

## DORF & NELSON<sup>LLP</sup>

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October 6, 2021

### **VIA HAND-DELIVERY**

Chair Robin Kramer and Members  
of the Zoning Board of Appeals  
Village of Mamaroneck  
169 Mt. Pleasant Avenue  
Mamaroneck, NY 10543

**Re: Application of 306 Fayette Ave. Realty LLC and New Waverly Avenue Associates  
524, 532 and 442 Waverly Ave.**

Dear Chair Kramer and Members of the Zoning Board of Appeals:

In July we had a pre-submission conference with the Village planning consultant, building inspector and planner. On their recommendation we filed an application for a building permit and a site plan in order to obtain a transmittal letter to your honorable board. On September 29, 2021 the building inspector sent us a transmittal letter authorizing this application for an area variance.

### **The Premises**

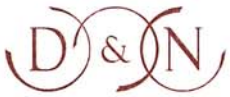
The lots consist of a building and a large lot in the M-1 zoning district. It is currently used for car storage and offices. The lot has landscaping, screening and interior islands.

### **The Requested Variance**

The applicant is seeking a variance from Article 342-32 A (2). This provision of the code requires that storage of anything other than cars be carried out in enclosed buildings. There is an exception for off street parking and motor vehicle service stations.

If approved, the applicant will lease the premises to Sunbelt Rentals for storage of equipment related to the construction, power and HVAC industries. Some of the storage will be outside. The variance is necessary to permit the outdoor areas to be utilized for storage.

Given the nature of the surrounding area and the proposed use the granting of the variance will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties. The property has been used for storage for years, primarily car dealer inventory. There will be no construction so the impacts will be primarily aesthetic. As the property is already screened and landscaped there would be no changes in the streetscape.



Thank you for your consideration. We look forward to appearing before your honorable Board to discuss this application.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'P. Noto', written over a faint horizontal line.

Paul J. Noto, Esq.

Village of Mamaroneck, New York  
Zoning Board of Appeals  
(Effective \_ 2007)

- ☐ 16 Copies
- ☐ Completed Application
- ☐ COs or Letter
- ☐ Violations, if any
- ☐ Photographs
- ☐ Survey
- ☐ Certified Drawings
- ☐ Consent
- ☐ Certification/Affidavit
- ☐ EAF
- ☐ Copy of Determination being appealed
- ☐ Riders if Application is Corp./Business Entity

Application # \_\_\_\_\_  
Agenda DATE: \_\_\_\_\_  
SP: \_\_\_\_\_  
AV: \_\_\_\_\_  
UV: \_\_\_\_\_  
Fence: \_\_\_\_\_  
Sign: \_\_\_\_\_  
Interpretation: \_\_\_\_\_

For Official Use Only

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Village of Mamaroneck, New York  
Zoning Board of Appeals  
APPLICATION

Date. Oct. 1 2021

TO: ZONING BOARD OF APPEALS-VILLAGE OF MAMARONECK  
123 Mamaroneck Avenue  
Mamaroneck., New York 10543

I (We) 306 Fayette Ave. Realty LLC and New Waverly Avenue Associates, LLC

(Name of Applicant)

Of 566 Westchester Ave., Rye Brook, NY Zip: 10573  
(Insert Complete Mailing Address)

Daytime Phone # (914) 935-3950 Daytime Fax # \_\_\_\_\_ EMAIL: TJMILO@GMAIL.COM

Apply to the Board of Appeals regarding property located at 442, 524, 532 Waverly Avenue

\_\_\_\_\_  
(Insert Location of Premises)

Bearing Village of Mamaroneck Tax Map Number. 1 1  
(Section) (Block) (Lot)

Village of Mamaroneck,  
New York Zoning Board of Appeals (Effective 2007)

1. This is an Application for the following: check one (1) or more as applicable

☒ **Area Variance** - This is to use land in a manner not allowed because of dimensional or topographical requirements in the Zoning Code

☐ **Use Variance**- This is to allow land to be used in a manner or for a purpose which is prohibited or not allowed by the Zoning code.

☐ **Special permit**

☐ **Sign Variance**

☐ **Fence Variance**

☐ **Appeal or Interpretation** (*Specify Code Section*)

☐ **Other:** Specify: \_\_\_\_\_

2. The Date and Description of the determination that is being appealed (a copy of the determination must be attached)

9/29/2021

3. What is the present zoning of the property? m-1

4. This Application must be made in the name of the person or entity that has a *possessory interest in the property such as a tenant, purchaser or owner*. If you are the owner, on *what date did you acquire title?* \_\_\_\_\_ If you are not the owner, list the name and address of the owner and describe your relationship to the property and the date said relationship commenced: \_\_\_\_\_

IF you have acquired title to the property within the past two years, provide the name of the prior owner:

NOTE:

If the Applicant or Property Owner is a:

**Corporation:** Attach a separate Rider listing all the corporation's officers, shareholders and their percentage of share ownership.

**Partnership:** attach a separate Rider listing the type of partnership and identify the partners and their partnership interests.

**LLC:** attach a separate Rider listing the LLCs members



**Village of Mamaroneck,  
New York Zoning Board of Appeals (Effective 2007)**

5. If someone else is authorized to act as your representative or to appeal with you on your behalf before the Board, his or her name, address and telephone number must be provided:

Name: Paul J. Noto  
 Address: 555 Theodore Fremd Ave., Rye, NY  
 Telephone: (914) 381-7600  
 Email: pnoto@dorflaw.com

6. Has a prior variance, special permit, or interpretation Application ever been submitted for this property?

☐

Yes

☒

No

If YES, you must attach copies of the prior variance or resolution and describe them:

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7. List **all permits** you must obtain in order to complete the subject project of this Application (include all permits or approvals necessary from any federal, state, county, or local agency or department):

Building permit and Site Plan approval

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**Village of Mamaroneck,  
New York Zoning Board of Appeals (Effective 2007)**

8. Is the property subject to any covenants, easement, or other restrictions or encumbrances? If so, list and describe these. (You may be required to provide copies of these documents establishing same to the Board.) Please be advised that nothing herein or within board purview will alter or modify any existing contractual rights with respect to the subject property.

None

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9. ☒ Check here if there has been any illegal use or violations issued with respect to the property, regardless of whether it has been removed or adjudicated.

If so, describe and provide the date(s) and details, including if the violation continues:

Violations in compliance with landscaping requirements. All violations cleared.

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10. The following are the provisions of the Village Code from which either a variance is sought or a permit is requested (you must itemize each variance you seek, since a variance cannot be obtained unless it is expressly requested and is the subject of public notice:

Article	<u>342</u>	Section	<u>32</u>	Subsection	<u>A (2)</u>
Article	<u>          </u>	Section	<u>          </u>	Subsection	<u>          </u>
Article	<u>          </u>	Section	<u>          </u>	Subsection	<u>          </u>
Article	<u>          </u>	Section	<u>          </u>	Subsection	<u>          </u>

**NOTE:**

IF this is an application for A *USE VARIANCE*,  
COMPLETE QUESTION 11 on page 10.

IF this is an application for an *AREA VARIANCE*,  
COMPLETE QUESTION 12 on page 11

IF this is an application for ALL OTHER APPLICATIONS-  
INCLUDING A SPECIAL PERMIT  
COMPLETE QUESTION 13 on page 12.

Village of Mamaroneck,  
New York Zoning Board of Appeals (Effective 2007)

11. A use variance may only be granted if it is determined that zonings regulations and restrictions cause the property owner unnecessary hardship. New York law provides that: "In order to prove such unnecessary hardship, the property owner shall demonstrate to the Board of Appeals that:

- 1) Under the applicable zoning regulations, the owner is deprived of a reasonable return for each and every permitted use under the zoning regulations for the particular district where the property is located This deprivation must be established by competent financial evidence;
- 2) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- 3) the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- 4) the alleged hardship has not been self-created

You must set forth the facts which support your Application request. (Attach additional sheets, schedules, or other information that you want the Board to consider):

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Village of Mamaroneck,

New York Zoning Board of Appeals (Effective 2007)

12. Under State law, the Board of Appeals must consider the following factors in making a decision on your request for an area variance:

- 1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

see attached

- 2) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance;

- 3) whether the requested area variance is substantial;

- 4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

- 5) whether the alleged difficulty was self-created...



13. If this Application is not for an area or use variance, provide information that supports your Application. You must refer to the appropriate sections of the Village Code and to other legal requirements necessary for the board to consider your application

**(Article X Special Permit) § 342-71 Action on referral.**

A. That the location and size of the use, the nature and intensity of the operations and traffic involved in or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to the type, arrangement and capacity of streets giving access to it and the hours of operation are such that the proposed use will be in harmony with the appropriate and orderly development of the district in which it is located.

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B. That the location, nature and height of buildings, walls and fences and the nature and extent of the landscaping and screening on the site, as existing or proposed, are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.

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C. That operations in connection with the proposed use will not be objectionable by reason of noise, fumes, smoke, dust, vibration, glare, intensity or flashing of lights.

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D. That the parking areas to be provided will be of adequate capacity for the particular use, properly located and suitably screened from adjoining residential uses and that the entrance and exit drives shall be laid out so as to achieve maximum safety.

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E. That, where they are applicable, the standards and requirements established or approved by the Village Engineer have been satisfactorily met as evidenced by his certification and that all necessary approvals of any other governmental agency or board have been or will be obtained by the applicant.

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Supplement to ZBA application

1. 306 Fayette Avenue Realty, Inc. owns 524 and 532 Waverly Ave.  
524 Waverly acquired in 2013. Section 8 block 25 lot 11  
532 Waverly acquired in 2013 Section 8 block 25 lot 1
  
2. New Waverly Avenue Assoc., LLC owns 442 Waverly Ave.  
Property was purchased in 2006. Section 8 block 25 lot 33

## Question 12

1. The site is in an M-1 zone. The Landlord made significant upgrades to the properties in 2010-11, which included the demolition of the 25,000 sf structure at 442 Waverly; the installation of the sidewalk from Ogden to the northern boundary of 442 Waverly; the installation of the rear retaining wall along 442, 524, and 532 Waverly; the installation of on-site sub surface drainage on both sides of the street (which tie into the sewer main along Fenimore Road); and the environmental remediation of 442 Waverly as part of the NYS Brownfield Program. The request for the area variance is for permission to store some equipment on the site that will not be in an enclosed building.

Pursuant to 342-32 A storage of equipment is a permitted principal use. 342-A (2) provides that uses must be carried out in enclosed buildings, except for off street parking and loading and a motor vehicle service station. This variance is required because a portion of the equipment will be stored outside.

The properties have received prior approvals for outdoor storage of car dealer inventory, warehouse/storage of automobile parts, and accessory parking.

If approved the property would be leased to Sunbelt Rentals for warehouse, storage, office and repair of equipment. The land will be used for employee and company vehicle parking, and outdoor storage of equipment and tools generally used by businesses, homeowners, and those in the construction, power and HVAC industries. The equipment would be lighting, generators, trailers, compressors and HVAC equipment. (See attached site plan)

The equipment would be rented to customers for a day, a few days, or even weeks or months at a time. Sunbelt's business model assumes that the rental equipment generally stays on the job site for extended periods of time. Ideally, the equipment would only come back to Waverly Avenue for routine maintenance and repair. Delivery and receipt of equipment would occur during normal business hours. Of course, depending on the demand, there may be some equipment on site during the day.

Given the current use of the property for storage of vehicles and the industrial uses of the surrounding properties the granting of this variance would not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties.

2. Short of building a large building or structure there is no other way the applicant could achieve this benefit. In fact, constructing a large building would have other impacts including but not limited to aesthetic changes and potential stormwater runoff impacts. A building would change the streetscape as well.
3. This variance is not substantial. The storage would be no different than the current use other than that the items stored are mobile equipment as opposed to cars. It would be virtually indistinguishable from the existing use.
4. The proposed variance will have no adverse impact on the physical or environmental conditions in the neighborhood. There will be no construction so there will be no physical changes. The

traffic in and out is no more than the storage of cars which is and has been the usage for years. The equipment is mobile and is not utilized on site.

5. The difficulty is self-created to the extent that it is code driven and not due to anything the applicant has done or not done. The use is the same, storage, the variance needed is to permit storage that is not in an enclosed building.
6. The properties have landscaping, screening, and interior islands comparable to a shopping center parking lot. The current properties do not resemble a traditional storage yard.



**Village of Mamaroneck,  
New York Zoning Board of Appeals (Effective 2007)**

It is my responsibility as the Applicant to complete this Application completely and carefully, and to provide sixteen (16) copies of this Application, together with all necessary papers, plans, surveys, documents or other required information.

Failure to submit the required documents and information will delay my Application or result in its denial, since the ZBA cannot review or grant relief to incomplete Applications.

It is my responsibility to comply with all related requirements in presenting this Application, and the ZBA reserves the right to request additional documentation and/or drawing, and to condition any requested relief upon the filing of covenants and restrictions.

Although employees of the Village may provide me with assistance, I understand it is my responsibility to be familiar and comply with all applicable laws and to submit all necessary papers, plans, surveys, documents or other required information. I understand that copies of the Village Code are available for my review at the Village Clerks office as well as the Village Website and that I may be represented at the ZBA hearing.

I HEREBY CERTIFY THAT ALL STATEMENTS MADE ON THIS APPLICATION ARE TRUE TO THE BEST OF MY KNOWLEDGE.

*Jh M.L.*  
(Applicant's Signature)

Sworn to before me this *1st*

Day of *Oct*, 20 *21*

*MaryJane De Fiore*  
Notary Public

MARYJANE DE FIORE  
NOTARY PUBLIC, State of New York  
No. 01DE4604574  
Qualified in Westchester County  
Commission Expires *5/31/23*

**CERTIFICATION**

(Required by New York State General Municipal Law)

Thomas Milo, Jr.

states as follows:

(Applicant's name)

1. I am interested in this application for a variance or special use permit now pending before the Village of Mamaroneck Board of Appeals,
2. I reside at 28 Lought Street, 5D, Ny, Ny 10013
3. The nature of my interest in the aforesaid application is as follows:  
Employee of the company that owns the property
4. If the Applicant or owner is a corporation, list the corporation's officers:  
 President: \_\_\_\_\_ Vice President: \_\_\_\_\_ Thomas Milo, Jr. - President  
 Secretary: \_\_\_\_\_ Treasurer: \_\_\_\_\_ Sabrina DOMINICUS - VP/Secretary
5. Do any of the following individuals have an interest, as defined below, in the owner or Applicant:
  - a. Any New York State officers, or
  - b. Any officer or employee of the Village of Mamaroneck, Town of Rye, Town of Mamaroneck, or Westchester County.

☐ Yes☒ No

For the purpose of this disclosure, an officer or employee shall be deemed to have an interest in the owner or Applicant when he, his spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them:

- a. is the Applicant or owner, or
- b. is an officer, director, partner or employee of the Applicant or owner, or
- c. legally or beneficially owns or controls stock of corporate Applicant or owner; or
- d. Is a party to an agreement with such an Applicant or owner, express or implied, whereby he may receive any payment or other benefit, whether or not for service rendered dependent or contingent upon the favorable approval of such application.

A PERSON WHO KNOWINGLY AND INTENTIONALLY FAILS TO MAKE SUCH DISCLOSURE SHALL BE GUILTY OF A MISDEMEANOR AS PROVIDED IN GENERAL MUNICIPAL LAW, SECTION 809  
 If "Yes," state the name and nature and extent of the interest of such individual:

Thomas Milo, Jr.

(Name &amp; Residence)

Employee

(Extent of interest)

Jh M.L

Applicant's Signature

Sworn to before me this 14th day of Oct, 2021Maryjane DeFior

NOTARY PUBLIC



# **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.

<b>Part 1 - Project and Sponsor Information</b>							
442/524/532 Waverly Ave							
Name of Action or Project: Sunbelt Rentals							
Project Location (describe, and attach a location map): 442/524/532 Waverly Ave							
Brief Description of Proposed Action: Upgrade of exterior at 524 Waverly, along with PB + Zoning approval for outdoor storage of equipment.							
Name of Applicant or Sponsor: TJ Mib		Telephone: 914 907 2383					
		E-Mail:					
Address: 566 Westchester Ave		tjmib6997@gmail.com					
City/PO: Rye Brook NY		State: NY	Zip Code: 10573				
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.			<table border="1"> <tr> <th>NO</th> <th>YES</th> </tr> <tr> <td align="center"><input checked="" type="checkbox"/></td> <td align="center"><input type="checkbox"/></td> </tr> </table>	NO	YES	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NO	YES						
<input checked="" type="checkbox"/>	<input type="checkbox"/>						
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: VOM Zoning + Planning			<table border="1"> <tr> <th>NO</th> <th>YES</th> </tr> <tr> <td align="center"><input type="checkbox"/></td> <td align="center"><input checked="" type="checkbox"/></td> </tr> </table>	NO	YES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
NO	YES						
<input type="checkbox"/>	<input checked="" type="checkbox"/>						
3.a. Total acreage of the site of the proposed action?		1.56 acres					
b. Total acreage to be physically disturbed?		0 acres					
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		1.56 acres					
4. Check all land uses that occur on, adjoining and near the proposed action.							
<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							

5. Is the proposed action, a. A permitted use under the zoning regulations?	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES	<input type="checkbox"/> N/A
b. Consistent with the adopted comprehensive plan?	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES	<input type="checkbox"/> N/A
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	<input type="checkbox"/> NO	<input checked="" type="checkbox"/> YES	
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"/> NO	<input type="checkbox"/> YES	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES	
b. Are public transportation service(s) available at or near the site of the proposed action?	<input type="checkbox"/> NO	<input checked="" type="checkbox"/> YES	
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES	
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"/> NO	<input type="checkbox"/> YES	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: <u>Municipal</u>	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: <u>Municipal</u>	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES	
b. Is the proposed action located in an archeological sensitive area?	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES	
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"/> NO	<input type="checkbox"/> YES	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES	
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 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?	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES	
16. Is the project site located in the 100 year flood plain?	<input type="checkbox"/> NO	<input checked="" type="checkbox"/> YES	
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? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: <u>Storm drains</u> <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> YES	



18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____	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: <u>442 was remediated through MYS Brownfield.</u> <u>COC received in 2013</u>	NO	YES
	<input type="checkbox"/>	<input checked="" type="checkbox"/>
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor name: <u>TJ Mink</u>		Date: <u>8/5/21</u>
Signature: <u>JHM</u>		