

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

In the Matter of

JOHN LYTLE

115 Valley View Drive, Newburgh  
Section 15, Block 2, Lot 7  
Zone: R1

Date: November 21, 2023  
Time: 7:00 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
DARRELL BELL  
JOSEPH POLITI  
JAMES EBERHART, JR.  
GREGORY M. HERMANCE  
JOHN MASTEN  
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: JOHN LYTLE

REPORTED BY: Patrick DeGiorgio, Court Reporter

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 Zoning Board of Appeals to order. The order of business this evening are the public hearings which have been scheduled.

The procedure of the board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The board will then ask the applicant any questions it may have and then any questions or comments from the public will be entertained.

The board will consider the applications and will try to render a decision this evening. It may take up to 62 days to reach a determination.

I would ask if you have a cell phone to please turn it off or put it on silent. And when speaking --  
(interrupted)

MS. JABLESNIK: We don't have a microphone this evening, so use your outdoor voices.

1 CHAIRMAN SCALZO: Just your  
2 outside voices today because it is  
3 being recorded. Roll call please.  
4 MS. JABLESNIK: Darrell Bell?  
5 MR. BELL: Present.  
6 MS. JABLESNIK: James Eberhart?  
7 MR. EBERHART: Present.  
8 MS. JABLESNIK: Greg Hermance?  
9 MR. HERMANCE: Here.  
10 MS. JABLESNIK: John Masten?  
11 MR. MASTEN: Here.  
12 MS. JABLESNIK: James Politi?  
13 MR. POLITI: Here.  
14 MS. JABLESNIK: Donna Rein?  
15 MS. REIN: Here.  
16 MS. JABLESNIK: Darrin Scalzo?  
17 CHAIRMAN SCALZO: Here.  
18 MS. JABLESNIK: Also present is  
19 our attorney David Donovan. From code  
20 compliance we have Joseph Mattina and  
21 Gerald Canfield. And our stenographer  
22 this evening is Patrick DeGiorgio.  
23 CHAIRMAN SCALZO: Very good.  
24 Please stand for the pledge.

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(Pledge of Allegiance)

CHAIRMAN SCALZO: Within the last 10 minutes I heard that one of our former members, John McKelvey, has passed away. If we can just have a moment of silence for Mr. McKelvey.

(Moment of Silence)

CHAIRMAN SCALZO: Thank you. Our first applicant this evening which I will be stepping away from momentarily is John Lytle, 115 Valley View Drive in Newburgh seeking area variances of lot area, lot width, minimum side and combined side yards to build a new single family dwelling unit on the property. Do we have mailings on this, Siobhan?

MS. JABLESNIK: This applicant sent out 31 mailings.

CHAIRMAN SCALZO: 31 mailings, very good. As I mentioned I need to step away from this. My employer is within 500 feet of the applicant. Mr. Hermance will be stepping away as

1 well. Mr. Bell, if you could take it  
2 from here, please.

3 MR. BELL: Okay. State your  
4 name please.

5 MR. LYTLE: Good evening. Ken  
6 Lytle representing John Lytle. It's  
7 an existing lot located on Valley View  
8 Drive. The existing lot is  
9 approximately 20,000 square feet,  
10 requirement by zoning is 40,000 square  
11 feet. It's a lot that was created in  
12 the subdivision I believe in 1956. We  
13 are proposing well and septic blending  
14 in with the rest of the neighborhood  
15 as this is what they have. We are  
16 proposing an Elgin system in the back  
17 for septic minimizing disturbance  
18 because it's an existing small lot.  
19 We will be relocating adjoining wells  
20 and septic and make sure there's  
21 separation for those. We have been  
22 doing some research for this lot.  
23 There was an adjoining lot, Lot Number  
24 117, that's the adjoining lot and had

1 a similar variance that was granted  
2 back in 2005. Their lot was actually  
3 smaller, it was only 17,000 square  
4 feet. Again, we are at 20,000 square  
5 feet. Their lot width was actually at  
6 100 and we are at approximately 125 to  
7 130 at the building line. They are  
8 actually proposing with the addition  
9 of approximately 12'8" off the  
10 property line. That was again back in  
11 2005.

12 Do you have any questions?

13 MS. JABLESNIK: Did everyone  
14 receive the letter that was e-mailed  
15 to you, I think, yesterday? It was  
16 received in our office regarding this  
17 application.

18 MR. BELL: I missed it.

19 MR. EBERHART: I missed it.

20 MS. JABLESNIK: It was e-mailed  
21 to you and you should have received it  
22 yesterday.

23 MR. BELL: What did it state?

24 MR. DONOVAN: If I can, I'll

1 summarize the letter. The letter was  
2 from an adjoining property owner. It  
3 would appear that there is some family  
4 relationship.

5 MR. LYTLE: My sister.

6 MR. DONOVAN: I guess you would  
7 know this. This individual is opposed  
8 to the variance. If you want I can  
9 read the letter for everybody if you  
10 don't have it?

11 MS. REIN: I have it, but go  
12 ahead.

13 MR. BELL: Okay. "Dear Town of  
14 Newburgh Zoning Board. I understand  
15 the petition for a variance to build  
16 at 115 Valley View Drive in Newburgh,  
17 Section 15, Lot 2, Block 7 has been  
18 presented to the Zoning Board. The  
19 petitioner did not sign the variance."  
20 I don't know what that means. The  
21 application was signed.

22 MR. LYTLE: It was signed.

23 MR. DONOVAN: In any event it  
24 goes on. "The board needs to consider

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several facts that follow.

1 - Valley View Drive is a small dead end street that is currently too narrow for the town to line appropriately so that vehicles stay on the correct side of the street. In fact, during winter months the town snowplows actually plow a long section of ditch between 103 and 108 so that there's adequate room for two vehicles to use the road simultaneously. Additional traffic, especially from a larger than allowed premises which would imply more people/vehicles would add to an already dangerous situation.

2 - The deed for 115 Valley View (15-2-7) which is this application, has "covenants and restrictions affecting said parcel which are to run with the land forever and shall be binding upon the parties and all persons claiming under them as follows. No building shall be erected upon the premises within 40 feet of



1 the street line nor within eight feet  
2 of the adjoined property lines. Plans  
3 for proposed house shall be submitted  
4 to the sellers herein for approval.  
5 These restrictions would have to be  
6 met. The seller, (Edith V.Lytle), is  
7 now deceased and I was her Power of  
8 Attorney. Not only have I not seen  
9 any plans for approval, but Edith  
10 clearly stated to numerous people  
11 including the owner of 116 Valley View  
12 Drive, Newburgh, that she wanted the  
13 lot to remain wooded as is.

14 3 - Per the deed for 113 Valley  
15 View Drive, Newburgh, 115 provides a  
16 legal right of way for ingress and  
17 egress for Valley View Drive. Deed  
18 states "an 18 foot wide right of way  
19 for ingress and egress to Valley View  
20 Drive, running from Valley View Drive  
21 south 62 degrees, 48 minutes east  
22 along the northerly line of property  
23 conveyed to Frederick W. Rudolph and  
24 his wife now owned by Carol Donovan

1 and Thomas Donovan for 200 feet. 115  
2 Valley View Drive, Newburgh, is the  
3 lot previously owned by the Donovans."  
4 And I should emphasize no relation to  
5 me.

6 "4 - 115 Valley View Drive,  
7 Newburgh, is not currently staked out  
8 and therefore the location of any  
9 structure would be a question and all  
10 the above criteria would not be  
11 adjusted for.

12 Number 5, any building/structure  
13 of 115 Valley View Drive would have to  
14 include appropriate room and ability  
15 to include well and septic that would  
16 not impact those properties next to  
17 and downhill from that lot.

18 6 - I, Donna Lytle Palumbo, am  
19 the current sole owner 109 Valley View  
20 Drive (15-2-6), 111 Valley View Drive  
21 (15-2-8), and additional lot without  
22 street numbers (15-2-10.1) that  
23 borders lot 115 Valley View Drive,  
24 Newburgh (15-2-7). Also as deemed in

1 Edith V. Lytle's Last Will and  
2 Testament (as not been probated yet)  
3 will be co-owner with my daughter  
4 Annachristina A. Palumbo of 113 Valley  
5 View Drive, Newburgh.

6 As a property owner directly  
7 affected by any structure being built  
8 on that lot, I wholeheartedly am  
9 against any change in 115 Valley View  
10 Drive, Newburgh, especially against  
11 any variances approved at this time.

12 Sincerely, Donna Lytle Palumbo."

13 MR. BELL: This was someone that  
14 opposed this?

15 MR. DONOVAN: Apparently a  
16 relative.

17 MR. LYTLE: Can I speak on this?  
18 I have a large scale tax map that will  
19 show some things. Lot Number 7 or 115  
20 of the actual applicant in front of  
21 you tonight, Lot Number 6 or 109  
22 Valley View Drive as mentioned in  
23 there is the lot that has the 18-foot  
24 right of way going down across, comes

1 across the bottom part of the lot  
2 outside of our lot we are doing in  
3 question. So it goes through my  
4 sister's lot which is 111 Valley View  
5 Drive to 113 Valley View Drive which I  
6 currently own. It was deeded 15 years  
7 ago. The right of way she is talking  
8 about is off of this lot. I have the  
9 deed to show where the right of way  
10 is. Again, on the map off of this  
11 property. I hope that clarifies some  
12 things for you.

13 MR. BELL: So I want to hear  
14 from the board.

15 MS. REIN: Do you want to start  
16 with the public first?

17 MR. BELL: We'll start with the  
18 board. Down on my right.

19 MR. POLITI: I'll go first.  
20 With the property in probate, would  
21 that suggest she is saying she would  
22 be the owner or part owner?

23 MR. DONOVAN: No. She is not.  
24 There's a deed that is John Paul

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Lytle. Relation to you, Ken?

MR. LYTLE: That's my brother.

It's all family.

MR. DONOVAN: Looks like there was a property conveyed on the same day on November 22nd.

MR. LYTLE: That's correct.

MR. DONOVAN: 2022 in which your sister got a parcel.

MR. LYTLE: Yes.

MR. DONOVAN: And brother got a parcel.

MR. LYTLE: Exactly, correct.

MR. DONOVAN: So the issue of probate, Jim, to answer your question, has no bearing on what's going on with this.

MR. POLITI: Thank you.

MR. BELL: Mr. Eberhart?

MR. EBERHART: I have no questions at this time.

MR. BELL: John?

MR. MASTEN: I have nothing right now.

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MR. BELL: Donna?

MS. REIN: I have nothing. I'd like to hear from the public.

MR. BELL: Well, if there's no other things from the board, let me see. Is there anyone here from the public who wishes to speak? Come forward, ma'am, and state your name. Speak loud so the stenographer can hear you.

MS. CHOMANCZUK: Sara Chomanczuk, C-H-O-M-A-N-C-Z-U-K, 117 Valley View Drive. So you are correct, we did build an addition onto our property. However, my house, our addition, was built onto the right-hand side not impacting or directly touching your property at all in any way, shape or form. So we do have several questions. 1, what is the square footage of the house that is presented to be built?

MR. LYTLE: Approximately 1,600 square feet.

1 MS. CHOMANCZUK: How far back  
2 from the road?

3 MR. LYTTLE: So what we did,  
4 where I met you out there in the  
5 field, I actually located the corners  
6 of your house. So pretty much in line  
7 with the front of your house is in  
8 line with the front of this.

9 MS. CHOMANCZUK: And because  
10 that is a heavily wooded lot how many  
11 trees are you planning on taking down?

12 MR. LYTTLE: We will take down  
13 the minimal amount of trees because  
14 you can't put those back. When you  
15 actually get into construction there  
16 are more down at the bottom side, the  
17 very large tree I believe right next  
18 to the property line.

19 MS. CHOMANCZUK: A hundred year  
20 old oak tree.

21 MR. LYTTLE: Yes. The plan is  
22 actually shifted to the house, again  
23 30 feet off the adjoining property  
24 giving us another 25 feet here. That

1 should be we would be able to keep  
2 that tree. We won't know during  
3 construction until we stake it out.  
4 The plan is I'd like to avoid that.  
5 We are very limited on the lot because  
6 of the lot width. We prefer to keep  
7 it down. It's very costly to remove  
8 also. No guarantee until you get in  
9 there and stake it out.

10 MS. CHOMANCZUK: Is the septic  
11 going to be placed on the driveway  
12 side?

13 MR. LYTTLE: Septic down on the  
14 bottom as well as here. Your well is  
15 in the top corner and your septic is  
16 in your backyard.

17 MS. CHOMANCZUK: Yes. It's 12  
18 feet from the property line.

19 MR. LYTTLE: Okay.

20 MR. BELL: Thank you. We did it  
21 a little differently.

22 MS. REIN: Has that resolved  
23 that for you?

24 MS. CHOMANCZUK: It's answered



1 my questions, yes.

2 MR. BELL: Does anybody else  
3 here from the public want to speak?

4 MR. O'BRIEN: Yes. I'm John  
5 O'Brien. I live across street from  
6 this lot for maybe 20, 22 years. It's  
7 rather confusing. I don't know how  
8 you guys get through all this. Simply  
9 put, I guess an easement to me is a  
10 small consideration. At Thanksgiving  
11 you can let your belt out one notch  
12 and it shouldn't be anything  
13 excessive, and maybe it isn't, but I  
14 would just ask for that kind of  
15 consideration that it's something that  
16 is not objectionable in terms of the  
17 size of it and impact it may have on  
18 us. So that's all I have. Thank you.

19 MR. BELL: Sir?

20 MR. FEDER: Bill Feder, Rockwood  
21 Drive. A couple questions. Are you  
22 able to comply with all state sanitary  
23 issues, well and septic systems  
24 separation, distance from neighbors

1 and on the lot? I think it's a  
2 hundred feet or at least 50 feet, is  
3 it not?

4 MR. LYTLE: Yes. If we are  
5 going forward with the variance that  
6 will go back to the office. These are  
7 measurements for adjoining wells and  
8 septic systems.

9 MR. FEDER: Did I hear correctly  
10 in the letter that it's stated never  
11 to be built on? Is that a  
12 misconception?

13 MR. DONOVAN: Let me answer that  
14 with two things. No, there are some  
15 restrictions in the deed, but I guess  
16 this is a good time to talk about  
17 that. Those are called private  
18 restrictions. This board is not a  
19 party to that private restriction. We  
20 can't entertain those. In fact, there  
21 are court cases that say we can't base  
22 our decision or any board, Planning  
23 Board, Zoning Board cannot base their  
24 decision on a private restriction

1 between the private parties. To the  
2 extent, and it's an odd one for the  
3 seller, I don't know if it's carried  
4 over from years ago, but again this  
5 has nothing to do with this board's  
6 deliberations.

7 MR. FEDER: Thank you.

8 MR. BELL: Anyone else here from  
9 the public?

10 MR. WONDSEL: Jeff Wondsel, 107  
11 Valley View. One of my questions is  
12 this parcel, this is -- with this --  
13 this is their driveway coming in, my  
14 house is right here.

15 MR. LYTLE: Here's a map.

16 MR. WONDSEL: I have two of  
17 those, thank you. Is this -- I'm just  
18 curious. If this is the property that  
19 there is going to be a consideration  
20 or need to be consideration for the  
21 pool and the shed that are on the  
22 adjoining property which I don't see  
23 it on here. I'm not sure if it's  
24 there. There's a shed that was

1 plopped in there kind of like a garage  
2 and an above ground pool and deck that  
3 sits right about here. I've been  
4 wondering if that's been taken into  
5 consideration?

6 MR. LYTLE: My understanding is  
7 that the pool was created right at the  
8 side of the existing house, it's  
9 probably in direct line.

10 MR. WONDSEL: More like here.  
11 See the driveway comes down here and  
12 straight here. That's where the pool  
13 is and that's where the shed is.

14 MR. LYTLE: The shed is right in  
15 the corner.

16 MR. DONOVAN: Can I interrupt?  
17 I just want to reflect for the record  
18 that they are pointing at a location  
19 that is not on the lot that's on the  
20 application before the board.

21 MR. BELL: Right.

22 MR. WONDSEL: That's pretty much  
23 what I was concerned about is there  
24 this new shed that was plopped in

1                   there a few months ago and we are here  
2                   and a large above ground pool here  
3                   with a deck on it which I'm not even  
4                   sure if it's permitted. Nevertheless  
5                   I'm sure it doesn't impede that but I  
6                   just wanted to bring that to the  
7                   attention of the board.

8                   MR. LYTLE: There's one more lot  
9                   between you and here?

10                  MR. WONDSEL: Yes. That was  
11                  offered to me years ago and I said no,  
12                  I don't want to clean it out. I don't  
13                  want to. That's pretty much it other  
14                  than I'm not happy to see this  
15                  property get demolished. That's my  
16                  opinion. Thank you very much.

17                  MS. REIN: Is that pool and lot  
18                  yours and pool and shed yours?

19                  MR. WONDSEL: No, it's not mine.  
20                  That's why I'm bringing up concerns.  
21                  I'm not sure if the pool and the shed  
22                  are permanent. The above ground pool  
23                  should have a fence around it  
24                  specifically if it has a deck on it.

1 This does not. So this is a concern  
2 that's -- if that any part of this  
3 problem?

4 MR. BELL: My understanding, and  
5 correct me if I'm wrong, an above  
6 ground pool is five feet so you don't  
7 have to have a fence.

8 MR. MATTINA: An above ground  
9 pools, if it's 48 inches or taller you  
10 don't need to have a fence.

11 MR. BELL: Exactly.

12 MR. MATTINA: But if it has a  
13 deck then the deck has to be --  
14 (interrupted)

15 MR. BELL: Exactly, and you have  
16 to raise the ladder.

17 MR. MATTINA: Correct, some  
18 self-closing gate.

19 MR. BELL: Self-closing gate,  
20 right. Any other questions from the  
21 public? I'll make a motion to close  
22 the public hearing?

23 MR. EBERHART: Second.

24 MR. BELL: So Mr. Bell was first

1 and Mr. Eberhart was second. All in  
2 favor?

3 MR. POLITI: Aye.

4 MR. EBERHART: Aye.

5 MR. BELL: Aye.

6 MR. MASTEN: Aye.

7 MS. REIN: Aye.

8 MR. DONOVAN: Mr. Bell, I happen  
9 to have in front of me, so would you  
10 like me to -- (interrupted)

11 MR. BELL: Yes, please. Go  
12 ahead.

13 MR. DONOVAN: So we have the  
14 five-part balancing test that we will  
15 go through at this time. Unless any  
16 board member has any other questions  
17 now that the public hearing is closed  
18 or observations or questions?

19 MR. POLITI: I have a question  
20 on the side yard requirements. I want  
21 to make sure I'm right. There should  
22 be 30 and a total of 80. The 30 and  
23 30, one side is not met?

24 MR. LYTTLE: One side is not met,

1                   yes. We were not able to meet it to  
2                   get the lot so narrow. It's only 114  
3                   feet at that location. The existing  
4                   lot. We are trying to get the front  
5                   of the house to match the rest of the  
6                   fronts of the houses on the street.

7                   MR. POLITI: I drove the road.  
8                   Most of those lots on that map, they  
9                   are fairly small.

10                  MR. DONOVAN: Mr. Lytle, maybe  
11                  you want to talk about that, how this  
12                  lot compares? I just did a quick  
13                  calculation on the tax map. There's  
14                  about 16 lots there not counting the  
15                  back lots.

16                  MR. LYTLE: That's correct.

17                  MR. DONOVAN: And how does this  
18                  lot compare to the other lots in the  
19                  neighborhood, those other 16 lots?

20                  MR. LYTLE: Most of the lots in  
21                  the neighborhood as you can see are a  
22                  hundred foot lot width or 125. The  
23                  high shape of the road has a little  
24                  bit of a curve to it. At our building



1 line we are 114 feet wide. Lot depths  
2 are almost identical, all about 200  
3 feet deep. The lot area and the lot  
4 size or every lot are almost  
5 identical. Still undersized under the  
6 40,000 square foot requirement  
7 required today. Again, the area or  
8 variance to the adjoining lot, our  
9 adjoining lot again is the 25-foot  
10 property that was divided up years and  
11 years ago. The adjoining lot is  
12 actually much smaller. We are  
13 approximately 20,000 square feet, that  
14 lot is approximately 17.5. They went  
15 for a variance and they have acquired  
16 it and on the one line, I believe  
17 their left line, they got a variance,  
18 a 12-foot, 8-inch variance left over  
19 their property line and our narrow  
20 spot is 25. That was back in 2005 on  
21 the adjoining lot.

22 MR. DONOVAN: Any other  
23 questions from the board?

24 MR. BELL: Any questions?

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MS. REIN: No.

MR. EBERHART: No.

MR. DONOVAN: So we'll go through the balancing test. The first factor is whether the benefit can be achieved by any other means feasible for the applicant to pursue?

MS. REIN: No.

MR. DONOVAN: It appears that it can't because of the size of the lot. The second factor is whether there's an undesirable change in the neighborhood or character or detriment of nearby properties will be created?

MR. BELL: No.

MS. REIN: No.

MR. DONOVAN: The third whether the request is substantial?

MR. BELL: It is substantial.

MS. REIN: Right.

MR. BELL: It's self-created.

MR. DONOVAN: It's self-created, yes. The fourth is whether the request will have an adverse or

1 physical -- sorry, the fourth is  
2 whether the request will have adverse,  
3 physical or environmental affects on  
4 the neighborhood?

5 MR. HERMANCE: No.

6 MS. REIN: No.

7 MR. BELL: No.

8 MR. DONOVAN: The fifth is  
9 whether or not the alleged difficulty  
10 is self-created which is a relevant  
11 factor but not a determinative one?  
12 Because obviously this like most area  
13 variances is self-created.

14 MR. BELL: Right.

15 MR. DONOVAN: So that being the  
16 case, does anyone on the board have a  
17 motion of some sort?

18 MS. REIN: I make a motion to  
19 approve.

20 MR. MASTEN: I'll second it.

21 MR. BELL: We have a motion to  
22 approve by Miss Rein and a second by  
23 Mr. Masten.

24 MR. DONOVAN: Could you roll on

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that?

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Eberhart?

MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Politi?

MR. POLITI: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Ms. Rein?

MS. REIN: Yes.

MR. BELL: I didn't hear you  
Jim. What was yours?

MR. EBERHART: I said yes.

MR. DONOVAN: And I'm sorry, in  
my haste, just for the record, this a  
Type 2 Action under SEQR so no  
environmental declaration is required.

MR. BELL: Motion approved.

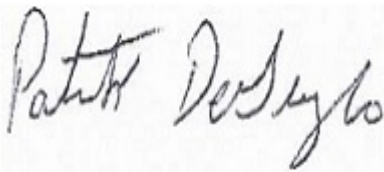
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STATE OF NEW YORK )

) ss:

COUNTY OF ORANGE )

I, PATRICK M. DeGIORGIO, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that the foregoing is a true and accurate record of the minutes having been stenographically recorded by me and transcribed under my supervision to the best of my knowledge and belief.

X   
PATRICK M. DeGIORGIO

Dated: December 6, 2023



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

In the Matter of

RYAN ROCKET

397 Candlestick Hill Road, Newburgh  
Section 6, Block 1, Lot 59  
Zone: AR

Date: November 21, 2023  
Time: 7:25 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
DARRELL BELL  
JOSEPH POLITI  
JAMES EBERHART, JR.  
GREGORY M. HERMANCE  
JOHN MASTEN  
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: JONATHAN CELLA

REPORTED BY: Patrick DeGiorgio, Court Reporter

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

1                   CHAIRMAN SCALZO: The second  
2                   application, because that first one  
3                   was rather lengthy without me here to  
4                   keep it moving along, is Ryan Rocket,  
5                   397 Candlestick Hill Road. This is a  
6                   Planning Board referral for area  
7                   variances for a proposed two-lot  
8                   subdivision, lot area, minimum side  
9                   yard and combined side yard setbacks  
10                  and lot width for the existing  
11                  Proposed Lot 1 that has two existing  
12                  nonconforming residences. Siobhan, we  
13                  have mailings on this?

14                  MS. JABLESNIK: This applicant  
15                  sent out 23 letters.

16                  CHAIRMAN SCALZO: 23 letters,  
17                  thank you. We have Jonathan Cella  
18                  with us here tonight. Mr. Cella, if  
19                  you could go ahead and present.

20                  MR. CELLA: Good evening. We  
21                  are here for 397 Candlestick Hill  
22                  Road. As stated this is a proposed  
23                  two-lot subdivision to create one  
24                  building lot on Lot Number 2 which



1 will be serviced by long septic and  
2 then Lot Number 1 would contain the  
3 two existing residences and the  
4 existing detached garage. We are  
5 located in the AR Zoning District.

6 Lot Number 2 which we are  
7 creating would meet all bulk  
8 requirements and there will be no  
9 variances required for that lot, but  
10 due to Lot 1 it would require the  
11 stated area variance, the lot area  
12 variance and the side yard setbacks  
13 for preexisting nonconforming  
14 conditions on the two existing  
15 buildings.

16 This here I believe is serviced  
17 by well and septic and we have  
18 provided an area for the septic  
19 extension area and the biggest  
20 variance we need is for the lot area.  
21 We are providing the 66,000 square  
22 feet, where 100,000 square feet is  
23 required.

24 CHAIRMAN SCALZO: Okay. Thank

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you very much.

MR. DONOVAN: If I could, Mr. Chairman, just as a housekeeping matter. I believe they'd need a variance to increase the degree of existing nonconformance since they are going to be on a smaller lot now. I know Mr. Mattina didn't have his fingerprints on that but he's always good at calling that out. You have existing nonconformance on these larger parcels and make that parcel smaller. So in addition to those variances which are nonconformance conditions, I think it's kind of the same thing. I just want to make sure that the record in front of the ZBA is complete.

MR. CELLA: Those would be the side yard setbacks on the existing buildings, that's what we are increasing the degree of nonconformity on.

CHAIRMAN SCALZO: Thank you,

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counsel.

MS. REIN: Counsel, is this a  
Type 2?

MR. DONOVAN: Type 2.

MR. CELLA: The lot width on  
this Lot Number 1, we will need a lot  
width and a variance.

CHAIRMAN SCALZO: Thank you.  
I'm going to look to members of the  
board for comment. I'll start with  
Miss Rein?

MS. REIN: I'm good, thank you.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: Nothing.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: I'm good.

CHAIRMAN SCALZO: Mr. Hermance?

MR. HERMANCE: I'm good.

CHAIRMAN SCALZO: Mr. Eberhart?

MR. EBERHART: No comment.

CHAIRMAN SCALZO: There's no way  
we are getting away with no comments  
all the way down. So Mr. Politi, what  
do you have?

1 MR. POLITI: Just so I'm clear,  
2 I'll ask this question. This is one  
3 lot obviously so you are going to  
4 subdivide. This is all one lot?

5 MR. CELLA: Yes, this is all one  
6 lot right now. Two frontages.

7 MR. POLITI: Do you have two  
8 residences on one property if the zone  
9 requires 100,000 square feet?

10 CHAIRMAN SCALZO: That's  
11 correct.

12 MR. POLITI: So now you are  
13 going to cut into that and create  
14 another what?

15 MR. CELLA: Another building  
16 lot.

17 MR. POLITI: This variance is  
18 about that property?

19 MR. CELLA: Yes.

20 CHAIRMAN SCALZO: That's  
21 correct.

22 MR. POLITI: Okay.

23 MR. CELLA: The new lot will  
24 conform to the difficult requirements.

1 MR. POLITI: I have a concern in  
2 that zone that you are now blocking  
3 that half further creating a  
4 nonconformity so I just want to make  
5 the board aware that's my opinion.  
6 That you are taking something in that  
7 zone and creating more.

8 CHAIRMAN SCALZO: Okay. Thank  
9 you, Mr. Politi. Just for the members  
10 of the board other than just calling  
11 out some simple numbers here, the  
12 existing total lot area is 117,476  
13 square feet. For two lots to be on a  
14 single dwelling they need 100,000  
15 square feet. If they were to do that,  
16 that would only leave 17,000 square  
17 feet. It's an odd shaped lot. It's  
18 an unusual setup. Mr. Cella, I see  
19 you have a proposed Lot 1 reserve  
20 septic location which is where?

21 MR. CELLA: Here.

22 CHAIRMAN SCALZO: Correct. That  
23 reserve septic location, is that area  
24 for both of the existing residences?

1 MR. CELLA: Both of the existing  
2 residences.

3 CHAIRMAN SCALZO: Okay.

4 MR. CELLA: We are demonstrating  
5 that in the case that the existing  
6 system fails for these, that we have  
7 adequate area to correct that and  
8 provide assistance.

9 CHAIRMAN SCALZO: Okay. It's  
10 just such an oddity with the existing  
11 dwellings where they are located on  
12 the lot, and then moving forward from  
13 there.

14 At this point I'm going to open  
15 it up to any members of the public  
16 that wish to comment on this  
17 application. Anybody from the public  
18 wishes to comment? Mr. Feder, if you  
19 could step forward and speak loudly.

20 MR. FEDER: Bill Feder, Rockwood  
21 Drive. I just want to make sure that  
22 they are not generating any new  
23 nonconformance, only the degree of  
24 nonconformance? There's no new

1 nonconformity; is that right? It will  
2 just be less severe?

3 CHAIRMAN SCALZO: Lot size for  
4 existing Lot 1. Currently they meet.  
5 Two dwellings on a single lot they  
6 already meet that with 117,000 square  
7 feet, so they are creating a  
8 nonconformity via lot area as well as  
9 the existing side yard setbacks.

10 MR. FEDER: Thank you. That's  
11 number 5 of the questions.

12 CHAIRMAN SCALZO: Any other  
13 members of the public that wish to  
14 speak about this application?

15 Now we actually just had a short  
16 dialogue or testimony from Mr. Feder,  
17 my comments, Mr. Politi had comments.  
18 Did that stir anything up? Any  
19 members of the board have any  
20 additional questions at this point?

21 MS. REIN: No.

22 MR. MASTEN: No.

23 MR. BELL: No questions.

24 MR. POLITI: This may be in the

1 process, I don't know. There's an  
2 environmental of this survey, a  
3 wetlands question?

4 CHAIRMAN SCALZO: Very good.  
5 I'm kind of surprised Miss Rein hasn't  
6 picked up on that.

7 MR. DONOVAN: She has which is a  
8 Type 2 Action, which it is.

9 MS. REIN: It is.

10 MR. DONOVAN: It's a Type 2  
11 Action, but was it shown on the map?

12 MR. CELLA: I'm not sure what  
13 the comment is.

14 CHAIRMAN SCALZO: Mr. Cella,  
15 that document was semi-completed when  
16 you do it online. It's an interactive  
17 document.

18 MS. REIN: Mr. Chairman, if it's  
19 a Type 2 isn't it irrelevant?

20 CHAIRMAN SCALZO: Yes, it is.  
21 However, we have a new member.

22 MR. POLITI: I don't know if  
23 there's an issue of wetland --  
24 (interrupted)



1 MR. CELLA: There's no issue of  
2 wetlands. That would also have to be  
3 delineated as part of this subdivision  
4 application.

5 CHAIRMAN SCALZO: Yes, the  
6 record shows that Mr. Politi is doing  
7 his best and you are speaking to each  
8 other and mumbling. Let's all help  
9 out the court reporter.

10 MR. POLITI: I wasn't sure if  
11 that played a part in our discussion  
12 here as it says it's incomplete.  
13 Again, I don't know this process.

14 MR. DONOVAN: So every  
15 application that comes before us, I  
16 guess every application that comes on  
17 appeal from the Building Department  
18 has to fill out a short Environmental  
19 Assessment Form. 99 percent of the  
20 proceedings are Type 2 Actions. Not  
21 that we don't care, but we don't take  
22 into account what's on the EAF. This  
23 does come from the Planning Board.  
24 Relative to our deliberations, that

1 would not be significant. Though it  
2 would be significant to the Planning  
3 Board because if there's either DEC or  
4 federal wetlands that are limited now,  
5 you would have to show them before you  
6 get subdivision approval. And I'm  
7 sure Pat would hold your feet to the  
8 fire for that.

9 MR. POLITI: Thank you.

10 CHAIRMAN SCALZO: Thank you.

11 Mr. Cella, let me ask you a question.  
12 This is not relevant to the variance  
13 as being sought in this application.  
14 I notice here with your proposed Lot  
15 Number 2, your proposed septic  
16 location it appears to show four  
17 laterals; is that correct?

18 MR. CELLA: Correct.

19 CHAIRMAN SCALZO: I'm used to  
20 working with a different county. In  
21 Orange County, do they require 100  
22 reserving percent or 50 percent?

23 MR. CELLA: 50 percent still,  
24 but we are showing the hundred.

1                   CHAIRMAN SCALZO: You answered  
2 my question because it was going to  
3 apply to Lot 1. It seemed as though  
4 the reserves area for Lot 1 seemed  
5 smaller for two dwellings than your  
6 laterals that you have set for a  
7 single family dwelling.

8                   MR. CELLA: They are based upon  
9 the perc rate.

10                  CHAIRMAN SCALZO: That I  
11 understand. But you're relatively  
12 close to each other.

13                  MR. CELLA: They are close to  
14 each other, yes.

15                  CHAIRMAN SCALZO: Different  
16 soils condition I'm assuming. Thank  
17 you. Any other questions from the  
18 board? One last opportunity, any  
19 members of the public? Mr. Feder?

20                  MR. FEDER: Is there no way that  
21 the lots could be configured if it's  
22 not a straight line, to lessen the  
23 degree of nonconformity?

24                  CHAIRMAN SCALZO: I have to --

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(interrupted)

MR. CELLA: We don't have a total lot area to provide. We would only need 140,000 and we have only 117,000. So the answer would be no.

MR. FEDER: You can't get there from here?

MR. CELLA: Not possible.

CHAIRMAN SCALZO: For the total lot area, I understand what Mr. Cella is saying and I don't want to put words in Mr. Feder's mouth, but if you look at the blue lot on this where it has that kick out of 23.41 feet, if you were to draw a straight line from that point all the way to where the current, you know, that would pick up some. Mr. Feder, I don't know if you've looked at the map while you were asking your question, that would add more area to Lot Number 1, decrease area in Lot Number 2, but I think that would still probably meet the 40,000 square feet there.

1 MR. CELLA: Yeah. We have  
2 10,000 square feet extra on Lot 2. I  
3 think this weighs out following the  
4 line, it just lays out.

5 CHAIRMAN SCALZO: Right. Thank  
6 you. Any other questions? No other  
7 questions from the public. No other  
8 questions from the board. At this  
9 point I'll look to the board for a  
10 motion to close the public hearing?

11 MR. BELL: I make a motion to  
12 close the public hearing.

13 MR. MASTEN: I'll second it.

14 CHAIRMAN SCALZO: We have a  
15 motion from Mr. Bell and we have a  
16 second from Mr. Masten. All in favor?

17 MR. POLITI: Aye.

18 MR. EBERHART: Aye.

19 MR. HERMANCE: Aye.

20 MR. BELL: Aye.

21 MR. MASTEN: Aye.

22 MS. REIN: Aye.

23 CHAIRMAN SCALZO: Aye. Those  
24 opposed? Very good.

1           As we discussed earlier  
2           informally, this is a Type 2 under  
3           SEQR. I did hear counsel mention that  
4           to Miss Rein earlier, so therefore we  
5           are going to go through the area  
6           variance criteria. We will discuss  
7           the five factors. The first one being  
8           whether or not the benefit can be  
9           achieved by other means feasible to  
10          the applicant?

11           MS. REIN: No.

12           MR. MASTEN: No.

13           CHAIRMAN SCALZO: Second, if  
14           there's an undesirable change in the  
15           neighborhood character or a detriment  
16           to nearby properties? Now, the  
17           proposed layout of this really from  
18           the road all that you are going to see  
19           from the road is going to be a  
20           driveway. Driving on Candlestick Hill  
21           almost reminded me of driving on  
22           Huckleberry Turnpike. Sometimes the  
23           houses are on top of each other.  
24           There's a couple of two-family

1 dwellings at the top of the hill. It  
2 was definitely interesting. Going  
3 back to the question if there's an  
4 undesirable change in the neighborhood  
5 or character?

6 MR. POLITI: No.

7 MR. EBERHART: No.

8 MR. HERMANCE: No.

9 MR. BELL: No.

10 MR. MASTEN: No.

11 MS. REIN: No.

12 CHAIRMAN SCALZO: Third, whether  
13 the request is substantial? By the  
14 numbers it is.

15 MR. BELL: Yes.

16 MS. REIN: Yes.

17 CHAIRMAN SCALZO: The fourth,  
18 whether the request will have adverse  
19 physical or environmental affects?

20 MR. POLITI: No.

21 MR. EBERHART: No.

22 MR. HERMANCE: No.

23 MR. BELL: No.

24 MR. MASTEN: No.

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MS. REIN: No.

CHAIRMAN SCALZO: The fifth, whether the alleged difficulty is self-created, which is relative but not determinative. It is self-created, of course it is. If the board approves it shall grant the minimum variance as necessary and may impose reasonable conditions. Having gone through the balancing test of the area variance, does the board have a motion of some sort?

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

MR. MASTEN: I'll second it.

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

CHAIRMAN SCALZO: To what?

MR. DONOVAN: I think we did that.

CHAIRMAN SCALZO: I did that.

MS. REIN: I'm sorry.

CHAIRMAN SCALZO: Did you not hear me say all in favor and you said



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aye?

MS. REIN: I usually say aye to you all the time.

CHAIRMAN SCALZO: Very good. We have a motion from Mr. Bell. We have a second from Mr. Masten. Can you roll on that, Siobhan?

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Eberhart?

MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Politi?

MR. POLITI: No.

MS. JABLESNIK: Ms. Rein?

MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: No. However, that is 5 - 2. Motion still carries. Your variances are approved.

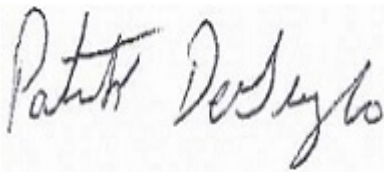
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STATE OF NEW YORK )

) ss:

COUNTY OF ORANGE )

I, PATRICK M. DeGIORGIO, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that the foregoing is a true and accurate record of the minutes having been stenographically recorded by me and transcribed under my supervision to the best of my knowledge and belief.

X   
PATRICK M. DeGIORGIO

Dated: December 6, 2023

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

In the Matter of

CASTLE USA CORP/JULY 4EVER

382 Rock Cut Road, Walden  
Section 11, Block 1, Lot 60.2  
Zone: R2

Date: November 21, 2023  
Time: 7:40 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
DARRELL BELL  
JOSEPH POLITI  
JAMES EBERHART, JR.  
GREGORY M. HERMANCE  
JOHN MASTEN  
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: (NONE)

REPORTED BY: Patrick DeGiorgio, Court Reporter

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

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CHAIRMAN SCALZO: Okay. Moving onto old business. Anyone here for Castle USA Corp/July 4Ever? That application has been postponed to the December meeting.





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

In the Matter of

STEVEN MOREAU

50 Old South Plank Road, Newburgh  
Section 52, Block 1, Lot 12  
Zone: R1

Date: November 21, 2023  
Time: 7:40 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
DARRELL BELL  
JOSEPH POLITI  
JAMES EBERHART, JR.  
GREGORY M. HERMANCE  
JOHN MASTEN  
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: STEVEN MOREAU  
JONATHAN CELLA

REPORTED BY: Patrick DeGiorgio, Court Reporter

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

1                   CHAIRMAN SCALZO: Moving onto  
2                   the next open application which is  
3                   Steven Moreau, 50 Old South Plank Road  
4                   seeking area variances of lot area,  
5                   lot width, lot depth, front yard, rear  
6                   yard, one side yard, combined side  
7                   yards, building surface coverage and  
8                   lot surface coverage to construct a  
9                   single family residence on a  
10                  nonconforming lot. I don't know how  
11                  many other variances we can receive in  
12                  this case after I read those. Mr.  
13                  Canfield has a very questionable look  
14                  on his face.

15                  MR. CANFIELD: Amused.

16                  CHAIRMAN SCALZO: I'd say more  
17                  bemused. Before we get back into  
18                  this, we had Mr. Milan here  
19                  representing the applicant last month.  
20                  Mr. Cella apparently has picked up the  
21                  ball and about to run with it. Before  
22                  we do that, Mr. Mattina, reading all  
23                  of the variances that I had mentioned,  
24                  when we start looking at building



1 height in this case, because the lot  
2 is too small to meet any of the  
3 setbacks, so does that make a play in  
4 this application as well?

5 MS. MATTINA: So we said no  
6 because it's under 35 feet. It  
7 doesn't make a difference.

8 CHAIRMAN SCALZO: It's under the  
9 35 feet, but with side yards being  
10 what they are, there is no structure  
11 there so we can't say we are  
12 increasing a degree of nonconformity,  
13 but I'm trying to think of how this  
14 applied to other structures that were  
15 -- if you look at -- I'll get to that.  
16 Thank you, Mr. Mattina. I don't think  
17 there's a question yet or an answer  
18 yet, but we are going to get there.  
19 Mr. Cella, we had this application in  
20 front of us last month. I don't know  
21 if you read the meeting minutes from  
22 last month, some of the questions that  
23 the board had asked. Some of the  
24 concerns that we had expressed. I

1 know myself I had noted that there was  
2 a less than five-foot setback on I  
3 want to say either side of the  
4 building and the applicant had  
5 indicated that he would go back and  
6 review their current layout to see if  
7 any changes could be made so we could  
8 still meet what he was looking to  
9 realize the benefit for.

10 MR. CELLA: So I have a new map  
11 here that was prepared by Mr. Milan  
12 and I can hand that out.

13 CHAIRMAN SCALZO: You can.

14 MR. CELLA: I understand that  
15 this is not -- (interrupted)

16 CHAIRMAN SCALZO: Mr. Moreau,  
17 Mr. Cella, please understand that you  
18 can call it what it is, it's just not  
19 fair to hand us something here tonight  
20 and ask us to evaluate it.

21 MR. CELLA: I know.

22 CHAIRMAN SCALZO: We will accept  
23 it of course.

24 MR. CELLA: Thank you. I'll

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hand them out.

MR. MOREAU: Mr. Chairman, he's just he helping out. John is still in. He's just in Cornwall tonight.

CHAIRMAN SCALZO: It's not our normal night here.

MR. DONOVAN: Lucky or unlucky as the case may be.

MR. CELLA: So stated by Mr. Scalzo, the five-foot -- having less than five feet on either side of the building would be relative -- nearly impossible to construct the residence to stay on this property, so what we are proposing is that the applicant, owner owns the adjacent property to the south of this property which is 54 Old South Plank Road and we are proposing to do a lot line change to transfer some of that land to the subject parcel that we are here to request the variance for and we are able to provide the five feet all the way around.

1           We understand that we would have  
2           to go to the Planning Board for a lot  
3           line change, but we don't want to  
4           proceed with that without having a  
5           discussion with you first, if it's  
6           enough to proceed.

7           CHAIRMAN SCALZO: This actually  
8           was one of the parts of the discussion  
9           at last month's meeting and I  
10          appreciate that you folks looked into  
11          that.

12          MR. MOREAU: It was the biggest  
13          thing.

14          MR. CELLA: This would permit us  
15          to stay on the property without  
16          impacting any neighbors. We have five  
17          feet all around. The proposed  
18          building it only 20 feet wide so that  
19          really can't be made that much  
20          smaller, the residential. So we  
21          provided a better rendering.  
22          Something like this would be a 20-foot  
23          wide house single family residence to  
24          be serviced by municipal water and

1 sewer.

2 CHAIRMAN SCALZO: Thank you.  
3 That helps me understand it much  
4 better.

5 MR. CELLA: As I was telling him  
6 it's a village lot dimension-wise.  
7 It's narrow. So we have to have a  
8 small narrow house similar to what you  
9 have seen in the Village of Walden.

10 MR. MOREAU: Can you show the  
11 audience too?

12 MR. CELLA: Sure.

13 CHAIRMAN SCALZO: Okay. I have  
14 an odd question for you, Mr. Cella and  
15 Mr. Moreau. The proposed dwelling,  
16 total height in comparison to the  
17 building to the right of it as I look  
18 at it, which would be the lot of  
19 Edward Hirsch, is that going -- are  
20 you going to look for the entire 35  
21 feet?

22 MR. MOREAU: No. The difference  
23 would be that it might be taller only  
24 because we position closer to the road

1 where they position way further so it  
2 drops down more, but overall height  
3 will probably be about the same. It's  
4 a two-story and it peaks, so it's like  
5 two and a half stories. So I would  
6 say it's 24, 25.

7 MR. CELLA: For a two-story  
8 residence the living space would  
9 occupy roughly 18 feet in height plus  
10 the roof hitch. So we are definitely  
11 less than 30. We are closer to 25 to  
12 28 feet on the front.

13 CHAIRMAN SCALZO: And that's  
14 where earlier in the discussion on  
15 this application where I was going, I  
16 didn't -- regarding the character of  
17 the neighborhood, we didn't want to  
18 see something that was monstrous  
19 compared to the ones that were next to  
20 it. You really can't compare it to  
21 the other property that you own, Mr.  
22 Moreau, because it's down in the hole.

23 MR. MOREAU: It's a cottage. A  
24 bungalow.

1 CHAIRMAN SCALZO: Questions from  
2 the board?

3 MR. BELL: Again, with the  
4 height, the max height is 35?

5 MR. MATTINA: Yes, 35 feet.

6 MR. BELL: That's even on Orange  
7 Lake if they choose to build at that  
8 height?

9 MR. MATTINA: Correct, that's  
10 town wide.

11 MR. BELL: Thank you.

12 CHAIRMAN SCALZO: Mr. Bell, I  
13 will remind you as we go through the  
14 balancing test we are talking about  
15 neighborhood character. We can't  
16 impose restrictions -- I don't want to  
17 call it restrictions on variances, but  
18 we grant the minimum variances to fit  
19 in this case. I didn't mean to jump  
20 in on you.

21 MR. BELL: That's fine.

22 CHAIRMAN SCALZO: I think I knew  
23 where you were going.

24 MR. BELL: I'm good.

1 CHAIRMAN SCALZO: Miss Rein, it  
2 looked like you were about to ask a  
3 question.

4 MS. REIN: No. Mr. Bell wanted  
5 to say something and I wanted to make  
6 sure he got the chance.

7 CHAIRMAN SCALZO: This will be a  
8 Type 2 Action.

9 MS. REIN: It is a Type 2  
10 Action.

11 CHAIRMAN SCALZO: Mr. Masten,  
12 just because I'm at that end of the  
13 table, do you have any questions or  
14 comments regarding this application?

15 MR. MASTEN: No, but I wasn't  
16 here so I will abstain.

17 CHAIRMAN SCALZO: I understand.  
18 Mr. Hermance, do you have any  
19 questions regarding this?

20 MR. HERMANCE: No questions.  
21 Just adding in the extra footage is  
22 important.

23 CHAIRMAN SCALZO: I see Mr.  
24 Eberhart is nodding in agreement with



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Mr. Hermance.

MR. EBERHART: Yes. That was the issue.

CHAIRMAN SCALZO: Mr. Eberhart, any other comments?

MR. EBERHART: Thank you, nothing further.

CHAIRMAN SCALZO: Mr. Politi, how about you?

MR. POLITI: That was the thought, the five-foot setback.

CHAIRMAN SCALZO: I think as far as emergency access to the house, I think you have really taken care of a situation that you couldn't take care of before.

MR. POLITI: The height you are saying is -- (interrupted)

MR. CELLA: Will be under 35 feet. It would be somewhere in between 25 and 30.

MR. POLITI: Thank you.

MR. MOREAU: That concept when I went to the Building Department I

1 asked if we could keep the amount of  
2 drawings down just in case you guys  
3 said something about this height issue  
4 so we will keep it in mind as we  
5 design it. Taking that input is what  
6 we are looking for.

7 CHAIRMAN SCALZO: Let me ask  
8 you, counsel. The applicant's current  
9 drawing that is in front of us,  
10 although we just did receive it 10  
11 minutes ago, depicts five-foot  
12 setbacks from the side lot which was a  
13 concern of ours at the last meeting.  
14 Now they do not have approval from the  
15 Planning Board.

16 MR. DONOVAN: Correct. Mr.  
17 Chairman, I spent a lot of years  
18 playing second base. I'm going to do  
19 a quit pivot over to Mr. Cella. You  
20 are going to the Planning Board;  
21 right? You don't want us to do  
22 anything tonight?

23 MR. CELLA: I don't think we  
24 can. The only thing you could do is

1 give us some positive feedback to make  
2 it -- give us comfort in going to the  
3 Planning Board to do this.

4 CHAIRMAN SCALZO: That's our job  
5 is to give the applicant comfort. Mr.  
6 Feder has a question.

7 MR. FEDER: Bill Feder, Rockwood  
8 Drive. How deep is the lot?

9 MR. CELLA: It's roughly 95  
10 feet, so 95 and 102 shows roughly 95  
11 feet.

12 MR. FEDER: How deep a  
13 structure? Can you not shorten the  
14 house a little bit to maybe do away  
15 with the rear yard setback issue?

16 MR. CELLA: The footprint of the  
17 proposed residence is only 25 by 50 so  
18 that's going to be a 1,500 to 1,600  
19 square foot building. It's not -- you  
20 have to make that a usable residence.

21 MR. FEDER: All right. Thank  
22 you.

23 CHAIRMAN SCALZO: The applicant  
24 appears to I'll say balance it between

1 the lot lines at the lakeside and  
2 roadside while it appears he is being  
3 considerate of his neighbor to not  
4 stick out further towards the lake  
5 than his neighbor. So at this point,  
6 the concerns that I had in last  
7 month's meeting have been alleviated  
8 by this proposal. Anyone else on the  
9 board have any comments regarding  
10 that? Moving back to counsel if no  
11 one else has this, in this case are we  
12 looking to the applicant to withdraw  
13 his application?

14 MR. DONOVAN: I just want to be  
15 clear. The likelihood is you will be  
16 at the Planning Board. Do they have a  
17 public hearing for a lot line change?  
18 I don't know what their procedure is.

19 MR. CELLA: I'm not exactly  
20 sure. We will have to modify the  
21 application to you because this lot is  
22 also going to need a variance.

23 MR. DONOVAN: Okay.

24 MR. CELLA: If that helps you

1 fellows out.

2 MR. DONOVAN: Procedurally you  
3 will have to have a public hearing  
4 because it's a little different. If  
5 you want -- I don't have an objection  
6 if it works administratively to leave  
7 it open with another public hearing.

8 MR. CELLA: No one is here.

9 MR. DONOVAN: They were here  
10 last time.

11 MR. CELLA: They were here last  
12 time?

13 CHAIRMAN SCALZO: They will be  
14 here Thursday.

15 MR. DONOVAN: You'll need an  
16 application for the lot line.

17 MR. CELLA: We will have to  
18 modify the application. I'm just  
19 looking now, we have 28-foot here  
20 where 30-foot is required and there  
21 will be another handful of variances  
22 for the existing structure. The  
23 increase in the degree of  
24 nonconformity.

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CHAIRMAN SCALZO: Very good. We happen to know from when the applicant was in here for the corner lot with the gazebo, Mr. Milan has done surveys of both lots. We could combine the two and we can see that.

MR. DONOVAN: The procedure would be to adjourn without date.

CHAIRMAN SCALZO: Very good. I would -- that's a wonderful idea, counsel. I think in this case when we do get back here I think we have to renotify this.

MR. DONOVAN: Correct.

MS. REIN: We have to do what?

CHAIRMAN SCALZO: Renotify the public hearing.

MR. DONOVAN: Absolutely.

CHAIRMAN SCALZO: This could take three to four months to come back to us from the Planning Board and by then people forget. That's what I feel as though would be the appropriate approach to this. Just

1 really looking to the board for a  
2 motion to keep the public hearing open  
3 until the applicant produces --  
4 actually at that point it's going to  
5 be a Planning Board referral.

6 MR. CELLA: Correct. We will  
7 get a new referral for you and modify  
8 the application. Like I said we were  
9 just looking for some positive  
10 feedback.

11 MR. MOREAU: We felt this was  
12 necessary.

13 CHAIRMAN SCALZO: I think this  
14 is a wonderful solution. So I'll look  
15 to the board for a motion to keep the  
16 public hearing open.

17 MR. DONOVAN: Without date with  
18 the understanding that there will be  
19 another public hearing when they come  
20 back.

21 CHAIRMAN SCALZO: Correct.

22 MR. POLITI: I'll make a motion.

23 CHAIRMAN SCALZO: We have a  
24 motion by Mr. Politi. A second?

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MR. EBERHART: Second.

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

MR. POLITI: Aye.

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Aye. Those  
opposed? Very good. Thank you.



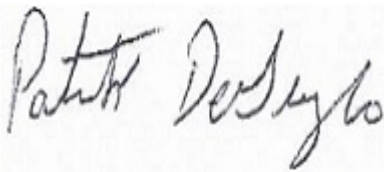
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STATE OF NEW YORK )

) ss:

COUNTY OF ORANGE )

I, PATRICK M. DeGIORGIO, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that the foregoing is a true and accurate record of the minutes having been stenographically recorded by me and transcribed under my supervision to the best of my knowledge and belief.

X   
PATRICK M. DeGIORGIO

Dated: December 6, 2023



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

-----  
In the Matter of

SUNOCO

5004 Route 9W, Newburgh  
Section 84, Block 2, Lot 2  
Zone: B

300 Route 32, Newburgh  
Section 17, Block 1, Lot 65.1  
Zone: B

69 North Plank Road, Newburgh  
Section 77, Block 1, Lot 2  
Zone: B

-----  
Date: November 21, 2023  
Time: 8:00 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
DARRELL BELL  
JOSEPH POLITI  
JAMES EBERHART, JR.  
GREGORY M. HERMANCE  
JOHN MASTEN  
DONNA REIN

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

APPLICANT'S REPRESENTATIVE: (NONE)

REPORTED BY: Patrick DeGiorgio, Court Reporter

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

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CHAIRMAN SCALZO: All right,  
next on the agenda is old business is  
Sunoco. We have three separate  
locations and it was just basically  
changing out the skin of the canopies  
and these stand alone signs.

MR. BELL: Yes.

CHAIRMAN SCALZO: The applicant  
when he was here presenting the last  
time we had not heard back from the  
county and I don't know if we have  
yet, but their time has expired.

MR. BELL: Correct.

CHAIRMAN SCALZO: Since we  
didn't hear from them I'm sure it was  
a local determination.

MR. BELL: Correct.

CHAIRMAN SCALZO: Therefore,  
without having to rehash what the  
entire application was, and Mr.  
Masten, you were not here last month,  
so if you could abstain from this.

MR. MASTEN: Sure.

CHAIRMAN SCALZO: Unless you

1 read the minutes and are prepared to  
2 vote along with us?

3 MR. MASTEN: I didn't get a  
4 chance to read them.

5 CHAIRMAN SCALZO: That's fine,  
6 Mr. Masten.

7 MR. DONOVAN: It's actually good  
8 because you didn't -- I have to  
9 correct myself. I read the minutes  
10 again today and I almost made it to  
11 the end of the year without making a  
12 mistake, but I didn't quite make it.  
13 I indicated at the last meeting that  
14 this was a type listed action under  
15 SEQR requiring a negative declaration.  
16 That was incorrect. This is actually  
17 a replacement in kind which makes it a  
18 Type 2 Action so you don't need to  
19 make any SEQR determination.

20 CHAIRMAN SCALZO: Thank you.

21 MR. DONOVAN: If you want to  
22 know I have a lengthy memo, but I  
23 think I'll just cut to the chase.

24 CHAIRMAN SCALZO: So this is a

1 Type 2 Action under SEQOR as counsel  
2 just mentioned. So we will discuss  
3 it. We still need to go through the  
4 balancing factors here. First one  
5 whether or not the benefit can be  
6 achieved by other means feasible to  
7 the applicant? They rebrand these  
8 types of companies on a relatively  
9 frequent basis, so I would say no.  
10 The second, if there's an undesirable  
11 change in the neighborhood character  
12 and detriment to nearby properties?  
13 And I believe it's going to go  
14 unnoticed. The third, whether the  
15 request is substantial? It's only as  
16 substantial as the initial signs were.  
17 And the fourth, whether the request  
18 would have adverse physical or  
19 environmental affects?

20 MR. BELL: No.

21 MS. REIN: No.

22 CHAIRMAN SCALZO: Fifth, whether  
23 the alleged difficulty is self-created  
24 which is relevant but not

1                   determinative? Yes, it is self-  
2                   created because they want to change  
3                   out the skins. However, having gone  
4                   through the balancing tests, does the  
5                   board have a motion of some sort?

6                   MR. BELL: I make a motion for  
7                   approval.

8                   CHAIRMAN SCALZO: We have a  
9                   motion for approval from Mr. Bell.

10                  MR. HERMANCE: Second.

11                  CHAIRMAN SCALZO: We have a  
12                  second from Mr. Hermance. Can we roll  
13                  on that please, Siobhan?

14                  MS. JABLESNIK: Mr. Bell?

15                  MR. BELL: Yes.

16                  MS. JABLESNIK: Mr. Eberhart?

17                  MR. EBERHART: Yes.

18                  MS. JABLESNIK: Mr. Hermance?

19                  MR. HERMANCE: Yes.

20                  MS. JABLESNIK: Mr. Masten is  
21                  abstaining. Mr. Politi?

22                  MR. POLITI: Yes.

23                  MS. JABLESNIK: Ms. Rein?

24                  MS. REIN: Yes.

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MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Variances are approved.

That is it for the board's business this evening. I have not read the meeting minutes from last month.

MR. DONOVAN: I'm not a member of the board, but I did spend my Sunday afternoon reading the minutes and it was very entertaining.

MR. BELL: It was very long too.

CHAIRMAN SCALZO: I'll read them on the beach next week. Very good. At this point I would look to the board for a motion to adjourn.

MR. BELL: I make a motion to adjourn.

MS. REIN: I second.

CHAIRMAN SCALZO: We have a motion to adjourn from Mr. Bell, we have a second from Miss Rein. All in favor?

MR. POLITI: Aye.



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MR. EBERHART: Aye.

MR. HERMANCE: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Aye. Those  
opposed? Very good.

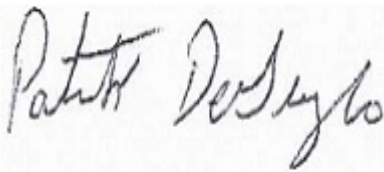
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STATE OF NEW YORK )

) ss:

COUNTY OF ORANGE )

I, PATRICK M. DeGIORGIO, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that the foregoing is a true and accurate record of the minutes having been stenographically recorded by me and transcribed under my supervision to the best of my knowledge and belief.

  
X \_\_\_\_\_  
PATRICK M. DeGIORGIO

Dated: December 6, 2023