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## Orange County Department of Planning

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### County Reply – Mandatory Review of Local Planning Action as per NYS General Municipal Law §239-l, m, &n

**Local Referring Board:** Town of Newburgh Zoning Board of Appeals      **Referral ID #:** NBT19-14M

**Applicant:** Laxmi Estates II, LLC      **Tax Map #:** 20-2-40

**Proposed Action:** Use variance to allow a drive thru and an Area Variance      **Local File #:**  
related to front yard setback.

**Reason for County Review:** The real property parcel involved in the proposed action is within 500 feet of  
US Route 9W.

**Date of Full Statement:** April 24, 2014

#### Comments:

County Planning is in receipt of the GML §239 referral for the above referenced Project. Based upon our review of the submitted materials, our office has found no evidence that significant inter-municipal or county-wide impacts would result from its approval. Our office would like to make the Appellant aware that there are a number of concerns related to the site plan that we will defer commenting until the site plan is referred by the Planning Board. None of our current concerns should affect the variances being sought at this time. County Planning recommends that the Board make a decision only after weighing the benefit to be realized by the applicant against the potential detriment to the health safety and general welfare of the neighborhood and/or community.

With respect to the request for a Use Variance, in an effort to aid the Board in making their decision, our office recommends working with the Appellant to understand the unnecessary hardship outlined in §267-b(2)(b) of the which consists of the following:

- *"In making such determination the board shall also consider: (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created."*

Considering the previous appeal questioning the validity of the proposed project categorized as a restaurant use and the aforementioned Use Variance sought, County Planning recommends that the Town consider appropriate Zoning Code changes to better define the uses associated with restaurants over fast food establishments.

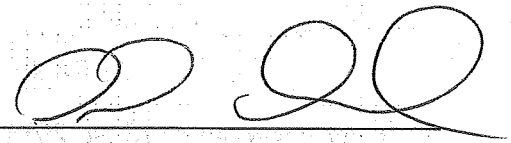
With respect to the requested Area Variance, in an effort to aid the Board in making their decision, our office recommends working with the Appellant to understand the balancing test outlined in §267-b(3)(b) of the NYS Town Law which consists of the following:

- *“(1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.”*

**County Recommendation: Local Determination**

**Date: April 29, 2014**

**Prepared by: Chad M. Wade, R.L.A.  
Planner**



**David Church, AICP  
Commissioner of Planning**

**As per NYS General Municipal Law 239-m & n, within 30 days of municipal final action on the above referred project, the referring board must file a report of the final action taken with the County Planning Department. For such filing, please use the final action report form attached to this review or available on-line at [www.orangecountygov.com/planning](http://www.orangecountygov.com/planning)**