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September 12, 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
Applicant's Response to Letter of Zarin & Steinmetz dated September 8, 2022

Dear Chairman Douglas and Member of the Board:

This letter responds to the letter of counsel for Citizens for Responsible Hudson Institute Site Development, Inc. ("opposition group"). As the arguments raised in said letter have been reiterated by the opposition group and amply refuted by the Applicant on many occasions before the Planning and Zoning Boards and the courts, our response will be relatively concise to not unduly burden your Board.

At the outset, it bears noting that, most tellingly, counsel expressly avoids any attempt to refute specifically the clear law set forth in my letter of August 23, 2022 regarding the significance of the Planning Board's Negative Declaration under SEQRA for this Board's review of the subject area variance application.

Equally telling is the fact that, in relying primarily on their opinions, feelings and anecdotal "evidence", the opposition group has not offered the Board a single shred of expert evidence to refute the voluminous expert evidence submitted by the Applicant's professional consultants, as reviewed and confirmed by the Town's consultants, which has demonstrated the lack of any significant adverse impacts of the proposed specialty hospital and culminated in the Planning Board's Negative Declaration.

As my August 23 letter has already addressed the principal arguments raised in counsel's June 25 PowerPoint submission, the comments herein will be confined to the arguments in their September 8 letter.

In lieu of repetition, for a full discussion of the manner in which the Applicant has satisfied the statutory area variance criteria, see the Applicant's 2016 Memorandum of Law, another copy of which was recently submitted and which was based on the maximum 92-patient proposal, prior to the 43% reduction to the current 52-patient maximum, along with my

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presentation outlines, copies of which are re-submitted as **Exhibit 1** hereto. See, also the Applicant's comprehensive February and March 2022 submissions to the Planning Board, previously submitted to your Board as well, and my letters to the Board of June 14 and August 23, 2022.

Page references below are to counsel's September 8 letter.

Pages 1-2 -

Significantly, counsel's principal argument is based on the opposition group's allegation of self-created hardship, the least important of the five statutory area variance criteria, no doubt because the Applicant clearly meets the other four area variance criteria. As one Board member pointed out, with only slight hyperbole, virtually every area variance application involves self-created hardship - which is why Town Law §267-b(3)(b)(5) provides that this last of the five statutory criteria "shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance."

Notwithstanding, the Applicant has presented a substantial argument that there is no self-created hardship in this case, or at the very least, there are exculpatory and mitigating factors, which significantly diminish the importance of this one criteria in this particular case. (See my April 25 outline, Exhibit 1, p. 10.) Further, as pointed out in my August 25 presentation (**Exhibit 1**, p. 9) and in my August 23 letter at pp. 5-6, the Village Board clearly could not have had in mind such a limited use as the specialty hospital when it enacted the State road frontage requirement for hospitals in 2004.

Although the Board ruled against the opposition group's use variance claim in its Decision and Order of March 2017, in holding that the subject State road frontage variance is, in fact, an area variance, in support of their self-created hardship claim, counsel audaciously continues to claim that the specialty hospital requires a use variance or a rezoning.

However, since the Board's 2017 Decision and Order, the Second Department has laid that matter to rest, in clearly holding that the State road frontage variance *is* an area variance. See *Route 17K Real Estate, LLC v. Zoning Board of Appeals of the Town of Newburgh*, 168 A.D.3d 1065, 93 N.Y.S.3d 107 (2d Dep't 2019). In accord: *Manocherian v. Zoning Board of Appeals of the Town of New Castle*, Order and Judgment, Hon. Paul L. Marx, J.S.C., Supreme Court, Westchester County, Index No. 66342/2016, May 16, 2018.

Likewise, counsel's continued contention that the specialty hospital is not a "hospital" for purposes of the Zoning Code is amply refuted by the September 24, 2020 Judgment of the Supreme Court, Westchester County, in this matter, a copy of which is annexed hereto as **Exhibit 2**, and with which the Zoning Board complied, by declaring that the use is a "hospital" in its Resolution of December 16, 2020.

Counsel's reference to the area maps they submitted at the public hearing showing the increasing number of homes in the area since the 1940's is unavailing. First, the argument is a non-sequitur. The mere fact that there are now a greater number of houses in the neighborhood does not mean that the Applicant's specialty hospital continuing the use of the existing buildings

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on the property for the institutional purposes for which they were constructed and used for some 60 years, will necessarily cause an undesirable change in the character of the neighborhood. The neighborhood grew around the institutional use of the property. Arguably the increased density supports such use. In fact, the only actual self-created hardship in this case is that of the neighbors, who moved next door to a property in institutional use for 60 years and designed for that use at the time they purchased their property, perhaps simply assuming that it would be converted to residential use.

Moreover, Map Exhibit A to counsel's September 8 letter purposely leaves a gap in its maps between 1974 and 1998. In not showing a map depicting the area in the 1980's, the opposition group misleads the Board by not showing that the area, particularly the Quaker Hill Drive subdivision, had been essentially fully developed by the 1980's, during which decade the Hudson Institute was still operating on the property and the Zoning Board, pursuant to Court Order, approved another hospital for the property. The Applicant pointed this out by including a 1990 area photograph in its "Addendum to Expanded Environmental Assessment Report", dated April 10, 2017. (See **Exhibit 3** annexed hereto.)

Pages 3-5 -

On page 3 of their September 8 letter, in addressing the first of the 5 statutory criteria, counsel again raises their persistent theme that the proposed specialty hospital will adversely affect neighborhood character and be inconsistent with the Town's Comprehensive Plan.

These related claims have been comprehensibly rebutted on numerous occasions by the Applicant, including in its 32-page Appendix 66 to its March 2022 submission to the Planning Board, a copy of which has been provided to your Board. For the Board's convenience, a copy of Appendix 66, fully refuting the opposition group's claims, is annexed as **Exhibit 4** hereto, and incorporated by reference as if fully set forth herein.

Further, as explained in my April 25 presentation (**Exhibit 1**, p. 8), and in my August 23 letter at p. 10, as required by the SEQRA Regulations, §617.7(c)(1), for a negative declaration and as it did in its April 5 Negative Declaration with its 34 mitigative Conditions, the Planning Board determined that the proposed specialty hospital would not have a significant adverse impact on the "existing community or neighborhood character" or be in "material conflict with the community's current plans or goals as officially approved or adopted".

Counsel's attempt to prejudice the Board with a 2017 Affidavit of the former Supervisor about the Town Board's purported intent in enacting the 2004 State road frontage amendment, which is unsupported by any documentation of that intent, is unavailing. This Affidavit was submitted in support of the opposition group in its 2017 litigation to set aside this Board's above-referenced 2017 area variance determination. In that proceeding, in which the Town Board actually counter-claimed against its own Zoning Board to set aside the Zoning Board's Decision and Order, the Applicant produced e-mails of the former Supervisor, obtained pursuant to the Freedom of Information Law, stating to members of the opposition group that she would do anything in her power to prevent the proposed specialty hospital. More importantly, the Supervisor's Affidavit merely supports the Applicant's contention that the 2004 amendment was

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never contemplated for and was never intended to apply to such a limited use as the proposed specialty hospital, as the Supervisor stated in paragraph 4 of her Affidavit: "Hospitals and nursing homes are generally large, resource-intensive institutional uses, whose traffic and noise from patients, visitors, staff and deliveries are not suited for local roads in residential neighborhoods." As indicated by the Planning Board's Negative Declaration, that characterization does not apply to the proposed specialty hospital.

Counsel well knows that its claim on pages 4-5 that the specialty hospital will not serve the local community is false. The Applicant has often addressed the service and contributions it will provide to the local community, including by reserving beds for local residents, affording them scholarships, providing them with a special sliding fee scale, providing a local liaison to the neighborhood and community and engaging in neighborhood outreach and community programs. See, for example, **Exhibit 4**, p. 11. See, also the following agreed Conditions of the Planning Board Negative Declaration:

26. Minimum of two resident client beds shall be made available to Cortlandt, Yorktown, Ossining, New Castle residents for each successive thirty (30) day period. One such resident bed shall be made available at a cost to them of no greater than Medicaid payment, and the other shall be made available on a sliding scale based on income.

32. The Applicant shall designate a senior level community liaison with authority to remedy any community concerns. . . .

These Conditions were directly negotiated with the opposition group's counsel. In short, there will be no limitation on service to local residents by the specialty hospital, who will be given special preferences and accommodations, and the specialty hospital fully intends and expects to participate in community programs related to its mission.

Footnote 5 on page 5 of counsel's letter contains one of its many intentionally misleading statements, in asserting that the Applicant makes a "big deal" about its reduction in bed count by 40 beds – or 43% - "as if that solved all residents' concerns" and that "such reduction was not a voluntary concession". That is a blatantly false statement. The 34 agreed Conditions appended to the Planning Board's Negative Declaration, including the 43% reduction in patient count, were negotiated directly with the opposition group's counsel and its then leadership, in extreme good faith by the Applicant, solely in an attempt to finally bring this now 7-year process to a conclusion.

It is not simply the inarguably significant 43% reduction in patient count, but the other 33 agreed Conditions appended to the Negative Declaration as well, along with its voluminous expert environmental submissions, upon which the Applicant bases its incredibly well-substantiated position that it has addressed all *reasonable* resident concerns and conclusively, as determined by the Planning Board, will not have a significant adverse impact on the neighborhood. Indeed, the Applicant has satisfied many *unreasonable* concerns as well. Many of the conditions agreed to by the Applicant to benefit the adjoining neighbors, in addition to

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adding substantial screening, such as blocking out all windows and discontinuing the use of doors facing them, would never occur with a residential subdivision.

Page 5 -

On page 5 of counsel's September 8 letter, they address the second variance criteria of "whether the benefit sought by the Applicant can be achieved by some method, **feasible for the Applicant to pursue**, other than an area variance". (Emphasis added.) The benefit which the Applicant seeks is to use the existing buildings on its property for a specialty hospital. The law clearly does not require that area variance applicants look for other sites on which to place their use or to demonstrate that they cannot embark on a totally different business or use of the property.

The two cases cited by counsel for their knowingly ridiculous propositions are irrelevant. *Durler v. Accettella*, 165 A.D.2d 872, 560 N.Y.S.2d 343 (2d Dep't 1990), preceded the amendments to the Village Law in 1992 to provide the five current criteria for an area variance. The amended law no longer requires an area variance applicant to demonstrate economic injury, the primary issue on which the *Durler* decision was based. *Durler's* only reference to alternatives related to whether the Applicant attempted to sell his property to the adjoining property owners or sought to purchase adjoining property to bring his parcel into compliance with minimum area and rear yard setback requirements. Those matters have nothing to do with the Applicant's ability to eliminate its need for the State road frontage variance, which could not be eliminated by any such actions. The other case cited by counsel, *Caspian Realty, Inc. v. Zoning Board of Appeals of Town of Greenburgh*, 68 A.D.3d 62, 886 N.Y.S.2d 442 (2d Dep't 2009), is not remotely relevant to this case and turned primarily on the local board's denial of relief to the applicant as a result of the applicant's substantially deceiving the board. The Board's review of that case will reveal that counsel has misled the Board as to its holding and its relevance.

For accurate discussions of how the "alternatives" criteria is applied in the area variance context and to the courts' elimination of the criteria of economic hardship in area variance cases pursuant to the amended Town Law, see the Practice Commentaries of noted Commentator, Terry Rice to Town Law §267-b at pp. 113-119 and 134-138 (McKinney's 2013).

Page 6 -

On page 6 of counsel's September 8th letter, they discuss the third variance criteria of substantiality. A State road frontage variance is necessarily a 100% variance, when viewed purely mathematically. However, the parties agree that the Board's evaluation of this criteria should not be limited to mere mathematical calculation, but must be viewed in the context of the variance. Accordingly, counsel states on page 6 of their letter: "We agree with the Applicant that the case law holds that simply relying upon the percentage of deviation alone does not suffice in evaluating a variance application. The *actual impacts* a requested variance would have on the surrounding community is critical to the overall analysis."

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Accepting counsel's premise as accurate, under the "totality of the circumstances", as they put it, the cogent analysis set forth in the Planning Board's Negative Declaration, based on the voluminous expert documentation supplied by the Applicant's professional consultants and the Town's own consultants, and supported by 34 agreed mitigative Conditions, demonstrates that the requested variance would not cause an undesirable change in the character of the neighborhood.

On page 6 of counsel's letter, they also wrongly claim that the Board may independently review environmental factors in ruling with respect to the fourth variance criteria – "whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district".

To the contrary, the Planning Board has made that determination in its Negative Declaration and as set forth in my letters of June 14 and August 23, 2022, the Zoning Board is legally bound by that determination and the environmental record on which it is based and is prohibited from making its own environmental findings.

Page 7 -

Counsel's discussion on page 7 of its September 8th letter of the fifth variance criteria relating to self-created hardship, in which it reiterates its contention that the specialty hospital requires something more than an area variance, such as a use variance or rezoning, has already been addressed above. The one case cited for their false proposition in this regard, *Van Deusen v. Jackson*, 35 A.D.2d 58, 312 N.Y.S.2d 853 (2d Dep't 1970), in addition to predating the 1992 amendment of the Town Law to set forth the criteria for area variances, is inapposite, as its holding was simply that a zoning board, by area variance, may not permit more dwelling units on a property than allowed by the zoning code. Notably, if the standard for granting area variances, as stated in footnote 9 on page 7 of counsel's letter, would be whether the granting of the variance would contravene the legislative judgment of the municipal legislative body in its original enactment of the physical and dimensional provisions of the zoning code, no one could ever be granted an area variance. The primary function of zoning boards *is to grant variances from code requirements*.

Pages 8-9 -

On page 8 of counsel's September 8 letter, as discussed above, they boldly claim that the Planning Board's "Negative Declaration has *no effect* on the ZBA's role to independently decide the 5-factor variance test". Once again, the accurate law, as quoted in my June 14 and August 23 letters, is that the Planning Board's Negative Declaration, in its capacity as Lead Agency, certainly *does* have an effect on the ZBA's variance review.

Tellingly, counsel does not specifically refute the case law cited in my two prior letters or quote that law, in either their August 25 letter or their September 8 letter. As set forth in my two letters, while the Zoning Board certainly may independently apply the 5-factor variance test, the courts have held that it must do so in a manner that is consistent with the Planning Board's findings in its Negative Declaration – which in this case is extremely contrary to any denial of

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the variance – and any denial must be limited to factors independent of those considered in the comprehensive environmental review and analysis of the Lead Agency. We respectfully submit once again, that based on the particularly expansive Negative Declaration in this case, with its 34-agreed mitigative Conditions, and the overwhelming expert environmental record, a court would necessarily find any denial of a variance by this Board to be arbitrary and capricious. See, examples of court decisions finding accordingly in my June 14 letter, p. 2.

Also, on page 8 of their September 8 letter, counsel cursorily contends that the Yeshiva precedent cited in our 2016 Memorandum of Law and in my April 25 presentation – a matter in which the opposition group’s counsel represented the Yeshiva applicant in obtaining an area variance from the same State road frontage requirement as applicable to “seminaries” – is “irrelevant”. However, the Applicant did not “ignore” any distinction between the Yeshiva case and this one, but instead, expressly reconciled any such distinction, cited the many similarities between the two cases, and indeed, demonstrated how the Yeshiva use, involving a large construction and expansion project, with many more people allowed on site than the proposed use, was far more impactful than this one. That variance was granted over neighborhood opposition. For a full discussion of the binding Yeshiva precedent, see our 2016 Memorandum of Law at pp. 13-17 and my April 25 presentation, **Exhibit 1**, pp. 11-12. Counsel has not addressed any of that discussion.

On pages 8-9 of their September 8 letter, counsel also futilely denies that the neighbor’s opposition is not based on “generalized objections”, which, as the courts have held many times and as the Board knows, may not supersede the voluminous expert evidence in the Record. The Board members themselves have expressly recognized at the public hearing that the neighbors’ comments have been based principally, if not totally, on the fact that they simply do not want what they constantly mischaracterize as a “commercial use” in a residential zone and on their feelings or “sense” of their neighborhood. **But, they have not produced to this Board in this proceeding a single shred of expert evidence which counters the voluminous expert evidence submitted by both the Applicant and the Town’s professional consultants.**

A review of the aforesaid Practice Commentaries clearly demonstrates that the many court decisions considering the “undesirable change” in the character of the neighborhood area variance criteria have been based uniformly on **objective, not subjective**, criteria, such as the fact that the variance would create a demonstrably substandard lot as compared to the other lots in the neighborhood. See McKinney’s, *supra*, pp. 119-134.

The case cited by counsel, *Millennium Custom Homes Inc. v. Young*, 58 A.D.3d 740, 873 N.Y.S.2d 91 (2d Dep’t 2009), is not to the contrary. In that case, the court noted that the ZBA “heard detailed oral statements from area residents based on personal knowledge, not mere generalized community opposition.” We do not know from the decision precisely what that “personal knowledge” was, but there is a big difference between personal knowledge of facts and statements of opinion and feeling. Further, in *Millennium*, the Court noted that: “the ZBA also had before it memoranda from the Town of Babylon Planning Division and Department of Environmental Control objecting to the development on a lot of this size due to area congestion, indicating that most lots in the area are larger than the subject lot, and that lots of similar size were developed before the Zoning Code took effect.” No such contrary evidence from the

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Town's professional consultants has been submitted in this case. Indeed, the Town's consultants have essentially agreed with the Applicant's consultants.

In the decision which counsel states to be "in accord" with *Millennium, John Hatgis, LLC v. DeChance*, 126 A.D.3d 702, 5 N.Y.S.3d 236 (2d Dep't 2015), the court referenced only the "testimony" of the "attendees" at the public hearing. We do not know from the decision who those "attendees" were, what their "testimony" involved, or whether there was any expert evidence at all to the contrary.

The Applicant has already addressed the *Mitchelson* case, previously cited by counsel and again referenced in footnote 10 on page 9 of their letter, in our letter of August 23, 2022. However, the fact that counsel has produced undisputed maps of public record simply showing the location of houses in the area during the various time periods, is not a "fact based" issue – albeit essentially the only purported "fact based" issue they cite – which overcomes the generalized nature of their objections to the specialty hospital.

On page 9 of their September 8 letter, counsel also once again cites as representative of the neighbors' purported non-generalized testimony, provisions of the Comprehensive Plan that purportedly show the proposed specialty hospital's "incompatibility" with the Town's land use and planning objectives. As noted above, that claim has been amply refuted on many occasions by the Applicant, including, at great length in **Exhibit 1** hereto.

Page 9-10 -

Finally, on pages 9-10 of their September 8 letter, counsel contends that "denying the variance would not violate the Americans with Disabilities Act". This issue has been fully addressed in the Applicant's 2016 Memorandum of Law at pp. 18-22, which will not be reiterated herein. It bears noting however, that the issue is not one of discrimination between hospital applicants or in the Town's treatment of hospitals in general, as counsel suggests, but with respect to the prospective patients of this specialty hospital, who suffer from a disability under the Law. Further, the issue is not limited to a denial of the subject area variance, but includes the totality of incidents during the entire 7-year review process.

In sum, based on the overwhelming Record of this case, including the Planning Board's Negative Declaration and its 34 agreed mitigative Conditions, we respectfully submit that it cannot reasonably be argued that the issuance of the subject area variance would not constitute the type of reasonable modification or accommodation required by Federal Law.

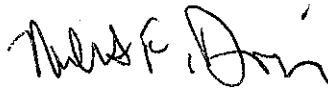
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Conclusion -

In conclusion, we respectfully submit that the overwhelming Record in this case mandates the Board's issuance of the subject area variance. Nothing presented by the opposition group warrants a contrary result.

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 1

ZONING BOARD OF APPEALS MEETING – APRIL 25, 2022

BACKGROUND, NEG DEC AND PLAN REDUCTION

1. Good evening, I am Bob Davis, attorney for the Applicant.
2. As you know, we are seeking to use the existing buildings on the Property for a Hospital to serve people with alcohol and other substance use disorders. We need an area variance from the State road frontage requirement, first imposed on special permits for hospitals in residential zones in 2004.
3. As you also know, we have been back and forth between the Planning Board and this Board since 2015, **7 years ago**. We were last before your Board in January 2020. We have been before the Planning Board, as Lead Agency, most recently from January 2021 until April of this year, for its SEQRA review.
4. On April 5, the Planning Board rendered its Negative Declaration under SEQRA that the creation of this Specialty Hospital **will not have any significant adverse environmental impacts**. That determination is binding on this Board and enables this Board, finally, to get to the substance of the area variance application in connection with the special permit/site plan application before the Planning Board, which will continue its review should this Board grant the variance.
5. Since our initial appearance before your Board to seek the variance, at the behest of the neighborhood group, this Board has previously rendered interim determinations on two so-called “threshold” issues which involved lengthy proceedings in 2016-2017 and 2019-2020.
6. First, in its Decision and Order of March 2017, this Board determined that this *is* an application for an area variance, not a use variance. The Supreme Court, Westchester County dismissed as premature the neighborhood group’s Article 78 proceeding challenging that determination. However, there have since been two decisions in our Second Department holding that similar State road frontage variances are, in fact, area variances, including in the *Sunshine Home* case. So the courts have disposed of that issue.
7. Second, in its Decision of January 2020, this Board determined, in favor of the Applicant, by a 3-1 vote, that the proposed use falls within the “hospital” use permitted by the Zoning Code. However, as four affirmative votes were required under the State Town Law, the 3-1 affirmative vote instead constituted a statutory “default denial”.

8. Thus, in a second Article 78 proceeding before Judge Cacace in Supreme Court, Westchester County, this one which the Applicant was compelled to bring to set aside the “default denial”, the Court ruled in the Applicant’s favor once again and set aside that “default denial”. This Board did not appeal, but in December 2020 complied with the Court’s Order to render its Resolution that the use is a permitted “hospital”.

9. The neighborhood group appealed the Court’s denial of its attempt to intervene in that second proceeding and that appeal remains pending.

10. Subsequent to this Board’s December 2020 Resolution, the Applicant has continued its proceedings before the Planning Board, which had been disrupted by that last interim Zoning Board proceeding on the “hospital” issue.

11. In that context, from September 2021 until this April, the Applicant has worked diligently directly with the neighborhood group to ensure the elimination of any potential significant adverse impacts of the specialty hospital upon the neighborhood.

12. Those mutual efforts culminated in the Applicant’s agreement to the 34 negotiated mitigative Conditions incorporated in the Planning Board’s April 5 Negative Declaration, which substantially reduce the scope of the Applicant’s use and limit it going forward. Some “bullet points” highlighting the significant reduction in scope and the elimination of any potentially significant adverse impacts, which came out of our discussions with the neighbors and their counsel and which strongly warrant this Board’s granting the variance, are as follows:

1. As from the outset, only the long existing buildings will be used. However, now the Applicant has agreed that there will be no future expansion of those buildings. Accordingly, there will be no adverse change in the appearance of the site or historic Quaker Ridge Road and no sensitive environmental area will ever be affected.

2. The application before this Board has to this point been based on a maximum of 92 patient beds and a staff of 86 “full time equivalents” (“F.T.E.’s”). However, the scope of the application has now been reduced by 43%, to a maximum of only 52 patients, or such lesser number as the State regulatory agency, OASAS, may require, with a corresponding decrease to about 50 F.T.E.’s, comprising about 65 actual full and part-time staff.

3. There will now be a maximum of only 23 staff on site at one time, for just a few hours per weekday, which along with the reduced number of patients, will amount to a maximum of 75 people on site at any time, which is only 1/3 the 225 people permitted by this Board for IBM and the Hudson Institute, when they occupied the site, and for the brain trauma hospital the Board approved in 1989.

4. The maximum weekday parking utilization is now only 10, which would increase to only 19 during weekly visitation on Saturday. Parking spaces have been reduced from 65 to 40, for a net of only 7 new spaces.

5. Given the Applicant's use of two employee shuttle vans, and the large decrease in patients and staff, the number of vehicle trips to and from the site during any shift is now minimal. On March 24, we provided the Planning Board (and now your Board) with charts showing all vehicle trips, employees on site, and parking use during every hour, weekdays and weekends. During any shift, there will only be 5-12 vehicles entering or exiting the site combined.

6. The Town's independent traffic expert had already signed off on the Applicant's traffic conclusions long before this large reduction in beds and staff even took place.

7. The Town's hydrogeological consultant also approved and agreed with the Applicant's unprecedented expansive off-site well impact study, concluding that, even when pumping water at twice the anticipated average daily rate for the original 92 patients, and doing so continuously for 72 hours straight, without considering the Applicant's water storage tank – **even then**, only two wells were very minimally affected to an extent that would not reduce their function. Moreover, the Town's consultant, its professional staff, and the Westchester County Health Department have signed off on the Applicant's voluntary post-approval well-monitoring program. (App. 23, 25, 35 & 36 of March 2019 submission Vol. 4).

8. Further, in consultation with the adjoining neighbors and its landscape architect, the Applicant has now provided extensive additional evergreen screening along its northern boundary with the nearest residences, with 140 8'-14' trees and some berms, while still adhering to its initial representation that, to protect nearby wells, it will not employ an irrigation system for those plantings, but will temporarily utilize a combination of a small water truck and rain collection until the plantings are established.

9. In further consultation with the neighbors and their architectural consultant, the Applicant has revised its lighting plan with extensive mitigation measures to eliminate any significant lighting impacts.

10. The Applicant had already proposed a new state-of-the-art septic system to replace the old one, which has been approved by the Westchester County Health Department to serve the originally proposed 92 patients. It will now be substantially downsized. The Applicant's experts have pointed out that, as agreed by the Town's expert, there will be no impact whatsoever on the Indian Brook Watershed. Only a portion of the active larger system would have been located within the far periphery of the Watershed and now, with the reduced size, **no** part of the active septic will be located within the Watershed.

11. The Applicant has stated from the outset that it would place a restrictive covenant on the adjoining 28-acre parcel to maintain its existing open space, so long as the Applicant's property is used for non-residential purposes. Of course, the Applicant will also preserve the 75% of its 20.8-acre Property which is open space, about 40 acres of open space in all to be preserved through this plan.

12. There will be no impact on any sensitive environmental features, including trees, steep slopes or wetlands.

13. The Applicant has agreed to buttress its application with dozens of other conditions of approval to further mitigate and eliminate any potential environmental impacts. (See, App. 55, 56 & 64, Feb. 2022 Planning Board submission, and the 34 Neg Dec Conditions.)

14. As a result, the Applicant has demonstrated that its specialty hospital will have less environmental impacts than the permitted educational, religious, or governmental uses or even a 20-lot residential subdivision of its two properties, none of which are subject to the State road frontage requirement.

15. Indeed, the Planning Board has now expressly determined in its Neg Dec that there will be no significant adverse environmental impacts with respect to traffic, surface water, groundwater, noise, odor or light, or “preliminarily”, on neighborhood character, nearby properties or the community – or any significant adverse environmental impacts at all.

16. Based on all of these facts and many more, we have now clearly demonstrated that the hospital will have no significant adverse impact on neighborhood character. We have provided ample, detailed analysis on that issue – for one of our lengthy discussions in that regard, see, for example, Appendix 66 to our February 2022 Volume, first submitted to the Planning Board in January 2019, and now provided to your Board.

PRIOR AND FUTURE USE OF PROPERTY

13. In addition to the many recent plan modifications culminating in the Neg Dec, the history of the property is relevant to the variance and to the neighborhood character in particular. The proposed specialty hospital 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 same type of specialty hospital. 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 in 1967, to the Hudson Institute, which used the Property into the 80’s. A special permit was issued by this Board pursuant to Court Order in 1989, when the neighborhood was fully developed, for another specialty hospital. All three of those special permits allowed **225** people on site, far more than the part-time maximum of 75 for a few hours weekdays now proposed.

14. Until our clients purchased the Property in 2010, it had been in disuse for some years, except by trespassers, who did substantial damage to the buildings. The Property was a haven for illegal parties and hunting.

15. Since our clients took over, they not only secured the Property and stopped a major neighborhood nuisance, but have spent millions in improving it, and repairing the buildings and bringing them up to Code. They have already installed fencing and extensive landscape screening.

16. The Board is well familiar with the Applicant's proposal for the future of the Property. In short, this will be a high-end Hospital for patients referred by medical professionals. Many will attend through corporate sponsored programs. There will be no clients from the penal system or government assistance programs. There will still be extensive professional prescreening and background checks. There will be no one with serious psychiatric history, violent or criminal backgrounds. There will be 24-hour professional security. The Hospital will be private pay, with special accommodations for Cortlandt residents. An experienced operator will be retained to manage the Hospital, along with its Medical Director, qualified Board of Directors, and licensed professional staff.

THE AREA VARIANCE CRITERIA

17. As the Board knows, it must evaluate our variance request by the statutory "balancing test", which weighs the benefit of the variance to the Applicant against the detriment to the health, safety and welfare of the neighborhood and community. There are five specific criteria the Board must also consider in applying the balancing test. As discussed in our 2016 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 in our various voluminous Expanded Environmental Assessment Reports submitted through the years, as well as now, the Town Consultants' favorable reports and the Planning Board's Neg Dec. Let's take a look at the variance criteria.

18. As to the balancing test, the benefit to the Applicant is clear. It can't use the Property as a hospital without the variance, which not only has great economic value, but enables our client to fulfill a deep commitment to helping those afflicted by addiction and to assisting those in need in the greater Cortlandt community.

19. On the other hand, the substantial Record demonstrates that the use will pose no significant detriment to the neighborhood or community, but will provide substantial benefits to both.

20. Among the benefits from the variance, which will off-set any relatively minimal impacts, are the following:

1. The continued refurbishing of the Property and the securing of it against the impacts of further trespassing.
2. 75% of the 20.8 acre Property will remain undeveloped undisturbed open space, as will the 27.8 acre adjoining parcel, in furtherance of the Town's Open Space Plan.

3. Given the absence of construction which would occur with other uses, there will be no disturbance by substantial demolition and construction activities, or to any sensitive environmental features, including wetlands, buffers, steep slopes and trees. **All** of the impacts of the likely more intense other permitted uses will be avoided.
4. There will be no additional school children generated and minimal use of the Town's resources, yet the Applicant has projected more than **\$500,000** in new annual property taxes.
5. In addition to this influx of tax revenues, the Applicant will provide significant care and accommodations to Cortlandt and other nearby residents. The Hospital will give them preference, by reserving beds, affording scholarships, and providing a favorable fee structure, augmented by their private insurance.
6. Our client will work closely with the Town, schools, and organizations to address the substance abuse epidemic, by providing speakers and programs.

21. First Variance Criterion – Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties – **Quite simply, given the substantial reduction in scope - there will be no such undesirable change or detriment.**

22. Importantly, every single component of the substantial environmental review to date and the voluminous environmental submissions - including the Planning Board 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 use of the Property, and the lessor impacts as compared to the other permitted educational, religious and residential subdivision uses not requiring State road frontage – is directly relevant to 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 Board finding that there will be no such undesirable change or detriment.

23. Significantly, given the Planning Board's binding determinations in its Neg Dec 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 ("preliminarily"), or indeed, any significant adverse environmental impacts at all, it is quite clear that the Applicant has necessarily satisfied the first variance criterion. 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 enumerated SEQRA criteria for determining significance. (617.7(c)(i)(v).)

24. In addition to the Neg Dec that there should be no significant adverse environmental impacts affecting neighborhood character or nearby properties, the issue of neighborhood character has also been addressed in particular in great detail by the Applicant throughout, including in App. 66 to its February 2022 Planning Board submission. Some additional points in this regard are that:

1. The use is consistent with historic hospital and institutional uses of the site.
2. Only the existing buildings and access will be used.
3. There will be no additional buildings or any future expansion.
4. Substantial additional landscape screening and fencing have been added already and much more will be added.
5. With 75% of the Property remaining open space, there will be with only 2% building coverage.
6. The adjoining property will remain as undeveloped buffer.
7. There will be no disturbance to any sensitive environmental features or the Watershed.
8. The Property is secured from the prior trespassing and nuisances.
9. Our client has invested and will continue to invest substantial sums to repair and renovate the existing buildings.

10. There will be a neighborhood liaison and outreach program.
11. There are other institutional and commercial uses in near vicinity.
12. Albeit not one of the statutory variance criteria, we have also demonstrated at great length that the use is consistent with many of the goals of the 2004 Comprehensive and Open Space Plans and the 2016 Comprehensive Plan. (App. 66. to Feb. 2022)

25. Second Variance Criterion – Whether the benefit sought can be achieved by some method feasible for the Applicant to pursue, other than an area variance – the simple answer is no. A variance from the State road frontage requirement is necessary for hospital use.

26. Third Variance 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 a State road or it is not. Substantiality must be reviewed **in context**. For all of the reasons I have just stated, the variance cannot be deemed substantial. Moreover:

1. While the Town’s Legislative history doesn’t 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 Neg Dec 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 far fewer patients and staff, employee shuttle vans, no emergency room or outpatients, longer patient stays, no patient cars, and with very limited visitation, among other mitigative factors.
2. Further, 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.
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 our 2016 Memo of Law, such as lot size, lot area per bed, and frontage length.

27. Fourth Variance Criterion – Whether the proposed variance will impact the physical or environmental conditions in the neighborhood – again, as we have pointed out, there will be no significant adverse environmental impacts. However, as Lead Agency, the Planning Board’s Neg Dec is binding on this Board and is controlling in this regard. The Planning Board expressly found that there will be no significant adverse environmental impacts in general and that specifically, there will be none with respect to traffic, surface water, groundwater, noise, odor or light, or even, “preliminarily”, on neighborhood character or nearby properties.

28. Fifth Variance Criterion – Whether the alleged difficulty was self-created is relevant, but does not preclude the granting of the area variance. - However, we submit that under the circumstances, there is no self-created difficulty here, 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 three times the combined patients and staff on site at one time. (75/225 vs our max of 52/75)
3. The special permits issued by this Board for other institutional uses before the 2004 amendment, for IBM and Hudson Institute, each likewise allowing 225 people on site.
4. The access remaining in the same location as used for other institutional uses.
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, protected by the Americans with Disabilities Act and therefore, their legal entitlement to reasonable accommodations in the application of the Town’s zoning laws, such as by the issuance of the subject variance.

THE YESHIVA PRECEDENT

29. Finally, another important factor, warranting the granting of the variance, as the Board knows, is that its determination is subject to its own past precedent. While our application stands on its own in meeting the area variance criteria, the 2010 Yeshiva State road frontage variance from the applicable seminary special permit requirements certainly provides strong support as well.

30. There are *some* differences with the Yeshiva, but they don't negate its precedential value. Their use was in operation prior to their 1994 frontage requirement – but on the other hand, our proposed use is for existing buildings that were built and used for over 60 years for institutional uses, including the same hospital use, for which three special permits were issued, including one for hospital use in 1989 – all **prior** to our 2004 State road frontage requirement. The fact that the Yeshiva use preceded its variance application was actually a negative for them, because there were substantial complaints from the community about how that use had operated.

31. Moreover, as we outlined in our 2016 Memorandum of Law and our initial Expanded Environmental Assessment, most of the differences between the two applications, along with their similarities, actually **support** the granting of our variance.

32. Furnace Woods Road has a couple of other schools on it – but the Quaker Ridge neighborhood has a number of non-residential uses as well, which we have pointed out in our submissions. More importantly, our expert analysis demonstrates that from a traffic perspective, there is little difference between the two roads. Our traffic engineer performed studies of Furnace Woods Road. Traffic counts were conducted at the Yeshiva driveway in September 2016, after the schools were open. It is not a heavily trafficked road either, as a typical State road would be. Both roads generally traverse a single-family residential neighborhood and have posted speed limits of 30 mph.

33. Like the Yeshiva students, the Hospital patients will not have on site or use their vehicles. But, in addition, they will have visitors only one day a month and many staff will travel by van.

34. The Yeshiva neighbors complained of a safety issue on Furnace Woods Road due to student pedestrian use, but there will be no such pedestrian use by the Hospital.

35. Presumably, the Yeshiva demonstrated by traffic analysis that its use would not cause any significant adverse traffic impact on its neighborhood, just as the Hospital has demonstrated in its traffic analysis, as determined by the Planning Board in its Neg Dec.

36. The Yeshiva is located in an R-40 residential zone, where it is also a non-residential use permitted by special permit conditional on a State road frontage requirement.

37. However, the Yeshiva use is more intense and its application had far more environmental implications.

38. The Yeshiva permit allows a combined total of staff and students of up to 300 people on site at one time. They have 37 acres. Our Property, along with the adjoining buffer property, is 48.6 acres. We will have a maximum of only 52 patients and 23 staff for a total of only 75 projected on site at any time when we achieve full capacity.

39. While the Yeshiva was undertaking substantial construction and making significant physical changes to its property, the Hospital involves no building construction and it is making little change to the exterior of its Property, other than primarily adding extensive screening.

40. Unlike the Yeshiva project, which involved significant environmental issues, such as an inadequate septic system causing wetland degradation and health concerns, thereby requiring a new sewage treatment plant, and which also involved wetland intrusions, the Hospital application poses no such environmental issues.

41. However, just as Yeshiva was required to be given accommodations under local zoning law by the Federal Religious Land Use and Institutionalized Persons Act ("RLUIPA"), the prospective hospital patients, suffering from substance use disorder, are likewise a Federally protected class under the Americans with Disabilities Act ("ADA"). (We covered that in our 2016 Memorandum, Section IV, and our Federal counsel's March 2017 letter to the Board.)

* * * *

42. In conclusion, we respectfully submit that the overwhelming evidence in the 7-year Record, including the Town Consultant's reports, along with the Planning Board's Negative Declaration, with its 34 negotiated Conditions, the prior precedent of this Board, and State and Federal Law, all mandate the issuance of the area variance.

Thank you.

ZONING BOARD MEETING – JUNE 27, 2022

INTRODUCTION

1. Good evening, I am Bob Davis, attorney for the Applicant. We are here tonight for the Board's public hearing on the application.
2. Since the April 25th meeting, we have provided the Board with the outline of my presentation at that meeting of the overwhelming proof supporting the area variance, along with our June 14th letter summarizing the legal effect of the Planning Board's Negative Declaration under SEQRA on these proceedings. You have the Planning Board record as well, including the most pertinent February 22 and March 24 submission volumes, and of course, the Neg Dec.
3. As there have already been substantial public hearings and a huge amount of public input on this application, before both this Board and the Planning Board, over the last seven years, we respectfully request that, after the public is heard once again now, the Board close this hearing tonight.
4. We also ask that the Board afford the Applicant a brief period to respond in writing if necessary to any comments tonight, and then render its determination at the July 25 meeting.

Thank you.

ZONING BOARD MEETING – AUGUST 29, 2022

INTRODUCTION

1. Good evening, I am Bob Davis, attorney for the Applicant.
2. The Board has before it the entire 7-year record of these proceedings before your Board and the Planning Board. In particular, since April, we have provided the Board another copy of our 2016 Memorandum of Law addressing all of the area variance criteria and showing that we meet them. The substantial recent **43%** reduction in the scope of the project and the many recent additional mitigation measures have strongly buttressed that earlier Memorandum, which is now even more dispositive than it was 6 years ago.
3. The Board also has our February and March 2022 volumes submitted to the Planning Board, which incorporate those significant modifications and mitigation measures, and which led to the Planning Board's April 5 Negative Declaration under SEQRA with its 34 agreed mitigative conditions on any approval. You have as well the outline of my comprehensive April 25 presentation, addressing all of the pertinent variance issues and demonstrating satisfaction of the statutory criteria in light of the most recent developments.
4. The Board also has my June 14th letter summarizing the important legal effect on this Board of the Planning Board's Neg Dec and my August 23 letter addressing the principal comments and themes of counsel and the public at the June 27th public hearing session.
5. At the June 27th hearing, everyone who wanted to be heard was heard and there were no further comments from the public. On July 17th, the Board conducted its site visit. The July 25th meeting was cancelled due to lack of a quorum.
6. So tonight, we respectfully request that the Board close the public hearing and render its Decision and Order on the Application, granting an area variance from the State Road frontage requirement, as the facts and law clearly dictate it should do.

Thank you.

EXHIBIT 2

Dec.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
In the Matter of the Application of
HUDSON RIDGE WELLNESS CENTER, INC., and
HUDSON EDUCATION AND WELLNESS CENTER,

Petitioners,

DECISION
ORDER & JUDGMENT

Index No. 1167/20

- against -

ZONING BOARD OF APPEALS
OF THE TOWN OF CORTLANDT,

Respondent.

-----X
CACACE, J.

The following papers, numbered one (1) through ten (10) were read on this petition for relief brought pursuant to article 78 of the Civil Practice Law and Rules (CPLR):

Papers Numbered

Notice of Verified Petition	1
Verified Petition - Exhibits	2
Memorandum of Law	3
Affirmation in Opposition	4
Affidavit in Opposition	5
Memorandum of Law in Opposition	6
Answer	7
Reply Affirmation	8
Sur-Reply Affirmation	9
Sur-Sur-Reply Affirmation	10

Upon the foregoing papers, it is decided, ordered and adjudged that the instant petition for relief brought pursuant to article 78 of the CPLR is resolved as follows:

Procedural History and Factual Findings

The record presented reflects that the events relevant to this proceeding began with the implementation of measures by the petitioners, Hudson Ridge Wellness Center, Inc., and Hudson Education and Wellness Center, to develop an approximately 20.8 acre lot located at 2016 Quaker Ridge Road, designated on the Town of Cortlandt Tax Map as Section 79.11, Block 1, Lot 18 (hereinafter, the project site), upon which improvements exist in the form of seven buildings previously associated with the original use of the property as a specialty hospital, denoted as a sanitarium in Town of Cortlandt property records, between approximately 1920 and 1948. Specifically, the petitioners are seeking to operate a new private specialty hospital upon the project site which would provide residential substance use disorder/chemical dependency treatment for a maximum of 92 patients (hereinafter, the proposed project). In pursuit of their rehabilitation and development of the project site, the petitioners sought site plan approval regarding same from the Planning Board of the Town of Cortlandt (hereinafter, Planning Board), which, incident thereto, undertook a review of the potential environmental impacts of the proposed project pursuant to SEQRA. In connection with its review, the Planning Board made a formal request of the Town of Cortlandt's Department of Technical Services (DOTS) on February 5, 2019, seeking a zoning opinion concerning whether the proposed project would constitute a "hospital" under the Code of the Town of Cortlandt (hereinafter, the Town Code), and if so, whether the operation of such a "hospital" would require frontage on a "main road".

Acting pursuant to the Planning Board's zoning opinion request, Martin G. Rogers, the Director of Code Enforcement of the DOTS (hereinafter, DCE Rogers), issued a written

determination, dated March 21, 2019, which concluded that the proposed project would not provide for the use of the project site as either a "hospital" or a "specialty hospital", but rather would constitute use as a "rehabilitation center" which is not a permitted use within the R-80 Zone encompassing the project site pursuant to §§ 307-14 and 307-15 of the Town of Cortlandt Table of Permitted Uses, and further declined to render a determination regarding any requirement of "main road" frontage for the proposed project. For reasons not clearly articulated upon the record, DCE Rogers issued a second written determination, dated May 16, 2019, in response to the Planning Board's zoning opinion request of February 5, 2019, through which he adhered to his earlier conclusion that the proposed project would not provide for the use of the project site for the operation of either a "hospital" or a "specialty hospital", but rather would provide for its use as a "rehabilitation center", and proceeded to render his further determination that Town Code § 307-59(B)(9) required that the proposed project have frontage upon a state road (hereinafter, DCE Rogers' determinations).

In response to DCE Rogers' determinations, the petitioners brought an application before the respondent Zoning Board of Appeals of the Town of Cortlandt (ZBA) for an interpretation of the Town Code in relation to those determinations based upon their contention that same were incorrect *en toto* (hereinafter, the underlying application), leading the respondent ZBA to conduct public hearings upon the underlying application on June 19, 2019, August 21, 2019, September 18, 2019 and October 16, 2019, when the public hearing was formally closed. As reflected in the certified minutes of its meeting on January 15, 2020, the respondent ZBA commenced its consideration of the underlying application by first announcing that two of its seven members, Frank Franco and Thomas Walsh, had recused themselves from participating in any vote upon

the underlying application. Immediately thereafter, Chairman David S. Douglas proceeded to marshal the evidence adduced in connection therewith upon the record, drawing from a draft Decision and Order (hereinafter, the draft D&O) which the respondent ZBA had prepared in advance of that meeting. As published therefrom, the respondent ZBA framed the question raised through the underlying application as an issue of whether the proposed use of the project site should be properly defined as the operation of a "hospital", which would be capable of being permitted upon the approval of applications for a special permit and an area variance, or whether that proposed use should be properly defined as a "rehabilitation center", which would be capable of being permitted upon the approval of an application for a use variance.

As further reflected in the certified minutes of the meeting of January 15, 2020, Chairman Douglas stated that the respondent ZBA first sought to define "hospital" through examination of the Town Code, but noted that the absence there of such a definition had ultimately lead to its reliance upon the Standard Industrial Classification Manual (SIC) for guidance regarding the question of whether the proposed project should properly be defined pursuant to § 8069 of the SIC which defines "Specialty Hospitals", or should more properly be defined pursuant to § 8361 of the SIC which defines "Residential Care". In connection therewith, Chairman Douglas again referenced the draft D&O and recited the definition of "Specialty Hospitals" provided by § 8069 of the SIC, and related that the given examples of same therein included both "alcoholism rehabilitation hospitals" and "drug rehabilitation hospitals". Again drawing from the draft D&O, Chairman Douglas next recited the definition of § 8361 of the SIC, and related that the given examples of same therein included both "alcoholism rehabilitation centers, residential: with health care incidental" and "drug rehabilitation centers, residential: with healthcare incidental".

After having recited these definitions, Chairman Douglas stated that the respondent ZBA had determined that the ultimate issue for its resolution turned upon whether the adduced evidence demonstrated that the health care services to be rendered through the proposed project should properly be characterized as being merely incidental to the primary care provided, or should otherwise properly be characterized as being more than incidental to such provided care. Chairman Douglas then stated that the adduced evidence which related to the type/nature of the health services to be administered pursuant to the proposed project, had supported the conclusion that the proposed project is a "hospital" within the meaning of § 8069 of the SIC. In support of this conclusion, Chairman Douglas proceeded to summarize the adduced evidence set forth within the draft D&O relating to the type/nature of the health services to be provided to patients who were being treated at the proposed project facility.

Specifically, reading from the draft D&O, Chairman Douglas related that the services to be provided to patients admitted to the proposed project facility would be in the nature of those medical treatment and care services traditionally provided by a hospital subsequent to the detoxification and stabilization of a person suffering from an acute substance abuse issue. In this regard, Chairman Douglas further related that the proponents of the proposed project had demonstrated that persons admitted thereto would require 24-hour medical treatment and care, which would be provided by no less than 2 medical doctors and 15 nurses, among other psychologists, social workers, counselors and technicians, all of whom would be responsible for administering treatment for physical needs related to internal medicine and addictionology, as well as psychiatry and psychology. In terms of the nature of the medical treatment to be administered through the proposed project to admitted patients, Chairman Douglas related that

the adduced evidence had established that such medical treatment and care would be central to the services provided, rather than merely incidental thereto, as these medical treatment and diagnostic services would be the same as those provided by traditional hospitals. In terms of the nature of the persons admitted to the proposed project facility for treatment and care, Chairman Douglas reflected upon the adduced evidence and stated that these persons would exclusively be sufferers of substance abuse disorder who would continue to receive diagnostic assessments, routine drug testing, physical and mental health examinations, prescribed medication treatment regimens, and other associated medical and psychiatric during their anticipated 28-45 days of in-patient treatment at the proposed project facility. After marshaling much of the evidence adduced in connection with the underlying application, as considered in light of the applicable statutory and case law, Chairman Douglas submitted that the proponents of the proposed project had successfully demonstrated that it meets the definition of a "hospital", and that the underlying application should be granted to the extent that DCE Rogers' determinations should properly be reversed and set aside.

Having completed his summarization of the draft D&O, Chairman Douglas indicated that prior to calling upon the members of the respondent ZBA to enter their respective votes upon the underlying application, he would first solicit comments from them. Initially, Cristin Jacoby announced that she would be abstaining from a vote upon the underlying application due to her absence from all public hearings conducted in connection therewith. Having received no comments from any other members of the respondent ZBA, Chairman Douglas advised that he wished to be heard further and proceeded to address his fellow ZBA board members. Notably, Chairman Douglas stated that he agreed with the draft D&O's analysis regarding the applicability

of the SIC to the definition of "hospital", and that he concurred with much of the content and findings outlined in the draft D&O based thereupon, yet stated that he intended to vote against the underlying application. Indeed, after submitting his several statements of concurrence with the draft D&O, Chairman Douglas proceeded to offer an explanation for his stated intention to vote to deny the underlying application based upon his feeling that the proposed project "falls more readily under SIC Code 8361 which covers residential care". Specifically, Chairman Douglas stated that he felt that the medical treatment to be provided pursuant to the proposed project is "incidental" to the primary care provided, as he submitted his belief that the residential upkeep of recovering patients subsequent to their detoxification would primarily be provided by nurses and social workers. Continuing, Chairman Douglas submitted that the presence of doctors doesn't establish that the proposed project would involve the operation of a hospital, as he stated that doctors provide medical care in many settings other than hospitals, as do care providers such as nurses, psychologists, social workers, counselors and technicians, whom he believed to routinely administer medication and perform diagnostic assessments, drug testing, mental/physical examinations and counseling in non-hospital settings. Upon these beliefs, Chairman Douglas submitted his opinion that the proposed project facility seemed to him to be more akin to what he characterized as "non-hospital healthcare facilities", referencing both a hospice and a residence for people with dementia as examples, rather than hospitals. Finally, Chairman Douglas stated that the adduced evidence concerning the Medication Assisted Treatment (MAT) to be offered to persons admitted to the proposed project facility, supported his view that such treatment constituted a "step-down" from the actual medical intervention provided to patients since MAT does not need to be provided in a hospital, or by doctors.

Chairman Douglas' remarks were followed by a motion brought by Wai Man Chin, Vice Chairman of the respondent ZBA, supporting the adoption of the draft D&O, as submitted and published by Chairman Douglas. Vice Chairman Chin's motion to approve the draft D&O was followed by a poll of the members of the respondent ZBA, which reflected votes in support of the motion by members Adrian C. Hunte and Eileen Henry, an abstention from the vote by member Cristin Jacoby, and a vote against the motion by Chairman Douglas. Upon the recording of the votes registered by the four voting members of the respondent ZBA, the tabulation of same by Assistant Town Attorney Joshua Subin reflected a total of 3 votes registered in favor of Vice Chairman Chin's motion to adopt the draft D&O, and a total of 1 vote registered in opposition thereto, leading Mr. Subin to announce that since the registered vote totals reflected the absence of a voting quorum of the respondent ZBA, the underlying application was deemed to have been denied and DCE Roger's determinations would remain in effect (hereinafter, the challenged determination).

The instant litigation ensued, as the petitioners commenced this hybrid article 78 proceeding/declaratory judgment action in an effort to overturn the challenged determination made by the respondent ZBA through its default denial of Vice Chairman Chin's motion to approve the draft D&O which had represented the proposed approval of the petitioners' challenge to DCE Rogers' determinations. By a verified petition, the petitioners brought the instant hybrid proceeding for a judgment pursuant to article 78 of the CPLR and declaratory relief pursuant to CPLR 3001, in an effort to challenge and overturn the respondent ZBA's failure to approve its own draft D&O by a voting quorum which is required by Town Law § 267-a(13) for the adoption of same, which specifically seeks an order of this Court: (1) reversing,

annulling and setting aside the challenged determination upon allegations that same was arbitrary and capricious, an abuse of discretion, contrary to substantial evidence and contrary to law, and (2) declaring that the petitioners' proposed establishment of a specialty residential drug abuse treatment facility on the project site does constitute the operation of a "hospital" within the meaning of the Town Code, and further directing that the draft D&O be given full force and effect as if it had been validly approved.

Legal Analysis

At the outset, the Court notes that although the challenged determination of the respondent ZBA to deny the petitioners' application for an "interpretation" - seeking to overturn DCE Rogers' determinations - was supported by the registered vote of merely 1 of the 4 voting members of the respondent ZBA, the resulting failure of a majority of its 7 members to register votes in support of Vice Chairman Chin's motion to approve the draft D&O constituted a denial of the petitioners' application and, in effect, an approval of DCE Rogers' determinations (*see* Town Law § 267-a[13][b]; *see also* *London v Zoning Bd. of Appeals of Town of Huntington*, 49 AD3d 739, 740, *lv. denied* 10 NY3d 713). When the respondent ZBA undertook to consider the petitioners' application for an "interpretation" regarding DCE Rogers' determinations, it was acting with the authority to make such an "interpretation or determination as in its opinion ought to have been made in the matter" by the Code Enforcement Division of the Town of Cortlandt in the first instance (*see* Town Law § 267-b[1]; *see also* *Matter of BBJ Assoc., LLC v Zoning Bd. of Appeals of Town of Kent*, 65 AD3d 154, 159). Pursuant to that express authority, the respondent

ZBA rendered the challenged determination, which, in effect, served to approve DCE Rogers' determinations that the petitioners' proposed establishment of a specialty residential drug abuse treatment facility on the project site does not constitute the operation of a "hospital" within the meaning of § 307-59(B)(9) of the Town Code.

In this regard, it is generally understood that a determination made by a zoning board of appeals may not be set aside by a reviewing court considering a challenge raised pursuant to article 78 of the CPLR unless that board's decision is arbitrary and capricious, lacks a rational basis, or constitutes an abuse of discretion (*see Matter of Lucas v Bd. of Appeals of Vil. of Mamaroneck*, 109 AD3d 925; *see also Matter of Fuentes v Planning Bd. of Vil. of Woodbury*, 82 AD3d 883). More specifically, where the challenge relates to the legal interpretation of a term of a zoning ordinance as it is applied to a particular property, the zoning board's interpretation shall not be set aside unless found to be unreasonable or irrational (*see Pecoraro v Board of Appeals of Town of Hempstead*, 2 NY3d 608, 613; *see also Matter of Frishman v Schmidt*, 61 NY2d 823, 825; *Matter of Conti v Zoning Bd. of Appeals of Vil. of Ardsley*, 53 AD3d 545, 547; *Matter of Falco Realty, Inc. v Town of Poughkeepsie Zoning Bd. of Appeals*, 40 AD3d 635, 636; *Matter of Arceri v Town of Islip Zoning Bd. of Appeals*, 16 AD3d 411, 412). In this regard, although a zoning board's interpretation of its zoning ordinance is generally entitled to great deference (*see Matter of New York Botanical Garden v Board of Stds. & Appeals of City of N.Y.*, 91 NY2d 413, 419; *see also Matter of Louchheim v Zoning Bd. of Appeals of Town of Southampton*, 44 AD3d 771), its interpretation "is not entitled to unquestioning judicial deference, since the ultimate responsibility of interpreting the law is with the court" (*Matter of Baker v Town of Islip Zoning Bd. of Appeals*, 20 AD3d 522, 523; *see Matter of Ogden Land Dev., LLC v Zoning Bd. of*

Appeals of Vil. of Scarsdale, 121 AD3d 695, 696).

Furthermore, where, as here, the courts are called upon to review a zoning board's exercise of its appellate authority in relation to a zoning code interpretation made by a zoning enforcement official pursuant to the jurisdictional authority conferred by Town Law § 267-a(4), this Court remains mindful that zoning ordinances exist in derogation of the common law and, thus, must be strictly construed in favor of the owner whose land is being regulated (*see Matter of La Russo v Neuringer*, 105 AD3d 743; *see also Matter of Sanantonio v Lustenberger*, 73 AD3d at 934; *Matter of Mamaroneck Beach & Yacht Club, Inc. v Zoning Bd. of Appeals of Vil. of Mamaroneck*, 53 AD3d 494, 498), and any ambiguity in the zoning ordinance under review must be resolved in favor of the property owner (*see Albany Basketball & Sports Corp. v City of Albany*, 116 AD3d 1135, *lv. denied* 23 NY3d 907; *Matter of Subdivisions, Inc. v Town of Sullivan*, 92 AD3d 1184, 1185; *Incorporated Vil. of Saltaire v Feustel*, 40 AD3d 586).

Consequently, as the Court's review of the challenged determination rendered by the respondent ZBA reveals that the basis upon which DCE Rogers relied when he determined that the petitioners' proposed establishment of a specialty residential drug abuse treatment facility on the project site does not constitute the operation of a "hospital" within the meaning of § 307-59(B)(9) of the Town Code, as echoed by Chairman Douglas when he registered his vote in opposition to the adoption of the draft D&O, was the application of the definition of a "hospital" pursuant to the 1987 edition of the Occupational Safety and Health Administration's Standard Industrial Classification (SIC) Manual. In this regard, it is noted that such reliance was compelled by the absence of a definition of "hospital" within either Town Code § 307-4, entitled "Definitions", or Town Code § 307-59, entitled "Hospitals or nursing home". Specifically, this

application of the SIC is properly drawn from Town Code § 307-4, which provides that any terms not defined therein (or within the unavailing New York State Uniform Fire Prevention and Building Code) may properly be given the meaning provided within the SIC Manual, and by Town Code § 307-14, entitled, "Content of Table of Permitted Uses", which also directs that such definition be drawn from the SIC. As both DCE Rogers' determinations and the respondent ZBA's challenged determination permissibly drew their applied definition of "hospital" from the SIC, the Court first notes that § 8069 of the SIC, entitled "Specialty Hospitals", defines same as "[e]stablishments primarily engaged in providing diagnostic services, treatment, and other hospital services for specified categories of patients", and provides examples including "alcoholism rehabilitation hospitals" and "drug rehabilitation hospitals". In addition, the Court notes that § 8361 of the SIC, entitled "Residential Care", defines same as "[e]stablishments primarily engaged in the provision of residential, social and personal care for children, the aged, and special categories of persons with some limits on ability for self-care, but where medical care is not a major element", and provides examples including "alcoholism rehabilitation centers, residential: with health care incidental", and "drug rehabilitation centers, residential: with health care incidental".

Having applied these SIC-based definitions, the Court notes first that the evidence adduced before the respondent ZBA indicated that the proposed project facility will be designed and staffed to provide medical treatment and related health care services to individuals who suffer from the diseases of alcoholism and/or chemical dependence, primarily subsequent to their detoxification, using a residential substance abuse treatment program model under licensing by the New State Office of Alcoholism and Substance Abuse Services (OASAS) pursuant to Article

32 of the of the Mental Hygiene Law (MHL) and 14 NYCRR Part 820. In connection therewith, the adduced evidence indicated that persons admitted to the petitioners' proposed OASAS-licensed treatment facility (hereinafter, patients) would receive 24/7 medical care and treatment on-site from a staff of medical/health professionals which would include a minimum of 2 medical doctors and 15 nurses, as complimented by an additional team of 2 licensed psychologists and 23 social workers, counselors and technicians, all of whom would implement the individual treatment and recovery plan developed for each patient admitted to the proposed project facility. More specifically, all patients would receive periodic medical assessments and ongoing treatment for medical ailments and chronic diseases, whereas patients determined to be suffering from withdrawal symptoms would be stabilized through the use of "medication-assisted treatment", and patients determined to be suffering from co-occurring mental illness would be treated with "medication therapy" to alleviate the symptoms of same, through the administration of these treatments on a daily basis by a medical doctor, registered nurse or nurse practitioner. Pursuant to the OASAS licensing requirements, the individual treatment and recovery plan developed for each patient would include initial and ongoing drug/alcohol screening, individual counseling, group counseling, family counseling, chemical abuse and dependence awareness education, chemical dependence relapse prevention counseling and generalized healthcare services throughout their anticipated 28-45 days of in-patient treatment at the proposed project facility. Notably, the adduced evidence which supported this overview of the medical treatment and related health care services to be provided to patients at the proposed project facility was derived from the hearing testimony and written presentations offered by Frank Cicero and Brian Baldwin, LCSW of Cicero Consulting Associates, Inc., and Peter Millock, Esq., of Nixon

Peabody, LLP, and Dr. Ernst Jean, MD, during the public hearing sessions conducted on September 18, 2019 and October 16, 2019.

Of further significance, the Court notes that the evidence presented by these hearing witnesses further informed that the OASAS certification, which the proposed project facility will operate under, specifically mandates that such a residential substance abuse treatment facility be operated under the supervision of a Medical Director who is a NYS licensed physician possessing the required education, training and experience in substance use disorder services, and who shall personally bear overall responsibility for, *inter alia*, all medical services provided by the program, oversight of routine medical care, specialized services and medications, and the supervision of medical staff in the performance of all medical services. Notably, Dr. Jean's testimony on October 16, 2019, offered through the prism of his personal experience as the Medical Director of an OASAS-certified residential substance abuse treatment facility located in Bronx County, revealed that patients do not qualify for such treatment unless they are seriously ill and require extensive 24-hour medical presence to address their addiction-related treatment needs and their commonly presented co-occurring disorders, which include coronary artery disease, hypertension and Chronic Obstructive Pulmonary Disease (COPD), opining that such a level of significant medical care cannot be properly characterized as mere custodial care.

Despite the considerable experience-based expertise reflected in the testimony and extensive written submissions presented by these witnesses in connection with the respondent ZBA's efforts to examine the nature of the medical care to be provided to the petitioners' patients, and their shared opinion that the petitioners' proposed project facility would provide diagnostic services and treatment which would be consistent with that provided at alcoholism

and drug rehabilitation hospitals as defined by § 8069 of the SIC, Chairman Douglas, alone amongst the members of the respondent ZBA, rejected that evidence and elected to register the only vote to deny the petitioners' interpretation application based upon his conclusion that the medical care to be provided to such patients would be incidental to the primary care they were to receive. Although Chairman Douglas declined to support this conclusion by identifying the specific nature of the primary care that he believed would predominate over the medical care that each patient would receive at the proposed project facility, he did indicate that his vote was based upon his determinations that patients would primarily be cared for by nurses and social workers, that the presence of doctors doesn't establish that the proposed project would constitute the operation of a hospital, and that the administration of medication and the performance of diagnostic assessments/examinations and counseling could be accomplished in non-hospital settings.

Against this backdrop, having considered the evidence adduced before the respondent ZBA, and having evaluated Chairman Douglas' articulated factual bases for his vote to deny the petitioners' interpretation application, the Court finds little difficulty concluding that there is neither a reasonable nor rational view of that adduced evidence which would support the challenged determination reached by the ZBA upon the sole vote of respondent Chairman Douglas. In this regard, the Court finds that all three of the bases proffered by Chairman Douglas in support of his disapproving vote bear little, if any, relevance to his ultimate determination that the medical care to be provided to the petitioners' patients would be incidental to the primary care they were to receive, as reflected by the conclusory statements he ostensibly offered to support his minimization of the significance of the adduced evidence detailing the routine

medical care that would be delivered to all patients of the proposed project facility. Indeed, the Court's scrutiny of each of the three findings offered by Chairman Douglas in support of his vote, reveals the ambiguous nature of such findings in relation to his ultimate conclusion that the medical care to be provided to the petitioners' patients would be incidental to the primary care they were to receive, as his findings that the petitioners' proposed project facility would be staffed by medical doctors on-site, that more patient care would be delivered by nurses than doctors, and that such patient care could be equally provided in either a hospital or a non-hospital setting, more persuasively undermines his ultimate conclusion rather than supports it. Consequently, noting the absence of support within the challenged determination for Chairman Douglas' ultimate conclusion that the medical care to be provided to the petitioners' patients would be incidental to the primary care they were to receive, the Court's consideration of the hearing testimony and submissions offered by the petitioners' expert witnesses, Frank Cicero, Brian Baldwin, Peter Millock, Esq., and Dr. Ernst Jean, MD, with specific regard to the extensive and consistent medical care that would be provided by the petitioners' to the patients of their OASAS-certified residential substance abuse treatment facility, strongly indicates that such care is not consistent with mere residential care defined by § 8361 of the SIC, yet is entirely consistent with the care provided by a specialty hospital as defined by § 8069 of the SIC.

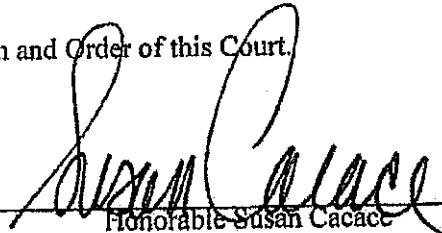
Accordingly, as this Court's role in reviewing the respondent ZBA's challenged determination is limited to a retrospective examination and analysis of the record before it to determine the level of evidentiary support therein for that determination, this Court finds that the record in this case compels it to conclude that the respondent ZBA's challenged determination to deny the petitioners' application for an interpretation that their proposed operation of an OASAS-

certified residential substance abuse treatment facility on the project site is consistent with that of "Specialty Hospital" as defined by § 8069 of the SIC, was improper, arbitrary and capricious, and constituted an abuse of discretion, as it was neither rational nor reasonable to reach that determination due to the patent absence of a sufficient evidentiary basis of support for same within the record (*see Matter of Sanantonio v Lustenberger*, 73 AD3d 934, 935; *see also Matter of Stone Indus., Inc., v Zoning Bd. of Appeals of Town of Ramapo*, 128 AD3d 973; *Matter of LaRusso v Neuringer*, 105 AD3d 743; *Halperin v City of New Rochelle*, 24 AD3d 768).

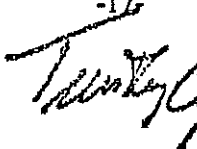
Based upon the foregoing, the respondent ZBA's challenged determination is hereby annulled and set aside (*see Matter of Sasso v Osgood*, 86 NY2d 374, 384 n. 2; *see also Matter of Ogden Land Dev., LLC v Zoning Bd. of Appeals of Vil. of Scarsdale*, 121 AD3d 695, 696-97; *Matter of Haberman v Zoning Bd. of Appeals of Town of E. Hampton*, 85 AD3d 1170, 1171; *Matter of Campbell v Town of Mt. Pleasant Zoning Bd. of Appeals*, 84 AD3d 1230, 1231; *Matter of Rusclano v Ross*, 78 AD3d 715, 716), and to the extent that the petitioners additionally seek declaratory relief, the Court hereby remits this matter to the respondent ZBA for the issuance of a determination that the petitioners' proposed establishment of an OASAS-certified residential substance abuse treatment facility on the project site does constitute the operation of a "hospital" within the meaning of the Town Code (*see Ogden Land Development, LLC v Zoning Bd. of Appeals of Village of Scarsdale*, 121 AD3d at 697).

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
September 24, 2020


Honorable Susan Cacace
Acting Justice of the Supreme Court

10/2/2020

-17

HON. SUSAN CACACE
WESTCHESTER COUNTY
JUDICIAL JUDGE

TO:

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EXHIBIT 3



PROPOSED SPECIALITY HOSPITAL

2016 QUAKER RIDGE ROAD

TOWN OF CORTLANDT, NEW YORK

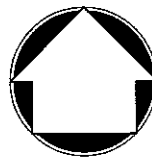
1990 AERIAL PHOTOGRAPH

DATE: 12/06/2016

JMC PROJECT: 14088

FIGURE: A-1

SCALE: 1" = 500'



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ARMONK
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JMC

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EXHIBIT 4

APPENDIX 66

**PROPOSED SPECIALTY HOSPITAL
2016 QUAKER RIDGE ROAD
TOWN OF CORTLANDT
WESTCHESTER COUNTY, NY**

**SEQRA Summary of No Potential Significant
Adverse Impacts**

**2. The Proposed Action Has No Potential Significant Adverse
Environmental Impacts Based on the Reasons Stated Below:**

**a. The Proposed Action is Consistent with The Town Development
Plan and Community Character**

- (1) The Proposed Action is consistent with the 2004 Comprehensive Plan. The Town's 2004 Master Plan makes note of this property in Policy 34, with the property being within the Special Reuse and Conservation Development (SRC) district at that time. Policy 34 recommended that the Town Board eliminate the SRC district from the Zoning Ordinance. The Hudson Institute property (the site) was mentioned in Policy 34 as one of the institutional properties expressly intended to benefit by redevelopment under the SRC zoning because the permitted lot area in that District was 5,000 square feet for single-family, two-family and multifamily dwellings, potentially making the property attractive for denser residential redevelopment than under the R-80 District. However, the Master Plan proposed to eliminate the SRC because of the lack of infrastructure in the area to support the increased housing density permitted thereunder. The Town Board adopted the Master Plan recommendation in amending the Zoning Ordinance to eliminate the SRC, whereby the property reverted to R-80 zoning. Thus, the proposed re-use of the property as a Specialty Hospital permits the property to be

used again and to remain on the tax rolls with no such increase in density, while providing for the Specialty Hospital's sanitary and water infrastructure needs on-site. The proposed use is therefore consistent with the Town's 2004 Master Plan and Policy 34 in particular.

(2) The Proposed Action is consistent with the 2004 Comprehensive Plan's goal of preserving Quaker Ridge Road, and also with the 2016 Comprehensive Plan where the Quaker Ridge Road area is listed on Table 7-1 on page 94 as a scenic resource in the Town, which is consistent with Quaker Ridge Road's recent historic designation. As demonstrated on Table III.C-4 (Appendix 5.K) and as updated in Appendix 30 (PowerPoint presentation to the Planning Board on 1/08/2019), the proposed Specialty Hospital has lower traffic volumes than other uses permitted in the R-80 district with no requirement of access to state roads (such as private schools, places of worship with associated religious school, and governmental buildings). As documented in the EEA Addendum, the Level of Service will not change, and there will be minimal traffic impact. No scenic features of Quaker Ridge Road are proposed to change, because the existing buildings on the property are proposed to be reused, with no new building construction proposed. Landscaping on the property will be enhanced. The existing open space (approximately 75% of the property) will remain intact. The adjacent 27.8 acre adjacent property to the south, owned by an affiliate company, that contains a small, vacant house but is otherwise undeveloped will remain in this condition as a buffer so long as the subject property is used as a hospital.

(3) The Town's 2004 Open Space Plan includes the property in its current state under Index E-2 as an "Under-Utilized Parcel, Five Acres or More, Particularly Worthy of Preservation". The proposed re-use of the property as a Specialty Hospital, with no new buildings proposed and with minimal land disturbance for some driveway, walkway and parking

improvements, maintains this property's open space identity in the substantially same condition as it was in 2004, and thereby conforms to the Town's Open Space Plan.

- (4) The proposed use preserves significant open space, a goal of the 2004 Comprehensive Plan. For example, as noted on page 86 of the 2016 Comprehensive Plan, the property is specifically mentioned in the context of meeting a goal of the 2004 Master Plan as being within "Category 3", which is an "underutilized privately-owned land" that currently provides open space benefits. With no new building development proposed on the property, the Proposed Action conforms to this goal.

- (5) The Proposed Action is consistent with the 2004 amendments to the Zoning Code to preserve local residential roads, as well as with Quaker Ridge Road as a recently designated Town Historic and Scenic Road with specific protections for pavement width, preservation of stone walls, mature trees and requirements for screening of new developments, as discussed below. The same roads were used for over 60 years for institutional use of the property. A special permit for such a hospital use was issued as late as 1989, when the character of the current neighborhood was already established. Furthermore, as noted previously, the proposed Specialty Hospital has lower traffic volumes than other uses permitted in the R-80 district with no requirement of access to state roads (such as private schools, places of worship with associated religious school, and a government building). All of these uses would have a greater impact than the proposed Specialty Hospital on any local residential road. As documented in the EEA Addendum, the Level of Service will not change with the proposed Specialty Hospital, and there will be minimal traffic impact.

With regard to Quaker Ridge Road as an Historic and Scenic Road, the Specialty Hospital proposes no changes to pavement width of Quaker Ridge Road (the proposed driveway improvements will widen the driveway and provide a 90 degree intersection with Quaker Ridge Road yet will not require the widening of the travelled pavement of Quaker Ridge Road), no alteration to any stone walls or mature trees, and evergreen hedge screening has been installed along the property's westerly property line adjacent to Quaker Ridge Road. No changes are proposed to the existing road striping adjacent to the property. An approximately 3 feet by 4 foot sign is proposed at the front gate of the property. Therefore, the Specialty Hospital will have no discernable impact to the historic nature of Quaker Ridge Road since the character of the roadway will not be noticeably altered.

- (6) The Proposed Action is consistent with the Town's 2016 "Envision Cortlandt" Comprehensive Plan. In addition to the property being mentioned, as indicated above, on page 86 with regard to the property providing open space benefits, and on page 94 with regard to the property as a scenic resource in the Town, the 2016 Master Plan provides on page 88 a list of Key Challenges and Opportunities for the Future; the Proposed Action is in conformance with many of these. For example, how the Specialty Hospital responds to the challenge of providing and preserving open space is discussed in #4, above. The Specialty Hospital also addresses the key challenge of preserving the Town's biodiversity by protecting significant expanses of land and habitat, with no new building construction proposed and minimal site disturbance (under one acre), preserving the majority of the 20.8 acre site. In addition, the adjacent 27.8 acre adjacent property to the south, owned by an affiliate company, that contains a small, vacant house but is otherwise undeveloped will remain in this condition so long as the subject property is used as a hospital. The Specialty Hospital also speaks to the challenge of protecting

environmentally sensitive land, with no disturbance proposed to wetlands, wetland buffers, and steep slopes. This also helps to address the additional challenge of encouraging climate resiliency by protecting wetlands and preserving forested areas.

- (7) The Specialty Hospital addresses the 2016 Master Plan challenge on page 88 of preserving water quality and protecting surface and groundwater resources. The two new HEWC wells will pump, on average, 9 gallons per minute. For some perspective, this is approximately the rate of a garden hose. In addition, the well will not run continuously, but will cycle on and off throughout the day, with less use at night. As discussed in the LBG Hydrogeologic Assessment in Appendix 5.H, the data indicate that groundwater withdrawals up to twice the average water demand of the Specialty Hospital will not result in storage depletion of the groundwater.

As approved and supervised by the Planning Board and, its professional staff and expert hydrogeology consultant, LBG conducted a 72-hour pumping test in August 2018. The primary goal of the pumping test was to evaluate potential impacts to water levels in nearby offsite potable supply wells while pumping the new water supply at twice the average water demand of the Specialty Hospital. To achieve this goal, a simultaneous pumping test was conducted on Well 1 and Well 2 between August 20 and August 23, 2018 with pre- and post-water level monitoring of the offsite wells. The two Hudson Ridge Wellness Center wells were pumped concurrently for three days, each at a pumping rate of 9 gpm (gallons per minute), for a combined yield of 18 gpm or 25,920 gpd (gallons per day). The average water demand for the Specialty Hospital is 12,660 gpd (8.8 gpm).

During the pumping test program, water-level measurements were collected from a total of four onsite wells, including two onsite bedrock

monitoring wells and the two wells pumped during the testing program (Well 1 and Well 2) and 16 residential wells. Minimal drawdown (less than 0.50 foot) was documented in the two onsite bedrock monitoring wells. Water-level effects related to the pumping test was observed in two adjacent properties located on Quaker Hill Drive with a drawdown of approximately 18.5 and 24.5 feet. Because both wells had a significant amount of available water above their respective pumps at the end of the test, during a test that was conducted to demonstrate extreme conditions that will not occur during the hospital occupancy (72 hours of continuous pumping at a combined rate of double the average water demand), these wells are not expected to be adversely affected by the use of the Hudson Ridge Wellness Center (HRWC) wells. Additionally, no discernible water-level impacts were measured in any of the other offsite monitoring locations that were attributed to pumping in Well 1 and Well 2. The Town's hydrogeology consultant and professional staff agreed with the testing protocol and findings.

Nonetheless, the Applicant has requested via a letter dated October 03, 2018 to the owners of the properties containing the wells affected by the pump test that they consider participating in a long-term offsite well monitoring program, which would start three to six months before the certificate of occupancy for the Specialty Hospital is issued and continue for up to two years after 75 percent full occupancy occurs. If long-term monitoring were to unexpectedly demonstrate any significant interference on these wells from the Hudson Ridge Wellness Center wells, mitigation options would be explored and implemented.

There will also be a domestic water storage tank to mitigate peak water draw demand, the existence of which was not accounted for in the extreme pumping test.

Additionally, eighty-five percent (85%) or more of the pumped water will be recycled back to the ground due to infiltration from the septic system following treatment, such that there would only be an effective draw of about 1.3 gallons per minute - or approximately 1,900 gallons per day. The contribution to ground water of annual rainfall to the Specialty Hospital site is equivalent to about 21 gallons per minute - much more than the intended draw from the ground. This routine analysis also indicates that HEWC would not affect groundwater supplies. In addition, there will be no irrigation systems installed for the site landscaping. Rather, the landscaping will be hand-watered by a manually carried hose as determined by an inspection of the landscaping. Thus, watering will only be conducted should the landscaping require it based upon the conditions at the time, and only that landscaping requiring watering will be watered, and only then by hand using a hose. This will keep landscaping watering to a minimum. Once established, the species planted will not require heavy usage of water. The existing approximately 15,000 gallon emergency fire water storage tank behind building #3 will continue to be used for emergency fire water storage. The emergency fire water storage tank will be refilled from the existing functional wells, which will be dedicated to supplying the fire storage tank and which may not be used for irrigation or any other purpose. Fire storage tank refill water will not be sourced from the two new wells which are only being used to supply domestic water to the facility.

- (8) Preserving community character is another 2016 Comprehensive Plan challenge on page 88, which the proposed action is addressing. As discussed in the Expanded Environmental Assessment (EEA) dated October 6, 2016, there was similar institutional use of the property from the 20's throughout the 80's, culminating in the issuance of a hospital special permit in 1989 when the neighborhood was fully developed, and the Applicant is using the same buildings that were used for those

institutional purposes. In addition, the existence of a Specialty Hospital on this site in a primarily residential neighborhood is not fundamentally different than any of the other non-residential uses permitted in the neighborhood, such as schools, places of worship with nursery schools, government offices, country clubs and recreation clubs.

- (9) Limiting the impacts associated with development, including increases in airborne pollutants, traffic, and noise levels is an additional 2016 Comprehensive Plan challenge on page 88, which the proposed action is addressing. The existing buildings on the property are proposed to be reused, with no new building construction proposed. No airborne pollutants are anticipated to be generated by the operation of the use, and any temporary construction impacts such as dust from the less than one acre of proposed disturbance will be mitigated by the sediment and erosion control plan. The proposed Specialty Hospital has lower traffic volumes than previous existing and approved uses of the site as well as other uses permitted in the R-80 district with no required access to state roads (such as private schools, places of worship with associated religious school, and a governmental building, per Table III.C-4 (Appendix 5.K) and as updated in Appendix 30 (PowerPoint presentation to the Planning Board on 1/08/2019), the Level of Service will not change, and there will be minimal traffic impact. Facility operations are not noise-intensive. During the day, patients may walk on the property for relaxation when they have any free time between sessions/activities. After dark, patients may be walking from their living space to possibly another building on the property for meetings. For example, there is a meditation meeting noted on the current schedule that begins at 9:00 PM. Lights out is at 10:30 PM. Also, there are limited employee arrivals/departures at the start of the night shift at 10:00 PM, with the use of the two shuttle vans. The nearest residence is approximately 300 feet distant and upgradient from the proposed parking lot of the main hospital building, and buffered by a solid

6-foot high fence on the Specialty Hospital property and by a wooded buffer on the residential property, limiting noise impacts.

(10) The proposed use will offer a number of other benefits to the Cortlandt community:

- Because the proposed Specialty Hospital is to be operated on a for-profit basis, it will not be exempt from local and school property taxes, and thus, unlike some other permitted uses, will remain on the Cortlandt tax rolls.
- The redeveloped property will pay a total of approximately \$561,660 in annual property taxes.
- This is almost a **ten-fold increase** in annual property taxes to be paid to all taxing jurisdictions following the proposed redevelopment, a very significant increase over existing conditions.
- No school children will be generated by this Specialty Hospital. As such, the approximately \$390,314 in school taxes generated will all be to the benefit of the Croton-Harmon School District.
- Because the residents remain on the property and are not permitted to have vehicles, there will be little impact to Town services such as highway and recreation.
- Also, private carters are to be used, so Town taxes will not be used for trash collection.
- No municipal water or sewer service will be utilized.

- The Specialty Hospital preserves all existing open space on two large, contiguous parcels:
- The adjacent 27.8 acre forested parcel to the south in the Town of New Castle containing a small vacant house will remain undeveloped open space;
- Approximately 75% of the 20.83 acre Site will remain undeveloped open space.
- There is no significant change in use or intensity of use because there is no new construction, existing buildings will be used, and the property historically contained hospital and institutional uses for some 60 years.
- The Town's 2004 Open Space Plan includes the property in its current state under Index E-2 as an "Under-Utilized Parcel, Five Acres or More, Particularly Worthy of Preservation". The proposed re-use of the property as a Specialty Hospital, with no new buildings proposed and with minimal land disturbance for some driveway, walkway and parking improvements, maintains this property's open space identity in the substantially same condition as it was in 2004.
- Due to the limited nature of the construction, there is no impact to environmental features such as wetlands, wetland buffers, steep slopes, or trees.
- Much less impact than other uses requiring a variance, such as a private or public school, a place of worship with religious school, or a general office building.

- Little disturbance by construction activity, with under one acre of site disturbance.
- Preferences for admission to the facility will be given to residents of Cortlandt, and scholarships will be awarded each year to two Cortlandt residents.
- A number of beds will be reserved for Cortlandt residents and they will be afforded reduced fees on a sliding scale based on income, augmented by their private insurance.
- The Applicant will actively participate in community outreach with relevant community and school programs, such as DARE, by providing expert speakers and programs, and will work with the Town as requested to combat the problem of substance use disorder.
- As part of its community outreach, the Applicant will designate a neighborhood/community liaison on its staff, who will among other duties, invite neighborhood representatives to open meetings no less than twice a year to keep them apprised of its operations and to address any questions or concerns from the neighbors. That person will also be available to call at any time if there was ever a more immediate matter. The Applicant will also provide appropriate municipal authorities with a staffed 24-hour access line.

(II) The proposed use is not appropriate for the Medical Oriented District discussed in the 2016 Comprehensive Plan. The issue of the inappropriateness of the Specialty Hospital in the MOD is discussed in great length in Appendix I.R and Appendix I.S. For example, the 2016 "Envision Cortlandt", does not propose to require or envision that the proposed use components of the MOD or all medical uses in general be

limited to just the MOD. Indeed, existing residential-oriented medical uses such as nursing homes, assisted living facilities, and group homes for disabled adults are dispersed throughout the Town, many in residential zoning districts such as the proposed Specialty Hospital. Other non-residential medical uses such as doctors' offices are also dispersed throughout the Town, with some doctors maintaining home offices in residential zones. Page 107 of the 2016 Comprehensive Plan, for example, acknowledges that care for the elderly residents of the Town is provided by several facilities, including the Bethel Nursing Home in Crugers, the Cortlandt Nursing Home on Oregon Road, the Seabury at Field Home in Cortlandt Manor, the NYS Veterans Home at the VA Campus in Montrose, and the Danish Home in Croton-on-Hudson. If all medical uses were intended by "Envision Cortlandt" to be limited to the MOD, all such existing uses and the properties on which they are located would be rendered non-conforming. Clearly, this is not "Envision Cortlandt's" intent. Further, there would be no basis to so distinguish a medical use from other non-residential uses in residential zones, such as educational and religious uses. The proposed Specialty Hospital has a temporary "residential" component but is not a long-term residential medical use because clients only stay for a limited period of time.

(12) To-date, the MOD zoning district has not been enacted by the Town. The Town is currently drafting the DEIS for the legislation as well as for the site plans for two developers who have projects related to the MOD district. In any case, the proposed legislation makes the MOD an "optional" overlay district designation, for which those property owners wishing to be included must apply to the Town Board for inclusion in the district in the Board's discretion.

(13) The envisioned MOD district in the 2016 Comprehensive Plan is depicted as a dense concentration of uses. This is contrary to the generally

accepted industry standards for such high-ended "luxury" Specialty Hospital facilities, which depend on location, privacy, tranquility, and security to provide a recovery buffer from the hustle and bustle of fast-paced, stressful everyday life. This buffer contributes to their success in working with individuals towards recovery and sobriety, and re-entry into normal everyday life. The MOD district, in contrast, does not provide such a location by its very nature of consolidating various medical uses into one location which is expressly envisioned to become a vital economic center of the Town.

(14) The proposed MOD differs in other ways from the needs of the proposed Specialty Hospital:

- The Specialty Hospital only permits limited visitation. Families will be scheduled for one weekend day every month for family member visitation, family education and group counseling. These family weekend days will be staggered, so as the facility approaches and reaches full capacity, visitation will be limited so that patients may have visitors only one day per month, which will take place on a weekend, and only up to 25% of the patients may have visitation on any one weekend. . Family contact and visits are generally minimized to enable the client to transition from their previous typical routines as well as to separate and distance themselves from those contacts while in the facility for an effective and long lasting treatment. Thus, unlike the goal of the MOD to provide for "boutique hotels, inns and bed & breakfasts", the Specialty Hospital has no such need and does not share this goal.
- Likewise, the Specialty Hospital's clients reside elsewhere and have no need for any housing component of the MOD. Further, their

demographic will be such that they have no need for any transportation component of the MOD.

- The Specialty Hospital is not an ambulatory or outpatient use, and so does not require a number of the ancillary/ambulatory/walk-in/urgent care/medical office/social services uses proposed for the MOD.
- The clients of the Specialty Hospital are not permitted to leave the grounds of the facility, and thus have no need for the MOD's "complimentary and accessory commercial uses". All of the Specialty Hospital's clients' needs will be provided for on-site.
- In addition, one of the "driving forces" of the MOD according to "Envision Cortlandt" is to offer "a continuum of care (aging in place)", and, "An aging demographic in the region is the driving force behind this growth strategy of moving towards larger and centralized medical facilities that provide a range of services." The proposed Specialty Hospital has no relationship to an "aging demographic", because it is to serve adults of all ages with a condition that is not age-related. Therefore, there is no need for the types of services that the elderly might require, which is a key rationale by the Town for the establishment of the MOD district. This is another reason why the proposed use is not appropriate for the MOD district.

(15) The 2016 Comprehensive Plan states that Quaker Bridge and Quaker Ridge Road are listed under priority capital improvements for 2015-2019, for resurfacing and rebuilding, which will support the proposed use. As documented in the EEA, the Level of Service will not change with the proposed Specialty Hospital, and there will be minimal traffic impact.

b. The Proposed Action Will Not Have Any Significant Adverse Impacts On Land

(16) No disturbance is proposed to Town-regulated steep slopes, wetlands, and wetland buffers.

(17) The proposed disturbance is less than one acre and is to occur on the developed portion of the property, and no trees are proposed to be removed. The forested portions of the site are to remain undisturbed. A mixture of shrubs and trees exists along the site's frontage with Quaker Ridge Road and has been supplemented with additional evergreen screening. A total of 80 new trees are depicted on the plan, including spruce, holly, fir and other species, some of which have already been planted.

(18) The approximately 27.8 acre property immediately adjacent to the south that is owned by the Applicant's affiliate contains a small, vacant house but is otherwise undeveloped, and will remain as a wooded buffer while the hospital use is in effect.

(19) The existing building coverage on the site is only 2%, and is proposed to remain with no construction of new buildings, with less than one acre of site disturbance proposed. The vast majority of the site, some approximately 75%, will remain undeveloped as open space, preserving the character of the neighborhood.

c. The Proposed Action Will Not Have Any Significant Adverse Impacts on Historical, Archeological or Geological Resources

(20) The existing buildings on the property are to remain, and no new buildings are proposed to be constructed.

(21) Grading and land disturbance will be limited to some driveway, walkway and parking improvements.

(22) No disturbance is proposed to Town-regulated steep slopes.

d. **The Proposed Action Will Not Have Any Significant Adverse Impacts on Wetlands**

(23) No disturbance to wetlands or wetland buffers is proposed.

e. **The Proposed Action Will Not Have Any Significant Adverse Impacts on Trees**

(24) The site vegetation is comprised primarily of mature hardwood trees on the eastern and south-central portion of the site, which will remain undisturbed.

(25) A mixture of shrubs and trees exists along the site's frontage with Quaker Ridge Road and has been supplemented with additional evergreen screening. A total of 80 new trees are depicted on the plan, including spruce, holly, fir and other species, some of which have already been planted.

(26) Because of the small extent of proposed disturbance (for some driveway, walkway and parking improvements), the limited extent of additional impervious surface, and with only 3 trees currently proposed to be removed to accommodate the new septic field, no significant impact to trees is anticipated.

f. **The Proposed Action Will Not Have Any Significant Adverse Impacts on Surface Water or Stormwater**

(27) The Proposed Action is within the Croton River Basin watershed, which drains to the Hudson River, and a portion of the property is within the Indian Brook Reservoir watershed (Appendix 5.C). Thus, the Proposed Action is not within a New York City watershed, and hence is not regulated by the NYCDEP.

(28) The proposed disturbance to the site is under one acre. Erosion and sediment control measures will be designed and implemented in accordance with Section 262-10 of Chapter 262 "Stormwater Management and Erosion and Sediment Control" of the Town of Cortlandt Code, which specifies utilizing the most current version of the Westchester County Soil and Water Conservation District's Best Management Practices Manual for Erosion and Sediment Control and the New York State Guidelines for Urban Erosion and Sediment Control, as amended.

g. **The Proposed Action Will Not Have Any Significant Adverse Impacts on Groundwater**

(29) The two new wells are both at least 200 feet from any potential source of pollution, and are situated within the property by more than 200 feet, in accordance with Health Department requirements.

(30) The closest of the two nearest wells on adjoining properties is approximately 300 feet distant and 70 feet lower in elevation. This separation is satisfactory to the Health Department, who has approved the site's wells as a source for the proposed Specialty Hospital, with neighboring wells very unlikely to be affected in any way.

(31) The Specialty Hospital will use less water than allotted to the property by its hydrology since the daily rainfall recharge to the groundwater is 21 gallons per minute based on the size of the Specialty Hospital property, while the projected use of groundwater is only approximately 9 gallons per minute (gpm). In addition, the well will not run continuously, but will cycle on and off throughout the day, with less use at night. Further, on an annual basis, approximately 85 percent of water used indoors is returned, or recharged, to the groundwater system by the septic system through treatment and percolation from the leach field. As a result, the total consumptive use, or water lost from the groundwater system, would be approximately 15 percent of the average water demand, or approximately 1,900 gallons per day (gpd), with a projected use therefore of only approximately 1.3 gallons per minute, which is only about 6% of the daily rainfall recharge.

(32) As discussed in the LBG Hydrogeologic Assessment in Appendix 5.H, the HEWC wells were tested simultaneously after they were drilled, each at a constant rate of 9 gpm (totaling 18 gpm which is twice the average water demand of the Specialty Hospital of 9 gpm, so each well can independently meet the water demand for the Specialty Hospital), for 72 hours. The test results demonstrated stabilized yield and drawdown in both wells within 48 hours from the start of the test. The wells also reported very good recovery (the water levels in Well 1 and Well 2 recovered 100 percent approximately 1.5 hours and 2.5 hours following the test shut down, respectively). The 72 hour testing of both wells demonstrate that they can independently meet the Specialty Hospital water demand. In addition, the data indicate that groundwater withdrawals up to twice the average water demand of the Specialty Hospital will not result in storage depletion of the groundwater. This indicates that the hospital's use would have no effect on adjoining water supplies, as further discussed in point

#7 based on an additional pump test which included offsite well monitoring.

(33) As also discussed in the LBG Hydrogeologic Assessment in Appendix 5.H, the combined 48.6 total acreage of the Specialty Hospital site and the adjoining property to the south owned by an affiliate company might, based on zoning requirements, be developed with a minimum of 20 and a maximum of 24 single-family homes. The consumptive water demand (after 85% return through the septic systems) would range from 1,650 gpd to 1,980 gpd. This range in consumptive water demand is similar to the projected consumptive water demand (1,900 gpd) of the proposed Specialty Hospital.

(34) There will be no irrigation systems installed for the site landscaping. Rather, the landscaping will be hand-watered by a manually carried hose as determined by an inspection of the landscaping. Thus, watering will only be conducted should the landscaping require it based upon the conditions at the time, and only that landscaping requiring watering will be watered, and only then by hand using a hose. This will keep landscaping watering to a minimum. Once established, the species planted will not require heavy usage of water. An existing approximately 15,000 gallon emergency fire water storage tank behind building #3 will continue to be used for emergency fire water storage. The emergency fire water storage tank will be refilled from the two functional existing wells, and refill water will not be sourced from the two new wells which will only be used to supply domestic water to the facility.

(35) As noted in the letter contained in Appendix I.P, the Specialty Hospital site is not located over an aquifer, nor is it within an Aquifer Protection District.

h. The Proposed Action Will Not Have Any Significant Adverse Impacts on Noise, Odor or Air Quality

(36) Supplemental landscape buffers and fencing have been installed on the property to buffer the adjoining neighbors from any noise, glare, visual impacts or other potential adverse impacts, which are expected to be largely irrelevant to the proposed re-use of the property. Approximately 75% of the site will remain undeveloped open space.

(37) Because no new buildings are proposed to be constructed, with minimal site disturbance proposed, dust from construction activities is anticipated to be minimal, and will be mitigated with sediment and erosion control measures.

(38) No long-term impacts to air quality are anticipated.

(39) Facility operations are not noise-intensive. During the day, patients may walk on the property for relaxation when they have any free time between sessions/activities. After dark, patients may be walking from their living space to possibly another building on the property for meetings. For example, there is a meditation meeting noted on the current schedule that begins at 9:00 PM. Lights out is at 10:30 PM. Also, there are limited employee arrivals/departures at the night shift change at 10:00 PM with the use of the two shuttle vans. The nearest residence is approximately 300 feet distant and upgradient from the proposed parking lot of the main hospital building, and buffered by a solid 6-foot high fence on the Specialty Hospital property and by a wooded buffer on the residential property.

(40) No odors are anticipated from the proposed Specialty Hospital.

i. **The Proposed Action Will Not Have Any Significant Adverse Impacts on Plants or Animals**

(41) Because of the small extent of proposed disturbance of less than one acre (for some driveway, walkway and parking improvements in already disturbed areas), the limited extent of additional impervious surface, no disturbance to wetlands or wetland buffers, and the adjoining 27.8 acre undeveloped property to the south owned by the Applicant's affiliate which contains a small, vacant house but is otherwise undeveloped and will remain so, no significant impacts are anticipated to the property's habitats and biodiversity.

j. **The Proposed Action Will Not Have Any Significant Adverse Impacts on Agricultural Resources**

(42) There are no agricultural resources in the vicinity of the Property. Any agricultural use of the property ceased in 1920 when Dr. Lamb constructed a substance use disorder treatment hospital on the site.

k. **The Proposed Action Will Not Have Any Significant Adverse Impacts On Aesthetic Resources, Open Space or Recreation Areas**

(43) The properties in the vicinity of the site are primarily residential uses with relatively large parcels. Mature trees exist on most of the neighboring properties along with a variety of other vegetation. However, there are non-residential and institutional uses in the vicinity as well. At least one of the nearby properties, directly across the street, has horse stables and corrals along its Quaker Ridge Road frontage. It is known as Rolling Stone Farm LLC with an address of 99 Quaker Bridge Road. The Danish Home is in the vicinity, and the GE Learning Center is situated at 1 Shady Lane Farm Road. Lakewood House, near the Danish Home and at 2125 Quaker Ridge Road, is a commercially used estate property that is

advertised and rented for gatherings such as weddings, family reunions, etc. Regarding the Danish Home, the property will contain a wireless cell tower because a special permit was approved by the Zoning Board of Appeals on February 15, 2017. Approximately 0.3 miles to the northeast of the Danish Home along Quaker Ridge Road are high tension overhead utility wires within an approximately 350-foot-wide easement, where trees and larger vegetation have been cleared. The Proposed Action is therefore not out of character with the neighborhood.

(44) The existing building coverage on the site is only 2%, and is proposed to remain with no construction of new buildings, with proposed site disturbance of less than one acre. Approximately 75% of the site will remain undeveloped open space and remain unchanged from existing conditions, preserving the character of the neighborhood. The existing buildings have been upgraded and repaired, and the property is no longer vacant which led to vandalism and destruction of property, which was a nuisance to the neighborhood.

(45) The buildings and use have been screened by substantial additional landscaping and the fencing recently installed on the property, and the adjoining 27.8 acre forested property to the south, owned by a related entity, that contains a small, vacant house but is otherwise undeveloped will remain in this condition to provide a substantial additional buffer while the hospital use is in effect. A mixture of shrubs and trees exists along the site's frontage with Quaker Ridge Road and has been supplemented with additional evergreen screening. A total of 80 new trees are proposed, including spruce, holly, fir and other species, some of which have already been planted.

(46) The Town's 2004 Open Space Plan includes the property in its current state under Index E-2 as an "Under-Utilized Parcel, Five Acres or More,

Particularly Worthy of Preservation". The proposed re-use of the property as a Specialty Hospital, with no new buildings proposed and with minimal land disturbance for some additional parking, upgrading of utilities and new septic fields, maintains this property's open space identity in the substantially same condition as it was in 2004, and thereby conforms to the Town's Open Space Plan.

(47) There will be no impact on Town recreation resources because the Specialty Hospital patients will remain on-site, and there will be no new residents of the Town who would use the Town's recreation resources.

(48) Site lighting, where required, will be shielded to prevent lighting impact beyond the property. Lights off is at 10:30 PM for lighting within the patient rooms.

I. **The Proposed Action Will Not Have Any Significant Adverse Impacts on Critical Environmental Areas**

(49) The western, developed portion of the property is not within the Indian Brook Reservoir Critical Environmental Area ("CEA") (Appendix 5.C), or any other CEA, nor is any portion of the property within the New York City watershed, nor over an aquifer protection zone.

(50) The eastern, undeveloped portion of the property, which will remain undeveloped, is within the periphery of the Indian Brook Reservoir CEA (Appendix 5.C). The western portion of the site is within the Croton River watershed, which drains to the Hudson River. The incorporation into the Proposed Action of stormwater best management practices on the existing developed, western portion of the property, which is not in said CEA, in compliance with current law and regulation should prevent any potential adverse impact to the CEA and the Hudson River.

(51) There are currently several working septic systems on the HEWC site, and these have been in existence since the 1920's. The HEWC plans to completely rebuild the septic systems to modern standards, with only the existing septic system serving Building 2 (to have limited use for offices) continuing to do so. A portion of the new septic system will be within the periphery of the Indian Brook Reservoir watershed but not within the CEA, as was also the case for the old septic system (Appendix 5.C). As such, there will be no impact of the septic system to the CEA. The new HEWC septic system is to be monitored as part of the on-going responsibilities of the hospital's facilities manager, unlike residential septic systems. If a repair is needed to the HEWC system, it would be taken out of service completely until repairs are made. This procedure eliminates any risk of adverse impacts, such that there will be no impact to any downstream areas.

m. The Proposed Action Will Not Have Any Significant Adverse Impacts on Transportation and Traffic

(52) The Traffic Studies provided analyzed the neighborhood roadway network, as well as the roadways within the Crotonville area (see Appendix 5 and 5.D).

(53) The Traffic Studies conclude that the proposed use will not generate any significant traffic volumes and will not have any significant adverse impacts on the neighborhood associated with the proposed Specialty Hospital with regard to traffic operations or safety. There will be no changes to the peak hour intersection levels of service at the analyzed intersections in the vicinity of the site and in Crotonville, and the intersections will continue to operate with the same minimal delays, operating at the best possible Level of Service A, during all hours of the day.

(54) The existing roadway widths are sufficient to accommodate the existing and projected vehicles. Accident reports were requested for accidents which occurred along the area roadways during the past three years from the Cortlandt, New Castle, and Ossining Police Departments. No accidents were reported in the vicinity of the site by the Cortlandt and New Castle Police Departments along the approximately 1,200 feet of Quaker Ridge Road from the frontage of the subject property to Glendale Road, approximately 3,500 feet of Quaker Ridge Road north of the site driveway and along approximately 650 feet of Glendale Road from Quaker Bridge Road to Quaker Ridge Road. Tables AR1 thru AR3 in Appendix 5.D depict data from the accident reports provided by the Town of Ossining Police Department. One accident was reported along Quaker Bridge Road between Old Albany Post Road and Glendale Road near Riverview Farm Road, located approximately 0.5 miles from the site, which involved a distracted driver. One accident was reported along Shady Lane Farm Road located more than a mile from the site which was caused by an alcohol impaired driver improperly exiting the Route 9A northbound off-ramp. There were 11 reported accidents along Old Albany Post Road between North Highland Avenue (US Route 9) located approximately 1.5 miles from the site and Quaker Bridge Road, the majority of which were in or south of the Crotonville area, approximately one mile or more from the site. Based on the contributing factors shown on the attached tables, the studied roadways experienced accidents resulting primarily from operator error or distraction. Based on the type and infrequency of accidents reported in the vicinity of the site and the low volume of traffic associated with the proposed use which is disseminated as traffic uses various roads farther from the site, the roadway characteristics combined with the relatively low traffic volumes are not expected to significantly impact access for emergency vehicles.

No accidents have been reported in the vicinity of the site during the past three years involving pedestrians or bicyclists. The area roadways are not heavily utilized by vehicular traffic, bicycles or pedestrians and the minor increases in vehicular volumes will not significantly impact the ability of bicycles and pedestrians to share the roadways. The roadway characteristics of Quaker Ridge Road are similar to Furnace Woods Road, the roadway which provides access to the Yeshiva for which the Town previously approved an area variance while acknowledging in the Yeshiva case, unlike this case, that there was substantial pedestrian use of Furnace Woods Road by the students.

- (55) The site generated traffic, which occurs primarily at shift changes, will be minimized with the utilization of two shuttle vans for the employees. The area roadways would operate at level of service A, the best possible level of service, even without the use of the shuttle vans.
- (56) The below traffic mitigating measures are part of the application and will be implemented per the Applicant's Transportation Management Plan, and as described in the attached 01/08/2019 PowerPoint presentation to the Planning Board, which is incorporated by reference herein:
- Patients will not be permitted to have vehicles on site or to use vehicles during their stay.
 - Employee arrival and departure times will be scheduled outside of existing peak traffic hours on area roads.
 - Staffing will consist of four shifts. Two shuttle vans will transport a substantial number of employees from pick-up points outside of the area.

- The estimated supply deliveries to the hospital are 5-6 per week, weekdays only, as well as once a week garbage and laundry service and daily UPS vehicles.
- Delivery vehicles will be directed to arrive via Routes 9 and 9A through Crotonville. Tractor trailer trucks will be prohibited.
- The existing security gate will be relocated and remain open during the day. The existing entranceway will be improved to prevent any queuing on Quaker Ridge Road.
- Visitation for each patient is limited to one weekend day per month, with only 25% of patients having visitation on any weekend.
- Snow removal and grounds maintenance will be handled on site.
- There will be more than adequate parking on site, much of which is already existing:
 - The Specialty Hospital will require much less parking than a general hospital or a nursing home, because it will have far fewer people coming to the site than those uses because:
 - There is no emergency room or outpatient treatment.
 - Visitation is very limited.
 - Many employees will be required as a condition of employment to use the shuttle vans.
 - There will be an on-going parking utilization monitoring program, with required reporting to the Town, with similar reporting on the traffic volumes along Quaker Ridge Road and the site driveway.

(57) The lack of traffic impacts is true both for a very conservative traffic analysis (where it was assumed for purposes of the traffic study that the two morning shifts [6:00 AM Shift 1 and 9:00 AM Shift 1A] are combined into one shift, where in reality, these shifts are split and the traffic trips will be fewer than analyzed, as well as although Shift 1 and Shift 2 do not correspond to the peak AM and PM highway hours, they were assumed to correspond to the peak AM and PM highway hours), as well as for a traffic analysis where realistic traffic operations were utilized.

(58) The proposed Specialty Hospital will generate far less traffic than the excess capacity of Quaker Ridge Road can absorb.

(59) The proposed Specialty Hospital has lower traffic volumes than with prior institutional uses approved for the site by special permit, including IBM, Hudson Institute and the hospital approved in 1989, all of which were permitted up to 225 people on site at one time, as opposed to 129 for the proposed use. 92 of the maximum 129 persons on site at one time are patients, none of whom will have cars, and 37 employees on the maximum shift, many of whom would be shuttled. In addition, other uses permitted in the R-80 district with no requirement of access to state roads (such as private schools, places of worship with associated religious school, and a governmental building), as illustrated on Table III.C-4 (Appendix 5.K) and as updated in Appendix 30 (PowerPoint presentation to the Planning Board on 1/08/2019), would generate more traffic than the proposed use.

(60) The 2016 Comprehensive Plan states that Quaker Bridge and Quaker Ridge Road are listed under priority capital improvements for 2015-2019, for resurfacing and rebuilding, which would seem to support the proposed use.

n. **The Proposed Action Will Not Have Any Significant Adverse Impacts on Parking**

(61) All parking will be on-site, and there will be no street parking or use of municipal parking facilities. The Town parking requirements for hospitals is one parking space for each patient and one space for each employee on the maximum shift. Based on the Town requirement, a total of 129 spaces are required. However, the actual parking requirements for the proposed Specialty Hospital will be far less than parking associated with a typical general hospital and will be more like a nursing home. There will be no emergency rooms and no daily visitors. The clients will not have their own vehicles on site, and so the proposed use is more like a nursing home, which requires less parking than a hospital use, or even less because visitation to nursing homes is not restricted. For the Specialty Hospital use, visitation is limited so that patients may have visitors only one day per month, which will take place on a weekend, and only up to 25% of the patients may have visitation on any one weekend. Accordingly, far fewer spaces than the required 129 will actually be needed or utilized at the site.

65 parking spaces are proposed which will be provided by a combination of resurfacing the existing parking areas and creating new gravel parking areas as depicted on the drawing "Site Plan/Tree Plan/13% Max. Grade", revision dated November 5, 2018, by Ralph G. Mastromonaco, PE, PC., and included with this submission. An additional 64 spaces could easily be provided to meet the Town requirement should ever it become necessary in the future to do so. Since the 129 spaces will not be required for the specific use, a parking waiver special permit is being requested from the Town. As discussed in point #56, there will be an on-going parking utilization monitoring program, with required reporting to the Town.

o. The Proposed Action Will Not Have Any Significant Adverse Impacts on Energy

(62) The Specialty Hospital will increase current electrical usage at the Property, although electricity was used in the past by the institutional uses that previously occupied the site. The facility will be served by Consolidated Edison, which currently services the area. Existing Con Edison facilities will be utilized, and the buildings' electrical systems upgraded.

(63) Energy efficiency will be emphasized in the restoration and operation of the buildings.

(64) The Proposed Action will not have any significant adverse impacts on energy.

p. The Proposed Action Will Not Have Any Significant Adverse Impacts on Sewer or Human Health

(65) Two new septic systems will be installed to replace the old existing system.

(66) There are currently several working septic systems on the HEWC site and these have been in existence since the 1920's. The HEWC plans to completely rebuild the septic systems to modern standards. The new HEWC septic system is to be monitored as part of the on-going responsibilities of the hospital's facilities manager, unlike residential septic systems. If a repair is needed to the HEWC system, it would be taken out of service completely until repairs are made. This procedure eliminates any risk of adverse impacts, such that there will be no impact to any downstream areas.

(67) The Westchester County Department of Health (WCDOH) has witnessed and agreed with all the septic soil testing on the site and the results of the testing. A WCDOH permit for the new septic system is pending and is expected shortly.

(68) The property is not within the New York City watershed. Therefore, no septic system reviews and/or approvals are required from the NYCDEP.

(69) All medical waste, if any, which will be minimal, will be handled by a private medical waste disposal contractor, and be disposed of in accordance with all pertinent medical waste disposal regulations including a weekly pickup. With this type of level of care, the only medical waste generated by the program will be limited to medical "sharps" including needles for treatment of clients with diabetes and lancets to test client's blood sugar levels, when needed. Any other type of blood or other type of testing would be conducted off-site by a medical testing laboratory. Generally, treatment programs with the number of beds/clients projected at the Specialty Hospital produce only minimal medical waste in the form of needles and/or lancets. The very small quantity of this type of medical waste that will be generated is such that only a quarterly annual pick-up by the medical waste vendor is anticipated. Thus, due to the limited nature and quantity that will be generated, and use of proper disposal techniques, there should be no significant adverse environmental impact to the character of the neighborhood due to medical waste.

(70) Projected non-medical waste generation of approximately 4-5 tons per month is not significant, and will be handled by a private waste disposal contractor.

(71) Human health will be improved with the proposed Specialty Hospital because it will provide a private residential treatment program for individuals who are recovering from chemical dependency.