



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

To be completed by Local Board having jurisdiction.

To be signed by Local Official.

TONZBA

TOWN OF Newburgh

96-1-6, 7, 8, 9, 11.1

MUNICIPALITY: ZONING BOARD of Appeals TAX MAP ID: 95-1-37.2 36
(Section-Block-Lot)

Local File #: _____

Project Name: Shoppes at Union Square

Applicant: G D P Amodio

Address: PO Box 55 145 Otterkill Road, Mountainville NY 10953

Attorney, Engineer, Architect: Langan, Engineer

Location of Site: Union Avenue (Rte 300) & Oak Avenue
(Street, highway, nearest intersection)

Size of Parcel: 11.39 acres Existing Lots: _____ Proposed Lots/Units _____

Present Zoning District: IB

TYPE OF REVIEW:

[] Special Use Permit* (SUP): _____

[x] Variance* USE (VU): _____

AREA (AV): varying area variances for front, and side yards setbacks, lot surface coverage, total signage to build a commercial (retail) & restaurant (existing) space. (variances ZBA granted 11/24/2009)

[] Zone Change* FROM: _____ TO: _____

[] Zoning Amendment** To Section: _____

[] Subdivision Major _____ Minor _____

[] Sketch [] Preliminary [x] Final

DATE: 2/7/12

Grace Cardone

CHAIRPERSON, Signature and Title
ZONING BOARD of Appeals

*Cite Section of Zoning Regulations where pertinent.

FOR COUNTY USE ONLY

County ID # _____

GDP AMODEO PARTNERS, LLC

c/o Goddard Development Partners, LLC

P.O. Box 55

145 Otterkill Road

Mountainville, NY 10953

Tel.: 845-534-0100

Fax: 845-534-0101

January 24, 2011

Hon. Grace Cardone and Members
Town of Newburgh Zoning Board of Appeals
308 Gardnertown Road
Newburgh, NY 12550

Re: The Shoppes at Union Square

Dear Chairperson Cardone and Zoning Board Members:

On November 24, 2009 the ZBA granted area variances for the above referenced project. On May 21, 2010 the ZBA granted a six month extension of those area variances. Construction has not been commenced on the project. Consequently, the variances expired as of November 24, 2010.

This application requests re-approval and reinstatement of the requested variances. Toward that end, enclosed please find a completed application and the following accompanying documents:

- A receipt in the amount of \$200.00 issued by the Town Clerk
- The Planning Board referral dated August 21, 2009
- Eleven copies of the plot plan (site plan), drawn to scale
- Certified copies of the deeds of the property affected by the variances
- The assessors list of property owners within 500 feet of the property
- 8 photographs taken at different angles including an aerial view.
- A long environmental assessment form
- Proxy statements from each property owner
- The ZBA's prior decision granting the same variances.


Please be advised that there have been **no** changes to the site plan upon which these variances were previously granted. The only change in circumstances has been that the Planning Board authorized phasing of the project and consolidation of the various individual lots has been approved by the Planning Board. The consolidated deed has been submitted for recording and a copy is attached. None of these changed circumstances impact or otherwise affect the request the variances whatsoever.

Hon. Grace Cardone and Members
January 20, 2012
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We request you place this matter on the February agenda of the ZBA for review and action.

If you have any questions or require any additional information in the interim, please do not hesitate to contact our office.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Adrian Goddard', written in a cursive style.

Adrian Goddard

cc: Larry Wolinsky, Esq.
[pp/amodeo/zba/jan2012/transltr]

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: _____
- b) OR DENIAL (REFERRAL) BY THE PLANNING BOARD OF THE TOWN OF NEWBURGH OF AN APPLICATION TO THE BOARD, SEE ACCOMPANYING NOTICE DATED: August 21, 2009

4. DESCRIPTION OF VARIANCE SOUGHT:

Variances being requested are as follows:

- a) Variance to Code 185-11, Bulk Table, Schedule 8, IB District (D)(2)&(3) varying the minimum front yard requirement from 60' to 55.7' abutting Route 300 where the existing building already has this variance. This application seeks merely to reaffirm this variance as requested by the Planning Board attorney as was done in this Board's July 24, 2008 decision.
- b) Variance to Code 185-11, Bulk Table, Schedule 8, IB District (D)(2)&(3) varying the minimum front yard requirement from 50' to 36.5' abutting Orr Avenue where the existing building already has this variance. The Planning Board has designated Orr Avenue a side yard. Please note that 185-17 designates that front yard setbacks are required on both street frontages of corner lots. If this setback were treated as a front setback instead of a side setback, the variance would be from 60' to 36.5'. This application seeks merely to reaffirm this variance as requested by the Planning Board attorney as was done in this Board's July 24, 2008 decision.
- c) Variance to Code 185-11, Bulk Table, Schedule 8, IB District (D)(2)&(3) varying the minimum side yard requirement from 50' to 0' abutting former lot 96-1-9. This is an increase of eight tenths of one foot from the variance granted by the Board on July 24, 2008.
- d) Variance to Code 185-11, Bulk Table, Schedule 8, IB District (D)(2)&(3) varying the minimum side yard from 50' to 5' in the area of the proposed Shoprite grocery store (lots 95-1-36, 95-1-37.2). This side yard adjoins the Lowe's parcel.

- e) Variance to Code 185-11, Bulk Table, Schedule 8, IB District (D)(2)&(3) varying the minimum side yard from 50' to 40.3'. This yard adjoins lot 95-1-35.
- f) Variance to Code 185-11, Bulk Table, Schedule 8, IB District (D)(2) & (3) varying the minimum lot surface coverage requirement from 80% to 89.8% on lot 96-1-11.1 (Cosimo's). This is an increase of 0.5% from the variance granted by the Board on July 24, 2008.
- g) Variance to Code 185-14 varying the area of signs permitted from 904 square feet of signage to a total of 1333.5 square feet of signage and varying the size of a directional sign from 3 feet to 35 feet. Please see the annexed signage schedule for a complete list of each proposed 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:
Not Applicable
(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:
Not Applicable
- c) THE VARIANCE WOULD NOT ALTER THE ESSENTIAL CHARACTER OF THE NEIGHBORHOOD BECAUSE:
Not Applicable
- d) THE HARDSHIP HAS NOT BEEN SELF-CREATED BECAUSE:
Not Applicable

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 proposed shopping center is located on Route 300, a well established commercial corridor. The shopping center includes the integrated development of two parcels. The first parcel consists of an existing restaurant located on lot 96-1-11.1 ("Cosimo's"). Of the variances

requested all but two of the variances pertain to this parcel. The remaining side yard variances relate to a parcel containing 6 lots to be consolidated which are approved by the Planning Board for a grocery store. Given the site's location in a commercial corridor; (b) the fact that several of the variances requested are for existing buildings or are incorporated entirely within the proposed shopping center; (c) the fact that the overall lot and surface coverage of the shopping center as a whole are in compliance with zoning; and (d) the grocery store for which a side variance is required adjoins an existing large commercial retailer (Lowe's) with an integrated traffic pattern, the variances requested will not produce an undesirable change in the character of the neighborhood.

- 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:

The owner of the Cosimo's parcel, CPK Union, LLC, requires continued individual ownership of its parcel for financing requirements. Therefore, lot consolidation is not possible. Without the ability to consolidate the lots, the newly requested variances cannot be avoided. The location of the grocery store building is driven by the existing wetlands and the stream corridor running through the property. The location of the building minimizes wetland disturbance while allowing for the required infrastructure and parking area.

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

The variances have no substantial physical or environmental impact. All but two of the variances are a result of CPK Union's ownership requirements of the Cosimo's parcel or the existing building on site. While the variances appear substantial in quantity, the variances are not substantial in effect because they are completely contained within the overall site, having no impact on exterior lots.

Although the variance adjoining the Lowe's parcel is substantial in quantity, it is not substantial in effect due to the fact that the neighboring property is existing commercial retail use of similar scale to the proposed grocery store and will include integrated traffic flow. The side yard variance of 9.7 feet is not substantial due to the fact that this small variance will enable less disturbance of the wetland area and stream corridor.

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

The area is already predominantly commercial. The area variances relating to the grocery store will minimize wetland and stream corridor disturbance providing a positive effect. The variances relating to the Cosimo's parcel are related to the ownership requirements of CPK Union. These are entirely within the integrated shopping center development.

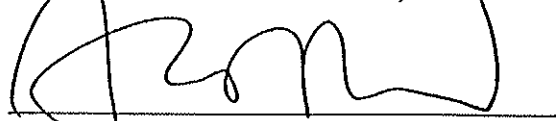
- e) THE HARDSHIP HAS NOT BEEN SELF CREATED BECAUSE:
The need for variances relating to the Cosimo's parcel is driven by the requirement of CPK to continue to own its own parcel as well as the existing building onsite. The variance relating to the grocery store is required due to the existing wetlands including the stream corridor on the property. The building location is driven by the need to avoid the wetland areas while including required infrastructure and parking area.

The Town Comprehensive Plan acknowledges that the current regulations for permitted signage are inadequate to meet the needs of today's national retailers. The applicant is proposing a signage in conformance with what is normally required to attract retail tenants in today's market.

7. ADDITIONAL REASONS (IF PERTINENT):

The ZBA has previously granted variances on November 24, 2009. The total number of variances required for this project remain the same.

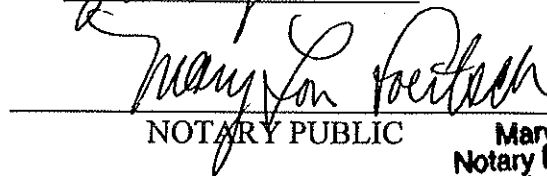
GDP AMODEO PARTNERS, LLC



By: Adrian Goddard

STATE OF NEW YORK:
COUNTY OF ORANGE:

SWORN TO THIS 23RD DAY OF January 2012



NOTARY PUBLIC

Mary Lou Foertsch
Notary Public, State of NY, *Wester Co*
Regis. #01F0466981
Comm. Expires 03/30/14

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
ZONING BOARD OF APPEALS

PROXY

OPK Union, LLC by Nicola Citera, DEPOSES AND SAYS THAT
HE/SHE RESIDES AT 1217 Route 300, Newburgh, NY 12550
IN THE COUNTY OF ORANGE AND STATE OF NEW YORK
AND THAT HE/SHE IS THE OWNER IN FEE OF TAX LOT SECTION 96, Block
1, LOT 11.1 - 1217 ROUTE 300, NEWBURGH, NY
WHICH IS THE PREMISES DESCRIBED IN THE FOREGOING APPLICA-
TION AND THAT HE/SHE HAS AUTHORIZED GDP Amadeo Partners, LLC
TO MAKE THE FOREGOING APPLICATION AS DESCRIBED THEREIN.

DATED: 1/19/12

Nicola Citera

OWNER'S SIGNATURE

Massanda Marlowe

WITNESS' SIGNATURE

STATE OF NEW YORK: COUNTY OF ORANGE:

SWORN TO THIS 19 DAY OF January 2012

Wanda J. McCarthy

NOTARY PUBLIC

WANDA J MCCARTHY
Lic. #01MC6230091
Notary Public-State of New York
Qualified in DUTCHESS
My Commission Expires 11/01/2014

TOWN OF NEWBURGH
ZONING BOARD OF APPEALS

PROXY

Union, LLC by Thomas & Gabriela Amodeo, DEPOSES AND SAYS THAT
HE/SHE RESIDES AT 14 Stern Drive, Newburgh, NY 12550
IN THE COUNTY OF Orange AND STATE OF NEW YORK
AND THAT HE/SHE IS THE OWNER IN FEE OF Tax lots 96-1-6, 96-1-7,
96-1-8, 96-1-9, 95-1-37.2 and 95-1-36

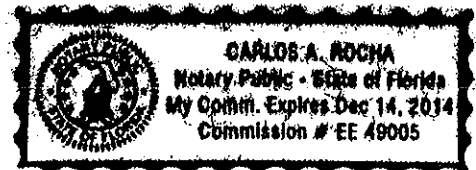
WHICH IS THE PREMISES DESCRIBED IN THE FOREGOING APPLICA-
TION AND THAT HE/SHE HAS AUTHORIZED GDP Amodeo Partners, LLC
TO MAKE THE FOREGOING APPLICATION AS DESCRIBED THEREIN.

DATED: 1-18-12 Gloria E. Amodeo
~~Memo J. Amodeo~~
OWNER'S SIGNATURE

[Signature]
WITNESS' SIGNATURE

Florida Orange
STATE OF NEW YORK; COUNTY OF ORANGE:
SWORN TO THIS 18th DAY OF January 2012

[Signature]
NOTARY PUBLIC



617.20
Appendix A
State Environmental Quality Review
FULL ENVIRONMENTAL ASSESSMENT FORM

Purpose: The full EAF is designed to help applicants and agencies determine, in an orderly manner, whether a project or action may be significant. The question of whether an action may be significant is not always easy to answer. Frequently, there are aspects of a project that are subjective or unmeasurable. It is also understood that those who determine significance may have little or no formal knowledge of the environment or may not be technically expert in environmental analysis. In addition, many who have knowledge in one particular area may not be aware of the broader concerns affecting the question of significance.

The full EAF is intended to provide a method whereby applicants and agencies can be assured that the determination process has been orderly, comprehensive in nature, yet flexible enough to allow introduction of information to fit a project or action.

Full EAF Components: The full EAF is comprised of three parts:

- Part 1: Provides objective data and information about a given project and its site. By identifying basic project data, it assists a reviewer in the analysis that takes place in Parts 2 and 3.
- Part 2: Focuses on identifying the range of possible impacts that may occur from a project or action. It provides guidance as to whether an impact is likely to be considered small to moderate or whether it is a potentially-large impact. The form also identifies whether an impact can be mitigated or reduced.
- Part 3: If any impact in Part 2 is identified as potentially-large, then Part 3 is used to evaluate whether or not the impact is actually important.

THIS AREA FOR LEAD AGENCY USE ONLY

DETERMINATION OF SIGNIFICANCE -- Type 1 and Unlisted Actions

Identify the Portions of EAF completed for this project:

Part 1

Part 2

Part 3

Upon review of the information recorded on this EAF (Parts 1 and 2 and 3 if appropriate), and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the lead agency that:

- A. The project will not result in any large and important impact(s) and, therefore, is one which will not have a significant impact on the environment, therefore a negative declaration will be prepared.
- B. Although the project could have a significant effect on the environment, there will not be a significant effect for this Unlisted Action because the mitigation measures described in PART 3 have been required, therefore a **CONDITIONED** negative declaration will be prepared.*
- C. The project may result in one or more large and important impacts that may have a significant impact on the environment, therefore a positive declaration will be prepared.

*A Conditioned Negative Declaration is only valid for Unlisted Actions

The Shoppes at Union Square

Name of Action

Name of Lead Agency

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)

Date

PART 1--PROJECT INFORMATION

Prepared by Project Sponsor

NOTICE: This document is designed to assist in determining whether the action proposed may have a significant effect on the environment. Please complete the entire form, Parts A through E. Answers to these questions will be considered as part of the application for approval and may be subject to further verification and public review. Provide any additional information you believe will be needed to complete Parts 2 and 3.

It is expected that completion of the full EAF will be dependent on information currently available and will not involve new studies, research or investigation. If information requiring such additional work is unavailable, so indicate and specify each instance.

Name of Action The Shoppes at Union Square

Location of Action (include Street Address, Municipality and County)

Northwest of the intersection of NYS Route 300 and Orr Avenue Town of Newburgh, Orange County, NY

Name of Applicant/Sponsor GDP Amodeo Partners, LLC

Address PO Box 55

City / PO Mountainville State NY Zip Code 10953

Business Telephone 845-534-0100

Name of Owner (if different) See Attached

Address _____

City / PO _____ State _____ Zip Code _____

Business Telephone _____

Description of Action:

The proposed development will consist of constructing a total of +/- 93,922 square feet of commercial retail space in three buildings. The buildings consist of one 71,000 sf retail building, one 18,102 sf retail building, and one 4,820 sf commercial addition to the existing Cosimo's restaurant at the corner of Route 300 and Orr Avenue. Along with the commercial retail space and the development includes associative site improvements including retaining walls, a stormwater conveyance system, utilities to service the buildings (water, sanitary, sewer, gas, electric and telephone) and a parking field for the development.

Please Complete Each Question--Indicate N.A. if not applicable

A. SITE DESCRIPTION

Physical setting of overall project, both developed and undeveloped areas.

1. Present Land Use: Urban Industrial Commercial Residential (suburban) Rural (non-farm)
 Forest Agriculture Other Undeveloped Commercial Property

2. Total acreage of project area: 11.39 acres.

APPROXIMATE ACREAGE	PRESENTLY	AFTER COMPLETION
Meadow or Brushland (Non-agricultural)	<u>2.36</u> acres	<u>2.36</u> acres
Forested	<u>6.91</u> acres	<u>0.87</u> acres
Agricultural (Includes orchards, cropland, pasture, etc.)	_____ acres	_____ acres
Wetland (Freshwater or tidal as per Articles 24,25 of ECL)	_____ acres	_____ acres
Water Surface Area	_____ acres	_____ acres
Unvegetated (Rock, earth or fill)	_____ acres	_____ acres
Roads, buildings and other paved surfaces	<u>1.34</u> acres	<u>7.48</u> acres
Other (Indicate type) <u>ACOE Regulated Wetlands</u>	<u>0.78</u> acres	<u>0.68</u> acres

3. What is predominant soil type(s) on project site? Erie

- a. Soil drainage: Well drained _____% of site Moderately well drained 100 % of site.
 Poorly drained _____% of site

b. If any agricultural land is involved, how many acres of soil are classified within soil group 1 through 4 of the NYS Land Classification System? _____ acres (see 1 NYCRR 370).

4. Are there bedrock outcroppings on project site? Yes No

a. What is depth to bedrock >5 (in feet)

5. Approximate percentage of proposed project site with slopes:

- 0-10% 84 % 10- 15% 7 % 15% or greater 9 %

6. Is project substantially contiguous to, or contain a building, site, or district, listed on the State or National Registers of Historic Places? Yes No

7. Is project substantially contiguous to a site listed on the Register of National Natural Landmarks? Yes No

8. What is the depth of the water table? >5 (in feet)

9. Is site located over a primary, principal, or sole source aquifer? Yes No

10. Do hunting, fishing or shell fishing opportunities presently exist in the project area? Yes No

11. Does project site contain any species of plant or animal life that is identified as threatened or endangered? Yes No

According to:

A letter dated 1/30/2007 from the NYSDEC Natural Heritage Program listed the Upland Sandpiper (*Bartramia Longicauda*) at or in the vicinity of the project site.

Identify each species:

Carpenter Environmental Associates (CEA), environmental consultant for the applicant, did not encounter habitat that would support foraging or nesting Upland Sandpipers during any site visits to the subject property. Furthermore, the NYSDEC 2000-2005 Breeding Bird Atlas did not identify this species within or adjacent to the subject property.

12. Are there any unique or unusual land forms on the project site? (i.e., cliffs, dunes, other geological formations?)

Yes No

Describe:

13. Is the project site presently used by the community or neighborhood as an open space or recreation area?

Yes No

If yes, explain:

14. Does the present site include scenic views known to be important to the community? Yes No

15. Streams within or contiguous to project area:

Unnamed tributary to the Brookside Pond

a. Name of Stream and name of River to which it is tributary

Unnamed tributary to the Brookside Pond

16. Lakes, ponds, wetland areas within or contiguous to project area:

0.78 +/- acres of ACOE regulated wetlands

b. Size (in acres):

0.78 +/- acres of ACOE regulated wetlands

17. Is the site served by existing public utilities? Yes No
- a. If YES, does sufficient capacity exist to allow connection? Yes No
- b. If YES, will improvements be necessary to allow connection? Yes No
18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? Yes No
19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 617? Yes No
20. Has the site ever been used for the disposal of solid or hazardous wastes? Yes No

B. Project Description

1. Physical dimensions and scale of project (fill in dimensions as appropriate).

- a. Total contiguous acreage owned or controlled by project sponsor: 11.39 acres.
- b. Project acreage to be developed: 9.5 acres initially; 9.5 acres ultimately.
- c. Project acreage to remain undeveloped: 1.9 acres.
- d. Length of project, in miles: N/A (if appropriate)
- e. If the project is an expansion, indicate percent of expansion proposed. 0 %
- f. Number of off-street parking spaces existing 44 ; proposed 453
- g. Maximum vehicular trips generated per hour: 289 (upon completion of project)? (New Trips)
- h. If residential: Number and type of housing units: N/A

	One Family	Two Family	Multiple Family	Condominium
Initially	_____	_____	_____	_____
Ultimately	_____	_____	_____	_____

- i. Dimensions (in feet) of largest proposed structure: 40 ft height; 285 ft width; 243.2 ft length.
- j. Linear feet of frontage along a public thoroughfare project will occupy is? 1883 +/- ft.

2. How much natural material (i.e. rock, earth, etc.) will be removed from the site? 30,000 tons/cubic yards. +/-
3. Will disturbed areas be reclaimed Yes No N/A

a. If yes, for what intended purpose is the site being reclaimed?

- b. Will topsoil be stockpiled for reclamation? Yes No
- c. Will upper subsoil be stockpiled for reclamation? Yes No

4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from site? 6.04 acres.

5. Will any mature forest (over 100 years old) or other locally-important vegetation be removed by this project?

Yes No

6. If single phase project: Anticipated period of construction: 18 months, (including demolition)

7. If multi-phased:

a. Total number of phases anticipated 1 (number)

b. Anticipated date of commencement phase 1: 03 month 2010 year, (including demolition)

c. Approximate completion date of final phase: 09 month 2011 year.

d. Is phase 1 functionally dependent on subsequent phases? Yes No

8. Will blasting occur during construction? Yes No

9. Number of jobs generated: during construction 50 +/- ; after project is complete 200 +/-

10. Number of jobs eliminated by this project 0 .

11. Will project require relocation of any projects or facilities? Yes No

If yes, explain:

12. Is surface liquid waste disposal involved? Yes No

a. If yes, indicate type of waste (sewage, industrial, etc) and amount _____

b. Name of water body into which effluent will be discharged _____

13. Is subsurface liquid waste disposal involved? Yes No Type _____

14. Will surface area of an existing water body increase or decrease by proposal? Yes No

If yes, explain:

15. Is project or any portion of project located in a 100 year flood plain? Yes No

16. Will the project generate solid waste? Yes No

a. If yes, what is the amount per month? +/- 10 tons

b. If yes, will an existing solid waste facility be used? Yes No

c. If yes, give name Orange County Transfer Station ; location Orange County, NY

d. Will any wastes not go into a sewage disposal system or into a sanitary landfill? Yes No

e. If yes, explain:

17. Will the project involve the disposal of solid waste? Yes No

a. If yes, what is the anticipated rate of disposal? _____ tons/month.

b. If yes, what is the anticipated site life? _____ years.

18. Will project use herbicides or pesticides? Yes No

19. Will project routinely produce odors (more than one hour per day)? Yes No

20. Will project produce operating noise exceeding the local ambient noise levels? Yes No

21. Will project result in an increase in energy use? Yes No

If yes, indicate type(s)

Electric and Natural Gas

22. If water supply is from wells, indicate pumping capacity _____ gallons/minute.

23. Total anticipated water usage per day 15,000 gallons/day. +/-

24. Does project involve Local, State or Federal funding? Yes No

If yes, explain:

25. Approvals Required:

			Type	Submittal Date
City, Town, Village Board	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
City, Town, Village Planning Board	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Site Plan Approval Architectural Review Board	
City, Town Zoning Board	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Variance Modifications	
City, County Health Department	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	OCHD Connection Review	
Other Local Agencies	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Other Regional Agencies	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
State Agencies	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	NYS DOT NYS DEC NOI	
Federal Agencies	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	ACOE Nationwide Permit No 39 and ACOE Jurisdictional Determination	JD Rec'd 10/31/08

C. Zoning and Planning Information

1. Does proposed action involve a planning or zoning decision? Yes No

If Yes, indicate decision required:

- | | | | |
|---|---|--|--------------------------------------|
| <input type="checkbox"/> Zoning amendment | <input checked="" type="checkbox"/> Zoning variance | <input type="checkbox"/> New/revision of master plan | <input type="checkbox"/> Subdivision |
| <input checked="" type="checkbox"/> Site plan | <input type="checkbox"/> Special use permit | <input type="checkbox"/> Resource management plan | <input type="checkbox"/> Other |

2. What is the zoning classification(s) of the site?

IB - Interchange Business

3. What is the maximum potential development of the site if developed as permitted by the present zoning?

133,424 square feet of commercial retail development

4. What is the proposed zoning of the site?

N/A

5. What is the maximum potential development of the site if developed as permitted by the proposed zoning?

N/A

6. Is the proposed action consistent with the recommended uses in adopted local land use plans? Yes No

7. What are the predominant land use(s) and zoning classifications within a ¼ mile radius of proposed action?

Predominant land use surrounding the property is primarily commercial retail development with old commercially zoned residential uses.

8. Is the proposed action compatible with adjoining/surrounding land uses with a ¼ mile? Yes No

9. If the proposed action is the subdivision of land, how many lots are proposed? N/A

a. What is the minimum lot size proposed? N/A

10. Will proposed action require any authorization(s) for the formation of sewer or water districts? Yes No

11. Will the proposed action create a demand for any community provided services (recreation, education, police, fire protection)?

Yes No

a. If yes, is existing capacity sufficient to handle projected demand? Yes No

12. Will the proposed action result in the generation of traffic significantly above present levels? Yes No

a. If yes, is the existing road network adequate to handle the additional traffic. Yes No

With the completion of improvements including signalization

D. Informational Details

Attach any additional information as may be needed to clarify your project. If there are or may be any adverse impacts associated with your proposal, please discuss such impacts and the measures which you propose to mitigate or avoid them.

E. Verification

I certify that the information provided above is true to the best of my knowledge.

Applicant/Sponsor Name GDP Amodeo Partners, LLC Date _____

Signature _____

Title _____

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

PART 2 - PROJECT IMPACTS AND THEIR MAGNITUDE

Responsibility of Lead Agency

General Information (Read Carefully)

- ! In completing the form the reviewer should be guided by the question: Have my responses and determinations been reasonable? The reviewer is not expected to be an expert environmental analyst.
- ! The Examples provided are to assist the reviewer by showing types of impacts and wherever possible the threshold of magnitude that would trigger a response in column 2. The examples are generally applicable throughout the State and for most situations. But, for any specific project or site other examples and/or lower thresholds may be appropriate for a Potential Large Impact response, thus requiring evaluation in Part 3.
- ! The impacts of each project, on each site, in each locality, will vary. Therefore, the examples are illustrative and have been offered as guidance. They do not constitute an exhaustive list of impacts and thresholds to answer each question.
- ! The number of examples per question does not indicate the importance of each question.
- ! In identifying impacts, consider long term, short term and cumulative effects.

Instructions (Read carefully)

- a. Answer each of the 20 questions in PART 2. Answer Yes if there will be any impact.
- b. Maybe answers should be considered as Yes answers.
- c. If answering Yes to a question then check the appropriate box(column 1 or 2)to indicate the potential size of the impact. If impact threshold equals or exceeds any example provided, check column 2. If impact will occur but threshold is lower than example, check column 1.
- d. Identifying that an Impact will be potentially large (column 2) does not mean that it is also necessarily significant. Any large impact must be evaluated in PART 3 to determine significance. Identifying an impact in column 2 simply asks that it be looked at further.
- e. If reviewer has doubt about size of the impact then consider the impact as potentially large and proceed to PART 3.
- f. If a potentially large impact checked in column 2 can be mitigated by change(s) in the project to a small to moderate impact, also check the Yes box in column 3. A No response indicates that such a reduction is not possible. This must be explained in Part 3.

	1	2	3
	Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

Impact on Land

1. Will the Proposed Action result in a physical change to the project site?

NO YES

Examples that would apply to column 2

- | | | | | |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Any construction on slopes of 15% or greater, (15 foot rise per 100 foot of length), or where the general slopes in the project area exceed 10%. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction on land where the depth to the water table is less than 3 feet. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction of paved parking area for 1,000 or more vehicles. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction on land where bedrock is exposed or generally within 3 feet of existing ground surface. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction that will continue for more than 1 year or involve more than one phase or stage. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Excavation for mining purposes that would remove more than 1,000 tons of natural material (i.e., rock or soil) per year. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Construction or expansion of a sanitary landfill.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Construction in a designated floodway.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

2. Will there be an effect to any unique or unusual land forms found on the site? (i.e., cliffs, dunes, geological formations; etc.)

NO YES

• Specific land forms:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

Impact on Water

3. Will Proposed Action affect any water body designated as protected? (Under Articles 15, 24, 25 of the Environmental Conservation Law, ECL)

NO YES

Examples that would apply to column 2

• Developable area of site contains a protected water body.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Dredging more than 100 cubic yards of material from channel of a protected stream.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Extension of utility distribution facilities through a protected water body.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Construction in a designated freshwater or tidal wetland.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

4. Will Proposed Action affect any non-protected existing or new body of water?

NO YES

Examples that would apply to column 2

• A 10% increase or decrease in the surface area of any body of water or more than a 10 acre increase or decrease.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Construction of a body of water that exceeds 10 acres of surface area.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

1	2	3
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

6. Will Proposed Action alter drainage flow or patterns, or surface water runoff?

NO YES

Examples that would apply to column 2

- | | | | | |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Proposed Action would change flood water flows | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action may cause substantial erosion. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action is incompatible with existing drainage patterns. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will allow development in a designated floodway. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

IMPACT ON AIR

7. Will Proposed Action affect air quality?

NO YES

Examples that would apply to column 2

- | | | | | |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Proposed Action will induce 1,000 or more vehicle trips in any given hour. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will result in the incineration of more than 1 ton of refuse per hour. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Emission rate of total contaminants will exceed 5 lbs. per hour or a heat source producing more than 10 million BTU's per hour. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will allow an increase in the amount of land committed to industrial use. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will allow an increase in the density of industrial development within existing industrial areas. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

IMPACT ON PLANTS AND ANIMALS

8. Will Proposed Action affect any threatened or endangered species?

NO YES

Examples that would apply to column 2

- | | | | | |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Reduction of one or more species listed on the New York or Federal list, using the site, over or near the site, or found on the site. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Removal of any portion of a critical or significant wildlife habitat.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Application of pesticide or herbicide more than twice a year, other than for agricultural purposes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

9. Will Proposed Action substantially affect non-threatened or non-endangered species?
 NO YES

Examples that would apply to column 2

• Proposed Action would substantially interfere with any resident or migratory fish, shellfish or wildlife species.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Proposed Action requires the removal of more than 10 acres of mature forest (over 100 years of age) or other locally important vegetation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

IMPACT ON AGRICULTURAL LAND RESOURCES

10. Will Proposed Action affect agricultural land resources?
 NO YES

Examples that would apply to column 2

• The Proposed Action would sever, cross or limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Construction activity would excavate or compact the soil profile of agricultural land.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• The Proposed Action would irreversibly convert more than 10 acres of agricultural land or, if located in an Agricultural District, more than 2.5 acres of agricultural land.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• The Proposed Action would disrupt or prevent installation of agricultural land management systems (e.g., subsurface drain lines, outlet ditches, strip cropping); or create a need for such measures (e.g. cause a farm field to drain poorly due to increased runoff).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

IMPACT ON AESTHETIC RESOURCES

11. Will Proposed Action affect aesthetic resources? (If necessary, use the Visual EAF Addendum in Section 617.20, Appendix B.)

NO YES

Examples that would apply to column 2

• Proposed land uses, or project components obviously different from or in sharp contrast to current surrounding land use patterns, whether man-made or natural.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Proposed land uses, or project components visible to users of aesthetic resources which will eliminate or significantly reduce their enjoyment of the aesthetic qualities of that resource.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Project components that will result in the elimination or significant screening of scenic views known to be important to the area.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

IMPACT ON HISTORIC AND ARCHAEOLOGICAL RESOURCES

12. Will Proposed Action impact any site or structure of historic, prehistoric or paleontological importance?

NO YES

Examples that would apply to column 2

• Proposed Action occurring wholly or partially within or substantially contiguous to any facility or site listed on the State or National Register of historic places.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Any impact to an archaeological site or fossil bed located within the project site.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Proposed Action will occur in an area designated as sensitive for archaeological sites on the NYS Site Inventory.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

IMPACT ON OPEN SPACE AND RECREATION

13. Will proposed Action affect the quantity or quality of existing or future open spaces or recreational opportunities?
 NO YES

Examples that would apply to column 2

- | | | | |
|---|--------------------------|--------------------------|--|
| • The permanent foreclosure of a future recreational opportunity. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • A major reduction of an open space important to the community. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

IMPACT ON CRITICAL ENVIRONMENTAL AREAS

14. Will Proposed Action impact the exceptional or unique characteristics of a critical environmental area (CEA) established pursuant to subdivision 6NYCRR 617.14(g)?
 NO YES

List the environmental characteristics that caused the designation of the CEA.

Examples that would apply to column 2

- | | | | |
|---|--------------------------|--------------------------|--|
| • Proposed Action to locate within the CEA? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will result in a reduction in the quantity of the resource? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will result in a reduction in the quality of the resource? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will impact the use, function or enjoyment of the resource? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
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IMPACT ON TRANSPORTATION

15. Will there be an effect to existing transportation systems?

NO YES

Examples that would apply to column 2

- | | | | | |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Alteration of present patterns of movement of people and/or goods. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will result in major traffic problems. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

IMPACT ON ENERGY

16. Will Proposed Action affect the community's sources of fuel or energy supply?

NO YES

Examples that would apply to column 2

- | | | | | |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Proposed Action will cause a greater than 5% increase in the use of any form of energy in the municipality. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two family residences or to serve a major commercial or industrial use. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

NOISE AND ODOR IMPACT

17. Will there be objectionable odors, noise, or vibration as a result of the Proposed Action?

NO YES

Examples that would apply to column 2

- | | | | | |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Blasting within 1,500 feet of a hospital, school or other sensitive facility. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Odors will occur routinely (more than one hour per day). | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will produce operating noise exceeding the local ambient noise levels for noise outside of structures. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will remove natural barriers that would act as a noise screen. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Proposed Action will set an important precedent for future projects.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Proposed Action will create or eliminate employment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

20. Is there, or is there likely to be, public controversy related to potential adverse environment impacts?

NO YES

If Any Action in Part 2 Is Identified as a Potential Large Impact or If you Cannot Determine the Magnitude of Impact, Proceed to Part 3

Part 3 - EVALUATION OF THE IMPORTANCE OF IMPACTS

Responsibility of Lead Agency

Part 3 must be prepared if one or more impact(s) is considered to be potentially large, even if the impact(s) may be mitigated.

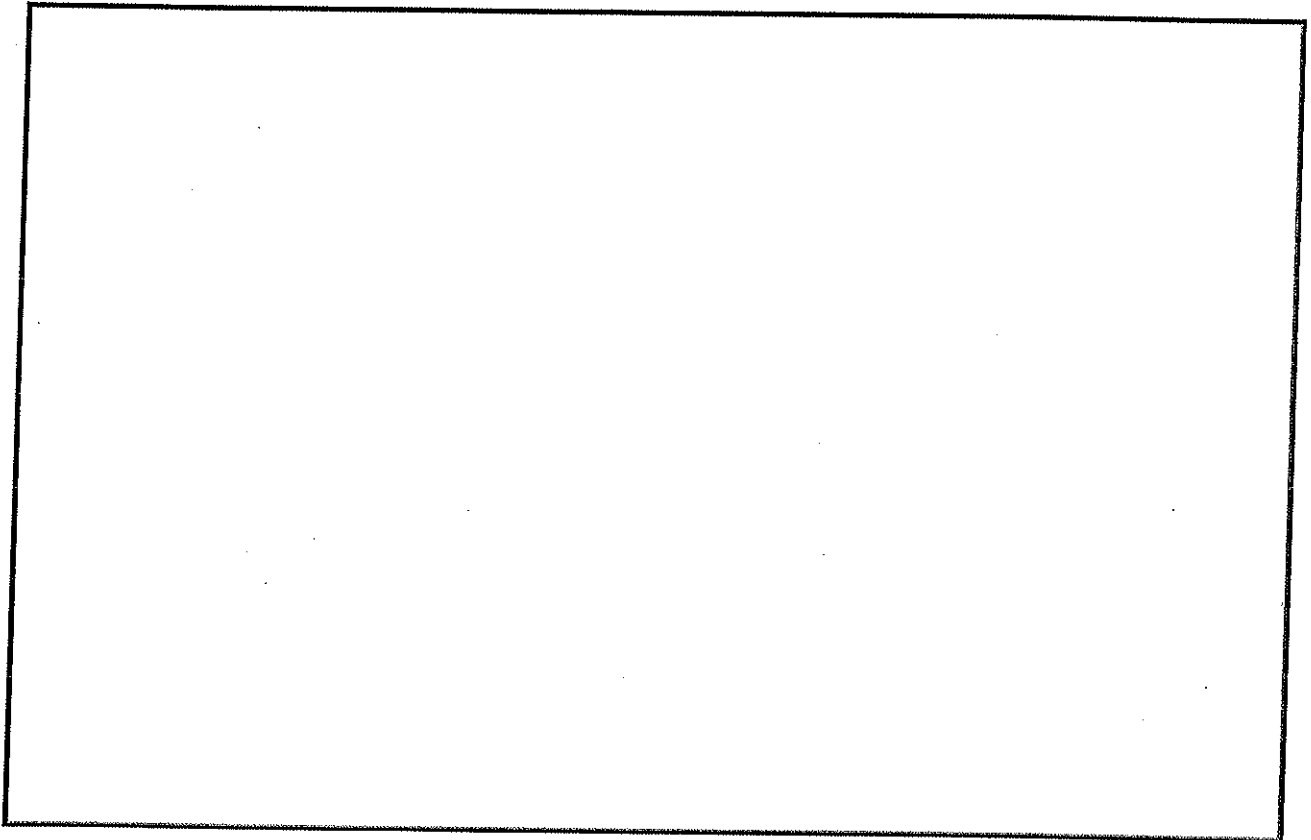
Instructions (If you need more space, attach additional sheets)

Discuss the following for each impact identified in Column 2 of Part 2:

1. Briefly describe the impact.
2. Describe (if applicable) how the impact could be mitigated or reduced to a small to moderate impact by project change(s).
3. Based on the information available, decide if it is reasonable to conclude that this impact is important.

To answer the question of importance, consider:

- ! The probability of the impact occurring
- ! The duration of the impact
- ! Its irreversibility, including permanently lost resources of value
- ! Whether the impact can or will be controlled
- ! The regional consequence of the impact
- ! Its potential divergence from local needs and goals
- ! Whether known objections to the project relate to this impact.



Dickover, Donnelly, Donovan & Biagi, LLP
Attorneys and Counselors at Law

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(Not for Service of Process)

August 21, 2009

Town of Newburgh
Zoning Board of Appeals
308 Gardnertown Road
Newburgh, New York 12550

RE: Shoppes @ Union Square (07.05)
Route 300/Orr Avenue (96-1-6, 7, 8, 9 & 11.1 and 95-1-37.2 & 36)
IB Zoning District

Union ORR LLC

Members of the Board:

I write to you as the attorney for the Town of Newburgh Planning Board. The above referenced applicant has applied to planning board for approval of a amended site plan allowing development of commercial (retail) and restaurant space on the property referenced above. A portion of the land to be developed is already improved by a Cosimo's restaurant. The restaurant building on that lot is non-complying as to bulk in several respects. You had earlier granted variances to this applicant after finding that protection for this existing non-compliance was lost by what was proposed.

The applicant has now submitted an amended proposal that changes the configuration of both the Cosimo's portion of the site and the balance as well. Revised (and additional) variances will now be required for the Cosimo's lot and for the commercial lot as well. Therefore, the planning board now has asked me to write in order to refer this matter to you for consideration of several area variances as follows:

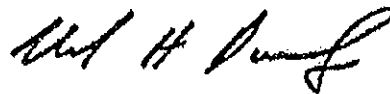
- Reaffirmation of the Front Yard Setback variances earlier granted (existing

Cosimo's);

- Side Yard Setback (existing Cosmio's);
- Side Yard Setback (proposed Shoprite);
- Lot Surface Coverage (Cosimo's);
- Signage (Site wide).

Thank you.

Very truly yours,



MICHAEL H. DONNELLY

MHD/lrm

Cc: Town of Newburgh Planning Board
308 Gardnertown Road
Newburgh, NY 12550

Tilford Stitele
Code Compliance
308 Gardnertown Road
Newburgh, NY 12550

Langan Engineering & Environmental Services
River Drive Center 1
Elmwoods Park, NJ 07407

Adrian Goddard
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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

February 8, 2010

GDP AMODEO PARTNERS, LLC
PO BOX 55
145 OTTERKILL ROAD
MOUNTAINVILLE, NY 10953

RE: UNION AVENUE & ORR AVENUE, NEWBURGH
(96-1-11.1, 6,7,8,9 & 95-1-37.2, 36) IB ZONE

Dear GDP Amodeo Partners, LLC. :

This letter is to advise you that the Zoning Board of Appeals has reached its decision and resolution on your request for a variance to build a commercial (retail) and restaurant (existing) space.

The Decision and Resolution is good for six months after the date it was reached.

Enclosed please find your copy of the "Decision". If you have any questions please call this office.

Very truly yours,



Betty Gennarelli, Secretary
Zoning Board of Appeals

/BG
Encl

Section 96, Block 1, Lots 6, 7, 8, 9 & 11.1

Section 95, Block 1, Lots 37.2 & 36

TOWN OF NEWBURGH: COUNTY OF ORANGE
ZONING BOARD OF APPEALS

-----X
In the Matter of the Application of

GDP AMODEO PARTNERS, LLC¹

DECISION

For area variances as follows:

- *Variance to Code §185-11, Bulk Table, Schedule 8, IB District (D)(2) & (3) varying the minimum front yard requirement from 60' to 55.7' abutting Route 300 where the existing building already has this variance. This application seeks merely to reaffirm this variance as requested by the Planning Board attorney as was done in this Board's July 24, 2008 decision.*
- *Variance to Code §185-11, Bulk Table, Schedule 8, IB District (D)(2) & (3) varying the minimum front yard requirement from 50' to 36.5' abutting Orr Avenue where the existing building already has this variance. The Planning Board has designated Orr Avenue a side yard. This application seeks merely to reaffirm this variance as requested by the Planning Board attorney as was done in this Board's July 24, 2008 decision;*
- *Variance to Code §185-11, Bulk Table, Schedule 8, IB District (D)(2) & (3) varying the minimum side yard requirement from 50' to 0' abutting former lot 96-1-9. This is*

¹ This Board, by decision dated July 24, 2008 granted a series of area variances to the applicant. As a result of market conditions, the applicant has submitted a revised site plan to the Planning Board. The Planning Board has again referred this matter to our Board. Seven variances are identified in the Planning Board referral. While all seven variances are identified in the caption, four of the variances identified were addressed in our July 24, 2008 decision. Three new variances, two relating to side yard reductions and one related to signs, are requested in this most recent referral.

an increase of eight tenths of one foot from the variance granted by the board on July 24, 2008;

- *Variance to Code §185-11, Bulk Table, Schedule 8, IB District (D)(2) & (3) varying the minimum side yard from 50' to 5' in the area of the proposed Shoprite grocery store (lots 95-1-36, 95-1-37.2);*
- *Variance to Code §185-11, Bulk Table, Schedule 8, IB District (D)(2) & (3) varying the minimum side yard from 50' to 40.3'. This yard adjoins lot 95-1-35;*
- *Variance to Code §185-11, Bulk Table, Schedule 8, IB District (D)(2) & (3) varying the maximum lot surface coverage requirements from 80% to 89.8 on lot 96-1-11.1 (Cosimo's). This is an increase of 0.5% from the variance granted by the Board on July 24, 2008;*
- *Variance to Code §185-14 varying the area of signs permitted from 904 square feet of signage to a total of 1,333.5 square feet of signage and varying the size of a directional sign from 3 feet to 35 feet.*
- -----X

Introduction

GDP Amodeo Partners, LLC is the applicant in connection with a series of area variances requested for certain real property located along Union Avenue (New York State Route 300) and Orr Avenue. The area variances requested are as follows: (a) Variance to Code §185-11, Bulk Table, Schedule 8, IB District (D)(2) & (3) varying the minimum side yard requirement from 30' to 0.8' abutting lot 96-1-7 where "Proposed Retail E will be constructed; (b) Variance to Code §185-11, Bulk Table, Schedule 8, IB District (D)(2) & (3) varying the minimum rear yard requirement from 60' to 19.7' abutting lot 95-1-37.2 where "Proposed

Retail D" will be constructed; (c) Variance to Code §185-11, Bulk Table, Schedule 8, IB District (D)(2) & (3) varying the maximum lot building coverage requirements from 17,511 sq. ft. to 17,573 sq.ft; and (d) Variance to Code §185-11, Bulk Table, Schedule 8, IB District (D)(2) & (3) varying the maximum lot surface coverage requirements from 35,022 to 43,778 sq.ft.

The property is known and designated on the Town tax map as Section 95, Block 1, Lots 36 and 37.2 and Section 96, Block 1, Lots 6, 7, 8, 9 and 11.1.

GDP Amodeo Partners, LLC has made application to the Town of Newburgh Planning Board seeking site plan approval to develop the aforementioned premises by constructing an addition to the existing building wherein the Cosmos restaurant is located as well as constructing 4 additional buildings which will be a mix of restaurant and retail uses. The premises are located in the IB Zoning District. The uses proposed are permitted in the zoning district.

A public hearing was held on November 24, 2009, notice of which was published in *The Mid-Hudson Times* and *The Sentinel* and mailed to adjoining property owners as required by Code.

As a preliminary matter, we note that the Planning Board in its referral of this matter to our Board requests that the variances heretofore given in our decision of July 24, 2008 be "reaffirmed." We do so at this time. The reasons set forth in our decision of July 24, 2008 are incorporated herein by reference in support of the reaffirmance of the variances heretofore given. In this regard, we further specifically reference footnote 1 to our July 24, 2008 decision and reaffirm that the front yard variances on Route 300 and on Orr Avenue are not required for the reasons provided in that decision.

Further, we note that two other modifications proposed by the applicant, while slightly increasing the degree of the area variances previously sought, are *de minimus* increases. First, in our earlier decision, the Board issued a side yard

variance reducing the minimum permitted side yard of 50 feet to 0.8 feet. The applicant now seeks a further reduction from 0.8 to 0 feet. Second, our earlier decision allowed a permitted lot surface coverage of 89.3%. The applicant now requests a total lot surface coverage of 89.8%.² This Board finds that the *de minimus* increase in the side yard and lot coverage variance requests fall within the parameters of the July 24, 2008 decision issued by this Board and the issuance of those variances are therefore reaffirmed herein for the reasons set forth in that prior decision.

This decision, therefore, will focus on the three new variances requested, two of which are side yard variances (seeking a variance from 50 feet to 5 feet and from 50 feet to 40.3 feet) and for total signage (seeking a total of 1,333.5 square feet of signs whereas the maximum permitted is 904 square feet and seeking a 35-foot directional sign whereas the maximum permitted is 3 feet).

Law

Section 185-11 of the Code of Ordinances of the Town of Newburgh [Zoning], entitled "Utilization of Bulk Table," requires compliance with the bulk regulations set forth in the bulk and use schedules set forth within the zoning ordinance.

Section 185-14 of the Code of Ordinances of the Town of Newburgh [Zon-

² The Board notes the receipt of the Orange County Planning Department's mandatory review of local planning action in connection with the lot surface coverage issue. The report need not be considered by the Board in that its delivery was untimely. (See New York State General Municipal Law Section 239-l, m and n). Nevertheless, we pause merely to comment on the County's recommendation of disapproval for the lot surface coverage issue. Curiously, the County does not address their prior letter, issued in connection with the 2008 application which found that all of the variances, including the lot surface variance, were for "local determination." In that the total increase in surface coverage as compared to the 2008 decision is less than 1%, we can find no basic difference on the issue of lot coverage between the 2008 application and the 2009 application. Moreover, the Planning Board Engineer has heretofore determined that all appropriate issues attendant to lot coverage have been satisfactorily addressed by the applicant. The concerns raised by the County appear to be not only untimely but unwarranted as well.

ing], entitled "Sign Regulations," requires compliance with the bulk regulations set forth in the bulk and use schedules set forth within the zoning ordinance

Background

After receiving all the materials presented by the applicant and hearing the testimony of Larry Wolinsky, Esq., the applicant's attorney, at the public hearing, held before the Zoning Board of Appeals on November 24, 2009, the Board makes the following findings of fact:

1. The applicant seeks a series of area variances from the Town of Newburgh Zoning Board of Appeals regarding certain real property identified herein consisting of 11.39 +/- total acre for a mixed retail and restaurant use on property located on Union Avenue (New York State Route 300) and Orr Avenue.
2. The premises are improved by an existing Cosmos restaurant as well as with existing retail uses. The applicant proposes to construct an addition to the existing building as well as construct 4 other structures. As identified herein, certain area variances will be required.
3. The applicants' proposal is set forth on a set of plans prepared by Langan Engineering & Surveying. Those plans are hereby incorporated into this decision and a set shall remain in the zoning board's file in this matter.
4. The required, existing and proposed dimensions (in feet) and the extent of the variances requested are as follows:

Bulk Requirement	Allowance	Existing	Proposed	Variance	Percentage
Side Yard Setback	50%		45'		90%

Sideyard Setback	50	40.3	9.7	19.4%
Total Storage	904 S.F.	1336 S.F.	429.5 S.F.	47.6%
Directional Sign	3 S.F.	39 S.F.	32 S.F.	106.7%

- Members of the public were heard during the public hearing. Their concerns related to existing adverse drainage conditions. The general concern was that the proposed new construction would exacerbate this existing condition.

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 an unlisted action under the State Environmental Quality Review Act. The Town Planning Board has heretofore issued a negative declaration for the site plan after conducting an uncoordinated review. This Board, after conducting its own uncoordinated review hereby adopts a negative declaration and thereby determines that this action- seeking four area variances - will have no significant adverse impact upon the environment.

GML 239 Referral

This application has been referred to the Orange County Planning Department for review and report. Their response was untimely and was therefore not considered by the Board.

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 property which is the subject of this application is located in the B Zoning District. All of the uses proposed by the applicant are permitted uses in the B Zoning District. Additionally, the area which surrounds the property, which property located at the corner of Union Avenue (New York State Route 300) and Orr Avenue, is a well-established commercial corridor. Construction of additional retail and restaurant uses within this well-established corridor will be consistent with the character of the neighborhood and will not produce any undesirable change in that neighborhood nor cause any detriment to any nearby properties.

The overwhelming majority of the signage proposed is internal to the site. The applicant and its consultants have demonstrated that the majority of the internal signage will not be visible to the general public unless they are within the propose shopping center.

No contrary testimony or evidence was adduced at the hearing.

Accordingly, the Board finds that the issuance of the requested variances will not result in any undesirable change to the neighborhood nor will it cause any detriment to any nearby properties.

(2) Need for Variance

The applicant has demonstrated to the Board that issuance of the two side yard variances are the only method feasible for the applicant to pursue to obtain the relief they seek.

With regard to the application for the sign variance, the Board finds that

the applicable portions of the Town Code, see Section 185-14(B)(1)(c), are inadequate to meet the needs for required traffic movements, way-finding and store identification. In order to accomplish these legitimate objectives, the Board finds that the signage variance herein granted is the minimum necessary to afford the applicant the relief needed.

(3) Substantial Nature of Variances Requested

When viewed from a purely mathematical computation point of view the variances sought are substantial. However, the overall effect of the variances, if granted, is insubstantial when the entire shopping complex is viewed as a whole.

(4) Adverse Physical & Environmental Effects

During the course of the public hearing, an adjoining property owner testified as to an existing adverse drainage condition. This resident raised a concern that the new construction might exacerbate this existing condition.

Initially, the Board notes that the existing adverse condition has no relationship to the variances requested by the applicant. Nevertheless, the Board inquired if the applicant would cooperate with the Town Engineer to review the condition identified by the neighbor. The applicant consented and as a result a field investigation was performed by the offices of McGoey, Hauser & Edsall, Consulting Engineers, P.C., on behalf of the Town of Newburgh, together with Langan Engineering on behalf of the applicant. The results of this field investigation are set forth in a memorandum dated July 23, 2008 which memorandum is attached to and made part of this Decision. Essentially, the Town's consultant determined that the applicant's project "will not significantly impact drainage tributary to the resident's culvert." This finding notwithstanding, the Town's consultant

did identify certain items which the applicants have voluntarily agreed to perform to improve the overall drainage situation.

No other adverse physical or environmental effects were indentified.

(5) Self-Created Difficulty

The need for this variance is clearly self-created in the sense that the applicant submitted their application charged with the knowledge of the existing Town Zoning Regulations. However, the fact that the hardship may be self-created is not a bar to issuance of the relief herein requested.

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 area 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 pursuit 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: November 24, 2009



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 Brenda Drake
Member Ronald Hughes
Member John McKelvey
Member Ruth Eaton

NAYS: Member James Manley
Member Michael Maher

ABSENT: None

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 maintained in the office of the Town of Newburgh Zoning Board of Appeals, said resulting from a vote having been taken by the Zoning Board at a meeting of said Board held on November 24, 2009.



BETTY GENNARELLI, SECRETARY

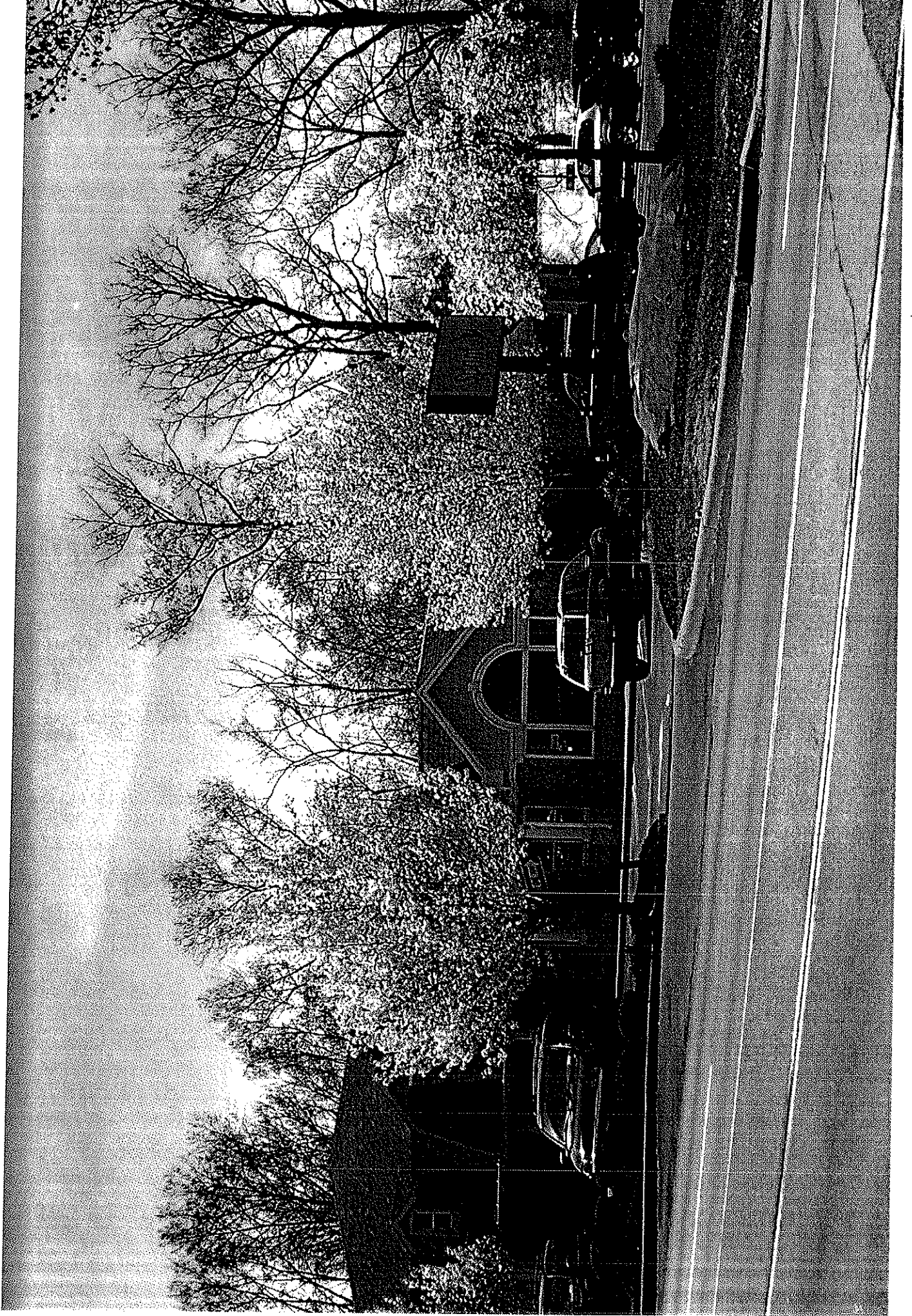
TOWN OF NEWBURGH ZONING BOARD OF APPEALS

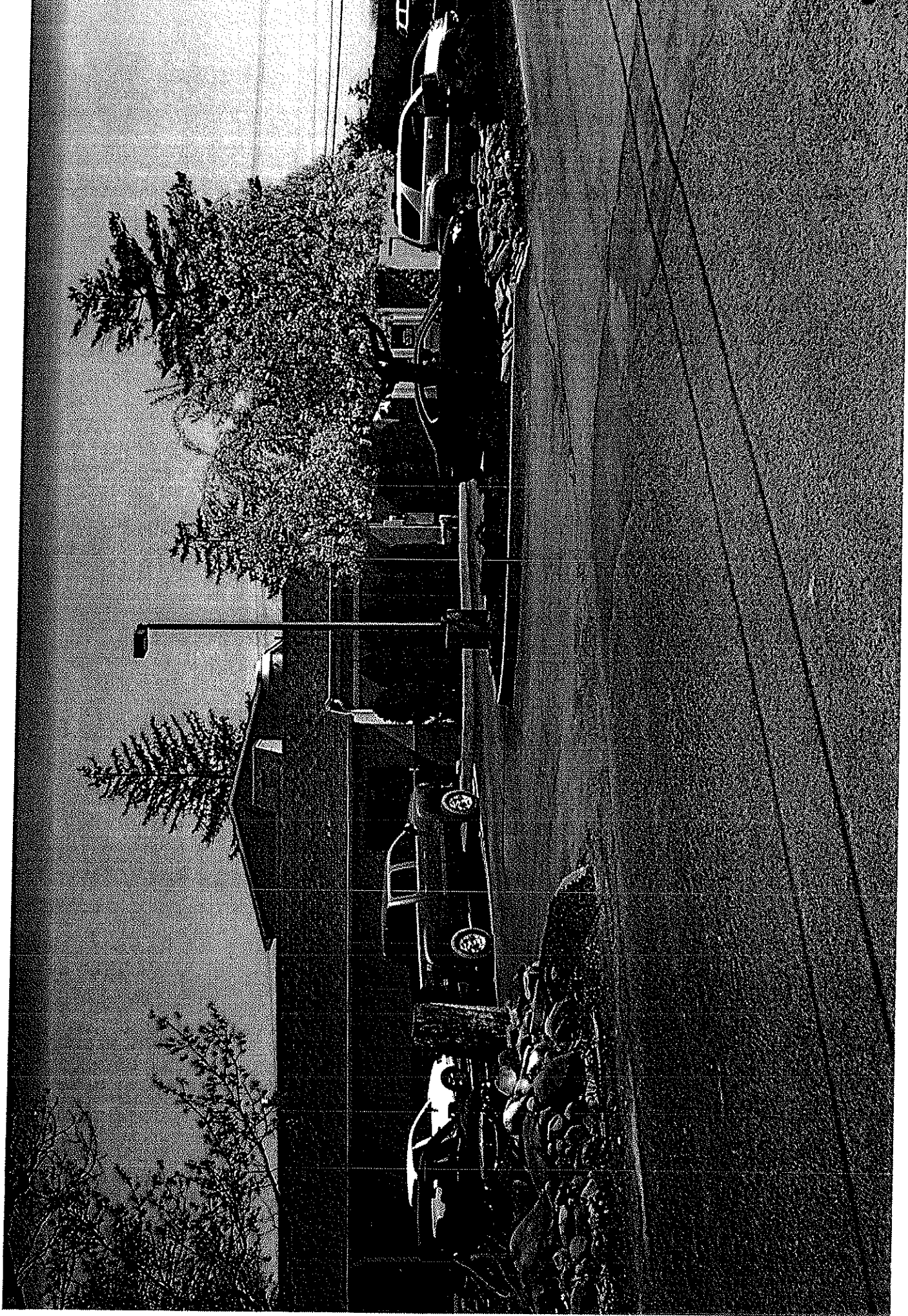
I, ANDREW J. ZARUTSKIE, Clerk of the Town of Newburgh, do hereby certify that the foregoing Decision was filed in the Office of the Town Clerk on
FEB - 5 2010.

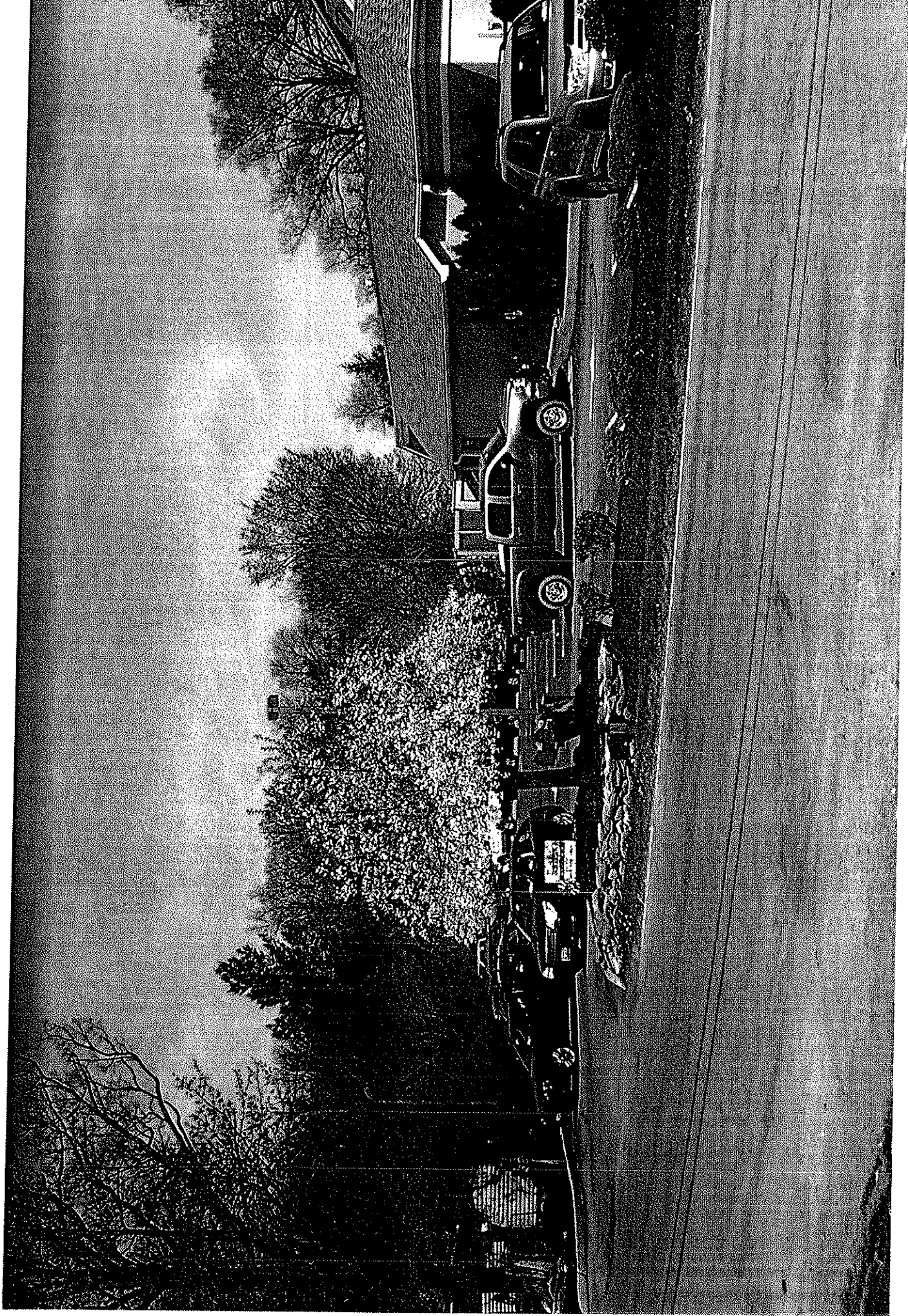


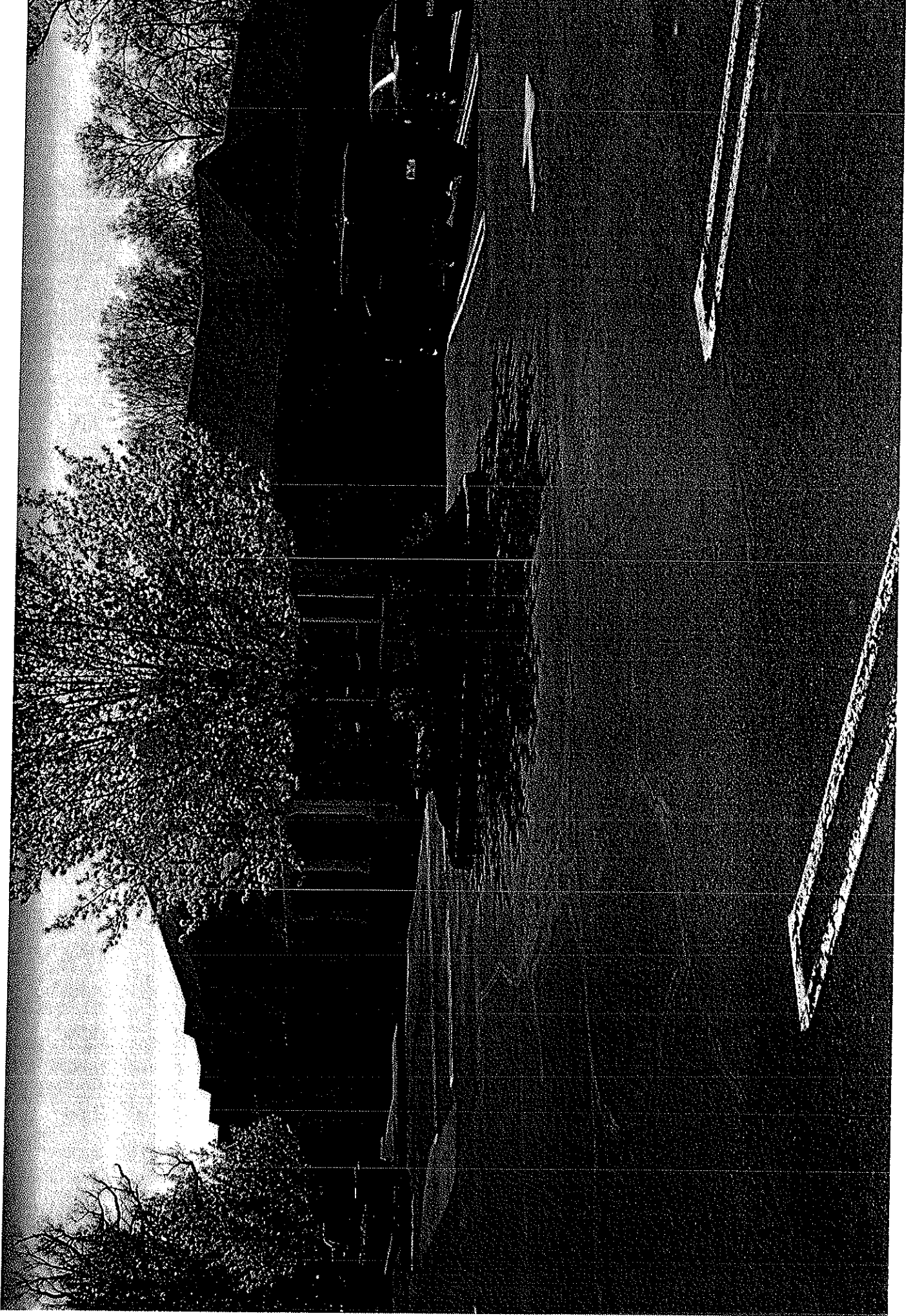
ANDREW J. ZARUTSKIE, CLERK

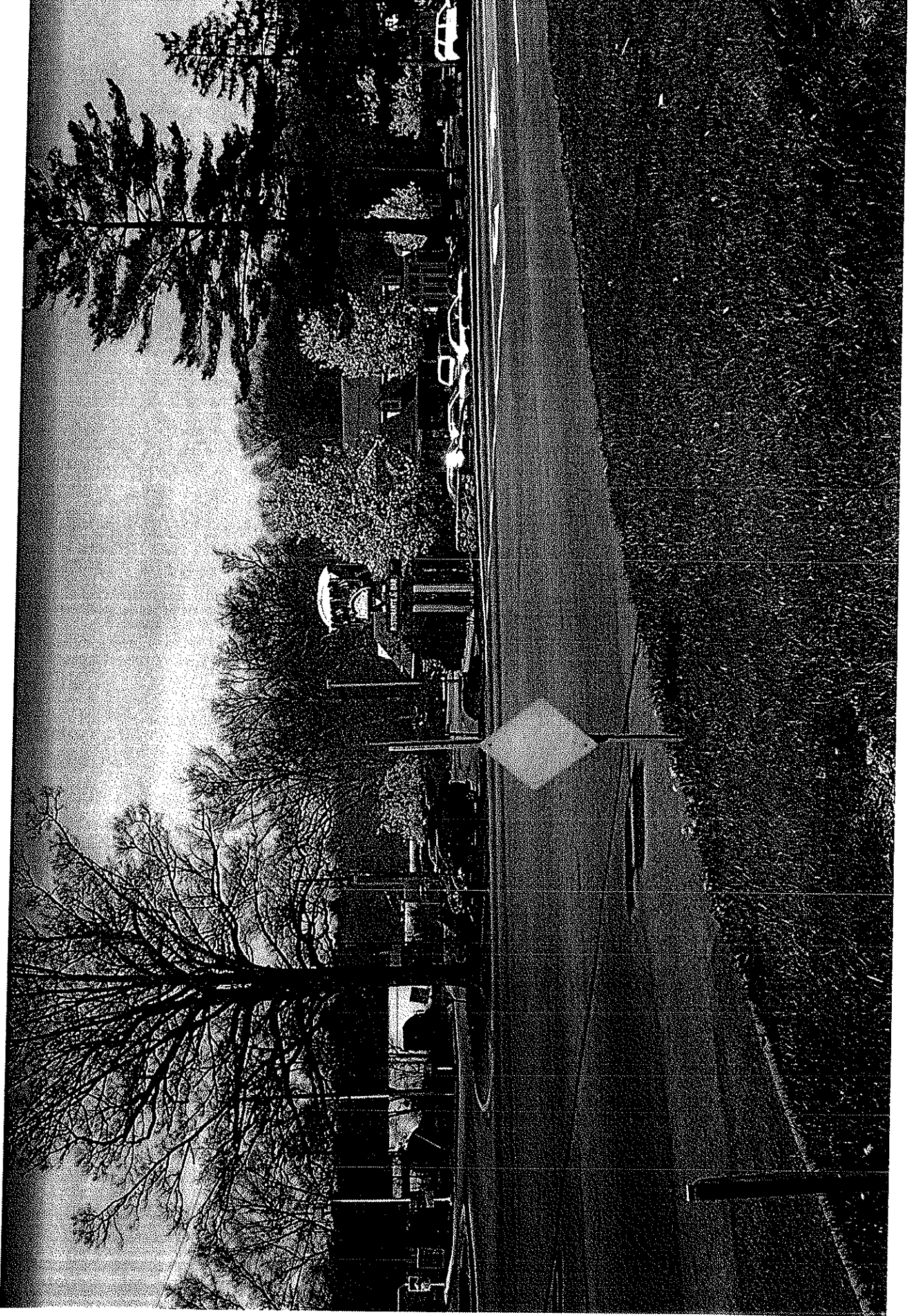
TOWN OF NEWBURGH

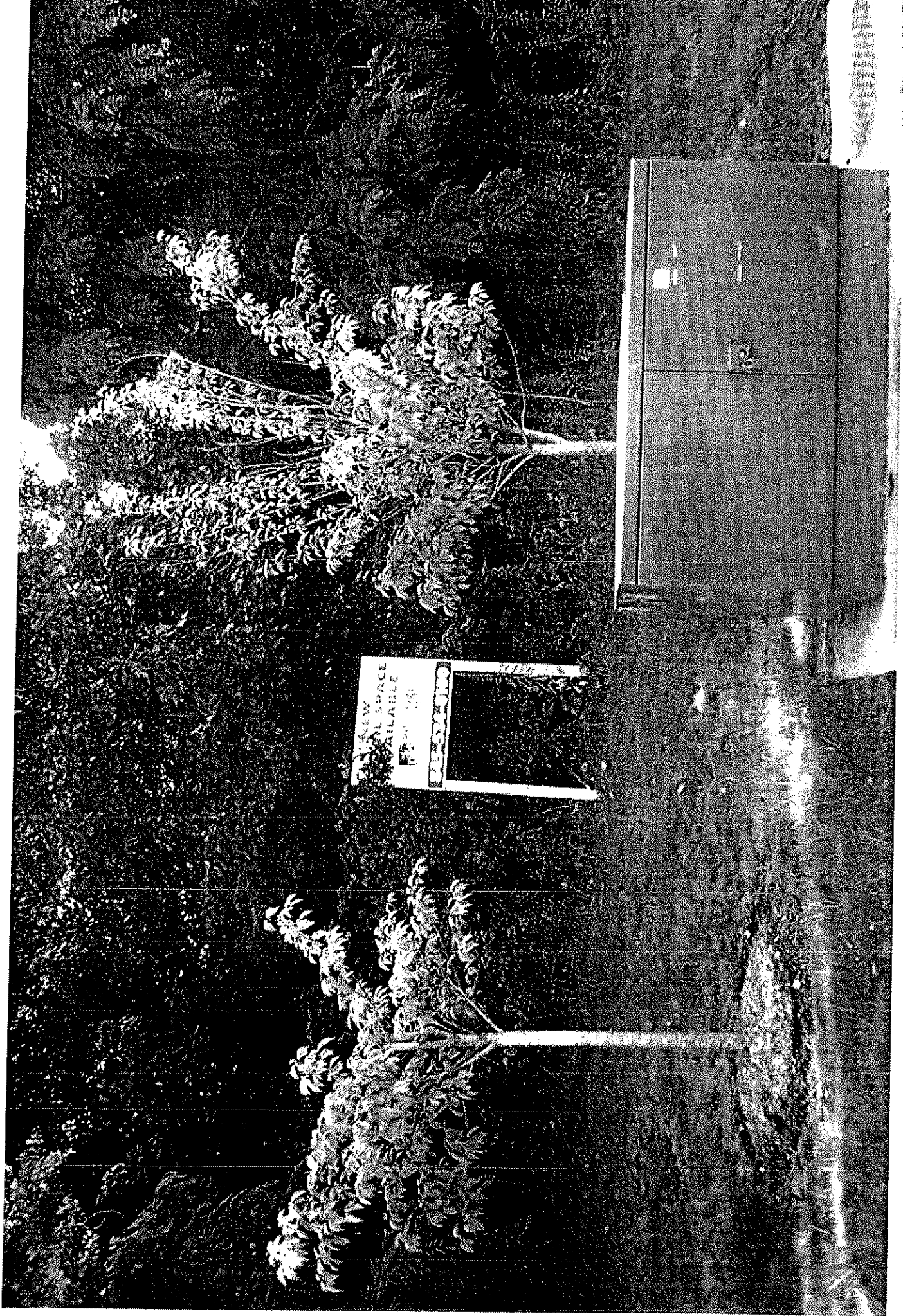




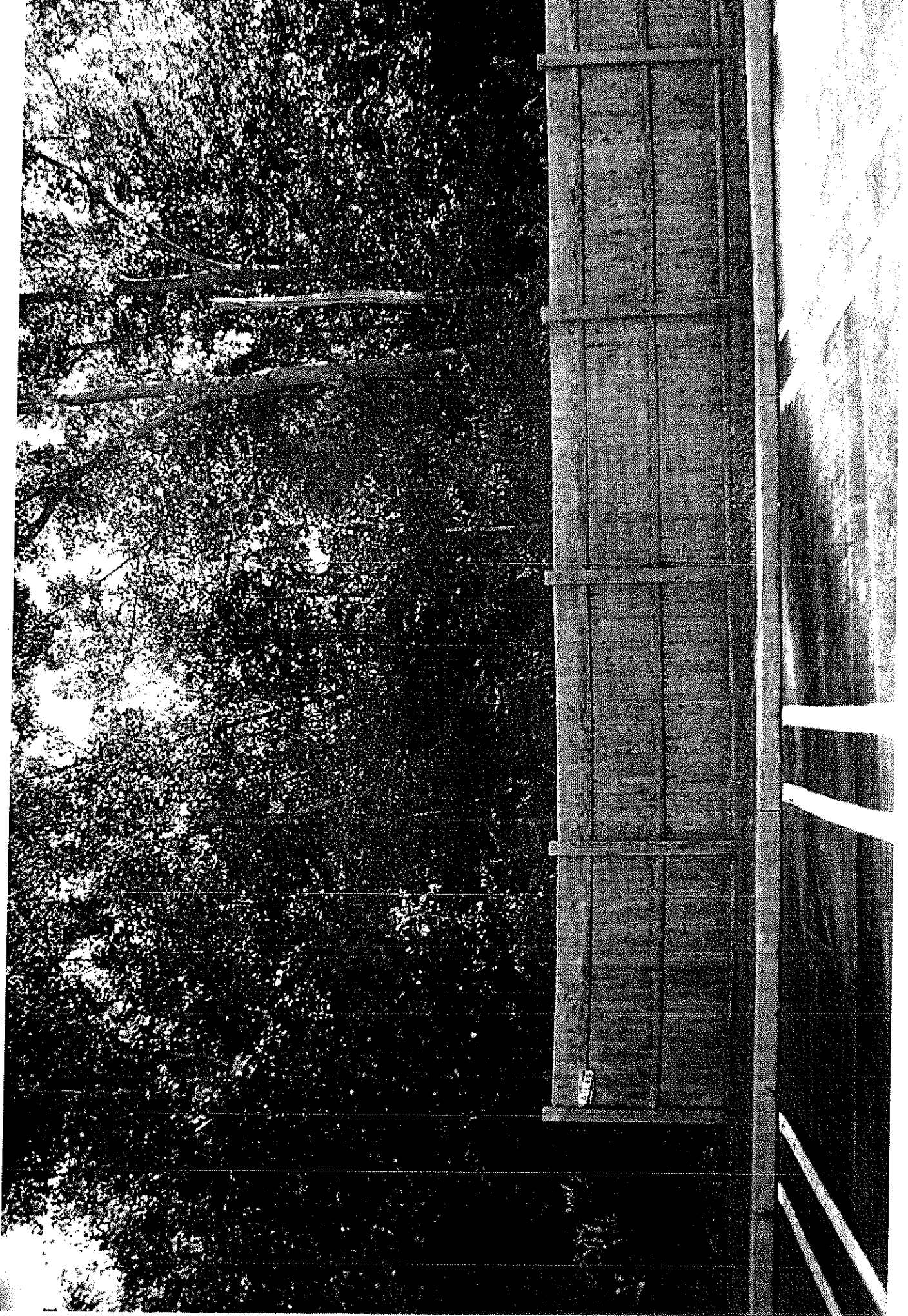












Signage Schedule

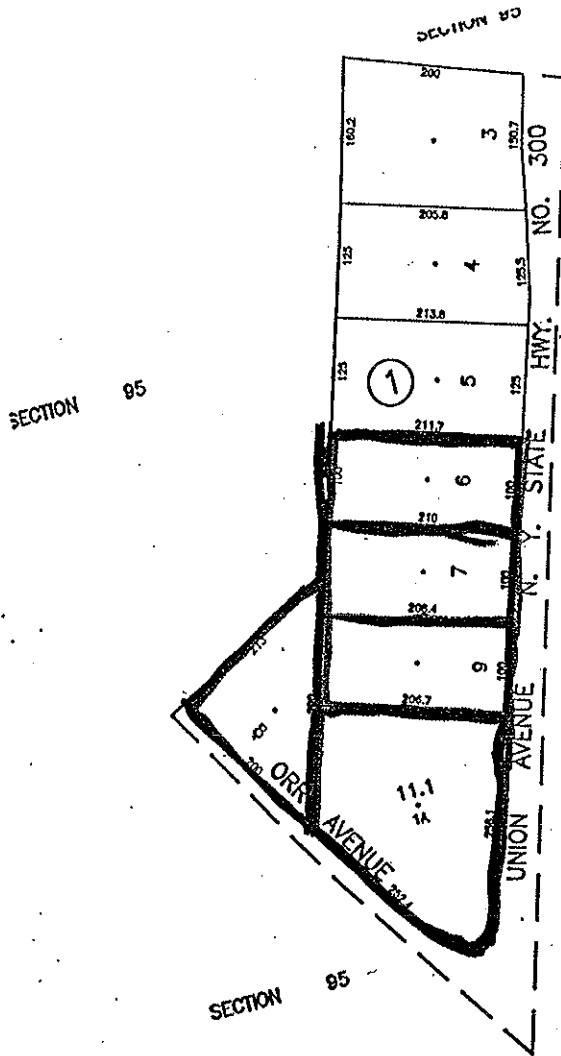
Existing:

Location	Total S.F.
Cosimo's Building Signage	28 S.F.
Cosimo's Pylon Sign	86 S.F.
Sprint	24 S.F.
Sprint Pylon	30 S.F.

Proposed:

Location	Total S.F.
Vitamin Shoppe East Elevation	81 S.F.
Vitamin Shoppe North Elevation	26 S.F.
Staples East Elevation	240.1 S.F.
Staples North Elevation	240.1 S.F.
Staples South Elevation	129 S.F.
Staples West Elevation	31.5 S.F.
Supermarket East Elevation	159.3 S.F.
Supermarket North Elevation	50.25 S.F.
Supermarket South Elevation	50.25 S.F.
Tenant Signage	14 S.F.
Main Pylon Sign	106 S.F.
Directional Signage	35 S.F.
Identification Signage	3 S.F.
Frontage	1808 S.F.
Square Footage Allowed:	904 S.F.
Total Square Footage:	1333.5 S. F.

GDP Amadeo
Shoppers @ Union Sq



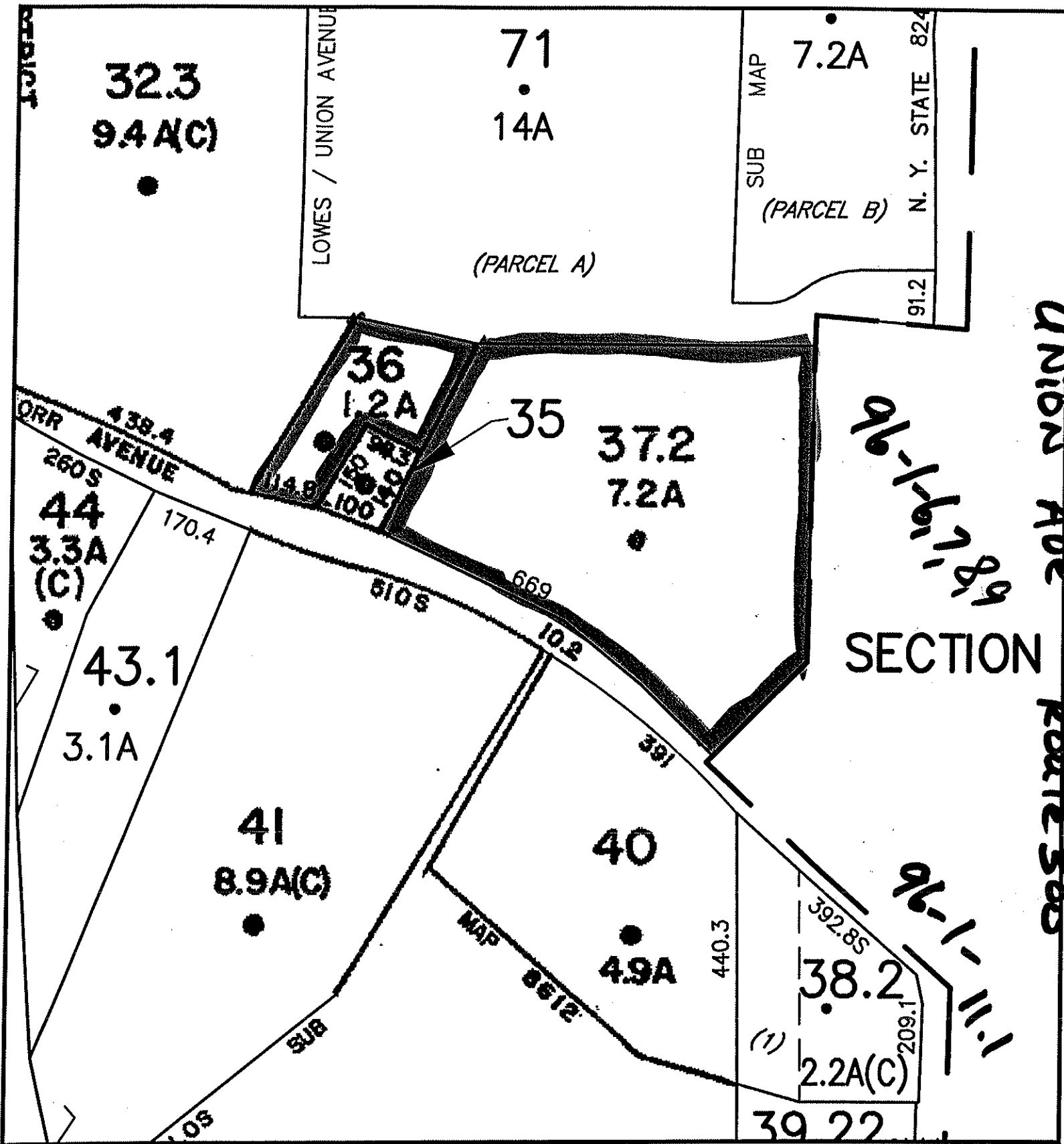
96-1-6-7-8-9-11.1

95-1-37.2,36

ORR Ave &
Union Ave
(Rte 300)

1 of 2

GDP AMB DEB 95-1-37.2, 38
Shoppes @ Union Sq 96-1-6, 7, 8, 9, 11.1



ORR AVE & UNION AVE (Route 300)

2 of 2