TOWN OF BEDFORD

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AGENDA

BEDFORD ZONING BOARD OF APPEALS

425 Cherry Street, 2nd Floor Conference Room

Bedford Hills, New York 10507

WEDNESDAY, November 4, 2015

7:30 P.M.

MINUTES: October 7, 2015

CARRYOVER APPLICATIONS:

1. Camille Branca Irrevocable Trust, 48 Davids Way, Bedford Hills, NY 10507. Section 60.20 Block 1 Lot 7, R-4 Acre Zoning District. The applicants request a variance of Article III Section 125-25 (3) (a) of the Town of Bedford Zoning Ordinance to permit the keeping of four (4) horses on a 4.072 acre parcel where three (3) horses are permitted. In the alternative, the applicant hereby seeks an interpretation as requested by a letter dated May 20, 2015 from Keith R. Betensky, Esq. representing Camille C. Branca Irrevocable Trust, of the Town of Bedford Building Inspector's Letter of Permit Denial dated May 19, 2015 to the extent that it concluded that the leased area at 49 Davids Way when combined with the lot area of the applicant's property at 48 Davids Way, does not satisfy the minimum acreage requirement for keeping a fourth horse due to the fact the lots are not abutting with common beneficial ownership in accordance with Article III Section 125-25 (3) (b).

2. Bedford Historical Society, 608 Old Post Road, Bedford, NY 10506. Section 84.7 Block 1 Lot 16, R-2 Acre Zoning District. The applicant requests a variance of Article III Section 125-11 and Article V Section 125-50 of the Town of Bedford Zoning Ordinance to permit the installation of a pre-fabricated 10 x 12-foot shed on a residential property with a non-conforming commercial use (Historical Hall) resulting in a side yard setback of 19 feet where 40 feet is required in the Residential 2 Acre Zoning District; building coverage of 18.46% where 6% is permitted and impervious surface coverage of 45%where 14% is permitted in the Residential 2 Acre Zoning District. The lot area is 0.317 acres where 2 acres are required in the Residential 2 Acre Zoning District.

3. SCGH Farm LLC, 340 Guard Hill Road, Bedford, NY 10506. Section 72.19 Block 2 Lot 8, R-4 Acre Zoning District. The applicant requests a variance of Article V Section 125-50 of the Town of Bedford Zoning Ordinance to permit the construction of additions and alterations to an existing residence including a new porch and 3-car garage resulting in building coverage of 3.77% where 3% is permitted in the Residential 4 Acre Zoning District.

4. P & J Housing Partners, 63 Charles Road, Bedford Corners, NY 10549. Section 83.11 Block 1 Lot 2, R-4 Acre Zoning District. The applicant requests a variance of Article V Section 125-50 of the Town of Bedford Zoning Ordinance to permit the construction of a swimming pool, spa/waterfall, and pergola in the rear yard of the residence resulting in combined building coverage of 3.43% where 3% is permitted in the Residential 4 Acre Zoning District.

5. **Christopher and Francesca Santomero, 42 Stone Paddock Place, Bedford, NY 10506.** Section 84.17 Block 1 Lot 2.4, R-4 Acre Zoning District. The applicants request a variance of Article V Section 125-50 and Article III Section 125-11 of the Town of Bedford Zoning Ordinance to permit the legalization of three sheds resulting in (1) building coverage of 3.3% where 3% is permitted in the Residential 4-Acre Zoning District; and (2) a side yard setback of 42' 10-1/8", as built, for shed #1 where 50 feet is required in the Residential 4-Acre Zoning District; and (3) a side yard setback of 37' 3-3/4", as-built, for shed #3 where 50 feet is required in the Residential 4 Acre Zoning District.

NEW APPLICATIONS:

1. **Mark Tomassi and Deborah Cardinale, 441 Bedford Road, Bedford Hills, NY 10507.** Section 60.17 Block 2 Lot 19, R-1/4 Acre Zoning District. The applicants request a variance of Article V Section 125-50 and Article III Section 125-11 of the Town of Bedford Zoning Ordinance to permit (1) The legalization of an all ready constructed 2-car garage and wood deck above resulting in a front yard setback of 24.1 feet where 35 feet is required in the R-1/4 Acre Zoning District; and a side yard setback of 11.3 feet where 20 feet is required in the R-1/4 Acre Zoning District; and (2) the installation of a 6-foot privacy fence and railing on top of the existing deck for safety and code compliance resulting in a front yard setback of 24.1 feet where 35 feet is required in the R-1/4 Acre Zoning District; and a side yard setback of 11.3 feet where 20 feet is required in the R-1/4 Acre Zoning District.

2. **Michael Chiappa and Mary Mahany, 51 High Street, Katonah, NY 10536.** Section 49.15 Block 2 Lot 2, TF Zoning District. The applicants request a variance of Article V Section 125-50 of the Town of Bedford Zoning Ordinance to permit the construction of a wood deck and stairs attached to a two-family residence under construction resulting in a side yard setback of 11'6" where 15 feet is required in the TF Zoning District.

3. **Alfred and Sandra Luposello, 40 Girdle Ridge Road, Katonah, NY 10536.** Section 61.6 Block 1 Lot 10, R-4 Acre Zoning District. The applicants request a variance of Article III Section 125-79.1 (7) of the Town of Bedford Zoning Ordinance to permit the creation of an 879 square foot one-bedroom cottage on the first floor of an existing accessory building (barn) resulting in 879 square feet of gross floor area where 800 square feet is permitted and the size of the cottage will be 44% of the total floor area of the principal residence structure where 25% is permitted.

4. **Markland Development Corp., 344 Main Street, Mount Kisco, NY 10549.** Section 60.11 Block 3 Lot 4, LI Zoning District. The applicants request a Special Use Permit in accordance with Article V Section 125-49 and Article VIII Section 125-68 of the Town of Bedford Zoning Ordinance to permit the operation of a vehicle delivery, storage, preparation, detail and minor maintenance and repair facility which such uses are classified as "public garage" under the Town of Bedford Zoning Code.

5. **Markland Development Corp., 344 Main Street, Mount Kisco, NY 10549.** Section 60.11 Block 3 Lot 4, LI Zoning District. The applicants request a variance of Article III Section 125-29.4 D. (3) (l) of the Town of Bedford Zoning Ordinance to permit a public garage on property located within the Aquifer Protection Zone.

ADOPTION OF 2016 SCHEDULE OF MEETINGS

Supporting documentation for all items on this agenda is available at the Town of Bedford website www.bedfordny.gov. Town Government –Boards--Zoning Board of Appeals-Calendar of Meetings. Larger documents and plans are available at the office of the Board of Appeals

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that the Board of Appeals of the Town of Bedford will hold a public hearing on the following:

Request of: **Camille Branca Irrevocable Trust**
48 Davids Way
Bedford Hills, NY 10507

for a variance of the Town of Bedford Zoning Ordinance to permit:

The keeping of four (4) horses on a 4.072 acre parcel where three (3) horses are permitted. This request being a variance of Article III Section 125-25 (3) (a); and in the alternative, the applicant hereby seeks an interpretation as requested by a letter dated May 20, 2015 from Keith R. Betensky, Esq. representing Camille C. Branca Irrevocable Trust, of the Town of Bedford Building Inspector's Letter of Permit Denial dated May 19, 2015 to the extent that it concluded that the leased area at 49 Davids Way when combined with the lot area of the applicant's property at 48 Davids Way, does not satisfy the minimum acreage requirement for keeping a fourth horse due to the fact the lots are not abutting with common beneficial ownership in accordance with Article III Section 125-25 (3) (b), for property owned by the applicants and located on:

48 Davids Way
Bedford Hill, NY 10507

Nov 4th, 2015

designated as Section 60.20 Block 1 Lot 7 on the Tax Map of the Town of Bedford in an R-4 Acre Zoning District. Said hearing will take place on **Wednesday, the 9th day of September 2015,** at the Town House Offices, 2nd Floor, 425 Cherry Street, Bedford Hills, New York, at **7:30 P.M.** At this hearing all persons appearing in favor of or in opposition to the above application will b e heard. Attendance at said hearing is not required. Applicant or his representative must be present.

DATED: August 21, 2015

Peter Michaelis, Chair
Town of Bedford Zoning Board of Appeals

Inquiry may be directed to:
Alexandra J. Costello, Secretary
Town of Bedford Zoning Board of Appeals
425 Cherry Street, Bedford Hills, NY 10507
(914) 666-4585; FAX: (914) 666-2026
acostello@bedfordny.gov; www.bedfordny.gov

The Law Offices of Keith R. Betensky

26 Village Green, Suite 4
P.O. Box 22
Bedford, New York 10506-0022
914-338-8050

writer's direct dial: 914-338-8050
e-mail: keith@betenskylaw.com

Keith R. Betensky
Admitted in N.Y. & N.J.

May 20, 2015

Town of Bedford
Department of Buildings
425 Cherry Street
Bedford Hills, New York 10507
Attention: Mr. Steven Fraietta

RE: **48 David's Way, Bedford Hills, New York**

Dear Mr. Fraietta:

As you may recall, I am the attorney for the Camille C. Branca Irrevocable Trust, the owner ("Owner") of 48 David's Way, Bedford Hills, New York ("Property"). As we discussed during our meeting on Friday, May 15, 2015, the Owner would like to reinstate and amend its pending application before the Zoning Board of Appeals. The purpose of the amendment to the application is to add an interpretation (as an alternative to the variance) that the proposed lease area at 49 David's Way, when added to the lot area of the Property, would satisfy the minimum acreage requirement for keeping a fourth horse at the Property because the proposed lease area "abuts" the Property pursuant to Section 125-25(B)(3)(b)("Abutting lots with common beneficial ownership shall be considered a single lot").

Pursuant to our discussion, kindly clarify the procedure for reinstating and amending the pending Zoning Board of Appeals application for the Property.

Please do not hesitate to contact me if you have any further questions.

Thank you.

Very Truly Yours,

Keith R. Betensky

RECEIVED
MAY 21 2015
Bedford Building Dept.

cc: Tony Branca

The Law Offices of Keith R. Betensky

26 Village Green, Suite 4
P.O. Box 22
Bedford, New York 10506-0022
914-338-8050

writer's direct dial: 914-338-8050
e-mail: keith@betenskylaw.com

Keith R. Betensky
Admitted in N.Y. & N.J.

July 28, 2015

Via Hand Delivery

Chairman Peter Michaelis and
Members of the Zoning Board of Appeals
Town of Bedford
425 Cherry Street
Bedford, New York 10507

RECEIVED
JUL 28 2015
BEDFORD ZONING
BOARD OF APPEALS

Re: AMENDED Application for an Interpretation or, In the Alternative, a Variance to Keep a Fourth Horse at 48 David's Way, Bedford Hills, New York

Dear Chairman Peter Michaelis and
Members of the Zoning Board of Appeals:

As you recall, I am the attorney for Camille C. Branca, Gary Magliari and Anthony A. Branca, as the co-trustees of the Camille C. Branca Irrevocable Trust ("Applicant") which owns the approximately 4.072-acre property known as Meadow Ridge Farm, located at 48 David's Way, Bedford Hills, New York ("Property"), and known as Section 60.20, Block 1, Lot 7 on the Town of Bedford Tax Map. The Applicant previously filed an appeal seeking an area variance and now amends that application to include a request for an interpretation that the Property, including the Lease Area (defined herein), meets the minimum acreage to keep a fourth horse at the Property or, in the alternative, an area variance to allow the Applicant to keep a fourth horse in the existing barn at the Property. See Zelnick v. Small, 268 A.D.2d 527 (2nd Dept. 2000)(wherein the court reversed the Zoning Board's denial of a variance to allow 32 horses because, among other things, the Zoning Board's decision was not based on substantial evidence).

I am pleased to report that in response to the Zoning Board's comments at the last public hearing on this matter, the Applicant has obtained the approval of Rainbeau Ridge Properties, LLC, the owner of 49 David's Way, the adjacent property to the north, to lease approximately two (2) acres of vacant land ("Lease Area"). See Affidavit of Anthony Branca ("Branca Affidavit"), dated July 22, 2015, at Exhibit A. The Lease Area is connected to the barn on the Property via Spring Lane, a dirt road maintained by the Applicant, and a Bedford Riding Lane Association ("BRLA") trail which traverses David's Way such that the Property and Lease Area together function as a single lot. See Branca Affidavit at ¶11, and Exhibits A & B thereto.

Because David's Way bisects the Property and the Lease Area, the Building Inspector has denied the Applicant's request for an interpretation that the Property, including the Lease Area, meets the minimum acreage to keep a fourth horse under Section 125-25 of the Zoning Code. A copy of said denial ("2015 Denial"), dated May 19, 2015, is enclosed herewith. As detailed herein, we believe the 2015 Denial is contrary to the facts and well established New York decisional law and, as such, the Applicant now asks this Honorable Board to reverse the 2015

Denial and either (i) issue an interpretation that the Property, including the Lease Area, meets the minimum acreage to keep a fourth horse under Section 125-25 of the Zoning Code; or (ii) in the alternative, grant an area variance to allow the Applicant to keep a fourth horse in the existing barn at the Property.

Please note the following legal arguments in support of the amended application:

A. The Zoning Board of Appeals Should Issue an Interpretation that the Property, including the Lease Area, Meets the Minimum Acreage to Keep a Fourth Horse

Section 125-25 of the Zoning Code, which sets forth the requirements for keeping horses in the R-4A zoning district is ambiguous and therefore must be construed in favor of the Applicant.

The keeping of horses is permitted on conforming lots in the R-4A zoning district as an accessory use provided that, among other things, "Two acres of lot area shall be required for the first horse, one acre of lot area shall be required for each horse after one. Zoning Code §125-25(B)(3)(a). The term "Lot Area" is defined as "The total horizontal area included within the boundaries of the lot." Zoning Code §125-3. The term "Lot" is defined as "A parcel of land, not divided by roads, occupied or to be occupied by a building or buildings and accessory buildings, together with such open spaces as are required under the provisions of this chapter, and having its principal frontage on a road or on such other means of access as may be deemed, in accordance with the provisions of law, to be suitable as a condition of the issuance of a permit for a building on such land." Zoning Code §125-3.

However, the Zoning Code also states the following with respect to keeping horses: "...Fences and all exercise yards or pastures lands shall be located at least five feet from each property line. ***Abutting lots with common beneficial ownership shall be considered a single lot.***" Zoning Code §125-25(B)(3).

Significantly, the term "abutting" is not defined in the Zoning Code. Zoning regulations are in derogation of common law and must be strictly construed against the municipality seeking to enforce them. Allen v. Adami, 39 N.Y.2d 275 (1976)("the ordinance before us does not clearly provide that common ownership arising subsequent to January 22, 1962, would effect a merger rendering the exception permitted by section 5.1.7 inapplicable to such commonly held adjacent parcels"). Any ambiguity in language used in zoning regulations must be resolved in favor of the property owner. Id.

In this case, the Property is separated from the Lease Area only by David's Way, a lightly travelled unstriped dead end Town road which is included in the BRLA trail system and abuts other farms. See Branca Affidavit at ¶11. The barn on the Property is connected to the Lease Area via Spring Lane and a BRLA riding trail over David's Way such that the Property and Lease Area together function as a single lot. Id. When the 2-acre Lease Area is added to the 4.072-acre Property, the total acreage, or "lot area" of approximately 6.072-acres far exceeds the minimum five (5) acre requirement to keep four horses set forth in Section 125-25 of the Zoning Code.

Courts routinely interpret ambiguous zoning codes in favor of the landowner. See e.g. Conti v. Zoning Board of Appeals of Village of Ardsley, 53 A.D.3d 545 (2nd Dept. 2008)(the Appellate Division, Second Department, reversed the lower court and zoning board decision which denied owners of four contiguous nonconforming lots' request for an interpretation that they could develop the lots with single family homes); City of New York v. 330 Continental, LLC, 60 A.D.3d 226 (1st Dept. 2009)(the Appellate Division overturned a preliminary injunction entered against three residential buildings, finding in relevant part that the words "transient" and "permanent" contained in the zoning resolution were vague); Lodge Hotel, Inc. v. Town of Erwin Planning Board, 62 A.D.3d 1257 (4th Dept. 2009)(the court reversed the planning board's denial of site plan approval for sidewalk retail, holding that the term "sidewalk retail" was not defined in the zoning law and concluded that its meaning was ambiguous); Baker v. Town of Islip Zoning Board of Appeals, 20 A.D.3d 522 (2nd Dept. 2005)(Where a zoning ordinance was ambiguous with respect to floor area calculation, the zoning board of appeals was not permitted to extend the zoning law by implication "to include areas underneath a roofed-over portion of the house."); Bonded Concrete, Inc. v. Zoning Board of Appeals of Town of Saugerties, 24 A.D.3d 943 (3rd Dept. 2005)(Where the term "structure" was not defined in the zoning code, the appellate court concluded that the lower court rationally determined that the stockpile of sand surrounded by three-sided concrete cubes did not constitute a "structure"); Incorporated Village of Saltaire v. Faustel, 40 A.D. 586 (2nd Dept. 2007)(Zoning Code was unenforceable where the terms "ordinary" and structural were not defined and zoning requirements pertaining to the alteration of a building were ambiguous); Halpern v. City of New Rochelle, 24 A.D.3d 768 (2nd Dept. 2005)(Inasmuch as the minimum required number of off-street parking spaces for houses of worship is ambiguously defined in the city ordinance, the Zoning Board's interpretation of that provision is entitled to deference ...the Zoning Board properly resolved the ambiguity in favor of the landowner").

Based on the foregoing, the Applicant respectfully requests an interpretation that the Lease Area is "abutting" the Property such that the Property consists of greater than five (5) acres and four (4) horses may be kept on the Property as of right without the need for any variances.

B. In the Alternative, The Zoning Board of Appeals Should Grant an Area Variance to Allow the Applicant to Keep a Fourth Horse at the Property.

Stables, barns and the keeping of horses in the R-4A zoning district are permitted accessory uses. See 125-25(B)(3)(keeping horses); See also Schedule of Use Regulations, Chapter 125 Attachment 3 (stables and barns).

In this case, the Property is improved with a single-family residence, an in-ground swimming pool, a barn, paddocks and related improvements. See Branca Affidavit at ¶1. The Property is unique because (i) it is relatively flat; (ii) there are no wetlands, steep slopes or other such restricted areas; (iii) it has an existing barn and paddocks which can accommodate a fourth horse such that no new structures are required; (iv) the barn and paddocks have independent access via Spring Lane to David's Way, the nearest public right of way; and (v) the Property has access to the extensive BRLA trail system including David's Way, Spring Lane and a portion of the Lease Area; and (vi) the Applicants use the horses for therapeutic purposes. See Branca

Affidavit at ¶8. The Property is immaculately maintained and the fourth horse has no adverse impact on the neighborhood. See Branca Affidavit at ¶12. Rather, the fourth horse furthers the historical agricultural/equestrian nature of the neighborhood which makes Bedford a unique and desirable place to live. Id.

In a court decision based on similar facts, the court reversed the Zoning Board's denial of a variance to allow 32 horses because, among other things, the Zoning Board's decision was not based on substantial evidence. Zelnick v. Small, 268 A.D.2d 527 (2nd Dept. 2000).

The undersigned's Memorandum in Support ("2014 Memorandum in Support") of the area variance to keep a fourth horse at the Property, submitted October 17, 2014, details how the Applicant meets the five criteria for an area variance. With the Lease Area now added to the Property, the scale tips even further in favor of the Applicant and there is certainly no evidence (other than generalized/speculative concerns raised by 2 neighbors) that the fourth horse would have any adverse impact whatsoever on the community. To the contrary, multiple letters in support have been submitted in favor of granting the Application. See Exhibit C to the 2014 Memorandum in Support. The Zoning Board has acknowledged that the Property is beautifully maintained and it is respectfully submitted that this beautiful horse farm contributes to Bedford's unique, bucolic character and desirability. Moreover, there are several other horse farms in the neighborhood and the fourth horse is entirely in keeping with the existing character of the neighborhood.

In 2013, several years after the Property was purchased, Mr. and Mrs. Branca adopted their youngest daughter who has special needs and rides for therapeutic purposes. Mr. Branca's wife and daughter can each ride a small Icelandic horse but Mr. Branca needs to ride a larger full size horse. For safety and social reasons, Applicant therefore requires two Icelandic horses so that Mr. and Mrs. Branca and their youngest daughter can trail ride together, and they require two larger full size horses so that Mr. and Mrs. Branca can ride together. An Icelandic horse cannot trail ride with a larger full size horse because they move at a different pace. See Branca Affidavit at ¶8.

Because the Applicant has now acquired an additional approximately 2-acres of Lease Area, the requested variance is, respectfully, moot and/or *de minimus*, and certainly not substantial. No new structures are necessary to keep the fourth horse – the existing barn and paddocks are sufficient. See Branca Affidavit at ¶5, 6. The Property is adequately screened from surrounding properties by a relatively large separating distance, sloping topography and mature trees, and the horses will often be exercised off site on the BRLA riding trails which extend for hundreds of miles throughout the Town. See Branca Affidavit at Exhibits A & B.

The benefit to the applicant far outweighs any perceived detriment to the community because the Applicant will be able to enjoy horseback riding with his wife on the two (2) larger horses, and his wife will be able to enjoy horseback riding with their youngest daughter (who also rides for therapeutic purposes) on the two (2) smaller Icelandic horses. Moreover, the Applicant has explored alternatives and acquiring the additional two acres was the only feasible option. See Branca Affidavit at ¶9, 10.

Recent cases decided by the Appellate Division, Second Department, support the Zoning Board's issuance of the requested interpretation, or in the alternative, a variance, as follows:

In Greentree Country Club, Inc. v City of New Rochelle, 119 A.D.3d 570 (2nd Dept. 2014), the court reversed the denial of a use variance to legalize the enclosure of outdoor porches in a clubhouse, finding that the denial was arbitrary and capricious, in part because the record indicated that the proposed renovation *did not result in any detriment to neighboring properties*. The instant case is similar to Greentree because the Applicant has demonstrated that the fourth horse will have no detrimental impact on the neighborhood. The horse will be kept in the existing barn and the existing paddocks, and the Lease Area and BRLA trails are sufficient to maintain the fourth horse.

In Graziose v. City of Glen Code Zoning Board of Appeals, 127 A.D.3d 863 (2nd Dept. 2015) the court set aside the Zoning Board of Appeals' denial of an area variance application, finding that the ZBA's decision was irrational, arbitrary and capricious. *Although the court noted that the requested variances were substantial, the court nevertheless reversed the ZBA denial*, noting that "similar variance requests were granted for properties in very close proximity to the subject property, and the ZBA's past pronouncements confirm that the character of the neighborhood would not be negatively affected by the granting of the variances."

Similarly, in Quintana v. Zoning Board of Appeals of Inc. Village of Muttontown, 120 A.D.3d 1248 (2nd Dept. 2014) the court reversed the denial of a lot depth variance where there was *no evidence that granting the variance would result in an undesirable change in character of the neighborhood, adversely impact physical and environmental conditions, or otherwise result in a detriment to the health, safety and welfare of the neighborhood.* In this case, the neighborhood has a strong agricultural history and there are many large farms in the vicinity, including the farm on which the Lease Area is located. The fourth horse would be in keeping with the agricultural character of the surrounding area which contributes to Bedford's iconic "horse country" reputation which, in turn, raises property values.

Moreover, in Goodman v. City of Long Beach Second Department, 2015 WL 2457861, Decided May 27, 2015), the court affirmed the Zoning Board of Appeals' grant of area variances for a mixed use residential and commercial building, "contrary to petitioners' contentions, the grant of the application had a rational basis and was not arbitrary and capricious, *even though the proposed variances were substantial and the applicant's alleged difficulty was self-created.*"

Based on the foregoing cases, even if the Zoning Board determines that the requested variance is "substantial" or "self-created" the variance should nevertheless be granted because the Applicant has demonstrated that the fourth horse will have no detrimental impact on the neighborhood. See Graziose, Quintana, and Goodman, supra.

C. The Zoning Board of Appeals Has Previously Granted Similar Variances to Horse Farms Including The Coverage Variance for the Barn on the Property.

As noted on page 3 of the 2014 Memorandum in Support, the Zoning Board has granted numerous variances with respect to other equestrian properties in Bedford, and a coverage variance with respect to the existing barn on the Property.

A decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious. Knight v. Amelkin, 68 N.Y. 975 (1986).

The coverage variance granted with respect to the existing barn on the Property (ZBA Resolution #06-09 Five, unanimously approved on December 31, 2009) serves as legal precedent. In that resolution, the Zoning Board found that the existing three stall barn would not result in an undesirable change in the neighborhood, was not substantial, and would have no adverse physical or environmental effect. The Applicant essentially seeks to legalize a fourth horse stall shown as an 11'x12' "storage" area in the existing barn. The other three horse stalls in the barn are 12'x12'.

Respectfully, the facts and circumstances have not changed since 2009 and the Zoning Board is bound by Resolution #06-09 Five because legalizing the conversion of the 11'x12' storage area to a fourth horse stall in the existing barn will not cause an undesirable change in the neighborhood, the variance is not substantial, and the variance would have no adverse physical or environmental effect. Knight v. Amelkin, 68 N.Y. 975 (1986); see also 2014 Memorandum in Support.

D. The Fourth Horse Should be Permitted Because It Does Not Change the Nature and Character of the Use

Stables, barns and the keeping of horses in the R-4A zoning district are permitted accessory uses. See 125-25(B)(3); see also Schedule of Use Regulations, Chapter 125 Attachment 3. The mere increase in the number of horses does not change the nature or character of the use (it is still a residential horse farm and no new structures are proposed). Smith v. Town of Islip, 202 A.D.2d 674 (2nd Dept. 1994)(wherein the court reversed the Zoning Board's limitation on the number of boats as arbitrary, holding that the "mere increase in volume or intensity of use, without concurrent variation or alteration of specific type of use, is not, per se, impermissible extension or enlargement of that use"). There is no evidence in the record that allowing the fourth horse to be kept in the barn will result in an undesirable change in the character of the neighborhood. To the contrary, there are several horse farms nearby, the BRLA trail system runs through the Lease Area, David's Way and the Property and Bedford Hills has a rich, celebrated agricultural history.

Based on the foregoing, we respectfully request that the Zoning Board grant the requested interpretation that the Property, including the Lease Area, meets the minimum acreage to keep four horses or, in the alternative, grant the requested area variance so that the Applicant may continue to enjoy horseback riding with his family.

Respectfully Submitted,

Keith R. Betensky

cc: Mr. Anthony Branca

STATE OF NEW YORK
COUNTY OF WESTCHESTER
TOWN OF BEDFORD
ZONING BOARD OF APPEALS

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Matter of the Application of

ANTHONY BRANCA, AS CO-TRUSEE OF THE CAMILLE C. BRANCA IRREVOCABLE TRUST,

Meadow Ridge Farm
48 David's Way
Bedford Hills, New York

PARCEL ID: 60.20-1-7

AFFIDAVIT OF ANTHONY BRANCA

----------x

STATE OF NEW YORK

COUNTY OF WESTCHESTER

I, ANTHONY BRANCA, being duly sworn, depose and say:

1. I am the co-trustee of the Camille C. Branca Irrevocable Trust which owns the property known as Meadow Ridge Farm at 48 David's Way, Bedford Hills, New York ("Property"). The Property is improved with a single family residence, swimming pool, barn, paddocks and riding ring, and I live there year-round with my family. The Property is situated on the Bedford Riding Lanes Association's extensive trail system which connects the Property to several other horse farms in the same neighborhood, and beyond. I am familiar with the facts and circumstances of this case and I submit this Affidavit in further support of my application pending before the Town of Bedford Zoning Board of Appeals.

2. The primary reason my wife and I decided to purchase the Property was to develop and live on a horse farm. Since moving to Bedford, our enthusiasm for horseback riding has only grown as our family has grown and as we have met other residents/riders in the neighborhood with similar interests.

3. I have also been told that the neighborhood in which the Property is located has a rich agricultural history and we are proud to continue that tradition, which is part of what makes Bedford a unique and desirable place to live.

4. Soon after I purchased my home, I applied for a building coverage variance to construct the existing barn, which was granted unanimously on December 31, 2009 (ZBA Resolution #06-09 Five).

5. The barn is prefabricated with three 12'x12' horse stalls plus a 11'x12' storage area which we now seek to legalize as a fourth horse stall. We have hired a professional horse groom to maintain the horses, barn and paddocks.

6. Keeping a fourth horse at the Property will have no adverse impact on the surrounding neighborhood. The paddocks are picked up on a regular basis and manure is stored in a sealed container and frequently carted away to prevent any odor issues. All horse feed is stored in rodent proof containers and the Property is immaculately maintained by a professional landscaping company.

7. My wife and I live at the Property with our children and pets, including our horses, and we hope to remain at the Property for many years.

8. It has become necessary to keep a fourth horse at the Property so that my family can enjoy horseback riding together. In 2013, several years after we purchased the Property, we adopted my youngest daughter who has special needs and rides for therapeutic purposes. My wife and daughter can each ride a small Icelandic horse but I need to ride a larger full size horse. For safety and social reasons, we require two Icelandic horses so that my wife and daughter can trail ride together, and we require two larger full size horses so that my wife and I can ride together. An Icelandic horse cannot trail ride with a larger full size horse because they move at a different pace. Thus, allowing four horses (two big and two small) allows us to maximize my family's use and enjoyment of our Property.

9. At the suggestion of the Zoning Board of Appeals, I asked the Town Board to amend the Zoning Code such that I would no longer require a variance. Unfortunately, the Town Supervisor informed me that the Town Board is not interested in amending the relevant portion of the Zoning Code at this time.

10. At the suggestion of the Zoning Board of Appeals, I also approached several nearby horse farms about keeping my fourth horse off site. Unfortunately, Buxton Farm, Beaver Dam Farm, Shady Lane Farm, and Bisbee Lane Farm all indicated that they could not accommodate my fourth horse.

11. I also approached my neighbors about acquiring more property in order to meet the minimum five (5) acres necessary to keep four (4) horses. Fortunately, my neighbors to the north at 49 David's Way (known as Rainbeau Ridge Farm) agreed to lease an approximately 2-acre parcel ("Lease Area") adjacent to my Property. The Lease Area is connected to the existing barn on my Property (in which the fourth horse stall is located) via Spring Lane, a dirt road

maintained and used solely for the benefit of my Property, and a Bedford Riding Lanes Association Trail. A map and aerial photo of the BRLA trail are attached hereto as shown on **Exhibit A**. The Lease Area is also located in the R-4A zoning district in which keeping horses is permitted. No horses are currently kept at 49 David's Way. The Lease Area and the Property function as a single lot because we routinely ride our horses from the barn on the Property north on Spring Lane, across David's Way and onto the existing BRLA trail on the Lease Area. Significantly, David's Way is *included* in the BRLA trail system, as shown on **Exhibit A**. Photographs of said existing BRLA trail are attached hereto as **Exhibit B**. Therefore, the parcel of land comprising Spring Lane, David's Way and the Lease Area should be included in the lot area of my Property in which case a fourth horse is permitted as of right.

12. The Zoning Board of Appeals has acknowledged that our Property is beautifully maintained. Respectfully, any prior objection from my neighbors is based on generalized concerns and/or speculation, and certainly not due to any impact from the fourth horse. In fact, the large majority of public comments to date have been in favor of my application. Because the fourth horse may be kept in an existing space in the same barn and paddocks as the other three "as of right" horses, there will continue to be no adverse impact on the neighborhood. To the contrary, allowing the Property to continue functioning as a horse farm carries on the long equestrian tradition in Bedford and enhances the scenic beauty that makes Bedford a unique, desirable place to live.

13. Based on the foregoing, I respectfully request that my application be granted forthwith so that I may keep a fourth horse at the Property.

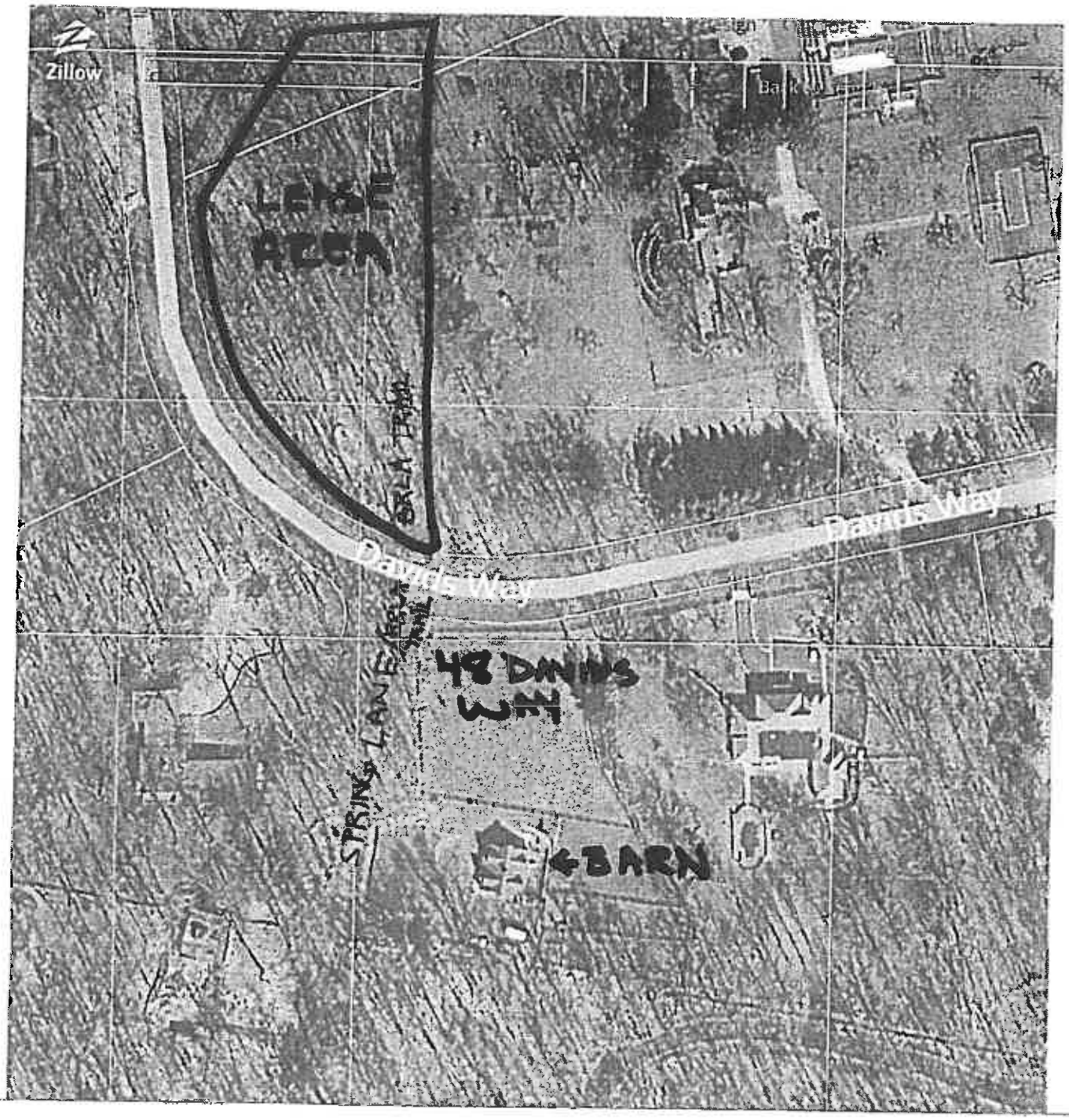
ANTHONY BRANCA

Sworn to before me this 22nd
Day of July, 2015

NOTARY PUBLIC

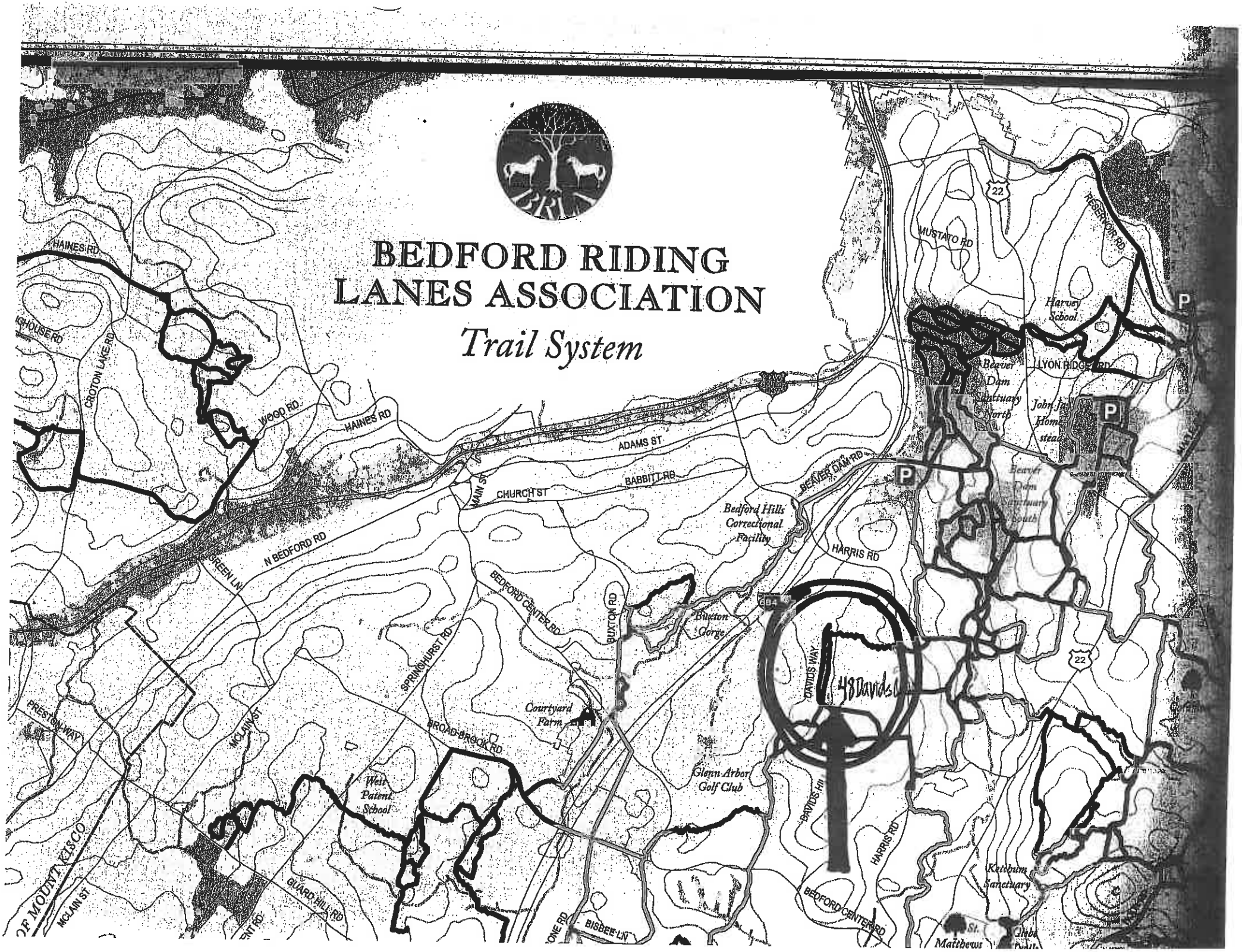
Keith R. Betenaky, Esq.
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02BE6275328
Qualified in Westchester County
Commission Expires Jan 1, 2017

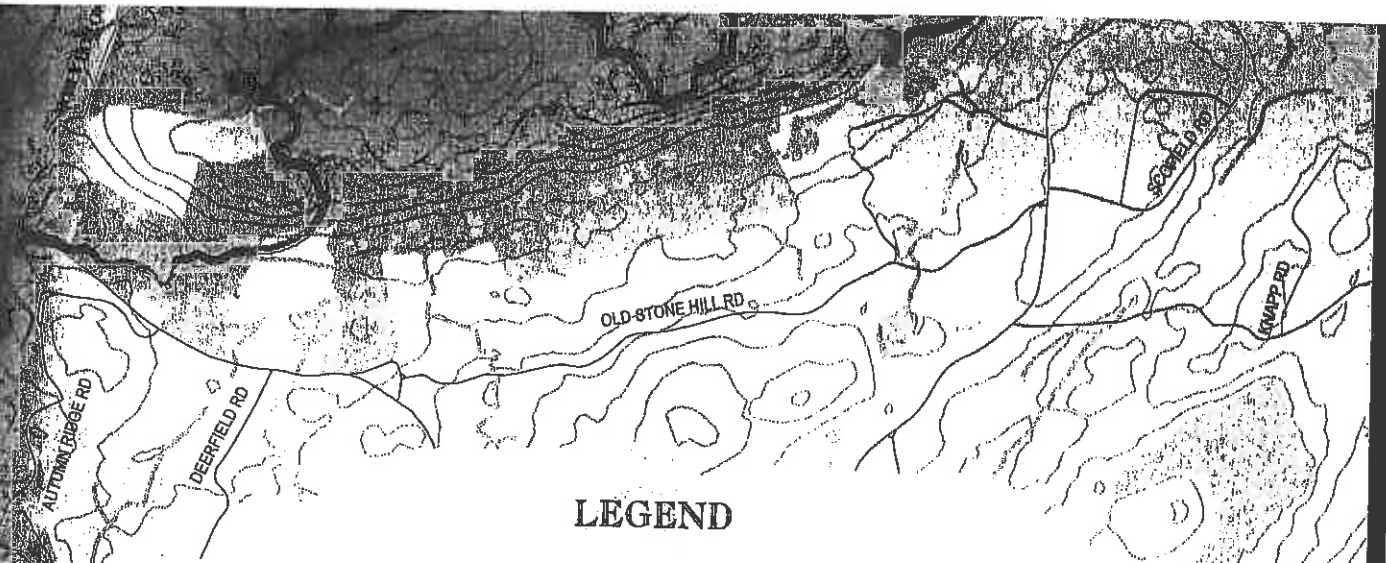
EXHIBIT A


Zillow
LEASE AREA
Davids Way
Davids Way
48 DAVIDS WAY
STRING LANE
BARN

BEDFORD RIDING LANES ASSOCIATION

Trail System





LEGEND

- BRLA Trails
- Town Roads
- BRLA Trails on Public Roads
- Horse Trailer Parking
- Community Landmarks
- 29 WPR Trail Junctions
- 30 39 *Connecting BRLA trail system*
- Contour 50ft
- Streams
- Lakes
- Parks & Sanctuaries
- Historic Stables
- *Note: BRLA Trail Markers are placed throughout the trail system*

The Bedford Riding Lanes Association maintains a cooperative trail system on private and public lands in the community of Bedford, NY. Trail use is restricted to BRLA members. Membership information is available online at bedfordridinglanes.com. Trail users are asked to respect property owners when on private lands and to be courteous to fellow trail users.

Map Produced by BRLA volunteers Stan Schulman & Betsy Perreten

Copyright ©2008. ALL RIGHTS RESERVED REPRODUCTION PROHIBITED.

874

Map current as of December 2008

EXHIBIT B

View Facing North from Spring Lane/BRLA Trail toward the Lease Area at 49 David's Way

PHOTO 1

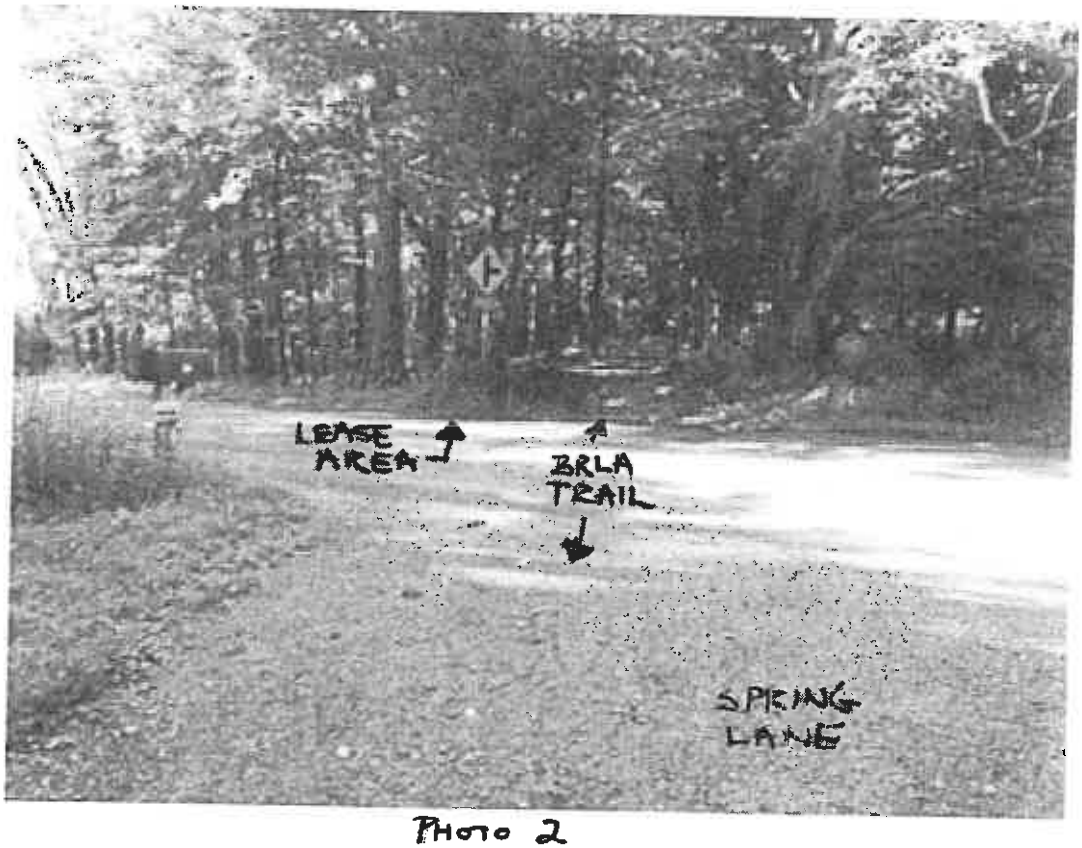


PHOTO 2

View Facing West from David's Way showing the BRLA Trail Connecting Spring Lane/48 David's Way (Left) with the Lease Area at 49 David's Way (Right)

PHOTO 3

Yellow BRLA Trail Arrow is slightly to the right of the street sign

PHOTO 4

View Facing South from the BRLA Trail on the Lease Area at 49 David's Way.
The red barn and fenced horse paddock at 48 David's Way and
Spring Street are visible in the background.

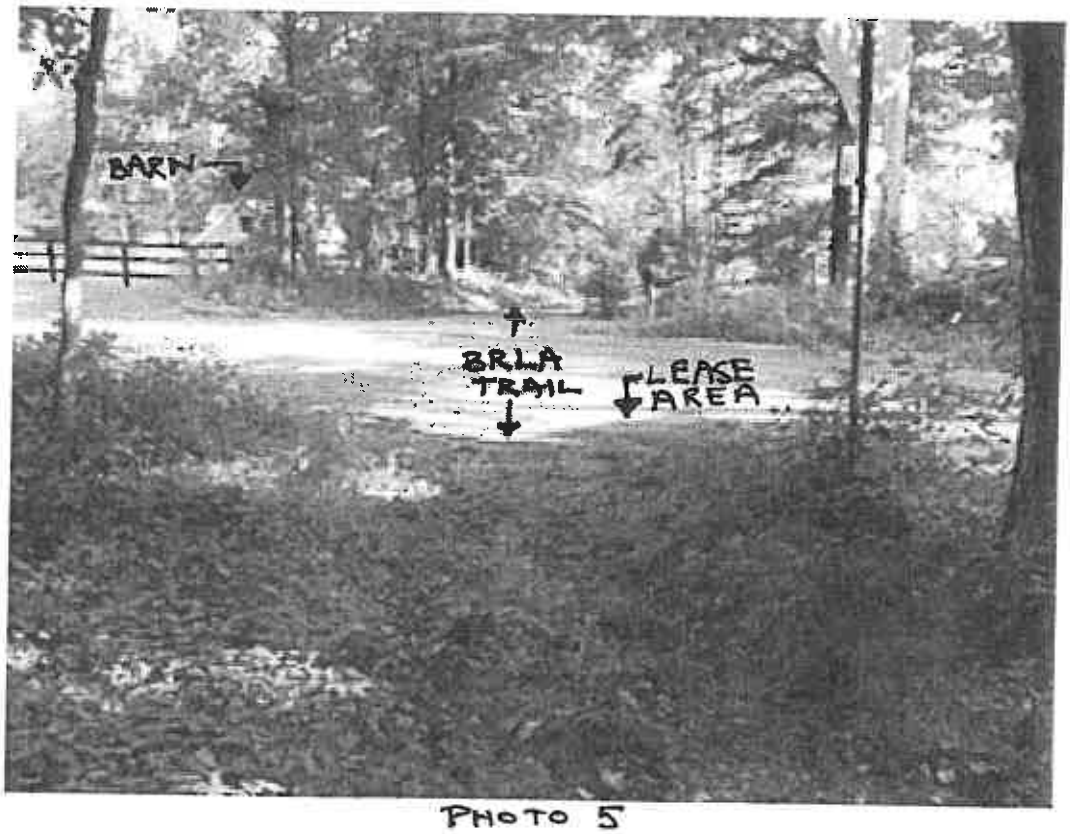


PHOTO 5

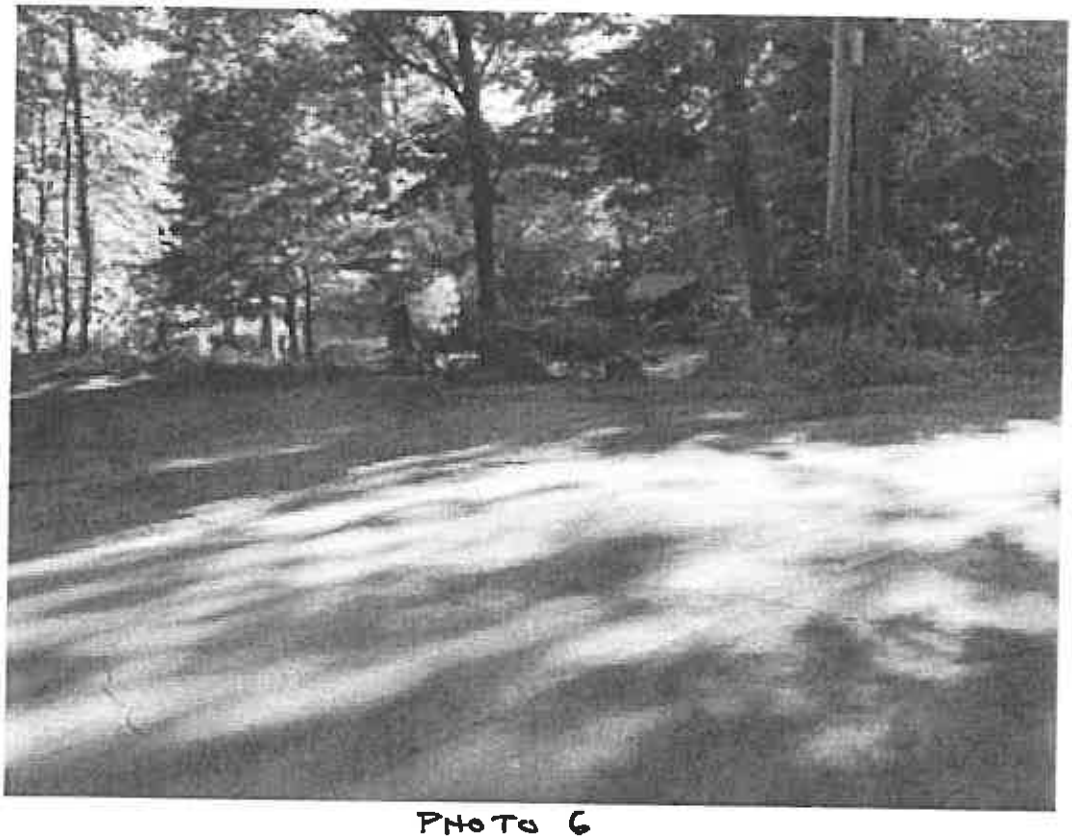


PHOTO 6

LETTER OF PERMIT DENIAL

Town of Bedford
Building Dept.
425 Cherry St.
914-666-8040

Application #:

Date: 5/19/2015

Parcel ID: **60.20-1-7**

Owner Information

Branca Irrevocable Trust, Camille

Applicant Information

Branca Irrevocable Trust, Camille
c/o AA Branca & Co CPA
700 Summer St
Stamford CT 06901

Location: 48 Davids Way
Parcel ID: 60.20-1-7
Permit Type: Zoning
Work Description: Permit the keeping of four (4) horses on a 4.072 acre parcel where only three horses are permitted as of right.

Dear Resident,
Regarding the application for a Zoning Permit on the property referenced above, the following facts are noted. This property is located in R-4A Zoning District. The requirements of the Zoning Ordinance of the Town of Bedford in comparison to your proposal are listed as follows:

The leased area at 49 David's Way when added to the lot area to the applicants property at 48 David's Way does not satisfy the minimum acreage requirement for keeping a fourth horse due to the fact the lots are not abutting with common beneficial ownership in accordance with Article III Section 125-25 (3) (b).

Because your project does not meet the requirements of the Town of Bedford Zoning Ordinance, your application for a building permit is DENIED. If you wish to proceed with your request, you may, within sixty days of this letter, apply to the of the above provisions

Very truly yours,

Steven Fraietta
Building Inspector

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that the Board of Appeals of the Town of Bedford will hold a public hearing on the following:

Request of: **Bedford Historical Society**
PO Box 491
Bedford, NY 10506

for a variance of the Town of Bedford Zoning Ordinance to permit:

The installation of a pre-fabricated 10 x 12-foot shed on a residential property with a non-conforming commercial use (Historical Hall) resulting in a side yard setback of 19 feet where 40 feet is required in the Residential 2 Acre Zoning District; building coverage of. 18.46% where 6% is permitted and impervious surface coverage of 45% where 14% is permitted in the Residential 2 Acre Zoning District. The lot area is 0.317 acres where 2 acres are required in the Residential 2 Acre Zoning District. These being variances of Article III Section 125-11 and Article V Section 125-50, for property owned by the applicants and located on:

608 Old Post Road
Bedford, NY 10506

designated as Section 84.7 Block 1 Lot 16 on the Tax Map of the Town of Bedford in an R-2 Acre Zoning District. Said hearing will take place on **Wednesday, the 4th day of November 2015,** at the Town House Offices, 2nd Floor, 425 Cherry Street, Bedford Hills, New York, at **7:30 P.M.** At this hearing all persons appearing in favor of or in opposition to the above application will be heard. Attendance at said hearing is not required. Applicants or their representatives must be present.

DATED: August 26, 2015
Revised October 6, 2015

Peter Michaelis, Chair
Town of Bedford Zoning Board of Appeals

Inquiry may be directed to:
Alexandra J. Costello, Secretary
Town of Bedford Zoning Board of Appeals
425 Cherry Street
Bedford Hills, NY 10507
(914) 666-4585; FAX: (914) 666-2026
acostello@bedfordny.gov
www.bedfordny.gov

ZONING BOARD OF APPEALS

Town of Bedford, Westchester County, New York
425 Cherry Street, Bedford Hills, New York 10507
Alexandra J. Costello, Secretary
914-666-4585; 914-666-2026 FAX
acostello@bedfordny.gov

RECEIVED
AUG 7 2015
BEDFORD ZONING
BOARD OF APPEALS

APPLICATION FOR A VARIANCE

1. Name of Owner: Bedford Historical Society

   Address: 612 Old Post Road, Bedford, NY 10506

   Telephone/Email: 914 234 9751

2. Name of Applicant, if other than Owner: _____

   Address: _____

   Telephone/Email: _____

3. Name of Professional (New York State Licensed Architect, Engineer, Land Surveyor, Landscape Architect):

   _____

   Address: _____

   Telephone/Email: _____

4. Identification Property:

   Street Address: 608 Old Post Rd Bedford, NY 10506

   Tax ID: _____ Zoning District: R2A Total Land Area: .317 Acres

   Age of the Building New Shed

   Is the property located in a designated Historic District? YES

   % of Building Coverage: 18 % of Impervious Surface 44

   Property Abuts a State or County highway, parkway, thruway or park: Yes ✓ No ____

   Property is within 500 feet of the boundary of the Town of Bedford: Yes: ____ No: ✓

   Property is on the NW side of Old Post Rd within the unincorporated area of the Town of Bedford.

ZONING BOARD OF APPEALS
APPLICATION FOR A VARIANCE

RECEIVED
AUG 7 2015
BEDFORD ZONING
BOARD OF APPEALS

5. Request:

The applicant requests that the Board approve the issuance of a Variance under the following section of the Code of the Town Bedford:

Article: _____ Section: _____

To Permit:

INSTALLATION OF NEW PREFAB SHED BEHIND HISTORICAL HALL ON PATIO

6. Plans required:

Include six copies of survey, site plan, building elevations and floor plans.

7. Public Notice:

Notice of the public hearing shall be published at least 10 days prior to the hearing in the Town newspaper and shall be mailed by the applicant at least 10 days prior to the hearing to all owners of property within 500 feet of the perimeter of the subject lot. The expense of publishing and mailing any notice shall be paid by the applicant, who shall file an affidavit of mailing with the Board Secretary prior to the hearing.

8. Fees: (make checks payable to the Town of Bedford)

Variance
(As required by Fee Schedule Town of Bedford Code)
Residential: ~~$350.00~~

Commercial: $550.00

Signature of Owner
Executive Director
Bedford Historical Society

8/7/15
Date

Signature of Applicant

Date

Rev. 5/18/10

LETTER OF PERMIT DENIAL

Town of Bedford
Building Dept.
425 Cherry St.
914-666-8040

Application #:

Date: 8/24/2015

Parcel ID: **84.7-1-16**

Owner Information

Bedford Historical Society

Applicant Information

Bedford Historical Society
PO Box 491

Bedford NY 10506

Location: 608 Old Post Rd
Parcel ID: 84.7-1-16
Permit Type: Shed
Work Description: Pre-fabricated Shed (10 x 12 feet) located on existing brick patio

Dear Resident,
Regarding the application for a Building Permit on the property referenced above, the following facts are noted. This property is located in R-2A Zoning District. The requirements of the Zoning Ordinance of the Town of Bedford in comparison to your proposal are listed as follows:

The proposal to add a shed on a residential property with a non-conforming commercial use will require variances of Article V Section 125-50 and Article III Section 125-11 from the Board of Appeals. The lot area of the parcel is non-conforming consisting of 0.317 acres where 2 acres are required in the Residential 2 Acre Zoning District; the shed will result in a side yard setback of 18.8 feet where 40 feet is required in the Residential 2 Acre Zoning District; the building coverage is estimated to be 18% where 6% is permitted and the impervious surface coverage is estimated to be 44% where 14% is permitted in the Residential 2 Acre Zoning District.

Because your project does not meet the requirements of the Town of Bedford Zoning Ordinance, your application for a building permit is DENIED. If you wish to proceed with your request, you may, within sixty days of this letter, apply to the of the above provisions

Very truly yours,

Steven Fraietta
Building Inspector

TOWN OF BEDFORD

Bedford Village Historic District Review Commission

CERTIFICATE OF APPROVAL NO. 2014/11

Applicant: Bedford Historical Society
612 Old Post Road
Bedford, NY 10506

RECEIVED
AUG 7 2015
BEDFORD ZONING
BOARD OF APPEALS

Issued: November 14, 2014

WHERE AS, the Bedford Village Historic District Review Commission met at a regular scheduled meeting on November 12, 2014 and discussed an application to erect a prefabricated 10'x12' Anthony Model shed behind the Historical Hall located at 608 Old Post Road.

NOW THEREFORE BE IT RESOLVED, that pursuant to Article 1, Section 71 of the Code of the Town of Bedford, the Commission reviewed the application, dated September 4, 2014, and hereby unanimously approved with conditions as set forth:

1.) **Windows should be located in back/rear of shed; 2.) the shed should be painted/stained the color white; 3.) the doors should be plain barn type; 4.) the structure should be approved by Town of Bedford Building Department.**

If the Work is not commenced within twelve (12) months, this Certificate of Approval becomes void and filing of a new application will be required. Please contact the Commission if there are any questions regarding approval.

James B. Renwick
Chairman
(914) 234-9261
Jim.renwick@renwicksothebysrealty.com

Attach: Drawings, Description, Application.

CC: (via email) Applicant : Bedford Historical Society, Town Clerk: L. Fumagalli, Code Enforcer: W. O'Keefe ,
✓Original (Hard copy): Building Dept.

Tom

TOWN OF BEDFORD

Bedford Village Historic District Review Commission

APPLICATION FOR CERTIFICATE OF APPROVAL

APPLICABILITY:

A Certificate of Approval is required for any action that alters the site or the exterior façade of a building in the Historic District, including but not limited to new construction, additions to existing buildings, renovation of exterior materials, changes in windows or doors, changes in paint color, significant landscape changes, lighting, signage, and walls or fences.

A Certificate of Approval must be obtained prior to applying for a Town of Bedford building permit.

Applications must be received two (2) weeks prior to a regularly scheduled meeting of the Commission.

Submit six (6) copies of the completed application, drawings and supporting materials to:

Bedford Village Historic District Review Commission
PO Box 48, Bedford, NY 10506
(914) 234-9454

IDENTIFICATION OF PROPERTY:

ADDRESS: 608 OLD POST ROAD (HISTORICAL HALL)

SECTION: 84.7 BLOCK 1 LOT(S): 16 ON TOWN ASSESSMENT MAP

APPLICANT INFORMATION:

OWNER: BEDFORD HISTORICAL SOCIETY AGENT: _____

ADDRESS: 612 OLD POST RD P.O. BOX 491 ADDRESS: _____
Bedford NY 10506

CONTACT #: 914-234-9751 CONTACT #: _____

DESCRIPTION OF PROPOSED CHANGES:

install pre-fabricated shed behind Historical Hall.
shed will not be visible from Street - See attached
site plan and specifics from Martin's Country Craftsman
BHS will shingle roof with wood shakes - 5" perfections

Required information to be included with all applications:

- ☑ Site plan of property showing existing and proposed buildings and exterior site features including significant landscaping. Include topographic information for landscape changes. Minimum Scale: 1" = 20'
- ☐ Scaled drawings showing plans and elevations of proposed construction, including detail drawings of relevant architectural features. Minimum Scale: ¼" = 1'-0"
- ☑ Color Photographs showing existing conditions to be changed and views from public right of ways which may be altered
- ☐ Samples or clear photographs and specifications of proposed materials and colors

APPLICATION – Continued

For Landscape Elements & Accessories, including: Signage, Lighting, Fences and Planting

☑ Site plan showing proposed placement on site Minimum Scale: 1"=20'

☐ Scaled drawings of elevations and construction details Minimum Scale: ½"=1'-0"

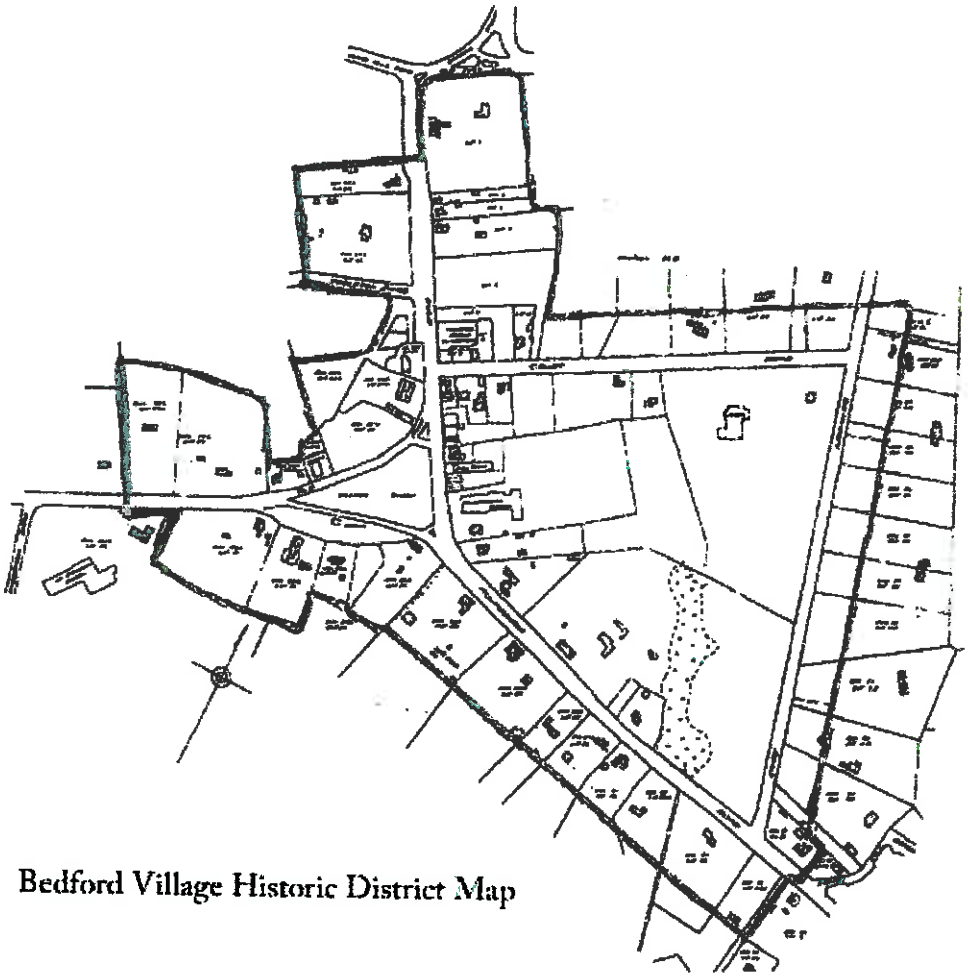
☐ Signs must show lettering style, size, placement and color Minimum Scale: ½"=1'-0"
Black letters on white background with Caslon Old Style or similar font is preferred

☐ Samples or clear photographs and specifications of proposed materials and colors

By submitting an application for a Certificate of Approval, the Applicant and Owner grant permission to the Town of Bedford and members of the Bedford Village Historic District Review Commission to enter the property described above for purposes related to the above application, at reasonable times, and with permission from either the owner or tenant in possession.

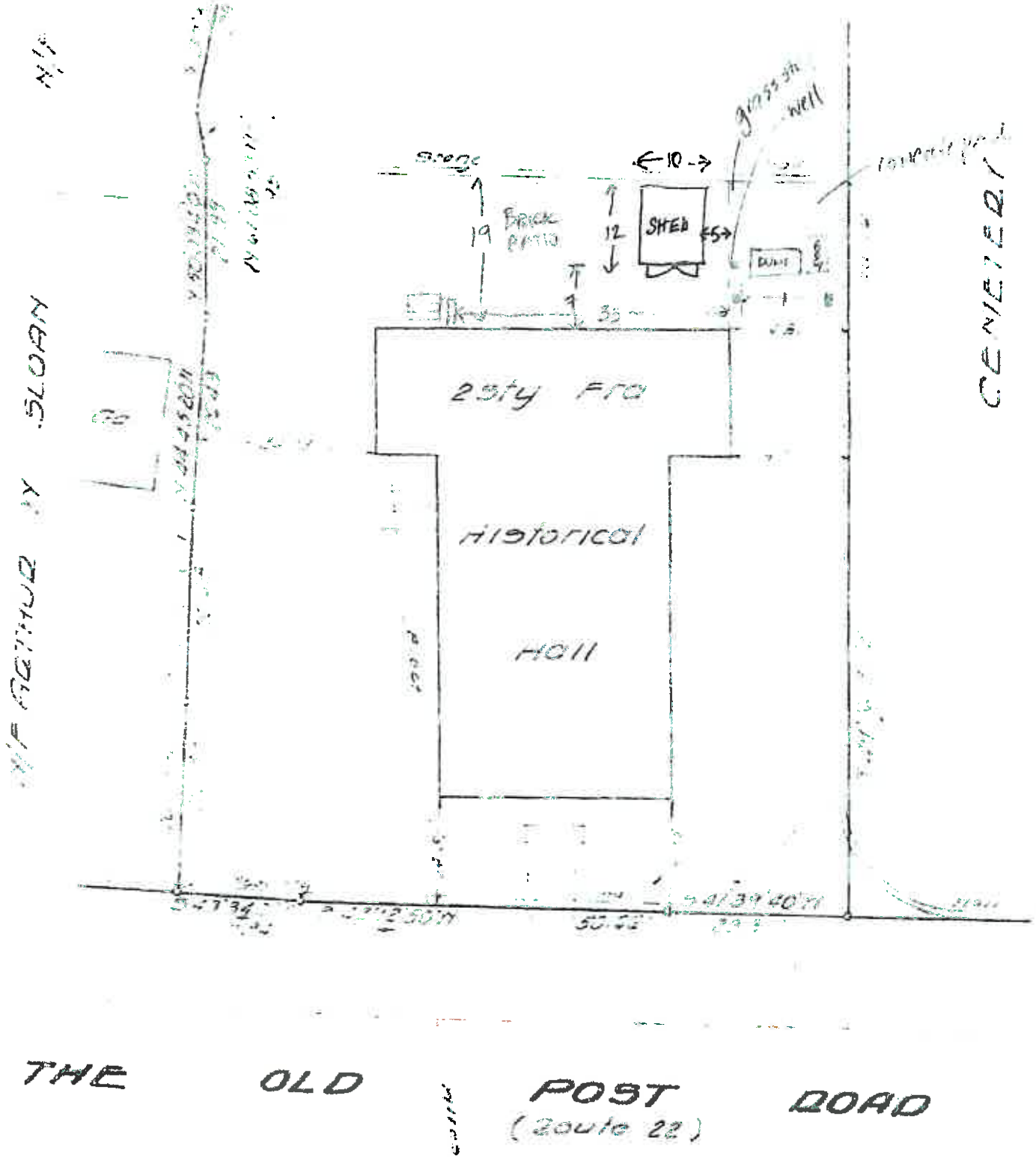
Signature of Applicant: Margaret H Ryan Date: 9/4/14

The Commission meets on the second Wednesday of every month at the Bedford Free Library at 7:00PM



Bedford Village Historic District Map

Please circle the subject property on the District Map.



SLOAN
CEMETERY
2sty Fra
Historical
Hall
SHED
Brick Patio
19
12
10
5
35
grass
well
THE OLD POST ROAD
(Route 22)

0.317 acres

"Anthony" has a gable roof with 7/12 pitch.

CONSTRUCTION DETAILS:

FLOORS:
4x4 PT Foundation Beams
2x4 PT Floor Joists 16" OC
5/8" Exterior Grade Plywood Flooring
2x4 Sill Plate

ROOF:
2x4 & 2x6 Rafters in Michael, Kris & John
2x4 Rafters in Thomas, Anthony, William, Charles. Bryan, Benjamin
Double Gussetted Trusses
1/2" Exterior Plywood Sheathing
Architectural Shingles
Aluminum Drip Edge
Overhang & Finished Soffits on all four sides

WALLS:
2x4 Studs 16" OC
T1-11 Duratemp Siding
Vinyl Trim-STANDARD
Wrated Trim-COLONIAL

DOORS:
Reinforced Double Doors
Jacks & Headers in Framing
Key Lock

WINDOWS:
On Michael, Kris:
1-Jalousie-STANDARD
On Thomas, Anthony, William, Charles, Bryan, Benjamin, John
2-Single Hung Aluminum with:
Vinyl Trim or Shutters-STANDARD
Wrated Trim-COLONIAL

Dimensions: 10 x 12 x 10'4" high to peak
Color: Duratemp grey as shown above with white trim (no X on doors)

2 – 30" doors at 10 foot side

2 - Jalousie windows 15 x 24 on each side of 12 foot sides

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that the Board of Appeals of the Town of Bedford will hold a public hearing on the following:

Request of: **SCGH Farm LLC**
31 Old Roaring Brook Road
Mount Kisco, NY 10549

for a variance of the Town of Bedford Zoning Ordinance to permit:

Construction of additions and alterations to an existing residence including a new porch and 3-car garage resulting in building coverage of 3.77% where 3% is permitted in the Residential 4 Acre Zoning District. This request requiring a variance of Article V Section 125-50 for property owned by the applicant and located on:

340 Guard Hill Road
Bedford, NY 10506

Nov 4. 2015

designated as Section 72.19 Block 2 Lot 8 on the Tax Map of the Town of Bedford in an R-4 Acre Zoning District. Said hearing will take place on **Wednesday, the 9th day of September 2015,** at the Town House Offices, 2nd Floor, 425 Cherry Street, Bedford Hills, New York, at **7:30 P.M.** At this hearing all persons appearing in favor of or in opposition to the above application will be heard. Attendance at said hearing is not required. Applicant or his representative must be present.

DATED: August 24, 2015

Peter Michaelis, Chair
Town of Bedford Zoning Board of Appeals

Inquiry may be directed to:
Alexandra J. Costello, Secretary
Town of Bedford Zoning Board of Appeals
425 Cherry Street
Bedford Hills, NY 10507
(914) 666-4585; FAX: (914) 666-2026
acostello@bedfordny.gov
www.bedfordny.gov

SHAMBERG MARWELL HOLLIS ANDREYCAK & LAIDLAW, P.C.

ATTORNEYS AT LAW

55 SMITH AVENUE
MOUNT KISCO, NEW YORK 10549
(914) 666 - 5600

October 21, 2015

RECEIVED
OCT 21 2015

Via Hand Delivery

Hon. Peter Michaelis, Chairman
and Members of the Zoning Board of Appeals
Town of Bedford
425 Cherry Street
Bedford Hills, NY 10507

Re: SCGH Farm LLC
Application for Area Variances from Section 125-50
Premises: 340 Guard Hill Road, Bedford, New York
Section 72.19, Block 2, Lot 8

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

This firm represents SCGH Farm LLC ("Applicant"), the owner of a parcel of real property located at 340 Guard Hill Road, Bedford, New York, and identified on the tax map of the Town as Section 72.19, Block 2, Lot 8 (the "Property"). The Property is located within the Residence Four-Acre District (R-4A), and is approximately 8.161 acres in size.

The Property at issue is an equestrian property containing a main house and several existing out-buildings as well as paddocks. The main house is over 135 years old and has historic elements that the Applicant would like to preserve. However, currently the house is essentially uninhabitable and requires extensive renovations to stabilize the house and property.

As part of the renovations, the Applicant is seeking to construct an addition to the main house, construct a garage that is connected to the house by a walkway, and make the necessary driveway modifications to provide adequate access. The existing building coverage is 10,493 square feet (2.95%). The proposed additions are a garage/breezeway, family room/ bathroom, and exterior porch, which together increase the proposed building coverage by 2,909 square feet resulting in coverage of 3.77%. Since the maximum building coverage permitted is 3%, the application before this Board is for a variance of 0.77%. The total proposed impervious coverage is 7.47%, which is below the allowed 8% and does not require a variance.

In August 2015, the Applicant's consultant Glenn Ticehurst, RLA, ASLA submitted to the Town a complete application for the requisite coverage variance and the matter was scheduled for the September 9, 2015 agenda. The Applicant appeared before your Board and after much discussion, the public hearing was closed but no decision was rendered by the Board.

In addition, as the property is listed on the Town's Survey of Historic Buildings, the Applicant's architects Grandberg & Associates made a submission in August 2015 to the Historic Building Preservation Commission (HBPC) for review of the proposed plan. Following a site walk, the HBPC held a hearing on September 16, 2015, a week after this Board's meeting. The members of the HBPC fully endorsed the proposal and were satisfied with the Applicant's efforts to maintain the historic value of the house. The HBPC especially supported a longer walkway connection to the garage to separate it from the main house as well as the proposed open porch, which helps to make the addition look like a part of the original house. The HBPC requested certain minor modifications to the plan which the Applicant incorporated and on October 9, 2015, Mr. Ticehurst submitted to your Board a revised Site Plan that reflected the modifications, and explained in a letter submission that the request for the building coverage variance remained essentially the same.

In light of the input from the HBPC and the revised plan, we respectfully request that you re-open the public hearing and consider the reasons why this Board should grant the variance as set forth in this letter. We look forward to discussing the merits with your Board in further detail at the November 4, 2015 meeting.

BACKGROUND

The Applicant purchased the Property in or around September 2014. The intended use of the Property is to create a residence for the Applicant's family of seven, including five children.

The Property is listed on the Survey of Historic Buildings and possesses a historic character that is reminiscent of Bedford's past. The Applicant would like to preserve the historic elements and has been working with the HBPC to plan appropriately. However, the main house requires substantial renovations that must be completed before it can be occupied. As set forth above, the Applicant is before this Board because it is seeking to construct a garage/breezeway (1375 s.f.), family room/ bathroom (691 s.f.) and exterior porch (634 s.f.), which together result in building coverage that exceeds the maximum.

We understand that some members of your Board took issue with the size of the proposed additions. In response, we note that the existing building coverage is almost at maximum despite the 8 acre size of the Property due to several historic features. Initially, the house itself accounts

for 5,061 square feet (1.4%) of the existing building coverage in part because of its extensive exterior porches and a porte cochere, which are unique to houses of this vintage but account for almost half of the existing residence's footprint. The actual liveable portions of the house as existing total about 5,800 square feet, which is relatively modest in light of the size of the Property. In addition, there are multiple existing outbuildings that are useful in the operation of the farm, including 2 barns, a cabin, a pump house, and 2 run-in sheds. As recognized by the HBPC, these outbuildings support the historic character of the Property. Due to these features, the relatively modest additions proposed by the Applicant result in a building coverage that exceeds the maximum permitted.

In addition, the plan is well thought-out and carefully considered from a historic and architectural perspective. The breezeway as proposed by the Applicant serves to separate the garage from the existing house, an element that the HBPC insisted be included to preserve the integrity of the original house. The exterior porch is also a key component of the plan because it serves to integrate the family room/bathroom addition into the rest of the house. Finally, the garage is an essential component of the proposal as there currently is no garage on the Property and the architects are working to modify the roof and other elements to make it tie into the rest of the structure.

In light of the historic value of the Property, we submit that it would be inconsistent with the planning and cultural values of the Town to remove the historic features so as to accommodate the proposed renovations, or to deny the addition of the aforementioned elements, when the increase in coverage is relatively small.

Furthermore, there will not be any detriment to the surrounding area resulting from these proposed improvements. The garage and addition would not be visible from the road as the improvements are at the back of the house and the neighboring houses are far from the proposed improvements since the Property is 8 acres in size. There are also existing trees that act as a natural buffer from neighboring properties.

THE REQUEST FOR AREA VARIANCE

The Balancing Test

Section 267-b(3)(b) of the New York State Town Law (and Article XII, Section 125-129(C)(2)(b) of the Zoning Code), sets forth the following "balancing test" to be applied by the Zoning Board in its review of this application for a building coverage variance:

> 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 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.

We discuss the Applicant's requested area variance in light of each of the foregoing factors below:

The Benefit to the Applicant Far Exceeds Any Detriment to the Community

New York State courts have established that, where the benefit of the requested variance to the applicant is great, similar variance applications have been approved in the past, and any detriment to the neighborhood is minimal, a zoning board should grant the variance. *See e.g., Tall Trees Const. Corp. v. Zoning Bd. of Appeals of Town of Huntington*, 97 N.Y.2d 86, 735 N.Y.S.2d 873 (2001).

The benefit to the Applicant is obvious as the additions would add value to the Property and the garage especially offers a modern and necessary amenity. The Applicant's commitment to the preservation and renovation of this historic Property would also be a benefit to the Town, with no detriment to the surrounding area.

We have also reviewed the Town's files for similar variances and have found several examples of this Board granting similar building coverage variances on other properties in the Town. In fact, earlier this year this Board granted a variance to Bruce & Cynthia S. Nathan at 462 Succabone Road, Bedford Corners to permit the construction of new detached garage with a second floor. That property is about a mile away from this Property, also located in the R-4 Zoning District and involved an increase of 0.81% to bring the existing 3.4% coverage to 4.21%.

On the basis of the foregoing, it is evident that this Board has considered and granted variances similar to the one proposed herein. It is also undisputed that there would not be any impact on the surrounding area as the additions to the house are behind the residence and shielded from other properties by surrounding trees. Thus, there is no detriment at all to the surrounding neighborhood and the Town has granted similar coverage variances.

Granting The Variance Will Not Create an Undesirable Change in Neighborhood Character or a Detriment to Nearby Properties

Granting of the area variance will not result in an undesirable change in the character of the neighborhood or a detriment to nearby properties.

As discussed above, there would not be any impact on the neighborhood or the immediate neighbors due to location and existing tree cover. Furthermore, the historical and architectural elements of the additions have been well thought out and approved by the HBPC to preserve the look and feel of the existing house. Furthermore, the addition of these amenities to this house and property would be entirely consistent with the neighborhood and the area.

We respectfully submit that the granting of the requested variance would not result in any undesirable change in the character of the neighborhood or create a detriment to nearby properties, thereby satisfying the first statutory sub-criterion under the balancing test.

There is No Other Feasible Method to Obtain the Benefit Sought By the Applicant

With respect to the second of the five statutory sub-criteria to be applied in the balancing test, there is no other feasible method to obtain the benefit sought by the Applicant. It is established that "an alternative that does not enable the applicant to achieve the desired benefit is not truly a feasible alternative to obtaining an area variance." Patricia E. Salkin, 2 N.Y. Zoning

Law & Prac. § 29:14 (2015) citing *Baker v. Brownlie*, 248 A.D.2d 527, 670 N.Y.S.2d 216 (2d Dep't 1998).

Here, since the existing coverage is almost at maximum, there is no feasible alternative to a variance. We submit that it would be pointless to demolish and remove existing farm buildings and to eliminate key portions of the plan only to gain a small decrease in the overall proposed coverage. The proposed additions are modest and reasonable, and no other option would meet the Applicant's needs. Any reduction in the size of the proposed additions would be only a minor reduction in the size of the variance.

Thus, we respectfully submit that there is no other feasible method to obtain the benefit sought by the Applicant.

The Variance Is Not Substantial

With respect to the third sub-criterion, the requested variance is insubstantial. It is established generally that the substantiality of a variance must be viewed in its context, not just as a mathematical calculation. *See e.g., Aydelott v. Town of Bedford Zoning Board of Appeals*, 6/25/2003 N.Y.L.J. 21 (col. 4) (J. Dickerson); *Robbins v. Seife*, 215 A.D.2d 665, 628 N.Y.S.2d 311 (2d Dept. 1995). What is substantial is relative, based upon the particular circumstances.

In context, the size of the additions is small in comparison to the size of the Property and surrounding open space. In any event, due to the location and vegetation, there would be no actual visual impact to the neighbors or surrounding area.

In light of foregoing, we submit that the requested variance is not substantial.

The Variance Will Have No Adverse Effect on the Physical or Environmental Conditions in the Neighborhood

With respect to the fourth statutory sub-criterion, the proposed area variance will have no adverse effect or impact on the physical or environmental conditions in the neighborhood.

As discussed above, the proposed additions are part of the house and far away from the property lines. Further, the existing vegetation will provide natural cover for any visual impacts.

Thus, there would be no adverse effect on the physical or environmental conditions in the neighborhood.

The Requested Variance Is Not
The Result of a Self-Created Difficulty

Initially, it is established that the issue of whether a difficulty is self-created expressly is not determinative in the context of an area variance because other factors should be weighed more heavily and a finding of self-created difficulty does not preclude a board of appeals from granting a variance.

In this instance, the existing coverage is already almost at maximum due largely to the exterior porches and farm outbuildings. The Applicant seeks the modern amenity of a garage, which cannot be added without a variance. Furthermore, the additions of a family room/ bathroom and an exterior porch are modest. Thus, this proposal is certainly a reasonable request in light of the neighborhood and the variances previously granted by the Board.

Conclusion

On the basis of the foregoing, we request that you re-open the public hearing and grant the variance application. We look forward to discussing its merits with your Board in further detail at the November 4, 2015 meeting.

Respectfully submitted,

John S. Marwell

JSM/tt
Enclosure

c: Mr. Glenn Ticehurst, RLA, ASLA (via email)
Mr. Ira Grandberg, AIA (via email)
Mr. James R. Gallop & Ms. Christie Allen (via email)

COVERAGE VARIANCES GRANTED BY TOWN OF BEDFORD ZONING BOARD (2012-2015)

Name of Owner	Address & Tax ID	Variance For	Date Granted & Resolution No.	Zone and/or Size of Lot	% Building Coverage (3% permitted where not otherwise specified)	% Impervious Surface Coverage (8% permitted where not otherwise specified
Jan & Sigmund Heller	148 Baldwin Road, Bedford Corners - 83.12-1-3	In-ground swimming pool	**#04-12 One** granted 4/11/12	R-4 A	Existing: 3.17% Increase: 0.51% Final: 3.68%	n/a
Peter & Roseann Chieco	76 Old Wagon Road, Bedford Corners - 83.14-1-17	In-ground swimming pool	**#04-12 Three** granted 4/11/12	R-4 A	Existing: 3.30% Increase: 0.37% Final: 3.67%	Existing: 10.95% Increase: 0.35% Final: 11.30%
Christina Dochtermann	100 Stone Bridge lane, Bedford Hills - 72.7-1-6	Pergola	**#06-12 One** granted 6/13/12	R-4 A	Existing: 3.94% Increase: 0.28% Final: 4.22%	n/a
Andrew Scott Parets (& Mindy Weil)	32 Girdle Ridge Road, Katonah - 61.10-2-9	Construction of swimming pool	**#05-13 One** granted 9/30/13	R-4 A	Existing: 4.0% Increase: 0.7% Final: 4.7% Plan revised to request **4.5% coverage**	*Property is under impervious surface threshold*
Antonio & Francesca Bueti	11 Captain Theale Road, Bedford - 95.09-2-2	8 car Garage with pergola; amended proposal to remove shed, greenhouse, pergola, and wood arbor	**#09-13 Four** granted 9/11/13	R-4 A	Existing: 3.50% Increase: 0.85% Final: 4.35% **Revised: 4.1%**	Existing: 13.77 % Increase: 1.03% Final: 14.80% **Revised-** **Existing: 10.2 %** **Increase: 1.6%** **Final: 11.8%**
Michael & Alice B. DeCandia	174 North Salem Road, Katonah - 39.14-2-9	In-ground swimming pool and legalize existing in-ground hot tub	**#01-14 Two** granted 3/3/14	R-4 A	Existing: 4.70% Increase: 1.20% Final: 5.90%	Existing: 11.20% Increase: 1.00% Final: 12.20%

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Name of Owner	Address & Tax ID	Variance For	Date Granted & Resolution No.	Zone and/or Size of Lot	% Building Coverage (3% permitted where not otherwise specified)	% Impervious Surface Coverage (8% permitted where not otherwise specified
Thomas & Susan McCrossan	143 West Patent Road, Bedford - 72.17-1-2.3	In-ground swimming pool	**#09-14 Six** granted 11/5/14	R-4 A	Existing: 3.09% Increase: 0.59% Final: 3.68%	N/A
Bruce & Cynthia S. Nathan	462 Succabone Road, Bedford Corners - 83.16-1-5	Construction of new detached 2-bay garage on grade level and guest bedroom and bathroom on upper level	**#10-14 Three** granted 1/6/15	R-4 A	Existing: 3.40% Increase: 0.81% Final: 4.21%	Existing: 13.30% Increase: 1.61% Final: 14.91%
Steven Kantor, Bedford Real Estate Associates LLC	221 Sarles Street, Bedford Corners – 94.5-1-1.1	Construction of a tennis court	**#10-14 Nine** granted 1/6/15	R-4 A	Existing: -- Increase: -- Final: 3.25%	N/A
Robert & Nancy Bogel	52 Schildbach Road, Pound Ridge - 62.14-1-2	Construction of single-family residence with carport and covered rear terrace areas, and swimming pool and pool house	**#12-14 Two** granted 3/5/15	R-4 A	Existing: 0.00% Increase: -- Final: 3.88%	N/A

Name of Owner	Address & Tax ID	Variance For	Date Granted & Resolution No.	Zone and/or Size of Lot	% Building Coverage (3% permitted where not otherwise specified)	% Impervious Surface Coverage (8% permitted where not otherwise specified
Michael Altman Marital Trust	190 Baldwin Road, Bedford Corners - 83.8-1-16	In-ground swimming pool	The application was last before the Board at the 6/10/15 meeting granted	R-4 A	Existing: 3.08% Increase: 0.45% Final: 3.53%	Existing: 16.45% Increase: 0.66% Final: 17.11%
Wayne Cohen	25 Deepwood Road, Bedford - 74.6-1-7.20	Swimming pool, spa and landscaping and site improvement	**#07-15 Seven** granted 8/19/15	R-4 A	Existing: -- Increase: -- Final: 3.36%	Existing: -- Increase: -- Final: 9.18%

Pd Chk # 5815 Receipt 2415

ZONING BOARD OF APPEALS

Town of Bedford, Westchester County, New York
425 Cherry Street, Bedford Hills, New York 10507
Alexandra J. Costello, Secretary
914-666-4585; 914-666-2026 FAX
acostello@bedfordny.gov

APPLICATION FOR A VARIANCE

1. Name of Owner: SCGH Farm LLC

   Address: 31 Old Roaring Brook Road, Mount Kisco, N.Y. 10549

   Telephone/Email: Jgallop@jrgca.com, Callen31@mac.com

2. Name of Applicant, if other than Owner: Glenn Ticehurst, RLA, ASLA

   Address: 448H Old Post Road, Bedford, N.Y. 10506

   Telephone/Email: 914-234-9666 / Glenn@btlandarch.com

3. Name of Professional (New York State Licensed Architect, Engineer, Land Surveyor, Landscape Architect): Benedek & Ticehurst, Landscape Architects

   Address: 448H Old Post Road, Bedford, N.Y. 10506

   Telephone/Email: 914-234-9666 / 914-234-9666

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BEDFORD ZONING
BOARD OF APPEALS

4. Identification Property:

   Street Address: 340 Guard Hill Road, Bedford, N.Y. 10506

   Tax ID: 72.19 / 2 / 8 Zoning District: R-4A Total Land Area: 8.161 Acres

   Age of the Building 136 yrs.

   Is the property located in a designated Historic District? No

   % of Building Coverage: 3.77 % of Impervious Surface 7.47

   Property Abuts a State or County highway, parkway, thruway or park: Yes ____ No X

   Property is within 500 feet of the boundary of the Town of Bedford: Yes: ____ No: X

   Property is on the NE side of Guard Hill Rd. within the unincorporated area of the Town of Bedford.

ZONING BOARD OF APPEALS
APPLICATION FOR A VARIANCE

5. Request:
The applicant requests that the Board approve the issuance of a Variance under the following section of the Code of the Town Bedford:

Article: V Section: 125-50

To Permit:
Construction of addition to residence with attached garage, which results in a building coverage of 3.77 %

6. Plans required:
Include six copies of survey, site plan, building elevations and floor plans.

7. Public Notice:
Notice of the public hearing shall be published at least 10 days prior to the hearing in the Town newspaper and shall be mailed by the applicant at least 10 days prior to the hearing to all owners of property within 500 feet of the perimeter of the subject lot. The expense of publishing and mailing any notice shall be paid by the applicant, who shall file an affidavit of mailing with the Board Secretary prior to the hearing.

8. Fees: (make checks payable to the Town of Bedford)

Variance
(As required by Fee Schedule Town of Bedford Code)
Residential: $350.00

Commercial: $550.00

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BEDFORD ZONING
BOARD OF APPEALS

Signature of Owner

8/6/15
Date

Signature of Applicant

8.6.15
Date

Rev. 5/18/10

BENEDEK & TICEHURST
LANDSCAPE ARCHITECTS & SITE PLANNERS, P.C.

August 7, 2015

Zoning Board of Appeals
425 Cherry Street
Bedford Hills, NY 10507

RECEIVED
AUG 7 2015
BEDFORD ZONING
BOARD OF APPEALS

re: 340 Guard Hill Road/SCGH Farm

Dear Chairman Michaelis and Members of the Board:

We are currently working on a beautiful 8.16 acre equestrian property, located at 340 Guard Hill Road. The house is historic and is in immediate need of a complete renovation. It is currently uninhabitable.

The renovation plans include an addition to the main house and the installation of an attached garage. Driveway modifications are also required to provide access to the new garage.

There are several existing beautiful out-buildings (2 barns, 1 cabin, 1 pump house and 2 run-in sheds) that are unique to the farm, as well as paddocks.

The architect (Iran Grandberg and Associates) is currently preparing plans for submission to the Historic Building Preservation Commission.

The existing building coverage is 2.95%. The proposed modifications/additions and new garage, increase the proposed building coverage to 3.77%, where 3% is allowed. The total existing impervious coverage is 6.04% and the proposed total impervious coverage is 7.47%, which is below the allowed 8%.

We believe that our request is reasonable and compatible with equestrian properties in Bedford. There will be no undesirable change to the neighborhood character or detriment to nearby properties. We also believe that there will be no adverse impact to the environment.

We look forward to the opportunity of presenting this project at the September 9th ZBA meeting. Please contact me in the meantime with any questions or concerns.

Sincerely,

Glenn Ticehurst, RLA, ASLA
for B & T

448H Old Post Road, Bedford Village, New York 10506 / P. 914.234.9666 / F. 914.234.6882 / www.btlandarch.com

LETTER OF PERMIT DENIAL

Town of Bedford
Building Dept.
425 Cherry St.
914-666-8040

Application #:

Date: 8/24/2015

Parcel ID: **72.19-2-8**

Owner Information

SCGH Farm LLC

Applicant Information

SCGH Farm LLC
31 Old Roaring Brook Rd

Mt Kisco NY 10549

Location: 340 Guard Hill Rd
Parcel ID: 72.19-2-8
Permit Type: Additions & Alterations
Work Description: Addition and alterations to an existing residence including a new porch and 3-car garage

Dear Resident,
Regarding the application for a Building Permit on the property referenced above, the following facts are noted. This property is located in R-4A Zoning District. The requirements of the Zoning Ordinance of the Town of Bedford in comparison to your proposal are listed as follows:

The project will result in building coverage of 3.77% where 3% is permitted in the R-4 Acre Zoning District. The property is listed on the HBPC's Survey of Historic Buildings and will require review of HBPC.

Because your project does not meet the requirements of the Town of Bedford Zoning Ordinance, your application for a building permit is DENIED. If you wish to proceed with your request, you may, within sixty days of this letter, apply to the of the above provisions

Very truly yours,

Steven Fraietta
Building Inspector

16575

ZONING BOARD OF APPEALS
Town of Bedford
Westchester County, New York

Resolution #10-96 Six
Ilene Scheer

WHEREAS, application has been made pursuant to Article I, Section 125-3 of the Code of the Town of Bedford, for a variance to permit a the installation of a washer, dryer, toilet and sink. Premises being known and designated on the tax map of the Town of Bedford as Section 72.19, Block 2, Lot 8 & 9 & 10, R4A Zone, and shown on the survey of property submitted on August 26, 1996, and

WHEREAS, a public hearing was held on October 2, 1996, on this application, at which time all those present wishing to be heard were given the opportunity to be heard, and

WHEREAS, members of the Board of Appeals have inspected the site, and

WHEREAS, The Board of Appeals has received substantial evidence regarding the benefits sought by the applicant as well as evidence that these benefits cannot be achieved by a satisfactory alternate method that would not require a variance, and

WHEREAS, The granting of this variance would not change the nature of the neighborhood and would have no negative effect on the properties of the immediate neighbors,

NOW, THEREFORE, on a motion by Mr. McMillan, Seconded by Mr. Ranscht.

RESOLVED, that the application for a variance be approved as submitted because the washer, dryer, toilet and sink will be kept in a utility room in a barn. The likelyhood that this would become an accessory apartment is doubtful.

Vote taken on the foregoing motion was as follows:

Ayes - Mr. McGovern, Mrs. Barton, Mr. Ranscht, Mrs. Nourse, Mr. McMillan.

Nays - None.

Hugh C. McMillan, Chairman

The foregoing is certified to be a true copy of a Resolution of the Zoning Board of Appeals of the Town of Bedford and was filed in the Office of the Clerk of the Town of Bedford on October 25, 1996.

Diane M. Egan, Secretary

TOWN OF BEDFORD
BUILDING & CODE
ENFORCEMENT

Memo

To:	Historic Building Preservation Commission
From:	Steven Fraietta – Building Inspector
CC:	Jeff Osterman
Date:	8/7/2015
Re:	SCGH Farm LLC–340 Guard Hill Road, Bedford 72.19-2-8, R-4 Acre Zoning District

---

With reference to the above, a building permit application has been submitted for the construction of additions and alterations to an existing residence including a 3 car garage. The project will require a variance from the Zoning Board of Appeals.

The residence is located at 340 Guard Hill Road, Bedford and is listed on the HBPC's Survey of Historic Buildings. I have attached a copy of the Assessor's cards as well variances we have on file for the property.

Please advise the outcome of the Commission's review. Thank you.

Att.

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that the Board of Appeals of the Town of Bedford will hold a public hearing on the following:

Request of: **P & J Housing Partners**
63 Charles Road
Bedford Corners, NY 10549

for a variance of the Town of Bedford Zoning Ordinance to permit:

Construction of a swimming pool, spa/waterfall, and pergola in the rear yard of the residence resulting in combined building coverage of 3.43% where 3% is permitted in the Residential 4 Acre Zoning District. This request requiring a variance of Article V Section 125-50 for property owned by the applicant and located on:

63 Charles Road
Bedford, NY 10506

designated as Section 83.11 Block 1 Lot 2 on the Tax Map of the Town of Bedford in an R-4 Acre Zoning District. Said hearing will take place on **Wednesday, the 9th day of September 2015,** at the Town House Offices, 2nd Floor, 425 Cherry Street, Bedford Hills, New York, at **7:30 P.M.** At this hearing all persons appearing in favor of or in opposition to the above application will be heard. Attendance at said hearing is not required. Applicant or his representative must be present.

Nov 4th, 2015

DATED: August 20, 2015

Peter Michaelis, Chair
Town of Bedford Zoning Board of Appeals

Inquiry may be directed to:
Alexandra J. Costello, Secretary
Town of Bedford Zoning Board of Appeals
425 Cherry Street
Bedford Hills, NY 10507
(914) 666-4585; FAX: (914) 666-2026
acostello@bedfordny.gov
www.bedfordny.gov

SHAMBERG MARWELL HOLLIS ANDREYCAK & LAIDLAW, P.C.

ATTORNEYS AT LAW

55 SMITH AVENUE
MOUNT KISCO, NEW YORK 10549
(914) 666 - 5600

October 20, 2015

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OCT 21 2015

Via Hand Delivery

Hon. Peter Michaelis, Chairman
and Members of the Zoning Board of Appeals
Town of Bedford
425 Cherry Street
Bedford Hills, NY 10507

Re: P & J Housing Partners
Application for Area Variances from Section 125-50
Premises: 63 Charles Road, Bedford Corners, New York
Section 83.11, Block 1, Lot 2

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

This firm represents P & J Housing Partners LLC ("Applicant"), the owner of a parcel of real property located at 63 Charles Road, Bedford Corners, New York, and identified on the tax map of the Town as Section 83.11, Block 1, Lot 2 (the "Property"). The Property is located within the Residence Four-Acre District (R-4A), and is approximately 4.133 acres in size. It is currently improved with a single-family house and several patios.

The Applicant is seeking to construct an in-ground swimming pool, a waterfall/spa, and a pergola, which together increase the building coverage from the existing 2.49% to 3.43%. Since the maximum building coverage permitted in the District is 3%, the application before this Board is for a variance of 0.43%. The resulting impervious coverage is significantly lower than the allowable 8% and does not require a variance.

On or about August 7, 2015 the Applicant's consultant, Glenn Ticehurst, RLA, submitted to the Town a complete application for the requisite variances and the matter was scheduled for the September 9, 2015 agenda. Public notice was published and mailed. Thereafter, the Applicant requested an adjournment of the hearing date and is now set to appear before your Board on November 4, 2015.

We submit this letter on behalf of the Applicant in further support of the variance application and look forward to discussing the merits with your Board in further detail.

BACKGROUND

The Applicant purchased the Property in or around July 2015.

In June 2015, the previous owners of the Property applied for and obtained a building permit for an in ground gunite swimming pool. In August 2015, the Applicant's consultant Glenn Ticehurst, RLA, ASLA submitted a request for revisions to the aforementioned building permit in order to construct a pool with slightly different dimensions in a different location than originally proposed, and to add a vanishing edge. He also submitted separate building permit applications seeking to construct a pergola and a spa & waterfall.

The Building Inspector issued separate letters denying all three building permit applications because, when the structures are combined and added to the existing single-family house, the resulting building coverage is 3.43% which is in excess of the 3% permitted.

The proposed swimming pool is 60' x 15' with a vanishing edge and is proposed to be located at the back of the house near the back patio and the spa would be adjacent to the existing house and the waterfall feature is proposed to be built into an existing rock formation, also adjacent to the home. The pergola as proposed is 10 feet at its highest, with no walls and lattice work above a stone slab.

This proposal will not have any impacts on neighboring property owners. The Property's topography and the existing rock formations provide a natural aesthetic value for the neighbors to the south. The existing vegetation on the northerly side of the property screens all potential impacts to the neighboring property. The neighbor to the west will not see any of the improvements due to topography, lot size and setbacks. In fact, other than the proposed modest pergola, these features are all at grade and would not be visible from any off-site locations.

Finally, there is no basis for the neighbors' concerns regarding landscaping at the Property. The Applicant's consultants had located pink ribbons on some of the trees so the common property line with the neighbors to the south was clearly delineated. They were also identified in regard to future landscaping, as they were nailed so that tree experts could evaluate the trees' health. The current plan contemplates the removal of one tree – a tree that is permitted to be removed by the owner. Should the future landscaping plan be developed and approved by the owner, any necessary tree removal permits will be obtained from the Town before any trees requiring such approvals are addressed.

THE REQUEST FOR AREA VARIANCES

The Balancing Test

Section 267-b(3)(b) of the New York State Town Law (and Article XII, Section 125-129(C)(2)(b) of the Zoning Code), sets forth the following "balancing test" to be applied by the Zoning Board in its review of this application for a building coverage and side yard setback variances:

> 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 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.

We discuss the Applicant's requested area variances in light of each of the foregoing factors below:

The Benefit to the Applicant Far Exceeds Any Detriment to the Community

New York State courts have established that, where the benefit of the requested variance to the applicant is great, similar variance applications have been approved in the past, and any detriment to the neighborhood is minimal, a zoning board should grant the variance. *See e.g., Tall Trees Const. Corp. v. Zoning Bd. of Appeals of Town of Huntington*, 97 N.Y.2d 86, 735 N.Y.S.2d 873 (2001).

The benefit to the Applicant is obvious as the improvements would add value to the Property and its enjoyment.

We have also reviewed the Town's files for similar variances and have found several examples of this Board granting similar and even more substantial building coverage variances on other properties in the Town. We annex hereto a chart of these variances for your ease of reference. Specifically, two recent building coverage applications that were granted by this Board, one to the Michael Altman Marital Trust and one to Wayne Cohen, involved the construction of swimming pools and a resulting coverage of 3.53% and 3.36% respectively.

On the basis of the foregoing, it is evident that this Board has considered and granted variances similar to the one proposed herein. It is also undisputed that there would not be any impact on the neighboring properties due to topography and existing vegetation. Thus, there is no detriment at all to the surrounding neighborhood and the Town has granted similar coverage variances.

Granting The Variances Will Not Create an Undesirable Change in Neighborhood Character or a Detriment to Nearby Properties

Granting of the area variance will not result in an undesirable change in the character of the neighborhood or a detriment to nearby properties.

As discussed above, there would not be any impact on the neighborhood or the immediate two neighbors due to topography and existing vegetation and the fact that all of the improvements except for the pergola are at grade, and the pergola itself is 10 feet at its highest. Furthermore, the addition of these amenities to this substantial house and property would be entirely consistent with the neighborhood and the area.

We respectfully submit that the granting of the requested variances would not result in any undesirable change in the character of the neighborhood or create a detriment to nearby properties, thereby satisfying the first statutory sub-criterion under the balancing test.

There is No Other Feasible Method to Obtain the Benefit Sought By the Applicant

With respect to the second of the five statutory sub-criteria to be applied in the balancing test, there is no other feasible method to obtain the benefit sought by the Applicant. It is established that "an alternative that does not enable the applicant to achieve the desired benefit is not truly a feasible alternative to obtaining an area variance." Patricia E. Salkin, 2 N.Y. Zoning Law & Prac. § 29:14 (2015) citing *Baker v. Brownlie*, 248 A.D.2d 527, 670 N.Y.S.2d 216 (2d Dep't 1998).

Here, the Applicant is not interested in pursuing the pool that was approved for the previous owners. Instead, the Applicant proposes a similarly sized pool with certain amenities that the Applicant finds attractive and desirable. Any other variation would not meet the Applicant's needs and the coverage difference would be minor.

Thus, we respectfully submit that there is no other feasible method to obtain the benefit sought by the Applicant

The Variances Are Not Substantial

With respect to the third sub-criterion, the requested variances are insubstantial. It is established generally that the substantiality of a variance must be viewed in its context, not just as a mathematical calculation. *See e.g., Aydelott v. Town of Bedford Zoning Board of Appeals*, 6/25/2003 N.Y.L.J. 21 (col. 4) (J. Dickerson); *Robbins v. Seife*, 215 A.D.2d 665, 628 N.Y.S.2d 311 (2d Dept. 1995). What is substantial is relative, based upon the particular circumstances.

In this case, whether reviewed mathematically or in context, the pool, the spa/waterfall, and the pergola are together only 0.43% over the maximum permitted coverage. In any event, due to the location and topography of the Property, there would be no actual visual impact to the neighbors.

In light of foregoing, we submit that the requested variances are not substantial.

The Variances Will Have No Adverse Effect on the Physical or Environmental Conditions in the Neighborhood

With respect to the fourth statutory sub-criterion, the proposed area variances will have no adverse effect or impact on the physical or environmental conditions in the neighborhood.

As discussed above, the proposed pool and spa will be located behind the house and far away from the property lines, the waterfall will be built into an existing rock formation, and the pergola is only 10 feet tall at its highest. Further, the topography and existing vegetation provide natural cover for any visual impacts.

Thus, there would be no adverse effect on the physical or environmental conditions in the neighborhood.

The Requested Variances Are Not The Result of a Self-Created Difficulty

Initially, it is established that the issue of whether a difficulty is self-created expressly is not determinative in the context of an area variance because other factors should be weighed more heavily and a finding of self-created difficulty does not preclude a board of appeals from granting a variance.

In this instance, the existing coverage is in compliance and the Applicant is seeking to add a few minor structures to add value and increase the enjoyment of the Property. It is certainly a reasonable request in light of the neighborhood and the variances previously granted by the Board.

Conclusion

On the basis of the foregoing, we request that you close the public hearing and grant the requested variances at the November 4, 2015 meeting.

Respectfully submitted,

John S. Marwell

JSM/tt
Enclosure

c: Peter Hauspurg (via e-mail)
Glenn Ticehurst, RLA, ASLA (via e-mail)

COVERAGE VARIANCES GRANTED BY TOWN OF BEDFORD ZONING BOARD (2012-2015)

Name of Owner	Address & Tax ID	Variance For	Date Granted & Resolution No.	Zone and/or Size of Lot	% Building Coverage (3% permitted where not otherwise specified)	% Impervious Surface Coverage (8% permitted where not otherwise specified)
Jan & Sigmund Heller	148 Baldwin Road, Bedford Corners - 83.12-1-3	In-ground swimming pool	**#04-12 One** granted 4/11/12	R-4 A	Existing: 3.17% Increase: 0.51% Final: 3.68%	n/a
Peter & Roseann Chieco	76 Old Wagon Road, Bedford Corners - 83.14-1-17	In-ground swimming pool	**#04-12 Three** granted 4/11/12	R-4 A	Existing: 3.30% Increase: 0.37% Final: 3.67%	Existing: 10.95% Increase: 0.35% Final: 11.30%
Christina Dochtermann	100 Stone Bridge lane, Bedford Hills - 72.7-1-6	Pergola	**#06-12 One** granted 6/13/12	R-4 A	Existing: 3.94% Increase: 0.28% Final: 4.22%	n/a
Andrew Scott Parets (& Mindy Weil)	32 Girdle Ridge Road, Katonah - 61.10-2-9	Construction of swimming pool	**#05-13 One** granted 9/30/13	R-4 A	Existing: 4.0% Increase: 0.7% Final: 4.7% Plan revised to request **4.5% coverage**	*Property is under impervious surface threshold*
Antonio & Francesca Bueti	11 Captain Theale Road, Bedford - 95.09-2-2	8 car Garage with pergola; amended proposal to remove shed, greenhouse, pergola, and wood arbor	**#09-13 Four** granted 9/11/13	R-4 A	Existing: 3.50% Increase: 0.85% Final: 4.35% **Revised: 4.1%**	Existing: 13.77 % Increase: 1.03% Final: 14.80% **Revised-** **Existing: 10.2 %** **Increase: 1.6%** **Final: 11.8%**
Michael & Alice B. DeCandia	174 North Salem Road, Katonah - 39.14-2-9	In-ground swimming pool and legalize existing in-ground hot tub	**#01-14 Two** granted 3/3/14	R-4 A	Existing: 4.70% Increase: 1.20% Final: 5.90%	Existing: 11.20% Increase: 1.00% Final: 12.20%

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OCT 21 2015
BEDFORD ZONING
BOARD OF APPEALS

Name of Owner	Address & Tax ID	Variance For	Date Granted & Resolution No.	Zone and/or Size of Lot	% Building Coverage (3% permitted where not otherwise specified)	% Impervious Surface Coverage (8% permitted where not otherwise specified)
Thomas & Susan McCrossan	143 West Patent Road, Bedford - 72.17-1-2.3	In-ground swimming pool	**#09-14 Six** granted 11/5/14	R-4 A	Existing: 3.09% Increase: 0.59% Final: 3.68%	N/A
Bruce & Cynthia S. Nathan	462 Succabone Road, Bedford Corners - 83.16-1-5	Construction of new detached 2-bay garage on grade level and guest bedroom and bathroom on upper level	**#10-14 Three** granted 1/6/15	R-4 A	Existing: 3.40% Increase: 0.81% Final: 4.21%	Existing: 13.30% Increase: 1.61% Final: 14.91%
Steven Kantor, Bedford Real Estate Associates LLC	221 Sarles Street, Bedford Corners – 94.5-1-1.1	Construction of a tennis court	**#10-14 Nine** granted 1/6/15	R-4 A	Existing: -- Increase: -- Final: 3.25%	N/A
Robert & Nancy Bogel	52 Schildbach Road, Pound Ridge - 62.14-1-2	Construction of single-family residence with carport and covered rear terrace areas, and swimming pool and pool house	**#12-14 Two** granted 3/5/15	R-4 A	Existing: 0.00% Increase: -- Final: 3.88%	N/A

Name of Owner	Address & Tax ID	Variance For	Date Granted & Resolution No.	Zone and/or Size of Lot	% Building Coverage (3% permitted where not otherwise specified)	% Impervious Surface Coverage (8% permitted where not otherwise specified)
Michael Altman Marital Trust	190 Baldwin Road, Bedford Corners - 83.8-1-16	In-ground swimming pool	The application was last before the Board at the 6/10/15 meeting granted	R-4 A	Existing: 3.08% Increase: 0.45% Final: 3.53%	Existing: 16.45% Increase: 0.66% Final: 17.11%
Wayne Cohen	25 Deepwood Road, Bedford - 74.6-1-7.20	Swimming pool, spa and landscaping and site improvement	**#07-15 Seven** granted 8/19/15	R-4 A	Existing: -- Increase: -- Final: 3.36%	Existing: -- Increase: -- Final: 9.18%

ZONING BOARD OF APPEALS

Town of Bedford, Westchester County, New York
425 Cherry Street, Bedford Hills, New York 10507
Alexandra J. Costello, Secretary
914-666-4585; 914-666-2026 FAX
acostello@bedfordny.gov

APPLICATION FOR A VARIANCE

1. Name of Owner: P and J Housing Partners

   Address: 63 Charles Road, Bedford, N.Y.

   Telephone/Email: 914-954-3929

2. Name of Applicant, if other than Owner: Glenn Ticehurst, RLA, ASLA of Benedek & Ticehhurst, PC.

   Address: 448H Old Post Road, Bedford, N.Y. 10506

   Telephone/Email: 914-234-9666 / Glenn@btlandarch.com

3. Name of Professional (New York State Licensed Architect, Engineer, Land Surveyor, Landscape Architect):

   Benedek & Ticehurst, Landscape Architects, PC

   Address: 448H Old Post Road, Bedford, N.Y. 10506

   Telephone/Email: 914-234-9666 / Glenn@btlandarch.com

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AUG 7 2015
BEDFORD BUILDING DEPARTMENT

4. Identification Property:

   Street Address: 63 Charles Road, Bedford Corners, NY

   Tax ID: 83.11 / 1 / 2 Zoning District: R-4A Total Land Area: 4.133 Acres

   Age of the Building 2 Years

   Is the property located in a designated Historic District? No

   % of Building Coverage: 3.43 % of Impervious Surface 6.94

   Property Abuts a State or County highway, parkway, thruway or park: Yes ____ No X

   Property is within 500 feet of the boundary of the Town of Bedford: Yes: ____ No: X

   Property is on the east side of Charles Road within the unincorporated area of the Town of Bedford.

ZONING BOARD OF APPEALS
APPLICATION FOR A VARIANCE

5. Request:

The applicant requests that the Board approve the issuance of a Variance under the following section of the Code of the Town Bedford:

Article: V Section: 125-50

To Permit: Construction of a pool, pergola, spa and waterfall, which will result in a building coverage of 3.43%

6. Plans required:

Include six copies of survey, site plan, building elevations and floor plans.

7. Public Notice:

Notice of the public hearing shall be published at least 10 days prior to the hearing in the Town newspaper and shall be mailed by the applicant at least 10 days prior to the hearing to all owners of property within 500 feet of the perimeter of the subject lot. The expense of publishing and mailing any notice shall be paid by the applicant, who shall file an affidavit of mailing with the Board Secretary prior to the hearing.

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AUG 7 2015
BEDFORD BUILDING DEPARTMENT

8. Fees: (make checks payable to the Town of Bedford)

Variance
(As required by Fee Schedule Town of Bedford Code)

Residential:	$350.00
Commercial:	$550.00

x [signature]
Signature of Owner

7/25/15
Date

[signature]
Signature of Applicant

7/25/15
Date

Rev. 5/18/10

Re: 63 Charles Road

JOCELYN REZNICK
69 CHARLES ROAD
BEDFORD CORNERS, NEW YORK 10549

My name is Jocelyn Reznick. I live at 69 Charles Road, Bedford Corners, and have lived there for than 40 years. I am unable to attend this hearing; but I want the Town of Bedford Zoning Board to hear my concerns when they consider the application for a variance of the Town Code, filed by the owners of the new residence at 63 Charles Road to permit the construction of a swimming pool, a spa, a waterfall, a pergola and a fence on their property.

The proposed swimming pool and pergola will be opposite my property line and will be clearly seen from my house. The swimming pool is likely to be noisy and disturbing to me. The construction of the swimming pool will require the removal of a massive oak tree.

The owners of 63 Charles Road plan to construct a chain-link fence, similar to fences used in school yards, that will run along my property line for a distance of approximately 75 feet. This fence will extend along a steep slope, just like the steep slope on my property, and will require the removal of a significant number of trees on that steep slope. Thus far, the construction of the new residence at 63 Charles Road has resulted in the removal of more than 75 trees from that property, most of which were alive and healthy. Since I have resided at 69 Charles Road, not a single healthy tree had been removed from 63 Charles Road, until the recent construction of that new residence.

I object to the size and location of the swimming pool and pergola, the size and location of the spa, the location and style of the proposed fence, and the removal of more trees.

Jocelyn Reznick
Jocelyn Reznick

9/5/15
Date

RECEIVED
SEP 9 2015
BEDFORD ZONING
BOARD OF APPEALS

LETTER OF PERMIT DENIAL

Town of Bedford
Building Dept.
425 Cherry St.
914-666-8040

Parcel ID: **83.11-1-2**

Application #:

Date: 8/19/2015

Owner Information

P & J Housing Partners

Applicant Information

P & J Housing Partners, LLC
63 Charles Road

Bedford Corners NY 10549

Location: 63 Charles Rd
Parcel ID: 83.11-1-2
Permit Type: Swimming Pool
Work Description: In ground swimming pool combined with the construction of a spa/waterfall and pergola will result in building coverage of 3.43% where 3% is permitted.

Dear Resident,
Regarding the application for a Building Permit on the property referenced above, the following facts are noted. This property is located in R-4A Zoning District. The requirements of the Zoning Ordinance of the Town of Bedford in comparison to your proposal are listed as follows:

When combined with the construction of a spa/waterfall and pergola will result in building coverage of 3.43% where 3% is permitted and will require a variance of Article V Section 125-50 from the Board of Appeals.

Because your project does not meet the requirements of the Town of Bedford Zoning Ordinance, your application for a building permit is DENIED. If you wish to proceed with your request, you may, within sixty days of this letter, apply to the of the above provisions

Very truly yours,

Steven Fraietta
Building Inspector

LETTER OF PERMIT DENIAL

Town of Bedford
Building Dept.
425 Cherry St.
914-666-8040

Application #:

Date: 8/19/2015

Parcel ID: **83.11-1-2**

Owner Information

Salierno, Vincent & Salierno, Carol Ann

Applicant Information

P & J Housing Partners, LLC
63 Charles Road

Bedford Corners NY 10549

Location: 63 Charles Rd
Parcel ID: 83.11-1-2
Permit Type: Hot Tub/Jacuzzi
Work Description: Construction of a Spa and waterfall

Dear Resident,
Regarding the application for a Building Permit on the property referenced above, the following facts are noted. This property is located in R-4A Zoning District. The requirements of the Zoning Ordinance of the Town of Bedford in comparison to your proposal are listed as follows:

Construction of a Spa and waterfall when combined with the construction of an inground swimming pool and pergola with result in building coverage of 3.43% where 3% is permitted and will require a variance of Article V Section 125-50 from the Board of Appeals.

Because your project does not meet the requirements of the Town of Bedford Zoning Ordinance, your application for a building permit is DENIED. If you wish to proceed with your request, you may, within sixty days of this letter, apply to the of the above provisions

Very truly yours,

Steven Fraietta
Building Inspector

LETTER OF PERMIT DENIAL

Town of Bedford
Building Dept.
425 Cherry St.
914-666-8040

Application #:

Date: 8/19/2015

Parcel ID: 83.11-1-2

Owner Information

P & J Housing Partners

Applicant Information

P & J Housing Partners, LLC
63 Charles Road

Bedford Corners NY 10549

Location: 63 Charles Rd
Parcel ID: 83.11-1-2
Permit Type: Pergola
Work Description: Pergola

Dear Resident,
Regarding the application for a Building Permit on the property referenced above, the following facts are noted. This property is located in R-4A Zoning District. The requirements of the Zoning Ordinance of the Town of Bedford in comparison to your proposal are listed as follows:

Pergola when combined with the construction of a spa/waterfall and in ground swimming pool will result in building coverage of 3.43% where 3% is permitted and will require a variance of Article V Section 125-50 from the Board of Appeals.

Because your project does not meet the requirements of the Town of Bedford Zoning Ordinance, your application for a building permit is DENIED. If you wish to proceed with your request, you may, within sixty days of this letter, apply to the of the above provisions

Very truly yours,

Steven Fraietta
Building Inspector

BENEDEK & TICEHURST
LANDSCAPE ARCHITECTS & SITE PLANNERS, P.C.

August 7, 2015

Zoning Board of Appeals
425 Cherry Street
Bedford Hills, NY 10507

re: 63 Charles Road

Dear Chairman Michaelis and Members of the Board:

Enclosed, please find our application package for 63 Charles Road. We are formally requesting a Building Coverage Variance of 0.48% to construct a swimming pool, spa/waterfall and pergola in the rear yard of the residence. The proposed location of these amenities is ideal, meets all property line setbacks, requires minimal grading, avoids steep slope disturbance, and will be screened from the neighboring properties.

The existing building coverage is 2.49% and the proposed building coverage is 3.43%, where 3% is allowed. The total existing impervious coverage is 5.57% and the proposed total impervious coverage is 6.94%, which is significantly below the allowable 8%.

We believe that our request is reasonable and that there will be no undesirable change to the neighborhood character or detriment to nearby properties. We also believe that there will be no adverse impact to this environment.

We look forward to presenting this project to you at the September 9th ZBA meeting. In the meantime, please contact me with any questions.

RECEIVED
AUG 7 2015
BEDFORD BUILDING DEPARTMENT

Sincerely,

Glenn Ticehurst, RLA, ASLA
for B & T

448H Old Post Road, Bedford Village, New York 10506 / P. 914.234.9666 / F. 914.234.6882 / www.btlandarch.com

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that the Board of Appeals of the Town of Bedford will hold a public hearing on the following.

Request of: **Christopher and Francesca Santomero**
42 Stone Paddock Place
Bedford, NY 10506

for a variance of the Town of Bedford Zoning Ordinance to permit:

The legalization of three sheds resulting in (1) building coverage of 3.3% where 3% is permitted in the Residential 4 Acre Zoning District; and (2) a side yard setback of 42' 10-1/8", as-built, for shed #1 where 50 feet is required in the Residential 4 Acre Zoning District; and (3) a side yard setback of 37' 3-3/4", as-built, for shed #3 where 50 feet is required in the Residential 4 Acre Zoning District. This being a variance of Article V Section 125-50 and Article III Section 125-11 for property owned by the applicant and located on:

42 Stone Paddock Place
Bedford, NY 10506

designated as Section 84.17 Block 1 Lot 2.4 on the Tax Maps of the Town of Bedford in an R-4 Acre Zoning District. Said hearing will take place on **Wednesday, the 7th day of October 2015** at the Town House Offices, 2nd Floor, 425 Cherry Street, Bedford Hills, New York, at **7:30 P.M.** At this hearing all persons appearing in favor of or in opposition to the above application will be heard. Attendance at said hearing is not required. The applicant or his representative must be present.

DATED: September 15, 2015

Peter Michaelis, Chair
Town of Bedford Zoning Board of Appeals

Inquiry may be directed to:
Alexandra J. Costello, Secretary
Town of Bedford Zoning Board of Appeals
425 Cherry Street
Bedford Hills, NY 10507
(914) 666-4585; FAX: (914) 666-2026
acostello@bedfordny.gov
www.bedfordny.gov

SHAMBERG MARWELL HOLLIS ANDREYCAK & LAIDLAW, P.C.

ATTORNEYS AT LAW

55 SMITH AVENUE
MOUNT KISCO, NEW YORK 10549
(914) 666 - 5600

September 8, 2015

Via Hand Delivery

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SEP 9 2015
BEDFORD ZONING
BOARD OF APPEALS

Hon. Peter Michaelis, Chairman
and Members of the Zoning Board of Appeals
Town of Bedford
425 Cherry Street
Bedford Hills, NY 10507

Re: Christopher and Francesca Santomero
Application for Area Variances from Section 125-50
Premises: 42 Stone Paddock Place, Bedford, New York
Section 84.17, Block 1, Lot 2.4

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

This firm represents Christopher and Francesca Santomero ("Applicants"), the owners of a parcel of real property located at 42 Stone Paddock Place, Bedford, New York, and identified on the tax map of the Town as Section 84.17, Block 1, Lot 2.4 (the "Property"). The Property is located within the Residence Four-Acre District (R-4A), and is approximately 4.5 acres in size.

The Property is currently improved with a single family house and other structures, including three sheds used for storage and as children's playhouses. A review of the property lines and existing coverage reveals that two of the sheds encroach into the side yard setback and that the sheds together minimally exceed the maximum building coverage. The Applicants seek approval of this Board to "legalize" these existing sheds. The sheds are referred to herein and on the enclosed plans as Shed 1, Shed 2, and Shed 3.

On September 1, 2015, the Applicants' architect, Michael Piccirillo, AIA, submitted three Applications for Building Permits for the three sheds and by three letters also dated September 1, 2015, the Town Building Inspector denied the three applications.

In furtherance of this application for area variances, we enclose six sets of the following:

- Two completed Town of Bedford Zoning Board of Appeals Variance Applications;
- Plan SP-1, Site Plan, Zoning Analysis, dated August 28, 2015, with Zoning Chart;
- Plan SP-2, Survey, dated September 4, 2015 (noted "Issued for ZBA 9/8/15");

- Plan A-100, Shed 1 Plan, Elevations, and Photo, dated September 4, 2015;
- Plan A-100, Shed 2 Plan, Elevations, and Photo, dated September 4, 2015;
- Plan A-100, Shed 3 Plan, Elevations, and Photo, dated September 4, 2015;
- Three Applications for Building Permits, each Stamped "Received" by the Bedford Building Department on September 1, 2015; and
- Three Letters of Permit Denial from the Bedford Building Department dated September 1, 2015. [The denial letter for the Shed 3 application is mistakenly dated 1/1/1900.]

Additionally, we submit two checks made payable to the Town of Bedford in the amount of $350.00 for the variance application fees.

BACKGROUND

The Applicants purchased the Property in 2003 and the sheds were constructed thereafter. Shed 1 is a storage shed, while Shed 2 and Shed 3 function as children's playhouses. Plans, elevations, and photos of each shed are provided in the enclosed drawings A-100.

As seen on the enclosed Site Plan (drawing SP-1), the sheds together constitute 641 square feet which, when combined with the rest of the building coverage on the property of 5,855 square feet, results in a total existing building coverage of 6,496 square feet, or 3.33 % building coverage. Thus, the existing coverage only minimally exceeds the maximum of 3% building coverage (5,881 square feet) permitted in the R-4A district. We note that the Building Department's Denial Letters round the coverage numbers for the Property to 3.3%.

Additionally, Shed 1 and Shed 3 encroach slightly on the required 50-foot side yard setback. Shed 1 is located closer to the garage and is 42.84 feet from the side property line while Shed 3 is closer to the playground set and is located 37.31 feet from the side property line. Shed 2 is set further back closer to the house and complies with all applicable setbacks.

Thus, the Applicants request the following variances: (1) from Section 125-27(A), which provides that "[t]he total building coverage of all principal and accessory buildings and structures, regardless of size, located on a lot shall comply with the maximum building coverage requirements in §125-50 herein" and (2) from Section 125-27(D)(1), which provides that "[a]ccessory buildings and structures permitted under this section shall comply with the front, rear and side yard requirements specified in § 125-50 herein…."

The sheds are otherwise permitted accessory structures pursuant to Section 125-49 and its accompanying table (Schedule of Use Regulations) and Section 125-27 (Accessory buildings or structures).

THE REQUEST FOR AREA VARIANCES

The Balancing Test

Section 267-b(3)(b) of the New York State Town Law (and Article XII, Section 125-129(C)(2)(b) of the Zoning Code), sets forth the following "balancing test" to be applied by the Zoning Board in its review of this application for a building coverage and side yard setback variance:

> 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 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.

We discuss the Applicants' requested area variances in light of each of the foregoing factors below:

The Benefit to the Applicants Far Exceeds Any Detriment to the Community

New York State courts have established that, where the benefit of the requested variance to the applicant is great, similar variance applications have been approved in the past, and any detriment to the neighborhood is minimal, a zoning board should grant the variance. *See e.g., Tall Trees Const. Corp. v. Zoning Bd. of Appeals of Town of Huntington*, 97 N.Y.2d 86, 735 N.Y.S.2d 873 (2001).

Here, there is no detriment at all to the surrounding neighborhood and the Town has granted similar variances. The three sheds have existed on the Property since in or around 2003 without complaint, the sheds are attractive and well-maintained, and the sheds encroaching on the side yard setback are in a wooded area and are screened from the neighboring property. The Applicants also seek a de-minimus coverage variance of just 0.3% above the 3% limit. Accordingly, the benefit to the Applicants of retaining the use of the existing sheds far exceeds the non-existent detriment to the surrounding community.

Granting The Variances Will Not Create an Undesirable Change in Neighborhood Character or a Detriment to Nearby Properties

Granting of the area variance will not result in an undesirable change in the character of the neighborhood or a detriment to nearby properties.

As discussed above, the three small sheds have existed on the Property for many years and their continued use would not produce an undesirable change. The building coverage exceeds the maximum by only 0.3% which is minimal and essentially imperceptible. As for the encroachment into the setback, Sheds 1 and 2 are located adjacent to a forested area and so are screened from the neighboring property, and are far from the neighboring house.

We respectfully submit that the granting of the requested variances would not result in any undesirable change in the character of the neighborhood or create a detriment to nearby properties, thereby satisfying the first statutory sub-criterion under the balancing test.

There is No Other Feasible Method to Obtain the Benefit Sought By the Applicants

The Applicants seek simply to legalize the three existing sheds located on the Property since in or around 2003. In order for the Applicants to obtain the benefit from the accessory sheds that they have enjoyed for quite a few years, there is no other feasible method than seeking the minimal area variances required.

Moreover, moving the sheds is not feasible as at least two of the sheds are on concrete footings. However, even if moving the sheds the few feet from the setback line were feasible, a de-minimus building coverage variance would still be required.

Thus, we respectfully submit that there is no other feasible method to obtain the benefit sought by the Applicants.

The Variances Are Not Substantial

With respect to the third sub-criterion, the requested variances are insubstantial. It is established generally that the substantiality of a variance must be viewed in its context, not just as a mathematical calculation. *See e.g., Aydelott v. Town of Bedford Zoning Board of Appeals*, 6/25/2003 N.Y.L.J. 21 (col. 4) (J. Dickerson); *Robbins v. Seife*, 215 A.D.2d 665, 628 N.Y.S.2d 311 (2d Dept. 1995). What is substantial is relative, based upon the particular circumstances.

As discussed above, the three sheds have existed on the Property without incident or complaint for years. The requested building coverage variance is minimal (3.3% vs. 3.0%) and would be imperceptible. The side yard setback variances for Sheds 1 and 3, respectively, are a mere 7.16 feet and 12.69 feet. In context, the sheds are screened from the neighboring property and are located far away from the neighboring house.

In light of foregoing, we submit that the requested variances are not substantial.

The Variances Will Have No Adverse Effect on the Physical or Environmental Conditions in the Neighborhood

With respect to the fourth statutory sub-criterion, the proposed area variances for sheds that have existed harmoniously on the Property for many years will have no adverse effect or impact on the physical or environmental conditions in the neighborhood.

Again, Sheds 2 and 3 are used as children's playhouses and Shed 1 is used for storage purposes. The minor nonconformity of the sheds with the requisite setbacks and coverage requirements does not affect the neighboring properties. The sheds are screened and far from neighboring houses.

Thus, there would be no adverse effect on the physical or environmental conditions in the neighborhood.

Self-Created Difficulty

Although in this instance the Applicants did construct the sheds, the fact that a difficulty is self-created expressly is not determinative in the context of an area variance because other factors should be weighed more heavily and a finding of self-created difficulty does not preclude a board of appeals from granting a variance.

Conclusion

On the basis of the foregoing, we request that you place this application on the agenda for your Board's October 7, 2015 meeting, and look forward to discussing its merits with your Board in further detail at that time.

Respectfully submitted,

P. Daniel Hollis III

P. Daniel Hollis, III

Enclosures

c: Michael Piccirillo, AIA (via email)

bc: Christopher and Francesca Santomero (w/encs.)

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RECEIVED
SEP 8 2015
BEDFORD ZONING
BOARD OF APPEALS

Pd check 2378 Receipt 2426

ZONING BOARD OF APPEALS

Town of Bedford, Westchester County, New York
425 Cherry Street, Bedford Hills, New York 10507
Alexandra J. Costello, Secretary
914-666-4585; 914-666-2026 FAX
acostello@bedfordny.gov

APPLICATION FOR A VARIANCE

1. Name of Owner: Christopher and Francesca Santomero

   Address: 42 Stone Paddock Place, Bedford, NY 10506

   Telephone/Email: (914) 762-8300/chris@lordae.com

2. Name of Applicant, if other than Owner: • MICHAEL PICCIRILLO ARCHITECTURE PLLC

   Address: 345 KEAR STREET SUITE 203, YORKTOWN HEIGHTS, NY 10598

   Telephone/Email: 368-9838 MICHAEL@MPICCIRILLOARCHITECT.COM

3. Name of Professional (New York State Licensed Architect, Engineer, Land Surveyor, Landscape Architect):

   Michael Piccirillo, AIA, Michael Piccirillo Architecture PLLC

   Address: 345 Kear Street, Suite 203, Yorktown, NY 10598

   Telephone/Email: (914) 368-9838/michael@piccirilloarchitect.com

4. Identification Property:

   Street Address: 42 Stone Paddock Place

   Tax ID: 84.17-1-2.4 Zoning District: R-4A Total Land Area: • 196,020 SF

   Age of the Building 2003

   Is the property located in a designated Historic District? _____

   % of Building Coverage: 3.3% % of Impervious Surface 7.5%

   Property Abuts a State or County highway, parkway, thruway or park: Yes ____ No ____

   Property is within 500 feet of the boundary of the Town of Bedford: Yes: ____ No: ____

   Property is on the _____ side of _____ within the unincorporated area of the Town of Bedford.

ZONING BOARD OF APPEALS
APPLICATION FOR A VARIANCE

5. Request:

The applicant requests that the Board approve the issuance of a Variance under the following section of the Code of the Town Bedford:

Article: V Section: 125-50

To Permit:

See attached letter. legalization

Shed #3 : 37' 3 3/4" setback and coverage in excess of 3%

6. Plans required:

Include six copies of survey, site plan, building elevations and floor plans.

7. Public Notice:

Notice of the public hearing shall be published at least 10 days prior to the hearing in the Town newspaper and shall be mailed by the applicant at least 10 days prior to the hearing to all owners of property within 500 feet of the perimeter of the subject lot. The expense of publishing and mailing any notice shall be paid by the applicant, who shall file an affidavit of mailing with the Board Secretary prior to the hearing.

8. Fees: (make checks payable to the Town of Bedford)

Variance

(As required by Fee Schedule Town of Bedford Code)

Residential: $350.00

Commercial: $550.00

X Signature of Owner

9/4/15 Date

Signature of Applicant

9/4/15 Date

Rev. 5/18/10

RECEIVED
SEP 8 2015
BEDFORD ZONING
BOARD OF APPEALS

LETTER OF PERMIT DENIAL

Town of Bedford
Building Dept.
425 Cherry St.
914-666-8040

Application #:

Date: 1/1/1900

Parcel ID: **84.17-1-2.4**

Owner Information

Santomero, Christopher & Santomero, Francesca

Applicant Information

Santomero, Christopher & Santomer
Santomero, Francesca
42 Stone Paddock Pl
Bedford NY 10506

Location: 42 Stone Paddock Pl
Parcel ID: 84.17-1-2.4
Permit Type: Shed
Work Description: Shed #3 (211 square feet)

Dear Resident,
Regarding the application for a Building Permit on the property referenced above, the following facts are noted. This property is located in R-4A Zoning District. The requirements of the Zoning Ordinance of the Town of Bedford in comparison to your proposal are listed as follows:

Shed #3 is located 37'-3 3/4 inches from the side property line where 50 feet is required in the R-4 Acre Zoning District and will require a setback variance of Article V Section 125-50 from the Zoning Board of Appeals; and when the total square footage is combined with the proposal to legalize two other shed structures on the property (Shed #1 and Shed #2) will have a combined building coverage of 3.3% where 3% is permitted in the R-4 Acre Zoning District and will require a variance of Article V Section 125-50 from the Zoning Board of Appeals.

Because your project does not meet the requirements of the Town of Bedford Zoning Ordinance, your application for a building permit is DENIED. If you wish to proceed with your request, you may, within sixty days of this letter, apply to the of the above provisions

Very truly yours,

Steven Fraietta
Building Inspector

Pd on # 2385 Receipt 2425

RECEIVED
SEP 8 2015
BEDFORD ZONING BOARD OF APPEALS

ZONING BOARD OF APPEALS

Town of Bedford, Westchester County, New York
425 Cherry Street, Bedford Hills, New York 10507
Alexandra J. Costello, Secretary
914-666-4585; 914-666-2026 FAX
acostello@bedfordny.gov

APPLICATION FOR A VARIANCE

1. Name of Owner: Christopher and Francesca Santomero

   Address: 42 Stone Paddock Place, Bedford, NY 10506

   Telephone/Email: (914) 762-8300/chris@lordae.com

2. Name of Applicant, if other than Owner: • MICHAEL PICCIRILLO ARCHITECTURE PLLC

   Address: 345 KEAR STREET SUITE 203, YORKTOWN HEIGHTS, NY 10598

   Telephone/Email: 368-9838 MICHAEL@MPICCIRILLOARCHITECT.COM

3. Name of Professional (New York State Licensed Architect, Engineer, Land Surveyor, Landscape Architect):

   Michael Piccirillo, AIA, Michael Piccirillo Architecture PLLC

   Address: 345 Kear Street, Suite 203, Yorktown, NY 10598

   Telephone/Email: (914) 368-9838/michael@piccirilloarchitect.com

4. Identification Property:

   Street Address: 42 Stone Paddock Place

   Tax ID: 84.17-1-2.4 Zoning District: R-4A Total Land Area: • 196,020 SF

   Age of the Building 2003

   Is the property located in a designated Historic District? _____

   % of Building Coverage: 3.3% % of Impervious Surface 7.5%

   Property Abuts a State or County highway, parkway, thruway or park: Yes ____ No ____

   Property is within 500 feet of the boundary of the Town of Bedford: Yes: ____ No: ____

   Property is on the _____ side of _____ within the unincorporated area of the Town of Bedford.

ZONING BOARD OF APPEALS
APPLICATION FOR A VARIANCE

5. Request:
The applicant requests that the Board approve the issuance of a Variance under the following section of the Code of the Town Bedford:

Article: V Section: 125-50

To Permit:
See attached letter. – Legalization
Shed #1 storage shed 42' 10" coverage in excess 23%
Shed #2 playhouse with deck

6. Plans required:
Include six copies of survey, site plan, building elevations and floor plans.

7. Public Notice:
Notice of the public hearing shall be published at least 10 days prior to the hearing in the Town newspaper and shall be mailed by the applicant at least 10 days prior to the hearing to all owners of property within 500 feet of the perimeter of the subject lot. The expense of publishing and mailing any notice shall be paid by the applicant, who shall file an affidavit of mailing with the Board Secretary prior to the hearing.

8. Fees: (make checks payable to the Town of Bedford)

Variance
(As required by Fee Schedule Town of Bedford Code)

Residential:	$350.00
Commercial:	$550.00

X _____ Signature of Owner — Date 9/4/15

_____ Signature of Applicant — Date 9/4/15

Rev. 5/18/10

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that the Board of Appeals of the Town of Bedford will hold a public hearing on the following:

Request of: **Mark Tomassi and Deborah Cardinale**
441 Bedford Road
Bedford Hills, NY 10507

for a variance of the Town of Bedford Zoning Ordinance to permit:

(1) The legalization of an all ready constructed 2-car garage and wood deck above resulting in a front yard setback of 24.1 feet where 35 feet is required in the R-1/4 Acre Zoning District; and a side yard setback of 11.3 feet where 20 feet is required in the R-1/4 Acre Zoning District; and (2) the installation of a 6-foot privacy fence and railing on top of the existing deck for safety and code compliance resulting in a front yard setback of 24.1 feet where 35 feet is required in the R-1/4 Acre Zoning District; and a side yard setback of 11.3 feet where 20 feet is required in the R-1/4 Acre Zoning District. Requiring variances of Article V Section 125-50 and Article III Section 125-11 for property located on:

441 Bedford Road
Bedford Hills, NY 10507

designated as Section 60.17 Block 2 Lot 19 on the Tax Maps of the Town of Bedford in a Residential 1/4-Acre Zoning District. Said hearing will take place on **Wednesday, the 4th day of November 2015**, at the Town House Offices, 2nd Floor, 425 Cherry Street, Bedford Hills, New York, at **7:30 P.M.** At this hearing all persons appearing in favor of or in opposition to the above application will be heard. Attendance at said hearing is not required. Applicants or their representative must be present.

DATED: October 7, 2015

Peter Michaelis, Chair
Town of Bedford Zoning Board of Appeals

Inquiry may be directed to:
Alexandra J. Costello, Secretary
Town of Bedford Zoning Board of Appeals
425 Cherry Street, Bedford Hills, NY 10507
(914) 666-4585; FAX: (914) 666-2026
acostello@bedfordny.gov
www.bedfordny.gov

ZONING BOARD OF APPEALS

Town of Bedford, Westchester County, New York
425 Cherry Street, Bedford Hills, New York 10507
Alexandra J. Costello, Secretary
914-666-4585; 914-666-2026 FAX
acostello@bedfordny.gov

APPLICATION FOR A VARIANCE

1. Name of Owner: MR/MRS. MARK TOMASSI

   Address: 441 BEDFORD RD., BEDFORD HILLS NY 10507

   Telephone/Email: 914-864-2347; 914 912 8404 tomatso@verizon net

2. Name of Applicant, if other than Owner: _____

   Address: _____

   Telephone/Email: _____

3. Name of Professional (New York State Licensed Architect, Engineer, Land Surveyor, Landscape Architect):

   JOHN D. WHALEN, ARCHITECT

   Address: 61 NORTH ST., KATONAH, NY 10536

   Telephone/Email: 914-232-4732 / jwpeninky@aol.com

4. Identification Property:

   Street Address: 441 BEDFORD RD., BEDFORD HILLS, NY 10507

   Tax ID: SHEET 60.17 BLOCK 2 LOT 19 Zoning District: 1/4 ACRE Total Land Area: 18,527 sq. FT. OR .425 ACRES

   Age of the Building 1920 - Original Residence

   Is the property located in a designated Historic District? No

   % of Building Coverage: 7.91 % % of Impervious Surface 21.94 %

   Property Abuts a State or County highway, parkway, thruway or park: Yes ✓ No ____

   Property is within 500 feet of the boundary of the Town of Bedford: Yes: ____ No: ✓

   Property is on the NORTHWEST side of BEDFORD RD within the unincorporated area of the Town of Bedford.

ZONING BOARD OF APPEALS
APPLICATION FOR A VARIANCE

5. Request:
The applicant requests that the Board approve the issuance of a Variance under the following section of the Code of the Town Bedford:

Article: ~~III~~ V Section: 125-11 125-50

To Permit:
LEGALIZATION OF 2 CAR GARAGE WITH DECK AND A NEW 6' PRIVACY FENCE AND RAILING ON TOP OF EXISTING DECK ABOVE FOR SAFETY AND CODE COMPLIANCE

SIDE SETBACK OF 11'3" WHERE 20' IS REQUIRED
FRONT YARD OF 24'1" WHERE 35' IS REQUIRED AND EXISTING 23'8"

6. Plans required:
Include six copies of survey, site plan, building elevations and floor plans.

7. Public Notice:
Notice of the public hearing shall be published at least 10 days prior to the hearing in the Town newspaper and shall be mailed by the applicant at least 10 days prior to the hearing to all owners of property within 500 feet of the perimeter of the subject lot. The expense of publishing and mailing any notice shall be paid by the applicant, who shall file an affidavit of mailing with the Board Secretary prior to the hearing.

8. Fees: (make checks payable to the Town of Bedford)

Variance
(As required by Fee Schedule Town of Bedford Code)
Residential: $350.00

Commercial: $550.00

Signature of Owner

Date 9/29/15

Signature of Applicant

Date

Rev. 5/18/10

LETTER OF PERMIT DENIAL

Town of Bedford
Building Dept.
425 Cherry St.
914-666-8040

Parcel ID: **60.17-2-19**

Application #:

Date: 2/2/2015

Owner Information

Tomassi, Mark

Applicant Information

Tomassi, Mark
Cardinale, Deborah
441 Bedford Rd
Bedford Hills NY 10507

Location: 441 Bedford Rd
Parcel ID: 60.17-2-19
Permit Type: Additions & Alterations
Work Description: Legalization of basement, 2-car garage and deck. New bathroom.

Dear Resident,
Regarding the application for a Building Permit on the property referenced above, the following facts are noted. This property is located in R-1/4A Zoning District. The requirements of the Zoning Ordinance of the Town of Bedford in comparison to your proposal are listed as follows:

The portion of the project that consists of the already constructed 2-car garage with deck above and the deck behind the residence results in a side yard setback of 11 feet, 3 inches where 20 feet is required and a front yard setback of 28.8 feet where 35 feet is required in the R-1/4 Acre Zoning District. Article V Section 125-50 and Article III Section 125-11. The project will require review and approval of the Bedford Wetlands Control Commission and submission of an as built survey depicting setback and building and impervious coverage as a requirement of ZBA application.

Because your project does not meet the requirements of the Town of Bedford Zoning Ordinance, your application for a building permit is DENIED. If you wish to proceed with your request, you may, within sixty days of this letter, apply to the of the above provisions

Very truly yours,

Steven Fraietta
Building Inspector

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that the Board of Appeals of the Town of Bedford will hold a public hearing on the following:

Request of: **Michael Chiappa and Mary Mahany**
Village Acquisitions Corp.
51 High Street
Katonah, NY 10536

for a variance of the Town of Bedford Zoning Ordinance to permit:

The construction of a wood deck and stairs attached to a two-family residence under construction resulting in a side yard setback of 11'6" where 15 feet is required in the TF Zoning District. This being a variance of Article V Section 125-50 for property owned by the applicant and located on:

51 High Street
Katonah, NY 10536

Designated as Section 49.15 Block 2 Lot 2 on the Tax Maps of the Town of Bedford in a TF Zoning District.

Said hearing will take place on **Wednesday, the 4th day of November 2015,** at the Town House Offices at 425 Cherry Street, Bedford Hills, New York, at **7:30 P.M.** At this hearing all persons appearing in favor of or in opposition to the above application will be heard. Attendance at said hearing is not required. Applicants or their representative must be present.

DATED: October 6, 2015

Peter Michaelis, Chair
Town of Bedford Zoning Board of Appeals

Inquiry may be directed to:
Alexandra J. Costello, Secretary
Town of Bedford Zoning Board of Appeals
425 Cherry Street, Bedford Hills, NY 10507
(914) 666-4585; (914) 666-2026 FAX
acostello@bedfordny.gov
www.bedfordny.gov

Pd check 1105 Receipt 2132

ZONING BOARD OF APPEALS

Town of Bedford, Westchester County, New York
425 Cherry Street, Bedford Hills, New York 10507
Alexandra J. Costello, Secretary
914-666-4585; 914-666-2026 FAX
acostello@bedfordny.gov

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BEDFORD ZONING
BOARD OF APPEALS

APPLICATION FOR A VARIANCE

1. Name of Owner: Michael Chiappa / Mary Mahaney
   Address: 51 High St.
   Telephone/Email: 347 813 6336 / mchiappa35@gma.
2. Name of Applicant, if other than Owner: _____
   Address: _____
   Telephone/Email: _____
3. Name of Professional (New York State Licensed Architect, Engineer, Land Surveyor, Landscape Architect):
   Brad DeMotte
   Address: 635 Danbury Rd Suite 1A Ridgefield Ct
   Telephone/Email: 203-431-8890
4. Identification Property:
   Street Address: 51 High St.
   Tax ID: 49.15-2-2 Zoning District: TF Total Land Area: 12,714.04
   Age of the Building 1970 / New Addition 2015
   Is the property located in a designated Historic District? NO
   % of Building Coverage: 12% % of Impervious Surface 13.5%
   Property Abuts a State or County highway, parkway, thruway or park: Yes ____ No X
   Property is within 500 feet of the boundary of the Town of Bedford: Yes: ____ No: X
   Property is on the S/W side of ~~High St~~ Greenville within the unincorporated area of the Town of Bedford.
   N/W ~~Greenville~~ High

ZONING BOARD OF APPEALS
APPLICATION FOR A VARIANCE

5. Request:
The applicant requests that the Board approve the issuance of a Variance under the following section of the Code of the Town Bedford:

Article: N/ Section: 125-50

To Permit:
Deck resulting in setback of 6'11"

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BEDFORD ZONING
BOARD OF APPEALS

6. Plans required:
Include six copies of survey, site plan, building elevations and floor plans.

7. Public Notice:
Notice of the public hearing shall be published at least 10 days prior to the hearing in the Town newspaper and shall be mailed by the applicant at least 10 days prior to the hearing to all owners of property within 500 feet of the perimeter of the subject lot. The expense of publishing and mailing any notice shall be paid by the applicant, who shall file an affidavit of mailing with the Board Secretary prior to the hearing.

8. Fees: (make checks payable to the Town of Bedford)

Variance
(As required by Fee Schedule Town of Bedford Code)

Residential:	$350.00
Commercial:	$550.00

Signature of Owner — Date: 9/28/15

Signature of Applicant — Date: 9/28/15

Rev. 5/18/10

Town of Bedford
Building & Code Enforcement

425 Cherry Street, Bedford Hills, New York 10507
914-666-8040; FAX 914-666-2026
buildinginsp@bedfordny.info
www.bedfordny.gov

REQUEST FOR REVISED BUILDING PERMIT

Permit No. 24114 **Plan Date of Revision Request:** 9/28/15

Revised Construction Cost: 8,500 (affidavit must be completed by Design Professional if the revised cost is $20,000 or more OR for Legalizations)

Additional Building Permit Fee:

Check No. [redacted] **Receipt No.**

Property Information: Section: 49.15 Block: 2 Lot: 2 Zoning District: TF

Property Location: 51 High St.

Property Owner: Mike Chiappa Telephone: 3478136336 Email: mchiappa35@gma

Mailing Address (if different from property location):

Applicant: Mike Chiappa Telephone: " Email: "

Mailing Address: 51 High St Katonah NY 10563

Signature of Applicant: Date: 9/28/15

Signature of Owner: Date: 9/28/15

Description of Revision: Variance request for deck installation

(To be completed by Building Department)

- Ridgelines and Steep Slopes (Pursuant to Section 102 of the Town Code):
- Wetlands (Pursuant to Section 122 of the Town Code):
- Stormwater Management (Pursuant to Section 103 of the Town Code):
- Zoning, Planning, Wetlands Compliance:
- Comments:

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SEP 29 2015
Bedford Building Dept.

Steven Fraietta, Building Inspector **Date**

Rev. 8/26/11

J. Osterman, Director of Planning **Date**

LETTER OF PERMIT DENIAL

Town of Bedford
Building Dept.
425 Cherry St.
914-666-8040

Parcel ID: **49.15-2-2**

Application #:

Date: 10/6/2015

Owner Information

Village Acquisitions Corp.

Applicant Information

Village Acquisitions Corp
(RESIDENT) Att: Mary Mahany
51 High St
Katonah NY 10536

Location: 51 High St
Parcel ID: 49.15-2-2
Permit Type: 2 Family Residence
Work Description: Remove existing structure down to foundation and build new two-family residence modification of building permit for a side yard deck

Dear Resident,
Regarding the application for a Building Permit on the property referenced above, the following facts are noted. This property is located in TF Zoning District. The requirements of the Zoning Ordinance of the Town of Bedford in comparison to your proposal are listed as follows:

Side yard deck resulting in a setback of 6'11" where 15 feet is required in the TF zoning district will require a variance of Article V Section 125-50

Because your project does not meet the requirements of the Town of Bedford Zoning Ordinance, your application for a building permit is DENIED. If you wish to proceed with your request, you may, within sixty days of this letter, apply to the of the above provisions

Very truly yours,

Steven Fraietta
Building Inspector

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that the Board of Appeals of the Town of Bedford will hold a public hearing on the following:

Request of: **Alfred and Sandra Luposello**
49 Girdle Ridge road
Katonah, NY 10535

for a variance of the Town of Bedford Zoning Ordinance to permit:

The creation of an 879 square foot one-bedroom cottage on the first floor of an existing accessory building (barn) resulting in 879 square feet of gross floor area where 800 square feet is permitted and the size of the cottage will be 44% of the total floor area of the principal residence structure where 25% is permitted. This request requires a variance of Article III Section 125-79.1 (7) for property owned by the applicant and located on:

49 Girdle Ridge Road
Katonah, NY 10536

designated as Section 61.6 Block 1 Lot 10 on the Tax Map of the Town of Bedford in a Residential 4-Acre Zoning District. Said hearing will take place on **Wednesday, the 4th day of November 2015**, at the Town House Offices, 2nd Floor, 425 Cherry Street, Bedford Hills, New York, at **7:30 P.M.** At this hearing all persons appearing in favor of or in opposition to the above application will be heard. Attendance at said hearing is not required. The applicant or his representative must be present.

DATED: October 9, 2015

Peter Michaelis, Chair
Town of Bedford Zoning Board of Appeals

Inquiry may be directed to:
Alexandra J. Costello, Secretary
Town of Bedford Zoning Board of Appeals
425 Cherry Street
Bedford Hills, NY 10507
(914) 666-4585; acostello@bedfordny.gov
www.bedfordny.gov

ZONING BOARD OF APPEALS

Town of Bedford, Westchester County, New York
425 Cherry Street, Bedford Hills, New York 10507
Alexandra J. Costello, Secretary
914-666-4585; 914-666-2026 FAX
acostello@bedfordny.gov

APPLICATION FOR A VARIANCE

1. Name of Owner: SANDY & AL LUPOSELLO

   Address: 49 GIRDLE RIDGE ROAD, KATONAH, N.Y. 10536

   Telephone/Email: 914-232-6796

2. Name of Applicant, if other than Owner: SAME

   Address:

   Telephone/Email:

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BEDFORD ZONING
BOARD OF APPEALS

3. Name of Professional (New York State Licensed Architect, Engineer, Land Surveyor, Landscape Architect):

   BARRY G. NADERMAN, P.E.

   Address: 1 DEANS BRIDGE ROAD, SOMERS, N.Y. 10589

   Telephone/Email: 914-760-6384 / bgn@naderman.com

4. Identification Property:

   Street Address: 49 GIRDLE RIDGE ROAD, KATONAH, N.Y. 10536

   Tax ID: 61.6/1/10 Zoning District: R-4A Total Land Area: 4.9807

   Age of the Building 13 ± YRS

   Is the property located in a designated Historic District? NO

   % of Building Coverage: 1.43 % of Impervious Surface

   Property Abuts a State or County highway, parkway, thruway or park: Yes ____ No X

   Property is within 500 feet of the boundary of the Town of Bedford: Yes: ____ No: X

   Property is on the SOUTH side of GIRDLE RIDGE ROAD within the unincorporated area of the Town of Bedford.

ZONING BOARD OF APPEALS
APPLICATION FOR A VARIANCE

5. Request:
The applicant requests that the Board approve the issuance of a Variance under the following section of the Code of the Town Bedford:

Article: 5 Section: 125-79.1 (7)

To Permit:
AN 879 S.F. ACCESSORY COTTAGE WITHIN A PORTION OF AN EXISTING BARN WHEREBY THE EXISTING PRINCIPAL IS 2001 S.F.

AS SUCH A VARIANCE IS REQUESTED FOR THE ACCESSORY COTTAGE OVER 800 S.F. (879 REQUESTED) AND IS OVER 25% OF THE PRINCIPAL RESIDENCE (44% REQUESTED)

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BEDFORD ZONING
BOARD OF APPEALS

6. Plans required:
Include six copies of survey, site plan, building elevations and floor plans.

7. Public Notice:
Notice of the public hearing shall be published at least 10 days prior to the hearing in the Town newspaper and shall be mailed by the applicant at least 10 days prior to the hearing to all owners of property within 500 feet of the perimeter of the subject lot. The expense of publishing and mailing any notice shall be paid by the applicant, who shall file an affidavit of mailing with the Board Secretary prior to the hearing.

8. Fees: (make checks payable to the Town of Bedford)

Variance
(As required by Fee Schedule Town of Bedford Code)
Residential: $350.00

Commercial: $550.00

Alfred Luposello
Signature of Owner
Sandra Luposello

9-24-15
Date

same
Signature of Applicant

Date

Rev. 5/18/10

NADERMAN
LAND PLANNING AND ENGINEERING, P.C. BARRY G. NADERMAN, P.E.

October 2, 2015

VIA HAND DELIVER

Bedford Zoning Board of Appeals
Bedford Town house
425 Cherry Street
Bedford Hills, NY 10507

Att: Peter Michaelis - Chair

Re: Proposed Cottage
Luposello Residence
49 Girdle Ridge Road
Town of Bedford
Sec. 61.6; Blk 1; Lot; 10

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BEDFORD ZONING
BOARD OF APPEALS

Dear Chair Michaelis and Board Members:

Enclosed please find six (6) sets of the following for the submission of an application for a variance for the above referenced project:

- Completed Application for a Variance
- Dwg SP-1 "Site Plan – Special Permit" dated 10/2/15
- Exhibit ADJ-1"Adjoining Properties Exhibit" dated 10/2/15
- Dwg A101 Architectural Plan prepared by Gary Savitzky Architect dated 9/30/15

Also enclosed find a checks in the amount of $350 for the Variance Application Fee.

The subject property is a 4.9807 acre parcel in an R4A zoning district located on the south side of Girdle Ridge Road. As shown on the site plan, the property currently consists of a single family residence and barn. At this time the Applicant is seeking the required approvals for the conversion of a portion of the existing barn to an 879sf one bedroom accessory cottage.

The existing barn is compliant with all required yard setbacks and allowable building coverage. It is acknowledged however, that the proposed cottage will exceed the allowable 800sf by 79 sf. As such we are requesting a variance for 879sf where the maximum allowed is 800sf. In addition, the existing residence is limited to 2001 gross square feet. As such, we are requesting a variance for the proposed 879sf cottage which is 44% of the existing residence where 25% maximum is allowed.

1 Deans Bridge Road
2nd Floor
Somers, NY 10589

tel: 914.245.5403
fax: 914.962.5963
e: bgn@naderman.com

We request we be placed on your November 4th agenda for consideration of the variances.

In the meanwhile, should you have any questions or require any additional information at this time, please feel free to contact me.

Respectfully,

Barry G. Naderman, P.E.
Naderman Land Planning & Engineering, P.C.

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BEDFORD ZONING
BOARD OF APPEALS

Cc: Sandy and Al Luposello w/ enc.
Gary Savitzky, AIA w/ enc.

5874zbasub

LETTER OF PERMIT DENIAL

Town of Bedford
Building Dept.
425 Cherry St.
914-666-8040

Parcel ID: **61.6-1-10**

Application #:

Date: 10/8/2015

Owner Information

Luposello, Alfred & Sandra

Applicant Information

Luposello, Alfred & Sandra
49 Girdle Ridge Rd

Katonah NY 10536

Location: 49 Girdle Ridge Rd
Parcel ID: 61.6-1-10
Permit Type: Cottage/Accessory Apartment
Work Description: Conversion of a portion of an existing barn to create a 879 square foot, one bedroom accessory cottage.

Dear Resident,
Regarding the application for a Building Permit on the property referenced above, the following facts are noted. This property is located in R-4A Zoning District. The requirements of the Zoning Ordinance of the Town of Bedford in comparison to your proposal are listed as follows:

The proposal will require a Special Use Permit from the Planning Board in accordance with Article III Section 125-79.1 and will require variances from the Board of Appeals because the cottage will contain 879 square feet of gross floor area where 800 square feet is permitted and is 44% of the total floor area of the principal residence structure where 25% is permitted (Article III Section 125-79.1 (7). A building permit to construct the barn was issued on 11/20/2003 and Certificate of Compliance 012028A was issued on December 8, 2005.

Because your project does not meet the requirements of the Town of Bedford Zoning Ordinance, your application for a building permit is DENIED. If you wish to proceed with your request, you may, within sixty days of this letter, apply to the of the above provisions

Very truly yours,

Steven Fraietta
Building Inspector

Certificate 012028A

Issued December 08, 2005

TOWN OF BEDFORD

WESTCHESTER COUNTY, NY

CERTIFICATE OF COMPLIANCE

Building Permit No. ***20217***

This is to certify that ***Alfred Luposello***

of ***49 Girdle Ridge Road, Katonah, NY 10536***

having filed on ***December 08, 2005*** Application No. ***012028A***

for a Certificate of Occupancy applying to premises located at ***49 Girdle Ridge Rd Katonah, NY 10536*** being Section, Block and Lot ***61.6-1-10,***

Town of Bedford Assessment Map in ***R-4A*** District

as shown on the Town zoning map, and the application having been approved, authority is hereby given to occupy or use said premises or building or part thereof for the following purposes:

Barn

Inspected on:

Under the following limitations:

Inspected - March 18, 2004

on and after this date until revoked, and subject to all the provisions of:

THE TOWN ZONING ORDINANCE

Richard Magna

Building Inspector

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that the Board of Appeals of the Town of Bedford will hold a public hearing on the following:

Request of: **Markland Development Corp.**
344 Main Street
Mount Kisco, NY 10549

On Behalf of
536 Bedford Road LLC
c/o Vail Buick GMC
606 Bedford Road
Bedford Hills, NY 10507

For a Special Use Permit in accordance with Article V Section 125-49 and Article VIII Section 125-68 of the Town of Bedford Zoning Ordinance to permit the operation of a vehicle delivery, storage, preparation, detail and minor maintenance and repair facility which such uses are classified as "public garages" under the Town of Bedford Zoning Code on property owned by the applicants and located on:

332 Adams Street
Bedford Hills, NY 10507

Designated as Section 60.11 Block 3 Lot 4 on the Tax Map of the Town of Bedford in the LI Acre Zoning Districts. Said hearing will take place on **Wednesday, the 4th day of November 2015,** at the Town House Offices, 425 Cherry Street, Bedford Hills, New York, at **7:30 P.M.** At this hearing all persons appearing in favor of or in opposition to the above applicants will be heard. Attendance at said hearing is not required. Applicants or their representative must be present.

DATED: October 16, 2015

Peter Michaelis, Chair
Town of Bedford Zoning Board of Appeals

Inquiry may be directed to:
Alexandra J. Costello, Secretary
Town of Bedford Zoning Board of Appeals
425 Cherry Street
Bedford Hills, NY 10507
(914) 666-4585; (914) 666-2026
acostello@bedfordny.gov
www.bedfordny.gov

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that the Board of Appeals of the Town of Bedford will hold a public hearing on the following:

Request of: **Markland Development Corp.**
344 Main Street
Mount Kisco, NY 10549

On Behalf of
536 Bedford Road LLC
c/o Vail Buick GMC
606 Bedford Road
Bedford Hills, NY 10507

For a variance of Article III Section 125-29.4 D. (3) (l) of the Town of Bedford Zoning Ordinance to permit a public garage on property located within the Aquifer Protection Zone on property owned by the applicants and located on:

332 Adams Street
Bedford Hills, NY 10507

Designated as Section 60.11 Block 3 Lot 4 on the Tax Map of the Town of Bedford in the LI Acre Zoning Districts. Said hearing will take place on **Wednesday, the 4th day of November 2015,** at the Town House Offices, 425 Cherry Street, Bedford Hills, New York, at **7:30 P.M.** At this hearing all persons appearing in favor of or in opposition to the above applicants will be heard. Attendance at said hearing is not required. Applicants or their representative must be present.

DATED: October 16, 2015

Peter Michaelis, Chair
Town of Bedford Zoning Board of Appeals

Inquiry may be directed to:
Alexandra J. Costello, Secretary
Town of Bedford Zoning Board of Appeals
425 Cherry Street
Bedford Hills, NY 10507
(914) 666-4585; (914) 666-2026
acostello@bedfordny.gov
www.bedfordny.gov

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 21, 2015

VIA HAND DELIVERY
Chairman Peter Michaelis and
Members of the Zoning Board of Appeals
Town of Bedford
425 Cherry Street
Bedford Hills, New York 10507

RECEIVED
OCT 21 2015
BEDFORD ZONING
BOARD OF APPEALS

Re: Application of 536 Bedford Road LLC (Vail Buick GMC)
332 Adams Street, Bedford Hills New York; Section 8 A, Lot 11-51
Property owned by Markland Development Corp.

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

Please be advised that the undersigned represents the interests of the applicant, 536 Bedford Road LLC, in connection with such applicant's desire to utilize the premises referenced above for the following automotive uses:

a. delivery and reception of new motor vehicles and motor vehicle lease returns;
b. motor vehicle preparation;
c. motor vehicle storage;
d. motor vehicle detailing;
e. minor motor vehicle maintenance and repairs.

Subject to the granting of a special permit for a public garage and a waiver of the prohibition against public garages as set forth in the Aquifer Protection Zone (hereinafter "APZ") regulations referenced below, these automotive related uses/services will be carried on at this location by Vail Buick GMC (hereinafter "Vail"). As this Board is aware through this Board's granting of a number of variances in connection with Vail's renovation of its existing dealership facilities, Vail presently operates its sales and service facilities in a recently renovated dealership facility located at 606 North Bedford Road Bedford Hills, New York. As this Board

is also aware from its involvement in connection with such application and the issuance of a special permit for the operation of the Splash Car Wash facility presently under construction, during the multiple hearings conducted with respect to such applications, certain concerns were raised by neighboring property owners regarding the potential for traffic impacts associated with the delivery of motor vehicles to the Vail dealership property and these concerns pertained both to car deliveries on North Bedford Road and on the private road known as Valerio Court. Indeed, in an effort to specifically address such concerns Vail acquired additional property on North Bedford Road which, although clearly helpful in terms of diverting car carrier deliveries from Valerio Court, still caused car carrier traffic to be generated on North Bedford Road although unloading generally took place within the perimeters of the auxiliary Vail facility.

Car carrier traffic, most especially in connection with this area of North Bedford Road with its multiplicity of new car sales facilities, continues to be a source of concern in the Town of Bedford. As will be shown below, this application affirmatively addresses car carrier traffic on North Bedford Road and Valerio Court in a most significant manner. It is respectfully submitted in this regard that this new application, if granted, will have an overwhelmingly ***positive*** effect on North Bedford Road by eliminating car carrier deliveries over and on North Bedford Road and Valerio Court to the extent that such car carrier deliveries relate to Vail. Moreover, in most cases, such car carrier traffic will be eliminated from North Bedford Road/Route 117. It is also respectfully submitted that the beneficial effect of the potential granting of this application has been recognized by the Planning Board as will hopefully be set forth in the positive recommendation to be issued by the Planning Board, the authorization of which was issued by the Planning Board at its meeting of October 13, 2015[1].

As members of this Board are aware, Adams Street is accessible directly via the Katonah Bypass which, through the foresight of the Bedford Town Board and Planning Board, was constructed more than 20 years ago and which facilitated the looping of truck traffic off Route 117 through the Katonah Bypass. Car carriers can therefore have direct access to the Adams Street location from Route 684 without traversing Route 117. To the extent that car carriers utilize the Katonah Bypass to access Adams Street and the proposed facility, car carrier traffic on North Bedford Road will be decreased. To the extent that car carrier traffic on North Bedford Road or Valerio Court was attributable to Vail, such car carrier traffic will simply be eliminated. Further, to the extent that car carrier traffic on Valerio Court attributable to Vail was thought to be a potential concern in connection with the operation of Splash, this concern will also be eliminated. Accordingly, there can be no doubt as to the benefits to be achieved by the granting of this application as same pertains to car carrier traffic.

It is respectfully submitted that separate and apart from the benefits resulting from its

[1] As of this writing, the written recommendation by the Planning Board has not yet been completed and the comments set forth herein are predicated upon my appearances before the Planning Board at their meetings of September 29, 2015 and October 13, 2015.

accessibility through the Katonah Bypass, the subject property is ideally located and suitable for the proposed use. In a comparative context, traffic on Adams Street is a small fraction of the traffic on North Bedford Road with the result that the minimum car carrier traffic applicable to the site will not in any way adversely impact the Adams Street area. The chosen location is therefore an ideal location for the Vail vehicle storage, preparation, detail, maintenance and minor repair facility. It is to be noted in this regard that, consistent with a recommendation by the Planning Board, the facility will not be open to the public but is for the internal use of Vail[2] thereby also minimizing the impact on Adams Street.

The subject property is located in the LI (Light Industrial) zoning district. The characteristics of the site are described in detail below. The existing site and the improvements constructed thereon have been pre-existing and unchanged for many decades. Although originally the applicant did not intend to make any site improvements (although the applicant intended to improve the appearance of the building and install the multiple improvements and devices referenced below for the protection of the APZ), through interaction with the Planning Board at their meetings of September 29, 2015 and October 13, 2015, and through site visits with an arborist and Kevin Winn (both at the suggestion of the Planning Board), the applicant now proposes to make site improvements including extensive removal of invasive trees and vines; repair to the damaged Town of Bedford drainage infrastructure on the site; installation of additional pervious and impervious surfaces (within and not to exceed the permitted maximums), installation of new lighting fixtures compliant with the Town of Bedford Code and installation of significant landscaping including utilization of native species as per recommendations of the Planning Board and a member of the Conservation Board. These modifications are shown on the plans prepared by Insite Engineering submitted herewith.

Despite the fact that the facilities are not intended to be directly accessible by the public, for the reasons set forth in footnote 2, the applicant seeks issuance of a special permit for a public garage. Section 125-3 of the Bedford Town Code (hereinafter "Code") defines a public garage as follows:

> "Any garage, other than a private accessory garage, available to the public, operated for gain and which is used for storage, major repair, body work,

[2] At the time this application was originally submitted to the ZBA, the applicant had not yet appeared before the Planning Board. As set forth above, the Planning Board has recommended that this facility not be considered as a vehicle service center for Vail's customers with the result that this facility will not be available for utilization by the public. A question therefore arises as to whether this use is to be classified as a public garage. However, when one reviews the definition of a public garage as contrasted with the definition of a private garage, it may well be that the drafters of the Town Code sought to differentiate between an accessory garage (defined as a private garage under the Code) and a principal use of a building for automotive repair, storage, body work, etc. (defined as a public garage). Accordingly, in an overabundance of caution and absent a contrary determination by the ZBA, application continues to be made for a special permit for a public garage.

painting, rental, greasing, washing, servicing, adjusting or equipping of automobiles or other motor vehicles."

According to Code section 125 d and 125 attachment 4, public garages are permitted in the LI zoning district subject, however, to the issuance of a special permit by the Zoning Board of Appeals (hereinafter "ZBA"). Additionally, this property, in like manner to virtually all of the properties in close proximity thereto and in other LI zoning district properties such as Plainfield Avenue, is located in the Aquifer Protection Zone (hereinafter "APZ") as defined by section 125-29.4 of the Code. Under section 125-29.4 D (3) (1) automotive service stations and public garages are prohibited uses for properties located in the APZ. Due to the sheer physical size of the APZ and its proximity to established industrial uses and properties zoned for light industrial uses, in like manner to many other applicants as described below, the applicant will require relief from the ZBA in connection with the prohibition set forth in section 125-29.4 D (3) (1).

The Special Permit

Turning first to the standards applicable to the issuance of the requested special permit for a public garage, the Code specifies the procedure by which the ZBA may proceed to grant the requested special permit. Section 125-59 provides for Planning Board review of the application for the purpose of making a recommendation to the ZBA in connection with issuance of the requested special permit. The Planning Board is required to make the specific findings set forth in the Code in connection with the applicant's application to the ZBA for issuance of a special permit for a public garage which such findings relate to the applications compliance with the legislatively prescribed conditions set forth in the Code. In this regard, the Code provides that the Planning Board shall review Vail's application and plans in accordance with the standards and requirements set forth in § 125-60 below and other applicable requirements of Article VIII of the Code, if any, and submit its findings and recommendations to the ZBA[3]. The applicable standards include only the following:

§ 125-60. General standards.

A. The proposed use will serve a community need or convenience and will not adversely affect the public health, safety and general welfare.

[3] There are other specific standards set forth in section 125-68 of the Code which, although the caption indicates are applicable to public garages, in fact only apply to the type of public garage which is defined as an automobile service station or gasoline filling station and this determination has been made by both the Planning Board and ZBA with the result that only the standards set forth in section 125-60 are the standards applicable to the type of public garage proposed by Vail.

B. The location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to streets giving access to it are such that it will be in harmony with the appropriate and orderly development of the area in which it is located.

C. The location, nature and height of buildings, walls, fences and the nature and extent of existing or proposed plantings on the site are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.

D. Operations in connection with any special permit use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, light or other characteristics than might be the operations of any permitted use not requiring a special use permit.

E. Parking areas will be of adequate size for the particular use, properly located and suitably screened from adjoining residential uses; and the entrance and exit drives shall be laid out so as to achieve adequate safety.

In New York State, the law applicable to the issuance of special permits (also sometimes referred to as a special exception) is clear and consistent. For example, in Nathan v. Board of Appeals of Town of Hempstead 125 A.D.3d 866, 5 N.Y.S.3d 127 (2nd Dept, 2015), the Appellate Division for the Second Department articulated the standards for issuance of a special permit as follows:

> "A 'special exception gives permission to use property in a way that is consistent with the zoning ordinance, although not necessarily allowed as of right" (citation omitted). The burden on an owner in seeking a special exception permit is, therefore, "considerably less" than the burden on an owner seeking a use variance (citations omitted). An applicant for a special exception permit need only show that it has complied with every legislatively imposed condition on the permitted use (citations omitted)."

Similarly, in Kabro Associates, LLC v. Town of Islip Zoning Bd. of Appeals 95 A.D.3d 1118, 944 N.Y.S.2d 277, (2nd Dept, 2012) the court stated:

> "Unlike a use variance, a 'special exception allows the property owner to put his property to a use expressly permitted by the ordinance ... subject only to 'conditions attached to its use to minimize its impact on the surrounding area' " (citations omitted). "The significance of this distinction is that the 'inclusion of the permitted use in the ordinance is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood' " (citations omitted). "Thus, the burden of proof on an owner seeking a special exception is lighter than that on an owner seeking a variance" (citations omitted). An owner seeking a special exception permit is only "required to show compliance with any legislatively imposed conditions on an otherwise permitted use"

See also White Castle System, Inc. v. Board of Zoning Appeals of Town of Hempstead 93 A.D.3d 731, 940 N.Y.S.2d 159, (2nd Dept, 2012).

Perhaps the best overview of relevant holdings pertaining to the issuance of special permits was set forth in the 2014 decision of Serota Smithtown LLC v. Town of Smithtown Board of Zoning Appeals 43 Misc.3d 1206(A), 990 N.Y.S.2d 440 (Sup. Ct. 2014)

> "Unlike a use variance, a special exception allows a property owner to put his property to a use expressly permitted by the ordinance subject only to conditions attached to it to minimize the impact on the surrounding area. The significance of this distinction is that the inclusion of the permitted use in the ordinance is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood (citations omitted). The burden of proof is lighter than that on an owner seeking a variance, and an owner seeking a special exception permit is only required to show compliance with any legislatively imposed conditions on an otherwise permitted use (citations omitted). While the reviewing board retains some discretion to evaluate each application for a special use permit, to determine whether the applicable criteria have been met and to make commonsense judgments in deciding whether a particular application should be granted, such determination must be supported by substantial evidence (citation omitted). Although scientific or expert testimony is not required in every case to support a determination, the board may not base its decision solely on generalized community objections. Moreover, expert opinion regarding traffic patterns, when presented, may not be disregarded in favor of generalized community opposition (citation omitted). Generalized or unsubstantiated complaints from

> neighbors, unsupported by empirical or expert evidence are generally insufficient for a zoning board to base its decision (citations omitted).

As set forth above, the Code provides a specific procedure whereby, before the ZBA can act, the ZBA is to receive a recommendation from the Planning Board based upon the standards set forth in section 125-60. In our submission to the Planning Board and through the two meetings at which the applicant appeared before the Planning Board as hereinabove referred to, we set forth therein and restate herein our basis for our belief that the application complies with all the standards digested at section 125-60. Specifically, we requested that the Planning Board and now request that your Board take into consideration the characteristics of the LI zoning district (in terms of permissible uses) and the Adams Street area (in terms of existing uses). We further requested that the Planning Board and now request that your Board take into consideration the fact that the uses in issue and the traffic applicable thereto, including car carrier traffic (although all such traffic will be minor in terms of volume), will essentially be transferred from North Bedford Road/Valerio Court to Adams Street. We suggested that, by taking all of these factors into consideration, the Planning Board had before it sufficient facts to support a determination and recommendation to the effect that all of the standards applicable to issuance of the requested special permit have been met.

Initially, in connection with the requirement set forth in section 125-60 A, we asserted and assert that there could be no doubt that the proposed use at this location will serve a community need or convenience and will not adversely affect the public health, safety and general welfare. The community need or convenience is self-evident. We asserted and assert that the establishment of this use at this location would, in the applicant's opinion, *promote* the public health safety and general welfare especially in connection with the relocation of car carrier deliveries to this Adams Street location.

Turning to the standards set forth in subsections 125-60 B through E, all such standards relate to the suitability of the site for the proposed use and the appropriateness of the use at the proposed location. In this regard, as set forth above, subsection125-60 B required a determination that "[t]he location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to streets giving access to it are such that it will be in harmony with the appropriate and orderly development of the area in which it is located". Subsection 125-60 C requires a determination that "[t]he location, nature and height of buildings, walls, fences and the nature and extent of existing or proposed plantings on the site are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings". Subsection 125-60 D requires a determination that "[o]perations in connection with any special permit use will not be more objectionable to nearby properties by reason of noise,

fumes, vibration, light or other characteristics than might be the operations of any permitted use not requiring a special use permit". Finally, Subsection 125-60 E requires a determination that "[p]arking areas will be of adequate size for the particular use, properly located and suitably screened from adjoining residential uses; and the entrance and exit drives shall be laid out so as to achieve adequate safety".

It is in these related respects that I believe that when your Board takes in the consideration the characteristics of the site and the permissible and existing uses in this portion of the Town, your Board should determine that the requirements of each of these subsections have readily been met, a conclusion which the Planning Board reached in making its positive recommendation. With respect to site-specific characteristics, the site consists of approximately 2.3 acres which is a very large site in this zoning district. The pre-existing building is approximately 17,000 square feet, well more than adequate for all business operations planned for the site. The site also has significant pre-existing paved areas, again well adequate for the proposed use. These areas can and will be expanded consistent with the requirements of the Code when the applicant implement the recommendations of the arborist by conducting site clearing of invasive species and trees and damaged trees and effectuate repairs to the Town's drainage system. Significantly, and as was demonstrated through the submission of photographic evidence to the Planning Board, the site can readily accommodate ingress and egress by car carriers. Such photos will be available at the public hearing to be held by your Board.

With respect to appropriateness of the use for the area and the absence of a deleterious effect on other uses established on nearby properties or the appropriate and orderly development of the area, initially it should be recognized that in view of the multiplicity of public garage uses already approved for that area as referenced in part below, it is clear that establishment of this use at this location will be in harmony with the appropriate and orderly development of the area in which it is located, a point which will be further emphasized and demonstrated by reference to existing uses when the applicant appears before your Board. Recognizing that these uses are special permit uses and the standards make reference to the appropriateness of the proposed use and its impacts (such as noise, fumes, vibration, light etc) as compared to uses not requiring a special permit, it is to be noted that the schedule of principal permitted uses for the LI zoning district allows wholesale business, storage or warehouse uses, manufacturing, assembly and fabrication uses and outdoor storage of commercial and industrial vehicles and construction equipment as well as printing plants. Accordingly, I believe that it is clear that this use will be in harmony with the appropriate and orderly development of the area in which it is located and that operations in connection with this proposed use will clearly not be more objectionable to nearby properties by reason of noise, fumes, vibration, light or other characteristics than might be the operations of any permitted use not requiring a special use permit.

As set forth above, all of these arguments were submitted to the Planning Board and, taking into consideration all of the foregoing as well as the measures proposed by the applicant for the protection of the APZ as referenced below, the Planning Board resolved to issue a positive recommendation to your Board. Such a recommendation confirms compliance with the legislatively prescribed conditions for issuance of the special permit. We believe that your Board, upon examination of all relevant facts and circumstances, should come to the same conclusion and determine to issue the special permit.

Request for Waiver of APZ Regulations Prohibiting Public Garages

Notwithstanding the prohibition of public garages for properties located in the APZ as referenced above, the records of the Town of Bedford confirm that the ZBA and the Planning Board, working together, have formulated a series of protective measures which, when imposed upon the granting of the special permit and waiver of the APZ regulations by the ZBA in the form of conditions, have permitted the operations of public garages on properties located in the AP'Z. Indeed, as will be shown below, many of these special permits were issued in connection with properties located in very close proximity to the subject site and for uses considered more intense than the uses proposed by the applicant.

Because this information exists within the records of the Town of Bedford, the applicant, in an effort to be proactive, reviewed the Planning Board recommendations and the ZBA minutes and resolutions of approval so as to discern what protective measures have been required by the Planning Board and ZBA in connection with past applications for public garages in the APZ and the applicant determined to immediately incorporate such protective measures as part of this application so that there would exist no question as to the applicant's proffer of and compliance with protective measures already determined by the Planning Board and ZBA to be appropriate under the circumstances and wholly protective of the APZ. In this regard, the applicant has reviewed the records pertaining to the approval of the following public garage uses in the APZ, *all of which were issued for public garage facilities in the LI zoning district for properties located in the APZ:*

1. December 1987 issuance of special permit to Brian Prato for public garage/auto body facility at 201 Railroad Avenue, Bedford Hills New York (variance also granted for reconstruction of building in July of 2014);

2. June 1988 issuance of a special permit to Rennsport for public

garage/automotive repair shop located at 353 Adams Street, Bedford Hills New York;

3. 1990 (exact date uncertain) issuance of a special permit to RAP Holding Corp. for a motor vehicle preparation and detail facility (Adzam) at 57 Plainfield Avenue, Bedford Hills New York

4. August 1993 issuance of special permit to Kernan for operation of an automotive garage at 364 Adams Street Bedford Hills New York;

5. November 1997 issuance of special permit to Beobide/Perez for operation of an automotive paint and body shop at 341 Adams Street Bedford Hills, New York;

6. February 2008 issuance of special permit to RAP Holding Corp, for operation of a motor vehicle service facility at 57 Plainfield Avenue Bedford Hills, New York;

7. September 2009 issuance of special permit to Nicola A. Soprano for operation of a motor vehicle sale and restoration facility at 350 Adams Street Bedford Hills, New York.

This list is not to be in any way exhaustive or reflective of the total number of special permits issued for public garages in the LI zoning district and in the APZ. This list was instead compiled and utilized by the applicant because the approved special permits listed above allow each and every use proposed by this applicant and, with respect to a number of such special permits, more intensive uses than proposed by this applicant. Indeed, many of the uses referenced above, such as full automobile repair facilities and full auto body paint and repair shops, can readily be seen as uses which might well be considered as presenting more potential for possible adverse consequences to the APZ as a consequence of such use yet, through the diligence of the Planning Board and ZBA, proper protective measures were imposed so as to allow such uses to be established in the APZ.

However, as was demonstrated to the Planning Board, in an effort to be proactive and to ensure complete protection of the APZ and to therefore promote the approval of this application, ***the applicant has determined to implement each and every protective measure previously identified by the ZBA and the Planning Board in connection with the review of the issued special permits referenced above***. Specifically, the applicant will install/comply with the following protective measures:

1. There will be no floor drains in the building which would discharge to the ground;

2. Despite the size of the building, the applicant will install a 1 inch lip at each doorway to prevent the accidental discharge/spill from the inside of the building to the outside of the building;

3. Additionally, in any area where fluids of any type are installed or exchanged in any vehicle, there will be a secondary containment system to capture any fluids;

4. Other than for heating purposes, there will be no fuel storage in the building, underground or above ground unless contained in NYS DOT certified transport/storage containers not exceeding 10 gallons in size;

5. Any and all bulk storage of lubricants and motor oil shall be in above ground containers complying with all applicable local, state and federal regulations and will have independent containment areas located thereunder;

6. Any storage of waste oil shall be in noncorrosive 55 gallon drums;

7. Any and all waste fluids shall be disposed of by a certified hauler/disposal firm (present contractor is Envirowaste) in accordance with all applicable EPA/DEC/DOT/DOH regulations;

8. There will be no body work or painting performed on site;

9. If vehicle washing is to be performed on site, the applicant will install the Hercules Water Treatment System as used by the Town of Bedford and as referenced in the Soprano approval (details provided to the Planning Board);

10. The applicant will maintain on site spill cleanup kits containing materials suggested/approved by NYSDEC for such purposes.

The Planning Board also requested, and the applicant agreed, that with respect to any repairs conducted at the site, such repairs would not include engine or transmission overhauls,

rebuilding or replacement and I believe that this will be included as a condition in the Planning Board recommendation. The Planning Board recommendation may also include other minor conditions to which the applicant agreed during the Planning Board hearings.

It is respectfully submitted that this applicant and this application comply with all of the legislatively prescribed standards for issuance of the requested special permit and, taking into consideration all of the voluntarily proposed measures for the protection of the APZ, compliance with all of the standards previously utilized by the ZBA for the issuance of a special permit for the operation of a public garage within the APZ, thereby authorizing a public garage use in the APZ. At the public hearing to be held in November, the applicant will provide additional information and photographs and be prepared to respond to any questions that members of the Board might have in connection with the applicants proposed use of this property.

On behalf of the applicant, I thank you for taking the time to review the submission and we look forward to appearing before your Board in November in support of this application

Yours very truly,

Charles V. Martabano

cc: Vail Buick GMC
Markland Development Corp.
Frank Veith, Esq.
Dan Pozin, Esq.

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SEP 18 2015

BEDFORD ZONING
BOARD OF APPEALS

ZONING BOARD OF APPEALS

Town of Bedford, Westchester County, New York
425 Cherry Street, Bedford Hills, New York 10507
Alexandra J. Costello, Secretary
914-666-4585; 914-666-2026 FAX
acostello@bedfordny.gov

APPLICATION FOR A VARIANCE

1. Name of Owner: MARKLAND DEVELOPMENT CORP.

   Address: 344 MAIN STREET, MT. KISCO, NEW YORK 10549

   Telephone/Email: (914)666-7700

2. Name of Applicant, if other than Owner: 536 BEDFORD ROAD LLC

   Address: c/o VAIL BUICK GMC, 606 NORTH BEDFORD ROAD, BEDFORD HILLS, NEW YORK 10507

   Telephone/Email:

3. Name of Professional (New York State Licensed Architect, Engineer, Land Surveyor, Landscape Architect):

   CHARLES V. MARTABANO, ESQ.

   Address: 9 MEKEEL STREET, KATONAH, NEW YORK 10536

   Telephone/Email: (914) 242-6200; cmartabano@gmail.com

4. Identification Property:

   Street Address: 332 ADAMS STREET, BEDFORD HILLS, NEW YORK 10507

   Tax ID: SECTION 8A LOT 11-51 60-11-3-4 Zoning District: LI Total Land Area: 2.281

   Age of the Building 40+ YEARS

   Is the property located in a designated Historic District? NO

   % of Building Coverage: 17.13% % of Impervious Surface ~~[illegible]~~ 69.15 %

   Property Abuts a State or County highway, parkway, thruway or park: Yes ____ No ✓

   Property is within 500 feet of the boundary of the Town of Bedford: Yes: ____ No: ✓

   Property is on the WEST side of ADAMS ST. within the unincorporated area of the Town of Bedford.

ZONING BOARD OF APPEALS
APPLICATION FOR A VARIANCE

5. Request:
The applicant requests that the Board approve the issuance of a Variance under the following section of the Code of the Town Bedford:

Article: III Section: 125-29.4D (3) (1)

To Permit:

Use of a pre-existing fully improved industrial site for a motor vehicle delivery, storage, preparation, detail and minor maintenance and repair facility.

6. Plans required:
Include six copies of survey, site plan, building elevations and floor plans.

7. Public Notice:
Notice of the public hearing shall be published at least 10 days prior to the hearing in the Town newspaper and shall be mailed by the applicant at least 10 days prior to the hearing to all owners of property within 500 feet of the perimeter of the subject lot. The expense of publishing and mailing any notice shall be paid by the applicant, who shall file an affidavit of mailing with the Board Secretary prior to the hearing.

8. Fees: (make checks payable to the Town of Bedford)

Variance
(As required by Fee Schedule Town of Bedford Code)

Residential:	$350.00
Commercial:	$550.00

Signature of Owner — Date 8/26/15

Signature of Applicant — Date 9/1/15

Rev. 5/18/10

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SEP 18 2015
BEDFORD ZONING
BOARD OF APPEALS

ZONING BOARD OF APPEALS

Town of Bedford, Westchester County, New York
425 Cherry Street, Bedford Hills, New York 10507
Alexandra J. Costello, Secretary
914-666-4585; 914-666-2026 FAX
acostello@bedfordny.gov

APPLICATION FOR A SPECIAL PERMIT

1. Name of Owner: MARKLAND DEVELOPMENT CORP.

   Address: 344 MAIN STREET, MT. KISCO, NEW YORK 10549

   Telephone/Email: (914) 666-7700

2. Name of Applicant, if other than Owner: 536 BEDFORD ROAD LLC

   Address: c/o VAIL BUICK GMC, 606 NORTH BEDFORD ROAD, BEDFORD HILLS, NEW YORK 10507

   Telephone/Email:

3. Name of Professional (New York State Licensed Architect, Engineer, Land Surveyor, Landscape Architect):

   CHARLES V. MARTABANO, ESQ.

   Address: 9 MEKEEL STREET, KATONAH, NEW YORK 10536

   Telephone/Email: (914)242-6200

4. Identification Property:

   Street Address: 332 ADAMS STREET, BEDFORD HILLS, NEW YORK 10507

   60.11-3-4 SECTION 8A

   Tax ID: LOT 11-51 Zoning District: LI Total Land Area: 2.281

   Age of the Building 40+ YEARS

   Is the property located in a designated Historic District? NO

   % of Building Coverage: 17.13% % of Impervious Surface ~~[illegible]~~ 49.15%)

   Property Abuts a State or County highway, parkway, thruway or park: Yes ____ No ✓

   Property is within 500 feet of the boundary of the Town of Bedford: Yes: ____ No: ✓

   Property is on the WEST side of ADAMS ST. within the unincorporated area of the Town of Bedford.

ZONING BOARD OF APPEALS
APPLICATION FOR A SPECIAL PERMIT

5. Request:
The applicant requests that the Board approve the issuance of a Special Permit under the following section of the Code of the Town Bedford:

Article: III Section: 125-68

The applicant proposes the following Special Permit:

Public garage use of a pre-existing fully improved industrial for a motor vehicle delivery, storage, preparation, detail and minor maintenance and repair facility.

6. Plans required:
Include six copies of a narrative, survey, site plan, building elevations and floor plans.

7. Public Notice:
Notice of the public hearing shall be published at least 10 days prior to the hearing in the Town newspaper and shall be mailed by the applicant at least 10 days prior to the hearing to all owners of property within 500 feet of the perimeter of the subject lot. The expense of publishing and mailing any notice shall be paid by the applicant, who shall file an affidavit of mailing with the Board Secretary prior to the hearing.

8. Site Plan:
Include a Preliminary Site Plan Application form, fee, and ten (10) copies of a Preliminary Site Plan complying with all requirements of Article IX, Section 125-88 of the Code of the Town of Bedford.

9. Fees: (make checks payable to the Town of Bedford)

Special Permit Application	$350.00
Preliminary Site Plan: (As required by Fee Schedule Town of Bedford Code)	$____
Total:	$____

Signature of Owner — Date: 8/26/15

Signature of Applicant — Date: 9/1/15

Rev. 5/10/10

LETTER OF PERMIT DENIAL

Town of Bedford
Building Dept.
425 Cherry St.
914-666-8040

Application #:

Date: 9/22/2015

Parcel ID: 60.11-3-4

Owner Information

Markland Development Corp

Applicant Information

Markland Development Corp
Attn: Buckingham Managment
116 Radio Cir
Mt Kisco NY 10549

Location: 332 Adams St
Parcel ID: 60.11-3-4
Permit Type: Commercial Renovation
Work Description: Renovations of an existing building & fully improved industrial site for a motor vehicle delivery, storage, preparation, detail & minor maintenance & repair facility.

Dear Resident,
Regarding the application for a Building Permit on the property referenced above, the following facts are noted. This property is located in LI Zoning District. The requirements of the Zoning Ordinance of the Town of Bedford in comparison to your proposal are listed as follows:

The operation of a public garage on property located within the Aquifer Protection Zone will require a Special Use Permit from the Board of Appeals in accordance with Article V Section 125-49 and Article VIII Section 125-68 of the Town of Bedford Zoning Ordinance and a variance of Article III Section 125-29.4 D. (3) (l) of the Town of Bedford Zoning Ordinance; as well as site plan approval from the Planning Board.

Because your project does not meet the requirements of the Town of Bedford Zoning Ordinance, your application for a building permit is DENIED. If you wish to proceed with your request, you may, within sixty days of this letter, apply to the of the above provisions

Very truly yours,

Steven Fraietta
Building Inspector