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

----- X

In the Matter of

AARON WEISS

211 Maple Drive, Newburgh  
Section 49; Block 3; Lot 8  
R-1 Zone

----- X

Date: April 25, 2024  
Time: 7:00 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: AARON WEISS

----- X

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

1       A a r o n   W e i s s

2                   CHAIRMAN SCALZO:  I'd like to call  
3                   the meeting of the Zoning Board of  
4                   Appeals to order.  The first order of  
5                   business this evening are the public  
6                   hearings which have been scheduled.  The  
7                   procedure of the Board is that the  
8                   applicant will be called upon to step  
9                   forward, state their request and explain  
10                  why it should be granted.  The Board will  
11                  then ask the applicant any questions it  
12                  may have, and then any questions or  
13                  comments from the public will be  
14                  entertained.  The Board will then  
15                  consider the applications and will try to  
16                  render a decision this evening, but may take  
17                  up to 62 days to reach a determination.

18                  I would ask that if you have a  
19                  cellphone, to please turn it off or put  
20                  it on silent.  When speaking, speak  
21                  directly into the microphone as this is  
22                  being recorded by our stenographer.

23                  Roll call, please.

24                  MS. JABLESNIK:  Darrell Bell.

25                  MR. BELL:  Here.



1       A a r o n   W e i s s

2               and square footage of accessory  
3               structures to build a 24 x 24 x 18.2  
4               two-car accessory structure.

5               Siobhan, do we have mailings on  
6               this?

7               MS. JABLESNIK: Yes. This  
8               applicant sent out 46 letters.

9               CHAIRMAN SCALZO: 46 letters. We  
10              are more than 500 feet from the County  
11              road?

12             MS. JABLESNIK: Yes. This  
13             applicant -- no. This applicant did, but  
14             we're timed out. He applied awhile ago.

15             CHAIRMAN SCALZO: I know that  
16             doesn't mean much to you, but that's  
17             going to mean something to other  
18             applicants this evening. Very good.

19             Who do we have with us?

20             MR. WEISS: Aaron Weiss representing  
21             myself. I just want to try to build a  
22             two-car accessory garage. Within the  
23             neighborhood, twenty-four houses have  
24             -- there are twenty-four houses in the  
25             neighborhood. Six houses don't have

1       A a r o n   W e i s s

2               garages.  There are four that have  
3               detached garages, at 514 Oakwood, 221  
4               Maple, 208 Maple and 203 Maple.  So I'm  
5               just trying to build a garage.

6                       CHAIRMAN SCALZO:  Very good.  I  
7               should mention that we are obliged by our  
8               positions here to go and visit the sites.  
9               We've all been out.  We all took a look.  
10              I had some questions for the woman of the  
11              house.

12                     MR. WEISS:  You spoke to her on the  
13              phone.

14                     CHAIRMAN SCALZO:  That was me.  You  
15              provided the sketch.  You described to me  
16              where your property pins were.  My  
17              concern was were you taking down that  
18              maple tree that's on that same side.

19                     MR. WEISS:  That's going to stay.

20                     CHAIRMAN SCALZO:  Your answer was  
21              no.  That is good, because it appears  
22              that that maple tree is beyond the five  
23              feet from where your property line is  
24              now.

25                     My question to you on the phone

1       A a r o n   W e i s s

2               was, how were you going to ensure that  
3               you maintain five feet minimum separation  
4               distance for accessories structures in  
5               the side yard. You answered me  
6               adequately on the phone. I'm okay with  
7               that.

8                       Thank you for providing the  
9               addresses of the homes. I drove through  
10              the neighborhood. I did see two-car  
11              detached garages as well.

12                     What's your plan for the garage?  
13              It appears as though you're a construction  
14              kind of guy.

15                     MR. WEISS: Well, all that kind of  
16              junk you saw, I want to get rid of that  
17              and put it in the garage so it's a little  
18              bit more tidy. The back corner there is  
19              a little bit of an eyesore. I'd like to  
20              clean that up.

21                     CHAIRMAN SCALZO: Your neighbors  
22              will love you. Very good. That's all I  
23              have.

24                     I'm going to start to my left.

25              Ms. Rein?

1       A a r o n   W e i s s

2                   MS. REIN: Is this a Type 2?

3                   CHAIRMAN SCALZO: Yes, it is.

4                   MS. REIN: Thank you. I have no  
5       questions.

6                   CHAIRMAN SCALZO: We had a couple  
7       applicants that tried to help us by  
8       completing the portion of the short form  
9       that they didn't have to.

10                  Very good. You have no other  
11       questions?

12                  MS. REIN: I have no other questions.

13                  CHAIRMAN SCALZO: How about Mr. Masten?

14                  MR. MASTEN: I had no questions. I  
15       saw a nice, beautiful deer running through  
16       the yard.

17                  CHAIRMAN SCALZO: Okay. A doe or a  
18       buck?

19                  MR. MASTEN: I couldn't tell.

20                  CHAIRMAN SCALZO: It was moving  
21       quickly and it was dusk.

22                  Okay. Mr. Bell?

23                  MR. BELL: Yes, I agree. You have  
24       the boat, the trailer. I mean, --

25                  MR. WEISS: It's an eyesore. I

1       A a r o n   W e i s s

2               agree.

3               MR. BELL:  -- there's a lot of  
4               stuff in that area.  I think it will be  
5               great.

6               CHAIRMAN SCALZO:  It's passing by  
7               me again as I have the Code Compliance  
8               sheet in front of me.  Obviously you're  
9               aware our maximum building height is 15  
10              feet.  You're looking for 18.16, which is  
11              18 feet 2 inches for you guys that don't  
12              know engineering feet.  Is that because  
13              you have trusses in there?

14              MR. WEISS:  Yes.

15              CHAIRMAN SCALZO:  Okay.  So there's  
16              no ability to open that up and --

17              MR. WEISS:  I was going to try to  
18              do like a short loft, like a flat ceiling  
19              over top.

20              CHAIRMAN SCALZO:  You answered my  
21              question.  We don't want to end up having  
22              an accessory apartment above a garage.

23              MR. WEISS:  Absolutely not.

24              CHAIRMAN SCALZO:  Mr. Hermance, do  
25              you have any questions regarding this?



1           A a r o n   W e i s s

2                   MR. HERMANCE:  Is there a reason  
3           why you couldn't have shifted the  
4           location in a little bit so you're not so  
5           tight to the property line?  Is there a  
6           septic issue or a leach field or --

7                   MR. WEISS:  The way it's sited, the  
8           edge there, the lot line kind of cuts in.  
9           If I moved it any further over, it would  
10          be like right behind the house.  I wanted  
11          to kind of try to keep it off to the side  
12          a little bit as best as I could.

13                   MR. HERMANCE:  Okay.  That's all I  
14          have.

15                   CHAIRMAN SCALZO:  It was pointed  
16          out to me that there was an area that  
17          hadn't grown grass yet.  That appears to  
18          be where you're going to be putting this.  
19          That's why it's shown forward, which also  
20          kind of takes advantage -- I'm not the  
21          applicant, but your driveway almost ends  
22          there.  If you threw it further in the  
23          back, you'd end up having to do some  
24          other type of improvement not to muck up  
25          the lawn.

1       A a r o n   W e i s s

2                   MR. WEISS:   Yes.

3                   CHAIRMAN SCALZO:   Mr. Eberhart?

4                   MR. EBERHART:   I have no questions.

5                   CHAIRMAN SCALZO:   Mr. Politi?

6                   MR. POLITI:   It was just the  
7                   height.   I was wondering how you were  
8                   building it with the trusses.   I'm good.

9                   CHAIRMAN SCALZO:   Any other  
10                   questions from the Board?

11                   (No response.)

12                   CHAIRMAN SCALZO:   At this point I  
13                   will open this meeting up to any members  
14                   of the public that wish to speak about  
15                   this application.   Is there anyone here  
16                   that wishes to speak about the  
17                   application on 211 Maple Drive?

18                   (No response.)

19                   CHAIRMAN SCALZO:   It appears not.  
20                   Very good.

21                   One last opportunity to the Board.

22                   (No response.)

23                   CHAIRMAN SCALZO:   No.   Very good.

24                   I'll look to the Board for a motion  
25                   to close the public hearing.

1       A a r o n   W e i s s

2                   MR. MASTEN: I'll make a motion to  
3       close the public hearing.

4                   MS. REIN: I'll second it.

5                   CHAIRMAN SCALZO: We have a motion  
6       from Mr. Masten. We have a second from  
7       Ms. Rein. All in favor?

8                   MR. POLITI: Aye.

9                   MR. EBERHART: Aye.

10                  MR. HERMANCE: Aye.

11                  MR. BELL: Aye.

12                  MR. MASTEN: Aye.

13                  MS. REIN: Aye.

14                  CHAIRMAN SCALZO: Aye.

15                  Those opposed?

16                  (No response.)

17                  CHAIRMAN SCALZO: This is a Type 2  
18       action under SEQRA?

19                  MR. DONOVAN: That's correct, Mr.  
20       Chairman.

21                  CHAIRMAN SCALZO: I know you had  
22       mentioned that to Ms. Rein earlier.

23                  We're going to go through the area  
24       variance criteria and discuss the five  
25       factors which we're weighing, the first

1       A a r o n   W e i s s

2               being whether or not this benefit can be  
3               achieved by other means feasible to the  
4               applicant.

5                       MR. POLITI:   No.

6                       MR. EBERHART:   No.

7                       MR. HERMANCE:   No.

8                       MR. BELL:       No.

9                       MR. MASTEN:     No.

10                      MS. REIN:       No.

11                      CHAIRMAN SCALZO:   No.

12                      The second, if there's an undesirable  
13                      change in the neighborhood character or  
14                      a detriment to nearby properties. I would  
15                      say no, although four out of -- how many  
16                      houses are in the neighborhood, sir?

17                      MR. WEISS:     That don't have  
18                      garages?

19                      CHAIRMAN SCALZO:   No, no. Just any  
20                      idea on the total?

21                      MR. WEISS:     Total garages?

22                      CHAIRMAN SCALZO:   No. Total homes.

23                      MR. WEISS:     Total homes. Twenty-  
24                      four.

25                      CHAIRMAN SCALZO:   So four out of

1       A a r o n   W e i s s

2               twenty-four.

3               Okay. The third, whether the  
4               request is substantial. Obviously the  
5               gentleman is here because, by the numbers,  
6               it may be considered substantial. We  
7               have reasoning from the applicant  
8               regarding why.

9               Fourth, whether the request will  
10              have adverse physical or environmental  
11              effects. With the applicant stating  
12              that he's going to clean up what's  
13              going on there now, it may actually --  
14              it would have the opposite of an  
15              adverse physical or environmental effect.

16             The fifth, whether the alleged  
17             difficulty is self-created, which is  
18             relevant but not determinative. Of course  
19             it's self-created. Most of what we see  
20             here is. However, that doesn't necessarily  
21             have to weigh in on what we're talking  
22             about.

23             Having gone through the balancing  
24             tests of the area variance, does the  
25             Board have a motion of some sort?

1       A a r o n   W e i s s

2                   MS. REIN: I'll make a motion to  
3       approve.

4                   MR. BELL: I'll second it.

5                   CHAIRMAN SCALZO: We have a motion  
6       for approval from Ms. Rein. We have a  
7       second from Mr. Bell. Can you roll on  
8       that, please, Siobhan.

9                   MS. JABLESNIK: Mr. Bell?

10                  MR. BELL: Yes.

11                  MS. JABLESNIK: Mr. Eberhart?

12                  MR. EBERHART: Yes.

13                  MS. JABLESNIK: Mr. Hermance?

14                  MR. HERMANCE: Yes.

15                  MS. JABLESNIK: Mr. Masten?

16                  MR. MASTEN: Yes.

17                  MS. JABLESNIK: Mr. Politi?

18                  MR. POLITI: Yes.

19                  MS. JABLESNIK: Ms. Rein?

20                  MS. REIN: Yes.

21                  MS. JABLESNIK: Mr. Scalzo?

22                  CHAIRMAN SCALZO: Yes.

23                  The motion is carried. Good luck.

24                  MR. WEISS: Thank you very much.

25                  (Time noted: 7:12 p.m.)

1       A a r o n   W e i s s

2

3

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

4

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

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

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

14              IN WITNESS WHEREOF, I have hereunto set  
15 my hand this 6th day of May 2024.

16

17

18

*Michelle Conero*

19

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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

NEWBURGH CHICKEN

197 South Plank Road, Newburgh  
Section 60; Block 3; Lot 6.1  
B Zone

----- X

Date: April 25, 2024  
Time: 7:12 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: NICHOLAS WARD-WILLIS

----- X

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



1       Newburgh Chicken

2                   CHAIRMAN SCALZO:  Our second  
3                   applicant this evening is Newburgh  
4                   Chicken.  This is a re-referral from the  
5                   Planning Board for changes to previously  
6                   approved dimensional regulations/bulk  
7                   requirements for the minimum front yard  
8                   setback on both Route 300 and Route 52,  
9                   the rear yard setback, the side setback  
10                  and maximum lot surface coverage  
11                  established in connection with the  
12                  special permit that was granted for the  
13                  project.  To previously approved  
14                  variances for the entrance to the  
15                  property on Route 52, the minimum  
16                  required setback from the physical  
17                  center line on Route 300, the minimum  
18                  required front yard setback from Route  
19                  300, minimum front yard setbacks on 300  
20                  and 52, the rear yard, side yard and  
21                  lot surface coverage.  I didn't say  
22                  that well.  The applicant is also  
23                  requesting area variances for the  
24                  required setback of a building in order  
25                  to permit a freestanding sign and

1       Newburgh Chicken

2               square footage of building signs.

3               The initial appearance to the ZBA  
4               for this application was September 28,  
5               2023.

6               Siobhan, do we have mailings on  
7               this?

8               MS. JABLESNIK: Yes. 27 mailings.

9               CHAIRMAN SCALZO: 27. Less than  
10              the residential folks.

11              Siobhan, have we heard back from  
12              the County on this?

13              MS. JABLESNIK: I actually didn't  
14              send this one, just because I sent it the  
15              first time and it's a continuation.

16              CHAIRMAN SCALZO: Okay. Counsel,  
17              is that appropriate?

18              MS. JABLESNIK: Not appropriate.

19              MR. DONOVAN: No. There is law,  
20              I'm sure the applicant's attorney will  
21              speak on or can speak on where, if  
22              there's not a significant change, you  
23              don't need to send it back. Irrelative  
24              to the variance application, there's not  
25              a significant change clearly. They

1       Newburgh Chicken

2                didn't seek the sign variances the first  
3                time.

4                MR. WARD-WILLIS: That is correct.

5                MR. DONOVAN: That's why I think it  
6                needs to go back to the County.

7                MR. WARD-WILLIS: I would concur.

8                CHAIRMAN SCALZO: Let's back up.  
9                Who do we have with us?

10               MR. WARD-WILLIS: Thank you, Mr.  
11               Chairman. Nicholas Ward-Willis with  
12               Keane & Beane on behalf of the applicant,  
13               Newburgh Chicken.

14               CHAIRMAN SCALZO: Sir, you  
15               understand that you can present to us  
16               this evening. You have an entire staff  
17               of the Board, which is great. However,  
18               we cannot pull the trigger on your  
19               application this evening.

20               MR. WARD-WILLIS: I do understand  
21               that. We wish to continue.

22               CHAIRMAN SCALZO: Very good. Thank  
23               you. Present away.

24               MR. WARD-WILLIS: Good evening. We  
25               were last before the Board in September

1       Newburgh Chicken

2               and October of 2023. On October 28, 2023  
3               you provided us with certain variances  
4               and a special use permit to continue the  
5               nonconforming use, and you confirmed  
6               certain dimensions of the sign plan.  
7               I'll explain it in more detail.

8               This is for the property located at  
9               197 South Plank Road which is an existing  
10              Dairy Queen. Our applicant, Newburgh  
11              Chicken, is proposing to demolish that  
12              building and replace it with a new  
13              building to house a Popeyes Chicken.

14              It's a Type 2 SEQRA action because  
15              it's under 4,000 square feet for a  
16              commercial building.

17              It's the construction of an  
18              approximately 2,537 square foot, one-  
19              story restaurant with 22 parking spaces  
20              for the Popeyes Chicken.

21              If I may.

22              CHAIRMAN SCALZO: Please. We all  
23              have copies of your plan, however, if any  
24              members of the public wish to go ahead  
25              and stand up and take a look at what

1       Newburgh Chicken

2               they've got planned, go right ahead.

3               This information is also available on the  
4               Town of Newburgh's website. The drawings  
5               are there as well.

6                       MR. WARD-WILLIS: As the Board may  
7               recall, when we appeared in September and  
8               October, our project is going to  
9               significantly improve both the aesthetics  
10              as well as the setback of the building  
11              from the intersection of Routes 52 and  
12              300.

13                     What we have here on this board is  
14              an overlay showing the existing building,  
15              which is close to Route 52 and 300, and  
16              how our building is going to be setback.  
17              This is just an overlay.

18                     We appeared before the Planning  
19              Board on four occasions. We also  
20              received comments from the New York State  
21              Department of Transportation. As a  
22              result of those comments and comments  
23              from the Planning Board and their  
24              consultants, we had some minor tweaking  
25              to the site plan. That required us to

1       Newburgh Chicken

2           come back, because as a continuation of  
3           the nonconforming use, the fast food  
4           restaurant, your Board issued is a  
5           special permit in October. Since there  
6           were no dimensional requirements for that  
7           nonconforming use, this Board had to, if  
8           you will, bless and approve of those  
9           dimensions.

10                  CHAIRMAN SCALZO: Did we bless and  
11                  approve of those dimensions or did we  
12                  defer to the Planning Board to establish  
13                  them?

14                  MR. WARD-WILLIS: You approved them  
15                  because the Planning Board -- you  
16                  approved it. We're hoping to avoid a  
17                  little bit of the ping-pong going back  
18                  and forth. We think we have the final  
19                  comments from the Planning Board. They  
20                  said they were fine with the site plan as  
21                  presented. We also had final comments  
22                  from the Department of Transportation as  
23                  well.

24                  The Department of Transportation  
25                  requested that we provide, and the Town

1       Newburgh Chicken

2               did as well, a 10-foot area to be  
3               dedicated to DOT for future road  
4               improvements at the intersection to be  
5               performed by others. We provided that.

6               The other change was the building.  
7               Because of some comments from the  
8               Planning Board about the retaining wall,  
9               we did some minor grading that caused a  
10              relatively insignificant shift of the  
11              building. It's still in the same  
12              orientation as it was previously. That  
13              resulted in some of the dimensional  
14              changes that we spoke about.

15              The entrance remains off of Union  
16              Avenue here. In and out is off of South  
17              Plank Road here. There will be  
18              restrictions on the turning movements  
19              here. It will be a right turn in only/  
20              right turn out only. There will be full  
21              access on Union Avenue.

22              The number of parking spaces hasn't  
23              changed.

24              The drive-through aisle is here  
25              with double stacking in this location to

1       Newburgh Chicken

2             allow for ordering on the menu boards.

3             I want to just explain to you now,  
4             with the previously granted -- in our  
5             packet we provided some charts. I  
6             updated those a little bit. I think it  
7             will make our discussion easier.

8             This first chart is the dimensional  
9             requirements as set forth on the site  
10            plan which your Board is required to  
11            review. These are the setbacks from the  
12            rear, front and side yards, as well as  
13            the setback required off of -- this chart  
14            pertains to the dimensional requirements.  
15            We're here before you tonight for the  
16            dimensional requirements, modifications  
17            of some but not all of the previously  
18            granted variances, and then three new  
19            variances related to the signage and the  
20            menu boards. Right now the chart before  
21            you deals only with the site plan and the  
22            dimensional requirement measurements.

23            This column is setting forth the  
24            category, the minimum lot area. The  
25            second column is the existing. The third



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2               column is what you approved in your  
3               October meeting. The fourth is the  
4               latest plan before the Planning Board.  
5               The last column, the fifth one, tells you  
6               if there's been a change, an increase or  
7               a decrease.

8               The minimum lot area, minimum lot  
9               width and depth obviously remain the same  
10              as the lot has not changed.

11              The minimum front yard setback on  
12              Route 52 is currently 13.9 feet. You had  
13              approved 77.1 feet. Due to some change  
14              in the grading, it's now increased to 82  
15              feet. The setback has actually increased  
16              by 4.9 feet. We would request that you  
17              concur and approve that setback.

18              With respect to the minimum front  
19              yard setback along Route 300, the current  
20              building is 25.3 feet. You had approved  
21              36.5 feet. Due to the change in the  
22              plan, that was reduced by 2 feet to 34.5  
23              feet.

24              The minimum rear yard setback,  
25              existing is 79.4. Our proposal would

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2               increase that to 118.6, which you had  
3               approved. Due to some changes in the  
4               grading, that has now dropped 2.5 feet to  
5               be 116.1 feet.

6               The minimum side yard setback is  
7               currently 6.6 feet. You had approved  
8               60.2. It's increasing by 3.4 feet to  
9               63.6 feet.

10              The maximum building height remains  
11              the same.

12              The maximum lot surface coverage  
13              increased by 60 square feet.

14              The maximum building coverage did  
15              not change.

16              What we're asking this Board to do  
17              with respect to the site plan layout that  
18              is on the plan in front of you is to  
19              approve the column under the March 2024  
20              concept plan.

21              CHAIRMAN SCALZO: Very good.  
22              Counsel, not mine, but you, I have my  
23              counsel digging in to help me remember,  
24              did we address anything regarding any  
25              buffer areas for landscaping in any of

1       Newburgh Chicken

2               this?

3                       MR. WARD-WILLIS: I do not believe  
4               so, no.

5                       MR. BELL: No.

6                       MR. WARD-WILLIS: No.

7                       MR. DONOVAN: Does it violate any  
8               of our landscape buffer requirements?

9                       Looking quickly through the  
10              Planning Board attorney's referral, he  
11              actually doesn't call out any specific  
12              variances. The first time it was because  
13              it was a nonconforming use, obviously an  
14              existing Dairy Queen. The second time he  
15              defers to the chart that's submitted. I  
16              don't know if that was identified at the  
17              Planning Board as a --

18                      MR. WARD-WILLIS: We did review the  
19              plans with Mr. Campbell. He concurs  
20              what's set forth in the chart are the  
21              only variances that are required. We  
22              confirmed that within the conversation  
23              yesterday. It's my recollection, and my  
24              colleague is concurring, that we do  
25              conform to the landscaping issues and no

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2               variances are required. We'll be coming  
3               back to you obviously --

4               MR. DONOVAN: I don't see that it  
5               was mentioned.

6               CHAIRMAN SCALZO: I understand  
7               that. I'm flying by the seat of my pants  
8               here when I say this, but I was pretty  
9               sure most things on State highways, there  
10              was a landscaping buffer requirement.

11              MR. WARD-WILLIS: We do comply with  
12              the building setback. We do have  
13              landscaping that's provided.

14              CHAIRMAN SCALZO: Very good. I  
15              didn't review the minutes from your last  
16              visit here.

17              MR. WARD-WILLIS: Are there any  
18              questions regarding the site plan and  
19              dimensional requirements as set forth in  
20              the chart? If not, I'll move to the next  
21              category.

22              CHAIRMAN SCALZO: Any questions  
23              from the Board?

24              MR. POLITI: No.

25              MR. EBERHART: No.

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2                   MR. HERMANCENCE: No.

3                   MR. BELL: No.

4                   MR. MASTEN: No.

5                   MS. REIN: No.

6                   CHAIRMAN SCALZO: I'm great with  
7       you proceeding.

8                   MR. WARD-WILLIS: Thank you. So  
9       the next category is the modifications to  
10      the variances granted by this Board at  
11      your October 26th meeting.

12                  MR. DONOVAN: Is this new or was  
13      this in your submission?

14                  CHAIRMAN SCALZO: I just got one.

15                  MR. WARD-WILLIS: This is updated.  
16      We removed some of the columns to be,  
17      hopefully, less confusing.

18                  This chart pertains to the  
19      variances granted by the Board at your  
20      October 26th meeting. You granted us the  
21      five variances, loading spaces, access on  
22      South Plank Road, center line on Union  
23      Avenue, front yard abutting Union Avenue  
24      and the freestanding sign height.

25                  Again, this sets forth what the

1       Newburgh Chicken

2               variances were, what you granted and if  
3               there's been any change to the current  
4               concept plan before the Planning Board.

5               With respect to the loading spaces,  
6               one is required and none was approved.  
7               None is still what we're providing  
8               because we do our deliveries within the  
9               existing drive aisle and those deliveries  
10              occur in off hours. There is no change  
11              requested there.

12             The access on South Plank Road, it  
13             requires 150 foot separation from the  
14             intersection to the drive aisle. We're  
15             improving what is there currently, but we  
16             do not meet 150 feet. You had previously  
17             approved 50.1 feet. That now -- I'm  
18             sorry. You previously approved 50.6  
19             feet. Due to the change in the grading,  
20             it's going to be 0.5 feet closer, so we  
21             would request a variance of 99.9 feet as  
22             opposed to the previous granted variance  
23             of 99.4 feet.

24             Likewise, the separation from the  
25             center line on Union Avenue to the

1       Newburgh Chicken

2           building, required is 80 feet. We  
3           received a variance for 68.3 feet. It's  
4           moved 2 feet closer, so there would be a  
5           variance now requested of 66.3 feet.

6           The front yard abutting Union  
7           Avenue and Route 300 has also, likewise,  
8           increased by 2 feet.

9           The freestanding sign height  
10          remains the same.

11          In this one chart we would be  
12          requesting a variance for variances two,  
13          three and four that you previously  
14          granted to be modified to the dimensions  
15          reflected, 99.9 feet, 13.7 feet and 25.5  
16          feet as reflected in red in that chart.  
17          These were all driven by the road  
18          dedication of 10 feet as well as some  
19          minor tweaks to the grading to address  
20          the retaining wall and the requests from  
21          the Planning Board.

22          CHAIRMAN SCALZO: I've got no  
23          questions regarding that.

24          Does anyone else on the Board have  
25          any questions regarding that?

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2                   MR. POLITI: No.

3                   MR. EBERHART: No.

4                   MR. HERMANCE: No.

5                   MR. BELL: No.

6                   MR. MASTEN: No.

7                   MS. REIN: No.

8                   MR. WARD-WILLIS: Thank you. The  
9                   last one is the new variances pertaining  
10                  to the signs. I'll give you two  
11                  handouts. One is an updated chart. If  
12                  the Board would like, I also have color  
13                  photographs of the sign, if you'd like to  
14                  see the sign.

15                  MS. REIN: I would like to see that.

16                  MR. WARD-WILLIS: Would anyone else  
17                  like to see the sign?

18                  CHAIRMAN SCALZO: Siobhan, you can  
19                  scan these and put those on the site for  
20                  next month?

21                  UNIDENTIFIED SPEAKER: I can e-mail  
22                  them to you, Siobhan, so you have the  
23                  actual --

24                  MS. JABLESNIK: That's fine. It's  
25                  easy enough for me to scan it, too.



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2                       MR. WARD-WILLIS:  These are the  
3                       signs.  The first one is the building.  
4                       The second one I'm handing out now is  
5                       some of the signs that are on the  
6                       building.

7                       When we were before you in October,  
8                       you had seen representations of the  
9                       building, but we didn't go into details  
10                      on the signs because we didn't have  
11                      clearance from our client as to what was  
12                      going to be requested.  We're before you  
13                      now for the sign variances, which  
14                      includes the menu boards.

15                     We have one freestanding sign that  
16                     you've seen before.  It's indicated on  
17                     the site plan along South Plank Road in  
18                     this location.  We'll make sure on the  
19                     updated plans it's reflected as a sign.  
20                     That is the only non-building mounted  
21                     sign.  The rest are the building mounted  
22                     signs, except, of course, the entrance  
23                     and exit signs which are exempt under  
24                     your code.

25                     With respect to signs, there are

1       Newburgh Chicken

2               none on the south side, which is the back  
3               side.

4                       I'm going to show you where the  
5               signs are on the building itself. If you  
6               turn to this sheet, again this sign here  
7               is the west side. The top sign is on the  
8               west side. There's just one sign which  
9               is the Popeyes. We are not going with  
10              the Louisiana Chicken sign. That's  
11              crossed out. On the Route 52 side, South  
12              Plank Road, this is one on the right-hand  
13              side. There are two signs, the rooster  
14              and then the Popeyes Chicken.

15                     On the side with the drive-through,  
16              the east side, that is where we have two  
17              signs. On the left-hand side, the  
18              rooster, that would be up here. I'm  
19              sorry. I have that reverse. This is the  
20              west side. On the west side we have the  
21              rooster and Love That Chicken. On the  
22              east side it's just one sign for Popeyes  
23              that would be above the drive-through  
24              windows.

25                     If you look at the second sheet,

1       Newburgh Chicken

2               the second sheet reflects the  
3               freestanding sign on the top left.

4               CHAIRMAN SCALZO: Counsel, pardon  
5               me just one second. For next month,  
6               because we know you're coming back, if  
7               you could, just on the one we're talking  
8               about with the signage layout, have  
9               them --

10              MR. WARD-WILLIS: North, south,  
11              east, west?

12              CHAIRMAN SCALZO: Yes.

13              MR. WARD-WILLIS: Yes.

14              Then here is just -- this is the  
15              freestanding sign.

16              These are the menu boards.

17              These are just further depictions  
18              of the signs that we just went through on  
19              the building.

20              The variances associated with that  
21              are reflected on the three-page chart I  
22              provided. In red are the ones where the  
23              variances are required. The first  
24              variance is for the freestanding sign.  
25              It's only permitted if the building on

1       Newburgh Chicken

2           the site is setback a minimum of 35 feet  
3           from the front property line. On Union  
4           Avenue we're at 34.5 feet. It's a 5 foot  
5           variance. It wasn't a concern before,  
6           but because of the offer of dedication to  
7           the DOT of 10 feet, we're now half a foot  
8           off with respect to that sign.

9           The second variance is on the  
10          second page. There's no limit on the  
11          number of signs on the site so long as  
12          their aggregate square footage is within  
13          the total allowable area limit. As  
14          you'll see on the third page, we're  
15          actually permitted a total square footage  
16          of signs of 87.9 square feet. We are  
17          requesting a variance of 179.5 square  
18          feet for a total of 267.4 square footage  
19          of signs, therefore that then triggers  
20          the request for the variance as requested  
21          on page 2.

22          So there are three variances for  
23          the sign, one is the total sign area, one  
24          is for the half foot setback on the free-  
25          standing sign, and then the third is the

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2               limit on the number of signs with respect  
3               to the -- as shown on the second page.

4               I hope I've explained that clearly.  
5               I hope these charts have helped.

6               CHAIRMAN SCALZO: Thank you.

7               MR. WARD-WILLIS: That's our  
8               presentation.

9               CHAIRMAN SCALZO: Okay. I don't  
10              have any questions myself.

11              Do any Members of the Board?

12              MR. POLITI: No.

13              MR. EBERHART: No.

14              MR. HERMANCENCE: No.

15              MR. BELL: No.

16              MR. MASTEN: No.

17              MS. REIN: No.

18              CHAIRMAN SCALZO: This is a public  
19              hearing. Is there anyone here in the  
20              audience that wishes to -- please step  
21              forward and state your name.

22              MR. MINGARD: Bob Mingard. Do I  
23              need to notify you of where I live?

24              CHAIRMAN SCALZO: If you want to.  
25              You don't have to.

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2                   MR. MINGARD:   Okay.  I'm in the  
3       Town of Newburgh.

4                   This is basically going to be  
5       replacing the existing Dairy Queen  
6       structure that's on that corner?

7                   CHAIRMAN SCALZO:  That is correct.

8                   MR. MINGARD:  Okay.  Can this  
9       gentleman please explain regarding the  
10      traffic on that corner, because --

11                  CHAIRMAN SCALZO:  That's an  
12      outstanding question.  However, that is a  
13      Planning Board issue.  You're going to  
14      have to go to the Planning Board to ask  
15      that question.  The variances that he is  
16      requesting today have nothing to do with  
17      traffic.

18                  MR. MINGARD:  Really?

19                  CHAIRMAN SCALZO:  That's correct.

20                  MR. MINGARD:  Because that's a big  
21      problem with the existing --

22                  CHAIRMAN SCALZO:  I hear you.  
23      That's a Planning Board issue.  They're  
24      here looking for relief from dimensional  
25      values.  Traffic, the Planning Board has

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2           a traffic consultant which you can, and I  
3           encourage you -- that's what the Town has  
4           them there for. They can go over any  
5           data with you. I believe you might even  
6           be able to see the traffic flow. I know  
7           they might have a trip generation manual  
8           chart in there that you can take a look  
9           at as well. That is a question for the  
10          Planning Board, not the Zoning Board of  
11          Appeals.

12                 MR. MINGARD: The second thing is,  
13           since the gentleman has been basically  
14           presenting to the Board, he was talking  
15           about signage. Are there any freestanding  
16           signs that are going to be --

17                 CHAIRMAN SCALZO: There are. Great  
18           question, because I had asked counsel  
19           myself. It's not appropriately labeled  
20           on the plan.

21                 Counsel, if you could point out  
22           where that freestanding sign is going to  
23           be to this gentleman.

24                 MR. WARD-WILLIS: Certainly. It's  
25           on the South Plank Road side right here.

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2                   MR. MINGARD:    Okay.

3                   MR. WARD-WILLIS:  Right here is the  
4                   intersection.

5                   MR. MINGARD:    Okay.

6                   CHAIRMAN SCALZO:  Sir, we had just  
7                   asked counsel, they're going to e-mail  
8                   us.  If you have internet access to the  
9                   Town of Newburgh's website, all of the  
10                  information regarding the signs, the  
11                  size, the shape, the height, square  
12                  footage, will all be on that.  Before the  
13                  next meeting, which is the fourth  
14                  Thursday of next month, you can take a  
15                  look at all of those in detail.

16                  MR. MINGARD:  The biggest concern I  
17                  would have would be with regard to the  
18                  sight line of traffic in that corner  
19                  between the two things.  It doesn't --

20                  CHAIRMAN SCALZO:  Correct.  That's  
21                  a very -- I appreciate that you picked up  
22                  on that.  Keep in mind, this sign is  
23                  going to be 14 feet in the air.

24                  MR. MINGARD:    Okay.

25                  CHAIRMAN SCALZO:  It's a 14 foot



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2               sign height, Counsel?

3               MR. MINGARD:  A single stalk, 14  
4               feet in the air or a solid --

5               MR. WARD-WILLIS:  It's 20 feet.  
6               The variance had been granted for 20  
7               feet.  This is what it will look like.

8               MR. MINGARD:  It's going to be on a  
9               stalk?

10              CHAIRMAN SCALZO:  14 feet in the  
11              air.

12              MR. WARD-WILLIS:  With respect to  
13              the Planning Board, we have discussed  
14              with them the traffic issues.  Their  
15              traffic expert has discussed it with our  
16              traffic expert.  We had a meeting with  
17              DOT.  The Planning Board will not  
18              schedule a public hearing until this  
19              Board grants the variances.

20              CHAIRMAN SCALZO:  The gentleman  
21              that was just standing, those are great  
22              questions.  I don't mean to discourage  
23              you here.  Please go to the Planning  
24              Board meeting.

25              MR. MINGARD:  Understood.

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2                   CHAIRMAN SCALZO:  It won't happen  
3       next month because they have to come back  
4       here because we haven't heard back from  
5       the County regarding the signs, actually.

6                   MR. WARD-WILLIS:  I'd be happy to  
7       have a meeting with the gentleman or  
8       anyone else after the meeting as well to  
9       answer any questions.

10                  CHAIRMAN SCALZO:  Very good.

11                  Is there anyone else from the  
12       public that wishes to discuss this  
13       application?

14                  (No response.)

15                  CHAIRMAN SCALZO:  One last time to  
16       the Board?

17                  MR. POLITI:  No.

18                  MR. EBERHART:  No.

19                  MR. HERMANCE:  No.

20                  MR. BELL:  No.

21                  MR. MASTEN:  No.

22                  MS. REIN:  No.

23                  CHAIRMAN SCALZO:  Because we have  
24       not received County, I'll look to the  
25       Board for a motion to keep the public

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2               hearing open.

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

5               MS. REIN: I'll second it.

6               CHAIRMAN SCALZO: We have a motion  
7               from Mr. Masten and we have a second from  
8               Ms. Rein to keep the public hearing open  
9               until the fourth Thursday of May.

10              MR. BELL: The 23rd.

11              CHAIRMAN SCALZO: The 23rd of May.

12              All in favor?

13              MR. POLITI: Aye.

14              MR. EBERHART: Aye.

15              MR. HERMANCE: Aye.

16              MR. BELL: Aye.

17              MR. MASTEN: Aye.

18              MS. REIN: Aye.

19              CHAIRMAN SCALZO: Aye.

20              Those opposed?

21              (No response.)

22              CHAIRMAN SCALZO: We'll see you  
23              next month, sir.

24              MR. WARD-WILLIS: Thank you, Mr.  
25              Chairman.

1       Newburgh Chicken

2                   The only clarification I understand  
3                   from the Board was with respect to the  
4                   labeling of the north, west, south and  
5                   clarifying where the freestanding sign  
6                   is.

7                   CHAIRMAN SCALZO: Offhand I think  
8                   you're correct. However, Michelle is  
9                   outstanding at collecting all this  
10                  information in the written word. You can  
11                  just read the minutes. If there's  
12                  anything else that we need, you'll find  
13                  it right there.

14                  MR. WARD-WILLIS: Thank you very  
15                  much.

16

17                  (Time noted: 7:35 p.m.)

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1       Newburgh Chicken

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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 for  
7 and within the State of New York, do hereby  
8 certify:

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

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

15              IN WITNESS WHEREOF, I have hereunto set  
16 my hand this 6th day of May 2024.

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*Michelle Conero*

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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

WILLIAM & MAGGIE MEHR  
10 Wintergreen Avenue, Newburgh  
Section 67; Block 4; Lot 6  
R-3 Zone

----- X

Date: April 25, 2024  
Time: 7:35 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: MAGGIE MEHR

----- X

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

1           W i l l i a m   &   M a g g i e   M e h r

2                   CHAIRMAN SCALZO:  Our third  
3           application this evening is William and  
4           Maggie Mehr seeking area variances of  
5           the minimum front yard setback and  
6           increasing the degree of nonconformity  
7           of the side yard to build a 7 x 31.3  
8           covered front porch.

9                   Siobhan, do we have mailings on  
10          this?

11                   MS. JABLESNIK:  This applicant sent  
12          58 letters.

13                   We have not heard back from the  
14          County yet.  That one I did send.

15                   CHAIRMAN SCALZO:  For our residential  
16          applicants, this can become painful.  What  
17          happens is anything that's within 500 feet  
18          of a State road or a County road needs  
19          to be sent to the County Planning  
20          Department for them to review.  It's  
21          called General Municipal Law 239.  It's  
22          a requirement.  Siobhan sent this, when  
23          the application was received, to the  
24          County.  They have thirty days to  
25          respond.  Their time isn't up yet.

1           William & Maggie Mehr

2                         We've been to your place. We have  
3                         read your application. This is one of  
4                         the more straightforward applications.  
5                         In situations like this, I really wish  
6                         I could help you. We do have the  
7                         ability from the County to give relief  
8                         from that type of submission for side  
9                         yards and rear yards. Yours is pushing  
10                        forward, so I can't help with this.

11                        We all went to your site. It's  
12                        one of the more straightforward  
13                        applications that we have.

14                        MS. MEHR: I mean, my front porch  
15                        and my front steps are falling down.

16                        CHAIRMAN SCALZO: We see that.  
17                        Unfortunately we're going to have to  
18                        delay you one month. I know where it's  
19                        going to end up coming back from the  
20                        County, but I can't rush them.

21                        Anyway, let me take three steps  
22                        backwards and ask --

23                        MS. MEHR: That's fine.

24                        CHAIRMAN SCALZO: -- who we have in  
25                        front of us?



1       William & Maggie Mehr

2                   MS. MEHR:  Maggie Mehr.

3                   CHAIRMAN SCALZO:  Ms. Mehr, again,  
4                   it's not a complicated application.  We  
5                   understand what you're looking to do.  
6                   We've all been to the site.  It's almost  
7                   covering what you have out there now and  
8                   widening out a little bit.

9                   MS. MEHR:  Yes.

10                  CHAIRMAN SCALZO:  We get it.  
11                  Unfortunately our hands are tied in this  
12                  case by law to not be able to act on your  
13                  application this evening.  Unfortunately  
14                  we're going to see you on the 23rd of  
15                  May, and you really can't do much between  
16                  now and then.

17                  MS. MEHR:  Okay.  Probably nothing  
18                  is going to happen between now and then --

19                  CHAIRMAN SCALZO:  It can't.

20                  MS. MEHR:  -- regardless.  Okay.

21                  So that's it?

22                  CHAIRMAN SCALZO:  Yes.

23                  MS. MEHR:  Okay.

24                  CHAIRMAN SCALZO:  Feel free to  
25                  stand here for another moment while I

1       William & Maggie Mehr

2           say, any questions from the Board?

3           MS. MEHR: Only if there's  
4           something necessary.

5           CHAIRMAN SCALZO: We have to leave  
6           the public hearing open as well.

7           If I could ask if there's anyone  
8           here from the public that wishes to speak  
9           about this application, please step  
10          forward.

11          MS. MEHR: I'll let him speak for  
12          me completely.

13          MR. BOWEN: Hi. My name is Howard  
14          Bowen and I live in the house next door,  
15          to the left.

16          I would just like to say, since I'm  
17          the only other person besides the County  
18          of Orange who could be impacted in any  
19          way, Bill and Maggie have been great  
20          neighbors for the last, I don't know how  
21          many decades. I have no objection.

22          CHAIRMAN SCALZO: Very good. Thank  
23          you. That will make its way into the  
24          public record.

25          As I said, you have a very

1       William & Maggie Mehr

2               straightforward application. We know  
3               what you're looking to do. Unfortunately  
4               we can't do anything.

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

8               (No response.)

9               CHAIRMAN SCALZO: I'll look to the  
10              Board for a motion to keep the public  
11              hearing open until the May meeting.

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

14             MS. REIN: I'll second it.

15             CHAIRMAN SCALZO: We have a motion  
16              from Mr. Masten. We have a second from  
17              Ms. Rein. All in favor?

18             MR. POLITI: Aye.

19             MR. EBERHART: Aye.

20             MR. HERMANCE: Aye.

21             MR. BELL: Aye.

22             MR. MASTEN: Aye.

23             MS. REIN: Aye.

24             CHAIRMAN SCALZO: Aye.

25              Those opposed?

1       William & Maggie Mehr

2                       (No response.)

3                       CHAIRMAN SCALZO: We'll see you the  
4       fourth Thursday of May.

5                       MS. MEHR: Okay. And it continues.

6

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

8

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

10

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

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

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

20                      IN WITNESS WHEREOF, I have hereunto set  
21       my hand this 6th day of May 2024.

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*Michelle Conero*

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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

MAGDALINI ZACHARIA

8 North Plank Road, Newburgh  
Section 80; Block 5; Lot 19  
B Zone

----- X

Date: April 25, 2024  
Time: 7:42 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: MARSHALL ROSENBLUM  
and DARREN DOCE

----- X

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

1       M a g d a l i n i   Z a c h a r i a

2                   CHAIRMAN SCALZO:  Our next  
3       applicant is Magdalini Zacharia, 8 North  
4       Plank Road, Newburgh.  This is a use  
5       variance to install a 4 x 12 roof mounted  
6       sign.

7                   Siobhan, do we have mailings on  
8       this?

9                   MS. JABLESNIK:  Yes.  This  
10      applicant sent 16 mailings.

11                  They also went to the County.

12                  CHAIRMAN SCALZO:  16 mailings and  
13      it went to the County.  Have we heard  
14      back from the County yet?

15                  MS. JABLESNIK:  No.

16                  CHAIRMAN SCALZO:  That is not a  
17      nod, it's a shake.  You just heard what I  
18      had said to the previous applicant.  
19      Please present, knowing full well we can  
20      not close your public hearing this  
21      evening and you'll be back in May.

22                  MR. ROSENBLUM:  Understood.  I'm  
23      Marshall Rosenblum, the project  
24      architect.  I'm here with the site  
25      engineer, Darren Doce.

1       M a g d a l i n i   Z a c h a r i a

2                   This application is for a  
3                   replacement of the Curaleaf sign on the  
4                   roof of the building at 8 North Plank  
5                   Road. This building is between Alexis  
6                   Diner and Burger King.

7                   The reason we could not apply for  
8                   the sign prior is that this sign is for a  
9                   dispensary. The dispensary was approved  
10                  by the State at the end of the year, and  
11                  by the Planning Board. We're here now  
12                  for the replacement sign as the rooftop  
13                  signs are technically no longer valid.

14                  CHAIRMAN SCALZO: I only know of  
15                  one other rooftop sign in the Town,  
16                  unless you can point me to a second one.

17                  MR. ROSENBLUM: It's been there  
18                  since they opened. Aesthetically they  
19                  like it. They want it. There's a  
20                  minimum impact.

21                  The sign has internally illuminated  
22                  letters on a green background.

23                  CHAIRMAN SCALZO: Right now all I  
24                  see is the struts up there. There's  
25                  nothing up there right now.

1           M a g d a l i n i   Z a c h a r i a

2                   MR. ROSENBLUM:  There's nothing  
3                   there right now.  That's the existing  
4                   structure.  We took down the sign because  
5                   it wasn't allowed --

6                   CHAIRMAN SCALZO:  Okay.

7                   MR. ROSENBLUM:  -- when the  
8                   renovation was done.

9                   CHAIRMAN SCALZO:  Obviously I live  
10                   in the Town or I wouldn't be sitting  
11                   here.  There was a rooftop sign there a  
12                   year ago?

13                   MR. DOCE:  Yes.

14                   MR. ROSENBLUM:  Yes, sir.

15                   CHAIRMAN SCALZO:  The things you  
16                   glaze over.

17                   Help me out.  This is a use  
18                   variance we're seeking here?

19                   MR. DONOVAN:  The ordinance, as I  
20                   read it and as Code Compliance has cited  
21                   it, 185-14 E(10) prohibits roof signs.

22                   There's a specific criteria that  
23                   you need to meet to satisfy a request for  
24                   a use variance before this Board could  
25                   consider granting a use variance.



1       M a g d a l i n i   Z a c h a r i a

2               Cutting to the chase, you don't need it.

3               MR. ROSENBLUM: Well, aesthetically  
4               it's -- how can I put it? It's the  
5               existing location. It's been here -- the  
6               need or the representation is aesthetic.  
7               It was there since day one when they  
8               opened. It's the symbol.

9               MR. DONOVAN: I'm sorry to interrupt.  
10              When did they open?

11              MR. ROSENBLUM: I guess it's about  
12              three years ago.

13              MR. DOCE: They enlarged the building.  
14              We got approval for the enlargement in  
15              2022, but they opened prior to that.

16              MR. DONOVAN: Just so I'm clear,  
17              the sign never had a permit so it's not  
18              permitted preexisting --

19              MR. ROSENBLUM: I believe it was  
20              allowed when it was first done, but when  
21              we did the renovation it was not permitted.  
22              We did not have the dispensary approval  
23              from the State of New York.

24              MR. DONOVAN: The issue that you  
25              have with a use variance has nothing to

1       M a g d a l i n i   Z a c h a r i a

2           do with aesthetics. You have to meet  
3           four criteria, the first of which is you  
4           have to prove by dollars and cents proof  
5           that your client can't realize a  
6           reasonable economic return on this  
7           building, on this business unless he gets  
8           the rooftop sign. If you can't prove  
9           that, you're out of the box.

10           You also have to demonstrate that  
11           the hardship is not self-created. In the  
12           context of a use variance, if the  
13           hardship is self-created, that is, if  
14           your client bought with knowledge or  
15           knowledge is imputed of the prohibition  
16           against rooftop signs, he can't get a  
17           variance. There's no proof in front of  
18           the Board that would allow them --

19           MR. ROSENBLUM: What about the  
20           criteria on the application that there's  
21           no negative impact?

22           MR. DONOVAN: Understood. The  
23           distinction with a use variance from an  
24           area variance, an area variance is a  
25           balancing test where five factors are

1       M a g d a l i n i   Z a c h a r i a

2               weighed. For a use variance, you must  
3               satisfy each of the four criteria. If  
4               you don't satisfy any one of those  
5               criteria, the application must be denied.

6               MR. ROSENBLUM: Can this Board  
7               issue a variance to that criteria or view  
8               that criteria within the context of a  
9               preexisting condition?

10              MR. DONOVAN: I don't know if it  
11              satisfies -- that was part of my  
12              question, if it satisfies the preexisting  
13              condition.

14              MR. ROSENBLUM: We don't see a  
15              financial hardship to having the sign.

16              MR. DONOVAN: Perhaps you may want  
17              to reconsider that statement.

18              MR. ROSENBLUM: It's been discussed.  
19              I don't know how that would be addressed.  
20              Very honestly, if the sign -- it's in  
21              the existing location. It's their symbol.  
22              That's the hardship. It's not financial.  
23              It's the symbol of the building that's  
24              been there since day one with the corporate  
25              people, the design people. Aesthetically

1       M a g d a l i n i   Z a c h a r i a

2           I think it works well.  It's a  
3           continuation because --

4           CHAIRMAN SCALZO:  I have a question  
5           for Mr. Doce.  When the building was  
6           rehabilitated or when the old ice cream  
7           shop was there, --

8           MR. ROSENBLUM:  Sophie's.

9           CHAIRMAN SCALZO:  -- was there a  
10          rooftop sign there?

11          MR. DOCE:  I'm not sure about the  
12          old ice cream place.  I know when  
13          Curaleaf first opened, there was a  
14          rooftop sign.  That's the rooftop sign in  
15          the picture.  In 2018 zoning was changed  
16          to disallow rooftop signs.  We were  
17          grandfathered.  My understanding is when  
18          we put the addition on, we lost our  
19          protection for the rooftop sign.  We need  
20          a variance then for the rooftop sign  
21          because of the addition.

22          CHAIRMAN SCALZO:  Okay.  That just  
23          helps me understand.

24          MR. DOCE:  The rooftop sign was  
25          once a legal sign until we put the

1       M a g d a l i n i   Z a c h a r i a

2           addition on the building, and then -- my  
3           understanding is, in this Town, if you  
4           change anything on the site at all, you  
5           lose your preexisting protection.

6           MR. BELL:    Right.

7           CHAIRMAN SCALZO:   Okay.   Good for  
8           us, not necessarily good for you.   The  
9           County hasn't weighed in yet, so this  
10          public hearing is going to remain open.

11          Mr. Mattina, I would really be  
12          leaning on him right now, but he had to  
13          excuse himself to go take care of other  
14          business.   We'll confer with him and find  
15          out what we can find out regarding that.

16          Other than that, back to Counsel.  
17          With the four criteria for a use  
18          variance, it's not like the song Two Out  
19          Of Three Ain't Bad.   You need all four.

20          MR. DOCE:    If the argument to the  
21          variance was created by the Town changing  
22          the zoning, we still have to meet the  
23          financial --

24          MR. DONOVAN:   That might be an  
25          argument you could advance, that it's not

1       M a g d a l i n i   Z a c h a r i a

2               self-created.  You still have to get over  
3               the financial.

4                       CHAIRMAN SCALZO:  Dollars and  
5               cents.

6                       MR. DONOVAN:  This Board dealt with  
7               that a number of times over the years.

8                       MR. ROSENBLUM:  I could perceive  
9               that there's less visibility for the sign  
10              for the dispensary that is viewable by  
11              the public or from the interstate.  By  
12              that consideration, yes, it would affect  
13              their business, because this is a  
14              publicly visible sign for a specific use,  
15              a dispensary.

16                      MR. DONOVAN:  I know you have to  
17              come back.  I don't want to beat this up  
18              too much.  Basically court decisions on  
19              this are you need very strong dollars and  
20              cents proof, like an appraisal that says  
21              the property has a greatly diminished  
22              value without the sign, a financial  
23              analysis that says without the sign you  
24              won't make any money.  I'm not looking to  
25              make money for my brother at the bar, but

1       M a g d a l i n i   Z a c h a r i a

2               you may want to consult with an attorney.  
3               Generally on an issue with a use  
4               variance, it's a very difficult burden to  
5               carry. You would want an attorney to  
6               help guide you through that process or  
7               perhaps echo what I'm telling you and  
8               then -- this is your application. You  
9               have to do what you want with your  
10              application. I'm telling you you don't  
11              meet the criteria, though.

12              CHAIRMAN SCALZO: If you're playing  
13              the long game, the Town of Newburgh is  
14              revamping their comprehensive plan and  
15              comments are still being accepted. There  
16              may be a possibility that you introduce  
17              this. It's not a short -- it's not going  
18              to be resolved any time soon. It's  
19              certainly something you could bring to  
20              the Comprehensive Plan Committee, you  
21              know, for future consideration.

22              MR. ROSENBLUM: Anything else?

23              CHAIRMAN SCALZO: Makes sense.  
24              Correct?

25              MR. DONOVAN: Correct.

1           M a g d a l i n i   Z a c h a r i a

2                   CHAIRMAN SCALZO:  Any questions  
3           from the Board on this?

4                   MR. POLITI:  No.

5                   MR. EBERHART:  No.

6                   MR. HERMANCE:  No.

7                   MR. BELL:  No.

8                   MR. MASTEN:  No.

9                   MS. REIN:  No.

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

13                   (No response.)

14                   CHAIRMAN SCALZO:  Okay.  I'll look  
15           to the Board for a motion to keep the  
16           public hearing open until the fourth  
17           Thursday in May.

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

20                   MR. MASTEN:  I'll second it.

21                   CHAIRMAN SCALZO:  We have a motion  
22           from Mr. Bell.  We have a second from  
23           Mr. Masten.  All in favor?

24                   MR. POLITI:  Aye.

25                   MR. EBERHART:  Aye.



1       M a g d a l i n i   Z a c h a r i a

2                       MR. HERMANCE:   Aye.

3                       MR. BELL:    Aye.

4                       MR. MASTEN:  Aye.

5                       MS. REIN:    Aye.

6                       CHAIRMAN SCALZO:  Aye.

7                       Those opposed?

8                       (No response.)

9                       CHAIRMAN SCALZO:  See you next  
10                      month.

11

12                      (Time noted:   7:50 p.m.)

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Magdalini Zacharia

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 6th day of May 2024.

*Michelle Conero*

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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

ELIXIEM AMOGUIS

149 Forest Road, Wallkill  
Section 3; Block 1; Lot 7  
AR Zone

----- X

Date: April 25, 2024  
Time: 7:50 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: ELIXIEM AMOGUIS

----- X

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

1 E l i x i e m A m o g u i s

2 CHAIRMAN SCALZO: We have 149  
3 Forest Road as our next application. I  
4 would like to be able to pronounce the  
5 applicant's name, but I'm having  
6 difficulty with that. 149 Forest Road,  
7 seeking area variances of increasing the  
8 degree of nonconformity of the front  
9 yard, rear yard and distance to the  
10 center line to build an enclosed  
11 breezeway connecting the garage and the  
12 dwelling.

13 Siobhan, do we have mailings on  
14 this?

15 MS. JABLESNIK: This applicant sent  
16 21 letters.

17 CHAIRMAN SCALZO: This went to the  
18 County. I'm going to guess you're going  
19 to tell me we haven't gotten it back.

20 MS. JABLESNIK: Ding, ding, ding.  
21 I e-mailed her before I left today, too.  
22 She said no, I don't have them.

23 MR. AMOGUIS: Good evening. My  
24 name is Elixiem Amoguis.

25 CHAIRMAN SCALZO: Thank you. I

1           E l i x i e m   A m o g u i s

2           would have struggled with this.

3           MR. DONOVAN: Exactly what it says.

4           CHAIRMAN SCALZO: We've all visited  
5           the site. It's a very tiny house.  
6           Actually, this isn't the first time it's  
7           been in front of us. I don't know if you  
8           were the owner at the time.

9           MR. AMOGUIS: I purchased it last  
10          year. A year ago. There was an approval  
11          for a variance.

12          CHAIRMAN SCALZO: For the front  
13          porch?

14          MR. AMOGUIS: Yeah. I thought just  
15          putting a roof over the deck would be a  
16          breeze because, well, you know, the area  
17          was already approved. I applied for a  
18          building permit in August.

19          CHAIRMAN SCALZO: You're going  
20          about it the right way. Very good.

21          Again, we all visited the site. I  
22          turned around in the street across from  
23          you, took a look. There's just not a lot  
24          to say. It's one of those straightforward  
25          applications that we get every once in

1       E l i x i e m   A m o g u i s

2               awhile.

3               Unfortunately, because the County  
4               has not responded to us within the  
5               allotted time for the GML 239, we cannot  
6               act on your application this evening.

7               Therefore, do you have anything  
8               that you want to add? Like I say, we've  
9               all seen it. We know what you're trying  
10              to do.

11              Does anybody from the Board have  
12              any comments regarding this?

13              MS. REIN: No.

14              MR. POLITI: No.

15              CHAIRMAN SCALZO: Is there anyone  
16              here from the public to speak about this  
17              -- here we go. We have a frequent flyer.

18              MR. MINGARD: Rob Mingard again.  
19              Now you know where I live. I'm on Forest  
20              Road.

21              Hi, neighbor. I'm across the  
22              street. I'm right across the street from  
23              him.

24              My wife and I were discussing this  
25              several times. It's like he wants to put

1           E l i x i e m   A m o g u i s

2           a breezeway. There used to be a  
3           breezeway with the old structure before  
4           it got renovated. Put it in for God's  
5           sake.

6                   CHAIRMAN SCALZO: What you're  
7           saying is you support the applicant?

8                   MR. MINGARD: Absolutely.  
9           Absolutely. There's four feet or so  
10          between the house and the garage. When  
11          you're going down the road, no one is  
12          going to notice it anyway, especially the  
13          people driving on Saturday night.

14                   CHAIRMAN SCALZO: He's going to put  
15          a roof on, a rocking chair and watch cars  
16          go by. We appreciate your commentary and  
17          it will be put into the meeting minutes.

18                   Did we already vote on the public  
19          hearing for this?

20                   MR. DONOVAN: Not yet.

21                   CHAIRMAN SCALZO: I'll look to the  
22          Board for a motion to keep the public  
23          hearing open.

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

1           E l i x i e m   A m o g u i s

2                   MR. MASTEN: I'll second it.

3                   CHAIRMAN SCALZO: We have a motion  
4           from Mr. Bell and a second from Mr. Masten.  
5           This sounds familiar. All in favor?

6                   MR. POLITI: Aye.

7                   MR. EBERHART: Aye.

8                   MR. HERMANCE: Aye.

9                   MR. BELL: Aye.

10                  MR. MASTEN: Aye.

11                  MS. REIN: Aye.

12                  CHAIRMAN SCALZO: Aye.

13                  Those opposed?

14                  (No response.)

15                  CHAIRMAN SCALZO: We'll see you  
16           next month.

17

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

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1 E l i x i e m A m o g u i s

2

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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 for  
7 and within the State of New York, do hereby  
8 certify:

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

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

15 IN WITNESS WHEREOF, I have hereunto set  
16 my hand this 6th day of May 2024.

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*Michelle Conero*

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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

CORRINE SMITH

14 Francis Street, Newburgh  
Section 27; Block 3; Lot 12  
R-3 Zone

----- X

Date: April 25, 2024  
Time: 7:58 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: GEORGE COONEY

----- X

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

1       C o r r i n e   S m i t h

2                   CHAIRMAN SCALZO:  Our next  
3       applicant is Corrine Smith, 14 Francis  
4       Street, seeking an area variance of the  
5       front yard setback to build an 8 x 10  
6       covered front deck.

7                   Do we have mailings on this,  
8       Siobhan?

9                   MS. JABLESNIK:  This applicant sent  
10       out 53 letters.

11                  CHAIRMAN SCALZO:  I know, because I  
12       saw it, it's not near a State road or a  
13       County road.  We can work with this.  
14       Very good.

15                  We do have the mailings?

16                  MS. JABLESNIK:  Yes.

17                  CHAIRMAN SCALZO:  They're the  
18       winner so far.

19                  Do we have anyone here representing  
20       this application?

21                  MR. COONEY:  We do.

22                  CHAIRMAN SCALZO:  I just read what  
23       it is that they are seeking.  If I  
24       recall, this house has also been in front  
25       of us for a variance before.

1       C o r r i n e   S m i t h

2                   MR. COONEY: I renovated the whole  
3       thing. Yeah.

4                   CHAIRMAN SCALZO: Mr. Haight was  
5       here saying yes, please.

6                   MR. COONEY: It's a small --

7                   CHAIRMAN SCALZO: We were all  
8       there. We know exactly what you're  
9       trying to do. If I have captured all of  
10      that in that one sentence, great. If you  
11      want to add anything to it, state your  
12      name and tell us.

13                  MR. COONEY: My name is George  
14      Cooney. I'm a friend of the family, also  
15      a retired contractor which is going to  
16      help her get this up and going and done  
17      correctly.

18                  Ms. Corrine Smith here has an  
19      existing deck, as you have seen by the  
20      photos. In her hardship of aging --

21                  CHAIRMAN SCALZO: Happens to the  
22      best of us.

23                  MR. COONEY: -- it becomes a little  
24      bit more difficult to park her car in the  
25      rain or in the snow and place some

1       C o r r i n e   S m i t h

2           grocery bags, open the door, as you can  
3           see by the distance from the door, a full  
4           swing. It makes it somewhat precarious  
5           for her to navigate from the walkway, up  
6           the steps with obstruction or open the  
7           door and throw the packages in.

8           The existing porch is 5.4. We're  
9           looking to make it 8 feet. The variance  
10          required or requested is 21.7 because the  
11          total distance from the front yard to the  
12          end of the new is 18.3. That would bring  
13          us to 40 foot as the code requires in a  
14          water district where 21.7 feet is  
15          required for that variance.

16          CHAIRMAN SCALZO: Okay. Thank you.

17          MR. COONEY: That is the photo I  
18          see that you have.

19          CHAIRMAN SCALZO: A quick question.  
20          With the proposed, are you going to go  
21          out past where the planter is?

22          MR. COONEY: We're going out -- if  
23          you see in the photo that you are not  
24          looking at I believe, it's similar to it,  
25          this is 5.4. We're going out 2.6 into

1       C o r r i n e   S m i t h

2               the planter box.

3               CHAIRMAN SCALZO:   Okay.  Not a lot  
4               going on there.  I honestly have no  
5               questions.

6               MR. COONEY:   Okay.  I might have a  
7               few other answers if you had some.  If  
8               not, we can only just hope for your  
9               blessing.

10              CHAIRMAN SCALZO:   Sometimes they  
11              say too much information might not be --

12              MR. COONEY:   I've done this a few  
13              times.  I know when to shut up.

14              CHAIRMAN SCALZO:   I'm going to  
15              start at the other end of the table with  
16              Mr. Politi.  Do you have any comments or  
17              questions?

18              MR. POLITI:   No.

19              CHAIRMAN SCALZO:   Mr. Eberhart?

20              MR. EBERHART:   No.

21              CHAIRMAN SCALZO:   Mr. Hermance?

22              MR. HERMANCE:   No.

23              CHAIRMAN SCALZO:   Mr. Bell?

24              MR. BELL:   It's a nice place.  I  
25              don't have any questions.

1       C o r r i n e   S m i t h

2                   CHAIRMAN SCALZO: Mr. Masten, any  
3       questions?

4                   MR. MASTEN: I have no questions.

5                   CHAIRMAN SCALZO: Ms. Rein?

6                   MS. REIN: No.

7                   CHAIRMAN SCALZO: Any questions or  
8       comments from the public on this?

9                   (No response.)

10                  CHAIRMAN SCALZO: I'm going to look  
11       to the Board for a motion to close the  
12       public hearing.

13                  MR. POLITI: I make the motion to  
14       close the public hearing.

15                  MR. EBERHART: I'll second.

16                  CHAIRMAN SCALZO: We have a motion  
17       from Mr. Politi. We have a second from  
18       Mr. Eberhart. All in favor?

19                  MR. POLITI: Aye.

20                  MR. EBERHART: Aye.

21                  MR. HERMANCE: Aye.

22                  MR. BELL: Aye.

23                  MR. MASTEN: Aye.

24                  MS. REIN: Aye.

25                  CHAIRMAN SCALZO: Aye.

1       C o r r i n e   S m i t h

2                   Those opposed?

3                   (No response.)

4                   CHAIRMAN SCALZO: Very good. This  
5                   is a Type 2 action under SEQRA?

6                   MR. DONOVAN: Correct, Mr. Chairman.

7                   CHAIRMAN SCALZO: Thank you, Counsel.  
8                   I was waiting for that. Obviously it  
9                   feels like it's been awhile since we've  
10                  been to this part in the discussion.

11                  We're going to discuss the five  
12                  factors we're weighing, the first one  
13                  being whether or not the benefit can be  
14                  achieved by other means feasible to the  
15                  applicant.

16                  MR. POLITI: No.

17                  MR. EBERHART: No.

18                  MR. HERMANCE: No.

19                  MR. BELL: No.

20                  MR. MASTEN: No.

21                  MS. REIN: No.

22                  CHAIRMAN SCALZO: The house and its  
23                  placement relative to the property line,  
24                  no. I agree with you.

25                  Second, if there's an undesirable



1       C o r r i n e   S m i t h

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

4                       MR. POLITI:   No.

5                       MR. EBERHART:  No.

6                       MR. HERMANCE:  No.

7                       MR. BELL:     No.

8                       MR. MASTEN:   No.

9                       MS. REIN:     No.

10                      CHAIRMAN SCALZO:  Everybody is  
11                      shaking their heads no, Michelle.

12                      Third, whether the request is  
13                      substantial.  It might be by the numbers.  
14                      Really when you see the lot, it doesn't  
15                      seem to be that way.

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

19                      MS. REIN:     No.

20                      MR. POLITI:   No.

21                      CHAIRMAN SCALZO:  It does not appear  
22                      so.

23                      The fifth, whether the alleged  
24                      difficulty is self-created, which is  
25                      relevant but not determinative.  Of

1       C o r r i n e   S m i t h

2               course it's self-created, but we can  
3               still move on.

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

7               MS. REIN: I'll make a motion to  
8               approve.

9               MR. BELL: I'll second it.

10              CHAIRMAN SCALZO: We have a motion  
11              for approval from Ms. Rein. We have a  
12              second from Mr. Bell.

13              Can you roll on that, please,  
14              Siobhan.

15              MS. JABLESNIK: Mr. Bell?

16              MR. BELL: Yes.

17              MS. JABLESNIK: Mr. Eberhart?

18              MR. EBERHART: Yes.

19              MS. JABLESNIK: Mr. Hermance?

20              MR. HERMANCE: Yes.

21              MS. JABLESNIK: Mr. Masten?

22              MR. MASTEN: Yes.

23              MS. JABLESNIK: Mr. Politi?

24              MR. POLITI: Yes.

25              MS. JABLESNIK: Ms. Rein?

1       C o r r i n e   S m i t h

2                   MS. REIN:   Yes.

3                   MS. JABLESNIK:   Mr. Scalzo?

4                   CHAIRMAN SCALZO:   Yes.

5                   The motion is carried.   The

6                   variances are approved.

7                   (Time noted:   8:03 p.m.)

8

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

10

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

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

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

20                   IN WITNESS WHEREOF, I have hereunto set  
21                   my hand this 6th day of May 2024.

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*Michelle Conero*

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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

JOSE VASQUEZ

9 Innis Avenue, Newburgh  
Section 64; Block 4; Lot 18  
R-3 Zone

----- X

Date: April 25, 2024  
Time: 8:03 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK  
JOSEPH MATTINA (Present at  
8:20 p.m.)

APPLICANT'S REPRESENTATIVE: JOSE VASQUEZ

----- X

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

1        J o s e   V a s q u e z

2                    CHAIRMAN SCALZO: Our next  
3                    applicant is Jose Vasquez, 9 Innis  
4                    Avenue in Newburgh, seeking an area  
5                    variance of the maximum allowed lot  
6                    surface coverage to keep an inground  
7                    pool built prior to the current owner  
8                    and, B, area variances of lot width,  
9                    one side yard and combined side yards  
10                    for interior alterations to create an  
11                    accessory apartment.

12                    Siobhan, do we have mailings on  
13                    this?

14                    MS. JABLESNIK: This applicant sent  
15                    45 letters.

16                    CHAIRMAN SCALZO: Are we within 500  
17                    feet of Route 52?

18                    MS. JABLESNIK: No.

19                    CHAIRMAN SCALZO: We are not. We  
20                    can continue. Very good.

21                    Who do we have with us?

22                    MR. VASQUEZ: Jose Vasquez. Good  
23                    evening.

24                    CHAIRMAN SCALZO: Good evening.  
25                    Mr. Vasquez, as I had mentioned, we have

1       J o s e   V a s q u e z

2             all been to the site.

3                     Just before I get any deeper, we  
4       did receive quite the comprehensive  
5       letter from some concerned -- Innis  
6       Avenue concerned neighbors. Boy, they  
7       really get into some detail on certain  
8       things.

9                     Now, Mr. Vasquez, are you the owner  
10      of the property?

11                    MR. VASQUEZ: My father-in-law. He  
12      doesn't speak English.

13                    CHAIRMAN SCALZO: That's fine. We  
14      can still go forward with this. I'm  
15      going to separate this into two different  
16      discussions, the first one being the  
17      pool. If that is okay with the -- this  
18      is my meeting. We're going to do it the  
19      way I say. Anyway, I'm going to split  
20      this in two. The first thing we're going  
21      to talk about is the pool. I looked on  
22      Google Earth Pro and that took me back to  
23      the pool has been in place since at least  
24      September of 2013. The property was  
25      purchased after that. They inherited

1       J o s e   V a s q u e z

2           this pool as an issue. I don't know what  
3           difference that makes to any of you  
4           folks.

5                    With regard to that, I'm going to  
6           ask the applicant's representative here,  
7           the son-in-law -- father-in-law or  
8           son-in-law?

9                    MR. VASQUEZ: Son-in-law.

10                   CHAIRMAN SCALZO: Very good. Your  
11           intentions for the pool, because when I  
12           was out there you had mentioned possibly  
13           there's a lot to maintain, the  
14           electricity involved. You were even  
15           considering getting rid of it. What's  
16           your intention here for the pool?

17                   MR. VASQUEZ: We want to keep the  
18           pool. We really want to keep the pool.

19                   CHAIRMAN SCALZO: Okay. I'm just  
20           trying to establish the way we're going  
21           here.

22                   MR. VASQUEZ: Yes.

23                   CHAIRMAN SCALZO: Okay. So with  
24           regard to the pool, as I mentioned, it's  
25           been in there eleven years. It seems to

1       J o s e   V a s q u e z

2               -- obviously it's well established. You  
3       can tell it wasn't recently installed.

4               So Counsel, help me out here. Can  
5       we split this application in two and vote  
6       on one thing to begin with or do we have  
7       to carry everything together?

8               MR. DONOVAN: You do not have to  
9       carry everything together. In fact, the  
10      Code Compliance referral is an A and a B.  
11      You can separate them out, should you  
12      choose to do that.

13              CHAIRMAN SCALZO: The pool is A.  
14      So in this case, and we're going to have  
15      the opportunity two times for the public  
16      to comment on this.

17              I'm going to look to the Board. Do  
18      we have any comments or questions here  
19      just regarding the pool -- the variance  
20      requested for the pool, which is eleven  
21      years in place?

22              Ms. Rein?

23              MS. REIN: No.

24              CHAIRMAN SCALZO: Mr. Masten?

25              MR. MASTEN: No.



1           J o s e   V a s q u e z

2                   CHAIRMAN SCALZO:   Mr. Bell?

3                   MR. BELL:   No.

4                   CHAIRMAN SCALZO:   Mr. Hermance?

5                   MR. HERMANCE:   No.

6                   CHAIRMAN SCALZO:   Mr. Eberhart?

7                   MR. EBERHART:   No.

8                   CHAIRMAN SCALZO:   Mr. Politi?

9                   MR. POLITI:   No.

10                  CHAIRMAN SCALZO:   No.

11                   Is there anyone that's here from  
12                   the public that wishes to talk about part  
13                   A of this application, which is the pool  
14                   remaining in place?

15                   (No response.)

16                   CHAIRMAN SCALZO:   No.   Okay.   Wait.  
17                   Very good.   Come on up, sir.   We're going  
18                   to get to the second part of this  
19                   application shortly.   If you could just  
20                   keep your comments relative to the pool  
21                   for now.

22                   MR. HANNIGAN:   My name is Joe  
23                   Hannigan.   I own 11 Innis Avenue.   I  
24                   bought that house in 1994 and that pool  
25                   was there.

1       J o s e   V a s q u e z

2                   CHAIRMAN SCALZO:   Okay.

3                   MR. HANNIGAN:   I knew the original  
4                   owner of the house.   His father put the  
5                   pool in in the late '50s.

6                   CHAIRMAN SCALZO:   Okay.   Google  
7                   Earth, it must have been so green it  
8                   looked like lawn.

9                   MR. HANNIGAN:   Yeah.   He's actually  
10                  done a good job of bringing the property  
11                  up whereas a lot of times we had frogs  
12                  swimming in the pool from the previous  
13                  owner, the smell of dead animals in  
14                  there, you know.

15                  CHAIRMAN SCALZO:   That's never fun.

16                  MR. HANNIGAN:   He's maintained the  
17                  property.   He's an excellent neighbor.

18                  CHAIRMAN SCALZO:   It appeared to be  
19                  very neat when I was there.

20                  MR. HANNIGAN:   That pool has been  
21                  there since I bought the adjoining  
22                  property in '94.   You can tell from  
23                  looking at that pool, it's been there  
24                  long before that.

25                  CHAIRMAN SCALZO:   Sure.   Eleven

1       J o s e   V a s q u e z

2               years for me is fine.  You've been there  
3               longer than that.

4                       With regard to the pool, Counsel,  
5               can I actually -- do we have to go  
6               through the balancing tests if we're  
7               splitting this?

8                       MR. DONOVAN:  I think it would be  
9               appropriate, if you're splitting them, to  
10              do the balancing tests on the pool first  
11              and then on the other second.

12                     CHAIRMAN SCALZO:  Do I need to also  
13              close the public hearing for the pool  
14              aspect?

15                     MR. DONOVAN:  Since you opened the  
16              public hearing for both components, you  
17              should not close the public hearing  
18              relative to the pool.  If the public  
19              wants to speak, you can limit them to the  
20              accessory apartment now that we've spoken  
21              about the pool.

22                     CHAIRMAN SCALZO:  Okay.  We'll vote  
23              on the entire application a bit later.  
24              We'll separate them as we're voting.

25                     Moving on to the second portion,

1       J o s e   V a s q u e z

2               which would be part B of this  
3               application.  The applicant is seeking an  
4               accessory apartment, which is what we  
5               have a great big set of plans for.  I saw  
6               you out there.  You live there in the  
7               apartment -- or you live at 11 Innis.  
8               Correct?

9                       MR. VASQUEZ:  Yes.

10                      CHAIRMAN SCALZO:  Does your father  
11                      live there?

12                      MR. VASQUEZ:  Yes.

13                      CHAIRMAN SCALZO:  So you both live  
14                      there.  Part of the criteria for an  
15                      accessory apartment is that they need to  
16                      be owner occupied.  If you're saying your  
17                      father does live there, then we can still  
18                      move forward.

19                      With regard to the size of the  
20                      accessory apartment, it's looking like  
21                      466 square feet.  I think the maximum is  
22                      700 square feet for accessory apartments.  
23                      If Joe Mattina were here, I would quiz  
24                      him on that.

25                      Thank you, Siobhan, for your

1       J o s e   V a s q u e z

2               expertise.

3                       MS. JABLESNIK:  No problem.

4                       CHAIRMAN SCALZO:  So that takes  
5               care of the accessory apartment that is  
6               proposed to be behind, what I'll call the  
7               garage.

8                       The letter that we received from a  
9               member of the public, which they did ask  
10              for it to be read into the minutes,  
11              however it's four pages long.  It is  
12              available for anyone that would like to  
13              see it on the Town of Newburgh's website.  
14              I'll pick up a couple of points that I  
15              did read through there if you'll give me  
16              a moment, please.

17                      There is a claim that there's  
18              another apartment in the basement.  Is  
19              that the case, sir?

20                      MR. VASQUEZ:  It's not an  
21              apartment.  It's a finished basement  
22              like you see.  We bought the house five  
23              or six years ago and we found it like  
24              that, the house.  We just fixed it.  Our  
25              family lives there.  We found the house

1       J o s e   V a s q u e z

2               like that.

3                       CHAIRMAN SCALZO:   Are there  
4               bedrooms down there?

5                       MR. VASQUEZ:   We have a couple of  
6               bedrooms, yes.

7                       CHAIRMAN SCALZO:   Are there egress  
8               windows?

9                       MR. VASQUEZ:   If you see in the  
10              blueprint, the architect wants us to put  
11              egress windows.  They're shown, the  
12              windows.

13                      CHAIRMAN SCALZO:   Is there a  
14              kitchen in the basement?

15                      MR. VASQUEZ:   Yes.  Yes, there is.

16                      CHAIRMAN SCALZO:   Okay.

17                      MS. REIN:   Is there a bathroom down  
18              there also?

19                      MR. VASQUEZ:   Yes.

20                      CHAIRMAN SCALZO:   So there's a  
21              kitchen and a bathroom.

22                      MS. REIN:   It's an apartment.

23                      CHAIRMAN SCALZO:   That would, I  
24              suppose, qualify as an apartment.

25                      You have central water, water from



1       J o s e   V a s q u e z

2               would really like to confer with Mr.  
3               Mattina regarding categorization of  
4               things.

5                       MS. REIN: Can we vote on this if  
6               they're still --

7                       CHAIRMAN SCALZO: Ms. Rein, we have  
8               the opportunity to hold it open for  
9               further clarification. We don't have to  
10              vote. If we keep the public hearing  
11              open, we don't have our 62 days, it  
12              doesn't start -- that clock doesn't start  
13              clicking, Counsel, until we close the  
14              public hearing?

15                      MR. DONOVAN: That is correct.

16                      CHAIRMAN SCALZO: To answer your  
17              question, we don't have to close the  
18              public hearing and we don't have to vote  
19              this evening. It's entirely up to the  
20              Board, a seven Member voting Board.

21                      Your question was relative to our  
22              procedures. Do you have questions  
23              regarding the application?

24                      MS. REIN: No. Just a comment that  
25              it looks like there's already an



1       J o s e   V a s q u e z

2               apartment down there.

3                       CHAIRMAN SCALZO:   Okay.   Mr. Masten,  
4               do you have anything?

5                       MR. MASTEN:   I have the same  
6               questions, --

7                       CHAIRMAN SCALZO:   Okay.

8                       MR. MASTEN:   -- and what the letter  
9               entails, too.

10                      CHAIRMAN SCALZO:   It's quite the  
11               letter.   It's difficult to quantify or  
12               verify certain aspects of it.

13                      MR. MASTEN:   It also is similar to  
14               another application we had awhile back  
15               over on Mill Street.

16                      CHAIRMAN SCALZO:   Okay.   Very good.  
17               I think I may recall the one you're  
18               talking about.   They were claiming a  
19               preexisting nonconforming condition.   I  
20               think we cleared Article 78 on that as  
21               well.   Very good.

22                      Mr. Bell, do you have any comments  
23               or questions on this?

24                      MR. BELL:   When did you purchase  
25               this property again?

1       J o s e   V a s q u e z

2                   CHAIRMAN SCALZO:  The deed is in  
3                   there.  I think it's 2018.

4                   MR. VASQUEZ:  April 2018.

5                   MR. BELL:  That accessory is on the  
6                   backside?  That apartment that I went in  
7                   to look, that was there?

8                   MR. VASQUEZ:  It was there already.  
9                   We fixed it.  We painted and we put in  
10                  new cabinets.

11                  MR. BELL:  The structure and  
12                  everything was --

13                  MR. VASQUEZ:  It was there.

14                  CHAIRMAN SCALZO:  Mr. Bell, I could  
15                  have helped with you that.  Looking at  
16                  Google Earth, I can verify it was there  
17                  as far back as 2011.

18                  MR. BELL:  The basement, was that  
19                  set up as an apartment before or after  
20                  you moved in?

21                  MR. VASQUEZ:  Everything was there.  
22                  We didn't do that.  We just fixed it.  
23                  You know, put new doors and all that.

24                  MR. BELL:  I'll move on right now.  
25                  I'm good.

1       J o s e   V a s q u e z

2                   CHAIRMAN SCALZO: Mr. Bell, I'm  
3       sorry, I didn't cut you off, did I?

4                   MR. BELL: No.

5                   CHAIRMAN SCALZO: Mr. Hermance, do  
6       you have questions?

7                   MR. HERMANCE: With the basement  
8       apartment, you're saying that was a  
9       preexisting condition. When it sold,  
10      what was it listed as, the house? Was it  
11      a one family?

12                  MR. VASQUEZ: A one-family house.

13                  MR. HERMANCE: When it was  
14      advertised, it wasn't advertised as a  
15      finished basement and a two family?

16                  MR. VASQUEZ: No. We bought it at  
17      the auction.

18                  CHAIRMAN SCALZO: It was a  
19      foreclosure. It was Fannie Mae.

20                  MR. HERMANCE: Never mind.

21                  MR. VASQUEZ: That's why we have  
22      all these issues right now.

23                  CHAIRMAN SCALZO: You never know  
24      what you're going to get at that point.  
25      I understand.



1       J o s e   V a s q u e z

2               going to eliminate the apartment in the  
3               basement?

4                       MR. VASQUEZ:   Yes.

5                       MR. HERMANCE:   You're still going  
6               to have bedrooms there?

7                       MR. VASQUEZ:   Right.

8                       MR. HERMANCE:   The accessory  
9               structure is going to be a regular  
10             apartment, --

11                      MR. VASQUEZ:   Right.

12                      MR. HERMANCE:   -- or this enclosure?

13                      MR. VASQUEZ:   Yes.

14                      MR. HERMANCE:   So you're moving it  
15             from the basement to up top, basically?

16                      MR. VASQUEZ:   Right.

17                      MS. REIN:    Are you going to take  
18             the kitchen and bathroom out of the  
19             basement?

20                      MR. VASQUEZ:   We'd like to keep the  
21             bathroom in the basement.   The kitchen is  
22             going to be removed.

23                      MR. DONOVAN:   Is there access from  
24             the basement upstairs?

25                      MR. VASQUEZ:   We have two accesses

1       J o s e   V a s q u e z

2               from the basement.

3               MR. DONOVAN:  If I want to get to  
4               the basement apartment, how do I get  
5               there?

6               MR. VASQUEZ:  One from the garage  
7               and another one from the side of the  
8               house.

9               CHAIRMAN SCALZO:  Counsel, I  
10              believe it's --

11              MR. VASQUEZ:  Exterior access.

12              MR. DONOVAN:  I just wanted to know  
13              if it was separate.

14              MR. BELL:  Is it being rented out  
15              at this time?

16              MR. VASQUEZ:  No.  No.

17              CHAIRMAN SCALZO:  I keep jumping  
18              all over the place.  Mr. Eberhart?

19              (Whereupon, Mr. Mattina joined the  
20              meeting.)

21              MR. EBERHART:  I would like to see  
22              what Mr. Mattina has to say.

23              CHAIRMAN SCALZO:  Mr. Mattina, I'm  
24              going to let you sit down and get settled  
25              in, because your name has been said a lot

1       J o s e   V a s q u e z

2               in the last five minutes.

3                       MR. MATTINA:   Fire when ready.

4                       CHAIRMAN SCALZO:   Mr. Mattina, we  
5                       are currently on the application for the  
6                       Vasquez residence on 9 Innis Avenue.  The  
7                       applicant has stated -- we got past the  
8                       pool issue with verification through  
9                       testimony of a neighbor that that pool  
10                      has been there a long time.

11                     MR. MATTINA:   Yes.

12                     CHAIRMAN SCALZO:   Then we moved on  
13                     to the accessory studio apartment which  
14                     is, for all intents and purposes, behind  
15                     the garage, which is a 466 square foot  
16                     accessory studio apartment which is less  
17                     than the 700 feet required for an  
18                     accessory apartment in a dwelling, a  
19                     single-family dwelling.  The applicant is  
20                     sitting, which is the father of the  
21                     gentleman standing behind the microphone,  
22                     his son.

23                     Through questioning on the  
24                     application, we have learned that in the  
25                     basement there are a few bedrooms, a

1       J o s e   V a s q u e z

2               bathroom and a sink/kitchen type area.

3               Help me out. When we talk about  
4               accessory apartments, Mr. Mattina, you  
5               can only have one accessory apartment in  
6               a dwelling that is owner occupied.

7               Correct?

8               MR. MATTINA: Correct. Anything  
9               else is a multiple dwelling and is not  
10              permitted.

11              CHAIRMAN SCALZO: Mr. Mattina, I'm  
12              struggling with just wrapping my head  
13              around this at the moment. Has Code  
14              Compliance been in the dwelling to verify  
15              that there are also bedrooms in the  
16              basement? What we're hearing is the plan  
17              is to put in some egress windows. Has  
18              any of that come by you?

19              MR. MATTINA: There was a complaint  
20              filed, that's what started this process,  
21              for three apartments in this structure.  
22              Inspector Campbell has been down there.  
23              They are in the process of removing the  
24              basement apartment. The basement  
25              apartment is supposed to be gone.



1       J o s e   V a s q u e z

2               There's no habitable space in the  
3               basement.

4                       CHAIRMAN SCALZO:  That's not what  
5               we heard from the applicant.  I heard  
6               everything I want out of you at this  
7               point, Mr. Mattina.  This is just my  
8               position as one Member of the Board.  I  
9               almost think I want to kick this back  
10              until we have verification that the  
11              apartment in the basement is gone.

12                     MR. EBERHART:  I agree.

13                     MR. MASTEN:  Yes.

14                     CHAIRMAN SCALZO:  That being said,  
15              is there anybody here from the public  
16              that wishes to speak about this  
17              application?

18                     (No response.)

19                     CHAIRMAN SCALZO:  No.

20                     Any other questions from the Board?

21                     (No response.)

22                     CHAIRMAN SCALZO:  My position is I  
23              would like to see the public hearing  
24              remain open.

25                     MS. REIN:  I agree, because we

1       J o s e   V a s q u e z

2               can't really vote on this or end it or  
3               make a decision because we don't really  
4               know what the condition of the apartment  
5               is.

6                       CHAIRMAN SCALZO:  I'm not so  
7               worried about that.

8               Mr. Mattina, as far as the building  
9               application, the building permit, they  
10              were supposed to be removing it.  That's  
11              not what we just heard from the applicant.

12                     MS. REIN:  I don't think it's  
13              feasible to try to give a determination  
14              on it.

15                     CHAIRMAN SCALZO:  Okay.  Mr. Bell?

16                     MR. BELL:  I thought I heard you  
17              say that you were getting -- that you  
18              were clearing that out.  I thought I  
19              heard that.

20                     MR. VASQUEZ:  What I understand is  
21              I have to wait for all the approvals.  We  
22              don't touch.  We have to wait.

23                     MR. BELL:  You have to wait for the  
24              approvals?

25                     MR. VASQUEZ:  Right.  We hired an

1       J o s e   V a s q u e z

2           architect. That's why we didn't touch  
3           anything, you know. We left it the way  
4           it is. I don't have any letter saying we  
5           have to remove the basement apartment.

6           MR. BELL: Because you already  
7           mentioned you were going to take the  
8           kitchen out.

9           MR. VASQUEZ: Right.

10          CHAIRMAN SCALZO: Make a playroom  
11          and some bedrooms.

12          MR. BELL: Make some bedrooms and a  
13          playroom. You were going to take the  
14          kitchen out, leave the bathroom?

15          MR. VASQUEZ: Yes.

16          MR. BELL: Put egress windows in?

17          MR. VASQUEZ: Yes. That's the  
18          application we have. We make the  
19          blueprints like that.

20          CHAIRMAN SCALZO: This application  
21          we have for the blueprints is upstairs  
22          only. It doesn't show anything about the  
23          basement. That's where our concern is at  
24          this point. What it sounds like is, my  
25          own opinion, the upstairs I don't really

1       J o s e   V a s q u e z

2           have an issue with.  It's what's going on  
3           below that needs to be straightened out  
4           before -- let's clear up a couple of  
5           violations, I guess is what I'm saying,  
6           before we go ahead and move forward on  
7           what's going on upstairs.

8                       Mr. Mattina, if you could share  
9           with us, not tonight, if you have any  
10          correspondence regarding what has been  
11          sent to the applicant, then we'll all  
12          understand what's been required of the  
13          applicant.

14                      MR. MATTINA:  As far as I know,  
15          everything is upstairs.  There's nothing  
16          downstairs.  There wasn't supposed to be  
17          anything downstairs.  It was all supposed  
18          to be removed, is my understanding.

19                      CHAIRMAN SCALZO:  Mr. Mattina, if  
20          you could find anything memorializing  
21          that and just circulate it to Siobhan and  
22          she'll circulate it to us, please.

23                      MR. MATTINA:  What we can do is  
24          we'll set up a site inspection and myself  
25          and Inspector Campbell will go out there

1       J o s e   V a s q u e z

2               and see what's there.

3               CHAIRMAN SCALZO: Very good. I'm  
4 going to ask the Board for a motion to  
5 keep the public hearing open.

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

8               MR. MASTEN: I'll second it.

9               CHAIRMAN SCALZO: We have a motion  
10 from Mr. Bell. We have a second from  
11 Mr. Masten. All in favor?

12              MR. POLITI: Aye.

13              MR. EBERHART: Aye.

14              MR. HERMANCENCE: Aye.

15              MR. BELL: Aye.

16              MR. MASTEN: Aye.

17              MS. REIN: Aye.

18              CHAIRMAN SCALZO: Aye.

19              Those opposed?

20              (No response.)

21              CHAIRMAN SCALZO: I'll tell you  
22 what, sir. You're going to be here next  
23 month.

24              MR. VASQUEZ: Okay.

25              CHAIRMAN SCALZO: Hopefully you can

1       J o s e   V a s q u e z

2           make arrangements with Mr. Mattina to  
3           have him come over, do an inspection.  
4           You've heard from us that there's a  
5           conflict with the application with an  
6           accessory apartment in the basement.  
7           We're going to go on Mr. Mattina's  
8           verification that that is not existing  
9           anymore, and then we can move forward  
10          with your application.

11                   MR. VASQUEZ:   Okay.

12                   CHAIRMAN SCALZO:   Thank you.

13

14                   (Time noted:   8:26 p.m.)

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1        J o s e   V a s q u e z

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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 for  
7 and within the State of New York, do hereby  
8 certify:

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

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

15           IN WITNESS WHEREOF, I have hereunto set  
16 my hand this 6th day of May 2024.

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*Michelle Conero*

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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

MICHAEL MOYER

1420 Route 300, Newburgh  
Section 60; Block 3; Lot 22.222  
IB Zone

----- X

Date: April 25, 2024  
Time: 8:26 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: JUSTIN DATES

----- X

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



1 Michael Moyer

2 CHAIRMAN SCALZO: The next  
3 applicant is Michael Moyer, 1420 Route  
4 300. It is a Planning Board referral  
5 for an area variance of the existing  
6 building height to convert the cinema  
7 to a self-storage facility.

8 Do we have mailings on this,  
9 Siobhan?

10 MS. JABLESNIK: This applicant sent  
11 66 letters.

12 CHAIRMAN SCALZO: 66 letters.  
13 Okay.

14 This went to the County. Have we  
15 heard back? We have not. Okay. Well,  
16 we have in front of us Mr. Dates.

17 MR. DATES: Yes, sir.

18 CHAIRMAN SCALZO: Mr. Dates, you've  
19 heard me say it three, four times tonight  
20 with regard to the General Municipal Law  
21 239. We need to give the County thirty  
22 days to respond. Their time has not  
23 finished ticking. This is the fifth  
24 application tonight.

25 MR. DATES: Understood.

1       M i c h a e l   M o y e r

2                   CHAIRMAN SCALZO: Call your local  
3                   representative and say the County needs  
4                   more staff to review these things.

5                   MR. DATES: We will.

6                   CHAIRMAN SCALZO: That's probably  
7                   not what you thought I was going to say.

8                   MR. DONOVAN: I thought you were  
9                   going to say the existing staff should  
10                  work harder.

11                  CHAIRMAN SCALZO: They're probably  
12                  understaffed.

13                  Mr. Dates, I know you. Maybe not  
14                  everyone else does. Please introduce  
15                  yourself and let's get through -- this is  
16                  a different application from what we had  
17                  seen a few years ago.

18                  MR. DATES: Thank you, Mr. Chairman.  
19                  Justin Dates, Colliers Engineering &  
20                  Design.

21                  As mentioned, I'm representing  
22                  the applicant, Michael Moyer, on this  
23                  proposed area variance.

24                  The project site, as mentioned,  
25                  is at 1420 Route 300. It is currently

1 Michael Moyer

2 The Showtime Cinema parcel. The  
3 applicant is looking to develop it with  
4 a self-storage facility.

5 This site is in the IB,  
6 Interchange Business, Zoning District.  
7 Self-storage centers is a use permitted  
8 with site plan approval from the  
9 Planning Board.

10 As you can see in the application,  
11 we were before the Planning Board back  
12 on March 21st at that time to present  
13 our initial application for this  
14 particular use, a self-storage center.

15 In this zone we do meet all the  
16 bulk requirement standards with the  
17 exception of the maximum building  
18 height. For this particular use, the  
19 maximum building height is 15 feet for  
20 a self-storage facility. The applicant  
21 is looking to renovate the existing  
22 movie theater building which has a max  
23 height of 28 feet. We're 13 feet above  
24 the max for that use, hence the  
25 referral from the Planning Board.

1 Michael Moyer

2 That's what we're looking to obtain the  
3 variance for.

4 CHAIRMAN SCALZO: So to reiterate  
5 what you just said, you have a  
6 preexisting condition of a 28-foot  
7 building. The maximum allowed is 15  
8 feet. Correct?

9 MR. DATES: Correct. For a self-  
10 storage center use.

11 CHAIRMAN SCALZO: Okay. And the  
12 proposal does not include any  
13 modifications or heightening of that  
14 existing structure?

15 MR. DATES: That is correct. The  
16 building is being renovated interiorly.

17 CHAIRMAN SCALZO: Inside. Okay.

18 MS. REIN: May I?

19 CHAIRMAN SCALZO: I just wanted to  
20 get --

21 MS. REIN: I was a little confused,  
22 because on question 6-A it says the  
23 height variance is for an existing  
24 building. The variance is required  
25 because the applicant is seeking a change

1 Michael Moyer

2 in use to a self-storage facility. The  
3 next line says there will be no change to  
4 the height of the existing building. I'm  
5 confused.

6 MR. DATES: That's correct.

7 MS. REIN: How can there be a  
8 change and not be a change?

9 MR. DATES: It specifically  
10 references the change to the height. The  
11 existing height is what it is, the  
12 existing 28 feet. We're not changing the  
13 height of that building.

14 MS. REIN: That's not what it says.  
15 It says there will be no change to the  
16 height of the existing building.

17 MR. DATES: That's correct.

18 MS. REIN: What you're asking for  
19 is a height variance for the existing  
20 building.

21 MR. DATES: The variance is  
22 required because we're changing the use  
23 of the facility. The maximum height, per  
24 the Town's Code, is 15 feet for a self-  
25 storage facility.

1 Michael Moyer

2 MS. REIN: Correct.

3 MR. DATES: We have an existing  
4 building that we're going to use as part  
5 of the self-storage facility itself, but  
6 it has an existing height of 28 feet,  
7 therefore it doesn't comply. We want to  
8 maintain that 28 feet height, renovate  
9 the interior movie theater building  
10 itself into self-storage units.

11 MS. REIN: Okay. Thank you. That  
12 was very confusing the way it was written  
13 here.

14 MR. DATES: I apologize for that.

15 MS. REIN: I'm good.

16 CHAIRMAN SCALZO: Mr. Masten?

17 MR. MASTEN: I have nothing right  
18 now.

19 MR. BELL: No.

20 CHAIRMAN SCALZO: Mr. Hermance?

21 MR. HERMANCE: I have no questions.

22 CHAIRMAN SCALZO: Mr. Eberhart?

23 He's shaking his head no.

24 Mr. Politi?

25 MR. POLITI: No.

1 Michael Moyer

2 CHAIRMAN SCALZO: This was here how  
3 many years ago?

4 MR. DATES: I want to say maybe  
5 three.

6 CHAIRMAN SCALZO: I don't expect  
7 anyone to remember this because I know I  
8 don't remember it well either, but I  
9 thought the site, as it's proposed now,  
10 is much more developed than the original  
11 variance we had granted. I thought we  
12 granted a height variance for this  
13 before.

14 MR. DATES: There was a height  
15 variance granted. Yes, that's correct.

16 CHAIRMAN SCALZO: I'm not going to  
17 call it anything new. What we did, from  
18 what I recall, we asked the applicant at  
19 that time to get rid of some of the  
20 impervious surfaces. Is that an issue  
21 here?

22 MR. DATES: An issue, no. That's  
23 actually what we're doing. If you look  
24 at the plan, the dark gray shaded area  
25 underneath is all the impervious coverage

1 Michael Moyer

2 or paved areas. You can see the  
3 southeast, the northwest, we're really  
4 pulling that all in. I think we're  
5 around .8 to almost an acre of reduction  
6 in the impervious over existing. We are  
7 right at the maximum permitted for the  
8 zone, for the record.

9 CHAIRMAN SCALZO: It would have  
10 helped if I read the table.

11 MR. DATES: The max for lot surface  
12 coverage in the zone is 60 percent. We  
13 are at 58 percent. The existing is  
14 actually 68 percent.

15 CHAIRMAN SCALZO: So you're  
16 dropping it 10 percent.

17 MR. DATES: Yes.

18 CHAIRMAN SCALZO: And still being  
19 under the requirement for lot surface  
20 coverage.

21 MR. DATES: That's correct.

22 MR. BELL: With the original one,  
23 in the past that was indoors.

24 CHAIRMAN SCALZO: It's going to be  
25 indoors. There are no modifications.



1 Michael Moyer

2 MR. DATES: That's correct.

3 CHAIRMAN SCALZO: I'm assuming  
4 you're going to get rid of the -- I don't  
5 know. That's an architectural issue.

6 MR. BELL: The pavement. That's  
7 what threw me off.

8 CHAIRMAN SCALZO: That's what we  
9 did. Like I say, this is much more  
10 developed than what the initial plan was  
11 that we saw a few years back.

12 MR. DONOVAN: Just to be clear, the  
13 28-foot variance is only for the existing  
14 building. The proposed buildings will  
15 comply.

16 MR. DATES: That's correct.

17 CHAIRMAN SCALZO: Building A.  
18 That's what we're referring to. Correct?

19 MR. DATES: Yes.

20 CHAIRMAN SCALZO: Building A only?

21 MR. DATES: That's correct.

22 CHAIRMAN SCALZO: A variance would  
23 apply to building A only, should it be  
24 granted.

25 MR. DATES: That's correct.

1       M i c h a e l   M o y e r

2                   MR. HERMANCE:   Didn't we approve  
3       this once?

4                   CHAIRMAN SCALZO:   Hang on.   Yes, we  
5       did.   A few years ago.   We have a  
6       process.   The County did not come back,  
7       so we can't vote tonight anyway.   We will  
8       end up having the public hearing remain  
9       open.

10                   Since we're here, since the  
11       presentation was given, we have members  
12       of the public here that may want to speak  
13       about it.   If there's anyone here from  
14       the public that wishes to speak about  
15       this application, please step forward.

16                   (No response.)

17                   CHAIRMAN SCALZO:   Okay then.   I  
18       don't have any more questions that can't  
19       be answered next month when we go through  
20       this again.

21                   I'll look to the Board for a motion  
22       to keep the public hearing open to the  
23       fourth Thursday in May.

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

1 Michael Moyer

2 MR. MASTEN: I'll second it.

3 CHAIRMAN SCALZO: We have a motion  
4 from Mr. Bell. We have a second from  
5 Mr. Masten. All in favor?

6 MR. POLITI: Aye.

7 MR. EBERHART: Aye.

8 MR. HERMANCE: Aye.

9 MR. BELL: Aye.

10 MR. MASTEN: Aye.

11 MS. REIN: Aye.

12 CHAIRMAN SCALZO: Aye.

13 Those opposed?

14 (No response.)

15 CHAIRMAN SCALZO: Mr. Dates, we'll  
16 see you in a month.

17 MR. DATES: Thank you.

18

19 (Time noted: 8:36 p.m.)

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1 Michael Moyer

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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 for  
7 and within the State of New York, do hereby  
8 certify:

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

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

15 IN WITNESS WHEREOF, I have hereunto set  
16 my hand this 6th day of May 2024.

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*Michelle Conero*

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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

NEWBURGH SOUTH CONGREGATION OF JEHOVAH'S WITNESSES

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

----- X

Date: April 25, 2024  
Time: 8:36 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

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

----- X

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

1       Newburgh South Congregation of Jehovah's Witnesses

2                   CHAIRMAN SCALZO: Next is the Newburgh  
3       South Congregation of Jehovah's Witnesses.  
4       My apologies to anyone that is here for  
5       that. They had asked for a deferment to next  
6       month. We will hear them next month.

7                   (Time noted: 8:37 p.m.)

8

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

10

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

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

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

20                  IN WITNESS WHEREOF, I have hereunto set  
21       my hand this 6th day of May 2024.

22

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*Michelle Conero*

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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

JAMES PURPURA

32 North Fostertown Drive, Newburgh  
Section 17; Block 2; Lot 59  
R-2 Zone

----- X

Date: April 25, 2024  
Time: 8:37 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: JAMES PURPURA

----- X

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

1 James Purpura

2 CHAIRMAN SCALZO: Other Board  
3 business is James Purpura which is at  
4 32 North Fostertown Drive in Newburgh.

5 We had heard this application  
6 previously and we did not have a full  
7 compliment of Board Members present.

8 Mr. Purpura had petitioned the  
9 Board for a revote with a full  
10 compliment of Board Members. We have  
11 all re-reviewed the application.

12 Do you recall where we are, Mr. Bell?

13 MR. BELL: I remember.

14 CHAIRMAN SCALZO: Very good. The  
15 public hearing had been closed. This is  
16 -- Counsel, stop when me when I'm going  
17 wrong. We are just here to revote  
18 because it was a tie. It was tie at  
19 three-three.

20 MS. REIN: You were out.

21 CHAIRMAN SCALZO: I was out and  
22 Siobhan and Mr. Bell really took --

23 MR. DONOVAN: I would like to say,  
24 this is a real kind of unique, narrow  
25 provision of the law. Typically when



1 James Purpura

2 someone wants the Board to hear an  
3 application again, they need to request a  
4 re-hearing. The Board has to vote for a  
5 re-hearing. There has to be a unanimous  
6 vote. The narrow exception I'm going to  
7 read from the statute is when there's a  
8 default denial of appeal, the statute  
9 says, in exercising its appellate  
10 jurisdiction only, that means this  
11 wouldn't apply to a special use permit  
12 application, only when Code Compliance  
13 denies an application, if someone has  
14 appealed to us, if an affirmative vote of  
15 a majority of all Members of the Board is  
16 not attained on a motion to grant the  
17 variance, then the applicant can request  
18 a new vote within a certain period of  
19 time, which this applicant has complied  
20 with that time period. You're not  
21 required to vote. You could just sit  
22 here and stare at your shoes or someone  
23 could make a motion to approve. If it's  
24 seconded, you would have a vote. You're  
25 not obligated to do anything. There's

1 James Purpura

2 been a request for a new vote because you  
3 fit into that very narrow exception where  
4 there is -- you're exercising your  
5 appellate jurisdiction. There was a  
6 motion to approve that didn't get enough  
7 votes.

8 CHAIRMAN SCALZO: Okay. Thank you,  
9 Counsel.

10 MS. REIN: Counselor, do we go over  
11 our thoughts again because we didn't have  
12 one person here?

13 MR. DONOVAN: You should act -- I'm  
14 sorry to interrupt.

15 MS. REIN: That's fine.

16 MR. DONOVAN: You should act in the  
17 way you feel is appropriate relative to  
18 deliberating on this.

19 CHAIRMAN SCALZO: I have read the  
20 meeting minutes with regard to that  
21 particular meeting, which included the  
22 balancing tests. In my absence, the  
23 Board did everything, in my opinion,  
24 appropriately. They just happened to be  
25 locked at three-three. I don't recall

1 James Purpura

2 who made the motion for approval at that  
3 meeting.

4 If anyone would like to make a  
5 motion for approval or denial at the  
6 moment.

7 MS. REIN: I'm sorry.

8 CHAIRMAN SCALZO: Let's go ahead.  
9 There's no discussion here. We're  
10 looking for a revote with a full  
11 compliment of Members.

12 MS. REIN: I'll make a motion to  
13 vote.

14 CHAIRMAN SCALZO: Very good. Do we  
15 have a motion for approval or a motion  
16 for denial?

17 MS. REIN: A motion for approval.

18 CHAIRMAN SCALZO: Very good. We  
19 have a motion for approval from Ms. Rein.

20 MR. MASTEN: I'll second it.

21 CHAIRMAN SCALZO: We have a second  
22 from Mr. Masten. Can you roll on that,  
23 please, Siobhan.

24 MS. JABLESNIK: Mr. Bell?

25 MR. BELL: Yes.

1 James Purpura

2 MS. JABLESNIK: Mr. Eberhart?

3 MR. EBERHART: Yes.

4 MS. JABLESNIK: Mr. Hermance?

5 MR. HERMANCE: Yes.

6 MS. JABLESNIK: Mr. Masten?

7 MR. MASTEN: Yes.

8 MS. JABLESNIK: Mr. Politi?

9 MR. POLITI: Yes.

10 MS. JABLESNIK: Ms. Rein?

11 MS. REIN: Yes.

12 MS. JABLESNIK: Mr. Scalzo?

13 CHAIRMAN SCALZO: Yes.

14 The motion is carried. The  
15 variances are approved.

16 MR. DONOVAN: It was worth the  
17 wait.

18 MR. PURPURA: I don't know how much  
19 of my \$425 is going to get split up.

20 MR. BELL: Zero. Zero.

21 MR. PURPURA: Then you're fired.  
22 Thank you very much.

23 CHAIRMAN SCALZO: That concludes  
24 the formal meeting.

25 The only thing is the approval of

1 James Purpura

2 the March meeting minutes.

3 I'll make a motion for approval of  
4 the March meeting minutes.

5 MS. REIN: I'll second.

6 CHAIRMAN SCALZO: We have a second  
7 from Ms. Rein. All in favor?

8 MR. POLITI: Aye.

9 MR. EBERHART: Aye.

10 MR. HERMANCE: Aye.

11 MR. BELL: Aye.

12 MR. MASTEN: Aye.

13 MS. REIN: Aye.

14 CHAIRMAN SCALZO: Aye.

15 Those opposed?

16 (No response.)

17 CHAIRMAN SCALZO: The meeting is  
18 concluded.

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20 (Time noted: 8:42 p.m.)

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1 James Purpura

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

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5

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

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

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

15 IN WITNESS WHEREOF, I have hereunto set  
16 my hand this 6th day of May 2024.

17

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*Michelle Conero*

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MICHELLE CONERO

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