



Village/Town of Mount Kisco Building Department  
104 Main Street  
Mount Kisco, New York 10549  
Ph. (914) 864-0019-fax (914) 864-1085

RECEIVED

MAR 28 2023

Zoning Board of Appeals  
Village/Town of Mount Kisco

February 27, 2023

James Scoli  
CJ Developers

Re: Notice of Denial  
Hickory Lane  
Proposed Subdivision  
SBL: 69.75-1-4

Dear Mr. Scoli:

Your recent submission for the proposed Hickory Lane subdivision "*has been denied*" for the following reason:

Subdivision approval is required pursuant to Chapter 94. Subdivision of Land Article II. Procedure for Filing Applications § 94-5. Subdivision approval required.

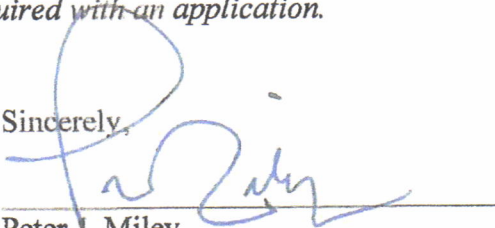
Pursuant to Chapter 110. Zoning Article III. District Regulations § 110-8. RS-12 Low-Density One-Family Residence District. C. Development regulations. (1) Each site in the RS-12 District shall be subject to the following development regulations: (d) Minimum lot width: 100 feet.

Proposed, is a two-lot subdivision located at Hickory Lane – SBL: 69.75-1-4. Lot No. 2 proposes a lot-width of 15.02 ft. where the required lot-width in the RS-12 Zoning District is 100 ft.; therefore, an 84.98 ft. lot-width variance is required.

*You have the right to appeal this decision within 60 days to the Zoning Board of Appeals.*

*If appealed, an updated survey and proposed site plan with [all] setback dimensions of both the home and accessory structure (garage) will be required with an application.*

Sincerely,

  
Peter J. Miley,  
Building Inspector

Jamie Scoli  
28 Scott Circle  
Purchase, NY 10577

March 24, 2023

Chairman Wayne Spector  
Zoning Board of Appeals  
Village of Mt. Kisco  
104 Main Street  
Mt. Kisco, New York 10549

**RECEIVED**  
**MAR 28 2023**  
Zoning Board of Appeals  
Village/Town of Mount Kisco

Re: Appeal of Determination of Building Inspector dated  
February 27, 2023 Relating to Proposed Subdivision of Property  
known as Tax ID Number 69.75-1-4 (Hickory Lane)

Dear Chairman Spector:

In accordance with the procedures specified for appeals to the Zoning Board of Appeals of the Village of Mount Kisco and as contract vendee of the property referenced above, I am hereby providing you with notice my intent to appeal the above referenced Denial Letter/Notice of Denial issued by the Building Inspector (copy attached) to your Board.

I will submit the application and all other required materials within the time period specified by your Board for inclusion on the agenda of the Zoning Board of Appeals for the April 18, 2023 meeting i.e. on or before March 28, 2023. I look forward to appearing before your Board in furtherance of this application.

Sincerely,



Jamie Scoli



**CHARLES V. MARTABANO**  
Attorney at Law

9 Mekeel Street  
Katonah, New York 10536  
[cmartabano@gmail.com](mailto:cmartabano@gmail.com)  
(914) 242-6200 Telephone  
(914) 242-3291 Facsimile  
(914) 760-9241 Cell

March 27, 2023

VIA HAND DELIVERY  
Chairman Wayne Spector, and  
Members of the Zoning Board of Appeals  
Village of Mt. Kisco  
104 Main Street  
Mt. Kisco, New York 10549

Re: Application of Jamie Scoli  
Premises known as Vacant Lot Owned by Sporn, Hickory Lane,  
Mount Kisco New York  
Tax ID Number: 69.75-1-4  
RS-12 Zoning District

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

Please be advised that the undersigned has been retained to represent the interests of the above referenced Applicant who is the contract vendee of the vacant property referenced above (hereinafter, "Property"). Reference is hereby made to the submitted Site Plan for the proposed two lot subdivision of such property (hereinafter "Site Plan"). As can be seen by reference thereto and as confirmed by the denial letter issued by the Building Inspector on February 27, 2023, the Applicant requires a variance authorizing the reduction of lot width for proposed Lot 2 from the lot width required for the RS-12 Zoning District (100 feet) to a lot width of 15.02 feet. On the surface, this might look like a request for a variance of significant magnitude. Given the unique circumstances applicable to this Property, the magnitude of the requested variance is, without doubt, clearly a matter of form over substance and, in fact, this is readily confirmed by reference to the Site Plan which is specifically designed to address the issues arising under Village Law §7-736 as reviewed in detail below.

Your Board's attention is respectfully referred to the letter dated September 25, 2022 from Village Attorney Whitney Singleton to the undersigned, a copy of which is attached hereto and made part hereof as Exhibit A. Said letter sets forth in detail the requirements of §7-736 (2) of the Village Law which governs the issuance of building permits. In reading the information that follows, it is significant to note that the land parcel within which Hickory Lane and its

potential extension as a street<sup>1</sup> is located is actually owned by the Village of Mount Kisco and is designated on the Municipal Tax Parcel Viewer as "Hickory Lane Right-of-Way" and is parcel 69.75-1-3. With the foregoing in mind, and based upon the information set forth in Mr. Singleton's letter, without the design as proposed for Lot 2 as shown on the Site Plan, Lot 2 would not be developable because Village Law §7-736 (2) indicates that no permit will issue unless a street or highway giving access to the proposed structure has been:

- a. duly placed on the official map or plan; or
- b. an existing state, county town or village highway; or
- c. a street shown upon a plat approved by the planning board.

Mr. Singleton analyzed the facts applicable to the Property's relation to Hickory Lane and made the following determinations:

1. Hickory Lane has not been placed as a street or highway on the Official Map which, quite frankly, cannot be surprising since the Village Official Map has not been updated since the mid-1950s;
2. Hickory Lane cannot be considered as an existing state, county town or village highway since the Village never maintained same and it is listed as a private road at its entrance, despite being owned by the Village as aforesaid;
3. However, in 1973 the Planning Board approved filed plat number 18347 and, as such, the depiction/creation of Hickory Lane inclusive of a planned cul-de-sac at the southerly terminus thereof in fact satisfied the requirements of Village Law §7-736 (2) for the lots having frontage/access thereon (see copy of filed subdivision plat number 18347 attached hereto and made part hereof as Exhibit B).

Mr. Singleton's letter goes on to state that:

"The southern terminus of Hickory Lane (cul-de-sac) simultaneously created frontage for your client's parcel along your client's north-western perimeter. While your client's parcel was not created as part of any subdivision on this private road, and therefore possesses no statutory right to utilize same, your client was, however, separately deeded an access right to same. Specifically, your client's chain of title conveyed with it *"an easement of Right-of-Way in common with others in and to and over Hickory Lane to and including the turnaround thereof as shown on said map, to and from North Bedford Avenue (N/K/A Barker*

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<sup>1</sup> As we will demonstrate at the public hearing, a certain portion of Hickory Lane is improved (although not to Village standards) and characterized as a private road up to a terminus referred to by Mr. Singleton as the "southern terminus of Hickory Lane (cul-de-sac)" which he also refers to as a "turnaround". Beyond that turnaround, there is an existing macadam roadway which extends to the southerly terminus of the Right-Of-Way itself which gives access to another home.

*Street) and also in and to said fifty-foot Right-of-Way running in a southerly direction from the southerly end of Hickory Lane.”*

(emphasis original)

Accordingly, Mr. Singleton’s letter concluded as follows:

“Accordingly, your client’s existing parcel has frontage (and access) on a road on a filed subdivision plat at Hickory Lane’s southern terminus (turnaround). Such frontage would qualify for a building permit issuance under Village Law §7-736 (2) for its existing lot layout or for proposed Lot 1A [Lot 1 on the Site Plan], but does not qualify for proposed Lot 1B [Lot 2 on the Site Plan].”

Finally, Mr. Singleton’s letter points out that the Village Law § 7-736 (3) provides an Applicant with the opportunity to apply for an area variance to remedy this decision, hence the current application.

The proposed Site Plan remedies the issue of frontage<sup>2</sup> because it provides for the benefit of Lot 2 a strip of land 15.02 feet wide running contiguous to the Hickory Lane Right-of-Way to the existing Hickory Lane turnaround referenced by Mr. Singleton. Accordingly, the layout provides for frontage on that portion of Hickory Lane which has been determined to meet the requirements of Village Law §7-736. However, utilization of that strip necessitates issuance of a variance because in accordance with §110-59 of the Village Code, lot width is “measured along a line drawn parallel to the street line, *measured at the required front yard setback*” and, in accordance with the same section, the front lot line is defined as “[t]he boundary of the lot along the street on which the lot has frontage”. The front yard setback is 25 feet in the RS-12 Zoning District and, at that point, the resultant lot width is 15.02 feet.

As noted above, and as confirmed by reference to the Site Plan, the lots proposed to be created by a subdivision meet all other requirements of the Code and they will appear to be fully conforming lots improved by substantial quality homes. Because, as acknowledged by Mr. Singleton, the Applicant will be the owner of an easement which allows for utilization of Hickory Lane beyond its existing southerly terminus (turnaround), the Applicant proposes to utilize the existing drive to provide access to Lot 2. By reason of the foregoing, for all intents and purposes, despite the technical layout of Lot 2, the two subdivided lots will provide no visual evidence of the configuration utilized to provide frontage on the turnaround.

It is respectfully submitted that, by reason of the unique facts and circumstances applicable to this application, this application qualifies for issuance of an area variance under

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<sup>2</sup> It must also be noted, as will be demonstrated that the public hearing, that the Applicant will be improving Hickory Lane up to the “turnaround” to standards mandated by the Village including installation of a 40 foot emergency vehicle turnaround which provides a valuable safety feature for the benefit of all residents.

Village Law § 7-712. The standard for area variances is well known to your Board. Village Law § 7-712 b (3), as amended in 1993, provides in pertinent part as follows:

Area variances. (a) The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

(b) 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 also 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.

I believe that the facts and circumstances of this application warrant issuance of relief as requested. I believe it appropriate to take the factors out of order as I wish to first address the issue as to whether the benefit sought by the Applicant can be achieved by some method, feasible for the Applicant to pursue, other than an area variance. As indicated above, the Hickory Lane Right-of-Way is owned by the Village of Mount Kisco, but the Village of Mount Kisco obviously has no intention of improving Hickory Lane (including the area south of the existing turnaround), so as to provide frontage for Lot 2 within the existing Hickory Lane Right-of-Way. Moreover, if through some means (such as acquisition of the Hickory Lane Right-of-Way) Hickory Lane were to be improved to Village standards so as to extend a street beyond the existing turnaround, the possibility of further development would be facilitated. However, as the Village has shown no inclination to improve the Hickory Lane Right-of-Way, this is not feasible option for the Applicant to pursue. The benefit to the Applicant (the ability to develop Lot 2) therefore cannot be achieved by some method, feasible for the Applicant to pursue, other than an area variance.

Another factor to consider is 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. Other than with respect to the "form over substance" lot width issue, the lots proposed to be created by the subdivision are fully conforming lots and they will be very well improved by the Applicant with substantial, quality homes, as the Applicant will



demonstrate at the public hearing. As further noted above, the creation of Lot 2, utilizing this method, will not be a catalyst to further development beyond Lot 2. I therefore believe that it is evident that an undesirable change will not be produced in the character of the neighborhood nor will a detriment to nearby properties be created.

The third factor is whether the requested area variance is substantial. As indicated above, if one were to simply view this in the abstract, it would appear that the variance is substantial simply by reason of the order of magnitude reflected by the actual numbers. However, as also set forth above, this is clearly a matter of form over substance, occasioned only by the manner in which lot width is determined under the Village Code.

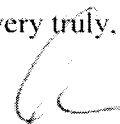
The fourth factor is whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The net result of granting the variance will be to allow one single additional lot to be created which, with the exception of the "form over substance" lot width variance, will be a fully conforming lot to be improved with a first quality new home. There will be no adverse effect or impact on the physical or environmental conditions in the neighborhood.

The fifth factor is whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of your Board, but shall not necessarily preclude the granting of the area variance. While an argument can always be made that any contract vendee creates their own hardship by proposing to purchase and develop a property which might require a variance, it must be noted that the existing Property owner has been placed in a most unusual situation by reason of the unique facts and circumstances applicable to the Property and its relation to Hickory Lane. Moreover, as actually provided for by the statutory language, self-created hardship may be relevant to the decision of the Board but should not necessarily preclude the granting of the area variance.

As set forth above, the general standard for the granting of an area variance is a balancing test whereby your Board is requested to consider 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. The Property sought to be acquired by the Applicant would be capable of being subdivided into two fully conforming lots but for the unique circumstances applicable to Hickory Lane which actually necessitate the application for the variance. By proposing to subdivide in the manner which would be facilitated by the granting of the requested variance, the detriment to the existing property owner and the Applicant as contract vendee brought about by Hickory Lane's status can be overcome thereby providing the benefit sought by the Applicant. With the addition of only one lot and with the construction of new, quality houses through a process which does not facilitate further construction of along Hickory Lane, I am hopeful that the Board will recognize that there is no detriment to the health, safety and welfare of the neighborhood or community and that therefore the variance should be granted.

At the public hearing on this matter, the Applicant will provide information regarding the proposed construction so that the Board can understand the Applicant's commitment to improve Hickory Lane and improve the Property with quality homes which should be viewed as enhancing the neighborhood, and not in any way detracting from it.

Yours very truly,



Charles V. Martabano

cc: Jamie Scoli  
Whitney Singleton, Esq.



SINGLETON, DAVIS & SINGLETON PLLC

ATTORNEYS AT LAW

THOMAS J. SINGLETON, 1930-2015  
ROBERT F. DAVIS  
WHITNEY W. SINGLETON\*  
ALEXANDER D. SALVATO  
\* ALSO MEMBER CONNECTICUT & FLORIDA BARS

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914.666.4400  
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WWW.SDSLAWNY.COM

September 25, 2022

*Via Email: [cmartabano@terrapincap.com](mailto:cmartabano@terrapincap.com)*

Charles V. Martabano, Esq.  
9 Mekeel Street  
Katonah, New York 10536

**Re: Hickory Lane Subdivision**

Dear Charlie:

In furtherance of your request for various documentation on the status of Hickory Lane, I have attached material which is germane to the issues we discussed. Since you had to cancel our Zoom meeting scheduled for last week, I thought I would briefly set forth my analysis and understanding of the situation. The governing provisions stem from state law (Village Law § 7-736, and to a lesser extent Village Law § 7-730), not Village Code.

Village Law Section 7-736 (2) provides in pertinent part:

*“No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plan, or if there be no official map or plan, unless such street or highway is (a) an existing state, county, town or village highway, or (b) a street shown upon a plat approved by the planning board as provided under the provisions of this article, as in effect at the time such plat was approved, or (c) a street on a plat duly filed and recorded in the office of the county clerk or register prior to the appointment of such planning board and the grant to such board of the power to approve plats. Before such permit shall be issued such street or highway shall have been suitably improved to the satisfaction of the planning board in accordance with standards and specifications approved by the appropriate village officers as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street...”*

From my review of the record, there appears to be two distinct applications of § 7-736 (B) to your client's proposed project depending upon whether we are discussing proposed Lot 1A or Lot 1B.

As you can see from the Official Map of Mount Kisco, Hickory Lane has not been placed as a street or highway on the Official Map, since it is neither named (on the Map) or listed (in the Legend) as such. Turning to the alternative means of qualifying, I do not believe that Hickory Lane can be considered an existing state, county, town or village highway since the Village has never maintained same and it is listed as a private road at its entrance. Alternatively, I have examined whether there have been any filed subdivision plats recorded in the county clerk's office reflecting Hickory Lane as street, prior or subsequent to the appointment of a planning board within the Village. There was at least one subdivision plat which reflected Hickory Lane as a road on a filed map.

Please see Filed Plat # 18347, entitled Subdivision of Property prepared for Roswell D & Josephine A. Regan which was approved by the Planning Board in 1973. That plat authorized the division of one improved parcel into two lots on the western side of Hickory Lane, as same is depicted on such plat. The southern terminus of Hickory Lane (cul-de-sac) simultaneously created frontage for your client's parcel along your client's north-western perimeter. While your client's parcel was not created as part of any subdivision on this private road, and therefore possesses no statutory right to utilize same, your client was, however, separately deeded an access right to same. Specifically, your client's chain of title conveyed with it "*an easement of right-of-way in common with others in and to and over Hickory Lane to and including the turnaround thereof as shown on said map, to and from North Bedford Avenue (N/K/A Barker Street) and also in and to said fifty-foot right-of-way running in a southerly direction from the southerly end of Hickory Lane.*" (See Liber 11582 Page 342, referencing survey filed at #7478).

Accordingly, your client's existing parcel has frontage (and access) on a road on a filed subdivision plat at Hickory Lane's southern terminus (turnaround). Such frontage would qualify for a building permit issuance under Village Law § 7-736 (2) for its existing lot layout or for proposed Lot 1A, but does not qualify for proposed Lot 1B. Proposed Lot 1B would not have statutorily required frontage on a street shown on a plat approved by the planning board, as an easement providing access is insufficient under state law. As explained by Justice Dickerson of the Westchester County Supreme Court in *Village of Irvington v. Sokolik*, (13 Misc.3d 1220(A) (2006) 831 N.Y.S.2d 351):

*"Village Law § 7-736(2) provides that "[n]o permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plan". An easement or right-of-way providing access does not satisfy the requirements of Village Law § 7-736" [See e.g., *Joseph v. Romano*, 208 A.D.2d 926, 617 N.Y.S.2d 868 (2d Dept.1994); *Weiderspiel v. Leifeld*, 197 A.D.2d 781, 602 N.Y.S.2d 712 (3d Dept.1993); *Goldstein v. Zoning Board of Appeals*, 78 A.D.2d 538, 432 N.Y.S.2d 202 (2d Dept.1980)].*

However, as we discussed, the above does not foreclose the applicant from proceeding with its application, but the application would either have to be modified to become compliant or relief would be needed. Village Law § 7-736 (3) incorporates a mechanism for relief from strict



compliance with Village Law § 7-736 (2). Specifically, Village Law § 7-736 (3) provides in pertinent part:

*“The applicant for such a permit may appeal from the decision of the administrative officer having charge of the issue of permits to the board of appeals or other similar board, in any village which has established a board having the power to make variances or exceptions in zoning regulations for: (a) an exception if the circumstances of the case do not require the structure to be related to existing or proposed streets or highways, and/or (b) an area variance pursuant to section 7-712-b of this chapter, and the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on zoning regulations...”*

The Mount Kisco Zoning Board of Appeals has entertained requests for variances under Village Law § 7-736 in the past, with some applicants being granted relief, while others were denied. However, those applications were for existing lots, not for further subdivision of lots. As the statute expressly provides, the standard of review for the Zoning Board would be the same statutory criteria utilized for all area variances under Village Law § 7-712-b.

If there are additional subdivision plats that have been filed impacting this parcel or changing the above analysis, please advise me. My review of your client’s title report does not reflect same. Also, I am also amenable to re-scheduling the Zoom meeting.

Sincerely yours,

*Whitney Singleton*

Whitney Singleton

WS:dds  
Enclosures



RECEIVED

Date: \_\_\_\_\_

MAR 28 2023

Case No.: \_\_\_\_\_

Fee: \_\_\_\_\_

Zoning Board of Appeals  
Village/Town of Mount Kisco

Date Filed: \_\_\_\_\_

Village/Town of Mount Kisco  
Municipal Building  
104 Main Street, Mt. Kisco, NY 10549

**Zoning Board of Appeals  
Application**

Appellant: Jamie Scoli  
Address: 28 Scotts Circle, Purchase NY 10577  
Address of subject property (if different): Hickory Lane, Mt Kisco NY 10549

Appellant's relationship to subject property: \_\_\_\_\_ Owner \_\_\_\_\_ Lessee  Other

Property owner (if different): Richard Sporn  
Address: 1111 Studewood St unit 602, Houston TX 77008

TO THE CHAIRMAN, ZONING BOARD OF APPEALS: An appeal is hereby taken from the decision of the Building Inspector, Peter Miley dated February 27, 2023 . Application is hereby made for the following:

Variation **or** \_\_\_\_\_ Interpretation of Section § 110-8. C.(1)(d) of the Code of the Village/Town of Mount Kisco,

to permit the:  Erection; \_\_\_\_\_ Alteration; \_\_\_\_\_ Conversion; \_\_\_\_\_ Maintenance of A proposed dwelling in connection with a 2-lot subdivision.

\_\_\_\_\_ in accordance with plans filed on (date) February 22, 2023 for Property ID # 69.75-1-4 located in the RS-12 Zoning District. The subject premises is situated on the East side of (street) Hickory Lane \_\_\_\_\_ in the Village/Town of Mount Kisco, County of Westchester, NY.

Does property face on two different public streets? Yes/No No  
(If on two streets, give both street names) \_\_\_\_\_

Type of Variance sought: \_\_\_\_\_ Use  Area

Is the appellant before the Planning Board of the Village of Mount Kisco with regard to this property? Yes

Is there an approved site plan for this property? No in connection with a \_\_\_\_\_ Proposed or \_\_\_\_\_ Existing building; erected (yr.) \_\_\_\_\_

Size of Lot: 354.2 feet wide 117 feet deep Area 41,313

Size of Building: at street level N/A feet wide N/A feet deep

Height of building: N/A Present use of building: N/A

Does this building contain a nonconforming use? N/A Please identify and explain: \_\_\_\_\_

Is this building classified as a non-complying use? N/A Please identify and explain: \_\_\_\_\_

Has any previous application or appeal been filed with this Board for these premises?  
Yes/No? No

Was a variance ever granted for this property? No If so, please identify and explain: \_\_\_\_\_

Are there any violations pending against this property? No If so, please identify and explain: \_\_\_\_\_

Has a Work Stop Order or Appearance Ticket been served relative to this matter?  
\_\_\_\_ Yes or  No Date of Issue: \_\_\_\_\_

Have you inquired of the Village Clerk whether there is a petition pending to change the subject zoning district or regulations? Yes, No petition pending



**I submit the following attached documents, drawings, photographs and any other items listed as evidence and support and to be part of this application:**

The following items **MUST** be submitted:

- a) Attached hereto is a copy of the order or decision (Notice of Denial) issued by the Building Inspector or duly authorized administrative official issued on 2/27/23 upon which this application is based.
- b) Copy of notice to the administrative official that I have appealed, setting forth the grounds of appeal and have requested the application to be scheduled for a public hearing.
- c) A typewritten statement of the principal points (facts and circumstances) on which I base my application with a description of the proposed work.
- d) Ten (10) sets of site plans, plat or as-built survey drawings professionally signed and sealed (as may be required).
- e) A block diagram with street names, block and lot numbers, and street frontage showing all property affected within 300' of the subject property, with a North point of the compass indicated.
- f) A full list of names and addresses of the owners of all property shown on the above noted block diagram that lie within or tangent to the 300' radius from the subject property.
- g) A copy of the Public Notice for the public hearing of this application.
- h) A sworn Affidavit of Mailing, duly notarized, that a true copy of said Public Notice has been sent by mail to all property owners within 300 feet of this premises at least 10 days prior to the public hearing.

**NOTE: APPLICANT MUST CAUSE A TRUE COPY OF THE PUBLIC NOTICE TO BE PUBLISHED IN THE OFFICIAL NEWSPAPER OF THE VILLAGE AT LEAST 15 DAYS PRIOR TO THE PUBLIC HEARING.**

- i) A true copy of the filed deed and/or signed lease or contract for the use of the subject property.
- \*j) At least two sets of unmounted photographs, 4" by 6" in size, showing actual conditions on both sides of street, between intersecting streets. Print street names and mark premises in question.
- \*k) A floor plan of the subject building with all the necessary measurements.
- \*l) A longitudinal section of the subject building and heights marked thereon as well as front elevations.

\* Optional - As Needed

I hereby depose & say that all the above statements and the statements contained in the papers submitted herewith are true.

[Signature]  
(Appellant to sign here)

Sworn to before me this day of: February 28, 2023

Notary Public, Westchester, County, NY

[Signature]



[TO BE COMPLETED IF APPELLANT IS NOT THE PROPERTY OWNER IN FEE]

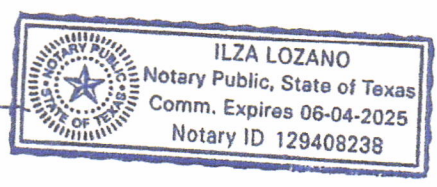
State of ~~New York~~ <sup>TEXAS</sup> }  
County of ~~Westchester~~ } ss

Being duly sworn, <sup>HARRIS</sup> deposes and say that he resides at <sup>TEXAS</sup> 1111 Studewood St, Houston, TX in the County of ~~Westchester~~, in the State of ~~New York~~, that he is the owner in fee of all that certain lot, piece or parcel of land situated, lying and being in the Village of Mount Kisco, County of Westchester aforesaid and known and designated as number 69.75-1-4 and that he hereby authorized Jamie Scali to make the annexed application in his behalf and that the statements contained in said application are true.

3/27/23

[Signature]  
(sign here)  
Richard Sporn

[Signature]  
NOTARY



03-27-2023

Date

**AFFIDAVIT OF MAILING**

STATE OF NEW YORK

}

}SS.:

COUNTY OF WESTCHESTER

}

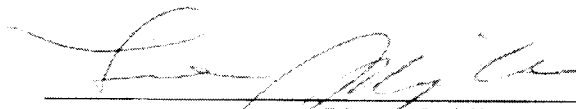
Rosalynn Scoli being duly sworn, deposes and says:

I reside at 28 Scott Circle, Purchase, NY 10577  
On April 8 2023 I served a notice of hearing, a copy of which is attached hereto and labeled Exhibit A, upon persons whose names are listed in a schedule of property owners within 300 feet of the subject property identified in this notice. A copy of this schedule of property owners' names is attached hereto and labeled Exhibit B. I placed a true copy of such notice in a postage paid property addressed wrapper addressed to the addresses set forth in Exhibit B, in a post office or official depository under the exclusive care and custody of the United States Post Office, within the County of Westchester.

Rosalynn Scoli

Sworn to before me on this

10<sup>th</sup> day of April 2024

  
(Notary Public)

FILOMENA MANGANIELLO  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01MA4897162  
Qualified in Westchester County  
My Commission Expires June 01, 2023

71.20-1-1  
Ferguson, Elizabeth Dary & Ferguson, Scott  
207 Barker St  
Mt Kisco, NY 10549

71.20-1-2  
B&F 59 LLC  
148 McLain St  
Bedford Corners, NY 10549

71.20-1-3  
Boyd, Laura  
216 Barker St  
Bedford Corners, NY 10549

71.20-1-4  
Steinberg, Richard  
146 South Liberty Dr  
Stony Point, NY 10980

71.20-1-5  
Celaj, Gzim & Nokshiqi, Ariana  
138 McLain St  
Bedford Corners, NY 10549

71.20-1-6  
Sporn, Richard & Sporn, Gayle  
1111 Studewood St  
Houston, TX 77008

71.20-1-7  
Borghi, Christopher & Borghi, Susan  
134 McLain St  
Mt Kisco, NY 10549

71.20-1-8  
Ernest Trust, Henick  
130 McLain St  
Bedford Corners, NY 10549

71.20-1-9  
Schwarz, Peter & Schwarz, Tanya  
2 Hickory Ln  
Bedford Corners, NY 10549

71.20-1-10  
RCF 2 Acquisition Trust  
c/o US Bank Trust NationalAsso  
810 7th Ave  
New York, NY 10019

71.20-1-11  
Uptown Investors LP  
126 McLain St  
Bedford Corners, NY 10549

71.20-2-3  
Neppala Living Trust  
59 Penwood Rd  
Bedford Corners, NY 10549

71.20-2-4  
Dweck, Jay  
55 Penwood Rd  
Bedford Corners, NY 10549

71.20-2-5  
Charles, Fern & Charles, Dirkson  
11 Edwards Ct  
Bedford Corners, NY 10549

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**MAR 28 2023**

**Zoning Board of Appeals  
Village/Town of Mount Kisco**

500'  
71.20-1-6  
Hickory Lane



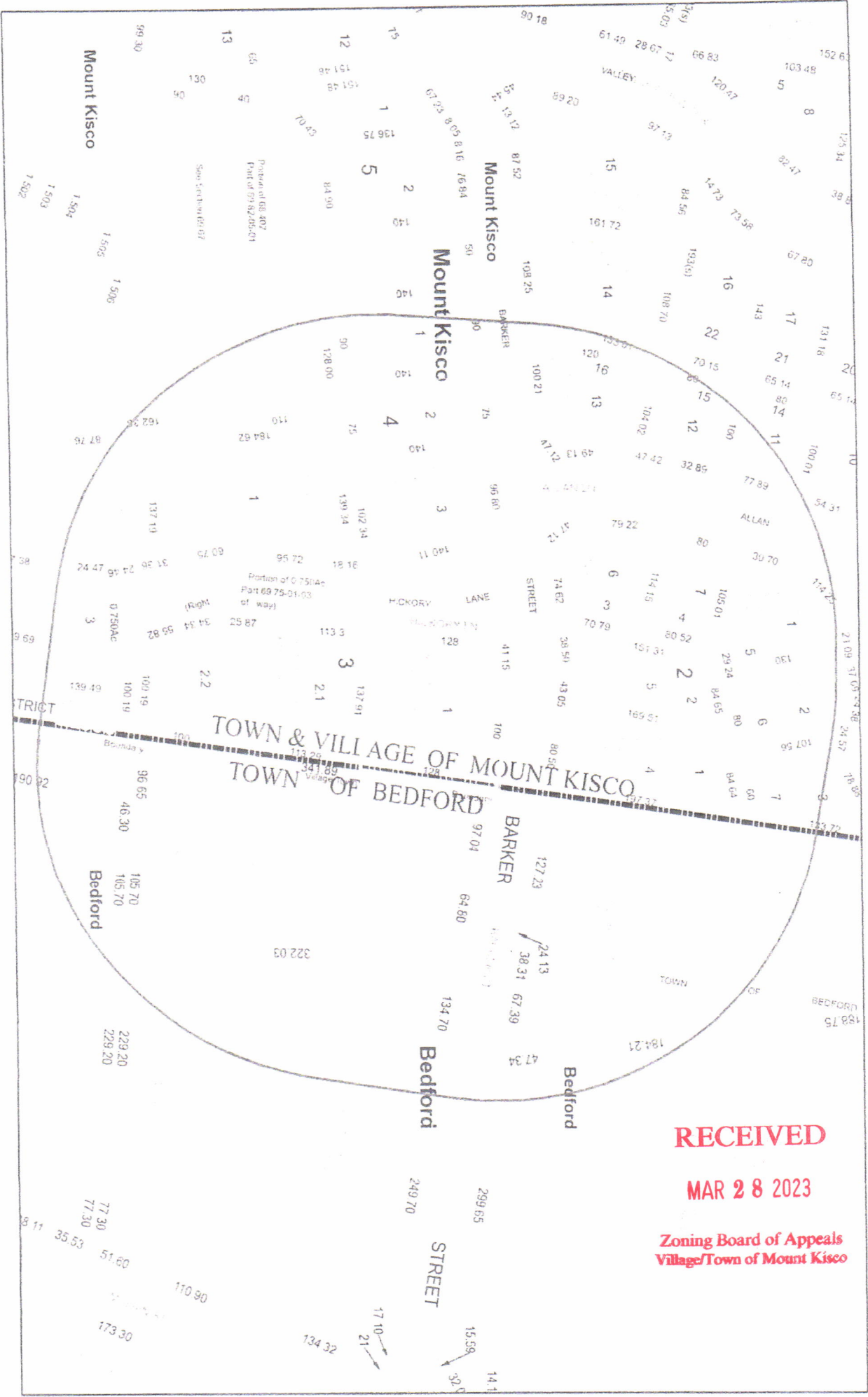
OWNERNAME	PROPADDRESS	PROPCITY	PROPZIP	PROPPRINTKEY	C/O	Mailing Address	City	State	Zip
Greene, Robert K	20 Hickory Ln	MOUNT KISCO	10549	69.67-4-3					
Golub, Helen L	Hickory Ln	MOUNT KISCO	10549	69.67-3-2.2		14 Hickory Lane	Mt. Kisco	NY	10549
Rubin George N Jr	28 Allan Ln	MOUNT KISCO	10549	69.67-2-2					
Ciccione, Umberto	165 Barker St	MOUNT KISCO	10549	69.67-1-14					
Lawless Graeme	12 Hickory Ln	MOUNT KISCO	10549	69.75-1-2					
Village/Town of Mount Kisc	Hickory Ln Right of Way	MOUNT KISCO	10549	69.75-1-3		104 Main Street	Mt.Kisco	NY	10549
Sporn, Richard A	Mclain St	MOUNT KISCO	10549	69.75-1-4		1111 Studewood St., Unit 602	The Villages	FL	32163
Moustakas Mylene	20 Allan Ln	MOUNT KISCO	10549	69.67-2-1					
Griffee, Steven	32 Allan Ln	MOUNT KISCO	10549	69.67-2-3					
Pitrulle, Frank	176 Barker St	MOUNT KISCO	10549	69.67-4-1					
Oris, Peter	16 Hickory Ln	MOUNT KISCO	10549	69.75-1-1					
Lin Mei Fang	3 Allan Ln	MOUNT KISCO	10549	69.67-1-13					
Caputo Christopher S	182 Barker St	MOUNT KISCO	10549	69.67-4-2					
Hsu, Chien	7 Allan Ln	MOUNT KISCO	10549	69.67-1-12					
Golub Kenneth L	14 Hickory Ln	MOUNT KISCO	10549	69.67-3-2.1					
Maliarakis, Stamatios	18 Hickory Ln	MOUNT KISCO	10549	69.67-3-1	N/A				
Santos Kirk S	203 Barker St	MOUNT KISCO	10549	69.67-2-4					
Pappas John M	6 Allan Ln	MOUNT KISCO	10549	69.67-2-6					
Troiano, Rose Ann	10 Allan Ln	MOUNT KISCO	10549	69.67-2-7					
Reyes Raul R	15 Allan Ln	MOUNT KISCO	10549	69.67-1-10					
Patel, Vishnu	197 Barker St	MOUNT KISCO	10549	69.67-2-5					
Boxer, Harold S	11 Allan Ln	MOUNT KISCO	10549	69.67-1-11					
Angarano Stephanie	16 Valley View Terr	MOUNT KISCO	10549	69.67-1-16					

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**MAR 28 2023**

Zoning Board of Appeals  
Village/Town of Mount Kisco

18 Hickory Ln. ID: 69.67-3-1 (Mount Kisco)

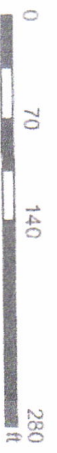


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**MAR 28 2023**  
**Zoning Board of Appeals**  
**Village/Town of Mount Kisco**

February 22, 2023

Tax parcel data was provided by local municipality. This map is generated as a public service to Westchester County residents for general information and planning purposes only, and should not be relied upon as a sole informational source. The County of Westchester hereby disclaims any liability from the use of this GIS mapping system by any person or entity. Tax parcel boundaries represent approximate property line location and should NOT be interpreted as or used in lieu of a survey or property boundary description. Property descriptions must be obtained from surveys or deeds. For more information please contact local municipality assessor's office.

1:1,500



**Westchester County GIS**

GIS  
<http://giswww.westchester.gov>  
 Information Office Building  
 148 Machine Avenue, Room 214  
 Yonkers, New York 10604

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Zoning Board of Appeals  
Village/Town of Mount Kisco





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MAR 28 2023

Zoning Board of Appeals  
Village/Town of Mount Kisco

PUBLIC NOTICE

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village/Town of Mount Kisco, New York will hold a Public Hearing on the 18<sup>th</sup> day of April, 2023 at the Municipal Building, Mount Kisco, New York beginning at 7:00 PM pursuant to the Zoning Ordinance on the Appeal of

Jamie Scoli  
28 Scott Circle  
Purchase, NY 10577

from the decision of Peter J. Miley, Building Inspector dated February 27, 2023 denying the Appellant's application to subdivide the property referenced below into two lots. The property involved is known as (no number, vacant Sporn lot) Hickory Lane, Mount Kisco, NY 10549 and described on the Village Tax Map as Section 69.5; Block 1; Lot 4; and is located on the east side of Hickory Lane in an RS-12 Zoning District. Said appeal is being made pursuant to Village Law §7-736 (3) to obtain a variance for one of the lots proposed to be created through the subdivision process from the provisions of §110-8 C (1)(d) which requires a 100-foot minimum lot width.

Wayne Spector, Chair  
Zoning Board of Appeals  
Village/Town of Mount Kisco



AFFIDAVIT OF PUBLICATION FROM

State of Wisconsin
County of Brown, ss.:

On the 3 day of April in the year 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared [Signature], personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed, the instrument.

[Signature] being duly sworn says that he/she is the principal clerk of THE JOURNAL NEWS, a newspaper published in the County of Westchester and the State of New York, and the notice of which the annexed is a printed copy, on the editions dated:

Zone: Westchester Run Dates: 04/03/2023

[Signature]
Signature

Sworn to before me, this 3 day of April, 2023

[Signature]
Notary Public, State of Wisconsin, County of Brown

[Signature]
My commission expires

Legend:

WESTCHESTER: Amawalk, Ardsley, Ardsley on Hudson, Armonk, Baldwin Place, Bedford, Bedford Hills, Brewster, Bnardiff Manor, Bronxville, Buchanan, Carmel, Chappaqua, Cold Spring, Crompond, Cross River, Croton Falls, Croton on Hudson, Dobbs Ferry, Eastchester, Elmsford, Gamson, Goldens Bridge, Granite Springs, Greenburg, Harrison, Hartsdale, Hastings, Hastings on Hudson, Hawthorne, Irvington, Jefferson Valley, Katonah, Lake Peekskill, Larchmont, Lincolnville, Mahopac, Mahopac Falls, Mamaroneck, Millwood, Mohegan Lake, Montrose, Mount Kisco, Mount Vernon, New Rochelle, North Salem, Ossining, Patterson, Peekskill, Pelham, Pleasantville, Port Chester, Pound Ridge, Purchase, Purdys, Putnam Valley, Rye, Scarsdale, Shenorock, Shrub Oak, Somers, South Salem, Tarrytown, Thornwood, Tuckahoe, Valhalla, Verplanck, Waccabuc, White Plains, Yorktown Heights, Yorkers

ROCKLAND: Blaauvelt, Congers, Garnerville, Haverstraw, Hillburn, Monsey, Nanuet, New City, Nyack, Orangeburg, Palisades, Pearl River, Piermont, Pomona, Sloatsburg, Sparkill, Spring Valley, Stony Point, Suffern, Tallman, Tappan, Thiells, Tomkins Cove, Valley Cottage, West Haverstraw, West Nyack

Ad Number: 0005648064



**PUBLIC NOTICE**

**PLEASE TAKE NOTICE** that the zoning Board of Appeals of the Village/Town of Mount Kisco, New York will hold a Public Hearing on the 18th day of April, 2023 at the Municipal Building, Mount Kisco, New York beginning at 7:00 PM pursuant to the Zoning Ordinance on the Appeal of  
Jamie Sun  
28 Scott Circle  
Purchase, NY 10577

from the decision of Peter J. Miley, Building Inspector dated February 27, 2023 denying the Applicant's application to subdivide the property referenced below into two lots. The property involved is known as the number, vacant Sporn lot) Hickory Lane, Mount Kisco, NY 10549 and described on the Village Tax Map as Section 69.5, Block 1, Lot 4; and is located on the east side of Hickory Lane in an RS-12 Zoning District. Said appeal is being made pursuant to Village Law § 7736 (3) to obtain a variance for one of the lots proposed to be created through the subdivision process from the provisions of S110-8 C (i) (d) which requires a 100-foot minimum lot width.

Wayne Spector, Chair  
Zoning Board of Appeals  
Village/Town of Mount Kisco

**0005648064**

State of New York )  
 ) ss:  
County of Westchester)

AFFIDAVIT OF POSTING

RECEIVED

APR 11 2023

Zoning Board of Appeals  
Town of Mount Kisco

**Gilmar Palacios Chin**, being duly sworn, says that on the 11<sup>th</sup> day of April 2023, he conspicuously fastened up and posted in seven public places, in the Village/Town of Mount Kisco, County of Westchester, a printed notice of which the annexed is a true copy, to Wit: ---

Municipal Building –  
104 Main Street

X

Public Library  
100 Main Street

X

Fox Center

X

Justice Court – Green Street  
40 Green Street

X

Mt. Kisco Ambulance Corp  
310 Lexington Ave


X

Carpenter Avenue Community House  
200 Carpenter Avenue


X

Leonard Park Multi Purpose Bldg

X

  
\_\_\_\_\_  
**Gilmar Palacios Chin**

Sworn to before me this 11<sup>th</sup> day of April 2023

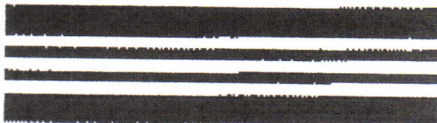
  
\_\_\_\_\_  
Notary Public

MICHELLE K. RUSSO  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01RU6313298  
Qualified in Putnam County  
My Commission Expires 10-20-2026

Hickory Lane



\*P05596313\*



\*DED2\*

19



\*\*\* DO NOT REMOVE \*\*\*

WESTCHESTER COUNTY RECORDING AND ENDORSEMENT PAGE  
(THIS PAGE FORMS PART OF THE INSTRUMENT)

THE FOLLOWING INSTRUMENT WAS ENDORSED FOR THE RECORD AS FOLLOWS:

TYPE OF INSTRUMENT DED-DEED FEE PAGE 4 TOTAL PAGES 4  
(SEE CODES FOR DEFINITIONS)

STAT'Y CHARGE	<u>5.75</u>
REC'ING CHARGE	<u>12.00</u>
RECMT FUND	<u>4.75</u>
EA 5217	<u>25.00</u>
TP-584	<u>5.00</u>
CROSS-REF.	<u>0.00</u>
MISC.	<u>          </u>

MORTG. DATE	<u>          </u>
MORTG. AMT	<u>          </u>
EXEMPT	YES <u>    </u> NO <u>    </u>

LIBER: <u>11592</u>
PAGE : <u>342</u>

REC'D TAX ON ABOVE MTGE:	
YONKERS	\$ <u>          </u>
BASIC	\$ <u>          </u>
ADDITIONAL	\$ <u>          </u>
SUBTOTAL	\$ <u>          </u>
MTA	\$ <u>          </u>
SPECIAL	\$ <u>          </u>
TOTAL PAID	\$ <u>          </u>

THE PROPERTY IS SITUATED  
IN WESTCHESTER COUNTY,  
NEW YORK IN THE:  
TOWN OF MT. KISCO  
TOWN OF BEDFORD

TOTAL PAID
52.50

\$ 65000.00  
CONSIDERATION

SERIAL NO.           

DWELLING      1-6      OVER

RECEIVED:  
TAX AMOUNT \$ 260.00  
TRANSFER TAX# 0005974

     DUAL TOWN  
     DUAL COUNTY/STATE  
     HELD  
     NOT HELD           

TITLE COMPANY NUMBER: 01

EXAMINED BY SBG4 RECORDING DATE 11/08/96

TERMINAL CTRL# 96313R055 TIME 15:37

DATE RETURNED           

RECEIVED

MAR 28 2023

Zoning Board of Appeals  
Village/Town of Mount Kisco

WITNESS MY HAND AND OFFICIAL SEAL

*Leonard N. Spargo*

LEONARD N. SPARGO  
WESTCHESTER COUNTY CLERK

*[Handwritten mark]*



BS  
FUT  
STAT 575

P

THIS INDENTURE, made the 31<sup>st</sup> day of October, 1996

BETWEEN Donald V. and Kathleen Courson Bittenheim, as husband and wife, residing at 235 Walker Street, Lenox, Massachusetts 02140

party of the first part, and Richard A. and Gayle Sporn, as husband and wife, residing at 134 McClain Street, Mt. Kisco, New York 10549

Being the same premises conveyed to the grantor by deed from Arthur T. Houlihan by deed dated 10/22/55 and recorded 10/31/55 in Liber 5520 Page 395

party of the second part,

WITNESSETH, that the party of the first part, in consideration of Ten Dollars

(\$10.00) dollars

paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the

See Schedule A Attached

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid, AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

Richard A. Sporn

Donald V. Bittenheim  
Donald V. Bittenheim  
Kathleen Courson Bittenheim  
Kathleen Courson Bittenheim

NOTARY PUBLIC  
NEW YORK STATE



MASSACHUSETTS  
STATE OF NEW YORK, COUNTY OF BERKSHIRE ss:

On the 31 day of October 19 96, before me personally came Donald V. and Kathleen Coursen Battenheim

to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged that they executed the same.

*Richard A. Sporn*  
COMMISSIONER EXPIRES - July 26, 2002

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19 before me personally came to me known, who, being by me duly sworn, did depose and say that he resides at

that he is the of

the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19 before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19 before me personally came the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at

that he knows to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw

execute the same; and that he, said witness, at the same time subscribed his name as witness thereto.

### BARGAIN AND SALE DEED

WITH COVENANT AGAINST GRANTOR'S ACTS

Title No. 804160

TO Donald V. Battenheim and Kathleen Coursen Battenheim  
to Richard Sporn and Gayle Sporn

Mt. Kisco Bedford  
SECTION 68.75 71.20  
BLOCK 69.5 1 1  
LOT 4 5  
COUNTY ~~Westchester~~ Westchester  
STREET ADDRESS Hickory Lane  
*Mount Road on Hickory Lane*

Return to the office of  
**COMMONWEALTH LAND TITLE INSURANCE COMPANY**

RETURN BY MAIL TO

*Richard A. SPORN*  
*521 Fifth Ave. 24th Floor*  
*New York, New York*  
*10135*

Recorded at the Request of  
**ROYAL ABSTRACT**  
501 FIFTH AVENUE, SUITE 1940  
NEW YORK, N.Y. 10110  
TEL. (212) 376-0990  
804160

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

SCHEDULE A

All that lot or parcel of land, situated in the Village of Mount Kisco, Town of Bedford, County of Westchester and State of New York, containing in area 0.948 acres situated on the easterly side of Hickory Lane, more particularly bounded and described as follows:

BEGINNING at a point on the easterly side of Hickory Lane (the same being shown and delineated on a map entitled "Survey of Property owned by Sinjon Inc. situate in the Village of Mt. Kisco Town of Bedford Westchester County N.Y." made by Fowler Engineering Corporation, Revised Sept. 5, 1951, and Dec. 4, 1951, and recorded on September 18, 1951, at the Division of Land Records of the County Clerk's Office of Westchester County, N.Y., and therein numbered 7478) distant 359.03 feet southerly from North Bedford Avenue as measured along the easterly line of said Hickory Lane, and running thence along land now or formerly of Schloss S.  $75^{\circ} 36' 50''$  E. 148.84 feet, and running thence along land now or formerly of Amendola to and along land now or formerly of Carelli S.  $21^{\circ} 51' 10''$  W. 383.76 feet, and running thence along land now or formerly of Semple N.  $58^{\circ} 22' 30''$  W. 118.72 feet, and running thence along land now or formerly of Buttenheim to and along a fifty-foot (50') right-of-way N.  $21^{\circ} 51' 10''$  E. 230.73 feet and 19.69 feet along the arc of a circle curving to the left on a radius of 215.15 feet to the southerly end of Hickory Lane, and running thence along the turnaround at the southerly end of Hickory Lane in an easterly and then northerly direction 139.49 feet along the arc of a circle curving to the left on a radius of 50 feet to the point or place of beginning.

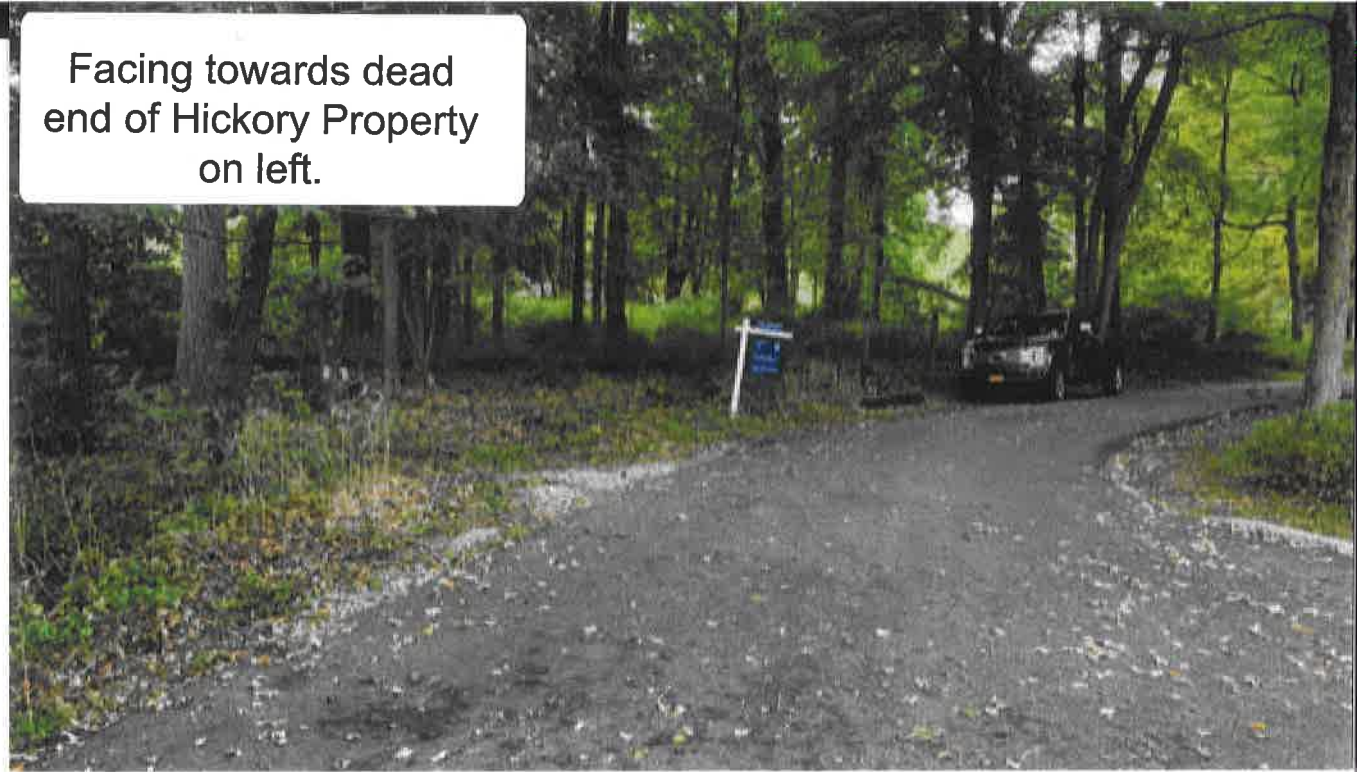
TOGETHER with an easement of right-of-way in common with others in and to and over Hickory Lane to and including the turnaround thereof as shown on said map, to and from North Bedford Avenue, and also in and to said fifty-foot right-of-way running in a southerly direction from the southerly end of Hickory Lane.

TOGETHER also with the right to lay, construct, erect, use and maintain gas, water and sewerage mains, electric lines, poles and appurtenances in said Hickory Lane and said fifty-foot right-of-way and the right to connect with and use free of charge any of said facilities now existing in said Hickory Lane and said fifty-foot right-of-way.

BUTTENHE.001

Premises known as Vacant Land on Hickory Lane and designated as Sheet 71.20 Block 1 Lot 6 in the Town of Bedford and designated as Sheet 69.75 Block 1 Lot 4 in the Town of Mt. Kisco shown on the Westchester County Land and Tax Map.

Facing towards dead  
end of Hickory Property  
on left.



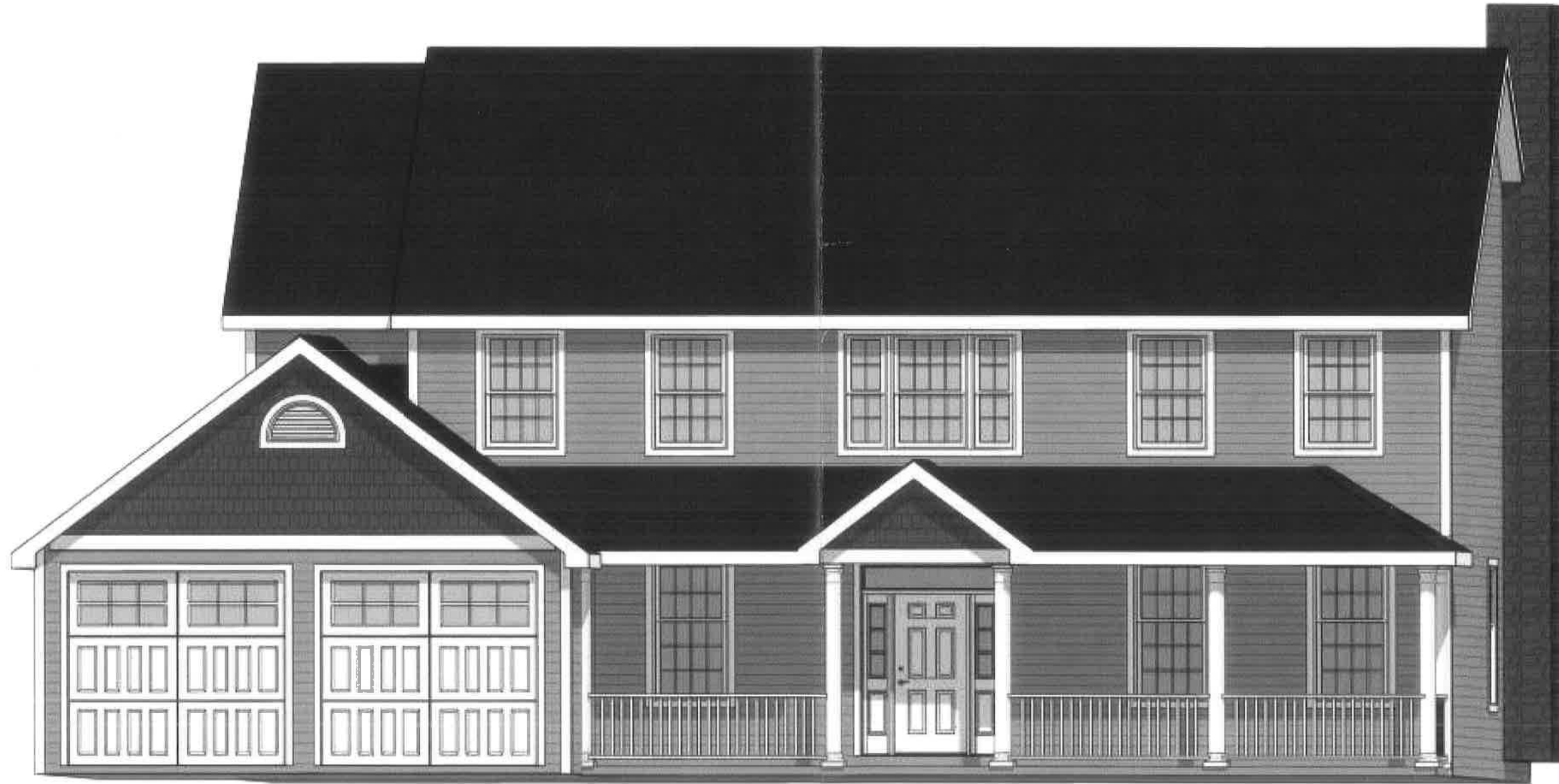
End of Hickory facing  
back towards Barker St  
Property on right

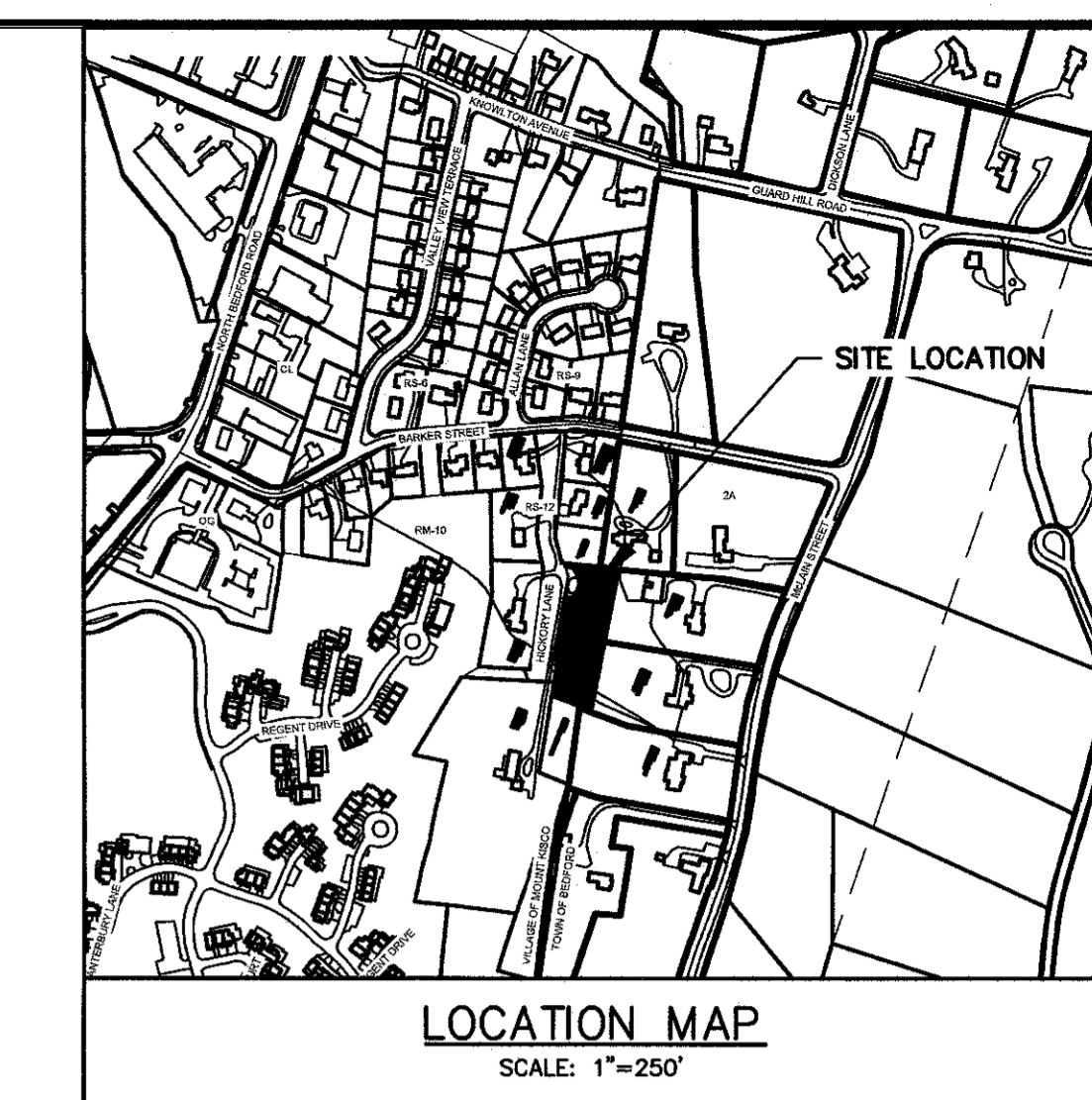
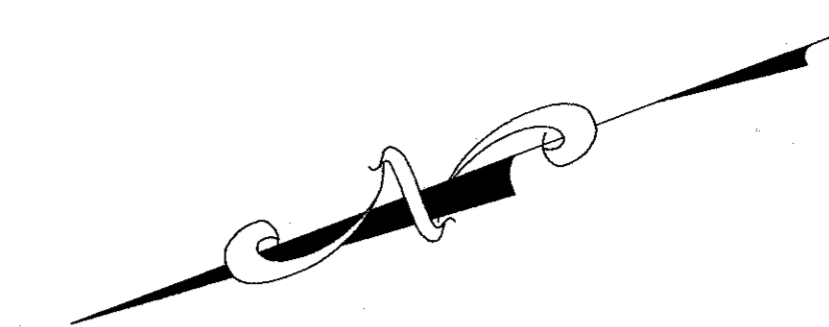
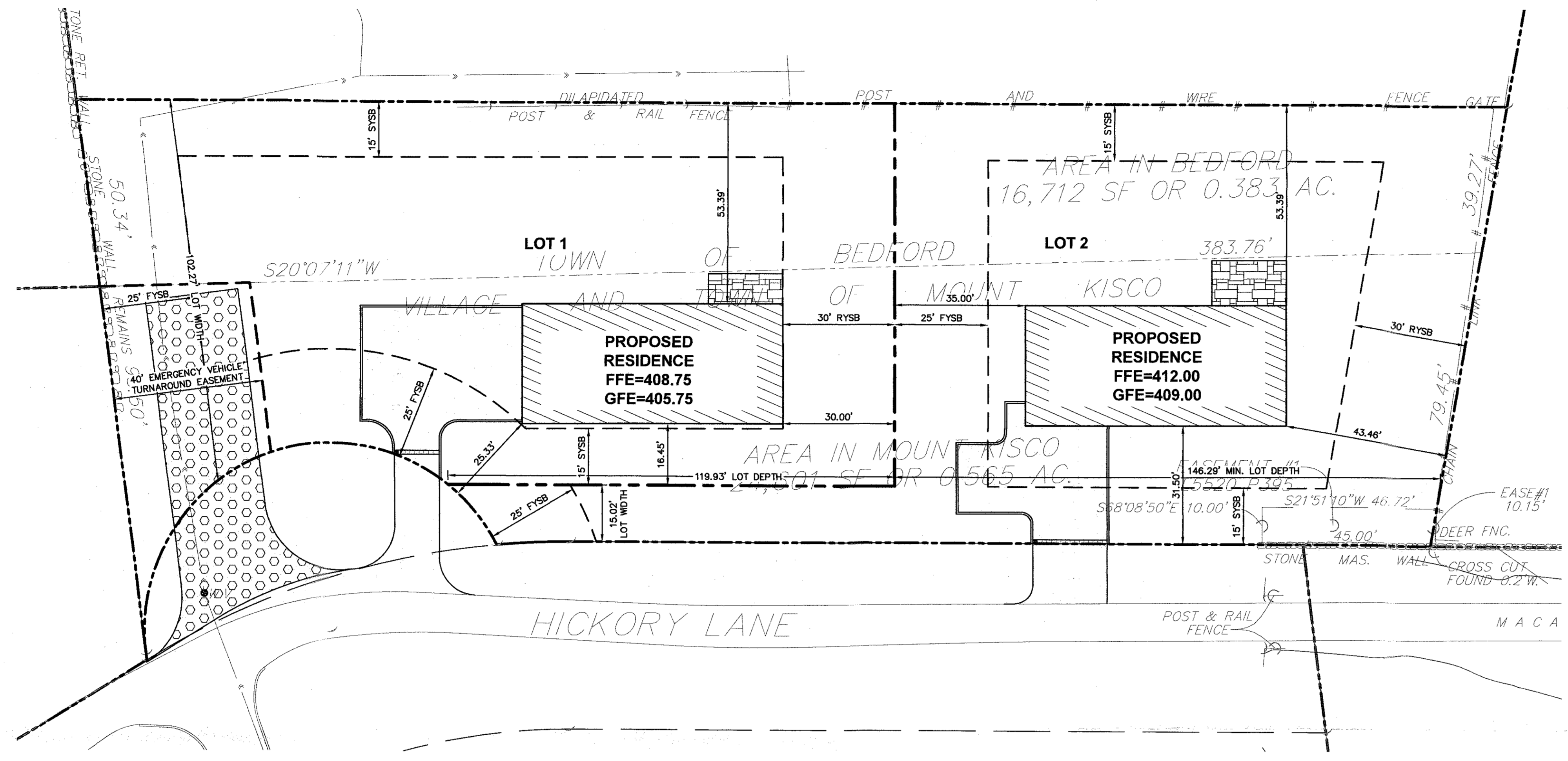


LOT 1



LOT 2





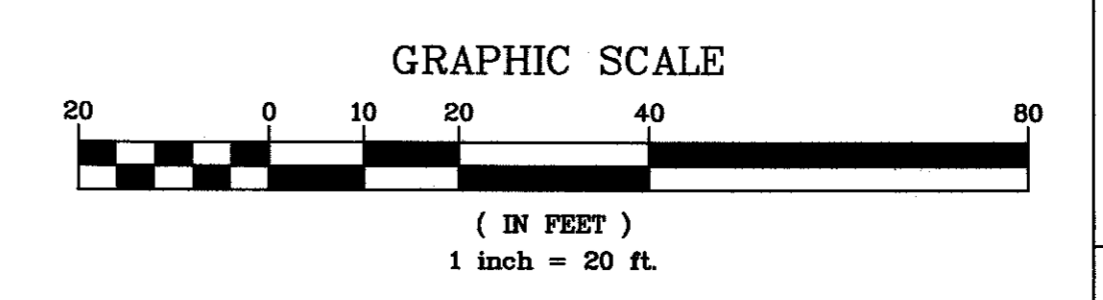
**LEGEND**

- PROPERTY LINE
- PROPOSED BELGIAN BLOCK CURB
- PROPOSED ASPHALT DRIVEWAY
- PROPOSED WALKWAY/PATIO
- PROPOSED GRASSPAV

ZONING ANALYSIS TABLE				
SBL: 69.75-1.4 SBL: 71.20-1.6	DISTRICT: RS-12 Low-Density One-Family Residential			
REGULATION	Required	Existing	Proposed Lot 1	Proposed Lot 2
Min. Lot Area (s.f)	12,500	41,313	21,611	19,702
Min. Lot Depth (ft.)	100	117	119.93	146.29
Min. Lot Width (ft.)	100	354.20	102.27	15.02*
<b>Min. Yards</b>				
- Front (ft.)	25	-	25.33	35.00
- Side 1 (ft.)	15	-	16.45	31.50
- Side 2 (ft.)	15	-	53.39	53.39
- Rear (ft.)	30	-	30.00	43.46
<b>Height</b>				
- Feet	35	-	≤35	≤35
- Stories	2.5	-	≤2.5	≤2.5
<b>Max Bldg. Coverage (sf)</b>				
- Lot 1 (2150+2(21,811-9,000))	4,672	-	2,240	-
- Lot 2 (2150+2(19,702-9,000))	4,290	-	-	2,240
Max Development Coverage (sf)	40%	0%	19%	18%
* Variance Required				

**PROPERTY OWNER & APPLICANT INFORMATION:**  
 PROPERTY OWNER:  
 RICHARD SPORN  
 1111 STUDEWOOD STREET UNIT 602  
 HOUSTON TX 77008  
 APPLICANT:  
 JAMES SCOLI  
 28 SCOTTIS CIRCLE  
 PURCHASE NY 10577

EXISTING INFORMATION SHOWN HEREON PROVIDED BY STEPHEN JOHNSON L.S. DATED FEBRUARY 28, 2022



PROJECT: PROPOSED 2-LOT SUBDIVISION HICKORY LANE VILLAGE OF MOUNT KISCO WESTCHESTER COUNTY - NEW YORK

**SITE PLAN**

**HUDSON ENGINEERING & CONSULTING, P.C.**  
 45 Knowlwood Road - Suite 201  
 Elmsford, New York 10523  
 T: 914-909-0420  
 F: 914-560-2086 © 2022

DATE: 08/18/22  
 SCALE: 1" = 20'  
 DESIGNED BY: T.K.  
 CHECKED BY: M.S.  
 SHEET NO. C-2

THIS PLAN NOT VALID FOR CONSTRUCTION WITHOUT ENGINEER'S SEAL & SIGNATURE

ANY ALTERATIONS OR REVISIONS OF THESE PLANS, UNLESS DONE BY OR UNDER THE DIRECTION OF THE NYS LICENSED AND REGISTERED ENGINEER THAT PREPARED THEM, IS A VIOLATION OF THE NYS EDUCATION LAW.

**RECEIVED**

Date: \_\_\_\_\_

Case No.: \_\_\_\_\_

Fee: **\$750.00**

**MAR 28 2023**

Date Filed: \_\_\_\_\_

**Zoning Board of Appeals  
Village/Town of Mount Kisco**  
Village/Town of Mount Kisco  
Municipal Building  
104 Main Street, Mt. Kisco, NY 10549

**Zoning Board of Appeals  
Application**

Appellant: **DP 21, LLC**  
Address: **333 North Bedford Road, Suite 145, Mount Kisco, NY 10549**  
Address of subject property (if different): **333 North Bedford Road, Mount Kisco, NY 10549**

Appellant's relationship to subject property:  Owner \_\_\_\_\_ Lessee \_\_\_\_\_ Other \_\_\_\_\_

Property owner (if different): **Same as above**  
Address: \_\_\_\_\_

TO THE CHAIRMAN, ZONING BOARD OF APPEALS: An appeal is hereby taken from the decision of the Building Inspector, **Peter Miley Memorandum to the Planning Board** dated **09/06/2019**. Application is hereby made for the following:

Variation **or** \_\_\_\_\_ Interpretation of Section **See attached list** of the Code of the Village/Town of Mount Kisco,

to permit the: \_\_\_\_\_ Erection;  Alteration; \_\_\_\_\_ Conversion; \_\_\_\_\_ Maintenance of **Refer to list of required variances in cover letter and project narrative**

\_\_\_\_\_ in accordance with plans filed on (date) **12/21/2020** for Property ID # **See below** located in the **ML & CL** Zoning District. The subject premises is situated on the **west** side of (street) **North Bedford Road** in the Village/Town of Mount Kisco, County of Westchester, NY.

Does property face on two different public streets? Yes/No **No**  
(If on two streets, give both street names) \_\_\_\_\_

Type of Variance sought: \_\_\_\_\_ Use  Area

**Mount Kisco (Section 69.50, Block 2, Lot 1), (Section 69.51, Block 1, Lot 3) and (Section 69.43, Block 1, Lots 2 & 3) and Bedford (Section 71.12, Block 2, Lot 36)**



Is the appellant before the Planning Board of the Village of Mount Kisco with regard to this property? Yes

Is there an approved site plan for this property? No in connection with a X Proposed or X Existing building; erected (yr.) \_\_\_\_\_

333 NBR: 1,964.5      333 NBR: 1,124.3      333 NBR: 37.70  
Size of Lot: 309 NBR: 71 feet wide 309 NBR: 203 feet deep Area 309 NBR: 0.42  
383 NBR: 125      383 NBR: 120      383 NBR: 0.58

Size of Building: at street level 333 NBR: 1,240      333 NBR: 595  
309 NBR: 65 feet wide 309 NBR: 65 feet deep  
383 NBR: 135      383 NBR: 45

Height of building: See below Present use of building: Grocery store/Retail/Family Recreation/  
Auto Storage/Warehouse/Office  
Top of ShopRite sign wall 35'-0", top of main building 27'-3"

**309 NBR is 16' tall on the east side and 31'-4" on the west side, 383 NBR is 21'**

Does this building contain a nonconforming use? No Please identify and explain: \_\_\_\_\_

Is this building classified as a non-complying use? No Please identify and explain: \_\_\_\_\_

Has any previous application or appeal been filed with this Board for these premises?  
Yes/No? Yes

Was a variance ever granted for this property? Yes If so, please identify and explain:  
Area Variances as part of ZBA Decision 20-06 granted on 12/18/2020

Are there any violations pending against this property? No If so, please identify and explain: \_\_\_\_\_

Has a Work Stop Order or Appearance Ticket been served relative to this matter?  
\_\_\_\_ Yes or X No Date of Issue: \_\_\_\_\_

Have you inquired of the Village Clerk whether there is a petition pending to change the subject zoning district or regulations? No

**I submit the following attached documents, drawings, photographs and any other items listed as evidence and support and to be part of this application:**

The following items **MUST** be submitted:

- a) Attached hereto is a copy of the order or decision (Notice of Denial) issued by the Building Inspector or duly authorized administrative official issued on \_\_\_\_\_ upon which this application is based.
- b) Copy of notice to the administrative official that I have appealed, setting forth the grounds of appeal and have requested the application to be scheduled for a public hearing.
- c) A typewritten statement of the principal points (facts and circumstances) on which I base my application with a description of the proposed work.
- d) Ten (10) sets of site plans, plat or as-built survey drawings professionally signed and sealed (as may be required).
- e) A block diagram with street names, block and lot numbers, and street frontage showing all property affected within 300' of the subject property, with a North point of the compass indicated.
- f) A full list of names and addresses of the owners of all property shown on the above noted block diagram that lie within or tangent to the 300' radius from the subject property.
- g) A copy of the Public Notice for the public hearing of this application.
- h) A sworn Affidavit of Mailing, duly notarized, that a true copy of said Public Notice has been sent by mail to all property owners within 300 feet of this premises at least 10 days prior to the public hearing.

**NOTE: APPLICANT MUST CAUSE A TRUE COPY OF THE PUBLIC NOTICE TO BE PUBLISHED IN THE OFFICIAL NEWSPAPER OF THE VILLAGE AT LEAST 15 DAYS PRIOR TO THE PUBLIC HEARING.**

- i) A true copy of the filed deed and/or signed lease or contract for the use of the subject property.
- \*j) At least two sets of unmounted photographs, 4" by 6" in size, showing actual conditions on both sides of street, between intersecting streets. Print street names and mark premises in question.
- \*k) A floor plan of the subject building with all the necessary measurements.
- \*l) A longitudinal section of the subject building and heights marked thereon as well as front elevations.

\* Optional - As Needed

I hereby depose & say that all the above statements and the statements contained in the papers submitted herewith are true.

[Signature]  
(Appellant to sign here)

Sworn to before me this day of: 13<sup>th</sup> of March, 20 23

Notary Public, Cindy Gentile, Westchester County, NY

**CINDY GENTILE**  
Notary Public, State of New York  
Registration No. 01GE6419898  
Qualified in Putnam County  
Commission Expires 7/26/25

[TO BE COMPLETED IF APPELLANT IS NOT THE PROPERTY OWNER IN FEE]

State of New York            }  
County of Westchester       } ss

Being duly sworn, deposes and say that he resides at \_\_\_\_\_ in the County of Westchester, in the State of New York, that he is the owner in fee of all that certain lot, piece or parcel of land situated, lying and being in the Village of Mount Kisco, County of Westchester aforesaid and known and designated as number \_\_\_\_\_ and that he hereby authorized \_\_\_\_\_ to make the annexed application in his behalf and that the statements contained in said application are true.

\_\_\_\_\_  
(sign here)

**THE JOURNAL NEWS  
NORTHERN EDITION**

DIRECT DIAL TO:  
Phone – (914)694-5123  
Heidi - (888) 516-9220 ext. 3662  
E-Mail – tjn-lhlegals@gannet.com

**ORDER FOR LEGAL NOTICES**

The attached legal notice is to run in The Journal News, Northern Edition, started with the issue dated March 6, 2023 for a total of 1 insertion.

**BILL TO:** JMC, PLLC

**ADDRESS:** 120 Bedford Road, Armonk, NY 10504

**PHONE #:** (914) 273-5225

**Please send Affidavits of Publication to:** **Number of proof – 3**

**Village of Mount Kisco  
104 Main Street  
Mount Kisco, New York 10549  
Attention: Michelle Russo, Secretary ZBA**

Signed: \_\_\_\_\_

Legal Advertising must be reserved by 5:00 p.m. on the fourth day in advance of publication date, and must be in this office by 12:00 noon on the third day in advance of publication date. Sundays and Holidays excluded.

When sending legal notices by mail to The Journal News, please specify on the envelope:

Legal Advertising Department

To avoid errors, notices should be typed double space on separate sheets of paper.

Three affidavits will be furnished unless otherwise specified. Proof will be furnished upon request.



**PUBLIC NOTICE**

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village/Town of Mount Kisco, New York will hold a Public Hearing on the 21st day of March 20 23 at the Municipal Building, Mount Kisco, New York, beginning at 7:00 PM pursuant to the Zoning Ordinance on the Appeal of **DP 21, LLC**

\_\_\_\_\_  
(Name of Applicant)  
**333 North Bedford Road, Suite 145, Mount Kisco, NY 10549**  
\_\_\_\_\_  
(Address of Applicant)

from the decision of Peter J. Miley, Building Inspector, dated 09/06/2019 (Date of Denial Letter) denying the application dated to permit the items on the attached list (Proposed Work).

The property involved is known as The Park 333 (333 North Bedford Road, Mount Kisco, NY 10549) (Address of Property)

and described on the Village Tax Map as Section \_\_\_\_\_ Block \_\_\_\_\_ Lot \_\_\_\_\_ Mount Kisco (Section 69.50, Block 2, Lot 1), (Section 69.51, Block 1, Lot 3) and (Section 69.43, Block 1, Lots 2 & 3) and Bedford (Section 71.12, Block 2, Lot 36) and is located on the west side of North Bedford Road in a \_\_\_\_\_ east/west/n/s (Street Name)

ML & CL Zoning District. Said Appeal is being made to obtain a variance from Section(s) refer to the attached list of the (Identify specific zoning code section number(s))

Code of the Village/Town of Mount Kisco, which requires refer to the attached list

Harold Boxer, Chair  
Zoning Board of Appeals  
Village/Town of Mount Kisco

## REVISION TO STATE ZONING LAWS ENACTED

**The rules governing the issuance of area variances have not been as clearly established by the Court as those for use variances. New Town Law, Section 267-b(3)- and Village Law, Section 7-712 (b) (3) establish a new, statutory process for the granting of area variances. There is no “test” as such for granting of area variances. The requirement that the applicant show “practical difficulty” or “significant economic injury” is gone. Instead, when an applicant requests an area variance, the new law requires the Board of Appeals to balance two elements: the benefit to the applicant from the variance, and the detriment to the health, safety, and welfare of the community or neighborhood that would occur if the variance was to be granted.**

**The provision set forth five factors for the Board to consider in balancing these interests.**

- (1) Whether an undesirable change will be produced in the character of the neighborhood or whether a detriment to nearby properties will be created by the granting of the variance.**
- (2) Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.**
- (3) Whether the requested 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.**
- (5) Whether the alleged difficulty was self-created (this will not necessarily preclude the granting of the area variance).**

**RECEIVED**

Date: \_\_\_\_\_

Case No.: \_\_\_\_\_

Fee: **\$750.00**

**MAR 28 2023**

Date Filed: \_\_\_\_\_

**Zoning Board of Appeals**  
**Village/Town of Mount Kisco**  
Village/Town of Mount Kisco  
Municipal Building  
104 Main Street, Mt. Kisco, NY 10549

**Zoning Board of Appeals**  
**Application**

Appellant: **DP 62, LLC**

Address: **333 North Bedford Road, Suite 145, Mount Kisco, NY 10549**

Address of subject property (if different): **309 North Bedford Road, Mount Kisco, NY 10549**

Appellant's relationship to subject property:  Owner \_\_\_\_\_ Lessee \_\_\_\_\_ Other \_\_\_\_\_

Property owner (if different): **Same as above**

Address: \_\_\_\_\_

TO THE CHAIRMAN, ZONING BOARD OF APPEALS: An appeal is hereby taken from the decision of the Building Inspector, **Peter Miley Memorandum to the Planning Board** dated **09/06/2019**. Application is hereby made for the following:

Variation **or** \_\_\_\_\_ Interpretation of Section **See attached list** of the Code of the Village/Town of Mount Kisco,

to permit the: \_\_\_\_\_ Erection;  Alteration; \_\_\_\_\_ Conversion; \_\_\_\_\_ Maintenance of **Refer to list of required variances in cover letter and project narrative**

\_\_\_\_\_ in accordance with plans filed on (date) **12/21/2020**

for Property ID # **See below** located in the **ML & CL** Zoning District.

The subject premises is situated on the **west** side of (street) **North Bedford Road**

\_\_\_\_\_ in the Village/Town of Mount Kisco, County of Westchester, NY.

Does property face on two different public streets? Yes/No **No**

(If on two streets, give both street names) \_\_\_\_\_

Type of Variance sought: \_\_\_\_\_ Use  Area \_\_\_\_\_

**Mount Kisco (Section 69.50, Block 2, Lot 1), (Section 69.51, Block 1, Lot 3) and (Section 69.43, Block 1, Lots 2 & 3) and Bedford (Section 71.12, Block 2, Lot 36)**



Is the appellant before the Planning Board of the Village of Mount Kisco with regard to this property? Yes

Is there an approved site plan for this property? No in connection with a X Proposed or X Existing building; erected (yr.) \_\_\_\_\_

Size of Lot: **333 NBR: 1,964.5** **333 NBR: 1,124.3** **333 NBR: 37.70**  
**309 NBR: 71** feet wide **309 NBR: 203** feet deep Area **309 NBR: 0.42**  
**383 NBR: 125** **383 NBR: 120** **383 NBR: 0.58**

Size of Building: at street level **333 NBR: 1,240** **333 NBR: 595**  
**309 NBR: 65** feet wide **309 NBR: 65** feet deep  
**383 NBR: 135** **383 NBR: 45**

Height of building: See below Present use of building: **Grocery store/Retail/Family Recreation/**  
**Auto Storage/Warehouse/Office**  
**Top of ShopRite sign wall 35'-0", top of main building 27'-3"**

**309 NBR is 16' tall on the east side and 31'-4" on the west side, 383 NBR is 21'**

Does this building contain a nonconforming use? No Please identify and explain: \_\_\_\_\_

Is this building classified as a non-complying use? No Please identify and explain: \_\_\_\_\_

Has any previous application or appeal been filed with this Board for these premises?  
Yes/No? Yes

Was a variance ever granted for this property? Yes If so, please identify and explain:  
**Area Variances as part of ZBA Decision 20-06 granted on 12/18/2020**

Are there any violations pending against this property? No If so, please identify and explain: \_\_\_\_\_

Has a Work Stop Order or Appearance Ticket been served relative to this matter?  
\_\_\_\_ Yes or X No Date of Issue: \_\_\_\_\_

Have you inquired of the Village Clerk whether there is a petition pending to change the subject zoning district or regulations? No



**RECEIVED**

Date: \_\_\_\_\_

Case No.: \_\_\_\_\_

Fee: **\$750.00**

**MAR 28 2023**

Date Filed: \_\_\_\_\_

Zoning Board of Appeals  
Village/Town of Mount Kisco  
Municipal Building  
104 Main Street, Mt. Kisco, NY 10549

**Zoning Board of Appeals  
Application**

Appellant: **DP 102, LLC**

Address: **333 North Bedford Road, Suite 145, Mount Kisco, NY**

Address of subject property (if different): **383 North Bedford Road, Mount Kisco, NY 10549**

Appellant's relationship to subject property: \_\_\_\_\_ Owner  Lessee \_\_\_\_\_ Other \_\_\_\_\_

Property owner (if different): **PHILAR REALTY CO., LLC**

Address: **116 Woodridge Road, Mount Kisco, NY 10549**

TO THE CHAIRMAN, ZONING BOARD OF APPEALS: An appeal is hereby taken from the decision of the Building Inspector, **Peter Miley Memorandum to the Planning Board** dated **09/06/2019**. Application is hereby made for the following:

Variation or \_\_\_\_\_ Interpretation of Section **See attached list** of the Code of the Village/Town of Mount Kisco,

to permit the: \_\_\_\_\_ Erection;  Alteration; \_\_\_\_\_ Conversion; \_\_\_\_\_ Maintenance of **Refer to list of required variances in cover letter and project narrative**

\_\_\_\_\_ in accordance with plans filed on (date) **12/20/2022**

for Property ID # **See below** located in the **ML & CL** Zoning District.

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Type of Variance sought: \_\_\_\_\_ Use  Area

**Mount Kisco (Section 69.50, Block 2, Lot 1), (Section 69.51, Block 1, Lot 3) and (Section 69.43, Block 1, Lots 2 & 3) and Bedford (Section 71.12, Block 2, Lot 36)**

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Auto Storage/Warehouse/Office**  
**Top of ShopRite sign wall 35'-0", top of main building 27'-3"**

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\_\_\_\_ Yes or X No Date of Issue: \_\_\_\_\_

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**I submit the following attached documents, drawings, photographs and any other items listed as evidence and support and to be part of this application:**

The following items **MUST** be submitted:

- a) Attached hereto is a copy of the order or decision (Notice of Denial) issued by the Building Inspector or duly authorized administrative official issued on \_\_\_\_\_ upon which this application is based.
- b) Copy of notice to the administrative official that I have appealed, setting forth the grounds of appeal and have requested the application to be scheduled for a public hearing.
- c) A typewritten statement of the principal points (facts and circumstances) on which I base my application with a description of the proposed work.
- d) Ten (10) sets of site plans, plat or as-built survey drawings professionally signed and sealed (as may be required).
- e) A block diagram with street names, block and lot numbers, and street frontage showing all property affected within 300' of the subject property, with a North point of the compass indicated.
- f) A full list of names and addresses of the owners of all property shown on the above noted block diagram that lie within or tangent to the 300' radius from the subject property.
- g) A copy of the Public Notice for the public hearing of this application.
- h) A sworn Affidavit of Mailing, duly notarized, that a true copy of said Public Notice has been sent by mail to all property owners within 300 feet of this premises at least 10 days prior to the public hearing.

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- \*j) At least two sets of unmounted photographs, 4" by 6" in size, showing actual conditions on both sides of street, between intersecting streets. Print street names and mark premises in question.
- \*k) A floor plan of the subject building with all the necessary measurements.
- \*l) A longitudinal section of the subject building and heights marked thereon as well as front elevations.

\* Optional - As Needed

I hereby depose & say that all the above statements and the statements contained in the papers submitted herewith are true.

\_\_\_\_\_  
(Appellant to sign here)

Sworn to before me this day of: March 20, 2023

Notary Public, [Signature], County, NY

AnnaMaria Ruggiere  
Notary Public, State of New York  
Registration #01RU636612  
Qualified In Westchester County  
Commission Expires Oct. 30, 2024

2025 a.r.

[TO BE COMPLETED IF APPELLANT IS NOT THE PROPERTY OWNER IN FEE]

State of New York            }  
County of Westchester    } ss

Being duly sworn, deposes and say that he resides at 116 Woodridge Rd  
Mount Kisco NY 10949 in the  
County of Westchester, in the State of New York, that he is the owner in fee of all that  
certain lot, piece or parcel of land situated, lying and being in the Village of Mount  
Kisco, County of Westchester aforesaid and known and designated as number  
383 N Bedford Rd, Mt Kisco and that he hereby authorized DP Joy LLC to make  
the annexed application in his behalf and that the statements contained in said application  
are true.

[Signature]  
\_\_\_\_\_  
(sign here)



Site Planning	Environmental Studies
Civil Engineering	Entitlements
Landscape Architecture	Construction Services
Land Surveying	3D Visualization
Transportation Engineering	Laser Scanning

March 28, 2023

Chairman Wayne Spector and  
Members of the Zoning Board of Appeals  
c/o Ms. Michelle Russo  
Zoning Board of Appeals Secretary  
Village of Mount Kisco Zoning Board of Appeals  
104 Main Street  
Mount Kisco, NY 10549

**RECEIVED**

**MAR 28 2023**

**Zoning Board of Appeals  
Village/Town of Mount Kisco**

RE: JMC Project 18118  
The Park 333 (ShopRite Expansion)  
333 North Bedford Road  
Town/Village of Mount Kisco, NY

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

We represent Diamond Properties in making an application for certain improvements to their commercial center located at The Park 333 at 333 North Bedford Road (NBR) in the Town/Village of Mount Kisco, New York. In accordance with the Town/Village protocol, we applied for several site variances from the Town/Village Zoning Code which were received. The variances were approved by ZBA Decision 20-06, dated December 18, 2020, and are still valid for approval. This Decision was then reapproved by the Zoning Board of Appeals (ZBA) on January 17, 2023. We are providing this submission to provide an update to the Board regarding the latest site plans and its impact on the previously approved variances.

As you may be aware, the approved development is before the Village's Planning Board for an amended approval which includes some proposed modifications to the site plans. The major modification is the proposed internal roadway connection to the adjacent property to the north (Kohl's property) which will allow vehicles to travel between the two properties without having to utilize Route 117. The previously approved roundabout at the northern site driveway has been enlarged and modified to accept this proposed internal roadway connection. Additionally, a new channelized right turn lane (entrance slip lane) is proposed at the northern driveway to 333 North Bedford Road. The last modifications relate to shifting the previously approved retaining wall to reduce the wall height as well as some minor parking lot modifications to curbs and parking.

We have attached an updated list of all the variances for the development comparing the approved variances from the ZBA Decision 20-06 to the amended site development plans. As you can see from our variance comparison table, there is either no change to the approved variance or less relief sought than the approved variances compared to the current site plans with the exception of one variance requiring further clarification.

Additionally, we have included the previously approved ZBA Decisions, which include tables comparing the original requested variances to the proposed variances.

We request to appear before the Village's Zoning Board of Appeals present the latest site plans as well as to correct the ZBA Decision 20-06 to reflect the lot coverage shown on the approved site plans. Accordingly, we are pleased to submit ten (10) copies of the following referenced documents for Zoning Board of Appeals review:

1. Copy of the original approving ZBA Decision 20-06, dated December 18, 2020.
2. JMC Project Narrative, last revised March 21, 2023.
3. Updated Variance Comparison Table.
4. JMC Drawing List (2 full size and 8 half scale):

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Revision</u>
C-000	"Cover Sheet"	12/21/2020
C-010	"Overall Existing Conditions Plan"	12/21/2020
C-100	"Overall Layout Plan"	12/21/2020
C-110	"Layout Plan"	12/21/2020
C-120	"Layout Plan"	12/21/2020
C-130	"Layout Plan"	12/21/2020
C-140	"Layout Plan"	12/21/2020

We trust that the enclosed documents are sufficient for the Zoning Board of Appeals review and look forward to discussing the project at the next available meeting. If you have any questions or require additional information, please do not hesitate to contact our office at (914) 273-5225.

Sincerely,

JMC Planning Engineering Landscape Architecture & Land Surveying PLLC

*Stephen Spina*

Stephen Spina, PE  
Senior Project Manager

cc: Mr. Jim Diamond  
Mr. Jay Black  
Mr. Guillermo Rivas  
Neil Alexander, Esq.  
Mr. Michael Gallin, AIA, LEED AP  
Mr. Richard Skriloff



RECEIVED

DEC 18 2020

Mount Kisco  
Office of the Village Clerk

**Zoning Board of Appeals  
of the Village/Town of Mount Kisco**

-----X

In the Matter of the Application of

Case No.: ZBA 20-6<sup>1</sup>

**DP 21, LLC, DP 62, LLC, and  
PHILAR REALTY CO., LLC**

----- X

**1. Location of Property:**

**Property ID:** 69.50-2-1; 69.43-1-2; and 69.51-1-3

333, 383, and 309 North Bedford Road

**2. Description of Request:**

The proposed project involves three separate tax parcels, 333 North Bedford Road which is located in the ML (Light Manufacturing) Zoning District with sections that and fronting North Bedford Road and located in the CL (Limited Commercial) Zoning District; 383 North Bedford Road which is located in the CL (Limited Commercial) Zoning district; and 309 North Bedford Road which is located in the CL (Limited Commercial) Zoning District. Proposed includes the merger/ subdivision of property lines and the realignment of the ingresses and egresses to the property (333 N. Bedford Rd.) that are located at both the north (opposite Foxwood Cir.) and south (Ice House Rd.) entrances. 383 N. Bedford Rd. is proposed to demolish the existing building to accommodate the realignment of the north entrance and construct a new 5,528 sq. ft. retail building and parking area. 309 N. Bedford Rd. will demolish part of the existing structure and reconfigure the parking area to accommodate the entrance/ egress located at Ice House Rd. The proposed project includes a Change of Use from office/warehouse to a "Full-Service Grocery Store" and alterations to the existing Grand Prink New York (GPNY) site which is now classified as a Family Recreational Facility. GPNY requires a change of use permit for a section of office space that is expanding to Family Recreational Facility. The change in sq. ft. amount (GPNY) is going from 118,096 sq. ft. to 121,913 sq. ft., an increase of 3,817 sq. ft.

333 North Bedford Road also includes an existing Membership Club that is subject to a Special Permit issued by the Planning Board. Parking requirements for Membership Clubs are now determined by the Planning Board and subject to Institute of Transportation Engineers review or other recognized parking sources per specific us prior to a parking determination. Membership clubs are subject to § 11-30 J and § 110-46, as well as the following:

---

<sup>1</sup> This application was amended and supplemented from its original form with only one applicant/appellant (DP 21, LLC) to include other property owners, DP 62, LLC and PHILAR REALTY CO., LLC.

110-24 B (2) Special Permit Uses

(a) Membership clubs conducting leisure-time and recreation activities for use by members, customers or clients on a periodic or seasonal basis, subject to the provisions of §§ 110-30J and 110-46 of this chapter, as well as the following:

[1] Submission at the time of application of a detailed exterior and interior layout plan and a schedule of activities and maximum capacities;

[2] Demonstration by the Applicants that potential traffic generation shall be within the reasonable capacity of the existing or planned road or street providing access, and that traffic circulation, exit and entrance drives are laid out to minimize traffic hazards and nuisances; and

[3] Demonstration by the Applicant that the membership club will be appropriate in the proposed location and will have no material adverse effect on existing or prospective conforming development, and the proposed site is adequate in size for the use.

Parking requirements for Family Recreation Facilities shall be determined by the Planning based upon specific standards from the Institute of Transportation Engineers or other recognized parking sources per specific use.

Parking requirements for "Full-Service Grocery Stores" requires not less than 1 space per 200 square feet of gross floor area.

3. **Zoning of Property:**

ML (Light Manufacturing) Zoning District (333 - Portion) -AND-  
CL (Limited Commercial) Zoning District (333 - Portion, 383 and 309)

4. **Variance(s) Requested:**

A. **Original Requested Relief:** By site, the variances originally requested were:

1) 333 North Bedford Road

- i. A variance from the requirement that the store [full-service grocery store], inclusive of all square footage devoted to the tenant, operator, and/or affiliated uses shall occupy at least 35,000 square feet but not more than 75,000 square feet as set forth in Village Code 110-24(B)(2)(b)(1).

	<u>Required</u>	<u>Proposed</u>	<u>Variance Needed</u>
Maximum Storage	75,000 Sq.Ft.	85,652 Sq.Ft.	10,652 Sq.Ft.

- ii. A variance from the requirement that Full-Service Grocery Store offer 429 parking spaces under Village Code 110.

	<u>Required</u>	<u>Proposed</u>	<u>Variance Needed</u>
Parking Spaces	429 Spaces	176 Spaces	253 Spaces

- iii. A variance from the maximum development coverage of 70% as set forth in Village Code 110-24(C)(3).

	<u>Required</u>	<u>Proposed</u>	<u>Variance Needed</u>
Maximum Development Coverage	70%	73.1%	3.1%

- iv. A variance from the minimum lot width of 100 ft. as set forth in Village Code 110-19(C)(4).

	<u>Required</u>	<u>Proposed</u>	<u>Variance Needed</u>
Minimum Lot Width	100 ft.	50 ft.	50 ft.

- v. A variance from the minimum front yard buffer of 20 ft. as set forth in Village Code 110-19(C)(6).

	<u>Required</u>	<u>Proposed</u>	<u>Variance Needed</u>
Minimum Front Yard Buffer	20 ft.	0 ft.	20 ft.

- vi. A variance from the minimum side yard buffer as set forth in Village Code 110-19(C)(6).

	<u>Required</u>	<u>Proposed</u>	<u>Variance Needed</u>
Minimum Side Yard Buffer	5 ft.	2 ft.	3 ft.

**2) 309 North Bedford Road**

- i. A variance from the requirement that premises offer 30 parking spaces under Village Code 110.

	<u>Required</u>	<u>Proposed</u>	<u>Variance Needed</u>
Parking Spaces	30 Spaces	19 Spaces	11 Spaces

- ii. A variance from the minimum lot width as set forth in Village Code 110-19(C)(4).

	<u>Required</u>	<u>Proposed</u>	<u>Variance Needed</u>
Minimum Lot Width	100 ft.	71 ft.	29 ft.

- iii. A variance from the minimum front yard buffer as set forth in Village Code 110-19(C)(6).

	<u>Required</u>	<u>Proposed</u>	<u>Variance Needed</u>
Minimum Front Yard Buffer	20 ft.	7 ft.	13 ft.

- iv. A variance from the minimum side yard buffer as set forth in Village Code 110-19(C)(6).

	<u>Required</u>	<u>Proposed</u>	<u>Variance Needed</u>
Minimum Side Yard Buffer	5 ft.	0 ft.	5 ft.

- v. A variance from the minimum side yard setback as set forth in Village Code 110-19(C)(5).

	<u>Required</u>	<u>Proposed</u>	<u>Variance Needed</u>
Minimum Side Yard Setback	10 ft.	7 ft.	3 ft.

**3) 383 North Bedford Road**

- i. A variance from the maximum development coverage of 80% as set forth in Village Code 110-19(C)(3).

	<u>Required</u>	<u>Proposed</u>	<u>Variance Needed</u>
Maximum Development Coverage	80%	83.1%	3.1%

- ii. A variance from the minimum front yard buffer as set forth in Village Code 110-19(C)(6).
- |                           | <u>Required</u> | <u>Proposed</u> | <u>Variance Needed</u> |
|---------------------------|-----------------|-----------------|------------------------|
| Minimum Front Yard Buffer | 20 ft.          | 12 ft.          | 8 ft.                  |
- iii. A variance from the minimum rear yard buffer as set forth in Village Code 110-19(C)(6).
- |                          | <u>Required</u> | <u>Proposed</u> | <u>Variance Needed</u> |
|--------------------------|-----------------|-----------------|------------------------|
| Minimum Rear Yard Buffer | 5 ft.           | 0 ft.           | 5 ft.                  |
- iv. A variance from the minimum side yard buffer as set forth in Village Code 110-19(C)(6).
- |                          | <u>Required</u> | <u>Proposed</u> | <u>Variance Needed</u> |
|--------------------------|-----------------|-----------------|------------------------|
| Minimum Side Yard Buffer | 5 ft.           | 0 ft.           | 5 ft.                  |
- v. A variance from the minimum side yard setback as set forth in Village Code 110-19(C)(5).
- |                           | <u>Required</u> | <u>Proposed</u> | <u>Variance Needed</u> |
|---------------------------|-----------------|-----------------|------------------------|
| Minimum Side Yard Setback | 10 ft.          | 0.8 ft.         | 9.2 ft.                |
- vi. A variance from the minimum rear yard setback as set forth in Village Code 110-19(C)(5).
- |                           | <u>Required</u> | <u>Proposed</u> | <u>Variance Needed</u> |
|---------------------------|-----------------|-----------------|------------------------|
| Minimum Rear Yard Setback | 10 ft.          | 0 ft.           | 10 ft.                 |
- vii. A variance from requirement that compactor, dumpster or container shall be located no closer to the property lines than is permitted for an accessory structure in said district as set forth in Village Code 110-30(D)(1) and where under Village Code 110-31(G)(1), no accessory structure, except a sign for which a permit, pursuant to Chapter 89 of this Code, has been granted and which is erected pursuant to a site plan approved by the Planning Board, shall be located or project nearer to any street line or side lot line than does the principal structure on the lot.

	<u>Required</u>	<u>Proposed</u>	<u>Variance Needed</u>
Compactor, Dumpster or Container Located in Rear Yard Adjacent to Side Lot Line	Prohibited	Allowed	Allowed

**B. Revised Requested Relief:** The variances originally requested were re-evaluated by the Applicants, Planning Board and professional staff in an effort to improve the plan layout, improve traffic efficiency and achieve greater zoning compliance. The result was a significant reduction in the number and degree of variances sought by Applicants. The revised requested relief (10 area variances) is reflected in the *right-hand* column of the schedule attached hereto as Exhibit A, with numerical assignment to each of the still need variances, and no numbers assigned to variances that were eliminated.

5. **Dates of Public Hearings:** July 21, 2020 and December 11, 2020 (and a joint meeting with Planning Board on October 8, 2020)

**Date of Action:** December 15, 2020

6. **Comments Received at the Public Hearing.**

None

7. **Documents Submitted with the Application:**

- Memorandum from Peter J. Miley, Building Inspector, dated 08/13/2019
- Principal Points, dated 06/30/2020
- Zoning Board of Appeals Application, dated 06/30/2020
- Copy of Map of properties within 300 Feet
- Full list of names for mailing
- Affidavit of Mailing, dated 07/06/2020
- Affidavit of Publication from The Journal News, dated 07/06/2020
- Affidavit of Posting, dated 09/09/2020
- Copy of Public Notice
- Copy of Survey
- Copy of Deed
- Copies of Site Plans, Surveys, Elevations, Layouts, and Renderings
- Fees Paid

8. **SEORA Determination:**

The subject application constitutes a Type I Action for which a separate resolution for a Negative Declaration was adopted and filed, determining the action has no significant adverse effect on the environment. The Planning Board, as Lead Agency, issued its Negative Declaration of Significance on May 12, 2020. Accordingly, the requirements of 6 NYCRR Part 617 have been met and this application not subject to further review under Environmental Conservation Law, Article VIII.

9. **Decision:**      CONDITIONALLY APPROVED

10. **Basis for Decision of ZBA:**

Under the statutorily enumerated criteria and based upon a review of the entire record, including testimony, submissions, maps, records and all other documentary proof, the ZBA has determined that the benefit to the Applicant outweighed any detriments to the community or neighborhood. This application is in connection with the site plan modification of several distinct properties to effectuate access relocation so as to facilitate full intersections, rather than the off-set intersections which presently exist. To accomplish the goal of improved traffic flows and increased traffic efficiency, there has been a need to work around existing site conditions on the several involved properties. As this application shall have substantial positive impact on traffic on the North Bedford Road corridor, and given Applicants' efforts to improve traffic flow on said corridor, this application cannot be reviewed in a vacuum. Applicants have worked in a collaborative manner with the Village Building Department Professional Staff and the Planning Board to reduce the number of variances required. Moreover, this Board met with the Planning Board, the Applicants and traffic design engineers to get a full appreciation of the attendant site constraints and planning challenges.

As such, the Board makes the following findings that:

(1) no undesirable change would occur to the character of the neighborhood, since the only significant site alterations include a) full signalized intersections, b) replacement of an existing building, with a smaller newly-constructed building (383 NBR), c) increased on-site parking and an improved site lay-out for 333;

(2) the benefits sought by the Applicants could not be achieved by a feasible method other than the variances, in that the Applicants have worked through numerous staff meeting to minimize or eliminate variances from the applicable zoning, and has eliminated approximately half of the variances originally sought. Although the respective sites could theoretically be designed to eliminate all (or almost all) of the requested variances, there are very valid attendant financial considerations, environmental site constraints and property right limitations that play a significant factor. This Board believes that the proposed planned and associated variance,

represent the only means by which the Applicants' objectives could reasonable be achieved;

(3) the variances are not substantial and, in many cases, bring the respective sites into greater compliance with the underlying zoning;

(4) there will not be an adverse impact on the environment, as there is no consequential change in either the building or development coverage (impervious surfaces); and,

(5) while the alleged difficulty was undoubtedly self-created, in that the current property owner was aware of existing traffic patterns, zoning and North Bedford Road corridor conditions at the time of its purchase, it is not fatal to the application, nor does such fact outweigh the other factors favoring the variances as set forth above.

**11. Conditions of Approvals.**

- A) The variances are solely for the plans presented, reviewed and considered by the Zoning Board.
- B) The variances herein are expressly conditioned upon the granting of site plan approval, special permit, steep slopes permit and appropriate waivers by the Planning Board(s) necessary to implement the variances, as well as necessary authorizations from NYSDOT and other permitting agencies.
- C) The variances are subject to Planning Board approval, including landscaping and storm water management. Failure to comply with any Planning Board conditions, limitations, requirements or preconditions shall be deemed a violation of this resolution.
- D) Any change to the plans which would impact either the necessity of a variance or the degree of relief shall constitute a change to the plans invalidating the relief granted herein without further approval of this Board.
- E) Any conditions herein or incorporated by reference shall be deemed to be continuing obligations of the respective Applicants.

**[NO FURTHER TEWXT ON THIS PAGE]**



12. **Vote: BY ORDER OF THE BOARD OF APPEALS**


Motion to approve by: Mr. Weise

Seconded by: Mr. Alfano

Vote:	Mr. Spector	AYE
	Mr. Hoyt	AYE
	Mr. Weise	AYE
	Mr. Alfano	AYE
	Chairman Boxer	AYE

**RESOLUTION EXECUTED:** December 18, 2020  
Mount Kisco, New York

**ZONING BOARD OF APPEALS**  
Village/Town of Mount Kisco

By:   
\_\_\_\_\_  
**HAROLD BOXER, CHAIRMAN**

PREVIOUS LIST OF VARIANCES	REVISED LIST OF VARIANCES
1) 333 NBR (ML District), the required maximum allowable building area for the proposed ShopRite grocery store is 75,000 sf, where 85,652 sf is proposed. Therefore a 10,652 sf variance is required.	1) 333 NBR (ML District), the required maximum allowable building area for the proposed ShopRite grocery store is 75,000 sf, where 85,652 sf is proposed. <b>10,652 sf variance is still sought.</b>
2) 333 NBR (ML District), the required maximum development coverage for the ML District is 70%, where 72.3% is proposed. Therefore a 2.3% variance is required. It should be noted that the proposed development coverage for the entire 333 NBR lot (all zoning districts in Mount Kisco and Bedford) is 69.5%.	2) 333 NBR (ML District), the required maximum development coverage for the ML District is 70%, where 72.3% is proposed. <b>2.3% variance is still sought.</b>
3) 333 NBR (ML District), the required quantity of parking spaces is 1,127 (prior to ITE input and determination by Planning Board), where 873 spaces are proposed. Therefore a 254 parking space variance is required.	Under new zoning, PLANNING BOARD makes discretionary parking determination for a number of uses within the site, making the degree of or need for a variance premature. <b>NO VARIANCE NEEDED AT THIS TIME</b>
4) 333 NBR (CL District), As per Village/Town of Mount Kisco Code 110-19 C. (4) Minimum lot width: 100 feet. Proposed is 50 feet therefore; a 50 foot lot-width variance is required.	By eliminating subdivision/re-subdivision, there is no longer any proposed new noncompliance. Lot width is an existing condition, compliant or otherwise. <b>NO VARIANCE NEEDED AT THIS TIME</b>
5) 333 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [1] Front yard buffer: 20 feet. Proposed is 0 feet therefore; a 20 foot front-yard buffer variance is required.	Mount Kisco Code 110-19 C. (6) (a) [1] Front yard buffer: 20 ft. Proposed is 0 feet. <b>IF THE PB DEEMS THIS ADVISABLE, THIS CAN BE WAIVED BY PB §110-32 B.</b> <b>NO VARIANCE NEEDED AT THIS TIME</b>
6) 333 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [3] side yard buffer: 5 feet. Proposed is 2 feet therefore; a 3 foot side-yard buffer variance is required.	Mount Kisco Code 110-19 C. (6) (a) [1] Front yard buffer: 20 feet. Proposed is 0 feet <b>IF THE PB DEEMS THIS ADVISABLE, IT CAN BE WAIVED BY PB PER §110-32 B.</b> <b>NO VARIANCE NEEDED AT THIS TIME</b>
7) 309 NBR (CL District), Parking required is 30 parking spaces, proposed is 19 spaces therefore; an 11 parking space variance is required.	309 NBR (CL District), Applicant can satisfy off-street parking by providing on adjoining lot per Village Code § 110-28 B. <b>NO VARIANCE NEEDED AT THIS TIME</b>

<p>8) 309 NBR (CL District), As per Village/Town of Mount Kisco Code 110-19 C. (4) Minimum lot width: 100 feet. Proposed is 71 feet. therefore; a 29 foot lot-width variance is required.</p>	<p>Need for variance eliminated by abandoning subdivision. Existing condition does not require a variance. <b>NO VARIANCE NEEDED AT THIS TIME</b></p>
<p>9) 309 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [1] Front yard buffer: 20 feet. Proposed is 7 feet. therefore; a 13 feet front yard buffer variance is required.</p>	<p>309 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [1] Front yard buffer: 20 feet. Proposed is 7 feet. IF THE PB DEEMS THIS ADVISABLE, IT <b>CAN BE WAIVED BY PB</b> PER §110-32 B. <b>NO VARIANCE NEEDED AT THIS TIME</b></p>
<p>10) 309 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [3] Side yard buffer: 5 feet. Proposed is 0 feet. therefore; a 5 foot side yard buffer variance is required.</p>	<p>309 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [3] Side yard buffer: 5 feet. Proposed is 0 feet. IF THE PB DEEMS THIS ADVISABLE, IT <b>CAN BE WAIVED BY PB</b> PER §110-32 B. <b>NO VARIANCE NEEDED AT THIS TIME</b></p>
<p>11) 309 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (5) Minimum building setback side: 10 feet. Proposed is 7 feet. therefore; a 3 foot variance is required.</p>	<p>3) 309 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (5) Minimum building setback side: 10 ft. Proposed is 7.7 ft. therefore; a 2.3 foot variance is required. DESPITE DECREASE FROM EXISTING CONDITION <b>Variance of 2.3 feet sought.</b></p>
<p>12) 383 NBR (CL District), As per Village/Town Mount Kisco Code Chapter 110. Zoning Article III. District Regulations § 110-19. CL Limited Commercial District. C. Development regulations. (3) Maximum development coverage is 80%, proposed is 86.4 % therefore; a 6.4% development coverage variance is required.</p>	<p>4) 383 NBR (CL District), As per Village/Town Mount Kisco Code Chapter 110. Zoning Article III. District Regulations § 110-19. CL Limited Commercial District. C. Development regulations. (3) Max development coverage is 80%, proposed is 86.4 % therefore; a 6.4% development coverage variance is required. <b>Variance of 6.4 % needed, but represents a decrease from 96.5% to 86.4%</b></p>
<p>13) 383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [1] Front yard buffer: 20 feet, Proposed is 12 feet. therefore; an 8 foot front yard buffer variance is required.</p>	<p>383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [1] Front yard buffer: 20 feet, Proposed is 12 feet. IF THE PB DEEMS THIS ADVISABLE, IT <b>CAN BE WAIVED BY PB</b> PURSUANT TO §110-32 B. <b>NO VARIANCE NEEDED AT THIS TIME</b></p>

<p>14) 383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [2] Rear yard buffer: 5 feet. Proposed is 0 feet. therefore; a 5 foot rear yard buffer variance is required.</p>	<p>5) 383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [2] Rear yard buffer: 5 feet. Proposed is 0 feet. therefore; a 5 foot rear yard buffer variance is requested. <b>Variance remains as proposed</b></p>
<p>15) 383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [3] Side yard buffer: 5 feet. Proposed is 0 feet therefore; a 5 foot side yard buffer variance is required.</p>	<p>6) 383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [3] Side yard buffer: 5 feet. Proposed is 0 feet therefore; a 5 foot side yard buffer variance is requested. <b>Variance remains as proposed</b></p>
<p>16) 383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (5) Minimum building setback side: 10 feet. Proposed is 0.8 ft. therefore; a 9.2 foot side yard setback variance is required.</p>	<p>7) 383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (5) Minimum building setback side: 10 feet. Proposed is 1 ft. A 9 ft side yard setback variance is requested. <b>Variance remains as proposed</b></p>
<p>17) 383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (5) Minimum building setback rear: 10 feet. Proposed is 0 feet. therefore; a 10 foot rear yard setback variance is required.</p>	<p>8) 383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (5) Minimum building setback rear: 10 feet. Proposed is 0 feet. therefore; a 10 foot rear yard setback variance is required. <b>Variance remains as proposed</b></p>
<p>18) 383 NBR (CL District), As per Village/Town Mount Kisco Code Chapter 110. Zoning Article V. Supplementary Regulations § 110-30. Supplementary use regulations. D. Trash compactors, dumpsters and other large trash containers. (1) The compactor, dumpster or container shall be located no closer to the property lines than is permitted for an accessory structure in said district. Proposed dumpster is located in the rear yard (west) adjacent to the side lot line. According to Chapter 110. Zoning Article V. Supplementary Regulations § 110-31. Supplementary development regulations. G. Accessory structures. (1) No accessory structure, except a sign for which a permit, pursuant to Chapter 89 of this Code, has been granted and which is erected pursuant to a site plan approved by the Planning Board, shall be</p>	<p>9) 383 NBR (CL District), As per Village/Town Mount Kisco Code Chapter 110. Zoning Article V. Supplementary Regulations § 110-30. Supplementary use regulations. D. Trash compactors, dumpsters and other large trash containers. (1) The compactor, dumpster or container shall be located no closer to the property lines than is permitted for an accessory structure in said district. Proposed dumpster is located in the rear yard (west) adjacent to the side lot line. According to Chapter 110. Zoning Article V. Supplementary Regulations § 110-31. Supplementary development regulations. G. Accessory structures. (1) No accessory structure, except a sign for which a permit, pursuant to Chapter 89 of this Code, has been granted and which is erected pursuant to a site plan approved by the Planning Board, shall be located or project nearer to any street line or side lot line than does the</p>

<p>located or project nearer to any street line or side lot line than does the principal structure on the lot.</p>	<p>principal structure on the lot. <b>Variances remain as proposed</b></p>
<p>19) 333 NBR (ML District), As per Village/ Town Mount Kisco Code Chapter 110. Zoning Article V. Supplementary Regulations § 110-33.1(c)[b] Natural Resource Protection regulations. Maximum the retaining wall length: 60 linear feet. Proposed retaining walls exceed 60 feet. The longest wall is 1,100 linear feet. Therefore, a 1,040 linear foot variance is required.</p>	<p><b>NO VARIANCE NEEDED AT THIS TIME</b></p>



Site Planning	Environmental Studies
Civil Engineering	Entitlements
Landscape Architecture	Construction Services
Land Surveying	3D Visualization
Transportation Engineering	Laser Scanning

**Project Narrative**  
**Revised March 21, 2023**  
JMC Project 18118  
The Park 333 (Shop Rite Expansion)

The proposed project involves an expansion and conversion of existing tenant space within the main existing multi-use building. There are proposed conversions of warehouse/office to a grocery store. A ShopRite grocery store is proposed to occupy current warehouse/office space within the northeast corner of the existing building. As part of ShopRite, an enclosed vestibule and bottle recycling area are proposed additions to the existing building footprint. The project proposes to improve the two existing access driveways along North Bedford Road to align with the existing driveways on the opposite side of the roadway. The project went through the approval process from late 2018 to early 2021 with the following approvals being received:

**I. Town/Village of Mount Kisco:**

**A. Planning Board**

Site Plan, Steep Slopes, Special Use Permit and Change of use  
Original approval resolution dated 01/12/2021, stamped 03/05/2021.  
Revised resolution issued 10/25/2022 to adjust the construction timing of the southern driveway. Approval extended to 07/13/2023.

**B. Zoning Board of Appeals**

Site Variances:

Original approval resolution dated 12/15/2020, expired 09/21/2022  
The site variances were re-approved by the ZBA at the 11/15/2022 meeting. The  
There will be adjustments needed to 2 of the variances based on the latest  
modifications to the site plans described in this narrative. However, the site plan  
modifications result in reductions to the previously approved variances.

Signage variances:

Original approval resolution dated 06/16/2021, expiration 11/23/2022  
The signage variances were extended by the ZBA at the 11/15/2022 meeting.

**2. Town of Bedford:**

**A. Planning Board**

Original approval resolution, dated 12/15/2020, adopted 02/03/2021, expires 18 months from endorsement of plans (08/03/2022), extended to 06/14/2023

**B. Wetlands Control Commission**

Approved 02/03/2020, expires 02/03/2024 (4 years)

**3. NYCDEP SWPPP Approval received 11/30/2021, expires 11/30/2026 (5 years)**

**4. NYSDEC SPDES General Permit Coverage received 01/20/2022, no expiration**

**5. NYS DOT Highway Work Permit:**

Stage 2 approval received in email 10/21/2021, reviewing new proposed modifications

Stage 3 in progress

Land Donation: in progress

As part of the north and south driveway realignments along North Bedford Road (NBR), cross access and utility easements are proposed on the existing adjacent properties to accommodate the proposed improvements. The existing project site located at 333 North Bedford Road (Section 69.50, Block 2, Lot 1) is owned by DP 21, LLC (which is part of Diamond Properties) and consists of 37.52 acres within Mount Kisco and Bedford. 333 NBR is located within the Village of Mount Kisco ML (Light Manufacturing) District, Village of Mount Kisco CL (Limited Commercial) District and Town of Bedford LI (Light Industrial) District. 333 NBR is where the majority of the proposed improvements are located. However, to properly design the project, there are existing adjacent properties along the northern and southern driveways that must provide cross access and utility easements.

The existing property located at 309 North Bedford Road, (Section 69.51, Block 1, Lot 3) is owned by DP 62, LLC (which is part of Diamond Properties) and consists of 0.75 acres within Mount Kisco. 309 NBR is located within the Village of Mount Kisco CL (Limited Commercial) District.

Modifications to 309 NBR involve the demolition of a portion of the existing building and parking lot in front of the building to allow for the intersection alignment with Park Drive. However, since the prior approval was issued, the property owner has had difficulties with one of the existing tenants within the existing building at 309 NBR. As a result, the tenant wishes to remain in the space and therefore the southern portion of the existing building that was previously approved for demolition must remain for several years until the tenant lease expires in 2027. This results in the inability to realign the southern driveway prior to the construction of ShopRite as previously proposed and approved. As a result, the drawings reflect the southern driveway in its current condition until Phase 3 of the project which would be after the construction and occupancy of ShopRite. In the interim, the southern driveway is proposed to restrict left turns out onto North Bedford Road. The 309 NBR driveway is also proposed to restrict exiting left turns out onto North Bedford Road in the interim condition.

The existing property located at 383 North Bedford Road, (Section 69.43, Block 1, Lot 2 & 3), owned by Philar Realty Co., LLC (which is currently leased by Diamond Properties) and consists of 0.43 acres within Mount Kisco. 383 NBR is located within the Village of Mount Kisco CL (Limited Commercial) District.

A connection from an internal existing driveway along the northern portion of the 333 NBR property is proposed to connect to the existing parking area within the northern adjacent Kohl's property which is 777 Bedford Road. The roadway will provide an internal connection that will allow vehicles passenger vehicles and delivery trucks to travel between the properties without having to enter onto North Bedford Road. The connection driveway between the 333 NBR property and 777 Bedford Road (Kohl's property) is a traffic improvement that the Town of Bedford has requested in the past. It is listed as a condition within the Bedford Planning Board Resolution of Final Site Plan Approval. The Town of Bedford had requested that the applicant pursue this connection should the option become available in the future.

The existing property located at 777 Bedford Road, (Section 71.12, Block 2, Lot 41) is owned by DP 142, LLC (which is part of Diamond Properties) and consists of 9.718 acres within Bedford. The property is located within the Town of Bedford LI (Light Industrial) District and the Town of



Bedford RB (Roadside Business) District. Modifications to 777 Bedford Road involve the removal of a portion of the existing fence, curb and parking along the southern property line to allow for the connection driveway.

In order to propose a connection between the 333 NBR site and the 777 Bedford Road property, the driveway spans across the rear of 793 Bedford Road which is Section 71.12, Block 2, Lots 31 and 32. The property is owned by DP 130, LLC (which is part of Diamond Properties) and consists of 0.90 acres within Bedford. The property is located within the Town of Bedford LI (Light Industrial) District and the Town of Bedford RB (Roadside Business) District.

The driveway connection to the Kohl's property is located partly on 793 Bedford Road. The proposed round-a-bout has been expanded beyond what was previously approved in order to accommodate the driveway connection to the Kohl's property. As a result, modifications to 793 Bedford Road property are required.

The intersection modifications will improve site access for delivery vehicles, fire/emergency apparatus and passenger vehicles as well as more efficient traffic maneuvering within the roadway. Sidewalks and crosswalks are proposed to improve pedestrian circulation across the driveways and NBR, while providing new designated pedestrian routes from North Bedford Road to the front of the main building. Traffic signal and roadway striping modifications will be required as part of the NYSDOT Highway Work in NBR. The existing 333 NBR property contains 802 parking spaces. The parking area on the east and north sides of the main building is proposed to be slightly expanded to provide an additional 61 parking spaces and to properly align the parking rows for better circulation and pedestrian access. The total proposed parking provided at 333 NBR is 863 spaces.

The existing 309 NBR lot has 33 parking spaces and a loss of 9 spaces from the proposed improvements results in 24 proposed spaces at the 309 NBR building. The existing 383 NBR lot has 18 parking spaces and a gain of 10 spaces from the proposed improvements results in 28 proposed spaces at the 383 NBR building.

Drainage, lighting and landscaping improvements are also proposed within the disturbed portions of 333 NBR, 309 NBR, 383 NBR, 793 Bedford Road and 777 Bedford Road. A ShopRite grocery store is proposed to occupy current warehouse/office space within the existing building. As part of ShopRite, an enclosed vestibule and bottle recycling area are proposed additions to the existing building footprint. The total proposed ShopRite area is 83,618 s.f. which includes an additional 1,926 s.f. portion of space from the adjacent Cucina space, thereby reducing the Cucina space. The previously approved ShopRite mezzanine of 3,960 sf was eliminated.

The ShopRite enclosed vestibule of 4,275 s.f. and the ShopRite bottle return area of 350 s.f. are also included within the new total ShopRite area of 83,618 s.f.. This results in a building footprint increase of 4,525 s.f. or if the proposed 382 s.f. field house building is included, the overall 333 NBR building footprint increase is 4,907 s.f. According to Local Law 5-2018 adopted 07/16/2018, a grocery store requires a Special Use Permit in the ML District. The maximum building area is 75,000 s.f., where 83,618 s.f. is proposed. The previously approved store area was 85,652 s.f.

The parking area on the east and north sides of the main building is proposed to be slightly expanded to provide additional parking spaces and to properly align the parking rows for better circulation and pedestrian access. The revised parking layout will also provide better accommodations for the existing delivery trucks that serve the tenants along the east side of the building. The plans also include drainage improvements within the disturbed portions of the site as well as some parking lot areas at the southern portion of the site that experience slow draining during heavy storms as required by the Village Engineering and Planning consultants.

A proposed recreational Field House at the existing municipal soccer field is also included in the project. The Field House has been proposed and presented to the Village under prior applications. The Field House is 382 s.f. and consists of public restrooms, equipment storage room and a vending machine area. The roof of the Field House is a proposed observation terrace to view the adjacent field. There are several small retaining/seat walls adjacent to the Field House and an extension of an existing sidewalk from the Field House to the parking area.

The proposed improvements result in an increase of approximately 0.89 acres of impervious area as follows:

+1.02 acres on 333 NBR lot

-0.12 acres on 309 NBR lot

-0.04 acres on 383 NBR lot

+0.06 acres on 793 Bedford Rd lot

-0.03 acres on 777 Bedford Rd lot

Some of the proposed parking areas on 383 NBR are proposed to be constructed with pervious pavement. 70% development coverage is permitted, where existing conditions is 66.5% and 69.2% is proposed for the 333 NBR lot. For the 309 NBR and 383 NBR lots, 80% development coverage is permitted. The development coverage for the 309 NBR lot is 91.6% under existing conditions and 76.1% under proposed conditions. The 383 NBR lot has a development coverage of 96.5% in existing conditions and 86.4% is proposed.

For 793 Bedford Road, 75% development coverage is permitted in the LI District and 80% development coverage is permitted in the RB District. The portion of the lot in the LI District has a development coverage of 23.6% in existing conditions and 51.3% is proposed. The portion of the lot in the RB District has a development coverage of 15.5% in existing conditions and 7% is proposed. The overall 793 Bedford Road lot has a development coverage of 19.8% in existing conditions and 30.6% in proposed conditions.

For 777 Bedford Road, 75% development coverage is permitted in the LI District and 80% development coverage is permitted in the RB District. It appears the proposed improvements are all located with the RB District. The proposed improvements result in a decrease of 0.03 acres of impervious area.

The following are the changes within the existing 333 NBR building:

- 114,037 s.f. Office/Warehouse B being reduced to 86,471 s.f. Office/Warehouse B for proposed ShopRite

- Office/Warehouse F and Office/Warehouse G to be replaced by 83,618 s.f. ShopRite
- Cucina Antica Warehouse being reduced by 1,926 s.f. to be replaced by portion of the 83,618 s.f. ShopRite.

The following are the changes within the existing 309 NBR lot:

- Proposed cross access and utility easements to allow for the intersection alignment with Park Drive.
- Demolition of existing 4,688 sf building consisting of 2,344 s.f. computer retail and 1,102 s.f. storage repair store in the front of the building and a 1,242 s.f. auto repair facility in the rear of the building.
- Total remaining building area for 309 NBR is 5,698 s.f. which is 1,225 sf of vacant space, a 812 s.f. nail salon and a 812 s.f. subway restaurant on the upper level. The lower level has a vacant space of 1,225 sf and 1,624 sf of automotive use space.
- Removal of 14 parking spaces, proposed total remaining for 309 NBR is 19 spaces.

The following are the changes within the existing 383 NBR lot:

- Proposed cross access and utility easements to allow for the intersection alignment with Foxwood Circle.
- Demolition of existing 7,893 sf building consisting of a retail store and an auto repair facility.
- Construction of new building with future retail use consisting of 5,503 sf.
- Addition of 12 parking spaces. The proposed design includes 30 parking spaces.

The following are the changes within the existing 793 Bedford Rd lot:

- Reconstruction of existing curb cut along the frontage of NBR.
- Removal of existing driveway
- Construction of a Channelized Right Turn Lane at North Driveway
- Portion of proposed round-a-bout and Kohl's connection driveway

The following are the changes within the existing 777 Bedford Rd lot:

- Reconstruction of existing parking area at southeast corner in order to construct the Kohl's connection driveway
- Slight modification to existing curb and landscape island along the southern side of Norm Avenue to allow for delivery trucks to enter the site.

Since the prior approvals listed above, new applications have been made to the Village of Mount Kisco Planning Board and Town of Bedford Planning Board. and the Town of Bedford Planning Board. The SEQRA distribution was made on August 26, 2022 by the Village of Mount Kisco

Planning Board for its intent to become lead agency. No objections were received so the Village of Mount Kisco Planning Board voted to declare itself lead agency on October 11, 2022.

Based on the Planning Board meetings, pre-submission conferences with key members of Town/Village staff/consultants and review of the previously submitted Site Plan drawings and applications, the project requires the following approvals:

1. Village of Mount Kisco Planning Board Site Plan Approval - modifications to the parking areas and access driveways along North Bedford Road, Site Plan waivers for parking, steep slopes, development coverage, etc.
2. Village of Mount Kisco Planning Board Special Use Permit - The proposed ShopRite grocery store requires a Special Use Permit in the ML District in accordance with the Resolution of the Board of Trustees of the Village/Town of Mount Kisco, Local Law 5-2018 adopted 07/16/2018.
3. Village of Mount Kisco Planning Board Change of Use Permit - Conversion of warehouse/office use to Full-Service Grocery Store use within the existing 333 NBR multi-use building.
4. Village of Mount Kisco Planning Board Steep Slopes Permit - Construction of a proposed retaining wall on steep slopes in order to expand the existing parking area east and north of the existing 333 NBR multi-use building.
5. Village of Mount Kisco Architectural Review Board. Modifications to the façade/exterior of the northeast corner of the main building at 333 NBR for the Shoprite expansion, renovation/rejuvenation of the exterior of the existing building at 309 NBR, construction of new building at 383 NBR and proposed field house building adjacent to the existing soccer field.
6. Village of Mount Kisco Zoning Board of Appeals variances:
  - 1) 333 NBR (ML District), the required maximum allowable building area for the proposed ShopRite grocery store is 75,000 sf, where 83,618 sf is proposed. Therefore a 8,618 sf variance is required. This is reduction from the previously granted variance of 10,652 sf.
  - 2) 333 NBR (ML District), the required maximum development coverage for the ML District is 70%, where 72.3% is proposed. Therefore a 2.3% variance is required.

This is a reduction from the previously granted variance of 3.1%.

It should be noted that the proposed development coverage for the entire 333 NBR lot (all zoning districts in Mount Kisco and Bedford) is 69.4% which is a slight increase from the previously approved 69.1%, which did not require a variance.

- 3) 309 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (5) Minimum building setback side: 10 feet. Proposed is 7.7 feet. therefore; a 2.3 foot variance is required.
- 4) 383 NBR (CL District), As per Village/Town Mount Kisco Code Chapter 110. Zoning Article III. District Regulations § 110-19. CL Limited Commercial District. C. Development regulations. (3) Maximum development coverage is 80%, proposed is 86.4 % therefore; a 6.4% development coverage variance is required.
- 5) 383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [2] Rear yard buffer: 5 feet. Proposed is 0 feet. therefore; a 5 foot rear yard buffer variance is required.
- 6) 383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [3] Side yard buffer: 5 feet. Proposed is 0 feet therefore; a 5 foot side yard buffer variance is required.
- 7) 383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (5) Minimum building setback side: 10 feet. Proposed is 1 ft. therefore; a 9 foot side yard setback variance is required.
- 8) 383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (5) Minimum building setback rear: 10 feet. Proposed is 0 feet. therefore; a 10 foot rear yard setback variance is required.
- 9) 383 NBR (CL District), As per Village/ Town Mount Kisco Code Chapter 110. Zoning Article V. Supplementary Regulations § 110-30. Supplementary use regulations. D. Trash compactors, dumpsters and other large trash containers. (1) The compactor, dumpster or container shall be located no closer to the property lines than is permitted for an accessory structure in said district. Proposed dumpster is located in the rear yard (west) adjacent to the side lot line. According to Chapter 110. Zoning Article V. Supplementary Regulations § 110-31. Supplementary development regulations. G. Accessory structures. (1) No accessory structure, except a sign for which a permit,

pursuant to Chapter 89 of this Code, has been granted and which is erected pursuant to a site plan approved by the Planning Board, shall be located or project nearer to any street line or side lot line than does the principal structure on the lot.

7. Town of Bedford Planning Board - modifications to the parking areas and access driveway along North Bedford Road on 333 NBR, modifications to 793 Bedford Road and 777 Bedford Road for the Kohl's driveway connection.
8. Town of Bedford Steep Slope Permit – disturbing steep slopes for proposed parking and retaining wall.
9. Town of Bedford Wetlands Control Commission – disturbance proposed within 100 foot wetland buffer. Bedford Wetlands Control Commission permit was received on February 3, 2020, expires February 3, 2024.
10. New York State Department of Environmental Conservation (NYSDEC) – coverage under SPDES General Permit No. GP-0-20-001 for Stormwater Discharges from Construction Activities for activities disturbing greater than one acre of soil. The permit coverage has been received from the prior approval. Therefore, it will need to be modified.
11. New York City Department of Environmental Protection (NYCDEP) – proposed construction within a Designated Main Street Area (DMSA), involving the creation of new impervious surfaces requires a SWPPP approval in accordance with the Watershed Regulations. A SWPPP Approval was received from the prior approval. The new changes to the northern driveway area will require re-approval of the SWPPP.
12. New York State Department of Transportation (NYSDOT) – Driveway alignment modifications and roadway work along and within NBR. DOT engineers have reviewed the latest proposed changes and have recommended completing the original permit process since it is very close to being issued. The new modifications have been submitted for a permit amendment.





Site Planning  
 Civil Engineering  
 Landscape Architecture  
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 Transportation Engineering

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 Construction Services  
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 Laser Scanning

**JMC Project 18118  
 The Park 333 (Shop Rite Expansion)**

**Zoning Variance Comparison Table**

<u>Variance #</u>	<u>CURRENT LIST OF VARIANCES</u>	<u>APPROVED LIST OF VARIANCES</u>	<u>DIFFERENCE</u>
1	333 NBR (ML District), the required maximum allowable building area for the proposed ShopRite grocery store is 75,000 sf, where 83,618 sf is proposed. Therefore a 8,618 sf variance is required.	333 NBR (ML District), the required maximum allowable building area for the proposed ShopRite grocery store is 75,000 sf, where 85,652 sf is proposed. Therefore a 10,652 sf variance is required.	REDUCTION OF 2,034 SF
2	333 NBR (ML District), the required maximum development coverage for the ML District is 70%, where 72.3% is proposed. Therefore a 2.3% variance is required.	333 NBR (ML District), the required maximum development coverage for the ML District is 70%, where 73.1% is proposed. Therefore a 3.1% variance is required.	REDUCTION OF 0.8%
3	333 NBR (CL District), As per Village/Town of Mount Kisco Code 110-19 C. (4) Minimum lot width: 100 feet. Proposed is 50 feet therefore; a 50 foot lot-width variance is required. Existing non-conforming to remain; variance no longer required without subdivision.	333 NBR (CL District), As per Village/Town of Mount Kisco Code 110-19 C. Existing non-conforming to remain; variance no longer required without subdivision.	NO VARIANCE NEEDED
4	333 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [1] Front yard buffer: 20 feet. Proposed is 0 feet therefore; a 20 foot front-yard buffer variance is required. Existing non-conforming to remain; variance no longer required without subdivision.	333 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [1] Existing non-conforming to remain; variance no longer required without subdivision.	NO VARIANCE NEEDED



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**JMC Project 18118**  
**The Park 333 (Shop Rite Expansion)**

**Zoning Variance Comparison Table**

<u>Variance #</u>	<u>CURRENT LIST OF VARIANCES</u>	<u>APPROVED LIST OF VARIANCES</u>	<u>DIFFERENCE</u>
5	333 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [3] side yard buffer: 5 feet. Proposed is 2 feet therefore; a 3 foot side-yard buffer variance is required.	333 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [3] Planning Board can waive variance unless structure is in buffer according to Provision 110-32B. <b>NO VARIANCE NEEDED AT THIS TIME</b>	NO VARIANCE NEEDED
6	309 NBR (CL District), Parking required is 24 parking spaces, proposed is 24 spaces therefore meets requirement.	309 NBR (CL District), Parking required is 30 parking spaces, proposed is 19 spaces therefore; an 11 parking space variance is required.	REDUCTION FROM 11 SPACES TO 0 SPACES. VARIANCE NOT NEEDED
7	309 NBR (CL District), As per Village/Town of Mount Kisco Code 110-19 C. (4) Minimum lot width: 100 feet. Proposed is 71 feet. therefore; a 29 foot lot-width variance is required. Existing condition does not require variance.	309 NBR (CL District), As per Village/Town of Mount Kisco Code 110-19 C. (4) Minimum lot width: 100 feet. Proposed is 71 feet. therefore; a 29 foot lot-width variance is required. Existing condition does not require variance.	NO VARIANCE NEEDED





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**JMC Project 18118  
 The Park 333 (Shop Rite Expansion)**

**Zoning Variance Comparison Table**

<u>Variance #</u>	<u>CURRENT LIST OF VARIANCES</u>	<u>APPROVED LIST OF VARIANCES</u>	<u>DIFFERENCE</u>
8	309 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [1] Front yard buffer: 20 feet. Proposed is 7 feet. therefore; a 13 feet front yard buffer variance is required. Buffer variance no longer required without subdivision; ZBA acknowledged does not require variance.	309 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [1] Front yard buffer variance no longer required without subdivision; ZBA acknowledged does not require variance.	NO VARIANCE NEEDED
9	309 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [3] Side yard buffer: 5 feet. Proposed is 0 feet. therefore; a 5 foot side yard buffer variance is required. Side yard buffer variance no longer required without subdivision; ZBA acknowledged does not require variance.	309 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [3] Side yard buffer variance may no longer be required without subdivision; ZBA acknowledged does not require variance.	NO VARIANCE NEEDED
10	309 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (5) Minimum building setback side: 10 feet. Proposed is 7.7 feet. therefore; a 2.3 foot variance is required.	309 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (5) Minimum building setback side: 10 feet. Proposed is 7 feet. therefore; a 3 foot variance is required.	REDUCTION OF 0.7 FEET



Site Planning  
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Landscape Architecture  
Land Surveying  
Transportation Engineering

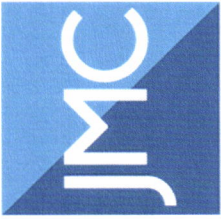
Environmental Studies  
Entitlements  
Construction Services  
3D Visualization  
Laser Scanning

JMC Project 18118  
The Park 333 (Shop Rite Expansion)

Zoning Variance Comparison Table

<u>Variance #</u>	<u>CURRENT LIST OF VARIANCES</u>	<u>APPROVED LIST OF VARIANCES</u>	<u>DIFFERENCE</u>
11	383 NBR (CL District), As per Village/Town Mount Kisco Code Chapter 110. Zoning Article III. District Regulations § 110-19. CL Limited Commercial District. C. Development regulations. (3) Maximum development coverage is 80%, proposed is 86.4% therefore; a 6.4% development coverage variance is required.	383 NBR (CL District), As per Village/Town Mount Kisco Code Chapter 110. Zoning Article III. District Regulations § 110-19. CL Limited Commercial District. C. Development regulations. (3) Maximum development coverage is 80%, proposed is 83.1% (less than existing) therefore; a 3.1% development coverage variance is required.	INCREASE IN 3.3% HOWEVER, PLANS THAT WERE PREVIOUSLY APPROVED BY PLANNING BOARD AND ZBA SHOW 86.4%. THE DEVELOPMENT COVERAGE ON THE PLAN HAS NOT CHANGED. SHOULD BE CONSIDERED NO CHANGE.
12	383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [I] Front yard buffer: 20 feet, Proposed is 12 feet. therefore; an 8 foot front yard buffer variance is required. Planning Board can waive variance unless structure is in buffer according to Provision 110-32B.	383 NBR (CL District), As per Village/Town Mount Kisco Code Chapter 110-19 C. (6) (a) [I] Planning Board can waive variance unless structure is in buffer according to Provision 110-32B. <b>NO VARIANCE NEEDED AT THIS TIME</b>	NO VARIANCE NEEDED





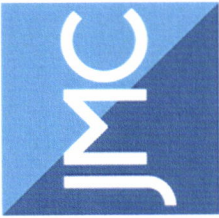
Site Planning  
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 Construction Services  
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 Laser Scanning

JMC Project 18118  
 The Park 333 (Shop Rite Expansion)

Zoning Variance Comparison Table

Variance #	CURRENT LIST OF VARIANCES	APPROVED LIST OF VARIANCES	DIFFERENCE
13	383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [2] Rear yard buffer: 5 feet. Proposed is 0 feet. therefore; a 5 foot rear yard buffer variance is required.	383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [2] Rear yard buffer: 5 feet. Proposed is 0 feet. therefore; a 5 foot rear yard buffer variance is required.	NO CHANGE
14	383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [3] Side yard buffer: 5 feet. Proposed is 0 feet therefore; a 5 foot side yard buffer variance is required.	383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (6) (a) [3] Side yard buffer: 5 feet. Proposed is 0 feet therefore; a 5 foot side yard buffer variance is required.	NO CHANGE
15	383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (5) Minimum building setback side: 10 feet. Proposed is 1 ft. therefore; a 9 foot side yard setback variance is required.	383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (5) Minimum building setback side: 10 feet. Proposed is 0.8 ft. therefore; a 9.2 foot side yard setback variance is required.	REDUCTION OF 0.2 FEET
16	383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (5) Minimum building setback rear: 10 feet. Proposed is 0 feet. therefore; a 10 foot rear yard setback variance is required.	383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C. (5) Minimum building setback rear: 10 feet. Proposed is 0 feet. therefore; a 10 foot rear yard setback variance is required.	NO CHANGE



Site Planning  
Civil Engineering  
Landscape Architecture  
Land Surveying  
Transportation Engineering

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Entitlements  
Construction Services  
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Laser Scanning

**JMC Project 18118**  
**The Park 333 (Shop Rite Expansion)**

<b>Variance #</b>	<b>CURRENT LIST OF VARIANCES</b>	<b>APPROVED LIST OF VARIANCES</b>	<b>DIFFERENCE</b>
17	<p>383 NBR (CL District), As per Village/Town Mount Kisco Code Chapter 110. Zoning Article V. Supplementary Regulations § 110-30. Supplementary use regulations. D. Trash compactors, dumpsters and other large trash containers. (1) The compactor, dumpster or container shall be located no closer to the property lines than is permitted for an accessory structure in said district. Proposed dumpster is located in the rear yard (west) adjacent to the side lot line. Easement from 333 New Bedford Road must allow 383 New Bedford Road to place trash enclosure on the property. According to Chapter 110. Zoning Article V. Supplementary Regulations § 110-31. Supplementary development regulations. G. Accessory structures. (1) No accessory structure, except a sign for which a permit, pursuant to Chapter 89 of this Code, has been granted and which is erected pursuant to a site plan approved by the Planning Board, shall be located or project nearer to any street line or side lot line than does the principal structure on the lot.</p>	<p>383 NBR (CL District), As per Village/Town Mount Kisco Code Chapter 110. Zoning Article V. Supplementary Regulations § 110-30. Supplementary use regulations. D. Trash compactors, dumpsters and other large trash containers. (1) The compactor, dumpster or container shall be located no closer to the property lines than is permitted for an accessory structure in said district. Proposed dumpster is located in the rear yard (west) adjacent to the side lot line. Easement from 333 New Bedford Road must allow 383 New Bedford Road to place trash enclosure on the property. According to Chapter 110. Zoning Article V. Supplementary Regulations § 110-31. Supplementary development regulations. G. Accessory structures. (1) No accessory structure, except a sign for which a permit, pursuant to Chapter 89 of this Code, has been granted and which is erected pursuant to a site plan approved by the Planning Board, shall be located or project nearer to any street line or side lot line than does the principal structure on the lot.</p>	NO CHANGE

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APR 11 2023

Zoning Board of Appeals  
Village/Town of Mount Kisco

AFFIDAVIT OF MAILING

STATE OF NEW YORK }  
 }  
COUNTY OF WESTCHESTER }SS.:  
 }

Amanda Mell-Taylor being duly sworn, deposes and says:

I reside/work at JMC, 120 Bedford Road, Armonk, NY 10504

On April 6th 20 23 I served a notice of hearing, a copy of which is attached hereto and labeled Exhibit A, upon persons whose names are listed in a schedule of property owners within 300 feet of the subject property identified in this notice. A copy of this schedule of property owners' names is attached hereto and labeled Exhibit B. I placed a true copy of such notice in a postage paid property addressed wrapper addressed to the addresses set forth in Exhibit B, in a post office or official depository under the exclusive care and custody of the United States Post Office, within the County of Westchester.

*Amanda Mell-Taylor*

Sworn to before me on this

6<sup>th</sup> day of April 20 23

*Lisa P. Kolba*  
(Notary Public)

LISA P. KOLBA  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01KO4916831  
Qualified in Westchester County  
Commission Expires Dec. 28, 20 25



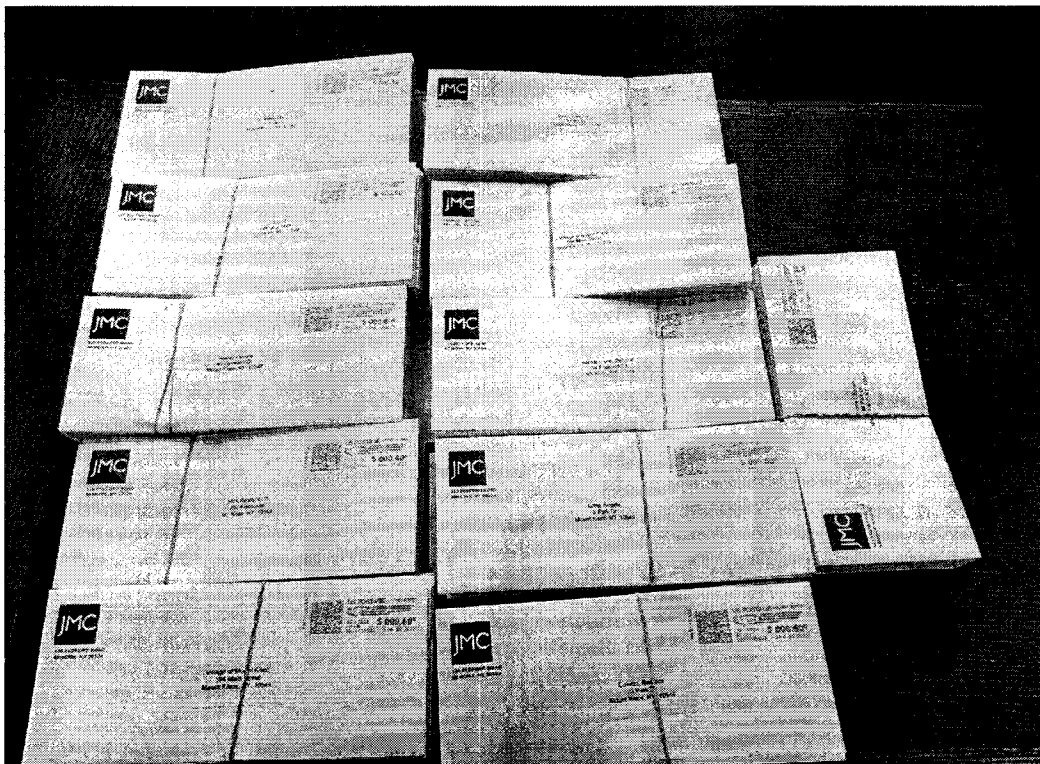


**EXHIBIT C**

JMC Project 18118



20230406\_150623



20230406\_150624



**EXHIBIT C**

**JMC Project 18118**



20230406\_150629



20230406\_150635

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**EXHIBIT B**

**APR 11 2023**

NYS Dept. of Transportation  
Reg. Director J. Dupont, PE  
4 Burnett Blvd.  
Poughkeepsie, NY 12603

DP 21 LLC  
333 N Bedford Rd  
Mount Kisco, NY 10549

Zoning Board of Appeals  
Village/Town of Mount Kisco

Victor Cannistra  
Kensico Park Realty, LLC  
43 Kensico Dr  
Mount Kisco, NY 10549

Meyer Jabaua Hotels  
Henry V. Kelley  
7 Kenosia Ave, Ste 2A  
Danbury, CT 06810

Cushman & Wakefield  
8875 Hidden Pkwy, Ste 300  
Tampa, FL 33632

Burger King Corp #825  
c/o Ryan LLC  
PO Box 460189  
Houston, TX 77056

Cofarge BPS  
2727 LBJ Fwy, Ste 806  
Dallas TX 75234

Moynihan, Rebecca  
47 Valley View Terr  
Mount Kisco, NY 10549

Hagerman Lori Ann  
51 Valley View Terr  
Mt. Kisco, NY 10549

11 Knowlton LLC  
c/o Pamela Healy  
40 Foxwood Circle  
Mt. Kisco, NY 10549

Aleshin Konstantin  
95 Park Dr  
Mt. Kisco, NY 10549

Pasillas, Herrera  
101 Park Dr  
Mt. Kisco, NY 10549

Anuszkiewicz, Daria  
86 Park Dr  
Mt. Kisco, NY 10549

Jean-Jacques Norma  
68 Park Dr  
Mt. Kisco, NY 10549

Martorano, Justin  
65 Park Dr  
Mt. Kisco, NY 10549

Wolman Adam  
64 Park Dr  
Mt. Kisco, NY 10549

Ludwig Karl T  
44 Park Dr  
Mt. Kisco, NY 10549

Pellshi, Robert  
75 Park Dr  
Mt. Kisco, NY 10549

Dejong, John M  
50 Park Dr  
Mt. Kisco, NY 10549

271 No Bedford Rd. Mt Kisco  
Attn: MRE Management  
27 Radio Cir  
Mt. Kisco, NY 10549

Vitkowski Thomas  
103 Park Dr  
Mt. Kisco, NY 10549

Davis, Meredith M  
109 Park Dr  
Mt. Kisco, NY 10549

Dounn, Steven  
110 Park Dr  
Manchester, NJ 08759

Cruz Elenita  
111 Park Dr  
Mt. Kisco, NY 10549

Young, Agata K  
3 Park Dr  
Mt. Kisco, NY 10549

Duelk, Penny  
7 Banbury Ave  
Mt. Kisco, NY 10549

Kantrowitz, David  
6 Park Dr  
Mt. Kisco, NY 10549

Calagini  
16 Foxwood Cir  
Mt. Kisco, NY 10549

Sottle, Mark  
11 Foxwood Cir  
Mt. Kisco, NY 10549

Hillman Lane, Deborah  
14 Foxwood Cir  
Mt. Kisco, NY 10549

**04/06/2023**

## EXHIBIT B

Dolger, Paul D  
PO Box 194  
Mount Kisco, NY 10549

Ved, Rashmi  
50 Foxwood Cir  
Mount Kisco, NY 10549

Fiorino, John  
49 Foxwood Cir  
Mount Kisco, NY 10549

John, Mary Lyden, Trustees  
147 Joyce Pl  
Hawthorne, NY 10532

McKillop, Kathy  
55 Foxwood Cir  
Mount Kisco, NY 10549

Pietrowicz, Ronald  
56 Foxwood Cir  
Mount Kisco, NY 10549

McLaughlin  
67 Foxwood Cir  
Mount Kisco, NY 10549

Kirch, Madison  
103 Foxwood Cir  
Mount Kisco, NY 10549

Katz, Roberta C  
101 Foxwood Cir  
Mount Kisco, NY 10549

Nash, Andrea  
34 Lake Way  
Purdys, NY 10578

Potusek Scott J  
18 Stonehouse Rd  
Somers, NY 10589

Castracan, Michael E  
113 Foxwood Cir  
Mount Kisco, NY 10549

Soulias, Kim G  
59 McManus Road South  
Patterson, NY 12563

HVA Realty, LLC  
c/o Engie  
PO Box 244  
Spokane, WA 99210

Garth E Beall Esq  
6411 Ivy Lane Ste 200  
Greenbelt, MD 20470

MRE Management  
27 Radio Circle  
Mount Kisco, NY 10549

Tennis Equities, Inc.  
77 Kensico Dr  
Mount Kisco, NY 10549

Gary E Knell Revocable Trust  
3225 Grace St NW, Apt 204  
Washington, DC 20007

Waters, Kiernan  
27 Knowlton Ave  
Mount Kisco, NY 10549

Meaney, Scott  
92 Park Dr  
Mount Kisco, NY 10549

272 N. Bedford Rd. LLC  
c/o Esat Gashi  
345 Kear St  
Yorktown Heights, NY 10598

Goldman Mark  
39 Park Dr  
Mount Kisco, NY 10549

Martin Rosa  
940 Wiget Lane  
Walnut Creek CA 94598

Engel, Michael J  
77 Park Dr  
Mount Kisco, NY 10549

Horan, Jeannine  
71 Park Dr  
Mount Kisco, NY 10549

Segal, Alla  
48 Park Dr  
Mount Kisco, NY 10549

Rosenberg, Jonathan  
49 Park Dr  
Mount Kisco, NY 10549

Schnipke, Jordan  
36 Park Dr  
Mount Kisco, NY 10549

DP62LLC  
333 N Bedford Rd  
Mount Kisco, NY 10549

DP62LLC  
PO Box 1493  
Hicksville, NY 11802

**04/06/2023**



**EXHIBIT B**

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**APR 11 2023**

*Zoning Board of Appeals  
Village/Town of Mount Kisco*

Alagia, Edward  
21 Park Dr  
Mount Kisco, NY 10549

Meghana, Dani  
18 Park Dr  
Mount Kisco, NY 10549

Teevan Helen M  
29 Park Dr  
Mount Kisco, NY 10549

Sinnott, Jeffrey G  
254 Sylvan Lake Rd  
Hopewell Junction, NY 12533

Loia, David  
8A Christopher Columbus Avenue  
Danbury, CT 06810

Fenton, Herbert  
12 Park Dr  
Mount Kisco, NY 10549

Fairchild Constance  
23 Foxwood Cir  
Mount Kisco, NY 10549

Margarita Segarra  
7 Park Dr  
Mount Kisco, NY 10549

Andersen, Alfred N  
19 Tioga Lane  
Pleasantville, NY 10570

Cericola, Michelle  
15 Foxwood Cir  
Mount Kisco, NY 10549

Feireis, Erik  
7 Foxwood Cir  
Mount Kisco, NY 10549

Adam Piscitello  
5 Foxwood Cir  
Mount Kisco, NY 10549

Reynolds, Kristine R  
14 Fairways Dr.  
Mount Kisco, NY 10549

Fazio Katy  
77 Foxwood Cir  
Mount Kisco, NY 10549

Agostino, Patricia  
68 Foxwood Cir  
Mount Kisco, NY 10549

Amico, Susan P  
97 Foxwood Cir  
Mount Kisco, NY 10549

Waters, Cynthia I  
117 Foxwood Cir  
Mount Kisco, NY 10549

Mancini, Richard  
8 Elidge Rd  
Katonah, NY 10536

Dounn, Steven  
110 Foxwood Cir  
Mount Kisco, NY 10549

HVJLR Luxury Imports  
10240 York Rd  
Cockeysville, MD 21030

DP 44, LLC  
c/o Diamond Properties  
PO Box 1493  
Hicksville, NY 11802

Suburban Propane L.P.  
Tax Dept  
P.O. Box 206  
Whippany, NJ 07981-0206

Gas 21 Realty Inc  
c/o Bellery  
536 Main St  
New Paltz, NY 12561

MRE Management  
27 Radio Circle  
Mount Kisco, NY 10549

Diamond Properties  
PO Box 1493  
Hicksville, NY 11802

Chia-Ling Tsu  
46 Park Dr  
Mount Kisco, NY 10549

Yang Zang  
350 3rd St, Unit 1705  
Cambridge, MA 02142-1143

Chelur Jayadas  
41 Park Dr  
Mount Kisco, NY 10549

Birnbaum, Sandra  
79 Park Dr  
Mount Kisco, NY 10549

Colucci, Barbara  
73 Park Dr  
Mount Kisco, NY 10549

**04/06/2023**

## EXHIBIT B

Glatt, Carolyn  
24 Oxford Drive  
Suffern NY 10901

Powell, Shana  
51 Park Dr  
Mount Kisco, NY 10549

Lackner Eric A  
34 Park Dr  
Mount Kisco, NY 10549

NRE Management  
27 Radio Circle  
Mount Kisco, NY 10549

Klein Jason H  
107 Park Dr  
Mount Kisco, NY 10549

Chappaqua Road Co LLC  
C/o Anthony Belcotti  
500 Executive Blvd Ste 203  
Ossining, NY 10562

Futterman, George  
112 Park Dr  
Mount Kisco, NY 10549

1 Park Dr  
Mount Kisco, NY 10549

The Donald Zuecker Co  
101 W. 55th St  
New York, NY 10019

Menon, Maya  
5 Park Dr  
Mount Kisco, NY 10549

Ciavardini Lisa Marie  
107 Waccabuc Rd  
Goldens Bridge, NY 10526

Ferlenguez, Bora  
11 Park Dr  
Mount Kisco, NY 10549

Bueti, Alfredo  
55 Beverly Rd  
Mount Kisco, NY 10549

Toscano, Dianne  
43 Lawrence Drive  
White Plains, NY 10603

Zaccari, Nora M  
2 Foxwood Cir  
Mount Kisco, NY 10549

Hyatt Lanson J  
3 Foxwood Cir  
Mount Kisco, NY 10549

Leahy, Ann M  
30 Overlook Dr  
Kingston, NY 12401

Speare Charles  
42 Foxwood Cir  
Mount Kisco, NY 10549

Kaplan, Judie  
38 Foxwood Cir  
Mount Kisco, NY 10549

Rubinson Yakov  
c/o Alle Segal  
48 Park Drive  
Mount Kisco, NY 10549

Haverkost, Frances  
100 Diplomat Dr 7k  
Mount Kisco, NY 10549

Albanese Debora M  
114 Austin Rd  
Mahopac, NY 10541

Francis Ann Stone Irrev Trst  
79 Foxwood Cir  
Mount Kisco, NY 10549

Naso, James V  
34 Lake Way  
Purdys, NY 10578

Reisz, Alexander  
63 Foxwood Cir  
Mount Kisco, NY 10549

Christine Smith  
73 Foxwood Cir  
Mount Kisco, NY 10549

Perettine Joseph  
90 Coventry Lane  
Brewster, NY 10509

Kalaydjian, Alice  
37 Wood Road  
Bedford Hills, NY 10507

Devesta, John P  
106 Foxwood Cir  
Mount Kisco, NY 10549

Village of Mount Kisco  
104 Main Street  
Mount Kisco, NY 10549

**04/06/2023**

## EXHIBIT B

Village of Mount Kisco  
104 Main Street  
Mount Kisco, NY 10549

c/o Auto Nation Inc.  
200 SW 1st Ave  
Fort Lauderdale, FL 33301

Notaro, Marci  
20 Knowlton Ave  
Mount Kisco, NY 10549

Torre Robert C Jr  
213 Railroad Ave  
Bedford Hills, NY 10507

Pennessi, Christopher  
19 Knowlton Ave  
Mount Kisco, NY 10549

Hunter Beryl  
23 Knowlton Ave  
Mount Kisco, NY 10549

Trujillo, Betty  
90 Park Dr  
Mount Kisco, NY 10549

Lopez, Flor  
85 Manchester Dr  
Mount Kisco, NY 10549

Lebowitz Eric  
Attn: Andrew Himmelfarb  
85 Park Dr  
Mount Kisco, NY 10549

Husain Mariellen  
61 Park Dr  
Mount Kisco, NY 10549

Diener, Robert  
43 Park Dr  
Mount Kisco, NY 10549

Ovadek, Richard F  
42 Park Dr  
Mount Kisco, NY 10549

Cravotta Donna E  
83 Park Dr  
Mount Kisco, NY 10549

Montalvo, Michael  
58 Park Dr  
Mount Kisco, NY 10549

Carp, Kristina  
72 Park Dr  
Mount Kisco, NY 10549

Charnas Deborah  
55 Park Dr  
Mount Kisco, NY 10549

Kulawik, Christopher  
37 Park Dr  
Mount Kisco, NY 10549

Doreen W. Welburn, Trustee  
33 Park Dr  
Mount Kisco, NY 10549

Paiva Antonio D  
115 Park Dr  
Mount Kisco, NY 10549

Moore, James K  
116 Park Dr  
Mount Kisco, NY 10549

Zabirova Irina  
24 Park Dr  
Mount Kisco, NY 10549

Tomarelli, Scott  
20 Park Dr  
Mount Kisco, NY 10549

Bonet, Michael  
27 Park Dr  
Mount Kisco, NY 10549

Mines, Daniel  
10904 Northgreen Drive  
Lake Worth, FL 33449

Milkey, Peter  
9 Foxwood Cir  
Mount Kisco, NY 10549

Trpisovsky, Collen K  
4 Foxwood Cir  
Mount Kisco, NY 10549

Servedio, Ann Marie  
35 Foxwood Cir  
Mount Kisco, NY 10549

Burns, Hilda  
45 Foxwood Cir  
Mount Kisco, NY 10549

Kehoe, Eileen  
14851 Santa Lucia Dr  
Charlotte, NC 28272

Kowalczyk, Stephen  
15 Lambert Ridge  
Croos River, NY 10518

**04/06/2023**

## EXHIBIT B

Roider David J  
62 Brook St  
Mount Kisco, NY 10549

Lauren Pizzulla  
86 Foxwood Cir  
Mount Kisco, NY 10549

McNee Kathleen  
62 Foxwood Cir  
Mount Kisco, NY 10549

Vizioli Antonello R  
264 Andrea Rd  
Yorktown Heights, NY 10598

Reisz Alexander  
64 Foxwood Cir  
Mount Kisco, NY 10549

Bednarczyk Denise  
98 Foxwood Cir  
Mount Kisco, NY 10549

Guerin, Marie M  
PO Box 606  
West Kennebunkport, ME 04094

Smario Lorraine  
1369 King St  
Greenwich, CT 06831

Guerin, Marie M  
P.O. Box 606  
West Kennebunkport, ME 04094

Mcquaid, William L  
124 Foxwood Cir  
Mount Kisco, NY 10549

Morales, Karen  
120 Foxwood Cir  
Mount Kisco, NY 10549

Groben Christopher  
72 Felter Hills Road  
Monroe, NY 10950

William Louis Dreyfuss  
PO Box 320  
Mount Kisco, NY 10549

Halstead-Quinn Terminal Corp  
33 Hubbells Dr  
Mount Kisco, NY 10549

Mac Marty Inc  
20 Shore Drive  
Kingston, MA 02369

Fasulo Gaspare  
35 Knowlton Ave  
Mount Kisco, NY 10549

Medina, Nereida  
100 Park Dr  
Mount Kisco, NY 10549

Tostanoski, Edward J  
40 Park Dr  
Mount Kisco, NY 10549

Salvagno Louis  
80 Park Dr  
Mount Kisco, NY 10549

Marks, Alex  
76 Park Dr  
Mount Kisco, NY 10549

Vuksanaj, Parlind  
47 Park Dr  
Mount Kisco, NY 10549

Stonsby Denise  
52 Park Dr  
Mount Kisco, NY 10549

283 N Bedford Rd Corp  
MRE Management  
27 Radio Cir  
Mount Kisco, NY 10549

113 Park Drive Realty LLC  
C/O Perry Verrone  
12 Center Street  
Pleasantville, NY 10570

Loffa, Angela  
2 Park Dr  
Mount Kisco, NY 10549

Spielvogel, Jay  
28 Park Dr  
Mount Kisco, NY 10549

Lepp, Teresa Maria  
502 Kennsington Way  
Mount Kisco, NY 10549

Townsend St Assoc's LP  
c/o Mosbacher Properties  
18 E 48th St 19 Floor  
New York, NY 10017

Martabano, William T  
325 N Bedford Rd  
Mount Kisco, NY 10549

McLeod Bonnie A  
13 Park Dr  
Mount Kisco, NY 10549

**04/06/2023**



## EXHIBIT B

Kenny Kevin J  
2650 Quaker Church Rd  
Yorktown Heights, NY 10598

Minard, Laura  
39 Foxwood Cir  
Mount Kisco, NY 10549

Healey Pamela  
40 Foxwood Cir  
Mount Kisco, NY 10549

Conti, Richard  
47 Foxwood Cir  
Mount Kisco, NY 10549

Ruiz, Lisa  
c/o Foxwood Condominium  
PO Box 265  
Somers, NY 10589

Whitehead, Adam  
c/o Richard Whitehead  
34201 Winterberry Dr  
Plainview, NY 11803

Alexander Kokh  
87 Foxwood Cir  
Mount Kisco, NY 10549

Arvind Siriram  
74 Foxwood Cir  
Mount Kisco, NY 10549

Giordano, James A  
c/o James Giordano  
600 Clarence Ave, Apt. 20  
Bronx, NY 10465

Logan, Susan  
71 Foxwood Cir  
Mount Kisco, NY 10549

Caravello, James J Jr  
25 West Cir  
Bedford, NY 10506

Munoz, Mary T  
96 Foxwood Cir  
Mount Kisco, NY 10549

McLaughlin, Karen  
118 Foxwood Cir  
Mount Kisco, NY 10549

Bergs, Roswitha  
104 Foxwood Cir  
Mount Kisco, NY 10549

Village Of Mount Kisco  
104 Main Street  
Mount Kisco, NY 10549

MRE Management  
27 Radio Cir  
Mount Kisco, NY 10549

Roedel Partners of Mt Kisco II  
PO Box 598  
Wilton, NH 03086

Verizon New York Inc.  
c/o Duff & Phelps LLC  
PO Box 2749  
Addison, TX 75001

Mavis Tire  
358 Saw Mill River Rd  
Ardsley, NY 10546

59 Kensico LLC  
27 Radio Circle  
Mount Kisco, NY 10549

DiLeo, Maria Guiseppa  
39 Knowlton Ave  
Mount Kisco, NY 10549

Koch, Katy  
93 Park Dr  
Mount Kisco, NY 10549

Topolski, Joseph Jr  
89 Park Dr  
Mount Kisco, NY 10549

Spada, Carol  
102 Park Dr  
Mount Kisco, NY 10549

Coyne, Patrick T  
97 Park Dr  
Mount Kisco, NY 10549

Campos Maquire Conseulo  
66 Park Dr  
Mount Kisco, NY 10549

Kim, Hak Duk  
63 Park Dr  
Mount Kisco, NY 10549

Tavolilla, George  
45 Park Dr  
Mount Kisco, NY 10549

Glen, Rebecca  
69 Park Dr  
Mount Kisco, NY 10549

Troncoso, Rosa  
84 Park Dr  
Mount Kisco, NY 10549

**04/06/2023**

## EXHIBIT B

Gilch, Jeffery  
57 Park Dr  
Mount Kisco, NY 10549

Stokhamer, Jody  
54 Park Dr  
Mount Kisco, NY 10549

Ettlinger, Robert  
59 Stebbins Rd  
Carmel, NY 10512

Hardiman, Michael J  
23 Park Dr  
Mount Kisco, NY 10549

Tanski-Oleszko, Cynthia  
126 Chapin Pkwy  
Buffalo, NY 14209

MDC  
27 Radio Cir  
Mount Kisco, NY 10549

DP 102 LLC  
333 N Bedford Rd  
Mount Kisco, NY 10461

DP 102 LLC  
333 N Bedford Rd  
Mount Kisco, NY 10549

Steuer Tuppence R  
15 Park Dr  
Mount Kisco, NY 10549

Priolo Susan  
2937 Baisley Ave, Apt. 1  
Bronx, NY 10549

Mason Elizabeth  
8 Park Dr  
Mount Kisco, NY 10549

Belmont, Joseph C Jr  
54 Greenwood Lane  
Valhalla, NY 10595

Dagostino, Robert J  
20 Byram Lake Rd  
Mount Kisco, NY 10549

Webster, Irina  
131 Werking Rd  
E. Greenbush, NY 12061-9302

Collins James W  
PO Box 40  
Hawthorne, NY 10532

Kemp, Jamie L  
129 Foxwood Cir  
Mount Kisco, NY 10549

Johnston, Georgette  
125 Foxwood Cir  
Bedford Hills, NY 10507

Grislis Mara  
114 Foxwood Cir  
Mount Kisco, NY 10549

Antin, Sandra  
105 Foxwood Cir  
Mount Kisco, NY 10549

Charisma Associates LLC  
PO Box 324  
Somers, NY 10589

MRE Management  
27 Radio Cir  
Mount Kisco, NY 10549

DP 47, LLC  
c/o Diamond Properties  
PO Box 1493  
Hicksville, NY 11802

Greenberg, Gail B  
49 Knowlton Ave  
Mount Kisco, NY 10549

Jackson Thomas F  
31 Knowlton Ave  
Mount Kisco, NY 10549

Marreso, Miquel  
43 Knowlton Ave  
Mount Kisco, NY 10549

Schottin, Rona C  
91 Park Dr  
Mount Kisco, NY 10549

Marks  
88 Park Dr  
Mount Kisco, NY 10549

Moreno-Liberum  
99 Park Dr  
Mount Kisco, NY 10549

Mangione Jessica L  
67 Park Dr  
Mount Kisco, NY 10549

Gabrielle Volpe Living Trust  
c/o Sally J. Boynton LLC  
81 Main St, Ste 415  
White Plains, NY 10601

**04/06/2023**

## **EXHIBIT B**

Steuer Michael  
70 Park Dr  
Mount Kisco, NY 10549

Malcolm Miller 1999 Realty Tr.  
55 Clubhouse Ln  
Scarsdale, NY 10553

John E. Porcelli  
135 Radio Cir Drive  
Mount Kisco, NY 10549

Campbell  
53 Park Dr  
Mount Kisco, NY 10549

Koli Esther  
35 Park Dr  
Mount Kisco, NY 10549

MRE Management  
27 Radio Cir Dr.  
Mount Kisco, NY 10549

325 N Bedford Rd LLC  
325 N Bedford Rd  
Mount Kisco, NY 10549

Bando, Christopher  
104 Park Dr  
Mount Kisco, NY 10549

343 Bedford Realty, LLC  
75 Commercial St  
Plainview, NY 11803

Lortkipanidze Archil  
105 Park Dr  
Mount Kisco, NY 10549

Goldstein Marc  
108 Park Dr  
Mount Kisco, NY 10549

Green, Jonathan  
114 Park Dr  
Mount Kisco, NY 10549

Weisse Daniel  
22 Park Dr  
Mount Kisco, NY 10549

Corrales Samuel  
17 Park Dr  
Mount Kisco, NY 10549

Healy Michael  
29 Foxwood Cir  
Mount Kisco, NY 10549

Christine Techersch  
30 Foxwood Cir  
Mount Kisco, NY 10549

Ragusa, Maria A  
77 Sunset Way  
Tarrytown, NY 10591

Cimo, Stephanie E  
25 Foxwood Cir  
Mount Kisco, NY 10549

Vena, Michael A  
10 Park Dr  
Mount Kisco, NY 10549

Corvino Maria  
41 Foxwood Cir  
Mount Kisco, NY 10549

Del Gaizo, Edward  
58 Foxwood Cir  
Mount Kisco, NY 10549

Brown, Perry  
57 Foxwood Cir  
Mount Kisco, NY 10549

Cucchiarella, John T  
90 Foxwood Cir  
Mount Kisco, NY 10549

Meliambro, Rocco  
83 Foxwood Cir  
Mount Kisco, NY 10549

Beristain, Melissa  
66 Foxwood Cir  
Mount Kisco, NY 10549

Ferrara, Philomena  
61 Foxwood Cir  
Mount Kisco, NY 10549

Piccione, Paula  
70 Foxwood Cir  
Mount Kisco, NY 10549

Sullivan Hall, Frances  
69 Foxwood Cir  
Mount Kisco, NY 10549

Visconti Brady, Linda M  
10 Somers Hill Rd  
Carmel, NY 10512

Fernandini, Edith F  
600 Clarence Ave, Apt 2Q  
Bronx, NY 10465

**04/06/2023**

## **EXHIBIT B**

Fein, Such, Crane LLP  
7 Century Drive, Ste 1  
Parsippany, NJ 07054

Brad Schneider  
49 Highland Rd  
Thornwood, NY 10594

Palmiero, John  
11 Reeback Dr  
Valhalla, NY 10595

Frederick Vaccaro  
100 Foxwood Cir  
Mount Kisco, NY 10549

Valle Lourdes L  
14 Albion Oval West  
Mahopac, NY 10541

275 Kisco Ave., LLC  
6411 Ivy Lane, Ste 200  
Greenbelt, MD 20770

North County Properties LLC  
187 Falmouth Rd  
Falmouth, ME 04105

Trinity Investment Properties  
21 Lauder Lane  
Greenwich, CT 06831

Brooks Realty of Mt. Kisco LLC  
15 Kensico Dr  
Mount Kisco, NY 10549

Tennis Equities Inc  
77 Kensico Dr  
Mount Kisco, NY 10549

Vaccaro  
94 Park Dr  
Mount Kisco, NY 10549

Vaccaro  
96 Park Dr  
Mount Kisco, NY 10549

Jager Christopher J  
87 Park Dr  
Mount Kisco, NY 10549

Jacobowitz, Steven O  
59 Park Dr  
Mount Kisco, NY 10549

Friedlander, David H  
81 Park Dr  
Mount Kisco, NY 10549

Juarez  
38 Park Dr  
Mount Kisco, NY 10549

Elgamal, Alyma  
106 Park Dr  
Mount Kisco, NY 10549

Sassano  
26 Park Dr  
Mount Kisco, NY 10549

Sorenson  
19 Park Dr  
Mount Kisco, NY 10549

Lee Jaeyong  
4 Park Dr  
Mount Kisco, NY 10549

Broth, Jacqueline  
31 Park Dr  
Mount Kisco, NY 10549

Gentile  
16 Park Dr  
Mount Kisco, NY 10549

John A. Martabano Trust No. 1  
5515 Lake Ridge Drive  
Brighton, MI 48116

Belanich, Michael  
30 Park Dr  
Mount Kisco, NY 10549

Spadaccia, Frank D  
31 Foxwood Cir  
Mount Kisco, NY 10549

Dellaripa, Frank  
14 Park Dr  
Mount Kisco, NY 10549

Maritza Budiuck  
77 Kenisco Dr  
Mount Kisco, NY 10549

Ryan, Evelyne H  
9 Park Dr  
Mount Kisco, NY 10549

Pasternak, Louise Ann  
2924 Nathaniel Run  
Williamsburg, VA 23185

Cruz, Jeffrey M  
17 Foxwood Cir  
Mount Kisco, NY 10549

**04/06/2023**

## **EXHIBIT B**

Stephens, Ross  
24 Foxwood Cir  
Mount Kisco, NY 10549

Sage Judith E  
18 Foxwood Cir  
Mount Kisco, NY 10549

Merusi Daniel  
PO Box 46  
Schenocock, NY 10587

Stasio, Rosemarie  
37 Foxwood Cir  
Mount Kisco, NY 10549

Naccari, Maria  
52 Foxwood Cir  
Mount Kisco, NY 10549

Guldner Louise  
53 Foxwood Cir  
Mount Kisco, NY 10549

Fazio, Gregory  
76 Foxwood Cir  
Mount Kisco, NY 10549

Townley Anthony  
Heritage Hills 469A  
Somers, NY 10589

Alexander Fazio  
85 Foxwood Cir  
Mount Kisco, NY 10549

Ciavardini, Paul W  
59 Foxwood Cir  
Mount Kisco, NY 10549

Ryan Isbell  
93 Foxwood Cir  
Mount Kisco, NY 10549

Jessica Robustelli, Inc.  
80 Chestnut Ridge  
Mt. Kisco, NY 10549

Bonforte, Michael  
102 Foxwood Cir  
Mount Kisco, NY 10549

Yamagami, Hiroshi  
109 Foxwood Cir  
Mount Kisco, NY 10549

K. Cullen  
Brookside & Foxwood  
Somers, NY 10589

Lori Zollo  
19 S Broadway, Unit BC  
Tarrytown, NY 10591

Gary E Knell Revocable Trust  
55 Knowlton Ave  
Mt. Kisco, NY 10549

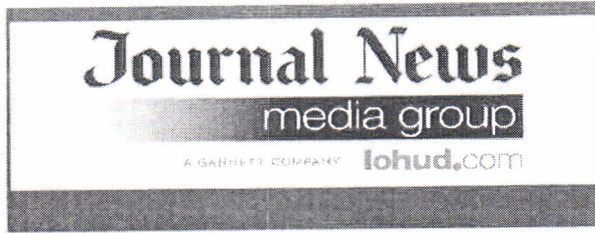
Duelk, Penny  
28 Foxwood Cir  
Mt. Kisco, NY 10549

HVA Realty, LLC  
250 Kisco Ave  
Mt. Kisco, NY 10549

Heritage Management Services  
Po Box 265  
Somers, NY 10589

AKA Realty LLC  
190 N Bedford Rd  
Mt. Kisco, NY 10549

Toscano, Dianne  
8 Foxwood Cir  
Mt. Kisco, NY 10589



RECEIVED  
APR 11 2023  
Zoning Board of Appeals  
Village/Town of Mount Kisco

**AFFIDAVIT OF PUBLICATION  
FROM**

**State of Wisconsin  
County of Brown, ss.:**

On the 3 day of April in the year 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared Linda Felt, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed, the instrument.

Linda Felt being duly sworn says that he/she is the principal clerk of **THE JOURNAL NEWS**, a newspaper published in the County of Westchester and the State of New York, and the notice of which the annexed is a printed copy, on the editions dated :

**Zone:**  
Westchester

**Run Dates:**  
04/02/2023

Linda Felt  
Signature

Sworn to before me, this 3 day of April, 2023

Vicky Felty  
Notary Public, State of Wisconsin, County of Brown

VICKY FELTY  
Notary Public  
State of Wisconsin

9/29/25  
My commission expires  
Legend:

**WESTCHESTER:**  
Amawalk, Ardsley, Ardsley on Hudson, Armonk, Baldwin Place, Bedford, Bedford Hills, Brewster, Briarcliff Manor, Bronxville, Buchanan, Carmel, Chappaqua, Cold Spring, Crompond, Cross River, Croton Falls, Croton on Hudson, Dobbs Ferry, Eastchester, Elmsford, Garrison, Goldens Bridge, Granite Springs, Greenburg, Harrison, Hartsdale, Hastings, Hastings on Hudson, Hawthorne, Irvington, Jefferson Valley, Katonah, Lake Peekskill, Larchmont, Lincoln Dale, Mahopac, Mahopac Falls, Mamaroneck, Millwood, Mohegan Lake, Montrose, Mount Kisco, Mount Vernon, New Rochelle, North Salem, Ossining, Patterson, Peekskill, Pelham, Pleasantville, Port Chester, Pound Ridge, Purchase, Purdys, Putnam Valley, Rye, Scarsdale, Shenorock, Strub Oak, Somers, South Salem, Tarrytown, Thornwood, Tuckahoe, Valhalla, Verplanck, Waccabuc, White Plains, Yorktown Heights, Yonkers

**ROCKLAND:**  
Blauvelt, Congers, Garnerville, Haverstraw, Hillburn, Monsey, Nanuet, New City, Nyack, Orangeburg, Palisades, Pearl River, Piermont, Pomona, Slootsburg, Sparkill, Spring Valley, Stony Point, Suffern, Tappan, Thiells, Tomkins Cove, Valley Cottage, West Haverstraw, West Nyack

**Ad Number: 0005649066**

## PUBLIC NOTICE

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village/Town of Mount Kisco, New York will hold a Public Hearing on the 18th day of April, 2023 at the Municipal Building, Mount Kisco, New York, beginning at 7:00 PM pursuant to the Zoning Ordinance on the Appeal of DP 21, LLC, 333 North Bedford Road, Suite 145, Mount Kisco, NY, 10549 from the decision of Peter J. Milroy, Building Inspector, dated 09/06/2019 denying the application dated to permit the items on the attached list. The property involved is known as The Park 333 (333 North Bedford Road, Mount Kisco, NY, 10549) and described on the Village Tax Map as Mount Kisco (Section 69.50, Block 2, Lot 1), (Section 69.51, Block 1, Lot 3) and (Section 69.43, Block 1, Lots 2 & 3) and Bedford (Section 71.12, Block 2, Lot 36) and is located on the west side of North Bedford Road in a ML & CL Zoning District. Said Appeal is being made to obtain a variance from Section(s) refer to attached list of the Code of the Village/Town of Mount Kisco, which requires refer to the attached list.

Wayne Spector, Chair  
Zoning Board of Appeals  
Village/Town of Mount Kisco

## Village of Mount Kisco Zoning Board of Appeals variances:

Original variances were received on December 18, 2020 and reinstated on January 18, 2023 (ZBA Case No. 20-6). The site plan design has been modified and all variances are either the same or have been reduced with the exception one slight increase:

## Village of Mount Kisco Zoning Board of Appeals variances:

1. 333 NBR (ML District), the required maximum allowable building area for the proposed ShopRite grocery store is 75,000 sf, where 83,618 sf is proposed. **Therefore a 8,618 sf variance is required.** This is reduction from the previously granted variance of 10,652 sf

2. 333 NBR, a variance from the requirement that Full-Service Grocery Store provide 420 parking spaces under Village Code 110.

	Required	Proposed	Variance Needed
Parking Spaces	420	167	253

3. 333 NBR (ML District), the required maximum development coverage for the ML District is 70%, where 72.3% is proposed. **Therefore a 2.3% variance is required.** This is a reduction from the previously granted variance of 3.1%.

It should be noted that the proposed development coverage for the entire 333 NBR lot (all zoning districts in Mount Kisco and Bedford) is 69.4% which is a slight increase from the previously approved 69.1%, which did not require a variance.

4. 309 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C, (5) Minimum building setback side: 10 feet. Proposed is 7.7 feet; therefore, **a 2.3 foot variance is required.**

5. 383 NBR (CL District), As per Village/Town Mount Kisco Code Chapter 110, Zoning Article III, District Regulations § 110.19, CL Limited Commercial District, C, Development regulations, (3) Maximum development coverage is 80%, proposed is 86.4 % therefore; **a 6.4% development coverage variance is required.** This equates to an increase in 3.3% from the previously approved variance of 83.1% development coverage which received a 3.1% development coverage variance.

6. 383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C, (6) (a) [2] Rear yard buffer: 5 feet. Proposed is 0 feet; therefore, **a 5 foot rear yard buffer variance is required.**

7. 383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C, (6) (a) [3] Side yard buffer: 5 feet. Proposed is 0 feet; therefore, **a 5 foot side yard buffer variance is required.**

8. 383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C, (5) Minimum building setback side: 10 feet. Proposed is 1 ft; therefore, **a 9 foot side yard setback variance is required.**

9. 383 NBR (CL District), As per Village/Town Mount Kisco Code 110-19 C, (5) Minimum building setback rear: 10 feet. Proposed is 0 feet; therefore, **a 10 foot rear yard setback variance is required.**

10. 383 NBR (CL District), As per Village/Town Mount Kisco Code Chapter 110, Zoning Article V, Supplementary Regulations § 110-30, Supplementary use regulations, D, Trash compactors, dumpsters and other large trash containers. (1) The compactor, dumpster or container shall be located no closer to the property lines than is permitted for an accessory structure in said district. Proposed dumpster is located in the rear yard (west) adjacent to the side lot line. According to Chapter 110, Zoning Article V, Supplementary Regulations § 110-31, Supplementary development regulations, G, Accessory structures. (1) No accessory structure, except a sign for which a permit, pursuant to Chapter 89 of this Code, has been granted and which is erected pursuant to a site plan approved by the Planning Board, shall be located or project nearer to any street line or side lot line than does the principal structure on the lot.

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APR 11 2023

Zoning Board of Appeals  
Village/Town of Mount Kisco

State of New York )  
 ) ss:  
County of Westchester)

AFFIDAVIT OF POSTING

**Gilmar Palacios Chin**, being duly sworn, says that on the 11<sup>th</sup> day of April 2023, he conspicuously fastened up and posted in seven public places, in the Village/Town of Mount Kisco, County of Westchester, a printed notice of which the annexed is a true copy, to Wit: ---

Municipal Building – X  
104 Main Street

Public Library X  
100 Main Street

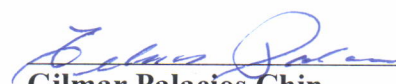
Fox Center X

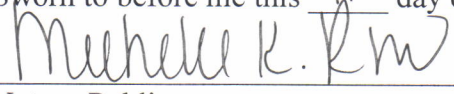
Justice Court – Green Street X  
40 Green Street

Mt. Kisco Ambulance Corp X  
310 Lexington Ave

Carpenter Avenue Community House X  
200 Carpenter Avenue

Leonard Park Multi Purpose Bldg X

  
\_\_\_\_\_  
**Gilmar Palacios Chin**

Sworn to before me this 11<sup>th</sup> day of April 2023  
  
\_\_\_\_\_

Notary Public  
**MICHELLE K. RUSSO**  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01RU6313298  
Qualified in Putnam County  
My Commission Expires 10-20-2026

ShopRite



AMENDED SITE PLAN APPROVAL DRAWINGS

# THE PARK 333 (SHOPRITE EXPANSION)

VILLAGE OF MT. KISCO TAX MAP SECTION: 69.50 | BLOCK 2 | LOT 1  
 TOWN OF BEDFORD TAX MAP SECTION: 71.12 | BLOCK 2 | LOT 36  
 333 NORTH BEDFORD ROAD/799 BEDFORD ROAD  
 VILLAGE OF MOUNT KISCO/TOWN OF BEDFORD, NY  
 TOWN OF BEDFORD, NEW YORK

### 333 NORTH BEDFORD ROAD TABLE OF LAND USE

VILLAGE OF MT. KISCO SECTION 69.50, BLOCK 2, LOT 1 - 333 NORTH BEDFORD ROAD  
 ZONE: MOUNT KISCO-"ML"-LIGHT MANUFACTURING / "CL"-LIMITED COMMERCIAL  
 TOWN OF BEDFORD SECTION 71.12, BLOCK 2, LOT 36  
 ZONE: BEDFORD-"LI"-LIGHT INDUSTRIAL / "RB"- "ROADSIDE BUSINESS"  
 PROPOSED USE: VARIES (LISTED ON DRAWING C-001)  
 FIRE DISTRICT: MOUNT KISCO - MOUNT KISCO FD / BEDFORD - BEDFORD HILLS FD  
 WATER DISTRICT: MOUNT KISCO WATER DEPARTMENT  
 SCHOOL DISTRICT: BEDFORD CENTRAL SCHOOL DISTRICT  
 SEWER DISTRICT: MOUNT KISCO - SAW MILL

DESCRIPTION	REQUIRED	EXISTING	PROPOSED
<b>MOUNT KISCO - ML DISTRICT</b>			
MINIMUM LOT AREA (SQUARE FEET)	10,000	1,309,939	1,309,939
BUILDING GROSS FLOOR AREA (SQUARE FEET)	-	610,723	615,630 <sup>(1)</sup>
BUILDING COVERAGE AREA (SQUARE FEET)	589,479	557,769	563,074 <sup>(1)</sup>
DEVELOPED AREA (SQUARE FEET)	916,967	931,524	946,952
MAXIMUM BUILDING COVERAGE (PERCENT)	45%	42.6%	43.0%
MAXIMUM DEVELOPMENT COVERAGE (PERCENT)	70%	71.1%	72.3%
MINIMUM LOT WIDTH (FEET)	75'	1,964.5	1,964.5
MINIMUM LOT DEPTH (FEET)	75'	1,124.3	1,124.3
MAXIMUM BUILDING HEIGHT (FEET/STORIES)	35/2.5 STORIES	35/2.0 STORIES	35/2.0 STORIES
FRONT YARD BUFFER (FEET)	10'	5' <sup>(2)</sup>	5'
REAR YARD BUFFER (FEET)	10'	21'	21'
SIDE YARD BUFFER (FEET)	10'	0' <sup>(3)</sup>	0'
MINIMUM FRONT BUILDING SETBACK (FEET)	10'	5' <sup>(2)</sup>	5'
MINIMUM REAR BUILDING SETBACK (FEET)	10'	39'	39'
MINIMUM SIDE BUILDING SETBACK (FEET)	10'	26'	26'

DESCRIPTION	REQUIRED	EXISTING	PROPOSED
<b>MOUNT KISCO - CL DISTRICT</b>			
MINIMUM LOT AREA (SQUARE FEET)	10,000	40,342	40,342
BUILDING GROSS FLOOR AREA (SQUARE FEET)	-	0	0
BUILDING COVERAGE AREA (SQUARE FEET)	12,103	0	0
DEVELOPED AREA (SQUARE FEET)	32,274	33,176	21,789
MAXIMUM BUILDING COVERAGE (PERCENT)	30%	0%	0%
MAXIMUM DEVELOPMENT COVERAGE (PERCENT)	80%	82.2%	54.0%
MINIMUM LOT WIDTH (FEET)	100'	50' <sup>(3)</sup>	50' <sup>(3)</sup>
MAXIMUM BUILDING HEIGHT (FEET/STORIES)	35/2.5 STORIES	30/2 STORIES	30/2 STORIES
FRONT YARD BUFFER (FEET)	20'	0' <sup>(2)</sup>	0' <sup>(2)</sup>
REAR YARD BUFFER (FEET)	5'	8'	-
SIDE YARD BUFFER (FEET)	5'	0' <sup>(3)</sup>	0' <sup>(3)</sup>
MINIMUM FRONT BUILDING SETBACK (FEET)	20'	32'	-
MINIMUM REAR BUILDING SETBACK (FEET)	10'	77'	-
MINIMUM SIDE BUILDING SETBACK (FEET)	10'	3' <sup>(3)</sup>	-

DESCRIPTION	REQUIRED	EXISTING	PROPOSED
<b>BEDFORD - LI DISTRICT</b>			
MINIMUM LOT AREA (SQUARE FEET)	20,000	267,321	267,321
BUILDING GROSS FLOOR AREA (SQUARE FEET)	-	811	811
BUILDING COVERAGE AREA (SQUARE FEET)	106,928	811	811
DEVELOPED AREA (SQUARE FEET)	200,491	117,613	156,161
MAXIMUM BUILDING COVERAGE (PERCENT)	40%	0.3%	0.3%
MAXIMUM DEVELOPMENT COVERAGE (PERCENT)	75%	44.0%	58.4%
MINIMUM EFFECTIVE SQUARE SIDE (FEET)	100'	-	-
FRONT YARD BUFFER (FEET)	15'	-	-
LESSER SIDE/TOTAL BOTH SIDES (FEET)	15/30	-	-
REAR YARD BUFFER (FEET)	30'	-	-
MAXIMUM BUILDING HEIGHT (FEET/STORIES)	45/3 STORIES	-	-

DESCRIPTION	REQUIRED	EXISTING	PROPOSED
<b>BEDFORD - RB DISTRICT</b>			
MINIMUM LOT AREA (SQUARE FEET)	-	16,681	16,681
BUILDING GROSS FLOOR AREA (SQUARE FEET)	-	0	0
BUILDING COVERAGE AREA (SQUARE FEET)	3,336	0	0
DEVELOPED AREA (SQUARE FEET)	13,345	7,288	9,586
MAXIMUM BUILDING COVERAGE (PERCENT)	20%	0%	0%
MAXIMUM DEVELOPMENT COVERAGE (PERCENT)	80%	43.6%	57.5%
MINIMUM EFFECTIVE SQUARE SIDE (FEET)	-	-	-
FRONT YARD BUFFER (FEET)	10	-	-
LESSER SIDE/TOTAL BOTH SIDES (FEET)	-	-	-
REAR YARD BUFFER (FEET)	30	-	-
MAXIMUM BUILDING HEIGHT (FEET/STORIES)	45/3 STORIES	-	-

DESCRIPTION	REQUIRED	EXISTING	PROPOSED
<b>TOTAL SITE</b>			
MINIMUM LOT AREA (SQUARE FEET)	-	1,634,283	1,634,283
BUILDING GROSS FLOOR AREA (SQUARE FEET)	-	611,534	616,441
BUILDING COVERAGE AREA (SQUARE FEET)	735,433	558,580	563,885
DEVELOPED AREA (SQUARE FEET)	1,144,007	1,089,601	1,134,488
MAXIMUM BUILDING COVERAGE (PERCENT)	45%	34.2%	34.5%
MAXIMUM DEVELOPMENT COVERAGE (PERCENT)	70%	66.7%	69.4%
FRONT YARD BUFFER (FEET)	20'	5' <sup>(2)</sup>	0'
REAR YARD BUFFER (FEET)	10'	21'	21'
SIDE YARD BUFFER (FEET)	10'	0' <sup>(3)</sup>	0'
MINIMUM FRONT BUILDING SETBACK (FEET)	10'	5' <sup>(2)</sup>	5'
MINIMUM REAR BUILDING SETBACK (FEET)	10'	39'	39'
MINIMUM SIDE BUILDING SETBACK (FEET)	10'	26'	26'
TOTAL PARKING SPACES	1,019/180	802 <sup>(2)</sup>	863
ACCESSIBLE PARKING SPACES (INCLUDED WITHIN TOTAL)	18	18	27
LOADING SPACES	8	28	21

### 383 NORTH BEDFORD ROAD TABLE OF LAND USE

VILLAGE OF MT. KISCO SECTION 69.43, BLOCK 1, LOT 2 & 3 (383 NORTH BEDFORD ROAD)  
 ZONE: MOUNT KISCO-"CL"-LIMITED COMMERCIAL  
 PROPOSED USE: RETAIL STORE  
 FIRE DISTRICT: MOUNT KISCO - MOUNT KISCO FD  
 WATER DISTRICT: MOUNT KISCO WATER DEPARTMENT  
 SCHOOL DISTRICT: BEDFORD CENTRAL SCHOOL DISTRICT  
 SEWER DISTRICT: MOUNT KISCO - SAW MILL

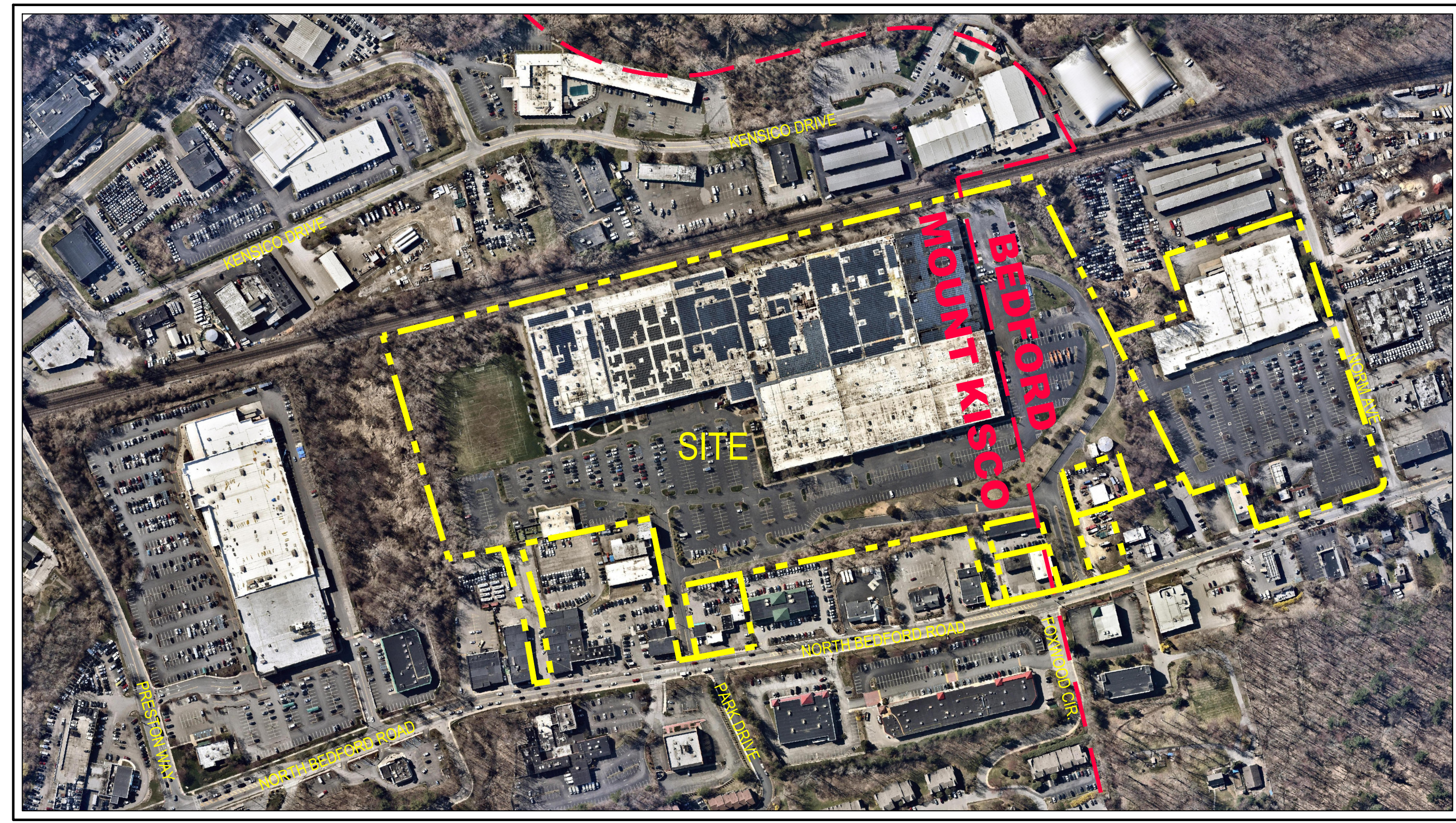
DESCRIPTION	REQUIRED	EXISTING	PROPOSED
<b>MOUNT KISCO - CL DISTRICT</b>			
MINIMUM LOT AREA (SQUARE FEET)	10,000	18,664	18,664
BUILDING GROSS FLOOR AREA (SQUARE FEET)	-	7,893	5,503
BUILDING COVERAGE AREA (SQUARE FEET)	-	7,893	5,503
DEVELOPED AREA (SQUARE FEET)	-	15,011	16,127
MAXIMUM BUILDING COVERAGE (PERCENT)	30%	42.3%	29.5%
MAXIMUM DEVELOPMENT COVERAGE (PERCENT)	80%	96.5%	86.4%
MINIMUM LOT WIDTH (FEET)	100'	149'	149'
MAXIMUM BUILDING HEIGHT (FEET/STORIES)	35/2.5 STORIES	15/1 STORY	24/1 STORY
FRONT YARD BUFFER (FEET)	20'	3' <sup>(3)</sup>	12'
REAR YARD BUFFER (FEET)	5'	0' <sup>(3)</sup>	0' <sup>(3)</sup>
SIDE YARD BUFFER (FEET)	5'	0' <sup>(3)</sup>	0' <sup>(3)</sup>
MINIMUM FRONT BUILDING SETBACK (FEET)	20'	40'	77'
MINIMUM REAR BUILDING SETBACK (FEET)	10'	0' <sup>(3)</sup>	0' <sup>(3)</sup>
MINIMUM SIDE BUILDING SETBACK (FEET)	10'	1.4' <sup>(3)</sup>	1' <sup>(3)</sup>
TOTAL PARKING SPACES	28	18 <sup>(2)</sup>	28
ACCESSIBLE PARKING SPACES (INCLUDED WITHIN TOTAL)	2	0' <sup>(3)</sup>	2
LOADING SPACES	1	1	1

### 309 NORTH BEDFORD ROAD TABLE OF LAND USE

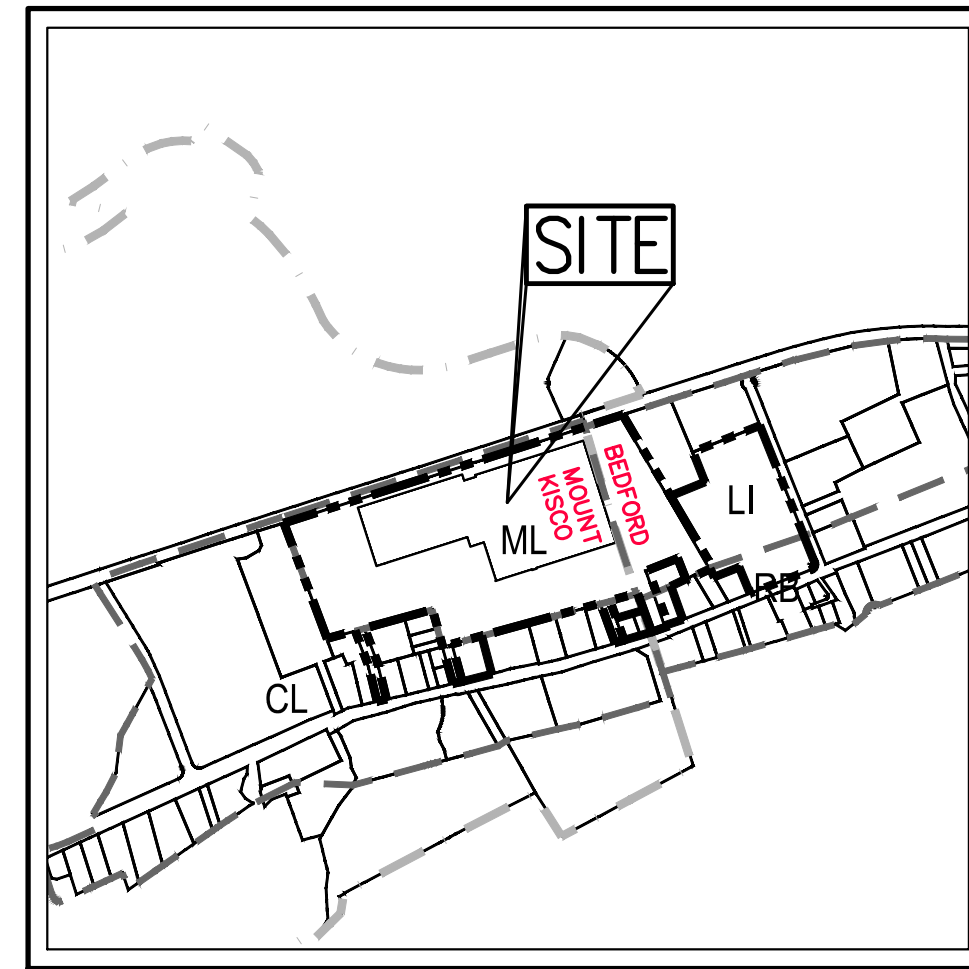
VILLAGE OF MT. KISCO SECTION 69.51, BLOCK 1, LOT 3 (309 NORTH BEDFORD ROAD)  
 ZONE: MOUNT KISCO-"CL"-LIMITED COMMERCIAL  
 PROPOSED USE: RETAIL STORE  
 FIRE DISTRICT: MOUNT KISCO - MOUNT KISCO FD  
 WATER DISTRICT: MOUNT KISCO WATER DEPARTMENT  
 SCHOOL DISTRICT: BEDFORD CENTRAL SCHOOL DISTRICT  
 SEWER DISTRICT: MOUNT KISCO - SAW MILL

DESCRIPTION	REQUIRED	EXISTING	PROPOSED
<b>MOUNT KISCO - CL DISTRICT</b>			
MINIMUM LOT AREA (SQUARE FEET)	10,000	32,498	32,498
BUILDING GROSS FLOOR AREA (SQUARE FEET)	-	10,386	5,698
BUILDING COVERAGE AREA (SQUARE FEET)	-	5,275	2,859
DEVELOPED AREA (SQUARE FEET)	-	29,776	24,729
MAXIMUM BUILDING COVERAGE (PERCENT)	30%	16.2%	8.8%
MAXIMUM DEVELOPMENT COVERAGE (PERCENT)	80%	91.6%	76.1%
MINIMUM LOT WIDTH (FEET)	100'	160'	160'
MAXIMUM BUILDING HEIGHT (FEET/STORIES)	35/2.5 STORIES	30/2 STORIES	30/2 STORIES
FRONT YARD BUFFER (FEET)	20'	0' <sup>(3)</sup>	7'
REAR YARD BUFFER (FEET)	5'	7'	8'
SIDE YARD BUFFER (FEET)	5'	0' <sup>(3)</sup>	0'
MINIMUM FRONT BUILDING SETBACK (FEET)	20'	32'	61'
MINIMUM REAR BUILDING SETBACK (FEET)	10'	77'	77'
MINIMUM SIDE BUILDING SETBACK (FEET)	10'	2.7' <sup>(3)</sup>	7.7' <sup>(3)</sup>
TOTAL PARKING SPACES	24	33 <sup>(3)</sup>	24
ACCESSIBLE PARKING SPACES (INCLUDED WITHIN TOTAL)	1	0' <sup>(3)</sup>	1
LOADING SPACES	1	1	1

**ZONING NOTES:**  
 1. VARIANCE REQUIRED.  
 2. EXISTING LEGAL NON-CONFORMITY.  
 3. INCLUDES 4,907 SF ADDITION FOR SHOPRITE ENCLOSED VESTIBULE, BOTTLE RECYCLING AREA AND 382 SF PROPOSED FIELD HOUSE.

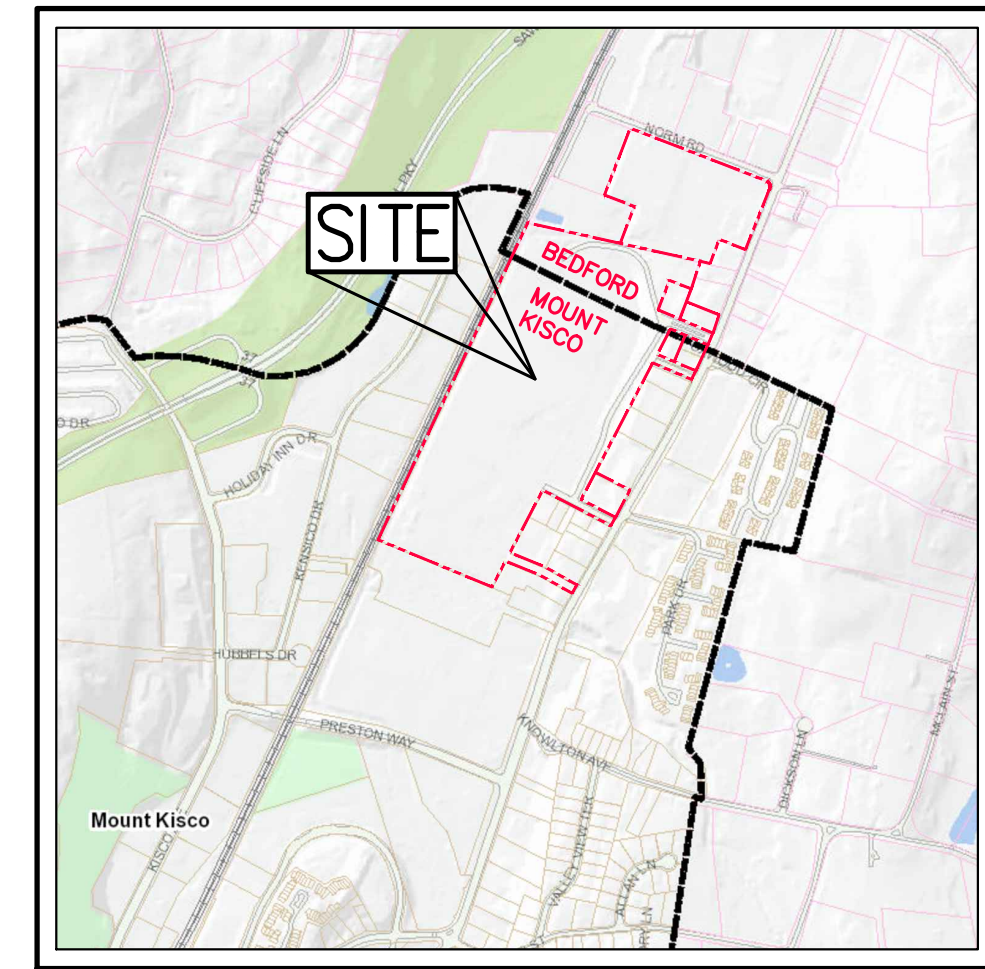


AREA MAP  
 SCALE: 1" = 250'  
 SOURCE: NEAR MAP



ZONING MAP  
 SCALE: 1" = 1,000'  
 SOURCE: VILLAGE/TOWN OF MOUNT KISCO  
 ZONING DISTRICT MAP, DATED 01/08/2018

ZONING MAP LEGEND	
---	SITE PROPERTY LINE
---	ZONING BOUNDARY
---	LOT LINE
---	TOWN BOUNDARY
ML	LIGHT MANUFACTURING DISTRICT (MOUNT KISCO)
CL	LIMITED COMMERCIAL DISTRICT (MOUNT KISCO)
LI	LIGHT INDUSTRIAL DISTRICT (BEDFORD)
RB	ROADSIDE BUSINESS DISTRICT (BEDFORD)



VICINITY MAP  
 SCALE: 1" = 1,000'  
 SOURCE: WESTCHESTER COUNTY GIS / 2016

### SHOPRITE PARKING TABLE

DESCRIPTION	REQUIRED	PROVIDED
STANDARD PARKING SPACES	409	410
ACCESSIBLE PARKING SPACES	9	10
TOTAL PARKING SPACES	418	420
LOADING SPACES	3	6

### GENERAL CONSTRUCTION NOTES APPLY TO ALL WORK HEREIN:

- PRIOR TO CONSTRUCTION, THE CONTRACTOR SHALL CALL 811 "DIG SAFELY" (1-800-962-7862) TO HAVE UNDERGROUND UTILITIES LOCATED INCLUDING ARRANGING FOR A PRIVATE MARKOUT ON-SITE WHERE APPLICABLE. EXPLORATORY EXCAVATIONS SHALL COMPLY WITH CODE 753 REQUIREMENTS. NO WORK SHALL COMMENCE UNTIL ALL THE OPERATORS HAVE NOTIFIED THE CONTRACTOR THAT THEIR UTILITIES HAVE BEEN LOCATED. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PRESERVATION OF ALL PUBLIC AND PRIVATE UNDERGROUND AND SURFACE UTILITIES AND STRUCTURES AT OR ADJACENT TO THE SITE OF CONSTRUCTION. INsofar as they may be endangered by the CONTRACTOR'S OPERATIONS, THIS SHALL HOLD TRUE WHETHER OR NOT THEY ARE SHOWN ON THE CONTRACT DRAWINGS. IF THEY ARE SHOWN ON THE DRAWINGS, THEIR LOCATIONS ARE NOT GUARANTEED EVEN THOUGH THE INFORMATION WAS OBTAINED FROM THE BEST AVAILABLE SOURCES, AND IN ANY EVENT OTHER UTILITIES ON THESE PLANS MAY BE ENCOUNTERED IN THE FIELD. THE CONTRACTOR SHALL, AT HIS OWN EXPENSE, IMMEDIATELY REPAIR OR REPLACE ANY STRUCTURES OR UTILITIES THAT HE DAMAGES, AND SHALL CONSTANTLY PROCEED WITH CAUTION TO PREVENT UNDUE INTERRUPTION OF UTILITY SERVICE.
- CONTRACTOR SHALL HAND DIG TEST PITS TO VERIFY THE LOCATION OF ALL EXISTING UNDERGROUND UTILITIES PRIOR TO THE START OF CONSTRUCTION. CONTRACTOR SHALL VERIFY EXISTING UTILITIES DEPTHS AND ADVISE OF ANY CONFLICTS WITH PROPOSED UTILITIES. IF CONFLICTS ARE PRESENT, THE OWNER'S FIELD REPRESENTATIVE, JMC, PLLC AND THE APPLICABLE MUNICIPALITY OR AGENCY SHALL BE NOTIFIED IN WRITING. THE EXISTING/PROPOSED UTILITIES RELOCATION SHALL BE DESIGNED BY JMC, PLLC.
- CONTRACTOR IS RESPONSIBLE FOR OBTAINING ANY AND ALL LOCAL PERMITS REQUIRED.
- ALL WORK SHALL BE DONE IN STRICT COMPLIANCE WITH ALL APPLICABLE NATIONAL, STATE, AND LOCAL CODES, STANDARDS, ORDINANCES, RULES, AND REGULATIONS. ALL CONSTRUCTION WORK SHALL BE PERFORMED IN ACCORDANCE WITH ALL SAFETY CODES, APPLICABLE SAFETY CODES MEAN THE LATEST EDITION INCLUDING ANY AND ALL AMENDMENTS, REVISIONS, AND ADDITIONS THERE TO, TO THE FEDERAL DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION'S OCCUPATIONAL SAFETY AND HEALTH STANDARDS (OSHA), AND APPLICABLE SAFETY, HEALTH REGULATIONS AND BUILDING CODES FOR CONSTRUCTION IN THE STATE OF NEW YORK. THE CONTRACTOR SHALL BE RESPONSIBLE FOR GUARDING AND PROTECTING ALL OPEN EXCAVATIONS IN ACCORDANCE WITH THE PROVISION OF SECTION 107-05 (SAFETY AND HEALTH REQUIREMENTS) OF THE NYS DOT STANDARD SPECIFICATIONS. IF THE CONTRACTOR PERFORMS ANY HAZARDOUS CONSTRUCTION PRACTICES, ALL OPERATIONS IN THE AFFECTED AREA SHALL BE DISCONTINUED AND IMMEDIATE ACTION SHALL BE TAKEN TO CORRECT THE SITUATION TO THE SATISFACTION OF THE APPROVAL AUTHORITY HAVING JURISDICTION.
- CONTRACTOR SHALL MAINTAIN ACCESS TO ALL PROPERTIES AFFECTED BY THE SCOPE OF WORK SHOWN HEREON AT ALL TIMES TO THE SATISFACTION OF THE OWNER'S REPRESENTATIVE. RAMPING CONSTRUCTION TO PROVIDE ACCESS MAY BE CONSTRUCTED WITH SUBBASE MATERIAL EXCEPT THAT TEMPORARY ASPHALT CONCRETE SHALL BE PLACED AS DIRECTED BY THE ENGINEER. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROVIDING SAFE PEDESTRIAN ACCESS AT ALL TIMES.
- CONTRACTOR SHALL MAINTAIN THE INTEGRITY OF EXISTING PAVEMENT TO REMAIN.

### 793 BEDFORD ROAD TABLE OF LAND USE

TOWN OF BEDFORD SECTION 71.12, BLOCK 2, LOTS 31 & 32 - 793 BEDFORD ROAD  
 ZONE: "LI" - "LIGHT INDUSTRIAL" (LOT 32)  
 ZONE: "RB" - "ROADSIDE BUSINESS" (LOT 31)  
 PROPOSED USE: COMMERCIAL AUTO SERVICE  
 FIRE DISTRICT: MOUNT KISCO - MOUNT KISCO FD / BEDFORD - BEDFORD HILLS FD  
 WATER DISTRICT: MOUNT KISCO WATER DEPARTMENT  
 SCHOOL DISTRICT: BEDFORD CENTRAL SCHOOL DISTRICT  
 SEWER DISTRICT: N/A

DESCRIPTION	REQUIRED	EXISTING	PROPOSED
<b>BEDFORD - LI DISTRICT</b>			
MINIMUM LOT AREA (SQUARE FEET)	20,000	21,000	21,000
BUILDING GROSS FLOOR AREA (SQUARE FEET)	-	2,329	2,329
BUILDING COVERAGE AREA (SQUARE FEET)	8,400	2,329	2,329
DEVELOPED AREA (SQUARE FEET)	15,750	4,953	10,767
MAXIMUM BUILDING COVERAGE (PERCENT)	40%	11.1%	11.1%
MAXIMUM DEVELOPMENT COVERAGE (PERCENT)	75%	23.6%	51.3%
MINIMUM EFFECTIVE SQUARE SIDE (FEET)	100'	-	-
FRONT YARD BUFFER (FEET)	15	198	198
LESSER SIDE/TOTAL BOTH SIDES (FEET)	15/30	49/108	49/108
REAR YARD BUFFER (FEET)	30	64	64
MAXIMUM BUILDING HEIGHT (FEET/STORIES)	45/3	15/1	15/1

DESCRIPTION	REQUIRED	EXISTING	PROPOSED
<b>BEDFORD - RB DISTRICT</b>			
MINIMUM LOT AREA (SQUARE FEET)	-	18,398	18,398
BUILDING GROSS FLOOR AREA (SQUARE FEET)	-	0	0
BUILDING COVERAGE AREA (SQUARE FEET)	3,336	0	0
DEVELOPED AREA (SQUARE FEET)	13,345	2,857	1,285
MAXIMUM BUILDING COVERAGE (PERCENT)	20%	0%	0%
MAXIMUM DEVELOPMENT COVERAGE (PERCENT)	80%	15.5%	7.0%
MINIMUM EFFECTIVE SQUARE SIDE (FEET)	-	-	-
FRONT YARD BUFFER (FEET)	10	-	-
LESSER SIDE/TOTAL BOTH SIDES (FEET)	-	-	-
REAR YARD BUFFER (FEET)	30	-	-
MAXIMUM BUILDING HEIGHT (FEET/STORIES)	45/3	-	-

DESCRIPTION	REQUIRED	EXISTING	PROPOSED
<b>TOTAL SITE</b>			
MINIMUM LOT AREA (SQUARE FEET)	20,000/-	39,398	39,398
BUILDING GROSS FLOOR AREA (SQUARE FEET)	-	2,329	2,329
BUILDING COVERAGE AREA (SQUARE FEET)	11,736	2,329	2,329
DEVELOPED AREA (SQUARE FEET)	29,095	7,810	12,052
MAXIMUM BUILDING COVERAGE (PERCENT)	40%/20%	5.9%	5.9%
MAXIMUM DEVELOPMENT COVERAGE (PERCENT)	75%/80%	19.8%	30.6%
FRONT YARD BUFFER (FEET)	15/10	198	198
REAR YARD BUFFER (FEET)	30	64	64
SIDE YARD BUFFER (LESSER SIDE/TOTAL BOTH SIDES) (FEET)	15/30	49/108	49/108
MAXIMUM BUILDING HEIGHT (FEET/STORIES)	45/3	15/1	15/1
TOTAL PARKING SPACES (1/EMPLOYEE + 1/150 GROSS SF)	19 <sup>(1)</sup>	>19	0
ACCESSIBLE PARKING SPACES (INCLUDED WITHIN TOTAL)	1	0	0
LOADING SPACES	1	1	0

**ZONING NOTES:**  
 1. ASSUMES MAXIMUM 3 EMPLOYEES PER SHIFT.

Summit Land Surveying PC Drawing:  
 SURVEY OF TAX LOTS NUMBERS 31 AND 32 IN BLOCK 2, SECTION 71.12

TC Merritts Land Surveyors Drawing List:  
 TOPOGRAPHY OF PROPERTY PREPARED FOR DIAMOND PROPERTIES LLC

Applicant/Owner:  
 DP21, LLC  
 333 N. BEDFORD ROAD, SUITE 145  
 MT. KISCO, NY 10549  
 (914) 773-6220

JMC Site Planner, Civil & Traffic Engineer,  
 Surveyor and Landscape Architect:  
 JMC PLANNING, ENGINEERING, LANDSCAPE  
 ARCHITECTURE & LAND SURVEYING, PLLC  
 120 BEDFORD ROAD  
 ARMONK, NY 10504  
 (914) 273-6225

Architect:  
 GALLIN BEELER DESIGN STUDIO  
 23 WASHINGTON AVENUE  
 PLEASANTVILLE, NY 10570  
 (914) 693-4004

Architect:  
 ROSENBAUM DESIGN GROUP  
 2001 MARCUS AVENUE  
 NEW HYDE PARK, NY 11042  
 (516) 616-6111

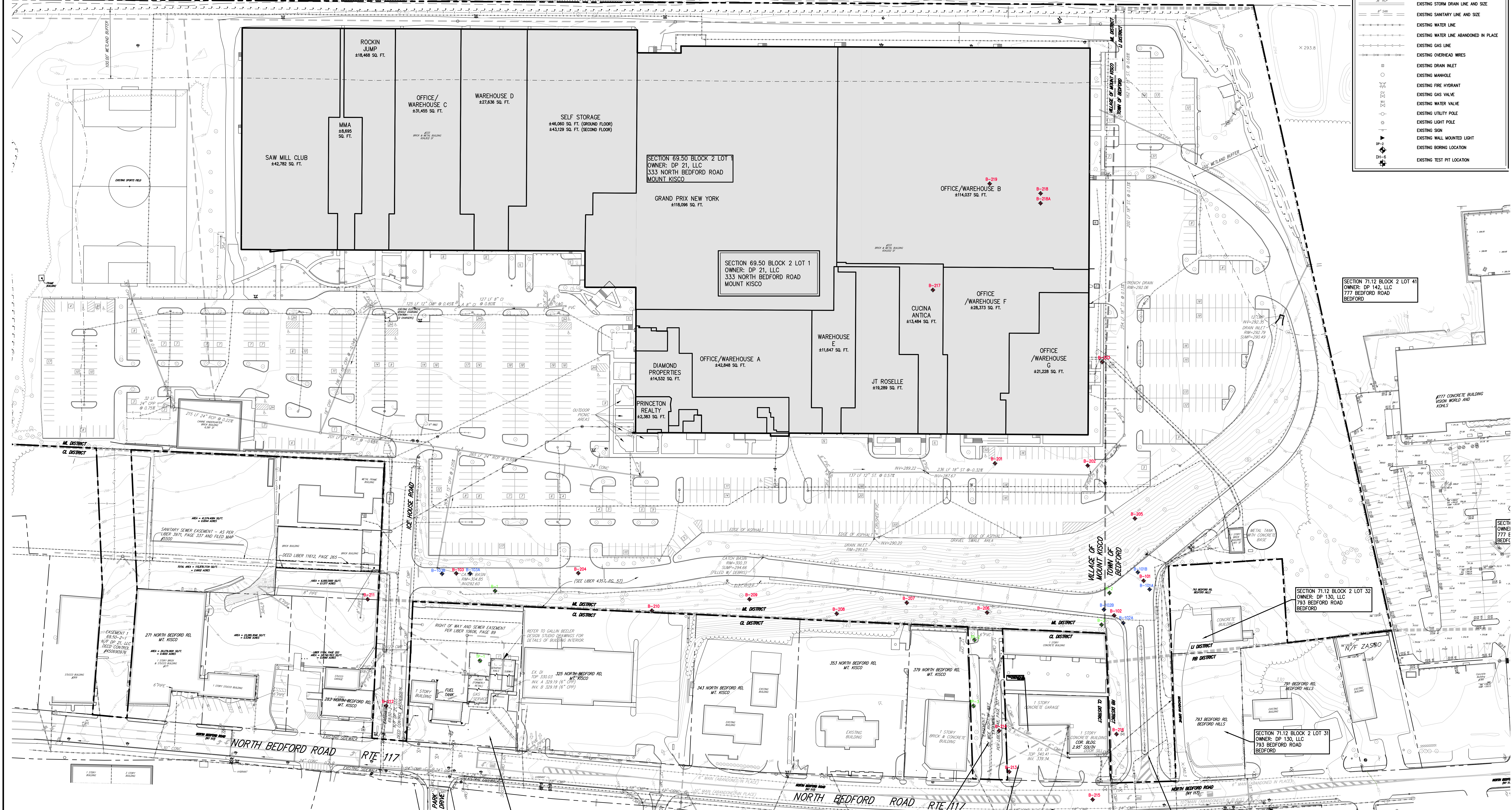
No.	Revision	Date	By
1.	MOUNT KISCO PLANNING BOARD REVISIONS	03/21/2023	DK

- JMC Drawing List:**
- C-000 COVER SHEET
  - C-001 PARKING ANALYSIS TABLES
  - C-002 PARKING ANALYSIS PLAN & TABLE (333 NBR)
  - C-003 PARKING ANALYSIS PLAN & TABLE (309 NBR)
  - C-004 PARKING ANALYSIS PLAN & TABLE (383 NBR)
  - C-010 OVERALL EXISTING CONDITIONS PLAN
  - C-020 OVERALL DEMOLITION PLAN
  - C-100 OVERALL LAYOUT PLAN
  - C-110 LAYOUT PLAN
  - C-120 LAYOUT PLAN
  - C-130 LAYOUT PLAN
  - C-140 LAYOUT PLAN
  - C-150 PROPOSED EASE



NOT FOR CONSTRUCTION

YORK CENTRAL AND HUDSON RIVER RAILROAD HARLEM DIVISION (CON-RAIL)



- NOTES**
- EXISTING CONDITIONS DEPICTED ON THIS PLAN HAVE BEEN TAKEN FROM THE FOLLOWING:
    - IC MERRITS AND LAND SURVEYORS DRAWING "TOPOGRAPHY OF PROPERTY PREPARED FOR DIAMOND PROPERTIES, LLC," REVISED 04/12/2019.
    - IC MERRITS AND LAND SURVEYORS DRAWING "TOPOGRAPHY OF PROPERTY PREPARED FOR DIAMOND PROPERTIES, LLC," REVISED 02/24/2022.
    - SUMMIT LAND SURVEYING PC DRAWING "SURVEY OF TAX LOTS NUMBERS 31 AND 32 IN BLOCK 2, SECTION 71.12," DATED 03/11/2021.
    - IC MERRITS AND LAND SURVEYORS DRAWING "TOPOGRAPHY OF PROPERTY PREPARED FOR DP 142, LLC," REVISED 07/07/2022.
  - LIMIT OF WETLAND LINE AT SOUTHWEST AND WESTERLY LOCATION TAKEN FROM DRAWING FILED "WETLAND DELINEATION MAP" PREPARED BY B. LANG ASSOCIATES, INC. AND SURVEYED BY CAMPBELL ENGINEERING, WETLAND DELINEATION CONDUCTED BY B. LANG ASSOCIATES, INC. IN SEPTEMBER 2000 AND VERIFIED BY DEPARTMENT OF THE ARMY, NEW YORK DISTRICT, CORPS OF ENGINEERS IN NOVEMBER 2000 (APPLICATION NO. 2000-0486-V) LIMIT OF WETLAND LINE AT NORTHWESTERLY LOCATION DELINEATED BY DAVID SESSORS, P.E., M.D., M.P. OF WETLAND SERVICES CONSULTING, P.C. ON JANUARY 7, 2008 AND CONFIRMED BY EVANS ASSOCIATES ON JANUARY 24, 2008. LIMIT OF WETLANDS WERE SURVEYED BY CAMPBELL ENGINEERING, L.P. IN FEBRUARY 2008. WETLAND LIMITS FOR 333 NORTH BEDFORD ROAD TAKEN FROM A MAP ENTITLED "MULTI-PHASE SURVEY PREPARED FOR DIAMOND PROPERTIES, LLC IN THE TOWNS OF MT. KISCO AND BEDFORD, WESTCHESTER COUNTY, NEW YORK" PREPARED BY CAMPBELL ENGINEERING, L.P. DATED DECEMBER 29, 2014. LIMITS OF WETLAND BOUNDARY WERE DELINEATED ON OCTOBER 29, 2019 BY GEOLOGICAL SOLUTIONS, LLC AND VERIFIED BY EVANS ASSOCIATES ON NOVEMBER 7, 2019. THE WETLAND BOUNDARY HAS NOT CHANGED SINCE THE SURVEY IN 2014.
  - THE BASE FLOOD ELEVATION WAS DETERMINED FROM "NATIONAL FLOOD INSURANCE RATE MAP PANELS 1051F AND 1052F" PUBLISHED BY THE NATIONAL FLOOD INSURANCE PROGRAM EFFECTIVE DATE SEPTEMBER 21, 2007. A LETTER OF MAP REVISION (18-02-1615P), EFFECTIVE 03/20/2020 INDICATES THAT THE SITE DEVELOPMENT AREA IS NOT LOCATED WITHIN THE 100-YEAR FLOODPLAIN.
  - A FEDERAL EMERGENCY MANAGEMENT AGENCY DETERMINATION DATED NOVEMBER 13, 2014 REMOVED THE 333 NORTH BEDFORD ROAD BUILDING FROM THE FLOOD AREA.

- THE APPLICANT IS PROPOSING A CHANGE OF USE FOR THE WAREHOUSE TO A GROCERY STORE. THE SUBJECT BUILDING IS WITHIN THE VILLAGE OF MOUNT KISCO.
- THE APPLICANT IS PROPOSING THE RECONFIGURATION OF A PORTION OF THE PARKING AREA LOCATED ON THE NORTH AND EAST SIDE OF THE 333 NORTH BEDFORD ROAD BUILDING TO SUPPORT THE CHANGE IN USE.
- PORTIONS OF THE PROJECT LOCATED IN THE VILLAGE OF MOUNT KISCO ARE WITHIN A NYSDSP DESIGNATED MAIN STREET DISTRICT (MSD). ACCORDINGLY, APPROVAL FROM NYSDSP IS REQUIRED FOR THE PORTIONS OF SITE WORK WITHIN THE VILLAGE.
- THE PROJECT IS WITHIN THE CROTON RIVER DRAINAGE BASIN.
- BORINGS, TEST PITS AND PERCOLATION TESTS WERE CONDUCTED BY CARLIN-SIMPSON ASSOCIATES ON NOVEMBER 26 AND 28, 2019 FOR SIZING OF THE STORMWATER MANAGEMENT PRACTICES ASSOCIATED WITH THE REDEVELOPMENT. ADDITIONAL TESTING WAS PERFORMED ON SEPTEMBER 8, 2020 AND ALL SOIL TESTS WERE WITNESSED BY NYSDSP. BORINGS AND TEST PITS SHOWN ON THE SITE PLANS WERE TAKEN FROM "BORING LOCATION PLAN," DATED SEPTEMBER 16, 2020, PREPARED BY CARLIN-SIMPSON AND ASSOCIATES. ADDITIONAL BORINGS SHOWN ON THE SITE PLANS WERE PERFORMED AND WITNESSED IN JULY 2021 BY CARLIN-SIMPSON AND ASSOCIATES. REFERENCED IN THE "BORING LOCATION PLAN," DATED AUGUST 12, 2021 WITHIN THE REPORT ON SUPPLEMENTAL SUBSURFACE SOIL AND FOUNDATION INVESTIGATION, DATED AUGUST 20, 2021.
- EXISTING INTERNAL BUILDING INFORMATION WAS TAKEN FROM GALLIN BEELER DESIGN STUDIO DRAWINGS.

**LEGEND**

[Symbol]	EXISTING PROPERTY LINE
[Symbol]	ADJACENT PROPERTY LINE
[Symbol]	EXISTING EASEMENT LINE
[Symbol]	EXISTING WETLAND LINE AND DELINEATION
[Symbol]	EXISTING BUILDING OVERHANG
[Symbol]	EXISTING BUILDING LINE
[Symbol]	EXISTING 333 NBR BUILDING LINE
[Symbol]	EXISTING PAVEMENT EDGE
[Symbol]	EXISTING CURB LINE
[Symbol]	EXISTING CONTOUR
[Symbol]	EXISTING INDEX CONTOUR
[Symbol]	EXISTING STONE WALL
[Symbol]	EXISTING RETAINING WALL
[Symbol]	EXISTING GUIDE RAIL
[Symbol]	EXISTING FENCE
[Symbol]	EXISTING TREE
[Symbol]	EXISTING TREE LINE
[Symbol]	EXISTING DIRECTIONAL ARROWS
[Symbol]	EXISTING PAINT
[Symbol]	EXISTING PARKING WITH NUMBER OF SPACES
[Symbol]	EXISTING PEDESTRIAN CROSSING
[Symbol]	EXISTING STORM DRAIN LINE AND SIZE
[Symbol]	EXISTING SANITARY LINE AND SIZE
[Symbol]	EXISTING WATER LINE
[Symbol]	EXISTING WATER LINE ABANDONED IN PLACE
[Symbol]	EXISTING GAS LINE
[Symbol]	EXISTING OVERHEAD WIRES
[Symbol]	EXISTING DRAIN INLET
[Symbol]	EXISTING MANHOLE
[Symbol]	EXISTING FIRE HYDRANT
[Symbol]	EXISTING GAS VALVE
[Symbol]	EXISTING WATER VALVE
[Symbol]	EXISTING UTILITY POLE
[Symbol]	EXISTING LIGHT POLE
[Symbol]	EXISTING SIGN
[Symbol]	EXISTING WALL MOUNTED LIGHT
[Symbol]	EXISTING BORING LOCATION
[Symbol]	EXISTING TEST PIT LOCATION

APPLICANT/OWNER: DP21, LLC  
 333 N. BEDFORD ROAD, SUITE 145  
 MT. KISCO, NY 10549

ARCHITECT: GALLIN BEELER DESIGN STUDIO  
 23 WASHINGTON AVENUE  
 PLEASANTVILLE, NY 10570

REVISION: 05/27/2023

NO. 1. MOUNT KISCO PLANNING BOARD REVISIONS

JMC Planning, Engineering, Landscape Architecture & Land Surveying, PLLC  
 John Meyer Consulting, Inc.

120 BEDFORD ROAD - ARMONK, NY 10504  
 VOICES 914.233.2229 - FAX 914.233.2192  
 www.jmcpnc.com

OVERALL EXISTING CONDITIONS PLAN  
 THE PARK 333  
 (SHOPRITE EXPANSION)  
 333 NORTH BEDFORD ROAD/799 BEDFORD ROAD  
 VILLAGE OF MOUNT KISCO/TOWN OF BEDFORD, NY

ANY ALTERATION OF PLANS, SPECIFICATIONS, PLATS AND REPORTS BEARING THE SEAL OF A LICENSED PROFESSIONAL ENGINEER OR LICENSED LAND SURVEYOR IS A VIOLATION OF SECTION 7209 OF THE NEW YORK STATE EDUCATION LAW EXCEPT AS PROVIDED FOR BY SECTION 7209, SUBSECTION 2.

STATE OF NEW YORK  
 SEAL OF THE PROFESSIONAL ENGINEER

Scale: 1" = 50'  
 Date: 12/12/2022  
 Project No: 18118  
 Drawing No: C-010

C-010





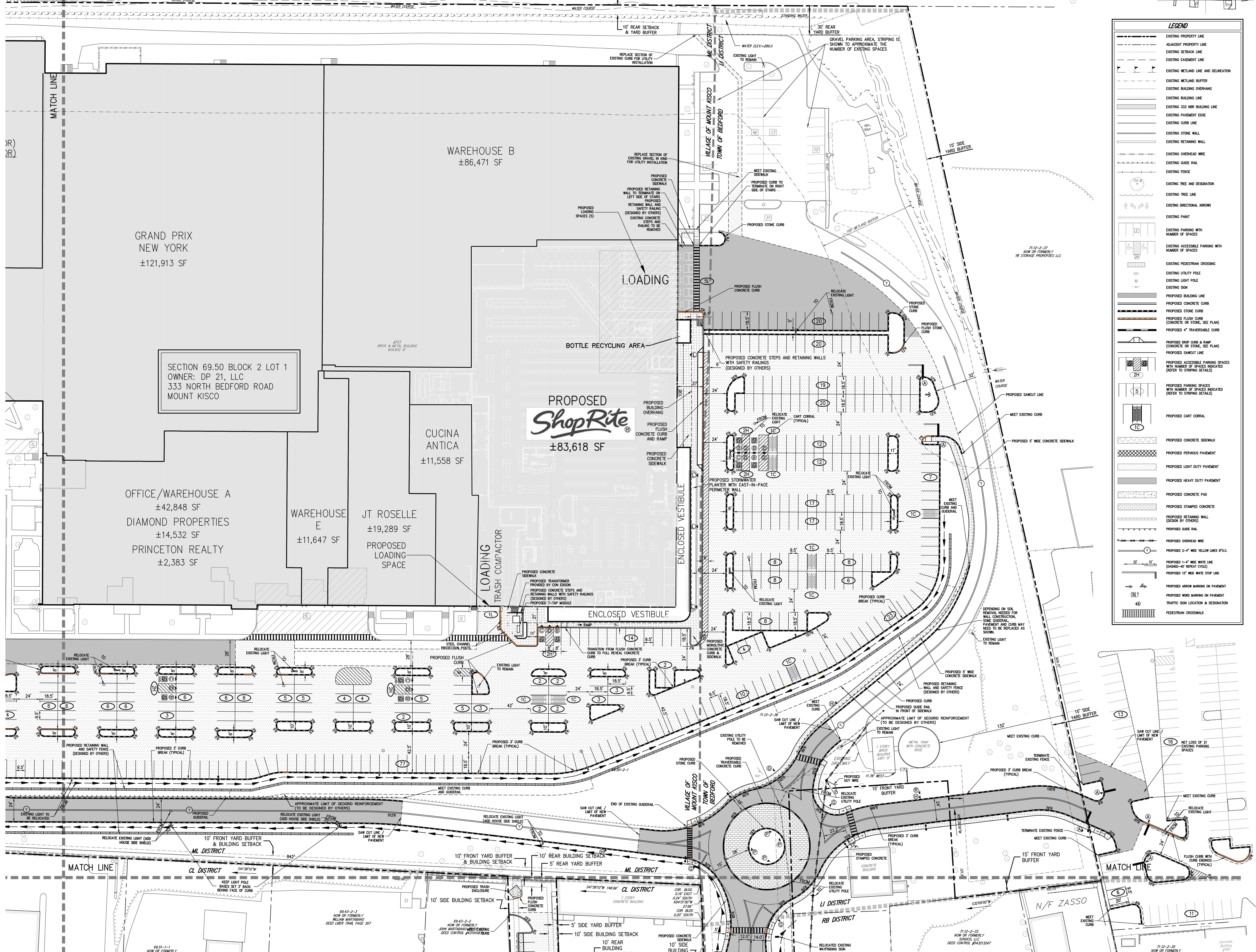
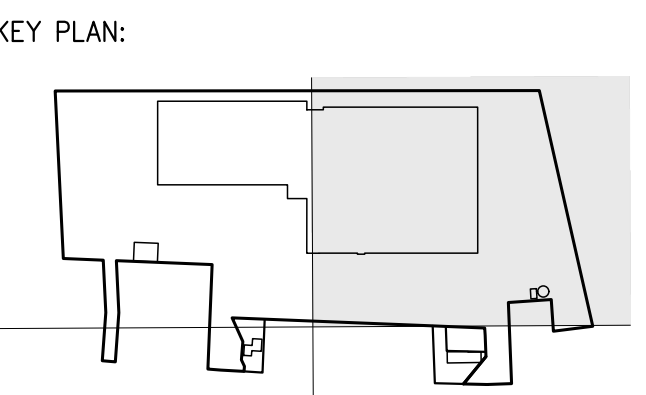






HARLEM DIVISION

(CON-RAIL)



**LEGEND**

- EXISTING PROPERTY LINE
- ADJACENT PROPERTY LINE
- EXISTING SETBACK LINE
- EXISTING EASEMENT LINE
- EXISTING METLAND LINE AND DELINEATION
- EXISTING METLAND BUFFER
- EXISTING BUILDING OVERHANG
- EXISTING BUILDING LINE
- EXISTING 333 NBR BUILDING LINE
- EXISTING PAVEMENT EDGE
- EXISTING CURB LINE
- EXISTING STONE WALL
- EXISTING RETAINING WALL
- EXISTING OVERHEAD WIRE
- EXISTING GUDE RAIL
- EXISTING FENCE
- EXISTING TREE AND DESIGNATION
- EXISTING TREE LINE
- EXISTING DIRECTIONAL ARROWS
- EXISTING PAINT
- EXISTING PARKING WITH NUMBER OF SPACES
- EXISTING ACCESSIBLE PARKING WITH NUMBER OF SPACES
- EXISTING PEDESTRIAN CROSSING
- EXISTING UTILITY POLE
- EXISTING LIGHT POLE
- EXISTING SIGN
- PROPOSED BUILDING LINE
- PROPOSED CONCRETE CURB
- PROPOSED STONE CURB
- PROPOSED FLUSH CURB (CONCRETE OR STONE, SEE PLAN)
- PROPOSED 4" TRAVERSABLE CURB
- PROPOSED DROP CURB & RAMP (CONCRETE OR STONE, SEE PLAN)
- PROPOSED SAWCUT LINE
- PROPOSED ACCESSIBLE PARKING SPACES WITH NUMBER OF SPACES INDICATED (REFER TO STRIPING DETAILS)
- PROPOSED PARKING SPACES WITH NUMBER OF SPACES INDICATED (REFER TO STRIPING DETAILS)
- PROPOSED CART CORRAL
- PROPOSED CONCRETE SIDEWALK
- PROPOSED PERVIOUS PAVEMENT
- PROPOSED LIGHT DUTY PAVEMENT
- PROPOSED HEAVY DUTY PAVEMENT
- PROPOSED CONCRETE PAD
- PROPOSED STAMPED CONCRETE
- PROPOSED RETAINING WALL (DESIGN BY OTHERS)
- PROPOSED GUDE RAIL
- PROPOSED OVERHEAD WIRE
- PROPOSED 2"-4" WIDE YELLOW LINES 8" O.C.
- PROPOSED 1"-4" WIDE WHITE LINE (DASHED-47' REPEAT CYCLE)
- PROPOSED 12" WIDE WHITE STOP LINE
- PROPOSED ARROW MARKING ON PAVEMENT
- PROPOSED WORD MARKING ON PAVEMENT
- TRAFFIC SIGN LOCATION & DESIGNATION
- PEDESTRIAN CROSSWALK

NOT FOR CONSTRUCTION

Revision Table:

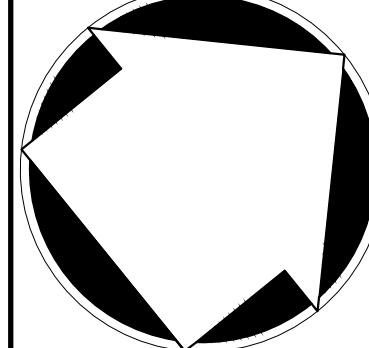
No.	Date	By	Check
1	12/27/2023	JK	

APPLICANT/OWNER: DP21, LLC  
 333 N. BEDFORD ROAD, SUITE 145  
 MT. KISCO, NY 10549

ARCHITECT: GALLIN BEELER DESIGN STUDIO  
 23 WASHINGTON AVENUE  
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JMC Planning, Engineering, Landscape Architecture & Land Surveying, PLLC  
 JMC Site Development Consultants, LLC  
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 PHONE: 914.233.2222 - FAX: 914.233.2192  
 www.jmcpllc.com



LAYOUT PLAN  
 THE PARK 333  
 (SHOPRITE EXPANSION)  
 333 NORTH BEDFORD ROAD/799 BEDFORD ROAD  
 VILLAGE OF MOUNT KISCO/TOWN OF BEDFORD, NY

ANY ALTERATION OF PLANS, SPECIFICATIONS, PLATS AND REPORTS BEARING THE SEAL OF A LICENSED PROFESSIONAL ENGINEER OR LICENSED LAND SURVEYOR IS A VIOLATION OF SECTION 7209 OF THE NEW YORK STATE EDUCATION LAW EXCEPT AS PROVIDED FOR BY SECTION 7209.5 SUBSECTION 2.

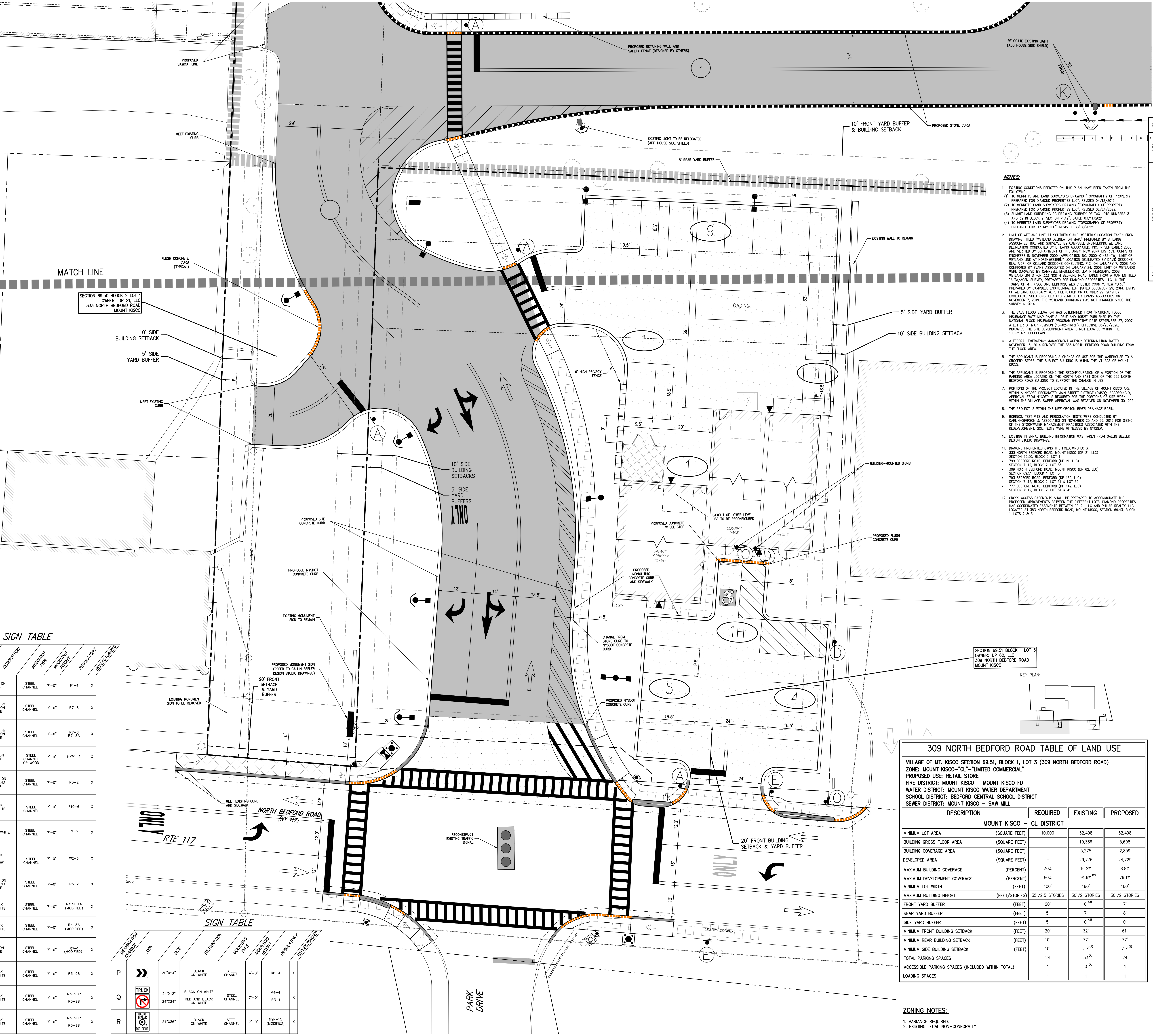


Scale: 1" = 30'  
 Date: 12/12/2022  
 Project No: 18118  
 10:00 0-100 1:00  
 Drawing No: C-120



**LEGEND**

- EXISTING PROPERTY LINE
- ADJACENT PROPERTY LINE
- EXISTING SETBACK LINE
- EXISTING EASEMENT LINE
- EXISTING METLAND LINE AND DELINEATION
- EXISTING METLAND BUFFER
- EXISTING BUILDING OVERHANG
- EXISTING BUILDING LINE
- EXISTING 333 MBR BUILDING LINE
- EXISTING PAVEMENT EDGE
- EXISTING CURB LINE
- EXISTING STONE WALL
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- EXISTING GUIDE RAIL
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- EXISTING TREE LINE
- EXISTING DIRECTIONAL ARROWS
- EXISTING PAINT
- EXISTING PARKING WITH NUMBER OF SPACES
- EXISTING ACCESSIBLE PARKING WITH NUMBER OF SPACES
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- EXISTING LIGHT POLE
- EXISTING SIGN
- EXISTING BUILDING LINE
- PROPOSED CONCRETE CURB
- PROPOSED STONE CURB
- PROPOSED FLUSH CURB (CONCRETE OR STONE, SEE PLAN)
- PROPOSED 4" TRAVELABLE CURB
- PROPOSED DROP CURB & RAMP (CONCRETE OR STONE, SEE PLAN)
- PROPOSED SAWHUT LINE
- PROPOSED ACCESSIBLE PARKING SPACES WITH NUMBER OF SPACES INDICATED (REFER TO STRIPING DETAILS)
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- PROPOSED 1"-4" WIDE WHITE LINES (DASHED-4" REPEAT CYCLE)
- PROPOSED 12" WIDE WHITE STOP LINE
- PROPOSED ARROW MARKING ON PAVEMENT
- PROPOSED WORD MARKING ON PAVEMENT
- TRAFFIC SIGN LOCATION & DESIGNATION
- PEDESTRIAN CROSSWALK



**SIGN TABLE**

DESIGNATION NUMBER	SYMBOL	SIZE	DESCRIPTION	MARKING TYPE	MARKING HEIGHT	REGULATORY	RECOMMENDED
A	STOP	30"x30"	WHITE ON RED	STEEL CHANNEL	7'-0"	R1-1	X
B	ONE WAY	12"x18"	GREEN & BLUE ON WHITE	STEEL CHANNEL	7'-0"	R7-8	X
C	ONE WAY	12"x18"	GREEN & BLUE ON WHITE	STEEL CHANNEL	7'-0"	R7-8	X
D	ONE WAY	12"x18"	RED ON WHITE	STEEL CHANNEL OR WOOD	7'-0"	N1P1-2	X
E	ONE WAY	24"x24"	BLACK ON RED AND WHITE	STEEL CHANNEL	7'-0"	R3-2	X
F	STOP	24"x36"	BLACK ON WHITE	STEEL CHANNEL	7'-0"	R10-6	X
G	YIELD	36"x36"x3/4"	RED ON WHITE	STEEL CHANNEL	7'-0"	R1-2	X
H	ONE WAY	30"x30"	BLACK ON YELLOW	STEEL CHANNEL	7'-0"	W2-6	X
I	ONE WAY	24"x24"	BLACK ON RED AND WHITE	STEEL CHANNEL	7'-0"	R5-2	X
J	ALL TRUCKS	24"x30"	BLACK ON WHITE	STEEL CHANNEL	7'-0"	N1R3-14 (MODIFIED)	X
K	ALL TRUCKS	24"x30"	BLACK ON WHITE	STEEL CHANNEL	7'-0"	R4-8A (MODIFIED)	X
L	PARKING	12"x18"	RED ON WHITE	STEEL CHANNEL	7'-0"	R7-1 (MODIFIED)	X
M	ONE WAY	24"x36"	BLACK ON WHITE	STEEL CHANNEL	7'-0"	R3-9B	X
N	ONE WAY	30"x12"	BLACK ON WHITE	STEEL CHANNEL	7'-0"	R3-9CP	X
O	ONE WAY	30"x12"	BLACK ON WHITE	STEEL CHANNEL	7'-0"	R3-9CP	X
P	ONE WAY	30"x24"	BLACK ON WHITE	STEEL CHANNEL	4'-0"	R6-4	X
Q	TRUCK	24"x12"	BLACK ON WHITE	STEEL CHANNEL	7'-0"	M4-4	X
R	TRUCK	24"x36"	BLACK ON WHITE	STEEL CHANNEL	7'-0"	R3-1	X
R	TRUCK	24"x36"	BLACK ON WHITE	STEEL CHANNEL	7'-0"	N1R-15 (MODIFIED)	X

**309 NORTH BEDFORD ROAD TABLE OF LAND USE**

VILLAGE OF MT. KISCO SECTION 69.51, BLOCK 1, LOT 3 (309 NORTH BEDFORD ROAD)  
ZONE: MOUNT KISCO-"CL"-LIMITED COMMERCIAL  
PROPOSED USE: RETAIL STORE  
FIRE DISTRICT: MOUNT KISCO - MOUNT KISCO FD  
WATER DISTRICT: MOUNT KISCO WATER DEPARTMENT  
SCHOOL DISTRICT: BEDFORD CENTRAL SCHOOL DISTRICT  
SEWER DISTRICT: MOUNT KISCO - SAW MILL

DESCRIPTION	MOUNT KISCO - CL DISTRICT		
	REQUIRED	EXISTING	PROPOSED
MINIMUM LOT AREA (SQUARE FEET)	10,000	32,498	32,498
BUILDING GROSS FLOOR AREA (SQUARE FEET)	-	10,386	5,698
BUILDING COVERAGE AREA (SQUARE FEET)	-	5,275	2,859
DEVELOPED AREA (SQUARE FEET)	-	29,776	24,729
MAXIMUM BUILDING COVERAGE (PERCENT)	30%	16.2%	8.8%
MAXIMUM DEVELOPMENT COVERAGE (PERCENT)	80%	91.6%	76.1%
MINIMUM LOT WIDTH (FEET)	100'	160'	160'
MAXIMUM BUILDING HEIGHT (FEET/STORIES)	35'/2.5 STORIES	30'/2 STORIES	30'/2 STORIES
FRONT YARD BUFFER (FEET)	20'	0' <sup>(1)</sup>	7'
REAR YARD BUFFER (FEET)	5'	7'	8'
SIDE YARD BUFFER (FEET)	5'	0' <sup>(1)</sup>	0'
MINIMUM FRONT BUILDING SETBACK (FEET)	20'	32'	61'
MINIMUM REAR BUILDING SETBACK (FEET)	10'	77'	77'
MINIMUM SIDE BUILDING SETBACK (FEET)	10'	2,7' <sup>(2)</sup>	7,7' <sup>(2)</sup>
TOTAL PARKING SPACES	24	33 <sup>(3)</sup>	24
ACCESSIBLE PARKING SPACES (INCLUDED WITHIN TOTAL)	1	0 <sup>(3)</sup>	1
LOADING SPACES	1	1	1

**ZONING NOTES:**  
1. VARIANCE REQUIRED.  
2. EXISTING LEGAL NON-COMFORMITY

**JMC**  
JMC Planning, Engineering, Landscaping, Architecture & Land Surveying, PLLC  
John Meyer Consulting, Inc.

**DP 21, LLC**  
333 N. BEDFORD ROAD, SUITE 145  
MT. KISCO, NY 10549

**GALLIN BEELER DESIGN STUDIO**  
23 WASHINGTON AVENUE  
PLEASANTVILLE, NY 10570

**LAYOUT PLAN**  
THE PARK 333  
(SHOPRITE EXPANSION)  
333 NORTH BEDFORD ROAD/799 BEDFORD ROAD  
VILLAGE OF MOUNT KISCO/TOWN OF BEDFORD, NY

**C-130**

Scale: 1" = 10'  
Date: 12/12/2022  
Project No: 18118  
Drawing No: C-130  
Landscape: SS

NOT FOR CONSTRUCTION



383 NORTH BEDFORD ROAD TABLE OF LAND USE

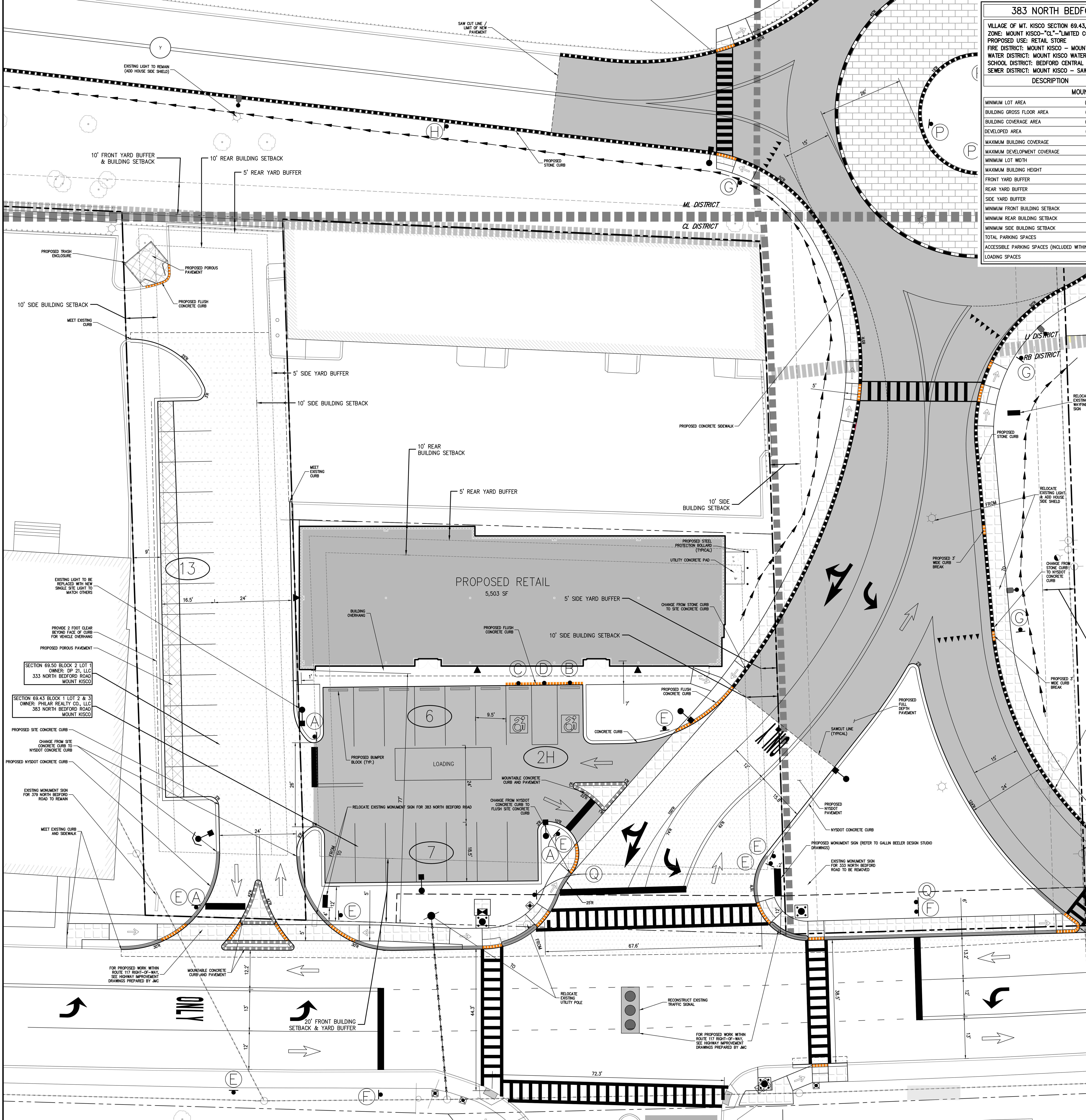
VILLAGE OF MT. KISCO SECTION 69.43, BLOCK 1, LOT 2 & 3 (383 NORTH BEDFORD ROAD)  
 ZONE: MOUNT KISCO - "CL" - "LIMITED COMMERCIAL"  
 PROPOSED USE: RETAIL STORE  
 FIRE DISTRICT: MOUNT KISCO - MOUNT KISCO FD  
 WATER DISTRICT: MOUNT KISCO WATER DEPARTMENT  
 SCHOOL DISTRICT: BEDFORD CENTRAL SCHOOL DISTRICT  
 SEWER DISTRICT: MOUNT KISCO - SAW MILL

DESCRIPTION	REQUIRED	EXISTING	PROPOSED
<b>MOUNT KISCO - CL DISTRICT</b>			
MINIMUM LOT AREA (SQUARE FEET)	10,000	15,664	15,664
BUILDING GROSS FLOOR AREA (SQUARE FEET)	-	7,893	5,503
BUILDING COVERAGE AREA (SQUARE FEET)	-	7,893	5,503
DEVELOPED AREA (SQUARE FEET)	-	18,011	16,127
MAXIMUM BUILDING COVERAGE (PERCENT)	30%	42.3%	29.5%
MAXIMUM DEVELOPMENT COVERAGE (PERCENT)	80%	96.5% <sup>(1)</sup>	86.4% <sup>(2)</sup>
MINIMUM LOT WIDTH (FEET)	100'	149'	149'
MAXIMUM BUILDING HEIGHT (FEET/STORIES)	35'/2.5 STORIES	15'/1 STORY	24'/4 STORY
FRONT YARD BUFFER (FEET)	20'	3' <sup>(3)</sup>	12'
REAR YARD BUFFER (FEET)	5'	0' <sup>(4)</sup>	0' <sup>(4)</sup>
SIDE YARD BUFFER (FEET)	5'	0' <sup>(4)</sup>	0' <sup>(4)</sup>
MINIMUM FRONT BUILDING SETBACK (FEET)	20'	40'	77'
MINIMUM REAR BUILDING SETBACK (FEET)	10'	0' <sup>(4)</sup>	0' <sup>(4)</sup>
MINIMUM SIDE BUILDING SETBACK (FEET)	10'	1.4' <sup>(5)</sup>	1' <sup>(6)</sup>
TOTAL PARKING SPACES	28	18 <sup>(7)</sup>	28
ACCESSIBLE PARKING SPACES (INCLUDED WITHIN TOTAL)	2	0 <sup>(8)</sup>	2
LOADING SPACES	1	1	1

**LEGEND**

- EXISTING PROPERTY LINE
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- EXISTING UTILITY POLE
- EXISTING LIGHT POLE
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- PROPOSED STONE CURB
- PROPOSED FLUSH CURB (CONCRETE OR STONE, SEE PLAN)
- PROPOSED 4" TRAPEZOIDAL CURB
- PROPOSED DROP CURB & BUMP (CONCRETE OR STONE, SEE PLAN)
- PROPOSED SAWMUT LINE
- PROPOSED ACCESSIBLE PARKING SPACES WITH NUMBER OF SPACES INDICATED (REFER TO STRIPING DETAILS)
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- PROPOSED CONCRETE SIDEWALK
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- PROPOSED 2-4" WIDE YELLOW LINES P.O.C.
- PROPOSED 4-6" WIDE WHITE LINE (DASHED-4" REPEAT CYCLE)
- PROPOSED 12" WIDE WHITE STOP LINE
- PROPOSED ARROW MARKING ON PAVEMENT
- PROPOSED SIGN MARKING ON PAVEMENT
- TRAFFIC SIGN LOCATION & DESIGNATION
- PEDESTRIAN CROSSWALK

- NOTES**
- EXISTING CONDITIONS DEPICTED ON THIS PLAN HAVE BEEN TAKEN FROM THE FOLLOWING:
    - (1) TO NEHRITS AND LAND SURVEYORS DRAWING "TOPOGRAPHY OF PROPERTY PREPARED FOR DIAMOND PROPERTIES, LLC," REVISED 04/12/2019.
    - (2) TO NEHRITS AND LAND SURVEYORS DRAWING "TOPOGRAPHY OF PROPERTY PREPARED FOR DIAMOND PROPERTIES, LLC," REVISED 02/24/2022.
    - (3) SUBMIT LAND SURVEYOR'S DRAWING "SURVEY OF TAX LOTS NUMBERS 31 AND 32 IN BLOCK 2, SECTION 71.12," DATED 03/11/2021.
    - (4) TO NEHRITS AND LAND SURVEYORS DRAWING "TOPOGRAPHY OF PROPERTY PREPARED FOR DP 142 LLC," REVISED 07/07/2022.
  - LIMIT OF METLAND LINE AT SOUTHERLY AND WESTERLY LOCATION TAKEN FROM DRAWING TITLED "METLAND DELINEATION MAP," PREPARED BY B. LANG ASSOCIATES, INC. AND SURVEYED BY CAMPBELL ENGINEERING, METLAND DELINEATION CONDUCTED BY B. LANG ASSOCIATED, INC. IN SEPTEMBER 2000 AND VERIFIED BY DEPARTMENT OF THE ARMY, NEW YORK DISTRICT, CORPS OF ENGINEERS IN NOVEMBER 2000 (APPLICATION NO. 2000-0486-170). LIMIT OF METLAND LINE AT NORTHERLY LOCATION DELINEATED BY DAVID SESSIONS, RIA, A.D. OF KELLARD SESSIONS CONSULTING, P.C. ON JANUARY 7, 2008 AND COMPRISED BY EVANS ASSOCIATES ON JANUARY 24, 2008. LIMIT OF METLANDS WERE SURVEYED BY CAMPBELL ENGINEERING, LLP IN FEBRUARY, 2008. METLAND LINES FOR 333 NORTH BEDFORD ROAD TAKEN FROM A MAP ENTITLED "ALTA/ASM SURVEY, PREPARED FOR DIAMOND PROPERTIES, LLC IN THE TOWNS OF MT. KISCO AND BEDFORD, WESTCHESTER COUNTY, NEW YORK" PREPARED BY CAMPBELL ENGINEERING, LLP, DATED DECEMBER 29, 2014. LIMITS OF METLAND BOUNDARY WERE DELINEATED ON OCTOBER 29, 2018 BY ECOLOGICAL SOLUTIONS, LLC AND VERIFIED BY EVANS ASSOCIATES ON NOVEMBER 7, 2018. THE METLAND BOUNDARY HAS NOT CHANGED SINCE THE SURVEY IN 2014.
  - THE BASE FLOOD ELEVATION WAS DETERMINED FROM "NATIONAL FLOOD INSURANCE RATE MAP PANELS 5007 AND 50027" PUBLISHED BY THE NATIONAL FLOOD INSURANCE PROGRAM EFFECTIVE DATE SEPTEMBER 27, 2007. A LETTER OF MAP REVISION (L-01-00-REVIS) EFFECTIVE 03/20/2008 INDICATES THE SITE DEVELOPMENT AREA IS NOT LOCATED WITHIN THE 100-YEAR FLOODPLAIN.
  - A FEDERAL EMERGENCY MANAGEMENT AGENCY DETERMINATION DATED NOVEMBER 13, 2014 REMOVED THE 333 NORTH BEDFORD ROAD BUILDING FROM THE FLOOD AREA.
  - THE APPLICANT IS PROPOSING A CHANGE OF USE FOR THE WAREHOUSE TO A GROCERY STORE. THE SUBJECT BUILDING IS WITHIN THE VILLAGE OF MOUNT KISCO.
  - THE APPLICANT IS PROPOSING THE RECONFIGURATION OF A PORTION OF THE PARKING AREA LOCATED ON THE NORTH AND EAST SIDE OF THE 333 NORTH BEDFORD ROAD BUILDING TO SUPPORT THE CHANGE IN USE.
  - PORTIONS OF THE PROJECT LOCATED IN THE VILLAGE OF MOUNT KISCO ARE WITHIN A NYSDOT DESIGNATED MAIN STREET DISTRICT (MSD). ACCORDINGLY, APPROVAL FROM NYSDOT IS REQUIRED FOR THE PORTIONS OF SITE WORK WITHIN THE VILLAGE. SWPPP APPROVAL WAS RECEIVED ON NOVEMBER 30, 2021. THE PROJECT IS WITHIN THE NEW CROTON RIVER DRAINAGE BASIN.
  - BORINGS, TEST RITS AND PERCOLATION TESTS WERE CONDUCTED BY GALLIN-BEELER ASSOCIATES ON NOVEMBER 26, 2019 FOR SIZING OF THE STORMWATER MANAGEMENT PRACTICES ASSOCIATED WITH THE REDEVELOPMENT. SOIL TESTS WERE WITNESSED BY NYSDOT.
  - EXISTING INTERNAL BUILDING INFORMATION WAS TAKEN FROM GALLIN-BEELER DESIGN STUDIO DRAWINGS.
  - DIAMOND PROPERTIES OWNS THE FOLLOWING LOTS:
    - 333 NORTH BEDFORD ROAD, MOUNT KISCO (DP 21, LLC)
    - SECTION 69.20, BLOCK 2, LOT 1
    - 333 NORTH BEDFORD ROAD, BEDFORD (DP 21, LLC)
    - SECTION 71.12, BLOCK 2, LOT 36
    - 333 NORTH BEDFORD ROAD, BEDFORD (DP 62, LLC)
    - SECTION 69.20, BLOCK 2, LOT 3
    - 763 BEDFORD ROAD, BEDFORD (DP 133, LLC)
    - SECTION 71.12, BLOCK 2, LOT 31 & LOT 32
    - 777 BEDFORD ROAD, BEDFORD (DP 142, LLC)
    - SECTION 71.12, BLOCK 2, LOT 31 & 41.
  - CROSS ACCESS EASEMENTS SHALL BE PREPARED TO ACCOMMODATE THE PROPOSED IMPROVEMENTS BETWEEN THE DIFFERENT LOTS. DIAMOND PROPERTIES HAS COORDINATED EASEMENTS BETWEEN DP 21, LLC AND PHILAR REALTY, LLC. LOCATED AT 383 NORTH BEDFORD ROAD, MOUNT KISCO, SECTION 69.43, BLOCK 1, LOTS 2 & 3.



NOT FOR CONSTRUCTION

**LAYOUT PLAN**  
 THE PARK 333  
 (SHOPRITE EXPANSION)  
 333 NORTH BEDFORD ROAD/799 BEDFORD ROAD  
 VILLAGE OF MOUNT KISCO/TOWN OF BEDFORD, NY

ANY ALTERATION OF PLANS, SPECIFICATIONS, PLATS AND REPORTS BEARING THE SEAL OF A LICENSED PROFESSIONAL ENGINEER OR LICENSED LAND SURVEYOR IS A VIOLATION OF SECTION 7209 OF THE NEW YORK STATE EDUCATION LAW, EXCEPT AS PROVIDED FOR BY SECTION 7209, SUBSECTION 2.

STATE OF NEW YORK  
 SEAL OF THE STATE ENGINEER

Drawn: SMN Approved: SS  
 Scale: 1" = 10'  
 Date: 12/12/2022  
 Project No: 18118  
 Job No: C-140 L&A  
 Drawing No: C-140

Revision

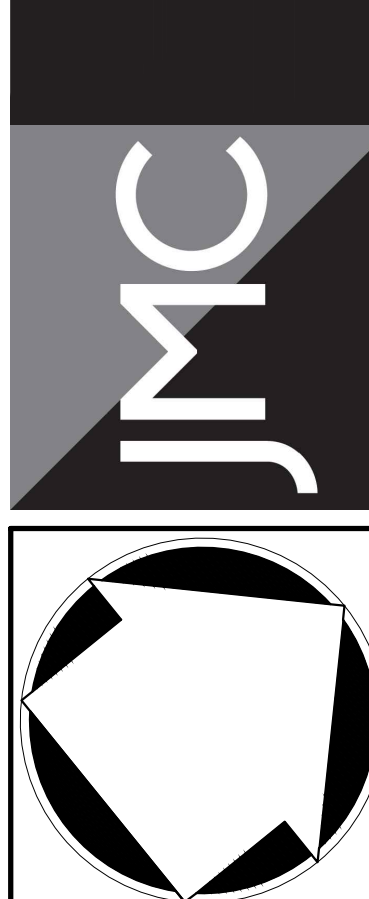
No.	Date	Description
1	07/19/2023	REVISED PER BEDFORD COMMENTS
2	03/27/2023	MOUNT KISCO PLANNING BOARD REVISIONS

APPLICANT/OWNER: DP21, LLC  
 333 N. BEDFORD ROAD, SUITE 145  
 MT. KISCO, NY 10549

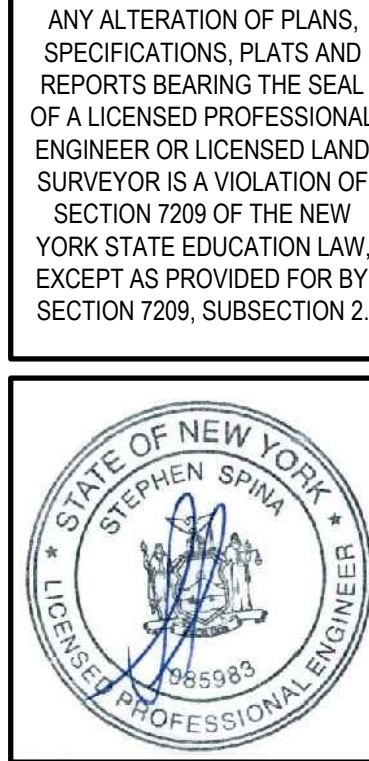
ARCHITECT: GALLIN-BEELER DESIGN STUDIO  
 23 WASHINGTON AVENUE  
 PLEASANTVILLE, NY 10587

JMC Planning, Engineering, Landscape Architecture & Land Surveying, PLLC  
 John Meyer Consulting, Inc.

120 BEDFORD ROAD - ARMONK, NY 10554  
 VOICES 914.833.3223 - FAX 914.833.2192  
 www.jmcpnc.com



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C-140



**Michelle Russo**

---

**From:** Sirignano Law Office <lawoffice@sirignano.us>  
**Sent:** Monday, April 10, 2023 2:02 PM  
**To:** Planning  
**Cc:** Peter Miley; Whitney Singleton; Alex Smoller; Lisa Mitchell  
**Subject:** Re: Smoller/Mitchell

**RECEIVED**

**APR 10 2023**

*Zoning Board of Appeals  
Village/Town of Mount Kisco*

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

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Michelle,  
Please adjourn our Zoning Board application to the May meeting.  
Thank you,  
Michael

**Michael Fuller Sirignano**  
Attorney and Counselor at Law  
Old Post Road Professional Building  
892 Route 35, PO Box 784  
Cross River, NY 10518  
Telephone: (914) 763-5500  
Fax: (914) 763-9589

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**From:** Planning <planning@mountkisco.ny.gov>  
**Date:** Monday, April 10, 2023 at 10:01 AM  
**To:** Sirignano Law Office <lawoffice@sirignano.us>  
**Cc:** Peter Miley <pmiley@mountkisco.ny.gov>, Whitney Singleton <wsingleton@sdslawny.com>, Alex Smoller <alex@smoller.com>, Lisa Mitchell <lisa\_mitchell@me.com>  
**Subject:** Smoller/Mitchell

Good morning Mr. Sirignano,

Please advise as to whether your client would like to appear at the April 18<sup>th</sup> Zoning Board of Appeals meeting or adjourn to May 16, 2023.

Sincerely,  
**Michelle K. Russo**  
Office Manager  
Planning & Zoning Secretary  
Village/Town of Mount Kisco  
104 Main Street



**Michelle Russo**

---

**From:** RvLarch <rvlarch@aol.com>  
**Sent:** Monday, April 10, 2023 11:37 AM  
**To:** Planning; Rvlarch@aol.com  
**Cc:** Peter Miley; wsingleton@sdslawny.com  
**Subject:** Re: 52 W Main Street

**RECEIVED**

**APR 10 2023**

**Zoning Board of Appeals  
Village/Town of Mount Kisco**

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Good morning,

We would like to adjourn to May 16th.

Roger

Roger van Loveren, AIA  
**RvL Architecture**  
**(914) 234 7823 off**  
**(914) 234 7534 fax**  
**(914) 588 5309 mobile**

-----Original Message-----

**From:** Planning <planning@mountkisco.ny.gov>  
**To:** Roger <Rvlarch@aol.com>  
**Cc:** Peter Miley <pmiley@mountkisco.ny.gov>; Whitney Singleton <wsingleton@sdslawny.com>  
**Sent:** Mon, Apr 10, 2023 9:57 am  
**Subject:** 52 W Main Street

Good morning Mr. van Loveren,

If you would like to appear on the April 18<sup>th</sup> agenda or adjourn the application to May 16<sup>th</sup>, please respond with how you would like to proceed.

Sincerely,

***Michelle K. Russo***

Office Manager  
Planning & Zoning Secretary  
Village/Town of Mount Kisco  
104 Main Street  
Mount Kisco, NY 10549  
(914)864-0022 (direct)  
(914)864-1085 (fax)

## MEMORANDUM

DATE: March 9, 2023  
TO: Mount Kisco Planning Board and Zoning Board of Appeals  
CC: Whitney Singleton, Esq., Village Attorney, Michael P. Musso, P.E.  
FROM: Rex Pietrobono  
SUBJECT: 180 South Bedford Rd; 2 Sarles Street Mitigation Response and Recommendations

First, I must reiterate my continuous and strong opposition to the Homeland Towers, LLC's 180 South Bedford Road proposed cellular applications pending before both Village Boards.

Nevertheless, as requested by the Mount Kisco Planning Board and Zoning Board of Appeals, I am submitting this Memorandum in response to the memorandum of mitigation options by the Village consultant, Michael Musso, (HDR), in the contingent event the cell tower was ultimately sited at the current location. I believe Mr. Musso did a thoroughly astute investigation of the proposed site, neighboring area, exhaustive review of the application itself and the proposed tower and base compound--and all viewed through HDR's own lens of considerable real-world experience in the placement of other cellular projects throughout the region and pertinent best practices rules and regulations. In short, his report should be the *minimum* basis for mitigation of the significant adverse environmental impacts on the community and neighboring properties.

Bear in mind while considering Mr. Musso's recommendations and my own supplemental details for additional screening, that it was Homeland Towers, LLC., who elected to place a cell tower within a few hundred feet of residences, a nature preserve, and near the Route 172 entrance to the Village. Thus, it is respectfully asked that the Village Boards' focus on mitigation efforts should not be deterred from requiring extensive screening due to any parsimonious objections Homeland Towers, LLC, may raise to the accompanying price tag.

### **THE BEST MITIGATION IS RELOCATION!**

Homeland selected one of the worst locations out of the entire 25 acres to negotiate a lease for a cell tower—between a home, a nature Preserve and a Village entrance. No dense screening to shield the neighboring properties. The Board of Trustees expressed their disdain for the proposed location this past Monday evening (March 6, 2023) where Mayor Gina Picinich said for the record:

The place where there does seem to be agreement by this Board is that the location for the cell tower, as proposed, in the current application before the Planning Board, so close to homes, is not desirable. The place where there appears to be agreement is that we would like to see that tower moved to a different location on that property further from homes. This, however, is not under our authority and remains under the purview of the Planning Board.

Board of Trustees, March 6, 2023, FB video record at 31:28 et seq.

Homeland knowingly painted themselves into a corner to demand the Village bail them out. Whether they *presently* have the right to relocate the tower elsewhere on the 25-acre parcel is not conclusive upon whether they *previously had* that right and waived it. Hence, a self-created or self-inflicted hardship while effectively removing from the Planning Board and ZBA their own determinations of “least impactful” or “least instructive” means of addressing a gap in coverage.

Neither the Boards nor the public know whether Homeland could have leased, or even sub-leased, a 4,000 sq ft spot in a less impactful or least intrusive site out of an entire 25 acres parcel also proposed to house a commercial solar farm since Homeland has not produced their lease(s).

Since when do Boards defer making their pivotal determinations because an applicant says so? Do any of you really believe your Board and Village consultants couldn’t have laid out a better non-segmented plan for that parcel that would be less intrusive or impactful? Rather than being ham-strung, of course you could have done a better job.

The ZBA requested the lease(s)—Homeland declined and elected to rely upon its submissions. Prior to that, the Planning had requested the lease(s)—Homeland refused. As part of the Board’s evaluations, the needed to ascertain whether Homeland had the chance to select a site elsewhere on the same parcel, but less intrusive or impactful means upon that parcel and the surrounding area. That critical element is one of the few afforded by the FCC and relevant caselaw to the local Boards in making their own determinations.

Notwithstanding all the foregoing, should one or both Boards abdicate that determination to the applicant itself and accede to this present off-course navigation, then the following requests are made to *supplement* the consultant’s mitigation report

**SUPPLEMENTAL MITIGATION ACTIONS IN ADDITION TO HDR RECOMMENDATIONS:**

**Expense:** At the outset, you should anticipate that the applicant may decry portion(s) of HDR’s report as well as the following supplementary recommendations. While weathering any such objection(s), bear in mind my earlier point that Homeland itself selected, negotiated, and contracted for this terrible location “so close to homes.” The applicant is an experienced commercial entity seeking to site a cell tower at an severely impactful and intrusive location. Their profitability at that proposed location comes at an inverse relationship to our family’s well-being and, in turn, our overall property value. We are afraid for the health of our family and generations to come much more than the aesthetics. There are rapidly advancing technologies and reports detailing the hazards the monopole’s emissions would pose to persons residing too close to such a cellular structure. That real and perceived impact equates to a substantial devaluation of our property as detailed in two October 2020 letters by respected real estate brokers Mariangela Cavaggioni and Dee Roider (see attached). So, make no mistake, while hearing demeaning objections of all proposed mitigation measures, our family, the Preserve, and

the community are already indirectly bearing the costs of mitigation of the cell tower at that proposed location on many fronts.

**Monopole texture /color:** The natural faux bark finish, (brown matte finish), for example, would likely cost more and require future maintenance—which is a good thing! The applicant should not be off the hook from maintaining the integrity of their responsibilities and conditions. As recommended by HDR (pages 8-9 of their report), the faux bark should go all the way to the top to give what little degree of screening is even available for such a tall stealth-tree monopole as is proposed. The Preserve, our family property, and the passer-by on Rt 172, should be afforded whatever available measures help to mitigate the visual impact of that monopole—and that faux bark is one of them. Viewing the monopole from the surrounding areas should be sufficient reason to require it, but also for all persons passing through the Eastern Gateway to our Village. A painted pole is distinguishable from a natural looking finish whether from the Preserve, our property, and r South Bedford Road. That minimal courtesy could go a long way toward more effective screening and that opportunity should not be lost simply to save Homeland that expense and maintenance.

#### **ON-SITE SUPPLEMENTAL RECOMMENDATIONS**

**On-site tree screening next to driveway at apex of turn:** ” (page 4 of HDR Report) “DWG SP-3 notes 50 trees being removed by the applicant. That is a lot of trees which should be replaced *in addition to* all of the trees required to screen the proposed project.

**Preservation of tall pine trees:** (Page 4 & 5 HDR Report) During the site visits, and in Mr. Musso’s report, there are at least three (3) critical tall pine trees to be preserved and protected which would be the only partial screening o the monopole from our family property: tagged specifically, as #37, #3083, #43, #38, and #39. On several occasions, Homeland has already acknowledged their significance and critical role in any attempts at partial screening.

**Penalty fee for preserved tree damage:** (Page 7 HDR Report) The above-referenced three trees are so vital to screening that Mr. Musso and a Planning Board member recommended a penalty or liquidated damages clause by Homeland be required to be paid in the event the applicant damages or destroys one of the aforesaid irreplaceable trees. At the site visit, Homeland stated that they could construct the monopole in the proposed location with a large crane between the trees *and not damage them*. They should be held to that representation. A penalty would act as a warranty against careless construction or maintenance. The sum should be large enough to compel the applicant, its agents, workers, contractors, or other representatives to carefully avoid any contact with those trees and the protection of the root system. It is suggested that a *significant* liquidated damages sum payable to our property (2 Sarles Street) reflecting damage to one of the said existing seventy-foot plus pine trees. Any damage would cause irreparable adverse visual impact and corresponding additional devaluation to our family property. (Note: the tallest Norway Spruce sold by Rosedale Nurseries, Inc. is 26XX ft.) Thus, the penalty should a *high multiple* of such expense to reflect the absence of a

replacement tree of that height. The point of the clause is incentive to carefully keep the three trees safe and sound. All trees planted should be warranted for replacement by Homeland.

**Plantings and berm:** (Page 10 & 11 of HDR Report) “Drawings show seven (7) new plantings (evergreen; 8 ft tall at planting)” on a four-foot-high dirt berm. The berm is a great idea for protection of trees and shrubs and adds additional height to tree screening. 12 ft tall trees are recommended herein. That extra 4 ft accelerates several years of growth to get to any effective screening height faster. According to a representative at Rosedale Nurseries, Inc., 51 Saw Mill River Road, Hawthorne, NY 10532, 914-769-1300, “Norway spruces grow the tallest, fastest, and do very well in this area.”

**Annual professional tree servicing against disease and insects:** It is a challenge to grow and protect trees in this immediate area from drought, disease, and insects. While the watering could be done by lay persons, professional tree care is a must to ensure any trees planted by the applicant don’t merely check-off a box but survive and thrive. Our family uses SavATree on an annual basis for many of our most important trees and shrubs.

**Removal of parking spaces/by-pass:** (Pages 13 & 14 of HDR Report) “[t]he by-pass located uphill from the compound area on can be eliminated from the Site Plan Drawings. . .” and is indicated in the diagram to be removed as a red “X.” That was an improper insinuation of parking within the northern buffer zone and likewise my request for its prohibition for well over a year (drawings indication “Homeland” had proposed these admittedly unnecessary off-site four 9x20’ parallel parking spaces which are expressly prohibited in a buffer zone per our Mount Kisco Code and would have required the removal of three (3) tall pine trees which are vital to screening other portions of our property. Those three (3) trees have been tagged (two of them twice) as follows: #51 (also as #3084), #52, and #53 (also as 2988).

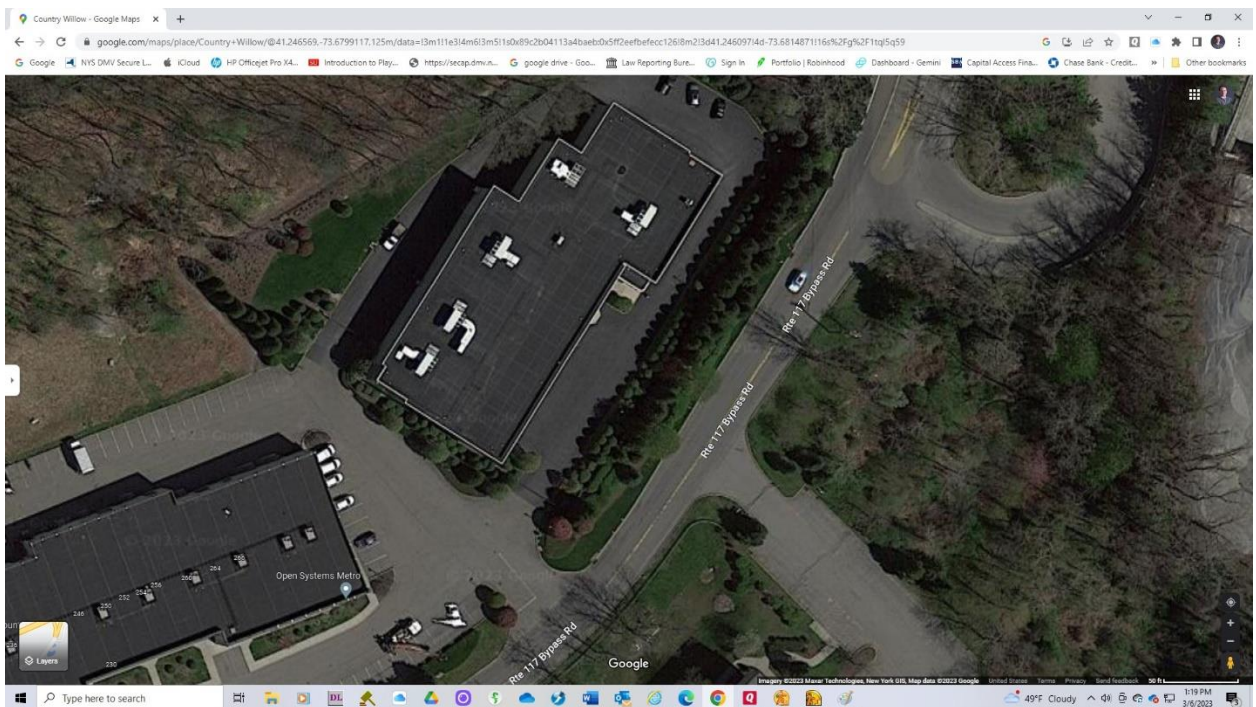
#### **OFF-SITE SUPPLEMENTAL RECOMMENDATIONS FOR 2 Sarles Street Property:**

Any of the many HDR recommended mitigation conditions for future Boards’ Resolution, if any, not directly referenced herein to avoid repetition, (including but not limited to, removal of proposed parking spaces, installation of a gate near base of driveway, stealth tree with branches and faux bark, on-site dirt berm, and no nighttime lighting except for necessary manual temporary use while servicing during such hours), are adopted herein as part of our requested recommendations and as a basis for any supplementation of same as well.

**Soil for berm:** (Pages 17 of HDR Report) the amount of soil needed for +/- 350 linear feet along inside of eastern edge of access road at a height of roughly between four (4) to six (6) feet (depending upon the specific spot along said berm) and eight (8’) feet wide. The berm will help screen the base compound structure of the monopole and serve as a healthy base for new tree and shrub plantings (and transplants of existing trees set forth below). The berm will also help protect our property from incidental encroachments during and after construction of the base and cell tower.

**Fencing:** (Pages 17 of HDR Report) HDR recommends fencing along the eastern edge of the access road at “6 ft 8 ft” in height. We would recommend limiting the fence height to 6’ high, but then extend the entire length of the linear feet of the fencing to screen our western view of the base compound and lowest portion of the monopole (along with other recommended screening from HDR and herein). That means, the fencing (made of composite material) should run from the southeastern most point of our property to the northwestern property boundary point abutting SBR. My family utilizes every part of our property and we ask the Boards to protect whatever view will remain should a cell tower be approved at the proposed location. Again, expense should be secondary to mitigation efforts. A variance may be necessary in some locations on our property and not others. Thus, we would request a variance to six (6) for our entire property.

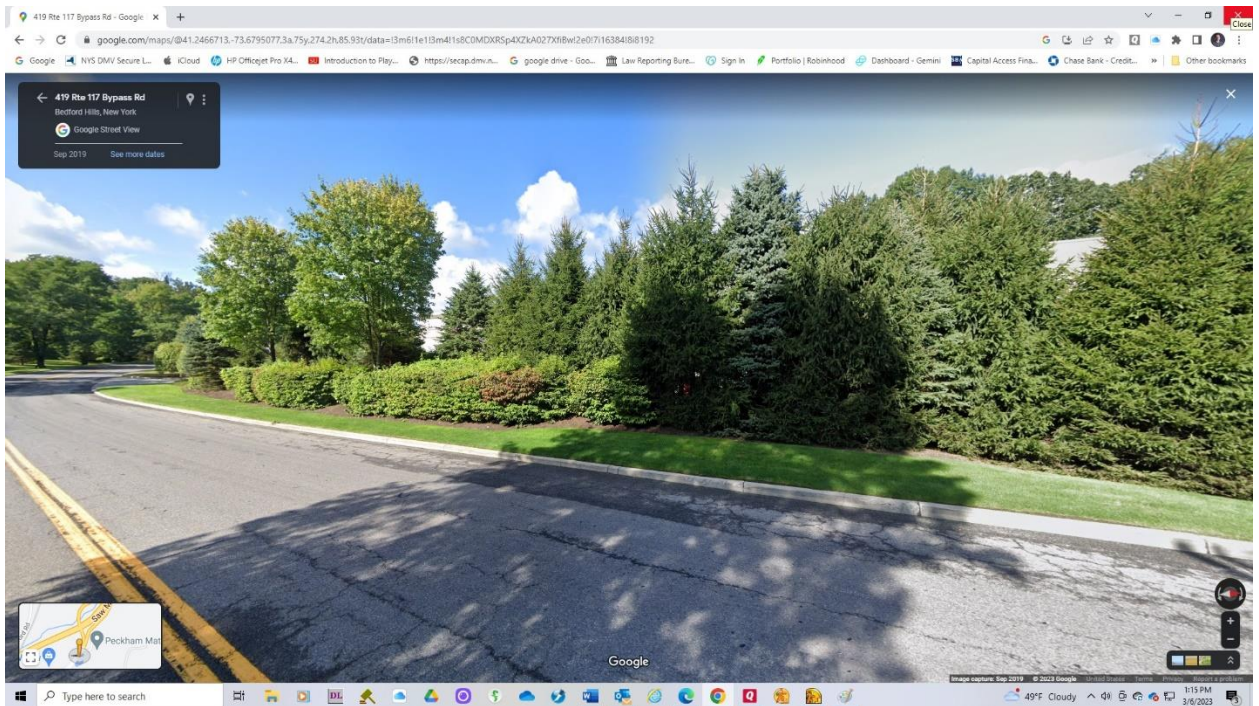
**Number and Height of New Trees:** (Pages 18 of HDR Report) “Plantings-suggested 10-15 new deciduous and coniferous trees and shrubs (mix). . .” To be clear, *more than 15* new trees would be needed to facilitate screening in an organic looking setting to match the rest of our family property. An example of such screening (although ours could be thinner) is shown below in images taken from 268 Route 117 By-pass Road, Bedford Hills, NY 10507.



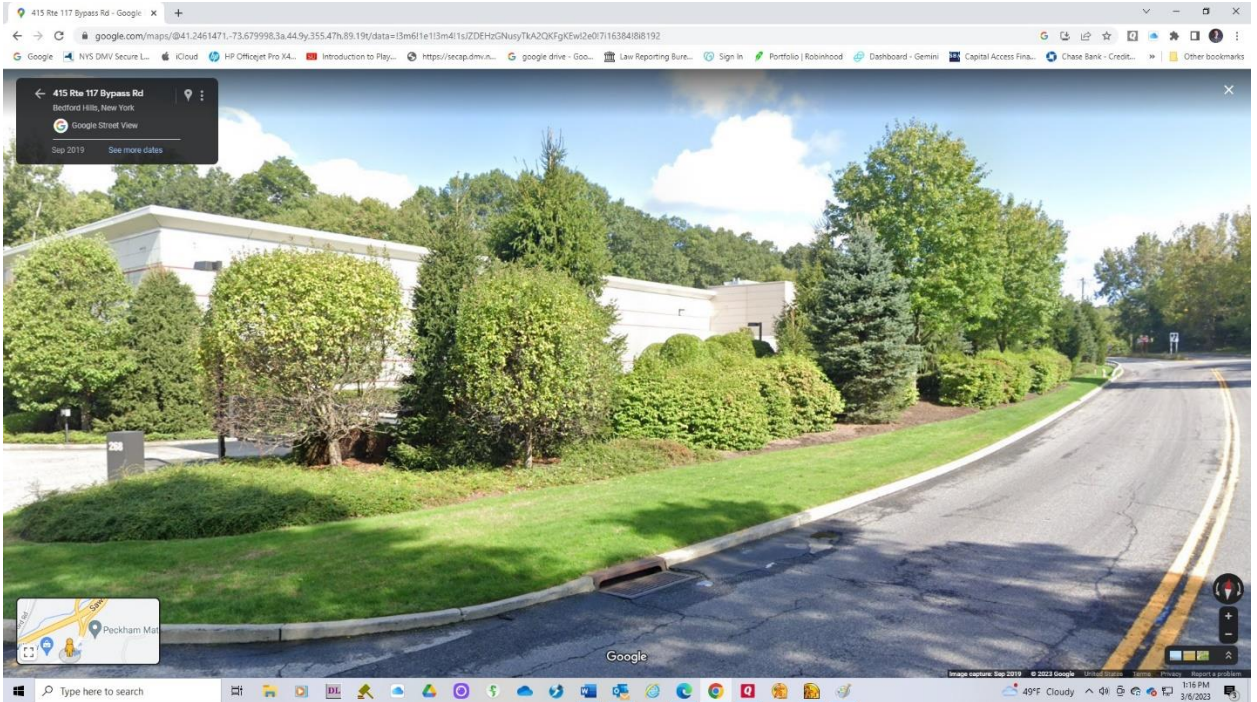
268 Route 117 By-pass Road, Bedford Hills, NY 10507 et seq.

The section of berm, trees, and shrubs, depicted above and in the following photographs, appears to be roughly 200 linear feet. There appears to be about six (6) trees per fifty feet, plus shrubs. That would require more like twice the amount recommended by HDR numbering about 30 trees, plus many shrub varieties. The trees should be a mix of Norway Spruces, Green Giants, a few dog woods, and other successful local growth trees. The new evergreens should be 12’ height.









**Number of shrubs:** a mix of many local varieties, deer resistant, consistent with other areas of our family property.

**Transplanting some existing trees and shrubs:** two (2) existing specimen trees, six (6) small fruit trees, and three (3) “Beauty Bushes, to make room for dirt berm.

**Irrigation infrastructure:** the trees and shrubs in that far western area lay beyond our water source (well) and some irrigation infrastructure would be needed to maintain all the numerous plantings.

**Stones for Short Walls and Terraces Along Berm:** an estimated 12-15 yards of “Loose Native Fieldstone” available at Bedford Gravel would need to be available for a series of interrupted short walls and terraces to intermittently shore up the berm and wrap around existing tall pine trees to protect their trunk and roots.

**Permission to use access road:** to facilitate delivery and installation of soil for berm, trees, shrubs, and stones to driveway for deliveries of soil, trees, shrubs, and stones to that western portion of our family property.

**Shed** (Pages 18 of HDR Report) We recommend an actual shed and a “faux” one. We need a longer and higher area screening the driveway near monopole and its base from our bedroom windows on the second floor facing west. It would need to be higher and larger than the Code permits without a building permit, thus, a variance(s) will be necessary.

**Screening for Route 172:** The balloon test at the 180 SBR site showed that the monopole will be visible to passers-by along SBR. All large swath of the public view may effectively be screened off-site with a combination of trees and shrubs and fencing. My family would consider allowing such appropriate screening in the northeast corner of our family property adjacent to Sarles Street and SBR.

**Variances:** Variances may be needed to effect creation of the berm, fencing, and shed.

**Warranty:** Homeland should warranty all trees and shrubs in the event they fail within the first five (5) years. Also, as stated previously, an annual service agreement should be entered into with a tree service company to help ensure the new plantings survival.

**Part 2-Full Environmental Assessment Form:** RF emission testing by a third-party consultant should be performed annually. This issue of emissions testing to ensure ongoing compliance with federal regulations was discussed by Mr. Musso at an informational cellular service seminar this year at the request of the Village Board of Trustees. Part 2, section 16 “Impact on Human Health” should be modified under sub-section (m) “Other impacts:” to describe the acceptable emissions and annual testing.

**Mitigation Fund:** to avoid future confusion or conflict with any other areas to be mitigated, such as, the Preserve and Route 172, it is recommended that the allocation of funds be made for each specific location along with their specifically approved mitigation efforts as submitted in the HDR Report and each interested party’s own Supplemental Recommendations, if any.

**SELF-CREATED HARDSHIP SHOULD NOT ELIMINATE OUR BOARDS’ EVALUATION OF IMPACT:**

Homeland is responsible for their own self-created hardship and should likewise be accountable for the expense of efforts to sufficiently mitigate the severe adverse impacts of a 140’ monopole upon the neighboring properties and surrounding community area.

In this case, Homeland’s application seeking a special use permit and variances should be denied outright on the record before the Boards underscoring the rejection of one or both of the two ill-conceived proposed industrial projects being shoehorned into a Conservation District (CD) 25-acre parcel at 180 SBR. Given the established record before the Planning Board of numerous significant environmental impacts that the cell tower (*and* a solar power plant—segmented or not) would have on the environment. *At the very least*, a Positive Declaration is clearly mandated in relation to Homeland’s Planning Board application and a denial of the variances sought from the Zoning Board of Appeals.

If the Planning Board were nonetheless inclined to approve the special use permit and the ZBA the three (3) *necessary* variances for the monopole and its compound, then is respectfully submitted that the February 27, 2023, HDR report of mitigation options, together with my

Supplemental recommendations, be accepted in whole by the Planning Board and ZBA as a condition of satisfying Part 2 of the Environmental Impact Statement.

Arguably, the Village has been shaving off the edges of the proverbial square peg to be forced through the round hole and has disincentivized the applicant to relocate to an alternate site elsewhere on the larger parcel *via* renewed negotiations with the owner to lease a different spot, or perhaps the solar applicant to sub-lease the 4,000 sq ft monopole elsewhere on the 25-acre parcel. For example, alongside the proposed solar farm at the top of the hill, if the solar application were to proceed and thus minimizing the non-segmented adverse impacts upon surrounding areas. As it's been repeated for ages: *where there's a will--there's a way*. It is conceivable that given their vast experience and resources, that had Homeland desired to relocate its proposed monopole to an alternate location—it would be accomplished.

William Raveis Real Estate  
Katonah Office  
95 Katonah Avenue  
Katonah, NY 10536

October 6, 2020

Planning Board  
Village/Town of Mount Kisco  
104 Main Street  
Mount Kisco, NY 10549

RE: Proposed Cell Tower--180 South Bedford Road Entrance

Dear Mount Kisco Planning Board:

My name is Dorothea ('Dee') Roider. I have been a Realtor Estate Broker in Westchester County, New York for the last 34 years, during which time I have held the position as the number one listing agent for 24 consecutive years. In my career I have handled over \$200,000,000 dollars in properties listed and sold.


I am also a life-long resident of Mount Kisco, and as such, I have always been active in local community causes. I am a member of professional organizations including the National Association of Realtors, New York State Association of Realtors, and Hudson Gateway Multiple Listing Services.

It has been brought to my attention that the location of a 145 ft cell tower has been proposed at 180 South Bedford Road in a spot situated between the Pietrobono home, Marsh Sanctuary, and South Bedford Road.

In my professional opinion, the installation of the proposed tower in that location would certainly have a negative impact on and reduce the value of the residence located at 2 Sarles Street, Mount Kisco, NY 10549 by approximately 20%; making said home less saleable, even at a reduced purchase price.

While I understand there may be a need in our community for improved cellular telephone coverage in nearby areas, such a project in that location would create a disproportionately adverse financial impact upon the 2 Sarles Street residence.

In my experience, I have had prospective buyers decline suggested properties for as little as being located near power lines. Having a 145 ft cell tower within such close proximity to the property would certainly reduce its number of potential buyers. I am sure that any potential buyer would have a lot of questions about the cell tower, and, because of all the notice about the proposed cell site and my obligation to my clients, this information would have to be disclosed to any future buyer. Thus, limiting the number of buyers that would be willing to purchase the property.

Sincerely,  
  
Dee Roider



Coldwell Banker Residential Brokerage  
Katonah - Bedford  
165 Katonah Ave, Katonah, NY 10536

October 7, 2020

Planning Board  
Village of Mount Kisco  
104 Main Street  
Mount Kisco, NY 10549

RE: Cell Tower Proposed for 180 South Bedford Road, Mount Kisco, NY 10549

Members of the Mount Kisco Planning Board:

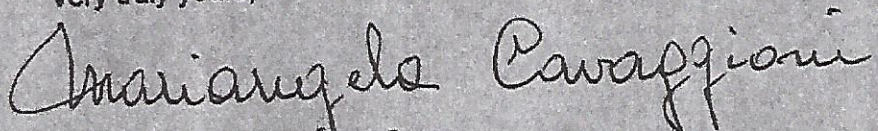
It has come to my attention that Homeland Towers and Verizon Wireless intend to build a 140 foot tall telecommunications structure located very closely to Route 172 and the Pietrobono home at 2 Sarles Street, Mount Kisco, New York 10549, as well as the neighboring Marsh Sanctuary Wildlife Preserve caretaker's house.

As a practicing real estate agent in this area for the past forty-three (43) years and, presently, an associate realtor for Coldwell Banker in Katonah—Bedford, I can affirm that a significant number of buyers will not be interested in purchasing a house, even as nice as the Pietrobono home, with a cell tower so close to it. As it stands today, the present view at the Pietrobono residence is the same as when they bought it in 1996, i.e. wildlife, woods, and roads with no direct view of any other buildings. The introduction of a tall steel tower would undoubtedly **NEGATIVELY IMPACT** their property value.

In my professional opinion, the installation of such a commercial cellular tower structure would have a significant adverse aesthetic impact upon the Pietrobono home causing it to suffer a reduced property value of roughly 18%.

There are other geographic locations in the immediate area which would be far less impactful and concealed from open view of nearby residences and all of the people driving into Mount Kisco. I am confident in the Mount Kisco Village and Town officials to find a suitable location which does not unfairly and adversely impact one of their residential homes.

Very truly yours,

  
Mariangela Cavappioni



LAW OFFICES OF  
**SNYDER & SNYDER, LLP**  
94 WHITE PLAINS ROAD  
TARRYTOWN, NEW YORK 10591

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ONE GATEWAY CENTER, SUITE 2600  
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(973) 824-9772  
FAX (973) 824-9774

REPLY TO:  
TARRYTOWN OFFICE

April 4, 2023

Honorable Chairman Wayne Spector  
and Members of the Zoning Board of Appeals  
Village of Mount Kisco  
104 Main Street  
Mount Kisco, New York 10549

Re: 180 S. Bedford Road  
Homeland Towers, LLC & Verizon Wireless

Honorable Chairman Spector and  
Members of the Zoning Board of Appeals:

As you are aware, we are the attorneys for Homeland Towers, LLC (“Homeland Towers”) and Verizon Wireless (together, “Applicants”) in connection with their application to place a public utility wireless telecommunications facility (“Facility”) at the above referenced property (“Property”).

Enclosed please find as Exhibit 1 the public notice that is being published and mailed in connection with the April 18, 2023 public hearing. As you recall, the first public hearing in connection with this matter was closed on March 21, 2023. A new public hearing has been necessitated by the Village for the reasons set forth below. The Applicants respectfully request any necessary variances that the Village deems are required.

I. Fence Height:

The Planning Board has requested that the security fence be increased in height to ten (10) feet and the Building Inspector has determined that the fence height is limited to six-and-a-half (6.5) feet. See Exhibit 2. In an effort to accommodate the request of the Planning Board, the Applicants hereby request a height variance for the fence, and in the alternative, appeal the Building Inspector’s determination that a fence height variance is required.

With respect to the appeal, please note that Section 110-27.1(E)(6) of the Village Code states: “Security fencing. Security fencing, showing the location, materials and height, shall be provided around each tower or monopole to secure the site and provide an opaque banner. Access to the structure shall be through a locked gate.” Thus, the Planning Board has the authority under the special permit criteria to allow the fence of any height.

Based on the foregoing, we respectfully request a determination that no fence height variance is required, or in the alternative the fence height variance.

## II. Setbacks:

The Applicants hereby request any additional or new variances under Section 110-27.1(E)(5) of the Village Code as now interpreted by the Building Inspector, and in the alternative the Applicants appeal the determination that such additional or new variances are required based on the following:

1. In late 2020 the Building Inspector issued a series of four (4) memos setting forth his official interpretation of the Village Code, including the setbacks under Section 110-27.1(E)(5). See Exhibit 3. On November 4, 2020, the Applicants expressly appealed the Building Inspector's interpretation of the necessary variances, stating clearly that: "The Applicants respectfully file this application to appeal the Building Inspector's Interpretation, or in the alternative to request any necessary area variances for the Facility." See Exhibit 4, including cover letter and memorandum of law. The Building Inspector's analysis with respect to the required setback variances was very detailed and specific. The Applicants relied upon this interpretation, as did the Zoning Board itself in approving the public notice. See Exhibit 5.

Section 110-27.1(E)(5) states:

Setbacks. Unless the FCC promulgates rules to the contrary, all personal wireless service facilities shall be separated from all residential dwellings by a distance of no less than 500 feet. In no case shall a setback be less than 20 feet or the minimum setback required by the underlying zoning district, whichever is greater. The setback shall increase 100 feet for each 10 feet that the personal wireless service facility exceeds the maximum height set forth in the underlying zoning district. Setbacks from towers or monopoles shall be measured from the base of the structure.

Nothing in Section 110-27.1(E)(5) references a setback from the property line. It only refers to separation from residential dwellings. In contrast, Section 110-27.1(C) expressly applies the underlying setbacks to the property line for the Facility, which the Facility meets. Moreover, Section 110-59 of the Village Code defines a setback as: "The horizontal distance from a lot line to the part of the building which is nearest to such lot line." The term building is defined in the Village Code as: "Any structure having a roof



supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals and/or property.” The Facility does not include any structure that meets the Village Code definition of building, and thus no setbacks apply. Accordingly, the only setback requirement that requires a variance is the separation to residential dwellings as originally applied for and discussed during the public hearing that was closed on February 21, 2023. No additional setback variance is required.


2. Other than the Applicants’ appeal, no other appeal was taken by any third party within the required appeal period.
3. The Building Inspector’s interpretation was the correct interpretation of the Village Code.
4. Other functionally equivalent competitors of Verizon Wireless were permitted without the need for these new and additional variances, and thus to require such variances here is arbitrary, capricious and unreasonably discriminatory in violation of both State and federal law.
5. Tellingly, the Building Inspector on the record at the February 21, 2023 public hearing stated that if he wanted to change his prior determination, he “would have already done so” and that he made the same determination for another application. See <https://vimeo.com/801354044>.
6. Since the application was filed, the Village Board amended the Village Code to expressly require the enforcement of various special permit criteria to wireless facilities located outside of the Overlay District, when such criteria had not been previously applied to other facilities. However, the Village Board chose not to amend the Village Code related to the setback issue discussed herein. Clearly, the Village Board had ample opportunity to amend the code to correct any misinterpretation that it believed the Building Inspector may have made dating back to 2020 in this application, and even earlier in other applications.

The FCC shot clock has been extended many times by the parties and is scheduled to expire on April 28, 2023. In the event the Zoning Board determines that the height of the tower (as appealed in the original filing) and the fence (as being appealed here) are within the purview of the Planning Board, then we respectfully request that the Zoning Board approve any necessary setback variances on April 18, 2023 as Type II actions under SEQRA. However, if the Zoning Board determines that the height of the tower and fence are subject to the issuance of variances, then the Zoning Board, having already consented to a coordinated SEQRA review, must await the Planning Board’s action on SEQRA. In which case we respectfully request that the Zoning Board schedule a special meeting on April 26, 2023. Please note that we request any necessary

variances the Village deems necessary and hereby incorporate the entire administrative record form the first public hearing process into this process.

We thank you for your consideration. If you have any questions or require any additional documentation, please do not hesitate to contact me at 914-333-0700.

Snyder & Snyder, LLP

By:   
Robert D. Gaudio

Enclosures

RDG/djk

cc: Planning Board  
Building Inspector  
Applicants

Z:\SSDATA\WPDATA\SS3\RDG\Homelandtowers\Mount Kisco\NY172\ZBA Letter 4-3-23.rtf

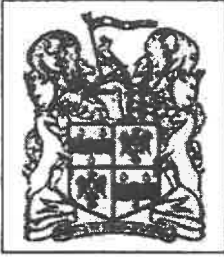
# Exhibit 1

## PUBLIC NOTICE

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village/Town of Mount Kisco, New York will hold a Public Hearing on the 18th day of April 2023 at the Municipal Building, Mount Kisco, New York, beginning at 7:00 PM pursuant to the Zoning Ordinance on the Application of Homeland Towers, LLC and Verizon Wireless c/o Snyder & Snyder, LLP 94 White Plains Road, Tarrytown, NY 10591, for its proposed wireless telecommunications facility at the Property identified as 180 S. Bedford Road, Mount Kisco, NY 10594 and described on the Village Tax Map as Section 80.44 Block 1 Lot 1 requires certain variances. The Property is located on the South side of South Bedford Road in a Conservation Development Zoning District. Application being made to obtain variances from §110-27.1(E)(5) for: (1) having a personal wireless service facility within 500 foot of a residential dwelling with the tower being approximately 295 feet from the naturalists cottage at the Marsh Sanctuary and approximately 390 feet from the residential dwelling at 2 Sarles Street and variances of approximately 205 feet and 110 feet, respectively; and (2) a setback of less than 1,130 feet from all property lines where the tower is approximately 171' to northerly property line, approximately 103' to easterly property line, approximately 1,094' to southerly property line and approximately 147' to westerly property line is proposed and variances of approximately up to 959', 1,027', 36' and 983' respectively are requested. A variance is also requested for relief from maximum fence height requirement of §110-31(F)(2) Code of the Village/Town of Mount Kisco setting a maximum fence height of 6½ feet where up to 10 feet is proposed and a variance of up to 3½ is requested, all as subject to Planning Board's required mitigation. Any other necessary variances are also requested and in the alternative an appeal that no variances are required or that the variances required had previously been applied for.

Wayne Spector, Chair  
Zoning Board of Appeals  
Village/Town of Mount Kisco

# Exhibit 2



Village/Town of Mount Kisco Building Department  
104 Main Street  
Mount Kisco, New York 10549  
Ph. (914) 864-0019-fax (914) 864-1085

March 1, 2023

Via e-mail: [RGaudioso@snyderlaw.net](mailto:RGaudioso@snyderlaw.net)

Robert D. Gaudioso, Esq.  
Snyder & Snyder, LLP  
94 White Plains Road  
Tarrytown, New York 10591

*Re: Homeland Application at 180 South Bedford Road, Tax ID 80.44-1-1*

Dear Mr. Gaudioso:

For clarity moving forward, I would like to elaborate on a few items that were discussion topics raised during the last Planning Board meeting on February 28, 2023 and the Zoning Board of Appeal's meeting of February 21, 2022. For organizational purposes, and in no particular order of importance, I have set them forth in separate paragraphs.

**Determinations.** While I have drafted numerous memoranda for the Planning Board's consideration and review, with some being specific to Homeland and others addressing issues on the SCS Sarle's application, those documents merely reflected my then-current views based upon various evolving application issues, and were not denial letters or "determinations" so as to start the sixty (60) day period within which your client or any aggrieved parties must appeal. Inter-office memos to the Planning Board are not "determinations" as they do not authorize or prohibit any particular component of your client's application, nor are they filed in my office or the village clerk's office as "determinations" so as to commence an appeal period under Village Law § 7-712-a (5)(b).

**Scope of Requisite Variances.** As you are well aware, the property owner has authorized and the Planning Board has been entertaining two applications for the above-referenced property. While you may deem them as independent of one another, from a zoning perspective, they clearly are not. The interrelation of these applications and the dual siting and implementing of the two projects rather than one, may well trigger variances that might not otherwise be required, or amplify the degree of variance necessary. This coupled with the evolving nature of your client's application, including changes such as: (1) an increased fence height variance raised in last evening's Planning Board meeting and (2) the need for a variance for tower height being necessary only in the event that the special permitting authority denies the proposed height, makes pinning down required variances an ever-changing task.

It is for the reasons set forth above, that I have never issued any denial letters or otherwise made "determinations" commencing any appeal clock. Based upon the above, in my view, your statements at the last Zoning Board of Appeals meeting suggesting that any appeals period had expired was incorrect.



**Logistics Moving Forward.** At the last Zoning Board meeting, you indicated that your client would like to move forward with its pending application for interpretation/variances in their current form. While this is certainly Homeland's prerogative, I do not want there to be any misunderstanding or confusion as to my position. Based upon the present status of your application, there will likely be additional variances necessary for this project to be completed. Based upon my discussion with the Village Attorney, my further review of the current status of the project and what happened at the last Planning Board meeting, I believe that the requested variance from the separation requirement contained in Village Code § 110-27.1 E(5) will be a variance in the amount of 500 feet, less the shortest distance to the base of the tower and to the nearest dwelling. There will also be a setback variance needed once the actual height of the tower is determined [Village Code § 110-27.1 E(5)]. Furthermore, unless the applicant demonstrates to the satisfaction of the board granting the special permit that a greater height is necessary, Homeland would need a variance from the maximum permitted tower height [Village Code § 110-27.1 E(3)]. Additionally, as raised at the last Planning Board meeting, if the fence height around the structure is going to exceed the maximum permitted fence height of 6½ feet, another variance will be needed [Village Code § 110-31(F)(2)].

If Homeland does not wish to amend and re-notice its application now to seek this additional relief, that is its prerogative. However, I do not want to misconstrue as to the scope of variances that is ultimately going to be needed. As the application progresses and amended plans are submitted, I think it is important that we confer as to precisely what those remaining variances will be.

Sincerely,

  
Peter Miley  
Building Inspector

Ccs: Planning Board  
Zoning Board of Appeals  
Whitney Singleton, Attorney for the Town/Village  
File

# Exhibit 3



Village/Town of Mount Kisco Building Department  
104 Main Street  
Mount Kisco, New York 10549  
Ph. (914) 864-0019-fax (914) 864-1085

MEMORANDUM

TO: Chairman Doug Hertz and Members of the Planning Board

FROM: Peter J. Miley, Building Inspector *PJM*

SUBJECT: Homeland Towers, LLC  
Public Utility Wireless Telecommunications Facility  
180 S. Bedford Rd. Tax Parcel No: 80.44-1-1

DATE: September 1, 2020

---

**PROJECT**

Proposed by Homeland Towers, LLC is the construction of a new Public Utility Wireless Telecommunications Facility ("cell-tower") to be located at 180 S. Bedford Road (SBR). 180 SBR is a 25 +/- acre parcel that is located in the Conservation Development District (CD) Zoning District. The proposed Public Utility Wireless Telecommunications Facility is a separate application with no connection to the application currently under review by the Planning Board for the installation of a Ground Mounted Solar Facilities, application No. PB2020-0395 proposed on the same parcel. Homeland Towers, LLC ("the applicant") seeks a Special Use Permit, Site Plan Approval and a Steep Slopes Permit from the Planning Board in accordance with Sections 110-27.1(H), 110-45(A) and 110-33.1 of the Village Zoning Code.

The CD Zoning District, by the issuance of a Special Permit by the Planning Board, allows for Tier 3 – Ground Mounted Solar Facilities. However, regarding a Public Utility Wireless Telecommunications Facility, 180 S. Bedford Road ("the property") is located outside of the § 110-27.1. PWSF Personal Wireless Service Facilities Overlay Zoning District which is an overlay district that is "*intended to provide a suitable choice of locations for establishment, construction and maintenance of personal wireless service facilities.*"

Pursuant to § 110-7. CD Conservation Development District. A. Purpose and intent:

*"is to permit single-family residential development at relatively low densities, consistent with the long-range planning objectives of the Village, which development is designed to maintain, preserve and enhance the natural and man-made environment of the lands within and adjacent to the district. In adopting this*



*district, the Village Board of the Village of Mount Kisco declares its intent to encourage well-planned residential site development by establishing flexible zoning controls that are designed to assure maximum conservation and efficient utilization of land.”*

The proposed cell tower project will require that 33 trees – greater than 4” caliper be removed.

## **STRUCTURES**

The proposed Public Utility Wireless Telecommunications Facility includes the installation of a 140 ft. monopole (145 ft. is the total height including “peak of faux treetop”) that is designed to resemble a large Pine Tree (“Monopine”) and designed to support multiple – “four-sided” Verizon Antennas. The proposed design also includes three lower areas on the Monopine for future colocation of other carriers. In addition, the fenced compound will also contain multiple equipment cabinets, a diesel generator and four future equipment areas contained within the 8 ft. high, 3,472 sq. ft. “fenced-in” area.

## **THE PROPERTY**

The proposed Public Utility Wireless Telecommunications Facility is located on the same twenty-five (25) acre parcel as the proposed Tier 3 Ground-Mounted Solar Facility.

Pursuant to Chapter 110. Zoning Article III. District Regulations § 110-7. CD Conservation Development District. (3):

*“Lot regulations for places of Tier 3 solar energy facilities. (a) Minimum lot area and site requirements: 25 acres parcel having frontage and access on a county or state road.”*

The proposed Public Utility Wireless Telecommunications Facility location would reduce the minimum lot area requirement of 25 acres by approximately 3,472 sq. ft. for a Tier 3 Ground-Mounted Solar Facility.

## **LOCATION**

The location of the cell-tower compound is 127 ft. south from the north property line that runs parallel to S. Bedford Road and 388 ft. from the residential home.

The proposed Public Utility Wireless Telecommunications Facility is in the CD Zoning District which is located “outside” of the Personal Wireless Facilities Overlay District. Section 110-27.1 titled “PWSF Personal Wireless Service Facilities Overlay District” was adopted on 10-21-1996 by Local Law No. 3-1996. Pursuant to § 110-27.1 H, the Planning Board is the permitting agency for Special Permits that are either *within* the Overlay District or *outside* the Overlay

District on non-Village-owned land. § 110-27.1 H sets forth a completely different and additional set of criteria by which to evaluate such applications [§ 110-27.1 H (1)-(4)] and shall be permitted only if:

*“a New York State-licensed professional engineer specializing in electrical engineering with expertise in radio communication facilities establishes to the satisfaction of the approving agency all of the following:”*

- (1) That the personal wireless service facility is needed to provide coverage to an area of the Village that currently has inadequate coverage and is of the minimum height and aesthetic intrusion necessary to provide that coverage;
- (2) That coverage cannot be provided by a personal wireless service facility located within the Personal Wireless Service Facilities Overlay District;
- (3) That all reasonable measures in siting the personal wireless service facility within the Personal Wireless Service Facilities Overlay District have been exhausted; and
- (4) That technical and space limitations prevent location or colocation in the Personal Wireless Service Facilities Overlay District.

Therefore, a Special Permit can only be issued by the Planning Board upon the applicant's submission of documentation by the RF Engineer that sufficiently satisfies, and has met the four (4) criterion set forth above.

### **ZONING**

- Chapter 110. Zoning Article V. Supplementary Regulations § 110-31. Supplementary development regulations. Exceptions to yard requirements. (2) Fences, hedges or walls, other than retaining walls, that are not over 6 1/2 feet in height may be erected anywhere on the lot, except that any such fence, wall or hedge, other than a retaining wall, that is erected in any front yard shall not have a height in excess of four feet. With respect to all new fence installations or replacements, the finished or formal presentation side of said fence shall face the adjacent property or street. Proposed is an 8 ft. fence that surrounds the compound and therefore; a 1 ft. 6 in. fence variance is required.

### **APPROVALS REQUIRED**

- Site Plan Approval
- Special Permit
- Steep Slopes Permit
- Zoning Board
- Public Hearing Required

PM/mkr



Village/Town of Mount Kisco Building Department  
104 Main Street  
Mount Kisco, New York 10549  
Ph. (914) 864-0019-fax (914) 864-1085

MEMORANDUM

TO: Vice Chairman John Bainlardi and Respected Members of the Planning Board

FROM: Peter J. Miley, Building Inspector *pm*

SUBJECT: Homeland Towers, LLC  
Public Utility Wireless Telecommunications Facility  
180 S. Bedford Rd. Tax Parcel No: 80.44-1-1

DATE: October 6, 2020

---

**PROJECT**

Proposed by Homeland Towers, LLC and New York SMSA Limited Partnership d/b/a Verizon Wireless (“the applicant”) is the construction of a new Public Utility Wireless Telecommunications Facility (“cell tower”) to be located at 180 S. Bedford Road (“the property”). 180 S. Bedford Road is a 25 +/- acre parcel that is located in the Conservation Development (CD) Zoning District. The proposed cell tower location is on the same 25-acre parcel that is currently under review by the Planning Board for the installation of a Ground-Mounted Solar Facility — application No. PB2020-0395. Homeland Towers, LLC, and New York SMSA Limited Partnership d/b/a Verizon Wireless requires a Special Use Permit, Site Plan Approval, and a Steep Slopes Permit from the Planning Board in accordance with Sections 110-27.1, 110-46, 110-45 and 110-33.1 of the Village Zoning Code. Sunrise Community Solar, LLC (“Sunrise”) also has an existing (pre-dating) application for a Special Use Permit, Site Plan Approval, and a Steep Slopes Permit from the Planning Board for a Tier-3 Solar Farm on the very same site. While the applicants are unaffiliated, they are proposing separate commercial projects on the same parcel of land and have timed the submissions of their respective applications in such a manner as to result in confusion in the process and misrepresentation as to the scope of the project, requiring certain recusals and hiring of outside consultants. Accordingly, reference to Sunrise in this memorandum is not because the applications are joint, but because each application bears upon the other as to the site-wide impacts and overall compliance with underlying zoning regulations.



## PROPERTY

180 S. Bedford Road (AKA Route 172) is located outside of the § 110-27.1. PWSF Personal Wireless Service Facilities Overlay Zoning District. The PWSF Overlay District is the preferred location “*intended to provide a suitable choice of locations for establishment, construction and maintenance of personal wireless service facilities.*” Siting personal wireless service facilities outside of the Overlay District is only permitted when the additional provisions of §110-27.1 H are all satisfied.

Pursuant to § 110-7. CD Conservation Development District. A. Purpose and intent:

“Is to permit single-family residential development at relatively low densities, consistent with the long-range planning objectives of the Village, which development is designed to maintain, preserve and enhance the natural and man-made environment of the lands within and adjacent to the district. In adopting this district, the Village Board of the Village of Mount Kisco declares its intent to encourage well-planned residential site development by establishing flexible zoning controls that are designed to assure maximum conservation and efficient utilization of land.”

Pursuant to Chapter 110. Zoning Article III. District Regulations § 110-7. CD Conservation Development District.

“(3) Lot regulations for places of Tier 3 solar energy facilities. (a) Minimum lot area and site requirements: 25 acres parcel having frontage and access on a county or state road.”

The Public Utility Wireless Telecommunications Facility, would reduce the minimum lot area by approximately 3,472 +/- sq. ft.

## LOCATION

The proposed cell tower and equipment compound will be located 127 feet south, starting at the north property line which runs parallel to S. Bedford Road. The property also runs south to southeast along and fronts Sarles Street. The proposed cell tower location is 388 feet to the closest residence (east) and will encroach 73 ft. into the 200 ft. buffer requirement for a Ground-Mounted Solar Facility.

Pursuant to § 110-7. CD Conservation Development District C. Development regulations (c) additional regulations.

[4] Buffers shall be designed to effectively limit the visibility of the development from surrounding uses and shall principally include areas left substantially in their

natural state, although the Planning Board may require that portions of said buffer areas be landscaped with grass, trees, shrubs or other ground cover or treatment to effectively limit the visibility of the development from surrounding areas. No parking, loading or buildings shall be permitted in said buffer areas, with the exception of preexisting buildings; a gate or security house of not greater than 125 square feet in floor area and 15 feet in height; and required utility structures designed to service the proposed development. Any new accessory structure located in a buffer area shall be permitted upon approval of the Planning Board. The minimum depth of said buffer area may be reduced by the Planning Board under site plan approval where the uses on each side of a common property line are generally similar in nature, but in no event shall such reduction exceed 50% of the hereinbefore mentioned buffer area depth.

[5] Significant ecological features, such as trees and stands of trees of significant size or character, streams and wetlands, shall be preserved and incorporated into the landscaping of the development to the maximum extent possible.

[6] Significant topographical features, such as steep slopes and large rock outcrops, shall be preserved, except where, in the judgment of the Planning Board, their alteration is necessary to achieve a satisfactory site plan.

[7] All utilities shall be installed underground or within buildings. Plans for water and sewer service shall be subject to approval by the Village Engineer. On-site drainage facilities shall be provided so as to minimize off-site flooding. Said drainage facilities shall also be subject to approval by the Village Engineer.

[8] If development is planned in stages, the Planning Board shall review and, if acceptable, approve the overall plan, as well as each stage, to assure that the staged development meets good planning and engineering standards.

[9] Open space. [a] The development shall result in the preservation of open space having meaningful scenic, ecological and/or recreational characteristics, with its location, access, shape and dimensions suitable, in the judgment of the Planning Board, for the intended purposes.

[b] The preservation of such open space shall be permanently assured by means of the filing of covenants and restrictions and/or scenic easements on the land. In addition, such land shall be conveyed to one of the following:

[i] A private land trust that assures the permanent preservation of such land as open space; or

[ii] An association of all property owners within the development, established in accordance with applicable law.

[c] All legal agreements and documents pertaining to the establishment of any trust or association and to the preservation and protection of all open space shall be subject to approval by the Village Board of the Village of Mount Kisco. The Village may require any additional conditions, agreements or documents which it deems necessary to ensure the completion of all improvements, the establishment of and continuity of the trust or association and the preservation and protection of all open space.

## STRUCTURES

The Public Utility Wireless Telecommunications Facility includes the installation of a 140 ft. monopole (145 ft. is the total height including “peak of faux/canopy treetop”) that is designed to resemble a large Pine Tree (“Monopine”) and support multiple – “four-sided” Verizon Antennas. At the highest point of the equipment installation (140 ft.), the Verizon four-sided array spans over 10 ft. in width on all four sides. The proposed design also includes three – lower areas on the Monopine for future colocation of other carriers. In addition, the fenced compound will also contain multiple equipment cabinets, a diesel generator and four – future equipment areas contained within the 8 feet high, 3,472 sq. ft. “fenced-in” area. Due to the slope of the area, the compound area is set on a built-up berm, the higher/elevated area will be fronting S. Bedford Road.

## SPECIAL PERMIT

Personal Wireless Service Facilities require a Special Permit pursuant to the provisions of both Section 110-46 (Special Permits) and Section 110-27.1 (PWSF Personal Wireless Service Facilities Overlay District). Pursuant to § 110-27.1 H, the Planning Board is the permitting agency for Special Permits that are either *within* the Overlay District or *outside* the Overlay District on non-Village-owned land. § 110-27.1 H sets forth a completely different and additional set of criteria by which to evaluate such applications [§ 110-27.1 H (1)-(4)] and shall be permitted only if:

*“a New York State-licensed professional engineer specializing in electrical engineering with expertise in radio communication facilities establishes to the satisfaction of the approving agency all of the following:”*

(1) That the personal wireless service facility is needed to provide coverage to an area of the Village that currently has inadequate coverage and is of the minimum height and aesthetic intrusion necessary to provide that coverage;



(2) That coverage cannot be provided by a personal wireless service facility located within the Personal Wireless Service Facilities Overlay District;

(3) That all reasonable measures in siting the personal wireless service facility within the Personal Wireless Service Facilities Overlay District have been exhausted; and

(4) That technical and space limitations prevent location or colocation in the Personal Wireless Service Facilities Overlay District.

Therefore, a Special Permit can only be issued by the Planning Board upon the applicant's submission of documentation by the RF Engineer that sufficiently satisfies and has met the four (4) criterion set forth above. A review of V-Comm's 8-17-20 memo suggests that the engineer did not adequately answer all of these questions. Engineers statements that "*A review of the surrounding area reveals absence of existing tall structures, towers, or water tanks that meet all the requirements for a wireless facility.*" is inaccurate. Certainly, the hospital, Cisca campus, Darlington Castle and other sites of high elevations exist within the area.

As I pointed out above (Page 4 Special Permit - first paragraph) and in my previous memo dated September 1, 2020, § 110-27.1 H sets forth a completely different and *additional* set of criteria by which to evaluate such applications. Consistent with a recent memo dated April 7, 2020 Site Plan & Special Use Application located at 45 East Main Street for the proposed Personal Wireless Service Facility, New York SMSA Limited Partnership d/b/a Verizon Wireless, it was stated that all sections (as applicable) pursuant to § 110-27.1. PWSF Personal Wireless Service Facilities Overlay District shall apply to those applications that are outside of the PWSF Personal Wireless Service Facilities Overlay. Notably, that applicant and the law firm representing that applicant, are identical to the immediate application. As such they have been made previously aware of this interpretation, and never appealed same.

The criteria set forth in § 110-27.1 H is specific regarding which Board (Planning Board or Board of Trustees based on location/ownership of property) is responsible for the issuance of a Special Permit. The issuance of a Special Permit by the Planning Board does not nullify other requirements set forth in § 110-27.1 or in §110-46. Therefore, Chapter 110. Zoning Article III. District Regulations § 110-27.1. PWSF Personal Wireless Service Facilities Overlay District shall apply to 180 S. Bedford Road, Public Utility Wireless Telecommunications Facility project. By way of illustration, but not limitation, the following provisions apply:

D. Data requirements. Applicants for special permits shall file with the Village Clerk 3 copies and with the Planning Board 11 copies, of the following documents:

(1) Site plan. A site plan, in conformance with applicable site plan submission requirements contained in § 110-45 of the Zoning Law. The site plan shall show

elevations, height, width, depth, type of materials, color schemes and other relevant information for all existing and proposed structures, equipment, parking and other improvements. The site plan shall also include a description of the proposed personal wireless service facility and such other information that the Planning Board requires.

(2) Environmental Assessment Form. A completed Environmental Assessment Form ("EAF"), including the Visual EAF Addendum. Particular attention shall be given to visibility from key viewpoints identified in the Visual EAF Addendum, existing tree lines and proposed elevations. (It bears noting that not all applicants have signed the EAF or application)

(3) Landscape plan. A landscape plan delineating the existing trees or areas of existing trees to be preserved, the location and dimensions of proposed planting areas, including the size, type and number of trees and shrubs to be planted, curbs, fences, buffers, screening elevations of fences and materials used. For towers or monopoles, the landscape plan shall address the criteria set forth in § 110-27.1F(3).

F.(3) Landscaping for towers or monopoles. For towers or monopoles, vegetative screening shall be provided to effectively screen the tower base and accessory facilities. At a minimum, screening shall consist of one row of native evergreen shrubs or evergreen trees capable of forming a continuous hedge at least five feet in height within two years of planting. Existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute of or in supplement toward meeting landscaping requirements. Additional screening may be required to screen portions of the structure from nearby residential property or important views. All landscaping shall be properly maintained to ensure good health and viability.

(4) Documentation of proposed height. Documentation sufficient to demonstrate that the proposed height is the minimum height necessary to provide service to locations which the applicant is not able to serve with existing facilities within and outside the Village.

(5) Statement regarding colocation. For new personal wireless service facilities, a statement by the applicant as to whether construction of the facility will accommodate colocation of additional facilities for future users.

(6) Structural engineering report. A report prepared by a New York State licensed professional engineer specializing in structural engineering as to the structural integrity of the personal wireless service facility. In the case of a tower or monopole, the structural engineering report shall describe the structure's height and design, including a cross section of the structure, demonstrate the structure's compliance with applicable structural standards and describes the structure's capacity, including the number of antennas it can accommodate and the precise point at which the antenna shall be mounted. In the case of an antenna mounted on an existing structure, the structural engineering report shall indicate the ability

of the existing structure to accept the antenna, the proposed method of affixing the antenna to the structure and the precise point at which the antenna shall be mounted.

(7) Engineering analysis of radio emissions. An engineering analysis of the radio emissions and a propagation map for the proposed personal wireless service facility. The analysis shall be prepared and signed by a New York State-licensed professional engineer specializing in electrical engineering with expertise in radio-communication facilities. The results from the analysis must clearly show that the power density levels of the electromagnetic energy generated from the proposed facility are within the allowable limits established by the FCC which are in effect at the time of the application. If the proposed personal wireless service facility would be colocated with an existing facility, the cumulative effects of the facilities must also be analyzed. The power density analysis shall be based on the assumption that all antennas mounted on the proposed facility are simultaneously transmitting radio energy at a power level equal to the maximum antenna power rating specified by the antenna manufacturer.

(8) Map of proposed coverage and existing facilities. A map showing the area of coverage of the proposed facility and listing all existing personal wireless service facilities in the Village and bordering municipalities containing personal wireless service facilities used by the applicant, and a detailed report indicating why the proposed personal wireless service facility is required to provide service to locations which the applicant is not able to serve with existing facilities which are located within and outside the Village, by colocation and otherwise. It bears noting that the applicant's PE memorandum and propagation maps do not incorporate the reconstructed tower on Captain Merritt's Hill, as their V-Comm report shows the new tower as approved but not constructed. It also shows it as only 94 feet tall. It also shows the 45 Main Street site as proposed without any inclusion of its proposed coverage. These should be updated, as should the letter from Homeland that relies upon the V-Comm report.)

E. Criteria for special permit applications. Applicants for special permits for establishment or construction of personal wireless service facilities shall meet all of the following criteria:

(1) Necessity. The proposed personal wireless service facility is required to provide service to locations which the applicant is not able to serve with existing facilities which are located within and outside the Village, by colocation and otherwise.

(2) Colocation. The colocation of existing personal wireless service facilities only within the Personal Wireless Service Facilities Overlay District shall be strongly preferred to the construction of new personal wireless service facilities. If a new site for a personal wireless service facility is proposed, the applicant shall submit a report setting forth in detail an inventory of existing personal wireless service facilities within the Personal Wireless Service Facilities Overlay District which are within a reasonable distance from the proposed facility with respect to coverage, an inventory of existing personal wireless service facilities in other municipalities which can be utilized or modified in order to provide coverage to



the locations the applicant is seeking to serve and a report on the possibilities and opportunities for colocation as an alternative to a new site. The applicant must demonstrate that the proposed personal wireless service facility cannot be accommodated on an existing facility within the Personal Wireless Service Facilities Overlay District or on an existing facility in another municipality due to one or more of the following reasons:

(a) The proposed equipment would exceed the existing and reasonably potential structural capacity of existing and approved personal wireless service facilities within the Personal Wireless Service Facilities Overlay District, considering existing and planned use for those facilities.

(b) The existing or proposed equipment would cause interference with other existing or proposed equipment which could not reasonably be prevented or mitigated.

(c) Existing or approved personal wireless service facilities within the Personal Wireless Service Facilities Overlay District or in neighboring municipalities do not have space on which the proposed equipment can be placed so it can function effectively and reasonably, and the applicant has not been able, following a good-faith effort, to reach an agreement with the owners of such facilities.

(d) Other reasons make it impracticable to place the proposed equipment on existing and approved personal wireless service facilities within the Personal Wireless Service Facilities Overlay District on existing facilities in other municipalities.

(e) Service to the locations to which the applicant seeks to provide service cannot be provided by existing facilities within or outside the Village.

(3) Maximum height. Unless the FCC promulgates rules to the contrary or the applicant demonstrates to the satisfaction of the board granting the special permit that a greater height is necessary, the maximum height for a tower or monopole shall be 80 feet above ground level or the minimum height necessary to provide service to locations which the applicant is not able to serve with existing facilities within and outside the Village, whichever is less.

(4) Minimum lot size. The minimum lot size for a tower or monopole shall be equal to the square of twice the tower's or monopole's height, or the minimum lot size required by the underlying zoning district, whichever is greater.

(5) Setbacks. Unless the FCC promulgates rules to the contrary, all personal wireless service facilities shall be separated from all residential dwellings by a distance of no less than 500 feet. In no case shall a setback be less than 20 feet or the minimum setback required by the underlying zoning district, whichever is greater. The setback shall increase 100 feet for each 10 feet that the personal wireless service facility exceeds the maximum height set forth in the underlying zoning district. Setbacks from towers or monopoles shall be measured from the base of the structure.

(6) Security fencing. Security fencing, showing the location, materials and height, shall be provided around each tower or monopole to secure the site and provide an opaque banner. Access to the structure shall be through a locked gate.

(7) Architectural compatibility. Where a personal wireless service facility is to be attached to an existing building or structure, such facility shall be integrated into such existing building or structure in a manner which blends with the architectural characteristics of the building or structure to the maximum extent practicable.

(8) Placement. Unless wall-mounted on an existing roof-mounted mechanical enclosure or similar appurtenance, all antennas mounted on a roof shall be located so that visibility of the antenna is limited to the greatest extent practicable. Antennas wall-mounted on a roof mounted mechanical enclosure or similar appurtenance shall not exceed the height of the appurtenance at the point of installation.

F. Design guidelines. The proposed personal wireless service facility shall meet the following applicable design guidelines:

(1) Finish/colors. Towers or monopoles not requiring Federal Aviation Administration (FAA) painting or marking shall either have a galvanized finish or be painted gray or blue-gray above the surrounding tree line and gray, green or tannish brown below the surrounding tree line.

(2) Illumination. No signals, lights or illumination shall be permitted on personal wireless service facilities unless required by the FAA or other federal, state or local authority.

(3) Landscaping for towers or monopoles. For towers or monopoles, vegetative screening shall be provided to effectively screen the tower base and accessory facilities. At a minimum, screening shall consist of one row of native evergreen shrubs or evergreen trees capable of forming a continuous hedge at least five feet in height within two years of planting. Existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute of or in supplement toward meeting landscaping requirements. Additional screening may be required to screen portions of the structure from nearby residential property or important views. All landscaping shall be properly maintained to ensure good health and viability.

(4) Visibility. All personal wireless service facilities shall be sited to have minimum adverse visual effect on residential areas, parks or major roadways.

(5) Signage. Signage shall be prohibited on personal wireless service facilities except for signage to identify the facility which is located along the right-of-way frontage and is approved by the Architectural Review Board. Except as specifically required by a federal, state or local authority, no signage shall be permitted on equipment mounting structures or antennas.

G. Construction and maintenance.

(1) Time limit for completion. A building permit must be obtained within six months after approval of a special permit for a personal wireless service facility, and construction of such facility must be completed within 12 months of such approval. The special permit shall automatically expire in the event that the building department has not granted such permit and construction of the facility is not completed with the periods set forth above.

(2) Annual inspections.

(a) Unless otherwise preempted by federal or state law, personal wireless service facilities, including towers, monopoles and antennas, shall be inspected annually at the applicant's expense for structural integrity, and a copy of the inspection report shall be promptly transmitted to the Building Inspector. The structural inspection shall be performed by a New York State-licensed professional engineer specializing in structural engineering. The structural inspection report shall describe the structural integrity of the personal wireless service facility, maintenance issues and repairs needed or made, if any. In the event that the structural inspections indicates structural deficiencies, then the deficiencies must be remedied within the time reasonably set by the Building Inspector.

(b) Unless otherwise preempted by federal or state law, personal wireless service facilities, including towers, monopoles and antennas, shall be inspected annually at the applicant's expense for radio emissions, and a copy of the inspection report shall be promptly transmitted to the Building Inspector. Radio emission inspection shall be performed by a New York State-licensed professional engineer specializing in electrical engineering with expertise in radio communication facilities. The radio emission inspection shall describe the power density levels of the electromagnetic energy generated from the facility, including the cumulative effects of collocated antennas. In the event that the radio emission inspection indicates that the electromagnetic energy generated from the facility are above the allowable limits stated within applicable FCC or ANSI standards or other applicable state or federal guidelines in effect at the time of the inspection, the applicant shall cease all use of the facility until such time as it proves to the satisfaction of the Building Inspector that the power density levels of the electromagnetic energy to be generated at the facility are below the applicable standards.

(3) Abandonment. In the event that the use of any personal wireless service facility has been discontinued by all operators on such facility for a period of 180 consecutive days or more, the facility shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the Building Inspector, who shall have the right to request documentation from the owner/operator of the facility regarding usage thereat. Upon such abandonment, the owner/operator shall remove the facility at its own expense, and failing prompt removal, the Village may remove the facility at the owner/operator's expense. All special permits, variances and approvals of any nature granted by the Village shall automatically expire as of the date of abandonment of the facility.



Additionally, the application should comply with the provisions of §110-46 governing Special Permits, which require among other provisions set forth in § 110-46:

- A. Notice and public hearing. The Planning Board shall not decide on any application for a special permit without first holding a public hearing, notice of which hearing, including the substance of the application, shall be given by publication in the official newspaper of the Village at least 15 days before the date of such hearing. In addition to such published notice, the applicant shall cause such notice to be mailed at least 10 days before the hearing to all owners of property which lies within 300 feet of the property for which approval is sought and to such other owners and by such other means of notification as the Planning Board may deem advisable.
- B. (1) That the proposed use shall be of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.  
  
(2) That, in addition to the above, in the case of any use located in or directly adjacent to either a residence district or a district in which residential uses are permitted, the location and size of such use, the nature and intensity of operations involved or those conducted in connection therewith and its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to or incongruous with the residential uses or conflict with the normal traffic of the neighborhood.
- C. Each application for a special permit shall be accompanied by a proposed plan showing the size and location of the lot and the location of all existing and proposed buildings and facilities, including access drives, parking areas and all streets within 200 feet of the lot.

## ZONING

The proposed Public Utility Wireless Telecommunications Facility is located in the CD Zoning District which is located “outside” of the Personal Wireless Facilities Overlay District. Proposed shall comply with all requirements set forth in the § 110-7. CD Conservation Development District; § 110-27.1. PWSF Personal Wireless Service Facilities Overlay District; § 110-45. Site Plan Approval and; §110-46. Special Permit § 110-33.1. Natural Resources Protection regulations.

## VARIANCES REQUIRED

1. Pursuant to § 110-27.1. PWSF Personal Wireless Service Facilities Overlay District E. (3) Maximum height.

“Unless the FCC promulgates rules to the contrary or the applicant demonstrates to the satisfaction of the board granting the special permit that a greater height is necessary, the maximum height for a tower or monopole shall be 80 feet above ground level or the minimum height necessary to provide service to locations which the applicant is not able to serve with existing facilities within and outside the Village, whichever is less.”

Proposed is a total height including a faux tree canopy of 145 feet, 65 feet more than is permitted in the CD Zoning District. Unless the applicant can demonstrate to the satisfaction of the board granting the special permit, that a greater height is necessary, the maximum permitted height is 80 feet above ground level or the minimum height necessary to provide service to locations which the applicant is not able to serve with existing facilities within and outside the Village, whichever is less. As proposed, a 65 ft. maximum height variance is required.

2. Pursuant to Chapter 110. Zoning Article III. District Regulations § 110-27.1. PWSF Personal Wireless Service Facilities Overlay District. (5) Setbacks.

“Unless the FCC promulgates rules to the contrary, all personal wireless service facilities shall be separated from [all] residential dwellings by a distance of no less than 500 feet. In no case shall a setback be less than 20 feet or the minimum setback required by the underlying zoning district, whichever is greater. The setback shall increase 100 feet for each 10 feet that the personal wireless service facility exceeds the maximum height set forth in the underlying zoning district.”

The proposed cell tower is located in the § 110-7. CD Conservation Development District. The maximum height permitted in the CD zoning district is 35 feet. Proposed is a Monopine with faux tree canopy totaling 145 feet, this is 110 feet higher than what is permitted in the CD Zoning District. Proposed is a setback distance of 388 feet to the closest residential home, a 1,600 feet setback to a residence is required; therefore, a 1,212 ft. setback variance is required.

Additional information regarding the distance to care-taker cottage located at the Marsh Sanctuary has not been provided, the setback variance required may increase.

3. Pursuant to Chapter 110. Zoning Article V. Supplementary Regulations § 110-31. Supplementary development regulations.

“Exceptions to yard requirements. (2) Fences, hedges or walls, other than retaining walls, that are not over 6 1/2 feet in height may be erected anywhere on the lot, except that any such fence, wall or hedge, other than a retaining wall, that is erected in any front yard shall not have a height in excess of four feet. With

respect to all new fence installations or replacements, the finished or formal presentation side of said fence shall face the adjacent property or street.”

Proposed is an 8 ft. fence that surrounds the compound and therefore; a 1 ft. 6 in. fence variance is required.

4. Pursuant to Chapter 110. Zoning Article III. District Regulations § 110-7. CD Conservation Development District. (3):

Lot regulations for places of Tier 3 solar energy facilities. (a) Minimum lot area and site requirements: 25 acres parcel having frontage and access on a county or state road.

The proposed Public Utility Wireless Telecommunications Facility would reduce the minimum lot area by 3,472+/- sq. feet which creates an area that is less than the required 25 acres for the installation of a Tier 3 Ground-Mounted Solar Facility. This needs to be further vetted or verified.

### **STEEP SLOPES**

The applicant seeks a Steep Slopes Permit issued by the Planning Board § 110-33.1. Natural resources protection regulations.

Pursuant to Chapter 110. Zoning Article V. Supplementary Regulations § 110-33.1. Natural resources protection regulations. In addition to all other requirements of the Zoning Code, all development in the Village shall comply with the following natural resources protection regulations:

A. Steep slopes. (1) Development limitations. To protect environmentally sensitive lands, preserve the Village's natural resources, and promote the orderly development of land.

(2) Steep slopes protection regulations. (a) Purpose. For the purpose of preventing erosion, preventing storm water runoff and flooding, providing safe building sites, preventing landslides and soil instability, protecting the quantity and quality of the Village's surface and groundwater resources, protecting important scenic views and vistas, preserving areas of wildlife habitat, minimizing the area of land disturbance related to site development and protecting the Village's character and property values, it is the intent of these steep slope regulations to minimize disturbance on steep slopes and to avoid disturbance and construction activities on very steep slopes. Further, it is the intent of these steep slope regulations to minimize the development of hilltops and ridgelines. The Village Board, the Planning Board, the Zoning Board of Appeals, the Building Inspector and the Village Engineer shall take these objectives into consideration in reviewing and acting on any plans submitted pursuant to the provisions of this chapter.



(b) Exempt and regulated activities.

[1] Regulated activities.

[a] It shall be unlawful to create any disturbance greater than 100 square feet in aggregate, or to cut any tree with a diameter greater than four inches when measured from 1 1/2 feet from ground level, on any steep slope, hilltop, or ridgeline, other than an exempt activity as defined herein, without a Steep Slopes Permit issued in conformance with these regulations.

[b] In order to protect the stability of slopes and to ensure the safety of residents, construction activities on steep slopes shall be minimized and shall follow the standards for grading set forth herein.

[c] Construction activities shall not be permitted on very steep slopes unless there is no viable alternative.

[2] Exempt activities. The following activities shall be exempt from provisions of this chapter:

(c) Standards for development approval. In denying, granting, or granting with modifications any application for a steep slopes permit, the Planning Board shall consider the consistency of the proposed activity with the following standards:

[1] Disturbance and construction activities on very steep slopes shall not be permitted unless there is no viable alternative.

[2] Disturbance of areas with steep slopes shall be in conformance with the following provisions:

[a] The planning, design and development of buildings shall provide the maximum in structural safety and slope stability while adapting the affected site to, and taking advantage of, the best use of the natural terrain and aesthetic character.

[b] The terracing of building sites shall be kept to an absolute minimum. The construction of retaining walls greater than six feet in height or 60 feet in length shall not be permitted unless there is no viable alternative.

[c] Roads and driveways shall follow the natural topography to the greatest extent possible in order to minimize the potential for erosion and shall be consistent with other applicable regulations of the Village of Mt. Kisco and current engineering practices.

[d] Replanting shall consist of vegetation intended to further slope stabilization with a preference for indigenous woody and herbaceous vegetation.

[e] When development activities are proposed to occur on hilltops or ridgelines, the plans submitted for review shall demonstrate that the impacts on the functions, aesthetics and essential characteristics of such areas are effectively minimized and mitigated. The natural elevations and vegetative cover of ridgelines shall be disturbed only if the crest of a ridge and the tree line at the crest of the ridge remains uninterrupted and shall not be permitted unless there is no viable alternative. This may be accomplished either by positioning buildings and areas of disturbance below a ridgeline or hilltop or by positioning buildings and areas of disturbance at a ridgeline or hilltop so that the elevation of the roof line of the building is no greater than the elevation of the natural tree line. However, under no circumstances shall more than 50 feet along a ridgeline, to a width of 50 feet generally centered on a ridgeline, be disturbed.

[f] Any regrading shall blend in with the natural contours and undulations of the land.

[g] Cuts and fills shall be rounded off to eliminate sharp angles at the top, bottom, and sides of regraded slopes.

[h] The angle of cut and fill slopes shall not exceed a slope of one vertical to two horizontal except where retaining walls, structural stabilization, or other methods acceptable to the Village Engineer are used, in which case the angle shall not exceed a slope of one vertical to three horizontal.

[i] Tops and bottoms of cut and fill slopes shall be set back from structures a distance that will ensure the safety of the structures in the event of the collapse of the cut or fill slopes. Generally, such distance shall be considered to be six feet plus 1/2 the height of the cut or fill.

[j] Disturbance of rock outcrops shall be by means of explosives only if labor and machines are not effective and only if rock blasting is conducted in accordance with all applicable regulations of the Village of Mt. Kisco and the State of New York.

[k] Disturbance of steep slopes shall be undertaken in workable units in which the disturbance can be completed and stabilized in one construction season so that areas are not left bare and exposed during the winter and spring thaw periods (December 15 to April 15).

[l] Disturbance of existing vegetative ground cover shall not take place more than 15 days prior to grading and construction.

[m] Temporary soil stabilization, including, if appropriate, temporary stabilization measures such as netting or mulching to secure soil during the grow-in period, must be applied to an area of disturbance within two days of establishing the final grade, and permanent stabilization must be applied within 15 days of establishing the final grade.

[n] Soil stabilization must be applied within two days of disturbance if the final grade is not expected to be established within 21 days. In locations where construction activities have temporarily ceased, temporary soil stabilization measures must be applied within one week.

[o] Topsoil shall be stripped from all areas of disturbance, stockpiled and stabilized in a manner to minimize erosion and sedimentation, and replaced elsewhere on the site at the time of final grading. Stockpiling shall not be permitted on slopes of greater than 10%.

[p] No organic material or rock with a size that will not allow appropriate compaction or cover by topsoil shall be used as fill material. Fill material shall be no less granular than the soil upon which it is placed and shall drain readily.

[q] Compaction of fill materials in fill areas shall be such to ensure support of proposed structures and stabilization for intended uses.

[r] Structures shall be designed to fit into the hillside rather than altering the hillside to fit the structure. (Among the methods that may be employed to achieve this goal are reduced footprint design, "step-down" structures, stilt houses, minimization of grading outside the building footprint, placement of structures at minimum street setback requirements to preserve natural terrain, etc.).

[s] Development shall be sited on the least sensitive portions of the site to preserve the natural landforms, geological features, and vegetation.

[t] The stability of slopes and the erodibility of soils on slopes is a function of various physical soil properties and underlying bedrock conditions. Where site surveys indicate the presence of soils or underlying bedrock conditions the physical properties of which might present limitations on construction practices or high erodibility that may result in unstable slopes, the Planning Board may limit the type and extent of construction activities or disturbance to these areas as necessary to ensure public health, safety, and welfare.

[u] Impacts from construction activities or other disturbance on bedrock outcrops and glacial erratics shall be minimized.



[v] All measures for the control of erosion and sedimentation shall be undertaken consistent with this chapter and with the Westchester County Soil and Water Conservation District's "Best Management Practices Manual for Erosion and Sediment Control," and New York State Department of Environmental Conservation "Guidelines for Urban Erosion and Sediment Control", as amended, or its equivalent satisfactory to the Planning Board, whichever requires the higher standards.

[w] All proposed disturbance of steep slopes shall be undertaken with consideration of the soils limitations characteristics contained in the Identification Legend, Westchester County Soils Survey, 1989, as prepared by the Westchester County Soil and Water Conservation District, in terms of recognition of limitation of soils on steep slopes for development and application of all mitigating measures, and as deemed necessary by the Planning Board.

(d) Permit procedures. [1] Application for permit. An application for a steep slopes permit shall be filed with the Planning Board, and shall contain the following information and such other information as required by it, except when waived by the Planning Board as not pertinent or necessary for the proposed disturbance:

[a] Name, post office address and telephone number of the owner and applicant.

[b] Street address and Tax Map designation of property covered by the application.

[c] Statement of authority from owner for any agent making application.

[d] Listing of property owners adjacent to, across streets from, and downslope within 500 feet of the property, and any additional property owners deemed appropriate by the Planning Board.

[e] Statement of proposed work and purpose thereof.

[f] A statement prepared by a licensed architect, registered landscape architect, or engineer, which describes:

[i] The methods to be used in overcoming foundation and other structural problems created by slope conditions, in preserving the natural watershed and in preventing soil erosion; and

[ii] The methods to be used to eliminate or mitigate water runoff on all adjacent properties and any other property that will be naturally affected by increased water runoff.

[g] A statement made under the seal of a licensed professional engineer certifying that:

[i] The proposed activity will disturb the steep slope area to the minimum extent practicable; and

[ii] The proposed mitigation measures will prevent, to the maximum extent practicable, the adverse effect of any disturbance of the steep slope area on the environment and any neighboring properties.

[h] Eleven copies of plans for the proposed regulated activities drawn to a scale of not less than one-inch equals 50 feet (unless otherwise specified by the Planning Board). Such plans shall be sealed and show the following:

[i] Location of proposed construction or disturbance and its relationship to property lines, easements, buildings, roads, walls, sewage disposal systems, wells, and wetlands within 100 feet of the proposed construction or disturbance, unless a greater distance is deemed appropriate by the Planning Board.

[ii] Estimated material quantities of excavation/fill.

[iii] Location and size of areas of soils by soils types in the area of proposed disturbance and to a distance of 100 feet surrounding the area of disturbance.

[iv] Existing and proposed contours (NGVD, National Geodetic Vertical Datum) at two-foot intervals in the area of proposed disturbance and to a distance of 100 feet beyond.

[v] Slope categories for the entire project site itself showing at minimum the steep slope and very steep slope categories. Slope is to be determined from on-site topographic surveys prepared with a two-foot contour interval. The vertical rise is to be measured, on the basis of two-foot contours, in a ten-foot horizontal length.

[vi] Cross sections of steep slope areas proposed to be disturbed.

[vii] Retaining walls or like constructions, with details of construction.

[viii] Erosion and sedimentation control plan prepared in accordance with the requirements listed above in Subsection A(2)(c)[2][k] through [o]. These plans

must be submitted under the seal of a licensed professional engineer and must show and certify the following:

[A] All existing and proposed natural and artificial drainage courses and other features for the control of drainage, erosion, and water.

[B] The calculated volume of water runoff from the slope(s) and from the lot in question, as unimproved.

[C] The calculated volume of water runoff from the slope(s) and from the lot in question, as improved.

[D] The existence, location and capacity of all natural and artificial drainage courses and facilities within 500 feet of the lot, which are or will be used to carry or contain water runoff to and from the slopes(s) and the lot.

[i] If required by the Planning Board, a detailed monitoring program, including but not necessarily limited to written status reports at specified intervals documenting activities undertaken pursuant to a permit.

[j] A list of all applicable county, state or federal permits that are required for such work or improvements.

[k] An application fee in the amount set forth in a fee schedule established by the Village Board.

[l] Other details, including specific reports by qualified professionals on soils, geology and hydrology, and borings and/or test pits, as may be determined to be necessary by the Planning Board.

[2] Application review. The Planning Board may hire professionals to review a steep slopes permit application at the sole expense of the applicant, as part of its powers also enumerated in § 110-45C(8) of this chapter.

[3] Notice and public hearing. The Planning Board shall not decide on any application for a steep slopes permit without first holding a public hearing, notice of which hearing, including the substance of the application, shall be given by publication in the official newspaper of the Village at least 15 days before the date of such hearing. In addition to such published notice, the applicant shall cause such notice to be mailed at least 10 days before the hearing to all owners of property which lies within 300 feet of the property for which approval is sought and to such other owners and by such other means of notification as the Planning Board may deem advisable.



[4] Action by the Planning Board. A determination shall be made to approve, approve with modifications and conditions, or disapprove the application within 60 days of closure of the public hearing. In approving any application, the Planning Board may impose such conditions or limitations as it determines necessary to ensure compliance with the intent, purposes and standards of this chapter.

(c) Duration of permit. [1] Activities specified by the steep slopes permit shall be undertaken pursuant to the provisions of this chapter and any conditions of the permit and shall be completed according to any schedule set forth in the permit.

[2] A steep slopes permit shall expire on the completion of the activities specified and shall be valid for a period of one year from the date of approval, or for the period of any other permit or approval issued by the Planning Board.

[3] A permit may be renewed by the Planning Board for a period of up to one year.

(f) Security. In granting a permit, the Planning Board shall require a security in an amount and with surety and conditions sufficient to ensure its compliance with the conditions and limitations set forth in the permit.

(g) Inspection and monitoring.

[1] The Planning Board may inspect, or cause to be inspected by its representative, activities pursuant to a permit so as to ensure satisfactory completion at the sole expense of the applicant.

[2] The Planning Board may require that the applicant submit for approval a detailed monitoring program, including but not necessarily limited to written status reports at specified intervals documenting activities undertaken pursuant to a permit.

[3] The Planning Board may require that the activities undertaken pursuant to a permit be supervised by an appropriate licensed professional at the sole expense of the applicant.

(h) Violations; penalties. [1] Notice of violation. Any person found violating any provision of this chapter or the terms and conditions of any permit granted hereunder shall be served with a written notice stating the nature of the violation and providing a specific time for the satisfactory correction thereof, which time shall not be less than five days.

[2] Stop order. The foregoing notwithstanding, if, in the judgment of either the Village Engineer or the Building Inspector, there is a violation of this chapter or any permit issued hereunder, then the Village Engineer or the Building Inspector may issue a written order to cease all work creating or causing said violation and directing the applicant to appear before the Planning Board at its next meeting. Upon the issuance of such an order and its delivery to the permit holder or his agent or contractor, the permit shall be deemed to have been suspended, and it shall be unlawful and a violation of this chapter to continue the permitted activity. The official issuing such an order shall rescind the order upon compliance with the permit and the taking of such corrective action as shall be determined by the permitting authority.

[3] Administrative sanctions. [a] In addition to any penalties imposed under Chapter 1 of this Code, upon finding that an applicant or any person acting as an agent or contractor for the applicant has violated the terms of this chapter or any permit issued hereunder, the Planning Board may impose any one or more of the following sanctions for each and every such violation:

[i] Revocation of the permit.

[ii] Direction to restore the affected area within a reasonable time to its condition prior to the violation, insofar as that is possible.

[iii] Imposition of any additional conditions on the permit as may be reasonably necessary to effectuate the restoration of the affected area and/or prevent the recurrence of the violation.

[b] Any restoration directed by the Planning Board that is not completed as required may be completed by the Village at the sole cost and expense of the applicant.

B. Wetlands. (1) Development limitations. To protect environmentally sensitive lands, preserve the Village's natural resources, and promote the orderly development of land, development on parcels that contain wetlands and waterways, which parcel on the effective date of this chapter is in excess of 40,000 square feet and is in single, undivided ownership, shall be limited by deducting the following from the gross lot area of such parcels to determine the net lot area (in conjunction with § 110-33.1A(1) herein:

(a) Fifty percent of the area of all wetlands.

(b) One hundred percent of the area of all lakes, ponds, streams and other such bodies of water.

(2) Development on parcels that contain any wetlands or waterways shall comply with Chapter 107, Wetlands and Drainage Control.

C. Tree preservation. Any application for site plan or subdivision approval shall comply with Chapter 99, Tree Preservation.

Regarding the above, it is quite evident that the application is incomplete in that the applicant has failed to provide:

1. *“On-site topographic surveys prepared with a two-foot contour interval”* for *“the entire project site”* as required by § 110-331. A(2)(d)(1)(h) so that the Planning Board can be assured that the *“development shall be sited on the least sensitive portions of the site to preserve the natural landforms, geological features, and vegetation”* as required by the development standards of § 110-331. A(2)(c)(2)(s). Obviously, if there are locations on the site that can be utilized so as to eliminate the need for a steep slopes permit, the Planning Board should be provided such information so as to make an informed decision. Notwithstanding the Applicant’s representation that it has complied with this requirement on the signed checklist, it appears as though the applicant has only provided the Planning Board topographic mapping information for a small portion of the project site.

Chapter 99. Tree Preservation Article I. General Regulations § 99-1. Findings and intent.

The Board of Trustees hereby finds and declares that the preservation and maintenance of trees, where reasonably possible within the Village, is necessary to protect the health, safety and general welfare of the Village/Town of Mount Kisco, because trees provide necessary shade, green space and aesthetic appeal, impede soil erosion and aid water absorption, provide other environmental benefits and generally enhance the quality of life. It is the intent of the Board of Trustees, by the adoption of this chapter, to provide for:

A. The protection and preservation of as many trees as possible, particularly those trees which are specimen trees and/or trees of select or rare species.

B. The reforestation and replacement of those trees which are removed due to disease or development.

C. The preservation of an acceptable level of green foliage in all areas of the Village.

D. Ensuring that suitable wildlife habitats are maintained and reinforced in all areas of the Village.



Article II. Tree Preservation Plans § 99-8. Applicability.

No site plan or major subdivision plat shall be approved unless and until a tree preservation plan for the subject property has been approved by the Planning Board. No certificate of occupancy shall be issued for any property subject to a tree preservation plan until all required planting and restoration is completed to the satisfaction of the Planning Board.

COMMENTS

1. Applicant should review this memo and each section referenced herein and provide a detailed response for each item.
2. A listing of property owners adjacent to, across streets from, and downslope within 500 feet of the property, and any additional property owners deemed appropriate by the Planning Board is required. Plan R1 provides only a 300 ft. distance.
3. Location of the proposed utilities are partially underground. All utilities from the street should be located underground.
4. Application requires review by the Fire Chief for Fire Access and Safety Considerations. Proposed drawing does not include an area adequate for Fire Department access, staging of equipment and parking for additional responding personnel. Applicant shall provide an adequate fire apparatus turnaround. Access drive must demonstrate that it can support emergency service vehicles and equipment.
5. The Building Department defers to the Village Engineer for all storm water mitigation, run-off, drainage, basins/detention, infiltration, and all aspect of grading. As previously identified by the Village Engineer in his memorandum of September 3, 2020 storm water pollution prevention plan is required for site plan approval. SWPPP shall demonstrate compliance with all applicable the requirements of the Village Zoning Code, Article XIV Stormwater Control.

Pursuant to § 110-62. Stormwater pollution prevention plans.

“A. Pollution prevention plan requirement. No application for approval of a land development activity shall be reviewed until the appropriate board has received a stormwater pollution prevention plan (SWPPP) prepared in accordance with the specifications in this article and Chapter 92A.”

6. The Building Department Defers to the Village Planner for landscaping, tree preservation plan, and lighting requirements.

7. This review memo does not include a complete NYS Uniform Building Code Review of structural integrity of the Monopole or any of the accessory structures, equipment cabinets, generator/ fuel storage and battery storage. Applicant should demonstrate that protections will be put in place to protect the environment and property should any leakage of fuel and/or battery acid/chemical occur.
8. The proposed cell tower location is 388 feet to the closest residence (east) and will encroach 73 ft. into the 200 ft. buffer requirement for a Ground-Mounted Solar Facility. Setbacks dimensions to the two structures (care takers cottage) located at the Marsh Sanctuary have not been provided.
9. Distance to other residences within the required setback have not been provided.
10. Plans containing equipment should be in color.
11. Additional information for all equipment is needed including, but not limited to: How often generator cycles and at what decibel level.
12. Information (type/size) for future equipment should be provided.
13. The proposed cell tower project will require that an additional 33 trees – greater than 4” caliper will be removed.
14. The plans provided only provide details for limited portions of the site, thereby eliminating the ability to ascertain whether there is an ability to site the sell tower at a location that does not require disturbance to steep or very steep slopes.

### **APPROVALS REQUIRED**

- Site Plan Approval
- Special Permit issued by the Planning Board
- Steep Slopes Permit issued by the Planning Board
- Zoning Board of Appeals (variances)
- Fire Chief approval
- Building Department approval
- A Public Hearing is Required



**Village/Town of Mount Kisco Building Department**  
**104 Main Street**  
**Mount Kisco, New York 10549**  
**Ph. (914) 864-0019-fax (914) 864-1085**

**MEMORANDUM**

**TO:** Acting Chairman Mike Bonforte and Respected Members of the Planning Board

**FROM:** Peter J. Miley, Building Inspector *PM*

**SUBJECT:** Homeland Towers, LLC  
Public Utility Wireless Telecommunications Facility  
180 S. Bedford Rd. Tax Parcel No: 80.44-1-1

**DATE:** October 19, 2020

---

**Introduction**

On October 6, 2020, the Building Department prepared a second memorandum with-respect-to the Public Utility Wireless Telecommunications Facility application that was submitted on August 18, 2020 by Homeland Towers, LLC and New York SMSA Limited Partnership d/b/a Verizon Wireless (“the applicant”) to be located at the proposed location: 180 S. Bedford Road in Mount Kisco, New York (“the property”).

Although this memo mentions some of my previous comments from my last memo, this new memo does not supersede or replace any of the previous Building Department memos in connection with this application. This new memorandum is in response to the recently submitted – revised application that the Building Department received on November 4, 2020 by Homeland Towers.

Homeland Towers, LLC, and New York SMSA Limited Partnership d/b/a Verizon Wireless requires a Special Use Permit, Site Plan Approval, and a Steep Slopes Permit from the Planning Board in accordance with Sections 110-27.1(H), 110-46, 110-45 and 110-33.1 of the Village Zoning Code. Sunrise Community Solar, LLC (“Sunrise”) also has an existing (pre-dating) application for a Special Use Permit, Site Plan Approval, and a Steep Slopes Permit from the Planning Board for a Tier-3 Solar Farm on the very same site. While the applicants are unaffiliated, they continue to move their application forward as separate commercial projects on the same parcel of land.

## The Property

180 S. Bedford Road (AKA Route 172) is located in the § 110-7. CD Conservation Development District which is outside of the § 110-27.1. PWSF Personal Wireless Service Facilities Overlay Zoning District. The PWSF Overlay District is the preferred location within the Village and is *“intended to provide a suitable choice of locations for establishment, construction and maintenance of personal wireless service facilities.”* Personal wireless service facilities outside of the Overlay District is only permitted when the additional and different set of criteria set forth in § 110-27.1 H.

As I pointed out above and stated in my previous memo dated October 6, 2020 and contrary to what Homeland Towers, LLC and Verizon Wireless states in their recent “Memorandum in Support of Applications for Special Permit...” § 110-27.1 H is only one section of the Village code specific to the issuance of a special permit; §110-46, §110-45 and §110-33.1 of the Village Zoning Code still apply.

Additionally, included in the applicants “Memorandum in Support of Applications for Special Permit...” Homeland Towers brings attention to a memo that was generated for the replacement of a cell-tower that is located on the Village Owned Property. The cell-tower located at the top of the mountain on Village owned property, differs significantly from the Homeland Tower application, the notable differences are as follows:

- a. Site already had an existing cell-tower that was approved on August 8, 1988 which predates the PWSF Zoning District adopted in 1996 and it’s located on a property that is almost 7 acres larger than the proposed Homeland Towers location
- b. The property where the existing cell-tower is located is also Village owned, it’s not on private property and the Village is not subject to its own Zoning Laws
- c. The setback distances to homes and any roadway are far greater than the Homeland Towers Proposal
- d. The existing cell-tower on the mountain is not located along any major arterial roadway

In addition, Homeland Towers skips mentioning another, more recent and pertinent memo dated April 7, 2020, regarding Site Plan & Special Use Application located at 45 East Main Street for the proposed Personal Wireless Service Facility, New York SMSA Limited Partnership d/b/a Verizon Wireless. In that memo, it was stated that all sections (as applicable) pursuant to § 110-27.1. PWSF Personal Wireless Service Facilities Overlay District and setbacks shall apply to those applications that are outside of the PWSF Personal Wireless Service Facilities Overlay. Notably, that applicant and the law firm representing that applicant, are identical to the immediate application. As such, they have been made previously aware of this interpretation, and never appealed same.

Last, the criteria set forth in § 110-27.1 H is specific regarding which Board (Planning Board or Board of Trustees, based on the location/ownership of property) is responsible for the issuance of



a Special Permit. The issuance of a Special Permit by the Planning Board does not nullify other requirements set forth in § 110-27.1 or in §110-46. Therefore, Chapter 110. Zoning Article III. District Regulations § 110-27.1. PWSF Personal Wireless Service Facilities Overlay District shall apply to the 180 S. Bedford Road, Public Utility Wireless Telecommunications Facility project.

### Zoning

Variations required;

1. Pursuant to § 110-27.1. PWSF Personal Wireless Service Facilities Overlay District E. (3) Maximum height.

“Unless the FCC promulgates rules to the contrary or the applicant demonstrates to the satisfaction of the board granting the special permit that a greater height is necessary, the maximum height for a tower or monopole shall be 80 feet above ground level or the minimum height necessary to provide service to locations which the applicant is not able to serve with existing facilities within and outside the Village, whichever is less.”

The proposed 145 feet (140 ft. Monopine and a 5ft. faux tree canopy) is 65 feet more than permitted. Unless the applicant can demonstrate to the satisfaction of the board granting the special permit that a greater height is necessary therefore; a 65 ft. maximum height variance will be required.

2. Pursuant to Chapter 110. Zoning Article III. District Regulations § 110-27.1. PWSF Personal Wireless Service Facilities Overlay District. (5) Setbacks.

“Unless the FCC promulgates rules to the contrary, all personal wireless service facilities shall be separated from [all] residential dwellings by a distance of no less than 500 feet. In no case shall a setback be less than 20 feet or the minimum setback required by the underlying zoning district, whichever is greater. The setback shall increase 100 feet for each 10 feet that the personal wireless service facility exceeds the maximum height set forth in the underlying zoning district.”

The proposed cell tower is located in the § 110-7. CD Conservation Development District. The maximum height permitted in the CD zoning district is 35 feet. Proposed is a Monopine with faux tree canopy totaling 145 feet, this is 110 feet higher than what is permitted in the CD Zoning District. Proposed is a setback distance of 197 feet to the closest residential home (care-takers cottage) a 1,600 feet setback to a residence is required and therefore; a 1,403 ft. setback variance is required.

### COMMENTS

1. Plan R1 sheet title block still indicates a 300 ft. distance.

2. Proposed drawing still “*does not include,*” an area adequate for Fire Department access, staging of equipment, and parking for additional responding personnel.
3. The Building Department defers to the Village Engineer for all storm water mitigation, run-off, drainage, basins/detention, infiltration, and all aspect of grading. As previously identified by the Village Engineer in his memorandum of September 3, 2020 storm water pollution prevention plan is required for site plan approval. SWPPP shall demonstrate compliance with all applicable the requirements of the Village Zoning Code, Article XIV Stormwater Control.

Pursuant to § 110-62. Stormwater pollution prevention plans.

“A. Pollution prevention plan requirement. No application for approval of a land development activity shall be reviewed until the appropriate board has received a stormwater pollution prevention plan (SWPPP) prepared in accordance with the specifications in this article and Chapter 92A.”

4. The Building Department Defers to the Village Planner for landscaping, tree preservation plan, and lighting requirements. Tree preservation plan shall be provided.
5. The proposed cell tower location is 388 feet to one residence (east) and 197 feet from the Marsh Sanctuary care-takers cottage.
6. Information (type/size) for future equipment should be provided.
7. The proposed cell tower project will require that an additional 33 trees – greater than 4” caliper will be removed.
8. The Building Department still needs clarification as to whether one application or a subsequent application that was submitted for a different use on the same property can violate the zoning requirements (required minimum lot area and buffers) of another pending application that preceded the second application.

### **APPROVALS REQUIRED**

- Site Plan Approval
- Special Permit issued by the Planning Board
- Steep Slopes Permit issued by the Planning Board; public hearing required
- Zoning Board of Appeals (variances)
- Fire Department

PM/mkr



**Village/Town of Mount Kisco Building Department**  
**104 Main Street**  
**Mount Kisco, New York 10549**  
**Ph. (914) 864-0019-fax (914) 864-1085**

**MEMORANDUM**

**TO:** Acting Chairman Mike Bonforte and Respected Members of the Planning Board

**FROM:** Peter J. Miley, Building Inspector *PJM*

**SUBJECT:** Homeland Towers, LLC  
Public Utility Wireless Telecommunications Facility  
180 S. Bedford Rd. Tax Parcel No: 80.44-1-1

**DATE:** November 19, 2020

---

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Although this memo mentions some of my previous comments from my last memo, this new memo does not supersede or replace any of the previous Building Department memos in connection with this application. This new memorandum is in response to the recently submitted – revised application that the Building Department received on November 4, 2020 by Homeland Towers.

Homeland Towers, LLC, and New York SMSA Limited Partnership d/b/a Verizon Wireless requires a Special Use Permit, Site Plan Approval, and a Steep Slopes Permit from the Planning Board in accordance with Sections 110-27.1(H), 110-46, 110-45 and 110-33.1 of the Village Zoning Code. Sunrise Community Solar, LLC ("Sunrise") also has an existing (pre-dating) application for a Special Use Permit, Site Plan Approval, and a Steep Slopes Permit from the Planning Board for a Tier-3 Solar Farm on the very same site. While the applicants are unaffiliated, they continue to move their application forward as separate commercial projects on the same parcel of land.

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a Special Permit. The issuance of a Special Permit by the Planning Board does not nullify other requirements set forth in § 110-27.1 or in §110-46. Therefore, Chapter 110. Zoning Article III. District Regulations § 110-27.1. PWSF Personal Wireless Service Facilities Overlay District shall apply to the 180 S. Bedford Road, Public Utility Wireless Telecommunications Facility project.

### Zoning

Variances required;

1. Pursuant to § 110-27.1. PWSF Personal Wireless Service Facilities Overlay District E. (3) Maximum height.

“Unless the FCC promulgates rules to the contrary or the applicant demonstrates to the satisfaction of the board granting the special permit that a greater height is necessary, the maximum height for a tower or monopole shall be 80 feet above ground level or the minimum height necessary to provide service to locations which the applicant is not able to serve with existing facilities within and outside the Village, whichever is less.”

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2. Pursuant to Chapter 110. Zoning Article III. District Regulations § 110-27.1. PWSF Personal Wireless Service Facilities Overlay District. (5) Setbacks.

“Unless the FCC promulgates rules to the contrary, all personal wireless service facilities shall be separated from [all] residential dwellings by a distance of no less than 500 feet. In no case shall a setback be less than 20 feet or the minimum setback required by the underlying zoning district, whichever is greater. The setback shall increase 100 feet for each 10 feet that the personal wireless service facility exceeds the maximum height set forth in the underlying zoning district.”

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### COMMENTS

1. Plan R1 sheet title block still indicates a 300 ft. distance.

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Pursuant to § 110-62. Stormwater pollution prevention plans.

“A. Pollution prevention plan requirement. No application for approval of a land development activity shall be reviewed until the appropriate board has received a stormwater pollution prevention plan (SWPPP) prepared in accordance with the specifications in this article and Chapter 92A.”

4. The Building Department Defers to the Village Planner for landscaping, tree preservation plan, and lighting requirements. Tree preservation plan shall be provided.
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8. The Building Department still needs clarification as to whether one application or a subsequent application that was submitted for a different use on the same property can violate the zoning requirements (required minimum lot area and buffers) of another pending application that preceded the second application.

#### **APPROVALS REQUIRED**

- Site Plan Approval
- Special Permit issued by the Planning Board
- Steep Slopes Permit issued by the Planning Board; public hearing required
- Zoning Board of Appeals (variances)
- Fire Department

# Exhibit 4

LAW OFFICES OF  
**SNYDER & SNYDER, LLP**  
94 WHITE PLAINS ROAD  
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(914) 333-0700

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WRITER'S E-MAIL ADDRESS

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REPLY TO:

TARRYTOWN OFFICE

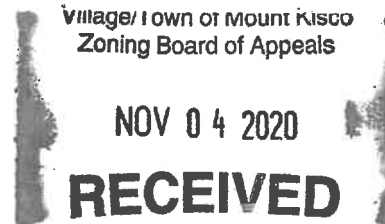
NEW YORK OFFICE  
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FAX (212) 932-2693

LESLIE J. SNYDER  
ROBERT D. GAUDIOSO

DAVID L. SNYDER  
(1956-2012)

November 4, 2020

Honorable Chairman Harold Boxer  
and Members of the Zoning Board of Appeals  
Village of Mount Kisco  
104 Main Street  
Mount Kisco, New York 10549



Re: 180 S. Bedford Road  
Public Utility Wireless Telecommunications Facility  
Homeland Towers, LLC

Honorable Chairman and  
Members of the Zoning Board of Appeals:

We are the attorneys for Homeland Towers, LLC ("Homeland Towers") and Verizon Wireless (together "Applicants") in connection with their enclosed application to place a public utility wireless telecommunications facility ("Facility") at the above referenced property ("Property"). The Facility is proposed as a 140-foot (145' to top of branches) monopole designed to resemble a tree ("Monopine") to support the equipment for Verizon Wireless. The Property is located in the CD Conservation Development District.

On October 6, 2020, the Applicants received an interpretation from the Village's Building Inspector that certain area variances are required for the Facility ("Building Inspector's Interpretation"). The Applicants respectfully file this application to appeal the Building Inspector's Interpretation, or in the alternative to request any necessary area variances for the Facility. The Applicants' submission is also in response to the comments received from the Village Building Inspector, Planning Board Engineer, and Planning Board's Wireless Consultant, ("Village Comments"), and also in response to certain public comments received.

In furtherance of the foregoing, enclosed please find, a check in the amount of \$750.00 representing the Zoning Board of Appeals application fee together with ten (10) copies of the following materials:

1. Zoning Board Application Form;
2. Memorandum in Support of Application;



3. Deed;
4. EAF with Visual EAF Addendum;
5. FCC Compliance Report;
6. RF Report dated August 17, 2020;
7. Alternate Site Analysis dated August 14, 2020;
8. Visual Resource Assessment dated July 29, 2020;
9. Supplemental Visual Resource Assessment dated September 28, 2020;
10. SHPO Concurrence that there are No Historic Properties in the Area of Potential Effects;
11. FAA Determination of No Hazard to Air Navigation;
12. Supplemental RF Report prepared by V-COMM L.L.C dated October 28, 2020;
13. Letter from Klaus Wimmer, of Homeland Towers, dated November 2, 2020, confirming that the mentioned alternative "high elevation" locations are not feasible alternative locations and are not available for the installation of the Facility;
14. Collocation Commitment Letter;
15. Memorandum of Lease;
16. Letter from APT, dated November 3, 2020, in response to the Village Comments and public comments;
17. Letter from APT, dated November 2, 2020, detailing the projects compliance with the requirements of §110-33.1(A) of the Village Code for a Steep Slope permit;
18. Letter from APT, dated October 29, 2020, confirming that the generator proposed will be in compliance with the Village's noise level requirements contained in the Village Code;
19. Fall Zone/Structural Letter from APT, dated September 16, 2020, certifying that the Facility, in the unlikely event of a collapse, would fall completely within the Property lines;

20. Please note that the Facility has been designed to collapse within the Property lines and there are no publicly accessible locations within close proximity to the facility. The Memorandum in Opposition from a neighboring property owner's counsel includes a letter from Dennis Rogers, dated March 28, 2013. This letter was originally submitted to the Town of Kent on behalf of an opposition group represented by Mr. Campanelli. Submitted herewith is the response from Tectonic Engineering, dated April 8, 2013, detailing the false assumptions contained in the Rogers letter;
21. Letter from Saratoga Associates, dated November 3, 2020, detailing the scope and methodology for the balloon test; and
22. Revised Zoning Drawings.

Please note that a balloon test has been scheduled for the morning of November 14, 2020 at the Property.

We thank you for your consideration, and look forward to discussing this matter with the Zoning Board of Appeals at its next available meeting. If you have any questions or require any additional documentation, please do not hesitate to contact me at 914-333-0700.

Snyder & Snyder, LLP

By: 

Robert D. Gaudio

RDG/djk

Enclosures

cc: Homeland Towers  
Verizon Wireless  
Planning Board

Z:\SSDATA\WPDATA\SS3\RDG\Homelandtowers\Mount Kisco\NY172\ZBA Letter 11.3.20.rtf

PLANNING BOARD AND  
ZONING BOARD OF APPEALS  
TOWN/VILLAGE OF MOUNT KISCO

-----X  
In the matter of the Application of

HOMELAND TOWERS, LLC and VERIZON WIRELESS

Premises: 180 S. Bedford Road  
Mount Kisco, NY 10594

S-B-L: 80.44 – 1 – 1  
-----X

**MEMORANDUM IN SUPPORT OF APPLICATIONS FOR  
SPECIAL PERMIT, SITE PLAN APPROVAL, STEEP SLOPE PERMIT,  
AND APPEAL OF BUILDING INSPECTOR INTERPRETATION, OR IN THE  
ALTERNATIVE A REQUEST FOR AREA VARIANCES, BY  
HOMELAND TOWERS, LLC AND VERIZON WIRELESS  
TO LOCATE A WIRELESS TELECOMMUNICATIONS FACILITY  
AT 180 S. BEDFORD ROAD**

**I. Introduction**

Homeland Towers, LLC (“Homeland Towers”) and Verizon Wireless (together “Applicants”) respectfully submit this memorandum in support of the applications filed (“Application”) for a wireless telecommunications facility (“Facility”) located at 180 South Bedford Road, Mount Kisco, NY 10594 (“Property”).

**II. Statement of Facts**

The Property is identified by SBL 80.44 – 1 – 1 on the Town/Village of Mount Kisco (“Village”) Tax Map, with a postal address of 180 South Bedford Road, Mount Kisco, NY 10594 and is located in the Conservation Development (“CD”) Zoning District.

The proposed Facility will be used to provide federally licensed wireless communication services to the Village and surrounding area. The Facility will include a 140-foot monopole (145 feet to the top of the branches), designed to resemble a tree (“Monopine”) to support the antennas of Verizon Wireless, while providing collocation space for similar federally licensed wireless carriers and emergency communications equipment, with related equipment installed within a fenced equipment compound at the base thereof.

The Facility is proposed to be located on a Property outside of the Personal Wireless Service Facilities Overlay District (“Overlay District”) because the significant gap in service could not be remedied from within the Town’s Overlay District. See Radio Frequency Justification Report prepared by V-COMM, L.L.C dated August 17, 2020, and as supplemented on October 28, 2020 (“RF Report”); See also, Alternatives Site Analysis prepared by Klaus Wimmer of Homeland Towers dated August 14, 2020, and as supplemented on October 29, 2020 (“ASA”).

### III. Public Utility Status

Under the laws of the State of New York Verizon Wireless is qualified as a public utility for zoning purposes. See Cellular One v. Rosenberg, 82 N.Y.2d 364 (1993) (hereinafter referred to as “Rosenberg”), Cellular One v. Meyer, 607 N.Y.S. 2d 81 (2nd Dept. 1994) and Sprint Spectrum, L.P. v. Town of West Seneca, (Index No. 1996/9106 Feb 25, 1997, Sup. Ct. Erie County). In Rosenberg, *supra*, the Court of Appeals, New York’s highest court, held that federally licensed wireless carriers (such as Verizon Wireless) provide an essential public service and are public utilities in the State of New York. Public utilities should be accorded favored treatment in zoning matters. See Rosenberg.

Verizon Wireless’s status as a public utility is underscored by the fact that its services are an important part of the national telecommunications infrastructure and will be offered to all persons that require advanced digital wireless communications services, including local businesses, public safety entities, and the general public.

In addition to its status as a public utility, Verizon Wireless is licensed by the Federal Communications Commission (“FCC”).

There is also a public need for Verizon Wireless’s service, as evidenced by the granting of licenses to Verizon Wireless by the FCC. This grant constitutes a finding that the public interest will be served by the Verizon Wireless’s service and is consistent with the public policy of the United States “to make available so far as possible, to all people of the United States a rapid, efficient, nationwide and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication . . . [.]” 47 U.S.C. §151.

The instant application is filed in furtherance of the goals and objectives established by Congress under the federal Telecommunications Act of 1996 (“TCA”). The TCA is “an unusually important legislative enactment,” establishing national public policy in favor of encouraging “*rapid deployment of new telecommunications technologies* (emphasis supplied).” Reno v. ACLU, 521 U.S. 844, 857 (1997).

In fact, in 1999, Congress expanded further upon this policy by enacting the Wireless Communications and Public Safety Act of 1999, Pub.L. 106-81, 113 Stat. 1286 (the “911 Act”). The “911 Act,” empowered the FCC to develop regulations to make wireless 911 services available to all Americans. The express purpose of the Act, as articulated by Congress, was “to encourage and facilitate the prompt deployment throughout the United



*States of seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation's public safety and other communications needs” (emphasis added).*

A state or local government’s authority to regulate “the placement, construction, and modification of personal wireless service facilities,” is limited by the federal requirements set forth in Section 332(c)(7)(B) of the TCA. 47 U.S.C. § 332(c)(7)(a). The Facility is a “personal wireless service facility” as defined by the TCA. 47 U.S.C. § 332(c)(7)(c). Pursuant to Section 332(c)(7)(B) the zoning authority of a State or local government, or instrumentality thereof, with regards to personal wireless service facilities is limited as follows:

- 1) No zoning decision or action shall “unreasonably discriminate among providers of functionally equivalent services,” or “prohibit or have the effect of prohibiting the provision of personal wireless services.” 47 U.S.C. §332(c)(7)(B)(i);
- 2) Decisions and actions on zoning and construction applications must be made “within a reasonable period of time.” 47 U.S.C. §332(c)(7)(B)(ii);
- 3) Any “decision shall be in writing and supported by substantial evidence contained in a written record.” 47 U.S.C. §332(c)(7)(B)(iii); and
- 4) No action or decision shall be made “on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.” 47 U.S.C. §332(c)(7)(B)(iv).

Please further note that on November 18, 2009, the FCC issued a Declaratory Ruling regarding timely review of applications for siting of wireless facilities, WT Docket NO. 08-165 (the “Shot Clock Order”). The Shot Clock Order finds that a “reasonable period of time” for a local government to act on this type of application, an application for a new tower, is presumptively 150 days. The FCC again clarified the 150 day “Shot Clock” (2018 Third Report and Order) and in the implementing regulations contained in 47 C.F.R. § 1.6003. According to the Shot Clock Order and 47 C.F.R. § 1.6003(c)(1)(iv), if the Village fails to act within 150 days of filing a complete application, the applicant may commence an action in court for “failure to act” under Section 332(c)(7)(B)(v) of the TCA.

#### **IV. The Zoning Approvals Required for the Proposed Facility Being Located Outside of the Overlay District**

The Applicants respectfully appeal the Building Inspector’s interpretation contained in the Building Inspector Memo dated October 6, 2020 (“Building Inspector Memo”) that the conditions of the Overlay District apply to the Facility located outside of the Overlay District.

Section 110-27.1(H) of the Zoning Code states as follows:

Special permits for sites outside the Personal Wireless Service Facilities Overlay District. Personal wireless service facilities at sites outside the Personal Wireless Service Facilities Overlay District shall require a special permit from the Village Board if the site is located on Village-owned property and the Planning Board if the site is located on any other property, and shall be permitted only if a New York State-licensed professional engineer specializing in electrical engineering with expertise in radiocommunication facilities establishes to the satisfaction of the approving agency all of the following:

- (1) That the personal wireless service facility is needed to provide coverage to an area of the Village that currently has inadequate coverage and is of the minimum height and aesthetic intrusion necessary to provide that coverage;
- (2) That coverage cannot be provided by a personal wireless service facility located within the Personal Wireless Service Facilities Overlay District;
- (3) That all reasonable measures in siting the personal wireless service facility within the Personal Wireless Service Facilities Overlay District have been exhausted; and
- (4) That technical and space limitations prevent location or colocation in the Personal Wireless Service Facilities Overlay District.

As clearly stated in the above code section because the Facility is to be located on a Property “outside the Personal Wireless Service Facilities Overlay District,” and the Property is not “Village-owned,” the Facility shall be approved by special permit from the Planning Board, if the Applicants meet the four above listed criteria. The standards set by the Village Zoning Code for personal wireless service facilities within the Overlay District do not apply to the proposed Facility, instead the Zoning Code requires that only the four above listed criteria be satisfied for special permit approval.

It is important to note that the Village has previously determined that the requirements of the Overlay District do not apply to properties outside of the Overlay District. In fact, the Village made this exact determination approximately one year ago for a facility located on Village owned property at 1 Mountain Avenue. See Memo from Village Attorney dated May 20, 2019 (“Village Attorney 2019 Memo”).<sup>1</sup>

By implication, the local law states that applications exempted by § 110-27.1 H do not have to comply or be “in accordance with the criteria set forth in this section [§ 110-27.1] and in § 110-46 of the Zoning Law.” In fact, § 110-27.1 H sets forth a completely different set of criteria by which to evaluate such applications. [§ 110-27.1 H(1)-(4)].

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<sup>1</sup> A copy of the Village Attorney 2019 Memo has been annexed hereto for your convenience.

See Village Attorney 2019 Memo.

Ultimately the Applicants must be afforded the same legal interpretation of the Zoning Code as was given for the Village's own property, and the Village must be bound by its own precedent. To do otherwise would be arbitrary, capricious, and discriminatory. See Knight v Amelkin, 68 N.Y.2d 975, 978 (1986) ("because petitioners have shown earlier determinations of the Board reaching contrary results on essentially the same facts, an explanation or, in the alternative, a conforming determination, is required."); See also Town of New Castle v. Kaufmann, 72 N.Y.2d 684, 686 (1988) ("[w]hen such a construction would thwart the settled purposes of the statute, however, literal and narrow interpretations should be avoided."); See also 47 U.S.C. § 332(c)(7)(B)(i)(I).

Therefore, the Applicants respectfully appeal the Building Inspector's interpretation contained in the Building Inspector Memo that the standards for the Overlay District apply to this Facility, as both the clear language of the Village Zoning Code, and the past precedents set by the Village, demonstrate that the Overlay District requirements do not apply to this Facility on this Property. As such a height variance and setback variances are not required.

In addition, the Applicants also appeal the Building Inspector's interpretation that a height variance is required pursuant to §110-27.1(E)(3). See Building Inspector Memo. For the reasons set forth above, §110-27.1(E)(3) does not apply to the Facility because it is located outside of the Overlay District. However, even if it were found that §110-27.1(E)(3) applied to the Facility located outside of the Overlay District, §110-27.1(E)(3) does not require the Applicants to seek a variance because the language of the Zoning Code clearly and unambiguously authorized the Planning Board to approve any height as long as the height is proven necessary. Section 110-27.1(E)(3) states as follows:

Maximum height. Unless the FCC promulgates rules to the contrary or the applicant demonstrates to the satisfaction of the board granting the special permit that a greater height is necessary, the maximum height for a tower or monopole shall be 80 feet above ground level or the minimum height necessary to provide service to locations which the applicant is not able to serve with existing facilities within and outside the Village, whichever is less.

As the Code clearly states, the 80-foot maximum height limitation does not apply if "the applicant demonstrates to the satisfaction of the board granting the special permit that a greater height is necessary." Therefore, since the Applicants have submitted an RF Justification Report that demonstrates the proposed height of 140 feet (145 to the top of faux branches) is necessary, a variance from §110-27.1(E)(3) is not required. See RF Justification Report.

The Building Inspector Memo also states that a variance from §110-7(C)(3)(a) could be required as the solar project proposed on the Property would not meet the minimum lot area requirement. Section 110-7(C)(3)(a) only sets a minimum lot area for the solar project.

Therefore, as the proposed Facility is an entirely separate and distinct use, the Applicants cannot be required to obtain a variance from this Zoning Code requirement for Tier 3 solar energy facilities. Moreover, the Property meets the requirements for the minimum lot size for both §110-7(C)(3)(a) and §110-27.1(E)(4), as the property is 25 acres in size. See Site Plan Sheet SP-1. The addition of the Facility will not reduce the size of the Property. Minimum lot size is a requirement for the size of the property and not a requirement for the amount of building or development coverage on a property. In fact, the Village Code sets separate and distinct requirements for the amount of development coverage for the solar facility. See Village Code §110-7(C)(3)(c). However, the conditions within §110-7(C)(3) only apply to the proposed solar facility and there are no maximum development coverage limitations in the Code for the Facility.

Based on all of the aforementioned it is respectfully requested that the Zoning Board of Appeals find that: (1) the standards for facilities within the Overlay District do not apply to this Facility located outside of the Overlay District; (2) there is no requirement for a variance for the height of the Facility if “the applicant demonstrates to the satisfaction of the board granting the special permit that a greater height is necessary”; (3) no setback variances are required; and (4) no variance from §110-7(C)(3)(a) is required for this Facility as that Zoning Code section only applies to “Tier 3 solar energy facilities.”

#### **V. The Proposed Facility Meets the Special Use Permit Standards**

A special use permit is permitted as of right when the applicant has demonstrated compliance with the applicable standards. See Matter of North Shore Steak House v. Board of Appeals of Inc. Vil. of Thomaston, 30 N.Y.2d 238 (1972).

In reviewing the Application, the following factors are offered for consideration in accordance with the Zoning Code. Please note that the following sections in **bold** face type are the actual quotes from the Zoning Code, and the response to each section is noted below.

**Special permits for sites outside the Personal Wireless Service Facilities Overlay District. Personal wireless service facilities at sites outside the Personal Wireless Service Facilities Overlay District shall require a special permit from the Village Board if the site is located on Village-owned property and the Planning Board if the site is located on any other property, and shall be permitted only if a New York State-licensed professional engineer specializing in electrical engineering with expertise in radiocommunication facilities establishes to the satisfaction of the approving agency all of the following:**

As noted above the Property is located outside the Overlay District and is not on Village-owned property, therefore the Applicants have requested special permit approval from the Planning Board. The RF Report submitted with the Application has been signed and sealed by Peter Longo, P.E. a professional engineer licensed in the state of New York. See RF Report.

**(1) That the personal wireless service facility is needed to provide coverage to an area of the Village that currently has inadequate coverage and is of the minimum height and aesthetic intrusion necessary to provide that coverage;**



The RF Report demonstrates that there is “a significant gap in coverage for Verizon Wireless,” and that “a new wireless facility is needed.” The RF Report also demonstrates that the proposed height “is the minimum height needed to provide the capacity and coverage required.” Furthermore, the Visual Resource Assessment prepared by Saratoga Associates, dated July 29, 2020, and as supplemented on September 28, 2020 (“VRA”) demonstrates that the Facility has been strategically located on the Property so that it is not visible from a vast majority of the Village. Moreover, the Applicants have proposed a stealth design Monopine to camouflage the Facility, and further reduce any visibility. The Facility is the least intrusive means available to fill the significant gap in coverage identified in the areas surrounding the Property.

**(2) That coverage cannot be provided by a personal wireless service facility located within the Personal Wireless Service Facilities Overlay District;**

As demonstrated in the RF Report “[t]he Overlay District is approximately 5,500 feet away from the proposed location and is outside of the coverage gap area, therefore it will not provide the required coverage to this intended area for this proposed site.”

**(3) That all reasonable measures in siting the personal wireless service facility within the Personal Wireless Service Facilities Overlay District have been exhausted; and**

As noted above, and in the RF Report, it would be futile for the Applicants to attempt to locate the Facility within the Overlay District because it is too far away from the coverage gap area and a facility in the Overlay District “will not provide the required coverage to this intended area for this proposed site.” See RF Report.

**(4) That technical and space limitations prevent location or collocation in the Personal Wireless Service Facilities Overlay District.**

As noted above, and in the RF Report, the technical limitations of where the coverage is needed prevents Verizon from filling the identified significant gap in coverage by locating equipment in the Overlay District. See RF Report. Neither collocation on an existing facility or constructing a new facility within the Overlay District will allow the Applicants to address the significant gap in coverage identified in the areas surrounding the Property. See RF Report. The Overlay District is too far, and “will not provide the required coverage to this intended area for this proposed site.” The RF Report also states that “[a] review of the surrounding area reveals absence of existing tall structures, towers, or water tanks that meet all the requirements for a wireless facility,” which demonstrates that collocation outside the Overlay District on an existing structure is also not possible, and that the proposed Facility is necessary to cure the significant gap in coverage. Additional information on the Applicants’ efforts to locate a facility on an existing tall structure is included in the ASA, which further demonstrates that there are no available tall structures that could support a facility and remedy the significant gap in coverage identified in the RF Report. See ASA.

Section 110-46 of the Village Zoning Code contains general requirements for special permit approvals, which the Applicants have also satisfied.

**A. Notice and public hearing. The Planning Board shall not decide on any application for a special permit without first holding a public hearing, notice of which hearing,**

including the substance of the application, shall be given by publication in the official newspaper of the Village at least 15 days before the date of such hearing. In addition to such published notice, the applicant shall cause such notice to be mailed at least 10 days before the hearing to all owners of property which lies within 300 feet of the property for which approval is sought and to such other owners and by such other means of notification as the Planning Board may deem advisable.

The Applicants have submitted an Application to request such a public hearing and will comply with above listed public notice requirements.

**B. In approving special permits, the Planning Board shall take into consideration the public health, safety and welfare and the comfort and convenience of the public in general. The Planning Board may prescribe such appropriate conditions and safeguards as may be required in order that the result of its action shall, to the extent possible, further the expressed intent of this chapter and the accomplishment of the following objectives:**

**(1) That the proposed use shall be of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.**

As demonstrated in the Application materials submitted herewith, including the VRA, the Facility has been strategically located and designed so as to fill the identified significant gap in service. The Facility will be in harmony with the appropriate and orderly development of the district, and will not be detrimental to the orderly development of adjacent properties. See VRA. The Facility is minimally visible and has incorporated a stealth monopine design to further blend the Facility into its surroundings and camouflage views of the Facility from the public. See VRA.

**(2) That, in addition to the above, in the case of any use located in or directly adjacent to either a residence district or a district in which residential uses are permitted, the location and size of such use, the nature and intensity of operations involved or those conducted in connection therewith and its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to or incongruous with the residential uses or conflict with the normal traffic of the neighborhood.**

The Facility is unmanned and only requires infrequent (approximately one technician per month) service visits. Therefore, the Facility will have a negligible impact on traffic, and “will not be hazardous or inconvenient to or incongruous with the residential uses or conflict with normal traffic of the neighborhood.” See EAF. An existing access drive will be utilized. The Facility has been placed on the Property and has been limited in sized and properly designed to resemble a tree so as to “not be hazardous or inconvenient to or incongruous with the residential uses or conflict with the normal traffic of the neighborhood.”

**C. Each application for a special permit shall be accompanied by a proposed plan showing the size and location of the lot and the location of all existing and proposed buildings and facilities, including access drives, parking areas and all streets within 200 feet of the lot.**

The Applicants have submitted a Site Plan with their application that shows "the size and location of the lot and the location of all existing and proposed buildings and facilities, including access drives, parking areas and all streets within 200 feet of the lot." See Site Plan.

**D. Each application for a special permit shall be accompanied by a fee as set forth in Chapter A112, Fees, of this Code. In addition thereto, and in order to ensure that the cost to the Village of any engineering, planning, legal or other expert consultations required in connection with the review of any application for a special permit shall be borne by the applicant, the applicant shall, upon the submission of an application pursuant to this section, deposit with the Treasurer of the Village/Town of Mount Kisco a sum in the amount set forth in § A112-110C of this Code; provided, however, that upon a resolution of the Planning Board, adopted by a vote of not less than 2/3 of the membership of such Board, finding that a deposit in a lesser amount will be sufficient to satisfy the anticipated cost of reviewing the application, the applicant may satisfy its obligation under this section to make an initial deposit by depositing such lesser amount. The Planning Board shall not consider any application for which a deposit is required under this section until the Treasurer has certified that the required deposit has been made. The sum deposited shall be held by the Treasurer in a separate trust and agency account for the benefit of the applicant and will be disbursed by the Treasurer for the payment of such engineering, planning, legal or other expert consultations as are required by the Board of Trustees, Planning Board or Village Manager for the review of the application for a special permit or other application related thereto, in accordance with the usual requirements of the Village for the payment of bills. In the event that, prior to the completion of the review of the application, the sum deposited is depleted to the amount set forth in column B of § A112-110C, the applicant shall deposit an additional amount as set forth in column C of § A112-110C. Review of the application shall be suspended until the applicant makes the additional required deposit. After the final action of the Planning Board with respect to the application, and upon payment of all of the fees for the reviews contemplated herein, the balance remaining in the trust and agency account shall be returned to the applicant. The requirements of this section shall be strictly enforced by the Planning Board and the Building Inspector, and no certificate of occupancy shall be granted until all of the fees required to be paid pursuant to this section have been paid.**

The Applicants have paid the required application fees and have submitted escrow funds as required by the Planning Board.

**E. In cases where a parcel of land for which a special permit has been requested is located within 500 feet of the boundary of another municipality, the Secretary of the Planning Board shall transmit a copy of the official notice of hearing to the Municipal Clerk of the affected municipality. Said notice shall also be submitted to the**

**Westchester County Planning Board when so required by the Westchester County Administrative Code.**

The Property is within 500 feet of the Town of Bedford, and the Applicants request that the Village direct the Secretary of the Planning Board to make the above noted referrals as required by GML §239-M and the Westchester County Administrative Code.

**F. The Planning Board may review any previously granted special permit for compliance with conditions imposed. Such review shall follow public notice given 15 days before a public hearing held thereon. Personal service of the notice of such hearing shall be made upon the owner of the property 15 days before the public hearing held thereon. Said special permit may be revoked following said hearing only upon a determination by the Planning Board to the effect that such conditions as may have been prescribed previously by the Planning Board in conjunction with the issuance of the special permit have not been or are no longer being complied with. The Planning Board shall set forth, in writing, said conditions that are no longer being met, following which a period of 60 days shall be granted for the applicant to comply with such conditions. If the applicant fails to comply within said sixty-day period, the special permit may be revoked.**

The Application herein is an initial request for a new special permit and therefore the above subsection is not applicable.

As noted above because the Facility is located outside of the Overlay District, meets the criteria for being located outside the Overlay District and meets the general special permit requirements, the Planning Board shall approve the Applicants' requested special use permit. See North Shore Steak House, N.Y.2d 238. Therefore, the Applicants respectfully request that the Planning Board approve the requested special permit for the Facility.

In the event that the Applicants' appeal regarding the applicability of the conditions contained in §110-27.1 is denied, the Applicants offer the following statements in support of the requested special permit.

#### **§110-27.1**

**B. Permitted uses. Except as specified in § 110-27H (Special permits for sites outside the Personal Wireless Service Facilities Overlay District), all new personal wireless service facilities, and all additions and/or modifications to currently existing personal wireless service facilities, shall be allowed only in the Personal Wireless Service Facilities Overlay District and only pursuant to a special permit issued by the Planning Board in accordance with the criteria set forth in this section and in § 110-46 of the Zoning Law.**

The Application includes a request for a special permit from the Planning Board.

**C. Underlying zoning regulations. The requirements of the underlying zoning districts shall apply within the Personal Wireless Service Facilities Overlay District unless the provisions set forth in this section are deemed more stringent than the underlying requirements. All structures and facilities accessory to personal wireless service**



facilities, including but not limited to equipment sheds, parking areas, anchors, bases and pads, shall comply with the existing setback and dimensional regulations established for principal structures in the underlying zoning district, except for the height of a proposed tower or monopole.

The Facility has been located so as to meet all of the required setbacks for the underlying Conservation Development District. See Site Plan Sheet SP-1. Please note that the setback and bulk requirements contained in §110-7(C)(3) for the proposed solar facility does not apply to this Application.

**D. Data requirements. Applicants for special permits shall file with the Village Clerk 3 copies and with the Planning Board 11 copies, of the following documents:**

The Applicants have submitted the required number of copies to the Village.

**(1) Site plan.** A site plan, in conformance with applicable site plan submission requirements contained in § 110-45 of the Zoning Law. The site plan shall show elevations, height, width, depth, type of materials, color schemes and other relevant information for all existing and proposed structures, equipment, parking and other improvements. The site plan shall also include a description of the proposed personal wireless service facility and such other information that the Planning Board requires.

The Site Plan submitted with the Application includes the elevations, height, width, depth, type of materials, color schemes and other relevant information for all existing and proposed structures, equipment, parking and other improvements. See Site Plan.

**(2) Environmental Assessment Form.** A completed Environmental Assessment Form (“EAF”), including the Visual EAF Addendum. Particular attention shall be given to visibility from key viewpoints identified in the Visual EAF Addendum, existing treelines and proposed elevations.

An EAF with the Visual EAF addendum has been submitted with the Applications. See EAF. The Applications have also submitted a Visual Resource Assessment with additional information regarding the limited visibility of the Facility. See VRA.

**(3) Landscape plan.** A landscape plan delineating the existing trees or areas of existing trees to be preserved, the location and dimensions of proposed planting areas, including the size, type and number of trees and shrubs to be planted, curbs, fences, buffers, screening elevations of fences and materials used. For towers or monopoles, the landscape plan shall address the criteria set forth in § 110-27.1F(3).

A landscape plan has been included on Sheet LS-1 of the Site Plan.

**(4) Documentation of proposed height.** Documentation sufficient to demonstrate that the proposed height is the minimum height necessary to provide service to locations which the applicant is not able to serve with existing facilities within and outside the Village.

The RF Report demonstrates the proposed height is the minimum height necessary. See RF Report.

**(5) Statement regarding colocation. For new personal wireless service facilities, a statement by the applicant as to whether construction of the facility will accommodate colocation of additional facilities for future users.**

Homeland Towers has submitted a letter dated October 27, 2020 stating that it will accommodate collocation of additional facilities for future users, including future municipal communications equipment (“Collocation Commitment Letter”). See also, Site Plan Sheets AP-1 and AP-2.

**(6) Structural engineering report. A report prepared by a New York State licensed professional engineer specializing in structural engineering as to the structural integrity of the personal wireless service facility. In the case of a tower or monopole, the structural engineering report shall describe the structure's height and design, including a cross section of the structure, demonstrate the structure's compliance with applicable structural standards and describes the structure's capacity, including the number of antennas it can accommodate and the precise point at which the antenna shall be mounted. In the case of an antenna mounted on an existing structure, the structural engineering report shall indicate the ability of the existing structure to accept the antenna, the proposed method of affixing the antenna to the structure and the precise point at which the antenna shall be mounted.**

Submitted with this Application is a Structural Letter dated September 16, 2020 (“Structural Letter”), certifying that the 140-foot-tall Facility (145 feet top of faux branches) will be designed in compliance with all applicable federal, state, and local structural requirements for loading, including wind and ice load. See Structural Letter. The Structural Letter also states that the Facility “will be designed to support at least four (4) antenna arrays.” In addition, the Structural Letter also certifies that “the proposed tower will be designed with a ‘hinge-point’ at elevation 31’ AGL (closest property line distance is 109’ +/-) so that in the unlikely event of a catastrophic failure occurring, the tower fall zone will be contained within the subject parcel.” The Site Plan also includes cross sections of the Tower. See Site Plan.

**(7) Engineering analysis of radio emissions. An engineering analysis of the radio emissions and a propagation map for the proposed personal wireless service facility. The analysis shall be prepared and signed by a New York State-licensed professional engineer specializing in electrical engineering with expertise in radio-communication facilities. The results from the analysis must clearly show that the power density levels of the electromagnetic energy generated from the proposed facility are within the allowable limits established by the FCC which are in effect at the time of the application. If the proposed personal wireless service facility would be colocated with an existing facility, the cumulative effects of the facilities must also be analyzed. The power density analysis shall be based on the assumption that all antennas mounted on the proposed facility are simultaneously transmitting radio energy at a power level equal to the maximum antenna power rating specified by the antenna manufacturer.**

Submitted with this Application is an Antenna Site FCC RF Compliance Assessment and Report prepared by Pinnacle Telecom Group, dated August 11, 2020 (“FCC Compliance Report”) that certifies the Facility will comply with the FCC rules and regulations regarding radio frequency emissions. The FCC Compliance report demonstrates that under worst-case conditions “the conservatively calculated maximum RF level caused by the combination of antenna operations is 2.0130 percent of the FCC general population MPE limit.” Therefore, the Facility is more than 45 times below the FCC limit and is in compliance. See FCC Compliance Report.

**(8) Map of proposed coverage and existing facilities. A map showing the area of coverage of the proposed facility and listing all existing personal wireless service facilities in the Village and bordering municipalities containing personal wireless service facilities used by the applicant, and a detailed report indicating why the proposed personal wireless service facility is required to provide service to locations which the applicant is not able to serve with existing facilities which are located within and outside the Village, by colocation and otherwise.**

The RF Report includes the above noted coverage maps and information regarding existing facilities. The RF Report demonstrates that there is a significant gap in coverage in the areas surrounding the Property and that the Facility is of the minimum height necessary to fill the gap in coverage. See RF Report.

**E. Criteria for special permit applications. Applicants for special permits for establishment or construction of personal wireless service facilities shall meet all of the following criteria:**

**(1) Necessity. The proposed personal wireless service facility is required to provide service to locations which the applicant is not able to serve with existing facilities which are located within and outside the Village, by colocation and otherwise.**

The Applicants have demonstrated that the proposed Facility is necessary and that existing facilities do not provide reliable service to the area in question resulting in the existing significant gap in coverage identified in the RF Report. See RF Report and ASA.

**(2) Colocation. The colocation of existing personal wireless service facilities only within the Personal Wireless Service Facilities Overlay District shall be strongly preferred to the construction of new personal wireless service facilities. If a new site for a personal wireless service facility is proposed, the applicant shall submit a report setting forth in detail an inventory of existing personal wireless service facilities within the Personal Wireless Service Facilities Overlay District which are within a reasonable distance from the proposed facility with respect to coverage, an inventory of existing personal wireless service facilities in other municipalities which can be utilized or modified in order to provide coverage to the locations the applicant is seeking to serve and a report on the possibilities and opportunities for colocation as an alternative to a new site. The applicant must demonstrate that the proposed personal wireless service facility cannot be accommodated on an existing facility within the Personal Wireless Service Facilities Overlay District or on an existing facility in another municipality due to one or more of the following reasons:**

**(a) The proposed equipment would exceed the existing and reasonably potential structural capacity of existing and approved personal wireless service facilities within the Personal Wireless Service Facilities Overlay District, considering existing and planned use for those facilities.**

**(b) The existing or proposed equipment would cause interference with other existing or proposed equipment which could not reasonably be prevented or mitigated.**

**(c) Existing or approved personal wireless service facilities within the Personal Wireless Service Facilities Overlay District or in neighboring municipalities do not have space on which the proposed equipment can be placed so it can function effectively and reasonably, and the applicant has not been able, following a good-faith effort, to reach an agreement with the owners of such facilities.**

**(d) Other reasons make it impracticable to place the proposed equipment on existing and approved personal wireless service facilities within the Personal Wireless Service Facilities Overlay District on existing facilities in other municipalities.**

**(e) Service to the locations to which the applicant seeks to provide service cannot be provided by existing facilities within or outside the Village.**

The RF Report demonstrates that the significant gap in coverage cannot be remedied by locating a facility within the Overlay District, as the Overlay District is too far away from the gap in coverage. See RF Report. The ASA also demonstrates that collocation at an existing facility outside of the Overlay District or outside of the Village is also not feasible. See ASA.

**(3) Maximum height. Unless the FCC promulgates rules to the contrary or the applicant demonstrates to the satisfaction of the board granting the special permit that a greater height is necessary, the maximum height for a tower or monopole shall be 80 feet above ground level or the minimum height necessary to provide service to locations which the applicant is not able to serve with existing facilities within and outside the Village, whichever is less.**

The RF Report demonstrates that the proposed height is the minimum height necessary, and that this "greater height" is therefore necessary to fill the significant gap in coverage. See RF Report. We therefore respectfully request that the Planning Board approve the Facility with its proposed height, without the need for an area variance, as the proposed height is necessary.

**(4) Minimum lot size. The minimum lot size for a tower or monopole shall be equal to the square of twice the tower's or monopole's height, or the minimum lot size required by the underlying zoning district, whichever is greater.**

The CD district requires a minimum lot size of 25 acres and the Property is at least 25 acres in size. See Site Plan Sheet SP-1.

**(5) Setbacks. Unless the FCC promulgates rules to the contrary, all personal wireless service facilities shall be separated from all residential dwellings by a distance of no less than 500 feet. In no case shall a setback be less than 20 feet or the minimum setback required by the underlying zoning district, whichever is greater. The setback shall increase 100 feet for each 10 feet that the personal wireless service facility exceeds the**



**maximum height set forth in the underlying zoning district. Setbacks from towers or monopoles shall be measured from the base of the structure.**

This would require a setback of 1,600 feet, and the Sheet TR-1 of the Site Plan demonstrates that there is no location on the Property where this setback can be met. In the event the Applicants' appeal of the Building Inspector's interpretation is denied, and it is determined that the setback requirement for facilities within the Overlay District applies to this Facility, which is located outside of the Overlay District, a variance will be sought from the Zoning Board of Appeals.

**(6) Security fencing. Security fencing, showing the location, materials and height, shall be provided around each tower or monopole to secure the site and provide an opaque banner. Access to the structure shall be through a locked gate.**

Details on the 6 foot proposed fence is included on Sheet C-3 of the Site Plan. The access gate will be locked.

...

**F. Design guidelines. The proposed personal wireless service facility shall meet the following applicable design guidelines:**

**(1) Finish/colors. Towers or monopoles not requiring Federal Aviation Administration (FAA) painting or marking shall either have a galvanized finish or be painted gray or blue-gray above the surrounding treeline and gray, green or tannish brown below the surrounding treeline.**

There are no markings or painting required by the FAA. See FAA Determination of No Hazard to Air Navigation ("FAA Determination"). The Tower is proposed with a stealth monopine design as an alternative to painting the Facility.

**(2) Illumination. No signals, lights or illumination shall be permitted on personal wireless service facilities unless required by the FAA or other federal, state or local authority.**

There is no light on top of the Facility and no light required by the FAA. See FAA Determination.

**(3) Landscaping for towers or monopoles. For towers or monopoles, vegetative screening shall be provided to effectively screen the tower base and accessory facilities. At a minimum, screening shall consist of one row of native evergreen shrubs or evergreen trees capable of forming a continuous hedge at least five feet in height within two years of planting. Existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute of or in supplement toward meeting landscaping requirements. Additional screening may be required to screen portions of the structure from nearby residential property or important views. All landscaping shall be properly maintained to ensure good health and viability.**

. Existing vegetation will be preserved to the maximum extent practicable and will be used in supplement toward meeting landscaping requirements. A landscaping plan has been included with the Site Plan to provide further screening. See Sheet LS-1 of the Site Plan

**(4) Visibility. All personal wireless service facilities shall be sited to have minimum adverse visual effect on residential areas, parks or major roadways.**

The Facility has been strategically located and designed with a stealth monopine design to present minimum visibility. See VRA. By locating the Facility off of the ridgeline and away from a majority of the residences, and incorporating a stealth design, the Facility will be the least intrusive means to remedy the significant gap in coverage.

**(5) Signage. Signage shall be prohibited on personal wireless service facilities except for signage to identify the facility which is located along the right-of-way frontage and is approved by the Architectural Review Board. Except as specifically required by a federal, state or local authority, no signage shall be permitted on equipment mounting structures or antennas.**

No signs are proposed on the tower and the only signs proposed are the site identification sign and the FCC required signage. See Site Plan Sheet C-3.

Therefore, based on all the aforementioned reasons, the Applicants have met all of the applicable criteria for special permit approval and respectfully request that the Planning Board issue the special permit for the Facility.

**VI. The Facility Meets the Requirements for Site Plan Approval**

The instant application also involves a request for site plan approval pursuant to §110-45 of the Zoning Code. A site plan is permitted as of right when the applicant has demonstrated compliance with the applicable standards.

In reviewing the application, the following factors are offered for consideration in accordance with the Zoning Code. Please note that the following sections in **bold** face type are the actual quotes from the Zoning Code, and the response to each section is noted below.

**A. General requirements.**

**(1) Site plan approval shall be required for all uses other than one-family residences and the buildings accessory thereto.**

As the Facility is not a one-family residential use the Applicants respectfully request Site Plan Approval from the Planning Board.

...

**B. Objectives. In considering and acting upon site plans, the Planning Board shall take into consideration the public health, safety and welfare and the comfort and convenience of the public in general and of the residents of the proposed development,**

if any, and of the immediate area in particular and may prescribe such appropriate conditions and safeguards as may be required in order that the result of its action shall, to the extent possible, further the expressed purposes of this chapter and the accomplishment of the following objectives in particular:

**(1) Pedestrian and vehicular access and safety: that all proposed accessways are adequate but not excessive in number, adequate in width, grade, alignment and visibility and not located too near to street corners or other places of public assembly; and other similar safety considerations.**

The Facility is unmanned and will have a negligible impact on traffic. See EAF. The FCC licensed services provided from the Facility will also improve pedestrian and traffic safety in the area, as wireless services are routinely used to report traffic accidents.

**(2) Circulation and parking: that adequate off-street parking and loading spaces are provided to prevent parking in public streets of vehicles of any persons connected with or visiting the use and that the interior circulation system is adequate to provide safe accessibility to all required off-street parking lots.**

The Facility is unmanned and only requires infrequent (once a month) visits by a site technician, and therefore the use will not result in an increase on parking in the surrounding public streets. Adequate parking has been provided for the proposed unmanned use. See Site Plan.

**(3) Landscaping and screening: that all areas where landscaping is required are reasonably screened at all seasons of the year, particularly from the view of adjacent residential lots and streets.**

Landscaping has been proposed and can be seen on Sheet LS-1 of the Site Plan. The Facility has also been strategically located so that views from nearby residential properties in the Village are screened by vegetation or limited by topography. See VRA.

**(4) Drainage and utilities: that all facilities for water, sanitary and storm sewer and other utility services are adequately designed and that the site drainage system affords the best practical solution to on- and off-site drainage problems.**

The Facility presents a minimal addition of impervious surface to a large undeveloped property, does not use potable water, and does not produce waste. See EAF. Soil erosion and sediment control plans are shown on the Site Plan. See Site Plan Sheets EC-1 and EC-2. The Facility will use a gravel access drive and most areas within the equipment compound (other than foundation for tower and concrete slabs for equipment cabinets) will also be gravel, which will help capture stormwater runoff and groundwater percolation.

**(5) Character and appearance: that the site layout of the proposed use, buildings, structures, freestanding signs and lighting shall be in general harmony with the character and appearance of the surrounding area and that of the Village as a whole.**

As noted in the VRA, views of the Facility are limited and the Facility also includes a stealth monopine design to camouflage any potential views of the Facility. Therefore, the Facility will be consistent with the character and appearance of the surrounding area.

**(6) Environmental preservation: that the proposed development or use is designed so as to minimize any adverse environmental effects; that all water bodies, wetlands, steep slopes, hilltops, ridgelines, major stands of trees, significant geological features and other areas of scenic or ecological value are preserved to the extent possible; that soil erosion is prevented to the extent possible; and that flood hazards are minimized.**

The Application also involves a request for a Steep Slope permit, and as demonstrated in the Application materials, including the EAF, the Facility will not present any significant adverse environmental effects. The Facility has been strategically located off of the ridgeline. The Facility is unmanned, does not produce waste, odors or vibrations. There are no impacts to the water table or wetlands. Only minimal tree removal is presented and the Applicants are planting trees for landscaping. In addition, the Applicants have received a concurrence that no historic properties are within the areas of potential effects from New York State Historic Preservation Office dated October 29, 2020 (“SHPO Concurrence”). The Site Plan includes soil erosion and control measures and there are no flood areas within the project site.

**(7) Fire protection: that all proposed structures, equipment and materials and the design of all sites are readily accessible for fire protection.**

The Facility will be constructed to comply with all applicable fire protection and fire safety codes required.

**(8) Master Plan: that the proposed site plan is in general conformance with the applicable provisions of the Master Plan of the Village of Mount Kisco, as may be in existence from time to time.**

The Facility will be reasonably accessible for fire protection.

**(9) Illumination: that the proposed development or use is designed so as to prevent misdirected or excessive artificial light, caused by inappropriate or misaligned light fixtures that produce glare, light trespass, and/or unnecessary sky glow, to discourage the waste of electricity, and to improve or maintain nighttime public safety, utility and security.**

There is no light proposed on the tower and no light is to be installed other than a maintenance light at ground level only to be used by a technician in the event they are visiting the site during night hours. See FAA Determination. The Facility does not produce glare or sky glow. See EAF. Again, the FCC licensed services provided from the Facility will promote public safety in the area.

**C. Procedure. The Planning Board shall approve or disapprove site plans in accordance with the following procedure:**

**(1) Prior to the submission of a formal site plan application, the applicant shall request the Planning Board to conduct a conceptual review of the proposed site plan. The request for such review shall be accompanied by the fee therefor set forth in Chapter A112 of this Code. The purpose of the conceptual review shall be to discuss the proposed site plan and the procedures and requirements of this section so that the**



necessary subsequent steps may be taken with a clear understanding of the Planning Board requirements in matters relating to the development of the site.

The Applicants filed for a conceptual review meeting but no conceptual review meeting was conducted.

**(2) Within six months following the presubmission conference and at least 15 days prior to the Planning Board meeting at which the plan is initially submitted to the Planning Board for review, 10 copies of the site plan and any related information, including a letter of application, shall be submitted to the Building Inspector. The fifteen-day requirement may be reduced to a minimum of 10 days at the discretion of the Planning Board, provided that said Board finds that such reduction will not preclude a thorough review of the site plan by appropriate Village officials prior to its presentation at the Planning Board meeting at which approval is requested. Subsequent submissions, data and material as deemed necessary and so requested by the Planning Board shall be submitted to the Building Inspector at least seven days prior to the meeting during which such data or material will be reviewed, unless specifically waived by the Planning Board.**

The Applicants have submitted the necessary copies to the Village Planning Department for the requested approvals from the Planning Board.

**(3) Each application for site plan approval, and each application for amendment to a site plan, shall be accompanied by the fee for approval of a site plan set forth in Chapter A112 of this Code, the purpose of which shall be to help defray the administrative costs related to the review of such site plan application. In the case of an application for amendment to a site plan, the Village Manager may waive the fee required herein, in whole or in part, where the proposed amendment is minor in character and will, in the judgment of the Village Manager, require minimal review by the Planning Board and staff.**

The Applicants have paid the required application fees and submitted the required escrow submissions.

**(4) The Building Inspector and Village Engineer shall review each proposed site plan or amended site plan for compliance with the Village Code. The Building Inspector shall present the site plan or amended site plan to the Planning Board only after he is satisfied that it does so comply with the Village Code. The application shall be deemed submitted to the Planning Board upon its presentation to the Board by the Building Inspector at a regular meeting. In the event that the Village Code is amended during the pendency of the application in any respect which may apply to the proposed site plan or amended site plan, the Planning Board shall suspend its review of the application and take no action with respect thereto until the Building Inspector has reviewed the site plan or amended site plan for compliance with the Village Code as amended. If the Building Inspector determines that the site plan does not comply with the Village Code as amended, the Building Inspector shall so report to the Planning Board, which shall thereupon deny the application for approval of the site plan or amended site plan.**

The Applicants respectfully submit that the application for Site Plan approval is complete and the Facility complies with the Village Code. It is also respectfully submitted that the time period and methods for deeming the Application complete are superseded by federal law. See Shot Clock Order and 47 C.F.R. § 1.6003.

**(5) When deemed appropriate by the Planning Board, the Fire Department shall be requested to review a site plan for fire access and safety considerations.**

The Fire Department has reviewed the project.

**(6) Applications for amendments to an approved site plan shall be made and acted upon in the same manner with the procedure set forth above. The Planning Board may refuse to consider an application for a new site plan or amendment to an approved site plan if the Building Inspector determines that the site is not in compliance with its current approved site plan by reason of the failure of the applicant or property owner to satisfy any of the conditions imposed upon the approval of such site plan.**

The Application is for original site plan approval and there are no current approved site plans applicable to the proposed Facility.

**(7) Superseding Subdivision 2 of § 7-725 of the Village Law insofar as it imposes a limitation upon the time within which the Planning Board must decide upon an application for site plan approval and anything to the contrary contained therein notwithstanding, the Planning Board shall decide upon an application for approval of a site plan within six months of its submission or any public hearing held thereon, whichever shall be later, and shall not be required to decide sooner.**

This code section is inapplicable as the Application must be reviewed in accordance with the reasonable period of time as interpreted by the FCC, which for the instant application is 150 days from filing a complete application. See 47 C.F.R. § 1.6003.

**(8) In order to ensure that the cost to the Village of any engineering, planning, legal or other expert consultations required in connection with the review of any application for approval of a site plan or amendment to an approved site plan shall be borne by the applicant, the applicant shall, upon the submission of an application pursuant to this section, deposit with the Treasurer of the Village/Town of Mount Kisco a sum in the amount set forth in § A112-110C of this Code; provided, however, that upon a resolution of the Planning Board, adopted by a vote of not less than 2/3 of the membership of such Board, finding that a deposit in a lesser amount will be sufficient to satisfy the anticipated cost of reviewing the application, the applicant may satisfy its obligation under this section to make an initial deposit by depositing such lesser amount. The Planning Board shall not consider any application for which a deposit is required under this section until the Treasurer has certified that the required deposit has been made. The sum deposited shall be held by the Treasurer in a separate trust and agency account for the benefit of the applicant and will be disbursed by the Treasurer for the payment of such engineering, planning, legal or other expert consultations as are required by the Board of Trustees, Planning Board or Village**

**Manager for the review of the application for approval of the site plan or amendment to an approved site plan or other application related thereto, in accordance with the usual requirements of the Village for the payment of bills. In the event that, prior to the completion of the review of the application, the sum deposited is depleted to the amount set forth in Column B of § A112-110C, the applicant shall deposit an additional amount as set forth in Column C of § A112-110C. Review of the application shall be suspended until the applicant makes the additional required deposit. After the final action of the Planning Board with respect to the application and upon payment of all of the fees for the reviews contemplated herein, the balance remaining in the trust and agency account shall be returned to the applicant. The requirements of this section shall be strictly enforced by the Planning Board and the Building Inspector, and no certificate of occupancy shall be granted until all of the fees required to be paid pursuant to this section have been paid.**

The Applicants have submitted the required fees and escrow funds.

**D. Site plan elements. The applicant shall submit a site plan signed and sealed by the registered architect or professional engineer responsible for the preparation of said site plan. The site plan shall include those elements hereinafter listed or as indicated by the Planning Board in the presubmission conference. This information, in total, shall constitute the site plan. Unless specifically modified by the Planning Board, the site plan shall be prepared at a scale of one inch equals 30 feet.**

**(1) Legal data.**

**(a) The section block and lot number of the property, taken from the latest tax records.**

The section block and lot is 80.44-1-1 and can be found on Sheet T-1 of the Site Plan.

**(b) The name and address of the owner of record and applicant if not the same.**

The Property Owner is Skull Island Partners LLC, and the Applicants are Homeland Towers, LLP and Verizon Wireless. This information is listed on Sheet T-1 of the Site Plan.

**(c) The name and address of the person, firm or organization preparing the plan.**

The Site Plan has been prepared by Scott M. Chasse P.E. of APT Engineering with offices located at 567 Vauxhall Street Extension- Suite 311, Waterford, CT 06385.

**(d) The date, North arrow and graphic scale.**

The Site Plan includes a date, compass arrow pointing north and a graphic scale on each plan sheet.

**(e) Sufficient description or information to define precisely the boundaries of the property. All distances shall be in feet and tenths of a foot. All angles shall be given to the nearest 10 seconds or closer. The error of closure shall not exceed one in 10,000.**

The boundary information has been included in the Site Plan which includes a survey.

**(f) A vicinity map identifying the location of the site in context to the surrounding area.**  
Sheets R-1 and SP-1 of the Site Plan include such a Map.

**(g) The location, names and existing widths of adjacent streets and curblines.**  
The locations, names and existing widths of adjacent streets and curblines are shown on Sheets R-1 and SP-1 of the Site Plan.

**(h) The locations and owners of all adjoining lands, as shown on the latest tax records.**  
The locations and owners of all adjoining lands are displayed on Sheet R-1 of the Site Plan.

**(i) The location, width and purpose of all existing and proposed easements, setbacks, reservations and areas dedicated to public use within or adjacent to the property.**  
There are no areas dedicated to public use as this is a public utility telecommunications facility. The information regarding easements can be found on the Survey included with the Site Plan and the setback information has been detailed on Sheet SP-1 of the Site Plan.

**(j) A complete outline of existing deed restrictions or covenants applying to the property.**  
A copy of the Deed has been submitted with the Application.

**(k) Existing zoning district boundaries.**  
This information can be found on Sheet SP-1 of the Site Plan.

**(2) Natural features.**

**(a) Existing contours with intervals of two feet or less, referred to a datum satisfactory to the Village Engineer.**  
The Survey and Sheet SP-3 of the Site Plan contain this information.

**(b) The location of existing watercourses, wetlands, wooded areas, rock outcrops, areas of slope in excess of 20%, trees with a diameter of eight inches or more, measured three feet above the base of the trunk, and other significant environmental features.**  
There are no watercourses, wetlands or rock outcrops near the project area. Wooded areas, steep slopes, and trees to be protected and trees to be removed are shown on the Site Plan. See Site Plan Sheet LS-1.

**(3) Existing structures and utilities.**

**(a) The location of uses and outlines of structures, drawn to scale, on and within 50 feet of the lot.**  
Sheet SP-1 of the Site Plan displays this information.



**(b) Paved areas, sidewalks and vehicular access between the site and public streets.**

The access drive has been included on the Site Plan, but there are no proposed sidewalks or other paved areas for vehicles or pedestrians.

**(c) Locations, dimensions, grades and flow directions of existing sewers, culverts and waterlines, as well as other underground and aboveground utilities within and adjacent to the property.**

Information regarding aboveground utilities can be found on sheets SP-2 and SP3. The Facility does not use potable water or produce wastewater, and therefore no waterlines, sewers or culverts are required.

**(d) Other existing development, including fences, landscaping and screening.**

Landscaping is proposed and can be seen on Sheet SP-3 and information regarding the eight-foot tall chainlink fence for the equipment compound can be found on Sheet CP-1.

**(4) Proposed development.**

**(a) The location of proposed buildings or structural improvements.**

The proposed Facility and equipment compound are shown on the Site Plan.

**(b) The location and design of all uses not requiring structures, including off-street parking and loading areas.**

The Facility is unmanned and the access drive provides sufficient parking for the infrequent technician visits.

**(c) The location, direction, power and time of use for any proposed outdoor lighting or public-address systems.**

The only light proposed would be a downward facing maintenance light only to be used in the event a technician is at the site during night hours. See Site Plan Sheet C-4.

**(d) The location and plans for any freestanding signs.**

No freestanding signs are proposed.

**(e) The location and arrangement of proposed means of pedestrian and vehicular access, including curbs, sidewalks, driveways or other paved areas, and profiles indicating grading and cross sections showing the width of roadways and the location and width of sidewalks and curbs.**

The access drive is shown on the Site Plan but there are no means for public access as the Facility is a public utility and not open to the public. However, the driveway has been widened to provide access to local emergency services in the event access to the Facility is necessary for those purposes. See Site Plan.

**(f) Any proposed screening and other landscaping, including types and locations of proposed street trees, on a landscape plan prepared by a licensed architect or landscape architect.**

Landscaping is proposed and has been detailed on Sheet LS-1 of the Site Plan.

**(g) The location of all proposed waterlines, valves and hydrants, the location of storm sewers and drainage facilities and the location of all sewer lines and appurtenances or the location of alternate means of water supply and sewage disposal and treatment.**

The Facility does not use water and does not produce sewage, therefore none of the above waterlines or sewer lines are proposed. See EAF.

**(h) An outline of any proposed easements, deed restrictions or covenants.**

The access drive is shown on the Site Plan and there are no relevant deed restrictions or covenants to be shown. See Survey on Site Plan and Sheet SP-2 of Site Plan.

**(i) A quantitative summary of proposed site plan features, to include the gross lot area, net lot area, site development coverage, building coverage and building square footages.**

This information is detailed on Sheet SP-1 of the Site Plan.

**(j) Any contemplated public improvements on adjoining properties.**

There are no contemplated public improvements on adjoining properties.

**(k) Any proposed new grades, indicating clearly how such grades will meet existing grades.**

All proposed grading information can be found on Sheet SP-3 of the Site Plan.

**(l) An illumination plan in accordance with § 110-32C of this chapter.**

As the only lighting proposed is a downward facing maintenance light only to be used in the event of a technician working at night. An illumination plan can be found on Sheet C-4 of the Site Plan. There is no light proposed on the tower. See FAA Determination.

**(5) If the site plan encompasses a large tract with several principal buildings, the applicant may submit a staging plan for the entire tract, or the Planning Board may require an overall plan for said tract in accordance with existing zoning controls, assuming the first-stage use encompasses the entire tract. Such a plan shall indicate an overall illustrated design for the entire site, plus detailed information for the first stage or stages. The Planning Board shall review the stage presented in accordance with the provisions of this section and also with reference to the overall development planned for the site.**

This project is not being proposed in stages.

**(6) The submission shall also include a completed site plan application checklist, copies of which are available from the Building Inspector.**

The Applicants have submitted the Site Plan Application Checklist.

**(7) Upon findings of the Planning Board that, due to special conditions peculiar to a site, certain of the information normally required as part of the site plan is inappropriate or unnecessary or that strict compliance with said requirements may cause extraordinary and unnecessary hardships, the Board may vary or waive the provision of such information, provided that such waiver will not have detrimental effects on the public health, safety or general welfare or have the effect of nullifying the intent and purpose of the site plan submission, Official Map, Village Comprehensive Plan or this chapter.**

The Applicants respectfully request the waivers as noted in this Memo.

**(8) A stormwater pollution prevention plan consistent with the requirements of Article XIV of this chapter and Chapter 92A shall be required for site plan approval. The SWPPP shall meet the performance and design criteria and standards in Article XIV of this chapter. The approved site plan shall be consistent with the provisions of Article XIV of this chapter and Chapter 92A. [Added 1-7-2008 by L.L. No. 1-2008]**

The Site Plan includes the necessary stormwater pollution prevention plan details.

Therefore, based on all the aforementioned reasons, the Applicants have met all of the applicable criteria for site plan approval and respectfully request that the Planning Board issue site plan approval for the Facility.

#### **VII. The Facility Meets the Statutory Requirements for the Area Variances Requested and is a Public Utility**

In the event Applicants' appeal of the Building Inspector's Interpretation is denied, the Applicants respectfully request in the alternative area variance relief from the variances noted in the Building Inspector Memo, and as stated with more specificity below.

- 1) Relief from setback of 1,600 feet from all residential dwellings contained in §110-27.1(E)(4); and
- 2) Relief from maximum height set by §110-27.1(E)(3).

Where a zoning board is considering an application involving a public utility, such as in the instant case, there is a relaxed standard for the requested variances. The Court in Rosenberg, supra, held that the traditional test for a variance does not apply to public utilities, such as Verizon Wireless, and that public utilities are entitled to a public utility variance exception. The Court held that the test for a variance for a public utility only requires the utility to show that the application is necessary "to render safe and adequate service and that

there are compelling reasons economic or otherwise,” for the Facility at the Property. Id. at 372. The Court further found that “where the intrusion or burden on the community is minimal, the showing required by the utility shall be correspondingly reduced.” Id. at 372. The Court also made clear that a zoning board may not exclude a utility from a community where the utility has shown a need for its facilities. Id. “This has been interpreted in the context of zoning decisions for telecommunications facilities to require that ‘[a] telecommunications provider that is seeking a variance for a proposed facility need only establish [1] that there are gaps in service, [2] that the location of the proposed facility will remedy those gaps and [3] that the facility presents a minimal intrusion on the community.’” New York SMSA Ltd. Partnership v. Vil. of Floral Park Bd. of Trustees, 812 F.Supp.2d 143, 154 (EDNY 2011), quoting Site Acquisitions, Inc. v. Town of New Scotland, 2A.D.3d 1135, 770 N.Y.S.2d 157 (3d Dep’t 2003); See also, Decarr v. Zoning Bd. of Appeals for Town of Verona, 62 N.Y.S.3d 244, 247 (4th Dept 2017); See also, Omnipoint Commc’ns, Inc. v. City of White Plains, 430 F.3d 529, 535 (2d Cir. 2005).

As demonstrated in the RF Report, the proposed Facility is necessary to fill a significant gap in service for Verizon Wireless. See RF Report. The service provided by the Facility will fill the identified significant gap in, and enhance reliable wireless coverage to public and private users, including police, fire, ambulance and emergency response personnel. In addition, the Facility will be designed to support future municipal emergency communications equipment. See Site Plan Sheets CP-1, A-1, and A-2. This Facility also offers the ability for collocation of additional carriers in the area. Thus, by approving the requested variances the Zoning Board will further the Applicants’ goal to provide those living, working, and traveling within the areas surrounding the Facility with reliable personal wireless services.

The Facility on the Property in the instant case is ideally located to remedy the gap in service. The size, location, height, bulk, use and appearance of the Facility is such that the Facility will be in harmony with the character of the neighborhood for a number of reasons. **First**, due to its location in a less densely populated area of the Village, on a property containing and surrounded by tall trees, the Facility will fill the significant gap in wireless services while providing a Facility that is minimally visible to the surrounding public. See VRA. **Second**, the Facility will comply with all applicable laws and standards, and will not adversely affect the public health, safety or the general welfare, as demonstrated by the FCC Compliance Report and EAF. **Third**, the Facility has been designed to include a hinge point that will reduce the fall zone. See Structural Letter. With the closest Property line being approximately 109 feet away the Facility has been designed to fall well within the Property lines in the unlikely event of a collapse. See Structural Letter. **Fourth**, the Facility will serve the neighborhood and benefit the entire community by filling a significant gap in wireless telecommunications services, which is particularly well suited for responding to accidents, lost hikers, natural disasters, and for reporting medical emergencies and other dangers such as potential criminal activity. **Fifth**, the Facility is the minimum height necessary to remedy the gap in service. See RF Report. **Sixth**, the Facility includes a stealth Monopine design to further reduce the visibility of the Facility. See VRA and Site Plan.

Furthermore, the project will not adversely affect the environment. See EAF. The project will have no impact on pedestrian or vehicular traffic, since the proposed Facility is



unmanned requiring infrequent maintenance visits of approximately once per month. The nature of the operations in connection with the project will not be objectionable to nearby properties or the environment since the Facility will not produce any smoke, odor, heat, dust, or fumes. See EAF. In addition, the Facility will be unmanned, will not generate solid waste, waste water or sewage, and will not require water supply or waste disposal, and will not attract insects, vermin or other vectors. Also, the Applicants have submitted a letter from APT Engineering dated October 29, 2020 (“Generator Letter”) confirming that the generator proposed at the Facility will still be compliant with the Village Code Requirements. See Generator Letter. The Facility will have no impact on historic or scenic resources. See SHPO Concurrence. Therefore, based on all of the aforementioned reasons the Facility will not have an adverse environmental impact.

With respect to health and safety, the FCC Compliance Report previously submitted, establishes that RF emissions from the Facility, even under worst case conditions, will be in compliance with all safety criteria specified by the FCC as required by the TCA. In fact, the emissions from the Facility under worst case scenarios are still less than 2.02% of the FCC limit or approximately 45 times below the applicable limit. See FCC Compliance Report.

Finally, there are no other means feasible for the Applicants to pursue, other than the area variance(s) since there are no locations on the Property that allow for the Facility to be located to at least 1,600 feet from all residences and the height proposed is the minimum height necessary. See Site Plan Sheet TR-1 and RF Report. However, the proposed location for the Facility on the Property does provide at least a 197-foot setback from the nearest existing residential dwelling (care-taker cottage on Marsh Sanctuary property), which is over the height of the Facility plus 50 feet. See Site Plan Sheet TR-1. It should also be noted that the next closest residence, that is not on the Marsh Sanctuary property, is located approximately 388 feet away from the tower, which is over two-and one-half times the height of the Facility. See Site Plan Sheet TR-1. The Facility includes a stealth design to further reduce visibility of the Facility. See VRA. Also, the Facility has been designed so as to fall completely within the Property lines in the unlikely event of a collapse. See Structural Letter.

Based on the foregoing, it is respectfully submitted that the Applicants have complied with the requirements for the grant of the requested area variances pursuant to the Rosenberg standard applicable to public utilities. As stated above because the FCC licensed carriers are public utilities for zoning purposes and the area variances requested are reviewed under the public utility exception standard. See Decarr, at 247 (“[m]oreover, inasmuch as the Applicants include a public utility, the ZBA was further limited in its discretion to deny the area variance”). Therefore, based on the aforementioned, the Applicants have complied with the requirements for the grant of area variances pursuant to the public utility exception standard. See Rosenberg. See also, Decarr.

However, in additional support of the request for area variances the Applicants offer the following:

- 1) The Facility on the Property will not produce an undesirable change in the character of the neighborhood as shown in the VRA. See VRA. The Facility will also not produce a detriment to nearby properties as the Facility will not produce any smoke,

odor, heat, dust, or fumes. See EAF. The Facility includes a stealth design Monopine. See VRA. In addition, the Facility will be unmanned, will not generate solid waste, waste water or sewage, and will not require water supply or waste disposal, and will not attract insects, vermin or other vectors;

- 2) As demonstrated on Sheet TR-1 of the Site Plan there is no area on the Property that would allow the Facility to meet the 1,600 foot setback from residential dwellings. See Site Plan. The Structural Letter also certifies that the Facility would fall well within the property lines in the unlikely event of a collapse. The Facility is needed to fill the significant gap in coverage identified in the areas surrounding the Property. See RF Report;
- 3) The requested relief is not substantial. The Facility meets all of the other setback and height requirements (see RF Report) and all other criteria for the special permit and site plan approvals requested. See Site Plan. The Facility has been strategically located so that the Facility is less visible to residential properties. See VRA. The Facility will also, in the unlikely event of a collapse, still fall within the property lines. See Structural Letter;
- 4) The Facility will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood as demonstrated in the EAF, the Generator Letter, the FCC Compliance Report and the VRA; and
- 5) The alleged difficulty is not self-created but is rather a result of the size of the Property, and the location of off-site residential dwellings. The location of the Facility is also dictated by the number of users in the area, topography, availability of obtaining a lease for the property, and the coverage needs of the area. The RF Report demonstrates that there is a significant gap in service in the areas surrounding the proposed Facility, and that the proposed Facility is of the minimum height necessary to fill this significant gap in service. Furthermore, this particular factor does not preclude the granting of the area variance. See Town Law §267-b(3)(b)(5).

Based on the above the Applicants have demonstrated that the Facility meets all of the applicable criteria for issuance of the following area variances:

- 1) Relief from setback of 1,600 feet from all residential dwellings contained in §110-27.1(E)(4); and
- 2) Relief from maximum height set by §110-27.1(E)(3).

Please note that although the Building Inspector's Memo noted a variance was needed for relief from §110-31 for a fence height of 8 feet where a maximum fence height of 6 feet 6 inches is required, the Applicants have revised the plans to propose a 6-foot fence. See Site Plan Sheet C-3. As the fence now complies with the Zoning Code no relief is necessary.

Also, although the Building Inspector's Memo noted this proposed Facility may impact the minimum lot area for the solar project on the same property, the minimum lot area

requirement does not apply to the wireless facility, and therefore no relief is required for this Application. Whether this creates an additional variance for the solar project is for the Building Inspector to decide, but this code section cannot be applied to this Facility. Out of an abundance of caution, to the extent that a variance is deemed required, the Applicants respectfully request same for all of the reasons set forth above.

**VIII. Steep Slope Permit and Compliance with §110-33.1(A) of the Zoning Code**

The Application also includes a request for a Steep Slope Permit in accordance with §110-33.1(A) of the Zoning Code. A letter from the Applicants' project engineer has been submitted herewith detailing compliance with the requirements for a Steep Slope Permit.

**Conclusion**

By granting the approvals requested herein the Planning Board and Zoning Board of Appeals will permit Verizon Wireless to improve its network and provide local businesses, residents and public service entities with a safe and reliable wireless communications alternative. There will be no significant adverse effects from the project.

WHEREFORE, for all of the foregoing reasons, the Applicants respectfully pray that the Planning Board issue a Negative Declaration, and issue the site plan approval, special permit and Steep Slope permit, and the Zoning Board of Appeals grant the Applicants' appeal of the Building Inspector's determination or in the alternative issue the area variances requested.

Dated: November 3, 2020  
Tarrytown, New York

Respectfully submitted,

/s/ Robert D. Gaudio  
Robert D. Gaudio, Esq.  
SNYDER & SNYDER, LLP  
94 White Plains Road  
Tarrytown, NY 10591

Village Attorney 2019 Memo





SINGLETON, DAVIS & SINGLETON PLLC

ATTORNEYS AT LAW

THOMAS J. SINGLETON, 1930-2015  
ROBERT F. DAVIS  
WHITNEY W. SINGLETON\*  
ALEXANDER D. SALVATO

\* ALSO MEMBER CONNECTICUT & FLORIDA BARS

120 EAST MAIN STREET  
MOUNT KISCO, NY 10549

914.666.4400  
FAX: 914.666.6442  
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May 20, 2019

Mayor Gina Picinich  
Board of Trustees  
Village/Town of Mount Kisco  
104 Main Street  
Mount Kisco, New York 10549

Hon. Douglas Hertz, Chairman  
Mount Kisco Planning Board  
Village/Town of Mount Kisco  
104 Main Street  
Mount Kisco, New York 10549

**Re: Crown Castle Cell Tower Replacement  
1 Mountain Road  
Section 69.56, Block 4, Lot 6 & 7**

Dear Mayor Picinich, Chairman Hertz and Members of the Boards:

With respect to the above referenced application, both the Village Planner and Building Inspector have requested input as to the proper application and interpretation of certain state and local laws. Accordingly, I am setting forth below the inquiries that have been made and my responses, but please keep in mind that under our Code and Village Law §7-712-a the Building Inspector is charged in the first instance with rendering interpretations. Accordingly, this is merely my suggested analysis.

First, Mr. Johannessen's May 9<sup>th</sup>, 2019 memo makes the following comment in Paragraph #6:

*"We defer to the Building Inspector and Village Attorney regarding zoning compliance, specifically as it relates to zoning tower height, setbacks, and minimum lot size, as specified within Section 110-27.1."*

The statement above emanates from earlier discussions that the Building Inspector, Planner and I have had regarding the requisite procedures and development criteria relating to applications "outside" the Personal Wireless Facilities Overlay District.

Section 110-27.1, entitled "PWSF Personal Wireless Service Facilities Overlay District" was adopted on 10-21-1996 by Local Law No. 3-1996 to (a) create an Overlay District to provide suitable choice of locations for wireless service facilities, and b) address the potential scenario where the most ideal locations are either not within the Overlay District or where Overlay District was incapable of providing a site that could provide the requisite coverage. Under § 110-27.1 H, the Planning Board is the permitting agency for special permits that are either within the Overlay District or outside the Overlay District on non-Village-owned land. Conversely, the Board of Trustees has retained jurisdiction to review and determine such special permit applications that are outside of the Overlay District and on Village-owned lands.

The Board of Trustees has enacted local law criteria or standards by which the Planning Board must evaluate and act upon its applications, as more thoroughly set forth in § 110-27.1 and § 110-46 (See §110-27.1 B). However, as the legislative body within the Village that adopts and repeals local zoning laws, the Village Board did not and does not have to subject itself to the same requirements for special permit applications before the Village Board (e.g. on Village-owned properties), affording it greater flexibility and discretion. This is specifically set forth in § 110-27.1 B which provides:

**"Except as s specified in § 110-27H (Special permits for sites outside the Personal Wireless Service Facilities Overlay District), all new personal wireless service facilities, and all additions and/or modifications to currently existing personal wireless service facilities, shall be allowed only in the Personal Wireless Service Facilities Overlay District and only pursuant to a special permit issued by the Planning Board in accordance with the criteria set forth in this section and in § 110-46 of the Zoning Law."**  
(emphasis supplied)

By implication, the local law states that applications exempted by § 110-27.1 H do not have to comply or be "in accordance with the criteria set forth in this section [§ 110-27.1] and in § 110-46 of the Zoning Law." In fact, § 110-27.1 H sets forth a completely different set of criteria by which to evaluate such applications. [§ 110-27.1 H(1)-(4)].

Section 110-27.1 H only permits exemption from the mandates of the balance of § 110-27.1 and § 110-46 where:

"a New York State-licensed professional engineer specializing in electrical engineering with expertise in radio communication facilities establishes to the satisfaction of the approving agency all of the following:

- (1) That the personal wireless service facility is needed to provide coverage to an area of the Village that currently has inadequate coverage and is of the minimum height and aesthetic intrusion necessary to provide that coverage;
- (2) That coverage cannot be provided by a personal wireless service facility located within the Personal Wireless Service Facilities Overlay District;

(3) That all reasonable measures in siting the personal wireless service facility within the Personal Wireless Service Facilities Overlay District have been exhausted; and

(4) That technical and space limitations prevent location or colocation in the Personal Wireless Service Facilities Overlay District.

Based upon the above and the submissions made to date, it seems clear that (a) the applicant's special permit application is for a facility outside of the PWSF Overlay District and (b) is on Village-owned property. Accordingly, if the applicant's RF Engineer submits documentation to sufficiently establish to the Board of Trustees' satisfaction that the four (4) criterion set forth above have been met, then the special permit application shall be deemed exempt from the other provisions of §§ 110-27.1 and 110-46. By way of example and not limitation, maximum height, setbacks, minimum lot size and other similar criteria shall not be requirements of applications on Village-owned land being reviewed by the Board of Trustees.

Notwithstanding the aforesaid, I hasten to point out that nothing within § 110-27.1 speaks to the issue of exempting any such special permit application from the requirements of § 110-45 (Site Plan Approval). Since, § 110-45 A(1) expressly provides that "site plan approval shall be required for all uses other than one-family residences and buildings accessory thereto" the Planning Board retains its site plan review authority.

In concluding the above analysis, I want to clear up a bit of confusion that seems to persist regarding the local regulation to which this site and application are subject. Having been the subject of past zoning variances and associated litigations, there seems to be some question as to how zoning regulations applied before but not now. First, zoning regulations do still apply, as evidenced by the fact that the Planning Board still possesses site plan review authority. Second, there was a legislative change in the Village's zoning as of October 21, 1996, whereby the PWSF Overlay District was created and the requirements and procedures were modified. As relates to this particular property, it was exempted from the application of many of the underlying requirements of § 110-27.1 if the mandates of § 110-27.1 H were met. The prior zoning variance applications and (and litigation) as well as Planning Board approvals all predated the adoption of the PWSF Overlay District regulations. Since the enactment of § 110-27.1, the Village Board has been the sole permitting authority for special permits and the Planning Board has solely retained jurisdiction for site plan approval (PB-2007-12, adopted 4-28-2009). Expressly within the Planning Board's resolution of Site Plan Approval, the following was recited:

*"WHEREAS, the Planning Board determined that a special permit approval was required from the Village Board because the property is Village owned and is owned and is located outside the personal wireless communication facilities overlay district; and*

*WHEREAS, the applicant received special permit approval from the Village Board and was referred back to the Planning Board to obtain site plan approval;"*

Regarding the inquiry as to whether or not the visual addendum to the EAF should be included (Paragraph #8), I concur with the Planner's position that it should be included as irrespective of the statutory form prepared by DEC, it is a requirement of the Village Zoning Code for wireless applications.

As to Paragraph #10 (whether any additional variances or modification to prior zoning board decisions needs to be made), I do not believe that any such actions need be undertaken provided that the Applicant has satisfied the four criteria necessary to be exempted from the provisions of § 110-27.1 by § 110-27.1 H. Provided that this application is exempt from § 110-27.1 it need not meet the requirements of such section or § 110-46.

Sincerely,

*Whitney Singleton*

Whitney Singleton



# Exhibit 5

## **PUBLIC NOTICE**

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village/Town of Mount Kisco, New York will hold a Public Hearing on the 15th day of December 2020 at the Municipal Building, Mount Kisco, New York, beginning at 7:00 PM pursuant to the Zoning Ordinance on the Appeal of Homeland Towers, LLC and Verizon Wireless c/o Snyder & Snyder, LLP 94 White Plains Road, Tarrytown, NY 10591, from the decision of Peter J. Miley, Building Inspector, dated October 6, 2020 including an interpretation of the zoning code that the proposed wireless telecommunications facility at the Property identified as 180 S. Bedford Road, Mount Kisco, NY 10594 and described on the Village Tax Map as Section 80.44 Block 1 Lot 1 requires certain variances. The Property is located on the South side of South Bedford Road in a Conservation Development Zoning District. In the alternative to the Applicants' Appeal of the Building Inspector's Interpretation, application is also being made to obtain a variance from §110-27.1(E)(4) for having a setback of less than 1,600 feet from all residential dwellings where 197 feet is proposed and a variance of 1,403 feet is requested, and relief from height requirement of §110-27.1(E)(3) Code of the Village/Town of Mount Kisco setting a maximum height of 80 feet where 145 feet is proposed and a variance of 65 feet is requested. The area variances are only requested in the alternative to the Applicants' Appeal of the Building Inspector's interpretation that such variance relief is required.

Harold Boxer, Chair  
Zoning Board of Appeals  
Village/Town of Mount Kisco

LAW OFFICES OF  
**SNYDER & SNYDER, LLP**

94 WHITE PLAINS ROAD  
TARRYTOWN, NEW YORK 10591

(914) 333-0700

FAX (914) 333-0743

WRITER'S E-MAIL ADDRESS  
rgaudioso@snyderlaw.net

April 6, 2023

NEW YORK OFFICE  
445 PARK AVENUE, 9TH FLOOR  
NEW YORK, NEW YORK 10022  
(212) 749-1448  
FAX (212) 932-2693

LESLIE J. SNYDER  
ROBERT D. GAUDIOSO  
DOUGLAS W. WARDEN  
JORDAN M. FRY

DAVID L. SNYDER  
(1956-2012)

Honorable Chairman Wayne Spector  
and Members of the Zoning Board of Appeals  
Village of Mount Kisco  
104 Main Street  
Mount Kisco, New York 10549

Re: 180 S. Bedford Road  
Homeland Towers, LLC & Verizon Wireless

Honorable Chairman Spector and  
Members of the Zoning Board of Appeals:


As you are aware, we are the attorneys for Homeland Towers, LLC and Verizon Wireless in connection with their application to place a public utility wireless telecommunications facility at the above referenced property.

Enclosed please find the following documents:

1. Affidavit of Mailing; and
2. Affidavit of Publication.

We look forward to discussing this matter at the public hearing on April 18, 2023. If you have any questions or require any additional documentation, please do not hesitate to contact me at 914-333-0700.

Snyder & Snyder, LLP

By:   
Robert D. Gaudioso

Enclosures  
RDG/djk  
cc: Applicants

Z:\SSDATA\WPDATA\SS3\RDG\Homelandtowers\Mount Kisco\NY172\March 2023 Public Notice\Proof of Notice Letter 04.06.2023.rtf

NEW JERSEY OFFICE  
ONE GATEWAY CENTER, SUITE 2600  
NEWARK, NEW JERSEY 07102  
(973) 824-9772  
FAX (973) 824-9774

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TARRYTOWN OFFICE

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**APR 10 2023**

**Zoning Board of Appeals  
Village/Town of Mount Kisco**

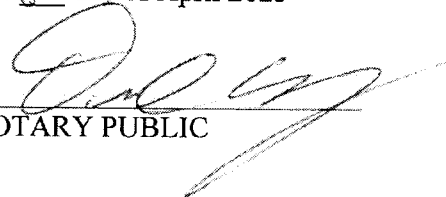
AFFIDAVIT OF MAILING

State of New York            )  
  )  
County of Westchester        )        ss:

Erica Atzl being duly sworn, deposes and says that she is over twenty-one years of age and works at 94 White Plains Road, Tarrytown, in the State of New York; that she is a paralegal at Snyder & Snyder, LLP, the attorney for Homeland Towers, LLC and Verizon Wireless regarding their application for the installation of a public utility wireless telecommunications facility at 180 South Bedford Road, Village of Mount Kisco, New York. On April 5, 2023 she served notice, a copy of which is attached hereto, upon the following named persons at the addresses set forth, as shown on the attached list, by mailing true copies of the same, enclosed and properly sealed in postpaid envelopes, which she entrusted to the exclusive care and custody of the United States Postal Service within the State of New York.

  
\_\_\_\_\_  
Erica Atzl

Sworn to and subscribed before me  
this 6<sup>th</sup> day of April 2023

  
\_\_\_\_\_  
NOTARY PUBLIC

David James Kenny  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 02KE6343903  
Qualified in Westchester County  
Commission Expires June 20, 2026

24

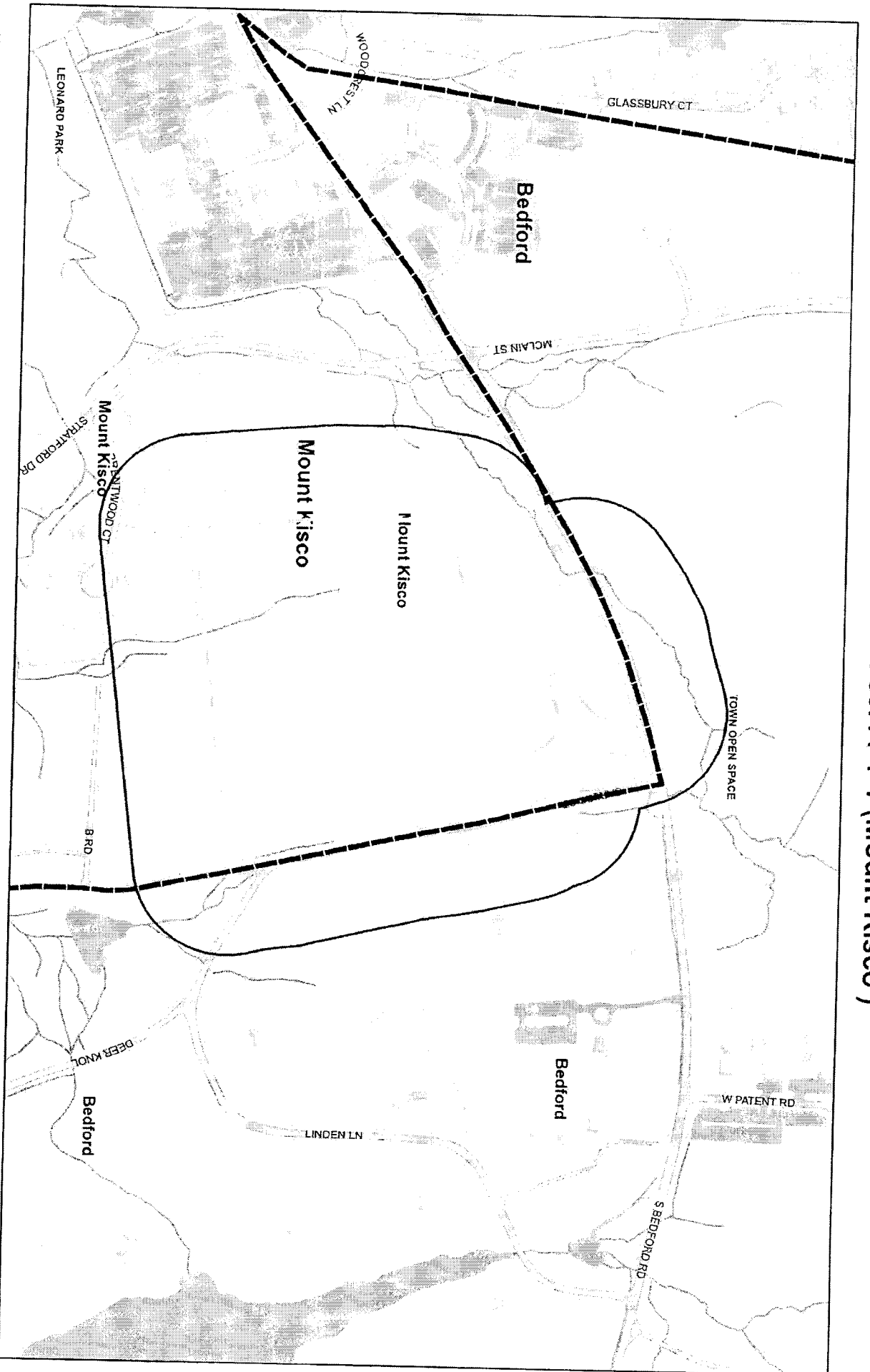


## **PUBLIC NOTICE**

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village/Town of Mount Kisco, New York will hold a Public Hearing on the 18th day of April 2023 at the Municipal Building, Mount Kisco, New York, beginning at 7:00 PM pursuant to the Zoning Ordinance on the Application of Homeland Towers, LLC and Verizon Wireless c/o Snyder & Snyder, LLP 94 White Plains Road, Tarrytown, NY 10591, for its proposed wireless telecommunications facility at the Property identified as 180 S. Bedford Road, Mount Kisco, NY 10594 and described on the Village Tax Map as Section 80.44 Block 1 Lot 1 requires certain variances. The Property is located on the South side of South Bedford Road in a Conservation Development Zoning District. Application being made to obtain variances from §110-27.1(E)(5) for: (1) having a personal wireless service facility within 500 foot of a residential dwelling with the tower being approximately 295 feet from the naturalists cottage at the Marsh Sanctuary and approximately 390 feet from the residential dwelling at 2 Sarles Street and variances of approximately 205 feet and 110 feet, respectively; and (2) a setback of less than 1,130 feet from all property lines where the tower is approximately 171' to northerly property line, approximately 103' to easterly property line, approximately 1,094' to southerly property line and approximately 147' to westerly property line is proposed and variances of approximately up to 959', 1,027', 36' and 983' respectively are requested. A variance is also requested for relief from maximum fence height requirement of §110-31(F)(2) Code of the Village/Town of Mount Kisco setting a maximum fence height of 6½ feet where up to 10 feet is proposed and a variance of up to 3½ is requested, all as subject to Planning Board's required mitigation. Any other necessary variances are also requested and in the alternative an appeal that no variances are required or that the variances required had previously been applied for.

Wayne Spector, Chair  
Zoning Board of Appeals  
Village/Town of Mount Kisco

# 180 S Bedford Rd. ID: 80.44-1-1 (Mount Kisco )



March 21, 2023

Tax parcel data was provided by local municipality. This map is generated as a public service to Westchester County residents for general information and planning purposes only, and should not be relied upon as a sole informational source. The County of Westchester hereby disclaims any liability from the use of this GIS mapping system by any person or entity. Tax parcel boundaries represent approximate property line location and should NOT be interpreted as or used in lieu of a survey or property boundary description. Property descriptions must be obtained from surveys or deeds. For more information please contact local municipality assessor's office.

1:5,000

N



Westchester County GIS

<http://giswww.westchester.gov.com>

Michaelian Office Building  
148 Marine Avenue Rm 214  
White Plains, New York 10601

Coppola George  
5 Brentwood Ct  
Mount Kisco, NY 10549

Tarnok, Maryann M  
7 Brentwood Ct  
Mount Kisco, NY 10549

Skull Island Partners LLC  
180 S Bedford Rd  
Mount Kisco, NY 10549

Marsh Sanctuary Inc  
71 Sarles St  
Mount Kisco, NY 10549

Wildlife Preserve Inc  
1001 S Bevenwyck Rd  
Parsippany, NJ 07054

Pietrobono Anna C  
2 Sarles St  
Mount Kisco, NY 10549

Paccetti Frank  
9 Brentwood Ct  
Mount Kisco, NY 10549

Mt. Kisco Chase HOA Inc  
Attn: Heritage Management Svcs  
PO Box 265  
Somers, NY 10589

Garewal, Karan  
6 Brentwood Ct  
Mount Kisco, NY 10549

Inserra, Michael J  
1001 Wootenhill Ct  
Greensboro, GA 30642

Planning Board  
Village/Town of Mount Kisco  
104 Main Street  
Mount Kisco, NY 10549

Mayor Gina D. Picinich  
Village/Town of Mount Kisco  
104 Main Street  
Mount Kisco, NY 10549

Village Board of Trustees  
Village/Town of Mount Kisco  
104 Main Street  
Mount Kisco, NY 10549

Town Clerk Lisbeth "Boo" Fumagalli  
Town of Bedford  
321 Bedford Road  
Bedford Hills, NY 10507

Building Inspector Peter J. Miley  
Village/Town of Mount Kisco  
Village Hall (1<sup>st</sup> Floor)  
104 Main Street  
Mount Kisco, NY 10549







# Certificate of Mailing — Firm

Name and Address of Sender	TOTAL NO. of Pieces Listed by Sender	TOTAL NO. of Pieces Received at Post Office™	Affix Stamp Here Postmark with Date of Receipt.			
Snyder & Snyder, LLP 94 White Plains Road Tarrytown, NY 10591	Postmaster, per (name of receiving employee)					
USPS® Tracking Number Firm-specific Identifier						
1.			Pietrobono Anna C 2 Sarles St Mount Kisco, NY 10549			
2.			Paccetti Frank 9 Brentwood Ct Mount Kisco, NY 10549			
3.			Mt. Kisco Chase HOA Inc Attn: Heritage Management Svcs PO Box 265 Somers, NY 10589			
4.			Garewal, Karan 6 Brentwood Ct Mount Kisco, NY 10549			
5.			Inserra, Michael J 1001 Wootenhill Ct Greensboro, GA 30642			
6.						



# Certificate of Mailing — Firm

Name and Address of Sender

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94 White Plains Road  
Tarrytown, NY 10591

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of Pieces Listed by Sender

TOTAL NO.  
of Pieces Received at Post Office™

Affix Stamp Here  
Postmark with Date of Receipt.

Postmaster, per (name of receiving employee)



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Firm-specific Identifier

Address

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12 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31			
Planning Board Village/Town of Mount Kisco 104 Main Street Mount Kisco, NY 10549			
Mayor Gina D. Picimich Village/Town of Mount Kisco 104 Main Street Mount Kisco, NY 10549			
Village Board of Trustees Village/Town of Mount Kisco 104 Main Street Mount Kisco, NY 10549			
Town Clerk Lisbeth "Boo" Fumagalli Town of Bedford 321 Bedford Road Bedford Hills, NY 10507			
Building Inspector Peter J. Milby Village/Town of Mount Kisco Village Hall (1 <sup>st</sup> Floor) 104 Main Street Mount Kisco, NY 10549			



**AFFIDAVIT OF PUBLICATION  
FROM**

**State of Wisconsin  
County of Brown, ss.:**

On the 6 day of April in the year 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared D. Roberts, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed, the instrument.

D. Roberts being duly sworn says that he/she is the principal clerk of **THE JOURNAL NEWS**, a newspaper published in the County of Westchester and the State of New York, and the notice of which the annexed is a printed copy, was published in the newspaper area(s) on the editions dated below:

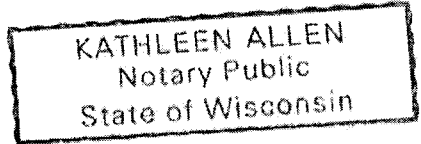
**Zone:** Westchester      **Edition Dates:** 04/03/2023

D. Roberts

Signature

Sworn to before me, this 6 day of April, 2023  
Kathleen Allen

Notary Public, State of Wisconsin, County of Brown



1-7-23

My commission expires

Legend:

**WESTCHESTER:**  
Amawalk, Ardsley, Ardsley on Hudson, Armonk, Baldwin Place, Bedford, Bedford Hills, Brewster, Briarcliff Manor, Bronxville, Buchanan, Carmel, Chappaqua, Cold Spring, Crompond, Cross River, Croton Falls, Croton on Hudson, Dobbs Ferry, Eastchester, Elmsford, Garrison, Goldens Bridge, Granite Springs, Greenburg, Harrison, Hartdale, Hastings, Hastings on Hudson, Hawthorne, Irvington, Jefferson Valley, Katonah, Lake Peekskill, Larchmont, Lincolndale, Mahopac, Mahopac Falls, Mamaroneck, Millwood, Mohegan Lake, Montrose, Mount Kisco, Mount Vernon, New Rochelle, North Salem, Ossining, Patterson, Peekskill, Palham, Pleasantville, Port Chester, Pound Ridge, Purchase, Purdys, Putnam Valley, Rye, Scarsdale, Shenecock, Shrub Oak, Somers, South Salem, Tarrytown, Thornwood, Tuckahoe, Valhalla, Verplanck, Waccabuc, White Plains, Yorktown Heights, Yonkers

**ROCKLAND:**  
Blauvelt, Congers, Garnerville, Haverstraw, Hillburn, Monsey, Nanuet, New City, Nyack, Orangeburg, Palisades, Pearl River, Piermont, Pomona, Stoughton, Sparkill, Spring Valley, Stony Point, Suffern, Tallman, Tappan, Thiells, Tomkins Cove, Valley Cottage, West Haverstraw, West Nyack

**Ad Number: 0005649449**

**PUBLIC NOTICE**

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village/Town of Mount Kisco, New York will hold a Public Hearing on the 18th day of April 2023 at the Municipal Building, Mount Kisco, New York, beginning at 7:00 PM pursuant to the Zoning Ordinance on the Application of Homeland Towers, LLC and Verizon Wireless c/o Snyder & Snyder, LLP 94 White Plains Road, Tarrytown, NY 10591, for its proposed wireless telecommunications facility at the Property identified as 180 S. Bedford Road, Mount Kisco, NY 10594 and described on the Village Tax Map as Section 80.44 Block 1 Lot 1 requires certain variances. The Property is located on the South side of South Bedford Road in a Conservation Development Zoning District. Application being made to obtain variances from §110-27.1(F)(5) for: (1) having a personal wireless service facility within 500 feet of a residential dwelling with the tower being approximately 295 feet from the naturalists cottage at the Marsh Sanctuary and approximately 390 feet from the residential dwelling at 2 Sarles Street and variances of approximately 705 feet and 110 feet, respectively; and (2) a setback of less than 1,130 feet from all property lines where the tower is approximately 171' to northerly property line, approximately 103' to easterly property line, approximately 1,094' to southerly property line and approximately 147' to westerly property line is proposed and variances of approximately up to 959', 1,027', 36' and 983' respectively are requested. A variance is also requested for relief from maximum fence height requirement of §110-31(F)(2) Code of the Village/Town of Mount Kisco setting a maximum fence height of 6½ feet where up to 10 feet is proposed and a variance of up to 3½' is requested, all as subject to Planning Board's required mitigation. Any other necessary variances are also requested and in the alternative an appeal that no variances are required or that the variances required had previously been applied for.

Wayne Spector, Chair  
Zoning Board of Appeals  
Village/Town of Mount Kisco  
0005649449



State of New York )  
 ) ss:  
County of Westchester)

AFFIDAVIT OF POSTING

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APR 11 2023

Zoning Board of Appeals  
Village/Town of Mount Kisco

**Gilmar Palacios Chin**, being duly sworn, says that on the 11<sup>th</sup> day of April 2023, he conspicuously fastened up and posted in seven public places, in the Village/Town of Mount Kisco, County of Westchester, a printed notice of which the annexed is a true copy, to Wit: ---

Municipal Building – X  
104 Main Street

Public Library X  
100 Main Street

Fox Center X

Justice Court – Green Street X  
40 Green Street

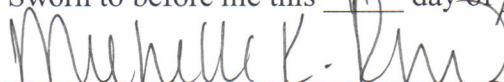
Mt. Kisco Ambulance Corp X  
310 Lexington Ave

Carpenter Avenue Community House X  
200 Carpenter Avenue

Leonard Park Multi Purpose Bldg X

  
\_\_\_\_\_  
**Gilmar Palacios Chin**

Sworn to before me this 11<sup>th</sup> day of April 2023

  
\_\_\_\_\_  
Notary Public **MICHELLE K. RUSSO**  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01RU6313298  
Qualified in Putnam County  
My Commission Expires 10-20-2026

Homeland