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November 15, 2021

**VIA FEDERAL EXPRESS**

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

**Re: Application of 306 Fayette Realty Inc. and New Waverly Associates LLC**

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

At the public hearing held on November 4, 2021 the Board requested that we provide an analysis of why we believe the appropriate remedy here is an area variance and not a use variance.

The subject properties are located on Waverly Ave. in the M-1 zone. The proposed use is storage of equipment which is expressly permitted in the M-1 zone. Because some of the storage will be outside of the building a variance is required. § 342-A (2) of the Code provides that the use must be carried on in enclosed buildings, except for off street parking, loading and a motor vehicle service station.

The proposed use is a permitted use in accordance with the provisions of the Code regarding the M-1 zone. Storage is expressly permitted. Thus, because storage is a permitted use in the M-1 zone, the appropriate variance is an area variance.

Village Law § 7-712 defines an area variance as the authorization by the zoning board for the use of the land in a manner that is not allowed by the physical requirements of the code. In this case the physical requirements for the storage is an enclosed building. A use variance is defined as the authorization by the zoning board of appeals for the use of the land *for a purpose* which is otherwise not allowed or permitted by the code. The purpose in the instant application is storage which is expressly permitted by the Code. Thus, an area variance is required.

Generally, the test for determining whether an application is for an area variance is “an area variance involves no change in the essential character of the zoned district; therefore, the neighborhood considerations are not as strong as in a use variance” *Matter of Wilcox v. Zoning Board of City of Yonkers*, 17 N.Y. 2d 249 (1966). In *Wilcox* the Court of Appeals held that “an area variance is required because the essential use remains the same although the particulars of the use may be different”.

In the *Matter of Khan v. Zoning Board of Appeals of the Village of Irvington*, 87 N.Y. 2d 344 (1996) the Court of Appeals citing *Wilcox* affirmed the premise that “generally speaking, an area variance involves no change in the essential character of the zoned district, nor does it seek to change



the essential use of the land.” See also *Consolidated Edison Co. v. Hoffman*, 43 NY2d 598, (606-607). The Court citing *Matter of Overhill Bldg Co. v. Delaney*, 28 N.Y. 2d 449 (1971) “In general an area variance is one which does not involve a use which is prohibited by the zoning ordinance while a use variance is one which permits a use of land which is proscribed. . . .[c]onverting garage space to office space, which is a permitted use. Consequently, while the change in this case is not strictly one of area, the variance is to be treated as an area variance.”

In the *Matter of Edward Barsic v. Thomas Young et.al*, 22 A.D. 3d 488 (2005) the Court found that a Village zoning code that permitted outside storage of materials only in the rear yard and in conjunction with AND accessory to the use of the main building or structure erected on the premises and cannot occupy a parking area would require a use variance to store equipment on a vacant parcel of land. Citing *Khan* the Court determined that the requirement that the storage be “in conjunction with and accessory to the use of the main building or structure erected on the premises” was the operative test because the property had no main building or structure. Here the code has no such requirement that the storage be accessory to a principal use or structure. In fact, the principal use for this application is storage which is expressly permitted by the code. The Village of Mamaroneck has these requirements for its commercial districts but not for the M-1 zone which has no such limitations. The distinguishing feature of *Barsic* is the fact that the ability to store anything is limited to an accessory use to a main building on the premises. Unlike in the M-1 zone, storage in *Barsic* was not permitted as a principal use.

In a more recent case *Abramovitz v. Zoning Board of Appeals of Incorporated Village of Bellport, et al*, 194 A.D. 3d 810 (2021) the court determined that an application to convert a 3 car garage into an indoor squash court and workout area was for an area variance and not a use variance. “Contrary to the petitioner’s contention, the ZBA properly interpreted its zoning ordinance in concluding that the proposed indoor squash court constituted an application for an area variance as it related to an ‘area’ of the property, specifically the garage, and was not a nonconforming use under the code.” Here a similar issue is raised as the application pertains to a portion of the site not covered by an enclosed building and the proposed use is not nonconforming under the code.

The critical test for determining the type of variance is the proposed use of the property and if that use is inconsistent with the provisions of the code. Here the proposed storage use is expressly permitted in the M-1 zone. Given that the use is permitted, an area variance is the appropriate remedy.

Thank you for your consideration.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Paul J. Noto'.

Paul J. Noto



November 11, 2021

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

**Re: Application of 306 Fayette Realty, Inc and New Waverly Avenue Associates, LLC**

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

At the public hearing held on November 4, 2021 the Board had some questions regarding our proposed use. Below is an overview of our proposed operations and answers to questions that were raised by the Board and the public.

Sunbelt Rentals is the premiere rental equipment company in North America. We lease construction equipment and industrial tools to construction companies and municipalities (we do not lease directly to consumers or individual homeowners). Our company has signed an agreement with 306 Fayette Avenue Realty, Inc and New Waverly Avenue Associates, LLC to lease the 6,700 sf warehouse space at 524 Waverly Avenue, along with the 61,000 sf of land located to the southwest and northeast of the building. This lease is contingent upon municipal approvals for outside storage of construction equipment.

Per the proposed site plan, the majority of the 48,000 sf of land located at 442 and 524 Waverly Avenue will be used to park construction equipment like Heating and Dehumidifier Units, Diesel Air Compressors, and Diesel Generators. The portable generators will have a license tag. The balance of this land (closest to the building) would be used for employee and customer parking. The 13,000 sf lot at 532 Waverly (corner of Ogden) would be used for employee and customer parking.

Our entire business model is contingent upon maximizing the amount of time that each piece of equipment is rented out to our business and municipal customers. Ideally, the equipment stored onsite would only be returned for maintenance and repair. The 6,700 sf warehouse would be utilized for storage of small parts, tools, and for the maintenance and repair of the stored construction equipment. Oil changes would occur within the warehouse. No repairs or maintenance would occur outside. None of the equipment would be run outside of the building. The receipt and delivery of all

rental equipment would occur onsite, using company owned flatbed trucks. The two (2) curb cuts located at 442 and 524 Waverly offer ideal circulation for our transport vehicles.

Our operation requires the installation of an above-ground, 500-1,000 gallon dual wall diesel fuel tank. The equipment stored onsite needs to be fueled prior to delivery. The tank will be installed on a concrete pad and protected by concrete bollards.

Sunbelt Rentals appreciates the Board's consideration of our proposed use. We hope that the above information answers all outstanding questions regarding our operation. We'd be happy to answer any additional questions, as we look forward to the next meeting scheduled for December 2, 2021.

Joseph Hill  
Real Estate Manager Regions 1,2,3,5 and 11  
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