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

----- X  
In the Matter of

JOANN SICOLO

741 Route 32, Wallkill  
Section 4; Block 2; Lot 39.1  
RR Zone

----- X

Date: January 23, 2025  
Time: 7:00 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVES: JOANN SICOLO  
THOMAS SEGRICH

----- X

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

1       J o a n n   S i c o l o

2                   CHAIRMAN SCALZO: I'd like to call  
3                   the meeting of the Zoning Board of  
4                   Appeals to order. The order of business  
5                   this evening are the public hearings  
6                   which have been scheduled. The procedure  
7                   of the Board is that the applicant will  
8                   be called upon to step forward, state  
9                   their request and explain why it should  
10                  be granted. The Board will then ask the  
11                  applicant any questions it may have, and  
12                  then any questions or comments from the  
13                  public will be entertained. The Board  
14                  will then consider the applications and  
15                  will try to render a decision this  
16                  evening but may take up to 62 days to  
17                  reach a determination. I would ask that  
18                  if you have a cellphone, to please turn  
19                  it off or put it on silent. When speaking,  
20                  speak directly into the microphone as this  
21                  is being recorded by our stenographer.

22                  Roll call, please.

23                  MS. JABLESNIK: Darrell Bell.

24                  MR. BELL: Here.

25                  MS. JABLESNIK: James Eberhart.

1       J o a n n   S i c o l o

2                   MR. EBERHART:   Here.

3                   MS. JABLESNIK:   Greg Hermance.

4                   MR. HERMANCE:    Here.

5                   MS. JABLESNIK:   John Masten.

6                   MR. MASTEN:      Here.

7                   MS. JABLESNIK:   Donna Rein is  
8                   absent this evening.

9                   MS. JABLESNIK:   Darrin Scalzo.

10                  CHAIRMAN SCALZO:  Here.

11                  MS. JABLESNIK:   Also present is our  
12                  Attorney, Dave Donovan, and our Stenographer,  
13                  Michelle Conero.

14                  CHAIRMAN SCALZO:  If you could all  
15                  please rise for the Pledge.  We have a  
16                  new president up there.

17                  (Pledge of Allegiance.)

18                  CHAIRMAN SCALZO:  Our first  
19                  applicant this evening is Joann Sicolo,  
20                  741 Route 32 for area variances of, A,  
21                  the minimum rear yard setback to build a  
22                  10.8 by 16.1 rear deck and, B, the  
23                  minimum rear yard setback and increasing  
24                  the degree of nonconformity of the side  
25                  yard to build a 14.3 by 16.1 three-season

1       J o a n n   S i c o l o

2               room.

3                       Siobhan, do we have mailings on  
4               this?

5                       MS. JABLESNIK: This applicant sent  
6               seventeen letters.

7                       CHAIRMAN SCALZO: Seventeen letters.

8                       Who do we have with us this evening?  
9               State your name.

10                      MS. SICOLO: Hi. Joann Sicolo.

11                      MR. SEGRICH: Tom Segrich.

12                      CHAIRMAN SCALZO: You're here for  
13               support?

14                      MR. SEGRICH: Just to help.

15                      CHAIRMAN SCALZO: Very good. If I  
16               have captured everything that you want to  
17               say in those two short sentences --

18                      MS. SICOLO: I think so, yeah.

19                      MR. SEGRICH: Sure. We put control  
20               points. If you look at the survey that  
21               was submitted for the side yard at least,  
22               we have control points of 50 feet, just  
23               to keep the side compliant. The drawings  
24               sometimes spit out extra inches, but they  
25               don't intend to.

1       J o a n n   S i c o l o

2                   CHAIRMAN SCALZO:  What you're  
3       saying is you don't need the side yard?

4                   MR. SEGRICH:  We don't.

5                   CHAIRMAN SCALZO:  Okay.

6                   MR. SEGRICH:  We're going to use  
7       the control point of 50 feet as a  
8       starting point.

9                   CHAIRMAN SCALZO:  So there's one  
10       less variance being requested.  48.27,  
11       he's really getting down there.  That's  
12       something.  I like significant digits.  
13       Just the 1 after the decimal and we're  
14       good.

15                   Boy, a 100-foot setback is quite  
16       substantial.  89 feet, you're only  
17       looking for 11.  It's really not out of  
18       this world, in my opinion, knowing what  
19       you've got going on there.  That's just  
20       my position.

21                   In this instance, now I will look  
22       to the Board for any comments they have.

23                   Mr. Eberhart?

24                   MR. EBERHART:  No comment.

25                   CHAIRMAN SCALZO:  It's a long way

1       J o a n n   S i c o l o

2               away.

3               Mr. Hermance, this is kind of close  
4               to your house.

5               MR. HERMANCE:  It's right down the  
6               road.  They back up to woods.  I don't  
7               really see any --

8               CHAIRMAN SCALZO:  Very good.  It  
9               doesn't appear to be a visual impact to  
10              anyone.

11              MR. HERMANCE:  No.

12              CHAIRMAN SCALZO:  Mr. Bell?

13              MR. BELL:  Nothing.

14              CHAIRMAN SCALZO:  How about you,  
15              Mr. Masten?

16              MR. MASTEN:  No questions.

17              CHAIRMAN SCALZO:  Does anyone from  
18              the public wish to speak about this  
19              application?

20              (No response.)

21              CHAIRMAN SCALZO:  Hearing none,  
22              I'll look back to the Board.

23              MR. BELL:  No.

24              CHAIRMAN SCALZO:  Very good.  I'll  
25              look to the Board for a motion to close

1       J o a n n   S i c o l o

2               the public hearing.

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

5               MR. BELL: I'll second it.

6               CHAIRMAN SCALZO: We have a motion  
7               to close the public hearing from Mr. Masten.  
8               It appears as though we had a second from  
9               Mr. Bell.

10              MR. BELL: Either way.

11              CHAIRMAN SCALZO: I'm left-ear dominant.  
12              Very good.

13              All in favor?

14              MR. EBERHART: Aye.

15              MR. HERMANCE: Aye.

16              CHAIRMAN SCALZO: Aye.

17              MR. BELL: Aye.

18              MR. MASTEN: Aye.

19              CHAIRMAN SCALZO: Those opposed?

20              (No response.)

21              CHAIRMAN SCALZO: Very good. This  
22              is a Type 2 action under SEQRA?

23              MR. DONOVAN: Correct, Mr. Chairman.

24              CHAIRMAN SCALZO: Very good. We  
25              are going to discuss the five factors



1       J o a n n   S i c o l o

2               still plenty of room behind there. I  
3               would say no.

4               The fourth, whether the request will  
5               have adverse physical or environmental  
6               effects.

7               MR. EBERHART: No.

8               MR. HERMANCE: No.

9               MR. BELL: No.

10              MR. MASTEN: No.

11              CHAIRMAN SCALZO: I don't believe  
12              so either.

13              The fifth, whether the alleged  
14              difficulty is self-created, which is  
15              relevant but not determinative. Of  
16              course it's self-created. However, if  
17              the Board approves, it shall grant the  
18              minimum variance necessary and may impose  
19              reasonable conditions.

20              Just to clarify, we're down to one  
21              variance request, which is the rear yard,  
22              because the side yard is no longer an  
23              issue. Correct?

24              MR. SEGRICH: Yes.

25              CHAIRMAN SCALZO: Okay. Does the

1       J o a n n   S i c o l o

2               Board have a motion of some sort?

3                       MR. EBERHART: I'll make a motion  
4               for approval.

5                       MR. BELL: I'll second it.

6                       CHAIRMAN SCALZO: We have a motion  
7               for approval from Mr. Eberhart. We have  
8               a second from Mr. Bell.

9                       Can you roll on that, please,  
10              ma'am.

11                      MS. JABLESNIK: Mr. Bell?

12                      MR. BELL: Yes.

13                      MS. JABLESNIK: Mr. Eberhart?

14                      MR. EBERHART: Yes.

15                      MS. JABLESNIK: Mr. Hermance?

16                      MR. HERMANCE: Yes.

17                      MS. JABLESNIK: Mr. Masten?

18                      MR. MASTEN: Yes.

19                      MS. JABLESNIK: Mr. Scalzo?

20                      CHAIRMAN SCALZO: Yes.

21                      The motion is carried. The  
22              variances are approved. Thank you.

23                      MS. SICOLO: Thank you.

24

25                      (Time noted: 7:10 p.m.)

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J o a n n   S i c o l o

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 2nd day of February 2025.

*Michelle Conero*

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MICHELLE CONERO

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

----- X

In the Matter of

ELIJIO CRUZ

389 Quaker Street, Wallkill  
Section 4; Block 1; Lot 19  
AR Zone

----- X

Date: January 23, 2025  
Time: 7:10 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: ELIJIO CRUZ

----- X

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

1       E l i j i o   C r u z

2                   CHAIRMAN SCALZO:  Our second  
3                   applicant would be -- I'm going to need  
4                   help here -- Elijio Cruz, 389 Quaker  
5                   Street for an area variance of increasing  
6                   the degree of nonconformity of one side  
7                   yard and the combined side yards to keep  
8                   a 12.2 by 13.11 -- here we are with  
9                   significant digits again -- nonheated  
10                  rear enclosed porch.

11                  Do we have mailings on that, Siobhan?

12                  MS. JABLESNIK:  This applicant sent  
13                  fourteen letters.

14                  CHAIRMAN SCALZO:  Fourteen letters.  
15                  Very good.

16                  MS. JABLESNIK:  I write it as I see  
17                  it.

18                  CHAIRMAN SCALZO:  13.12, I actually  
19                  know that's an inch and a half.  13.11 is  
20                  not quite an inch and a half.  Just saying.  
21                  Very good.

22                  Who do we have with us?

23                  MR. CRUZ:  I'm Elijio Cruz.

24                  CHAIRMAN SCALZO:  I apologize for  
25                  butchering your first name.

1       E l i j i o   C r u z

2                   MR. CRUZ:  No worries.

3                   CHAIRMAN SCALZO:  I just said two  
4       sentences there about what it is that  
5       you're looking to do.  You're trying to  
6       keep what you've got, really.

7                   MR. CRUZ:  Yeah.

8                   CHAIRMAN SCALZO:  Do you have  
9       anything else that you want to add to  
10      this conversation or narrative?

11                  MR. CRUZ:  No.  That pretty much  
12      encompasses everything.

13                  CHAIRMAN SCALZO:  I'm trying to not  
14      make this difficult on anyone.  I honestly  
15      don't have any comments on this application.

16                  I'm going to start to my left and ask  
17      Mr. Masten if he has any comments?

18                  MR. MASTEN:  I have no questions.

19                  CHAIRMAN SCALZO:  How about you,  
20      Mr. Bell?

21                  MR. BELL:  Was this done with or  
22      without a permit?

23                  MR. CRUZ:  The previous owner did  
24      it.  I just bought the property in  
25      October.  I'm trying to obtain -- bring

1       E l i j i o   C r u z

2             it up to code, basically, with the Town.

3             MR. BELL: That's what I was --

4             okay. I'm good.

5             CHAIRMAN SCALZO: Thank you, Mr. Bell.

6             Mr. Hermance?

7             MR. HERMANCE: I have nothing.

8             CHAIRMAN SCALZO: Mr. Eberhart?

9             MR. EBERHART: I have nothing.

10            CHAIRMAN SCALZO: Very good.

11            Is there anyone from the public

12            here to speak about this application?

13            (No response.)

14            CHAIRMAN SCALZO: Back to the Board

15            for one more look.

16            (No response.)

17            CHAIRMAN SCALZO: Very good. In

18            this instance I will look to the Board

19            for a motion to close the public hearing.

20            MR. MASTEN: I'll make a motion to

21            close the public hearing.

22            MR. BELL: I'll second it.

23            CHAIRMAN SCALZO: We have a motion

24            to close the public hearing from Mr. Masten.

25            We have a second from Mr. Bell. All in

1       E l i j i o   C r u z

2                favor?

3                   MR. EBERHART:   Aye.

4                   MR. HERMANCE:   Aye.

5                   CHAIRMAN SCALZO:  Aye.

6                   MR. BELL:        Aye.

7                   MR. MASTEN:     Aye.

8                   CHAIRMAN SCALZO:  Those opposed?

9                   (No response.)

10                  CHAIRMAN SCALZO:  This is also a  
11                  Type 2 action under SEQRA.  Correct, Counsel?

12                  MR. DONOVAN:    Correct, Mr. Chairman.

13                  CHAIRMAN SCALZO:  I want you to say  
14                  some words, Dave.

15                  MR. DONOVAN:    It's a good meeting when  
16                  I don't talk much.

17                  CHAIRMAN SCALZO:  Here again we're  
18                  going to discuss the five factors we're  
19                  weighing, the first one being whether or  
20                  not the benefit can be achieved by other  
21                  means feasible to the applicant.  Well,  
22                  we heard testimony from the applicant  
23                  that he inherited this situation.  The  
24                  only other -- he really can't.

25                  The second, if there's an undesirable

1       E l i j i o   C r u z

2           change in the neighborhood character or  
3           a detriment to nearby properties. I'll  
4           say it again, this is a preexisting  
5           nonconforming condition that has been  
6           exposed for sometime now. I would say  
7           the character of the neighborhood is  
8           exactly as it was.

9           The third, whether the request is  
10          substantial. It does not appear so there  
11          either.

12          The fourth, whether the request  
13          will have adverse physical or environmental  
14          effects. No more than currently.

15          MR. BELL: No.

16          CHAIRMAN SCALZO: Fifth, whether the  
17          alleged difficulty is self-created. We  
18          heard testimony from the applicant that  
19          he purchased it this way, so he did not  
20          create this issue.

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

24          MR. BELL: I'll make a motion for  
25          approval.

1       E l i j i o   C r u z

2                   MR. HERMANCE: I'll second.

3                   CHAIRMAN SCALZO: We have a motion  
4                   from Mr. Bell. We have a second from  
5                   Mr. Hermance.

6                   Can you roll on that, please, Siobhan.

7                   MS. JABLESNIK: Mr. Bell?

8                   MR. BELL: Yes.

9                   MS. JABLESNIK: Mr. Eberhart?

10                  MR. EBERHART: Yes.

11                  MS. JABLESNIK: Mr. Hermance?

12                  MR. HERMANCE: Yes.

13                  MS. JABLESNIK: Mr. Masten?

14                  MR. MASTEN: Yes.

15                  MS. JABLESNIK: Mr. Scalzo?

16                  CHAIRMAN SCALZO: Yes.

17                  The motion is carried. The  
18                  variances are approved.

19                  Good luck, sir.

20                  MR. CRUZ: Thank you so much.

21

22                  (Time noted: 7:15 p.m.)

23

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1       E l i j i o   C r u z

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

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

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

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

15           IN WITNESS WHEREOF, I have hereunto set  
16 my hand this 2nd day of February 2025.

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*Michelle Conero*

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MICHELLE CONERO

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

----- X

In the Matter of

THANG HUU TRAN

16 Old South Plank Road, Newburgh  
Section 51; Block 4; Lot 10  
R-1 Zone

----- X

Date: January 23, 2025  
Time: 7:15 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVES: THANG HUU TRAN  
EDWIN MOLINA

----- X

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

1           T h a n g   H u u   T r a n

2                   CHAIRMAN SCALZO:  Our next applicant  
3                   this evening is Thang Huu Tran, 16 Old  
4                   South Plank Road, Newburgh, for area  
5                   variances for the minimum rear yard  
6                   setback to keep a 12 by 15.5 rear deck,  
7                   the minimum rear yard setback to keep a  
8                   12 by 15.5 sunroom, the setback from the  
9                   rear property line to keep a 24 foot  
10                  above-ground pool, and the setback to  
11                  the rear and side property lines to keep  
12                  a 12 by 12 accessory building.

13                  Do we have mailings on this?

14                  MS. JABLESNIK:  This applicant sent  
15                  sixty-five letters.  Winner, winner.

16                  CHAIRMAN SCALZO:  Holy smokes that's  
17                  a lot.  Here we have four variances being  
18                  requested this evening.

19                  Let's start off, who do we have in  
20                  front of us?

21                  MR. TRAN:  My name is Thang Huu Tran.

22                  MR. MOLINA:  He's the owner.  I'm  
23                  Edwin Molina, I'm the real estate agent that  
24                  represents him.

25                  CHAIRMAN SCALZO:  Very good.



1           T h a n g   H u u   T r a n

2           and then you sell it again. I think  
3           right now you've got five or six  
4           properties, or in the last three or four  
5           years, five or six properties that you've  
6           been through. Is this the first time  
7           you've landed here for a variance?

8           MR. TRAN: It's my first time.

9           CHAIRMAN SCALZO: Typically any  
10          time you do that real estate -- the  
11          upgrades to the real estate, you do go  
12          through the Building Department and get  
13          the proper permits?

14          MR. TRAN: Yes.

15          CHAIRMAN SCALZO: I'm just asking.  
16          I've got nothing else.

17          Let's start with Mr. Eberhart.

18          MR. EBERHART: Nothing.

19          CHAIRMAN SCALZO: How about you,  
20          Mr. Hermance?

21          MR. HERMANCE: No, I have nothing  
22          on this.

23          CHAIRMAN SCALZO: Mr. Bell?

24          MR. BELL: It's really not related  
25          to what they're requesting, but I just

1           T h a n g   H u u   T r a n

2           wonder why this doesn't show up prior to  
3           the purchase of the home.  Maybe we can  
4           have this conversation another time.  I  
5           always wonder why it happens like this.  
6           I know that the previous owners seem to  
7           not get the permits.  I guess it's not  
8           showing up on the real estate data.  I  
9           don't know.  I'm just trying to figure  
10          out why it doesn't show up.

11                   CHAIRMAN SCALZO:  Well, our Code  
12          Compliance Department, I'm sure, is  
13          understaffed.  The Assessor's office may  
14          let them know that there is something  
15          there, that they are being assessed in a  
16          certain way.  They let the Code Compliance  
17          folks know if it's there or something.  I  
18          don't know if they determine whether or not  
19          it's within code or not.  I guess it's up  
20          to Code Compliance to go out and verify  
21          things.  When you purchase a piece of  
22          property in the Town of Newburgh, or at  
23          least I know in the Town of Newburgh,  
24          the municipals which come out of Siobhan's  
25          Office, they do not -- the letter states

1       T h a n g   H u u   T r a n

2           they don't do a physical field inspection,  
3           all they do is check the file to see if  
4           there are any outstanding permits.

5                   Is that correct, Siobhan?

6                   MS. JABLESNIK: Yeah. In a lot of  
7           cases, like in his case, if it's a cash  
8           purchase, they don't typically do  
9           municipal searches. If you're getting  
10          something that's, you know, like the ones  
11          you have to bid for --

12                   CHAIRMAN SCALZO: Auction.

13                   MS. JABLESNIK: The auction ones  
14          you don't do municipal searches. Those  
15          are quick.

16                   MR. BELL: I know it's not on them.  
17          It's no reflection on them at all. I'm  
18          just curious, because the last one, the  
19          gentleman who was just here, he purchased  
20          in October. That's another one that falls  
21          in the same category. I was just curious.

22                   MS. JABLESNIK: A lot of them are  
23          cash buys and they don't do municipals.  
24          You buy the problem, basically, and then  
25          you get stuck.

1       T h a n g   H u u   T r a n

2                   MR. BELL: I appreciate what they're  
3       trying to do by trying to get it up to  
4       code.

5                   MS. JABLESNIK: Sadly it falls on  
6       the new owner.

7                   CHAIRMAN SCALZO: Thank you, Siobhan.

8                   MS. JABLESNIK: No problem.

9                   CHAIRMAN SCALZO: Mr. Masten?

10                  MR. MASTEN: I have no questions on  
11       this.

12                  CHAIRMAN SCALZO: Okay. I appreciate  
13       that.

14                  At this point I'll open it up to any  
15       members of the public that wish to speak  
16       about this application.

17                  (No response.)

18                  CHAIRMAN SCALZO: There's none. Very  
19       good.

20                  I'll look back to the Board.

21                  (No response.)

22                  CHAIRMAN SCALZO: Nothing. Okay.

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

25                  MR. MASTEN: I'll make a motion to

1       T h a n g   H u u   T r a n

2               close the public hearing.

3               MR. BELL: I'll second it.

4               CHAIRMAN SCALZO: We have a motion  
5               to close the public hearing from Mr. Masten.  
6               We have a second from Mr. Bell. All in  
7               favor?

8               MR. EBERHART: Aye.

9               MR. HERMANCE: Aye.

10              CHAIRMAN SCALZO: Aye.

11              MR. BELL: Aye.

12              MR. MASTEN: Aye.

13              CHAIRMAN SCALZO: Those opposed?

14              (No response.)

15              CHAIRMAN SCALZO: Very good.

16              Again, a Type 2 action under SEQRA.

17              Correct, Counsel?

18              MR. DONOVAN: Correct, Mr. Chairman.

19              CHAIRMAN SCALZO: We're going to go  
20              through the area variance criteria and  
21              discuss the five factors which we will be  
22              weighing, the first one being whether or  
23              not the benefit can be achieved by other  
24              means feasible to the applicant.

25              MR. EBERHART: No.

1           T h a n g   H u u   T r a n

2                           MR. HERMANCE:  No.

3                           MR. BELL:  No.

4                           MR. MASTEN:  No.

5                           CHAIRMAN SCALZO:  He inherited this  
6           preexisting nonconforming.

7                           Second, if there's an undesirable  
8           change in the neighborhood character or a  
9           detriment to nearby properties.

10                          MR. BELL:  No.

11                          CHAIRMAN SCALZO:  No.  Any upgrades  
12           he's done actually make it look a little  
13           nicer.

14                          Third, whether the request is  
15           substantial.

16                          MR. BELL:  No change.

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

20                          MR. BELL:  No.

21                          CHAIRMAN SCALZO:  Fifth, whether the  
22           alleged difficulty is self-created which  
23           is relevant but not determinative.  He  
24           bought it that way.  It sounds like it's  
25           not self-created.

1           T h a n g   H u u   T r a n

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

5                       MR. BELL:   I'll make a motion for  
6           approval.

7                       MR. MASTEN:   Second.

8                       CHAIRMAN SCALZO:   We have a motion  
9           for approval from Mr. Bell.   We have a  
10          second from Mr. Masten.

11                      Can you roll on that, please, Siobhan.

12                      MS. JABLESNIK:   Mr. Bell?

13                      MR. BELL:   Yes.

14                      MS. JABLESNIK:   Mr. Eberhart?

15                      MR. EBERHART:   Yes.

16                      MS. JABLESNIK:   Mr. Hermance?

17                      MR. HERMANCE:   Yes.

18                      MS. JABLESNIK:   Mr. Masten?

19                      MR. MASTEN:   Yes.

20                      MS. JABLESNIK:   Mr. Scalzo?

21                      CHAIRMAN SCALZO:   Yes.

22                      The motions are carried.   The  
23          variances are approved.

24                      Good luck, sir.

25                      (Time noted:   7:23 p.m.)

1        T h a n g   H u u   T r a n

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

4

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

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

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

14           IN WITNESS WHEREOF, I have hereunto set  
15 my hand this 2nd day of February 2025.

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*Michelle Conero*

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MICHELLE CONERO

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

----- X  
In the Matter of

EILEEN REILLY

123 Lattintown Road, Newburgh  
Section 7; Block 1; Lot 32  
AR Zone

----- X

Date: January 23, 2025  
Time: 7:23 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: JONATHAN CELLA

----- X

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

1 Eileen Reilly

2 CHAIRMAN SCALZO: Our next  
3 applicant this evening is Eileen Reilly,  
4 123 Lattintown Road, seeking an area  
5 variance of the minimum side yard setback  
6 to replace a 12 by 16 rear deck that was  
7 previously built without permits.

8 Siobhan, do we have mailings on  
9 this one?

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

12 CHAIRMAN SCALZO: Thirteen letters.  
13 Can you imagine if they had to send out  
14 the sixty-five. I can't believe that  
15 last one. That was something.

16 MR. BELL: That was a whole ordeal.

17 CHAIRMAN SCALZO: Do we have anyone  
18 that's going to represent Eileen Reilly  
19 this evening?

20 MS. JABLESNIK: Jonathan Cella was  
21 supposed to be here for them.

22 CHAIRMAN SCALZO: Maybe Jonathan  
23 doesn't realize just how efficient we  
24 are. He's probably going to walk in in  
25 twenty minutes.

1 Eileen Reilly

2 I'll tell you what we're going to  
3 do. We're going to set this one aside --

4 MR. DONOVAN: We call it second  
5 call.

6 MR. EBERHART: It's like last call.

7 MR. DONOVAN: That's a totally  
8 different thing than last call. I read  
9 about last call. I know what second call  
10 is.

11 CHAIRMAN SCALZO: Okay. Very good.

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

13 (Time resumed: 7:40 p.m.)

14 CHAIRMAN SCALZO: We are going to  
15 jump back to new business for this  
16 evening. Eileen Reilly, 123 Lattintown  
17 Road, seeking an area variance of the  
18 minimum side yard setback to replace a  
19 12 by 16 rear deck that was previously  
20 built without permits. We have Jonathan  
21 Cella in front of us.

22 Mr. Cella, if I have captured just  
23 about everything that you wanted to talk  
24 about, I stole your thunder, --

25 MR. CELLA: You did.

1 Eileen Reilly

2 CHAIRMAN SCALZO: -- or if you'd  
3 like to add to that.

4 MR. CELLA: No.

5 CHAIRMAN SCALZO: A man of few  
6 words.

7 MR. CELLA: The deck was previously  
8 constructed. The owner just wants to  
9 rebuild it in kind. Replace it in kind.

10 CHAIRMAN SCALZO: Replace it in  
11 kind with permits.

12 MR. CELLA: With permits and the  
13 application.

14 CHAIRMAN SCALZO: I don't have any  
15 comments myself on this at all.

16 In this instance I'm going to now  
17 look to my right. Mr. Eberhart, do you  
18 have any comments?

19 MR. EBERHART: No comments.

20 CHAIRMAN SCALZO: How about you,  
21 Mr. Hermance?

22 MR. HERMANCE: The previous deck  
23 was built by the same owner?

24 MR. CELLA: I'm not sure of that.  
25 The previous deck was -- as you see, it's

1 Eileen Reilly

2 built to the corner of the house. It's  
3 been like that for quite awhile.

4 MR. HERMANCE: Other than that, I  
5 have nothing.

6 CHAIRMAN SCALZO: Mr. Bell?

7 MR. BELL: The previous deck was  
8 built without a permit, which is now gone.  
9 He's coming to do one with a permit the  
10 right way. I'm good.

11 CHAIRMAN SCALZO: Replace it like  
12 it used to be.

13 MR. BELL: The right way. The legal  
14 way.

15 CHAIRMAN SCALZO: Mr. Masten?

16 MR. MASTEN: I have no questions.

17 CHAIRMAN SCALZO: All right. I'll  
18 open this up to the members of the public.  
19 Is there anyone here that wishes to speak  
20 about this application?

21 (No response.)

22 CHAIRMAN SCALZO: It does not appear  
23 so.

24 One last look to the Board.

25 MR. BELL: I'm good.

1 Eileen Reilly

2 CHAIRMAN SCALZO: I'll look to the  
3 Board for a motion to close the public  
4 hearing.

5 MR. MASTEN: I'll make a motion to  
6 close the public hearing.

7 MR. EBERHART: Second.

8 CHAIRMAN SCALZO: Mr. Masten got it  
9 all out first. Mr. Eberhart was the second  
10 there. All in favor?

11 MR. EBERHART: Aye.

12 MR. HERMANCE: Aye.

13 CHAIRMAN SCALZO: Aye.

14 MR. BELL: Aye.

15 MR. MASTEN: Aye.

16 CHAIRMAN SCALZO: Those opposed?

17 (No response.)

18 CHAIRMAN SCALZO: No. Very good.

19 Here we go again with our Type 2  
20 action under SEQRA. We're going to  
21 discuss the five factors, the first one  
22 being whether or not the benefit can be  
23 achieved by other means feasible to the  
24 applicant.

25 MR. BELL: No.

1 Eileen Reilly

2 CHAIRMAN SCALZO: No.

3 Second, if there's an undesirable  
4 change in the neighborhood character or a  
5 detriment to nearby properties. Well, the  
6 previous setup used to be exactly the same,  
7 so it's really not going to change that.

8 Third, whether the request is  
9 substantial. Again, they're putting up  
10 what they took down.

11 Fourth, whether the request will have  
12 adverse physical or environmental effects.  
13 It does not appear so.

14 Fifth, whether the alleged difficulty  
15 is self-created, which is relevant but not  
16 determinative. Well, they kind of inherited  
17 the house with the deck on it. The deck is  
18 down.

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

22 MR. BELL: I'll make a motion for  
23 approval.

24 MR. MASTEN: I'll second it.

25 CHAIRMAN SCALZO: We have a motion

1 Eileen Reilly

2 for approval from Mr. Bell. We have a  
3 second from Mr. Masten.

4 Siobhan, can you roll on that, please.

5 MS. JABLESNIK: Mr. Bell?

6 MR. BELL: Yes.

7 MS. JABLESNIK: Mr. Eberhart?

8 MR. EBERHART: Yes.

9 MS. JABLESNIK: Mr. Hermance?

10 MR. HERMANCE: Yes.

11 MS. JABLESNIK: Mr. Masten?

12 MR. MASTEN: Yes.

13 MS. JABLESNIK: Mr. Scalzo?

14 CHAIRMAN SCALZO: Yes.

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

17 MR. CELLA: Thank you very much.

18

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

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1 Eileen Reilly

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

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5

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

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

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

15 IN WITNESS WHEREOF, I have hereunto set  
16 my hand this 2nd day of February 2025.

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*Michelle Conero*

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MICHELLE CONERO

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

EMPIRE SOLAR SOLUTIONS  
SEAN DABROSKI  
  
5 Jessica Court, Newburgh  
Section 7; Block 1; Lot 60.3  
AR Zone

----- X

Date: January 23, 2025  
Time: 7:24 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: SHANNON MURPHY

----- X

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

1       E m p i r e   S o l a r   S o l u t i o n s / S e a n   D a b r o s k i

2                   CHAIRMAN SCALZO: We are going to  
3                   move on to items held open from the  
4                   2024 meeting. Empire Solar Solutions/  
5                   Sean Dabroski at 5 Jessica Court,  
6                   seeking an area variance of the minimum  
7                   front yard setback to install a ground-  
8                   mounted solar array. I see we have our  
9                   solar rep making her way up to the  
10                  microphone.

11                  If you recall, last month when  
12                  you were here I had asked for a little  
13                  time because we did have a very similar  
14                  application, when I say directly across  
15                  the street, it was directly across the  
16                  street. I did review the meeting minutes  
17                  from that one. That one, unfortunately  
18                  for that applicant, was denied.

19                  Now, we, as a Board, need to -- I  
20                  like to maintain consistency. However,  
21                  the lot shapes and sizes are not  
22                  consistent amongst these two lots.

23                  MS. MURPHY: Correct.

24                  CHAIRMAN SCALZO: There are  
25                  differences between the two that we

1       E m p i r e   S o l a r   S o l u t i o n s / S e a n   D a b r o s k i

2               certainly take into consideration.

3               That being said, because I'm the  
4       Chairman and I get to vote last, I'm  
5       going to look to the Members of the Board  
6       for any additional comments that they may  
7       have regarding this.

8               MR. DONOVAN: While you think about  
9       that, if I can for a second, we're all  
10      familiar with the concept of we need to  
11      follow our precedent. We're always  
12      concerned about setting a precedent. In  
13      this situation we have a nearby property  
14      that a couple years ago, in 2016, had a  
15      solar application that was turned down.

16              If you wish to grant this application,  
17      what you need to do is set forth on the  
18      record why this is different than the other  
19      application. The Chairman has already  
20      suggested some differences. If your  
21      inclination is to grant it, you need to  
22      say why this is different.

23              CHAIRMAN SCALZO: Unfortunately  
24      Mr. Masten straightened me out before the  
25      meeting got started that at the particular

1       E m p i r e   S o l a r   S o l u t i o n s / S e a n   D a b r o s k i

2               meeting that the applicant was turned  
3               down, he was absent for.

4               MR. MASTEN: I had a knee replacement.

5               MR. DONOVAN: You speak as a Board,  
6               though.

7               CHAIRMAN SCALZO: Right. I understand  
8               that. He didn't recall the actual property  
9               or the applicant, which is understandable.

10              As I mentioned, like I say, I like to  
11              remain consistent amongst ourselves as a  
12              Board. In reviewing that application,  
13              looking at that other property and looking  
14              at this one, the one that we denied was,  
15              I'll call it, topographically challenging.  
16              It was quite the slope, it was up a hill --

17              MR. MASTEN: I remember that.

18              CHAIRMAN SCALZO: -- and it was --  
19              I don't believe it was as large as this  
20              lot that the applicant is in front of us,  
21              which is a relatively gently sloping  
22              piece of land. It's certainly not what  
23              the other applicant was as far as that  
24              goes. I'm just pointing out the  
25              differences between the two applicants

1       E m p i r e   S o l a r   S o l u t i o n s / S e a n   D a b r o s k i

2               for that purpose.

3               Now I'll go back to Mr. Masten and  
4       say, do you have any comment regarding  
5       this application?

6               MR. MASTEN: Not right now.

7               CHAIRMAN SCALZO: Okay. Very good.  
8       Mr. Bell?

9               MR. BELL: Was that the one --

10              CHAIRMAN SCALZO: It's on the  
11       cul-de-sac and it backs up to Lattintown  
12       Road.

13              MR. BELL: I'm talking about the  
14       previous one.

15              CHAIRMAN SCALZO: The previous one  
16       was on the other side of Lattintown Road.  
17       Mr. Bell, I don't believe you were a  
18       Member of the Board at the time.

19              MR. BELL: In '16, no. I came in  
20       '17. I didn't see them.

21              CHAIRMAN SCALZO: He was trying to  
22       really -- there's a term for it that I  
23       really can't use, but he was trying to  
24       put a lot in a little space, whereas they  
25       have a little more room here on this lot.

1       Empire Solar Solutions / Sean Dabroski

2                   MR. MASTEN:  If I remember right,  
3       there was a lot of rock there.

4                   CHAIRMAN SCALZO:  As far as the  
5       geology of the lot, I don't recall the  
6       other lot.  I don't recall that.

7                   MR. BELL:  Wasn't there also one up  
8       here, up on Lakeside?

9                   MS. JABLESNIK:  Powelton, they have  
10      ground-mounted solar there.

11                  CHAIRMAN SCALZO:  It's allowed in  
12      the zone, just they can't meet the  
13      setbacks.

14                  MR. BELL:  They can't meet the  
15      setbacks.  Okay.  I'm good.

16                  CHAIRMAN SCALZO:  Okay.  Mr. Hermance?

17                  MR. HERMANCE:  I know the last time  
18      we had asked if it was possible to shift  
19      the field closer to the home to avoid the  
20      degree of nonconformity.  You had said  
21      you couldn't do that.

22                  MS. MURPHY:  It's always going to  
23      be violating the setback.  If you got it  
24      a little bit closer, we still need the  
25      clearance to still meet the code, no

1       Empire Solar Solutions / Sean Dabroski

2               matter how close we got it to the house.  
3               This area has the most existing screening,  
4               so it's kind of the most aesthetically  
5               pleasing and not visible to the public.

6               MR. DONOVAN: While it's closer to  
7               the road, it's actually less visible  
8               because of the existing vegetation.

9               MS. MURPHY: Correct.

10              MR. HERMANCE: We had also discussed  
11              possibly adding some other screening.

12              MS. MURPHY: Correct, which we're  
13              totally open to. The proposal is there  
14              are four trees that -- we think in these  
15              small gaps that do exist, four trees  
16              would be more than sufficient.

17              CHAIRMAN SCALZO: Can I ask  
18              specifically what types of trees were you  
19              looking at, deciduous or evergreen?

20              MS. MURPHY: They would be evergreen.  
21              They're six feet.

22              CHAIRMAN SCALZO: Eventually they  
23              grow.

24              MS. MURPHY: Exactly.

25              CHAIRMAN SCALZO: Okay. Thank you

1       E m p i r e   S o l a r   S o l u t i o n s / S e a n   D a b r o s k i

2                very much.

3                Mr. Hermance?

4                MR. HERMANCE:  If we did approve, I  
5                would like that as a condition.

6                CHAIRMAN SCALZO:  Okay.  I hear you.  
7                Thank you.

8                Mr. Eberhart?

9                MR. EBERHART:  That's a reasonable  
10               condition.  Nothing beyond that.

11               CHAIRMAN SCALZO:  Thank you.  Thank  
12               you for looking into this, folks.  I appreciate  
13               that.

14               Is there anyone here from the public  
15               that wishes to speak about this application?

16               (No response.)

17               CHAIRMAN SCALZO:  No.  I don't have  
18               any comments myself, actually.  I threw  
19               my own words in in the beginning.

20               In this instance I'll look to the  
21               Board for a motion to close the public  
22               hearing.

23               MR. EBERHART:  I'll make the motion  
24               to close the public hearing.

25               MR. BELL:  Second.

1       Empire Solar Solutions / Sean Dabroski

2                   CHAIRMAN SCALZO: We have a motion  
3       to close the public hearing from Mr. Eberhart.  
4       We have a second from Mr. Bell. All in favor?

5                   MR. EBERHART: Aye.

6                   MR. HERMANCE: Aye.

7                   CHAIRMAN SCALZO: Aye.

8                   MR. BELL: Aye.

9                   MR. MASTEN: Aye.

10                  CHAIRMAN SCALZO: Those opposed?

11                  (No response.)

12                  CHAIRMAN SCALZO: No.

13                  Any further discussion before we go  
14       through the factors here?

15                  (No response.)

16                  CHAIRMAN SCALZO: Counsel, this is a  
17       linear --

18                  MR. DONOVAN: Type 2 action.

19                  CHAIRMAN SCALZO: Area variance.

20       We're going to discuss the five factors  
21       we're weighing, the first one being  
22       whether or not the benefit can be achieved  
23       by other means feasible to the applicant.  
24       Now, as Mr. Hermance had mentioned, we  
25       did discuss in the previous meeting the

1       E m p i r e   S o l a r   S o l u t i o n s / S e a n   D a b r o s k i

2           possibility of moving the solar array  
3           closer to the home. Now, that would  
4           have decreased the degree of variance  
5           required, but in this instance, keeping  
6           it closer to Lattintown, the applicant  
7           made a solid point as to why.

8           Second, if there's an undesirable  
9           change in the neighborhood character or  
10          a detriment to nearby properties. I  
11          don't know the answer to that, only  
12          because I haven't seen any other solar  
13          arrays near there.

14          Counsel, if we don't know the answer  
15          to that --

16          MR. DONOVAN: You always tell the  
17          truth.

18          CHAIRMAN SCALZO: I don't know the  
19          answer.

20          MR. DONOVAN: Correct. We don't  
21          have enough information in front of us to  
22          make a final determination on that issue.

23          CHAIRMAN SCALZO: Thank you, Counsel.

24          The third, whether the request is  
25          substantial. In this case, when you look

1       Empire Solar Solutions / Sean Dabroski

2             at the numbers, it is a substantial  
3             request.

4                     The fourth, whether the request will  
5             have adverse physical or environmental  
6             effects. Well, as far as the viewshed  
7             goes, the applicant has offered to put  
8             some screening, trees, evergreens, so  
9             you won't see the solar array year round  
10            from the road. Conversely, if the  
11            applicant was to move them closer to  
12            the house, the people in the cul-de-sac  
13            would actually get a better view of  
14            them than the people on Lattintown, if  
15            you know what I mean.

16                    Fifth, whether the alleged difficulty  
17            is self-created, which is relevant but not  
18            determinative. Of course it's self-created.

19                    If the Board approves, it shall grant  
20            the minimum variance necessary and may  
21            impose reasonable conditions.

22                    Having gone through the balancing  
23            tests of the area variance, what is the  
24            pleasure of the Board? Do we have a motion  
25            of some sort?

1       E m p i r e   S o l a r   S o l u t i o n s / S e a n   D a b r o s k i

2                   MR. HERMANCE: I'll make a motion  
3                   to approve with the condition of the four  
4                   trees discussed, the evergreens, to help  
5                   hide the --

6                   MS. MURPHY: Absolutely.

7                   MR. DONOVAN: As part of that motion,  
8                   this is different than the application  
9                   decided in August of 2016 located at 1  
10                  Greiner Road in that this solar array  
11                  will be less visible and have less of  
12                  an impact on the neighborhood.

13                  CHAIRMAN SCALZO: That is entirely  
14                  true. Counsel is just pointing out the  
15                  difference between these two applications,  
16                  why one was denied and it appears as  
17                  though we're heading towards an approval  
18                  here.

19                  We have a motion from Mr. Hermance  
20                  with conditions. Do we have a second  
21                  somewhere?

22                  MR. EBERHART: Second.

23                  CHAIRMAN SCALZO: I was looking at  
24                  you, Mr. Eberhart. So we have a motion  
25                  from Mr. Hermance with conditions. We

1       E m p i r e   S o l a r   S o l u t i o n s / S e a n   D a b r o s k i

2               have a second from Mr. Eberhart.

3                       Can you roll on that, please,  
4       Siobhan.

5                       MS. JABLESNIK:   Mr. Bell?

6                       MR. BELL:    Yes.

7                       MS. JABLESNIK:   Mr. Eberhart?

8                       MR. EBERHART:   Yes.

9                       MS. JABLESNIK:   Mr. Hermance?

10                      MR. HERMANCE:   Yes.

11                      MS. JABLESNIK:   Mr. Masten?

12                      MR. MASTEN:    Yes.

13                      MS. JABLESNIK:   Mr. Scalzo?

14                      CHAIRMAN SCALZO:   Yes.

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

17                      Thank you for being patient with  
18       us.   It actually benefited you, as you  
19       can tell.

20                      MS. MURPHY:    Absolutely.

21                      CHAIRMAN SCALZO:   It gave us a  
22       chance to evaluate it.

23

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

25

1        E m p i r e   S o l a r   S o l u t i o n s / S e a n   D a b r o s k i

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

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

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

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

15           IN WITNESS WHEREOF, I have hereunto set  
16 my hand this 2nd day of February 2025.

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*Michelle Conero*

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MICHELLE CONERO

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

----- X  
In the Matter of

STEPHEN & SUSAN D'AURIA  
326 Balmville Lane, Newburgh  
Section 27; Block 8; Lot 20  
R-2 Zone

----- X

Date: January 23, 2025  
Time: 7:35 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: SUSAN D'AURIA

----- X

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

1        S t e p h e n   &   S u s a n   D ' A u r i a

2                    CHAIRMAN SCALZO: We're going to  
3        now move on to the also held open from  
4        December meeting.

5                    After this portion is over, I see  
6        Mr. Cella did arrive and we're going to  
7        come back to him. Like I say, he  
8        probably wasn't expecting this type of  
9        efficiency this evening.

10                   Do we have any representation here  
11        from the Stephen and Susan D'Auria?

12                   MS. D'AURIA: That's me.

13                   CHAIRMAN SCALZO: Last month the  
14        only reason why we asked you to come back  
15        is we didn't have all the information in  
16        front of us that actually showed the  
17        offset distances that we were looking  
18        for. I have it now. Now we completely  
19        understand that you are looking for your  
20        rear deck corner to be 26.1 feet  
21        perpendicular from the property line. We  
22        didn't have that information last month.

23                   Fellow Board Members, you guys all  
24        have this map as well that was in our  
25        package this month. You have a better

1       S t e p h e n   &   S u s a n   D ' A u r i a

2               understanding now of what it is that  
3               we're looking to do -- that the  
4               applicant, pardon me, is looking to do.

5               The public hearing is still open.

6               Do the Board Members have any  
7               questions now that we have a little more  
8               clarification with this map?

9               MR. EBERHART:   No.

10              MR. HERMANCE:   No.

11              MR. BELL:       No.

12              MR. MASTEN:   No.

13              CHAIRMAN SCALZO:   Are there any  
14              members of the public that wish to speak  
15              about this application?

16              (No response.)

17              CHAIRMAN SCALZO:   No.

18              Okay.   I'll look to the Board for a  
19              motion to close the public hearing.

20              MR. DONOVAN:   Ma'am, do we have  
21              your name?

22              MS. D'AURIA:   Susan D'Auria.

23              MR. DONOVAN:   Thanks very much.

24              CHAIRMAN SCALZO:   I'll look to the  
25              Board for a motion to close the public

1       S t e p h e n   &   S u s a n   D ' A u r i a

2               hearing.

3               MR. BELL: I'll make a motion to  
4               close the public hearing.

5               MR. MASTEN: I'll second it.

6               CHAIRMAN SCALZO: We have a motion  
7               to close the public hearing from Mr. Bell.  
8               We have a second from Mr. Masten. All in  
9               favor?

10              MR. EBERHART: Aye.

11              MR. HERMANCE: Aye.

12              CHAIRMAN SCALZO: Aye.

13              MR. BELL: Aye.

14              MR. MASTEN: Yes.

15              CHAIRMAN SCALZO: Those opposed?

16              (No response.)

17              CHAIRMAN SCALZO: Very good. This  
18              is a Type 2 action under SEQRA, so we are  
19              going to discuss the five factors, the  
20              first one being whether or not the benefit  
21              can be achieved by other means feasible  
22              to the applicant. They might be able to  
23              shift it, but it kind of lines up better  
24              with the door where the deck currently  
25              sits.

1           S t e p h e n   &   S u s a n   D ' A u r i a

2                        Second, if there's an undesirable  
3           change in the neighborhood character or  
4           a detriment to nearby properties.

5                        MR. BELL:   No.

6                        CHAIRMAN SCALZO:   It does not appear  
7           so.

8                        The third, whether the request is  
9           substantial.

10                      MR. BELL:   No.

11                      CHAIRMAN SCALZO:   No.   I mean, the  
12           house -- it's following the house line.  
13           It's just offset in.   I wouldn't say so.

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

16                      MR. EBERHART:   No.

17                      MR. HERMANCE:   No.

18                      MR. BELL:   No.

19                      MR. MASTEN:   No.

20                      CHAIRMAN SCALZO:   The fifth, whether  
21           the alleged difficulty is self-created  
22           which is relevant but not determinative.  
23           Of course it's self-created.   However,  
24           it doesn't necessarily factor into the  
25           way we're going to vote.

1        S t e p h e n   &   S u s a n   D ' A u r i a

2                    If the Board approves, it shall  
3        grant the minimum variance necessary.  
4        However, we've been through that.

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

8                    MR. BELL: I'll make a motion for  
9        approval.

10                   MR. MASTEN: I'll second it.

11                   CHAIRMAN SCALZO: We have a motion  
12        for approval from Mr. Bell. We have a  
13        second from Mr. Masten.

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

16                   MS. JABLESNIK: Mr. Bell?

17                   MR. BELL: Yes.

18                   MS. JABLESNIK: Mr. Eberhart?

19                   MR. EBERHART: Yes.

20                   MS. JABLESNIK: Mr. Hermance?

21                   MR. HERMANCE: Yes.

22                   MS. JABLESNIK: Mr. Masten?

23                   MR. MASTEN: Yes.

24                   MS. JABLESNIK: Mr. Scalzo?

25                   CHAIRMAN SCALZO: Yes.

1        S t e p h e n   &   S u s a n   D ' A u r i a

2                    The motion is carried.   The  
3                    variances are approved.

4                    MS. D'AURIA:   Thank you.

5                    CHAIRMAN SCALZO:   Enjoy the deck.  
6                    You're going to have lovely views.

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

8

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

10

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

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

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

20                    IN WITNESS WHEREOF, I have hereunto set  
21                    my hand this 2nd day of February 2025.

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*Michelle Conero*

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

----- X

In the Matter of

PRIME & TUVEL

2 Lakeside Road, Newburgh  
Section 86; Block 1; Lot 39.3  
IB Zone

----- X

Date: January 23, 2025  
Time: 7:45 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

APPLICANT'S REPRESENTATIVE: JASON TUVEL  
MATTHEW SECKLER

----- X

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

1 Prime & Tuvel

2 CHAIRMAN SCALZO: Now we are going  
3 to move on to an item held open from the  
4 November 2024 meeting, Prime & Tuvel,  
5 which is 2 Lakeside Road in Newburgh,  
6 which is a Planning Board referral for an  
7 area variance of the construction of a  
8 new gasoline station to be located within  
9 1,000 feet of an existing gasoline station.  
10 This is a continuation of the public  
11 hearing.

12 Good to see you. I'm sure you don't  
13 feel the same way perhaps.

14 MR. TUVEL: I was going to say happy  
15 new year to everybody. It's good to  
16 see everybody.

17 I know the Board, like I said in  
18 November, just wants to be thorough about  
19 this application.

20 CHAIRMAN SCALZO: Right.

21 MR. TUVEL: Just to summarize where  
22 we came from, because I know it's been  
23 some time, we came in here initially with  
24 several variances. I think it was four  
25 initially. We had sign variances and

1 Prime & Tuvel

2 some other items. Those were all  
3 eliminated.

4 CHAIRMAN SCALZO: You're just  
5 looking for that one 1,000 foot --

6 MR. TUVEL: In addition to that,  
7 and because it was noted in Mr. Wersted's  
8 report, there was a little discrepancy I  
9 think. The truck parking, that was also  
10 eliminated as well.

11 CHAIRMAN SCALZO: I didn't get  
12 through the entire package.

13 MR. TUVEL: That was eliminated  
14 previously. I think maybe he might have  
15 looked at a prior iteration of the plan,  
16 maybe, when he was drafting the letter.  
17 There's no truck parking. That was  
18 something that the Board mentioned at one  
19 of the first meetings way back when.  
20 That was eliminated.

21 Looking at Mr. Wersted's report --  
22 I know another party's traffic consultant  
23 also sent a report. We responded to both  
24 of those. Looking at Mr. Wersted's report,  
25 I don't see any major concern whatsoever.

1       P r i m e   &   T u v e l

2           In fact, I think he agreed with the  
3           methodologies, agreed with the scope of  
4           the review. I think he did have some  
5           technical comments, which rightfully  
6           so. This would go to site plan, should  
7           the Board approve the variance, where  
8           we would continue to work with him on  
9           some of those technical items. I think  
10          he agreed based on -- I don't know if  
11          the Board would like us to rehash them,  
12          but a lot of the off-track improvements  
13          that were being made, the signal timing  
14          that was being done, some of the road  
15          widening. I think his report indicated  
16          that it would be an overall improvement  
17          to the area, and that was set forth in  
18          his report. I think he agreed with the  
19          queueing analysis. He viewed that as  
20          conservative as well. He agreed with  
21          the trip generation. I know we talked  
22          about this in November. It was kind of  
23          a last-minute thought to get him to  
24          review it independently. I think his  
25          report reflected that we conservatively

1       P r i m e   &   T u v e l

2           analyzed this, that the improvements  
3           that we are performing as part of our  
4           application would be a betterment to  
5           the area in terms of some of the issues  
6           occurring out there.

7                        So we're here. I have our traffic  
8           consultant back. I don't know, Mr. Chairman,  
9           what your thought was here, if you just  
10          wanted the reports for the Board's review  
11          and that would allow you to weigh the  
12          variance criteria. We are here to answer  
13          any questions, should you have them.

14                       I believe that independent review  
15          underscored or reinforced our testimony  
16          was accurate during the course of the  
17          presentation.

18                       CHAIRMAN SCALZO: I appreciate you  
19          going through that again just for the  
20          Board Members. It's been a little while.

21                       MR. TUVEL: I think the case has  
22          come a long way as well.

23                       CHAIRMAN SCALZO: You bet. Ken  
24          Wersted actually called me before he  
25          submitted the other three, four-page

1       P r i m e   &   T u v e l

2           document to us that you're referring to,  
3           and then we received revised information  
4           from your office.

5           MR. TUVEL:   Yes.   From Stonefield,  
6           our consultant.   Correct.

7           CHAIRMAN SCALZO:   I mostly agree  
8           with what you're saying with regard to  
9           Ken Wersted's comments.   I'll call them  
10          no show stoppers, in my opinion.   I don't  
11          want to -- we received your information  
12          late.

13          MR. TUVEL:   Well, ours was a response  
14          to the fact that he submitted a report and  
15          one of the parties submitted a report.  
16          I just wanted to make sure that -- I can  
17          also represent, from speaking with our  
18          traffic consultant, that none of the items  
19          set forth -- none of the technical items  
20          in his report do we find objectionable to  
21          working with him to provide that information,  
22          which we did in that letter.   If the Board  
23          were to approve the application, we take no  
24          issue with complying with the technical  
25          comments in his letter.   They would also

1       P r i m e   &   T u v e l

2           be part of site plan review, as well,  
3           at the Planning Board because he would  
4           review it in that respect also. Again,  
5           as you've seen, we are willing to work  
6           with you on making sure that the Board  
7           is comfortable and has all the information  
8           necessary, but I do feel that that's the  
9           case.

10                 I'll defer to you, Mr. Chairman,  
11           and the Board on that issue.

12                 CHAIRMAN SCALZO: Okay. I appreciate  
13           the way you're framing this.

14                 Just for the Members of the Board to  
15           know, Siobhan reached out to us all when  
16           the hard copy packages arrived and then we  
17           got the PDF versions Tuesday.

18                 MS. JABLESNIK: Yes.

19                 CHAIRMAN SCALZO: I forwarded that  
20           to Ken Wersted. I got an e-mail from Ken  
21           just saying he didn't have a chance to look  
22           at anything, understandably so, in two days.

23                 Now, at our last -- when the applicant  
24           was here last in November, I had asked you  
25           folks to spend a little time digging into

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2           the information that we already had,  
3           and then when Ken Wersted's comments  
4           had come in. There are a couple -- did  
5           I breeze through the information that  
6           was provided to us this week. Yes.  
7           Did I dig in like I wanted to. Not  
8           necessarily. However, the applicant's  
9           representation here kind of captured it  
10          well enough to the extent that I know  
11          how I feel about certain things.

12                 I'm going to look to the Members  
13          of the Board here in this instance.  
14          The new information that we just  
15          received, if you feel as though you've  
16          had enough time to look at it and make  
17          an informed decision this evening, let's  
18          continue. If not, I'm going to look to  
19          you guys. However you feel we should  
20          move, then that's how we'll move.

21                 MR. DONOVAN: Mr. Chairman, while  
22          everyone is thinking about that, the  
23          public hearing is open. There are  
24          people from the public here. There's  
25          not a lot of them, but there are members

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2           of the public here. You can consider  
3           that.

4           The other thing, just to kind of  
5           orient the Board, we don't have an  
6           engineer or a traffic consultant that  
7           sits here. No one here is a traffic  
8           engineer. The prism with which you  
9           look at this application before you is  
10          the specific requirement of the code  
11          that says the Planning Board shall  
12          approve plans for a motor vehicle  
13          service station. The Board shall  
14          consider the potential interference  
15          with or danger to traffic on abutting  
16          streets relative to the 1,000 foot  
17          requirement.

18          What I want to say is, when you  
19          analyze the five factors, you've got to  
20          look at the big picture of whether or  
21          not there's going to be an adverse  
22          traffic impact as a result of this  
23          facility being less than 1,000 feet  
24          from another facility. That's kind of  
25          your objective here. If you think you

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2           have enough information to make a  
3           decision, you get to do that. If you  
4           don't, because you didn't get through  
5           the last submission, you don't have to.  
6           Remember, the law says you can close  
7           the public hearing and take up to 62  
8           days to decide. You could also close  
9           the public hearing and think about it.  
10          You could also vote tonight. You could  
11          ask Mr. Tuvel and his consultants to  
12          get in the car from Hackensack and come  
13          back to Newburgh because it's a great  
14          place to be.

15                 CHAIRMAN SCALZO: It's the Crossroads  
16                 of the Northeast. It says it right there.

17                 Thank you, Counsel.

18                 MR. DONOVAN: I was trying to give  
19                 everybody time to think.

20                 CHAIRMAN SCALZO: It's nice to be  
21                 reminded.

22                 I'll go back to my correspondence  
23                 with Ken Wersted. He hasn't had a chance  
24                 to look at the resubmission to what they  
25                 sent.

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2 That being said, I'm not going to  
3 ask the Board anything at this point  
4 because Counsel reminded me that the  
5 public hearing is still open.

6 Is there anyone here that wishes to  
7 speak about this application? I see  
8 Mr. Bacon with a smile on his face.  
9 You had your hand up. If you've got  
10 something that you want to state --

11 MR. BACON: Thank you, Mr. Chairman.  
12 Happy new year to the Board.

13 CHAIRMAN SCALZO: Happy new year to  
14 you.

15 MR. BACON: So I put my two cents  
16 in on this application pretty much.

17 CHAIRMAN SCALZO: We got a nickel's  
18 worth out of you by now, I'm sure.

19 MR. BACON: Also, we do have a  
20 traffic engineer here, Michael Maris, who  
21 has prepared a report and would like to  
22 speak to the Board.

23 I think Dave's comments are important.  
24 I think overall remember that the Board has  
25 to look at whether or not this 1,000 foot

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2           requirement with not two but three gas  
3           stations within that proximity is  
4           consistent with the purposes of the  
5           code and the intent of the code, and  
6           that the traffic impacts are sort of a  
7           secondary but very important part of  
8           that. That's what I'd like Mr. Maris  
9           to talk about.

10                   CHAIRMAN SCALZO: Normally I would  
11           agree with you, however this is -- we've  
12           had months. This was kind of a Johnny-  
13           come-lately issue. We do have his written  
14           comments which we have all read. That is  
15           my position.

16                   Counsel, is that -- it's my meeting  
17           and I can --

18                   MR. DONOVAN: I would tell you I'm  
19           not necessarily -- I think the public  
20           hearing is open. You have the public  
21           here. You should listen to the public  
22           and give whatever weight you want to give  
23           to those comments.

24                   CHAIRMAN SCALZO: Okay. I stand  
25           corrected.

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2 MR. DONOVAN: In the nicest way  
3 possible.

4 CHAIRMAN SCALZO: In the nicest way  
5 possible. Who am I to disagree with  
6 someone who is paid to give me good advice.

7 MR. BACON: Thank you, Mr. Chairman.  
8 Mr. Maris is a real gentleman. He's not  
9 going to waste your time.

10 MR. TUVEL: Can I just respond to  
11 that real quick? I won't object to what  
12 the Board is saying, but that was my fear,  
13 is that now he brings Mr. Maris. I'm  
14 going to then ask the Board if I can  
15 rebut, of course, with Mr. Seckler, and  
16 then we get into another back and forth.  
17 I know Mr. Bacon is trying to represent  
18 his client. He could have done this  
19 five months ago when we had traffic  
20 testimony initially before the Board.  
21 He wasn't here. The Board asked for  
22 the report from Mr. Wersted. His report  
23 comes in. I felt that was, again, a  
24 late report, but I know that the Board  
25 is going to consider it out of fairness.

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2           Again, this is all stuff that could  
3           have been done -- I feel like I need to  
4           get it on the record -- it could have  
5           been done five months ago. He could  
6           have come in with an expert at that time  
7           and put forth whatever information he  
8           wanted. Now we're going to get into a  
9           back and forth which is just going to  
10          further, unfortunately, delay the process.

11                 CHAIRMAN SCALZO: Sure. As solid a  
12           point as you just made, the information  
13           that we have from your office was dated  
14           December 18th but we didn't get it until  
15           last week. As far as when we're talking  
16           about tardiness, you're guilty too.

17                 MR. TUVEL: That was all in response  
18           to the fact that the Board had asked for  
19           additional information from its engineer,  
20           and also the fact that he decided to submit  
21           a report months later. That's why we  
22           responded. We would have never responded  
23           because we felt that all of the information  
24           was done at the time back in November.  
25           That's what -- I don't disagree with the

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2           fact that it was done, you got it this  
3           week. I get that in terms of fairness,  
4           you having to review it as the Board  
5           and Mr. Wersted having to review it as  
6           a consultant. The only reason we  
7           generated more information was because  
8           more information from others was  
9           proffered. That's the only reason.

10                   CHAIRMAN SCALZO: I hear what you're  
11                   saying. I appreciate your comments.  
12                   We're going to let Mr. Bacon's consultant  
13                   speak.

14                   MR. BACON: Thank you, Mr. Chairman.  
15                   Just a point of clarification. Mr. Maris  
16                   did get his report in before Mr. Wersted.  
17                   I think we were timely on that.

18                   MR. MARIS: My name is Michael Maris,  
19                   M-A-R-I-S. I'm a traffic consultant.  
20                   Our offices are in Franklin Lakes, New  
21                   Jersey. Basically my education is in  
22                   architecture and civil engineering.  
23                   However, since 1967, almost sixty years  
24                   ago, I have been a traffic and parking  
25                   consultant. During that period I have

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2           worked in probably a couple of thousand  
3           projects throughout the United States,  
4           from California to Texas to Florida to  
5           Maine and in between. Hundreds of  
6           projects in New York and in New Jersey  
7           and in the northeast. I have testified  
8           at approximately 500 to 600 planning or  
9           zoning boards as a traffic and parking  
10          expert. I'm a member or fellow of the  
11          Institute of Transportation Engineers.  
12          I'm a member of the Expert Witness  
13          Council. I'm also -- I was a charter  
14          member of the American Planning Association.

15                 Now, on this particular project we  
16                 were asked to review the traffic impact  
17                 study submitted on behalf of this  
18                 application. The one we reviewed was  
19                 dated June 20th, I believe. It had a  
20                 revision date of -- I heard the date as  
21                 some additional information had been  
22                 submitted. I haven't seen it. I don't  
23                 know if anything I'm saying today has  
24                 been modified. If it is, I would stand  
25                 corrected.

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2 First we looked at the proposed  
3 access to the project. The traffic  
4 impact study says that there are four  
5 driveways. The site plan shows three  
6 driveways. The traffic impact study  
7 analyzes three driveways. The driveways  
8 have different geometry. Some of it, I  
9 look at it and I wonder why. Like the  
10 southernmost driveway closest to 17K is  
11 shown as 36 feet wide. It's supposed to  
12 be a right in only. It's supposed to  
13 have a sign that says no trailers. I've  
14 got to wonder why is it 36 foot wide when  
15 normally you would have it 15 to 20 feet.  
16 The only reason I'm questioning that is,  
17 if it is that wide, somebody can mis-  
18 understand it and exit at that driveway.  
19 It's supposed to be an entrance only.  
20 There's an issue there. In fact, if it  
21 is intended to be a right in only, then  
22 I would put a sign that says right in  
23 only. I would put a sign that says no  
24 exit. I would channelize it so people  
25 cannot misunderstand what it's intended

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2               to be.

3                       The center driveway does not show  
4                       any right turns in. I assume it's  
5                       intended to be that way. If that's the  
6                       case, there should be a sign that says  
7                       no right turns in. It should be clear  
8                       what these driveways are intended.

9                       The northern most driveway, when  
10                      I look at the traffic study it shows  
11                      zero traffic. Nobody enters or exits  
12                      that driveway. I'm wondering why is it  
13                      there. I know there's a statement there  
14                      that it was analyzed at zero in order  
15                      to be conservative. A traffic impact  
16                      study has to be accurate. For somebody  
17                      to make a decision, it has to reflect  
18                      what is being proposed.

19                     Frankly, I question why three  
20                     driveways. Every driveway creates a  
21                     conflict with the through roadway. If  
22                     you analyze -- if the traffic study  
23                     analyzes two driveways and says it will  
24                     work fine, because that's what the traffic  
25                     study says, then why put a third driveway

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2           over there? That's a question that I  
3           have in my mind.

4           The traffic impact study has --  
5           follows a generally accepted scope. It  
6           follows an outline. It looks at  
7           existing traffic volumes, it looks at  
8           future traffic volumes and, where there  
9           is a problem, identifies improvements.  
10          I've got no problem with the outline of  
11          the traffic impact study. However, I  
12          think there's some information missing  
13          and some information needs to be  
14          clarified. The traffic impact study  
15          looks at traffic conditions during the  
16          morning, evening and Saturday peak  
17          hours. That's what you would do. For  
18          this type of a development, that's what  
19          it would be. That's correct. It  
20          includes traffic counts that were done.  
21          We checked the date they were done. It  
22          was not a bad day. There was no snow,  
23          there were no unusual weather conditions.  
24          We find that acceptable. However,  
25          normally when we do traffic impact

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2 studies, we look at typical conditions.  
3 We do seasonal adjustments. In this  
4 case I would have contacted New York  
5 State Department of Transportation and  
6 asked them to give me a seasonal  
7 adjustment. As far as I know, June may  
8 be a very low traffic day of the year.  
9 Unless I see somebody say we checked  
10 with the State and this is okay, then I  
11 don't know whether that's okay.

12 MR. DONOVAN: Mr. Maris, can I  
13 interrupt for a second, after I told the  
14 Chairman to make sure he heard from you?  
15 Are you going to say anything different  
16 than what's in your report?

17 MR. MARIS: No, sir.

18 MR. DONOVAN: You have the report.  
19 Right?

20 CHAIRMAN SCALZO: Yes.

21 MR. DONOVAN: Do you want to hear a  
22 summary of the report or -- it's up to  
23 the Board.

24 I mean, you're just repeating what  
25 you've already told us.

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2 MR. MARIS: I'm providing more  
3 explanation why some of these things -- I  
4 disagree with some of them.

5 MR. DONOVAN: My question to you,  
6 is there anything new?

7 MR. MARIS: No, sir.

8 MR. DONOVAN: It's up to you,  
9 Mr. Chairman, if you want to continue  
10 to listen.

11 CHAIRMAN SCALZO: We're rolling as  
12 we are. I'm going to look to the Board.

13 MR. BELL: I don't need to hear any  
14 more. I mean, if it's exactly what I'm  
15 reading -- I read, I don't need to be  
16 told the same thing I already read. If  
17 he's trying to clarify, then, you know, I  
18 guess we can afford him the opportunity.

19 CHAIRMAN SCALZO: Sir, your report,  
20 if there are -- you have it in your  
21 hands. If you could look at that and if  
22 there are any -- if there's supplemental  
23 information that you would like to add to  
24 that, then we'd be happy to hear that.

25 MR. MARIS: Unless something has

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2 been submitted since I did my review that  
3 changes it, I have nothing else.

4 CHAIRMAN SCALZO: Unfortunately we  
5 do have -- Stonefield Engineering has  
6 taken your report as well as information  
7 that was provided by Ken Wersted and they  
8 did respond to all of those.

9 That hasn't been posted online?

10 MS. JABLESNIK: It has been.

11 CHAIRMAN SCALZO: It has been posted  
12 online for review. Just bear with me.

13 Just to your point that you had  
14 just made, sir, Stonefield -- let's see.  
15 It said response based on a review of the  
16 traffic impact studies for the Matrix  
17 I-84 Distribution Center prepared by a  
18 different consultant and 36 Racquet Road,  
19 which is just up the street, which has  
20 been included in the subject traffic  
21 impact study as advised by the Town of  
22 Newburgh Planning Board. The volumes are  
23 generally consistent among the reports.  
24 Please refer to the appended volume for  
25 comparison which compares the subject

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2           count volumes to the aforementioned  
3           traffic impact studies which performed  
4           counts on select study intersections  
5           during September or November as noted.

6           So when the initial report came out  
7           that they had done a traffic impact study  
8           in February, my opinion is February is  
9           certainly not the impact traffic that  
10          you'd see during the summer months of  
11          June, July and August. I think you're at  
12          a disadvantage because you weren't able  
13          to get a look at their response to your  
14          report. I, along with Members of the  
15          Board, did read your letter -- your  
16          report. Your qualifications are  
17          certainly outstanding. I've never heard  
18          anyone that's had the experience that you  
19          have.

20          Mr. Bell, your opinion is if there  
21          were other things that the consultant  
22          could expand on, let's go ahead.

23                 Mr. Masten?

24                 MR. MASTEN: I'm at a loss right  
25                 now.

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2 CHAIRMAN SCALZO: No problem.

3 Mr. Hermance?

4 MR. HERMANCE: No.

5 CHAIRMAN SCALZO: Mr. Eberhart?

6 MR. EBERHART: No.

7 CHAIRMAN SCALZO: Mr. Bacon's  
8 consultant, Mr. Maris, did not have the  
9 opportunity to review Stonefield's  
10 responses to his, nor Mr. Wersted's,  
11 comments.

12 MR. EBERHART: That being said, my  
13 thought is that if there's nothing  
14 different that he's presenting than we've  
15 already received, then we need to move on.

16 CHAIRMAN SCALZO: Okay.

17 MR. BACON: Mr. Chairman, if I can  
18 just make a suggestion.

19 CHAIRMAN SCALZO: Sure, Mr. Bacon.

20 MR. BACON: I'm not asking that the  
21 public hearing be kept open for another  
22 month, unless the Board really wants to  
23 do that. I think at least have some type  
24 of written comment period where we can  
25 have a chance to respond in writing.

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2 CHAIRMAN SCALZO: Duly noted.

3 Mr. Maris, let me ask you. This is  
4 kind of an odd question, but looking  
5 through the traffic impact study that was  
6 provided by Stonefield as well as the  
7 plans, I understand that the traffic  
8 analysis is all based on projections.  
9 Was there anything in the Stonefield  
10 report that stuck out to you that said  
11 this can't happen because of? Is there  
12 any particular item in this report that  
13 you said this is something that shouldn't  
14 be considered because of any particular  
15 item?

16 MR. MARIS: Yes, sir. There are  
17 some. It's in my report, but I can  
18 expand on it.

19 CHAIRMAN SCALZO: All right. I'm  
20 going to give you a couple of minutes  
21 here.

22 MR. MARIS: One of the improvements  
23 that they are talking about is a double  
24 left-turn lane out of Riverside Road --

25 CHAIRMAN SCALZO: Lakeside Road.

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2                   MR. MARIS:  -- onto Route 17.  I  
3           think we've all driven double left-turn  
4           lanes and we've all experienced how tight  
5           it is to make left turns next to each  
6           other.  Normally when that happens, they  
7           have what we call elephant tracks.  That  
8           directs cars to be further away from each  
9           other when they're making the turn.  When  
10          they hit Route 17K in this case, you need  
11          more room for the cars to go straight,  
12          because they are coming off the curve and  
13          then they need to go straight.  Route 17  
14          is only 24 feet wide.  That's not wide  
15          enough for a double left turn.  I think  
16          that could be a problem.  What they would  
17          need to do is do what we call a turning  
18          path analysis, which is you put on the  
19          plan of what's existing, the paths that  
20          two cars would make.  In this case I  
21          think they need to consider trucks, the  
22          possibility of two trucks going side by  
23          side, or one truck and one passenger  
24          vehicle side by side, to see whether  
25          Route 17 can make that left turn -- the

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2           cars can make it without hitting each  
3           other. That's a safety issue. I think  
4           that needs to be addressed.

5                    The other thing that needs to be  
6           addressed is the left turn onto I-84.  
7           I've been out there several times. Every  
8           time that left-turn lane is too short.  
9           The left-turn cars, the demand is more  
10          than the lane. What happens is the  
11          left-turning traffic backs up and blocks  
12          one of the through lanes. That is a  
13          serious problem because it impacts  
14          capacity. Now, I'm not suggesting that  
15          the applicant needs to fix that, but it  
16          is an issue. It is a safety issue. The  
17          issue is, how do you fix it. You can fix  
18          it by changing the timing of the signal,  
19          but I understand those signals are all  
20          coordinated. If you change the time, you  
21          impact another approach. You could  
22          lengthen the left-turn lane if there was  
23          room, but there's no room to make it  
24          longer. You can create a double left  
25          turn in which case you have another

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2           problem, whether the ramp can accept  
3           double left turns. So there's an issue  
4           there that needs to be analyzed. The  
5           reason I'm bringing it up is this  
6           application will add traffic to that  
7           movement. They show that their cars will  
8           go and make that left turn. I don't  
9           think it's addressed properly in the  
10          traffic impact study. It doesn't suggest  
11          anything. The improvement that I have a  
12          problem with is widening Riverside Road,  
13          changing the green time to favor Riverside  
14          Road.

15                 MR. BELL: Lakeside Road.

16                 CHAIRMAN SCALZO: Lakeside.

17                 MR. MARIS: I'm sorry?

18                 CHAIRMAN SCALZO: Lake, river. A  
19          water body.

20                 MR. MARIS: Anyway. Lakeside Road.  
21          I apologize. You're improving one approach  
22          to the intersection at the expense of the  
23          other approach. The driveway from the  
24          service station is going to have less  
25          green time. They're going to have a

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2           problem.  You can't take something to  
3           -- do something to solve your problem  
4           and create a problem for somebody else.  
5           I think there are some issues there.

6                    I couldn't analyze all the queueing  
7           analysis, the vehicle backups, because  
8           they are not included in the report.  
9           They're included for the existing  
10          conditions and the conditions without  
11          this project, but when you get to the  
12          conditions with the project, the  
13          queueing analysis is not included.  I  
14          can't say what impact this project is  
15          going to have because it's not there.

16                   I think there's -- if it was not  
17          clear in my letter, I think it follows  
18          guidelines, but there are some areas  
19          where insufficient information is  
20          provided or issues are not addressed.  
21          They're there and they are not  
22          addressed.

23                    I think those two issues, the  
24          double left turn and the left turn onto  
25          the ramp are issues that are hard to

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2           take care of and need to be addressed.

3                   CHAIRMAN SCALZO: Thank you. That's  
4           exactly what I was -- well, those examples  
5           are exactly what I was looking for. The  
6           benefit that all of us Members of the  
7           Board have is we live here. I drive  
8           I-84 every Wednesday in the summer, I  
9           go to my golf league. There's not enough  
10          stacking room between the I-84 D ramp  
11          westbound. There's just not enough. I  
12          believe part of the problem, it's not  
13          this applicant's problem, but the  
14          circulation plan at Pilot kind of lends  
15          to the challenges that this applicant has.

16                   Anyway, that's neither here nor there.

17                   Thank you. I appreciate that.

18                   MR. MARIS: Thank you.

19                   CHAIRMAN SCALZO: Mr. Tuvel, we're  
20          going to let you --

21                   MR. BELL: I live that's a good  
22          point.

23                   MR. TUVEL: What were you going to  
24          say, Mr. Chairman?

25                   CHAIRMAN SCALZO: I was going to

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2           give you the floor for a few minutes.

3                   MR. TUVEL: I'll bring our traffic  
4           engineer up to address those items. In  
5           Mr. Wersted's report, he goes over all  
6           the improvements that we're making to the  
7           intersection, including the signal timing,  
8           and actually indicates that it would be  
9           an overall improvement to the area. He  
10          also comments about the queueing that I  
11          believe Mr. Maris mentioned in his  
12          testimony. In Mr. Wersted's letter, he  
13          actually indicated that he does not  
14          expect any blockage with respect to  
15          queueing as well, and that our queueing  
16          analysis was conservative. Mr. Wersted,  
17          your traffic consultant, does comment  
18          on all of these. Of course they're  
19          also going to be looked at when we get  
20          to the site plan stage by the DOT  
21          because we are under their jurisdiction  
22          as well. They may make us do more  
23          improvements perhaps.

24                   I wanted Mr. Seckler to address  
25          those items that Mr. Maris --

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2 MR. DONOVAN: While he gets  
3 prepared, I do want to remind the Board  
4 again, we're here for the 1,000 foot  
5 issue. We're getting down to the weeds  
6 on existing conditions, which this  
7 project has nothing to do with, which may  
8 be an existing problem. Something is  
9 going to be built here. This is a  
10 permitted use. There's going to be some  
11 sort of commercial use at sometime. I  
12 don't think anyone is suggesting this  
13 property is never going to be built on.  
14 I do want you to focus on the analysis of  
15 the Board shall consider potential  
16 interference with or danger to traffic on  
17 all abutting streets. The cumulative  
18 effect of curb cuts for any new use shall  
19 be considered. That's where your focus  
20 should be. Remember, if you give an  
21 approval, this doesn't authorize  
22 construction. This is only they pay  
23 their \$200, perhaps more than \$200, and  
24 they can pass go to go to the Planning  
25 Board where Ken Wersted is going to do a

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2 full traffic impact study. They're going  
3 to have to do what the DOT requires them  
4 to do, which, for those of you who have  
5 been through that process, is no easy  
6 feat. The DOT is slow and they're  
7 difficult. I just want you to be aware  
8 of that. I'm not trying to influence you  
9 one way or another. You guys are not  
10 traffic engineers, right. You need to  
11 analyze the five factors for the 1,000  
12 foot requirement.

13 MR. TUVEL: We'll be at those  
14 points eventually hopefully. Mr. Maris  
15 and Mr. Bacon may have more comments as  
16 we go. That will be part of the process.

17 MR. DONOVAN: I suspect they will.

18 MR. TUVEL: Just to be fair, because  
19 Mr. Maris did raise some items, I just  
20 wanted Mr. Seckler to be able to respond  
21 to them, if that's okay, Mr. Chairman.

22 CHAIRMAN SCALZO: I did it for one,  
23 I've got to do it for the other.

24 MR. SECKLER: Again for the record,  
25 Matt Seckler. I previously was here, I

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2 think, in June, or some summer month when  
3 it was much warmer outside.

4 CHAIRMAN SCALZO: We've seen you so  
5 much, I feel like I should invite you to  
6 my kids' birthday parties.

7 MR. SECKLER: There are a number of  
8 items that we have responded to in  
9 writing related to Mr. Maris's comments,  
10 so I don't want to rehash them. You guys  
11 have them, although maybe not fully  
12 reviewed at this point. I understand,  
13 obviously, Mr. Maris has not seen that  
14 response. I don't want to get into the  
15 back and forth on those items.

16 I do want to address just a couple  
17 points that he was making while it's  
18 fresh in everyone's mind. One of the  
19 comments related to the double left-hand  
20 turn we're creating from Lakeside Road.  
21 Again, we have no issues putting in the  
22 skid marks or elephant tracks, guiding  
23 the two lanes through the intersection.

24 We are widening the receiving lanes.  
25 This was part of the NYSDOT additional

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2 review that we got. We pitched this  
3 idea. We're working with NYSDOT and  
4 understand the feasibility of the  
5 double left-hand turn was to widen the  
6 lanes to 15 feet wide each. While the  
7 lanes along Lakeside Road, when you're  
8 waiting at the traffic light, are going  
9 to be 11 to 12 feet wide, in order to  
10 accommodate, as Mr. Maris mentioned,  
11 the vehicles as they turn side by side,  
12 we ensured that we have 15-foot wide  
13 lanes. That may require widening along  
14 the edge of 17K along the Pilot side,  
15 the south side. That's something we  
16 understand and we will address.

17 Again, probably not applicable to  
18 this Board, but just understanding that  
19 we are in the process of making --  
20 continually working on this project  
21 with the various jurisdictions, like  
22 NYSDOT, to ensure comments like that  
23 are addressed.

24 I also want to mention in terms  
25 of Pilot; again, one of the aspects of

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2           this application, and this was actually,  
3           I think, suggested by Mr. -- by your  
4           Board's engineer when he was reviewing  
5           this application from the Planning  
6           Board's standpoint was changing the way  
7           the driveway works at Pilot, so as a  
8           right-turn only lane and then a left  
9           lane. The reason why we're doing that  
10          is, when you have a right-turn only  
11          lane on the Pilot approach, that  
12          movement can go with a green arrow at  
13          the same time that vehicles are turning  
14          into the Pilot on that green arrow.  
15          Basically the left-turn green arrow for  
16          cars going into Pilot can occur at the  
17          same time as the right-turning cars or  
18          trucks coming out. As you go from  
19          Pilot, a lot of the traffic is actually,  
20          again, going right and getting back on  
21          to the interstate. While we are reducing  
22          the amount of green time for vehicles  
23          making lefts or throughs, the predominant  
24          movement, which is that right turn back  
25          to the interstate, they actually have

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2           more green time with the way we  
3           designed this. Not only will they get  
4           a green when Pilot gets their green  
5           light, they also can make their right  
6           turn when vehicles turn into the  
7           driveway making that left turn.

8                    Again, I know it was technical in  
9                    nature. I just wanted to make sure the  
10                   record is clear on what we are proposing  
11                   here as it relates to Mr. Maris's comments.

12                   Lastly, obviously the left turn from  
13                   17K onto 84, I think everyone understands,  
14                   I think Counsel also mentioned, again this  
15                   is an existing condition. We did analyze  
16                   it, we did study it. Understanding that  
17                   whether this site was developed here or  
18                   1,600 feet away from a gas station  
19                   somewhere to the west of here, it will  
20                   add traffic to that approach. I don't  
21                   think that's necessarily relevant to  
22                   the variance we're seeking. It is an  
23                   existing condition. Again, that is an  
24                   analysis we provided.

25                   As Mr. Maris mentioned, he did

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2           have a number of comments about things,  
3           such as the time of year we did the  
4           counts.  Again, we responded to that  
5           with an accident analysis just to kind  
6           of give everyone a preview of what is  
7           in the submission package that came in  
8           in January from our office.

9                        Again, I don't want to harp into  
10           too much of the details.  I just wanted  
11           to hit those couple bullet points.  
12           Again, also understanding that could be  
13           a site plan issue, it could be a New  
14           York State DOT review issue, not  
15           necessarily this Board.  It will be  
16           captured through another jurisdictional  
17           body.

18                       MR. TUVEL:  Matt, just to reiterate  
19           for everyone, you take no issue and are  
20           willing to work with Mr. Wersted on all  
21           of his outstanding technical comments.  
22           Correct?

23                       MR. SECKLER:  Correct.  I think in  
24           our response letter, that was the  
25           intention of the response letter, not to

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2 leave his comment letter just out there  
3 and just show up here without making  
4 effort to show that we are working with  
5 him. Again, I understand there hasn't  
6 been the full time to review it. It is  
7 our intention to respond to every comment  
8 in writing. If there are some continued  
9 disagreements or improvements that he  
10 wishes us to make, we will continue to  
11 work with his office.

12 CHAIRMAN SCALZO: Thank you. Okay.

13 MR. BELL: A 1,000 foot variance.

14 CHAIRMAN SCALZO: Board Members, do  
15 you have any questions so far?

16 MR. HERMANCE: No.

17 CHAIRMAN SCALZO: Are there any  
18 other questions or comments from the  
19 public?

20 MR. MASTEN: I've got a question.  
21 The last survey that you gave us, is that  
22 the same as what we just got tonight?

23 MR. TUVEL: We didn't do a new report,  
24 but there were comments in Mr. Wersted's  
25 letter that we responded to. There wasn't

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2 a brand new report. We responded to --

3 MR. MASTEN: I looked at the date  
4 and they were identical.

5 MR. TUVEL: Right. We just wanted  
6 to make sure that we answered all the  
7 questions in his letter. As Matt  
8 indicated, we're willing to work with him  
9 going forward.

10 MR. MASTEN: In my opinion, right  
11 now it's a little confusing.

12 MR. TUVEL: Okay. I understand.

13 CHAIRMAN SCALZO: Thanks, Mr. Masten.

14 Like I say, the big deal really was  
15 the December 18th letter that is now  
16 online, Mr. Bacon. We put it online when  
17 we received it on Tuesday.

18 Guidance, Counsel.

19 MR. DONOVAN: You've got a couple  
20 of options. One option is you could  
21 continue the public hearing until February.  
22 I don't know why you would do that, but  
23 you could do that. Your other option,  
24 and I think suggested by Mr. Bacon, is  
25 that you close the hearing, you give

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2           Mr. Bacon and his traffic consultant an  
3           opportunity to respond because they  
4           just got this information as well.  
5           Fair is fair. The applicant should  
6           then get the last word. You would set  
7           comments from Mr. Bacon at a certain  
8           period of time, his consultant responds  
9           in a certain period of time, and then  
10          you would put this on the February  
11          agenda to perhaps try to vote one way  
12          or the other. You could close the  
13          public hearing, not give Mr. Bacon any  
14          time, and make a decision. You could  
15          close the public hearing and not do  
16          anything because you have 62 days to  
17          decide.

18                 MR. TUVEL: When is the February  
19                 hearing, Mr. Chairman? Is it also the  
20                 fourth Thursday?

21                 MS. JABLESNIK: The 27th.

22                 MR. TUVEL: I may have a conflict  
23                 that day. That's why I asked.

24                 CHAIRMAN SCALZO: Me, too. Anyway,  
25                 okay. We do have 62 days, should we

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2 close the public hearing.

3 MR. DONOVAN: Right.

4 CHAIRMAN SCALZO: I'm a big advocate  
5 here of receiving -- let's just say if I  
6 had a choice singularly, I would close  
7 the public hearing this evening and  
8 accept written comments. Not that we  
9 don't get value out of what we hear  
10 from the public, but I also don't want  
11 this back and forth to continue.

12 MR. BELL: Right.

13 CHAIRMAN SCALZO: Mr. Maris and  
14 Mr. Bacon have not seen the Stonefield  
15 response. I know Ken Wersted --

16 MR. MASTEN: I got mine tonight.

17 CHAIRMAN SCALZO: -- is looking at  
18 it as well.

19 I'm going to look for discussion  
20 from the Board. Does the Board feel as  
21 though we've heard enough on the public  
22 end of things that they want to close the  
23 public hearing tonight? That doesn't  
24 require us to move on it tonight, other  
25 than closing the public hearing.

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2                   MR. TUVEL: Mr. Chairman, if you go  
3                   that route, I would just have one sort of  
4                   -- Counsel was saying the same thing. If  
5                   you close the public hearing and allow  
6                   for supplementation by written response,  
7                   just to kind of -- I think Mr. Masten is  
8                   correct, just to make sure everything is  
9                   clear in terms of the chronology of all  
10                  the reports and where they stand. We  
11                  submitted something that the Board  
12                  received earlier this week. Obviously  
13                  Mr. Bacon would like to respond. Put a  
14                  date on when he should respond by with  
15                  his consultant. We would then have a  
16                  week to maybe respond to that. I do  
17                  think perhaps the last word maybe should  
18                  be from the Board's professional, after  
19                  reviewing all of that, to provide  
20                  guidance to the Board so when you see the  
21                  final product, I guess, you have your own  
22                  consultant's response and analysis of  
23                  everything.

24                  CHAIRMAN SCALZO: I almost feel  
25                  like you should be sitting here after you

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2 said that.

3 MR. DONOVAN: Thanks a lot.

4 MR. TUVEL: That was based on what  
5 David was saying. I was just thinking in  
6 my mind, I just don't want there to be  
7 any confusion on the reports and who  
8 responded to what. That's all.

9 CHAIRMAN SCALZO: I like the way  
10 you framed that.

11 MR. DONOVAN: That's kind of what I  
12 said, except for Ken Wersted getting the  
13 last word.

14 CHAIRMAN SCALZO: I do recall it  
15 was something similar. Left off that  
16 last step.

17 I'm looking to the Board. What do  
18 you think?

19 MR. BELL: I mean, we're really  
20 supposed to be focusing on this 1,000 feet.

21 CHAIRMAN SCALZO: Counsel is right.

22 MR. BELL: Traffic patterns and all  
23 of that stuff is good, but that needs to  
24 go to the next phase, over to the  
25 Planning Board. We're working on the

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2 1,000 feet between gas stations.

3 CHAIRMAN SCALZO: Thanks for  
4 reeling us back in.

5 MR. BELL: That's it. To keep  
6 pushing it and kicking the can, why.  
7 There's no reason. That's my opinion.

8 CHAIRMAN SCALZO: It sounds like  
9 Mr. Bell wants to stop the bleeding.

10 MR. BELL: I'm ready to put a  
11 tourniquet on it.

12 MR. HERMANCE: As Counselor stated,  
13 there's going to be a business in there  
14 regardless of who it is. There's going  
15 to be traffic no matter what we decide.

16 CHAIRMAN SCALZO: Let's not get  
17 ahead of ourselves. All I'm looking for  
18 is, are we closing the public hearing or  
19 not?

20 MR. HERMANCE: I think we should.

21 MR. DONOVAN: The next question is,  
22 do you want a comment period or are you  
23 just going to close the hearing?

24 MR. BELL: Just close it.

25 CHAIRMAN SCALZO: If we close the

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2 public hearing, do we have to determine  
3 if we're going to have a written comment  
4 period?

5 MR. DONOVAN: Yes. They need to  
6 know.

7 CHAIRMAN SCALZO: Now you're in the  
8 right chair.

9 MR. BELL: I'll make a motion --

10 CHAIRMAN SCALZO: It's a slippery  
11 slope here.

12 MR. BELL: I'll make a motion to  
13 close the public hearing.

14 CHAIRMAN SCALZO: If we have a  
15 motion to close the public hearing, then  
16 we need to either -- we have our 62 days.  
17 Before we close the public hearing, if we  
18 are intent on looking at information from  
19 all consultants in this case, we need to  
20 so state before we close the public hearing.

21 MR. BELL: Do we have enough to vote  
22 on the 1,000 feet?

23 MR. DONOVAN: That's your decision  
24 to make.

25 MR. EBERHART: I believe we do.

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2 MR. BELL: I do, too. I'm at the  
3 1,000 feet part.

4 CHAIRMAN SCALZO: What do you  
5 think, Mr. Masten? Do you think we have  
6 enough information to act on the 1,000  
7 feet?

8 MR. MASTEN: I believe we may have  
9 enough information, yes. I'm going by  
10 the 1,000 foot mark.

11 CHAIRMAN SCALZO: That's exactly  
12 where we're at.

13 Okay. Mr. Hermance, what are you  
14 thinking? Do we have enough information  
15 to act on that 1,000 feet?

16 MR. HERMANCE: I believe we do,  
17 since whatever we decide would be  
18 discussed by the Planning Board and they  
19 can review the traffic.

20 CHAIRMAN SCALZO: Site plans are  
21 subject to public hearings.

22 MR. BELL: Exactly.

23 CHAIRMAN SCALZO: Does anybody have  
24 a motion of some sort?

25 MR. BELL: I have a motion to close

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2 the public hearing.

3 MR. EBERHART: I'll second it.

4 CHAIRMAN SCALZO: We have a motion  
5 to close the public hearing from Mr. Bell.  
6 We have a second from Mr. Eberhart. All  
7 in favor?

8 MR. EBERHART: Aye.

9 MR. HERMANCE: Aye.

10 CHAIRMAN SCALZO: Aye.

11 MR. BELL: Aye.

12 MR. MASTEN: Aye.

13 CHAIRMAN SCALZO: Those opposed?  
14 (No response.)

15 CHAIRMAN SCALZO: Okay. Well, here  
16 we are. We didn't ask for a comment  
17 period, therefore we're either sitting  
18 for somewhere between now and 62 days or  
19 we're moving forward now.

20 MR. DONOVAN: If you're going to  
21 move forward, this is an Unlisted action  
22 under SEQRA so you'd have to issue a  
23 negative declaration, if the Board wants  
24 to take action tonight.

25 MR. BELL: A negative declaration.

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2                   MR. DONOVAN:   So what that would  
3                   entail relative to this project is, I  
4                   would ask you all just to confirm that  
5                   you reviewed, evaluated all the materials  
6                   that have been submitted, you acknowledge  
7                   that your jurisdiction is limited to the  
8                   consideration of the one requested area  
9                   variance, and given that the Planning  
10                  Board must conduct a full environmental  
11                  review of the project during their site  
12                  plan review, it is clear that you are  
13                  conducting what's called an uncoordinated  
14                  review.   You're the only agency involved.  
15                  It's a segmented review in that you're  
16                  doing a part and then it's going on to  
17                  the Planning Board.   Their review and  
18                  your review is no less protective of the  
19                  environment as no construction can be  
20                  authorized until after the site plan  
21                  approval is granted.   If you're willing,  
22                  under those circumstances, that there's  
23                  basically going to be, and I'm going to  
24                  be a little more formal than we usually  
25                  are on these things, but that the

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2 granting of the negative declaration  
3 for the 1,000 foot requirement only is  
4 authorized because the use is allowed  
5 in the zoning district, there's not  
6 going to be any adverse impact on any  
7 critical environmental area, any land  
8 forms, any wetland bodies, any groundwater,  
9 surface water, threatened or endangered  
10 species, which, again, as a result of  
11 the 1,000 foot requirement the Planning  
12 Board is going to analyze as well, no  
13 significant adverse impact on agricultural  
14 land, aesthetic resources, archeological  
15 resources. If you're satisfied with that,  
16 you would authorize the Chairman to sign  
17 Part 3 of the long environmental assessment  
18 form indicating that your decision will  
19 not result in any significant adverse  
20 environmental impact and issue a negative  
21 declaration. If you're okay with everything  
22 I just said, it would be a motion to issue  
23 a negative declaration.

24 CHAIRMAN SCALZO: I feel like we're  
25 gypping Donna because she's not here and

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2 she would love that.

3 MR. EBERHART: I'm good.

4 MR. BELL: That sounds good to me.

5 CHAIRMAN SCALZO: Say the words.

6 Make a motion for a negative --

7 MR. BELL: I'm making a motion for  
8 a negative declaration to confirm the  
9 material limited to the 1,000 foot area  
10 variance, uncoordinated review --

11 MR. DONOVAN: Based upon what was  
12 previously said by Counsel?

13 MR. BELL: Yes, what was previously  
14 said by Counsel. I left that part out.

15 CHAIRMAN SCALZO: I don't think you  
16 could write that fast.

17 MR. BELL: I was trying to get as  
18 much of it. You would have to sign the  
19 Part 3 form. What was the name of that  
20 form?

21 MR. DONOVAN: The long environmental  
22 assessment form.

23 MR. EBERHART: I'll second that.

24 CHAIRMAN SCALZO: So we have a  
25 motion from Mr. Bell for a neg dec. We

1 Prime & Tuvel

2 have a second from Mr. Eberhart.

3 Can you roll on that, please,  
4 Siobhan.

5 MS. JABLESNIK: Mr. Bell?

6 MR. BELL: Yes.

7 MS. JABLESNIK: Mr. Eberhart?

8 MR. EBERHART: Yes.

9 MS. JABLESNIK: Mr. Hermance?

10 MR. HERMANCE: Yes.

11 MS. JABLESNIK: Mr. Masten?

12 MR. MASTEN: Yes.

13 MS. JABLESNIK: Mr. Scalzo?

14 CHAIRMAN SCALZO: Yes.

15 Counsel, we are moving now on to  
16 the --

17 MR. DONOVAN: Consideration of the  
18 five factors.

19 CHAIRMAN SCALZO: -- consideration  
20 of the five factors?

21 All right. We will discuss these  
22 five factors --

23 MR. BELL: I'm sorry, Mr. Chairman.  
24 You mentioned that there -- that area is  
25 -- what was that again? It was already

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2 -- it's going to be used --

3 MR. DONOVAN: The use is allowed  
4 subject to this variance being issued.  
5 My overall purpose, when I said that  
6 before, is that this property is going to  
7 be used for something at some point.

8 MR. BELL: Of course. Of course.  
9 That doesn't sway me either way, I just  
10 wanted --

11 CHAIRMAN SCALZO: Thank you, Mr. Bell  
12 and Counsel, for reeling us back in. We  
13 are here to discuss -- the applicant is  
14 looking for the 1,000 foot relief from  
15 being within -- again, Mr. Eberhart and  
16 I kind of went back and forth on the  
17 difficulty of not considering Pilot to  
18 be a fueling station.

19 MR. BELL: Yeah. That's crazy.

20 CHAIRMAN SCALZO: The factors, the  
21 first one being whether or not the  
22 benefit can be achieved by other means  
23 feasible to the applicant --

24 MR. BELL: No.

25 CHAIRMAN SCALZO: -- for the 1,000

1 Prime & Tuvel

2 feet.

3 MR. DONOVAN: I'll ask everybody to  
4 just chime in on that, please.

5 MR. EBERHART: Yes.

6 CHAIRMAN SCALZO: Counsel, I'm  
7 going to help you out.

8 Mr. Masten, do you feel the benefit  
9 can be achieved by other means feasible  
10 to the applicant?

11 MR. MASTEN: No.

12 CHAIRMAN SCALZO: Mr. Bell, the  
13 same question?

14 MR. BELL: No.

15 CHAIRMAN SCALZO: Mr. Hermance, the  
16 same question?

17 MR. HERMANCE: Well, yes, if they  
18 decided to build somewhere else. In this  
19 location, no.

20 CHAIRMAN SCALZO: We heard you say  
21 McDonald's.

22 Mr. Eberhart, whether or not the  
23 benefit can be achieved by other means  
24 feasible to the applicant?

25 MR. EBERHART: I would probably say

1 Prime & Tuvel

2 the same thing, but no.

3 CHAIRMAN SCALZO: The second  
4 factor, if there's an undesirable change  
5 in the neighborhood character or a  
6 detriment to nearby properties. I'm  
7 going to go the other way. Mr. Eberhart?

8 MR. EBERHART: No.

9 CHAIRMAN SCALZO: Mr. Hermance, do  
10 you feel as though there's an undesirable  
11 change in the neighborhood character or a  
12 detriment to nearby properties?

13 MR. HERMANCE: No.

14 CHAIRMAN SCALZO: Mr. Bell, do you  
15 feel there's an undesirable change in the  
16 neighborhood character or a detriment to  
17 nearby properties?

18 MR. BELL: It will be a big change.  
19 No.

20 CHAIRMAN SCALZO: Mr. Masten, the  
21 same question. Is there an undesirable  
22 change in the neighborhood character or a  
23 detriment to nearby properties?

24 MR. MASTEN: I don't believe so.

25 CHAIRMAN SCALZO: The third, whether

1 Prime & Tuvel

2 the request is substantial. If we're  
3 looking at 1,000 feet, I don't know how  
4 many feet he is. 560. Something like  
5 that. 500, 600 feet.

6 MR. TUVEL: I can get you the  
7 exact --

8 CHAIRMAN SCALZO: That's all right.

9 I'm going to go back to Mr. Eberhart  
10 here. Do you feel as though this request  
11 is substantial?

12 MR. EBERHART: Yes.

13 CHAIRMAN SCALZO: How about you,  
14 Mr. Hermance. Is this request substantial?

15 MR. HERMANCE: Yes.

16 CHAIRMAN SCALZO: Mr. Bell?

17 MR. BELL: Yes.

18 CHAIRMAN SCALZO: How about you,  
19 Mr. Masten?

20 MR. MASTEN: Yes.

21 CHAIRMAN SCALZO: The fourth, whether  
22 the request will have adverse physical or  
23 environmental effects. It appears that  
24 by the time the Planning Board gets ahold  
25 of this, the physical or environmental

1 Prime & Tuvel

2 effects, they're going to evaluate that  
3 as well. That's just me talking.

4 Mr. Masten, do you feel as though  
5 the request will have adverse physical  
6 or environmental effects?

7 MR. MASTEN: To a point.

8 CHAIRMAN SCALZO: He's honest.

9 Mr. Bell?

10 MR. BELL: Yes.

11 CHAIRMAN SCALZO: Mr. Hermance,  
12 will the request have adverse physical or  
13 environmental effects?

14 MR. HERMANCE: Yes.

15 CHAIRMAN SCALZO: Mr. Eberhart, will  
16 it have adverse physical or environmental  
17 effects?

18 MR. EBERHART: To a certain extent,  
19 yes.

20 CHAIRMAN SCALZO: And the fifth,  
21 whether the alleged difficulty is self-  
22 created which is relevant but not  
23 determinative. Of course it's self-  
24 created. Most of the things we see are.

25 Mr. Masten, do you feel as though

1 Prime & Tuvel

2 the alleged difficulty is self-created?

3 MR. MASTEN: Yes.

4 CHAIRMAN SCALZO: Mr. Bell, do you  
5 feel as though it's self-created?

6 MR. BELL: Yes.

7 CHAIRMAN SCALZO: Mr. Hermance?

8 MR. HERMANCE: Yes.

9 CHAIRMAN SCALZO: Mr. Eberhart?

10 MR. EBERHART: Yes.

11 CHAIRMAN SCALZO: Very good.

12 Having gone through the balancing  
13 tests, does the Board have a motion of  
14 some sort?

15 MR. EBERHART: I'll make a motion  
16 for approval.

17 CHAIRMAN SCALZO: We have a motion  
18 for approval from Mr. Eberhart.

19 MR. HERMANCE: I will second.

20 CHAIRMAN SCALZO: We have a second  
21 from Mr. Hermance.

22 Can you roll on that, please, Siobhan.

23 MS. JABLESNIK: Mr. Bell?

24 MR. BELL: Yes.

25 MS. JABLESNIK: Mr. Eberhart?

1 Prime & Tuvel

2 MR. EBERHART: Yes.

3 MS. JABLESNIK: Mr. Hermance?

4 MR. HERMANCE: Yes.

5 MS. JABLESNIK: Mr. Masten?

6 MR. MASTEN: No.

7 MS. JABLESNIK: Mr. Scalzo?

8 CHAIRMAN SCALZO: No.

9 So we have three to two.

10 MR. DONOVAN: Well, the motion  
11 doesn't pass.

12 From memory, when -- I'm going to  
13 ask for a little time to do a little  
14 checking. The statute provides that when  
15 an application is here on appellate review,  
16 so a denial from the Building Department,  
17 that this vote would be a no vote. However,  
18 this application is not here based upon a  
19 denial. It's a referral from the Planning  
20 Board. Just give me twenty-four hours to  
21 figure out if this is a no action or denial,  
22 because I don't know the answer to that  
23 question off the top of my head.

24 MR. TUVEL: Can I speak? I'm sorry.

25 MR. DONOVAN: Sure. If we've got

1 Prime & Tuvel

2 three attorneys in the room --

3 MR. TUVEL: I believe it's just a  
4 majority of the Board.

5 MR. DONOVAN: No. You need four  
6 votes. You need four votes.

7 CHAIRMAN SCALZO: Unfortunately  
8 we're down one Member. One Member -- we  
9 have a vacancy and one Member is not here.

10 MR. DONOVAN: I believe there's a  
11 provision that will allow you to ask for  
12 reconsideration of the same thing, but  
13 you have to ask within a certain period  
14 of time. I believe the statute provides  
15 for that. I'm looking at Jim now. I'm  
16 just looking to make sure I get this  
17 right.

18 MR. BACON: I think you're right,  
19 Dave. I think it's a no action and they  
20 are entitled to a revote if they would  
21 like it.

22 MR. TUVEL: Where you would have  
23 somebody else come back and --

24 MR. DONOVAN: I'll just check,  
25 because there is a time period.

1       P r i m e   &   T u v e l

2                   MR. TUVEL:   Okay.

3                   MR. DONOVAN:   I think you have to  
4                   do it within 62 days, I think.

5                   MR. TUVEL:   Would that person have  
6                   to review the transcript from this meeting  
7                   that they missed?

8                   MR. DONOVAN:   That person would be  
9                   Donna.   She wouldn't necessarily have to.  
10                  She's been present for every other meeting.

11                  MR. TUVEL:   Except for this one.

12                  When would the meeting -- the next  
13                  meeting is obviously the 27th.   Is everybody  
14                  here for that meeting?

15                  CHAIRMAN SCALZO:   I probably will  
16                  be, but that's like the day I'm going to  
17                  possibly fly to Florida.   That day or the  
18                  following day.

19                  MR. TUVEL:   I guess I could talk to  
20                  David about all this stuff offline.   That  
21                  would just be, again, just a vote?   There  
22                  would be no testimony or anything?

23                  MR. DONOVAN:   That would be just a  
24                  vote.   You need to ask for it.

25                  MR. TUVEL:   I understand.

1 Prime & Tuvel

2 MR. DONOVAN: Take a look. It's in  
3 Subdivision 13 or something. 267 --

4 MR. TUVEL: Are you appointing  
5 another member between now and --

6 MR. DONOVAN: We don't get to do  
7 that.

8 CHAIRMAN SCALZO: It's up to the  
9 Town Board. I'm not involved at all,  
10 although I'd like to be.

11 MR. BACON: A quick question. If  
12 the Board wants to deliberate on it, it  
13 can do that before the vote. Right?

14 MR. DONOVAN: What do you mean  
15 deliberate?

16 MR. BACON: I mean, if the Board  
17 wants to discuss --

18 MR. DONOVAN: At the meeting. So  
19 long as there is a request, absolutely.  
20 I would hope that the Board would deliberate.

21 CHAIRMAN SCALZO: Ken Wersted is still  
22 looking at this. We didn't call him off.

23 MR. DONOVAN: Understood.

24 MR. BELL: It could be subject to  
25 -- the votes could change.

1 Prime & Tuvel

2 CHAIRMAN SCALZO: It's possible.

3 MR. BELL: Just because we voted  
4 this way right now doesn't mean we'll  
5 vote this way -- I mean, with Donna here,  
6 who knows.

7 MR. DONOVAN: Check the statute. I  
8 believe that you get to request for a  
9 revote because you didn't get sufficient  
10 votes. You need to do that within -- you  
11 need to make the request within 62 days.  
12 I think it's 267 Subdivision 13. Just  
13 take a look at that.

14 MR. TUVEL: I'll obviously copy  
15 Jim. That's fine.

16 CHAIRMAN SCALZO: All right.

17 MR. TUVEL: Thank you.

18

19 (Time noted: 8:40 p.m.)

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1 Prime & Tuvel

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

4

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

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

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

14 IN WITNESS WHEREOF, I have hereunto set  
15 my hand this 2nd day of February 2025.

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*Michelle Conero*

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MICHELLE CONERO

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

----- X

In the Matter of

JAMES TURNER

409 Gardnertown Road, Newburgh  
Section 63; Block 1; Lot 9  
R-3 Zone

----- X

Date: January 23, 2025  
Time: 8:40 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

----- X

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

1       J a m e s   T u r n e r

2                   CHAIRMAN SCALZO:  We have James  
3       Turner, 409 Gardnertown Road, just  
4       requesting a six-month extension.  
5       Variances were granted at the May 23rd  
6       meeting.

7                   I've got no problem with that.  We  
8       do it all the time.

9                   Members of the Board, would someone  
10      make a motion to approve the request for  
11      a six-month extension for James Turner.

12                  MR. MASTEN:  I'll make the motion.

13                  MR. BELL:  I'll second it.

14                  CHAIRMAN SCALZO:  We have a motion  
15      to extend from Mr. Masten.  We have a  
16      second from Mr. Bell.  All in favor?

17                  MR. EBERHART:  Aye.

18                  MR. HERMANCE:  Aye.

19                  CHAIRMAN SCALZO:  Aye.

20                  MR. BELL:  Aye.

21                  MR. MASTEN:  Aye.

22

23                  (Time noted:  8:41 p.m.)

24

25

1 James Turner

2

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

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

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

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

15 IN WITNESS WHEREOF, I have hereunto set  
16 my hand this 2nd day of February 2025.

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*Michelle Conero*

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MICHELLE CONERO

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

BOARD BUSINESS

Approval of the 2025 Meeting Dates for the  
Zoning Board of Appeals

----- X

Date: January 23, 2025  
Time: 8:41 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York

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

ALSO PRESENT: DAVID DONOVAN, ESQ.  
SIOBHAN JABLESNIK

----- X

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

1       B o a r d   B u s i n e s s

2                   CHAIRMAN SCALZO: We have the  
3 approval of the 2025 meeting dates, which  
4 is the last page of the packet that  
5 Siobhan -- the first portion of the  
6 packet.

7                   The only thing I'll bring to your  
8 attention is the November meeting is  
9 going to be on Tuesday, November 5th, and  
10 the December meeting is going to be on  
11 Tuesday, December 23rd. Other than that,  
12 we have no other business.

13                   I'll look to the Board for a motion  
14 to adjourn.

15                   MR. BELL: I'll make a motion to  
16 adjourn, go home.

17                   MR. MASTEN: I'll second it.

18                   CHAIRMAN SCALZO: We have a motion  
19 from Mr. Bell. We have a second from  
20 Mr. Masten. All in favor?

21                   MR. EBERHART: Aye.

22                   MR. HERMANCE: Aye.

23                   CHAIRMAN SCALZO: Aye.

24                   MR. BELL: Aye.

25                   MR. MASTEN: Aye.

1        B o a r d   B u s i n e s s

2                                (Time noted: 8:43 p.m.)

3

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

5

6

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

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

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

16                    IN WITNESS WHEREOF, I have hereunto set  
17                    my hand this 2nd day of February 2025.

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*Michelle Conero*

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MICHELLE CONERO