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June 14, 2022

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

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

Dear Chairman Douglas and Member of the Board:

As the Board knows, on April 5, 2022, the Planning Board, as Lead Agency under SEQRA, rendered its Negative Declaration that the proposed specialty hospital will not have a significant environmental impact with respect to the only environmental issues identified by the Board as relevant to this matter. This letter will serve to briefly set forth for your Board the legal ramifications of the Planning Board's Negative Declaration for your Board's review of and determination upon the subject application for an area variance from the State road frontage requirement.

The Court of Appeals has held that an "involved agency" under SEQRA, such as your Board, is bound by the Negative Declaration of the Lead Agency and may not perform its own independent subsequent SEQRA review. See, *Gordon v. Rush*, 100 N.Y.2d 236 (2003). See, also, *Troy Sand & Gravel Co., Inc. v. Town of Nassau*, 101 A.D.3d 1505, 957 N.Y.S.2d 444 (3d Dep't 2012). As stated by the Third Department in the latter case, while the Negative Declaration does not preclude your Board from reviewing the application under the Zoning Code, the Board must "necessarily take into consideration and abide by" the Planning Board's SEQRA determination, and your Board's ultimate determination, which is subject to CPLR Article 78 review, "will be upheld only if it is rational and supported by the substantial evidence."

In this regard, in another case involving the same parties as the latter Third Department case, *Troy Sand & Gravel Co., Inc. v. Town of Nassau*, 125 A.D.3d 1170, 4 N.Y.S.3d 613 (3d Dep't 2015), the Court explained that an involved agency's independent review under zoning regulations does not include "the ability to now gather additional environmental impact information beyond the full SEQRA record developed before the lead agency. Rather, in conducting its own jurisdictional review of the environmental impact of the project, the [involved agency] is required by the overall policy goals of SEQRA and the specific regulations governing findings made by "involved agencies" to rely on the fully developed SEQRA record in making the findings that will provide a rationale for its zoning determinations."

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

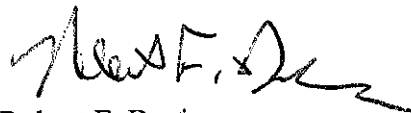
In applying the foregoing principles in this particular case, it must be recognized that, as I discussed in my April 25th presentation before the Board, every aspect of the substantial environmental review of this application to date is directly relevant to the area variance criteria to be evaluated by this Board. This includes the Applicant’s numerous environmental submissions, the Planning Board’s Negative Declaration and the 34 agreed Conditions annexed thereto and incorporated therein, all of the other mitigative conditions agreed to by the Applicant and incorporated in the application and the Record, the favorable reports of the Town’s consultants and professional staff, the historical use of the property, and the much lesser impacts of the proposed specialty hospital use as compared to other permitted educational, religious and residential subdivision uses not requiring State road frontage.

Accordingly, it is particularly important in this case to note that the courts will set aside a zoning board’s denial of a variance when the lead agency has rendered a Negative Declaration and the zoning board’s determination is inconsistent therewith. See, for example, *Simon v. Englert*, 185 A.D.3d 940, 128 N.Y.S.3d 539 (2d Dep’t 2020); *209 Hudson Street, LLC v. City of Ithaca Board of Zoning Appeals*, 182 A.D.3d 851, 122 N.Y.S.3d 766 (3d Dep’t 1920), *Luburic v. Zoning Board of Appeals of Village of Irvington*, 106 A.D.3d 824, 966 N.Y.S.2d 440 (2d Dep’t 2013).

Thus, the law is clear that while the Planning Board has determined that the proposed specialty hospital will *not* have any significant adverse environmental impacts, its Negative Declaration *does* have a very significant impact on this Board and its review of the Applicant’s area variance application.

Thank you for your consideration.

Very truly yours,



Robert F. Davis

RFD:dds

c: Thomas Wood, Esq.
Town Planning Board