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

----- X

In the Matter of

PILOT TRAVEL CENTERS, LLC

239 Route 17K
Section 89; Block 1; Lot 38.22
B Zone

----- X

Date: November 23, 2021
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: FRANK PALUMBO and
EDWARD WHALEN

----- X

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

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CHAIRMAN SCALZO: I'd like to call the meeting of the Zoning Board of Appeals to order.

The order of business this evening are the public hearings scheduled. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have, and then any questions or comments from the public will be entertained. The Board will then consider the applications and will try to render a decision this evening but may take up to 62 days to reach a determination.

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

Roll call, please.

MS. JABLESNIK: Darrell Bell.

MR. BELL: Here.

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MS. JABLESNIK: James Eberhart.

MR. EBERHART: Here.

MS. JABLESNIK: Robert Gramstad
is absent.

Greg Hermance.

MR. HERMANCE: Here.

MS. JABLESNIK: Anthony Marino is
also absent.

John Masten.

MR. MASTEN: Here.

MS. JABLESNIK: Darrin Scalzo.

CHAIRMAN SCALZO: Present.

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

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

Siobhan, if you could lead us,
please.

(Pledge of Allegiance.)

CHAIRMAN SCALZO: All right. Our
first applicant this evening is Pilot
Travel Centers, LLC, 239 Route 17K in

1
2 Newburgh, seeking area variances of the
3 setback of a pylon sign built without a
4 permit and to add extra building wall
5 signage, a new menu board, fuel island
6 canopy lettering and four directional
7 signs.

8 Siobhan, do we have mailings on
9 this?

10 MS. JABLESNIK: Yes. This
11 applicant sent out 12 letters. We
12 received the County response. It was a
13 Local determination.

14 CHAIRMAN SCALZO: County response
15 was a Local determination. Thank you.

16 Who do we have with us this
17 evening?

18 MR. PALUMBO: Mr. Chairman, my
19 name is Frank Palumbo. I'm with CT Male
20 Associates. With me is Ed Whalen from
21 Pilot, from Knoxville. He did bring with
22 him close to the southern accent.

23 Thank you for entertaining our
24 application and thank you for the Code
25 Enforcement Officer's review and

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highlighting what we had done in error.

So the variances that we're seeking are primarily due to the change of the regulations. The differential of our signs from what was there and have been there I would say would border on not significant, but when viewed in concert with the present code, they do seem like they're a very high percentage and a large request. We would ask the Board to consider the two facts, although one is the law, one is the practicality and reality of what was out there.

If I may just try to do it quickly and see if there are any comments from the Board.

CHAIRMAN SCALZO: That would be fantastic. Don't go too quickly. I learned my lesson from years of speaking quickly.

MR. PALUMBO: I have been accused of the same. I'm purposely going at a slower pace.

So the freestanding sign, one of

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the things we wanted to point out was it is in exactly the same location it has always been, the foundations are exactly the same. The error, besides not getting the permit initially, was that in the construction previously, and I think there are some photos in your application of the two posts, originally the sign was contained within those two posts. When it was constructed, really in error, it went up and went out about 6 inches on each side where the sign is. That change, and the fact that it was a change of the new sign, brought it into the code compliance of the setback.

What's unique about our site is the flaring right at the DOT's right-of-way line there. So we are 7.62 feet off of the right-of-way line instead of the 26 plus or minus feet for the height of the sign. We're approximately about 50 feet from the road edge. That is where the right-of-way flares out because we're that close to the interchange, which is a

1 unique situation that I think not every
2 applicant would face. Otherwise, the sign
3 is very, very close -- I don't want to say
4 identical, but very, very close to the
5 sign that was there in the first place. I
6 think we feel that the sign is appropriate
7 for where it is located, being it has been
8 there.
9

10 It is also appropriate for the
11 directional context of it. It's not just
12 a sign saying that this is the Pilot
13 Travel and RVs, but you can tell from what
14 was I think actually probably a pretty
15 good decision by the Planning Board with
16 the site plan originally, the trees that
17 are out in the front to the one side of
18 the sign are well groomed. They look like
19 they were planted with the original site
20 plan. That does obscure the sign a little
21 bit when you're heading in towards the
22 interstate. I think everybody probably
23 understands that most of the vehicles are
24 coming from the interstate. We're a truck
25 center. Driving there again today, seeing

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that you have to get past that knoll before you can even see the sign. We do think that having a sign that sort of gives the first indication is important and should be visible from the road. If we set it back further, we think that that does a detriment to not only us as the applicant and the owner of the property, but just for good knowledge of what driveway you're turning into. That's where you're going. So that's the freestanding sign in a nutshell.

With respect to the building signage, again it sounds like a very large percentage, but the evidence of what we had done there in the past on the front face of the building, we had the words Travel Center. Those are being replaced now with image signs that take up essentially the same area, one of which is a map of Newburgh in there. The Pilot that's above the doorway is almost identical in size there. The RVs on the end, again very, very similar in size to

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what was there.

The one addition that we have is for a new tenant space, the Cinnabon. That would be the only addition.

So add all those up, comparatively to what was on the face of the building previously, it's very, very similar. Again, we recognize that the current code, if you change anything it will look like it's out of compliance.

We think that everything that was being done and the work that's being done on the building was to really give it a facelift and not one that was just let's try to get more signage. That wasn't the intent. It was really to improve the whole exterior quality of the building.

With that also goes the menu board at the drive-thru, which I think is unlisted in terms of within the code. We are replacing the existing menu board, raising it up slightly. Again, very close to the same size.

Also included in the application

1
2 are for the directional signs. Our
3 directional signs are larger. We
4 recognize that. One of the things that
5 we've done with those is that -- a lot of
6 these were done for bringing our signs up
7 with LED lighting. Those directional
8 signs also have a solar component on the
9 top of the box which is something that the
10 company was doing to try to be more energy
11 efficient.

12 We do ask that the Board consider
13 the larger signs just for the fact that it
14 is primarily a truck use. Having the
15 signs slightly higher -- the only thing that we
16 think might be a little different, Joe, is
17 that it was 4 feet high, but that they
18 were -- the sign was at 4 feet high or --

19 MR. MATTINA: Yes. You'll have 4
20 square foot, 4 feet high.

21 MR. PALUMBO: Yes. So we weren't
22 as high as 6 feet. It's very close. I
23 knew there was something that was
24 different there.

25 So we would ask the Board for

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their consideration of that, when you're looking over the top of the hood of the trucks, to have a sign that is a little bit higher and a little larger that says, you know, auto access only. We don't want a truck making the wrong turn into that area.

So that's, I think, the nutshell of most of what was covered in the application. Certainly we would be interested in any comments from the public and comments from the Board.

CHAIRMAN SCALZO: Thank you very much.

I actually don't have comments myself, but I'm going to look to the Members of the Board.

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

MR. BELL: When you mentioned a menu sign, I guess we're speaking of Arby's?

MR. PALUMBO: Yes.

MR. BELL: Joe, you said that is

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supposed to be -- I'm losing my voice.
It's supposed to be authorized at 6 or is
it 4?

MR. MATTINA: The directional
signs can only be 4 square foot. They
have to be less than 6 foot off the grade.
The menu board is not addressed in the
code.

MR. PALUMBO: It's not addressed
in the code so it's not allowed. Correct?

MR. MATTINA: Correct.

MR. PALUMBO: So we are asking
for something that is not even allowed in
the code but we are replacing one that was
already there.

MR. BELL: Okay. And the other
one was did I understand they're replacing
the Travel Center and adding like
Cinnabon?

MR. PALUMBO: Yes. So right
where -- I'm not sure exactly which
pictures you have there. So on the
original pictures you could see the words
Travel Center which went across the entire

1 face of that same wall. That same wall is
2 now going to have three panels. They are
3 more colorful than the Travel Center. We
4 think they are a little more eye popping
5 without being obtrusive.
6

7 MR. BELL: Okay. I'm good.

8 CHAIRMAN SCALZO: Thank you,
9 Mr. Bell.

10 Mr. Hermance?

11 MR. HERMANCE: When I did stop in
12 there I noticed the work has already
13 commenced.

14 MR. PALUMBO: Yes. And we beg
15 your indulgence with the fact that we
16 didn't do that in the right process.

17 MR. HERMANCE: And then the sign
18 out by the road, you said originally it
19 was supposed to be inside of the
20 framework?

21 MR. PALUMBO: Right. So the
22 design that was done and sent to the sign
23 fabricator was going to use the same
24 vertical posts -- I mean new posts but in
25 the same location where they were. What

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they did was they came up to the bottom of the sign and then went with a lower bar and went out a little bit which made it different.

Joe, if they had just even changed the sign, if it was exactly the same but a new sign, would they have had to go for it because of the --

MR. MATTINA: Yes, because in the new sign law you have to set back off the property line the height of the sign. The height of the sign is 26 feet. Typically you have to set 26 foot back from the line.

MR. PALUMBO: So the sign that we had out there I believe was very close to the same height. It's just that it's the new code.

MR. MATTINA: Correct.

MR. PALUMBO: So that's the difference. We replaced the sign very, very consistent with what was there, but it's now under the new code.

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

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CHAIRMAN SCALZO: Mr. Eberhart?

MR. EBERHART: I have nothing.

I've been out there several times.

CHAIRMAN SCALZO: Thank you.

Mr. Masten?

MR. MASTEN: I'm fine with it.

CHAIRMAN SCALZO: Very good.

At this time I'd like to open the meeting up to any members of the public that are here to speak about this application.

(No response.)

MR. DONOVAN: Mr. Chairman, if I could. Joe, do you know of any prior variances issued with the Pilot facility?

MR. MATTINA: No. What happened with the old sign code, they never needed a variance because everything was based off road frontage. They have almost 700 square foot of road frontage, so the sign was never an issue.

With the new code it's based on the building. The building is only 90. They lost 80 percent of what they were

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allowed to have when the new law went into effect. That's where they got caught.

MR. DONOVAN: Thanks, Joe.

CHAIRMAN SCALZO: Thank you.
That's what I had anticipated. Okay.

One more time. Do any members of the public wish to speak?

(No response.)

CHAIRMAN SCALZO: No. I will return to the Board. Any other questions?

MR. EBERHART: I have none.

CHAIRMAN SCALZO: So at this point I'll look to the Board for a motion to close the public hearing.

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

MR. MASTEN: I'll second it.

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

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Eberhart?

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MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes. The public hearing is now closed.

Moving on. It's a Type 2 action under SEQRA?

MR. DONOVAN: No. A sign variance is an Unlisted action.

CHAIRMAN SCALZO: An Unlisted action. Thank you.

So in this case we're also going to have to -- if we're going to make a motion to approve this application, then we're also going to need a motion for a negative declaration. That is correct, Counselor?

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

CHAIRMAN SCALZO: Thank you.

So at this point I'll look to the

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Members of the Board for a motion for a negative declaration.

MR. BELL: I'll make a motion for a negative declaration.

MR. HERMANCE: I'll second it.

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

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. Scalzo?

CHAIRMAN SCALZO: Yes.

Counselor, if you'll take care of the rest of that.

MR. DONOVAN: You just need to sign here.

CHAIRMAN SCALZO: We still need to proceed through the balancing test.

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Before we do, I would like to ask the Members of the Board, because there are a few different variances here, would you like to treat them as -- do you want to address them together or would you like to address them separately? I only say that because last month we had a unique signage issue as well, although I don't think this is quite the same.

MR. BELL: It's not the same.

CHAIRMAN SCALZO: So I'll look to the Board. Do you feel as though we can handle this under one?

MR. BELL: Yes.

MR. EBERHART: Yes.

MR. HERMANCE: Yes.

MR. MASTEN: Yes.

CHAIRMAN SCALZO: So discussing the five factors which we are weighing, the first one being whether or not the benefit can be achieved by other means feasible to the applicant.

Well, in my opinion the code change is really why they're here. We

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could have them reduce, but that just doesn't seem like that would be practical.

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

MR. BELL: No.

MR. EBERHART: No.

MR. HERMANCE: No.

MR. MASTEN: No.

CHAIRMAN SCALZO: No.

The third, whether the request is substantial.

MR. BELL: No.

MR. EBERHART: No.

MR. HERMANCE: No.

MR. MASTEN: No.

CHAIRMAN SCALZO: I don't believe so, either.

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

MR. BELL: No.

MR. EBERHART: No.

MR. HERMANCE: No.

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MR. MASTEN: No.

CHAIRMAN SCALZO: No.

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

MR. BELL: It is.

CHAIRMAN SCALZO: It is and it's not. Well, it's not because the code changed. So I don't want to call it preexisting nonconforming, but it did.

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

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

MR. BELL: I'll second it.

CHAIRMAN SCALZO: We have a motion for approval from Mr. Masten. We have a second from Mr. Bell. Siobhan, roll on that.

MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Eberhart?

MR. EBERHART: Yes.

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MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The motion is carried. The
variances are approved. Good luck.

MR. PALUMBO: Thank you very
much.

MR. WHALEN: Thank you.

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

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

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of December 2021.

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

MOSSGARDEN PROPERTIES, LLC
12 Hinchcliffe Drive, Newburgh
Section 18; Block 1; Lot 4.2
R-2 Zone

----- X

Date: November 23, 2021
Time: 7:20 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: CHARLES BROWN

----- X

MICHELLE L. CONERO
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CHAIRMAN SCALZO: Our next applicant this evening is Mossgarden Properties, LLC, 12 Hinchcliffe Drive in Newburgh, seeking area variances of lot size and lot width to construct a single-family dwelling.

Siobhan, mailings on this one?

MS. JABLESNIK: This applicant sent out 33 letters.

CHAIRMAN SCALZO: 33 letters. Okay.

Mr. Brown, we know who you are. If you could, introduce yourself for the record, please.

MR. BROWN: Some of these guys don't. My name is Charles Brown. I'm the engineer for the applicant.

This is an existing lot in a subdivision that was created in 1957. It looks to me like a larger subdivision based on the drafting. It's undersized, again, in area. It's a little over half an acre where it should be 40,000 square feet. The lot width is a minimum of 150

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and we're at 140. Other than that, the lot meets the requirements. It's in an existing subdivision. Just about every other lot in there, if not all of them, are built. It's not out of character with the neighborhood. There are no environmental constraints on the lot.

I think if this subdivision had Town water, this lot would be in total conformance with the R-2 Zone.

CHAIRMAN SCALZO: Very good. Thank you, Mr. Brown. I actually did look at the filed map.

MR. BROWN: I brought a copy of it.

CHAIRMAN SCALZO: I'm not sure that it's really necessary to see. Okay.

Since you do have it there, just an observation, I see that the tax map shows a straight line for Hinchcliffe Road whereas the subdivision does show what almost looks like it used to be a cul-de-sac. So you're losing lot area there.

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MR. BROWN: Also an adjoining lot.

CHAIRMAN SCALZO: Yes. Also, Mr. Brown, I saw a temporary access road through there on the filed map. There are no restrictions that go along with that, are there?

MR. BROWN: Actually, that access road got joined to the adjacent lot. That's not ours, --

CHAIRMAN SCALZO: Okay.

MR. BROWN: -- which is why we're under.

CHAIRMAN SCALZO: Very good. We have all been through the subdivision. I agree with your assessment that the lot size is in kind with the other lots in the development.

Charlie, just one of the things that I had picked up on. The application itself, the checkmark is for a use variance.

MR. BROWN: No. That's a mistake.

CHAIRMAN SCALZO: I understand

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that. We just need to make those corrections. I believe we can do it right here and now.

MR. DONOVAN: That's correct. Charlie, you indicate that the filed application should be checked appropriately area variance as opposed to use variance?

MR. BROWN: Yes. Area variance.

CHAIRMAN SCALZO: Again, you've got the engineering, to work on that with the separation distances between the wells and the septic.

MR. BROWN: Yes.

CHAIRMAN SCALZO: I have no questions myself at this point.

I'm going to look to the Members of the Board. In this case I will start down at the other end of the table. So Mr. Masten?

MR. MASTEN: I have no questions.

CHAIRMAN SCALZO: Very good. Mr. Eberhart?

MR. EBERHART: No questions for me.

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CHAIRMAN SCALZO: Mr. Hermance?

MR. HERMANCE: The wooden fence on the adjacent property, if you're looking at it from the road, to the left it looks like the wooden fence actually encroaches also.

MR. BROWN: Yes.

MR. HERMANCE: I see there's a note to remove it.

MR. BROWN: The shed in the back.

MR. HERMANCE: The wire fence.

MR. BROWN: And the shed.

MR. HERMANCE: And the shed?

MR. BROWN: Yup.

MR. HERMANCE: Does that also include the stockade fence, or whatever that is?

MR. BROWN: We're going to have to. We can't construct this lot without it. The wire fence will be removed. It's noted there. They put that fence up which was not on his property.

CHAIRMAN SCALZO: Thank you, Mr. Hermance.

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Mr. Bell, do you have any
comments on this application?

MR. BELL: No.

CHAIRMAN SCALZO: Very good.

At this time I would like to open
the meeting up to any members of the
public that would like to speak about this
application at Hinchcliffe Drive.

Please step forward and introduce
yourself, please.

MR. STADTMAUER: Thank you,
everybody. Thank you for giving me the
chance.

I'm Alan Stadtmauer. I'm a
relatively new owner of 10 Hinchcliffe
Drive, the next door neighbor. I live
right up the hill, right by the side of
this one.

You'll forgive me for printing my
notes on an iPad. I've moved in recently
enough that I don't even have a printer
yet, but I've been there since June.

I really would like to ask you --

MR. DONOVAN: We would ask that

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you speak slowly.

MR. STADTMAUER: Yes. I meant to apologize about that. I tend to be -- I do do a lot of public speaking and I tend to be very paced.

I actually would like to ask you to turn down this request for three reasons, three pretty straightforward reasons. The first one is that I really do believe this is out of character with the neighborhood.

The second one is I do think that there is a potential health issue with wells and septics that I'll get into.

The third one is, frankly the zoning is what the zoning is. This is a pretty significant variance. I think there's a pretty big precedent to be set here, of course not knowing if this precedent has been set many times before.

I'm speaking to the first point. So I viewed the property, my property, 10 Hinchcliffe Drive, for the first time last February, basically the second day

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that it was on the market, at a time that, as we know, it was a really, really heated real estate market. I instantly fell in love with it. The house itself is a beautiful split level ranch, 1969, mid century. I walked inside, went downstairs and there's a den that looks straight out of the Brady Bunch, exposed brick around the fireplace in the exact same pattern as the brick on the exterior of the house.

I walked the land. My house is on an acre of property that was created by combining two different smaller lots, probably to meet the existing zoning laws back in the day. Then I walked around and I just like -- that piece of land, everywhere you look, and I saw it during the wintertime when there were no leaves, it's hundreds of feet from the neighbor to the one side, to the other side, back, across the road. I walked around the neighborhood. There are no privacy hedges. I had been looking up in Marlboro where everything was built, all the

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developers had done it on farmland and people had to go and plant cyprus trees and privacy hedges. That little subdivision in Hinchcliffe, a neighborhood that I had really gotten to like, there are no privacy hedges.

I can't speak to the square footage of every single lot, but I will tell you that the configuration of those lots, the houses are pretty far from each other, and between those houses consistently are stands of trees. So the neighborhood really is what makes Newburgh Town so beautiful. It's rural but it's also really a neighborhood. I have real neighbors and real privacy.

It's not just the size of this lot that we're discussing here that's so critical. It's such an odd shape. It's a trapezoid. My survey doesn't quite look exactly like that. I think that might have been off of an older subdivision map. It's an odd shape where the front of it barely has enough room against Hinchcliffe

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Drive for the width of the driveway.
There's a driveway close enough that will
meet whatever we expect.

But the trees have to come down
to build a house there. Even if they
surgically removed just enough trees to be
able to build that house, let's face it,
it's a very heated market, somebody is
going to come in, a family is going to see
it, the house is going to be flipped,
they're going to buy it, they're going to
want a lawn in the backyard for their kids
and the trees are going to come down.

This is pretty close to my house.
Before you know it there are going to be
no trees left between us.

I do believe it's going to change
the neighborhood. When I walk up and down
these three blocks, it's mid century
modern houses built in the '60s or early
'70s, every one of them different. I
can't imagine that at a moment when
there's a shortage of lumber and supplies
in a hot market, I haven't seen the design

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for the house itself, just the plot of land, that this is going to be a stoic house that looks like the others or looks different from the others, but like the others.

That brings me to the second point. Mossgarden has said that but for the fact that had it been on Town water this would have been in the zoning law requirements. The reality is that it's not on Town water and that's why these are the zoning requirements. Possibly for health reasons. Possibly for other reasons. But that's what gave rise to the character of how people put their plots separately.

I've spoken to neighbors who talked about how hard it was to make sure that septic and wells are separate. On this map there's an indication --

May I approach?

MR. BROWN: Sure.

MR. STADTMAUER: There's an indication of where my well -- where my

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well is, all the way down here relative to the house. There's a note that says that the surveyor did not find the well. It identifies that well back from the original 1950s corporate map. So I walked that area and I cannot find a wellhead there. I'm not surprised because it doesn't really make sense to put it all the way down below the house.

I have to confess something. My house closed in June. When I did my initial contract inspection, the snow was on the ground, my inspector never found my well. My surveyor, which was in the spring, couldn't find my well. I bought the house. I don't know where the well is. I've had plumbers come. I've had landscapers come. Nobody has found the well.

Now, prior to my ownership of this house, a few owners ago had a below ground pool. Two owners ago removed that pool and put an above ground pool. The sellers who had bought the land to

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renovate it and sell it to me, they removed that and then did more landscaping.

I have to believe that the well is in a logical spot, right behind my house. The water tank pump goes -- the pipe goes that way. I just don't know exactly where it is. Eventually I will. I don't know yet. I don't know that this developer does, either. There's no logic that the well would be below and the water would be pumped up. It's that the well is behind and had been covered during these many previous pool removals and that the water flows down into the house.

That might mean that their septic tank and my well will be near each other. Now, I don't know that. I just don't think they have done their homework. I do think there could be a health problem later on. Then the question is what is going to be the liability and who is going to take care of the remedy of that when there might already be another family

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living in that house and me in mine and there could be groundwater contamination.

The third point, of course, is straightforward. You know precedents much better than I do. We're not talking about 10,000 feet -- 1,000 feet, 2,000 feet, 3,000 feet. We're talking about their covering 57 percent of the required land. The variance being asked for is over 40 percent of the requirement. That increases the density tremendously.

Anybody would be able to buy a piece of an acre and plop two houses on it. Buy 10,000 square feet from this neighbor, 15 from this neighbor and plot the house between the two. The density of our little subdivision and neighborhood rises very quickly. The density of the R-2 designation in the Town of Newburgh can rise very quickly. Forgetting the impact that has on our services, just thinking about the character of our Town and those neighborhoods. I think this is significant.

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Thank you for indulging me for a very, very long conversation. Thank you for listening to me.

Again, I hope you will consider not allowing this house, and certainly not allowing this house without a careful understanding of the health risks that are involved.

CHAIRMAN SCALZO: Before you sit down, I just would like to know, you're indicating your well pump or your expansion tank comes into the house. Can you point to it on that? Your house location is on that map. Can you point to what portion of the house --

MR. STADTMAUER: Do you see over here? This is not drawn exactly, the footprint of the house. It's not to scale. Do you see how the shape of the house is like this?

CHAIRMAN SCALZO: Yes.

MR. STADTMAUER: So this over here is the end of the master bedroom. The boiler room and mechanicals are right

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underneath here.

CHAIRMAN SCALZO: Okay.

MR. STADTMAUER: The pipe comes in from this direction. Now, the grade of the land goes --

CHAIRMAN SCALZO: There's topography on this. I can't see which way the --

MR. STADTMAUER: I'm surmising, but I don't know for a fact that the well has to be anywhere here. Right. It could be right behind the house, but it could really be I think anywhere here. Whatever the case is, my septic is over here. It doesn't really make sense. Again, I've walked this area plenty and I cannot find a wellhead here. I don't think this is the wellhead.

CHAIRMAN SCALZO: In the '50s and '60s they did bury the well casings. My own house was built in '55 and I can't find where my well is.

MR. STADTMAUER: This has been plaguing me that I haven't been able to

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find it. I feel like if there is something wrong, I actually should --

CHAIRMAN SCALZO: Mr. Brown, before you go away, do you know the planimetrics for the adjacent residence, this gentleman's residence? Is that plotted from a physical location or was it a --

MR. BROWN: That was surveyed.

CHAIRMAN SCALZO: Surveyed.

Okay.

MR. BROWN: Both of them. Both adjoining residences.

CHAIRMAN SCALZO: Very good.

MR. BROWN: John Millen did the survey. He's good.

CHAIRMAN SCALZO: We're familiar with Mr. Millen's work. He's a great surveyor.

Obviously you've expressed your reservations about this application. In your opinion, what would be reasonable?

MR. STADTMAUER: Look, I don't know that I'm smart enough for that. It's not necessarily my field. It feels to me

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like this plot -- the shape of the plot looks, on the subdivision, as though -- I don't think it was ever intended for a house. It feels like it was intended originally to have -- perhaps to have a road that went from Hinchcliffe over and around to Sarvis Lane.

CHAIRMAN SCALZO: Which I had mentioned earlier in the application during Mr. Brown's presentation, that there was a temporary access road shown. Mr. Brown is indicating that may not have been on this lot at all.

I also did look at the subdivision.

Charlie, if you could flip that over, please.

The lot that we're discussing here today appears to be very similar in size, and perhaps even slightly larger than the lot on the adjacent side, on the other side of you.

MR. STADTMAUER: Yes. You know, 14 Hinchcliffe Drive is currently

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unoccupied and --

CHAIRMAN SCALZO: Unoccupied meaning no one lives there or is it vacant land?

MR. STADTMAUER: No. There's a house there. In fact, when I bought the land there were a lot of cars outside. I don't really know the owner. The story I heard is that the owner had been renting out the house, but nobody is living there right now. So there's nobody since basically the end of July. Nobody saw the sign, received the mailing or can show up here tonight.

In the time since I got the mail basically about eight days ago I have not had a chance to go back to the old deeds. My understanding was that this little plot of land was once upon a time owned by the same person who owned 14 Hinchcliffe Drive and it had been combined together. That's why there's an encroaching -- it really is encroaching. The reason why there's an encroaching shed and fence and that kind

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2 of thing is because, in fact, I believe it
3 was owned by one person the same way as my
4 land is two plots and my house sits right
5 across that line. If somebody ever sold
6 off one of those plots, maybe in a
7 foreclosure or maybe something else, there
8 would also be an encroachment.

9 CHAIRMAN SCALZO: As I mentioned,
10 I looked on the County website and this
11 parcel was a tax sale parcel.

12 MR. STADTMAUER: When I bought --
13 when I was doing my investigation before
14 my contract and my offer, my broker looked
15 at the records and said that the County
16 owned it. So I'm like okay, this is not
17 clearly intended to be green, maybe not.

18 CHAIRMAN SCALZO: Very good. I
19 thank you for your comments.

20 MR. STADTMAUER: Thank you.

21 CHAIRMAN SCALZO: I believe I've
22 asked all the questions I wanted to up to
23 this point.

24 At this point I'm going to look
25 to the Members of the Board for any of

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their comments. I'll start with Mr. Bell.

MR. BELL: I have none. I'm just riding off your back. I agree.

CHAIRMAN SCALZO: Very good.

Mr. Hermance?

MR. HERMANCE: No questions at this point.

CHAIRMAN SCALZO: Mr. Eberhart?

MR. EBERHART: No questions for me.

CHAIRMAN SCALZO: And Mr. Masten?

MR. MASTEN: I have nothing.

CHAIRMAN SCALZO: Apparently I spoke for us all.

MR. DONOVAN: The public.

CHAIRMAN SCALZO: At this point I would like to open this up to any members of the public that wish to speak about this application.

Please step forward and state your name as we are being recorded. Ma'am, please.

MS. COWEN: I'm Elaine Cowen. I live at 6 Baltsas.

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I always go down Baltsas. It ends in that property. It's a busy intersection because people are coming around from the back, all different directions. There's not enough frontage to me.

I saw when the surveyor was there, there's a red line. It's very narrow. It's a busy area. School buses come by, cars come by.

Originally the people who owned the A-frame house, number 14, purchased it. They did own both and then it went into foreclosure. It was auctioned, this parcel. Now I believe 14 might be in foreclosure.

It's just a busy -- it will change the character of the neighborhood. We have deer. I mean where are they going? All of the woods are disappearing.

So I think it does increase the density of our small neighborhood. I think the smallest parcel currently is probably a half acre, you know, because

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most of the homes are like from the late '60s to like 1974. So we have .69. The people on the corner I think have 1.2. This property is opposite 2 Baltsas. So I mean it's a significant -- I think it's 23,000 square feet versus 40.

CHAIRMAN SCALZO: Yes. That's just about exactly a half acre.

MS. COWEN: Right. I mean it's small. It's a very odd shape.

So the driveway, although it's deep it would be a long driveway I'm sure coming out into a very busy roadway.

So that's my thoughts.

CHAIRMAN SCALZO: Thank you. An acre is 43,560. This is 23. So it's a little larger than a half acre.

MS. COWEN: There might be a half acre on Baltsas. Most of them are .69. So those are my thoughts.

CHAIRMAN SCALZO: Thank you very much. Your comments are very important and they will be recorded.

MS. COWEN: Okay.

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CHAIRMAN SCALZO: Mr. Mahar?

MR. MAHAR: Good evening. Mike Mahar. I'm actually working with Charlie on this property to put the house up.

Just two notes on it. This was a pre-approved lot in a subdivision back in the '50s. Obviously it was approved at that time. It did meet the zoning requirements at that time. Obviously the zoning has changed over the years to create this issue.

In addition, as far as the character of the neighborhood, the house proposed does meet all the setback requirements. There's no relief requested on any setback requirements. It's strictly the size of the lot, which is consistent -- like the last neighbor had stated, it's consistent with the rest of the size of the lots, about a half acre or so. As you indicated, it's a little over half an acre. It is consistent with the neighborhood. It does meet all the setback requirements.

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Again, the variance is for the lot width, the 10 feet or so, and not the lot size, based on the current zoning that was changed.

CHAIRMAN SCALZO: Thank you, Mr. Mahar.

Is there anyone else from the public that wishes to speak about this application?

(No response.)

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

MR. BELL: No.

MR. EBERHART: No.

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

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

MR. MASTEN: I'll second it.

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

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please, 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. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed.

This is a Type 2 action under
SEQRA?

MR. DONOVAN: Correct, Mr. Chairman.

CHAIRMAN SCALZO: Thank you,
Counselor.

Any further discussion before we
talk about the criteria that guides us
here?

(No response.)

CHAIRMAN SCALZO: Keep in mind
that we are here for lot area and road
frontage, lot width. Correct?

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MR. DONOVAN: Correct.

CHAIRMAN SCALZO: No further discussion. Counselor --

MR. DONOVAN: I was going to ask Mr. Mattina a question, if I can.

Joe, so an applicant comes in, well and septic. They want to get a building permit. Let's assume everything else complied. Do you require them to show locations of wells and septic on the adjoining parcel?

MR. MATTINA: Yes. We require wells within 200 feet of any leach field.

MR. DONOVAN: Charlie, what are you showing us? It's the anticipated, reputed --

MR. BROWN: This is what's shown on the original subdivision map for the location of the well. The septic was up here.

MR. DONOVAN: Joe, what I'm asking is would you look for more? Would Code Compliance look for more in terms of the location of a well in this application

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specifically?

MR. MATTINA: This application, since it's signed and sealed, we would take it from the engineer as is. If there's a discrepancy, we'll put the red flag up and make them do a little extra diligence and look for a well.

CHAIRMAN SCALZO: Thank you. Mr. Mattina, when you in the Building Department would request to see wells within 200 feet of the lot, that is just to show them, not necessarily -- you're leaving it up to the engineer or design professional to ensure that County Health requirements are met. Correct?

MR. MATTINA: Correct. I'm the one actually signing the permit. I need to know for myself.

CHAIRMAN SCALZO: So even if, for instance, a well is closer than 200 feet to an adjoining septic, as long as the topography provides for overland flow away from the adjoining well, really you're looking for a minimum of 100 feet?

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MR. MATTINA: Correct. If the septic is uphill from a well, it needs to be 200 feet. 100 feet if it's downhill from the well. Yes.

CHAIRMAN SCALZO: Thank you, Mr. Mattina.

Mr. Brown, let me ask you a question. I know in Ulster County they allow for wells and septic to maintain a 100-foot separation if there's a swale or a boundary condition between the well and septic. Is that the same in Orange County or do they hold tight to the 200?

MR. BROWN: Well, this wouldn't go to Orange County Health Department because it's not a --

CHAIRMAN SCALZO: Single. I understand that.

MR. BROWN: Yeah. The State criteria is if there's a swale or a boundary condition between the well and septic, your separation is reduced to 100 feet.

CHAIRMAN SCALZO: Okay. Thank

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you.

Again, Members of the Board, the filed map that this lot was developed off of is on the back side of Mr. Brown's presentation there.

I did happen to notice, doing my research on this, that Mr. Brown has proposed a septic system where it was exactly planned for in the original filed map.

MR. BROWN: Correct. Is it the Ballcliffe subdivision?

CHAIRMAN SCALZO: I didn't look at the name. It was not a field. It was seepage pits that they had used, which was an acceptable criteria back in the '50s.

Anyway, I kind of got off topic here. So let's go back.

MR. BROWN: I'd like to note the design flows are substantially less now than they were in the '50s because of low flowing fixtures. They were 150 gallons per day per bedroom. Now they're 110 gallons per day per bedroom. The State

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Health Department also allows Elgin and other alternate systems that also shrank down the fields.

CHAIRMAN SCALZO: Correct.

Mr. Brown, before we even get to our criteria, so we're not going to -- I'm not sure where we're going to land here, but there have been concerns regarding the foliage. Should this move forward, would your client do the most they could to maintain mature trees or --

MR. BROWN: Yes.

CHAIRMAN SCALZO: Thank you.

All right. We're going to move into the five factors we're weighing, the first one being whether or not the benefit can be achieved by other means feasible to the applicant. That's quite simple. It's preexisting in its condition. Preexisting nonconforming. It met the size in the '50s when it was developed.

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

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properties. Well, if you were to split that statement in two, we've heard testimony here from residents that they feel that it would be considered an undesirable change in the neighborhood character. Detriment to nearby properties is something that I cannot answer to. It would be a newer dwelling in a subdivision of homes that were built 50 years ago. So that's that.

The third is whether the request is substantial. This lot, again, is substandard due to changes in zoning over the years. So while it may be substantial today, and codes always change, do you feel as though it's substantial?

MR. MASTEN: Yes.

MR. BELL: I do. Very much.

CHAIRMAN SCALZO: The fourth, whether the request will have adverse physical or environmental effects. That is also something that we're going to have to weigh here. Should we move forward with this, I think I would have to insist

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that the applicant do his best to verify the well location of the adjoining property, because that would really determine if his septic design can remain where it is.

And the fifth, whether the alleged difficulty is self-created, which, because this lot was developed in the '50s, I don't believe that this is a self-created issue. The only self-created portion is that they're trying to develop it now.

Therefore, if we approve, we are only required to grant the minimum variances necessary and we may impose reasonable conditions here.

So having gone through those balancing criteria, does the Board have a motion of some sort with any conditions?

MR. EBERHART: I think there should be some conditions.

CHAIRMAN SCALZO: Mr. Eberhart, I don't believe Michelle can hear you.

MR. EBERHART: I'm sorry. I

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believe that we should set some conditions in regards to if there's any effect in terms of the septic and the wells.

MR. DONOVAN: Maybe something along the lines that the applicant needs to verify that all required Health Department separations are maintained, as well as maintaining as many trees that are possible, during the course of construction, on the lot.

Would those be the two things that the Board is interested in, if I may?

CHAIRMAN SCALZO: Thank you, Counselor.

MR. EBERHART: It sounds reasonable.

CHAIRMAN SCALZO: At this point I'm going to actually look out to the public here.

Sir, should we get that far, would you allow the engineer and surveyor to enter upon your property to attempt to locate your well?

MR. STADTMAUER: I'd have to look

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into that. I cannot commit to that at this time. We would have to discuss what the rules are and what's legally required of me.

CHAIRMAN SCALZO: Okay. I believe surveyors have what's called a right of entry with proper notification. But we can --

MR. STADTMAUER: We can talk about that.

CHAIRMAN SCALZO: Sure. Those two criteria, we're looking at verification of wells so we can verify separation distances --

MR. BROWN: Okay.

CHAIRMAN SCALZO: -- and maintaining as many trees as we can, mature trees. Obviously you're aware that should a tree be potentially disturbed, you look at the drip line of those trees. If you disturb the root system beyond the drip line, you risk killing the tree. I'm not saying you do, but you risk it.

Therefore, I'm looking to the

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Board here for any sort of motion with those conditions that we just discussed.

MR. BELL: We're looking for them to go back and identify before we --

CHAIRMAN SCALZO: I don't know that that's required. I believe that we can do what we have to do here, and then it's incumbent upon the applicant to verify that. If they cannot meet those separation distances and they need to -- they're only here for lot area and lot width.

MR. BELL: Right.

MR. EBERHART: An approval with conditions.

CHAIRMAN SCALZO: So it's for an approval with those conditions, and then it becomes the Code Compliance or Building Department's responsibility to verify. It becomes the design professional's responsibility to verify that it meets County Health Department code.

MR. BELL: So I'll make a motion that we first close the public hearing.

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CHAIRMAN SCALZO: It is closed.

MR. BELL: I missed that. Sorry.

So I'll make a motion that we put those stipulations with the septic and the trees and move it forward for approval.

CHAIRMAN SCALZO: Very good. So we have a motion from Mr. Bell.

MR. EBERHART: I'll second it.

CHAIRMAN SCALZO: We have a second from Mr. Eberhart. Can you roll call on that, please, 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. Scalzo?

CHAIRMAN SCALZO: Yes.

The motions are carried.

Approval is granted conditioned on the two bits that we just provided.

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MR. BROWN: Understood. Thank
you.

(Time noted: 7:55 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 4th day of December
2021.

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

GAS LAND PETROLEUM, INC.

42 South Plank Road, Newburgh
Section 71; Block 2; Lot 11
B Zone

----- X

Date: November 23, 2021
Time: 7:55 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: CHRISTOPHER LAPINE

----- X

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

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CHAIRMAN SCALZO: Our next applicant this evening is Gas Land Petroleum, Inc., 42 South Plank Road in Newburgh, otherwise known as New York State Route 52. This is a Planning Board referral for area variances of the front yard to New York State Route 52, the setback to the intersection, parking in both front yards, minimum front yard setbacks for the canopy on Route 52 and Fifth Avenue, and confirmation that the underground fuel tanks meet the 15-foot setback from the property line.

Siobhan, do we have mailings on this?

MS. JABLESNIK: This applicant sent out 57 letters, but we have not received the County response yet.

CHAIRMAN SCALZO: We have not gotten the County response yet. Are you aware of what that means to you this evening, sir?

MR. LAPINE: I'll be seeing you in December.

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CHAIRMAN SCALZO: And that also we will not be able to close the public hearing this evening as well.

We would like to hear your presentation. I know there are members of the public here that either have questions or may have some comments on your application. If we could start with you identifying yourself and letting us know why you're here.

MR. LAPINE: My name is Christopher Lapine. I'm with the Chazen Companies. We represent the applicant, Gas Land Petroleum, this evening.

They own and operate the existing fuel station here at 42 South Plank Road. It consists of a convenience store and eight pump islands on this particular parcel that is wedged between Fifth Avenue and New York State Route 52.

When it was constructed in 1975 and up until October of 2020, it has been located within the R-3 Zoning District. It wasn't until October of 2020 that this

1
2 property was rezoned into the district.
3 Prior to the rezoning, it was an existing
4 nonconforming use. With the rezoning,
5 it's a conforming use with existing
6 nonconformities in terms of the bulk
7 requirements.

8 Those bulk requirements that are
9 listed, the majority of those bulk
10 requirements are already nonconforming
11 with regard to the parcel. The existing
12 parcel in terms of the front yard setback,
13 the existing building is located within
14 the front yard setback associated with
15 Fifth Avenue and front yard setback
16 associated with Route 52. The canopy is
17 located within the front yard setback of
18 Fifth Avenue, and it's also located within
19 the front yard setback of Route 52. The
20 parcel encroaches, as it exists today,
21 within the 50-foot setback to an
22 intersection.

23 Some of the other issues
24 associated with the property is parking is
25 not allowed within any of the setbacks of

1
2 the property. Currently parking is within
3 the setbacks of the property. Parking is
4 required to be 10 feet off the property
5 line. Currently parking is within 10 feet
6 of the property line.

7 The current parcel also lacks a
8 loading area as well.

9 What the applicant is seeking to
10 do is they are looking to enhance the
11 on-site circulation, both pedestrian and
12 vehicular circulation, on site. They're
13 also looking to improve the aesthetics of
14 this building.

15 They currently have a restroom
16 facility that's in the rear of the
17 facility, outdoor entry only. They would
18 like to bring those inside the building
19 and make them ADA accessible. They would
20 like to also provide a deli within the
21 existing building.

22 The intent is the existing
23 building is approximately 1,600 square
24 feet. I apologize for not having the
25 existing conditions plan with me this

1 evening, but the new building is set back
2 18 feet to the north of the existing
3 building. The intent of that is it
4 provides parking along the north side of
5 the site, and now we have a dedicated
6 access aisle which is not so congested
7 with cars backing up into where cars are
8 staging near the pump islands.
9

10 One of the other items that we
11 are looking to address in the project is
12 the entire property along Fifth Avenue is
13 open between the right-of-way and the
14 site. There's a free flow of cars without
15 any particular area where they can be
16 directed in terms of navigating ingress
17 and egress. This proposal looks to
18 provide curbing along Fifth Avenue with
19 parking adjacent to it so that we narrow
20 down the points of ingress and egress so
21 we don't have a number of free-flowing
22 cars in between.

23 We're also looking to provide a
24 privacy fence in the rear of the property,
25 a six-foot high cedar fence.

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We're looking to decorate the back of the property with landscaping and provide a series of landscaping along the boundary of the property next to the adjoining residential lot.

The site right now also doesn't have a dedicated refuse enclosure. We're looking to provide that dedicated refuse enclosure for this particular project.

However, due to the fact that this was rezoned, we're now before you to get variances for the existing nonconformities that were previously on the site. I want to share with you the extent of those.

We're here seeking a variance for the existing canopy which is within both the Fifth Avenue setback and the Route 52 setback. We're not making any changes to that. That's an existing nonconformity. There are no changes.

We're seeking a variance for the existing nonconformity in terms of the setback between an intersection and the

1
2 property's canopy. Once again, it's a
3 50-foot setback. We're 22 feet now.
4 We're still going to be 22 feet.

5 The current project as it exists,
6 the current site has an encroachment for
7 the existing building within the front
8 yard setback of Fifth Avenue. Our new
9 layout here brings the building within the
10 required front yard setback. So we're
11 eliminating that one nonconformity. We
12 still have the nonconformity with the
13 building encroaching in the Route 52
14 setback.

15 The fuel pumps, I forgot to touch
16 on those earlier. The fuel pumps as they
17 exist today are within the 15-foot setback
18 from a property line. They'll continue to
19 be within the 15-foot setback. There are
20 no changes proposed to those fuel tanks at
21 all. They're all conforming fuel tanks in
22 the ground.

23 With regard to the parking, we
24 will have still a need for parking within
25 the setback and within a side yard

1 setback. The parking that's proposed
2 along the eastern portion of the site
3 along this curbed island will be adjacent
4 to the new landscaping that we're
5 proposing here.
6

7 We believe the overall additions
8 to the site and what's being contemplated
9 here will aesthetically improve the site,
10 kind of create a new -- it's not going to
11 necessarily be eye popping, but it will be
12 a little bit more modernized in terms of
13 the look and feel.

14 This is a copy of the kind of
15 rendering that was shared when the Town
16 rezoned the property. We're looking to do
17 kind of a fieldstone halfway up, vertical
18 windows to provide daylight to the
19 building, provide more natural light to
20 it. They're going to have metal awnings
21 along the frontage of the dormers on this
22 building, and then they'll have a
23 clapboard siding. There will be no vinyl
24 siding on this. Architectural style
25 shingles.

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So this is going to be a big enhancement to what's existing on the site, along with our ability to landscape and provide some privacy fence in the rear of the property.

As it exists right now, the applicant does have issues with the restroom in the rear of the building. There's some mischievous behavior that takes place back there. His intent is to bring all of that inside so that people are using the restrooms within the facility as opposed to outside. As I indicated earlier, they're not ADA accessible, they're existing nonconforming, and he wants to bring that in compliance with ADA accessible.

The other aspect of this project is it provides ADA accessibility in terms of parking and pedestrian access which currently doesn't exist today.

CHAIRMAN SCALZO: Well, thank you.

I have a few questions. The

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required minimum setback from a State highway, is that 50 or 60?

MR. LAPINE: 50.

CHAIRMAN SCALZO: It is 50?

MR. MATTINA: It's 60 with the exception if the majority of the house is within 350 feet, you can move it up to 50. I can't tell on this if the majority of the houses are 350 or not.

CHAIRMAN SCALZO: Okay. That's fine. That's good enough for me in this case.

As you're aware, we cannot close the public hearing this evening.

A lot of the information that you have provided are really Planning Board type comments, when you're referring to the landscaping plan and the facade, the fencing around the back.

I'm very familiar with this site. It really doesn't have very good flow currently. I really appreciate that you're looking to take care of any shenanigans that may occur behind the

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building. I see with your fence -- and this is not any type of Zoning Board of Appeals issue. I just appreciate what I'm looking at here.

MR. LAPINE: I wanted to mention one other thing with regard to the front yard setback along Route 52. We're going to be improving that by at least 5 feet with further setting the building back.

CHAIRMAN SCALZO: Which is exactly -- you brought me to where I was headed, which was I would like to see the existing conditions survey so I can see exactly what we have now compared to what you're proposing. Up until this point I didn't realize that your intention was to completely knock down the old building and put up a new one.

MR. LAPINE: Okay.

CHAIRMAN SCALZO: So that would be helpful to me, and I'm sure it would be helpful to the other Members of the Board.

And again, we're going to be seeing you in December. Thank you for the

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presentation.

I'm actually going to open it up to the Board as well as members of the public here.

I'm going to start with Mr. Masten. Do you have any comments?

MR. MASTEN: I have no questions on it. There's been a gas station there for years.

CHAIRMAN SCALZO: Sure.

Mr. Eberhart?

MR. EBERHART: No questions.

CHAIRMAN SCALZO: Mr. Hermance?

MR. HERMANCE: On the application it says to confirm the underground fuel tanks meet the 15-foot setback. How is that achieved?

MR. LAPINE: We're seeking a variance for that. They don't meet the 15-foot setback. That's one of the reasons we're here.

MR. DONOVAN: What is the setback?

MR. LAPINE: 15 feet.

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MR. DONOVAN: I know that. How far are the tanks away?

MR. LAPINE: The tanks are -- so within the -- we are 12.5 feet.

CHAIRMAN SCALZO: But they are entirely within the property boundary?

MR. LAPINE: They're within the property boundary but on the northern side -- northeastern side of the site.

CHAIRMAN SCALZO: Okay. Mr. Hermance, did he answer your question?

MR. HERMANCE: Yes.

CHAIRMAN SCALZO: Mr. Bell, do you have questions?

MR. BELL: No. I'm good.

CHAIRMAN SCALZO: Very good.

At this point I'm going to open it up to any members of the public that wish to ask any questions or provide comments regarding this application. Be advised that you will have another opportunity in December. If you wanted to take a look now, ask questions, perhaps the applicant can have those answers for

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the next meeting.

MR. SOUKUP: I want to say something.

CHAIRMAN SCALZO: Sir, if you could step up, please, and identify yourself.

MR. SOUKUP: My name is Robert Soukup. I live right behind the store, at 9 Fifth Avenue. I've lived there for over 23 years. For 23 years I've been battling the store.

I came here today to express my disgust with the Orange County Health Department, Code Compliance and the supervision of the Town of Newburgh.

They say the proof is in the pudding. I'm going to leave it with you today. I want you all to look at it, some of the problems that I put up with in 23 years.

There are indoor bathrooms in that building. The problem is the transit coming off of 84, they flush rags down the toilet, needles, hyperdermic, they plug it

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up. If I had a dollar for every time they had a plumber cleaning out the lines, I could buy a boat.

Then they did this. They put up a Johnny on the Spot in the middle of the summer. I'm quite sure that you all have family come over the holidays, picnics and holidays. For your grandchildren to look out the window and say grandpa, there's a lady out there pulling her pants down and going to the bathroom.

It's embarrassing to go outside and pick up condoms and marijuana papers and drugs and hyperdermic needles. I'm ashamed of the Town. I'm ashamed of the County. I'm ashamed of Code Compliance. I challenged the Town to show me the fines that they gave this store in 23 years. I grant you that not one fine has been issued. This has been going on for 23 years.

Knocking down a store and putting up a new building is not going to solve the problem. Not even inside bathrooms,

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because when the bathrooms are full and plugged they're going to come outside.

I mean I brought pictures that I wanted you --

CHAIRMAN SCALZO: Which you can hand off to Siobhan.

MR. SOUKUP: -- to look at.

CHAIRMAN SCALZO: Sir, would you like those back or can we keep those for the file?

MR. SOUKUP: No. You can have them. I've got extras. Believe me, you're liable to hear some responses, too.

CHAIRMAN SCALZO: Sir, your comments are very important to us and they are recorded. We will have them for eternity.

What the applicant is here for this evening are not things that this Board addresses. As I say, your comments are very important. What they are here seeking from us this evening is relief from certain codes. If we don't grant those, then they may come back with an

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2 alternative or they may leave it exactly
3 as it is, because it is preexisting
4 nonconforming. So as I say, your comments
5 are very important.

6 MR. SOUKUP: You're not doing the
7 Town any justice by having that building
8 there, brand new or old. Like I said, all
9 people in public office that have been
10 appointed by the people, I'm very
11 disgusted because you're not doing your
12 job.

13 I was in the United States Marine
14 Corp. Outside of fighting the main thing
15 was cleanliness. If some of my DIs seen
16 the shape and condition of the building,
17 they would have heart attacks.

18 I ask each one of you, take a
19 day, go down to the store, walk around,
20 look at the corners. They sell food
21 there. Why the Orange County Health
22 Department has not closed this place down
23 in 23 years, it's a shame. And new
24 building or old building, it's not going
25 to change anything. The leopard doesn't

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change its spots.

I've been there since 1995. I talked to the owner of the store, Mitch, and he tells me oh, it's not our fault, we got a guy running the store and we can't break the contract. That's bologna. We can't have this. There's little children in the neighborhood that's moved in recently, within the 20 years, and for them to see what's going on and the hyperdermic needles laying all over the place, the best thing the Town could do is close the store. That eliminates the problem because the people coming off the internet, they're not going to come there. They're going to go someplace else to get gas.

If our illustrious president has his way and we go with this new green idea, there's not going to be any gas cars anymore. They are going to be electric. So we ain't going to need the gas station.

CHAIRMAN SCALZO: Sir, we appreciate your comments. You're going to

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have multiple opportunities throughout this process. Your next opportunity will be December.

MR. SOUKUP: Okay.

CHAIRMAN SCALZO: If this makes it back to the Planning Board, the Planning Board has the ability to place conditions on the applicant or requests upon the applicant for perhaps security or lack of access to the back of the building. That's something that this Board does not -- that's not what we're here for. Your next opportunity will be with us in December.

MR. SOUKUP: I'll be here.

CHAIRMAN SCALZO: Beyond that, it's the Planning Board.

The applicant has his hand up.

MR. LAPINE: With regard to access to the back of the building, that's something that was brought up during the initial stages with the Planning Board.

There is a cedar fence that continues along the front of the building

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so it's blocking access for people to come in the back. We have the refuse enclosure that extends here.

Perhaps what we should consider is -- we have the fence line that extends along the residential property. We may be doing a locked gate adjacent to the refuse enclosure so there is no access to the back with the exception of an employee and maintenance.

CHAIRMAN SCALZO: That sounds fantastic to me, although that's something you're going to have to take up with the Planning Board.

MR. LAPINE: I'm just sharing it with you.

MR. SOUKUP: You can also plan on having a rat infestation company take charge of your premises. I trap one to five rats a week. I've been dumping them in your dumpster. I could have brought them down here like I did the pictures, but I'll save that for next time.

MS. JABLESNIK: Please don't

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bring rats.

MR. SOUKUP: The proof is in the pudding. I'm sorry. Talk is cheap.

MR. BELL: We don't need that kind of talk.

MR. SOUKUP: 23 years of talk and no action. I am aggravated and disgusted.

CHAIRMAN SCALZO: Sir, as I said, your comments are all recorded. They are certainly memorialized and will be available for the Town Board as well as the Planning Board to read.

MR. SOUKUP: I'll be here.

CHAIRMAN SCALZO: I thank you for your service, sir.

MR. SOUKUP: You're welcome.

CHAIRMAN SCALZO: Perhaps we'll see you in December.

MR. SOUKUP: You will. Thank you.

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

MR. INDZONKA: My name is Erik

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Indzonka. I'm at 46 South Plank Road.
It's South Plank, LLC.

I just have a few questions about
the drawing here. For some reason the
only time we see it is at these meetings.
The gray shaded area on the bottom --

MR. LAPINE: Right here?

MR. INDZONKA: No. Further
south. Down at the bottom.

CHAIRMAN SCALZO: Sir, if you can
actually approach the easel.

MR. LAPINE: This is to the south
here.

MR. INDZONKA: I'm just going to
say the lower portion of your drawing.
What is this shaded area there?

MR. LAPINE: This is the new
pavement. This is for the loading area
for the refuse.

MR. INDZONKA: This will be the
what?

MR. LAPINE: The pick-up area and
loading area associated with the refuse.

MR. INDZONKA: So what would now

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be a parking area which is actually right on the property line. Do you agree with me on that?

MR. LAPINE: There is pavement that extends beyond the property line. It's from the adjoining property. You're correct.

MR. INDZONKA: You're going to have a truck loading zone?

MR. LAPINE: The truck loading zone is this particular area right here.

MR. INDZONKA: Okay.

MR. LAPINE: This area right here adjacent to it will all be grass and landscaped.

MR. INDZONKA: Okay. The area that you have for the refuse, is that going to be the exact area that it is now, the same footprint, or a new one?

MR. LAPINE: This is a new refuse that is going to be fully enclosed.

MR. INDZONKA: The one that is there now is fully enclosed, too. It is never fully enclosed. The gate swings in

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the wind back and forth.

MR. LAPINE: This will have a steel latch on it.

MR. INDZONKA: So does the other one. I'm just saying that --

MR. LAPINE: It's operations.

MR. INDZONKA: I understand. This is something that I have to agree with what he says. This is no cause of yours because you're the designer. At the last meeting a year ago Mr. Soukup and I were met with nothing but hostility by the owner of this property because he came in to get a variance and he said things that were just untrue and how he would further maintain the property. Here we are a year later and he's taken no steps whatsoever to ensure us that he would keep that promise, which he has not, or that he will keep this one that you have here on these lovely placards that would change the thing.

What I'm just trying to say is that as he's seeking variances for the

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location of the pump, the gas tank would be changed?

MR. LAPINE: No.

MR. INDZONKA: Okay. And those gas tanks have been in that location for how long would you say?

MR. LAPINE: He's owned the site since 2010.

MR. INDZONKA: Okay.

MR. LAPINE: I can only speak to how long he's had it for.

MR. INDZONKA: Have you done any type of -- as far as the amount of traffic that passes through those two areas, down Fifth Avenue and down 52, as far as, let's say, 5:00 in the afternoon?

MR. LAPINE: That information is available.

MR. INDZONKA: Okay. Well, when you're trying to do ingresses and egresses and you say you want a setback for a fuel tank that's within now the road, would you say that in the last 11 years the traffic patterns have changed, or perhaps in the

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last --

CHAIRMAN SCALZO: Mr. Indzonka, I apologize for interrupting. The questions that you're asking the applicant's engineer are all questions that are really Planning Board questions. We're here looking for variances for canopy offsets to the property lines. Again, my comments regarding the aesthetics of the lot, they are really Planning Board questions. We're here purely focused on the variances and the relief that the applicant is requesting based on, in most cases, when it comes to the canopy and the underground storage tanks which would be preexisting.

MR. INDZONKA: Right. With the preexisting canopy and with the gasoline storage tanks, would you agree that residents of the City, because I don't believe that he is --

MR. LAPINE: Town.

MR. INDZONKA: The traffic area is a highly, highly congested area and, in fact, at this point in time if you were to

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try to leave that gas station at 5:30 in the afternoon, you would have to probably wait there for minutes and minutes and minutes to get access.

CHAIRMAN SCALZO: Mr. Indzonka, I could probably help you by telling you my address is 57 Fifth Avenue. I am very familiar with this site.

MR. INDZONKA: So the question I have is -- I remember when Vinny owned that gas station and he did mechanic work there. It has changed dramatically with the congestion in the Town of Newburgh. When you consider these variances and these setbacks and you take that into consideration too, the amount of congestion that now is clogging that area every single day, that makes it almost impossible.

CHAIRMAN SCALZO: Sir, again, these are Planning Board questions, although I happen to -- during the day, in addition to wearing a cape, I also work for a transportation organization. The

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enhancement that they are making to channelize vehicles to get in and out of this lot are tremendous compared to what we currently experience. They are providing organization to that area where there currently is not.

MR. INDZONKA: I would say that's so on your street but not so much --

CHAIRMAN SCALZO: The curb island is currently there. Sure.

MR. INDZONKA: That's not going to change on the Route 52 side.

MR. LAPINE: It's not the intent to change it on the Route 52 side.

CHAIRMAN SCALZO: Thank you for your comments, sir. They are very important and they are memorialized.

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

(No response.)

CHAIRMAN SCALZO: No. I'm going to look back to the Board.

MR. MASTEN: No.

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CHAIRMAN SCALZO: At this point I'm going to look to the Board for a motion to keep the public hearing open.

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

MR. EBERHART: I'll second it.

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

MR. BELL: Aye.

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

MR. MASTEN: Aye.

CHAIRMAN SCALZO: Aye.

We will see you in December.

MR. LAPINE: I thought we had an existing conditions plan in the packet. Would it help if I did an overlay so you can see where the existing building is?

CHAIRMAN SCALZO: That would certainly help me be able to visualize it, yes. Thank you.

MR. LAPINE: When is your December meeting?

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MS. JABLESNIK: The 23rd.
(Time noted: 8:23 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 4th day of December
2021.

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

SCANNELL PROPERTIES, LLC
(NEWBURGH COMMERCE CENTER)

124 Route 17K, Newburgh
Section 95; Block 1; Lot 58
IB Zone

----- X

Date: November 23, 2021
Time: 8:23 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: ZACHARY ZWEIFLER &
CHUCK UTSCHIG

----- X

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

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CHAIRMAN SCALZO: Our final applicant this evening is a holdover from the October 28th meeting. We have Scannell Properties, LLC, Newburgh Commerce Center at 124 Route 17K. It was also a Planning Board referral for an area variance to construct a warehouse 381 feet away from State Route 17K where 500 feet is required.

This is a continuation of the public hearing. I do see that we have the applicants here.

Members of the Board, we did receive, between the October meeting and now, correspondence from the applicant's representative. It was a very good presentation, and the correspondence that we received further addresses some of our concerns from our last meeting.

I did make a site visit to the location again. The applicant appears to really have done quite a job on pointing out to us exactly why these variances should be granted. What I did pick up

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seems to fit with what's going on there.

My remaining concerns were there were members of the public here that were discussing noise, odors and perhaps light pollution.

If any one of the members of the applicant team can just come up. My one question, you provided a wonderful screen plan to screen the three residential homes that are there.

With regards to sound, I'm going to look to your engineer in this case. Where in this case we are decreasing -- the 500 feet is from the State highway. As far as sound, how it's going to impact these folks, I know you have quite the buffer there. The studies that I've read, some do work depending on the depth of the buffer. Is there any other positive type sound barriers that you're proposing between the residents and the facility that you're proposing?

MR. ZWEIFLER: I'm Zachary Zweifler from Scannell Properties. Sorry

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I couldn't be here last month.

One thing that we did look at and we did do between our last initial application in September and this meeting is we've engaged a sound consultant, Kevin Hatachi, to help us evaluate that.

We looked at it pretty in depth. They actually pulled all sorts of data from both neighboring properties where sound studies had been done in the past, and we collected ambient noise as well as data available from the airport, given the noise created by the aircraft.

We've actually upped our mitigation plan quite substantially. Now we're looking at two sound barriers, one 415 feet for the three properties directly south of us and then another wall that's 325 feet long for the house over to our east side as well.

We're hopeful and would be happy to share this around.

CHAIRMAN SCALZO: That's outstanding.

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MR. ZWEIFLER: The short answer to the point is we're going to -- we're creating a situation where we're at or within the ambient sound level. When you include the aircraft, we're well below the ambient sound level.

CHAIRMAN SCALZO: I'm glad you were thinking about that as well.

The other gentleman had mentioned odors. I'm not sure that the solution to pollution is dilution. The further away from him you are with whatever activities that would require -- if it's just the rotation around the facility, I don't think it's a big deal. If it's an area -- I don't know what your layout is. The idling or whatever, I know it has to occur sometimes. If that's the furthest point away from the dwellings, that's probably beneficial. Again, I'm not sure what your layout shows. So that was good.

As far as light pollution, I believe your landscaping plan probably will take care of most of that. The

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building materials --

I'm sorry, Mr. Bell. I'm on a roll and I'm starting to talk faster.

MR. BELL: You go right ahead.

CHAIRMAN SCALZO: Just building materials for the sound walls, I'm hopeful that it would be something that wouldn't eventually deteriorate so if those do remain, residential dwellings, they don't end up having to look at a dilapidated fence or a dilapidated sound wall. That's my only hang up there.

MR. ZWEIFLER: We have our site plan. If you could pull that out we can show you again, maybe as a reminder, we've intentionally placed all of the commercial vehicle activities on the west side of the property. We intentionally tried to push it as far away from the residences. We intentionally sited it to screen against that. We did our best to look into commercial activities as far away from the residence along 17K to the southwest. You'll see here, again all of

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our commercial vehicle activities is happening on the west side. Again, we tried to push it as far away from the residence as possible.

As far as your -- I think the only one -- I'm trying to keep up with you. The other one you mentioned was the sound walls and materials. We're looking at a vinyl maintenance free product. It will be there and without any need for upkeep for as long as it's able to stay up. The coloring is all integral.

CHAIRMAN SCALZO: Very good. Do you have a proposed height on those sound barriers?

MR. ZWEIFLER: Yeah. The ones along the south side of the building for the three residences to the southwest will be 13 feet tall. That's as measured from the closest pavement, not necessarily off of the ground level. And then on the east side, that will be 11 feet tall. In all cases that's going to provide I think a great visual barrier in addition to the

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audio effects.

CHAIRMAN SCALZO: Thank you.

MR. UTSCHIG: In many cases that's above. So our grade -- in addition to the height of the wall, the grade is higher in both cases. That whole transition will provide a pretty significant screen from those residences looking up at this.

CHAIRMAN SCALZO: Stacks, typically a vehicle maximum Federal height is what, 13'6". So at 13 feet I believe you probably are going to capture or at least block that.

MR. UTSCHIG: Not only will it deflect the sound, but you'll get a visual barrier that will go along with the planting material that's proposed. You have pretty dense protection, not just plant material but there's a barrier to protect those residents.

CHAIRMAN SCALZO: Okay. Again, thank you. I appreciate that you were thinking of what I was thinking of without

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me telling you.

Regarding any odors, has there been any consideration of that?

MR. UTSCHIG: I apologize, Chairman. I shouldn't shrug.

MR. ZWEIFLER: The easy answer is it's anticipated in all of the operations that are happening within the building.

The only thing that is happening outside is the movement of vehicles. I think with that we really put a lot of effort -- we're going to have commercial vehicles coming in, coming across that southern access point and then pulling into the truck lot. So wherever that needs to be.

MR. UTSCHIG: Due to the cost of fuel, idling time has gone way down.

CHAIRMAN SCALZO: I understand. Very good. I appreciate you indulging me.

Now I'm going to turn it over to the remaining Members of the Board here. Mr. Bell, I cut him off a few times.

MR. BELL: You did very good. I

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was just thinking back to the last meeting when the property owners were speaking. Can you show me where those three homes are? So now what type of barriers are we looking at for the privacy for them?

I know we're looking at sound. I know that one of them was very concerned about his swimming pool with his grandchildren. I can understand being on top of the warehouse looking down, you know, or maybe from outside of the window from whatever floor.

What type of barriers or what are we looking at for their privacy?

MR. ZWEIFLER: We're looking primarily at the wall which is going to be opaque.

Do you have the landscaping plan handy? We really spent a lot of time and effort. We also submitted, if you want to look at them again, renderings from those three residences so you can see what it looks like after construction.

We've really increased the

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landscaping quite a large magnitude over what's required by code to ensure that -- if you look at the renderings, I don't think you can see the wall, quite honestly. We put so many buffers in there, you don't even see the wall, but it's there as well.

CHAIRMAN SCALZO: With the combination of deciduous and evergreens.

MR. ZWEIFLER: Absolutely.

MR. BELL: One of the things I did see -- I see you have the loading docks. I guess it was my understanding that there's going to be some type of commercial or whatever buildings. Right? Where is the parking for those employees?

MR. ZWEIFLER: So all the auto parking is on the east side. You've got 103 auto spaces shown on the east side and then the commercial vehicles. That's how we're trying to bifurcate, to make sure that the personal vehicles are kept kind of where it's a little bit more sensitive.

MR. BELL: Okay.

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MR. UTSCHIG: The landscaping that we're talking about is excessive here in this quadrant along with the wall. We put landscaping on both sides to protect the residents on this side of the wall here. We've really kind of carved off these pieces to protect them from the activity that's going on here, car activity here, truck activity there.

MR. BELL: I'm good.

CHAIRMAN SCALZO: Thank you, Mr. Bell.

Mr. Hermance, do you have any comments?

MR. HERMANCE: They're also concerned with the light pollution. So now with that wall there and your light shining towards the building, would you need like deflectors or whatever to keep the lighting from filtering onto their property?

MR. ZWEIFLER: Absolutely. Did we bring a photometric?

MR. UTSCHIG: No.

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MR. ZWEIFLER: We ran the photometrics on the site. We called for shielding on some of the lights. We're going to be looking at all downcast LED lights. We've gotten to the point where there's no pollution coming off site.

MR. HERMANCE: And the LEDs, you can get them directional?

MR. ZWEIFLER: It made our lives a heck of a lot easier.

CHAIRMAN SCALZO: Sure.

And Mr. Hermance brings up a wonderful point. Keep in mind that these are all things that we're curious about, although that's not what your variance is for.

Any members of the public that want to speak about this application will have another opportunity when this goes back to the Planning Board. Those questions and comments can be addressed at that point.

We're here looking at the variance of 138 feet. I just want to

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remind the Board that that's what we're really here for. The other stuff is, I'll call it gravy.

Like I said, when it came to the character of the neighborhood or detrimental effect on the neighborhood, I thought a lot about it after our last meeting and the comments from the public were about noise and about light and about odor. It appears that you folks went back and did your homework here. I have nothing more.

Mr. Masten, anything down there?

MR. MASTEN: Not right now.

CHAIRMAN SCALZO: Mr. Eberhart?

MR. EBERHART: No. I'm satisfied.

MR. BELL: I'm good.

CHAIRMAN SCALZO: At this point I'd like to also invite any members of the public that wish to comment on the continuation of this from last month's meeting. If anybody would like to comment, please come forward.

MR. KANE: I'm at 128 Route 17K.

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CHAIRMAN SCALZO: Sir, keep in mind that Michelle is recording all of this. So if you --

MR. KANE: Michael Kane, 128 Route 17K. I would like to see my house on the map. The three houses --

MR. UTSCHIG: Yup.

MR. KANE: Okay.

CHAIRMAN SCALZO: Sir, did you understand what they were saying with regards to --

MR. KANE: Right. They want to put --

CHAIRMAN SCALZO: They're going to put a sound wall.

MR. KANE: -- a wall, hedges, berms, whatever.

CHAIRMAN SCALZO: But a wall is going to mitigate sound. I'm sure during the Planning Board process the results of their noise study would be available to the public.

MR. KANE: All three of us are looking out our windows and looking at a

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massive amount of semi-trailers. Why can't the parking be on this side and the trailers be over here? There's nothing over here, you know.

CHAIRMAN SCALZO: Sir, could you just put your landscaping plan back up, please?

So your concern, Mr. Kane, about what you're going to be looking at, these trees -- so sir, if you could point out where those three residential homes are again.

MR. KANE: Here's my pool. I'm just saying that basically this is the way it is now.

CHAIRMAN SCALZO: It's a combination of deciduous trees and evergreen trees which will shield your view probably from even the noise barrier which they are proposing.

Am I correct, sir.

MR. UTSCHIG: Yes. We haven't cut an engineering section.

CHAIRMAN SCALZO: I'm asking if

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the Planning Board is going to do that.

MR. KANE: The Coke place and whatever. That's the way it is now. I mean putting a wall here, I don't see what a 10 foot wall, a 14 foot wall will do. I'll look right over it as soon as I get in my upstairs.

I don't understand why the quiet parking can't be over here and the loud semis be over on this side. I'm just stating that.

And not to mention that, okay, you're going to have to put another light here now. Now you're going to have four red lights between the industrial park and the Air National Guard. It took me ten minutes to get out of my driveway the last three weeks between 4:00 and 6:00 at night or on a Saturday morning. It's hard enough just to get out of my driveway with cars coming here, here and here. Now you're going to put another light here. There's one here, and there's one down here, and there's one right here, and then

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the Air National Guard. So you're going to have four lights here now.

Now the semi is going to come here, it's going to be backed up with trailers, you know, parked in front of my house. Not only am I going to hear the noise in the back of my house, I'm going to hear the noise in the front of my house.

CHAIRMAN SCALZO: Sir, you're making very valid points. You're going to have another opportunity to discuss this in front of the Planning Board.

Something that I will tell you that I do know, along the Route 300 corridor, when the development of the I-87/I-84 project was going on, before the project was done the lights weren't synchronized to work together. My assumption is the DOT will probably have phasing of these lights so they're going to get a predominant green to move all that traffic through. That's something that can be discussed at the Planning

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Board meeting as well.

There are ways to mitigate the idling or standing vehicles in front of your properties which may be able to be addressed in front of the Planning Board.

MR. UTSCHIG: Just to assure this Board, there's a complete traffic study that's being vetted out, not only by the Town's traffic consultant but by the DOT, in reference to the impacts this project will have on the road and the appropriate mitigation that they're going to make us construct.

CHAIRMAN SCALZO: Thank you.

MR. KANE: I realize that the property has got to be used for something. I just don't get why the parking, nice and quiet, can't be on this side and you flip that around.

MR. UTSCHIG: Just so the Board understands, there are two other residences located here and here. Actually, the closest resident to our site is located right up in this area. There

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are two on the other side also. We tried to get a layout that was functional. We tried to provide screening that was significant.

I think the addition of the sound wall does two things. It provides visual and sound. So I think the response to the concerns have been substantial on the side of the developer.

MR. KANE: And another question I have is why couldn't you just go in through the industrial park?

CHAIRMAN SCALZO: They don't have a right-of-way to the lot through the industrial park.

MR. KANE: They can't come through here?

CHAIRMAN SCALZO: No. They don't own any of those parcels.

MR. KANE: I do believe this parcel comes down and goes like that. Where is that person's house? Yeah. It comes down, I think, and goes over like this, does it not?

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CHAIRMAN SCALZO: I can't attest to the design of the facility itself, but I'm sure they came up with probably the most economical development for it.

The area in the lower portion of the map that you were just pointing at, sir, I believe that leads to the Thruway. I'm sure that's without access, so --

MR. KANE: You have Amscan and that massive building. I just figured they can come in the industrial park and just come in a different direction.

CHAIRMAN SCALZO: Again, sir, they don't own the real property to do that.

MR. KANE: This property is free I believe. It's past the lake.

CHAIRMAN SCALZO: Sir, as I mentioned to the previous folks from the public that were here to discuss things, you're going to have another opportunity to air your comments to the Planning Board. They will, of course, take those under consideration as well. Again, your

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comments are very important. We're here purely to discuss the application in front of us which is for the variance from the setback from the highway.

MR. KANE: I think there's a better layout --

CHAIRMAN SCALZO: Thank you very much.

MR. KANE: -- instead of clogging up 17K with more traffic.

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

(No response.)

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

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

MR. HERMANCE: I'll second it.

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

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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. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is closed.

MR. DONOVAN: Mr. Chairman, if I may. Is that a revised concept site plan?

MR. UTSCHIG: Yes.

MR. DONOVAN: Has that copy been submitted to the Board?

MR. UTSCHIG: That's the original submitted site plan.

MR. DONOVAN: So the original submitted site plan had the sound barrier on it?

MR. UTSCHIG: No.

MR. ZWEIFLER: No. It has not been submitted.

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MR. DONOVAN: Can you?

MR. UTSCHIG: Yes.

MR. ZWEIFLER: Yes.

MR. DONOVAN: The sound study that you spoke about, is that something you could submit to the Zoning Board as well?

MR. ZWEIFLER: Absolutely.

CHAIRMAN SCALZO: You bring up some great points, Counselor. We probably should have an opportunity to review those.

MR. DONOVAN: My thought was different than that, but you're the boss and I'm not.

If the Board was inclined to move favorably, I'm going to assume that you want to impose certain conditions. Those conditions would be compliance with the sound study and requirements with the plan dated such and such, last revised such and such, which is going to show the sound barrier on it. That was my suggestion. Again, it's up to the Board.

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You've heard what's being proposed. If that's sufficient for you, I just want to be able to tie in a resolution to those specific conditions so when it goes to the Planning Board and ultimately Code Compliance, they have it to look at.

CHAIRMAN SCALZO: What a wonderful idea.

MR. DONOVAN: Unless you want them back for Christmas, too.

CHAIRMAN SCALZO: And I also want to note that Dave talks faster than I do.

Thank you, Counselor. I believe this is a Type 2.

MR. DONOVAN: Yes. We discussed that the individual setbacks is a Type 2 action under SEQRA.

CHAIRMAN SCALZO: We will discuss the five factors again, although I brought them up it seems as though multiple times in the last meeting.

The first one is whether or not the benefit can be achieved by other means

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feasible to the applicant. Now, we had discussed at the last meeting perhaps the reduction in size may allow that to occur. However, the applicant indicated the economics behind it really wouldn't work.

The second, if there's an undesirable change in the neighborhood character or a detriment to nearby properties. That's the one that I believe we had the applicant come up with some mitigating factors this evening for. The neighborhood character, it has been just as is. The parcel is currently vacant. Development is inevitable. They are doing their best regarding the detriment to nearby properties. They're doing their best to mitigate with a comprehensive landscaping and sound barrier plan.

The third, whether the request is substantial. I struggled with that as well. However, looking at the surrounding facilities, it really doesn't appear so.

Fourth, whether the request will have adverse physical or environmental

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effects. I don't believe so. They have demonstrated that on their current plan as well as the plan that we're going to hold them to with conditions.

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

I believe what we have heard from the applicant this evening allows us to move forward with this. Now, that's just me.

I'm looking to the Board. Having gone through the balancing test of the area variance, does the Board have a motion of some sort, perhaps with conditions?

MR. BELL: I'll make a motion for approval with the conditions that the sound study be provided to the Planning Board.

CHAIRMAN SCALZO: Which it will be.

MR. BELL: Which it will be.

CHAIRMAN SCALZO: As well as the --

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MR. BELL: The Zoning Board.
Bring it to us.

MR. DONOVAN: And the sound barriers shown on the revised concept plan. You can submit that. You can e-mail it to me so I can make reference to the last revision date. Make sure it gets to Siobhan. If you can, e-mail me a copy just so I can reference the last revision date.

CHAIRMAN SCALZO: Counselor, we only have a motion at this point. I don't know how far -- we don't know how this is going to land.

MR. DONOVAN: I'm attempting to be efficient.

CHAIRMAN SCALZO: I'm speaking slowly. I know it's dragging on.

Mr. Bell I believe has captured what we're looking for, and Counselor has helped us clearly define it.

MR. DONOVAN: Perhaps more than you wanted to be helped.

CHAIRMAN SCALZO: We have a

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motion. I haven't heard a second.

MR. MASTEN: I'll second it.

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

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. Scalzo?

CHAIRMAN SCALZO: Yes.

The motion is carried. The variances are approved with conditions.

MR. UTSCHIG: Thank you very much.

CHAIRMAN SCALZO: The last order of business are the meeting minutes from last month. I haven't had a chance to read them.

MR. MASTEN: I glanced at them.

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CHAIRMAN SCALZO: I move to defer voting on accepting the minutes until the next month. I made the motion.

MR. HERMANCE: I'll second it.

CHAIRMAN SCALZO: Mr. Hermance made the second. All in favor of deferring the acceptance of the meeting minutes for October to the December meeting?

MR. BELL: Aye.

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

MR. MASTEN: Aye.

CHAIRMAN SCALZO: Aye.

We're not going to vote on the acceptance of the meeting minutes. I didn't read them.

I'll look to the Board for a motion to adjourn.

MR. MASTEN: I'll make the motion to adjourn.

MR. EBERHART: I'll second it.

CHAIRMAN SCALZO: I have a motion from Mr. Masten. I have a second from

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Mr. Eberhart. All in favor?

MR. BELL: Aye.

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

MR. MASTEN: Aye.

CHAIRMAN SCALZO: Aye.

(Time noted: 8:51 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have
hereunto set my hand this 4th day of December
2021.

Michelle Conero

MICHELLE CONERO