimensional, the parcels. So width and also area. There are similar conditions on the adjacent parcels.

Also I have an aerial I can pass around. Ours is actually the one with the red roof. You can see orientation wise that the front of our building is pretty similar to all the homes -- all the buildings as you travel east into the City of Newburgh. The location of the other structures is very similar.

That's all.

CHAIRMAN SCALZO: Okay. Justin, thank you very much. I have a tax map in front of me as well which shows the lot to the left of you is 50 feet wide, the lot to the right of you is 50

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feet wide. They're dimensionally just about the same depth. I imagine if they were in here for something it would be a very similar conversation.

Preexisting nonconforming is what you've got going on. It's very simple.

The one question I do have, though, is your application does state that this is for a licensed massage therapist's office.

MR. DATES: Yes.

CHAIRMAN SCALZO: You are a registered landscape architect?

MR. DATES: That's correct.

CHAIRMAN SCALZO: Which is one of the regulated professions by the Office of Professions?

MR. DATES: That's correct.

CHAIRMAN SCALZO: As is massage therapy. I looked on the Office of Professions, and perhaps Brian is a nickname for Mr. Chen and his partner that's doing this. I don't know that this has any bearing on the application at all, but neither of them appear on the Office of Professions website as having a license for

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massage therapy. Again, that should not have an impact on your application, however it is now in the meeting minutes and the Planning Board, they may have questions about that as well.

MR. DATES: Okay. I mean I can secure a copy of their license.

CHAIRMAN SCALZO: That would be wonderful.

MR. DATES: We're going to be back before this Board as I hear.

UNIDENTIFIED SPEAKER: I have a copy of his license.

MR. DATES: Actually, we have a copy right here. It is not Brian Chen.

CHAIRMAN SCALZO: I was looking at it in the reverse name -- reverse order. So that makes a little more sense to me.

MR. McKELVEY: We forgot to mention that all the Board Members visit all of these sites.

CHAIRMAN SCALZO: Can I keep these?

MR. DATES: Of course.

CHAIRMAN SCALZO: Thank you very much.

MR. McKELVEY: We didn't mention that

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all the Members have visited the sites.

MR. DATES: Okay.

CHAIRMAN SCALZO: Very good. If you could pass those down to Siobhan.

Thank you very much. That alleviates a concern of mine, however it should have no bearing on the application.

At this point I'll look to the Members of the Board. Mr. Marino, do you have any comments on this application?

MR. MARINO: Do you anticipate more car traffic than the previous business that was there before? Do you have enough space for that additional parking?

MR. DATES: That's actually a topic that was discussed at the Planning Board, at our initial appearance before them. We were looking to park out all the existing paved areas that are on the site, which got us about five -- it got us five spaces. Personal use required seven. We were initially looking for a variance from the parking requirement. We went to the Planning Board first. They did not want to provide that referral and required that we build out the two

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additional parking spaces. So the map that you have was modified for the Planning Board sketch plan to show where we would build the additional two spaces at the back or the southern side of the site.

MR. MARINO: How many spaces will you have with the additional sites?

MR. DATES: Seven total.

MR. MARINO: Total?

MR. DATES: Yup. What they have is there would be two employees there, and all the services are by appointment only. They're able to schedule those appointments throughout the day and feel that at most you're going to have one patient for each of the employees. There should be plenty of spaces. With the two employees we would have five additional spaces. Even if four appointments got there between the overlap, we would be able to park them out.

CHAIRMAN SCALZO: Thank you. Mr. Masten?

MR. MASTEN: I have no questions.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: No questions.

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CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: The only question I have is we couldn't get on the property.

CHAIRMAN SCALZO: It wasn't plowed. We couldn't access the back of the lot.

MR. MCKELVEY: We couldn't get to the lower level.

CHAIRMAN SCALZO: Since you'll be back next month -- actually, the snow is gone now.

MR. DATES: It should be gone by now.

CHAIRMAN SCALZO: We'll try to make another visit out there.

Mr. Bell?

MR. BELL: No.

CHAIRMAN SCALZO: At this point I'll open it up to any members of the public that wish to talk about this application?

(No response.)

CHAIRMAN SCALZO: Hearing none --

MR. CANFIELD: Darrin, just a comment. With respect to your statement about the licensing, that's a requirement at the time of the building permit. The applicant must display a current license for these occupancies.

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CHAIRMAN SCALZO: Since you just brought it up, even if they were just going for the anesthetist?

Justin, is that a regulated professional as well?

MR. DATES: What's that?

CHAIRMAN SCALZO: An anesthetist for cosmetology.

MR. DICKOVER: It's a cosmetologist business.

CHAIRMAN SCALZO: Thank you, Jerry.

MR. CANFIELD: I have a question. In my packet, part 1 of the EAF is not here. Does everyone have that?

Justin, that was filled out and submitted?

MR. DATES: Yes. We did a short form.

CHAIRMAN SCALZO: I have part 2. I have part 3. I do not have part 1.

MS. JABLESNIK: I don't have it.

MR. DICKOVER: I have it.

MR. LEVIN: We have part 1.

MR. CANFIELD: Siobhan has it for the record?

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MS. JABLESNIK: I do not have part 1.

MR. CANFIELD: If you'd just make it a point to get that with the application.

MS. JABLESNIK: Let me just look in the file here.

MR. DATES: It should be right after the application form.

CHAIRMAN SCALZO: It's unusual some of them have it and some of them don't.

MR. DATES: My file copy has it with the application form.

CHAIRMAN SCALZO: I have two copies. I have sheets 2 and 3 and now 1, 2 and 3.

MS. JABLESNIK: I have it.

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

CHAIRMAN SCALZO: I'm going to go to my cheat sheet. Actually, all of the actions this evening are type 2 actions under SEQRA, this one obviously falling under that as well.

This is an unlisted action?

MR. DICKOVER: It's not residential.

CHAIRMAN SCALZO: Thank you. I stand corrected. This is an unlisted action under

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SEQRA. However, as I mentioned earlier, we can not close the public hearing this evening.

We have not made any motions; correct?

MS. JABLESNIK: No.

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

MR. MASTEN: I'll make a motion to keep it open.

MR. McKELVEY: I'll second.

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

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. McKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

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CHAIRMAN SCALZO: Yes.

The public hearing remains open. We'll stop back out and visit since we can walk in the backyard now.

MR. DATES: Sure. Just one other bit of information. The applicant does have other locations. This would be I believe the fourth. He's got one in Fishkill, Port Jervis and Middletown. They are an established business and looking to get one here in Newburgh.

CHAIRMAN SCALZO: Thank you.

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

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

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I further certify that I am not
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IN WITNESS WHEREOF, I have hereunto
set my hand this 29th day of November 2018.

Michelle Conero

MICHELLE CONERO

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

----- X
In the Matter of

ROBERT MILLER

22 Adonna Drive
Section 39; Block 1; Lot 82
R-2 Zone

----- X

Date: November 20, 2018
Time: 7:30 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: ROBERT J. DICKOVER, ESQ.
GERALD CANFIELD
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: ROBERT MILLER

----- X

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ROBERT MILLER

30

CHAIRMAN SCALZO: Our next application for this evening is Robert Miller, 22 Adonna Drive, seeking an area variance to construct a 6 by 10 deck where a minimum of 30 feet on the side yard is required.

MS. JABLESNIK: The applicant sent out 30 letters. All the mailings, publications and postings are in order.

CHAIRMAN SCALZO: Very good.

Sir, if you could identify yourself and tell us why --

MR. MILLER: My name is Robert Miller and I live at 22 Adonna Drive. I want to put a 6 by 10 deck on the side of my house which has a sliding glass door. There was a deck there when I moved in. That's pretty much the way to get out of the house. It's steps and a deck.

CHAIRMAN SCALZO: I see that. Your house sits quite a ways back from the -- yeah, you kind of hug that rear property line.

MR. MILLER: I think that was because of the placement of the well and the septic tank.

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ROBERT MILLER

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CHAIRMAN SCALZO: We can see where the door leads out to the no deck.

I have no comments on this. I'll look to my right this time.

Mr. Bell?

MR. BELL: No.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: No.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: I feel it's an expedition if the deck isn't fixed.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: No.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: It's a very nice rural area. I was there yesterday.

MR. MASTEN: There was a nice beautiful buck up there.

MR. MILLER: It wasn't too muddy, was it?

MR. MARINO: Not too bad.

CHAIRMAN SCALZO: At this time I'll open it up to any members of the public that wish to speak about this application.

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ROBERT MILLER

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(No response.)

CHAIRMAN SCALZO: Hearing none, I will look back to the Board.

Fostertown Road is a County road, isn't it? My apologies to you, sir. You're going to be stunned the same way the other applicants were stunned this evening. Because this is within 500 feet of a County road, this was sent to the County for their review, so therefore we can not render a decision this evening purely because we're waiting to hear back from the County. In this instance we're also going to need to leave the public hearing open for this evening, although this is a type 2 action under SEQRA so we don't have to figure that out later.

If I could look to the Board for a motion to keep the public hearing open.

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

MR. MARINO: I'll second it.

CHAIRMAN SCALZO: We have a motion from Mr. Bell. We have a second I think from Mr. Marino. Roll call.

MS. JABLESNIK: Mr. Bell?

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ROBERT MILLER

33

MR. BELL: Yes.

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo:

CHAIRMAN SCALZO: Yes.

The public hearing remains open. No one else will be re-noticed. As I mentioned to another applicant, you're not required to be here. We're going to have our own conversation about it and we will render a decision at that point. We still have 62 days from then to render a decision I believe.

Jerry, you had a question?

MR. CANFIELD: I do. Just in the packet is a document from TH Remodeling.

MR. MILLER: Yes.

MR. CANFIELD: They reference three decks.

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ROBERT MILLER

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MR. MILLER: I have permits for the front and the back deck of the house. They've already been approved. I wanted to do them all at once.

MR. CANFIELD: I see. So this is just --

MR. MILLER: For the side.

CHAIRMAN SCALZO: Just for the B deck.

MR. CANFIELD: The B deck. Okay.

CHAIRMAN SCALZO: Thank you very much.

MR. MILLER: Thank you.

(Time noted: 7:36 p.m.)

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

----- X
In the Matter of

KENNETH DUXBURY

9 Smith Avenue
Section 32; Block 7; Lot 3
R-1 Zone

----- X

Date: November 20, 2018
Time: 7:36 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: ROBERT J. DICKOVER, ESQ.
GERALD CANFIELD
SIOBHAN JABLESNIK

----- X

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CHAIRMAN SCALZO: We have held open from the Thursday, October 25, 2018 meeting Kenneth Duxbury, which is 9 Smith Avenue in Newburgh, which was a variance to construct a 13 by 6 front deck with a 5 by 6 landing with a combined side yard of 61 feet where 80 is required, a front yard of 17 feet where 50 feet is required.

The public hearing does remain open in this case. The applicant came and stated their -- gave their testimony. We had, I don't believe, any comments from anyone from the public.

If you folks remember being at the site, it's a pretty straightforward application. Unless we have -- do we have discussion on this application?

MR. MASTEN: The application is supposed to be still posted at that site?

CHAIRMAN SCALZO: I believe it probably does.

MR. MASTEN: I revisited it on the 14th after I came from Fleetwood and it wasn't there.

MR. McKELVEY: It has to be there until

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the decision is voted on.

MS. JABLESNIK: The postings?

CHAIRMAN SCALZO: The sign.

MS. JABLESNIK: The posting of the sign?

CHAIRMAN SCALZO: It was probably knocked over because between the last meeting and this one we had a severe snowstorm. It may have still been there but in a snowbank.

MR. McKELVEY: You have to notify them; right, Jerry?

MR. CANFIELD: What's that?

MR. McKELVEY: You have to notify them?

MR. CANFIELD: To put it up, yes. If it was posted prior to the first appearance, right, I would think it served it's purpose.

MR. McKELVEY: It has to remain until the decision.

MR. CANFIELD: It has to remain.

CHAIRMAN SCALZO: However, we had no -- we had no members of the public that spoke on this application.

MR. BELL: Right.

CHAIRMAN SCALZO: Unless I'm going to

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get us in legal trouble, I would prefer to not
prolong this. It was a --

MR. MASTEN: Cut and dry.

CHAIRMAN SCALZO: Yeah.

MR. McKELVEY: I know last month it was
up.

CHAIRMAN SCALZO: In that instance I'll
look to legal counsel so I don't get myself in
trouble.

MR. DICKOVER: Like I said before, on
this one -- I don't know what your local law says
about this. It's a local law. It's not a State
law that requires this kind of posting on the
property. Unless there's a penalty provision in
your local law that says failure to keep it
maintained and posted shall result in a denial of
the application or a continuance of the
application, which I would be hard pressed to
think that it does frankly, I think you can go
ahead and proceed in it's absence.

CHAIRMAN SCALZO: Well then, that's
fair enough for me.

Do I hear a motion?

MR. McKELVEY: It could have been

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knocked down by a snowplow.

CHAIRMAN SCALZO: And underneath a car.

MR. LEVIN: I would like to make a motion to approve.

MR. MARINO: Second.

MR. DICKOVER: Your 239 letter, do you have it?

CHAIRMAN SCALZO: Yes.

We did hear back from the County on this one. The only reason why it was held open last month was because we had not heard back from the County. The County recommendation was a local determination.

I believe in last month's meeting, I would have to review the minutes again but I believe I did state it was a type 2 action under SEQRA.

So we have a motion to approve from Mr. Levin.

MR. BELL: I'll second it.

CHAIRMAN SCALZO: A second from Mr. Bell. Roll call.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

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MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Motion carried and approved. The
variance is granted.

MR. CANFIELD: Darrin, also this is 2
days short of timing out. We were talking before
about the 30 days from the County. This is just
2 days short tonight of timing out, the 30 days.

CHAIRMAN SCALZO: Very good.

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

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

----- X
In the Matter of

- APPROVAL OF MINUTES FROM ZBA MEETING HELD
ON 10/25/18

- DISCUSSION RE ORANGE COUNTY PLANNING
DEPARTMENT REFERRALS

----- X

Date: November 20, 2018
Time: 7:42 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: ROBERT J. DICKOVER, ESQ.
GERALD CANFIELD
SIOBHAN JABLESNIK

----- X

MICHELLE L. CONERO
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CHAIRMAN SCALZO: The only other business the Board has to contend with is the approval of the meeting minutes for last month's meeting.

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

MR. MASTEN: I'll second.

CHAIRMAN SCALZO: We have a motion to approve last month's minutes from Mr. Levin, we have a second from Mr. Masten. All in favor?

MR. BELL: Aye.

MR. MASTEN: Aye.

MR. MARINO: Aye.

MR. LEVIN: Aye.

CHAIRMAN SCALZO: Aye.

MR. MARINO: A question. Since we had three held over because the County's letter had not come to us, is there anything we can do to get them to coincide so when somebody comes in with an application we can expect an answer from the County within the timeframe before the meeting occurs?

CHAIRMAN SCALZO: Tony, I agree with you, and Mr. Bell. If we set our cut off at

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twelve days prior to the meeting, eleven, twelve,
ten days --

MS. JABLESNIK: Fourteen days.

CHAIRMAN SCALZO: If they come in on
day fourteen prior to, then they've already cut
the County out of sixteen days worth of review.

MR. MARINO: It seems like it's a lot
of time wasted waiting for the County.

MR. McKELVEY: Betty used to try to get
them to speed it up and they wouldn't. They said
"We're busy."

CHAIRMAN SCALZO: Tony, the other
thing, while we're still going through our
transition here with Siobhan taking over for
Betty, we had help from the Town of Cornwall who
submits every application to the County whether
they're within 500 feet of a County road or not.

MR. MARINO: Do we give the County 30
days or is that law?

CHAIRMAN SCALZO: State law.

MR. MARINO: So they must have 30 days.

CHAIRMAN SCALZO: So we're not sending
them as much as other municipalities are. We're
only sending the ones we absolutely have to.

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MR. MARINO: There's no way we can have our meeting more than 30 days after the letter goes out to the County so that we get the response back within the timeframe so when we hold the meeting we can vote on it the same night.

MR. DICKOVER: Here's the interesting piece to the question. Most statutes and most local ordinances require the board to establish the date for your public hearings. Many municipalities, and I suspect this may be one of them, ignore that and allow their receiving secretary to determine whether or not the application is complete and whether or not a public hearing should be scheduled. It's pretty common but it doesn't follow the letter of the law. It's done to expedite applications so they don't have to come in here one time, introduce their project, this board decide whether the application is complete, whether you have jurisdiction or not, which is a whole other issue, and then establish a public hearing for another month later. You do that to expedite applications as a nod to the members of the

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public. So I don't think you're following that procedure. There's really no other way to expedite this. It's a State law requirement. If you make a decision in the absence of a referral or recommendation back from the County Department, your decision is infirm and will be subject to easy upset by any challenge. You should not do that.

CHAIRMAN SCALZO: The only way we can get past that, Tony, is instead of a 14-day cutoff we have a 30-day cutoff so it's incumbent upon the applicant to get it in 30 days ahead of when they want to be on.

MR. McKELVEY: We don't set the meeting dates.

CHAIRMAN SCALZO: It's always been the fourth Thursday of the month.

MR. DICKOVER: The statute states the board shall establish the public hearing date. I suspect perhaps you're doing that when you receive the applications.

MS. JABLESNIK: I'm doing what?

MR. DICKOVER: Setting the public hearing date.

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BOARD BUSINESS

MS. JABLESNIK: Right.

MR. DICKOVER: It's common but it typically doesn't follow the letter of the law.

CHAIRMAN SCALZO: If there's no other Board business, I can hear a motion to adjourn.

MR. McKELVEY: I'll make that motion.

MR. MASTEN: Second.

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

MR. BELL: Aye.

MR. LEVIN: Aye.

MR. MASTEN: Aye.

MR. MARINO: Aye.

CHAIRMAN SCALZO: Aye.

(Time noted: 7:46 p.m.)

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