

ZONING BOARD MEETING OCTOBER 19, 2016

INTRODUCTION

1. Good evening. I am Bob Davis, attorney for the Applicant. With me tonight is our traffic engineer, Richard Pearson and P.E., Ralph Mastromonaco. We've given you a very comprehensive submission. So tonight I will summarize the key points. Mr. Pearson will discuss traffic, which is perhaps the only pertinent issue with respect to the variance before this Board. Most of the issues are in the purview of the Planning Board which will fully review this matter.
2. We made application to the Planning Board in July 2015 for a special permit and site plan approval for a specialty Hospital to serve people suffering from alcohol and other substance use disorders. We require an area variance, such as you've issued in the past, from the State road frontage requirement, first imposed on hospitals in residential zones in 2004. The Town Moratorium prevented us from moving forward until this July.
3. This use is consistent with the historical use of the site, which from the 1920's until about 1950 was used by the Lamb Foundation for the very same type of specialty hospital use. The buildings were specifically constructed for this use. Later there were other types of institutional uses. Special permits were issued by this Board to IBM in 1957, and later to the Hudson Institute in 1967, which used the Property from the 60's into the 80's. A special permit was issued by this Board by court order in 1989 for another hospital, but that use never commenced. (All three of those special permits allowed 225 people on site, far more than we propose.) Since Hudson Institute, the Property was owned by various corporate entities, including the Maharishi's.
4. Until our clients purchased the Property in 2010, it had been in disuse for some years, except by trespassers, who did a great deal of damage to the buildings, which became dilapidated and graffiti covered. The Property had become a haven for illegal parties and hunting.
5. Since our clients took over, they have not only secured the Property and stopped a major public nuisance in the neighborhood, but have spent over \$1.5 million toward repairing the buildings and bringing them up to Code. They have also installed fencing and planted extensive landscape screening around the perimeter.
6. To allay any concerns about the use, it is important to note from the outset what this Hospital will be and what it will not be.

7. Most people are familiar with places like the Betty Ford Clinic and Silver Hill and High Watch in Connecticut on which this Hospital will be modeled. There is no other such hospital in Westchester and given the well-publicized epidemic of substance use disorder, there can be no denying the need for one.
8. This will be a high-end Hospital for patients referred by medical professionals. Most will probably attend through corporate sponsored programs. Importantly, there will be no clients from the penal system or who are government assisted. This will be a private pay Hospital. However, our client will make various special accommodations for Cortlandt residents.
9. It is also important to note that all patients either will have undergone detox elsewhere before admission, or won't need it. They will be pre-tested to make sure they aren't currently on drugs or alcohol and, of course, there will be no such substances on site.
10. Even so, there will still be extensive professional prescreening and background checks. There will be no one who has any serious psychiatric history, violent or criminal backgrounds. Notwithstanding, there will be 24-hour professional security. A well-recognized national firm in this field will manage the Hospital.
11. In short, this will be a wellness center, intended to provide a very private, peaceful setting. There will be no disturbance, let alone danger, to the neighborhood, and the patients clearly won't want to draw attention to themselves. They will be there voluntarily, to get well.
12. This is also a very environmentally friendly use of this 20+ acre site. Only the existing buildings will be used. No new construction is proposed. Accordingly, there will be no impact on any sensitive environmental features, including any trees, slopes or wetlands. The substantial existing open space – some 75% of the Property - will remain. There is only 2% building coverage.
13. An affiliate has also purchased an adjoining 27.8-acre undeveloped site which will not be built upon, but will be used as a natural buffer area for the Hospital. Our client is willing to place a restriction on that site to prohibit its development so long as the Hospital is there.
14. Significantly, our extensive expert analysis demonstrates that there will be no adverse traffic impact. The patients will not be allowed to drive or have vehicles. Visitation will be limited to only one weekend day per month for each patient. Unlike a general hospital, there is that extremely restricted visitation, no outpatients, and no emergency room. Traffic will generally consist only of the staff at non-peak

hours. We expect to incorporate other ways to further limit traffic, including by the shuttling of staff in vans from off-site.

15. There is already sufficient private water and septic capacity on site, so there's no use of public infrastructure. There should be no impact on off-site wells.
16. As we've noted, the use is consistent with the Town's 2004 Master Plan and Open Space Plan recommendations for the site as well as the 2016 Master Plan.
17. Unlike the case with certain other permitted uses, the site will remain on the tax rolls. Based on our analysis, the taxes on the Property will increase by over a **half a million dollars** annually, although no new school children will be generated and there will be little use of Town services.
18. In sum, we really believe this is the best use of this site and that the Town will think so as well. The proposed use will have **much less impact** on the environment and the neighborhood than other permitted uses, such as a full residential subdivision of the combined 50 acres, or particularly, the types of school and religious uses which have expressed interest in the site to our clients and which are not subject to the State road frontage requirement.
19. As reflected by the materials we have submitted, this is a very well thought-out proposal. It will not have any significant impact on the neighborhood and it will benefit the Town as a whole.
20. It must also be noted that these patients are a protected class under the Americans with Disabilities Act and are entitled to reasonable accommodations in the application of local zoning laws, such as the issuance of a variance. As our analysis shows, due to the lack of residentially zoned properties with accessible State road frontage, the denial of the requested variance would essentially serve to prohibit this type of hospital in the Town.

VARIANCE

21. As the Board well knows, it has to evaluate our client's variance request by applying a balancing test which weighs the benefit to the Applicant in granting the variance against the detriment to the health, safety and welfare of the neighborhood and community. There are five specific criteria that the Board must also consider. As discussed in great detail in my Memorandum of Law, at pages 39-49 in particular, our client's entitlement to the variance, is premised in large part on the expert analysis set forth in our voluminous Expanded Environmental Assessment Report. Let's just take a look at the criteria generally tonight:

22. The benefit to the Applicant is clear. It can't use the Property as a Hospital any longer without the variance, which has not only significant economic value to our client, but would also enable its principals to fulfill a deep commitment to helping those afflicted with the disease of addiction.
23. On the other hand, the substantial record demonstrates that the Hospital will pose no detriment at all to the health, safety and welfare of the neighborhood and community, but will provide significant benefits to the community as a whole, as well as to the neighborhood.
24. Among the substantial benefits which the granting of the variance will result in for the neighborhood and the community, which will easily off-set the minimal impacts, if any, on the neighborhood , are the following:
 1. The continued refurbishing of the Property and the buildings thereon and the securing of it against the negative impacts of further trespassing.
 2. A projected increase in real property taxes to the Town and school district of some \$515,000 per year, without generating any school children and with minimal use of Town resources.
 3. 75% of the 20.83 acre Property will remain undisturbed, open space, as will the 27.8 acre adjoining Property, in furtherance of the Town's Open Space Plan.
 4. Given the absence of new construction, which would occur with other uses of the Property, there will be no disturbances caused by substantial demolition and construction activities, and there will be no disturbance whatsoever to any sensitive environmental features of the Property or the large adjoining parcel, including no impacts whatsoever on wetlands, wetland buffers, steep slopes or trees.
 5. The Hospital will give preference to Cortlandt residents, including by reserving beds for such residents, affording scholarships, and providing a favorable fee structure, augmented by their private insurance.

6. Our client will work closely with the Town and community organizations to address the substance abuse epidemic in the Town and region, including by providing speakers and programs for the Town, its schools, and local organizations such as DARE.

25. **First Criterion** – Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties – there will be no such undesirable change or detriment.

1. The use is consistent with historical hospital and other institutional uses of the site and the buildings.
2. Only the existing buildings and access drive will be utilized.
3. There will be no additional buildings.
4. Substantial additional landscape screening and fencing have been added.
5. 75% of the 20.83 acre property remains open green space, with only 2% building coverage.
6. 27.8 acre adjoining forested property to the south will remain as buffer.
7. The Property is secured from trespassing.
8. Our client has invested and will continue to invest substantial sums to repair and renovate the existing buildings.
9. There is no demonstrable traffic or other adverse impacts.
10. There are other institutional and commercial uses in near vicinity.

26. **Second Criterion** – Whether the benefit sought by the Applicant can be achieved by some method feasible for the Applicant to pursue, other than an area variance – the simple answer is no. Absent a Planning Board waiver, which the Town disputes is permitted and is not forthcoming, a variance from the State road frontage requirement is necessary for Hospital use.

27. **Third Criterion** – Whether the requested variance is substantial – As the Board knows, the law requires this is not merely a mathematical computation – which would not lend itself to a road frontage requirement in any event, as either the Property is located on the road or it is not. Substantiality must be reviewed in context. For all of the reasons we have just stated, the variance cannot be deemed substantial. Moreover:

1. While the Town’s legislative history, which we “FOILED”, doesn’t indicate this, presumably the State road frontage requirement is intended to prevent the impacts of a high traffic use – such as a general hospital – on local residential roads. In this case, as the expert analysis reflects, there will be no significant adverse traffic impacts from this particular type of hospital.
2. Further, there are various other permitted uses for which the State road frontage is not required, which would easily generate more traffic.
3. The substantiality of the frontage variance is also mitigated by the fact that the Property generally far exceeds all of the other specific bulk requirements for a hospital special permit as outlined at pages 45-46 of my Memo, such as lot size, lot area per bed, and frontage length.

29. **Fourth Criterion** – Whether the proposed variance will have an effect or impact on the physical or environmental conditions in the neighborhood – again, as we have pointed out there will be no adverse environmental impact.

1. There is no new construction, so there will be no impact on physical or environmental conditions.
2. As demonstrated by the expert traffic analysis, traffic impacts will be minimal.
3. Substantial open space will be preserved on the Property and the adjoining Property.
4. Wells and septic are in the jurisdiction of the County Health Department, but given the substantial distance away of the nearest off-site wells, there should be no impact at all.
5. The Property is not located on an aquifer or in an Aquifer Protection Zone.
6. The Property is not in the New York City Watershed.
7. There will be very minimal medical waste generated by this specialty Hospital use.

30. Fifth Criterion – Whether the alleged difficulty was self-created, which consideration is relevant, but does not preclude the granting of the variance. - We would submit that under the circumstances, there is no self-created difficulty with respect to the State road frontage issue given:

1. The long historical use of the Property for the same type of specialty hospital and the construction of the buildings for this use.
2. The issuance of a special permit by this Board by court order in 1989 for a hospital with more combined patients and staff. (75/225 vs our max of 92/178)
3. The special permits for other institutional uses before the 2004 amendment as well, including IBM and Hudson Institute, each allowing 225 employees.
4. The access drive remaining in same location.
5. The 2010 Yeshiva precedent for the issuance of a similar State road frontage variance, which occurred prior to our client's purchase.
6. The status of our client's patients as a federally protected class.

Precedent

31. The Yeshiva precedent certainly provides strong support for the issuance of the variance as well. We have discussed that at length at pages 13-17 of my Memorandum. In essence, the Yeshiva permit allows far more people on site than the proposed hospital use, (225/300) and the road on which the Yeshiva is located, which our expert has analyzed, is much like Quaker Ridge Road in its traffic characteristics.

At this juncture, I will turn the floor over to Rich Pearson to take you through traffic issues. And we'll be happy to answer any questions.

HUDSON WELLNESS CENTER
ZONING BOARD MEETING NOVEMBER 16, 2016

INTRODUCTION

1. Good evening. I am Bob Davis, attorney for the Applicants. Mercifully, I will be brief. We won't have any further presentation tonight.
2. As we discussed at the work session, we are here tonight primarily to listen to any additional public comment. For the benefit of the Board and everyone, we will fully address the comments in one comprehensive submission, hopefully for the next meeting, rather than piecemeal, which would only result in endless back and forth.
3. At the work session, we discussed the SEQRA process. In that regard, we would note that while counsel for the opposition reminded the Board that his firm represents many developers before the Town with large, complex construction projects, which *do* have significant impacts and which *do* call for a full blown coordinated SEQRA review, this is not one of those projects.
4. Our clients are not building anything. They are using the existing buildings in a manner similar to their prior approved uses. They are not touching a single sensitive environmental feature of the property. Indeed, for example, they are planting more trees, replacing the old septic system, and will shuttle employees to the site to reduce what would already be a negligible traffic impact on local roads, even under the ultra-conservative, worst possible case analysis we've submitted.
5. Our clients have the utmost respect for the Town and their neighbors, as well as for the protection of the environment and the conservation of this beautiful property. That is why they are preserving the 75% existing open space on the 20+ acre property and perserving the adjacent 27.8 acre property as natural buffer. That is why they are proposing a use that is not only consistent with the historic use, but which has far less impacts than uses permitted without *any* variance.
6. That is why they are deeply committed to working with the entire community to address the health crisis of addiction.
7. In this regard, as the Board knows, our clients' rights are not dependent on a neighborhood opinion poll. The application is governed by Federal, State and local law and the interests of the *entire* community. There are over 40,000 citizens of Cortlandt. Many of them will benefit from the services and volunteer efforts our client will provide. Given the Town's recent budget, with its 2% tax increase, they certainly will benefit by the half a million dollars our clients will be adding to annual tax revenues.

8. It should be noted that while you have heard from some nearby neighbors, the houses of the two principal parties represented by counsel are more than a mile away, so it's unclear how they will be affected.
9. So with respect to SEQRA, we would submit your process is simple. This is an Unlisted Action. You can perform your own uncoordinated review. Based on the voluminous record, there are no significant environmental impacts of your granting the variance, so there should ultimately be a Negative Declaration with your variance determination. Your variance does not even permit the proposed use to proceed. The Planning Board will perform its own SEQRA review and render its own determination.
10. Finally, with respect to the legal issue raised by opposing counsel as to what type of variance this is, we addressed that at length in our original Memorandum of Law, which we have now augmented by my letters of November 10th and 11th.

Thank you.

**HUDSON WELLNESS CENTER – THE STATE ROAD FRONTAGE VARIANCE IS AN
AREA VARIANCE, NOT A USE VARIANCE
ZONING BOARD MEETING DECEMBER 14, 2016**

1. There can be no legitimate question that a variance from the State road frontage requirement for hospital special permits is an area variance, not a use variance. We covered this point at length in our Memorandum of Law at Sections V and VI and in my letter of November 11th, and we respectfully refer the Board to those submissions for a full discussion.

2. First, as we explained in those submissions, the opponents' use variance argument has recently been rejected by both the New Castle Zoning Board – in the Sunshine Children's Home case involving some of the same opponents and a very similar nursing road frontage requirement – and by the Bedford Zoning Board.

3. Moreover, this Board, as well as opponents' counsel, have previously treated such a road frontage variance as an area variance.

4. I am sure this Board remembers that in 2010, after lengthy proceedings, you issued an area variance to the Yeshiva on Furnace Woods Road from a very similar provision of the Cortlandt Code, §307-50(B)(8), which provides that with respect to special permits for universities, colleges and seminaries: "Access to the premises shall be via state or county highways only". Zarin & Steinmetz, the law firm who represent opponents to our application, represented the Yeshiva on its application.

5. All of the current Board members were on the Board then. A copy of the Board's Decision is included as Exhibit 3 to my Memorandum of Law and a copy of the Minutes of the Board's July 18, 2007 meeting where the Yeshiva attorney presented the request for that variance is Exhibit 4 to my Memorandum. (Appendix E to EEAR)

6. There are two issues regarding the relevance and precedential value of the Yeshiva variance to this case. (1) First, it bears on the type of variance we seek and (2) we submit it supports the granting of our variance. We will look at only the first issue tonight.

7. The Yeshiva case fully supports the fact that we seek an area variance from the State road frontage requirement, not a use variance as claimed by opponents' attorneys. Tellingly, in their letter of November 7, making their use variance claim, the same attorneys, now representing the opponents rather than the applicant, don't even mention the Yeshiva case, their own case, even though we had addressed at length in my Memorandum to demonstrate this is an area variance.

8. Then they claim, rather incredibly, in their November 9th letter that the Yeshiva case cannot serve as any precedent for the granting of our area variance because: "the ZBA did not state whether it was granting the Yeshiva a use or area variance." Frankly, that statement is not only preposterous, but disingenuous, to put it mildly.

9. This Board well knows, as stated in the July 2007 Minutes, the Yeshiva attorney expressly stated that it was an area variance they sought and expressly took the Board through the statutory balancing test and the other area variance criteria. So there can be no question whatsoever that the variance that the Board granted the Yeshiva was that which they requested, an area variance.

10. There was no mention of a use variance by either the Yeshiva attorneys or the Board in that case and there was no proof of the statutory use variance criteria offered in that case, only proof of the criteria for an area variance.

11. I note also that the same Minutes reflect that the Yeshiva attorney included their request for a front yard setback variance in his very same discussion of the area variance standards as for the road frontage variance. He also argued that the variances should not be denied on the basis of community opposition, which was substantial in that case.

12. Now counsel for our opponents turns around 180 degrees and claims that completely contrary to their statements in the Yeshiva case, our client requires a use variance from the State road frontage requirement. There is no plausible explanation for their totally contradictory argument in this case. The law did not change since 2010. The nature of the variance did not change. The only distinction is that in the Yeshiva case they represented the party seeking the variance and in this case they represent the people opposing the variance. The distinction in what side they happen to be on does not change the unambiguous law applicable to this case. This is an area variance.

13. And, by the way, the Yeshiva variance likewise, was not a “dimensional” variance, but was also a “locational” variance which opponents’ counsel now claims makes our variance a use variance. They consistently ignore the dual statutory definition that area variances cover not only “dimensional requirements” but “physical requirements” as well. So based on the Yeshiva case alone, this is clearly an area variance.

14. Next, we need only look at the controlling definitions of “use variance” and “area variance” in the State Town Law (§§267(1)(a) and (b)):

“Use variance” shall mean the authorization by the zoning board of appeals for the **use of land for a purpose** which is otherwise **not allowed or is prohibited by the applicable zoning regulations.**

“Area variance” shall mean the authorization by the zoning board of appeals for the **use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.** (Emphasis supplied.)

15. Accordingly, the relevant inquiry is whether the hospital use is a “*prohibited*” purpose in the zoning district or whether the State road frontage requirement is a “*dimensional or physical requirement*”. As the hospital use is permitted in the residential district, and as “frontage” is a “physical” requirement, the clear answer, is that the frontage requirement is subject to area variance analysis. The project opponents conveniently focus only on the word “dimensional” in the statute, while studiously avoiding the word “**physical**” in the same statute.

16. Based on the statute and voluminous case law, the recognized treatise on New York Zoning Law by Dean Salkin states that frontage variances are area variances.

17. In the 1998 *Sunrise Plaza* decision we cited, rendered by the Second Department which governs our jurisdiction, the Court pointed out that by definition, a variance from a special permit requirement is an area variance, because a special permit otherwise allows the owner to use his property for the particular purpose.

18. In fact, Town Law §274-b(3), entitled “**Approval of Special Permits**”, on its face, provides that, consistent with the reasoning in *Sunrise Plaza*, *any* variance from a special permit requirement is necessarily an area variance, and is so *despite any law to the contrary*:

“Application for area variance. Notwithstanding any provision of law to the contrary, where a proposed special use permit contains one or more features which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance . . .”

19. Finally, as if the statute were not clear enough, in the Court of Appeals’ 2004 decision, in the seminal case of *Matter of Real Holding Corp. v. Lehigh*, the highest court in our State, removed any possible doubt on this issue. That case arose in the Town of Wappingers, and the Court affirmed the Second Department and the Supreme Court, Westchester County in holding that a **variance may be issued from any special permit requirement and that such a variance is an area variance.**

20. The opponents also conspicuously avoid any discussion of the *Real Holding Corp.* decision, because the Court of Appeals held that relief from another “locational” type special permit requirement for gas stations, which mandated a minimum separation from residential districts and other stations, was an area variance. Like our case, that separation requirement was not a “dimensional requirement” of the lot itself, but a “physical requirement”, which is likewise subject to an area variance under the statute.

21. The Court of Appeals laid this issue even more firmly to rest in its 2014 determination in *Colin Realty v. Town of North Hempstead*. In that case, the Court finally clarified that a parking variance – also not a dimensional variance – is an area variance in all cases, regardless of whether the required parking is based on the use or on square footage, and that the area variance rules always apply, so long as the underlying use is permitted in the Zoning District.

22. In Cortlandt, a hospital or nursing home is a specially permitted use in every residential zoning district, subject to all of the special permit requirements, which include the State road frontage requirement. There is no basis to differentiate the State road frontage requirement from all of the other many requirements set forth for a hospital special permit in §307-59(B). If the Town Board had wished to create a separate residential district encompassing only land on State roads and limited hospitals and nursing homes to that district, it could have done so, but it did not.

23. As if all of these authorities and the many cases cited in our Memorandum of Law treating frontage variances as area variances are not enough, **§280-a of the Town Law** provides that building permits for *any* use can only be issued if the building is to be located on certain types of roads, which include State roads, but expressly provides that if the building is not to be located on one of those roads, the owner may apply for an area variance. We cited a 2008 East Fishkill case where the Town's own attorneys, Wood and Klarl, prevailed in upholding a 100% area variance from the §280-a frontage requirement issued by the Zoning Board. Mr. Klarl himself argued before the Second Department and won a reversal in that case.

24. The opponents' counsel basically ignores all of the law set forth by the Court of Appeals and the State statutes. In their Nov. 7 letter, they offer just one misleading citation in support of their spurious use variance argument, the 1995 *Elwood Properties* decision, which involved a party seeking a use variance from a nursing home road frontage requirement. But not only was the question of what type of variance was necessary not even raised or addressed in that decision, more importantly, that decision preceded the Court of Appeals' 2004 decision in *Real Holding*. Prior to *Real Holding*, there was some confusion among the courts and there were cases such as *Elwood* in which some courts held that a variance from *any* special permit requirement, whether frontage or otherwise, required a use variance. *Real Holding* put those cases to rest and they are no longer good law. That includes *Elwood*, which is why it has never been cited by any other court for the proposition for which our opponents offer it.

25. In sum, we respectfully submit that this issue is beyond reasonable argument. Pursuant to overwhelming authority, our application is for an area variance. To hold otherwise, this Board would be purporting to make new law. I would think the Board would instead chose to follow the very strong current law that this is an area variance, so that its decision would not only be the correct one, but it would be far more likely to be upheld by the courts. Thank you.

**HUDSON WELLNESS CENTER –
THE STATE ROAD FRONTAGE VARIANCE IS AN AREA VARIANCE,
NOT A USE VARIANCE
ZONING BOARD MEETING JANUARY 18, 2017**

1. We have nothing new to add on the sole issue again before the Board tonight: whether a variance from the special permit requirement of State road frontage for hospitals and nursing homes is a use variance rather than an area variance.
2. As we have explained at length, there can be no legitimate question that a variance from the State road frontage requirement is an area variance. We covered this point in our October Memorandum of Law at Sections V and VI. Then we covered it again in my letter of November 11 responding to Mr. Steinmetz's letter of November 7 raising the issue. Now two months after my November 11 letter, we get a response letter from Mr. Steinmetz. And I've provided you with my letter tonight responding to him in detail. Both counsel argued the issue back and forth at great length at the December 14 meeting. All members of the public who wished to be heard at that meeting were heard. You have the outline of my presentation of the December meeting and you have the video.
3. So, in short, tonight we respectfully just summarize that the law on this issue could not be more clear.
 - (1) **First**, all relevant State statutes, including:
 - (a) that defining "area" and "use" variances (§ 267),
 - (b) that specifically providing for area variances from special permit requirements (§ 274-b(3)), and
 - (c) that specifically providing for area variances from road frontage requirements for building permits, including State road frontage (§ 280-a),
all mandate that this is an area variance.
 - (2) **Second**, the Court of Appeals, the highest court in this State, mandates that this is an area variance.
 - (3) **Third**, the precedents of this Zoning Board and other local zoning boards dictate that this is an area variance.
4. It is an area variance for two independent reasons. First, the law requires that *any* variance from *any* special permit requirement is an area variance. Second, even if that were not the case, State road frontage is a "physical requirement" and therefore falls within the statutory definition of "area variance".
5. Notwithstanding the efforts of opposing counsel, there is absolutely no law to the contrary.
6. Accordingly, any decision of the Board to the contrary would have no legitimate legal basis and would not pass judicial scrutiny.
7. Other than that, we would respectfully point out that notwithstanding this being a public hearing, this is purely a legal issue for attorneys in this field to address before the Board.
8. We would be pleased to answer any questions of the Board tonight. Thank you.