

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: _____ X

4. DESCRIPTION OF VARIANCE SOUGHT: See attached letter

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

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

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

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

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

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

N/A

6. IF AN AREA VARIANCE IS REQUESTED: (If applicable)

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

Combined lot will be larger than abutting lots and will contain a single family residence similar to the abutting lots.

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:

No other use of property is possible without requested variances.

c) THE REQUESTED AREA VARIANCE IS NOT SUBSTANTIAL BECAUSE:

Combined lot will be of similar size and use and will be consistent with neighborhood.


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

Lot will be serviced by public water, the Orange County Health Department will have to approve the proposed septic system.

e) THE HARDSHIP HAS NOT BEEN SELF CREATED BECAUSE:

Lots predated zoning in the Town of Newburgh.

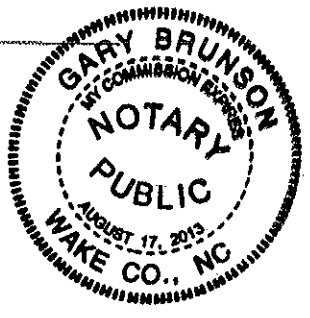
7. ADDITIONAL REASONS (IF PERTINENT):


PETITIONER (S) SIGNATURE

STATE OF NEW YORK: COUNTY OR ORANGE:

SWORN TO THIS 10th DAY OF January 20 13


NOTARY PUBLIC



NOTE: NYS GML Section 239-m (3) for proposed actions that are within 500 feet of the properties or thresholds listed in the statute the Zoning Board of Appeals is required to send a copy of the complete application to the Orange County Department of Planning to be reviewed prior to Zoning Board of Appeals decision. And also NYS GML Section 239-NN requires notification for any proposed actions, to the Municipal Clerk, within 500 feet of the Border of that adjoining County, Town or City.

TOWN OF NEWBURGH
ZONING BOARD OF APPEALS

PROXY

John K. John, DEPOSES AND SAYS THAT
HE/SHE RESIDES AT 5424 Rolling Field Dr., Garner
IN THE COUNTY OF Wake AND STATE OF North Carolina
AND THAT HE/SHE IS THE OWNER IN FEE OF Tax lot 40-3-3 & 10 in the
Town of Newburgh

WHICH IS THE PREMISES DESCRIBED IN THE FOREGOING APPLICA-
TION AND THAT HE/SHE HAS AUTHORIZED Engineering & Surveying Properties, PC
TO MAKE THE FOREGOING APPLICATION AS DESCRIBED THEREIN.

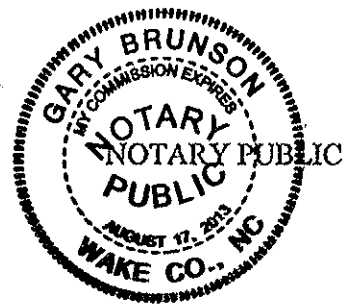
DATED: 1/10/13

[Handwritten Signature]
OWNER'S SIGNATURE

WITNESS' SIGNATURE

North Carolina Wake
STATE OF ~~NEW YORK~~: COUNTY OF ~~ORANGE~~.
SWORN TO THIS 10th DAY OF January 20 13

[Handwritten Signature]



Appendix C

State Environmental Quality Review

SHORT ENVIRONMENTAL ASSESSMENT FORM

For UNLISTED ACTIONS Only

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

1. APPLICANT/SPONSOR John K. John	2. PROJECT NAME Country Estates Subdivision Amended Subdivision Plan Lot 3 & 10
3. PROJECT LOCATION: Municipality Town of Newburgh County Orange	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) Lots 40-3-3&10 on Laurie Lane	
5. PROPOSED ACTION IS: <input type="checkbox"/> New <input type="checkbox"/> Expansion <input checked="" type="checkbox"/> Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY: The proposed action is to combine 2 existing lots into a single lot and to remove the filed map restriction and allow a proposed 3 bedroom house with and individual septic system.	
7. AMOUNT OF LAND AFFECTED: Initially <u>0.804</u> acres Ultimately <u>0.804</u> acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If No, describe briefly side setback, lot width and lot size variance required	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input checked="" type="checkbox"/> Residential <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other Describe:	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes, list agency(s) name and permit/approvals: ZBA approval for lot size, side setback and lot width	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, list agency(s) name and permit/approvals:	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: <u>ROSS CONGLOVITE, ENGINEER</u> Date: <u>1/29/13</u> Signature: _____	

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

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

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4? If yes, coordinate the review process and use the FULL EAF.
 Yes No

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

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

C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:

C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:

C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:

C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:

C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:

C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly:

D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?
 Yes No If Yes, explain briefly:

E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?
 Yes No If Yes, explain briefly:

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

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

- Check this box if you have identified one or more potentially large or significant adverse impacts which **MAY** occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.
- Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action **WILL NOT** result in any significant adverse environmental impacts **AND** provide, on attachments as necessary, the reasons supporting this determination.

Name of Lead Agency

Date

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (If different from responsible officer)





www.EngineeringPropertiesPC.com
71 Clinton Street
Montgomery, NY 12549
phone: (845) 457-7727
fax: (845) 457-1899

January 10, 2013

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

ATTN: Grace Cardone, Chairperson

**RE: W.O. # 1027.01
COUNTRY ESTATES SUBDIVISION AMENDED SUBDIVISION PLAN
LAURIE LANE, NEWBURGH, NEW YORK
APPLICATION NARRATIVE**

Dear Chairperson Cardone,

Engineering & Surveying Properties, PC has prepared an amended subdivision plan for lots # 3 & 10 on the filed map entitled Plan of Subdivision for Country Estates filed on July 14, 1959. The proposed plan is to combine 2 existing lots that are not approved for building as per the filed map. Engineering & Surveying Properties, PC has performed soils testing for the proposed site and has determined that the existing lots may be deemed buildable based on a proposed Amended Subdivision Plan.

Based on our meeting with the Town of Newburgh Planning Board, it is the opinion of the Building Inspector that it is unclear if Section 185-18(A)(1) and Section 185-18(C)(3) applies to this proposed combination as the lots were not under separate ownership at the time of adoption of the current Zoning Ordinance. Based on this opinion we are applying for an interpretation of the ordinance and if not granted we would like to apply for an area variance.

The current application proposes to combine the lots to create one buildable lot. We believe both section 185-18(A)(1) Existing lots-

"Nothing shall prohibit the use of a lot of less than the prescribed area or width when such lot is owned individually and separate from any adjoining tract at the time of enactment of this chapter, provided that all other provisions of this chapter are met."

and Section 185-18(C)(3) –

"The minimum width of each required side yard for a residential use on an existing lot providing less than the required lot width shall be reduced by 15 feet for lots in the R-1, AR and RR Districts and reduced by five feet for lots in the R-2 and R-3 Districts."

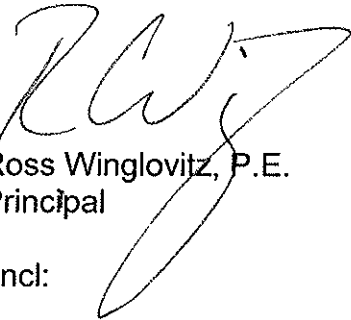
both apply to the combined lot as proposed.

A different interpretation would imply that a smaller lot (e.g. one of the tax lots), would be permitted to construct a single family home while a combination of smaller lots would not. It is our opinion that the intent of the ordinance is to require such combinations when lots do not meet current area requirements. Similar sections of other Town ordinances have language that clarifies this, for example section 300-75 (D) of the Town of New Windsor Zoning (copy attached) reads as follows-

“Any separate plot nonconforming as to bulk which becomes subsequently attached to other adjoining land in the same ownership shall be entitled to the benefit of the provisions of Subsection A only if the total contiguous plot remains nonconforming as to bulk after the plots become attached.”

If there are any questions and/or comments please don't hesitate to contact this office.

Sincerely,
Engineering & Surveying Properties, PC



Ross Winglovitz, P.E.
Principal

encl:

cc: John K. John
file

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

James B. Biagi
David A. Donovan
Michael H. Donnelly
Robert J. Dickover

28 Bruen Place
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Phone (845) 294-9447
mail@ddbblaw.com
Fax (845) 294-6553
(Not for Service of Process)

Successor Law Firm To:
Alexander Appelbaum, P.C., Florida, N.Y. (1915-1988)
Ludmerer & Vurno, Esqs., Warwick, N.Y.

January 14, 2013

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

RE: Country Estates Subdivision
43-3-47 (Zone R-1)

Members of the Board:

I write to you at the direction of the Town of Newburgh Planning Board. The above referenced applicant appeared before the planning board on January 3, 2013 proposing to consolidate Lots 3 and 10 of an existing approved subdivision into a single lot. The two lots in question carry a map note announcing that these lots were not approved for building purposes. The note was required because septic disposal technology existing at the time of approval was insufficient to support these lots. Current *Elgin* system technology makes these lots now approvable for building purposes and the applicant has requested that the earlier limitation be lifted as part of the approval.

Neither Lot 3 nor Lot 10 meet the current minimum lot size or lot width requirements of the R-1 zoning district. Indeed, even when consolidated, the combined lot fails to satisfy minimum lot area (40,000 square feet required, 35,022 proposed) and minimum lot width (150 feet required, 102.34 proposed). Moreover, the house proposed to be built will not satisfy the 30-foot side yard requirement of the code (23.34 proposed) nor the *both side yards* requirement of the code (80 feet required, 51.34 proposed).

The applicant urges, however, that Section 185-18(A)(1) [Existing lots] excepts this lot from the lot area and lot width requirements and that Section 185-18(C)(3) authorizes a reduction in the side yard requirement of 15 feet. Subparagraph (A)(1) of Section 185-18 reads as follows:

Existing lots. Nothing shall prohibit the use of a lot of less than
~~the prescribed area or width when such lot is owned individually~~

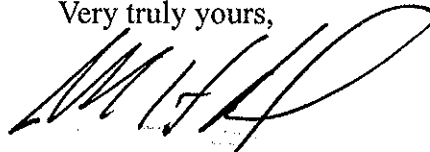
and separate from any adjoining tract at the time of enactment of this chapter, provided that all other provisions of this chapter are met.

The applicant offered no evidence to the planning board regarding ownership of these lots at any point in time. However, it appears that, at the present time at least, the applicant owns both lots 3 and 10 and, at some earlier time, a single owner owned all of the lots in the subdivision.

The planning board has asked me to refer this matter to you for an interpretation of these two sections insofar as they apply to the circumstances presented. If the interpretation does not result in the relief the applicant urges, then the planning board wishes you to consider the grant of a variance from the requirements set forth above.

The planning board has no particular matters to bring to your attention. It appears that the requested variances are Type II actions under SEQRA.

Very truly yours,



MICHAEL J. DONNELLY

MHD/lrm

Cc: Town of Newburgh Planning Board
David A. Donovan, Esq.
Ross Winglovitz, P.E.

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

James B. Biagi
David A. Donovan
Michael H. Donnelly
Robert J. Dickover

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January 14, 2013

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

RE: Country Estates Subdivision
40-3-3 & 10 (Zone R-1)

Revised

Members of the Board:

I write to you at the direction of the Town of Newburgh Planning Board. The above referenced applicant appeared before the planning board on January 3, 2013 proposing to consolidate Lots 3 and 10 of an existing approved subdivision into a single lot. The two lots in question carry a map note announcing that these lots were not approved for building purposes. The note was required because septic disposal technology existing at the time of approval was insufficient to support these lots. Current *Elgin* system technology makes these lots now approvable for building purposes and the applicant has requested that the earlier limitation be lifted as part of the approval.

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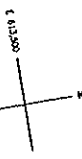
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Very truly yours,

MICHAEL H. DONNELLY

MHD/lrm

Cc: Town of Newburgh Planning Board
David A. Donovan, Esq.
Ross Winglovitz, P.E.



John
Laurie Lane
SECTION
40-3-3
40-3-10