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November 16, 2022

Town of Chester Zoning Board of Appeals
1786 Kings Highway
Chester, NY 10918

Re: Referral from Town of Chester Planning Board
Summerville Way Holdings LLC Subdivision Application
SBL - 6-1-36.11, 36.12 & 37.1

Dear Members of the Board:

This firm has been retained to represent Rachel Mandel and Summerville Way Holdings LLC (the "Applicants") to represent them in connection with a referral to this Board from the Town of Chester Planning Board (the "Planning Board"). By letter dated October 12, 2022, the Planning Board seeks this Board's interpretation/variance as to whether the Applicants require a Town Law 280-a variance or a 280-a (4) "open area" determination from the Town Board in order to obtain approval of the Applicants 3 lot subdivision application (the "Subdivision") shown on a proposed subdivision map (the "Subdivision Map") pending before the Planning Board. This letter supplements the ZBA Application form.

As demonstrated herein, the Applicants require neither variance and that the referral reflects a misunderstanding of Town Law 280-a.

Town Law 280-a is not related to and does not govern applications for subdivisions. Rather, it is a prohibition restraining a building inspector from issuing building permits for structures on lots which to not have "access", as defined therein, to a public street or highway. Specifically, Section 280-a (1) provides in the respect:

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“No permit for the erection of any building shall be issued unless a street or highway giving **access** to such proposed structure has been placed on the official map or plan, or if there is no official map or plan, unless such street or highway is (a) an existing state, county or town highway. . . .”

“**Access**” for the purposes of that prohibition is specifically defined under 280-a (5) as:

“For the purpose of this section the word “access” shall mean that the plot on which such structure is proposed to be erected directly abuts on such street or highway and has sufficient frontage thereon to allow ingress and egress of fire trucks, ambulances, police cars and other emergency vehicles, and, ***frontage of 15 feet shall be presumptively sufficient for that purpose.***”

Here the Subdivision Map shows each proposed lot to have at least 85 feet of frontage on NYS Highway Route 94. Accordingly, the Subdivision is unaffected by the prohibitions in Town Law 280-a.

Because of sight distance requirements the NYS DOT has approved access to Lot 3 on the Subdivision Map to be via a shared driveway with Lot 2, with Lot 3 having an easement over Lot 2 for such purpose. However, that development plan does not change the fact that each Lot shown on the Subdivision Map has “access” in the form of frontage on a public street, in excess of the minimum requirement under Town Law Section 280-a, and therefore, no relief from its provisions in either the form of a 280-a variance or an open area declaration from the Town Board are required.

The variance provided for under Town Law 280-a (3) and the open area declaration provided for under Town Law 280-a(4) are by their terms only applicable to instances where an applicant’s lots do not have the minimum access required under 280-a (5). Here, the Lots on the proposed Subdivision Map are in compliance and no such relief is required.

Accordingly, it is requested that this Board interpret that the provisions of Town Law 280-a are not relevant to this Subdivision.

Respectfully submitted,


NEAL D. FRISHBERG