

April 8, 2026

**Sent Via Email and Federal Express**

Chairman Richard Gandon and Members of the  
Village of Suffern Planning Board  
Village Hall  
61 Washington Avenue  
Suffern, NY 10901

**Re: Amended Site Plan Application (“Application”)  
Application No. 16B/125AB  
156-160 Wayne Avenue, Suffern, NY SBL 48.69-1-1 (“Property”/“Site”)**

Dear Chairman Gandon and Members of the Planning Board:

As you are aware, our Firm, together with C&J Engineering Consulting, D.P.C. and Peter F. Gaito and Associates (altogether, the “Development Team”), represents Scohen Brooklyn LLC (the “Applicant”) in connection with the above-referenced Property and Application for a 23-unit townhouse development (the “Project”). The purpose of the instant correspondence is to respond in detail to certain issues that arose in the most recent Nelson and Pope (“NP”) Comment Memorandum, dated as of March 17, 2026 (the “NP Memo”), and at your Board’s March Regular Meeting, namely issues related to the Project’s stormwater treatment and provision of parkland and/or the payment of a fee in lieu of parkland.

In particular, the Applicant respectfully submits that NP’s comments on these topics neglects to account for the fact that governmental agencies, such as the Planning Board, may only require exactions from applicants for land use development projects if there is: (i) an “essential nexus” between the a project’s impact(s) and the governmental demand or condition; and (ii) “rough proportionality” in the nature or extent of the governmental demand or condition and the project’s impact(s). *See Koontz v. St. Johns River Water Management District*, 570 U.S. 595, 611-614 (2013); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Nollan v. California Coastal Comm’n*, 483 U.S. 825 (1987).

Thus, in relation to the first prong, as the United States Supreme Court held in *Nollan*, a governmental agency could not condition a land use permit on a requirement that an applicant grant an easement allowing the public to cross over the applicant’s beachfront in order to go between two public beaches separated by the site because that that requirement had no “essential nexus” to the agency’s purported concern that the project would cause a visual barrier to the ocean. *See Nollan*, 483 U.S. at 838-841. In relation to the second prong, as the Supreme Court held in *Dolan*, a governmental agency could not require an applicant to dedicate a pedestrian/bicycle easement without demonstrating that

the project would generate vehicles or bicycle trips “roughly proportional” to justify that requirement. *See Dolan*, 512 U.S. at 390-392. In *Koontz*, the Supreme Court held that the *Nollan/Dolan* analysis applies not only to conditions that require the physical dedication of real property, but also to conditions that require an applicant to pay money (*i.e.*, “monetary exactions”). *See Koontz*, 570 U.S. at 611-614, 133 S. Ct. at 2598-2600.

As such, a governmental agency may only impose a requirement: (i) if that project has an actual impact on environmental conditions, and; (ii) that such requirement is roughly proportional to that impact. Here, as discussed below, there is no “essential nexus” to requiring the Applicant to address pre-existing, upland stormwater conditions or to provide recreation fees.

### **1. Applicant’s Stormwater Management Complies With Applicable Law.**

The NP Memo improperly seeks to make the Applicant responsible for attenuating pre-existing off-Site flooding conditions in the area, noting that “[m]ultiple residents expressed concern about flooding on the site and surrounding properties, especially runoff from Nordkop Mountain (which is in Harriman State Park),” and incorrectly contending that the Applicant “must [] demonstrate[] that the proposed drainage system can accommodate the additional upland flow.” (*See* NP Memo at 14, ¶ (A)(b).) Respectfully, NP’s contention is inapt because it calls for the Applicant to address upland conditions that have no “essential nexus” to the Project’s stormwater impacts. *See Nollan*, 483 U.S. at 838-841.

Indeed, the New York State Department of Environmental Conservation *Stormwater Design Manual* only requires an applicant to calculate the water quality volume (“WQv”) “for the site” and to reduce the site’s WQc. *See* N.Y.S. D.E.C. *Stormwater Design Manual* at 3-1; *see also id.* at 3-2 (“The runoff reduction approach for stormwater management *reduces a site’s impact* on the aquatic ecosystem through the use of site planning measures, runoff reduction techniques, and certain standard SMPs with RRv capacity.” (emphasis added)); *id.* at 4-2 (“The WQv is directly related to the *amount of impervious cover constructed at a site.*” (emphasis added)). Ultimately, “the goal of runoff reduction is to replicate pre-development hydrology.” *See id.* at 4-4.

Here, the Project provides for stormwater management created by its development and assures that stormwater from the Site will not impact neighboring properties. The existing upland, off-Site stormwater flows through an existing New York State owned system/facilities located within Wayne Avenue (NYS Route 202) and, as shown on multiple sheets of the Plan Set, the Applicant proposes to convey the stormwater that will be created by the Project around the existing system, in its own system. Therefore, stormwater created by the Project will have no impact on neighboring properties.

Additionally, the Applicant has demonstrated in the enclosed Stormwater Pollution Prevention Plan (SWPPP) that its proposed stormwater system/facilities have been designed to handle the 100-year storm event for on-Site conditions. The Applicant has also demonstrated that it has made the off-Site conditions of a 25-year storm event better, which is more than is legally required.

## **2. The Project Provides Sufficient Recreational Facilities Such That The Applicant Cannot Be Required To Contribute to the Village’s Recreational Fund.**

Because the Project provides for the recreational needs of its prospective residents, and, as such, will not impact the Village’s future recreational needs, there is no essential nexus for further demands from the Applicant in this regard. *See Nollan*, 483 U.S. at 838-841. Under the Village’s law, any determination related to a project’s recreational needs must be based on “a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes in the Village of Suffern,; which must be premised on “an evaluation of the present and anticipated future needs for park and recreational facilities in the Village based on projected population growth to which the particular site plan will contribute.” *See* Suffern Code, Section 228-22(K)(1).

Here, the Applicant has provided approximately 730 square feet of recreation area on the Site for Project residents in the form of a playground. The Project’s Development Team estimates that the Project could lead to a maximum projected population growth of 60-64 people.<sup>1</sup> The Applicant submits that the recreational facilities provided in the proposed Project are adequate for its future residents, particularly given that a Village Park containing a pool, trail, basketball court, baseball field, and playground, is located less than half a mile from the Property (with an existing sidewalk network in place to access same) on Memorial Drive.

Accordingly, because a park adequate for the Project’s residents is already proposed, there is, respectfully, no basis to require the Applicant to pay an additional fee on top of this. *See* Suffern Code, § 228-22(K)(2) (“If a park cannot be properly located on the site plan, the Planning Board may require a sum of money in lieu thereof to be established by the Village Board of Trustees.”); *see also* New York State Village Law § 7-725-a(6)(c) (establishing that a Planning Board may only require a fee in lieu if a suitable park cannot be properly located on the subject property). Here, again, the Applicant submits that it has provided adequate recreational facilities to meet the requirements of the Village Code and applicable New York State law, and nothing in the Code or by law mandates both the provision of adequate facilities, plus payment of a recreational fee.

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<sup>1</sup> This assumes all residents of the Project will move from outside of the Village, which is conservative and likely unrealistic. The population growth is likely lower.

**CONCLUSION**

We look forward to your Board's continued review of the Application and Project at its April 22, 2026 Regular Meeting to discuss the issues set forth herein and any other additional questions or comments your Board and/or its Staff may have. As always, please let us know if you have any questions, would like to discuss anything, or require any additional information.

Very truly yours,

ZARIN & STEINMETZ, LLP

By: /s/ Daniel M. Richmond  
Daniel M. Richmond  
Kate Feinman

cc Wayne Project, LLC  
Michael J. Calise  
C&J Engineering Consulting, D.P.C.  
Peter Gaito Jr., AIA, NCARB,  
Peter F. Gaito & Associates  
Robert Magrino, Esq.  
Planning Board Counsel  
Terry Rice, Esq.,  
Village Counsel (by electronic mail)