

BURKE, MIELE, GOLDEN & NAUGHTON, LLP

40 MATTHEWS STREET

SUITE 209

POST OFFICE BOX 216

GOSHEN, NEW YORK 10924

(845) 294-4080

FAX (845) 294-7673

RICHARD B. GOLDEN
KELLY M. NAUGHTON*
ROBERT M. MIELE**
PATRICK T. BURKE

ASHLEY N. TORRE**
JOHN E. AHEARN, III

JOSEPH P. MCGLINN (1941-2000)

* ADMITTED IN NEW YORK & MASSACHUSETTS

** ADMITTED IN NEW YORK & NEW JERSEY

May 22, 2020

Via Email

Town of Newburgh Zoning Board of Appeals
Old Town Hall
308 Gardnertown Road
Newburgh, New York 12550

Re: Application of Emma Gasparini
125 Mill Street (SBL: 2-1-64)

Dear Chairman Scalzo and Members of the Board:

The above-referenced application of Emma Gasparini is scheduled for a continued public hearing before you on May 28, 2020. As you may recall, we last appeared before you for a public hearing on February 27, 2020. The purpose of this letter is two-fold. First, I write to address certain comments or issues raised by the Board during the hearing, and second, I write to respond to the public comments made on Ms. Gasparini's application.

Response to Board Comments

During the hearing on February 27, 2020, Board Member Masten indicated he had been inside the home and there was an interior staircase. (*See* Exhibit "A" hereto [excerpt of 2-27-20 ZBA transcript] at p. 21, lines 14-24).¹ As previously explained in Ms. Gasparini's submission of February 13, 2020, there was no interior staircase when she purchased the home. While the lack of an interior staircase clearly supports an interpretation that the home existed as a two-family dwelling for some time, the existence of an internal staircase in the past does not mean it was not a two-family dwelling. To the extent the home previously had an interior staircase, that does not establish that the residence was a single-family residence. Additionally, and importantly, it is undisputed that when Ms. Gasparini purchased the property and continuing to today there was not and is not an interior staircase. These circumstances show the uniqueness of Ms. Gasparini's hardship for purposes of her use variance application.

¹ Although Mr. Masten also questions the electrical service to the property, this is not within the ZBA's purview but is a determination made by the utility company (Central Hudson).

Further, regarding the exterior staircase as the sole means of access to the second story, a question arose at the hearing about a statement in the engineer's letter report from Maser Consulting, P.A., dated February 10, 2020, which was part of Ms. Gasparini's supplemental submission to the ZBA. The statement indicated that Mr. Gasparini had told the engineer that there was an old deck and stair to the second floor that was rotting and replaced after Ms. Gasparini purchased the property. This was not accurate and Maser Consulting, P.A. has since provided a revised report to clarify what Mr. Gasparini had in fact told him. Specifically, Mr. Gasparini had told him that "there were existing footings and rotting wood remnants of a stairway remaining to the second story unit on the ground, but no stair or landing existed, and he initially used a ladder to access the second story" and "Mr. Gasparini installed new wood and stairs for this leading to the entry door of the second story unit by utilizing the existing footings." A copy of this letter report from Maser Consulting, P.A., revised March 2, 2020, was previously provided to the ZBA by email on March 18, 2020. A copy of this revised report is also annexed hereto as Exhibit "B."

The next point I need to address is the assessment records. As you may recall, in Ms. Gasparini's prior submission and during the February 27, 2020 hearing, we discussed in detail the significance of the property assessment cards classifying her home as a two-family dwelling since as early as 1984. This classification is important because (1) it was made at a time when a two-family dwelling was a permitted use of the property, before it was rezoned in 1991; and (2) it was made after the sole documentation relied upon by the Building Department in support of its determination that the home was a single-family dwelling and not a two-family dwelling, *i.e.*, a 1975 building permit and 1981 assessment records. The tax records must be considered in this case as evidence of the two-family use. *See, e.g., Calvi v. Zoning Bd. of Appeals of City of Yonkers*, 238 A.D.2d 417, 418 (2d Dept. 1997) (upholding zoning board decision that nonconforming two-family dwelling use was not abandoned that was based upon, *inter alia*, tax records).

At the hearing on February 27, 2020, the ZBA set forth its position that the assessor determines the worth of properties for purposes of taxation and is separate from the building department. (*See* Exhibit "A" at p. 19, line 20 to p. 20, line 3). The ZBA maintained this position on another recent application that involved a two-family home – the application Maria Chacha – and its discussions on that application are aptly relevant here. Specifically, during the January 23, 2020 public hearing on Ms. Chacha's application, a member of the public questioned discrepancies between the assessor cards, which indicated the home had 4 bedrooms, and the applicant's plans, which indicated the home had 5 bedrooms. (*See* Exhibit "C" [excerpt of 1-23-20 ZBA transcript] at p. 117, line 16 to p. 117, line 6). In response, Joseph Mattina of the Town's Code Compliance Department explained: "The assessor's sole purpose is to establish a market value of a parcel. It has nothing to do with legal bedrooms, illegal bedrooms. It establishes the market value of a piece of property." (*Id.* at p. 117, lines 13-17). When questioned how a prospective home purchaser would determine the number of bedrooms in a home (*id.* at p. 117, lines 18-23), Mr. Mattina responded: "You would do a title search through the Building Department. We go through our archives and records and we will tell you exactly how many legal bedrooms there are." (*Id.* at p. 117, line 24 to p. 118, line 3).

Here, Ms. Gasparini's title company did indeed perform a title search through the Town's Building Department – the Code Compliance Department – before she purchased the home. The Code Compliance Department responded that there was no Certificate of Occupancy but that none

was required, and that there were no known violations against the property.² She thus did precisely what the Town's Code Compliance Department said to do prior to purchasing the home in order to determine its legal use and was given no reason to believe it was anything but a legal two-family dwelling. There was no Certificate of Occupancy indicating otherwise, and there was no record of any violations at the property. The Town cannot have it both ways. It cannot require a prospective purchaser to conduct a title search through the building department to determine the legal use, as opposed to relying solely on assessor's records, and then fault Ms. Gasparini for relying upon the results of such a title search. The assessor had classified the home as a two-family dwelling, the property had been taxed as a two-family home for decades, and the Code Compliance Department's title search response did not identify a different use of the property or reveal any violations. Ms. Gasparini was entitled to rely upon this information, all of which indicated that the home was indeed a two-family dwelling. This supports an interpretation that the home is a legal preexisting nonconforming two-family dwelling and also shows, for purposes of Ms. Gasparini's use variance request, that her hardship was not self-created.

Finally, during the hearing on February 27, 2020 Chairman Scalzo referred to and relied on various items including a Zillow listing advertising the residence as a two-family home with an unfinished "roughed out" second story and aerial photos of the property dating back to the 1970s indicating there was no deck in the back. (See Exhibit "A" at p. 25, lines 11-20 and p. 26, line 10 to p. 27, line 2). These items are not part of the record on this application and it is improper for you to rely up on them in deciding this matter. In this regard, I submitted a F.O.I.L. request for copies of this information on March 20, 2020. In response I was told that those items "were just pulled up online by Chairman Scalzo not something printed and submitted to the file. So that's something you can pull up online." Copies of my request and the response are annexed hereto as Exhibit "D." I am unable to know what precisely Chairman Scalzo was referring to and, in any event, the ZBA cannot place onus on Ms. Gasparini as an applicant to try and search for records it has considered on her application. These records and Chairman Scalzo's comments about them cannot be considered by the Board. Nor are these items, based on their descriptions, conclusive proof that the home was not a two-family dwelling.

Response to Public Comments

I am in receipt of the following public comments on Ms. Gasparini's application: (1) letter from Greg Hermance (undated) and related comments during the February 27, 2020 hearing; (2) email from Debbie Deegan, dated February 27, 2020; and (3) letter from Brennan Gasparini (undated). I address these submissions individually below.

(1) Greg Hermance

Greg Hermance submitted a letter to the ZBA and also spoke during the public hearing on February 27, 2020. In his letter, Mr. Hermance stated that his children used to be babysat in the home at 125 Mill Street and he does not recall the home ever being used as a two-family. At the hearing Mr. Hermance told the ZBA that he believes his son was babysat there in 2000 and it was a single-family home, and from what he recalls he did not remember it being a two-family. (Exhibit

² A copy of the letter from the Code Compliance Department provided to Ms. Gasparini's title company, dated June 29, 2017, was provided with her original application submission.

“A” at p. 23, line 25 to p. 24, line 15). However, Stephanie Warren has provided a statement that she was babysat in the home when she was younger, and that the home was used as a two-family home since at least 1999.³ Mr. Hermance’s recollection is not conclusive evidence and is refuted by the statement of Ms. Warren.

During the hearing Mr. Hermance and his wife Pamela Hermance also stated that the home had an interior staircase to the second floor when they were inside to pick up their son (Exhibit “A” at p. 25, line 16 to p. 26, line 4), which was again in or around the year 2000. (*Id.* at p. 24, lines 6-8). As noted above, the existence of an interior staircase in the past does not mean the home was not a two-family dwelling, and the fact remains that there was no interior staircase when Ms. Gasparini purchased the property. Importantly, Mr. and Mrs. Hermance never indicated that they had went upstairs, and therefore did not establish that the second story was not in fact a separate dwelling unit.

In his letter Mr. Hermance also questions the size and adequacy of the septic tank for the 5 or 6 bedroom home located on the property. As Ms. Gasparini is not proposing to add any bedrooms or increase the size of the existing home, this issue is not related to her pending application.⁴ Nevertheless, Ms. Gasparini has had no issues with the septic system since she purchased the property in 2017 and began renting it as a two-family residence.

(2) *Debbie Deegan*

Debbie Deegan submitted an email to the ZBA regarding Ms. Gasparini’s application on February 27, 2020. Ms. Deegan focuses on the 1975 building permit in the Town’s files that indicated the home was a single-family, which again predates the 1984 tax assessment classification of the property as a two-family dwelling. Ms. Deegan attempts to explain the tax assessor’s classification by suspecting that the assessor counted as a second kitchen a room that resembled a kitchen but was used as a photography dark room. Nothing in the record supports this claim and, importantly, Ms. Gasparini had no knowledge of this allegation prior to purchasing the property.

Ms. Deegan’s email also notes her concern about environmental impacts from the home. She questions the adequacy of the septic tank, added draw to the water table, and impacts to private wells. As noted above, the septic system is not an issue for the ZBA, as Ms. Gasparini is not increasing the size of the home or number of bedrooms. Ms. Deegan’s concern about water usage and impacts to wells are misplaced for the same reasons. However, notwithstanding the irrelevance of these concerns, there is no evidence of any issues related to the septic system or water usage since Ms. Gasparini purchased the home in 2017 and has been utilizing it as a two-family dwelling. Such speculative and unsupported allegations are not proper considerations for the ZBA.

³ Ms. Warren’s statement was included in Exhibit “C” to Ms. Gasparini’s supplemental submission of February 13, 2020.

⁴ While the Building Department’s initial denial of Ms. Gasparini’s building permit to install a landlord panel indicated that the home should be a 3-bedroom single-family dwelling, there is nothing in the Building Department records reflecting this 3-bedroom limitation. The 1984 assessment card indicates the dwelling has 5 bedrooms and the assessment cards are the only known evidence regarding the number of bedrooms.

Ms. Deegan also comments about the presence of multiple cars at the property since it was sold, allegations of increased traffic, fear of crowding, and observance of cars parked on the street. Again, the size of the home and number of bedrooms are not proposed to increase. Any increase in vehicles or traffic is not necessarily attributable to the use of the home as a two-family dwelling, but instead may lend itself to the size of the home, which remains unchanged. Additionally, there is no prohibition or restrictions on parking vehicles on Mill Street. (See Town Code §§ 174-45, 174-48, 174-51, 174-52).

(3) Brennan Gasparini

Brennan Gasparini's comments are irrelevant and should be disregarded in their entirety. Mr. B. Gasparini writes in opposition to the property being used as a rental property, but that is not the issue before you. Rather, Ms. Gasparini asks the Board to find that the home located at 125 Mill Street is a legal preexisting nonconforming two-family residence or, in the alternative, seeks a use variance to allow its use as a two-family residence. As you know, zoning regulates the use of a property, not the user. Whether or not the property will be rented or occupied by Ms. Gasparini is therefore not relevant to this application.

Mr. B. Gasparini's inflammatory allegations about a past tenant have no bearing in this proceeding. It is clear from his letter that the basis of his opposition is rooted in his utter dislike for Emma Gasparini and her husband Peter Gasparini, who happen to be his parents. Such subject personal opinion is not a proper consideration for this Board.

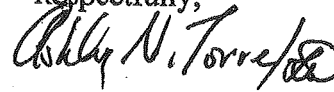
Conclusion

For the reasons set forth above, Ms. Gasparini's prior submissions to the ZBA and during the hearing on February 27, 2020, we ask that you grant Ms. Gasparini's request for an interpretation that her property is a legal nonconforming two-family dwelling or, in the alternative, a use variance. Ms. Gasparini should not be penalized for the Town's failure to maintain clear and consistent records concerning the use of her property.

Additionally, I am unsure whether the five neighbors who previously gave statements in support of Ms. Gasparini's application can/will attend the continued public hearing on May 28, 2020 so that the Board can question their knowledge about the 2-family dwelling use. However, I do want to highlight the relevance of these statements on Ms. Gasparini's alternative request for a use variance. I want to remind the Board that Ms. Gasparini has provided signed statements from five neighbors who have no objection to her use of the property as a 2-family dwelling and find it to be consistent with the character of the neighborhood.

Thank you for your consideration.

Respectfully,



Ashley N. Torre

cc: David A. Donovan, Esq. (via email)

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

----- X

In the Matter of

EMMA GASPARINI

125 Mill Street, Wallkill
Section 2; Block 1; Lot 64
RR Zone

----- X

Date: February 27, 2020
Time: 7:03 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman
JOHN MCKELVEY
RICHARD LEVIN
JOHN MASTEN
ANTHONY MARINO
PETER OLYMPIA

ALSO PRESENT: ROBERT DICKOVER, ESQ.
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: ASHLEY TORRE

----- X

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EMMA GASPARINI

CHAIRMAN SCALZO: Our second applicant this evening is Emma Gasparini, 125 Mill Street in Wallkill, seeking a use variance to install a 100 amp landlord meter and panel on a two-family. Bulk table schedule 1 does not permit a two-family dwelling unit in an RR Zone. In this case that would be the Reservoir Zone. Any use not permitted shall be deemed prohibited.

Do we have mailings on it, Siobhan?

MS. JABLESNIK: This applicant sent out 19 mailings.

CHAIRMAN SCALZO: 19 mailings. Okay. Very good.

If you could introduce yourself.

MS. TORRE: Good evening. My name is Ashley Torre from the law firm Burke, Miele, Golden & Naughton. We represent the applicant, Ms. Gasparini.

So I was here briefly last month just to request an adjournment because we had been brought on new to this. I did, since that time, make a supplemental submission of February 13th. I wanted to make sure everyone did in fact

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

receive that.

I don't want to rehash everything that's been detailed in there, but just to give you an overview of why we're here tonight --

CHAIRMAN SCALZO: Actually, if I can just hang you up. We have all visited the site and we have all read the packages. Perhaps there is someone here that may want to hear what you have to say.

MS. TORRE: Of course.

CHAIRMAN SCALZO: I'm not looking for the Reader's Digest version. If you could just give a brief synopsis --

MS. TORRE: Certainly.

CHAIRMAN SCALZO: -- of what you've got.

MS. TORRE: Certainly. So this application is twofold. First, we're asking for an interpretation that the property is a legal preexisting two-family home. And second, in the alternative, we're asking for a use variance to allow the two-family home.

As you had noted before, the property is currently in the RR District where two-family

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

homes are not permitted. That wasn't always the case, though. Up until 1991 it was in the AR District where, in fact, two-families were permitted.

That dwelling itself was built in the 1900s, before it was -- before the Town had zoning, so there was no requirement for it to have a CO. As I said, in 1991 the zone changed from AR to RR, and that's why two-families are no longer permitted. So before that zone change, in 1984 the Town assessment records show that the property class changed from one-family to two-family. I think that's a very telling piece of evidence that that happened before the zone change.

So my client bought the property in 2017. It was marketed as a two-family home. It was, for all purposes, a two-family home. There's no internal -- it's an upstairs and a downstairs. There's no internal stairway connecting the two units. You have an outdoor entrance to the bottom unit, and an outdoor entrance to the top unit as well.

As most do when you're buying a home,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

my client got a title search that included a municipal violation search. That came back. They asked the Building Department are there any violations noted on the property. The Building Department had no knowledge of any violations.

So after she purchased it she did renovate the house. In August of 2018 she had a permit to install electric -- a separate electric meter for the second floor unit. It was in April of 2019, when she applied for a landlord panel, that the Building Department asked her for more information about the two-family use. So Ms. Gasparini's prior attorney did submit some information about that use. The Town then responded and it said that there wasn't enough -- that we didn't give them enough to show that it was in fact a two-family.

They really relied on two things to make that determination. One was a 1975 building permit and the other was an assessment record from 1981. Again, we have that 1984 assessment record that shows the property class had changed to a two-family.

So really the first basis of this

1 application is an appeal of that determination.
2 We're asking for this Board to find that the home
3 is a legal nonconforming two-family home.
4

5 In addition to the assessment records,
6 I also submitted some statements from neighbors,
7 one of them I believe from the '70s who is
8 familiar with the property and that it has been
9 historically used as a two-family home for some
10 time. I also submitted an engineer's report that
11 explains how there's no apparent addition to the
12 building and that there's the two separate
13 entrances, there's no internal staircase. The
14 building exists, for all purposes, as a
15 two-family home. Both doors to the upper and
16 lower unit appear to be original.

17 So I do believe that the evidence
18 really does show that it was a legal
19 nonconforming two-family home.

20 Again, in the alternative we're asking
21 for a use variance.

22 I know this Board knows it's a very
23 stringent test and it's not easy to meet. I do
24 think that the circumstances here are the type of
25 unique circumstances where this type of relief is

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EMMA GASPARINI

12

available.

Just to touch on that briefly. As far as the hardship being unique to the property; as I mentioned, the way this house is built, you have the upstairs unit, the downstairs unit. There's only an exterior way to get into each unit. You can't go in between floors otherwise. I can't imagine having a single-family home where you have to go outside and walk up stairs on a deck to get to the second floor.

As far as return on the investment, Ms. Gasparini invested a total of \$18,000, with the purchase price, for the renovations that have been done in order to bring it to a single-family home, which is really the only reasonable permitted use in this district. I think Town buildings maybe can be permitted in this district, but that really wouldn't be applicable. It would cost substantial renovations. Upwards of \$39,000 was the estimate given for that. It would also result in over \$1,000 less rent than she would get for the two-family. The use variance won't alter the character of the neighborhood. There's no addition. Nothing being

1
2 added to the residence. It's going to stay
3 exactly how it looks today and how it's been used
4 historically.

5 Again, some of the neighbors we were
6 able to speak to did submit statements confirming
7 it would not alter the character of the
8 neighborhood. The hardship, we don't believe, is
9 self-created in these circumstances. It was
10 really created by the zone change in 1991.

11 My client, before purchasing the
12 property, had no reason to think that it was not
13 a legal two-family home because it was
14 preexisting before that zone change, and there
15 were no known municipal violations. It was built
16 as a two-family home, and marketed as a
17 two-family home, and taxed as a two-family home
18 by the Town's records and also the County's for
19 some time.

20 Are there any questions?

21 CHAIRMAN SCALZO: Thank you for the
22 presentation. I'm sure anybody that's here to
23 speak about this appreciates that as well.

24 So what I want to do at this point is
25 I'm going to turn it over to our Board Members.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I'll start with Mr. Marino. Do you have any comments on this?

MR. MARINO: Is the owner now paying taxes on it as a two-family house?

MS. TORRE: Yes.

MR. MARINO: And has been since 1991?

MS. TORRE: She's only owned it since 2017, but it's been taxed as a two-family since 1984.

MR. MARINO: Okay.

MR. LEVIN: When did she buy it?

MS. TORRE: 2017.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: Okay. I've lived in the area for 25 years and that house was a one-family house. There was never an exterior stairway outside. I got to know the guy who lived there before he died. He showed me the pond across the street he took care of. He said the only way to get upstairs is the interior stairway going up the stairs inside the house.

Also, the meter set outside. There's two meter panels, a digital and an A-base meter with one service going to both. The services have

1
2 to be individual. I also saw the new panel box
3 there which hasn't been touched yet. But the ones
4 they got there now, there's a digital and an
5 A-base meter with one service. By Central
6 Hudson's standards, you have to have a service
7 for each meter.

8 MS. TORRE: So is that -- you're saying
9 if there's two families you have to have --

10 MR. MASTEN: There was a mother, father
11 and a daughter. That was it. Now there's all
12 kinds of people living in there.

13 MS. TORRE: That's just contrary to
14 what we've been told and what my understanding
15 is.

16 MR. MASTEN: I've been there since '92.

17 MS. TORRE: Just as far as the electric
18 meters, I don't know that I followed as far as
19 you need to have two, I think you said, or --

20 MR. MASTEN: There's two electric
21 meters there, one service. Every time there's a
22 service there's supposed to be a service for each
23 meter, not one service for two meters.

24 MS. TORRE: Okay. I know that the -- I
25 think the second meter was installed with a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EMMA GASPARINI

16

permit in 2018.

MR. MASTEN: One is a digital, one is an A-base. The original one was an A-base they used to put on houses.

CHAIRMAN SCALZO: Thank you.

Mr. Levin, any comments on this?

MR. LEVIN: No.

CHAIRMAN SCALZO: How about Mr. McKelvey?

MR. MCKELVEY: You said there's no interior stairs now?

MS. TORRE: Do you want to wait until -- I'm sorry. Your question?

MR. MCKELVEY: There's no interior stairs to get up --

MS. TORRE: That's correct. There's no interior staircase.

CHAIRMAN SCALZO: Is that it, Mr. McKelvey?

MR. MCKELVEY: Yes.

CHAIRMAN SCALZO: Mr. Olympia, any questions?

MR. OLYMPIA: Yes. When was the last second family living on the property? You said

1
2 there was somebody -- there were two families
3 living on the property?

4 MS. TORRE: Yes.

5 MR. OLYMPIA: When was the last -- when
6 was the property last occupied by two families?

7 MR. GASPARINI: Since I've owned it.

8 CHAIRMAN SCALZO: Sir, you're going to
9 need to step forward and state your name for the
10 record, please.

11 MR. GASPARINI: I'm Peter Gasparini.

12 Since I've owned it it's been rented as
13 of October `17. 2017.

14 MR. OLYMPIA: Prior to that do you
15 know, Mr. Gasparini?

16 MR. GASPARINI: I have no idea, no. I
17 have no idea about the house or anything. I have
18 no idea of the people that lived there. I have no
19 idea of anything other than my title search and
20 everything that I did on it.

21 MR. OLYMPIA: We have received an
22 e-mail from a neighbor that has voiced some
23 concerns about the septic system, and the
24 adequacy of the septic system, and whether or not
25 there could be a problem with the groundwater and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EMMA GASPARINI

18

feeding into a stream that goes into Chadwick, which is the Town's source of fresh water. Has the septic system been tested at all for the adequacy?

MR. GASPARINI: I've had absolutely no problems with it. I haven't even had to drain it out. At this point it's been fine. My tenants all use Rid-X. Like I said, I haven't had any problems, and I've had as many as twelve people living in that house at one period of time. It's down to six now. In the past, whatever company and everything -- whatever company comes with these tenants, I have no idea. I have absolutely no problem with the septic. There's no dampness or anything on the outside. Like I said, I used to have a septic at one time in the other houses I own. The ones that have septic, I have my tenants use Rid-X.

MR. OLYMPIA: Thank you.

MR. GASPARINI: Can I say something about the electric?

CHAIRMAN SCALZO: Certainly.

MR. OLYMPIA: Sure.

MR. GASPARINI: All right. The

1
2 gentleman mentioned there's two poles that go
3 down to that meter. There's two separate --

4 MR. MASTEN: There's two meters, one
5 service coming in.

6 MR. GASPARINI: I'm sorry, sir. You're
7 going to have to take another look at that.

8 MR. MASTEN: I've been there three
9 times.

10 MR. GASPARINI: Central Hudson would
11 have never put on one.

12 MR. MASTEN: I know.

13 CHAIRMAN SCALZO: Okay. Mr. Olympia,
14 anything else?

15 MR. OLYMPIA: No, thank you.

16 CHAIRMAN SCALZO: You had mentioned
17 earlier that the assessor's report indicated that
18 it was a two-family.

19 MS. TORRE: Yes.

20 CHAIRMAN SCALZO: By definition, the
21 tax assessor evaluates the monetary worth of
22 multiple properties in an entire neighborhood.
23 The purpose of their assessment is to determine
24 how much property tax owners should pay to the
25 city, county or other municipality in which the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EMMA GASPARINI

20

properties are located. So an assessor is not in the building department.

MS. TORRE: I do understand that. In this specific case, the Building Department actually relied on the assessor's records to support their determination that it's a one-family. It's only fair that this Board consider all the assessor's records, including this 1984 subsequent record that does state differently.

CHAIRMAN SCALZO: I understand that. I understand also that you gave us the property classification cards in your package. What was missing were building permits from 1981 I believe.

It says repair of fire damage to a one-family dwelling.

MS. TORRE: I believe that was the 1975 building permit.

CHAIRMAN SCALZO: That could be. So in 1975 they identified it as a one-family dwelling.

Also, the property cards that you did supply, also all of the sketches, they show the exterior dimensions of the dwelling including the enclosed front porch. There is no back deck shown

1
2 on it. If the access to the building for the
3 secondary apartment was from a back deck or
4 stairs -- I didn't see a ladder there -- it's
5 kind of difficult to assume that.

6 The other thing is an observation that
7 I made when visiting the site, the access to the
8 second-story apartment. The door is underneath
9 the soffit, which means it appears that if you
10 were to have a door that swung into the
11 apartment, there's no problem at all. You could
12 never have an exterior door because it would hit
13 the roof.

14 I believe, Mr. Masten, did you mention
15 that you had been in the house and that you had
16 seen --

17 MR. MASTEN: Years ago.

18 CHAIRMAN SCALZO: -- that there were an
19 interior set of stairs?

20 MS. TORRE: I thought he had said that
21 he had spoke with the prior owner. I didn't
22 recall him -- you were actually inside the house?

23 MR. MASTEN: The gentleman showed me
24 the house.

25 CHAIRMAN SCALZO: The other issue is in

1
2 your package there is an engineering report, as
3 you call, it from Maser Consulting.

4 MS. TORRE: Yes.

5 CHAIRMAN SCALZO: I called Maser and
6 spoke with Corey Robinson, the EIT that prepared
7 the report, and he informed me that his report
8 was based on existing conditions. He said it had
9 been completely renovated and there was no way
10 for him to determine if there had ever been a set
11 of stairs because everything is new. He can not
12 confirm or deny that it was ever there, but his
13 observations were existing conditions. He did not
14 do a pre-renovation report, he only did post.

15 MS. TORRE: That is correct. I believe
16 his report mentions that it was renovated after
17 that. But his report did find that there was no
18 apparent addition added and that there was no --
19 that the doors -- both the doors did appear to be
20 original, --

21 CHAIRMAN SCALZO: Okay.

22 MS. TORRE: -- which I think are
23 important given the accessways.

24 CHAIRMAN SCALZO: It may be.

25 You did mention regarding the -- hang

1
2 on. I have another -- this is from 1975, '76,
3 which you mentioned was from the original fire.

4 I have, from 1981, an assessor tax law
5 assessment.

6 Rob, just to confirm, that says April
7 10, 1981?

8 MR. DICKOVER: Yes.

9 CHAIRMAN SCALZO: Partial completion
10 and renovation of fire damage to one-family
11 house. It was permit number 2981. So in 1981 it
12 was also recognized as a single-family home.

13 MS. TORRE: I believe until 1984.
14 That's when it was changed.

15 CHAIRMAN SCALZO: Okay. I'm certain
16 that there are going to be some other issues
17 brought up when I open this up to the public,
18 which is going to be now.

19 MS. TORRE: Certainly.

20 CHAIRMAN SCALZO: Is there anyone here
21 from the public that would like to speak about
22 this application?

23 Sir, in the back. Please state your
24 name for the record.

25 MR. HERMANCE: My name is Greg

1
2 Hermance. I live on 142 Mill Street. I've lived
3 there for my entire life, on that road.

4 I knew Mr. Herbie Trubenbach. I know
5 that residence to be a single-family dwelling. In
6 fact, my son was babysat there by Karen
7 Trubenbach in, I believe, 2000 is when we had
8 brought him there. That house was a single-
9 family at that point also.

10 CHAIRMAN SCALZO: So in 2000 you're
11 saying it was a single-family?

12 MR. HERMANCE: From what I recall. I
13 don't remember any two-family. It was only
14 Herbie, Karen and their daughter living in that
15 residence.

16 CHAIRMAN SCALZO: So have you been in
17 the home?

18 MR. HERMANCE: I was in the home to
19 pick up my son. Yes.

20 CHAIRMAN SCALZO: Mr. Masten had
21 claimed that there was an interior set of stairs.
22 Are you aware if there was or was not?

23 MR. HERMANCE: There was.

24 This is my wife, Pamela Hermance. She
25 also was in the home to pick up my son and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EMMA GASPARINI

observed it as a single-family home with a set of stairs going up to the second story.

MS. HERMANCE: Yes.

CHAIRMAN SCALZO: Thank you very much.

MR. HERMANCE: Okay. Thank you.

CHAIRMAN SCALZO: You represent that your client also purchased -- it was marketed as a two-family, which I understand.

MS. TORRE: Yes.

CHAIRMAN SCALZO: The internet is a beautiful thing. I did find an old Zillow listing for 125 Mill Street. It states, "Calling all contractors, flippers and investors. Already zoned two-family. Much potential in a great location. Not a short sale or a foreclosure. Second story was never finished. Space ready to be roughed out for renovations." This was from a 2017 listing. I'm just telling you what I found on the internet.

MS. TORRE: I understand.

I don't know if there's anything you have to offer.

It's my understanding that it was -- they purchased it and it was already improved as

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EMMA GASPARINI

a two-family, that they had made some renovations to both floors, but --

CHAIRMAN SCALZO: Thank you.

MS. TORRE: Do you have anything to add?

CHAIRMAN SCALZO: Additionally --

MR. GASPARINI: It was already roughed out. There was already panel up there.

CHAIRMAN SCALZO: Additionally, through either Bing or Google Maps, I have screenshots from October of 2012 and 2015. The October 2012 and '15 don't show any sidewalk or access, even trampled grass, leading to the back of the house. Between October of 2012 and May of 2015 they did remove the concrete block sidewalk leading to the front and they paved it.

And then also I have another aerial that shows no deck in the back. As part of the package, I do believe the owner indicates that he removed an old deck because it was in poor condition and replaced it. I had found no aerial photography. Historicaerials.com, you can look at a bunch of photos all the way back to the '70s. None of those indicated that a deck was

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ever there. That's what I've got.

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

(No response.)

CHAIRMAN SCALZO: Hearing none, I'll look back to the Board. Mr. Marino?

MR. MARINO: When Mr. Gasparini bought the house in 2017 did he have to have it inspected?

MS. TORRE: Inspected as far as a home inspection or code compliance --

MR. MASTEN: Yes.

MR. GASPARINI: I didn't do a home inspection, no.

MR. MARINO: You didn't do it at all. And when he signed the papers to buy the house, was it listed as a one-family or a two-family house?

MS. TORRE: It was being marketed as a two-family house.

MR. MARINO: That's what he bought it as?

MS. TORRE: Yes.

CHAIRMAN SCALZO: Marketing is

1
2 determined by a realtor; correct?

3 MS. TORRE: Yes. They would be the ones
4 that wrote the listing. I don't know how they
5 come to that determination. I'm sure it was a
6 bunch of factors.

7 MR. MARINO: One other question. He
8 said at one point there were twelve people living
9 in that house. Was that a family? Two families?
10 Was somebody renting out rooms?

11 MS. TORRE: I believe it was a
12 two-family.

13 MR. GASPARINI: It was a two-family. It
14 was a mother and a son. The mother had the
15 daughters and the grand kids living with her.
16 The son had a child of his own and he took care
17 of -- he housed the two grandchildren downstairs
18 at sleeping times.

19 MR. MARINO: They were living in both
20 the upstairs and the downstairs?

21 MR. GASPARINI: Yes.

22 MR. MARINO: And paying you rent as a
23 two-family?

24 MR. GASPARINI: Yes. There was another
25 question you asked.

1
2 MR. MARINO: Yes. They're not renting
3 out rooms there, are they?

4 MR. GASPARINI: No.

5 MR. MARINO: Twelve people seem like an
6 awful lot to be living there.

7 MR. GASPARINI: Like I said, it was two
8 families. It was a mother and a son. That's the
9 way it came. There were quite a few people
10 staying there because they were sharing it with
11 the grandchildren and stuff like that.

12 MR. MARINO: Okay.

13 CHAIRMAN SCALZO: Your package produced
14 a half dozen letters regarding the application.
15 The first one is from Ryan Ledoux, the second
16 from Stephanie Warren, George Rivera, Padriac
17 Cioffi. Are any of those folks here that can
18 confirm or support what your claim is as opposed
19 to the people that we've heard from that dispute
20 it?

21 MS. TORRE: I don't believe so, but I
22 did not specifically ask them to be. If the Board
23 would like to hear from them and wants to hold
24 the hearing open, I could ask them to attend.

25 CHAIRMAN SCALZO: We may get there

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

later.

MS. TORRE: Okay.

CHAIRMAN SCALZO: Sir.

MR. GASPARINI: The other question you asked, I just had it on the tip of my tongue and I can't remember it.

MR. MARINO: About code compliance? Having it inspected? Was that it?

MR. GASPARINI: No. Like I said, I didn't have any code compliances come in to inspect the house, and I didn't have a home inspection.

The other thing was you asked about the County. We went to the Town, your office right here, and the woman looked it up on the County records and on your records and told me it was a two-family house. My title company did the same thing. That's how I looked at it and that's how I took it. The listing and -- the realtor was telling me it was a two-family, everything is legal, everything is fine, so I went and bought it.

CHAIRMAN SCALZO: Sir, you mentioned in earlier testimony that you have other homes that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EMMA GASPARINI

31

you rent out. I don't know if they're in the Town of Newburgh. It doesn't matter. I'm assuming you've made renovations to those homes as well to accommodate whatever you're trying to do for your tenants. It's been batted around here more than once that some major renovations have taken place in the dwelling. Did you get permits for that?

MR. GASPARINI: Nothing was needed. All I did was sheetrock. That was all I did. There was paneling up there. I took the paneling down. The rooms were all divided and everything. I put twelve-foot boards of sheetrock up there. That was all I did. And taped it and painted it. I did no kind of work whatsoever. I did no electrical work other than asking for the meter. They put the meter in and that was it. Central Hudson put the meter in. That was all I did. The whole house was wired by the one meter box downstairs. That was it. That was the extent of my work, sheetrocked and taped. I don't believe you need a permit for that. Like I said, if I would have built a room or something like that, I would have said fine, I need a permit. I didn't need a permit for anything that I did. Everything was

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

there, it just needed to be updated a little.

CHAIRMAN SCALZO: As you were still seated you had said it was roughed out.

MR. GASPARINI: Yeah. It was all framed out with paneling on it.

MS. TORRE: So I think that was the -- you had mentioned a listing that you had found on Zillow I think, and -- I forget what the exact wording was. I think that was in response to that.

CHAIRMAN SCALZO: Upstairs unfinished.

MR. GASPARINI: I didn't build one room. I didn't even build a closet. There were walk-in closets there and everything else. The bathroom was there. I had the bathroom painted because it was pink tiles and a blue tub. All I did was paint it because -- actually, to be honest with you, I have a 1941 house and my house had plaster walls, cemented tile. You know how they put the inch of cement.

CHAIRMAN SCALZO: I had seafoam green in my bathroom. I know exactly what you're talking about.

MR. GASPARINI: I broke mine all out

1
2 and remodeled mine. It was so fine, and so
3 perfect, and so exquisite. The only thing it
4 needed was the color had to be changed. A pink
5 and a blue tub don't go together. I have a color
6 glaze guy that paints my tubs and showers.

7 CHAIRMAN SCALZO: Just so I'm clear,
8 sheetrock and painting cost you \$38,000?

9 MR. GASPARINI: No. No.

10 CHAIRMAN SCALZO: I thought that was
11 the investment that you said --

12 MS. TORRE: It was 18.

13 CHAIRMAN SCALZO: 18.

14 MR. GASPARINI: Downstairs I really
15 didn't do nothing but put a living room floor in,
16 because, as you see, it had water damage. A line
17 must have broke.

18 CHAIRMAN SCALZO: I haven't seen inside
19 the house.

20 MR. GASPARINI: That was the only thing
21 I did downstairs. I added a couple of cabinets
22 and everything else. All the wood -- the same
23 paneling that is down there was upstairs.

24 CHAIRMAN SCALZO: Okay. In the
25 engineer's report it states that you replaced the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EMMA GASPARINI

34

deck in the back. When you purchased the home there was a deck there?

MR. GASPARINI: The cement footings were there and everything was there. We had to climb to get up into the back door.

CHAIRMAN SCALZO: Okay. It says, "Mr. Gasparini mentioned that the old deck and stair was rotting and in an unsafe condition so he replaced the wooden stairs for this landing."

MR. MCKELVEY: He would need a permit for that, wouldn't he?

CHAIRMAN SCALZO: Okay. I have no other questions for you, sir.

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

(No response.)

CHAIRMAN SCALZO: I'll look to the Board for one last opportunity?

MR. MASTEN: No.

MR. OLYMPIA: No.

MR. MCKELVEY: If he replaced the porch he would need a permit?

CHAIRMAN SCALZO: Yeah. In this case I'm going to look to the Board. If the Board

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EMMA GASPARINI

35

feels as though they have enough information regarding this application to close the public hearing and perhaps vote later, then I'll look to the Board for a motion to close the public hearing. If not, I'll look to the Board for a motion to leave it open.

MR. MARINO: I would make the motion that we leave it open and have them come back next month, have the writers of those six letters come in to verify that. If there's any other information we need, we could use the help of someone from the building inspector's office to be here next month. That would be very helpful if they were here.

CHAIRMAN SCALZO: Mr. Marino, you're making a motion?

MR. MARINO: I'll make a motion we do that.

MR. McKELVEY: Would we want to see what he said about the County, too?

CHAIRMAN SCALZO: Well we have a pretty comprehensive package here. You have heard everything we've said this evening. Most notably, it sounds as though Mr. Marino would like to hear

1
2 from the people that gave you the affidavits that
3 claim they've been in the house and there was no
4 set of stairs and it was a two-family.

5 MS. TORRE: I don't know if that's what
6 the affidavits exactly say.

7 CHAIRMAN SCALZO: Actually, they were
8 exactly the same. It was fill your name in here
9 with the number of years you lived here and sign
10 the bottom is what it was. We heard testimony
11 from Mr. Hermance in the back there who has been
12 in the house, as well as Mr. Masten who can at
13 least convey the information to us verbally and
14 we can ask them questions, which is very
15 beneficial to the Board in making a
16 determination.

17 MS. TORRE: Of course. I understand. We
18 can certainly ask. I just can't guarantee that
19 they are going to be around and able to come.
20 I'll certainly try to get them here in order to
21 do so.

22 CHAIRMAN SCALZO: Okay. We also have --
23 Siobhan, has this been put online or not, the
24 mail we received?

25 MS. JABLESNIK: The e-mail we received?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EMMA GASPARINI

37

The one from the woman?

CHAIRMAN SCALZO: Yes.

MS. JABLESNIK: No. I just received that this evening.

CHAIRMAN SCALZO: Will that be posted online --

MS. JABLESNIK: If you would like me to I will.

CHAIRMAN SCALZO: -- as part of the package? Sure.

Mr. Hermance, I do recall we have a letter from him in the file as well I think.

So we have a motion to keep the public hearing open from Mr. Marino.

MR. MCKELVEY: I'll second that.

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

MS. JABLESNIK: Mr. Levin?

MR. LEVIN: Yes.

MS. JABLESNIK: Mr. Marino?

MR. MARINO: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. McKelvey?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EMMA GASPARINI

38

MR. MCKELVEY: Yes.

MS. JABLESNIK: Mr. Olympia?

MR. OLYMPIA: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The public hearing is going to remain open. We'll see you in March. No one will be re-noticed for this application.

MS. TORRE: Will I be able to get a copy of those -- you mentioned a letter and e-mail. Can you send those to me?

MS. JABLESNIK: I'll post them online. You'll be able to get them there.

MS. TORRE: Where will they be?

CHAIRMAN SCALZO: On the Town of Newburgh website in the ZBA files. If you go right to the ZBA -- in the calendar, the Town of Newburgh calendar for meetings.

MS. TORRE: So it will be for next meeting?

MS. JABLESNIK: No. I'll add them tomorrow. You'll see them for this month's meeting. You can go back how ever long you need to.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EMMA GASPARINI

39

MS. TORRE: I just want to make sure we have everything.

MR. DICKOVER: Mr. Chair, I have one request. I heard the applicant say that he got a letter from the title company when he purchased the property. Typically there's a request made of the Building Department to confirm whether or not there are any violations of record. Often times that letter will divulge what the status of the property is. I was hoping to see a copy of it. Perhaps you just handed it to me.

CHAIRMAN SCALZO: Yes, sir. I did.

MS. TORRE: I believe it only says there's no known violations.

CHAIRMAN SCALZO: I do believe that's not based on a field visit either. They just check the files.

MS. TORRE: I understand.

MR. DICKOVER: No violations but no inspection had been performed. The structure was built before certificates of occupancy were required and so there is none on record.

Then I would withdraw my request. The Board seems to have it.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIRMAN SCALZO: I'm sorry, Rob. I should have showed you that before.

So we'll see you next month.

MS. TORRE: Thank you. Have a good evening.

CHAIRMAN SCALZO: Thank you.

(Time noted: 7:38 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 March 2020.

Michelle Conero

MICHELLE CONERO

EXHIBIT B



Engineers
Planners
Surveyors
Landscape Architects
Environmental Scientists

555 Hudson Valley Avenue, Suite 101
New Windsor, NY 12553-4749
T: 845.564.4495
F: 845.567.1025
www.maserconsulting.com

February 10, 2020
Revised March 2, 2020

VIA HAND DELIVERY

Peter Gasparini
300 Walnut Avenue
New Windsor, NY 12553

Re: 125 Mill Street
Tax Lot 2-1-64
Town of Newburgh, Orange County, New York
MC Project No. 19003203A

Dear Mr. Gasparini:

On January 6, 2020 Maser Consulting P.A. conducted a site visit at 150 Mill Street, Wallkill NY 12589 under the supervision of Mr. Peter Gasparini, to provide a professional opinion in determining if the residential building is a two (2) family home. It is our understanding that the residence was labeled as a “single-family home” by the Code Compliance department when the owner applied for the installation of a landlord electric meter. Photographs from the visit on 1/6/20 have been included as an attachment of this letter.

The residence exists today as a two (2) family residence with one 3-bedroom apartment upstairs and one 3-bedroom apartment downstairs, each having separate bathroom and kitchen facilities with no internal connection between the apartments. Separate entryways to each apartment exist, and the driveway area has room for a minimum of 6 parking spaces. The lower apartment has two entryways, one on the rear (north) and one on the front (south) side of the building. The upper apartment has one entryway through a staircase and landing that leads to a door on the second story in the rear of the building. The entry door to the upper unit and the southern door to the lower unit appear to be original. Mr. Gasparini mentioned that when he purchased the property there were existing footings and rotting wood remnants of a stairway to the second story unit on the ground, but no stair or landing existed, and he initially used a ladder to access the second story. Mr. Gasparini installed new wood and stairs for this leading to the entry door of the second story unit by utilizing the existing footings. Separate electric panels and meters exist on the front of the residence. Mr. Gasparini also informed us that both apartments were renovated in the summer of 2018, which was apparent during the visit. The siding around the residence is aged and the exterior does not show any apparent signs of a building addition. According to the Orange County Real Properties report (*see attachment*) the Property Class is “220 – 2 Family Residential.”

Based on the lack of any interior connection between the units, the separate electric meters, and separate exterior entrances to each unit, it is our opinion that the residence exists today as a two (2) family residence.



Gasparini
MC Project No. 19003203A
Revised March 2, 2020
Page 2 of 2

If you have any questions, please feel free to call me at 845.564.4495, extension 3808.

Very truly yours,

MASER CONSULTING P.A.

A handwritten signature in black ink, appearing to read 'Cory D. Robinson', written over a horizontal line.

Cory D. Robinson, EIT
Senior Engineer

CDR/jm

CC: File, w/ encl.

R:\Projects\2019\19003203A_125-Mill_Street\Correspondence\OUT\200302_CDR_Gasparini_R3.docx



Property Description Report For: 125 Mill St, Municipality of Newburgh



Status: Active
Roll Section: Taxable
Swis: 334600
Tax Map ID #: 2-1-64
Property Class: 220 - 2 Family Res
Site: RES 1
In Ag. District: No
Site Property Class: 220 - 2 Family Res
Zoning Code: -
Neighborhood Code: 21400
School District: Wallkill
Total Assessment: 2019 - \$35,000

Property Desc: Huc
Deed Page: 474
Grid North: 1002607

Total Acreage/Size: 135 x 308
Land Assessment: 2019 - \$8,100
Full Market Value: 2019 - \$108,700
Equalization Rate: ----
Deed Book: 14257
Grid East: 607973

Area

Living Area:	2,796 sq. ft.	First Story Area:	1,452 sq. ft.
Second Story Area:	1,344 sq. ft.	Half Story Area:	0 sq. ft.
Additional Story Area:	0 sq. ft.	3/4 Story Area:	0 sq. ft.
Finished Basement:	0 sq. ft.	Number of Stories:	2
Finished Rec Room	0 sq. ft.	Finished Area Over Garage	0 sq. ft.

Structure

Building Style:	Colonial	Bathrooms (Full - Half):	2 - 0
Bedrooms:	5	Kitchens:	2
Fireplaces:	0	Basement Type:	Full
Porch Type:	Porch-enclsd	Porch Area:	72.00
Basement Garage Cap:	0	Attached Garage Cap:	0.00 sq. ft.
Overall Condition:	Normal	Overall Grade:	Average
Year Built:	1900		

Owners

Emma Lynn Gasparini
 300 Walnut Ave
 New Windsor NY 12553

Sales

Sale Date	Price	Property Class	Sale Type	Prior Owner	Value Usable	Arms Length	Addl. Parcels	Deed Book and Page
7/10/2017	\$100,000	220 - 2 Family Res	Land & Building	Trubenbach, Herbert A	Yes	Yes	No	14257/474

Utilities

Sewer Type:	Private	Water Supply:	Private
Utilities:	Gas & elec	Heat Type:	Hot wtr/stm
Fuel Type:	Oil	Central Air:	No

Improvements

Structure	Size	Grade	Condition	Year
Porch-enclsd	72.00 sq ft	Average	Normal	1900

Special Districts for 2019

Description	Units	Percent	Type	Value
FD033-Plattekill fire	0	0%		0

Exemptions

Year	Description	Amount	Exempt %	Start Yr	End Yr	V Flag	H Code	Own %
------	-------------	--------	----------	----------	--------	--------	--------	-------

Taxes

Year	Description	Amount
2020	County	\$1,106.41
2019	County	\$1,077.48
2019	School	\$2,789.27

*** Taxes reflect exemptions, but may not include recent changes in assessment.**

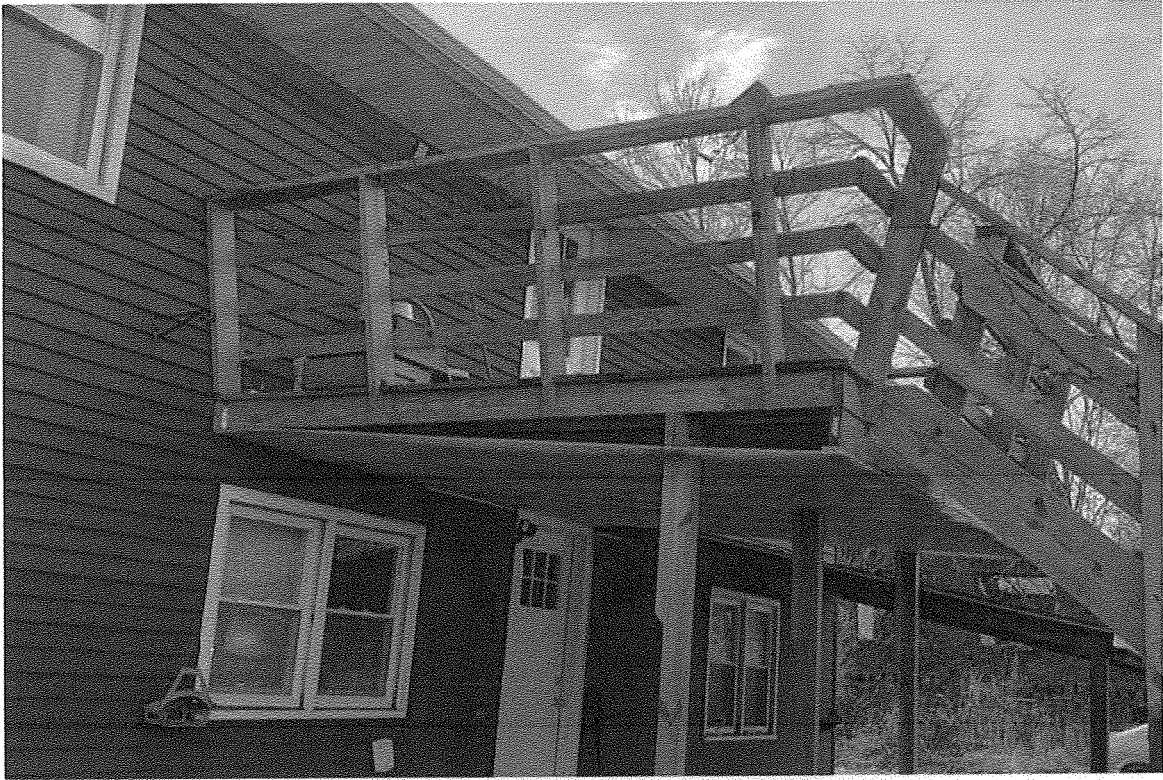


FIGURE 1: DECK ACCESS TO SECOND STORY UNIT



FIGURE 2: LOOKING ACROSS DRIVEWAY AT SOUTHWEST CORNER OF RESIDENCE



FIGURE 3: WEST SIDE OF RESDENCE, OVERHANG, DECK ACCESS TO SECOND STORY



FIGURE 4: SOUTH SIDE OF RESIDENCE AND SOUTHERN ENTRYWAY TO LOWER UNIT



FIGURE 5: NORTH ACCESS TO GROUND FLOOR UNIT

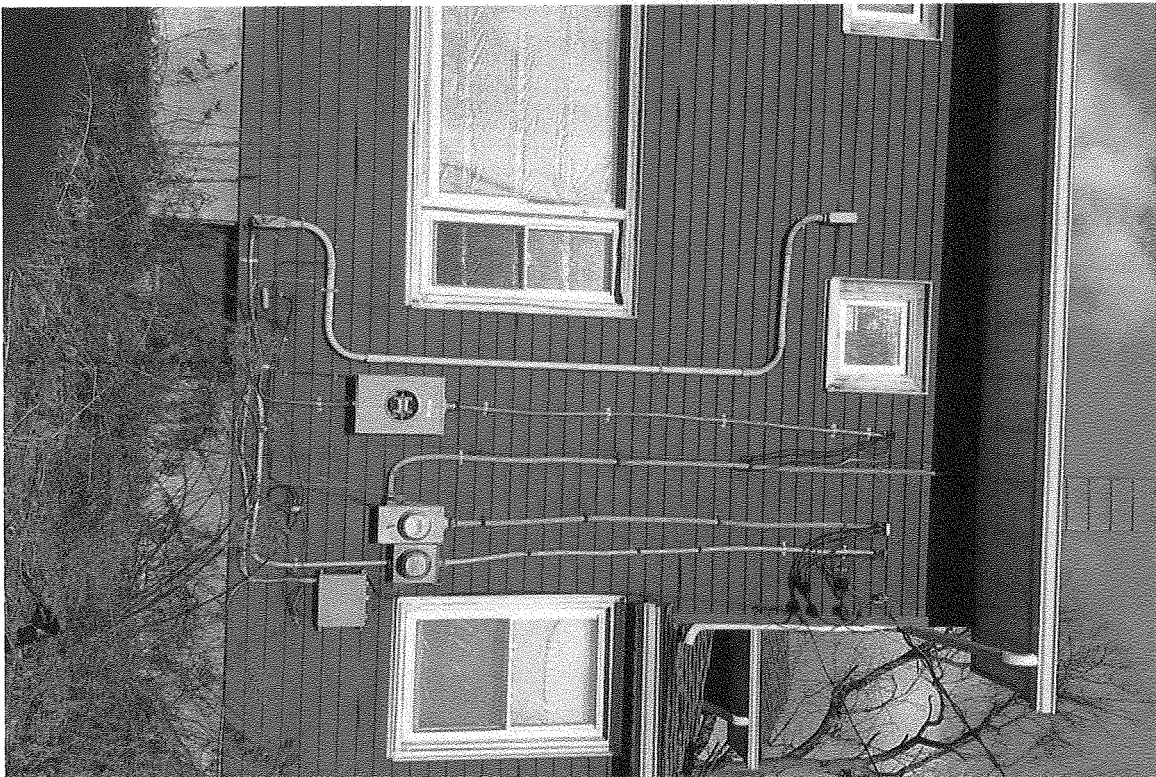


FIGURE 6: SOUTH SIDE OF STRUCTURE - ELECTRIC METERS (LEFT IS SERVICING UPPER UNIT, RIGHT IS SERVICING LOWER UNIT)

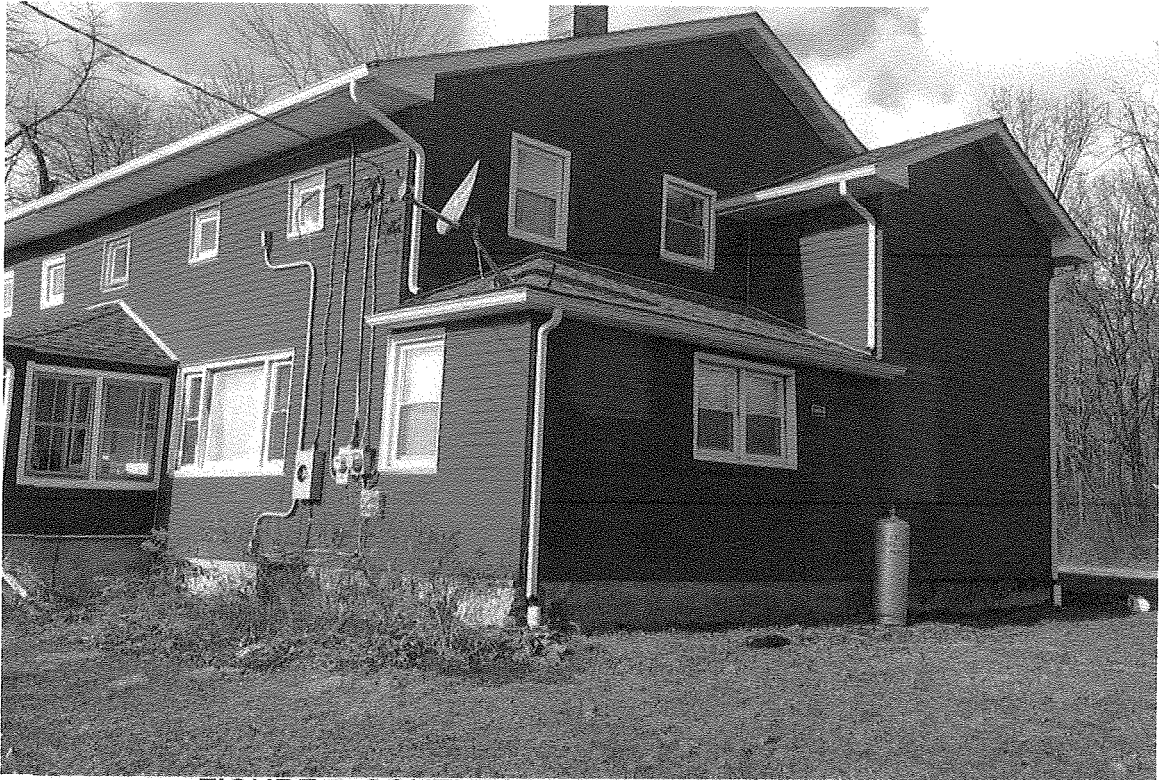


FIGURE 7: SOUTHEAST CORNER OF RESIDENCE

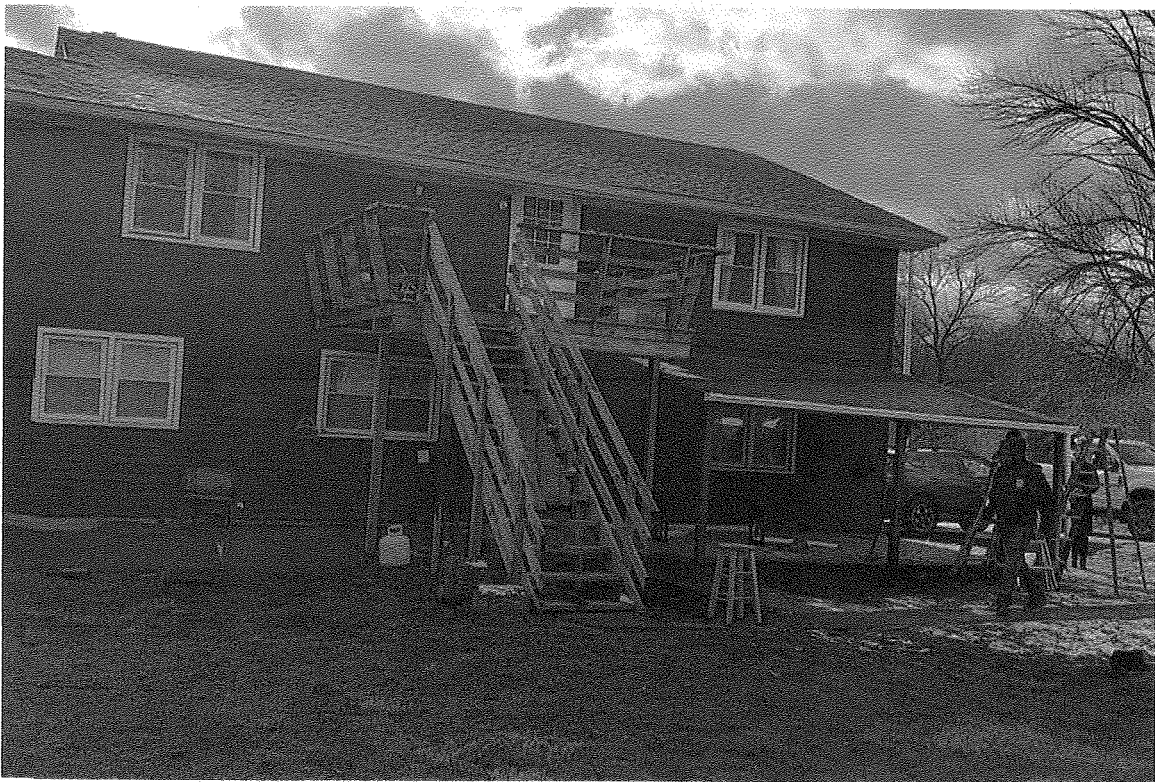


FIGURE 8: NORTH SIDE OF RESIDENCE, DECK ACCESS TO SECOND STORY & NORTH ACCESS TO GROUND FLOOR UNIT



FIGURE 9: ACCESS DOOR TO SECOND STORY

EXHIBIT C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

----- X
In the Matter of

MARIA CHACHA
1879 Route 300, Newburgh
Section 13; Block 2; Lot 15
R-1 Zone

----- X

Date: January 23, 2020
Time: 7:58 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: MICHAEL HENNESSY

----- X

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MARIA CHACHA

CHAIRMAN SCALZO: Moving on. Our fourth holdover is Maria Chacha, 1879 Route 300 in Newburgh, seeking an area variance to enlarge a nonconforming two-family dwelling with a proposed front yard setback where 57 feet where 60 is required, floor area of 1,200 square feet where 1,500 square foot is the minimum, and an existing lot area of 41,922 square feet where 100,000 foot is the minimum.

We did receive notification back from the County. They had noted a Local determination.

This applicant, at last month's meeting I had asked for additional information. We are in receipt of a letter or documentation from their surveyor who has reached out to the DEC. That is not DEC wetlands. It is wetlands that are controlled by the National Wetlands Inventory, which is otherwise known as Federal wetlands, which carry no buffer. You can build right up to National Inventory Wetlands. In addition, you're also allowed to disturb up to 4,356 square feet of Federal wetlands without a permit. Therefore, that portion of this

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MARIA CHACHA

application is fine.

However, I did ask for the architect's revised plans, and that we are not in receipt of.

MR. HENNESSY: In the original application there was --

MR. DONOVAN: If you could tell us who you are for the stenographer.

MR. HENNESSY: I'm Mike from Hennessy Architects.

CHAIRMAN SCALZO: Then your testimony may do just fine. What we were looking for -- I don't know if you had a chance to read the meeting minutes from last month.

MR. HENNESSY: No, I have not.

CHAIRMAN SCALZO: What I was looking for -- there is no determination or indication on the plan, and I'm just looking at the first floor plan. The existing living/dining room on, if you're facing the dwelling, the left side, there is no indication that -- I'm assuming that's a studio apartment right now.

MR. HENNESSY: Yes.

CHAIRMAN SCALZO: That's considered a one bedroom as it is without the improvements.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MARIA CHACHA

113

You're throwing a second floor on that?

MR. HENNESSY: Yes.

CHAIRMAN SCALZO: I'm just talking about the left side of this.

MR. HENNESSY: Yes.

CHAIRMAN SCALZO: So you're throwing a master bedroom upstairs with a bathroom. Is downstairs going to remain a bedroom?

MR. HENNESSY: No.

CHAIRMAN SCALZO: Okay. So that's a wash as far as increase in bedrooms for that half.

The other half, existing how many bedrooms?

MR. HENNESSY: Just for the tenant to the left?

CHAIRMAN SCALZO: The tenant to the right now.

MR. HENNESSY: To the right, that would be three. Yeah, three.

CHAIRMAN SCALZO: Okay. That's what it says here. You're doing well.

You also propose a second-story addition there with a master bedroom, walk-in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MARIA CHACHA

114

closet and others. Are you eliminating any bedrooms downstairs or is that remaining the same?

MR. HENNESSY: Everything is remaining the same. There's a bedroom upstairs now. We're just changing the gable. There was a knee wall. We're just expanding the floor area.

CHAIRMAN SCALZO: Okay. So that statement indicates that there is zero increase in bedrooms --

MR. HENNESSY: Correct.

CHAIRMAN SCALZO: -- for the entire structure.

MR. HENNESSY: Correct.

CHAIRMAN SCALZO: All right. So I'm looking at five total bedrooms.

Any idea of the size of the septic?

MR. HENNESSY: No. We do not know.

CHAIRMAN SCALZO: That's not part of the application. I'm just asking.

All right. As I say, the wetlands issue has now gone away.

I have no questions at this point. I'm going to look to the Members of the Board. Mr.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MARIA CHACHA

115

Bell?

MR. BELL: No.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: How many families will live in that house once you complete the renovations?

MR. HENNESSY: It's a two-family.

MR. MARINO: Are there two there now?

MR. HENNESSY: Yes.

MR. MARINO: The same two will stay?

MR. HENNESSY: Yes.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: Nothing.

MR. LEVIN: Since the wetlands is out of it, I have no questions.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: Will the septic system have to be looked into?

CHAIRMAN SCALZO: That's something I'm going to look to Joe from Code Compliance. There is no increase in bedrooms. I don't know what it was before. I'm not sure how to -- I'm not sure that that's something that we need to consider at this meeting. I really think that's up to Code

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Compliance at this point.

I'm not putting you on the spot, Joe,
but I'm going to ask you to look into that.

MR. MATTINA: When I do my plan reviews
there's an evaluation from a design professional
that the septic can handle the additional new
load because bathrooms also count. That will be
taken care of in plan review.

CHAIRMAN SCALZO: Typically the design
is just based on bedrooms.

MR. MATTINA: Bathrooms now, too.
Water consumption. Yes.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: I'm fine.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: I'm good.

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

MS. POST: I'm Heather Post, I live at
1912 Route 300. I think that there might be a
little bit of misinformation here to someone
somewhere. Currently it does show on the plans
that were submitted that there are five bedrooms.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MARIA CHACHA

117

If you look at the property card for this property, it notes that there are four bedrooms total, one apartment, then three bedrooms in the other. I don't know where we're coming up with this fifth bedroom. I think that --

CHAIRMAN SCALZO: Let me hang on one second. Mr. Mattina and I have discussed this at length. The assessor is not part of code. The assessor -- Joe, if you could help me out with the way the assessor looks at things compared to the way the code is.

MR. MATTINA: The assessor's sole purpose is to establish a market value of a parcel. It has nothing to do with legal bedrooms, illegal bedrooms. It establishes the market value of a piece of property.

MS. POST: Which I understand. That isn't so much the issue. There should be something that should state how many bedrooms. If someone were to purchase the home, do you just go by whatever somebody was using the house as, because that's not always the case?

MR. MATTINA: You would do a title search through the Building Department. We go

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MARIA CHACHA

118

through our archives and records and we will tell you exactly how many legal bedrooms there are.

MS. POST: Okay. So has anyone done that for this property?

CHAIRMAN SCALZO: There is typically not a need for that unless someone were to FOIL that information.

MS. POST: I did FOIL for all the information on this property and that's what I was given. I was told --


MR. MATTINA: I did the plan review three months ago. I don't remember.

MS. POST: I would suggest that's something you look into.

MR. MATTINA: Yes. I always do.

MS. POST: The other concern, just something to consider, is that -- I don't care about the front yard setback. That's pretty simple. I get it. Converting a two-family when you're within the zone, that's fine. They're literally asking for more than double what they own. They're asking for a two-family home when they don't even have one acre and they are required to have more than two acres. I think

EXHIBIT D

From: Siobhan Jablesnik zoningboard@townofnewburgh.org 
Subject: RE: FOIL Request
Date: March 25, 2020 at 12:29 PM
To: Ashley Torre atorre@bmglawyers.com

Hi Ashley

Ive attached all emails and anything submitted by the public for this application. As far as the aerial photos and Zillow listing those were just pulled up online by Chairman Scalzo not something printed and submitted to the file. So that's something you can pull up online.

Hope you are well. I'll let you know the next ZBA date when I hear anything.

From: Ashley Torre [mailto:atorre@bmglawyers.com]
Sent: Friday, March 20, 2020 9:16 AM
To: Joseph Pedi; josephpedi@townofnewburgh.org
Cc: Siobhan Jablesnik
Subject: FOIL Request

Attached please find our FOIL request requesting copies of all documents in the record before the Zoning Board of Appeals for the application of Emma Gasparini, 125 Mill Street (SBL 2-1-64), excluding the applicant's own submissions, and specifically including, but not limited to:

1. All items referenced and/or relied on by the Chairman at the February 27, 2020 hearing on this matter, including but not limited to a Zillow listing and aerial photos of the property dating back to the 1970s; and
 2. All emails and public comments submitted to the Zoning Board of Appeals.
- Please note electronic copies are preferred.

Thank you.

Ashley N. Torre, Esq.
Associate Attorney
Burke, Miele, Golden & Naughton, LLP
40 Matthews Street, Suite 209
P.O. Box 216
Goshen, NY 10924
P: (845) 294-4080
F: (845) 294-7673



DOC032520.pdf