



TOWN OF AMHERST PLANNING DEPARTMENT

Application for Rezoning

For Official Use

File #: _____ Acreage _____ Fee \$ _____

Address Verified by
Assessor's Office

VERIFIED BY _____ DATE _____

Application Received
by Planning Department

ACCEPTED BY _____ DATE _____

Materials Checked by
Zoning Enforcement
Officer

CHECKED BY _____ DATE _____

Materials & Fee Paid
to Town Clerk

ACCEPTED BY _____ DATE _____

Fill In Applicable Fees

2 ACRES OR LESS

\$1,250.

2 – 20 ACRES

**\$1,250 + \$250/acre or fraction
thereof over 2 acres** (fractions of an acre
to be counted as 1 acre)

21 – 30 ACRES

**\$5,700 + \$150/acre or fraction
thereof over 21 acres** (fractions of an acre
to be counted as 1 acre)

OVER 30 ACRES

**\$6,900 + \$75/acre or fraction
thereof over 30 acres** (fractions of an acre
to be counted as 1 acre)

**Request for Relief of / Change to Conditions
of Zoning Approval**

\$1,200.

AFFIDAVIT FEE FOR PUBLIC HEARING

\$15.

TOTAL FEE: \$ _____

TO BE COMPLETED BY APPLICANT**1. Petitioner:**Name: Jeffery D. Palumbo, Esq. for Bevilacqua Development, LPAddress: 9276 Main Street, Suite 3Clarence

City

NY

State

14031

Zip Code

Phone: (716) 317-0629Fax (716) 854-0059E Mail: jpalumbo@blockandlongo.com**2. The undersigned hereby petitions the Honorable Town Board to rezone the following described property:**From: Neighborhood Business (NB) DistrictTo: General Business (GB) District**3. Street address of land to be rezoned: (must be verified by Town Assessor's Office)**2577 Millersport Hwy, Amherst, NY 14068SBL #: 41.15-1-18**4. Area of land to be rezoned (in acres): 1.41 acres****5. Owner of Land:**Name: ANTHONY J SCIOLI IIIAddress: 115 Golden Pheasant Dr.Getzville

City

NY

State

14068

Zip Code

Phone: (716) 433-4747**6. Representative (Architect, Engineer, Landscape Architect, Surveyor or Attorney):**Name: Jeffery D. Palumbo, Esq.Address: 9276 Main Street, Suite 3Clarence

City

NY

State

14031

Zip Code

Phone: (716) 317-0629

Fax _____

E Mail: jpalumbo@blockandlongo.com

7. **Petitioner's interest in property**

 X Option to purchase
 Owner
 Other (explain) _____

8. **The following are all others having an interest in this application and join herein with the petitioner named above:** (describe extent of interest; attach sheets as needed)

Anthony J. Scioli III, landowner

9. **Attach Survey and Legal description of land to be rezoned. The Survey must be prepared by a New York State Licensed Land Surveyor. See Exhibit A (Survey)**10. **Said property has the following deed restrictions or covenants:** (attach copy)

Liber Page

11. **Information on proposed project:**

A. Description of the character of the proposed development: _____
A modern, quick-service coffee restaurant serving customers in both an indoor cafe
area and via a drive-through. The coffee restaurant will utilize the existing building
footprint and add a drive-through lane with order board. Significant vegetative
screening is planned as a buffer for surrounding properties.

B. **Rationale for rezoning request:**

1. Why was this site chosen? (1) Prime location on a major thoroughfare _____
 (2) Suitability for quick-service coffee with drive-through. The business model depends on the ability
 to serve customers rapidly during peak morning hours. _____
 (3) Consistency with surrounding commercial development with drive-thrus; (4) Existing restaurant use on the site

2. Why cannot land be used with the existing zoning? _____
Drive-thrus are not permitted in the NB zoning district, despite the site's close
proximity to the GB District directly across Millersport Hwy and to another drive-thru
at Burger King less than 500 feet away, also located in the NB district.
3. How will this rezoning impact surrounding properties? Positively, as it will provide additional
options for amenities to a commercial area and create jobs. Any impacts resulting from the
new land use are mitigated by screening and by its similarity to neighboring uses.
4. How will this rezoning impact the school system? Increase tax revenue, no increase in
demand on the school system.

12. Quantitative Data:

A. Total # of dwelling units	<u>0</u>
B. Distribution of dwelling units by type	<u>N/A</u>
C. Gross Residential Density per acre	<u>N/A</u>
D. Total amount of Open Space	<u>0.5 acres +/-</u>
E. Proposed Non-Residential Floor Area	<u>3,100 sq. ft.</u>

13. Development Schedule:

Start Q3 2025
 Finish Q4 2025
 Stages (# of) 1

14. If any portion of the proposed development is planned to be sold or leased, please describe:

The quick-serve coffee restaurant will be sold or leased to the final operator.

15. Open Space ownership and maintenance provisions (if applicable):

The 30-foot green space buffer on the east end of the parcel, which will be improved with additional landscaping, is required to remain in place by a prior condition of approval.

16. Basis for Findings (Sec. 8-3-5 of the Town Zoning Code) (Attach sheets and supplemental materials as necessary.)**A. The proposed zoning and development plan must be generally consistent with the policies of the Comprehensive Plan and the Town Zoning Ordinance.**

1. State in detail why the proposed zoning is consistent with the adopted Town of Amherst Bicentennial Comprehensive Plan. Cite specific sections, maps, and/or figures in the Plan that support the proposed zoning at this location (The Comprehensive Plan document is available at the Planning Department, Town Clerk's Office, Amherst libraries, or at www.amherst.ny.us). Add sheets as needed.

Please comprehensive plan consistency statement attached hereto as **Exhibit B**.

2. Pursuant to NYS Town Law Section 272a(11), "All Town land use regulations must be in accordance with a comprehensive plan adopted pursuant to this Section." The Amherst Town Board adopted the Bicentennial Comprehensive Plan pursuant to NYS Town Law 272 on January 2, 2007. If the rezoning is approved, the Town Board may require the Plan to be amended, as applicable.

Cite all text, maps, or figures that must be amended to support the proposed zoning at this location (attach pages as necessary) and provide detailed suggested amendments. None in the Comprehensive Plan. The Zoning Map will need to be amended.

3. State why the proposed zoning is consistent with intent and objectives (Sec. 1-2-2) of the Zoning Ordinance:
See consistency statement attached hereto as **Exhibit B**.
-
-
-

B. Adequate Services and Utilities are available or are proposed to be made available with the construction of the development:

1. Sanitary Sewer Available on site.
2. Storm Sewer/Drainage Available on site.
3. Water Available on site.
4. Other _____

C. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:

The proposed zoning and land use are in harmony with the surrounding land commercial uses, several of which also include restaurants and drive-thrus, and in harmony with the GB district directly across Millersport Hwy.

D. Suitability of the subject property for uses permitted by the current versus the proposed district:

While previously utilized successfully as a restaurant under the current NB (Neighborhood Business) zoning, operating a competitive quick-service restaurant at this location now requires a drive-through due to market trends, indicating the property's functional suitability aligns better with the uses permitted in the GB district.

E. Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the Town:

The proposed rezoning facilitates the revitalization of this existing commercial property, allowing a use better aligned with evolving commercial market trends along a major thoroughfare. This aligns with the Town's Comprehensive Plan objectives to encourage reinvestment in older commercial corridors and redevelop underutilized properties for economically viable purposes, thereby helping to maintain a strong commercial base. (Section 3.3.2)

17. The petitioner encloses herewith the sum of \$ 1,265 to pay the fee, and consents to the placement of a sign(s) at the described location identifying this request for a period of time to be determined by the Town Clerk.
18. The undersigned certifies that all information required to be disclosed pursuant to Section 809 of the General Municipal Law (see below) is as follows:

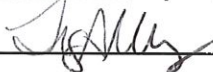
The undersigned swears or affirms that all statements made herein are true, that all drawings submitted correctly show the situation involved in this petition.



Signature of Petitioner

Subscribed and sworn to before me this 16 day of May, 2025

Notary Public, Erie County, New York



TRACY A. MURRAY
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01MU5077295
Qualified in Genesee County
Commission Expires May 5, 2027

N.Y.S. General Municipal Law - Section 809 Disclosure in certain applications:

1. Every application, petition or request submitted for a variance, amendment, change of zoning, approval of a plat, exemption from a plat or official map, license or permit, pursuant to the provision of any ordinance, local law, rule or regulation constituting the zoning and planning regulations of a municipality shall state the name, residence and the nature and extent of the interest of any state office or any office or employee of such municipality or of a municipality of which such municipality is a part, in the person, partnership or association making such application, petition or request (hereinafter called the applicant) to the extent known to such applicant.
2. For the purpose of this section an officer or employee shall be deemed to have an interest in the applicant when he, his spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them
 - (a) is the applicant, or
 - (b) is an officer, director, partner or employee of the applicant, or
 - (c) legally or beneficially owns or controls stock of a corporate applicant or is a member of a partnership or association applicant, or
 - (d) is a party to an agreement with such an applicant, express or implied, whereby he may receive any payment or other benefit, whether or not for services rendered, dependent or contingent upon the favorable approval of such applicant, petition or request.
3. In the county of Nassau the provisions of subdivisions one and two of this section shall also apply to a party officer. "Party Officer" shall mean any person holding any position or office, whether by election, appointment or otherwise, in any party as defined by subdivision four or section two of the election law.
4. Ownership of less than five per cent of the stock of a corporation whose stock is listed on the New York or American Stock Exchanges shall not constitute an interest for the purposes of this section.
5. A person who knowingly and intentionally violates this section shall be guilty of a misdemeanor.

Current Planning/Files/Application Forms 2019/Rezoning Application Form 2019

REVISED February 2021

Short Environmental Assessment Form

Part 1 - Project Information


Instructions for Completing

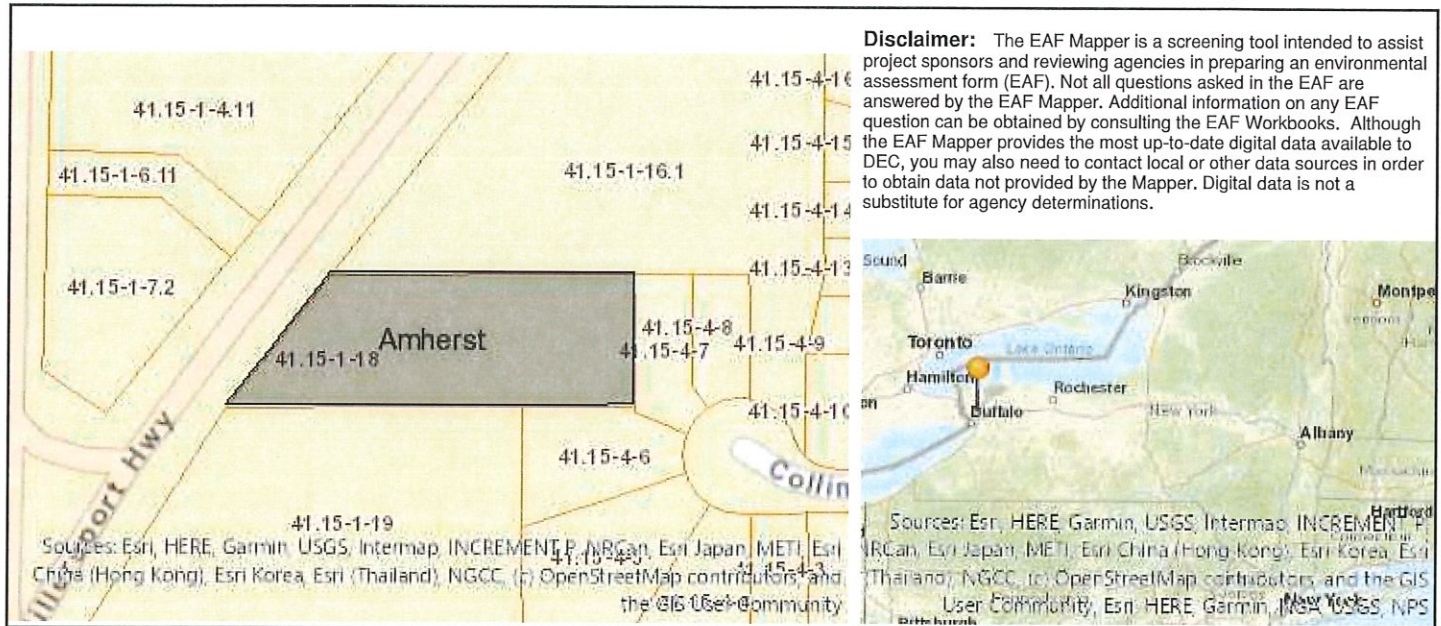
Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information			
Name of Action or Project: Proposed Drive-Thru			
Project Location (describe, and attach a location map): 2577 Millersport Highway [SBL: 41.15-1-18]			
Brief Description of Proposed Action: Proposed rehabilitation of the existing 3,000 sf restaurant building on site to include the installation of a drive-thru with associated site improvements including removal of the rear parking area to accommodate the drive-thru lane.			
Name of Applicant or Sponsor: Bevilacqua Development, L.P.		Telephone: 716-691-7444	
		E-Mail: jbevilacqua@bdvlp.com	
Address: 9332 Transit Road, Suite B			
City/PO: East Amherst		State: NY	Zip Code: 14051
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.		NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: ECDOH		NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
3. a. Total acreage of the site of the proposed action?		1.4 acres	
b. Total acreage to be physically disturbed?		0.3 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		1.4 acres	
4. Check all land uses that occur on, are adjoining or near the proposed action:			
5. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify):			
<input type="checkbox"/> Parkland			

<p>5. Is the proposed action,</p> <p>a. A permitted use under the zoning regulations?</p> <p>b. Consistent with the adopted comprehensive plan?</p>	<p>[a restaurant is a permitted use, a restaurant with drive through is not in the NB zoning district. Refer to variance application]</p>	<p>NO</p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>	<p>YES</p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p>	<p>N/A</p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>
<p>6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?</p>		<p>NO</p> <p><input type="checkbox"/></p>	<p>YES</p> <p><input checked="" type="checkbox"/></p>	
<p>7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?</p> <p>If Yes, identify: _____</p>		<p>NO</p> <p><input checked="" type="checkbox"/></p>	<p>YES</p> <p><input type="checkbox"/></p>	
<p>8. a. Will the proposed action result in a substantial increase in traffic above present levels?</p> <p>b. Are public transportation services available at or near the site of the proposed action?</p> <p>c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?</p>		<p>NO</p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p> <p><input type="checkbox"/></p>	<p>YES</p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input checked="" type="checkbox"/></p>	
<p>9. Does the proposed action meet or exceed the state energy code requirements?</p> <p>If the proposed action will exceed requirements, describe design features and technologies:</p> <p>_____</p> <p>_____</p>		<p>NO</p> <p><input type="checkbox"/></p>	<p>YES</p> <p><input checked="" type="checkbox"/></p>	
<p>10. Will the proposed action connect to an existing public/private water supply?</p> <p>If No, describe method for providing potable water: _____</p> <p>_____</p>		<p>NO</p> <p><input type="checkbox"/></p>	<p>YES</p> <p><input checked="" type="checkbox"/></p>	
<p>11. Will the proposed action connect to existing wastewater utilities?</p> <p>If No, describe method for providing wastewater treatment: _____</p> <p>_____</p>		<p>NO</p> <p><input type="checkbox"/></p>	<p>YES</p> <p><input checked="" type="checkbox"/></p>	
<p>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?</p> <p>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?</p>		<p>NO</p> <p><input checked="" type="checkbox"/></p> <p><input type="checkbox"/></p>	<p>YES</p> <p><input type="checkbox"/></p> <p><input checked="" type="checkbox"/></p>	
<p>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?</p> <p>b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?</p> <p>If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____</p> <p>_____</p> <p>_____</p>		<p>NO</p> <p><input checked="" type="checkbox"/></p> <p><input checked="" type="checkbox"/></p>	<p>YES</p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>	

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, a. Will storm water discharges flow to adjacent properties? b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe:	NO	YES
	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input checked="" type="checkbox"/>
stormwater runoff is conveyed to the existing storm sewer system on site, which ultimately connects to the public storm sewer on Millersport Hwy		
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 checked="" type="checkbox"/>	<input type="checkbox"/>
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor/name: <u>Patrick Sheedy Jr, PE - Carmina Wood Design</u> Date: <u>11/27/24</u> Signature: <u></u> Title: <u>engineer on behalf of the applicant</u>		



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]	No

TOWN OF AMHERST ATTACHMENT
State Environmental Quality Review
ENVIRONMENTAL ASSESSMENT FORM

1. For each applicable category of proposed new structures, including additions to existing structures, provide the following information for all soil types on the project site (according to Soil Survey of Erie County, NY; Table 11, Building Site Development, pp 294-305):

Soil Name	Shallow excavations	Dwellings without basements	Dwellings with basements	Small commercial buildings	Local roads and streets
Cosad loamy fine sand	<input checked="" type="checkbox"/>				

2. If the Soil survey indicates either "severe" or "moderate" suitability for the proposed types of construction, a geotechnical and hydrological analysis based on one test per 3.5 acres of project area must be provided (per Town Board resolution, 3/17/03, amended 6/16/03).

_____ Geotechnical report attached ☒ Not applicable

3. Is your property located: On Youngs Road between Dodge and Klein Roads? ☐ Yes ☒ No
On Wehrle Dr. between Spindrift Dr. and Oakwood Rd? ☐ Yes ☒ No

If so, the property may be within an area of the Town that is affected by a moratorium on connections to the sanitary sewer system.

4. Are there alternative locations on the site for this project? ☐ Yes ☒ No

5. Location and size of real property owned by petitioner within one (1) mile of subject proposal:
1.4 acres [2577 Millersport Hwy]

6. Are you aware of current or future plans or intentions by others in the Town of Amherst to develop property within 1000± ft. of the present project request: ☐ Yes ☒ No

Describe _____

(Potential environmental impacts from adjacent or nearby projects undergoing the approval process will receive a coordinated environmental review to determine cumulative effects on common receivers (e.g. traffic and drainage corridors) and other relevant environmental concerns.)

7. Maximum number of vehicular trips to be generated per hour upon completion of project 51
Source: ITE trip generation

8. Will blasting occur during construction? ☐ Yes ☒ No

9. Does the project propose to connect and be tributary to the public sanitary sewer system? ☒ Yes ☐ No

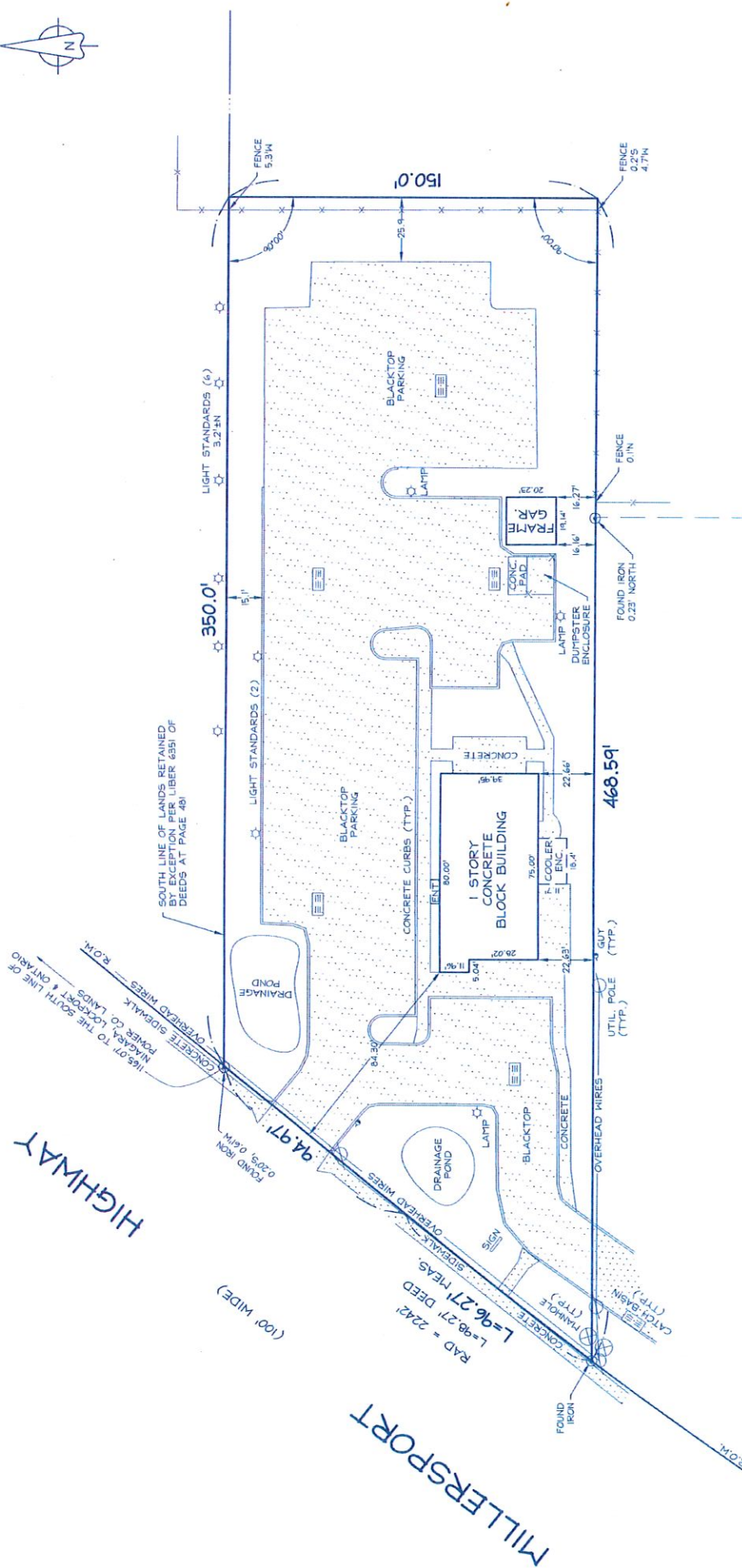
10. Proposed net additional gallons per day (gpd) of sanitary sewer discharge upon completion of project:

1,375 average flow 6,050 peak flow.

(Please note that average flows of 2,500 gpd or greater will require an Engineer's Report that includes a detailed downstream sewer capacity analysis and the identification of and commitment to required I/I offset work during peak wastewater flow conditions.)

EXHIBIT A

BOUNDARY SURVEY



84 Sweeney Street, Suite C-13 North Tonawanda, NY 14120
Phone: (716) 692-0800 fax: (716) 389-0491 www.nussbaumer.com



**NUSSBAUMER
& CLARKE, INC.**
ENGINEERS AND SURVEYORS

BOUNDARY SURVEY

No. 2577 Millersport Highway
Part of Lot 63, Township 12, Range 7
Holland Land Company's Survey

Town of Amherst
County of Erie, State of New York

Date of Survey: 9/16/2024 SBL No. 41.15-1-18

Project No.: 24J4-0336
Scale: 1" = 40'

John F. Raimondo

John F. Raimondo, P.L.S.

Successors to the records of Graf Land Surveys

Successors to the records of James L. Shuler, Land Surveyor

THIS MAP IS NOT VALID WITH AN AFFIDAVIT OF NO CHANGE
NO IRONS SET OR FOUND AT PROPERTY CORNERS UNLESS NOTED HEREON.

This survey was prepared without the benefit of an
Unauthenticated, unlicensed or additions to any survey, drawing,
design, specification, plan or report is a violation of section
2502, paragraph 2 of the New York State Education Law.
This map may be used by any person for any purpose.

EXHIBIT B

COMPREHENSIVE PLAN & ZONING CONSISTENCY STATEMENT



Block, Longo, LaMarca
& Brzezinski, P.C.
ATTORNEYS | SINCE 1933

9276 Main Street, Ste. 3
Clarence, NY 14031
P (716) 320-3150
F (716) 854-0059

MEMORANDUM

TO: Members of the Amherst Planning Board

FROM: Jeffery D. Palumbo, Esq.

DATE: May 9, 2025

RE: Comprehensive Plan & Zoning Consistency Statement
Rezoning 2577 Millersport Hwy from NB to GB

I. Consistency with the Comprehensive Plan

The proposed rezoning of the property at 2577 Millersport Highway from Neighborhood Business (NB) to General Business (GB) is consistent with the adopted Town of Amherst Bicentennial Comprehensive Plan (the "Plan"). The Plan is intended as a policy guide for managing growth and change, including rezoning requests, and explicitly aims to achieve **revitalized older neighborhoods and commercial corridors** (Section 2.3, Page 2-6) (Section 3.2, Page 3-4) (Section 11.2, Page 11-3). A key objective of the Land Use and Development Element is to **advance the redevelopment and revitalization of underutilized, obsolete, and vacant properties for economically viable uses** (Section 3.2, Policy 3-9, Page 3-16).

The former owner of the facility, previously a Nina's Custard restaurant without a drive-through, has stated in his letter to the ZBA dated March 19, 2025 (attached hereto as **Exhibit 1**), that the property is functionally obsolete as a quick-service restaurant without a drive-through due to market trends. The proposed GB zoning, permitting a quick-service restaurant with a drive-through as of right, aligns with the Plan's intent to enable **reinvestment and economically viable uses** on existing commercial sites (Section 3.2, Policy 3-9, Page 3-16) (Section 11.4, Page 11-9), thereby contributing to the Town's strong commercial base by helping to sustain the nonresidential tax base (Section 5.0, Overview, Page 5-1) (Section 11.4, Page 11-9). Policy 3-15 explicitly states that **rezonings should help implement Comprehensive Plan policies, such as advancing the revitalization of underutilized or obsolescent properties** (Policy 3-9). While the Plan references areas along Millersport Highway, its broader goals for revitalizing commercial corridors (Section 2.3, Page 2-5) (Section 3.2, Page 3-4) and enabling economically viable uses on underutilized properties (Section 3.2, Policy 3-9)

support the proposed zoning change at this location on a major commercial suburban thoroughfare to facilitate needed reinvestment (Section 2.3, Page 2-5).

Additionally, Figure 6, the Conceptual Land Use Plan, clearly places the subject parcel's location in a "Commercial / Mixed Use" area. The Plan categorizes commercial areas by "form" (Traditional or Suburban) and "type" (Center or Corridor), recognizing that these areas require different approaches to revitalization and development (Section 3.3.2, Page 3-33) (Section 3.3.2, Page 3-36). The proposed rezoning of 2577 Millersport Highway from NB to GB is consistent with the "suburban" form of commercial development envisioned in the Plan for several reasons.

Millersport Highway, as a major thoroughfare (Source 4), aligns with the description of a "suburban corridor" (Section 3.3.2, Page 3-38) (Section 6.2, Page 6-8) (Section 130) that is often **automobile-oriented** (Section 3.3.2, Page 3-33) (Section 130) and may have **larger parcels connected by higher speed thoroughfares without many walkable connections** (Section 3.3.2, Page 3-34) (Section 90). Moreover, the subject site is part of the "Getzville Plaza" under the Conceptual Land Use Plan (Figure 6-A), which is classified as a **"Suburban Center."** A key objective of the Plan for these Suburban Centers and Corridors is **revitalization through reinvestment, redevelopment, or retrofitting existing buildings/sites** (Section 3.3.2, Page 3-33). The proposed GB zoning allows a quick-service restaurant with a drive-through as of right, which the former owner suggests is a necessary adaptation due to current market trends for the property to be economically viable. This directly supports the Plan's policy to **advance the redevelopment and revitalization of underutilized or obsolescent properties for economically viable uses** (Section 3.2, Policy 3-9) (Section 11.4) within these corridors, contributing to the maintenance of a strong commercial base (Section 5.0, Overview, Page 5-1) (Section 11.4).

Furthermore, the Plan suggests that **"land intensive commercial uses that include automobile-related uses"** should be located within existing centers along arterial and collector highways designated as suburban and commercial corridors (Section 3.3.2, Page 3-43). A quick-service restaurant with a drive-through is an automobile-oriented use, making its location on Millersport Highway, a major suburban arterial in a "Commercial" area (Figure 6) and a "Suburban Center" (Figure 6-A), highly consistent with this guidance. While the Plan does indicate a desire to **reduce future new commercial development** in some areas along Millersport Highway north of North French Road (Section 3.3.2, Page 3-43), the subject property is located south of this area, where the focus is on **reinvestment and revitalization of existing commercial sites** (Section 2.3) (Section 3.2) (Section 11.2). The presence of multiple drive-through facilities nearby (Burger King at 2515 Millersport Hwy and Tim Hortons at 2290 Millersport Hwy) further indicates that this type of facility is consistent with the existing character of this specific suburban commercial corridor segment of Millersport Highway and the Getzville Plaza suburban center.

II. Consistency with the Zoning Ordinance Intent & Objectives (Sec. 1-2-2)

The proposed rezoning of the property at 2577 Millersport Highway from NB (Neighborhood Business) to GB (General Business) to allow a quick-service restaurant with a drive-through facility is consistent with the stated "Intent and Objectives" of the Town of Amherst Zoning Code, as outlined in Section 1-2-2.

The purpose of the Zoning Ordinance is to promote the public health, safety, convenience, comfort, prosperity, and general welfare by regulating land use in districts **generally consistent with the policies of the Comprehensive Plan**. Section 1-2-2 lists specific objectives to achieve this purpose.

Several of these objectives are advanced by the proposed rezoning:

- **Objective 1-2-2(A):** "To protect the character and values of residential, institutional and public uses, business, commercial and manufacturing uses and to insure their orderly and beneficial development". The property is located in a commercial area on a major thoroughfare. Rezoning from NB to GB allows a quick-service restaurant with a drive-through as of right. The former owner indicated the property is functionally obsolete as a quick-service restaurant without a drive-through in the current market. Permitting a drive-through is argued to be necessary for the business's economic viability, thereby enabling the "beneficial development" of this commercial property and allowing it to remain competitive within the commercial corridor and contribute to maintaining the Town's strong commercial base. While there is a debate about whether adding a drive-through to an existing restaurant is a change in essential use or an operational modification requiring a use or area variance respectively vs, the rezoning to GB resolves this by permitting the specific type of establishment outright, facilitating its "orderly and beneficial development" within a district where this type of commercial activity is intended.
- **Objective 1-2-2(K):** "To guide the future development of the town so as to bring about the gradual conformity of land, structures and uses generally consistent with the policies of the Comprehensive Plan". The Comprehensive Plan is intended to guide development and decision-making, including rezoning requests. The Plan's policies aim to achieve **revitalized older neighborhoods and commercial corridors and advance the redevelopment and revitalization of underutilized, obsolete, and vacant properties for economically viable uses** (Policy 3-9, Page 3-26). The proposed rezoning facilitates the redevelopment of an underutilized, obsolete commercial property into an economically viable use, which is consistent with the Plan's policies for reinvestment and revitalization in commercial corridors. Millersport Highway is recognized as a suburban corridor where **land intensive commercial uses that include automobile-related uses** are appropriate in designated locations. The rezoning enables such an automobile-oriented use on an existing commercial site, aligning future development on this property with the Plan's vision for suburban commercial corridors.

- **Objective 1-2-2(L):** "To accomplish the specific intents and goals set forth in the introduction to the respective sections". This refers to the underlying goals of the different zoning districts and Plan elements. By allowing a competitive and economically viable commercial use (restaurant with drive-through) in a commercial district on a major corridor, the rezoning supports the broader goal of maintaining a **strong tax base** and ample economic opportunities, which is a specific intent of the Zoning Ordinance and Comprehensive Plan.

While other Zoning objectives like providing adequate open space, preventing overcrowding, and protecting neighborhood character are also listed, these aspects relate more directly to the specific **site design** and would be addressed during the Site Plan Review process following a rezoning. The rezoning itself, by moving the property to the GB district where a drive-through restaurant is a permitted use, allows the applicant to pursue a project deemed economically necessary and consistent with the type of development envisioned for suburban commercial corridors in the Comprehensive Plan, thereby aligning the property's potential use with the broader intent of the Zoning Code to guide beneficial commercial development consistent with the Plan.

EXHIBIT 1

Letter from former Owner of 2577 Millersport Hwy
(Nina's Custard)

March 19, 2025

Town of Amherst Zoning Board of Appeals
5583 Main Street
Williamsville, New York 14221

Anthony Scioli III.
5780 South Transit Road
Lockport, New York 14094

To Whom it May Concern:

I have owned and operated Nina's Custard at 2577 Millersport Highway since 1990. This past year, we made the difficult decision to close the restaurant due to increasing challenges in competing with modern quick-service establishments that offer drive-thru service. The trend in the food service industry has shifted away from dine-in options for fast-casual restaurants, as many families are often on the go and prefer the convenience of drive-thru service.

Based on my experience, I believe it would be extremely difficult for any operator to successfully run a restaurant at this location without a drive-thru facility. Several competing businesses in the immediate vicinity have drive-thru service, putting this property at a disadvantage. Looking back, I regret not incorporating a drive-thru when I originally built the restaurant, as it would have allowed us to remain competitive with newer establishments along Millersport Highway.

The property has ample green space and a substantial buffer from nearby residential areas. Additionally, the traffic impact of a drive-thru would be minimal compared to the approximately 18,000 vehicles that already travel along Millersport Highway daily. Without the ability to add a drive-thru, the building's functional use will likely become obsolete.

For these reasons, I respectfully request that you consider this letter in support of a variance to allow a drive-thru facility at this location.

Sincerely,

Anthony Scioli III

Anthony Scioli III.

EXHIBIT C

DRAFT LOCAL LAW

LOCAL LAW NO. ____-201

TOWN OF AMHERST
COUNTY OF ERIE, STATE OF NEW YORK

A LOCAL LAW AMENDING CHAPTER 203 OF THE TOWN OF AMHERST CODE,
KNOWN AS THE ZONING ORDINANCE, TO REZONE 2577 MILLERSPORT HWY.,
AMHERST, NY 14068 FROM NB TO GB AND TO
AMEND THE ZONING MAP ACCORDINGLY.

Be it enacted by the Town Board of the Town of Amherst as follows:

Section 1. Title.

This Local Law shall be referred to as, "A Local Law Amending Chapter 203 of Town of Amherst Code, Known As The Zoning Ordinance, to Rezone 2577 MILLERSPORT HWY, AMHERST, NY 14068 from NB to GB zoning and Amend The Zoning Map Accordingly."

Section 2. Legislative Findings and Intent.

The Town Board of the Town of Amherst finds that an application to rezone 2577 MILLERSPORT HWY, AMHERST, NY 14068 from NB to GB zoning has been filed and is in proper order. The Town Board further finds that the rezoning is consistent with the Comprehensive Plan.

Section 3. Amherst Zoning Map.

The Town Board hereby amends its zoning map which is incorporated by reference in the Town zoning code by amending from _____ NB _____ to _____ GB _____ the zoning of _____, **subject to any conditions imposed by the authorizing resolution;** legally described as follows:

Section 4. Validity.

This Local Law is adopted under the authority granted to the Town Board of the Town of Amherst pursuant to §§10(1)(ii)(a)(12), 20 and 27 of the Municipal Home Rule Law and §265 of the Town Law of the State of New York.

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

Section 5. Effective Date.

This Local Law shall take effect immediately when it is filed in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law and published pursuant to Sections 130 & 133 of the Town Law and Chapter 28 of the Code of the Town of Amherst.

**Francina Spoth
Town Clerk
Town of
Amherst
County of Erie, State of New York**

EXHIBIT D

SITE DRAWINGS
(SUBJECT TO SITE PLAN APPROVAL
AFTER REZONING)

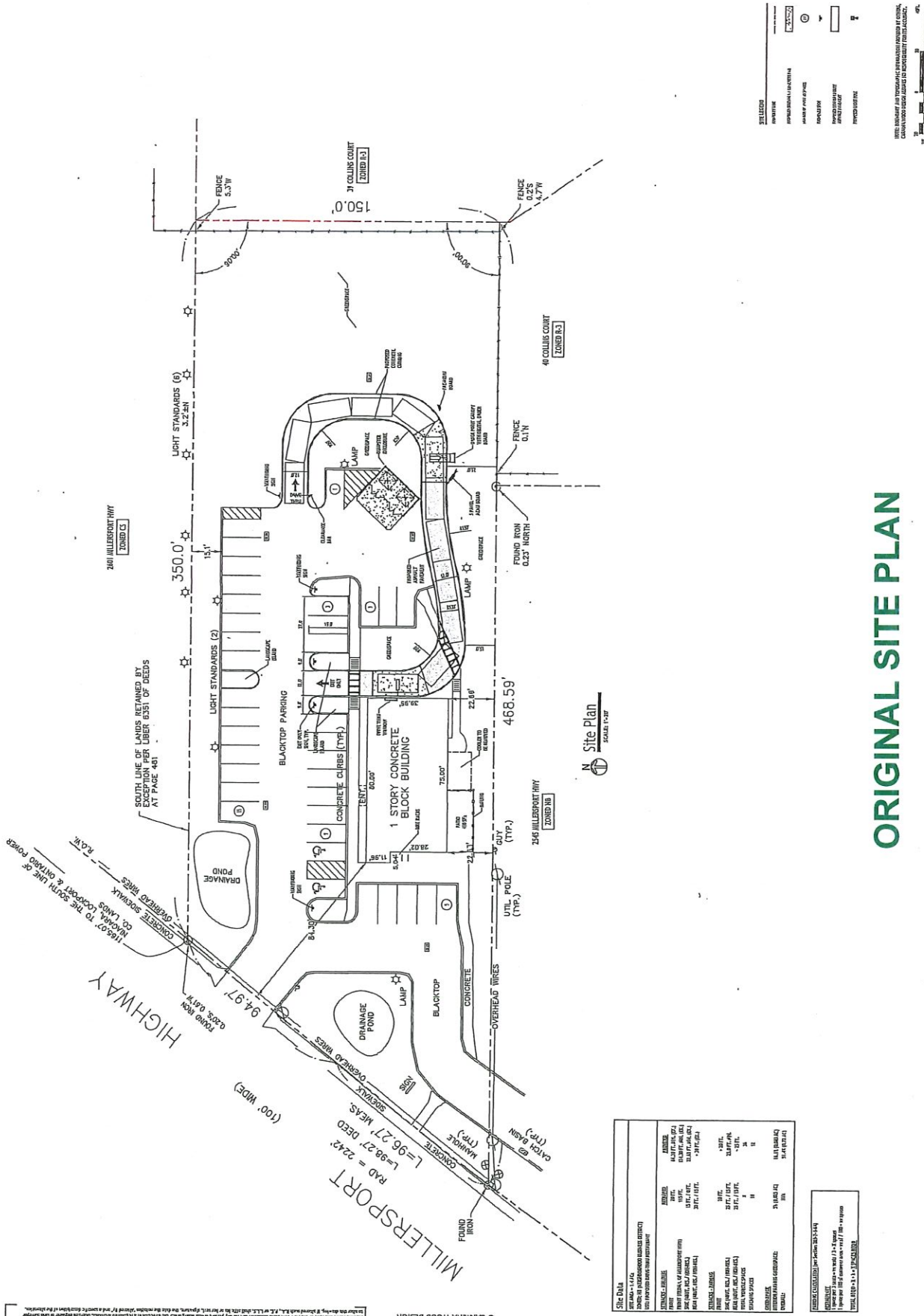


NOTE: BOUNDARY AND TOPOGRAPHIC INFORMATION PROVIDED BY OTHERS. CARBINA WOOD DESIGN ASSUMES NO RESPONSIBILITY FOR ITS ACCURACY.

**LATEST PROPOSED DRIVE-THROUGH LAYOUT
(SUBJECT TO SITE PLAN APPROVAL AFTER REZONING)**

PAVING CALCULATION (per Section 202-7-1.4a)

REQUIREMENT
1 space per 3 seats = 33 seats / 3 = 11 spaces
1 space per 100 sq ft customer area = 1,500 sf / 100 = 15 spaces
TOTAL REQ'D = 11 + 15 = 26 SPACES REQ'D



ORIGINAL SITE PLAN

N Site Plan
SCALE 1"=20'

Site Data	
PROJECT NO.	24-4000
PROJECT NAME	Proposed Drive-Through
PROJECT LOCATION	2577 Millersport Hwy, Amherst, NY
PROJECT OWNER	Carmina/Wood Design
PROJECT ENGINEER	John A. Wood
PROJECT ARCHITECT	John A. Wood
PROJECT LANDSCAPE ARCHITECT	John A. Wood
PROJECT CIVIL ENGINEER	John A. Wood
PROJECT ELECTRICAL ENGINEER	John A. Wood
PROJECT MECHANICAL ENGINEER	John A. Wood
PROJECT ENVIRONMENTAL ENGINEER	John A. Wood
PROJECT HISTORIC PRESERVATION	John A. Wood
PROJECT TRAFFIC ENGINEER	John A. Wood
PROJECT GEOTECHNICAL ENGINEER	John A. Wood
PROJECT SOILS ENGINEER	John A. Wood
PROJECT WATER ENGINEER	John A. Wood
PROJECT AIR ENGINEER	John A. Wood
PROJECT NOISE ENGINEER	John A. Wood
PROJECT VIBRATION ENGINEER	John A. Wood
PROJECT RADIATION ENGINEER	John A. Wood
PROJECT ELECTROMAGNETIC INTERFERENCE	John A. Wood
PROJECT CLIMATE ENGINEER	John A. Wood
PROJECT ASTROLOGICAL ENGINEER	John A. Wood
PROJECT METEOROLOGICAL ENGINEER	John A. Wood
PROJECT OCEANOGRAPHIC ENGINEER	John A. Wood
PROJECT GLACIOLOGICAL ENGINEER	John A. Wood
PROJECT HYDROLOGICAL ENGINEER	John A. Wood
PROJECT HYDRAULIC ENGINEER	John A. Wood
PROJECT HYDROPOWER ENGINEER	John A. Wood
PROJECT MARINE ENGINEER	John A. Wood
PROJECT POLAR ENGINEER	John A. Wood
PROJECT SPACE ENGINEER	John A. Wood
PROJECT SURVEYING ENGINEER	John A. Wood
PROJECT THERMAL ENGINEER	John A. Wood
PROJECT TOPOGRAPHIC ENGINEER	John A. Wood
PROJECT URBAN ENGINEER	John A. Wood
PROJECT WIND ENGINEER	John A. Wood
PROJECT WOOD ENGINEER	John A. Wood
PROJECT ZONING ENGINEER	John A. Wood

THIS PLAN IS A PRELIMINARY DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION. IT IS THE RESPONSIBILITY OF THE CLIENT TO OBTAIN ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

[illegible]

EXHIBIT E

LEGAL DESCRIPTION

LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 63, Township 12, Range 7 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at a point in the southeasterly line of Millersport Highway which is 1165.07 feet southwesterly from the south line of the Niagara, Lockport and Ontario Power Company's lands, said point of beginning also being the point of intersection of the south line of lands retained by Milherst Nurseries, Inc., by exception in a deed recorded in the Erie County Clerk's Office in Liber 6351 of Deeds at Page 481; running thence easterly along the said south line of lands retained by Milherst Nurseries, Inc., 350 feet; running thence southerly at right angles, 150 feet; running thence westerly at right angles, 468.59 feet to the southeasterly line of Millersport Highway; running thence northeasterly along the southeasterly line of Millersport Highway, 98.27 feet to a point of curve, and continuing along said southeasterly line of Millersport Highway, 94.97 feet to the point or place of beginning.