

ZBA MEETING – JUNE 27, 2013

(Time Noted – 7:47 PM)

BALMVILLE CONSTRUCTION, INC.

122 ROCK CUT ROAD, NBGH
(47-1-28.2) R-1 ZONE

Applicant is seeking area variances for the front yard setbacks and the 80-foot setback from the centerline of a County roadway to build a new single family on Lot #4 and for the existing single-family residence on Lot #1 of a proposed 4-Lot subdivision.

Chairperson Cardone: The next applicant Balmville Construction.

Ms. Gennarelli: This applicant sent out twenty-eight letters. All the mailings, publications and postings are in order.

Mr. Lytle: Good evening I'm Ken Lytle (owner of Balmville Construction) representing Balmville Construction a...we're representing a...122 Rock Cut Road, this 6-acre parcel located in the Town of Newburgh. We're here tonight for two area variances. There's an existing home on there and we were before the planning board proposing a subdivision of this property. The existing home is approximately 71 feet from the centerline of the road where we need the area variance for that because currently it requires 80 feet and off from the property line its 47 feet where, you know, the County road requires 60 feet. The new home on Lot #4 we're proposing the same numbers and why want to do that is to keep with the aesthetics of the neighborhood. The properties to the south of this, I have some aerial photos here, they are very similar distance off the road. I'll pass these out.

(Mr. Lytle approached the Board)

Mr. Lytle: We figure by keeping the a...new proposed home lining up the existing homes in the area would actually match the streetscape with the road currently.

Mr. McKelvey: This a...property goes back through the wooded area in the back?

Mr. Lytle: That's correct, it extends all the way back as you get to the DEC wetlands in the back. You can see on there we have the tree buffer, the existing tree line which is currently there, yeah that's about halfway back of the property.

Mr. Donovan: And Ken, Lots 2 and 3 are...have nothing to do with this application, correct?

Mr. Lytle: That is correct.

Mr. Donovan: And the only reason I mention that is, I don't know if you've seen the County Planning Department referral and the Chair will read that but they have questions about the flag lots of Lots 2 and 3, I just want to make the point that those have nothing to do with the variance application before the Board this evening.

Mr. Lytle: I have not seen the letter; I know these two have nothing...

Chairperson Cardone: Okay, I'll read it at this time then. County Planning is concerned with the use of flag lots related to the application but we will comment on the subdivision layout when the application is referred by the planning board. That's something to keep in mind.

Mr. Lytle: Yes, okay.

Mr. Donovan: And, also Ken just to be clear the variance on the existing house, I mean, that's a permitted pre-existing condition that...that protection is lost because of the subdivision application so a...that's why that needs a variance otherwise the house as it stands now is not...is not going to look any different before the variances granted then after.

Mr. Lytle: That's correct.

Mr. Maher: Okay, on Lot #1 the existing...

Ms. Gennarelli: Mike can you pull your mic in?

Mr. Maher: I'm sorry.

Ms. Gennarelli: Thank you.

Mr. Maher: The plan shows a rectangular house but on the pictures submitted there's a...a front porch is that taken into consideration as far as the setbacks go?

Mr. Lytle: A...yes, it was.

Mr. Maher: I take that back, it's on the side, my mistake.

Mr. Lytle: Yeah, the front has a little concrete stairway.

Mr. Maher: Yeah I'm sorry, I'm looking at...I'm looking at the picture I thought that was the road frontage driveway.

Mr. Lytle: Thanks.

Mr. McKelvey: It's true all these houses are close together there too.

Mr. Lytle: Yeah, we figured actually the proposal for Lot #4 setting it back another 20 some feet would actually look kind of funny driving down the road that's why were actually going for this at the same time.

Chairperson Cardone: You say the house on Lot #4 is directly on line with the house on Lot #1?

Mr. Lytle: That is correct. And you'll see actually during the subdivision with the County right-of-way we're actually giving them the first 25 feet of our property to make it consistent with the County.

Chairperson Cardone: Do we have any other questions from the Board? Do we have any questions or comments from the public? Yes, please step up to the microphone and identify yourself for the record.

Mr. Weikel: Jeff Weikel, I live at 152 Rock Cut Road, just north of your parcels. Can I ask how is it determined who the letters are sent to? Because my neighbor, just north, right next to me said that they didn't receive one.

Mr. Lytle: Betty, do you want to address that?

Ms. Gennarelli: Okay. Yes, the assessor's office makes up the list and it was 500 feet from the edges of the property lines. Whatever the property lines are its 500 feet from that and they make up the list and give it to us to give to the applicant.

Mr. Weikel: Okay. A...I...I noticed the parcel...what you're doing is up against the parcel it is basically next to me, it's a vacant lot a...

Ms. Gennarelli: Could you just get a little closer to the mic?

Mr. Weikel: Sorry. And there's a wetlands there, are you affecting that...is that the...I think that that's declared a buffer zone or something?

Mr. Lytle: Yup, you see actually if you walk into the woods there are some orange flags that are hung there by the DEC. The DEC was out there and there is a buffer that extends actually from that property actually a little ways into our property and that's already been approved by the DEC for that house.

Mr. Weikel: A...one other thing I was going to...all right so you're also clearing property to the back...?

Mr. Lytle: No, we're not...I'm not clearing anything past the existing tree line that's already been disturbed. We're not touching anything into that. After that it almost actually turns into water where the wetlands are so there's nothing happening down there at all. And you see we have 100 foot buffer and our houses and septic and everything else are proposed to be in front of the 100 foot buffer. Okay?

Mr. Weikel: The only other question I had is...are you bringing in any fill? Just concerned about it disturbing the water table and things.

Mr. Lytle: We're not proposing any fill at this time, I mean, there might be a little regrading around the house as you dig out for foundation but besides that no fill will be brought in, no.

Mr. Weikel: That's all I have. Thank you.

Chairperson Cardone: Okay. Do you know if there will be a Public Hearing with the planning board?

Mr. Lytle: I'm assuming so yes. There usually is yes.

Chairperson Cardone: Oh, these are...these are issues that could be addressed at the planning board level.

Mr. Weikel: How will I find out when that happens? Is there a way...

Mr. Lytle: You'll be notified about that also. Same (inaudible)...

Chairperson Cardone: Right.

Mr. Weikel: Thank you.

Chairperson Cardone: Okay, you're welcome. Do we have any other questions or comments from the public?

Chairperson Cardone: Do I have a motion to close the Public Hearing?

Mr. McKelvey: I'll make a motion to close the Public Hearing.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted - 7:59 PM)

ZBA MEETING – JUNE 27, 2013 (Resumption for decision: 9:14 PM)

BALMVILLE CONSTRUCTION, INC. 122 ROCK CUT ROAD, NBGH
(47-1-28.2) R-1 ZONE

Applicant is seeking area variances for the front yard setbacks and the 80-foot setback from the centerline of a County roadway to build a new single family on Lot #4 and for the existing single-family residence on Lot #1 of a proposed 4-Lot subdivision.

Chairperson Cardone: On the application Balmville Construction, 122 Rock Cut Road, seeking an area variance for the front yard setbacks and the 80-foot setback from the centerline of a County roadway to build a new single family on Lot #4 and for the existing single-family residence on Lot #1 of a proposed 4-Lot subdivision. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. McKelvey: I think what they're looking for with that house is to keep it in line with the rest of the houses on Rock Cut Road. I'll make a motion we approve.

Ms. Smith: I'll second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE
JOHN MC KELVEY
MICHAEL MAHER
JOHN MASTEN
ROSEANNE SMITH

ABSENT: JAMES MANLEY
BRENDA DRAKE

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
GERALD CANFIELD, CODE COMPLIANCE

(Time Noted - 9:15 PM)

8/7/13

TOWN OF NEWBURGH: COUNTY OF ORANGE
ZONING BOARD OF APPEALS

-----X

In the Matter of the Application of

BALMVILLE CONSTRUCTION, INC.

DECISION

For area variances to proposed lot # 1 as follows:

- *Grant of a variance allowing a setback of 71 feet from the center line of Rock Cut Road;*
- *Grant of a variance allowing a front yard setback of 47 feet where a minimum of 60 feet is required on a County Road(Rock Cut Road - County Highway #23); ;*

For area variances to proposed lot # 4 as follows:

- *Grant of a variance allowing a setback of 73 feet from the center line of Rock Cut Road;*
- *Grant of a variance allowing a front yard setback of 47 feet where a minimum of 60 feet is required ; required on a County Road(Rock Cut Road - County Highway #23);*

-----X

Introduction

Balmville Construction, Inc. is the owner of certain property located on Rock Cut Road (County Road # 23.) The property is presently improved by one single family dwelling. The applicant now seeks to subdivide the property into 4 building lots, one of which would contain the existing home and three of which would be suitable for the construction of new residential single family dwellings.

The existing single family residence – which is located on proposed lot #1 - does not currently meet the minimum front yard setback requirement of 60 feet from a County Road nor does it meet the requirement that it be at least 80-feet from centerline of Rock Cut Road. While it is currently permitted as a pre-existing non-conforming condition, this protection is lost as a result of the proposed subdivision.

Additionally, the single family dwelling proposed to be constructed on Lot #4 will not meet these same bulk requirements¹.

In order to allow the existing house to remain in its current location and, further, to allow the new home to be built in its proposed location, the applicant requires relief as follows: as to proposed lot # 1: (a) An area variance permitting a setback of 71 feet from the centerline of Rock Cut Road and (b) An area variance allowing a front yard setback of 47 feet where a minimum of 60 feet is required on a County Road; as to proposed lot #2: (a) An area variance permitting a setback of 73 feet from the centerline of Rock Cut Road and (b) An area variance allowing a front yard setback of 47 feet where a minimum of 60 feet is required on a County Road.

The property is located at 122 Rock Cut Road, is in the R-1 Zoning District and is identified on the Town of Newburgh tax map as Section 47, Block 1, Lot 28.2.

A public hearing was held on June 27, 2013, notice of which was published in *The Mid-Hudson Times* and *The Sentinel*.

Law

Section 185-18 (C)(4)(a) of the Town Code provides that “no building or

¹ Proposed lots 1 and 4 are adjacent to one another on Rock Cut Road.

structure shall be placed within 80 feet of the centerline of Rock Cut Road ...”

Section 185-18 (C)(4)(b) of the Town Code provides that “front yards abutting all county and state highways shall be at least 60 feet in depth ...”

Additionally, this board has determined in the past that any prior protections afforded to pre-existing non-conforming conditions are lost when that property is subdivided.

Background

After receiving all the materials presented by the applicant and hearing the testimony of Ken Lytle of Balmville Construction, at the public hearing held before the Zoning Board of Appeals on June 27, 2013, the Board makes the following findings of fact:

1. The applicant is the owner of a 6.11+/- acre (tax parcel 47-1-28.2) located at 122 Rock Cut Road.
2. The lot is presently improved by a single-family dwelling.
3. This dwelling does not comply with the 60 foot minimum front yard setback required for lots on a County Road nor does it comply with the minimum 80-foot from the centerline requirement for lots with frontage on Rock Cut Road.
4. The applicant now proposes to subdivide the property into 4 residential building lots, while maintaining the existing single-family dwelling on the newly created Lot #1. No change to these setbacks of the dwelling will result from the subdivision of the property; however, the protection previously afforded this lot is lost upon subdivision.

5. Additionally, the single-family dwelling which is proposed to be constructed on Lot #4 will similarly not meet the 60 foot front yard and 80-feet from the centerline of Rock Cut Road setback requirements.
6. The applicant's proposal is set forth on a subdivision plan prepared by Zen Design Consultants, Inc. dated March 28, 2013. Those plans are hereby incorporated into this decision and a set shall remain in the zoning board's file in this matter.
7. One member of the public spoke during the public hearing. His concerns related to wetland disturbance, clearing limits and fill importation. It appeared that his concerns were adequately addressed at the hearing.
8. The applicant was referred to the Zoning Board of Appeals by the Town of Newburgh Planning Board pursuant to correspondence from their counsel dated May 21, 2013.

After hearing the testimony at the public hearing and considering the materials received by the Board and after viewing the subject site, the Board decides as follows:

SEQRA

This matter constitutes a Type II action under the State Environmental Quality Review Act inasmuch as it involves the granting of an individual setback/lot line area variance [6 NYCRR §617.5(c)(12)]. As such, this project is not subject to review under the State Environmental Quality Review Act.

GML 239 Referral

This application has been referred to the Orange County Planning Department for review and report. The Planning Department has reported that this matter is one for local determination, there being no significant inter-municipal or countywide considerations found to exist.

Findings

In reviewing the facts presented for the requested area variances, the Board considered the five standards for determining whether the applicant has sustained its burden of proof as required by Town Law Section 267-b (3). Each factor has been considered relevant to the decision of the board of appeals, but no single one is viewed as precluding the granting of the variances.

(1) Undesirable Change—Detriment to Nearby Properties

The applicant testified at the hearing that the existing home and proposed newly constructed home would be in harmony with the existing, mature, neighborhood and will not in any way result in any undesirable changes to the neighborhood nor cause any detriment to any nearby properties.

No contrary evidence or testimony was submitted at the Public Hearing.

Absent any testimony or evidence indicating such, the Board can not conclude that any undesirable change in the character of the neighborhood or detriment to the neighbors in that neighborhood will result from the grant of the proposed variances.

Accordingly, based upon the evidence and testimony submitted to the Board, the Board finds that the request of the area variances will not result in any serious, undesirable, detriment to surrounding property owners.

(2) Need for Variance

Based upon the testimony and evidence submitted at the Hearing the Board finds that it is not feasible for the applicant to subdivide the lot in a way that would have any meaningful use and benefit to the applicant without the requested area variances.

Accordingly, the Board finds that the benefit sought to be achieved by the applicant cannot be achieved by any other method other than the issuance of the requested variances.

(3) Substantial Nature of Variances Requested

The variance requested are substantial. However, because the focus of the inquiry by the Zoning Board of Appeals is upon the character of the neighborhood in question, we believe, under the circumstances presented here, that the moderately substantial nature of the variance requested does not prohibit us from granting the application.

Additionally, the request for these variances must be viewed in the context of (a) the existing non-conformity of the residence on the lot and (b) the extent of the *variation* from that existing condition. Because the focus of the inquiry by the Zoning Board of Appeals is upon the character of the neighborhood in question, we believe, under the circumstances presented here, that the substantial nature of the side yard variance requested does not prohibit us from granting the application.

(4) Adverse Physical & Environmental Effects

No testimony or evidence was received by the Board indicating that the

requested variances would cause any adverse physical or environmental effects.

Accordingly, based upon the evidence and testimony received, The Board finds that the variances requested will not adversely impact the physical or environmental conditions in this neighborhood.

(5) Self-Created Difficulty

The need for these variances is clearly self-created in the sense that the applicant purchased this property charged with the knowledge of the Zoning Ordinance and while aware of the need to obtain variances in order to subdivide and construct a house of the size and location proposed.

However, the board believes, under the circumstances presented, that the self-created nature of the need for the variances requested does not preclude granting the application. Moreover, as noted earlier, no undesirable change in the character of the neighborhood will occur as the result of the granting of these variances.

Decision

In employing the balancing tests set forth in Town Law Section 267-b (3), the Board hereby determines that the applicant has satisfied the requisites of Section 267-b and grants the front yard and centerline setback variances as requested upon the following conditions:

1. The variances hereby granted are granted for the purpose of authorizing construction of what is shown on the plans or described within the application materials only. No construction other than as shown or described (architectural refinements aside) is authorized by this decision.

2. This approval is not issued in a vacuum but is rather one of two independent yet interconnected discretionary approvals (the other being within the jurisdiction of the Town of Newburgh Planning Board). As such, this grant of variance is conditioned upon approval of the application now pending before the planning board. This approval of the ZBA is intended to do no more than vary the specified strict limitation provisions of the Code identified; it is not intended to authorize construction of a particular building nor approve the footprint, size, volume or style thereof. The planning board remains possessed of all of its power and authority to review, limit, request modifications to, and to ultimately approve (absolutely or conditionally) any application in reference to this project as may come before it. Should the planning board require changes in the size, location or configuration from what is shown on the plans before the ZBA that require greater or different variances, the applicant must return to the ZBA for further review and approval.

3. Section 185-55 [Procedure; construal of provisions; conflict with state law] of the Code of Ordinances of the Town of Newburgh provides, in subdivision "D," that this grant of variance shall become null and void at the expiration of six months from issuance, unless extended by this board for one additional six-month period. As noted above, this application is not decided in a vacuum but is rather tied to a specific application for approval pending before the Town of Newburgh Planning Board and this approval is conditioned upon the applicant diligently pursuing his application before that board. Provided that the applicant shall report to this board monthly on the

progress of the application pending before the planning board, and provided that such reports demonstrate a diligent pursual of that application, the time period within which the planning board application is processed shall not be included within the initial six-month limitation of Section 185-55 D.

Dated: June 27, 2013



Grace Cardone, Chair
Town of Newburgh ZBA

By roll call a motion to adopt the decision was voted as follows:

AYES: Chair Grace Cardone
Member John McKelvey
Member Michael Maher
Member Roseanne Smith
Member John Masten

ABSENT: Member Brenda Drake
Member James Manley

STATE OF NEW YORK)
)ss:
COUNTY OF ORANGE)

I, BETTY GENNARELLI, Secretary to the Zoning Board of Appeals of the Town of Newburgh, do hereby certify that the foregoing is a true and exact copy of a Decision rendered by the Zoning Board at a meeting of said Board held on

June 27, 2013.


BETTY GENNARELLI, SECRETARY

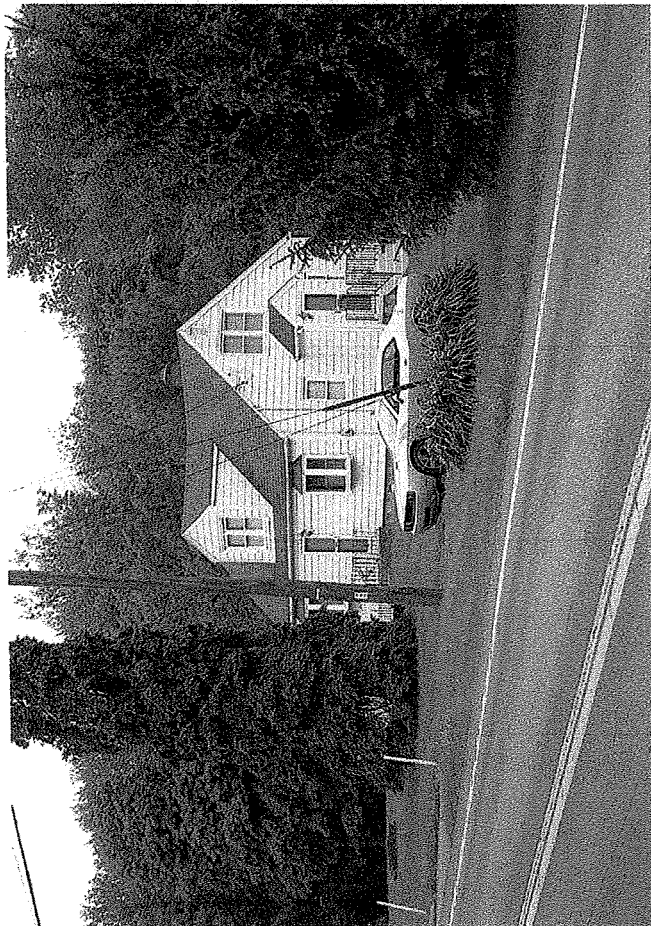
TOWN OF NEWBURGH ZONING BOARD OF APPEALS

I, ANDREW J. ZARUTSKIE, Clerk of the Town of Newburgh, do hereby certify that the foregoing Decision was filed in the Office of the Town Clerk on

JUL 26 2013.


ANDREW J. ZARUTSKIE, CLERK

TOWN OF NEWBURGH





DESIGNED BY:
RODOLPH BLANKS INC.
NEWBURGH, NY 10991-3200
485-080-1001 (OFFICE HOURS)

- PROPOSED CONTOUR
- EXISTING CONTOUR
- EXISTING PROPERTY LINE
- PROPOSED DRAINAGE CHANNEL
- PROPOSED DRAIN OUTLET
- PROPOSED DRAINAGE STRUCTURE
- PROPOSED GROUNDWATER DRAIN
- EXISTING WELL

COUNTY CERTIFICATION:
THE TOWN OF NEWBURGH, NEW YORK, HAS REVIEWED THIS SITE PLAN AND HAS DETERMINED THAT THE PROPOSED DEVELOPMENT IS IN ACCORDANCE WITH THE ZONING REGULATIONS AND THE LAND USE ORDINANCES OF THE TOWN OF NEWBURGH, NEW YORK. THE TOWN ENGINEER HAS REVIEWED THE SITE PLAN AND HAS DETERMINED THAT THE PROPOSED DEVELOPMENT IS IN ACCORDANCE WITH THE ZONING REGULATIONS AND THE LAND USE ORDINANCES OF THE TOWN OF NEWBURGH, NEW YORK.

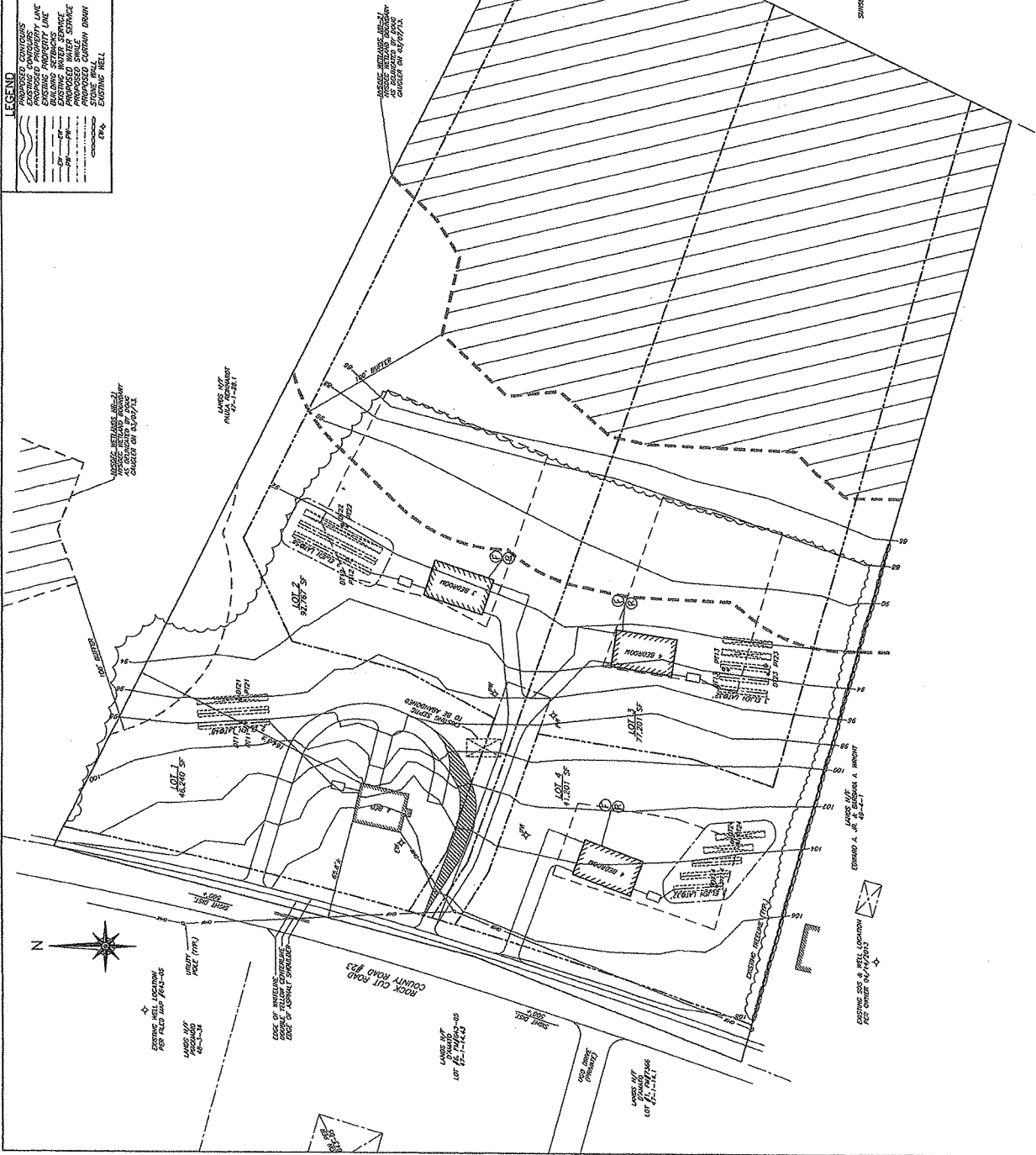
ZONING CERTIFICATION:
THE TOWN OF NEWBURGH, NEW YORK, HAS REVIEWED THIS SITE PLAN AND HAS DETERMINED THAT THE PROPOSED DEVELOPMENT IS IN ACCORDANCE WITH THE ZONING REGULATIONS AND THE LAND USE ORDINANCES OF THE TOWN OF NEWBURGH, NEW YORK.

PROPOSED PAVEMENT:
THE PROPOSED PAVEMENT SHALL BE 4" ASPHALT OVER 4" GRANULAR SUBGRADE WITH 1" SAND.

PROPOSED SEWER SYSTEM:
THE PROPOSED SEWER SYSTEM SHALL BE 12" DIAMETER VCP SEWER WITH 3' DEPTH.

PROPOSED DRAINAGE CHANNEL:
THE PROPOSED DRAINAGE CHANNEL SHALL BE 24" DIAMETER VCP DRAIN WITH 3' DEPTH.

PROPOSED DRAINAGE STRUCTURE:
THE PROPOSED DRAINAGE STRUCTURE SHALL BE 24" DIAMETER VCP MANHOLE WITH 3' DEPTH.



GIBSON ESTATES 4 LOT SUBDIVISION SITE PLAN ROCK CITY, NY TOWN OF NEWBURGH, ORANGE COUNTY, NY		
WILLIAM J. MORRIS, P.E. ENGINEER	SCALE AS SHOWN	SHEET NUMBER 2 OF 2

DATE: 02/26/2015 11:59:39
13-082-SEC

