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

- - - - - X  
In the Matter of

CHRISTIAN FRIENDS WELCOME ASSEMBLY

7 D'Alfonso Road, Newburgh  
Section 97; Block 1; Lot 63  
R-2 Zone

- - - - - X

Date: April 23, 2026  
Time: 7:05 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: DESIREE WATSON  
ROLAND BLOOMER

- - - - - X

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

2 CHAIRMAN SCALZO: I'd like to call  
3 the meeting of the Zoning Board of  
4 Appeals to order. The order of business  
5 this evening are the public hearings  
6 which have been scheduled and posted.

7 The procedure of the Board is that  
8 the applicant will be called upon to step  
9 forward, state their request and explain  
10 why it should be granted. The Board will  
11 then ask the applicant any questions it  
12 may have, and then any questions or  
13 comments from the public will be  
14 Entertained. The Board will then  
15 consider the applications and will try  
16 to render a decision this evening, but  
17 may take up to 62 days to reach a  
18 determination.

19 I would ask if you have a cellphone,  
20 to please turn it off or put it on silent.  
21 When you're up front speaking, speak  
22 directly into the microphone as it is  
23 being recorded by our stenographer.

24 Roll call, please.

25 MS. JABLESNIK: Latwan Banks.

2 MS. BANKS: Present.

3 MS. JABLESNIK: Darrell Bell.

4 MR. BELL: Present.

5 MS. JABLESNIK: James Eberhart.

6 MR. EBERHART: Present.

7 MS. JABLESNIK: Greg Hermance.

8 MR. HERMANCENCE: Here.

9 MS. JABLESNIK: John Masten.

10 MR. MASTEN: Here.

11 MS. JABLESNIK: Donna Rein.

12 MS. REIN: Here.

13 MS. JABLESNIK: Darrin Scalzo.

14 CHAIRMAN SCALZO: Here.

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

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

21 (Pledge of Allegiance.)

22 CHAIRMAN SCALZO: Our first  
23 applicant this evening is Christian  
24 Friends Welcome Assembly at 7 D'Alfonso  
25 Road in Newburgh. This is a Planning

2 Board referral. They're seeking an  
3 interpretation -- it's for an  
4 interpretation of the Town's Zoning  
5 Code to confirm that a state licensed  
6 daycare/childcare program is permitted  
7 as an accessory use under the  
8 classification of nursery school in  
9 the R-2 Zone.

10 Do we have mailings on this,  
11 Siobhan?

12 MS. JABLESNIK: We do. This  
13 applicant sent fifty letters.

14 CHAIRMAN SCALZO: Fifty letters.  
15 This is also subject to GML-239.

16 MS. JABLESNIK: They came back and  
17 said it was unnecessary. They wrote me a  
18 nice letter.

19 MR. DONOVAN: Interpretations are  
20 not required to be referred.

21 MS. JABLESNIK: Although it is a  
22 box to click on the website.

23 CHAIRMAN SCALZO: Okay. Who do we  
24 have with us this evening?

25 MS. WATSON: Desiree Watson, proxy

2 for Christian Friends Welcome Assembly.

3 MR. BLOOMER: Good evening. I'm  
4 Roland Bloomer, attorney on behalf of  
5 Christian Friends.

6 CHAIRMAN SCALZO: Very good. The  
7 description I gave was woefully short, so  
8 if you could please go ahead and --

9 MR. DONOVAN: But not woefully  
10 long.

11 CHAIRMAN SCALZO: We're all aware  
12 tonight is the NFL draft, the Knicks are  
13 playing and other things are going on.

14 MR. BELL: You didn't say that.

15 MR. DONOVAN: All things are true.

16 MR. BLOOMER: Good evening. This  
17 is in relation to a property on D'Alfonso  
18 Road. It is currently a church. If  
19 you're familiar with the area, when you  
20 turn on D'Alfonso Road, it's right on the  
21 left, sort of behind Aldi's. It's a very  
22 unique piece of property. The church has  
23 been there and running.

24 My applicant has put an application  
25 in for an interpretation basically

2 stating that daycares are also nurseries  
3 -- considered nursery schools.

4 The table actually lists nursery  
5 schools or daycares. It would fall  
6 under there. The general law as well  
7 references both of them hand in hand.  
8 It's spelled out very articulately in  
9 the application that was submitted  
10 along with the attachments.

11 There is also case law that does  
12 speak towards nursery schools in areas  
13 that are not zoned specifically and  
14 allowed the use as an accessory use,  
15 that it shouldn't be prohibited  
16 unless it shows things that are  
17 detrimental to the community.

18 The Court of Appeals has also  
19 held that nursery schools in general  
20 are not, by nature, detrimental to  
21 the community.

22 We would urge along those lines  
23 as well.

24 CHAIRMAN SCALZO: Very good. Thank  
25 you.

2 Feel free.

3 MS. WATSON: I was going to refer  
4 to the table bulk requirements where it  
5 referred to -- can I pull out the --

6 CHAIRMAN SCALZO: Yes.

7 MS. WATSON: Where it refers to  
8 accessory use nursery school or daycare,  
9 as he mentioned, it says go to D-2. D-2  
10 only mentions cluster developments. You  
11 go further down to D-6 where it says  
12 nursery schools for preschool children.  
13 However, after going through the  
14 definitions for the zoning codes in the  
15 Town of Newburgh, it states nursery  
16 schools and daycare facilities licensed  
17 by the state are covered under nursery  
18 schools.

19 MS. REIN: Are you licensed?

20 MS. WATSON: Excuse me?

21 MS. REIN: Are you licensed?

22 MS. WATSON: We're not licensed  
23 yet. You have to apply for the license.  
24 We've completed every step, but now they  
25 need a certificate of occupancy. We can

2 only get that once the Building  
3 Department approves.

4 MS. REIN: Thank you.

5 CHAIRMAN SCALZO: Okay. Thank you,  
6 Donna. Great question.

7 Mr. Masten, do you have any  
8 questions?

9 MR. MASTEN: Nothing right now.

10 CHAIRMAN SCALZO: Mr. Bell.

11 MR. BELL: What are the ages --  
12 (Cellphone ringing.)

13 CHAIRMAN SCALZO: Somebody didn't  
14 follow our instructions.

15 MR. BELL: Put that on vibrate back  
16 there.

17 So what are the ages that we're  
18 looking at?

19 MS. WATSON: Daycare starts from  
20 infants as early as six weeks up to the  
21 age of five, but also to include before  
22 and aftercare. A lot of families have  
23 more than one child and they are  
24 different ages. To be able to bring all  
25 of your children to be dropped off at the

2 same location and picked up from the same  
3 location takes a load off the parents and  
4 helps them to be in the same place and  
5 learning similar.

6 MR. BELL: Okay. And the before  
7 and aftercare hours, what would they be?

8 MS. WATSON: It would be open from  
9 6 a.m. Some parents have to be to work  
10 at 7:00 or 7:30, 8:00, 6:30. It depends.  
11 So they're able to drop their children  
12 off at 6 and the children can have  
13 breakfast, relax, do work and the bus  
14 will come and pick them up and take them  
15 to school.

16 As well as after school we'll be  
17 open until 6 as well. They'll arrive  
18 after they are out of school and picked  
19 up.

20 MR. BELL: You're looking at the  
21 hours of 6 to 6 with school-age children  
22 being picked up at a certain time to take  
23 them to school and go back there until 6  
24 p.m.?

25 MS. WATSON: Correct. But because

2 parents work at different hours, they're  
3 not all getting dropped off exactly at 6.

4 MR. BELL: No. Of course. They'll  
5 be staggered throughout the day.

6 MS. WATSON: Yes.

7 MR. BELL: I understand.

8 You said that you are in the  
9 process of getting your license?

10 MS. WATSON: Yes. You have to get  
11 a childcare license in order to operate a  
12 facility for daycare children.

13 MS. REIN: Are you preparing all  
14 meals and snacks?

15 MS. WATSON: Meals and snacks can  
16 be prepared. That will be part of the  
17 application as well. From my experience  
18 from running a daycare, we do prepare at  
19 my daycare. I'm also Young & Unique  
20 Corporation who also owns a childcare  
21 center.

22 MR. EBERHART: I know that.

23 MS. WATSON: I'm proxy for the  
24 church.

25 Yes, we prepare meals and snacks.

2 MR. BELL: It was my turn and I had  
3 that next question down.

4 MS. REIN: Let's go.

5 MR. BELL: I'm good.

6 CHAIRMAN SCALZO: Thank you, Mr. Bell.  
7 Mr. Hermance.

8 MR. HERMANCE: I have nothing further.

9 CHAIRMAN SCALZO: Mr. Eberhart.

10 MR. EBERHART: Nothing. I know of  
11 Young & Unique. My wife owned a daycare  
12 business. She knows you also.

13 I'm all for it. I like what you  
14 guys do.

15 CHAIRMAN SCALZO: Very good.

16 Ms. Banks.

17 MS. BANKS: No questions.

18 CHAIRMAN SCALZO: No questions.

19 At this point we'll open it up to  
20 any members of the public that wish to  
21 comment on this application.

22 (No response.)

23 CHAIRMAN SCALZO: All right. Very  
24 good.

25 I have no comments myself.

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

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

6 MR. EBERHART: I'll second that.

7 CHAIRMAN SCALZO: We have a motion  
8 from Mr. Bell. I think it was Mr. Eberhart  
9 that was the second there. All in favor.

10 MS. BANKS: Aye.

11 MR. EBERHART: Aye.

12 MR. HERMANCE: 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.

20 Counsel, although it's an  
21 interpretation, we still go through the  
22 criteria?

23 MR. DONOVAN: You do not go through  
24 the criteria. It's an interpretation.

25 Just so I am clear, the request is

2 to make an interpretation that the  
3 nomenclature, if you will, nursery school  
4 and daycare are used interchangeably, so  
5 the daycare qualifies as a nursery and is  
6 therefore a permitted use in the R-2  
7 Zone. Is that what you're looking for?

8 MR. BLOOMER: Yes.

9 CHAIRMAN SCALZO: The rub, too,  
10 it's between three and five years and  
11 we're going beyond those ages.

12 MS. WATSON: Older -- I mean  
13 younger.

14 MR. DONOVAN: I don't think the  
15 code requires that.

16 MR. BLOOMER: I don't think so.

17 MR. DONOVAN: There's nothing in  
18 the code, because I looked. I think  
19 Dominic was just saying, listen, a  
20 nursery could be three to five primarily.  
21 Daycare could be beyond. There's nothing  
22 in the code that I see, and maybe it's  
23 something with your licensing, but that's  
24 a whole different ball of wax that you  
25 run into in front of the Planning Board,

2 in terms of hours of operation, drop off,  
3 pick up, when that will be, traffic. All  
4 that kind of stuff the Planning Board  
5 will deal with. This Board is just being  
6 asked is the nomenclature daycare used --  
7 could be used interchangeably with  
8 nursery school. That's it. Right?

9 MR. BLOOMER: That is correct. The  
10 table itself uses the word "or" in  
11 between. We would think that would be  
12 one in the same, but we're here because  
13 we were asked to present.

14 MR. DONOVAN: Because it's a cool  
15 place to go.

16 MR. BLOOMER: Absolutely.

17 CHAIRMAN SCALZO: Got to have some  
18 fun.

19 Any Board discussion?

20 MR. BELL: I'm good.

21 CHAIRMAN SCALZO: I would consider  
22 those interchangeable myself.

23 MS. REIN: Mm'hm'.

24 MR. BELL: Of course.

25 CHAIRMAN SCALZO: I guess, Counsel,

2 do you want to help me out here?

3 MR. DONOVAN: It would be a motion  
4 to approve the interpretation as  
5 requested.

6 MR. EBERHART: I'll make a motion  
7 that we approve the interpretation.

8 MS. BANKS: I'll second.

9 CHAIRMAN SCALZO: We have a motion  
10 from Mr. Eberhart. I thought we had a  
11 second -- it was kind of a tie. We'll  
12 give it to Ms. Banks tonight.

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

15 MS. JABLESNIK: Ms. Banks.

16 MS. BANKS: Yes.

17 MS. JABLESNIK: Mr. Bell.

18 MR. BELL: Yes.

19 MS. JABLESNIK: Mr. Eberhart.

20 MR. EBERHART: Yes.

21 MS. JABLESNIK: Mr. Hermance.

22 MR. HERMANCE: Yes.

23 MS. JABLESNIK: Mr. Masten.

24 MR. MASTEN: Yes.

25 MS. JABLESNIK: Ms. Rein.

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MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo.

CHAIRMAN SCALZO: Yes.

The motion is carried. The  
interpretation is in your favor.

MR. BLOOMER: Thank you.

MS. WATSON: Thank you.

(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 4th day of May 2026.

*Michelle Conero*  
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MICHELLE CONERO

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

GURU BABA

5306 Route 9W, Newburgh  
Section 23; Block 2; Lot 1  
B Zone

----- X

Date: April 23, 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: JOSEPH SAFFIOTI

----- X

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

2 CHAIRMAN SCALZO: Our second  
3 applicant this evening is Guru Gaba,  
4 5306 Route 9W. This is also a  
5 Planning Board referral for area  
6 variances of the following pre-  
7 existing non-conformities for a  
8 proposed cannabis dispensary  
9 facility: rear yard, side yard, side  
10 yard to the automotive service  
11 building, front yard to the State  
12 highway and front yard to the Town  
13 highway. The applicant may also be  
14 looking for variances for the  
15 existing freestanding sign, height,  
16 front yard and side yard.

17 Siobhan, do we have mailings on  
18 this?

19 MS. JABLESNIK: This applicant sent  
20 thirty letters.

21 CHAIRMAN SCALZO: Thirty letters.  
22 Very good.

23 And GML-239?

24 MS. JABLESNIK: Local determination.

25 CHAIRMAN SCALZO: Local determination.

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That's wonderful.

Who do we have with us?

MR. SAFFIOTI: Good evening,  
Mr. Chairman, Members of the Board.  
Joseph Saffioti, Saffioti & Anderson  
for the applicant.

This site is the Valero gas  
station on Route 9W. It's a mixed  
use site. It has a gas station, a  
Subway sandwich shop in the building.  
There's an automotive repair building  
in the rear.

For the existing sign, variances  
to allow its current size. We asked  
for a copy -- we FOIL'd a copy of the  
decision that this Board had granted  
in, I believe, 2019 to allow that  
sign. We're asking for the variances  
that were determined by Code Compliance  
or a continuation of the existing  
variance as to the sign. The sign is  
already existing. The building is  
already existing.

The space that the cannabis

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dispensary would occupy is a storefront/office that was previously occupied by the owner of the building. They relocated their business location for their offices and have been trying to rent the space out for four or five years. No one has been interested in it. The applicant's related family members run the other businesses on the site.

Basically because this is a cannabis dispensary, it's a change of use and requires Planning Board approval. These variances that were issued as area variances were raised by the Planning Board at its prior application.

CHAIRMAN SCALZO: Very good. Okay. I recall the application the first time it was through here. It is all pre-existing nonconforming. I do believe it had a positive result from the last time the applicant was in here for the same structure.

MR. SAFFIOTI: I believe so.

2 CHAIRMAN SCALZO: I have no  
3 comments myself. I'm going to start down  
4 at the other side of the table.

5 Ms. Banks, do you have any  
6 questions or comments?

7 MS. BANKS: Not yet.

8 CHAIRMAN SCALZO: Mr. Eberhart.

9 MR. EBERHART: No.

10 CHAIRMAN SCALZO: Mr. Eberhart,  
11 were you here the last time this  
12 applicant was in?

13 MR. EBERHART: Yes.

14 CHAIRMAN SCALZO: That's helpful.  
15 Mr. Hermance.

16 MR. HERMANCE: The last one, similar  
17 to this, had to be certain distances  
18 away. This meets that criteria?

19 CHAIRMAN SCALZO: I believe the  
20 Planning Board would have pointed that  
21 out as they handed it off to us.

22 MR. HERMANCE: Got you.

23 CHAIRMAN SCALZO: Anything else,  
24 Mr. Hermance?

25 MR. HERMANCE: No.

2 CHAIRMAN SCALZO: Mr. Bell.

3 MR. BELL: No.

4 CHAIRMAN SCALZO: Mr. Masten.

5 MR. MASTEN: No.

6 CHAIRMAN SCALZO: Ms. Rein.

7 MS. REIN: So nothing is changing?

8 MR. SAFFIOTI: Nothing is changing.

9 They're going to put a door where the  
10 existing window is on the entrance on the  
11 front of the building.

12 MS. REIN: I'm good.

13 CHAIRMAN SCALZO: Very good.

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

18 Please state your name.

19 MS. DUNLOP: Hi. My name is  
20 Vanessa Dunlop. I live on 32 McCall  
21 Place, which is right off of Valero, the  
22 gas station.

23 I just want to say on behalf of  
24 myself and my family who collectively own  
25 five homes on McCall Place, we respectfully

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voice our opposition to the proposed third cannabis dispensary in a three-mile span on 9W. Currently there's already one dispensary located two miles south of us and another just one mile north of us. Access to these businesses is readily available within a short driving distance. Adding another dispensary directly on our road does not fill an unmet need and it creates an unnecessary concentration in a very small radius.

Our primary concern is traffic safety. Our road already experiences heavy traffic flow due to the gas station and the school bus depot. There's no light. There's no traffic light. Getting out on 9W to make a left or a right is extremely difficult. Adding another high-traffic retail business will increase turning movements, congestion and the potential for accidents, particularly during peak hours when our school buses are entering and exiting.

2 It can take up to seven minutes for  
3 residents to make the left turn on 9W  
4 during peak hours.

5 This is not about opposing local  
6 business. We have no problem with  
7 cannabis dispensaries. None at all.  
8 It's about thoughtful planning and  
9 protecting the safety and character  
10 of our neighborhood.

11 We should be asking whether this  
12 location is appropriate given the  
13 existing traffic conditions and the  
14 proximity to other dispensaries  
15 rather than simply whether it is  
16 legally permitted.

17 Our small hamlet of Middlehope  
18 already has a dispensary and multiple  
19 storage facilities. We deserve to  
20 feel pride in our community. It has  
21 been long overdue for us to add some  
22 charm and character to our small  
23 stretch of 9W and the surrounding  
24 area.

25 With ten dispensaries in Town,

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taking into account the traffic and safety concerns, I urge the council to carefully reconsider the cumulative impact and deny this application.

CHAIRMAN SCALZO: Thank you for your comments. Obviously you put a little homework into that, which is wonderful. Very well put together.

The purpose of this Board is to apply the code as it is in our section of the Town Code. There is no regulatory restriction against having cannabis dispensaries within a certain distance of another.

Now, I know the comprehensive plan for the Town of Newburgh has been under development for, jeppers creepers, it's got to be three and a half years now. They're going to get to the finish line I'm sure. That's one of those things where you can actually place comments in the comprehensive plan, comments such as this. Perhaps dispensaries should have minimum distances between them.

2 So with regard to your comments,  
3 if we were to consider what you had  
4 just said for a denial perhaps, we  
5 run the risk of having litigation  
6 against us because there is nothing  
7 restricting this business from being  
8 there.

9 Now with regard to what you're  
10 talking about, about getting out onto  
11 Route 9W and it taking seven minutes,  
12 I am very familiar with that area. I  
13 have relatives that live close to it.  
14 It's a challenge to get out there if  
15 you're trying to take a left.

16 Something you also said, that  
17 there are a few other dispensaries  
18 relatively close to this. Perhaps  
19 this may not generate the business  
20 that you think it may. I'm not sure  
21 there's a trip generation manual that  
22 could justify this type of business,  
23 what it's going to generate as far as  
24 traffic flow. However, with other  
25 ones so close, perhaps it will be a

2 fight to see who can give the lowest  
3 prices. I'm not sure. I'm not sure  
4 that -- if this was the only one in  
5 Town, then I may agree with your  
6 point with how much traffic it may  
7 generate. Without a study, we'll  
8 never know. That's just my piece.

9 I can't tell you how much I  
10 appreciate you showing up as prepared  
11 as you were.

12 MS. DUNLOP: I'd like to take  
13 credit for that, but it's --

14 CHAIRMAN SCALZO: A very informed  
15 presentation. Thank you.

16 That's just me. There are seven of  
17 us here.

18 I'm going to go down to Ms. Rein.  
19 Oh, come up, please.

20 MS. MARIAN EUGENE: We're the  
21 family from McCall Place. I'm Marian  
22 Eugene, 24 McCall place.

23 Did I understand correctly --  
24 I'm not sure if I understand correctly.  
25 There are no guidelines that say you

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can't have ten dispensaries within a mile distance or three miles as long as it's approved?

CHAIRMAN SCALZO: I'll use a different example. You have Del's Deli, right, and then you have the gas station which also has a deli. There are no restrictions on that. You treat it the same way.

MS. MARIAN EUGENE: I did do the drive. It just feels like I'm on dispensary road then. 9W from Middlehope has become dispensary road. That's not why I moved up here. I didn't move here -- when I look at the maps of where all the dispensaries are, they're all on that side of Newburgh, the Town of Newburgh, the City of Newburgh. I'm like what's going on here. Why is it we only get dispensaries.

CHAIRMAN SCALZO: As a Board we've seen dispensaries come in and, believe me, they're scattered amongst the far reaches of the Town.

2 MS. MARIAN EUGENE: I've driven  
3 around.

4 MR. BELL: There's a lot.

5 MR. DONOVAN: Joe, aren't they  
6 licensed by OCM?

7 MR. SAFFIOTI: You need a license.

8 MR. DONOVAN: If they are licensed  
9 by Office of Cannabis Management, New  
10 York State, the Town is --

11 MS. MARIAN EUGENE: My main concern  
12 besides that is that the traffic is  
13 horrendous. I commuted to the city. For  
14 thirty years I drove to the city from  
15 McCall Place. I would leave my house  
16 half an hour early at 5 in the morning so  
17 I wouldn't hit the traffic. We all know  
18 the traffic. We know the traffic on  
19 Fostertown Road when it's rush hour.  
20 It's all the way down to Stewart's on 9W.  
21 We know the traffic is horrendous.

22 To say that maybe they won't get  
23 the amount of people coming to buy from  
24 the Valero, that's not true. Maybe.

25 CHAIRMAN SCALZO: I'm not saying

2 that there's not going to be an increase.

3 MS. MARIAN EUGENE: I understand.  
4 I'm just giving you my opinion. It might  
5 be they won't come there. They're  
6 stopping there to get gas, they're  
7 stopping there to get a cup of coffee,  
8 use the restrooms.

9 We have Joe's behind us, the  
10 garage.

11 The buses -- it's not only at peak  
12 hour, the school buses. School buses are  
13 coming in and out at night. They go to  
14 games, they come back at night. We have  
15 traffic continuously on such a small road.  
16 It's difficult for us as homeowners to  
17 always get out on that road.

18 I don't agree with putting the  
19 dispensary there, but it's not in my  
20 hands.

21 CHAIRMAN SCALZO: And again, I  
22 appreciate that you're here, that you're  
23 all here to give comments.

24 The comprehensive plan for the Town  
25 of Newburgh is currently under development.

2 If you have these concerns, they will be  
3 -- they will at least read them. There's  
4 a possibility that, you know, perhaps  
5 restrictions if enough people were to  
6 say hey, you ought to restrict these  
7 to, you know, nothing within two  
8 miles. Whatever. You come up with  
9 your own criteria. I'm not going to  
10 say it's going to be acted on favorably  
11 or whatever. Currently the way the  
12 code sits, it is an allowed use where  
13 it is.

14 MS. MARIAN EUGENE: Okay.

15 CHAIRMAN SCALZO: Thank you.

16 MS. FELICIA EUGENE: One more.

17 Felicia Eugene, I'm at 25 McCall Place.

18 We did actually voice our concerns  
19 at a Town Hall meeting and they advised  
20 us to come to this once we received the  
21 letter that this would be presented at  
22 this meeting. That's why we came and  
23 spoke to you today.

24 Also to add to what my mother had  
25 previously stated, there are also trucks,

2 huge trucks that go to Valero. All times  
3 of the day and night they're coming in  
4 and out of the road as well. Eighteen-  
5 wheelers. We're always having to deal  
6 with that.

7 CHAIRMAN SCALZO: Now that the Town  
8 Council held me out by sending you here  
9 to talk to me, you need to go back to  
10 them and talk about the traffic issues,  
11 which they have control over and we  
12 don't.

13 MS. FELICIA EUGENE: Okay. Thank  
14 you.

15 CHAIRMAN SCALZO: Thank you.

16 MR. SAFFIOTI: Having my business  
17 on Route 9W, for thirty-seven years I've  
18 been sitting there near the Alexis Diner.  
19 I understand the concerns. The State of  
20 New York for years has ignored 9W to  
21 widen it. It is a State problem. Back  
22 in, I think around 199 -- the late '90s,  
23 early 2000s there was talk to widen 9W.  
24 The State is ignoring it. It does  
25 desperately need work.

2 The area variances are for an  
3 existing site that was previously  
4 granted. The only reason we're here is  
5 because it's a change of use under the  
6 code. We're looking for the same  
7 variances to be reapproved.

8 CHAIRMAN SCALZO: At face value  
9 it's pretty simple. It really is.

10 Is there anyone else from the  
11 public that wishes to comment on this  
12 application?

13 (No response.)

14 CHAIRMAN SCALZO: Seeing none, I'll  
15 look to the Board for a motion to close  
16 the public hearing.

17 MR. BELL: I'll make a motion to  
18 close the public hearing.

19 MR. MASTEN: I'll second it.

20 CHAIRMAN SCALZO: We have a motion  
21 to close from Mr. Bell. We have a second  
22 from Mr. Masten. All in favor.

23 MS. BANKS: Aye.

24 MR. EBERHART: Aye.

25 MR. HERMANCENCE: Aye.

2                   CHAIRMAN SCALZO:   Aye.

3                   MR. BELL:   Aye.

4                   MR. MASTEN:   Aye.

5                   MS. REIN:   Aye.

6                   CHAIRMAN SCALZO:   Those opposed.

7                   (No response.)

8                   CHAIRMAN SCALZO:   Okay.   Counsel,  
9           this I know is a Type 2 action.

10                  MR. DONOVAN:   Type 2.

11                  If I can be permitted to ask one  
12           question.   So Joe, on the agenda it says  
13           Guru Gaba.   Is that the correct name or  
14           is it Guru Baba?

15                  MR. GABA:   That's the name of the  
16           company.

17                  MR. DONOVAN:   B-A-B-A or G-A-B-A?

18                  MR. BABA:   B-A-B-A.

19                  MR. DONOVAN:   I thought maybe when  
20           Steve Gaba retired he went into the  
21           cannabis business.

22                  CHAIRMAN SCALZO:   It's on the  
23           application right.

24                  MS. JABLESNIK:   Look, the B and the  
25           G are right next to each other.   Give me

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a break.

CHAIRMAN SCALZO: Very good.

So this is a Type 2 action under SEQRA. We are going to go through the area variance criteria and discuss the five factors which we are weighing for this preexisting nonconforming request that had been previously approved by us, if I framed that correctly so you all understand where we're headed here.

The first one being whether or not the benefit can be achieved by other means feasible to the applicant.

MS. BANKS: No.

MR. EBERHART: No.

MR. HERMANCE: No.

CHAIRMAN SCALZO: No.

MR. BELL: No.

MR. MASTEN: No.

MS. REIN: No.

CHAIRMAN SCALZO: There you go.

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

2 subjective.

3 MR. BELL: That's the Planning  
4 Board. That's traffic.

5 MR. DONOVAN: That relates to the  
6 use, which you're not really ruling on.  
7 You're ruling on the area variances and  
8 everything else. It's an existing  
9 building.

10 CHAIRMAN SCALZO: Thanks for  
11 keeping me in line, Counselor.

12 The answer would be no, there's not.

13 The third, whether the request is  
14 substantial. It's no more substantial  
15 than it was when the applicant was in  
16 here three, four years ago when we  
17 approved it.

18 The fourth, whether the request  
19 will have adverse physical or  
20 environmental effects.

21 MR. BELL: None.

22 CHAIRMAN SCALZO: It does not  
23 appear so.

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

2 relevant but not determinative. Of  
3 course it's self-created.

4 Right, Counsel?

5 MR. DONOVAN: That is correct,  
6 Mr. Chairman.

7 CHAIRMAN SCALZO: Very good. So  
8 having gone through the balancing tests  
9 of the area variance, does the Board have  
10 a motion of some sort?

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

13 MR. BELL: I'll second.

14 CHAIRMAN SCALZO: We have a motion  
15 for approval from Mr. Eberhart. We have  
16 a second from Mr. Bell.

17 Can you roll on that, please,  
18 Siobhan.

19 MS. JABLESNIK: Ms. Banks.

20 MS. BANKS: I'm going to abstain.

21 MS. JABLESNIK: Mr. Bell.

22 MR. BELL: Yes.

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: No.

MS. JABLESNIK: Ms. Rein.

MS. REIN: I'm going to say yes only because the issues that you brought forth to us, which are very real issues, are not within our purview. We have no jurisdiction over that. We have no authority over that.

MR. BELL: Traffic and all that.

MS. REIN: For what we're actually looking at, my answer is yes.

MS. JABLESNIK: Mr. Scalzo.

CHAIRMAN SCALZO: Yes.

The motion is carried. The variances are approved.

MR. SAFFIOTI: Thank you.

(Time noted: 7:33 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 4th day of May 2026.

*Michelle Conero*  
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MICHELLE CONERO

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

ALLEN & DEB MONKS  
4 Novelty Way, Walden  
Section 11; Block 1; Lot 114.4  
AR Zone

----- X

Date: April 23, 2026  
Time: 7:34 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: ALLEN MONKS  
MARK GARRISON

----- X

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

2 CHAIRMAN SCALZO: Our next  
3 applicant this evening is Allen and  
4 Deb Monks, 4 Novelty Way, Walden,  
5 which is really just the other side  
6 of Orange Lake, seeking an area  
7 variance for increasing the degree of  
8 nonconformity of the rear yard to  
9 create habitable space on an existing  
10 rear deck.

11 Who do we have with us?

12 MR. MONKS: Mark Garrison,  
13 contractor extraordinaire.

14 CHAIRMAN SCALZO: Extraordinaire.

15 MR. MONKS: Just not just the  
16 average contractor.

17 CHAIRMAN SCALZO: Not just the  
18 average contractor. You weren't the guy  
19 with the phone on, were you?

20 MR. MONKS: No.

21 CHAIRMAN SCALZO: Then you're  
22 extraordinaire.

23 And you, sir?

24 MR. GARRISON: We are asking for  
25 permission to -- I'm sorry.

2 CHAIRMAN SCALZO: Who are you?

3 MR. GARRISON: Mark Garrison.

4 CHAIRMAN SCALZO: Thank you.

5 MR. MONKS: I'm Allen Monks.

6 CHAIRMAN SCALZO: Very good. Have  
7 at it.

8 MR. MONKS: Several years ago Mark  
9 built a -- tore down a rotten deck, put  
10 up a very nice deck around a swimming  
11 pool. It's a two-level deck. Everything  
12 about it we love, it's great, but we're  
13 running out of space as a family because  
14 we have kids, grand kids. The house is  
15 getting a little too small. The upper  
16 deck, which we're talking about doing  
17 over, basically sits there nine months  
18 out of the year doing nothing. My wife  
19 said, "You know, I've been thinking."  
20 Here we go. We'd like to make that a  
21 365-day-a-year room.

22 CHAIRMAN SCALZO: What you're  
23 saying is you're husband extraordinaire  
24 because you listened.

25 MR. MONKS: I love my wife to

2 death, but she's my third wife. I  
3 finally learned.

4 Don't put that in the record.

5 MR. DONOVAN: By the way, too late.

6 MR. BELL: It took three times to  
7 get it right.

8 MR. MONKS: Slow learner.

9 So that's where we are. We'd like  
10 to make it a 365-day-a-year room, not  
11 just a deck.

12 CHAIRMAN SCALZO: Whose says we  
13 don't have fun here.

14 MR. MONKS: You've got to have fun.

15 CHAIRMAN SCALZO: I've got to be  
16 honest with you. I don't have any  
17 questions about this application myself.  
18 I think the pictures are still up on  
19 Zillow. I did a search just because I do  
20 a lot of research when I'm looking at  
21 these things.

22 MR. MONKS: I don't know.

23 CHAIRMAN SCALZO: I'm going to  
24 start with Ms. Rein. Do you have any  
25 comments or questions on this?

2 MS. REIN: No.

3 CHAIRMAN SCALZO: Not even on the  
4 SEQRA documents? You read those more  
5 carefully than I ever do.

6 MS. REIN: I wrote yes. Everything  
7 is okay.

8 CHAIRMAN SCALZO: Everything is  
9 okay in your book.

10 Mr. Masten.

11 MR. MASTEN: I have no problem  
12 there.

13 CHAIRMAN SCALZO: Mr. Bell.

14 MR. BELL: So it's not going to  
15 extend out past the existing deck?

16 MR. MONKS: No.

17 MR. BELL: Okay. I'm good.

18 MR. MONKS: Just three walls and a  
19 roof.

20 MR. MASTEN: I was there and I was  
21 talking to your wife. She remembered me  
22 when you did the deck originally. She  
23 said our family is getting bigger. My  
24 wife started laughing. Both wives know  
25 what the heck they're talking about.

2 CHAIRMAN SCALZO: Mr. Hermance.

3 MR. HERMANCE: I have no questions.

4 CHAIRMAN SCALZO: Mr. Eberhart.

5 MR. EBERHART: It took you to get  
6 to the third time to get it right.

7 CHAIRMAN SCALZO: Let's stay on  
8 topic, Mr. Eberhart.

9 MR. EBERHART: No questions.

10 MR. MONKS: Can you strike that,  
11 please?

12 MR. BELL: It's basically the third  
13 time that he listened.

14 CHAIRMAN SCALZO: You guys are  
15 brutal.

16 MS. BANKS: No questions.

17 CHAIRMAN SCALZO: Ms. Banks,  
18 nothing.

19 In this instance I'm going to open  
20 this up to any members of the public that  
21 wish to speak about the topic of the  
22 application and nothing more. Is anyone  
23 here to speak about the application?

24 (No response.)

25 CHAIRMAN SCALZO: Okay. Very good.

2 We gave them the opportunity.

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

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

7 MS. BANKS: I'll second.

8 CHAIRMAN SCALZO: We had a motion  
9 from Mr. Masten. I think Ms. Banks beat  
10 anybody out there as a second. All in  
11 favor.

12 MS. BANKS: Aye.

13 MR. EBERHART: Aye.

14 MR. HERMANCE: 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 This is a Type 2 action under

23 SEQRA?

24 MR. DONOVAN: Correct, Mr. Chairman.

25 CHAIRMAN SCALZO: You knew I was

2 waiting for that.

3 All right. So we're going to go  
4 through the five criteria that you heard  
5 me say a few minutes ago, the first one  
6 being whether or not the benefit can be  
7 achieved by other means feasible to the  
8 applicant.

9 MS. BANKS: No.

10 MR. HERMANCENCE: No.

11 MR. BELL: No.

12 CHAIRMAN SCALZO: Unless they  
13 stopped extending their family.

14 Second, if there's an undesirable  
15 change in the neighborhood character or a  
16 detriment to nearby properties. As  
17 Mr. Bell asked and it was responded  
18 to, this is not going to extend any  
19 further than what the current deck  
20 is. I would say no.

21 Third, whether the request is  
22 substantial. It does not appear so.

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

2 MS. BANKS: No.

3 MR. EBERHART: No.

4 MR. HERMANCE: No.

5 MR. BELL: No.

6 MR. MASTEN: No.

7 MS. REIN: No.

8 CHAIRMAN SCALZO: No.

9 Fifth, whether the alleged  
10 difficulty is self-created which is  
11 relevant but not determinative. Of  
12 course it's self-created.

13 Having gone through the balancing  
14 tests as you've all heard, does the Board  
15 have a motion of some sort?

16 MR. BELL: I'll make a motion for  
17 approval.

18 MR. MASTEN: I'll second it.

19 CHAIRMAN SCALZO: We have a motion  
20 for approval from Mr. Bell. We have a  
21 second from Mr. Masten.

22 Can you roll on that, please,  
23 Siobhan.

24 MS. JABLESNIK: Ms. Banks.

25 MS. BANKS: Yes.

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MS. JABLESNIK: Mr. Bell.

MR. BELL: Yes.

MS. JABLESNIK: Mr. Eberhart.

MR. EBERHART: Yes.

MS. JABLESNIK: Mr. Hermance.

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Masten.

MR. MASTEN: Yes.

MS. JABLESNIK: Ms. Rein.

MS. REIN: Yes.

MS. JABLESNIK: Mr. Scalzo.

CHAIRMAN SCALZO: Yes.

The motion is carried.

Good luck, sir.

MR. MONKS: Thank you very much.

(Time noted: 7:40 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 4th day of May 2026.

*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

DAVID DEPUY  
7 Grimm Road, Newburgh  
Section 76; Block 5; Lot 9  
R-3 Zone

----- X

Date: April 23, 2026  
Time: 7:40 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: MICHAEL HENDERSON

----- X

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

2 CHAIRMAN SCALZO: Our next  
3 applicant this evening is David DePuy,  
4 7 Grimm Road. This is also a Planning  
5 Board referral for area variances of  
6 lot area, lot depth, front yard, rear  
7 yard and lot surface coverage to  
8 convert an existing single-family  
9 residence to a two-family residence  
10 with a 16 foot by 18 foot addition  
11 for tenant number 2.

12 Siobhan, do we have mailings on  
13 this?

14 MS. JABLESNIK: This applicant sent  
15 thirty-four letters.

16 CHAIRMAN SCALZO: Thirty-four letters.  
17 We're not on the State highway or  
18 anything that would require GML-239?

19 MS. JABLESNIK: We are. I sent it  
20 and I have not received that one back.  
21 It was very, very close.

22 MR. BELL: Not close enough.

23 CHAIRMAN SCALZO: Oh, what are you  
24 talking, like 494 feet?

25 MS. JABLESNIK: It was pretty close.

2 I don't know what the exact  
3 measurement was. It was within  
4 there.

5 CHAIRMAN SCALZO: It did check  
6 the box?

7 MS. JABLESNIK: It did.

8 CHAIRMAN SCALZO: Before I let you  
9 speak -- actually, who do we have with  
10 us?

11 MR. HENDERSON: Michael Henderson  
12 from Hennessey Architects.

13 CHAIRMAN SCALZO: Mr. Henderson,  
14 are you aware of what GML-239 requires us  
15 not to do when we don't hear back from  
16 the County?

17 MR. HENDERSON: Yes.

18 CHAIRMAN SCALZO: We can't vote on  
19 this tonight. Typically they come back  
20 with a local determination, but we need  
21 to give them the opportunity to tell us  
22 it's a local determination.

23 We're going to still let you  
24 present. If you have any visuals you'd  
25 like to throw up or --

2 MR. HENDERSON: Just the page you  
3 have.

4 CHAIRMAN SCALZO: Okay. Plus this.  
5 The floor is yours.

6 MR. HENDERSON: So this is an  
7 existing single-family building residence.  
8 It's on the road behind the Big Lots,  
9 McDonald's and the Price Chopper, a few  
10 blocks over from the Building Department.  
11 So it's in a very commercial area.

12 The client is looking to just divide  
13 it into a two-family. He needs a few  
14 variances. There will be no change to  
15 the outside of the building for the  
16 purpose of a two-family.

17 During this time he wants to put  
18 on an addition in the back just for  
19 one of the tenants. That would be  
20 the only change. It would just be  
21 more of pleasure.

22 The main part, the two-family,  
23 the looks of the building on the  
24 outside will not change for that.

25 CHAIRMAN SCALZO: Just out the back?

2 MR. HENDERSON: Yes.

3 MS. REIN: Who lives in the house  
4 now?

5 MR. HENDERSON: The client himself  
6 and his mother.

7 MS. REIN: Is there a separate  
8 apartment for her?

9 MR. HENDERSON: There will be. The  
10 left side of the house will be her side  
11 and the right side, the two-story side,  
12 will be his apartment.

13 MS. REIN: He's not building this  
14 to rent it out? He's building it for  
15 family?

16 MR. HENDERSON: Yes.

17 MR. DONOVAN: Although, Donna, just  
18 to be clear, if and when it's approved by  
19 the Planning Board, if it gets through  
20 this Board --

21 MS. REIN: It can be used either  
22 way.

23 MR. DONOVAN: That's correct.

24 CHAIRMAN SCALZO: Okay. Thank you,  
25 Donna.

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

4 MR. MASTEN: I have nothing.

5 CHAIRMAN SCALZO: Mr. Bell.

6 MR. BELL: No.

7 CHAIRMAN SCALZO: Mr. Hermance.

8 MR. HERMANCE: That's an approved  
9 use in this zone, --

10 MR. HENDERSON: Yes.

11 MR. HERMANCE: -- the two-family?

12 MR. HENDERSON: The lot doesn't  
13 meet the requirements.

14 MR. HERMANCE: That's all I have.

15 CHAIRMAN SCALZO: Mr. Eberhart.

16 MR. EBERHART: No questions.

17 CHAIRMAN SCALZO: Ms. Banks.

18 MS. BANKS: No.

19 CHAIRMAN SCALZO: The public  
20 hearing inevitably is going to stay open.  
21 However, if anyone is here to speak about  
22 this application, you have an opportunity  
23 to do that right now.

24 Is there anyone here to speak about  
25 this application?

2 (No response.)

3 CHAIRMAN SCALZO: It does not look  
4 that way.

5 Okay. So I am going to turn back  
6 to the Board. I'm going to look to the  
7 Board for a motion to keep the public  
8 hearing open.

9 MR. MASTEN: I'll make a motion to  
10 keep the public hearing open.

11 MS. REIN: I'll second.

12 CHAIRMAN SCALZO: We have a motion  
13 to keep the public hearing from Mr. Masten.  
14 I heard some mumbling down the other side  
15 of the table, but Ms. Rein was loudest  
16 so I'm going to give it to her. All  
17 in favor.

18 MS. BANKS: Aye.

19 MR. EBERHART: Aye.

20 MR. HERMANCE: Aye.

21 CHAIRMAN SCALZO: Aye.

22 MR. BELL: Aye.

23 MR. MASTEN: Aye.

24 MS. REIN: Aye.

25 CHAIRMAN SCALZO: Those opposed.

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D a v i d D e P u y

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(No response.)

CHAIRMAN SCALZO: See you next  
month.

MR. HENDERSON: Okay.

(Time noted: 7:45 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 4th day of May 2026.

*Michelle Conero*  
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MICHELLE CONERO

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

In the Matter of

JOSEPH & BRIDGET ZAPPONE

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

----- X

Date: April 23, 2026  
Time: 7:45 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: We are now moving on to the items held open from the February 2026 meeting, or the March 2026 meeting. Because the B is next to the G. I'm going to get kicked later, I know it.

So the Joseph and Bridget Zappone application was withdrawn.

If anyone is here for that, they withdrew the application. They're going to pursue a different avenue to get there.

(Time noted: 7:46 p.m.)

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

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IN WITNESS WHEREOF, I have hereunto  
set my hand this 4th day of May 2026.

*Michelle Conero*  
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MICHELLE CONERO

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

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

----- X

Date: April 23, 2026  
Time: 7:47 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: TAYLOR PALMER  
NICK DiLEMME

----- X

MICHELLE L. CONERO  
Court Reporter  
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(845) 541-4163

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CHAIRMAN SCALZO: The next application held over is Nick and Jennifer DiLemme, 2201 Route 300 in Wallkill, seeking an interpretation and/or variances -- this one is going to be lengthy. The other people that are hanging around, it's going to be exciting -- for an application to the Zoning Board of Appeals appealing from a determination of the Code Compliance supervisor and seeking a determination from the Board that DiLemme & Sons, Inc.'s use of the improvements at the project location may be continued as a legal non-conforming commercial use. In the alternative, the applicant is requesting area variances and/or a use variance to permit the same. The application is a continuation of the matter previously presented at the January 2026 meeting.

Now, I did ask you to re-notice on that. Because we did that, we

2 don't have to -- there is no  
3 additional application to the County  
4 because --

5 MR. DONOVAN: No. It's the same  
6 application.

7 CHAIRMAN SCALZO: Very good.

8 Okay. I was not here for the  
9 initial one, but, boy, did I read a whole  
10 bunch of stuff. It's a lot to digest.

11 I'm going to let you give me the  
12 Reader's Digest version of it all.

13 MR. PALMER: I'm happy to do it.  
14 For the record, Taylor Palmer from the  
15 law firm of Cuddy & Feder.

16 The Knicks are down 15.

17 I am joined by --

18 MR. DONOVAN: Seriously?

19 MR. PALMER: Second quarter.

20 Anyway, back to our application. I  
21 am again joined by the applicant, Nick  
22 DiLemme, who is the owner of the family  
23 concrete and masonry business. He and  
24 his wife own the property at 2201 State  
25 Route 300. Nick is the principal in that

2 company.

3 For those that were with us, as you  
4 may recall, we are before you, as the  
5 Chairman mentioned, for relief seeking an  
6 appeal of the determination that was made  
7 by the Code Compliance supervisor, and,  
8 in the alternative, two requests for area  
9 variance relief for the company's  
10 employees and vehicles to be located on  
11 the property, as well as an alternative  
12 request, these are, again, alternative  
13 requests, for a use variance to permit  
14 the commercial use of the basement  
15 office, the two-car detached garage and  
16 the rear parking area on the property.

17 As you mentioned, Mr. Chairman, we  
18 did provide a detailed background about  
19 the project and the property at the first  
20 hearing. Since we did not have a full  
21 complement of the Board, if I may, I'll  
22 briefly reorient everyone on the  
23 application materials that were submitted  
24 and then the additional materials that we  
25 have.

2 By point of information, as you  
3 know, we did re-notice tonight's hearing.

4 By way of background, the property  
5 is a 1.2 acre parcel that has driveway  
6 access both on Route 300 and then on  
7 Strawridge Road, and it's classified in  
8 the Agricultural Residential District,  
9 the AR District.

10 The property is improved by a  
11 single-family residence with a primary  
12 driveway to 300. In the back there's the  
13 two-car detached garage. There are  
14 photos and other pictures in the initial  
15 submission, and then some additional  
16 materials that we provided more recently.  
17 It also includes the garage workshop and  
18 the gravel parking area. And then again,  
19 there's driveway access in the rear to  
20 Strawridge Road.

21 The rear third of the property is  
22 also enclosed by a fence that provides  
23 screening in the back area.

24 The company's principal use of the  
25 property is limited to the basement

2 office in the residence. That consists  
3 of about 580 square feet of finished  
4 office space, one of the questions the  
5 Board had during the first presentation.  
6 We did include the assessor's card, just  
7 for reference, that indicates the use of  
8 that space for that office use. Then  
9 parking of company employee vehicles in  
10 the gravel work area, the garage of the  
11 residence, as well as two garage bays  
12 that act as the workshop.

13 So the company's primary work, a  
14 masonry and concrete business -- concrete  
15 finishing business, is not done on the  
16 property but rather offsite or off  
17 premises, at job sites. The company's  
18 use is primarily limited to administrative  
19 office work which is in the basement  
20 office, the 580 square foot area we were  
21 talking about, and then of course the  
22 employees coming and going with their  
23 vehicles.

24 So turning to our application. As  
25 we detailed in our December submission to

2 you all, we first asked the Board to  
3 consider review of the Code Compliance  
4 supervisor's determination that the  
5 company's use of the property was not a  
6 legally existing nonconforming use and  
7 therefore not entitled to the non-  
8 conforming use protection specifically of  
9 Section 185-19 A of the Town Code, nor  
10 did its use, which dates back to the  
11 early 1980s, fall within the code  
12 definition of home occupation. Those are  
13 what the Code Compliance director  
14 identified, and again, as the Chairman,  
15 mentioned kind of lengthier --

16 MR. DONOVAN: Can I just -- I'm  
17 sorry, Taylor. Just so I clarify for my  
18 own, is it your position that it's a  
19 permitted preexisting nonconforming use  
20 because it was allowed as a home  
21 occupation in 1984?

22 MR. PALMER: In part, yes.

23 MR. DONOVAN: What's the other  
24 part?

25 MR. PALMER: The story will unfold.

2 Chapter one. We are going to break that  
3 down. I'm going to go through the  
4 specific criteria of home occupation and  
5 then what other accessory uses are or  
6 were permitted in that code which were  
7 later revised. The code definitions, for  
8 example, didn't exist when this use was  
9 initiated, and in later years things were  
10 changed to kind of reflect what those  
11 uses are or were. As the applicant and  
12 as a property owner, those definitions  
13 weren't available. We're seeking a  
14 favorable determination in regards to  
15 that. Let me try --

16 MR. DONOVAN: I just -- I'm getting  
17 older so I want to ask the questions  
18 before I forget them. Other than the  
19 building permit that was closed out for  
20 the two-car garage/workshop, was there  
21 any other document that was produced in  
22 1984 that would confirm that this was a  
23 home occupation?

24 MR. PALMER: We only have -- I'll  
25 get to some information. I believe

2 Ms. Rein asked a question about the  
3 CO. I'll sort of conclude with that  
4 information. I assure you, Dave, I  
5 will address that point but more  
6 specific.

7 No, there was no specific CO  
8 issued for that, but we've submitted  
9 for your reference, as far as the  
10 records go back, information about --  
11 and I'll get to that presentation,  
12 too. The building on your tax  
13 assessor's card is listed as mixed or  
14 multi-use. It has also been taxed  
15 that way as far as the records go back.

16 CHAIRMAN SCALZO: When you say the  
17 assessor and the way they tax, the  
18 Building Department and Assessor's Office  
19 serve two very different functions. The  
20 assessor just wants to make sure that  
21 you're taxed on the actual use. Sometimes  
22 the Building Department is not fully aware.

23 MR. PALMER: To Dave's point --

24 CHAIRMAN SCALZO: When we talk  
25 about the assessor taxing applicants a

2 certain way, I've got to stop you there  
3 because we get ourselves in trouble when  
4 we try --

5 MR. PALMER: Understood. I was  
6 just trying to present the materials we  
7 have through the FOIL, that that is what  
8 we have.

9 Critically, for the benefit of the  
10 Board Members that were not with us at  
11 the initial presentation, what was  
12 slowing the process here for this  
13 particular application is that we had  
14 submitted FOIL requests to the Town to  
15 try and review the existing zoning codes  
16 that were in place when this application  
17 was -- excuse me, when this use was first  
18 initiated on the property because that  
19 was our position, that this was an  
20 existing nonconforming use, and therefore  
21 that was the position that we took. We  
22 have since received some of the zoning  
23 information. We still don't actually  
24 have the 1974 zoning code which we've  
25 requested from the Town. Let's just put

2 that in a different bucket for now.

3 To start, as you noticed, we did  
4 re-notice our hearing tonight.

5 To give you background about this  
6 property and this use, Nick's father,  
7 Nicandro, who is not with us, started his  
8 masonry career and shortly thereafter  
9 moved that family business, after being  
10 laid off from the Ford manufacturing  
11 plant in New Jersey back in 1980.  
12 Nicandro was successful, and by the '80s  
13 he grew this into his family business.  
14 Nicandro's wife Francesca and her sister  
15 -- I'm sorry, his sister Antoinette used  
16 the basement of the home of the property  
17 as an office. As a family business they  
18 used the two-car detached garage, which  
19 was built in 1984, and the adjacent  
20 parking area on the premises for vehicles,  
21 equipment, parking and storage.

22 I have Nick who will speak to some  
23 of the history and the tenancy there just  
24 to give you the context of how long this  
25 has been utilized, the property, and

2 again from our perspective, pursuant to  
3 the code that was active when this use  
4 was in place, a permitted use.

5 The company was formally  
6 incorporated in 1987. About that same  
7 time they began to offer concrete  
8 finishing. They continued to utilize  
9 the property for that limited purpose.

10 Turning to our appeal. While we  
11 have not been able to review that  
12 historical zoning code I mentioned,  
13 we did get -- we do submit that the  
14 company's use of the property in the  
15 1980s, as I mentioned to the Zoning  
16 Board Attorney, constitutes a home  
17 occupation under the 1974 zoning code.

18 So now I'm going to go through  
19 the definitions and the uses that  
20 existed in the context of the 1974  
21 zoning code. In 1974 in this district,  
22 the AR District, they permitted on the  
23 property home occupations -- that's  
24 one defined use, one use -- private  
25 garage and carport for not more than

2 four vehicles, off-street parking --  
3 these are individual accessory uses  
4 -- off-street parking for commercial  
5 vehicles operated by the occupants of  
6 the permitted residence when such  
7 vehicles are housed in a garage or  
8 carport, off-street parking not  
9 under cover for not more than one  
10 commercial vehicle not over 25 feet  
11 in length, garden house or tool shed  
12 and then farm equipment. That's a  
13 long list of accessory uses. Now I'm  
14 going to try and --

15 CHAIRMAN SCALZO: Can you go back  
16 to the -- I'm sure I have this in my  
17 package. The vehicles, commercial  
18 vehicles, how many were allowed with the  
19 carport and the --

20 MR. PALMER: Sure. Specifically  
21 under the code in 1974, off-street  
22 parking for commercial vehicles operated  
23 by, it doesn't note a number there but it  
24 does say private car or carport for not  
25 more than four. So that's the -- it

2 doesn't define what carport is. It  
3 doesn't say any of that. It was four  
4 for that specific accessory use.

5 So again, these uses contain  
6 several terms that were unfortunately  
7 not defined at the time, such as  
8 commercial vehicles. That was later  
9 defined in 1998. So at the time of  
10 the construction or the time this was  
11 approved, that was not a defined term.  
12 The same is true for carport, farm  
13 equipment or occupants. Those haven't  
14 changed.

15 Prior to going through the  
16 elements and other conditions of these  
17 accessory uses, I do point out, just  
18 because we're an interpretation, not  
19 the variance land specifically, that  
20 the highest court and precedent that  
21 exists deals with interpretations,  
22 because zoning is interpretation of  
23 the common law rights, it means we  
24 need to have a plain reading of what  
25 the zoning code says. So if there's

2 any room for ambiguity, that should  
3 be strictly construed in favor of the  
4 property owner. Any ambiguities  
5 would be read in favor of the property  
6 owner, or applicants in this case,  
7 for DiLemme & Sons. Again, I only  
8 say that because tonight is not --  
9 tonight's discussion is the  
10 interpretation side. It may evolve  
11 into variance discussions --

12 MS. REIN: Excuse me. Can I ask a  
13 question?

14 CHAIRMAN SCALZO: Go right ahead.

15 MS. REIN: How does all of this --  
16 I read what you quoted, pretty much the  
17 same thing here, and I agree with you  
18 that the work space in the house is  
19 definitely consistent with a small  
20 business, accountant, dentist, the whole  
21 nine yards. But for the rest of this,  
22 how does -- how do the nine large  
23 commercial trucks, five commercial  
24 trailers, a huge, huge garage with I  
25 don't know how many vehicles in there,

2 plus -- I don't know, is it an excavator  
3 or a --

4 MS. CAROLLO: A crane.

5 MS. REIN: With claws.

6 MR. DiLEMMME: It's an all-terrain  
7 forklift.

8 MS. REIN: An all-terrain forklift.

9 MS. CAROLLO: There's the forklift  
10 and the crane. There's two separate ones.

11 CHAIRMAN SCALZO: I love comments  
12 from the public, but we just need to know  
13 your names.

14 MS. CAROLLO: I'm Danielle Carollo.  
15 I live at 442 Strawridge Road, across the  
16 street. I observe the operations daily.

17 CHAIRMAN SCALZO: Thank you.

18 MS. REIN: So my question is how  
19 does this -- I mean, the business has  
20 grown exponentially. It's no longer a  
21 mom and pop business. How does that --  
22 this fit into this?

23 MR. PALMER: If I may, I'm going to  
24 go through those elements about the home  
25 occupation just for the record proceeding

2 tonight. That is one of the elements,  
3 what type of use could be considered a  
4 home occupation. That's one of those  
5 elements of the home occupation.

6 Specific to the vehicles, the  
7 application has somewhat evolved.  
8 Initially it was we didn't have a  
9 zoning code to look at to try to tell  
10 us what the uses would even permit at  
11 that time. That's where the initial  
12 application sort of lived. As we got  
13 at least a piece of that, one of the  
14 older zoning codes, through the FOIL  
15 search very recently, a month ago,  
16 then we were able to say okay, that's  
17 what the code said, at least in this  
18 1974 code. We still don't have the  
19 1980 code, which is what we were  
20 talking about when the company was  
21 incorporated. So I'll get to that.

22 Essentially we're going to be  
23 evolving this application into an  
24 application for area variance relief,  
25 seeking to have the additional vehicles

2 permitted on the site. There's a  
3 component that's the home occupation.  
4 There's a component that's the  
5 commercial vehicles. That's sort of  
6 the evolution of what we're finding  
7 out as we continue to get these codes  
8 and other information. That's how  
9 this application itself is evolving.

10 MS. REIN: You're going to talk  
11 about the ingress and egress? When you  
12 come down that road, if those trucks are  
13 coming out, nobody else is getting  
14 through.

15 MR. PALMER: We certainly can.

16 CHAIRMAN SCALZO: Let's stay to the  
17 -- that's a traffic issue. That's perhaps  
18 a safety issue. We need to stay --

19 MS. PILLITTERI: It was actually  
20 a safety issue yesterday as well.

21 I'm sorry. My name is Taylor  
22 Pillitteri. I live across the street  
23 from the construction zone as well.

24 CHAIRMAN SCALZO: I'm going to give  
25 the public an opportunity to speak.

2 Please allow me to ask you to speak.

3 MS. BANKS: I have a question.  
4 What was on the initial application?

5 MR. PALMER: So the original  
6 application that we submitted to --

7 MS. BANKS: Right. What did you  
8 ask for in your original application?

9 MR. PALMER: We sought a  
10 determination that the whole -- the  
11 operation itself, period, however it was  
12 characterized, was an existing non-  
13 conforming use because the code -- we  
14 didn't have the code provision to say  
15 based on this code provision, this is the  
16 use and therefore it was permitted. We  
17 were operating as an existing nonconformity.  
18 We have since received one of those codes.  
19 We haven't received the 1980 code. We're  
20 relying now, in making these submissions,  
21 effectively on the 1974 code because it's  
22 the best we've got.

23 MS. BANKS: I'm getting old so I  
24 need you to kind of like break this down  
25 for me. The original application was

2 for home office/home occupancy, one  
3 employee, one truck? Was that the  
4 original -- what was on the original  
5 application? I feel like it's kind of --

6 MR. PALMER: So the original  
7 application --

8 MR. DONOVAN: May I? So the  
9 original application to this Board, not  
10 in 1984?

11 MS. BANKS: No. The original  
12 application.

13 MR. PALMER: The original  
14 application sought to treat this --  
15 sought an interpretation from the Board  
16 that this was an existing nonconforming  
17 use. The whole thing. The whole kit and  
18 caboodle --

19 MS. BANKS: You basically want it  
20 to be kind of like grandfathered in?

21 MR. PALMER: Sure. And now what  
22 we're -- because we have the benefit --  
23 now that we have the benefit of that  
24 zoning code, we've met or modified the  
25 application that's before you to say

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well, because we have that code, we now know that it squarely fit within, at a minimum, the home occupation and then these other accessory uses that allowed, to the extent they did, four vehicles, commercial vehicles and the like. So that's what we're characterizing the use as. So we're -- if we get all the way sort of through that list of accessory uses, ultimately we'll have to then seek from your Board, at least we're going to have to probably speak with the counsel, and there may be needs to even re-notice or adjust what relief is sought. We're getting information as it comes to us, so the nature of the relief we're seeking has changed and it's all because of the more information that we've been able to get from Town files. So we're here tonight presenting what the ask is, but we'll certainly speak to counsel about what he believes will be sort of the next step of this application should the Board --

2 MR. DONOVAN: I don't get a vote.  
3 You've got to convince the Board to get  
4 to that point.

5 MR. PALMER: I know the public also  
6 wants to speak, so let me try to dial  
7 this down.

8 CHAIRMAN SCALZO: This is my first  
9 time hearing this. I will give the  
10 public the opportunity to speak, I'm not  
11 going to say as long as they'd like, but  
12 I will certainly give them an opportunity.  
13 I need to hear from you, as the applicant's  
14 representative, everything I need to hear.

15 MR. PALMER: The first application,  
16 as I mentioned, did deal with this as  
17 sort of a whole. We highlighted the  
18 uses, the history and what was there.  
19 Now we're into the home occupation  
20 component. One of the accessory uses, so  
21 to speak, that we're speaking to now is  
22 the home occupation.

23 You mentioned, Ms. Rein, the home  
24 occupation says any gainful occupation or  
25 profession customarily conducted within a

2 dwelling by the residents thereof,  
3 clearly secondary to the use of the  
4 dwelling for living purposes and which  
5 does not change the character of the  
6 structure. It's in the basement. It's  
7 580 square feet. It fits those criteria,  
8 and that's what's been operating in that  
9 space, you know, since the time of -- I  
10 guess the quoted times that we mentioned  
11 in our submission.

12 I mentioned that we included in the  
13 submission the building cards and the  
14 things that also show those areas.  
15 Again, also I'm not suggesting that  
16 speaks to the use. It's just, again,  
17 evidence that those things have been  
18 there.

19 The second part of that definition  
20 says that the activity will not have more  
21 than one resident employee working on the  
22 property at any time and shall not occupy  
23 more than one half of the ground floor of  
24 the dwelling or its equivalent elsewhere  
25 if so used.

2 CHAIRMAN SCALZO: Is it specific to  
3 say the property or the dwelling?

4 MR. PALMER: It says the dwelling.

5 CHAIRMAN SCALZO: Okay. Only  
6 because you said property just then.

7 MR. PALMER: So the activity -- I'm  
8 just reading the quote. It says, "Said  
9 activity shall not have more than one  
10 non-resident employee working on the  
11 premises --

12 CHAIRMAN SCALZO: Premises.

13 MR. PALMER: -- premises at any one  
14 time and shall not occupy more than one  
15 half of the ground floor of the dwelling."

16 MS. REIN: What does premises  
17 encompass?

18 CHAIRMAN SCALZO: I would say the  
19 entire property.

20 MS. REIN: Okay.

21 MR. PALMER: Or dwelling or its  
22 equivalent elsewhere as so defined.

23 The third part of that definition  
24 says -- it lists permissible home  
25 occupations. In this case we're sort of

2 suggesting -- I mean, I can go through  
3 all of them.

4 MS. REIN: Don't.

5 MR. PALMER: It's a lengthy list of  
6 anything from a lawyer to --

7 MR. DONOVAN: Let me say I think  
8 you have to read the whole sentence. I'm  
9 really talking to the Chairman. "Said  
10 activity shall not occupy more than one  
11 half of the ground floor area of the  
12 dwelling or its equivalent elsewhere in  
13 the dwelling if so used." It does say,  
14 "Working on the premises at any one time  
15 and shall not occupy" -- I'm sorry. Let  
16 me go back. "Said activity shall not  
17 have more than one non-resident employee  
18 working on the premises at any one time  
19 and shall not occupy more than one half  
20 of the ground floor area of the  
21 dwelling." Okay. You have to read that  
22 together. I think you got one -- you're  
23 limited to that area in my view. That's  
24 what that says.

25 MR. EBERHART: The physical

2 building itself? You're saying dwelling  
3 or premises.

4 MR. DONOVAN: That makes more sense  
5 for a home occupation. Taylor is reading  
6 from other things that talk about having  
7 construction vehicles. I don't know  
8 really why that was added, but it's  
9 there.

10 MR. PALMER: Then they would later  
11 amend it again, but I assure you I'm  
12 getting there. This was the home  
13 occupation piece. That piece of it, that  
14 component, the basement office with the  
15 one employee, that hasn't changed. Nick  
16 can speak to who and how and when folks  
17 have been in that space.

18 So then turning to the next section  
19 here, the other access -- I'll call it  
20 the other accessory use section. This is  
21 the evolution of this application from  
22 where it was originally, just this is an  
23 existing nonconformity as is. Now we're  
24 applying specific uses, again from the  
25 1974 code because we don't have access to

2 the 1980 code where the company is also  
3 entitled to continue to park its  
4 commercial vehicles and store its tools  
5 and equipment on the property due to the  
6 as-of-right accessory uses under the 1974  
7 code which were not further restricted  
8 until there was an amendment in 1991,  
9 again not knowing what 1980 said. These  
10 uses, as I sort of mentioned earlier,  
11 were off-street parking for commercial  
12 vehicles operated by the occupants of the  
13 permitted residence when such vehicles  
14 are housed in a garage or carport. So  
15 that's a permitted accessory use.

16 Now we have home office. Now we're  
17 talking about just another accessory use.  
18 There's no limit to one, we'll call it  
19 accessory use. It has to be a customary,  
20 incidental accessory use.

21 Off-street parking, not under  
22 cover, for not more than one commercial  
23 vehicle and not over 25 feet in length.

24 Then the other section we mentioned  
25 before, Mr. Chairman, the private garage

2 or carport for not more than four  
3 vehicles, farm equipment or garden house  
4 or tool shed.

5 When you read these together,  
6 that's where we're pursuing the uses  
7 and/or vehicles that are on the site,  
8 which I think then will effectively  
9 evolve the application into the home  
10 occupation, I think is the use that we're  
11 seeking a confirmation by the Board. But  
12 then the other relief that the applicant  
13 will be seeking is area variances to the  
14 specific number of vehicles and how  
15 they're parked, where they're parked or  
16 other relief.

17 When we read this together, the  
18 1974 code, in our perspective, speaks to  
19 the ability for the applicant to park  
20 these additional commercial vehicles,  
21 including those not under cover, farm  
22 equipment such as tractors and forklifts.  
23 It says examples, baling hay and sheds  
24 for storage and other equipment. For  
25 several of these uses, they were undefined

2 and not subject to additional  
3 conditions under the '74 code,  
4 specifically carport, farm equipment  
5 and garden house or tool shed. When  
6 considering those ambiguities, they  
7 are to be read in favor of the  
8 applicant. We are asking the Board  
9 to consider whether ambiguities exist  
10 under that 1974 code. By way of  
11 example, farm equipment was undefined  
12 and not subject to additional conditions  
13 in '74. Considering the company was  
14 not asked to remove its farm equipment,  
15 its backhoe from the property in 1994  
16 when there was actually an investigation  
17 done by Joe's predecessors. The Zoning  
18 Code was later amended to specify what  
19 was considered farm equipment which  
20 was only permitted accessory to any  
21 potential farm operations. As the  
22 code evolved, more specifics came  
23 into play, but not when the use was  
24 evident on the property.

25 Again, I'm going to have Nick

2 speak. I know the public --

3 CHAIRMAN SCALZO: A handful of  
4 times I heard you say about the 1980 code  
5 which you have not yet received from the  
6 Town.

7 MR. PALMER: Correct.

8 CHAIRMAN SCALZO: Counsel, I  
9 wouldn't expect you to know the answer.  
10 You did this through a FOIL request?

11 MR. PALMER: Multiple FOIL requests.

12 CHAIRMAN SCALZO: The response from  
13 the Town with regard to these FOIL  
14 requests was that they didn't have it?  
15 They weren't going to supply it? There's  
16 notification requirements here. What --

17 MR. PALMER: We weren't sure if at  
18 some point we were going to have to try  
19 and appeal and try and pursue other  
20 action to try and get that information.  
21 Right now the best we can do is rely on  
22 that. They indicated that there are  
23 boxes of these things that are not stored  
24 on eCode conveniently online like your  
25 current zoning code. It's just a matter

2 of recordkeeping, I think, of those  
3 materials. I don't know that we've  
4 actually been told no, we don't have it.  
5 It's just I don't know that the Town has  
6 gotten there yet.

7 CHAIRMAN SCALZO: To me, we're  
8 going off the '74 code, but the 1980 code  
9 would be more applicable to what your  
10 application is all about.

11 MR. PALMER: We're kind of in that  
12 conundrum area for that purpose. We have  
13 very much -- we have all the records and  
14 all the submissions and all of the requests.  
15 I think the Town Counsel was here at prior  
16 meetings where we made those requests.  
17 We're actively trying to seek it out so  
18 we could figure out if there was anything  
19 different, if uses changed. There are  
20 lists of other sort of attachments and  
21 things that were in that code, but,  
22 again, we don't have any of the  
23 documentation.

24 MS. REIN: You said something about  
25 a 1991 code.

2 MR. PALMER: So to the FOIL  
3 request, we did receive other codes that  
4 came after the fact.

5 CHAIRMAN SCALZO: After the  
6 incorporation of the business. I want  
7 the one just before it.

8 MS. BANKS: Can I ask a question?

9 CHAIRMAN SCALZO: Sure.

10 MS. BANKS: Even if we receive the  
11 FOIL, right, based on what we saw  
12 happening on the property, like the  
13 soldering, the crane and all these other  
14 things, doesn't that vacate any potential  
15 grandfathering? Like if the business  
16 qualified for whatever the 1974 rule or  
17 the 1980 rule is, based on the actual  
18 activities happening on the premises,  
19 wouldn't that vacate the entire like  
20 potential for grandfathering?

21 CHAIRMAN SCALZO: I don't know.

22 MR. DONOVAN: I'm sorry to do this  
23 to you, Joe. I do it like once every --  
24 if someone came in today and they came to  
25 your office and wanted to do a home

2 occupation, you're going to send them  
3 here because they need a special permit?

4 MR. MATTINA: Correct.

5 MR. DONOVAN: Correct?

6 MR. MATTINA: Correct.

7 MR. DONOVAN: Do you know in 1984  
8 -- it seems like a long time ago but it  
9 really wasn't. I was in law school then  
10 -- what did somebody have to do if they  
11 wanted to have a home occupation?

12 MR. MATTINA: I have no clue.

13 MR. DONOVAN: Not the answer I was  
14 looking for.

15 MR. MATTINA: I could guess or  
16 speculate.

17 CHAIRMAN SCALZO: I think what Joe  
18 meant to say was I'll find out.

19 MS. BANKS: Just to go back. I  
20 feel like a few series ago -- because  
21 this is a lot of like talking and papers  
22 and stuff like that, and confusion. A  
23 few conversations ago we also heard and  
24 had a conversation about like trucks  
25 being parked and moved and employees

2 coming to park their cars and get into  
3 vehicles and then go work offsite. So  
4 all of those things, even if we got the  
5 FOIL, right, is that relevant at all?

6 CHAIRMAN SCALZO: I don't know what  
7 the code says.

8 MR. DONOVAN: Let me just say, it  
9 could be. The starting point for any  
10 preexisting nonconforming use is it has  
11 to be legal when it got started. Either  
12 it got an approval from the Town or it  
13 wasn't regulated by the Town therefore it  
14 was allowed. I keep asking Taylor these  
15 questions because I'm trying to figure  
16 out in 1984, plus or minus, when this use  
17 started, what status of approval did it  
18 have, and I'm getting we don't know.

19 MR. PALMER: I mean, I have -- the  
20 applicant is here that can testify to the  
21 nature of the use, which is a home  
22 occupation which was a permitted  
23 accessory use. We don't know by special  
24 permit or simply by, you know, the nature  
25 of an occupancy of the use.

2 MS. REIN: Dave, since the company  
3 has evolved exponentially, wouldn't that  
4 change?

5 MS. BANKS: Yeah.

6 MR. DONOVAN: So just bear with me  
7 because I'm very linear. I want to  
8 establish what happened in 1984. Was  
9 that use approved or allowed then, what  
10 was the extent of the use then when it  
11 started, what's the extent of the use  
12 now.

13 MR. PALMER: I can tell you what  
14 the problem for that is because Ms. Rein  
15 brought it up at the last meeting. The  
16 Building -- Code Compliance didn't  
17 maintain COs before 1985. All of this  
18 is adding to the existing nonconformity  
19 argument in favor of the applicant.  
20 That's why --

21 MS. BANKS: Hang on. I'm sorry.  
22 I'm so sorry. I'm old. I'm very old.

23 CHAIRMAN SCALZO: You're the  
24 youngest member of this Board.

25 MS. BANKS: I'm old. So you're

2 talking about the questions about the CO,  
3 right, like not having the certificate of  
4 occupancy?

5 MR. PALMER: The Board is asking if  
6 we have a CO.

7 MS. BANKS: And you're saying that  
8 you asked -- you've submitted FOIL  
9 requests and they have not been filled.

10 CHAIRMAN SCALZO: That's for the  
11 zoning code from 1984.

12 MR. PALMER: Very specific.

13 MS. BANKS: You've gotten no  
14 response?

15 MR. PALMER: We got the property's  
16 files. It's one thing to have the  
17 property's files. If Mr. Donovan lived  
18 in Town, I could say I want to solicit  
19 the records for 34 Main Street, and I  
20 could get those files through a FOIL  
21 request. This is a bit different.  
22 We've had to go to the town clerk to  
23 specifically obtain, and we've even  
24 contacted the Department of State to  
25 try and obtain a copy of the old

2 records. Like everything else,  
3 there are some accessible and some  
4 that are in a box or lost in a flood  
5 or a fire.

6 MS. BANKS: I just want to be very,  
7 very specific. Are you getting a  
8 response to the request or you're not  
9 getting a response to the request?

10 MR. PALMER: So we've gotten a  
11 response to the request initially. I  
12 honestly don't recall the last bouncy  
13 ball of that request. So I can submit  
14 that to you all for your reference.  
15 We've been in regular contact with the  
16 Town regarding that specific Zoning Code.  
17 I don't remember who --

18 CHAIRMAN SCALZO: I will reach out  
19 myself to the Town's counsel And find out  
20 why we can't -- the Town can't produce  
21 this information to you.

22 MR. PALMER: Mr. Chairman, I can  
23 forward it to counsel --

24 CHAIRMAN SCALZO: That would be  
25 fine.

2 MR. PALMER: -- and provide it to  
3 you so you have a host of our submissions  
4 making that request.

5 CHAIRMAN SCALZO: It's difficult to  
6 do what you need to do without all of the  
7 tools in your shed.

8 MR. PALMER: You too, to make that  
9 decision and fully understand.

10 MS. REIN: Excuse me. David, if  
11 this 1980 information is crucial, why are  
12 we here now deciding this? We can't  
13 decide it with --

14 CHAIRMAN SCALZO: We told the  
15 applicant to come back.

16 MS. REIN: He may have to come back  
17 again. We don't have the information we  
18 need.

19 MR. EBERHART: I agree. Until we  
20 establish the baseline.

21 MS. BANKS: The question I have is  
22 even if we get it, right, even if we get  
23 it and it was a permitted use, let's say  
24 you could have one car or four cars or  
25 whatever, the actual activity that's

2 happening on the premises is not  
3 permitted.

4 MS. REIN: We don't know that yet.

5 MR. BELL: We don't know from 1984.

6 CHAIRMAN SCALZO: All businesses  
7 evolve.

8 MR. DONOVAN: Understand, there are  
9 specific regulations against preexisting  
10 nonconforming uses and there's a  
11 prohibition against expansion. I'm  
12 struggling with the baseline. I'm sure  
13 the public is going to, because they said  
14 it before, they're going to state that it  
15 has expanded. In my mind I want to know,  
16 so I can best advise you, what was going  
17 on in 1984 and was that approved or not,  
18 because I think if the Board says yes,  
19 it's a preexisting nonconforming, we're  
20 satisfied, then we get to the area  
21 variance request. I think if the Board  
22 says no, I don't think we get to the area  
23 variance, I think we go right to the use  
24 variance.

25 MR. PALMER: That is one way -- if

2 the code says these uses were not  
3 permitted, the off-street parking, the  
4 carport, all the commercial vehicles and  
5 the home occupation --

6 MR. DONOVAN: But if the Board says  
7 we don't agree that it's a preexisting  
8 nonconforming use, I don't think you go  
9 to the area variance. You could apply  
10 here for a special permit for a home  
11 occupation.

12 MR. PALMER: Let me do one thing  
13 just to help the Board, because it's  
14 unfortunately in Dave and I territory. I  
15 want to recite some case law specifically  
16 as to why COs are issued. It's not  
17 always about specifically the use, but  
18 what was constructed. So just for the  
19 benefit here, as I mentioned, the  
20 Building Department didn't maintain  
21 records before 1985 in that capacity. In  
22 this case we're talking about a single-  
23 family residential property, and  
24 certificates of occupancy are typically  
25 issued upon the closure of a building

2 permit. That doesn't always necessarily  
3 relate to the use of the structure  
4 because the principal use is the  
5 residence, so the owners of a residence  
6 who own and apply for that in the  
7 first place. This house was built as  
8 a house and then it was used, based  
9 on what we have from the '74 code,  
10 for these accessory uses. So to put  
11 it differently, if the company wanted  
12 a tool shed on the property, Nick  
13 would apply for a building permit and  
14 eventually receive a CO in his name  
15 for that shed. The company's use as  
16 a home office, the garages, the  
17 parking areas of the property were  
18 all accessory uses that were permitted  
19 under the 1974 code and then amended  
20 through 1991.

21 So now I'm going to go just to  
22 the case law side of this, because  
23 the Court of Appeals has had to deal  
24 with this issue, you don't have a CO.  
25 So how do we try to help better

2 understand this. We noted this in  
3 our last submission, so I'm not going  
4 to go through each of the cases so to  
5 speak, but --

6 MS. BANKS: Another question. So  
7 the case law, if we -- okay. I mean, if  
8 we have to wait for the FOIL request to  
9 be filled and we don't know --

10 CHAIRMAN SCALZO: I'm going to  
11 reach out the town counsel. What's  
12 really disturbing to me is we're not  
13 getting a definitive answer from counsel  
14 as to why the Town can't supply this.

15 MS. BANKS: Sure. So this  
16 application was entered when?

17 MR. PALMER: In December we  
18 submitted it.

19 MS. BANKS: December. What's the  
20 status clock on it? Like a status clock,  
21 when this application would like expire  
22 and then maybe perhaps automatically get  
23 approved.

24 MR. DONOVAN: The application in  
25 front of this Board?

2 MS. BANKS: Yes.

3 MR. DONOVAN: It doesn't expire  
4 unless they go away. So long as it's in  
5 front of the Board actively being  
6 reviewed by the Board. I mean, we've  
7 had them go on for a year or more.

8 MR. EBERHART: Isn't there a clock  
9 for when you make a FOIL request?

10 MR. DONOVAN: When you make a FOIL  
11 request, the FOIL access officer has to  
12 have it filed within five business days.  
13 Sometimes they acknowledge receipt. They  
14 could provide the information. If they  
15 need more time, they'll say they need  
16 more time, right. Generally speaking,  
17 you get up to twenty business days as  
18 more time. If something happens that  
19 they can't locate it, then they would  
20 request more time. At some point in  
21 time, I don't remember exactly what it is  
22 off the top of my head, it's deemed a  
23 denial, and that denial can be appealed  
24 to the FOIL appeal officer who then has  
25 to render a decision in ten business

2 days, if I recall correctly. Then if  
3 it's another denial or we can't find it,  
4 the language would be after a diligent  
5 search of the Town files, we find no  
6 record responsive to your request, which  
7 is not what we want to hear. We want to  
8 know what was in effect in 1980. I don't  
9 know where we go if you can't find it. I  
10 find it difficult to believe --

11 MR. PALMER: If I may. I don't  
12 know that the Town ever said it didn't  
13 exist or they don't have copies of it. I  
14 think it was just an administrative  
15 burden to try to locate it with --

16 MS. BANKS: That's my question.  
17 What's the response that you got? Did  
18 someone say --

19 MR. PALMER: I don't want to  
20 mischaracterize what anybody said. We  
21 have it all in writing. We have it all  
22 communicated. We have multiple folks in  
23 my office that handle it, from paralegals  
24 to other associates. That is typically  
25 handled by my paralegal. We'll have to

2 ask specifically what the communication  
3 back from the Town was. It wasn't a we  
4 don't have it.

5 MS. BANKS: Understood. I don't  
6 want this to drag on because I feel --

7 CHAIRMAN SCALZO: I sidetracked  
8 this, and I apologize. I will pursue  
9 this with the Town with regard to the --

10 MR. PALMER: Thank you.

11 Just to Ms. Banks' comments, if I  
12 may. We regularly followed up on the  
13 FOIL. We didn't just sit there and wait  
14 and hold it out. We have been diligently  
15 pursuing that specific code section  
16 because that's how we want to be able to  
17 land this plane in some way.

18 Just one other piece. Again, I  
19 can't imagine where the Knicks are now.  
20 For reference, we also note that the  
21 applicants are also continuing this  
22 process before another Board. They're  
23 also at the Planning Board for another  
24 property called the New Road property. I  
25 think we incorporated that submission,

2 some of that information for you all in  
3 the reference documents that we have.

4 MS. BANKS: The property was sold  
5 or bought or something?

6 CHAIRMAN SCALZO: That's the latest  
7 in here. It's one of the exhibits.

8 MR. PALMER: So that property was  
9 approved in 2008 before -- amidst, I  
10 should say, the great recession for this  
11 use, this commercial use. That use was  
12 effectively approved, but those approvals  
13 have expired. Of course the DEC, in  
14 their infinite wisdom, although they lost  
15 in SEQRA, the DEC changed the regs, so  
16 everything about that building had to  
17 change. It's before your Planning Board.  
18 Stormwater plans, the whole host. The  
19 applicant is actively pursuing also other  
20 plans for, I call it the meat and bones,  
21 the sort of other accessory components of  
22 this operation. I just want the Board to  
23 be aware the applicant has eyes on that.  
24 Maybe the neighbors know or are unaware.  
25 We are pursuing approvals which would

2 enable the majority of what's happening  
3 or what's on the site, again, our  
4 position, permitted, to relocate to a  
5 new place in the Town of Newburgh.  
6 That's pending before your Planning  
7 Board. With that, we are pursuing --

8 MS. BANKS: You said that started  
9 in what? 2018?

10 MR. PALMER: No. That started --  
11 Nick, when did that start?

12 MR. DiLEMME: Sometime after 2004.

13 MS. BANKS: 2004? It started in  
14 2004?

15 MR. PALMER: It was approved in  
16 2008, but that approval that was granted  
17 for another site has expired.

18 MS. BANKS: So now it's 2026,  
19 sixteen years later --

20 CHAIRMAN SCALZO: I see right here,  
21 as part of exhibit D, they have something  
22 in which the latest revision date was  
23 February 4, 2026.

24 MR. PALMER: It's actively before  
25 the Planning Board right now.

2 MS. BANKS: We restarted that  
3 process after it expired sixteen years  
4 ago?

5 MR. PALMER: Correct. The  
6 recession, the whole -- I mean, in my  
7 experience, and again I'm not merely that  
8 of Mr. Donovan, we had a lot of users  
9 here in the Town of Newburgh that either  
10 got approved back then. The flavor of  
11 the time of 2006, 2007 was assistive  
12 living or senior or advanced age. A lot  
13 of those approvals, when the bubble burst  
14 in 2007 during the recession, came back  
15 to many of your boards to seek multi-  
16 family as of right. There were a lot of  
17 changes that reflect that.

18 MS. BANKS: Understood. Sixteen  
19 years is a long time.

20 MR. PALMER: Understood. No  
21 argument there.

22 We are actively pursuing other  
23 approvals elsewhere for what would be the  
24 majority of this. A lot of this we're  
25 here because the applicant received the

2 determination, but we're pursuing  
3 multiple fronts. One of the fronts will  
4 deal with the number of vehicles here,  
5 the home occupation and much more sort of  
6 limited capacities. I just want to be  
7 clear to the Board because we included  
8 that that's also a pending piece of this.

9 MS. REIN: We can't vote on what  
10 will be.

11 MR. PALMER: Right. I'm not asking  
12 you to.

13 CHAIRMAN SCALZO: Mr. Masten, it  
14 looks like he has a question.

15 MR. MASTEN: Yes. I've read both of  
16 these reports twice in depth and I still  
17 go back and read them over to get more  
18 information out of them.

19 CHAIRMAN SCALZO: Thank you.

20 MR. PALMER: So with that, I've  
21 taken a lot of your time tonight, I would  
22 ask the Board to continue the hearing. I  
23 mean, we're happy to be back before you  
24 next month. It's just a matter of when  
25 the submission deadlines --

2 CHAIRMAN SCALZO: Make no mistake,  
3 Members of the Board, that is my  
4 responsibility. I will be the one to  
5 reach out to the Town for that  
6 information.

7 MS. JABLESNIK: The submission  
8 deadline for next month would be May  
9 14th.

10 MR. PALMER: Okay. So I'll --

11 CHAIRMAN SCALZO: We'll hear from  
12 the public.

13 MR. PALMER: We'll get to that  
14 after the public gets an opportunity.

15 CHAIRMAN SCALZO: They've been  
16 patient.

17 I'm going to open it up to any  
18 members of the public that wish to speak  
19 about this application. Keep in mind  
20 that we did receive a bunch of  
21 correspondence, letters, photos, videos.  
22 I'm reluctant to open a video on my own  
23 computer at home.

24 MS. CAROLLO: Don't worry, I have  
25 them for you.

2 CHAIRMAN SCALZO: I'm going to  
3 limit you.

4 MS. CAROLLO: It's less than a  
5 minute.

6 I'm also confused because in the  
7 minutes -- actually, I'm sorry, my name  
8 is Danielle Carollo and I live at 442  
9 Strawridge Road in Wallkill, New York,  
10 directly across the street from the  
11 DiLemme property.

12 According to the minutes from the  
13 January meeting, DiLemme's counsel said  
14 that "The legal nonconforming use, the  
15 use dates back to the early '80s, that  
16 falls within the 1974 home occupation  
17 code." So that's what the minutes say.  
18 If he has that -- there was no mention  
19 of any 1980 code. I'm just going to  
20 say that.

21 Also -- I'll get back to that in  
22 a minute. So this is not just a home  
23 occupation. You guys have seen it.  
24 I've submitted videos. It is not the  
25 same historical use. There has been

2 clear expansion in scale and intensity.

3 My understanding of grandfathering,  
4 grandfather, is that it must be lawful  
5 and unchanged and it must not show  
6 material expansion, which we can see  
7 in the Google Earth images, which I  
8 have also submitted, that in 1994 --  
9 I'm sorry -- yeah, 1994 this is what  
10 the property looked like. You can  
11 see that. Then in 2006 we can see  
12 how it expanded. Then in 2025 we can  
13 see how much it's expanded even more,  
14 the footprint.

15 CHAIRMAN SCALZO: By the term  
16 expansion, just the amount of vehicles  
17 that are associated --

18 MS. CAROLLO: The vehicles, the  
19 intensity of the occupation. I can say  
20 firsthand that since I've lived in my  
21 home, I have seen the intensity of the  
22 operation throughout the five years that  
23 I've owned my home. It is not just the  
24 number of vehicles. The number of  
25 employees. I've seen as many as eight

2 employees there. I've submitted photo  
3 evidence of that. It's actually gotten  
4 to the point where the employees are now  
5 recording me.

6 CHAIRMAN SCALZO: I actually saw  
7 that.

8 MS. CAROLLO: Yup. I get it, I  
9 work from home. I'm home all day. I see  
10 it all day.

11 CHAIRMAN SCALZO: That's a home  
12 occupation.

13 MS. CAROLLO: Exactly. If they're  
14 sitting in an office, that would be one  
15 thing. They're not just doing pick ups  
16 and drop offs. The pick ups and drop  
17 offs happen all day, multiple times a  
18 day. There's so much traffic that it  
19 causes, and the noise. It's not just  
20 parking and storage. They're prepping  
21 for their operations, they're cleaning  
22 their stuff.

23 Just so you know what it feels like  
24 to live across the street, let's let you  
25 hear it.

2 (Video played.)

3 MS. CAROLLO: It's all day every  
4 day. Sometimes it's as late as 10:00 at  
5 night.

6 MR. BELL: Really.

7 MS. CAROLLO: That's what this  
8 video is. I have everything time  
9 stamped, and I've submitted all of that.

10 CHAIRMAN SCALZO: Yup.

11 MS. CAROLLO: And here's today.  
12 This is today. The giant crane moving  
13 the pallets or the cutting of metal,  
14 sparks going into the street.

15 (Video played.)

16 MS. CAROLLO: You'll see this is a  
17 photo of eight different employees on  
18 site.

19 So I'm asking you to protect the  
20 residents. We have to endure this daily.  
21 I can't have my windows open on a  
22 beautiful spring day because that is what  
23 I hear all day long. Sometimes it's not  
24 all day. Sometimes they're there at 6  
25 a.m., which is against the noise

2 ordinance. The noise ordinance starts  
3 at 8 a.m. They're there before that.  
4 They're loading, they're unloading,  
5 there's multiple people. Then they  
6 come back at the end of the day.  
7 Other times it's all frigin day. I'm  
8 sorry, but it is very frustrating.

9 I'm asking you to protect the  
10 residents, because no matter what the  
11 1974, 1980, there is material  
12 expansion that has occurred here and  
13 it's impacting us.

14 Thank you.

15 CHAIRMAN SCALZO: Thank you for  
16 coming out and taking your time to  
17 express your opinions and observations.  
18 Thank you.

19 Anyone else from the public that  
20 wishes to speak about this application?

21 MS. PILLITTERI: Hello. My name is  
22 Kayla Pillitteri. I also live directly  
23 across the street.

24 Unfortunately my backyard, my pool  
25 is directly in the construction zone.

2 When I try to sit outside with my kids,  
3 it's beyond -- I can't even hear my  
4 children talking some days, as you can  
5 hear by Danielle's videos.

6 I also wanted to say, considering  
7 the grandfathered in thing, in 1994 a man  
8 that everybody has heard of named Jeff  
9 Bezos opened an online bookstore out of  
10 his garage. At that point in time it was  
11 allowed. Now Jeff Bezos is currently  
12 massive. At some point you have to  
13 realize that it's no longer appropriate  
14 to operate your business out of your  
15 garage or neighborhood.

16 I think I'm so passionate because  
17 I've been e-mailing the Board about this  
18 for the last five years, and e-mailing  
19 the Town.

20 I'm not new to the area. My  
21 parents have lived in the development  
22 since the early 2000s, 2000. I grew up  
23 in the neighborhood. We love the  
24 neighborhood so much that we bought a  
25 house in the neighborhood.

2 Since 2000, in the last 26 years,  
3 I've seen how much it has grown.

4 If this was a home-based office, I  
5 promise you I would not care. Danielle  
6 works from home. I wave to her in the  
7 morning. It wouldn't bother me.

8 It's to the point that it interrupts  
9 my every day life. It wakes my children  
10 up every single morning at 6:00 with  
11 the trucks and the cranes. It's  
12 consistent all day.

13 I'm not going to harp on the  
14 pictures on Google Images because  
15 I've submitted them and I know  
16 Danielle sent them to you.

17 I also know that at the end of  
18 your -- when you decide whether or  
19 not you're going to grant the  
20 variance, you guys always say, you  
21 know, whether this creates a  
22 detrimental adverse impact to the  
23 community. I think it does. You ask  
24 if this is undesirable to the  
25 surrounding neighborhood. It is.

2 Third, you ask whether the hardship  
3 is self-created, and in this case I  
4 clearly think it is. The applicant  
5 has expanded operations beyond what  
6 is permitted rather than complying  
7 with zoning regulations that every  
8 other small business in the Town is  
9 expected to follow.

10 As I said, I want to be clear, I  
11 do support small business. We are  
12 small business owners in the community  
13 and we do it the correct way. Support  
14 does not mean exemption from the law.  
15 Granting this variance sets precedents,  
16 it undermines the zoning protection  
17 of neighborhoods and doesn't protect  
18 the residents like myself.

19 So respectfully I ask that you  
20 deny this variance. Thank you.

21 CHAIRMAN SCALZO: Thank you for  
22 your time.

23 Anyone else here from the public  
24 that wishes to speak about this  
25 application?

2 MR. SANCHEZ: My name is Jose  
3 Sanchez. I live at 3302 State Route 300.  
4 I'm Mr. DiLemme's neighbor. I live right  
5 next door to him.

6 Excuse me, I had an operation, I do  
7 apologize.

8 I live there too and I work from  
9 home. That noise that they're talking  
10 about is really not true. It may happen  
11 on one or two occasions or whatever.  
12 It's not an every day occurrence. But,  
13 I mean, I can understand they may get  
14 upset. Saying it is every day doesn't  
15 mean it is every day. Like I said, I  
16 work from home myself.

17 It doesn't bother me. I've been  
18 living there for sixteen years. Yes, I  
19 see when they do their work. They have  
20 to work so they have to do their jobs.  
21 If they create some noise, it's not so  
22 loud that it's so disturbing that you  
23 can't hear your TV. I have my windows  
24 open, too. It's not that loud. I'm  
25 right there. I'm next door. I

2 understand they're across the street.  
3 I'm not saying that they're lying, but it  
4 depends on the person's tolerance for the  
5 noise level or whatever. I mean, the  
6 employees go over there, he has to have  
7 his employees there, they do work.  
8 They're loading, unloading, whatever.  
9 That's what they are doing.

10 The pictures that they took or  
11 whatever, anybody could timestamp  
12 anything on the computer. It doesn't  
13 necessarily mean it's true. If it's  
14 true, have pictures with the newspaper  
15 showing what day it is so you can prove  
16 this is the day that this happened, this  
17 is the day -- the newspaper from that  
18 day, because anybody who is tech savvy  
19 could put a date on any picture, okay.  
20 I'm computer retarded, I admit it, but I  
21 could do that myself. It's not that hard  
22 to do. You can do it on your cellphone,  
23 digital camera or the computer. I'm not  
24 accusing them of anything. I'm just  
25 saying that if it's happening, be able to

2 prove it on a daily basis. Have the  
3 daily paper so you prove this is  
4 happening every single day. Don't say  
5 it's happening every day single when  
6 it's not.

7 Like I said, I live right there.  
8 It doesn't happen every single day.  
9 I don't live in the twilight zone, so  
10 how is it they hear one thing and I  
11 don't? I'm right there. I'm the  
12 next door neighbor. I don't understand  
13 how come they hear it and I can't.  
14 My windows are open. Not everybody  
15 else. I don't understand that.

16 I just want to say, like have a  
17 realistic view when you're making a  
18 judgment. Don't make it on, you  
19 know, somebody saying it happens  
20 every single day because it doesn't  
21 happen every single day.

22 CHAIRMAN SCALZO: You're repeating  
23 yourself. Thank you.

24 MR. SANCHEZ: I want to make it  
25 short. I just want to say that.

2 CHAIRMAN SCALZO: You've said it.  
3 Thank you for your comments.

4 Please come forward, sir.

5 MR. PHILLIPS: I am old. My name  
6 is Tom Phillips. I've lived in the  
7 neighborhood since '97, how ever many  
8 years that is. During that time -- the  
9 business was there when we came in. You  
10 could see it was a residential business  
11 that was going to grow.

12 In my time they have not disturbed  
13 me. They've been very good neighbors.  
14 Their help is polite and their vehicles  
15 have never been a problem.

16 I think we should do everything we  
17 can to accommodate a good business in the  
18 Town.

19 At the same time, hopefully we can  
20 find a resolution to a noise problem for  
21 the people that are very close. I think  
22 both sides have something to offer.

23 That's all I have to say.

24 CHAIRMAN SCALZO: Thank you for  
25 your comments.

2 MS. MILLSPAUGH: Hi. I'm Nancy  
3 Millspaugh. Tom is my other half. I've  
4 lived in the house since 1997.

5 I don't have an issue with the  
6 noise in the neighborhood.

7 I live three houses directly  
8 through the woods, so I can see the work  
9 going on. There are not trucks on the  
10 roads. They come, they go. That's it.

11 In the morning time do I hear  
12 beeping. Occasionally when they're  
13 backing up. They come, they pick their  
14 trucks up, they park the cars and they  
15 leave. There's not much work going on on  
16 the property.

17 I worked three years on nightshift  
18 at a local hospital. The noise didn't  
19 keep me awake. I would be home by 7 in  
20 the morning and be sleeping. The noise  
21 is not a problem.

22 Thank you.

23 CHAIRMAN SCALZO: Thank you.

24 Does anyone else from the public  
25 wish to comment on this application?

2 (No response.)

3 CHAIRMAN SCALZO: Okay. Counsel,  
4 I believe we kind of need to keep the  
5 public hearing open on this.

6 MR. DONOVAN: You are going to make  
7 a concerted effort to obtain what appears  
8 to be a missing zoning ordinance?

9 CHAIRMAN SCALZO: That's correct.

10 MR. DONOVAN: That being the case,  
11 everyone needs the opportunity to comment  
12 on that, --

13 CHAIRMAN SCALZO: Correct.

14 MR. DONOVAN: -- the public as well  
15 as the applicant. That's a long way of  
16 saying yes, you need to keep the public  
17 hearing open.

18 CHAIRMAN SCALZO: The Knicks are  
19 losing. He doesn't care.

20 MR. DONOVAN: In law school they  
21 teach you if you could say it in 2 words,  
22 why not say it in 147.

23 CHAIRMAN SCALZO: Did you have  
24 anything else to add?

25 MR. PALMER: Not at this time.

2 CHAIRMAN SCALZO: The public is  
3 going to get the opportunity to speak  
4 again. I'm going to caution the public  
5 that when they do come back -- we've  
6 heard your comments, they're a matter of  
7 record now. Please, when you come back,  
8 if you have new information, we're happy  
9 to hear it. When you do come back, I  
10 don't want to hear the same thing I just  
11 heard.

12 MR. PALMER: For the record, we've  
13 gone through every other comment. There  
14 were approximately thirty other letters  
15 in support of the operations that are  
16 taking place at the site. That is part  
17 of your public hearing record regarding  
18 the operations.

19 CHAIRMAN SCALZO: There's even  
20 people that don't live close that were  
21 throwing support out there. That was  
22 kind of a head scratcher to me. People  
23 that don't live there anymore.

24 MS. PILLITTERI: Can I ask a  
25 question? If it is going to be adjourned

2 again, is there any way that we can  
3 know before we rearrange our work  
4 schedules and everything?

5 CHAIRMAN SCALZO: We are the fourth  
6 Thursday of every month.

7 MS. PILLITTERI: Last time when we  
8 came in February, I think you postponed  
9 it until April. Is there a way of  
10 knowing that they're requesting an  
11 adjournment before, because like the  
12 lawyers and --

13 CHAIRMAN SCALZO: In this instance  
14 they're not requesting it. I believe the  
15 Members of the Board feel as though we  
16 don't have enough information that we can  
17 act on. We could close the public  
18 hearing and act on it tonight if we felt  
19 we had enough information. We don't -- I  
20 don't feel that way.

21 MR. PALMER: You'll be setting a  
22 date certain so the public will know when  
23 the next --

24 CHAIRMAN SCALZO: I'll be on the  
25 phone with the town counsel tomorrow.

2 MR. DONOVAN: The motion would be  
3 to continue it to the fourth Thursday in  
4 May.

5 MR. PALMER: All we'd ask is if  
6 you're successful, Mr. Chairman, in  
7 getting that document, that we just have  
8 time -- we have until, I think, Siobhan,  
9 you said the 14th or something of May.  
10 If we get it then, we'll try and still  
11 get you materials before the meeting.  
12 It's just a matter of us being able to  
13 respond to it when we get it.

14 CHAIRMAN SCALZO: To your question,  
15 ma'am, we just want to make an informed  
16 decision.

17 MS. PILLITTERI: I completely  
18 understand. I think maybe my question  
19 was confusing. I think I'm trying to  
20 ask, if we aren't able to obtain that  
21 information and it isn't going to be able  
22 to be spoken upon at the May meeting, is  
23 there any way we're able to know so we  
24 don't rearrange everything to be here?

25 CHAIRMAN SCALZO: I understand. In

2 this instance the applicant -- if I'm  
3 unsuccessful with the Town, which I'm not  
4 thinking I'm going to be, so I can find  
5 out from the Town when they can actually  
6 provide that to the applicant, and then  
7 we have to give them a little bit of time  
8 to assemble their arguments.

9 MS. CAROLLO: So why at the January  
10 meeting were we saying they needed to  
11 obtain the 1974 code? That's what the  
12 minutes say.

13 CHAIRMAN SCALZO: I believe they  
14 were looking for the '74 code. I don't  
15 know --

16 MR. PALMER: Any code --

17 MS. BANKS: That's a good question.  
18 You were looking for the 1974 code and  
19 now you're looking for the 1980 code?

20 MR. PALMER: Correct.

21 MS. BANKS: Okay. So you requested  
22 them separately?

23 MR. PALMER: We requested all of it  
24 together.

25 MS. BANKS: You got one and you

2 need the others?

3 MR. PALMER: We got some of the  
4 pieces.

5 MS. CAROLLO: But you only  
6 mentioned the 1974 code in the meeting.  
7 That's what's in the minutes.

8 CHAIRMAN SCALZO: Let me do that.  
9 It's not a he said/she said. I don't  
10 care what they asked for. I, as the  
11 Chairman, am asking the Town to supply  
12 the 1980 code. That's that. I don't  
13 care if they asked for '74, '68, '92. I  
14 want '80.

15 MR. PALMER: Just reasoning for the  
16 benefit of the public or the Board, that  
17 just because -- the 1980 code may not  
18 have changed or added or removed any  
19 uses, so then we would be relying on the  
20 code at the time when they first occupied  
21 the premises.

22 MS. BANKS: I just hope that we can  
23 get whatever we need, because it seems  
24 like it's the -- it's the clerk, it's the  
25 clerk, it's clerk, it's the FOIL.

2 Whatever it is we need to ask for, I'm  
3 just hoping that we can consolidate that  
4 one request --

5 CHAIRMAN SCALZO: Ms. Banks, I will  
6 take care of it. Please trust me that I  
7 will take care of it. I am very aware  
8 now -- because I was not at the last  
9 meeting. I am very aware now what needs  
10 to be supplied. I will make sure they  
11 get it. If they don't get it, there will  
12 be a reason why.

13 MS. BANKS: Okay. So even if  
14 there's a reason why, is there another  
15 like expedited or elevated way to request  
16 it so we can get what we need? Does that  
17 make sense? Or do we go to the County  
18 Clerk?

19 CHAIRMAN SCALZO: The County Clerk  
20 doesn't have it. This is local.

21 MR. PALMER: We went to the other  
22 source, which is the Department of --

23 MS. BANKS: So the only place we  
24 can get this is with the Town Clerk?

25 CHAIRMAN SCALZO: I'm going to the

2 top. I'm going to let someone ask all  
3 the right people. I'm not going to start  
4 at the clerk. I'm going to go to the  
5 supervisor.

6 MS. BANKS: The FOIL request, we  
7 said, was it five business days? I want  
8 to remember the timeline.

9 CHAIRMAN SCALZO: That's something  
10 that -- I don't want to say that's not  
11 our -- I'm not going to hold someone to  
12 that. I'm going to bring the problem to  
13 the Town Supervisor and I'm going to let  
14 him handle it.

15 MR. PALMER: We're going to forward  
16 to FOIL request --

17 CHAIRMAN SCALZO: If something is  
18 not supplied in the appropriate amount of  
19 time, that's not my concern. I need to  
20 -- I need to do my best.

21 MS. BANKS: Yes.

22 CHAIRMAN SCALZO: With regard to  
23 holding the accountability, I'm going to  
24 leave that up to the supervisor for the  
25 Town.

2 MS. BANKS: I don't know if it's  
3 accountability. I just want to help get  
4 -- I just want to make sure we get  
5 whatever we need to help get this moving.  
6 It keeps --

7 CHAIRMAN SCALZO: I appreciate your  
8 enthusiasm to help. Please allow me to  
9 reach out, as the Chairman of the ZBA, to  
10 the supervisor and I will get an answer.

11 MS. REIN: Excuse me, Darrin.  
12 Should we hold this over then until June?

13 CHAIRMAN SCALZO: Hold it until  
14 June?

15 MS. REIN: To give everybody a  
16 chance to get what they need.

17 MR. BELL: He said May.

18 MS. REIN: Siobhan said that they  
19 have to have their request or they have  
20 to submit by May 14th. Is that enough  
21 time?

22 CHAIRMAN SCALZO: I'm not sure.

23 MS. REIN: Rather than do this all  
24 over again.

25 CHAIRMAN SCALZO: The rub is this.

2 I've got different ends of the spectrum  
3 here. We want to resolve this as quickly  
4 as possible. If we were to push this out  
5 until June, if the opportunity for them  
6 to receive the information and appear  
7 before us in May is there, then we lost a  
8 month.

9 MS. BANKS: Right. I think we  
10 should go right to May.

11 MR. PALMER: The neighbors have  
12 asked to be notified, and I don't want to  
13 put more of a --

14 CHAIRMAN SCALZO: We're not going  
15 to re-notify.

16 MR. PALMER: Thank you. I was  
17 going to suggest maybe if we don't  
18 receive that code provision or it's under  
19 process by that time, then we would just  
20 ask --

21 CHAIRMAN SCALZO: Then we're going  
22 to have -- you're going request --

23 MR. PALMER: Just for the public.

24 CHAIRMAN SCALZO: The public, in  
25 this case I'm going to have to ask you to

2 keep an eye on the website.

3 MS. JABLESNIK: You would just  
4 check the agenda on the Town website.  
5 Like this one, the one application was  
6 withdrawn. You'd be able to see it's  
7 adjourned until June or something.

8 MR. PALMER: If we don't -- I'm  
9 sorry. I'll speak to the Board. If we  
10 don't get it by that date, we'll submit  
11 an adjournment so that there's plenty of  
12 time for the neighbors to know that the  
13 Board will consider it in June. Does  
14 that make sense?

15 CHAIRMAN SCALZO: Yes.

16 Now I'm going to look to the Board  
17 for a motion to keep the public hearing  
18 open.

19 MR. DONOVAN: Until the fourth  
20 Thursday in May.

21 MR. EBERHART: I make a motion that  
22 we keep the public hearing open until  
23 May --

24 MR. MASTEN: I'll second it.

25 CHAIRMAN SCALZO: The fourth

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Thursday in May. I helped you out,  
Mr. Eberhart. I thought I heard a  
second from Mr. Masten down there.  
All in favor.

MS. BANKS: Aye.

MR. EBERHART: Aye.

MR. HERMANCENCE: Aye.

CHAIRMAN SCALZO: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: Those opposed.

(No response.)

CHAIRMAN SCALZO: I'm hoping to see  
you in May.

MR. PALMER: Agreed.

(Time noted: 8:45 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 4th day of May 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

LARS KIELHORN  
3 Mace Circle, Newburgh  
Section 51; Block 5; Lot 13.2  
R-1 Zone

----- X

Date: April 23, 2026  
Time: 8:47 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: LARS KIELHORN  
TRACY BARRY

----- X

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

2                   CHAIRMAN SCALZO: Our next  
3                   applicant is a holdover from last  
4                   month's meeting, Lars Kielhorn,  
5                   3 Mace Circle in Newburgh, area  
6                   variances of the front yard and  
7                   setback to the property line to  
8                   build an accessory structure with  
9                   solar thermal collectors on the roof  
10                  to heat the pool.

11                  Folks, you may recall from last  
12                  month's meeting that I had asked the  
13                  applicant to reach out to his land  
14                  surveyor to provide a little clarity  
15                  on the property lines. We have  
16                  received that information. I know  
17                  Siobhan had e-mailed that, so it  
18                  wasn't part of your packages. Have  
19                  you taken a look at it?

20                  MS. REIN: Yes.

21                  MR. BELL: Yes.

22                  CHAIRMAN SCALZO: Are you all now  
23                  clear on where Mr. Kielhorn's property  
24                  line is, where Mr. Clarino's property  
25                  line is and where that land in between

2               them that no one owns is?

3               MS. REIN:    Yes.

4               MR. MASTEN:   No man's land.

5               CHAIRMAN SCALZO:  It is a bona fide  
6               gore.  Now I understand it so much  
7               clearer.

8               This is where I'm going to look at  
9               Counsel and say I don't know how we move  
10              forward to grant any variances on a piece  
11              of property that the applicant does not  
12              own, nor does his adjoining, contiguous  
13              neighbor.

14              MR. DONOVAN:  Based upon this  
15              survey provided by William James with a  
16              date that I can't read because the font  
17              is too small, but it's recent.

18              MR. KIELHORN:  Very recent.

19              CHAIRMAN SCALZO:  Revised April 17,  
20              2026.

21              MR. DONOVAN:  It indicates the area  
22              that you're looking to build on is not on  
23              your property.

24              MR. KIELHORN:  It is on the gore.  
25              There is a -- which there is a pool which

2           has been there for 25 years. It's a  
3           concrete area which has been there for  
4           25 years which there was a -- which  
5           there was a pergola on there that was  
6           permitted in 2016 that we're trying  
7           to extend.

8                       MR. DONOVAN: I understand that.  
9           The Board can't vote to approve something  
10          that's not on your property.

11                      MS. BANKS: Is the pool that's been  
12          there for 25 years a part of your  
13          property?

14                      MS. BARRY: The pool is on our  
15          property.

16                      CHAIRMAN SCALZO: The pool is on  
17          their property.

18                      MS. BARRY: The pool is on our  
19          property and the area where the pre-  
20          existing pergola is has been used for  
21          25 years for that pool. We're not  
22          asking to use anything that isn't  
23          already delineated for use.

24                      MR. KIELHORN: And built upon.

25                      MS. BARRY: Even there were trees

2           put in about 25 years ago that Rich  
3           Clarino is aware of. He sent a letter to  
4           you guys that he is not opposed to this,  
5           was involved in putting it there.

6           I know that that gore is a gray  
7           area. There's been some back and forth  
8           as to what that gore represents.

9           The pergola that was approved  
10          before is already there. We're just  
11          asking to extend it on the same exact  
12          property that's been used for 25 years by  
13          the owner --

14          CHAIRMAN SCALZO: I understand  
15          exactly. I am very sympathetic to what's  
16          going on here. As a Board we can't vote  
17          on something that's not on your property.

18          Now, I know Clarino said he's fine  
19          with everything that you're doing, but  
20          there is a title issue here that's out of  
21          our area of expertise. Perhaps reaching  
22          out to an attorney to try and quitclaim  
23          that portion of the land and -- I've seen  
24          that done before, but I don't -- I can't  
25          give you advice. I do know that we can't

2            now that we are very clear with where the  
3            property lines are.

4            What's so unfortunate is we get so  
5            many applicants in here that come in  
6            asking for forgiveness rather than  
7            permission. You're approaching this the  
8            right way and we're kind of -- we're  
9            stopping you from doing it. You had the  
10           right approach.

11           MS. BARRY: In the questions that  
12           you ask when you do give permission, one  
13           of the things that you ask about is would  
14           what we're doing be detrimental to the  
15           surrounding area.

16           MR. DONOVAN: But it's always on  
17           property that the applicant owns.

18           MS. BARRY: It's leaving us with --  
19           the only option is to start using  
20           propane, which we're really adamantly  
21           trying to avoid. I just put solar lights  
22           on our deck today. We have solar lights  
23           going from our driveway to our house.  
24           Around that entire pool area is 24 solar  
25           lights that I put in last year when we

2            bought the house. We're really trying to  
3            reduce the footprint. Without being able  
4            to extend the pergola, we can't do  
5            anything that is economically and good  
6            for the environment.

7                       It for 25 years has been used for  
8            the same purpose, the pergola. How was  
9            that approved in 2016?

10                      CHAIRMAN SCALZO: That I don't  
11            know. I can't answer to that.

12                      Perhaps the Building Department can  
13            answer how they issued a permit for a  
14            pergola that wasn't on their property.

15                      MR. MATTINA: I'd have to go back  
16            and look in the file and see what the  
17            survey showed.

18                      CHAIRMAN SCALZO: It's possible  
19            that was done in error. I appreciate  
20            everything you're trying to do. I think  
21            it's wonderful that you're trying to  
22            reduce your carbon footprint. I do.

23                      Unfortunately, as I mentioned, I  
24            have seen it done before where gore areas  
25            had been quitclaimed by a contiguous

2            property owner so you, in essence, end up  
3            owning that property. Until you do, we  
4            cannot act on your application.

5            MS. BANKS: Can I ask a quick  
6            question?

7            MR. BELL: Can they buy that  
8            portion of the property?

9            CHAIRMAN SCALZO: Buy it from who,  
10           because there's no owner. That's why a  
11           quitclaim Q-U-I-T --

12           MS. BANKS: I have a quick question  
13           because I'm old.

14           CHAIRMAN SCALZO: Not because you're  
15           old.

16           MS. BANKS: Is this pergola already  
17           over the property line?

18           CHAIRMAN SCALZO: Yeah.

19           MS. BANKS: How long has it been  
20           there?

21           CHAIRMAN SCALZO: It's all pre-  
22           existing.

23           MS. BANKS: Isn't there like Real  
24           Property Law in New York State where  
25           there's like adverse or hostile

2 possession?

3 CHAIRMAN SCALZO: Adverse is open  
4 and notorious. Sure, this might fit the  
5 criteria, but there's no --

6 MR. DONOVAN: This Board can't make  
7 that determination.

8 MS. BANKS: Okay.

9 MR. DONOVAN: We're presented with  
10 a survey that shows the area where the  
11 addition or construction proposed is in  
12 an area not owned by the applicant.

13 MS. BANKS: Got you.

14 MR. DONOVAN: That's the problem.

15 MS. BANKS: They would have to deal  
16 with the adverse hostile possession --

17 MR. DONOVAN: They have to figure  
18 out how to get that --

19 CHAIRMAN SCALZO: By whatever  
20 means, yes.

21 MS. BANKS: Because it's been there  
22 since 2016. Correct?

23 CHAIRMAN SCALZO: Well, the land  
24 has been there forever.

25 MR. KIELHORN: The pool has been

2 there for more than 25 years.

3 MS. BANKS: Under the Real Property  
4 Law there's a 10-year statute. If this  
5 pergola was built over the property line  
6 and it's open and obvious, they could  
7 technically take possession of it under  
8 Real Property Law.

9 MR. DONOVAN: We can't make that  
10 determination. It's a factual thing  
11 between them and their neighbor.

12 CHAIRMAN SCALZO: Thank you,  
13 Counsel.

14 That's where we're at, unfortunately.  
15 Again, I think what you're trying  
16 to do is fabulous. We can't act on this.

17 MS. BARRY: Okay.

18 CHAIRMAN SCALZO: Counsel, where do  
19 we go from here? There has to be closure  
20 to this. Do we deny or --

21 MR. DONOVAN: So you could ask the  
22 Board to vote and they'd vote no or you  
23 could withdraw the application and live  
24 to fight another day.

25 MS. BARRY: I don't know which one

2           is more advantageous. I guess we'll try  
3           to quitclaim or hostile takeover. I'm  
4           not sure. I didn't quite understand  
5           that, but I'll look it up when I get  
6           home.

7           CHAIRMAN SCALZO: Perhaps reaching  
8           out to your legal counsel, they may guide  
9           you the best way.

10          MS. BARRY: We didn't think we  
11          needed legal counsel for a \$2,000  
12          pergola.

13          MR. KIELHORN: It's turning into a  
14          \$50,000 project. It really is.

15          MS. BARRY: When we purchased the  
16          house --

17          MR. DONOVAN: You can keep talking,  
18          I don't mean to be rude. You're not  
19          going to put this on your property.  
20          That's not going to happen. So if the  
21          Board votes and denies your application,  
22          then you've got to come back and request  
23          a rehearing and it has to be unanimous.  
24          If you withdraw your application, you can  
25          just submit another application once you

2               get this title taken care of.

3                       MS. BARRY: We'll withdraw.

4                       MR. DONOVAN: Thank you.

5

6                       (Time noted: 8:55 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.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 4th day of May 2026.

*Michelle Conero*  
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MICHELLE CONERO

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

READY COFFEE  
1422 Route 300, Newburgh  
Section 60; Block 3; Lot 23  
IB Zone

----- X

Date: April 23, 2026  
Time: 8:55 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: ROBERT WACHTEL  
SEAN PETERS

----- X

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

2 CHAIRMAN SCALZO: Our next  
3 applicant, this is a come back, Ready  
4 Coffee. This is a Planning Board  
5 referral requesting variances for the  
6 proposed project to be a standalone  
7 and not in conjunction with a shopping  
8 center, theater or office; B, lot  
9 size, rear yard, side yard, both side  
10 yards for a proposed new drive-thru  
11 coffee facility.

12 This is a continuation of a  
13 previous --

14 MR. WACHTEL: Correct.

15 CHAIRMAN SCALZO: So we don't have  
16 to go through any of the other --

17 MR. DONOVAN: This application is  
18 for a use variance.

19 CHAIRMAN SCALZO: With a different  
20 approach.

21 MR. WACHTEL: Good evening. Robert  
22 Wachtel, Ready Coffee. I'm joined by  
23 Sean Peters with H2M Architects &  
24 Engineers.

25 I will be addressing the first

2 issue from the Planning Board and then  
3 Sean will be addressing the remainder.

4 The first issue regards we're  
5 requesting an area variance from what is  
6 classified as a restaurant or fast food  
7 establishment in conjunction with a  
8 shopping center, theater or office.  
9 We're requesting an area variance because  
10 the physical requirement of the part of  
11 the shopping center, et cetera we don't  
12 meet, but our underlying use is permitted  
13 by the zone. That's what we're seeking  
14 an area variance on, the shopping center,  
15 theater requirement.

16 CHAIRMAN SCALZO: Okay. Counsel,  
17 does that hold water?

18 MR. DONOVAN: So the Planning Board  
19 sent this over indicating to me, the way  
20 I read Mr. Cordisco's letter, that it's a  
21 permitted use and it just needs the area  
22 variances.

23 CHAIRMAN SCALZO: Then it holds  
24 water.

25 MR. WACHTEL: Sean will present the

2 remaining.

3 MR. PETERS: Thank you, Rob.

4 Sean Peters, H2M Architects &  
5 Engineers.

6 Just for the benefit of some of the  
7 Board Members that weren't here last  
8 month, this project is for a drive-thru  
9 coffee shop. The project currently  
10 developed right now is an existing 1,300  
11 square foot smoke and vape shop.

12 The need for these area variances  
13 is necessitated by what I believe to be  
14 two main things, the first being the lot  
15 size, which is obviously out of Ready  
16 Coffee's control. This is a very small  
17 lot that exists within a zoning district  
18 that has fairly significant setback  
19 requirements. That drives a lot of the  
20 need for these setbacks.

21 The other thing is the physical  
22 location of the structure. The structure  
23 is located intentionally where it's  
24 shown, and that's to provide -- you know,  
25 we spoke to the DOT about this. That's

2 to safely provide queueing for vehicles  
3 that are coming through this site without  
4 backing up onto Route 300. We believe  
5 that is the most sensitive part of this  
6 project, is making sure that we're  
7 adequately addressing traffic. We have  
8 met with the DOT and talked to them. We  
9 explained the need for queueing. Ready  
10 Coffee itself has collected a lot of data  
11 on their previous stores and the number  
12 of customers that come through and the  
13 queueing. Really what this store would  
14 likely require at a maximum would be ten  
15 vehicles queued. You're seeing fourteen,  
16 and that's just to provide an additional  
17 factor of safety.

18 With all that being said, again,  
19 the lot size here is really the driver  
20 for the need for these variances.

21 So for example, the lot width is  
22 100 feet and the bulk table requires 80  
23 feet for both side yards. You'd need to  
24 have a building that was only 20 feet  
25 wide to fit within here without some need

2 for a side yard variance. So even this  
3 building, which is 34 by 37 approximately,  
4 even with its small footprint, it still  
5 requires a side yard variance. So the  
6 challenge that this lot presents is  
7 it's small size. Again, this building  
8 is under 700 square feet. The existing  
9 vape shop is 1,300 square feet. There's  
10 a reduction of the square footage of  
11 the building by 46 percent. We're  
12 actually minimizing the building  
13 coverage on this lot.

14 Then again, the need for those  
15 variances is largely driven by, you  
16 know, the location of the setbacks  
17 and, you know, providing adequate  
18 queueing for the vehicles that are  
19 going to be accessing the site.

20 CHAIRMAN SCALZO: How big is this  
21 facility? Are you guys related to the  
22 one that's --

23 MR. PETERS: Yes. It's roughly the  
24 exact same size.

25 CHAIRMAN SCALZO: Same dimensions?

2 MR. PETERS: The same footprint.

3 I did want to also clarify one  
4 thing for the Board. With that original  
5 letter of referral, it noted the rear  
6 yard setback was required as 40 1/2 feet.  
7 That did not account for the canopy.  
8 That was something that was noted after.  
9 I just want to clarify that that rear  
10 yard setback is actually going to be 28  
11 feet and not the 40 1/2 that we're  
12 requesting because of accounting for  
13 that canopy.

14 CHAIRMAN SCALZO: The canopies will  
15 get you every time. Right, Joe?

16 MR. MATTINA: Yes, they will.

17 MR. DONOVAN: Do you know when or  
18 how this lot was created?

19 MR. PETERS: I do not. I know  
20 we've looked into the history of the lot.  
21 I know, obviously, there's currently a  
22 smoke shop. I believe there was a  
23 town --

24 MR. WACHTEL: Town judge, lawyer,  
25 his legal office.

2 MR. DONOVAN: A home occupation.

3 MR. PETERS: We're not going down  
4 that road.

5 MR. WACHTEL: It was his legal  
6 office in the '80s.

7 MR. DONOVAN: It's just such a  
8 small lot.

9 MR. PETERS: Again, it's largely  
10 driven by that existing lot.

11 CHAIRMAN SCALZO: Very unusual.  
12 You're really limited by lot size. I  
13 think you've done a great job with what  
14 you have. Having an exit out onto the  
15 old entrance or exit certainly is  
16 helpful. That's a controlled  
17 intersection there.

18 MR. PETERS: Correct.

19 CHAIRMAN SCALZO: I have no  
20 comments.

21 Ms. Banks.

22 MS. BANKS: No comments.

23 CHAIRMAN SCALZO: Mr. Eberhart.

24 MR. EBERHART: No comment.

25 CHAIRMAN SCALZO: Mr. Hermance.

2 MR. HERMANCE: No comment.

3 CHAIRMAN SCALZO: Mr. Bell.

4 MR. BELL: None.

5 CHAIRMAN SCALZO: Mr. Masten.

6 MR. MASTEN: I have none.

7 CHAIRMAN SCALZO: Ms. Rein.

8 MS. REIN: I'm good.

9 CHAIRMAN SCALZO: At this point  
10 I'll open it up to any members of the  
11 public that wish to speak about this  
12 application.

13 (No response.)

14 CHAIRMAN SCALZO: It's dwindling  
15 down here. We have some relatives.  
16 There's only a handful.

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

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

21 MR. EBERHART: I'll second it.

22 CHAIRMAN SCALZO: We have a motion  
23 to close from Mr. Bell. I thought it was  
24 Mr. Eberhart I heard as a second. All in  
25 favor.

2 MS. BANKS: Aye.

3 MR. EBERHART: Aye.

4 MR. HERMANCE: Aye.

5 CHAIRMAN SCALZO: Aye.

6 MR. BELL: Aye.

7 MR. MASTEN: Aye.

8 MS. REIN: Aye.

9 CHAIRMAN SCALZO: Those opposed.

10 (No response.)

11 CHAIRMAN SCALZO: Very good.

12 This is a type 2 action under SEQRA

13 because we're looking at dimensional?

14 MR. DONOVAN: That is correct.

15 Also the building is under 4,000 square

16 feet so it's a type 2. A commercial

17 building under 4,000 square feet is a

18 type 2. Aren't you glad I came?

19 CHAIRMAN SCALZO: I am.

20 All right. The five factors, the

21 first one being whether or not the

22 benefit can be achieved by other means

23 feasible to the applicant. That would be

24 no.

25 Second, if there's an undesirable

2 change in the neighborhood character  
3 or a detriment to nearby properties.

4 MS. BANKS: No.

5 MR. EBERHART: No.

6 MR. HERMANCE: No.

7 MR. BELL: No.

8 MR. MASTEN: No.

9 MS. REIN: No.

10 CHAIRMAN SCALZO: I'll say no.

11 The third, whether the request is  
12 substantial. I suppose you could say so.

13 MR. BELL: Yup.

14 CHAIRMAN SCALZO: You know, if the  
15 current occupant in that building was  
16 coming in for something, they'd be here  
17 and we'd be having the same conversation.  
18 Anyway, I would say no.

19 The fourth, whether the request will  
20 have adverse physical or environmental  
21 effects.

22 MR. BELL: No.

23 CHAIRMAN SCALZO: No. Or at least  
24 none that won't be mitigated.

25 The fifth, whether the alleged

2 difficulty is self-created which is  
3 relevant but not determinative. Of  
4 course when the applicant purchased the  
5 property they were made aware of the size  
6 and dimensions of everything and tried to  
7 fit a lot of stuff into a small box. So  
8 yes, of course it's self-created.

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

12 MS. BANKS: I'll make a motion to  
13 approve.

14 MR. BELL: I'll second.

15 CHAIRMAN SCALZO: We have a motion  
16 for approval from Ms. Banks. We have a  
17 second from Mr. Bell.

18 Can you roll on that, please,  
19 Siobhan.

20 MS. JABLESNIK: Ms. Banks.

21 MS. BANKS: Yes.

22 MS. JABLESNIK: Mr. Bell.

23 MR. BELL: Yes.

24 MS. JABLESNIK: Mr. Eberhart.

25 MR. EBERHART: Yes.

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MS. JABLESNIK: Mr. Hermance.

MR. HERMANCE: Yes.

MS. JABLESNIK: Mr. Masten.

MR. MASTEN: Yes.

MS. JABLESNIK: Ms. Rein.

MS. REIN: Yes. I wish I had a cup  
of that coffee right now.

MS. JABLESNIK: Mr. Scalzo.

CHAIRMAN SCALZO: Yes.

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

(Time noted: 9:04 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 4th day of May 2026.

*Michelle Conero*  
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MICHELLE CONERO

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

JAMES TURNER  
355 Lakeside Road, Newburgh  
Section 33; Block 1; Lot 22

----- X

Date: April 23, 2026  
Time: 9:05 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

2 CHAIRMAN SCALZO: Now we're going  
3 to other Board business. We have James  
4 Turner. We have a letter requesting an  
5 extension for variances granted at the  
6 July of 2025 meeting.

7 I think he's a little late with  
8 that because I think it's a six-monther.  
9 We typically grant these.

10 I'll look to the Board for a motion  
11 to approve the extension for the  
12 variances granted for James Turner.

13 MR. MASTEN: I'll make a motion we  
14 extend it.

15 MS. REIN: I'll second.

16 CHAIRMAN SCALZO: We have a motion  
17 for the extension by Mr. Masten. We have  
18 a second by Ms. Rein. All in favor.

19 MS. BANKS: Aye.

20 MR. EBERHART: Aye.

21 MR. HERMANCE: Aye.

22 CHAIRMAN SCALZO: Aye.

23 MR. BELL: Aye.

24 MR. MASTEN: Aye.

25 MS. REIN: Aye.

2 CHAIRMAN SCALZO: Those opposed.

3 (No response.)

4 MS. JABLESNIK: Is this just until  
5 July? You're not giving it six months?

6 CHAIRMAN SCALZO: We'll give them  
7 six months. Hang on.

8 MR. DONOVAN: I think you need to  
9 give him --

10 CHAIRMAN SCALZO: "I'm asking the  
11 Board for a six-month extension so I can  
12 complete the project."

13 MR. DONOVAN: When did he get his  
14 approval?

15 MS. JABLESNIK: He got it in July  
16 of 2025. He's over his six-month  
17 request.

18 MR. DONOVAN: You could give it for  
19 the balance of the six months. You can't  
20 give it an extra six months.

21 CHAIRMAN SCALZO: That would be  
22 January '26, which is already passed.

23 As I read his request that came in  
24 for this, if he's looking for six months  
25 from now, I'm going to give him six

2 months from now.

3 MS. JABLESNIK: I was just going  
4 with what we did in the past.

5 CHAIRMAN SCALZO: What did we do in  
6 the past?

7 MS. JABLESNIK: We only give it  
8 until --

9 CHAIRMAN SCALZO: July of 2025. If  
10 we give him a year, we would give him  
11 until July of '26.

12 MS. JABLESNIK: I was saying if he  
13 came in in July of 2026, then he would  
14 have been a year and he would have had to  
15 reapply.

16 CHAIRMAN SCALZO: Right.

17 MS. JABLESNIK: Do you know what I  
18 mean?

19 CHAIRMAN SCALZO: So we should only  
20 give him to July of 2026 in this instance.

21 MR. DONOVAN: Let me ask you this.  
22 When I said that, you said absolutely no.  
23 When Siobhan said that, you thought it  
24 was a great idea.

25 MS. REIN: We're all tired.

2 CHAIRMAN SCALZO: I want to know  
3 who the draft picks were, is what I want  
4 to know. I've got to get home.

5 MR. MASTEN: It's only the first  
6 night.

7 MR. DONOVAN: They only get a year.

8 CHAIRMAN SCALZO: If he was  
9 approved in July of '25, if he gets a  
10 year, then we'll give him to July of '26.

11 MS. REIN: Yes.

12 CHAIRMAN SCALZO: I'm sorry.

13 MS. REIN: I'll make a motion that  
14 we give this gentleman until July '26.

15 CHAIRMAN SCALZO: I like that.

16 MS. BANKS: I'll second that.

17 CHAIRMAN SCALZO: We have a motion  
18 from Ms. Rein. We have a second from  
19 Ms. Banks. 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.

MS. JABLESNIK: Now you can do it  
all over again.

(Time noted: 9:08 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 4th day of May 2026.

*Michelle Conero*

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MICHELLE CONERO

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

ROMEL ALVAREZ AND THAI JASON  
12 Berry Lane, Newburgh  
Section 35; Block 3; Lot 20

----- X

Date: April 23, 2026  
Time: 9:08 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: JONATHAN MILLEN

----- X

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

2 CHAIRMAN SCALZO: We have 12 Berry  
3 Lane, also requesting an extension for  
4 variances granted at the July 2025  
5 meeting.

6 We have Mr. Millen in the back just  
7 to make sure we do our jobs correctly.

8 Mr. Millen, because you've sat  
9 through this, we're going to let you ask  
10 for it in person.

11 MR. MILLEN: All right. So these  
12 people inadvertently never built their  
13 deck that they got the variance for  
14 essentially. They would like to  
15 respectfully request the Board to  
16 consider extending their --

17 CHAIRMAN SCALZO: Application. As  
18 you just heard Siobhan straighten me out  
19 on this, we can certainly entertain  
20 something that would give you a full year  
21 from the initial, which would bring them  
22 to July of this year.

23 MS. REIN: June.

24 MS. JABLESNIK: July.

25 CHAIRMAN SCALZO: Mr. Millen, do

2 you think there's an issue with them  
3 finishing that by then?

4 MR. MILLEN: I certainly don't  
5 think so.

6 CHAIRMAN SCALZO: If you impress  
7 upon them that it's very important that  
8 they do.

9 MR. MILLEN: I think it would be.

10 CHAIRMAN SCALZO: Very good. I'll  
11 look to the Board for a motion for the  
12 extension to July of 2026.

13 MS. BANKS: I'll make a motion to  
14 extend.

15 MR. EBERHART: Second.

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

19 MS. BANKS: Aye.

20 MR. EBERHART: Aye.

21 MR. HERMANCENCE: Aye.

22 CHAIRMAN SCALZO: Aye.

23 MR. BELL: Aye.

24 MR. MASTEN: Aye.

25 MS. REIN: Aye.

2 CHAIRMAN SCALZO: Those opposed.

3 (No response.)

4 MR. MILLEN: Thank you.

5 CHAIRMAN SCALZO: Sorry you had to  
6 sit through all that, Mr. Millen. It's  
7 always interesting.

8 MR. MILLEN: Yes.

9 CHAIRMAN SCALZO: All right. Other  
10 than the approval of the minutes from  
11 last month, I believe that's all we have.

12 Does anybody want to make a motion  
13 for the approval of the meeting minutes?

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

15 MS. BANKS: I'll second that.

16 CHAIRMAN SCALZO: We have a motion  
17 from Mr. Eberhart. We have a second from  
18 Ms. Banks.

19 I have one comment on the meeting  
20 minutes, and that's to you, Michelle.

21 It's D-A-R-R-I-N.

22 We have a motion and we have a  
23 second. All in favor.

24 MS. BANKS: Aye.

25 MR. EBERHART: Aye.

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MR. HERMANCENCE: Aye.

CHAIRMAN SCALZO: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

CHAIRMAN SCALZO: I'll look for a motion to adjourn.

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

MS. BANKS: Second.

CHAIRMAN SCALZO: We have a motion from Mr. Masten and we have a second from Ms. Banks.

All in favor.

MS. BANKS: Aye.

MR. EBERHART: Aye.

MR. HERMANCENCE: Aye.

CHAIRMAN SCALZO: Aye.

MR. BELL: Aye.

MR. MASTEN: Aye.

MS. REIN: Aye.

(Time noted: 9:11 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 4th day of May 2026.

*Michelle Conero*  
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MICHELLE CONERO