

Same minutes used for both the use variances and the area variances

ZBA MEETING – JANUARY 23, 2014

(Time Noted – 7:01 PM)

MARTIN MILANO

1292 ROUTE 300, NBGH
(97-2-30.1, 30.22, 33) I / B ZONE

Applicant is seeking Use variances for Section 185-27 - Hotels, motels and accessory restaurant. C - Site Planning Standards. (1) That the site have its principal frontage on a State or County Highway; And also for 185-27 D-3 (b) Hotels or motels with more than 100 rooms are permitted a restaurant with bar facilities, which may be located either in the principal building or in an accessory building to allow the restaurant as a principal use on as stand-alone lot of a proposed subdivision in the IB Zone.

Chairperson Cardone: If there is anyone here this evening for the Martin Milano, I have a letter:

I write with respect to the above referenced matter, which is scheduled for a Public Hearing this Thursday, January 23rd 7 PM. I hereby respectfully request an adjournment of the matter until the next Zoning Board of Appeals meeting on February the 27th. The reason for the adjournment request is that we would like additional time to gather information responsive to the ZBA's request and to make a further submission prior to the Public Hearing. Very truly yours, Joseph McKay

Do we have a motion to adjourn this matter to February the 27th?

Ms. Smith: I'll motion.

Mr. Masten: I'll second.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried. So if anyone is here on the Milano matter we will be meeting and having the Public Hearing on the 27th of February 27, 2014. You will not be re-noticed.

PRESENT ARE:

GRACE CARDONE
MICHAEL MAHER
JAMES MANLEY
JOHN MASTEN
ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
GERALD CANFIELD, CODE COMPLIANCE
JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 7:03 PM)

Same minutes used for both the use variances and the area variances

ZBA MEETING – FEBRUARY 27, 2014

(Time Noted – 7:03 PM)

MARTIN MILANO

1292 ROUTE 300, NBGH
(97-2-30.1, 30.22, 33) I / B ZONE

Applicant is seeking Use variances for Section 185-27 - Hotels, motels and accessory restaurant. C - Site Planning Standards. (1) That the site have its principal frontage on a State or County Highway; And also for 185-27 D-3 (b) Hotels or motels with more than 100 rooms are permitted a restaurant with bar facilities, which may be located either in the principal building or in an accessory building to allow the restaurant as a principal use on as stand-alone lot of a proposed subdivision in the IB Zone.

Chairperson Cardone: If there is anyone here tonight concerning the Martin Milano variance, I have a communication.

I write with respect to the above referenced matter which is scheduled for a Public Hearing Thursday, February the 27th, 2014 at 7PM. I hereby respectfully request an adjournment of the matter until the next Zoning Board of Appeals meeting on March the 27th, 2014. Thank you for your courtesies with respect to this matter. Very truly yours, Joseph Mackay.

Mr. Donovan: There is a subsequent letter.

Chairperson Cardone: This one is dated February 21st that's the last letter I have.

Mr. Donovan: I got one by e-mail late this afternoon.

Ms. Gennarelli: I didn't get it.

Chairperson Cardone: Well, it must have been after I shut the computer off.

Mr. Donovan: They indicated they wanted to withdraw the applications.

Ms. Gennarelli: I didn't get that.

Chairperson Cardone: I didn't get it either.

Mr. Donovan: I can get it off of my phone.

Ms. Gennarelli: I can go back to the office and check during the break or...

Mr. Donovan: Okay.

Ms. Gennarelli: ...if you like?

Mr. Donovan: I suggest, yeah.

Ms. Gennarelli: Yes.

Chairperson Cardone: Okay then, I'll hold off on this.

Mr. Lally: Is that adjournment granted then?

Chairperson Cardone: No, what the a...our attorney is saying that he received notification that they wanted to withdraw the application but we would have to see that and Mrs. Gennarelli is going to check on her computer a little later to see if it's on her computer.

Mr. Lally: Thank you.

Ms. Gennarelli: What is your name, sir?

Mr. Lally: My name is James R. Lally, L-A-L-L-Y.

Ms. Gennarelli: Thank you.

(Time Noted – 7:05 PM)

ZBA MEETING – FEBRUARY 27, 2014 (Resumption of Meeting: 8:16 PM)

Chairperson Cardone: The Board is resuming its regular meeting. I have the communication regarding the Martin Milano area and use variances.

Dear Mrs. Cardone and Zoning Board Members, I write with respect to the above referenced matter which was scheduled for a Public Hearing this evening at 7PM. Please be advised that the applicant hereby withdraws the pending variance applications. Thank you for your courtesy. Very truly yours, Joseph Mackay

So that application has been withdrawn.

Ms. Gennarelli: That was the two applications?

Chairperson Cardone: Yes.

PRESENT ARE:

GRACE CARDONE
MICHAEL MAHER

JAMES MANLEY
JOHN MASTEN
ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:17 PM)



Edward A. Mirone
County Executive

Orange County Department of Planning

Submittal Form for Mandatory Review of Local Planning Action as per NYS General Municipal Law §239-1(m), (n)

Referral ID#
County (if any)

This form is to be completed by the local board having jurisdiction. Submittals from applicants will not be accepted unless coordinated with both the local board having jurisdiction and the County Department of Planning.

Please include all materials that are part of a "full statement" as defined by NYS GML §239-m (i.e. "all materials required by and submitted to the referring body as an application on a proposed action").

Municipality:

Town of Newburgh

Local Referring Board:

Zoning Board of Appeals

Applicant:

MARTIN MILANO

Project Name:

HAMPTON INN & ROUTE 300

Location of Project Site:

1292 ROUTE 300

Tax Map #:

97-2-30.1

Tax Map #:

97-2-30.22

Tax Map #:

97-2-33

Local File No.:

Size of Parcel:

5.1/3.2/?

If more than one parcel, please include sum of all parcels.

Reason for County Review:

Current Zoning District (include any overlays):

IB

Type of Review:

Comprehensive Plan Update/Adoption

Zoning Amendment

Zoning District Change from _____ to _____

Ordinance Modification (cite section): _____

Local Law

Site Plan

Sq. feet proposed (non-residential only): _____

Which approval is the applicant currently seeking?

SKETCH / PRELIM / FINAL (circle one)

Subdivision

Number of lots proposed: _____

Which approval is the applicant currently seeking?

SKETCH / PRELIM / FINAL (circle one)

Special Use Permit

Lot Line Change

Variance

AREA / USE (circle one)

185-27 C-1 & 185-27 D-3(b)

Other

TO allow proposed subdivision

Is this an update to a previously submitted referral? YES / NO (circle one)

Local board comments or elaboration:

Grace Cardone

10/15/13

Chairperson,
Zoning Board of Appeals

Signature of local official

Date

Title

Municipal Contact Phone Number: 845 566-4901

If you would like the applicant to be cc'd on this letter, please provide the applicant's address:

Please return, along with full statement, to: Orange County Dept. of Planning 124 Main St. Goshen, NY 10924

Question or comments, call: 845-815-3840 or email: planning@orangecounty.gov

Use

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: October 10, 2013

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

I (WE) Martin Milano PRESENTLY

RESIDING AT NUMBER 6 Rivers Edge, Newburgh, NY 12550

TELEPHONE NUMBER (845) 567-9100

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:

Section 97; Block 2;
Lots 30.1, 30.22, 33 (TAX MAP DESIGNATION)
1292 Route 300
Newburgh, NY 12550 (STREET ADDRESS)
1B (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).

Use Variance : Section 185-27 (c) (1)
Use Variance : Section 185-27

#11 Column "A" - Accessory Uses: Restaurants - required 60' setback. Applicant's existing restaurant has a 47.1' rear setback. This requires a variance.

#12 Column "D" - Uses subject to Site Plan Approval
Hotels require 60' rear setback. Applicant's
existing hotel has a 49.5' rear setback. This
requires a variance. 2

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: Sept. 9, 2013
correspondence from Planning Board Counsel
Michael H. Donnelly, Esq.

4. DESCRIPTION OF VARIANCE SOUGHT: _____

See Attached Memorandum

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 Memorandum

**(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 Memorandum

c) THE VARIANCE WOULD NOT ALTER THE ESSENTIAL
CHARACTER OF THE NEIGHBORHOOD BECAUSE:
See Attached Memorandum

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

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:
See Attached Memorandum

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:
See Attached Memorandum

c) THE REQUESTED AREA VARIANCE IS NOT SUBSTANTIAL BECAUSE:
See Attached Memorandum

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

e) THE HARDSHIP HAS NOT BEEN SELF CREATED BECAUSE:
See Attached Memorandum

7. ADDITIONAL REASONS (IF PERTINENT):

See Attached

Martin Milano
PETITIONER (S) SIGNATURE
MARTIN MILANO

STATE OF NEW YORK; COUNTY OF ORANGE:

SWORN TO THIS 10th DAY OF October 2013

Mary E. Bozydaj
NOTARY PUBLIC

MARY E. BOZYDAJ
Notary Public-State of New York
Qualified in Ulster County
My Commission Expires 1/31/2014

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

Martin Milano, DEPOSES AND SAYS THAT

HE/SHE RESIDES AT 6 Rivers Edge Newburgh, NY 12550

IN THE COUNTY OF _____ AND STATE OF _____

AND THAT HE/SHE IS THE OWNER IN FEE OF _____

TAX LOTS 97-2-30.1; 97-2-30.22; 97-2-33

WHICH IS THE PREMISES DESCRIBED IN THE FOREGOING APPLICA-
TION AND THAT HE/SHE HAS AUTHORIZED Catania, Mahon, Milligram
& Rider, PLLC
TO MAKE THE FOREGOING APPLICATION AS DESCRIBED THEREIN.

DATED: October 10, 2013 Mart M l

[Handwritten Signature]

OWNER'S SIGNATURE
MARTIN MILANO

WITNESS' SIGNATURE

STATE OF NEW YORK: COUNTY OF ORANGE:

SWORN TO THIS 10th DAY OF October 2013

[Handwritten Signature]

NOTARY PUBLIC

MARY E. BOZYDAJ
Notary Public-State of New York
Qualified in Ulster County
My Commission Expires 1/31/2014

**ADDENDUM TO APPLICATION OF MARTIN MILANO
FOR AREA AND USE VARIANCES**

I

NARRATIVE SUMMARY

On or about August 21, 2013, Martin Milano (the "Applicant") applied to the Town of Newburgh Planning Board for approval to revise the existing lot lines with respect to Tax Lots 97-2-30.1, 30.22 and 33. These contiguous lots are located adjacent to New York State Route 300. Lot 30.1 contains the currently vacant Gateway Diner and the Hampton Inn hotel. The application to the Planning Board specifically proposed to dissolve the existing lot line between Lots 97-2-33 and 97-2-30.1, and to revise the lot line between 97-2-30.1 and 97-2-30.22. The resulting lot line revisions would create two (2) lots. Proposed Lot #1 (+/- 1.93 acres) would contain the existing diner, and proposed Lot 2 (+/-6.66 acres) would contain the existing hotel.

This +/- 8.6 acre site is located within the IB (Interchange Business) Zoning District. The Hampton Inn hotel and the restaurant (the "diner") were constructed during the early 1990's, and those structures comply with all then-existing, and current zoning rules and regulations, and all proper permits for the same have been obtained from the Town of Newburgh.

The proposed project will require variances due to the locations of the existing facilities on the proposed lots and due to current code requirements. This has been confirmed by counsel for the Planning Board, Michael Donnelly, Esq., who drafted a letter dated September 9, 2013, on behalf of the Planning Board, referring the Applicant to the Zoning Board of Appeals to obtain certain required area and use variances. Pursuant to the town code, within the IB zoning district, a 60' rear yard setback is required. The diner on proposed lot #1 is located approximately 47.1' from the rear property line, and the hotel on proposed lot #2 is located approximately 49.5' from the rear property line. The Applicant requests that this Board grant two (2) area variances: one on proposed lot #1 of approximately 12.9', and one on proposed lot #2 of approximately 10.5' such that the property will be within the required rear yard setbacks.

Also, in its referral letter of September 9, 2013, the Planning Board has requested that the Applicant apply for variances from Section 185-27(c)(1) of the Town Code, which requires that a hotel site have its principle frontage on a state or county highway, and from Section 185-27 of the Town Code, to allow the restaurant (diner) as a principle use on a stand-alone lot in the IB Zoning District. The restaurant is currently approved as an accessory use to the Hampton Inn.

Other than the modification of the existing lot lines, the applicant will not be making any physical modifications to the property or existing buildings, and the attached Environmental Assessment Form demonstrates that there will be no physical impact to, or adverse impact on the environment as a result of this request.

To render its decision with respect to the area variances, this board must consider all of the factors required by the New York State Town Law. The law requires that a zoning board of appeals take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider: (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.

The following is respectfully submitted to guide this board's determination of the within application.

II

THE AREA VARIANCES

THE REQUESTED AREA VARIANCES WILL NOT PRODUCE AN UNDESIREABLE CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD OR BE A DETERMIMENT TO NEARBY PROPERTIES

The instant application will result in no physical changes being made to the structures on the property, and they will remain as they have existed for decades. Inasmuch as no physical changes will result from the lot line modifications, the variances will have no effect on the character of the neighborhood and will have no detrimental effects on neighboring properties.

THE BENEFIT SOUGHT BY THE APPLICANT CANNOT BE ACHIEVED BY SOME METHOD, FEASIBLE FOR THE APPLICANT TO PURSUE, OTHER THAN THE AREA VARIANCE

The application for the rear yard variances cannot be achieved by another feasible means. As stated above, the hotel and restaurant were constructed in the early 1990's. It is not feasible to modify the buildings, as constructed, in order to accommodate the code's rear yard setbacks. Again, no physical alteration of the existing structures is proposed.

THE REQUESTED VARIANCES ARE NOT SUBSTANTIAL

Two area variances are before the board; one for a variance of +/- 12.9' (60' - 47.1'), and one for a variance of +/- 10.5' (60'-49.5'). The 12.9' rear yard modification is the equivalent of

a 21.5% variance from the code. The 10.5' rear yard modification is the equivalent of a 17.5% variance from the code. These are not statistically significant variances. Again, most importantly, the structures will not change and their locations on the lot will not change. They will continue to exist as they have for decades. The only difference is that the proposed lot line modifications will result in a change in what is considered the "rear yard" under the town code, resulting in the need for the variances.

**THE PROPOSED VARIANCE WILL NOT
HAVE AN ADVERSE EFFECT OR IMPACT
ON THE PHYSICAL OR ENVIRONMENTAL
CONDITIONS IN THE NEIGHBORHOOD OR DISTRICT**

Since the proposed lot line changes will not result in any physical change to the existing structures or their current uses, the proposed variances will have no adverse environmental effects, and they will have no impact on the existing neighborhood conditions. The short environmental assessment form attached hereto further confirms that the variances will result in no adverse environmental impacts.

THE ALLEGED DIFFICULTY WAS NOT SELF-CREATED

This board must determine whether the alleged difficulty was self-created. In this case, it can be argued that the hardship is self-created in that it arises out of the request to modify the lot lines for the property. In truth, however, the motivation for the requested variances is to make that portion of the parcel containing the diner more attractive, both aesthetically and economically, to a potential lessee. The use and intensity of the use of the adjacent lot has changed dramatically since the diner and hotel were constructed. In the past several years, the Town Planning Board has approved the development of at least five additional restaurants on the parcel adjoin the diner site, such as Chili's, Longhorn, Panera, Starbuck's and Five Guys. The variances are requested so that an appropriate, economically-qualified tenant can continue the currently approved restaurant use. Stated differently, the variances are required so that the diner structure will not continue to remain vacant. Moreover, as this board is aware, even if it finds that the difficulty was self-created, that factor alone is insufficient to deny the requested variances.

III

THE USE VARIANCES

Two of the variances sought are use variances. To render its decision with respect to the use variances, this board must consider whether the property can realize a reasonable financial return; whether the hardship is unique to the property; whether the variance will alter the character of the neighborhood; and whether the hardship was self-created.

THE PROPERTY CANNOT REALIZE A REASONABLE FINANCIAL RETURN WITHOUT THE NEEDED VARIANCES AND THE HARDSHIP IS UNIQUE TO THE PROPERTY

The application to the Planning Board to vary the lot lines is made based primarily upon economic considerations caused by the current recession, and upon recent build out pursuant to the town's zoning code, that has permitted large scale development on the lots adjacent to the pre-existing Gateway Diner and Hampton Inn hotel. In the past several years, the Town Planning Board has approved the development of the adjoining parcel, which has resulted in the construction of several "national chain restaurants", such as Chili's, Longhorn, Panera, Starbuck's and Five Guys. Over time, this increased intensity of use of the adjoining parcel contributed to the Gateway Diner going out of business, and to the loss of more than fifty (50) local residents becoming unemployed. The facts demonstrate that these recent changes have, at least in part, caused the restaurant to continue become vacant, and an eyesore to the Newburgh community, despite the Applicant's attempts to aggressively market the restaurant (diner) building for a new tenant. Stated differently, the ability to continue the restaurant use as an accessory use to the hotel has diminished greatly.

The Applicant has been hampered in his attempts to lease the premises due to several critical factors. Namely, since the restaurant is located on the same parcel as the hotel, any financing that a new tenant wishes to obtain for the reconstruction, refurbishment or remodeling of the structure must be approved by the hotel's lenders. Due to the tightening of credit requirements, and increased regulation of mortgage financing, the Applicant's attempts to lease the space have been futile. Moreover, the Applicant has been required to pay outstanding water charges attributable to the diner, which, when added to the Applicant's other real property taxes, has resulted in the Applicant paying in excess of \$65,000 in taxes per year on the parcel as a whole. The proposal to segregate the restaurant to its own parcel will alleviate these economic concerns, and will also allow the lot to be taxed separately for tax purposes.

The hardship is unique to this property. Since the hotel and diner were constructed, several stand-alone restaurants have been approved and constructed within the town. These include Denny's, Perkin's Pancake House, the Neptune Diner and Cosimo's restaurant. Whatever the original intent of the town code was, to prohibit stand-alone restaurants, it is clear that the town's practice is now to approve such restaurants, and the same approval should similarly be afforded to this applicant.

THE VARIANCE WILL NOT ALTER THE CHARACTER OF THE NEIGHBORHOOD

The instant application will result in no physical changes being made to the structures on the property, and they will remain as they have existed for decades. Inasmuch as no physical changes will result from the lot line modifications, the variances will have no effect on the character of the neighborhood and will have no detrimental effects on neighboring properties.

THE HARDHIP WAS NOT SELF-CREATED

This board must determine whether the alleged difficulty was self-created. In this case, it can be argued that the hardship is self-created in that it arises out of the request to modify the lot lines for the property. In truth, however, the motivation for the requested variances is to make that portion of the parcel containing the diner more attractive, both aesthetically and economically, to a potential lessee. The use of the adjacent lot has changed dramatically since the diner was approved. In the past several years, the Town Planning Board has approved the development of at least five additional restaurants on the parcel adjoin the diner site, such as Chili's, Longhorn, Panera, Starbuck's and Five Guys. The variances are requested so that an appropriate, economically-qualified tenant can continue the currently approved restaurant use. Stated differently, the variances are required so that the diner structure will not continue to remain vacant. Moreover, as this board is aware, even if it finds that the difficulty was self-created, that factor alone is insufficient to deny the requested variances.

617.20
Appendix B
Short Environmental Assessment Form

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.

Part 1 - Project and Sponsor Information			
Name of Action or Project: Hampton Inn Newburgh			
Project Location (describe, and attach a location map): 1292 Route 300, north of the Route 300/Route 17K intersection (eastern side)			
Brief Description of Proposed Action: The applicant proposes to dissolve the existing lot line between Lots 97-2-33, 97-2-30.1, and revise the lot line between 97-2-30.1 and 97-2-30.22. The resulting lot line revisions will create two lots. Proposed Lot 1 (±1.93 acres) would contain the existing diner and Proposed Lot 2 (±6.66 acres) would contain the existing hotel.			
Name of Applicant or Sponsor: Martin Milano		Telephone: 845-567-9100	
		E-Mail: MM92NY@aol.com	
Address: 1292 Route 300			
City/PO: Newburgh		State: New York	Zip Code: 12550
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 checked="" type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: Town of Newburgh - Zoning Board of Appeals (Variance Requests) & Planning Board (Lot Line Revision)			YES <input checked="" type="checkbox"/>
3.a. Total acreage of the site of the proposed action?		±8.5 acres	
b. Total acreage to be physically disturbed?		0 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		±8.5 acres	
4. Check all land uses that occur on, adjoining and near the proposed action. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input 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 checked="" type="checkbox"/>	<input 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?	<input type="checkbox"/>	<input type="checkbox"/>	<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: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
b. Are public transportation service(s) available at or near the site of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	<input type="checkbox"/>	<input checked="" 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: Both the structures on-site are pre-existing, no building modifications are being conducted as part of this application	<input type="checkbox"/>	<input type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ Both structures are currently serviced by municipal water	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ Both structures are currently serviced by municipal sewer	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Is the proposed action located in an archeological sensitive area?	<input checked="" type="checkbox"/>	<input 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?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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 type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input checked="" 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?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
16. Is the project site located in the 100 year flood plain?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: <input type="checkbox"/> NO <input type="checkbox"/> YES			

RESET

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____	NO	YES
_____	<input checked="" type="checkbox"/>	<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	YES
_____	<input checked="" type="checkbox"/>	<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	YES
_____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor name: _____	Date: <u>10/10/2013</u>	
Signature: _____		

Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing:	<input type="checkbox"/>	<input type="checkbox"/>
a. public / private water supplies?	<input type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input type="checkbox"/>	<input type="checkbox"/>

	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input type="checkbox"/>	<input type="checkbox"/>

Part 3 - Determination of significance. The Lead Agency is responsible for the completion of Part 3. For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

<input type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
<input type="checkbox"/>	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.
_____	_____
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)

PRINT

RESET



New York 3300 Newburgh NY 12550

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
P.O. Box 610
Goshen, NY 10924
Phone (845) 294-9447
mail@ddbllaw.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.

September 9, 2013

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

RE: Hampton Inn
97-2-30.1, 30.22 & 33 (Zone IB)
1262 Route 300 (13.14)

Members of the Board:

I write to you on behalf of and at the direction of the Town of Newburgh Planning Board. The above referenced applicant appeared before the planning board during its meeting of September 5, 2013. The applicant proposes to subdivide two existing parcels of land in a fashion that will merge one of those parcels (a small strip of land located along Route 300) with an existing (although long abandoned) diner site, while subdividing the diner site off from an existing Hampton Inn. For the planning board to approve the proposed subdivision a number of variances will be required. The planning board wishes me to list these variances and to refer to you the applicant's request for consideration of granting same:

1. A rear yard setback variance for Lot #1 (60 feet required, 47.1 feet provided);
2. A rear yard setback variance for Lot #2 (60 feet required, 49.5 feet provided);
3. A variance from the requirement of Section 185-27(C)(1) that a hotel and motel site have its principal frontage on a State or County Highway. The reconfigured subdivision will remove the existing frontage of the hotel / motel with accessory restaurant site;
4. A use variance to allow a restaurant use as a principal use on a lot in the IB Zoning District. By subdividing the diner lot from the motel lot the authorization under Section 185-27 for restaurant uses as accessory to a hotel or motel use is lost.

The planning board has no particular information to bring to your attention regarding this application. The planning board suggests that you conduct your SEQRA review of this application on an uncoordinated review basis.

Very truly yours,



MICHAEL H. DONNELLY

MHD/lrm

cc: Town of Newburgh Planning Board
308 Gardnertown Road
Newburgh, NY 12550

David A. Donovan, Esq.
Dickover, Donnelly, Donovan & Biagi, LLP
P.O. Box 610
Goshen, NY 10924

Andrew B. Fetherston, P.E., CPESC
Maser Consulting, P.A.
1607 Route 300, Suite 101
Newburgh, NY 12550

SECTION 98

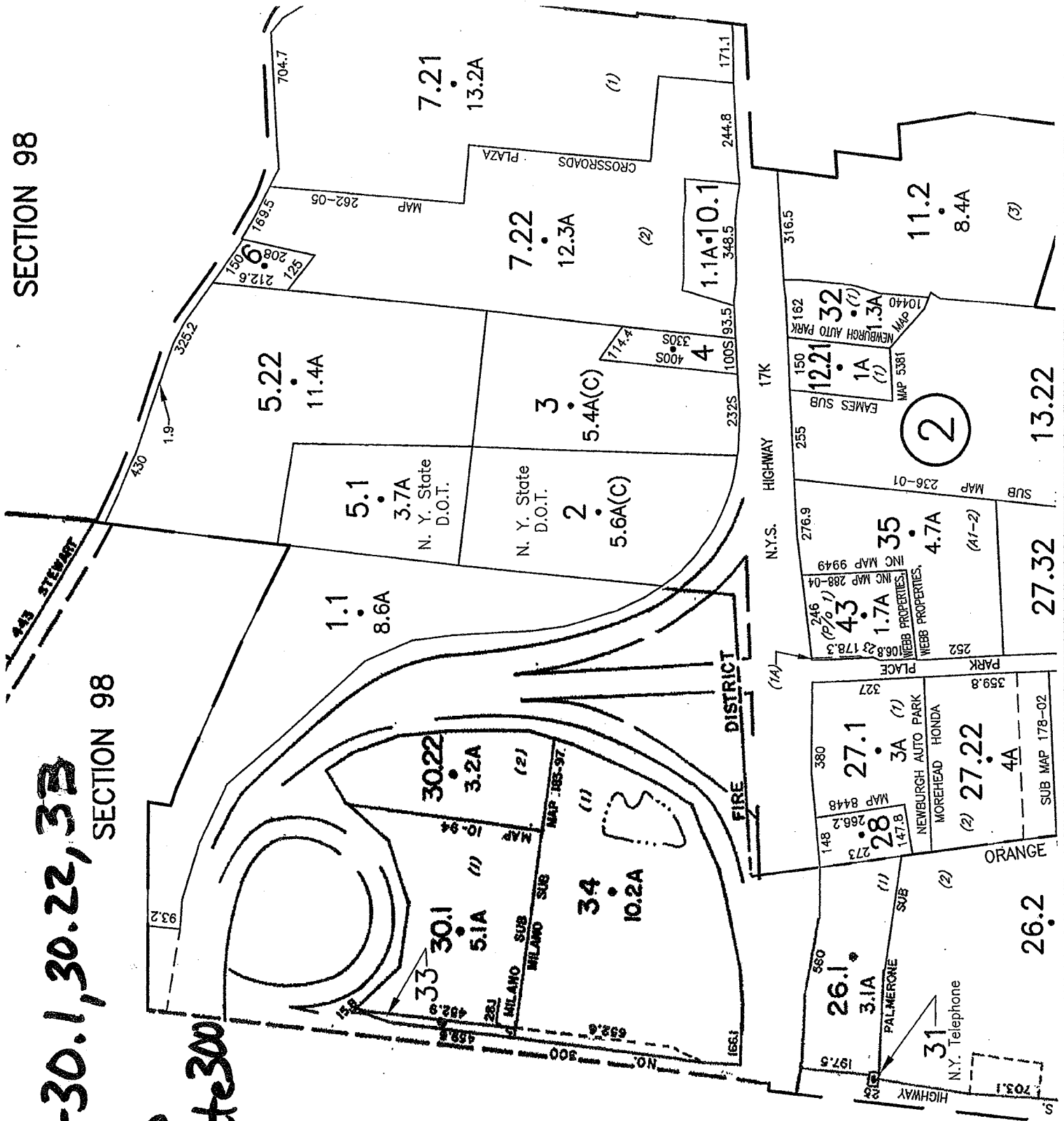
SECTION 98

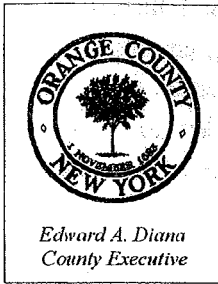
97-2-30.1, 30.22, 3B

Milano

1262 Route 300

95





ORANGE COUNTY DEPARTMENT OF PLANNING

DAVID CHURCH, AICP
COMMISSIONER

www.orangecountygov.com/planning
planning@orangecountygov.com

124 MAIN STREET
GOSHEN, NEW YORK 10924-2124

TEL: (845) 615-3840
FAX: (845) 291-2533

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 #:** NBT 38-13M

Applicant: Martin Milano

Tax Map: 97-3-30.1, 30.22,
and 33

Proposed Action: Use variance to remove a diner from an accessory
use to allow a subdivision.

Local File #:

Reason for County Review: The subject parcels is within 500 feet NYS Route 300 and Interstate 87.

Date of Full Statement: October 17, 2013

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. 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. 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.”*

Although the subdivision itself is not subject to the ZBA's scrutiny, County Planning would like to offer the following guidance for the Boards consideration as deemed appropriate. Additionally we would like to inform the Appellant of potential issues identified that may need consideration prior to any approval by the Planning Board. These comments are informational only because this Variance is expected to be an early action leading to additional referrals and to fuller review. County Planning will expect to comment specifically on the subdivision and other next actions when referred to us under the GML process.

1. There is an existing water line on proposed lot no. 1 that provides water to the existing Diner as well as a fire hydrant on proposed lot no. 2. The proposed easement may need to be expanded to include the portion of the existing water line on proposed lot no. 1

2. Portions of the existing stormwater drainage system on proposed lot no. 1 include infrastructure on proposed lot no. 2, including, but not limited to underground piping, catch basins, vegetative swales, and a stormwater management pond. Our office recommends that the Appellant determine in appropriate drainage easements are needed on proposed lot no. 2 along the north side and east side of the existing development , as well as around the existing stormwater pond.

County Recommendation: Local Determination

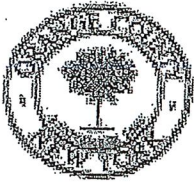
Date: October 24, 2013

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

Fred Pudda

for **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.



Samuel A. Mirra
County Executive

Orange County Department of Planning

Submittal Form for Mandatory Review of Local Planning Action as per NYS General Municipal Law §229-1(m), (n), & (o)

Referral ID#

This form is to be completed by the local board having jurisdiction. Submittals from applicants will not be accepted unless coordinated with both the local board having jurisdiction and the County Department of Planning.

Please include all materials that are part of a "full statement" as defined by NYS GML §229-1(m) (i.e. "all materials required by and submitted to the referring body as an application on a proposed action").

Municipality:

Town of Newburgh

Local Referring Board:

Zoning Board of Appeals

Applicant:

MARTIN MILANO

Project Name:

Hampton Inn & Diner Subdivision

Location of Project Site:

1292 Route 300

Tax Map #:

97-2-30.1

Tax Map #:

97-2-30.22

Tax Map #:

97-2-33

Local File No.:

Size of Parcel:

5.1/3.2/?

If more than one parcel, please include sum of all parcels.

Current Zoning District (include any overlays):

IB

Reason for County Review:

ON NYS Route 300

Type of Review:

Comprehensive Plan Update/Adoption

Zoning Amendment

Zoning District Change from _____ to _____

Ordinance Modification (cite section): _____

Local Law

Site Plan

Sq. feet proposed (non-residential only): _____

Which approval is the applicant currently seeking?

SKETCH / PRELIM / FINAL (circle one)

Subdivision

Number of lots proposed: _____

Which approval is the applicant currently seeking?

SKETCH / PRELIM / FINAL (circle one)

Special Use Permit

Lot Line Change

Variance

(AREA) USE (circle one) Lot #1 REAR YARD SETBACK & Lot #2 REAR

Other

YARD SETBACK for proposed Subdivision

Is this an update to a previously submitted referral? YES / NO (circle one)

Local board comments or elaboration:

Shane Cardone

10/15/13

Chairperson,
Zoning Board of Appeals

Signature of local official

Date

Title

Municipal Contact Phone Number:

845 566-4901

If you would like the applicant to be cc'd on this letter, please provide the applicant's address:

Please return, along with full statement, to: Orange County Dept. of Planning 124 Main St. Goshen, NY 10924

Question or comments, call: 845-616-3940 or email: planning@orangecountygov.com

AREA

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: October 10 , 2013

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

I(WE) Martin Milano PRESENTLY
RESIDING AT NUMBER 6 Rivers Edge, Newburgh, NY 12550
TELEPHONE NUMBER (845) 567-9100

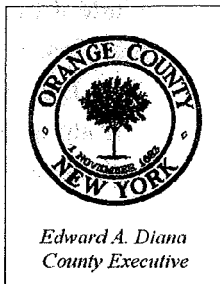
HEREBY MAKE APPLICATION TO THE ZONING BOARD OF APPEALS FOR THE FOLLOWING:

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

1. LOCATION OF THE PROPERTY:
Section 97; Block 2;
Lots 30.1, 30.22, 33 (TAX MAP DESIGNATION)
1292 Route 300
Newburgh, NY 12550 (STREET ADDRESS)
1B (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).
Area Variances: Table of Use and Bulk Requirements
IB District Schedule 8

#11 Column "A" - Accessory Uses: Restaurants - required 60' setback. Applicant's existing restaurant has a 47.1' rear setback. This requires a variance.



ORANGE COUNTY DEPARTMENT OF PLANNING

DAVID CHURCH, AICP
COMMISSIONER
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124 MAIN STREET
GOSHEN, NEW YORK 10924-2124

TEL: (845) 615-3840
FAX: (845) 291-2533

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 #:** NBT 39-13M

Applicant: Martin Milano **Tax Map:** 97-3-30^a, 30.22,
and 33

Proposed Action: Area variance related to insufficient rear yard for two **Local File #:**
(2) proposed lots.

Reason for County Review: The subject parcels is within 500 feet NYS Route 300 and Interstate 87.

Date of Full Statement: October 17, 2013

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. 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. 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 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.”*

Although the subdivision itself is not subject to the ZBA's scrutiny, County Planning would like to offer the following guidance for the Boards consideration as deemed appropriate. Additionally we would like to inform the Appellant of potential issues identified that may need consideration prior to any approval by the Planning Board. These comments are informational only because this Variance is expected to be an early action leading to additional referrals and to fuller review. County Planning will expect to comment specifically on the subdivision and other next actions when referred to us under the GML process.

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County Recommendation: Local Determination

Date: October 24, 2013

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

Fred Pidda

for **David Church, AICP**
Commissioner of Planning

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