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

- - - - - X
In the Matter of

- NEWBURGH CHICKEN
197 South Plank Road, Newburgh
Section 60; Block 3; Lot 6.1
B Zone
- JAMES PURPURA
32 North Fostertown Drive, Newburgh
Section 17; Block 2; Lot 59
R-2 Zone

- - - - - X

Date: March 28, 2024
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
JAMES EBERHART, JR.
GREG HERMANCE
JOHN MASTEN
JAMES POLITI
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA

- - - - - X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

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CHAIRMAN SCALZO: I'd like to call the meeting of the Zoning Board of Appeals to order. The order of business this evening are the public hearings which have been scheduled. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have, and then any questions or comments from the public will be entertained. The Board will 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 this is being recorded by our stenographer.

Roll call. James Politi.

MR. POLITI: Here.

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2

CHAIRMAN SCALZO: James Eberhart.

3

MR. EBERHART: Present.

4

CHAIRMAN SCALZO: Greg Hermance.

5

MR. HERMANCE: Present.

6

CHAIRMAN SCALZO: John Masten.

7

MR. MASTEN: Yes.

8

CHAIRMAN SCALZO: Donna Rein.

9

MS. REIN: Here.

10

CHAIRMAN SCALZO: Also with us

11

this evening is Dave Donovan, our

12

legal Counsel; we have Joe Mattina

13

from Code Compliance; and Michelle

14

Conero, our Stenographer.

15

If you would all please rise

16

for the Pledge.

17

(Pledge of Allegiance.)

18

CHAIRMAN SCALZO: Absent from

19

the meeting are Siobhan, our trusted

20

secretary who keeps it all together.

21

You'll have to excuse me this evening,

22

I'm not as good as her with the

23

organization. Also missing is Mr. Bell.

24

Mr. Bell can't be here this evening.

25

Both of them held it up while I was

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out in January and February. I am convinced this is payback.

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Before we really get started, there are a few alterations to the agenda this evening. We have held over from last month for other Board business, James Purpura, 32 North Fostertown Drive. He has asked to be deferred to next month because he would like a full compliment of Board Members here to vote. We will be hearing Mr. Purpura's revote next month.

Also Newburgh Chicken, the current Dairy Queen site, they have asked for a deferment as well.

If anyone is here for Newburgh Chicken/Popeyes or Purpura, they will not be addressed this evening. They will be on next month.

Nobody is getting up to leave.

UNIDENTIFIED SPEAKER: I want to know what's happening over there.

CHAIRMAN SCALZO: I thought I saw Lynn Warren here. You might want

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to tell him what I just mentioned
about Purpura being pushed to next
month.

(Time noted: 7:04 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 12th day of April 2024.

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

VINCENT DELGADO
133 Coach Lane, Newburgh
Section 58; Block 6; Lot 30
R-2 Zone

----- X

Date: March 28, 2024
Time: 7:04 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
JAMES EBERHART, JR.
GREG HERMANCE
JOHN MASTEN
JAMES POLITI
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA

APPLICANT'S REPRESENTATIVE: VINCENT DELGADO

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

1 Vincent Delgado

2 CHAIRMAN SCALZO: Our first
3 applicant this evening is Vincent
4 Delgado, 133 Coach Lane in Newburgh,
5 seeking an area variance of, A,
6 increasing the degree of nonconformity
7 of the rear yard to build a 10 by 5
8 rear deck (the permit application is
9 from 2016); and B, area variances of
10 the minimum front yard setback and
11 increasing the degree of nonconformity
12 of the rear yard to build an 18 by
13 24 foot addition.

14 Siobhan assures me that all
15 the mailings are in order for this
16 application.

17 Who do we have this evening
18 for this application? Please step
19 forward and state your name for the
20 record.

21 MR. DELGADO: Vincent Delgado.

22 CHAIRMAN SCALZO: Okay, Mr. Delgado.
23 If I have captured everything that you
24 want to talk about in that short
25 statement that I just read, then we

1 v i n c e n t D e l g a d o

2 can just go ahead and ask the Board
3 some questions. If you would like to
4 add some flavor to that, please.

5 MR. DELGADO: On the deck, I
6 just bought the house with the deck.
7 I'm trying to get that closed, a CO
8 for that, in order to do the addition.

9 CHAIRMAN SCALZO: Very good.
10 Actually, I saw that in the
11 application, you bought the house
12 with the deck already installed.

13 Counsel, there was one other
14 concern regarding that.

15 MR. DONOVAN: Yes. So the
16 application for the 10 by 5 year deck
17 I guess goes back eight years. That's
18 a fresh denial, so to speak, with the
19 new application. The reason I ask
20 that question is that the law requires
21 you appeal a denial within sixty days.
22 I'm not really good in math, but I
23 think 2016 is more than sixty days ago.

24 MR. DELGADO: I had gone there
25 with that application when the Building

1 Vincent Delgado

2 Department was right next door and spoke
3 to Joan. She's no longer there. I don't
4 know whatever happened to that.

5 MR. DONOVAN: I'm sorry to put you
6 on the spot, Joe. Effectively, just
7 so we cover our administrative bases,
8 this application for the 10 by 5
9 deck, originally denied in 2016,
10 would also be denied with the new
11 application which is from January 2024?

12 MR. MATTINA: We can do them
13 under the same one.

14 MR. DONOVAN: Okay. That's good
15 news for you.

16 CHAIRMAN SCALZO: We're obliged
17 by our positions here on the Zoning
18 Board of Appeals to go out and take a
19 look at all of these properties that
20 are here this evening.

21 I was out at your place Tuesday. I
22 happened to notice right across the
23 street from you, your neighbor put
24 quite a substantial addition on his
25 house.

1 v i n c e n t D e l g a d o

2 MR. DELGADO: Which one?

3 CHAIRMAN SCALZO: If you pulled
4 out of your driveway and drove into
5 the house across the street. That
6 can't be the original size of the
7 house. It's not shaped like you're
8 proposing.

9 MR. DELGADO: It's on the end.
10 Yes.

11 CHAIRMAN SCALZO: You're also
12 burdened with having two front yards
13 because you're on a corner.

14 MR. DELGADO: Right.

15 CHAIRMAN SCALZO: When realtors
16 say it's a corner lot, I don't
17 understand the appeal of that. From
18 my position here, it always ends up
19 being more restrictive, which in your
20 case it is.

21 Observation-wise, Meadow Hill
22 has been around since the '60s. Most
23 of the houses are the same size.
24 People have made modifications to
25 suit their style of living.

1 v i n c e n t D e l g a d o

2 I also read in your application
3 that this is for your mother or
4 mother-in-law.

5 MR. DELGADO: Possibly.

6 CHAIRMAN SCALZO: God bless
7 you, sir.

8 MR. DELGADO: Really because I
9 want a four-car garage. If I've got
10 to put a roof on, I might as well
11 just go up and extend it to make a
12 fourth bedroom for my mother-in-law.

13 CHAIRMAN SCALZO: You're the
14 best.

15 MR. DELGADO: This way she's
16 self-contained. That's my wife.

17 CHAIRMAN SCALZO: I didn't
18 realize she was here. I got caught.
19 I would love if my mother-in-law
20 lived with me.

21 MR. DELGADO: If you have young
22 kids, it's a good babysitter.

23 CHAIRMAN SCALZO: Everybody
24 gets so wound up coming here, but
25 it's not like that.

1 Vincent Delgado

2 Anyway, my observations, I just
3 stated them.

4 What I'm going to do at this
5 point, unless you have something more
6 to add, I'm going to poll the Board
7 for any comments they may have and
8 then open it up to the public. Is
9 there anything else you want to add?

10 MR. DELGADO: No.

11 CHAIRMAN SCALZO: You're standing
12 there. If they have questions, you're
13 the guy to ask.

14 MR. DELGADO: Okay.

15 CHAIRMAN SCALZO: Or perhaps
16 your mother-in-law.

17 Mr. Politi, do you have any
18 questions or comments regarding this
19 application?

20 MR. POLITI: You answered them.
21 The garage space you're pushing out.
22 It's 18 feet?

23 MR. DELGADO: Yes.

24 CHAIRMAN SCALZO: Four in, two
25 deep, is that what I'm to understand?

1 V i n c e n t D e l g a d o

2 MR. DELGADO: It will be --
3 both sides will be tandem.

4 MR. POLITI: The other question
5 was what the upper floor was going to
6 be used for. You answered that with
7 your mother-in-law. We went through
8 that. Those answered my questions.

9 CHAIRMAN SCALZO: Jim's in-laws
10 live in a totally different house.

11 Mr. Eberhart, do you have any
12 questions regarding this?

13 MR. EBERHART: I feel for you.
14 I have some questions, but I'm kind
15 of in the same situation. I had my
16 mother-in-law --

17 CHAIRMAN SCALZO: So you're
18 sympathetic?

19 MR. EBERHART: I'm with you.

20 CHAIRMAN SCALZO: Are you
21 talking about the cars or the family
22 members? Okay.

23 Mr. Hermance, do you have
24 anything?

25 MR. HERMANCE: No. That

1 v i n c e n t D e l g a d o

2 answered my questions.

3 CHAIRMAN SCALZO: I missed the
4 last two meetings. I figured I'd up
5 my game.

6 Mr. Masten?

7 MR. MASTEN: I was there. I
8 know the property and stuff in that
9 area because I helped put the gas in
10 them.

11 I didn't see a sign around the
12 property at all.

13 MR. DELGADO: It came off. We've
14 had tremendous winds. It did come off.
15 I don't know where it went.

16 MR. MASTEN: Probably in the woods
17 in the back.

18 CHAIRMAN SCALZO: Yours isn't the
19 only one. I saw the sticks up on
20 another one. We did have heavy winds
21 there last week. By law it's
22 supposed to remain posted until the
23 public hearing has been closed.

24 MR. DELGADO: Okay.

25 CHAIRMAN SCALZO: It was posted

1 v i n c e n t D e l g a d o

2 initially.

3 MR. DELGADO: I've got a picture
4 that I posted it.

5 CHAIRMAN SCALZO: We saw the
6 pictures.

7 Ms. Rein?

8 MS. REIN: Leave his mother-in-law
9 alone.

10 CHAIRMAN SCALZO: Yes, ma'am.

11 MS. REIN: I have no questions.

12 CHAIRMAN SCALZO: Nothing about
13 the short form environmental?

14 MS. REIN: Is it a Type 2?

15 CHAIRMAN SCALZO: It's a Type 2
16 action.

17 MS. REIN: No.

18 MR. DONOVAN: Yes, Mr. Chairman,
19 this is a Type 2 action.

20 CHAIRMAN SCALZO: We'll get to
21 that later, Counsel.

22 At this time I'd like to open
23 it up to any members of the public
24 that would like to speak about this
25 application.

1 v i n c e n t D e l g a d o

2 Mr. Delgado, you can sit right
3 there, if anybody else is going to
4 come up.

5 Is there anybody from the
6 public that wishes to speak about
7 this application?

8 MR. DELGADO: The people the
9 letters were sent to.

10 CHAIRMAN SCALZO: It can be
11 anybody in the room. We actually do
12 have some folks that just come here
13 because they like to see what we do.

14 MR. DELGADO: Okay.

15 CHAIRMAN SCALZO: They'll ask
16 questions about the applications.

17 (No response.)

18 CHAIRMAN SCALZO: Hearing no
19 comments from the public, I'll make a
20 motion to close the public hearing.

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

23 CHAIRMAN SCALZO: You can do
24 it, too.

25 MS. REIN: I'll second.

1 v i n c e n t D e l g a d o

2 CHAIRMAN SCALZO: We have a
3 motion from Mr. Masten. We have a
4 second from Ms. Rein. All in favor?

5 MR. POLITI: Aye.

6 MR. EBERHART: Aye.

7 MR. HERMANCENCE: Aye.

8 MR. MASTEN: Aye.

9 MS. REIN: Aye.

10 CHAIRMAN SCALZO: Aye.

11 Those opposed?

12 (No response.)

13 CHAIRMAN SCALZO: Very good.

14 In this case, this is a Type 2
15 action under SEQRA.

16 We're going to move through our
17 criteria, the area variance criteria,
18 and discuss the five factors we're
19 weighing, the first one being whether
20 or not the benefit can be achieved by
21 other means feasible to the applicant.
22 For the benefit he's seeking, I'm not
23 so sure.

24 Actually, Joe Mattina, help me
25 out here. He's looking for a four-

1 V i n c e n t D e l g a d o

2 car garage which would keep four cars
3 in his, basically, house. That would
4 save him from violating other types
5 of code violations. Am I correct?

6 MR. MATTINA: You can have
7 storage of up to four vehicles. He's
8 right at the limit.

9 CHAIRMAN SCALZO: All right.
10 Thank you.

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

14 MR. POLITI: No.

15 MR. EBERHART: No.

16 MR. HERMANCE: No.

17 MR. MASTEN: No.

18 MS. REIN: No.

19 CHAIRMAN SCALZO: No.

20 Third, whether the request is
21 substantial. By the numbers it is.
22 As I mentioned, he's got two front
23 yards. If you were to look at the
24 front yard from Coach, I believe it
25 is the one that dead ends --

1 v i n c e n t D e l g a d o

2 MR. DELGADO: Saddle.

3 CHAIRMAN SCALZO: Saddle.

4 Thank you. He would meet the side
5 yard if you look at the front of his
6 house.

7 Anyway, Mr. Politi, do you have
8 comments?

9 MR. POLITI: I'm good.

10 MR. EBERHART: No.

11 MR. HERMANCE: No.

12 CHAIRMAN SCALZO: Mr. Masten?

13 MR. MASTEN: No.

14 CHAIRMAN SCALZO: Ms. Rein?

15 MS. REIN: No.

16 CHAIRMAN SCALZO: The fourth,
17 whether the request will have adverse
18 physical or environmental effects.

19 MR. POLITI: No.

20 MR. EBERHART: No.

21 MR. HERMANCE: No.

22 MR. MASTEN: No.

23 MS. REIN: No.

24 CHAIRMAN SCALZO: It does not
25 appear so.

1 V i n c e n t D e l g a d o

2 The fifth, whether the alleged
3 difficulty self-created, which is
4 relevant but not determinative. Of
5 course it's self-created. As far as
6 its relevance, we can move through that.

7 Any comments before we move through
8 the next step here?

9 (No response.)

10 CHAIRMAN SCALZO: If the Board
11 approves, it shall grant the minimum
12 variance necessary and may impose
13 reasonable conditions on this.

14 Having gone through the balancing
15 tests, not the act but the tests, of
16 the area variance, does the Board
17 have a motion of some sort?

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

20 MR. MASTEN: I'll second it.

21 CHAIRMAN SCALZO: We have a
22 motion for approval from Ms. Rein.
23 We have a second from Mr. Masten.
24 I'm going to roll on that.

25 Mr. Politi?

1 Vincent Delgado

2 MR. POLITI: Yes.

3 CHAIRMAN SCALZO: Mr. Eberhart?

4 MR. EBERHART: Yes.

5 CHAIRMAN SCALZO: Mr. Hermance?

6 MR. HERMANCE: Yes.

7 CHAIRMAN SCALZO: Mr. Masten?

8 MR. MASTEN: Yes.

9 CHAIRMAN SCALZO: Ms. Rein?

10 MS. REIN: Yes.

11 CHAIRMAN SCALZO: I am affirmative
12 as well.

13 The variances are approved.

14 Good luck, sir.

15 MR. DELGADO: Thank you.

16 MR. DONOVAN: Mr. Chairman, if
17 I could. In an effort to be thorough,
18 Mr. Delgado had asked for a use
19 variance and an interpretation of the
20 ordinance for a special permit.

21 You really only need an area
22 variance. Even though your application
23 indicates a use variance and an
24 interpretation for a special permit,
25 you didn't need those. Correct?

1 v i n c e n t D e l g a d o

2 CHAIRMAN SCALZO: You wanted to
3 cover all the bases.

4 MR. DONOVAN: Just so we're
5 clear for the record, you got an area
6 variance. That's all you needed.

7 MR. DELGADO: Better to have
8 and not need than to need and not
9 have.

10

11 (Time noted: 7:17 p.m.)

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1 Vincent Delgado

2

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

4

5

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

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

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

16 IN WITNESS WHEREOF, I have hereunto
17 set my hand this 12th day of April 2024.

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MICHELLE CONERO

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH ZONING BOARD OF APPEALS
----- X
In the Matter of

ANNA PIOTROWSKI, M.D.
175 North Plank Road, Newburgh
Section 39; Block 1; Lot 57
B Zone

----- X

Date: March 28, 2024
Time: 7:17 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
JAMES EBERHART, JR.
GREG HERMANCE
JOHN MASTEN
JAMES POLITI
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA

APPLICANT'S REPRESENTATIVE: ANNA PIOTROWSKI

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

1 Anna Piotrowski, M.D.

2 CHAIRMAN SCALZO: Moving on to
3 the next applicant, Anna Piotrowski,
4 175 North Plank Road, seeking an area
5 variance of the front yard to a State
6 road to rebuild an existing nonconforming
7 single-family dwelling unit with a new
8 second story addition.

9 Siobhan has assured me that all
10 the mailings are in order for this as
11 well.

12 Who do we have with us?

13 MS. PIOTROWSKI: I'm Anna
14 Piotrowski. I'm the property manager
15 for my mother who is here.

16 CHAIRMAN SCALZO: Very good. If
17 I have captured just about everything,
18 and we've seen the property.

19 Pardon me, Joe. I know you said
20 the plans, or at least some of the
21 plans, typically are given to Siobhan.
22 She didn't include them in our packages.

23 Let me back up. If there's
24 anything that you would like to add
25 to that very short description, feel

1 Anna Piotrowski, M.D.

2 free. If I have captured it well
3 enough for you --

4 MS. PIOTROWSKI: I have a house
5 next door. I would like to get rid
6 of the mobile home that's abandoned.

7 CHAIRMAN SCALZO: I understand.
8 Let me go to -- your offset from the
9 State highway is a preexisting
10 nonconforming condition.

11 MS. PIOTROWSKI: Yes. My
12 father owned the property for thirty
13 something years. It was a rental a
14 long time ago. Long time.

15 CHAIRMAN SCALZO: I see that
16 place very often. I really like the
17 brick.

18 MS. PIOTROWSKI: I want to save
19 the brick.

20 CHAIRMAN SCALZO: Very good.
21 You just answered --

22 MS. PIOTROWSKI: I want to save
23 that really pretty brick.

24 CHAIRMAN SCALZO: The minimum
25 is 60 for the front yard. The

1 Anna Piotrowski, M.D.

2 proposed is 36.6 feet, which you'll
3 need a 23.4 variance. Because I
4 haven't seen a set of plans, I'm
5 assuming the 36 -- well, I did see
6 the survey. The survey indicates
7 that your current offset is 40.6. My
8 assumption, help me out, is that
9 additional 4 feet that you're
10 increasing it is because you're going
11 to put on a 4-foot front porch?

12 MS. PIOTROWSKI: I would like
13 to.

14 MR. MATTINA: That's it.

15 CHAIRMAN SCALZO: I'm smart
16 like that sometimes. I'm straight
17 with that now. I have no other
18 questions.

19 I'm going to start at the other
20 end of the table. Ms. Rein, do you
21 have any questions regarding this?

22 MS. REIN: Yes. Dr. Piotrowski,
23 it says on the second page --

24 MS. PIOTROWSKI: The doctor is
25 my mother. I'm just the property

1 Anna Piotrowski, M.D.

2 manager.

3 MS. REIN: On the second page,
4 on C, it says, "The existing first
5 floor and the foundation will not be
6 changed," and then you go in a couple
7 of pages and it says there's going to
8 be a renovation on the first floor of
9 the building along with the second --

10 MS. PIOTROWSKI: Demo work.
11 The roof had collapsed in. They just
12 want to get rid of all of that.

13 MS. REIN: That's going to be
14 done on the --

15 MS. PIOTROWSKI: That brick. I
16 want that brick to stay.

17 CHAIRMAN SCALZO: On all four
18 sides?

19 MS. PIOTROWSKI: Yes, please.

20 CHAIRMAN SCALZO: Really you're
21 going up but you're not going out.

22 MS. PIOTROWSKI: No. Plans
23 would have really helped.

24 MR. MATTINA: They're going out
25 4 foot in the front.

1 Anna Piotrowski, M.D.

2 MS. PIOTROWSKI: I want to save
3 it, please.

4 CHAIRMAN SCALZO: Very good.
5 Ms. Rein?

6 MS. REIN: I'm good.

7 CHAIRMAN SCALZO: Mr. Masten?

8 MR. MASTEN: I have nothing.

9 CHAIRMAN SCALZO: Very good.
10 Mr. Hermance?

11 MR. HERMANCE: Are there any
12 historical restrictions --

13 MS. PIOTROWSKI: No.

14 MR. HERMANCE: -- for this
15 homestead --

16 MS. PIOTROWSKI: No.

17 MR. HERMANCE: -- that would
18 prevent you from changing --

19 MS. PIOTROWSKI: None. I live
20 next door, too, so I prefer it to
21 stay a residence.

22 CHAIRMAN SCALZO: Mr. Eberhart?

23 MR. EBERHART: No questions.

24 CHAIRMAN SCALZO: Mr. Politi?

25 MR. POLITI: I'm good.

1 Anna Piotrowski, M.D.

2 CHAIRMAN SCALZO: You and I
3 discussed this. I believe our
4 questions have been answered.

5 MR. POLITI: I spoke to Joe
6 earlier. He had it going up.

7 CHAIRMAN SCALZO: Very good.
8 Hold everything. Just in case
9 somebody wants to talk, you may have
10 to answer a question or three.

11 In this case, if there is
12 anyone from the public that wishes to
13 comment on this application, please
14 step forward.

15 UNIDENTIFIED SPEAKER: I can't
16 hear. Is the microphone on? When
17 someone -- they're facing you, but I
18 don't understand what they're saying.

19 MS. PIOTROWSKI: Maybe it's not
20 loud.

21 CHAIRMAN SCALZO: If you don't
22 mind, I'm not -- can you hear me fine?

23 UNIDENTIFIED SPEAKER: Yes.
24 Absolutely.

25 CHAIRMAN SCALZO: I really project.

1 Anna Piotrowski, M.D.

2 UNIDENTIFIED SPEAKER: It's the
3 people that are facing that way when
4 they're speaking. Maybe the mic
5 isn't on.

6 CHAIRMAN SCALZO: Thank you.
7 That's wonderful to know. Further
8 applicants, I will make sure they're
9 speaking very close to the microphone
10 so the members of the public can
11 hear.

12 MS. REIN: If you'd like to
13 move up here, we have seats.

14 CHAIRMAN SCALZO: You can sit
15 in the front row.

16 UNIDENTIFIED SPEAKER: I just
17 wondered if that was on.

18 CHAIRMAN SCALZO: Very good.

19 All right. Does anyone from
20 the public have any comments regarding
21 this application?

22 (No response.)

23 CHAIRMAN SCALZO: It does not
24 appear so.

25 I will make a motion to close

1 Anna Piotrowski, M.D.

2 the public hearing.

3 MR. MASTEN: I'll second it.

4 CHAIRMAN SCALZO: We have a
5 motion from me and we have a second
6 from Mr. Masten. All in favor?

7 MR. POLITI: Aye.

8 MR. EBERHART: Aye.

9 MR. HERMANCE: Aye.

10 MR. MASTEN: Aye.

11 MS. REIN: Aye.

12 CHAIRMAN SCALZO: Aye.

13 Those opposed?

14 (No response.)

15 CHAIRMAN SCALZO: Very good.

16 This is a Type 2 action under SEQRA?

17 MR. DONOVAN: Correct, Mr. Chairman.

18 CHAIRMAN SCALZO: We're also going
19 to run through the variance criteria
20 and discuss the five factors we are
21 weighing.

22 The first one, whether or not the
23 benefit can be achieved by other means
24 feasible to the applicant. In this case,
25 absolutely not. It was a preexisting

1 Anna Piotrowski, M.D.

2 nonconforming condition.

3 Second, if there's an undesirable
4 change in the neighborhood character
5 or a detriment to nearby properties.
6 I think quite the contrary. With the
7 removal of the trailer in the back,
8 as well as just updating the home so
9 it's habitable, would be beneficial.

10 Third, whether the request is
11 substantial. Again, it's preexisting
12 nonconforming, except for the porch.

13 The fourth, whether the request
14 will have adverse physical or
15 environmental effects. It appears not.

16 The fifth, whether the alleged
17 difficulty is self-created, which is
18 relevant but not determinative. The
19 only difficulty that is self-created
20 is the porch addition. Other than
21 that, the home is exactly where the
22 home has been.

23 I kind of commanded that whole
24 conversation. Did anybody want to
25 stop me along the way?

1 Anna Piotrowski, M.D.

2 MS. REIN: No.

3 CHAIRMAN SCALZO: Very good.

4 Having gone through the balancing
5 tests of the area variance, does the
6 Board have a motion of some sort?

7 MR. POLITI: I'll make a motion
8 to approve.

9 MR. EBERHART: Second.

10 CHAIRMAN SCALZO: We have a
11 motion for approval from Mr. Politi.
12 We have a second from Mr. Eberhart.
13 I'm going to roll on that from the
14 other side of the table.

15 Ms. Rein?

16 MS. REIN: Yes.

17 CHAIRMAN SCALZO: Mr. Masten?

18 MR. MASTEN: Yes.

19 CHAIRMAN SCALZO: Mr. Hermance?

20 MR. HERMANCE: Yes.

21 CHAIRMAN SCALZO: Mr. Eberhart?

22 MR. EBERHART: Yes.

23 CHAIRMAN SCALZO: Mr. Politi?

24 MR. POLITI: Yes.

25 CHAIRMAN SCALZO: I am

1 Anna Piotrowski, M.D.

2 affirmative as well.

3 Very good. The variances are
4 approved. You're all set.

5 MS. PIOTROWSKI: Thank you.

6 (Time noted: 7:24 p.m.)

7

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

9

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

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

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

20 IN WITNESS WHEREOF, I have hereunto
21 set my hand this 12th day of April 2024.

22

23

25

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

NEWBURGH SOUTH CONGREGATION
OF JEHOVAH'S WITNESSES

33 Old Little Britain Road, Newburgh
Section 97; Block 3; Lot 13
R-3/O Zones

----- X

Date: March 28, 2024
Time: 7:24 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
JAMES EBERHART, JR.
GREG HERMANCE
JOHN MASTEN
JAMES POLITI
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA

APPLICANT'S REPRESENTATIVE: JOSH MOGDLIN

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

1 Newburgh South Congregation of Jehovah's Witnesses

2 CHAIRMAN SCALZO: Our next applicant
3 is Newburgh South Congregation of
4 Jehovah's Witnesses, 33 Old Little
5 Britain Road, seeking a use variance to
6 install two 19.25 square foot illuminated
7 monument signs and four 2.7 square foot
8 wall-mounted signs.

9 Siobhan assures me that all the
10 mailings are in order for this application.

11 Who do we have with us this evening?

12 MR. MOGDLIN: Good evening. My
13 name is Josh Mogdlin. I'm representing
14 the Newburgh South Congregation of
15 Jehovah's Witnesses. Thank you for the
16 opportunity.

17 CHAIRMAN SCALZO: This is our
18 sign code. Sometimes it leaves us
19 scratching our heads. This is one of
20 those instances.

21 MS. REIN: Is this just signage?
22 There was so much going on with the
23 paperwork.

24 CHAIRMAN SCALZO: This is just
25 signage. Ms. Rein, the issue here,

1 Newburgh South Congregation of Jehovah's Witnesses

2 and Mr. Mattina properly categorized
3 it, because of the way the code
4 reads, it is a use variance.

5 I'm not sure if you're aware of
6 the four criteria that you need to
7 satisfy for a use variance. In my
8 time, ten years here on the Board, I
9 think I've seen three use variances
10 approved. It's not like the old
11 song, two out of three ain't bad.
12 You need to satisfy all of the
13 criteria, one of them being a dollars
14 and cents -- help me out, Counsel.

15 MR. DONOVAN: You need to prove
16 by financial evidence that you can't
17 realize -- it's a little interesting
18 for the church, but you can't realize
19 any reasonable economic return on
20 your investment in the property
21 unless you have the signs.

22 CHAIRMAN SCALZO: Perhaps if
23 you were creative --

24 MR. MOGDLIN: I -- I'm sorry.

25 CHAIRMAN SCALZO: If you're

1 Newburgh South Congregation of Jehovah's Witnesses

2 creative. People need to know where
3 to go. If they can't contribute,
4 maybe that's the burden. I'm not sure.

5 MR. MOGDLIN: I think the other
6 option was we were trying to identify
7 if this was more an interpretation.

8 MR. DONOVAN: Very good. The
9 application, Mr. Chairman -- even
10 though this indicates a use variance
11 on our agenda, the application made
12 was an interpretation.

13 CHAIRMAN SCALZO: Very good.

14 MR. DONOVAN: Make your
15 argument on the interpretation.

16 CHAIRMAN SCALZO: The floor is
17 yours, however, I would like you to
18 grab that microphone and go stand by
19 Mr. Politi so the people in the back
20 can hear you. You can face them
21 because we'll probably be able to
22 hear you just fine.

23 UNIDENTIFIED SPEAKER: It comes
24 with aging.

25 MR. MOGDLIN: Can you hear?

1 Newburgh South Congregation of Jehovah's Witnesses

2 CHAIRMAN SCALZO: I just retired. I
3 completely understand what you mean.

4 MR. MOGDLIN: As was mentioned
5 on the paperwork, we are requesting a
6 variance for the total sign area as
7 well as illumination.

8 This property is in the R-3,
9 but also with the professional office
10 overlay within R-3 under Section --
11 let me get the code right. I am
12 getting older, too. Section 185-14
13 L(1) subparagraph A, that is the only
14 sign code for R-3. It is for home
15 occupancy. It states total square
16 feet. That is the only sign code
17 that's available. Throughout all of
18 the code, there is no code specific
19 for a place of worship or for a
20 professional office overlay. Any
21 other business within this overlay
22 corridor would run into the same
23 challenge.

24 In addition, we do have a place
25 of worship, which is a little bit

1 Newburgh South Congregation of Jehovah's Witnesses

2 different. We are along a corridor
3 with two other churches within this
4 corridor within 300 feet. They have
5 signs. Some of them are internally
6 illuminated and much bigger than the
7 square footage.

8 We did look through the code.
9 The best we could find was Section
10 185-14 K subparagraph 2, which wasn't
11 applicable either, but it was our
12 conservative assumption, and that's
13 why we're going with the sign of
14 19.25 square feet, because that says
15 the maximum is 20 square feet. We
16 have no code in there to really
17 define our use within the entire
18 zoning ordinance.

19 CHAIRMAN SCALZO: Thank you for
20 pointing that out. The comprehensive
21 plan is being updated currently by
22 the Town of Newburgh. Actually,
23 there's a meeting Tuesday. Perhaps
24 this is something that can be brought
25 to the attention of the Comprehensive

1 Newburgh South Congregation of Jehovah's Witnesses

2 Committee, which you just told one
3 member right now.

4 MR. MOGDLIN: Beautiful.

5 MR. MATTINA: That was one of
6 my requirements when I put in my
7 sheet to the Comprehensive Plan
8 Committee, that it did not address
9 places of worship. They're aware of
10 it.

11 CHAIRMAN SCALZO: Thank you,
12 Mr. Mattina.

13 Counsel, I'm kind of at a loss
14 for words, which is unusual for me.
15 Help me out.

16 MR. DONOVAN: The interpretation
17 that you're seeking is relative to
18 the size of the sign. Do I understand
19 that correctly?

20 MR. MOGDLIN: Total sign area
21 as well as illumination.

22 MR. DONOVAN: Before we get there,
23 there needs to be a determination as
24 to whether or not the sign is permitted,
25 which is the more difficult burden.

1 Newburgh South Congregation of Jehovah's Witnesses

2 In the overlay you're allowed -- a
3 professional use gets assigned a
4 maximum of 4 square feet.

5 Do I have that right, Joe?

6 MR. MATTINA: Yes.

7 MR. DONOVAN: Not to lead the
8 witness, is there anything that you
9 would want to argue that the use of
10 the property is a professional use?

11 MR. MOGDLIN: No.

12 MR. DONOVAN: Okay.

13 CHAIRMAN SCALZO: You tried.

14 MR. DONOVAN: I did.

15 MR. MOGDLIN: Let me rephrase
16 that.

17 MR. DONOVAN: If I can, what
18 you're allowed to do, as I read the
19 code, if you're a professional use,
20 and I don't know if that's defined
21 anywhere, but a professional use
22 would be entitled to an identification
23 sign of a certain size. If the Board
24 deems that you're a professional use,
25 then the next question would be is

1 Newburgh South Congregation of Jehovah's Witnesses

2 the Board interested in granting an
3 area variance for the size of the
4 signs proposed.

5 MS. REIN: And the illumination.

6 MR. DONOVAN: And the illumination
7 as well, Joe?

8 MR. MATTINA: There's no regulation
9 because it's not listed.

10 MR. DONOVAN: You're absolutely
11 correct.

12 So you first have to decide
13 whether or not this falls within the
14 parameters of a professional use,
15 and, if so, if you would be inclined
16 to give the variance for the size and
17 the illumination.

18 MR. MOGDLIN: If I can add, we're
19 not commercial and we're not residential.
20 We are unique. We would be the closest
21 to a professional use according to the
22 interpretation.

23 MS. REIN: This is one sign? I
24 thought it was multiple.

25 MR. MOGDLIN: So we prefer to

1 Newburgh South Congregation of Jehovah's Witnesses

2 have one monument sign. The Planning
3 Board wanted entry walls on each side
4 of our driveway. Instead of adding
5 one monument sign in addition to
6 those entry walls, our intent is to
7 include a sign area on each entry
8 wall. It is two signs, but it's so
9 as to reduce adding another monument
10 sign.

11 MS. REIN: We're talking about
12 three signs, one on each side --

13 MR. MOGDLIN: So two on the --
14 right at the entrance there are two
15 entry walls. Those were required by
16 the Planning Board. We agreed to
17 them. If you see how close they are,
18 putting a monument sign near that as
19 well would become -- it would kind of
20 mess up the aesthetics, it wouldn't
21 look as pleasing, thereby we're
22 putting a sign on each side. Whether
23 they're coming from the east or the
24 west, they can identify this is the
25 location and safely exit to the street.

1 Newburgh South Congregation of Jehovah's Witnesses

2 MS. REIN: Where will the monumental
3 sign be?

4 MR. MOGDLIN: There would be none.
5 It would be added to the actual entry
6 wall.

7 I don't know if you can see it.
8 These were also included in the
9 package. Hopefully you got those.
10 That would actually be the entry
11 wall, but with the sign attached to
12 that entry wall.

13 MS. REIN: Will all the signs
14 be illuminated?

15 MR. MOGDLIN: The two entry
16 walls will have one down light per
17 entry wall.

18 CHAIRMAN SCALZO: Nothing
19 behind it?

20 MR. MOGDLIN: Nothing --

21 CHAIRMAN SCALZO: It's not
22 backlit?

23 MR. MOGDLIN: They're not
24 illuminated from the back. Correct.

25 MS. REIN: Darrin, I think

1 Newburgh South Congregation of Jehovah's Witnesses

2 there was a letter from a concerned
3 person. They didn't exactly say what
4 property they were pertaining to, but
5 when you read the letter and you look
6 at everything that we're looking at
7 today, the Jehovah's Witnesses' site
8 is the only site that would compare
9 to that. They had a problem with all
10 of the signs and the lights.

11 CHAIRMAN SCALZO: Directly
12 across the street is the Baptist
13 church, which these -- I'm probably
14 not going to say this the right way,
15 but these are, I'll say, less
16 illuminated than the church across
17 the street. My having seen these
18 before, there's one right over on
19 Gardnertown for the condo complex.
20 You can see it's inset right into the
21 wall. You almost miss the sign
22 because you're appreciating the wall.

23 MS. REIN: A precedence has
24 already been set then?

25 MR. DONOVAN: Joe, I keep

1 Newburgh South Congregation of Jehovah's Witnesses

2 putting you on the spot. The one
3 across the street was built at a time
4 that predates the ordinance?

5 MR. MATTINA: Right. It was
6 the prior sign code. If it was
7 applied for today, they would be
8 here, the same situation.

9 CHAIRMAN SCALZO: They just did
10 a replacement.

11 I need some guidance here, Counsel.

12 MR. DONOVAN: I don't see a
13 definition of professional in the code.
14 I think you may want to be careful with
15 that, though. I don't know whether
16 the Board is inclined to say it's a
17 professional use. I think if you
18 don't say that, though, you can't get
19 past go.

20 MS. REIN: To say it's a
21 professional use would change the tax
22 codes. Right?

23 MR. DONOVAN: I think that's a
24 separate issue that the assessor
25 makes a determination based -- if

1 Newburgh South Congregation of Jehovah's Witnesses

2 you're talking about a religious real
3 property tax exemption, that's based
4 upon assessment criteria, not on the
5 site.

6 MR. EBERHART: How are we defining
7 professional use?

8 MR. DONOVAN: Well --

9 MR. MOGDLIN: It's not a residence.

10 MR. DONOVAN: It's not a commercial
11 use. Jim, I don't know. You have a
12 situation where you have a use that's
13 allowed. The use is allowed. They've
14 gone through the Planning Board
15 process to get the use. The sign
16 ordinance just doesn't address it.

17 CHAIRMAN SCALZO: We have a
18 flaw in our code, which it comes down
19 to, which we are trying to overcome
20 with the Comprehensive Committee.

21 MR. DONOVAN: What I'm suggesting
22 may be a reach, but it's the only way
23 that I can think of to accommodate
24 the sign, which otherwise appears not
25 to be permitted and would require a

1 Newburgh South Congregation of Jehovah's Witnesses

2 use variance, which you're not going
3 to --

4 CHAIRMAN SCALZO: It's merely
5 impossible.

6 MR. DONOVAN: I think it is
7 impossible. You're not going to be
8 able to meet the criteria.

9 MS. REIN: Darrin, what was
10 that other Board that you were
11 talking about that you were on?

12 CHAIRMAN SCALZO: The
13 Comprehensive Plan Committee.

14 MS. REIN: This is going to go
15 to them also?

16 CHAIRMAN SCALZO: The Comprehensive
17 Plan Committee is ten, twelve, fifteen,
18 twenty years when they revise the code.
19 That's what we're going through right
20 now.

21 MR. DONOVAN: How that process
22 works, the Comprehensive Plan Committee
23 will do its work over a period of time.
24 When they finish the work, they'll make
25 recommendations to the Town Board. The

1 Newburgh South Congregation of Jehovah's Witnesses

2 Town Board will undertake them as, if
3 and when they have the time to do
4 that. That requires a public hearing,
5 SEQRA review. The point I'm trying
6 to make is it's not an expeditious
7 process.

8 MS. REIN: We should not hold
9 this over and have them address it?

10 CHAIRMAN SCALZO: No. It's
11 certainly -- there's going to be no
12 resolution -- I can't see that
13 happening for six months minimum.

14 MS. REIN: Okay. How do we get
15 past the professional problem?

16 MR. DONOVAN: I'm not that
17 familiar with the church. Do you
18 have a pastor for the congregation?

19 MR. MOGDLIN: There's no
20 parsonage on the site. There is a
21 group of individuals who are assigned
22 to presentations, lectures.

23 MR. DONOVAN: Are those people
24 trained?

25 MR. MOGDLIN: They are trained.

1 Newburgh South Congregation of Jehovah's Witnesses

2 MR. DONOVAN: Do they have a
3 certification or do they need to go
4 through some sort of special --

5 MR. MOGDLIN: Every five years.

6 MR. DONOVAN: -- some sort of
7 professional review that authorizes
8 them to give their -- I go to the
9 Catholic church.

10 MR. MOGDLIN: There's ongoing
11 school every five years. They are
12 the ones who shepherd, who provide
13 the training. Every six months
14 they're reviewed and certified using
15 the scriptures. They don't receive,
16 like, a paper certification but they
17 are --

18 MR. DONOVAN: Would these folks
19 have any other job? Are they compensated?

20 MR. MOGDLIN: They're not compensated.
21 They're volunteers.

22 MS. REIN: Will any of the
23 parishioners live there?

24 MR. MOGDLIN: No. There's no
25 parsonage there. It's for parishioners.

1 Newburgh South Congregation of Jehovah's Witnesses

2 MR. POLITI: Does incorporation
3 play anything? You're incorporated,
4 it's a business?

5 MR. MOGDLIN: Correct. There
6 is a corporation that holds the
7 title, and, of course, handles the
8 maintenance and operation. That is
9 the Newburgh congregation itself.
10 Newburgh South Congregation of
11 Jehovah's Witnesses, they identify
12 the proxy that I'm representing them
13 for, and thereby you have a group of --

14 MR. DONOVAN: Would it be a
15 religious corporation formed under
16 the Religious Corporation Law?

17 MR. MOGDLIN: Is it 503 --

18 MR. DONOVAN: 503(c). That's a
19 tax status, not necessarily a legal
20 status. Let me just take a peek.

21 CHAIRMAN SCALZO: Counsel, how
22 about this. Obviously this is
23 leaving us all scratching our heads.
24 I don't want to have to act on this
25 tonight based on what we're hearing

1 Newburgh South Congregation of Jehovah's Witnesses

2 and following the code.

3 Let me ask -- well, Donna,
4 you've been very good about asking
5 questions.

6 Mr. Masten, do you have any
7 questions regarding this application?

8 MR. MASTEN: Not at this time.

9 CHAIRMAN SCALZO: That's fine.

10 Mr. Hermance?

11 MR. HERMANCE: No.

12 CHAIRMAN SCALZO: Mr. Eberhart?

13 MR. EBERHART: No. I'm, in my
14 mind, trying to figure in some way
15 how to stretch --

16 CHAIRMAN SCALZO: Careful when
17 you say that.

18 MR. EBERHART: The definition
19 of professional. Right?

20 CHAIRMAN SCALZO: Sure.

21 Mr. Politi?

22 MR. POLITI: The same. I'm
23 trying to get a definition.

24 CHAIRMAN SCALZO: Are there any
25 members of the public here that wish

1 Newburgh South Congregation of Jehovah's Witnesses

2 to speak about this application?

3 (No response.)

4 CHAIRMAN SCALZO: Okay. It
5 appears not. In this case I believe
6 we can close the public hearing.

7 MR. DONOVAN: Do you want him
8 to put something in writing?

9 CHAIRMAN SCALZO: Actually, I
10 would. Counsel, I'm going to ask you
11 to phrase it for me.

12 MR. DONOVAN: So perhaps it
13 would be helpful to the Board if you
14 were able to provide some sort of
15 letter, written documentation,
16 written proof to the Board that
17 demonstrates that the use could be
18 considered a professional use under
19 the code because there's a corporate
20 ownership, it's filed as a
21 corporation, wherever it may be
22 filed, the people that lead the
23 congregation are trained and they
24 have to be -- it's not a formal
25 certification, they have to be

1 Newburgh South Congregation of Jehovah's Witnesses

2 qualified in order to -- whatever the
3 correct terminology is, to coordinate
4 or conduct the service, something
5 along those lines, which would assist
6 you in the interpretation. If you
7 can be deemed a professional use,
8 then you've just crossed your biggest
9 hurdle.

10 MR. MOGDLIN: Thank you. Thank
11 you for helping clarify. I was
12 thinking the fact that it didn't
13 exist would be easier. You're
14 looking at an actual area variance?

15 MR. DONOVAN: The area variance
16 criteria is much, much, much simpler
17 than the use variance.

18 CHAIRMAN SCALZO: Having said
19 that, and there are no members of the
20 public that wish to speak on this
21 application, let's do one step at a
22 time here.

23 Counsel, do you see any issues
24 with me looking to close the public
25 hearing?

1 Newburgh South Congregation of Jehovah's Witnesses

2 MR. DONOVAN: The only issue is
3 that would start a clock. Because
4 this is an Unlisted action, we need
5 to do SEQRA. You can, but --

6 CHAIRMAN SCALZO: I see where
7 you're going. Thank you very much.

8 In this case perhaps we should
9 leave the public hearing open, --

10 MR. DONOVAN: I would.

11 CHAIRMAN SCALZO: -- that way
12 the clock does not start ticking.

13 MR. DONOVAN: Let's say there's
14 someone who couldn't make it, there's
15 an additional submission to the
16 Board, it gives the public an
17 opportunity to read it and comment on
18 it.

19 CHAIRMAN SCALZO: Thank you.

20 In that case I will look to the
21 Board for a motion to keep the public
22 hearing open.

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

25 MS. REIN: I'll second it.

1 Newburgh South Congregation of Jehovah's Witnesses

2 CHAIRMAN SCALZO: We have a
3 motion from Mr. Masten. We have a
4 second from Ms. Rein. All in favor?

5 MR. POLITI: Aye.

6 MR. EBERHART: Aye.

7 MR. HERMANCE: Aye.

8 MR. MASTEN: Aye.

9 MS. REIN: Aye.

10 CHAIRMAN SCALZO: Aye.

11 Those opposed?

12 (No response.)

13 CHAIRMAN SCALZO: Very good. I
14 think you know where we're headed --
15 or where we think you should head. I
16 need to rephrase that.

17 MR. MOGDLIN: Absolutely. I
18 will deliver that to the same place
19 we delivered the applications. We'll
20 get that in well before the next
21 public hearing of the Zoning Board of
22 Appeals.

23 CHAIRMAN SCALZO: The fourth
24 Thursday of the month.

25 MR. DONOVAN: You don't have to

1 Newburgh South Congregation of Jehovah's Witnesses

2 do any additional mailings. This is
3 kept open. If you could get it in --
4 is it two weeks before the meeting?

5 CHAIRMAN SCALZO: Yes.

6 MR. DONOVAN: Get it in two
7 weeks before the meeting.

8 MR. MOGDLIN: We'll give you
9 plenty of time.

10 CHAIRMAN SCALZO: Ten days to
11 two weeks.

12 MR. MOGDLIN: Thank you.

13

14 (Time noted: 7:45 p.m.)

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Newburgh South Congregation of Jehovah's Witnesses

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 12th day of April 2024.

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

STEVEN MOREAU

50 Old South Plank Road, Newburgh
Section 52; Block 1; Lots 12 & 13
R-1 Zone

----- X

Date: March 28, 2024
Time: 7:45 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
JAMES EBERHART, JR.
GREG HERMANCE
JOHN MASTEN
JAMES POLITI
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA

APPLICANT'S REPRESENTATIVE: JONATHAN MILLEN

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

1 S t e v e n M o r e a u

2 CHAIRMAN SCALZO: Our next
3 applicant is Steven Moreau, 50 Old
4 South Plank Road in Newburgh. This
5 is a Planning Board referral for area
6 variances of lot area, front yard,
7 rear yard, side yard and minimum lot
8 depth for lot number 13; minimum lot
9 area, front yard, rear yard, side
10 yard, combined side yards, minimum
11 lot width, lot depth and maximum
12 building coverage and lot surface
13 coverage for lot number 12 to
14 construct a single-family residence
15 on a nonconforming lot. The initial
16 appearance for this application was
17 October 26, 2023.

18 Siobhan assured me that the
19 mailings are in order for this
20 application.

21 Did I miss any variances with
22 that mouthful?

23 MR. MILLEN: No.

24 CHAIRMAN SCALZO: Very good. I
25 know you, but others don't. If you

1 S t e v e n M o r e a u

2 could just please introduce
3 yourselves. If I haven't captured
4 what it is that we're looking for --
5 you're back. You were here way back
6 when. I was extremely happy to see
7 you come back this way. You
8 recognized the ability to get past
9 the house without having to step on
10 an adjoining lot. Quite honestly, it
11 appears as though you certainly made
12 improvements to the lot size from
13 what you had initially come in with.
14 I know it's a rebuild, although it's
15 a rebuild from -- it had been
16 demolished, I don't want to say many
17 years ago.

18 Mr. Millen, is there anything
19 that you'd like to add, or Mr.
20 Moreau, to what I just said?

21 MR. MILLEN: No, other than we
22 appeared on the 26th of October.
23 There were some comments from the
24 public and concerns regarding the
25 ability to get around the house from

1 S t e v e n M o r e a u

2 either side.

3 I should say that virtually
4 every lot within proximity to this
5 does not meet the zoning requirements
6 in any fashion. We're really not
7 asking for anything that all the
8 other lots haven't already gotten,
9 particularly because right now the
10 40,000 square foot zone is somewhat
11 absurd relative to the neighborhood.

12 With all that being said, the
13 applicant had a lot line change made
14 in order to create a much bigger
15 buffer around the house. Other than
16 that, all the zoning requirements
17 were minimized a small amount as a
18 result of that.

19 CHAIRMAN SCALZO: Thank you.
20 We also recognize that the applicant
21 is keeping the home further away from
22 an adjoining dwelling on the lake.
23 They're not trying to creep up any
24 further. We recognize that as well.

25 That is a rendering of what

1 S t e v e n M o r e a u

2 you're looking to do?

3 MR. MOREAU: Yes.

4 CHAIRMAN SCALZO: Like I say,
5 emergency access around it, we
6 appreciate that you considered that.

7 I don't have any other comments
8 myself.

9 I'm going to jump down to Mr.
10 Politi. Do you have any?

11 MR. POLITI: The only comment
12 is that that's what we asked for. We
13 asked for that access around the
14 building.

15 CHAIRMAN SCALZO: Mr. Eberhart?

16 MR. EBERHART: No questions.

17 CHAIRMAN SCALZO: Like I say,
18 when you were here before, I didn't
19 realize it was going to come back as
20 quickly as it did. Very nice.

21 Mr. Hermance?

22 MR. HERMANCE: I think he
23 satisfied all of our prior concerns.

24 CHAIRMAN SCALZO: Very good.
25 Thank you.

1 S t e v e n M o r e a u

2 Mr. Masten?

3 MR. MASTEN: No.

4 CHAIRMAN SCALZO: Ms. Rein?

5 MS. REIN: I'm good.

6 CHAIRMAN SCALZO: At this time
7 I'm going to open it up to any
8 members of the public that wish to
9 speak about this application on Old
10 South Plank Road. Is there anyone
11 here that wishes to discuss that?

12 MR. BOCKEMUHL: I would.

13 CHAIRMAN SCALZO: Please step
14 forward.

15 MR. BOCKEMUHL: Do I need to
16 state my name?

17 CHAIRMAN SCALZO: Yes, sir.

18 MR. BOCKEMUHL: My name is
19 Alfred Bockemuhl and I live at 35 Old
20 South Plank Road. It's basically
21 across the street.

22 One comment before I get into
23 the application. They used the word
24 rebuild. I think we should be
25 careful that we don't incorporate

1 S t e v e n M o r e a u

2 that into the thought process. Maybe
3 you can answer this question. I
4 think if you no longer have a use
5 after twelve months, or is it
6 eighteen months, that you no longer
7 have the ability to have that use as
8 a rebuild. Correct?

9 MR. MATTINA: That's if it's
10 noncompliant for a use. That would
11 not apply.

12 MR. BOCKEMUHL: I'm not
13 applying it here, but more as a
14 matter of record because there are
15 other properties in the neighborhood
16 that are problematic.

17 My questions are, because you
18 listed all of those variances, --

19 CHAIRMAN SCALZO: There's a
20 boat load of them.

21 MR. BOCKEMUHL: -- can we maybe
22 understand, you're moving the
23 property line. Right?

24 MR. MILLEN: So what happened
25 was -- well, keep in mind that

1 S t e v e n M o r e a u

2 virtually none of the lots meet any
3 of the zoning requirements,
4 regardless of what it may be.

5 Prior to that, there was a very
6 limited amount of room to get around
7 the house. We expanded the lot line
8 to the south, took away from the lot
9 to the south in order to create a
10 much bigger area around the house.
11 Other than that, everything is the
12 same. All the criteria involved in
13 the zoning, which we didn't meet
14 before, it still doesn't meet. Some
15 of it is mildly better than it was
16 before.

17 CHAIRMAN SCALZO: Mr. Bockemuhl,
18 if I can point out, and since you
19 have the plan in front of you, the
20 lot that's shaded in blue, the side
21 yard distance from the lot that
22 currently has a dwelling on it has
23 been reduced to 28.3 feet. By them
24 moving the property line to
25 accommodate this future structure

1 S t e v e n M o r e a u

2 created that because it's 38 with
3 side yard requirements. They
4 actually created that need for a
5 variance by moving the property line
6 to -- I don't know if you picked up
7 on that.

8 MR. BOCKEMUHL: I completely
9 understand. I completely understand
10 what they're doing. I just want to
11 make sure for the people in the
12 audience, that they understand.
13 You're taking from the larger lot a
14 little bit of property and adding it
15 to the smaller lot to make both lots
16 more attractive. That's my opinion.

17 CHAIRMAN SCALZO: I'm not sure
18 if you were here when the applicant
19 was here the first time. The
20 concerns of this Board were -- I
21 believe the footprint that they are
22 proposing remained the same, however,
23 thinking from an emergency services
24 standpoint, how to get around that if
25 adjoiners chose to put up a fence.

1 S t e v e n M o r e a u

2 That was our primary -- that's what I
3 recall as being our primary concern.
4 The applicants came in here with a
5 revised plan with 404 square feet
6 added to that lot now just to
7 accommodate that.

8 We're all also aware that
9 Orange Lake is a very unique area
10 that, you know, everything started
11 off as a summer cottage, so nothing
12 meets the standards -- not nothing.
13 Unless you buy the lot that's next to
14 you, then you would meet the side
15 yard.

16 MR. BOCKEMUHL: That's one way
17 to solve the problem.

18 CHAIRMAN SCALZO: I apologize
19 for cutting you off, Mr. Bockemuhl.
20 That's the one thing I just wasn't
21 aware if you realized or not.

22 MR. BOCKEMUHL: Again, I
23 understood.

24 So it's clear, I'm in favor of
25 what the applicant has done. I just

1 S t e v e n M o r e a u

2 he's made some room to do that, and
3 that Althea is good across the street
4 as well.

5 CHAIRMAN SCALZO: Althea is
6 going to be the one that's looking at
7 it.

8 MR. FARNELL: Thank you.

9 CHAIRMAN SCALZO: Thank you.

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

13 (No response.)

14 CHAIRMAN SCALZO: It does not
15 appear so.

16 In this case I'll look to the
17 Board. I believe we could close the
18 public hearing.

19 MR. HERMANCE: I'll make a
20 motion to close the public hearing.

21 MR. EBERHART: Second.

22 CHAIRMAN SCALZO: We have a
23 motion to close the public hearing
24 from Mr. Hermance. We have a second
25 from Mr. Eberhart. All in favor?

1 S t e v e n M o r e a u

2 MR. POLITI: Aye.

3 MR. EBERHART: Aye.

4 MR. HERMANCE: Aye.

5 MR. MASTEN: Aye.

6 MS. REIN: Aye.

7 CHAIRMAN SCALZO: Aye.

8 Those opposed?

9 (No response.)

10 CHAIRMAN SCALZO: Very good.

11 Counsel, this is a Type 2

12 action under SEQRA?

13 MR. DONOVAN: Correct, Mr. Chairman.

14 CHAIRMAN SCALZO: We're going to go

15 through the area variance criteria and

16 discuss our five factors, the first one

17 being whether or not the benefit can be

18 achieved by other means feasible to the

19 applicant. My opinion is that while

20 it's a challenging site to develop,

21 the applicant has already shown good

22 faith here and gone through a lot

23 line change to add 5 additional feet

24 to one side. I think that's wonderful.

25 Second, if there's an undesirable

1 S t e v e n M o r e a u

2 change in the neighborhood character
3 or a detriment to nearby properties.

4 MS. REIN: No.

5 CHAIRMAN SCALZO: All right.

6 The third, whether the request is
7 substantial. Anything built on any
8 of those lots around Orange Lake is
9 substantial. Is it substantial
10 comparatively speaking to the other
11 lots? Not really.

12 Fourth, whether the request will
13 have adverse physical or environmental
14 effects.

15 MR. POLITI: No.

16 MR. EBERHART: No.

17 MR. HERMANCE: No.

18 MR. MASTEN: No.

19 MS. REIN: No.

20 CHAIRMAN SCALZO: It does not
21 appear so.

22 Fifth, whether the alleged
23 difficulty is self-created, which is
24 relevant but not determinative. To
25 tack on to what Mr. Bockemuhl said

1 S t e v e n M o r e a u

2 earlier, this parcel has been vacant
3 for awhile. It's got to be partially
4 self-created by wanting to put a home
5 that's not wider than 10 feet on the
6 lot, although that is relevant but
7 not determinative.

8 Does anyone else have any
9 comments regarding that?

10 (No response.)

11 CHAIRMAN SCALZO: Very good.
12 Having gone through the balancing
13 tests of the area variance, does the
14 Board have a motion of some sort?

15 MR. POLITI: I'll make a motion
16 to approve.

17 MR. MASTEN: I'll second it.

18 CHAIRMAN SCALZO: Mr. Masten
19 jumped all over it. We have a motion
20 to approve from Mr. Politi. We have
21 a second from Mr. Masten. I'm going
22 to roll on that.

23 Ms. Rein?

24 MS. REIN: Yes.

25 CHAIRMAN SCALZO: Mr. Masten?

1 S t e v e n M o r e a u

2 MR. MASTEN: Yes.

3 CHAIRMAN SCALZO: Mr. Hermance?

4 MR. HERMANCE: Yes.

5 CHAIRMAN SCALZO: Mr. Eberhart?

6 MR. EBERHART: Yes.

7 CHAIRMAN SCALZO: Mr. Politi?

8 MR. POLITI: Yes.

9 CHAIRMAN SCALZO: I am affirmative
10 as well.

11 MR. MILLEN: So I understand, since
12 the Planning Board didn't declare itself
13 lead agency --

14 MR. DONOVAN: It's a Type 2, so
15 we don't need to do anything.

16 MR. MILLEN: This is the end of
17 this process now?

18 MR. DONOVAN: It's not the end.
19 It's the end of this application.

20 CHAIRMAN SCALZO: Obviously
21 you're going to end up back in the
22 Building Department.

23 MR. MILLEN: In other words, we
24 don't need to go back to the Planning
25 Board to do anything regarding this?

1 S t e v e n M o r e a u

2 MR. DONOVAN: That I don't
3 know. I don't know if -- do you have
4 subdivision approval?

5 MR. MATTINA: I would think yes
6 because it's a site plan.

7 MR. MILLEN: I'm sorry. That's
8 correct. I apologize.

9 MR. MOREAU: Thank you guys.

10

11 (Time noted: 7:58 p.m.)

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1 S t e v e n M o r e a u

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

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

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

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

16 IN WITNESS WHEREOF, I have hereunto
17 set my hand this 12th day of April 2024.

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MICHELLE CONERO

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH ZONING BOARD OF APPEALS
----- X
In the Matter of

THAI JASON
12 Berry Lane, Newburgh
Section 35; Block 3; Lot 20
R-1 Zone

----- X

Date: March 28, 2024
Time: 7:58 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
JAMES EBERHART, JR.
GREG HERMANCE
JOHN MASTEN
JAMES POLITI
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA

APPLICANT'S REPRESENTATIVE: JONATHAN MILLEN

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

1 Thai Jason

2 CHAIRMAN SCALZO: Our next
3 applicant is Thai Jason, 12 Berry
4 Lane. It's a Planning Board referral
5 as well for area variances of lot
6 area, front yard, lot width and the
7 minimum habitable floor area to
8 convert an existing structure to a
9 two-family residence.

10 Siobhan assures me that all the
11 mailings are in order for this
12 application.

13 We have Mr. Millen with us
14 again. Mr. Millen, this one is a
15 little more interesting. This one
16 sent me to the book, and even had me
17 reach out to Counsel, because I'm
18 thinking to myself, this is in an R-1
19 District and they're looking to do
20 something you typically find in an
21 R-2. My question to Counsel was
22 really why wouldn't this be a use
23 variance and not an area variance.
24 However, R-1, with meeting certain
25 criteria you can. It's site plan

1 T h a i J a s o n

2 approval as per the Planning Board.

3 MR. MILLEN: Mm'hm'.

4 CHAIRMAN SCALZO: Anyway,
5 Counsel straightened me out where
6 this is not a use variance.

7 That being said; Mr. Millen, do
8 you have anything you want to add to
9 this?

10 MR. MILLEN: Well, we have
11 another very nonconforming preexisting
12 condition where the house is actually
13 on the property line, let alone not
14 having a setback.

15 There are a number of area
16 variances associated with this. It's
17 pretty straightforward. There are a
18 number of area variances. We're
19 looking to see if we can get
20 acquiescence on building this project.

21 CHAIRMAN SCALZO: Okay. Thank
22 you.

23 As I mentioned for a couple of
24 the other applications, we are
25 obliged by our positions here to go

1 T h a i J a s o n

2 take a look at these things, so I
3 did. The house is right on the
4 right-of-way line. That's kind of
5 crazy. As I mentioned, this sent me
6 to Counsel asking why it wasn't a use
7 variance. I am aware that in R-1
8 accessory apartments are allowed. In
9 this case this would be -- I don't
10 know why this wouldn't fit, and then
11 it kind of occurred to me, the
12 applicant doesn't intend to live
13 there. You have to be owner occupied
14 to have an accessory apartment. When
15 we discuss our factors here, should
16 we get that far, if the benefit can
17 be achieved by other means, well, I
18 suppose if the applicant lived there,
19 you'd only have to look for an
20 accessory apartment.

21 The other thing is, having gone
22 through the neighborhood, it appears
23 it is all single family. I can't
24 tell from looking at any tax records
25 or anything like that if they're

1 T h a i J a s o n

2 rental units there or not. This, in
3 my opinion, changes the character of
4 what's going on there by defining
5 that house as a rental, a two-family
6 rental. Not that that makes it for a
7 bad thing. However, I'm just making
8 that observation.

9 Now I'm going to turn it over
10 to the rest of the Board Members to
11 have their own comments as well. I'm
12 going to start with Mr. Politi.

13 MR. POLITI: Is this the
14 configuration that's already in the
15 building, these units?

16 MR. MILLEN: Yes. Well, what's
17 in the building -- there are some
18 changes. The interior of the
19 building is very distressed. I'm not
20 absolutely certain if there are any
21 changes to the floor plan relative to
22 what's in the building right now.

23 MR. POLITI: So this could have
24 been --

25 MR. MILLEN: I'm not certain.

1 T h a i J a s o n

2 I'm sorry.

3 MR. POLITI: The request then
4 becomes the rental of the two units.
5 Because it's R-1, a two-family
6 technically is not, by code, allowed.
7 Correct? Am I correct on that?

8 MR. MILLEN: You can have an
9 accessory.

10 MR. POLITI: This doesn't make
11 it because of the 700-foot requirement.
12 The second floor is at 861.

13 MR. MILLEN: Right. That's
14 part of the request.

15 MR. POLITI: I just want to
16 make sure I'm clear.

17 MR. MATTINA: Two families are
18 permitted in the R-1.

19 CHAIRMAN SCALZO: As long as
20 they meet 185-25, or something like
21 that.

22 MR. MATTINA: Right. It is a
23 permitted use, you just have to get
24 Planning Board site plan approval.

25 MS. REIN: And the owner has to

1 T h a i J a s o n

2 live there?

3 CHAIRMAN SCALZO: No, no.

4 That's why we're here. If the owner
5 was to live there, they wouldn't be
6 here.

7 MS. REIN: Right.

8 MR. MATTINA: Yes and no.

9 CHAIRMAN SCALZO: Expand on that,
10 Joe.

11 MR. MATTINA: If they were going
12 to go for an accessory apartment, the
13 owner would have to live there. You're
14 only allowed 700 square feet for that
15 accessory apartment, so you need a
16 variance for that. You also need to
17 meet all the requirements for a
18 single family. He would be here for
19 the other setback, for the front,
20 anyway.

21 CHAIRMAN SCALZO: In looking at
22 the configuration of the dwelling,
23 and if you look at what the proposed
24 second floor would be, where bathroom
25 number 2 is on the upper floor, I'm

1 T h a i J a s o n

2 not sure that he's got the proper
3 height. That could certainly be
4 called an attic. Anyway, that was
5 just me thinking out loud.

6 Donna, I apologize, I
7 misinformed you. They would be back
8 here if they wanted to do an
9 accessory apartment.

10 Mr. Millen, let me back up.
11 This was a Planning Board referral.
12 There's a letter from Dominic
13 Cordisco dated January 24th of '24,
14 "Additionally, this lot has
15 encumbrances from the adjoining lot,"
16 that's an interesting configuration
17 of what's going on here, "including a
18 portion of a shed on the adjoining
19 lot's septic system. The applicant
20 is attempting to resolve these
21 encumbrances, and, if the adjoining
22 owner is agreeable, the project will
23 also involve a lot line change. That
24 lot line change would increase the
25 amount of deficiencies likely for lot

1 T h a i J a s o n

2 area and lot width. Resolving these
3 encumbrances would depend on the
4 willingness of the adjoining lot
5 owner to participate in a lot line
6 change application." Do you have a
7 status on that?

8 MR. MILLEN: Yes. At this
9 point that adjoining owner does not
10 appear to be willing to do anything
11 at all about the situation.

12 CHAIRMAN SCALZO: Very good. I
13 see a hand.

14 MR. O'ROURKE: I'm the adjoining
15 owner.

16 CHAIRMAN SCALZO: Please state
17 your name for the record.

18 MR. O'ROURKE: Jeffrey O'Rourke.
19 I'm an occupant of 8 Berry Lane. We
20 are a residence on a dead end. It
21 used to be a private road of single-
22 family homes. The house has been in
23 my wife's family since 1972, where
24 our septic system has been since that
25 period of time.

1 T h a i J a s o n

2 I even brought with me a survey
3 from 2008 that shows the septic
4 system being in that location as well.

5 My lot is only 10,000 square
6 feet, 100 by 100. My well is smack
7 dab underneath the middle of my house.
8 I have to have septic within -- I
9 can't have it within 50 feet of my
10 well, therefore there's nowhere else
11 it can go.

12 I've been willing to make
13 accommodations for the applicant,
14 unfortunately the applicant is not
15 one to get back to me, nor being
16 willing to be -- willing to make
17 those accommodations equivocal.

18 CHAIRMAN SCALZO: I apologize.
19 I jumped on you.

20 MR. O'ROURKE: I apologize for
21 jumping out in front. I figured it
22 was needed.

23 MR. MILLEN: If I could interject,
24 I believe I could be assertive on the
25 part of the applicant to do what's

1 T h a i J a s o n

2 required, because something has to be
3 done.

4 MR. O'ROURKE: I agree.

5 MR. MILLEN: I don't even think
6 your septic situation -- you must not
7 have a lot of use there because it
8 doesn't even appear to be functioning
9 the way --

10 MR. O'ROURKE: It functions
11 completely fine.

12 CHAIRMAN SCALZO: I think what
13 he's saying, Mr. Millen, is when he
14 flushes, nothing else happens.

15 MR. O'ROURKE: I'm good to go,
16 man. I've lived there for almost
17 five years and it's been in my wife's
18 family a long time.

19 MR. MILLEN: In other words,
20 how many people --

21 MR. O'ROURKE: There's three
22 people consistently living there. My
23 wife and I also foster --

24 CHAIRMAN SCALZO: Gentlemen,
25 believe me when I tell you, I

1 T h a i J a s o n

2 appreciate the dialogue between the
3 two of you. However, Michelle is
4 trying to record all this. It's
5 really not relevant to why we're
6 here.

7 I'm going to open it up to the
8 public appropriately in a few
9 minutes. We may have more comments.

10 Thank you, Mr. Millen. That
11 does shed a different light on the
12 referral letter information from the
13 Planning Board.

14 I'm going to look to the
15 Members of the Board here. Mr. Politi,
16 what are you thinking?

17 MR. POLITI: I know what's
18 rattling around in my brain. If we,
19 as a Board, say affirmatively it's
20 okay to go -- I guess I'm trying to
21 ask Dave this question. We have
22 these outstanding issues. These are
23 quite functional property lines,
24 functional pieces of the other
25 property, all that occurs with the

1 T h a i J a s o n

2 Planning Board, we are putting
3 ourselves --

4 MR. DONOVAN: Jim, I think
5 there are a couple issues. One of
6 the issues that I think is important
7 to the Board is that if there is a
8 lot line adjustment made, which I
9 think would be in everyone's interest
10 to get the neighbor's property on the
11 neighbor's property, that what
12 Dominic is indicating is there's
13 likely going to be additional
14 variances. I know Mr. Millen loves
15 to come here, but I don't know if he
16 wants to come back.

17 My question to you is, do you
18 want to try to address that in some
19 fashion and come back with what you
20 need? Even if the Board decided to
21 give you relief, you may very likely
22 come back. I don't know if the Board
23 is going to be inclined to do that
24 because, you know, you have
25 encroachments.

1 T h a i J a s o n

2 MR. POLITI: That's my
3 hesitancy. You're asking me my
4 hesitancy. You have quite a bit of
5 play that needs to occur for this to
6 function as a separate unit or a
7 separate parcel. I don't know if
8 that puts us in a --

9 MR. MILLEN: My point would be
10 that the lot line change would not
11 impact the variances that we're
12 seeking in a significant manner
13 because we've made the lot line
14 changes in such a way as I don't
15 think it would have any impact at
16 all. It's not going to impact the
17 front line. It's not going to impact
18 the side line. I don't see --

19 CHAIRMAN SCALZO: Minimum lot
20 area.

21 MR. MILLEN: That's about it.
22 In a situation like this, there's no
23 other solution. It's not the
24 applicant's fault or responsibility
25 to be subject to having to change the

1 T h a i J a s o n

2 lot line and that, in turn, affecting
3 their ability to do what they want to
4 do with the improvements to the
5 property.

6 MR. POLITI: In my short time
7 here, there have been other instances
8 that became quite protracted.

9 MS. REIN: I'd like to ask
10 something, although it may be
11 inconsequential. Is there an issue
12 with the wetlands?

13 MR. MILLEN: No.

14 MS. REIN: On one page it
15 seemed that there was an issue. Here
16 it says, "Mapping information on
17 local and federal wetlands and water
18 bodies is known to be incomplete."
19 Why would that be?

20 MR. MILLEN: That's just part
21 of the agencies involved.

22 CHAIRMAN SCALZO: Perhaps I can
23 help.

24 MS. REIN: Please.

25 CHAIRMAN SCALZO: When you fill

1 T h a i J a s o n

2 these out, it is on the DEC's
3 website. When you pick your lot,
4 that question is answered by the
5 program.

6 MS. REIN: Okay.

7 MR. MILLEN: There aren't any
8 wetland issues affecting this
9 property for what we're doing.

10 MS. REIN: Okay. There's also
11 number 12, "Does the project site
12 contain or is it substantially
13 contiguous to a building, archeological
14 site or district which is listed on
15 the National or State Register of
16 Historic Places?" On the bottom it
17 says, "Is the project site or any
18 portion of it located in or adjacent
19 to an area designated as sensitive
20 for archeological sites of the New
21 York State Historic Preservation
22 Office," and you guys put down yes.

23 MR. MILLEN: Again, you have to
24 understand that this particular
25 process for the short environmental

1 T h a i J a s o n

2 assessment form, as well as the long,
3 you submit to the agency, the
4 Department of Environmental
5 Conservation, and they answer the key
6 questions for you. You can't change
7 that. They're saying yes and then
8 we're calling and saying where is
9 this thing and then there will be
10 something a mile and-a-half down the
11 road or something that's in their
12 inventory. Most of the time they
13 don't even know why it's there.
14 That's not something we checked as
15 yes.

16 CHAIRMAN SCALZO: Keep in mind
17 Ms. Rein, because they're here as a
18 Planning Board referral, they have to
19 go back to the Planning Board. The
20 Planning Board may -- I know for a
21 fact they read our minutes. If it's
22 perhaps something that did get by
23 them, in our public hearing it would
24 probably bring Pat Hines' attention
25 to it.

1 T h a i J a s o n

2 MS. REIN: I understand what
3 you're saying, sir. It's just that
4 if it's an affirmative, I don't
5 understand why somebody didn't look
6 into it as to why it is an
7 affirmative or what to do to change
8 it.

9 MR. MILLEN: I explained that
10 we did. We called the archeological
11 society and asked them to tell us.

12 MS. REIN: You didn't get an
13 answer?

14 MR. MILLEN: We didn't get a
15 definitive answer. They had nothing
16 definitive to tell us about. Again,
17 a lot of the short forms and long
18 forms that we have filled out answer
19 yes to that question and it turns out
20 to be it's some old structure a
21 couple miles down the road or
22 something.

23 MS. REIN: Who determines that?

24 MR. MILLEN: I would imagine
25 it's the Department of Environmental

1 T h a i J a s o n

2 Conservation. They have a listing of
3 historical sites.

4 MR. DONOVAN: If I can, also
5 Donna, this is a Type 2 action.

6 MS. REIN: Right. Okay.

7 MR. MILLEN: This comes up very
8 often. There are questions that are
9 answered automatically and you can't
10 change it.

11 MS. REIN: Somebody should
12 change that.

13 CHAIRMAN SCALZO: Yeah.

14 MR. MILLEN: I can't actually
15 uncheck that and make it a no. There
16 are a number of items there --

17 MS. REIN: There are.

18 MR. MILLEN: -- that are
19 checked for you already and you don't
20 have a chance or an opportunity to
21 change it.

22 MS. REIN: Thank you.

23 CHAIRMAN SCALZO: Thank you,
24 Ms. Rein.

25 Mr. Masten, do you have anything?

1 T h a i J a s o n

2 MR. MASTEN: I have nothing.

3 CHAIRMAN SCALZO: Mr. Hermance?

4 MR. HERMANCE: No. I just
5 don't understand how it could have
6 encroached that far into the
7 neighbor's property to begin with.

8 CHAIRMAN SCALZO: My neighbor's
9 driveway is on my property. It was
10 because it was a family compound, if
11 you will. Nobody really cared.
12 Perhaps that's how it happened.

13 MR. MILLEN: Did you say '72?

14 MR. O'ROURKE: In 1972 the
15 house was built. Your property used
16 to be a converted barn. That's why
17 it's so close to the road.

18 MR. MILLEN: In 1972 they
19 probably weren't paying too much
20 attention to where the lot lines
21 were.

22 CHAIRMAN SCALZO: Mr. Eberhart?

23 MR. EBERHART: No questions.

24 CHAIRMAN SCALZO: Mr. Politi,
25 we started with you, but I don't know

1 T h a i J a s o n

2 if you were done.

3 MR. POLITI: I'm done.

4 CHAIRMAN SCALZO: I'd like to
5 open it up to any members of the
6 public that wish to speak about this
7 application on Berry Lane. Do we
8 have anybody here that would like to
9 talk about it?

10 MR. O'ROURKE: My name is
11 Jeffrey O'Rourke. I own the
12 residence at 8 Berry Lane next door.

13 I do have a few concerns with
14 the house. I myself know the
15 condition of the house. There are a
16 lot of things that need to be done to
17 it.

18 CHAIRMAN SCALZO: I'm going to
19 stop you there and say that anything
20 that has to do with the structural
21 integrity or other building codes,
22 this is not the forum for that.

23 MR. O'ROURKE: Correct.

24 CHAIRMAN SCALZO: Go talk to
25 the guy in the red shirt.

1 T h a i J a s o n

2 MR. O'ROURKE: I'm more worried
3 about the pit in the backyard.

4 CHAIRMAN SCALZO: It must be an
5 old swimming pool.

6 MR. O'ROURKE: There used to be
7 a fence around it until the applicant
8 purchased the home. He took the
9 fence down. I communicated I need a
10 fence up there. I have kids that I am
11 responsible for their safety in and
12 out of my home. My pleadings have
13 gone unanswered, as most of my
14 pleadings with the applicant have. I
15 would just like that to be taken into
16 consideration. I would put a fence
17 up if I could myself. I would like
18 to put it on the proposed property
19 line.

20 CHAIRMAN SCALZO: I'm going to
21 stop you again. This is not the
22 forum for that. It's not holding
23 water. Maybe it used to be. I don't
24 know.

25 MR. O'ROURKE: It is a ten-foot

1 T h a i J a s o n

2 hole, ten feet by ten feet.

3 CHAIRMAN SCALZO: According to
4 the topography, it's only six feet.

5 There could also be another
6 solution, which would be the
7 applicant could put up no trespassing
8 signs. Anyway, that's not -- we're
9 not here to discuss safety features
10 around the dwelling or the property.
11 We're here really for, you know, what
12 the application has stated. Your
13 concerns certainly could be heard by
14 the Code Compliance Department.

15 MR. O'ROURKE: I appreciate it.
16 That's really all I had.

17 CHAIRMAN SCALZO: You have
18 legitimate concerns, but just
19 understand that's not why we're here.

20 MR. O'ROURKE: Correct.

21 CHAIRMAN SCALZO: While you're
22 standing, do you have any other
23 comments?

24 MR. O'ROURKE: That's all. I
25 think we can hopefully have

1 T h a i J a s o n

2 communication going forward and a
3 solution.

4 CHAIRMAN SCALZO: As I had
5 started this, my observations -- I
6 live miles from there. Not far. I
7 don't know if you understood what I
8 meant when I said if it was owner
9 occupied they'd be in here for a
10 variance just for an accessory
11 apartment.

12 MR. O'ROURKE: Correct.

13 CHAIRMAN SCALZO: Because the
14 applicant is approaching it this way,
15 it is going to be a rental property, --

16 MR. O'ROURKE: Yes.

17 CHAIRMAN SCALZO: -- both
18 apartments, if you will.

19 MR. O'ROURKE: Thank you very
20 much. I appreciate your time.

21 CHAIRMAN SCALZO: If you look
22 on the Town of Newburgh, our meeting
23 website, Mr. Millen's contact
24 information is on the map that's in
25 the application.

1 T h a i J a s o n

2 MR. O'ROURKE: Thank you.

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

6 (No response.)

7 CHAIRMAN SCALZO: I'm going to
8 look back to the Board. Do you feel
9 as though you have enough information
10 to close the public hearing? If you
11 don't, what concerns do you have that
12 you may want to keep it open? I'm
13 going to look to the Board at this
14 point.

15 Well, we did have comments from
16 the adjoining neighbor.

17 I'll look to the Board. What
18 do we want to do here?

19 MR. EBERHART: I would move to
20 close the public hearing.

21 CHAIRMAN SCALZO: Thank you,
22 Mr. Eberhart. Would you call that a
23 motion?

24 MR. EBERHART: Yes, I would.

25 CHAIRMAN SCALZO: We have a

1 T h a i J a s o n

2 m o t i o n t o c l o s e t h e p u b l i c h e a r i n g b y
3 M r . E b e r h a r t .

4 M R . P O L I T I : I ' l l s e c o n d i t .

5 C H A I R M A N S C A L Z O : W e h a v e a
6 s e c o n d f r o m M r . P o l i t i . A l l i n f a v o r ?

7 M R . P O L I T I : A y e .

8 M R . E B E R H A R T : A y e .

9 M R . H E R M A N C E : A y e .

10 M R . M A S T E N : A y e .

11 M S . R E I N : A y e .

12 C H A I R M A N S C A L Z O : A y e .

13 T h o s e o p p o s e d ?

14 (N o r e s p o n s e .)

15 C H A I R M A N S C A L Z O : V e r y g o o d .

16 T h e p u b l i c h e a r i n g i s n o w c l o s e d .

17 T h i s i s a T y p e 2 a c t i o n u n d e r
18 S E Q R A ?

19 M R . D O N O V A N : C o r r e c t , M r . C h a i r m a n .

20 C H A I R M A N S C A L Z O : W e ' r e g o i n g t o g o
21 t h r o u g h t h e v a r i a n c e c r i t e r i a a n d d i s c u s s
22 t h e f i v e f a c t o r s w e a r e w e i g h i n g , t h e
23 f i r s t o n e b e i n g w h e t h e r o r n o t t h e
24 b e n e f i t c a n b e a c h i e v e d b y o t h e r m e a n s
25 f e a s i b l e t o t h e a p p l i c a n t . M y p o s i t i o n

1 T h a i J a s o n

2 is this could be avoided if it were
3 owner occupied. That's just my
4 position on it.

5 Ms. Rein, do you have feelings
6 on it or any statements to go on?

7 MS. REIN: No. I agree. I
8 agree with you.

9 CHAIRMAN SCALZO: Mr. Masten,
10 anything? You don't have to.

11 MR. MASTEN: I'll hold off.

12 CHAIRMAN SCALZO: Mr. Hermance?

13 MR. HERMANCENCE: I agree.

14 CHAIRMAN SCALZO: Mr. Eberhart?

15 MR. EBERHART: I agree.

16 MR. POLITI: I agree.

17 CHAIRMAN SCALZO: Second, if
18 there's an undesirable change in the
19 neighborhood character or a detriment
20 to nearby properties.

21 My opinion on that, or my
22 position on that is the dwelling is a
23 dwelling and it's been that way. It
24 may have been a converted barn, but
25 it's been a single-family dwelling

1 T h a i J a s o n

2 for X amount of years at this point.
3 I would say in that case, no.

4 Mr. Politi?

5 MR. POLITI: That's the concern
6 from the neighborhood character
7 standpoint.

8 CHAIRMAN SCALZO: That comes
9 later.

10 MR. POLITI: I'll wait until
11 then.

12 CHAIRMAN SCALZO: Mr. Eberhart,
13 any comments on that portion?

14 MR. EBERHART: No.

15 CHAIRMAN SCALZO: Mr. Hermance?

16 MR. HERMANCE: No.

17 CHAIRMAN SCALZO: Mr. Masten?

18 MR. MASTEN: No.

19 CHAIRMAN SCALZO: Ms. Rein?

20 MS. REIN: No.

21 CHAIRMAN SCALZO: Third,
22 whether the request is substantial.
23 You know, we're looking at, again,
24 preexisting nonconforming conditions.
25 I think that criteria doesn't really

1 T h a i J a s o n

2 work so much here.

3 The fourth, whether the request
4 will have adverse physical or
5 environmental effects. We're not
6 sure with the old septic system
7 issue. I'll say I'm not sure.

8 Ms. Rein, what do you think?

9 MS. REIN: I agree.

10 CHAIRMAN SCALZO: Mr. Masten?

11 MR. MASTEN: The same.

12 CHAIRMAN SCALZO: Mr. Hermance?

13 MR. HERMANCENCE: Because you're
14 proposing to bring two families in
15 there, there's a concern.

16 CHAIRMAN SCALZO: I'm assuming
17 that the proposed septic system for
18 the dwelling has been designed in
19 accordance with New York State
20 standards by a professional engineer.

21 MR. MILLEN: Yes, sir.

22 CHAIRMAN SCALZO: That's really
23 not our concern. They've sized it
24 appropriately based upon percolation
25 and soils analysis.

1 T h a i J a s o n

2 Mr. Eberhart?

3 MR. EBERHART: I have no
4 concerns.

5 CHAIRMAN SCALZO: Mr. Politi?

6 The fifth, whether the alleged
7 difficulty is self- created, which is
8 relevant but not determinative. Of
9 course it's self- created.

10 Mr. Politi, I stepped all over
11 you before. Neighborhood character,
12 I said that comes later, that is the
13 second factor.

14 Again, my position is this will
15 impact the character of the
16 neighborhood by becoming a bona fide
17 two-family rental.

18 MR. DONOVAN: Mr. Chairman, if
19 I could. When you first went through
20 that criteria, you indicated that the
21 house had always been there so it
22 wouldn't. You're saying it would
23 because it's going from a single
24 family to a two family?

25 CHAIRMAN SCALZO: When talking

1 T h a i J a s o n

2 about preexisting nonconforming
3 conditions. I take no issue with
4 that because it's there.

5 MR. DONOVAN: I want to make
6 sure your position -- I'm sorry,
7 Michelle, to talk at the same time.
8 I just want to make sure your
9 position relative to the undesirable
10 change in the neighborhood character
11 or detriment to nearby properties is
12 on the record.

13 CHAIRMAN SCALZO: Counsel,
14 that's great. You put me on the
15 spot. Can I say both, it is yes and
16 it is no, if you will?

17 MR. DONOVAN: You can say
18 whatever you want. I prefer you to
19 be clear in what you say. I can't
20 tell you what to say.

21 CHAIRMAN SCALZO: When it comes
22 to the physical features of the lot,
23 I don't believe there's an undesirable.
24 change in the neighborhood character.
25 However, when it comes to what's

1 T h a i J a s o n

2 going to end up being the use of the
3 lot, now can I say that because it's
4 an area variance when I refer to the
5 use, Counsel?

6 MR. DONOVAN: I don't want to
7 put words into your mouth. Could you
8 say that it would be a change in the
9 neighborhood character by having a
10 two family on a lot that is 45,000
11 square feet where the minimum
12 required is 100,000 square feet. You
13 could say that.

14 CHAIRMAN SCALZO: I certainly
15 could. It is in a neighborhood of
16 all single-family dwellings.

17 MS. REIN: This is also going
18 to set a precedence.

19 CHAIRMAN SCALZO: That's a
20 rough one. We do have another option
21 here, which is think on it.

22 MR. DONOVAN: You have sixty-two
23 days.

24 CHAIRMAN SCALZO: We have sixty-two
25 days here.

1 T h a i J a s o n

2 In having gone through the
3 balancing tests of the area variance,
4 does the Board have a motion of some
5 sort?

6 If I may, I would like to defer
7 determination on this. I would like
8 to do a little more digging, go visit
9 the site again. However, that's just
10 my position. There are six of us
11 here this evening, and that's how
12 this works. We are at the tail end
13 of this balancing test.

14 Does the Board have a motion of
15 some sort?

16 MR. POLITI: Could the motion
17 be made to defer?

18 MR. DONOVAN: Frequently the
19 Board, when they do that, they'll
20 make a motion to defer to the April
21 meeting.

22 MR. POLITI: I would like to at
23 least put this out.

24 CHAIRMAN SCALZO: Keep in mind,
25 Mr. Politi, the public hearing is

1 T h a i J a s o n

2 closed. We could accept comments in
3 writing for up to that date.

4 MR. DONOVAN: You have to make
5 a determination within sixty-two days
6 of tonight after you've closed the
7 public hearing. That's why you read
8 that at the beginning of the meeting.

9 CHAIRMAN SCALZO: It's ten
10 years, Counsel. I just kind of glaze
11 over it.

12 MR. POLITI: I'll put that out
13 on the floor, to defer.

14 CHAIRMAN SCALZO: We have a
15 motion to defer to the April meeting
16 from Mr. Politi.

17 MR. HERMANCE: I'll second it.

18 CHAIRMAN SCALZO: We have a
19 second from Mr. Hermance. I'm going
20 to roll on that.

21 Ms. Rein?

22 MR. DONOVAN: A yes vote is to
23 defer.

24 MS. REIN: I know. It would be
25 no for me.

1 T h a i J a s o n

2 CHAIRMAN SCALZO: That's why
3 we're a multi-member Board.

4 Mr. Masten?

5 MR. MASTEN: No.

6 CHAIRMAN SCALZO: Okay. Mr.
7 Hermance, it was your motion.

8 MR. HERMANCE: Yes.

9 CHAIRMAN SCALZO: Mr. Eberhart?

10 MR. EBERHART: No.

11 CHAIRMAN SCALZO: Mr. Politi?

12 MR. POLITI: The vote is to
13 defer?

14 CHAIRMAN SCALZO: The vote is
15 to defer.

16 MR. POLITI: Yes.

17 Was that a split?

18 CHAIRMAN SCALZO: My position
19 is I vote to defer. I believe here
20 we site at three-three.

21 MR. DONOVAN: The motion
22 doesn't carry.

23 CHAIRMAN CSALZO: The motion
24 does not carry, therefore we need
25 another motion.

1 T h a i J a s o n

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

4 CHAIRMAN SCALZO: The public
5 hearing is closed. This is making a
6 motion for approval.

7 MS. REIN: Okay. That's it.
8 I'll make a motion to approve or
9 disapprove.

10 CHAIRMAN SCALZO: So what
11 you're saying -- Ms. Rein, can you
12 clarify your motion, please?

13 MS. REIN: I'll make a motion
14 to approve.

15 CHAIRMAN SCALZO: Very good.
16 We have a motion for approval from
17 Ms. Rein.

18 MR. EBERHART: I'll second.

19 CHAIRMAN SCALZO: We have a
20 second from Mr. Eberhart. We're
21 going to roll on that again. I'm
22 going to start at the other end of
23 the table.

24 Mr. Politi, this is for a
25 motion to approve the variances as

1 T h a i J a s o n

2 presented in the application.

3 MR. POLITI: No.

4 CHAIRMAN SCALZO: Mr. Eberhart?

5 MR. EBERHART: Yes.

6 CHAIRMAN SCALZO: Mr. Hermance?

7 MR. HERMANCE: I'll say no.

8 CHAIRMAN SCALZO: Mr. Masten?

9 MR. MASTEN: No.

10 CHAIRMAN SCALZO: Ms. Rein?

11 MS. REIN: No. I didn't know

12 if I had to say to approve or

13 disapprove.

14 CHAIRMAN SCALZO: I see exactly
15 what you did.

16 MS. REIN: I was a little
17 confused.

18 CHAIRMAN SCALZO: You made the
19 motion so we could vote on it.

20 I also am negative to that.

21 In this case the variances are
22 not approved.

23 MR. MILLEN: Could I interject
24 for a second?

25 CHAIRMAN SCALZO: Certainly.

1 T h a i J a s o n

2 MR. MILLEN: It appears to me
3 that nothing about the variance is
4 going to change, regardless of
5 whether or not we make an agreement
6 to change the lot lines. Would you
7 agree to that?

8 MR. DONOVAN: You can make your
9 statement. I'm not going to let you
10 cross-examine the Board.

11 MR. MILLEN: Okay. It's my
12 opinion that the variances would not
13 be impacted, other than the lot area
14 by accommodating the neighbor.

15 CHAIRMAN SCALZO: Well, looking
16 at the structure as it exists, no.
17 None of those dimensions will change.
18 You're absolutely right. However,
19 what we're doing is, should we
20 approve this as a two-family
21 dwelling, we're setting a precedent.

22 MR. DONOVAN: If I can, Mr.
23 Chairman. There's been a vote. The
24 matter is concluded.

25 CHAIRMAN SCALZO: Thank you,

1 T h a i J a s o n

2 Counsel, for allowing me to not get
3 myself in trouble.

4 MR. MILLEN: So what I wanted
5 -- my observation is that it's not
6 the variances, it's whether or not
7 you can have a second tenant there?

8 MR. DONOVAN: I can't let you
9 do this. The Board has already
10 voted. I can't let you poll the jury
11 afterwards.

12 MR. MILLEN: I didn't think
13 they voted.

14 MR. DONOVAN: It was a motion
15 to approve that failed, which is
16 interesting but that's what happened.

17 MR. MILLEN: All right.

18 CHAIRMAN SCALZO: Very good.

19

20 (Time noted: 8:30 p.m.)

21

22

23

24

25

1 T h a i J a s o n

2

3

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

4

5

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

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

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

16 IN WITNESS WHEREOF, I have hereunto
17 set my hand this 12th day of April 2024.

18

19

20

21

22

MICHELLE CONERO

23

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH ZONING BOARD OF APPEALS
----- X
In the Matter of

RE EQUITY NY, LLC
346 Meadow Avenue, Newburgh
Section 66; Block 1; Lot 1
IB Zone

----- X

Date: March 28, 2024
Time: 8:30 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
JAMES EBERHART, JR.
GREG HERMANCE
JOHN MASTEN
JAMES POLITI
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA

APPLICANT'S REPRESENTATIVE: DAVID NIEMOTKO

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

1 Re Equity NY, LLC

2 CHAIRMAN SCALZO: We are moving
3 on to our next applicant, RE Equity
4 New York, LLC at 346 Meadow Avenue,
5 seeking an area variance of
6 increasing the degree of nonconformity
7 to raise the roof on an existing
8 nonconforming single-family structure.

9 Siobhan assures me that all the
10 mailings are in order for this.

11 MR. NIEMOTKO: My name is David
12 Niemotko. Our firm are the architects.
13 We're the firm that prepared the
14 plans and are presenting the application.

15 As was mentioned, the property
16 is located at 346 Meadow Avenue in
17 Newburgh. It's in the IB Zone.

18 There are three structures on
19 the site. The owner wants to renovate
20 one of the structures.

21 If we use the plan, the top of
22 the plan is north, and it would be
23 the uppermost building. It's in bad
24 condition. We've prepared architectural
25 plans to renovate it and submitted

1 Re Equity NY, LLC

2 them to the Building Department. Of
3 course they referred it to you
4 because it is a preexisting
5 nonconforming condition. According
6 to your code section, any furtherance
7 of that would require Zoning Board
8 approval.

9 The type of work that we're
10 proposing is to remove an existing
11 shed roof that's in bad condition,
12 replace it with a gable and have it
13 tie into the existing gable that's
14 there.

15 If you look at the pictures
16 that we provided, you'll see that on
17 the first page, facing the property
18 on the west side, the building is all
19 the way in the middle of the picture,
20 closest to the commercial building.
21 In the second picture it doesn't even
22 show up. It's hidden because it more
23 obscures the back of the lot. In the
24 next few pictures you'll see the roof
25 that we want to replace. These

1 Re Equity NY, LLC

2 pictures show the shed roof. Also,
3 there's a lot of damage within the
4 building. That's what's starting
5 this process. We need to repair the
6 walls as portions of the foundation
7 have to be worked on.

8 This is the existing gabled
9 roof of the L-shaped building. We'd
10 like to have a gabled roof to tie
11 into it.

12 We're not expanding the
13 building. We're not adding on to the
14 area. We're not changing the lot
15 size or the lot coverage. It's the
16 replacement of the roof.

17 MS. REIN: Dave, is this a Type
18 2?

19 MR. DONOVAN: Yes.

20 MS. REIN: Thank you.

21 CHAIRMAN SCALZO: If I could, I
22 haven't seen the plans. Again, I'll
23 make sure I mention to Siobhan, when
24 these things happen, plans would be
25 helpful to us. I don't need to see

1 Re Equity NY, LLC

2 them now. You can answer my
3 questions probably quite easily.

4 Is the intent to throw a second
5 story on this?

6 MR. NIEMOTKO: No.

7 CHAIRMAN SCALZO: Okay. That's
8 certainly helpful to me. We had
9 visited the site. As an engineer, I
10 don't know how you're going to do
11 this without it being a total tear it
12 down to the ground. The stone
13 foundation, unless there's something
14 interior that I didn't see --

15 MR. NIEMOTKO: It's not in good
16 shape. I mean, the walls have to be
17 shored from the inside, we probably
18 have to do stud alongside stud or
19 additional studs at the mid span.
20 The roof will have to be reframed,
21 load bearing onto the new stud work.
22 The foundation is holding the
23 existing structure. We're not going
24 to be adding -- well, somewhat.
25 There will be portions of the

1 Re Equity NY, LLC

2 foundation that will have to be
3 addressed.

4 CHAIRMAN SCALZO: Okay. I'm
5 assuming, Joe, that ends up in your
6 office. They obviously need a design
7 professional to certify that the
8 existing foundation could accommodate
9 what it is they are looking to do?

10 MR. MATTINA: I'm pretty sure
11 he already addressed that in the
12 plans. We have a set of plans
13 already.

14 CHAIRMAN SCALZO: Again, I
15 don't have the benefit of having seen
16 them, that's why I'm asking questions
17 that you know the answer to.

18 MR. MATTINA: Yes.

19 MS. REIN: There's no height
20 change. Correct?

21 MR. NIEMOTKO: Correct.

22 CHAIRMAN SCALZO: I would
23 assume your gable --

24 MR. NIEMOTKO: Actually, that's
25 an interesting question, because the

1 Re Equity NY, LLC

2 shed roof is like this, okay. When
3 we do our gable, it's going to be
4 like this. There would be a height
5 change on this portion of the roof.
6 If the shed is going this way, we're
7 increasing the height this way. The
8 ridge continues straight across. In
9 terms of the line of the existing
10 roof, we're not increasing the
11 height.

12 CHAIRMAN SCALZO: Again, this
13 is a very interesting application. I
14 had given Jim Politi some homework.
15 He reached out to the Building
16 Department. It's two structures on
17 one lot. This is a very old
18 condition that apparently happened.
19 Good for you guys. You're not going
20 to increase -- no build out at all.
21 The rear corner -- the rear block
22 corner, that would be the north. The
23 building corner is 0.7 feet east of
24 the line. There's no intention of --

25 MR. NIEMOTKO: No.

1 Re Equity NY, LLC

2 CHAIRMAN SCALZO: Other than
3 because you're going to have to
4 replace the roof there, too.

5 MR. NIEMOTKO: Portions of it,
6 yes.

7 CHAIRMAN SCALZO: The building
8 corner, it's currently seven-tenths.
9 I'm kind of curious how you're going
10 to --

11 MR. NIEMOTKO: It's currently
12 what?

13 CHAIRMAN SCALZO: Currently
14 seven-tenths of a foot. I'm an
15 engineer, I talk in metric feet.

16 MR. NIEMOTKO: Correct.

17 CHAIRMAN SCALZO: I'm kind of
18 curious how you're going to end up --
19 this has nothing to do with you. I
20 get caught up in myself. I'm curious
21 how you're going to design a roof
22 that's not going to encroach onto the
23 adjoining lot if you have
24 seven-tenths of a foot right now,
25 which ends up being a little less

1 Re Equity NY, LLC

2 than eight inches.

3 MR. NIEMOTKO: You're talking
4 about the roof overhang encroaching
5 past. We have limited the overhang
6 to six inches.

7 CHAIRMAN SCALZO: There you
8 have it. Again, like I said,
9 sometimes I get caught up in myself.

10 MR. NIEMOTKO: That's fine.
11 That side of the building is a gable
12 already. We're not -- the overhang
13 would not wrap around. It would stop
14 at that corner.

15 CHAIRMAN SCALZO: Very good.
16 Without the benefit of seeing the
17 plans, you're not going up. You
18 know, when the gable -- you may end
19 up eclipsing fifteen feet, but it
20 doesn't sound like --

21 MR. NIEMOTKO: We're going to
22 stay within the zoning code
23 requirement.

24 CHAIRMAN SCALZO: I've got
25 nothing.

1 Re Equity NY, LLC

2 Mr. Politi?

3 MR. POLITI: Actually, I had to
4 talk to Joe. On that section you're
5 going down to the footings?

6 MR. NIEMOTKO: For the repair?
7 If need be. We can't do any -- we're
8 looking to do investigative work.
9 But yeah, the stone is separating.
10 We have to go down to the footing,
11 pour new from stone to stone and fill
12 it with new concrete.

13 MR. POLITI: Just curiosity.
14 This middle building, this is a home
15 -- currently a home?

16 MR. NIEMOTKO: Yes.

17 MR. POLITI: Just curiosity.
18 Is this a garage?

19 MR. NIEMOTKO: This here is.

20 CHAIRMAN SCALZO: A CMU building?

21 MR. NIEMOTKO: Yes. You're
22 talking about this building?

23 MR. POLITI: The block building
24 that's in between, it's a garage?

25 MR. NIEMOTKO: Yes.

1 Re Equity NY, LLC

2 CHAIRMAN SCALZO: The intent is
3 not to develop that?

4 MR. NIEMOTKO: I have no
5 knowledge.

6 CHAIRMAN SCALZO: That's fine.

7 MR. NIEMOTKO: The one building
8 that's before you right now is in bad
9 shape. He's concentrating on trying
10 to get that repaired. We're not
11 proposing anything for any of the
12 other buildings.

13 MR. POLITI: It was built in
14 1945.

15 CHAIRMAN SCALZO: The fact is
16 it's probably going to look much
17 better than it does now.

18 Mr. Eberhart?

19 MR. EBERHART: No questions.

20 CHAIRMAN SCALZO: Mr. Hermance?

21 MR. HERMANCE: I take it the
22 reason you're not taking it completely
23 down is because a renovation is
24 different than a complete rebuild?

25 MR. NIEMOTKO: Correct.

1 Re Equity NY, LLC

2 MR. HERMANCCE: Okay.

3 MR. NIEMOTKO: We have to leave
4 a portion of it there to maintain its
5 status. Absolutely.

6 CHAIRMAN SCALZO: Mr. Masten?

7 MR. MASTEN: I have nothing.

8 CHAIRMAN SCALZO: Ms. Rein?

9 MS. REIN: I'm good.

10 CHAIRMAN SCALZO: Okay. At
11 this time we're going to open it up
12 to any members of the public that
13 wish to speak about this application.

14 Please come on up. Since there's
15 not many people behind you, you can
16 probably just face us.

17 MR. CRUDELE: You just wait until
18 you get to be my age.

19 Good evening. My name is Fred
20 Crudele. This is my wife Diane. We
21 own the building across the street at
22 341 Meadow Avenue.

23 You've got to forgive me, I'm
24 not really familiar with this
25 procedure. We were concerned about

1 Re Equity NY, LLC

2 the final intent. In other words,
3 there's a house there which I believe
4 they're going to rent out. It's a
5 residence.

6 MS. CRUDELE: A single family.

7 MR. CRUDELE: This is the
8 building to the left as you're
9 facing --

10 MR. NIEMOTKO: Correct. Do I
11 speak?

12 CHAIRMAN SCALZO: Absolutely.
13 We'll entertain some questions
14 regarding that. The applicant is
15 proposing -- there are three
16 structures on the lot. The house
17 that looks like a house, --

18 MR. CRUDELE: Right.

19 CHAIRMAN SCALZO: -- the big
20 square building that looks like a
21 garage that only has one door on it,
22 and then the building that's directly
23 to the left of that that is
24 contiguous or the closest one to the
25 lot where the commercial building is.

1 Re Equity NY, LLC

2 MS. CRUDELE: What is that used
3 for?

4 CHAIRMAN SCALZO: Apparently
5 this is a preexisting condition that
6 at one point was used as living
7 quarters for folks.

8 MS. CRUDELE: It would be a
9 single family?

10 CHAIRMAN SCALZO: I'm going to
11 look to Joe. There are multiple
12 dwellings on a single lot, which is
13 unusual but it happens.

14 MR. MATTINA: The two dwelling
15 units, the front one was 1950, that's
16 the single family. The one in
17 question was 1945, and that's a
18 single family. It goes back.

19 CHAIRMAN SCALZO: Both of them
20 had that status at some point but not
21 the square block garage.

22 MR. CRUDELE: So now it will be
23 the garage included?

24 CHAIRMAN SCALZO: No. That
25 third building is going to remain

1 Re Equity NY, LLC

2 independent.

3 MS. CRUDELE: So how many
4 families will live in the structure
5 we're discussing today?

6 CHAIRMAN SCALZO: We're not
7 sure of that. Whatever code would
8 allow.

9 MS. CRUDELE: How do we find
10 out what the code allows?

11 MR. MATTINA: It's listed as a
12 single-family dwelling.

13 CHAIRMAN SCALZO: If it's
14 listed as a single-family dwelling,
15 it's going to be a single family.

16 MS. CRUDELE: Of course there
17 are parking issues. What is this to
18 a single-family neighborhood? What
19 impact?

20 CHAIRMAN SCALZO: Your zone is
21 the most interesting zone. Of all
22 the applications, yours is pretty
23 interesting. You're in, I think it's
24 IB.

25 MR. NIEMOTKO: IB.

1 Re Equity NY, LLC

2 MS. CRUDELE: I don't know what
3 that means.

4 CHAIRMAN SCALZO: Industrial
5 Business. Over the years businesses
6 came in and kind of crept. You're
7 one of a few residences in that area.
8 It's unusual.

9 MS. CRUDELE: Right. Of course
10 we're concerned if seven more
11 families live across the street.

12 MR. DONOVAN: If I can. The
13 only reason this is here tonight is
14 because of the work on the roof. In
15 terms of what's allowed to be there,
16 that's not before the Board. The
17 Board is not allowing additional
18 families or additional occupants.
19 Code Compliance handles that. Right
20 now each structure is approved as --
21 is allowed as a single-family
22 dwelling. There's nothing the Board
23 is going to do that's going to change
24 that. It's just the fact that work
25 is going to be done on the roof and

1 Re Equity NY, LLC

2 it requires a variance.

3 MS. CRUDELE: When we saw the
4 invitation for the meeting, it said
5 raise the roof and they didn't
6 identify which building. We thought
7 the two-story home was asking for a
8 third story, but that's not the case.

9 CHAIRMAN SCALZO: That's not
10 the case.

11 MS. CRUDELE: It's not getting
12 higher -- it's not going higher, it's
13 just repair?

14 CHAIRMAN SCALZO: It's repair.
15 Perhaps it could be a little higher.
16 My opinion is the bulk of where
17 they're raising this roof is going to
18 be obscured from your view by the
19 other block building in front of it.

20 MS. CRUDELE: Right. But is it
21 a whole house up there?

22 CHAIRMAN SCALZO: It's only to
23 replace the roof. He's not putting a
24 second story on it.

25 MS. CRUDELE: How many bathrooms?

1 Re Equity NY, LLC

2 CHAIRMAN SCALZO: We're not
3 here to talk about bathrooms. We're
4 just giving them consideration for
5 the variances that they're requesting.

6 MS. CRUDELE: Thank you.

7 CHAIRMAN SCALZO: Thank you.

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

11 (No response.)

12 CHAIRMAN SCALZO: It appears
13 not.

14 I'll look to the Board for a
15 motion to close the public hearing.

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

18 MS. REIN: I'll second it.

19 CHAIRMAN SCALZO: Down that end
20 of the table. Mr. Masten made the
21 motion and Ms. Rein seconded it. All
22 in favor?

23 MR. POLITI: Aye.

24 MR. EBERHART: Aye.

25 MR. HERMANC: Aye.

1 R e E q u i t y N Y , L L C

2 MR. MASTEN: Aye.

3 MS. REIN: Aye.

4 CHAIRMAN SCALZO: Aye.

5 Those opposed?

6 (No response.)

7 CHAIRMAN SCALZO: Very good.

8 It's a Type 2 action under
9 SEQRA.

10 We are going to roll through
11 the five factors, the first one being
12 whether or not the benefit can be
13 achieved by other means feasible to
14 the applicant. No. He's got to
15 repair it, once he gets in there to
16 see what's going on.

17 Second, if there's an undesirable
18 change in the neighborhood character
19 or a detriment to nearby properties.
20 No.

21 The third, whether the request
22 is substantial. No. Preexisting
23 nonconforming is what we've got going
24 on with all of the setbacks.

25 Fourth, whether the request

1 Re Equity NY, LLC

2 will have adverse physical or
3 environmental effects.

4 MR. POLITI: No.

5 MR. EBERHART: No.

6 MR. HERMANCENCE: No.

7 MR. MASTEN: No.

8 MS. REIN: No.

9 CHAIRMAN SCALZO: No.

10 Fifth, whether the alleged
11 difficulty is self-created, which is
12 relevant but not determinative. It
13 would appear, from the date of the
14 deed that was supplied with the
15 application, the applicant inherited
16 that building in that condition. I
17 would say it's really not self-
18 created.

19 Having gone through the
20 balancing tests of the area variance,
21 does the Board have a motion of some
22 sort?

23 MS. REIN: I'll make a motion
24 to approve.

25 MR. HERMANCENCE: I'll second it.

1 Re Equity NY, LLC

2 CHAIRMAN SCALZO: We have a
3 motion for approval from Ms. Rein.
4 We have a second from Mr. Hermance.
5 I'll roll on that.

6 Mr. Politi?

7 MR. POLITI: Yes.

8 CHAIRMAN SCALZO: Mr. Eberhart?

9 MR. EBERHART: Yes.

10 CHAIRMAN SCALZO: Mr. Hermance?

11 MR. HERMANCE: Yes.

12 CHAIRMAN SCALZO: Mr. Masten?

13 MR. MASTEN: Yes.

14 CHAIRMAN SCALZO: Ms. Rein?

15 MS. REIN: Yes.

16 CHAIRMAN SCALZO: I am
17 affirmative as well.

18 The variance is approved.

19 MR. NIEMOTKO: Thank you very
20 much, everyone.

21

22 (Time noted: 8:45 p.m.)

23

24

25

1 Re Equity NY, LLC

2

3

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

4

5

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

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

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

16 IN WITNESS WHEREOF, I have hereunto
17 set my hand this 12th day of April 2024.

18

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MICHELLE CONERO

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH ZONING BOARD OF APPEALS
----- X
In the Matter of

5450 ROUTE 9W, LLC

5430 & 5450 Route 9W, Newburgh
Section 9; Block 1; Lots 53.1 & 13
B Zone

----- X

Date: March 28, 2024
Time: 8:45 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
JAMES EBERHART, JR.
GREG HERMANCE
JOHN MASTEN
JAMES POLITI
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA

APPLICANT'S REPRESENTATIVE: STANLEY SCHUTZMAN,
ANTHONY GUCCIONE & UMBERTO BALDINUCCI

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

1 5 4 5 0 R o u t e 9 W , L L C

2 CHAIRMAN SCALZO: Held open
3 from the February 22nd meeting, we
4 have 5450 Route 9W, LLC, which was a
5 Planning Board referral for area
6 variances of the rear yard, setback
7 of the canopy to a State highway,
8 minimum off-street parking and the
9 buffer between a B and an R-3 Zone.

10 You folks have been waiting
11 patiently. He even brought his own
12 easel. This is great. He doesn't
13 want to be like Mr. Moreau and hold
14 it himself.

15 Gentlemen, you're going to have
16 to indulge me because I wasn't here
17 for your initial presentation and I
18 wish I was. I'm going to ask that
19 you go ahead and enlighten me. I've
20 been to the site. I've seen it.
21 I've been a Newburgh guy my whole
22 life, so I know exactly what was
23 there through the years. If you
24 could enlighten me on what we're
25 doing.

1 5450 Route 9W, LLC

2 MR. SCHUTZMAN: Good evening.
3 My name is Stanley Schutzman. I'm a
4 local attorney. With me today I have
5 Anthony Guccione and Umberto
6 Baldinucci who are representatives of
7 JMC Engineering which is the
8 applicant's engineering contractor.

9 Prior to submitting the --
10 we're here on a Planning Board
11 referral. Prior to submitting this
12 variance application, one of the
13 items in the Planning Board referral
14 we took care of as a matter of good
15 faith. We redesigned the project
16 before presenting it to you. The
17 issue of off-street parking was
18 eliminated by reducing the size of
19 the building and reconfiguring the
20 premises.

21 I'll ask Anthony to just give a
22 little thirty-second speech on
23 exactly what the building plan is,
24 and then we can go through the
25 Planning Board referral letter as

1 5450 Route 9W, LLC

2 well as my submittal letter of
3 February 5th of 2024 which detailed
4 the applicant's position with respect
5 to these matters.

6 MR. GUCCIONE: Good evening.
7 My name is Anthony Guccione with JMC.
8 We're the engineers on the project.

9 This is the current plan that's
10 before the Board. Would you like me
11 to start with the Planning Board and
12 show you the changes or go right to
13 the new plan?

14 CHAIRMAN SCALZO: Go right to
15 the new stuff. I don't necessarily
16 need to know what they did. They're
17 a different board.

18 MR. GUCCIONE: Sure. This is
19 the new plan. You can see the site
20 is outlined in red. It's 3.7 acres
21 in size. There are currently two
22 lots. The applicant is proposing to
23 merge the two lots into one lot as we
24 see outlined in red. 9W is at the
25 top of the sheet. You can see Oak

1 5 4 5 0 R o u t e 9 W , L L C

2 Street on the left side of the page.
3 This is Cortland Drive.

4 CHAIRMAN SCALZO: Your north
5 arrow is where?

6 MR. GUCCIONE: The north arrow
7 is here. 9W runs mostly north, but
8 it kind of looks a little east.

9 CHAIRMAN SCALZO: I missed it
10 in the title block.

11 MR. GUCCIONE: This is in a B,
12 Business, District.

13 You've got two proposed
14 driveways here connecting to 9W. One
15 driveway, the southernmost driveway,
16 is designed to align with the future
17 driveway of Overlook Farms. We're
18 hopeful that the DOT is going to
19 approve a traffic signal at that
20 location. There was previously, as
21 Mr. Schutzman mentioned, a driveway
22 connecting to Oak Street. That
23 required a variance because it's a
24 driveway serving a parking lot with
25 more than ten spaces. That can't be

1 5450 Route 9W, LLC

2 within 150 feet of an intersection.
3 We redesigned the site to eliminate
4 that driveway and the need for that
5 variance. That's one less variance.

6 This building here is a retail
7 building. It's proposed to be 11,550
8 square feet. That was reduced by
9 about 3,000 square feet from the
10 previous plan.

11 The second building is a 3,100
12 square foot convenience store and a
13 1,500 square foot restaurant. Right
14 now they're looking at putting a
15 pizzeria in there. That's the
16 proposed building.

17 Associated with that is a gas
18 canopy and six pumps. That's right
19 in front of the building, right there.

20 There are several variances
21 being requested in association with
22 the project. The first is a rear
23 yard variance required for the
24 buildings. 30 feet is required from
25 the rear property line, which is

1 5 4 5 0 R o u t e 9 W , L L C

2 here. You can see the narrow shape
3 of the site. It really limits where
4 you can put buildings and get parking
5 to support them. The buildings are
6 closer to the property line than the
7 30 feet. 19.5 feet is the setback
8 for the smaller convenience store and
9 18 feet is the proposed setback for
10 the retail. That's the first
11 variance that we're respectfully
12 requesting, 30 feet down to 18 and
13 19.5.

14 The second, which we're looking
15 really for an interpretation on, is
16 the canopy. This is a corner lot.
17 As I heard from another application,
18 a corner lot becomes a front yard.
19 Adjacent to Route 9W, which is a
20 State highway, that 40-foot setback
21 bumps up to 60 feet. We are
22 proposing 18.6 feet in the front and
23 31 feet on the side where 40 feet is
24 required on this front yard on
25 Cortland Drive and then 60 feet is

1 5 4 5 0 R o u t e 9 W , L L C

2 required on 9W. That's a building
3 setback. We don't see that the
4 building is the canopy. The building
5 is defined in your zoning code as a
6 structure wholly or partially
7 enclosed with exterior walls and a
8 roof. Since that doesn't have walls,
9 we didn't see it as a building. We
10 didn't think initially it was subject
11 to a building setback. We'd
12 appreciate an interpretation from
13 your Board on that.

14 Finally, a rear yard buffer is
15 required at the rear of the property
16 adjacent to the residential. In the
17 B, Business, District that we're in,
18 there's a minimum buffer strip table
19 in your zoning ordinance. The buffer
20 needs to be half the required rear
21 yard setback. The rear yard setback
22 is 30 feet, so the buffer would need
23 to be 15 feet. The Planning Board
24 attorney went up to 75 feet. We
25 would like an interpretation there as

1 5450 Route 9W, LLC

2 well.

3 I think that pretty much wraps
4 it up.

5 MR. SCHUTZMAN: With respect to
6 the requested interpretation, we're
7 seeking approval for a variance if
8 the interpretation of this Board is
9 consistent with what the Planning
10 Board attorney wrote in his referral
11 letter.

12 CHAIRMAN SCALZO: Thank you.
13 Having been to the site, it makes a
14 lot more sense to me when you're
15 going to eliminate the property line
16 between the two.

17 The stream channel itself, are
18 there any buffer requirements for
19 that?

20 MR. GUCCIONE: No buffer
21 requirements. We'll need to get Army
22 Corp approval to relocate a portion
23 of that stream. We're actually going
24 to daylight some of it. Right now
25 there's about 125 feet that's

1 5450 Route 9W, LLC

2 culverts on the site. We're going to
3 reduce that to 80 feet of culvert.
4 It's looked upon favorably by the
5 Army Corp. We will need to get
6 approval for that, but there's not
7 wetlands per se. It's a watercourse.

8 CHAIRMAN SCALZO: Is it a
9 categorized stream?

10 MR. GUCCIONE: It's not a class
11 C stream. We have a floodplain
12 consultant, Buddy Jackson, getting
13 involved with the floodplain analysis.
14 There is a floodplain associated with
15 that that we'll have to analyze. We
16 did the same thing across the street
17 at Overlook Farms with the relocation
18 of that stream. It would need a
19 floodplain permit.

20 MR. SCHUTZMAN: I just would
21 like to add that the request for the
22 variance is in the back section. We
23 have submitted to the Board a letter
24 of support from the property owner,
25 Hudson Hills.

1 5450 Route 9W, LLC

2 CHAIRMAN SCALZO: We did see
3 that. I don't know if that was
4 mentioned. I wasn't here, as I
5 mentioned, at the last meeting. That
6 is the property owner, it's not the
7 individuals that actually live in the
8 complex? The ones that actually look
9 at it?

10 MR. SCHUTZMAN: That's right.

11 CHAIRMAN SCALZO: Okay. I
12 don't know how many questions you
13 folks asked at the last meeting. Not
14 many?

15 Did you folks close the public
16 hearing on this?

17 MR. DONOVAN: No. We were
18 waiting for the County.

19 CHAIRMAN SCALZO: Now you're
20 timed out.

21 MR. DONOVAN: I don't know if
22 you got the report or not.

23 CHAIRMAN SCALZO: I'm not sure
24 if we did. That timed out. We're
25 allowed to move forward in this case.

1 5450 Route 9W, LLC

2 Help me out. The proposed
3 restaurant, 1,500 square feet, thirty
4 seats, and a convenience store of
5 3,000 square feet, does that meet the
6 rear yard setback?

7 MR. GUCCIONE: No. That's one
8 of the variances we're requesting.
9 30 feet is required. We're proposing
10 19.5.

11 CHAIRMAN SCALZO: There was a
12 structure there before that didn't
13 need any variances at all.

14 MR. GUCCIONE: There's a
15 structure there now. It was a
16 limousine structure.

17 CHAIRMAN SCALZO: No matter
18 what you did, you couldn't configure
19 it?

20 MR. GUCCIONE: It didn't meet
21 the needs of the applicant.

22 CHAIRMAN SCALZO: Meet the
23 needs of the applicant. Okay.

24 The same thing regarding the
25 retail, 11,550, you also need a

1 5450 Route 9W, LLC

2 variance there as well?

3 MR. SCHUTZMAN: Yes.

4 CHAIRMAN SCALZO: You couldn't
5 possibly shrink the size of the
6 building, move it up so you wouldn't
7 need a variance?

8 MR. GUCCIONE: No. We did
9 shrink that from the previous
10 proposal. It was 3,000 square foot
11 bigger. By the time you put a
12 driveway in here -- one of the
13 changes that happened here was Oak
14 Street was used for truck access to
15 the site to get deliveries and such.
16 When we had to remove the Oak Street
17 entrance, we had to reconfigure this
18 to be able to get a truck to back
19 into the loading space. This knuckle
20 was the amount that was stacking and
21 getting into the site to push the
22 building to there. It's really just
23 the driveway and the configuration of
24 the watercourse that really dictated
25 the location for that building. It

1 5450 Route 9W, LLC

2 gets really narrow if you were to --
3 it's only 70 feet right now. For
4 retail it becomes really useless if
5 you make it much narrower. You can
6 see the site is really pinched.

7 CHAIRMAN SCALZO: The site is
8 pinched. The site is pinched because
9 of your proposed development. It's
10 going to make its own little handle
11 here. With the development across
12 the street and what's up on the hill,
13 you're going to make your own area
14 that people congregate in. Holy
15 smokes, you're really -- the entire
16 site development, it's substantial.
17 That's just my observation.

18 The amount of parking, was that
19 the required amount of parking spaces?

20 MR. GUCCIONE: We're actually
21 over parked. We need 122 spaces. We
22 have 128 spaces. We meet the parking
23 requirement.

24 CHAIRMAN SCALZO: I didn't mean
25 that in a good way. Perhaps you can

1 5450 Route 9W, LLC

2 green up some space if you lost some.

3 MR. GUCCIONE: We can certainly
4 get rid of the extra six spaces.

5 That's where this revised plan ended
6 up. If you'd be in favor of six less
7 spaces and more green space, we'd be
8 happy --

9 CHAIRMAN SCALZO: You're not
10 here for that.

11 MR. GUCCIONE: That's a good
12 observation. It makes sense.

13 CHAIRMAN SCALZO: I also
14 recognize that you're saddled with a
15 very unusually shaped right-of-way.

16 MR. GUCCIONE: Yes.

17 CHAIRMAN SCALZO: I know it was
18 a concern of Mr. Politi.

19 I'll ask the ridiculous
20 question here. Did you reach out to
21 DOT to see if they needed that area?
22 You could reduce some of your
23 variances by -- although that process
24 is --

25 MR. GUCCIONE: Yeah, it's a

1 5 4 5 0 R o u t e 9 W , L L C

2 real long process for dealing with
3 DOT. We did the project across the
4 street. We're dealing with them to
5 take some property for a sidewalk, so
6 a land donation to DOT. It's years,
7 literally, to do that.

8 CHAIRMAN SCALZO: The appraisers,
9 they have come and check it out.

10 MR. GUCCIONE: Exactly. We are
11 dealing with that.

12 CHAIRMAN SCALZO: People retire
13 when you're trying to get through.

14 MR. GUCCIONE: You're not mistaken.

15 CHAIRMAN SCALZO: I'm friendly
16 with a bunch of DOT folks. I know
17 Sue Stepton left.

18 MR. GUCCIONE: Use of occupancy
19 permits and land donations. It's a
20 long process.

21 CHAIRMAN SCALZO: Like I say,
22 you're fitting a whole bunch of stuff
23 -- ten pounds of stuff in a five-pound
24 bag, like they say.

25 Again, you know what, I would

1 5450 Route 9W, LLC

2 assume you folks -- this has nothing
3 to do with your variance. I would
4 assume with the development, the old
5 Par, the newer development behind
6 this and the old Par, this probably
7 does -- would meet the needs of
8 what's going on in the neighborhood.

9 MR. SCHUTZMAN: The applicant
10 feels it fulfills the need with the
11 residential across the street, up the
12 hill. That's kind of what the letter
13 from the neighbors said, that we
14 provide a good service with the gas
15 and pizza.

16 CHAIRMAN SCALZO: The aesthetic
17 portion of it was my concern. You
18 get the property owner that says this
19 is going to be great for my business
20 model, but when it comes to the
21 people that sit on their back decks
22 and they're looking at a building
23 that they weren't looking at before --

24 MR. GUCCIONE: Economics. You
25 need to get a certain amount of

1 5 4 5 0 R o u t e 9 W , L L C

2 square footage that makes it
3 worthwhile to do the development.
4 It's under 15,000 square feet, all
5 together, of building.

6 CHAIRMAN SCALZO: Counsel, I'm
7 going to put you on the spot, or at
8 least check your memory. Do you
9 recall how we treated the canopy for
10 the applicant that was out on 747 and
11 84?

12 MR. DONOVAN: Was that an
13 issue, Joe?

14 CHAIRMAN SCALZO: Joe Mattina,
15 was that an issue there?

16 MR. MATTINA: I don't remember.
17 I think everything was an issue on
18 that site.

19 CHAIRMAN SCALZO: Yeah. I agree.

20 MR. DONOVAN: Just looking at
21 the code, the building is defined as
22 a structure wholly or partially
23 enclosed and a roof affording
24 shelters to persons, animals or
25 property. Wholly or partially

1 5 4 5 0 R o u t e 9 W , L L C

2 enclosed. A structure. If you look
3 at structure, a structure says
4 anything which is constructed, very
5 helpful, or erected which requires a
6 location on land or attachment to
7 something having such location,
8 including but not limited to the
9 following, signs or billboards,
10 fences, walls other than those less
11 than four feet high, radio and
12 television antennas, pergolas,
13 porches, outdoor bins, tool sheds,
14 carports, equipment and storage
15 buildings or sheds, swimming pools,
16 swimming pool filter pads -- I don't
17 know what that is -- tennis courts,
18 doghouses or sheds and children's
19 tree houses -- apparently not adults'
20 tree houses -- clubhouses, dollhouses
21 and playhouses and structures, all of
22 which are over ten feet in height,
23 and then it goes on. It doesn't say
24 gas station canopy.

25 I think, Joe, you fairly

1 5450 Route 9W, LLC

2 consistently determined those were
3 structures, though. Correct?

4 MR. MATTINA: Yes. We've
5 issued many variances for them. 17K,
6 I think Cumberland Farms.

7 MR. DONOVAN: We've never been
8 asked for the interpretation. I
9 think Joe is correct, you've issued
10 variances and never made a
11 determination. It seems a pretty
12 all-encompassing definition of
13 structure.

14 CHAIRMAN SCALZO: With regard
15 to an interpretation, should we
16 consider that to be a structure and
17 you're looking for a variance for the
18 canopy?

19 MR. SCHUTZMAN: That's correct.

20 CHAIRMAN SCALZO: And then the
21 big deal here -- I guess the big deal
22 is the rear buffer. I know we briefly
23 touched on that. Can you help me out
24 and help me understand it a little
25 better?

1 5 4 5 0 R o u t e 9 W , L L C

2 MR. GUCCIONE: Sure. The
3 project is in a B Zone. It abuts an
4 R-3 Zoning District at the rear of
5 the property. The Planning Board
6 attorney's letter that is from
7 December is saying that there is a
8 75-foot buffer required. However, if
9 you look at the minimum buffer strip
10 table in the zoning district, the
11 buffer depth needs to be equal to
12 half the rear yard setback. Our rear
13 yard setback is 30 feet, so half of
14 that would be 15 feet. We're not
15 sure where he got that 75 feet from.
16 It's our understanding the rear yard
17 buffer should be 15 feet, half of the
18 required 30-foot rear yard setback.
19 We're providing at least 18 feet, and
20 more in some places. We believe we
21 comply, unless we're misinterpreting
22 something.

23 MR. DONOVAN: I think what
24 happened is that Pat Hines, I don't
25 think he was at the meeting, he

1 5 4 5 0 R o u t e 9 W , L L C

2 prepared a letter, as he usually
3 does. He did not identify a variance
4 required for the buffer. He did
5 require the rear yard setback
6 variance. At the meeting Jim
7 Campbell talked about the 75-foot
8 buffer in the R-3. Dominic repeated
9 that in the referral letter. There
10 you have it.

11 CHAIRMAN SCALZO: Crystal clear.

12 MR. DONOVAN: Well, typically
13 Pat identifies what the variances
14 are. Joe is going to hate me after
15 tonight's meeting.

16 MS. REIN: That entire area
17 looks like a stuffed sausage.

18 CHAIRMAN SCALZO: I think I
19 said it a little different, but I
20 like your interpretation as well.
21 Population growth. It's exponential.

22 What are we thinking? I'm
23 going to go to my far end, Mr.
24 Politi.

25 MR. POLITI: Do you have a

1 5 4 5 0 R o u t e 9 W , L L C

2 potential tenant for the larger
3 building?

4 MR. GUCCIONE: Not yet.

5 MR. POLITI: That whole lot
6 line threw me off a little bit, the
7 way it kicked in. I don't know what
8 the reasoning is which forces that
9 down to an 18-foot space. I mean, if
10 you straighten that line out, you
11 gain quite a bit. The curb line is
12 still out where it's showing. Right?

13 MR. GUCCIONE: Way out here.
14 You're right, if the property line
15 was more consistent like it typically
16 would be, we wouldn't have that
17 situation.

18 MR. POLITI: You would have a
19 little bit more.

20 MR. GUCCIONE: It's the odd
21 shape of the DOT right-of-way.

22 MR. POLITI: That's the actual
23 DOT?

24 MR. GUCCIONE: That's the
25 right-of-way.

1 5450 Route 9W, LLC

2 MR. POLITI: That was my question.

3 CHAIRMAN SCALZO: It's a head
4 scratcher.

5 MR. POLITI: Just so I understand,
6 that's all green?

7 MR. GUCCIONE: That's all green.
8 That would be landscaping. We asked
9 the DOT if we could do some
10 beautification there, some landscaping.

11 The buffer strip, one more time
12 can I go back? I'm looking at the
13 zoning now. The minimum buffer strip
14 requirement table in the zoning, it
15 talks about the districts. In a B
16 District it says half the minimum
17 rear yard or side yard setback of the
18 yard containing the buffer to a
19 maximum of 50 feet. The 75 would be
20 Interchange Business or Industrial
21 Districts, the 75 feet. There are
22 only three requirements, Industrial,
23 IB and B. We're B. Half the minimum
24 rear yard setback up to 50 feet.

25 MR. SCHUTZMAN: Again, if the

1 5450 Route 9W, LLC

2 Board is in agreement with our
3 interpretation of the statutory
4 language, alternatively we're seeking
5 the Board's approval of the variance
6 in that respect.

7 CHAIRMAN SCALZO: You have to
8 bear with me.

9 MR. POLITI: The property
10 across the street, that's already in
11 process?

12 MR. SCHUTZMAN: That has an
13 approval resolution in place.

14 MR. POLITI: That will be more
15 apartments?

16 MR. GUCCIONE: Up there. Correct.
17 We're seeking third-party approvals
18 now, DOT and that.

19 CHAIRMAN SCALZO: As I said many
20 times already, bear with me. I'm
21 going to roll down your table of land
22 use, the chart on your plan, just so
23 all the Board Members can hear.
24 Hopefully it will sink in like it's
25 going to sink in with me.

1 5450 Route 9W, LLC

2 I'm going to start with lot
3 area. In this case required is
4 35,000 or .8 acres. That's not an
5 issue whatsoever.

6 If you guys want to follow
7 along, I'm looking at the chart here
8 on the plan, or you could just listen
9 to me because I love to talk.

10 We're looking at the lot width
11 requires 100 feet. That's not an
12 issue. We far exceed those.

13 Lot depth, 125 is required. We
14 far exceed those existing and
15 proposed.

16 Lot building coverage, the
17 percent required is 40 max.

18 MR. GUCCIONE: That's the max.

19 CHAIRMAN SCALZO: Max is 40.

20 What we're saying here is the lot
21 building coverage, you're only saying
22 10?

23 MR. GUCCIONE: 10 percent
24 building coverage. This building and
25 this building cover 10 percent of the

1 5450 Route 9W, LLC

2 site.

3 CHAIRMAN SCALZO: Joe, does the
4 canopy work into that at all or not?

5 MR. MATTINA: I was reading.

6 Sorry.

7 CHAIRMAN SCALZO: That's all
8 right. The lot building coverage --

9 MR. MATTINA: I would say yes.
10 It's not pervious surface.

11 MR. DONOVAN: If you decide
12 that it's a building --

13 CHAIRMAN SCALZO: When you say
14 lot coverage here, and you just said
15 pervious surface, we're not
16 considering all the parking areas?

17 MR. GUCCIONE: That's two lines
18 down.

19 CHAIRMAN SCALZO: Thank you.
20 All right. So I understand now with
21 the 10 percent as opposed to the
22 maximum of 40.

23 Building height 35, you're not
24 going to exceed that.

25 Lot surface. Required or

1 5450 Route 9W, LLC

2 maximum is 80 percent and you're only
3 at 62. That's that big back triangle
4 that's saving you.

5 MR. GUCCIONE: That wooded area.

6 CHAIRMAN SCALZO: That's why
7 you're not going to disturb it, plus
8 the neighbor probably prefers that.

9 MR. GUCCIONE: The previous
10 plan went further into that and had
11 more walls and disturbance. We
12 limited the disturbance in the back
13 and reduced the walls significantly.

14 CHAIRMAN SCALZO: I'm following
15 along now. Not from my tree house.

16 A front building setback of 60
17 and 40. Existing is 61.

18 MR. GUCCIONE: That was before
19 the determination of the canopy as a
20 building. We saw the canopy as a
21 structure but not as a building. A
22 building is a structure but a
23 structure is not necessarily a
24 building. I guess that's gone, so
25 that has to change.

1 5 4 5 0 R o u t e 9 W , L L C

2 CHAIRMAN SCALZO: Then you have
3 the parenthesis which you described
4 in the note below.

5 Rear setback, we have 30
6 minimum. Again, you say existing 29.
7 Proposed 18 with parenthesis 4.
8 Variance required for building
9 setback. Ding, ding, ding. That's
10 the first one that really catches my
11 attention.

12 For rear building setback we're
13 looking for a 12-foot variance.

14 Do you guys all follow along
15 with me?

16 MS. REIN: Yes.

17 CHAIRMAN SCALZO: I'm sorry I'm
18 talking through it, but it's helping
19 me.

20 Side building setback, you have
21 a 25 minimum. You far exceed those.

22 Going down to the parking
23 summary. Quite honestly, that really
24 doesn't matter to us. We're not here
25 to talk about that.

1 5450 Route 9W, LLC

2 The big deal is the
3 interpretation of the canopy and the
4 rear yard setback. The interpretation
5 of code with that buffer, it's not
6 hanging with me, if you know what I
7 mean. I'm not thinking hard about it.

8 MR. DONOVAN: I think that that
9 may -- that may have been given in
10 error by the Planning Board. It
11 appears to me, since I read verbatim
12 from the code, that's what the code
13 says.

14 MR. SCHUTZMAN: They may have
15 misinterpreted it was in the B Zone,
16 which is what we suspect.

17 CHAIRMAN SCALZO: So now back
18 to, you're proposing a 12-foot rear
19 yard variance. How much of that
20 would be now a buffer, or there won't
21 be one?

22 MR. GUCCIONE: All of that 18
23 feet would be a buffer.

24 CHAIRMAN SCALZO: All of that
25 18 feet?

1 5450 Route 9W, LLC

2 MR. GUCCIONE: And more by the
3 retail building. This is 18 feet
4 here, this little piece here. We
5 have plenty here, obviously. Over
6 here we've got 19.5 feet from the
7 building to the back.

8 CHAIRMAN SCALZO: That's one
9 more Forsythia bush.

10 MR. GUCCIONE: Exactly.

11 CHAIRMAN SCALZO: Did I just
12 knock this down to interpretation of
13 the canopy, rear yard relief of 12
14 feet, and then, like I say, I agree
15 with Counsel here, the interpretation
16 of the buffer might have been
17 misdirected. Really we're only here
18 for two things.

19 MR. SCHUTZMAN: That's our view.

20 CHAIRMAN SCALZO: This is a
21 really big package.

22 MR. DONOVAN: You can hear from
23 the public. If you're just inclined
24 to vote on the area variance, we'd
25 have to rule on the interpretation.

1 5450 Route 9W, LLC

2 CHAIRMAN SCALZO: Very good. I
3 appreciate you guys explaining things
4 to me a little better.

5 The public hearing is still
6 open. Because we didn't get County
7 approval last month, they timed out,
8 which means if the County doesn't
9 respond within thirty days, we can
10 act without County input.

11 Therefore, of the two gentlemen
12 sitting behind the John Meyer
13 Consulting representatives --

14 MR. ANARUMO: Tom Anarumo, 16
15 Alta Drive, right off Oak Street.
16 I've been there over thirty years.

17 Mr. Scalzo, I would like to say
18 something about what you said,
19 respectfully, about the people on the
20 deck, they're going to look at the
21 building. Orchard Hills is high up.
22 They're going to be looking way over
23 the building. Middlehope has really
24 been, to me, over the last thirty
25 years not good. This developer is

1 5450 Route 9W, LLC

2 building and beautifying that whole
3 area. I know a lot of people in
4 Orchard Hills are really looking for
5 this development. It's going to be
6 easy to get in and out with the
7 light. All that makes a difference.
8 I'm really for it. I live right
9 around the corner.

10 CHAIRMAN SCALZO: I know
11 exactly where --

12 MR. ANARUMO: Alta Drive.

13 CHAIRMAN SCALZO: I think my
14 doctor lives there.

15 MR. ANARUMO: Dr. Reed, my
16 friend. He knows about it, too. I
17 know Mr. Donovan for years.

18 Thank you for your time. Have
19 a nice holiday, everybody. I
20 appreciate it.

21 CHAIRMAN SCALZO: We have a
22 member of the public in support of
23 the project. Very good.

24 Anyone else from the public?
25 You're shaking your head no. Just

1 5450 Route 9W, LLC

2 taking notes.

3 In this case I'll look to the
4 Board for a motion to close the
5 public hearing.

6 MR. POLITI: I'll make the
7 motion.

8 MR. EBERHART: Second.

9 CHAIRMAN SCALZO: We have a
10 motion from Mr. Politi. We have a
11 second from Mr. Eberhart. All in
12 favor?

13 MR. POLITIL: Aye.

14 MR. EBERHART: Aye.

15 MR. HERMANCE: Aye.

16 MR. MASTEN: Aye.

17 MS. REIN: Aye.

18 CHAIRMAN SCALZO: Aye.

19 Those opposed?

20 (No response.)

21 CHAIRMAN SCALZO: I only do
22 those opposed for Mr. Fetter who is
23 not even here.

24 In this case, now we're going
25 to move through the -- is this a Type

1 5450 Route 9W, LLC

2 2 action or Unlisted?

3 MR. DONOVAN: I believe, Stan,
4 this is an Unlisted action.

5 MR. SCHUTZMAN: Again, it was
6 reported as a Type 2 because somebody
7 said that this was in an agricultural
8 zone, which it's not.

9 MR. GUCCIONE: Type 1. That
10 was in Pat Hines' memo. He said
11 agricultural.

12 MR. DONOVAN: I wouldn't
13 characterize this as a Type 1. I
14 guess the question in my mind is
15 whether or not it's an Unlisted
16 action because of the -- now we've
17 taken away a number of the variances.

18 CHAIRMAN SCALZO: All we're
19 looking at is rear yard, so it's a
20 Type 2?

21 MR. DONOVAN: Type 2.

22 CHAIRMAN SCALZO: It's a Type
23 2. How are we applying this to the
24 canopy? We're going to call the
25 canopy a structure?

1 5450 Route 9W, LLC

2 MR. DONOVAN: We aren't going
3 to do anything. If you wanted to --

4 CHAIRMAN SCALZO: I'm looking
5 for some guidance.

6 MR. DONOVAN: You can go
7 through the five-part balancing tests
8 and ask the Board to vote on the
9 variances, including the canopy, and
10 that would address the issue.

11 MS. REIN: You're putting it in
12 as a Type 2?

13 CHAIRMAN SCALZO: Because it's
14 dimensional, what we're looking at here.

15 Before we get started with this,
16 would the Board prefer to act on all
17 of these at once or do you want to
18 separate them out with the rear yard
19 and canopy, should we decide that?
20 My position is I really don't
21 think there's that much to worry
22 about if we were to lump them together.

23 MS. REIN: I think we should do
24 it all at once.

25 CHAIRMAN SCALZO: You're tired.

1 5450 Route 9W, LLC

2 I can tell.

3 MS. REIN: Besides that, it's
4 not going to make a bit of difference.

5 CHAIRMAN SCALZO: Okay then.
6 It's a Type 2 action under SEQRA.
7 We're going to discuss the five
8 factors we're weighing, the first one
9 being whether or not the benefit can
10 be achieved by other means feasible
11 to the applicant.

12 MS. REIN: No.

13 CHAIRMAN SCALZO: Not the
14 benefit, no. They could shrink the
15 buildings, but then it --

16 MS. REIN: It wouldn't look
17 like a stuffed sausage.

18 CHAIRMAN SCALZO: If they
19 shrink it, it would be on the back
20 side so you wouldn't see it.

21 Second, if there's an undesirable
22 change in the neighborhood character
23 or a detriment to nearby properties.
24 We heard testimony from a not so
25 contiguous property, an interested

1 5450 Route 9W, LLC

2 property owner that he feels as
3 though it's a very desirable change.

4 MS. REIN: We haven't heard
5 from any of the people that live at
6 Orchard Landing? Any of the tenants
7 there?

8 CHAIRMAN SCALZO: No. We have
9 one from the --

10 MS. REIN: From the owner.

11 CHAIRMAN SCALZO: I'll tell you
12 why. If they're all rental units, if
13 they're not individually owned, all
14 they send it to is the owner.

15 MR. DONOVAN: It's posted on
16 the website and posted in the
17 newspaper.

18 CHAIRMAN SCALZO: Correct.

19 MR. SCHUTZMAN: And on the sign.

20 CHAIRMAN SCALZO: If somebody
21 drove by, unless the wind knocked it
22 down, which we had.

23 Again, we've had testimony here
24 that the neighborhood character would
25 actually be improved.

1 5450 Route 9W, LLC

2 The third, whether the request
3 is substantial. Well, when you're
4 talking about the variances themselves --

5 MS. REIN: They're not.

6 CHAIRMAN SCALZO: -- they're
7 really not. When you look at the
8 site as a whole, there's your stuffed
9 sausage, Donna.

10 Gentlemen at this end of the
11 table?

12 Fourth, whether the request
13 will have adverse physical or
14 environmental effects. The
15 applicant's representative indicated
16 that any requirements that the Army
17 Corp of Engineers would have for the
18 movement of the stream would be
19 addressed prior to this moving
20 forward, though that's not what
21 they're here for talking to us.

22 The fifth, whether the alleged
23 difficulty is self-created, which is
24 relevant but not determinative. Of
25 course it's self-created because the

1 5450 Route 9W, LLC

2 previous building didn't need these
3 variances. Again, relative but not
4 determinative.

5 If the Board approves, it shall
6 grant the minimum variance necessary
7 and may impose reasonable conditions.

8 Having gone through the
9 balancing tests of the area variance,
10 what is the pleasure of the Board?

11 MR. POLITI: If you're
12 structuring them all together, how
13 should that be framed? We're doing
14 all of the variances requested?

15 CHAIRMAN SCALZO: As they
16 appear in the application.

17 MR. DONOVAN: So by approving
18 the variance, you'll approve all the
19 variances being requested.

20 MR. POLITI: I would make that
21 motion.

22 CHAIRMAN SCALZO: A motion to
23 approve?

24 MR. POLITI: To approve.

25 MR. HERMANC: I'll second it.

1 5450 Route 9W, LLC

2 CHAIRMAN SCALZO: We have a
3 motion for approval from Mr. Politi.
4 We have a second from Mr. Hermance.
5 I'm going to roll on this starting at
6 this end of the table.

7 Ms. Rein?

8 MS. REIN: Yes.

9 CHAIRMAN SCALZO: Mr. Masten?

10 MR. MASTEN: Yes.

11 CHAIRMAN SCALZO: Mr. Hermance?

12 MR. HERMANCE: Yes.

13 CHAIRMAN SCALZO: Mr. Eberhart?

14 MR. EBERHART: Yes.

15 CHAIRMAN SCALZO: Mr. Politi?

16 MR. POLITI: Yes.

17 CHAIRMAN SCALZO: I'm affirmative
18 as well.

19 MR. SCHUTZMAN: Thank you all.

20 CHAIRMAN SCALZO: Thank you.

21

22 (Time noted: 9:23 p.m.)

23

24

25

1 5450 Route 9W, LLC

2

3

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

4

5

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

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

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

16 IN WITNESS WHEREOF, I have hereunto
17 set my hand this 12th day of April 2024.

18

19

20

21

22

MICHELLE CONERO

23

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25

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH ZONING BOARD OF APPEALS
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In the Matter of

CROSSCUT CONSTRUCTION
70 Frozen Ridge Road, Newburgh
Request for a Six-Month Extension

----- X

Date: March 28, 2024
Time: 9:23 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
JAMES EBERHART, JR.
GREG HERMANCE
JOHN MASTEN
JAMES POLITI
DONNA REIN

ALSO PRESENT: DAVID DONOVAN, ESQ.
JOSEPH MATTINA

----- X

MICHELLE L. CONERO
Court Reporter
Michelleconero@hotmail.com
(845) 541-4163

1 C r o s s c u t C o n s t r u c t i o n

2 CHAIRMAN SCALZO: We have other
3 Board business. We have Crosscut
4 Construction at 70 Frozen Ridge Road.
5 They sent us a letter to request a
6 six-month extension for a previously
7 approved variance. I don't know how
8 many -- well, Mr. Masten was here for
9 that. Maybe Mr. Hermance. Maybe Mr.
10 Eberhart. It's on Frozen Ridge Road.
11 The fellow is slow on the construction
12 of this house.

13 Let me put it into where you
14 might remember. Mr. Hughes, Animal
15 Hughes came in. He actually lived on
16 a property behind it and they shared
17 a well.

18 MR. EBERHART: I remember.

19 MS. REIN: Can I ask you
20 something? I don't understand. If
21 that was pre-approved --

22 CHAIRMAN SCALZO: They need to
23 start or they need to get moving and
24 they haven't.

25 MS. REIN: Is there a certain

1 C r o s s c u t C o n s t r u c t i o n

2 amount of time that once it's
3 approved --

4 MR. DONOVAN: Six months.

5 CHAIRMAN SCALZO: Six months.
6 I don't know how lumber prices are,
7 if they're down from COVID.

8 MR. MASTEN: They're still up
9 there.

10 CHAIRMAN SCALZO: The letter is
11 to request a six month extension. I
12 don't have any issue with that
13 myself. Anyone else?

14 MR. POLITI: No.

15 MR. EBERHART: No.

16 MR. HERMANCE: No.

17 MR. MASTEN: No.

18 MS. REIN: No.

19 CHAIRMAN SCALZO: I'll look to
20 the Board for a motion to approve the
21 six-month extension.

22 MR. MASTEN: I'll make the
23 motion.

24 MS. REIN: Second.

25 CHAIRMAN SCALZO: We have a

1 C r o s s c u t C o n s t r u c t i o n

2 motion from Mr. Masten. We have a
3 second from Ms. Rein. All in favor?

4 MR. POLITI: Aye.

5 MR. EBERHART: Aye.

6 MR. HERMANCE: Aye.

7 MR. MASTEN: Aye.

8 MS. REIN: Aye.

9 CHAIRMAN SCALZO: Aye.

10 Very good. That concludes our
11 Board business.

12 If everyone has read the
13 meeting minutes from February and
14 they would like to make a motion to
15 approve the meeting minutes from
16 February.

17 MR. POLITI: I'll make the
18 motion.

19 MR. EBERHART: Second.

20 CHAIRMAN SCALZO: We had a
21 motion from Mr. Politi and a second
22 from Mr. Eberhart. All in favor?

23 MR. POLITI: Aye.

24 MR. EBERHART: Aye.

25 MR. HERMANCE: Aye.

1 C r o s s c u t C o n s t r u c t i o n

2 MR. MASTEN: Aye.

3 MS. REIN: Aye.

4 CHAIRMAN SCALZO: I'll abstain
5 because I wasn't here.

6 I would say that concludes the
7 meeting for the evening. A motion to
8 adjourn?

9 MS. REIN: I'll make a motion
10 to adjourn.

11 MR. MASTEN: Second.

12 CHAIRMAN SCALZO: I have a
13 motion from Ms. Rein and a second
14 from Mr. Masten. All in favor?

15 MR. POLITIL: Aye.

16 MR. EBERHART: Aye.

17 MR. HERMANCE: Aye.

18 MR. MASTEN: Aye.

19 MS. REIN: Aye.

20 CHAIRMAN SCALZO: Aye.

21

22 (Time noted: 9:26 p.m.)

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1 C r o s s c u t C o n s t r u c t i o n

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

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

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

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

16 IN WITNESS WHEREOF, I have hereunto
17 set my hand this 12th day of April 2024.

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MICHELLE CONERO

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