



**TOWN OF CORTLANDT**  
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PLANNING DIVISION

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TO: Chairperson Taylor & Members of the Planning Board

CC: Thomas F. Wood, Town Attorney  
Chris Kehoe, Deputy Director of Planning / Clerk to Zoning and Planning Boards

FROM: Chairperson Douglas & Members of the Zoning Board of Appeals  
Joshua B. Subin, Assistant Town Attorney

RE: The Application of Hudson Ridge Wellness

DATE: June 27, 2021

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With regard to issues that cases such as Muller<sup>1</sup> have raised concerning the authority of zoning boards of appeals, the Zoning Board of Appeals (“ZBA”), as an involved agency, respectfully requests that the Planning Board, as lead agency, refer back questions of ZBA authority after the Planning Board has made a corresponding SEQR determination and the associated fact findings.

In making this request, the ZBA notes that while in Muller the court addressed questions related to a zoning board’s authority to waive or modify conditions of a special permit, in considering the exercise of that authority the court also applied the five factors of Town Law § 267-b. Consequently, if the ZBA is to make a full determination here, we prefer to have findings of fact related to SEQR prior to undertaking our review.

As one may anticipate, some of § 267-b’s five factors have the potential to overlap with SEQR findings, especially those related to the “character of the neighborhood” or adverse effects upon “physical or environmental conditions in the neighborhood.”

See generally, Town Law § 267-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*

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<sup>1</sup> See Muller v. Zoning Bd. of Appeals Town of Lewisboro, 192 A.D.3d 805 (N.Y. App. Div. 2021) and other related cases.

*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.*

Along those lines, and among many other things, it would be helpful if the Planning Board could provide the ZBA with information related to the following, prior to its referral:

- A comprehensive community character analysis related to the proposed development, its effects on the community, population concentration, distribution and growth;
- Information about the potential for growth inducement caused by this development or any expansion of Quaker Ridge Road;
- Information related to the historic nature of Quaker Ridge Road and its corresponding designation;
- See generally, The SEQR Handbook, 4<sup>th</sup> Edition 2020, pp. 82-85
- Findings as related to the compatibility with the Town's Master Plan;
- Information related to physical environmental impacts;
- Information related to traffic impacts;
- Information related to visual impacts; and
- The long-term and short-term feasibility of mitigation proposals proposed by the applicant.

We thank you for your diligence in this, and all matters, and appreciate the job you are doing as lead agency.