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

- - - - - X
In the Matter of

COLETTE DROUIN, FAITH DROUIN & NICHOLAS TORRACA

Spencer Avenue, Newburgh
Section 51; Block 2; Lot 13.2
R-1 Zone

- - - - - X

Date: June 27, 2024
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: JONATHAN MILLEN,
COLETTE DROUIN, FAITH DROUIN & NICHOLAS TORRACA

- - - - - X

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

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CHAIRMAN SCALZO: I'd like to call the meeting of the Zoning Board of Appeals to order. The order of business this evening are the public hearings which have been scheduled. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have, and then any questions or comments from the public will be entertained. The Board will consider the applications and will try to render a decision this evening but may take up to 62 days to reach a determination. I would ask that if you have a cellphone, to please turn it off or put it on silent. When speaking, speak directly into the microphone as we have our stenographer with us this evening recording the meeting.

Roll call, please.

MS. JABLESNIK: Darrell Bell.

MR. BELL: Here.

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MS. JABLESNIK: James Eberhart.

MR. EBERHART: Here.

MS. JABLESNIK: Greg Hermance.

MR. HERMANCE: Here.

MS. JABLESNIK: John Masten.

MR. MASTEN: Here.

MS. JABLESNIK: James Politi.

MR. POLITI: Here.

MS. JABLESNIK: Donna Rein is
absent this evening.

Darrin Scalzo.

CHAIRMAN SCALZO: Here.

MS. JABLESNIK: Also present is our
Attorney, Dave Donovan; from Code
Compliance, Joseph Mattina; and our
Stenographer, Michelle Conero.

CHAIRMAN SCALZO: If you would all
please rise for the Pledge.

(Pledge of Allegiance.)

CHAIRMAN SCALZO: All right, folks.
We have a big agenda and we've got a
packed house. It's going to be a good
one.

Our first applicant this evening is

2 Colette Drouin, Faith Drouin and Nicholas
3 Torraca, Spencer Avenue, seeking area
4 variances of lot area, lot width, lot
5 depth, front yard, rear yard, one side
6 yard, combined side yards and lot surface
7 coverage to build a new single-family
8 dwelling.

9 I think that's just about every
10 variance you can possibly request.

11 Siobhan, do we have mailings on
12 this?

13 MS. JABLESNIK: This applicant sent
14 fifty-five letters.

15 CHAIRMAN SCALZO: Fifty-five
16 letters.

17 We have our applicant in front of
18 us. We have the most amount of people
19 standing for an application that I've
20 ever seen before.

21 Now, I have captured the application
22 in one complete sentence. If that
23 indicates exactly what it is you're
24 looking to do and you would like to
25 just have us ask you questions, we

2 can go there. If you have any additional
3 narrative that you would like to add,
4 feel free. However, our stenographer
5 needs to know who is standing, so
6 please introduce yourselves.

7 MS. COLETTE DROUIN: I'm Colette
8 Drouin. I live at 46 Old South Plank
9 Road. My daughter, Faith Drouin, is the
10 primary owner of the Spencer Ave lot. We
11 happen to be on the deed because we're
12 helping with the paperwork, the bureaucracy.

13 CHAIRMAN SCALZO: What a nice mom.

14 MS. COLETTE DROUIN: I am. So
15 basically we've been at this for about
16 two years. Poor Siobhan has had to talk
17 to me multiple, multiple times. We will
18 just take any questions that you might
19 have for us.

20 CHAIRMAN SCALZO: Very good. Who
21 else do you have with you? There are two
22 more standing.

23 MR. TORRACA: I'm Nicholas Torraca.
24 I'm the husband and father.

25 MS. FAITH DROUIN: I'm Faith, I'm

2 the daughter.

3 CHAIRMAN SCALZO: Very good. And
4 way in the back we have Mr. Millen.
5 Jonathan Millen.

6 MR. MILLEN: I just have one thing
7 to say. The lots, generally speaking, in
8 this subdivision are all basically the
9 same.

10 CHAIRMAN SCALZO: You make a solid
11 point, Mr. Millen. We are all aware of
12 the area around Orange Lake having very
13 small lots. We're all aware it used to
14 be a weekend community for folks and then
15 it just turned into year-round residences
16 many, many years ago.

17 I'm going to let my Board Members
18 go first with their questions. I'm
19 actually going to start down with Mr.
20 Masten. Do you have any comments, Mr.
21 Masten?

22 MR. MASTEN: I have no questions.

23 CHAIRMAN SCALZO: No questions.

24 MR. MASTEN: It's a beautiful
25 property.

2 CHAIRMAN SCALZO: We are all
3 obliged by our positions to go and visit
4 the properties, so we have all seen the
5 vacant lot with some logs laying down on
6 it.

7 Mr. Bell, do you have any comments
8 or questions?

9 MR. BELL: It's my understanding
10 that this was two lots and now it's
11 combined into one. Is that correct?

12 MS. COLETTE DROUIN: That is
13 correct.

14 MR. BELL: You, young lady, Faith?

15 MS. FAITH DROUIN: Yes.

16 MR. BELL: You are the primary
17 owner of this?

18 MS. FAITH DROUIN: It's going to be
19 my primary residence. My parents are
20 helping with the paperwork. Once
21 everything is settled, I will be buying
22 them out of the lot.

23 MR. BELL: I need to tell my kids
24 that. That's all I have.

25 CHAIRMAN SCALZO: Thank you.

2 Mr. Hermance, do you have comments
3 or questions regarding this application?

4 MR. HERMANCE: Just a comment on
5 the size. Have you considered a smaller
6 footprint of house so you wouldn't need
7 so many variances?

8 MS. COLETTE DROUIN: The size of
9 the house is less than 2,000 square feet.
10 It will be a modest house. We've tried
11 to again look at the neighborhood and
12 other people's houses. We're not looking
13 to build a big mansion or anything like
14 that. There are no lake views per se.
15 This is just a home residence that's
16 basically a five-minute walk to our house
17 at 46 Old South Plank Road so our
18 daughter can take care of us as we get
19 old.

20 CHAIRMAN SCALZO: Old South Plank
21 Road is that small section of road
22 between O'Dell and Route 52?

23 MS. COLETTE DROUIN: Yes.

24 CHAIRMAN SCALZO: You're going to
25 be here for some excitement. We have a

2 couple right in that neighborhood. Very
3 good. Thank you.

4 Mr. Hermance, your questions have
5 been answered?

6 MR. HERMANCE: Yes.

7 CHAIRMAN SCALZO: Mr. Eberhart?

8 MR. EBERHART: I have no questions.

9 CHAIRMAN SCALZO: Mr. Politi?

10 MR. POLITI: I went by the site. I
11 saw the site.

12 The letter?

13 CHAIRMAN SCALZO: Thank you, Mr.
14 Politi. I apologize. We did receive a
15 letter, was it today or yesterday, --

16 MS. JABLESNIK: Today.

17 CHAIRMAN SCALZO: -- from a
18 neighbor with concerns regarding the way
19 -- primarily, what I got out of this
20 letter, was the drainage on the site.

21 MS. COLETTE DROUIN: Yes.

22 CHAIRMAN SCALZO: It seems to be a
23 collection point for a lot of surface
24 runoff.

25 MS. COLETTE DROUIN: Yes.

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CHAIRMAN SCALZO: Let's say we get to a certain part in this application -- actually, I just stole the spotlight from Mr. Politi. It was his question. Let me let Mr. Politi go ahead and continue and then we'll get back to this.

MR. POLITI: If it does present a problem once you build, you'll have to mitigate that runoff so you're not impacting the neighbors. Has that been considered in the design or preliminary design?

MS. COLETTE DROUIN: It has. It has. So based on the excessive rain we've had in the last couple of years, there has been, we called it the Drouin Lake, the Drouin Pond, whatever you want to call it. We're going to be working with Lakeside Construction with regard to the construction of the house. He has also been aware of the runoff water. He has a plan with regard to the height of the house itself and how the water will continue to run the way it is. It's not

2 going to change. It's just going to be
3 the same for the neighbors as it has
4 always been.

5 There is a drainage pipe that was
6 put in there by the Town of Newburgh
7 years ago. Bill Lynn, construction Bill
8 Lynn, has tried to meet with Mark Hall to
9 discuss this pipe that was put in. It
10 starts at one side of the street, runs
11 underneath Spencer Ave and then empties
12 out into our property, and then from
13 there it basically flows down behind our
14 property towards the lake area. Basically
15 Mr. Lynn is taking that into account. He's
16 planning to build the house a little bit
17 higher but not change the route of that
18 water. It's going to remain the same.
19 It's not going to change, unless the
20 Town of Newburgh Highway Department
21 decides to do something.

22 MR. POLITI: Is that something that
23 should be solved first before --

24 CHAIRMAN SCALZO: Mr. Politi, we
25 have Code Compliance with us as well.

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Mr. Mattina, have you seen building permits come in with site developments that have had grading plans that you have had to look at to ensure that the topography doesn't lend itself to pushing site water onto other lots?

MR. MATTINA: Right. Most subdivisions come with a grading plan. If this is an old lot and it doesn't, we will take it into account. During the construction, the water has to be pitched away from the house. It has to be pitched so it doesn't affect other properties.

CHAIRMAN SCALZO: There you go. Joe, would it be unusual for you to see some topography on this or proposed topography once the lot is developed to ensure --

MR. MATTINA: As it's being developed. As it's being developed you'll see it come together and you'll see swales put in and drainage put in.

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It's hard to see the blank slate. During construction you can see it as it comes around.

CHAIRMAN SCALZO: What's nice about a blank slate is you can almost make it what you want.

With regard to the Town putting in a culvert pipe underneath the road, typically they will so it can convey water from one side to the other. Obviously we heard testimony from you to begin with that you have a pond on your property.

MS. COLETTE DROUIN: Yes.

CHAIRMAN SCALZO: You're going to do your best to mitigate and not send that water onto any of your neighbors.

MS. COLETTE DROUIN: Other than already happens. Like I said, I've got pictures from a year ago with the big rain we had. You saw the water start actually all the way over by where the Dubois Park -- is it park?

MR. TORRACA: The water is mostly

2 in the right-hand neighbor's yard. He's
3 kind of used to having a foot of water.

4 MS. COLETTE DROUIN: He's talking
5 about the neighbor next to Spencer Ave.
6 The water flows from Cross Street,
7 underneath, and then it flows in between
8 our property and the other neighbor's
9 property, who is Mr. Kevin Joy, through
10 that and then just follows a little
11 stream. It ends up over on O'Dell into
12 the lake. That's the way that works.

13 CHAIRMAN SCALZO: Perhaps I could
14 phrase it a little differently. We're
15 looking for you not to increase any flow
16 to your neighbors.

17 MS. COLETTE DROUIN: It will not be
18 increased. Like I said, Mr. Lynn does
19 have a plan to ensure that, one, our
20 basement doesn't get flooded, but it
21 doesn't also increase water on anybody
22 else's property. It's just going to
23 continue the way it is.

24 CHAIRMAN SCALZO: Okay. These
25 minutes are public record, so we've got

2 you saying everything you're saying here
3 that you're promising you're going to
4 do.

5 MS. COLETTE DROUIN: Yes.

6 CHAIRMAN SCALZO: They're postage
7 stamp lots on Orange Lake. You're
8 centering the house on the lot. We're
9 going to have another application in
10 front of us very shortly that doesn't
11 have the side yards that you already
12 have.

13 I don't have any other questions.

14 At this time I'm going to open the
15 meeting up to any members of the public
16 that are here. You folks can sit right
17 in the front row, or wherever you want to
18 sit.

19 Is there anyone here from the
20 public that wishes to speak about this
21 application on Spencer Ave? Please step
22 forward, sir.

23 MR. LANGER: Greg Langer, 279-281
24 Lakeside Road. I'm here representing the
25 board of directors of the Orange Lake

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Homeowners Association.

I just have a little -- I didn't e-mail it because I got yelled at last time for submitting it too late.

CHAIRMAN SCALZO: Because this is short, I will read it into the record. Sometimes we get multiple pages. "Dear Chairman Scalzo and Board Members, Colette Drouin, Faith Drouin and Nicholas Torraca presented their plans for a new residence to the Orange Lake Homeowners Association board of directors several months ago. The board had an opportunity to canvas the nearby homeowners who have reacted favorably to the proposal. The applicants have been contributing members to the Orange Lake community and our board, and our board is in full support of this application. This may be a significant addition to the west side of the lake. Thank you for the opportunity to comment."

Thank you, Mr. Langer. Is there anything else that you have to add to

2 that?

3 MR. LANGER: We just want to say,
4 if you ever had a chance to see the
5 Orange Lake website, Mr. Torraca has
6 posted some beautiful pictures that he's
7 taken that are worth looking at.

8 CHAIRMAN SCALZO: For any members
9 of the public, just so you can
10 understand, the homeowners association
11 for Orange Lake, while we do appreciate
12 their comments and their input, they have
13 no bearing on the determination that the
14 Board makes. We do appreciate all input.
15 These public hearings enlighten us to
16 things that we normally or sometimes
17 wouldn't have seen.

18 Are there any other members of the
19 public that wish to speak about this
20 application? Mr. Fetter.

21 MR. FETTER: Bill Fetter, Rockwood
22 Drive. No objection but some questions.

23 I heard the word basement. There's
24 going to be a basement in the residence?

25 MS. COLETTE DROUIN: A walkout

2 basement, sir.

3 MR. FETTER: It's on the west side.
4 Will there be a septic and well?

5 MS. COLETTE DROUIN: We're on the
6 east side.

7 CHAIRMAN SCALZO: They have
8 municipal services. Actually, you can
9 see them on the map.

10 MR. BELL: It's municipal.

11 CHAIRMAN SCALZO: It makes
12 development much easier with municipal
13 services.

14 MR. FETTER: I'm just thinking if
15 there's any kind of basement, is there
16 going to be pumping involved and
17 additional surface waters?

18 MR. TORRACA: The plan is not to
19 have that happen. The property sort of
20 slopes. The wet spot is here. They'll
21 put fill. The bottom of the basement
22 will be a walkout.

23 CHAIRMAN SCALZO: We're going to
24 assume that the current building
25 construction code requires footing drains

2 draining to daylight where they can. If
3 not, mechanical means to pump them.

4 Correct, Joe?

5 MR. MATTINA: Correct.

6 MR. FETTER: A retaining wall?

7 CHAIRMAN SCALZO: Mr. Fetter, I
8 want to remind you, we're only here to
9 talk about the variances.

10 MR. FETTER: Thank you.

11 CHAIRMAN SCALZO: Do any other
12 members of the public wish to speak about
13 this application?

14 (No response.)

15 CHAIRMAN SCALZO: Very good. We're
16 going to look back to the Board.

17 Mr. Politi, have your questions
18 been satisfied?

19 MR. POLITI: Yes.

20 CHAIRMAN SCALZO: Mr. Eberhart?

21 MR. EBERHART: I'm good.

22 CHAIRMAN SCALZO: Mr. Hermance?

23 MR. HERMANCE: I'm good.

24 CHAIRMAN SCALZO: Mr. Bell?

25 MR. BELL: I'm good.

2 CHAIRMAN SCALZO: Mr. Masten?

3 MR. MASTEN: I'm fine.

4 CHAIRMAN SCALZO: At this point
5 I'll look to the Board for a motion to
6 close the public hearing.

7 MR. MASTEN: I'll make a motion to
8 close the public hearing.

9 MR. BELL: Second.

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

13 MR. POLITI: Aye.

14 MR. EBERHART: Aye.

15 MR. HERMANCE: Aye.

16 CHAIRMAN SCALZO: Aye.

17 MR. BELL: Aye.

18 MS. MASTEN: Aye.

19 CHAIRMAN SCALZO: Very good.

20 Moving on. This is a Type 2 action
21 under SEQRA. Correct, Counsel?

22 MR. DONOVAN: That is correct, Mr.
23 Chairman.

24 CHAIRMAN SCALZO: Thank you.

25 We are going to go through the area

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variance criteria and discuss the five factors which we will be weighing, the first one being whether or not the benefit can be achieved by other means feasible to the applicant. It's currently an undeveloped lot. Someone is looking to live there. The lot, while small, is in kind with other lots in that subdivision.

Would you agree, Mr. Bell?

MR. BELL: I agree.

CHAIRMAN SCALZO: Second, if there's an undesirable change in the neighborhood character or a detriment to nearby properties. I would not say so. With newer construction, it kind of brings a desirable change other than just having woods.

The third, whether the request is substantial. By the numbers it is. However, with the lot, the size that it is and the other lots in the neighborhood, it kind of falls into the same as the other lots.

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Fourth, whether the request will have adverse physical or environmental effects. We heard testimony from the applicant that they are going to do everything that they possibly can to mitigate any issues with surface runoff. We're going to hold you to that.

The fifth, whether the alleged difficulty is self-created, which is relevant but not determinative. Of course it's self-created, but right now there's no house on it.

Having moved through those, if the Board approves, it shall grant the minimum variances necessary.

Having moved through those, does the Board have a motion of some sort?

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

MR. BELL: Second.

CHAIRMAN SCALZO: We have a motion for approval, that was Mr. Eberhart. We have a second from Mr. Bell. Can you roll on that, please, Siobhan.

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MS. JABLESNIK: Mr. Bell?

MR. BELL: Yes.

MS. JABLESNIK: Mr. Eberhart?

MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Mr. Politi?

MR. POLITI: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The motion is carried. The
variances are approved. Good luck.

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

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

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

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

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

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

Michelle Conero

MICHELLE CONERO

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

In the Matter of

WILLIAM LYNN

48 O'Dell Circle, Newburgh
Section 51; Block 1; Lot 24
R-1 Zone

----- X

Date: June 27, 2024
Time: 7:20 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: WILLIAM LYNN

----- X

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

2 CHAIRMAN SCALZO: Our second
3 applicant is right around the corner, 48
4 O'Dell Circle, seeking area variances of
5 the minimum front yard setback, minimum
6 building lot coverage, surface lot
7 coverage and increasing the degree of
8 nonconformity of one side yard and the
9 combined side yards to build a 22 by 26
10 front yard attached garage.

11 Siobhan, do we have mailings on
12 this?

13 MS. JABLESNIK: This applicant sent
14 fifty-one letters.

15 CHAIRMAN SCALZO: Fifty-one. Okay.
16 Very good.

17 Who do we have this evening
18 representing Bill Lynn and Lori Frank?

19 MR. LYNN: Bill Lynn.

20 CHAIRMAN SCALZO: Mr. Lynn, very
21 good. I gave a narrative of what it is
22 that you're looking for with the
23 variances requested this evening. If you
24 have anything that you'd like to add to
25 that --

2 MR. LYNN: I don't think so.

3 CHAIRMAN SCALZO: Okay. This time
4 I'm going to reserve my comments and I'll
5 go to the Board first. This time I'm
6 going to start at the other end of the
7 table with Mr. Politi.

8 Mr. Politi, do you have comments
9 or questions for the applicant?

10 MR. POLITI: When I went to the
11 site, you had white lines.

12 MR. LYNN: I tried to make it so
13 you could get an idea of what I was
14 doing. I put them on just so you could
15 get an idea, anybody who would be coming
16 by.

17 MR. POLITI: That was helpful.

18 I have a couple of questions. I
19 talked to Joe. Just for clarification,
20 the right-of-way, the street right-of-way
21 is right there. Even though I understand
22 the street is further away, you have
23 improvement in there. It's ready to
24 encroach.

25 MR. LYNN: That's the best -- with

2 the 20 feet, you can't really get a car
3 in.

4 MR. POLITI: When I turned around
5 and came back, down below there's a
6 garage.

7 MR. LYNN: The garage is tiny and
8 you really can't get in it. It's full.
9 There's no storage in the house. It's a
10 really small house to begin with. Right
11 now it's full of storage. That's why we
12 wanted to build a garage. It's really
13 difficult -- you see where the cars are.
14 There's no place to throw snow, there's
15 no place to do anything. As we're
16 getting older -- I don't want to say
17 that. We're getting older. You have to
18 go out and hand shovel most of it so we
19 can even get the cars out and snow blow
20 it. There's no place to put the snow.
21 If we put a garage up, it will give us a
22 little more storage and a place to put
23 the cars. There's just a small area,
24 like you said, between the garage and the
25 road, 15 feet or whatever. We can clean

2 that off and then we can, you know, get
3 out without having a big problem.

4 MR. POLITI: Just an observation.

5 MR. LYNN: That's understood.

6 MR. POLITI: When I went into the
7 neighborhood, nobody is that close.

8 MR. LYNN: Except if you walk on
9 Old South Plank.

10 MR. POLITI: That's on the other
11 side.

12 MR. LYNN: Right on the corner, two
13 doors away there's another one.

14 MR. POLITI: Did you consider any
15 -- you have a wide lot, which is
16 interesting. You have that space. I saw
17 a car parked there. You have a driveway.
18 Was that ever considered, the side?

19 MR. LYNN: Well, it's way down the
20 hill. You've got to block the whole
21 access to the lake. If you're talking
22 the one on the right-hand side with the
23 pavement that goes down, --

24 MR. POLITI: Yes.

25 MR. LYNN: -- I'd have to fill the

2 whole thing and try to put a retaining
3 wall of some sort, because that wall goes
4 way down - --

5 MR. POLITI: Is that a public lot?

6 MR. LYNN: -- no. It's my launch,
7 and then next door --

8 MR. POLITI: The neighbor's launch.
9 So that's not public. The encroachment
10 being so close to that lot --

11 MR. LYNN: I would go less than
12 that, but you can't really even get a car
13 in.

14 MR. POLITI: You wouldn't be able
15 to.

16 CHAIRMAN SCALZO: A typical parking
17 stall is a minimum of 10 by 20. An older
18 vehicle with a big bumper on it, you have
19 to be very careful.

20 MR. POLITI: Those are my thoughts.

21 CHAIRMAN SCALZO: Thank you, Mr.
22 Politi.

23 Mr. Eberhart?

24 MR. EBERHART: In looking at it,
25 and I see what you intended, I don't have

2 any questions for you.

3 CHAIRMAN SCALZO: Mr. Hermance?

4 MR. HERMANCE: I assume the
5 electrical service is going to have to
6 be --

7 MR. LYNN: I'm going to have to
8 move that. There's two heat pumps that I
9 have to move.

10 MR. HERMANCE: Other than that, I
11 have no questions. It's very tight to
12 the road.

13 Does the Town have a specific
14 distance that they have to be offset,
15 Joe?

16 MR. MATTINA: No.

17 MR. LYNN: I'm 15 feet from the
18 actual edge of road. Like Mr. Politi
19 said, there's a right-of-way that goes
20 through. It goes through mostly
21 everybody's front yard. Most everybody
22 is on it already with the parking. Not
23 making anybody right or wrong, but just
24 saying they're all -- that's why it's so
25 difficult.

2 When I originally looked at it, I
3 said oh, I can put a 24 by 26 garage.
4 All of a sudden I looked at the survey
5 map and said I guess I can't. I was
6 hoping I had enough on the one side there
7 to be able to get 20 feet. That's all
8 I've got.

9 MR. HERMANCE: I have nothing
10 further.

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

13 Mr. Bell?

14 MR. BELL: We had a good conversation
15 while I was there. I understand what he's
16 trying to do and what's going to move.
17 I'm good.

18 CHAIRMAN SCALZO: Mr. Masten?

19 MR. MASTEN: I have no questions,
20 Darrin.

21 CHAIRMAN SCALZO: No questions.
22 Very good.

23 The first question actually is, Mr.
24 Mattina, on the sheet that you provided
25 us, the Code Compliance chart, at the

2 very bottom it says, "Notes, will require
3 a variance from New York State Codes
4 Division for less than 5 feet from the
5 property line."

6 MR. MATTINA: What happened, the
7 codes division gave an interpretation
8 that says the street cannot be built upon
9 so a variance wouldn't be required.

10 CHAIRMAN SCALZO: Can you repeat
11 that?

12 MR. MATTINA: The street cannot be
13 built upon so the fire rating is not
14 required on that side of the garage.

15 MR. DONOVAN: Because you can't put
16 a structure on the street.

17 MR. MATTINA: Correct. There's an
18 exception in the code that says if you
19 can't build on the lot, you don't have to
20 have the fire requirements.

21 CHAIRMAN SCALZO: Okay. Thank you.
22 I appreciate that.

23 MR. MATTINA: That note means
24 nothing.

25 MR. DONOVAN: But we do take what

2 you tell us very seriously, Joe.

3 MR. MATTINA: Thank you.

4 CHAIRMAN SCALZO: I'm going to be
5 in your shoes myself. I'm getting older,
6 I want to have one-floor living and be
7 able to walk through my garage into my
8 house. I'm certainly in tune with what
9 you're saying there.

10 In my ten years on the Zoning Board
11 of Appeals and in my previous life, I
12 have never seen someone propose to build
13 something so close to a property line. I
14 know it's the right-of-way. I'm having a
15 difficult time with that. I understand
16 the 22 feet. You'll put your longer car
17 on that side of the garage.

18 When we go through our area
19 variance criteria, one of those balancing
20 questions is, is there any other means
21 for you to get what you're looking to get
22 out of here. With 23 feet plus or minus
23 from the bump out on the north side of
24 your house, the little bump out, although
25 it may be the ground floor, you have 23

2 plus or minus feet there, 22 feet on the
3 other one. The survey does not include
4 any offsets to that side of the house,
5 but you have an opportunity -- you might
6 have to stack your cars. There is an
7 opportunity here for you to achieve what
8 you're looking for for two-car parking.

9 I'm struggling with your
10 application for being one foot from the
11 right-of-way line. I can't imagine that
12 we would move forward with this, because
13 you know what's going to happen, sir, is
14 you're going to be the guy that sets the
15 precedent for every other house down the
16 street.

17 As I say, I struggle with -- there
18 are six of us here tonight. Perhaps the
19 other Board Members see it differently.
20 That's my perception as I look at the
21 application.

22 MR. LYNN: I was going to say,
23 there's a stagger part for the other 2
24 feet. The 20 is, like I said, pretty
25 much a minimum. The stagger was more for

2 an aesthetic thing to make it look --

3 CHAIRMAN SCALZO: Give it some
4 depth. Sure.

5 MR. LYNN: We want to make the
6 neighborhood -- keep up. The
7 neighborhood looks really good.

8 CHAIRMAN SCALZO: Sir, I absolutely
9 -- I love your neighborhood. I admire
10 the homes every time I drive through
11 there. You are correct, if you go down
12 Old South Plank, there are a couple
13 garages very close to the street line.

14 As I approached your lot, I came in
15 off 52 and I headed straight towards you,
16 I had the opportunity to go left on Old
17 South Plank or continue right on O'Dell.
18 My circulation, the way I was driving,
19 that first garage that's the closest one
20 to you, I kind of lost it. It didn't
21 even pick up on me, because as I'm
22 sweeping that corner, the fellow that
23 just did a nice job with the house that
24 used to be blue and now it's white and
25 black, it just kind of sat with me.

2 Nobody else's garage from that viewpoint
3 was that close.

4 MR. LYNN: Did you see the lines in
5 the driveway?

6 CHAIRMAN SCALZO: Yes.

7 MR. LYNN: I mean, you can see
8 they're 15 feet off. Pretty much it's
9 all still there. The only thing is the
10 building would be --

11 CHAIRMAN SCALZO: Sure. The
12 asphalt is not centered on the right-of-way.
13 It's actually pushed closer to the other
14 side.

15 Still, the right-of-way is the
16 right-of-way. The Town actually has the
17 opportunity, they could utilize that if
18 they had to. If they had to run a new
19 water line or something like that, they
20 could run it right there. That's all I
21 had. I appreciate you answering my
22 questions clearly. That's wonderful.

23 Before I turn it over to the
24 public, Mr. Politi.

25 MR. POLITI: One other question.

2 The roof line. You're not going up?

3 MR. LYNN: It goes up a foot in
4 order to make it not look so long. It's
5 an aesthetic thing.

6 MR. POLITI: It would be the top of
7 the --

8 MR. LYNN: Just like a foot over
9 the top of the one there, just so it
10 doesn't look like a big long tunnel type
11 of thing. Again, it's more of an
12 aesthetic thing so it can fit. If it
13 can't be the height, we can --

14 CHAIRMAN SCALZO: It's a lovely
15 home as it is right now. I'm certain if
16 you made it through this process, what
17 you would do would be equally as nice.

18 MR. LYNN: Thank you.

19 CHAIRMAN SCALZO: Before I turn it
20 over to the public, anybody else? Have I
21 stirred up any other questions with my
22 comments?

23 (No response.)

24 CHAIRMAN SCALZO: At this point I'm
25 going to open it up to any members of the

2 public that wish to speak about this
3 application for Mr. Lynn and Ms. Frank.
4 Do any members of the public here wish to
5 comment?

6 (No response.)

7 CHAIRMAN SCALZO: I can't wait to
8 see what everybody is here for.

9 I'll look to the Board here. Any
10 last questions?

11 (No response.)

12 CHAIRMAN SCALZO: If not, I'll look
13 to the Board for a motion to close the
14 public hearing.

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

17 MR. BELL: Second.

18 CHAIRMAN SCALZO: We have a motion to
19 close the public hearing from Mr. Masten
20 and we have a second from Mr. Bell. All
21 in favor?

22 MR. POLITI: Aye.

23 MR. EBERHART: Aye.

24 MR. HERMANCE: Aye.

25 CHAIRMAN SCALZO: Aye.

2 MR. BELL: Aye.

3 MR. MASTEN: Aye.

4 CHAIRMAN SCALZO: Those opposed?

5 (No response.)

6 CHAIRMAN SCALZO: I did that for
7 you, Mr. Fetter. Robertson's Rules.

8 Very good. Counsel, this is also a
9 Type 2 action under SEQRA?

10 MR. DONOVAN: That is correct, Mr.
11 Chairman.

12 CHAIRMAN SCALZO: Thank you, sir.

13 We're going to go through the
14 variance criteria and discuss the five
15 factors we're weighing, the first one
16 being whether or not the benefit can be
17 achieved by other means feasible to the
18 applicant. My personal opinion is that
19 it can't. This one might get a little
20 sticky.

21 I'm actually going to look on an
22 individual basis. Mr. Masten, do you
23 believe that the benefit can be achieved
24 by other means feasible to the applicant?

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

2 CHAIRMAN SCALZO: Mr. Bell?

3 MR. BELL: No.

4 CHAIRMAN SCALZO: Mr. Hermance?

5 MR. HERMANCE: Yes.

6 CHAIRMAN SCALZO: Mr. Eberhart?

7 MR. EBERHART: Yes.

8 CHAIRMAN SCALZO: Mr. Politi?

9 MR. POLITI: It can be achieved by
10 other means.

11 CHAIRMAN SCALZO: Okay. Second, if
12 there's an undesirable change in the
13 neighborhood character or a detriment to
14 nearby properties. You know what, by
15 what we're hearing about what he's
16 intending on doing, I don't know that it
17 would be an undesirable change to the
18 character itself. However, again, we're
19 going to set a precedent with however we
20 vote here, folks. We've got one today
21 that's asking for one foot off a
22 right-of-way and we're going to have six
23 more applications in ten years. I don't
24 know that I've answered the question.
25 I'm just making a statement.

2 Let me back up and say, is there an
3 undesirable change in the neighborhood
4 character or a detriment to nearby
5 properties. Mr. Politi, your opinion?

6 MR. POLITI: It would be a
7 detriment.

8 CHAIRMAN SCALZO: It's a difficult
9 question.

10 MR. POLITI: Yes, because of the
11 mix of the neighborhood. Yes.

12 CHAIRMAN SCALZO: Mr. Eberhart?

13 MR. EBERHART: No.

14 CHAIRMAN SCALZO: Mr. Hermance?

15 MR. HERMANCE: I believe it would.

16 CHAIRMAN SCALZO: Mr. Bell?

17 MR. BELL: Yes.

18 CHAIRMAN SCALZO: Mr. Masten?

19 MR. MASTEN: There would be no
20 change.

21 CHAIRMAN SCALZO: Okay. The third,
22 whether the request is substantial.

23 Well, by the numbers it is substantial.

24 From my experience in ten years on the

25 ZBA, it's substantial. One foot off any

2 property line is substantial.

3 MR. BELL: I agree.

4 CHAIRMAN SCALZO: So we've got a
5 head nod from Mr. Masten. We have an
6 agreement from Mr. Bell.

7 Mr. Hermance?

8 MR. HERMANCENCE: Yes.

9 CHAIRMAN SCALZO: Mr. Eberhart?

10 MR. EBERHART: Yes.

11 CHAIRMAN SCALZO: Mr. Politi?

12 MR. POLITI: Yes.

13 CHAIRMAN SCALZO: The fourth,
14 whether the request will have an adverse
15 physical or environmental effect. In
16 this instance, I don't believe so.

17 MR. BELL: No.

18 CHAIRMAN SCALZO: Fifth, whether
19 the alleged difficulty is self-created,
20 which is relevant but not determinative.
21 Of course it's self-created. However,
22 moving past that, it's relevant but not
23 determinative.

24 MR. DONOVAN: Mr. Chairman, before
25 you vote, if I may.

2 CHAIRMAN SCALZO: Please.

3 MR. DONOVAN: We've talked about
4 this before, but I do want to remind the
5 Board that this is not a score card.
6 Even though it's a five-part balancing
7 test, you don't say three one way, two
8 the other way. What you do is you
9 balance the relative equities of that
10 five-part test. In so doing, what you
11 want to determine is does the benefit to
12 the applicant outweigh the detriment to
13 the community. That's what your ultimate
14 objective is. I want to emphasize that.

15 I want to also say that substantiality
16 is not just a mathematical calculation. You
17 do look at the overall effect and impact to
18 the neighborhood. That's another way to
19 look at it. We frequently look at a
20 mathematical percent. That is not the only
21 way to look at it. You can analyze it.
22 Many court decisions have said you may
23 analyze it relative to the overall impact
24 on the community, the overall effect
25 if you will. I just want to make the

2 point that it's not three on one side,
3 two on the other, therefore you have
4 to vote a certain way.

5 CHAIRMAN SCALZO: Thank you,
6 Counsel, for helping us understand
7 that even better. Not that I was
8 keeping score. It's an interesting
9 way to look at the balancing test.

10 Having gone through that, does
11 the Board have a motion of some sort,
12 keeping in mind that the Board can
13 grant the minimum variance necessary
14 and may impose reasonable conditions?

15 I will be honest with the Board,
16 I struggled with this one the most
17 out of all the applicants that I
18 looked at for tonight's agenda.

19 MR. EBERHART: In my mind it's the
20 reasonable condition. It's a tough one.

21 CHAIRMAN SCALZO: Also, Members of
22 the Board, keep in mind, if this is
23 something that you feel as though you
24 need to think more about, we do not need
25 to make a decision this evening. We can

2 defer, we can think about it. If you
3 feel as though you need to gather more
4 information or you need to revisit the
5 application, you need to revisit the
6 property, we have that ability.

7 MR. POLITI: Let's assume you went
8 to the side of the house. Let's say you
9 went to the side.

10 MR. LYNN: Go ahead.

11 MR. POLITI: We've been trying to
12 keep that at 5 feet so that you have 5
13 and 5, you know. That's something that,
14 in my short time, we've been trying to
15 achieve, the space that's accessible. In
16 this setting it may not be as applicable.
17 I just see the front, not knowing the
18 alternative. That's a huge question mark
19 for me in determining that because of the
20 encroachment. I shouldn't say
21 encroachment. How close you are to the
22 right-of-way. You have the space on the
23 side. There's the argument you can't
24 bring anything in.

25 MR. LYNN: The side part I did not

2 measure. The side part from the existing
3 house to the right-of-way -- to the next
4 lot line is not very big either. You
5 can't do two cars wide there. It's not
6 really big at all.

7 CHAIRMAN SCALZO: I understand
8 that, sir. I scaled off the map that you
9 provided which scaled pretty well. At
10 the closest corner, not the porch but the
11 dwelling, perpendicular you have 28 feet.
12 Where you bump out, you have 22, 23 feet.
13 At the front, not including your walk and
14 the retaining areas, there's 27. I know
15 I have to stack cars in my own driveway.
16 It's not desirable, but it's the way I do
17 it.

18 To your point, Mr. Politi, that's
19 -- I don't know what you were asking, but
20 that's --

21 MR. POLITI: You don't have an
22 alternative. I don't know Howard
23 Weeden's office. I don't see an
24 alternative design.

25 MR. LYNN: That's what I came up

2 with when I talked to him. I didn't see
3 another way to do it. I went over this
4 quite a bit before I submitted it because
5 I really didn't want to do that either,
6 but it was like where am I going to put
7 this and how am I going to do it.

8 MR. BELL: My question here is, at
9 the edge of the side of your driveway,
10 coming towards the second retaining wall,
11 almost in line with the side of the
12 house, was it ever a thought that you
13 could actually put it there and -- have
14 that two-car garage placed there and move
15 that whole retaining wall where the
16 mailbox is? Maybe work it in that space?

17 MR. LYNN: Again, from the edge of
18 the house going right toward the other
19 neighbor, there's not a whole lot of
20 room. There's only that little -- it's
21 like 7 feet or 8 feet, if I'm in the
22 right spot.

23 MR. BELL: I'm talking about from
24 here, the edge of your driveway, to here.
25 That has to be more than 7, 8 feet.

2 MR. LYNN: Right, right. Again,
3 you can't put two cars there. How would
4 you -- you know what I'm saying?

5 MR. BELL: Do you know what the
6 measurements are or you just never looked
7 at it?

8 MR. LYNN: I didn't look at it
9 because where it is. Like I said, it's
10 not much more than a car wide. It's all
11 the way down.

12 MR. BELL: Okay.

13 CHAIRMAN SCALZO: Mr. Lynn, had you
14 considered -- I'm just spitballing here.
15 This is just an idea. If you were to
16 offset your garage to, in this case the
17 south, say keep it 5 feet off the
18 property line, because your front
19 right-of-way line, it diverges towards
20 each other, you would actually increase
21 the distance off the right-of-way. Now
22 you'd end up having another jog in your
23 house, a jog on the left and a jog on the
24 right.

25 MR. LYNN: Facing it, going to the

2 left?

3 CHAIRMAN SCALZO: Correct. If you
4 were to stay 5 feet off the left property
5 line, that would decrease the amount of
6 variance you need on the right-of-way.
7 If you maintain the same shape you were
8 looking to do --

9 MR. LYNN: In the front, if I'm not
10 mistaken, and I'm pretty sure I'm not --
11 if you can see the picture, you'll see
12 the column. You know, there's a stone
13 block column right there. That is only
14 about 3 feet, maybe, from the property
15 line, or 2 feet. I know the sewer and
16 both of our sewer line shutoffs are right
17 there. We have pressurized lines.
18 They're right off there. As a matter of
19 fact, I think mine is right next to that.
20 They're only 2 feet apart.

21 CHAIRMAN SCALZO: I'm just spitballing.

22 MR. LYNN: Believe me, if I was --
23 I went through this thing and racked my
24 brain for a long time before we even
25 tried to put this together to see if it

2 would work. We've been around and around
3 with this. It's not an easy thing. It's
4 not even an easy thing to do just as far
5 as all the stuff I have to move. Mr. Politi
6 said you have to move the electric. It's
7 all taken into consideration. It's a lot
8 more work to do that, but that looked like
9 the right thing and to keep it reasonably
10 nice looking.

11 CHAIRMAN SCALZO: I understand.
12 All right. Nobody has made a motion of
13 some sort, or even that we defer for
14 another month.

15 The public hearing has actually
16 already been closed.

17 MS. GREGG: It's closed?

18 CHAIRMAN SCALZO: We voted
19 approximately five minutes ago.

20 Counsel, can I --

21 MR. BELL: She missed it.

22 MR. DONOVAN: You are the Chairman.
23 It's good to be the Chairman. You can
24 exercise discretion.

25 CHAIRMAN SCALZO: We're going to

2 exercise discretion and allow you to
3 speak.

4 MS. GREGG: It's important to give
5 this man some support. Having been a
6 resident in this area for a few years,
7 1952, okay, he needs a little support.
8 If you could have a map or something here
9 in our hands to see what his place looks
10 like. We have not been given the
11 opportunity. You either give him support
12 or not support. Do we have a picture,
13 some visual to see?

14 CHAIRMAN SCALZO: Ma'am, you make a
15 solid point. Before I get to that, if
16 you could just give your name for the
17 stenographer.

18 MS. GREGG: Alma Gregg. I've been
19 here since 1952, and my family. You may
20 have seen me out there at times.

21 CHAIRMAN SCALZO: Thank you, ma'am.
22 The information regarding the application,
23 which may or may not include photographs,
24 does appear on the Town of Newburgh's
25 website. Should you not have internet

2 ability and the ability for someone
3 to drive you around -- that's how we
4 check them out, we drive past.

5 MS. GREGG: Okay.

6 CHAIRMAN SCALZO: When the public
7 comes to comment on applications, our
8 hopes are that they have looked at the
9 application and seen the property
10 themselves. A lot of times it doesn't
11 happen, and that's fine. We do
12 appreciate your comments, ma'am.

13 MS. GREGG: Thank you.

14 CHAIRMAN SCALZO: Thank you.

15 We've been through our balancing
16 questions here.

17 Mr. Eberhart, your finger was up.

18 MR. EBERHART: As you mentioned
19 about setting a precedent.

20 CHAIRMAN SCALZO: It's not easy. I
21 told you, this was the most challenging
22 one for me to review.

23 MR. POLITI: Let me ask a question
24 of the attorney. We went through this
25 with another property in my time here

2 where we voted and they had to come back.
3 I think the opportunity for some type of
4 redesign, some other concept. That's my
5 opinion. I don't know how the rest feel.
6 I'm not truly in favor of what's
7 happening. If it was possible to slide
8 it, to try to pull that over and gain
9 space. Just to pull it away, something
10 away from the lot line -- from the
11 right-of-way line. That's my opinion, if
12 there's a way to do that. I hate that we
13 went through that last time and the
14 applicant had to come back and it had to
15 be unanimous by law. It would give you
16 the opportunity to get this done.

17 MR. LYNN: Just for information
18 again, where the jog is, that comes out 2
19 feet and that ends up about the same
20 thing, less than a foot or a foot off of
21 that right-of-way. Even moving it over 3
22 feet or 4 feet to get over, or even 5
23 feet to the left or the south, it's only
24 going to bring it off the line another
25 few inches.

2 CHAIRMAN SCALZO: Currently you're
3 proposing seven-tenths. Not even a foot.

4 MR. LYNN: It might maybe make a
5 foot at that point if I brought it over.
6 I don't have a problem doing that. I'm
7 just saying, if you bring it over that
8 much further, the look of the house
9 versus -- you know, you're right, too.
10 It might give me, might give me a foot
11 off of that line at that point, because
12 the line doesn't move that much as it's
13 going.

14 CHAIRMAN SCALZO: I understand
15 that.

16 MR. POLITI: One other question.
17 The primary goal of this is storage?

18 MR. LYNN: Cars mostly, and to add
19 a little storage. We were going to do an
20 attic.

21 Pull down stairway with an attic.

22 CHAIRMAN SCALZO: What was your
23 building height proposed at?

24 MR. LYNN: 14 feet. 14 and a
25 couple inches or something.

2 CHAIRMAN SCALZO: This would
3 actually be attached to the house, so
4 it's not considered an accessory
5 structure.

6 MR. MATTINA: Correct.

7 CHAIRMAN SCALZO: You're two
8 and-a-half stories --

9 MR. MATTINA: You have 35 feet.

10 MR. LYNN: I don't want to do that.

11 CHAIRMAN SCALZO: With the proposed
12 garage, would you be blocking the view
13 perhaps of the lake from someone across
14 the street?

15 MR. LYNN: No.

16 CHAIRMAN SCALZO: I'm just asking.

17 MR. LYNN: That's okay.

18 MR. POLITI: I just think on the
19 garage underneath, the garage underneath,
20 if it's for storage, then you can bump
21 that out.

22 MR. LYNN: Correct.

23 MR. POLITI: I'm trying to think of
24 a solution. That's where I'm stuck.

25 MR. LYNN: The primary purpose is

2 for snow removal and getting the cars out
3 of the snow. That's it. It would add a
4 little bit of storage. As you know, when
5 you're at 20 feet, there's not much room.
6 It would give us a little bit of wall
7 space for some shelves. The primary part
8 is to keep the cars out of the snow and
9 give us a little less work in the
10 wintertime. The hardest part is in the
11 winter there's nowhere to put the snow.
12 You're putting it on this neighbor's
13 property and that neighbor's property.
14 It's just what it is.

15 CHAIRMAN SCALZO: That's a problem
16 that I'm sure has been going on since
17 that's been a year-round residence.

18 MR. LYNN: Absolutely.

19 CHAIRMAN SCALZO: Again, Board, do
20 we have a motion of some sort or are we
21 looking to push this a month? I just
22 want to put all the options out there.

23 MR. EBERHART: Kicking it down the
24 road, I don't see that.

25 MR. BELL: I don't see why we need

2 to kick the can down the road.

3 MR. DONOVAN: If it's okay with the
4 Board; Mr. Lynn, would you consider
5 reorienting the garage, making any
6 modifications before the Board votes? I
7 think you've heard from the Board that
8 perhaps they're looking at you to reduce
9 the magnitude of the variance. Is that
10 something you're willing to look at? If
11 you're not, Mr. Eberhart is correct,
12 there's no point in coming back in a
13 month. If you are, maybe the Board --

14 MR. LYNN: I wouldn't say I
15 wouldn't do it. Like I said, to me,
16 that's what I tried to mention. The
17 difference in what we're going to gain by
18 moving it is so little, it's almost not
19 worth the trouble to do it. If you felt
20 that was the only way we could do this --

21 MR. DONOVAN: There are no promises.

22 MR. LYNN: Understood. It's back
23 to the drawing board and we try it again.
24 Whatever you guys decide, because that's
25 why we're here.

2 CHAIRMAN SCALZO: I don't want to
3 run into asking you to do specific
4 things. Perhaps your surveyor that put
5 the proposed garage on there could show
6 what you would gain by moving it 5 feet
7 from the southerly property line.

8 MR. BELL: When you showed me the
9 other day the tabs in the driveway where
10 it was going to stop, they were actually
11 stopping right in front of the rear tire
12 of the SUV.

13 MR. LYNN: Correct.

14 MR. BELL: Basically your SUV still
15 had another couple feet --

16 MR. LYNN: Right.

17 MR. BELL: -- from where it stopped
18 to where the road is. Okay.

19 MR. LYNN: That dimension is only
20 -- that's from the house out.

21 MR. BELL: Exactly. From the house
22 -- from that wall out here, your SUV back
23 tire, let's say this stopped right at the
24 edge -- right in front of the back tire
25 under the vehicle with that distance

2 being another 3, 4 feet to the road.
3 Another 3, 4, 5 feet. 4 feet.

4 MR. LYNN: From that mark that we
5 had, that's 14 teen feet from the road.

6 MR. BELL: 14 feet from the road?

7 MR. LYNN: 14.5 feet.

8 MR. BELL: Okay. With that said, I
9 can make a motion. I hope you were
10 paying attention to what I just said.
11 I'll make a motion for yes, I understand
12 we've got the precedence. We set
13 precedence. I mean, we have been setting
14 precedence for years on the Board, over
15 and over. With that said, I'll make a
16 motion for approval.

17 MR. DONOVAN: Mr. Bell, with that
18 motion you're indicating that this area
19 of Orange Lake is very unique,
20 substandard lots. The area is littered
21 with lots that don't meet the zoning
22 requirements. The Board might be
23 inclined to act differently if there was
24 another application outside of Orange
25 Lake. This is kind of a unique

2 situation.

3 MR. BELL: It's a unique situation.

4 CHAIRMAN SCALZO: That's exactly
5 what I heard him think.

6 MR. BELL: I'm thinking what he
7 showed me was -- you know, when you look
8 -- I'm looking at the picture now again.
9 Here in the driveway -- I see this is the
10 one that I'm going off of here. When I
11 see that, his tabs actually stop where it
12 comes out from the house, under the front
13 of the SUV. You've still got this much
14 more of the SUV before he hits the road.

15 CHAIRMAN SCALZO: To that end Mr.
16 Bell, what I'm going to say to you is
17 when Mr. Lynn bought this property, he
18 was charged with having to know what the
19 code required for any substantial --

20 MR. BELL: That's your opinion, Mr.
21 Chairman. I got you. I made my motion.
22 My motion is for approval.

23 CHAIRMAN SCALZO: We have a motion
24 for approval from Mr. Bell.

25 MR. EBERHART: I'll second it.

2 CHAIRMAN SCALZO: We have a second
3 from Mr. Eberhart.

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: No.

11 MS. JABLESNIK: Mr. Masten?

12 MR. MASTEN: No.

13 MS. JABLESNIK: Mr. Politi?

14 MR. POLITI: No.

15 MS. JABLESNIK: Mr. Scalzo?

16 CHAIRMAN SCALZO: No.

17 Mr. Lynn, the motions did not
18 carry. Perhaps you may want to revisit
19 something. As it stands right now, the
20 variances were not approved.

21 MR. LYNN: Thank you.

22

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

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

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

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

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

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

Michelle Conero

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

DEANNA & JOHN SAUNDERS
23 Briarwood Crescent, Newburgh
Section 88; Block 3; Lot 8
R-1 Zone

----- X

Date: June 27, 2024
Time: 7:50 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: DEANNA SAUNDERS &
JOHN SAUNDERS

----- X

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

2 CHAIRMAN SCALZO: Our third
3 applicant this evening is Deanna and
4 John Saunders, 23 Briarwood Crescent,
5 Newburgh, seeking area variances of
6 the minimum front yard setback,
7 maximum allowed building coverage,
8 maximum allowed surface coverage and
9 increasing the degree of nonconformity
10 of one side yard and combined side
11 yards to build a 12 by 37 rear
12 addition, convert the garage into
13 habitable space and build a 6 by 16
14 front porch.

15 Siobhan, do we have mailings on
16 this?

17 MS. JABLESNIK: This applicant sent
18 sixty letters.

19 CHAIRMAN SCALZO: So far you're the
20 winner. Who do we have with us?

21 MS. SAUNDERS: I'm Deanna Saunders.
22 This is my husband, John Saunders.

23 CHAIRMAN SCALZO: As you heard me,
24 those two sentences, what I read, if I
25 have captured everything that you would

2 like to say, we can just move on to the
3 next portion.

4 MS. SAUNDERS: We can move on to
5 the next portion.

6 CHAIRMAN SCALZO: You did great.

7 MS. SAUNDERS: Thank you. It sums
8 it up.

9 CHAIRMAN SCALZO: I drove through
10 the neighborhood. It's a quaint little
11 neighborhood. Your home is one foot or
12 two feet away from the right property
13 line, --

14 MS. SAUNDERS: Mm'hm'.

15 CHAIRMAN SCALZO: -- a preexisting
16 nonconforming condition.

17 MS. SAUNDERS: Yes.

18 CHAIRMAN SCALZO: Something which
19 is almost not relative to this
20 application, but I have to ask anyway.

21 Mr. Mattina, you reviewed these
22 plans. Correct?

23 MR. MATTINA: Yes.

24 CHAIRMAN SCALZO: I saw on the
25 survey portion, which is in here

2 somewhere --

3 MS. SAUNDERS: The survey was a
4 smaller, separate --

5 CHAIRMAN SCALZO: In the back where
6 the sports pages are. I'm looking at
7 your survey. In the very back -- Mr.
8 Mattina, you're with me now -- it says
9 new woodshed, and the offset to that
10 woodshed is one foot off the line.
11 Accessory structures require five feet
12 off the line, at least since I've been
13 here.

14 Is that correct, Joe?

15 MR. MATTINA: Correct, unless it
16 predates zoning.

17 MR. DONOVAN: New could be a
18 relative term.

19 CHAIRMAN SCALZO: Believe it or
20 not, you're kind of -- you're not
21 expanding to the right. You're going up.

22 MS. SAUNDERS: We're going up and
23 out. Not to the sides.

24 CHAIRMAN SCALZO: Not to the sides
25 at all. The front porch is in kind with

2 the others I've seen. Again, my question
3 was almost not related to your application.
4 I just happened to pick up on it.
5 Perhaps Code Compliance may have a comment
6 on that later. Right now that's all
7 I have.

8 I'm going to start with Mr. Masten.
9 Mr. Masten, do you have any comments
10 regarding this application?

11 MR. MASTEN: Not right now.

12 CHAIRMAN SCALZO: How about you,
13 Mr. Bell?

14 MR. BELL: I don't have any
15 comments. We had a good conversation. I
16 can see what they're looking to do. It
17 will be beneficial. I'm good.

18 CHAIRMAN SCALZO: Okay. Mr. Hermance?

19 MR. HERMANCE: No. It would
20 increase the degree of nonconformity.

21 CHAIRMAN SCALZO: Correct, because
22 they're going up and they're also going a
23 little closer to the street.

24 Mr. Eberhart?

25 MR. EBERHART: No questions.

2 CHAIRMAN SCALZO: How about you,
3 Mr. Politi?

4 MR. POLITI: In the back, that back
5 section, it may be on the bigger plan,
6 the side yard measurement --

7 MS. SAUNDERS: For which side?
8 Facing the house --

9 MR. POLITI: If you're facing the
10 house, in the back where you're going to
11 add that --

12 MS. SAUNDERS: It's not going to be
13 the whole width of the house.

14 MR. POLITI: I see that. Just that
15 measurement is not on there.

16 MS. SAUNDERS: It's going to be 36
17 feet wide. We're about, I want to say
18 15, 16 feet away from the end of the
19 other part of the house.

20 MR. POLITI: Where you're almost on
21 the line?

22 MS. SAUNDERS: Yes.

23 MR. POLITI: This is about a 16 foot --

24 MS. SAUNDERS: About, yes.

25 CHAIRMAN SCALZO: Is that it,

2 Mr. Politi?

3 MR. POLITI: Yes.

4 CHAIRMAN SCALZO: At this point
5 I'll open it up to any members of the
6 public that wish to speak about this
7 application on Briarwood Crescent.

8 Please identify yourself and ask
9 away.

10 MR. ROMERO: My name is Bryndon
11 Romero. I reside -- I'm the direct next
12 door neighbor to John and Deanna on the
13 north end, I believe.

14 CHAIRMAN SCALZO: Yes.

15 MR. ROMERO: Just thinking --

16 CHAIRMAN SCALZO: I'm looking at
17 your name on the map.

18 MR. ROMERO: All right. Just
19 thinking about what they're planning to
20 do, thinking about the neighborhood and
21 what's happening, besides them I believe
22 I'm the first and last and current
23 neighbor that would be most affected. I
24 have zero issues with what they're trying
25 to do. Taking them into consideration as

2 neighbors, as a community, they've taken
3 very good care of the home in the six
4 years I've joined the community. Their
5 property has nothing but become
6 aesthetically more pleasing each and
7 every year.

8 MS. SAUNDERS: We try.

9 MR. ROMERO: I have no doubt that
10 whatever they plan to do, it will be nice
11 and it will add to the community.

12 MS. SAUNDERS: Thank you.

13 CHAIRMAN SCALZO: Thank you for
14 your comments, Mr. Romero. They're very
15 important to us.

16 Are there any other members of the
17 public that wish to speak about this
18 application?

19 (No response.)

20 MS. SAUNDERS: I would like to say
21 that the overall goal, like he said, is
22 to actually make it more aesthetically
23 pleasing while giving us functionality
24 for a growing family. You've all seen
25 the homes in our neighborhood. Just by

2 knowing how many letters we had to send
3 out, you know that it's a very small --
4 all the properties are very close
5 together, so the houses are also very
6 small. We're trying to make it a little
7 bit more functional while also making it
8 a house that the neighborhood can be
9 proud of.

10 CHAIRMAN SCALZO: Thank you.

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

14 (No response.)

15 CHAIRMAN SCALZO: It does not look
16 that way.

17 I'll give one last look to the
18 Board.

19 (No response.)

20 CHAIRMAN SCALZO: 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. MASTEN: Second.

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

5 MR. POLITI: Aye.

6 MR. EBERHART: Aye.

7 MR. HERMANCENCE: Aye.

8 CHAIRMAN SCALZO: Aye.

9 MR. BELL: Aye.

10 MR. MASTEN: Aye.

11 CHAIRMAN SCALZO: Those opposed?

12 (No response.)

13 CHAIRMAN SCALZO: Very good.

14 Again, Counsel, this is a Type 2
15 action under SEQRA?

16 MR. DONOVAN: That is correct, Mr.
17 Chairman.

18 CHAIRMAN SCALZO: Thank you, sir.

19 We're going to go through the
20 variance criteria, again the five. The
21 first one being whether or not the
22 benefit can be achieved by other means
23 feasible to the applicant. This one
24 differs from the previous application
25 where they're going up, although they're

2 going out towards the street, not nearly
3 to the degree that the previous one was.
4 Anyway, the feasible by other means, it
5 does not appear so.

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

9 MR. BELL: No.

10 CHAIRMAN SCALZO: Third, whether
11 the request is substantial. By the
12 numbers it could be. In this instance it
13 does not appear so.

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

17 MR. BELL: None.

18 CHAIRMAN SCALZO: Negative.

19 Fifth, whether the alleged difficulty
20 is self-created, which is relevant but not
21 determinative. Of course it's self-created.
22 However, we can still move past that.

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

2 MR. BELL: I'll make a motion for
3 approval.

4 MR. MASTEN: I'll second it.

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

8 Can you roll on that, please,
9 Siobhan.

10 MS. JABLESNIK: Mr. Bell?

11 MR. BELL: Yes.

12 MS. JABLESNIK: Mr. Eberhart?

13 MR. EBERHART: Yes.

14 MS. JABLESNIK: Mr. Hermance?

15 MR. HERMANCE: Yes.

16 MS. JABLESNIK: Mr. Masten?

17 MR. MASTEN: Yes.

18 MS. JABLESNIK: Mr. Politi?

19 MR. POLITI: Yes.

20 MS. JABLESNIK: Mr. Scalzo?

21 CHAIRMAN SCALZO: Yes.

22 The motion is carried. The
23 variances are approved. Good luck,
24 folks.

25 (Time noted: 8:02 p.m.)

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

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

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

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

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

Michelle Conero

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

LARRY SIMMONS
329 Lakeside Road, Newburgh
Section 50; Block 1; Lot 6
R-1 Zone

----- X

Date: June 27, 2024
Time: 8:02 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: STEVEN SECON

----- X

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

2 you'd like to add any other commentary to
3 that, please feel free.

4 MR. SECON: I'll just make it
5 brief. The property, as you know, is
6 located among many nonconforming lots on
7 the east side of Orange Lake. What we're
8 proposing to do is add on the existing
9 footprint, basically making the roof
10 built out in order to accommodate
11 grandchildren upstairs and make the
12 garage a little bit more voluminous, just
13 to get some seasonal things up and out of
14 the parking area. Like many of the
15 houses, there's no basement. For those
16 reasons, the lot being only 30 feet wide,
17 pretty much it needs variances because of
18 its existing nonconformity.

19 We've submitted letters of support
20 from surrounding neighbors.

21 We would be delighted to answer any
22 questions that you might have.

23 CHAIRMAN SCALZO: Thank you very
24 much.

25 I'm going to start with Mr. Masten.

2 Mr. Masten, do you have comments
3 regarding this application?

4 MR. MASTEN: Not really.

5 CHAIRMAN SCALZO: How about you,
6 Mr. Bell?

7 MR. BELL: I'm good.

8 CHAIRMAN SCALZO: Mr. Hermance?

9 MR. HERMANCE: A question for Joe.
10 Being an accessory structure in the front
11 yard, I didn't think they were allowed.

12 MR. MATTINA: They're not. That's
13 why it's here.

14 CHAIRMAN SCALZO: It's preexisting
15 nonconforming. That we're aware of.
16 Since he is increasing the height of
17 that, where does that fall?

18 MR. MATTINA: That's the increasing
19 the degree of nonconformity.

20 MR. DONOVAN: In your notice of
21 disapproval, Joe, it indicates that your
22 application to raise the roof 2 feet on
23 an existing nonconforming accessory
24 building, front yard and setback is
25 disapproved because it increases the

2 degree of nonconformity.

3 MR. MATTINA: Correct.

4 MR. DONOVAN: That brings us to the
5 nonconformity is allowed but it increases
6 the degree.

7 MR. HERMANCENCE: That's all I had.

8 CHAIRMAN SCALZO: Mr. Eberhart?

9 MR. EBERHART: No questions.

10 CHAIRMAN SCALZO: Mr. Politi?

11 MR. POLITI: One of the questions
12 in Orange Lake, and I did call Joe,
13 there's no side to side. This is all --

14 MR. SECON: Correct.

15 CHAIRMAN SCALZO: They won't be
16 blocking anyone's view except for someone
17 sitting on the garage roof. There you
18 have it.

19 That's it for you, Mr. Politi?

20 MR. POLITI: That's it.

21 CHAIRMAN SCALZO: I'll open it up
22 to any members of the public that wish to
23 speak about this application. Mr. Langer.

24 MR. LANGER: Greg Langer, 279-281
25 Lakeside Road, representing the board of

2 directors again.

3 CHAIRMAN SCALZO: I see another
4 short letter coming my way. The short
5 ones I'll read. This is from Mr. Langer.
6 "Dear Chairman Scalzo and Board Members,
7 Larry Simmons has addressed the Orange
8 Lake Homeowners Association concerning
9 his plans to expand his residence and
10 garage. The board had an opportunity to
11 communicate with nearby residents who
12 have reacted favorably to this proposal.
13 Larry and his family are long-time
14 residents who have always taken an
15 interest in the lake. Larry was the
16 editor of the Orange Lake Newsletter for
17 many years in the '90s when communication
18 about the proposed water and sewer
19 project was critical. This will be an
20 upgrade to the former cottage and will
21 blend in with the neighborhood. Thank
22 you for the opportunity to comment."

23 Thank you, Mr. Langer. The short
24 ones I'll read.

25 MR. LANGER: Thank you.

2 CHAIRMAN SCALZO: We appreciate
3 that.

4 Anyone else from the public?
5 Actually, you're not a public man.

6 MR. MATTINA: I just want to clear
7 something up. With the accessory
8 building, there are two variances. One,
9 it's in the front yard, increasing the
10 degree. The second, it doesn't setback
11 feet from the property line. The garage
12 would have two variances.

13 CHAIRMAN SCALZO: Okay. Are there
14 any modifications to the application
15 required in this case?

16 MR. MATTINA: No. It has them both
17 on there. I want to make sure you're
18 looking at the setback from the property
19 line and the front yard.

20 CHAIRMAN SCALZO: Mr. Fetter, I saw
21 your hand up.

22 MR. FETTER: Bill Fetter, Rockwood
23 Drive. There's discussion of just going
24 straight up, however you're changing the
25 side yard setbacks as mentioned in here

2 in the second sentence. Is there
3 additional building of walls to support
4 the second floor? Why is there a need
5 for a side yard variance if they're not?

6 CHAIRMAN SCALZO: When you increase
7 the height, you increase the degree of
8 nonconformance.

9 MR. FETTER: Okay. I can't argue.

10 CHAIRMAN SCALZO: I didn't write
11 the rules, Mr. Fetter. I'm just the guy
12 that conforms to them.

13 MR. FETTER: Thank you.

14 CHAIRMAN SCALZO: Very good.

15 Is there anyone else from the
16 public that wishes to speak about this
17 application?

18 (No response.)

19 CHAIRMAN SCALZO: I'll look to the
20 Board for a motion to close the public
21 hearing.

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

24 MR. EBERHART: Second.

25 CHAIRMAN SCALZO: We have a motion

2 from Mr. Masten. We have a second from
3 Mr. Eberhart. All in favor?

4 MR. POLITI: Aye.

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: Very good.

13 Counsel, I think so far so good.

14 It's a Type 2 again?

15 MR. DONOVAN: That's correct.

16 CHAIRMAN SCALZO: We all know the
17 drill, folks. The first one being
18 whether or not the benefit can be
19 achieved by other means feasible to the
20 applicant.

21 MR. POLITI: No.

22 MR. EBERHART: No.

23 MR. HERMANCE: No.

24 MR. BELL: No.

25 MR. MASTEN: No.

2 CHAIRMAN SCALZO: No.

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

6 MR. POLITI: No.

7 MR. EBERHART: No.

8 MR. HERMANCENCE: No.

9 MR. BELL: No.

10 MR. MASTEN: No.

11 CHAIRMAN SCALZO: No. We heard
12 testimony that the neighborhood is in
13 favor of this.

14 The third, whether the request is
15 substantial. By the numbers, yes.
16 Taking everything into consideration in
17 the neighborhood, it is not.

18 The fourth, whether the request
19 will have adverse physical or
20 environmental effects. None.

21 The fifth, whether the alleged
22 difficulty is self-created, which of
23 course it is, however that's relevant but
24 not determinative.

25 Having gone through the balancing

2 tests, does the Board have a motion of
3 some sort?

4 MR. HERMANCE: I'll make a motion
5 to approve.

6 MR. EBERHART: Second.

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

10 Can you roll on that, please,
11 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. Politi?

21 MR. POLITI: Yes.

22 MS. JABLESNIK: Mr. Scalzo?

23 CHAIRMAN SCALZO: Yes.

24 The motion is carried. The
25 variances are approved.

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L a r r y S i m m o n s

MR. SECON: Thank you all.
(Time noted: 8:10 p.m.)

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

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

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

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

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

Michelle Conero

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

----- X

Date: June 27, 2024
Time: 8:10 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
JAMES POLITI

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

APPLICANT'S REPRESENTATIVE: JASON TUVEL
and ZACHARY CHAPLIN

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MICHELLE L. CONERO
Court Reporter
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2 CHAIRMAN SCALZO: We have Prime
3 and Tuvel, 2 Lakeside Road, which is
4 a Planning Board referral for area
5 variances of a gasoline station
6 located within 1,000 feet of an
7 existing gasoline station, a front
8 yard landscaping buffer of 23.1 feet
9 where 45 feet is required, maximum
10 allowed freestanding signs (two are
11 proposed where one is permitted), and
12 maximum allowed building signage (150
13 square feet is proposed, 75 square
14 feet is the maximum allowed).

15 Siobhan, do we have mailings on
16 this?

17 MS. JABLESNIK: This applicant sent
18 twelve letters.

19 CHAIRMAN SCALZO: Twelve letters.

20 Siobhan, did we hear back from the
21 County?

22 MS. JABLESNIK: We have not
23 received County.

24 CHAIRMAN SCALZO: We have not
25 received the County Planning Department's

2 comments on this. I don't know if you're
3 aware what that means to you, but General
4 Municipal Law 239 requires us, as a
5 Board, to send any applications which are
6 within 500 feet of a state highway, an
7 interstate highway, county road to the
8 County for their ability to review and
9 comment to us. Since we have not heard
10 back from them, we will certainly
11 appreciate your presentation this
12 evening. However, by law we are unable
13 to vote or even close the public hearing.

14 MR. TUVEL: I understand that, Mr.
15 Chairman.

16 CHAIRMAN SCALZO: Very good.

17 MR. TUVEL: Good evening, Mr.
18 Chairman and Members of the Board. I'm
19 Jason Tuvel, I'm the attorney on the
20 project.

21 This is an application for a
22 community store. It's proposed to be a
23 QuickChek of 6,730 square feet.

24 As the Chairman indicated, this is
25 a referral from the Planning Board.

2 We've been working with the Planning
3 Board conceptually on this project, had
4 several meetings with them as well.
5 We've reduced the magnitude of the
6 project as well as some of the variances
7 sought.

8 As the Chairman indicated, we do
9 have four variances associated with the
10 application, the first one being we
11 violate the proximity requirement of
12 being within 1,000 feet of another gas
13 station. Obviously there's a Pilot,
14 there's a Mobil all within 1,000 feet of
15 this property. The Mobil is the closest
16 at about 240 feet from the property.

17 In addition to that, we do need a
18 variance for the buffer. The buffer that
19 we're seeking here is a pinch point at
20 the intersection of 17K and the
21 interstate. It's mainly due to the fact
22 that we have a significant amount of
23 wetlands on the east side of the property
24 which is pushing the site a little bit
25 further towards 17K. However, the

2 majority of the frontage along 17K does
3 comply with the buffer requirement.

4 The last variance that we're
5 seeking is a second freestanding sign of
6 75 square feet. We are allowed one at
7 75. Since we're asking for two at 75, it
8 violates both the number of freestanding
9 signs and the square footage. Both
10 individually comply with the square
11 footage requirement. Since we have two
12 cumulatively, they don't comply with the
13 square footage requirement.

14 We did submit a report outlining
15 the criteria and going through the
16 justifications. I'd ask that be made
17 part of the record. Hopefully the Board
18 had a chance to review it.

19 In addition to that, Mr. Chairman,
20 I'd like our engineer, Zachary Chaplin
21 from Stonefield Engineering & Design, to
22 go through the plan and outline the bases
23 for the variances before the Board and
24 the public, if that's okay.

25 CHAIRMAN SCALZO: Absolutely.

2 Keeping in mind that we cannot vote
3 tonight. We will hopefully have one
4 extra member next month. We have one
5 missing tonight, so you may have to do it
6 again.

7 MR. TUVEL: Would the Board
8 prefer --

9 CHAIRMAN SCALZO: Well, you know --

10 MR. DONOVAN: That's up to the
11 applicant. Obviously there are members
12 of the public. If you all came for this
13 application, the Board will allow the
14 public to speak.

15 The Board will leave it to you. If
16 you'd like to make a presentation, that's
17 up to you. I would never let the
18 Chairman say no to that.

19 CHAIRMAN SCALZO: I actually would
20 prefer to hear it all.

21 MR. TUVEL: I would prefer it as
22 well. If there are comments from the
23 public, we would like to see if it
24 impacts at all the application.

25 I would like to ask Mr. Chaplin to

2 go through his presentation. I'd be
3 happy to answer any questions that the
4 Board has.

5 CHAIRMAN SCALZO: Thank you.

6 MR. CHAPLIN: Good evening. For
7 the record, my name is Zachary Chaplin
8 with Stonefield Engineering & Design,
9 civil engineer for the project.

10 As Jason mentioned, we've been
11 working on this for quite some time. I
12 think we started this late last year.
13 We've been in front of the Planning Board
14 twice. They gave us feedback initially.
15 We ended up revising the plan, scaling it
16 back, making some changes to the layout.

17 If you look at the site, it's a bit
18 interesting. There are three frontages
19 and we have the wetlands to the east.
20 Those are State regulated wetlands with a
21 100-foot buffer. There's essentially no
22 disturbance or anything proposed within
23 the wetlands or the buffer area.

24 The other part to consider is the
25 access. We had discussions with the DOT.

2 They basically said no access on 17K. Of
3 course no access on 84. All of our
4 access points are located on Lakeside.
5 We tried to design the site, from a
6 layout standpoint, to be efficient and
7 safe with having only the curb cuts on
8 Lakeside. We have an ingress only
9 driveway all the way to the west. The
10 middle curb cut is a full movement
11 driveway. The curb cut all the way to
12 the east is an egress only driveway. We
13 think it's pretty good for the flow.
14 Delivery type vehicles, larger vehicles,
15 they're going to enter in that first curb
16 cut and kind of circulate around the ring
17 of the property. The passenger vehicles
18 will circulate in the central part of the
19 project.

20 As Jason mentioned, this is a 6,730
21 square foot convenience store.

22 There are eight multi-purpose
23 dispensers, so sixteen fueling stations.

24 We have sixty parking spaces.

25 I think the other thing that's

2 important to note is there is a lot of
3 landscaping, a lot of green space around
4 the perimeter. That kind of gets me into
5 the first variance about the buffer.

6 Because we abut 17K and because
7 we're within 350 feet of an intersection,
8 there's a 45-foot buffer requirement. At
9 the pinch point we're roughly about 24,
10 25 feet, but if you look at the plan, as
11 you go north, that expands. I think the
12 other thing to consider, too, is that the
13 property line encroaches into or it's
14 pretty far away from the curb line, so
15 from a visibility standpoint you're
16 actually going to see a pretty large
17 buffer. It's hard to see on this plan
18 that I put up, but those numbers in red
19 are actually dimensions from the curb
20 line. They're all above 45. Visually
21 you're going to see a buffer that's more
22 than the 45 feet, even though the
23 property line is obviously less.

24 The other thing that we spoke
25 about, the Planning Board, and I'm sure

2 you're in favor of as well, they asked us
3 to put rock walls to help further enhance
4 that buffer. There are rock walls that
5 are proposed alongside 17K.

6 Jason I think spoke pretty well to
7 the 1,000 foot requirement. One thing
8 I'll add, I think it's a different type
9 of use compared to the Pilot. It's not a
10 truck stop. This is really more just a
11 convenience store, gas station. Very
12 different, at least from the Pilot.
13 Also, our access points are not on 17K
14 like those other two gas stations. We're
15 only on Lakeside.

16 MR. TUVEL: The Board is probably
17 familiar with QuickChek. There are no
18 repairs that take place onsite, there's
19 no storage of vehicles, there's no sale
20 of vehicles. I know the definition of
21 motor vehicle fueling station, but the
22 only thing that occurs is the dispensing
23 of fuel and the convenience store. Is
24 that correct?

25 MR. CHAPLIN: Correct.

2 Lastly, the signage. We have our
3 main sign at the corner of 17K and
4 Lakeside. It's where it makes sense.
5 It's going to have the gas prices and the
6 QuickChek logo. Because we have three
7 frontages and also because the property
8 kind of sinks, we really felt there was
9 an opportunity to add a sign on the other
10 side of 84. That's why we're seeking
11 that second sign, just for visibility
12 purposes. It helps customers who are
13 traveling along the road to know that
14 you're there since, again, it's limited
15 access just on Lakeside. That's the main
16 reason why we have two signs, and then of
17 course it leads into the size. We are
18 beating the size requirement. We have
19 two, so that's what's creating the sign
20 variance.

21 Just to sum up, we really looked to
22 design the site to be like an efficient,
23 safe layout. We understand we want to
24 make the buffers as large as we can,
25 landscaping, make sure we're protecting

2 the wetlands. We have bio-retention
3 basins proposed. I worked with the
4 engineer in terms of stormwater
5 management, et cetera.

6 We do feel like we're at a point
7 now with the Planning Board, and that's
8 why they referred us. We're looking
9 forward to continuing the project.

10 MR. TUVEL: Your office also
11 submitted a submission going through the
12 five-part criteria. Correct?

13 MR. CHAPLIN: Correct.

14 CHAIRMAN SCALZO: I read those.
15 Let me ask you a question. The Planning
16 Board insisted on the three entrances off
17 Lakeside Road. The DOT was not going to
18 entertain anything for 17K. Correct?

19 MS. TUVEL: Correct.

20 CHAIRMAN SCALZO: You also
21 mentioned that you wanted to have a
22 second sign that could be visible from
23 I-84. Have you approached DOT on that?

24 MR. CHAPLIN: I don't believe we
25 spoke on that.

2 CHAIRMAN SCALZO: I believe there's
3 a sign law that you would need to follow
4 that DOT may have to take a look at.

5 MR. TUVEL: Since we're not
6 finishing this evening, we can try to
7 make that inquiry before we come back and
8 let you know if there's any restriction.

9 CHAIRMAN SCALZO: That would be
10 great.

11 With regard to the presentation
12 almost calling out the wetlands as if
13 they were a constraint that we should
14 consider allowing you to bypass the 45-
15 foot buffer, that was always there. In
16 my opinion, you should have modeled your
17 site to meet all the criteria while
18 maintaining, they actually call it an
19 adjacent area, they don't call it a
20 buffer zone anymore. That's just an
21 observation I have.

22 Up at the corner of Rock Cut and
23 17K, I do believe we held that gas
24 station -- that's not within 1,000 feet.
25 That's a half mile away. I believe we

2 held them to that criteria. Knowing,
3 also though, that this is a substantial
4 intersection area, I got jammed up there
5 myself when I was going to look at this
6 property. The Pilot folks, really if one
7 truck gets jammed up in there, everything
8 gets stuck, I'll say, on 17K.

9 That being said, typically we don't
10 ask for traffic studies. There was
11 nothing with regard to traffic in our
12 packets for evaluation.

13 Counsel, am I off track here?

14 MR. DONOVAN: No, you're not, Mr.
15 Chairman.

16 One thing I did want to mention.
17 As far as this Board, everything tonight
18 has been a Type 2. This will be an
19 Unlisted action. The Board is going to
20 have to make a SEQRA determination.

21 The 1,000 foot requirement, and
22 obviously I'm sure you'll take a look at
23 185-28-G of the code, it does talk about
24 the Board, in this context the Planning
25 Board. We are being asked to issue a

2 variance. This Board shall consider the
3 potential interference with or danger to
4 traffic on all abutting streets and the
5 cumulative affect of all curb cuts for
6 any such new use shall also be
7 considered.

8 I think in order to have a record
9 in front of this Board, there needs to be
10 some analysis of the number of curb cuts,
11 what's going to happen, where they all
12 are in proximity to you, how many there
13 are and what impact -- you'll say there's
14 not any impact -- what impact this will
15 have on the traffic so there's a record
16 in front of this Board that they can act
17 on and make a SEQRA determination as well
18 as a determination on your application.

19 MR. TUVEL: We've going to have to
20 do it regardless when we go back to the
21 Planning Board at some point.

22 MR. CHAPLIN: We prepared a traffic
23 study. The Planning Board's consultant
24 provided comments. We recently
25 resubmitted as recent as last week.

2 We're happy to share that with you.

3 CHAIRMAN SCALZO: We can reach out
4 to Ken Wersted.

5 MR. DONOVAN: Obviously I am
6 certainly not qualified to read and
7 interpret a traffic study. Maybe a
8 Reader's Digest version and some
9 explanation drilling down on the
10 requirements of 185-28-G. I think that's
11 important to this Board.

12 MR. TUVEL: We can make sure this
13 Board has that.

14 CHAIRMAN SCALZO: Don't kill us
15 with that stuff.

16 MR. TUVEL: We can do an executive
17 summary, as you've indicated.

18 CHAIRMAN SCALZO: I like the way
19 Counsel said it, the Reader's Digest
20 version, for those of you that know what
21 that still is.

22 MR. TUVEL: Can I just address one
23 of the comments you made? I think what
24 Zach indicated, the wetlands, the buffer
25 that we're short on in the front.

2 Another reason we thought it was
3 appropriate in this specific instance was
4 the fact that the property line was
5 entering into the right-of-way. From a
6 visibility perspective, on that pinch
7 point where it is deficient, it would
8 appear that the buffer is met because you
9 would have 45 feet of landscaping or
10 grading from the curb line.

11 Am I right, Zach?

12 MR. CHAPLIN: The other thing is
13 the layout. It's rectilinear when you
14 look at the building and the pumps.
15 You're kind of facing a corner. We even
16 have more than the 45 feet at the corner,
17 and then it pinches down because it's
18 kind of a triangular shape as you go
19 south. If we were to rotate it, that
20 hurts our access points. We're limited
21 to access on Lakeside. We're not going
22 to be able to get the entrances that we
23 want in the prime spots.

24 We looked at a lot of different
25 layouts. I think the buffer was even not

2 as much as we have it now. We've made
3 changes to actually improve that corner
4 and go beyond the 45 feet. It's tough
5 because of the shape.

6 CHAIRMAN SCALZO: I appreciate the
7 clarification. Thank you.

8 If you could, again, confirm with
9 DOT that they don't need to get a look at
10 the signage visible from 84.

11 MR. TUVEL: Of course.

12 CHAIRMAN SCALZO: At this point I'm
13 going to open it up. Again, folks, we
14 can't close this public hearing tonight.
15 You'll have another opportunity next
16 month to ask some more questions.

17 Mr. Politi, what do we have from
18 you?

19 MR. POLITI: I'm good right now. I
20 needed to hear that. I'll be prepared for
21 the next one.

22 CHAIRMAN SCALZO: Mr. Eberhart?

23 MR. EBERHART: Nothing right now.

24 CHAIRMAN SCALZO: How about you,
25 Mr. Hermance?

2 MR. HERMANCE: As far as the second
3 sign that's going to be facing I-84,
4 there's also informational signs on the
5 roadway itself for restaurants --

6 CHAIRMAN SCALZO: The blue signs.

7 MR. HERMANCE: The blue signs. In
8 order to get more exposure as far as
9 signage, people knowing that the gas
10 station is there. I mean, it's just
11 something else to consider, that that
12 will be on that sign, too.

13 CHAIRMAN SCALZO: Very good.

14 Mr. Bell?

15 MR. BELL: I'm laughing because you
16 all read my notes over here. I'm going
17 to reserve until next month. I've got my
18 notes here. That was one of them right
19 there.

20 CHAIRMAN SCALZO: Thank you, Mr. Bell.

21 Mr. Masten, do you have any comments?

22 MR. MASTEN: Not at this time.

23 CHAIRMAN SCALZO: We have another
24 month to figure it out. Excellent.

25 At this time I'm going to turn it

2 over to any members of the public that
3 wish to speak regarding this application.
4 Please step forward, state your name and
5 -- we have two.

6 MR. WEISS: Good evening. My name
7 is Robert Weiss and I represent the Mid-
8 Hudson Civic Center. We own Ice Time
9 which is on Lakeside.

10 I couldn't get our letter in in
11 time. Since the public comment period is
12 going to extend beyond today, I've got
13 eight copies that I'd like to submit.
14 I'm not requesting they be read into the
15 record, but I would like them to be made
16 a part of the record. I have a copy for
17 everybody.

18 CHAIRMAN SCALZO: Certainly.
19 They're very lengthy so I wouldn't have
20 read those into the record at all.

21 MR. WEISS: The Civic Center stands
22 opposed to the application for the
23 reasons set forth in that letter that you
24 all have. Since there will be time for
25 additional public comment, I won't

2 belabor our point. Our point is in the
3 correspondence to the Board.

4 CHAIRMAN SCALZO: I would like to
5 let you walk away, however we have quite
6 a bit of reading. Again with the
7 Reader's Digest version, are there any
8 particular hot ones or is every one a hot
9 one?

10 MR. WEISS: Every reason that you
11 can imagine to put a gas station within
12 1,000 feet of another gas station.

13 We just heard about the sign on the
14 highway. We're going to be drawing on
15 our street, Lakeside, as many trucks and
16 as many cars as possible. Not on 17K but
17 on Lakeside. We have a family fun
18 center, Ice time.

19 There are environmental concerns,
20 there's the traffic concerns.

21 There's no basis really for this
22 Board to ignore the 1,000 foot
23 restriction. It's there for a reason.
24 It was considered and it's there for a
25 reason.

2 Pretty much every reason you can
3 imagine is set forth, hopefully briefly,
4 with detail as well in that correspondence
5 to the Board.

6 CHAIRMAN SCALZO: Thank you.

7 MR. WEISS: Thank you, sir.

8 CHAIRMAN SCALZO: I appreciate
9 that. You'll have another opportunity
10 next month if you'd like. We will
11 certainly read all of this. At the end
12 of this portion, we know we don't have an
13 August meeting, so it will be July.

14 MR. WEISS: Thank you very much.

15 CHAIRMAN SCALZO: Next up.

16 MR. BACON: Thank you, Mr. Chairman.
17 My name is James Bacon, I'm an attorney
18 and I represent the other gas station, the
19 Mobil.

20 Before I start, I have to say I've
21 appeared before boards for the last
22 thirty-two years. I don't think I've
23 heard a more good natured chairman
24 than you.

25 CHAIRMAN SCALZO: It's going to get

2 you nowhere.

3 MR. BACON: I knew you were going
4 to say that.

5 The Board is obviously well versed
6 with Town Law 267A and the five factors.
7 It's going to trigger all of these for
8 this application.

9 Also, as the Board had discussed
10 earlier on some of the other applications,
11 the Town of Newburgh Zoning Code also
12 has some specific powers and duties.
13 185-54 specifically talks about exceptional
14 and extraordinary circumstances unique to
15 such land or buildings that do not apply
16 generally to land or buildings in the
17 neighborhood, and the variances necessary
18 for the reasonable use of the land, and
19 that the minimum amount of variances
20 will be accomplished for this purpose, as
21 the Board had said in some of the earlier
22 discussions.

23 This applicant chose about the most
24 intense use for this parcel as possible,
25 to have a gas station within 1,000 feet

2 of two other gas stations. Of all
3 the uses to be chosen for that site, he
4 chose -- they chose that very intensive use.

5 As the applicant -- as you had read
6 earlier, there is the front yard
7 setback, which is a 50 percent
8 setback. Two signs instead of one,
9 that's 100 percent variance. The 150
10 square feet for signage instead of
11 75, that's 100 percent variance.

12 The one that really has to be
13 looked at is the 1,000 foot, because
14 it's not only the distance. I mean,
15 99.9 percent of that code is written
16 where you take a 100-foot requirement
17 or a 50-foot or a 5-foot and you decide
18 whether or not a reduction is reasonable
19 or not. In this one instance, in this
20 Section, 185-28-G, it specifically says
21 to the Board that in no instance shall
22 a new motor vehicle service station
23 be permitted to be established within
24 1,000 feet in any direction from the
25 lot. In no instance. The code doesn't

2 even want you to look at exceptional
3 circumstances. In no instance. That
4 is the only place I think in the
5 whole code where that language is used.
6 It's specific to protect other gas
7 stations and not to prevent -- not to
8 allow that area to be over-congested
9 with traffic, and for public safety,
10 obviously.

11 The other interesting thing with
12 that section is that it allows --
13 there is an escape route for the
14 applicant. They can go to the Planning
15 Board. If the Planning Board decides
16 that that is a travel center, then you're
17 allowed to go underneath the 1,000 foot
18 requirement. This prohibition --
19 prohibition, that's a very important
20 word. This prohibition shall not apply
21 to gasoline or diesel service fuel
22 facilities located in a travel center
23 approved by the Planning Board. So
24 it's really -- it gives them that escape
25 route if that's what the Planning Board

2 thinks is proper for this area. We
3 don't think that would be proper. I
4 think this would apply because you
5 need 12 acres for a travel center and
6 they have about 6. They chose this
7 very intensive development to bring
8 before the Board. They could have
9 chosen any number of other places.

10 We hope the Board considers that
11 along with the other factors. If I
12 could put some comments in writing in
13 the next couple weeks, we'd appreciate
14 that as well.

15 CHAIRMAN SCALZO: Thank you for
16 your comments. We'll all be back here
17 next month, so you'll have another
18 opportunity.

19 MR. BACON: Thank you very much.

20 CHAIRMAN SCALZO: I appreciate it.

21 Are there any other members of the
22 public that wish to speak about this
23 application? Mr. Fetter.

24 MR. FETTER: Bill Fetter, Rockwood
25 Drive. I concur with the signage.

2 There's plenty of signage on the highway.
3 One sign on the local streets should be
4 enough to indicate that the service
5 station is there.

6 Secondly, the owner knows what
7 layout they need. They knew what size
8 property they had. If it doesn't fit,
9 then another location should be searched
10 for so they don't need a variance for the
11 front yard setback. Thank you.

12 CHAIRMAN SCALZO: Thank you, Mr.
13 Fetter.

14 Anyone else?

15 Please step forward, sir, and state
16 your name.

17 MR. SINAGRA: Good evening. My name
18 is Jose Sinagra. I'm the manager of the
19 Mobil at 246 17K.

20 I think this plan should be dead.
21 We have six gas stations on 17K. 17K is
22 starting to look like the Bronx. 300 is
23 starting to look like Grand Concourse. A
24 QuickChek there is going to -- already
25 you've got problems with drugs. It's

2 going to be off 17K. It gives the drug
3 dealers to sell drugs or transfer drugs
4 away from 17K. I have that problem at
5 Mobil. Pilot also has that problem.

6 You're talking about 60 parking
7 spaces. You could do a lot there,
8 especially at night, okay.

9 You're going to take away from a
10 small business for QuickChek. It's going
11 to kill us, the small guy.

12 You have six gas stations. That
13 land should be built with something more
14 for the community, McDonald's, Kentucky
15 Fried Chicken. Something that people
16 don't have to go to 300.

17 Mobil, we have a deli. QuickChek
18 is a very well-known name. Once they see
19 a QuickChek, everybody is going to go to
20 QuickChek. That means Pilot will be
21 hurting, Mobil will be boarded down. Now
22 you're going to have a Mobil with boards.
23 Cumberland will be hurting from QuickChek.

24 Everything up here, all you see is
25 just storage, warehouses. They're

2 killing everything up here.

3 CHAIRMAN SCALZO: Pardon me for
4 interrupting. You're making some very
5 good points, sir. We have to evaluate
6 all the comments that we receive from the
7 public based on the variances that they
8 are requesting. As I say, you're making
9 some very good comments. Those comments
10 are more appropriate for the Planning
11 Board to hear because they have different
12 criteria that they can weigh things
13 against than we do. When we evaluate
14 applications, we evaluate them based on
15 what the applicant is requesting with
16 regard to relief from the code.

17 I've been a lifelong Newburgh
18 person myself. I can appreciate
19 everything you're saying. Sir, I'm going
20 to -- let's get back in the lane of --

21 MR. SINAGRA: My thing is that a
22 QuickChek will close down the Mobil.
23 That's a definite. It will shut us down.

24 CHAIRMAN SCALZO: Which is where
25 that 1,000 foot --

2 MR. SINAGRA: Exactly. It will
3 shut us down. It's going to hurt also
4 Pilot. Pilot depends on truckers.
5 That's how they make their money. Us, we
6 depend on people that get off the
7 highway. They come straight to us, they
8 fuel up. Once they see a QuickChek,
9 they're going to go right to the
10 QuickChek. What happens, we've got no
11 business. What happens, we shut down, we
12 board it up. Now you're going to have a
13 piece of land with boards all over the
14 windows for QuickChek. That's going to
15 be my point. You're going to have a gas
16 station, but then you're going to have a
17 small business that's trying to make a
18 living, trying to survive, shut down for
19 a big corporation. I hope you take that
20 under consideration.

21 CHAIRMAN SCALZO: We do appreciate
22 your comments.

23 MR. SINAGRA: Like I said, you
24 don't need no six gas stations. That
25 will be six gas stations on one strip.

2 We could use a restaurant, a fast food
3 restaurant where people could go with
4 their children, get some food instead of
5 going all the way to 300. Again --

6 MR. BELL: We got you.

7 CHAIRMAN SCALZO: We pick up what
8 you're putting down. I understand.

9 MR. SINAGRA: I appreciate it.
10 Thank you very much.

11 CHAIRMAN SCALZO: Is there anyone
12 else from the public that wishes to speak
13 about this application?

14 (No response.)

15 MR. DONOVAN: Mr. Chairman, if I
16 could. As Jimmy mentioned, he wanted to
17 submit some comments in writing. I ask
18 you do that in sufficient time so the
19 applicant will have an opportunity to
20 respond.

21 There are two things I want to do.
22 I want to make sure that the record in
23 front of this Board is complete and you
24 have time to consider everything that's
25 been submitted. Also I want to make sure

2 the process is fair. We are inviting
3 the applicant's attorney to submit a
4 brief, however I want you to have the
5 opportunity to do that, to do it or
6 not do it. We've done this a few
7 times in the past where we've had
8 opposing counsel making arguments. I
9 want everyone to have the opportunity
10 to submit so the Board has the
11 opportunity and I have the opportunity
12 to review all the legal arguments.

13 MR. TUVEL: I appreciate that.
14 When would you want all submissions by,
15 including the traffic analysis? I just
16 want to make sure you have enough time to
17 review it.

18 CHAIRMAN SCALZO: Our deadline is
19 ten days prior to --

20 MS. JABLESNIK: Our deadline would
21 be July 11th. If you submit anything
22 after the 19th, it will not get to the
23 Board. I will not be here.

24 CHAIRMAN SCALZO: That will push
25 you out until September because we are

2 not meeting in August.

3 MR. DONOVAN: Just so everyone goes
4 out of here tonight knowing what they
5 need to do when.

6 MS. JABLESNIK: The cutoff is July
7 11th. If someone else responds and wants
8 to e-mail me or drop anything off, then I
9 will not be here after Friday, the 19th.

10 MR. DONOVAN: As a suggestion,
11 whatever you want to submit relative to
12 traffic or whatever by the 11th. Jim, if
13 you could submit by the 11th and then you
14 have until the 19th, like the judge's
15 scheduling order. Just so the Board has
16 enough time and you have enough time to
17 consider. Does that work okay?

18 MR. BACON: If I get counselor's
19 information, I can e-mail it to him to
20 give him a head start.

21 MR. DONOVAN: Great. Maybe Mr.
22 Weiss, you can give Mr. Tuvel a copy of
23 your correspondence as well, just so
24 we're all on the same playing field. We
25 can fight each other, but --

2 MR. TUVEL: Of course. I wanted to
3 indicate, too, there's no high-speed
4 diesel proposed. There would be no
5 tractor trailer fueling or large trucks
6 going to the facility. I just want to
7 make that clear.

8 CHAIRMAN SCALZO: Why do I think I
9 saw parking provisions for large trucks?
10 Fuel delivery?

11 MR. CHAPLIN: Those are meant for
12 campers, trailers.

13 CHAIRMAN SCALZO: It's not labeled
14 that way. That led to my assumption that
15 they were --

16 MR. TUVEL: We can change the
17 labeling on that. That's fine.

18 MR. CHAPLIN: A quick question on
19 the traffic. Obviously we prepared a
20 report, and we can have our traffic
21 engineer go through that. Do you also
22 want an executive summary to submit or
23 should we submit the full study?

24 CHAIRMAN SCALZO: The full study is
25 going to be lost with the amount of time.

2 MR. DONOVAN: We don't have a
3 traffic consultant to review it. It
4 would be redundant. I think the ZBA just
5 needs to focus on the issues before the
6 ZBA.

7 MR. TUVEL: That's fine.

8 CHAIRMAN SCALZO: In this case I'm
9 going to look to the Board for a motion
10 to keep the hearing open until the July
11 hearing, which is what day?

12 MS. JABLESNIK: July 25th.

13 CHAIRMAN SCALZO: July 25th.

14 MR. POLITI: I'll make that motion.

15 MR. EBERHART: Second.

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

19 MR. POLITI: Aye.

20 MR. EBERHART: Aye.

21 MR. HERMANCE: Aye.

22 CHAIRMAN SCALZO: Aye.

23 MR. BELL: Aye.

24 MR. MASTEN: Aye.

25 CHAIRMAN SCALZO: Those opposed?

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(No response.)

MR. DONOVAN: As I like to say to the public, there are no additional mailings or notices. Check the website. There's not going to be an additional notice. This will be on the agenda.

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

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

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

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

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

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

Michelle Conero

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

EK DANT, LLC
32 EXPRESS

689 Route 32, Wallkill
Section 4; Block 2; Lot 6
RR Zone

----- X

Date: June 27, 2024
Time: 8:43 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: ALEX URDA,
RITESH PATEL & ROHINI PATEL

----- X

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

2 CHAIRMAN SCALZO: Next we have EK
3 Dant, LLC, 689 Route 32, a Wallkill
4 mailing address. This is also a
5 Planning Board referral for a special
6 permit to replace an existing convenience
7 store structure with a new 3,600
8 square foot convenience store. The
9 structure is a preexisting nonconforming
10 use in the RR Zone.

11 Siobhan, do we have mailings on
12 this?

13 MS. JABLESNIK: This applicant sent
14 out twenty-six letters.

15 CHAIRMAN SCALZO: Twenty-six letters.

16 Siobhan, did we hear back from the
17 County on this?

18 MS. JABLESNIK: No.

19 CHAIRMAN SCALZO: Okay. As you
20 heard me state earlier, with General
21 Municipal Law 239, we need to give the
22 County the opportunity to comment on any
23 action that's on a State highway, a
24 County highway. This application does
25 fall there.

2 We are happy to hear you present
3 this evening, but please bear in mind
4 that we cannot close the public hearing
5 nor vote on this application.

6 MR. URDA: That's fine.

7 CHAIRMAN SCALZO: Something else to
8 add to that. That actually is going to
9 help you for other considerations this
10 evening. This is going to be a Type 1
11 action pursuant to Town Code because of
12 the proximity to Chadwick Lake. Type 1
13 actions require a coordinated review
14 between the ZBA and the Planning Board.
15 The ZBA cannot act or issue an approval
16 where a coordinated review is required
17 until the lead agency, which in this case
18 is the Planning Board, issues a negative
19 declaration or otherwise closes out
20 SEQRA. This means we can't act until the
21 Planning Board closes out SEQRA. Even if
22 we -- actually, next month you'll be fine
23 with County because they get thirty days
24 and then it's over for them and we can
25 move forward without it. We can't take

2 action until the Planning Board closes
3 out SEQRA.

4 MR. URDA: Okay.

5 CHAIRMAN SCALZO: So now you know
6 next time you come back, that's what
7 you're going to need for us to continue
8 to move forward. Again, we're happy to
9 hear you present this evening.

10 MR. URDA: Good evening. My name
11 is Alex Urda with Urda Engineering. I'm
12 the engineer and also covering the
13 architectural for the owner.

14 Rohini and Ritesh Patel the owners.
15 They've owned the property for about four
16 years. They started looking at some
17 remodel ideas three years ago, ran into
18 some snags.

19 The goal is to upgrade the existing
20 facility. They want to improve the looks
21 of it, improve the overall shopping
22 experience, but also meet the needs of
23 the growing community.

24 Obviously the building has been
25 there quite awhile. It preexists them.

2 There were fuel stations there in the
3 past which were since removed.

4 When we got into looking at
5 remodeling the existing building, Code
6 might back me up on this, once we touch
7 more than fifty percent of the value of
8 the building, we get into having to meet
9 current code. That's where a big piece
10 of our hardship is, taking an older
11 building, modifying it to meet the
12 current code, everything inside and out.
13 At that point it was better to go with a
14 brand new structure and also to resolve
15 some of the code compliance issues with
16 NYS DOT.

17 We discussed it with your traffic
18 engineer and your site engineer. Real
19 quick, we had to throw it out there to
20 try to keep the driveway, at least try,
21 knowing that we would get throttled back
22 by the State to something more like this.
23 They'll allow two entrances, 30 foot
24 each.

25 We pushed the building back.

2 That's another piece of shifting away
3 from the existing foundation. The
4 existing foundation, they have 2,400 foot
5 coverage with about 1,900 and change for
6 storage. That's a total of 3,600. I
7 needed to leave room for what the State
8 was going to request. Also, the Planning
9 Board requested a stonewall to match the
10 surrounding character. Our 70-foot
11 setback from the right-of-way leaves me
12 with plenty of room to have 20-foot
13 parking stalls, plus a 44-foot drive
14 aisle, plus additional space for this
15 landscape buffer. I forgot to change
16 that to show you. That's already in
17 discussion with Planning and also the
18 State.

19 There's an existing septic system
20 that's also antiquated, just like the
21 building. They want to replace that.

22 The well could have stayed, however
23 it's right where we have access. We
24 would like to provide access around the
25 building. Currently trucks come in and

2 have to park in the front for deliveries.
3 We want to be able to have them come
4 around the back and not sit in front of
5 the building. In order to do that they
6 would hit the well. Unfortunately, my
7 layout centered the building on the site.
8 We discussed it back and forth, if we
9 could leave it in some fashion. We'll
10 put in a new well as well.

11 One of our headaches, as an
12 nonconforming use I don't know what bulk
13 criteria I'm going to have to adhere to.
14 I did my best. I threw a bulk table on
15 there for business, which isn't
16 necessarily applicable because we're in
17 an RR. I'm hoping to get some guidance
18 on that. Planning was hope to get
19 guidance on that as well.

20 The SEQRA hurdle is a little
21 tricky. I have to get SEQRA from them
22 first. We don't know, use wise are we
23 going to be able to move ahead. I didn't
24 want to put on nonconforming sizes and
25 then waste the effort to go through a

2 full site design. I didn't want to have
3 the cart before the horse. We took the
4 site design only to this level. I haven't
5 done the stormwater yet, haven't done the
6 3D version of it.

7 For the SEQRA, can they review
8 that?

9 MR. DONOVAN: It's a little bit of
10 -- I get it. I did reach out to Dominic,
11 the Planning Board Attorney, just to get
12 some clarification. He confirmed because
13 what the Town Code says, in proximity to
14 Chadwick Lake, this is a Type 1 action
15 and will require a coordinated review.
16 That means until they issue a neg dec, we
17 can't act, which basically, admittedly,
18 is very difficult for you because this is
19 a nonconforming use. Are they going to
20 get the high sign from us before they
21 spend a fair amount of money in site
22 development. I don't have a good answer
23 for you. I can tell you what the law is,
24 but sometimes the law is not very user
25 friendly. I have to admit that.

2 MR. URDA: We're looking for some
3 advice from you guys on the setbacks.

4 MR. DONOVAN: Relative to that
5 issue, we just did this on Newburgh
6 Chicken.

7 MR. URDA: I heard a little bit
8 about that.

9 MR. DONOVAN: What I want to say
10 is, if you want to compare it to a
11 similar zone, that's helpful. The Board
12 will ultimately set the setbacks based
13 upon your site plan. In other words,
14 these are the setbacks as established and
15 the Board is satisfied. When you have a
16 continuation of a nonconforming use,
17 which really the Board just did last
18 month for the Dairy Queen being
19 redeveloped as Newburgh Chicken, you can
20 set the setbacks for that nonconforming
21 use.

22 MR. URDA: The same with landscaping?

23 MR. DONOVAN: Correct.

24 MR. URDA: That's good. Other
25 questions I had. We were expecting to

2 approach you for a use variance that
3 would ride with the land in case the
4 property is sold. I'm not sure how your
5 special permits advance in Newburgh, if
6 they're strict to an owner, if they're
7 sunset, if they have a term for one-year
8 review. I know the letter came out and
9 it was for a special permit. We had
10 anticipated in prior discussions
11 approaching the project for a use
12 variance. I don't know if that's
13 something to discuss.

14 MR. DONOVAN: I don't mean to
15 answer all the questions here. That's
16 something that you could choose to do.
17 The special permit, what the code section
18 says is you can't change it to another --
19 well, as you know, there are two code
20 provisions. You're looking to put it on
21 a different portion of the lot as well as
22 if you want to demonstrate -- this is
23 what Newburgh Chicken did, they
24 demonstrated to the Board that it was the
25 same or a less restricted intensity of

2 use. So a special permit for that issue
3 as distinct from a special use permit.
4 It is a special permit that this Board
5 determines that the uses proposed are of
6 the same or less restrictive nature than
7 the prior nonconforming use. That would
8 go with the property.

9 MR. URDA: Okay. I wanted to make
10 sure that was determined. There's no
11 sunset.

12 239, we did note that part of the
13 process. We wanted to get it before you
14 so we could get in for July. We knew we
15 couldn't be here in August.

16 Sign limits. Would I approach that
17 -- we anticipate approaching that
18 separately at a later date, not knowing
19 what would be expected.

20 MR. DONOVAN: We just did this with
21 Newburgh Chicken. It's a variance.

22 MR. URDA: When we're ready with
23 that.

24 General overview. It enhances the
25 site to have it setback like we did. The

2 State likes the access reduced to the
3 30-foot entrances. There have been
4 problems with vehicles coming in, making
5 massive U-turns at a high speed. The
6 owner doesn't want that to happen.
7 Nobody wants that to happen. We changed
8 the entrance with that island which will
9 cut off some of that activity there
10 currently. Currently vehicles that do
11 pull in, it's very limited. You almost
12 have to back onto the State route and use
13 that shoulder. Technically the State's
14 road use is only two-thirds of that, but
15 there's a whole other paved lane there
16 that exists. It's not actually a lane.
17 It's almost like three lanes of traffic
18 going through there. We're going to help
19 throttle that back a little bit.

20 I do have another client that knows
21 this owner, so we have -- I had the
22 benefit, I stole my other project from
23 them. I know there are some requests on
24 the architectural. The Planning Board
25 reviews that. What we had in the past is

2 a cement-based board with a board and
3 batten look with a stone front. This is
4 the exact same structural look that we
5 have that we're presenting to you. We
6 tied this to another facility. This is
7 in Liberty. I did have the benefit to be
8 able to give you guys the floor plan and
9 the elevations I stole from the Liberty
10 project. The intent is to keep it in the
11 residential feel. The other facility
12 their friends have, this is nestled
13 nicely within that.

14 I can't think of anything else to
15 go over with you tonight other than
16 answer some questions and kick me down a
17 month, which actually may not happen.
18 The Planning Board -- I would have to go
19 back to Planning?

20 MR. DONOVAN: I think you would
21 have to go back to Planning and advance
22 SEQRA. I don't know if there's a middle
23 ground. I understand completely what
24 your problem is.

25 MR. URDA: I think I'll have to

2 give them the entire complete site
3 package in order to get SEQRA.

4 CHAIRMAN SCALZO: My review of the
5 plan as well as the visuals, I think it's
6 going to be quite the improvement in the
7 site. I was a little concerned with
8 3,600 square feet. You're expanding a
9 little more. Seeing that, it's very
10 helpful to me. I honestly don't have any
11 comments.

12 MR. URDA: Rohini corrected me. I
13 think in my paperwork I put slightly over
14 1,900 square feet. That's the internal
15 space of the existing facility. The roof
16 line and what's covered currently is
17 2,400. I was off on my numbers a little
18 bit. It's a 48 percent increase.

19 To explain that briefly, a
20 component of that is a lot of the extra
21 space inside is to deal with ADA
22 accessible bathrooms. We currently don't
23 have that. To not lose square footage in
24 the building floor space, we need that.
25 Those take up at least 850 square feet or

2 more.

3 There's also an improved mechanical
4 space. There's a little bit of code
5 compliance that just keeps kicking that
6 number up a few hundred square feet.

7 CHAIRMAN SCALZO: Thank you.

8 At this point I'm going to look to
9 the Members of the Board. Mr. Politi, do
10 you have any questions?

11 MR. POLITI: No.

12 CHAIRMAN SCALZO: Knowing full well
13 we're going to see it again.

14 Mr. Eberhart?

15 MR. EBERHART: No.

16 CHAIRMAN SCALZO: How about you,
17 Mr. Hermance?

18 MR. HERMANCE: I have no questions.

19 CHAIRMAN SCALZO: Mr. Bell?

20 MR. BELL: None.

21 CHAIRMAN SCALZO: Mr. Masten?

22 MR. MASTEN: Not right now.

23 CHAIRMAN SCALZO: We're going to
24 maintain this public hearing open.
25 However, if anyone is here from the

2 public that wishes to comment on this,
3 now is a wonderful opportunity for you.

4 MR. REISCHER: Corey Reischer, 2
5 Terrizzi Drive. I own the property on
6 Terrizzi Drive.

7 I do have some pictures to show you
8 guys.

9 I certainly support a renovation
10 there. Obviously it is much needed.

11 Where my concern comes in is with
12 the expansion and intensity of use that
13 would add to the area. Owning that
14 property that does have the retention
15 pond next to it, we find trash there all
16 the time. We have people loitering,
17 drinking beer, leaving beer cans. My
18 concern is with the bigger store there,
19 more people in and out gives more
20 opportunity for trash to be left around
21 and also crime. The store was robbed in
22 the past a few times, armed robbery.

23 As you guys see from the picture,
24 this is one business entirely surrounded
25 by residential areas.

2 We also have concerns about the
3 access to the back of the building. I
4 think that presents another opportunity
5 for people who are up to no good to have
6 another access point to the building.

7 While I know it would be a well
8 maintained site, it is another
9 opportunity for trash to potentially
10 collect, flow into the sewer, which is
11 right by our property.

12 CHAIRMAN SCALZO: Great points
13 again. Solid points that are real
14 concerns of people that do live near
15 this. I'm going to recommend to you,
16 which I also recommended to the gentleman
17 on the previous application, your
18 comments are things that the Planning
19 Board has the power to address more so
20 than we do. I'm going to recommend that
21 you please go to the Planning Board
22 meeting when it comes to this. They'll
23 have a public hearing regarding this,
24 should it get that far. We appreciate
25 you coming here, taking your time. I

2 know it's not been an easy night to be
3 here. We do get a lot of your comments.

4 MR. REISCHER: Thank you. One
5 other thing. With the access in, I
6 couldn't see that drawing. Terrizzi
7 Drive goes right up alongside that. Is
8 the plan to basically -- is it possible
9 to take a peek at that?

10 CHAIRMAN SCALZO: There will be no
11 access off Terrizzi.

12 MR. REISCHER: Right now people
13 come off of it like it's an exit ramp.

14 CHAIRMAN SCALZO: Terrizzi Drive is
15 a private right-of-way.

16 MR. REISCHER: Yeah. It's how it
17 connects there now. Coming out with the
18 curb seems like it would kind of block
19 that off. Thank you.

20 CHAIRMAN SCALZO: The other
21 gentleman behind you.

22 MR. WOODARD: I just want to -- I
23 mean, we have to come back to the
24 Planning Board anyway. We're in full
25 support of everything that's going on.

2 I'm a retired police officer, so
3 the crime aspect for me is a big deal,
4 especially on Terrizzi Drive being a
5 private drive where there's been several
6 robberies prior to them being here and
7 them being there. I find tire tracks and
8 I have to notify the police that this is
9 where cars are parking. There needs to
10 be some sort of lighting or something to
11 deter that. I've found knives and other
12 screwdrivers and weapons, I've found
13 money. I've found different things over
14 there.

15 There are homes that are there,
16 three in the front, two in the way back.
17 The further back anything is pushed back
18 will make it more visible to people to
19 see the homes and for the homes to see
20 the building, which people really don't
21 want.

22 We do want the building to be
23 renovated. It's a very nice community,
24 very nice people, but there has to be
25 some sort of happy medium.

2 CHAIRMAN SCALZO: To your point,
3 the Planning Board could address perhaps
4 a landscaping plan that could enhance
5 what you're looking for, but that's the
6 other Board.

7 I apologize if you said it. Just
8 your name for the stenographer.

9 MR. WOODARD: Ricky Woodard.
10 Excuse me. Terrizzi Drive.

11 CHAIRMAN SCALZO: Thank you very
12 much, sir.

13 MR. TERRIZZI: Good evening. John
14 Terrizzi, 8 Terrizzi Drive.

15 We really would like to see an
16 improvement with the area. It definitely
17 needs it.

18 I have a concern that was addressed
19 by the engineer. He mentioned that the
20 fuel tanks that were in the ground had to
21 be removed.

22 CHAIRMAN SCALZO: Off the table,
23 sir. I'm sorry. There's no fuel tanks
24 proposed with this.

25 MR. TERRIZZI: Correct. There are

2 existing fuel tanks I believe that are
3 still there. That used to be a gas
4 station back in the '60s. To my
5 knowledge -- I've been in that area for
6 around sixty years. To my knowledge,
7 those tanks are still there. We need
8 verification that those tanks have been
9 removed, because it does pose a threat to
10 everyone's well, not to mention the lake.

11 CHAIRMAN SCALZO: You're in the
12 reservoir district which is very
13 important as well. It's important
14 everywhere.

15 I'm going to look to Mr. Mattina in
16 this case. Mr. Mattina, do you have
17 knowledge of that?

18 MR. MATTINA: I don't have any
19 knowledge, but the DEC keeps track of all
20 the underground tanks. You might want to
21 call the DEC.

22 MR. PATEL: Phase 1, there's no
23 tank.

24 CHAIRMAN SCALZO: A phase 2
25 environmental?

2 MR. PATEL: I submitted them, too.

3 MR. TERRIZZI: So there is
4 verification there are no tanks there?

5 MR. PATEL: Yes. I spent so much
6 money for them to check the property.

7 MR. TERRIZZI: Great.

8 MR. DONOVAN: Engineers are much
9 more expensive than attorneys.

10 CHAIRMAN SCALZO: Very good. Mr.
11 Terrizzi, thank you for your comments.

12 MR. WILLIAMS: My name is Charles
13 Williams. These individuals here are
14 hard working individuals. I just wanted
15 to say they're taxpayers and also they're
16 good people. Hopefully they can get
17 their proposal done. I'm with them.

18 There's a fence running alongside
19 that road. If it's well lit, they must
20 acquit. Okay. That's what I'm saying.
21 Put some lighting up there. Put some
22 cameras up there. They deserve it.

23 Plus we need more sponsors for our
24 T-ball teams. That's right. For our
25 kids.

2 CHAIRMAN SCALZO: Thank you for
3 your comments.

4 MS. GREGG: Hello, everyone. My
5 name is Alma Gregg. It hasn't changed
6 since the last few minutes I was here.

7 I'm concerned about this, and we
8 all should be concerned about this new
9 possible business that may come here. I
10 say may because it's going to be a fight
11 with the folks and the State I think.
12 Nothing is done easily, as we all know
13 from the history of America.

14 I'm concerned about the outstanding
15 traffic which has an impact upon this
16 whole area out there where I live. My
17 parents and my family made an impact in
18 the area.

19 The point is the traffic has to
20 subside. It cannot go on like this.
21 Early in the morning you've got the
22 motorcycles and the trucks making all
23 these sounds. We just have our hands at
24 our side. We know it's not right.

25 A business that comes into this

2 area has to be protected because it's bad
3 for anybody who walks along the highway.

4 CHAIRMAN SCALZO: Ma'am, thank you
5 very much for your comments. I'm going
6 to also state to you that your comments
7 are very valuable. The Planning Board
8 has more of an ability to address your
9 concerns than we do.

10 MS. GREGG: I understand. I wanted
11 to bring it up.

12 CHAIRMAN SCALZO: Thank you very
13 much. We appreciate you coming tonight.

14 MR. O'BRIEN: Hello.

15 CHAIRMAN SCALZO: Good evening, sir.

16 MR. O'BRIEN: Michael O'Brien, 708
17 Route 32, Wallkill. I have the house
18 right next to the store. I've been going
19 to that store for forty-four years. They
20 sell worms. A little convenience store
21 that still sells worms.

22 I would hope the Board and the
23 Planning Board will do everything they
24 can to see this get improved. These
25 people go above their business,

2 especially in this corporate world.

3 In relation to what they're saying
4 about the garbage, that's thrown out of
5 cars driving on 32. I was there at the
6 house and I saw all types of things.
7 It's not the store. It's the road. The
8 speed limit on that road really needs to
9 be changed.

10 That's all the comments I have.

11 CHAIRMAN SCALZO: Thank you for
12 your comments.

13 Mr. Fetter.

14 MR. FETTER: Bill Fetter, Rockwood
15 Drive. It's a Type 1 action. Does that
16 mandate a Planning Board public hearing?

17 MR. DONOVAN: I would never speak
18 for the Planning Board.

19 MR. FETTER: The reason being,
20 you're referring to the public that
21 they'll have a chance, an opportunity for
22 the public hearing, but it's not uncommon
23 for the Planning Board to waive a public
24 hearing. They can write their comments
25 to the Planning Board and I'm sure

2 they'll be read into the record, but we
3 need to be careful that people leave here
4 thinking they may have a chance to speak
5 to the Planning Board when frequently you
6 don't have a chance.

7 CHAIRMAN SCALZO: Mr. Fetter,
8 you're correct. Although I find it
9 unusual that a site plan for this in the
10 RR Zone, which it's a preexisting
11 nonconforming use, I'd be surprised if
12 the Planning Board didn't entertain a
13 public hearing. I can't guarantee that.
14 Perhaps when I cross paths with the
15 Planning Board Chairman, I'll mention
16 that to him. He also reads our meeting
17 minutes. Perhaps he'll take that under
18 advisement for the Planning Board to
19 consider a public hearing should they not
20 be required to have one.

21 MR. FETTER: Like the BJs, there
22 was no public hearing. That's a rather
23 large project. The public didn't have a
24 chance to speak then. Thank you.

25 CHAIRMAN SCALZO: Thank you, Mr.

2 Fetter.

3 MR. REISCHER: The reason for the
4 variance is because we're going from the
5 2,400 square feet to bigger. Correct?

6 CHAIRMAN SCALZO: No.

7 MR. DONOVAN: So the use that's
8 there is a nonconforming use. It's not
9 permitted by law. If you want to change
10 or increase the degree of your
11 nonconformity, you need a special permit
12 basically.

13 MR. REISCHER: Sure. I think I
14 understood. There was a question about
15 whether it was 1,900 square feet usable
16 or 2,400 square feet, that some of the
17 building was maybe not put to the best
18 use. Where I'm going with this is, do we
19 need to expand or could we use the
20 current 2,400 square foot and not need a
21 variance but yet be fully updated, lay it
22 out in a more up-to-date way and maybe
23 not need the variance, make better use of
24 the space that's already there?

25 CHAIRMAN SCALZO: I don't know that

2 I have an answer for you on that, but I
3 can do a little research. Perhaps if
4 you're here for the next public hearing,
5 I might be able to answer that question.

6 MR. REISCHER: Thank you.

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

9 (No response.)

10 MR. HERMANCE: Mr. Chairman, as the
11 engineer stated, with the newer -- when
12 you have to bring the building up to the
13 new codes, it does expand with the
14 bathroom sizes and things like that for
15 access. That would contribute to the
16 square footage. That would be an
17 explanation.

18 MS. PATEL: I can --

19 CHAIRMAN SCALZO: State your name.

20 MS. PATEL: My name is Rohini
21 Patel. I'm a resident and owner of the
22 store. My house is at 676 Route 32.

23 Besides that, I wanted to talk
24 about increasing. Currently we do not
25 have the public restrooms. Every

2 customer, we don't like to say no to them
3 because it's not a public restroom.
4 That's why.

5 We don't have an office. I think
6 the -- I don't know if you know the store
7 or not.

8 Why we wanted to like increase it,
9 since we are doing it let's do it like
10 we're doing it more. The customers have
11 more shopping like, you know, experience
12 and easy for me myself working in a store
13 like say for us, too.

14 Basically, you know, we are asking
15 to make this because currently we cannot
16 do the deli for the breakfast. Once we
17 start that, we will be able to because we
18 will have a public restroom. That's the
19 code. Right? That's why, you know, we
20 want some more area to do more. That's
21 why it's like 2,400 square foot. That's
22 why we're proposing 3,600 square feet,
23 more storage.

24 Our neighbor says that we had
25 crimes. I would like to know how many

2 times. Like, they have, the cops,
3 documentation for that to see like that
4 happened -- something happened to their
5 property, damaged their property and they
6 have called the cops or just saying that
7 somebody threw garbage. I also pick up
8 garbage because this is like wide
9 property, right. People, like in the
10 night they throw garbage from Route 32.
11 That's not something criminal.

12 The second thing, you know, I have
13 never seen knives or anything in my
14 parking lot. Even if you -- we have
15 security systems.

16 If it's damaging anybody's
17 property, I think they should be -- I
18 think they are aware this business is
19 standing a longer time. Maybe like, you
20 know, so they should be knowing that this
21 is our business, right, no matter what.

22 We have reached out to the
23 supervisor because that was a gas
24 station. Right now it's just because of
25 Chadwick Lake. Earlier it was a

2 business. They changed the zoning
3 because of Chadwick Lake.

4 My concern is just that, like, you
5 know, all the neighborhood knows that
6 this is a business property. Even if I
7 don't go further for the renovation, if I
8 don't go for the upgrade, the situation
9 will be the same. Like, you know, we
10 have to secure our property so if there
11 is a crime.

12 CHAIRMAN SCALZO: While I appreciate
13 where you're going with this, security
14 issues and of that nature are all the
15 things that we're not here on the
16 Zoning Board of Appeals to -- it's
17 ancillary information to the entire
18 application. It's not something that's
19 going to influence how we vote on
20 anything. While I appreciate what you're
21 saying, I do want to give everybody a
22 chance to speak. Where you're going is
23 not going to -- it's not going to influence
24 how we vote.

25 MS. PATEL: That's correct. I

2 wanted to clear from my end, like,
3 you know, it won't be anything.
4 That's why, like, I wanted to convey
5 this message.

6 CHAIRMAN SCALZO: Very good. Thank
7 you very much.

8 Is there anyone else from the
9 public that wishes to speak on this
10 application?

11 (No response.)

12 CHAIRMAN SCALZO: All right. I'm
13 going to look to the Board now for a
14 motion to keep the public hearing open --
15 Counsel, I don't know how to do this. Do
16 we just say until we get SEQRA
17 coordination completed with the Planning
18 Board?

19 MR. DONOVAN: So that's a great
20 question. Did you want to come back for
21 any reason next month or do you want to
22 get squared away with the Planning Board?

23 MR. URDA: I better get squared
24 away with the Planning Board.

25 MR. DONOVAN: This would be

2 adjourned without date.

3 CHAIRMAN SCALZO: I'll look to the
4 Board for a motion to adjourn without a
5 date.

6 MR. POLITI: I'll make the motion.

7 MR. EBERHART: Second.

8 CHAIRMAN SCALZO: We have a motion
9 from Mr. Politi. We have a second from
10 Mr. Eberhart. All in favor?

11 MR. POLITI: Aye.

12 MR. EBERHART: Aye.

13 MR. HERMANCENCE: Aye.

14 CHAIRMAN SCALZO: Aye.

15 MR. BELL: Aye.

16 MR. MASTEN: Aye.

17 CHAIRMAN SCALZO: We'll see you
18 when we see you.

19 MS. JABLESNIK: Just so you know,
20 we'll have to re-notice. Just look at
21 the dates and the times and all of that.

22 CHAIRMAN SCALZO: Folks, what
23 Siobhan just said is we're going to
24 re-notice. All of you will get mailings
25 again when the applicant is going to be

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EK Dant, Inc. (32 Express)

back.

(Time noted: 9:15 p.m.)

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

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

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

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

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

Michelle Conero

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

LAWRENCE REALTY CO &
RAYMOND & MARJORIE BIANCO

37 & 39 Colandrea Road, Marlboro
Section 6; Block 1; Lots 66.21 & 66.32
AR Zone

----- X

Date: June 27, 2024
Time: 9:15 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
JAMES POLITI

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

APPLICANT'S REPRESENTATIVE: CORY ROBINSON

----- X

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

2 CHAIRMAN SCALZO: Next up is
3 Lawrence Realty Co. and Raymond and
4 Marjorie Bianco, 37 and 39 Colandrea
5 Road. This is also a Planning Board
6 referral for area variances of the
7 front yard and maximum lot surface
8 coverage on a preexisting lot for a
9 lot line change between lots
10 6-1-66.21 and 6-1-66.32.

11 Do we have mailings on this,
12 Siobhan?

13 MS. JABLESNIK: This applicant
14 sent forty-seven letters.

15 CHAIRMAN SCALZO: Forty-seven.
16 Boy, it's rural out there.

17 Who do we have with us and what do
18 we have?

19 MR. ROBINSON: Cory Robinson,
20 Colliers Engineering. I'm here on behalf
21 of the applicant.

22 You described it pretty well.
23 Simply the owner, Rick Lawrence, and the
24 Biancos are looking to transfer a small
25 amount of property between the two

2 parcels and reorient the property lines.
3 This allows us to solve an issue with the
4 existing property lines. The Bianco
5 parcel kind of goes over the driveway
6 that peels off into Lawrence Farms. We
7 can adjust that, and during the process
8 we can reorganize the property line.

9 There's some fencing that's out
10 there on the Bianco parcel.

11 The variance for the front yard is
12 existing. It's created by the right-of-
13 way. It's unchanged as part of this
14 application. We're not touching the
15 front lot line.

16 There's a small coverage variance
17 for the pavers, the house, the shed and
18 everything on the Bianco parcel. We're
19 making the parcel slightly bigger by
20 1,000 square feet, so that coverage
21 variance is being reduced with this action.

22 That's all I have.

23 CHAIRMAN SCALZO: The most straight-
24 forward application we had this evening.

25 I have no comments. You don't hear

2 that from me very often.

3 I'm going to start with Mr. Politi.

4 MR. POLITI: I have no comments.

5 CHAIRMAN SCALZO: Mr. Eberhart?

6 MR. EBERHART: No.

7 CHAIRMAN SCALZO: Mr. Hermance?

8 MR. HERMANCE: No.

9 CHAIRMAN SCALZO: Mr. Bell?

10 MR. BELL: No.

11 CHAIRMAN SCALZO: Mr. Masten?

12 MR. MASTEN: No.

13 CHAIRMAN SCALZO: I think we're all
14 just tired.

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

18 (No response.)

19 CHAIRMAN SCALZO: Okay. Any last
20 questions from the Board?

21 (No response.)

22 CHAIRMAN SCALZO: I'll look for a
23 motion to close the public hearing.

24 MR. MASTEN: I'll make a motion to
25 close the public hearing.

2 MR. EBERHART: Second.

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

6 MR. POLITI: Aye.

7 MR. EBERHART: Aye.

8 MR. HERMANCE: Aye.

9 CHAIRMAN SCALZO: Aye.

10 MR. BELL: Aye.

11 MR. MASTEN: Aye.

12 CHAIRMAN SCALZO: Those opposed?

13 (No response.)

14 CHAIRMAN SCALZO: Very good.

15 MR. DONOVAN: That's correct, Mr.
16 Chairman.

17 CHAIRMAN SCALZO: Thank you. We're
18 going to discuss the five factors, the
19 first one being whether or not the
20 benefit can be achieved by other means.

21 MR. POLITI: No.

22 MR. EBERHART: No.

23 MR. HERMANCE: No.

24 MR. BELL: No.

25 MR. MASTEN: No.

2 CHAIRMAN SCALZO: It does not
3 appear so.

4 Second, if there's an undesirable
5 change in the neighborhood character or a
6 detriment to nearby properties. This
7 would go virtually unnoticed except for
8 the driveway.

9 The third, whether the request is
10 substantial.

11 MR. POLITI: No.

12 MR. EBERHART: No.

13 MR. HERMANCENCE: No.

14 MR. BELL: No.

15 MR. MASTEN: No.

16 CHAIRMAN SCALZO: It does not
17 appear so.

18 Fourth, whether the request will
19 have adverse physical or environmental
20 effects. Unchanged.

21 Fifth, whether the alleged
22 difficulty is self-created which is
23 relevant, however it was preexisting
24 nonconforming. I would say it's not
25 self-created.

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. HERMANCENCE: I'll second it.

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

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

14 MS. JABLESNIK: Mr. Bell?

15 MR. BELL: Yes.

16 MS. JABLESNIK: Mr. Eberhart?

17 MR. EBERHART: Yes.

18 MS. JABLESNIK: Mr. Hermance?

19 MR. HERMANCENCE: Yes.

20 MS. JABLESNIK: Mr. Masten?

21 MR. MASTEN: Yes.

22 MS. JABLESNIK: Mr. Politi?

23 MR. POLITI: Yes.

24 MS. JABLESNIK: Mr. Scalzo?

25 CHAIRMAN SCALZO: Yes.

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The motion is carried. The
variances are approved.

MR. ROBINSON: Thank you.
(Time noted: 9:22 p.m.)

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

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

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

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

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

Michelle Conero

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

N&N UNION, LLC
CPK UNION, LLC

Route 300, Newburgh
Section 96; Block 1; Lot 6.2
IB Zone

----- X

Date: June 27, 2024
Time: 9:22 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: KELLY LIBOLT

----- X

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

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CHAIRMAN SCALZO: We have N&N Union, LLC and CPK Union LLC, Route 300. This is also a Planning Board referral for area variances of maximum height, 40 feet is proposed where 15 feet is allowed; the rear yard setback, 40 feet is required and 30 is proposed; building orientation and building materials to build a new self-storage center on the lot.

Do we have mailings on this, Siobhan?

MS. JABLESNIK: This applicant sent twenty-four letters.

We have not received the County response.

CHAIRMAN SCALZO: We have not received the County response. You understand what that means?

MS. LIBOLT: I understand.

CHAIRMAN SCALZO: Thank you for not making me say it again.

MS. LIBOLT: I'll give you the Reader's Digest version.

2 CHAIRMAN SCALZO: You've been
3 listening.

4 MS. LIBOLT: I think pictures are
5 worth a thousand words. This project,
6 I'm sure everyone knows where this is.
7 This is the property behind Cosimo's.
8 It's on the corner of 300 and Orr Avenue,
9 tucked away in the back. It's about 11
10 acres in total with all the properties
11 there.

12 We may have been before this Board
13 before. I've worked on this project for
14 quite some time. It's broadly called
15 Newburgh Shoppes. There were several
16 phases. The first phase was Cosimo's.
17 The second phase was the retail stores in
18 the back. The third phase, it was
19 actually approved by the Planning Board
20 as a grocery store. It was a pretty
21 intense use. They've been trying to
22 market this site.

23 What they're proposing to do is, in
24 the same area where there was previously
25 the grocery store, to do self-storage.

2 Self-storage is all kinds of different
3 configurations. The self-storage units
4 are the garage-style type. There are
5 actually five buildings and there's one
6 which is a three-story building.

7 We did provide you with the topo
8 survey just to kind of give you an idea
9 of the holdings of this property.
10 Essentially this landowner owns
11 everything on this drawing except the
12 three parcels that are on 300. There's a
13 residential property. They own
14 everything on this holding except these
15 three properties.

16 Just to give everyone a basis of
17 this drawing, this is 300 here, this is
18 Orr, this is Cosimo's, this is the
19 retail. Lowe's is over on the side. On
20 Orr there's a truck stop here. This
21 applicant owns all of the properties on
22 the balance of Orr. We'll talk about
23 that in a minute.

24 The reason that we're here is
25 because, in addition to the fact that

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we're before the Planning Board for site plan approval, we're also proposing a subdivision, and that's really what brought us here. Not necessarily the subdivision, but where we're subdividing the lot, it changes the front yard and the rear yard of this property. This is the proposed subdivision line, again before the Planning Board. The front yard would have been 300, but now this is a separate parcel. The driveway access is off of Orr. This becomes their front yard, their backyard is against Lowe's, and then side and side. That's really what brought us here for a number of variances.

As you had indicated, there are four variances. I'll go through them very quickly. The first two are, I think, kind of easy. They have to do with a section of the code particular for storage units. It requests that storage units, where possible, are perpendicular to the front yard. These are parallel to

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the front yard. They would have been perpendicular to 300, but they're parallel to Orr Avenue.

It suggests where possible, and these are where possible, that the buildings are masonry materials.

I gave you kind of the five-part test for all of these. Just broadly on those two issues, the applicant owns all of the properties on the other side of Orr. If you think about the properties that would be the most affected, they would be those properties on the opposite side of Orr Avenue. They own all of those properties.

These buildings are setback almost 136 feet from Orr Avenue. There's an 80-foot front yard setback that's required. All of that area will be landscaped. It's just important to note that, again just to keep everyone oriented, this is the front yard. This building doesn't have a drive aisle on the Orr Avenue side, so this area could be landscaped.

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We have some stormwater here. The drive aisle is on the opposite side of the building, so it gives you additional protection on that side of the building.

We did provide you -- I won't bore you with this. There's other photo documentation of other buildings in the area that are not masonry, other storage buildings. Guardian is right down the road. Those are metal-style buildings. They're also not a hundred percent perpendicular. We did provide you with some other buildings in the area, just to talk about the character of the community, that are not masonry. I think you know your community, and I know I'm going to have to do this again next month. That's really the building locations and materials.

We came before this Board because it's not clear whether or not the Planning Board actually has jurisdiction over that section of the code. The code says where possible you have to comply.

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We thought it was best -- I spoke to Dominic -- to err on the side of caution and come before this Board to seek a variance.

The next variance application has to do with the rear yard setback. Again, the rear yard here is the property line that's adjacent to Lowe's. The requirement is for 40 feet and we're proposing 30 feet. We're looking for a 10-foot area variance. That area there, I'm sure everyone has been to Lowe's, there's a significant grade difference between the two properties. Lowe's is at about 350. Our property elevation is 341. It's almost a 9-foot difference. I gave you some photos of what it looks like from Lowe's. Lowe's, that side of the building over here where we have this setback, this is all parking. It's not the front of the store, it's the side of the store. It's not heavily used. They have a very significant fence here. They also have trees that are on the lower

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portion of the site. Our property line doesn't abut next to their wall. If you of impact, who will be impacted, there isn't a high propensity that there are going to be a lot of people in the public that are going to be affected by the reduction of that setback.

The last variance that we're seeking is for the building height. In this code there are a variety of different uses that are permitted. There's a broad spectrum of uses. For storage facilities, the maximum building height is 15 feet. Other buildings could be larger. So again, when this was a shopping center, we could have built it to 40 feet, a hotel could be 50 feet. If this was an office building it could be 40 feet. The point is that because this is self-storage, it's limited to 15 feet. I would imagine the intent of the code was to limit it to that height because of the garage-style self-storage facility. This particular building, we believe that

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this mimics an office building. The intent of the code is to provide a 40-foot building, three stories, which would be very similar to an office building. We're happy to work with the Planning Board as we move forward to try to work on the architecture to keep that intent of the code alive. What we're seeking is to permit a 40-foot structure where, again, the 15-foot is limited to storage facilities. Of course other buildings could be taller. Sort of the same argument, the applicant owns all of the properties on the other side of Orr. The other property on the other side is Lowe's. When you think about the test, as your attorney had so graciously talked about, the potential for the public to be impacted is minimal. The balance test is whether or not the benefit to the applicant outweighs the impact to the public.

That is it. I'm happy to answer any questions that the Board may have.

2 CHAIRMAN SCALZO: At the moment I
3 have none again.

4 I'm going to start with Mr. Politi.

5 MR. POLITI: No.

6 CHAIRMAN SCALZO: Mr. Eberhart?

7 MR. EBERHART: I'm fine.

8 CHAIRMAN SCALZO: Mr. Hermance?

9 MR. HERMANCE: I'm good.

10 CHAIRMAN SCALZO: Keeping in mind
11 we're going to hear this again.

12 Mr. Bell?

13 MR. BELL: None.

14 CHAIRMAN SCALZO: Mr. Masten?

15 MR. MASTEN: I have nothing.

16 CHAIRMAN SCALZO: Very good.

17 Is there anyone from the public
18 that wishes to speak about this
19 application?

20 MR. FETTER: Bill Fetter, Rockwood
21 Drive. What is the expected stick up
22 from the Lowe's parking lot? It looks
23 like it would be about 20 feet.

24 MS. LIBOLT: We would be at 341
25 plus 40 feet. They're at 350.

2 MR. FETTER: So it's 30 feet above.
3 There's a 6 or 8-foot fence there as
4 well.

5 MS. LIBOLT: Correct. I'm not sure
6 how tall their building is.

7 MR. FETTER: I was just thinking
8 from the parking lot.

9 MS. LIBOLT: That particular
10 building is setback more than 10 feet.
11 The area variance for the reduced yard
12 setback is for the smaller buildings, for
13 the garage-style buildings. That
14 particular building is setback the
15 appropriate distance.

16 MR. FETTER: The site was
17 originally approved as a supermarket?

18 MS. LIBOLT: That's correct.

19 MR. FETTER: Is there any conflict
20 with change of use that should be
21 addressed here?

22 MS. LIBOLT: I can certainly speak
23 to the Planning Board. We've already
24 started the review process with the
25 Planning Board. Although the SEQRA

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decision is still alive on that prior use, the site plan approval for the shops, the grocery store has expired. This is a new application.

MR. DONOVAN: That was never built. It wouldn't be -- you look generally to change a use if there was a supermarket there established that they were then changing the use.

MR. FETTER: It's the Planning Board's purview to decide change of approval?

MR. DONOVAN: If the approval has lapsed for a prior permitted use that was never built, it's just a new application.

CHAIRMAN SCALZO: In this instance I'm going to look to the Board for a motion to keep the public hearing open to July.

MR. EBERHART: I'll make the motion.

CHAIRMAN SCALZO: Very good.

MR. BELL: Second.

CHAIRMAN SCALZO: We have a motion from Mr. Eberhart. We have a second from

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Mr. Bell. All in favor?

MR. POLITI: Aye.

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

CHAIRMAN SCALZO: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

CHAIRMAN SCALZO: Those opposed?

(No response.)

CHAIRMAN SCALZO: Very good.

MS. LIBOLT: Thank you. Have a
good night.

(Time noted: 9:33 p.m.)

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

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

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

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

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

Michelle Conero

MICHELLE CONERO

1
2 STATE OF NEW YORK : COUNTY OF ORANGE
3 TOWN OF NEWBURGH ZONING BOARD OF APPEALS
4 ----- X
5 In the Matter of

6 NEWBURGH SOUTH CONGREGATION OF JEHOVAH'S WITNESSES

7 33 Old Little Britain Road, Newburgh
8 Section 97; Block 3; Lot 13
9 R-3/O Zone
----- X

10 Date: June 27, 2024
11 Time: 9:33 p.m.
12 Place: Town of Newburgh
13 Town Hall
14 1496 Route 300
15 Newburgh, New York

16 BOARD MEMBERS: DARRIN SCALZO, Chairman
17 DARRELL BELL
18 JAMES EBERHART, JR.
19 GREGORY M. HERMANCE
20 JOHN MASTEN
21 JAMES POLITI

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

25 APPLICANT'S REPRESENTATIVE: JOHN CAPPELLO

----- X
26 MICHELLE L. CONERO
27 Court Reporter
28 Michelleconero@hotmail.com
29 (845) 541-4163

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

10 We understand the challenges
11 with the sign law. I read through
12 the information you provided and,
13 boy, you found an avenue that I
14 didn't even consider, which is
15 wonderful.

16 MR. CAPPELLO: John Cappello, by
17 the way, JG Law. We looked at this as,
18 you know, this is a religious use, it's
19 permitted in the zoning district, it's
20 fully approved, I believe it's fully
21 built. The actual monuments for the
22 signs are there. I think the CO is
23 actually issued. It's gone through the
24 environmental review, fully vetted.

25 The only issue that came up is

2 there's just nothing in your code in any
3 zoning district that regulates religious
4 signs. We looked through the code. I
5 don't think it was the intention of the
6 Town, and I had spoken to the Town
7 attorney. I think eventually this is
8 going to be fixed, but the facility is
9 ready to open now and they would like to
10 have signs, which is why, you know, we're
11 here asking for relief.

12 In looking at the code, you do
13 permit, in the R-3 Zoning District, I
14 believe it's professional office signs.
15 While it's a religious use for taxation
16 and zoning, the religious organization
17 does conduct business as any legitimate
18 religious organization does. There is a
19 computer there. There's an office. You
20 schedule events there. They file their
21 taxes. Business is occurring there. Not
22 only is it the facility to practice your
23 religion, it is the facility to run the
24 facility and the organization.

25 We believe, solely for the purposes

2 of signage, this would be considered a
3 professional office, which would be
4 an interpretation which would allow a
5 sign to go up for the facility.

6 As I stated in my letter, there
7 is a loop for religious land use. If
8 there was no provision for a sign for
9 religious, it would be really frustrating
10 the practice of your religion because
11 you want people to know where to turn
12 when they get to the facility and that
13 they are at the right facility.

14 This is an avenue that would allow
15 Jehovah's Witnesses to proceed to open
16 their facility while the Town addresses
17 the global issue going forward.

18 Signs, I don't know if -- I had
19 one other instance, actually it was
20 here in the Town, where there was a
21 code change and a table was there and
22 just the line got dropped. It may be
23 as innocent as that. When things
24 were being printed, something just
25 got dropped out of the code.

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2 We're asking for an interpretation
3 that would consider this a professional
4 sign.

5 We would then come to the next
6 issue. In the R-3 Zoning District,
7 professional signs, the limit of the
8 size is 4 square feet. If you look
9 at the photos we have here in the
10 monument sign, if we provided a sign
11 that was 4 square feet, it would be
12 inconsequential. I think it would be
13 -- you know, an accountant works out
14 of their home and has a home office
15 that has that type of sign. We're
16 asking for an area variance to allow
17 two signs to be posted on the monument
18 that already exists. I think we do
19 have a -- these photos are the
20 existing monuments that are there
21 today. This is not a simulation.
22 That's a picture taken today. This
23 is simulating the sign being put on
24 there. We're not building anything
25 new, it's not expanding. It would be

2 putting back one on each side, and
3 then there would be two 2.7 square
4 foot wall signs here and here.

5 We believe, given the context
6 and the size of the building and the
7 size of the facility, and consistent
8 with other religious uses in the area,
9 that this is not going to be something
10 that is going to be out of character
11 with the neighborhood or with the
12 community. It would be attractive
13 signage. It's not over -- it's not a
14 huge glowing sign.

15 I provided the criteria for an
16 area variance. We wouldn't be able
17 to have any other signs. The only
18 feasible would be to wait six or
19 eight months while the Town is going
20 through its comprehensive plan to
21 wait to put up the signs.

22 That's it in a nutshell. Any
23 questions, I have a representative
24 here who knows the details.

25 CHAIRMAN SCALZO: I don't have any.

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I'm glad that you found a way to present it that I personally find acceptable to move forward with this. That's my position.

How about you, Mr. Masten?

MR. MASTEN: Well, I'll go along with the gentleman, what he's saying, because across the street there's a sign, an illuminated sign, both sides, for the church over there. Down the street, the other Jehovah's Witness, there's no signs on that gate at all. There is a small sign on the building.

CHAIRMAN SCALZO: I appreciate your observations.

Mr. Bell?

MR. BELL: None.

CHAIRMAN SCALZO: Mr. Hermance?

MR. HERMANCE: I have no questions.

CHAIRMAN SCALZO: Mr. Eberhart?

MR. EBERHART: No questions.

MR. POLITI: Nothing.

CHAIRMAN SCALZO: Now I'm going to look to Counsel to help guide us the rest

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of the way here.

MR. DONOVAN: I would suggest that you move in two directions. First would be to adopt a resolution interpreting the code that this is a professional office use and thus signage is permitted. That's a Type 2 action under SEQRA, an interpretation. You can proceed on that first.

If that's positive, then you move to the area variances.

CHAIRMAN SCALZO: In this case I'm going to look to the Members of the Board. As Counsel had just helped us understand a little better, is that an acceptable approach to you?

MR. POLITI: Yes.

MR. EBERHART: Yes.

MR. HERMANCENCE: Yes.

MR. BELL: Yes.

MR. MASTEN: Yes.

CHAIRMAN SCALZO: I would agree.

In this case I believe we have to make a motion.

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MR. DONOVAN: Make a motion to issue an interpretation that the use proposed is a professional office use permitting signage.

MS. JABLESNIK: I heard Darrin say that.

CHAIRMAN SCALZO: That's what I was thinking. Exactly what I was thinking.

MR. BELL: I wrote it down, if you want to repeat it.

MR. POLITI: You need the motion. I'll make that motion.

MR. HERMANCENCE: Second.

CHAIRMAN SCALZO: I'm going to go down here because it's getting late. Mr. Politi made the motion. Mr. Hermance seconded. All in favor?

MR. POLITI: Aye.

MR. EBERHART: Aye.

MR. HERMANCENCE: Aye.

CHAIRMAN SCALZO: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

CHAIRMAN SCALZO: Those opposed?

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(No response.)

CHAIRMAN SCALZO: Very good.

MR. DONOVAN: That's an area
variance. The signage for this use would
be an Unlisted action, John, in my view,
and would require the issuance of a
negative declaration. You would need to
do that first.

CHAIRMAN SCALZO: In this case I'll
look to the Board for a negative
declaration under SEQRA.

MR. BELL: I'll make a motion for a
negative declaration under SEQRA.

MR. MASTEN: Second.

CHAIRMAN SCALZO: It sounded like
it was on this end of the table this
time. Motion from Mr. Bell. Second from
Mr. Masten. All in favor?

MR. POLITI: Aye.

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

CHAIRMAN SCALZO: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

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MR. DONOVAN: I would ask that you go through the five-part balancing test.

CHAIRMAN SCALZO: Here we go with the five, folks. The first one being whether or not the benefit can be achieved by other means feasible to the applicant.

MR. POLITI: No.

MR. EBERHART: No.

MR. HERMANCE: No.

MR. BELL: No.

MR. MASTEN: No.

CHAIRMAN SCALZO: No.

The second, if there's an undesirable change in the neighborhood character or a detriment to nearby properties.

MR. POLITI: No.

MR. EBERHART: No.

MR. HERMANCE: No.

CHAIRMAN SCALZO: No.

MR. BELL: No.

MR. MASTEN: No.

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CHAIRMAN SCALZO: Third, whether the request is substantial. It does not appear so either.

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

MR. POLITI: No.

MR. EBERHART: No.

MR. HERMANCE: No.

CHAIRMAN SCALZO: No.

MR. BELL: No.

MR. MASTEN: No.

CHAIRMAN SCALZO: And fifth, whether the alleged difficulty is self-created. It's really created by an ambiguous or a nonexistent code. I don't believe it's self-created.

Having gone through that, does the Board have a motion of some sort?

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

MR. BELL: Second.

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

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We have a second from Mr. Bell. All in favor?

MR. POLITI: Aye.

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

CHAIRMAN SCALZO: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

CHAIRMAN SCALZO: Those opposed?

(No response.)

MR. CAPPELLO: Thank you very much.

MR. FETTER: Is the public hearing still open? I think there are four signs and I think only two were presented.

CHAIRMAN SCALZO: Two on the monument and then two on the building.

MR. FETTER: It says four 2.7 square feet. The agenda says four.

CHAIRMAN SCALZO: Perhaps Siobhan might have --

MS. JABLESNIK: Maybe I made a typo.

MR. FETTER: They're only asking for two small signs. Right, John?

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MR. CAPPELLO: Two small signs.

MR. BELL: Two small signs on the building and then the monument.

MR. FETTER: None of them are lighted?

CHAIRMAN SCALZO: On the monument signs, front lit or back lit?

MR. MODGLIN: Josh Modglin from the Newburgh South Congregation.

We have two down lights on the entry wall, so the monument signs.

CHAIRMAN SCALZO: There's no internal lighting?

MR. MODGLIN: No internal lighting.

CHAIRMAN SCALZO: Folks, a motion to close the public hearing, which I erroneously did not do before.

MR. MASTEN: I'll make the motion.

MR. EBERHART: Second.

CHAIRMAN SCALZO: We have Mr. Masten and a second down here by Mr. Eberhart. All in favor?

MR. POLITI: Aye.

MR. EBERHART: Aye.

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MR. HERMANCENCE: Aye.

CHAIRMAN SCALZO: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

CHAIRMAN SCALZO: Now I'm good.

MR. FETTER: As a business is it taxable?

CHAIRMAN SCALZO: I don't know. I'm not sure the Zoning Board of Appeals has the word tax in it anywhere.

MR. DONOVAN: We did that with Gasparini where the zoning designation and the tax designation, two separate things, two separate functions in the Town. What the assessor does is different than what the Zoning Board and the Building Department do.

CHAIRMAN SCALZO: Thanks for keeping me honest.

I'm going to look to the Board for a motion to adjourn.

MR. BELL: I'll make the motion.

MR. EBERHART: Second.

CHAIRMAN SCALZO: We have a motion

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to adjourn from Mr. Bell. We had a
second from Mr. Eberhart. All in favor?

MR. POLITI: Aye.

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

CHAIRMAN SCALZO: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

(Time noted: 9:48 p.m.)

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

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

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

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

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

Michelle Conero

MICHELLE CONERO