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

NICK & JENNIFER DiLEMME
2201 Route 300, Wallkill
Section 3; Block 1; Lot 91.2
AR Zone

----- X

Date: February 26, 2026
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

BOARD MEMBERS: DARRIN SCALZO, Chairman
LATWAN BANKS
DARRELL BELL
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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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, they're going to 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 then 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. This evening we don't have microphones, so I'm going to ask that when you are speaking, to take a solid breath and speak loud so our stenographer can record it.

2 Roll call, please.

3 MS. JABLESNIK: Latwan Banks.

4 MS. BANKS: Present.

5 MS. JABLESNIK: Darrell Bell.

6 MR. BELL: Here.

7 MS. JABLESNIK: James Eberhart.

8 MR. EBERHART: Here.

9 MS. JABLESNIK: Greg Hermance.

10 MR. HERMANCE: Here.

11 MS. JABLESNIK: John Masten.

12 MR. MASTEN: Here.

13 MS. JABLESNIK: Donna Rein.

14 MS. REIN: Here.

15 MS. JABLESNIK: Darren Scalzo.

16 CHAIRMAN SCALZO: Here.

17 MS. JABLESNIK: Also present is our

18 Attorney, Dave Donovan; from Code

19 Compliance is Joseph Mattina; and our

20 Stenographer is Michelle Conero.

21 CHAIRMAN SCALZO: If we could

22 please rise for the Pledge.

23 (Pledge of Allegiance.)

24 CHAIRMAN SCALZO: For those folks

25 that have an agenda in front of them, I'm

2 going to diverge from the actual agenda
3 and I'm going to jump to held open from
4 the January 2026 meeting.

5 With regard to the Nick and
6 Jennifer DiLemme application at 2201
7 Route 300 in Wallkill, we have received a
8 request from their representation that
9 they are looking to defer hearing any
10 more this evening. They received some
11 historical zoning information that they
12 need to evaluate and are going to
13 incorporate that into their presentation
14 to the Board. That being said, the
15 DiLemme application is being asked to be
16 deferred to the March meeting.

17 Discussion from the Board?

18 The public hearing is still open,
19 but I have another fact for you. I know
20 I will not be present for the March
21 meeting. If we choose to defer, we as a
22 Board can defer until the meeting after
23 that.

24 MR. BELL: That would be a good
25 idea because I won't be here.

2 CHAIRMAN SCALZO: You won't be here
3 in March?

4 MR. BELL: No. I'll be on a
5 business trip.

6 CHAIRMAN SCALZO: That being said,
7 Members of the Board, we have in front of
8 us now a request for deferring the
9 application from being heard. As the
10 Vice Chair and myself will not be here
11 for the March meeting, we can defer to
12 April.

13 If we should choose to do that, I'm
14 going to recommend to the Board that we
15 ask the applicant to re-notice for that
16 because it's a solid two months out and
17 people tend to not mark up their
18 calendars. It would be a good reminder
19 for them.

20 First and foremost, does anyone on
21 the Board have any objections or comments
22 to deferring this or would we like to
23 just continue with the application this
24 evening?

25 MS. BANKS: I object.

2 CHAIRMAN SCALZO: To?

3 MS. BANKS: To deferral.

4 CHAIRMAN SCALZO: You object to
5 deferral?

6 MS. BANKS: I do. The reason I
7 object to deferral is, in looking in the
8 packet, there is no CO. They don't have
9 a certificate to operate. It's technically
10 not a legal business, unless some other
11 development has come out. I don't know
12 how we would, like, interpret existing
13 zoning law for a business that's actually
14 illegal.

15 CHAIRMAN SCALZO: Okay. Ms. Banks,
16 that's a very solid point that you make.
17 However, we're not here to enforce any
18 type of code compliance, whether they
19 have a certificate of occupancy or not.
20 They are here for an interpretation only.
21 They are currently in court for this
22 matter.

23 MR. DONOVAN: If I can, Mr. Chairman.
24 Their argument, and I'm not saying that
25 it's a sound argument or -- is or is not.

2 Their argument is -- one of their
3 arguments is they are permitted as a
4 preexisting nonconforming use, which
5 would mean they may not have a
6 certificate of occupancy.

7 Also part of their argument is we
8 need to review historical data from the
9 Town because that data may indicate that
10 we are a permitted use.

11 There is a concept, which I think
12 is very important, which is due process,
13 right. That is that you give the
14 applicant in front of the Board the
15 opportunity to prove their case. A
16 reasonable opportunity. There is nothing
17 in the law that says they have seventeen
18 days or seventy-two days to provide the
19 information, but they should be afforded,
20 in my view, due process, which would
21 require a reasonable opportunity to
22 present their case.

23 The other thing that needs to be
24 factored in is the information they are
25 requesting would appear to be in the

2 hands of the Town.

3 MS. REIN: Dave, how can they
4 operate without a CO? I don't get that.

5 MR. DONOVAN: Because there's a
6 process. We can like the process or not
7 like the process.

8 MS. REIN: I just don't understand
9 it. I don't understand why a company
10 that's been around as long as they
11 have --

12 MR. DONOVAN: Well, that's part of
13 the issue in front of the Board. I would
14 ask you not to prejudge that until you
15 have all the information, or at least
16 give them the time to present the
17 information.

18 MS. REIN: Will they be coming back
19 with a CO?

20 CHAIRMAN SCALZO: That we're not
21 sure of. Because they asked for the
22 historical documentation dating back to
23 1974 I believe, which the zoning -- I'm
24 not sure. The Town used to have an R-4
25 Zone. They had AR. They had different

2 zones. I do believe the zone that this
3 is in used to be categorized a different
4 way. The applicant's representation is
5 looking for an opportunity to fully
6 evaluate the code changes from '74 on to
7 see where they fall.

8 MS. REIN: Darren, again I'm not
9 understanding this. Regardless of that,
10 how that turns out, wouldn't they still
11 need a CO to operate or no?

12 CHAIRMAN SCALZO: That I can't
13 answer.

14 MR. DONOVAN: One of their arguments
15 is that they were permitted as a pre-
16 existing nonconforming use, which means
17 they were legal when they started. That
18 could be because it wasn't prohibited.
19 I don't know what the answer is. Do
20 they ultimately have to have a CO? No.

21 MS. REIN: They do not?

22 MR. DONOVAN: They do not. If you
23 purchased a house before the requirement
24 for a CO, there wouldn't be a CO for your
25 house.

2 MS. REIN: Are you saying that they
3 could be grandfathered in to that?

4 MR. DONOVAN: I'm not saying
5 anything other than they should be given
6 the opportunity to present whatever
7 evidence they want to present, then you
8 have all the evidence in front of you so
9 whatever determination you make is well
10 founded.

11 Just recall, this is a record-based
12 proceeding. So long as the applicant in
13 front of the Board, as well as those
14 opposed to the application, have the time
15 and the ability to present all of their
16 arguments fully and fairly and you have
17 the opportunity to consider them, then
18 your determination is going to be
19 supported because it won't be arbitrary
20 and capricious, which is the standard to
21 which this Board is held.

22 MS. REIN: Let me ask something
23 that's a little besides that. If they
24 don't have a CO and they are allowed to
25 operate without a CO, how are they being

2 graded for taxes?

3 CHAIRMAN SCALZO: That is
4 completely -- we are here to interpret
5 code -- grant variances when appropriate
6 and interpret code for applicants.
7 That's something else that you may want
8 to go ahead and make an appointment with
9 the assessor's office to see how they
10 determine that.

11 MS. BANKS: I have a question. In
12 the application I didn't see a request or
13 any mention of the CO. It was just
14 about, like, use. They don't need a CO
15 and we can kind of just --

16 CHAIRMAN SCALZO: He's not saying
17 they don't need a CO.

18 MR. DONOVAN: I'm saying they're
19 entitled to due process to make their
20 argument that they are allowed to
21 continue, perhaps without a CO. Perhaps
22 that will be a problem for them. I don't
23 know. They haven't finalized their
24 argument in front of us. Their allegation
25 is they are waiting for information from

2 the Town that they don't have that
3 they need for their case.

4 MS. BANKS: Okay. Just one more
5 question.

6 MR. DONOVAN: You can have more
7 than one.

8 MS. BANKS: If we were to move
9 forward with an approval because we want
10 to allow due process --

11 CHAIRMAN SCALZO: We're not getting
12 there yet. What we're asking for tonight
13 is just if the Board is willing to grant
14 the applicant another two months to
15 assemble their package to re-present to
16 us or to present to us. Let's not get
17 ahead of it by asking if we do this or if
18 we do that. We need to hear all --

19 MS. BANKS: The question -- what
20 I'm asking is if we allow the extension
21 really, right, at what point -- because
22 this has been going on for a long time.
23 After I looked through all the notes and
24 all the evidence they presented, it's
25 been going on for so long. I would like

2 to bring closure to this for both the
3 business and the residents.

4 Let's say, for example, April comes
5 up and they ask for another extension.
6 At what point are we allowed to say --

7 CHAIRMAN SCALZO: We don't have to
8 grant one after April. However, we also
9 need to stay in our lane with a few of
10 the points that you just made with regard
11 to how long this has been going on. That
12 is a code compliance issue. Our
13 procedures here are for evaluating
14 applications for area variances, use
15 variances and interpretation of code.
16 That's it. As far as the length of this
17 application, we've only seen it since
18 January. That's it. So it's new to us.
19 It might be very old in the eyes of the
20 Town, but to the ZBA it's new.

21 Did I cover that correctly, Counsel?

22 MR. DONOVAN: Yes.

23 MS. REIN: If we do this and give
24 them the time that they are requesting,
25 when they come back in front of us will

2 they come with a definitive answer as to
3 whether or not they need a CO or need a
4 permit? How can we vote on something if
5 we don't have that? How do we --

6 CHAIRMAN SCALZO: I'm going to
7 apologize for not being here last month.
8 I had something that kept me away. When
9 I read through the entire package, the
10 applicant's representation right on the
11 first sheet had said we don't have all of
12 the zoning information that we would like
13 to make a good presentation, and they
14 still went on with it. So right off the
15 bat, you know -- I'm not going to say the
16 applicant -- they didn't have all the
17 tools in the shed that they needed. They
18 asked for additional time. Now the Town
19 has provided them, I suppose, with the
20 zoning information that they had requested.

21 MS. REIN: I was just curious,
22 because they've been in business for so
23 long, how did they not have the tools?
24 How did they not know what was going on?
25 Did anybody know?

2 CHAIRMAN SCALZO: I can't answer
3 for Code Compliance. Perhaps, Donna,
4 that's a question for not even Joe, but
5 people that were here before Joe.

6 You didn't work here in 1981. Did
7 you, Joe?

8 MR. MATTINA: No.

9 CHAIRMAN SCALZO: We both had more
10 hair then.

11 All we have in front of us is
12 whether or not we want to allow the
13 applicant to extend. As a Board, with
14 the Chair and the Vice Chair not being
15 available for the month of March, do we
16 want to extend to April, or we can close
17 the public hearing and go forward tonight.

18 MS. REIN: What would that entail?

19 CHAIRMAN SCALZO: Someone makes a
20 motion to close the public hearing and
21 then we vote on the application as it has
22 been presented. I think we'd be running
23 ourselves into a real trouble spot with
24 that.

25 MR. BELL: You weren't here.

2 MS. REIN: I read everything.

3 MR. DONOVAN: Just a couple things.
4 Because we're always concerned about
5 setting a precedent, in my whatever,
6 fifteen, twenty years here, we have never
7 not granted a request for an adjournment.
8 This would be the first time.

9 If we close the public hearing and
10 vote, let's just say we deny the
11 application, it just goes back to court,
12 right. It doesn't stop operation unless
13 the Town gets something called a
14 temporary restraining order. It would
15 just go back to court.

16 The argument -- I'm not going to be
17 their attorney, but an argument could be
18 made, hey, you didn't allow us due process.
19 We asked from our initial application or
20 we advised you that we were awaiting
21 information from the Town that we don't
22 have, and you did -- another arm of the
23 Town said to me we're going to deny
24 your application while you're waiting
25 for information from the Town.

2 MS. BANKS: I would be comfortable
3 extending until next month but not until
4 April.

5 MR. DONOVAN: I don't have anything
6 to do with that.

7 CHAIRMAN SCALZO: I understand your
8 position. As a seven-member Board,
9 knowing that two members won't be here,
10 it would need to be unanimous. It would
11 have to be four votes aye or nay, either
12 way. Actually, no, that's not true.
13 Anything less than four is a denial.
14 Correct?

15 MR. DONOVAN: It depends.

16 CHAIRMAN SCALZO: This is an
17 interpretation.

18 MR. DONOVAN: It's a nonaction.

19 CHAIRMAN SCALZO: A nonaction.
20 So let's take this in smaller
21 steps.

22 MR. DONOVAN: If I may. One other
23 thing. I'll remind you of your other
24 precedent. When there are four or five
25 members of the Board present, you have

2 always allowed applicants the ability to
3 defer a vote.

4 CHAIRMAN SCALZO: For a full
5 complement.

6 MR. DONOVAN: Correct.

7 CHAIRMAN SCALZO: Okay. Let's take
8 it in smaller steps. I'll look to the
9 Board for a motion to keep the public
10 hearing open, we'd have to do it on a
11 month-by-month basis, or we can keep the
12 public hearing open until -- we can even
13 say April at this point, could we?

14 MR. DONOVAN: I would recommend, as
15 I always recommend, if you're going to do
16 that, you make a motion to keep the
17 public hearing open until a date certain.
18 Someone on the Board should, if they're
19 so inclined, make a motion for whatever
20 that date certain may be.

21 CHAIRMAN SCALZO: Then we have the
22 opportunity at the next meeting to extend.

23 MR. DONOVAN: Unless there's a
24 motion made to extend it to April.

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

2 extend the application to April.

3 MR. MASTEN: I'll second that.

4 CHAIRMAN SCALZO: Is that clear
5 enough, Counsel?

6 MR. DONOVAN: Yes. The motion is
7 to extend the public hearing until April.

8 Mr. Chairman, if I understand
9 correctly, you're going to direct that
10 the applicant re-notice. Correct?

11 CHAIRMAN SCALZO: That's correct.

12 MR. DONOVAN: That's the motion in
13 front of the Board.

14 CHAIRMAN SCALZO: We have a motion
15 from Mr. Bell. We have a second from
16 Mr. Masten.

17 Can you roll on that, Siobhan.

18 MS. JABLESNIK: Ms. Banks.

19 MS. BANKS: No.

20 MS. JABLESNIK: Mr. Bell.

21 MR. BELL: Yes.

22 MS. JABLESNIK: Mr. Eberhart.

23 MR. EBERHART: Yes.

24 MS. JABLESNIK: Mr. Hermance.

25 MR. HERMANCE: Yes.

2 MS. JABLESNIK: Mr. Masten.

3 MR. MASTEN: Yes.

4 MS. JABLESNIK: Ms. Rein.

5 MS. REIN: No.

6 MS. JABLESNIK: Mr. Scalzo.

7 CHAIRMAN SCALZO: Yes.

8 That appears to be five ayes and
9 two nays. The motion is carried to keep
10 the public hearing open until April.

11 The next order of business
12 regarding this application is what,
13 Counsel?

14 MR. DONOVAN: Siobhan will notify
15 the applicant that they need to re-notice,
16 and then there's information that they
17 have promised to submit to us. You
18 would need to get that and review that.
19 At the same point in time, the public
20 hearing is open. Any other information
21 that the public wants to submit is
22 properly submitted as well.

23 CHAIRMAN SCALZO: Correct.

24 Anyone that's here to hear the
25 DiLemme application, we are going to --

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the vote was just to keep the public hearing open until April. Anyone that's within 500 feet of the business will be re-noticed, which means you'll get a mailing from the Town indicating when the next meeting is going to be. The fourth Thursday in April we will all hear that application again.

If anyone is not here for that, stick around because we're going to continue with our regularly scheduled agenda. If you were here just for that application, that's it for that one tonight.

(Time noted: 7:17 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 5th day of March 2026.

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

CASH FOR CANS

158 North Plank Road, Newburgh
Section 41; Block 2; Lot 17
B Zone

- - - - - X

Date: February 26, 2026
Time: 7:18 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: SURJEET BASSI

- - - - - X

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

2 CHAIRMAN SCALZO: Our first new
3 business applicant for the evening is
4 Cash for Cans located at 158 North Plank
5 Road in Newburgh. They're seeking area
6 variances for a front yard setback and a
7 lack of vehicle protection to alter the
8 existing freestanding sign for the new
9 occupancy.

10 Siobhan, do we have mailings on
11 this?

12 MS. JABLESNIK: This applicant sent
13 41 letters.

14 CHAIRMAN SCALZO: That is on a
15 State road. Did we get --

16 MS. JABLESNIK: We did not receive
17 County. I'm sorry. They have timed out.
18 I haven't received, but they timed out.

19 MR. DONOVAN: You don't know how
20 lucky you just got.

21 CHAIRMAN SCALZO: Who do we have
22 with us?

23 MR. BASSI: Surjeet Bassi.

24 CHAIRMAN SCALZO: That is as it
25 appears on the application, S-U-R-J-E-E-T

2 B-A-S-S-I?

3 MR. BASSI: Yes.

4 CHAIRMAN SCALZO: Very good. Thank
5 you.

6 With that one sentence if I've
7 captured what it is you're looking to do
8 -- obviously this is the old Big 3 Deli
9 just over by the Golden Rail. You're
10 pretty much just putting a sign up where
11 the other sign is?

12 MR. BASSI: Yes.

13 CHAIRMAN SCALZO: The same size?

14 MR. BASSI: The same size.

15 CHAIRMAN SCALZO: It didn't have
16 street protection before and you're not
17 going to have it now. Basically your
18 application says just that.

19 If there are any other comments or
20 you'd like to add to that --

21 MR. BASSI: With no sign there's no
22 business.

23 CHAIRMAN SCALZO: That is true.
24 That is true.

25 All right. I'm going to look to

2 the Board. I'll start down at this end.
3 Ms. Rein, do you have any questions
4 or comments regarding this application?

5 MS. REIN: I do not.

6 CHAIRMAN SCALZO: You're just going
7 to see a sign go up. That's the only
8 change.

9 The building looks great. It
10 really does.

11 Mr. Masten.

12 MR. MASTEN: I have none.

13 CHAIRMAN SCALZO: Mr. Bell.

14 MR. BELL: None.

15 CHAIRMAN SCALZO: Mr. Hermance.

16 MR. HERMANCE: No questions.

17 CHAIRMAN SCALZO: Mr. Eberhart.

18 MR. EBERHART: No.

19 CHAIRMAN SCALZO: Ms. Banks.

20 MS. BANKS: No.

21 CHAIRMAN SCALZO: At this point I'm
22 going to open it up to any members of the
23 public that wish to comment on this
24 application.

25 (No response.)

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

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

7 MR. BELL: I'll second it.

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

12 MS. BANKS: Aye.

13 MR. EBERHART: Aye.

14 MR. HERMANCENCE: Aye.

15 CHAIRMAN SCALZO: Aye.

16 MR. BELL: Aye.

17 MR. MASTEN: Aye.

18 MS. REIN: Aye.

19 CHAIRMAN SCALZO: Those opposed?

20 (No response.)

21 CHAIRMAN SCALZO: Very good.

22 Counsel, this is a Type 2 action
23 under SEQRA. Correct?

24 MR. DONOVAN: That is correct.

25 It's a replacement in kind.

2 CHAIRMAN SCALZO: We're going to go
3 through the variance criteria and discuss
4 the five factors which we're weighing,
5 the first one being whether or not the
6 benefit can be achieved by other means
7 feasible to the applicant. In this
8 instance I would say no.

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

12 MS. BANKS: No.

13 MR. EBERHART: No.

14 MR. HERMANCENCE: No.

15 MR. BELL: No.

16 MR. MASTEN: No.

17 MS. REIN: No.

18 CHAIRMAN SCALZO: No.

19 Third, if the request is substantial.
20 No more substantial than what's already
21 there.

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

25 MS. BANKS: No.

2 MR. EBERHART: No.

3 MR. HERMANCE: No.

4 MR. BELL: No.

5 MR. MASTEN: No.

6 MS. REIN: No.

7 CHAIRMAN SCALZO: That would be no.

8 Fifth, whether the alleged difficulty
9 is self-created which is relevant but not
10 determinative. Actually, this is not
11 self-created. They inherited the sign
12 right where it is.

13 MR. DONOVAN: They purchased with
14 the knowledge. They are charged with the
15 knowledge. If they make changes, they
16 have to comply with the new zoning. So
17 it is self-created, Mr. Chairman.

18 CHAIRMAN SCALZO: Thanks, Counsel.
19 I should have stopped while I was ahead.

20 Having gone through the five-factor
21 balancing test, does the Board have a
22 motion of some sort?

23 MS. BANKS: I'll make a motion to
24 approve.

25 MR. EBERHART: I'll second.

2 CHAIRMAN SCALZO: We have a motion
3 for approval from Ms. Banks. We have a
4 second from Mr. Eberhart.

5 Can you roll on that, please,
6 Siobhan.

7 MS. JABLESNIK: Ms. Banks.

8 MS. BANKS: Yes.

9 MS. JABLESNIK: Mr. Bell.

10 MR. BELL: Yes.

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 The motion is carried. The
22 variances are approved.

23 Good luck, sir.

24

25 (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 5th day of March 2026.

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

DEAN ZAMBITO

23 Herrmann Avenue, Newburgh
Section 100; Block 5; Lot 11
R-2 Zone

- - - - - X

Date: February 26, 2026
Time: 7:28 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: WILL HERNANDEZ
DEAN ZAMBITO

- - - - - X

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

2 CHAIRMAN SCALZO: Our second new
3 business application this evening is
4 Dean Zambito, 23 Herrmann Avenue in
5 Newburgh, seeking area variances of
6 maximum lot building coverage and
7 increasing the degree of nonconformity
8 of the front yard to build a 15 by 20
9 side yard addition.

10 Do we have mailings on that,
11 Siobhan?

12 MS. JABLESNIK: This applicant sent
13 45 letters.

14 CHAIRMAN SCALZO: They're more than
15 500 feet away from Route 17K so there is
16 no County requirement for GML 239.

17 Sir, we've gone and looked at the
18 lots. Each of these applications,
19 everybody on the Board goes and takes a
20 look at.

21 Your application is pretty
22 straightforward. You've got a pretty
23 small lot. The garage sticks out further
24 than what the current front yard setback
25 allows, so your addition is not what's

2 causing you to be in front of the Board
3 tonight, it's the garage that's
4 preexisting. You have preexisting
5 nonconforming conditions.

6 The lot being small, I did see that
7 you're over on lot coverage by 5, 6
8 percent. Something like that.

9 I'm sorry. Let me back up. Who do
10 we have in front of us?

11 MR. HERNANDEZ: Will Hernandez. I
12 represent Mr. Zambito. I'm the
13 contractor for 23 Herrmann Avenue.

14 We're looking for a 15 by 20 family
15 room addition which is not going to make
16 any impact on the neighborhood. It's
17 actually going to make it better. That's
18 pretty much what we're looking for.

19 This is the owner, Mr. Zambito,
20 Dean Zambito.

21 CHAIRMAN SCALZO: Very good. Thank
22 you.

23 I'm going to start down at the
24 other end. Ms. Banks, do you have any
25 questions or --

2 MS. BANKS: No.

3 MR. EBERHART: No questions.

4 CHAIRMAN SCALZO: Mr. Hermance.

5 MR. HERMANCE: The variance is
6 actually just for the garage. It's
7 already preexisting.

8 CHAIRMAN SCALZO: And lot coverage.
9 Mr. Bell.

10 MR. BELL: None.

11 CHAIRMAN SCALZO: Mr. Masten.

12 MR. MASTEN: Nothing.

13 CHAIRMAN SCALZO: Ms. Rein.

14 MS. REIN: There's just something
15 here on letter E, the third page in, the
16 hardship has not been self-created. The
17 preexisting nonconforming front yard is
18 not a self-created hardship, but it's
19 saying the 82 square foot lot surface
20 coverage is. I'm confused.

21 CHAIRMAN SCALZO: The 82 square
22 foot surface lot coverage -- surface lot
23 coverage is self-created because if he
24 didn't do the addition, he wouldn't need
25 the extra 82 square feet.

2 MR. DONOVAN: They're both self-
3 created.

4 CHAIRMAN SCALZO: Dave just
5 straightened me out.

6 MR. DONOVAN: You're charged with
7 the knowledge --

8 MS. REIN: They are both self-
9 created?

10 CHAIRMAN SCALZO: They are.

11 MS. REIN: They may want to amend
12 that.

13 MR. DONOVAN: That's their argument.

14 CHAIRMAN SCALZO: Well the front
15 yard is --

16 MR. DONOVAN: Their application is
17 their argument. You don't have to agree
18 with that.

19 MS. REIN: But it has to be correct.

20 MR. DONOVAN: No, it doesn't.

21 MS. REIN: It's their opinion?

22 MR. DONOVAN: It's their opinion.
23 It's their argument. Self-created for an
24 area variance is not an impediment for
25 granting relief.

2 MS. REIN: Thank you. You know I
3 read everything.

4 CHAIRMAN SCALZO: How did the short
5 form EAF do? Was that okay?

6 MS. REIN: Fine.

7 CHAIRMAN SCALZO: That's one of
8 those self fill out ones and comes with a
9 little map on the back.

10 MS. REIN: I would stop while
11 you're ahead.

12 CHAIRMAN SCALZO: Does anyone from
13 the public have any questions or comments
14 regarding this application?

15 (No response.)

16 CHAIRMAN SCALZO: I'm going to look
17 back at the Board for a motion to close
18 the public hearing.

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

21 MS. REIN: I'll second it.

22 MS. BANKS: Second.

23 CHAIRMAN SCALZO: We have a motion
24 from Mr. Masten. We have stereo seconds
25 from Ms. Rein and Ms. Banks. All in

2 favor.

3 MS. BANKS: Aye.

4 MR. EBERHART: Aye.

5 MR. HERMANCE: Aye.

6 CHAIRMAN SCALZO: Aye.

7 MR. BELL: Aye.

8 MR. MASTEN: Aye.

9 MS. REIN: Aye.

10 CHAIRMAN SCALZO: Those opposed?

11 (No response.)

12 CHAIRMAN SCALZO: This also is a
13 Type 2 action under SEQRA?

14 MR. DONOVAN: Correct, Mr. Chairman.

15 CHAIRMAN SCALZO: I know what I'm
16 going to say when it comes to the fifth
17 one.

18 The first one being whether or not
19 the benefit can be achieved by other
20 means feasible to the applicant. He's
21 not moving the garage and he'd like to
22 do an addition, so no.

23 Second, if there's an undesirable
24 change in the neighborhood character
25 or a detriment to nearby properties.

2 No.

3 The third, whether the request is
4 substantial. It does not appear so.

5 Fourth, whether the request will
6 have adverse physical or environmental
7 effects.

8 MR. BELL: None.

9 CHAIRMAN SCALZO: Fifth, whether
10 the alleged difficulty is self-created
11 which is relevant but not determinative.
12 I will keep my trap shut.

13 MR. BELL: Yes.

14 CHAIRMAN SCALZO: Yes, it is.

15 Very good. Having gone through the
16 balancing tests of the area variance,
17 does the Board have a motion of some
18 sort?

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

21 MR. HERMANCE: Second.

22 CHAIRMAN SCALZO: We have a motion
23 for approval from Mr. Eberhart. We have
24 a second from Mr. Hermance.

25 Can you roll on that, please,

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Dean Zambito

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Siobhan.

MS. JABLESNIK: Ms. Banks.

MS. BANKS: Yes.

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: Ms. Rein.

MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo.

CHAIRMAN SCALZO: Yes.

The motion is carried. The
variances are approved.

Good luck, sir.

MR. HERNANDEZ: Thank you.

(Time noted: 7:35 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 5th day of March 2026.

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

JOSEPH & BRIDGET ZAPPONE

35 & 41 Lattintown Road, Newburgh
Section 9; Block 3; Lots 12.1 & 12.2
R-3 Zone

----- X

Date: February 26, 2026
Time: 7:35 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: JAY SAMUELSON

----- X

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

2 CHAIRMAN SCALZO: Our third
3 applicant for this evening is Joseph and
4 Bridget Zappone, 35 and 41 Lattintown
5 Road. This is a Planning Board referral
6 for an area variance for a proposed lot
7 line change. It requires an area
8 variance for an accessory structure 0.7
9 away from the property line where 5 feet
10 is required.

11 This application is a resubmission
12 from September 25, 2025.

13 Siobhan, are we within 500 feet of
14 New York State Route 9W there?

15 MS. JABLESNIK: I don't think so.

16 CHAIRMAN SCALZO: That's fine. I
17 was just asking.

18 Who do we have with us?

19 MR. SAMUELSON: Good evening. Jay
20 Samuelson, Engineering Properties,
21 representing the applicants, Joe and
22 Bridget Zappone.

23 CHAIRMAN SCALZO: Okay. Mr.
24 Samuelson, we're going to let you go
25 ahead and present. We have sort of heard

2 this before.

3 MR. SAMUELSON: So the application
4 was first presented to you in September
5 2025. Unfortunately I was out of town
6 that week and could not be here. A
7 representative of my office was here
8 who made the application.

9 After that meeting there were
10 several requests of the Board for us
11 to speak with the neighbor, look for
12 other options of how this could be
13 remedied without a variance. That
14 did take several months to play out.
15 It is my fault that I did not ask for
16 extensions or deferrals of those
17 public hearings, so I apologize.
18 That's my fault. We did make a
19 reapplication in January to rehear
20 the thing.

21 During that time we met -- the
22 applicant met with the neighbor
23 several times. They talked about an
24 easement, they talked about lot line
25 changes. There were several options

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that went back and forth. An agreement that was acceptable to all parties was just not able to be achieved. They could not come to agreement on how this could be accomplished.

Also in that timeframe the applicant was able to find the certificate of compliance that they received from the Town of Newburgh Building Department for the pool shed. That was submitted as part of the application.

As a little bit of additional background, this house was built in 1994. The pool was built in 1998. The pool shed was built roughly around 2012. The certificate of compliance was issued in 2014. This has all been there for at least fourteen years. Yes, it's been there awhile.

You can tell by the pictures that were submitted that the actual lot

2 line was quite unknown by the two --
3 the applicant and the neighbor. As
4 you can see, the applicant did
5 maintain several feet around that
6 pool shed and their pool for many
7 years. The last time that they had
8 a survey done was when the original
9 subdivision was done and the house
10 was built, prior to the pool and
11 everything else being built. They
12 didn't realize where the property
13 line was in relation to the pool
14 until they did the recent survey
15 which was submitted to the Planning
16 Board for a lot line change, which is
17 how we got here.

18 As you can see, the pool shed
19 has been there for a long time. The
20 applicant has maintained the area
21 around it. There was no argument
22 about where the line was until an
23 actual map was produced, or discussion
24 about it.

25 Here we are tonight. Basically

2 my request is at this point in time,
3 since there was a certificate of
4 compliance issued for that pool shed,
5 that you issue a variance just to
6 memorialize that so we can move
7 forward with the lot line change.

8 CHAIRMAN SCALZO: Thank you. We
9 are in receipt of your certificate of
10 compliance. Siobhan also reviewed the
11 file, which I don't know if you have the
12 copy of the --

13 MR. SAMUELSON: I do not.

14 CHAIRMAN SCALZO: I'm going to give
15 this to you. The applicant, at that
16 point, for the shed to be placed on the
17 property, indicated on that map that the
18 shed would be 30 feet away from the
19 property line. While we do have a
20 certificate of compliance here that
21 indicates that it met all of the
22 criteria, one document is false. I'm
23 not sure which one or if you were
24 anticipating that the Code Compliance
25 Department would go out there and

2 certify, almost as a licensed land
3 surveyor would, --

4 MR. SAMUELSON: I understand your
5 point.

6 CHAIRMAN SCALZO: -- that that is
7 in compliance. I'm not quite sure where
8 to go with that. However, knowing --
9 this document was awesome to me because
10 it says here that the enclosed shed and
11 covered porch are a prefab. That shed is
12 prefabricated. Right?

13 MR. SAMUELSON: That is my
14 understanding.

15 CHAIRMAN SCALZO: It came in on a
16 truck just like mine did. You know
17 what's cool about those is you can move
18 them. Because the property line diverges
19 from the shed, if you were to pull the
20 shed in one direction, you can get that 5
21 feet.

22 MR. SAMUELSON: Then it doesn't
23 line up with the pool.

24 CHAIRMAN SCALZO: That's terrible.
25 I have OCD. That would just rub me the

2 wrong way.

3 Anyway, that's what we just found
4 out ourselves. I know I just dropped
5 that on you.

6 MR. SAMUELSON: That's fine. This
7 is new knowledge to me.

8 CHAIRMAN SCALZO: That's just the
9 way I'm looking at things. I am but one
10 of seven people here that are going to
11 make or break it, if you will.

12 I'm going to turn to my left here.
13 Ms. Rein, do you have questions or
14 comments regarding this application?

15 MS. REIN: I'm wondering, given
16 this new information, if the people
17 involved can figure this out for
18 themselves.

19 CHAIRMAN SCALZO: Actually, the
20 applicant's representative had said that
21 they had approached the contiguous
22 neighbors.

23 MS. REIN: They couldn't figure
24 anything out.

25 CHAIRMAN SCALZO: It's not that

2 they couldn't figure it out. They
3 couldn't come to an agreement with
4 regard to either an easement or a
5 license agreement to allow them to
6 maintain --

7 MS. REIN: I understand that.

8 CHAIRMAN SCALZO: You've been on
9 the Board long enough, Donna. You hear
10 me say the big thing for me is if you've
11 got something that close to a property
12 line and you want to paint the outside of
13 that post, there's no way your behind is
14 not on somebody else's property when
15 you're doing it.

16 MS. REIN: What I'm saying is since
17 this new information came to this
18 gentleman, why not bring it back to the
19 folks involved and say well, can you just
20 move it 5 feet and be done with this.

21 CHAIRMAN SCALZO: I hadn't thought
22 of that at the last meeting when Mr.
23 Babcock was here. My OCD hadn't kicked
24 in until you said it.

25 Actually, we'll give you the

2 opportunity, if you want to -- now that
3 you have that other information, if you
4 wanted to go ahead and confer with your
5 client. You just heard us defer one for
6 a month. I'm going to give you that
7 opportunity if you'd like. If you'd like
8 us to go ahead and continue, we can do
9 that, too.

10 MR. SAMUELSON: I would like the
11 opportunity to discuss this with them.
12 Like I said, they didn't have the record
13 of the application. They only had the
14 record of the certificate of compliance.
15 I remember reading the minutes from the
16 meeting in September. The Building
17 Department said they had no records they
18 were aware of. Obviously we found some
19 somewhere. There are some conversations
20 that I would like to have with the
21 applicants.

22 MR. BELL: That's a good idea.

23 CHAIRMAN SCALZO: So since you're
24 here and you did present, we're going
25 to go ahead, if there are any other

2 comments --

3 MR. SAMUELSON: Correct.

4 CHAIRMAN SCALZO: -- that can
5 benefit you, that would be wonderful.

6 Ms. Rein, great idea.

7 Mr. Masten.

8 MR. MASTEN: Nothing.

9 CHAIRMAN SCALZO: Mr. Bell.

10 MR. BELL: No.

11 CHAIRMAN SCALZO: Mr. Hermance.

12 MR. HERMANCE: No. I have no
13 questions.

14 CHAIRMAN SCALZO: Mr. Eberhart.

15 MR. EBERHART: No.

16 CHAIRMAN SCALZO: Ms. Banks.

17 MS. BANKS: No.

18 CHAIRMAN SCALZO: At this point the
19 public hearing is open. Is there anyone
20 here from the public that wishes to speak
21 about this application?

22 Please step forward and state your
23 names loud enough for our recording
24 stenographer to be able to capture it.

25 MR. WENZEL: Stephen Wenzel, owner

2 of the adjacent property.

3 CHAIRMAN SCALZO: Very good.

4 MS. MAYLE: My name is Judith
5 Mayle, I'm an attorney that represents
6 Mr. Wenzel in this matter.

7 I do have some documents for the
8 Board. I apologize, we just recently
9 found out about the hearing on the 21st.
10 I didn't have as much time as I would
11 have liked to make a more formal
12 presentation to the Board this evening.
13 I only have three copies. Like I said,
14 it's not as formal as I would prefer.

15 CHAIRMAN SCALZO: It's good to see
16 you.

17 MS. MAYLE: Same here.

18 CHAIRMAN SCALZO: It appears as
19 though we may be extending the public
20 hearing, so if you don't get to present
21 as you wanted with the lack of time, I
22 have a feeling we're going to have
23 another opportunity.

24 MS. MAYLE: The most I would
25 present to you is additional copies of

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this document so all the Board Members would have it in front of them.

I'd just like to speak to a couple of issues that you raised this evening and that were addressed by the applicant's representative.

First, Mr. Wenzel was contacted by Bridget Zappone around October 8th of 2025 to discuss a potential easement to allow them to go over his property to maintain the site. After Mr. Wenzel looked at the Planning Board application and the ZBA file and we had some discussion, he went down and looked at the property. It was discovered that actually the corner of the building, as well as the concrete foundation and the required fencing that goes around the pool, encroaches onto Mr. Wenzel's property.

As was noted, they are maintaining a fairly large section of his property. Almost 30 feet into the property line to maintain it. You can see that from the

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pictures that are presented with the Zoning Board application.

Mr. Wenzel did actively engage in discussions with the Zappones. There were a number of correspondence, which I have attached to the documentation, of e-mails and exchanges of surveys on not an easement but a conveyance or sale of a portion of the property to address not only the variance but the significant encroachment onto Mr. Wenzel's property. The last correspondence we had was October 21st where we outlined the parameters of the sale and the cost of the property. We asked them to take that into consideration, and of course to consult with their counsel. We agreed with their proposal on the amount of property they wanted. We asked them to take all of that into consideration and get back to us. As of November 15th when I last e-mailed Ms. Zappone, we got no response from them to our proposal to sell the property.

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Mr. Wenzel is still actively involved. He would like to resolve this issue. We'd like to avoid going to litigation to try to quiet the encroachment and recover the property.

We agree that probably the best solution here, and meets one of your factors, is to pursue other means to remedy the particular issue, which would be, in this proposal, a sale of the property.

We also noted that in a letter from, I believe he's the Planning Board attorney, Mr. Cordisco, noted that the C of O was issued based on a representation by the applicant that there was a 30-foot distance from the building to Mr. Wenzel's property line.

We would submit that this is a self-created hardship on their part.

In addition, the variances themselves don't remedy the encroachment of the building and the structure. Those have to be addressed in some way, shape

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or form. Like I said, we believe that should be done through a conveyance with the easement.

Because the property is so close, you're asking for a hundred percent variance there, because it's right on and over the property line. It's a substantial variance. There will be a hardship to Mr. Wenzel because if he tries to use that particular portion of the property, there could be a liability exposed to him, especially with the pool over in that area. For the future sale of the property there's going to be an impact because we've got this encroachment, we've got this building right on and over the line. That needs to be addressed, whether it's here or in court. It may delay or negatively impact his ability to sell the property.

For all of those reasons we believe that the variance should be denied and that you encourage the applicant to maybe move the building, if it can be moved,

2 remove the slab and move the fence along
3 with that, or, in the alternative, we are
4 very willing to open those -- continue
5 discussing selling the property. We just
6 never heard back from the Zappones after
7 the offer was submitted.

8 CHAIRMAN SCALZO: Thank you very
9 much.

10 MS. MAYLE: Thank you.

11 CHAIRMAN SCALZO: Does anyone else
12 from the public wish to speak about this
13 application?

14 (No response.)

15 CHAIRMAN SCALZO: Mr. Samuelson,
16 did you want to add anything? I was
17 going to look to the Board for a motion
18 to keep the public hearing open.

19 MR. SAMUELSON: No. I can answer a
20 few of those questions and discuss what's
21 going on.

22 CHAIRMAN SCALZO: That's fine, but
23 I'll tell you what. We had a bit of
24 documentation laid on us which we haven't
25 had the chance to evaluate, which we

2 will. Going from there, this will also
3 be published on the Town of Newburgh
4 website.

5 MR. SAMUELSON: I'll ask if I can
6 get a copy of that.

7 CHAIRMAN SCALZO: You will have the
8 opportunity to review and comment against
9 these as well. I'll let you continue if
10 you'd like.

11 MR. SAMUELSON: No. I will be
12 happy to respond in writing. That's
13 fine.

14 CHAIRMAN SCALZO: At this point I'm
15 going to look to the Board for a motion
16 to maintain the public hearing. Again
17 folks, I am not here and Darrell is not
18 here for the month of March. I don't
19 want to do that. This one is a little
20 different. I'm going to look to the
21 Board for a little advice here. How do
22 you folks want to handle that? We can't
23 defer everything, if there are holdovers,
24 until April. So far it's only two if we
25 go ahead with this one.

2 MS. REIN: I think we should hold
3 it over until April.

4 CHAIRMAN SCALZO: That's fine.

5 MR. EBERHART: I'll make a motion
6 that we move this to April.

7 MS. REIN: I'll second.

8 CHAIRMAN SCALZO: We have a motion
9 to move this to the April public hearing
10 from Mr. Eberhart. We have a second from
11 Ms. Rein.

12 Counsel, just because this is now
13 two months out, although this is the
14 first time we're hearing this in theory,
15 is it appropriate that I don't ask for
16 this to be re-noticed?

17 MR. DONOVAN: I'll make a suggestion.
18 The other application had several members
19 of the public. This application has one
20 member of the public. I think you would
21 be safe -- just so it's clear, there
22 wouldn't be another mailing. The hearing
23 would be continued to the fourth Thursday
24 in April.

25 Check the Town website because that's

2 -- in fact, I was showing off the Town
3 website today to another municipal
4 client, you should be more like
5 Newburgh. I think that would be okay.

6 CHAIRMAN SCALZO: Okay. So we have
7 a motion to keep the public hearing open,
8 we have a second as well, without having
9 to re-notice the public. All in favor.

10 MS. BANKS: Aye.

11 MR. EBERHART: Aye.

12 MR. HERMANC: Aye.

13 CHAIRMAN SCALZO: Aye.

14 MR. BELL: Aye.

15 MR. MASTEN: Aye.

16 MS. REIN: Aye.

17 CHAIRMAN SCALZO: Those opposed?

18 (No response.)

19 CHAIRMAN SCALZO: Very good. We'll
20 see you in April.

21 MR. SAMUELSON: See you in April.

22 I do have one question. This copy
23 can I have?

24 CHAIRMAN SCALZO: Yes. I'm going
25 to ask Siobhan to post that at the

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request of the chairman with the
application.

MS. JABLESNIK: Post that survey?

CHAIRMAN SCALZO: The survey.

MS. JABLESNIK: Okay.

(Time noted: 7:53 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 5th day of March 2026.

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

LYNDA AND MARK DAIGLE

349 Lakeside Road, Newburgh
Section 33; Block 1; Lot 24
R-1 Zone

----- X

Date: February 26, 2026
Time: 7:53 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, New York

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

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

APPLICANT'S REPRESENTATIVE: MARK DAIGLE

----- X

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

2 CHAIRMAN SCALZO: Now we have held
3 open from the January 2026 meeting, I
4 think which was held over a little longer
5 than that, Linda and Mark Daigle, 349
6 Lakeside Road, area variances of a 10 by
7 20 accessory building in the front yard
8 and less than 5 feet from the property
9 line, area variances of the rear yard,
10 side yard, combined side yards, lot
11 surface coverage and building surface
12 coverage to keep a rear deck.

13 Let's just back up and say there
14 was another portion of this application,
15 which is the shed, which we have already
16 settled. The variances for the shed have
17 been determined as -- those variances
18 were granted for that.

19 MR. DAIGLE: Yes.

20 CHAIRMAN SCALZO: Why we are here
21 is purely for the cantilevered portion of
22 the deck over your property line.

23 Boy oh boy, Counsel and I had a few
24 discussions on this. You also pointed
25 out to us an application that was heard

2 by us in 2019 --

3 MR. DAIGLE: Correct.

4 CHAIRMAN SCALZO: -- on the lake.

5 MR. DAIGLE: Yes.

6 CHAIRMAN SCALZO: There are minor
7 differences between that application and
8 your application.

9 Counsel, if you could pick up where
10 I left off.

11 MR. DONOVAN: I spent more time
12 than I really wanted in my own private
13 purgatory this afternoon reading. Another
14 shout out to the website because I can go
15 back and get the 2019 minutes. I read
16 through those. I also read the Board's
17 written decision that was issued. It
18 would appear that the encroachment over
19 Orange Lake was not the subject of a
20 variance in 2019. The decision says
21 the encroachment is noted by the Board
22 and is permitted to remain because it
23 is preexisting and is neither implicated
24 or impacted by the requested variance.
25 This application appears to be a

2 little bit different because there is
3 a variance for the deck.

4 Some of the things that Code
5 Compliance said in 2019, Jerry
6 Canfield, he said, "One other thing.
7 There was an existing deck that you
8 spoke of on the lake which appears to
9 be an encroachment. I don't know the
10 Board can do anything about it other
11 than make note of it." Jerry again
12 went on to say, "My only concern is a
13 preexisting condition. It's an
14 encroachment over the property line.
15 I think it should be noted as an
16 encroachment," which is what we
17 ultimately did.

18 I noted at the time, as was
19 pointed out at the last meeting, that
20 I didn't think it was an impediment
21 to the Board's action, although there
22 wasn't a request for a variance for
23 that deck.

24 That being said, it seems like
25 such a -- how long has the deck been

2 there? Did you say 2002?

3 MR. DAIGLE: Correct.

4 MR. DONOVAN: 2002. It's been
5 there for twenty-four years. Obviously
6 it hasn't bothered anybody. At the same
7 point in time, you're always concerned
8 about setting a precedent. I don't know
9 if -- what did we talk about, Joe, last
10 time? A terrace that was less than 12
11 inches?

12 MR. MATTINA: Correct.

13 MR. DONOVAN: Did you get your
14 ruler out? Are you less than 12 inches?

15 MR. DAIGLE: No.

16 MR. DONOVAN: You're an honest man.

17 CHAIRMAN SCALZO: We have an honest
18 applicant with us.

19 MR. DAIGLE: I am sorry.

20 MR. DONOVAN: I bet you're sorry
21 you ever brought it up.

22 MR. DAIGLE: The Board did ask me
23 to go around the lake and take a look at
24 some of the other decks.

25 CHAIRMAN SCALZO: We asked you to

2 trespass is what we did.

3 MR. DAIGLE: Encroach and trespass.
4 I didn't want to take any photos because
5 I didn't want to --

6 CHAIRMAN SCALZO: Scare anyone.

7 MR. DAIGLE: Well, they're my
8 neighbors. I don't want to stir the pot
9 so to speak.

10 There are numerous decks that are
11 cantilevered. I counted six or seven on
12 my side of the lake, walking on the ice.

13 CHAIRMAN SCALZO: The difference --
14 I don't know if --

15 MR. DAIGLE: I don't know when they
16 were built. I don't know where their
17 property lines are. I don't know if they
18 are encroaching or -- I'm just saying.
19 Of course that one house on Sunset Cove,
20 that's the one that you were referring
21 to --

22 CHAIRMAN SCALZO: The toolbox
23 house.

24 MR. DAIGLE: -- that was granted a
25 variance. I thought it was a similar

2 case to mine. You're saying it's not.

3 MR. DONOVAN: There was an
4 encroachment, but the encroachment
5 wasn't called out in the variance
6 application. In other words, they
7 didn't apply for a variance for relief
8 from that. What the Board did was they
9 noted it as an encroachment, and it can
10 stay because it's a preexisting
11 condition, but they didn't grant a
12 variance.

13 What's different in your
14 application is, for obvious reasons,
15 you applied for a variance to allow
16 that. The problem for the Board is
17 it encroaches. The Board can't approve
18 an encroachment. We didn't approve it
19 before, we just let it lay.

20 CHAIRMAN SCALZO: It was a non-
21 action.

22 The other issue is you have a deed
23 that's described by metes and bounds.
24 The other decks that may be overhanging,
25 maybe they go to the water line.

2 MR. DAIGLE: Exactly.

3 CHAIRMAN SCALZO: It's very
4 possible. By your deck overhanging your
5 property line has nothing to do with
6 what's on the other side of it. We know
7 it's over yours.

8 MR. DAIGLE: But it does stay
9 within the character of the neighborhood.

10 CHAIRMAN SCALZO: Yeah. I agree.

11 MR. DAIGLE: Very much so.

12 CHAIRMAN SCALZO: This one is a
13 real dilemma for me personally, just
14 because we've had testimony that the lake
15 is an orphan.

16 MR. DAIGLE: Nobody has complained
17 that I know of.

18 CHAIRMAN SCALZO: The fish haven't
19 protested or anything. I've never in my
20 thirteen years on the Board granted a
21 variance for an encroachment. That's a
22 challenge for me. I was looking for
23 anything that I could sink my teeth into,
24 but I came up short. You did your
25 homework, too, and I appreciate that. I

2 don't know where to go at this point.

3 I'm going to look -- Donna, do you
4 have questions?

5 MS. REIN: You look at me.

6 CHAIRMAN SCALZO: Remember the old
7 thinker on the rock.

8 MS. REIN: I'm thinking that
9 there's got to be some way to include
10 this. I mean, a deck -- the deck was
11 approved.

12 CHAIRMAN SCALZO: I'm not sure of
13 that. I was even trying to consider,
14 because Joe threw us the nugget there,
15 the actual foundation is not encroaching.
16 It's just the cantilevered portion.

17 Joe, how does code apply to
18 overhangs when it comes to sides, front
19 yards and every other type of setback?

20 MR. MATTINA: We go by the definition.
21 The definition is unoccupied ground area
22 -- unoccupied area from the ground to
23 the sky, the definition for setbacks.

24 CHAIRMAN SCALZO: Can you repeat
25 that?

2 MR. MATTINA: I'll read the
3 definition. I was just checking to see
4 if that qualified as a dock or something
5 like that. "Rear yard setbacks. The
6 unoccupied ground area fully open between
7 the sky, extended to the full width of
8 the lot from the building to the rear lot
9 line." So from the ground to the sky,
10 open area.

11 CHAIRMAN SCALZO: But then a soffit
12 on a house wouldn't apply.

13 MR. MATTINA: It would apply.

14 CHAIRMAN SCALZO: So when we see
15 offsets to property lines, they shouldn't
16 be from the foundation of the house, they
17 should be from the soffits?

18 MR. MATTINA: There's an exemption
19 in there for soffits and overhangs and
20 roofs.

21 MR. DONOVAN: I have it in front of
22 me. It's 185-18 Subdivision C. "Yard
23 requirements shall not apply to, A,
24 chimneys, open trellises, unroofed steps
25 or terraces not higher than one foot from

2 ground level. B, overhanging roof that
3 does not project into the required yard
4 over 10 percent of the required setback
5 distance. C, awning or moveable canopy
6 that does not project over 10 feet into
7 required yard area. D, fences or walls.
8 E, infrastructure installed from approved
9 site plan. F, off-street parking."

10 Do you want to go back and measure
11 again?

12 CHAIRMAN SCALZO: Do you want to
13 put a bunch of bricks underneath it so
14 it's 11 inches?

15 MR. DAIGLE: That's one way to do
16 it.

17 MR. MATTINA: Can it be a dock or a
18 boat launch? That's what I'm checking
19 out now. 185-43. 185-48.3.

20 MR. DAIGLE: When did this code go
21 into effect?

22 MR. DONOVAN: I don't know.

23 CHAIRMAN SCALZO: You heard the
24 other application about the historical
25 zoning information perhaps. Is that what

2 you're scratching at maybe? I don't
3 know.

4 MR. DAIGLE: Yeah, right.

5 MS. REIN: Can it be included in
6 the initial structure?

7 CHAIRMAN SCALZO: That would be
8 bad.

9 MS. REIN: Why?

10 MR. DONOVAN: No, not necessarily.
11 Because, I mean, the testimony was that
12 the house was originally built in 1935 --

13 MR. DAIGLE: Correct.

14 MR. DONOVAN: -- and then
15 refurbished in 1951. You bought in 1994
16 and put the deck on. There was no deck
17 prior to 2002. Is that accurate or not?

18 MR. DAIGLE: There was a concrete
19 patio. I built a deck on top of that.

20 MR. DONOVAN: But you cantilevered
21 it out?

22 CHAIRMAN SCALZO: Over the concrete
23 patio.

24 MS. REIN: So it can't be considered
25 as part of the deck that was there?

2 CHAIRMAN SCALZO: It was a solid
3 concrete patio. Solid ground, if you
4 will.

5 MR. BELL: He built it out over the
6 concrete.

7 MS. JABLESNIK: Patios don't require
8 a permit. Anything with a deck does.

9 MR. DONOVAN: Which one are you
10 looking at?

11 MR. MATTINA: Docks and decks.

12 MR. DONOVAN: Subdivision 2.

13 CHAIRMAN SCALZO: Who wrote this?

14 MR. MATTINA: That's why I gave it
15 to the attorney.

16 CHAIRMAN SCALZO: This is the first
17 time I've seen the word axis in a code.
18 It says here, "Shall have a minimum
19 setback of 10 feet from the adjacent
20 property line extended into the lake on
21 the same axis as the property line runs
22 on shore where it meets the lake or at a
23 right angle to the mean high water mark,
24 whichever results in the greater setback.
25 Preexisting docks and wharfs which do not

2 conform to these bulk requirements are
3 permitted subject to the provisions of
4 185-19."

5 I almost have to sketch it out. A
6 minimum setback of 10 feet from the
7 adjacent property line extended into the
8 lake on the same axis.

9 MR. DONOVAN: Joe, not to put you
10 on the spot. I can read the minutes.
11 I'll put you on the spot anyway. I don't
12 mean to do this to you either. Do you
13 think that this might apply?

14 MR. MATTINA: The way it's written?

15 MR. DONOVAN: Here's where I'm
16 going, before you answer that question.
17 If you think it might apply, would you
18 want to go out and take a look at the
19 property? If it does apply, then it
20 doesn't need a variance.

21 MR. MATTINA: Well --

22 MR. DONOVAN: Then you could
23 withdraw the application.

24 MR. MATTINA: The way it's written,
25 I don't understand what it says so I'd

2 send it here for an interpretation. I
3 know what it looks like. There's no need
4 for a site inspection. It fits within
5 the parameters of what it says, but then
6 it doesn't fit within what it says.
7 That's why we have a seven-member Board.

8 MS. BANKS: Are we allowed to
9 screen shot things and put it into AI for
10 an interpretation or breakdown during
11 meetings or no?

12 MR. EBERHART: You can do it on
13 your own.

14 CHAIRMAN SCALZO: AI can guide you,
15 but I wouldn't want to trust it to make a
16 legal determination from here.

17 MS. BANKS: Not to make a legal
18 determination. To just make it easier to
19 understand. We definitely wouldn't use
20 it for an interpretation. The interpretation
21 becomes ours.

22 MR. BELL: It does break it down.

23 MR. HERMANCE: I believe you said
24 before that you built the deck and you
25 thought at the time that you didn't need

2 a permit at the time.

3 MR. DAIGLE: Right. I filled out
4 an application, went to the building
5 inspector. He took one look and he said
6 your deck, your proposal is less than 30
7 inches and it's being built on a concrete
8 -- over a concrete patio. He said you
9 don't need one.

10 MR. HERMANCE: That came from the
11 building inspector?

12 MR. DAIGLE: Yes.

13 MS. DAIGLE: That was DiLorenzo.

14 CHAIRMAN SCALZO: In 2002 you built
15 the deck?

16 MR. DAIGLE: 2001. Something like
17 that. 2002. I'm not --

18 CHAIRMAN SCALZO: Joe, the dock
19 section that you pointed us to was added
20 in 2005.

21 MS. BANKS: So it was before.

22 MS. JABLESNIK: We don't know what
23 it said before 2005.

24 MS. BANKS: Right. It was built
25 before that.

2 MS. JABLESNIK: Right. It could
3 have been in there but it might have been
4 changed or something.

5 MS. BANKS: Would this be another
6 situation where we go back and --

7 CHAIRMAN SCALZO: Historical
8 zoning. We could. If we went and did a
9 site visit after the snow melted and saw
10 that it was 10 inches or less, or less
11 than a foot, you just walk away.

12 MR. DAIGLE: It's only this much
13 over (indicating).

14 CHAIRMAN SCALZO: I'm not talking
15 about the overhang. I'm talking about
16 from your concrete patio to the bottom of
17 your deck.

18 MR. DAIGLE: To the bottom of the
19 deck. That's probably 12 inches, 10
20 inches.

21 CHAIRMAN SCALZO: 10 inches?

22 MR. DAIGLE: The base. I think it
23 has a 9-inch fascia.

24 MR. HERMANCE: I think he included
25 photos.

2 MR. DAIGLE: I was talking to the
3 top of the deck. The top is about 21.
4 It's on a slope. There's a slight pitch
5 to it. It varies.

6 CHAIRMAN SCALZO: That's really
7 low. Look at that.

8 MR. DONOVAN: Yeah.

9 CHAIRMAN SCALZO: I doubt you've
10 got a foot there.

11 MR. DONOVAN: So if the Board is
12 inclined to rely upon Section 185-18
13 Subdivision C that this constitutes --
14 since there's no definition of a terrace
15 -- higher than one foot from ground level
16 and issue the variance.

17 CHAIRMAN SCALZO: Does he need a
18 variance?

19 MR. DONOVAN: Or you could issue an
20 interpretation that it's not needed.

21 Does that make your life easy, Joe?

22 MR. MATTINA: Definitely.

23 MR. DAIGLE: It works for me.

24 MR. DONOVAN: Are you sure you
25 don't want the Board to adjourn it until

2 April?

3 MR. DAIGLE: No thanks.

4 MR. BELL: I think that works.

5 CHAIRMAN SCALZO: I think that's a
6 wonderful way to look at this.

7 I'm going to look to the Board for
8 a motion to interpret this application as
9 not needing a variance.

10 MR. HERMANCE: I'll make that motion.

11 MR. DONOVAN: I'll write it up
12 based on 185-18-C.

13 CHAIRMAN SCALZO: Mr. Hermance just
14 made that motion.

15 MS. REIN: I'll second it.

16 CHAIRMAN SCALZO: We have a second
17 from Ms. Rein.

18 MR. DONOVAN: This is an
19 interpretation. You don't need to
20 go through the five-part balancing test.

21 CHAIRMAN SCALZO: All in favor.

22 MS. BANKS: Aye.

23 MR. EBERHART: Aye.

24 MR. HERMANCE: Aye.

25 CHAIRMAN SCALZO: Aye.

2 MR. BELL: Aye.

3 MR. MASTEN: Aye.

4 MS. REIN: Aye.

5 CHAIRMAN SCALZO: I believe you
6 have a resolution.

7 MR. DAIGLE: Thank you very much.

8 MR. DONOVAN: Thanks for doing your
9 homework.

10 MR. DAIGLE: I would say any time,
11 but -- thank you.

12 CHAIRMAN SCALZO: You saw the
13 struggle there. Now you can tell all
14 your friends, because that was placed in
15 2005, anything that's new does not get
16 the same consideration that you just did.

17 You got that, Mr. Langer?

18 I guess that's about it.

19 I did not attend the meeting in
20 January so I cannot vote on the January
21 meeting minutes. The last thing is to
22 approve the January meeting minutes.

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

25 MR. MASTEN: I'll second.

2 CHAIRMAN SCALZO: We have a motion
3 from Mr. Bell. We have a second from
4 Mr. Masten. I abstain.

5 All in favor.

6 MS. BANKS: Aye.

7 MR. EBERHART: Aye.

8 MR. HERMANCE: Aye.

9 MR. MASTEN: Aye.

10 MS. REIN: I abstain, too. I
11 wasn't here.

12 CHAIRMAN SCALZO: Very good. I'll
13 motion to adjourn.

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

16 CHAIRMAN SCALZO: Second.

17 We have a motion to adjourn from
18 Mr. Bell. We have a second from the
19 Chairman. All in favor.

20 MS. BANKS: Aye.

21 MR. EBERHART: Aye.

22 MR. HERMANCE: Aye.

23 CHAIRMAN SCALZO: Aye.

24 MR. BELL: Aye.

25 MR. MASTEN: Aye.

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MS. REIN: Aye.
(Time noted: 8:14 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 5th day of March 2026.

Michelle Conero

MICHELLE CONERO