

APPLICATION TO THE ZONING BOARD OF APPEALS, TOWN OF NEWBURGH

DATED: FEBRUARY 8, 2012

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

I (WE) CHRISTIAN KELLY PRESENTLY  
RESIDING AT NUMBER 39 NEW ROAD, NEWBURGH, NY 12550  
TELEPHONE NUMBER 845-742-2384

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

- X   A USE VARIANCE
- AN AREA VARIANCE
- INTERPRETATION OF THE ORDINANCE
- ACCESSORY APARTMENT

1. LOCATION OF THE PROPERTY:

34-2-16.3 (TAX MAP DESIGNATION)  
39 NEW ROAD (STREET ADDRESS)  
B (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NUMBER; DO NOT QUOTE THE LAW).

SECTION 185-10-B-PERMITTED USES -  
BULK TABLE - SCHEDULE 7 - COLUMN C.  
ALLOW FOR ONLY EXISTING SINGLE-FAMILY  
DWELLINGS.

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: FEBRUARY 3, 2011
- b) OR DENIAL (REFERRAL) BY THE PLANNING BOARD OF THE TOWN OF NEWBURGH OF AN APPLICATION TO THE BOARD, SEE ACCOMPANYING NOTICE DATED: \_\_\_\_\_

4. DESCRIPTION OF VARIANCE SOUGHT: TO CONSTRUCT A NEW SINGLE FAMILY HOUSE IN A B ZONE, WHICH IS NOT A PERMITTED USE.

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:

SEE ATTACHED ADDENDUM

(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:

SEE ATTACHED ADDENDUM

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

SEE ATTACHED ADDENDUM

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

SEE ATTACHED ADDENDUM

6. IF AN AREA VARIANCE IS REQUESTED:

N/A

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

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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:

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c) THE REQUESTED AREA VARIANCE IS NOT SUBSTANTIAL BECAUSE:

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

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e) THE HARDSHIP HAS NOT BEEN SELF CREATED BECAUSE:

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7. ADDITIONAL REASONS (IF PERTINENT) :

SEE ATTACHED ADDENDUM

*Christopher J. Kelly*  
PETITIONER(S) SIGNATURE

STATE OF NEW YORK : COUNTY OR ORANGE :

SWORN TO THIS 8 DAY OF FEBRUARY 20 12

*TR*  
NOTARY PUBLIC

THOMAS R. LYNCH  
Notary Public, State of New York  
Qualified in Ulster County  
Registration No. 01LY6201381  
Commission Expires February 23, 2013

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.

**ADDENDUM**  
**USE VARIANCE APPLICATION**  
**OF CHRISTIAN KELLY**  
**39 New Road, Town of Newburgh**  
**SBL: 34-2-16.1**  
**Zoning Board Application Parts 4 thru 7**  
**February 3,2012**

4. **DESCRIPTION OF VARIANCE SOUGHT:** To construct a new single family house in a B Zone zoning district, which is a not a permitted use.
  
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:**

The uses permitted in a B Zone will provide the applicant with no economic benefit due to reasons explained below:

    1. **Retail and personal service stores, health clubs and fitness facilities.**

With most plazas and malls in prime locations struggling to keep space rented, a commercial parcel tucked into a residential part of the community, has little chance to compete. The majority of the properties in close proximity to the subject parcel are residential single family homes, most are in R-2 Zones. Retail developers would dismiss this property for its location, lack of visibility and the high risk neighborhood. Health fitness facilities rent space and have rarely build their own facilities. Again, the parcel's location, lack of visibility and residential high risk neighborhood preclude this parcel form being marketed for such uses. Hence, these uses can not provide the applicant with any economic benefit.
    2. **Business, professional and research offices, and banks.** Again there is an abundance of empty professional office space in the Town of Newburgh situated in prime locations along most of Newburgh's major arteries. It should be noted that 9 parcels located in this same district, on Crabapple Court, have been marketed for these uses for over 15 years and are still vacant. Banks wish to be surrounded by retail i.e. pad sites or corner lots, with high visibility and high traffic volumes. The subject parcel has none of these characteristics and therefore can not be marketed for banks. Clearly, the applicant can not receive any economic benefit from these uses.

## a) (CONTINUED)

3. Eating and Drinking Places. Besides the neighborhood characteristics which were mentioned in Item #1 above, the lack of municipal sewer, the parking and lighting required, along with necessary storm water facilities, both on and off site, prevent the subject parcel from being economically feasible for these uses. The rural location, impact on the environment, visibility and overall character of the neighborhood, critically flaw this parcel from being marketed for these uses, and cannot provide any economic benefit to the applicant.
4. Indoor amusement establishments. This use was already attempted and failed in this district on New Road, much closer and visible to Route 32, in a much stronger economy. Again, please refer to the neighborhood characteristics which critically flawed the uses in Item # 1 above. Based on these characteristics, district history and location, the subject parcel can not be marketed for these uses and can expect no economic benefit from this use being permitted.
5. Motor vehicle service stations and public garages, car wash and rental agency. Location (flag lot), lack of visibility and sanitary sewer, traffic and noise levels, storm water management (on and off site) and the impact of such uses to the surrounding residential community and nearby protected wetlands prohibits the subject parcel from every being listed for this type of development and considering any economic benefit from these permitted uses.
6. Convenience stores with or without gasoline filling stations. As stated in Item #5 above, location (flag lot), sanitary sewer, traffic, storm water management (on and off site) and the impact of such a use on the surrounding residential community, deprives the subject parcel from being considered for this type of development and any economic benefit from this permitted use.
7. (Uses 7 thru 12 & 16) Hotels and motels, Shopping Centers, Theaters, places of worship and related facilities, Business Parks and Mini-malls. The subject parcel does not have sufficient area to support these uses.
8. (Uses 13 & 14) Affordable and Senior housing. Non-applicable.
9. (Use 15) Restaurants. Please refer to Item #3 above as the same explanation applies to restaurants not being any economic benefit as a permitted use.

**The above is being submitted as proof that the parcel is deprived of any economic benefit by the uses permitted in a B Zoning District. A competent evidence statement is attached hereto.**

- b. **THE HARDSHIP IS UNIQUE AND DOES NOT APPLY TO A SUBSTANTIAL PORTION OF THE DISTRICT OR NEIGHBORHOOD BECAUSE:** The parcel is in a portion of this B Zoning District that is predominantly residential and is a flag lot with very little road frontage and no visibility to passing traffic. The parcel is located on a moderately traveled town road more than a ¼ of a mile from nearest highway (Rte. 32), which is very rare for B District parcels. The Neighborhood is also predominantly residentially zoned (R2), both along the easterly side of New Road and along the rear of the subject parcel.
- c. **THE VARIANCE WOULD NOT ALTER THE ESSENTIAL CHARACTER OF THE NEIGHBORHOOD BECAUSE:**  
As stated above, the subject parcel lies in a predominantly residential neighborhood, the majority being single family homes along the easterly side of New Road in the R-2 Zoning District and to the north. See Attached Zoning Map Insert.
- d. **THE HARDSHIP HAS NOT BEEN SELF-CREATED BECAUSE:**  
The subject parcel is a portion of parent parcel of originally 2.9 acres in size, which was then subdivided into 3 parcels in 2010. However, the subdivision had been started in 2004, when there was still a market for affordable space for small businesses with little need for visibility. That market non-existent by the time the subdivision had reached final approval. The applicant bought his existing house and parent parcel with the intention of subdividing the parent parcel into 3 lots with the existing house on Lot 1, "his business" on Lot 2 and another commercial building or a new single family house for his family on Lot 3, which ever approval seemed more plausible at the time of subdivision was filed in the Orange County Clerk's Office. The applicant cannot be held responsible for his lots lack of marketability or the Zoning District in which it is situated.
6. **IF AN AREA VARIANCE IS REQUESTED:** This section is not applicable, no area variance is being requested.
7. **ADDITIONAL REASONS (IF PERTINENT):**  
The applicant has always desired to build a new single family home on the subject parcel. Initially, the applicant had intended to petition the Town Board for a "Zoning Change" once the subdivision was approved. But, after meeting with the Town Engineer and the Town Supervisor, and seeing the time these changes were taking (approx. 3 years) and the money spent on representation before the Town Board, the choice of applying to the Zoning Board of Appeals for a use variance seemed to be the most practical and affordable avenue to take. It should be noted that the parcel is further encumbered by a 100 foot wide, high tension power line easement near New Road with a tower located near the entrance of this flag lot.

ADDITIONAL REASONS (cont):

The applicant does eventually hope to move his custom window business into a new structure on Lot No. 2 located easterly of the subject parcel Lot No. 3, another reason why a use variance was considered more feasible.

It should be noted that a similar variance was granted to lands of Hogan, at 15 New Road, SBL: 34-2-18 in 2000.



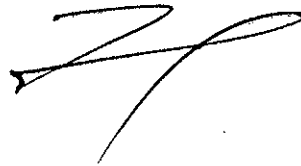
PETITIONER (S) SIGNATURE

Christian Kelly

STATE OF NEW YORK: COUNTY OR ORANGE:

SWORN TO THIS 6 DAY OF FEBRUARY 2012

THOMAS R. LYNCH  
Notary Public, State of New York  
Qualified in Ulster County  
REGISTRATION NO. 01166281381  
Commission Expires February 23, 2013



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.



# Talcott Engineering DESIGN, PLLC.

1 GARDNERTOWN ROAD ~ NEWBURGH, NY 12550  
(845) 569-8400\* ~ (fax) (845) 569-4583

Town of Newburgh  
Zoning Board of Appeals  
308 Gardnertown Road  
Newburgh, NY 12550

February 7, 2012

Re: Competent Evidence Statement  
Use Variance Application  
Lands of Christian & Angela Kelly  
39 New Road  
SBL: 34-2-16.3  
Job No. 12002-KEL

Dear Zoning Board Memebers:

I, Charles T. Brown, P.E., have represented Christian and Angela Kelly, and the subject parcel, since 2004, and that under my supervision, a Zoning Board of Appeals Application was prepared for the above referenced use variance to erect a single family home which will be occupied by the Kelly family, if said variance is granted

Based on my knowledge of the Town Zoning Law and a working relationship with many of the realtors, developers and builders in the greater Newburgh area for over twenty years, a use analysis was prepared under my supervision. That analysis is provided in Part 5 a) of the Addendum to the Kelly ZBA Application. Each use (Uses 1 thru 16) permitted in the Business (B) Zoning District are listed with an explanation as to why said uses will not provide any economic benefit to Christian and Angela Kelly. Those explanations take into consideration the surrounding neighborhood characteristics, the parcels location, environmental, drainage and traffic issues which create the critical flaws and/or hardships in the commercial development of the subject parcel. My knowledge of the cost to engineer, plan and build commercial development in the Town of Newburgh gives me the necessary insight to evaluate each of the uses permitted in a Business (B) Zoning District and explain how they will not provide the Kellys with any economic benefit and more specifically that the subject parcel has critical flaws which would prevent it from being successfully marketed for these uses.

It should be further noted that based on both experience and observation of the recent zoning changes reviewed by the Town Board, that the legal and planning representation needed in a Zoning Change petition (\$8,000-\$10,000) would not be cost affective with a parcel the size of the Kellys. Such a zoning change may also need to include the 3 privately owned parcels north of the Kelly Subdivision which are residential uses also in the same (B) Business Zoning District to avoid spot zoning, making a zoning change even less likely an avenue for the Kellys to pursue.



Charles T. Brown, PE

**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 Christian Kelly	2. PROJECT NAME Use Variance for Single Family Home
3. PROJECT LOCATION: Municipality <u>Town of Newburgh</u> County <u>Orange</u>	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) <u>39 New Road, Newburgh, NY Town of Newburgh SBL: 34-2-16.3</u>	
5. PROPOSED ACTION IS: <input checked="" type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY: Applicant wishes to construct a single family home on a lot located in a Business Zoning District. New Single Family Homes are not a permitted use in a Town of Newburgh (B) Business Zoning District.	
7. AMOUNT OF LAND AFFECTED: Initially <u>1.15</u> acres    Ultimately <u>1.15</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 <u>Single family homes are not permitted in a (B) Business Zoning District</u>	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input checked="" type="checkbox"/> Residential <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other Describe: <u>Predominantly single family homes, with a few small businesses and some 2 and 3 family structures.</u>	
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: <u>Building permit from Town of Newburgh Code Compliance Dept.</u>	
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 type="checkbox"/> No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: <u>Christian Kelly</u> Date: <u>2/6/12</u> Signature: <u>Christ T. Kelly</u>	

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

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**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)



TOWN OF NEWBURGH  
ZONING BOARD OF APPEALS

PROXY

Christian Kelly . DEPOSES AND SAYS THAT  
HE/SHE RESIDES AT 39 New Road, Newburgh, NY 12550 .  
IN THE COUNTY OF Orange AND STATE OF New York .  
AND THAT HE IS THE OWNER IN FEE OF Town of Newburgh Tax Parcel:  
Section 34 Block 2 Lot 16.3 .

WHICH IS THE PREMISES DESCRIBED IN THE FOREGOING APPLICA-  
TION AND THAT HE HAS AUTHORIZED Talcott Engineering Design, PLLC  
TO MAKE THE FOREGOING APPLICATION AS DESCRIBED THEREIN.

DATED: 2/6/12

*Christ T. Kelly*

OWNER'S SIGNATURE

*[Signature]*

WITNESS' SIGNATURE

STATE OF NEW YORK: COUNTY OF ORANGE:

SWORN TO THIS 6 DAY OF FEBRUARY 2012

*[Signature]*  
NOTARY PUBLIC

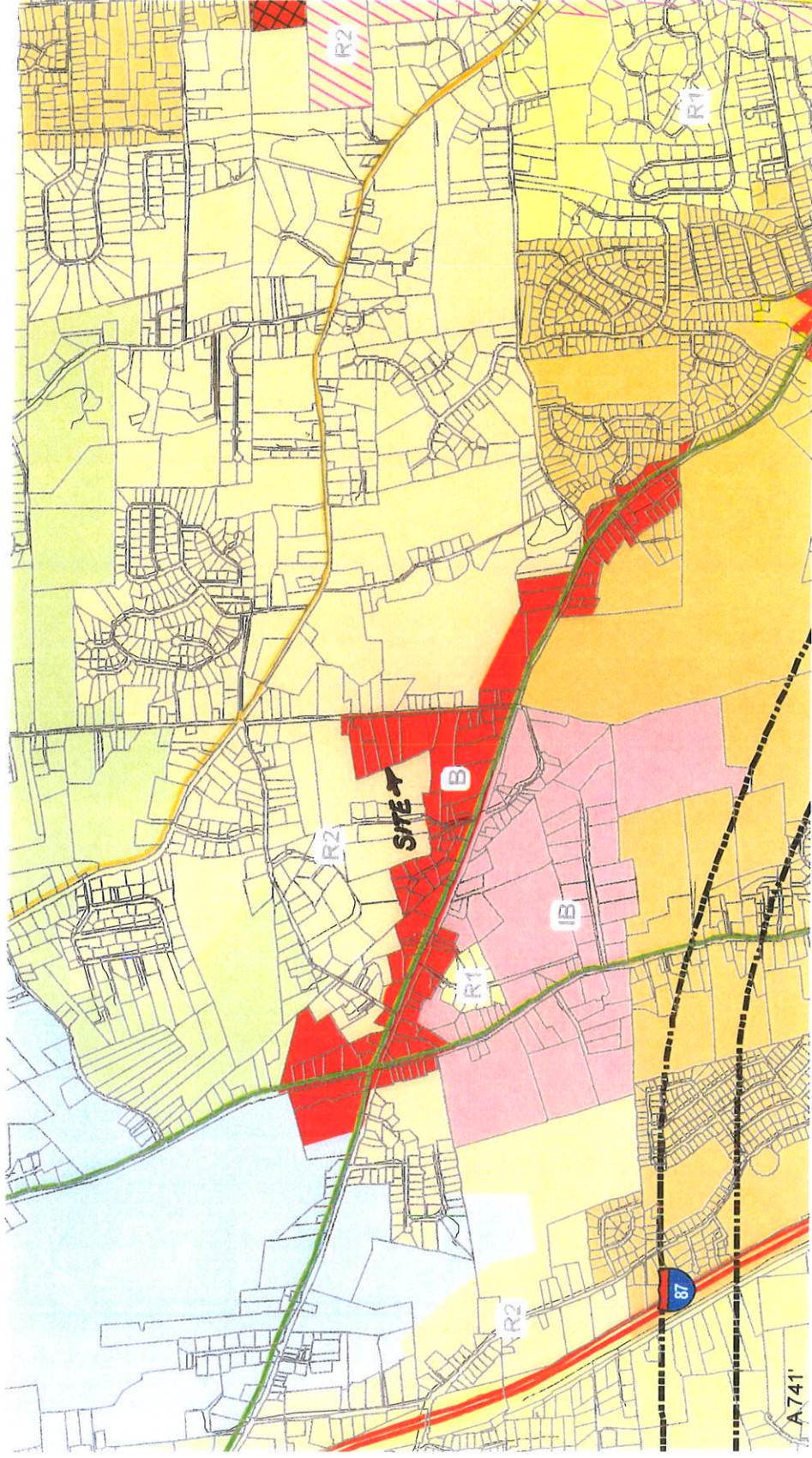
THOMAS R. LYNCH  
Notary Public, State of New York  
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**KELLY  
USE VARIANCE  
APPLICATION  
TOWN OF NEWBURGH  
ZONING BOARD OF APPEALS**

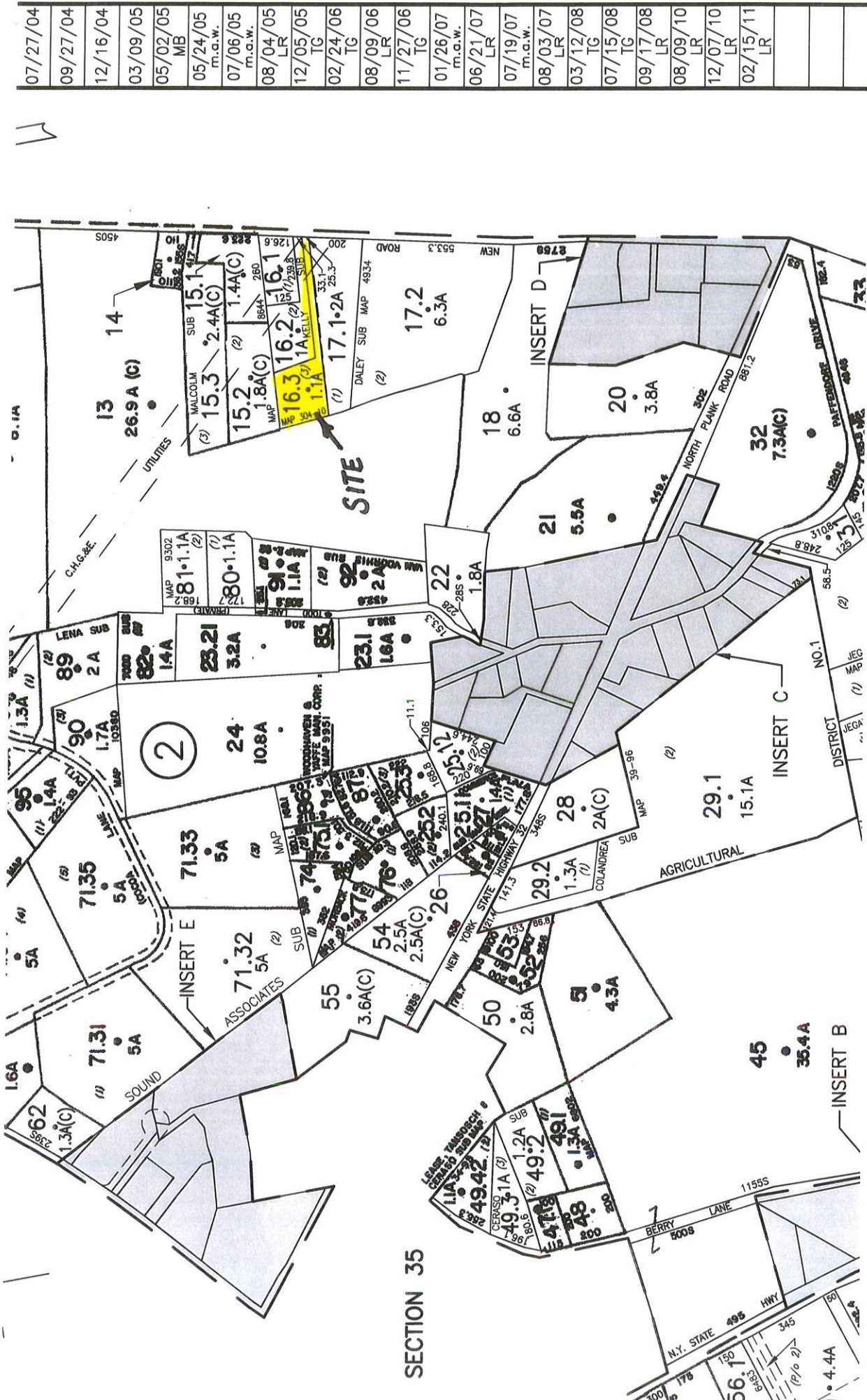
**SITE PHOTOS  
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**February 7, 2012**





KELLY - 39 NEW ROAD 34-2-16.



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SECTION 35

KELLY - 39 NEW ROAD 34-2-16.1