



**VILLAGE OF SUFFERN
ZONING BOARD OF APPEALS MINUTES
JANUARY 18, 2024**

Attendance: Barry Tesseyman, Chairman
Cary Adwar, Member
Bruce Simon, Member
Lisa Wilson, Member
Andrew Zavoski, Member
Robert Magrino, Assistant Village Attorney
Melissa B. Reimer, Village Clerk

CALL TO ORDER

Chairman Tesseyman called the meeting to order at 7:30 P.M., led everyone in the Pledge of Allegiance.

**Wayne Project, LLC - 156-160 Wayne Avenue – Z2023-05
Interpretation Application**

Mr. Daniel Richmond, Esq. represents 156-160 Wayne Avenue LLC. Mr. Richmond was before the Board as a continuation of the November meeting. They are appealing the determination by the Village Building Inspector, dated October 18, 2023. Mr. Richmond believes that the building inspector's determination should be overruled because it is not in the Village's zoning law. The building inspector's determination does not appear in the Village's code and is not in the text of the subject local law effectuating the rezoning and did not appear in the title report obtained by their client. In fact, he stated that, the text of the local law, including the version filed with the New York State Department of State does not include conditions related to the rezoning of the property.

The night of the November ZBA meeting, Mr. Richmond stated that they received a letter from Terry Rice right before the last meeting. As a result, he stated that he sent a letter to the Zoning Board in response, earlier this week. Mr. Richmond stated that in his letter he detailed how Mr. Rice's letter was in error for several reasons.

The only matter before the Board is requesting an interpretation of the Village's zoning law. A plain reading of the Village's zoning law establishes that there are no conditions restricting development of the property. He stated that by law the building inspector only has the power to administer, "zoning law and building code," pursuant to section 266-45a of the Village zoning law. He stated, "Pursuant to section 266-54e of the Village zoning law, the zoning board is only authorized to decide questions involving the interpretation of any provision of the zoning law on an appeal from the determination by the administrative official charged with the enforcement of that law. Case law establishes that, as a general rule, unambiguous language of a statute is a lone determinative." He then cited case law and stated that the court said that zoning code must be construed according to their words used in their ordinary meaning. As a result, the language is plain and the building inspector's reference to the Village Board minutes is inappropriate and improper.

Mr. Richmond again cited case law. He stated that Mr. Rice's letter does not address, much less,

contradicts the basic facts and law before the Board.

Mr. Richmond stated that the Village letter from Mr. Rice is a red herring. For example, the uniformity requirement of the Village law. This requires that all regulations be uniform in each class or kind of buildings throughout each district. Mr. Richmond stated that the Village Board's rezoning of the property did not contain any regulations that are not uniform throughout the M15 district. The uniformity requirement is irrelevant to this appeal.

He said that Mr. Rice's letter incorrectly cites this argument as an attempt to reason that the minutes are the proper location for site specific conditions rather than the code. He believes that Terry Rice's letter highlights the impropriety of the building inspector's invocation of a purported condition that is buried in old Village Board meeting minutes. The case law cited in Mr. Rice's letter stands for the proposition that conditions to rezonings must be found in recorded covenants or declarations against a particular property to put future owners on notice.

Mr. Richmond cited case law that Mr. Rice referred to. Richmond stated that in this case, no restricted covenants were ever recorded and is a legal nullity. Mr. Rice stated that, in his letter, that the contention is only because his client lacked due diligence. Mr. Richmond reiterated that the Board's only ruling is based solely on a plain reading of the Village code establishes that no conditions affect the development of the property. He stated that the bounds of reasonable due diligence are not infinite. No reasonable purchaser would be expected to have looked for or found conditions buried in a few sentences in the 2011 Board minutes, which were 57 pages. The minutes were done ten years before the property was purchased.

Citing case law, Mr. Richmond stated that due diligence does not require prospective purchasers to review legislative history related to a property's zoning. Reviewing applicable zoning laws and obtaining a title commitment are reasonable due diligence.

Mr. Richmond drew attention to the affirmation submitted by his client. He stated that he is an experienced developer having purchased multiple properties. His client has spent \$50 thousand on due diligence for this property in zoning and a title commitment. Nothing listed the minutes as an exception. The title report contained two exceptions. He cited case law regarding how a purchaser must be put on notice of such.

He stated that his client was aware that the property had obtained approvals for a multifamily housing project, he had no idea that the property itself was restricted to that particular plan. Attached to the contract was a copy of the previously approved site plan, but no mention of the Village Board minutes or conditions. His client only knew that there was a site plan approved in 2011. He would not have purchased the property if he was aware of the conditions.

He stated that Terry Rice's letter shows that the purported conditions set forth by the Board minutes is not a proper condition. He again cited case law. Richmond stated that the only thing that the municipality can regulate and restrict are lot sizes and permitted uses. In this case, the restriction is the type of dwellings and the exact number allowed.

The Village Board's condition which requires to develop 24 three-bedroom units. He said that his client was told that three-bedroom units are in violation of the zoning code.

Finally, he asked the board to overturn the building inspector's determination. He stated that the Village zoning code is very clear and the building inspector's reference to the Village Board minutes is inappropriate. He said even if it were proper, it would have caused ambiguity in the law and it would be settled in favor of his client. The law has to be clear and in concise terms.

No questions were asked by the Board. Mr. Magrino stated that many of the Board members just received the voluminous submission by Mr. Richmond, tonight.

The Zoning Board scheduled the continuance for February 15, 2024, at 7 P.M.

MOTION – Schedule a continuance for 156-160 Washington Avenue for February 15, 2024, at 7:00 P.M., was made by Board Member Adwar, seconded by Board Member Zavoski, with all in favor.

IV Rockland Logistics Center LLC – Z2024-01

Chairman Tesseyman read the Public Notice into the record.

Mr. Matthew Dudley, Harris Beach PLLC, spoke on behalf of the applicant. He introduced two engineers from Dynamic Engineer Consulting that were with him and will present information to the board. He gave a background of why the application is before the Board. Mr. Dudley also introduced Mr. Will Pasik from Brookfield Properties, the parent company to IV Rockland Logistics Center.

Mr. Dudley explained the location and details of the property. He explained that the applicant submitted a site plan to the Planning Board, and they referred the applicant to the Zoning Board of Appeal for area variances. The applicant is seeking two area variances from the Board. Mr. Dudley explained the project of three warehouses and associated parking. The project includes a new storm water management system.

Mr. Dudley explained the two variances needed.

The first was the variance for section 266-15N subsection 2 – development constraints on “land under water.” This section of the zoning code prohibits buildings or structures from being situated where certain ponds, streams and wetlands currently exist on a property.

The proposed project is planning to construct a portion of one of the warehouse buildings on the site where there is currently a stormwater drainage retention pond. This pond is located right in the middle of the parcel of property. In addition, Mr. Dudley informed the board that there are wetlands on the property that are regulated by the Army Corps of Engineers. There is about an acre of land that the access road and parking lots will disturb some of the wetlands.

The second area variance is regarding the zoning code section 266-15 N3(a2) and 3(b) which prohibits development on property that has slope in excess of 20% slope for non-residential districts. The property is located in the Planned Light Industrial (“PLI”) zoning district. The proposed plan is within the zoning district, however there are certain portions of the project which are proposed to be constructed in areas of slope that is in excess of 20% slope. Specifically, Mr. Dudley told the Board that there is a retaining wall that will be constructed on the eastern side of the parking lot as well as portions of the two smaller warehouse buildings.

Chairman Tesseyman swore Mr. Joshua Sewald/Dynamic Engineering in.

Mr. Sewald introduced himself and explained that they have been through a very rigorous SEQRA process. He had two exhibits to share with the board. The first is the aerial map of the property. The second is the actual site plan rendering. It is the three buildings that have been overlayed on the same aerial map.

The aerial map was placed so that the Board could see it. The site, he said, was approximately 125

acres. Mr. Sewald explained what was on the map. He explained that you cannot see the site from Hemion Road because of the grade changes. He brought this up because there is significant topography on the property. Hence the reason for the second variance.

The second exhibit was the aerial map with the site plan overlaid on top. He told the board that the three warehouse buildings are allowed within the PLI zone. He listed the square footage of each building. They are also in compliance with the bulk ordinance. He said that they also comply with the Master Plan regarding the building coverage and setback standards.

The first variance is regarding the pond that is onsite. Over the years the pond has been enlarged to accommodate some of the runoff from the parking or the buildings that were built on site. Through doing their due diligence, they found that the pond is regulated. They have an Army Corps of Engineers jurisdictional determination. To drain the pond to do the development of the three buildings, they will have to get a permit from the Army Corps of Engineers. Part of the SEQRA process and the Army Corps of Engineers, they will be making a new pond twice as big as the old one and somewhere else on the site.

They are asking to put a building over the drained pond/existing stormwater basin and create a new pond/stormwater basin twice as big as the old one. Overall, it is a net benefit.

The second variance is associated with steep slopes. The property has several topographic changes across it. It is not a flat site. The site has wetlands and significant grade changes. The property is approximately 125 acres. The steep slope covers about three acres of property. They will have a robust stormwater management facility. Multiple basins will be spread throughout the property. Underground infiltration, above ground infiltration - will help stormwater runoff – will also increase the water quality that is associated with the streams and the wetlands. The applicant will also be improving and reducing the water that is tributary to that flooding area, something that is very sensitive in today's day and age.

Mr. Sewald asked if there were any questions.

Board Member Zavoski asked the depth of the existing pond.
Answer: Only about 3-4 feet deep.

Mr. Magrino asked if that was a man-made pond and if that was part of the stormwater system for the prior building.

Answer: The historical arial photos looks like there was a small man-made pond from a farm that used to be there. Over time with the Novartis campus, it got larger and larger. It is regulated now by the Army Corps of Engineers.

Board Member Simon – Rockland County Planning letter was received this morning. It was five or six pages. Nothing was addressed about the letter received.

Answer: Mr. Dudley said that he wanted to give an introduction and answer questions before getting into the letter. He said that their plan was to go over the letter line-by-line.

Mr. Magrino asked them to review where they are in the SEQRA process.

Answer: Mr. Dudley said that for about 18 months, starting in 2022, they submitted their application to the Planning Board up to December 2023, they worked through various stages of SEQRA. The Planning Board determined that it was a positive declaration, determined that they were the lead agency, and over that 18-month period went through rigorous environmental reviews.

The applicant, along with other consultants, submitted a very large DIS statement. Including wetland studies, habitat studies, provided over 100-page civil drawing set, and a “SWIP” stormwater management report (how it is handled in the pre-development condition and the post-development condition). They answered questions and comments from the Village Planning Board, the Board’s professionals, adjacent Town/Village comments, other outside agencies, and a few hundred comments from the public. During 2023, they worked through all questions, concerns, and comments. The applicant completed the FEIS. In December, the Planning Board accepted and closed the SEQRA process. There was a rigorous review from an environmental standpoint including the mitigation that will be associated with the wetlands as well as the steep slopes.

Mr. Magrino added that the process with the Planning Board needed to be completed before it could be brought before the Zoning Board of Appeals.



Rockland County

Ed Day, Rockland County Executive

DEPARTMENT OF PLANNING

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Douglas J. Schuetz
Acting Commissioner

Richard M. Schiafo
Deputy Commissioner

January 17, 2024

Suffern Zoning Board of Appeals
61 Washington Avenue
Suffern, NY 10901

Tax Data: 55.22-1-1

Re: **GENERAL MUNICIPAL LAW REVIEW:** Section 239 L and M
Map Date: 12/15/2023

Date Review Received: 12/18/2023

Item: **IV2 ROCKLAND LOGISTICS CENTER, LLC (SU-54N)**

A variance application to construct a wholesaling/warehouse distribution center on 124.93 acres in the PLI zoning district and Suffern Flood Plain District. The site will have three warehouse buildings totaling 1,221,800 square feet. Building 1 will comprise 963,100 square feet with 186 loading bays, 210 trailer stalls, and 479 parking stalls. Building 2 will have an area of 170,500 square feet, 27 loading bays, 28 trailer stalls, and 119 parking stalls. Building 3 will be 80,200 square feet in area, with 21 loading bays and 63 parking stalls. Variances are requested from Sections 266-15N.(2) (land under water) and 266-15N.(3)b (steep slopes). The existing pharmaceutical manufacturing facility on the site will be demolished. South side of Old Mill Road, approximately 800 feet west of Hemion Road; north side of Route 59, approximately 275 feet west of Woodland Drive

Reason for Referral:

Village of Montebello, NYS Thruway (I-87/287), Lafayette Avenue (NYS 59), Mahwah River

The County of Rockland Department of Planning has reviewed the above item. Acting under the terms of the above GML powers and those vested by the County of Rockland Charter, I, the Commissioner of Planning, hereby:

**Recommend the following modifications*

This GML 239 Referral was submitted to the County Planning for a review of two "area variances". While area variances are traditionally deviations from the physical dimensional requirements of a local zoning law, the variances requested in this case are not and are instead a request to disregard certain provisions of the local code that prohibit certain activities in land under water and on steep slopes. These prohibitions are intended to prevent development on environmentally sensitive resources and this department is concerned about the setting of a precedent that would open ecologically valuable land to development. This site is particularly constrained by wetlands, waterbodies, and areas of steep slopes. We urge the Village to limit this encroachment to the greatest extent possible. In addition, the Village should carefully consider and cite for the record the unique characteristics of this site that warrant relief from the zoning regulations, so that a precedent that could be applied to other parcels is not established.

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1 Section 266-15 N (2) of the Village Code explicitly prohibits that buildings or structures be located in "land under water". Section 266-16N.(3)(b) of the Village Code explicitly prohibits construction on slopes in excess of 20%. The proposed application is in direct contradiction with these two sections and therefore the building footprint must be reduced in size and scale. The Village must be satisfied that the applicant has properly evaluated all possible alternatives to reduce the building footprints and the size and scale of the development to address the environmental constraints of the site and has mitigated environmental impacts to the greatest extent possible.

2 The Village must be satisfied that all mitigation measures adequately address site environmental impacts particularly those related to wetlands loss and flooding

3 This department requests that a condition of approval be made so that any artificially created wetlands be properly maintained by the developer and function as wetlands in perpetuity. All wetland mitigation should be designed with native plants.

4 It is recommended that the Village review and consult the 'Flood Mitigation & Resilience Report (Mahwah River-SD-111) prepared for the New York State Department of Environmental Conservation, in cooperation with the New York State Office of General Services, November 2021, particularly the Village of Suffern Flood Resiliency Best Practices Checklist and ensure that they are incorporated into this project.

5 It is recommended that the Village review and consult the current update of the County Multi-Jurisdictional Hazard Mitigation Plan to ensure that this project is consistent with the Village and County efforts to mitigate future hazards such as flooding.

6 According to the DEIS the eastern box turtle was identified on-site within the western portion of Wetland A. There were no mitigation efforts identified in the DEIS to protect the eastern box turtle. While State law does not provide specific protections for the box turtle, the applicant should make all efforts to develop and implement mitigation strategies to minimize adverse effects of habitat fragmentation to not negatively impact the habitat necessary for the box turtle. Additionally, the DEIS indicated that herbicides may be used to control very aggressive invasive vegetation. Such use of herbicides should be carefully considered so as not to potentially harm the box turtle. The Village must address that habitat fragmentation as a major threat and prevent fragmentation an important management tool for protecting this Species of Special Concern.

7 Proactive planning that avoids or minimizes impact to the habitat of important areas and maintains habitat connections for wildlife movement will contribute to the long-term biodiversity of the region. The ZBA must consider the impacts of this development, particularly the impacts of the loss of trees, loss of tree species, the increase of impervious surface and the loss of wetland areas, on the biodiversity of the area, specifically habitat fragmentation and the impact of the movement of species to and from and within these sensitive habitats.

8 The impacts of the removal of 534 mature trees should be more carefully evaluated, including the carbon storage and greenhouse gas impacts of removing so many trees. Efforts should be made to increase the number of trees to be retained. While the proposed plan is to have a one-to-one replacement of trees and to plant 534 trees, replacing mature trees with small saplings has significant environmental impacts and does not provide the same diversity for foraging, nesting, and shelter for the wildlife. It will take many years for the trees that are planted to mature and would significantly change the biodiversity of the area including the roosting and nesting opportunities for birds.

It is recommended that the applicant review "An Approach for Conserving Biodiversity in the Hudson River Estuary Corridor" that identifies voluntary, non-regulatory strategies for conserving wildlife and habitat in the region. A pdf can be found at: <https://hudson.dnr.cals.cornell.edu/library>

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9 Based on the Hudson Valley Natural Resource Mapper, depicted below, almost the entire site is in the riparian buffer of the Mahwah River. The Natural Heritage Program (NHP) has identified riparian buffers to highlight important streamside areas that influence stream dynamics and health. Well-vegetated riparian buffers intercept stormwater runoff, filter sediment and nutrients, and help attenuate flooding. Natural buffers also support unique and diverse habitats, and often serve as wildlife travel corridors. Development within the riparian buffer with additional impervious surfaces will result in the degradation of the quality of local waterways and exacerbate localized flooding. Additionally, tributaries 1 and 5 are mapped by NYSDEC and assigned a classification of 'C'. The best usage for class C fresh surface waters is fishing. Measures should be taken that prohibit any further degradation of these waterbodies but instead can result in water quality improvements. These impacts to environmental resources from the proposed development should be mitigated to the greatest extent possible.

10 Further discussion should be provided as to why certain wetlands are not being recognized for flood attenuation.

11 The Proposed Project will result in unavoidable impacts to federally regulated wetlands and tributaries. The Village and other involved and interested agencies must be satisfied that the applicant has worked with the United States Army Corps of Engineers (USACOE) to acquire all necessary permits for the filling of wetlands, any wetland disturbance, and that the replacement of existing culverts and installation of new culverts will maintain the existing connectivity between USACOE regulated freshwater wetlands via USACOE regulated tributaries.

12 If the US Army Corps of Engineers requires a permit pursuant to Section 404 of the Clean Water Act for the discharge to fill in Waters of the U.S., then a Section 401 Water Quality Certification (WQC) will be required to verify compliance with State water quality regulations. Issuance of these certifications is delegated in New York State to the NYSDEC. If the project qualifies for a Nationwide Permit, it may be eligible for coverage under a DEC Blanket WQC. Coverage under a Blanket requires compliance with all conditions for the corresponding Nationwide Permit. For more information and to view the DEC Blanket WQCs, please visit <https://www.dec.ny.gov/permits/6546.html>. A determination on Corps jurisdiction and a Nationwide Permit eligibility is likely necessary for a DEC jurisdictional determination.

13 The applicant suggests that the loss of wetland functions and values would be compensated for with mitigation, through the implementation of stormwater management practices (i.e., vegetated infiltration basins) and other vegetated areas. This should be further substantiated and demonstrated. The Village must be satisfied that the mitigation measures proposed will reduce or avoid potential significant adverse environmental impacts to natural resources.

14 A review must be completed by the Rockland County Department of Health to ensure compliance with Article XIX (Mosquito Code) of the Rockland County Sanitary Code.

15 A review must be completed by the New York State Department of Transportation, and any required permits obtained.

16 A review must be completed by the New York State Thruway Authority, and any required permits obtained.

17 The subject site is within 500 feet of the Mahwah River, a County Regulated Stream. A review must be completed by the Rockland County Drainage Agency, and any required permits obtained.

18 Any future site plan applications are subject to a review by this department, as mandated by New York State General Municipal Law, Section 239-m.

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19 The subject property is located in the Suffern Flood Plain District, which is subject to Section 266-17 of the Village of Suffern Zoning Code. Per Section 266-17.C., all uses in the Flood Plain District require the issuance of a special permit. A plan demonstrating that floodproofing measures are consistent with the flood protection elevation and associated flood factors for the area must be submitted to the Planning Board by a registered professional engineer. This plan must demonstrate that the proposed development will not result in any adverse effects on the neighboring properties within the floodplain. The Floodplain Administrator for the Village of Suffern shall certify that the proposed construction is in compliance with the floodplain regulations of the Village and the Federal Emergency Management Agency. The applicant must submit an application for review of the special permit to the Village of Suffern Planning Board and the Rockland County Department of Planning.

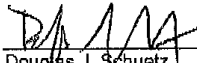
20 While Hemion Road, County Route 93, is more than 500 feet from the subject property, it provides the sole access to Old Mill Road and the primary access road for the site. Heavy construction vehicles will travel along the County road on their way to and from the site. A review of the site plan and travel impact study must be completed by the Rockland County Highway Department and any comments or concerns be addressed.

21 The Village of Montebello is one of the reasons this proposal was referred to this department for review. The municipal boundary is adjacent to the eastern boundary of the site. New York State General Municipal Law states that the purposes of Sections 239-l, 239-m and 239-n shall be to bring pertinent inter-community and countywide planning, zoning, site plan and subdivision considerations to the attention of neighboring municipalities and agencies having jurisdiction. Such review may include inter-community and county-wide considerations in respect to the compatibility of various land uses with one another; traffic generating characteristics of various land uses in relation to the effect of such traffic on other land uses and to the adequacy of existing and proposed thoroughfare facilities; and the protection of community character as regards predominant land uses, population density, and the relation between residential and nonresidential areas.

The Village of Montebello must be given the opportunity to review the proposal and its impact on community character, traffic, water quantity and quality, drainage, stormwater runoff and sanitary sewer service. The areas of countywide concern noted above that directly impact the Village of Montebello must be considered and satisfactorily addressed, as well as any additional concerns about the proposal.

22 It is this department's understanding that site access issues related to Old Mill Road have not been resolved. The ZBA shall be assured that any concerns/conflicts regarding access to the site have been satisfactorily addressed.

23 This project presents an opportunity to advance the goals of the New York State Climate Leadership and Community Protection Act (CLCPA), through the inclusion of on-site renewable energy. The Climate Act, which was signed into law in 2019, set a goal of reducing greenhouse gas emissions by 85% from 1990 levels by 2050. This development will result in an increased demand for energy and will pull that energy from the grid. Warehouse buildings may be conducive to the installation and use of solar panels and the installation of solar walls. It is recommended that the potential use of on-site renewable energy be evaluated and strongly considered. Likewise, the buildings should be designed and constructed to maximize energy efficiency.


 Douglas J. Schuetz
 Acting Commissioner of Planning

cc: Mayor Michael Curley, Suffern
 New York State Department of Transportation
 New York State Thruway Authority
 Rockland County Department of Health
 Rockland County Drainage Agency
 United States Army Corps of Engineers
 New York State Department of Environmental Conservation
 Rockland County Highway Department
 Dynamic Engineering
 Village of Montebello Planning Board

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Rockland County Planning Board Members

**NYS General Municipal Law Section 239 requires a vote of a 'majority plus one' of your agency to act contrary to the above findings. The review undertaken by the County of Rockland Department of Planning is pursuant to, and follows the mandates of Article 12-B of the New York General Municipal Law. Under Article 12-B the County of Rockland does not render opinions, nor does it make determinations, whether the item reviewed implicates the Religious Land Use and Institutionalized Persons Act. The County of Rockland Department of Planning defers to the municipality forwarding the item reviewed to render such opinions and make such determinations if appropriate under the circumstances.*

In this respect, municipalities are advised that under the Religious Land Use and Institutionalized Persons Act, the preemptive force of any provision of the Act may be avoided (1) by changing a policy or practice that may result in a substantial burden on religious exercise, (2) by retaining a policy or practice and exempting the substantially burdened religious exercise, (3) by providing explicit exemptions from a policy or practice for applicants that substantially burden religious exercise, or (4) by any other means that eliminates the substantial burden.

Proponents of projects are advised to apply for variances, special permits or exceptions, hardship approval or other relief.

Pursuant to New York State General Municipal Law §239-m(5), the referring body shall file a report of final action it has taken with the County of Rockland Department of Planning within thirty (30) days after final action. A referring body which acts contrary to a recommendation of modification or disapproval of a proposed action shall set forth the reasons for the contrary action in such report.

Mr. Dudley addressed the letter from the Rockland County Planning Board. He said that he respectfully disagreed with the Rockland County Planning Board. He said that he likened this application for area variances to one that seeks to build a portion of a building within a side, front, or backyard setback. The zoning code prohibits construction of a building within a setback, yet this Board has authority and jurisdiction to issue and grant an area variance for construction within or would otherwise be a regulated setback. In this case it is regulated wetlands, or ponds, or streams – the Board has authority, discretion, and jurisdiction to the area variance for construction within those areas. Similarly for the area variance for steep slopes.

Board Member Simon said that he had overall concern. He stated that it was a lengthy GML letter and gave him a little pause.

The applicant asked to go line-by-line.

Item 1. References the variances that they were here for this evening. Prohibits construction on slopes greater than 20%. The Board must be satisfied that the applicant has properly evaluated all possible alternatives. He said that it discussed “scale of development” and “addressing environmental constraints of the site and have they been mitigated those environmental impacts to the greatest extent possible.”

Mr. Sewald asked if this could be approved to override due to the general nature of the comment. The applicant is mitigating as part of SEQRA and the Army Corps Individual Permit. They are going to drain the existing pond, but they will provide the site with more wetlands at over a 2:1 ratio. They believe that they comply with the intent of the GML but disagree with the language. Through the SEQRA process, the Planning Board consultants, Army Corps of Engineers – with all three parties, can drain the pond, put elsewhere on site they give multiple acres back to the environment for wetlands and habitat. They are going to develop the part that is developed and the part that is undisturbed will stay undeveloped with more wetlands.

Item 2. No override needed

Item 3. Asking the Board to override particularly the language “Condition the approval.” You cannot condition a variance approval – it’s either Yay or Nay. The Planning Board can condition a site plan approval, but not the ZBA.

Item 4. and 5. No override needed

Mr. Magrino said that they can just go through the items that they would like to override.

Item 6. Asking the Board to override – discusses the specific species of animal called the Eastern Box Turtle. There are no state rules, as the County mentioned, regarding the turtle, but as the SEQRA process discusses they talk about how to take down the site, drain the pond, relocate wildlife into the new wetlands that you are mitigating. Please override due to the language and know that Rockland County was a part of the SEQRA process. They were copied on all transmittals.

Item 7. Asking the Board to override – discussing the habitat wildlife movement. Again, SEQRA addressed this. That is what SEQRA is for wetlands, species, and all environmental features.

Item 8. Asking the Board to override – discussing the trees on site. They will be removing trees, but the jurisdiction is heavily regulated, including the Village, Army Corps of Engineers, DEC,

etc. The applicant has a permitted use with the PLI zone. They are under the impervious coverage and the building coverage requirements. They are developing within some of their upland area and some trees will require to be taken down. They believe that with SEQRA FEIS statement, it talks about when trees are allowed to come down. The Army Corps has a restriction on when trees can come down because of bats in the area. It is all part of SEQRA.

This has been reviewed and approved by all various agencies.

Item 9. Asking the Board to override – discusses the riparian buffer and the classifications associated with the downstream Mahwah River. SEQRA has been completed, but it is more site plan related before Planning Board. They will get into a discussion of how much water is now tributary to that stream, is that water clean enough, does it meet certain New York State requirements.

Item 10. Asking the Board to override – Again this is more site plan related because through the Army Corps of Engineers it will be an Individual Permit and Mitigation Permit. This item talks about wetlands and flood attenuation....

Mr. Magrino asked if they were looking for an override on 10 and the answer was yes.

Item 11. Asking the Board to override – discusses culverts on the site. The applicant must obtain a “Protection of Waters Permit” to adjust culverts on the site. This is a site plan related item, and they need a specific permit from the Army Corps of Engineers.

Item 12 is fine.

Item 13. Asking the Board to override – discusses wetland functions and mitigation efforts. This was completed through SEQRA. Again, they must obtain an individual permit.

Item 14. and 15. No problem.

Item 16. Asking for an override – it discusses the New York State Thruway Authority and any required permits obtained. The client purchased Old Mill Road from the NYS Thruway Authority. It is a private road that the applicant owns; there is no NYS Thruway Authority permit required. Should there be, it would be a condition of site plan approval and not applicable to area variance.

Item 17., 18., 19., 20., and 21. No problem.

Item 22. The applicant and Mr. Magrino agreed that it does not need an override.

23. Asking for an override – it discusses the Climate Act and other things associated with site plan and building permit related items. The parent company, Brookfield, will ensure that it is LEED certified and environmentally friendly. The applicant is not targeting solar for this building yet. This is more geared toward the Building Department and their review.

Mr. Dudley added that the County submitted a comment letter when the applicant filed an application for site plan approval with the Planning Board in 2022. Many of the comments in that letter were very similar to this letter. They are expecting another comment letter from the County because the applicant filed additional materials in support of its site plan application and a special

permit for the flood plain district.

Board Member Wilson asked about retaining walls and asked for them to show the Board where the retaining walls are going to be built.

Answer: Mr. Sewald showed the Board where the walls would be constructed. The main retaining wall is in one strip. The tallest it becomes is six feet high.

Mr. Magrino addressed the criteria for area variance.

Mr. Dudley said that his firm's letter dated December 18, 2023, addressed the five factors for the balancing test for the Board to approve the area variance.

Five points:

1. Will the granting of the two area variances produce an undesirable change in the character of the surrounding neighborhood or detriment to nearby properties. They believe that neither area variance will produce an undesirable change. The applicant is taking measures to add new wetlands and open water to the site. It will not affect any of the neighboring properties. In fact, there are not too many neighbors around the property.

For the steep slopes, the applicant proposes substantial stormwater management facilities that are not on the property now. The applicant is planning that the water from the steep slopes will go into the appropriate stormwater retention basins.

2. Would the benefits sought from the area variances be achieved by another method? During the SEQRA process, the applicant submitted alternatives to the proposed project. None of which, according to the Village and their consultants, were a reasonable option.
3. Area variances are not substantial. The property site is approximately 125 acres. The area variances cover 2.239 acres for wetlands. In relation to the steep slopes, the property associated is 3.85 acres.
4. Will the two area variances adversely affect the physical environment? Mr. Dudley stated that it is the same answer as item 1. The applicant is mitigating stormwater and drainage items.
5. Is the need for the variances self-created? The need is self-created, but New York State law says, this does not require the Board to deny. The other factors outweigh the creation of the self-creation factor.

Board Member Zavoski asked about access to the property. He asked about quality of life and what kind of traffic is coming into this warehouse. Will it be a high volume in and out of the warehouse with semi-trucks?

Answer: Part of SEQRA, they had to prepare a very robust traffic study. They had to model existing conditions of what is on the roadway network (i.e., Hemion, Route 59, Airmont Road). Then they had to model what those three buildings could generate. They took that increase and ran it through the roadway network. Through the SEQRA process, Montebello said that they do not want traffic going through their neighborhood. The County regarding Hemion Road gave their level of service traffic. Lastly, there was the New York Department of Transportation because their jurisdiction is Route 59 and some of the lights and interchanges that are in the area.

Part of the development is going to require off-site mitigation and improvements to those

intersections (i.e., signal timing adjustments, left-turn lanes, and widening of curb radii. It was part of the traffic study for SEQRA and part of the Planning Board application. With this development, they will improve those intersections and improved roadways. Tractor trailers do not want to travel at peak times.

Board Member Zavoski asked if they will be adding a signal light on Hemion and the access road.

Answer: No. They may have to paint a left-turn lane on Hemion.

Board Member Wilson asked if they were going to increase the traffic lanes at Hemion and 59.

Answer: No increase in lanes. They will be making signal time adjustments and widening the curb radii.

Board Member Adwar asked about the same thing for Airmont Road and Route 59. That is how you get to the Thruway.

Answer: Airmont and Route 59 will have improvements center and left-hand turning. There will also be improvements to signal timing and curb radii. The curb radius on Airmont and 59, where the furniture store is, will be widened. The light will get re-timed to allow more left turns to go through. They will also restripe the roadway for more capacity for traffic.

Board Member Wilson asked, "What hours will the warehouse actually operate?"

Answer: The applicant is building on spec. They do not have a tenant. Mr. Sewald said that he would say 24/7 to play it safe, but he does not actually know.

Board Member Zavoski asked if there were any restrictions on what can be warehoused there (what items).

Answer: Based on the Village zoning, it would be a dry goods warehouse.

Board Member Zavoski was worried about storing hazardous materials.

Answer: That would have to be rigorously vetted out through the SEQRA process, at the beginning.

Chairman Tesseyman asked to open the public hearing.

Motion - to open the public hearing was so moved by Board Member Simon and seconded by Board Member Wilson, with all in favor.

No one from the public spoke.

Motion- to close the public hearing moved by Board Member Simon, seconded by Board Member Wilson, with all in favor.

Motion - to grant both variances was moved by Board Member Wilson, seconded by Board Member Adwar,

Mr. Magrino stated that before we vote for granting the variances, we must go through the Rockland County Planning letter, and we will need separate motions to override the conditions listed.

Motion - to override Item 1, was moved by Board Member Simon, seconded by Board Member

Adwar, the reasons given by the applicant, passed with all in favor.

Motion - to override Item 3, was moved by Board Member Adwar, seconded by Board Member Wilson, the reasoning being that was more of a Planning Board issue, and it addresses part of the SEQRA process, passed with all in favor.

Motion - to override Item 6, was moved by Board Member Adwar, seconded by Board Member Simon, it was part of the SEQRA process, passed with all in favor.

Motion - to override Item 7; 8; and 9, was moved by Board Member Simon, seconded by Board Member Wilson, these were items addressed as part of the SEQRA mitigation process in the Environment Impact Statement, passed with all in favor.

Motion - to override Item 10 and 11, was moved by Board Member Wilson, seconded by Board Member Adwar, these were items addressed as part of the site plan process and not a Zoning Board issue, passed with all in favor.

Motion - to override Item 13, was moved by Board Member Adwar, seconded by Board Member Wilson, part of the SEQRA mitigation process, passed with all in favor.

Motion - to override Item 16, was moved by Board Member Simon, seconded by Board Member Wilson, basis for this is that there was no permit was required and if it were it would be part of the SEQRA or site plan approval, passed with all in favor.

Motion - to override Item 23, was moved by Board Member Simon, seconded by Board Member Wilson, addressed as part of the site plan process and not a Zoning Board issue, passed with all in favor.

Motion cont. - There was a motion and a second to the granting of the two variances from Section 266-15N2 from the Village code regarding land underwater and Section 266-15N3b regarding development constraints and steep slopes, passed with all in favor.

MOTION TO APPROVE MINUTES FROM NOVEMBER 30, 2023, ZONING BOARD OF APPEALS MEETING.

A MOTION to approve the Zoning Board of Appeals minutes of November 30, 2023, was moved by Board Member Simon, seconded by Board Member Wilson, with all in favor.

Motion - to set the next Zoning Board Meeting for February 15, 2024, at 7:00 P.M. and adjourn the meeting, was moved by Board Member Adwar, seconded by Board Member Zavoski, with all in favor.

Respectfully,

Melissa B. Reimer, CPA
Village Clerk