

1

2 STATE OF NEW YORK : COUNTY OF ULSTER

3 TOWN OF MARLBOROUGH ZONING BOARD

-----X

4

In the Matter of

5

DANE DESANTIS and CECILIA COLANGELO

6

226 Highland Avenue

7

Marlboro, New York 12542

8

S.B.L #108.12-1-48

9

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PUBLIC HEARING CONCERNING A 22.9 FEET

10

REQUIRED LOT WIDTH AREA VARIANCE REQUEST.

11

DATE: May 12, 2022

12

TIME: 6:00 P.M.

13

PLACE: Town of Marlborough

14

Town Hall

15

#21 Milton Turnpike

Milton, New York 12547

BOARD MEMBERS:

16

WILLIAM GIAMETTA, CHAIRMAN

17

JEFF MEKEEL

18

LENNY CONN

GEORGE SALINOVICH, ABSENT

19

ANDREW NIKOLA

20

ALSO PRESENT:

21

Dane Desantis, Applicant

22

Cecilia Colangelo, Applicant

23

Penny E. Cashman, Zoning Board

24

Secretary

25

26

-----X

LISA MARIE ROSSO

27

140 Mahoney Road

28

Milton, New York 12547

29

(845) 674-3937

LISA MARIE ROSSO - (845) 674-3937

1 DANE DESANTIS & CECILIA COLANGELO - PUBLIC HEARING

2

CHAIRMAN GIAMETTA: Welcome to the

3

Town of Marlboro Zoning Board of

4

Appeals, May 12th, meeting. Please

5

join me for the pledge to the flag.

6

(Pledge of Allegiance)

7

CHAIRMAN GIAMETTA: Thank you very

8

much. We have two matters on our

9

agenda this evening. But before we get

10 to those, we had minutes from the last  
11 meeting under consideration and  
12 approval. The last meeting was April  
13 20th.

14 MR. MEKEEL: I make a motion we  
15 approve the meeting minutes from April  
16 20th.

17 CHAIRMAN GIAMETTA: Second?

18 MR. CONN: Yes.

19 CHAIRMAN GIAMETTA: All in favor?

20 MR. MEKEEL: Aye.

21 MR. CONN: Aye.

22 MR. NIKOLA: I will abstain  
23 because I was absent at that meeting.

24 CHAIRMAN GIAMETTA: Thank you.

25 The first matter is the Desantis matter

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# 1 DANE DESANTIS & CECILIA COLANGELO - PUBLIC HEARING

2 and we have to read the legal notice  
3 for it. Mr. Nikola, if you would?  
4 MR. NIKOLA: Town of Marlborough  
5 Zoning Board of Appeals Legal Notice.  
6 Please take notice that a public  
7 hearing will be held by the Town of  
8 Marlborough Zoning Board of Appeals,  
9 ZBA, at the Town Hall, 21 Milton  
10 Turnpike, Milton, New York on May 12th  
11 2022 at 6:00 P.M. or soon thereafter as  
12 may be heard. Owner/applicant Dane  
13 Desantis is seeking relief from Town of  
14 Marlborough Code 155, Attachment 2,  
15 Schedule 1, by way of a 22.9 feet  
16 required width area variance.  
17 Location, 226 Highland Avenue. Tax  
18 parcel, Section 108.12. Block 1. Lot  
19 48 (R Zone). Any interested parties,  
20 either for or against this application,

21 will have the opportunity to be heard  
22 at this time. William Giametta,  
23 Chairman, Town of Marlborough Zoning  
24 Board of Appeals.  
25 CHAIRMAN GIAMETTA: Thank you very

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1 DANE DESANTIS & CECILIA COLANGELO - PUBLIC HEARING

2 much. The notifications of the  
3 neighbors has been completed?  
4 MR. DESANTIS: Yes, it has. We  
5 sent out 54 letters of 57 on the list,  
6 but three properties are null with no  
7 address to send on the partial  
8 document. So we sent all of the  
9 information, and it has been turned  
10 into the committee.

11 CHAIRMAN GIAMETTA: Ms. Cashman,  
12 how many do you have, on the record?

13 MS. CASHMAN: Fifty-four mailed.  
14 One came back with no mail receptacle.  
15 Forty were returned signed, and 13 are  
16 still unaccounted for.

17 CHAIRMAN GIAMETTA: Okay. Of this  
18 very legal notice; correct.

19 MR. DESANTIS: Yes.

20 CHAIRMAN GIAMETTA: Would you  
21 kindly briefly explain why you're here  
22 tonight?

23 MR. DESANTIS: Yes, we are here  
24 tonight to continue our zoning board  
25 request for an area variance for a lot

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5

1 DANE DESANTIS & CECILIA COLANGELO - PUBLIC HEARING

2 width of our proposed subdivision at 26  
3 Highland Avenue. Our property meets

4 all other required codes per the Town R  
5 Zone that we are located in. We just  
6 are able to get the desired 75-foot  
7 width of the property due to a  
8 telephone easement in the back of the  
9 property, which pretty much only will  
10 allow us to build at one location of  
11 the property.

12 CHAIRMAN GIAMETTA: Board members,  
13 do we have a thorough understanding of  
14 that?

15 MR. NIKOLA: Yes.

16 MR. CONN: Yes.

17 MR. MEKEEL: Yes.

18 CHAIRMAN GIAMETTA: At this time,  
19 I would like to ask the public if there  
20 is anybody who would like to speak,  
21 either for or against the project of  
22 the Desantis? Anyone out there?

23 (No audible response)

24 CHAIRMAN GIAMETTA: Having heard  
25 none, I do call attention to a letter

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1 DANE DESANTIS & CECILIA COLANGELO - PUBLIC HEARING

2 that was sent to us, and I would like  
3 it read for the record. Mr. Conn,  
4 would you be kind enough to read the  
5 letter --

6 MR. CONN: Sure.

7 CHAIRMAN GIAMETTA: -- regarding  
8 this matter?

9 MR. CONN: I will read it  
10 verbatim. Dear William Giametta, How  
11 are you? Our name are Yee Lam and Sau  
12 Chu Chan. We are the owner of 69  
13 Western Avenue, Marlborough, New York  
14 12542. We are against applicant Dane

15 Desantis. We are not agree relief from  
16 Town of Marlborough Code 155,  
17 Attachment 2, Schedule 1 by way of a  
18 22.9 feet required lot width area  
19 variance because it is too closed to my  
20 property. I have right to say no. I  
21 need to work. I may not have time to  
22 attend the meeting on May 12, 2022 at  
23 6:00 P.M., Town Hall. Thanks for your  
24 cooperate. Sincerely, Yee Lam and Sau  
25 Chu Cha, dated April 30th, 2022.

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1 DANE DESANTIS & CECILIA COLANGELO - PUBLIC HEARING

2 CHAIRMAN GIAMETTA: And their  
3 address was what, Mr. Conn?

4 MR. CONN: Sixty-nine Western  
5 Avenue.

6 CHAIRMAN GIAMETTA: And your  
7 address is what?

8 MR. DESANTIS: 226 Highland  
9 Avenue. They're not immediate  
10 neighbors to us.

11 CHAIRMAN GIAMETTA: Thank you.  
12 Thank you very much. Anyone else wish  
13 to contribute either for or against  
14 this matter?

15 (No audible response)

16 CHAIRMAN GIAMETTA: Having heard  
17 no one to that effect. Board members,  
18 any questions, concerns?

19 MR. MEKEEL: No.

20 MR. NIKOLA: No.

21 MR. CONN: No.

22 CHAIRMAN GIAMETTA: I need a  
23 motion for --

24 MR. MEKEEL: I make a motion we  
25 close the public hearing.

1 DANE DESANTIS & CECILIA COLANGELO - PUBLIC HEARING

2 CHAIRMAN GIAMETTA: Second?

3 MR. NIKOLA: I second.

4 CHAIRMAN GIAMETTA: All in favor?

5 MR. MEKEEL: Aye.

6 MR. CONN: Aye.

7 MR. NIKOLA: Aye.

8 CHAIRMAN GIAMETTA: And any

9 discussion on this matter?

10 MR. MEKEEL: No.

11 MR. NIKOLA: None.

12 MR. CONN: No.

13 CHAIRMAN GIAMETTA: I would ask

14 for a motion regarding it?

15 MR. CONN: I make a motion that we

16 give a 22.9 feet required lot width

17 area variance.

18 CHAIRMAN GIAMETTA: Second?

19 MR. MEKEEL: I will second that.

20 CHAIRMAN GIAMETTA: All in favor?

21 MR. NIKOLA: Aye.

22 MR. CONN: Aye.

23 MR. MEKEEL: Aye.

24 CHAIRMAN GIAMETTA: Your variance

25 is approved.

1 DANE DESANTIS & CECILIA COLANGELO - PUBLIC HEARING

2 MR. DESANTIS: Thank you so much.

3 CHAIRMAN GIAMETTA: Okay. Good

4 luck to you and make sure you get your

5 required permits from Ms. Cashman and

6 her office. Anything else, Ms.

7 Cashman, on the Desantis matter?

8 MS. CASHMAN: No.

9 (Whereupon, at 6:07 P.M., the  
10 Hearing was concluded.)

11

12 ? ? ? ?

13

14

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1 DANE DESANTIS & CECILIA COLANGELO - PUBLIC HEARING

2 C E R T I F I C A T E

3

4 STATE OF NEW YORK )

: SS.:

5 COUNTY OF ULSTER )

6

7 I, LISA M. ROSSO, a Notary Public for

8 and within the State of New York, do hereby

9 certify:

10 That the witness whose examination is

11 hereinbefore set forth was duly sworn and

12 that such examination is a true record of

13 the testimony given by that witness.

14 I further certify that I am not related

15 to any of the parties to this action by

16 blood or by marriage and that I am in no way

17 interested in the outcome of this matter.

18 IN WITNESS WHEREOF, I have hereunto set

19 my hand this 2nd day of June 2022.

20  
21  
22  
23  
24  
25

\_\_\_\_\_  
LISA M. ROSSO

LISA MARIE ROSSO - (845) 674-3937

1

2 STATE OF NEW YORK : COUNTY OF ULSTER

3 TOWN OF MARLBOROUGH ZONING BOARD

-----X

4

In the Matter of

5

DAVID TODER

6

578 Route 44-55

7

Highland, New York 12528

8

S.B.L #95.2-2-10

9

-----X

PUBLIC HEARING CONCERNING THE REQUEST FOR A  
21 FEET 8 INCH FRONT YARD AREA VARIANCE AND  
A 13 FEET 5 INCH SIDE YARD SETBACK AREA  
VARIANCE.

12

DATE: May 12, 2022

13

TIME: 6:08 P.M.

14

PLACE: Town of Marlborough

15

Town Hall

16

#21 Milton Turnpike

Milton, New York 12547

BOARD MEMBERS:

17

WILLIAM GIAMETTA, CHAIRMAN

18

JEFF MEKEEL

19

LENNY CONN

GEORGE SALINOVICH, ABSENT

20

ANDREW NIKOLA

ALSO PRESENT:

21

David Toder, Applicant

22

Penny E. Cashman, Zoning Board

23

Secretary

24

-----X

25

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140 Mahoney Road

Milton, New York 12547

(845) 674-3937

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1 DAVID TODER - PUBLIC HEARING

2 CHAIRMAN GIAMETTA: This brings us



3 to the second matter of the evening.

4 And like the first, there is a legal

5 notice that needs to be read. Would

6 one of the board members read it,

7 please?

8 MR. MEKEEL: Please take notice

9 that a public hearing will be held by

10 Town of Marlboro Zoning Board of

11 Appeals at the Town Hall, 21 Milton

12 Turnpike, Milton, New York on May 12th

13 2022 at 6:00 P.M. or soon thereafter as

14 may be heard. Owner/applicant David

15 Toder is seeking relief from Town of

16 Marlborough Code 115, Attachment 2,

17 Schedule 1, by way of a 13 feet 5 inch

18 side yard setback area variance and a

19 21 feet 8 inch front yard setback area

20 variance. Location is 578 Route 44/55,

21 Highland, New York 12528. Tax parcel:

22 Section 95.2. Lot 10 and that is a C2

23 Zone. Any interested parties, either

24 for or against this application will

25 have the opportunity to be heard at

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3

1 DAVID TODER - PUBLIC HEARING

2 this time. William Giametta, Town of

3 Marlborough Zoning Board of Appeals.

4 CHAIRMAN GIAMETTA: Thank you very

5 much, Mr. Mekeel. And I believe Mr.

6 Toder is here this evening?

7 MR. TODER: Yes, I have some

8 updated site plans to share with you,

9 three copies here.

10 CHAIRMAN GIAMETTA: Are these

11 plans different from what was before us

12 at the workshop?

13 MR. TODER: Yes. There are a

14 number of differences. One is that  
15 Patty Brooks pointed out that the prior  
16 survey I was relaying on was incorrect  
17 where the front yard -- the front  
18 property line was.

19 MR. NIKOLA: This is correct then?

20 MR. TODER: I wanted to give you a  
21 correct one. It's at the highway  
22 25-foot from the center line of 44/55  
23 in the front yard, not center line.

24 CHAIRMAN GIAMETTA: Are you saying  
25 the measurement differs or the

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1 DAVID TODER - PUBLIC HEARING  
2 measurment is the same?

3 MR. TODER: I'm saying the  
4 property is actually smaller --

5 CHAIRMAN GIAMETTA: Smaller?

6 MR. TODER: -- than what was shown  
7 on the previous plans in that that  
8 showed the front property line in the  
9 middle of 44/55, which was based on a  
10 previous survey and Patty Brooks  
11 pointed out that's not right.

12 MR. MEKEEL: Roughly 13 feet; is  
13 that correct? From 38 and change?

14 MR. TODER: That variance -- that  
15 dimension hasn't changed. I'm just  
16 saying that the drawing is updated.

17 MR. MEKEEL: Okay. The drawing is  
18 updated, okay.

19 MR. TODER: That's right. And  
20 this plan also has a slight variation  
21 on the front yard setback, as well as  
22 the side yard setback compared to the  
23 prior. One is that we are planning to  
24 put in a new landing, stair and ramp to

25 access the bakery so that we have a

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1 DAVID TODER - PUBLIC HEARING

2 fully compliant --

3 MR. MEKEEL: Is this for handicap?

4 MR. TODER: Handicap code, that's

5 right. Because the current stairs are

6 not code compliant and so that --

7 instead of a 13 foot 4, because it's --

8 the building is at a slight angle, that

9 comes within almost 12-foot so that we

10 would like a 23-foot front yard

11 variance as opposed to 21 foot 8 that

12 we were previously asking for.

13 Basically 16 inches more to allow for

14 that landing, rather than on the front

15 corner of the building.

16 CHAIRMAN GIAMETTA: Is there any

17 other differences?

18 MR. TODER: The other difference

19 is that the side yard, I reviewed the

20 zoning code, and it is allowed that the

21 garage, for example, has an angle.

22 It's angled with reference to the side

23 yard and you can use the average width

24 of the angled building and so the

25 requested side yard variance is less

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1 DAVID TODER - PUBLIC HEARING

2 than previous, and so that's the other

3 substantial change.

4 MR. NIKOLA: Now 26 feet?

5 MR. TODER: Now we would like a 9

6 foot variance on the side yard to allow

7 the existing building to remain. We

8 don't need as large a variance as the  
9 previous ones.

10 CHAIRMAN GIAMETTA: So, one  
11 variance you're asking for a little  
12 additional relief and one variance less  
13 relief; is that correct?

14 MR. TODER: Yes.

15 CHAIRMAN GIAMETTA: Okay. Thank  
16 you very much for that explanation.  
17 Did you send out the notification to  
18 the neighbors?

19 MR. TODER: Yes, apparently, they  
20 were received.

21 CHAIRMAN GIAMETTA: Ms. Cashman?

22 MS. CASHMAN: He mailed out 18,  
23 nothing came back.

24 CHAIRMAN GIAMETTA: How many went  
25 out?

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1 DAVID TODER - PUBLIC HEARING

2 MS. CASHMAN: Eighteen.

3 CHAIRMAN GIAMETTA: Eighteen  
4 mailings.

5 AUDIENCE: What had to come back?

6 CHAIRMAN GIAMETTA: I'm sorry?

7 MS. CASHMAN: The card that gets  
8 signed.

9 AUDIENCE: They put it in our  
10 mailbox.

11 CHAIRMAN GIAMETTA: So you're  
12 saying 18 mailings went out; correct?

13 MS. CASHMAN: Yes.

14 MR. TODER: And apparently, there  
15 were calls about the issues.

16 AUDIENCE: Oh, I have issues.

17 CHAIRMAN GIAMETTA: We're going to  
18 be asking about that very shortly. Is

19       there anything further that you would  
20       like to explain about the project to  
21       the board and to the audience, or is  
22       that pretty much it?  
23       MR. TODER: Yes, I'd like to back  
24       up then just to do the overall  
25       explanation.

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1       DAVID TODER - PUBLIC HEARING  
2       MS. CASHMAN: Yes.  
3       MR. TODER: Thank you.  
4       MR. MEKEEL: Yes.  
5       MR. TODER: So the -- let's see,  
6       the current use of that building is  
7       said to be residential, but we're  
8       changing it to commercial. The  
9       planning board is saying since it's a  
10      change of use, the existing building in  
11      its existing location must receive  
12      variances because it's close to the  
13      road and the side yard or side property  
14      line than is allowed by current code  
15      requirements. So, both of those are --  
16      most allow the building remain where it  
17      is. And then as I said at the  
18      beginning, we are intending to add a  
19      code compliant stair, landing, and ramp  
20      entry to the bakery shop retail. And  
21      that would -- because of the angle,  
22      that would protrude about 16 inches  
23      more closer to the road and the front  
24      property line. So such that that one  
25      is then a 23 foot front yard variance

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1       DAVID TODER - PUBLIC HEARING

2 from 35 foot front yard to the allowed  
3 12 foot.  
4 CHAIRMAN GIAMETTA: Question about  
5 that handicap entry, how high off the  
6 ground is the highest part roughly?  
7 MR. TODER: The door is  
8 approximately 14 inches, so just two  
9 risers up.  
10 CHAIRMAN GIAMETTA: Two risers.  
11 MR. TODER: But because the door  
12 swings out, it leads somewhat of a  
13 generous landing and it's just one step  
14 down, effectively two risers.  
15 CHAIRMAN GIAMETTA: Thank you.  
16 MR. TODER: And the ramp away from  
17 the road along the --  
18 CHAIRMAN GIAMETTA: Zoning is  
19 commercial; correct?  
20 MR. TODER: Yes, C2.  
21 CHAIRMAN GIAMETTA: C2?  
22 MR. MEKEEL: Prior to being  
23 residential, it was commercial?  
24 MR. TODER: That's correct. It  
25 was Rachel's Candy Store and I believe

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1 DAVID TODER - PUBLIC HEARING  
2 other commercial uses decades before  
3 that. And then since approximately  
4 2010, it has been residential and so  
5 this is a return to historic.  
6 MR. MEKEEL: The building has been  
7 there for how long?  
8 MR. TODER: Oh, at least since  
9 1920's. I think it was a garage before  
10 it was a candy store. A garage  
11 probably for horses and carriages  
12 before that, if it's that old, but I'm

13 not certain.

14 CHAIRMAN GIAMETTA: We are

15 reviewing the permit uses in the C2

16 zone, and the primary use is a bakery;

17 is that correct?

18 MS. BELL: Uh-huh.

19 CHAIRMAN GIAMETTA: Okay. We find

20 that that is yes, a permitted use in

21 the C2 zone so that is a big plus.

22 Also, there is no need to be concerned

23 about a use variance. We're addressing

24 the area variances only at this point.

25 At this time, I'd like to open up the

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1 DAVID TODER - PUBLIC HEARING

2 matter to the public to speak either

3 for or against the project. And if you

4 have some comments, please state your

5 name for the record. Anyone wish to

6 speak?

7 AUDIENCE: I don't have comments

8 for or against, because I need some

9 information.

10 CHAIRMAN GIAMETTA: What's your

11 name, ma'am?

12 MS. PAPORTO: My name is Dorothy

13 Paporto, and I reside at 570. First of

14 all, who is David Toder?

15 MR. TODER: I am the architect for

16 the baker, Kristin, who is here.

17 MS. PAPORTO: So you own it?

18 MR. TODER: I am not the owner,

19 and neither is Kristin. She's the

20 tenant, and I'm employed by the owner

21 and Kristin to assist in this project

22 and it's easiest for me to be

23 represented of the project, and so it's

24 in my name.

25 MS. PAPORTO: Because I had

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1 DAVID TODER - PUBLIC HEARING  
2 surveyors on my property walking  
3 around, and I thought, oh, that's okay.  
4 I was a little curious, you know. My  
5 house is up in the back, and it's a  
6 long driveway with a wooden lot in  
7 front of me, which I purposely obtained  
8 so that no one would put up, you know,  
9 like a garage or car wash or something  
10 like that. So it's a wooden lot, but  
11 at least I'd rather come up the  
12 driveway with a wooded lot, you know,  
13 than something else. Well, it didn't  
14 bother me that they was surveying until  
15 they started digging a hole on the  
16 property, and when I went out and asked  
17 them, hey guys, what are you doing?  
18 They told me, and I said, well, who  
19 hired you? And they said, well, the  
20 bakery. Well, no, the owner. Well, I  
21 don't know. And so I stood there and I  
22 said, you know don't who hired you? I  
23 said that is a business. And I thought  
24 that was odd. And I thought it would  
25 just be respectful if you're going to

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1 DAVID TODER - PUBLIC HEARING  
2 have two or three guys walking around  
3 your property digging a hole looking  
4 for a steel rod that you kind of knock  
5 on the door, Dorothy, we're going to be  
6 walking around your property, all



7 right. Okay. What's it about? And  
8 it's not just general curiosity, like,  
9 oh, she is a nosy old lady that lives  
10 up on the hill, their property is right  
11 against my property, okay. So, I  
12 thought it would have been nice that  
13 being done. And do surveyors usually  
14 do that? Do they usually just start  
15 work without knocking on a person's  
16 door?

17 MR. TODER: They normally are on  
18 the subject property and so, if they're  
19 putting the foot over the line, they're  
20 generally seeking their --

21 MS. PAPORTO: At that point, I  
22 didn't receive a letter. I didn't  
23 know. Subject to what?

24 MR. TODER: I just mean that most  
25 of them are on the bakery property. I

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14

1 DAVID TODER - PUBLIC HEARING  
2 believe even if they, you know, step  
3 foot on your property, they were  
4 surveying the property.

5 MS. PAPORTO: They were digging a  
6 hole between the lot. I own the lot,  
7 of course, where my house is, and then  
8 the lot in front is the one that I  
9 purchased several years later in 1980,  
10 you know, for that sole purpose, just  
11 to keep it all one being, you know, and  
12 not have somebody build up in front.  
13 So, when you're digging a hole on  
14 somebody's property, I don't know, just  
15 knock at the door, I say, you know, for  
16 one. And so you are not the owner and  
17 you're not the person that this is

18 going to effect? It's going to be the  
19 bakery?  
20 MR. TODER: That's correct. And  
21 I'm not the surveyor either. That  
22 happens to be a separate --  
23 MS. PAPORTO: You don't mind me  
24 asking?  
25 MR. TODER: Of course.

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15

1 DAVID TODER - PUBLIC HEARING  
2 MS. PAPORTO: I come from the  
3 north and you don't walk around  
4 people's property.  
5 CHAIRMAN GIAMETTA: Excuse me, the  
6 surveying matter you discussed  
7 somewhat. Is there something further  
8 to go over?  
9 MS. PAPORTO: Definitely. As soon  
10 as you can inform me as to what Code  
11 155, Attachment 2, Schedule 1 is, I  
12 can't tell you whether I agree with it  
13 or disagree with it.  
14 CHAIRMAN GIAMETTA: Okay. That is  
15 what are called the tables of the Town  
16 of Marlborough Zoning Code, and it's a  
17 guideline and a requirement of all  
18 properties to meet certain parameters  
19 of those tables within each individual  
20 zone. And the project before us does  
21 not meet all of those parameters.  
22 That's why we're here this evening.  
23 MR. TODER: The existing building  
24 is closer to the street than is allowed  
25 by current zoning code. So it

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16

1 DAVID TODER - PUBLIC HEARING  
2 encroaches on the front yard setback.  
3 It's the existing building. So we're  
4 not adding onto it, we're making it  
5 more of an encroachment.  
6 MS. PAPORTO: Did your surveyor  
7 come up with the fact that the parking  
8 lot, which is on the side of the  
9 building, is on their property?  
10 Because I always thought it was kind of  
11 like on my property, but I never made  
12 an issue because it is a wooded lot,  
13 they keep their property nicely. I  
14 have been there 46 years, I don't  
15 bother anybody, nobody bothers me, and  
16 it wasn't worth bringing up until I see  
17 it in black and white. So could you  
18 tell me what your surveyor found?  
19 MR. TODER: Not as well as the  
20 surveyor. That's one reason we're  
21 involved to make absolutely certain  
22 where the property lines are so that  
23 we're not on your property with  
24 anything.  
25 MS. PAPORTO: You realize you got

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17

1 DAVID TODER - PUBLIC HEARING  
2 these pink ribbons?  
3 MR. TODER: Yes.  
4 MS. PAPORTO: And that is a  
5 demarcation of your property?  
6 MR. TODER: Right.  
7 MS. PAPORTO: It's really close to  
8 the corner of the garage, which is on  
9 an angle. I kind of thought that was  
10 on my property too. But, there again,  
11 I said, Dorothy, what are you

12 complaining for? It's just all logs  
13 and wooded logs there, you know, but  
14 now that brings me to my next  
15 question --  
16 MR. NIKOLA: Ma'am, can I just ask  
17 you to show us on your map that we have  
18 where your property is if it's in  
19 relation to being quite close to the  
20 bakery?  
21 MS. PAPORTO: Oh, it's right next  
22 to it.  
23 MR. NIKOLA: You said wooded area.  
24 Here is the building that we're  
25 referring to.

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18

1 DAVID TODER - PUBLIC HEARING  
2 MS. PAPORTO: Is this facing you  
3 or facing me?  
4 MR. NIKOLA: I will turn it around  
5 for you. Not a problem. Here is the  
6 bakery, and there is the ramp.  
7 MS. PAPORTO: Yes.  
8 MR. NIKOLA: So whereabouts is  
9 your property?  
10 MS. PAPORTO: Well, I'm between  
11 the ranch and the bakery.  
12 MR. NIKOLA: Correct.  
13 MR. CONN: Is this your house  
14 right here?  
15 MS. PAPORTO: This is my wooded  
16 lot right here. That would be the  
17 driveway that would go up and back to  
18 my house.  
19 MR. NIKOLA: Which is probably  
20 right here?  
21 MS. PAPORTO: Yes, I could see  
22 people coming in and out, you know,

23        their back yard is my front yard.  
24            MR. NIKOLA: Adjacent to you.  
25            MS. PAPORTO: And over a little.

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19

1        DAVID TODER - PUBLIC HEARING  
2        So this is why I had had concerns about  
3        the parking lot.  
4            MR. NIKOLA: Understood. This is  
5        a neighbor of yours right here, I  
6        presume.  
7            MS. PAPORTO: Yes, used to be  
8        Novaks. I don't know who the people  
9        are now.  
10        MR. NIKOLA: That is fine. I will  
11        circle this and share it with the  
12        others so they can see.  
13        MS. PAPORTO: Now, I also note  
14        that it says 13 feet, 5 inches, and  
15        they also make mention of 21 feet, 8  
16        inches. How do we get so specific with  
17        these dimensions and what do these  
18        dimensions mean and are you certain by  
19        your survey because I'm really kind of  
20        starting that --  
21        MR. CONN: All of the building  
22        codes require specific lot, depth,  
23        width, front yard setbacks before you  
24        can put another structure within those  
25        and so --

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20

1        DAVID TODER - PUBLIC HEARING  
2            MS. PAPORTO: Oh, good.  
3            MR. CONN: -- if they don't have  
4        enough on the side, the front, the  
5        back, they have to come for a variance.

6 And that's what the --

7 MS. PAPORTO: See, that is what I  
8 didn't understand.

9 MR. CONN: That's what the survey  
10 does. The surveyor comes and gives an  
11 actual exact measurement of exactly how  
12 far so they know how much they need.  
13 When he came before us before at the  
14 last meeting, the original survey that  
15 they used, as Mr. Toder said, was  
16 incorrect. So that is why they came  
17 out, and did a more current survey on  
18 the property and now we have the  
19 measurements.

20 MS. PAPORTO: So, now it's correct  
21 all of a sudden? I mean, you can't  
22 change a survey, you can't change  
23 boundary lines.

24 MR. CONN: What happens is your  
25 property lines don't necessarily

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21

1 DAVID TODER - PUBLIC HEARING  
2 change, but what happens is on your  
3 setbacks sometimes they change. And we  
4 had a case before us a couple of months  
5 ago, because the county widened the  
6 road, and they take their eminent  
7 domain privileges that reduce the front  
8 yard setback for that property owner  
9 that had been there, like you said,  
10 there for 40 years. So their house may  
11 have been --

12 MS. PAPORTO: Forty-six.

13 MR. CONN: -- in compliance with  
14 code when it was built, but because it  
15 was a county road --

16 MS. PAPORTO: So, the setbacks

17 same thing.  
18 MR. CONN: -- and the county came  
19 and said we're going to widen this road  
20 and take more space in front for our  
21 county road. That reduced --  
22 MS. PAPORTO: Yeah, I understand.  
23 MR. CONN: -- their front yard  
24 setback.  
25 MS. PAPORTO: It's just logistics.

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22

1 DAVID TODER - PUBLIC HEARING  
2 MR. CONN: Sometimes it's to no  
3 fault of the property owner.  
4 MS. PAPORTO: How do I then -- do  
5 I have to get a surveyor to see whether  
6 or not the garage is on my property and  
7 whether the parking lot is on my  
8 property? Not completely, but a good  
9 partial, and there again, Hey, Dorothy,  
10 we're going to, you know, make this a  
11 ramp, or put the parking lot a little  
12 wider, you don't mind if we take a  
13 couple of feet of your wooded lot? I  
14 would have said, not at all.  
15 MR. CONN: That's why we have  
16 these meetings and that's why there are  
17 planning board meetings that are open  
18 to the public.  
19 MS. PAPORTO: Right. And I am  
20 sorry to make it tedious, but I want to  
21 understand before I say I agree or  
22 disagree. I'm not disagreeable as  
23 nature. I mean, I have been there 46  
24 years and I don't think you've seen me  
25 so... let me see if I had any other

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1 DAVID TODER - PUBLIC HEARING  
2 questions. And then, there again, I  
3 would think that the 13 feet would be  
4 the bakery from the side to the wooded  
5 lot and the 21 feet is the lengthwise  
6 of their -- is that where that comes  
7 from?

8 MR. CONN: Your numbers that  
9 you're looking at is changed, and  
10 that's the most recent survey. That's  
11 what he is saying.

12 MS. PAPORTO: Because the law  
13 changed or the survey changed?

14 MR. CONN: No, it wasn't the  
15 survey. The original survey, because  
16 probably things that had happened in  
17 the past was incorrect, and they were  
18 going on old information, so they did a  
19 more current survey recently.

20 MS. PAPORTO: According to whose  
21 guidelines?

22 MR. CONN: Well, it could have  
23 been, like I just explained to you, the  
24 setbacks could have changed, the county  
25 could've extended the road.

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1 DAVID TODER - PUBLIC HEARING  
2 MS. PAPORTO: I don't care if the  
3 county extended it. I just don't want  
4 somebody else changing it on me like a  
5 private citizen. Oh, we're going to  
6 resurvey it. Let me say we're going to  
7 dig this hole a little bit, and we'll  
8 move this flag over here a little bit  
9 more, so that everything shifts a  
10 little way and then we're copesettic.



11 CHAIRMAN GIAMETTA: If you hire a  
12 surveyor, it would have to identically  
13 match the applicant's survey. The  
14 position of the markers by law they  
15 have to coincide exactly.

16 MS. PAPORTO: By law, that is what  
17 I would think.

18 MR. CONN: And the numbers that I  
19 was originally telling you that are  
20 changed, the front yard setback he now  
21 needs 23 feet variance, which is a  
22 little more of what was originally  
23 asked for and the side yard now needs 9  
24 feet, which is less than what was  
25 originally asked for.

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25

1 DAVID TODER - PUBLIC HEARING

2 MS. PAPORTO: Can I briefly ask  
3 how this will affect me? All right. I  
4 live in their backyard up on a hill,  
5 it's a wooded lot up ahead of me, is  
6 anything going to touch my wooded lot?

7 MR. MEKEEL: No, everything is  
8 going to stay the same.

9 MR. CONN: No, nothing can go on  
10 your property. He has to stay within  
11 his property within the setbacks.

12 MS. PAPORTO: Those pink flags.

13 MR. CONN: Well, I can't speak for  
14 those. I don't know where they are.

15 MS. PAPORTO: There are two sets.  
16 Come up.

17 MR. MEKEEL: That's good for you,  
18 so some day if you go to sell.

19 MS. PAPORTO: There is two sets of  
20 flags actually. I can go back to my  
21 seat now.

22 CHAIRMAN GIAMETTA: Thank you.  
23 Was there any further input from the  
24 public?  
25 MR. RHODES: Yes. My name is

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26

1 DAVID TODER - PUBLIC HEARING  
2 Michael Rhodes, and what else did you  
3 want?  
4 CHAIRMAN GIAMETTA: Are you  
5 speaking for or against the project?  
6 MR. RHODES: I have some comments.  
7 Gentlemen, I don't know if you know me  
8 or don't know me, but I was born and  
9 raised on Bailey's Gap in the house  
10 that I still live in there, and I have  
11 three -- two parcels now. I used to  
12 have three. I helped organize the  
13 residence back about 17 years ago when  
14 we pushed the town back because the  
15 town was creating a strictly commercial  
16 zone there and we pushed back saying  
17 but we live there, so the town  
18 accommodated us by creating the C2  
19 zone, which is mixed and so it's  
20 anticipated it's going to create issues  
21 because over the last 20, 30 years,  
22 that's just been a highway, everybody  
23 just zooms up and down. However, when  
24 I go back 30 years, we had a  
25 barbershop, we had restaurants, we had

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27

1 DAVID TODER - PUBLIC HEARING  
2 two hotels, we had four gas stations --  
3 three gas stations, Bailey's Gap was a  
4 village, and the residence there -- we

5 have residences and commercial so it  
6 creates contention. The property in  
7 question was owned by a great aunt of  
8 mine, Rachel Rhodes, that shop, for at  
9 least 60 years, she was my married to  
10 my great uncle. Next to it is  
11 currently my great grandfather's house,  
12 which we have pictures of, just after  
13 the civil war. And his blacksmith shop  
14 is still there. This is all existing.  
15 So, anyway, I'm here to just say I  
16 would ask that the town just pause a  
17 moment, take a little reflection on  
18 what that area is, what it was. In my  
19 opinion, our biggest problem there is,  
20 I am sorry to say, lack of police  
21 presence. And the chief knows me, I  
22 call him all the time because I never  
23 see a police car up there, not from  
24 Marlboro, and I'm sorry to say it, but  
25 it's true. And the speed limit, it's

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28

1 DAVID TODER - PUBLIC HEARING  
2 dangerous because there is no signs,  
3 there are no signs on that road telling  
4 you to slow down, telling you it's a  
5 densely populated area, telling you  
6 there is even a speed limit. I just  
7 came driving back and forth through  
8 there looking, and if there is a speed  
9 limit, I may be wrong, but I think it's  
10 like 40, 45. We are trying and I am  
11 basically in support of the project,  
12 because I think, if for no other  
13 reason, that building existed for 60  
14 years as a commercial building, it is  
15 at the crest of the highway elevation

16 wise so you can see cars from both  
17 sides coming and going. It's not like  
18 it's hidden. It is a little congested,  
19 and I know there has been accidents up  
20 there, but, again, I really believe  
21 it's because we're not being recognized  
22 as a residential area where people are  
23 living and walking. You take your life  
24 in your hands trying to walk on that  
25 road up there. They'll throw you in

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29

1 DAVID TODER - PUBLIC HEARING  
2 the ditch. So, I wouldn't want  
3 those -- that current situation to work  
4 against this young lady for what she is  
5 trying to do. Because if she were  
6 doing this 50 years ago, that would  
7 have been no -- like I said, stores  
8 were there, barbershops, everything,  
9 but we didn't drive 50 miles an hour  
10 and motorcycles racing up and down the  
11 highway. One of the issues that I  
12 bring before the town again and trying  
13 to give some information, that Mobil  
14 gas station up there, which I owned,  
15 and it's been developed now since I  
16 sold it, operates 24 hours a day. That  
17 tells you something about the traffic.  
18 And yet I -- last year I was here for  
19 six months in residence. I was on that  
20 highway every day, and I swear to God,  
21 never saw a police car, not a Marlboro  
22 policeman, and I was -- I mean, I'm not  
23 upset as much as just begging and  
24 asking the town to recognize us. I  
25 know you guys have Milton, and

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1 DAVID TODER - PUBLIC HEARING  
 2 Middlehope, and Marlboro, everybody  
 3 gets all of this attention, but  
 4 Bailey's Gap exists, and it has a  
 5 history, and it goes back to over 150  
 6 years, and it's part of your town. And  
 7 I guess that is all I -- okay.  
 8 CHAIRMAN GIAMETTA: Thank you very  
 9 much.  
 10 MR. RHODES: You're welcome.  
 11 CHAIRMAN GIAMETTA: Anyone else  
 12 wish to contribute?  
 13 (No audible response)  
 14 MR. MEKEEL: I make a motion we  
 15 close the public hearing.  
 16 MR. NIKOLA: Second.  
 17 CHAIRMAN GIAMETTA: All in favor?  
 18 MR. NIKOLA: Aye.  
 19 MR. MEKEEL: Aye.  
 20 MR. CONN: Aye.  
 21 CHAIRMAN GIAMETTA: The public  
 22 hearing is now closed. Any discussion  
 23 about the matter?  
 24 MR. MEKEEL: I do not have any  
 25 discussions, no.

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1 DAVID TODER - PUBLIC HEARING  
 2 MR. NIKOLA: No.  
 3 MR. CONN: No.  
 4 CHAIRMAN GIAMETTA: Are we ready  
 5 to make a motion regarding it? Okay,  
 6 someone be kind enough to make a motion  
 7 on this matter.  
 8 MR. NIKOLA: I make a motion to  
 9 approve the applicant, David Toder,

10 relief from the Town of Marlborough  
11 Code 155, Attachment 2, Schedule 1, by  
12 way of a 9 foot, which is an amendment,  
13 for the side yard setback area  
14 variance, and a 23-foot front yard  
15 setback area variance, which is also an  
16 amendment from the original, according  
17 to the legal notice.

18 MR. MEKEEL: I will second that  
19 motion.

20 CHAIRMAN GIAMETTA: All in favor?

21 MR. MEKEEL: Aye.

22 MR. CONN: Aye.

23 MR. NIKOLA: Aye.

24 CHAIRMAN GIAMETTA: Aye.

25 MS. PAPORTO: Can I just add

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32

1 DAVID TODER - PUBLIC HEARING  
2 something?

3 CHAIRMAN GIAMETTA: Bare with me,  
4 ma'am. We will talk about that  
5 briefly. Motion carried and approved,  
6 variance granted. Thank you, Mr.  
7 Toder. Thank you, Mr. Nikola for  
8 reading that nicely, and I'm going to  
9 ask one more question. What did you  
10 want to say, ma'am?

11 MS. PAPORTO: Just advise  
12 surveyors when it comes up at other  
13 times that if you've got people walking  
14 around with their setups, especially  
15 they were in my -- they were really on  
16 my property, because they -- I own two  
17 parcels of land.

18 CHAIRMAN GIAMETTA: Right.

19 MS. PAPORTO: So as they're  
20 kicking up something for the iron rod,

21 I think that should -- and they're on  
22 my side of the driveway, and I don't  
23 like to disturb the stability of the  
24 trees down there, you know.  
25 CHAIRMAN GIAMETTA: So you

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33

1 DAVID TODER - PUBLIC HEARING  
2 recommend the surveyors be more  
3 courteous; correct?  
4 MS. PAPORTO: No, I recommend they  
5 notify the resident and say your  
6 property will be surveyed. Do you give  
7 us permission, and we'll be there  
8 Tuesday afternoon. Come on.  
9 CHAIRMAN GIAMETTA: Thank you for  
10 your thoughts, ma'am.  
11 MS. PAPORTO: Any time.  
12 CHAIRMAN GIAMETTA: Anything  
13 further, board members? Motion to  
14 adjourn?  
15 MR. MEKEEL: I make a motion we  
16 adjourn the meeting.  
17 MR. CONN: I second.  
18 CHAIRMAN GIAMETTA: All in favor?  
19 MR. MEKEEL: Aye.  
20 MR. CONN: Aye.  
21 MR. NIKOLA: Aye.  
22 CHAIRMAN GIAMETTA: Meeting is  
23 over for tonight. Thank you very much.  
24 (Whereupon, at 6:43 P.M., the  
25 Hearing was adjourned.)

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34

1 DAVID TODER - PUBLIC HEARING  
2 ? ? ? ?  
3 C E R T I F I C A T E

4

5 STATE OF NEW YORK )  
6 : SS.:  
7 COUNTY OF ULSTER )

7

8 I, LISA M. ROSSO, a Notary Public for  
9 and within the State of New York, do hereby  
10 certify:

11 That the witness whose examination is  
12 hereinbefore set forth was duly sworn and  
13 that such examination is a true record of  
14 the testimony given by that witness.

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

19 IN WITNESS WHEREOF, I have hereunto set  
20 my hand this 4th day of June 2022.

21

22

23 \_\_\_\_\_  
LISA M. ROSSO

24

25

LISA MARIE ROSSO - (845) 674-3937