

## RESOLUTION

Village of Mamaroneck Planning Board

RE: 1216 Henry Avenue

### Resolution of Final Subdivision Plat Approval

After due discussion and deliberation, on motion by \_\_\_\_\_, seconded by \_\_\_\_\_ and carried, the following resolution was adopted:

WHEREAS, on February 9, 2015 1216 Henry Ave LLC, "the Applicant," (all references to which shall include and be binding upon the Applicant's successors and/or assigns) applied to the Planning Board for approval of a subdivision for a 17,500 square foot property to create three lots comprised of lot 1 at 5,776 square feet, lot 2 at 5,973 square feet, and lot 3 at 5,752 square feet, located at 1216 Henry Avenue ("Premises") with a single family home to be situated on each lot (newly constructed homes on Lots 1 and 3 and rehabilitate an existing home on Lot 2); , with plans prepared by Hudson Engineering and Consulting, PC (Michael F Stein, PE) with Drawing Numbers:

1. C-1 (dated 1/7/14 and last updated on 3/25/15),
2. C-2 (dated 1/7/14 and last updated 3/25/16),
3. C-3 (dated 1/7/14 and last updated on 5/14/15),
4. C-4 (dated 1/7/14 and last updated on 3/25/15),
5. C-5 (dated 6/16/15 and last updated on 9/18/15),
6. C-6 (dated 5/14/15 and last updated on 8/4/15),
7. SD-1 (dated 5/14/15 and last updated on 10/13/15)

for 1216 Henry Avenue, Mamaroneck, Westchester-New York (collectively "Project");  
and

WHEREAS, the Premises is situated in the R-5 Residential District and designated on the Village of Mamaroneck tax map as Section 4 Block 49 Lot 9; and

WHEREAS, the Harbor and Coastal Zone Management Commission ("Commission") conducted its preliminary review of the Project on May 11, 2015 and thereafter submitted a memorandum to the Planning Board summarizing the Commission's preliminary review comments; and

WHEREAS, a legally noticed public hearing was opened by the Planning Board on May 13, 2015 and continued on May 27, 2015, June 10, 2015, June 24, 2015, July 8, 2015, September 9, 2015, September 30, 2015, October 14, 2015, November 18, 2015, December 9, 2015; January 13, 2016; March 9, 2016 and closed on April 13, 2016; and

WHEREAS, after circulating notice of its intent to be Lead Agency to involved agencies and having received no objection within thirty days, the Planning Board declared itself to be the Lead Agency pursuant to SEQRA and thereafter, on April 13, 2016, adopted a conditioned negative declaration ("CND") for the Project; and

WHEREAS, on June 8, 2016, after the expiration of a 30-day comment period on the CND, the Planning Board confirmed the CND with minor non-substantive changes ("June 2016 CND"); and

WHEREAS, the June 2016 CND identified seven (7) conditions pertaining to the Project's environmental impact in the areas of stormwater management, rock removal and noise, and community character which, if met, the Project would not have a significant adverse environmental impact and the preparation of an environmental impact statement would not be required; and

WHEREAS, after the Planning Board adopted the June 2016 CND, the Applicant submitted an application to the Commission based upon the above described plans prepared prior to the adoption of the June CND, for purpose of determining consistency of the Project with the Village of Mamaroneck's Local Waterfront Revitalization Program ("LWRP"); and

WHEREAS, by resolution dated August 31, 2016, the Commission determined that in the absence of (1) a plan incorporating the conditions of the June 2016 CND which are binding on the Commission; and (2) additional submissions by the Applicant addressing the Commission's requests for details regarding proposed rock chipping and removal and use of fill for stormwater management/site development, the Commission was unable to determine whether the Project as revised by the June 2016 CND is consistent with the aforesaid policies of the LWRP pertaining to LWRP policies: 12, 14, and 33 and to avoid a default determination of LWRP consistency, the Commission determined that the Project is not consistent, to the maximum extent practicable, with policies of the LWRP due to the inadequate, incomplete, and inaccurate information provided by the Applicant, including the Applicant's failure to submit plans reflecting conditions of the June 2016 CND; and

WHEREAS, the Applicant thereafter filed an Article 78 proceeding against the Planning Board challenging the validity of the following two conditions in the June 2016 CND relating to community character which was thereafter dismissed as premature and not ripe for adjudication on February 7, 2017 ("February 7, 2017 Decision and Order");<sup>1</sup> and

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<sup>1</sup> The Article 78 proceeding challenged the validity of the following two conditions in the June 2016 CND relating to community character –(1) "F. Maintain a distance of 22 feet between the existing residence on Lot 2 and the proposed new residences on Lots 1 and 3. This is the neighborhood's average existing setback between residences based on the *Village Planning Department's Analysis of 1216 Henry Neighborhood Home Distances dated 10/16/15*," and (2) "G. The proposed two new single-family residences shall be limited to 2,500 square feet of FAR, including the garage, unless the garage does not count toward FAR because it is cellar or basement area excluded by subsection (2) of the definition of "floor area gross" in Section 3-42.3 of the Village Code. This restriction shall be incorporated into a Declaration, in a form acceptable to counsel to the Village to be recorded against the Property in the Westchester County Clerk's office." By Decision and Order dated February 7, 2017, the Supreme Court, Westchester County (Hon. Ann E. Minihan, Acting Supreme Court Justice) granted the Planning Board's motion and dismissed the Article 78 proceeding as premature and not ripe for adjudication ("February 7, 2017

WHEREAS, on November 28, 2016, upon recommendation of the Planning Board, the Village of Mamaroneck Board of Trustees enacted certain amendments to the Village Zoning Code (a) revising residential FAR throughout the Village; (b) amending the definition of "Floor Area Gross" to eliminate the 400 square foot exemption from FAR for garages in single and two family homes; and (c) redefining conditions relating to the development of corner lots; and

WHEREAS, as a result of these zoning amendments, the Project was no longer zoning compliant; and

WHEREAS, these zoning amendments addressed some, but not all, of the concerns articulated by the Planning Board in the June 2016 CND as justifications for imposing the two conditions challenged in the Article 78 proceeding; and

WHEREAS, subsequent to the enactment of the zoning changes and the February 7, 2017 Decision and Order, counsel for the Planning Board and the Applicant engaged in good faith negotiations to resolve the parties remaining differences; and

WHEREAS, counsel for the Planning Board and the Applicant memorialized the results of their negotiations in a Stipulation of Settlement which provided: (a) upon the Applicant's submission to the Planning Board of a revised subdivision application that is zoning compliant with the current Village Code and, in addition, complies with the requirements of certain amendments to be adopted by the Planning Board to the June 2016 CND which are more restrictive than the requirements of the Village Code as detailed below, the Planning Board has agreed to amend the June 2016 CND to provide for a maximum permitted floor area for the new houses on lots 1 and 3 of 2750 square feet and minimum separation distances between the houses on lots 1 and 2 and lots 2 and 3 of twenty (20) feet and sixteen (16) feet respectively ("Amended June 2016 CND"); and (b) the Applicant has agreed to withdraw its pending appeal of the instant Article 78 proceeding, subject to both the execution of the Stipulation of Settlement and the Planning Board's approval of the Amended June 2016 CND, and to forego further litigation specifically regarding the terms and conditions of the Amended June 2016 CND, provided that the Applicant's revised subdivision application receives subdivision approval from the Planning Board; and

WHEREAS, by resolution adopted September 13, 2017, the Planning Board approved the terms and conditions of the Stipulation of Settlement; and

WHEREAS, on September 19, 2017, the Stipulation of Settlement, duly executed by counsel for the Planning Board and the Applicant, was filed with the Supreme Court, Westchester County; and

WHEREAS, on or about September 29, 2017, the Applicant filed a revised subdivision application as provided for in the Stipulation of Settlement consisting of and as

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Decision and Order"). Subsequently, pursuant to a Stipulation of Settlement entered into between the parties (detailed below) the Applicant agreed to withdraw its pending appeal of the instant Article 78 proceeding.

thereafter amended to include the following plans:

Plans entitled "Proposed Subdivision 1216 Henry Avenue Village of Mamaroneck Westchester-New York" with plans prepared by Hudson Engineering and Consulting, PC (Michael F Stein, PE) with Drawing nos. C-1 (dated 1/7/14 and last updated on 9/12/17), C-2 (dated 1/7/14 and last updated 2/5/18), C-3 (dated 1/7/14 and last updated on 6/1/16), C-4 (dated 1/7/14 and last updated on 2/5/18), C-5 (dated 6/16/15 and last updated on 6/7/1[6]), C-6 (dated 5/14/15 and last updated on 2/5/18), SD-1 (dated 5/14/15 and last updated on 9/12/17); Survey prepared by George J. Mottarella, PE, LS dated 12/8/15 and last revised on 1/7/16; Landscape Summary for Proposed Subdivision 1216 Henry Avenue LLC prepared by A. Anthony Acocella, Landscape Architect, PC and last revised on 8/13/15; Stormwater Pollution Prevention Plan for the proposed subdivision prepared by Hudson Engineering and Consulting, PC with plans C-2, C-4 and C-6 last revised on 2/5/18 ("SWPPP") ("Revised Subdivision Application"); and

WHEREAS, by memorandum to the Planning Board dated October 10, 2017, the Building Inspector determined that the Revised Subdivision Application is zoning compliant with the current Village Code and, in addition, complies with the requirements of certain amendments to be adopted by the Planning Board to the June 2016 CND pursuant to the Stipulation of Settlement and described above which are more restrictive than the requirements of the Village Code; and

WHEREAS, the Amended June 2016 CND memorialized the limits on square footage of the houses to be built on Lots 1 and 3 of the proposed subdivision and the minimum separation distances required between the houses on Lots 1 and 2 and lots 2 and 3 of the proposed subdivision as set forth in the Stipulation of Settlement; and

WHEREAS, the Planning Board determined that revisions to the proposed subdivision made by the Applicant during the course of the Planning Board's review of the application and its potential adverse environmental impacts, together with the Planning Board's imposition of, and the Applicant's compliance with, the additional SEQRA conditions set forth in the Amended June 2016 CND, would mitigate those potential adverse environmental impacts; and

WHEREAS, the Amended June 2016 CND was adopted by the Planning Board by Resolution dated October 25, 2017 and confirmed, after the expiration of a thirty (30) day written comment period, by Resolution dated December 13, 2017; and

WHEREAS, thereafter the Planning Board referred the Applicant to the Commission to review consistency of the Revised Subdivision Application with the LWRP pursuant to Village Code §240-29; and

WHEREAS, the Applicant submitted an application for a consistency determination for the Revised Subdivision Application, including Coastal Assessment Form; among other

materials and documentation submitted to the Commission and appeared at Commission meetings held on February 21, 2018, March 22, 2018 and April 18, 2018; and

WHEREAS, during the Commission's proceedings it was demonstrated that a number of trees have been prematurely cut down at the Premises since the Applicant acquired the Premises and constructed a home on Lot 2 and the Applicant agreed to plant trees in addition to those depicted in the Landscape Plan to address tree replacement; and

WHEREAS, during the Commission's proceedings the Applicant agreed to implement a Dust Mitigation Protocol (dated April 9, 2018) during rock removal and construction; and

WHEREAS, the SWPPP requires the installation of a stormwater filtration system on Lot 1 (i.e. a Bayfilter or other stormwater filtration device) together with associated piping across each of the Lots for the benefit of all three of the Lots; and

WHEREAS, a draft Declaration for Construction, Maintenance and Inspection for Stormwater Management Facilities to be recorded against each of Lots 1, 2 and 3 prepared by the Village Engineer, Village Consulting Engineer and Village Land Use Counsel and reviewed and agreed to by the Applicant sets forth in detail the obligations of the owners of Lots 1, 2 and 3 to construct, maintain and inspect the stormwater management facilities on each of the Lots ("Draft Declaration"); and

WHEREAS, the SWPPP and Draft Declaration set forth the right but not the obligation of the Village to enter upon the Lots to inspect the stormwater management facilities, and upon the default of the lot owner(s), the right, but not the obligation to maintain any such stormwater management facilities at the sole cost and expense of the owners of Lots 1, 2 and 3 and has been amended to provide for joint and several liability among the lot owners and additional notification procedures among the lot owners; and

WHEREAS, on May 16, 2018, the Commission completed its review and evaluation of said Revised Subdivision Application, and after conferring with its consultants determined that the Revised Subdivision Application is consistent, to the maximum extent practicable, with policies of the LWRP and will not substantially hinder the achievement of any of the policies set forth in the LWRP with satisfaction of the following condition(s) required: (1.) The final Declaration for Construction, Maintenance and Inspection for Stormwater Management Facilities to be recorded against Lots 1, 2 and 3 shall not differ in material respect from the Draft Declaration which is annexed to this resolution; (2.) The Landscape Summary for the Project shall be amended consistent with the Applicant's proposal dated March 26, 2018 with the exception that the Flowering Pear is to be replaced with a non-invasive tree species. The one additional street tree to be planted along the Fifth Street row shall be planted in a location to be approved by the Village Landscape Consultant; (3.) The Applicant's Dust Mitigation Protocol dated April 9, 2018 shall be implemented during rock removal and construction and Rock Removal Building Permit issuance for construction on Lots 1, 2, and 3 shall require mandatory adherence to such protocol unless the Village adopts a more stringent standard; (4.) Prior to approval of the SWPPP confirmation by the SMO (Village Engineer) that the Village's Stormwater Management Infrastructure serving the Premises is capable of accommodating the

run-off flows generated; and (5.) The failure to observe and perform the above conditions 1-4 shall render this resolution invalid; and

WHEREAS, in its May 16<sup>th</sup> resolution the Commission also recommended that the Planning Board consider and impose, as appropriate, certain conditions on approval of the final plat to address potential impacts of rock removal proposed for the site; and

WHEREAS, Village Landscape Consultant Susan Oakley submitted a memorandum to the Planning Board dated June 8, 2018 with recommendations to specifically address Applicant's proposal dated March 26, 2018 and approval condition 2 of the Commission's May 16<sup>th</sup> resolution in connection with proposed landscaping for the site; and

WHEREAS, a new legally noticed public hearing on the preliminary plat was opened by the Planning Board on June 13, 2018 and continued on June 27, 2018; and

WHEREAS, in addition to considering comments received at the public hearings, the Planning Board received and reviewed written communications from neighbors and interested parties; and

WHEREAS, on June 27, 2018 the Building Inspector and Village Planner submitted a memorandum to the Planning Board outlining Village Code treatment of rock removal and standard Village practices for projects involving rock removal which was discussed at the June 27, 2018 Planning Board meeting; and

WHEREAS, the Village Consulting Engineer has evaluated and approved the Applicant's SWPPP and stormwater management facilities and has provided information to the Planning Board at its public meetings on the Application; and

WHEREAS, the Planning Board is familiar with the Premises and all aspects of the proposed action and has been satisfied that the subdivision plat will conform to the requirements of the Village Code, Chapter A348; and

WHEREAS, the public hearing on the preliminary plat was closed on June 27, 2018; and

WHEREAS, the Planning Board has completed its review and evaluation of the application and approved a preliminary plat on July 25, 2018 and has fully considered the relevant factors set forth in the Village Code and determined that such standards and criteria have been satisfied; and

WHEREAS, the applicant submitted a revised final plat prepared by George J. Motarella PE, dated December 18, 2018; and

WHEREAS, the Planning Board has completed its review and evaluation of the final plat dated December 18, 2018 and has fully considered the relevant factors set forth in the Village Code and determined that such standards and criteria have been satisfied; and

WHEREAS, on January 9, 2019 the Planning Board found the final plat to be in substantial agreement with the preliminary plat.

NOW, THEREFORE BE IT RESOLVED, that the Revised Subdivision Application for approval of a final subdivision plat with plans as detailed on p.4 of this resolution to create three zoning compliant lots for the property located at 1216 Henry Avenue, is hereby conditionally approved subject to compliance with the following conditions which, unless otherwise specified, must be satisfied prior to the Planning Board Chairman's signing of the final linen:

- (a) The preparation and submission to the Planning Board of a plat in final form within 180 days of the date of the filing of this resolution granting conditional final subdivision plat approval, which shall be accompanied by the items of information enumerated in Section A348-10 of the Village of Mamaroneck Subdivision Regulations. One or more extensions may be granted by the Planning Board provided that the Applicant makes an application to the Planning Board not less than thirty (30) days prior to the expiration of the original or subsequent approvals. A request for an extension of time to submit a final plat must include information regarding the date that the Planning Board granted final subdivision approval and a statement as to whether any prior application for an extension of time has been made by the Application and the action taken by the Planning Board on such application.
- (b) The Applicant shall secure approval of the water supply and wastewater disposal system by the Westchester County Department of Health.
- (c) The Applicant shall satisfy all such additional conditions of final subdivision approval as the Planning Board may deem appropriate, specifically:
- (d) The Applicant shall pay all outstanding consultant review fees in connection with the review of the application.
- (e) The Planning Board having determined that the need for recreational facilities created by this subdivision cannot be met on the property, payment of a recreation fee of \$17,000 for the two newly created lots pursuant to Section A348-13 of the Village Code in accordance with the subdivision recreation fee schedule established under Chapter A347, Fees in the Village Code.
- (f) A Declaration for Construction, Maintenance and Inspection for Stormwater Management Facilities shall be recorded against Lots 1, 2 and 3 which shall not differ in material respect from the Draft Declaration which is annexed to the Commission's consistency resolution dated May 16, 2018.
- (g) If the Applicant, during the course of construction, encounters such conditions as flood areas, underground water, soft or silty areas, improper drainage, or any other unusual circumstances or conditions that were not foreseen in the original planning, the Applicant shall report same to the Village Engineer. The Applicant may submit, if he so desires, his recommendations as to the special treatment to be given such areas to secure adequate, permanent and satisfactory construction. The Village Engineer, without unnecessary delay shall investigate the condition or conditions, and shall either approve the Applicant's

recommendations to correct the conditions, order a modification thereof, or issue his own specifications for the correction of the conditions. In the event of the Applicant's disagreement with the decision of the Village Engineer, or in the event of a significant change resulting to the site plan or any change that involves the wetland regulated areas, the matter shall be decided by the Planning Board. Any such conditions observed by the Planning Board or its agents shall be similarly treated.

(h) Submission of Westchester Joint Water Works "Will Serve" letter stating that they have the ability to accommodate the additional water supply demand generated from the proposed development.

(i) Submission of Village Engineer "Will Serve" letter stating that the Village of Mamaroneck sanitary sewer system has the ability to accommodate the additional waste water generated from the proposed development.

(j) The Landscape Summary shall be amended to reflect comments of the Village Landscape Architect (June 8, 2018 memorandum) which shall be submitted to the Planning Board prior to approval of the final plat.

(k) Any rock removal at the Premises shall require adherence to the following protocols: (1) there shall be no blasting, (2) the Applicant's Dust Mitigation Protocol dated April 9, 2018 shall be implemented during rock removal activities, (3) at least four weeks prior to the commencement of any rock removal activities at the Premises the Applicant shall advise the Building Department of such planned activities, with the Building Department providing reasonable notice of rock removal activities to neighboring property owners within 200 feet of the Premises, and (4) rock removal schedule as set forth in Condition E of the Amended June 2016 CND. Compliance with all applicable Village Code requirements governing rock removal and noise, including, but not limited to, Chapter 120, Chapter 172 and Chapter 254 of the Village Code and compliance with any other applicable statutes and regulations shall be required.

(l) The submission of a SWPPP for a land development activity consistent with the requirements of Chapter 294 of the Village Code.

(m) Conditions of the Amended June 2016 CND including the following:

A. The Applicant shall provide an additional underdrain to the stormwater system on Lot 1 by installing an underdrain below the perimeter piping which carries overflows from all three lots into the new catch basin and the Village's stormwater conveyance system located at the end of Lot I on Henry Avenue. This will be reviewed and approved by the Consulting Village Engineer and will provide an additional engineering safeguard for the maximum performance of the stormwater management system.

B. The Applicant shall record in the Westchester County Clerk's office a Declaration against each of the three lots in the subdivision, in form satisfactory to Village counsel and the Consulting Village Engineer, for

the construction, inspection and maintenance of the stormwater system on each of the lots in accordance with the requirements of an approved stormwater pollution prevention plan.

- C. The Applicant shall provide a performance bond or other security acceptable to the Village Board, in an amount to be determined by the Village Engineer, and in a form satisfactory to Village counsel, to ensure the full and faithful completion of the stormwater improvements on each lot and off-site stormwater/catch basin improvements. Said bond shall remain in effect for a period of not less than one year from the date of final acceptance or other certification that the improvements have been constructed in accordance with the approved plans and specifications and that a one-year inspection has been conducted and the improvements have been found to be acceptable to the Village of Mamaroneck.
- D. The Applicant shall provide a maintenance bond or other suitable guarantee, in an amount to be determined by the Village Engineer and in a form satisfactory to Village counsel, sufficient to ensure proper operation and maintenance of the stormwater improvements post-construction.
- E. Applicant shall limit rock removal and associated trucking activities to a 9am-5pm schedule from Monday through Friday. No such activities shall be permitted on weekends and national holidays.
- F. Maintain a distance of 20 feet between the existing residence on Lot 2 and the proposed new residence on Lot 1 and maintain a distance of 16 feet between the existing residence on Lot 2 and the proposed new residence on Lot 3. This is consistent with the neighborhood's average existing setback between residences based on the *Village Planning Department's Analysis of 1216 Henry Neighborhood Home Distances* dated 10/16/15.
- G. The proposed two new single family residences shall be limited to 2750 square feet of FAR including the garage, unless the garage does not count towards FAR because it is cellar or basement area excluded by subsection (2) of the definition of "Floor Area Gross" in Section 342-3 of the Village Code. This restriction shall be incorporated into a Declaration, in a form acceptable to counsel to the Village, to be recorded against the property in the Westchester County Clerk's office.

(n) Prior to the issuance of a building permit for any of the lots, the Applicant shall furnish to Village Counsel and file with the Village Clerk and Building Department, a copy of all documents required to be recorded as a condition of this approval and written evidence of the submission of such documents to the County Clerk's Office for recording.

(o) The applicant shall not utilize gas-powered generators for power supply on the job site during construction. The applicant shall utilize a temporary power pole and meter for distribution to the site.

AND BE IT FURTHER RESOLVED, that if said conditions be not fully complied with within the above time limit, the said subdivision plat shall be disapproved.

VOTE:

Ayes:  
Nays:  
Absent:  
Abstained:

PLANNING BOARD  
Village of Mamaroneck

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John Verni, Chairman

Date: January 23, 2019