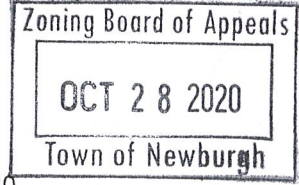




# TOWN OF NEWBURGH

*Crossroads of the Northeast*

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



## APPLICATION

OFFICE OF ZONING BOARD  
(845) 566-4901

DATED: 9/25/2020

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

I (WE) HSC Balmville LLC c/o Bohler Engineering MA, LLC PRESENTLY

RESIDING AT NUMBER (see proxy attached)

TELEPHONE NUMBER 518-438-9900 (Bohler)

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

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

1. LOCATION OF THE PROPERTY:

24-4-1.12 (TAX MAP DESIGNATION)

1 North Hill Lane (SE corner of Route 9W & North Hill Lane) (STREET ADDRESS)

B - Business (ZONING DISTRICT)

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 PROVISION OF THE ZONING LAW APPLICABLE, (INDICATE THE SECTION AND SUBSECTION OF THE ZONING LAW APPLICABLE BY NUMBER; DO NOT QUOTE THE LAW).

185-13 (b)



# TOWN OF NEWBURGH

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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: No date - prepared by Drake Loeb, see attached

4. DESCRIPTION OF VARIANCE SOUGHT: Area variance for parking count.

61 parking spaces required; 26 parking spaces proposed.

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

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

\_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_



# TOWN OF NEWBURGH

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. IF AN AREA VARIANCE IS REQUESTED:

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

The variance would result in more green space and tree & wetland preservation than if the 61 spaces were built. With the current layout and parking count proposed there is a 100+/- foot undisturbed vegetative buffer maintained to the adjacent residential properties to the rear. Additional green space rather than unused parking spaces will be more aesthetically pleasing.

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 developable site area is limited by the extent of the on-site wetlands. Building 61 parking spaces would encroach on the on-site wetlands and result in additional asphalt and impervious surface that is not needed for the parking demand for the tenant.

c) THE REQUESTED AREA VARIANCE IS NOT SUBSTANTIAL BECAUSE:

Granting of the area variance results in a much greater amount of green space. While relief of 35 parking spaces is being sought it is believed these parking spaces would sit vacant based on parking needs of other stores of the same tenant.

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 variance could be seen as a benefit to the neighborhood as granting the variance will result in more green space and less asphalt, site lighting, tree cutting, etc., and will be a benefit to the environment as wetlands will not be as impacted as they would be if the parking lot was built to meet code.

e) THE HARDSHIP HAS NOT BEEN SELF CREATED BECAUSE:

The Code requirement covers all types of retail stores, rather than specific types of retail uses. This retail tenant does not require the amount of parking spaces that the Code calls for based on other stores of the same tenant in similar locations.



# TOWN OF NEWBURGH

*Crossroads of the Northeast*

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

OFFICE OF ZONING BOARD  
(845) 566-4901

### 7. ADDITIONAL REASONS (IF PERTINENT):

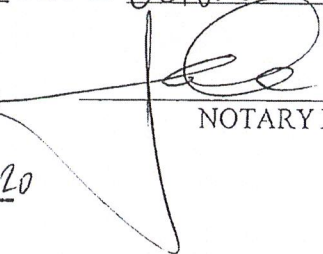
\_\_\_\_\_  
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\_\_\_\_\_

  
\_\_\_\_\_  
PETITIONER (S) SIGNATURE

STATE OF NEW YORK: COUNTY OF ORANGE:

SWORN TO THIS 5<sup>th</sup> DAY OF October 202020

JENNIFER ENNIS  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01EN6313479  
Qualified in Ulster County  
My Commission Expires October 20, 2020

  
\_\_\_\_\_  
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.  
**(ALL MATERIALS REGARDING THE APPLICATION MUST BE SUBMITTED TO THE ZONING BOARD OFFICE FOR REVIEW NO LATER THAN 10 DAYS PRIOR TO THE HEARING DATE OR THEY MAY NOT BE CONSIDERED THE NIGHT OF THE MEETING).**

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

# Short Environmental Assessment Form

## Part 1 - Project Information

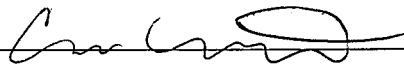
### Instructions for Completing

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

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

<b>Part 1 – Project and Sponsor Information</b>			
Name of Action or Project: Area Variance for relief from required parking count - Proposed Retail Store			
Project Location (describe, and attach a location map): Southeast Corner of US Route 9W & North Hill Lane			
Brief Description of Proposed Action: 61 parking spaces are required by Town zoning code and 26 spaces are proposed.			
Name of Applicant or Sponsor: HSC Balmville, LLC, c/o Bohler Engineering MA, LLC		Telephone: 518-438-9900 E-Mail: cmlodzianowski@bohlereng.com	
Address: 17 Computer Drive West			
City/PO: Albany		State: NY	Zip Code: 12205
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: Town of Newburgh Planning Board and Zoning Board, Town of Newburgh Building Dept, NYS DOT, Orange County Planning and DOH			YES <input checked="" type="checkbox"/>
3. a. Total acreage of the site of the proposed action? _____ 2.16 +/- acres b. Total acreage to be physically disturbed? _____ 0.94 +/- acres c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ 2.16 +/- acres			
4. Check all land uses that occur on, are adjoining or near the proposed action:			
5. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify): <input type="checkbox"/> Parkland			

	NO	YES	N/A
5. Is the proposed action,			
a. A permitted use under the zoning regulations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
b. Are public transportation services available at or near the site of the proposed action?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ _____	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ An on-site septic system is proposed. _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ On-site wetlands were flagged to identify federal wetlands. Less than 0.10-acre of federal wetlands is proposed to be disturbed. _____ _____			

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:		
<input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input checked="" type="checkbox"/> Early mid-successional <input checked="" type="checkbox"/> Wetland <input type="checkbox"/> Urban <input type="checkbox"/> Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
a. Will storm water discharges flow to adjacent properties?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If Yes, briefly describe:  Storm water will be managed on site per NYS DEC Guidelines.		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment:	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
<b>I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</b> Applicant/sponsor/name: <u>BOHLER ENGINEERING MA, LLC</u> Date: <u>9/28/2020</u> Signature: <u></u> Title: <u>PROJECT MANAGER</u>		

# SOBO & SOBO

ATTORNEYS AT LAW

ONE DOLSON AVENUE  
MIDDLETOWN, N.Y. 10940  
PHONE: (855) 468-7626 (SOBO)  
FAX: (845) 343-0929

OFFICES IN:  
MIDDLETOWN, N.Y.  
NEWBURGH, N.Y.  
POUGHKEEPSIE, N.Y.  
SPRING VALLEY, N.Y.  
MONTICELLO, N.Y.  
NEW YORK, N.Y.

September 30, 2020

*Via First Class Mail*

Bohler Engineering MA, LLC  
Attention: Caryn Miodzianowski  
17 Computer Drive West  
Albany, New York 12205

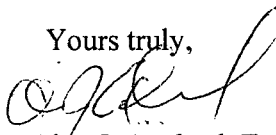
Re: Filiberti to Commerce Street Partners, LLC  
Premises: Route 9W & N. Hill Lane  
Newburgh, New York

Dear Ms. Mlodzianowski,

Pursuant to the e-mail I received from Amy B. Nelson, Esq., one of the Purchaser's Attorneys in the above matter and my conversation of yesterday morning with Siobhan Jablesnik, Acting Secretary for the Town of Newburgh ZBA, in which she advised only one of the Sellers needed to execute the Proxy, enclosed is the Original of the Executed Proxy.

If you have any questions or comments, please feel free to call me on my cellphone at (845) 541-2905.

Yours truly,



Alan J. Axelrod, Esq.

Enclosure

cc.: [anelson@rushtonstakely.com](mailto:anelson@rushtonstakely.com)



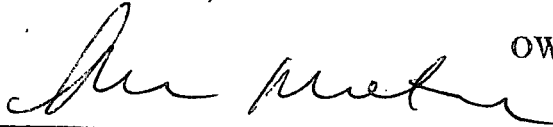
TOWN OF NEWBURGH  
ZONING BOARD OF APPEALS

PROXY

BARBARA A. FILIBERTI, DEPOSES AND SAYS THAT  
HE/SHE RESIDES AT 1 North Hill Lane, Newburgh  
IN THE COUNTY OF Orange AND STATE OF New York  
AND THAT HE/SHE IS THE OWNER IN FEE OF Tax Parcel # 334600-24-4-1.12  
together with David M. Filiberti, Joan M. Filiberti-Gottlieb + Elaine M. Filiberti-Harney  
WHICH IS THE PREMISES DESCRIBED IN THE FOREGOING APPLICA-  
TION AND THAT HE/SHE HAS AUTHORIZED HSC Balmville LLC + Bohler Engineering PA, LLC  
TO MAKE THE FOREGOING APPLICATION AS DESCRIBED THEREIN.

DATED: 9/30/20 Barbara A. Filiberti

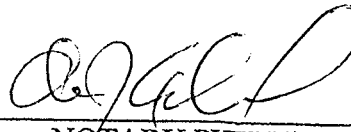
OWNER'S SIGNATURE



NANCY MONTOYA  
WITNESS' SIGNATURE

STATE OF NEW YORK: COUNTY OF ORANGE:

SWORN TO THIS 30<sup>th</sup> DAY OF September 2020



NOTARY PUBLIC

AXELROD ALAN J  
Notary Public, State of New York  
No. 02AX4520760  
Qualified in Orange County  
Commission Expires November 30, 2022

Quitclaim Deed  
Individual or Corporation

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT

THIS INDENTURE, made the 13<sup>th</sup> day of February, 1998.

BETWEEN PAULINE F. HAYS, residing at 5970 Pelican Blvd., Unit 531, Naples, Florida 34108

party of the first part, and MARGARET J. FILIBERTI residing at North Hill Lane, Newburgh, New York 12550, JOAN M. FILIBERTI-GOTTLIEB residing at 608 Rte. 9W, Newburgh, New York 12550, DAVID M. FILIBERTI residing at 386 Buck Hollow Road, Fairfax, Vermont 05454, BARBARA A. FILIBERTI residing at North Hill Lane, Newburgh, New York 12550 and ELAINE M. FILIBERTI-HARVEY, residing at 10 Greentree Lane, Milton, New York 12547

party of the second part,

WITNESSETH, that the party of the first part, in consideration of One Hundred Fifteen Thousand (\$115,000.00) Dollars paid by the party of the second part, does hereby remise, release and quitclaim unto the party of the second part, their heirs or successors and assigns of the party of the second part forever, all her right, title and interest in the following:

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

TOGETHER with all right, title and interest, if any, of the party of the first part of, in and to any streets and roads abutting the above-described premises to the center lines thereof, TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises, TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.  
This deed is subject to the trust provisions of Section 13 of the Lien Law.

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

IN WITNESS WHEREOF, the party of the first part has duly executed

166474326 150

this deed the day and year first above written.

IN PRESENCE OF:

*Pauline F. Hays*  
PAULINE F. HAYS

STATE OF FLORIDA, COUNTY OF *Collier* ss:

On the *29* day of February, 1998, before me personally came PAULINE F. HAYS to me known to be the individual(s) described in and who executed the foregoing instrument, and acknowledged to executing the same.

*[Signature]*  
Notary Public

QUITCLAIM DEED

*TR. 0 97321*  
PAULINE F. HAYS

JOEL LOUNDS  
Notary Public - State of Florida  
My Commission Expires Jun. 16, 2000  
Commission # CC 551600

-TO-

MARGARET J. FILIBERTI,  
JOAN M. FILIBERTI-GOTTLIEB,  
DAVID M. FILIBERTI, BARBARA  
A. FILIBERTI, ELAINE M.  
FILIBERTI-HARNEY

1998474376 181

James R. Loeb  
Richard J. Drake, *retired*  
Glen L. Heller\*  
Marianna R. Kennedy  
Gary J. Gogerty  
Stephen J. Gaba  
Adam L. Rodd  
Dominic Cordisco  
Ralph L. Puglielle, Jr.  
Nicholas A. Pascale

Alana R. Bartley  
Aaron C. Fitch  
Judith A. Waye  
Michael Mariens

Jennifer L. Schneider  
Managing Attorney

\*L.L.M. in Taxation

**BY EMAIL ONLY**

Darrin J. Scalzo, Chairman  
Zoning Board of Appeals  
Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, New York 12550

Re: Dollar General; Planning Board Project No. 19-24

Dear Chairman Scalzo and Board Members:

At the Planning Board's April 16, 2020 meeting, the Planning Board resolved to refer this application to the Zoning Board of Appeals for its consideration of the following area variances that are required for this project.

In particular, the applicant seeks site plan approval from the Planning Board for a commercial retail establishment that requires 62 parking spaces with only 30 parking spaces provided.

The Planning Board has not declared its intent to serve as lead agency so that the Zoning Board of Appeals may consider and process this application without the need to wait for the Planning Board to conclude its review.

Thank you for your consideration of this matter.

Very Truly Yours



Dominic Cordisco

cc:

David A. Donovan, Esq., Attorney for the ZBA

Town of Newburgh Planning Board  
Patrick J. Hines, Planning Board Consulting Engineer



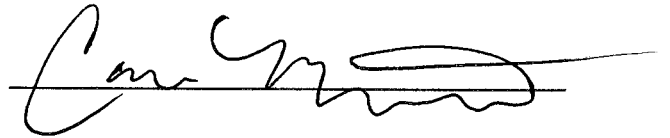


**AFFIDAVIT OF POSTING(S) OF  
NOTICE OF PUBLIC HEARING  
AT THE PROPERTY**

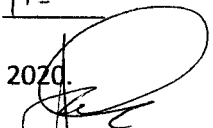
STATE OF NEW YORK: COUNTY OF ORANGE:

I CARYN MLODZIANOWSKI, being duly sworn, depose and say that I did on or before  
November 10, 2020, post and will thereafter maintain at  
1 North Hill Ln/Rte 9w 24-41.12 B Zone in the Town of Newburgh, New York, at or near the front  
property line(s) and within view of each fronting street a copy(ies) of the Notice of Public Hearing, which  
notice was in the form attached hereto.

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



Sworn to before me this 4th  
day of November, 2020.



JENNIFER ENNIS  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01EN6313479  
Qualified in Ulster County  
My Commission Expires October 20, 2022



1 N. Hill Lane - N. Hill Lane posting







1 N. Hill Lane - NYS Route 9W posting

