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

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In the Matters of

- RICHARD & JOANNE FORBES - 9 Echo Lane
- GARAGE SALES UNLIMITED, LLC - 440 South Plank Road
- GEORGE & JOAN MESTER - 7 Leonard Avenue
- MELISSA COSTA-TAYLOR & JOHN TAYLOR - 1 Disano Drive
- JO ANN BERETTA - 60 Old Post Road
- DEAN MULLINGS - 1671 Route 300
- AUTUMN SKY DEVELOPMENT, INC. - 254 Route 17K

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Date: September 28, 2017
 Time: 7:00 p.m.
 Place: Town of Newburgh
 Town Hall
 1496 Route 300
 Newburgh, NY 12550

BOARD MEMBERS: JAMES E. MANLEY, JR., Chairman
 DARRELL W. BELL
 JOHN D. MASTEN
 JOHN MCKELVEY
 RICHARD D. LEVIN
 DARRIN J. SCALZO

ALSO PRESENT: DAVID A. DONOVAN, ESQ.
 GERALD CANFIELD

----- X

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

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CHAIRMAN MANLEY: Good evening.

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I'd like to call the meeting of the Zoning

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Board of Appeals to order.

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The first order of business is the

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public hearing scheduled for today. The

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procedure of the Board is that the applicant

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will be called upon to step forward, state

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your request and explain why it should be

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granted relief under the code. The Board

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will then ask the applicant any questions it

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may have, and then any questions or comments

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from the public will be entertained. After

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all the public hearings have been completed,

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the Board may adjourn to confer with Counsel

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regarding any legal questions it may have.

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The Board will then consider the applications

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in the order heard and will try to render a

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decision this evening but may take up to

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62 days to reach a determination.

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I would ask if you have cell phones,

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to please put them on silent or turn them

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off. When speaking, speak directly into the

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microphone and state your name and address

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for the record as it is being recorded by our

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Stenographer.

I'll begin with this evening's roll call. Darrell Bell?

MR. BELL: Here.

CHAIRMAN MANLEY: Richard Levin?

MR. LEVIN: Present.

CHAIRMAN MANLEY: Michael Maher, absent.

John Masten?

MR. MASTEN: Here.

CHAIRMAN MANLEY: John McKelvey?

MR. MCKELVEY: Present.

CHAIRMAN MANLEY: Darrin Scalzo?

MR. SCALZO: Here.

CHAIRMAN MANLEY: James Manley, myself, present.

At this time I'd like to ask everybody to stand for our Pledge of Allegiance. Leading us this afternoon in the prayer is going to be our Board Member, Darrell Bell.

(Pledge of Allegiance.)

CHAIRMAN MANLEY: In addition this evening, I'd like to ask Mr. Canfield, you're present this evening as well. Yes?

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MR. CANFIELD: Yes, I am.

CHAIRMAN MANLEY: Thank you, sir.
And our Attorney, Mr. Donovan.

MR. DONOVAN: I'm here as well.

CHAIRMAN MANLEY: I'd like to read into the record a communication that was received this afternoon from the applicant that is at the end of our agenda, Autumn Sky Development. It's addressed to the Zoning Board of Appeals. "Dear Chairman and Members of the Board, on behalf of the applicant, Autumn Sky Development, Incorporated, I am hereby withdrawing the above-referenced applications pending before your Board. This withdrawal is effective immediately, and neither I nor my client will be appearing at this evening's meeting. Thank you for your consideration and cooperation you provided to date. Very truly yours, John C. Cappello." So if there's anybody here for Autumn Sky Development, that will not be heard this evening as they've withdrawn their application.

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RICHARD & JOANNE FORBES

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RICHARD & JOANNE FORBES

9 Echo Lane

Section 25; Block 5; Lot 6.1

R-3 Zone

7:05 p.m.

CHAIRMAN MANLEY: The first item on the agenda this evening that the Board will hear is the application of Richard and Joanne Forbes, 9 Echo Lane, Newburgh, seeking area variances for the rear yard setback to build a 10 by 35 rear deck attached to a 12 by 27 foot 6 inch deck on the residence.

At this point I have to read the mailings. The applicant sent out 48 letters. All the mailings and publications and posting is in order.

The public hearing notices for all the new applications that are being heard this evening were published in The Mid Hudson Times on Wednesday, September 20th, and in The Orange County Post on Friday, September 22nd.

Good evening.

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RICHARD & JOANNE FORBES

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MS. FORBES: Good evening.

MR. FORBES: Good evening.

CHAIRMAN MANLEY: If you could, just for the record, state your name and address for the Board.

MS. FORBES: My name is Joanne Matthews Forbes.

MR. FORBES: My name is Richard Forbes.

MS. FORBES: And we reside at 9 Echo Lane in Newburgh, New York.

CHAIRMAN MANLEY: Thank you. If you could tell the Board and describe to the Board what it is you're looking for as far as a variance from our current code.

MS. FORBES: Thank you, Mr. Chairman. We seek an area variance with regard to our residence. What we're seeking to do is to build a deck on what we consider the back of our house, and that's how you have it, but in reality it is actually the side of our house.

I do have some Google Map printouts -- I know it's late, I don't know if you would like to accept them -- to show how our house is situated. Our house is almost 200 years old. It

1
2 sits on Echo Lane but the house is actually
3 perpendicular to 9W. I have actually seen old
4 maps of the area during a project I was working
5 on in the Department of Highways in Poughkeepsie.
6 Our house is the original house in the
7 neighborhood. I believe our address originally
8 was 9 Echo Lane -- I'm sorry, 9W and that our
9 driveway was 9 Echo Lane and turned into the
10 roadway.

11 So when we talk about our rear of the
12 house, it's really the side of the house where
13 the house is being built.

14 One of the things that we ask that you
15 consider is, while the Town does maintain, I
16 believe it is 40 foot setbacks for this area for
17 side setbacks, depending on if you want to
18 consider our house a single-family home with an
19 accessory apartment, which is really what it is,
20 or a multi-family property, the setbacks are much
21 less. I believe under the table I was looking at
22 earlier today, the setbacks for that property
23 could be 15 if you consider it a single-family
24 with an accessory apartment, or if you consider
25 it a multiple family it would be a 25 foot

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RICHARD & JOANNE FORBES

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setback.

The property -- the deck to get to our neighbors would be 20 feet, the edge of the deck to where the property line actually is. Also in the pictures that I brought, and I think you may be able to see them from the pictures that were previously submitted -- can I submit these Google Maps?

CHAIRMAN MANLEY: Yes, you may. I can take those. I will let you know that the Board Members do make site visits, so --

MS. FORBES: I understand.

CHAIRMAN MANLEY: -- they're very familiar with the property layout.

MS. FORBES: Good to know. Hopefully you were able to notice that our rear yard is completely -- what you consider our rear yard, what really is the side to the house, is completely obscured by natural trees, fencing. We have pine trees, we have bushes. We can not see our neighbor to the back or side of our house at all because of 25 foot bushes.

MR. FORBES: And they're evergreens. In the winter they're up.

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2 MS. FORBES: They do not lose their
3 leaves. I think you can also tell by the fact
4 that none of our neighbors came in to contest our
5 request for an area variance, that I don't think
6 anyone really has a problem with this.

7 Do you have anything to add?

8 MR. FORBES: No. You said it for me.

9 MS. FORBES: One of the things I did
10 want to bring to your attention, as I said we
11 have a single -- what we consider a single-family
12 home with an accessory apartment. My parents
13 live in the accessory apartment. My father is
14 now 83 years old, my mother is in her 70s, and
15 they are not in the best of health. One of the
16 prime concerns we had and one of the reasons why
17 we want to build this deck is because we also
18 want to attach a rail to it. Recently my mother
19 was injured. EMS actually had a problem getting
20 up our front steps, which are very steep. If we
21 had a ramp I think it would be safer for my
22 elderly parents to gain access to the house. In
23 the unfortunate event of an emergency egress, it
24 would be easier to get them out as well. That's
25 the second reason why we want to build this deck

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RICHARD & JOANNE FORBES

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that connects the two homes from the rear.

Do you have any questions that we could possibly answer?

CHAIRMAN MANLEY: Do any of the Board Members at this time have any questions for the applicant?

MR. LEVIN: Would you be building another entrance to get back to that ramp?

MS. FORBES: Entrance meaning a curb cut?

MR. LEVIN: Yeah. Something that would go -- going through the front would be almost impossible.

MS. FORBES: Yes. We have considered that but that would actually have -- I don't know if that has to be a separate application.

MR. FORBES: I think we would have to apply in the future for something like that. If we ever need it we're hoping we can do it. Right now we're doing the deck.

On of the other things is, if you noticed from the site visit, there's three entrances off the back of the house, two come off the main part of the house, the other comes off

1 the garage where the accessory apartment is.
2 There's nothing off the back of the house to
3 connect them at one level. For my in-laws or
4 anybody to get from one back door to the other,
5 you have to go down a flight of stairs, across
6 and then back up a flight of stairs rather than
7 one level. That's one reason we want to join the
8 three doors.
9

10 MS. FORBES: In all honesty, what my
11 father said is he would be able to walk outside
12 and enjoy the yard more if there was a ramp.
13 We're trying to accommodate him.

14 MR. LEVIN: I think you're making a
15 mistake by not applying for everything at once.

16 MS. FORBES: The ramp was really
17 something that we added on recently after my
18 father had some additional health problems.

19 MR. LEVIN: When you come in to the
20 driveway, for your father to get to the back
21 won't it be difficult?

22 MR. FORBES: Right now he'd probably
23 come off the side of the yard for like -- if for
24 some reason he could do the steps. If it became
25 more prevalent where it's a constant need and

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never being able to use the steps, we would do that. When we started this project it was a little over a year ago and I think their collective healths were better.

MS. FORBES: Right now we're thinking for emergency egress purposes only.

CHAIRMAN MANLEY: Due to the fact that the property is within 500 feet of New York State 9W, we're required to refer this to the Orange County Department of Planning. They have sent their letter back with a comment. I'll just read the comment into the record. The comments are that the Planning Department has reviewed the submitted materials regarding the appeal for an area variance. While the Zoning Board of Appeals must weigh the local issues in balancing the needs of the Appellant with the potential impacts on the surrounding area, it does not appear that intermunicipal or countywide impacts would result if the Board finds that granting relief is warranted in this matter. County recommendation is Local determination.

At this point, if none of the other Board Members have any pressing questions for the

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applicant, I'll open the public hearing to anybody in the audience that has any questions regarding this application or comments regarding this application.

MS. FORBES: Mr. Chairman, may I make one more point if you don't mind?

CHAIRMAN MANLEY: Certainly.

MS. FORBES: I just again wanted to emphasize --

MR. DONOVAN: You're doing well so far, so --

MS. FORBES: I just wanted to emphasize this house is almost 200 years old, built long before the zoning codes were in effect in this area. We just hope you take that into consideration. This was not something we created. The house was here long before our neighbors' houses were built around us.

CHAIRMAN MANLEY: Thank you.

MS. FORBES: Thank you.

CHAIRMAN MANLEY: At this point, hearing no questions or comments from the public, I'll turn to the Board Members if you have anything further.

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MR. BELL: Nothing.

MR. MASTEN: I'm good.

CHAIRMAN MANLEY: All right. At this point do we have a motion from the Board to close the public hearing?

MR. McKELVEY: I'll make a motion we close the hearing.

MR. MASTEN: I'll second it.

CHAIRMAN MANLEY: I have a motion to close from Mr. McKelvey and a second from Mr. Masten. At this point we'll do the roll call vote. Darrell Bell?

MR. BELL: Yes.

CHAIRMAN MANLEY: Richard Levin?

MR. LEVIN: Yes.

CHAIRMAN MANLEY: Michael Maher is absent. John Masten?

MR. MASTEN: Yes.

CHAIRMAN MANLEY: John McKelvey?

MR. McKELVEY: Yes.

CHAIRMAN MANLEY: Darrin Scalzo?

MR. SCALZO: Yes.

CHAIRMAN MANLEY: And myself yes. At this point the public hearing is now closed. The

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Board will continue with the other public hearings and at the end of the evening we'll make a determination.

MS. FORBES: Thank you very much for your time.

CHAIRMAN MANLEY: You're welcome.

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

(Resumption for decision: 8:17 p.m.)

CHAIRMAN MANLEY: The Board will resume it's session this evening. The first application for the Board to consider this evening is the application of Richard and Joanne Forbes, 9 Echo Lane in Newburgh, seeking their variance for the rear yard setback to build a 10 by 35 rear deck attached to a 12 by 27 feet 6 inch deck on the residence. This is a Type 2 action under SEQRA.

The Board will now go through the area variance criteria, the first of which being whether or not the benefit can be achieved by other means feasible to the applicant. What is the Board's discussion with respect to that first test?

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RICHARD & JOANNE FORBES

MR. LEVIN: I don't believe there's any other way to do it.

CHAIRMAN MANLEY: Okay. Does anybody else have any other comments?

MR. BELL: No.

CHAIRMAN MANLEY: The second item that the Board needs to consider under the area variance criteria test is whether or not granting the variance would result in any undesirable change in the neighborhood, the character or detriment to any nearby properties.

MR. BELL: No.

MR. MASTEN: No.

MR. McKEVLEY: No.

MR. LEVIN: No.

MR. SCALZO: No.

CHAIRMAN MANLEY: The third item is whether or not the request that the applicant is seeking is substantial in nature.

MR. BELL: No.

MR. MASTEN: No.

MR. McKEVLEY: No.

MR. LEVIN: No.

MR. SCALZO: No.

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2 CHAIRMAN MANLEY: The next is whether
3 the request will have any adverse physical or
4 environmental affects.

5 MR. BELL: No.

6 MR. MASTEN: No.

7 MR. McKELVEY: No.

8 MR. LEVIN: No.

9 MR. SCALZO: No.

10 CHAIRMAN MANLEY: And finally, whether
11 the alleged difficulty is self-created. It is a
12 relevant factor but not determinative.

13 MR. BELL: Yes.

14 MR. SCALZO: He could not proceed with
15 the deck, but that's really not the desired
16 effect.

17 CHAIRMAN MANLEY: At this point,
18 considering all of the criteria before the Board
19 to consider for an area variance, do we have a
20 motion from the Board with regard to this
21 application?

22 MR. McKELVEY: I'll make a motion we
23 approve it.

24 MR. LEVIN: I'll second.

25 CHAIRMAN MANLEY: I have a motion from

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RICHARD & JOANNE FORBES

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Mr. McKelvey to approve, a second from Mr. Levin.
I'll start with a roll call vote. Darrell Bell?

MR. BELL: Yes.

CHAIRMAN MANLEY: Richard Levin?

MR. LEVIN: Yes.

CHAIRMAN MANLEY: Michael Maher is
absent. John Masten?

MR. MASTEN: Yes.

CHAIRMAN MANLEY: John McKelvey?

MR. MCKELVEY: Yes.

CHAIRMAN MANLEY: Darrin Scalzo?

MR. SCALZO: Yes.

CHAIRMAN MANLEY: And myself yes. The
variance is granted.

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

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GARAGE SALES UNLIMITED, LLC

440 South Plank Road

Section 52; Block 7; Lot 1

B Zone

7:14 p.m.

CHAIRMAN MANLEY: The next application

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2 this evening before the Board is going to be the
3 application of Garage Sales Unlimited, LLC, 440
4 South Plank Road, Newburgh, New York, seeking
5 area variances for the front yard setback of 60
6 feet along State roads and the minimum side yard
7 setback to change from an eating and drinking
8 establishment to a retail store.

9 The applicant sent out 52 letters. All
10 the mailings and publications and postings are in
11 order.

12 Good evening.

13 MS. TAGUE: Good evening.

14 MR. TAGUE: Good evening.

15 CHAIRMAN MANLEY: Could you state your
16 name and address for the record, please?

17 MR. TAGUE: I'm Chris Tague. We live
18 at 2 Nancy Lane but the address is for 440 South
19 Plank Road.

20 CHAIRMAN MANLEY: Nancy Lane in
21 Newburgh?

22 MR. TAGUE: Yeah.

23 MS. TAGUE: I'm Susane Tague, I live at
24 2 Nancy Lane, Newburgh. The address is 440 South
25 Plank Road.

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2 CHAIRMAN MANLEY: Okay. Could you
3 explain to the Board what it is you're looking
4 for as far as your variance and --

5 MR. TAGUE: We recently purchased the
6 building about a year ago and we're looking -- it
7 was a former restaurant. We have a little
8 vintage store in Walden, so we're looking to open
9 that store as a vintage furniture/collectible
10 shop.

11 CHAIRMAN MANLEY: Can you maybe
12 describe to the Board a little bit about where
13 you are in the process and what the need for the
14 variances are that you have?

15 MR. TAGUE: Okay. There's two
16 variances, one that the building is not set back
17 far enough from the road, Route 52. The building
18 was built in 1950. And then a side yard
19 variance. We're looking to -- the building did
20 have a little fire damage, so we're looking to
21 -- after we get the Zoning Board hearing we have
22 some work to do cleaning it up. We mostly
23 painted the outside. I painted some of the
24 inside stuff. We're using it as is. We took the
25 kitchen stuff out. We're using the building as

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is. We're not taking out any walls or --

MR. DONOVAN: They're not making any exterior changes, Jerry? This is a change of use? That's what the trigger is. The existing conditions relative to the front yard and the side yard, they're existing, they're not being exacerbated or anything?

MR. CANFIELD: Yes. If I may, this is an existing nonconforming building that's been in existence for many years. The applicant has purchased the building. The change of use which constituted a site plan review, which they did appear before the Planning Board but because of the size of the building the Planning Board chose to honor the waiver exception providing that they did come to the Zoning Board. With the change of use they had lost their existing nonconforming protection. So that's why they're before you tonight for the front yard and the side yard. But there are no additional setbacks being created.

MR. DONOVAN: They're not going to need site plan approval?

MR. CANFIELD: No. That was waived.

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2 The next step, should this Board approve this
3 application, is to continue with the building
4 department for a building permit and hopefully
5 move forward with their plans.

6 CHAIRMAN MANLEY: In essence Jerry, if
7 it was to remain an eating and drinking
8 establishment they would need absolutely nothing
9 from this Board, they could just open up, but due
10 to the change in use, going from eating and
11 drinking to the retail store, it brings forward
12 all the new requirements with the zoning?

13 MR. CANFIELD: That's correct. There's
14 a provision in our code, I believe it's 185-58,
15 that cites that the existing nonconforming
16 protection is lost if there were a change of use
17 and/or an appearance before the Planning Board.
18 The existing nonconforming could continue as such
19 forever providing that there are no new
20 nonconformities created or a change of use.

21 CHAIRMAN MANLEY: Very good. Does the
22 Board have any questions for the applicant?

23 MR. McKELVEY: Would be good to see
24 them using it. It's been idle for quite awhile.

25 CHAIRMAN MANLEY: Are there any other

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2 questions that the Board maybe has for the
3 applicant?

4 (No response.)

5 CHAIRMAN MANLEY: If not, I will turn
6 the public hearing to the members of the public.
7 Is there anybody here with regard to this
8 application that has any comments or questions?

9 (No response.)

10 CHAIRMAN MANLEY: Hearing none, I'll go
11 one last time back to the Board?

12 (No response.)

13 CHAIRMAN MANLEY: At this point,
14 hearing none from the Board, do I have a motion
15 to close the public hearing?

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

18 MR. BELL: I'll second it.

19 CHAIRMAN MANLEY: We have a motion by
20 Mr. Levin and a second by Mr. Bell. I'll start
21 with a roll call.

22 Before we do that, I may add also that
23 we received the Orange County -- it is on Route
24 52 -- Department of Planning comments with regard
25 to this. The only comment they had is that they

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2 indicate here that they note that the existing
3 parking area is located partially on the property
4 to the east of the subject parcel. The applicant
5 may wish at some point to consider a lot line
6 adjustment with the neighboring property in order
7 to acquire that portion. That was the only
8 comment. It still left the determination --
9 Local determination by this Board.

10 So at this point a roll call vote.

11 Darrell Bell?

12 MR. BELL: Yes.

13 CHAIRMAN MANLEY: Richard Levin?

14 MR. LEVIN: Yes.

15 CHAIRMAN MANLEY: Michael Maher is
16 absent. John Masten?

17 MR. MASTEN: Yes.

18 CHAIRMAN MANLEY: John McKelvey?

19 MR. McKELVEY: Yes.

20 CHAIRMAN MANLEY: Darrin Scalzo?

21 MR. SCALZO: Yes.

22 CHAIRMAN MANLEY: And myself yes. The
23 public hearing is now closed.

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

25 (Resumption for decision: 8:20 p.m.)

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GARAGE SALES UNLIMITED, LLC

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CHAIRMAN MANLEY: The next application this evening that the Board heard was the application of Garage Sales Unlimited, LLC at 440 South Plank Road, Newburgh, seeking an area variance for the minimum front yard setback of 60 feet along State Route 52 and the minimum side yard setback to change from an eating and drinking establishment to a retail store.

Do we have discussion on the first item, which is whether or not the benefit can be achieved by other means feasible to the applicant?

MR. SCALZO: Pre-existing nonconforming. I don't believe so.

MR. BELL: No.

CHAIRMAN MANLEY: The next is whether or not granting of the variance would result in an undesirable change in neighborhood character or detriment to nearby properties.

MR. McKELVEY: It's not going to change.

MR. SCALZO: Actually I think it's a benefit. With activity in the building you don't have the possibility of people occupying the

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building, undesirables occupying the building.

CHAIRMAN MANLEY: Right now it's vacant and it's obviously subject to vandalism --

MR. SCALZO: Correct.

CHAIRMAN MANLEY: -- and obviously blight that occurs as a result of having vacant property. It certainly is an improvement.

Whether or not the request that the applicant is seeking is substantial in nature.

MR. BELL: No.

MR. MASTEN: No.

MR. McKELVEY: No.

MR. LEVIN: No.

MR. SCALZO: No.

CHAIRMAN MANLEY: The next is whether the request will have any physical or environmental adverse affects.

MR. LEVIN: I don't believe so.

MR. McKELVEY: I don't believe so either.

MR. MASTEN: I don't believe so.

MR. BELL: No.

CHAIRMAN MANLEY: The last is whether or not the alleged difficulty is self-created.

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2 It is a factor that's relevant but not
3 determinative.

4 At this point do we have a motion from
5 the Board?

6 MR. LEVIN: I'll make a motion to
7 approve.

8 MR. SCALZO: I'll second that.

9 CHAIRMAN MANLEY: We have a motion to
10 approve from Mr. Levin. I caught the second from
11 Mr. Scalzo. Roll call vote. Darrell Bell?

12 MR. BELL: Yes.

13 CHAIRMAN MANLEY: Richard Levin?

14 MR. LEVIN: Yes.

15 CHAIRMAN MANLEY: Michael Maher is
16 absent. John Masten?

17 MR. MASTEN: Yes.

18 CHAIRMAN MANLEY: John McKelvey?

19 MR. McKELVEY: Yes.

20 CHAIRMAN MANLEY: Darrin Scalzo?

21 MR. SCALZO: Yes.

22 CHAIRMAN MANLEY: And myself yes. The
23 motion is carried. The variance is approved.

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

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GEORGE & JOAN MESTER

GEORGE & JOAN MESTER

7 Leonard Avenue

Section 100; Block 5; Lot 32

R-2 Zone

7:20 p.m.

CHAIRMAN MANLEY: The next application this evening before this Board is the application of George and Joan Mester, 7 Leonard Avenue in Newburgh, seeking an area variance for the side yard setback to build a carport, 11 by 22, on the side of the existing residence.

This applicant sent out 32 letters. All the mailings, publications and postings are in order.

Good evening.

MS. MESTER: Good evening. I'm Joan Mester, 7 Leonard Avenue, Newburgh, New York. George twisted his knee today, this afternoon, and it's quite painful so he stayed home.

CHAIRMAN MANLEY: And you're solo.

MS. MESTER: Yes, that's correct.

We are seeking a side variance to build an open carport attached to the garage. We do

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park a vehicle there now and the area is blacktopped already. There are some trees between this area where the proposed carport would be and the neighbor's house, so it's sort of blocked from their view.

MR. McKELVEY: There are other carports that are close to the property lines, too.

MS. MESTER: Other car --

MR. McKELVEY: There's another one down the road.

MS. MESTER: There is. On the right of our house there is a house with a two-car garage that is very close to our property line. Yes.

CHAIRMAN MANLEY: It was actually -- in looking at the property, by having the car there gave a better understanding of exactly how big it would be and -- because you did -- the pictures here that you also submitted had the vehicle in it, which was definitely helpful.

As Mr. McKelvey said, there were other similar garages that are very close to the property line within your development already.

MS. MESTER: Definitely.

CHAIRMAN MANLEY: Do any of the Board

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GEORGE & JOAN MESTER

Members have any questions regarding the applicant's submittal at all?

(No response.)

CHAIRMAN MANLEY: This one, of course, did not require a County referral, so we don't have to worry about that.

If no one else has any questions, at this point I will open the public hearing to the members of the public. If there's anybody here with regard to this application that would like to be heard, please raise your hand so we can call upon you.

(No response.)

CHAIRMAN MANLEY: There being no questions, comments from the public, we'll now move towards asking the Board for a motion to close the public hearing.

MR. McKELVEY: I'll make that motion.

MR. MASTEN: I'll second it.

CHAIRMAN MANLEY: We have a motion from Mr. McKelvey and we have a second from Mr. Masten. I'll go through the roll call vote. Darrell Bell?

MR. BELL: Yes.

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GEORGE & JOAN MESTER

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CHAIRMAN MANLEY: Richard Levin?

MR. LEVIN: Yes.

CHAIRMAN MANLEY: Michael Maher is
absent. John Masten?

MR. MASTEN: Yes.

CHAIRMAN MANLEY: John McKelvey?

MR. MCKELVEY: Yes.

CHAIRMAN MANLEY: Darrin Scalzo?

MR. SCALZO: Yes.

CHAIRMAN MANLEY: And myself yes. The
public hearing is now closed.

MS. MESTER: Thank you.

CHAIRMAN MANLEY: Thank you.

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

(Resumption for decision: 8:22 p.m.)

CHAIRMAN MANLEY: The next this evening
that was heard was the variance requested by
George and Joan Mester, 7 Leonard Avenue,
Newburgh, seeking an area variance for the side
yard setback to build a carport, 11 by 22, on the
side of the existing residence. It's a Type 2
action under SEQRA.

We have discussion on this application,
the first being whether or not the benefit can be

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achieved by other means feasible to the applicant.

MR. LEVIN: I don't think so.

MR. McKELVEY: I don't think so either. The area is already blacktopped and they are parking a vehicle there now.

CHAIRMAN MANLEY: The next is whether or not the granting of the variance would create an undesirable change in the neighborhood character or detriment to nearby properties.

MR. BELL: No.

MR. McKELVEY: It's similar.

MR. BELL: It's already similar.

MR. McKELVEY: There's one other carport there.

CHAIRMAN MANLEY: And the applicant did testify that there were other similar garages, carports that were in the neighborhood.

MR. BELL: There are.

CHAIRMAN MANLEY: Whether or not the request, if granted, is substantial in nature.

MR. McKELVEY: No.

MR. BELL: No.

MR. LEVIN: Not substantial.

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CHAIRMAN MANLEY: Whether the request will have any adverse physical or environmental affects.

MR. SCALZO: I don't believe so. Plus it's going to be an open carport and that would not have the same visual obstruction as an enclosed structure.

CHAIRMAN MANLEY: And finally, whether the alleged difficulty is self-created. It is relevant but not determinative.

At this point, going through the criteria for an area variance, do we have a motion from the Board?

MR. BELL: I'll make a motion to approve.

MR. MCKELVEY: I'll second.

CHAIRMAN MANLEY: We have a motion from Mr. Bell and we have a second from Mr. McKelvey. I'll go with a roll call vote. Darrell Bell?

MR. BELL: Yes.

CHAIRMAN MANLEY: Richard Levin?

MR. LEVIN: Yes.

CHAIRMAN MANLEY: Michael Maher is absent. John Masten?

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MELISSA COSTA-TAYLOR & JOHN TAYLOR

MR. MASTEN: Yes.

CHAIRMAN MANLEY: John McKelvey?

MR. McKELVEY: Yes.

CHAIRMAN MANLEY: Darrin Scalzo?

MR. SCALZO: Yes.

CHAIRMAN MANLEY: And myself yes. The motion is carried and the variance has been granted.

(Time noted: 8:25 p.m.)

* * *

MELISSA COSTA-TAYLOR & JOHN TAYLOR

1 Disano Drive

Section 34; Block 1; Lot 1.2

R-1 Zone

7:24 p.m.

CHAIRMAN MANLEY: The next application before the Board this evening is the application of Melissa Costa-Taylor and John Taylor, 1 Disano Drive in Newburgh, seeking area variances for the maximum height of the accessory buildings, the maximum allowed square footage of the accessory buildings and the maximum allowed storage of no

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more than four vehicles to build an accessory building of 50 by 34 by 27 feet 6 inches.

The applicant sent out 23 letters. All the mailings and publications and postings are in order.

This matter was also referred to the Orange County Department of Planning.

At this point I have a conflict and I'm going to recuse myself with regard to this application. Mr. McKelvey is going to take over the meeting and Mr. Levin is going to act as the secretary.

MR. McKELVEY: Good evening. State your name and address.

MR. TAYLOR: John Taylor, 1 Disano Drive, Newburgh, New York.

MS. TAYLOR: Melissa Taylor.

MR. McKELVEY: Would you explain to the Board exactly what you would like for variances?

MS. TAYLOR: We're looking to put an accessory building up, a garage, which is I guess oversized, over height and over four car capacity.

We have had, in the last

1
2 year-and-a-half, John's mother, due to her ailing
3 health has moved into our home so we have her
4 living with us. We are literally out of space in
5 our home. We need storage space. We also have
6 had a shed that we had collapse on our pool
7 patio, so we don't have that 200 square feet
8 either for our lounge furniture, things like
9 that. We're looking to put up a bigger garage
10 because we do have some antique cars that we'd
11 like to put in there, along with, you know, a
12 motorcycle and things. We also need the storage
13 upstairs so that way we can put our patio
14 furniture away in the winter so it's not getting
15 damaged, as well as I do a lot of charity work
16 and I collect things for baskets. Right now I
17 have forty baskets in my kitchen because I have
18 nowhere to put them until the ladies auxiliary
19 tricky tray in November. So, you know, we just
20 really are busting at the seams at this point.
21 That's why we're looking to put this up.

22 MR. McKELVEY: Why do you want the
23 height on the building? It's so high.

24 MS. TAYLOR: We want the second floor
25 for storage. The downstairs is just the four-

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2 car garage and then the upstairs is really for
3 storage capacity.

4 MR. McKELVEY: The maximum is 15 feet.

5 MS. TAYLOR: I understand.

6 MR. McKELVEY: You're way over.

7 MS. TAYLOR: I understand that. I mean
8 we're looking to put in an upstairs so we have
9 places to -- I can work on tables, build baskets,
10 have storage places. It's just an outdoor
11 facility. That's what we're looking for. We're
12 looking for downstairs to have room for the cars
13 and the bikes on the wall and have additional
14 storage as well in the building.

15 MR. McKELVEY: You have no plans of
16 making a living space upstairs?

17 MS. TAYLOR: No. We don't want anybody
18 living on our property. It's bad enough we have
19 his mother-in-law -- I mean his mom, my
20 mother-in-law. I'm just saying we don't want
21 anybody else living with us. We have enough.

22 MR. SCALZO: This is being recorded you
23 know.

24 MS. TAYLOR: I know. I hope she
25 doesn't see this public record. Really, we don't

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want anybody living on our property.

MR. LEVIN: Can I ask you why 34 feet? That's the depth of the building. You can put a lot of cars in there.

MR. TAYLOR: We have cars, a motorcycle, kids' quads.

MR. McKELVEY: How many cars?

MS. TAYLOR: We have cars that are in storage units right now. We have several cars.

MR. McKELVEY: How many? We have to know how many.

MR. TAYLOR: Five.

MR. McKELVEY: You're only allowed four.

MR. TAYLOR: Obviously one is going to have to go somewhere else. We have a lot of accessory stuff that's more than just cars. That additional space behind that would be obviously the motorcycle, the quads and the items that we have in our garage now.

MR. LEVIN: The last time you were here, which was how long ago?

MS. TAYLOR: About a year ago.

MR. LEVIN: I recall something about a

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wire going over the back.

MS. TAYLOR: No. What happened was we had the telephone lines -- the poles were all moved but we couldn't put the garage in the location because of the easement with Central Hudson. That's why we were going to go back. We actually had a meeting with Central Hudson. Our neighbor signed off for us to move the easement onto her side of the property, because she doesn't use the property, if we wanted to do it. It's just a lot of work to excavate and dig, you know. So we didn't want to touch all the landscape. We have a spot. Our property is not unique per se but it is in the sense that based on our ground where our septic system is and where our well is, we don't have another location to actually build the garage. That's why we've been trying to put it down at the bottom of the driveway on the side. That's where this one would be moving to. It's essentially that same garage, it's just built sideways now with more garage doors. Last time it would have had a couple dead on. Now it has to have them this way because we can't drive straight in. We would

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need a different access.

MR. DONOVAN: Just for clarification, when you were here last year one of the issues was that the garage was proposed within the easement area.

MR. TAYLOR: Correct.

MR. DONOVAN: You discovered that that was not permissible. I guess you did whatever you did. The point of tonight is you've moved it; --

MS. TAYLOR: Yes.

MR. DONOVAN: -- correct?

MR. TAYLOR: Out of the way of the easement.

MR. DONOVAN: The other issues are still here but the issue of the placement is not an issue anymore.

MR. TAYLOR: The easement with Central Hudson is not relevant.

MR. SCALZO: Their driveway could be over but the actual structure couldn't --

MR. McKELVEY: The building is bigger than the other one was, too.

MR. TAYLOR: The other one was 50 by

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2 24. That's only because the way we turned the
3 building sideways, we were able to gain a little
4 -- well, 10 feet. The other way we couldn't do
5 that we realized because of the wires and the
6 easement for Central Hudson.

7 MR. SCALZO: To tack on to what Mr.
8 McKelvey was talking about earlier regarding the
9 height of the building, one of the concerns that
10 we have here is that it eventually does turn into
11 living space. Historically we're, I don't want
12 to say restricted but we do have a great concern
13 with being that far over what -- your height of
14 27 feet as opposed to 15 is quite substantial.
15 Are you married to that height? Can you drop it
16 down so we could be assured that there would
17 never be living space there? I understand you
18 run a business. We don't want to necessarily
19 have you run your office out of there.

20 MR. TAYLOR: No, no. We did 12 feet on
21 the bottom for our, obviously, cars, putting
22 bikes and things like that on the walls. I can
23 actually build storage to put all my stuff. The
24 upstairs, I put it at 8 feet for a regular height
25 for a room. That's the only reason.

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MS. TAYLOR: Just so you could walk.

MR. TAYLOR: You can walk and stand up.

MS. TAYLOR: Once you put the sides in, it's hard for storage.

MR. TAYLOR: That's her area for charity stuff.

MS. TAYLOR: I literally need space. I need to set up some tables, set my baskets up. You really don't get much storage when the roof slopes down. It cuts off a lot of space. That was the only reason why we kind of wanted to go with that height.

MR. TAYLOR: The way the roof was, there's no storage.

MR. SCALZO: That I understand.

MR. McKELVEY: Any other questions from the Board?

(No response.)

MR. McKELVEY: If not, is there anyone in the audience that would like to speak on this? Step up to the mic.

MS. STEELE: Hi. I'm Christine Steele from 121 Valley View Drive. I'm actually here speaking for my mom, Doris Steele, who also lives

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at 121 Valley View Drive.

She wrote a little statement. I'm reading this letter on behalf of my mom, Doris Steele, who could not be here tonight. We've lived next door to John and Melissa for eleven years and we have no objections to this building that they're proposing. We do not feel there will be any negative impact to our property and will not be a burden or infringe on our property at all. We are hoping the Board grants the variances they need so we can continue to be neighbors for many years to come. Thank you.

MR. DONOVAN: If you could hand that up. Thank you very much.

MR. DZIEGELEWSKI: I'm Joe Dziegelewski, 5 Disano Drive. I'm the house directly to the south of the Taylors. I'm here tonight to endorse this application. I've been a neighbor for some time, less than twelve years now. The way their lot is set and that, it's basically like a walkout lot.

I'm not as concerned about the height of the building because it's basically way set down the hill. I think the way they've

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orientated it, the plans and -- the building plans and the layout, I feel it's little to no impact to the road as we drive by it every day.

The Taylors have had a difficult time over the years just trying to organize their yard with vehicles, lawn equipment, pool and patio furniture, which is really this need for a shed. It's a type of ancillary structure. I think this is positive now this is giving them a means to organize their property and all the vehicles.

I'd also like to note that I think there's similar structures along Disano as you go down the street. I know there's a detached garage towards the end of the street that's probably well over two stories. It's a two-car garage. I believe the house on the end also has a four-bay garage. So I don't think it's atypical for the neighborhood. There's carports, there's detached garages, there's oversized garages that are in the area. I think from a functionality standpoint, especially when it snows and there's vehicles, snow removal and everything becomes a burden. All homeowners up there have lawn equipment, snowblowers, trailers.

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There's other ancillary stuff that I feel would be good for them to store in their garage. I support the application. Thank you.

MR. McKELVEY: Anyone else?

(No response.)

MR. McKELVEY: Anyone from the Board?

MR. SCALZO: I just have one more.

Looking at the survey that you provided, you show the 1,700 square foot footprint. Also your foundation, I'm not sure it's to scale. However your septic tank and your laterals, your laterals are not shown on here which could impede you from placing that there. Are you --

MR. TAYLOR: They're more towards the center. So the garage, it doesn't even come near that. That's the only literally -- that's the last place we can put the garage is right there. We wanted it to drive straight down the driveway and drive straight in. Because of that easement, that's just --

MS. TAYLOR: The septic is 10 feet away from the garage. It's not --

MR. SCALZO: The tanks.

MR. TAYLOR: The laterals are straight

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down behind it.

MR. SCALZO: Are you going to have footing drains in this building or no?

MR. TAYLOR: I'm assuming.

MR. SCALZO: If you're on a slab I don't believe you need them.

MS. TAYLOR: Okay.

MR. TAYLOR: I'll say no then. The ground is not going to be built up to the foundation. It's not going to be built in the ground.

MR. SCALZO: You'd need a greater separation if you had footing drains from your laterals, if that were the case.

MR. TAYLOR: I don't think that would be an issue.

MR. DONOVAN: Just for clarification on the number of vehicles, what we have from code compliance is you're allowed to store a maximum of four. It says six plus. If the Board is inclined to grant the variance, they're going to affix a number over four. I don't know if you're asking for five, six, one or two. I don't know.

MS. TAYLOR: Thirty. I'm kidding.

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We have to give him a number. He likes to collect. I think we'd be looking for probably six cars.

MR. DONOVAN: In this facility?

MR. TAYLOR: A couple of them are small so they can go sideways if they had to.

MR. McKELVEY: You're only allowed four.

MR. DONOVAN: They're asking for a variance for two extra. It says six plus. I just want to be able to fix that number. If that number is six, if that gets approved Jerry, is sufficient for code compliance?

MR. CANFIELD: If that's what they're requesting, yes.

MR. DONOVAN: Just for clarification, you're requesting six.

I want to also revisit the issue of the maximum building height. What the Board looks at is the substantiality of the variance. By my calculation you're at 83 percent. The Board just doesn't look at math, it looks at the overall affect of the variance.

Your neighbor testified, and I just

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want to clarify this, that the topography is such that does your lot sit lower than other lots?

MR. TAYLOR: The back part does.

MR. DONOVAN: Where the accessory structure will be. So the overall affect of the variance will be diminished by the topography?

MS. TAYLOR: Correct. The garage wouldn't be bigger --

MR. TAYLOR: It's not sitting at the height with the house. It's much lower.

MR. DONOVAN: What's the degree of visibility to the neighbors?

MR. TAYLOR: None.

MR. SCALZO: You probably wouldn't see it in front of the house.

MR. BELL: It's sitting down.

MR. DONOVAN: I'm trying to help them.

MS. TAYLOR: Thank you, David.

MR. DONOVAN: Thank you.

MR. McKELVEY: I have the report from the County.

MR. LEVIN: The Planning Department has reviewed the submitted materials regarding the area for an area variance. While the Zoning

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Board of Appeals must weigh the local issues in balancing the needs of the applicant with the potential impacts of the surrounding area, it does not appear that intermunicipal or countywide impacts would result if the Board finds that granting relief is warranted in this matter. There have been multiple use area variances requested over the last two years for relief from maximum allowable square footage and maximum allowable vehicle storage requirements of the zoning code. If the Town of Newburgh would like to revisit these sections of the code, Orange County Planning would be happy to provide technical assistance. Local determination.

MR. McKELVEY: Once again, any more questions from the Board?

MR. BELL: No.

MR. McKELVEY: If not, I'll look for a motion.

MR. BELL: I'll make a motion to close it.

MR. MASTEN: I'll second it.

MR. McKELVEY: Motion made by Mr. Bell and seconded by Mr. Masten. Roll call.

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MR. LEVIN: Darrell Bell?

MR. BELL: Yes.

MR. LEVIN: Richard Levin, yes.

Michael Maher absent.

John Masten?

MR. MASTEN: Yes.

MR. LEVIN: John McKelvey?

MR. MCKELVEY: Yes.

MR. LEVIN: Darrin Scalzo?

MR. SCALZO: Yes.

MR. LEVIN: James Manley recused.

Thank you.

MR. TAYLOR: Thank you.

(Time noted: 7:40 p.m.)

(Resumption for decision: 8:25 p.m.)

CHAIRMAN MANLEY: The next application this evening, which I'll be recusing myself on, is the application before the Board of Melissa Costa-Taylor and John Taylor, 1 Disano Drive in Newburgh, seeking area variances for the maximum height of the accessory buildings, the maximum allowed square footage of the accessory buildings and the maximum allowed storage of no more than four vehicles to build an accessory building 50

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2 by 34 by 27 feet 6 inches.

3 MR. CANFIELD: Excuse me. The one
4 variance is for six vehicles.

5 MR. BELL: Six or four?

6 MR. DONOVAN: Six.

7 MR. CANFIELD: Up to six is what the
8 applicant asked for, not for four. Correct?

9 MR. TAYLOR: Yes.

10 MR. McKELVEY: Any discussion?

11 MR. SCALZO: You know, as you've all
12 sit with me long enough, when it comes to
13 building heights I have a tough time with really
14 exceeding. But I'm going to, for now, not pay
15 attention to that.

16 What I'm actually -- I would really
17 like to see is the sketch that was provided of
18 the building, how it relates to the existing
19 dwelling as well as the property lines and the
20 septic system. As a 1,700 square foot square
21 rectangle on a sketch, I don't believe that's an
22 accurate representation of how this is going to
23 fit on the lot. Myself, I would prefer to see
24 just a little better detail or to scale where the
25 actual building is going to sit, how it relates

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2 to where the septic tank and leach field is.
3 That's my main concern. I would like to see an
4 accurate sketch, because the house -- looking at
5 the house, it looks as though the house itself is
6 probably about 1,700 square feet plus or minus.
7 Maybe 2,000. So your foundation -- the
8 foundation that I'm looking at on the sketch
9 would be very similar in size to the building
10 that you're proposing to be putting up. I would
11 just like to see -- that would clear my mind if I
12 could see a to scale representation. I would
13 prefer to defer determination.

14 MR. DONOVAN: So I think as the Board
15 knows, we have -- the Board has 62 days from the
16 close of the public hearing to make a decision.
17 Darrin is indicating he would like some
18 additional information to assist him. The Board
19 can defer making a decision if that's the Board's
20 pleasure.

21 Do you understand what Mr. Scalzo is
22 looking for?

23 MR. TAYLOR: Absolutely.

24 MR. DONOVAN: Are you able to provide
25 that within enough time before the October

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meeting, --

MR. TAYLOR: Sure.

MR. DONOVAN: -- ten days or two weeks before the meeting?

MR. SCALZO: And if you could also just re-evaluate if you're married to that 27 foot height. Just consider it.

MR. TAYLOR: Sure.

MR. DONOVAN: If that's the Board's pleasure, it would be a motion to reserve decision and place it on the October agenda.

MR. SCALZO: I'll make a motion to reserve decision until next month's meeting.

MR. MASTEN: I'll second it.

MR. McKELVEY: Roll call.

MR. LEVIN: Darrell Bell?

MR. BELL: Yes.

MR. LEVIN: Richard Levin, yes.

Mike Maher absent.

John Masten?

MR. MASTEN: Yes.

MR. LEVIN: John McKelvey?

MR. McKELVEY: Yes.

MR. LEVIN: Darrin Scalzo?

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MR. SCALZO: Yes.

MR. LEVIN: James Manley, absent.

MR. MCKELVEY: We'll hold that over until next -- we'll vote on it next month. We have 62 days.

MR. SCALZO: With the way the calendar falls, it may not be two months.

MR. DONOVAN: We can worry about that then.

MS. TAYLOR: Can we just ask one question?

MR. SCALZO: Sure.

MR. TAYLOR: In reference to the height, you're talking about the height, obviously the difference. It's considerably a steep drop down as far as the driveway going down to that section. Even with the heights together, they're going to be relatively the same or a little bit less.

MR. SCALZO: Perhaps when you supply that other information to us. You may be able to put a narrative together to explain that as well.

MR. TAYLOR: No problem.

MR. SCALZO: We've seen the site so I

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JO ANN BERETTA

know.

MR. LEVIN: Can you make that to
scale?

MR. TAYLOR: Yeah. Okay. Sure.

(Time noted: 8:29 p.m.)

* * *

JO ANN BERETTA

60 Old Post Road

Section 8; Block 1; Lot 38.2

AR Zone

7:40 p.m.

CHAIRMAN MANLEY: The next item before
the Board this evening is the application of
Jo Ann Beretta, 60 Old Post Road in Newburgh,
requesting area variances for lot number 1,
the minimum lot area, the minimum lot width,
minimum one side yard setback and minimum
combined side yard setbacks; and for lot
number 2, the minimum lot area, minimum front
yard setback for the dwelling and minimum
side yard setback for the accessory building
on a proposed two-lot subdivision with two

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JO ANN BERETTA

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existing single-family dwellings before the
Planning Board.

The applicant sent out 15 letters.
All the mailings, publications and postings
are in order.

Good evening.

MR. DATES: Good evening.

CHAIRMAN MANLEY: Could you just
state your name and address for the record?

MR. DATES: Justin Dates from Maser
Consulting. I'm presenting the project.

CHAIRMAN MANLEY: Why don't you just
brief the Board on exactly what it is the
applicant is in need of for the variance.

MR. DATES: Sure. The application
before you is a product of a two-lot subdivision.
The current lot is 1.43 acres in size. On the
north end it has frontage on Old Post Road and on
the south end it has frontage on River Road.
There are currently two dwellings on the single
lot. The red outline shows the one in proximity
of Old Post and then this is the dwelling in
proximity to River Road.

The applicant is looking to subdivide

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the parcel and create two lots. That incurred
variances I'll present to you now. Lot 1 is on
the top, lot 2 is on the bottom. So lot 1, we're
currently in the AR Zone of the Town. The
minimum lot area in the AR Zone is 40,000 square
feet. By subdividing the parcel, lot 1 would
have 28,495 square feet or about .65 acres. Also
by location of the existing house and the
adjacent porch on the eastern side of the house,
we would need variances for the single side yard
and both side yards. On the east side of the
house there's a porch which back in 1998 it was a
slab on grade. In 1998 they got a building
permit to enclose that and create this porch.
That is now within -- it's 3.68 feet from the
edge of that porch to the property line. Single
side yard setback in this zone, minimum is 30
feet. We would require a variance there of 26.32
feet. Also based on the zoning, both side yards
combined equal a minimum of 80 feet. So with the
existing location of the house to the western
property line and that setback from the porch to
the eastern property line, we are only at 40.35
feet, so we would need a variance of 39.65 feet.

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Then by creating the lot and where the existing home is, lot width -- minimum lot width in this zone is 150 feet. By dimensions of the existing lot we have 95.79 feet, so a 54.21 foot variance on that.

Then moving on to lot 2, which is on the bottom of the page, this also would require a variance from the minimum lot area. This lot is 27,954 feet where 40,000 square feet is required. It also has a front yard variance. The current lot essentially reads to the center line of each of the roads. We also have to provide a 25-foot right-of-way proposed dedication to the Town for those two roads. So in both instances, obviously that brings the front property lines closer to the house. In this instance, on River Road for lot 2, after we take away that 25 foot setback we are just over 2 feet from the front yard. In this zone front yard is 50 feet, we have 2.05 so we need a 47.95 foot variance. Then the last variance on lot 2 is on the western side of the lot there's a small accessory building there. Currently it's .84 feet off the property line. This southwest corner. Minimum setback there is

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5 feet, so we need a 4.16 foot variance for that structure as well.

Before getting into this project the applicant -- it's neighbor along the entire east side is Central Hudson. They did reach out to Central Hudson to see if they would be willing to sell some property to them so that they could boost lot area, boost setbacks and things of that nature. I provided a letter to the Board that shows that Central Hudson was not willing to sell the property. They did try to see if they could help reduce or eliminate some of these variances in that sense.

Also from a lot area standpoint, the adjacent lots to the west -- there's about five, six residential lots to the west. They vary from about .33 acres to about .46 acres. As I presented, our proposed lots are .64 and .65, so almost double some of these adjacent residential lots.

I think that summarizes the project. If you have any questions.

MR. LEVIN: When were the homes on each lot built?

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JO ANN BERETTA

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MR. DATES: I'm sorry?

MR. LEVIN: When were the homes built on each lot?

MR. DATES: It seems around 1900.

MR. DONOVAN: You don't propose any physical changes at all?

MR. DATES: That's correct. This would be a boundary change. There are no changes to any of the homes or --

MR. DONOVAN: But for the bulk area, the lot size, every other condition is existing?

MR. DATES: That's correct.

MR. DONOVAN: If I drove down the street, if the variances were denied, it would look just the same as it looks now?

MR. DATES: That's correct.

MR. DONOVAN: There is no change. This whole thing is necessitated by the fact of the two-lot subdivision?

MR. DATES: Yes. And it would also -- it's only permitted one dwelling per lot. We've got a situation.

MR. SCALZO: Justin, any idea on proposed lot 2 which one of the wells is the

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JO ANN BERETTA

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active well?

MR. DATES: So it actually has a --
let's see. Lot 2 has a septic and has a service
-- water service.

MR. SCALZO: Okay.

MR. DATES: Lot 1 is septic and well.
That well right here.

MR. SCALZO: There's a second one
behind the house as well.

MR. DATES: It's not material to the --

MR. SCALZO: I do have one other, or
something else. You had mentioned as far as the
right-of-way dedication to the Town being 25 feet
off the center line of the road. Just looking at
also again proposed lot 2, it almost appears as
though your lot dedication could shift forward.
If you're looking -- it almost appears as though
the lot corner falls at the edge of pavement and
then you're giving the Town another 27.30 feet.
Is that dimension actually required if you're
only going 25 off the center?

MR. DATES: You're talking about this
corner?

MR. SCALZO: Yes.

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JO ANN BERETTA

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MR. DATES: When we took the reading it was our understanding from the deed it's to the center line.

MR. SCALZO: I understand.

MR. DATES: We took it right from that. Although it's not actually the center line of road, it was --

MR. SCALZO: You have a metes and bounds that work for you so that's what determined it. I'm good now.

MR. DATES: Okay. It closely -- if you look at both on the north and south, they closely mimic what's going on with the Central Hudson lot. That dedication appears to have happened sometime in the past.

MR. SCALZO: There are three gas markers on the east side of your property lines. Are there any associated easements with those?

MR. DATES: On our property? As far as --

MR. SCALZO: Sometimes they have a prescribed width. Is there any --

MR. DATES: From our survey due diligence, it did not come up on our property.

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JO ANN BERETTA

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MR. SCALZO: Thank you.

MR. LEVIN: Can I ask Mr. Donovan a question?

MR. DONOVAN: It depends.

MR. LEVIN: What would happen here if we did nothing?

MR. DONOVAN: It would look just the way it looks now. There would be only one lot instead of two.

MR. LEVIN: They would be able to function --

MR. DONOVAN: They have been for a hundred years. You have two houses on one lot.

MR. LEVIN: Right.

CHAIRMAN MANLEY: At any time were they two lots at one time?

MR. DATES: Not that I'm aware of.

CHAIRMAN MANLEY: So there were always two separate houses on one parcel of property?

MR. DATES: It's been this as long as this applicant has owned it. He bought it in 1938. Sine they owned the property since 1938 it's been like this.

MR. DONOVAN: I don't have any further

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JO ANN BERETTA

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questions.

MR. CANFIELD: Jim, just one question. Procedurally I think it's for Dave. I don't know if you have discussed this but on lot 1 there's an encroachment of the gravel driveway. It goes over -- splashes over a little bit to lot 8-1-37. I believe that there is no obligation for any enforcement or any action taken other than just an acknowledgement. Is that correct?

MR. DONOVAN: Yeah, that's correct. I didn't look at it that carefully, and of course I didn't bring my glasses. So we have -- there's no impairment on access, right? Your driveway just encroaches onto the neighbor's?

MR. DATES: Yeah. The northwest corner is on the adjacent.

MR. DONOVAN: I think just for clarification purposes, any approval this Board gives is not an approval of the existence of that gravel driveway. To the extent there's any issue at all -- it's been there since 1938, perhaps there's not. To the extent there's any issue, this Board doesn't sanction what's going on. That issue remains as a private issue, not

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JO ANN BERETTA

subject to review of this Board.

CHAIRMAN MANLEY: At this point are there any further questions from the Board regarding this application?

(No response.)

CHAIRMAN MANLEY: I might add that the application does not require County referral.

At this point I'll open up the questions to anybody in the public that's here regarding this application. If there is, please step forward.

(No response.)

CHAIRMAN MANLEY: Hearing none, I'll go back to the Board one last time. If there's nothing further from the Board, I would ask the Board for a motion to close the public hearing.

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

MR. LEVIN: I'll second.

CHAIRMAN MANLEY: Motion from Mr. Scalzo. The second is going to be Mr. Levin. Roll call vote. Darrell Bell?

MR. BELL: Yes.

CHAIRMAN MANLEY: Richard Levin?

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JO ANN BERETTA

MR. LEVIN: Yes.

CHAIRMAN MANLEY: Michael Maher is absent. John Masten?

MR. MASTEN: Yes.

CHAIRMAN MANLEY: John McKelvey?

MR. MCKELVEY: Yes.

CHAIRMAN MANLEY: Darrin Scalzo?

MR. SCALZO: Yes.

CHAIRMAN MANLEY: And myself yes. The public hearing is now closed.

MR. DATES: Thank you.

(Time noted: 7:54 p.m.)

(Resumption for decision: 8:29 p.m.)

CHAIRMAN MANLEY: The next application this evening for the Board to consider is the application of Jo Ann Beretta, 60 Old Post Road in Newburgh, seeking area variances for lot number 1, the minimum lot area, the minimum lot width, minimum one side yard setback and minimum combined site yard setback; and for lot 2, the minimum lot area, minimum front yard setback for the dwelling and minimum side yard setback for the accessory building on a proposed two-lot subdivision with two existing single-family

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JO ANN BERETTA

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dwellings before the Planning Board. Type 2
action under SEQRA.

Going through the criteria set forth in
the law for an area variance, the first thing
that the Board needs to consider is whether the
benefit can be achieved by other means feasible
to the applicant. Does the Board feel that
there's any way that the applicant could benefit
from doing this any other way that's feasible?

MR. SCALZO: I don't think so.

MR. McKELVEY: They couldn't get any
land from Central Hudson.

MR. DATES: Justin Dates with Maser. I
just wanted to make one clarification on the
information regarding the structures. The
structure on lot 2 was circa 1900. The structure
on lot 1 was about 1964 construction date. I
just wanted to clarify that from my presentation
to the Board previously.

CHAIRMAN MANLEY: Okay. So we have
one --

MR. DATES: Lot 2 is circa 1900, lot 1
is 1964.

CHAIRMAN MANLEY: So let the record

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JO ANN BERETTA

reflect that the applicant in their testimony is correcting lot number 1 to be circa 1964 and lot number 2 1900.

MR. DATES: Correct.

CHAIRMAN MANLEY: Thank you.

MR. DATES: Thank you.

CHAIRMAN MANLEY: With this information, continuing along with our area variance criteria, does the Board feel that granting of this variance would result in any undesirable change in the neighborhood character or detriment to nearby properties?

MR. BELL: No.

MR. MASTEN: No.

MR. McKELVEY: No.

MR. LEVIN: No.

MR. SCALZO: No.

CHAIRMAN MANLEY: The Board feels it's been pre-existing? It's been there for --

MR. MASTEN: Over fifty years.

CHAIRMAN MANLEY: Obviously no complaints from the neighbors.

The next is whether or not this request is substantial in nature.

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JO ANN BERETTA

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MR. LEVIN: I don't believe so. It's the circumstances that they're under.

CHAIRMAN MANLEY: Some of the variances are fairly close to the property lines, but again those are now lines created based on the subdivision.

MR. SCALZO: As our wise Counsel pointed out, if you drove down the street without this being approved it would look exactly the same.

CHAIRMAN MANLEY: The only thing that may occur in the future would be if they do -- whoever buys the homes or if they sell them may require variances in the future based on anything that they should do in the future. We can't predict what will happen in the future.

MR. DONOVAN: And that would be the case now --

CHAIRMAN MANLEY: Correct.

MR. DONOVAN: -- with the added variance of there's two houses on one lot. So they need relief from that. That's being reduced. You can look at it that way.

Is that wise enough, Darrin?

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JO ANN BERETTA

MR. SCALZO: I didn't hear the AC kick on, Dave.

CHAIRMAN MANLEY: Whether or not the request will have any adverse physical or environmental affects.

MR. MASTEN: I don't believe so.

MR. BELL: No.

MR. MASTEN: No.

MR. McKELVEY: No.

MR. LEVIN: No.

MR. SCALZO: No.

CHAIRMAN MANLEY: Finally, whether the alleged difficulty is self-created. It is something that's relevant but not determinative.

Having that information before the Board, does the Board wish to make a motion?

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

MR. MASTEN: I'll second it.

CHAIRMAN MANLEY: We have a motion to approve from Mr. Levin. We have a second from Mr. Masten. Roll call vote. Darrell Bell?

MR. BELL: Yes.

CHAIRMAN MANLEY: Richard Levin?

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JO ANN BERETTA

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MR. LEVIN: Yes.

CHAIRMAN MANLEY: Michael Maher is absent. John Masten?

MR. MASTEN: Yes.

CHAIRMAN MANLEY: John McKelvey?

MR. McKELVEY: Yes.

CHAIRMAN MANLEY: Darrin Scalzo?

MR. SCALZO: Yes.

CHAIRMAN MANLEY: Myself yes. The motion is carried and the variance is granted.

(Time noted: 8:34 p.m.)

* * *

DEAN MULLINGS

1671 Route 300

Section 16; Block 5; Lot 2

R-2 Zone

7:54 p.m.

CHAIRMAN MANLEY: The next application before the Board this evening is the application of Dean Mullings, 1671 Route 300, Newburgh, seeking an area variance for 185-38 C(2), the lot

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DEAN MULLINGS

must meet the minimum area for a single-family dwelling to build a 670 square foot accessory apartment in the basement of the premises.

This was a County referral. Unfortunately I contacted the County Department of Planning yesterday to see if they could fax over their information with regard to this and they are still working on it. Pursuant to the statute, they have thirty days from the date we send it to them to return it. It was faxed to them on September 7th when we received the packet, and they have until October 7th. So we can hear the public hearing this evening, however legally we can't act on it until such time as we receive that.

MR. DONOVAN: Or we don't receive it and the time expires.

CHAIRMAN MANLEY: Correct. So the applicant sent out 22 letters. All the mailings and publications and postings are in order.

Could you please state your name and address for the record, please?

MR. MULLINGS: Dean Mullings, 1671 Route 300 in Newburgh, New York.

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DEAN MULLINGS

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CHAIRMAN MANLEY: Thank you, Mr. Mullings. You're represented by your representative?

MR. CELLA: Jonathan Cella.

CHAIRMAN MANLEY: Mr. Cella, are you going to present this evening?

MR. CELLA: I'll give a small presentation.

CHAIRMAN MANLEY: Thank you.

MR. CELLA: We're here to convert the existing basement of the existing residence into an accessory apartment which would be owner occupied. The building would remain owner occupied. The existing building is three bedrooms and he would remove one bedroom on the upstairs living space and add one bedroom in the basement, keeping the total bedroom count at three.

The existing residence is serviced by an on-site well and on-site septic system.

Why we're here is we require four area variances, one for the lot area, one for the side yard setback, one for the total side yard setback and one for the lot width.

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DEAN MULLINGS

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There's no physical change to the property, so these are all pre-existing non-conforming issues. The only physical change we present -- propose on the property would be maybe creating some kind of walkway from the driveway around back, the existing walkout door on the eastern side of the property which would provide the access to the apartment.

So the existing -- the required lot area is 40,000 square feet and we provide 22,000. The lot width, required is 150, we provide 145. The side yard requirement is 30, we provide 18. The total side yard is 80 where we provide 67.

The plans for the accessory apartment were provided to the building department, probably under the old building code. If we get approval they'd be updated to conform to the 2015 residential code.

On site we have sufficient parking for both the accessory and the existing residence.

CHAIRMAN MANLEY: Is there a plan to expand the parking area in the front? If you look at the parking area, it would be tight turning a car around there with more than two

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DEAN MULLINGS

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vehicles.

MR. CELLA: We're not proposing to expand the driveway, no. He has the garage. He might expand the driveway in the future but at this time we're not proposing that.

CHAIRMAN MANLEY: I mean two cars might fit but if you wind up with three it's going to be very tight there to get cars in and out. You're right on 300 there and that's right by the hill. Coming down that hill -- they come down that hill pretty fast.

MR. CELLA: If we do expand the driveway no other variances would be required because I believe we're at 12 percent lot coverage. We're able to go up to 30 percent. So in case if we do feel we need to expand the driveway, that can be done.

CHAIRMAN MANLEY: I'm just thinking from a safety perspective.

MR. CELLA: It's a good point.

CHAIRMAN MANLEY: You have to turn the car around in that driveway. When I was there I had to turn the car around. I had to come in and then I backed in like this and came out because

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DEAN MULLINGS

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there was no way I was going to back out onto
300.

MR. CELLA: If we do expand the
driveway there would be no impacts to any of the
existing septic or well. It would be a feasible
thing to do.

CHAIRMAN MANLEY: Do any of the Members
of the Board have any questions for the applicant
or the applicant's representative?

MR. BELL: I have one. You mentioned
that right now it's a three bedroom.

MR. CELLA: Correct.

MR. BELL: You're looking to put the
additional one in the basement but remove one?

MR. CELLA: We'd remove the closet from
one bedroom, making -- therefore it wouldn't be a
bedroom anymore, and then that would be, whether
it be an office or a den or a study.

MR. BELL: I understand.

CHAIRMAN MANLEY: Mr. Canfield, did you
have a comment or a question?

MR. CANFIELD: Just one thing,
Jonathan. State Route 300 is a 60 foot setback,
not 50. 185-18, additional yard requirements.

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DEAN MULLINGS

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MR. CELLA: I missed that. So we would require a fifth area variance for front yard setback. We have 57 as opposed to the 60 that's required. Thank you very much.

MR. LEVIN: It's 300 back here or 300 over here? I don't see how it's laid out.

MR. CELLA: I'm sorry. This is the access. So this would be the front of the house. This is New York State Route 300 here and this would be 32 over here. I'm sorry. 300 and then 32. So right here is -- this is the existing door into the walkout basement.

MR. LEVIN: Okay.

MR. DONOVAN: So in terms of the front yard variance, the code indicates that one of the things you have to meet is 185-37 C(2). The lot meets the requirements of the zoning district for a single-family dwelling. There's sufficient notice to encompass the additional variance that's required. You don't need to reapply or re-notice. This falls within the parameters of the variance that's already been requested.

MR. CELLA: Thank you.

CHAIRMAN MANLEY: This property being

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DEAN MULLINGS

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within 500 feet of New York State 300 did have to go to the County. Like I said, we are waiting for that to come back. We'll put it on the next agenda.

Do any of the other Board Members have any questions, comments with regard to this application?

(No response.)

CHAIRMAN MANLEY: If not, I'll go out to the public. Is there anybody here from the public with regard to this application before the Board this evening?

(No response.)

CHAIRMAN MANLEY: Hearing none, I'll come back to the Board and ask the Board is there a motion from the Board to close the public hearing?

Counsel is suggesting we just keep the public hearing open until such time as we hear back from the County in the event we need to enter their comments into the record.

At this point do I have a motion to keep the public hearing open and to continue it next month?

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DEAN MULLINGS

MR. MASTEN: I'll make a motion.

MR. BELL: I'll second it.

CHAIRMAN MANLEY: So we have a motion from Mr. Masten and a second from --

MR. BELL: I'll second it.

CHAIRMAN MANLEY: -- Mr. Bell. Roll call vote. Darrell Bell?

MR. BELL: Yes.

CHAIRMAN MANLEY: Richard Levin?

MR. LEVIN: Yes.

CHAIRMAN MANLEY: Michael Maher is absent. John Masten?

MR. MASTEN: Yes.

CHAIRMAN MANLEY: John McKelvey?

MR. MCKELVEY: Yes.

CHAIRMAN MANLEY: Darrin Scalzo?

MR. SCALZO: Yes.

CHAIRMAN MANLEY: And myself yes. The public hearing is kept open until next month.

MR. CELLA: Thank you.

MR. MULLINGS: Thank you.

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

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CHAIRMAN MANLEY: At this point in our meeting I would like to ask before proceeding, the Board would like to take a short adjournment to confer with Counsel regarding legal questions raised by tonight's applications. If I could ask you, in the interest of time, if you could wait out in the hallway. As soon as we're completed we'll call you in very shortly.

(A recess was taken from 8:03 p.m. until 8:17 p.m.)

* * *

PET HOTEL & DAY CARE
Board Business - Project Update

CHAIRMAN MANLEY: At this point in the meeting, just any final items. There are some announcements. One is we have a notice here. This actually went to John Ewasutyn, Chairman of the Town of Newburgh Planning Board. "Dear Mr. Chairman, as an update to the project before the Town of Newburgh Planning Board we have resubmitted to the New York State

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Department of Environmental Conservation to obtain a SPDES permit. We are awaiting notice for a notice of complete application in order to proceed with them. With respect to the New York State DOT, we submitted a Perm 33 to the New York State DOT Newburgh regional office to obtain an entrance permit. Additionally, we are submitting a utility permit application for installation of a six-inch fire line which must traverse Route 9W. Thank you. Very truly yours, Thomas M. Depuy, PE." This is for the proposed pet hotel and daycare facility located at Section 9, Block 3, Lots 22.2, 23 and 22.1 in the Town of Newburgh. This is carbon copied to the Town of Newburgh ZBA because they need to keep us updated with regard to their Planning Board activity because of the variance that they requested.

Did anybody else have any other comments or questions?

(No response.)

CHAIRMAN MANLEY: We'll postpone our minutes from the last meeting until such time as Betty returns. We'll take care of that next

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month.

As far as the application of Mr. Mullings, that will have to wait until next month.

Do we have a motion to adjourn the hearing?

MR. BELL: I'll make a motion to adjourn.

MR. MASTEN: I'll second it.

CHAIRMAN MANLEY: I have a motion to adjourn from Mr. Bell and a second from Mr. Masten. All in favor?

MR. BELL: Aye.

MR. MASTEN: Aye.

MR. McKELVEY: Aye.

MR. LEVIN: Aye.

MR. SCALZO: Aye.

CHAIRMAN MANLEY: Aye.

The meeting is closed. Thank you.

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

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

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

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

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

IN WITNESS WHEREOF, I have hereunto
set my hand this 6th day of October 2017.

Michelle Conero

MICHELLE CONERO