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

----- X

In the Matter of

KRISHNA K. DIXIT, M.D.

338 Meadow Avenue
Section 66; Block 1; Lot 3
IB Zone

----- X

AREA & PARKING VARIANCE

Date: January 26, 2006
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: GRACE CARDONE, Chairperson
JAMES E. MANLEY, JR.
RUTH J. EATON
JOHN McKELVEY
ROBERT A. KUNKEL
RON HUGHES

ALSO PRESENT: CAROLYN MARTINI, ESQ.
BETTY GENNARELLI, ZBA Secretary
GERALD CANFIELD, Code Compliance
Supervisor

----- X

MICHELLE L. CONERO
Court Reporter
72 River Glen Road
Wallkill, New York 12589
(845)895-3018

KRISHNA K. DIXIT, M.D.

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CHAIRPERSON CARDONE: I would like to call the meeting of the ZBA to order. The first order of business is a public hearing scheduled for today. The procedure of the Board is that the applicant will be called upon to step forward, state his request and explain why it should be granted. The Board may then ask the applicant any questions they have. Members of the public will then be invited to ask questions or make comments. The Board may adjourn to confer with counsel after the public hearings have been completed. We will then try to render a decision this evening, however we have up to sixty-two days to render a decision.

Before we call the first person, I would like to welcome our new Board Member, Jim Manley.

MR. MANLEY: Thank you, Ms. Cardone.

CHAIRPERSON CARDONE: We'll start with a roll call.

MS. GENNARELLI: Ron Hughes.

MR. HUGHES: Here.

MS. GENNARELLI: John McKelvey.

MR. McKELVEY: Here.

KRISHNA K. DIXIT, M.D.

1 3
2 MS. GENNARELLI: Ruth Eaton.
3 MS. EATON: Here.
4 MS. GENNARELLI: James Manley.
5 MR. MANLEY: Here.
6 MS. GENNARELLI: Robert Kunkel.
7 (Mr. Kunkel entering room.)
8 MR. HUGHES: He's here.
9 MS. GENNARELLI: Robert Kunkel.
10 CHAIRPERSON CARDONE: Just say here.
11 MR. KUNKEL: Here.
12 MS. GENNARELLI: Michael Maher.
13 (No response.)
14 MS. GENNARELLI: Grace Cardone.
15 CHAIRPERSON CARDONE: Here.
16 MS. GENNARELLI: Okay.
17 CHAIRPERSON CARDONE: Our first
18 applicant this evening is Krishna Dixit.
19 MR. SHAW: Thank you. For the record,
20 my name is Gregory Shaw, I'm with Shaw
21 Engineering representing Dr. Krishna tonight in
22 this presentation before the Board. Dr. Krishna
23 -- excuse me. Dr. Dixit owns an 18,000 square
24 foot parcel on the north side of Meadow Avenue
25 just maybe about 1,200 feet east of Union Avenue.

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The property is in the interchange business zone as is the properties to the rear of him and the properties across the street on Meadow Avenue.

We have made application before the Planning Board to construct a new addition for Dr. Dixit, which will be for his sole use, on the parcel and to reconstruct the parking lot. The existing building is just a little bit shy of 1,200 square feet and the new addition is about 1,600 square feet. So all totaled you're looking at about a 2,800 square foot building on this 18,000 square foot lot.

The variances that we're requesting before you is for a minimum side yard of 1 where we are obligated to provide 30 feet and we are providing 12, a minimum side yard -- excuse me -- of both where it's required at 80 feet and we're providing a total of 47, and a rear yard depth where we are obligated to provide 60 and we're providing 39.

Finally with respect to parking, based upon 1 space per 200 square feet, we're obligated to provide 14 spaces and we're providing 12. So we're looking for a variance of 2 parking spaces

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The neighborhood of Dr. Dixit's property is somewhat unique. It's in an interchange business zone but it has different uses. Across the street you have residential homes, to the west of it you have a home, but the closer you move to Union Avenue it turns into commercial. Immediately to the east of us there are a couple commercial lots. You have the Construction Employers of the Hudson Valley, they have a parcel, and immediately to the east of them you have Homestead Abstract, again a commercial use in that area.

The variances that we are asking in our opinion are not substantial and are consistent with the neighborhood. With respect to the side yard 1, we are matching the existing side yard setback of the existing building. Actually, we're gaining a foot. The existing side yard 1 is 11 feet and the new addition will be off that property line 12 feet. With respect to the other side yard, which is conventionally 50 feet, that being 30 for both -- 80 for both minus 30 for one side yard, the other side yard is 50, we're

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really providing 35. So effectively we're 15 feet shy with respect to that side yard setback. With respect to the rear which butts up against Showtime Cinemas, we're obligated to provide 60 feet and we're providing 39.

With respect to impacts, the rear of Showtime Cinemas, while it's a little bit more than 60 feet it's presently a blank masonry wall which is the back of the cinema, so there really wouldn't be any impact on that as a neighbor. Looking at our neighbors and the variances that we're requesting, again they're not substantial. The Construction Employers of the Hudson Valley, their building is about 2,650 square feet in size. Again, our addition on the existing building is going to be about 2,800 square feet, about 150 feet more. With respect to their setbacks, both of their setbacks total a total of 47 feet which is identical to what we're proposing. So again, we feel that we have no impact on that property.

Obtaining a variance. These variances that we're requesting, it is really our only option with respect to putting any addition onto

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this building. When this lot was created and when the existing building was originally built it was consistent with the zoning that's in the Town. I'm assuming that's about 25 years ago. Since that time the Town has changed its zoning. It's increased its lot area. Now you're requiring 40,000 square feet. It increased its lot width and it increased its lot depth.

Variances are our only option because the setbacks are quite substantial, and again that's not to any shortcoming or fault of my client, it's just that the Town enlarged the requirements for any lots of this use in this particular zone. So we feel that we are not impacting the neighborhood. It's commercial, it's zoned properly, it's just that the lot is too small, and it's small due to the fact that the Town had an upgrade to the Zoning Ordinance over the years. We feel that even with the construction of the new addition and the variances that we're requesting it's consistent with what's in the existing neighborhood.

Thank you.

CHAIRPERSON CARDONE: Do we have any

KRISHNA K. DIXIT, M.D.

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questions from the Board?

MS. EATON: I have a question regarding the parking. Would it be possible to put any parking spaces in the rear of the building for employees only?

MR. SHAW: Possibly. I would have to -- I'd have to work with the parking lot a little bit. Very simply, I would have to pull a narrow driveway through here, have the spaces face to the west and then back out and then pull back out again.

MS. EATON: Mainly for employees I'm thinking, not patients.

MR. SHAW: You may be able to do that, but at the same point in time you may lose a space or two in order to get the drive through where the handicap spaces are. So it's possible but I'm not too optimistic that it will be worth the effort because I very well may lose two in order to get the drive through. I'm sorry, I'm just thinking off the top of my head.

CHAIRPERSON CARDONE: How many employees are you talking about?

MR. SHAW: Doctor, how many employees

KRISHNA K. DIXIT, M.D.

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do you have?

DR. DIXIT: Two employees.

MR. SHAW: With the addition after it's built how many employees will you have?

DR. DIXIT: The same.

MR. SHAW: Two plus how many physicians?

DR. DIXIT: One.

MR. SHAW: One. A total of three.

CHAIRPERSON CARDONE: A total of three?

MR. SHAW: Yes. Again -- I'll point out again that this is not for rental, this is for Dr. Dixit's exclusive use, okay.

CHAIRPERSON CARDONE: Just one doctor?

MR. SHAW: Just one doctor.

MR. MANLEY: How long has the applicant been at the location, the current location?

MR. SHAW: Doctor, how long have you been there for?

DR. DIXIT: Six, seven months.

MR. SHAW: Six, seven months sir.

MR. MANLEY: Is there any anticipation that the applicant's business is going to grow beyond what it currently is once -- if the

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addition is approved is there any anticipation
that the practice will grow beyond what --

MR. SHAW: I've spoken about that with
the doctor and his answer was no. I've been in
his office, it's very tight quarters, all right.
He needs more space in order for his business to
at least function, not necessarily grow, and --
no, there would not be a substantial increase to
his practice. Again, it would be for his sole
use. He doesn't plan on bringing another
physician into his practice. He's making quite a
substantial investment into the property. He's
redoing the entire parking lot and the addition.
He's not going to put that kind of money in and
then find out that it's not going to work for his
practice, that he's not going to be able to serve
his patients and that they're going to be parking
on the street to use an extreme. It just doesn't
make sense.

MR. McKELVEY: We could stipulate he
couldn't use street parking, couldn't we?

CHAIRPERSON CARDONE: It's not
permitted.

MR. McKELVEY: Yeah.

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MR. SHAW: Again, the variance that we're asking for for parking is only 2 spaces. We were here before this Board two months ago and the request was more substantial. We've knocked it down considerably.

CHAIRPERSON CARDONE: You requested 17 spaces -- it was required 17 and you were asking for 12.

MR. SHAW: Correct. So we had a deficiency of 5. We reduced the building down by 600 square feet, increased the setbacks and reduced the number of parking spaces that we need for a variance.

MR. MANLEY: How many square feet did you say that the building trades were next door?

MR. SHAW: 2,650 square feet. Ours all totaled will be just a little less than 2,800 square feet.

CHAIRPERSON CARDONE: Any other questions from the Board?

MR. HUGHES: I have some questions, and maybe Jerry can clarify this. To me it seems like there's another request here that should be asked for for a variance, and that's a

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2 furtherance of a nonconformity in the new
3 addition. Is that so? They're looking to put
4 that new addition over even with the edge of the
5 building, and to me that's furthering a non-
6 conformity because it's not where it belongs now
7 to begin with, which is only one of the questions
8 I have.

9 MR. CANFIELD: You're partially
10 correct, Ron. If the applicant were expanding an
11 existing nonconforming use he would be before you
12 for that. Essentially that request is basically
13 your extending the linear footage of a deficient
14 setback, okay. Basically that's exactly what Mr.
15 Shaw is asking for. So to list that as a
16 separate variance would basically be a mute point
17 because that's exactly what he's asking for, a
18 variance for that setback.

19 MR. HUGHES: Well, one of my concerns
20 was I don't want to go through this proceeding
21 and find out we overlooked something where
22 they'll have to end up back here again. So
23 having said that and clarifying that part of the
24 situation; yes, you are right. You were here a
25 couple months ago and you say it's not

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significant but you have 17,971 square feet and
you're supposed to have 40,000. That's a
deficiency of over a half an acre, and I don't
think that that's not substantial. That is
substantial.

Going down the list, you haven't hit
one in nine items here. Everything is deficient.
You're supposed to have 150 feet and you have
100. You're supposed to have 30 feet and you
have 12. 80 feet and you have 47, and on and on.
Your coverage of the lot is 40 -- 80 percent and
the maximum by law you can only have 40. So
you've got a lot of things here working against
you and I don't agree it's been reduced enough to
have the impacts that I'm looking for for this
not to stick out in this neighborhood.

MR. SHAW: Well, let me just touch on a
couple of them. With respect to lot width, lot
area and lot depth, that exists, okay. When the
Town created this lot it was consistent with
zoning. By virtue of the fact that them having
changed the zoning and now making this lot
nonconforming, it's treated as an existing
nonconforming condition. We shouldn't be

KRISHNA K. DIXIT, M.D.

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2 penalized for the lot because the Town changed
3 the rules after the lot was created.
4 MR. HUGHES: Mr. Shaw, the doctor just
5 told us he's been here six months. This didn't
6 come up in the middle of the night.
7 MR. SHAW: That's a separate issue. I
8 do not feel that these areas, both lot area, lot
9 width and lot depth, should have a variance
10 required on it. I think that's the point you
11 just made previously, that you felt that they
12 should have a variance request made for those
13 three items. My response is no, they're not.
14 They're treated as an existing nonconforming
15 condition.
16 Am I right on that point, Mr. Canfield?
17 MR. CANFIELD: Yes. I would agree with
18 Mr. Shaw there again. The lot size as it is is
19 not being changed. It can't be changed,
20 obviously.
21 MR. HUGHES: I understand that.
22 MR. CANFIELD: The zoning is what has
23 changed, okay.
24 MR. HUGHES: Not in the last six months
25 it didn't change.

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MR. CANFIELD: Not in the last six months, but regardless whether it be this applicant or any applicant that would come in, as the lot was originally created that's what was in existence at the time so that allowed that lot to be that size. Now with the upscale of zoning it has changed the lot size requirements but you've already got a building on that lot that was created many, many years ago, okay. So when you change the footprint of the building, that's where you're making changes to existing nonconformities, okay. It would be my opinion that it wouldn't apply to lot size and that type thing because that's a constant, it's not going to change.

MR. HUGHES: The lot is going to be the same. To me 22,000 feet deficient on the lot itself is --

MR. CANFIELD: What is actually changing is the footprint of the building, and expanding an existing nonconforming comes into where you increase that degree of nonconformity.

MR. HUGHES: Mm'hm'. Thanks for making that clear.

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MR. MANLEY: Mr. Shaw, with respect to the map that's been provided here, on the lower left-hand corner where it says existing building --

MR. SHAW: Exist -- okay.

MR. MANLEY: Lower left-hand corner of the existing building indicates 11 feet from the property line apparently to the edge of the building.

MR. SHAW: Correct.

MR. MANLEY: But if you go to the northwestern corner of the building it says that the setback is 12 feet, the side yard setback. Does the property actually V off a little bit to the left?

MR. SHAW: Yes. That's the reason for the difference. The wall is not parallel with the property line.

MR. MANLEY: Okay. Thank you.

CHAIRPERSON CARDONE: Do we have any other questions from the Board?

(No verbal response.)

CHAIRPERSON CARDONE: Do we have any questions or comments from the public? If so,

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please stand, state your name and address.

MS. MANDARINO: Josefa Mandarino, 15 Starrow Drive. Just a couple of things. I know you said you can't change, the lot is too small, but maybe the building is too large. The setback of 12 feet when you're supposed to have 30 doesn't seem right to me. Also, you mentioned possibly parking, you know, in the front on the street. There is no parking on that street at all. There's no parking allowed there as it stands now. That's it.

CHAIRPERSON CARDONE: Thank you. Any other comments?

(No verbal response.)

CHAIRPERSON CARDONE: If not, I declare this part -- one more, Mr. Canfield?

MR. CANFIELD: Just one thing. If I could bring to Ron Hughes' attention 185-19, I'll bring it up and you can take a look at it, and it deals directly with nonconformity of bulk requirements. This particular applicant falls into that category of an alteration on the addition. It's right here. Essentially it says that it is permitted. So the existing lot

KRISHNA K. DIXIT, M.D.

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2 conditions or lot size basically is exempt as an
3 issue as nonconforming.
4 CHAIRPERSON CARDONE: Thank you.
5 MR. HUGHES: Well, may I read this?
6 CHAIRPERSON CARDONE: Sure.
7 MR. HUGHES: Normal maintenance and
8 repair, structural alteration, relocation,
9 reconstruction or enlargement of a building which
10 does not house a nonconforming use.
11 MR. CANFIELD: Which in this case it's
12 not a nonconforming use, it is permitted in that
13 zone.
14 MR. HUGHES: But is nonconforming as to
15 the district regulations for lot area and width,
16 lot depth, side yards and height. Habitable
17 floor area or other such dimensional regulation
18 is permitted if the same does not increase or
19 create a new nonconformity. To me I think it's
20 making a new nonconformity. Thanks for bringing
21 that to my attention.
22 CHAIRPERSON CARDONE: Any other
23 questions or comments?
24 (No verbal response.)
25 CHAIRPERSON CARDONE: If not, I declare

KRISHNA K. DIXIT, M.D.

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2 this part of the hearing closed. Thank you.

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4 (Time noted: 7:18 p.m.)
5 (Resumption for decision: 8:47 p.m.)
6

7 DECISION RENDERED AS FOLLOWS:

8 CHAIRPERSON CARDONE: The Board is
9 resuming its regular meeting.

10 On our first application, Krishna Dixit
11 at 338 Meadow Avenue, this was a re-application
12 for an area variance and a parking variance to
13 erect an addition on an existing building.

14 Do we have discussion on this
15 application?

16 (No verbal response.)

17 CHAIRPERSON CARDONE: This is a Type II
18 under SEQRA.

19 Any discussion on this application?

20 MR. HUGHES: Yes. To me -- this
21 applicant was before us before. They've improved
22 a little bit on their position by reducing the
23 size of the additional building but I feel that
24 with the residences across the street and the
25 neighborhood, that it's asking for too much.

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It's 23,000 square feet deficient, which is over a half an acre, and there's lots of other things that are deficient there. It's just too much in a tiny spot.

CHAIRPERSON CARDONE: Any other comments from the Board?

MR. MANLEY: I would just like to note the parking is definitely an issue. I was there today and there were three open vacant spots out of all the spots that are there now. I'm pretty certain that there's going to be additional spaces that are going to be needed. So I have a concern with the parking.

CHAIRPERSON CARDONE: Do we have a motion for approval on this application?

(No verbal response.)

CHAIRPERSON CARDONE: Do we have a motion for disapproval on this application?

MR. HUGHES: I'll move that.

CHAIRPERSON CARDONE: Do I have a second?

MR. McKELVEY: I'll second.

CHAIRPERSON CARDONE: We have a motion and a second for disapproval on this application.

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All those in favor of disapproval please say aye.

MR. MANLEY: Aye.

MR. McKELVEY: Aye.

MR. KUNKEL: Aye.

MR. HUGHES: Aye.

CHAIRPERSON CARDONE: Aye.

Opposed?

MS. EATON: Aye, opposed.

CHAIRPERSON CARDONE: We have one
opposed?

MS. EATON: Yes.

CHAIRPERSON CARDONE: The motion for
disapproval is carried.

(Time noted: 8:50 p.m.)

CERTIFICATION

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: February 2, 2006

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

----- X

In the Matter of

MICHAEL STARACE

3 Gould Place
Section 2; Block 3; Lot 26.1
RR Zone

----- X

VARIANCE

Date: January 26, 2006
Time: 7:18 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: GRACE CARDONE, Chairperson
JAMES E. MANLEY, JR.
RUTH J. EATON
JOHN McKELVEY
ROBERT A. KUNKEL
RON HUGHES

ALSO PRESENT: CAROLYN MARTINI, ESQ.
BETTY GENNARELLI, ZBA Secretary
GERALD CANFIELD, Code Compliance
Supervisor

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MICHELLE L. CONERO
Court Reporter
72 River Glen Road
Wallkill, New York 12589
(845)895-3018

MICHAEL STARACE

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CHAIRPERSON CARDONE: Our next applicant is Michael Starace.

MS. GENNARELLI: Is this the original or a copy?

MR. BROWN: I think it's a copy.

MS. GENNARELLI: Can I get the original, please?

MR. BROWN: Sure. This is an application for an accessory two-car garage that was here last month. Since that time we shrunk the building down a little bit and reduced the height, so the request for variance is reduced. The free-standing two-car garage is 60 foot off the front yard but the code states that the setback for accessory structures should be at least half of the primary structure, which in this case is 102.7 feet. We meet the side yard setback for accessory structure which the code says is 5 feet and we're at 7.5. The building is 22 by 42 which is reduced from 23 by 43 previous. The actual square footage -- there's a typo on the plans -- should be 924. 924 square feet. The height now is 20 foot at the ridge. Last month we were at 26, so we reduced that one

MICHAEL STARACE

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substantially. Code max for accessory structure is at 15 feet.

We looked at other alternatives and oddly if we shifted this into this area here and attached it to the building the height limit would be 35 feet and we would meet the required setbacks. Again, the prior setback for a primary structure is 60 feet off the front yard.

I'm assuming that the four-car garage variance request is based upon there is a shed on the property. The house is a raised ranch that has a two-car garage on it. The shed has a garage door. It's not used for vehicles but it does look like --

CHAIRPERSON CARDONE: What is the square footage on that structure?

MR. BROWN: It's probably 9 by 12.

MR. STARACE: The shed. 9 by 20.

MR. BROWN: 9 by 20.

CHAIRPERSON CARDONE: That would give you 1,100 square feet for the accessory structure then.

MR. BROWN: If you add both together, yes.

MICHAEL STARACE

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CHAIRPERSON CARDONE: Which you would have to do. Yes.

MR. BROWN: Okay. That's the way it reads. That puts us at 104 square feet over the 1,000.

You want to keep that; right, Mike?

MR. STARACE: What's that?

MR. BROWN: You want to keep the shed?

MR. STARACE: Yeah. I spent a lot of money on that shed.

MR. BROWN: And again, we looked at alternatives but this is really the best place to put it. We don't want -- this is corner lot. We don't want to put it in front of the building or attach it to the building, which would meet the code requirements, because it would be unsightly and wouldn't really fit in with the character.

CHAIRPERSON CARDONE: As long as that shed has a garage door it's considered a garage. Is there any way to redesign that?

MR. STARACE: We can get rid of the door. I can take the garage door off.

MR. McKELVEY: You have two garages under the house; right?

MICHAEL STARACE

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MR. BROWN: Yeah. It's a raised ranch
with a two-car garage underneath.

CHAIRPERSON CARDONE: And then you
wouldn't have more than a four-vehicle garage?

MR. STARACE: Yes.

MR. BROWN: Correct.

CHAIRPERSON CARDONE: The height again?
Could you tell me the height again?

MR. BROWN: 20 foot to the ridge.
These were submitted.

MS. EATON: Will you use the existing
driveway?

MR. BROWN: There will be a little bit
more paving off the existing driveway, but yes.

MS. EATON: That's the only driveway?

MR. BROWN: Right. There's no new
driveway. The garage doors will be facing this
way. This will be facing here. You just add a
little bit.

MS. EATON: And this is the other shed
which wasn't shown on this map?

MR. BROWN: Right.

MS. EATON: And the swimming pool is
not indicated on this map either.

MICHAEL STARACE

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MR. BROWN: Right.

MS. EATON: That all should have been shown. I believe the question was asked last time you were here, this is not going to be used for any business purposes whatsoever, it's all personal?

MR. BROWN: That's correct. The storage area and the attic has now been limited to 6.5 feet, so it's not usable for any living area or anything like that. We've also cut the height of the garage itself. It will just be used for the trucks for the business as parking only. There will be no work done on them.

MS. EATON: Electricity to the building?

MR. BROWN: Yes. Basic electricity just for lights and what not.

MS. EATON: Plumbing?

MR. BROWN: No.

MS. EATON: Thank you.

CHAIRPERSON CARDONE: I just need to make a correction here. According to the denial, the one-car garage that's currently there that you're calling the shed is 288 square feet.

MICHAEL STARACE

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MR. BROWN: 288?

MR. McKELVEY: That's what it says here.

CHAIRPERSON CARDONE: That would be a total of 1,212.

MR. MANLEY: I just have one question. It appears that there's a number of deficiencies to the submission tonight with respect to some omissions and inaccuracies. Do you have an explanation for that?

MR. BROWN: The site plan was based upon the last certified survey of the property at which time the surveyor did not pick those up or they weren't constructed. We would have to do, you know, a new survey which would be a little pricey, but if that's the Board's request we would be willing to do that.

MR. HUGHES: You have 10 foot on the first floor and 6 feet on the upstairs according to this.

MR. BROWN: 6.5 feet clear, yeah.

MR. HUGHES: And 10 feet on the main floor?

MR. BROWN: Of the garage, yes.

MICHAEL STARACE

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MR. HUGHES: Why such a high door?

MR. BROWN: The garage door is 9 feet.
We need room for the header. That's to clear the
work racks on the trucks.

MR. HUGHES: I have nothing else.

CHAIRPERSON CARDONE: Any other
questions from the Board?

(No verbal response.)

CHAIRPERSON CARDONE: Any questions or
comments from the public?

MR. MEHNERT: Yeah, I have a question.

CHAIRPERSON CARDONE: Could you state
your name and address, please.

MR. MEHNERT: I'm Dave Mehnert and I
live at 15 Gould Place. I'm two houses down from
Mike. I guess I'm wondering why the Board
doesn't -- why the zoning is that he can't build
his garage? Why -- what's the real problem? Is
he too close to the road? Is it too big? Is it
business use? I don't understand.

CHAIRPERSON CARDONE: The square
footage is over the allowed amount, which is
1,000 square feet. That is considered a front
yard and you're not allowed to have an accessory

MICHAEL STARACE

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2 building in the front yard, and it's over the
3 height that's allowed. The height that's allowed
4 is 15 feet and he wants 20 feet.

5 MR. MEHNERT: If it was only 15 foot
6 tall and everything was the same he could build
7 it?

8 CHAIRPERSON CARDONE: Right. If it
9 were under the 1,000 square feet and were not in
10 a front yard and it was under 15 feet; yes, he
11 would be able to build it.

12 MR. MEHNERT: Okay. I don't really
13 have a problem with it.

14 CHAIRPERSON CARDONE: Okay. Any other
15 questions or comments from the public?

16 MR. GLOVER: I have something to say
17 about it. I actually live right across the
18 street from where the garage is planned.

19 CHAIRPERSON CARDONE: State your name
20 and address.

21 MR. GLOVER: Richard Glover, 78 East
22 Road. I have no problem whatsoever with it
23 height wise. It wouldn't be in -- my back deck
24 actually looks right into Mike's front yard.

25 CHAIRPERSON CARDONE: Thank you.

MICHAEL STARACE

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Any other questions or comments?
(No verbal response.)
CHAIRPERSON CARDONE: If not, I declare
this part of the hearing closed. Thank you.

(Time noted: 7:30 p.m.)
(Resumption for decision: 8:50 p.m.)

DECISION RENDERED AS FOLLOWS:
CHAIRPERSON CARDONE: On the
application of Michael Starace at 3 Gould
Place, this was a re-application for a
variance for permission to erect a two-car
garage on a corner lot which is considered a
front yard, for a height variance, square
footage area, and also keeping more than a
four-car garage. This is a Type II action
under SEQRA.
Do we have discussion on this
application?
MR. McKELVEY: He's well over the
square footage. Is there a possible way that he
could cut it down? We're figuring 12 -- what did
we figure?

MICHAEL STARACE

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MR. HUGHES: 1,240.

CHAIRPERSON CARDONE: 1,212.

MR. McKELVEY: 1,212 was the total.

MR. MANLEY: I think in keeping with the character of the neighborhood I would like to see the height come down a little bit, just a little bit more, as opposed to -- instead of 20 I could probably live with around 18 feet in height. Bring it into a little bit more of conformity.

CHAIRPERSON CARDONE: And the applicant also stated that he would be willing to redesign the shed so that it was indeed a shed and not a garage. I would think that would have to be considered also.

Is the applicant still here?

MR. STARACE: Could I speak?

CHAIRPERSON CARDONE: Yes.

MR. STARACE: If the shed becomes a shed than my square footage problem --

CHAIRPERSON CARDONE: If it's a shed it still counts because it's an accessory building.

MR. STARACE: Okay.

CHAIRPERSON CARDONE: It's a total of

MICHAEL STARACE

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2 1,000 square feet of accessory buildings --
3 building or buildings.

4 MR. STARACE: Okay.

5 CHAIRPERSON CARDONE: What about the
6 suggestion for the height coming down to 18 feet?

7 MR. STARACE: Anything can happen. I
8 don't know if you got my letter. I included a
9 letter. I just have -- I have a raised ranch. I
10 should have probably spent the extra \$30,000 and
11 put a basement in the house and I wouldn't have a
12 problem with this, but the lot is a -- you don't
13 know what you're going to encounter. We're a
14 growing family, we have growing needs, we need
15 space. I guess 18 feet -- I don't know what
16 that's going to give me for storage. I'm not
17 going to be able to walk up there.

18 CHAIRPERSON CARDONE: Well, if you drop
19 the first floor back -- if you drop the first
20 floor back to -- you have it at 10 feet now. If
21 you drop that back to --

22 MR. STARACE: I have a van I use for
23 work. It's got a lot of racks. With the racks
24 it's 8 foot 6 clearance. That means I need a 9-
25 foot door. That means I need a 1-foot header.

MICHAEL STARACE

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2 That means I need a 10-foot ceiling. It was
3 originally 12 and we dropped that down. I really
4 can't -- I mean I'm kind of doing a good thing
5 for the neighborhood by putting my van inside. I
6 have two neighbors --

7 CHAIRPERSON CARDONE: We understand
8 that.

9 MR. STARACE: -- right next to me that
10 do not have a problem with this.

11 MR. MANLEY: I think the thing too you
12 have to look at is neighborhoods and neighbors
13 change. What's acceptable to one neighbor today,
14 down the road if a house is sold the new people
15 moving in or people that move in and out, if you
16 sell your home. You have to think about the
17 character of the neighborhood down the road.

18 MR. STARACE: I am thinking of the
19 character. I build nice stuff. I've taken
20 garbage out of East Road and turned it into nice
21 stuff. There's no getting away from that. I'm a
22 class act. I don't keep things shabby. It's not
23 going to be ugly. It's going to look like the
24 shed. There's really no merit to that. Like I
25 said, it's not big, big. It's a garage. There's

MICHAEL STARACE

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nothing funky about it. It's a garage with windows.

MR. McKELVEY: But if you do it and the rest of the neighbors want to do the same thing, --

CHAIRPERSON CARDONE: The neighborhood has changed.

MR. McKELVEY: -- the neighborhood is going to change drastically.

MR. STARACE: Let's take Pressler Road for example. There's two of them on there well over 20 feet. One is a couple years old. Let's take the gentleman down the road right here in the white house. He's well over 20 feet. Now he's added a breezeway. That was completed in the summer. So I'm not really an exception to the rule. I am but I'm not.

CHAIRPERSON CARDONE: I think we can close discussion on this. We really just needed an answer to the question --

MR. STARACE: Okay.

CHAIRPERSON CARDONE: -- about the height.

MR. STARACE: What would you like for

MICHAEL STARACE

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me to do? 18 feet?

MR. HUGHES: Can I speak?

CHAIRPERSON CARDONE: Yes.

MR. HUGHES: Maybe I can give a different angle to you. We're trying to bring it down so that you can get what you're looking for. We're a review board. Our intent, and our scope, and our focus is trained on keeping the zoning what it is Town wide, not just for your neighborhood or the next guy. So what our questions are basically are what can you live with that you can cut down where you'll still be in conformance and not exceed your 1,000 feet, and, if so, maybe only 50 or 100 over. We might be apt to grant you that. When you're 200 and 300 feet over and 6 or 8 feet over it's hard for us to say yes to that. When you come to the Zoning Board something is illegal to begin with or you wouldn't be here. We're a review board. We review what's coming before us and why the building inspector rejected your permit application.

MR. STARACE: Okay.

MR. HUGHES: So if there's something we

MICHAEL STARACE

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can do where you can do this and this and this --

CHAIRPERSON CARDONE: And it's not so substantial. It is substantial what you're asking for.

MR. HUGHES: You're asking for some substantial stuff. The feet is supposed to be 15, you were looking for 26 originally. We're asking you to come down to 18.

MR. STARACE: If I'm not going to have 20 feet I could probably go 15 feet and call it a day.

MR. HUGHES: What about 18?

MR. STARACE: I mean it's something.

MR. HUGHES: Just so you understand and everybody, we're not trying to cut anybody off. We're supposed to stay in compliance with what the zoning provides.

MR. STARACE: I don't know if 18 is going to give me what I need.

MR. HUGHES: If you did 10 feet and 8 feet to the peak, 6 feet on the corners, you ought to be able to stand up in there, even right up against the wall. 6, 12.

MR. STARACE: I don't know, I'm not a

MICHAEL STARACE

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builder.

MR. HUGHES: So am I. I build, too.

MR. STARACE: I'm not a builder.

MR. HUGHES: Do the numbers. With a 6,
12 pitch, 6 feet at the sides.

MR. STARACE: It doesn't have a 6 foot
now? I don't know what he's got now.

MR. HUGHES: I don't know. I didn't
read that.

MR. STARACE: Sure.

MR. HUGHES: Work your numbers out.
Maybe you want to reconfigure.

MR. STARACE: Yeah. If I can stand up
in there. I'm only 5 foot 8. If I can get 6,
that would be great. That would be wonderful.

MR. HUGHES: I think you need to answer
Mr. Manley's question about that 18 foot --

MR. STARACE: Yeah. If you want me to
answer; 18, I can live with that.

MR. HUGHES: What are the real
dimensions he can be in compliance with if you
add 288 on that garage?

CHAIRPERSON CARDONE: It's 212 over.
If we're cutting back on the height, that takes

MICHAEL STARACE

1 40
2 away part of what he's asking for.
3 MR. HUGHES: Substantiality.
4 CHAIRPERSON CARDONE: It's not
5 substantial.
6 Do I have a motion for approval on this
7 application?
8 MR. HUGHES: I would feel more
9 comfortable if the conditions were spelled out
10 more clearly.
11 CHAIRPERSON CARDONE: Okay.
12 MR. HUGHES: 20 by 40 by 18. Can you
13 live with that?
14 MR. STARACE: Yeah.
15 MR. HUGHES: Mr. Manley, did you have
16 something you wanted to add onto that?
17 MR. MANLEY: I'm happy with the 20 by
18 40.
19 MR. HUGHES: That gives him 800. He's
20 got 288.
21 MR. MANLEY: 20 by 40 by 18 high.
22 MR. HUGHES: Yup.
23 MR. MANLEY: The only other condition
24 was the --
25 MR. HUGHES: Then he's 28 square feet

MICHAEL STARACE

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over.

MR. MANLEY: -- the doorway.

MR. McKELVEY: He has to take the doorway off the shed.

MR. STARACE: If I'm allowed to do that now that I've lost the square feet? Do I have to go through that expense?

MR. HUGHES: The four-car thing.

MR. STARACE: All right. No problem.

MR. McKELVEY: Four-car maximum.

MR. STARACE: How about if I put a smaller door there where a car can't go in? I can get my motorcycle in there.

MR. HUGHES: Sure.

MR. McKELVEY: As long as you can't get a car in there.

MR. STARACE: Okay. Fine.

MR. HUGHES: I have nothing further.

CHAIRPERSON CARDONE: Did we have a motion then?

MR. McKELVEY: On what he proposed?

CHAIRPERSON CARDONE: Right.

MR. HUGHES: With those conditions.

CHAIRPERSON CARDONE: With those

MICHAEL STARACE

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conditions.

MR. McKELVEY: You made a motion.

MR. KUNKEL: Is yours a motion for approval with those conditions?

MR. HUGHES: I was just working on the formula.

MR. McKELVEY: If it's acceptable. Do you accept --

MR. STARACE: That's fine with me.

CHAIRPERSON CARDONE: Do I have a second to that motion?

MR. KUNKEL: I'll second it.

CHAIRPERSON CARDONE: We have a motion for approval stating a height of 18 feet, --

MR. McKELVEY: 20 by 40.

CHAIRPERSON CARDONE: -- 20 by 40 and a change in the shed door.

MR. McKELVEY: To where you can't get a car in.

CHAIRPERSON CARDONE: All those in favor please say aye.

MR. MANLEY: Aye.

MS. EATON: Aye.

MR. McKELVEY: Aye.

MICHAEL STARACE

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MR. KUNKEL: Aye.

MR. HUGHES: Aye.

CHAIRPERSON CARDONE: Aye.

Opposed?

(No verbal response.)

CHAIRPERSON CARDONE: The motion is
carried.

MR. STARACE: Thank you very much.

(Time noted: 9:00 p.m.)

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CERTIFICATION

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: February 2, 2006

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

----- X

In the Matter of

RICHARD MITCHETTI

444 South Plank Road
Section 52; Block 5; Lot 1
B Zone

----- X

VARIANCE

Date: January 26, 2006
Time: 7:30 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: GRACE CARDONE, Chairperson
JAMES E. MANLEY, JR.
RUTH J. EATON
JOHN McKELVEY
ROBERT A. KUNKEL
RON HUGHES

ALSO PRESENT: CAROLYN MARTINI, ESQ.
BETTY GENNARELLI, ZBA Secretary
GERALD CANFIELD, Code Compliance
Supervisor

----- X

MICHELLE L. CONERO
Court Reporter
72 River Glen Road
Wallkill, New York 12589
(845)895-3018

RICHARD MITCHETTI

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CHAIRPERSON CARDONE: Our next applicant is Richard Mitchetti.

MS. GENNARELLI: He didn't bring the affidavit.

MR. LYTLE: I can run back and get it if you want or I can make the presentation and bring it to you first thing in the morning.

CHAIRPERSON CARDONE: In the morning.

MR. McKELVEY: Could you do us a favor and move that out a little bit, it's hard to see.

MR. LYTLE: Good evening. My client is proposing a service garage located on Route 52. Currently he is actually across the street from where this proposed location is. We're here tonight, we're actually seeking two variances. One -- how it's written is actually for the sale of used cars. He is actually not looking to sell used cars at all at this facility. He is looking for this variance approval for the actual permission to actually use his dealer license. That is actually part of the same exact actually section under this requirement.

The reason for the actually reason -- the actual reason for the use of the dealer

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2 license is it allows him to, for his clients, go
3 to their actually individual clients' houses,
4 test drive their cars, bring them in to actually
5 allow actually to do actually a small inspection
6 of them prior to actually some of his clientele
7 actually purchasing the car for a family member.
8 These are some of the reasons actually that he
9 would need to use this service.

10 Again, there's nothing regarding
11 actually the sale of used cars. It is not
12 permitted actually at this facility. There's no
13 intention of doing that.

14 The second actually variance he's going
15 for is for the storage -- temporary storage of
16 actually cars. Currently right now the actual
17 allowable use is actually for three cars to be
18 stored. He has a service station. Some of the
19 things that he actually does in the service
20 station is actually he'll bring a car in, have
21 some repairs done, he'll wait for parts to come
22 overnight possibly, maybe a couple days depending
23 on what the issue might be, and he would actually
24 need to actually store that car on the site while
25 he's waiting for those parts. Three cars is

RICHARD MITCHETTI

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2 actually very limiting what he could or could not
3 do. He's actually going for actually 20 spaces.
4 The allowable is 3. Most of which would actually
5 be stored in the rear parking area actually
6 behind the building in a fenced-in area with
7 landscaping proposed around it. Actually the
8 landscaping would be reviewed by the Planning
9 Board and the Planning Board's landscape
10 architect. Some of the additional spaces would
11 be used in the front for somebody to drop off a
12 car in the evening to be serviced the next
13 following day.

14 Again, he has an existing facility
15 across the road currently. He is not the owner
16 of that actual facility. He's not really allowed
17 to make any improvements to that facility. He's
18 hoping to move across the street and make it
19 actually a better improvement to the
20 neighborhood, again with the current landscaping
21 requirements, fencing, the screened-in area in
22 the back.

23 Does the Board have any questions?

24 CHAIRPERSON CARDONE: Any questions
25 from the Board?

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MR. HUGHES: Is there any difference in this print than the last print you submitted?

MR. LYTLE: The print, no. Actually we submitted the application and again we really want to be specific about actually stating actually there's no used cars or used car sales. That was a big -- actually big actually issue last time we submitted. That is the reason for the resubmission. If the Board would actually like us as part of the approval to stipulate that on the plans, my client has no problem with doing that also so it could be enforced.

MR. MANLEY: Could you maybe elaborate a little bit for the Board as to how you feel that the alleged hardship is unique to this particular neighborhood and for the applicant?

MR. LYTLE: For the parking spaces or --

MR. MANLEY: For the approval of the use variance itself.

MR. LYTLE: Okay. There are only a couple service stations in the Town of Newburgh, only one in this area right here. Again, it's actually across the street. I believe that does

RICHARD MITCHETTI

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2 make it actually unique in nature because again
3 it is one of the only ones around the area
4 regarding that. The parking -- the parking is a
5 separate issue.

6 MR. MANLEY: What's going to happen
7 with the automotive shop that's currently across
8 the street if this one is built?

9 MR. LYTLE: Again, he's moving all his
10 facilities across the street. He is not the
11 owner. He has no plans on doing anything with
12 that facility.

13 MR. MANLEY: So that then would not
14 prevent someone else from coming in and opening
15 up a service station, correct, in the old
16 location?

17 MR. LYTLE: I believe you are correct.
18 His dealer license would be abandoned for that.
19 His dealer license is -- a new person coming
20 would actually have to apply for a new dealer
21 license which would not be approved or allowed
22 without coming for a variance. The services I
23 believe actually would be actually continued
24 possibly would be allowed.

25 MS. EATON: Does he own this property

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now?

MR. LYTLE: He owns the property across the street where we're proposing this facility. Yes, he does. He does not own where he's currently residing at -- working at.

MR. MANLEY: How long has he owned the property?

MR. LYTLE: He's owned this property I believe approximately two years. I can confirm that with him.

MS. EATON: Is he working out of that right now?

MR. LYTLE: I believe actually snow removal when he plows actually his current facility he puts cars and stuff over there. Right now I believe he actually sets cars over there for people to pick up. I believe that's all that's being done right now. He's actually limited on what he can do because there's not adequate parking.

MS. EATON: There's cars parked there today.

MR. LYTLE: Actually I believe they're actually for people to pick up during the night

RICHARD MITCHETTI

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2 or in the morning or waiting for parts. With the
3 new facility he would like to put them in the
4 back in the screened-in area with landscaping.
5 MR. McKELVEY: How many total cars is
6 he parking between the two properties now?
7 MR. LYTLE: I honestly don't know.
8 Do you know how many cars you're
9 parking between the two facilities, your
10 existing --
11 MR. MITCHETTI: About 20, 30 cars
12 average in and out all day long.
13 MR. LYTLE: How many cars would there
14 actually be overnight?
15 MR. MITCHETTI: In the facility, yes.
16 I can service them quicker and get them out.
17 Where I am now I only have two bays. Earlier
18 there were cars parked there today but they're
19 all gone. They are picked up. They were
20 customers' cars.
21 MR. McKELVEY: I go by there quite a
22 bit. There's cars there every day.
23 MR. MITCHETTI: They were there today.
24 Yes, there was. They were all picked up as of
25 tonight. 6:00 they were all gone. They were

RICHARD MITCHETTI

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2 completed jobs waiting for people to get done
3 work.

4 MS. EATON: They're all licensed cars?

5 MR. MITCHETTI: No. There's two
6 unlicensed over there I believe today. There's a
7 box truck, that's still there. There was one car
8 in front of the garage that was picked up today
9 also. It had no plates on it. All the rest of
10 the vehicles were licensed.

11 MS. EATON: Thank you.

12 MR. HUGHES: I have another question.
13 There's another deficiency. There's 6,000 square
14 feet on the minimum lot area that wasn't
15 requested in this variance that I can see. You
16 have -- you're supposed to have 47,500 and you
17 have 41,890.

18 MR. LYTLE: I believe that actually was
19 granted. We were actually here four to five
20 months ago and actually came in for two
21 variances. One was that area I believe and the
22 other was the frontage along Washington Avenue.
23 I believe we were approximately two inches short
24 at that point. We were granted both those
25 variances at that point.

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MR. HUGHES: So you already have that variance?

MR. LYTLE: That's correct. I believe it's actually stated on the plans on the first sheet.

MR. HUGHES: I didn't see it in the narrative.

MR. MANLEY: How do you plan to keep the overall character of the neighborhood without really altering it or changing it for the neighbors, specifically noise with regard to the property to the -- I guess it would be the lands of Rivera, I believe there's a red house directly behind the existing property, as well as Lincoln Avenue? There's a number of houses along Lincoln Avenue.

MR. LYTLE: Lincoln Avenue. I believe there's actually only one house on the east side of Lincoln Avenue. Lincoln Avenue is actually a paper street. Actually he's also in the process of actually taking over half of that street right now through the Town Board. That's in the process also.

Regarding the noise, through the

1
2 Planning Board and me talking and meeting with
3 Karen Arent there will be heavy landscaping along
4 the back actually buffer to that and shield that
5 from the neighbors behind them. We're actually
6 proposing actually a screened-in privacy fence.

7 MR. MANLEY: Where are you with respect
8 to taking over half of Lincoln Avenue? Has the
9 board been receptive to that?

10 MR. LYTLE: They have been very
11 receptive. Currently right now it's actually in
12 the surveyor's hands. They are drawing up the
13 actual individual deeds and maps that will
14 actually be associated to the people. Actually
15 Mark Taylor, the Town Board Attorney, actually he
16 is in the process of actually reviewing those and
17 making a presentation actually to the Town Board
18 to actually have that adopted and completed.

19 MR. MANLEY: They haven't voted on that
20 yet?

21 MR. LYTLE: They actually have actually
22 given us the okay to go ahead and actually get
23 the individual surveys done, actually talk to the
24 neighbors about having that done also.

25 MR. MANLEY: They haven't physically

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given the approval?

MR. LYTLE: No. That's why I have not addressed the maps. That has no effect on the area variances or anything else.

MR. MANLEY: Thank you.

MR. McKELVEY: You're still going to bring the road off of Washington for the house?

MR. LYTLE: That is correct. We want to keep the residential area separate from the commercial.

CHAIRPERSON CARDONE: Any other questions?

MR. HUGHES: I do. We're going from 3 to 20 --

MR. LYTLE: Yes.

MR. HUGHES: -- and a used car in an area where there's going to be a leftover space that he's using now which is going to compound the effect in the neighborhood by having two service stations once this one is created. There's one there now that's not being knocked down. He doesn't own that.

MR. LYTLE: He doesn't own it, he has no control of what happens. He's taking his

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2 service station out and moving it across the
3 street.

4 MR. HUGHES: The thing in my mind
5 that's going to create a problem in the long run
6 is that you're asking for 17 more spaces. You
7 already have two variances because of the
8 deficiency in the 5,000, 6,000 feet from the lot.
9 And granted you're getting all that other stuff
10 together, but there's not supposed to be a used
11 car business in that area to begin with, or a
12 service station, the use.

13 MR. LYTLE: Well, the service station
14 itself is actually allowed but the used cars are
15 not. Used cars -- again, he's not doing this for
16 the used cars, he's doing it for the purpose of
17 the dealer license to allow him to actually help
18 his clients out by testing and driving the cars.

19 MR. McKELVEY: You have no intentions
20 of selling cars?

21 MR. MITCHETTI: Well, I sell them but I
22 don't display them. My customer comes in and
23 tells me what they want, I go to the auction, buy
24 it and they pick it up that night. I don't
25 display cars for sale. I have a dealers license

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there for fifteen years.

MR. McKELVEY: You're not going to have the cars on there --

MR. MITCHETTI: I'm not going to line them up with flags and lights. I don't want to do that.

MR. McKELVEY: That was my question.

MR. MITCHETTI: I just -- a customer comes in and says I want a Lincoln, I ask them what color, I go to the auction and buy it and they pick it up that night. Other than that, I use my dealer plate to pick customers' cars up. If they're looking to buy a car I have the opportunity to test drive it, bring it to my shop and check it out for my customer. Without a dealer plate I can't do that. It's a good tool to have in my type of business. That's all.

MR. HUGHES: To me the request for the parking from 3 to 20, that's way out of order.

MR. MITCHETTI: Most of the vehicles I feel will be in a fenced-in area, screened-in area.

MR. HUGHES: I'm familiar with the plan. It's just way over what the code allows

RICHARD MITCHETTI

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for. 3 to 20 is a big difference. If it was 3 to 5 I could understand that.

MR. MITCHETTI: I have a very busy business.

MR. LYTLE: He has a good business. Again, it's grown over the years, which is good for the community, and again actually based on the volume of business that he does.

CHAIRPERSON CARDONE: Any questions or comments from the public?

(No verbal response.)

CHAIRPERSON CARDONE: Any other comments from the Board?

(No verbal response.)

CHAIRPERSON CARDONE: If not, I declare this part of the hearing closed. Thank you.

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

(Resumption for decision: 9:00 p.m.)

DECISION RENDERED AS FOLLOWS:

CHAIRPERSON CARDONE: On the application of Richard Mitchetti at 444 South Plank Road. This is also a re-application for an

RICHARD MITCHETTI

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2 area variance and a use variance for permission
3 to store more than the permitted amount of
4 vehicles on property in a business district.
5 This is an Unlisted action under SEQRA.
6 Do I have a motion for a negative
7 declaration?
8 MR. McKELVEY: I'll make a motion for a
9 negative dec.
10 CHAIRPERSON CARDONE: Do I have a
11 second?
12 MS. EATON: I'll second.
13 CHAIRPERSON CARDONE: All those in
14 favor please say aye.
15 MR. MANLEY: Aye.
16 MS. EATON: Aye.
17 MR. McKELVEY: Aye.
18 MR. KUNKEL: Aye.
19 MR. HUGHES: Aye.
20 CHAIRPERSON CARDONE: Aye.
21 Opposed?
22 (No verbal response.)
23 CHAIRPERSON CARDONE: The motion is
24 carried.
25 Do we have discussion on this

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application?

MR. HUGHES: Yes. This is an application we had a couple months back and it's been rung out a little bit. I still think that even with the prior variances that they obtained, that there's just too much for a lot this size, and it's going to leave another gas station right across the highway. It's not going to improve --

MR. McKELVEY: Don't call it a gas station. Service station.

MR. HUGHES: Service station. I'm sorry. I'll stand corrected. To me there's just too many things going on here that are deficient.

CHAIRPERSON CARDONE: If you will recall, when it was sent to the County last month one of the things that was questioned was the unnecessary hardship standard, whether they were proven or not, and then --

MR. HUGHES: They were not.

CHAIRPERSON CARDONE: We don't feel that they really have been.

MR. MANLEY: Madam Chair, for the record I have had an opportunity to review the minutes from the prior meeting where the

RICHARD MITCHETTI

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2 applicant did come before the Zoning Board, so I
3 feel that I'm fully briefed enough on this
4 particular file to vote on it for the record.
5 CHAIRPERSON CARDONE: I would agree.
6 Do we have a motion for approval on
7 this application?
8 (No verbal response.)
9 CHAIRPERSON CARDONE: Do we have a
10 motion for disapproval on this application?
11 MR. HUGHES: I'll move that.
12 CHAIRPERSON CARDONE: Do I have a
13 second?
14 MR. MANLEY: I'll second the motion.
15 CHAIRPERSON CARDONE: All those in
16 favor please say aye.
17 MR. MANLEY: Aye.
18 MS. EATON: Aye.
19 MR. McKELVEY: Aye.
20 MR. KUNKEL: Aye.
21 MR. HUGHES: Aye.
22 CHAIRPERSON CARDONE: Aye.
23 Opposed?
24 (No verbal response.)
25 CHAIRPERSON CARDONE: The motion for

RICHARD MITCHETTI

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disapproval is carried.

(Time noted: 9:04 p.m.)

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

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: February 2, 2006

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

----- X

In the Matter of

STUART TEICHER - MOUNTAIN RIDGE DEVELOPERS
18 Hibbing Way
Section 119; Block 1; Lot 96
R-3 Zone

----- X

VARIANCE

Date: January 26, 2006
Time: 7:45 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: GRACE CARDONE, Chairperson
JAMES E. MANLEY, JR.
RUTH J. EATON
JOHN McKELVEY
ROBERT A. KUNKEL
RON HUGHES

ALSO PRESENT: CAROLYN MARTINI, ESQ.
BETTY GENNARELLI, ZBA Secretary
GERALD CANFIELD, Code Compliance
Supervisor

----- X

MICHELLE L. CONERO
Court Reporter
72 River Glen Road
Wallkill, New York 12589
(845)895-3018

STUART TEICHER - MOUNTAIN RIDGE DEVELOPERS

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CHAIRPERSON CARDONE: Our next applicant is Stuart Teicher, Mountain Ridge Development.

MR. TEICHER: Good evening. I'm Stuart Teicher, I'm senior vice president and general counsel of the applicant, Meadow -- Mountain Ridge Developers, L.L.C. I hope I have before you what I hope is an easy one. We've got a single-family home in the Meadow Winds development which in all manner of aspects is in conformance with the building code and zoning with one minor exception and that is that by human error the home was located and actually constructed 8 inches into the front setback. The required setback is 30 feet, this home is 29.3 feet. The home is constructed already. I've got the pictures here that were in the application. When one looks at this particular house it doesn't look any different than any of the other ones on the block, and with the exception of the technical distinction that really can't even be seen by the naked eye. There is, however, the need for that variance.

The Town has already issued a temporary

STUART TEICHER - MOUNTAIN RIDGE DEVELOPERS

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2 certificate of occupancy for this property. The
3 only reason it's not final is because we do need
4 to get the variance settled in order to allow
5 them to issue a final CO. The house is done and
6 built, it's finished.

7 There's no physical environmental
8 impact on the community at all. There's no
9 effect on the health or safety of the residents.
10 The house fits into the character of the
11 community just like all the other houses in the
12 area, and there's no detriment to the community
13 at all, there just simply isn't, and therefore
14 the balancing act of weighing in favor of the
15 applicant -- I think the balance really falls in
16 favor of the applicant because of the almost
17 technical nature of the situation.

18 MR. McKELVEY: Just for your
19 information, we do visit the sites before -- we
20 have been --

21 MR. TEICHER: Okay. Great.

22 MR. MANLEY: I wish I could call this
23 one an easy one. There are some issues that I
24 have that I'm going to need some clarification
25 and answers on. One specifically is when this

STUART TEICHER - MOUNTAIN RIDGE DEVELOPERS

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2 lot was planned out by your development company
3 certainly you knew what size home you were going
4 to be putting into that particular lot. So my
5 question is why didn't anyone in your company
6 pick up the fact that the footprint of the home
7 was larger than the actual site and would make it
8 nonconforming?

9 MR. TEICHER: Actually, the footprint
10 of the home is not larger. What happened is when
11 the surveyors came out and located the footprint,
12 all they needed to do was push the whole thing
13 back 8 inches. It was nothing more than human
14 error on their part. We tried very hard to make
15 sure that they always check and double check that
16 they are right, that they're not violating the
17 setback. It was simply human error by a surveyor
18 to locate it where it was, and it was so close we
19 didn't notice it until we did the final survey.
20 But the lot -- the house itself fits on the lot.
21 We did check that ahead of time.

22 MR. MANLEY: Okay. Because my next
23 comment was going to be it's certainly easier to,
24 if you know something doesn't fit, build it and
25 then worry about going to the Board later on to

STUART TEICHER - MOUNTAIN RIDGE DEVELOPERS

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2 get relief and just simply saying it's kind of a
3 slam dunk, you have to approve it because the
4 house is already there, and really what recourse
5 do we have except to say tear it down or fix it.
6 MR. TEICHER: You're absolutely right.
7 I could see why you would feel that way. Un --
8 not unfortunately, fortunately for me that did
9 not apply here. The house does fit. It's as if
10 I'm holding this piece of paper on the board and
11 if I just push it up like that it's fine. If I
12 notice correctly, the other side of the house I
13 think is conforming. It's just the way the
14 surveyor located on the lot with a subtle little
15 shift that caused this problem.
16 MR. MANLEY: Do you have any other
17 options to you? Lot line changes?
18 MR. TEICHER: Not really because if you
19 look at the plan it's conforming on all other
20 sides. There's a street in front of it and
21 there's nothing behind it. There's really no
22 other alternative. And for 8 inches, you know,
23 no one would know the difference. It's just -- I
24 don't know how else to explain it.
25 MS. EATON: Don't the surveyors come

STUART TEICHER - MOUNTAIN RIDGE DEVELOPERS

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out to layout the foundation before?

MR. TEICHER: Yup. When they come out they're told make sure you do it right, and on every other house on the block they did it right and they made a mistake on this one.

MS. EATON: It's the portion of the garage that's sticking out that's causing the problem?

MR. TEICHER: Yeah. It's not -- yeah, it's the portion of -- the garage has a little jog in it. It's the design of the house. We built this particular house dozens of times on this job, the same way, same look, same, you know, plan, same architecturals. Someone messed up on this particular house and just shifted it ever so slightly when they came out. Because it's so close, that's probably one of the reasons they didn't pick up on it. You know, if the guy would have done it by 15 feet we would have seen it right away. Because it was only 8 inches -- if the surveyor comes out and says I did it, I did it right, we say did you check the setback, they say yes and it looks all right, we have to go with what they say. Unfortunately it wasn't

STUART TEICHER - MOUNTAIN RIDGE DEVELOPERS

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until the end that we found out there was a small discrepancy.

MS. EATON: Are the front steps also included in the encroachment?

MR. TEICHER: No. The only thing is that one corner of the garage. Just that.

If I may, I'll just show you the survey. Oh, you have it there. Ma'am, it's just this edge right there because the rest of the house steps back. It's just that piece right there.

MS. EATON: The steps come out a little bit also.

MR. TEICHER: Yeah, but I don't know exactly the technical distinction. From what I understand it's just this one section.

MR. McKELVEY: You can see --

CHAIRPERSON CARDONE: There's a little curve in the roadway right there. Possibly that's why they made the mistake.

MR. TEICHER: A curve in the road, yeah.

MR. McKELVEY: You can see that this is shorter here than it is here. You go down

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here --

MR. TEICHER: If you look at all the other houses built on the site, they're all done in conformance. It's just this one that -- I don't have an excuse for the guy. He shouldn't have done it. You know, I certainly could understand that if the house were too big than you'd say well, we're coming in after the fact because we're trying to get something we knew we couldn't have gotten if we asked ahead of time, which is not the case and the situation. We've built this house dozens of times in the community and it was just human error that shifted it. Maybe because you just pointed out the curve in the road. Maybe because it's a little bit of a unique place, maybe that's why they messed up.

MS. EATON: How many more homes do you have to build up there?

MR. TEICHER: I think we've got about four or five unsold and probably about ten left to close including those four or five. We got a bunch of COs today and yesterday so we're just about done.

MS. EATON: There aren't any problems

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with them?

MR. TEICHER: No. I mean here and there, you know, there was something. We have been before the Board on a different thing -- on a deck issue once and, you know -- but widespread problems, no. This is the first one that I've ever done. Well, I'll tell you what. There was another one. About a year ago I think we were before you for a very similar situation as well. Yup.

MR. MANLEY: I do know there's been a number of issues up there with respect to building issues that I've certainly heard about.

MR. TEICHER: It's a large development, so it's true there's been things we have had to come before the boards for.

CHAIRPERSON CARDONE: Any other questions from the Board?

(No verbal response.)

CHAIRPERSON CARDONE: Any questions or comments from the public?

(No verbal response.)

CHAIRPERSON CARDONE: If not, I declare this part of the hearing closed.

STUART TEICHER - MOUNTAIN RIDGE DEVELOPERS

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MR. TEICHER: Thank you.

CHAIRPERSON CARDONE: Mr. Canfield.

MR. CANFIELD: Just one thing. First, on behalf of the Code Compliance Department I would like to apologize to the Zoning Board because, as Mr. Teicher had stated, we have issued a temporary C of O, and I can see and understand where that would put you in an uncomfortable position. As Mr. Manley has stated, he's one hundred percent right, and I'm sure Mr. Teicher will agree, to expect this Board to tell you to tear the house down would be a difficult decision. But we are equally faced with a difficult decision as well when Mr. Teicher sells a house and he has his tenants living in a motel and now they're banging on our door for a C of O over 6, 8 inches. Again I apologize. We issued a temporary CO. It was not our intent to put the Board under any additional pressure.

With that being said, I would like to suggest to the Board a possible remedy. From this point forward we will be imposing an additional requirement on your organization. You

STUART TEICHER - MOUNTAIN RIDGE DEVELOPERS

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2 do have the number of single-family houses that
3 you have mentioned, but there is also an
4 additional road of condos to be built, okay, and
5 we have experienced in the past this exact type
6 scenario several times. It wasn't just once or
7 twice. In any event, what we've done at the
8 Planning Board level, and the Planning Board has
9 been very receptive, and in this environment of
10 sales and building on smaller lots the building
11 envelopes are very tight on the plot plan with
12 respect to the setbacks. The Planning Board has
13 supported our request and had the developers and
14 applicants add an additional note or a condition
15 of approval to put a note and a requirement on
16 the site plan that your licensed surveyor or
17 engineer will stake out the house prior to a
18 footing inspection, and that will create a belt
19 and suspender type situation whereas it's more or
20 less than oops, I made a mistake but there is a
21 liability imposed upon that licensed professional
22 because he will be responsible to stake it out
23 prior to us doing the inspection.
24 I also might add at the time of our
25 inspection we cannot tell exactly where the

STUART TEICHER - MOUNTAIN RIDGE DEVELOPERS

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2 property line is as opposed to where the footings
3 are dug, especially looking at a construction
4 site you have freshly dug out earth. We can tell
5 where the footings are going but we don't know --
6 without these things being staked out for clarity
7 for us we can't tell where the lines are. Again,
8 I agree with Mr. Teicher in the sense that 8, 10,
9 15 feet, sure we can pick up, but we don't go out
10 with a tape measure to pick up inches.

11 Again, we can further discuss this
12 tomorrow but I can assure the Board that we will
13 take every step necessary to ensure that the
14 developer puts the house and the size house
15 that's proposed for that lot in its correct
16 place. I think by that belt and suspender,
17 having the licensed professional stake out the
18 house and then it's his responsibility before a C
19 of O to give us a certified plot plan of exactly
20 where the house is, it's a double check to make
21 sure that these houses are ending up where they
22 belong. It will apply to the rest of the condos
23 as well.

24 MR. TEICHER: Yeah. I don't have any
25 problem with that at all. I mean there is no

STUART TEICHER - MOUNTAIN RIDGE DEVELOPERS

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2 benefit to us for me being here tonight. I would
3 much rather find a way to work with the township
4 to avoid this because, you know, again going back
5 to your original thing, if I were trying to get
6 something I wasn't entitled to I could
7 understand. This is just, you know, an error I
8 would like to avoid just like everybody else. I
9 agree and I just want the Board to understand
10 that the code offices and the officers have been
11 very helpful in dealing with this situation
12 because we do have a person who is trying to move
13 in and it's a little bit touchy. I think there's
14 been a spirit of cooperation on this particular
15 application since the beginning. It's much
16 appreciated.

17 CHAIRPERSON CARDONE: Thank you. Thank
18 you, Mr. Canfield.

19 There being no further questions or
20 comments, I declare this part of the hearing
21 closed.

22 The Board will take a short adjournment
23 to confer with counsel regarding legal questions
24 raised by tonight's applications. In the
25 interest of time I would ask if you would step

STUART TEICHER - MOUNTAIN RIDGE DEVELOPERS

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2 out into the hall and we will call you in
3 shortly.

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5 (Time noted: 7:55 p.m.)
6 (Resumption for decision: 9:04 p.m.)
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8 DECISION RENDERED AS FOLLOWS:

9 CHAIRPERSON CARDONE: On the
10 application of Stuart Teicher, Mountain Ridge
11 Development at 18 Hibbing Way seeking an area
12 variance for the front yard setback. This is a
13 Type II action under SEQRA.

14 Do we have discussion on this
15 application?

16 MR. McKELVEY: It sounds like we have
17 another case of a surveyor screwing up.

18 CHAIRPERSON CARDONE: And I think Mr.
19 Canfield pointed out possible remedies to the
20 situation.

21 MR. McKELVEY: Yeah. And there's a
22 little discrepancy in that curve in front of the
23 house, too. It looks like it's all right on one
24 side. There's a little bend in the road there.

25 CHAIRPERSON CARDONE: Do I have a

STUART TEICHER - MOUNTAIN RIDGE DEVELOPERS

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2 motion for approval on this application?
3 MR. McKELVEY: I'll make a motion we
4 approve.
5 CHAIRPERSON CARDONE: Do I have a
6 second?
7 MR. KUNKEL: I'll second.
8 CHAIRPERSON CARDONE: All those in
9 favor please say aye.
10 MS. EATON: Aye.
11 MR. McKELVEY: Aye.
12 MR. KUNKEL: Aye.
13 CHAIRPERSON CARDONE: Aye.
14 Opposed?
15 MR. MANLEY: Aye.
16 MR. HUGHES: Aye.
17 CHAIRPERSON CARDONE: One.
18 MR. HUGHES: Two.
19 MR. KUNKEL: It was approved four to
20 two.
21 CHAIRPERSON CARDONE: Right, four to
22 two.
23 We could do a roll call vote. If the
24 secretary would do a roll call vote, please.
25 MS. GENNARELLI: Ron Hughes.

STUART TEICHER - MOUNTAIN RIDGE DEVELOPERS

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MR. HUGHES: No.
MS. GENNARELLI: John --
MR. McKELVEY: Yes.
MS. GENNARELLI: -- McKelvey.
MR. McKELVEY: Yes.
MS. GENNARELLI: I'm sorry, I forgot
Robert Kunkel.
MR. KUNKEL: Yes.
MS. GENNARELLI: Ruth.
MS. EATON: Yes.
MS. GENNARELLI: Jim.
MR. MANLEY: No.
MS. GENNARELLI: Grace.
CHAIRPERSON CARDONE: This is a motion
for disapproval. Yes.
MR. KUNKEL: No, it's a motion for
approval.
MR. HUGHES: Motion for approval.
MR. KUNKEL: This is a motion for
approval.
MR. McKELVEY: Motion for approval.
CHAIRPERSON CARDONE: Could you read
back -- I'm sorry. Never mind. It is a motion
for approval. Yes was mine.

STUART TEICHER - MOUNTAIN RIDGE DEVELOPERS

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What is the final count?

MR. KUNKEL: Four-two for approval.

CHAIRPERSON CARDONE: Okay.

(Time noted: 9:08 p.m.)

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

I, Michelle Conero, a Shorthand
Reporter and Notary Public within and for
the State of New York, do hereby certify
that I recorded stenographically the
proceedings herein at the time and place
noted in the heading hereof, and that the
foregoing is an accurate and complete
transcript of same to the best of my
knowledge and belief.

DATED: February 2, 2006

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

----- X

In the Matter of

RICHARD BUCHHEIT

30 Lancer Drive
Section 57; Block 5; Lot 1
R-2 Zone

----- X

VARIANCE

Date: January 26, 2006
Time: 9:08 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: GRACE CARDONE, Chairperson
JAMES E. MANLEY, JR.
RUTH J. EATON
JOHN McKELVEY
ROBERT A. KUNKEL
RON HUGHES

ALSO PRESENT: CAROLYN MARTINI, ESQ.
BETTY GENNARELLI, ZBA Secretary
GERALD CANFIELD, Code Compliance
Supervisor

----- X

MICHELLE L. CONERO
Court Reporter
72 River Glen Road
Wallkill, New York 12589
(845)895-3018

RICHARD BUCHHEIT

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2 CHAIRPERSON CARDONE: We have one more
3 item here to look at. On October 27th Richard
4 Buchheit of 30 Lancer Drive came before the
5 Zoning Board. He was erecting a pool and he was
6 putting it in an existing front yard which was a
7 corner lot. When the motion was made for
8 approval on this application it was stated that
9 this was approving it as a corner lot but the
10 motion did not contain the front and side yard
11 setbacks. What I'm asking for now is a motion to
12 reconsider this application so that an amendment
13 can be made to it.
14 MR. McKELVEY: I'll make that motion.
15 CHAIRPERSON CARDONE: Do I have a
16 second to that?
17 MR. HUGHES: Second.
18 CHAIRPERSON CARDONE: All those in
19 favor please say aye.
20 MS. EATON: Aye.
21 MR. McKELVEY: Aye.
22 MR. KUNKEL: Aye.
23 MR. HUGHES: Aye.
24 CHAIRPERSON CARDONE: Aye.
25 Opposed?

RICHARD BUCHHEIT

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MR. MANLEY: Abstain.

CHAIRPERSON CARDONE: Could we have another motion --

MR. McKELVEY: I'll make a motion that we amend our decision to include the front and side yard setbacks that were requested.

CHAIRPERSON CARDONE: Do I have a second to that?

MR. KUNKEL: I'll second it.

CHAIRPERSON CARDONE: All those in favor please say aye.

MS. EATON: Aye.

MR. McKELVEY: Aye.

MR. KUNKEL: Aye.

MR. HUGHES: Aye.

CHAIRPERSON CARDONE: Aye.

Opposed?

MR. MANLEY: Abstain.

CHAIRPERSON CARDONE: One abstention.

(Time noted: 9:09 p.m.)

CERTIFICATION

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: February 2, 2006

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

----- X

In the Matter of

REORGANIZATIONAL MEETING

----- X

BOARD BUSINESS

Date: January 26, 2006
Time: 9:09 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: GRACE CARDONE, Chairperson
JAMES E. MANLEY, JR.
RUTH J. EATON
JOHN McKELVEY
ROBERT A. KUNKEL
RON HUGHES

ALSO PRESENT: CAROLYN MARTINI, ESQ.
BETTY GENNARELLI, ZBA Secretary
GERALD CANFIELD, Code Compliance
Supervisor

----- X

MICHELLE L. CONERO
Court Reporter
72 River Glen Road
Wallkill, New York 12589
(845)895-3018

REORGANIZATIONAL MEETING

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CHAIRPERSON CARDONE: One other order of business this evening is every January we have a reorganization meeting.

I will accept nominations for Chairman.

MS. EATON: I nominate Grace Cardone as Chairman.

MR. MANLEY: Second.

CHAIRPERSON CARDONE: We have a nomination and a second. All those in favor please say aye.

MR. MANLEY: Aye.

MS. EATON: Aye.

MR. McKELVEY: Aye.

MR. KUNKEL: Aye.

MR. HUGHES: Aye.

CHAIRPERSON CARDONE: Aye.

Opposed?

(No verbal response.)

CHAIRPERSON CARDONE: And I am now accepting nominations for a Vice Chairman.

MS. EATON: I nominate John McKelvey.

MR. KUNKEL: I second that motion.

CHAIRPERSON CARDONE: All those in

REORGANIZATIONAL MEETING

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favor please say aye.

MR. MANLEY: Aye.

MS. EATON: Aye.

MR. McKELVEY: Aye.

MR. KUNKEL: Aye.

MR. HUGHES: Aye.

CHAIRPERSON CARDONE: Aye.

Opposed?

(No verbal response.)

CHAIRPERSON CARDONE: The motion is carried.

Is there any further business?

MR. McKELVEY: The minutes.

CHAIRPERSON CARDONE: Everyone has the minutes from last month. You have had a chance to look them over. I did not find any errors in those minutes.

MR. McKELVEY: No. We have the two single-page corrections that we asked for.

CHAIRPERSON CARDONE: For the month before.

MR. McKELVEY: I'll make a motion we accept the minutes.

CHAIRPERSON CARDONE: Do I have a

REORGANIZATIONAL MEETING

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second?

MR. HUGHES: Second.

CHAIRPERSON CARDONE: All those in favor of accepting the minutes please say aye.

MS. EATON: Aye.

MR. McKELVEY: Aye.

MR. KUNKEL: Aye.

MR. HUGHES: Aye.

CHAIRPERSON CARDONE: Aye.

Opposed?

MR. MANLEY: Abstain.

CHAIRPERSON CARDONE: The motion is carried.

Any further business?

(No verbal response.)

CHAIRPERSON CARDONE: The meeting is adjourned until next month.

(Time noted: 9:12 p.m.)

CERTIFICATION

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: February 2, 2006

