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(ALSO ADMITTED IN)

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** Special Counsel

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October 5, 2022

VIA E-MAIL (zoningboard@townofnewburgh.org) and Hand Delivery (11 copies)

Town of Newburgh Zoning Board of Appeals
Attention: Siobhan Jablesnik, ZBA Secretary
21 Hudson Valley Professional Plaza
Newburgh, NY 12550

RE: American Signs, Inc. Variance Application
88 N Plank Road/SBL# 77-2-2.1 (the "Property")
Our File No.: 15693-67253

Dear Chairman Scalzo and Members of the ZBA:

Introduction and the Property

We represent American Signs, Inc. (hereinafter the "Applicant"), in connection with the request for variances to alter an existing free-standing sign at the above referenced Property. The Property consists of a shopping plaza, which currently includes a Domino's, Subway and Family Dollar, among others. Previously, ShopRite was the flagship store in the plaza, but it has been closed for several years and the property owner intends to open an Ocean State Job Lot in the former Shoprite space. The Property is zoned B (Business District), and is approximately 5.5 acres in size, with frontage on North Plank Road. Numerous other plazas and businesses with large, free-standing signs line that same section of North Plank Road.

As part of the renovation of the former ShopRite space, The Applicant is not proposing to add any additional free-standing signs but is merely replacing the former ShopRite sign with an

Town of Newburgh Zoning Board of Appeals
October 5, 2022
Page 2

Ocean State Job Lot sign. The existing sign structure includes six (6) signs for various businesses in the plaza and the new Ocean State Job Lot sign will be placed at the top. In addition, the height of the sign structure will be reduced from 42.6 feet to 35 feet. The Applicant is essentially seeking to legalize a pre-existing nonconformity.

The Variance Request

The Applicant’s proposal requires the following area variance as per the Town’s sign regulations:

<u>Variance</u>	<u>Required</u>	<u>Proposed</u>
1. Sign Setback	35ft.	20 ft.

More specifically § 185-14-J-5-a provides that “[n]o freestanding sign shall be located less than 15 feet from any front or side property line, or a distance equal to the height of said sign, whichever is greater.” Here, the proposed sign is 35 feet tall, so it requires a setback of 35 feet.

The Application of the Balancing Test and Five Factors for an Area Variance Pursuant to NYS Town Law Section 2676-b.3 Weigh Heavily in the Applicant’s Favor

In making its determination, the ZBA shall take into consideration the benefit to the Applicant if the variance is granted, as weighed against the detriment to the health safety and welfare of the neighborhood or community by such grant. In making such determination the ZBA shall consider the following five (5) factors.

1. WHETHER AN UNDESIRABLE CHANGE WILL BE PRODUCED IN THE CHARACTER OF THE NEIGHBORHOOD OR WHETHER A DETRIMENT WILL BE CREATED TO NEARBY PROPERTIES BY THE GRANTING OF THE AREA VARIANCES

In determining whether an undesirable change in the community will be produced, a relevant inquiry is how the Property compares with surrounding lots. This can refer to both the dimensions of the surrounding properties, as well as the general characteristics.

The Property is located in the B (Business) district and is surrounded by a cluster of other shopping plazas and businesses. Likewise, many of these other plazas and businesses include free-standing signs like the one on the Property. By way of example, the following businesses and

Town of Newburgh Zoning Board of Appeals
October 5, 2022
Page 3

properties have large, free-standing signs similar to the Property: Pizza Hut, Sunoco, BP, McDonalds, Big Lots/AutoZone and the Mid Valley Mall.

Most importantly, those signs are also located in close proximity to North Plank Road. While the sign on the Property requires a variance because it is situated 20 feet from the property line, it is set back 65 feet from the edge of the road due to a large right-of-way. In other words, the sign on the Property is actually set back farther from the road than all of the aforementioned businesses.¹

Accordingly, the requested variances will not at all alter the aesthetics or makeup of the neighborhood. Large signs in close proximity to the road are abundant in the Business district and the existing sign has been on the property for many years. Moreover, the Applicant is actually reducing the height of the sign thus, improving any potential aesthetic impacts. As such, the grant of the variance will not produce an undesirable change in the neighborhood or cause a detriment to nearby properties.

2. WHETHER THE BENEFIT SOUGHT BY THE APPLICANT
CAN BE ACHIEVED BY SOME METHOD, FEASIBLE FOR THE
APPLICANT TO PURSUE, OTHER THAN THE AREA VARIANCES

Here, the benefit sought by the Applicant is to continue using the existing sign structure, which was constructed many years ago. Moving the sign structure is not possible as it is a large metal structure, attached to cement footings. There are also several other signs on the existing structure. Moreover, the sign already sits far from the road and the setback variance is only required because of a large right-of-way. If the sign was to be moved back any farther from the property line, it would likely need to be built taller as it would be obscured by the Domino's building. Similarly, moving the sign back would make it too difficult to read and force motorists to look away from the road. A sign in the middle of a parking lot would not serve its intended purpose.

As such, the benefit sought by the Applicant cannot be achieved by any other method.

3. WHETHER THE REQUESTED VARIANCE IS SUBSTANTIAL

The substantiality of a variance cannot be judged solely by a comparison of the percentage deviation from the mandated requirement. Indeed, a deviation cannot be viewed in the abstract because the deviation only becomes relevant if it relates to an adverse effect.

¹ These figures were obtained from Google Maps.

Town of Newburgh Zoning Board of Appeals

October 5, 2022

Page 4

While the requested sign setback variance— a deviation of approximately 42.8 %— is arguably substantial from a quantitative perspective, it is not qualitatively substantial and cannot be viewed in the abstract. The deviation only becomes relevant if it relates to an adverse effect.

The sign was constructed many years ago and is not at all out of character with the neighborhood. Given the lack of any community character or environmental impacts, the quantitative deviation should not be given any significant weight and therefore, the requested variance is not substantial. This is especially true given the fact that the Applicant is seeking to eliminate an existing non-conformity with respect to the height of the sign.

4. WHETHER THE PROPOSED VARIANCES WILL HAVE AN ADVERSE EFFECT OR IMPACT ON THE PHYSICAL OR ENVIRONMENTAL CONDITIONS IN THE NEIGHBORHOOD OR DISTRICT

Absent any special circumstances, the primary focus of the fourth statutory factor is whether granting the area variances will result in any negative impacts on traffic or parking. In some cases, there may be concerns as to negative impacts on unobstructed views, sunlight, wetlands, etc. Here, there are no such environmental impacts.

The requested variance would allow only for the existing sign structure to continue its existence and there are no unique environmental characteristics associated with the Property. The requested variance would not have any impact on lighting as the existing sign boards and new Ocean State Job Lot sign board all comply with Code's requirements for sign lighting.

5. WHETHER THE ALLEGED DIFFICULTY WAS SELF-CREATED

Here, the alleged difficulty was not created by the Applicant, but instead arises from a change in the Town's Code that rendered the existing sign structure non-conforming.

Additionally, Town Law Section 267-b.3(b)(5) provides that this consideration shall be relevant to the decision, but shall not necessarily preclude the granting of the variances. Based upon the fact the area variances will not negatively alter the character of the neighborhood or have any detrimental effect on nearby properties, the ZBA should choose not to assign significant negative weight to this particular consideration.

Conclusion

Enclosed are eleven (11) copies of the following:

- (1) This cover letter in support of the application;

CATANIA, MAHON & RIDER, PLLC

Town of Newburgh Zoning Board of Appeals

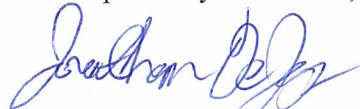
October 5, 2022

Page 5

- (2) The completed application forms signed by the property owner;
- (3) A signed Proxy Statement;
- (4) An Assessor's List of property owners within 500' of the Property;
- (5) The Notice of Disapproval letter, dated August 26, 2022, received from the Code Compliance Department;
- (6) The Deed for the Property;
- (7) A copy of the site plan, prepared by BL Companies.
- (8) A copy of the relevant Orange County Tax Map;
- (9) Photographs of the Property, taken from different angles;
- (10) Architectural renderings of the proposed sign;
- (11) A Short Environmental Assessment Form (EAF) pursuant to SEQRA; and
- (12) A copy of the receipt showing payment of a \$500 application filing fee and \$50 public hearing fee.

Please note that we believe this request is a Type II Action under SEQRA because it involves an area variance for an existing, nonconforming structure (See 6 NYCRR 617.5(c)(1); and therefore, no Environmental Assessment Form is required. In any event, we have submitted the Short Form EAF for your convenience. If the Town requires anything else, please advise me at your earliest convenience. Kindly place on the ZBA's next meeting agenda, which I believe is October 27, 2022. Your anticipated cooperation is greatly appreciated.

Respectfully submitted,



Jonathan DeJoy, Esq.

JED/jd/2183468

Pursuant to IRS Regulations, any tax advice contained in this communication or attachments is not intended to be used and cannot be used for purposes of avoiding penalties imposed by the Internal Revenue Code or promoting, marketing or recommending to another person any tax related matter.



TOWN OF NEWBURGH

Crossroads of the Northeast

ZONING BOARD OF APPEALS
21 Hudson Valley Professional Plaza
Newburgh, NY 12550

OFFICE OF ZONING BOARD

TELEPHONE 845-566-4901

FAX LINE 845-564-7802

APPLICATION

DATED: September 23, 2022

TO: **THE ZONING BOARD OF APPEALS**
THE TOWN OF NEWBURGH, NEW YORK 12550

I (WE) Catania, Mahon & Rider, PLLC PRESENTLY

RESIDING AT NUMBER 641 Broadway, Newburgh, NY 12550

TELEPHONE NUMBER (845) 565-1100

HEREBY MAKE APPLICATION TO THE ZONING BOARD OF APPEALS FOR THE FOLLOWING:

- USE VARIANCE
- AREA VARIANCE (S)
- INTERPRETATION OF THE ORDINANCE
- SPECIAL PERMIT

1. LOCATION OF THE PROPERTY:

77-2-2.1 (TAX MAP DESIGNATION)

88 North Plank Road (STREET ADDRESS)

(B) Business (ZONING DISTRICT)

2. PROVISION OF THE ZONING LAW APPLICABLE, (INDICATE THE SECTION AND SUB-SECTION OF THE ZONING LAW APPLICABLE BY NUMBER; DO NOT QUOTE THE LAW).

Section 185-14-J-5-a

3. IF VARIANCE TO THE ZONING LAW IS REQUESTED:

- a) APPEAL IS MADE FROM DISAPPROVAL BY THE TOWN BUILDING INSPECTOR OR BUILDING PERMIT APPLICATION. SEE ACCOMPANYING NOTICE DATED:
August 26, 2022
- b) OR DENIAL (REFERRAL) BY THE PLANNING BOARD OF THE TOWN OF NEWBURGH OF AN APPLICATION TO THE BOARD, SEE ACCOMPANYING NOTICE DATED:

4. DESCRIPTION OF VARIANCE SOUGHT: Setback variance for freestanding sign

5. IF A USE VARIANCE IS REQUESTED: STRICT APPLICATION OF THE ZONING LAW WOULD PRODUCE UNNECESSARY HARDSHIP IN THAT:

- a) UNDER APPLICABLE ZONING REGULATIONS THE APPLICANT IS DEPRIVED OF ALL ECONOMIC USE OR BENEFIT FROM THE PROPERTY IN QUESTION BECAUSE:

(ATTACH WITH THIS APPLICATION COMPETENT FINANCIAL EVIDENCE ESTABLISHING SUCH DEPRIVATION)

- b) THE HARDSHIP IS UNIQUE AND DOES NOT APPLY TO A SUBSTANTIAL PORTION OF THE DISTRICT OR NEIGHBORHOOD BECAUSE:

- c) THE VARIANCE WOULD NOT ALTER THE ESSENTIAL CHARACTER OF THE NEIGHBORHOOD BECAUSE:

- d) THE HARDSHIP HAS NOT BEEN SELF-CREATED BECAUSE:

6. IF AN AREA VARIANCE IS REQUESTED:

- a) THE VARIANCE WILL NOT PRODUCE AN UNDESIRABLE CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD OR A DETRIMENT TO NEARBY PROPERTIES BECAUSE:

See attached narrative.

- b) THE BENEFIT SOUGHT BY THE APPLICANT CAN NOT BE ACHIEVED BY SOME METHOD, FEASIBLE FOR THE APPLICANT TO PURSUE, OTHER THAN AN AREA VARIANCE, BECAUSE:

See attached narrative.

- c) THE REQUESTED AREA VARIANCE IS NOT SUBSTANTIAL BECAUSE:

See attached narrative.

- d) THE PROPOSED VARIANCE WILL NOT HAVE AN ADVERSE EFFECT OR IMPACT ON THE PHYSICAL OR ENVIRONMENTAL CONDITIONS IN THE NEIGHBORHOOD OR DISTRICT BECAUSE:

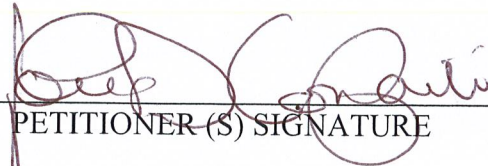
See attached narrative.

- e) THE HARDSHIP HAS NOT BEEN SELF-CREATED BECAUSE:

See attached narrative.

7. ADDITIONAL REASONS (IF PERTINENT):

See attached narrative.


PETITIONER (S) SIGNATURE

RHODE ISLAND
STATE OF ~~NEW YORK~~: COUNTY OF ~~ORANGE~~: WASHINGTON

SWORN TO THIS 23 DAY OF September 2022

#20403

Nancy Lee Hampton Beeley, Notary
NOTARY PUBLIC

My Commission
Expires July 18, 2025



NOTE: NYS GML Section 239-m (3) for proposed actions that are within 500 feet of the properties or thresholds listed in the statute the Zoning Board of Appeals is required to send a copy of the complete application to the Orange County Department of Planning to be reviewed prior to Zoning Board of Appeals decision. And also NYS GML Section 239-NN requires notification for any proposed actions, to the Municipal Clerk, within 500 feet of the Border of that adjoining County, Town or City.

(ALL MATERIALS REGARDING THE APPLICATION MUST BE SUBMITTED TO THE ZONING BOARD OFFICE FOR REVIEW NO LATER THAN 13 DAYS PRIOR TO THE HEARING DATE OR THEY MAY NOT BE CONSIDERED THE NIGHT OF THE MEETING).

(NOTE: BOARD MEMBERS MAKE SITE VISITS TO ALL THE PROPERTIES)

TOWN OF NEWBURGH
ZONING BOARD OF APPEALS

PROXY

John D. Conforti, DEPOSES AND SAYS THAT

HE/SHE RESIDES AT 257 Promenade Avenue, Warwick, RI 02886

IN THE COUNTY OF Kent AND STATE OF Rhode Island

AND THAT HE/SHE IS THE OWNER IN FEE OF Chief Financial Officer of OST of Newburgh, LLC

~~0336~~ 88 North Plank Road, Newburgh, NY

WHICH IS THE PREMISES DESCRIBED IN THE FOREGOING APPLICA-

TION AND THAT HE/SHE HAS AUTHORIZED Catania, Mahon & Rider, PLLC

TO MAKE THE FOREGOING APPLICATION AS DESCRIBED THEREIN.

DATED: 9-29-2022

OWNER'S SIGNATURE

John D. Conforti
Chief Financial Officer
OST of Newburgh, LLC

Jarell Beau

WITNESS' SIGNATURE

STATE OF NEW YORK: COUNTY OF ORANGE:

SWORN TO THIS 29th DAY OF September 20 22

#20403

My Commission Expires July 18, 2025

Nancy Lee Hampton Sealey Notary
NOTARY PUBLIC

State of Rhode Island
County of Washington



THIS IS NOT A BUILDING PERMIT

APPLICATION #22-0749
88 N Plank Rd
Town of Newburgh
Code Compliance Department

21 Hudson Valley Professional Plaza Newburgh, NY 12550
845-564-7801 Phone 845-564-7802 Fax

MAILED TO: American Sign Inc. 614 Ferry Street , New Haven, CT 06513 - 203-624-2991

PROJECT: Install 2 wall signs.

SBL: 77-2-2.1

APPLICATION DATE: 07/22/2022

Review Date: 7-25-2022

8-25-2022

Residential: All smoke and co alarms shall be upgraded.

Commercial: Carbon Monoxide Detection is required. Section 915.3 2017 NY Supplement.

ORANGE COUNTY REQUIRES ALL ELECTRICIANS TO BE LICENSED

Revisions:

1. As previously stated the free-standing sign will require a variance
2. Requested the electrician submit an Orange County electrical license. The license submitted is from Poughkeepsie which is Dutchess County not Orange
3. The store does not have a permit to occupy this space as of this letter. Once item #2 is submitted and is correct, the sign application will be held until a fit-out permit is issued for this space.

Joseph Mattina

Code Compliance

TOWN OF NEWBURGH -

Crossroads of the Northeast

ZONING BOARD OF APPEALS
21 Hudson Valley Professional Plaza
Newburgh, NY 12550

TELEPHONE 845-566-4901

FAX LINE 845-564-7802

August 29, 2022

American Sign Inc.
614 Ferry St.
New Haven, CT 06513

Re: 88 N Plank Rd, Newburgh
77-2-2.1 B Zone

To whom it may concern:

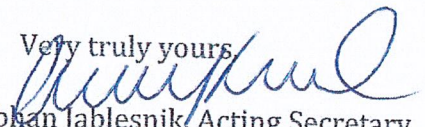
Enclosed please find Notice of Disapproval of Building Permit Application together with Application and Instructions for the Zoning Board of Appeals.

To install a new 9' x 9' sign on an existing non-conforming free standing sign on your property in the Town of Newburgh you must obtain a variance from the Zoning Board of Appeals.

The next scheduled available meeting of the Zoning Board of Appeals is Thursday October 27, 2022. If this Agenda is full, the next meeting will be Tuesday November 22, 2022. If you plan on applying to the Zoning Board of Appeals for variances, the application and all materials requested must be submitted to this office no later than 13 business days prior to the hearing date. Also, all mailings must be completed at least 10 business days prior to that date. Please refer to the enclosed Meeting Dates and Deadlines sheet.

If you have any questions, please do not hesitate to contact this office.

Very truly yours,


Siobhan Jablesnik, Acting Secretary
Zoning Board of Appeals

/BG

Encl. NYS GML Section 239 requires the Zoning Board of Appeals to send a copy of the complete application to the Orange County Department of Planning to be reviewed prior to Zoning Board of Appeals decision.



TOWN OF NEWBURGH

~Crossroads of the Northeast~

CODE COMPLIANCE DEPARTMENT
21 HUDSON VALLEY PROFESSIONAL PLAZA
NEWBURGH, NEW YORK 12550

TELEPHONE 845-564-7801
FAX LINE 845-564-7802

2998-22

NOTICE OF DISAPPROVAL OF BUILDING PERMIT APPLICATION

Date: 08/26/2022

Application No. 22-0886

To: American Sign Inc.
614 Ferry Street
New Haven, CT 06513

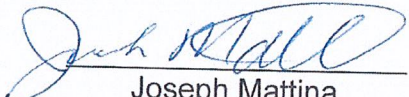
SBL: 77-2-2.1
ADDRESS: 88 N Plank Rd

ZONE: B

PLEASE TAKE NOTICE that your application dated 08/18/2022 for permit to install a 9' x 9' sign onto a non-conforming free-standing sign on the premises located at 88 N Plank Rd is returned herewith and disapproved on the following grounds:

Town of Newburgh Municipal Code:

- 1) 185-14-G. Nonconforming signs: The lawful use of a sign or signs existing at the time of adoption of this chapter may be continued, even though the sign does not conform to the regulations and limitations of this section, until one or more of the following occurs:
 - (a) The structure, size, location or accessories of any or all signs previously granted approval and permits are altered, modified, changed, reconstructed or moved.
- 2) 185-14-J-5-a: No freestanding sign shall be located less than 15 feet from any front or side property line, or a distance equal to the height of said sign, whichever is greater.


Joseph Mattina

Cc: Town Clerk & Assessor (500')
File

Town of Newburgh Code Compliance

OWNER INFORMATION *BUILT WITH OUT A PERMIT* YES / **NO**

NAME: American Signs Application # 22-0886

ADDRESS: 614 FERRY ST. NEW HAVEN Ct. 06513

PROJECT INFORMATION: **AREA VARIANCE** USE VARIANCE

TYPE OF STRUCTURE: SIGN @ 88 NORTH PLANK RD NEWBURGH NY 12550

SBL: 77-2-2.1 ZONE: B ZBA Application # 2998-22

TOWN WATER: **YES** / NO TOWN SEWER: **YES** / NO N/A

	MINIMUM	EXISTING	PROPOSED	VARIANCE	VARIANCE PERCENTAGE
SETBACK	35'	20'		15'	42.80%
LOT WIDTH					
LOT DEPTH					
FRONT YARD					
REAR YARD					
SIDE YARD					
MAX. BUILDING HEIGHT					
BUILDING COVERAGE					
SURFACE COVERAGE					

INCREASING DEGREE OF NON-CONFORMITY - 185-19-C-1 _____ YES / NO
 2 OR MORE FRONT YARDS FOR THIS PROPERTY _____ YES / NO
 CORNER LOT - 185-17-A _____ YES / NO

ACCESSORY STRUCTURE:

GREATER THEN 1000 S.F. OR BY FORMULA - 185-15-A-4 _____ YES / NO
 FRONT YARD - 185-15-A _____ YES / NO
 STORAGE OF MORE THEN 4 VEHICLES _____ YES / NO
 HEIGHT MAX. 15 FEET - 185-15-A-1 _____ YES / NO
 10% MAXIMUM YARD COVERAGE - 185-15-A-3 _____ YES / NO

NOTES: EXISTING NON-CONFORMING

REVIEWED BY: Joseph Mattina DATE: 26-Aug-22

Town of Newburgh Code Compliance

OWNER INFORMATION *BUILT WITH OUT A PERMIT* YES / **NO**

NAME: American Signs Application # 22-0886

ADDRESS: 614 FERRY ST. NEW HAVEN Ct. 06513

PROJECT INFORMATION: **AREA VARIANCE** USE VARIANCE

TYPE OF STRUCTURE: SIGN @ 88 NORTH PLANK RD NEWBURGH NY 12550

SBL: 77-2-2.1 ZONE: B ZBA Application # 2998-22

TOWN WATER: **YES** / NO TOWN SEWER: **YES** / NO N/A

	MINIMUM	EXISTING	PROPOSED	VARIANCE	VARIANCE PERCENTAGE
SETBACK	35'	20'		15'	42.80%
LOT WIDTH					
LOT DEPTH					
FRONT YARD					
REAR YARD					
SIDE YARD					
MAX. BUILDING HEIGHT					
BUILDING COVERAGE					
SURFACE COVERAGE					

INCREASING DEGREE OF NON-CONFORMITY - 185-19-C-1 _____ YES / NO
 2 OR MORE FRONT YARDS FOR THIS PROPERTY _____ YES / NO
 CORNER LOT - 185-17-A _____ YES / NO

ACCESSORY STRUCTURE:

GREATER THEN 1000 S.F. OR BY FORMULA - 185-15-A-4 _____ YES / NO
 FRONT YARD - 185-15-A _____ YES / NO
 STORAGE OF MORE THEN 4 VEHICLES _____ YES / NO
 HEIGHT MAX. 15 FEET - 185-15-A-1 _____ YES / NO
 10% MAXIMUM YARD COVERAGE - 185-15-A-3 _____ YES / NO

NOTES: EXISTING NON-CONFORMING

REVIEWED BY: Joseph Mattina DATE: 26-Aug-22

WARRANTY DEED WITH LIEN COVENANT

AS OF
THIS INDENTURE, made the 28th day of June, 2022,
^

BETWEEN: THE LIVANOS GROUP LLC, a New York limited liability company
having an office at PO Box 780302, Maspeth, N.Y. 11378,

Grantor;

AND

OSJ OF NEWBURGH, LLC , having an office at 375 Commerce Park Road, North Kingstown,
Rhode Island 02852,

Grantee

WITNESSETH, that the Grantor, in consideration of ONE DOLLAR (\$1.00), and other good and valuable consideration, paid by the Grantee, hereby grants and releases unto the Grantee, the heirs and assigns of the Grantee forever,

See Attached Schedule A

SUBJECT to easements, covenants and restrictions of record, if any.

INTENDING TO BE THE SAME PREMISES conveyed by Theodore C. Livanos and Kiriaki Livanos to The Livanos Group LLC, by Deed dated March 1, 2009 and recorded in the Orange County Clerk's Office on May 19, 2009, in Book of Deeds No. 12827 at Page 973.

Said premises being more commonly known as 88 North Plank Road, in the Town of Newburgh, County of Orange, State of New York. Tax Identification No. 77-2-2.1.

TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the Grantee, the heirs or successors and assigns of the Grantee forever. **AND** the Grantor covenants as follows:

FIRST: The Grantee shall quietly enjoy the said premises.

SECOND: The Grantor will forever warrant the title to said premises.

THIS Deed is subject to the trust provisions of Section 13 of the Lien Law.

The words "Grantor" and "Grantee" shall be construed to read in the plural whenever the sense of this deed so requires.

IN WITNESS WHEREOF, the Grantor have executed this Deed the day and year first above written.

In presence of:

THE LIVANOS GROUP LLC, a New York limited liability company


By: 

Name: Theodore Livanos

Title: Managing Member

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

On this 22nd day of June, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared Theodore Livanos, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose names are subscribed to the within instrument and acknowledged to me that he executed the same in his capacities, and that by his signatures on the instrument, the individual or the person upon behalf of which the individuals acted, executed the instrument.



Notary Public

E. VICKY KRYONERIS
NOTARY PUBLIC, State of New York
No. 01KR6089084
Qualified in Nassau County
Commission Expires March 17, 2023

Schedule A

(legal description)

PARCEL I

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE TOWN OF NEWBURGH, COUNTY OF ORANGE, STATE OF NEW YORK BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT AT THE INTERSECTION OF THE SOUTHERLY LINE OF CHESTNUT LANE WITH THE EASTERLY LINE OF NORTH PLANK ROAD AND

RUNS THENCE ALONG THE EASTERLY LINE OF NORTH PLANK ROAD, SOUTH $08^{\circ} 26'$ EAST, 121.90 FEET TO A POINT OF BEND IN SAID LINE;

THENCE SOUTH $12^{\circ} 38'$ EAST, 78.10 FEET TO A POINT;

THENCE NORTH $74^{\circ} 22' 30''$ EAST, 200 FEET (199.99 FEET AS MEASURED) TO A POINT;

THENCE NORTH $10^{\circ} 04' 30''$ WEST, 200 FEET (200.02 FEET AS MEASURED) TO A POINT IN THE MIDDLE OF A STONE FENCE IN THE SOUTHERLY LINE OF CHESTNUT LANE;

THENCE ALONG SAID LINE SOUTH $74^{\circ} 20'$ WEST, 200 FEET TO THE POINT OR PLACE OF BEGINNING.

PARCEL II

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE TOWN OF NEWBURGH, COUNTY OF ORANGE, STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF CHESTNUT LANE AT THE NORTHEASTERLY CORNER OF LANDS OF SHELL OIL COMPANY, THE SAID POINT OF BEGINNING BEING A DISTANCE OF 200.00 FEET MEASURED ON A COURSE NORTH $74^{\circ} 20'$ EAST ALONG SAID LINE OF CHESTNUT LANE FROM THE EASTERLY LINE OF NORTH PLANK ROAD, AND

RUNS THENCE ALONG THE SOUTHERLY LINE OF CHESTNUT LANE THE FOLLOWING TWO COURSES AND DISTANCES:

1. NORTH $74^{\circ} 20'$ EAST, 124.32 FEET TO A POINT;

2. SOUTH 89° 55' EAST AS SHOWN ON A SUBDIVISION MAP OF "FENLO PARK" BY WM J. HURLIHE, SURVEYOR, DATED OCTOBER 1950, RECORDED IN THE ORANGE COUNTY CLERK'S OFFICE, 217.01 FEET TO A POINT AT THE INTERSECTION OF SAID LINE OF CHESTNUT LANE WITH THE WESTERLY LINE OF NOEL DRIVE;

THENCE ALONG SAID LINE OF NOEL DRIVE THE FOLLOWING TWO COURSES AND DISTANCES AS SHOWN ON SAID MAP:

1. SOUTH 4° 18' WEST 303.89 FEET TO A POINT;
2. SOUTH 21° 22' WEST 248.39 FEET TO A POINT;

THENCE THROUGH THE LANDS NOW OR FORMERLY OF SAID CICHOSKI, A CALCULATED BEARING AND DISTANCE OF SOUTH 87° 46' 37" WEST (SOUTH 87° 46' 33" WEST AS MEASURED) 391.74 FEET TO THE EASTERLY LINE OF NORTH PLANK ROAD;

THENCE ALONG SAID LINE AS SHOWN ON SAID MAP THE FOLLOWING THREE COURSES AND DISTANCES:

1. NORTH 7° 32' EAST 128.89 FEET TO A POINT;
2. NORTH 5° 29' EAST 76.50 FEET TO A POINT;
3. NORTH 12° 38' WEST 63.10 FEET TO A POINT ON THE SOUTHWESTERLY CORNER OF LANDS OF PARCEL;

THENCE ALONG THE SOUTHERLY LINE OF SAID LANDS, NORTH 74° 22' 30" EAST, 199.99 FEET TO A POINT AT THE SOUTHEASTERLY CORNER OF SAID LANDS;

THENCE ALONG THE EASTERLY LINE OF SAID LANDS, NORTH 10° 04' 30" WEST, 200.02 FEET TO THE SOUTHERLY LINE OF CHESTNUT LANE AT THE POINT OR PLACE OF BEGINNING.

PERIMETER DESCRIPTION

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE TOWN OF NEWBURGH, COUNTY OF ORANGE, STATE OF NEW YORK BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT, SAID POINT BEING AT THE INTERSECTION OF THE SOUTHERLY LINE OF CHESTNUT LANE WITH THE EASTERLY LINE OF NORTH PLANK ROAD, THENCE RUNNING ALONG SAID SOUTHERLY LINE OF

CHESTNUT LANE NORTH 73° 51' 24" EAST, 324.32 FEET TO A POINT OF BEND IN SAID LINE, NORTH 89° 36' 24" EAST, 217.01 FEET TO A POINT;

THENCE RUNNING ALONG THE WESTERLY LINE OF NOEL DRIVE (PRIVATE ROAD), SOUTH 03° 49' 24" WEST, 303.89 FEET TO A POINT;

THENCE ALONG THE WESTERLY LINE OF STANLEY PLACE, SOUTH 20° 53' 24" WEST, 248.39 FEET TO A POINT, SOUTH 87° 18' 01" WEST, 3.44 FEET TO A POINT;

THENCE ALONG THE NORTHERLY LINE OF LAND NOW OR FORMERLY SEMBLER/TREASURE NEW YORK JOINT VENTURES II, SOUTH 87° 18' 01" WEST, 388.30 FEET TO A POINT ON SAID EASTERLY LINE OF NORTH PLANK ROAD;

THENCE ALONG SAID OF NORTH PLANK ROAD NORTH 07° 03' 24" EAST, 128.89 FEET TO A POINT, NORTH 05° 00' 24" EAST, 76.50 FEET TO A POINT OF BEND IN SAID LINE, NORTH 13° 06' 36" WEST, 141.20 FEET TO A POINT, NORTH 08° 54' 36" WEST, 121.90 FEET TO THE POINT OR PLACE OF BEGINNING









Existing Pylon



Proposed Pylon



Fabricate & Install (2) Single sided
9' x 9' flex face, LED Illuminated sign cabinets
to mount back to back on existing pole structure

Existing Sign Height is 42'6"
Proposed Sign height is 35'0"
Existing Poles are 6.75" x 8" x 3/8" Wall Steel Tubes
Existing Shop Rite Sign Cabinets are 9' Diameter



Project:
OSJL
88 No. Plank Rd
Town of Newburgh NY
5/12/2022
Date:

Drawn By:
Salesman:

Customer Approval/Signature:

SCALE: NTS
UL SIGNAGE DRAWING E-92359
© COPYRIGHT 2022

This sign is intended to be installed in accordance with the requirements of Article 600 of the NEC and/or other applicable local codes. This includes proper grounding and bonding of the sign.

The location of the disconnect switch after installation shall comply with Article 600.6(A)(1) of the NEC.

This design and engineering is to remain the exclusive property of American Sign Inc. Submitted for your personal use under the agreement that the use of this design in its entirety or any part will not be reproduced, copied, lent, or used for any purpose without written consent from American Sign Inc.



Short Environmental Assessment Form

Part 1 - Project Information

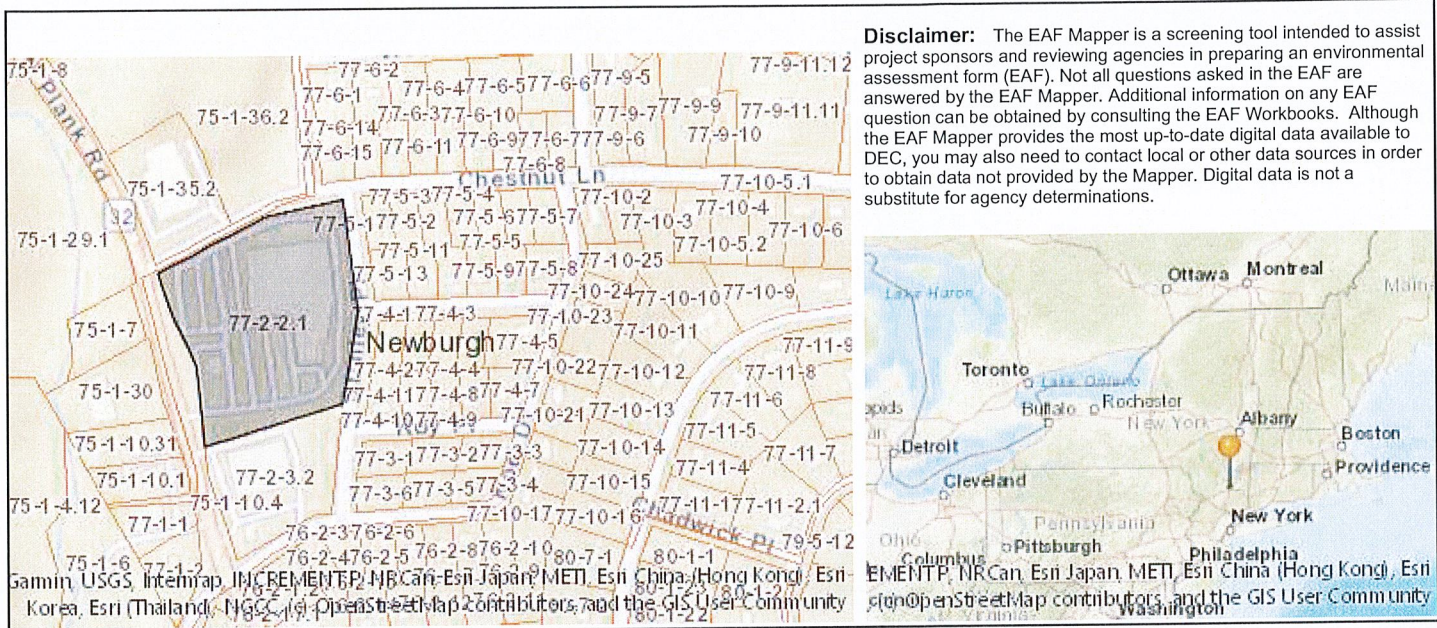
Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information			
Name of Action or Project: Ocean State Job Lot Area Variance			
Project Location (describe, and attach a location map): 88 N Plank Road, Newburgh, NY 12550			
Brief Description of Proposed Action: Area variance to allow for the continued use of an existing sign structure in a shopping plaza.			
Name of Applicant or Sponsor: American Signs, Inc./ Catania, Mahon & Rider, PLLC		Telephone: (845) 565-1100 E-Mail: jdejoy@cmrlaw.com	
Address: 641 Broadway			
City/PO: Newburgh		State: NY	Zip Code: 12550
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.		NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: Area variance from Town of Newburgh ZBA		NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
3. a. Total acreage of the site of the proposed action? _____ 5.5 acres b. Total acreage to be physically disturbed? _____ n/a acres c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ 5.5 acres			
4. Check all land uses that occur on, are adjoining or near the proposed action:			
5. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify): <input type="checkbox"/> Parkland			

		NO	YES	N/A
5. Is the proposed action,	a. A permitted use under the zoning regulations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?			NO	YES
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?			NO	YES
If Yes, identify: _____		<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?			NO	YES
	b. Are public transportation services available at or near the site of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	<input type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements?			NO	YES
If the proposed action will exceed requirements, describe design features and technologies: _____ _____		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply?			NO	YES
If No, describe method for providing potable water: _____ _____		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities?			NO	YES
If No, describe method for providing wastewater treatment: _____ _____		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?		<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____				



Disclaimer: The EAF Mapper is a screening tool intended to assist project sponsors and reviewing agencies in preparing an environmental assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Although the EAF Mapper provides the most up-to-date digital data available to DEC, you may also need to contact local or other data sources in order to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.

Part 1 / Question 7 [Critical Environmental Area]	No
Part 1 / Question 12a [National or State Register of Historic Places or State Eligible Sites]	No
Part 1 / Question 12b [Archeological Sites]	Yes
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
Part 1 / Question 15 [Threatened or Endangered Animal]	No
Part 1 / Question 16 [100 Year Flood Plain]	No
Part 1 / Question 20 [Remediation Site]	Yes

GENERAL NOTES

1. NORTH ARROW AND BEARINGS ARE BASED ON NAD 83 INTERSECTION A.
2. PARCELS ARE LOCATED IN A PLANNED INDUSTRIAL AREA AS SHOWN ON THE ZONING MAP OF NEWBURGH, NEW YORK, AND ARE SUBJECT TO THE ZONING REGULATIONS OF THE TOWN OF NEWBURGH, NEW YORK, AS AMENDED BY RESOLUTION NO. 142 OF THE TOWN BOARD, DATED AUGUST 1, 2017.
3. THE UNDERGROUND UTILITIES SHOWN HAVE BEEN PLOTTED FROM FIELD SURVEY DATA AND ARE NOT TO BE CONSIDERED AS GUARANTEED. THE LOCATION OF UTILITIES SHALL BE VERIFIED BY THE APPLICANT PRIOR TO CONSTRUCTION. THE APPLICANT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES AND AGENCIES PRIOR TO CONSTRUCTION. THE APPLICANT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES AND AGENCIES PRIOR TO CONSTRUCTION.
4. EXISTING PAVING SPACES, TIE IN/BACK SPACES, IN HANDOFF SPACES.
5. ALL UTILITIES SHOWN ARE BASED ON RECORD DRAWINGS, FIELD SURVEY DATA AND FIELD SURVEY DATA.
6. NO OBSERVABLE EVIDENCE OF RECENT EROSION/SLURRY CONSTRUCTION OR OTHER DISTURBANCE IS OBSERVED ON THE SUBJECT PROPERTY.
7. THE TOWN PUBLICLY DESIGNATED RIGHT OF WAY.

SURVEYOR'S LEGAL DESCRIPTION

THE PARCELS SHOWN ON THIS SURVEY MAP ARE PART OF THE LAND SHOWN ON THE SURVEY MAP OF THE TOWN OF NEWBURGH, NEW YORK, DATED AUGUST 1, 2017, AND ARE SUBJECT TO THE ZONING REGULATIONS OF THE TOWN OF NEWBURGH, NEW YORK, AS AMENDED BY RESOLUTION NO. 142 OF THE TOWN BOARD, DATED AUGUST 1, 2017.

THESE PARCELS ARE PART OF THE LAND SHOWN ON THE SURVEY MAP OF THE TOWN OF NEWBURGH, NEW YORK, DATED AUGUST 1, 2017, AND ARE SUBJECT TO THE ZONING REGULATIONS OF THE TOWN OF NEWBURGH, NEW YORK, AS AMENDED BY RESOLUTION NO. 142 OF THE TOWN BOARD, DATED AUGUST 1, 2017.

MAP REFERENCE

- A. THE GENERAL USE OF THIS MAP IS FOR THE PROPERTY OF THE LIVANOS GROUP LLC, 88 NORTH PLANK ROAD, NEWBURGH, NEW YORK, AND IS NOT TO BE CONSIDERED AS A GUARANTEE OF THE ACCURACY OF THE INFORMATION SHOWN ON THIS MAP.
- B. THE TOWN OF NEWBURGH, NEW YORK, ZONING MAP, AS AMENDED BY RESOLUTION NO. 142 OF THE TOWN BOARD, DATED AUGUST 1, 2017, IS REFERRED TO AS THE ZONING MAP.
- C. THE TOWN OF NEWBURGH, NEW YORK, ZONING MAP, AS AMENDED BY RESOLUTION NO. 142 OF THE TOWN BOARD, DATED AUGUST 1, 2017, IS REFERRED TO AS THE ZONING MAP.

ZONING INFORMATION

ZONE	TYPE OF BUSINESS	PERMITTED USES	SETBACKS	HEIGHTS	COVERAGES
1	MANUFACTURING	MANUFACTURING	30 FEET	30 FEET	50 PERCENT
2	MANUFACTURING	MANUFACTURING	30 FEET	30 FEET	50 PERCENT
3	MANUFACTURING	MANUFACTURING	30 FEET	30 FEET	50 PERCENT
4	MANUFACTURING	MANUFACTURING	30 FEET	30 FEET	50 PERCENT
5	MANUFACTURING	MANUFACTURING	30 FEET	30 FEET	50 PERCENT
6	MANUFACTURING	MANUFACTURING	30 FEET	30 FEET	50 PERCENT
7	MANUFACTURING	MANUFACTURING	30 FEET	30 FEET	50 PERCENT
8	MANUFACTURING	MANUFACTURING	30 FEET	30 FEET	50 PERCENT

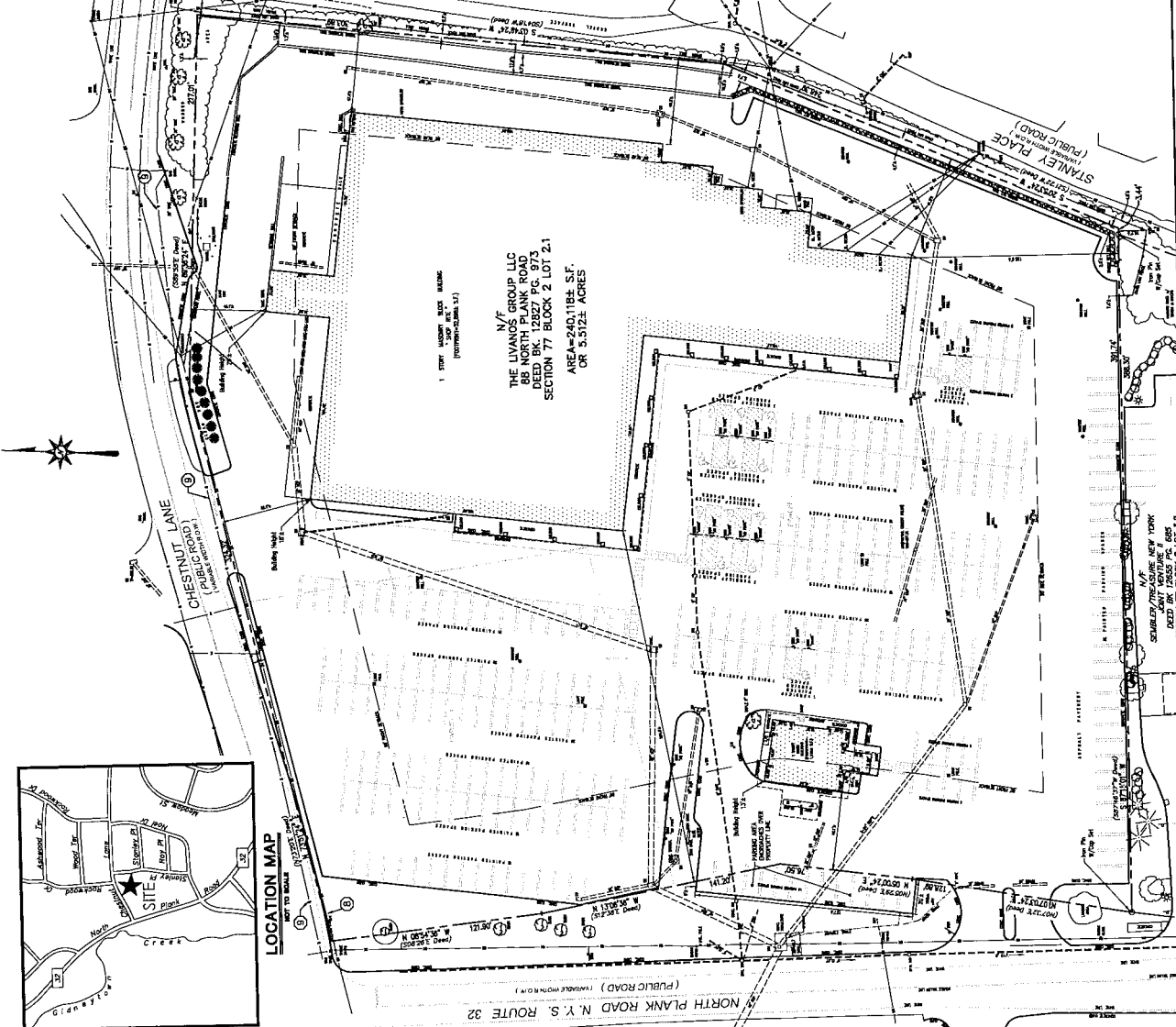
TITLE COMMITMENT INFORMATION

TITLE COMMITMENT REFERENCE NUMBER	RECORDING REFERENCE	DESCRIPTION	STATUS ON PLAT
1	1701/27	PLAT OF THE LAND SHOWN ON THIS SURVEY MAP...	NOT PLATTABLE
2	1702/24	PLAT OF THE LAND SHOWN ON THIS SURVEY MAP...	NOT PLATTABLE
3	1703/28	PLAT OF THE LAND SHOWN ON THIS SURVEY MAP...	NOT PLATTABLE
4	1704/27	PLAT OF THE LAND SHOWN ON THIS SURVEY MAP...	NOT PLATTABLE
5	1705/27	PLAT OF THE LAND SHOWN ON THIS SURVEY MAP...	NOT PLATTABLE
6	1706/27	PLAT OF THE LAND SHOWN ON THIS SURVEY MAP...	NOT PLATTABLE
7	1707/24	PLAT OF THE LAND SHOWN ON THIS SURVEY MAP...	NOT PLATTABLE
8	1708/24	PLAT OF THE LAND SHOWN ON THIS SURVEY MAP...	NOT PLATTABLE
9	1709/24	PLAT OF THE LAND SHOWN ON THIS SURVEY MAP...	NOT PLATTABLE
10	1710/24	PLAT OF THE LAND SHOWN ON THIS SURVEY MAP...	NOT PLATTABLE
11	1711/24	PLAT OF THE LAND SHOWN ON THIS SURVEY MAP...	NOT PLATTABLE
12	1712/24	PLAT OF THE LAND SHOWN ON THIS SURVEY MAP...	NOT PLATTABLE
13	1713/24	PLAT OF THE LAND SHOWN ON THIS SURVEY MAP...	NOT PLATTABLE
14	1714/24	PLAT OF THE LAND SHOWN ON THIS SURVEY MAP...	NOT PLATTABLE
15	1715/24	PLAT OF THE LAND SHOWN ON THIS SURVEY MAP...	NOT PLATTABLE

SURVEY CERTIFICATION

I, THE SURVEYOR, HEREBY CERTIFY THAT I AM A LICENSED SURVEYOR IN THE STATE OF NEW YORK AND THAT I HAVE PERSONALLY CONDUCTED THE SURVEY SHOWN ON THIS MAP AND THAT THE INFORMATION SHOWN ON THIS MAP IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DATED: 02/14/2024



N/F
 THE LIVANOS GROUP LLC
 88 NORTH PLANK ROAD
 DEED BK. 12827, PG. 085
 SECTION 77, BLOCK 2, LOT 2, 1
 AREA=240,184 S.F.
 OR 5.512± ACRES



**AFFIDAVIT OF POSTING(S) OF
NOTICE OF PUBLIC HEARING
AT THE PROPERTY**

STATE OF NEW YORK: COUNTY OF ORANGE:

I, Jonathan DeJoy, being duly sworn, depose and say that I did on or before
October 13, 2022, post and will thereafter maintain at

88 N Plank Rd 77-2-2.1 B Zone in the Town of Newburgh, New York, at or near the front
property line(s) and within view of each fronting street a copy(ies) of the Notice of Public Hearing, which
notice was in the form attached hereto.

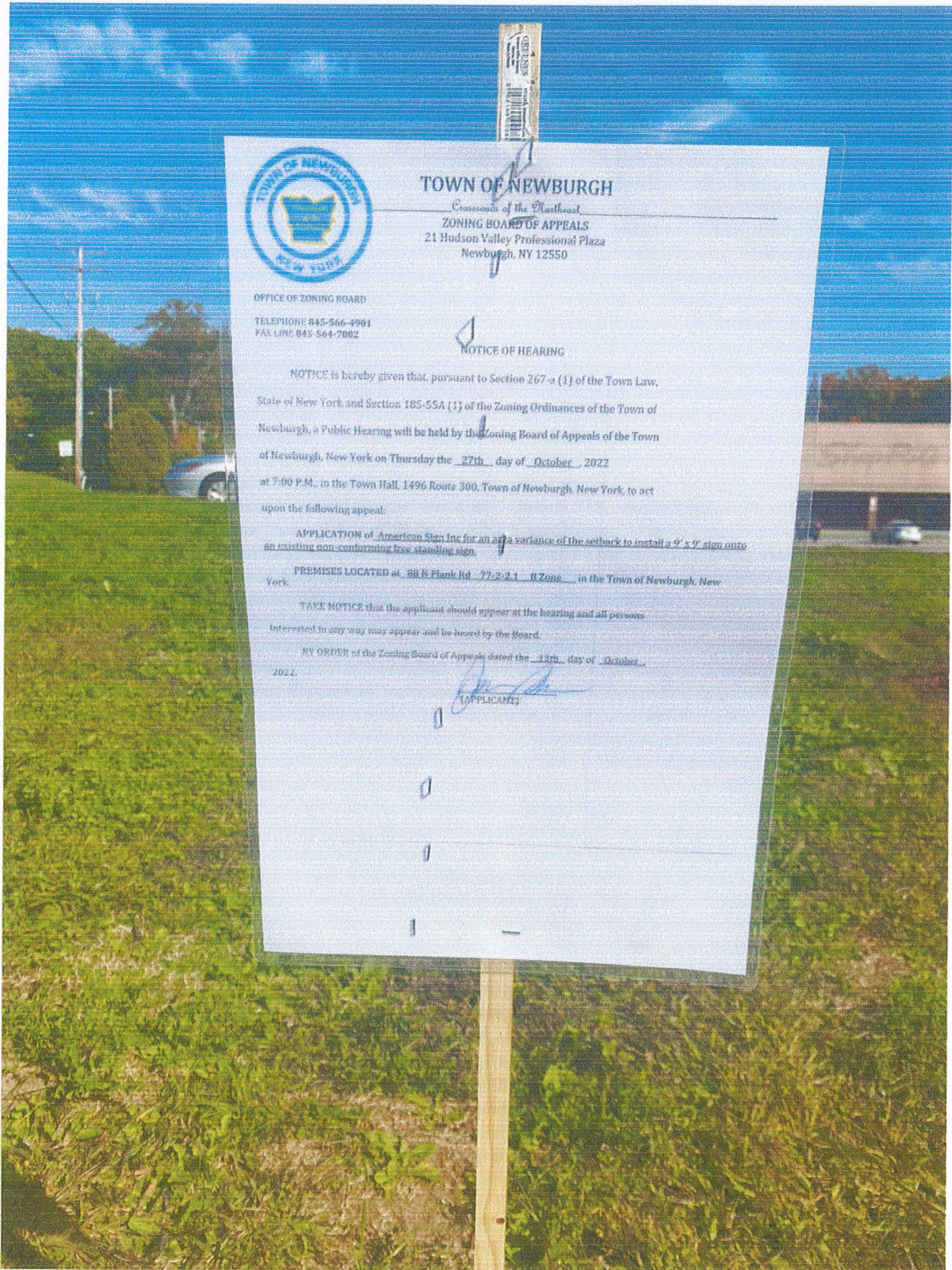
The applicant shall maintain and update notice(s) (with amended information if there is any change to
the information contained in the original Notice of Hearing) until after the Public Hearing is closed. The
Notice must then be removed and property disposed of within ten (10) days of the close of the Public
Hearing. Failure to follow the required procedure may result in the Public Hearing being held open for
additional time.

Sworn to before me this 11th
day of October, 2022.



JULIE A. DURKIN
Notary Public, State of New York
No. 01DU6314887
Qualified in Dutchess County
Commission Expires 11/17/2022

PHOTO OF SIGN POSTING FOR PUBLIC HEARING 10/27/22



TOWN OF NEWBURGH

Crossroads of the Northeast
ZONING BOARD OF APPEALS
21 Hudson Valley Professional Plaza
Newburgh, NY 12550

OFFICE OF ZONING BOARD
TELEPHONE 845-566-4901
FAX LINE 845-564-7002

NOTICE OF HEARING

NOTICE is hereby given that, pursuant to Section 267-a (1) of the Town Law, State of New York and Section 185-55A (1) of the Zoning Ordinances of the Town of Newburgh, a Public Hearing will be held by the Zoning Board of Appeals of the Town of Newburgh, New York on Thursday the 27th day of October, 2022 at 7:00 P.M., in the Town Hall, 1496 Route 300, Town of Newburgh, New York, to act upon the following appeal:

APPLICATION of American Sign Inc for an area variance of the setback to install a 9' x 9' sign onto an existing non-conforming free standing sign.

PREMISES LOCATED at 88 N Plant Rd 77.2-2.1 B Zone in the Town of Newburgh, New York.

TAKE NOTICE that the applicant should appear at the hearing and all persons interested in any way may appear and be heard by the Board.

BY ORDER of the Zoning Board of Appeals dated the 13th day of October, 2022.

[Signature]
(APPLICANT)

SIGN POSTING PUBLIC HEARING 10.27.22

