

**941 SOUNDVIEW DRIVE
MAMARONECK, N.Y. 10543**

March 20, 2023

Mr. Seamus O'Rourke, Chair, and Members of the Village of Mamaroneck Planning Board
Village Hall
169 Mt. Pleasant Avenue
Mamaroneck, NY 10543

Re: 921 Soundview Drive ("Property")
Site Plan Review and Wetlands Permit Application

Dear Chair O'Rourke and Members of the Planning Board:

We live at 941 Soundview Drive, immediately adjacent to the above-referenced Property. It has been our home for almost 16 years. Prior to that, we were residents of the Town of Mamaroneck for more than 25 years.

We write because we have significant concerns about the impact of proposed development of the Property on Otter Creek and the surrounding wetlands, which have been designated as a Critical Environmental Area by Westchester County and New York State.

The Applicant has proposed a 6,122 square foot house and pool, a significant portion of which would be within the 100-foot buffer zone adjacent to Otter Creek. This project would occupy the majority of the buildable area of this .528 acre lot, at least 30% of which is within the AE Flood Zone. It would be the first residence on either side of the Otter Creek Preserve to have a pool.

We have reviewed the materials submitted by the Applicant in connection with the March 22 hearing on the Application. These materials, made available on the Village's website on the afternoon of March 17, raise a number of questions, including the following:

- No documentation has been provided that either the U.S. Army Corps of Engineers ("ACOE") or the New York State Department of Environmental Conservation ("DEC") has made jurisdictional determinations regarding this project. It is not clear that a field delineation has been attempted for either tidal or freshwater wetlands, or that a jurisdictional determination has been sought from ACOE. In its March 8, 2023 letter to the Board, Nexus states that "[t]he 10' contour has been labeled on the civil drawings." However, there is no confirmation that this line has been approved by DEC.
- We note that the wetland buffer is calculated on Applicant's drawings by reference to the location of a former wood fence. It is unclear why the Applicant believes that the location of that fence is determinative of the actual boundary of the wetlands for regulatory purposes.
- In response to questions from the Board's consultants regarding the height of the proposed residence, Nexus stated in its March 8 letter that "the final height of the building will be per end user". This response raises a question as to whether these plans represent a project that the

Applicant actually intends to construct, or instead are conceptual plans to assist in marketing the Property to potential purchasers, who may or may not wish to construct a residence according to the approved plans.

Also unclear is to how the Applicant intends to carry its burden of proof that the project meets the standards set forth in Chapter 192, which Nexus concedes governs this application.

Section 192-14(E) sets forth the “specific standards of consideration”, which provide that “no permit shall be issued . . . pursuant to this Chapter unless the [Planning Board] *shall find* that:

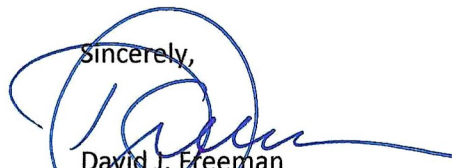

- (a) The proposed regulated activity is consistent with the policy of this Chapter to preserve, protect and conserve wetlands and the benefits derived therefrom, to prevent the despoliation and destruction of wetlands and to regulate the development of such wetlands in order to secure the natural benefits of wetlands consistent with the general welfare and beneficial economic, social and agricultural development of the Village of Mamaroneck.
- (b) . . .
- (c) The proposed regulated activity is compatible with the public health and welfare.
- (d) The proposed regulated activity is reasonable and necessary.”(emphasis added)

Section 192-14(E)(2) states that “*the Applicant shall have the burden of demonstrating that the proposed regulated activity will be in accordance with the standard set forth in this Section.*”

Section 192-15 allows the Board to condition the approval of permits in such manner as “are necessary to ensure the preservation and protection of effective wetlands and to ensure compliance with the policy and provisions of this Chapter. . . .”

It thus appears that in order to approve this Application, the Board would need to make *affirmative findings* that the Applicant has demonstrated that each of these standards has been met.

In light of the above open issues, as well as the many environmental concerns that have been raised by others about this Application, we respectfully submit that the Board cannot make such a determination based on the record as it stands today.

Sincerely,

David J. Freeman

Ellen G. Freeman