

**THE MARKETPLACE AT NEWBURGH
THIRD AMENDED
FINDINGS STATEMENT**

State Environmental Quality Review Act

Pursuant to Article 8 of the New York Environmental Conservation Law - the State Environmental Quality Review Act (SEQRA), and its implementing regulations at 6 N.Y.C.R.R. Part 617, the Town of Newburgh Planning Board, as Lead Agency, makes the following amended findings:

- Name of Action:** The Marketplace at Newburgh
- Description of Action:** The instant action is for modifications to a previously approved site plan to facilitate development of a retail use on approximately 128.1± acre site. The applicant proposes to develop an IB Interchange Business zoned site on the northeast corner of Routes 84 and 300 opposite the Newburgh Mall with up to 850,000 square feet of commercial floor area. See below for more detailed description of the proposed site plan modifications.
- Location:** The proposed development is located on NYS Route 300 (Union Avenue) north of the junction with US Interstate Highway 84 in the Town of Newburgh, Orange County, New York.
- Lead Agency:** Town of Newburgh Planning Board
Newburgh Town Hall
Town of Newburgh Planning Board
308 Gardnertown Road
Newburgh, NY 12550
Contact: John Ewasutyn, Chairman
(845) 564-7804
- SEQRA Classification:** Type I
- Date Final EIS Filed:** March 15, 2007
- Date Findings Adopted:** May 3, 2007
- Date of First Amendment to Findings (subdivision and signage):** March 6, 2008.
- Date of Second Amendment to Findings (well protocol, stormwater pollution prevention plan and groundwater recharge modifications):** June 19, 2008
- Date of SEQRA Consistency Determination (Amended Site Plan Approval):**
September 16, 2010

Date of SEQRA Consistency Determination (Second Amended Site Plan Approval): November 18, 2010

Date of Third Amendment to Findings (deferral of construction of the Project's Route 52/Fifth Avenue access road improvements until the Project build out exceeds 400,000 square feet of commercial floor area): December ____, 2011

I. Background:

The Town of Newburgh Planning Board ("Planning Board") is SEQRA lead agency in connection with a request for site plan approval of a proposed retail shopping center known as "The Marketplace at Newburgh" ("Project"). On May 3, 2007, the Planning Board issued a SEQRA Findings Statement based upon its review and consideration of an Environmental Impact Statement prepared to assess the environmental impacts of the Project. A copy of that Findings Statement is attached hereto and is incorporated herein by reference.

On March 6, 2008 the Planning Board issued an amendment to the Findings Statement in connection with the Project Sponsor's submission of a comprehensive signage plan and its request for subdivision of the parent Project parcel to accommodate the needs of several Project tenants to hold fee title to their development sites. A copy of that Amended Findings Statement is attached hereto and incorporated herein by reference.

On June 19, 2008, the Planning Board issued a second amendment to the Findings Statement necessitated by mandates from outside agencies having principal jurisdiction over well protection and stormwater pollution prevention, and the lead agency's identification of a superior methodology to address groundwater recharge. A copy of that Second Amended Findings Statement is attached hereto and incorporated herein by reference.

On September 16, 2010, the Planning Board issued a SEQRA Consistency Determination in connection with the Project Sponsor's first application for amended site plan. A copy of that SEQRA Consistency Determination is attached hereto and incorporated herein by reference.

On November 18, 2010, the Planning Board issued a SEQRA Consistency Determination in connection with the Project Sponsor's second application for amended site plan. A copy of that SEQRA Consistency Determination is attached hereto and incorporated herein by reference.

II. Proposed Site Plan Modifications and Findings

The Project Sponsor has recently made a third application for amended site plan approval via letter dated October 26, 2011, requesting Planning Board approval of the following modifications:

(i) deferral of construction of the Project's Route 52/Fifth Avenue access road improvements until the Project build out exceeds 400,000 square feet of commercial floor area;

(ii) redesign of an internal driveway (identified on the site plan as "Entry A") to permit two-way traffic;

(iii) lowering of the "village center" grading by approximately 21 inches on average; and

(iv) inclusion of a pharmacy building in the village center.

As a consequence of these changes, the Board deems it appropriate to amend the SEQRA Findings Statement to specifically address the Project modifications proposed by the October 26, 2011 application for site plan amendment.

The purpose of these amended Findings is to describe the required modifications and to set forth the Board's determination as to whether such modifications present the potential for any significant adverse environmental impacts requiring further environmental review.

Findings: The Planning Board has reviewed and considered the individual components of the third modification to the site plan as described in the October 26, 2011 letter from Wilder Balter Partners and as shown on the multiple drawings submitted therewith. As a consequence of such review, including review by the Planning Board's professional consultants, the Planning Board finds that the modifications present no substantive changes to the overall impacts of the project, including, but not limited to, land disturbance, impervious surfaces, stormwater runoff, utilities, community services, visual issues, ecological or other issues examined in the prior SEQRA record.

In support of the traffic related aspects of the proposed modifications set forth above, a traffic study dated September 22, 2011, prepared by John Collins Engineers, P.C., was submitted to the Town and its professional traffic consultant which analyzes the proposed modifications with specific reference to the extensive SEQRA review of this project previously conducted by the Planning Board, supplemented by additional data and analysis. The traffic study found that the modifications, as proposed, were consistent with prior SEQRA studies and would not result in adverse impacts to traffic. The Planning Boards' professional traffic consultant concurred with the John Collins Engineer's study.

In addition, as a further mitigation measure, the applicant has agreed to monitor the Route 52/Fifth Avenue intersection after (i) completion and occupancy of the first 200,000 square feet of commercial floor area; and (ii) after completion and occupancy of 400,000 square feet of commercial floor area, to ascertain if any of the identified intersection improvements at Fifth Avenue as set forth in prior

SEQRA documents and permits would be warranted for installation due to traffic generated by the Project. Such monitoring review will be provided to the Planning Board and its consultants. If, in the sole opinion of the Planning Board and its advisors, it is determined that such traffic improvements are warranted, the applicant has agreed to implement such improvements.

III. Effect on Previous Findings:

The original SEQRA Finding Statement with which incorporated the Developer's proposal to complete all three entranceways before issuance of the first certificate of occupancy for retail space as a specifically identified mitigation measure. See, Section "F" [Traffic and Transportation]. That mitigation measure is hereby rescinded and replaced with the following:

- No certificate of occupancy shall be issued for any retail establishment shown on these amended plans until the two entranceways proposed to be completed initially are, in fact, completed to the satisfaction of the Town of Newburgh Code Compliance Department, together with all of the first phase improvements listed in the map notes on the plan coversheet as being required to be completed before such issuance.

- No certificates of occupancy will be issued for any structures beyond a total of 400,000 square feet until all three proposed entranceways have been completed to the satisfaction of the Town of Newburgh Code Compliance Department.

The Findings Statement issued by the Planning Board on May 3, 2007, the Amendment to Findings Statement issued by the Planning Board on March 6, 2008, and the Second Amended Findings Statement issued by the Planning Board on June 19, 2008, as well as all of their findings, mitigation measures and conditions remain in full force and effect except as may be modified herein.

IV. Certification of Amended Findings

Having considered the Draft and Final EIS, and having considered the written facts and conclusions and specific findings contained herein as well as the original findings and amended findings and SEQRA consistency determinations incorporated by reference herein, all relied upon to meet the requirements in the of 6 N.Y.C.R.R. Part 617, this Amended Statement of Findings certifies that:

1. The requirements of 6 N.Y.C.R.R. Part 617 have been met;
2. Consistent with the social, economic and other essential considerations, from among the reasonable alternatives thereto, the action approved is one which minimizes or avoids adverse environmental effects to the maximum extent practicable; including the effects disclosed in the environmental impact statement; and
3. Consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures which were identified as practicable.

Dated: March ____, 2012

Town of Newburgh Planning Board
Newburgh Town Hall
Town of Newburgh Planning Board
308 Gardnertown Road
Newburgh, NY 12550

By: John P. Ewasutyn, Planning Board Chairman