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REPLY TO:

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July 3, 2025

Honorable Chair Robin Kramer and
Members of the Zoning Board
Village of Mamaroneck
169 Mount Pleasant Avenue
Mamaroneck, NY 10543

Re: Appeal of Issuance of Building Permit
1011 Greacen Point Road, Mamaroneck, NY

Honorable Chair and Members of the Zoning Board:

We represent Francesca Ortenzio, MD and Jakub "Kuba" Tatka, MD ("Appellants"), the owners of the property at 1019 Greacen Point Road, and we write with regard to the pending appeal ("Appeal") previously filed on December 16, 2024 appealing the prior issuance of the building permit ("Building Permit") to the developer ("Developer") of the property located at 1011 Greacen Point Road ("Property").

As you may be aware, on June 11, 2025, the Mamaroneck Planning Board voted in favor of tabling the review of the Site Plan application until the Zoning Board acted on the Appeal. A video of the Planning Board meeting may be found at: <https://lmcmmedia.org/show/village-of-mamaroneck-planning-board-meeting-6-11-25/>.

1. We respectfully amend the Appeal for the additional reasons set forth herein. We request that the Zoning Board issue a determination that the following variances are required: a) floor area for the actual floor area, which was previously miscalculated; b) setback variances for structures in the side yard setbacks including the wall, barrier, stairs, planters, lighting fixtures, propane tanks and stormwater management structures; c) the number of stories, being 3.5 stories, and overall house height; and d) wall and barrier height.
2. We respectfully request that that the Zoning Board of Appeals ("ZBA") re-open the hearing and annul the FAR variance previously granted on April 16, 2024, Application ZON-24-0002 ("Prior FAR Variance") based on new evidence pursuant to New York State Village Law Section 7-712-a(12).

In furtherance of the foregoing, enclosed please find six (6) copies of the following documents:

1. Exhibit A: Applicant Disclosure Statement by Appellants;
2. Exhibit B: April 21, 2025 letter (“County Planning Board Letter”) from the Westchester County Planning Board confirming that the NYS DEC wetlands have been updated and a DEC Jurisdictional Determination should be submitted, recommending shifting the structure to minimize disturbance to the Village wetland buffer, changing the stormwater management system, and the preserving the greatest number of trees possible;
3. Exhibit C¹: Letter from Counsel for Appellants to the Planning Board dated June 9, 2025, with the following exhibits:
 - a. Sub-Exhibit 1: Copy of the FOIL request submitted on May 23, 2025 and the Village’s response to same;
 - b. Sub-Exhibit 2: Copies of emails discussing a private, *ex parte*, non-public meeting held with the Developer and its representatives, the Chairs of the Planning Board and the Harbor and Coastal Zone Management Commission (“HCZMC”), a member of the Board of Architectural Review (“BAR”), and the Village consulting engineer;
 - c. Sub-Exhibit 3: Copies of emails showing other *ex parte* discussions and deviations from normal procedures to help the Developer expedite the process outside of the public eye;
 - d. Sub-Exhibit 4: Request for Determination (“Request for Determination”) to Building Inspector Scott Ransom dated May 16, 2025, for which no response has been received and we have been informed none is forthcoming, with the following exhibits:
 - i. Sub-Sub-Exhibit 1: Plans marked to show areas not included in the floor area calculation upon which the Prior FAR Variance was based;
 - ii. Sub-Sub-Exhibit 2: Letter from the Developer’s engineer admitting substantive errors in the plans previously approved by the ZBA, Planning Board, HCZMC, and BAR;
 - iii. Sub-Sub-Exhibit 3: Plans marked to highlight some of the structures violating the setback requirements;

¹ References to exhibits, sub-exhibits, and sub-sub-exhibits shall be in the style of Exhibit [Exhibit]-[Sub-Exhibit]-[Sub-Sub-Exhibit]. For example, Exhibit C-4-2 shall refer to Exhibit C, Sub-Exhibit 4, Sub-Sub-Exhibit 2.

- iv. Sub-Sub-Exhibit 4: Appeal of Henderson Case 2A-2007 (“ZBA Henderson Determination”), in which the ZBA found that walls and other structures are not exempt from setback requirements;
 - v. Sub-Sub-Exhibit 5: Annotated diagram showing cumulative height of wall/fence construct with fill;
 - vi. Sub-Sub-Exhibit 6: Average Grade Calculation with an incorrect stated elevation value submitted by the Developer, which is not signed and sealed by an engineer;
 - vii. Sub-Sub-Exhibit 7: Chart detailing the correct pre-construction elevation/average existing grade and using the same technique to determine the post-construction elevation;
 - viii. Sub-Sub-Exhibit 8: Series of diagrams and annotated plans detailing grade and height issues;
 - e. Sub-Exhibit 5: Email from the Land Use Coordinator informing the Developer’s attorney of the incorrect hearing time on the public notice sign posted at the Property, which at the time of the Request for Determination had not been corrected;
 - f. Sub-Exhibit 6: Letter of Positive Jurisdiction from the New York State Department of Environmental Conservation (“DEC”) stating that there are freshwater wetlands and/or freshwater-wetland-adjacent areas regulated by the DEC at the Property;
4. Exhibit D: Opposition to Site Plan Application letter (“Opposition Letter”) to the Planning Board dated February 12, 2025, with the following sub-exhibits:
- a. Sub-Exhibit 1: ZBA resolution dated April 4, 2024, in which the ZBA rejected the Developer’s claim that the project was entitled to additional floor area based on the cumulative size of the Property and an additional lot on which no portion of the project was located;
 - b. Sub-Exhibit 2: Memorandum from John Kellard, PE, dated February 12, 2025 which suggested modifications to the project;
 - c. Sub-Exhibit 3: Series of wall designs submitted by the Developer after the previous site plan approval, annotated in red to show the evolution of the wall/fence;

- d. Sub-Exhibit 4: Letter from Andrzej Riess, MD, dated January 17, 2025, detailing an incident at 931 Fairway Lane, Mamaroneck, in which a neighbor accidentally drove his car off his driveway and into Dr. Riess' pool, narrowly avoiding hitting three people on his property;
 - e. Sub-Exhibit 5: Sketch diagram and photographs showing the viewpoint from Francesca's and Kuba's home at 1019 Greacen Point;
 - f. Sub-Exhibit 6: Partial list of prior plan errors, miscalculations, and incorrect testimony;
 - g. Sub-Exhibit 7: Flood Plain Development Permit Application submitted by the Developer, which states that the "Golf Simulator" will be below the alleged 13-foot base flood elevation;
 - h. Sub-Exhibit 8: CULTEC FAQ sheet, which recommends there be "at least 10 feet of horizontal separation between a CULTEC system and any foundation, retaining wall, or other structural member";
 - i. Sub-Exhibit 9: Photographs of machinery and dilapidated fencing that had been left on the Property in the wetland buffer even after the building permit was revoked;
 - j. Sub-Exhibit 10: Detailed list of Code requirements which we respectfully requested the Planning Board ensure are complied with and issues which we requested the Planning Board address;
 - k. Sub-Exhibit 11: Objection letter and petition signed by members of the community;
 - l. Sub-Exhibit 12: Photograph of the public notice sign with an incorrect hearing time posted at the Property, which at the time of the Opposition Letter had not been corrected and upon information and belief still has not been corrected more than four months later;
- 5. Exhibit E: Most recent plans submitted by the Developer, upon information and belief.
 - 6. Exhibit F: Letters withdrawing prior support for the development from the neighbors.

I. Building Inspector Appeal:

As previously noted, the current plan includes a wall that we believe fails to meet the setback and height requirements. See December 16, 2024 filing. Since the Appeal was filed, the

Developer has revised the plans numerous times. Attached as Exhibit E are the most recent plans filed by the developer, upon information and belief.

On May 16, 2025, we filed a Request for Determination with the Building Inspector. See Exhibit C-4. Despite our following up, the Building Inspector has not provided a reply.

The Request for Determination filed with the Building Inspector includes the following points:

1. A floor area variance is required because the developer significantly undercounted the actual floor area.
2. Setback variances are required for all structures in the side yard setbacks.
3. Variances are required for the number of stories and overall house height.
4. A variance is required for the wall and barrier height.
5. BAR approval is required.

In the interest of brevity, we respectfully refer the ZBA to Exhibit C-4 attached hereto for a fulsome explanation as to the basis for each required variance and approval as noted above.

Section 342-90 of the Village Code states:

The Board shall hear and decide appeals from and review from any order, requirement, decision, interpretation or determination made by any administrative official or board charged with the implementation or enforcement of this chapter and may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from **and make such determination and order as, in its opinion, ought to be made in the premises.**

(Emphasis added).

Moreover, New York State Village Law, Section 7-712-b states:

Orders, requirements, decisions, interpretations, determinations. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination **as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.**

(Emphasis added)

In the ZBA Henderson Determination, attached as Exhibit C-4-4, the ZBA already correctly held that it has the power to modify the prior determination of the Building Inspector. Thus, this Appeal is ripe and the Building Inspector's determination may be modified as the Zoning Board determines in its opinion, including the power to enforce the Zoning Code and require variances where required under the Village Code as it relates to the Property.

The ZBA Henderson Determination also correctly holds that the ZBA has the authority to independently calculate the correct floor area to determine whether the house meets the Village Code floor area ratio requirements. We contend that the house does not meet the floor area ratio requirements as detailed in Exhibit C-4. The Zoning Board held that the Zoning Code provisions must be "literally" enforced and that "if the Building Inspector or others believe the Zoning Code does not properly address the circumstances . . ." they should petition the Village Board to amend the Zoning Code.

Most importantly, the Zoning Board correctly held in the ZBA Henderson Determination that the only structures permitted in the required yards are "the ordinary projection of the windowsills, bay windows, belt courses, cornices, eaves, exterior stairs and other architectural features, but those features must not project more than three feet into any required yard and must not be closer than five feet to the property line." The Zoning Board previously confirmed that the Village Code does not permit stairs, platforms, walls and structures used as planters within the yards. Similarly the Zoning Code does not permit the wall, barrier, stairs, planters, lighting fixtures, propane tanks and stormwater management structures in the required 25-foot side yard.

The Zoning Board concluded that:

Several People appeared to argue that this is a common practice. Whether or not this is a common practice our authority is limited to applying the Zoning Code as written and not how people would like it written. Steps, platforms, walls and structures used as planters do not fall within the exceptions established in section 342-14 for projecting architectural features. Therefore to the extent those structures encroach into any of the required yards we find that the building permit was not properly issued.

Here, numerous structures encroach into the required side yards and are not within the exceptions set forth for architectural features. Accordingly, we respectfully request that the Zoning Board determine that a variance is required for each such structure.

II. The ZBA Should Re-open the Hearing and Annul the Prior FAR Variance:

On April 16, 2024, the ZBA issued the Prior FAR Variance. However, that variance was issued upon false information and there is new evidence such that the ZBA should rehear the application annul the Prior FAR Variance.

New York State Village Law Section 7-712-a(12) states as follows:

Rehearing. A motion for the zoning board of appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard may be made by any member of the board. A unanimous vote of all members of the board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

A zoning board of appeals may entertain an application for a rehearing when new facts are presented that change the aspects of the case. *See Hoerner v. Tormey*, 262 N.Y.S.2d 271 (2d Dep't 1965). In addition, it is settled law that there can be a new application and determination by a zoning board when "new plans materially change the aspects of the case[.]" *Pettit v. Board of Appeals*, 554 N.Y.S.2d 723, 724 (2d Dep't 1990). It is for the Board to determine whether there are changed circumstances sufficient to warrant a rehearing. *Id.* "While the determination to rehear an application is within the discretion of a zoning board, and a zoning board may refuse to rehear an application in the absence of new facts or a change of circumstances (citations omitted), even when the second application is brought by a different applicant (citation omitted), a zoning board may not refuse to consider an application with respect to which there has been a substantial change of circumstances since the prior denial." *Matter of Moore v. Town of Islip Zoning Bd. of Appeals*, 813 N.Y.S.2d 542 (2d Dep't 2006).

Here there are significant new facts and changed circumstances, including:

1. The Prior FAR Variance was based on incorrect plans riddled with errors. See letter from the Developer's engineer admitting substantive errors in the plans previously approved by the ZBA at Exhibit C-4-2.
2. The original plans failed to disclose the scope and location of the tremendous retaining wall and failed to include the barrier on top of the wall. The wall and barrier are necessary based on the significantly oversized house. Had this wall and barrier been disclosed as part of the Prior FAR Variance application, the results should have been far different.
3. The development requires numerous additional variances and approvals as detailed in Point I above, which were not addressed previously.
4. The overall plans have changed significantly. See Exhibit E.
5. The support for the development has been withdrawn by the neighbors. See Exhibit F.
6. The County Planning Board has recommended numerous changes. See Exhibit A.

7. The DEC has now indicated that there are freshwater wetlands in close proximity to the development, and a DEC freshwater wetlands permit is likely required when this was not the case when the ZBA issued the Prior FAR Variance.

Thank you for your consideration, and we look forward to the required public hearing on the Appeal on July 24, 2025.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Robert D. Gaudio', written over a horizontal line.

Robert D. Gaudio

Exhibits

RDG/cae

cc: Scott Ransom, Building Inspector
Kathleen Gill, Village Manager
Mayor Sharon Torres and the Board of Trustees
Village of Mamaroneck Planning Board