



Village/Town of Mount Kisco Building Department
104 Main Street
Mount Kisco, New York 10549
Ph. (914) 864-0019-fax (914) 864-1085

September 23, 2021

Anthony Giardina
P.O. Box 158
Mount Kisco, New York 10549

Re: Permit Denial Letter
79 North Moger Avenue
Mount Kisco, NY Tax ID: 69.73-3-5
Building Permit Application to convert the second –
floor storage of an existing garage into an efficiency apartment

Dear Mr. Giardina:

We received a Building Permit application to “Legalize an existing efficiency apartment located on the second floor of an accessory building.” Proposed is the conversion of the second floor storage area into a 450 +/- sf efficiency apartment.

Unfortunately, we are unable to issue a Building Permit and reject this application for the following reason(s):

1. Pursuant to Chapter 110. Zoning Article III. District Regulations § 110-12. RM-10 Moderate-Density Multifamily District (G) Other customary accessory uses, buildings or structures, subject to the applicable provisions of Article V hereof, such as playhouses, greenhouses, cabanas, trash containers, outdoor air conditioners and the like, provided that said uses and buildings or structures are incidental to the principal use and further provided that said uses shall not include any activity conducted as a business or as a separate residence. A separate residence is proposed and therefore; a variance issued by the Zoning Board of Appeals from this section is required.
2. Pursuant to §110-31 Supplementary development regulations. A. Lot for every building. Except for designed multistructure developments, such as but not limited to shopping centers, office parks or multifamily or townhouse developments, not more than one principal building hereinafter erected shall be permitted on any lot in the Village of Mount Kisco. The conversion of the garage thereby creates a second principle structure and therefore; a variance issued by the Zoning Board of Appeals from this section is required.

In addition, we note the following:

3. Three parking spaces are located adjacent and south of the garage, pursuant to Chapter 110. Zoning Article IV. Off-Street Parking and Loading Regulations § 110-28. Off-

street parking. A. General parking requirements. (1) All off-street parking shall be subject to the requirements set forth in this article. D. Ingress and egress to parking areas. (2) No parking space shall be designed so as to require a vehicle to back out onto a public street or sidewalk in order to vacate the space. The proposed parking areas require that the cars back out onto Carpenter Avenue and therefore; a variance issued by the Zoning Board of Appeals from this section is required.

Note* All parking spaces must be designed in accordance with the Village Parking Standards for residences measuring 9 ft. wide by 18.5 ft. long.

History

The original building was constructed in the late 1800's on a two-front – 12,803 sf lot that extends through, and fronts on two streets – N. Moger and Carpenter Avenue. On September 11, 1940, a building permit (permit No. 762) was issued for alterations and an addition of a new dormer located on the third floor of the building. Tax card(s) dated September 1954 and 1966 indicate a four (4) family conversion on three levels, and a four (4) car garage.

We looked back at the previous codes to determine if there were any parking requirements at that time. Pursuant to Building Zone Ordinance dated February 15, 1954, Section 10. Garages, stables and service stations (d) Garages in Residence "C" Districts. In Residence "C" districts, private garage space may be provided for three motor vehicles on any adequate lot; and space for one additional motor vehicle for each 1,250 sf by which the area of the lot exceeds 1,250 sf; but if space is provided for more than 6 motor vehicles, the total number of vehicles for which space is provided shall not exceed the number of families for which the principal building is designed. Although not required, we are assuming, given the current two-space code requirement, that the four (4) car garage was constructed to provide a minimum of one parking space for each of the existing dwelling units.

Last, Planning Board approval is also required.

Should you have any questions, please feel free to contact me.

Sincerely yours,



Peter J. Miley
Building Inspector

Date: 11.16.21
Fee: \$750

Case No.: 21-2D
Date Filed: 10.26.21

RECEIVED Village/Town of Mount Kisco
Municipal Building
OCT 26 2021 Main Street, Mt. Kisco, NY 10549

Zoning Board of Appeals
Village/Town of Mount Kisco

**Zoning Board of Appeals
Application**

Appellant: Anthony Giardina Jr. and Angela Giardina as Trustees of the Giardina Living Trust
Address: PO Box 158, Mount Kisco, NY 10549
Address of subject property (if different): 79 North Moger Avenue, Mount Kisco, NY 10549

Appellant's relationship to subject property: X Owner _____ Lessee _____ Other _____

Property owner (if different): As above
Address: _____

TO THE CHAIRMAN, ZONING BOARD OF APPEALS: An appeal is hereby taken
from the decision of the Building Inspector, Peter J. Miley
dated September 23, 2021. Application is hereby made for the following:

X Variation or X Interpretation of Sections 110-12 G; 110-31 A; and 110-28 (1) and (
of the Code of the Village/Town of Mount Kisco,

to permit the: _____ Erection; _____ Alteration; _____ Conversion; _____ Maintenance
XX Legalization of pre-existing efficiency apartment

_____ in accordance with plans filed on (date) August 9, 2021
for Property ID # 69-73-3-5 located in the RM-10 Zoning District.
The subject premises is situated on the East side of (street) North Moger
Avenue in the Village/Town of Mount Kisco, County of Westchester, NY.
Does property face on two different public streets? Yes/No Yes
(If on two streets, give both street names) North Moger Avenue and Carpenter Avenue

Type of Variance sought: _____ Use X Area _____

Is the appellant before the Planning Board of the Village of Mount Kisco with regard to this property? not presently

Is there an approved site plan for this property? No in connection with a
Proposed or X Existing building; erected (yr.) circa 1870

Size of Lot: 100 feet wide 126.36 feet deep Area 12,803 SF; 2939 acres

Size of Building: at street level see plans feet wide see plans feet deep

Height of building: 2 1/2 stories Present use of building: residential

Does this building contain a nonconforming use? No Please identify and explain: _____

Is this building classified as a non-complying use? No Please identify and explain: _____

Has any previous application or appeal been filed with this Board for these premises?
Yes/No? No

Was a variance ever granted for this property? No If so, please identify and explain: _____

Are there any violations pending against this property? yes If so, please identify and explain: Lack of certificate of occupancy for apartment (All other violations addressed)

Has a Work Stop Order or Appearance Ticket been served relative to this matter?
X Yes or No Date of Issue: April 10, 2019

Have you inquired of the Village Clerk whether there is a petition pending to change the subject zoning district or regulations? yes

I submit the following attached documents, drawings, photographs and any other items listed as evidence and support and to be part of this application:

The following items **MUST** be submitted:

- a) Attached hereto is a copy of the order or decision (Notice of Denial) issued by the Building Inspector or duly authorized administrative official issued on September 23, 2021 upon which this application is based.
 - b) Copy of notice to the administrative official that I have appealed, setting forth the grounds of appeal and have requested the application to be scheduled for a public hearing.
 - c) A typewritten statement of the principal points (facts and circumstances) on which I base my application with a description of the proposed work.
 - d) Ten (10) sets of site plans, plat or as-built survey drawings professionally signed and sealed (as may be required).
 - e) A block diagram with street names, block and lot numbers, and street frontage showing all property affected within 300' of the subject property, with a North point of the compass indicated.
 - f) A full list of names and addresses of the owners of all property shown on the above noted block diagram that lie within or tangent to the 300' radius from the subject property.
 - g) A copy of the Public Notice for the public hearing of this application.
 - h) A sworn Affidavit of Mailing, duly notarized, that a true copy of said Public Notice has been sent by mail to all property owners within 300 feet of this premises at least 10 days prior to the public hearing.
- NOTE: APPLICANT MUST CAUSE A TRUE COPY OF THE PUBLIC NOTICE TO BE PUBLISHED IN THE OFFICIAL NEWSPAPER OF THE VILLAGE AT LEAST 15 DAYS PRIOR TO THE PUBLIC HEARING.**
- i) A true copy of the filed deed and/or signed lease or contract for the use of the subject property.
 - *j) At least two sets of unmounted photographs, 4" by 6" in size, showing actual conditions on both sides of street, between intersecting streets. Print street names and mark premises in question.
 - *k) A floor plan of the subject building with all the necessary measurements.
 - *l) A longitudinal section of the subject building and heights marked thereon as well as front elevations.

*** Optional - As Needed**

I hereby depose & say that all the above statements and the statements contained in the papers submitted herewith are true.

(Appellant to sign here)
Anthony Giardina as Trustee of the Giardina Living Trust

Sworn to before me this day of: October, 2021

Notary Public, Westchester, County NY

SELIKA E MURCHISON LISCHKE
Notary Public - State of New York
NO. 01MU6184897
Qualified in Putnam County
My Commission Expires Apr 7, 2024

[TO BE COMPLETED IF APPELLANT IS NOT THE PROPERTY OWNER IN FEE]

State of New York }
County of Westchester } ss

Being duly sworn, deposes and say that he resides at _____ in the County of Westchester, in the State of New York, that he is the owner in fee of all that certain lot, piece or parcel of land situated, lying and being in the Village of Mount Kisco, County of Westchester aforesaid and known and designated as number _____ and that he hereby authorized Anthony Ga to make the annexed application in his behalf and that the statements contained in said application are true.

(sign here)

CHARLES V. MARTABANO
Attorney at Law

9 Mekeel Street
Katonah, New York 10536
cmartabano@gmail.com
(914) 242-6200 Telephone
(914) 242-3291 Facsimile
(914) 760-9241 Cell

October 26, 2021
RECEIVED

OCT 26 2021

Zoning Board of Appeals
Village/Town of Mount Kisco

VIA HAND DELIVERY
Michelle Russo, Secretary
Zoning Board of Appeals
Village of Mt. Kisco
104 Main Street
Mt. Kisco, New York 10549

Re: Application of Anthony Giardina Jr .and Angela Giardina
as Trustees of the Giardina Living Trust
Premises known as 79 North Moger Avenue, Mount Kisco New
York; Tax ID Number: 69.73-3-5

Dear Michelle:

In connection with the above referenced application, I herewith enclose the following:

1. Ten (10) copies of completed, executed and notarized application;
2. Ten (10) copies of the deed to the premises;
3. Ten (10) copies of my clients' Notice of Appeal;
4. Ten (10) copies of the typewritten full statement by the owners of the principal points upon which the application is based;
5. Ten (10) copies of a letter from the undersigned regarding strict construction of zoning codes;
6. Ten (10) copies of a copy of the block diagram provided by the Village for notice purposes;
7. Ten (10) copies of a full list of the names and addresses of owners of all property shown on the block diagram located within 300 feet of the subject property;
8. Ten (10) copies of the Public Notice;
9. My client's check in the amount of \$750 representing the application fee.

In addition to the foregoing, we are delivering herewith ten (10) sets of my client's site plan.

I have arranged for the publication of the public notice and I am awaiting advice from LOHUD as to whether the affidavit of publication will be delivered directly to you or to me in which case, I will subsequently provide it to you. When the public notices are served by mail, an appropriate affidavit will be provided to you. If you have any questions with respect to the foregoing or the enclosed, please do not hesitate to contact me.

Yours very truly,

A handwritten signature in dark ink, appearing to be 'C. Martabano', written over the closing 'truly,'.

Charles V. Martabano

cc: Anthony and Angela Giardina

CHARLES V. MARTABANO
Attorney at Law

9 Mekeel Street
Katonah, New York 10536
cmartabano@gmail.com
(914) 242-6200 Telephone
(914) 242-3291 Facsimile
(914) 760-9241 Cell

October 26, 2021

VIA HAND DELIVERY
Chairman Harold Boxer and
Members of the Zoning Board of Appeals
Village of Mt. Kisco
104 Main Street
Mt. Kisco, New York 10549

RECEIVED

OCT 26 2021

Zoning Board of Appeals
Village/Town of Mount Kisco

Re: Application of Giardina Living Trust
Premises Known as 79 North Moger Avenue, Mount Kisco, New York
Section 69.73 Block 3 Lot 5

Dear Chairman Boxer and Members of the Zoning Board of Appeals:

As referenced in the Owner's Statement in support of their request for interpretations or, in the alternative, for a variance of the sections cited in the Denial Letter issued by the Building Inspector and referenced in the public notice, I wanted to provide to your Board some of the caselaw regarding the interpretation of zoning codes. This is of particular import with respect to the owner's application as your Board is being requested to interpret the Building Inspector's application of regulations to structures which have been in existence since approximately 1870 and uses which have been in existence for many decades predating the existing regulations.

As I am certain that all of you are aware, decisional law of the State of New York is such as to require that zoning codes or regulations be construed strictly against the drafter (the municipality) and in favor of the property owner with any ambiguity to be resolved in favor of the property owner. The leading case on the proper manner of interpretation of zoning codes was decided by the Court of Appeals in *Allen v. Adami* 39 N.Y.2d 275 (1976). In that case, the municipality sought to "read into the zoning code" a condition which did not exist in the actual verbiage of the applicable code. In striking down the interpretation urged by the municipality and affirmatively stating that had the municipality desired to impose such a condition, it could easily have done so, the Court of Appeals held:

Since zoning regulations are in derogation of the common law, *they must be strictly construed against the municipality which has enacted and seeks to enforce them.* (Citations omitted) *Any ambiguity in the language used in such regulations must be resolved in favor of the property owner.* (Citation omitted.)

(Emphasis added)

This case therefore stands for the proposition that zoning regulations must be interpreted and applied as drafted, and cannot be “extended” or “expanded” to apply to situations not contemplated by the language of the regulation as strictly construed, which we believe to be particularly important with respect to the current application.

Subsequent to the issuance of the Court’s decision in *Allen v. Adami, supra*, the Court of Appeals consistently adhered to the principle of strict construction of zoning codes. For example, in *FGL & L Property Corp. v. City of Rye*, 66 N.Y.2d 111 (1985), the Court stated:

Zoning laws are to be given a strict construction because they are in derogation of common-law rights (*citations omitted*).

Similarly, in *City of New York v. Les Hommes*, 94 N.Y.2d 267 (1999), the Court of Appeals held:

The cases guiding our analysis in this area require that we show a healthy respect for the plain language employed and that it be construed in favor of the property owner and against the municipality which adopted and seeks to enforce it (*citations omitted*).

For decades, Courts have consistently adhered to the holding of *Allen v. Adami*. The Appellate Division for the Second Department has been particularly active in this respect and clearly and consistently adheres to the doctrine of strict construction of zoning codes against a municipality with ambiguity resolution in favor of the property owner. For example, in *Sposato v. Zoning Bd. Of Appeals of Village of Pelham*, 287 A.D.2d 639 (2nd Dept, 2001) the Appellate Division stated:

Zoning Codes, being in derogation of the common law, must be strictly construed against the enacting municipality (*citation omitted*). Ambiguities in a zoning ordinance must be resolved in favor of the property owner (*Citation omitted*).

See also *Barkus v. Kern*, 160 A.D.2d 694 (2nd Dept. 1990) “(s)ince zoning regulations are in derogation of the common law, they must be strictly construed against the municipality which has enacted and seeks to enforce them and any ambiguity in the language used in such regulations must be resolved in favor of the property owner”; *KMO-361 Realty Assocs. V. Davies*, 204 A.D.2d 547 (2nd Dept, 1994) “(z)oning regulations are in derogation of the common law and must be strictly construed against the municipality. Thus, any ambiguity in the language used in zoning regulations must be resolved in favor of the property owner”; *Hogg v. Cianciulli*, 247 A.D.2d 474 (2nd Dept, 2004) “...any ambiguity in the language of the zoning ordinance must be resolved in favor of the property owner”; *Ferraris v. Zoning Bd. Of Appeals of Village of Southampton* 7 A.D.3d 710 (2nd Dept, 2004) “Any ambiguities in a zoning ordinance must be resolved in favor of the property owner”; *Town of Riverhead v. Gezari*, 63 A.D.3d 1042 (2nd Dept. 2009 “Since zoning regulations are in derogation of the common law, they must be strictly construed against the municipality which has enacted and seeks to enforce them”; *Mamaroneck Beach & Yacht Club, Inc. v. Zoning Board of Appeals of Village of Mamaroneck*, 53 A.D.3d 494 (2nd Dept. 2008) “ ‘It is well settled that zoning codes, being in derogation of the common law, must be strictly construed against the enacting municipality and in favor of the property owner’ ”; *Baker v. Town of Islip Zoning Bd. Of Appeals*, 20 A.D.3d 522 (2nd Dept, 2005).

Accordingly, as we present our arguments to your Board at the public hearing to be held on November 16, 2021, we respectfully request that, in interpreting the zoning regulations which form the basis for the Denial Letter to the facts of the application before you, you apply the rule of strict construction of zoning codes in favor of the property owner and against the municipality with any ambiguity being resolved in favor of the property owner. As set forth in the Owner’s Statement, we believe that the rules of strict construction as applied to the particular facts and circumstances pertaining to this unique application should result in a determination to the effect that, most particularly with respect to items 2 and 3 of the Denial Letter, no variance is necessary.

We will provide additional information and arguments at the public hearing to be held with respect to this matter and look forward to appearing before your Board

Yours very truly,



Charles V. Martabano

cc: Giardina Living Trust

Anthony Giardina Jr .and Angela Giardina
as Trustees of the Giardina Living Trust
PO Box 158
Mount Kisco, NY 10549

October 19, 2021

VIA HAND DELIVERY
Chairman Harold Boxer and
Members of the Zoning Board of Appeals
Village of Mt. Kisco
104 Main Street
Mt. Kisco, New York 10549

Re: Application of Giardina Living Trust
Premises Known as 79 North Moger Avenue,
Mount Kisco, New York

Section 69.73 Block 3 Lot 5

Dear Chairman Boxer and Members of the Zoning Board of Appeals:

We submit this document as our required typewritten statement of the principal points (facts and circumstances) on which we base our application. As confirmed by the deed that we are submitting as part of our application, prior to the transfer of this property to our Living Trust, my wife Angela and I purchased the property known as 79 North Moger Avenue, Mount Kisco, New York, taking title in March 1990, more than 30 years ago. Prior to purchasing the property, I spoke with former Building Inspector Austin Cassidy in an effort to determine whether there existed any violations or any other issues with respect to the property and I was advised that there was none. I was also advised that it appears as though the improvements on the property were constructed circa 1870, with the result that these structures and the associated parking areas have existed for many decades predating the adoption of zoning in Mount Kisco and, of course, many decades before the current zoning.

Over the years I have made an effort to maintain the properties in what I believe to be a first-class condition and I have made numerous improvements since taking ownership. I've complied with all fire and safety code requirements and I have filed the Landlord Registry forms annually, identifying all of the registered apartments including one two-bedroom apartment and three one-bedroom apartments in the main building and a small studio apartment over the detached garage. In other words, both in purchasing this property and subsequently thereafter, I made the appropriate inquiries regarding the legality of all structures and uses on the property, which I obviously presumed were either legally conforming (given that our property was located in a multifamily residential district) or grandfathered as a consequence of the age of the structures and my conversations with the then Building Inspector. I also want to confirm that, in addition to multiple conversations that I had with former Building Inspector Austin Cassidy prior to the purchase of this property, I also consulted with him regarding repairs and improvements, including interior repairs/upgrades made to the specific apartment which is the subject matter of this appeal.

However, as a consequence of a fire inspection which took place in 2019, I was advised that the small studio apartment over the garage did not have a certificate of occupancy. I went to the Building Department in an effort to review the applicable files to ascertain whether there existed a certificate of occupancy but, despite all of the efforts of myself, Building Inspector Peter Miley and our attorney, Charles V. Martabano, Esq., we were unable to find a certificate of occupancy for the apartment over the garage despite the existence of the apartment when we purchased the property. Unfortunately, when I renovated the apartment subsequent to our acquisition of the property and sought the advice of the then Building Inspector as referenced above, I was advised by Mr. Cassidy that I did not have to obtain a permit for the limited work that I was doing with the result that I naturally did not seek a certificate of occupancy believing there was no need for same. I also did not maintain the records for the work done decades ago which would have otherwise possibly assisted Mr. Miley in being able to issue a certificate of occupancy or other evidence of compliance. I also want to point out for the record that, at all times, Building Inspector Peter Miley has been most professional and cooperative to work with and truly attempted to assist us in legalizing the apartment

without the necessity of an application to your Board. However, when we were unable to find proof in the record, we decided to legalize the apartment through an application to your Board.

Mr. Miley issued a Denial Letter on September 23, 2021, which we will refer to in this letter as the "Denial Letter". We are therefore required to submit an application in the alternative: i.e. either for an interpretation that the zoning code sections cited by the Building Inspector do not apply to our application or, in the alternative for a variance from the referenced sections cited by the Building Inspector.

With respect to the requested interpretations, we are advised by our attorney, Charles V. Martabano, that the terms of the zoning code of the Village of Mount Kisco are required to be construed strictly against the drafter of the code (the Village of Mount Kisco) and in favor of the property owners with any ambiguity, if any, required to be construed in the favor of the property owners (see letter from Charles V. Martabano, also being submitted with our application). We presume that the Village Attorney will agree with Mr. Martabano's citations to applicable law and provide guidance to your Board accordingly.

Throughout all the arguments that follow below, we are requesting that the Board not lose sight of the fact, as established by the record and confirmed by the content of the Denial Letter, that all of the structures on the site date back to the late 1870s; the footprints have not been altered; no new structures have been erected; and the uses have not been changed, at least since we acquired the property. While we reluctantly are forced to accept responsibility for not previously obtaining a certificate of occupancy based upon our conversations with the then Building Inspector, we are hopeful that the Board will accept our representations as to what transpired in connection with our acquisition of the subject property and subsequent renovation of the pre-existing apartment and issue the necessary interpretations or variances so that the property can be fully legalized. My wife and I, aged 78 and 81 respectively, depend upon the income from this property for our retirement. Again, we always acknowledged the existence of this apartment and duly registered the apartment with the Landlord Registry. Our neighbors will attest to the existence of this apartment for decades. We look at this process as simply legalizing a pre-existing condition and hope that the Board will agree with our position. We also ask the Board to consider the fact that, while

we are benefited by the existence of the RM-10 Medium-Density Multifamily District Regulations in a use context, those same regulations, as well as other regulations, being applied to our property more than a century after the construction of the existing structures and many decades subsequent to the establishment of the uses, places us in the position of having to attempt to apply or comply with regulations on an “after-the-fact basis”, where compliance may be very difficult or impossible and therefore issuance of variances would be appropriate. I have been a member of the Zoning Board of Appeals in the Town of New Castle for 20 years and I have dealt with legalization situations such as this on many occasions and, from my perspective, a zoning board of appeals plays a most important role in the legalization of pre-existing structures and uses under appropriate circumstances.

As set forth below, all of the requested variances are area variances as none of the denial items represent a prohibited use but instead refer to dimensional or physical constraints. In this regard I am advised that Village Law section 7-712 b (3), as amended in 1993, provides in pertinent part as follows:

Area variances. (a) The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

(b) In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was

self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

With the foregoing as background, the first item set forth in the Denial Letter indicates that we require a variance from section 110-12 (G) because the apartment in issue is physically located within an accessory structure and section 110-12 (G) indicates that an accessory structure should not be utilized for a “separate residence”. It is imperative that the Board understand that there is no question as to the legality of the underlying residential apartment use in the RM-10 Modern-Density Multifamily District which allows for multifamily uses on lots of 10,000 SF or more. As set forth in our application and confirmed by the Denial Letter, our property is 12,803 SF and therefore multifamily uses are permitted. Accordingly, this is not a situation where we are dealing with a use variance because the underlying apartment/multifamily use is a permitted use. Therefore, this is a question of allowing an otherwise permitted use to be physically located within an accessory structure, a physical constraint for which we will seek a variance. Application of the variance standards to our request in this regard is set forth below.

Item 2 of the Denial Letter indicates that we require a variance of section 110-31, supplementary development regulations, whereby the code requires that “[e]xcept for designed multistructure developments, such as but not limited to shopping centers, office parks or multifamily or townhouse developments, not more than one principal building hereinafter erected shall be permitted on any lot in the Village of Mount Kisco”. It is the position of the Building Inspector that the “conversion” of the garage creates a second principal structure and therefore a variance is required.

Initially we want to set forth our position that, based upon the rules of strict construction of zoning codes as set forth in our attorney’s letter, we do not believe that this section is applicable to our situation at all. Initially, and as indicated above and as set forth in the Denial Letter, all structures in issue were erected circa 1870. The code section in issue says that “not more than one principal building *hereinafter erected* shall be permitted on any lot...”. The erection of structures on our lot occurred long before the adoption of any zoning codes and therefore the

structure in issue cannot be said to be “hereinafter erected” i.e. erected subsequent to the adoption of the code section in issue. The Denial Letter speaks in terms of a “conversion” of the garage building into a second principal structure and, had the drafters of the code desired to insert that prohibition, they could have done so. They did not. The conversion of a pre-existing structure is not, we believe, in any way equivalent to the “erection” of a new structure. We therefore believe it is clear that this section does not apply to us and request your interpretation to that effect.

Additionally, we believe that this section, again subject to the doctrine of strict construction, clearly by its terms exempts multifamily housing developments from the purview of the prohibition because the code section states that the prohibition applies except in connection with designed multistructure developments which explicitly identifies “multifamily developments” as a specified example. Even though it is clear that our structures were constructed many decades before the effective date of this code section, it also appears clear that our structures would have been perceived to be part of a multifamily development and therefore again the code section would not apply. Accordingly, separate and apart from our request for variance relief in the alternative, we would request that your Board find that this section does not apply to our situation based on the doctrine of strict construction of zoning codes.

Item 3 of the Denial Letter references the fact that three (3) parking spaces are located adjacent to and south of the pre-existing garage and asserts that section 110-28 regarding off-street parking and loading regulations specifies that (1) all off-street parking shall be subject to requirements set forth in this article (Article IV) and that subsection D (2) indicates that “no parking space shall be designed so as to require a vehicle to back out onto a public street or sidewalk” and therefore asserts that a variance is required. As indicated above, the structures at 79 North Moger Avenue were constructed circa 1870. While we do not know when the parking spaces in question were constructed (long before our ownership) these parking spaces have been existing and utilized in this manner for many decades. We believe that it is clear that this section was intended to apply prospectively as it specifically references the design of parking spaces, clearly referring to the prospective construction of parking spaces, not parking spaces which have been in place for decades. Were it to be otherwise, we believe that a survey of

existing conditions throughout the Village would result in determinations of noncompliance of significant proportions and we believe that constitutional protections apply to pre-existing conditions.

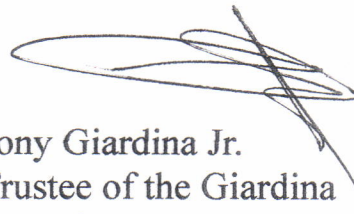
It is important to note that this aspect of the Denial Letter does not indicate that we have inadequate parking. Accordingly, if your Board were to find that any variance were required, it does not relate to the required number of parking spaces and we are not required to install any additional parking spaces for which we would have the opportunity to “design” such parking spaces. The Denial Letter also indicates that, subsequent to the construction of the original structures, building permits were applied for and issued. In this regard, we do wish to note that section 110-28 J (1) does provide that “[s]tructures and land uses in existence for which building permits and site plans have been previously approved shall not be subject to the revised requirements for off-street parking spaces set forth in this chapter, provided that any parking facilities currently existing and serving such structures or uses shall not, in the future, be reduced except where they exceed such requirements”. It appears that the code section relied upon by the Building Inspector was adopted in 1987 and there exists no doubt whatsoever that the parking arrangements that existed with respect to this property existed in precisely the same manner as now existing prior to the adoption of the code provision. We therefore believe that where, as here, we do not require a parking variance as to the number of spaces and therefore nothing about this application actually triggers the need for additional parking or for the design of new parking spaces, we believe that the Building Inspector’s reliance on this section is misplaced as nothing that we are doing in any way calls into question the existing parking, which we believe need to be viewed as grandfathered by reason of their prior existence in exactly the same condition (other than necessary maintenance and repair) for many decades. While the provisions of the code governing noncomplying buildings and structures do not appear to specifically address the issue of parking spaces, we believe that the intent of the provisions governing noncomplying buildings and structures combined with the provisions of section 110-28 J (1), clearly evidence an intent to protect parking arrangements which have been in place for many decades such as is the case with our application. We hope you will agree that we are entitled to an interpretation that the requirements of section 110-28 A do not apply to our specific situation.

To the extent that your Board determines that we require any variances, as indicated above, these variances represent area variances because none of the use aspects of the application represent prohibited uses and, as indicated above, we are entitled to the protection accorded grandfathered structures and uses. However, to the extent that you determine that variances are required, we would desire to point out that in our opinion, application of the 5 factors referenced in the Village Law should result in a determination on the part of your Board to grant the requested variances. Once again, in considering the 5 factors, it must be remembered that our property has been utilized in precisely the same manner as now requested for many decades. The area in which our property is located (Carpenter Ave., Barker Street) has many residential multi-structure multifamily developments. Legalization of the accessory apartment will not in any way bring about an undesirable change in the character of the neighborhood or present a detriment to nearby properties. Unfortunately, as a consequence of the content of the Denial Letter, the benefit that we seek cannot be achieved by some method, feasible for us to pursue, other than an area variance. Our property does not contain sufficient area to modify the parking so as to prevent the need to utilize the parking spaces in the manner which they have been utilized for decades (see site plan being submitted with our application). We do not believe that any of the requested variances are substantial in nature under the unique circumstances applicable to our application because the granting of these variances will not in any way effectuate any change whatsoever to existing conditions. The requested variances will not have any adverse effect or impact on the physical or environmental conditions in the neighborhood or district because, as indicated above, our property has been operated in exactly the same manner for many decades without any incident or complaint, many properties in the area have similar circumstances (we will be bringing pictures to the meeting to demonstrate this fact) and we are not introducing any new nonconformities by reason of our requested relief which is, as indicated above, sought solely to legalize existing conditions. The same is true with respect to the factor which indicates that the granting of the proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. These same conditions have existed for many decades; no changes being introduced whatsoever. We will also be presenting letters of support from our neighbors. With respect to the fifth factor, to the extent that your Board

finds that we could be chargeable with a self-created hardship by reason of our failure to obtain a certificate of occupancy, we would respectfully point out that self-created hardship is a factor that could be relevant to your decision but not necessarily preclude the granting of the requested area variances.

We therefore believe that to the extent that your Board finds that the code sections relied upon by the Building Inspector necessitate the granting of one or more variances, we believe that we have met the requirements for issuance of the necessary variances. We look forward to appearing before your Board.

Respectfully Submitted

A handwritten signature in black ink, appearing to read 'Anthony Giardina Jr.', with a long, sweeping horizontal stroke extending to the right.

Anthony Giardina Jr.
Trustee of the Giardina
Living Trust

Anthony Giardina, as Trustee of the Giardina Living Trust

PO Box 158

Mount Kisco, NY 10549

October 18, 2021

Chairman Harold Boxer
Zoning Board of Appeals
Village of Mt. Kisco
104 Main Street
Mt. Kisco, New York 10549

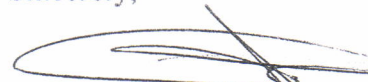
Re: Appeal of Determination of Building Inspector dated
September 23, 2021 relating to 79 N. Moger Ave., Mount Kisco
New York

Dear Chairman Boxer:

In accordance with the procedures specified for appeals to the Zoning Board of Appeals of the Village of Mount Kisco and as trustee of the Giardina Living Trust (owner of 79 North Moger Ave., Mount Kisco New York), I am hereby providing you with notice of the Trust's intent to appeal the above referenced Denial Letter/Notice of Denial issued by the Building Inspector (copy attached) to your Board. The appeal will be submitted seeking relief in the alternative i.e. requesting interpretations of the Code contrary to the determinations made by the Building Inspector and/or in the alternative, requesting issuance of variances in connection with same.

I will submit the application and all other required materials within the time period specified by the Code i.e. on or before October 22, 2021. I look forward to appearing before your Board.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony Giardina', written over a horizontal line.

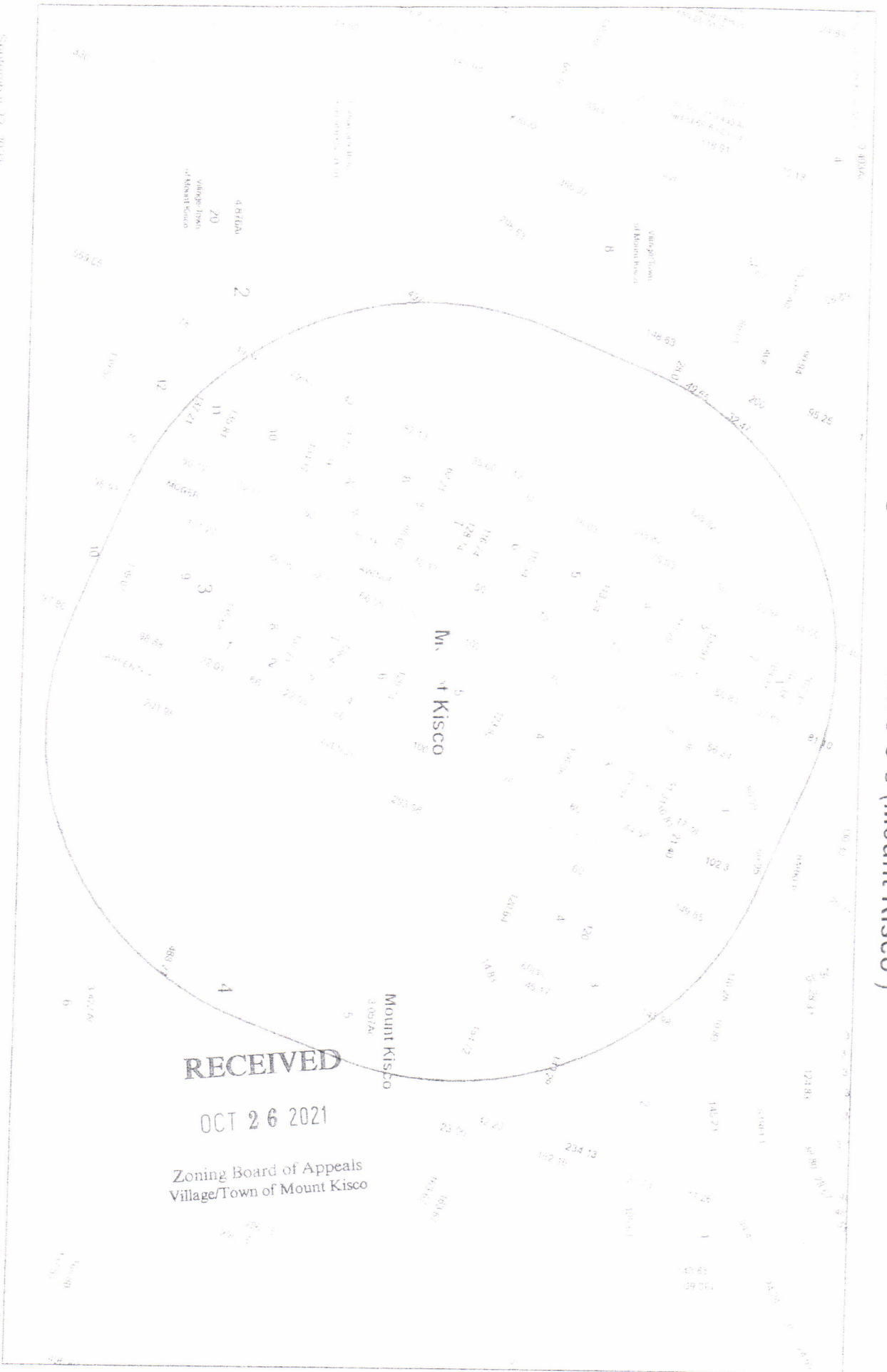
Anthony Giardina, Trustee

OWNERNAME	PROPADDRESS	PROPCITY	PROPIZIP	PROPRINTKEY	C/O	Mailing Address	City	State	Zip
Montesdeoca, Manuel - Dora Montesdeoca	50 N Moger Ave	MOUNT KISCO	10549	69.73-2-11		58 Hillside Park	Brewster	NY	10509
Ridgecrest Owners Corp.	57 Carpenter Ave	MOUNT KISCO	10549	69.73-4-7	Sequoia Property Mgmt	241 Lexington Ave	Mt Kisco	NY	10549
Tara Close Apts. Corp.	77 Carpenter Ave	MOUNT KISCO	10549	69.73-4-6	Westchester Property Mgmt	520 White Plains Rd, Ste 450	Tarrytown	NY	10591
87 N Moger Ave Realty Corp	87 N Moger Ave	MOUNT KISCO	10549	69.73-3-4	Mr. Frank Surace	65 Pines Bridge Rd	Bedford Corners	NY	10549
Brooks, Greg	64 N Moger Ave	MOUNT KISCO	10549	69.73-2-8					
Giardina, Anthony - Angela Giardina	79 N Moger Ave	MOUNT KISCO	10549	69.73-3-5		POB 158	Mt Kisco	NY	10549
Cambareti, Pat	44 N Moger Ave	MOUNT KISCO	10549	69.73-2-12		5 Chestnut Ridge Rd	Mt Kisco	NY	10549
84 Carpenter Avenue LLC	67 N Moger Ave	MOUNT KISCO	10549	69.73-3-8		16 Lawrence St	Mt Kisco	NY	10549
Pinto, Robert	88 N Moger Ave	MOUNT KISCO	10549	69.73-2-4		93 10th Street	Staten Island	NY	10306
VMB Capital Group LLC	96 N Moger Ave	MOUNT KISCO	10549	69.73-2-2		121 Rye Bridge Rd	Harrison	NY	10528
101 Carpenter Ave. Owners	101 Carpenter Ave	MOUNT KISCO	10549	69.73-4-5	Putnam Mgmt Attn:Jon Stark	POB 729	Rye	NY	10580
S.t.e.c.k. Properties Inc	101 N Moger Ave	MOUNT KISCO	10549	69.73-3-1	William A Kelly Co	87 Bedford Rd	Katonah	NY	10536
105 Mt Kisco Associates LLC	95 Kisco Ave	MOUNT KISCO	10549	69.65-2-5		1955 Central Park Ave	Yonkers	NY	10710
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Ellington, Stanley C Jr - Lees Minda	111 Carpenter Ave	MOUNT KISCO	10549	69.73-4-4		76 Chestnut Ridge RD	Armonk	NY	10504
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Vigliotti, Ralph M - Greg W Vigliotti	60 N Moger Ave	MOUNT KISCO	10549	69.73-2-9		26 Meadowbrook Lane	Mt Kisco	NY	10549
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Mt Kisco-Moger LLC	119 Carpenter Ave	MOUNT KISCO	10549	69.73-4-3	Rothner Mgmt Corp	Lenox Hill Station , PO Box 613	New York	NY	10021

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OCT 26 2021

Zoning Board of Appeals
Village/Town of Mount Kisco



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OCT 26 2021

Zoning Board of Appeals
Village/Town of Mount Kisco

September 22, 2021

This source data was provided by local municipality. This map is generated as a public service to Westchester County residents for general information and planning purposes only, and should not be relied upon as a sole informational source. The County of Westchester hereby disclaims any liability from the use of this GIS mapping system by any person or entity. Tax parcel boundaries represent approximate property information and should NOT be interpreted as a survey or deed of a survey for property boundary determination. Property descriptions must be obtained from surveys of record. For more information please contact local municipality assessor's office.

1:1,500

0 70 140 280
feet

Westchester County GIS

GIS: <http://gis.westchester.org>

Map: <http://map.westchester.org>

Map: <http://map.westchester.org>

Map: <http://map.westchester.org>

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OCT 26 2021

Zoning Board of Appeals
Village/Town of Mount Kisco

PUBLIC NOTICE

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village/Town of Mount Kisco, New York will hold a Public Hearing on the 16th day of November, 2021 at the Municipal Building, Mount Kisco, New York beginning at 7:00 PM pursuant to the Zoning Ordinance on the Application of

Anthony Giardina Jr .and Angela Giardina
as Trustees of the Giardina Living Trust
PO Box 158
Mount Kisco, NY 10549

to appeal the determination of the Building Inspector dated September 23, 2021 rejecting Appellants' application to legalize a pre-existing efficiency apartment at 79 North Moger Avenue, Mount Kisco, New York. Appellants seek an interpretation of the cited Code provisions (§§110-12 G; 110-31 A; and 110-28 (1) and (2)) determining that they do not preclude the application or, in the alternative, a variance of whatever sections are determined to be applicable to the application. The property involved is known as 79 North Moger Avenue, Mount Kisco, New York and is described on the Village Tax Map as Section 69.73 Block 3 Lot 5 and is located on the East side of North Moger Avenue in the RM-10 Zoning District.

Harold Boxer, Chair
Zoning Board of Appeals
Village/Town of Mount Kisco

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NOV 05 2021

AFFIDAVIT OF MAILING

Zoning Board of Appeals
Village/Town of Mount Kisco

STATE OF NEW YORK }
COUNTY OF WESTCHESTER } SS.:
}

Maryanne Martabano being duly sworn, deposes and says:

I reside at 9 Mekeel Street, Katonah, NY 10536

On October 29 20 21 I served a notice of hearing, a copy of which is attached hereto and labeled Exhibit A, upon persons whose names are listed in a schedule of property owners within 300 feet of the subject property identified in this notice. A copy of this schedule of property owners' names is attached hereto and labeled Exhibit B. I placed a true copy of such notice in a postage paid property addressed wrapper addressed to the addresses set forth in Exhibit B, in a post office or official depository under the exclusive care and custody of the United States Post Office, within the County of Westchester.

Maryanne Martabano

Sworn to before me on this

3 day of November 20 21

Regina DiMenna
(Notary Public)

REGINA DIMENNA
Notary Public, State of New York
Qualified in Putnam County
Reg. No. 01044069351
My Commission Expires Nov. 27, 2024

OWNERNAME	PROPADDRESS	PROPCITY	PROPZIP	PROPPRINTKEY	C/O	Mailing Address	City	State	Zip
Montesdeoca, Manuel - Dora Montesdeoca	50 N Moger Ave	MOUNT KISCO	10549	69.73-2-11		58 Hillside Park	Brewster	NY	10509
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105 Mt Kisco Associates LLC	95 Kisco Ave	MOUNT KISCO	10549	69.65-2-5		1955 Central Park Ave	Yonkers	NY	10710
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Thomas, Margaret	93 N Moger Ave	MOUNT KISCO	10549	69.73-3-3					
Boylan, Sean - Deborah Tooma	56-58 N Moger Ave	MOUNT KISCO	10549	69.73-2-10					
Larizza, Giuseppe - Vincenza Larizza	57 N Moger Ave	MOUNT KISCO	10549	69.73-3-9					
Singh Sukhwinder - Jagroop Singh Cheema	50-52 Carpenter Ave	MOUNT KISCO	10549	69.73-3-7		6 Pine View Rd	Mt Kisco	NY	10549
Zhao, Sunny Liang - Ivy Stacie Wong	71 N Moger Ave	MOUNT KISCO	10549	69.73-3-6					
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Mt Kisco-Moger LLC	119 Carpenter Ave	MOUNT KISCO	10549	69.73-4-3	Rother Mgmt Corp	50 Plainfield Ave	Bedford Hills	NY	10507
						Lenox Hill Station , PO Box 613	New York	NY	10021



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NOV 12 2021

AFFIDAVIT OF PUBLICATION
FROM

Zoning Board of Appeals
Village/Town of Mount Kisco

State of Wisconsin
County of Brown, ss.:

On the 11 day of November in the year 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Denise Roberts, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed, the instrument.

Denise Roberts being duly sworn says that he/she is the principal clerk of THE JOURNAL NEWS, a newspaper published in the County of Westchester and the State of New York, and the notice of which the annexed is a printed copy, was published in the newspaper area(s) on the editions dated below:

Zone:
Westchester

Edition Dates:
10/23/2021

Denise Roberts
Signature

Sworn to before me, this 11 day of November, 2021

Kathleen Allen
Notary Public, State of Wisconsin, County of Brown

1-7-25
My commission expires

Legend:

WESTCHESTER:

Amewalk, Ardsley, Ardsley on Hudson, Armonk, Baldwin Place, Bedford, Bedford Hills, Brewster, Briarcliff Manor, Bronxville, Buchanan, Carmel, Cheappaqua, Cold Spring, Crompond, Cross River, Croton Falls, Croton on Hudson, Dobbs Ferry, Eastchester, Elmsford, Garrison, Goldens Bridge, Granite Springs, Greenburg, Harrison, Harlsdale, Hastings, Hastings on Hudson, Hawthorne, Irvington, Jefferson Valley, Katonah, Lake Peekskill, Larchmont, Lincoln Dale, Mahopac, Mahopac Falls, Mamaroneck, Millwood, Mohegan Lake, Montrose, Mount Kisco, Mount Vernon, New Rochelle, North Salem, Ossining, Patterson, Peekskill, Pelham, Pleasantville, Port Chester, Pound Ridge, Purchase, Purdys, Putnam Valley, Rye, Scarsdale, Shenorock, Shrub Oak, Somers, South Salem, Tarrytown, Thornwood, Tuckahoe, Valhalla, Verplanck, Waccabuc, White Plains, Yorktown Heights, Yonkers

ROCKLAND:

Blauvelt, Congers, Garnerville, Haverstraw, Hillburn, Monsey, Nanuet, New City, Nyack, Orangeburg, Palisades, Pearl River, Piermont, Pomona, Slootsburg, Sparkill, Spring Valley, Stony Point, Suffern, Tallman, Tappan, Thiells, Tomkins Cove, Valley Cottage, West Haverstraw, West Nyack

Ad Number: 0004967714

KATHLEEN ALLEN
Notary Public
State of Wisconsin

State of New York)
) ss:
 County of Westchester)

AFFIDAVIT OF POSTING

Guillermo Gomez, being duly sworn, says that on the 9th day of November 2021, he conspicuously fastened up and posted in seven public places, in the Village/Town of Mount Kisco, County of Westchester, a printed notice of which the annexed is a true copy, to Wit: ---

Municipal Building –
 104 Main Street

X

Public Library
 100 Main Street

X

Fox Center

X

Justice Court – Green Street
 40 Green Street

X

Mt. Kisco Ambulance Corp
 310 Lexington Ave

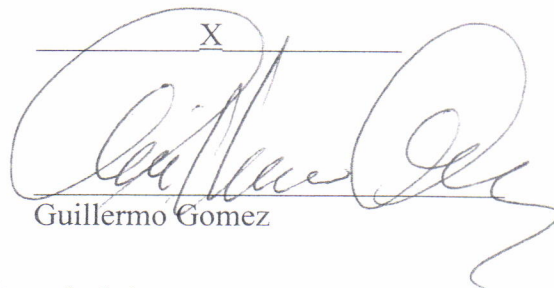
X

Carpenter Avenue Community House
 200 Carpenter Avenue

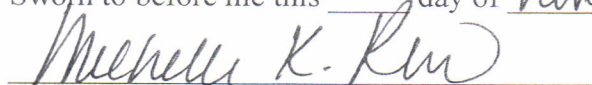
X

Leonard Park Multi Purpose Bldg

X


 Guillermo Gomez

Sworn to before me this 9th day of November 2021


 Notary Public

MICHELLE K. RUSSO
 NOTARY PUBLIC-STATE OF NEW YORK
 No. 01RU6313298
 Qualified In Putnam County
 My Commission Expires 10-20-2022



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Control Number
481230086

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OCT 26 2021

Zoning Board of Appeals
Instrument Type Village/Town of Mount Kisco
DED



WESTCHESTER COUNTY RECORDING AND ENDORSEMENT PAGE
(THIS PAGE FORMS PART OF THE INSTRUMENT)

*** DO NOT REMOVE ***

THE FOLLOWING INSTRUMENT WAS ENDORSED FOR THE RECORD AS FOLLOWS:

TYPE OF INSTRUMENT: DED - DEED

FEE PAGES: 5 TOTAL PAGES: 5

RECORDING FEES

STATUTORY CHARGE	\$6.00
RECORDING CHARGE	\$15.00
RECORD MGT. FUND	\$19.00
RP 5217	\$165.00
TP-584	\$5.00
CROSS REFERENCE	\$0.00
MISCELLANEOUS	\$0.00
TOTAL FEES PAID	\$210.00

TRANSFER TAXES

CONSIDERATION	\$0.00
TAX PAID	\$0.00
TRANSFER TAX #	11523

MORTGAGE TAXES

MORTGAGE DATE	
MORTGAGE AMOUNT	\$0.00
EXEMPT	
COUNTY TAX	\$0.00
YONKERS TAX	\$0.00
BASIC	\$0.00
ADDITIONAL	\$0.00
MTA	\$0.00
SPECIAL	\$0.00
TOTAL PAID	\$0.00

SERIAL NUMBER:

DWELLING:

RECORDING DATE: 5/8/2008
TIME: 12:45:00

THE PROPERTY IS SITUATED IN
WESTCHESTER COUNTY, NEW YORK IN THE:
TOWN OF MT. KISCO

WITNESS MY HAND AND OFFICIAL SEAL

TIMOTHY C. IDONI
WESTCHESTER COUNTY CLERK

Record & Return to:
ANTHONY & ANGELA GIARDINA
186 CROTON LAKE RD

MT KISCO, NY 10549

THIS INDENTURE, made the 2nd day of January, two thousand and eight

BETWEEN ANTHONY GIARDINA^{JR.} and ANGELA GIARDINA, his wife, residing at
186 Croton Lake Road, Mt. Kisco, New York 10549

party of the first part, and,

ANTHONY GIARDINA, JR. and ANGELA GIARDINA, Trustees, or their successors in trust, under the
GIARDINA LIVING TRUST, dated SEPTEMBER 6, 2000, and any amendments thereto, residing at 186
Croton Lake Road, Mt. Kisco, New York 10549
party of the second part,

WITNESSETH, that the party of the first part, in consideration of ten dollars and other valuable
consideration paid by the party of the second part, does hereby grant and release unto the party of the
second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situ-
ate, lying and being in the Village and Town of Mt. Kisco, County of Westchester
and State of New York more particularly bounded and described as set
forth in Schedule A which is annexed hereto.

The premises above described are also shown and designated on the
official tax assessment map and roll of the Village/Town of Mt. Kisco
as Section 69, Sheet 73, Block 3, Lot 5.

SECTION 69.73 BLOCK 3 LOT 5

BEING AND INTENDED TO BE the same premises as conveyed to the party of the first part by deed dated
March 14, 1990, and recorded in the county clerk's office in Liber 9776 Page 79

SUBJECT to mortgages of record, if any.

SUBJECT to any state of facts an accurate survey may show.

SUBJECT to any covenants, easements and restrictions of record, if any.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and
roads abutting the above described premises to the center lines thereof; TOGETHER with the
appurtenances and all the estate and rights of the party of the first part in and to said premises; TO
HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or
successors and assigns of the party of the second part forever.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of
the first part will receive the consideration for this conveyance and will hold the right to receive such
consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and
will apply the same first to the payment of the cost of the improvement before using any part of the total
of the same for any other purpose.

AND the party of the first part covenants as follows: that said party of the first part is seized of the said
premises in fee simple, and has good right to convey the same; that the party of the second part shall
quietly enjoy the said premises; that the said premises are free from encumbrances, except as aforesaid;
that the party of the first part will execute or procure any further necessary assurance of the title to said
premises; and that said party of the first part will forever warrant the title to said premises.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first
above written.

IN PRESENCE OF:

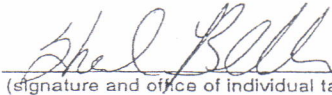

ANTHONY GIARDINA, JR.


ANGELA GIARDINA

On the 2nd day of January in the year 2008
before me, the undersigned, personally appeared

ANTHONY GIARDINA and ANGELA GIARDINA
personally known to me or proved to me on the basis of
satisfactory evidence to be the individual(s) whose name(s) is
(are) subscribed to the within instrument and acknowledged to
me that he/she/they executed the same in his/her/their
capacity(ies), and that by his/her/their signature(s) on the
instrument, the individual(s), or the person upon behalf of
which the individual(s) acted, executed the instrument.

SHEILA L. PANZELLA
Notary Public, State of New York
No. 01PA6031197
Qualified in Nassau County
Commission Expires Sept. 27, 2009



(signature and office of individual taking acknowledgment)

On the _____ day of _____ in the year _____
before me, the undersigned, personally appeared

personally known to me or proved to me on the basis of
satisfactory evidence to be the individual(s) whose name(s) is
(are) subscribed to the within instrument and acknowledged to
me that he/she/they executed the same in his/her/their
capacity(ies), and that by his/her/their signature(s) on the
instrument, the individual(s), or the person upon behalf of which
the individual(s) acted, executed the instrument.

(signature and office of individual taking acknowledgment)

TO BE USED ONLY WHEN THE ACKNOWLEDGMENT IS MADE OUTSIDE NEW YORK STATE

State (or District of Columbia, Territory, or Foreign Country)

SS:

On the _____ day of _____ in the year _____ before me, the undersigned, personally appeared

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are)
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies),
and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s)
acted, executed the instrument, and that such individual made such appearance before the undersigned in the

in

(insert the City or other political subdivision)
taken)

(and insert the State or Country or other place the acknowledgment was taken)

(signature and office of individual taking
acknowledgment)

**WARRANTY DEED
WITH FULL COVENANTS**

Title No. _____

ANTHONY GIARDINA and ANGELA GIARDINA

TO

GIARDINA LIVING TRUST

STANDARD FORM OF NEW YORK BOARD OF TITLE UNDERWRITERS
Distributed by



Commonwealth

A LANDAMERICA COMPANY

COMMONWEALTH LAND TITLE INSURANCE COMPANY

SECTION 63.73
BLOCK 3
LOT 5
COUNTY OR TOWN WESTCHESTER
STREET ADDRESS 79 Moger Avenue, Mt.
Kisco

Recorded at Request of COMMONWEALTH LAND
TITLE INSURANCE COMPANY

RETURN BY MAIL TO:

ANTHONY and ANGELA GIARDINA
186 CROTON LAKE ROAD
MT. KISCO, NY 10549

SCHEDULE A-

ALL that certain plot, piece or parcel of land, situate, lying and being in the Village of Mount Kisco, Town of Mount Kisco, County of Westchester and State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the Southeasterly side of North Moger Avenue where the same is intersected by the division line between lands now or formerly of Mary J. Reynolds and lands now or formerly of Fisher (premises herein described);

RUNNING THENCE along said division line South $56^{\circ} 41' 00''$ East 129.74 feet to the northwesterly side of Carpenter Avenue;

RUNNING THENCE along the same North $32^{\circ} 13' 40''$ East 100.00 feet to the division line between premises herein described and lands now or formerly of John H. Johnson;

RUNNING THENCE along said division line North $56^{\circ} 40' 50''$ West 126.36 feet to the southeasterly side of North Moger Avenue;

RUNNING THENCE along the same South $34^{\circ} 09' 40''$ West 100.00 feet to the point or place of BEGINNING.



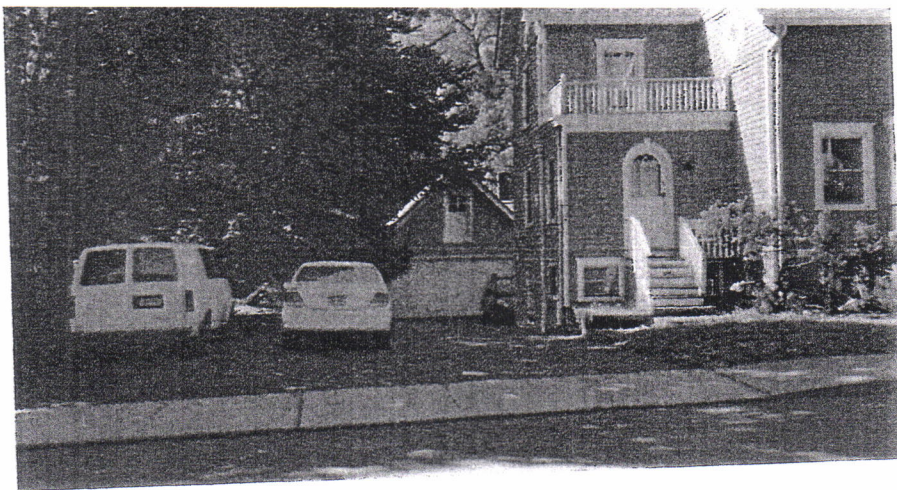
CARPENTER AVE SIDE 87. NO MOGER



CARPENTER AVE SIDE 93 NO MOGER



CARPENTER AVE SIDE 101 NO MOGER



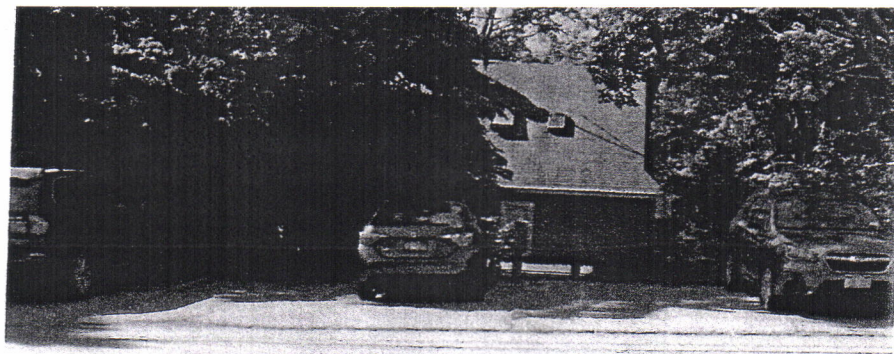
72 NO MOGER AVE



96 NO. MOGER AVE



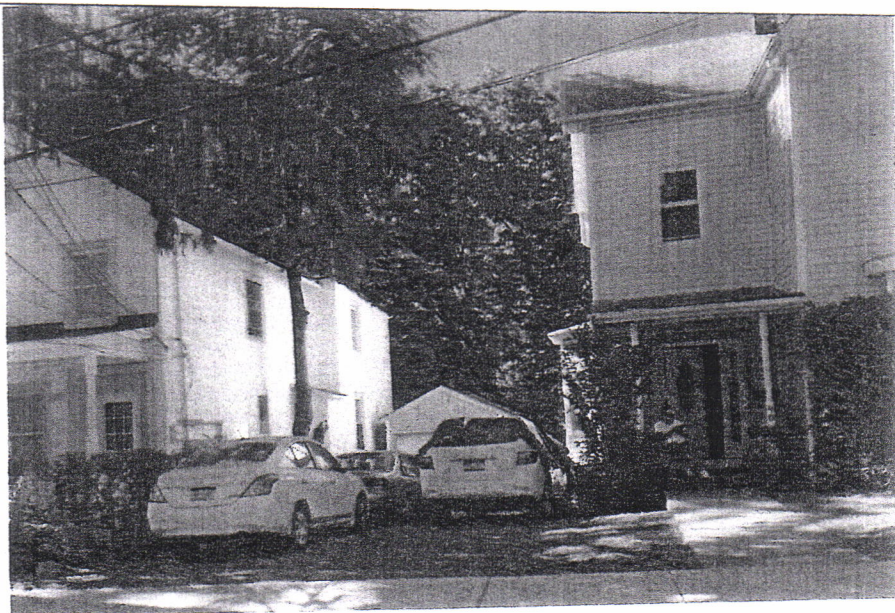
98 NO MOGER



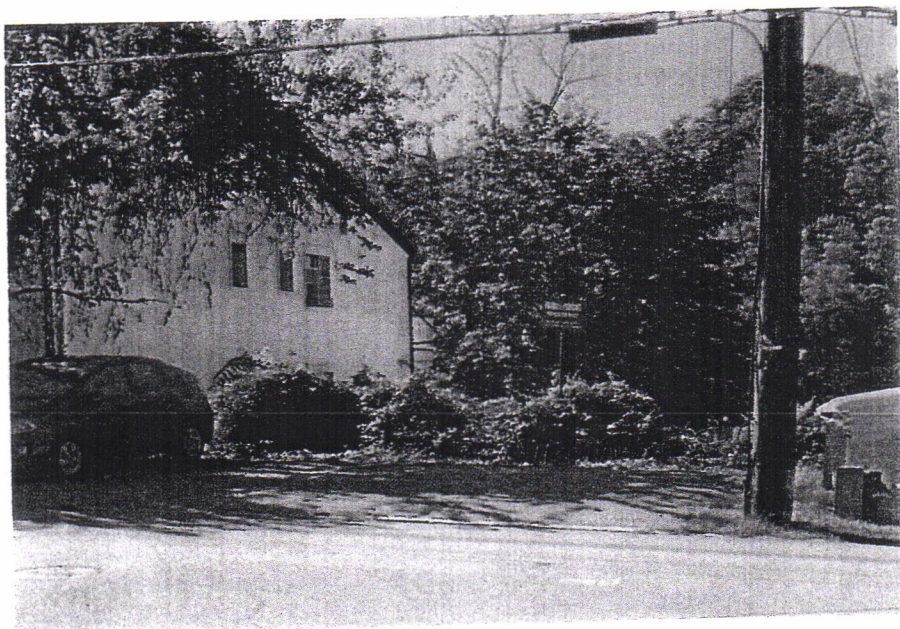
CARPENTER AVE SIDE 49 NO. MOGER



CARPENTER AVE SIDE 57 NO. MOGER



90 NO. MOGER



CARPENTER AVE SIDE 79 NO. MOGER

Date. 11/13/19

To whom it may concern,

As a resident/owner of property on North Moger Ave. I am familiar with the barn apartment at 79 North Moger Ave.

To the best of my knowledge the apartment has always been there.

Name

[Signature]

Address

87 North Moger Ave
Mt. Kisco, N.Y. 10549

Date. 11/14/19

To whom it may concern,

As a resident/owner of property on North Moger Ave. I am familiar with the barn apartment at 79 North Moger Ave.

To the best of my knowledge the apartment has always been there.

Name

Julius Cohen

Address

72 North Moger Ave.
Mt. Kisco, N.Y.

Date. 11/13/19.

To whom it may concern,

As a resident/owner of property on North Moger Ave. I am familiar with the barn apartment at 79 North Moger Ave.

To the best of my knowledge the apartment has always been there.

Name William C. Brer

Address 76 N. Moger Ave.
Mt. Kisco NY

Date. 11/18/2019.

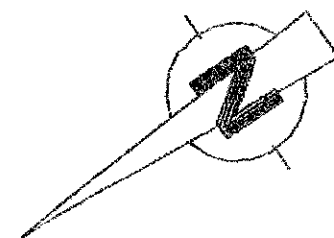
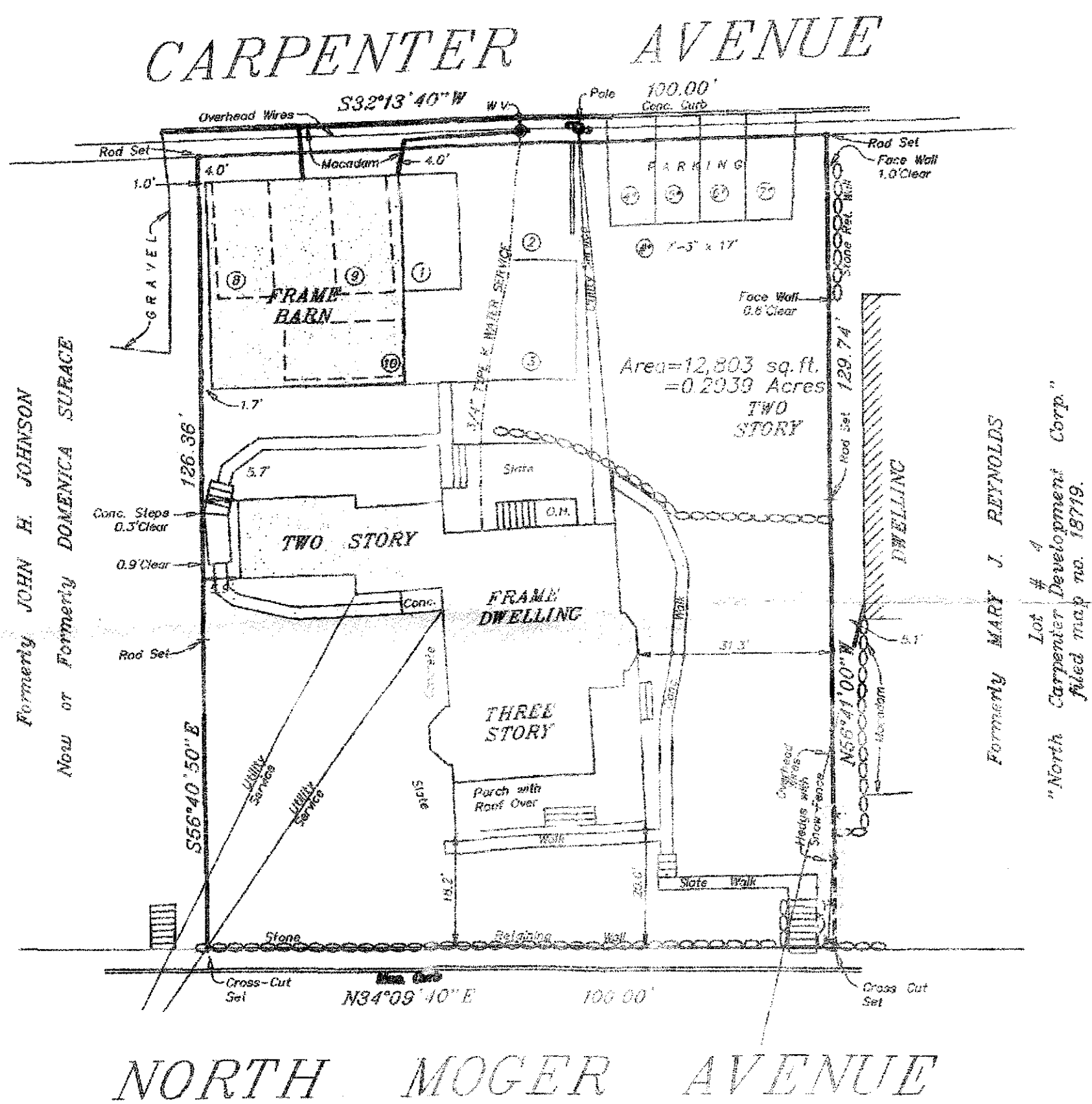
To whom it may concern,

As a resident/owner of property on North Moger Ave. I am familiar with the barn apartment at 79 North Moger Ave.

To the best of my knowledge the apartment has always been there.

Name Simon / Zhou

Address 71 North Moger Ave
Mount Kisco NY 10549.



PROPERTY DATA	
PROPERTY OWNER	GIARDINA LIVING TRUST
APPLICANT	ANTHONY JR. & ANGELA GIARDINA
LOCATION	79 NORTH MOGER
TAX MAP DATA	SECTION 69.73 BLOCK 3 LOT 5
SITE AREA	2939 ACRES

ZONING DISTRICT: RM-10 MODERATE-DENSITY MULTIFAMILY DISTRICT		
DIMENSIONAL REGULATIONS	REQUIRED	PROVIDED
MINIMUM SIZE OF LOT		
MINIMUM LOT AREA	10,000 S.F.	12,803 S.F.
MINIMUM LOT WIDTH	100 FT.	100 FT.
MINIMUM LOT DEPTH	100 FT.	126.36 FT.
MINIMUM YARD DIMENSIONS:		
PRINCIPAL BUILDING:		
FRONT YARD SETBACK:	25 FT.	18.2 FT.
REAR YARD SETBACK:	30 FT.	34.5 FT.
SIDE YARD:	25 FT.	5.7 FT.
ACCESSORY BUILDINGS:		
FRONT YARD SETBACK:	25 FT.	4 FT.
REAR YARD SETBACK:	30 FT.	88.5 FT.
SIDE YARD:	25 FT.	
MAXIMUM DEVELOPMENT COVERAGE:	65% OF LOT AREA	38% OF LOT AREA
MAXIMUM % OF LOT TO BE OCCUPIED:		
PRINCIPAL BUILDING COVERAGE:	25% OF LOT AREA	18.8% OF LOT AREA
MAXIMUM HEIGHT:		
PRINCIPAL BUILDING FEET:	2 1/2 STORIES OR 35 FT.	2 1/2 STORIES
PARKING REGULATIONS:		
PRINCIPAL BUILDING: 4 APARTMENTS	2 PER EA. DWELLING UNIT	
ACCESSORY BUILDING: 1 APARTMENT	1.25 PER EA. DWELLING UNIT	
GUEST & VISITOR PARKING:	0.5 PER EA. DWELLING UNIT	
TOTAL:	11.75	7



LOCATION MAP
SCALE: 1" = 300'

RECEIVED
OCT 26 2021
Zoning Board of Appeals
Village of Mount Kisco

79 MOGER AVENUE
Prepared For
ANTHONY GIARDINA

SITE PLAN

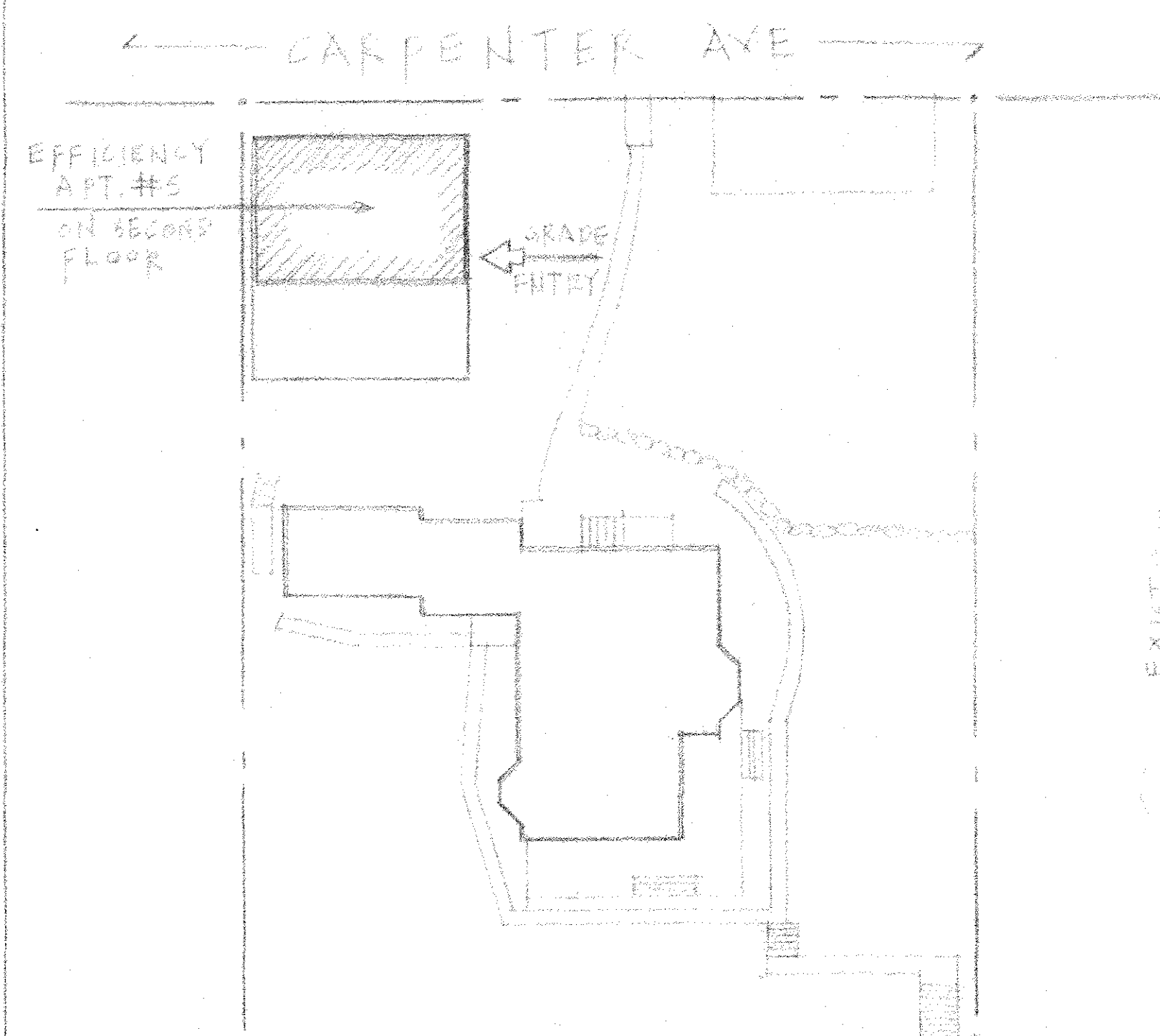
CIARCIA ENGINEERING, P.C.
360 UNDERHILL AVENUE
YORKTOWN HEIGHTS, NY 10598
(914) 245-0123

SHEET NUMBER
11

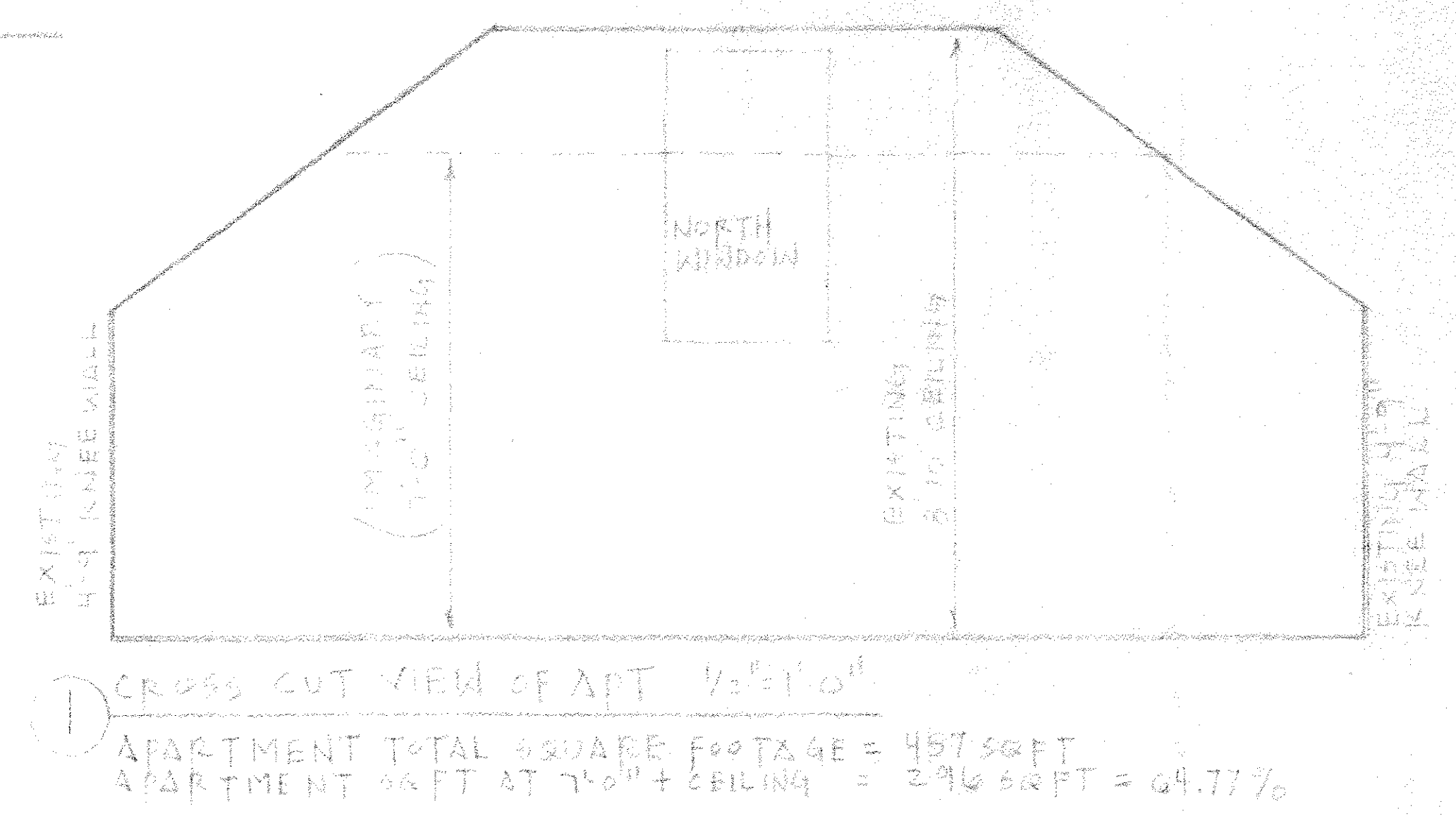
ADDED WATER SERV. 7-28-17
ORIGINAL DATE: 1/6/2017
PROJECT NUMBER:



UNAUTHORIZED ALTERATIONS OR ADDITIONS TO THIS
DRAWING IS A VIOLATION OF SECTION 7209 (2) OF THE
NEW YORK STATE EDUCATION LAW.

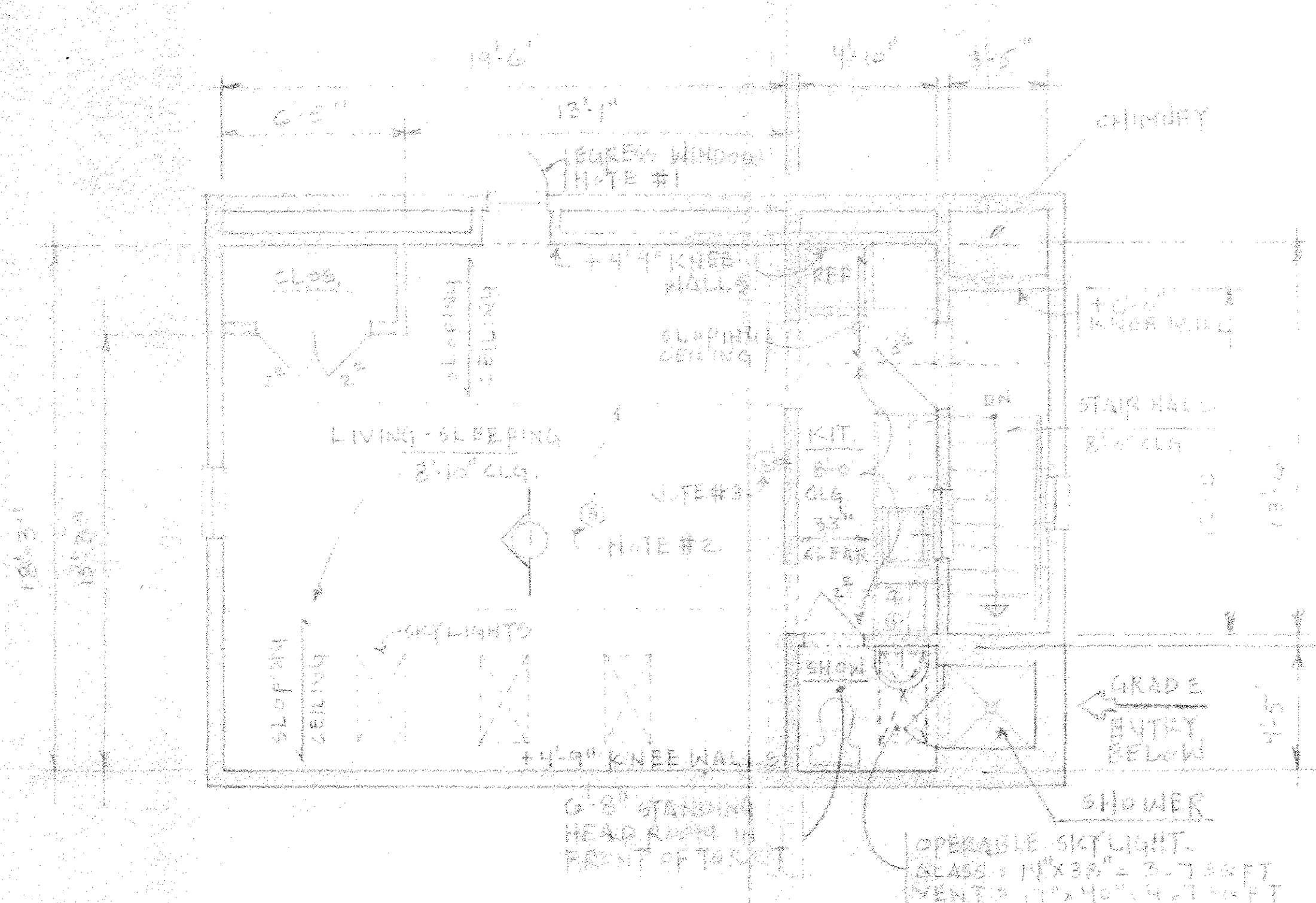


KEY LOCATION PLAN
NO SCALE



CROSS CUT VIEW OF APT. V3=1'0"

APARTMENT TOTAL SQUARE FOOTAGE = 457 SQ FT
APARTMENT SQ FT AT 7'0" + CEILING = 296 SQ FT = 64.77%



EXISTING FLOOR PLAN: EFFICIENCY APARTMENT #5

NOTE #1 - EGRESS WINDOW CLEAR WIDTH OPENING = 22 7/16"
ANDERSEN CW-135 CLEAR HEIGHT OPENING = 36 3/8"
CLEAR SILL OPENING = 5'7"
SILL HEIGHT 14" ABOVE FLOOR
SILL HEIGHT ABOVE OUTSIDE GRADE = 10'-1 1/2"

NOTE #2 - CEILING MOUNTED HARDHAT LIGHT

NOTE #3 - CARBON MONOXIDE DETECTOR PLUG INTO EXISTING WALL OUTLET WITH BATTERY BACK UP

RECEIVED
OCT 26 2021
Zoning Board of Appeals
Village of Mount Kisco

SHEET TITLE EXISTING EFFICIENCY APARTMENT #5 FLOOR PLAN	
PROJECT MR. ANTHONY GIARDINA	DATE JUNE 1, 2021
DRAWN BY J. L. L. L.	
CHECKED BY J. L. L. L.	
DATE JUNE 1, 2021	
PROJECT NO. 17	
SHEET NO. 1	
OF 1 SHEETS	

November 9, 2021

Via Email: planning@mountkisco.gov

Hon. Harold Boxer, Chairperson
and Members of the Zoning Board of Appeals
104 Main St.
Mount Kisco, NY 10569

RECEIVED

NOV 08 2021

*Zoning Board of Appeals
Village/Town of Mount Kisco*

**Re: SureGreen Properties, LLC: Application for Interpretation
1 Manchester Drive, Village of Mount Kisco**

Dear Chairperson Harold Boxer and members of the Zoning Board of Appeals,

As you will recall, our firm represents SureGreen Properties, LLC with respect to its application for four (4) variances and/or an interpretation that the subject property, located at 1 Manchester Drive, Mount Kisco, New York, is a prior nonconforming perimeter use as a two-family residence. Having been denied her initial application for four variances and/or an interpretation as a prior nonconforming use, Suregreen Properties, LLC is now seeking to withdraw its application.

Please confirm receipt of this request and the withdrawal of the application and advise if you have any further questions or requirements.

Sincerely,



P. Daniel Hollis, III



**ZARIN &
STEINMETZ**

Kory Salomone •
ksalomone@zarin-steinmetz.com
• Also admitted in CT

September 27, 2021

Via Hand Delivery and Email

Harold Boxer, Chair
Village/Town of Mount Kisco Zoning Board of Appeals
104 Main Street
Mount Kisco, NY 10549

RECEIVED

SEP 28 2021

**Zoning Board of Appeals
Village/Town of Mount Kisco**

**Re: 215 Lexington Avenue
Parcel Id. # 80.32-4-6**

Honorable Vice-Chair and Members of the Board:

I. INTRODUCTION

This firm represents the Bagnato 205 Lexington Ave Corp ("Applicant"), owner of the property located at 215 Lexington Avenue, Mount Kisco, New York ("Subject Property") in connection with this area variance application. We initially appeared before your Board on May 18th and again on June 15th. As you will recall, on March 9, 2021, the Applicant received site plan approval from the Planning Board for the renovation of a mixed-use building, construction of three attached townhouses, and related site improvements. Pursuant to that resolution of approval the Applicant was required to satisfy several conditions, including obtaining area variances from your Board. Based on discussions that we had with your Board on May 18th and June 15th, certain plan revisions were suggested, triggering the need for amended site plan approval.

Accordingly, the Applicant submitted revised plans to the Planning Board on June 22, 2021, and appeared before the Planning Board on July 13th, August 10th, and September 14th. At the conclusion of the September 14th meeting, the Planning Board granted amended site plan

approval. A copy of the Planning Board resolution of approval is attached hereto as **Exhibit A**. The purpose of this letter is to transmit a revised area variance application and to request placement on your October 19, 2021 agenda.

II. SUBJECT PROPERTY

The Subject Property is located at 215 Lexington Avenue and is identified on the Tax Assessment map of the Town/Village of Mount Kisco as Tax Parcel # 80.32-4-6. The site is located in the CN Neighborhood Commercial Zoning District, which permits residences above commercial retail and townhomes as principal permitted uses.

The Subject Property is approximately 0.26 acres and is currently improved with a roughly 4,315 s.f. four-family mixed use building, which contains a retail store on the ground floor and four apartments above. Just south of the existing mixed-use building is a small, previously approved, parking area.

III. PROPOSED DEVELOPMENT AND PRIOR DISCUSSIONS WITH THE ZBA

As you know, the Applicant is proposing to retain the mixed-use building in its current location and to add three new attached townhomes with parking for both the townhomes and the mixed-use building on the rear of the property. The exterior finishes of the proposed townhomes and the existing mixed-use building will be identical. This proposal also includes improvements to the sidewalk, curbing, landscaping, elimination of all curb cuts on Lexington Avenue and restoration of 3 on-street parking spaces.

During our discussions at the May 18th ZBA meeting, it became clear that your board was generally comfortable with all the variances except the request for an 8-space parking variance. At the conclusion of the May 18th meeting, you requested that we prepare a plan adding additional parking spaces, thereby reducing the parking variance requested.

Accordingly, on June 15th, we presented a plan that increased the number of parking spaces provided to 12, thereby reducing the variance needed from 8 spaces to 6 spaces. In order to provide these additional spaces, the proposed townhomes were pushed 2.5 ft. closer to Lexington Avenue and 188 s.f. of "green" space was eliminated. After discussing this plan, your Board noted its comfort in granting a parking variance of 6 spaces, subject to receipt of amended site plan approval from the Planning Board.

In addition to the revised parking layout, your Board also requested that we remove the covered walkway between the buildings. By removing the covering to the walkway, we reduce the total building coverage and eliminate the need for a variance from the building coverage requirement.

IV. AMENDED SITE PLAN APPROVAL

The revisions made to the plans, based on our discussions with your Board, include:

- (i) an increase in the number of parking spaces from 10 to 12;
- (ii) the relocation of the proposed townhomes 2.5 feet closer to Lexington Avenue;
- (iii) the elimination 188 s.f. of “green” space; and
- (iv) the elimination of the covered walkway between the existing building and proposed townhomes.

In order to address these plan revisions, pursuant to § 110-45(C)(6) of the Mount Kisco Zoning Code, we submitted an application for amended site plan approval to the Planning Board. In support of that application and this area variance application, enclosed herewith please find the “Existing Conditions, Demolition & Layout Plan”, prepared by Alfonzetti Engineering P.C., dated June 8, 2020, Revised September 23, 2021. As stated above, based on the revised layout plan, the Planning Board granted amended site plan approval on September 14, 2021.

V. ZONING REQUIREMENTS AND NEED FOR AN AREA VARIANCE

The Subject Property is located in the CN Neighborhood Commercial Zoning District. Pursuant to § 110-18(A), “[t]he CN District is intended to provide for a mix of residential and highly restricted commercial uses.” Permitted uses in the CN district include residences above stores (*see* § 110-18(B)(1)(h)) and townhouses (*See* § 110-18(B)(1)(k)). As shown on the zoning compliance chart on the Layout Plan enclosed herewith, the following variances are required:

1. Front Yard Setback: Pursuant to § 110-18(C)(7), the required front yard setback in the CN zone is 20 feet. In this case, the Applicant is proposing a front yard setback of 3.0 feet. Therefore, a variance of 17 feet is required.
2. Parking Aisle Width: Pursuant to Chapter 110 – Attachment 1 Parking Facility Standards, the required aisle width for parking spaces at 90 degrees is 25 feet. The aisle width provided ranges from 19.2 feet to 22.9 feet. Accordingly, a 5.8 feet drive aisle width variance is necessary.
3. Parking: Pursuant to Chapter 110 Attachment 2, a total of 18¹ parking spaces are required for the proposed development.
 - 6.75 spaces for the new townhouses (2 per unit and .75 guests)
 - 9 for existing four family (2 per unit and 1 for guests)(4 spaces have been credited for the existing two-family dwelling.
 - 6 spaces for the 1,200 s.f. retail store (1 per each 200 s.f.)

In this case, 12 parking spaces are being provided. Therefore, a variance for 6 spaces is required.

¹ Please note that the Applicant has received a credit of four (4) parking spaces for the previously existing 2-family house.

4. Development Coverage: Pursuant to § 110-18(C)(7)(b)(3), the maximum development coverage is 65%. The proposed development coverage is 80.9%. Accordingly, a variance of 15.9% is required.

VI. STANDARDS FOR GRANTING AN AREA VARIANCE

A. Statutory Provisions: New York State Town Law § 267-B(3) and New York State Village Law § 7-712(B)(3): These sections of the State’s Town and Village Law provide the framework and statutory underpinning for the Zoning Board’s review of area variances. These sections provide as follows:

“3. Area variances. (a) The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such local law, to grant area variances as defined herein.

(b) In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

(c) The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

B. Application of Area Variance Standards to the Present Application:

1. Overall Standard: The overall standard that governs the Zoning Board’s review of area variances is a balancing test set forth in Town Law § 267-B(3) and Village Law § 7-712(B)(3). This standard requires the Zoning Board of Appeals to balance “...the benefit to

the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.” The State statute then provides the Zoning Board with five specific considerations to take into account in evaluating the balancing test set forth above.

It is respectfully submitted that the granting of these variances will not be a detriment to the health, safety, and welfare of the neighborhood or community, but it will be a great benefit to the Applicants.

On balance, and for the reasons set forth below, we feel that the Applicant is entitled to the requested variance.

2. Specific Standards for Zoning Board Review:

a. *Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance:*

It is respectfully submitted that the granting of the requested area variances will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties. The Subject Property is located in the CN zoning district. The stated intent of the CN district is “to provide for a mix of residential and highly restricted commercial uses.” Further, in 2019, the zoning code was amended to include townhouses as a principal permitted use. In this case, the Applicant is renovating the exterior of the existing structure, which contains retail on the first floor with apartments above and proposing three new 2-bedroom townhomes. This development proposal is in keeping with intent and character of the CN district.

First, with respect to the front yard setback, the proposed development is in keeping with the character of the surrounding neighborhood. To the north are multi-family houses that are built right up to the sidewalk. In this case, the proposed setback is in keeping with the surrounding properties and will not result in an undesirable change in the character of the neighborhood or be a detriment to nearby properties.

Second, the deficient parking aisle width will not result in an undesirable change in the character of the neighborhood, nor will it be a detriment to nearby properties.

Third, the development proposal requires a total of 18 parking spaces and 12 are being provided. The need for parking in this area is mitigated by the fact that the Subject Property is within walking distance to public transportation; the train station is just over one-half mile away and the nearest bus stop is approximately one quarter mile away. Further, the Subject Property is within walking distance to the downtown area. Finally, for foregoing reasons, the Applicant is willing contractually limit the number of cars that a tenant can have to one per residential unit.

Fourth, with respect to development coverage, it is respectfully submitted that the additional development coverage over what is allowable will have a positive impact on the character of the community and be a benefit to neighboring properties. The addition of three new townhouses, the exterior renovations to the existing structure, and the restoration of sidewalk, curbing, and landscaping will create a beautiful and cohesive street scape that will benefit not only the applicant, but also the entire neighborhood.

For the foregoing reasons, the granting of the requested variances will not result in a change in the character of the neighborhood or be a detriment to nearby properties.

b. *Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance:*

It is respectfully submitted that in order to re-develop the Subject Property incorporating the existing building into the townhouse design and create a cohesive street scape, there is no feasible alternative to pursue other than the area variances.

c. *Whether the requested area variance is substantial:*

- i. **Minimum Front Yard Setback:** As stated above, the minimum front yard setback requirement is 20 feet. Currently, the existing building has a front yard setback of 0.5 feet. This is considered a pre-existing legal non-conformity. The proposed front yard setback for the new townhouses is 3 feet, a deficiency of 17 feet. It is respectfully submitted that the proposed setback is in keeping with the character of the properties to the north and south of the subject property. As you can see on our plans, the townhouse buildings were placed so as to line up with the building on the adjoining property. To set the townhomes back further would create an undesirable "sawtooth" effect.
- ii. **Aisle Width:** It is respectfully submitted that the requested variance from the minimum aisle width is not substantial. The required parking aisle width is 25 feet. In this case, the parking the aisle width ranges from 19.2 feet to 22.9 feet. Accordingly, a variance of 5.8 feet is required.
- iii. **Required Number of Parking Spaces:** Pursuant to Chapter 110 Attachment 2, the development proposal requires a total of 18 parking spaces and 12 are being provided. While this requested variance represents a 33% reduction in the parking that is required, there are extenuating circumstances that mitigate any impacts associated with the granting of the variance. As stated above, the need for parking in this area is alleviated by the fact that the Subject Property is within in walking distance to public transportation; the train station is just over one-half mile away and the nearest bus stop is just over a quarter mile away. Further, the Subject Property is within walking distance to the downtown area. Finally, for foregoing reasons, the Applicant is willing contractually limit the number of cars that a tenant can have to one per residential unit.

- iv. Maximum Development Coverage: Pursuant to § 110-18(C)(7)(b)(3), the maximum development coverage is 65%. The Applicant is seeking a development coverage of 81.7%, which requires a 16.7% maximum development coverage variance. It is respectfully submitted that this is not a substantial variance.

d. *Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district:*

It is respectfully submitted that the requested variance will have no adverse effect or impact on the physical or environmental condition in the neighborhood or district.

e. *Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance:*

It is respectfully submitted that the alleged difficulty was not self-created. The re-development of the Subject Property is being driven by the location of the existing building, the neighboring building to the south, and the desire to create a cohesive street scape that blends into the surrounding neighborhood. It should be noted that pursuant to both the State Statute and case law, this criterion shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

Based on the foregoing, a balancing of all the factors supports the granting of the requested variance. There will be a significant benefit to the Applicant if the requested variance is granted with no harm to the neighboring properties. Therefore, the interests of justice will clearly be served by the granting of the area variance.

3. Application of Balancing Tests: The standard that the Zoning Board of Appeals must use in evaluating this request for an area variance is the benefit to the Applicant if the variance is granted, compared to any detriment to the health, safety and welfare of the neighborhood or community created by such grant. In this case, there will be no detriment to the health, safety and welfare of the neighborhood, while the benefit to the Applicant is significant.

VII. CONCLUSION

The analysis of the specific factors set forth above clearly demonstrates that the benefit to the Applicant outweighs any detriment to the health, safety and welfare of the neighborhood. For all of the foregoing reasons, it is respectfully requested that the variances sought herein be granted.

Please place this matter on the Zoning Board of Appeals' October 19, 2021 meeting agenda and advise if any additional information is required.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,


Kory Salomone

EXHIBIT A

**PLANNING BOARD RESOLUTION
VILLAGE OF MOUNT KISCO**

RECEIVED

**SITE PLAN APPROVAL
CHANGE OF USE PERMIT
215 LEXINGTON AVENUE**

SEP 15 2021

**Mount Kisco
Office of the Village Clerk**

**Sheet 80.32, Block 4, Lot 6
Cal #2016-0328**

September 14, 2021

WHEREAS, the subject property consists of ± 0.26 acre of land and is located at 215 Lexington Avenue within the Neighborhood Commercial (CN) Zoning District; and

WHEREAS, the subject property is located on the corner of Lexington Avenue and Maplewood Drive; and

WHEREAS, the subject property is owned by Bagnato 205 Lexington Avenue Corp. ("the applicant"); and

WHEREAS, the subject property is developed with a unlawful, dimensionally noncomplying three-story (4-family) apartment building with $\pm 1,200$ s.f. of commercial use on the ground floor and an attached 1-story commercial building located immediately to its south; an existing non-complying parking area is located adjacent to Lexington Avenue and consists of six (6) perpendicular spaces; and

WHEREAS, a residence and garage had been located on the subject parcel but have since been demolished and removed; and

WHEREAS, the applicant is proposing the legalization and exterior renovation of the existing 4-family apartment building and the construction of three (3) new townhomes to be located along Lexington Avenue; an off-street parking area is proposed to the rear of the building, with access from Maplewood Drive ("the proposed action"); and

WHEREAS, the proposed action includes landscaping, lighting, installation of accessible parking, the increase of greenspace along Maplewood Drive, the installation of street trees, and the ability to provide three (3) new on-street parking spaces on Lexington Avenue; and

WHEREAS, on March 9, 2021, the Planning Board issued a Negative Declaration of Significance and granted Site Plan Approval and a Change of Use Permit, subject to conditions; and

WHEREAS, Condition #1 of the approving resolution required the applicant to obtain all outside agency approvals, including certain area variances from the Zoning Board of Appeals; and

WHEREAS, the applicant appeared before the Zoning Board of Appeals and, as a result of their review, the applicant has made the following adjustments to the previously approved site plan:

1. The modified plan increases the number of parking spaces for 10 to 12 spaces; the configuration of the parking spaces has been adjusted; and
2. The location of the proposed townhomes has shifted toward Lexington Avenue by 2.5 feet; and
3. As a result of Items #1 and #2 above, the amount of greenspace has been decreased by 188 s.f.; and
4. The covered walkway has been eliminated and, therefore, a building coverage variance is no longer required.

WHEREAS, reference is made to a letter prepared by the applicant's Attorney, Zarin & Steinmetz, dated June 22, 2021; and

WHEREAS, according to the applicant, while the Zoning Board of Appeals did not act on the requested variances, the Zoning Board indicated that the plan changes described above would satisfy its concerns and would be viewed favorably when compared to the original proposal; and

WHEREAS, following its appearance before the Zoning Board, the applicant modified the site plan drawings to address comments provided by the Zoning Board of Appeals and re-applied to the Planning Board for amended site plan approval; and

WHEREAS, the applicant reviewed the amended site plan and associated revisions with the Planning Board at the Board's July 13, 2021 meeting; and

WHEREAS, reference is made to the following drawings prepared by Federico Associates, dated (last revised) June 22, 2021:

- Streetscape Elevations Lexington Ave (A1)
- Streetscape Elevations Maplewood Ave (A2)

- Rear & Right Elevations (East & South) (A3)
- Ground Floor/Basement Plans (A4)
- First Floor Plans (A5)
- Second Floor Plans (A6)

WHEREAS, reference is made to review memoranda prepared by the Building Inspector, Village Planner, and Village Engineer of various dates; and

WHEREAS, the proposed action has been determined to be an Unlisted Action, pursuant to the New York State Environmental Quality Review Act (SEQRA), 6 NYCRR Part 617 and a coordinated review was not conducted; and

WHEREAS, the Planning Board has compared the proposed action with the Criteria for Determining Significance in 6 NYCRR 617.7(c) and determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Planning Board has considered all reasonably related long-term, short-term, direct, indirect, and cumulative environmental effects associated with the proposed action including other simultaneous or subsequent actions.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board hereby issues the attached Negative Declaration of Significance; and

BE IT FURTHER RESOLVED THAT, the Planning Board hereby grants site plan approval and approves the following plans (hereafter referred to as "the approved plans"), subject to the below conditions:

1. The following plans, prepared by Alfonzetti Engineering, P.C., dated (last revised) June 15, 2021
 - Existing Conditions, Demolition and Layout Plan
 - Proposed Grading and Utility Plan
 - Erosion Control & Green Areas Plan
 - Site Details
 - Turning Radius Study Plan
2. Lighting Plan, prepared by e-conolight, signed by Ralph Alfonzetti, P.E., dated (last revised) June 15, 2021
3. Landscape Plan, prepared by Stephen Lopez, AICP, RLA, dated November 16, 2020; and

BE IT FURTHER RESOLVED THAT, the Planning Board hereby grants a waiver to permit permanent encroachments into the landscape buffer, as shown on the approved plans referenced herein; and

BE IT FURTHER RESOLVED THAT, in accordance with Section 110-38 of the Zoning Code, the Planning Board hereby grants a Change of Use Permit; and

BE IT FURTHER RESOLVED THAT, unless extended by the Planning Board within 6-months of the filing of this resolution, Conditions #1 – #7 shall be satisfied prior to the signing of the approved plans by the Planning Board Chairman. Construction shall commence within six (6) months of the date of this Resolution and all remaining conditions contained herein shall be satisfied within one (1) year of commencement of construction.

Conditions to be Satisfied Prior to the Signing of the Approved Plans:

1. Prior to the signing of the approved plans, it is the applicant's responsibility to identify and secure any and all necessary permits/approvals from outside agencies having jurisdiction over the proposed action. Copies of outside agency permits/approvals shall be submitted to the Planning Board and the Building Department. In the event that such permit(s) require modification to the plans approved herein, a determination shall be made by the Building Inspector and Village Engineer as to whether the modification(s) is substantive and should be returned to the Planning Board for review. The following outside agency permits/approvals have been identified by the applicant:
 - Area variances from the Village of Mount Kisco Zoning Board of Appeals (ZBA)
 - Village of Mount Kisco Architectural Review Board (ARB)
 - Village of Mount Kisco Department of Public Works (DPW) – to be issued prior to the commencement of work
 - Westchester County Department of Public Works
 - New York City Department of Environmental Protection (NYCDEP) Stormwater Pollution Prevention Plan (SWPPP) approval
 - New York State Department of Environmental Conservation (NYSDEC) SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-20-001) – to be issued prior to the commencement of work
2. The owner/applicant shall satisfactorily address any outstanding comments provided by the Building Inspector, Village Attorney, Village Engineer, and/or Village Planner.
3. The landscape plan shall be revised to incorporate the proposed modifications, to the satisfaction of the Village Planner.
4. All applicable application fees and fees associated with professional legal, engineering and planning consultation shall be paid for by the owner/applicant.

5. Payment of a recreation fee (3 units) in the amount required by the Village Board's schedule of fees, as applicable.
6. The applicant shall submit a "check set" (4 copies) of the approved plans prepared in final form and in accordance with the conditions of this Resolution, for review by Village staff.
7. The approved plans shall be revised to conform to the above conditions and to the satisfaction of Village staff. The applicant shall submit four (4) original copies of the approved plans, signed and sealed by the design professional, for final review by Village staff and for signature by Village staff and the Planning Board Chairman. All plans shall have a common revision date.

Conditions to be Satisfied Prior to Commencement of Any Work:

8. The applicant shall obtain a Building Permit. A Building Permit shall not be issued until the Approved Plans have been signed by the Village staff and the Planning Board Chairman.
9. The applicant shall submit a schedule for all earthwork and land disturbance to the Village Engineer for approval. The applicant shall notify the Village Engineer and Building Inspector at least 72 hours in advance of any site disturbance.
10. Before commencement of any land disturbance, placing construction equipment on-site or actual construction, the subject property must be staked out by a NYS Licensed Land Surveyor, as determined necessary by the Village Engineer.
11. A pre-construction meeting shall be conducted with the applicant, contractor, Building Inspector, and Village Engineer.

Conditions to be Satisfied Prior to the Issuance of a Building Permit:

12. The owner/applicant shall satisfy the above conditions and the approved plans shall be signed by Village staff and the Planning Board Chairman.
13. A pre-construction meeting shall be conducted with the applicants, contractor, Building Inspector, Village Engineer and Village Planner.
14. The Applicant shall demonstrate that coverage has been obtained under the NYSDEC SPDES General Permit (GP-0-20-001).

Conditions to be Satisfied During Construction:

15. The Village Engineer and Village Planner shall have the right to inspect the property during construction.

16. All construction activities shall be performed during the times permitted under the Village Code. The Village Engineer and Village Planner shall have the right to inspect the property during construction, the cost of which shall be paid for by the applicant.
17. All proposed retaining walls more than four (4) feet in height shall be fully designed by a New York State Licensed Professional Engineer and to the satisfaction of the Building Inspector. Design drawings, details, and calculations shall be submitted to the Village Engineer and Building Inspector for review and approval.
18. All development activities shall be completed in accordance with the Approved Plans, subject to potential, non-substantive "field changes." For any reason, should modification to these plans be deemed necessary, the applicants shall contact the Building Inspector to review same and to determine if Amended Site Plan Approval is required. Any change to the construction details approved as part of the Approved Plans shall be reviewed and approved by the Building Inspector or Village Staff, as applicable.
19. Construction-related exterior lighting, equipment, and generators shall be turned off during non-working hours.
20. Construction activities shall be supervised by a NYS Licensed Professional Engineer.

Conditions to be Satisfied Prior to the Issuance of a Certificate of Occupancy:

21. There shall be no Final Certificate of Occupancy issued, until there is full compliance with the plans approved herein and all conditions of this Resolution.
22. Prior to the issuance of a Final Certificate of Occupancy, an as-built survey, signed and sealed by a NYS Licensed Land Surveyor and demonstrating compliance with the approved plans shall be submitted. This survey shall be prepared to the satisfaction of the Village Engineer.
23. Prior to the Issuance of a Final Certificate of Occupancy, all required landscaping Installations shall be completed and inspected by the Village Planner; any plant substitutions shall be approved by the Village Planner prior to being installed.
24. A final site inspection shall be completed by the Building Inspector, Village Engineer and Village Planner.
25. All applicable application fees and fees associated with professional legal, engineering and planning consultation shall be paid for by the applicant.

Other Conditions:

26. All WHEREAS clauses contained within the body of this Resolution shall be deemed incorporated as conditions of approval, as if fully set forth herein.
27. The Planning Board is to retain original jurisdiction.
28. The applicant shall be responsible for the installation (material/labor) associated with any Improvements proposed on Village property, including the installation of landscaping, sidewalks, curbing, utilities, and the three (3) on-street parking spaces (if approved by the Village Manager).
29. All aspects regarding use, construction and operations at this site shall be fully compliant with Village Code, covenants, restrictions, and easements, and any other local, state or federal regulations.
30. Landscaping shall be maintained for the life of the facility and in accordance with the approved landscaping plan. The applicant shall be responsible for any re-grading, replanting, or irrigation necessary to ensure that the landscaping is installed and maintained in accordance with the approved plan. In the event that landscaping is not maintained to the satisfaction of the Village Engineer and/or Building Inspector, the Village Engineer and/or Building Inspector shall notify the applicant in writing of the violation.
31. No change of use and no expansion or intensification of use shall be permitted without Planning Board approval.
32. Failure to comply with any of the aforesaid conditions shall constitute a violation of site plan approval and shall subject the applicant to prosecution, penalties and/or permit revocations pursuant to applicable law. Deviation from any such approvals may render this site plan or certificates of occupancy issued in conjunction therewith, null and void.

ADOPTION OF RESOLUTION


WHEREUPON, the Resolution herein was declared adopted by the Planning Board of the Village of Mount Kisco as follows:

The motion was moved by: JOHN BAINLARDI

The motion was seconded by: MICHAEL BONFORTE

The vote was as follows:

JOHN BAINLARDI	<u>AYE</u>
RALPH VIGLIOTTI	<u>NAY</u>
MICHAEL BONFORTE	<u>AYE</u>
WILLIAM POLESE	<u>AYE</u>
CRYSTAL PICKARD	<u>AYE</u>
BARBARA ROPPOLO	<u>AYE</u>
MICHAEL MCGUIRK	<u>NAY</u>



John Bainlardi, Acting Chairman

September 14, 2021

AFFIDAVIT OF MAILING

STATE OF NEW YORK)
)
COUNTY OF WESTCHESTER) ss:

Village/Town of Mount Kisco
Zoning Board

NOV 04 2021

RECEIVED

Being duly sworn, Tracy A. Russo, hereby deposes and says as follows:

1. I am not party to this action and am over 18 years of age;
2. On November 3, 2021, I served the within Public Notice, via standard mail, addressed to the following people at the last known addresses set forth below:

See attached.

Tracy A. Russo
Tracy A. Russo

Sworn to and subscribed before me
this 4th day of November 2021

Laura McMahon
NOTARY PUBLIC

LAURA MCMAHON
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01MC6017348
QUALIFIED IN ROCKLAND COUNTY
COMMISSION EXPIRES 12/14/2022

NOV 04 2021

PUBLIC NOTICE

RECEIVED

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village/Town of Mount Kisco, New York will hold a Public Hearing on the 16th day of November 2021 at the Municipal Building, Mount Kisco, New York, beginning at 7:00 PM pursuant to the Zoning Ordinance on the Appeal of Bagnato 205 Lexington Avenue Corp c/o The Crecco Companies, 871 Commerce Street, Thornwood, New York 10594 from the decision of Peter J. Miley, Building Inspector, dated July 7, 2021 denying the application dated to permit the renovation of an existing structure and the construction of three new townhouses with associated parking and landscaping.

The property involved is known as 215 Lexington Avenue, Mount Kisco, New York and described on the Village Tax Map as Section 80.32 Block 4 Lot 6 and is located on the east side of Lexington Avenue in a CN Neighborhood Commercial Zoning District. Said Appeal is being made to obtain a variance from Section(s): 118(C)(7)(b)(6)[a], Chapter 110-Attachment 1, Chapter 110-Attachment 2, and 110-18(C)(7)(b)(3) of the Code of the Village/Town of Mount Kisco, which requires

- 110-18(C)(7)(b)(6)[a] requires a front yard setback of 20 feet. 3.0 feet are being provided; therefore, a 17 foot front-yard setback variance is required
- Chapter 110 – Attachment 1 requires that the aisle width for parking at 90 degrees shall be 25ft. The proposed drive-aisle width is 19.2 feet; therefore, a 5.8 foot drive-aislewidth variance is required.
- Chapter 110 – Attachment 2 requires that 18 parking spaces be provided for the project. 12 parking spaces are being provided; therefore, a 6 parking space variance is required.
- 110-18(C)(7)(b)[3] limits the maximum development coverage to 65%. The proposed development coverage is 80.9%; therefore, a 15.9% maximum development coverage variance is required.

Harold Boxer, Chair
Zoning Board of Appeals
Village/Town of Mount Kisco

Reber John F - John F Reber Trust
122 Smith Ave
MOUNT KISCO, NY 10549

121 Smith Ave LLC
108 Smith Avenue
Mt.Kisco, NY 10549

Jadan Enrique
Teresa Jadan
200 Lexington Ave
MOUNT KISCO, NY 10549

St Francis Cemetery
2 Green St
Mt Kisco, NY 10549

Peralta Guido G
Peralta, Maria T
4 Maplewood Dr
MOUNT KISCO, NY 10549

Mathias Family Corporation
104 Smith Ave
Mt.Kisco, NY 10549

113 Smith Avenue Assoc
113 Smith Ave
MOUNT KISCO, NY 10549

Bagnato 205 Lexington Ave Corp
c/o Capital R E Tax Services
1300 Combermere Dr
Troy, MI 48083

Lago, Bertha
Romero, Jaime
10 Maplewood Dr
Mt.Kisco, NY 10549

People of the State of NY
Dir. Real Estate Westchester Co.
148 Martine Ave, 9th Floor
White Plains, NY 10601

Reberville, LLC
122 Smith Avenue
Mt.Kisco, NY 10549

Pinnetti, Nicola
27 Manchester Dr
Mt. Kisco, NY 10549

Bagnato Holding Co Inc
Edward Bagnato
18 Overlook Rd
Norwalk, CT 06851

Thomas Fatato Realty Corp
592 Pacific Street
Brooklyn, NY 11217

Tapia-Garcia, Alberto
Tapia-Garcia, Angelica Z
203 Lexington Ave
Mt. Kisco, NY 10549

Three Girls, LLC
241 Lexington Ave
Mt.Kisco, NY 10549

105 Smith Avenue LLC
Attn: Luigi Demasi
16 Oakbrook Rd
Ossining, NY 10562

Bagnato Holding Co Inc
Edward Bagnato
18 Overlook Rd
Norwalk, CT 06851

Bon Ann LLC
75 Grove Street
Mt. Kisco, NY 10549

Bermeo Claudio
100 Gregory Ave
Mt. Kisco, NY 10549

Pugliese Matthew
Meghan Pugliese
108 Smith Avenue
Mt.Kisco, NY 10549

Gonzales Gustavo
Rosa E Gonzales
3 Maplewood Dr
Mt. Kisco, NY 10549

Tapia-Garcia, Alberto
Tapia-Garcia, Angelica Z
15 Maplewood Dr
MOUNT KISCO, NY 10549

Delgado Julio
465 Doansburg Rd
Brewster, NY 10509

Amuso, Dominic Steven
200 Woodcrest Dr. unit 221
Mt. Kisco, NY 10549

Village/Town of Mount Kisco
Zoning Board
NOV 04 2021

RECEIVED



RECEIVED

NOV 12 2021

Zoning Board of Appeals
Village/Town of Mount Kisco

AFFIDAVIT OF PUBLICATION FROM

State of Wisconsin
County of Brown, ss.:

On the 31 day of October in the year 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Linda Tatt, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed, the instrument.

Linda Tatt being duly sworn says that he/she is the principal clerk of **THE JOURNAL NEWS**, a newspaper published in the County of Westchester and the State of New York, and the notice of which the annexed is a printed copy, on the editions dated :

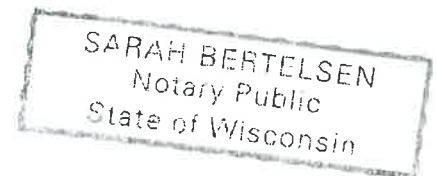
Zone:
Westchester

Run Dates:
10/31/2021

Linda Tatt
Signature

Sworn to before me, this 31 day of October, 2021

[Signature]
Notary Public, State of Wisconsin, County of Brown



7/27/25

My commission expires

Legend:

WESTCHESTER:

Amawalk, Ardsley, Ardsley on Hudson, Armonk, Baldwin Place, Bedford, Bedford Hills, Brewster, Briarcliff Manor, Bronxville, Buchanan, Carmel, Chappaqua, Cold Spring, Crompond, Cross River, Croton Falls, Croton on Hudson, Dobbs Ferry, Eastchester, Elmsford, Garrison, Goldens Bridge, Granite Springs, Greenburg, Harrison, Hartsdale, Hastings, Hastings on Hudson, Hawthorne, Irvington, Jefferson Valley, Katonah, Lake Peekskill, Larchmont, Lincolnville, Mahopac, Mahopac Falls, Mamaroneck, Millwood, Mohegan Lake, Montrose, Mount Kisco, Mount Vernon, New Rochelle, North Salem, Ossining, Patterson, Peekskill, Pelham, Pleasantville, Port Chester, Pound Ridge, Purchase, Purdys, Putnam Valley, Rye, Scarsdale, Shenorock, Shrub Oak, Somers, South Salem, Tarrytown, Thornwood, Tuckahoe, Valhalla, Verplanck, Waccabuc, White Plains, Yorktown Heights, Yonkers

ROCKLAND:

Blauvelt, Congers, Garnerville, Haverstraw, Hillburn, Monsey, Nanuet, New City, Nyack, Orangeburg, Palisades, Pearl River, Piermont, Pomona, Sloatsburg, Sparkill, Spring Valley, Stony Point, Suffern, Tallman, Tappan, Thiells, Tomkins Cove, Valley Cottage, West Haverstraw, West Nyack

Ad Number: 0004972518

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and is located on the eastside of Lexington Avenue in a CN Neighborhood Commercial Zoning District. Said Appeal is being made to obtain a variance from Section(s): 118(C)(7)(b)(6)(a), Chapter 110-Attachment 1, Chapter 110-Attachment 2, and 110-18(C)(7)(b)(3) of the Code of the Village/Town of Mount Kisco, which requires

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Harold Boxer, Chair
Zoning Board of Appeals
Village/Town of Mount Kisco 0004972518

State of New York)
) ss:
County of Westchester)

AFFIDAVIT OF POSTING

Guillermo Gomez, being duly sworn, says that on the 9th day of November 2021, he conspicuously fastened up and posted in seven public places, in the Village/Town of Mount Kisco, County of Westchester, a printed notice of which the annexed is a true copy, to Wit: ---

Municipal Building –
104 Main Street

X

Public Library
100 Main Street

X

Fox Center

X

Justice Court – Green Street
40 Green Street

X

Mt. Kisco Ambulance Corp
310 Lexington Ave

X

Carpenter Avenue Community House
200 Carpenter Avenue

X

Leonard Park Multi Purpose Bldg

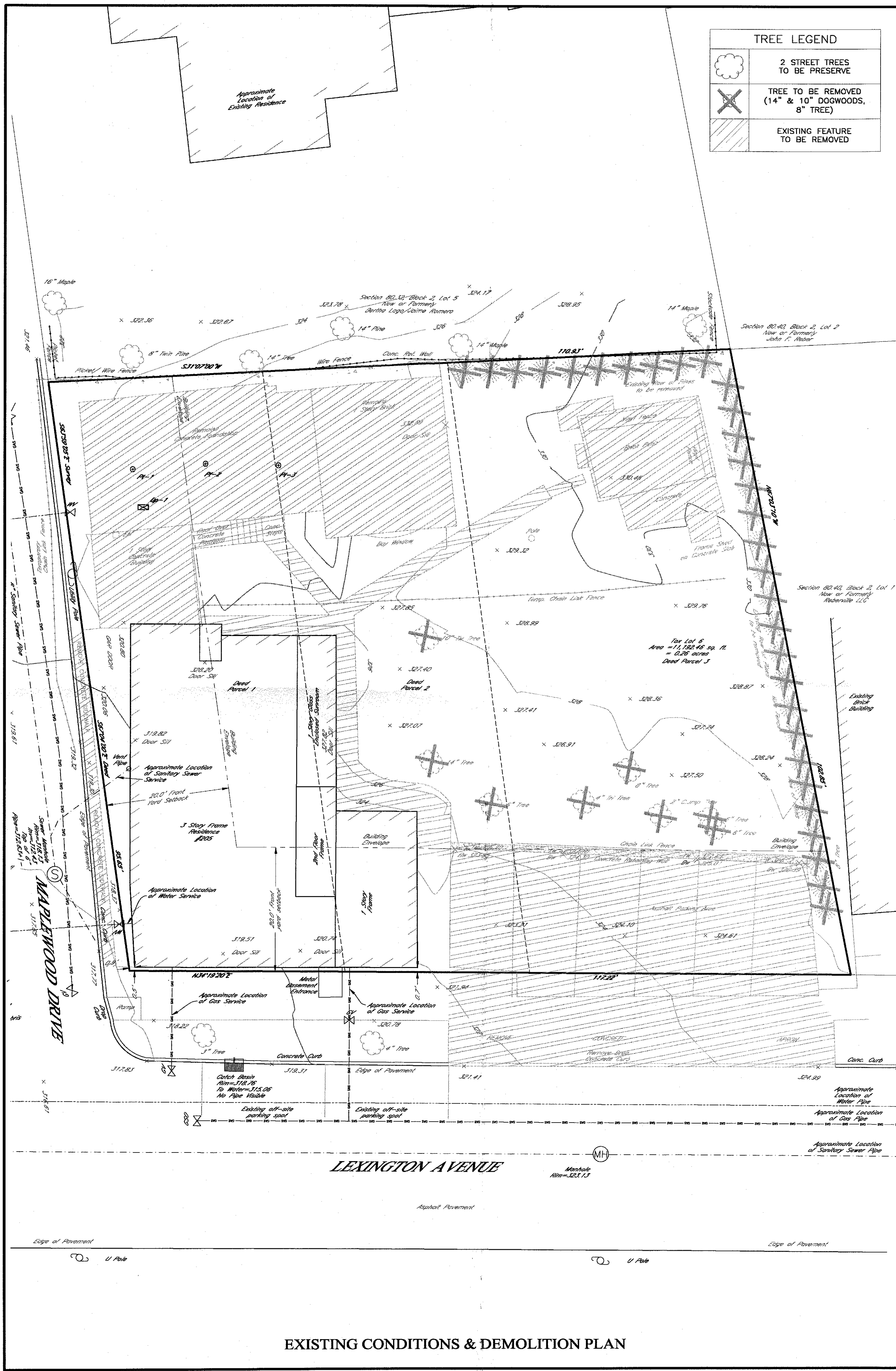
X


Guillermo Gomez

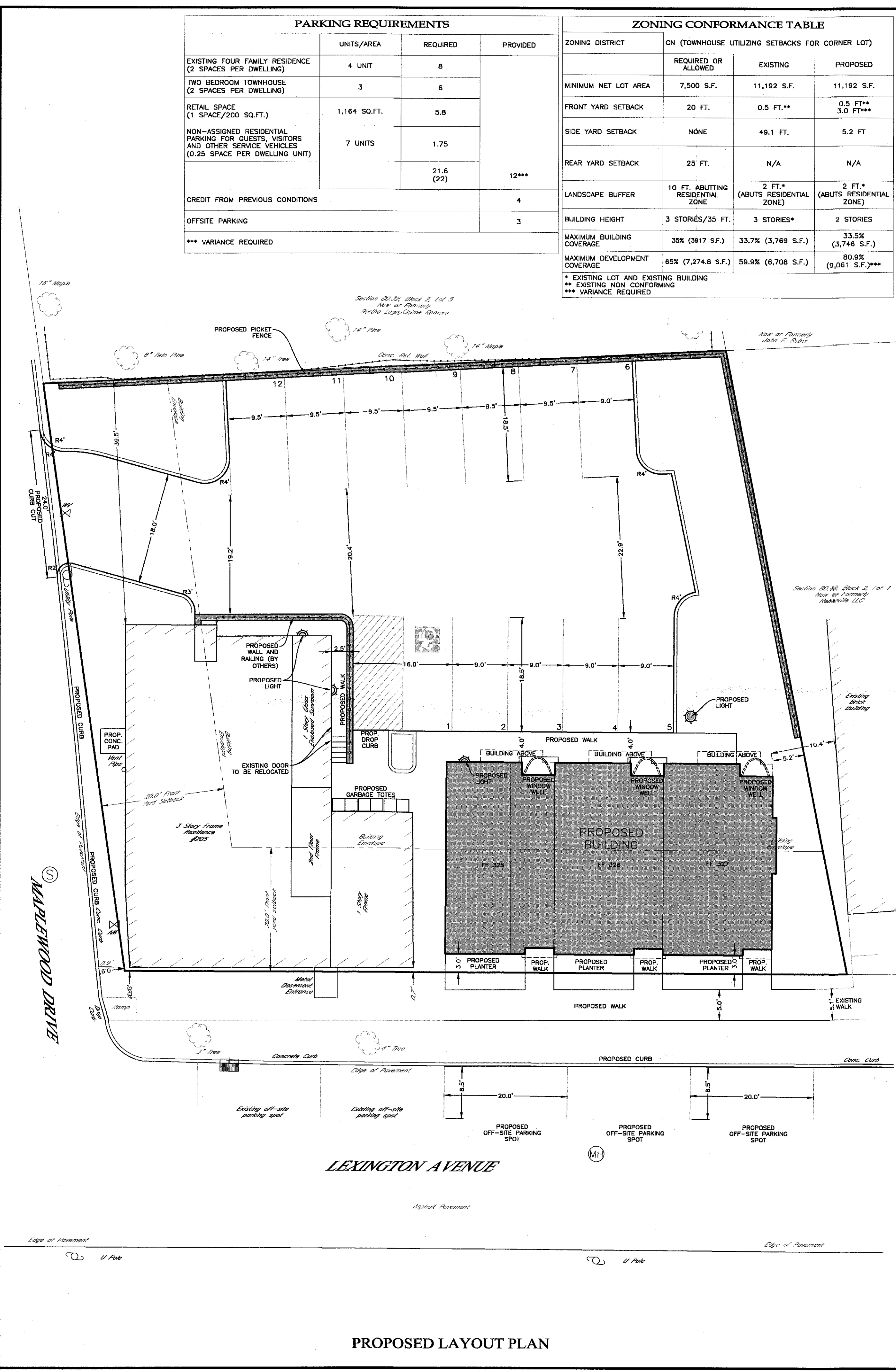
Sworn to before me this 9th day of November 2021


Notary Public

MICHELLE K. RUSSO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01RU6313298
Qualified In Putnam County
My Commission Expires 10-20-2022



EXISTING CONDITIONS & DEMOLITION PLAN



PROPOSED LAYOUT PLAN

LOCATION MAP

N.T.S.

CONSTRUCTION NOTES:

- THE CONTRACTOR SHALL LOCATE AND VERIFY IN THE FIELD ALL UTILITIES: SEWER, WATER, GAS, ELECTRICAL, ETC. PRIOR TO THE START OF CONSTRUCTION. CONTRACTOR SHALL CALL CODE 753 (FORMERLY CODE 53) PRIOR TO THE START OF CONSTRUCTION.
- THE INSTALLATION OF WATER AND SEWER SHALL BE INSPECTED UNDER THE DIRECTION OF A N.Y. STATE LICENSED PROFESSIONAL ENGINEER.
- EROSION AND SEDIMENT CONTROL MEASURES SHALL BE REQUIRED AS INDICATED ON THIS PLAN OR THE EROSION CONTROL PLAN OR AS DIRECTED BY THE GOVERNING AGENCY, IN ACCORDANCE WITH THE CURRENT EDITION OF "NEW YORK STATE STANDARDS AND SPECIFICATIONS FOR EROSION AND SEDIMENT CONTROLS" (BLUE BOOK).
- AS BUILT PLANS IF REQUIRED, SHALL BE CERTIFIED BY A N.Y. STATE LICENSED SURVEYOR OR PROFESSIONAL ENGINEER.
- ALL PROPERTY DISTURBED IN THE RIGHT-OF-WAY OR ON PRIVATE LANDS, SHALL BE RESTORED TO ACCEPTABLE CONDITIONS, AS REQUIRED BY THE GOVERNING AGENCY.
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL APPLICATIONS AND PERMITS REQUIRED FOR CONSTRUCTION.
- THE ROAD AND UTILITIES SHALL BE STAKED IN THE FIELD BY A NEW YORK STATE LICENSED SURVEYOR OR ENGINEER.
- UNDERGROUND UTILITIES: GAS, ELECTRIC, CABLE, TELEPHONE, ETC. SHALL BE AS REQUIRED BY THE GOVERNING AGENCY AND THE APPROPRIATE UTILITY COMPANY.
- ALL PROPOSED OR DISTURBED SLOPES, 1:1 OR GREATER SHALL BE STABILIZED WITH AN EROSION CONTROL BLANKET.
- IN LIEU OF BLASTING, ROCK RIPPING WILL BE USED WHEREVER POSSIBLE. IF BLASTING IS REQUIRED, BLASTING WILL OCCUR IN ACCORDANCE WITH REGULATIONS AND STANDARDS PRESCRIBED BY THE GOVERNING AGENCY. CONTRACTOR IS RESPONSIBLE FOR ALL NECESSARY PERMITS IF BLASTING IS REQUIRED.
- NO REPRESENTATION OF THE SUB-SURFACE SOIL CONDITIONS ON THIS SITE ARE MADE OR IMPLIED. IT IS THE DEVELOPER/CONTRACTOR'S RESPONSIBILITY TO ENSURE ALL IMPROVEMENTS ARE PLACED ON SOIL WITH A SUITABLE BEARING CAPACITY.

DEEP TEST HOLE DESCRIPTIONS
(8/18/2020)

DT1	0'-36" BROWN SANDY LOAM 36"-84" SAND NO GROUNDWATER NO REFUSE NO MOTTLING
-----	---

PERCOLATION TEST
(8/18/2020)

P1	2.5 MIN./IN.
P2	4 MIN./IN.
P3	2.14 MIN./IN.

* SLOWEST PERCOLATION RATE OBSERVED: 4 MIN/INCH
PERCOLATION RATE USED: 8 MIN/INCH

IT IS A VIOLATION OF THE NEW YORK STATE EDUCATION LAW, ARTICLE 145, SECTION 7209(2), FOR ANY PERSON, UNLESS HE IS ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER OR LAND SURVEYOR, TO ALTER ANY ITEM ON THIS PLAN IN ANY WAY. IF ANY ITEM BEARING THE SEAL OF AN ENGINEER OR LAND SURVEYOR IS ALTERED, THE ALTERING ENGINEER OR LAND SURVEYOR SHALL AFFIX TO THE ITEM HIS SEAL AND THE NOTATION "ALTERED BY" FOLLOWED BY HIS SIGNATURE AND THE DATE OF SUCH ALTERATION, AND A SPECIFIC DESCRIPTION OF THE ALTERATION.

ALFONZETTI ENGINEERING, P.C.
14 SMITH AVE, MT. KISCO, N.Y. 10549
914-666-9800 INFO@ALFONZETTIENG.COM

SITE DATA

OWNER/APPLICANT:
THE CRECCO COMPANIES
871 COMMACK STREET
THORNWOOD, NY 10594

SITE ADDRESS:
215 LEXINGTON AVENUE
MT. KISCO, NY 10549

TAX MAP #: 80.32-4-6

LOT AREA: 0.26 ACRES

ZONING: R4

REVISIONS:
REvised: SEPTEMBER 23, 2021
REvised: JUNE 15, 2021
REvised: APRIL 28, 2021
REvised: DECEMBER 8, 2020
REvised: NOVEMBER 12, 2020
REvised: SEPTEMBER 28, 2020
REvised: AUGUST 11, 2020

DRAWINGS: EXISTING CONDITIONS,
DEMOLITION & LAYOUT PLAN
JUNE 8, 2020

PROJECT: 215 LEXINGTON AVE
TOWN/VILLAGE OF MT. KISCO,
WESTCHESTER COUNTY, NY

RECEIVED
SEP 28 2021
Zoning Board of Appeals
Village/Town of Mount Kisco

SHEET 01 OF 04

MEMO

TO: Harold Boxer, Chairman of the ZBA
Members of the Zoning Board of Appeals
FROM: Rex Pietrobono
DATE: November 9, 2021

RE: 180 South Bedford Road, Homeland Towers, LLC and SCS Sarles Street, LLC II

Efforts to protect the buffer zones surrounding both the proposed solar and cellular projects are appreciated. The said buffer zones are intended to protect the neighboring properties and surrounding community by leaving them in their natural state—here, locally incomparable forest and wildlife habitats.

SCS Sarles Street, LLC II (“SCS”) may be recently credited for removing most of its proposed encroachments from the buffer zones, however, it should be noted that their year-long delay in remedying such improper intrusions unnecessarily has cost the Village, Planning Board, staff, and the surrounding community and neighboring property owners substantial time and money. They are fighting for profit while we are defending the rights of our families, the community, and the environment.

Prohibited Parking is Still Proposed to be Within the Northern Buffer Zone:

So, while the solar applicant has finally removed itself principally from the buffer zones—they have not done so entirely. SCS proposes parking for their own solar project, as well as surprisingly supportive and participative (*via* sub-lease, consent, or other agreement) with the 08/10/2021 Homeland Towers, LLC (“Homeland”) quiet submission seeking separate and detached ‘off-site’ parking situated entirely within SCS’s leased area in the northern buffer zone.

Unfortunately, proposals for improper parking spaces or areas by both Homeland and SCS are unquestionably within the buffer zone. As you are well aware, our Mount Kisco Code §110-59 specifically prohibits, among other encroachments, parking within a buffer zone:

“BUFFER

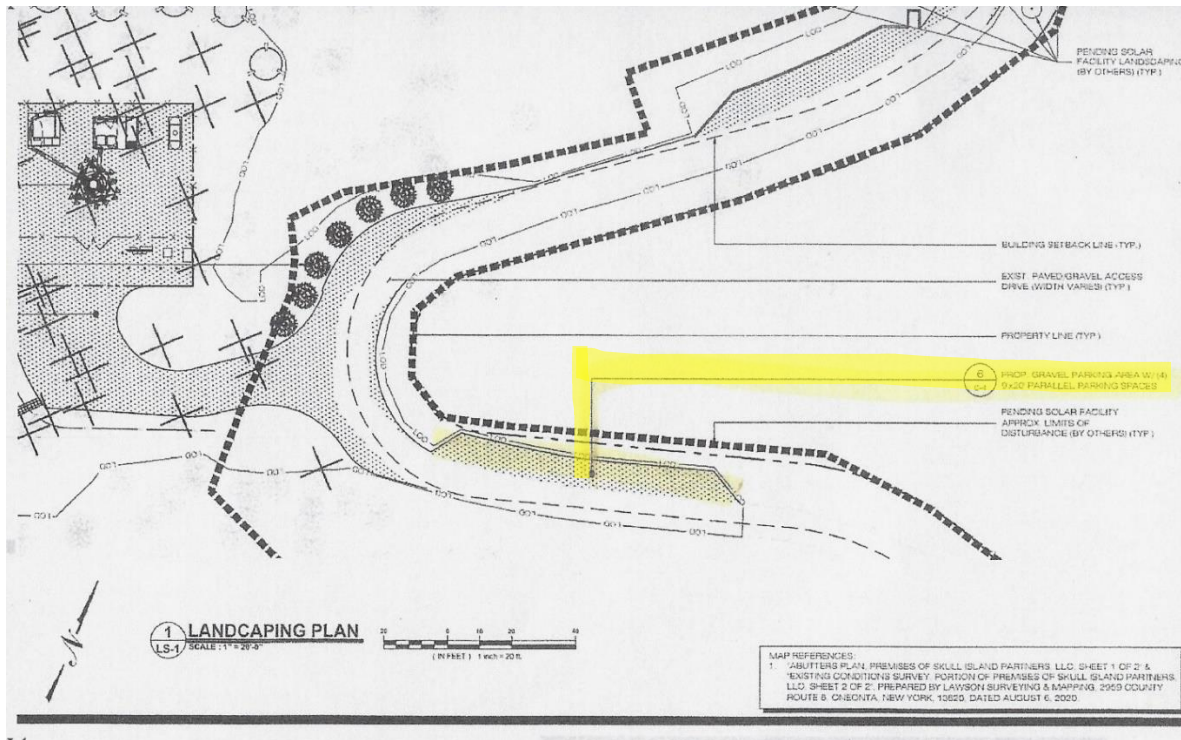
A strip of land along the perimeter of the parcel, identified on a site plan, established to separate one type of land use from another. **No structure, parking or loading is permitted in any "buffer."** "Buffers" are to be landscaped and kept as open space, except that driveways and walkways providing access through the "buffer" to a structure or parking on the lot are permitted.” (Emphasis added.)

Id. at §110-59.

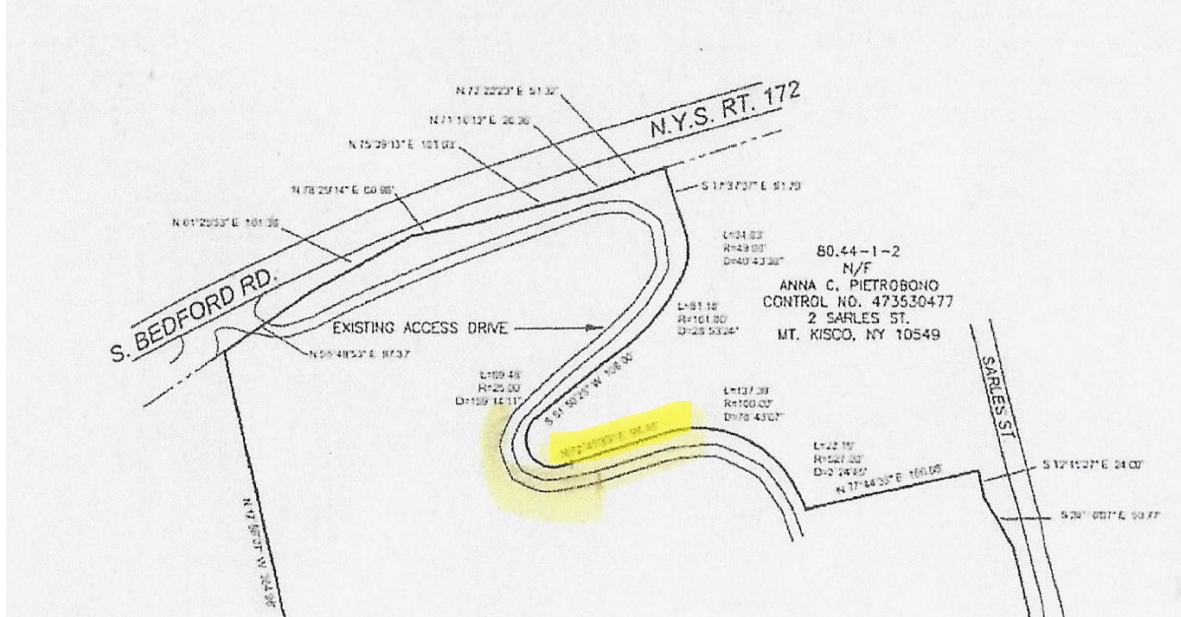
Homeland Towers, LLC:

It appears that SCS and Homeland have artfully coordinated their combined efforts for Homeland to carve out additional detached parking spaces outside of its own approx. 4,500 sq ft site where, until now, any suggested use of SCS space has been quashed and bitterly declared to be ‘off-limits’ when discussing any possible alternate locations within SCS’s entire leased area.

A plan was innocuously submitted by Homeland which creates four (4) 9'x20' gravel parking spaces right up to, and possibly over, my family's property line. And, while you will see on LS-1 below that Homeland's proposal closely resembles the solar applicant's two so-called "pull-overs" at the lower portion of the 180 South Bedford Road driveway, it is actually Homeland's submission proposing this new parking section (circled "6" on Landscaping Plan for "PROP GRAVEL PARKING AREA W/(4) 9'x20' PARRALELL PARKING SPACES").



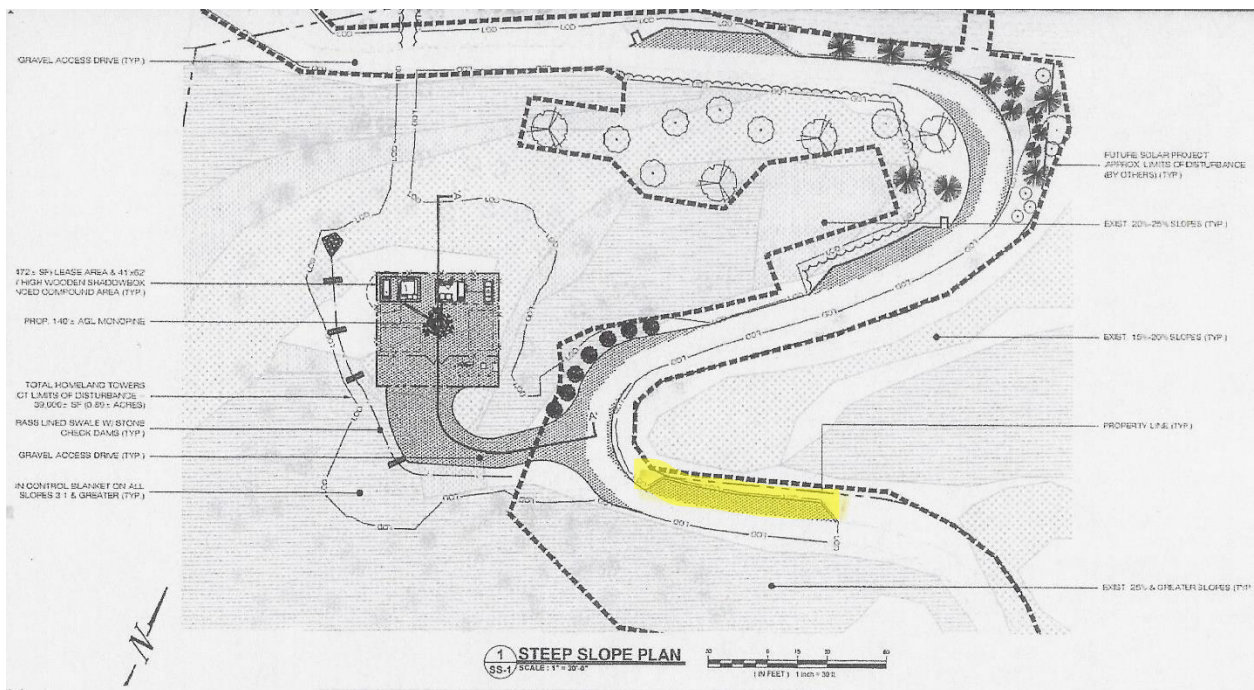
Homeland LS-1; Page 402 of the 08/10/21 PB Packet (above cropped with emphasis is added.)



Page 379 of the 08/10/2021 PB Packet (above cropped with emphasis is added.)



11/03/21 image from our family property shows Homeland's proposed detached off-site parking spaces within the northern buffer zone (appears to encroach right up to and over our property boundary line, as well as, eliminating three large specimen trees and shrubs (i.e., our three trees and shrubs) which would serve as screening from SCS's use of driveway and proposed cell tower.)



Homeland; Page 401 of the 08/10/2021 PB Packet (image cropped and emphasis is added.)



11/03/21 image shows visual approximation of Homeland's four proposed detached off-site buffer zone parking spaces as depicted in their LS-1; Page 402 of the 08/10/21 PB Packet, *supra*.

It is incomprehensible that after all the protracted and vigorous buffer zone arguments before the resulting in SCS's withdrawal largely from most of its buffer zone encroachments, that SCS would even consider sub-leasing, permitting, or consenting to Homeland's use of this portion of their leased space for the utterly barbaric destruction, physically and symbolically, of the Mount Kisco Code's protective buffers and setbacks.

Paradoxically, throughout this entire process Homeland has repeatedly and conveniently insisted that any off-site use of SCS space was not available to them as the reason they could not put their proposed cell tower on top of the former tennis court. And yet here they are, now appearing off-site nonetheless circumventing the northern buffer zone, setbacks, and seemingly the property boundary line itself. Comparatively then, Homeland should be denied any such off-site expansion owing their previous steadfast disavowals of any ability to do so, except apparently, when as now it conveniently suits their own self-serving wants.

When ultimately considering both applications together without segmentation to determine the totality of impact cumulatively upon the same parcel and the neighboring properties, it is irreconcilable for a solar field on the same CD parcel with a cell tower proposed on the steepest of slopes and devouring 50+ more trees within the northern buffer zone (as many trees as just

preserved by SCS's newest plan submitted in the October 26, 2021 PB packet) constraining neighboring properties and eastern gateway travelers alike to suffer its unscreened base structure and monopole.

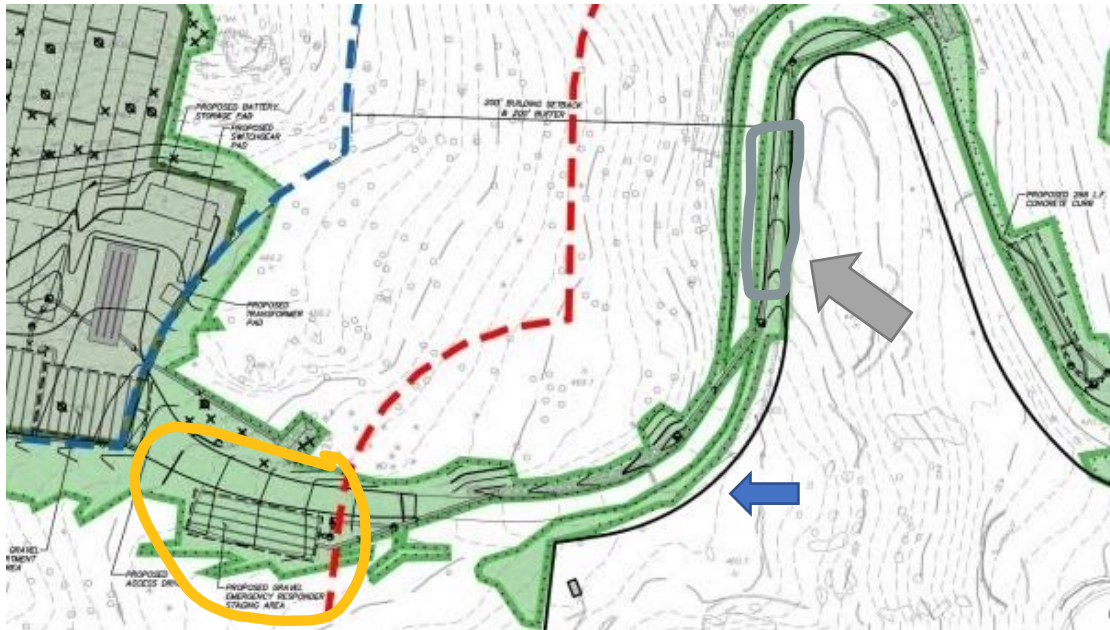
On a procedural note, Homeland has exhausted this process during virtually all of 2021 by refusing to maintain their required escrow balance as similarly situated applicants must do thereby putting the entire public hearing process in a limbotic state. If Homeland objected to the said deposit or its use, then it should have acted early on to resolve the dispute in good faith; perhaps, depositing the sum under protest—thereby preserving their objection(s), posted a bond, or suggested some other alternative method of compliance without sacrificing their right to protest it at a later date.

Homeland approach of not maintaining their escrows, not appearing, and thereby thwarting “public hearings”—save their voluminous assembly-line document filings. Thusly, the principal component absent from the multiple public hearings has been oral opposition from the public. Since the usual process in-effect recognizes that few members of a public would likely read through 600 plus/minus pages of multiple detailed filings and instead rely on what they ‘hear.’ It is disingenuous at best to assert that the public instead ‘could always file their objections,’ thereby effectively severing one leg of a three-legged stool.

SCS Sarles Street, LLC II:

It also appears as though SCS is looking to Homeland to do some shared work for them as shown below where SCS proposes an underground water drainage pipe to follow the driveway downward until just after the first sharp turn, the proposed pipe crosses the driveway to run virtually contiguous with our family's property line. On the SCS diagram below there is no indication of the corresponding removal of three large specimen screening trees required to bury that SCS line coincidentally directly under the proposed detached off-site parking spaces in the northern buffer, *supra*, foreshadowing the removal of our trees between the finger-pointing of responsibility.

It appears that Homeland, with SCS's consent in some fashion, has discretely submitted plans including plans mixed-in with their voluminous filings to install parking spaces in that specific area in glaring violation of buffers, setbacks, and our property boundary line. Thus, overlaying both applications as shown herein, one can see that if Homeland's off-site parking located within SCS's leased area were to be approved by the Planning Board (or the ZBA), whether unwittingly or not, then SCS could arrange to install their aforesaid underground pipe beneath Homeland's four parking spaces in the buffer.



SCS, Page 658 of the 10/26/21 PB Agenda Packet (Enlarged and emphasis added.)

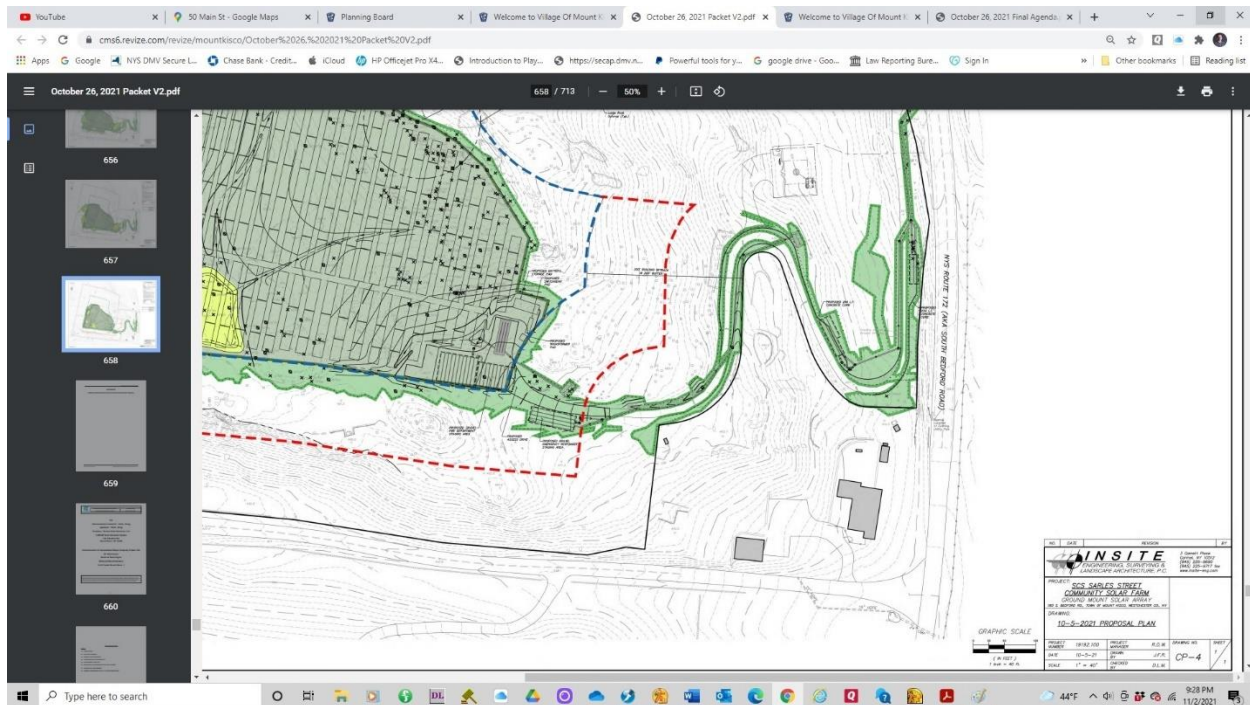
YELLOW = SCS “proposed gravel emergency responders staging area”

BLUE = view from Pietrobono property looking south along SCS driveway

GRAY = Homeland proposed four parking spaces (this SCS diagram does **not** show Homeland’s removal of trees for their proposed parking area at our boundary.)



View from our family property looking south (**BLUE** arrow in diagram above) where SCS proposes parking euphemistically described as “proposed gravel emergency responders staging area.”



SCS, Page 658 of the 10/26/21 PB Agenda Packet. Blue line is 200' buffer, red is 100' buffer.

While SCS seeks to avoid the buffer zone parking proscription by using the name “emergency responders staging area,” anyone and everyone else who will travel by motor vehicle up that driveway from Route 172 will see it for what it is—general parking. During a walking tour of the site next door back in April 2020, I was told that there would be a gate at the bottom of the driveway to keep people out.

Gate at the lower portion of the private driveway should be restored or rebuilt:

It is fanciful for Insite Engineering to claim that traffic will be minimal and only “a van visiting a couple of times a year.” Their representation made to the Planning Board on October 26, 2021, might have been accurate if:

- 1) The public were prohibited by a gate from accessing the parcel *via* the driveway; and
- 2) There was not another principal use on that parcel which utilizes the same driveway.

Vehicles have been driving up and down the driveway for several years since the former gate at the lower part of the driveway (near the entrance about one-third distance of the first driveway leg from the Route 172 entrance) was allowed to breakdown without repair and then replaced with a single chain and lock (which was effective but suffered a similar fate and never repaired or replaced.)

The lack of a gate provides unfettered access to the parcel *via* the driveway and will invariably invite parking in those gravel spaces or so-called ‘staging area’ (as well as the two so-called “pull-overs” along each of the lower portions of the driveway) and immediately become an attractive nuisance inviting its misuse by people of good and bad intentions alike.

Such convenient parking would quickly draw people to park for: eating and drinking invariably leaving food waste and cans, etc., persons walking the grounds without knowledge nor concern for private boundaries, and at night—beer bottles and potential drug use and other potential criminal mischief.

In the past years, there hasn't been readily available parking areas so most of the vehicles we've encountered driving up that driveway turn around and leave. However, some of them have stayed doing something or another at the top of the hill, or even parking on our family property's walking path. Imagine what would happen if there were convenient parking area(s). Members of my family have told people time and time again that the property next door is private property and ours is too. Some people have argued with me, my wife, and one of our daughters. People have even driven on our walking path entering from the driveway next door. Some other examples: a wayward UPS truck once drove off the driveway next door and got stuck on our path; a youthful driver in a sports car drove on our path as if it were a roadway; and just this past summer there was a class field trip from the driveway next door unknowingly walking all about our property leaving cans and wrappers in their wake (not to mention the occasional dogwalker and random people found walking about or even jogging through our property.)

Misuse of any parking area is just one reason it should not be permitted in a buffer zone as by Code—no matter what substitute name an applicant may try to give it. Last year when I visited the Lewisboro neighborhood near the cell tower (referenced by Homeland's valuation study), the nearest homeowner sadly told me of the many late-night intrusions by partyers and others being raucous and leaving cans, bottles, and evidence of drug use behind. It's not fair to conscript my family and their safety and welfare into policing and cleaning-up our property because of parking improperly permitted in the buffer zone and the previous gate and chain being allowed to be broken down and neither repaired nor replaced.

Also, a cell tower would apparently require more intensive maintenance than the solar field and service vehicles would likely park in the SCS area too as an alternative to their own site. If such parking lot were permitted, there is no way to stop its use by vehicles on the property to service a cell tower. The four parking spaces Homeland is seeking virtually at our doorstep would be even more disastrous and constitute a private nuisance from its approval by any Board. This singular parking issue is just a microcosm of the problem with two principal uses proposed on the same parcel and the reason they must be combined in the determination of totality of impact which leads to two major legal points inadequately addressed so far in this process:

1) How many principal uses can there be on a single parcel in a Conservation District? Either Homeland is the principal use, or it is an accessory use, and *vice versa* for SCS. There has been no subdivision of the 25 acres, and none is proposed with one parcel having SCS as the principal use and the other parcel Homeland, and there cannot be because of the second legal point; and

2) If the 25 acres were to be subdivided as to permit each use to be a principal use on its own parcel, SCS would not have the minimum 25 acre parcel the CD Zoning District requires for its solar farm.

Additional Points for Board Members Consideration:

Water Table/Aquifer Underneath the Proposed Solar Field:

Damaged solar panels may allow heavy toxic metals to seep into the water table. Many of the neighboring and nearby properties are reliant upon well water. The solar company be required to regularly test the water quality of the surrounding properties and supplying them the results. They should also carry insurance and/or post a bond to indemnify any such serious damages, such as the cost of hooking all of us up to a Mount Kisco community water line.

And with all the proposed water run-off controls being proposed, shouldn't the water table be monitored to ensure that it is not being depleted by the rerouting of water run-off which would otherwise replenish the aquifer.

Wildlife Habitat and Invasive Plant Species; 180 South Bedford Road:

On SCS, Page 485 of the 10/26/21 PB Agenda Packet, et seq. (Page 1 of Report) there is a Wildlife Habitat Assessment dated October 4, 2021.

Wildlife: on Page 503 (part of the Assessment's Appendix 'A') there is a letter from Ecological Analysis, LLC, which requests "any information with respect to threatened and/or endangered species or ecologically significant communities on or adjacent to the referenced property [180 South Bedford Road]." Hence, my following brief observations.



On Page 494 (Page 11 of the Report) the said Wildlife Habitat Assessment referencing “threatened or endangered species which are given statutory protection by Section 182.2g of 6 NYCRR Part 182.” It goes on to conclude:

“Several of the species from these listings of protected animals were eliminated from consideration due to the lack of known populations within the range of central Westchester County generally, including . . .” first and second on the list are Box and wood turtle.

The report goes on to conclude on Page 498 (Page 13 of Report): “There were no protected wildlife species identified for this location . . .”

They are certainly on the property next door, among many other creatures, since as can be seen from the image I took above on October 2, 2021, while hiking the Marsh trails in its southwest corner where a wood turtle was barely observed due to its great natural camouflage.

Invasive Plant Species: I did not see it on their list, but there is an enormous amount of Japanese Knotweed at the lower part of the driveway entrance area to the first turn. These plants are extremely invasive and threaten to spread further on that property and ours (and possibly, the Preserve). Steps should be taken to eradicate and control this invasive plant and prevent its spread.

Proposed Screening for Our Property by SCS is inadequate (and the Cell Tower—Impossible):

The 180 South Bedford Road site plan has changed dramatically since walking our property with Insite Engineering back in April 2020. What was proposed then is no longer sufficient to accomplish its stated purpose given the ensuing changes.

Invitation to Planning and Zoning Board and Appeals Members to View Proposed Project(s) From Our Family's Property at 2 Sarles Street:

In the event members of the Zoning Board of Appeals and Planning Board consider attending a site visit to 180 South Bedford Road, each Board member and staff is invited to join me for a view of the proposed project(s) from our family property at 2 Sarles Street. Members of Insite Engineering are also invited to attend along with Mount Kisco Board members.