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

----- X

In the Matter of

WILLIAM HOLMES

38 Laurie Lane, Newburgh  
Section 40; Block 2; Lot 8  
R-3 Zone

----- X

Date: July 25, 2019  
Time: 7:05 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JOHN MCKELVEY  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
DARRELL BELL  
PETER OLYMPIA

ALSO PRESENT: DAVID DONOVAN, ESQ.  
JOSEPH MATTINA

APPLICANT'S REPRESENTATIVE: LINDA ZWART  
WILLIAM HOLMES

----- X

MICHELLE L. CONERO  
PMB #276  
56 North Plank Road, Suite 1  
Newburgh, New York 12550  
(845)541-4163

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WILLIAM HOLMES

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CHAIRMAN SCALZO: I would like to call the meeting of the ZBA to order. The first order of business are the public hearings scheduled for this evening. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have, and then any questions or comments from the public will be entertained. After all of the public hearings have been completed the Board may adjourn to confer with counsel regarding any legal questions it may have. The Board will then consider the applications in the order heard and will try to render a decision this evening but may take up to 62 days to reach a determination.

I would ask that if you have a cell phone, to please put it on silent or turn it off. When speaking speak directly into the microphone as it is being recorded this evening.

Roll call. Darryl Bell.

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WILLIAM HOLMES

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MR. BELL: Here.

CHAIRMAN SCALZO: Peter Olympia.

MR. OLYMPIA: Here.

CHAIRMAN SCALZO: John McKevey.

MR. McKELVEY: Here.

CHAIRMAN SCALZO: Richard Levin.

MR. LEVIN: Here.

CHAIRMAN SCALZO: John Masten.

MR. MASTEN: Yes.

CHAIRMAN SCALZO: Tony Marino.

MR. MARINO: Here.

CHAIRMAN SCALZO: Our Counselor, David  
Donovan.

MR. DONOVAN: Here.

CHAIRMAN SCALZO: Joe Mattina from Code  
Compliance.

MR. MATTINA: Here.

CHAIRMAN SCALZO: And Michelle Conero.  
Thank you.

If we could all rise for the Pledge.  
Mr. Levin, if you could lead us please.

(Pledge of Allegiance.)

CHAIRMAN SCALZO: Our first applicant  
this evening is William Holmes, 38 Laurie Lane,

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WILLIAM HOLMES

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Newburgh, seeking an area variance to build a 16 by 29.25 addition with a front yard setback of 37.9 where a 50 foot setback is required, and a second front yard setback of 45.8 where 50 foot is required.

This did not get referred to the Orange County Department of Planning.

The applicant sent out 24 letters. All the mailings, publications and postings are in order.

If you could please introduce yourself and let us know why you're here.

MS. ZWART: Sure. My name is Linda Zwart, I'm an architect and I'm representing Bill Holmes this evening on this application.

He is seeking a variance for this. He would like to put an addition on the right side of his home. The addition will be for a bedroom and then some additional living space upstairs. He has his daughter who is a widow and her two children living with them. Because it's a hardship for her, he was adding some additional space for the family.

The addition is going to be slightly

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proud of the existing house, and that is purely for aesthetics only. Just because the house is quite long already, so to push the addition slightly forward just gives the opportunity for a reversed gable and a little bit more aesthetic appeal on the home.

It is 2.5 feet in front of the existing residence and the setback to the side is 50 foot because there's a paper street, so therefore we're required to have two front yards.

CHAIRMAN SCALZO: Thank you very much.

What I did not mention as the meeting began is we are obliged by our positions to go and visit each site. We have seen all the sites.

I was there the other day. It's all wooded next to you on the side where you're going to put the addition. That's apparent. I thought you were pushing it a little forward to get access to the back garage door underneath if you had to swing a car back there. Your aesthetically pleasing solution is fine.

I did also notice as I drove into the subdivision that there was one other house -- I try to see if there are other homes there that

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WILLIAM HOLMES

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may match the character of what you're trying to do. I did see one other home in there that had a similar setup coming in. I wouldn't say it's out of character for what we've seen.

Those are my only comments. At this point I'm going to turn to the Members of the Board. Mr. Bell, do you have any comments?

MR. BELL: I'm good.

CHAIRMAN SCALZO: My Olympia?

MR. OLYMPIA: No.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: She covered everything.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: Nothing.

MR. MASTEN: I have nothing.

MR. MARINO: It's a good location.

CHAIRMAN SCALZO: It's very private back there. It's real nice.

At this point I would like to open it up to any members of the public here to comment on this application.

(No response.)

CHAIRMAN SCALZO: Hearing none, I'll give one opportunity more to the Board?

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WILLIAM HOLMES

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(No response.)

CHAIRMAN SCALZO: Thank you. In that case I'll look to the Board, their pleasure, for a motion to close the public hearing.

MR. McKELVEY: I'll make that motion.

MR. MASTEN: I'll second it.

CHAIRMAN SCALZO: We have a motion from Mr. McKelvey, a second from Mr. Masten.

Roll call. Mr. Bell?

MR. BELL: Yes.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: Yes.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. McKELVEY: Yes.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: Yes.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: Yes.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: Yes.

CHAIRMAN SCALZO: I vote yes as well.

Our public hearing is closed. We will do our best to render a decision this evening.

You don't have to stick around to hear it if you

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WILLIAM HOLMES

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don't want to. Thank you very much.

MS. ZWART: Thank you.

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

(Time resumed: 7:55 p.m.)

CHAIRMAN SCALZO: I'd like to call the meeting back to order. We will go in the order we heard the applications this evening.

Looking at William Holmes, 38 Laurie Lane, seeking an area variance for a 16 by 29.25 addition with a front yard setback of 37.9 where 50 is required, and a second front yard setback of 45.8 where 50 is required.

I believe this is a Type 2 action under SEQRA. Is that correct, Dave?

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

CHAIRMAN SCALZO: Thank you, Dave.

Therefore we're going to go through the area variance criteria and we'll discuss the five factors, the first one being whether or not the benefit can be achieved by other means feasible to the applicant.

MR. BELL: No.

MR. OLYMPIA: No.

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WILLIAM HOLMES

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MR. McKELVEY: No.

MR. LEVIN: No.

MR. MASTEN: No.

CHAIRMAN SCALZO: Second, if there's an undesirable change to the neighborhood character or a detriment to nearby properties. I believe there is not.

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. LEVIN: No.

MR. MASTEN: No.

CHAIRMAN SCALZO: The third, whether the request is substantial. I do not believe it's substantial.

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. LEVIN: No.

MR. MASTEN: No.

CHAIRMAN SCALZO: By code it may be. Visually I don't believe so.

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

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WILLIAM HOLMES

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I don't believe so.

The fifth, whether the alleged difficulty is self-created. It's relative but not determinative. Of course it's self-created. Again, it's going to fit there.

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

Having gone through the balancing test of the area variance, what is the pleasure of the Board? Does the Board have a motion of some sort?

MR. McKELVEY: I'll make a motion we approve.

MR. MASTEN: I'll second that.

CHAIRMAN SCALZO: We have a motion to approve from Mr. McKelvey. I heard a second from Mr. Masten. Roll call. Mr. Bell?

MR. BELL: Yes.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: Yes.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. McKELVEY: Yes.

CHAIRMAN SCALZO: Mr. Levin?

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WILLIAM HOLMES

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MR. LEVIN: Yes.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: Yes.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: Yes.

CHAIRMAN SCALZO: I am a yes as well.

Motion carried. The variance is  
granted.

(Time noted: 7:57 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 7th day of August 2019.

  
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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

BARBARA REICH

90 Mountain View Avenue, Newburgh  
Section 14; Block 1; Lot 26  
RR Zone

----- X

Date: July 25, 2019  
Time: 7:12 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JOHN MCKELVEY  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
DARRELL BELL  
PETER OLYMPIA

ALSO PRESENT: DAVID DONOVAN, ESQ.  
JOSEPH MATTINA

APPLICANT'S REPRESENTATIVE: BARBARA REICH

----- X

MICHELLE L. CONERO  
PMB #276  
56 North Plank Road, Suite 1  
Newburgh, New York 12550  
(845)541-4163

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CHAIRMAN SCALZO: Our second applicant this evening is Barbara Reich, 90 Mountain View Avenue, seeking an area variance to keep a 6 by 10 front deck built without a permit and increasing the degree of nonconformity of the front yard with a minimum 45 feet where 60 is required, one side yard of 14 feet where 50 is required, and combined side yards of 44 where 100 is required.

This did not require Orange County Department of Planning review.

The applicant sent out 14 letters. All the mailings, publications and postings are in order.

Good evening. If you could introduce yourself, please, and go over your application with us.

MS. REICH: I'm Barbara Reich and I live at 90 Mountain View Avenue. I moved here a year ago in June and bought the house. I felt the -- actually the porch was unsafe. There are pictures of it in the package that I sent to you. So I, not knowing, I'm a single woman, and that doesn't make an excuse, but I contacted a

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BARBARA REICH

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contractor and I had him do the deck. I said now do I need a permit and he said no, not for this kind of thing you don't need a permit. So here I am. Then trying to get the permit we found out that I needed a variance. So I am here tonight for the variance.

The porch that I put in, I think all of you saw it, conforms to the house. I did not extend it beyond the part of the house that extends -- that comes out that's already built. It was built in 1961 in one place and 1953 in another. The front of the house, I kept in line with that. I did not extend it beyond -- towards the street, beyond the front of the house. It fits in I thought. I built a smaller porch than I had wanted because I didn't want to extend it too far. It's safe for me to use compared to what I had.

That's why I'm here. I'm hoping -- I got a notice that I needed to have a variance, so I submitted the variance and that's where I am.

CHAIRMAN SCALZO: Thank you very much. I must apologize for mispronouncing your name.

MS. REICH: That's okay. Everybody

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BARBARA REICH

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does.

CHAIRMAN SCALZO: As I mentioned, we have all visited the site. You have what is considered to be a pre-existing nonconforming condition, as you had mentioned, with your home. Had you been doing anything, if the porch even had setback from where it is right now, you would still be in front of us this evening.

MS. REICH: Correct.

CHAIRMAN SCALZO: I was to the site. I don't think there's anything that's out of character with the neighborhood. It's quite nice. I have no comments.

I'm going to look to the members of the Board. Mr. Bell?

MR. BELL: He did a good job.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: Aesthetically it improves the appearance.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: Was this a replacement for a porch that was there?

MS. REICH: Yes, it was. Actually there was no porch there. There was a dirt mound

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BARBARA REICH

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that was there and then somebody, I don't know who it was, took and brought in and built four or five steps and just set it there. That was just sitting there, it wasn't attached to anything. I could not use it at all. I mean I wouldn't let anybody use it. I put tape around it.

MR. McKELVEY: It wasn't safe.

MS. REICH: No. I put stuff around it so we wouldn't use the front door at all.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: Everything was lovely, your house and everything.

I was wondering how you found out that you were in violation.

MS. REICH: The Code Compliance Department came out because I didn't -- somebody reported my porch, that I did not have a permit.

MR. LEVIN: Okay. Thank you.

CHAIRMAN SCALZO: Welcome to New York. We're here to help.

MS. REICH: That's okay.

CHAIRMAN SCALZO: Mr. Masten, any comment?

MR. MASTEN: It's an improvement from

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BARBARA REICH

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the existing porch. I remember the other porch  
that was there.

CHAIRMAN SCALZO: Very good. Mr.  
Marino?

MR. MARINO: I have no problem with it  
at all.

CHAIRMAN SCALZO: Thank you.  
At this point I'll open it up to any  
members of the public that are here to speak  
about this application.

(No response.)

CHAIRMAN SCALZO: Hearing none, one  
last opportunity for the Board.

(No response.)

CHAIRMAN SCALZO: Very good. If I  
could hear a motion for closing the public  
hearing.

MR. MARINO: I'll make the motion.

MR. BELL: I'll second.

CHAIRMAN SCALZO: I have a motion from  
Mr. Marino. I heard my second down here on the  
other side of the table, Mr. Bell.

Roll call. Mr. Bell?

MR. BELL: Yes.

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CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: Yes.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: Yes.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: Yes.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: Yes.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: Yes.

CHAIRMAN SCALZO: And I as well.

The public hearing is closed. We'll do our best to render a determination this evening.

MS. REICH: Thank you for your time.

(Time noted: 7:17 p.m.)

(Time resumed: 7:57 p.m.)

CHAIRMAN SCALZO: Our second application this evening was Barbara Reich, 90 Mountain View Avenue, Newburgh, seeking an area variance to keep a 6 by 10 front deck built without a permit and increasing the degree of nonconformity of the front yard with a minimum of 45 where 60 is required, one side yard of 14 where 50 is required, and combined side yards of

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44 where 100 is required.

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

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. LEVIN: No.

MR. MASTEN: I don't think so.

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

MR. BELL: No.

MR. OLYMPIA: No.

MR. McKELVEY: No.

MR. LEVIN: No.

MR. MASTEN: No.

CHAIRMAN SCALZO: I don't believe so.

Third, is the request substantial.

It's a pre-existing nonconforming house and she's not extending any further to the road, so I would say no.

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

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BARBARA REICH

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don't believe so.

Fifth, whether the alleged difficulty is self-created. That's relative but not determinative. The house is already nonconforming, so I would say no.

Having gone through the balancing test of the area variances, what's the pleasure of the Board?

MR. LEVIN: I'll make a motion to approve.

MR. BELL: I'll second.

CHAIRMAN SCALZO: We have a motion from Mr. Levin. We have a second from Mr. Bell. Roll call. Mr. Bell?

MR. BELL: Yes.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: Yes.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: Yes.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: Yes.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: Yes.

CHAIRMAN SCALZO: Mr. Marino?

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BARBARA REICH

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MR. MARINO: Yes.

CHAIRMAN SCALZO: And I am a yes as well.

Motion carried. The variance is approved.

(Time noted: 7:59 p.m.)

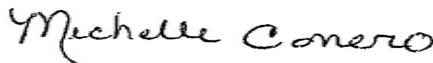
C E R T I F I C A T I O N

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of August 2019.



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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

349 SOUTH PLANK ROAD, LLC

349 South Plank Road, Newburgh  
Section 47; Block 1; Lot 80.1  
B Zone

----- X

Date: July 25, 2019  
Time: 7:17 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JOHN MCKELVEY  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
DARRELL BELL  
PETER OLYMPIA

ALSO PRESENT: DAVID DONOVAN, ESQ.  
JOSEPH MATTINA

APPLICANT'S REPRESENTATIVE: JONATHAN CELLA

----- X

MICHELLE L. CONERO  
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56 North Plank Road, Suite 1  
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(845)541-4163

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349 SOUTH PLANK ROAD, LLC

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CHAIRMAN SCALZO: Our next applicant is 349 South Plank Road, LLC which is at 349 South Plank Road, seeking an area variance to utilize the premises for a transportation services business with a rear yard setback of 17 feet where a 30 foot is required and a side yard setback of 13 feet where 15 is required.

This applicant sent out 32 letters. All the mailings, publications and postings are in order.

This did get reviewed by the Orange County Department of Planning. It was mailed on the 11th of July. I don't know that we got anything back. They have thirty days to respond.

MR. CELLA: July?

CHAIRMAN SCALZO: The 11th. The 11th of July.

MR. CELLA: I was hoping you said June.

CHAIRMAN SCALZO: Unfortunately not. In this instance we can not render a determination this evening until we have comments back from the Orange County Department of Planning.

Please present this evening and we'll

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ask you any questions. We'll maintain the public hearing open until next month.

Please introduce yourself, sir, and let's go.

MR. CELLA: Good evening. I'm Jonathan Cella, I'm representing the applicant.

We were here at the June meeting of the Planning Board for a site plan for a change of use of the existing building. He's going to operate a transportation -- a car service, I'm sorry. Driving people back and forth to airports and other local destinations.

In that, we need one variance for the existing building which crosses over the eastern side yard setback.

We're proposing to construct covered parking in the rear of the building which would be 40 feet deep and 48 feet wide, and for that we will need an additional rear yard variance.

As seen on the site, we're building the carport on the back corner of the building here. We have a line here and a tree line. It won't be visible from the street. It won't be visible from the adjacent properties other than a little

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bit in the fall.

The site plan approval from the Planning Board, we're going to repave the parking lot and improve it. We're going to delineate the parking lot. Right now it's all gravel and it will be paved. Right now it goes to the edge of the road and we're going to have -- delineate the parking lot along the road here. We're going to put a stonewall along the road with some landscaping there.

The building is serviced by water and sewer. This is in the B Zone.

CHAIRMAN SCALZO: Thank you very much. As I said, we've all been to the site.

We're not here for a use variance.

MR. CELLA: It's a permitted use.

CHAIRMAN SCALZO: It's a permitted use. I did see a couple of livery vehicles there already when I was on site taking a look. I didn't see anything that's a show stopper for me.

One thing I did notice is the utilities shown on the survey almost show it just being above ground and all the way spanning the property, however there is an attachment to the

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349 SOUTH PLANK ROAD, LLC

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rear of the building at the bump out which is probably going to have to be relocated or raised.

MR. CELLA: Yes.

CHAIRMAN SCALZO: That's not for us to say. That's probably just part of your site plan.

MR. CELLA: Correct. And the reason for the covered roof is because he likes to park the cars underneath in the rear. As you can see in the picture, he has a medium size Astro bus. He likes to park everything underneath so when he has to run in the middle of the winter it's ready to go.

CHAIRMAN SCALZO: You don't have to blow the snow off it.

MR. CELLA: You can't drive with the snow on top. That's the need for the covered parking.

CHAIRMAN SCALZO: It's covered but open; correct?

MR. CELLA: Covered but open.

CHAIRMAN SCALZO: Okay. Very good. I have no questions myself.

Mr. Bell?

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MR. BELL: None.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: What is the site used for now?

MR. CELLA: Well before I believe it was some kind of mechanic shop. Right now he's operating. He has -- he knows the violation. We're currently pressing through the Planning Board and --

CHAIRMAN SCALZO: Everything you say can and will be used against you.

MR. CELLA: The Town knows. Everyone knows.

MR. MARINO: My other question is --

MR. CELLA: He had a business on 9W and he was moving it from there to here. This is a business that's been in operation in the Town of Newburgh.

MR. MARINO: What will actually go on there if you get an approval? Will people be coming there to pick up vehicles?

MR. CELLA: Essentially nothing. He's parking vehicles. There's roughly a 100 square foot office in the front corner here. The

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drivers will come, drop their cars off and pick up the company vehicles, leave the site to pick up the people that are using the service. So there won't be clients parking their vehicles there. They'll be picking up at sites, driving to airports, driving to a ball game. There's not excessive parking. He has, I think it's a fleet of twelve vehicles. As one of his drivers comes in -- there will only be twelve cars on site at a time because they'll drop their car off and pick another one up. It's a twenty-four hour business but it's not manned twenty-four hours. It's twenty-four hours on demand.

MR. MARINO: How late in the evening will there be activity there at the site?

MR. CELLA: Like I said, the activity will be minimal. It's on demand. Maybe one night there's no activity. Just say tonight there might be no activity after -- there might be no activity now whereas another night someone might be taking a late ride to the airport, might come by and 10:00, drop a car off and run out of there. It's not manned twenty-four hours. There's no one there twenty-four hours but it's a

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349 SOUTH PLANK ROAD, LLC

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twenty-four hour service.

MR. MARINO: Okay.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: I have no comments.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: No comment.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: It's all woods behind  
you; right?

MR. CELLA: Correct.

CHAIRMAN SCALZO: At this time I'll  
open it up to any members of the public that are  
here that want to comment on this application.

I'm sorry, Peter.

MR. OLYMPIA: That's all right. I have  
no comments.

CHAIRMAN SCALZO: Mr. Mattina?

MR. MATTINA: Good afternoon. Joe  
Mattina, Code Compliance.

I have one question. It was an auto  
repair garage.

MR. MASTEN: It was Rick's Repair  
garage.

MR. MATTINA: The last five or six

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years.

Mr. Zappone, you know, I OTR'd him. He responded right away to the Planning Board, so there's no issues with us.

A couple things I did see on the site plan. On the front yard setback, it should be 60 feet off a State road, not 40.

MR. CELLA: We have 47. We'll need an additional variance for that. They didn't bring that up when we went to the Planning Board. I'm sorry. We can fix that.

MR. MATTINA: In the rear there's a rear covered -- this is the first time I'm seeing this.

MR. CELLA: The covered parking is proposed, it's not existing.

MR. MATTINA: If it's ever enclosed, that would have to have a rear yard setback also.

MR. CELLA: That's what we are requesting is the rear yard setback for the covered parking.

MR. MATTINA: I didn't see that.

MR. CELLA: It's on here. We say that there's -- we're showing on the proposed plan 17

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feet.

MR. MATTINA: I didn't see the numeral on the map.

MR. CELLA: There's a zoning table.

CHAIRMAN SCALZO: Mr. Cella, we're going to need you to revise the maps to show actually what the front yard offset distance is perpendicular to the property line.

MR. CELLA: We have 47. The existing setback is 47 feet. We just have to -- the only thing we have to change is up here. It's all up here.

CHAIRMAN SCALZO: All right. Very good.

MR. CELLA: I would have to change the setback line to 60. I don't know if you want me to make a new submission for that.

CHAIRMAN SCALZO: Do we have to?

MR. DONOVAN: I think we should have it on the file. We have to hold this open.

MR. CELLA: It's not a problem.

CHAIRMAN SCALZO: You need to revise the application. You're still on the agenda for next month.

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MR. DONOVAN: Just for purpose of clarification, the building is already existing; correct? It's not as if you are building a building that will require a front yard variance?

MR. CELLA: That's correct. So the front yard variance is pre-existing, and so is also the one side yard setback. We're not increasing the side yard. That will remain the same. It's just the rear yard is the one we are creating.

MR. McKELVEY: Whoever was in there before really fixed the building up nice compared to what it was.

MR. CELLA: They fixed the building but not the parking lot. We'll be pushing forward to the parking lot. As I mentioned, it will be an owner-occupied building.

CHAIRMAN SCALZO: Thank you, Mr. Mattina.

Is there anyone else from the public here to speak about this application?

(No response.)

CHAIRMAN SCALZO: Hearing none, I'll go back to the Board, specifically to Mr. Olympia?

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MR. OLYMPIA: No, thank you.

CHAIRMAN SCALZO: Very good. At this point I will entertain a motion to keep the public hearing open.

MR. McKELVEY: I'll make that motion.

MR. MASTEN: I'll second it.

CHAIRMAN SCALZO: Thank you. We have a motion from Mr. McKelvey, we have a second from Mr. Masten to keep the public hearing open until the August meeting. The date on that is August -- the fourth Thursday in August.

Roll call. Mr. Bell?

MR. BELL: Yes.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: Yes.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. McKELVEY: Yes.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: Yes.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: Yes.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: Yes.

CHAIRMAN SCALZO: I am a yes as well.

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The public hearing remains open. No one will be re-noticed for this.

Mr. Cella, we'll see you next month.

MR. CELLA: Thank you.

(Time noted: 7:30 p.m.)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of August 2019.

*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

GLORIA SMITH-TRAPANI

9 Libra Lane, Wallkill  
Section 1; Block 2; Lots 7.2-11  
AR Zone

----- X

Date: July 25, 2019  
Time: 7:30 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JOHN MCKELVEY  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
DARRELL BELL  
PETER OLYMPIA

ALSO PRESENT: DAVID DONOVAN, ESQ.  
JOSEPH MATTINA

APPLICANT'S REPRESENTATIVE: MARISSA WEISS

----- X

MICHELLE L. CONERO  
PMB #276  
56 North Plank Road, Suite 1  
Newburgh, New York 12550  
(845)541-4163

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CHAIRMAN SCALZO: The next applicant is Gloria Smith Trapani, 9 Libra Lane, Wallkill, seeking an area variance to build a 40 by 13 by 18 accessory building where there's an existing 440 square foot of accessory structure and a building height of 18 feet where 15 is the maximum allowed. The maximum allowed vehicle storage is four vehicles. No building shall project closer than the fronting street.

This also had to go to the Orange County Department of Planning.

It was mailed on the 11th of July.

Also, there were 32 mailings to Newburgh, 6 to Wallkill, so 38 in total.

We have not heard back from the Orange County Department of Planning unfortunately, which means we can not close the public hearing this evening. At least feel free to present. We'll open it up to the public and maintain the public hearing.

Please introduce yourself and go over the application, please.

MS. WEISS: Sure. I'm Marissa Weiss of

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Jacobowitz & Gubits here for the applicant this evening, Gloria Smith-Trapani. She's at 9 Libra Lane. That's in an Agricultural Residential Zone.

As the Chairman already said, we're here tonight for an area variance to install a prefabricated pole barn which measures 80 feet wide by 40 feet long by 18 feet high which equates to about 1,200 square feet. The reason we're here is because the section of the Zoning Code that describes and delineates what size accessory buildings can be, 185-15(a)(4), has a maximum accessory building size of 1,000 square feet. We're over by 200 square feet.

As noted, I already said that this pole barn was already pre-purchased. It was purchased on February 14th of 2019. I did submit a receipt to that effect. The applicant was not aware of the size limitation when she bought the pole barn, unfortunately. Rather than have to go out and fix or return or anything like that, we're here this evening to make sure that she can still use this as we believe this area variance is pretty de minimus in comparison to other

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variances that could be requested.

It's kind of hard to see because this property is very large. It's over 17.6 acres in size. You should all have the maps in front of you as well. The pole barn is proposed to be this little black shape that's right here. There's an existing stonewall that you can see from here, right here, that it will be placed caddy corner to.

Going off of that as well, this pole barn will be used as an agricultural building. This property is currently used as a Christmas tree farm. The building itself will be used to house equipment for taking down trees as well as any supplies that may be needed as well.

Originally the Code Compliance Department had stated that an additional two variances were needed, and that was for outside of this building size limitation for a front yard variance setback and a building height variance setback. Since that original determination the Code Compliance Department has determined that those additional variances are not needed based upon some e-mail communications with other

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colleagues in my office which we've also submitted documentation as to.

The building height variance is not required because there is an exemption for any agricultural buildings. As I said, this will be used as an agricultural building to store equipment for the Christmas tree farm, so the 15 foot height limitation doesn't apply.

In addition, there's also some question as there are many streets, as you can see on this map, what the front yard exactly is. We have spoken a little bit with the Code Compliance Department to determine based upon the Town's Zoning Code what exactly the front yard would be. As you can see, this is Libra Lane right here, which is the property's address, 9 Libra Lane, and this is New York State Route 300. For purposes of the Zoning Code the front yard is determined based upon where the principal access point is to the property itself. The house faces this way and the principal access, it's debatable but you could say it's off of 300 or off of Libra Lane itself. They're both -- I guess that's the northwest of the house. The house faces towards

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both of those streets. Either of those streets could be considered the front yard.

This is the house. Where the proposed pole barn would be, it would be situated in the rear yard. As I stated, Jerry Canfield agrees with that as well.

With that, I have nothing further. If the Board has any questions, I'm very welcome to answer them.

CHAIRMAN SCALZO: Thank you very much. As I mentioned, we have been to the site. It's a quite large piece of property. I did see all the little Christmas trees. I did see the equipment that you're stating is going to be in the barn.

One question actually is for Dave, or Joe Mattina. Agricultural exemptions, we had something else -- you had mentioned an agricultural exemption. Is that a form, is that a statement?

MS. WEISS: There is I believe -- actually I do not know. They have an agricultural exemption on the property. That's not the exemption I was referring to. The exemption is within 185-15(a)(1). The

1 regulations for accessory buildings themselves  
2 have a 15 foot height limitation but there's no  
3 -- there's an exemption there for agricultural  
4 buildings, an agricultural exemption. It doesn't  
5 -- I'm sorry, Dave. It doesn't have anything to  
6 do with the fact of whether or not there's a tax  
7 exemption for agricultural purposes on the  
8 property.  
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10 MR. DONOVAN: It's a code exemption,  
11 Joe?

12 MR. MATTINA: The height?

13 MR. DONOVAN: Yes.

14 MR. MATTINA: The height is exempt if  
15 it's strictly farm purposes. No personal  
16 vehicles, snowmobiles, sleds. One hundred  
17 percent farm use.

18 As far as being a registered farm, bulk  
19 table schedule 2 is a permitted use under column  
20 C. They really don't need any exemptions or  
21 anything. It's a permitted use.

22 CHAIRMAN SCALZO: Thank you.

23 MS. WEISS: Thank you.

24 CHAIRMAN SCALZO: So at this point I'll  
25 turn to the Members of the Board. Mr. Marino, do

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GLORIA SMITH-TRAPANI

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you have any comments on it?

MR. MARINO: I was there yesterday I think it was. To me it's a beautiful location, very rural, that's controlled by a viscous looking dog that is not viscous at all. It's a great site. I have no problem.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: I have no questions.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: I also thought it was a great site.

MR. McKELVEY: I agree.

MR. OLYMPIA: No questions.

CHAIRMAN SCALZO: Mr. Bell?

MR. BELL: I'm good.

CHAIRMAN SCALZO: It's a great piece of property.

At this point I'm going to open up to any members of the public that may want to comment on this application.

Please step forward and state your name.

MS. McKENZIE: My name is Gayle McKenzie, I'm at 10 Pisces Drive. I'm probably

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one of the very few people who have visual access to their yard. I am pleased with every bit of work that they have done there so far. I have absolutely no problem with them putting up this building. None whatsoever. My living room windows faces that way. I have no problem whatsoever.

They did do a great job of bringing this back into an AR, and I'm loving the fact that this is going right back into what it should be, an AR. I'm pleased.

CHAIRMAN SCALZO: Thank you for your comments.

As I mentioned earlier, unfortunately, because we have not heard from the Orange County Department of Planning, we can not close the public hearing and therefore we can not make a determination this evening, although I haven't heard any derogatory comments regarding the application which is great.

So at this point I'm going to look to the Members of the Board for a motion to maintain the public hearing until the August meeting.

MR. MASTEN: I'll make a motion.

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MR. MARINO: Second.

CHAIRMAN SCALZO: We have a motion from Mr. Masten and we have a second from Mr. Marino. Roll call. Mr. Bell?

MR. BELL: Yes.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: Yes.

CHAIRMAN SCALZO: Mr. McKelvey?

MR. MCKELVEY: Yes.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: Yes.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: Yes.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: Yes.

CHAIRMAN SCALZO: I am a yes as well.

We'll see you next month.

No one is going to be re-noticed.

We'll see you back. Unfortunately we're handcuffed on this one.

MS. WEISS: Understood. Thank you.

CHAIRMAN SCALZO: Before proceeding the Board is going to take a short adjournment to confer with Counsel regarding

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GLORIA SMITH-TRAPANI

legal questions raised by tonight's and  
previous meeting's applications. If I could  
ask, in the interest of time, if you folks  
could wait out in the hallway and we'll call  
you back in very shortly.

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

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

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 7th day of August 2019.

*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

BRENNAN GASPARINI

1064 Route 32, Wallkill  
Section 2; Block 2; Lot 3  
RR Zone

----- X

Date: July 25, 2019  
Time: 8:00 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JOHN MCKELVEY  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
DARRELL BELL  
PETER OLYMPIA

ALSO PRESENT: DAVID DONOVAN, ESQ.  
JOSEPH MATTINA

APPLICANT'S REPRESENTATIVE: MARISSA WEISS

----- X

MICHELLE L. CONERO  
PMB #276  
56 North Plank Road, Suite 1  
Newburgh, New York 12550  
(845)541-4163

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CHAIRMAN SCALZO: We are moving on now to something held open from the June 27th meeting, Brennan Gasparini seeking an area variance to reinstate a nonconforming use of a second single-family dwelling unit on a single lot. Bulk table schedule 1 permits only one dwelling per lot. 2, nonconforming buildings shall have one year to be restored after damage. And 3, the use shall not be reestablished if discontinued for one year or more. There's an existing 2.3 feet on the side yard where 50 feet is required.

This one has been a lot of fun. So therefore we're going to hit this up in a way -- we have three, four alternatives. Town Code allows only one single-family dwelling per lot in the RR District. The property is improved by two single-family homes, both of which have been abandoned. When I say abandoned, we are aware, I did some research myself online through the County website, the house was foreclosed on. The house was -- one of the owners bought in '86, lost it to foreclosure in 2016. It sat in limbo during that process all the way to 2018 through

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the foreclosure process. It appears Mr. Gasparini picked it up in 2018.

We have had other applications in the area, most notably one on Orange Lake, where a very similar situation had occurred. A gentleman was trying to purchase the home through the foreclosure process which was very difficult. They were trying to maintain the vacancy. We had allowed it to be considered with the foreclosure process for that other property on Orange Lake.

MR. DONOVAN: Mr. Chairman, if I may for the edification of the Board. In the matter of the application of Robar Realty that this Board decided in October of 2015, this Board made a determination that the mortgage foreclosure process, being as lengthy and extensive that it is, extended a period of time for a house to be determined to have lost it's pre-existing nonconforming status. In that case, the matter of Robar Realty, this Board indicated that the fact that more than one year had passed was not a -- was not determinative because of the foreclosure process, and they extended -- this

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Board extended the period of time to make a determination that the pre-existing nonconforming status had not been lost.

This matter did go through mortgage foreclosure. The deed that was provided with the application indicates that Mr. Gasparini acquired title through Fannie Mae. The Chairman has independently verified that. This was a mortgage foreclosure. We know the application by Mr. Gasparini was made to this Board within one year of his purchase of the property.

If the Board is so inclined, you could render an interpretation consistent with your prior finding of Robar Realty that the pre-existing nonconforming protection has not been lost as a result of the mortgage foreclosure process and grant a favorable interpretation that it is still, if you will, for lack of a better phrase, grandfathered to enable him to construct two principal single-family residential structures on the property.

CHAIRMAN SCALZO: Thank you, Dave.

MR. DONOVAN: If you reach that determination there are no other matters that

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BRENNAN GASPARINI

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need to be considered.

CHAIRMAN SCALZO: That's just where I was going. If we were to determine that it did still maintain, we don't have to review any subsequent requests beyond that?

MR. DONOVAN: That's correct.

Just for the record, interpretations are Type 2 under SEQRA. There's no SEQRA action which you need to take either.

CHAIRMAN SCALZO: Do we have any discussion on this further?

MR. BELL: I'm clear.

CHAIRMAN SCALZO: In this case I go through our five criteria?

MR. DONOVAN: Actually you do not. If the Board is inclined to issue an interpretation that the pre-existing nonconforming status has not been lost, the applicant is entitled to proceed to construct two single-family dwellings on one lot, subject to compliance obviously with all New York State Uniform Fire Prevention Code requirements as administered by the Building Department.

CHAIRMAN SCALZO: Thank you. How do we

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BRENNAN GASPARINI

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proceed?

MR. DONOVAN: Someone needs to make that motion.

MR. BELL: I'll make the motion.

MR. DONOVAN: That you do what I just said.

CHAIRMAN SCALZO: Do I hear anyone?

MR. MARINO: I'll make a motion that we do exactly what he said.

CHAIRMAN SCALZO: Exactly what Dave said.

MR. MARINO: We allow him to have two dwellings on one lot.

MR. BELL: Second.

CHAIRMAN SCALZO: We recognize that the foreclosure process did delay the maintenance of the property.

We have a motion from Mr. Marino. We have a second from Mr. Bell. Roll call starting with Mr. Bell.

MR. BELL: Yes.

CHAIRMAN SCALZO: Mr. Olympia?

MR. OLYMPIA: Yes.

CHAIRMAN SCALZO: Mr. McKelvey?

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MR. McKELVEY: Yes.

CHAIRMAN SCALZO: Mr. Levin?

MR. LEVIN: Yes.

CHAIRMAN SCALZO: Mr. Masten?

MR. MASTEN: Yes.

CHAIRMAN SCALZO: Mr. Marino?

MR. MARINO: Yes.

CHAIRMAN SCALZO: I'm a yes as well.

The motion carried.

(Time noted: 8:06 p.m.)

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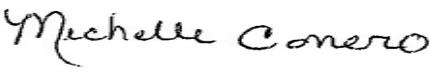
C E R T I F I C A T I O N

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 7th day of August 2019.

  
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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

REFERRAL FROM THE TOWN BOARD RE:

THE ADDITION OF CHAPTER 172 - TREE PRESERVATION &  
PROTECTION - TO THE CODE OF THE TOWN OF NEWBURGH

----- X

Date: July 25, 2019  
Time: 8:06 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: DARRIN SCALZO, Chairman  
JOHN MCKELVEY  
RICHARD LEVIN  
JOHN MASTEN  
ANTHONY MARINO  
DARRELL BELL  
PETER OLYMPIA

ALSO PRESENT: DAVID DONOVAN, ESQ.  
JOSEPH MATTINA

----- X

MICHELLE L. CONERO  
PMB #276  
56 North Plank Road, Suite 1  
Newburgh, New York 12550  
(845)541-4163

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CHAIRMAN SCALZO: Other Board business. I was given an envelop by the Town Board that had some information, a referral to the Local Law adding Chapter 172 entitled Tree Preservation & Protection to the Code of the Town of Newburgh. They just wanted us to review and comment on it.

I have personally reviewed it. If you gentlemen would allow me to comment, I will e-mail you what my comments are. If anyone would like to look at this, I would be happy to hand it over. It's regarding trees.

My comments were more geared towards -- they have specific details in there. One is regarding sediment control. There's a detail in there for hay bails. I know the New York State DOT no longer recognizes that as an erosion and sediment control best management practice.

Also staking of trees, which large stakes go in the ground to hold the trees up in a certain manner. The DOT standards also have a different detail than what was provided here. The details provided here

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were the Federal standards, however my impression is that it would be easier for contractors to follow New York State standards as we are in New York State. Those are the only comments I had.

I would be happy to hand the package off to anyone that would like to read it.

MR. BELL: Okay.

CHAIRMAN SCALZO: Other than that, does anybody care to entertain a motion to adjourn?

MR. OLYMPIA: What about the minutes?

CHAIRMAN SCALZO: The meeting minutes from the June meeting. Does anybody have any comments?

(No response.)

CHAIRMAN SCALZO: Motion to approve the meeting minutes from last month?

MR. BELL: Yes.

MR. OLYMPIA: Yes.

MR. McKELVEY: Yes.

MR. LEVIN: Yes.

MR. MASTEN: Yes.

MR. MARINO: Yes.

CHAIRMAN SCALZO: And I as well.

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Tony, you had something else?

MR. MARINO: Did we have anything held off from last month besides Gasparini?

MR. LEVIN: That was it.

CHAIRMAN SCALZO: We've cleaned them all up. We have two to roll over to next month because we haven't heard from Orange County.

Joe Mattina is helping the heck right out of us by giving Siobhan eleven for next month. If anybody is taking a vacation, that's the time to do it.

MR. MATTINA: Eleven and I'm waiting for one more survey.

CHAIRMAN SCALZO: If nobody has any other business, I'll make a motion to adjourn so Michelle can stop typing.

MR. McKELVEY: I'll make the motion.

CHAIRMAN SCALZO: We have a motion to adjourn from Mr. McKelvey.

MR. BELL: I'll second it.

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

MR. BELL: Aye.

MR. OLYMPIA: Aye.

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BOARD BUSINESS

MR. McKELVEY: Aye.

MR. LEVIN: Aye.

MR. MASTEN: Aye.

MR. MARINO: Aye.

CHAIRMAN SCALZO: Aye.

(Time noted: 8:10 p.m.)

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

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

That hereinbefore set forth is a  
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set my hand this 7th day of August 2019.

*Michelle Conero*

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MICHELLE CONERO