



Orange County Department of Planning
Application for Mandatory County Review of Local Planning Action
(Variances, Zone Changes, Special Permits, Subdivisions)

To be completed by Local Board having jurisdiction.

To be signed by Local Official.

TONZBA

TOWN OF Newburgh

MUNICIPALITY: ZONING BOARD of Appeals TAX MAP ID: 20-2-30.21
(Section-Block-Lot)

Local File #: _____ Project Name: _____

Applicant: Families for a Better Town of Newburgh Robert Trent, Clarence Brown
for Rosalie De Angelo

Address: 29 Hopeview Court, 32 Hopeview Court, 41 DeVito Drive Newburgh NY

Attorney, Engineer, Architect: _____

Location of Site: 5266 Route 9W (DeVito Drive)
(Street, highway, nearest intersection)

Size of Parcel: 4 acres Existing Lots: _____ Proposed Lots/Units _____

Present Zoning District: B

TYPE OF REVIEW: Interpretation + Reversal of Code Compliance Determinations - see attached

Special Use Permit* (SUP): _____

Variance* USE (VU): _____

AREA (AV): _____

Zone Change* FROM: _____ TO: _____

Zoning Amendment** To Section: _____

Subdivision Major _____ Minor _____

Sketch

Preliminary

Final

DATE: 3/5/12

Grace Cardone

CHAIRPERSON, Signature and Title

ZONING BOARD of Appeals

*Cite Section of Zoning Regulations where pertinent.

FOR COUNTY USE ONLY

County ID # _____



ORIGINAL

APPLICATION TO THE ZONING BOARD OF APPEALS
TOWN OF NEWBURGH

DATED: February 24, 2012

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

I (WE) Families for a Better Town of Newburgh, Robert Trent, Clarence Brown and Rosalie DeAngelo,

PRESENTLY RESIDING AT NUMBER 29 Hopeview Ct., Newburgh New York 12550, 32 Hopeview Ct., Newburgh, New York 12550, 41 DeVito Drive, Newburgh, New York 12550, and 39 DeVito Drive, Newburgh, New York 12550, respectively, all represented by Richard B. Golden, Esq, of Burke, Miele & Golden, LLP, P.O. Box 216, 40 Matthews St., Suite 209, Goshen, New York, 10924.

TELEPHONE NUMBER of attorney Richard B. Golden: 845-294-4080

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

- A USE VARIANCE
AN AREA VARIANCE
X INTERPRETATION OF THE ORDINANCE
ACCESSORY APARTMENT
X OTHER (REVERSAL OF DETERMINATIONS OF

GERALD CANFIELD, ALL INVOLVING SANTA MONICA HOLDINGS, LLC PROPERTY, (1) THAT AN ADULT USE ENTERTAINMENT IS A VALID ACCESSORY, OR OTHERWISE PERMISSIBLE, USE TO AN "EATING AND DRINKING PLACE," AS SET FORTH IN HIS WRITTEN DETERMINATION DATED AUGUST 5, 2010 AND ADDRESSED TO JOHN P. EWASUTYN (ENCLOSED), ESPECIALLY WITHOUT ANY PARTICULARIZED TOWN-WIDE SURVEY SUPPORTING THE GENERALIZED CONCLUSION OF THE PROPRIETY OF AN ENTERTAINMENT USE AS AN ACCEPTSSORY USE, AND CONTRARY TO THE FACTS THAT SUCH ADULT USE IS NEITHER "CLEARLY . . . SUBORDINATE" OR "CLEARLY INCIDENTAL" TO THE PRINCIPAL USE, (2) THAT AN ACCESSORY OR OTHERWISE PERMISSIBLE ADULT ENTERTAINMENT USE CAN SUBSTANTIALLY ECLIPSE, OR BE A SUBSTANTIAL PART OF, AN OTHERWISE VALID EATING AND DRINKING PLACE USE, AS IT IS NEITHER "CLEARLY . . . SUBORDINATE" OR "CLEARLY INCIDENTAL" TO THE PRINCIPAL USE (TOWN CODE §185-3(B) ["Accessory" and "Accessory Use"], (3) ALLOWING WORK TO BE PERFORMED AT THE SITE WITHOUT A CLEARING AND GRADING PERMIT, WHILE CLEARING AND GRADING PERMITS HAVE BEEN REQUIRED FOR OTHER PROJECTS ONLY ACHIEVING SITE PLAN APPROVAL (SEE TOWN CODE §§ 83-6, -7), AND (4) IN NOT ISSUING A STOP WORK ORDER FOR THE WORK BEING PERFORMED AT THE SITE THAT IS IN FURTHERANCE OF AN ILLEGAL OR PRE-EXISTING, NON-CONFORMING ADULT ENTERTAINMENT USE. (SEE TOWN CODE §§ 71-12, 185-33 ["PROHIBITED USE"] AND 185-19(A)(1))).

APPELLANTS TRENT, BROWN AND DEANGELO HAVE STANDING TO FILE THIS APPEAL AS THEY ARE ALL AGRIEVED PERSONS IN ACCORDANCE WITH N.Y. TOWN LAW § 267-A(4) AND TOWN CODE § 185-55, OWING TO, INTER ALIA, THE CLOSE PROXIMITY OF THEIR RESIDENCES TO THE SUBJECT SANTA MONICA HOLDINGS, LLC PROPERTY. THE APPELLANT ASSOCIATION FAMILIES FOR A BETTER TOWN OF NEWBURGH HAS STANDING AS EACH OF THE OTHER APPELLANTS ARE MEMBERS OF THIS ASSOCIATION, THE ASSOCIATION'S INTERESTS ARE SOLELY WITH RESPECT TO THE PROPER AND CONSTITUTIONAL LIMITATION OF ADULT USES IN THE TOWN OF NEWBURGH, AND NEITHER THE ASSERTED CLAIMS IN THE APPEAL, NOR THE RELIEF REQUESTED, REQUIRES THE PARTICIPATION OF ITS INDIVIDUAL MEMBERS. *SEE, E.G., SOCIETY OF PLASTICS INDUS. V. COUNTY OF SUFFOLK, 77 N.Y.2D 761, 776 (1991).*

1. LOCATION OF THE PROPERTY:

SECTION 20, BLOCK 2, LOT 30.²₁ (TAX MAP DESIGNATION)

5266 Route 9W, Newburgh N.Y. 12550 (STREET ADDRESS)

Presently Designated by the Town as "B" (ZONING DISTRICT)

*Bob
3-5-12*

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

Town Code §§ 185-3(B) ["Accessory" and "Accessory Use"], 83-6, 83-7(P), 185-33 ["Prohibited Use"], 185-19(A)(1), 71-12, and "Table of Use and Bulk Requirements B District – Schedule 7."

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: ___ N/A ___

b) OR DENIAL (REFERRAL) BY THE PLANNING BOARD OF THE TOWN OF NEWBURGH OF AN APPLICATION TO THE BOARD, SEE ACCOMPANYING NOTICE DATED: ___ N/A ___

4. DESCRIPTION OF VARIANCE SOUGHT: _____ N/A _____

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: _____ N/A _____

(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: ___ N/A ___
- c) THE VARIANCE WOULD NOT ALTER THE ESSENTIAL CHARACTER OF THE NEIGHBORHOOD BECAUSE: ___ N/A ___
- d) THE HARDSHIP HAS NOT BEEN SELF-CREATED BECAUSE: N/A

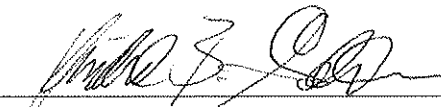
6. IF AN AREA VARIANCE IS REQUESTED:

- a) THE VARIANCE WILL NOT PRODUCE AN UNDESIRABLE CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD OR A DETRIMENT TO NEARBY PROPERTIES BECAUSE: ___ N/A ___
- 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: N/A
- c) THE REQUESTED AREA VARIANCE IS NOT SUBSTANTIAL BECAUSE: ___ N/A ___
- d) THE PROPOSED VARIANCE WILL NOT HAVE AN ADVERSE EFFECT OR IMPACT ON THE PHYSICAL OR ENVIRONMENTAL CONDITIONS IN THE NEIGHBORHOOD OR DISTRICT BECAUSE: ___ N/A ___
- e) THE HARDSHIP HAS NOT BEEN SELF CREATED BECAUSE: N/A

7. ADDITIONAL REASONS (IF PERTINENT): None presently, but reserve right to supplement this application during appeal.

Families for a Better Town of Newburgh, Robert Trent, Clarence Brown and Rosalie DeAngelo,

By Proxy:



Richard B. Golden, Esq.
PETITIONER (S) SIGNATURE

STATE OF NEW YORK: COUNTY OR ORANGE:

SWORN TO THIS 24th DAY OF February ²⁰¹²~~2009~~

DONNA E. ROE
Notary Public, State of New York
No. 01805963896
Qualified in Orange County
Commission expires January 2, 2014

Donna E. Roe
NOTARY PUBLIC

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.

TOWN OF NEWBURGH

Crossroads of the Northeast

OLD TOWN HALL
308 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550

CODE COMPLIANCE DEPT.
TELEPHONE 845-564-7801
FAX LINE 845-564-7802

August 5, 2010

BY HAND DELIVERY

John P. Ewasutyn, Planning Board Chairman

Town of Newburgh Planning Board

Town of Newburgh

308 Gardnertown Road

Newburgh, New York 12550

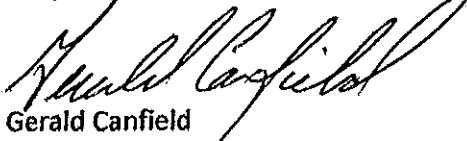
Re: Santa Monica Holdings

Dear John:

Section 185-3 of the Code defines "EATING AND DRINKING PLACE" as "[a] business establishment serving food or drink to be consumed primarily on the premises or within a food court area of a shopping center. . . ." An Eating and Drinking Place is a use permitted subject to site plan approval in the B District. The existing establishment falls within this definition.

The Town of Newburgh has customarily permitted various forms of entertainment and leisure activities and diversions to be offered at business establishments serving food or drink. These include, but are not limited to, musical performances, comedy performances, dancing, juke boxes, games such as pool and darts, and televisions with sports and other programming. The Town's Comprehensive Plan recommends the examination of negative secondary effects of "adult uses" and, if warranted, the establishment of a definition and regulations. To date, this has not been undertaken.

Very truly yours,



Gerald Canfield


Appendix C

State Environmental Quality Review

SHORT ENVIRONMENTAL ASSESSMENT FORM

For UNLISTED ACTIONS Only

PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)

1. APPLICANT/SPONSOR Families for a Better Town of Newburgh, etc.	2. PROJECT NAME Santa Monica Holdings, LLC
3. PROJECT LOCATION: Municipality Town of Newburgh County Orange	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) 5266 Route 9W, Newburgh, New York (Section 20, Block 2, Lot 30.21)	
5. PROPOSED ACTION IS: <input type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration Appeal from Code Compliance Officer determinations	
6. DESCRIBE PROJECT BRIEFLY: This application is an appeal to the Zoning Board of Appeals from an interpretation by the Town Code Compliance Officer and from said Officer's determinations allowing project work to proceed without permits.	
7. AMOUNT OF LAND AFFECTED: Initially +/- 2.71 acres Ultimately +/- 2.71 acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input type="checkbox"/> Yes <input type="checkbox"/> No If No, describe briefly Not applicable. This is an appeal from an interpretation by the Town Code Compliance Officer, etc.	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input checked="" type="checkbox"/> Residential <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other Describe: The property is located in the Town's B District ("Business District").	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, list agency(s) name and permit/approvals:	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, list agency(s) name and permit/approvals: Not applicable.	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: FAMILIES FOR A BETTER TOWN OF NEWBURGH, BLOCK 2, LOT 30.21, Date: 2.23.12 Signature: 	

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment

OVER

1

Reset

PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4? If yes, coordinate the review process and use the FULL EAF.

Yes No

B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency.

Yes No

C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)

C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:
No.

C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:
No.

C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:
No.

C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:
No.

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:
No.

C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:
No.

C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly:
None.

D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?

Yes No If Yes, explain briefly:

E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?

Yes No If Yes, explain briefly:

PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)

INSTRUCTIONS: For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question D of Part II was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

Check this box if you have identified one or more potentially large or significant adverse impacts which **MAY** occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.

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 **AND** provide, on attachments as necessary, the reasons supporting this determination.

Town of Newburgh Zoning Board of Appeals

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)

Reset

TOWN OF NEWBURGH
ZONING BOARD OF APPEALS

PROXY

CLARENCE BROWN, DEPOSES AND SAYS THAT

HE/SHE RESIDES AT 41 DEVITO DR., TOWN OF NEWBURGH

IN THE COUNTY OF ORANGE AND STATE OF NEW YORK

AND THAT HE/SHE IS THE OWNER IN FEE OF ^{AN AGGRIEVED PERSON AND MEMBER OF FAMILIES FOR A PERIOD TOWN OF NEWB.} ~~CONCERNING DECISIONS, INTERPRETATIONS,~~
~~AND DETERMINATIONS MADE BY THE TOWN CODE COMPLIANCE DEPT. AND/OR BUILDING~~
AND CODE ENFORCEMENT OFFICER AS TO 5266 ROUTE 9W, TOWN OF NEWBURGH
(TOWN TAX MAP SECTION 20, BLOCK 2, LOT 30.21)

WHICH IS THE PREMISES DESCRIBED IN THE FOREGOING APPLICA-

TION AND THAT HE/SHE HAS AUTHORIZED RICHARD B. GOLDEN, ESQ.

TO MAKE THE FOREGOING APPLICATION AS DESCRIBED THEREIN.

DATED: 2/12/12 Clarence L. Brown

OWNER'S SIGNATURE

[Handwritten Signature]

WITNESS' SIGNATURE

STATE OF NEW YORK: COUNTY OF ORANGE:

SWORN TO THIS 12TH DAY OF FEBRUARY 20 12

[Handwritten Signature]
RICHARD B. GOLDEN
NOTARY PUBLIC STATE OF N.Y.
NO. 02604764316
QUALIFIED IN ORANGE CO.
COMMISSION EXPIRES

TOWN OF NEWBURGH
ZONING BOARD OF APPEALS

PROXY

ROSANIE DEANGELO, DEPOSES AND SAYS THAT

HE/SHE RESIDES AT 39 DEVITO DR., TOWN OF NEWBORGH

IN THE COUNTY OF ORANGE AND STATE OF NEW YORK

AND THAT HE/SHE IS THE OWNER IN FEE OF AN ACQUIRED PERSON AND MEMBER OF FAMILIES FOR A BETTER TOWN OF NEWBORGH, CONCERNING DECISIONS, INTERPRETATIONS, AND DETERMINATIONS MADE BY THE TOWN CODE COMPLIANCE DEPT. AND/OR BUILDING AND CODE ENFORCEMENT OFFICER AS TO 5266 ROUTE 9K, TOWN OF NEWBORGH

(TOWN TAX MAP SECTION 20, BLOCK 2, LOT 30.21)
WHICH IS THE PREMISES DESCRIBED IN THE FOREGOING APPLICA-

TION AND THAT HE/SHE HAS AUTHORIZED RICHARD B. GOLDEN, ESQ.

TO MAKE THE FOREGOING APPLICATION AS DESCRIBED THEREIN.

DATED: 2/12/12 *Regina DeLuzo*

OWNER'S SIGNATURE

[Handwritten Signature]

WITNESS' SIGNATURE

STATE OF NEW YORK: COUNTY OF ORANGE:

SWORN TO THIS 12TH DAY OF FEBRUARY 20 12

[Handwritten Signature]

RICHARD B. GOLDEN
NOTARY PUBLIC, STATE OF NY.
NO. 02604766886
QUALIFIED IN ORANGE CO.
COMMISSION EXPIRES 11.17.14

TOWN OF NEWBURGH
ZONING BOARD OF APPEALS

PROXY

ROBERT TRENT, DEPOSES AND SAYS THAT

HE/SHE RESIDES AT 32 HOPEVIEW CT., TOWN OF NEWBURGH

IN THE COUNTY OF ORANGE AND STATE OF NEW YORK

AND THAT HE/SHE IS ^{AN ACCRUEVED PERSON AND HOLDER OF FINANCIAL BENEFIT FROM} ~~THE OWNER IN FEE OF~~ CONCERNING DECISIONS, INTERPRETATIONS, AND DETERMINATIONS MADE BY TOWN CODE COMPLIANCE DEPT. AND/OR BUILDING AND CODE ENFORCEMENT OFFICER AS TO 5266 ROUTE 9W, TOWN OF NEWBURGH (TOWN TAX MAP SECTION 20, BLOCK 2, LOT 30.21) WHICH IS THE PREMISES DESCRIBED IN THE FOREGOING APPLICA-

TION AND THAT HE/SHE HAS AUTHORIZED RICHARD B. GOLDEN, ESQ.

TO MAKE THE FOREGOING APPLICATION AS DESCRIBED THEREIN.

DATED: 2/12/2012 

OWNER'S SIGNATURE


WITNESS' SIGNATURE

STATE OF NEW YORK: COUNTY OF ORANGE:

SWORN TO THIS 12th DAY OF FEBRUARY 20 12



RICHARD B. GOLDEN
NOTARY PUBLIC, STATE OF N.Y.

No. 02604766386
REGISTERED IN ORANGE CO.
COMMISSION EXPIRES 11.17.14

20-2-30.21
5266 Route 9W

SECTION 23

SECTION 24

SECTION 26

SECTION 25

25

