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Mamaroneck NY 10543

Village of Mamaroneck Planning Board
169 Mt Pleasant Ave.
Mamaroneck NY 10543

March 22, 2023

Re: Wetlands Public Hearing / Site Development Plan

Dear Chairman O'Rourke, Members Bintzer, Call-Chin, Goldstein, and Litman,

I am appearing this evening as a party in interest. My interest is wetland protection and code compliance for both site development plan approval and consideration of wetland permitting. Although your honorable board has calendared both a wetland hearing and site development plan approval permitting, when I complete my presentation, I hope you'll agree that this is premature due to incomplete and in some cases inaccurate information on records thus far.

I have separately attached excerpts from village code Chapter 192 to illustrate the required procedural steps.

Procedural steps outlined per code:

The first procedural step is in § 192-5 B (3) whereby the planning board determines that all such information, including any additional information requested, has been supplied in a complete and satisfactory form.

I submit for the record that at this time, you do not have complete information to be able to make informed determinations in the following areas.

The second is in § 192-6 whereby, "Within five days of its receipt of a completed application for a permit regarding a proposed regulated activity" there's a notice of application or notice of hearing promulgated. There are specifics in code for contents of this notice. I submit for the record that all such information is not in a complete and satisfactory form ripe for your review, thus am not sure why this hearing is being held. Also I could not locate the public hearing notice is posted on the village website from the clerk's office that a Wetland Public Hearing is scheduled.

The third procedural step is in [§ 192-12 Distribution of application.](#)

Where determined appropriate, the Agency may forward one copy of the application to the Village Engineer, the Building Inspector, the Department of Public Works, the applicable Fire District, the Police Department, the Westchester County Soil and Water Conservation District and any other local, state, county, regional and federal agencies having jurisdiction, for their report and recommendations, prior to the holding of a hearing

I'm not trying to make a determination for planning board, but suffice it to say given there are no records demonstrating wetland boundaries from agencies that have jurisdiction it would behoove this board at the very least to forward a copy of the application (when deemed complete) to the Westchester Soil and Conservation District, NYSDEC and ACOE Regulatory Permitting NY District.

WETLANDS-

The application for a wetland permit does not meet code requirements for § 192-5 B (3) and § 192-12

The AKRF application summary sheet uploaded on the agenda for the date entered 1/11/23 states, Applicant to provide DEC wetland permit and confirmation of no ACOE jurisdiction. Continued. This application summary sheet was uploaded to the agenda 3/17/23 and has not been updated since 1/11/23. The last time this application was calendared on your 2/8/23 agenda, when asked about state and federal wetlands jurisdiction, the applicant's representative reported several things. After a long explanation on where the wetlands adjacent boundary is located, in summary Mr. Evans reported that "DEC mapping is from 1967, it is difficult to read USGS maps and she had the surveyor compare 1929 datum with 1988 datum to figure out where the wetland boundary is...let's call it elevation 11 on the survey."

Ms. Evans also reported that a state DEC representative was at the site, requests for jurisdictional determinations are unusual she is coming back, and if an email going back and forth satisfies the board's request that will be provided.

For your hearing record, if this email chain has been provided to the board it is not provided in agenda items to the public.

Ms. Evans also represented that due to the fact that no direct impact is occurring in the federal wetland and, "I could have as much chance getting a jurisdictional determination from ACOE as a winning lottery ticket."

As previously requested of the applicant, chairman O'Rourke on 2/8/23 stated in response, "provide as much information as possible"

The planning board needs, but has not yet received factual information for the record re wetlands jurisdiction by state and federal agencies.

The NY District ACOE Regulatory Branch's website the following is posted for applicants:

Jurisdictional Determinations

The identification and location of jurisdictional Waters of the United States (which includes wetlands) regulated by the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act of 1977, is physically determined through a process known as a jurisdictional determination (JD). The method of performing a wetland JD employs a multi-parameter approach defined in Technical Report Y-87-1, Corps of Engineers Wetlands Delineation Manual, dated January 1987, and supplemental guidance. It generally requires positive evidence of hydrophytic vegetation, hydric soils, and wetlands hydrology for a determination that an area is a wetland.

The JD process establishes a line that separates and identifies the USACE-regulated wetland areas and waters from non-wetland (upland) areas that are not regulated by the USACE.

The JD provides important information to a landowner or investor for planning purposes or carrying out certain activities on a given parcel of land. It is essential in making an application for a permit from the USACE to determine if work would occur in wetlands or navigable waters of the United States.

In order for USACE to confirm a JD, typically a consultant is hired to delineate waters of the United States on a site. Upon receipt of a request to perform a jurisdictional determination, the following procedures would be followed:

- A review to determine if the request has sufficient information to perform a jurisdictional determination. If not, a letter requesting additional information will be sent. Once sufficient information is received, a site visit (if needed) will be scheduled.
- During the site visit, Corps personnel will review the delineation for accuracy. If any changes are necessary they will be pointed out to the applicant/consultant so that they can be surveyed and added onto a revised delineation drawing for Corps review/approval.
- Once the final delineation is received and reviewed, a final letter of jurisdiction will be sent. A checklist of required information for submitting a request for jurisdictional determination can be found by [clicking here](#).

Prior to considering wetland permitting, wetland boundaries and adjacent areas field delineated and verified by state / federal agencies is paramount to consider any further review including site plan development.

Since the applicant already has a hired consultant to field delineate waters of the US on the site please determine the record is not complete. When the applicant provides a ACOE jurisdictional determination for the record to substantiate the claim that no disturbance will be occurring within the wetland or adjacent area boundaries then record is complete.

Another option in gaining ACOE jurisdictional determination falls under code and procedures. Distribution of Application reports where determined appropriate, the agency (defined as your board) may forward a copy of the application to.... the Westchester Soil and Conservation District, and any other local, state, county, regional, and federal agencies having jurisdiction for their report and recommendations prior to holding a hearing.

In the attached “Understanding in National Wetlands Inventory” (NWI) publication, I’ve highlighted these key sentences:

The NWI is intended to promote the understanding and conservation of wetland resources with an easily accessible platform.

It has not been verified by wetlands experts and therefore is not a replacement for field investigations and scientific wetland delineations.

The NWI must be field verified by a wetland professional and the boundaries confirmed by the U.S. Army Corps of Engineers prior to any development activities.

Even if you are planning to avoid a mapped NWI, there may be other wetlands present or the wetland boundaries may be incorrect.

Also included for your review are 2 attachments of NWI from the US Fish and Wildlife Service wetlands mapper within the vicinity of the property. One is a USGS Topography map. The type of wetland that exists in the area is an Estuarine and Marine Wetland habitat.

In addition; given the applicant has not provided jurisdictional determinations re wetlands for the record, when the application is deemed complete by your board, it is within your authority should your board choose, to distribute this to aforementioned agencies in compliance with village code in § 192-12.

WETLANDS AND SITE DEVELOPMENT PLAN

Absent facts/ data from the agencies that may have jurisdiction this board will have great difficulty determining that this proposed site plan meets wetlands and site development plan approval's general criteria and standards of review village code.

See:

§ 342-76 **General criteria and standards of review.**

The following criteria and standards shall be used by the Planning Board in reviewing applications for site development plan approval

A.

Ecological considerations. The development shall, insofar as practicable:

(1)

Result in minimal degradation of unique or irreplaceable land types and in minimal adverse impact upon the critical areas, such as streams, wetlands, areas of aquifer recharge and discharge, steep slopes, highly erodible soils, areas with a high water table, mature stands of mature vegetation and extraordinary wildlife nesting, feeding or breeding grounds.

(2)

Conform to existing geological and topographic features to the end that the most appropriate use of land is encouraged.

Protected resources identified within the village's LWRP, the comprehensive water and land use plan relative to your review in code 342-76 A. (1) above include:

- the site is in a designated area containing a high water table shallow soils see map on page 12
- the site is in a designated critical environmental area see page 16 #12 for specific wildlife habitat description and pages 35-38 for wildlife species
- the site is within a designated significant fish and wildlife habitat see map on page 17

- the site is within floodplains
- the site contains jurisdictional wetlands

LWRP link:

https://www.village.mamaroneck.ny.us/sites/g/files/vyhlf826/f/uploads/current_lwrp.pdf

For the record here are some factual citations from applicant submissions and village planning documents for your consideration to determine if you have received complete and satisfactory records to begin your review.

The applicant has provided the following information, with incomplete or inaccuracies noted in records:

1. Building Permit application page 1, #3. Topography **steep incline is checked yes and the village's Comprehensive Plan identifies steep slopes as a development constraint.**

2. Planning Board Application-

Page 2 # 7 **restrictions** to which the site is subject to **response is only wetlands and wetlands buffer.**

Page 3 II. Coastal assessment form -

in A. 1. Significant fish and wildlife habitats **erroneously checked no.**

In B. 11. **Excavation activities** or placement of fill **in coastal waters** is **erroneously checked no**

In B. 15. Development affecting a natural feature which provides protection against flooding or erosion **erroneously checked no. (LWRP policy 12 identifies wetlands as natural protective features)**

3. The applicant has **not provided** records demonstrating that this proposal will result in minimal degradation of irreplaceable land forms and minimal adverse impact to critical areas.

The applicant has however put forth in the record not included for this board's review that," However, because the Village-regulated 100' wetland buffer extends throughout the majority of the subject parcel, **some unavoidable impacts are proposed within the Village wetland buffer.** Please refer to attached narrative text, Response 44, for details."

Those response 44 details include the following:

Policy 44 Preserve and protect tidal and freshwater wetlands and preserve the benefits derived from these areas.

Response 44: Otter Creek Salt Marsh is located along the eastern property boundary. According to the US Fish and Wildlife Service National Wetlands Inventory,¹ Otter Creek is an estuarine and marine wetland system consisting of deep-water tidal habitats and adjacent tidal wetlands that are semi-enclosed by the creek's banks. Otter Creek comprises tidal wetlands with high marsh² vegetation that is subject to periodic flooding (spring and storm tides). These wetlands/watercourses are regulated by the Army Corps of Engineers (ACOE), the New York State Department of Environmental Conservation (DEC), and the Village of Mamaroneck. No wetlands would be impacted by the proposed development. The ACOE does not regulate a wetland adjacent area. The DEC regulates a tidal wetland adjacent area that extends to the 10' elevation on the subject property. No impacts are proposed in this area. The Village of Mamaroneck regulates a 100' wetland adjacent area which extends throughout the majority of the subject parcel. Therefore, **impacts to the 100' adjacent area would be unavoidable, as no**

alternative locations are present on site. Impacts of the potential future project were minimized to the maximum extent practicable. The development was placed as far away from the wetlands as possible; the majority of the residence and the entire driveway are located outside of the regulated area, and the proposed pool would be elevated above grade. All activities would occur outside of the Flood Hazard Area (Flood Zone AE). An erosion and sediment control plan (E&SCP) has been prepared, as has a Stormwater Pollution Prevention Plan/Stormwater Management Report (SWPPP/SMP) to prevent impacts outside of the disturbance limit during construction, and throughout the site after development. Please refer to previous policy responses for details. Impacts to the tidal wetlands have been completely avoided, as have impacts to the DECregulated tidal wetland adjacent area and to the Flood Hazard Area. Unavoidable impacts to the Village-regulated 100' wetland adjacent area have been minimized to the maximum extent practicable. The site layout and plans (SWPPP/SMP and E&SCP) have been developed to minimize potential impacts and protect the sensitive natural systems and habitats associated with the adjacent Otter Creek Salt Marsh.

Again my interest in appearing this evening is due to; issues raised in code, applicant incomplete or inaccurate submission records, but mainly for wetland protection and habitat- if you don't know the boundary how can you as a board protect it.

Respectfully,
Doreen Roney

Attachments:

Excerpts from Chapter 192 Village code

Understanding in National Wetlands Inventory

US Fish and Wildlife Service satellite wetlands mapper of site

US Fish and Wildlife Service USGS Topographic wetlands mapper of site

EXCERPTS FROM VILLAGE CODE CHAPTER 192

§ 192-2Definitions.

The following terms, phrases, words and their derivatives shall have the meanings given terms, herein:

ADJACENT AREA

Any land in the Village of Mamaroneck immediately adjacent to a wetland or lying within 100 feet, measured horizontally, of the boundary of a wetland.

AGENCY

The Planning Board.

APPLICANT

Any person who files an application for any permit issued by the Agency pursuant to this chapter, and includes the agent of the owner or a contract vendee.

BOARD

The Wetlands Appeals Board established by Article 24 of the State Environmental Conservation Law.

BOUNDARIES OF A WETLAND

The outer limits of the vegetation specified in Subdivisions 1(a) and (b) of § 24-0107 of the State Environmental Conservation Law and of the waters specified in Subdivision 1(c) of such section.

CONTROLLED AREA

A wetland and its adjacent area, as defined herein.

PARTY IN INTEREST

The applicant, the Agency, the State Department of Environmental Conservation, each local government in which the regulated activity or any part thereof is located and any person who appears and wishes to be a "party in interest" at the public hearing held pursuant to § **192-13**.

PERSON

Any corporation, firm, partnership, association, trust, estate, one or more individuals and any unit of government or agency or subdivision thereof.

POLLUTION

The presence in the environment of human-induced conditions or contaminants in quantities or characteristics which are or may be injurious to humans, plants, animals or property.

PROJECT

Any action which may result in direct or indirect physical impact on a freshwater wetland, including but not limited to any regulated activity.

REGULATED ACTIVITY

Any form of draining, dredging, excavation or removal of soil, mud, sand, shells, gravel or other aggregate from any wetland, either directly or indirectly; any form of dumping, filling or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly; erecting any structures or roads, the driving of pilings or the placing of any other obstructions, whether or not changing the ebb and flow of the water; any form of pollution, including, but not limited to, installing a septic tank, running a sewer outfall and discharging sewage treatment effluent or other liquid wastes directly into or so as to drain into a wetland; that portion of any subdivision of land that involves any land in any wetland or adjacent area; and any other activity which substantially impairs any of the several functions served by wetlands or the benefits derived therefrom, which are set forth in § 24-0105 of the State Environmental Conservation Law

WETLANDS

Any area which meets one or more of the following criteria:

A.

Lands and waters of the state that meet the definition provided in § 25-0103, Subdivision 1, of the New York State Tidal Wetlands Act (Article 25 of the Environmental Conservation Law). The approximate boundaries of such lands and waters are indicated on the official tidal wetlands inventory promulgated by the Commissioner pursuant to § 25-0201 of the Act or such an inventory that has been amended or adjusted pursuant to § 25-0201, Subdivision 6, of said Act.

B.

All other areas, 2,500 square feet or larger, that comprise hydric soils or are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of hydrophytic vegetation, as defined by the technical publication, Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1989).

§ 192-5 Application for permit.

A.

Any person proposing to conduct or cause to be conducted a regulated activity requiring a permit under this chapter upon any controlled area shall file an application for a permit with the Clerk of the Village of Mamaroneck. The Clerk shall immediately forward such application to the Agency.

B.

Information required.

(1)

An application for a permit shall be filed by the applicant on a form prescribed by the Agency. Such application shall set forth the purpose, character and extent of the proposed regulated activity. The application shall include a detailed description of the regulated activity, a map showing the area of wetland or adjacent area directly affected, with the location of the proposed regulated activity thereon, a deed or other legal description describing the subject property and such additional information as the Agency deems sufficient to enable it to make the findings and determinations required under this chapter.

(2)

The application shall be accompanied by a list of the names of the owners of record of lands adjacent to the wetland or adjacent area upon which the project is to be undertaken and the names of known claimants of water rights, of whom the applicant has notice, which relate to any land within or within 100 feet of the boundary of the property on which the proposed regulated activity will be located.

(3)

An application shall not be deemed to be completed or received until the Agency determines that all such information, including any additional information requested, has been supplied in a complete and satisfactory form.

C.

The Clerk of the Village of Mamaroneck shall cause a copy of such completed application to be mailed to all local governments where the proposed activity or any part thereof is located.

§ 192-6 **Notice of application.**

A.

Within five days of its receipt of a completed application for a permit regarding a proposed regulated activity, the Agency shall provide the applicant with a notice of application, which the applicant shall publish, at his or her own expense, at least once in the official newspaper of the Village of Mamaroneck.

B.

Said notice of application shall be in a form prescribed by the Agency and shall:

(1)

Specify that persons wishing to object to the application should file a notice of objection by a specified date, together with a statement of the precise grounds of objection to the application, with the Agency.

(2)

Specify that if no notices of objection are timely filed or if the Agency determines that the proposed activity is of such a minor nature as to not affect or endanger the balance of systems within any wetland, then the Agency, in its discretion, may determine a hearing is not necessary and dispense with the public hearing.

(3)

Specify that the application, including all documents and maps therewith, is available for public inspection at the office of the Clerk of the Village of Mamaroneck.

C.

Notwithstanding any other provisions of this section, the Agency may, in its discretion, dispense with the requirement for a public notice of application and require a notice of hearing pursuant to § **192-8**.

§ 192-8 **Notice of hearing.**

A.

The Agency shall, within 21 days of receipt of a completed application, provide the applicant with a notice of hearing, which the applicant shall publish, at his or her own expense, at least 15 days prior to the date set for the hearing, at least once in the official newspaper of the Village of Mamaroneck.

B.

At least 15 days prior to the date set for the hearing, the Agency shall, by certified mail, provide a notice of hearing to each local government within whose boundaries the proposed regulated activity or any portion thereof will be located.

C.

At least 15 days prior to the date set for the hearing, the Agency shall, by certified mail, provide notice of hearing to all owners of record of land adjacent to the affected wetland or adjacent area and to all known claimants of water rights, of whom the applicant has notice, which relate to any land within or within 100 feet of the boundary of the property on which the proposed regulated activity will be located.

D.

The notice of hearing shall:

(1)

State the name of the applicant.

(2)

Specify the location and outline the scope of the proposed regulated activity.

(3)

Specify the date, time and place of the public hearing on the application.

(4)

Specify that persons wishing to be parties in interest and eligible to be heard at such public hearing, if any, should file a notice of appearance by a specified date, together with a statement of the precise grounds of support of, opposition to or interest in the application, with the Agency.

(5)

Specify that any person who wishes to be a party in interest without filing a notice of appearance may do so by appearing at the public hearing and indicating his or her desire to be a party in interest, if a public hearing is held.

(6)

Specify that if no notices of appearance are timely filed by any party in interest and if the applicant waives any public hearing, then the public hearing may be canceled by the Agency.

(7)

Specify that the application, including all documents and maps therewith, is available for public inspection at the office of the Clerk of the Village of Mamaroneck.

§ 192-12 Distribution of application.

Where determined appropriate, the Agency may forward one copy of the application to the Village Engineer, the Building Inspector, the Department of Public Works, the applicable Fire District, the Police Department, the Westchester County Soil and Water Conservation District and any other local, state, county, regional and federal agencies having jurisdiction, for their report and recommendations, prior to the holding of a hearing

§ 192-13 Public hearing procedure.

A.

Any public hearing held on a permit application received under this chapter shall be conducted by the Agency. The Agency shall have full authority to control the conduct and procedure of the bearing and shall be responsible that a complete record of the hearing is kept. The public hearing shall be held within the Village of Mamaroneck.

B.

Any person may appear as a party in interest, notwithstanding the failure of such person to file a timely notice of appearance, by appearing at the hearing and making known his or her desire to be a party in interest. Persons who are not parties in interest may be allowed to participate in the hearing where the Agency finds that such participation would be in the public interest.

C.

All parties in interest shall be afforded an opportunity to present oral and written arguments on issues of law and policy and an opportunity to call witnesses in their behalf and to present oral and written evidence on issues of fact. The Agency shall permit the parties in interest to cross-examine witnesses but may limit such cross-examination to avoid the introduction of irrelevant or repetitious material in the record of the hearing.

