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April 20, 2023

**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: East Coast North Properties, LLC  
Application for Area Variances  
Premises: 416 Waverly Avenue, Village of Mamaroneck, New York  
Parcel ID: Section 8; Block 111; Lots 29-42

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

On behalf of East Coast North Properties, LLC (the “Applicant”), owner of the above captioned Premises, we respectfully submit this letter in response to comments received from members of the Zoning Board of Appeals (“ZBA”) at the April 13<sup>th</sup> meeting regarding the requested area variances for the proposed addition to the existing self-storage building (“Project”).<sup>1</sup>

**I. Requested Area Variance Relief**

As a result of the extensive State Environmental Quality Review Act (“SEQRA”) process, the Applicant amended the Project and now proposes a building addition that has been reduced in terms of size, massing and scale. The March 6, 2023 Zoning Compliance Determination from the Village Building Inspector indicated that the following area variances are needed for the amended Project:

- Maximum Building Height: 1-story<sup>2</sup>
- Maximum Building Coverage: 2% (1,016 sf)
- Maximum Floor Area Ratio (“FAR”): 0.58<sup>3</sup>
- Minimum Off-Street Parking Spaces: 61 spaces<sup>4</sup>

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<sup>1</sup> The area variance application was initially submitted to the ZBA on June 20, 2018.

<sup>2</sup> A 1-story area variance was granted in 2013 for the existing self-storage building. See Oct. 3, 2013 Zoning Board of Appeals Resolution (“2013 ZBA Resolution”).

<sup>3</sup> A 0.34 FAR variance was granted in 2013 for the existing self-storage building. See 2013 ZBA Resolution.

<sup>4</sup> A 37-off street parking space variance was granted in 2013 for the existing self-storage building (allowing 52 spaces where 89 spaces were required). See 2013 ZBA Resolution.



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The area variances for the Project are calculated based on the area variances the ZBA previously granted in 2013. It is well established that area variances run with the land (see St. Onge v. Donovan, 71 N.Y.2d 507, 520 (1988)), and therefore, the variances granted in 2013 for the Premises are still valid. When the 2013 area variances were granted, the FAR, building coverage, height, parking and loading spaces on the Premises ceased to be nonconforming with those dimensional requirements. Hoffmann v. Gunther, 245 A.D.2d 511 (App. Div. 2d Dep't 1997). Therefore, the variances for the new building addition should be calculated based on the conditions permitted in 2013. Hoffmann, 245 A.D.2d 512-513.

Consistent with this reasoning, more recently, in Bout v. Zoning Bd. of Appeals of Town of Oyster Bay, 71 A.D.3d 1014 (2d Dep't 2010), the Second Department took issue with the ZBA's method of calculating the amended area variance required for a building addition where a prior area variance was granted. In overturning the ZBA's decision to deny the variance, the Court assessed the variance utilizing the delta between the original variance granted and the proposed amended variance in making its ruling. Bout, 71 A.D.3d 1015.

As such, it is respectfully submitted that the Building Inspector's amended Zoning Compliance Determination correctly represents the area variances required for the proposed building addition.<sup>5</sup>

## **II. When Viewing the Totality of the Circumstances and Benefits to Both the Applicant and the Community from the Project, The Factors Balance in Favor of Granting the Area Variances.**

The area variance factors balance in favor of granting the requested area variances for the Project. First, when considering the re-envisioned Project's design and location in the heart of the Village's industrial area in totality, the requested variances will not have a detrimental impact on the surrounding area. Second, as the ZBA has previously concluded in the SEQRA Findings Statement, the proposed area variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.

Third, the Project is a result of the Applicant exploring all feasible alternatives through the SEQRA process and is smaller in scale and size and more zoning compliant than originally proposed. This redesigned Project reduces both the visual mass of the building and the footprint of the addition by approximately 1,044 square feet and reduced the proposed FAR of the site from 2.26 to 1.92. The redesign also reduced the height of portions of the new addition by gradually stepping down each building segment.

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<sup>5</sup> Notwithstanding, we note that since this Board previously granted area variances in 2013, any finding inconsistent with this precedent would be arbitrary and capricious. Knight v. Amelkin, 68 N.Y.2d 975, 977 (1986).



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Fourth, when considering the overall effect of granting the relief, the variances are not substantial.<sup>6</sup> In fact, the Project will have the following benefits to both the Applicant and the surrounding community:

- Full sitewide compliance with the Village and FEMA floodplain construction standards applicable to commercial buildings in the AE Flood Zone;
- Increase flood volume storage onsite by 31,091 cubic feet;
- Install flood gates and vents that will launch automatically without the need for electricity;
- Install a rooftop Community Solar System to provide clean energy to local residents;
- Decrease the impervious coverage on the Premises by 4.8%;
- Install new stormwater management improvements, including the rain garden along Fenimore Road with Daylilies, Green Gem Boxwoods and Evergreen Azalea's to attract pollinators;
- Install new landscaping around the entire Waverly Avenue and Fenimore Road frontages, including the expansion of existing planting beds and the addition of 2 new planting beds;
- Install a new publicly accessible pocket park at the corner of Waverly Avenue and Fenimore Road;
- Install new street trees along Waverly Avenue and Fenimore Road;
- Demolish 4 existing older industrial buildings onsite that do not comply with floodplain development standards;
- Remove the existing outdoor storage of contractor equipment and vehicles;
- Install new exterior lighting on the Premises;
- Improve the safety of traffic and vehicle circulation onsite by removing equipment storage and reconfiguring existing spaces;
- Eliminate one of the existing driveways on Waverly Avenue to improve safety along Fenimore Road by preventing vehicles from backing out of the barn driveway directly onto the Road; and
- Improve the existing visual conditions on the Premises by adopting a façade that divides the proposed addition into 5 separate segments, each designed to resemble independent buildings with varied colors, materials and structural elements to disguise the self-storage use as a commercial or office building.

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<sup>6</sup> The substantiality of a variance cannot be judged solely by a comparison of the percentage deviation from the mandated requirements of the Zoning Code. Indeed, the overall effect of granting the relief is the appropriate inquiry. See Friends of Shawangunks, Inc. v. Zoning Bd. of Appeals of Town of Gardiner, 56 A.D.3d 883, 886, 867 N.Y.S.2d 238, 241 (3d Dep't 2008) (although variances were substantial the ZBA properly determined area variances will not have a substantial impact on the community); Schaller v. New Paltz Zoning Bd. of Appeals, 108 A.D.3d 821, 824, 968 N.Y.S.2d 702, 705 (3d Dep't 2013) (upholding ZBA determination that an area variance was not substantial when compared to the nearby buildings). See also 2 N.Y. Zoning Law & Prac. § 29:15 (2022).



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The requested area variances will promote meaningful development of the already fully developed Premises while maintaining consistency with the existing uses in the neighborhood and the Village's contemplated future use of the MAKER zone area. The Project is appropriately located in the geographic center of the Industrial Area, abuts an existing railroad and is compatible with the existing industrial development in the neighborhood. There are several buildings in the surrounding area<sup>7</sup> with similar heights, FARs and building coverages requirements and therefore the area variances proposed cannot be viewed as substantial when considering the other buildings in the neighborhood.<sup>8</sup>

Notably, the Project is supported by multiple businesses and property owners in the immediate area, as evidenced by the 21 letters of support sent to the ZBA to-date. Indeed, this Project will be a catalyst to transform this area of the industrial zone and spur additional investment and ratables in the Village, as noted in numerous public comments at the April 13<sup>th</sup> meeting.

### **III. Conclusion**

For the reasons set forth above and included in the ample record in this matter over the last 5 years, it is respectfully submitted that the Applicant's request for relief herein is not substantial as none of the variances will have a significant overall effect on the surrounding area or neighborhood. In fact, the Project provides numerous benefits to the surrounding neighborhood and Village community. To the extent that the ZBA finds otherwise, we respectfully remind that the mere fact that a variance may be deemed "substantial," or "self-created" does not preclude application of the *overall* balancing test and does not necessitate denial of the area variance application.<sup>9</sup>

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<sup>7</sup> There are 4 buildings (845 Palmer Avenue, 270 Waverly Avenue, 149 Fenimore Road, and 225 Stanley Avenue) within 0.5 miles of the Premises that have an FAR that exceeds what is permitted under the Zoning Code. In fact, 3 of those buildings have an FAR larger than the Project's proposed 1.92 (270 Waverly Avenue, 149 Fenimore Road, and 225 Stanley Avenue).

<sup>8</sup> Courts in this jurisdiction have held that where the record reveals that lots in the neighborhood of the subject parcel do not comply with the lot area zoning requirements, a Zoning Board's denial of a requested lot area variance will not be upheld. See Sautner v. Amster, 284 A.D.2d 540 (2d Dep't 2001)(denial of lot area variance was improper where it was based on claim that variances would create undesirable change in character of community or would cause significant impact on rest of neighborhood, where large number of lots in neighborhood were the same size as proposed lots); Easy Home Program v. Trotta, 276 A.D.2d 553 (2d Dep't 2000)(denial of lot area variance is improper where 11 lots in the immediate neighborhood of the subject parcel do not comply with the lot area zoning requirements).

<sup>9</sup> Church of Jesus Christ of Latter Day Saints v. ZBA of Town/Village of Harrison, 296 A.D.2d 460 (2d Dep't 2002) (determination that a request that was determined "substantial" did not excuse Zoning Board of Appeals from applying the overall balancing test). See Daneri v. Zoning Bd. Of Appeals of Town of Southold, 98 A.D.3d 508, 510 (2d Dep't 2012) (self-created nature of difficulty is not preclusive of the ability to obtain an area variance).



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The Applicant requests that the ZBA grant the aforementioned variances to allow the proposed addition to the existing self-storage building. It is respectfully submitted that the benefit to the Applicant and the surrounding industrial area if the area variances are granted clearly outweighs any possible detriment to the health, safety, and welfare of the neighborhood or community by such grant.

The Applicant looks forward to appearing before the ZBA on May 4<sup>th</sup> for continuation of the public hearing and consideration of the area variance application. Thank you for your time and consideration in this matter.

Very truly yours,

*Anthony B. Gioffre III*

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Enclosures

cc: Ashley Ley, AICP, AKRF, Inc.  
Lori Lee Dickson, Esq., Attorney for the Zoning Board of Appeals  
Cleary Consulting, LLC  
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Client