



TOWN OF NEWBURGH

Crossroads of the Northeast

ZONING BOARD OF APPEALS
OLD TOWN HALL
308 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550

APPLICATION

OFFICE OF ZONING BOARD
(845) 566-4901

DATED: 1/24/18

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

I (WE) Daniel / Elissa Dickinson PRESENTLY
RESIDING AT NUMBER 4 Maplewood Dr. Newburgh, NY 12550
TELEPHONE NUMBER 845-591-6720

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

- A USE VARIANCE
- 280-A AN AREA VARIANCE
- INTERPRETATION OF THE ORDINANCE
- SPECIAL PERMIT

1. LOCATION OF THE PROPERTY:

Vacant Lot 6-1-12 (TAX MAP DESIGNATION)

(STREET ADDRESS)
AR (ZONING DISTRICT)

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 PROVISION OF THE ZONING LAW APPLICABLE, (INDICATE THE SECTION AND SUBSECTION OF THE ZONING LAW APPLICABLE BY NUMBER; DO NOT QUOTE THE LAW).

280-A



TOWN OF NEWBURGH

Crossroads of the Northeast

ZONING BOARD OF APPEALS
OLD TOWN HALL
308 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550

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: 1/18/18

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: NY Town Law 280-A

"permits for buildings not on improved mapped streets"

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:



TOWN OF NEWBURGH

Crossroads of the Northeast

ZONING BOARD OF APPEALS
OLD TOWN HALL
308 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550

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:

the property is already accessed via a residential development. It would retain the same character as any other residence on the street.

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:

all other methods of reconciliation have previously been exhausted, including an attempt to access the lot via another easement

c) THE REQUESTED AREA VARIANCE IS NOT SUBSTANTIAL BECAUSE:

a denial of variance would produce a land-locked parcel
Reference - "N.Y. RPP Law 335-A: NY Code - Section 335A" Easements of necessity"

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

It would not impact the environment in any other way a similarly built residential home would on the street

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

the previous actions had not been anticipated upon the purchase of the property. All easements were well recorded in the orange county clerks office upon purchase of lot.



TOWN OF NEWBURGH

Crossroads of the Northeast

ZONING BOARD OF APPEALS
OLD TOWN HALL
308 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550

OFFICE OF ZONING BOARD
(845) 566-4901

7. ADDITIONAL REASONS (IF PERTINENT):

PETITIONER (S) SIGNATURE

STATE OF NEW YORK: COUNTY OF ORANGE:

SWORN TO THIS 24 DAY OF JANUARY 2018

NOTARY PUBLIC

ANDREW J. ZARUTSKIE
Notary Public, State of New York
No. 01ZA4502524
Qualified in Orange County
Commission Expires Nov. 30, 2021

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 10 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)

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: <i>Residential Home (Lot 6-1-12)</i>			
Project Location (describe, and attach a location map): <i>Vacant Lot 6-1-12</i>			
Brief Description of Proposed Action: <i>Construction of 2600 sq ft residential home.</i>			
Name of Applicant or Sponsor: <i>Daniel and Elissa Dickinson</i>		Telephone: <i>845-591-6720</i>	
Address: <i>4 Maplewood Dr.</i>		E-Mail: <i>danielmichaeldickinson@yahoo.com</i>	
City/PO: <i>Newburgh</i>	State: <i>NY</i>	Zip Code: <i>12550</i>	
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 governmental Agency? If Yes, list agency(s) name and permit or approval: <i>US Army Corp of Engineers (General permit)</i>		NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
3.a. Total acreage of the site of the proposed action?		<i>12</i> acres	
b. Total acreage to be physically disturbed?		<i>52.0</i> acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		<i>12</i> acres	
4. Check all land uses that occur on, adjoining and near the proposed action.			
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input 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			

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____ _____	NO	YES
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____ _____	NO	YES
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____ _____	NO	YES

I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE

Applicant/sponsor name: Dagel Dickerson Date: 1/27/18
 Signature: [Handwritten Signature]

Agency Use Only [If applicable]

Project:

Date:

Short Environmental Assessment Form
Part 2 - Impact Assessment

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing: a. public / private water supplies?	<input type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input type="checkbox"/>	<input type="checkbox"/>
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input type="checkbox"/>	<input type="checkbox"/>

Agency Use Only [If applicable]

Project: _____

Date: _____

Short Environmental Assessment Form Part 3 Determination of Significance

For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

- Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
- Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Name of Lead Agency

Date

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (if different from Responsible Officer)



ORANGE COUNTY - STATE OF NEW YORK
 ANN G. RABBITT, COUNTY CLERK
 255 MAIN STREET
 GOSHEN, NEW YORK 10924

Law signed 1/26/18

COUNTY CLERK'S RECORDING PAGE
 THIS PAGE IS PART OF THE DOCUMENT - DO NOT DETACH



BOOK/PAGE: 13979 / 1220
 INSTRUMENT #: 20150076390

Receipt#: 2047072
 Clerk: MRL
 Rec Date: 12/07/2015 07:00:00 AM
 Doc Grp: D
 Descrip: DEED
 Num Pgs: 4
 Rec'd Frm: RIVER CITY ABSTRACT OF HUDSON VALLEY INC

Party1: FUCHECK RAY
 Party2: DICKINSON DANIEL
 Town: NEWBURGH (TN)
 6-1-12

Payment Type: Check ___
 Cash ___
 Charge ___
 No Fee ___

Comment: _____

Ann G. Rabbitt
 Ann G. Rabbitt
 Orange County Clerk

Recording:	
Recording Fee	40.00
Cultural Ed	14.25
Records Management - Coun	1.00
Records Management - Stat	4.75
TP584	5.00
RP5217 All others - State	241.00
RP5217 - County	9.00
Sub Total:	315.00
Transfer Tax	
Transfer Tax - State	180.00
Sub Total:	180.00
Total:	495.00
**** NOTICE: THIS IS NOT A BILL ****	
***** Transfer Tax *****	
Transfer Tax #: 3217	
Commercial Transfer Tax	
Consideration: 45000.00	
Transfer Tax - State	180.00
Total:	180.00

Record and Return To:
 RIVER CITY ABSTRACT OF HUDSON VALLEY
 2645 SOUTH RD SUITE 4
 POUGHKEEPSIE, NY 12601

53150

1000 W 1000

Bargain & Sale Deed with Covenants Against Grantor's Acts
Individual or Corporation

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT

THIS INDENTURE, made the 10th day of September, 2015

BETWEEN RAY FUCHECK, residing at
and DAWN FUCHECK, residing at > 45 Willets Way
Newburgh, NY

party of the first part, and

DANIEL DICKINSON and ELISSA DICKINSON, residing at
4 Maplewood Dr. Newburgh, NY 12550
+ husband & wife

party of the second part,

WITNESSETH, that the party of the first part, in consideration of Ten Dollars, lawful money of the United States in hand paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

6-1-12

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 and more particularly described in the Schedule A attached hereto and made a part hereof.

BEING the same premises conveyed to RAY FUCHECK and DAWN FUCHECK from Donald Glas, Ellen Glas and Janet Yovans by deed dated 3/14/2006 and recorded in the Orange County Clerk's Office on 5/11/2006 in Liber 12152 at page 441.

BEING the premises commonly known as vacant parcel with an S-B-L of 6-1-12, Frozen Ridge Road, Newburgh, NY 12550.

TOGETHER with all right, title and interest, if any, of the party of the first part of, in and to any streets and roads abutting the above-described premises to the center lines thereof;

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

TO HAVE AND TO HOLD the premises herein granted unto Grantee and his heirs, executors, administrators, successors and assigns forever.

Grantor covenants that Grantor has not done or suffered anything whereby said premises have been encumbered in any way whatever, except as set forth herein.

Grantor, in compliance with Section 13 of the Lien Law, covenants that he will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement before using any part of the total of the same for any other purpose.

TITLE NO. RCA-WT-53150

SCHEDULE A

ALL that certain piece or parcel of land lying, situate and being in the Town of Newburgh, County of Orange, and State of New York bounded and described as follows:

BEGINNING at a point at the southeasterly corner of the herein described premises and on the westerly line of Lot No. 2 from a map entitled, "Final Plan and Subdivision for R & K Real Estate Management, Inc.", and filed in the Orange County Clerk's Office on the 27th of April 1989 as Map No. 9463, said point being North 24° 45' 18" East 248.16 feet from an iron pipe found; and running thence along the northerly line of lands now or formerly of Daley, North 63° 39' 24" West 924.76 feet to an iron rod found in stones; thence along the line of lands now or formerly of Tarben Inc., North 24° 43' 08" East 1088.19 feet to an iron bar found; thence along the line of lands of Lot No. 2 from a map entitled, "Subdivision Plan, Lands of Marlene Mazzola and James Mazzola, Jr." and filed in the Orange County Clerk's Office on 4th April 1997 as Map No. 75-97, South 69° 06' 22" East 669.37 feet to stump with wire found; thence along the line of lands of Lot No. 1 from a map entitled, "2 Lot Subdivision Lands of Margarete Griffin", and filed in the Orange County Clerk's Office on the 14th of July 2004 as Map No. 469-04 the following two courses and distances: 1) South 24° 07' 46" West 324.70 feet to a point; 2) South 60° 21' 37" East 254.62 feet to a point; thence leaving said line and along the westerly line of aforementioned Lot No. 2 from Filed Map No. 9463, South 24° 45' 18" West passing through an iron pipe found at 306.92 feet, passing through an iron pipe found at an additional 200.70 feet and passing through an iron pipe found at an additional 138.38 feet, a total distance of 812.54 feet to the point or place of **BEGINNING**.

TOGETHER WITH a 12 foot right of way across lands now or formerly of Smith and Cosman as filed in the Orange County Clerk's Office in Liber 260 of Deeds at page 403.

TOGETHER WITH AND SUBJECT TO a 50 foot right of way as shown on Filed Map No. 9463.

TOGETHER WITH AND SUBJECT TO a 50 foot right of way as set forth in Liber 2223 at page 957 and Liber 2229 at page 233.

SCHEDULE B OF THIS TITLE REPORT CONSISTS OF TWO PAGES

IN WITNESS WHEREOF, Grantor has duly executed this deed on the date first above written.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN PRESENCE OF:

Ray FucHECK
RAY FUCHECK

Dawn FucHECK
DAWN FUCHECK

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

On the 10th day of September in the year of 2015 before me, the undersigned, a notary public in and for said state, personally appeared RAY FUCHECK and DAWN FUCHECK, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Bridget Gekakis
Notary Public, State of New York
No. 01GE6091054
Qualified in Dutchess County
Commission expires April 21, 2019

Bridget Gekakis
Notary Public

STATE OF NEW YORK
COUNTY OF ORANGE
TOWN OF NEWBURGH

SECTION 6
BLOCK 1
LOT 12

RFR
Richard Forbes, Esq.
372 Fullerton Ave
Suite 5
Newburgh, NY 12550

ORANGE COUNTY CLERK'S OFFICE RECORDING PAGE

THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE

TYPE IN BLACK INK:

NAME(S) OF PARTY(S) TO DOCUMENT

Ray Fudcheck
Dawn Fudcheck
TO
Donald Glas

SECTION 6 BLOCK 1 LOT 26.1



RECORD AND RETURN TO:
(name and address)

Kenneth Johnson Esq
15 South Corner Dr
PO Box 44
Montgomery, Ky 42549

ST 44458

THIS IS PAGE ONE OF THE RECORDING

**ATTACH THIS SHEET TO THE FIRST PAGE OF EACH
RECORDED INSTRUMENT ONLY**

DO NOT WRITE BELOW THIS LINE

INSTRUMENT TYPE: DEED MORTGAGE SATISFACTION ASSIGNMENT OTHER

PROPERTY LOCATION

- ___ 2089 BLOOMING GROVE (TN)
- ___ 2001 WASHINGTONVILLE (VLG)
- ___ 2003 SO. BLOOMING GROVE (VLG)
- ___ 2289 CHESTER (TN)
- ___ 2201 CHESTER (VLG)
- ___ 2489 CORNWALL (TN)
- ___ 2401 CORNWALL (VLG)
- ___ 2600 CRAWFORD (TN)
- ___ 2800 DEERPARK (TN)
- ___ 3089 GOSHEN (TN)
- ___ 3001 GOSHEN (VLG)
- ___ 3003 FLORIDA (VLG)
- ___ 3005 CHESTER (VLG)
- ___ 3200 GREENVILLE (TN)
- ___ 3489 HAMPTONBURGH (TN)
- ___ 3401 MAYBROOK (VLG)
- ___ 3689 HIGHLANDS (TN)
- ___ 3601 HIGHLAND FALLS (VLG)
- ___ 3889 MINISINK (TN)
- ___ 3801 UNIONVILLE (VLG)
- ___ 4089 MONROE (TN)
- ___ 4001 MONROE (VLG)
- ___ 4003 HARRIMAN (VLG)
- ___ 4005 KIRYAS JOEL (VLG)

- ___ 4289 MONTGOMERY (TN)
- ___ 4201 MAYBROOK (VLG)
- ___ 4203 MONTGOMERY (VLG)
- ___ 4205 WALDEN (VLG)
- ___ 4489 MOUNT HOPE (TN)
- ___ 4401 OTISVILLE (VLG)
- ___ 4600 NEWBURGH (TN)
- ___ 4800 NEW WINDSOR (TN)
- ___ 5089 TUXEDO (TN)
- ___ 5001 TUXEDO PARK (VLG)
- ___ 5200 WALLKILL (TN)
- ___ 5489 WARWICK (TN)
- ___ 5401 FLORIDA (VLG)
- ___ 5403 GREENWOOD LAKE (VLG)
- ___ 5405 WARWICK (VLG)
- ___ 5600 WAWAYANDA (TN)
- ___ 5889 WOODBURY (TN)
- ___ 5801 HARRIMAN (VLG)
- ___ 5809 WOODBURY (VLG)
- CITIES**
- ___ 0900 MIDDLETOWN
- ___ 1100 NEWBURGH
- ___ 1300 PORT JERVIS
- ___ 9999 HOLD

NO. PAGES 5 **CROSS REF.** _____
CERT. COPY _____ **ADD'L X-REF.** _____
MAP# _____ **PGS.** _____

PAYMENT TYPE: CHECK CASH CHARGE NO FEE

Taxable
CONSIDERATION \$ 101,500.
TAX EXEMPT _____
Taxable
MORTGAGE AMT. \$ _____

MORTGAGE TAX TYPE:

- ___ (A) COMMERCIAL/FULL 1%
- ___ (B) 1 OR 2 FAMILY
- ___ (C) UNDER \$10,000
- ___ (E) EXEMPT
- ___ (F) 3 TO 6 UNITS
- ___ (I) NAT.PERSON/CR. UNION
- ___ (J) NAT.PER-CR.UN/1 OR 2
- ___ (K) CONDO

Donna L. Benson
DONNA L. BENSON
ORANGE COUNTY CLERK

Received From River City

BARGAIN AND SALE DEED WITH COVENANT AGAINST GRANTOR'S ACTS (INDIVIDUAL OR CORPORATION)

FORM 8002 (short version), FORM 8007 (long version)

CAUTION: THIS AGREEMENT SHOULD BE PREPARED BY AN ATTORNEY AND REVIEWED BY ATTORNEYS FOR SELLER AND PURCHASER BEFORE SIGNING.

THIS INDENTURE, made the 16th day of December, 2009,

BETWEEN

RAY FUCHECK and DAWN FUCHECK, Husband and Wife, residing at 45 Willets Way, Newburgh, New York 12550, party of the first part, and

DAVID LEROY, residing at 10 Oriole Circle, Newburgh, New York 12550, party of the second part;

WITNESSETH, that the party of the first part, in consideration of Ten Dollars and No Cents (\$10.00), lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever;

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of Newburgh, County of Orange and State of New York, being more particularly described in Schedule A attached hereto;

BEING AND INTENDED TO BE the same premises conveyed to Ray Fucheck and Dawn Fucheck, Husband and Wife, by deed from Donald Glas, Ellen Glas and Janet Yovane dated March 14, 2006 and recorded in the Orange County Clerk's Office on May 11, 2006 in Liber 12152 at page 441.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof,

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part, covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

Reserving to the grantors an easement over a portion of the premises as fully described on the attached Schedule B. and for ingress and egress and for utilities

Section: 6
Block: 1
Lot: 26.1

TITLE NO. RCA-ST-44458

REVISED SCHEDULE A

ALL that certain piece or parcel of land lying, situate and being in the Town of Newburgh, County of Orange and State of New York, bounded and described as follows:

BEGINNING at a point at the southeasterly corner of the herein described premises and on the westerly line of Lot No.2 from a map titled, "Final Plan of Subdivision for R & K Real Estate Management Inc." and filed in the Orange County Clerk's Office on 27 April 1989 as Map No. 9463, said point being N 24 degrees 45' 18" E 248.16 feet from an iron pipe found at the southeasterly corner of lands now or formerly of Jeanne Daley from deed in Liber 11238 of Deeds at page 327; and running thence along the dividing line of said Daley and the herein described premises, N 63 degrees 39' 24" W 924.76 feet to an iron rod found in a stone pile; thence along the easterly line of lands now or formerly of Tarben, Inc., N 24 degrees 43' 08" E 260.70 feet to a point; thence along the line of lands now or formerly of Ray and Dawn Fuchek, S 64 degrees 11' 18" E 924.73 feet to a point; thence along the westerly line of aforesaid Lot No. 2, S 24 degrees 45' 18" W passing through an iron pipe found at 102.74 feet, a total distance of 269.28 feet to the point or place of **BEGINNING**.

SUBJECT to a right of way for the American Telephone and Telegraph Company and subject to a right of way 50 feet in width retained by Buhl, Buhl and Glas along the Eastern edge of the premises hereby conveyed. Additional, the party of the second part agrees to participate in the dedication of said right of way as part of a public highway.

TOGETHER WITH a right of way across the lands now or formerly of Smith and Cosman, Liber 260 page 403, together with a right of way granted to Buhl, Buhl and Glas across the lands now or formerly Chadwick, Liber 2223 mp 957. Said right of way from Chadwick being reserved by Buhl, Buhl and Glas for all ordinary purposes of ingress and egress to their adjoining properties, Liber 2299 page 233. Said right of way from Chadwick is incorporated in the 50 foot wide road and the 50 foot wide extension as described on a subdivision map of lands now or formerly R & K Real Estate Management Inc. as resolved by the Town of Newburgh Planning Board, 12/10/1987.

For conveyancing only,
to be conveyed

Together with all right, title if intended and interest of, in and to any streets and road abutting the above described premises, to the center line thereof.



ANTHONY D. VALDINA, LS, P.C.
LAND SURVEYING

4 Pleasant View Avenue
Newburgh, New York 12550

Phone: (845)561-8367
Fax: (845)565-4428

Schedule B

Date: 18 Nov. 2009

DESCRIPTION

for

Fuchek 50' R.O.W.

All that certain piece or parcel of land lying, situate and being in the Town of Newburgh, County of Orange and State of New York being a right of way fifty feet in width a portion of which is shown on a map titled, " Final Plan of Subdivision For R & K Real Estate Management, Inc. " and filed in the Orange County Clerk's Office on 27 April 1989 as Map No. 9463, and bounded and described as follows:

Beginning at a point of curvature on the westerly line of Still Hollow Road (a private road) as shown on aforesaid filed map; and running thence, leaving said line and through Lot No's 1 and 2 from said filed map, N 10°-30'-19" W 106.91' to a point on the easterly line of lands of the grantor; thence through the lands of the grantor the following two courses and distances: 1) N 10°-30'-19" W 86.62' to a point; 2) N 24°-45'-18" E 187.83' to a point on the southerly line of other lands of the grantor; thence along said line, S 64°-11'-18" E 50.01' to a point on the westerly line of aforesaid Lot No. 2; thence along said line, S 24°-45'-18" W 171.02' to a point; thence leaving said line and through aforesaid Lot No. 2, S 10°-30'-19" E 106.92' to a point on a curve on the right of way line of aforesaid Still Hollow Road; thence along said right of way and along a curve to the left having a radius of 75.0' and an arc length of 92.32' to the point or place of beginning.

Schedule B

SCH-33

24.5A

6
9A
11.3A(C)

9.3
12.8A

20
7A

Dickinson
6-1-12

13.2
61.1A(C)



5.21
2.1A

155
10.9A

US COURT (PVT.)
G.G. PROPERTIES INC. SUB MAP 171-08

154
10A

18.2
30A(C)

SCH-513601

SCH-331100

44.4.2A

41.22
27.2A

11
4.4A(C)

23.22
10.5A



12
12A(C)

SECTION 127

26.1
5.6A(C)

24
5.3A

SCH-513601
SCH-331100

23.21
7.6A

23.3
5.2A

23.4
5.5A

23.5
3.8A

1.7A
23.11
(1A)

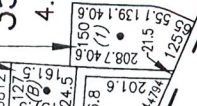
23.12
3.8A

25.1
9.4A

32.21
30.2.4A
50.9

97
23.6
23.8A

98
33.1
35.2
4.4A



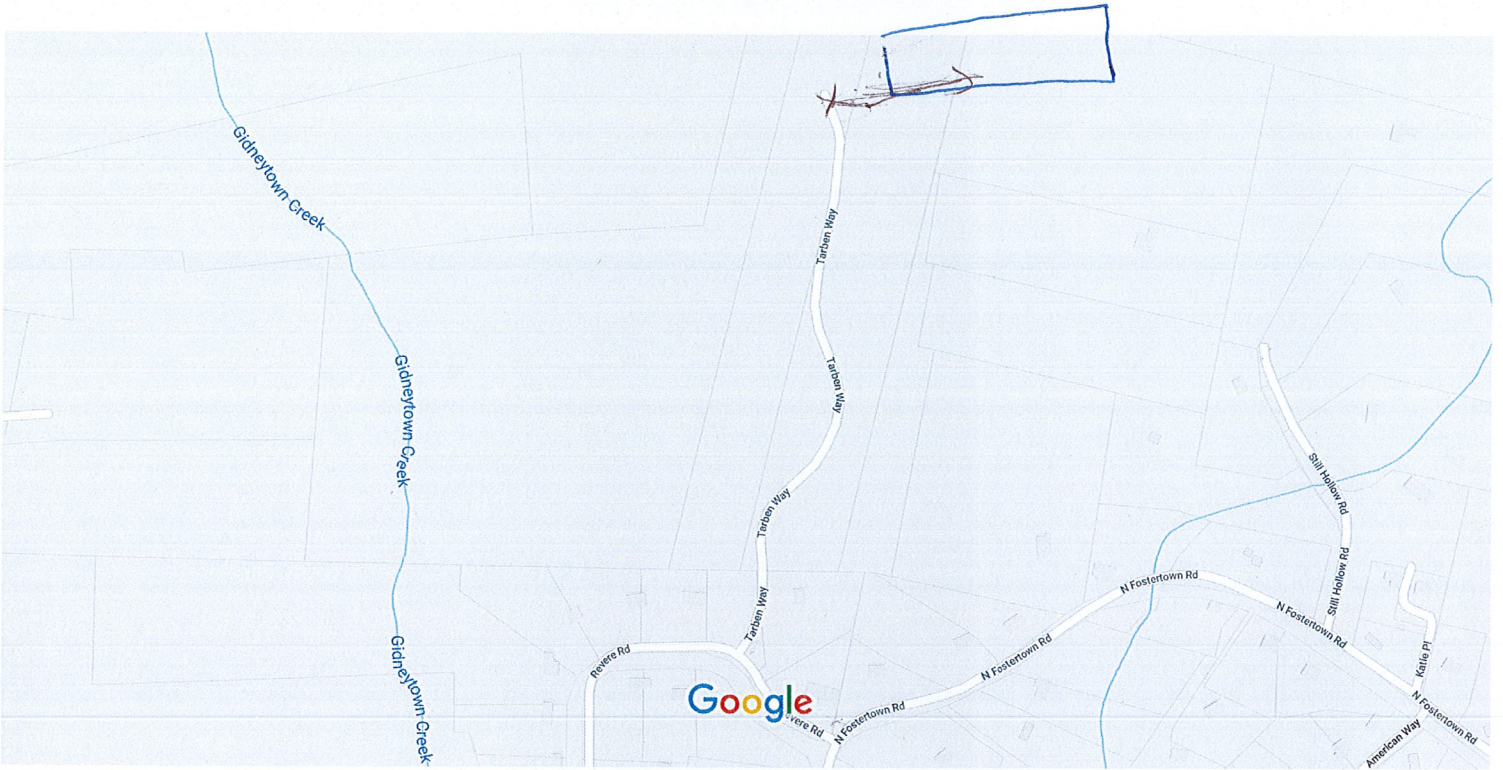
27
2.4A

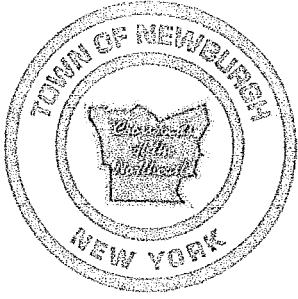
MAP 410-08
MAP 171-08

MAP 253-93

MAP 253-93

SECTION 17





TOWN OF NEWBURGH

~Crossroads of the Northeast~

CODE COMPLIANCE DEPARTMENT
308 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550

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

2666-18

NOTICE OF DISAPPROVAL OF BUILDING PERMIT APPLICATION

Date: 01/24/2018

Application No. 16-0287

To: Daniel Dickinson
4 Maplewood Dr
Newburgh, NY 12550

SBL: 6-1-12
ADDRESS: Off of Tarben Way

ZONE: AR

PLEASE TAKE NOTICE that your application dated 04/13/2016 for permit to construction of a single family home. on the premises located at Off of Tarben Way is returned herewith and disapproved on the following grounds:

N.Y. Town Law 280-A:

- 1) No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plans.
- 2) The roadway must be suitably improved to town specifications


Joseph Mattina

Cc: Town Clerk & Assessor (500')
File

formality requirement of Section 280-a. This may mandate creation of an open development under 280-a (4) before a building permit may be issued for a structure on such roadway.

Suitably Improved

Section 280-a ties issuance of a building permit to satisfaction of a second requirement as well. Subdivision "2" directs that, before a building permit may be issued, the road providing access shall be *suitably* improved. This requirement is satisfied in one of two ways: either by improving the road to a specification set by the town board [§280-a (2)] or, at the permit-seeker's election, by appealing to the zoning board of appeals [§280-a (3)] for an area variance allowing access from a roadway not satisfying the town road specification. The extent of roadway improvement required is the level of improvement sufficient—in the judgment of the zoning board of appeals— "to allow the ingress and egress of fire trucks, ambulances, police cars and other emergency vehicles." [§280-a (5)]. An application for such relief to the zoning board of appeals constitutes an application for an area variance. While it is difficult to fit the review of an application for a §280-a (3) variance into the five-factor area variance analysis of Town Law Section 267-b (3), it is clear that a §280-a (3) variance is an area variance subject to that section¹¹ and, presumably, to the mandate that the zoning board articulates an appropriate five-factor balancing analysis supporting its decision.

Requirements Applied Together

What does all that mean? As noted, before a building permit may be issued, two requirements must be satisfied: (1) it must be demonstrated that the road providing access to the lot upon which construction is proposed is possessed of a certain formal status, and (2) the roadway must be *suitably* improved.¹²

Both requirements must be satisfied before a building permit may be issued. It

First published in the New York Zoning Law and Practice Report, Vol. 11, No. 5, copyright Thomson Reuters. Used with permission.

is irrelevant whether the street providing access has been dedicated or whether any such offer has been accepted by the town.¹³ Nor is it necessary that the applicant own¹⁴ the roadbed in question. Indeed, this will rarely be the case, for the intent of Section 280-a is to grant the town the authority to command improvements on property not owned¹⁵ by the applicant.

This is not to say that demonstration of a right of access across the roadbed is not an issue. Clearly it is. However, where a property owner takes title to property by reference to a lot shown on a filed map and that that lot abuts a street shown on that map, the law gives to that lot owner (indeed, to each such lot owner) the right to utilize that street for the purpose of ingress and egress to his property.¹⁶

Thus, if the roadway providing access satisfies the formal status requirement and is also improved to the appropriate road specification (i.e., the town road specification for a town road and the private road specification for a private road), then both requirements of Section 280-a are satisfied and a building permit may be issued. If the roadway, although satisfying the status requirement, does not meet the appropriate road specification requirement, a 280-a variance will then be required. As noted, the suitability of improvement determination to be made by the zoning board is governed by a test of adequacy of emergency vehicle access as defined in §280-a (5).

Roadway Providing Actual Access: Frontage Not Sufficient

It is important to note that the "roadway providing access" in both requirements outlined above must be the roadway that will actually provide access; Section 280-a focuses on the status and adequacy of the access proposed to actually be used, not merely on the roadway onto which the property fronts. Therefore, a property that has frontage on a fully improved, well-maintained town road must still satisfy the requirements of Section 280-a (or obtain a variance modifying the suitability of improvement requirement) if the access the

First published in the New York Zoning Law and Practice Report, Vol. 11, No. 5, copyright Thomson Reuters. Used with permission.

owner of that property intends to use is through another roadway of qualifying status but unsuitable condition.¹⁷

Failure to Satisfy the Formal Roadway Status Requirement

As noted already, a zoning board of appeals may give relief from the second requirement (by fixing the suitable level of improvement of the roadway). Does the zoning board also have the authority to vary the first requirement of qualifying roadway status? Section 280-a (3)(a) suggests, although the language is not at all clear, that it *might* have that authority. Section 280-a (3) reads, in pertinent part, as follows:

3. The applicant for such a permit may appeal from the decision of the administrative officer having charge of the issue of permits to the board of appeals or other similar board... having the power to make variances or exceptions in zoning regulations for: (a) an exception if the circumstances of the case do not require the structure to be related to existing or proposed streets or highways, and/or (b) an area variance pursuant to section two hundred sixty-seven-b of this chapter, and the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on zoning regulations. The board may in passing on such appeal make any reasonable exception and issue the permit subject to conditions that will protect any future street or highway layout...

Does the grant of authority to the zoning board to “make... an *exception* if the circumstances of the case do not require the structure to be *related to* existing proposed streets or highways” [280-a (3), emphasis added] give the zoning board the authority to relieve an applicant from the requirement that the roadway providing access to a proposed structure be possessed of the required formality? Or is this phrase intended instead to provide additional criteria by which a zoning board should decide whether the level of improvement of a proposed access is *suitable under the circumstances*? There is little law on this

First published in the *New York Zoning Law and Practice Report*, Vol. 11, No. 5, copyright Thomson Reuters. Used with permission.

issue but, based upon what law there is, it appears that the courts view this language as providing criteria for suitable access determinations, and not as a separate grant of authority to forgive the roadway status requirement.¹⁸ It is thus the rule that when the roadway in question does not satisfy the status requirement of Section 280-a, no building permit may be issued for any structure on that property. Is any relief available to the property owner in such circumstances?

OPEN DEVELOPMENT AREAS

The creation of an open development area¹⁹ under Section 280-a (4) allows issuance of building permits for homes on lots that obtain their access by an easement or right-of-way not shown on a filed map rather than by means of a road of the status required by Section 280-a (1). Absent creation of an open development area, the owner of a lot obtaining access by means of a non-qualifying access-way could not (as noted already) obtain a building permit because the first requirement of Section 280-a is not satisfied. It is important to understand this essential difference between 280-a (3) relief [issuance of a variance on condition that a roadway be suitability improved] and 280-a (4) relief [open development area authorization]. The focus is not on whether the access-way is public versus private.²⁰ Instead, the focus is on whether the proposed access-way is a roadway of the requisite status versus an easement or right-of-way that fails to satisfy that roadway status requirement.

What then are the procedural requirements for creation of an open development area? Town Law Section 280-a (4) [which allows the creation of open development areas] requires that the town board seek the *advice* of the planning board before establishing an open development area. The section sets no time period for the planning board to give such advice other than “a reasonable time to report.” Here is the full subparagraph:

4. The town board may, by resolution, establish an open

First published in the New York Zoning Law and Practice Report, Vol. 11, No. 5, copyright Thomson Reuters. Used with permission.

development area or areas within the town, wherein permits may be issued for the erection of structures to which access is given by right of way or easement, upon such conditions and subject to such limitations as may be prescribed by general or special rule of the planning board, if one exists, or of the town board if a planning board does not exist. If a planning board exists in such town, the town board, before establishing any such open development area or areas, shall refer the matter to such planning board for its advice and shall allow such planning board a reasonable time to report.

What should be the content of the planning board's advisory report? The statute provides no particulars. However, because the purpose of Section 280-a is to insure that provision is made for suitable access to land before a building permit is issued, suitability of access will often be the primary focus of the planning board's report. How many lots will be served? Is the easement access proposed of sufficient width and suitable grade? Can it accommodate the traffic anticipated to use it? Can emergency services personnel obtain access to the building or buildings to be constructed? How many lots can the roadway serve? The planning board may also look to the town's comprehensive development plan to see if it offers any guidance.

The planning board is additionally given the authority, under authority of Section 280-a (4), to promulgate "general or special rule[s]" setting "conditions" and "limitations" on the creation and design of open development areas within the town. These rules may presumably, be promulgated in advance in the generic sense ("general" rules) or upon the specific application referred to the planning board ("special" rules) for that particular open development area.

The planning board is bound by Town Law Section 280-a (4) to provide the town board with its advice upon referral; deliver of its "advice" is not optional. Because some of the issues the planning board will likely face will touch upon an examination of the land in question and the nature of the easement itself, the planning board may wish to have the assistance of an engineer or planner in

First published in the New York Zoning Law and Practice Report, Vol. 11, No. 5, copyright Thomson Reuters. Used with permission.

TOWN LAW SECTION 280-A: REQUIREMENTS AND REMEDIES

Section 280-a is an important—yet frequently misunderstood—section within Article 16 [Zoning and Planning] of the Town Law of the State of New York. The section attempts to tie together, insofar as roadways are concerned, the jurisdiction of the building inspector (no building permits may be issued unless the requirements of the section are satisfied), the town board (possessed of the authority to establish town road and private road specifications) and the planning board (charged⁸ with ensuring that roads within subdivisions are adequate to accommodate prospective traffic).

Unfortunately, Section 280-a is a cumbersome and difficult section of law. Its restrictive terms address only the issuance of building permits, yet the section has great importance in the context of subdivision and site plan review as well. Section 280-a announces that its requirements must be met before a building permit may be issued. However, it also provides two potential forms of relief—a 280-a *variance* [subdivision “3”] and creation of an *open development area* [subdivision “4”]—when those requirements are not, or cannot be, met. The variance relief provision pulls in the zoning board of appeals and the open development area provision pulls in both the planning board and town board.

Some planning boards routinely send every applicant proposing a private road in his subdivision to the zoning board of appeals in order to obtain a “280-a variance” due to the private road nature of the application. Is this what Section 280-a requires? If not, when is such a variance required? To answer this question—indeed, to understand Section 280-a at all—it makes sense to begin with the spectrum-like concepts of public roads, private roads, easements and rights-of-way.

First published in the New York Zoning Law and Practice Report, Vol. 11, No. 5, copyright Thomson Reuters. Used with permission.

PUBLIC V. PRIVATE ROADWAY

There is no requirement in the Town Law of the State of New York that roadways in subdivisions be town highways. The phrase, *town highway* means a roadway offered for dedication to the town and, after acceptance, controlled and maintained by the town as a town road. Section 277 (2)(a) of the Town Law does, however, direct that a planning board must ensure that “the streets and highways [in a subdivision] be of sufficient width and suitable grade and [that such roadways shall be suitably located to accommodate the prospective traffic, to afford adequate light and air, to facilitate fire protection, and to provide access of fire fighting equipment to buildings.”

Most local zoning codes echo the approach taken by Section 277, providing that roads *may* be offered for dedication as town roads but not requiring such dedication. A zoning law *requiring* dedication of roadways is not authorized by Section 277 and likely accomplishes a taking of property under the Fifth Amendment to the United States Constitution.⁹ Consistent with this approach, many towns promulgate a hierarchy of road specifications, often providing a less onerous specification for (presumptively less used) private roads. As an example, the zoning chapter in the Town of Monroe (Orange County) code provides, “[i]n the event that any roads are not offered for dedication or are not accepted by the town, [that] suitable legal agreements satisfactory to the Town Board shall be required....” and further provides two tiers for right-of-way widths: 30 feet “for any street not dedicated to the Town of Monroe,” and 50 feet for “[a]ny street dedicated to the Town of Monroe.”

What then is a private road? The term is not defined (or even mentioned) in Section 280-a. A private road is, however, generally understood to be a roadway shown as a road or street on a filed map providing access to lots within a subdivision, which road or street will not be owned or controlled by a municipality. Typically, the owners of properties abutting a private road own to

First published in the New York Zoning Law and Practice Report, Vol. 11, No. 5, copyright Thomson Reuters. Used with permission.

the centerline of that road. A defined strip of that privately owned land at a width sufficient to provide a travelled-way then straddles that line. Within this strip, the roadway itself is constructed. Each owner of property fronting the private road has the right to use the road to access his property. As more fully explained below, utilization of a private road as just described does not itself require relief under Section 280-a of the Town Law of the State of New York; either under the variance provisions of subdivision "3" or under the open development area provisions of subdivision "4."

EASEMENTS AND RIGHTS-OF-WAY

Easements, in the most generic sense, are rights granted to someone to use land that they do not own. A common easement is an access easement, often called a right-of-way.¹⁰ The important concept here is that one having rights under an easement is permitted to use someone else's land for his own purpose. This is, of course, also true of a private road. However, there is an important distinction between a private road and a generic access easement of which a private road is a subclass. While the easement rights are generally recorded in either case, private easements are not shown as streets or roads on subdivision maps filed with the county clerk. Private roads are. Thus, a right-of-way is quite different from a private road, one of the essential characteristics of which is depiction as a roadway on a filed map.

TOWN LAW 280-A ACCESS

Enough background. Now to the issues. What is a 280-a variance? What is an open development area? When is a 280-a variance required? When can one be granted? When is 280-a variance relief unavailable? Under what circumstances must an open development area be created before a lot may receive a building permit?

Status of Roadway

Town Law §280-a is, as noted already, a cumbersome and difficult section of law. The section prohibits issuance of a permit for the erection of a building on any lot in a town unless two requirements are met. First, the street or highway giving access to such proposed building must possess a certain formal status. This first requirement can be satisfied in one of two ways (with the second way having several variations). The first method is direct and simple. If the roadway giving access to the proposed building is a street duly placed on the official map or plan of the town, the requirement of formal status is fully satisfied [§280-a (1)]. If, however, the town has no official plan or map, then the requirement of formal status can only be satisfied under the second method.

Under this method, acceptable roadway status will exist only if:

- such street or highway is an existing state, county or town highway [§280-a (1)(a)], or if
- such street is one shown upon a plat approved by the planning board as provided in sections two hundred seventy-six and two hundred seventy-seven of [the Town Law], as in effect at the time such plat was approved [§280-a (1)(b)], or if
- such street is one shown on a plat duly filed and recorded in the office of the county clerk or register prior to the appointment of such planning board and the grant to such board of the power to approve plats [§280-a (1)(c)].

Note that we look to the bullets above only if the town has no official map. For modern subdivision approvals, this *only-if* rule matters little, for Town Law Section 279 [Subdivision review; record of plats] says, in subparagraph “3” [Effect of filing], that “[a]fter such plat is approved and filed, the streets, highways and parks shown on such plat shall be and become a part of the official map or plan of the town.” While some read “such plat” more broadly as including ancient plats (ones that predate planning boards), such a reading is of doubtful validity. Thus, in a town that has an official plan and map, a roadway shown on an ancient plat but not on that official map, does not satisfy the

First published in the New York Zoning Law and Practice Report, Vol. 11, No. 5, copyright Thomson Reuters. Used with permission.