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February 10, 2023

Via: Email and Hand Delivery

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

Re: Referral from Town of Chester Planning Board
Mandel/Summerville Way Holdings LLC Subdivision Application (the
Subdivision")
SBL6-1-36.11, 6-1-36.12 & 6-1-37.1(the "Premises")

Dear Members of the Board:

This letter supplements the Applicant's, Rachel Mandel's, submission to the Zoning Board of Appeals submitted on or about October 24, 2023, by specifically addressing the five factor test to be addressed by a zoning board of appeals in considering an area variance. For informational purposes, nothing herein or in any other submission by or for the Applicant concerning this proposed subdivision should be construed as a waiver, limitation, or restriction as to any and all rights that the Applicant may have to further contest or pursue this matter. This appeal comes before you by way of referral by the Town Planning Board by letter dated October 12, 2023.

Pursuant to that letter, this Board must, initially, determine if the proposed Subdivision would need a variance from Town Law Section 280-a in order to be approved. That issue was addressed in this firm's letter to the Board dated November 16, 2022. Assuming, *arguendo*, that such a variance is required, we now address why we believe such a variance should be granted by this Board.

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The Premises (Tax Lots SBL 6-1-36.11, 6-1-36.12 & 6-1-37.1) are located in the Town of Chester Zoning District SR-6 totaling 4.06+/- acres, more than four times the per lot area requirement in the Zoning District and significantly larger than each of the nearby adjoining properties on the north side of NYS Route 94. Following subdivision, the subdivided lots (upon each of which is proposed to have situated a one family home which is consistent with the existing properties along the north side of Route 94) will each be of a size consistent with and similar to neighboring properties on the north side of NYS Route 94, and considerably larger than the lots of the cluster development, the Greens at Chester, just to the north and adjacent the Premises. So as to the size of proposed lots and their use as one family homes the proposed subdivided lots will be consistent with the existing community character. As to density, the proposed subdivided lots will also be consistent with adjacent properties except it will be significantly less dense than the smaller more compacted lots at Greens at Chester thereby having less impact on the community than the Greens.

The Applicant seeks a New York State Town Law 208-a variance granting access from each of the proposed subdivided lots to NYS Route 94. The three (3) proposed lots are shown on a Subdivision Plan, sheet C-100, prepared by Engineering & Surveying Properties, with a revised date 8/23/2022, submitted with the original application.

The Zoning Ordinance bulk requirements for the SR-6 Zone, in which the proposed subdivision is situated, respecting the proposed single family residences and the proposed dimensions of each lot are:

Minimum Building Requirements:

	Required	Proposed Lot 1	Proposed Lot 2	Proposed Lot 3
Lot Area:	1 Acre	1.66 Acres	1.16 Acres	1.24 Acres
Lot Width:	150 feet	154.2 feet	180.7 feet	201.4 feet
Front Yard:	60 feet	249.6 feet	90.5 feet	64.5 feet
Rear Yard:	60 feet	106.8 feet	267.1 feet	144.7 feet
Side Yards:				
(one/both)	30/60 feet	40.8/112.3 feet	32/64.2 feet	34.4/91.2 feet

Maximum Allowable

Building Height:	35 ft.	<35 ft.	<35 ft.	<35 ft.
Lot Coverage:				
(Buildings)	15%	<15%	<15%	<15%

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The sizes of the proposed lots comply with the bulk requirements and are large enough to leave an ample building envelope for each lot, which is a goal of the Zoning Code. Specifically, the sizes of each of the lots:

“assure[s] adequate separation between uses and buildings so as to promote safety, comfort, privacy and preservation of property values.” (See Chapter 98. Zoning, Article 1. General Provisions, Section 98-1, Purpose, Subsection (G.)

Based upon the existing development within in the S-6 Zone, we believe the purpose of the zone is to provide for moderate to high density residential development uses. The single family development sought in this application is certainly compliant with those uses.

As stated in the third memo of 1/31/23 by Robert J. Dickover, Counsel to the Zoning Board of Appeals (“Memo”), citing the provisions of Town Law 280-a(3) concerning this matter, the Applicant has a right to seek an area variance under the provisions of NYS Town Law 280-a to allow the proposed residential buildings to have access to NYS Route 94 “subject to any reasonable exception and issue the permit [for the buildings to have access to NYS Route 94] subject to conditions that will protect any future street or highway layout.” (See Page 3 of Memo.) The Memo goes on to state, at Page 6, “From the foregoing comes the conclusion that the applicant can request a variance from the requirements of 280-a.” The Memo continues “In this case the variance being requested is the access be (1) allowed by easement. In the review and determination of that request it is incumbent on the ZBA to determine the extent to which such an easement area shall be ‘suitably improved’.”

As noted in the Memo “In order to receive an approval for a 280-a variance, the criteria that the zoning board of appeals shall take into consideration is the benefit to the applicant if the requested variances are 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 and the applicant must demonstrate that the proposal meets the criteria set forth in the five factor test.” (Memo at Page 6.)

The Town Law Section 267-b sets forth five factors (but 6 of which are enumerated) the Zoning Board of Appeals should consider before granting or denying an application for an area variance. These are the same factors set forth in the N.Y.S. Town Law.

The first, will the benefit to the applicant outweigh any detriment to the community?

Here the benefit to the applicant will be a better return on her investment in the

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Premises arising from the value of two additional building lots. The need for the additional lots in this instance is particularly great as the value of the Premises has been diminished by a change in the viewshed. The Premises faces to the South a view of a partially developed Office Park Zoning District in the Town and a Light Manufacturing/ Research Zone in the Village of Chester not offering an attractive view, with the prospect of a less attractive view as further development is approved and to the North the Premises abuts the recently approved high density Chester Greens development. These changes in the viewshed creating this condition have diminished the value of the Premises, which may only be recouped by creating additional building lots. Of course protecting the value of the Premises is one of the specific stated purposes of the Zoning Code, as quoted above. Submitted herewith is a copy of a map entitled Town and Village of Chester Zoning Boundaries, prepared by the applicant's engineers, Engineering and Surveying Properties, dated 2-9-23, which shows the zoning districts adversely affecting the Premises.

On the other side of the balancing test, there is virtually no detriment but only benefit to the community. The neighborhood surrounding the Premises to the North on Route 94 are largely residential. By granting the area variance, the Premises would be developed by 2 additional single family residences in keeping with the character of the neighborhood on the North side of Route 94. Such an approval would eliminate all the other less attractive permitted uses of the Premises under the Zoning Ordinance, which include 2 family homes and small motor repair shops, and by special permit, multiple dwellings, businesses, contractor storage yards etc. all of which are invited as an adjunct to the zoning development across the street. Although the Zoning Ordinance permits various types of residential and commercial development in the Zoning District, in the immediate vicinity of the Premises on the North side of Route 94, the development is mainly single family residences similar to the proposed lots. By approving the variance, the Zoning Board would be acting to foster future development consistent with the existing conditions and forestalling less attractive development.

Clearly, the applicant has met the first factor to be met to permit the relief sought.

The second factor to be weighted is whether the grant of the variance would cause undesirable changes in the character of the neighborhood?

Submitted herewith is a portion of the tax map in the vicinity of the Premises along Route 94, showing the uses and dimensions of the properties near the Premises. Almost all of the development on the North side of Route 94 is residential and almost all of the residential development is similar to or more dense than the proposed lots. The South side of Route 94 is zoned Industrial and would be virtually unaffected by the proposed

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development of the Premises. There would be no adverse change in the character of the neighborhood by allowing **two** more homes in the neighborhood and the proposed lots would be in general conformity with those in the neighborhood and in conformity with the bulk regulations of the Zoning District.

Submitted herewith is a letter from, "Engineering & Surveying Properties", the applicant's engineers dated February 8, 2023 (the "Engineering Report"). It indicates that the new proposed common driveway over which one of the proposed lots would have an easement. It indicates that the common driveway conforms in all ways to the Town Code as to width, grade, and construction. It provides for drainage and prevention of flooding onto Route 94; that the curb cut is located where it is by the determination of the NYSDOT and has been designed in conformity with NYSDOT requirements, including drainage, sight lines and grades. Prior to being built, a Permit will need to be obtained from the NYSDOT, assuring compliance with its requirements.

And, as pointed out in Robert J. Dickover's third Memorandum to this Board dated 1-31-23:

"The proposed location of the easement area accessway onto SR 94 does provide sufficient sight distance and has been deemed by the NYS DOT as acceptable for the two single family homes that are proposed as par of the subdivision"

Further, the Engineering Narrative confirms that the common driveway provides adequate access to emergency vehicles.

The existing driveway which currently services the existing single family home on proposed Lot 1, was approved by the Town of Chester Building Department when it was constructed and a Building Permit for it was issued what appears to be May 14, 1945, a copy of which is submitted herewith. It was obtained from the Town of Chester Building Department. Unfortunately, the year of issuance is not very legible. However, this office confirmed the year from the County Assessor's Records. Since then 2 letters have been issued by the Building Department confirming no violations existed on the Premises, necessarily including the driveway. And of course, over 75 years of its use without incident, demonstrates its safety and adequacy.

Mr. Dickover raised the question of how the ZBA can be assured that the driveways will be maintained in a safe condition. That, of course is an issue with regard to every driveway in the Town. However, here that issue can be addressed effectively by the applicant

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filing a declaration in connection with the subdivision imposing on the lot purchasers the obligation to maintain the driveways to Town standards, with the right of inspection and enforcement given to the Town.

With the above provisions in place, the applicant will satisfy the second consideration.

Third, is there another feasible solution to the applicants problem?

The answer is no. The sloping topography as shown in the subdivision plan and location of the Premises permits no alternative than a 280-a variance for a 3 lot subdivision.

Further, this is the driveway plan which the NYSDOT has indicated it will approve, so that there is no other solution but compliance with the requirements of the NYSDOT. And providing for only a two lot subdivision would, as noted above, diminish the Applicants return on investment.

The fourth factor is whether the variance would be substantial?

This variance would not permit building lots which are not in conformity with the bulk requirements of the SR6 Zoning District. Nor would the width of the proposed lots along Route 94 be out of conformity with the neighborhood, so that the variance sought would not result in lot widths substantially different than those that already exist. By securing the 280-a variance the number of driveways in the proposed subdivision would be reduced from 3 to 2. This is virtually the reverse of substantial. Instead of adding impact of driveways to the community, the variance would reduce it to its minimum.

Fifth, would the grant of the variance have adverse physical or environmental effects on the neighborhood?

As outlined above, there would be no adverse physical or environmental impacts on the neighborhood because the variances would only permit the single family residential development consistent with the area.

Sixth, was the alleged difficulty self created?

Having proposed the two new lots at a time when the current zoning ordinance was in effect does create a self imposed hardship. However, that fact, according to NYS Town Law standing on its own is not a basis for a denial of the requested variance. Nor is this a

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variance which a prudent purchaser might have anticipated would be required as access to NYS Route 94 seems reasonably possible.

A primary issue to be considered in an application for a 280-a variance is whether the proposed access has sufficient frontage for emergency vehicles such as the fire trucks or ambulances. Here, because the proposed access is to a New York State Highway, the NYSDOT has reviewed and approved the safety of the proposed access and the Engineering Report confirms that the proposed common driveway provides adequate access for emergency vehicles.

As to the existing driveway servicing proposed Lot 1. It is a pre-existing condition, for which a Certificate of Occupancy has been issued and has been in place and used as access for over 75 years without incident.

As previously stated, a condition of the grant of this variance can be that the appropriate declaration be recorded by the applicant in connection with the prosecution of its subdivision application before the Town Planning Board, providing for the proper use and maintenance of the driveways, with the power of enforcement granted the Town, so that safe access will always be maintained.

For the foregoing reasons it is respectfully submitted that the area variance should be granted.

Respectfully submitted.

Very truly yours,

A handwritten signature in black ink, appearing to read "Philip Dropkin", written in a cursive style.

PHILIP DROPKIN

Enclosures
PD/fa



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February 8, 2023

Fabricant Lipman & Frishberg, PLLC
One Harriman Square
PO Box 60
Goshen, NY 10924

ATTN: Philip Dropkin, Esq.

**RE: W.O. # 1744.01
SUMMERVILLE WAY HOLDINGS, LLC
3966 SUMMERVILLE WAY (NYS ROUTE 94)
PROJECT NARRATIVE**

Dear Mr. Dropkin,

The project known as the Summerville Way Holdings, LLC comprises of a lot line change of three (3) separate tax parcels identified on the Town of Chester Tax Map as Section 6 Block 1, Lots 36.11, 36.12 and 37.1. Tax lot 36.11 contains an existing single-family residence and tax lots 36.12 & 37.1 are vacant. The purpose of this lot line change is to reconfigure the three (3) lots so that the two vacant lots will be buildable lots pursuant to current Town of Chester Zoning Code. Proposed Lot #1 contains the existing dwelling, and other associated improvements, for which access to NYS Route 94 (aka Summerville Way) has been utilized through the neighboring property, 6-1-37.1, under the same ownership. Proposed Lots #2 & #3 shall gain access to NYS Route 94 through a common driveway single connection to the state highway. This location was determined to be the most suitable location for a proposed driveway due to the limited observed sight distances along NYS Route 94. The location and design for this proposed driveway was submitted to the NYSDOT for an initial review and preliminary approval, subject to a speed study conducted by Colliers Engineering & Design (CED). Per the aforementioned speed study performed by CED, it was determined that the prevailing speed of vehicles along this portion of the highway travel at a lower speed (48 mph) than the posted speed limit of 55 mph, thus permitting a lower threshold for the minimum required sight distances. Additionally, the applicant will remove existing vegetation and cut back the grade within the NYSDOT right-of-way between 15' and 20' to maximize the sight

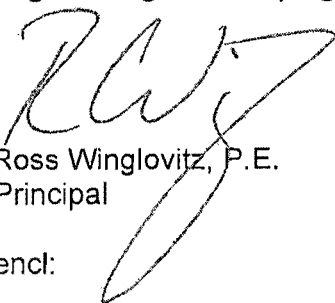
distances from this proposed driveway, and to create a path for stormwater to flow away from the highway edge of pavement.

The proposed common driveway to serve Lots #2 & #3 has been designed in accordance with the NYSDOT, NYS Residential Building Code and the Town of Chester design requirements. As such, the proposed common driveway utilizes a negative grade of 2% from the existing NYS Route 94 edge of pavement to prevent stormwater flows from entering the existing paved travel way. Stormwater generated from the common driveway, and the remaining development, will be directed to the proposed roadside swale within the DOT right-of-way. The proposed common driveway has been designed to maintain a minimum width of 12', with a 36' wide portion of pavement at the connection to NYS Route 94 and have a grade of 8.0% or less. It is noted that section §A101-21 of the Town of Chester Road Specifications code requires driveways to have a slope no more than one inch per foot (8.33%) from curb to the Town right-of-way. However, as this project site does not abut a Town of Chester roadway, or right-of-way, this section of the Town code is not applicable, although complied with.

Lastly, the location and design of the proposed driveways to serve Lots #2 & #3 have been validated to ensure that emergency vehicles will have adequate access to the two (2) proposed dwellings.

If you have any additional questions and/or comments please don't hesitate to contact this office.

Sincerely,
Engineering & Surveying Properties, PC



Ross Winglovitz, P.E.
Principal

encl:

cc: file



Keith Woodruff, CPESC, CPSWQ
Senior Project Engineer

FORM #6

Application No. Permit No.

Building Department

TOWN OF CHESTER

County of: Orange

Location: St. Ol.

Map No.: Tax Map Section: 6 Block: 1 Lot: 36

Certificate of Occupancy

No.

Date: May 14 1953

THIS CERTIFIES that the building located at premises indicated above, conforms substantially to the approved plans and specifications heretofore filed in this office with Application for Building Permit dated March 19, pursuant to which Building Permit was issued, and conforms to all of the requirements of the applicable provisions of the law. The occupancy for which this certificate is issued is

One Family Dwelling

This certificate is issued to James Bond
(owner, lessee or tenant)
of the aforesaid building.

Arthur T. Bond
Superintendent of Buildings

(The Certificate of Occupancy will be issued only after affidavits or other competent evidence is submitted to the Superintendent of Buildings that the completion of the construction in compliance with the State Building Construction Code and with other laws, ordinances or regulations affecting the premises, and in conformity with the approved plans and specifications. A final electrical, plumbing, heating or sanitation certificate or other evidence of compliance may be required before the issuance of the Certificate of Occupancy.)

BUILDING INSPECTOR'S COPY