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

- - - - - X
In the Matter of

JJSK, INC.

165 South Plank Road, Newburgh
Section 60; Block 3; Lot 18
IB Zone

- - - - - X

Date: September 26, 2024
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: JOSEPH SAFFIOTI

- - - - - X

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

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

24 Roll call, please.

25 MS. JABLESNIK: Darrell Bell

2 is absent this evening.

3 James Eberhart.

4 MR. EBERHART: Present.

5 MS. JABLESNIK: Greg Hermance.

6 MR. HERMANCE: Present.

7 MS. JABLESNIK: John Masten.

8 MR. MASTEN: Here.

9 MS. JABLESNIK: James Politi is
10 also absent this evening.

11 Donna Rein.

12 MS. REIN: Here.

13 MS. JABLESNIK: Darrin Scalzo.

14 CHAIRMAN SCALZO: Here.

15 MS. JABLESNIK: Also present is our
16 Attorney, David Donovan; from Code
17 Compliance, Joe Mattina; and our
18 Stenographer is Michelle Conero.

19 CHAIRMAN SCALZO: Very good. If
20 you could all please rise for the Pledge.

21 (Pledge of Allegiance.)

22 CHAIRMAN SCALZO: Before we
23 actually get started, if anyone is here
24 for the applicant Spark Car Wash,
25 1227-1229 Route 300 in Newburgh, they

2 have asked to be deferred to the next
3 month's meeting. We will not be hearing
4 that applicant this evening. If anyone
5 is here for the Spark Car Wash
6 application, we will not be discussing
7 that application this evening.

8 Moving on to our regular agenda.
9 Our first applicant this evening is JJSK,
10 Inc., 165 South Plank Road, which is a
11 Planning Board referral for area
12 variances of lot area, lot width, front
13 yard, rear yard, one side yard, the
14 combined side yards and the parking lot
15 landscaping for a proposed change of use
16 to an existing building to convert it to
17 a retail cannabis dispensary. Additionally,
18 the distance to Tarsio Lanes is less
19 than 500 feet.

20 Siobhan, do we have mailings on this?

21 MS. JABLESNIK: This applicant sent
22 36 letters. We received the County back.

23 CHAIRMAN SCALZO: The County came
24 back. The County was a Local
25 determination. Very good.

2 Who do we have with us this evening
3 for JJSK, Inc.?

4 MR. SAFFIOTI: Good evening, Mr.
5 Chairman, Board Members. My name is
6 Joseph Saffioti and I'm here on behalf of
7 the applicant to review the application
8 before the Board.

9 This structure is an existing
10 building on Route 52. It was built
11 probably in the '50s. It's masonry
12 construction. It's three stores. It's a
13 nonconforming preexisting use. It's been
14 there for as long as I've been here.
15 Actually, before I was here. It was
16 converted, I believe, in the '70s into a
17 two story, then to a third.

18 My client entered into a lease
19 agreement for use of the middle store on
20 the side of the building for a retail
21 cannabis dispensary, which is a permitted
22 use under state law. My clients have a
23 license from New York State to operate
24 this business. The cannabis business is
25 identical to a store, but for it's under

2 a different use and requires variances.
3 If this was any other existing store, no
4 variances would be required because the
5 building exists. Based on that
6 requirement, we have filed with the Town
7 of Newburgh Planning Board a site plan
8 application. The Planning Board had a
9 number of comments, which we've addressed
10 in our plans. There will be upgrades to
11 the exterior of the facility to add
12 exterior lighting, a dumpster enclosure,
13 a new parking lot, additional parking
14 spaces.

15 The variances that were needed
16 would be lot area, lot width, front yard
17 setback, side yard setback, both side
18 yards. It's basically self-explanatory.
19 The building is there. That's the size
20 of the lot. Under the cannabis code, it
21 has the same setback requirements as the
22 regular B Zone for this building. We
23 don't meet the requirements. That's what
24 we're asking for relief from this Board.

25 There will be no new or additional

2 enlargement of the building. The
3 existing store will be used. The
4 existing signage will be used. There
5 will be some plantings to upgrade the
6 landscaping, which has been addressed on
7 the revised site plan. So all the yard
8 variances and area variances.
9 Unfortunately that's the condition it is.
10 We've asked for relief from the Board for
11 those uses.

12 As to the parking lot, I asked my
13 client about their customers. Typically
14 seventy percent of their customers order
15 online. They come to the store, they get
16 checked through security, they pick up
17 their product and they leave, typically
18 within five to ten minutes. There are no
19 long-term people in the store.

20 Under state law for the license,
21 this business is highly, highly
22 regulated. Every single container has a
23 barcode marking that must be inventoried.
24 Very, very strict controls. There will
25 be a security guard onsite at the door to

2 check and make sure only of age people
3 may enter the store to do purchases.
4 They double check at the cash register.
5 That's a state law requirement.

6 We feel the 31 parking spaces are
7 adequate. There's not a lot of traffic
8 for the side store. The store doesn't
9 have a lot of traffic. The front store
10 has parking for the deli in front. We've
11 never see the parking lot full.

12 The issue on the distance from this
13 store to Tarsio bowling lanes, the Town
14 Code, up until Monday, required a 500-
15 foot setback from any building which was
16 primarily used for youth activities. Our
17 argument to the Board is that Tarsio
18 bowling lanes has been there for a very
19 long time, has a liquor license, has a
20 bar and a restaurant inside the bowling
21 alley. It serves all ages, but not
22 predominantly young people only. It does
23 have, I assume, Saturday morning bowling
24 parties, which I went through when I was
25 a kid many, many, many years ago.

2 I think most of the variances we're
3 requesting are self-explanatory. They're
4 detailed in the application. My client's
5 argument is in favor of the variance.
6 We're here to answer any questions of the
7 Board and any comments from the members
8 of the public.

9 CHAIRMAN SCALZO: Thank you very
10 much.

11 At this time I'm going to look to
12 the Board for any questions or comments.

13 Actually, before I do that;
14 Counsel, Monday night the Town Board
15 had --

16 MR. SAFFIOTI: I didn't detail
17 that. The Town Board adopted an
18 amendment to the local law stating that
19 it doesn't apply to private children's
20 facilities, it only applies to
21 governmentally-owned or governmental
22 agencies that are operated within 500
23 feet. Once that local law is filed with
24 the Secretary of State, that variance
25 isn't required.

2 CHAIRMAN SCALZO: Variance or
3 interpretation.

4 Counsel, is that, in your opinion,
5 accurate?

6 MR. DONOVAN: Well, Mr. Chairman, I
7 want you to go around the horn and I will
8 read this again.

9 CHAIRMAN SCALZO: No problem. Very
10 good.

11 I'll look to the Members of the
12 Board.

13 MR. EBERHART: I want to know also.

14 CHAIRMAN SCALZO: We'll get there.
15 Actually, we can even get clarification
16 after we poll the public. So Mr.
17 Eberhart, I'm in agreement with you.

18 With regard to the preexisting
19 nonconforming conditions, do you have any
20 comments regarding that?

21 MR. EBERHART: No. Not at this
22 time.

23 CHAIRMAN SCALZO: Mr. Hermance.

24 MR. HERMANCE: It may be in the
25 paperwork here, but what is the

2 separation distance currently from
3 Tarsio?

4 MR. SAFFIOTI: We believe it's
5 about 450 feet. The code requires 500
6 feet. I spoke with Mark Taylor, the Town
7 Attorney, yesterday. He anticipates that
8 law will be filed with the Secretary of
9 State within thirty days. It's going to
10 be a mute point at that point.

11 MR. HERMANCE: That's all I had.

12 CHAIRMAN SCALZO: Very good.

13 Mr. Masten.

14 MR. MASTEN: Nothing at this time.

15 CHAIRMAN SCALZO: Very good.

16 Ms. Rein.

17 MS. REIN: What type of action is
18 this? Is it a Type 2?

19 MR. DONOVAN: It's a Type 2 action.

20 MS. REIN: No questions.

21 CHAIRMAN SCALZO: They appear to be
22 all linear, preexisting nonconforming.

23 I myself don't have any comments on
24 this.

25 At this point I'm going to open

2 this up to any members of the public that
3 wish to speak about this application. If
4 you'd like to speak, please come forward
5 and state your name. It is being
6 recorded by our stenographer.

7 MR. RUSSELL: Good evening. I own
8 the property across the street. He
9 mentioned about --

10 CHAIRMAN SCALZO: Your name, sir?

11 MR. RUSSELL: John Russell.

12 CHAIRMAN SCALZO: Very good, Mr.
13 Russell.

14 MR. RUSSELL: Yes. My question is,
15 his application about 500 feet away from
16 Tarsio, and I guess they serve alcohol.

17 CHAIRMAN SCALZO: Tarsio does serve
18 alcohol, and there's a liquor store right
19 next to Tarsio.

20 MR. RUSSELL: Right. Actually, so
21 does the firehouse. Don't they serve
22 beer?

23 CHAIRMAN SCALZO: I suppose they
24 could. I'm not a member of that.

25 MR. RUSSELL: They do.

2 CHAIRMAN SCALZO: Okay.

3 MR. RUSSELL: I'm just curious.

4 MR. SAFFIOTI: The Town Code says
5 that they can't be within 500 feet of a
6 facility primarily being used for youth
7 activities.

8 MR. RUSSELL: Oh, youth activities.

9 MR. SAFFIOTI: We're saying that
10 Tarsio is far from just a youth activity.

11 MR. RUSSELL: It is. That's my
12 question.

13 CHAIRMAN SCALZO: Thank you, sir.

14 MR. RUSSELL: Thank you.

15 MR. SAFFIOTI: For the Board's
16 information, we did discuss it with the
17 Town, the separation distance between
18 this building and the park, Algonquin
19 Park. It would be from the door, the
20 entrance of our building, to any
21 buildings on the park which are a quarter
22 mile away.

23 CHAIRMAN SCALZO: Right. I did
24 read some of the legislation before it
25 was adopted. Any facade or windows need

2 to be covered, you can't see the product
3 from the exterior.

4 MR. SAFFIOTI: They're going to
5 comply with all the State regulations.

6 MR. DONOVAN: Mr. Chairman, if you
7 want, I can just read the copy of the law
8 as amended. It says, "No approval or
9 permit shall be granted to cannabis
10 onsite consumption on the premises.
11 Cannabis retail dispensaries proposed to
12 be located on the same road and within
13 500 feet of" -- here's the change -- "of
14 the structure or its grounds occupied
15 exclusively as a public youth facility,
16 meaning a location or structure owned by
17 a government or government subdivision or
18 agency that is accessible to the public
19 where the primary purpose is to provide
20 recreational opportunities or services to
21 children or adolescents of whom the
22 primary population is reasonably expected
23 to be seventeen years of age or younger."

24 CHAIRMAN SCALZO: Thank you,
25 Counsel.

2 So it appears, with the adoption of
3 that, the interpretation or -- that's off
4 the table.

5 MR. DONOVAN: Correct. Although
6 this is on its way to being official, but
7 it's not official yet.

8 CHAIRMAN SCALZO: Okay. Counsel, I
9 don't know that you would know the answer
10 to this, but there's also no smoking on
11 the grounds?

12 MR. SAFFIOTI: No onsite
13 consumption.

14 CHAIRMAN SCALZO: No loitering
15 outside or smoking. I can smoke my
16 cigars outside there, but they can't
17 smoke what they're buying in the
18 building.

19 MR. SAFFIOTI: I can't stop people
20 from what they do in their cars in the
21 parking lot.

22 CHAIRMAN SCALZO: Right. Very
23 good.

24 Okay. Is there anyone else from
25 the public that wishes to comment on this

2 application?

3 (No response.)

4 CHAIRMAN SCALZO: No. Very good.

5 I'll look back to the Board here.

6 (No response.)

7 CHAIRMAN SCALZO: It appears,
8 Counsel, help me out, that all we're
9 looking at here are preexisting
10 nonconforming conditions on an existing
11 building?

12 MR. DONOVAN: That's correct.

13 CHAIRMAN SCALZO: At this point
14 I'll look to the Board for a motion to
15 close the public hearing.

16 MR. EBERHART: I'll make the
17 motion.

18 MR. MASTEN: Second.

19 CHAIRMAN SCALZO: We have a motion
20 to close the public hearing from Mr.
21 Eberhart. We have a second from Mr.
22 Masten. All in favor.

23 MR. EBERHART: Aye.

24 MR. HERMANCE: Aye.

25 CHAIRMAN SCALZO: Aye.

2 MR. MASTEN: Aye.

3 MS. REIN: Aye.

4 CHAIRMAN SCALZO: Those opposed?

5 (No response.)

6 CHAIRMAN SCALZO: Very good.

7 Motion carried.

8 As we were informed earlier, this
9 is a Type 2 action under SEQRA. We will
10 go through the area variance criteria and
11 discuss the five factors which we're
12 weighing, the first one being whether or
13 not the benefit can be achieved by other
14 means feasible to the applicant. Again,
15 we're only talking about the preexisting
16 nonconforming conditions. So no. The
17 first answer to criteria 1 is no.

18 Second, if there's an undesirable
19 change in the neighborhood character or a
20 detriment to nearby properties. Nothing
21 is changing on the exterior of the
22 building.

23 The third, whether the request is
24 substantial. Again, it's preexisting
25 nonconforming, so it is not substantial

2 because it exists currently.

3 The fourth, whether the request
4 will have adverse physical or
5 environmental effects. It does not
6 appear so.

7 The fifth, whether the alleged
8 difficulty is self-created, which is
9 relevant but not determinative. This is
10 preexisting, therefore it is not self-
11 created.

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

15 MR. MASTEN: I'll make a motion we
16 approve.

17 MS. REIN: I'll second.

18 CHAIRMAN SCALZO: We have a motion
19 for approval from Mr. Masten. We have a
20 second from Mrs. Rein.

21 Can you roll on that, Siobhan?

22 MR. DONOVAN: Before you do,
23 because the law as it exists -- the
24 request is for an interpretation. Your
25 interpretation is that Tarsio bowling

2 alley doesn't, as its primary purpose,
3 provide recreational activities to
4 children or adolescents, so therefore
5 this would not be prohibited under the
6 current zoning which would be rendered
7 moot by the zoning amendment anyway.

8 CHAIRMAN SCALZO: Michelle, if you
9 got all that.

10 MS. CONERO: I did.

11 CHAIRMAN SCALZO: Do we need to
12 modify --

13 MR. DONOVAN: That's what she said.
14 That's what I thought.

15 CHAIRMAN SCALZO: Okay. Roll on
16 that.

17 MS. JABLESNIK: Mr. Eberhart?

18 MR. EBERHART: Yes.

19 MS. JABLESNIK: Mr. Hermance?

20 MR. HERMANCE: Yes.

21 MS. JABLESNIK: Mr. Masten?

22 MR. MASTEN: Yes.

23 MS. JABLESNIK: Ms. Rein?

24 MS. REIN: Yes.

25 MS. JABLESNIK: Mr. Scalzo?

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J J S K , I n c .

CHAIRMAN SCALZO: Yes.

The motion is carried. The
variances are approved.

MR. SAFFIOTI: Thank you.

(Time noted: 7:16 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 7th day of October 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

FREDERICK & JANE NEAL
515 Washington Avenue, Newburgh
Section 52; Block 12; Lot 15.2
R-1 Zone

----- X

Date: September 26, 2024
Time: 7:17 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: FREDERICK NEAL

----- X

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

2 CHAIRMAN SCALZO: Our second
3 applicant this evening is Frederick and
4 Jane Neal, 515 Washington Avenue, seeking
5 area variances for one side yard and the
6 combined side yards to build a 22.78 by
7 14.33 enclosed rear porch.

8 Thank you, Mr. Mattina, for using
9 engineering feet for me.

10 Do we have mailings on that,
11 Siobhan?

12 MS. JABLESNIK: This applicant sent
13 out 53 letters.

14 CHAIRMAN SCALZO: Very good.

15 Who do we have with us this
16 evening?

17 MR. NEAL: I'm Frederick Neal.

18 CHAIRMAN SCALZO: Mr. Neal, if I
19 have captured what it is that you're
20 exactly looking for in that one sentence,
21 then we can continue with our process,
22 or, if you'd like to add any flavor to
23 it, feel free.

24 MR. NEAL: We would like to just
25 screen in and cover an existing deck.

2 Screen it in so we don't get bit by
3 mosquitoes and other bugs. I hear
4 there's a lot of diseases.

5 CHAIRMAN SCALZO: The encephalitis
6 scare.

7 MR. NEAL: That's what we would
8 like to do. We need a variance for that,
9 so we would kindly request that.

10 CHAIRMAN SCALZO: Sir, we're
11 obliged by our positions on the ZBA to
12 visit each property. We have all taken a
13 look. We've all seen the deck that you
14 have there.

15 The intent is to just go up to
16 cover it. You're not expanding that deck
17 at all. Correct?

18 MR. NEAL: That's correct.

19 CHAIRMAN SCALZO: That's good
20 enough for me.

21 I'm going to start down with Ms. Rein.
22 Do you have any questions for the applicant?

23 MS. REIN: No.

24 CHAIRMAN SCALZO: Mr. Masten, do you
25 have any questions for the applicant?

2 MR. MASTEN: No.

3 CHAIRMAN SCALZO: Mr. Hermance?

4 MR. HERMANCE: I was looking around
5 the neighborhood. There are other
6 neighbors that have screened in -- in
7 fact, right across the street from you,
8 they have one off to the side. I have no
9 questions.

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

12 Mr. Eberhart?

13 MR. EBERHART: No.

14 CHAIRMAN SCALZO: You know, I think
15 we all kind of freaked him out. I was
16 sitting in my truck out in front, too.
17 He walked out and introduced himself.
18 We're all friendly faces. Very good.

19 At this point I'm going to open it
20 up to any members of the public that wish
21 to comment on this application for
22 Frederick and Jane Neal at 515 Washington
23 Avenue.

24 Sir, please state your name.

25 MR. KOSLOSKI: Pete Kosloski. I

2 live next door.

3 The lot is fenced in. Nothing is
4 changing. The driveway is on the
5 adjacent lot. There's no change going to
6 happen that anybody will notice, so I'm
7 all in favor.

8 CHAIRMAN SCALZO: Very good, sir.
9 Thank you for your comments. They are
10 very important to the Board.

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

14 (No response.)

15 CHAIRMAN SCALZO: Okay. One last
16 look at the Board. Any other comments or
17 questions?

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 MS. REIN: I'll second.

25 CHAIRMAN SCALZO: We have a motion

2 to close from Mr. Masten. We have a
3 second from Ms. Rein. All in favor.

4 MR. EBERHART: Aye.

5 MR. HERMANCE: Aye.

6 MR. MASTEN: Aye.

7 MS. REIN: Aye.

8 CHAIRMAN SCALZO: Aye.

9 Those opposed.

10 (No response.)

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

14 MR. DONOVAN: Correct, Mr. Chairman.

15 CHAIRMAN SCALZO: I just like
16 hearing that I'm right.

17 We will go through the area
18 variance criteria and discuss the five
19 factors that we are weighing, the first
20 one being whether or not the benefit can
21 be achieved by other means feasible to
22 the applicant.

23 Well, they can stay inside and not
24 realize the benefit of having a deck, so
25 no.

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

6 Other than the enclosure, there's
7 going to be nothing else that we're
8 looking at. We've heard testimony from
9 an adjoining neighbor that he doesn't
10 feel as though it's an undesirable
11 change.

12 The third, whether the request is
13 substantial. No.

14 MR. EBERHART: No.

15 MR. HERMANCE: No.

16 MR. MASTEN: No.

17 MS. REIN: No.

18 CHAIRMAN SCALZO: They're not
19 exceeding any limits that are currently
20 there, other than height.

21 The fourth, whether the request
22 will have adverse physical or
23 environmental effects.

24 It does not appear so. Perhaps
25 instead of sheet flow you're going to

2 have concentrated flow when you put
3 leaders on your gutters. An energy
4 dissipator at the bottom of those will
5 prevent you from having to fill that.

6 MR. DONOVAN: Spoken like a true
7 engineer.

8 CHAIRMAN SCALZO: Sorry, Siobhan.

9 MS. JABLESNIK: I have to listen to
10 it all day.

11 CHAIRMAN SCALZO: The fifth,
12 whether the alleged difficulty is self-
13 created, which is relevant but not
14 determinative. Of course it's self-
15 created. However, it doesn't necessarily
16 prevent us from granting this.

17 Having moved through the balancing
18 tests, does the Board have a motion of
19 some sort?

20 MS. REIN: I'll make a motion to
21 approve.

22 MR. EBERHART: Second.

23 CHAIRMAN SCALZO: We have a motion
24 from Ms. Rein. It sounded like Mr. Eberhart
25 beat you out, Mr. Hermance.

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Can you roll on that, please,
Siobhan.

MS. JABLESNIK: Mr. Eberhart?

MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Hermance?

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Ms. Rein?

MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

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

(Time noted: 7:25 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 7th day of October 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

TRI-CAR PROPERTIES, LLC
600 Stony Brook Court, Newburgh
Section 97; Block 1; Lot 58
B Zone

----- X

Date: September 26, 2024
Time: 7:25 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: RYAN CARLETON

----- X

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

2 CHAIRMAN SCALZO: Our third
3 applicant is Tri-Car Properties, LLC.
4 They are seeking an area variance of
5 the minimum side yard setback to keep
6 a 6 by 8 deck with a 34-foot long
7 ramp.

8 Siobhan, do we have mailings on
9 this?

10 MS. JABLESNIK: This applicant sent
11 out, are you ready? Do you want to say
12 it or do you want me to say it?

13 MR. CARLETON: I don't know if I
14 have the exact number, but --

15 MS. JABLESNIK: 169.

16 CHAIRMAN SCALZO: I've been on the
17 Board for ten years and I've never heard
18 a number that big. You are the winner.
19 I just want to say, if you were doing
20 this in another municipality, they make
21 you send out certified, return receipt
22 requested stuff on your own. How cool
23 are we.

24 As you heard me say in the previous
25 applicant, we are all obliged by position

2 to take a ride by. From what I saw
3 facing -- actually, let me back up. Who
4 do we have?

5 MR. CARLETON: Ryan Carleton.

6 CHAIRMAN SCALZO: Mr. Carleton, if
7 I have captured everything that we need
8 to know in that one blistering
9 sentence --

10 MR. CARLETON: That's it. A 3-foot
11 variance to keep our 6 by 8 deck and
12 34-foot ramp as an emergency handicap
13 exit.

14 CHAIRMAN SCALZO: Emergency
15 handicap access. Very good.

16 As I mentioned, we're all obliged
17 to take a look.

18 Facing the building, the left-hand
19 side close to the tennis court, or is
20 that pickleball now?

21 MR. CARLETON: A tennis court.

22 CHAIRMAN SCALZO: I don't have any
23 questions.

24 At this point I'm going to turn to
25 the Board. Mr. Eberhart, do you have any

2 comments regarding this application?

3 MR. EBERHART: No. Not at all.

4 CHAIRMAN SCALZO: Mr. Hermance?

5 MR. HERMANCE: No comments.

6 CHAIRMAN SCALZO: Mr. Masten?

7 MR. MASTEN: No.

8 CHAIRMAN SCALZO: Ms. Rein?

9 MS. REIN: No.

10 CHAIRMAN SCALZO: I don't have any.

11 At this point I'm going to open it
12 up to the members of the public.

13 Mr. Millen, did you have anything
14 you wanted to add?

15 MR. MILLEN: No. I apologize.

16 CHAIRMAN SCALZO: I'm just making
17 sure.

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

21 UNIDENTIFIED SPEAKER: I just have
22 one question.

23 CHAIRMAN SCALZO: Please step
24 forward and state your name. We are
25 happy to hear you.

2 UNIDENTIFIED SPEAKER: Since you
3 sent out so many letters, I guess I'm the
4 one person here. I'm not clear as to why
5 a visit to the variance board is required
6 since this is an existing situation.

7 CHAIRMAN SCALZO: Well, I'm going
8 to let the applicant answer that
9 question.

10 MR. CARLETON: The actual existing
11 deck that was on the building was never
12 legally put on, so I'm trying to actually
13 legally put that deck and ramp there.

14 UNIDENTIFIED SPEAKER: That
15 explains that.

16 CHAIRMAN SCALZO: If you hung
17 around this Board, you'd hear oftentimes
18 people come in asking for forgiveness and
19 not for permission. That's exactly
20 what's going on here tonight.

21 UNIDENTIFIED SPEAKER: Thank you.

22 CHAIRMAN SCALZO: Are there any
23 other members of the public that wish to
24 speak about this application?

25 (No response.)

2 CHAIRMAN SCALZO: It doesn't look
3 like it.

4 This is a Type 2 action under
5 SEQRA, Counsel?

6 MR. DONOVAN: Correct, Mr. Chairman.

7 CHAIRMAN SCALZO: If there are no
8 other questions from the Board, I'll look
9 to the Board for a motion to close the
10 public hearing.

11 MR. MASTEN: I'll make a motion to
12 close the public hearing.

13 MR. HERMANCE: I'll second.

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

17 MR. EBERHART: Aye.

18 MR. HERMANCE: Aye.

19 CHAIRMAN SCALZO: Aye.

20 MR. MASTEN: Aye.

21 MS. REIN: Aye.

22 CHAIRMAN SCALZO: Those opposed?

23 (No response.)

24 CHAIRMAN SCALZO: Very good.

25 Again, we're going to roll through our

2 five factors which we're weighing, the
3 first one being whether or not the
4 benefit can be achieved by other means
5 feasible to the applicant.

6 They're trying to maintain ADA
7 compliance there. It doesn't really
8 appear to be -- I don't know how else you
9 would do it. I don't know what the
10 interior of the building looks like.

11 The second, if there's an
12 undesirable change in the neighborhood
13 character or a detriment to nearby
14 properties. It does not appear so.

15 The third, whether the request is
16 substantial. By the numbers, some may
17 consider it to be. Looking at the
18 layout, it's not really getting close to
19 -- I'm sure the people won't miss their
20 backhand looking at your deck.

21 The fourth, whether the request
22 will have adverse physical or environmental
23 effects. It does not appear so.

24 The fifth, whether the alleged
25 difficulty is self-created, which is

2 relevant but not determinative. We just
3 found out that it's self-created and he's
4 here asking for forgiveness.

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

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

10 MR. EBERHART: I'll second.

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

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

16 MS. JABLESNIK: Mr. Eberhart?

17 MR. EBERHART: Yes.

18 MS. JABLESNIK: Mr. Hermance?

19 MR. HERMANCE: Yes.

20 MS. JABLESNIK: Mr. Masten?

21 MR. MASTEN: Yes.

22 MS. JABLESNIK: Ms. Rein?

23 MS. REIN: Yes.

24 MS. JABLESNIK: Mr. Scalzo?

25 CHAIRMAN SCALZO: Yes.

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The motion is carried. The
variances are approved.

(Time noted: 7:30 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 7th day of October 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

APJ ENTERPRISES OF NEWBURGH, LLC

Lakeside Road, Newburgh
Section 11; Block 1; Lot 74.1
R-1 Zone

----- X

Date: September 26, 2024
Time: 7:30 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: ROLAND BLOOMER

----- X

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

2 CHAIRMAN SCALZO: Our next
3 applicant is APJ Enterprises of Newburgh,
4 LLC, Lakeside Road. They are seeking an
5 area variance -- pardon me, a use
6 variance. Is that correct?

7 MR. MATTINA: Yes.

8 CHAIRMAN SCALZO: To keep an 80 by
9 40 by 20 storage building on a vacant
10 parcel.

11 Do we have mailings on this,
12 Siobhan?

13 MS. JABLESNIK: This applicant sent
14 34 letters.

15 CHAIRMAN SCALZO: 34 letters.

16 Okay. Who do we have with us this
17 evening?

18 MR. BLOOMER: Good evening, ladies
19 and gentlemen. I'm Roland Bloomer on
20 behalf of APJ Enterprises of Newburgh.
21 This is Mr. Julian, a member of APJ
22 Enterprises.

23 CHAIRMAN SCALZO: Very good. It
24 kind of escaped me that this is actually
25 a use variance and not an area variance.

2 MR. BLOOMER: Correct. It falls
3 under a use variance because the code
4 doesn't specifically allow the permitted
5 use. It's 185-7 F where, because it's
6 not specifically permitted, it's
7 prohibited.

8 MS. REIN: There's no storage
9 allowed on the property. That's what it
10 says.

11 MR. BLOOMER: Correct. Yes, that
12 is exactly.

13 So the problem is that because it
14 falls under that, it would meet other
15 requirements if it wasn't on vacant land.

16 The property where we are -- where
17 it's already installed, you've been to
18 the property I assume, is way off of the
19 road, all the way in the back of the
20 property with tree lines behind it. It's
21 also on property where this gentleman
22 owns the other parcels where there are
23 barns on the property. There are two
24 corrals for animals on the property as
25 well, so it fits within the character of

2 what the property is currently being used
3 for.

4 The shed itself, the storage shed,
5 if you will, is a canopy. There's no
6 foundation, there are no utilities to it
7 at all. It's put up and it's kept there
8 on the property for purposes of storing
9 things underneath the canopy itself.

10 CHAIRMAN SCALZO: I did see that
11 when I drove down. Very good. Continue
12 if you'd like.

13 MR. BLOOMER: That's it.

14 CHAIRMAN SCALZO: That about sums
15 it up. Okay.

16 MR. DONOVAN: If I can, Mr.
17 Chairman. Roland, you probably know
18 there are four factors that you need to
19 meet.

20 MR. BLOOMER: Yes, there is. The
21 first one is being deprived of economic
22 use or benefit on the property because of
23 the zoning not allowing it. It's not
24 allowing storage to be put on the
25 property which affects my client.

2 The unique -- it's unique, it does
3 not apply to a substantial portion of the
4 neighborhood. The majority of the
5 neighborhood around the property is
6 houses. This property, being where it is
7 -- if I had a huge map. It's in the
8 middle of houses -- barns and houses, but
9 it's severely off of the main street by
10 the trees. It does fit in with the
11 current neighborhood. It doesn't stick
12 out or disrupt anything. It doesn't
13 alter the character of the neighborhood.
14 The property, as I stated, already has
15 two corrals for animals on it, barns on
16 it. Canopy storage fits within that
17 parameter, is my argument at least.

18 The hardship is not self-created
19 because he's not allowed to store
20 anything on the property the way that the
21 zoning currently is. Being that it's an
22 unspecified use, it doesn't specifically
23 allow it, so it's prohibited. That's why
24 we're here for the use variance.

25 CHAIRMAN SCALZO: Okay. While I

2 appreciate everything that you laid out,
3 typically when we're looking at the one
4 criteria, the dollars and cents is what
5 we actually need, and we need, for lack
6 of a better phrase, hard numbers.

7 MR. DONOVAN: What the law calls
8 competent financial evidence. I've been
9 here actually longer than Darrin. One
10 use variance was granted ever. Basically
11 you're looking at an appraisal with the
12 pole barn and without. In terms of
13 you're looking at some sort of -- we've
14 had appraisals, we've had real estate
15 broker analysis, we've had CPA analysis
16 of what the value of the property is with
17 or without so there's some basis. If you
18 -- I don't know if the pole barn was
19 there when you bought the property, but
20 if you bought the property and it was
21 vacant, I'm not asking you to admit
22 anything, but you're imputed with the
23 knowledge that you can't have a storage
24 barn. If the zoning doesn't allow it
25 when you buy it, it's likely

2 self-created. As opposed to an area
3 variance where you balance the five
4 criteria, a use variance, you don't meet
5 one of the four criteria and you're --

6 CHAIRMAN SCALZO: You're done.

7 MR. DONOVAN: Right. The
8 battleship has been sunk.

9 MR. BLOOMER: Understood.

10 CHAIRMAN SCALZO: We can't --
11 obviously this evening I'm sure you're
12 not prepared to give us, as Counsel said,
13 competent financial information regarding
14 that. What we can do for you -- we're
15 going to hear from the public on this.
16 What we can do is keep the public hearing
17 open, give you an opportunity to gather
18 that information, and then we can see you
19 again, if that's how you want to move
20 forward.

21 MR. BLOOMER: Can you give me one
22 second?

23 CHAIRMAN SCALZO: Sure.

24 MR. BLOOMER: We would like to do
25 that.

2 MS. REIN: What do you intend on
3 storing?

4 MR. BLOOMER: What do you intend on
5 storing?

6 MR. JULIAN: There's farm equipment
7 that I have. Hay also. I have three
8 animals there -- four animals. I'm
9 sorry.

10 CHAIRMAN SCALZO: I saw a dump
11 truck and a --

12 MR. JULIAN: I've done a lot of
13 work there. When I got it, it was really
14 messed up, that whole place.

15 CHAIRMAN SCALZO: I'm a local guy
16 my entire life. I recall what it used to
17 look like.

18 MR. JULIAN: It was destroyed. I
19 spent a lot of time on that place. It
20 helps me protect things that I have there
21 for the stuff that I need.

22 MS. REIN: Thank you.

23 MR. JULIAN: You're welcome.

24 MR. MASTEN: It looks good.

25 CHAIRMAN SCALZO: Painting the

2 barn, there's certainly aesthetic value
3 added to that for sure.

4 As I drove down and took a look,
5 you've got a dump truck and flow boy in
6 there. The flow boy on farm work kind of
7 makes me scratch my head.

8 MR. JULIAN: Well --

9 CHAIRMAN SCALZO: Let me help out
10 anybody that doesn't know what a flow boy
11 is. It's a tractor trailer that doesn't
12 tip up. It has a belt in it that feeds
13 asphalt, or any other type of material,
14 into so they don't have to worry about
15 taking out wires overhead or anything
16 like that. It's probably a 53-foot
17 trailer or something like that.

18 MR. JULIAN: Yeah.

19 CHAIRMAN SCALZO: That's just in
20 case you didn't know, Donna.

21 MR. DONOVAN: I had no idea. I
22 thought it was something you used at a
23 pool, a flow boy.

24 CHAIRMAN SCALZO: It's what I use
25 to cut my hair with.

2 Okay. Thank you.

3 At this point I'm going to turn to
4 my Board Members here. Any additional
5 questions, Ms. Rein?

6 MS. REIN: No.

7 CHAIRMAN SCALZO: Mr. Masten, do
8 you have any questions or comments?

9 MR. MASTEN: Hold it over and get
10 more information.

11 CHAIRMAN SCALZO: Okay. Perfectly
12 reasonable. That's what we're moving
13 towards.

14 Mr. Hermance?

15 MR. HERMANCE: That was my question
16 also, is it going to be used for
17 commercial storage of equipment or a
18 commercial use?

19 MR. JULIAN: I can't say that it
20 won't. You know, some stuff that I do
21 have there, it's to keep out of the
22 elements. It's mostly going to be for
23 the farm itself, --

24 MR. HERMANCE: You wouldn't be
25 conducting --

2 MR. JULIAN: -- machinery that I
3 have.

4 MR. BLOOMER: He wants to know if
5 you're going to be running a business.

6 MR. JULIAN: No, I'm not running a
7 business.

8 CHAIRMAN SCALZO: Mr. Bloomer,
9 Michelle is trying to record what you're
10 saying.

11 Mr. Eberhart.

12 MR. EBERHART: I have nothing until
13 we see the financials.

14 CHAIRMAN SCALZO: Financial
15 evidence. I'll say it again, it's a
16 tough hill to climb when it comes to
17 producing that.

18 Okay. At this point I'm going to
19 open it up to any members of the public
20 that wish to comment on this application
21 for APJ Enterprises on Lakeside Road.

22 Please step forward and state your
23 name.

24 MR. REMIGIO: Romeo Remigio. This
25 shed is in complete visibility of more

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than half my house's windows. As I'm sipping coffee, I can see this white structure. It's 80 feet long, 40 feet tall, whatever it is. You can see it. From Lakeside you can see the top third of it. Nothing about it flows with the Town of Newburgh forestry, the flowing hills. It's a big white structure. It's not a red tent. It's not a red shed by far.

Inside that shed, if you're curious, are a fleet of commercial vehicles, tractor trailers, low boys, dump trucks, excavators, low boys, skid steers, rollers. You name it, it's back there. Those things operate frequently. Just this evening, 7:00, there was a dump truck unloading material. When that dump truck opens and closes, the door closes, it makes a catastrophic shocking sound. I'm sure you've heard it. That happens all too often in earshot of my bedroom.

In addition to that, in that storage shed, there's no hay in there.

2 No. The animals on that farm are up by
3 the stream by the red barn. I can say
4 that because I see it everyday.

5 There's nothing in that shed except
6 commercial equipment. Everything on that
7 -- inside that commercial -- inside that
8 tent says Julian on it. Therefore, you
9 can add two plus two there.

10 As far as agricultural assistance
11 for that, there's no cultivation of
12 crops.

13 All those horses and donkeys are
14 maintained in the building up by the
15 street. The horses aren't down in that
16 shed. There's no room in there for
17 anything else.

18 There's dump trucks. As I said,
19 big aluminum dump trucks, skid steers.
20 There's all commercial equipment in
21 there. That area is zoned for
22 residential. The next thing that's
23 residential -- commercially zoned is by
24 the airport.

25 On top of that, Lakeside Road, at

2 the very beginning by the north end by
3 the Leptondale Deli, it says there nine-
4 ton limit. At the far end of it, the
5 other end, it also says nine-ton limit.
6 Those trucks are 80,000 pounds plus.
7 That road is frequented by people that
8 walk their dogs, exercise, jog, walk,
9 whatever it is. They're going to be
10 inhibited by the travel of these dump
11 trucks and tractor trailers that frequent
12 that road.

13 If you give him the variance to do
14 that, you're going to ring a dinner bell
15 for that storage shed to be used as a
16 facility to store his commercial
17 equipment. None of that stuff is used
18 for agriculture. There's no growing on
19 that farm. It's horses grazing. That's
20 it.

21 When I first moved there, it was a
22 pretty farm, grass hills, et cetera.
23 This tent popped up, this massive tent.
24 It's white, it's 80 feet long, 40 feet
25 tall and 20 feet wide.

2 CHAIRMAN SCALZO: We've all been
3 there and seen it.

4 MR. REMIGIO: There's nothing cute
5 about it. It's strictly business.

6 CHAIRMAN SCALZO: Okay, sir. We
7 appreciate your comments. Thank you.

8 Does anyone else from the public
9 wish to speak about this application?

10 MS. ANDERSON: I'm Michelle
11 Anderson, 540 Lakeside Road.

12 I just want to say that that --
13 I've been a neighbor to that property for
14 nearly fifty years. I just want to say
15 that property was so deplorable when the
16 current owner took over. He has done so
17 much upkeep and maintenance and refining
18 of that property. I can't even believe
19 that storage facility -- I mean, it's a
20 Quonset hut. It's not going to protect
21 from a lot is a problem for anybody,
22 really.

23 I think that he does have equipment
24 that he runs on the property and up by
25 the paddocks and so forth and he needs a

2 place to store them. I can't really see
3 why -- I don't have any argument for him
4 having that there. It is off of the road
5 and I really can't see why anybody would.

6 CHAIRMAN SCALZO: Thank you for
7 your comments.

8 MS. ANDERSON: Thank you.

9 CHAIRMAN SCALZO: Does anyone else
10 wish to speak about this application?

11 MR. ORPHAL: Good evening. My name
12 is Alan Orphal, I live across the street
13 from their house.

14 Since they moved in, there's a lot
15 of traffic, tractor trailers, dump trucks
16 coming in and out. I wouldn't want to
17 say all day long. At least once or twice
18 a day they're coming in and out.

19 For awhile they were parking next
20 to the house with their lights on at
21 night, shining in my living room window.

22 I like what he's done with the
23 property. I like what he's done with the
24 barn. If he's going to give me some kind
25 of assurances that we're not going to be

2 increasing traffic coming in and out of
3 the building, I don't have a problem with
4 it.

5 I just had to say my two cents.

6 CHAIRMAN SCALZO: Thank you, sir.

7 Does anyone else wish to speak?

8 Apparently this is the one everybody was
9 waiting for.

10 MS. MILLER: I'm kitty corner to
11 this property.

12 CHAIRMAN SCALZO: Your name is?

13 MS. MILLER: Margaret Miller. Just
14 like Michelle, before that house was a
15 horror zone. There were pigs loose,
16 chickens loose. It was terrible. Since
17 he came in, it's beautiful. I feel it
18 increased the value of my property. I
19 have no problems with that.

20 You can hardly see it. Even if you
21 drive by, you can't see it. I walk that
22 road. I have to look way down to see it.
23 It doesn't make a difference to me.

24 CHAIRMAN SCALZO: Thank you for
25 your comments.

2 MS. KRAKOWKA: Hi. I'm at 545
3 Lakeside.

4 CHAIRMAN SCALZO: Your name is?

5 MS. KRAKOWKA: Becky Krakowka.

6 When we moved in there was like a
7 thicker treeline, but since then it's
8 been thinned out quite a bit. I can see
9 the structure from my property pretty
10 well when I'm in the back. It is noisy
11 sometimes.

12 That's all I want to say. That's
13 all I feel comfortable saying.

14 CHAIRMAN SCALZO: Everybody's
15 comments -- I appreciate you folks
16 finding the time to make it out here.
17 Your comments are very valuable to us, so
18 thank you.

19 Is there anyone else from the
20 public that wishes to speak about this
21 application?

22 (No response.)

23 CHAIRMAN SCALZO: Okay. As I
24 mentioned earlier in the application,
25 this applicant is seeking a use variance,

2 which there are four criteria that need
3 to be met. The applicant has not
4 produced all of that information. We're
5 going to afford him the opportunity to at
6 least get us that, therefore the public
7 hearing is going to remain open.
8 Actually, I can't say that. I'm going to
9 look to the Board for a motion to keep
10 the public hearing open. You folks will
11 all be able to come back and comment
12 regarding that. Consider this the
13 information-gathering portion of this
14 application. We will render no opinions
15 this evening other than to hopefully keep
16 the public hearing open.

17 At this point I'm going to look to
18 the Board for a motion to keep the public
19 hearing open.

20 MR. EBERHART: I'll make a motion.

21 MR. MASTEN: I'll second it.

22 CHAIRMAN SCALZO: We have a motion
23 from Mr. Eberhart. We have a second from
24 Mr. Masten.

25 MR. DONOVAN: Just for clarity,

2 that's until the October meeting. For
3 the people in the audience, you will not
4 get another mailing. Your notice is
5 tonight that it's going to be at the
6 October meeting. Follow the Town
7 website, which you know is excellent.
8 You'll be able to see the agenda on that.

9 CHAIRMAN SCALZO: I'll give you the
10 date.

11 MR. MASTEN: 10/24.

12 CHAIRMAN SCALZO: Thank you, Mr.
13 Masten. The 24th. I can confirm.

14 Mr. Bloomer, Mr. Julian, we'll see
15 you back here in October.

16 MR. DONOVAN: I interrupted the
17 vote.

18 CHAIRMAN SCALZO: Counsel, you're
19 wrecking my flow. All in favor?

20 MR. EBERHART: Aye.

21 MR. HERMANCE: Aye.

22 CHAIRMAN SCALZO: Aye.

23 MR. MASTEN: Aye.

24 MS. REIN: Aye.

25 CHAIRMAN SCALZO: Those opposed?

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APJ Enterprises of Newburgh, LLC

(No response.)

CHAIRMAN SCALZO: Very good.

(Time noted: 7:45 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 7th day of October 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

DOROTHY HALL (TRUST)
61 Albany Post Road, Newburgh
Section 27; Block 2; Lot 5
R-3 Zone

----- X

Date: September 26, 2024
Time: 7:45 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: DOROTHY HALL &
JENNIFER HORAN

----- X

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

2 CHAIRMAN SCALZO: We are moving on
3 to items held open from the July 2024
4 meeting. We have Dorothy Hall, the
5 trust, 61 Albany Post Road in Newburgh,
6 seeking an area variance of increasing
7 the degree of nonconformity of the front
8 yard setback to build a 24 by 28 side
9 yard addition.

10 We've heard previously about the
11 mailings. Everything was in order.

12 What plagued you last time was the
13 County had not responded. In this case,
14 their time is up or they have responded.

15 MS. JABLESNIK: It was a Local
16 determination, if you wanted to know.

17 MS. HALL: We already knew that.

18 CHAIRMAN SCALZO: Fellow Members of
19 the Board, do you recall the application?

20 MR. EBERHART: Yes.

21 MR. HERMANCE: Yes.

22 MR. MASTEN: Yes.

23 MS. REIN: Yes.

24 CHAIRMAN SCALZO: Very good. I
25 don't know how much discussion we need to

2 have.

3 Counsel, do you recall, did I close
4 the public hearing on this?

5 MR. DONOVAN: You did not, because
6 it was held over.

7 CHAIRMAN SCALZO: At this point
8 I'll look to the Board -- actually, is
9 there anyone in the public that would
10 like to comment on this?

11 (No response.)

12 CHAIRMAN SCALZO: I'll look to the
13 Board for a motion to close the public
14 hearing.

15 MS. REIN: I'll make a motion to
16 close the public hearing.

17 MR. HERMANCE: I'll second it.

18 CHAIRMAN SCALZO: We had a motion
19 to close from Ms. Rein. I'm going to
20 give it to Mr. Hermance as the second.
21 All in favor?

22 MR. EBERHART: Aye.

23 MR. HERMANCE: Aye.

24 CHAIRMAN SCALZO: Aye.

25 MR. MASTEN: Aye.

2 MS. REIN: Aye.

3 CHAIRMAN SCALZO: Those opposed?

4 (No response.)

5 CHAIRMAN SCALZO: This is a Type 2
6 action under SEQRA. We're going to roll
7 through our criteria and discuss our five
8 factors again, the first one being
9 whether or not the benefit can be
10 achieved by other means feasible to the
11 applicant. We all know why the applicant
12 is doing what the applicant is doing. I
13 would say no.

14 The second, if there's an
15 undesirable change in the neighborhood
16 character or a detriment to nearby
17 properties.

18 MR. EBERHART: No.

19 MR. HERMANCENCE: No.

20 MR. MASTEN: No.

21 MS. REIN: No.

22 CHAIRMAN SCALZO: The third,
23 whether the request is substantial. By
24 the numbers it may be, however that's, in
25 this case, not all that substantial.

2 The fourth, whether the request
3 will have adverse physical or
4 environmental effects. It it does not
5 appear so.

6 The fifth, whether the alleged
7 difficulty is self-created, which is
8 relevant but not determinative. Of
9 course it's self-created.

10 However, having gone through the
11 balancing tests, does the Board have a
12 motion of some sort?

13 MS. REIN: I'll make a motion to
14 approve.

15 MR. EBERHART: I'll second.

16 CHAIRMAN SCALZO: Book ends again.
17 Very good. We have a motion for approval
18 from Ms. Rein. We have a second from
19 Mr. Eberhart.

20 Can you roll on that, please,
21 Siobhan.

22 MS. JABLESNIK: Mr. Eberhart?

23 MR. EBERHART: Yes.

24 MS. JABLESNIK: Mr. Hermance?

25 MR. HERMANCE: Yes.

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MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Ms. Rein?

MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Thanks for your patience. We
didn't have a meeting last month so you
had to wait a little extra.

MS. HALL: Thank you.

(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.

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Michelle Conero

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

DANIELLE CIAFFONE
2 & 4 Whisper Lane, Newburgh
Section 47; Block 1; Lots 72.1, 72.2 & 72.3
R-1 Zone

----- X

Date: September 26, 2024
Time: 7:50 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: JONATHAN MILLEN

----- X

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

2 CHAIRMAN SCALZO: Moving on. Our
3 next applicant is Danielle Ciaffone, 2 &
4 4 Whisper Lane. This is a Planning Board
5 referral for area variances to convert
6 three existing lots into two lots. Both
7 lots will have an existing two-family
8 residence. Area variances for the
9 proposed new lots are: Lot 1, lot area,
10 side yard and lot surface coverage. Lot
11 2, lot area, side yard, lot width and
12 both side yards.

13 Mr. Millen, you gave a wonderful
14 presentation last month. We are
15 consolidating here. We're going from
16 three to two. There's no additional
17 buildings going on. Correct?

18 MR. MILLEN: Correct.

19 CHAIRMAN SCALZO: That's what I
20 thought.

21 Do any Members of the Board have
22 any comments regarding this? I thought
23 it was wonderful, I didn't realize 52 had
24 its own street sign.

25 MS. REIN: This is a Type 2?

2 MR. DONOVAN: That's correct. A
3 lot line adjustment, Type 2.

4 MS. REIN: This may be irrelevant,
5 but it says this project is located in
6 the 100-year floodplain.

7 CHAIRMAN SCALZO: There's a stream
8 in the front yard.

9 MS. REIN: Okay. That's it, the
10 stream?

11 CHAIRMAN SCALZO: That's it. The
12 applicant is not proposing any changes to
13 the property other than removing a lot
14 line.

15 MS. REIN: Okay.

16 CHAIRMAN SCALZO: Any other
17 questions from the Board?

18 (No response.)

19 CHAIRMAN SCALZO: Do any members of
20 the public wish to speak about this?

21 (No response.)

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

25 MS. REIN: I'll make a motion.

2 substantial. No.

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

7 The fifth, whether the alleged
8 difficulty is self-created, which is
9 relevant but not determinative.
10 Actually, it's only being created because
11 they're consolidating three lots to two.

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

15 MR. HERMANCE: I'll make a motion
16 to approve.

17 MR. EBERHART: Second.

18 CHAIRMAN SCALZO: I'm going with
19 that end of the table. We have a motion
20 from Mr. Hermance. We have a second from
21 Mr. Eberhart.

22 Can you roll on that, Siobhan.

23 MS. JABLESNIK: Mr. Eberhart?

24 MR. EBERHART: Yes.

25 MS. JABLESNIK: Mr. Hermance?

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MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Ms. Rein?

MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

The motion is carried. The
variances are approved.

MR. MILLEN: Thank you very much.
Have a great evening.

(Time noted: 7:55 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.

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Michelle Conero

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

MATTHEW GALLAGHER
409 Little Britain Road, Newburgh
Section 97; Block 1; Lot 42
R-3 Zone

----- X

Date: September 26, 2024
Time: 7:55 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: MATTHEW GALLAGHER

----- X

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

2 CHAIRMAN SCALZO: Our next
3 applicant is Matthew Gallagher, 409
4 Little Britain Road, seeking area
5 variances of the front yard, maximum
6 height and maximum square footage to add
7 a two-story, 992 square foot addition
8 onto an existing accessory structure.

9 This had to remain open since the
10 County did not get back to us in time.
11 I'm assuming they came back with a Local
12 determination for Mr. Gallagher who lives
13 right next door to a commercial property.

14 You really can't see what he's
15 trying to do from the road, because at
16 that point it's a 40 mile-an-hour speed
17 limit.

18 MR. GALLAGHER: Just at the 45
19 coming out of the city.

20 CHAIRMAN SCALZO: We heard the
21 applicant's narrative last month. We've
22 all been to the property. I have no
23 additional questions.

24 Does anyone on the Board have any
25 additional questions?

2 MR. EBERHART: No.

3 MR. HERMANCE: No.

4 MR. MASTEN: No.

5 MS. REIN: No.

6 CHAIRMAN SCALZO: Very good.

7 I'll look to the vast number of
8 chairs that are empty and ask if anyone
9 from the public wishes to comment?

10 (No response.)

11 CHAIRMAN SCALZO: Very good. I'll
12 look to the Board for a motion to close
13 the public hearing.

14 MR. MASTEN: I'll make a motion.

15 MS. REIN: I'll second it.

16 CHAIRMAN SCALZO: Thank you, Mr.
17 Masten. We have a motion from Mr. Masten
18 and a second from Ms. Rein. All in
19 favor?

20 MR. EBERHART: Aye.

21 MR. HERMANCE: Aye.

22 CHAIRMAN SCALZO: Aye.

23 MR. MASTEN: Aye.

24 MS. REIN: Aye.

25 CHAIRMAN SCALZO: Those opposed?

2 (No response.)

3 CHAIRMAN SCALZO: We're going to
4 roll through our five criteria again, the
5 first one being whether or not the
6 benefit can be achieved by other means
7 feasible to the applicant. The benefit
8 he's looking for, he can't get any other
9 way.

10 The second, if there's an
11 undesirable change in the neighborhood
12 character or a detriment to nearby
13 properties. I would say since he's
14 actually building in kind, it's going to
15 look very, I'd say, quite the opposite of
16 detrimental, in character with the
17 neighborhood.

18 The third, whether the request is
19 substantial. He's kind of plagued by a
20 funny right-of-way taking by DOT. I
21 don't know if you folks recall that from
22 the application. If the right-of-way was
23 consistent with the pavement line with a
24 certain offset, he may not even be here.
25 I'm not saying, but it's possible.

2 Fourth, whether the request will
3 have adverse physical or environmental
4 effects. We don't think so.

5 The fifth, whether the alleged
6 difficulty is self-created which is
7 relevant but not determinative. Of
8 course it's self-created. He's not here
9 asking for forgiveness, he's here asking
10 for permission.

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

14 MR. HERMANCE: I'll make a motion
15 to approve.

16 MR. EBERHART: I'll second.

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

20 Can you roll on that, please,
21 Siobhan.

22 MS. JABLESNIK: Mr. Eberhart?

23 MR. EBERHART: Yes.

24 MS. JABLESNIK: Mr. Hermance?

25 MR. HERMANCE: Yes.

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MS. JABLESNIK: Mr. Masten?

MR. MASTEN: Yes.

MS. JABLESNIK: Ms. Rein?

MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo?

CHAIRMAN SCALZO: Yes.

Mr. Gallagher, the motion is
carried. Good luck. Can't wait to see
it.

MR. GALLAGHER: Thank you for your
time.

(Time noted: 8:00 p.m.)

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

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

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I further certify that I am not
related to any of the parties to this
proceeding by blood or by marriage and that
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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH ZONING BOARD OF APPEALS
----- X

In the Matter of

SPARK CAR WASH

1227-1229 Route 300, Newburgh
Section 96; Block 1; Lots 4 & 5
IB Zone

----- X

Date: September 26, 2024
Time: 8:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

----- X

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

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S p a r k C a r W a s h

CHAIRMAN SCALZO: As I mentioned earlier, Spark Car Wash asked for a deferment to the October 24th meeting.

(Time noted: 8:01 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 7th day of October 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: September 26, 2024
Time: 8:01 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: JASON TUVEL

----- X

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

2 CHAIRMAN SCALZO: Next is Prime and
3 Tuvel, 2 Lakeside Road, which is a
4 Planning Board referral for area
5 variances of a gasoline station located
6 within 1,000 feet of an existing gasoline
7 station. They subsequently had removed
8 all of the other variances that they were
9 requesting. That is the only one we were
10 looking at.

11 We have, in this case, closed the
12 public hearing on this. The applicant
13 had allowed us an additional day, because
14 today is day 63, for us to figure out
15 what it is that we wanted to do, as well
16 as seek legal counsel. I'm going to ask
17 for forgiveness of my fellow Board
18 Members, because while I was in contact
19 with counsel a handful of times, I did
20 not bring you into the full picture.

21 We're all struggling with this one.
22 We heard wonderful evidence produced by
23 the applicant's traffic engineer which
24 would lead you to believe that if their
25 project isn't approved, the traffic would

2 only get worse, but with the approval, it
3 will actually be better.

4 This is the first time that I've
5 had, in my ten years here -- this one
6 actually did require, I'll say, a traffic
7 analysis, which is why the applicant
8 brought their professional in to give us
9 that testimony.

10 In this case, Board, we should
11 consider the potential interference with
12 danger or traffic on the abutting street
13 and the cumulative effect on all curb
14 cuts for any such new use.

15 Having said that, we heard
16 testimony from the professional from the
17 applicant. While I might have a couple
18 of letters after my name, traffic
19 engineering is not my bag. I can't lend
20 a professional opinion to that. But,
21 what we can do is, if we were to reopen
22 the public hearing and engage Ken
23 Wersted, the Planning Board's traffic
24 consultant, to give us an analysis of the
25 materials that have been presented to us

2 for a professional evaluation of that,
3 then we can make a very informed
4 decision. Right now we've only got one
5 side. While it was a very good
6 presentation on the one side, and I hate
7 to drag this out any longer, however I,
8 myself, feel as though I need to know
9 that. I have a hesitancy regarding --
10 you know, we're going to be creating a
11 condition here that's never been seen
12 before in the Town of Newburgh. However,
13 with the testimony of the traffic
14 engineer here, it seems to support that
15 it would not have an impact. I may feel
16 one way today, but I might feel another
17 way after I hear what Ken Wersted's
18 opinion of this is.

19 Counsel, am I going wrong here?

20 MR. DONOVAN: Just to go back to
21 where we were. The only variance in
22 front of the Board is the 1,000 foot
23 requirement. That's the only thing in
24 front of the Board. Procedurally you
25 heard from the applicant, then there was

2 some opposition, counsel came in,
3 letters, testimony from other attorneys.
4 The Board then listened to the traffic
5 consultant, closed the public hearing and
6 said we need some time to think about it.
7 I've had some conversations with the
8 Chairman as recently as maybe 4 p.m.
9 today.

10 The question has been raised by the
11 Chairman, can we engage our own traffic
12 consultant. This Board has the authority
13 to do that. You've done it in the past.
14 Not frequently. I remember very vividly
15 the night that one of you were here,
16 maybe Joe was here for The Marketplace
17 when we stayed here until about 1:30 in
18 the morning. We had a sign consultant,
19 there were people outside. The Board at
20 that time felt like -- there were a
21 number of area variances needed. The
22 Board felt a little overwhelmed. They
23 engaged a sign consultant. You have the
24 authority to do that. You're allowed to
25 do that. If you're going to do that, you

2 need to reopen the public hearing.
3 Obviously you're going to allow the
4 traffic consultant to comment. That's
5 got to allow the applicant to comment.
6 It's got to allow the members of the
7 public to comment before you reach a
8 determination.

9 If that's what you want to do, your
10 first course of action is to reopen the
11 public hearing for the purpose of
12 engaging your own traffic consultant to
13 review what's been submitted to make
14 recommendations back to you.

15 MS. REIN: Would their traffic
16 consultant also be here at the same time?

17 CHAIRMAN SCALZO: Actually, I don't
18 believe Mr. Wersted would be here. He
19 would get the information that's been
20 supplied to us, review it in the comforts
21 of his own office, and he would probably
22 provide for us a summary.

23 The other thing is, I'm aware that
24 there's been a substantial investment by
25 the applicant here, and I would --

2 sometimes you hesitate when you ask them
3 to spend more money. However, if Ken
4 Wersted does this and everything works
5 through, then he doesn't have to do it
6 when you're actually back. He's going to
7 do it no matter what. That's how I'm
8 looking at it.

9 MR. TUVEL: Can I be heard, Mr.
10 Chairman?

11 CHAIRMAN SCALZO: Please.

12 MR. TUVEL: I understand what the
13 Board is asking, and it does make sense.
14 Here's my only, I guess, comment on it,
15 if I can. I kind of wish the Board had
16 -- maybe it needed to hear the testimony
17 in order to make that determination. My
18 feeling would be this is obviously going
19 -- if the Board were to approve the
20 variance, it would have to go back to the
21 Planning Board. It came here as a
22 Planning Board referral for site plan.
23 If the Board were to grant the variance,
24 one of the conditions would be or could
25 be, a suggestion, if it were to go to the

2 Planning Board for site plan, which it
3 would have to do to be approved, that the
4 Planning Board have their own traffic
5 expert verify all the information that
6 our traffic expert did during the site
7 plan review. That may be another way to
8 handle it. It is on a DOT road, so the
9 DOT is obviously going to look at the
10 traffic as well. We've had preliminary
11 meetings with the Department of
12 Transportation.

13 I'll respect whatever decision the
14 Board wants to make on this issue,
15 whether you want to have your own traffic
16 expert advise you.

17 My other suggestion could be, if
18 the Board felt that the traffic testimony
19 was compelling enough to grant the
20 variance, perhaps it could condition its
21 approval on the Planning Board having its
22 own traffic consultant also review the
23 traffic when it goes for site plan.
24 That's just another thought, just to
25 avoid spending more months here.

2 As the applicant, or representative
3 of the applicant, I do understand why you
4 would want that. I'm not going to
5 dispute that. It's logical. From an
6 efficiency standpoint, I'm asking you to
7 think about the suggestion as a
8 possibility.

9 MS. REIN: Counsel, can I ask you a
10 question? If we were to approve it or
11 disapprove it and the Town had a
12 different verdict in mind, do they change
13 what we decide?

14 CHAIRMAN SCALZO: They cannot
15 continue without our --

16 MR. DONOVAN: Do you mean the
17 Planning Board, Donna?

18 MS. REIN: Yes.

19 MR. DONOVAN: The Planning Board
20 can't do anything until they're finished
21 here.

22 MS. REIN: If we approve it -- what
23 I'm asking is, if we approve it and it
24 goes to the Planning Board and the
25 Planning Board has their own consultant

2 come in, can they reverse our decision?

3 MR. DONOVAN: They wouldn't reverse
4 our decision. We are considering a very
5 narrow issue, can there be another
6 gasoline station -- I'm not quoting
7 exactly -- within 1,000 feet of another
8 one. That's the determination that this
9 Board has been asked to make. The way
10 the code reads, it's based upon traffic.
11 They don't mention safety. They mention
12 traffic. That's why the applicant put in
13 testimony from his traffic consultant,
14 the report in his testimony, at the last
15 meeting. The Planning Board wouldn't
16 overrule us.

17 Let me be clear. There's a spectra
18 of things you could do. You could approve
19 this subject to compliance with the
20 mitigating measures that the traffic
21 consultant has suggested and subject to
22 any other mitigating measures that the
23 Planning Board determines. You could
24 deny it, understanding the only thing in
25 the record is the testimony from and the

2 report from their traffic consultant.
3 You all live here, right. That comes
4 into consideration, your personal
5 knowledge of the facility, its location
6 and what the traffic would be like.
7 That's a factor. You could deny it. You
8 could grant it with those conditions.
9 You could reopen the hearing, ask Ken
10 Wersted, who is the Planning Board's
11 Traffic Consultant, to weigh in on this
12 so you may feel better informed.

13 MS. REIN: If we denied it, would
14 it be dead in the water or would it go
15 back to the Planning Board?

16 MR. DONOVAN: It would not go back
17 to the Planning Board. It may or may not
18 be dead in the water. By that I mean,
19 you know, disputes are often resolved in
20 court. I'm not opposed to that, even
21 though my kids are out of college. That
22 is not -- the applicant has a decision to
23 make. We have to have a rational basis
24 for what we do. We can't act in a
25 fashion that's arbitrary and capricious.

2 If I'm the applicant's attorney,
3 I'm going to say in the record there was
4 one traffic study and testimony from one
5 traffic consultant that was in favor of
6 our variance application versus how ever
7 you decide. That's what I would say if I
8 was him.

9 MS. REIN: So we can approve it
10 with conditions?

11 MR. DONOVAN: If that's the
12 direction you want to take, you
13 absolutely can. You can reopen the
14 hearing and ask your traffic consultant.
15 No one ever tells me and I never ask
16 anyone how they're going to vote.
17 Someone could make a motion to approve
18 and it might not pass.

19 MS. REIN: Right.

20 MR. DONOVAN: I don't know what
21 that does for the applicant. That's like
22 he's in purgatory now. If his application
23 gets denied, he goes straight to hell.

24 MR. TUVEL: That's okay. I'm
25 wrestling with -- I understand the Board

2 wants to be comfortable with whatever
3 decision it makes and it has all the
4 facts.

5 My one suggestion was, if you
6 approve it, you have a condition that the
7 Planning Board's consultant look at it.

8 Another thing could be it's
9 approved subject to us working with the
10 traffic engineer that you mentioned. If
11 he has a disagreement or some sort of --
12 I'll call it has revisions that he feels
13 need to be made, we have to come back and
14 show that we comply with those. That
15 could be another thought.

16 MS. REIN: You would automatically
17 defer to him?

18 MR. TUVEL: Right. We would defer
19 to him, try to work it out. If we came
20 to an impasse for example, I'm just
21 making this up, he said you have to
22 restrict the left turn, we said no we
23 don't, we're at an impasse, we would have
24 to come back and resolve it before the
25 Board. That's just an example, something

2 that could possibly come up.

3 CHAIRMAN SCALZO: First of all, you
4 know what, I'll apologize that I didn't
5 think of this back in July.

6 MR. TUVEL: That's okay.

7 CHAIRMAN SCALZO: I know with any
8 project, time is money and the longer
9 this drags out, unfortunately.

10 Back to you, Donna. Again, my
11 position on this is I would -- I'm not
12 the pro. Ken Wersted is. He's going to
13 do it whether it's for us or the Planning
14 Board. He's still going to do it. I
15 prefer, and there are five of us here, to
16 have balanced information, both sides.
17 Right now I've only got one. I don't
18 want to -- again, my position, I don't
19 want to condition anything on we give an
20 approval but if the Planning Board -- the
21 idea with any type of engineering is you
22 come in with your concept and that's
23 great. Really it's a matter of steps.
24 Ken Wersted may find a fatal flaw that we
25 wouldn't recognize. I don't know that.

2 I want to know that. He may come back
3 with everything looks great and then
4 unfortunately we -- however much time
5 that -- traffic is a big factor when it
6 comes to a situation like this. We're
7 creating a condition. Keep in mind that
8 there is no place in the Town of Newburgh
9 that has three gas stations within 1,000
10 feet of each other. We can't consider
11 the Pilot. That's out of there. There
12 are four fueling stations, but we're only
13 thinking three. I don't want to lead you
14 any way you don't want to go. I'm just
15 telling you what my position is.

16 MR. TUVEL: If the Board felt that
17 that was necessary and retained a
18 consultant, could we have that finalized
19 for the next meeting? Would that be --

20 CHAIRMAN SCALZO: When you say
21 finalized for the next meeting, meaning
22 having Ken's comments for the next
23 meeting?

24 MR. TUVEL: Yeah.

25 CHAIRMAN SCALZO: I'd have to reach

2 out to John Ewasutyn to see if he could
3 expedite anything.

4 MR. TUVEL: Part of the reason I
5 made the recommendation or thoughts I had
6 before was, it's not the Board's problem,
7 obviously, but we have time constraints
8 that are not your problem. We've been at
9 this for awhile. I thought that was
10 maybe a good compromise in terms of you
11 get what you want in terms of a peer
12 review of the traffic engineering while
13 at the same time we get to move to the
14 next step. That was kind of my thought
15 there.

16 CHAIRMAN SCALZO: Again, I apologize
17 that I didn't think of this in July.

18 MR. TUVEL: That's okay. We're all
19 working --

20 CHAIRMAN SCALZO: In the 63 days
21 we've been waiting here, we could have
22 had that had I thought of that before.

23 Anyway, what are we thinking, Board
24 Members?

25 MR. EBERHART: It's definitely the

2 prudent thing to do. If we have a
3 subject matter expert that could clarify
4 things for us so we can make a better
5 decision, we should go that path. In my
6 mind, I think we should go ahead and
7 reopen the public hearing and have our
8 subject matter expert, the gentleman you
9 referenced, take a look at this so we can
10 make a more informed decision.

11 MS. REIN: I have a little
12 difference of opinion. I think that
13 considering the time they've been here,
14 that if we approve it under the
15 conditions that they have to defer to our
16 expert, wouldn't that be covering all the
17 bases and not making them come back
18 again? Do you know what I'm saying?

19 CHAIRMAN SCALZO: I do, but I can't
20 blindly accept one side without having
21 the information on the other. That's how
22 I operate. That's the beauty of having a
23 multi-member Board. I respect what
24 you're saying, it's just not how I'm
25 seeing it.

2 MR. HERMANCE: By the engineer
3 reviewing that and giving us his
4 recommendation, if he went in your favor
5 and we approved it, you'd already be
6 ahead of the game with --

7 MR. TUVEL: That's a good point.
8 If that individual is going to do the
9 review regardless, he would be doing it
10 now versus later, although the plans I
11 think have to be further engineered a
12 little bit. You're right, he would have
13 had his chance and on a high level made
14 determinations if there's any traffic
15 issues. That is true.

16 CHAIRMAN SCALZO: Perhaps any
17 revisions that need to be made from any
18 site plan improvements, he could give Ken
19 the Reader's Digest version of the
20 compliments that --

21 MR. TUVEL: Another thing is if
22 that individual makes a recommendation in
23 their report and says I agree with 95
24 percent but I have the following three
25 recommendations, we agree to stipulate to

2 them, then the Board feels a little bit
3 more comfortable. I completely
4 understand. Like you're saying, we would
5 have implemented that at the Planning
6 Board anyway if we got to that point. I
7 see it. I'm struggling with the client's
8 timing issue.

9 CHAIRMAN SCALZO: Again --

10 MR. TUVEL: I'm trying to balance
11 it.

12 MR. HERMANCE: Understood.

13 CHAIRMAN SCALZO: You were one of
14 the most interesting applications I've
15 seen in ten years. I appreciate your
16 patience.

17 I'm going to look to the Board for
18 a motion to reopen the public hearing.

19 MR. MASTEN: I'll make the motion
20 to reopen the public hearing.

21 MR. EBERHART: Second.

22 CHAIRMAN SCALZO: We have a motion
23 from Mr. Masten. We have a second from
24 Mr. Eberhart.

25 MR. TUVEL: It's for this discrete

2 issue. Correct? We're not reopening
3 it --

4 CHAIRMAN SCALZO: Did I condition
5 it that way?

6 MR. DONOVAN: Yes.

7 CHAIRMAN SCALZO: Okay.

8 MR. DONOVAN: I'll tell you the
9 story later, but yes.

10 CHAIRMAN SCALZO: I'll look to the
11 Board for a motion to reopen the public
12 hearing purely for the traffic analysis
13 by a professional on the other side, our
14 side, which would be working for the
15 Zoning Board of Appeals. That's what I'm
16 hoping to --

17 MR. DONOVAN: What's that he said.
18 We have that motion from Mr. Eberhart.

19 MR. EBERHART: To reopen the public
20 hearing.

21 CHAIRMAN SCALZO: Did we have a
22 second from Mr. Hermance on that or was
23 it Mr. Masten?

24 MR. MASTEN: Yeah.

25 MR. DONOVAN: I think Mr. Masten

2 made the motion.

3 CHAIRMAN SCALZO: Michelle, can you
4 call it back to me?

5 MS. CONERO: Mr. Masten made the
6 motion and Mr. Eberhart seconded.

7 CHAIRMAN SCALZO: Very good. We
8 have a motion from Mr. Masten. We have a
9 second from Mr. Eberhart.

10 Roll on that individually.

11 MS. JABLESNIK: Mr. Eberhart?

12 MR. EBERHART: Yes.

13 MS. JABLESNIK: Mr. Hermance?

14 MR. HERMANCE: Yes.

15 MS. JABLESNIK: Mr. Masten?

16 MR. MASTEN: Yes.

17 MS. JABLESNIK: Ms. Rein?

18 MS. REIN: Yes.

19 MS. JABLESNIK: Mr. Scalzo?

20 CHAIRMAN SCALZO: Yes.

21 I'm giving you the opportunity, Ms.
22 Rein, to say you've had enough.

23 MR. DONOVAN: So we're clear and
24 everyone is clear, we, I don't know who
25 is we, but we are going to reach out to

2 Ken Wersted, tell him exactly what we're
3 looking to do and provide him the
4 information. I believe he should have
5 the report. There was also a letter from
6 July. There's also the transcript of
7 last month's meeting. He should have all
8 of those things, in my opinion.

9 CHAIRMAN SCALZO: I will reach out
10 to, first and foremost, John Ewasutyn,
11 the Chairman of the Planning Board, ask
12 him if he is okay with me speaking
13 directly with, A, Pat Hines and Ken
14 Wersted.

15 MR. DONOVAN: Ken Wersted, by the
16 way, works with Creighton Manning.

17 MR. TUVEL: If it's okay, I'll have
18 our traffic expert reach out to him as
19 well, --

20 CHAIRMAN SCALZO: It's a small
21 community.

22 MR. TUVEL: -- that way he can just
23 -- we can get him the information as
24 quickly as possible.

25 MR. DONOVAN: Correct.

2 CHAIRMAN SCALZO: Ken needs to know
3 he's actually --

4 MR. TUVEL: I understand.

5 CHAIRMAN SCALZO: You're paying him
6 no matter what.

7 MR. TUVEL: Would we be carried
8 then to the October meeting?

9 CHAIRMAN SCALZO: Let's see how
10 fast we can get Ken to get back to us.

11 MR. DONOVAN: My suggestion tonight
12 is that we also move to schedule this for
13 the October meeting, because you don't
14 have a meeting in between.

15 CHAIRMAN SCALZO: I would agree.
16 We will put you back on the October
17 agenda.

18 MR. TUVEL: Okay. If it's on for
19 October, he would issue a report, the
20 Board would consider that report and then
21 make its determination at that point?

22 CHAIRMAN SCALZO: Correct.

23 MR. TUVEL: Okay. Thank you very
24 much.

25 CHAIRMAN SCALZO: Thank you for

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your patience.

(Time noted: 8:17 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 7th day of October 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

RAM HOTELS

Auto Park Place, Newburgh
Section 97; Block 2; Lot 37.1
IB Zone

----- X

Date: September 26, 2024
Time: 8:17 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

----- X

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

2 CHAIRMAN SCALZO: The other Board
3 business we have is RAM Hotels has
4 requested a six-month extension. We
5 granted the variances in February of
6 2024.

7 Does anyone have a comment on that?
8 (No response.)

9 CHAIRMAN SCALZO: Do I have a
10 motion to grant a six-month extension to
11 RAM Hotels?

12 MR. EBERHART: I'll make a motion
13 to extend.

14 CHAIRMAN SCALZO: Motion to extend
15 from Mr. Eberhart.

16 MR. HERMANCE: I'll second.

17 CHAIRMAN SCALZO: We have a second
18 from Mr. Hermance. All those in favor?

19 MR. EBERHART: Aye.

20 MR. HERMANCE: Aye.

21 MR. MASTEN: Aye.

22 MS. REIN: Aye.

23 CHAIRMAN SCALZO: Aye.

24 Those opposed?

25 (No response.)

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CHAIRMAN SCALZO: We've had a little time to read some meeting minutes. That's the last thing, the approval of the meeting minutes from the last meeting. Do I have a motion for approval of the meeting minutes?

I'll make that motion. A second?

MR. EBERHART: Second.

CHAIRMAN SCALZO: A second from Mr. Eberhart. All in favor?

MR. EBERHART: Aye.

MR. HERMANCE: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Aye.

Thank you.

(Time noted: 8:20 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 7th day of October 2024.

Michelle Conero

MICHELLE CONERO