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BY HAND DELIVERY & ELECTRONIC SUBMISSION

Chairman Thomas Burt
and Members of the Harbor & Coastal Zone Management Commission
Village of Mamaroneck
169 Mt. Pleasant Avenue
Mamaroneck, NY 10543

Re: Elisabeth & William Fedyna
Supplemental Materials
Harbor & Coastal Zone Management Commission Application
Consistency Review of Wetlands Permit Application
Premises: 1165 Greacen Point Road, Village of Mamaroneck, New York
(Parcel ID: 9-65 -75)

Dear Chairman Burt and Members of the Harbor & Coastal Zone Management Commission:

This letter and enclosed materials are respectfully submitted on behalf Elisabeth and William Fedyna (the "Applicants"), the owners of residential property located at 1165 Greacen Point Road in the Village of Mamaroneck, New York (the "Premises"), in furtherance of the Harbor & Coastal Zone Management Commission ("HCZMC") consistency review application submitted on April 3, 2020.¹

As this Commission is aware, the Applicants are proposing to demolish the existing uninhabitable single-family home and construct a modest new residence, garage and driveway, which will be fully zoning-compliant (the "Project"). The proposed new home is modest in comparison to the surrounding neighborhood and will have an approximately 2,655 square foot building footprint and connect to a breezeway and garage. The proposed 10' wide driveway is the minimum necessary to provide the required turnaround and parking area. The failing septic system must be entirely replaced and meet current Westchester County Department of Health standards. The Applicants are also proposing to install stormwater management infrastructure where none currently exists and wetland buffer plantings to restore a portion of the wetlands, which is now lawn, to a natural state. The proposed improvements will provide a considerable benefit over existing conditions.

This submission is made in response to comments from Commission members during the July 15th hearing regarding the proposed reconstruction of a single-family home and associated residential improvements on the Premises.

¹ The Consistency Review is related to the pending wetlands permit application that was submitted to the Planning Board on April 3, 2020.

The Proposed Reconstruction Will Not Negatively Impact the Wetlands or Wetlands Buffer Area.

The Premises is currently improved with a severely deteriorated house and garage. All of the existing improvements are located within the wetland buffer. The entirety of the wetlands on the site is currently maintained as lawn, providing no benefit to the adjacent wetland and minimal wildlife habitat value. No stormwater management infrastructure exists at the site.

Consistency with Policies 7, 7a and 44 – The Proposed Wetland Plantings will Preserve, Protect and Restore the Wetlands and Wildlife Habitats.

The Village of Mamaroneck Local Waterfront Revitalization Program (“LWRP”) policies 7,² 7a³ and 44⁴ seek to preserve, protect and restore wetlands and significant coastal fish and wildlife habitats. Consistent with these policies, the Applicants are proposing comprehensive planting plan to restore portions of the wetland from lawn to its natural state.

As demonstrated in the enclosed Landscaping Plan prepared by JMC, PLLC and dated August 31, 2020, the saltmeadow cordgrass, *Spartina patens*, will be replanted along the upper boundary of the salt marsh to help stabilize the shoreline. Additionally, the *Spartina patens* will provide habitat for crustaceans and shore birds. Above the high tide line, *Distichlis spicata* will grow to a full height and spread to create a dense meadow that will provide habitat for a variety of insects and serve as a food source for migrating waterfowl. Along the southern property line, marsh elder, *Iva frutescens*, will be planted to create a shrub layer for small mammals and birds.

As further discussed in the Wetlands Analysis prepared by Beth Evans, PWS, Evans Associates Environmental Consulting, Inc., dated August 31, 2020 (“Wetland Analysis”), enclosed as **Exhibit A**, the proposal will significantly improve the functional values of the wetlands by restoring portions of the high marsh and salt meadow that are currently maintained as lawn. The Applicants’ proposal to partially restore, protect and preserve the tidal wetlands and wildlife habitats through native coastal plantings is consistent with LWRP policies 7, 7a and 44.

Consistency with Policies 21 and 22- The Project Allows for Residential Enjoyment of the Coastline and Encourages Water-Related Recreation.

² LWRP Policy 7 provides: “Significant coastal fish and wildlife habitats, as identified on the N.Y. Coastal Area Map (when finalized), shall be protected, preserved, and where practical, restored so as to maintain their viability as habitats.”

³ LWRP Policy 7a provides: “Significant coastal fish and wildlife habitats, as identified in this document, shall be protected, preserved, and where practical, restored so as to maintain their viability as habitats.”

⁴ LWRP Policy 44 provides: “Preserve and protect tidal and freshwater wetlands and preserve the benefits derived from these areas.”

LWRP policies 21⁵ and 22⁶ encourage the development of water-dependent uses and residential enjoyment of the coastline within the Village. The proposed Project intends to maintain a positive connection for recreational use of the parcel, the adjacent shoreline and waterway for the homeowners and their family. The property owners' right to enjoy their land in its entirety, including unrestricted access to the water, is consistent with these policies.

Although the Commission has expressed concern about impacts related to the property owners accessing the water edge and existing dock, we respectfully note that even if the Applicants were not proposing improvements to the property, they would be permitted to access the water edge and dock without restrictions.

As indicated in the enclosed Wetlands Analysis, access to the dock and water edge will be possible, as it is today, without disturbing the restored and existing salt marsh and salt meadow habitats on the property. Notably, as depicted on the enclosed Site Plans, the majority of the proposed residential uses will be located in upland areas outside of the wetland and closer to the proposed home.

Furthermore, pursuant to Section 192-2 of the Village's Wetland Code, walking through a wetland is not a Regulated Activity, and therefore does not require a Wetland Permit from the Planning Board under 192-4. In fact, the maintenance of lawns and outdoor recreation (including hiking) are exempt activities that do not require a wetland permit, as provided in Sections 192-4(2) & (8).

The Premises, as well as the surrounding lots, are residential uses within a residential zoning district. We respectfully note that most coastal properties in the Village have unrestricted access to the water's edge without the use of paths or installed walkways. To require such measures here would not be consistent with HCZMC prior precedent and LWRP policies and would be punitive.

The Proposed Fill is Necessary to Minimize Damage to Property from Flooding and Prevent the Discharge of Sewage into Wetlands and Coastal Waters

⁵ LWRP Policy 21 provides: "Water-dependent and water-enhanced recreation shall be encouraged and facilitated and shall be given priority over nonwater-related uses along the coast, provided it is consistent with the preservation and enhancement of other coastal resources and takes into account demand for such facilities..."

⁶ LWRP Policy 22 provides: "Development, when located adjacent to the shore, shall provide for water-related recreation, as a multiple use, whenever such recreational use is appropriate in light of reasonably anticipated demand for such activities and the primary purpose of the development. In the village of Mamaroneck, this also applies to redevelopment of waterfront property."

As permitted by Section 186-6 of the Village of Mamaroneck Flood Damage Prevention Code (the “Flood Code”), the Applicants have requested a variance from Section 186-5(3) of the Flood Code from the Planning Board. This variance is requested to permit the proposed fill related to the installation of the new septic system and elevation of the new home to comply with the Village’s Flood Code and Federal Emergency Management Agency (“FEMA”) residential construction standards.

Approximately ~1,100 cubic yards of fill is proposed within the AE zone in order to raise the grade at various locations around the dwelling and install a new septic system that is compliant with the Westchester County Department of Health (“DOH”) standards.

Consistency with Policies 37 and 38 – The Fill is Necessary to Replace the Existing Failing Septic System.

LWRP policies 37⁷ and 38⁸ provide that the quality of surface water must be conserved and protected and best management practices must be utilized to minimize the discharge of excess nutrients and organics into coastal waters. The existing septic system is failing partially within the wetlands buffer, and if used in its current condition, results in effluent and raw sewage leaking to the surface and flowing into the adjacent wetland and coastal waters.

Public sewer is not currently available at the site. Therefore, regardless of whether the existing home is renovated or a new home is constructed, the residence must be served by a new septic system. The import of fill is required for the septic system to fully conform with the current DOH regulations. For example, the elevation of the front yard needs to be raised approximately 3.5 feet to provide for the required separation between rock and the bottom of the absorption fields.

The new septic system is proposed to be constructed in front of the home, as far from the wetland as feasible and within approximately the same area as the existing septic system. As demonstrated in the enclosed standards and septic constraints drawing, included in **Exhibit B**, the options for placement of a new septic system are limited due to the setbacks required by the DOH and the location of the wetland and wetland buffer area. Further, there are no other alternative septic designs available that meet DOH standards and there is no option to request a variance from the DOH design standards (see **Exhibit C**).

The proposed fill is necessary to remove a failing septic system that can leak raw sewage into the wetlands and coastal waters and install a Code-compliant septic system.

Consistency with Policies 11 and 12 – The Fill is Necessary for the Home to Meet Village and Current FEMA Standards.

⁷ LWRP Policy 37 provides: “Best Management Practices will be utilized to minimize the nonpoint discharge of excess nutrients, organics and eroded soils into coastal waters.”

⁸ LWRP Policy 38 provides: “The quality and quantity of surface water and groundwater supplies will be conserved and protected, particularly where such waters constitute the primary or sole source of water supply.”

LWRP Policies 11⁹ and 12¹⁰ provide that development within the coastal area must be undertaken to minimize damage to property from flooding and erosion. The Premises is located within the AE Flood Zone with a Base Flood Elevation (“BFE”) of 13.00. The home and the site are entirely positioned within the 100-year flood plain. The proposed home is sited and designed to comply with Village and current FEMA standards and therefore minimize damage from flooding. This is a significant improvement from the existing residential structure which is not elevated above the BFE and does not meet local or Federal standards for structures within a floodplain.

To comply with Village and FEMA standards, the finished floor of the proposed home must be at an elevation of 16.00 and the proposed garage must be raised to an elevation of 13.00. We note that even if the Applicants were proposing to renovate the existing home, such renovation would constitute a Substantial Improvement pursuant to 186-2 of the Flood Code and current FEMA regulations. As such, the renovation would be required to comply with the same Village and FEMA standards for residential construction as the proposed new home. A renovation to the existing home would not decrease the amount of fill required.

Since last appearing before the Commission, the Applicants have revised their plans to redesign the proposed foundation for the home to alleviate the need for additional fill (see attached Site Drawings prepared by JMC PLLC, last revised August 31, 2020). While the fill is still required to raise the grade at various locations around the dwelling in order to comply with local and Federal residential construction standards, the re-design resulted in a reduction of the total quantity of proposed fill from approximately 1,700 cubic yards to the 1,100 cubic yards proposed today. The fill requested is the minimum necessary to afford relief to the Applicants. The home design complies with the Village and current FEMA standards for residential construction within an AE Flood Zone, and as such, the redesigned home will minimize damage to property caused by flooding and erosion.

Consistency with Policies 11 and 12 –The Proposed Fill Will Not Result in an Increase in Base Flood Elevation or Adversely Impact Flooding Conditions on Neighboring Properties.

In furthering LWRP Policies 11 and 12, the Project will minimize damage to property from flooding and erosion. The proposed fill and grading were reviewed by civil engineers at JMC PLLC to determine if it would result in an increase in base flood elevation due to wave runup, ramping or deflection of floodwaters that may cause damage to life or property. The proposed fill will result in no net increase in the base flood elevation, create no additional threats to public safety, nor create any nuisance or ill effects on neighboring properties. Per the FEMA Flood maps, the Premises is within the AE zone of a Tidal Sheltered Water connected to the Long Island Sound. The addition of approximately 1,100 cubic yards of fill will not raise the base flood elevation of the Long Island Sound in the vicinity of the Project.

⁹ LWRP Policy 11 provides: “Buildings and other structures will be sited in the coastal area so as to minimize damage to property and the endangering of human lives caused by flooding and erosion.”
¹⁰ LWRP Policy 12 provides: “Activities or development in the coastal area will be undertaken so as to minimize damage to natural resources and property from flooding and erosion by protecting natural protective features.”

The requested fill meets the standards provided for in Flood Code Section 186-6(A)(4) that the Planning Board will review in considering the requested variance. The fill will not result in increased flood heights or threats to public safety. Fill is located above the stillwater elevation and therefore will have no impact on the rate and rise of floodwaters. The variance will not result in public expense and as previously discussed, wetland plantings will actually result in a decrease in stormwater runoff rates and displacement from the Premises. The granting of the variance will not conflict with existing laws nor will it victimize the public. As previously discussed herein, the Applicant has an application for a variance from the Flood Code pending before the Planning Board and, upon receiving a Consistency Determination, will return to the Planning Board for consideration of such variance.

Prior Precedent Permits the HCZMC to Grant Consistency for an Application Requiring a Floodplain Development Variance for Fill.

The HCZMC has previously given a Consistency Determination on projects proposing “positive net fill” within a flood zone and wetland buffer area. Indeed, in the prior cases for similar residential improvements at 1 Shore Road; 8 Oak Lane and 648 Shore Acres Drive, “positive net fill” was approved. As demonstrated in the resolutions, memoranda and drawings for those 3 prior matters (attached in **Exhibit E**), the import of fill in cases where it is necessary to replace a septic system that is failing partially within a wetland buffer with a new system that is entirely Code-compliant, is consistent with the LWRP.

The Applicants are proposing similar reconstruction of a single-family home with accessory structures and replacement of a failing septic system, and therefore, the HCZMC is without authority to deny a Consistency Determination based on the Applicants’ proposed filling and re-grading plan. In fact, not only are the Applicants proposing replacement of the septic system, they are proposing to replace an existing home that is not compliant with Village and FEMA standards with a residence that is compliant with construction standards for structures within the AE flood zone. Given HCZMC prior precedent, and the Project’s furtherance of the LWRP policies previously described herein, a Consistency Determination should be granted for the Project.

As demonstrated in the enclosed materials, the proposed stormwater management system and wetland plantings, as well as replacement of the failing septic system, will provide considerable benefits to the tidal wetlands and buffer area.

Materials Enclosed

In support of this application, enclosed please find an electronic copy of the following materials:

- Exhibit A: Wetland Analysis Narrative, prepared by Beth Evans, PWS, Evans Associates Environmental Consulting, Inc., dated August 31, 2020;
- Exhibit B: Chart of DOH-required setbacks for a septic system and Site Drawing Depicting of Septic Constraints prepared by JMC, PLLC, dated September 2, 2020;



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- Exhibit C: Email correspondence from Ruben Berrios, Westchester County Department of Health Bureau of Environmental Quality regarding lack of alternatives for septic design;
- Exhibit D: July 21, 2020 JMC, PLLC Response to May 18, 2020 Village Engineer's comments;
- Exhibit E: JMC Analysis of Prior matters receiving HCZMC Consistency Determination that proposed positive net fill & materials for each case:
- 1: 1 Shore Road;
 - 2: 8 Oak Lane; and
 - 3: 648 Shore Acres Drive.

Also enclosed please find copies of the following:

- Stormwater Pollution Prevention Plan & Drainage Analysis, prepared by JMC PLLC, dated June 8, 2020 and last revised August 31, 2020; and
- Engineering drawings, including a landscaping plan (L-100), prepared by JMC, PLLC, dated July 24, 2018 and last updated September 2, 2020.

We look forward to appearing before the HCZMC on September 16th. Should the HCZMC or Village Staff have any questions or comments in the interim, please do not hesitate to contact me. Thank you for your time and consideration in this matter.

Very truly yours,

Kristen Motel

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Enclosures

cc: Frank Tavalacci, Acting Building Inspector
William Long, Village Planner
Christy A. Mason, Esq., Planning Board & HCZMC Attorney
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Client