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August 23, 2022

Hon. David Douglas, Chairman  
and Members of the Zoning Board of Appeals  
1 Heady Street  
Cortlandt Manor, NY 10567  
Attn.: Chris Kehoe

*Re:* Matter of Hudson Ridge Wellness Center, Inc. and  
Hudson Education and Wellness Center

Dear Chairman Douglas and Member of the Board:

This letter addresses the principal issues raised by the opposition group and its counsel at the June 27, 2022 public hearing session.

**The Other Non-Residential Uses Permitted in the R-80 Residential Zoning District**

The opposition group constantly raises its general objection that a “commercial use” – which is how they mischaracterize the proposed specialty hospital – should not be permitted in a residential zone. However, the opponents studiously ignore the fact that, as reflected in the attached highlighted copy of the “Table of Permitted Uses” in the Town Zoning Code, there are approximately **40 non-residential uses**, not including enumerated subcategories of such uses, permitted in the R-80 Residential Zoning District in which the property is located. Some 13 such non-residential uses are permitted as of right, while the others require a special permit. (See **Exhibit A** hereto.)

Only four of the 40 non-residential uses require frontage on a State or County road, i.e., Conversion of dwelling to funeral service or construction of funeral service facility (enumerated State roads or Oregon Road) (§307-47); University, college or seminary (State or County highway) (§307-50); Hospital or nursing home (State road) (§307-59); Offices of doctors, dentists or other health-care practitioners (State road or Oregon Road).

The non-residential uses permitted as of right, and without the necessity of State road frontage, include houses of worship with associated nursery schools, public and private schools, government buildings, including libraries and public utility facilities.

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### **Existing Non-Residential Uses in the Neighborhood**

As set forth in Volume I of the Applicant's "Consolidated Expanded Environmental Assessment Report", dated March 2019, pages 25, 47, 56, 85, 108-109, there are currently, or until recently have been, other non-residential uses in the neighborhood where the Applicant's property is located.

At least one of the nearby properties, directly across the street, has horse stables and corrals along its Quaker Ridge Road frontage. Until recently, it has been known as Rolling Stone Farm LLC, with an address of 99 Quaker Ridge Road.

Also, until recently, the Danish Home for the Aged, a nursing home for about 24 residents, operated nearby at 1065 Quaker Bridge Road since 1954. Currently, the Gurdjieff Foundation is pursuing an application before the Town to use the Danish Home site for a significant, "non-school curriculum program", a purportedly permitted religious use, including provision for up to 75 people to stay overnight. At its July 12, 2022 meeting, the Planning Board scheduled a public hearing for September 6, 2022.

The GE Learning Center, which conducts large programs, is located nearby at 1 Shady Lane Farm Road/1 Old Albany Post Road.

Lakewood House, near the Danish Home site, at 2125 Quaker Ridge Road, is a commercially used Estate property advertised as providing lodging for 18 guests and as being available for gatherings such as weddings and family reunions.

Regarding the Danish Home site, that property also now has a Verizon wireless cell tower, pursuant to a special permit approved by the Zoning Board on February 15, 2017. On or about July 12, 2022, the Building Department issued a Certificate of Completion for the cell tower and the Planning Board renewed its Special Permit for five years on that date.

Approximately 0.3 miles to the northeast of the Danish Home site, along Quaker Ridge Road, are high tension Con Ed overhead utility lines, within an approximately 350 foot-wide easement corridor, where trees and large vegetation have been cleared.

Thus, the proposed specialty hospital is *not* out of character with the neighborhood.

### **The Historical Use of the Property for Non-Residential Purposes**

In alleging the purported impact which the proposed specialty hospital will have on the character of the neighborhood, the opposition group also ignores the prior non-residential uses of the property subsequent to 1948, which was when the original hospital on the property closed after over 20 years of operation, and when the neighborhood was not nearly as developed as it is today. Accordingly, they have disregarded the more intensive institutional use of the property from 1948 into the mid 1980's, when the neighborhood was as fully developed as it is today, and the Town's approval of a more intensive hospital use in 1989.



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The opponents also ignore the fact that the existing buildings on the property were essentially abandoned from the mid 80's and the property (and neighbors) subjected to unlawful trespassing, parties, and hunting, until the Applicant's affiliate purchased the property in 2010 and commenced spending millions of dollars to secure the property and to rehabilitate the severely damaged buildings.

Finally, the opponents consistently ignore as well the fact that the specialty hospital will use only the existing buildings on site, which have been used for non-residential, institutional purposes since the 1920's, when they were constructed for the original hospital use. There is no new building construction proposed.

A summary of the history of the property is set forth in Volume I of the Applicant's "Consolidated Expanded Environmental Assessment Report" of March 2019, at pp. 47-49, as follows:

The property has been developed since the 1920's and has contained a variety of institutional tenants, including a hospital/sanitarium as discussed below.

The property was previously similarly used as a hospital to treat substance use disorder, having been built in 1920 by a New York physician, Dr. Robert Lamb, who designed the site to serve as a specialized medical care center ("sanitarium") as noted in the original property building card (see Appendix I.I) with the purpose of providing highly individualized care for his patients (especially those requiring mental rehabilitation) (Appendix I.M). Dr. Lamb's design of the site and the main building reflected his belief that a typical hospital-like atmosphere should be avoided. The hospital was closed in 1948 and leased to several tenants and the rental income used to finance grants to the Albany Medical School and the University of Vermont Medical College, as specified by Dr. Lamb. The outbuildings were constructed in the 1920's and 1930's with the exception of the maintenance garage, which was constructed in the 1970's (Appendix I.I.)

Subsequent institutional tenants included the Maryknoll Sisters, who needed interim accommodations while their new convent was being built in Ossining. The Sisters left in 1957 and the estate was sold to IBM, whose Research Division used the site until 1961 when the Thomas J. Watson Research Center was completed in Yorktown. In 1957, the Lamb Foundation made an application for a special permit to permit IBM to use the property for laboratory and office use. This entailed the construction of a parking area for 55 cars with the provision for another 35 cars in the future. The permit was subsequently granted as Zoning Board of Appeals (ZBA) Case No. 3A-57, 4-57. The Zoning Board's 1968 resolution in Case No. 2-68 granted an amendment to the special permit previously issued to the Hudson Institute (who occupied the site beginning in 1962 and into the early 1980's), thereby documenting that special



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permit. In addition, ZBA Case No. 7-67, minutes of meeting and special permit dated March 23, 1967, permitted the Hudson Institute a maximum property occupancy of 225 persons (Appendix 2.C and Appendix I.M M.I-M.7). In 1981, a Certificate of Occupancy was filed for the one family residence on the site. This compares with a maximum occupancy of 129 [now only 75] persons for the proposed Specialty Hospital.

As noted above, the site was occupied beginning in 1962 and into the early 1980's by the Hudson Institute, a private, non-profit research institute studying public policy issues. The Institute moved its headquarters to Indianapolis in 1984.

In ZBA Case No. 170-86, a special permit was issued in 1989 for a hospital and/or nursing home to operate as a Residential Community Re-entry Facility for persons who suffered brain injuries. This permit had been denied twice by the Zoning Board and was finally directed by the Supreme Court of Westchester County, via Judge Rosato in Article 78 proceeding, Index No. 12830/88. There was a Planning Board Resolution as well in PB 46-86. The ZBA's notable conditions of approval (see Appendix I.M M.6) included the limitation to 75 patients, but with a total 225 combined patients and employees permissible on-site at one time, as opposed to 178 total over 24-hours as proposed by the Applicant at ultimate maximum occupancy, with a maximum of 129 at any one time at the largest combined shifts [under the prior 92 bed proposal - now only 75 maximum under the current 52 bed proposal]. Apparently, this hospital did not commence operations. In addition, the special permits for IBM and Hudson Institute allowed 225 employees on site.

Thus, the Town has previously approved at least **3** much more intensive non-residential uses of the property since the Lamb Hospital closed, all allowing up to 225 persons on site at one time, **three times** the maximum of 75 staff and patients to be on the site at one time for the proposed specialty hospital. Two of those more intensive uses existed for a combined 2½ decades and through the full development of neighborhood, and one was approved thereafter in 1989.

**The Proposed Hospital will Generate Less Impact on the Neighborhood than Other Uses Permitted As Of Right**

At the June 27, 2022 public hearing session, the opposition group falsely claimed that the Applicant had provided no proof of its statement that the proposed specialty hospital will generate less impact than other uses permitted as of right. To the contrary, in its environmental and traffic submissions, the Applicant has previously provided a detailed comparison of the traffic to be generated by the specialty hospital, under the original 92 bed proposal to uses permitted as of right, as well as to previously permitted uses for which the property was approved. See, for example, Table III C-4, Revised 3/24/2017, "Showing Comparison of



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Potential Development Traffic Volumes”, a copy of which is included, among other places, as Appendix 5K to the Applicant’s “Consolidated Expanded Environmental Assessment Report”, Volume 2, March 2019 and which was accepted by the Town’s Traffic Consultant. Of course, the impact of the proposed hospital, which has now reduced its bed count by 43%, to 52, will now clearly be much less. Another copy of Table III. C-4 is submitted herewith as **Exhibit B**.

The Applicant provided a similar favorable comparative analysis for a 10-lot residential subdivision of its 20.83 acre property. See **Exhibit C** hereto, which juxtaposes Traffic Tables submitted by the Applicant, dated September 14, 2015, March 24, 2017, and March 24, 2022, respectively. Were the Applicant also to include its adjoining affiliated 27.8 acre property for at least a 20-lot subdivision., the residential subdivision traffic could be expected to double, thereby rendering the comparative analysis even more favorable. Of course, such a new subdivision would also necessarily entail the demolition of the existing buildings and the destruction of some 40 acres of open space, which will be preserved by the approval of the proposed specialty hospital. Further, private residences would not be subject to the types of restrictions to which the Applicant has agreed, such as on lighting, use and location of windows, doors and generators, night activities, parking, pools and tennis courts.

**The Town’s State Road Frontage Requirement for Hospitals and Nursing Homes was not Intended to Apply to this Limited Specialty Hospital Use**

The opposition group has made much of the fact that in adding the State road frontage requirement for hospitals and nursing homes to the Town Zoning Code in 2004, the Town Board intended that hospitals be located only on a busy State thoroughfare reflecting the intensity of the use. Notwithstanding that the Applicant has the legal right to seek an area variance from the State road frontage requirement or any other physical or dimensional requirement of the Zoning Code, the opponents’ argument is misplaced.

While the Town’s legislative history doesn’t specifically indicate, presumably the State road frontage requirement was intended to prevent the impacts of a high traffic use – such as a general hospital – on local residential roads and to reflect that the existing general hospital in Town is on a State road. In this case, as the expert analysis and the Planning Board’s Negative Declaration show, there will be no significant adverse traffic impacts from this specialty hospital. The State road requirement wasn’t aimed at this type of more limited use, with its far fewer patients and staff, employee shuttle vans, no emergency room or outpatients, longer patient stays, no patient cars, and very limited visitation, among many other mitigative factors.

Further, as noted above, the expert reports demonstrate that there are various other permitted uses for which State road frontage is not required, which would easily generate more traffic and other impacts.



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Notably, other than for the road frontage requirement, the property generally far exceeds all of the other specific bulk requirements for a hospital special permit as outlined at pp. 45-46 of our 2016 Memorandum of Law, another copy of which has been submitted to the Board in connection with this latest proceeding, such as lot size, lot area per bed and frontage length.

Accordingly, with respect to the third statutory area variance criteria – whether the requested variance is substantial – as the Board knows, the law requires that 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 a State road or it is not. Rather, substantiality must be reviewed in context. On the basis of the foregoing, the requested road frontage variance cannot be deemed to be substantial. This is particularly true when the opponents have produced no legislative history whatsoever with respect to the State road frontage requirement which would indicate that the Town Board ever had in mind this type of limited specialty hospital use when it enacted the 2004 amendment. Clearly, no evidence of any such legislative intent exists.

#### **The Zoning Board is Bound by the Planning Board's Negative Declaration**

As stated in my letter to the Board of June 14, 2022, as held by the Court of Appeals in *Gordon v. Rush*, 100 N.Y.2d 236, 762 N.Y.S.2d 18 (2003), an involved agency “under SEQRA”, such as your Board, is “bound” by the Negative Declaration of the “Lead Agency”, under SEQRA, and may not perform its own independent review.

In accord, see, *Beer v. New York State Department of Environmental Conservation*, 189 A.D.3d 1916, 138 N.Y.S.3d 684 (3d Dep't 2020); *Turkewitz v. Planning Board of City of New Rochelle*, 24 A.D.3d 790, 809 N.Y.S.2d 113 (2005) (2d Dep't 2005) (“The Planning Board, as an involved agency for SEQRA purposes . . . properly relied upon the finding set forth in the Final Environmental Impact Statement circulated by the Board of Appeals on Zoning of the City of New Rochelle, which appropriately designated itself as the lead agency”.); *Rimler v. City of New York*, 53 Misc.3d 1212 (A), 50 N.Y.S.3d 28 (Sup. Ct., Kings Cty. 2016) (involved agency was bound by the negative declaration of the lead agency and consequently had no authority to revisit the project's environmental analysis or to reverse the lead agency's determination of no potentially significant adverse impacts.); *Scott v. City of Buffalo*, 28 Misc.3d 1135 (A), 867 N.Y.S.2d 378 (Sup. Ct. Erie Cty. 2008) (“ . . . [I]nvolved and interested agencies are obligated to advise the lead agency of any relevant environmental concerns and are bound by any determination of significance issued by the lead agency.”); *Falco Realty, Inc. v. Town of Poughkeepsie Planning Board*, 10 Misc.3d 1078 (A), 814 N.Y.S.2d 890 (Sup. Ct., Westchester Cty. 2006) (“Here, many of the issues raised by petitioner were addressed by the DEC [the lead agency] in its SEQRA analysis. As such, the Planning Board, as an involved agency under SEQRA, properly relied upon the findings set forth in the DEC's negative declaration”, citing *Turkewitz, supra*); *Freck v. Town of Porter*, 158 A.D.3d 1163, 71 N.Y.S.3d 2052 (4<sup>th</sup> Dep't 2018) (“we reject petitioner's further contention that the ZBA was not bound by the negative declaration issued by the New York State Department of Environmental Conservation with respect to the excavation aspect of the project.”); *Town of Blooming Grove v. County of Orange*, 103 A.D.3d 655, 959 N.Y.S.2d 265 (2d Dep't 2013); *Sylvan Development Corp. v. Westchester*



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*Joint Waterworks*, 50 A.D.3d 692, 853 N.Y.S.2d 918 (2d Dep't 2008) (SEQRA does not require multiple environmental reviews of the same action.); *Incorporated Village of Poquott v. Cahill*, 11 A.D.3d 536, 782 N.Y.S.2d 823 (2d Dep't 2004) (SEQRA review ends with the lead agency's determination of significance and no involved agency may later require a second determination.)

Likewise cited in my July 14<sup>th</sup> letter to the Board was the Third Department case, *Troy Sand & Gravel Co., Inc. v. Town of Nassau*, 101 A.D.3d 1505, 957 N.Y.S.2d 444 (3d Dep't 2012), in which the Court held that albeit the lead agency's SEQRA determination does not preclude an involved agency from independently reviewing an application in applying the Town's zoning ordinance, that involved agency, "in its review of, among other things, the environmental impact of the [proposed use] under its zoning regulations, will necessarily take into consideration and abide by [the lead agency's] SEQRA determination . . ." and, [o]f course, the [involved agency's] ultimate determination is subject to CPLR article 78 review, and will be upheld only if it is rational and supported by substantial evidence. . . . In the event that the [involved agency] evaluates environmental concerns which overlap with environmental findings made by [the lead agency] in the SEQRA process, any contrary or conflicting finding by the [involved agency] would, of course, have to be rationally based and supported by substantial evidence."

In a follow up Third Department case to *Troy Sand & Gravel*, which likewise followed the Court of Appeals Decision in *Gordon v. Rush, Troy Sand & Gravel Company, Inc. v. Town of Nassau*, 125 A.D.3d 1170, 4 N.Y.S.3d 613 [3d Dep't 2015], the Court held that an involved agency's "independent review" does not "include the ability to . . . gather additional environmental impact information beyond the full SEQRA record" before the lead agency. "Rather, in conducting its own jurisdictional review of the environmental impact of the project, the [involved agency] is required by the overall policy goals of SEQRA and the specific regulations governing findings made by "involved agencies" to rely on the fully developed SEQRA record in making the findings that will provide a rationale for its zoning determinations. Here, the full SEQRA record, covering thousands of pages, reflects the hard look at the proposed [projects] environmental impacts conducted by the [lead agency] with the [involved agency's] extensive involvement."

Accordingly, the Third Department held in *Troy Sand & Gravel* that the local board in that case, like your Board, an involved agency, was not entitled "to gather additional information regarding the environmental impact of the proposed . . . project as part of its review of the zoning applications . . . any such additional information regarding environmental factors would necessarily be outside the SEQRA record. Such a procedure would vitiate the efficiency and coordination goals of SEQRA . . . Although the [involved agency] is entitled to conduct an independent review whereby it applies the standards and criteria found in its zoning regulations, its review of the environmental impact of the project is necessarily based on the [SEQRA] record because its zoning determinations must find a rationale in [the SEQRA determination]. . . . The [involved agency] must rely upon the [SEQRA determination of the lead agency] as the basis for



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[its] review of the environmental impacts that [it is] required to consider in connection with [the proposed project].”

Neighbors’ counsel relies primarily on the case of *Chadwick Gardens Assoc., LLC v. City of Newburgh Zoning Board of Appeals*, 273 A.D.2d 232, 709 N.Y.S.2d 450 (2d Dep’t 2000) to rebut the foregoing case authority set forth in my June 14<sup>th</sup> letter. Their attempt to do so is unavailing. *Chadwick* stands only for the proposition that a zoning board may deny an area variance on “other grounds” than those addressed in a Negative Declaration under SEQRA.

In *Chadwick*, the owner of an apartment complex sought an area variance to allow it to construct 32 additional apartment units on its property, which were 23 more units than allowed by the minimum square footage requirement of the City of Newburgh Code. The Court upheld the zoning board’s denial of that substantial variance, stating in pertinent part:

Furthermore, contrary to the appellant’s contention, a negative declaration under Environmental Conservation Law article 8 (SEQRA) with respect to a proposed development is not dispositive of the issue of that development’s impact on a neighborhood and the ZBA may deny an area variance **on other grounds**. (See, . . . also, *Matter of Wal-Mart Stores, Inc. v. Planning Bd. of Town of North Elba*, 238 A.D.2d 93, 97, 668 N.Y.S.2d 774). Moreover, the determination of the ZBA was not based on the generalized or unsubstantiated concerns of the residential neighbors (see, *Matter of Michelson v. Warshavsky*, 236 A.D.2d 406, 653 N.Y.S.2d 622). (Emphasis added.)

709 N.Y.S.2d *supra*, at 450.

The principle stated in *Chadwick*, i.e., that an agency may, when acting with a rational basis, go beyond grounds encompassed under SEQRA review, and the resulting Negative Declaration or SEQRA findings, and deny an approval on such other grounds is clarified in *Wal-Mart Stores, Inc. v. Planning Bd. of Town of North Elba*, 238 A.D.2d 93, 668 N.Y.S.2d 774 (3d Dep’t 1998), on which the *Chadwick* Court relied. In *Wal-Mart*, the town planning board denied a conditional special use permit and site plan approval to *Wal-Mart* to construct a large new Wal-Mart store in the town. The board adopted a Final Environmental Impact Statement “in which it responded to hundreds of written comments addressing, *inter alia*, the visual impact of the proposed structure and parking lot upon the scenic area in which it was to be located, and the effect this retail operation, on the secondary growth it could be expected to spawn, would have on the general character and ambience of the community.” Based thereon, the Board rendered its “Findings” as required by SEQRA and denied the application.



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In response to Wal-Mart's claim that the planning board's basis for its denial should have been restricted to the analysis required under SEQRA, the Court explained as follows:

While the analysis required to be undertaken by SEQRA necessitates that an agency weigh the environmental consequences of its action, the basis for the agency's decision is not – as petitioner suggests – restricted to those considerations alone . . . Indeed, the agency's capacity to regulate activity on other, legal grounds within the sphere of its authority continues unabated . . . Here, it must be born in mind that respondent concluded not **only that the proposal did not meet the requirements of SEQRA, but also that it did not satisfy the relevant criteria set forth in the Town Land Use Code**, including two of the three specific conditions for obtaining a conditional use permit (namely, those providing that a permit will only be granted if the proposed use “will not have a materially adverse impact upon adjoining and nearby properties”, and “will not result in a clearly adverse aesthetic impact”). Additionally, respondent found that several “general development considerations”, which it was constrained to evaluate and which have as their aim the avoidance of “any undue adverse impact on the natural, physical, social and economic resources of the Town”, were not met. In making these findings, respondent was entitled to consider factors outside the scope of the environmental review mandated by SEQRA, insofar as they bear on matters legitimately within the purview of the Town Land Use Code. (Emphasis added.)

668 N.Y.S.2d, *supra*, at 776-777.

However, under the extraordinary circumstances of the Applicant's particular proposal before this Board, which has been reviewed in exhaustive detail, based on voluminous submissions addressing every conceivable aspect of the application, for 7 years, it is inconceivable that the Planning Board's Negative Declaration did not cover every aspect of potential concern, in the broadest context of the term “environment” – as it unquestionably did. The Planning Board expressly stated that it did so and the opponents have not claimed otherwise. Accordingly, the Planning Board's Negative Declaration addressed every issue pertinent to the area variance criteria to be applied by the Zoning Board, including the most relevant criteria of whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created, whether the requested variance is substantial in its context, and whether the proposed variance will impact the physical or environmental conditions in the neighborhood.

In particular, every single component of the substantial environmental review to date and the voluminous environmental submissions - including the Planning Board's Negative Declaration and its 34 agreed Conditions, all of the other mitigative conditions agreed to by the Applicant, the positive reports of the Town Consultants on traffic and well matters, the historical



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use of the Property, and the lesser impacts as compared to the other permitted educational, religious and residential subdivision uses not requiring State road frontage – is directly relevant to the area variance criteria of the lack of any undesirable change to neighborhood character or detriment to nearby properties. The Negative Declaration and all of the expert evidence in the Record weigh heavily in favor of the Zoning Board finding that there will be no such undesirable change or detriment.

Significantly, given the Planning Board’s binding determinations in its Negative Declaration that there will be no significant adverse impacts with respect to traffic, surface water, groundwater, noise, odor or light, or neighborhood character, nearby properties or community character, or indeed, any significant adverse environmental impacts at all, it is quite clear that the Applicant has necessarily satisfied the first area variance criterion.

Importantly, the Planning Board’s omnibus determination of no significant impacts necessarily encompassed the issue of “impairment of the character or quality of the existing community or neighborhood character”, which is one of the expressly enumerated SEQRA criteria for determining significance. (See, 6 NYCRR 617.7(c)(i)(v).)

Quite simply, when the Lead Agency, the Planning Board, after an incredibly thorough analysis, utilizing the overwhelming record produced by the Applicant, which addresses hundreds of comments made by the opposition group, has determined that every relevant factor bearing on the Zoning Board’s variance analysis has been fully addressed and that there will be no significant adverse impact, there cannot be any rational basis for the Zoning Board to disregard that determination. If there is no significant impact with respect to all relevant issues, there is no legitimate basis to deny the requested area variance.

The case opponents’ counsel cites to buttress *Chadwick, MLB, LLC v. Schmidt*, 50 A.D.3d 1433, 856 N.Y.S.2d 296 (3d Dep’t 2008), is also easily distinguishable. In that case, where the planning board denied a subdivision application, after rendering a Negative Declaration, it did so on the basis of an adverse effect on drainage conditions, *which the board specifically referenced in its Negative Declaration*. The Court explained as follows:

. . . Here, petitioner argues that the “harmonious opinions” from both his engineer and the Village Engineer, coupled with the Board’s issuance of a negative declaration under SEQRA, support the conclusion that his application to subdivide the subject parcel should have been approved, and that the Board’s determination impermissibly rested solely upon generalized community opposition. Initially, we note that the Board’s issuance of a negative declaration is not wholly inconsistent with its denial of petitioner’s application. In its SEQRA determination the Board acknowledged the potential adverse effects associated with drainage and flooding problems, yet simply did not find them to be so significant in their impact as to require a positive declaration. Thus, since the Board’s SEQRA determination was that no *significant* adverse impacts would



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result from the proposed subdivision, but that there could be adverse effects associated with the drainage and flooding problems, we do not find the Board's SEQRA determination to be incompatible with its subsequent denial of petitioner's application for approval of the subdivision.

. . . While petitioner asserts that the concerns about the recurring drainage and flooding problems in the locale voiced by owners of adjacent and neighboring downgrade parcels at the public hearing constituted "generalized community objections" which cannot, standing alone, justify denial of his application, . . . we find their concerns to be specific and based upon personal experience and observations (. . . *see also Matter of Michelson v. Warshavsky*, 236 A.D.2d 406, 407, 653 N.Y.S.2d 622 [1977]). In particular, the downhill property owners imparted to the Board their personal knowledge and detailed observations regarding the recurring drainage problems in the locale as a result of heavy rain and runoff from the steep hill upon which petitioner's property lies, which included the flooding of streets and basements.

Moreover, in rendering its determination, the Board considered not only the concerns of adjacent property owners, but also the opinion of the Village Engineer . . .

"The evidence in this case presented a close, fact-specific choice of the kind that local boards are uniquely suited to make" . . ., and where, as here, conflicting inferences may be drawn, it was the responsibility of the Board, not this Court, to weigh the evidence and exercise its discretion in approving or denying approval to the subdivision plat . . .

856 N.Y.S.2d, *supra*, at 297-298.

In this case, unlike in *MLB*, the Planning Board cited no such adverse impact in its Negative Declaration. Likewise, the neighbors have offered no such specific impact of the Applicant's specialty hospital, let alone any expert evidence of same, and any such claim would be contrary to the expert evidence in the record, put forth not only by the Applicant's professional consultants, but by those of the Town. Accordingly, also unlike *MLB*, any denial by the Zoning Board would not be consistent with the findings of the professional experts retained by the Town. Moreover, unlike in *MLB*, the evidence in the Record of this case does not present a "close, fact specific choice" – the facts as presented in the voluminous record, including those in the expert reports, are overwhelming in favor of the Applicant and the granting of the variance. This is why the opponents have been relegated to baseless speculation and vague, subjective claims that the specialty hospital will undermine their "sense of community."



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Finally, the case cited by opponents' counsel to contend that their objections are not merely generalized – even though as the Board has pointed out, they focus simply on their claim that this will be a “commercial use” in a residential neighborhood, which will purportedly affect their subjective sensibilities – *Michelson v. Warshavsky*, 236 A.D.2d 406, 653 N.Y.S.2d 622 (2d Dep't 1997), which was also cited in the *Chadwick* and *MLB* cases, is likewise easily distinguishable with respect to the opposition in this case. Merely quoting from the Court's decision in *Michelson* will demonstrate this fact:

A planning board may not base a determination on the generalized concerns and conclusory statements of interested citizens (*see Matter of Marker Sq. Props. v. Town of Guilderland Zoning Bd. of Appeals*, 66 N.Y.2d 893, 498 N.Y.S.2d 772, 489 N.E.2d 741; *McDonald's Corp. v. Rose*, 111 A.D.2d 850, 490 N.Y.S.2d 588), especially when rebutted by probative evidence to the contrary (*see Matter of Market Sq. Props. v. Town of Guilderland Zoning Bd. of Appeals, supra; Matter of C & A Carbone v. Holbrook*, 188 A.D.2d 599, 591 N.Y.S.2d 493, *Reed v. Planning Bd. of Town of Chester*, 120 A.D.2d 510, 501 N.Y.S.2d 710). However, a planning board may apply its “discretion and commonsense judgments” to the facts as presented (*see Matter of Market Sq. Props. v. Town of Guilderland Zoning Board of Appeals, supra*) and may require that issues raised by such facts be addressed by the applicant (*see Matter of AHU Realty Corp. v. Goodwin*, 81 A.D.2d 637, 438 N.Y.S.2d 136). Here, owners of adjacent and neighboring parcels of land testified at the hearing that the property at issue was subject to severe flooding. Further, the owners testified that this flooding resulted in runoff which, inter alia, damaged adjacent homes and properties, and flooded the sole access road to a residential area known as the Isle of Wight, thereby blocking ingress and egress by residents and emergency vehicles, and covering fire hydrants. Owners testified that the flooding problem had been exacerbated by prior construction projects on the subject property that had been aborted. This testimony, which was based on long-term personal observations and, in one instance, supported by photographic evidence, was not the type of conclusory or general objections found insufficient in the cases cited above, but rather was sufficient to raise legitimate and serious questions about the effect of the proposed subdivision and ensuing construction on flooding and runoff, and to support a demand by the appellants for further information. However, in response to such a demand, the petitioner, who professed ignorance of the flooding problem at the hearing, merely submitted three cursory and conclusory letters which opined that the proposed subdivision and construction would not exacerbate the flooding problem. The letters, two of which did not state,



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inter alia, the factual basis for the assertions made therein, lacked evidentiary value and were inadequate to address the issues raised at the hearing. Accordingly, on the record before it, the appellants' determination that the proposed subdivision should be denied was supported by substantial evidence . . .

653 N.Y.S.2d, *supra*, at 623-624.

In this case, unlike in *Michelson*, the opponents have not raised any such specific, fact-based issues related directly to the proposed specialty hospital use, but only generalized and/or speculative claims about the impropriety in their view of the "commercial use" in the residential neighborhood and its purported interference with their "sense of community". Furthermore, also unlike in *Michelson*, no one can reasonably contend that the Applicant has not addressed - at exhaustive length, for **7 years** and with voluminous expert submissions - *all* of the pertinent issues.

Respectfully, the opponents' claims must be rejected and, in order for the Zoning Board to act consistently with the Planning Board's Negative Declaration and the voluminous 7-year Record as required by the courts, the Applicant must be granted the subject area variance.

Thank you for your consideration.

Very truly yours,



Robert F. Davis

RFD:dds  
Enclosures

c: Thomas Wood, Esq.  
Town Planning Board  
Brad Schwartz, Esq.



# EXHIBIT A



CORTLANDT CODE

	CROS	PROS	R-160	R-80	R-40	R-40A	R-20	R-15	R-10	RG	CC	HC	CD	MD	M-1	HC-9A
Barn or stable	P	P	P	P	P	P	P	P	P	P	P	P	N	N	N	P
Swimming pool (See Note 5)	P	N	P	P	P	P	P	P	P	P	P	P	N	N	N	P
Pool cabana	P	N	P	P	P	P	P	P	P	P	P	P	N	N	N	P
Tennis court (See Note 5)	P	N	P	P	P	P	P	P	P	P	P	P	N	N	N	P
Unenclosed parking of:																
Passenger automobiles	P	P	P	P	P	P	P	P	P	P	P	P	N	N	N	P
Not more than 1 commercial vehicle of not more than 25 feet in length nor more than 6,000 pounds in net chassis weight, excluding any commercial vehicle designed primarily for the transportation of petroleum products or other flammable substance, hazardous materials or waste	P	P	P	P	P	P	P	P	P	P	P	P	N	N	N	P
Unenclosed storage of boats, recreational vehicles, mobile homes and equipment																
In rear yard	P	N	P	P	P	P	P	P	P	P	P	P	N	N	N	P
In front or side yard	N	N	N	N	N	N	N	N	P	P	P	P	N	N	N	N
Unenclosed storage of used or scrap material, not to occupy more than 100 square feet of ground area, or not more than 1 unregistered automobile																
In rear or side yard	P	N	P	P	P	P	P	P	P	P	P	P	N	N	N	P
In front yard	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Domestic keeping of animals: Subject to Note 6																
Greenhouse, nursery or sale of agricultural and garden crops produced on site	P	N	P	P	P	P	P	P	P	P	P	P	N	N	N	P
<b>PARK AND OPEN SPACE (PUBLIC)</b>																
Passive open space: natural open space areas, wildlife sanctuaries and parks; open spaces preserving important vistas, view corridors or scenic resources; paths, riding trails, boardwalks or bridges for the above; caretaker's dwelling	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Active open space: picnic grounds; beaches; gardens; playing fields; tennis courts; swimming pools; other athletic facilities and related buildings, locker facilities, grandstands, bandstands and shelters; parking facilities; maintenance and administration buildings	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
<b>PRIVATE WILDLIFE</b>																
<b>PRIVATE NATURE PRESERVE</b>																
<b>PRIVATE NATURE PRESERVE USERS</b>																
Hiking trails for passive recreational use	P	N	P	P	P	P	P	P	P	P	P	P	P	P	P	P
A farm for educational purposes with the keeping of livestock subject to § 307-15, Note 6	P/SP	N	P/SP	P/SP	P/SP	N	N	N	N	N	N	N	N	N	N	N
Public and private school curriculum programs	SP	N	SP	SP	SP	N	N	N	N	N	N	N	N	N	N	N
Non-school-curriculum programs	SP	N	SP	SP	SP	N	N	N	N	N	N	N	N	N	N	N
Summer programs	SP	N	SP	SP	SP	N	N	N	N	N	N	N	N	N	N	N
Conservation or enlargement of any building	SP	N	SP	SP	SP	N	N	N	N	N	N	N	N	N	N	N
The use of any land for organized outdoor group activity	SP	N	SP	SP	SP	N	N	N	N	N	N	N	N	N	N	N
Special events, such as but not limited to general membership events, plant sales or other fund-raising events	AP	N	AP	AP	AP	N	N	N	N	N	N	N	N	N	N	N
Caretaker's dwelling	P	N	P	P	P	N	N	N	N	N	N	N	N	N	N	N
<b>AGRICULTURE AND ANIMAL SERVICES</b>																
Raising of field and garden crops; vineyard or orchard farming	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Kennel	N	N	SP	SP	SP	N	N	N	N	N	SP	P	SP	P	P	SP
Livestock farm	SP	N	SP	SP	SP	N	N	N	N	N	SP	P	SP	P	P	SP
Riding academy	N	N	SP	SP	SP	N	N	N	N	N	SP	P	SP	P	P	SP
Animal hospital	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P

Table of Permitted Uses  
 §§ 307-14 and 307-15, Zoning  
 Town of Cortlandt

LEGEND:

P = Permitted by right      SIC = Standard Industrial Classification  
 N = Not permitted          n.e.c. = Not elsewhere classified  
 SP = Permitted by special permit      -- = Not applicable

	CROS	PROS	R-160	R-80	R-40	R-40A	R-20	R-15	R-10	RG	CC	HC	CD	MD	M-1	HC-9A
<b>INSTITUTIONAL, RECREATIONAL AND PUBLIC USES</b>																
Church or other place of worship and religious instruction, parish house, rectory or convent and nursery school	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Nursery school	N	N	N	N	N	N	N	N	N	N	P	P	P	N	N	P
Public or private school offering courses in general instruction	N	N	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Vocational school, such as business, secretarial or data processing	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P
University, college or seminary	N	N	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP
Government building, including public library	N	N	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Public golf course	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP
Country club	SP	N	SP	SP	SP	SP	SP	SP	SP	SP	P	P	P	P	P	P
Tennis club, yacht club or similar sports and recreation club	SP	N	SP	SP	SP	SP	SP	SP	SP	SP	P	P	P	P	P	P
Property owners' association building	P	N	P	P	P	P	P	P	P	P	P	N	N	N	N	P
Dance studio	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P
Bowling center	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P
Physical fitness facilities	N	N	N	N	N	N	N	N	N	N	SP	SP	SP	SP	SP	SP
Amusement center	N	N	N	N	N	N	N	N	N	N	SP	SP	SP	SP	SP	SP
Conversion of living units in camp to year-round occupancy	N	N	SP	SP	SP	SP	SP	SP	SP	SP	SP	N	N	N	N	N
Membership club	N	N	N	N	N	N	N	N	N	SP	SP	P	P	P	P	P
Marina	SP	N	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	N
Museum or art gallery	SP	P	SP	SP	SP	SP	SP	SP	SP	SP	P	P	P	P	P	P
Theater, cinema or motion pictures (except motion picture theaters)	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P
Adult motion picture theaters	N	N	N	N	N	N	N	N	N	N	N	SP	N	N	N	SP
School (for profit)	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P
Theatrical producers, bands, orchestras and entertainers (except adult entertainment cabarets)	N	N	N	N	N	N	N	N	N	N	P	P	P	N	N	P
Amusement and recreation service n.e.c. as defined by SIC Sec. 7999, except as otherwise specified herein	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P
Hiking trails for passive recreational use	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
<b>RETAIL STORES</b>																
Building materials and garden supplies (SIC Sec. 52)	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P
General merchandise stores (SIC Sec. 53)	N	N	N	N	N	N	N	N	N	N	P	P	P	N	N	P
Food stores (SIC Sec. 54)	N	N	N	N	N	N	N	N	N	N	P	P	P	N	N	P



ZONING

	CROS	PROS	R-160	R-80	R-40	R-40A	R-20	R-15	R-10	RG	CC	HC	CD	MD	M-1	HC-9A
<b>Automobile dealers and service stations</b>																
New and used car dealer	N	N	N	N	N	N	N	N	N	N	N	P	N	P	P	N
Automobile and home supply store	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P
Gasoline service station	N	N	N	N	N	N	N	N	N	N	SP	SP	N	P	P	SP
Recreational vehicle, motor home, boat dealer	N	N	N	N	N	N	N	N	N	N	N	P	N	P	P	P
Automotive dealer n.e.c. (SIC Sec. 5599)	N	N	N	N	N	N	N	N	N	N	N	P	N	P	P	P
Apparel stores (SIC Sec. 56)	N	N	N	N	N	N	N	N	N	N	P	P	P	N	N	P
Furniture and home furnishing stores (SIC Sec. 57)	N	N	N	N	N	N	N	N	N	N	P	P	P	N	N	P
Fuel oil dealers	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N
Miscellaneous retail stores (SIC Sec. 59) (except adult bookstores) <sup>2</sup>	N	N	N	N	N	N	N	N	N	N	P	P	P	N	N	P
Adult bookstore <sup>3</sup>	N	N	N	N	N	N	N	N	N	N	N	SP	N	N	N	SP
Vape shop, to be located at least 1,000 feet away from the nearest point of any property owned by a school or school district, church, or other place of worship or religious instruction	Y	Y	N	N	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y
<b>EATING AND DRINKING PLACES (SIC Sec. 58) (except adult entertainment cabarets)</b>	N	N	N	N	N	N	N	N	N	N	P	P	P	N	N	P
Adult entertainment cabarets	N	N	N	N	N	N	N	N	N	N	N	SP	N	N	N	SP
<b>FINANCE, INSURANCE AND REAL ESTATE (SIC Secs. 60-67)</b>	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P
<b>HOTELS AND OTHER LODGING PLACES</b>																
Hotel (except adult hotel)	N	N	N	N	N	N	N	N	N	N	P	P	N	N	N	P
Adult hotel	N	N	N	N	N	N	N	N	N	N	N	SP	N	N	N	SP
<b>PERSONAL SERVICES FACILITIES</b>																
Coin-operated laundry and coin-operated dry cleaning	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P
Garment pressing and cleaners' agent	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P
Family and commercial power laundry	N	N	N	N	N	N	N	N	N	N	N	P	N	P	P	P
Other laundry and cleaning service	N	N	N	N	N	N	N	N	N	N	N	P	N	P	P	P
Conversion of dwelling to funeral service or construction of a funeral service facility	N	N	SP	SP	SP	SP	SP	SP	SP	SP	P	P	P	N	N	P
Funeral service, other than above	N	N	N	N	N	N	N	N	N	N	P	P	P	N	N	P
Other personal services (SIC Secs. 722-729) (except adult massage establishments)	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P
Adult massage establishments	N	N	N	N	N	N	N	N	N	N	N	SP	N	N	N	SP
<b>BUSINESS SERVICE FACILITIES (SIC Sec. 73) (such as advertising agencies, reproduction, stenographic, equipment rental or data processing)</b>	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P
<b>AUTOMOBILE REPAIR, SERVICES AND PARKING</b>																
Automotive rental	N	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P
Automobile parking facilities	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P
Automotive repair shop, provided that no unregistered or inoperable motor vehicle remains on the premises for more than 30 days	N	N	N	N	N	N	N	N	N	N	N	P	N	P	P	P
Automotive body and paint shop, provided that no unregistered or inoperable motor vehicle remains on the premises for more than 30 days	N	N	N	N	N	N	N	N	N	N	N	SP	N	SP	SP	SP
Car wash, waxing or polishing	N	N	N	N	N	N	N	N	N	N	P	P	N	P	P	P
Automotive service, except repair and car wash (SIC Sec. 7549)	N	N	N	N	N	N	N	N	N	N	N	P	N	P	P	P
<b>MISCELLANEOUS REPAIR SERVICES (SIC Sec. 76) (such as electrical, radio, television, clock or furniture)</b>	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P

<sup>1</sup> Editor's Note: L.L. No. 6-2007, adopted 3-13-2007 also provided that such special permits shall be renewable every three years.

Table of Permitted Uses  
§§ 307-14 and 307-15, Zoning  
Town of Cortlandt

LEGEND:  
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	CROS	PROS	R-160	R-80	R-40	R-40A	R-20	R-15	R-10	RG	CC	HC	CD	MD	M-1	HC-9A
<b>HEALTH AND SOCIAL SERVICES</b>																
Hospital or nursing home	N	N	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP
Offices of doctors, dentists or other health care practitioners	N	N	SP	SP	SP	SP	SP	SP	SP	SP	P	P	P	P	P	P
Other health (SIC Secs. 808-809) or social services (SIC Sec. 83)	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P
<b>LEGAL, MANAGEMENT, ENGINEERING AND OTHER PROFESSIONAL SERVICES (SIC Secs. 81, 87 and 89)</b>	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P
<b>BUSINESS OR PROFESSIONAL OFFICE IN TRANSITIONAL LOCATION</b>	N	N	SP	SP	SP	SP	SP	SP	SP	SP	--	--	--	--	--	--
<b>OFFICE OR RESIDENTIAL USE OF HISTORIC STRUCTURE (Does not apply to uses otherwise permitted by this table)</b>	N	N	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP
<b>CONSTRUCTION</b>																
General building and heavy construction contractors, including contractors' yards	N	N	N	N	N	N	N	N	N	N	N	N	N	SP	SP	N
Special trade contractors, including plumbing, heating and airconditioning, electrical, carpentry, sheet metal, etc.	N	N	N	N	N	N	N	N	N	N	N	SP	N	SP	SP	SP
<b>TRANSPORTATION AND PUBLIC UTILITIES</b>																
Public utility facility																
Facilities and equipment containing a volume of less than 300 cubic feet, for local distribution of utility services, whether or not on the same lot as another use	N	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Buildings approved in connection with, and on the same site as, a Planning Board-approved subdivision	N	N	P	P	P	P	P	P	P	P	P	P	P	P	P	P
All other public utility facilities, including but not limited to transmission towers and mass transportation facilities	N	N	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP
Trucking and courier services	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N
Public warehousing and storage	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N
Taxicab operation	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P
Travel agencies	N	N	N	N	N	N	N	N	N	N	P	P	P	N	N	P
<b>WHOLESALE TRADE (not including asphalt batching in MO Zone)</b>	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N
<b>MANUFACTURING</b>																
Food and kindred products (SIC Sec. 20)	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N
Textile mill products (SIC Sec. 22)	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N
Apparel and other finished products made from fabrics and similar materials (SIC Sec. 23)	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N



CORTLANDT CODE

	CROS	PROS	R-160	R-80	R-40	R-40A	R-20	R-15	R-10	RG	CC	HC	CD	MD	M-1	HC-9A
Lumber and wood products (SIC Sec. 24), except furniture and except logging, sawmills and planing mills	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N
Furniture and fixtures (SIC Sec. 25)	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N
Die-cut paper, paperboard and cardboard (SIC Sec. 2675)	N	N	N	N	N	N	N	N	N	N	N	P	N	P	P	P
Other paper and allied products (SIC Sec. 26), except pulp mills, paper mills and paperboard mills	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N
Printing, publishing and allied industries (SIC Sec. 27)	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N
Leather and leather products (SIC Sec. 31), except leather tanning and finishing	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N
Cut stone and stone products (SIC Sec. 328), except quarrying and processing of own stone	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N
Fabricated metal products, except machinery and transportation equipment (SIC Sec. 34)	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N
Computer and office equipment (SIC Sec. 357)	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N
Household audio and video equipment (SIC Sec. 365)	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N
Communications equipment (SIC Sec. 366)	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N
Electronic components and accessories (SIC Sec. 367)	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N
Boat building and repairing (SIC Sec. 3732)	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N
Measuring, analyzing and controlling instruments; photographic, medical and optical goods, watches and clocks (SIC Sec. 38)	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N
Jewelry, precious metal, jewelers' findings and materials and lapidary work (SIC Secs. 3911 and 3915)	N	N	N	N	N	N	N	N	N	N	N	P	N	P	P	P
Miscellaneous manufacturing industries (SIC Sec. 39)	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N
Manufacture of goods of any type for retail sale on premises with not more than 10 employees	N	N	N	N	N	N	N	N	N	N	N	SP	N	N	SP	SP
JUNKYARD	N	N	N	N	N	N	N	N	N	N	N	N	N	N	SP	N
ACCESSORY NONRESIDENTIAL USES																
Accessory buildings and accessory uses, except as specified below	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P
Outdoor display and storage of goods or equipment, except as authorized by other town regulations (live plant materials, automobiles, boats and aboveground pools for retail sale are exempt from these regulations)	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N
Storage of goods or equipment in trailers, box trailers or similar vehicles, registered or unregistered	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N
Not more than 2 outdoor vending machines, only 1 of which may be illuminated (See Note 7)	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P
Private garage	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P



# EXHIBIT B



***APPENDIX K***  
***Table III.C-4, revised 03/24/2017,***  
***Showing Comparison of Potential***  
***Development Traffic Volumes***



**TABLE III.C-4**

**POTENTIAL & PREVIOUS DEVELOPMENT VOLUMES COMPARISON**

PROPOSED USE	PEAK AM HOUR			PEAK PM HOUR			REQUIRES ACCESS TO STATE ROAD
	ENTER	EXIT	TOTAL	ENTER	EXIT	TOTAL	
a. 38,560 sf <sup>(3)</sup> Proposed Specialty Hospital (Conservative Analysis)	41 <sup>(1)(2)</sup>	11 <sup>(1)(2)</sup>	52 <sup>(1)(2)</sup>	34 <sup>(1)(2)</sup>	41 <sup>(1)(2)</sup>	75 <sup>(1)(2)</sup>	YES
b. 38,560 sf <sup>(3)</sup> Proposed Specialty Hospital (Realistic Analysis)	19 <sup>(1)</sup>	0 <sup>(1)</sup>	19 <sup>(1)</sup>	22 <sup>(1)</sup>	23 <sup>(1)</sup>	45 <sup>(1)</sup>	YES
<b>POTENTIAL &amp; PREVIOUS USES</b>							
c. 38,560 sf <sup>(3)</sup> Private School (K-12) (ITE Code 536)	86	51	137	59	153	212	NO
d. 24,690 sf Place of Worship with Religious School <sup>(5)(6)</sup>	--	--	--	58	117	175	NO
e. 38,560 sf <sup>(3)</sup> General Office Building (Government Offices) (ITE Code 710) <sup>(7)</sup>	78	11	89	21	101	122	NO
f. 38,560 sf <sup>(3)</sup> Medical-Dental Office Building (ITE Code 720) <sup>(1)</sup>	90 <sup>(1)</sup>	45 <sup>(1)</sup>	135 <sup>(1)</sup>	64 <sup>(1)</sup>	101 <sup>(1)</sup>	165 <sup>(1)</sup>	YES <sup>(3)(4)</sup>
g. Hospital Approved in 1989 for 225 Person Occupancy <sup>(8)</sup> (ITE Code 610)	131 <sup>(1)</sup>	59 <sup>(1)</sup>	190 <sup>(1)</sup>	65 <sup>(1)</sup>	133 <sup>(1)</sup>	198 <sup>(1)</sup>	N/A <sup>(10)</sup>
h. IBM Research & Development Approved in 1957 for 225 Employees (ITE Code 760)	101	17	118	12	108	120	N/A <sup>(9)</sup>
i. Hudson Institute Single Tenant Office Approved in 1962 for 225 Employees (ITE Code 715)	117	14	131	20	113	133	NO

**Notes to Table III.C-4:**

- (1) Peak hour site generated volumes will be out of phase with peak volumes at the analyzed intersections in the vicinity of the site.
- (2) As discussed on pages 43-44 of the "Expanded Environmental Assessment" report dated October 6, 2016, a very conservative traffic analysis has been provided, no traffic trip reduction credit has been taken for use of the shuttle van for transporting employees and the two morning shifts of the facility have been combined into one AM shift for purposes of providing a very conservative (large) trip generation.
- (3) The assumed 38,560 sf of building area is what exists on the site currently and is proposed to remain for the Specialty Hospital. However, other potential uses might have larger buildings, resulting in a greater traffic volume than indicated on this table.
- (4) Medical-Dental Office Buildings are only permitted on a state road or on Oregon Avenue. The greater traffic volume generated by this use (as well as a large standard hospital use) justifies this requirement, as opposed to the lower traffic volume resulting from the proposed Specialty Hospital.
- (5) From the DEIS, accepted as complete on June 7, 2012, for the Upper Westchester Muslim Society Masjid and Islamic Center, Town of New Castle, NY.
- (6) Nursery schools are also permitted along with places of worship and religious instruction, and would generate additional traffic beyond what is depicted in this table.
- (7) ITE does not have sufficient study data regarding a permitted as-of-right government building, and therefore a general office building ITE use was utilized because this use functions in a similar manner to a government building.
- (8) When existing neighborhood was fully developed.
- (9) Research and development facilities are not currently permitted in the R-80 zone.
- (10) The Hospital approved in 1989 pre-dated the 2004 zoning amendment adding the state road frontage requirement.



# EXHIBIT C

**TABLE A**

**TRIP GENERATION COMPARISON**

Description		52 Dwelling Rooms Specialty Hospital	10 Dwelling Units Single-Family Detached Housing (ITE Code 210)	38,500 sf Private School (K-12) (ITE Code 536) <sup>(1)</sup>	38,500 sf Church (ITE Code 560) <sup>(1)</sup>
Peak Weekday AM Hour of Generator	Enter	10	8	86	18
	Exit	2	2	50	15
	<b>Total</b>	<b>12</b>	<b>10</b>	<b>136</b>	<b>33</b>
Peak Weekday PM Hour of Generator	Enter	2	9	59	19
	Exit	10	5	153	17
	<b>Total</b>	<b>12</b>	<b>14</b>	<b>212</b>	<b>36</b>
Peak Sunday Hour of Generator	Enter	2	6		227
	Exit	7	5	N/A	237
	<b>Total</b>	<b>9</b>	<b>11</b>		<b>464</b>

Note <sup>(1)</sup>: The private school and religious uses could be combined. The uses could include a yeshiva, church, synagogue and/or a mosque.