



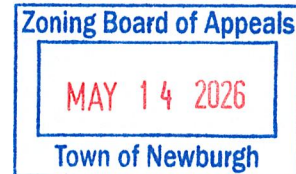
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Taylor M. Palmer, Esq.  
[tpalmer@cuddyfeder.com](mailto:tpalmer@cuddyfeder.com)

May 14, 2026

**VIA EMAIL**

Chairman Scalzo  
and Members of the Zoning Board of Appeals  
Town of Newburgh  
21 Hudson Valley Professional Plaza  
Newburgh, NY 12550  
Attn: Siobhan Jablesnik, Secretary to the Board



Re: Adjournment Request – Pending Request for Zoning Determination/Interpretation, and  
In the Alternative, Applications for Area Variances or a Use Variance  
Applicants: Nick DiLemme, Jennifer McHugh DiLemme, & Di Lemme & Sons, Inc.  
Premises: 2201 State Route 300, Town of Newburgh, New York  
Tax ID: 3-1-91.2

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Dear Chairman Scalzo and the Members of the Zoning Board of Appeals,

On behalf of Nick DiLemme and Jennifer McHugh DiLemme, and Di Lemme & Sons, Inc. (the “Company,” and collectively, the “Applicants”), we respectfully submit this letter and the referenced enclosures in furtherance of their Request for Zoning Determination/Interpretation, and, in the alternative, Applications for Area Variances or a Use Variance (collectively the “Applications”), which Applications are pending before this Board. Pursuant to the Applicants’ understanding of this Board’s directives on April 23, 2026, the Applicants respectfully request that the Public Hearing be further adjourned from the Board’s May 28th meeting Agenda to the Board’s June 25<sup>th</sup> meeting Agenda for continued review and Public Hearing as they still have not received all the historical zoning codes in effect during the 1980s (i.e., the ‘1980 Zoning Code’).

By way of brief background, this Board opened the Public Hearing on the Applications at its regularly scheduled meeting on January 22, 2026, at which time the Board voted to adjourn and continue the Public Hearing to its next regularly scheduled meeting on February 26, 2026, to allow for further consideration of the issues raised by the Applications and to grant the Applicants additional time to obtain the historical zoning codes. As of February 17, 2026, however, the Town had not provided Applicants with copies of the zoning code in effect during the 1980s, which Applicants originally sought through its Freedom of Information Law request dated September 29, 2025. Accordingly, on this date Applicants submitted an adjournment request to the Board to allow Applicants to obtain and introduce the aforesaid zoning code to the record of the Applications.

At its meeting on February 26, 2026, this Board considered Applicants’ adjournment request during the continued Public Hearing on the Applications, and, because two of the Board’s seven members would not be in attendance at its next regularly scheduled meeting on March 26, 2026, the Board voted to adjourn the matter and continue the Public Hearing to its regularly scheduled meeting on April 23, 2026. This Board, with all members present, then continued the Public Hearing on the Applications at its meeting on April 23, 2026.



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As documented in the April 23<sup>rd</sup> meeting minutes for Public Hearing on the Applications, the members of the Board agreed that the historical zoning codes (i.e., the “1980 Code”), which neither Applicants nor the Board had received, are essential to informing the Board’s decision on the Applications.<sup>1</sup> Accordingly, this Board voted to adjourn the matter and continue the Public Hearing to its next regularly scheduled meeting on May 28, 2026,<sup>2</sup> unless said historical zoning code had not been received by the May 14, 2026, submission deadline for the May 28th meeting, in which case Applicants would request the Board further adjourn the matter and continue the Public Hearing to the its regularly scheduled meeting on June 25, 2026.<sup>3</sup>

Critically, however, the Applicants have still not received Local Law No. 4 of 1974, which established the AR (Agriculture) District, its regulations, and classified the Premises within the AR District, nor have they received all of its subsequent amendments that were in effect during the 1980s. Indeed, the “Zoning Code of 1990,” which contains Local Law No. 4 of 1974 *as amended to August 29, 1990*, does not capture the zoning regulations in effect when the Applicants’ Workshop was built in 1984, nor does it capture the zoning regulations in effect when the Company was formally incorporated in 1987 and expanded its services to include concrete finishing on or about this same time. The aforementioned is documented in **Exhibit A** – Emails between Daniel Conant, Lisa Ayers, and Riddar Nget, and **Exhibit B** – the Applicants’ Adjournment Request dated February 17, 2026.

As noted in the latter:

Local Law No. 4 of 1974 is critical to the initial determination requested of this Board, i.e., whether the Company’s use of the Premises was legal in the 1980s, because the Law enacted the Zoning Code governing this time period, including Nicandro DiLemme’s formation of the Company and the Company’s use of the Premises.<sup>4</sup> Accordingly, the Applicants respectfully submit that adjourning the Public Hearing to permit the entirety of Local Law No. 4 of 1974 to be entered into the record is appropriate, as its provisions go to the crux of the Applicants’ Request for Zoning Determination/Interpretation *and* their request for area variance relief, to the extent it may be necessary.

Accordingly, the Applicants respectfully request additional time to try to obtain the following relevant historical zoning codes from the Town: (i) Local Law No. 4 of 1974; (ii) amendments to the 1974 Zoning Code enacted after Local Law No. 4 of 1987 and before Local Law No. 4 of 1991; and (iii) a full copy of Local Law No. 6 of 1974.

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<sup>1</sup> Refer to page 129 of the April 23<sup>rd</sup> meeting minutes.

<sup>2</sup> *Id.*, refer to pages 137-38.

<sup>3</sup> *Id.*, refer to pages 135-137.

<sup>4</sup> Per the October 28, 2025 Determination Letter prepared by Gerald Canfield, “The AR District was established by Town of Newburgh Local Law No. 4 of 1974. ... The Premises and the two preceding lots which were combined to form the Premises have been within the boundaries of the AR District since the District’s formation.” Refer to Attachment L of the Applicants’ initial submission dated December 26, 2025.



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**CONCLUSION & MATERIALS ENCLOSED:**

Adjourning the Public Hearing would permit the Board to properly assess the merits of the initial determination of the Code Compliance Supervisor, the Applicants' appeal from said determination, and whether the Applicants would require area variance relief for the Company's continued use of the Premises.<sup>5</sup>

In further support of the Applications and the instant request for a one (1)-month adjournment, enclosed please find a copy of the following materials:

- Exhibit A:** Emails from Daniel Conant to Lisa Ayers dated May 12, 2026, and from Lisa Ayers to Riddar Nget, dated May 11, 2026, along with:
- Excerpts of the "Zoning Code of 1990"; and
- Exhibit B:** The Applicants' Adjournment Request to the Zoning Board of Appeals dated February 17, 2026, including:
- Exhibit A: Email from Lisa Ayers to Riddar, dated February 9, 2026; and
  - Exhibit B: Purported excerpts of Local Law No. 4 of 1974 as found in the document entitled "Local Law #4-1974.pdf" attached to the email in Exhibit A.

In consideration of the foregoing, the Applicants respectfully request that the Public Hearing be adjourned from the Board's May 28<sup>th</sup> meeting Agenda, to the Board's June 25<sup>th</sup> meeting Agenda for continued review and Public Hearing. In the meantime, should Town Staff or the Board have any questions or comments with regard to the foregoing, please do not hesitate to contact me. Thank you for your time and consideration in this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Dan Conant', with a horizontal line extending to the right.

Daniel Conant  
Enclosures

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<sup>5</sup> *Tomich v. Lowery*, 942 N.Y.S.2d 618, 619 (2d Dep't 2012) (affirming Supreme Court's annulment of a ZBA determination where the board found the applicant "failed to establish that the continuous nonconforming use of the subject property as a multi-family dwelling began prior to the 1934 enactment of the relevant zoning code" because the board's determination was "without a rational basis and was not based on the evidence in the record").



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Page 4

cc: Applicants  
David Donovan, Esq., Attorney to the Zoning Board of Appeals  
Michael Matsler, Esq., Rider, Weiner & Frankel, P.C.  
Daniel Conant, Esq., Cuddy & Feder LLP

# Exhibit A

**From:** [Conant, Daniel](#)  
**To:** ["town-clerk@townofnewburgh.org"](mailto:town-clerk@townofnewburgh.org)  
**Cc:** ["codecompliance@townofnewburgh.org"](mailto:codecompliance@townofnewburgh.org); [Mark Taylor](#); [David A. Donovan](#); [Palmer, Taylor M.](#); [Nget, Riddar](#); [Persico, Moira](#)  
**Subject:** FW: Town of Newburgh FOIL Request Documents  
**Date:** Tuesday, May 12, 2026 4:51:18 PM  
**Attachments:** [Dilemni Foil 2.pdf](#)  
[Dilemni Foil Request.pdf](#)  
[Zoning Code of 1990.pdf](#)

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Hi Lisa,

Thank you for the additional local laws and ordinances. I've copied Attorney Donovan here to ensure that all parties are kept current.

In reviewing the new materials (attached; "Dilemni Foil Request" & "Dilemni Foil 2") and those received from you on February 9<sup>th</sup> & 25<sup>th</sup>, I note that we still have not received Local Law No. 4 of 1974, itself, and one (or more) of the subsequent local laws/ordinances amending LL #4-1974, the aforementioned of which we originally requested from the Town via FOIL dated September 25, 2025, prior to your involvement. I also note that the document titled "Dilemni Foil 2" only contains the odd pages of LL #6-1974 beginning with page xxix (page 4 of PDF).

To be more specific regarding the former, we received the attached "Zoning Code of 1990" from you on February 25, 2026, which contains Local Law No. 4 of 1974 *as amended* through August 29, 1990 (refer to the 1990 Supplementation Instruction Sheet re: Suppl. #12 on page 103 of the PDF). Its July 20, 1989 Supplementation Instruction Sheet, for Suppl. #11, on p. 105, indicates that the Zoning Code was also revised on or about this time (refer to my highlights and call outs on p. 105), however, the amendments to the Zoning Code contained in Suppl. #11 are not reflected in any of the Local Laws or Ordinances that we have received to date.

Accordingly, we kindly ask the Town to continue searching its zoning records for:

- Local Law No. 4 of 1974;
- Amendments to the 1974 Zoning Code enacted after Local Law No. 4 of 1987 and before Local Law No. 4 of 1991; and
- Full copy of Local Law No. 6 of 1974.

We sincerely appreciate your efforts to search through the boxes of historical zoning records, and please let us know if you have any questions or would like further clarification.

Thank you,

Dan

**From:** Lisa Ayers <[town-clerk@townofnewburgh.org](mailto:town-clerk@townofnewburgh.org)>

**Sent:** Monday, May 11, 2026 4:57 PM

**To:** Nget, Riddar <[RNget@cuddyfeder.com](mailto:RNget@cuddyfeder.com)>

**Cc:** Gerald Canfield <[codecompliance@townofnewburgh.org](mailto:codecompliance@townofnewburgh.org)>; Mark Taylor <[MTaylor@riderweiner.com](mailto:MTaylor@riderweiner.com)>

**Subject:** Re: Town of Newburgh FOIL Request Documents

Good Afternoon Riddar,

Town of Newburgh ZBA attorney David Donovan has advised that you have modified your FOIL request to include the zoning code in effect in 1990.

Given that the zoning code was not separately published every year, our office has reviewed all local laws and ordinances adopted subsequent to local law No. 4 of 1974 which was previously provided to you through December 31, 1990.

Enclosed are copies of the local laws and ordinances that were identified to have included zoning provisions.

1. Local Law No. 6 of 1974
2. Local Law No. 1 of 1975
3. Ordinance No. 81-3
4. Local Law No. 1 of 1983
5. Local Law NO. 1 of 1984
6. Local Law No. 4 of 1987

Have a nice evening

Thanks,

Lisa

On Wed, Feb 25, 2026 at 2:12 PM Lisa Ayers <[town-clerk@townofnewburgh.org](mailto:town-clerk@townofnewburgh.org)> wrote:

Hi Riddar,

This is what the town attorney gave me. The last pages show the supplemental sheets.

Thanks,  
Lisa

On Mon, Feb 23, 2026 at 10:30 AM Nget, Riddar <[RNget@cuddyfeder.com](mailto:RNget@cuddyfeder.com)> wrote:

Hi Lisa,

To clarify below, please provide an update on the *full text of Local Law #4 of 1974*. The document previously sent contained only the cover page and the zoning map of the Law.

Thanks,  
Riddar



Riddar Nget  
Paralegal  
Cuddy & Feder LLP  
445 Hamilton Avenue, 14th Floor  
, 10601  
T 914 761 1300 | F 914 761 5372  
[rnget@cuddyfeder.com](mailto:rnget@cuddyfeder.com)  
[www.cuddyfeder.com](http://www.cuddyfeder.com)

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NOTE: The information in this e-mail message and any attachments thereto have been sent by an attorney or his/her agent, and is or are intended to be confidential and for the use of only the individual or entity named above. The information may be protected by attorney/client privilege, work product immunity or other legal rules. If the reader of this message and any attachments thereto is not the intended recipient, you are notified that retention, dissemination, distribution or copying of this e-mail message and any attachments is strictly prohibited. Although this e-mail message (and any attachments) is believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, the intended recipient is responsible to ensure that it is virus free. The sender and Cuddy & Feder LLP shall not have any responsibility for any loss occasioned in any manner by the receipt and use of this e-mail message and any attachments.

Pursuant to Treasury Regulations, any U.S. federal tax advice contained in this communication, unless otherwise stated, is not intended and cannot be used for the purpose of avoiding tax-related penalties.

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**From:** Nget, Riddar <[RNget@cuddyfeder.com](mailto:RNget@cuddyfeder.com)>  
**Sent:** Friday, February 20, 2026 4:14 PM  
**To:** Lisa Ayers <[town-clerk@townofnewburgh.org](mailto:town-clerk@townofnewburgh.org)>  
**Cc:** Conant, Daniel <[DConant@cuddyfeder.com](mailto:DConant@cuddyfeder.com)>; Nget, Riddar <[RNget@cuddyfeder.com](mailto:RNget@cuddyfeder.com)>  
**Subject:** RE: Town of Newburgh FOIL Request Documents

Hi Lisa,

Following up on our phone conversation last week. Can you please provide an update on the *full* copy of 1987 Zoning Code that was omitted from the original request (only the zoning map was provided)?

Thanks,  
Riddar

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**From:** Lisa Ayers <[town-clerk@townofnewburgh.org](mailto:town-clerk@townofnewburgh.org)>  
**Sent:** Monday, February 9, 2026 3:06 PM  
**To:** Nget, Riddar <[RNget@cuddyfeder.com](mailto:RNget@cuddyfeder.com)>  
**Subject:** Town of Newburgh FOIL Request Documents

Good Afternoon Riddar,

Thank you for your patience, attached are the documents you requested through FOIL.

Please let me know if you need anything else.

Thanks,  
Lisa

--

Lisa M. Vance Ayers  
Town Clerk  
Registrar of Vital Statistics  
Town of Newburgh  
(845)564-4554  
[town-clerk@townofnewburgh.org](mailto:town-clerk@townofnewburgh.org)

--

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--

Lisa M. Vance Ayers

Town Clerk

Registrar of Vital Statistics

Town of Newburgh

(845)564-4554

[town-clerk@townofnewburgh.org](mailto:town-clerk@townofnewburgh.org)

# Exhibit B



445 Hamilton Avenue, 14th Floor  
White Plains, New York 10601  
T 914 761 1300  
F 914 761 5372  
cuddyfeder.com

Taylor M. Palmer, Esq.  
[tpalmer@cuddyfeder.com](mailto:tpalmer@cuddyfeder.com)

February 17, 2026

**VIA EMAIL**

Chairman Scalzo  
and Members of the Zoning Board of Appeals  
Town of Newburgh  
21 Hudson Valley Professional Plaza  
Newburgh, NY 12550  
Attn: Siobhan Jablesnik, Secretary to the Board

Re: Adjournment Request - Pending Request for Zoning Determination/Interpretation, and  
In the Alternative, Applications for Area Variances or a Use Variance  
Applicants: Nick DiLemme, Jennifer McHugh DiLemme, & Di Lemme & Sons, Inc.  
Premises: 2201 State Route 300, Town of Newburgh, New York  
Tax ID: 3-1-91.2

---

Dear Chairman Scalzo and the Members of the Zoning Board of Appeals,

On behalf of Nick DiLemme and Jennifer McHugh DiLemme, and Di Lemme & Sons, Inc. (the "Company," and collectively, the "Applicants"), we respectfully submit this letter and the referenced enclosures in furtherance of their Request for Zoning Determination/Interpretation, and, in the alternative, Applications for Area Variances or a Use Variance (collectively the "Applications"), which Applications are pending before this Board.

As you know, this Board opened the Public Hearing on the Applications at its last meeting on January 22, 2026, at which time the Applicants requested to continue the Public Hearing to prepare responses to the oral statements of several neighbors and obtain copies of historical zoning regulations in effect during the relevant time period (e.g., 1980s). Due to the Applicants' recent receipt of some, though not all, applicable historical zoning codes and the volume of information submitted by a commenter via e-mail on January 28, 2026, we respectfully request that the Public Hearing be adjourned from the Board's February 26<sup>th</sup> meeting Agenda to its March 26<sup>th</sup> meeting Agenda so the Applicants may obtain Local Law No. 4 of 1974 and finalize responses to the aforementioned materials.

As previously discussed at the Public Hearing,<sup>1</sup> and as noted in our initial submission,<sup>2</sup> the Applicants requested copies of the Town's historical zoning codes in effect at the time of the Company's establishment to determine whether the Company's use of the above-referenced premises (the "Premises") is legally nonconforming, either in whole or in part. The Applicants have since continued to follow up on their September 25, 2025 Freedom of Information Law ("FOIL") request for said zoning codes,<sup>3</sup> and, as a result of their efforts, only just received three

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<sup>1</sup> Please refer to pages 86-87, and 151-52 of the January 22, 2026 Public Hearing meeting minutes.

<sup>2</sup> Please refer to page 2 and Attachment M of the Applicants' initial submission dated December 26, 2025.

<sup>3</sup> *Id.*



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Page 2

(3) digital files on the afternoon of February 9th, two (2) of which contain relevant codes (Local Law No. 4 of 1987 and Local Law No. 4 of 1991).<sup>4</sup>

The third file received by the Applicants, purportedly containing Local Law No. 4 of 1974, includes only what seem to be excerpts of the Law,<sup>5</sup> together with several documents related to the adoption of it.<sup>6</sup> The Applicants left a message informing the Town's FOIL Officers of this the following day, February 10<sup>th</sup>, and spoke with a FOIL Officer on Friday, February 13<sup>th</sup>, at which time the Applicants were told that the Town Attorney compiled the materials and that the Officer would inform the Town Attorney of the omission of Local Law No. 4 of 1974.

Local Law No. 4 of 1974 is critical to the initial determination requested of this Board, i.e., whether the Company's use of the Premises was legal in the 1980s, because the Law enacted the Zoning Code governing this time period, including Nicandro DiLemme's formation of the Company and the Company's use of the Premises.<sup>7</sup> Accordingly, the Applicants respectfully submit that adjourning the Public Hearing to permit the entirety of Local Law No. 4 of 1974 to be entered into the record is appropriate, as its provisions go to the crux of the Applicants' Request for Zoning Determination/Interpretation *and* their request for area variance relief, to the extent it may be necessary.

Furthermore, adjourning the Public Hearing will allow the Applicants to more fully address the materials submitted to this Board by a public commenter on January 28<sup>th</sup>. The Applicants have worked diligently to respond to all of the materials, but given their volume (46 files) and nature (multimedia),<sup>8</sup> the Applicants respectfully request additional time to respond to them. This time will also provide the Applicants the opportunity to finish identifying and responding to certain inaccurate comments made at the Public Hearing concerning the Company's use of the Premises.

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<sup>4</sup> Refer to the email from Lisa Ayers to Riddar Nget dated February 9, 2026. See **Exhibit A**.

<sup>5</sup> Enclosed as **Exhibit B**. Note: the excerpts bear the same sidebar letterhead as those in Exhibit A of the October 28, 2025, Determination Letter prepared by Gerald Canfield ("Donald R. Becker, P.O. Box 11, 185 Grand Street, Newburgh, N.Y. 12550"). See Attachment L of the Applicants' initial submission dated December 26, 2025.

<sup>6</sup> E.g., the Town Board Resolution Introducing Local Law No. 4 of 1974 and Providing for Public Notice and Hearing, dated March 22, 1974; the Town Board Resolution enacting Local Law No. 4 of 1974, dated April 8, 1974; and the Notice of Adoption of Local Law No. 4 of 1974, dated April 9, 1974.

<sup>7</sup> Per the October 28, 2025 Determination Letter prepared by Gerald Canfield, "The AR District was established by Town of Newburgh Local Law No. 4 of 1974. ... The Premises and the two preceding lots which were combined to form the Premises have been within the boundaries of the AR District since the District's formation." Refer to Attachment L of the Applicants' initial submission, dated December 26, 2025.

<sup>8</sup> The public commenter submitted forty-six (46) digital files totaling 1.1 gigabytes, consisting of a letter, aerial images, mobile phone screenshots, and videos.



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In sum, adjourning the Public Hearing would permit the Board to properly assess the merits of the initial determination of the Code Compliance Supervisor, the Applicants' appeal from said determination, and whether the Applicants would require area variance relief or a use variance for the Company's continued use of the Premises.

**MATERIALS ENCLOSED:**

In further support of the Application and the instant request for a one (1)-month adjournment, enclosed please find a copy of the following materials:

- Exhibit A:** Email from Lisa Ayers to Riddar Nget, dated February 9, 2026; and
- Exhibit B:** Purported excerpts of Local Law No. 4 of 1974 as found in the document entitled "Local Law #4-1974.pdf" attached to the email in **Exhibit A**.

In consideration of the foregoing, the Applicants respectfully request that the Public Hearing be adjourned from the Board's February 26<sup>th</sup> meeting Agenda, to the Board's March 26<sup>th</sup> meeting Agenda for continued review and Public Hearing. In the meantime, should Town Staff or the Board have any questions or comments with regard to the foregoing, please do not hesitate to contact me. Thank you for your time and consideration in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T.M. Palmer', with a long horizontal flourish extending to the right.

Taylor M. Palmer

Enclosures

cc: Applicants  
David Donovan, Esq., Attorney to the Zoning Board of Appeals  
Michael Matsler, Esq., Rider, Weiner & Frankel, P.C.  
Daniel Conant, Esq., Cuddy & Feder LLP

# Exhibit A

## Nget, Riddar

---

**From:** Lisa Ayers <town-clerk@townofnewburgh.org>  
**Sent:** Monday, February 9, 2026 3:06 PM  
**To:** Nget, Riddar  
**Subject:** Town of Newburgh FOIL Request Documents  
**Attachments:** Local Law #4-1974.pdf; Local Law No. 4 of 1987.pdf; Local Law No. 4 -1991.pdf

Good Afternoon Riddar,

Thank you for your patience, attached are the documents you requested through FOIL.

Please let me know if you need anything else.

Thanks,  
Lisa

--

Lisa M. Vance Ayers  
Town Clerk  
Registrar of Vital Statistics  
Town of Newburgh  
(845)564-4554  
[town-clerk@townofnewburgh.org](mailto:town-clerk@townofnewburgh.org)

# Exhibit B

LOCAL LAW #4 OF THE YEAR 1974  
TOWN OF NEWBURGH

A LOCAL LAW GENERALLY AMENDING AND REVISING THE ZONING LAW OF  
THE TOWN OF NEWBURGH.

BE IT ENACTED by the Town of Newburgh, County of Orange, as  
follows:

SECTION 1. GENERALLY AMENDING LOCAL LAW #1 OF THE YEAR 1966.

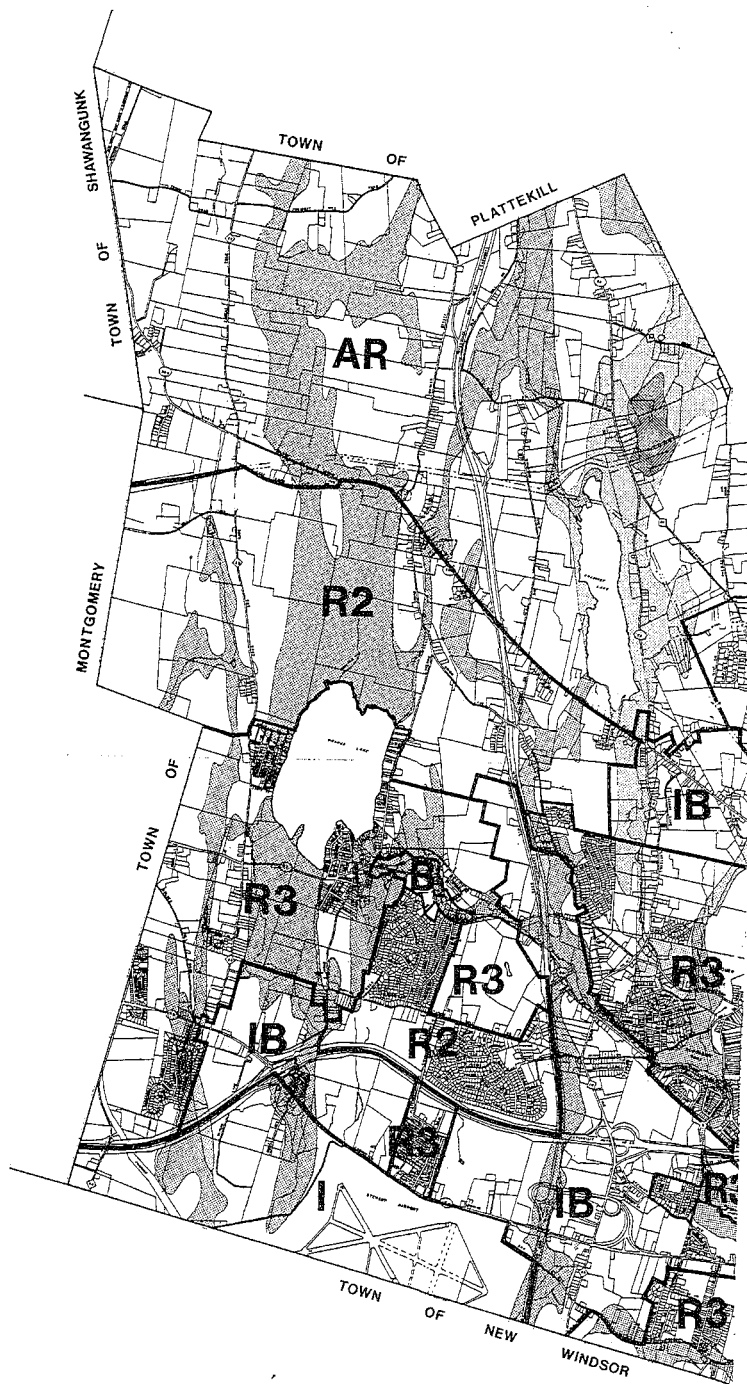
That Local Law #1 of the year 1966 establishing a zoning law  
of the Town of Newburgh and as amended from time to time is  
hereby amended to read as follows:

# ZONING MAP

- AR AGRICULTURE  
RESIDENTIAL
- R1 RESIDENTIAL
- R2 RESIDENTIAL
- R3 RESIDENTIAL
- B BUSINESS
- IB INTERCHANGE  
BUSINESS
- I INDUSTRIAL

## DEVELOPMENT CONSTRAINTS

- MAJOR DRAINAGE  
CONSIDERATIONS
- MINOR DRAINAGE  
CONSIDERATIONS



BASE MAP PREPARED BY  
ORANGE COUNTY DEPARTMENT OF PLANNING 1971

TOWN OF NEWBURGH, ORANGE COUNTY, N



Y.

0 2000 4000ft

↑ NORTH