

January 12, 2023

Via Town's Online Application Portal

Hon. David Douglas
Chairperson of the Town of Cortlandt Zoning Board of Appeals
and Members of the Zoning Board of Appeals
1 Heady Street
Cortlandt Manor, New York 10567

Re: *Bilal Ahmad (Cortlandt Manor Hotel)*
Application for Area Variance
2054 East Main Street, Section 23.20 Block 1 Lots 2 & 3 (the "Property")

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

We represent Bilal Ahmad ("Applicant"), the contract vendee of the above-referenced Property. We are extremely excited to be working with the Applicant and the Town to hopefully bring a high quality and much needed Marriott Hotel to the Town, located along the primary commercial corridor of Cortlandt Boulevard at the intersection with the Bear Mountain Parkway.

Given the unique topography and geometry of the Property, the Development Team has determined that certain area variances will be required from your Board. Although we have only conducted initial discussions with Town staff and the Planning Board, we all concluded it would be prudent to conduct some initial discussions with your Board at this early stage, since the necessary variances are integral to the viability of the project. As stated in the enclosed denial letter from the Town's Code Enforcement Division, dated December 9, 2022 (the "Denial Letter"), the proposed development requires area variances for relief from the Town Code's building height, parking lot landscaping and side yard setback requirements. In addition, the proposed development will require minor relief from the Town Code's on-site parking requirements.

While the Applicant is still working with the Town to confirm the precise required variances and their scope, we respectfully request that your Board place this Application on its January 19, 2023 work session and regular meeting agenda for an initial presentation and discussion. Accordingly, in support of this Application, please find enclosed the following materials:

1. Town of Cortlandt Code Enforcement Division Denial Letter, dated December 9, 2022;
2. Full Environmental Assessment Form (FEAF), dated October 18, 2022;
3. Site Plan (L1.0) prepared by Keplinger Freeman Associates and dated January 5, 2023:

4. Architectural and Elevation Plans prepared by Rod. A. VanDerWater Architect PC and dated January 10, 2023;
5. Affidavit of Ownership and Authorization dated October 17, 2022;
6. Survey prepared by Donald R. Stedje, P.L.S. and dated October 13, 2022;
7. Deed dated October 17, 2005, recorded May 31, 2006 in Control No. 461380245; and
8. Deed dated October 1, 2008, recorded October 16, 2008 in Control No. 482820309.

BACKGROUND

The Property

The Property consists of two adjacent tax parcels with a total lot area of approximately 2.43 acres and is located within the Town's Designed Commercial (CD) District. The Hotel is a principal permitted use within the CD. With access to Jacobs Hill Road via two existing curb cuts, the Property is bounded on the east by East Main Street (Route 6), to the north by Bear Mountain State Parkway's on/off ramp, to the south by Jacobs Hill Road and a multi-tenant commercial plaza on the south side of Jacobs's Hill Road, and to the west by undeveloped land zoned in the Town's Planned Village Development (PVD) District. The Property is currently improved with a small structure.

Proposed Hotel

The Applicant submits this application to permit the construction of a new five-story hotel on the Property. The hotel building will include 93 rooms, an indoor swimming pool, fitness center, professional conference center, and a full bar and grill. The Applicant intends this to be branded or flagged as a Courtyard by Marriott. Other site improvements will include an outdoor parking lot with 93 parking spaces, a courtyard deck, tiered retaining walls and extensive landscaping (collectively, the "Project").

SEQRA AND PLANNING BOARD

Prior to the filing of this Application, the Applicant filed an application with the Town's Planning Board for Site Plan Review. The Applicant presented the Site Plan application to the Planning Board on December 6, 2022, and on January 10, 2023 the Planning Board declared itself lead agency under SEQRA.

As the Board knows, Town Code Section 307-92(a) and Town Law Section 267-b grants the Zoning Board of Appeals ("ZBA") the authority to grant area variances from the Town Code's area or dimensional requirements. In granting such area variances, the ZBA "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." (N.Y. Town Law § 267-b.). In making the above determination, the ZBA must consider the following factors: (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. (N.Y. Town Law § 267-b.)). As discussed in detail below, the benefit of granting the requested variances outweighs the detriment, if any, to the health, safety and welfare of the neighborhood or community by such grants. As such, we respectfully request that the ZBA grant the proposed Application.

As a threshold matter, this Project will provide numerous benefits to the Town and, as described herein, will not result in any significant adverse environmental impacts. The Property is located in the Town's Designed Commercial (CD) District, which permits as-of-right the proposed hotel use. Due to the Project's location, a hotel is arguably the best and most efficient use of the Property. The Property abuts a primary arterial roadway in East Main Street (US Route 6) and is also adjacent to the Bear Mountain Parkway on and off ramp. As such, the Property an ideal location for a hotel as it is easily accessible to travelers while avoiding any significant increase in traffic through Cortlandt's commercial corridor, let alone during peak hours. In addition, the Property's close proximity to the Town's already developed commercial district will afford Town's businesses the benefits of increased foot traffic. Given the above, the Project satisfies the Town Code's express intention of the CD District, which is "to provide a means for the establishment of well-designed, efficient retail shopping centers *and complementary activities serving a wide area.*"

In addition, the Project will be carefully constructed into the existing site slope, thus utilizing retaining walls to minimize grading. The proposed retaining walls will be staggered and terraced to reduce the height of each section of the wall to no more than six feet in most locations. The Project also includes extensive landscaping both between the retaining wall tiers, as well as throughout the Project site. The use of extensive landscaping will soften the appearance of the development as viewed from the surrounding properties. As such, the Applicant submits the Project would not result in any significant adverse visual impacts.

Further, the Project will not result in significant adverse stormwater drainage impacts. The Project includes the installation of a drainage system that will control stormwater on-site. The Applicant is also seeking to include only the parking which is deemed necessary for the proposed hotel use, therefore minimizing the impervious surface area and further enhancing on-site stormwater management.

Lastly, the proposed hotel use is a low impact use that will not result in any significant adverse noise impacts. Again, the Property abuts a primary arterial roadway as well as the Bear Mountain Parkway. Further, the Property is adjacent to an existing commercial center with fitness center, medical, restaurant and spa uses. The proposed hotel use will not result in significant noises that would regularly exceed the ambient noise for the area. As such, the proposed use is highly unlikely to result in an adverse noise impact.

VARIANCES SOUGHT

The development of the Property requires a total of five (5) variances, each of which is analyzed below. While the Applicant will explain how each requested variance satisfies the statutory analysis, the Applicant will first explain how the variances viewed as a whole, satisfy the required analysis.

First, the Hotel will not produce an undesirable change in the character of the neighborhood. The site is zoned for the use and it is something that the Town has long sought to have established for residents, their family members, and the surrounding business community. As we shall explain, the height of the structure, the location of the building and landscaping, and the quantity of parking work for this use on this site. None of the necessary variances required will create an adverse impact to the character of the community, let alone the Route 6 corridor. See, e.g., Quintana v. B.Z.A. of Muttontown, 120 A.D.3d 1248, 992 N.Y.S.2d 332, 334 (2d Dept. 2014) (affirming annulment of ZBA denial of area variances because “although there was some support in the record for the conclusions of the [subject ZBA] that the petitioners’ difficulty was self-created, and that the requested lot-depth variance was substantial, there was no evidence that granting the variance would produce an undesirable change in the character of the neighborhood, adversely impact on physical and environmental conditions, or otherwise result in a detriment to the health, safety, and welfare of the neighborhood or community”); Schumacher v. Town of East Hampton Z.B.A., 46 A.D.3d 691, 849 N.Y.S.2d 72, 74–75 (2d Dept. 2007) (holding that ZBA “improperly succumbed to community pressure” in denying area variances “since there was no evidence that granting the proposed variances would have an undesirable effect on the character of the neighborhood, adversely impact physical and environmental conditions, or otherwise result in a detriment to the health, safety, and welfare of the neighborhood or community”); Filipowski, v. Z.B.A. of Greenwood Lake, 38 A.D.3d 545, 547, 832 N.Y.S.2d 578, 581 (2d Dept. 2007) (holding that denial of variance was arbitrary and capricious because “although the evidence established that the variance sought was substantial, there was little, if any, evidence presented to demonstrate that granting the variance would have an undesirable effect on the character of the neighborhood, adversely impact on physical and environmental conditions, or otherwise result in a detriment to the health, safety, and welfare of the neighborhood or community.”). As explained above, the Project the variances would allow is in harmony with the character of the community.

Second, the Applicant has no viable alternative to the variances requested, and, in the absence of these variances, no reasonable development could be built on the property. Marriott has a minimum number of rooms that must be established to ensure the Hotel is of a size and quality to retain and perpetuate brand loyalty. That was a critical starting point. As the Applicant’s project engineers shall explain, given the topographic slope from the back to the front of the Property, there is no way to design and grade the site with the front entrance facing Jacobs Hill Road. The slope precludes that. So with an attractive front vestibule and entrance at the rear, and four stories of rooms including the entrance level, the building becomes five (5) stories because the grading falls off to the Route 6 side. There is simply no alternative. The same is true for the setbacks, landscaping and parking.

Third, we submit that given the circumstances, the variances are not substantial. Even if the variances were deemed substantial, it is settled law that “[s]ubstantiality cannot be judged in the

abstract; rather, the totality of relevant circumstances must be evaluated in determining whether the variance sought is, in actuality, a substantial one.” Lodge Hotel, Inc. v. Town of Erwin Z.B.A., 21 Misc. 3d 1120(A), 873 N.Y.S.2d 512 (Sup. Ct. Steuben Cnty. 2007), aff’d, 43 A.D.3d 1447, 843 N.Y.S.2d 744 (4th Dep’t 2007); see also Sasso v. Osgood, 86 N.Y.2d 374, 385, 633 N.Y.S.2d 259, 264–65, (1995) (holding that even where “the variances sought [are] substantial” variances are appropriately granted where “granting the variances would merely permit [a party] to use his property for a permitted use equal to all other neighboring lots”); Wambold v. Southampton Z.B.A., 140 A.D.3d 891, 32 N.Y.S.3d 628, 630 (2d Dep’t 2016) (“While we agree with the petitioner that the proposed variance was substantial, there was no evidence that the granting of the variance would have an undesirable effect on the character of the neighborhood, adversely impact physical and environmental conditions, or otherwise result in a detriment to the health, safety, and welfare of the neighborhood or community.”); Baker v. Brownlie, 248 A.D.2d 527, 529–30, 670 N.Y.S.2d 216, 218 (2d Dep. 1998) (holding that it was arbitrary and capricious to deny area variances where the resulting project “will not have any appreciable impact on physical or environmental conditions in the area, notwithstanding that a substantial variance may be technically necessary”). Here, the requested variances would not have an undesirable effect on the character of the neighborhood, adversely impact physical and environmental conditions, or otherwise result in a detriment to the health, safety, and welfare of the neighborhood or community.

Fourth, the Applicant submits that the requested variances will not cause adverse environmental impacts. Courts uniformly reject such speculative and unverified assertions about environmental considerations related to variances. See, e.g., Quintana, 120 A.D.3d at 1249, 992 N.Y.S.2d at 334 (affirming annulment of ZBA denial of area variances because, *inter alia*, there was no evidence that the variance grant would adversely impact physical and environmental conditions, or otherwise result in a detriment to the health, safety, and welfare of the neighborhood or community; Schumacher, 46 A.D.3d at 693, 849 N.Y.S.2d at 74-75 (same); Wambold, 140 A.D.3d at 893, 32 N.Y.S.3d at 630 (affirming area variances grant because, *inter alia*, there was no evidence that the variance grant would adversely impact physical and environmental conditions). If anything, the project the variances would allow would have a positive impact on the environment, including by addressing an existing drainage condition. We fully understand that the Planning Board as lead agency will conduct a comprehensive review under SEQRA.

Fifth, and finally, even if the hardship were self-created, this factor is not dispositive to its analysis, and certainly should not be in this case, where the totality of the circumstances show the merit of the requested variances. See N.Y. Town Law § 267-b(3)(b) (“whether the alleged difficulty was self-created . . . shall not necessarily preclude the granting of the area variance.”); De Sena v. Bd. of Zoning Appeals of Inc. Vill. of Hempstead, 45 N.Y.2d 105, 408 N.Y.S.2d 14, 15 (1978) (“A finding of self-created hardship normally should not in and of itself justify denial of an application for an area variance”); Sasso v. Osgood, 86 N.Y.2d 374, 633 N.Y.S.2d 259, 265 (1995) (holding the granting of an area variance was proper even when a parcel with a substandard lot size was purchased by an applicant who knew variances would be required).

With that overriding framework, the Applicant will next address how each requested variances meets each of the statutory factors.

Individual Side Yard Setback Variance

The Property requires a variance from the CD District's 50-foot individual side yard setback requirement, where the Applicant proposes a 44-foot side yard setback along the northerly side yard. (Town Code § 307-17, Attachment 5-Table of Dimensional Regulations, Nonresidential Districts). The northerly side yard abuts the Bear Mountain Parkway on/off ramp.

The impact of the reduced side yard setback along the Property's northerly boundary line is minimal, if any. As stated, the Property's northerly boundary line abuts the Bear Mountain Parkway on/off ramp. This is a high-intensity non-residential use. The setback requirement cannot be complied with due to the Property's existing conditions. Specifically, there are several characteristics of the Property that make compliance with this requirement particularly challenging. These include a majority of slopes on site being greater than 10%, the relative shallow depth to bed rock and evidence of rock outcroppings, aligning the proposed access drive on site with access across Jacob's Hill Road, and non rectilinear shape, making location for building envelope limited. The Applicant's Development Team will further explain this during its presentation to your Board.

Corner Lot Side Yard Setback Variance

The Property requires a variance from the CD District's 75-foot corner lot side individual side yard setback requirement, where the Applicant proposes a 45-foot side yard setback along the southerly side yard. Town Code § 307-4. The southerly side yard abuts Jacobs Hill Road and is across from the aforementioned multi-tenant commercial plaza. As explained above, the same geometric site constraints make compliance with this requirement impossible if a building of this nature is to be achieved. The benefit to the Applicant of this corner lot variance, as well as the side yard variance, significantly outweighs any perceived detriment.

Building Height

The Property requires a variance from the CD District's maximum 3 story/35-foot height requirement, where the Applicant proposes a 5-story/48'10" building. (Town Code § 307-17, Attachment 5-Table of Dimensional Regulations, Nonresidential Districts). While this is clearly the most significant variance request, we submit the impact of this variance is minimal. Due to the site's topography, despite the westerly façade of the building being only 4-stories, the drop in elevation results in a 5-story structure on the easterly façade. The Applicant is attempting to provide the requisite number of hotel rooms, while simultaneously minimizing blasting and using the site's natural grade as much as possible. The Applicant maintains that this is the minimum variance necessary to use the Property for the permitted hotel use.

Further, due to the Property's topography and the extensive landscaping proposed, the impact of the building height will be minimal. The view from East Main Street will be reduced by the setback, the landscaping and the ornamental retaining walls. In addition, the view from Jacobs Hill, including the residences to the west, will not be problematic due to the combination of natural screening

elevated above the ground level surrounding the building and the reduced building height on the westerly façade, both due to the Property's topography. Therefore, the granting of the requested building height variance is consistent with the neighborhood and will not have an adverse impact on the physical or environmental conditions of the neighborhood. Accordingly, this variance would not produce an undesirable change in the character of the neighborhood; rather, it would allow development consistent with the prevailing community character.

Parking Lot Landscaping and Off-Street Parking Variance

Lastly, the Property requires a variance from the Town's parking lot landscaping and off-street parking requirements. Town Code Section 307-22.B.1 requires landscaping in parking areas equal to a minimum of 5% of the total area within the perimeter of the parking area. Town Code Section 307-29.C requires a minimum of 1 stall per room plus 1 stall per employee on maximum shift for a hotel use. Here, the 93-room hotel with 7 employees on maximum shift requires a total of 100 off-street parking spaces, where 93 are provided.

The Applicant previously proposed 100 parking spaces, thus complying with the Town Code's off-street parking requirements. However, both in response to the comments of the November 28, 2022 Westchester County Planning Board Referral Review letter and in an effort to provide some level of parking lot landscaping, the Applicant subsequently reduced its off-street parking count to allow for the landscaped islands as shown on the enclosed site plan. Importantly, prior to making this change, the Applicant confirmed with the Marriot that only 93 parking stalls are necessary for a 93-room Courtyard by Marriot hotel at this location.

The impact of granting these variances is minimal. First, due to the Property's topography and the site plan design, the parking area will be largely screened thereby satisfying the purpose of the parking lot landscaping requirement. The site plan design locates nearly the entire parking on the west side of the site (i.e., behind the building when viewing the Property from East Main Street). In doing so, the parking area is screened from East Main Street. In addition, by locating the parking in the westerly side of the Property, the natural topography, when combined with the landscaping surround the parking area, will largely screen the parking area from the properties to the west of the site. Lastly, the topography results in the Property being raised in elevation from Jacobs Hill Road. Thus, the parking area will be screened from the properties to the south. This screening, when combined with the parking lot landscaping proposed, will create a soft appearance that is not fully visible to nearby property owners. Second, full compliance with the off-street parking requirements would result in excessive parking and a reduction in parking lot landscaping. Marriot, who has an interest in each of its patrons having on-site parking, has stated that 93 parking spaces is sufficient for this proposed hotel location. As such, there is no need for the additional 7 parking spaces.

CONCLUSION

On balance, granting the requested variances will not produce a detriment to the health, safety or welfare of the community. In contrast, the Applicant, as well as the Town and its residents, would benefit by permitting the redevelopment of the Property as currently proposed. We respectfully request, therefore, that your Board grant the requested area variances.

Again, we ask that the Board place this Application on its January 19, 2023 work session and regular meeting agenda for an initial presentation and discussion and look forward to appearing before your Board. In the meantime, please do not hesitate to contact us with any questions.

Respectfully submitted,

ZARIN & STEINMETZ LLP



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