

Village of Mamaroneck



*Village Hall at the Regatta
P.O Box 369*

*123 Mamaroneck Avenue
Mamaroneck, NY 10543*

<http://www.villageofmamaroneck.org>

OFFICE OF
ROBERT A. SPOLZINO
VILLAGE ATTORNEY

Tel (914) 777-7737
Fax (914) 777-7769

TO: Mayor Murphy and the Board of Trustees
Jerome Barberio, Village Manager
Daniel Sarnoff, Assistant Village Manager
Hernane deAlmeda, P.E., Village Engineer

FROM: Robert A. Spolzino, Esq.

RE: Brixmor

DATE: November 21, 2019

Attached for your consideration are an amended license agreement, a "blow-up" of the portion of the survey which shows the license area and a copy of the Planning Board resolution approving Brixmor's amended site plan.

If the amended license agreement meets with your approval, the motion is to authorize the Village Manager to execute the agreement.

AMENDED LICENSE AGREEMENT

THIS AMENDED LICENSE AGREEMENT is entered into this _____ day of November 2019 by and between the **Village of Mamaroneck**, a municipal corporation organized and existing under the laws of the State of New York, having its principal office at 123 Mamaroneck Avenue, Mamaroneck, New York 10573, (hereinafter “the Village”), and **CW A&P Mamaroneck LLC**, a limited liability company organized and existing under the laws of the State of New York, having its principal office at 450 Lexington Avenue, New York, NY 10170 (hereinafter “CW A&P”), owner of the property located at 805 and 817-819 Mamaroneck Avenue, Mamaroneck, New York 10543 (“CW A&P’s Property”). This Amended License Agreement supersedes the prior license agreement dated February 12, 2019.

For and in consideration of the mutual promises contained in this License Agreement, the Village and CW A&P agree as follows:

A. Landscape area license to CW A&P.

The Village grants to CW A&P, and CW A&P accepts from the Village, a revocable license to occupy and use a portion of the Village right-of-way at the end of Lester Avenue, designated as “Lester Avenue License Area” on the as-built survey annexed as Exhibit A (the “License Area”), to use only in accordance with Paragraph No. 1(m) of the resolution of the Village of Mamaroneck Planning Board Resolution dated May 24, 2017, and for pedestrian access to CW A&P’s Property as approved by the Village of Mamaroneck Building Inspector, whose approval shall not be unreasonably withheld. The license is subject to the following terms and conditions:

1. **Maintenance.** CW A&P will complete the improvements to the License Area in accordance with the site plan and as shown on Exhibit A and will thereafter maintain the License Area, including the ramp, sidewalk, plantings and other improvements, to the reasonable satisfaction of the Building Inspector at CW A&P’s sole cost and expense.

2. **Transferability.** CW A&P may not transfer the rights conferred on it by this License Agreement except to a grantee or transferee (by assignment, lease mortgage, etc.) of the entire interest in CW A&P’s Property.

3. **Duration.** The term of the amended license for the License Area will commence on December 1, 2019 and will end on January 31, 2028, unless sooner terminated. Unless the license has already terminated, CW A&P may extend the term of the license for another of five years, until December 31, 2033, by giving written notice to Village not earlier than August 31, 2028, and not later than October 31, 2028.

4. **Termination.** The license for the License Area will automatically terminate if CW A&P’s certificate of occupancy for CW A&P’s Property is revoked. The Village may terminate the license granted to CW A&P by this License Agreement upon 60 days’ written notice to CW A&P if the Village determines, in its sole discretion, that it requires the use of the License Area for any purpose. If the Village exercise this right of termination, CW A&P will vacate the property within 30 days of receipt of written notice from the Village. The Village’s decision to terminate this License Agreement is the equivalent of the Village’s refusal to grant approval. As provided in Paragraph No. 1(m) of the resolution of the Village of Mamaroneck Planning Board Resolution dated May 24, 2017, CW A&P will, upon termination of the License Agreement by the Village, be required and allowed to file a revised site plan and landscaping plan with the Building

Department showing the elimination of the landscaping strip. Termination of this License Agreement by the Village because the Village requires the use of the License Area will not affect Licensee's right to use Licensee's Property as permitted by the Village of Mamaroneck Planning Board Resolution dated May 24, 2017 will not be affected by the Village's termination of the license.

5. *Access.* The Village may access any portion of the License Area for any governmental purpose upon one day's written notice to CW A&P, except that the Village will have the right to access the License Area, or any portion of it, immediately in the event of an emergency. The Village will make any and all reasonable repairs and/or restoration to any portion of the License Area damaged by the Village during access granted by the CW A&P or required by the Village in the event of an emergency.

6. *No warranty.* The Village does not warrant title to the License Area nor does the Village make any representation that License Area is satisfactory for the use permitted by this License Agreement.

7. *Accommodation.* The permission granted to CW A&P under this License Agreement is given by the Village to CW A&P as an accommodation. CW A&P acknowledges the Village's ownership of the License Area and the Village's rights associated with that ownership. CW A&P agrees that, except as otherwise provided in this License Agreement, it will never assail, resist, or deny the Village's ownership rights on the basis of CW A&P's occupancy or use of the License Area under this License Agreement.

8. *Insurance coverage.* CW A&P will add the License Area to the areas covered by its liability and property damage insurance policy. The policy must name the Village of Mamaroneck as an additional named insured with the same policy limits as are otherwise applicable to CW A&P's Property and must include a provision requiring 30 days' notice to the Village before the insurance policy may be cancelled. CW A&P will file a certificate of insurance with the Village Manager prior to undertaking any work on the License Area.

B. Drainage license to the Village.

CW A&P grants to the Village, and the Village accepts from CW A&P, an irrevocable license to discharge storm water from a catch basin on Lester Avenue into the stormwater management system constructed on CW A&P's property, as set forth in diagram attached as Exhibit "B," subject to the following terms and conditions:

1. *Construction.* CW A&P will construct the connection from the catch basin on Lester Avenue to the stormwater management system on its property at its sole cost and expense in accordance with plans and specifications approved by the Village Engineer. CW A&P will complete construction of the connection before applying for a final certificate of occupancy for CW A&P's property and acknowledges that it will not receive a final certificate of occupancy for the "new mixed commercial use units" presently under construction on CW A&P's Property located perpendicular to the existing retail box, formerly occupied by A&P, as identified in the Site Plan Approval Resolution, dated May 24, 2017, until the Village Engineer has determined that the connection is completed in accordance with the approved plans and specifications.

2. *Maintenance and repair by the Village.* The Village will maintain and repair the catch basin on Lester Avenue at its sole cost and expense.

3. *Maintenance and repair by CW A&P.* CW A&P will maintain the connection between the

catch basin on Lester Avenue and CW A&P's storm water management system, at its sole cost and expense, in the same manner as it is required by the Declaration of Construction, Maintenance and Inspection of Stormwater Management Facilities made by CW A&P on August 8, 2017 to maintain the stormwater management system on its property, but the Village will reimburse CW A&P for the reasonable cost of any repairs to and/or replacements of the connection necessitated by the negligence, reckless or willful misconduct of the Village as reasonably determined by the Village Engineer.

C. General provisions.

1. ***Application.*** These general provisions apply to each of the licenses provided for in this License Agreement.

2. ***Indemnification by CW A&P.*** CW A&P releases and will defend, indemnify and hold the Village of Mamaroneck, and its trustees, officials, officers, agents, employees and volunteers harmless from and against all claims of any nature whatsoever, including losses, claims, actions, damages, hospital and medical expenses, attorneys' fees and other legal defense costs, settlements, judgments, fines and penalties, arising out of or in connection with CW A&P's use of the Landscape Area and the connection from the storm drain on Lester Avenue to the stormwater management system on its property, resulting from any negligent, reckless, or intentional act or omission of CW A&P, except claims resulting from the negligent, reckless or willful misconduct of the Village. This indemnity will not be limited by reason of the requirement that CW A&P provide insurance coverage or the limits of that coverage.

3. ***Indemnification by the Village.*** The Village releases and will defend, indemnify and hold CW A&P and its officers, agents and employees harmless from and against all claims of any nature whatsoever, including losses, claims, actions, damages, hospital and medical expenses, attorneys' fees and other legal defense costs, settlements, judgments, fines and penalties, arising out of or in connection with the Village's use of the storm drain on Lester Avenue, except claims resulting from the negligent, reckless or willful misconduct of the CW A&P.

4. ***Entire understanding.*** This License Agreement embodies the entire understanding between the parties. There are no further or other agreements or understandings, written or oral, in effect between the parties, relating to the subject matter of this License Agreement, other than the documents which constitute the approvals by the Village, in its governmental capacity, of the development on CW A&P's property. Any amendment to this License Agreement must be in writing and executed by the parties.

5. ***Notices.*** Any notice to CW A&P under this License Agreement must be sent by overnight delivery addressed as follows:

CW A&P Mamaroneck LLC
450 Lexington Avenue
New York, NY 10170
Attn: David Vender

Executive Vice President for Brixmor Property Group

Any notice to the Village under this License Agreement must be sent by overnight delivery addressed as follows:

Village Manager
Village of Mamaroneck
Village Hall at the Regatta
123 Mamaroneck Avenue
Mamaroneck, New York 10543

or the new address for the Village Manager's Office should the current address change.

IN WITNESS WHEREOF, the undersigned have caused this License Agreement to be executed
on the ____ day of November, 2019.

For the Village:

For the CW A&P:

Village of Mamaroneck, New York

Jerry Barberio
Village Manager

David Vender
CW A&P MAMARONECK, LLC

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On the ____ day of _____ in the year 2019 before me, the undersigned, a Notary Public in and for said State, personally appeared Jerry Barberio personally known to me or proved to me on the basis of satisfactory evidence to be the Village Manager of the Village of Mamaroneck whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On the ____ day of _____ in the year 2019 before me, the undersigned, a Notary Public in and for said State, personally appeared David Vender personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

Richard A. Spinelli
 Richard A. Spinelli
 650 Holstead Avenue
 Mamaroneck, N. Y. 10543
 (914) 381-2357
 N.Y.S. Lic. Land Surveyor
 No. 49240



—Unauthorized additions to or alterations of this plan is a violation of Section 7209 of the N.Y.S. Education Law.

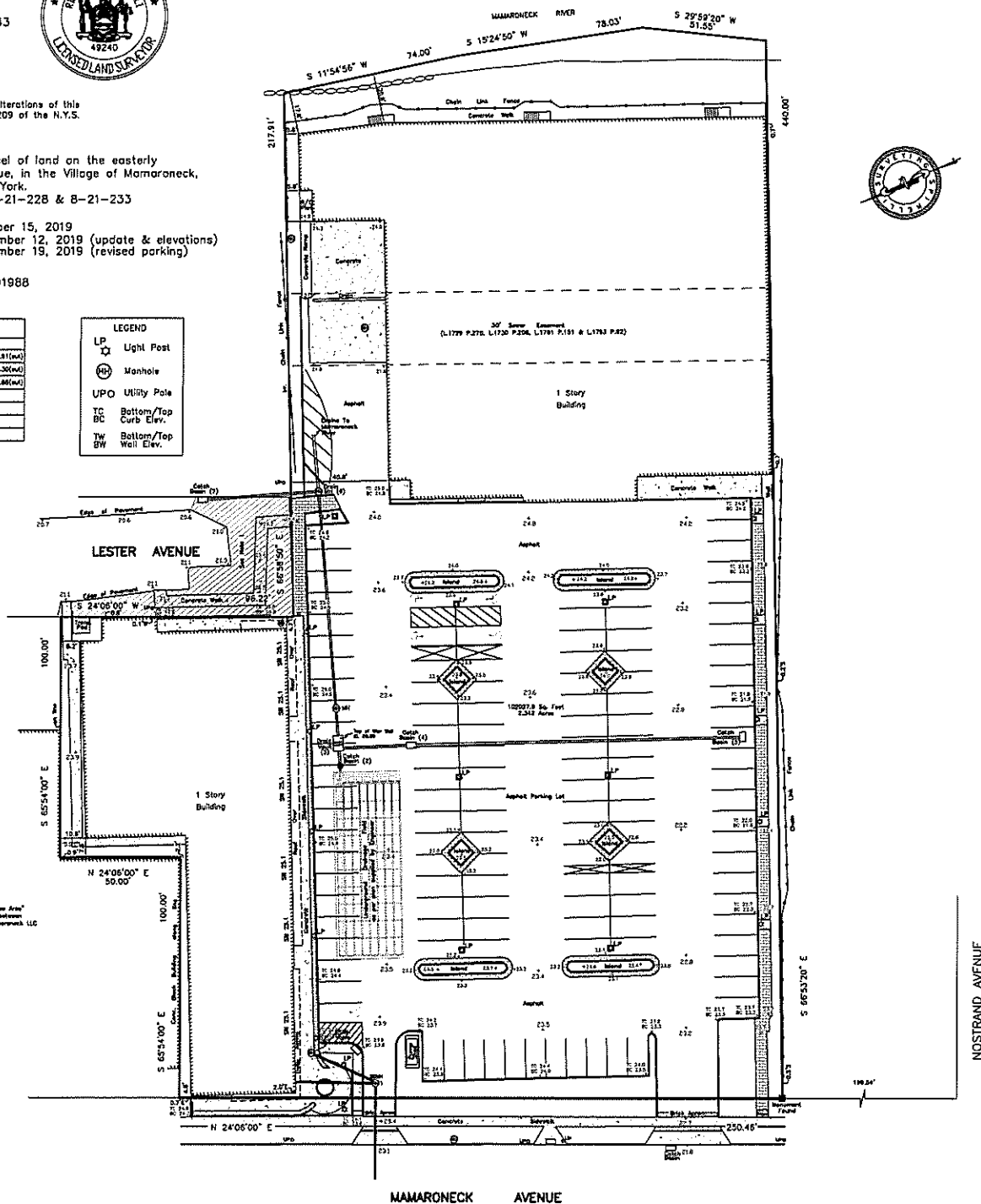
As-Built Survey of a parcel of land on the easterly side of Mamaroneck Avenue, in the Village of Mamaroneck, Westchester County, New York.
 Parcel known as SBLs: 8-21-22B & 8-21-233

Scale 1" = 30' October 15, 2019
 November 12, 2019 (update & elevations)
 November 19, 2019 (revised parking)

Elevations shown in NAVD1988

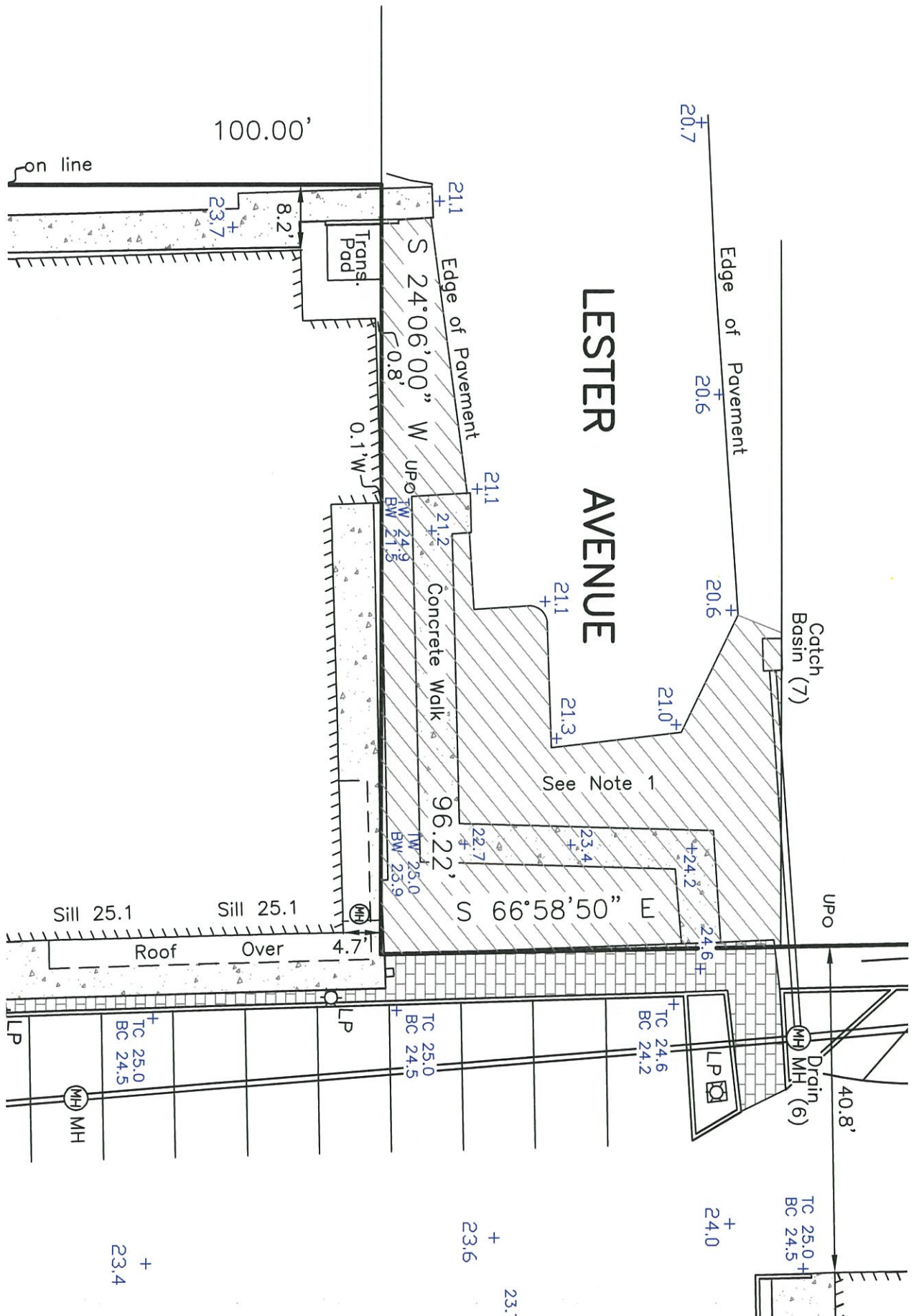
Manhole/Utility Basic Data			
Manhole	Size	Depth	Notes
255001	24.00	18.01(±)	18.01(±) 17.81(±)
255002	24.00	18.40(±)	18.30(±) 18.30(±)
255003	24.00	18.10(±)	18.30(±) 17.88(±)
255004	24.00	18.10(±)	18.11(±) 18.11(±)
255005	24.00	18.10(±)	18.11(±) 18.11(±)
255006	24.00	18.10(±)	18.11(±) 18.11(±)
255007	24.00	18.10(±)	18.11(±) 18.11(±)
255008	24.00	18.10(±)	18.11(±) 18.11(±)
255009	24.00	18.10(±)	18.11(±) 18.11(±)
255010	24.00	18.10(±)	18.11(±) 18.11(±)

LEGEND
LP Light Post
Manhole
UPO Utility Pole
TC Bottom/Top Curb Elev.
BC Bottom/Top Well Elev.



Notes:
 1. Approximate location of "Lester Avenue Extension Area" as per agreement signed between the Village of Mamaroneck and CN AMP Infrastructure, LLC

E "MAMK689"





RESOLUTION

Village of Mamaroneck Planning Board

(Adopted November 13, 2019)

RE: 805 Mamaroneck Avenue

Resolution Approving Site Plan Amendment

After due discussion and deliberation, on motion by R. Litman, seconded by L. Mendes and carried, the following resolution was adopted:

WHEREAS, on September 27, 2019, Brixmor Property Group, the applicant, submitted to the Planning Board of the Village of Mamaroneck an application, with accompanying documentation, seeking approval of a site plan amendment that includes: 1) a slightly modified building footprint at the right rear corner of the new commercial building; 2) a sidewalk against the building and leading to the utility room, railing, and three foot high retaining wall on the right side of the new commercial building; 3) a sidewalk and staircase behind the new commercial building to provide fire access; 4) moving and narrowing the landscape islands to provide turning radius for emergency vehicles; and 5) removal of two accent walls and signs located near Mamaroneck Ave.; and

WHEREAS, the applicant's property is located at 805 Mamaroneck Avenue, is designated on the Village of Mamaroneck tax map as Section 8, Blocks 72 and 69, Lots 1 and 1, and is located within the C-1 General Commercial Zoning District; and

WHEREAS, the site changes are described and illustrated on the following drawings submitted by the applicant and prepared by Site Design Consultants, all of which, as most recently revised, constitute the proposed amended site plan:

- *Amended Site Overlay, Sheet 1, signed by Joseph Riina PE, dated October 22, 2019; and*
- *Amended Site Details, Sheet 2, signed by Joseph Riina PE, dated October 22, 2019.*

WHEREAS, the Planning Board heard public comment with respect to the proposed site plan amendment on October 24, 2019 and November 13, 2019; and

WHEREAS, in addition to considering comments received at the public meetings, the Planning Board has received and reviewed written communications from neighbors; and

WHEREAS, the changes to the site plan have been reviewed by the Village Engineer and were determined to not negatively impact the function and quality of the stormwater pollution prevention plan and associated stormwater systems; and

WHEREAS, the Planning Board has determined that there are no new environmental concerns that would result from the proposed changes to the site plan, and therefore the negative declaration issued on March 22, 2017 remains valid; and



WHEREAS, the Planning Board has thoroughly reviewed the application for site plan amendment, as well as the documents the applicant has submitted in support of the application; and

NOW, THEREFORE, BE IT RESOLVED that the application of Brixmor Property Group for approval of an amended site plan in accordance with the proposed amended site plan identified in this resolution is approved, subject to compliance by the applicant with the following conditions:

1. Prior to the issuance of a certificate of occupancy, the applicant must:
 - a. pay all outstanding consultant and professional review fees in connection with review of the application by the Planning Board; and
 - b. install all landscaping in a healthy and vigorous state; and
2. Prior to issuance of a certificate of occupancy, the Building Department must verify that the "as built" conditions conform to the final approved site plan.
3. The landscaping must be maintained for the life of the facility.
4. The applicant must submit three sets of the drawings constituting the amended site plan for endorsement by the Planning Board Chairman. One set of the endorsed amended site plan will be returned to the applicant. The other two sets of endorsed amended site plan submitted will be provided to the Village Building Inspector and to the Planning Board Secretary.
5. All conditions imposed on the applicant pursuant to the previously approved site plan continue to apply.
6. If the Building Inspector determines that, as a result of conditions in the field or concerns related to public health, safety, and welfare, minor changes are necessary to complete the work authorized by the approved plans, the Building Inspector may, allow such changes and amend the building permit(s) accordingly. The applicant must submit amended plans reflecting the approved field changes. If the Building Inspector determines that conditions in the field or concerns related to the public health, safety and welfare require a change in the approved plans but that change is not minor, any deviation from or change in the approved plans must be approved by the Planning Board by amendment to this approval.
7. All requirements imposed upon the applicant by this resolution are binding upon the applicant's successors and assigns, as well.

VOTE:

Ayes: Verni, Mendes, Litman, Savolt, Goldstein

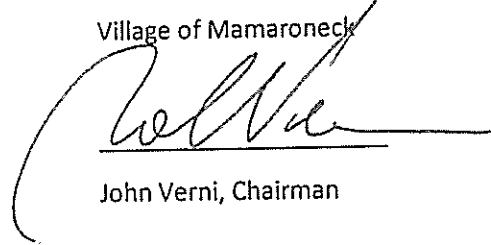
Nays: None

Abstained: None

Absent: None



Village of Mamaroneck



John Verni, Chairman

Date: November 13, 2019

Vote Record				
Resolution re: 805 Mamaroneck Avenue- Mamaroneck Center SDP1-2019				
November 13, 2019				
	Yes/Aye	No/Nay	Abstain	Absent
Chairperson Verni	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Mendes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Litman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ms. Savolt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ms. Goldstein	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>