

300 Tice Boulevard
Suite 101
Woodcliff Lake, NJ 07677
Main: 877 627 3772



VIA UPS

May 22, 2025

Katlyn Bettmann
Town of Orangetown Zoning Board of Appeals
26 Orangeburg Road
Orangeburg, NY 10962

25 Whittier Road – 3 Lot Subdivision **(ZBA #24-62)**
Town of Orangetown, Rockland County, NY
Project No. 24001458A

Dear Ms. Bettmann,

We are pleased to submit the enclosed letter from the applicant's attorney, which clarifies the property's access rights to Whittier Road. We have also amended the Plot Plan to address some comments the Board had at the meeting held on December 4, 2024. Please find enclosed two (2) copies of this Plot Plan prepared by our office, last revised May 21, 2025, for review.

We believe the Board now has sufficient information to grant the variances previously requested. At this time, we kindly request to be placed on the next available ZBA meeting agenda.

Should you have any further questions, please do not hesitate to contact our office.

Sincerely,

Colliers Engineering & Design, Architecture, Landscape Architecture, Surveying, CT P.C.

A handwritten signature in black ink, appearing to read "Jesse Cokeley".

Jesse Cokeley, PE
Geographic Discipline Leader

R:\Projects\2024\24001458A\Correspondence\OUT\250522_JBC_OrangetownZB_Cover Letter.docx

SAVAD CHURGIN
ATTORNEYS AT LAW

Paul Savad (1941-2020)
Joseph A. Churgin

Of Counsel
Susan Cooper
Donna Sobel

55 OLD TURNPIKE ROAD – SUITE 209
(Rt. 59 & THRUWAY EXIT 14)
NANUET, NEW YORK 10954

(845) 624-3820
Fax: (845) 624-3821

May 1, 2025

Denise A. Sullivan, Deputy Town Attorney
Town of Orangetown
26 Orangeburg Road
Orangeburg, New York 10962

By Email dsullivan@orangetown.com and UPS Courier

RE: 25 Whittier Road, Blauvelt, New York - SBL 65.18-13 (the “Property”)
Bedrock Whittier LLC (the “Applicant”)

Dear Ms. Sullivan:

As you are aware, we represent Applicant Bedrock Whittier LLC, the owner of the above property since July 2024.

We provide this letter and enclosures in an effort to obtain a Town Law §280-a Variance relating to the proposed subdivision of the Property.

The Deed into the Applicant (Exhibit “A”) was from Steven Finn, Grantor.

Finn took title by deed dated October 11, 1993 from Barlette L. Thomas, Edward C. Leber, Jr., and Chelsey Leber (Exhibit “B”).

The deed to the Applicant and the deed to Finn include all right, title and interest, if any, of the seller to any “streets and roads abutting” the Property.

Edward C. Leber and Bartlett R. Leber took title in 1950 pursuant to a deed dated June 13, 1950 from Robert E. Leber (Exhibit “C”).

Robert E. Leber is the original owner and subdivider of all lands surrounding Whittier Road. The deed out from Robert C. Leber states his address as “Leber Road (no street number)”.

It is believed that the Leber Family lived at 25 Whittier Road, which home was built in 1916, prior to other home construction on Whittier Road. The occupants of the home go to and from the home via a circular driveway that exits onto Whittier Road from both ends. The circular driveway is still there today (See Exhibit “E”).

The Applicant seeks to subdivide the 3.30 acre lot into three viable subdivision lots (Exhibit “D”).

Also enclosed are the following:

Two current photographs of 25 Whittier Road (Exhibit “E”);

Google printout (Exhibit “F”);

Filed Map from 1934 (Exhibit “G”);

Filed Map from 1938 (Exhibit “H”);

Decision of the Hon. Mark C. Dillon, JSC dated June 15, 2000 in an action under Index No. 2647/00 (Exhibit “I”); and

Decision of the Hon. Mark C. Dillon, JSC dated July 11, 2000 in an action under Index No. 3157/00 (Exhibit “J”).

For the reasons set forth in Judge Dillon’s two Decisions, the Applicant is entitled to a Town Law §280–a Variance.

In the June 15, 2000 Decision, the Court held that “Plaintiffs are the owners of Lot 13, abutting the westerly side of Whittier Road, as evidence by a Bargain and Sale deed dated October 11, 1993. Documents establish certain rights of the Finns over the westerly half of Whittier Road”. The Applicant herein is the current owner of Lot 13. That case, which related to the other side of Whittier Road stands for the proposition that the owner of the property on the other side of Whittier Road has a right to use Whittier Road to access his property. “Similarly today, KDJ will obviously need to utilize Whittier Road to enter upon and leave its premises”.

The predecessors in title to the Applicant all utilized Whittier Road to access the Property going back to Robert Leber pre-1950. How can it be argued that the Applicant does not have the same right.

Finally, the July Decision is important because it held that KDJ (on the other side of Whittier Road) was properly granted a Town Law §280-a Variance. This establishes that Whittier Road qualified under the statute.

Please call me to discuss.

Very truly yours,

A handwritten signature in cursive script that reads "Joseph A. Churgin".

JOSEPH A. CHURGIN

JAC/mc

encs.

cc: Bedrock Whittier LLC

EXHIBIT A

EXHIBIT A

**BARGAIN AND SALE DEED WITH COVENANT AGAINST GRANTOR
(INDIVIDUAL)**

STATUTORY FORM C

THIS IS A LEGALLY BINDING INSTRUMENT. IF NOT FULLY UNDERSTOOD, WE RECOMMEND ALL PARTIES TO THE INSTRUMENT CONSULT AN ATTORNEY BEFORE SIGNING.

THIS INDENTURE, made ^{as of} the 1st day of July, ~~June~~, Two Thousand and Twenty Four

Between:

STEVEN FINN, as surviving spouse of Dawn Nostrand Finn who died a resident of Rockland County on October 12, 2011
25 Whittier Road
Blauvelt, NY 10913

party of the first part, and

BEDROCK WHITTIER LLC,
441 Route 306, Suite 6
Monsey, NY 10952

party of the second part:

WITNESSETH, that the party of the first part, in consideration of Ten and 00/100 (\$10.00) dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, his heirs and assigns forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of Orangetown, County of Rockland and State of New York;

Said premises described herein being and intended to be the premises described and conveyed to Steven Finn by deed dated 10/11/1993 and recorded 10/27/1993 in the Rockland County Clerk's Office in Liber 657 Page 1339, made by Barlett L Thomas, Edward C Leber, Jr. and Chesley Leber.

ALSO DESCRIBED ON SCHEDULE "A" ANNEXED HERETO

TOGETHER with all right, title and interest, if any, of the party of the first part of, in and to any streets and roads abutting the above-described premises to the center lines thereof;
TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, his heirs and assigns forever. And the party of the first part covenants that he has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

BY: 

STEVEN FINN

STATE OF FLORIDA)
) ss.:
COUNTY OF DADE)

On the 19 day of June in the year 2024, before me, the undersigned, a Notary Public in and for said State personally appeared STEVEN FINN personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

#HH260253
Commission expires May 2, 2026
Liyian Paetz Rodriguez
Notary Public State of Florida



NOTARY PUBLIC

BARGAIN & SALE DEED

STREET ADDRESS: 25 Whittier Road
Blauvelt, NY 10913

SECTION 65.18
BLOCK 1
LOT 13
Town of Orangetown County of Rockland

STEVEN FINN, as surviving spouse of
Dawn Nostrand Finn who died a resident
of Rockland County on October 12, 2011

TO

BEDROCK WHITTIER LLC

ISAAC SCHEINER, Esq
441 Route 306
Monsey, NY 10952
(845)364-0700

Old Republic Title Insurance Company

Title Number: **TSL-15284-RK**

Page 1

SCHEDULE A DESCRIPTION

ALL that certain plot piece or parcel of land, situate, lying and being in the Town of Orangetown, County of Rockland, State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the westerly side of Whittier Road with the northerly side of Bradley Hill Road;

RUNNING THENCE southwesterly along the northwesterly side of Bradley Hill Road along a curve to the left having a radius of 300.50 feet, a distance of 266.17 feet to a point of tangency and South 46 degrees 01' 30" West 126.43 feet to a point of curve;

THENCE along a curve to the right having a radius of 21.71 feet, a distance of 51.85 feet to a point of tangency on the easterly side of New York State Route No. 303 (State Highway No. 1898);

THENCE along the easterly side of New York State Route No. 303 North 02 degrees 53' 32" East 498.71 feet to the southerly line of land now or formerly of Landgren;

THENCE along the southerly line of land now or formerly of Landgren and along the southerly line of land now or formerly of Lamhut South 83 degrees 13' 30" East 386.20 feet to the westerly side of Whittier Road;

THENCE along the westerly side of Whittier Road South 06 degrees 46' 30" West 300 feet to the point and place of BEGINNING.

FOR CONVEYANCE ONLY:

ALL that certain plot, piece, or parcel of land, in the State of New York, County of Rockland, Town of Orangetown, which is unimproved with structures, consisting of and known as the easterly one-half of the Whittier Road, twenty-feet wide running along the entire westerly boundary of the property conveyed to the party of the first part pursuant to a certain deed dated October 30, 1981, and recorded in the Office of the Rockland County Clerk on November 18, 1981, in Liber 1065 of Deeds, Page 928, reserving to the party of the first part, the right of way, if any, over and upon the strip of land known as Whittier Road, as described in said deed.

FOR INFORMATIONAL PURPOSES ONLY:

Said premises is known as **25 Whittier Road, Blauvelt, NY 10913. Section 65.18 Block 1 Lot 13, Rockland County**

EXHIBIT B

EXHIBIT B

ENVELOPE Rockland County, New York
Edward Gorman
RECORDING PAGE

Transaction Number: 931116110811

Type of Instrument: DEED

Received From: TICOR TITLE GUARANTEE
254 SOUTH MAIN STREET
NEW CITY NY 10956

Recording Charge: 59.00

** EXAMINED AND CHARGED AS FOLLOWS : **

** TRANSFER TAX **	** MTG/DEED AMOUNT **
920.00	230,000.00

RS#: 001852

Mortgage#: _____
 Received Tax on Above Mortgage
 Basic: .00
 Special Addl: .00
 Additional: .00
 Mortgage Tax Total: .00

Town: _____

Total Recording Fees: 979.00

** THIS PAGE IS PART OF THE INSTRUMENT **

I HEREBY CERTIFY THAT THE WITHIN AND FOREGOING WAS RECORDED IN THE
CLERK'S OFFICE FOR Rockland County, New York

IN (Book/Page): BOOK 657 PAGE 1338
ON (Recorded Date): 11/16/93
AT (Time): 10:23 Terminal ID: 136



Edward Gorman
EDWARD GORMAN

693-01639

FF 29 (11/85) Standard N.Y.D.T.U. Form #002 Bargain and Sale Deed, with Covenant Against Grantor's Act-Individual or Corporation (Single Sheet)
CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

This Indenture, made the 11th day of October nineteen hundred and ninety-three

Between Bartlett L. Thomas, Edward C. Leber, Jr. and Chesley Leber, residing at 17 Cushing Road, Wellsley, Mass. 02181, 6101 Providence Country Club, Drive, Charlotte, N.C. 28277 and 467 Greenbush Road North, Blauvelt, N.Y. 10913 respectively

parties
of the first part, and Steven Finn and Dawn Nostrand Finn, residing at 114 Depot Place, South Nyack, N. Y. 10960

party of the second part,

Witnesseth, that the party of the first part, in consideration of Ten Dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Oratamin Neighborhood, Town of Orangetown, County of Rockland and State of New York, more particularly described in the attached Schedule A.

Together with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; Together with the appurtenances and all the estate and rights of the party of the first part in and to said premises; To Have And To Hold the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.
And the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.
And the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.
The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.
In Witness Whereof, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

Bartlett L. Thomas
Bartlett L. Thomas
Edward C. Leber, Jr.
Edward C. Leber, Jr.
Chesley Leber
Chesley Leber

STATE OF NEW YORK, COUNTY OF Rockland ss:

On the 27th day of October 19 93, before me personally came Chesley Leber

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that she executed the same.

Orville H. Mann, Jr.

ORVILLE H. MANN, JR.
Notary Public, State of New York
No. 7898929
Qualified in Rockland County
Term Expires October 31, 1994

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19, before me personally came

to me known, who, being by me duly sworn, did depose and say that he resides at No.

that he is the of

, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19, before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same.

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19, before me personally came

the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at No.

; that he knows to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw

execute the same; and that he, said witness, at the same time subscribed his name as witness thereto.

Bargain and Sale Deed
With Covenant Against Grantor's Acts

Title No. _____

TO

SECTION 105,
BLOCK 854
LOT 12
CITY OR TOWN Orangetown
COUNTY Rockland

Recorded At Request of

TITLE USA Insurance Corporation
of New York

RETURN BY MAIL TO:

Standard Form of New York
Board of Title Underwriters
Distributed by
TITLE USA Insurance Corporation
of New York

Walsh and Walsh, Esqs.
P.O. Box 876
North Tarrytown, N.Y. 10591
Zip No.

RESERVE THIS SPACE FOR
USE OF RECORDING OFFICE

BOOK 1657 PAGE 1340

TICOR TITLE GUARANTEE COMPANY
SCHEDULE A DESCRIPTION

Title No.: 6193-01639

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Orangetown, County of Rockland, State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the westerly side of Whittier Road with the northerly side of Bradley Hill Road;

RUNNING THENCE southwesterly along the northwesterly sides of Bradley Hill Road along a curve to the left having a radius of 300.50 feet, a distance of 266.17 feet to a point of tangency and South $46^{\circ} 01' 30''$ West 126.43 feet to a point of curve;

THENCE along a curve to the right having a radius of 21.71 feet, a distance of 51.85 feet to a point of tangency on the easterly side of New York State Route No. 303 (State Highway No. 1898);

THENCE along the easterly side of New York State Route No. 303 North $02^{\circ} 53' 32''$ East 498.71 feet to the southerly line of land now or formerly of Landgren;

THENCE along the southerly line of land now or formerly of Landgren and along the southerly line of land now or formerly of Lamhut South $85^{\circ} 13' 30''$ East 386.20 feet to the westerly side of Whittier Road;

THENCE along the westerly side of Whittier Road South $06^{\circ} 46' 30''$ West 300.00 feet to the point and place of BEGINNING.

BOOK 0657 PAGE 1341

6193-01639

State of North Carolina
County of Mecklenburg ss.:

On the 11th day of October, 1993 before me personally came Edward C. Leber, Jr. to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same.

James H. Urcam
My Comm. Expires 5-1-95

State of Mass.
County of Suffolk ss.:

On the 15th day of October, 1993 before me personally came Bartlett L. Thomas, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that she executed the same.

William A. Fiedling
My Commission Expires
11/9/99

6193-01639

State of North Carolina

County of Mecklenburg ss.:

On the 17th day of October, 1993 before me personally came Edward C. Leber, Jr. to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same.

France H. VonCannon
My Commission Expires 5-1-95

State of Mass.

County of Suffolk ss.:

On the 15th day of October, 1993 before me personally came Bartlett L. Thomas, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that she executed the same.

Patricia A. Furlong
My Commission Expires 9/9/99

EXHIBIT C

EXHIBIT C



DEED—Full Covenant with Lien Covenant LIBER 512 PAGE 217
1917, Chap. 661, Statutory Form A, Chap. 627 Laws of 1932

TUTBLANK REGISTERED U.S. PAT. OFFICE
Tuttle Law Print, Publishers, Rutland, Vt.

F 217

This Indenture,

Made the _____ seventh _____ day of _____ June, _____ Nineteen Hundred and _____ Fifty,

~~Between~~ ROBERT E. LEBER, widower, of Leber Road (no street number), Blauvelt, in the Town of Orangetown, County of Rockland and State of New York,

_____ party of the first part, and
EDWARD C. LEBER and BARTLETT R. LEBER, his wife, whose residence is Bradley Parkway (no street number), Blauvelt, in the Town of Orangetown, County of Rockland and State of New York,

_____ parties of the second part,

~~Witnesseth~~ that the party of the first part, in consideration of (\$ 1.00) lawful money of the United States, and other good and valuable consideration, _____ paid by the parties of the second part, does hereby grant and release unto the parties of the second part, their heirs and assigns forever, all that certain lot, piece or parcel

of land, together with the buildings and improvements thereon, situate, lying and being in the Oratamin Neighborhood, Town of Orangetown, County of Rockland and State of New York, situated about one mile northeast of the Blauvelt Station of the West Shore Railroad, and east of the said company's lines, and more particularly bounded and described as follows, viz:- BEGINNING at a point in the northerly line of Bradley Road Extension (so-called in a deed from the said party of the first part and his wife to the Town of Orangetown and shown upon a map thereof - - duly filed in the Rockland County Clerk's Office), said point or place of beginning is marked by an iron bar and is at the point of intersection of the northerly line of said Bradley Road Extension and the westerly line of Whittier Road, a proposed road forty (40) feet in width; running thence along the westerly line of said Whittier Road, North twenty (20) degrees thirty-eight (38) minutes East one hundred and fifty (150) feet to an iron bar; running thence along other lands of Leber, North sixty-nine (69) degrees twelve (12) minutes West two hundred (200) feet to an iron bar and other lands of Leber; running thence along the same, South thirteen (13) degrees West two hundred eight and nine-tenths

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(208.9) feet to an iron bar and the northerly line of said Bradley Road Extension; and running thence easterly along the northerly line of the same as the same curves about two hundred (200) feet to the point or place of beginning.

BEING the same premises heretofore conveyed by Robert E. Leber and wife to John Newburn McVeigh and Roberta Leber McVeigh, his wife, by deed dated November 7th, 1941 and recorded in the Rockland County Clerk's Office in Liber 396 of Deeds at Page 499, and the same premises conveyed by John Newburn McVeigh and wife to Robert E. Leber and Alma Biele Leber, his wife, by deed dated October 19th, 1942 and recorded in the Rockland County Clerk's Office in Liber 403 of Deeds at Page 403; the said Alma Biele Leber having heretofore died.

LIBER 512 PAGE 218

Together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

To have and to hold the premises herein granted unto the parties of the second part, their heirs and assigns forever, as tenants by the entirety.

SUBJECT, however, to a mortgage heretofore made and given by Robert E. Leber and wife, to The Provident Building and Loan Association of Haverstraw, N. Y., Inc., dated October 16, 1930 and recorded in the Rockland County Clerk's Office in Liber 294 of Mortgages at Page 86.

And said ROBERT E. LEBER

covenants as follows:

First. That said party of the first part is

seized of said premises in fee simple, and has good right to convey the same;

Second. That the parties of the second part shall quietly enjoy the said premises;

Third. That the said premises are free from incumbrances;

Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises;

Fifth. That said ROBERT E. LEBER

will forever WARRANT the title to said premises.

Sixth. That the grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

In Witness Whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In Presence of

Robert E. Leber (Signature) L.S. L.S. L.S. L.S.

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State of New York

LIBER 512 PAGE 220

County of ROCKLAND.

§§.

On this 9th day of June, 1950 Nineteen Hundred and Fifty, before me, the subscriber, personally appeared

ROBERT E. LEBER, widower,

to me personally known and known to me to be the same person described in and who executed the within Instrument, and he duly acknowledged to me that he executed the same.

Leslie E. Cooke
Leslie E. Cooke
Notary Public, State of New York
Residing in Rockland County
Commission expires Mar. 30, 1951.

RECORDED JUN 13 1950 9:30 A.M.

John W. Boyle, CLERK.

EXHIBIT D

EXHIBIT D

EXHIBIT E

EXHIBIT E

Google

© 2025 Google



25 Whittier Rd

25 Whittier Rd

25 Whittier Rd, Blauvelt, NY 10913 · 4.5 mi Building





Google
© 2025 Google



25 Whittier Rd



25 Whittier Rd 

25 Whittier Rd, Blauvelt, NY 10913 · 4.5 mi
Building



EXHIBIT F

EXHIBIT F

EXHIBIT G

EXHIBIT G

TOWN OF ORANGETOWN

SCALE 1"=50' JUNE 18, 1934

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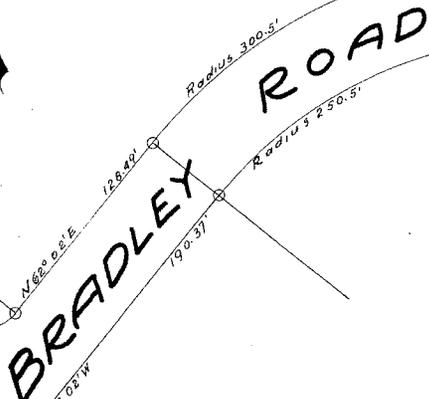
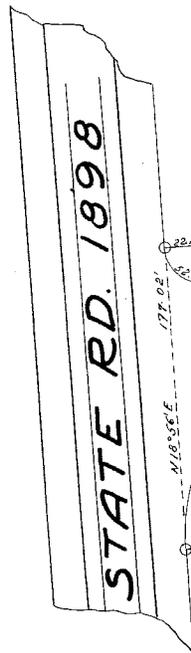
I hereby certify that this map is a true copy of the original now on file in my office Dated the 10 day of April 1935.

25 Whittier Existing monument

WHITTIER RD.

EXTENSION

GREENBUSH ROAD



PROPERTY TO BE DEEDED TO THE TOWN OF ORANGETOWN FOR THE EXTENSION OF BRADLEY ROAD FROM THE GREENBUSH ROAD WESTERLY TO STATE ROAD 1898 BY ROBERT E. AND ALMA B. LEBER.

ALL THAT CERTAIN PIECE OR PARCEL OF LAND LYING, SITUATE, AND BEING IN THE TOWN OF ORANGETOWN, COUNTY OF ROCKLAND, STATE OF NEW YORK BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A MONUMENT SET AT THE INTERSECTION OF THE WESTERLY LINE OF WHITTIER ROAD AND THE NORTHERLY LINE OF THE HEREIN DESCRIBED PROPOSED BRADLEY ROAD EXTENSION, AND RUNNING THENCE S 67° 13' E, A DISTANCE OF 462.97' TO A CONCRETE MONUMENT, THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 300.5' A DISTANCE OF 44' IN A NORTHEASTERLY DIRECTION TO A CONCRETE MONUMENT IN THE WESTERLY SIDE OF THE GREENBUSH ROAD AND RUNNING THENCE ALONG THE WESTERLY SIDE OF SAID ROAD, A DISTANCE OF 109.76' IN A SOUTHWESTERLY DIRECTION TO A CONCRETE MONUMENT, THENCE A CURVE TO THE LEFT HAVING A RADIUS OF 30', A DISTANCE OF 49.58' IN A NORTHWESTERLY DIRECTION TO A CONCRETE MONUMENT, THENCE N 67° 13' W, A DISTANCE OF 453.64' TO A CONCRETE MONUMENT, THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 250.5', A DISTANCE OF 221.9' IN A SOUTHWESTERLY DIRECTION TO CONCRETE MONUMENT, THENCE S 62° 02' W A DISTANCE OF 190.37' TO A CONCRETE MONUMENT, THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 122.74', A DISTANCE OF 92.33' IN A SOUTHWESTERLY DIRECTION TO A CONCRETE MONUMENT IN THE EASTERLY R.O.W. LINE OF S.H. # 1898, THENCE ALONG THE SAME N 18° 56' E, A DISTANCE OF 177.02' TO A CONCRETE MONUMENT, THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 22.17' A DISTANCE OF 52.97' IN A SOUTHEASTERLY DIRECTION TO A CONCRETE MONUMENT, THENCE N 62° 02' E, A DISTANCE OF 128.49' TO A CONCRETE MONUMENT, THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 300.5', A DISTANCE OF 266.1' TO THE POINT OR PLACE OF BEGINNING, CONTAINING 1.092 ACRES.

ALL OF WHICH IS SHOWN ON THE MAP ABOVE.

County Eng'rs Office, New City
Cahin P. Allison C.E.
County Engineer

Note: O Indicate Rock Co. official highway monuments.

Copied from a tracing under CWA by J. Jocherer Dec. 19, 1934. Box N° 47

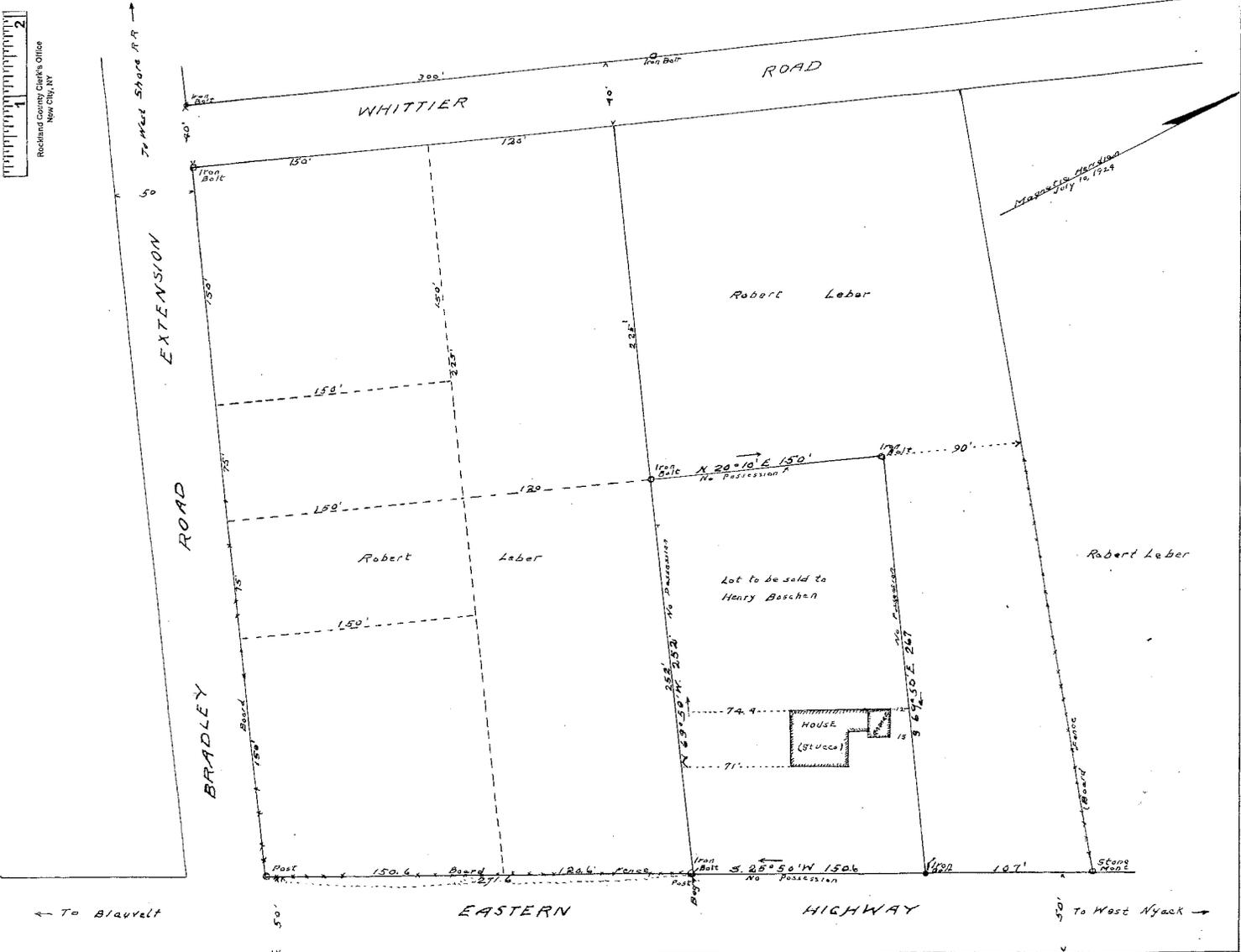


EXHIBIT H

EXHIBIT H

1184

Rockland County Clerk's Office
New City, NY



← To Blauvelt

→ To West Nyack

← To Nyack
BRADLEY ROAD

Certified for New York Title & Mortgage Co
as a correct survey of the above described lot
Edward W. Christie
I hereby certify that this map is a true copy
of the original now on file in my office
Dated the 28th of 1924

LOT OF LAND OF ROBERT LEBAR, BETWEEN
BLAUVELT & WEST NYACK, ROCKLAND CO. N. Y.
EAST OF WEST SHORE, R.R. IN THE ORTAMIN NEIGH-
BORHOOD. SCALE 1"=50' JULY 12 1924 E.W. Christie Surveyor
Nyack N.Y.

Filed Aug. 11 - 1924
J. H. Shewwood Clerk.

Copied from map filed in Book 7 Page 2
by FR Whittier June 8, 1938. Checked by [illegible]

EXHIBIT I

EXHIBIT I

**SUPREME COURT - STATE OF NEW YORK
TRIAL/SPECIAL TERM PART-ROCKLAND COUNTY**

Present:

Hon. MARK C. DILLON

Justice.

SUPREME COURT: ROCKLAND COUNTY

X

DAWN FINN and STEVEN FINN,

**DECISION
AND ORDER**

Plaintiffs,

-against-

FILED MW

KDJ REALTY, INC ,

JUN 15 2000 9-

ROCKLAND COUNTY
CLERK'S OFFICE

Defendant.

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

INDEX

NUMBER 2647/00

MOTION

DATE 6/6/00

X

THE FOLLOWING PAPERS NUMBERED 1 TO 49 READ ON THIS MOTION by plaintiff for an Order restraining defendant from asserting a utilities easement, and on the cross-motion by defendant for an Order dismissing the action pursuant to CPLR Rules (1), (3) and (5)

PAPERS NUMBERED

**ORDER TO SHOW CAUSE-AFFIDAVITS
NOTICE OF CROSS-MOTION-AFFIDAVITS
ANSWERING AFFIDAVITS
REPLYING AFFIDAVITS
AFFIDAVITS
MEMORANDA OF LAW**

1, 2, 34, 43
8, 9, 16, 19, 33, 35, 36, 39, 42, 47

PLEADINGS-EXHIBITS-STIPULATIONS-MINUTES

48, 49
3-7; 10-15; 17, 18, 20, 21-32; 37,
38, 40, 41, 44-46

BRIEFS: PLAINTIFF'S/PETITIONER'S

DEFENDANT'S/RESPONDENT'S

On May 15, 2000, the plaintiffs (hereinafter also referred to as "the Finns") commenced this action seeking a declaratory judgment that the defendant, KDJ Realty, Inc. (hereinafter referred to as either "KDJ" or the "defendant"), has no right to use Whittier Road as a right of way and that a claimed utilities easement does not exist. Plaintiffs also seek a preliminary

injunction restraining KDJ from installing utility lines in the roadbed of Whittier Road. Since 1993, the plaintiffs have owned and resided in a home which fronts on the westerly side of Whittier Road. In March 2000, the defendant purchased a lot on the eastern side of Whittier Road upon which they wish to construct a single family residence.

The defendant filed a cross-motion to dismiss the action pursuant to CPLR Rule 3211 (a) (1), (3) and (5). Specifically, the defendant asserts the present action is barred by the doctrine of *res judicata*, that dismissal is warranted by the documentary evidence submitted to the Court, and that the plaintiffs do not have capacity to sue because they have no rights over the easterly portion of Whittier Road.

This action presents among the most complicated of issues currently pending at the Supreme Court, Rockland County.

PROCEDURAL HISTORY

Before the Court addresses the merits of the present action and the defenses thereto, a brief discussion and review of previous litigation involving these two (2) parties is necessary for a complete understanding of the issues at bar.

On or about March 29, 2000 under Index No. 1724/00, the plaintiffs commenced a proceeding under CPLR Article 78 seeking vacatur of a building permit issued by the Town of Orangetown to KDJ dated March 24, 2000, involving the property located at Town of Orangetown Tax Map Section 65 18, Block 1, Lot 11 (hereinafter referred to as "Lot 11"). Specifically, the petitioners (plaintiffs herein) claimed that the issuance of the building permit violated the conditional variance issued by the Orangetown Zoning Board of Appeals on March 3, 1999. The conditions included a requirement that the applicant, KDJ, provide proof to the ZBA that KDJ and the residents of any house built on Lot 11 will have the unrestricted right to use Whittier Road for access to Bradley Parkway. The conditional variance also required KDJ to obtain a building permit within a reasonable time following the filing of the Decision and prior to the beginning any construction on Lot 11.

KDJ moved to dismiss the Finns' petition on the ground that they failed to exhaust their administrative remedies by first appealing the issuance of the building permit to the ZBA. KDJ also asserted that contrary to the Finns' contention, it had acquired title to Lot 11 by a deed recorded on March 30, 2000 which granted KDJ an easement over Whittier Road. KDJ further denied the Finns' contention that the size of the house for which the permit was issued exceeded the 2,800 square foot limit set by the ZBA on the conditional variance.

On April 5, 2000 this Court heard extensive oral argument from counsel for Finn, KDJ and the Town of Orangetown. It held that the Finns, by failing to challenge the building permit before the Zoning Board of Appeals, failed to exhaust their administrative remedies and that, consequently, the petition was dismissed.

The Court noted in support of its Decision that the Finns had already taken steps to pursue their administrative remedies by filing an application before the ZBA that would be heard in under two (2) weeks. Therefore, Court intervention at that juncture was inappropriate. The Court, *in dicta*, discussed certain merits of the case in order to explain why it was not applying the holding of *Watergate II Apartments v Buffalo Sewer Authority*, 46 N Y 2d 52 (1978). The Court of Appeals held in *Watergate II Apartments* that a Court may overlook a party's failure to exhaust administrative remedies if it finds that the party will suffer irreparable harm by dismissal of the Article 78 proceeding, that equities balance in favor of the petitioners and that there be a likelihood of success by the petitioners on the merits. In such a context, the Court opined that the petitioners did not show a likelihood of success on the merits.

Approximately six (6) weeks passed before the plaintiffs commenced the instant action and filed the Order to Show Cause seeking declaratory and injunctive relief. On June 5, 2000, the Court heard extensive oral argument from both sides and reserved decision. After an extensive review of the parties submissions and oral argument, the following constitutes the Decision and Order of the Court.

STANDING

As a threshold matter, KDJ claims that the plaintiffs lack the capacity or standing to sue and that, therefore, the action must be dismissed pursuant to CPLR 3211 (a) (3). The basis for the claim is the quitclaim deed from Jacqueline Jewett to the Finns dated May 12, 2000 which purports to transfer ownership of the easterly portion of Whittier Road to the plaintiffs. The defendant asserts that Jacqueline Jewett had no rights or interest in Whittier Road, and thus could not convey any rights or ownership to the Finns which would otherwise provide the Finns with standing to challenge KDJ's purported utilities easement. The plaintiffs, on the other hand, claim that they own both the westerly and the easterly portions of Whittier Road.

A party's legal capacity to sue and a party's standing to sue are usually referred to as one and the same. Yet, courts have recognized certain nuances distinguishing the two concepts. It has been held that legal "capacity to sue" relates to a litigant's power to appear and bring a grievance before the Court. Legal "standing," meanwhile, involves the much larger question of justiciability, which relates to whether the party seeking relief has a sufficiently cognizable stake in the outcome so as to cast the dispute in a form traditionally capable of judicial resolution. See, *Council of the City of New York v Guilham*, 2000 N Y Slip Op 20141 (Sup Ct Queens Cty 1999). It appears that defendant's challenge to plaintiffs' claim of ownership over Whittier Road is more closely akin to justiciability or standing, and shall be treated as such. While CPLR Rule 3211 does not contain a specific provision listing lack of standing as a ground for dismissal, it has been held that when such a motion is made, as in the case at bar, it can be brought under the lack of capacity to sue provision set forth in subdivision 3 of §3211 (a). See, *Gilman v Abagnale*, 235 A D 2d 989 (3rd Dept 1997).

It is well established that the standing of a party to seek judicial review of a particular claim or controversy is a threshold matter, which once questioned, should ordinarily be resolved by the Court before reaching the merits. *New York State Association of Criminal Defense Lawyers v. Kaye*, 182 Misc 2d 85 (Sup Ct Albany Cty 1999). A party has standing when its personal or property rights will be directly and specifically affected by the complained of action. *City of Binghamton v. County of Broome*, 168 Misc 2d 792 (Sup Ct Broome Cty 1996). More specifically, standing to sue requires a showing of injury in fact, distinct from that of the general public. *Committee to Preserve Brighton Beach and Manhattan Beach, Inc v. Planning Commission of City of New York*, 259 A D 2d 26 (1st Dept 1999). In matters involving real property, it has been held that standing should be liberally construed so that land use disputes are settled on their merits rather than by preclusive, restrictive standing rules. *Parisella v. Town of Fishkill*, 209 A D 2d 850 (3rd Dept 1994).

Applying the above guidelines to the case at bar, and without reaching the merits of this action, the Court finds that plaintiffs are possessed of standing to sue. There is a clear dispute as to the exercise of rights over Whittier Road. Plaintiffs are the owners of Lot 13 abutting the westerly side of Whittier Road, as evidenced by a bargain and sale deed dated October 11, 1993. Documents establish certain rights of the Finns over the westerly half of Whittier Road. The Finns also assert ownership to the easterly portion of the road by virtue of a quitclaim deed dated May 12, 2000. Thus, they claim that they own Whittier Road and can legally prevent the defendant from exercising its purported right of way on the surface of the roadway and its claimed utilities easement beneath the roadbed. Defendants counter that the plaintiffs have no rights to Whittier Road and, therefore, cannot stop the defendants from proceeding with construction on Lot 11, which abuts the easterly side of Whittier Road and which KDJ acquired by bargain and sale deed dated March 30, 2000. Since this case obviously involves a dispute over land ownership and usage, the Court, in liberally applying the rules of standing, finds that plaintiffs have standing to litigate the merits of this action and to seek equitable relief via the instant Order to Show Cause.

RES JUDICATA

The defendant also contends that the present action is barred by the doctrine of *res judicata* as a result of the findings rendered that resolved the prior Article 78 litigation, pursuant to CPLR Rule 3211 (a) (5). It bases this claim upon the fact that the Court had discussed the underlying merits of the case in explaining why the earlier petition was being dismissed on the ground of petitioners' failure to exhaust their administrative remedies. Defendant argues that the Court's Order of April 5, 2000 is determinative of the allegations contained in the present action. This Court disagrees.

The doctrine of collateral estoppel and the broader doctrine of *res judicata* prohibit the re-litigation of issues already resolved by a prior proceeding. *Gramatan Home Investors Corp v Lopez*, 46 N Y 2d 481 (1979). The elements of *res judicata* are (1) that the issues under litigation be identical to the issue resolved for the prior proceeding, (2) that the issues, in fact, be

resolved by that prior proceeding, and (3) that the party against whom collateral estoppel is asserted had a full and fair opportunity to be heard at the prior proceeding. *Ryan v. New York Telephone Company*, 62 N Y 2d 494, 500-01 (1984), *Capital Telephone Company v. Pattersonville Telephone Company*, 56 N Y 2d 11, 18 (1982), *Gilberg v. Barbieri*, 53 N Y 2d 285, 290-01 (1981). The burden of proof rests with the proponent of *res judicata* as to the first two elements, and with the opponent to establish the lack of a full and fair prior proceeding as to the third element. *Ryan v. New York Telephone Company*, at 501, *Capital Telephone Company v. Pattersonville Telephone Company*, at 17-18, *Schwartz v. Public Administrator of County of Bronx*, 24 N Y 2d 65, 73 (1969).

The doctrine of *res judicata* is designed to provide finality in the resolution of disputes to assure that parties may not be vexed by further litigation. *New York State Labor Relations Board v. Holland Laundry*, 294 N Y 480 (1945). While a final judgment bars future action between the same parties on the same cause of action, a court, in properly seeking to deny a litigant two "days in court," must be careful not to deprive him of one. *Reilly v. Reid*, 45 N Y 2d 24, 27-28 (1978). In this regard, it has been held that an initial Article 78 determination is not *res judicata* as to a second action where the plaintiff submits new and additional facts which render it substantially different from the first one. *Morehouse v. Town of Horicon Planning Board*, 85 A D 2d 769 (3rd Dept. 1981). Moreover, *res judicata* does not bar a second action if the plaintiff was statutorily or jurisdictionally precluded from obtaining complete relief in the first action. *LaDuke v. Lyons*, 250 A D 2d 969 (3rd Dept. 1998).

In the case at bar, the plaintiffs' Article 78 proceeding in March 2000 sought a revocation of the building permit previously issued to KDJ for construction on Lot 11, and a declaration that the granting of the permit was arbitrary and capricious. The present action does not challenge any municipal action or inaction, in fact, the Town of Orangetown is not a named party. This litigation is a direct action between the Finns and KDJ which seeks a judgment declaring that the Finns own Whittier Road, that KDJ's right of way does not exist, and that KDJ has no right to a utilities easement beneath the roadbed. Admittedly, certain allegations which now comprise the present action were touched upon in the Article 78 proceeding such as whether or not KDJ has an easement on Whittier Road. Nonetheless, the Finns in the Article 78 proceeding were merely seeking the vacatur of the building permit, as violative of the ZBA's earlier conditional variance. In fact, the Finns admitted in the earlier proceeding that their primary objection was to the construction of a home that was allegedly larger than the 2,800 square foot house permitted by the ZBA. They claimed that KDJ intended to construct a house in excess of 3,721 square feet. It was this disputed fact and related municipal issues that brought them before the Court, and it was their failure to first appeal to the ZBA for relief from the building permit that required the Court to dismiss the petition on grounds of exhaustion.

In the Article 78 proceeding, even if the petitioners believed and raised the claim that KDJ had no valid surface easement, the remedies available to the Court were limited to whether or not the building permit should be vacated. They were further restricted by the fact that the Finns had failed to exhaust their administrative remedies. In the instant declaratory judgment action, the

relief requested and remedies available are now much broader, in that the Finns are seeking a judicial determination that KDJ's asserted surface and utilities easements do not exist. Moreover, at the time the Court heard and determined the Article 78 proceeding, the Finns did not assert any rights over the easterly portion of Whittier Road. However, as evidenced by the quitclaim deed dated May 12, 2000, they now claim to have purchased this portion of Whittier Road from their neighbor, Jacqueline Jewett. Curiously, the declaratory judgment action was commenced just five (5) days later on May 17, 2000. This claim of ownership, whether ultimately deemed valid or not by the Court, is certainly an additional fact, and a separate issue, which renders the instant action substantially different from the Article 78 proceeding. Accordingly, the Court finds that the additional facts combined with the potential to the plaintiff for greater and complete relief render the doctrine of *res judicata* inapplicable here.

The plaintiffs assert three causes of action in their instant complaint. The first is for a declaratory judgment that the defendant, KDJ, has no right to use Whittier Road as a right of way for ingress and egress from Bradley Parkway. The second cause of action seeks a permanent injunction enjoining KDJ from claiming a surface easement for ingress and egress to its property via Whittier Road. The third cause of action seeks a permanent injunction enjoining KDJ from installing underground utility lines under the roadbed of Whittier Road, and from claiming the right to install and use utility lines in such roadbed. For reasons set forth below, the cross-motion seeking dismissal of each of these causes of action must be granted for diverse factual and legal reasons, and the Order to Show Cause seeking to permanently enjoin KDJ's installation of utilities beneath the roadbed of Whittier Road denied with a lifting of the current TRO against such activities.

THE UTILITIES EASEMENT AND THIRD CAUSE OF ACTION

KDJ obtained title to its property by bargain and sale deed dated March 30, 2000, which contains language of a surface easement over Whittier Road by expressed grant. The plaintiffs argue that the mere existence of a surface easement does not simultaneously provide KDJ with the right to claim or install utility lines beneath the roadbed of Whittier Road, as a surface easement is limited to ingress and egress and does not extend to broader rights beneath Whittier Road. The plaintiffs' argument on this issue has merit, to the extent that case law is well settled in recognizing a crucial distinction between a "surface easement" on the one hand and a "utility easement" on the other. Here, the bargain and sale deed, by which title to Lot 11 devolved from Elizabeth Trifari and Kathleen Hagan to KDJ, describes the surface easement as a "right of way to be for all purposes of ingress and egress to and from the premises and the Bradley Parkway to be used in common with others entitled thereto." While Schedule A of the same bargain and sale deed also contains language that KDJ is possessed of "the right to use and/or install gas, electric and water services in the easterly portion of the bed of Whittier Road in favor of [its] premises," such expressed utilities easement cannot be recognized as valid by the Court, as a utilities easement had never been created by any prior change of title or other legal document, and is not present in the surface easement granted to the prior premises owners, Trifari and Hagan, in the deed by which they obtained title in 1996.

To the extent, therefore, that the only valid and enforceable expressed easement for Whittier Road possessed by KDJ is a "surface easement," KDJ enjoys no "utilities easement" under the roadbed of Whittier Road *McCormick v Trageser*, 24 N Y 2d 873, -875 (1969), *Holden v City of New York*, 7 N Y 2d 840, 841 (1959), *Spiak v Zeglen*, 255 A D 2d 754, 757 (3rd Dept 1998), *U S Cablevision Corporation v Theodoreu*, 192 A D 2d 835, 837 (3rd Dept 1993), *Maffer v Zimmermann*, Rockland County Index No 3741/85, October 9, 1985 (Stolarik, J)

The plaintiffs' argument that the existence of KDJ's expressed surface easement does not create underground utility rights, while correct, does not go far enough in analyzing KDJ's claimed right to install utilities in this instance. New York Law recognizes various theories under which easements may be recognized. An expressed easement contained in a deed is merely one form of easement by which a party might obtain utility rights. Other easements include statutory easements by necessity as recognized by Real Property Law (RPL) §335-a, easements by necessity under common law, easements by implication, and easements by estoppel. This Court cannot address the ultimate issue of whether to grant or deny a permanent injunction as to the installation of utility lines under the roadbed of Whittier Road, without considering whether utility rights exist in favor of KDJ under an easement theory independent of the expressed surface easement contained in the bargain and sale deed dated March 30, 2000.

The Court finds that the defendant, KDJ, is entitled to a statutory utilities easement of necessity by application of RPL §335-a. This section provides that when an owner of a parcel which does not abut a public roadway is possessed of an easement giving access to or egress from any public road to the parcel, as here, such owner may, when necessary to the enjoyment of the lot, lay beneath the surface easement wires and conduits for the purpose of supplying the property with electric and telephone service. The statute further provides that when wires and conduits are installed for supplying electric and telephone service to a property pursuant to the statute, the holder of the surface easement must restore the property as nearly as possible to its original condition, and compensate the title owner of the surface for any actual and irreparable damages occasioned by the utility lines. The applicability of RPL §335-a was not discussed by any of the parties in the papers submitted to the Court. However, the circumstances envisioned by RPL §335-a are precisely those present in the instant action, where KDJ enjoys a deeded surface easement for ingress to and egress from its property,¹ relative to Bradley Parkway, and would require the installation of electric and telephone lines in order to enjoy its property purchased from Trifari and Hagan and, in particular, the house being constructed thereon. Accordingly, while KDJ is not possessed of any expressed valid and enforceable utility easement in the deed received from Trifari and Hagan, it nevertheless is possessed of a statutory easement by necessity under RPL §335-a for installation of electric and utility lines under the same roadbed.

¹The validity of the expressed surface easement is discussed *infra*

In addition to the foregoing, the Court must also consider whether KDJ is entitled to install utilities by virtue of an easement by implication. The proponent of an easement by implication must establish three elements. First, there must be a unity of two or more properties and their subsequent separation of title. Second, the claimed easement must have, prior to separation, been so long continued and obvious or manifest to show that it was meant to be permanent. Third, the use must be necessary to the beneficial enjoyment of the land. *U.S. Cablevision Corporation v. Theodoreu, supra*, at 488, citing *Abbott v. Herring*, 97 A D 2d 870 (3rd Dept. 1983), *aff'd*, 62 N Y 2d 1028 (1984), *Astwood v. Bachinsky*, 186 A D 2d 949-950 (3rd Dept. 1992), *Mimogue v. Monette*, 158 A D 2d 843, 844 (3rd Dept. 1990), *Ford v. Village of Sidney*, 139 A D 2d 848, 849 (3rd Dept. 1988). Under the facts and circumstances present here, all three elements for an easement by implication appear to be present. The properties now owned by the Finns, KDJ and Jacqueline Jewett were all owned in the early part of the twentieth century by Robert E. Leher. There was, in fact, a unity of the properties now owned by the Jewetts and by KDJ, when both lots were jointly owned by John Brodenck from 1965 through and including 1981. For many years, the roadbed of Whittier Road was possessed of water pipes delivering municipal water to the properties from Bradley Parkway, including properties now owned by the Finns and the Hovsepians. The presence of a water utility line was known and obvious, and certainly intended to be permanent. Additionally, the presence of water utility lines beneath the roadbed of Whittier Road is clearly necessary for the beneficial enjoyment of the various premises. Thus, even if *arguendo* KDJ is not possessed of a utilities easement by necessity under RPL §335-a, it is nevertheless entitled to install utilities by virtue of the existence of an easement by implication, given the historical use of the properties in the vicinity of Whittier Road that includes water utility lines. An easement by implication would allow installation of any needed utilities, beyond mere electric and telephone services recognized by RPL §335-a.

KDJ also appears entitled to a utilities easement by necessity under common law. Such an easement is created where, as here, separate properties had once been subject to a unity of title, and that upon severance of parcels, an easement over one parcel is necessary for access to another parcel. *Astwood v. Bachinsky, supra*, at 950 (3rd Dept. 1992), *Mimogue v. Monette, supra*, at 844 (3rd Dept. 1990). The Court is satisfied that KDJ has established its necessity to the placement of utility lines beneath Whittier Road, given the history and location of lots jointly owned by John Brodenck until 1981.

The final form of easement, by estoppel, appears to have no applicability to the facts and circumstances of this matter.

Due to the existence in favor of KDJ of an easement by necessity under RPL §335-a and, alternatively, the existence in its favor of an easements by implication and/or common law necessity, the Court denies the plaintiffs' application to permanently enjoin the installation of utility lines beneath the roadbed of Whittier Road and lifts the Temporary Restraining Order issued by the Court on May 17, 2000 against such installation activity. Moreover, the third cause of action contained in the plaintiffs' complaint must be dismissed as a matter of law.

THE FIRST AND SECOND CAUSES OF ACTION INVOLVING
THE SURFACE EASEMENT

The plaintiffs claim as a part of their First Cause of Action that Lot 11, now owned by KDJ, and Lot 12, now owned by Jewett, were previously held in common ownership as one lot, and that in 1976 they were sold to John Broderick as one lot with one common owner. Plaintiffs contend that when Broderick sold this property as two separate lots--Lot 12 in 1981 to Jewett and Lot 11 in 1996 to Elizabeth Trifan and Kathleen Hagan-- it was an illegal subdivision, because the properties had previously been merged by operation of law and Broderick had not received Planning Board approval for his subsequent subdivision. The plaintiffs further claim, in their Second Cause of Action, that the foregoing warrants a permanent injunction against KDJ's use of Whittier Road since the claimed illegality of Broderick's subdivision nullifies any easement claimed by KDJ.

It is not necessary for the Court to analyze whether or not the "merger doctrine" applies here, since it finds that the plaintiffs are barred by laches from pursuing this argument. Since the plaintiffs seek the equitable remedies of declaratory judgment and injunction, the equitable doctrine of laches is applicable. See, *Little Joseph Realty v Town of Babylon*, 41 N.Y.2d 738, 745 (1977).²

More specifically on the issue of laches, the Finns bought their present home on Whittier road in 1993. Their home is located on a lot which was at one time, along with all the other properties referenced herein, owned by Robert E. Leber. The Finns, in fact, purchased their property from Leber's three (3) grandchildren. Section 5-21 of the Orangetown Zoning Code became effective July 29, 1965, and provided that if two separate contiguous lots were under joint ownership, they would be thereafter deemed to be one lot. On May 19, 1976, after the effective date of Zoning Law §5-21 and beyond any "grandfathering" of the statute, the properties now referred to as Lots 11 and 12 were sold to John Broderick with a single metes and bounds description. On October 30, 1981, he sold a portion of that property (Lot 12) to Jewett. On December 16, 1996, he sold the remaining portion (Lot 11) to Trifan and Hagan, who on March 30, 2000 sold the lot in turn to KDJ. The Finns claim that Broderick's division of one combined lot into two separate lots without receiving a variance and/or Planning Board approval renders KDJ's lot illegal under Zoning Law §5-21 and, therefore, vitiates whatever easement or other legal rights KDJ now asserts. In other words, the plaintiffs argue that any easement for Whittier Road was "merged" out of existence by Broderick's common ownership of the lots and can no longer be enjoyed by KDJ.

²The Court also notes that an action at law would appear to be time barred if the plaintiffs brought an action against Broderick, the Town of Orangetown or other parties for damages caused by the creation of an illegal subdivision. Since there does not appear to be any specific statute of limitations for this type of action or remedy, the six (6) years limitations period of CPLR §213 (1) should be applied and is now, apparently, expired.

This argument might be worth more extended analysis if it were not for the fact that the Finns, to use a common expression, wish to have their cake and eat it too. They argue that KDJ's lot is illegal, but they are simultaneously silent on the issue of the legality of the Jewett lot. Obviously, if the KDJ lot is illegal, then the Jewett lot is illegal for the same reason, and if the Jewett lot were to be declared illegal, no valid rights could devolve to the Finns regarding the eastern half of Whittier Road by quitclaim deed. At first blush, one might wonder why the plaintiffs have failed to even raise or acknowledge this point. The Finns argue that the quitclaim deed is of significance, in providing them with title to the eastern half of Whittier Road and the claimed legal right to block KDJ's use of the road for surface travel and/or for the installation of utilities. However, the reason why the Finns never challenged the legality of the Jewett lot may be that Jewett is now allied with the Finns for this litigation, as evidenced by Jewett's transfer by quitclaim deed of the easterly portion of Whittier Road to the Finns just five days prior to the commencement of this action.

Ordinarily, equity aids the vigilant. *Patterson v Hewitt*, 195 U.S. 309 (1904). However, the Court does not believe that the plaintiffs have been vigilant with regard to their easement-related arguments based upon the merger doctrine. By only raising the merger issue now as part of their efforts to stop KDJ from constructing a house on Lot 11, it is clear they had acquiesced to the subdivided nature of Lots 11 and 12 for all the years they have owned their own neighboring property from 1993 to present. They only now assert, for the first time, a zoning violation that allegedly vitiates easements previously enjoyed by various neighboring parties. Presumably, if there were no plans by KDJ to build on its lot, the plaintiff would not now be arguing the claimed legal effect of Broderick's subdivision of the earlier-merged lots. Accordingly, this Court deems appropriate the application of the doctrine of laches to bar the plaintiffs from asserting the merger doctrine against Lots 11 and 12 and any surface easements running in favor of such properties. See, *Leising v Clarence*, 144 A.D.2d 969 (4th Dept. 1988).

For the same reasons that the merger doctrine cannot be used to defeat KDJ's ownership of Lot 11, it cannot be utilized to defeat KDJ's asserted surface easement over Whittier Road. The surface easement comprises the plaintiffs' first and second causes of action. The plaintiffs specifically argue that prior to the Broderick subdivision, the property in question consisted of one parcel which always had access to the public roadway known as Bradley Parkway. Therefore, they claim that there was no easement by necessity. This argument fails once the merger argument is rejected due to laches, because Lot 11 is currently an independent lot which has no access to Bradley Parkway except over Whittier Road. The argument also fails, after the application of laches, as the 1981 deed from Broderick to Jewett for Lot 12 and the 1996 deed from Broderick to Trifari and Hagan for Lot 11 both contain express rights of way over Whittier Road for access to the properties.

As plaintiffs contend, Lots 11 and 12 were held in common ownership until 1981 when Broderick split them into two (2) lots. Access to Lot 11 from Bradley Parkway was only then possible by use of Whittier Road that ran along Lot 12 on the eastern side and Lot 13 on the western side. Similarly today, KDJ will obviously need to utilize Whittier Road to enter upon and

leave its premises. Therefore, the Court concludes that the defendant has a valid surface easement for ingress and egress created by common law necessity as a result of Broderick's separation in 1981 of one parcel into two parcels and the clear need to access the property via Whittier Road. See, *U S Cablevision Corp v Theodoreu, supra*, at 838, *Astwood v Bachinsky, supra*, at 950, *Minogue v Monette, supra*, at 844. For this reason, the Court also gives legal recognition to the validity of the expressed rights of way contained in the various deeds for Whittier Road in favor of Jewett, Infari and Hagan, and KDJ. All such easements can co-exist with the Finns' easement over the western portion of Whittier Road, as an easement in favor of one party does not exclude a valid and concurrent easement over the same roadway in favor of another.

Using the same analysis of the deeds offered to the Court, it is clear that plaintiffs have failed to establish any ownership rights over Whittier Road by conveyance from either Leber or Jewett, and as a result, the first and second causes of action must be dismissed. The plain language of the 1993 deed from Robert Leber's grandchildren to the Finns does not transfer any ownership rights to the western side of Whittier Road as the metes and bounds description contained in the deed describes the Finns' property line as running "along the westerly side of Whittier Road." A survey for the same property prepared for the Finns by Robert E. Sprace, P L S dated September 24, 1993 also specifically delineates the property line as extending alongside the western edge of Whittier Road, not including any portion of the road itself. At best, the 1993 deed from Leber's grandchildren to the Finns grants an easement over the western surface of Whittier Road, by which the Finns access a driveway to their dwelling. While the Finns claim that they were told that they owned the road, this parol evidence cannot be considered by the Court and is of no legal significance since the deed is clear and unambiguous. See, *Sprak v. Zeglen*, 255 A D 2d 754, 757 (3rd Dept 1998), *U S Cablevision Corp v Theodoreu*, 192 A D 2d 835, 837-838 (3rd Dept 1993). Likewise, the Finns' performance of maintenance and plowing for Whittier Road at their own expense does not create for them legal ownership of the roadway and is otherwise of no legal significance.

As far as the quitclaim deed is concerned that was executed by Jewett in favor of the Finns dated May 12, 2000, and the issues it raises regarding claimed ownership to the eastern half of Whittier Road, the quitclaim deed fails to provide the Finns with ownership to the eastern half of the roadway. A quitclaim deed is the weakest form of deed conveyance. The deed in this instance contains a standard recitation of "all right, title and interest, if any" to the center line of any roads abutting the Jewett property. The Court can reasonably infer that if Jewett possessed valid title to the easterly portion of Whittier Road and intended to sell it, she would have done so by bargain and sale deed, which is a stronger deed than a mere quitclaim deed. In any event, to adequately assess what rights, if any, were conveyed by Jewett to the Finns by the quitclaim deed, it is necessary to examine what rights, if any, were possessed by Jewett to Whittier Road. The deed from Broderick to Jewett dated October 30, 1981 expressly delineates the property line of the lot (Lot 12) as running alongside the "easterly side of Whittier Road." The same deed document contains an expressed "right of way over a strip of land forty (40) feet in width running from Bradley Parkway known as Whittier Road as laid out, and along the westerly boundary of the premises." The deed from Broderick to Jewett further specifically describes the right of way

on Whittier Road as existing "for all purposes of ingress to and from the premises in common with other parties entitled thereto." Thus, it is clear from an examination of the Broderick-Jewett deed that Jewett acquired ownership to Lot 11 not including Whittier Road, along with a right of way for the entire width of Whittier Road which was not exclusive of rights of way held in common by other parties entitled to utilize Whittier Road. Accordingly, since the Finns already possessed a right of way to the western half of Whittier Road adjacent to their property, the quitclaim deed received from Jewett conveys to the Finns, at best, a right of way for the entire width of Whittier Road, including its eastern half. Since Jewett never acquired from Broderick ownership to any portion of Whittier Road, no ownership rights were transferred from Jewett to the Finns by the quitclaim deed of May 12, 2000. Further, any rights recently acquired by the Finns pursuant to quitclaim deed over the easterly half of Whittier Road is, given the deed history to the Jewett property, concurrent with the right of way enjoyed over Whittier Road by other parties in common. Such other parties clearly include KDJ, whose own deed from Trifar and Hagan expressly grants a right of way over Whittier Road, which had been previously granted to them by John Broderick in 1996. The Finns' easement right over the eastern portion of Whittier Road is also not inconsistent with the surface easement in favor of KDJ as recognized by this Court by common law necessity.

The conveyance of a quitclaim deed from Jewett to the Finns on May 12, 2000, five days prior to the commencement of this litigation, was clearly a contrivance intended to assist the plaintiffs in the prosecution of this action. The Courts cannot look favorably upon such contrivances particularly where, as here, the quitclaim deed conveyed no rights, title or interest to the Finns that negatively effect KDJ's surface easement over Whittier Road. KDJ's surface easement is intact by virtue of an expressed right of way contained in the deed to KDJ from Trifar and Hagan, and/or by virtue of the surface easement over Whittier Road in favor of KDJ based upon this Court's finding of common law necessity.

Finally, there is a historical note that places the resolution of this matter in perspective. While there has been much discussion in this Decision and Order regarding the common ownership of Lots 11 and 12 by John Broderick between 1965 and 1981, and the legal issues arising therefrom, such lots were in fact separately owned during much of this century, prior to 1965. Lot 11, now owned by KDJ, had previously been owned by Louis and Lucy Scott until 1952, who sold the lot to Charles and Philomena Perrella with a 40' right of way over Whittier Road to Bradley Parkway. The Perrellas, in turn, conveyed the same right of way in 1953 to Gladys Kunle and Dr. Francis J. Sweeney, who held the property as joint tenants. After the death of Ms. Kunle, a further deed was conveyed in 1964 listing the title owners as Dr. Sweeney and Francis J. Sweeney which, while not containing a specific recital regarding a right of way over Whittier Road, nevertheless conveyed the easement with language conveying all "the appurtenances and all the estate and rights of the [grantor]." The deed conveyed by the Sweeney estate to John Broderick contained an expressed easement over Whittier Road. Consequently, this Court's Decision, which recognizes surface easement and utility rights over and beneath Whittier Road in favor of KDJ for Lot 11, is consistent with the long-running history of the properties, and merely re-affirms the historical recognition that Lot 11, which is not contiguous to

any public roadway, requires easement rights for the lawful enjoyment and utility of the premises. The complication created by John Broderick's common ownership of Lots 11 and 12 between 1965 and 1981, followed by subdivision without proper variance under Zoning Law §5 21, is now no longer an issue due to laches. Moreover, the lot is no longer in need of municipal variance in light of this Court's legal findings that affirm KDJ's surface easement rights by expressed grant in its deed, and its surface easement rights by necessity at common law.

The Court has considered the remainder of the parties' arguments, and deems them to be either mooted by other aspects of this Decision and Order or, alternatively, finds such additional arguments to be without sufficient factual or legal merit.

CONCLUSION

Defendant's cross-motion to dismiss plaintiffs' complaint on the basis of documentary evidence pursuant to CPLR §3211 (a) (1) is granted for the reasons set forth above as to all three causes of action. Plaintiffs Order To Show Cause seeking an Order enjoining the defendant from installing utilities beneath Whittier Road is denied. The TRO of May 17, 2000 temporarily enjoining utilities-related activities is lifted.

In light of all of the foregoing, it is hereby

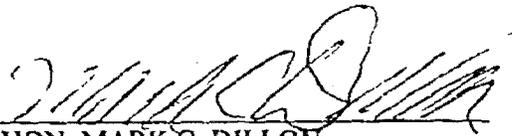
ORDERED, that the plaintiffs' Order To Show Cause seeking to enjoin the defendant from installing utilities beneath the roadbed of Whittier Road be and is hereby denied, and it is further

ORDERED, that the Temporary Restraining Order against such activity of May 17, 2000 be and is hereby lifted, and it is further

ORDERED, that the defendant's cross-motion to dismiss the first, second and third causes of actions contained in the plaintiff's complaint be and is hereby granted pursuant to CPLR Rule 3211 (a) (1), and the complaint dismissed in its entirety.

This constitutes the Decision and Order of the Court.

Dated June 15, 2000
New City, New York


HON. MARK C. DILLON
JUSTICE OF THE SUPREME COURT

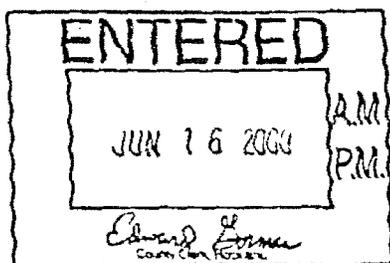


EXHIBIT J

EXHIBIT J

SUPREME COURT - STATE OF NEW YORK
TRIAL/SPECIAL TERM PART-ROCKLAND COUNTY

Present:

Hon. MARK C. DILLON

Justice.

SUPREME COURT: ROCKLAND COUNTY

-----X
DAWN FINN and STEVEN FINN
for a judgment pursuant to Article 78, C.P.L.R.,

DECISION
AND ORDERS

Petitioners,

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

-against-

TOWN OF ORANGETOWN, TOWN BOARD OF THE TOWN OF ORANGETOWN, ZONING BOARD OF APPEALS FOR THE TOWN OF ORANGETOWN, JOHN GIARDELLA, as DIRECTOR OF THE OFFICE OF BUILDING, ZONING AND PLANNING ADMINISTRATION AND ENFORCEMENT FOR THE TOWN OF ORANGETOWN, JAMES RILEY, ESQ., As TOWN ATTORNEY FOR THE TOWN OF ORANGETOWN, BRIAN KENNY, as TAX ASSESSOR FOR THE TOWN OF ORANGETOWN, KDJ REALTY, INC., ELIZABETH TRIFARI, AND KATHLEEN HAGAN,

INDEX
NUMBER 3157/00
MOTION
DATE 7/7/00

FILED MW

OCT 31 2001

ROCKLAND COUNTY
CLERK'S OFFICE

Respondents.

-----X
The following papers numbered 1 through 37 read on this Petition by the Petitioners for a judgment pursuant to Article 78 of the CPLR and upon the motion by the municipal Respondents for an Order dismissing the Petition and upon the cross-motion by Respondent KDJ Realty Inc. for an Order dismissing the Petition.

PAPERS NUMBERED	
NOTICE OF PETITION/PETITION	1, 2
NOTICE OF CROSS-MOTION-AFFIDAVITS-AFFIRMATIONS	17, 18
NOTICE OF MOTION-AFFIDAVITS-AFFIRMATIONS	21, 22
ANSWERING AFFIDAVITS-AFFIRMATIONS	23
ORDER TO SHOW CAUSE-AFFIDAVITS-AFFIRMATIONS	24, 25
ANSWERING AFFIDAVITS-AFFIRMATIONS	30

REPLY AFFIDAVITS	32
FILED PAPERS	29
PLEADINGS-EXHIBITS-STIPULATIONS-MINUTES	3-16; 19, 20, 26-28; 31; 33-37
BRIEFS: PLAINTIFF'S/PETITIONER'S	DEFENDANT'S/RESPONDENT'S

In this, the Petitioners' most recent Article 78 proceeding, they assert ten (10) Claims, eight of which seek to enjoin the Respondent, KDJ Realty, Inc., from constructing a one-family house on a piece of property located on Whittier Road, a private road in the Hamlet of Blauvelt, Town of Orangetown, County of Rockland. The Ninth Claim seeks compensatory and punitive damages against the Town in the amount of \$150,000.00. The Tenth Claim seeks compensatory and punitive damages of \$450,000.00 against KDJ.

By way of background, the Petitioners commenced an earlier Article 78 proceeding on or about March 29, 2000 seeking vacatur of a building permit issued by the Town to KDJ dated March 24, 2000. The Court dismissed that Petition on April 5, 2000, because the Petitioners failed to exhaust their administrative remedies.

Some six (6) weeks after the Article 78 dismissal, the Petitioners commenced a plenary action seeking declaratory and injunctive relief. Specifically, they asserted three (3) causes of action. First, they sought a declaratory judgment that KDJ has no right to use Whittier Road for ingress and egress to their property from Bradley Parkway, a public road. Second, they sought a permanent injunction enjoining KDJ from claiming a surface easement for ingress and egress to its property via Whittier Road. Third, they sought a permanent injunction enjoining KDJ from installing underground utility lines under Whittier Road and from claiming the right to install and use utility lines in the roadbed.

On June 15, 2000, after exhaustive legal research and a painstaking review of the submissions, including necessarily all the deeds to the subject property and surrounding properties as well, the Court denied the plaintiffs (Petitioners herein) action, granted KDJ's cross-motion to dismiss and lifted the TRO that had been imposed against KDJ during the pendency of the action.

The Court held that KDJ possessed a statutory utilities easement of necessity pursuant to RPL §335-a, an easement by implication to install utilities and an easement by necessity to install utilities. Further, the Court determined that KDJ possessed a valid surface easement for ingress and egress created by grant, by common law necessity, and by implication. The Court also concluded that the plaintiffs were barred by the doctrine of laches from alleging that the KDJ lot (hereinafter referred to as Lot "11"), and the adjoining Jewett lot (hereinafter referred to as "Lot 12"), had been merged in 1976 when they were sold to John Broderick as one lot and that their subsequent re-subdivision in 1981 was illegal.

In response to the instant Petition, KDJ has filed a cross-motion opposing the requested relief, and the municipal defendants have filed a motion to dismiss. Defendants Trifari and Hagen, the prior owners of Lot 11, have not responded.

KDJ asserts that the first five (5) Claims should be dismissed as time barred pursuant to Town Law §267-c. This provision requires that an Article 78 proceeding challenging a Decision of a Zoning Board of Appeals be instituted "within thirty days after the filing of a Decision of the Board in the Office of the Town Clerk." KDJ argues that the underlying basis for Petitioners' present proceeding is the ZBA Decision dated March 3, 1999, filed on or about April 18, 1999, granting KDJ four out of five (5) requested variances. Obviously, the present Article 78 proceeding was commenced more than thirty (30) days after the 1999 ZBA Decision was filed. The Petitioners, however, do not concede that they are time barred. They claim that their instant application challenges not the March 1999 ZBA Decision, but the most recent ZBA Decision which was filed with the Town Clerk on May 9, 2000. The instant proceeding was initiated on June 8, 2000, thirty (30) days after the last Decision's filing date.

Inasmuch as Petitioners' application references the March 3, 1999 Decision, Petitioners' counsel argued during a court appearance on June 27, 2000 that since the March 3, 1999 ZBA Decision contained conditions which KDJ was required to fulfill, it was not a final one and that the statute of limitations was tolled until the ZBA rendered a final Decision. The Petitioners claim that the Decision filed on May 9, 2000 was, in fact, the final Decision and that this proceeding, initiated on June 8, 2000, is timely under Town Law §267-c.

As a threshold matter, the Court rejects Petitioners' argument that a ZBA Decision which contains conditions is not final. Case law is clear in this Judicial Department and others that a Board's Decision is final when filed, and the fact that the applicant is required to meet certain conditions neither detracts from the finality of the Decision nor tolls the applicable statute of limitations. See, *Long Island Pine Barrens Society, Inc. v. Planning Board of the Town of Brookhaven*, 247 A.D.2d 395 (2nd Dept., 1998); *O'Connell v. Zoning Board of Appeals of the Town of New Scotland*, 267 A.D.2d 742 (3rd Dept., 1999), *lv. to app. disp. in part, den. in part*, 94 N.Y.2d 938 (2000). Thus, Petitioners' claim that KDJ, at the 1999 hearing on requested variances, had misrepresented the issue of common ownership is, in fact, time barred. The remainder of Petitioners' claims regarding the merger of Lots 11 and 12 (First, Second, Third and Fifth Claims) and the ancillary arguments devolving therefrom are barred by the doctrine of *res judicata*, in that the Court fully analyzed and rejected Petitioners' merger arguments in its Decision dated June 15, 2000. As an aside, the Second Claim seeking an Order of this Court directing the Town Assessor to amend the Town's tax maps to show that Lots 11 and 12 are merged is denied on a further ground as well. Quite simply, this request seeking an amendment or correction to the assessment roles is not appropriate under Article 78, since the Real Property Tax Law §524 *et. seq.* provides the mechanism under which such an application should be made.

The Sixth Claim alleges that the ZBA's granting of variances to KDJ was arbitrary and capricious, that the March 24, 2000 building permit was illegally issued and that the ZBA improperly refused to revoke the Building Permit. The Court agrees with KDJ that this cause of action is barred by the statute of limitations, as well as by the doctrine of *res judicata*. To the extent that it challenges the granting of the variances in the ZBA Decision dated March 3, 1999, the Claim is time barred for the reasons set forth above, because Petitioners once again argue that KDJ made misleading misrepresentations during the ZBA hearing leading to the March 3, 1999 Decision which was filed on or about April 18, 1999. The Petitioners could have challenged that Decision via an earlier and timely Article 78 proceeding. Now is not the time, almost fifteen (15) months after the ZBA Decision was filed, to be challenging it. In paragraphs 77 and 78 of the present Petition, the Petitioners concede that the Decision of March 3, 1999 was a final determination. Therefore, any challenges to such Decision, including the Claim that the Town Attorney improperly advised the ZBA, are untimely under Town Law §267-c.

The Petitioners' remaining contentions in the Sixth Claim are barred by *res judicata*. Petitioners' extensive discussion alleging that the ZBA improperly relied upon a memo from one Louis Kayser and a title report from McCall Abstract Corporation is unavailing as well. due to the doctrine of *res judicata*. The Court has already determined in its June 15, 2000 Decision and Order that KDJ possesses a statutory utilities easement of necessity, and common law easements by implication and necessity to install utilities. The Court also concluded that KDJ possesses a valid surface easement for ingress and egress over Whittier Road by grant, by necessity and by implication. Therefore, whether or not the ZBA properly or improperly relied upon the aforesaid documents in reaching its Decision filed on May 9, 2000 is irrelevant, since the Court has already determined the relative rights of the parties in the plenary action for declaratory and injunctive relief.

In their Fourth Claim, the Petitioners assert that the building permit issued to KDJ was illegal because KDJ failed to comply with Town Law §280-a. A review of the ZBA Decision filed on April 18, 1999 demonstrates that the ZBA granted KDJ's request for such a variance with the relevant condition that KDJ submit to the Planning Board a road improvement plan for Whittier Road.

It is true that the ZBA's subsequent Decision filed May 9, 2000 determined that a road improvement plan was not required, because Town Law §280-a was inapplicable to the facts at hand. However, this subsequent Decision did not negate the finality of the Decision filed on April 18, 1999. Thus, it was the 1999 Decision which granted the §280-a variance from which Petitioners should have appealed via an Article 78 proceeding. The Petitioners instead waited until almost one year later, in their challenge to the Decision filed on May 9, 2000, to bootstrap arguments involving the earlier 1999 Decision. As such, their challenge of the Town Law §280-a variance is denied as untimely. *See, Long Island Pine Barrens Society, Inc., supra.*

Even if the Petitioners' Town Law §280-a challenge is not time barred, it would still be rejected on the merits. First of all, Whittier Road appears on the 1924 map which was filed in the

Rockland County Clerk's Office. While this map apparently was not provided to the ZBA at the April 19, 2000 hearing, it is an exhibit to this proceeding. Therefore, the requirements of §280-a (1) (c) have been met, and no variance under that statutory provision was ever needed. Second, it is well established that the purpose of §280-a is to guarantee the health, safety and general welfare of the community before buildings on streets shall be occupied and streets used by the residents thereof. See, *Robinson v. Jagger*, 57 Misc.2d 507 (Sup. Ct. 1968); *McGlasson Builders, Inc. v. Tompkins*, ___ Misc. ___, 203 N.Y.S.2d 633 (Sup. Ct., West. Co., 1960). In the case at bar, it is undisputed that there are pre-existing homes on Whittier Road, and that the one-family structure proposed by KDJ would merely be in addition to those that already exist in the area. In fact, the Petitioners admitted in their original Order To Show Cause dated March 31, 2000 that their own property has access through Whittier Road and would face the structure to be built by KDJ. (See, Verified Petition dated March 30, 2000, para. 10). Moreover, the ZBA found in its Decision filed May 9, 2000 that adequate room exists on Whittier Road for access by emergency vehicles. Accordingly, the ZBA's consideration of road issues, though not necessary under Town Law 280-a (1) (c), nevertheless addressed the statutory purpose and intent of §280-a.

The Petitioners also claim that KDJ would have to prove ownership over Whittier Road in order to properly receive a building permit to build thereon. This argument has already been rejected by the Court in its June 15, 2000 Decision and Order which determined, *inter alia*, that KDJ has a valid surface easement over Whittier Road. Thus, assuming *arguendo* that a variance under §280-a was required, KDJ's lack of ownership of Whittier Road would not preclude the issuance of a variance. See, 1996 Practice Commentaries to Town Law §280-a (3). As explained by Terry Rice, Esq. in the Practice Commentaries regarding a 1996 amendment to §280-a (3), relief under §280-a may be warranted if access to and from a structure can be safely provided by an *easement*. There is no longer a requirement that an applicant establish "practical difficulty or unnecessary hardship." Therefore, contrary to Petitioners' contention, where access to a structure is by easement, there does not have to first be a Town-established open development area under §280-a (4) before a building permit may be issued.

The Seventh Claim seeking an injunction and an Order compelling KDJ to demolish the structure and to restore the property to its original condition is barred by the doctrine of *res judicata*, in that this Court has already denied Petitioners' request for injunctive relief.

The remaining Eighth, Ninth and Tenth Claims seeking declaratory and monetary relief against the Town and KDJ are denied for all the reasons set forth above and for the reasons set forth in this Court's Decision and Order dated June 15, 2000.

Accordingly, it is hereby ORDERED that the Article 78 Petition is denied in its entirety. It is further

ORDERED, that the municipal Respondents' motion to dismiss is granted. It is further

ORDERED, that KDJ's cross-motion to dismiss the Petition and cancel Petitioners' notice(s) of pendency is granted. The further request that the Court set an amount of undertaking to be posted by KDJ is now moot.

Dated: July 11, 2000
New City, New York



HON. MARK C. DILLON, J.S.C.

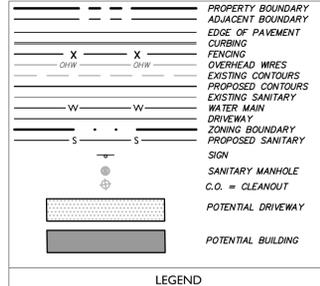
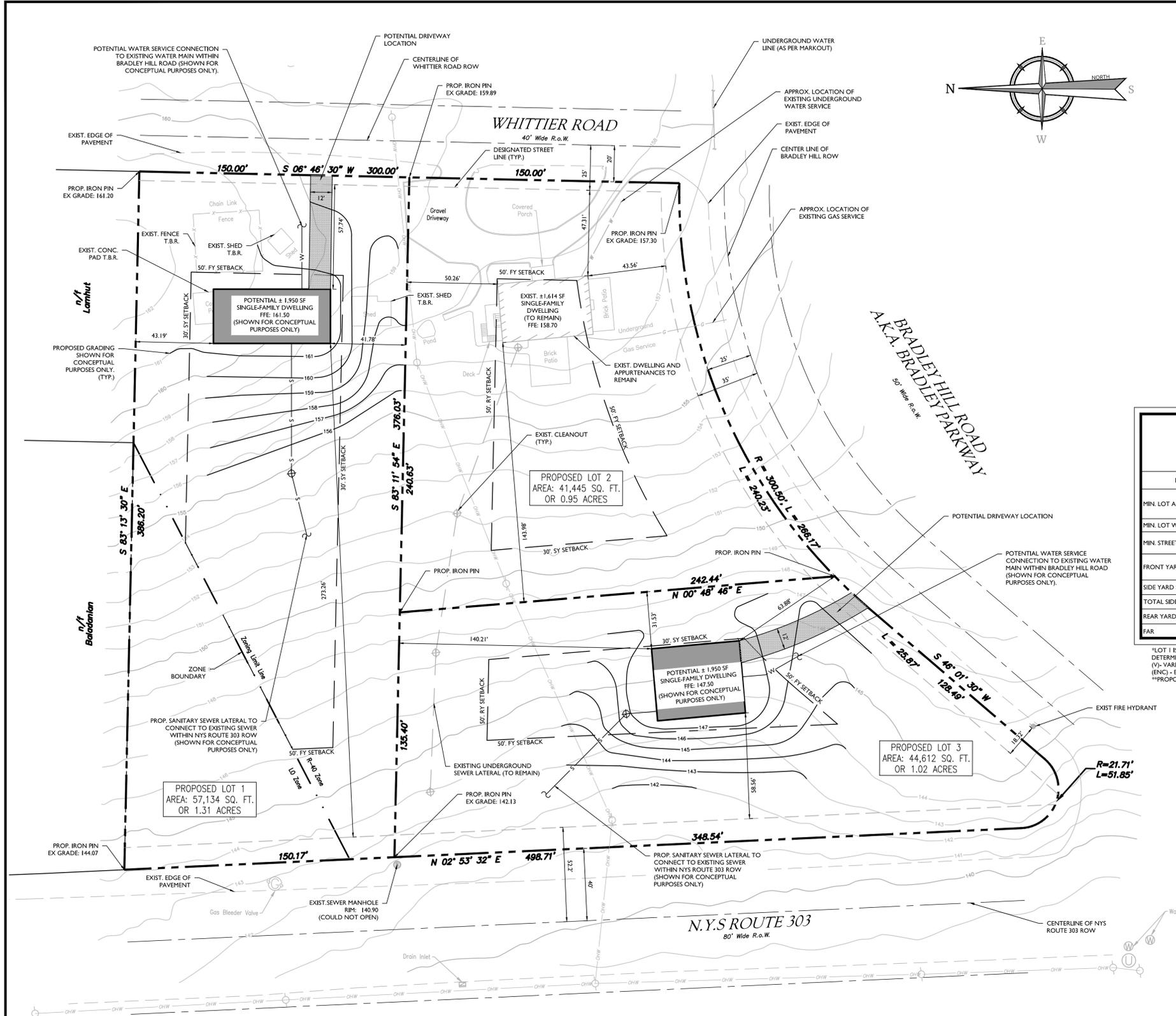
TO: JOSEPH H. ADAMS, ESQ.
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53 Burd Street
Nyack, NY 10956

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TOWN ATTORNEY OF ORANGETOWN
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Attorney for Respondent KDJ Realty, Inc.
108 New Hempstead Road
New City, NY 10956

ELIZABETH TRIFARI
327 Mullock Road
Middletown, NY 10940

KATHLEEN HAGAN
100 Billwood Drive
Monroe, NY 10950



VICINITY MAP
SOURCE: GOOGLE EARTH
SCALE: 1" = 500'

TABLE OF BULK REQUIREMENTS ZONE: R-40 DISTRICT (SINGLE-FAMILY)						
ITEM	REQUIRED	EXISTING	PROP. LOT 1	PROP. LOT 2	PROP. LOT 3	COMPLIES
MIN. LOT AREA*	40,000 S.F.	TOTAL = 143,191 SF R-40 = 128,426 SF LO = 14,765 SF	TOTAL = 57,134 SF R-40 = 42,369 SF LO = 14,765 SF	41,445 SF	44,612 SF	YES
MIN. LOT WIDTH	150'	300'	150'	150'	154.33'	YES
MIN. STREET FRONTAGE**	100'	1,261'	150.00' (WHITTIER ROAD) 150.17' (N.Y.S. ROUTE 303)	150.00' (WHITTIER ROAD) 240.23' (BRADLEY HILL ROAD)	128.49' (BRADLEY HILL ROAD) 348.54' (N.Y.S. ROUTE 303)	YES
FRONT YARD SETBACK	50'	43.56' (ENC) (BRADLEY HILL ROAD) 47.31' (ENC) (WHITTIER ROAD)	57.74'	43.56' (V) (BRADLEY HILL ROAD) 47.31' (V) (WHITTIER ROAD)	63.88'	NO (V)
SIDE YARD SETBACK	30'	143.98'	41.78'	143.98'	31.53'	YES
TOTAL SIDE SETBACK	80'	N/A	84.97'	N/A	N/A	YES
REAR YARD SETBACK	50'	50.42'	N/A	50.00'	140.21'	YES
FAR	0.15	0.039	0.046*	0.039	0.034	YES

*LOT 1 IS BASED ON THE PORTION OF THE LOT LOCATED IN THE R-40 ZONE AND THE ADDITIONAL LOT AREA IN THE LO ZONE IS NOT TO BE USED WHEN DETERMINING FAR FOR THE PROPOSED DWELLING.
 (V) - VARIANCE REQUIRED
 (ENC) - EXISTING NON-CONFORMITY
 **PROPOSED LOT 1 REQUIRES A VARIANCE FROM NEW YORK STATE LAW SECTION 280-a (STREET FRONTAGE)

- DISTRICTS**
- SCHOOL DISTRICT: SOUTH ORANGETOWN GENERAL SCHOOL DISTRICT I
 - FIRE DISTRICT: BLAUVELT
 - WATER DISTRICT: VEOLIA NY
 - SEWER DISTRICT: ORANGETOWN SEWER DISTRICT
 - LIGHTING DISTRICT: TOWN OF ORANGETOWN

- GENERAL NOTES**
- LOT AREA OF TOTAL TRACT IS +/- 143,312 SF (±3.29 ACRES). EXISTING LOT IS PROPOSED TO BE SUBDIVIDED INTO 3 NEW LOTS: PROPOSED LOT 1 (57,134 SF), PROPOSED LOT 2 (41,445 SF), PROPOSED LOT 3 (44,612 SF).
 - ZONE - R-40 DISTRICT (SINGLE-FAMILY) & LO DISTRICT
 - EXISTING USE: SINGLE-FAMILY DETACHED RESIDENCE
 - PROPOSED USE: SINGLE-FAMILY DETACHED RESIDENCE
 - ENGINEER: COLLIER ENGINEERING & DESIGN, CT, P.C. 300 TICE BOULEVARD SUITE 101 WOODCLIFF LAKE, NJ 07677
 - SURVEYOR: EDWARD T. GANNON, P.L.S. CHERRY HILL ROAD BLOOMING GROVE, NY 10914
 - EXISTING BOUNDARY AND LOCATION INFORMATION SHOWN HEREON IS BASED ON A SURVEY ENTITLED "PRELIMINARY 3 LOT SUBDIVISION FOR STEVEN FINN", PREPARED BY EDWARD T. GANNON, P.L.S., DATED MAY 30, 2024.
 - FACILITIES FOR ELECTRIC AND TELEPHONE SERVICE SHALL BE INSTALLED UNDERGROUND.
 - NO BUILDING PERMIT WILL BE ISSUED UNTIL SEWAGE DISPOSAL ARRANGEMENTS HAVE BEEN APPROVED BY THE ROCKLAND COUNTY HEALTH DEPARTMENT AND AND/OR THE TOWN OF ORANGETOWN.
 - PROPOSED SINGLE FAMILY RESIDENCES, SITE GRADING, AND UTILITIES ARE SHOWN ON THIS PLAN FOR CONCEPTUAL PURPOSES ONLY. THIS IS INTENDED TO DEMONSTRATE THAT THE PROPOSED LOTS ARE SUITABLE FOR DEVELOPMENT. FUTURE DEVELOPMENT ON THIS SITE BY THE CURRENT OR FUTURE OWNERS WILL REQUIRE APPROVAL FROM THE TOWN OF ORANGETOWN PLANNING BOARD AND ACABOR. DETAILED SITE PLAN DESIGN WILL BE PREPARED AS PART OF ANY FUTURE SITE PLAN APPLICATION.

HEALTH DEPARTMENT APPROVAL

APPROVAL NOT REQUIRED (LESS THAN FOUR LOTS)

THE OWNER OR THEIR REPRESENTATIVE, HEREBY IRREVOCABLY OFFERS FOR DEDICATION TO THE TOWN OF ORANGETOWN, ALL THE STREETS, MUNICIPAL USES, EASEMENTS, PARKS, AND REQUIRED UTILITIES SHOWN ON THE WITHIN SUBDIVISION PLAT AND CONSTRUCTION PLANS IN ACCORDANCE WITH AN IRREVOCABLE OFFER FOR DEDICATION.

OWNER OR REPRESENTATIVE: _____ DATE: _____

APPROVED FOR FILING: _____

OWNER: _____

ROCKLAND COUNTY DRAINAGE AGENCY APPROVAL

APPROVED AS FINAL PLAT BY RESOLUTION OF THE TOWN OF ORANGETOWN PLANNING BOARD:

CHAIRMAN, TOWN OF ORANGETOWN PLANNING BOARD: _____ DATE: _____

ALL FUTURE DEVELOPMENT OF THIS PROPERTY SOUGHT BY THE CURRENT AND ALL FUTURE OWNERS SHALL REQUIRE APPROVAL FROM THE TOWN OF ORANGETOWN PLANNING BOARD AND ACABOR PRIOR TO THE ISSUANCE OF A BUILDING PERMIT OR ANY OTHER APPROVALS.

SCALE: 1" = 30'

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REV.	DATE	DESCRIPTION
1	5/27/2025	REVISED PER ZBA MEETING COMMENTS

Jesse Barrett Cokerley
NEW YORK LICENSED PROFESSIONAL ENGINEER
LICENSE NUMBER: 090987-01
COLLIERS ENGINEERING & DESIGN, CT, P.C.
N.Y. C.O.A.#: 0017609

PRELIMINARY PLOT PLAN
FOR
25 WHITTIER ROAD
PROPOSED 3 LOT
SUBDIVISION
SECTION 65.18
BLOCK 1
LOT 13
TOWN OF ORANGETOWN
ROCKLAND COUNTY
NEW YORK

Colliers
Engineering & Design
WOODCLIFF LAKE
300 TICE BOULEVARD
SUITE 101
WOODCLIFF LAKE, NJ 07677
PHONE: 845.352.0411
COLLIERS ENGINEERING & DESIGN, INC. DOING BUSINESS AS MASER CONSULTING

SCALE: AS SHOWN DATE: 6/4/24 DRAWN BY: MR CHECKED BY: MR
PROJECT NUMBER: 24001458A DRAWING NAME: C-CNPT

SHEET TITLE: PLOT PLAN
SHEET NUMBER: 1 of 1

ROCKLAND COUNTY SEWER DISTRICT No. 1

4 Route 340
Orangeburg, New York 10962
Phone: (845) 365-6111 Fax: (845) 365-6686
RCSD@co.rockland.ny.us

Michael Specht
Chairman

Michael R. Saber, P.E.
Executive Director

December 4, 2024

Ms. Katlyn Bettmann
Town of Orangetown Zoning Board of Appeals
20 South Greenbush Road
Orangeburg, NY 10962

Re: Bedrock Whittier LLC
25 Whittier Road, Blauvelt
Tax Lot 89/65.18-1-13



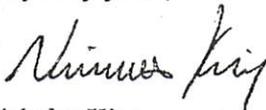
Dear Ms. Bettmann:

Our office has received and reviewed a plot plan that was last revised on June 4, 2024, which Colliers Engineering & Design prepared for the above referenced project. We thank you for the opportunity to comment on this application. Our comments are as follows:

1. Rockland County Sewer District No. 1 does not object to the plan as shown. This project does not affect any sanitary sewers within the District. We request no future correspondence for this site.

Please inform us if any developments in this project change to affect the District. If you have any questions, please contact this office at 845-365-6111.

Very truly yours,


Nicholas King
Engineer II

cc: M. Saber M. Dolphin
Jake Palant – Rockland County Department of Planning

File: TOO 65.18-1-13 – 25 Whittier Road
Reader

DEPARTMENT OF PLANNING

Dr. Robert L. Yeager Health Center
50 Sanatorium Road, Building T
Pomona, New York 10970
Phone: (845) 364-3434 Fax: (845) 364-3435

Douglas J. Schuetz
Acting Commissioner

Richard M. Schiafo
Deputy Commissioner

December 02, 2024

Orangetown Zoning Board of Appeals
20 Greenbush Road
Orangeburg, NY 10962



Tax Data: 65.18-1-13

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M

Map Date: 06/04/2024

Date Review Received: 11/05/2024

Item: *25 Whittier Road Subdivision Plan (GML-24-0311)*

A variance application to permit the subdivision of a 3.29-acre, split-zoned tract of land in the R-40 and LO zoning districts into three lots. Lot 1 will include 1.31 acres, with the northwestern portion in the LO zoning district, and the remainder of the parcel zoned R-40. Lots 2 and 3 will be completely within the R-40 district and comprise 0.95 and 1.02 acres, respectively. An existing single-family dwelling will remain on Lot 2, while the other two lots are intended to be developed as single-family homes in the future. A variance for Lot 1 is requested regarding road access (New York State Law Section 280-A). Northeast corner of Bradley Parkway and NYS Route 303

Reason for Referral:

County Route 11 - N Greenbush Rd, State Route 303

The County of Rockland Department of Planning has reviewed the above item. Acting under the terms of the above GML powers and those vested by the County of Rockland Charter, I, the Commissioner of Planning, hereby:

Recommend the Following Modifications

- 1 A review shall be completed by the New York State Department of Transportation and any required permits obtained.
- 2 The applicant must comply with the comments provided by the Rockland County Department of Health in their letter dated December 2, 2024.
- 3 The Bulk Requirements table on the site plan indicates that a variance is required for the front yard of Lot 2. This variance is not noted in the letter from the Building Department, dated September 20, 2024, or the GML Referral Form. The Town must clarify a front yard variance is required. For any additional variances required, a revised ZBA application must be submitted and forwarded to this department for review, as

25 Whittier Road Subdivision Plan (GML-24-0311)

required under General Municipal Law.

- 4 Pursuant to New York State General Municipal Law (GML) Sections 239-m and 239-n, if any of the conditions of this GML review are overridden by the board, then the local land use board must file a report with the County's Commissioner of Planning of the final action taken. If the final action is contrary to the recommendation of the Commissioner, the local land use board must state the reasons for such action.
- 5 In addition, pursuant to Executive Order 01-2017 signed by County Executive Day on May 22, 2017, County agencies are prohibited from issuing a County permit, license, or approval until the report is filed with the County's Commissioner of Planning. The applicant must provide to any County agency which has jurisdiction of the project: 1) a copy of the Commissioner's report approving the proposed action or 2) a copy of the Commissioner of Planning recommendations to modify or disapprove the proposed action, and a certified copy of the land use board statement overriding the recommendations to modify or disapprove, and the stated reasons for the land use board's override.



Douglas J. Schuetz
Acting Commissioner of Planning

cc: Supervisor Teresa Kenny, Orangetown
NYS Department of Transportation
Rockland County Department of Health
Rockland County Drainage Agency
Rockland County Highway Department
Rockland County Planning Board
Colliers Engineering & Design

*New York State General Municipal Law § 239(5) requires a vote of a 'majority plus one' of your agency to act contrary to the above findings.

The review undertaken by the County of Rockland Department of Planning is pursuant to and follows the mandates of Article 12-B of the New York General Municipal Law. Under Article 12-B the County of Rockland does not render opinions nor determines whether the proposed action reviewed implicates the Religious Land Use and Institutionalized Persons Act. The County of Rockland Department of Planning defers to the municipality referring the proposed action to render such opinions and make such determinations as appropriate under the circumstances.

In this respect, municipalities are advised that under the Religious Land Use and Institutionalized Persons Act, the preemptive force of any provision of the Act may be avoided (1) by changing a policy or practice that may result in a substantial burden on religious exercise, (2) by retaining a policy or practice and exempting the substantially burdened religious exercise, (3) by providing exemptions from a policy or practice for applications that substantially burden religious exercise, or (4) by any other means that eliminates the substantial burden.

Pursuant to New York State General Municipal Law §§ 239-m and 239-n, the referring body shall file a report of its final action with the County of Rockland Department of Planning within thirty (30) days after the final action. A referring body that acts contrary to a recommendation of modification or disapproval of a proposed action shall set forth the reasons for the contrary action in such report.

Katlyn Bettmann

From: Gaddi, Alfred <GaddiA@oru.com>
Sent: Thursday, November 21, 2024 10:03 PM
To: Cheryl Coopersmith; Gerard Chesterman
Cc: Turanchik, Michael J.; Katlyn Bettmann
Subject: 2Whittier Rd, Blauvelt Subdivision Gas Review



Hi Cheryl/Gerard,

Based on the plans provided, this is only a subdivision and no construction is taking place. Please let me know if this is inaccurate. Please contact O&R's new business department for any new services needed for the additional properties.

Thanks,

Alfred Gaddi, PE
Gas Engineering
Orange and Rockland Utilities, Inc.
390 W. Route 59
Spring Valley, NY 10977
845-577-3235 (office)
845-554-4986 (cell)
845-577-3255 (fax)

INTERNAL

Katlyn Bettmann



From: deanna lamhut <dmlamhut@optonline.net>
Sent: Tuesday, November 26, 2024 12:06 PM
To: Katlyn Bettmann
Subject: Response to subdivision variance to 280A for Bedrock Whittier LLC meeting Dec 4 2024

To Whom is May concern,

All the residents on Whittier road vehemently object to the decision to widen and pave said road.

We were not informed of this decision , which creates great hardship to the residents.

NO PLANS WERE INCLUDED FOR WIDENING OR PAVING WHITTIER ROAD at the last subdivion meeting .

NYstate law 280A allows for variances to this decision.

This law is for undedicated roads that do not meet emergency vehicle requirements.

****We have had fire engines down this road for a fire to 28 whittier road.....no problem.**

****We have a 20 ton garbage truck that comes down this road every two days.**

****We have an oil truck which has been coming down this road in winter months since 1948.**

We are talking about ONE HOUSE entering this road which DOES NOT IMPACT the road at all.

This decision to widen the road is overkill. Our road is NOW WIDE ENOUGH to accommodate all emergency vehicles and their weight!!

Please be aware that the residents on the road will be addressing this issue at the meeting on December 4.

Thank you,

Sincerely,

Deanna Lamhut,(representing all the residents on Whittier Road .)

Bedrock Whittier Project

Pictures of Whittier Road

Not a narrow road.

20 ton garbage truck 2x week.

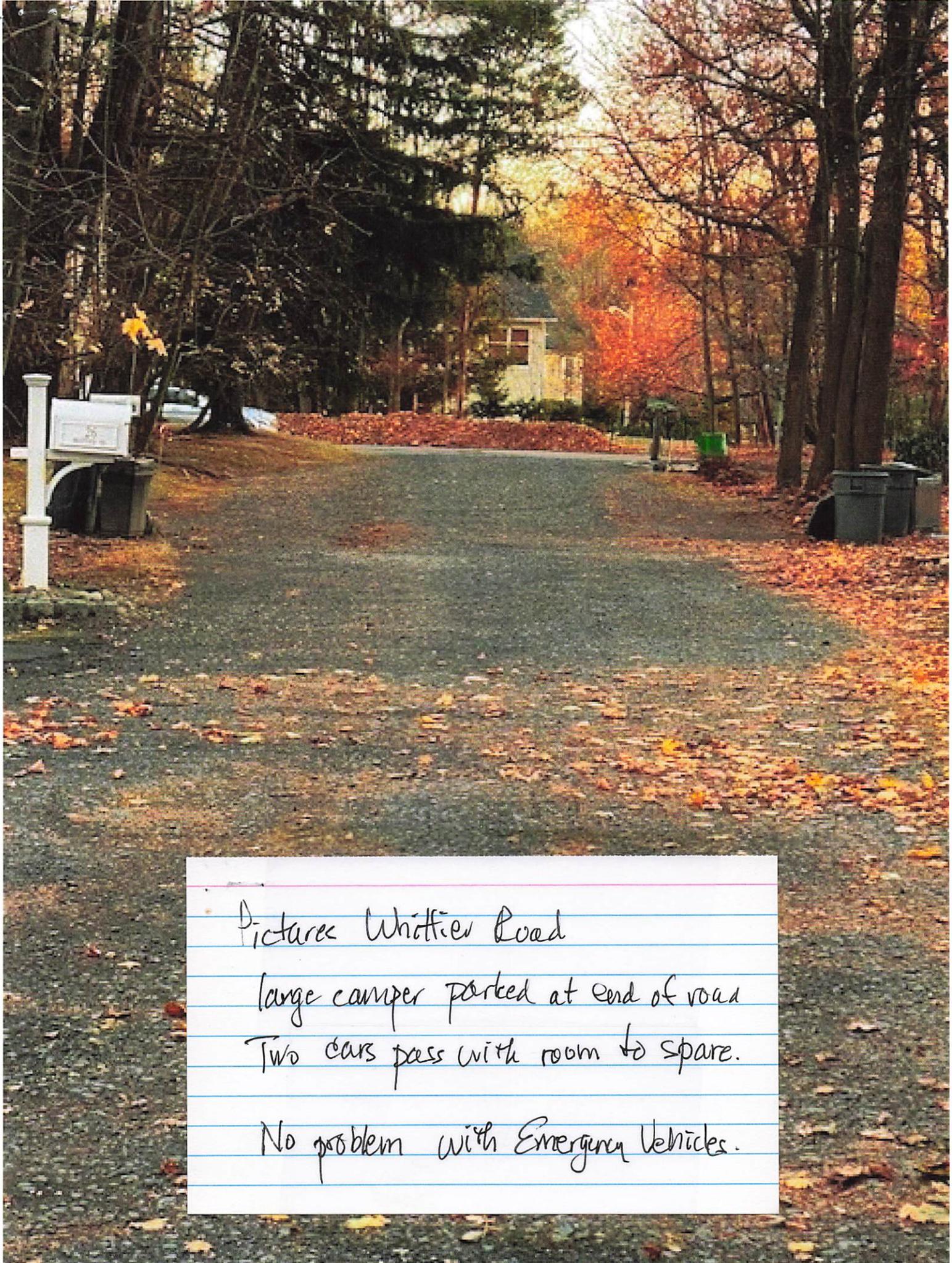
Oil truck

Cars pass on road

Fire truck has been at end of road.



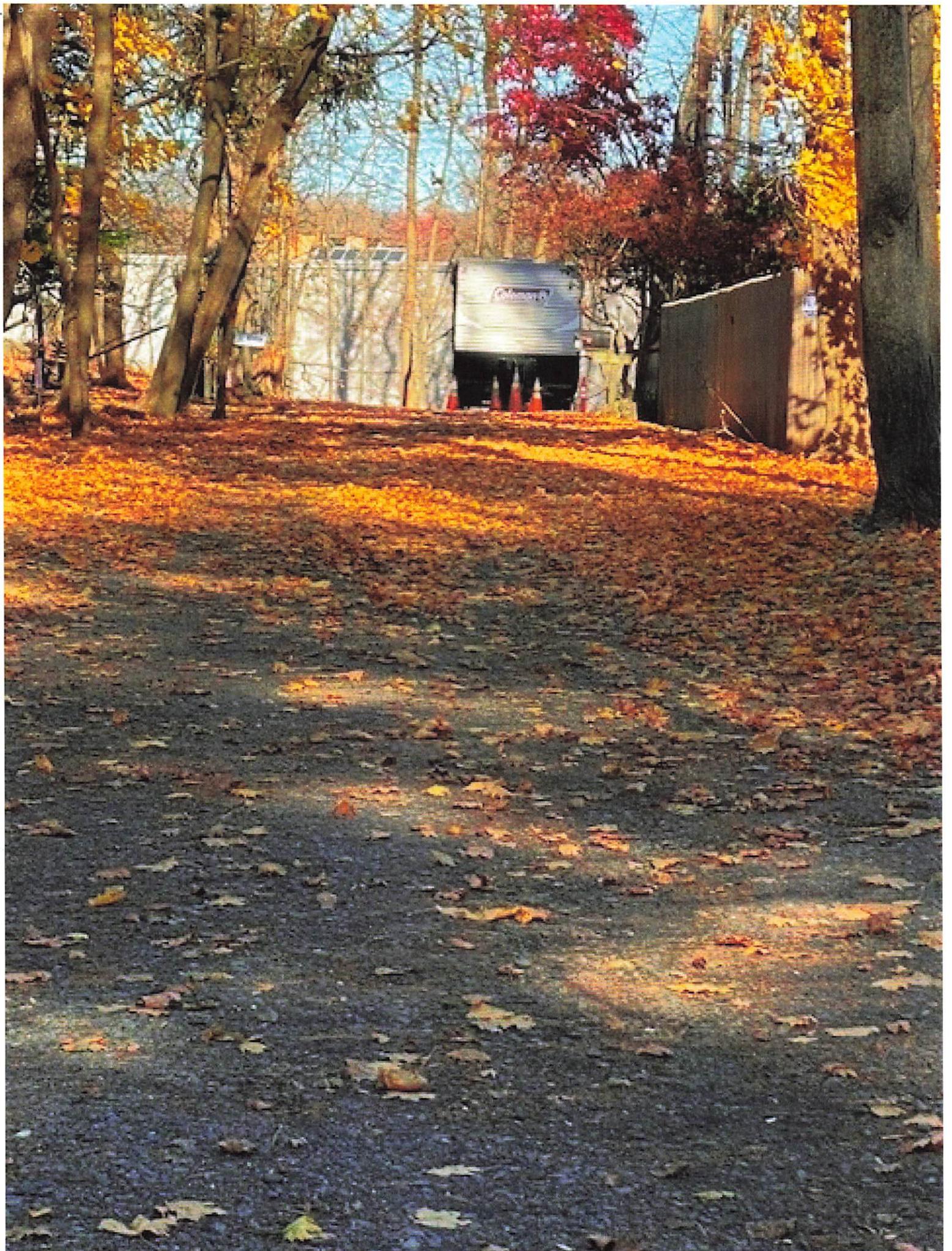
Deanna Lambert



Pictures Whittier Road

large camper parked at end of road
Two cars pass with room to spare.

No problem with Emergency Vehicles.





NO
DUMPING
ORD. #1.3a

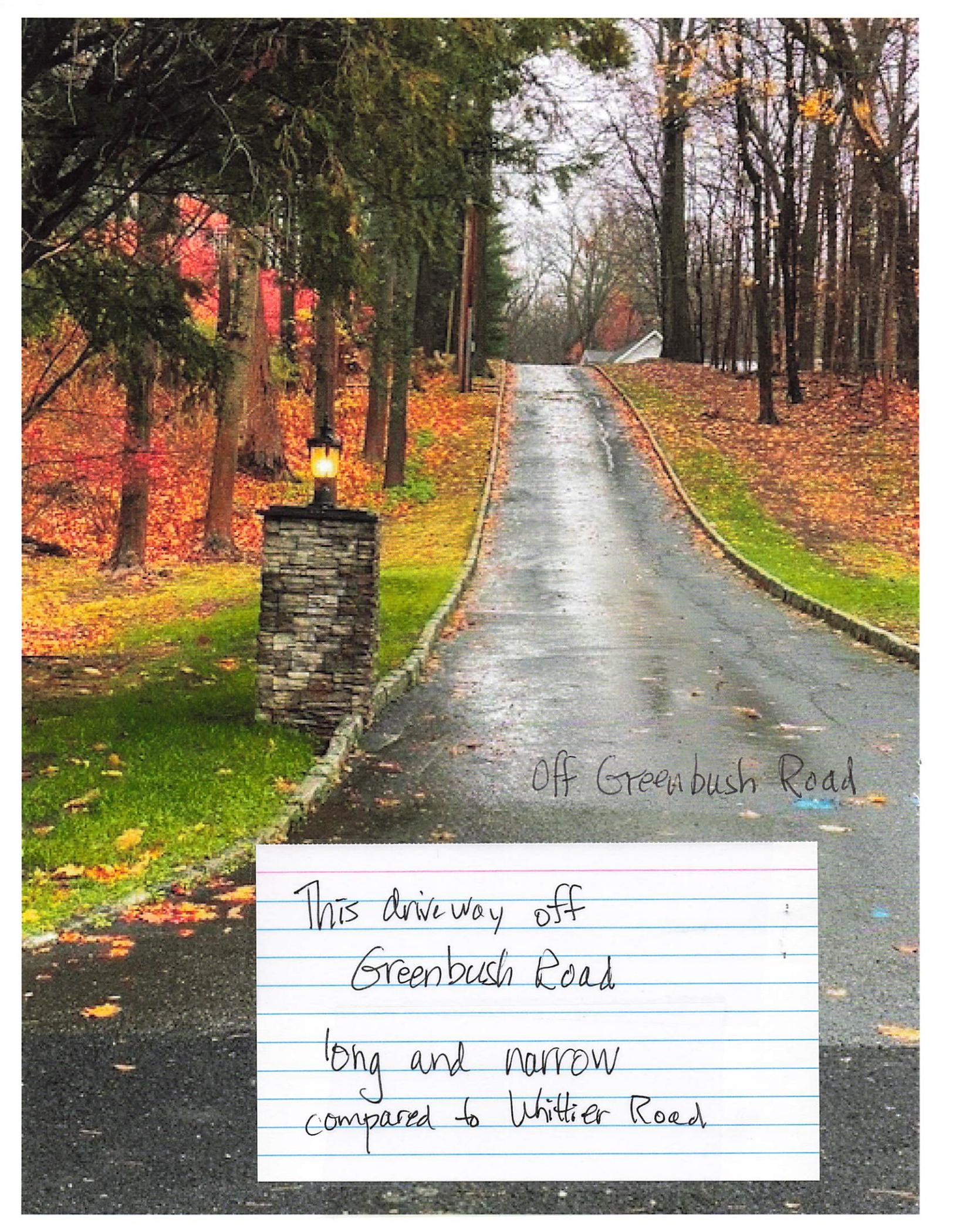
Private Road
Jewett Dr

NO
TRESPASSING
DO NOT ENTER
PRIVATE COMMUNITY
DELIVERIES & SERVICES
FOR JEWETT ROAD ONLY
TRESPASSERS WILL
BE PROSECUTED

Private Road Jewett Drive
Very narrow road
compared to Whittier Road



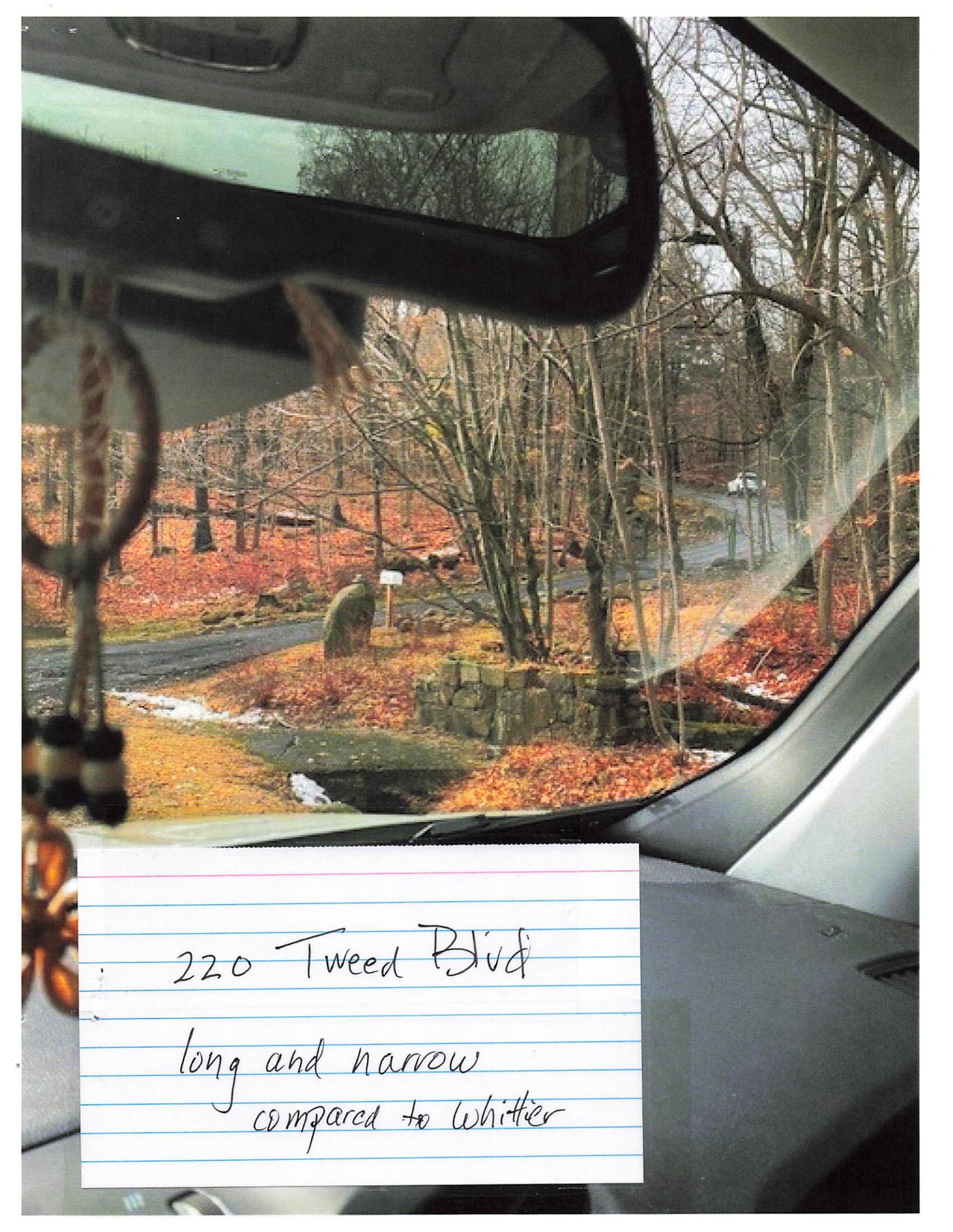




Off Greenbush Road

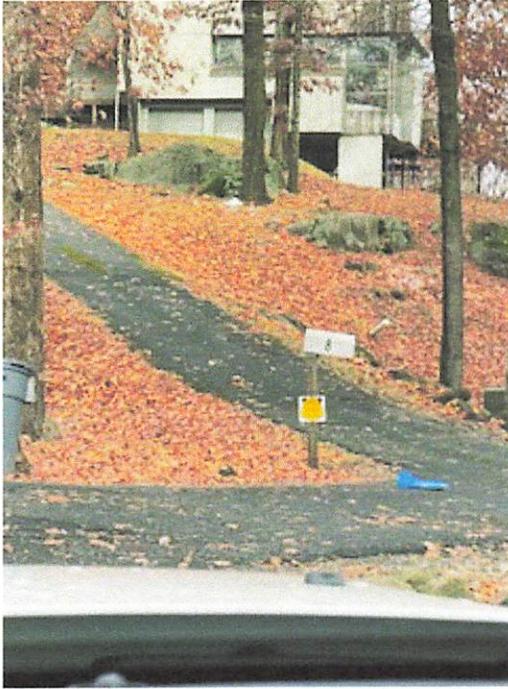
This driveway off
Greenbush Road

long and narrow
compared to Whittier Road



220 Tweed Blvd

long and narrow
compared to Whittier



Sent from my iPhone

8 Tweed Blvd

This truck Carrie's 250 gals of water on board , is designated for a few homes with driveways in our Nieghborhood that large pumpers can not access the home for fire emergencies, it can lay in (stretch hose) from Bradley or have a larger pumper relay water to it , it has a deck gun on the front of the apparatus

That can shoot water 150 ft , or two separate hose lines that can be stretched into a house fire , and the deck gun can be operational while the truck is moving because it has a two separate pump system , so it can dispense water while in motion

A very versatile attack truck for smaller roads and homes with long narrow driveways



DEC 3 2024

TOWN OF ORANGETOWN
LAND USE BOARDS

ZONING BOARD OF APPEALS

Town of Orangetown
26 Orangeburg Road
Orangeburg, New York 10962
(845) 359-8410 (ex. 4316)
Date: November 4, 2024

TO: OBAPAE

- | | |
|--|----------------------------------|
| ✓ NYS Dept of Environmental Conservation | ✓ Rockland County Drainage |
| ✓ New York State Dept. of Transportation | ✓ Rockland County Health |
| Palisades Interstate Park Commission | ✓ Rockland County Planning |
| NYS Thruway Authority | ✓ Rockland County Highway |
| ✓ ACOE | ✓ Rockland County Sewer Dstrt #1 |
| CSX | ✓ Orange and Rockland Utilities |
| | ✓ Veolia |

This matter is scheduled for: December 4, 2024

**Review of Plans: Bedrock Whittier LLC/25 Whittier Road Subdivision,
25 Whittier Road Subdivision, Blauvelt, NY**

Section: 65.18 Block: 1 Lot:13 LO & R-40 zone

Chapter 43, Section 3.12, R-40 & LO District, for a variance from New York State Law Section 280-a(Street Frontage), for (3) lot subdivision, at a single-family residential lot. The premises are located at 25 Whittier Road, Blauvelt, New York and identified on the Orangetown Tax Map as Section 65.18, Block 1, Lot 13 in the LO & R-40 zoning district.

Please review the information enclosed and provide comments. These comments may be mailed, or e-mailed to the Zoning Board Office.

If your Agency does not have any comments at this time, please respond to this office by sending back this sheet.

- US Postal: 26 Orangeburg Road, Orangeburg, NY 10962
- Email to Zoning Board: **KBettmann@orangetown.com**

Zoning Board Meeting Date: December 4, 2024

- () Comments attached
- () No Comments at this time. Please send future correspondence for review.
- () No future correspondence for this site should be sent to this agency. Plans reviewed and this agency does not have any further comments.
- () This project is out of the jurisdiction of this agency and has no further comments.

This project is before the Zoning Board on Wednesday, December 4, 2024. Kindly forward your completed review to this office *BEFORE*** December 4, 2024.**

Reviewing Agency_____

Name:_____Date:_____

Signature: _____

Thank you, **Katlyn Bettmann (EXT. 4316)**

Name of Municipality: TOWN OF ORANGETOWN

Date Submitted: _____

Please check all that apply:

<input type="checkbox"/> Commercial	<input checked="" type="checkbox"/> Residential
<input type="checkbox"/> Planning Board	<input type="checkbox"/> Historical Board
<input checked="" type="checkbox"/> Zoning Board of Appeals	<input type="checkbox"/> Architectural Board
<input type="checkbox"/> Subdivision	<input type="checkbox"/> Consultation
<input type="checkbox"/> Number of Lots	<input type="checkbox"/> Pre-Preliminary/Sketch
<input type="checkbox"/> Site Plan	<input type="checkbox"/> Preliminary
<input type="checkbox"/> Conditional Use	<input type="checkbox"/> Final
<input type="checkbox"/> Special Permit	<input type="checkbox"/> Interpretation
<input checked="" type="checkbox"/> Variance	
<input type="checkbox"/> Performance Standards Review	
<input type="checkbox"/> Use Variance	
<input type="checkbox"/> Other (specify): _____	

PERMIT#: _____
 ASSIGNED _____
 INSPECTOR: _____

Referred from Planning Board: YES / NO
 If yes provide date of Planning Board meeting: _____

Bedrock Whittier LLC/

Project Name: 25 Whittier Road Subdivision

Street Address: 25 Whittier Road, Blauvelt NY, 10913

Tax Map Designation:

Section: 65.18 Block: 1 Lot(s): 13
 Section: _____ Block: _____ Lot(s): _____

Directional Location:

On the West side of Whittier Road, approximately
0 feet North of the intersection of Bradley Hill Road, in the
 Town of ORANGETOWN in the hamlet/village of Blauvelt.

Acreage of Parcel <u>143,191 SF</u>	Zoning District <u>R-40 / LO</u>
School District <u>South Orangetown General School District I</u>	Postal District <u>Blauvelt</u>
Ambulance District <u>Blauvelt</u>	Fire District <u>Blauvelt</u>
Water District <u>Veolia NY</u>	Sewer District <u>Orangetown Sewer</u>

Project Description: *(If additional space required, please attach a narrative summary.)*

The applicant is proposing to subdivide Lot 13 into three separate lots for future single family residential use. The existing single-family dwelling is to remain. No site improvements are proposed at this time. See attached narrative summary.

The undersigned agrees to an extension of the statutory time limit for scheduling a public hearing.

Date: 9/30/24 Applicant's Signature: _____



APPLICATION REVIEW FORM

FILL IN WHERE APPLICABLE.

(IF THE FOLLOWING DOES NOT APPLY PLEASE MOVE ON TO THE NEXT PAGE)

If subdivision:

- 1) Is any variance from the subdivision regulations required? Yes
- 2) Is any open space being offered? No If so, what amount? _____
- 3) Is this a standard or average density subdivision? N/A

If site plan:

- 1) Existing square footage _____
- 2) Total square footage _____
- 3) Number of dwelling units _____

If **special permit**, list special permit use and what the property will be used for.

Environmental Constraints:

Are there **slopes greater than 25%**? If yes, please indicate the amount and show the gross and net area No

Are there **streams** on the site? If yes, please provide the names. No

Are there **wetlands** on the site? If yes, please provide the names and type:

No

Project History:

Has this project ever been reviewed before? Yes

If so, provide a narrative, including the list case number, name, date, and the board(s) you appeared before, and the status of any previous approvals.

Planning Board granted Preliminary Approval on 9/25/24

List tax map section, block & lot numbers for all other abutting properties in the same ownership as this project.

None



**OFFICE OF BUILDING, ZONING, PLANNING
ADMINISTRATION AND ENFORCEMENT
TOWN OF ORANGETOWN
20 GREENBUSH ROAD
ORANGEBURG, N.Y. 10962**

**Jane Slavin, RA
Director**

(845) 359-8410

Fax: (845) 359-8526

Date: September 20, 2024

To: Planning Board

**From: Jane Slavin, RA.,
Director O.B.Z.P.A.E.**

**Subject: 25 Whittier Road Subdivision Plan
Prepreliminary/ Preliminary/ Final Subdivision Plan
and SEQRA Review
25 Whittier Road, Blauvelt
65.18/1/13, R-40/LO zone district**

**RECEIVED
SEP 24 2024
TOWN OF ORANGETOWN
LAND USE BOARDS
PB #24-41**

Submission Reviewed:

Proposed subdivision plan as prepared by Colliers Engineering, dated 6/4/24.

- 1) Whittier Road is not a dedicated town road. A 280-A variance is required.**
- 2) Per Town Code Chapter 2, section 2-4, ACABOR review is required.**
- 3) The SEAF appears to be in order.**

300 Tice Boulevard
Suite 101
Woodcliff Lake, New Jersey 07677
Main: 877 627 3772



NARRATIVE SUMMARY
Proposed 3 Lot Subdivision
25 Whittier Road (65.18-1-13)
Town of Orangetown, Rockland County, NY
Colliers Engineering & Design Project No. 24001458A
October 1, 2024

The site consists of approximately ± 3.29 acres split between the R-40 and LO Zoning Districts. It is located along Whittier Road, but also has frontages along Bradley Hill Road and New York State Route 303. Under existing conditions, the site consists of a $\pm 1,614$ square foot single-family residence near the intersection of Whittier Road and Bradley Hill Road. The remainder of the site is primarily vacant, wooded land.

The Applicant is seeking to subdivide the property into three (3) separate lots. Proposed Lot 1 would consist of 1.31 acres (57,134 SF), Proposed Lot 2 would consist of 0.95 acres (41,445 SF), and Proposed Lot 3 would consist of 1.02 acres (44,612 SF). The existing single-family dwelling on the site would remain within Proposed Lot 2. The two (2) new lots would be intended for future single-family dwellings. No site improvements are proposed at this time, however conceptual site layout, grading, and utility designs are shown on the plans to demonstrate that the proposed lots can support single-family dwellings.

The Orangetown Planning Board granted a Neg Dec under SEQRA and Preliminary Subdivision Approval at their September 25, 2024, meeting. As indicated in Director Slavin's review memo, application must be made to the Zoning Board of Appeals for a 280-A variance because one of the newly created lots in the subdivision will have frontage/access to a Private Road, in this case Whittier Road. Should the Zoning Board see fit to grant the requested variance, application will be made back to the Planning Board for Final Subdivision Approval. It is acknowledged that any future development of this property sought by the current and all future owners shall require approval from the Town of Orangetown Planning Board and ACABOR prior to the issuance of a building permit. The applicant only intends to subdivide the property under this application.

R:\Projects\2024\24001458A\Correspondence\OUT\241001_Narrative Summary.docx



	NO	YES	N/A
5. Is the proposed action, <ul style="list-style-type: none"> a. A permitted use under the zoning regulations? b. Consistent with the adopted comprehensive plan? 	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<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 checked="" type="checkbox"/>	<input 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?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Are public transportation services available at or near the site of the proposed action?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input 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: _____ _____	<input type="checkbox"/>	<input checked="" 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: _____ Not proposed as part of this action, but connection will be made to existing public water supply should houses be constructed	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ Not proposed as part of this action, but connection will be made to existing public wastewater utilities should houses be constructed	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____			

RECEIVED

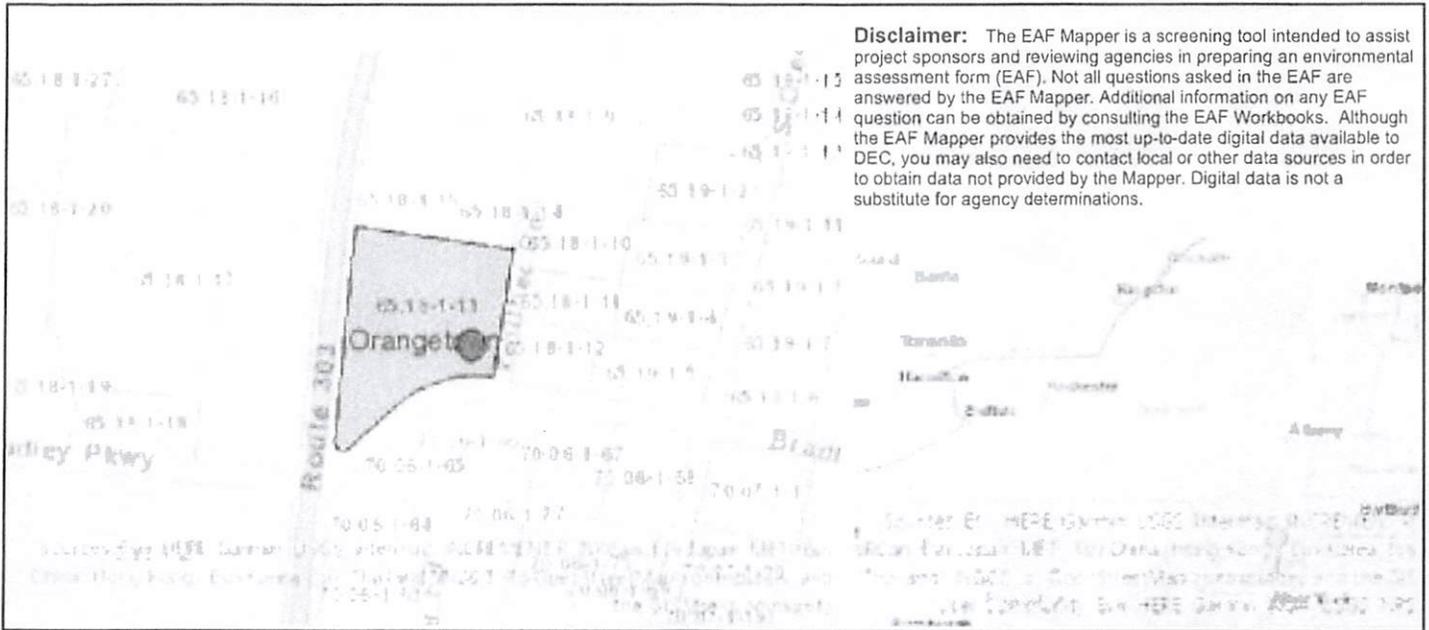
OCT 7 2024

TOWN OF ORANGETOWN
LAND USE BOARDS

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?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<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,	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
a. Will storm water discharges flow to adjacent properties?	<input type="checkbox"/>	<input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?	<input type="checkbox"/>	<input type="checkbox"/>
If Yes, briefly describe: _____ _____		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment: _____ _____	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 type="checkbox"/>	<input checked="" type="checkbox"/>
Adjacent properties across NYS Route 303 (Former General Bearing Site & Xerox Blauvelt) are previous remediation sites per NYSDEC records. These parcels are separated from the site by a State Highway and would not be impacted by the proposed action.		
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor/name: <u>Bedrock Whittier LLC by Yehuda S. Gershtrom</u> Date: <u>6/19/24</u> Signature: <u>[Signature]</u> Title: <u>Member</u>		



PRINT FORM



Disclaimer: The EAF Mapper is a screening tool intended to assist project sponsors and reviewing agencies in preparing an environmental assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Although the EAF Mapper provides the most up-to-date digital data available to DEC, you may also need to contact local or other data sources in order to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.

- Part 1 / Question 7 [Critical Environmental Area] No
- Part 1 / Question 12a [National or State Register of Historic Places or State Eligible Sites] No
- Part 1 / Question 12b [Archeological Sites] Yes
- Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies] No
- Part 1 / Question 15 [Threatened or Endangered Animal] No
- Part 1 / Question 16 [100 Year Flood Plain] No
- Part 1 / Question 20 [Remediation Site] Yes



SWIS	PRINT KEY	NAME	ADDRESS
392489	65.18-1-9	Advanced Manolta LLC	614 Route 303,Blauvelt, NY 10913
392489	65.18-1-10	Mark Hovsepien	28 Whittier Rd,Blauvelt, NY 10913
392489	65.18-1-11	Russell H Tobe	26 Whittier Rd,Blauvelt, NY 10965
392489	65.18-1-12	Jacqueline Jewett	722 Bradley Pkwy,Blauvelt, NY 10913
392489	65.18-1-13	Steven Finn	25 Whittier Rd,Blauvelt, NY 10913
392489	65.18-1-14	Deanna Lamhut	29 Whittier Rd,Blauvelt, NY 10913
392489	65.18-1-15	Raffe Balabanian	579 Rte 303,Blauvelt, NY 10913
392489	65.18-1-16	PG-OE 100 Corporate Dr LLC	900 Route 9 North Ste 400,Woodbrige, NJ 07095
392489	65.18-1-17	Bradley Pkwy Holding LLC	2727 LBJ Freeway Ste 806,Dallas, TX 75234
		Coforge BPS	
392489	65.19-1-2	Michael Acosta	516 N Greenbush Rd,Blauvelt, NY 10913
392489	65.19-1-3	Stephanie Zanetti	508 Greenbush Rd N,Blauvelt, NY 10913
392489	65.19-1-4	Rose Magnone	502 N Greenbush Rd,Blauvelt, NY 10913
392489	65.19-1-5	Midalama Perez	750 Bradley Pkwy,Blauvelt, NY 10913
392489	70.06-1-64	Pedro Rios	17 Sgt Parker Rd,Blauvelt, NY 10913
392489	70.06-1-65	FEFI & EL Holdings LLC	75 Sterling Blvd Unit 453,Englewood, NJ 07631
392489	70.06-1-66	Boris Sipershteyn	21 Sgt Parker Rd,Blauvelt, NY 10913
392489	70.06-1-67	Lucine Debany	23 Sgt Parker Rd,Blauvelt, NY 10913
392489	70.06-1-2	Advanced Blauvelt LLC	614 Route 303, Blauvelt NY 10913





**PB #24-41: 25 Whittier Road Subdivision Plan
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**TO: Bedrock Whittier LLC, Monsey, New York 10952
FROM: Orangetown Planning Board**

RE: PB #24-41: 25 Whittier Road Subdivision Plan – 3 lots: The application of Bedrock Whittier LLC, applicant and owner, for Prepreliminary/ Preliminary/ Final Site Plan, at a site known as "25 Whittier Road", in accordance with Article 16 of the Town Law of the State of New York, the Land Development Regulations of the Town of Orangetown, Chapter 21A of the Code of the Town of Orangetown and to determine the environmental significance of the application pursuant to the requirements of the New York State Environmental Quality Review Act. The site is located at 25 Whittier Road, Blauvelt, Town of Orangetown, Rockland County, New York, and as shown on the Orangetown Tax Map as Section 65.18, Block 1, Lot 13 in the R-40/LO zoning district.

Heard by the Planning Board of the Town of Orangetown at meetings held **Wednesday September 25, 2024**

September 25, 2024

Jesse Cokeley, Colliers Engineering, appeared and testified. The Board received the following communications:

1. Project Review Committee Report dated September 11, 2024.
2. Interdepartmental memorandum from the Office of Building, Zoning, Planning Administration and Enforcement (OBZPAE), Town of Orangetown, signed by Jane Slavin, R.A., AIA, Director, dated September 20, 2024.
3. Interdepartmental memorandum from the Department of Environmental Management and Engineering (DEME), Town of Orangetown, signed by Bruce Peters, P.E., dated September 24, 2024.
4. Interdepartmental memorandum from the Bureau of Fire Prevention, Town of Orangetown, signed by David Majewski, Chief Fire Inspector, dated September 10, 2024.
5. Interdepartmental memorandum from the Bureau of Fire Prevention, Town of Orangetown, signed by David Majewski, Chief Fire Inspector, dated September 16, 2024.
6. Interdepartmental memorandum from the Highway Department, Town of Orangetown, signed by Jim Dean, Superintendent of Highways, dated September 25, 2024.
7. Interdepartmental memorandum from the Office of Recreation and Parks, Town of Orangetown, signed by Aric Gorton, Superintendent of Parks, Recreation and Building Maintenance, dated July 25, 2024.
8. Letter from the Rockland County Department of Planning, signed by Douglas Schuetz, Acting Commissioner of Planning, dated September 16, 2024.
9. Letter from Rockland County Department of Health, signed by Elizabeth Mello, PE, dated July 12, 2024.
10. Letter from Rockland County Sewer District NO.1, signed by Nicolas King, Engineer I, dated September 6, 2024.

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11. Letter from Orange and Rockland Utilities, Inc., signed by Alfred Gaddi, PE, dated August 2, 2024.
12. Project Narrative Summary, signed by Jesse Cokeley, P.E., Dated July 10, 2024.
13. Response letter from Colliers Engineering to Bruce Peters, Town of Orangetown DEME, dated July 10, 2024
14. A letter/notice from Town of Orangetown Zoning Board of Appeals, signed by Michael J. Bosco, dated July 31, 2024.
15. A letter/notice from the Rockland County Department of Planning, signed by Jake Palant, dated July 23, 2024.
16. A letter/notice from the Rockland County Highway Department, signed by Dyan Rajasingham, dated August 2, 2024.
17. Preliminary Plot Plan for 25 Whittier Road Proposed 3 Lot Subdivision, Prepared by Colliers Engineering and Design, dated June 4, 2024.
18. 3 Lot Subdivision Prepared for Steven Finn, prepared and signed by Edward T. Gannon, P.L.S., dated June 27, 2024.
19. Survey Prepared for Steven Finn, prepared and signed by Edward T. Gannon, P.L.S., dated October 19, 2023.

The Board reviewed the plan. The meeting was open to the public.

A motion was made to open the Public Hearing by Michael Mandel- Vice Chairman and second by Denise Lenihan and carried as follows: Thomas Warren – Chairman, aye; Denise Lenihan, aye; Michael Mandel- Vice Chairman, aye; Lisa DeFeciani, absent; Bruce Bond (Alternate Member), aye Michael McCrory, aye; and Andrew Andrews, aye.

Public Comment:

Deanna Lamhunt, 29 Whittier Road, Blauvelt. Brought up the issue of property being maintained from an aesthetics standpoint. Stressed concern and question regarding how the property will be zoned.

Vanessa Lapins, 659 Western Highway, Blauvelt. Questioned the Board on who the owner of the lot is.

Donna Solari, 573 Greenbush Road, Blauvelt. Concerned that aesthetics will be an issue. Questioned about access to records.

There being no one else from the public, a motion was made to close the Public Hearing portion of the meeting by Andrew Andrews and second by Michael Mandel- Vice Chairman and carried as follows: Thomas Warren – Chairman, aye; Denise Lenihan, aye; Michael Mandel- Vice Chairman, aye; Lisa DeFeciani, absent; Bruce Bond (Alternate Member), aye, Michael McCrory, aye; and Andrew Andrews, aye.

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SEQRA

Pursuant to New York Code, Rules & Regulations (NYCRR) Section 617.7, the Town of Orangetown Planning Board, as lead agency, for the reasons articulated in this Board's analysis of all of the submissions by the applicant, interested agencies, departments and the public, with respect to this project including the Environmental Assessment Form, which reasons are summarized in the motion, hereby determines that the proposed action will not have a significant impact on the environment and a Draft Environmental Impact Statement (DEIS) will not be prepared.

After having identified the relevant areas of environmental concern, namely drainage, surface water runoff, land clearing, vegetation, fauna, traffic and noise levels, and after having taken a hard look at said environmental issues, and after having deliberated regarding such concerns, and having heard from the applicant, and the applicant's consultant and having heard from the following offices, officials and/or Departments: (Town of Orangetown): Office of Building, Zoning, Planning Administration and Enforcement and Department of Environmental Management and Engineering; and having heard from the following involved and interested agencies: Town of Orangetown Zoning Board of Appeals, Rockland County Department of Planning, Rockland County Department of Highways, Rockland County Department of Health, Rockland County Sewer District #1, and having reviewed the drawings presented by the applicant's professional consultants; a summary of the reasons supporting this determination are, and the Planning Board finds that the proposed action:

- Will not significantly affect existing air quality or noise levels;
- Will not significantly affect existing surface water quality or quantity or drainage;
- Will not significantly affect existing ground water quality or quantity;
- Will not significantly affect existing traffic levels;
- Will not create a substantial increase in solid waste production;
- Will not create a potential for erosion, flooding, leaching or drainage problems;
- Will not have a significant adverse impact on the environmental characteristics of our critical environmental area or environmentally sensitive sites or features;
- Will not have an impairment of the character or quality of important historical, archeological or architectural resources;
- Will not have an impairment of the character or quality of important aesthetic resources;
- Will not have an impairment of existing community or neighborhood character;
- Will not remove or destroy large quantities of vegetation or fauna;
- Will not remove or destroy large quantities of wildlife species or migratory fish;
- Will not have a significant adverse impact to natural resources;
- Is consistent with the Town of Orangetown Comprehensive/Master Plan;

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- Will not have adverse economic or social impacts upon the Town;
- Will not create a hazard to human health; and
- Will not create a substantial change in the use of land, open space or recreational resources.

On motion by Michael Mandel, Vice Chairman, and seconded by Andrew Andrews, carried as follows: Thomas Warren, Chairman, aye; Michael Mandel, Vice Chairman, aye; Andrew Andrews, aye; Michael McCrory, aye; Bruce Bond, (Alternate Member), aye; Denise Lenihan, aye; and Lisa DeFeciani, aye, the Board declared itself Lead Agency.

On motion by Denise Lenihan, and seconded by Michael Mandel, Vice Chairman, carried as follows: Thomas Warren, Chairman, aye; Michael Mandel, Vice Chairman, aye; Andrew Andrews, aye; Michael McCrory, aye; Bruce Bond, (Alternate Member), aye; Denise Lenihan, aye; and Lisa DeFeciani, aye, the Board declared a Negative Declaration.

DECISION: In view of the foregoing and the testimony before the Board, the application was granted **Preliminary Subject to the Following Conditions:**

1. The following note shall be placed on the subdivision plan: "At least one week prior to the commencement of any work, including the installation of erosion control devices or the removal of trees and vegetation, a Pre-construction meeting must be held with the Town of Orangetown Department of Environmental Management and Engineering, Superintendent of Highways and the Office of Building, Zoning and Planning Administration and Enforcement. It is the responsibility and obligation of the property owner to arrange such a Meeting."
2. Stormwater Management Phase II Regulations: Additional certification, by an appropriate licensed or certified design professional shall be required for all matters before the Planning Board indicating that the drawings and project are in compliance with the Stormwater Management Phase II Regulations.
3. All outdoor construction activities, including site clearing operations if applicable, shall take place between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday. No such activities shall take place on Sunday or a legal holiday. The same criteria shall apply to indoor construction activities, except that such activities may take place between the hours of 7:00 a.m. and 10:00 p.m.
4. The applicant is reminded that no work can begin and no permit will be issued until all comments are met from the various agencies, all approvals are obtained, the Final Site Plan is stamped and the construction plans are reviewed and approved by the inspector.

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5. The Town of Orangetown Department of Building, Zoning, Planning Administration and Enforcement reviewed the Information and has the following comments:
 - Whittier Road is not a dedicated town road. A 280-A variance is required.
 - Per Town Code Chapter 2, section 2-4, ACABOR review is required.
 - The SEAF appears to be in order.

6. The Town of Orangetown Department of Environmental Management and Engineering (DEME) reviewed the information and offered the following comments:
 - Contrary to the applicant's engineer's letter to this Department of 7/10/24 (attached), whether the applicant plans to do the site improvements now or at a later date, **all required subdivision improvements (site, roadway, drainage, sanitary, etc.) must be designed in accordance with the Town of Orangetown Town Code and depicted on the drawing(s) NOW** in order for the subdivision to be approved.
 - Drainage calculations, prepared and sealed by a New York State Licensed Professional Engineer, shall be submitted for review and approval. The applicant's engineer shall design onsite storage to achieve a zero increase in runoff, up to and including the 100-yr. storm, for the proposed subdivision.
 - The total area of disturbance shall be listed on the subdivision plan.
 - Whittier Road is currently an undersized, gravel road. Because the applicant is proposing to add another single-family Residence to this street - bringing the total residences to 5. To ensure that any and all emergency service vehicles have clear, safe and unobstructed access to the new and existing residences along said road, Whittier Road shall be improved (rebuilt and paved) to meet the Town of Orangetown Rural Road specifications from the intersection with Bradley Hill Road to the northern most property line. The improvements shall include but not limited to widening the road to 24-foot wide minimum, paving the road and depth of constituent's (asphalt, subgrade, etc.) as well as load capacity to support fire apparatus.
 - A note shall be added to the Subdivision Plan (Plot plan) stating that *--"All required improvements to Whittier Road depicted on this plan shall be completed, inspected, approved and accepted (including submission and approval of As-Builts) prior to the issuance of **ANY** building permits for proposed Lots 1&3 and/ or C o f0. for proposed Lot 2."*

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CONTINUATION OF CONDITION # 6

- The intersection of Whittier Road at Bradley Hill Road shall be modified to conform to Town of Orangetown Street Specification standards.
- A stop sign shall be added to Whittier Road, at the intersection with Bradley Hill Road.
- Whittier Road shall be labeled as a private road.
- The proposed driveway entrances for Lots 1 & 3 shall be revised to have proposed radii - at the intersection with the street.
- All existing utilities & utility structures (sanitary, storm, water, gas electric, cable/ fiber optic, etc.) within Whittier Road, Bradley Hill Road and Route 303 shall be shown complete on the drawings.
- All driveways on the east side of Whittier road, opposite the proposed subdivision, shall be shown on the plans.
- The northern section of the existing driveway on proposed Lot 2 shall be removed from proposed Lot 1. Also, the first 15 feet of the two driveway entrances from proposed Lot 2 (existing driveway) shall be shown to be paved, to keep gravel from the driveway spilling out onto Whittier Road.
- The proposed driveways for Lots 1 & 3 shall be shown and labeled to be paved. Also, a typical symbol for paving shall be shown at these locations (as well as the required improved portion of Whittier Road) and added to the drawing legend.
- The sight distances at the driveway entrance for proposed Lot 3 onto Bradley Hill Road shall be given on the plans.
- Concrete curbing shall be shown and installed along west side Whittier Road - for the length of the subdivision- and the north side of Bradley Hill Road- for the length of the subdivision.
- Profiles shall be provided for all proposed drainage piping.
- Separate post construction stormwater maintenance agreements for all proposed stormwater systems shall be submitted to this Department and the Town Attorney's office for review and approval. Said agreement shall include a maintenance and management schedule, individual inspection checklists for all existing and proposed stormwater facilities, contact person with cell phone number, yearly report to be submitted to this Department, etc.

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CONTINUATION OF CONDITION # 6

- All existing & proposed easements and dedications shall be shown on the plan (s), including page and liber or instrument number, metes and bounds, utility location within easement (where applicable) and ownership.
- Soil erosion and sediment control plans and details shall be submitted with the drawing set for review and approval. The plans shall depict SESC features designed so that each lot may be developed independently/ separately.
- The proposed sanitary house connections for Lot 1 & 3 shall be designed in accordance with all applicable rules & regulations and shown on the drawings -i.e. not just conceptual layouts as currently labeled on the plan.
- The proposed sanitary house connection for Lot 3 shall be relocated/ redesigned to run directly west to the existing public sanitary main along Route 303, to avoid crossing the existing utility line that runs through the Lot.
- The existing and proposed sanitary house connections shall be shown complete (connecting to the existing sanitary main) on the drawings.
- Profiles for the proposed sanitary house connections shall be added to the drawings.
- Cleanouts shall be shown and labeled along all of the existing and proposed sanitary house connections. The top and invert elevations for every sanitary house connection cleanout shall be added to the plans.
- The drawing depicts the existing sanitary house connection running through proposed Lot 3. An easement through lot 3, to the benefit of Lot 2, shall be proposed and shown on the drawings, including the metes and bounds. A written easement shall be submitted to the Town Attorney's office and this Department for review and approval.
- All utility connections (electric, gas, water, sanitary sewer, fiber, etc.) shall be shown complete (from mains to the homes) for all three homes of the subdivision.
- All existing foliage/ trees/ etc. shall be located and added to the plans. The symbol(s) for same shall be added to the drawing legend.
- The drawings shall show all proposed tree removals.

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CONTINUATION OF CONDITION # 6

- A landscaping plan shall be added to the drawing set.
 - The edge of pavement symbol shown on the drawing does not match the symbol in the legend. This shall be corrected. Also, the edge of pavement symbol is the same symbol as the designated street line. This too shall be corrected. All symbols shown on the drawing(s) shall be included in the drawing legend and match what is shown on the legend.
 - Typical details shall be included with the drawings (i.e. pavement, curbing, sanitary house connection, sanitary cleanout, etc.)
 - Monuments shall be drawn and labeled at all subdivision comers/ R.O.W.s for Whittier Road, Bradley Hill Road, Route 303.
 - Iron pins shall be clearly shown at each property comer. The symbol for same shall be added to the drawing legend.
 - The datum for the contours shall be given. A note shall be added to the Site Plan indicating the source benchmark for the referenced datum (including the BM elevation.)
7. The Town of Orangetown Bureau of Fire Prevention reviewed the information and offered the following comments:
- Show the distance from the closest hydrant to furthest portion of the building measuring along the Fire Apparatus Access Route. Greater than 600' may require the installation of fire hydrant. IFC 507.5.1.
 - Show the width of Whittier Road, required fire access road width is 20'.
 - Show that the fire access road is capable of supporting the imposed load of a Fire Apparatus weighing up to 75,000 pounds.
8. The Town of Orangetown Highway Department reviewed the information and offered the following comments:
- Please be advised that Whittier Road is not a Town road and does not appear on the NYS Local Highway Inventory.

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9. The Town of Orangetown Office of Parks and Recreation reviewed the information and offered the following comments:
- In review of the 25 Whittier Rd. Subdivision Plan -3 lots, the Town of Orangetown Parks and Recreation Department recommends, pursuant to Orangetown Zoning Code Section 21-20.E and Town Board Resolution #396 dated May 8, 2006, which sets the amount of \$6,300.00 per lot for single family homes, that the Planning Board waive the requirement for the reservation of parkland and condition approval on payment of \$18,900.00 in lieu of parkland.
10. The Rockland County Department of Planning reviewed the plans and offered the following comments.
- The Town shall be satisfied that the proposed residential subdivision is compliant with all applicable provisions of the Route 303 Overlay Zone, outlined in Article XIII, Section 13 .1 OB. of the Orangetown Zoning Code.
 - A review shall be completed by the New York State Department of Transportation and any required permits obtained.
 - A review must be completed by the County of Rockland Department of Highways and any required permits obtained from them.
 - The applicant must comply with the comments provided by the Rockland County Department of Health in their letter dated August 6, 2024.
 - As required by the Rockland County Stream Control Act, the subdivision must be reviewed and signed by the Chairman of the Rockland County Drainage Agency before the County Clerk can accept the plan to be filed.
 - Once a subdivision has been approved, a filed map cannot be used to convey property, nor can the tax maps be updated with the lot changes, until the deeds are filed with the County Clerk, conveying the portions of the lots that are required to achieve the lot configuration indicated on the subdivision map. The applicant and the Town must make sure that the deeds are properly filed with the Rockland County Clerk to ensure that the tax maps are properly updated.
 - Prior to the start of demolition, construction or grading, a soil and erosion control plan shall be developed and in place for the entire site that meets the latest edition (November 2016) of the New York State Standards for Urban Erosion and Sediment Control.
 - There shall be no net increase in the peak rate of discharge from the site at all design points.

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CONTINUATION OF CONDITION # 10....

- A Stormwater Pollution Prevention Plan (SWPPP), if required for development, shall be provided and conform to the current regulations, including the New York State Stormwater Management and Design Manual (January 2015) and local ordinances.
- Water is a scarce resource in Rockland County; thus, proper planning and phasing of this project are critical to supplying the current and future residents of the Villages, Towns, and County with an adequate supply of water. If any public water supply improvements are required, engineering plans and specifications for these improvements shall be reviewed and approved by the Rockland County Department of Health prior to construction in order to ensure compliance with Article II (Drinking Water Supplies) of the Rockland County Sanitary Code and Part 5 of the New York State Sanitary Code.
- Any future site plan and variance applications required to implement the proposed subdivision must be referred to this department, as required by New York State General Municipal Law, Section 239-m.
- Pursuant to New York State General Municipal Law (GML) Sections 239-m and 239-n, if any of the conditions of this GML review are overridden by the board, then the local land use board must file a report with the County's Commissioner of Planning of the final action taken. If the final action is contrary to the recommendation of the Commissioner, the local land use board must state the reasons for such action.
- In addition, pursuant to Executive Order 01-2017 signed by County Executive Day on May 22, 2017, County agencies are prohibited from issuing a County permit, license, or approval until the report is filed with the County's Commissioner of Planning. The applicant must provide to any County agency which has jurisdiction of the project: 1) a copy of the Commissioner's report approving the proposed action or 2) a copy of the Commissioner of Planning recommendations to modify or disapprove the proposed action, and a certified copy of the land use board statement overriding the recommendations to modify or disapprove, and the stated reasons for the land use board's override.

11. The Rockland County Department of Health (RCDOH) reviewed the plans and offered the following comments:

- Realty Subdivision application is to be made to this office

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CONTINUATION OF CONDITION # 11

- Should the Board require a stormwater management system to remediate the increase in impervious surface, application is to be made to the RCDOH for review of the system for compliance with the County Mosquito Code.

12. The Rockland County Sewer District NO. 1 reviewed the information and offered the following comments:

- The Rockland County Sewer District No. 1 does not object to the Planning Board serving as lead agency for this review.
- The Rockland County Sewer District No. 1 does not object to the plan as shown. This project does not affect any sanitary sewers within the District. We request no future correspondence for this site

13. Orange and Rockland Utilities, Inc. reviewed the information and offered the following comments:

- Being that this is only a lot subdivision and no construction activities, there are no gas conflicts. Please contact O&R's new business department for any new customers.

14. TREE PROTECTION: The following note shall be placed on the Site Plan: The Tree Protection and Preservation Guidelines adopted pursuant to Section 21-24 of the Land Development Regulations of the Town of Orangetown will be implemented in order to protect and preserve both individual specimen trees and buffer area with many trees. Steps that will be taken to preserve and protect existing trees to remain are as follows:

- No construction equipment shall be parked under the tree canopy.
- There will be no excavation or stockpiling of earth underneath the trees.
- Trees designated to be preserved shall be marked conspicuously on all sides at a 5 to 10-foot height.
- The Tree Protection Zone for trees designated to be preserved will be established by one of the following methods:
 - i. One (1) foot radius from trunk per inch DBH

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CONTINUATION OF CONDITION # 14

- ii. Drip line of the Tree Canopy. The method chosen should be based on providing the maximum protection zone possible. A barrier of snow fence or equal is to be placed and maintained one yard beyond the established tree protection zone. If it is agreed that the tree protection zone of a selected tree must be violated, one of the following methods must be employed to mitigate the impact:
 - 1. Light to Heavy Impacts – Minimum of eight inches of wood chips installed in the area to be protected. Chips shall be removed upon completion of work.
 - 2. Light Impacts Only – Installation of ¾ inch of plywood or boards, or equal over the area to be protected.

The builder or its agent may not change grade within the tree protection zone of a preserved tree unless such grade change has received final approval from the Planning Board. If the grade level is to be changed more than six (6) inches, trees designated to be preserved shall be welled and/or preserved in a raised bed, with the tree well a radius of three (3) feet larger than the tree canopy.

- 15. All landscaping shown on the site plan shall be maintained in a vigorous growing condition throughout the duration of the use of this site. Any plants not so maintained shall be replaced with new plants at the beginning of the next immediately following growing season.
- 16. Prior to the commencement of any site work, including the removal of trees, the applicant shall install the soil erosion and sedimentation control as required by the Planning Board. Prior to the authorization to proceed with any phase of the site work, the Town of Orangetown Department of Environmental Management and Engineering (DEME) shall inspect the installation of all required soil erosion and sedimentation control measures. The applicant shall contact DEME at least 48 hours in advance for an inspection.
- 17. The contractor's trailer, if any is proposed, shall be located as approved by the Planning Board.
- 18. If the applicant, during the course of construction, encounters such conditions as flood areas, underground water, soft or silty areas, improper drainage, or any other unusual circumstances or conditions that were not foreseen in the original planning, such conditions shall be reported immediately to DEME. The applicant shall submit their recommendations as to the special treatment to be given such areas to secure adequate, permanent and satisfactory construction. DEME shall investigate the condition(s), and shall either approve the applicant's recommendations to correct the condition(s), or order a modification thereof. In the event of the

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CONTINUATION OF CONDITION # 18

applicant's disagreement with the decision of DEME, or in the event of a significant change resulting to the site plan or any change that involves a wetland regulated area, the matter shall be decided by the agency with jurisdiction in that area (i.e. Wetlands - U.S. Army Corps of Engineers).

19. Permanent vegetation cover of disturbed areas shall be established on the site within thirty (30) days of the completion of construction.
20. Prior (at least 14 days) to the placing of any road sub-base, the applicant shall provide the Town of Orangetown Superintendent of Highways and DEME with a plan and profile of the graded road to be paved in order that these departments may review the drawings conformance to the approved construction plans and the Town Street Specifications
21. A note shall be included on the filed site plan to the effect that approval is granted for ITE Land Use Code 150 warehousing only, and any future intent for alternate warehousing will require a new application to the Building Department and Planning Board.
22. The Planning Board shall retain jurisdiction over lighting, landscaping, signs and refuse control.

The foregoing resolution was made and moved by Denise Lenihan, and second by Michael Mandel – Vice Chairman and carried as follows: Thomas Warren – Chairman, aye; Denise Lenihan, aye; Michael Mandel – Vice Chairman, aye; Michael McCrory, aye; Lisa DeFeciani, absent; Bruce Bond (alternate member), aye; and Andrew Andrews, aye.

The Planning Assistant is hereby authorized, directed and empowered to sign this **DECISION** and file a certified copy in the Office of the Town Clerk and the Office of the Planning Board.

Dated: September 25, 2024
Gerard Chesterman, Town of Orangetown Planning Board



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**State Environmental Quality Review Regulations
NEGATIVE DECLARATION
Notice of Determination of Non-Significance**

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This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Regulation) of the Environmental Conservation Law.

The PLANNING BOARD, TOWN OF ORANGETOWN, as Lead Agency, has determined that the proposed action described below will not have a significant impact on the environment and a Draft Environmental Impact Statement will not be prepared.

NAME OF ACTION: 25 Whittier Road Subdivision Plan

SEQR STATUS: Type I _____ Unlisted XXXXXX
CONDITIONED NEGATIVE DECLARATION: Yes _____ No XXXXXX

DESCRIPTION OF ACTION: Final Site Plan Review

LOCATION: 25 Whittier Road, Blauvelt, New York 10913

REASONS SUPPORTING THIS DETERMINATION:

The Orangetown Planning Board, as Lead Agency, determined that the proposed action will not have a significant impact on the environment and a Draft Environmental Impact Statement (DEIS) will not be prepared. The reasons supporting this determination are as follows:

The project will not have a significant impact upon the environment and a DEIS need not be prepared because the proposed action does not significantly affect air quality, surface or ground water quality, noise levels or existing external traffic patterns. In addition, it will have no impact upon the aesthetic, agricultural or cultural resources of the neighborhood. No vegetation, fauna or wildlife species will be affected as a result of this proposed action. The proposed action is consistent with the Town of Orangetown Master Plan and will not have any adverse economic or social impacts upon the Town or its businesses or residences.

If Conditioned Negative Declaration, the specific mitigation is provided on an attachment.

For Further Information contact:

Office of Building, Zoning and Planning
Administration and Enforcement
Town of Orangetown
26 West Orangeburg Road, Orangeburg, NY 10962
Telephone Number: 845-359-8410

For Type I Actions and Conditioned Negative Declarations, a copy of this notice is sent: - Commissioner, New York State Department of Environmental Conservation, - Region 3 Headquarters, NYSDEC, - Town Supervisor, Applicant, Involved Agencies



TOWN OF ORANGETOWN
2024 OCT 24 A 9:20
TOWN CLERK'S OFFICE

WHITTIER ROAD

Certifications on this boundary survey map signify that the map was prepared in accordance with the current existing Code of Practice for Land Surveys adopted by the New York State Association of Professional Land Surveyors, Inc. The certification is not an expressed or implied warranty or guarantee, it is purely a statement of professional opinion based on knowledge, information and existing field evidence and documentary evidence available. The certification is limited to persons for whom the boundary survey map is prepared, to the title company, to the governmental agency, and to the lending institution listed on this boundary survey map.

Any alteration or addition to this survey is a violation of SECTION 7209 of the NEW YORK STATE EDUCATION LAW, except as per SUBDIVISION 2. All certifications hereon are valid for this map and copies thereof only if said map or copies bear the inked or impressed seal of the surveyor whose original signature appears hereon.

ANY EASEMENTS AND/OR SUBSURFACE STRUCTURES UNRECORDED ARE NOT GUARANTEED UNLESS PHYSICALLY EVIDENT ON THE PREMISES AT THE TIME OF THE SURVEY

SUBJECT TO COVENANTS, EASEMENTS, RESTRICTIONS, CONDITIONS AND AGREEMENTS RECORDED AND UNRECORDED

UNDERGROUND UTILITIES SHOWN HEREON BASED ON UTILITY EVIDENCE VISIBLE AT GROUND SURFACE AND ARE SUBJECT TO FIELD VERIFICATION BY EXCAVATION

UTILITIES SHOWN DO NOT PURPORT TO CONSTITUTE OR REPRESENT ALL UTILITIES LOCATED UPON OR ADJACENT TO THE SURVEYED PREMISES

SUBJECT TO AN UP TO DATE TITLE SEARCH

WETLANDS IF ANY ARE NOT SHOWN

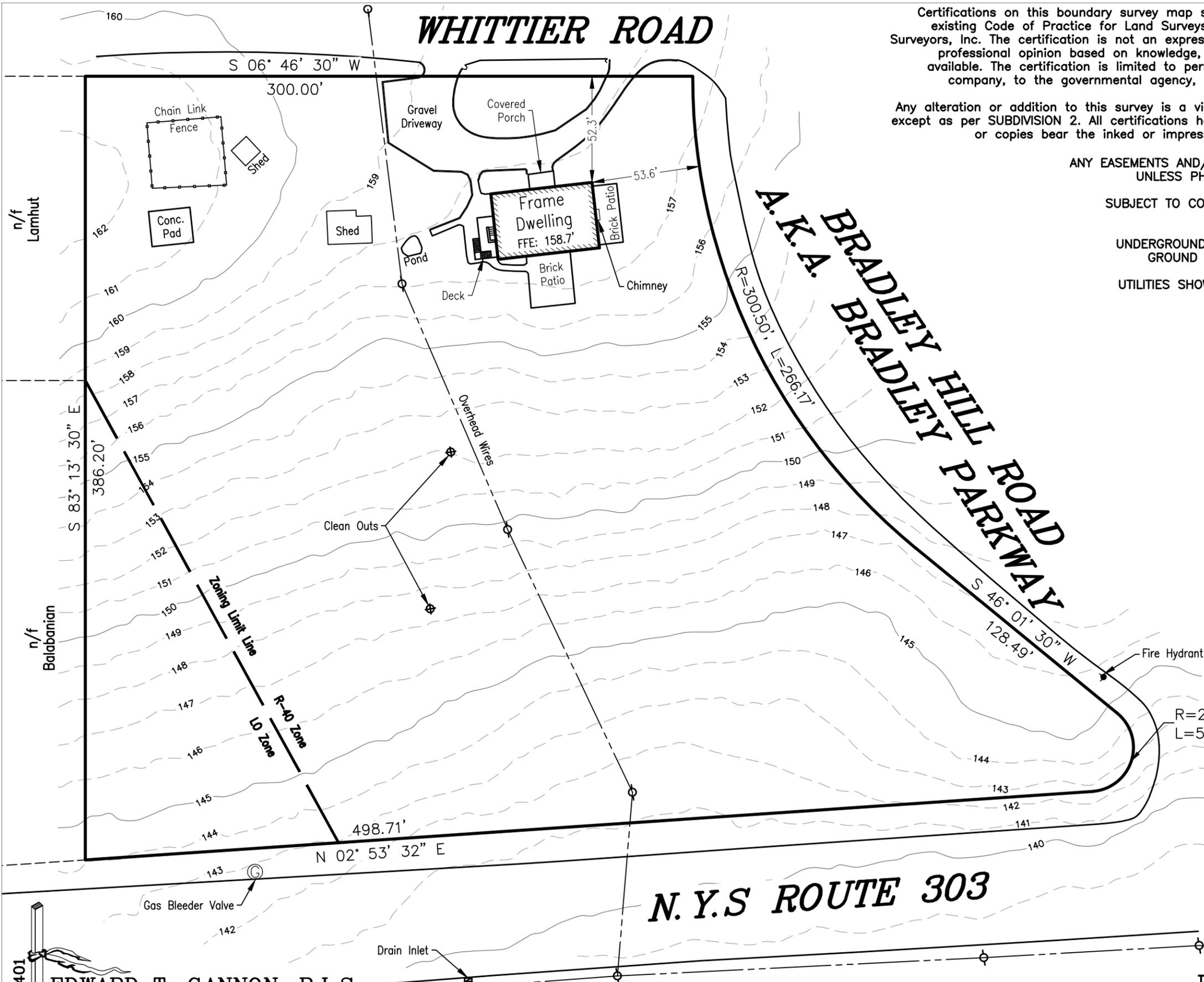
TOPOGRAPHIC DATA SHOWN HERE ON DERIVED FROM A COMBINATION OF FIELD LOCATIONS AND RECORD LIDAR DATA

VERTICAL DATUM: NAVD1988

EXTERIOR BOUNDARY SHOWN AS PER A COMBINATION OF THE DEED OF RECORD, BOOK 657 PAGE 1338, AND THE ROAD DEDICATION FOR BRADLEY PARKWAY, BOOK 346 PAGE 566



CERTIFIED ONLY TO:
 Steven Finn
 Old Republic Title Insurance Company
 M&M Self Storage LLC
 Bedrock Property Group LLC



#23401
EDWARD T. GANNON, P.L.S.
 CHERRY HILL ROAD ~ BLOOMING GROVE, NY 10914
 egannonsurveying@yahoo.com

SURVEY PREPARED FOR STEVEN FINN
 TOWN OF ORANGETOWN, COUNTY OF ROCKLAND, STATE OF NEW YORK
 TAX LOT: SECTION 65.18 - BLOCK 1 - LOT 13
 SCALE: 1" = 50'
 SURVEY DATE: OCTOBER 19, 2023
 AREA: 3.29 ACRES

