

STATE OF NEW YORK : COUNTY OF ULSTER
TOWN OF MARLBOROUGH ZONING BOARD

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In the Matter of

ROYAL ENERGY PROPERTIES, LLC

#1666 Route 9W, Milton, New York 12547

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PUBLIC HEARING FOR A 6' FRONT YARD AND
40' REAR YARD AREA VARIANCE REQUEST

Date: April 11, 2019
Time: 7:00 p.m.
Place: Town of Marlborough
Town Hall
#21 Milton Turnpike
Milton, New York 12547

BOARD MEMBERS: WILLIAM GIAMETTA, Chairman
JEFF MEKEEL
DAVE ZAMBITO
LENNY CONN, absent/recused
GEORGE SALINOVICH

ALSO PRESENT:

REBECCA A. VALK, ESQ.

THOMAS CORCORAN, JR. BUILDING INSPECTOR/CODE
ENFORCEMENT

CHARLES T. BROWN, P.E., TALCOTT ENGINEERING DESIGN

PENNY E. CASHMAN, ZONING BOARD SECRETARY

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2 CHAIRMAN GIAMETTA: Welcome
3 everyone to the ZBA meeting this evening,
4 April 11th. I'd ask you to rise for the
5 pledge to the flag.

6 (Pledge of Allegiance)

7 CHAIRMAN GIAMETTA: Thank
8 you. We are on tonight for a one item
9 agenda, namely Royal Energy for a public
10 hearing. But before that, I believe we have
11 some minutes from the last meeting that were
12 produced. Board members, have you had a
13 chance to review those, and if so, is there
14 any questions or concerns about last month's
15 minutes?

16 MR. MEKEEL: No, I'm good.

17 CHAIRMAN GIAMETTA: You're
18 good with that?

19 MR. MEKEEL: Uh-huh.

20 MR. SALINOVICH: I'm good.

21 CHAIRMAN GIAMETTA: Mr.
22 Salinovich is good. Mr. Zambito?

23 MR. ZAMBITO: I'm good.

24 CHAIRMAN GIAMETTA: I'd ask
25 for a motion for approval of those minutes.

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2 MR. SALINOVICH: I'll make a
3 motion that the minutes be approved.

4 MR. ZAMBITO: I will second.

5 CHAIRMAN GIAMETTA: And a
6 vote on that?

7 MR. SALINOVICH: Aye.

8 MR. MEKEEL: Aye.

9 MR. ZAMBITO: Aye.

10 CHAIRMAN GIAMETTA: And aye.
11 Minutes approved formally. Thank you very
12 much.

13 We had a workshop last month,
14 and to review and outline the proposal, I'd
15 ask for someone from Royal Energy to just
16 summarize, once again, what you wish to do.
17 I see Mr. Brown in the audience, the
18 engineer. If you don't mind, Charlie --

19 MR. BROWN: Not at all.

20 CHAIRMAN GIAMETTA: -- your
21 presentation?

22 MR. BROWN: So, the proposal
23 is, again, to knock down the three
24 industrial buildings that are distressed,
25 and two houses on the north end of the site,

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and construct a 50,400 square-foot cold storage warehouse, a building which would contain a new office. They're not renting out the building itself. In other words, they take in -- it's open to whoever wants to come in, it is freezing -- frozen goods only. So they need this space because, apparently, there is a lot of demand for it. And, eventually, from what he told me, once that new building is built, he is going to take down this portion of this building, which will free up this site and make it more truck friendly, I guess. So, but he does need this first, because he is using this building. I know that we've got to widen the retaining wall so we can get the fire lanes and whatnot around the building. The only change on this drawing from the one that we had seen last month is we added a 20-foot waterline easement, which would go through the town. We talked to Al Koenig, K-O-E-N-I-G, after the meeting. The town, I guess, wants to loop the waterline to make sure that Brooklyn Bottling doesn't lose

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2 water service, because that would be
3 critical to them. So, we offered up this
4 easement. I'm sure Amy would be on board
5 too with that. And I guess that's all the
6 town would need anyway. As far as variance,
7 the existing house on this side yard is 19
8 feet off the property line, the setback is
9 25, we're actually a little over 30, so
10 we're improving the condition there. The
11 front yard, we're only asking for a five-
12 foot setback. The existing building right
13 now is only ten and a half feet off of the
14 front property line so we're substantially
15 improving that condition. As far as the
16 rear, it's 75, and we have 35 here, 41 on
17 the back corner. So the existing building
18 is 25 and a half, so we don't think that's
19 unreasonable.

20 So we're here to answer any
21 questions from the public or board and
22 hopefully proceed.

23 CHAIRMAN GIAMETTA: Now, you
24 mentioned the -- you say retaining wall
25 around that?

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MR. BROWN: Yes.

CHAIRMAN GIAMETTA: Is that beyond the building construction, or is that part of the 40 feet?

MR. BROWN: The retaining wall is within the 40 feet.

CHAIRMAN GIAMETTA: It's within 40 feet.

MR. BROWN: It will probably be very close to the property line.

MR. ZAMBITO: But the retaining wall is coming out?

MR. BROWN: No, this is proposed.

MR. ZAMBITO: Oh, this is proposed. Is there something there now that has to come out?

MR. BROWN: Just the building.

MR. ZAMBITO: But there is another retaining wall?

MR. BROWN: Not that I know of.

MR. CORCORAN: I think there

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2 is one on the south side of the building,
3 not on the north side.

4 MS. HEPWORTH: Hi, everybody.

5 CHAIRMAN GIAMETTA: Just if
6 you don't mind a moment, Ms. Hepworth, I
7 know you're from the neighborhood. I will
8 give you a chance to speak.

9 MS. HEPWORTH: I just want to
10 know what we're looking at. I just need to
11 know, so I can be a part of it. I'm sorry
12 we're late.

13 CHAIRMAN GIAMETTA: We're
14 going to explain that very shortly.

15 MS. HEPWORTH: Oh, good.

16 CHAIRMAN GIAMETTA: Mr. Brown
17 has given a formal presentation, but we'll
18 go over it even more.

19 MS. HEPWORTH: I can't see it
20 though.

21 CHAIRMAN GIAMETTA: All
22 right. Well, you can come up too if you
23 would like.

24 MS. HEPWORTH: Oh, good.

25 CHAIRMAN GIAMETTA: You're

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2 welcome to do that.

3 MS. HEPWORTH: Thanks.

4 CHAIRMAN GIAMETTA: In light
5 of vision, please do. What is happening,
6 some older structures are coming down as the
7 proposal, and a new structure built.

8 MS. HEPWORTH: Sounds good.

9 CHAIRMAN GIAMETTA: Mr.
10 Brown, you stated in the future they may
11 wish to demolish other structures to the
12 south of the construction, perhaps rebuild
13 it and make it new?

14 MR. BROWN: No. They didn't
15 say anything to me about rebuilding the
16 portion of the main building that they want
17 to knock down after they build the new one.

18 CHAIRMAN GIAMETTA: They just
19 said that they want to take some of it down?

20 MR. BROWN: Yeah. In other
21 words, that's one of the reasons. The size
22 of this building is critical, because
23 they're losing all of the other buildings,
24 and they're figuring on losing this one
25 after the main building is built.

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2 CHAIRMAN GIAMETTA: I see.

3 MR. BROWN: So I'm assuming
4 that would be a straight demolition permit
5 from the building department at that time.

6 CHAIRMAN GIAMETTA: I see.

7 MS. VALK: How quickly will
8 they take down the existing after they move
9 into the new?

10 MR. BROWN: I can get an
11 answer from my client, but he made it sound
12 like once the building was operational, he
13 would have enough space to do what he wants
14 within the new building.

15 MS. VALK: I don't know if
16 the board heard, I just asked how quickly he
17 is looking to take down the existing after
18 they move into the new.

19 CHAIRMAN GIAMETTA: Did they
20 indicate when that was?

21 MR. BROWN: Relatively soon.
22 Because, again, it's going to facilitate
23 vehicles, and they will have enough storage
24 within the new building for compensating for
25 taking that building down, that portion of

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2 the main building.

3 MR. MEKEEL: So the old
4 building is basically ten feet off the line
5 on the 9W side; correct?

6 MR. BROWN: Correct.

7 MR. MEKEEL: So you're moving
8 this whole building to the east; right?

9 MR. BROWN: Right.

10 MR. MEKEEL: Which basically
11 you're giving the town the right of way of
12 the waterline so you don't have to build
13 overtop, because the existing building sits
14 on top of the waterline.

15 MR. BROWN: Well, there is no
16 waterline there.

17 MR. MEKEEL: Oh, okay. So
18 you're giving them the right of way for the
19 extension to go through there?

20 MR. BROWN: Correct.

21 MR. MEKEEL: So that is why
22 you're shifting this whole building to the
23 east?

24 MR. BROWN: Right. So they
25 can loop the waterline and maintain, assure

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2 that they have water going to Brooklyn
3 Bottling because apparently, if they have no
4 water, they're out of business.

5 MR. MEKEEL: Okay. So,
6 basically, shifting it off of that location,
7 okay.

8 CHAIRMAN GIAMETTA: Any other
9 questions on this matter?

10 MR. MEKEEL: No, I'm good.

11 CHAIRMAN GIAMETTA: Okay. I
12 want to thank Mr. Brown for explaining that.
13 And I would like to call on Ms. Valk,
14 briefly, to outline some of the concerns the
15 board has when voting on an area variance,
16 mainly the criteria that we should be
17 considering. There is five points; is that
18 correct?

19 MS. VALK: That is correct.
20 I provided to your clerk, who I believe put
21 in your packets a worksheet that goes
22 through -- it summarizes what the criteria
23 are for the board, and then it lists the
24 five criteria. What I have done, I have
25 given some space, and this is something that

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2 you can use, not just for this application,
3 obviously, but in the future if you ever
4 feel appropriate. You can take notes on
5 these criteria as you're sitting here in the
6 meeting.

7 So, the first factor is
8 whether an undesirable change would be
9 produced in the character of the neighborhood
10 or if there will be a detriment to nearby
11 properties.

12 CHAIRMAN GIAMETTA: Let's go
13 through these slowly.

14 MS. VALK: Uh-huh.

15 CHAIRMAN GIAMETTA: If you
16 don't mind. Do you want to be recognized
17 yet, sir?

18 AUDIENCE: No, sorry, I just
19 had an itch.

20 CHAIRMAN GIAMETTA: Please
21 state that again.

22 MS. VALK: So whether there
23 will be an undesirable change produced in
24 the character of the neighborhood, or if
25 there will be a detriment to the nearby

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2 properties by granting the area variance.

3 So there is two factors in this first --
4 this is from a statute, I just want you to
5 know.

6 So character of the
7 neighborhood. So typically when you're
8 addressing something like that, you're
9 looking at, do we have another commercial or
10 industrial, however you want to describe this
11 building, in the area. This, I believe,
12 fronts on 9W; correct?

13 MR. ZAMBITO: Correct.

14 MR. MEKEEL: Which is
15 zoned --

16 MS. VALK: Yes.

17 MR. MEKEEL: -- for this.

18 MS. VALK: Actually, I'm
19 going to just seague for one second. If you
20 saw the memo from your Building Inspector
21 and Code Enforcement Officer, you will see
22 that this property is in the process of
23 getting the --

24 MR. ZAMBITO: Overlay.

25 MS. VALK: -- the overlay

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2 district on it. It's a little unique in the
3 fact that the town board does not finish
4 that process until the planning board grants
5 site map approval. So I would just
6 recommend, as a condition of your variance,
7 you just state that this is a condition upon
8 finishing the overlay approval. Because
9 that is key to them seeking the underline
10 use. So detriment to nearby properties
11 would essentially mean, whether or not there
12 are any physical conditions or any other
13 reason why you think allowing the variances
14 would cause a detriment to the properties.

15 CHAIRMAN GIAMETTA: And
16 number two?

17 MS. VALK: Number two is
18 whether or not there are alternative means
19 for the applicant to achieve the benefit
20 they seek. So the benefit they seek is
21 essentially a building this size. And the
22 question that you would ask is whether or
23 not there is any way to tweak it a little
24 bit that the variance wouldn't be needed.

25 CHAIRMAN GIAMETTA: Mr.

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2 Brown, would you respond to that one,
3 please?

4 MR. BROWN: Well, again,
5 because the site is so built out at this
6 particular point, the buildings we're taken
7 down and possibly taking down in the future,
8 necessitate the size of this building as
9 proposed. Actually, we're at 53,000 square
10 feet and higher. And I sat down with my
11 client, and we did pair it back so, number
12 one, we met the side yard setback. Number
13 two, the front yard setback became minimal.
14 We're done meeting the height, and really
15 the only one that is a little heavy is the
16 rear. But, again, the existing building to
17 remain is closer than that.

18 MS. VALK: And is there site
19 conditions that you couldn't make the
20 building come, I guess, it could be wider.
21 Do you see what I'm saying?

22 MR. BROWN: Come wider this
23 way?

24 MS. VALK: Yeah.

25 MR. BROWN: Right now, this

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2 12 by 12 door is for access for box trucks,
3 which actually will be able to pull into the
4 building and be able to maneuver. We need
5 that, and we have a couple of parking spots
6 over here, (indicating). We need this aisle
7 wide to get these vehicles in and out of
8 this area. There is also a loading door
9 over here on this building, which they need
10 access to. So, I could maybe tweak it a
11 little, but not enough to get all of this
12 area here that we need.

13 MS. VALK: Okay. Then the
14 next question is the substantiality of
15 variances requested. We're actually looking
16 at two variances. One is six foot in the
17 front, and then the second is the -- I
18 forget exactly how many feet it is in the
19 rear.

20 MR. BROWN: Forty.

21 MS. VALK: Forty-foot
22 variance in the rear.

23 CHAIRMAN GIAMETTA: Can
24 anything be done about that, Mr. Brown,
25 or -- particularly, the front one, or is

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2 that lining up with some other utilities?

3 MR. BROWN: Well, the front
4 one, we actually had the 75 here on this
5 corner of the building, so it's actually,
6 you know, a tapered variance, if ever again.

7 MR. SALINOVICH: It's not the
8 whole thing.

9 MR. MEKEEL: So the way the
10 property is designed, you have to go that
11 route.

12 MR. BROWN: Yeah.

13 MR. MEKEEL: And by allowing
14 the town, giving them the right a way to run
15 a waterline through there, when they do
16 that, he tweaked the building by moving it
17 to the east.

18 MR. BROWN: Correct.

19 MR. MEKEEL: So, basically,
20 you could have said, Well, we can leave the
21 building ten foot off of the line in the
22 front, and we would be able to meet the back
23 setbacks.

24 MR. BROWN: Right.

25 MR. MEKEEL: And we would

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2 only need one variance, but then the town
3 wouldn't have the opportunity to have the
4 right of way to run the waterline through
5 there.

6 MR. BROWN: That's correct.

7 MR. MEKEEL: Okay.

8 MR. ZAMBITO: If you tweaked
9 the building more to the east and get rid of
10 that six-foot variance, it would hinder the
11 back, and then he would only have -- you
12 would need more of a variance in the back.

13 MR. MEKEEL: Yes, that's
14 correct.

15 MR. BROWN: Yes, and I would
16 also lose the ability to have the vehicles
17 move over here (indicating), because it
18 rotates. I actually had it laid out like
19 that.

20 MR. ZAMBITO: I just wanted
21 you to emphasize it so we understand why
22 we're going to two variances instead of
23 tweaking it and going for one.

24 MS. HEPWORTH: When is it
25 appropriate to talk?

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2 CHAIRMAN GIAMETTA: I will
3 give you an opportunity to talk very soon.

4 MS. HEPWORTH: Oh, you are?
5 No problem.

6 CHAIRMAN GIAMETTA: You're
7 definitely going to get an opportunity, no
8 doubt about it.

9 MS. VALK: The fourth factor
10 is the effect or impact on physical or
11 environmental conditions in the
12 neighborhood. So whether or not the area
13 variance would cause any drainage or other
14 issues. Did you already get a neg dec from
15 the planning board?

16 MR. BROWN: No, actually the
17 planning board won't do a technical review
18 until we have the variances granted, but
19 that is going to be a comprehensive approval
20 process. We do have to do all of the
21 drainage per DEC regulations, because we are
22 disturbing more than an acre on a commercial
23 site. So there would be more quality, more
24 quantity, SPDES permit for the DEC involved.

25 MS. VALK: Did you send a

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2 short form EAF with the application?

3 MR. BROWN: I believe I did a
4 long form.

5 MS. VALK: You did a long
6 form?

7 MR. BROWN: I am pretty sure.
8 I might have done a short form for here, but
9 I definitely did a long form for the
10 planning board.

11 MS. VALK: Do you know if you
12 have a copy?

13 MR. MEKEEL: We don't need a
14 long form.

15 CHAIRMAN GIAMETTA: Ms.
16 Cashman, do you know if we have a short form
17 EAF for this project?

18 MS. CASHMAN: No, I don't
19 think so.

20 MS. VALK: Do you have a
21 blank one?

22 CHAIRMAN GIAMETTA: I thought
23 I saw something.

24 MS. CASHMAN: I have it.

25 CHAIRMAN GIAMETTA: Is that

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2 short or long?

3 MR. CORCORAN: I think that's
4 the long form.

5 MS. VALK: It is a long form,
6 which is fine.

7 CHAIRMAN GIAMETTA: Thank
8 you, Ms. Cashman.

9 MS. VALK: And then the last
10 criteria is self creation of difficulty, and
11 the words out of the statute are, whether
12 the alleged difficulty is self-created,
13 which consideration shall be relevant to the
14 decision of the board, but shall not
15 necessarily preclude the grants in the area
16 variance. As a matter of law, any variance
17 is considered self-created if somebody
18 purchased the property subject to zoning
19 restrictions. You can argue that because
20 they are applying for an overlay, because
21 actually the rear yard setback in a
22 residential district is much less onerous
23 than the overlay of what they're looking for
24 in this district. So whether or not it's
25 self-created, I think is an arguable point.

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2 MR. BROWN: Yeah, it's
3 currently zoned RAG-1, and the rear yard
4 setback for that is 25 feet.

5 MS. VALK: However, I don't
6 think it would allow commercial buildings
7 so.

8 CHAIRMAN GIAMETTA: It's
9 currently zoned -- what, Mr. Brown?

10 MR. BROWN: RAG-1, rural
11 agricultural.

12 CHAIRMAN GIAMETTA: And the
13 rear yard setback is what?

14 MR. BROWN: Twenty-five.

15 CHAIRMAN GIAMETTA: Where are
16 you reading that from?

17 MR. BROWN: Zoning table on
18 the drawing.

19 MR. SALINOVICH: It's 75.

20 MR. CORCORAN: It's 75.

21 CHAIRMAN GIAMETTA: 75?

22 MR. CORCORAN: 50 in the
23 front, 75 in the rear, 35 on the side, 80
24 combined.

25 CHAIRMAN GIAMETTA: Yeah.

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2 MR. BROWN: Oh, yes, you are
3 correct.

4 CHAIRMAN GIAMETTA: Okay.

5 MR. BROWN: Sorry about that.

6 CHAIRMAN GIAMETTA: So the
7 rear yard set back requirement is 75 feet.

8 MR. BROWN: So that doesn't
9 change from RAG-1.

10 MS. VALK: Oh, that doesn't?

11 MR. CORCORAN: No.

12 MR. BROWN: The BC. The
13 front however does.

14 MS. VALK: Strike what I
15 said.

16 CHAIRMAN GIAMETTA: What
17 happens to the front?

18 MR. BROWN: The front, RAG is
19 50.

20 CHAIRMAN GIAMETTA: Oh, 50?

21 MR. BROWN: Yes, and the BC
22 is 75.

23 CHAIRMAN GIAMETTA: Were
24 those all of the criteria, Ms. Valk?

25 MS. VALK: That was all five

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2 of them, yes.

3 CHAIRMAN GIAMETTA: Having
4 heard that, Board, any further concerns
5 or --

6 MR. MEKEEL: I don't have
7 anything.

8 CHAIRMAN GIAMETTA: Any
9 concerns, Mr. Zambito?

10 MR. ZAMBITO: No, I'm good.

11 MR. SALINOVICH: You're
12 taking out the walls, you have fire access
13 admissible?

14 MR. BROWN: The terrain --
15 the reason for the wall -- again, the
16 warehouse by definition has to be all one
17 level. The doors for the tractor trailers
18 are going to be down four foot from the
19 floor, but the lot pitches in such a way we
20 need a retaining wall in the back to
21 essentially keep the building from being
22 buried. I mean, it's not that high, but
23 these steel buildings are generally
24 prefabricated, and they really don't like to
25 make the columns different lengths. So I

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2 have in the past filled in between the
3 columns with concrete to retain the soil.
4 But the retaining wall is actually so that
5 we can maintain it fairly level around the
6 building for fire trucks, but also there is
7 concrete pads going on two ends of the
8 building that are going to support the
9 cooling units, and they need access to those
10 for maintenance. So we are proposing a
11 gravel drive around the building, retaining
12 walls are in place -- are proposed -- so
13 that the grading works on that so the
14 vehicles can get around the building.
15 Otherwise, it gets pretty steep in the back
16 just beyond the existing building.

17 CHAIRMAN GIAMETTA: What type
18 of roof is going to occupy this structure?

19 MR. BROWN: Metal.

20 CHAIRMAN GIAMETTA: Is it
21 peaked or it's flat or --

22 MR. BROWN: It's peaked.
23 It's pitched. It's a very low pitch, but
24 it's pitched.

25 CHAIRMAN GIAMETTA: It's a

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2 pitched roof?

3 MR. BROWN: Yes. I mean, he
4 is actually talking about maybe putting
5 solar on it, so...

6 CHAIRMAN GIAMETTA: But it's
7 in conformance with the code as far as the
8 height?

9 MR. BROWN: Yes. Your code
10 is unique on building height. It measures
11 it from halfway between the ridge and the
12 soffit, instead of going all the way to the
13 ridge.

14 CHAIRMAN GIAMETTA: I
15 recognize Inspector Corcoran in the
16 audience. Do you have anything to comment
17 on, Mr. Corcoran?

18 MR. CORCORAN: No, we spoke.
19 And the only thing I had seen there, again,
20 we have our 35-foot fire access road around
21 there. I talked to Mr. Brown. We have to
22 move that retaining wall back a little bit.
23 Even though we have 35 feet fire access,
24 fire apparatus is usually 28 and a half
25 feet, so that wall is a little close, but he

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2 has room to play with there, and I will
3 bring that up at the planning board too. So
4 we have to move that retaining wall back a
5 few feet, but other than that, I am fine
6 with the height. I'm fine with the fire
7 access.

8 CHAIRMAN GIAMETTA: Very
9 good. Thank you. Members of the audience?
10 Yes, ma'am, please state your name for the
11 record.

12 MS. HEPWORTH: Amy Hepworth.

13 CHAIRMAN GIAMETTA: Yes, Ms.
14 Hepworth?

15 MS. HEPWORTH: Our land is
16 directly east --

17 MR. BROWN: And south.

18 MS. HEPWORTH: -- and south.
19 We're extremely supportive of this project
20 and it's critical to Ag, and it's imperative
21 that we move forward in this to help assist
22 this building to be erected and to do our
23 due diligence. There is a -- we haven't
24 been able to give a presentation to the town
25 in relationship to Ag development here, but

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2 this is a strategic project. It's going to
3 benefit our communities in ways that we
4 don't even have the appropriate time to give
5 tonight. On the variance, it looked like
6 you did a very good job offsetting it. I
7 thought that was impressive, because there
8 is a waterway that drains from the town hall
9 pond and it goes underneath there, and they
10 did a good job. Whoever designed that and
11 did it, they did a good job. It holds an
12 awful lot. Even at the time when there was
13 a flood at the town hall, it was amazing
14 what that drainage system did far better
15 than the one before it, which was our
16 property. And I just want to be clear that,
17 I guess, you guys all know that originally
18 it was Hepworth's property, and that area
19 was a mushroom -- my great, great uncle or
20 something or other -- I think you might even
21 have a picture of that building in the
22 history books. And it's one thing about
23 history is we're proud of our history, and
24 the one thing we can all work together is
25 progress. And that building is extremely

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2 dysfunctional and impossible to put into any
3 modern use. It's critical to develop. This
4 is a central location. So from the point of
5 view of, from the 75 variance and, I mean, I
6 would go so far as to sell them land.

7 That's how important. And if they were
8 given the opportunity to put this up, the
9 farmers in this region would fill it. So, I
10 know you have an issue with the highway
11 development and trying to coordinate
12 commercial and development here. This is --
13 however, we progress in commercial zoning.
14 This is an agricultural building, so that's
15 good. You know what I mean? It's a
16 facility that's going to be built to
17 strengthen the region. The buildings that
18 they're talking about in order to make this
19 flow properly, those really are a creative
20 design actually to maximize the area and
21 function.

22 CHAIRMAN GIAMETTA: In what
23 way?

24 MS. HEPWORTH: Because we
25 need a lot of square footage in the

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2 building, and even what I am hearing -- it's
3 difficult to see, I don't have my glasses on
4 exactly. I will go over there and, you
5 know, be a part of it in the best way
6 because it's a critical piece of building
7 for what's going on. But those buildings
8 that they're talking about taking away,
9 again, I hear like you have the main
10 facility and you might need to take down
11 some of the other buildings, I don't know.
12 Have you guys been to the site?

13 MR. ZAMBITO: Yes.

14 MS. HEPWORTH: Oh, good.

15 MR. BROWN: The building that
16 is coming down is the one with the saggy
17 roof they call it.

18 MS. HEPWORTH: Yeah.

19 MR. BROWN: And then the two
20 to the east of it, those are the commercial
21 buildings. And then there is a house
22 actually to the north of this that is right
23 off the property line, which is in very poor
24 shape, and then there is another house right
25 in this area (indicating).

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2 MS. HEPWORTH: Right, in the
3 middle.

4 MR. BROWN: Right, that's
5 coming down also.

6 MS. HEPWORTH: Well, that is
7 a sure win for the town to develop a
8 strategical piece of property. So, that's
9 all I say is the neighbors, and as somebody
10 trying to represent agriculture in the
11 community, we couldn't have better timing
12 ever than these people to put this money
13 right into the town right now. It will be
14 filled up and we'll talk about that soon.
15 We'll be coming to the town hall and giving
16 our presentation within a month. We're
17 going to get on the town board docket, and
18 we'll give a presentation. Do you have any
19 questions for me? And can I even have --
20 are you going to vote on it tonight?

21 CHAIRMAN GIAMETTA: That's
22 our plan, yes.

23 MR. ZAMBITO: Hope so.

24 CHAIRMAN GIAMETTA: So you
25 feel it's a favorable project.

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2 MS. HEPWORTH: Thank you so
3 much. The timing is critically important.

4 CHAIRMAN GIAMETTA: Thank
5 you.

6 MS. HEPWORTH: And I can't
7 tell you what a good neighbor and dedicated
8 in a business partner for the town to have
9 those people in our town. We should work
10 with them tremendously. I cannot tell you
11 what a great neighbor they are beyond. They
12 are very good people.

13 So, the zoning in the
14 overlay, I think we did pretty good, right
15 guys? I would hope that any problems you
16 see, we'll try to get through it as fast as
17 possible, because, boy, do we need that
18 building, and we're going to help, yes,
19 please.

20 CHAIRMAN GIAMETTA: Are you
21 finished with that, Ms. Hepworth?

22 MS. HEPWORTH: Yeah, Gail is
23 my other Hepworth.

24 CHAIRMAN GIAMETTA: I see
25 someone else in the audience. Your name?

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2 GAIL HEPWORTH: My name is
3 Gail Hepworth, I am Amy's sister, and I am
4 part of her business. And I just wanted to
5 clarify the abundance of enthusiasm that we
6 have for this business. It is not -- the
7 variance is very, very important. It is not
8 desirable, nor would it be easy, or I just
9 want to clarify that some of the land is not
10 possible, so it's only in the unlikely event
11 that there is some catastrophic problem
12 here, it's not a solution, it's important
13 that the, what is here, which is reasonable,
14 be considered.

15 CHAIRMAN GIAMETTA: I see.
16 Thank you very much. Anything else, Ms. Amy
17 Hepworth?

18 MS. HEPWORTH: Not unless you
19 have a problem with doing it so I can have a
20 good argument.

21 CHAIRMAN GIAMETTA: Anyone
22 else want to comment? I see another couple
23 in the audience.

24 MS. FEILEN: My name is Diane
25 Feilen, and I'm a property owner in

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2 Marlboro, but I used to own the property
3 right next door, which is still owned by my
4 family, and we're for the project. The
5 biggest thing, the way that it sits now.
6 That we know from living in the community,
7 that building is kind of an eyesore. So I
8 think anything that would look aesthetically
9 better would definitely help the community.
10 And in addition, they are great neighbors.
11 And I'm also involved working with the
12 Hepworths, and I think it's beneficial to
13 their business and the other farmers, which
14 is obviously beneficial to the whole
15 community.

16 CHAIRMAN GIAMETTA: Thank you
17 very much. Gentlemen, any comments?

18 (No response)

19 CHAIRMAN GIAMETTA: Anything
20 further from anyone at all?

21 (No response)

22 CHAIRMAN GIAMETTA: Okay.
23 I'd like to ask for a motion to close the
24 public part of this meeting.

25 MR. MEKEEL: I will make a

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motion to close the public -- the meeting.

MR. ZAMBITO: I will second.

CHAIRMAN GIAMETTA: And a
vote?

MR. SALINOVICH: Aye.

MR. MEKEEL: Aye.

MR. ZAMBITO: Aye.

CHAIRMAN GIAMETTA: And aye.

GAIL HEPWORTH: Thank you.

CHAIRMAN GIAMETTA: You're
welcome. Okay. The requirement to notify
the surrounding neighbors has been done; is
that correct?

MR. MEKEEL: Yes.

CHAIRMAN GIAMETTA: And Ms.
Cashman has stated there was how many
mailings out?

MS. CASHMAN: There was 21
mailed, 19 were returned signed, one was not
deliverable, and one is not returned yet.

CHAIRMAN GIAMETTA: Okay.
Regarding the required certified mailings,
Ms. Cashman just summarized that all but --
was it two or three?

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2 MS. CASHMAN: All, but two.

3 CHAIRMAN GIAMETTA: All but
4 two did not get to the recipient.

5 MR. BROWN: One may have. We
6 just didn't get the green card back yet, and
7 the other one --

8 CHAIRMAN GIAMETTA: Was
9 undeliverable.

10 GAIL HEPWORTH: I think that
11 might be mine.

12 CHAIRMAN GIAMETTA: Is that
13 yours?

14 GAIL HEPWORTH: Yes.

15 CHAIRMAN GIAMETTA: Thank
16 you, Ms. Cashman.

17 MS. VALK: Well, at least we
18 know she knew about it because she was here.

19 CHAIRMAN GIAMETTA: Yes. We
20 want to ask for the newspaper article.

21 MS. CASHMAN: You have it.

22 CHAIRMAN GIAMETTA: We have
23 it in the folder here?

24 MS. CASHMAN: The legal
25 notice.

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2 CHAIRMAN GIAMETTA: For the
3 record, I will ask Mr. Mekeel to read --

4 MR. MEKEEL: So I'm going to
5 read the legal notice. (Reading): Please
6 take notice that a public hearing will be
7 held by the Town of Marlborough Zoning Board
8 of Appeals at the Town Hall, #21 Milton
9 Turnpike, Milton, New York on April 11, 2019
10 at 7:00 p.m. or soon thereafter as may be
11 heard. Owner applicant Royal Energy
12 Properties, LLC has made a front yard
13 setback area variance request six foot and a
14 rear yard setback area variance request of
15 40 foot with regard to Town Code 155,
16 Attachment 2 Schedule 1. The project is a
17 proposed replacement of a commercial cold
18 storage warehouse and removal of other
19 structures at the property identified as
20 number 1666 Route 9W, Milton, New York
21 12547. Tax Parcel: Section 103.3. Block
22 3, Lot 68, which is currently an RAG-1 Zone
23 with application to the town board for BC.
24 Any interested parties, either for or
25 against this application will have the

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2 opportunity to be heard at this time.

3 William Giametta, Chairman, Town of
4 Marlborough Zoning Board of Appeals.

5 CHAIRMAN GIAMETTA: Thank
6 you, Mr. Mekeel.

7 MR. MEKEEL: So we have that
8 official.

9 CHAIRMAN GIAMETTA: Better
10 late than not at all.

11 MR. MEKEEL: At this time, I
12 would like to make a motion to grant the
13 variance.

14 MS. VALK: First you have to
15 issue a negative dec. So you just make a
16 motion to issue a negative declaration, and
17 I believe during the time somebody
18 commented, the board members, had an
19 opportunity to look at the EAF, and if you
20 have no concerns, you can issue a negative
21 declaration.

22 CHAIRMAN GIAMETTA: That
23 negative dec comes from the zoning board or
24 the planning board?

25 MS. VALK: Planning board

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2 will do their own when they do their review.
3 It's an uncoordinated review.

4 CHAIRMAN GIAMETTA: So we
5 have an official step in this process, and
6 having heard all of the input and testimony
7 regarding the case, we ask for a motion
8 regarding the declaration.

9 MR. SALINOVICH: I will make
10 a motion that we accept the declaration of
11 -- what is it called?

12 MS. VALK: The negative
13 declaration.

14 CHAIRMAN GIAMETTA: The
15 negative declaration.

16 MR. MEKEEL: I will second
17 that motion.

18 CHAIRMAN GIAMETTA: And a
19 vote?

20 MR. SALINOVICH: Aye.

21 MR. MEKEEL: Aye.

22 MR. ZAMBITO: Aye.

23 CHAIRMAN GIAMETTA: And aye
24 on the negative dec. And now we're leading
25 up to our motion regarding the variances.

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MR. MEKEEL: I will make a motion that we grant the variance -- variances, request of a six foot at the front yard setback, and a 40 foot at the rear yard setback.

MR. ZAMBITO: I will second.

MS. VALK: We should go down the five criteria, and then state what is in support. So character of the neighborhood and detriment to nearby properties. Character of the neighborhood is generally a commercial area, because it's fronts on 9W; correct?

MR. ZAMBITO: Correct.

MR. MEKEEL: Correct, yes.

MS. VALK: So this would be consistent with the character of the neighborhood; correct?

MR. MEKEEL: Yes, it would.

MR. ZAMBITO: Correct.

MR. SALINOVICH: It does.

MS. VALK: Does any board member feel that there is anything with this variance application that would cause a

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2 detriment to nearby properties?

3 MR. ZAMBITO: We just heard
4 from the nearby property owner, so the
5 answer is no.

6 MR. MEKEEL: No.

7 MS. VALK: Okay. As to
8 alternative methods for the applicant to
9 achieve the benefits sought, I believe we
10 received testimony from the applicant
11 representative that was not contradicted
12 that given the site conditions they would
13 not be able to rearrange the building for
14 purposes of fitting it within the building
15 square. So, if I may, I believe the board
16 would find that there are no reasonable
17 alternatives for the applicant.

18 MR. MEKEEL: That's correct,
19 yes.

20 MR. ZAMBITO: Correct.

21 MS. VALK: As far as the
22 substantiality of the variance, the six-foot
23 variance in the front is obviously, as far
24 as percentage goes, non-substantial. The 40
25 foot variance in the rear is over 50

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2 percent, which is generally considered
3 substantial, but --

4 MR. ZAMBITO: Because it's
5 less than the height of the building, it's
6 fine.

7 MS. VALK: And, also, I
8 believe given existing site conditions, that
9 they are improving upon that, and that is
10 something else that could go to your
11 consideration of substantiality.

12 MR. MEKEEL: Yes, we agree to
13 that. I do.

14 MS. VALK: I don't believe
15 there has been any testimony that there
16 would be a negative physical or
17 environmental impact for the conditions in
18 the neighborhood.

19 MR. MEKEEL: Correct.

20 MS. VALK: And self-creation
21 of the difficulty.

22 MR. MEKEEL: They did not
23 self-create this.

24 CHAIRMAN GIAMETTA: Who did?

25 MR. BROWN: Well, other than

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2 it's self-created, it's not critical to your
3 decision. In other words, most area
4 variances I do are self-created, but if it's
5 better than the alternative, then you're
6 allowed to waive that. I should let you say
7 all of that.

8 MS. VALK: No, that's fair.

9 MR. ZAMBITO: He's correct.

10 MS. VALK: Yeah, he is
11 correct, and, actually, he worded it very
12 well. And also, as you balance these five
13 factors, so you put the weight on to each
14 one that you feel -- you don't have to say
15 they're all 20 percent of the criteria. So
16 even if it's self-created, you can say that,
17 Well, the benefit that is given to the
18 neighborhood outweighs the facts so --

19 MR. ZAMBITO: It is self-
20 created, but for him to fit this building to
21 footprint, this is what has to be done and
22 it's not detrimental to anything. It's self
23 creation of the issue.

24 MS. VALK: So given that
25 deliberation then, and all four, and I don't

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2 think anybody disagrees with anything that
3 we just went over, so that will be your
4 findings. And you may now proceed to vote
5 on that.

6 CHAIRMAN GIAMETTA: And a
7 vote for the variance?

8 MR. SALINOVICH: Aye.

9 MR. MEKEEL: Aye.

10 MR. ZAMBITO: Aye.

11 CHAIRMAN GIAMETTA: And aye
12 from the Chair also.

13 MR. BROWN: Thank you very
14 much.

15 CHAIRMAN GIAMETTA: Variance
16 approved.

17 MR. BROWN: Thank you very
18 much.

19 CHAIRMAN GIAMETTA: You're
20 welcome.

21 MS. HEPWORTH: Thank you.

22 CHAIRMAN GIAMETTA: Thank
23 you, gentlemen. Thank you, Ms. Valk.

24 MS. VALK: You're welcome.

25 CHAIRMAN GIAMETTA: Very well

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2 done.

3 MS. VALK: Thank you, I
4 appreciate that. Are we adjourning?5 CHAIRMAN GIAMETTA: We are
6 adjourning.7 MR. MEKEEL: I will make a
8 motion we adjourn.

9 MR. ZAMBITO: I'll second.

10 MR. SALINOVICH: Aye.

11 MR. MEKEEL: Aye.

12 MR. ZAMBITO: Aye.

13 CHAIRMAN GIAMETTA: And aye.

14 oOo

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16 (Time noted: 7:43 p.m.)
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