

ZONING BOARD OF THE TOWN OF CORTLANDT  
STATE OF NEW YORK

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In the Matter of the Application of

HUDSON RIDGE WELLNESS CENTER, INC. AND  
HUDSON EDUCATION AND WELLNESS CENTER

For An Area Variance

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APPLICANTS' MEMORANDUM OF LAW

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## INTRODUCTION

The Applicants propose to use the 20.83 acre property at 2016 Quaker Ridge Road in the Town of Cortlandt and the existing buildings thereon ("the Property") as a rehabilitation hospital for those suffering from substance use disorder. The Property was previously used as such a rehabilitation hospital from the 1920's until 1948, and for various other institutional uses thereafter, through the 1980's, for which several special permits were issued. In 1989, a special permit was also issued for another hospital use at the Property, which never came to fruition. The Town's Master Plans and Open Space Plan reflect the long time institutional use of the Property and the goal of maintaining its existing open space in connection with such use.

Since purchasing the Property in 2010, through a corporate affiliate, Applicant Hudson Ridge Wellness Center, Inc. has secured the Property with a gated entrance, fencing, and extensive landscaping, and has engaged in a herculean clean-up, refurbishing and beautification of the Property, which had become a dangerous blight on the neighborhood due to constant trespassing and illegal hunting, which inflicted substantial damage to the Property and buildings. The Property had become a haven for wild parties and the buildings had become dilapidated and graffiti covered.

The Applicants are very sensitive to the protection of the environment, the conservation of the Property, and the avoidance of adverse impacts on the neighborhood. Thus, they have proposed a very environmentally friendly use of this large site. Only the existing buildings will be used for the proposed hospital. There will be no new construction. Accordingly, there will be no impact on any sensitive environmental features, including any trees, wetlands, or steep slopes. The substantial existing open space will remain. An affiliate of the Applicants has also purchased the adjoining undeveloped 27.8 acre site, which will not be built upon, but will be

used as a natural buffer area for the hospital. The Applicants have expressed their willingness to place a restriction on that adjoining site to prohibit its development so long as the hospital use continues.

There will be no significant traffic impact. The patients will not be allowed to drive or to have vehicles on site. Visitation will be limited to only one weekend day per month for each patient. Traffic will generally consist only of the staff, at staggered, non-peak hours. Unlike a general hospital, there will be no emergency room or other traffic generating uses. The Applicants are exploring ways to still further limit traffic, which will include the shuttling of employees in passenger vans from off-site.

There is already sufficient private water and a septic system on site, so that there will be no use of public infrastructure.

Unlike the case with certain other permitted uses, the site will remain on the tax rolls. Based on the Applicants' analysis, the taxes on the Property will increase by over a half a million dollars annually, although no new school children will be generated and there will be little use of Town services.

The proposed use will have much less impact on the environment and neighborhood than other permitted uses, such as a full residential subdivision, an affordable housing project, or the types of school and religious uses which have expressed interest in the site.

Many people are familiar with places like the Betty Ford Clinic in California and Silver Hill in Connecticut, on which this hospital will be modeled. There is no other such hospital in Westchester and given the well-publicized epidemic of substance use disorder, there can be no denying the dire need for one.

This will be a high-end hospital for patients referred by medical professionals. Most will probably attend through corporate sponsored programs. Importantly, there will be no clients from the penal system or who are government assisted. This will be a private pay hospital. However, the Applicants will offer significant accommodations and preferences for Cortlandt residents, including setting aside a certain number of beds for them, providing them with scholarships, and accepting their insurance for payment. The Applicants also intend to be heavily involved in supporting programs conducted by the Town and local organizations, including providing expert speakers. Throughout the past couple of years, the Applicants have had talks with various interested local organizations, including DARE and the Cortlandt and Croton Coalitions, and sponsored sports teams through the Town Recreation Department.

It is important to note that all patients either will have undergone detoxification elsewhere before admission or will not need it. They will be pre-tested to make sure they are not currently on drugs or alcohol and, of course, there will be no such substances on site.

Notwithstanding, there will be extensive professional pre-screening and background checks. There will be no one admitted who has any serious psychiatric history, or violent or criminal backgrounds. In any case, there will be 24-hour professional security. A well-recognized national firm in this field will professionally manage the hospital.

In short, this will be a *wellness* center, intended to provide a very private, peaceful setting. There will be no disturbance, let alone danger, to the neighborhood, and the patients clearly will not wish to draw attention to themselves. They will be there voluntarily, to get well.

It should be noted that the prospective patients are a protected class under the Americans With Disabilities Act and are entitled to reasonable accommodations in the application of local zoning laws.

As discussed at length herein, the Applicants seek a special permit from the Town Planning Board, as required for hospital use. The Property generally far exceeds the specific bulk requirements for such a special permit. However, a 2004 amendment to the Town Zoning Ordinance requires that a hospital in a residential district front upon a State road, which the Property does not. Therefore, the Applicants seek an area variance from this Board with respect to the State road frontage requirement. The Applicants respectfully submit that they will satisfy the statutory criteria for such variance.

Finally, it must be noted that the Applicants submitted their original application for said special permit and site plan approval to the Planning Board over a year ago, on July 20, 2015, and made their initial public presentation to the Planning Board on August 4, 2015, at which a neighborhood opposition group appeared in force, although it was not a public hearing, to show its objection to the application. As a result, the Town Board immediately commenced consideration of a Moratorium Law, which it enacted in September 2015, and re-enacted in February 2016 in an attempt to correct procedural infirmities in the Law alleged by the Applicants. The Moratorium extended from its original enactment in September 2015 through June 30, 2016, thereby forestalling the application for its entire duration.

**I. THE PROPOSED SPECIALTY HOSPITAL  
IS A PERMITTED USE OF THE PROPERTY  
WHICH REQUIRES ONE AREA VARIANCE  
UNDER THE PRESENT ZONING ORDINANCE**

Applicant Hudson Ridge Wellness Center, Inc. (“HRWC”) is the owner of the 20.83 acre property known as 2016 Quaker Ridge Road in the Town of Cortlandt, which is further known and designated at Section 79.11, Block 1, Lot 18 on the Town Official Tax Map (the “Property”). Through its affiliated entity, Applicant Hudson Education and Wellness Center (“HEWC”), HRWC proposes to operate a specialty hospital providing a residential addictions program treating those with chemical dependency. HEWC’s hospital would be essentially the same use as the original rehabilitation hospital use of its property conducted by Dr. Lamb from the 1920’s until 1948.. (HRWC and HEWC are hereinafter collectively referred to as “HEWC”).

HEWC’s proposed hospital use of the Property is permitted by special permit in the R-80 Zoning District. Pursuant to the Table of Permitted Uses under §§307-14 and 307-15 of the Town Zoning Ordinance, the general use category of “Health and Social Services”, includes a “hospital or nursing home” as a specially permitted use in all residential zoning districts, as well as most other districts.

“Hospital” is not a defined term in the Zoning Ordinance. However, §307-4, “Definitions”, provides in its prologue that: “Uses listed in the Table of Permitted Uses shall be further defined by the “Standard Industrial Classification Manual, United States Office of Management and Budget.”

Likewise, §307-14, “Content of Table of Permitted Uses”, provides in pertinent part:

D. Unless otherwise stated in this chapter, non-residential uses listed on the Table of Permitted Uses shall be further defined by the Standard Industrial Classification Manual (SIC), Executive Office of the President, Office of Management and Budget, 1987.

The referenced Standard Industrial Classification Manual includes in its “Industry Group 806,” “Hospitals”, under subsection “8069 Specialty Hospitals, except Psychiatric”, the following uses, among others:

Establishments primarily engaged in providing diagnostic services, treatment and other hospital services for specialized categories of patients, except mental. [Psychiatric hospitals are classified in Industry 8063.]

- Alcoholism rehabilitation hospitals . . .
- Chronic disease hospitals . . .
- Drug addiction rehabilitation hospitals . . .
- Hospitals, specialty; except psychiatric . . .
- Rehabilitation hospitals: drug addiction and alcoholism.

HEWC’s proposed use falls within all of the foregoing categories of the Standard Industrial Classification Manual and therefore, constitutes a specially permitted use in the R-80 Zoning District.

In addition to the “General Conditions and Standards” for all special permits set forth in §307-42(A) of the Zoning Ordinance, §307-59, “Hospital or nursing home,” sets forth the additional requirements for the special permit sought by HEWC as follows:

**§307-59. Hospital or nursing home.**

- A. Purpose. The purpose of this section is to allow for the provision of hospital and nursing home facilities and accessory buildings and uses, including dwellings for staff members, to serve the needs for medical care of residents of the Town and to ensure that such facilities are provided in a manner that is not disruptive to surrounding property or the neighborhood.
- B. Standards and conditions. Standards and conditions shall be as follows:



- (1) Minimum lot area: 10 acres; minimum lot area per bed: 2,000 square feet.
- (2) Minimum frontage: 100 feet.
- (3) Maximum building coverage: 20%.
- (4) Maximum height: main building: 75 feet; dwelling for staff: 35 feet; other accessory buildings: 25 feet.
- (5) Minimum building setback:

**Number of Feet**

Type	Front	Side	Rear
Main building	200	125	125
Dwelling for staff	100	100	100
Other accessory building*	75	75	75

\*May be located in side or rear yard only.

- (6) Waiver of requirements.  
[Amended 5-17-2005]

- (a) Where a hospital or nursing home facility which has previously received a special permit proposes to utilize, alter or modify any building or structure which is in existence on the date of the application for a new or amended special permit approval pursuant to this section, or where an existing hospital proposes to construct a new building or structure or addition thereto, the Planning Board, subject to appropriate conditions, may waive the requirements for minimum building setback, maximum height, total floor area, minimum lot frontage, maximum building coverage, required parking, and any such

other dimensional regulation, standard or condition, including landscaping and buffering requirements, or other requirements as set forth in this chapter.

(b) The Town Board does hereby determine that it is appropriate to amend the Zoning Ordinance of the Town to allow the Planning Board some flexibility with respect to considering applications for existing hospital facilities within the Town. The adoption of these amendments is not in any way to be considered an endorsement by the Town Board of any specific plan proposed by any applicant either presently pending or in the future filed with the Planning Board for consideration. The Planning Board should exercise its own sound judgment and discretion as authorized by law in making a determination on any applications with respect to hospitals within the Town of Cortlandt.

(7) Minimum distance between buildings: two times the height of the taller building.

(8) Buffers, fencing and landscaping shall be provided in such a manner as to protect adjoining properties from noise, glare, visual impacts and other adverse impacts and shall conform to the standards established in §§307-21B and 307-22 of this chapter.

(9) **Only to be permitted on a lot in residential zones which fronts on a state road.**  
[Added 9-14-2004] (Emphasis added.)

HEWC requires an area variance from §307-59(B)(9) above, which was added as an amendment to §307-59 in 2004, and which requires that a hospital use in a residential zone be located on a State road. Similarly added to the Zoning Ordinance in 2004, via §307-15 “Notes to Table of Permitted Uses”, Subsection A, “Note A” (11), was the requirement: “Hospital [sic] and nursing homes will be permitted only on a lot in a residential zone which fronts on a state road.”

HEWC’s counsel submitted a Comprehensive FOIL request to the Town regarding the local legislative history of the 2004 amendment, which resulted in producing very little information regarding the Town’s motivation for the amendment. Discussion among the Town’s professional staff and the Planning Board at the Planning Board’s public hearing session of September 8, 2004, at which the Board considered a wide variety of proposed amendments to the Zoning Ordinance for which the Town Board sought its recommendation, indicated that the amendment to the Ordinance imposing State road frontage requirement for hospitals and nursing homes and a similar amendment for doctors’ and dentists’ offices (requiring frontage on a State road or Oregon Road) were intended to be consistent with a similar amendment adopted in 2003 for funeral homes (§307-47(B)(1)) and to avoid any uncertainty which might have arisen from using the originally proposed term “arterial roads”. Presumably, it was also recognized at the time that New York Presbyterian Hudson Valley Hospital was and is located in a Residential District on a State road (Route 202).

The Property is located on Quaker Ridge Road, a Town road, which provides its only frontage and means of access, i.e., it does not front on a State road. **Otherwise, the 20.83 acre parcel generally far exceeds the foregoing special permit bulk requirements with, e.g. over**

**2 times the minimum lot area (in addition to its 20+ acre adjoining parcel), 4 times the minimum lot area per bed, 6 times the minimum frontage, building coverage of only one-tenth the maximum permitted coverage, and a front yard setback from the main building of about 1 ½ times the minimum required setback.**

Significantly, the State road requirement was not added to the special permit requirements for hospitals and nursing homes until September 14, 2004, which was some 80 years after the original hospital was built and first used as such, some 25-50 years after the various other existing buildings were constructed and utilized for other office, institutional, and non-residential uses, and some 15 years after a special permit had been issued for another hospital use of the site.

There is also at least one recent precedent of the Zoning Board's granting of a variance from an analogous special permit State road frontage requirement. That precedent and the pertinent legal criteria for the granting of the variance, including the status of the prospective patients as a federally protected class, are discussed below.

## II. HISTORY OF THE PROPERTY

A "Historical Timeline" for the Property, including its ownership and use from 1920 to date, is included as Exhibit 2(b) to the Appendix hereto. The following information was obtained from Town files and historical material accumulated by HEWC.

The Property was previously used as a hospital for almost 30 years, having been purchased in 1920 by a New York physician, Dr. Robert Lamb, who designed the site to serve as a specialized medical care center ("sanitarium"), as noted in the Town's original "Building Record" card for the main hospital building (see, Appendix, Ex. 1), with the purpose of providing highly individualized care for his patients (especially those requiring mental rehabilitation) (See, Appendix, Ex. 2(a)). Dr. Lamb's design of the site and the main hospital building reflected his belief that a typical hospital-like atmosphere should be avoided. The hospital was closed in 1948 and thereafter, was leased to several tenants, with the rental income used to finance grants to the Albany Medical School and the University of Vermont Medical College, as specified by Dr. Lamb. The outbuildings, designated on the Town's Building Records as used for offices and conference space, were constructed in the 1950's, with the exception of the maintenance garage (with office above it), which was constructed in the 1970's. (See, Appendix, Ex. 1).

Subsequent tenants included the Maryknoll Sisters, who needed interim accommodations while their new convent was being built in Ossining. The Sisters left in 1957 and the Property was sold to IBM, whose Research Division used the site until 1961, when the Thomas J. Watson Research Center was completed in Yorktown. In 1957, the Lamb Foundation applied to the Town for a special permit to permit IBM to use the Property for laboratory and office use. This entailed the construction of a parking area for 55 cars with the provision for another 35 cars in

the future. (Appendix, Ex. 2(c)). The special permit was subsequently granted by the Zoning Board of Appeals (ZBA case No. 3A-57, 4-57). (Appendix, Ex. 2(e)).

The site was occupied beginning in 1962 and into the 1970's and early 1980's by the Hudson Institute, a private non-profit research institute studying public policy issues. The Zoning Board's 1968 resolution in case No. 2-68 granted an amendment to the special permit previously issued to the Hudson Institute, thereby documenting that original special permit. (Appendix, Ex 2(c)). In 1981, a Certificate of Occupancy was filed for the use of one of the buildings on the Property as a single-family residence. (Appendix, Ex. 2(d)). The Institute moved its headquarters to Indianapolis in 1984.

Notably, in ZBA Case No. 170-86, yet another special permit was issued in 1989, this time for a second, new hospital use, a residential community re-entry facility for persons who had suffered brain injuries. This permit had been denied twice by the Zoning Board, but was finally directed by the Supreme Court of Westchester, via Judge Rosato, in an Article 78 proceeding entitled *Berg v. Zoning Board of Appeals of the Town of Cortlandt*, Index No. 12830/88. There was a Planning Board Resolution as well in PB 46-86, apparently granting site plan approval. The ZBA's notable conditions of approval of the hospital included the limitation to 75 patients, but with a total 225 combined patients and employees permissible, a combined total much greater than that proposed by HEWC. (Appendix, Ex. 2(f).)

### **III. PRIOR PRECEDENT -- THE 2007 YESHIVA VARIANCE**

Commencing in 2007, the Zoning Board considered a similar situation involving a State road frontage variance in regard to the application of Congregation Yeshiva Ohr Hameir (“the Yeshiva”), Case No.: 23-27. The Yeshiva application for its property in the R-40 Single-Family Residential District involved a site development plan application for its construction of an on-site wastewater treatment plant and its renovation and reconstruction of an existing building, previously serving a dude ranch at the site, for classroom and dormitory space. The Yeshiva trains its students at the site in Talmudic learning and essentially operates a “seminary”.

Thus, the Yeshiva is subject to §307-50 of the Zoning Ordinance, which sets forth the specific special permit standards for “university, college or seminary” use.

Pursuant to §307-50(B)(8): “Access to the premises shall be via state or county highways only.”

The foregoing provision is similar to the above-referenced §307-59(B)(9) requirement for hospitals and nursing homes: “Only to be permitted on a lot in residential zones which fronts on a state road.”

In its Decision and Order of March 17, 2010 with respect to its issuance of a State/County road access variance to the Yeshiva, which is located on Furnace Woods Road, a Town road, the Zoning Board stated, in pertinent part, as follows:

“Access to the premises shall be via state or county highways only.” Here, the Yeshiva is located on Furnace Woods Road, the same road for the Blue Mountain Middle School, the Furnace Woods School, a restaurant and a shooting range. Students are bused to these two schools daily, while the Yeshiva’s students reside on campus. As a result, the Town has no “rational basis” under NYS Law, or “compelling

governmental interest” under Federal Law, to terminate the Yeshiva’s use of its property on Furnace Woods Road (a Town road).

It also might be noted the requirement of a Special Permit under Section 307-50 (“University, College or Seminary”) only came into the Town Code with “ZORP” in 1994 (10 years after Yeshiva began its religious use on the property). Therefore, before 1994, the Special Permit requirement[s], let alone the two above-described variances, were not part of the Town Zoning Ordinance (and not required).

For all the foregoing reasons, this Board hereby: . . .

GRANTS a variance from the requirement under Section 307-50 (8) of the Town Zoning Ordinance which requires access to the premises via state or county highways only. With this variance, the Applicant can continue its present access to its premises from Furnace Woods Road (a Town road). (A copy of the Zoning Board’s Resolution in the Yeshiva case is annexed as Exhibit 3 to the Appendix hereto.)

At all times relevant hereto, like the Yeshiva property, the HEWC property has been and remains in its existing state designed for hospital or use other than as a single-family residence. As with the Yeshiva case, where the subject special permit requirement was enacted in 1994, some 10 years after the Yeshiva began its use of its property, the subject special permit State road frontage requirement for HEWC’s use came into effect in 2004, many decades after the original similar hospital use of the Property for some 30 years, after its use for other non-residential, institutional special permit uses thereafter – albeit such uses have been dormant for some years - and after the issuance of a special permit for another hospital use in 1989.

As is the case with the Yeshiva students, faculty and staff, the patients at HEWC’s hospital will temporarily “reside” on site. Like the Yeshiva students, the HEWC patients will not have or use vehicles. Further, they will have outside visitors only one day a month at most.



However, while the patients at HEWC will not exceed 92, the student population at the Yeshiva site is “limited” by its Town approvals to 225 – which limit has generally been reached – with total student, faculty and staff residency not to exceed 300, which is about twice as many as the combined pertinent/staff population to be on site at the HEWC Property at any time.

As the Yeshiva was apparently deemed to have demonstrated, the HEWC has demonstrated by its traffic analysis that its use will not generate any significant traffic impact on the neighborhood, thereby, as in the Yeshiva case, eliminating any “rational basis” under New York State Law or “compelling governmental interest under Federal Law”, to prohibit HEWC’s specialty hospital use – a use similar to that of the Property for many decades – with its current frontage and only access on a Town road. It should also be noted that there is already a commercial horse operation (across the street) and a nursing home on the same road, along with school bus usage.

Unlike the Yeshiva, which generates an alleged safety issue on Furnace Woods Road due to student pedestrian usage, no such pedestrian usage will be generated by HEWC.

Unlike the Yeshiva case, where the applicant was undertaking substantial construction and making physical changes to its property, HEWC is making virtually no change to the exterior of its buildings or its existing site plan.

Just as the Yeshiva was concurrently before the Planning Board for special permit and site plan approval, and the Zoning Board therefore, deferred to the Planning Board with respect to traffic related issues and other planning issues raised by the public, HEWC will be before the Planning Board for such approvals and with respect to such issues.

Unlike the Yeshiva project, which apparently involved environmental issues, such as an inadequate septic system posing wetland degradation and health concerns, thereby necessitating

a new treatment plant, and wetland intrusion, the HEWC application poses no such issues.

Like the Yeshiva site, there are existing buildings on the HEWC property which are dimensionally non-conforming as to certain current special permit setback requirements. But as was expressly determined in the Yeshiva case, once it withdrew its proposal to add a “bump-out” to one such building, as HEWC does not seek to enlarge any such buildings, no variance is required for them.

Significantly, as discussed below, just as the Yeshiva was required to be given accommodations under local zoning law by virtue of the Federal Religious Land Use and Institutionalized Persons Act (“RLUIPA”), the prospective HEWC patients, suffering from substance use disorder, are a Federally protected class under the Americans with Disabilities Act (“ADA”).

According to the Town’s records of the public hearings in the Yeshiva matter, many neighbors complained about the manner in which the Yeshiva conducted its operation and maintained its property prior to the variance application. No such complaints are anticipated in this case – not only because there are very few close neighbors, and as the owner of the HEWC property owns through an affiliated entity a large portion of the adjoining lands to serve as a buffer – but because, since assuming ownership, the HEWC property owner has secured the property to prevent the previous nuisances caused by trespassers and has substantially upgraded it. However, a local group has organized to oppose the prospective hospital use. Notably, they are represented by the same law firm, Zarin and Steinmetz, which has represented the Yeshiva in its applications before the Town and which secured the Yeshiva’s similar frontage variance.

It is a fundamental rule of zoning law that a decision of a zoning board, which acts in a quasi-judicial capacity, which neither adheres to its own precedent, nor indicates a reason for reaching a different result on essentially the same facts, is arbitrary and capricious. See, e.g., *Knight v. Amelkin*, 68 N.Y.2d 975, 510 N.Y.S.2d 550 (1986); *Tall Trees Construction Corp. v. Zoning Board of Appeals of the Town of Huntington*, 97 N.Y.2d 86, 735 N.Y.S.2d 873 (2001). Consequently, “where . . . a zoning board is faced with an application that is substantially similar to a prior application that had been previously determined, the zoning board is required to provide a rational explanation for reaching a different result.” *Lucas v. Board of Appeals of the Village of Mamaroneck*, 57 A.D.3d 784, 870 N.Y.S.2d 78 (2<sup>nd</sup> Dep’t 2008). Absent an explanation for such differing treatment, annulment is mandated under such circumstances, even if there may otherwise be evidence in the record sufficient to support the determination. See, e.g., *Hamptons, LLC v. Zoning Board of Appeals of the Village of East Hampton*, 98 A.D.3d 738, 950 N.Y.S.2d 386 (2<sup>nd</sup> Dep’t 2012).

On the basis of the foregoing, HEWC respectfully submits that there would be no reasonable basis for the Zoning Board to distinguish this case from the Yeshiva case in any significant manner as would warrant the denial of the similar State road frontage variance to HEWC. In fact, the Yeshiva precedent strongly supports the issuance of the variance to HEWC. Indeed, HEWC respectfully submits that its application has even more positive factors weighing in its favor, and less negative factors weighing against it, in the application of the statutory balancing test to be applied to the subject area variance request, than did the Yeshiva variance application.

**IV. HEWC'S PATIENTS, AS PERSONS SUFFERING FROM THE DISEASE OF ADDICTION, ARE A FEDERALLY PROTECTED CLASS ENTITLED TO ACCOMMODATIONS UNDER THE TOWN'S ZONING LAW**

HEWC is planning to establish a short-term (28 to 45 day) residential addictions treatment program similar to the Betty Ford Center in Rancho Mirage, CA. The HEWC addiction program philosophy and program model will utilize the Twelve (12) Step – Disease concept model of addictions, which is based on the principles of Alcoholics Anonymous and is abstinence based. The residential addictions treatment model includes, but is not limited to, diagnostic assessment, person-centered treatment planning, individual, group and family counseling. Twelve Step interventions, with flexible treatment goals, including daily AA meetings, a strong emphasis on the new client screening and intake/admission process, the effective balance of medical care, psychosocial and psychological care, and family involvement with monthly weekend family programs.

To ensure a safe and effective recovery treatment environment for clients and staff, Hudson Education and Wellness Center places a high priority on the new client screening and intake/admission process. Clearly established new client admission criteria utilized by highly trained professional staff screeners and intake/admission specialists will ensure appropriate treatment program admissions that does not include individuals with a history of serious psychiatric, violent or criminal backgrounds. The HEWC new client screening and intake/admission process includes professional background checks on all potential new admissions by nationally recognized background screening organizations.

All new clients are screened for alcohol and drugs through urinalysis testing at admission to the program and on an ongoing random basis during their treatment stay to ensure ongoing compliance. All alcohol, illegal drugs and some client prescription medications are prohibited

on site at HEWC. Client vehicle use is prohibited and clients may not have vehicles on site. Clients are not permitted to leave the facility/grounds during their treatment stay at HEWC. Family members and other visitors of clients at the facility are prohibited during their treatment with the exception of family members during the regularly scheduled monthly family weekends. All prospective HEWC clients will be thoroughly screened and supervised by professional staff in a luxurious treatment setting.

There can be no issue that addiction is a disease. All HEWC patients will be afflicted with the disease of addiction in varying stages of recovery or convalescence from this often chronic potentially life-threatening illness. The term “disease” as applied to addiction is not a metaphor; it is a medically accepted term. In 1956, The American Medical Association (AMA) formally classified alcoholism as a disease and more recently the American Society of Addiction Medicine (ASAM) and the National Institute on Drug Abuse (NIDA) expanded and refined this definition. Accordingly, addiction is now defined as a chronic, relapsing brain disease that is characterized by compulsive alcohol/drug seeking and use despite harmful consequences. It is considered a brain disease because alcohol and other drugs change the brain both structurally and functionally. Thus, individuals suffering with addiction are said to have an “addicted brain”. A chronic brain disorder, addiction is not merely a behavioral problem or simply the result of making maladaptive choices, according to ASAM. Moreover, addiction is now seen as a *primary disease*, not a byproduct of something else such as psychiatric or emotional problems, although these may co-exist and be intertwined with addiction. To successfully manage the disease of addiction – not unlike other chronic diseases such as diabetes, cancer, or cardiovascular disease – treatment and follow up monitoring must be maintained over the long term and in some cases for the patient’s lifetime.

There can be no question that HEWC's prospective patients constitute a protected class under the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§12101 et seq. and §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794. Under the ADA, 42 U.S.C. §12132, "[s]ubject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

Furthermore, persons recovering from or receiving treatment for addiction to alcohol or drugs are disabled individuals for purposes of the ADA and §504 of the Rehabilitation Act. See, 42 U.S.C. §§12210(b) and (c). 28 C.F.R. §§35.104, 35.131 (ADA); 29 U.S.C. §§706(8)(B) and (C) (Rehabilitation Act).

The ADA and Rehabilitation Act have often been employed to challenge local zoning board decisions. For example, in the very relevant case of *Innovative Health Systems, Inc. v. City of White Plains*, 931 F.Supp. 222 (S.D.N.Y.) aff'd, except with respect to one individual plaintiff, 117 F.3<sup>rd</sup> 37 (2<sup>nd</sup> Cir. 1997), the District Court and Second Circuit Court of Appeals explained at length that local zoning decisions are within the scope of the ADA and thus, issued and upheld, respectively, an injunction to prevent the City of White Plains from interfering with the relocation of a substance abuse treatment center. The District Court also reversed the determination of the City Zoning Board of Appeals that the center was not a permitted use of the property and revoking the building permit the center had been issued by the City Commissioner of Buildings. As explained in *Innovative Health Systems*, the ADA and Rehabilitation Act require that "public entities and entities receiving federal financial assistance are required to make 'reasonable modifications', or 'reasonable accommodations' in their rules, policies and practices when necessary to avoid discrimination." See, e.g., 42 U.S.C. §12131(2); 45 C.F.R.

§84.3(k).

As stated by the District Court in *Innovative Health Systems*:

Under the ADA and Rehabilitation Act, public entities and entities receiving federal financial assistance are required to make 'reasonable modifications' or 'reasonable accommodations' in their rules, policies and practices when necessary to avoid discrimination. . . . An accommodation is reasonable if it does not cause any undue hardship or fiscal or administrative burdens on the municipality, or does not undermine the basic purpose that the zoning ordinance seeks to achieve . . .

931 F.Supp. 222, *supra*, at 239.

See, also, e.g., *Oxford House, Inc. v. Town of Babylon*, 819 F.Supp. 1179 (E.D.N.Y. 1993) (in which plaintiff was represented by one of HEWC's co-counsel, Robert L. Schonfeld, Esq.) and *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328 (2d Cir. 1995), applying the analogous standards of the Federal Housing Act ("FHA").

In addition, the Second Circuit noted:

. . . There is little evidence in the record to support the ZBA's decision on any ground other than the need to alleviate the intense political pressure from the surrounding community brought on by the prospect of drug - and alcohol - addicted neighbors. The public hearings and submitted letters were replete with discriminatory comments about drug - and alcohol - dependent persons based on stereotypes and general unsupported fears. . . . Although the City certainly may consider legitimate safety concerns in its zoning decisions, it may not base its decisions on the perceived harm from such stereotypes and generalized fears. As the district court found, a decision made in the context of strong, discriminatory opposition becomes tainted with discriminatory intent, even if the decision makers personally have no strong views on the matter. . . .

We also find the ZBA's decision to be highly suspect in light of the requirements set forth in the zoning ordinance. . . . The lack of a credible justification for the zoning decisions raises an additional inference that the decision was based on

impermissible factors, namely the chemical-dependent status of IHS's clients. Accordingly, we see no reason to disturb the district court's finding of likelihood of success on the merits.

117 F.3d at 49.

There is no question that, as held in *Innovative Health Systems*, HEWC has standing to assert the protections afforded its prospective patients by the ADA and the Rehabilitation Act. See *Innovative Health Systems*, supra, 931 F.Supp. at 234-237.

Accordingly, in a matter recently handled by HEWC's counsel in the Town of Yorktown, regarding the issuance of a special permit for a sober living home providing a temporary transitional residence for those having undergone treatment for addiction, the Town of Yorktown Zoning Board, in upholding against the appeal of neighbors the determination of the Town Building Inspector that the sober living home was a permitted "convalescent home" in a residential zoning district, correctly noted that: "Individuals recovering from drug or alcohol addiction are also a protected class under the Federal Fair Housing Act and Americans with Disabilities Act." (See Yorktown Zoning Board of Appeals Determination, 7/24/14, French and Gironda appeal no. 4/14, pertaining to 482 Underhill Avenue, Yorktown Height, New York.)

On the basis of the foregoing, HEWC respectfully submits that the Zoning Board must grant HEWC the "reasonable accommodation" of the issuance of the subject State road frontage variance. HEWC's application to the Planning Board for a special permit and site plan approval is likewise subject to the same "reasonable accommodation" requirements.



**V. THE ZONING BOARD MAY GRANT AN AREA VARIANCE FROM THE SPECIAL PERMIT REQUIREMENT OF STATE ROAD FRONTAGE**

There is no question that the Planning Board may grant HEWC an area variance from the subject special permit requirement of State road frontage.

Town Law Section 274-b(3) and its counterpart, Village Law §7-275-b(3), succinctly provide:

**Approval of Special Permits;**

**“Application for area variance.** Notwithstanding any provision of law to the contrary, **where a proposed special use permit contains one or more features which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance** pursuant to section two hundred sixty-seven-b of this article, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.” (Emphasis added.)

Notwithstanding the statute’s straightforward clarity, the Court of Appeals removed any possible doubt as to proper interpretation of Town Law §274-b (3) in its seminal decision in *Matter of Real Holding Corp. v Lehigh*, 2 N.Y.3d 297, 778 N.Y.S.2d 438 (NY, 2004).

Real Holding acquired property upon which a gasoline station had formerly been located and conducted a clean-up of the site. Seeking to construct a new gasoline station, the owner was required to secure a special use permit to operate, but was unable to satisfy certain dimensional requirements (minimum separation from residential neighborhoods and other gas stations). Real Holding applied to the zoning board of appeals for an area variance from these physical requirements. In denying the request, the board alleged that a zoning board has no authority to grant a variance on a special use permit application. Such position was proven to be incorrect.

The Supreme Court (Westchester County, Justice Nicolai), the Second Department and the Court of Appeals all resoundingly disagreed with the zoning board, “*reasoning that the plain meaning of Town Law §274-b (3) specifically allows local zoning boards of appeal to grant area variances in these situations. Further, the Court held that this power was not limited by Town Law § 274-b (5), which permits town boards to authorize zoning boards of appeal to waive any requirements for the approval of a special use permit so long as the conditions were described in the zoning ordinance. The Court noted that Town Law § 274-b (5) merely permits additional powers of waiver to be delegated to the zoning board of appeals.*” (2 N.Y. Zoning Law & Prac. § 30:4 *Area Variances and Special Use Permits*, Patricia Salkin, 4<sup>th</sup> ed.)

In extinguishing the potential for any future confusion on this issue, the Court of Appeals went to great lengths to make its holding clear:

“In the early 1990's, the Legislature authorized the Joint Legislative Commission on Rural Resources to develop recommendations for recodifying local zoning laws. In 1991, the provisions concerning ZBAs in the Town Law were substantially revised as a result (see L 1991, ch 692, §§ 1-4; Town Law §§ 267--267-c). The following year the Legislature enacted companion legislation, which, as relevant here, included new Town Law § 274-b (see L 1992, ch 694, § 2). This provision defines and governs approval of special use permits, a widely used zoning device previously unmentioned in state statute....

**First, subdivision (3) plainly states that “application may be made to the [ZBA] for an area variance” in those cases “where a proposed special use permit . . . do[es] not comply with the zoning regulations.” Moreover, a ZBA may grant these area variances “[n]otwithstanding any provision of law to the contrary.”**

Next, subdivision (3) refers to “zoning regulations” without qualification. **Nothing in the statute's language suggests that area variances for special use zoning regulations should be treated differently than area variances from general, so-called bulk, zoning requirements. To hold that a ZBA may vary certain zoning provisions only if expressly empowered to do so by the town board overlooks the entire purpose of the ZBA, which is to provide relief in individual cases from the rigid application of zoning regulations enacted by the local legislative body....**

Thus, section 274-b authorizes ZBAs to issue area variances from special use permit requirements, following the statutory procedures applicable to ZBAs in the exercise of their area variance jurisdiction. This is not only clear, but entirely consistent with the statutes and case law emphasizing that ZBAs are “vested with the exclusive power to grant or deny, in the first instance, a variance from the zoning ordinances. (*Matter of Commco, Inc. v Amelkin*, 62 NY2d 260, 266 [1984]; see also *Jewish Reconstructionist Synagogue of N. Shore v Incorporated Vil. of Roslyn Harbor*, 40 NY2d 158, 162 [1976] (Emphasis supplied.)

778 N.Y.S.2d, *supra*, at 440-41.

Noted New York zoning authority Terry Rice, who writes the McKinney's Practice Commentaries on Town Law and Village Law, as well as various annual surveys on land use and zoning matters, provided a historical analysis of the proper interplay between special use permits and variances since the enactment of Town Law §274-b, effective 1993, and the 2004 Court of Appeals decision in *Real Holding*. While it is somewhat lengthy, it provides an accurate and impartial assessment of law:

“Prior to the 1992 effective date of Town Law section 274-b and Village Law section 7-725-b, case law established that a board entertaining a special permit application did not possess the authority to waive or modify any of the explicit conditions enumerated in a community's zoning law. See *Jewish Reconstructionist Synagogue of the North Shore v. Levitan*, 34 N.Y.2d 827, 828-29, 316 N.E.2d 339, 339, 359 N.Y.S.2d 55, 55 (1974); *Wisoff v. Amelkin*, 123 A.D.2d 623, 624, 506 N.Y.S.2d 778, 779 (2d Dep't 1986); *Knadle v. Zoning Bd. of Appeals of the Town of Huntington*, 121 A.D.2d 447, 448, 503 N.Y.S.2d 141, 141-42 (2d Dep't 1986); *McMahon v. Zoning Bd. of Appeals of the Town of Wappinger*, 121 A.D.2d 451, 452, 503 N.Y.S.2d 142, 143 (2d Dep't 1986); *Cathedral of the Incarnation v. Glimm*, 97 A.D.2d 409, 410, 467 N.Y.S.2d 241, 242 (2d Dep't 1983). Compliance with the specific legislated criteria for a special permit use could not be waived under the guise of an area variance. *Knadle*, 121 A.D.2d at 447, 503 N.Y.S.2d at 142; *McMahon*, 121 A.D.2d at 452, 503 N.Y.S.2d at 143; *Cathedral of the Incarnation*, 97 A.D.2d at 410, 467 N.Y.S.2d at 242.

Town Law section 274-b and Village Law section 7-725-b each contain two provisions which authorize waivers or variances from special permit requirements. Town Law section 274-b(5) and Village Law section 7-725-b(5) enable a town board or board of trustees to authorize a board reviewing special permit applications to “waive” any of the requirements for “approval, approval with modifications or disapproval” of a special permit. N.Y. Town Law

§274-b(5); N.Y. Village Law § 7-725-b(5). Absent authorization from a town board or board of trustees to approve waivers, a board reviewing a special permit application lacks authority to waive compliance with the specific criteria mandated for a particular use. *Dost v. Chamberlain-Hellman*, 236 A.D.2d 471, 472, 653 N.Y.S.2d 672, 672 (2d Dep't 1997).

In addition to the authority of Town Law section 274-b(5) and Village Law section 7-725-b(5), Town Law section 274-b(3) and Village Law section 7-725-b(3) provide that “where a proposed special use permit contains one or more features which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance . . . .” Town Law §274-b(3); Village Law §7-725-b(3). As a consequence of the preexisting case law prohibiting the granting of an area variance to excuse compliance with specific special permit criteria, the scope of these provisions remained unclear. In a number of decisions, the courts largely concluded that, despite the preexisting case law, Town Law section 274-b(3) and Village Law section 7-725-b(3) authorize zoning boards of appeal to grant area variances required in connection with a special permit application. *Real Holding Corp. v. Lehigh*, 304 A.D.2d 583, 584, 756 N.Y.S.2d 893, 893 (2d Dep't 2003); *Sunrise Plaza Assocs. v. Town Bd. of Babylon*, 250 A.D.2d 690, 694, 673 N.Y.S.2d 165, 168-69 (2d Dep't 1998); *Dennis v. Zoning Bd. of Appeals of the Vill. of Briarcliff Manor*, 167 Misc. 2d 555, 560, 637 N.Y.S.2d 266, 269 (Sup. Ct., Westchester Co. 1995).

**The Court of Appeals put the issue to rest in *Real Holding Corp. v. Lehigh*, in which it determined that “Town Law § 274-b(3) vests a [zoning board of appeals] with authority to grant an area variance from any requirement in a zoning regulation, including those for a special use permit.”** 2 N.Y.3d 297, 299, 810 N.E.2d 890, 891, 778 N.Y.S.2d 438, 439 (2004). The Court relied on the language of Town Law section 274-b(3) which, like Village Law section 7-725-b(3), “states that ‘application may be made to the [zoning board of appeals] for an area variance’ in those cases ‘where a proposed special use permit . . . [does] not comply with the zoning regulations.’ Moreover, a [zoning board of appeals] may grant these area variances ‘notwithstanding any provision of law to the contrary.’” Id. at 301, 810 N.E.2d at 892-93, 778 N.Y.S.2d at 440-41 **The Court further noted that Town Law section 274-b(3), like Village Law section 7-725-b(3), authorizes a variance from “zoning regulations” without qualification. Id.**

**Nothing in the statute's language suggests that area variances for special use zoning regulations should be treated differently than area variances from general, so-called bulk, zoning requirements. To hold that a [zoning board of appeals] may vary certain zoning provisions only if expressly empowered to do so by the town board overlooks the entire purpose of the [zoning board of appeals], which is to provide relief in individual cases from the rigid application of zoning regulations enacted by the local legislative body. Id.**

Lastly, the Court noted that Town Law section 274-b is entitled “Approval of special use permits,” and that subdivision 3 provides that an application for an area variance may be made to the zoning board of appeals “pursuant to’ section 267-b . . . which supplies the procedures for a [zoning board of appeals] to follow when issuing an area variance. Thus, section 274-b authorizes [zoning boards of appeal] to issue area variances from special use permit requirements, following the statutory procedures applicable to [zoning boards of appeal] in the exercise of their area variance jurisdiction.” Id.

Interpreting Town Law section 274-b(5), the identical counterpart to Village Law section 7-725-b(5), the Court noted that that provision does not conflict with or diminish a zoning board of appeals' independent jurisdiction pursuant to Town Law section 274-b(3) (or Village Law section 7-725-b(3)). Id at 302, 810 N.E.2d at 893, 778 N.Y.S.2d at 441. Subdivision 5 authorizes a town board to empower a board reviewing a special permit application to waive any special permit requirements. Id. **“The waiver authority in subdivision (5) is broader than a [zoning board of appeals'] authority in subdivision (3), which is restricted to granting area variances . . . . In effect, subdivision (5) allows a town board to establish one-stop special use permitting if it so chooses.”** Id. Finally, the Court noted that although it was unnecessary to consult the legislative history because of the Court's reliance on the plain meaning statute, the relevant statutory text nevertheless supported its conclusions. Id.

This conclusion appears to be contrary to the case law existing prior to the enactment of Town Law section 274-b and Village Law section 7-725-b, and a contrary interpretation of the meaning of Town Law section 274-b(3) and Village Law section 7-725-b(3) is equally plausible. **However, as a determinative ruling, *Real Holding* permits one who cannot satisfy any of the requirements applicable to a special permit to seek an area variance.** Id. at 299, 810 N.E.2d at 891, 778 N.Y.S.2d at 439. Of course, if a town board or board of trustees has authorized the reviewing board to waive such requirements, that board may consider a request for dispensation from compliance with the legislatively adopted special permit criteria. (Emphasis supplied.)

55 SYRLR 1395, Terry Rice, Syracuse Law Review, Zoning and Land Use, 2005.

While *Real Holding* is undoubtedly the seminal case, there have been many court decisions following the 1993 effective date of the statutory amendments (both before and after *Real Holding*) confirming a zoning board's authority to grant variances from special use permit requirements.

Shortly after the enactment of Town Law §274-b(3) and Village Law §7-725-b(3), Justice LaCava confirmed this grant of power in *Dennis v. Zoning Bd. of Appeals, Village of Briarcliff Manor*, 167 Misc.2d 555, 637 N.Y.S.2d 266 (S. Ct. West. Cty. 1995) where a not-for-profit corporation sought a special use permit to operate a nursery school in a residential neighborhood. A specific physical requirement within the special use permit regulations mandated private schools be sited on at least a 2 acre parcel, and the site comprised only 1.2 acres. The owner applied for and was granted area variances, prior to being issued a special use permit.

The Court reasoned:

**“By its very terms, “[n]otwithstanding any provision of law to the contrary”, subdivision (3) of section 7-725-b of the Village Law empowers zoning boards of appeal to grant applications for area variances that may be needed in connection with an application for a special use permit. A zoning board of appeals needs no authorization beyond that which is granted by subdivision (3).”**

The Court went on to note:

**“the Bill Jacket for chapter 694 of the Laws of 1992 supports this application of the statute...[as both] the ‘Summary of Provisions’ portion of the Sponsor’s Memorandum of Senator Cook...[and] the ‘Statement of Support’ portion of the Memorandum [provide] that in the event...special use permit requirements present dimensional difficulties to a particular applicant, an area variance may be applied for to the zoning board of appeals.”** *Dennis v. Zoning Bd. of Appeals, Village of Briarcliff Manor*, at pg. 560 (Emphasis supplied.)

In *Sunrise Plaza Associates, L.P. v. Town Bd. of Town of Babylon*, 250 A.D.2d 690, 673 N.Y.S.2d 165, (2d Dept., 1998), the Second Department confirmed a zoning board’s authority to issue variances from special use permit requirements, even where the Town Board is the permitting authority for the special permit. The Court reasoned:

“While it is true that, generally, there must be compliance with the requirements of a zoning ordinance before a special use permit may be granted (see, e.g., *Matter of Vergata v. Town Bd. of Town of Oyster Bay*, 209 A.D.2d 527, 618 N.Y.S.2d 832), **the special use permit here was issued after the Zoning Board granted the application by Summit for a variance waiving the need for strict compliance with the parking requirements....** Further, contrary to Sunrise's contention, Town Law § 274–b does not preclude the award of a special use permit after a parking variance has been obtained. **Indeed, Town Law § 274–b(3) expressly provides for the issuance of a special use permit in conjunction with an area variance** ( see, *Matter of Dennis v. Zoning Bd. of Appeals of Vil. of Briarcliff Manor*, 167 Misc.2d 555, 637 N.Y.S.2d 266). While that provision does not mention use variances, **a special use permit generally will not be accompanied by an application for a use variance, as, by definition, the use is authorized** (Town Law § 274–b[1]; see, *Matter of North Shore Steak House v. Board of Appeals of Inc. Vil. of Thomaston*, supra, at 238, 331 N.Y.S.2d 645, 282 N.E.2d 606; *Matter of Texaco Ref. & Mktg. v. Valente*, supra, at 674, 571 N.Y.S.2d 328). **A special use permit allows the owner to use the property in a manner expressly permitted by law** (*Matter of Framike Realty Corp. v. Hinck*, 220 A.D.2d 501, 632 N.Y.S.2d 177).”

673 N.Y.S.2d, supra, at 693-694. (Emphasis supplied.)

In *Matter of Lafiteau v. Guzewicz*, 13 Misc.3d 1228(A), 831 N.Y.S.2d 354 (Table) (S. Ct., Suffolk Cty., 2006 (unreported decision): “Petitioners commenced an Article 78 proceeding [inter alia] seeking to annul the . . . Decision of respondent, Zoning Board of Appeals of the Village of Southampton . . . which granted respondent, Chabad of Southampton, a special use permit and numerous substantial variances for [its] property. . .”

In regard to the relationship between variances and special permits, the court stated:

“In *Matter of Real Holding Corp. v. Lehigh*, 2 NY3d 297, 778 NYS2d 438 (2004), the Court of Appeals held that a zoning board had authority pursuant to Town Law § 274-b (3) [the identical counterpart to Village Law §7-725-b (3)] **to grant area variances from any requirements in the zoning regulations, including requirements for issuance of special use permits. That holding abrogated long-standing case law that held that compliance with the standards promulgated for issuance of a special permit must be demonstrated before a special permit may be issued.**” (pg. 4-5)

See, also, *Tabernacle of Victory Pentecostal Church v. Weiss*, 101 A.D.3d 738, 955 N.Y.S.2d 180 (2d Dep’t 2012) (zoning board may grant a 100% variance from off-street parking

requirement in connection with special permit); *Capriola v. Wright*, 73 A.D.3d 1043, 900 N.Y.S.2d 754 (2d Dep't 2010) (the zoning board may grant area variances for off-street parking and the installation of a sign in connection with special permit); *Bell Atlantic Nynex Mobile, Inc. v. Lonergan*, 172 Misc.2d 317, 659 N.Y.S.2d 402 (Sup. Ct. Westchester Cty. 1997) (building height variance in connection with special permit is an area variance, not use variance); *Lockport Smart Growth, Inc. v. Town of Lockport*, 63 A.D.3d 1549, 880 N.Y.S.2d 412 (4<sup>th</sup> Dep't 2009) (area variances permitted in connection with special permit).

Therefore, it is indisputable that a zoning board of appeals can “*without qualification*” issue variances in connection with a special use permit where the site contains one or more features which do not comply with the zoning code, including specifically special permit requirements. The case law only further confirms what the statute already succinctly provides. As Terry Rice more aptly noted in his annual zoning and land use assessment “*The Court of Appeals put the issue to rest in Real Holding Corp. v. Lehigh, in which it determined that “Town Law § 274-b(3) vests a [zoning board of appeals] with authority to grant an area variance from any requirement in a zoning regulation, including those for a special use permit”* 55 SYRLR 1395, *supra*, at 1416.



**VI. A VARIANCE FROM THE STATE ROAD  
FRONTAGE REQUIREMENT IS AN AREA VARIANCE**

Clearly, the subject road frontage variance is an area variance, not a use variance.

Town Law §§267 1(a) and (b) define “use” and “area” variances, respectively, as follows:

- (a) **“Use variance” shall mean the authorization by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.**
- (b) **“Area variance” shall mean the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations. (Emphasis supplied.)**

Accordingly, the relevant inquiry is whether frontage speaks to a “*dimensional or physical requirement*” or speaks to whether the use is “*prohibited*” within the zoning district. As the subject hospital use is permitted in the subject residential district, and “frontage” is a “physical” or “dimensional” component determined by reference to lot lines and rights of way, the answer, consistent with every discernible interpretation ever rendered, is clear that frontage is an area requirement, subject to area variance analysis.

Indeed, the Second Department’s decision in *Sunrise Plaza Associates, L.P. v. Town Bd. of Town of Babylon, supra*, is essentially dispositive on this point in stating, as noted above, that:

Indeed, Town Law § 274-b(3) expressly provides for the issuance of a special use permit in conjunction with an area variance . . . While that provision does not mention use variances, a special use permit generally will not be accompanied by an application for a use variance, as, by definition, the use is authorized . . . A special use permit allows the owner to use the property in a manner expressly permitted by law . . .

673 N.Y.S.2d, *supra* at 693-694.

In specifically addressing the distinctions between use and area variances, New York Jurisprudence, Second Edition, *Buildings, Zoning and Land Controls* § 364. *Definitions of, and distinctions between, use and area variances*, provides:

“A use variance permits a use of land which is proscribed by the zoning regulations, whereas a variance which does not involve a prohibited use and which does not seek a change in the essential use of the land should be characterized as an area variance.....an area variance involves matters such as:

- setback lines
- **frontage requirements**
- lot size restrictions
- density regulations
- height limitations
- yard requirements

Renowned New York zoning authority, Dean Patricia E. Salkin, has similarly denominated a variation from frontage requirements as a prototypical area variance:

**Unlike a use variance, an area variance does not involve a use that is prohibited by the zoning ordinance. The enabling acts define an area variance as “[t]he authorization by the zoning board of appeals for the use of land in a manner which is not allowable by the dimensional or physical requirements of the applicable zoning regulations.” Thus, area variances involve matters such as setback lines, frontage requirements, lot-size restrictions, density regulations, and yard requirements.....** The court of appeals observed: “*An ‘area’ variance is one which does not involve a use which is prohibited by the zoning ordinance, while a ‘use’ variance is one which permits the use of land which is proscribed.*” Citing *Consolidated Edison Co. of New York, Inc. v. Hoffman*, 43 N.Y.2d 598, 403 N.Y.S.2d 193, 374 N.E.2d 105, (1978). (Emphasis supplied, interior citations omitted.)

2 N.Y. Zoning Law and Practice, 4<sup>th</sup> ed., §29:5, Patricia E. Salkin, *Area variances*

New York case law is replete with decisions consistent with these statutory provisions, definitions and the Salkin treatise:

In *Matter of Healey v. Town of E. Fishkill Zoning Bd. of Appeals*, 50 A.D.3d 799, 855 N.Y.S.2d 239 (N.Y.A.D. 2 Dept., 2008), a case in which Cortlandt’s own current Town Attorneys, Wood and Klarl prevailed on the issue, the Second Department confirmed that an **area variance** was the proper analysis where the subject parcel needed a **100% variance from the Town’s zoning requirement that a building lot must have frontage on a “town road.”** Akin to the variance sought herein (relief from a particular type of road frontage), the Second Department held:

“[S]ince the lot has **frontage only on Smalley Lane, which is not a Town road, it was necessary to obtain an area variance given the requirement that a buildable lot have frontage on a Town road.** In granting that variance, the Board noted that no other variances were required and, after reviewing the application and a short-form environmental assessment form, found that granting the variance would have no adverse effect or impact on the community or surrounding area. (Emphasis added.)

855 N.Y.S.2d, *supra*, at 239.

In *Matter of Westervelt v. Zoning Bd. of Appeals of Town of Woodbury*, 7 A.D.3d 964, 776 N.Y.S.2d 487 (N.Y.A.D. 2 Dept., 2004), the court reviewed the potential “granting of **area** variance to allow construction of single-family dwelling on lot with **no street frontage . . .**” and although the court upheld the zoning board’s denial of the requested area variance on the basis that it was too substantial, the court and zoning board both acknowledged area variance analysis as the proper means of review.

Similarly in *Matter of Gregory v. Zoning Bd. of Appeals of Town of Somers*, 270 A.D.2d 419, 704 N.Y.S.2d 638 (N.Y.A.D. 2 Dept., 2000) “petitioners requested an **area variance** to build a single-family residence on a parcel of land in the Town of Somers which **lacked frontage on a “town road”** and the zoning board and courts properly reviewed the application in the context of an “**area variance**”.

In *Matter of Samek v. Zoning Bd. of Appeals of Town of Ballston*, 162 A.D.2d 926, 558 N.Y.S.2d 257 (N.Y.A.D. Third Dept., 1990), the property owner sought **an area variance from frontage requirements on state highway in connection with its special use permit** application for a commercial use. In confirming the fact that the road frontage variance was properly an “area variance” the Court remanded the matter to the respondent zoning board for further findings on the **“application for an area variance.”**

The Court of Appeals has confirmed that a variance from road frontage requirements must properly be characterized as an “area variance” by observing:

**“An ‘area variance’ is one which does not involve a use which is prohibited by the zoning ordinance, while a ‘use’ variance is one which permits the use of land proscribed”** *Consolidated Edison Co. v. Hoffman*, 43 N.Y. 598 (1978), at 606–607. (Emphasis supplied.)

**“Thus, an area variance involves “matters such as setback lines, frontage requirements, lot-size restrictions, density regulations, and yard requirements”** *Matter of Khan v. Zoning Bd. of Appeals of Vil. of Irvington*, 87 N.Y.2d 344 (1996), at 351. Emphasis supplied.)

Similar to the analysis above, the following list of cases confirms that variance relief from ‘road frontage’ requirements properly constitutes an application for an “area variance”, not a use variance. The list comprises only 50 of the most recent Second Department or Court of Appeals cases directly confirming such interpretation:

*Allstate Properties, LLC v. Board of Zoning Appeals of Village of Hempstead*, 49 A.D.3d 636, 856 N.Y.S.2d 130 (N.Y.A.D. 2<sup>nd</sup> Dept., 2008);  
*Milburn Homes, Inc. v. Trotta*, 7 A.D.3d 531, 776 N.Y.S.2d 312 (N.Y.A.D. 2<sup>nd</sup> Dept., 2004); *Sakrel, Ltd. v. Roth*, 176 A.D.2d 732, 574 N.Y.S.2d 972 (N.Y.A.D. 2 Dept., 1991);  
*Kreuter v. Zoning Bd. of Appeals of Village of Scarsdale*, 174 A.D.2d 569, 570 N.Y.S.2d 681 (N.Y.A.D. 2 Dept., 1991) .... required to apply for an area variance because the parcel failed to meet the general area and frontage requirements.

*Matter of Paniccia v. Volker*, 133 A.D.2d 404, 519 N.Y.S.2d 398 (N.Y.A.D. 2<sup>nd</sup> Dept., 1987); *Matter of Graziano v. Scalafani*, 143 A.D.2d 664, 532 N.Y.S.2d 931 (N.Y.A.D. 2 Dept., 1988);  
*Matter of Jackson v. Kirkpatrick*, 125 A.D.2d 471, 509 N.Y.S.2d 572 (N.Y.A.D. 2<sup>nd</sup>, 1987).  
*Matter of Weissberg v. Schoenfeld*, 147 A.D.2d 649, 538 N.Y.S.2d 989 (N.Y.A.D. 2 Dept., 1989)  
*Wiggin v. Kern*, 161 A.D.2d 716, 555 N.Y.S.2d 858 (N.Y.A.D. 2 Dept., 1990).  
*Jensen v. Village of Old Westbury*, 160 A.D.2d 768, 553 N.Y.S.2d 820 (N.Y.A.D. 2 Dept., 1990)  
*Matter of Healey v. Town of E. Fishkill Zoning Bd. of Appeals*, 50 A.D.3d 799, 855 N.Y.S.2d 23 (N.Y.A.D. 2<sup>nd</sup> Dept., 2008)  
*Matter of Harmon v. Kern*, 159 A.D.2d 502, 552 N.Y.S.2d 853 (N.Y.A.D. 2 Dept., 1990)  
*Salierno v. Briggs* 141 A.D.2d 547, 529 N.Y.S.2d 159 (N.Y.A.D. 2 Dept., 1988) (frontage requirements on a lake)  
*Hofstein v. Board of Zoning and Appeals of Town of North Hempstead*, 159 A.D.2d 503, 552 N.Y.S.2d 372 (N.Y.A.D. 2 Dept., 1990)  
*Pecoraro v. Board of Appeals of Town of Hempstead*, 2 N.Y.3d 608, 814 N.E.2d 404 N.Y., 2004.  
*Matter of Gregory v. Zoning Bd. of Appeals of Town of Somers*, 270 A.D.2d 419, 704 N.Y.S.2d 638 (N.Y.A.D. 2<sup>nd</sup> Dept., 2000)  
*Milburn Homes, Inc. v. Trotta*, 7 A.D.3d 531, 776 N.Y.S.2d 312 (N.Y.A.D. 2 Dept., 2004);  
*Matter of Petruzzelli v. Zoning Bd. of Appeals of Vil. of Dobbs Ferry*, 181 A.D.2d 825, 581 N.Y.S.2d 105 (N.Y.A.D. 2 Dept., 1992)  
*Matter of Green v. Scheyer*, 205 A.D.2d 535, 612 N.Y.S.2d 663 (N.Y.A.D. 2 Dept., 1994)  
*Matter of Budget Estates v. Roth* 203 A.D.2d 287, 610 N.Y.S.2d 69 (N.Y.A.D. 2 Dept., 1994)  
*Matter of Kattke v. Incorporated Vil. of Freeport*, 200 A.D.2d 746, 607 N.Y.S.2d 84 (N.Y.A.D. 2 Dept., 1994)  
*McNair v. Board of Zoning Appeals of Town of Hempstead*, 285 A.D.2d 553, 728 N.Y.S.2d 73 (N.Y.A.D. 2 Dept., 2001);  
*Philipps v. Town of Washington Zoning Bd. of Appeals*, 278 A.D.2d 496, 718 N.Y.S.2d 91 (N.Y.A.D. 2 Dept., 2000);  
*Matter of Romano v. Jenks* 220 A.D.2d 432, 631 N.Y.S.2d 875 (N.Y.A.D. 2 Dept., 1995)  
*Matter of Ramundo v. Pleasant Val. Zoning Bd. of Appeals*, 41 A.D.3d 855, 839 N.Y.S.2d 189 (N.Y.A.D. 2 Dept., 2007)  
*Buckley v. Amityville Village Clerk*, 264 A.D.2d 732, 694 N.Y.S.2d 739 (N.Y.A.D. 2 Dept., 1999)  
*Graziano v. Scalafani* 143 A.D.2d 664, 532 N.Y.S.2d 931 (N.Y.A.D. 2 Dept., 1988).  
 ...the petitioner sought an "area" variance from the minimum frontage and lot area requirements,"  
*Matter of Philipps v. Town of Washington Zoning Bd. of Appeals*, 278 A.D.2d 496, 718 N.Y.S.2d 91 (N.Y.A.D. 2 Dept., 2000)

*Matter of Westervelt v. Zoning Bd. of Appeals of Town of Woodbury*, 7 A.D.3d 964, 776 N.Y.S.2d 487 (N.Y.A.D. 2<sup>nd</sup> Dept., 2004)

*Matter of Henthorne v. Molloy*, 270 A.D.2d 420, 704 N.Y.S.2d 636 (N.Y.A.D. 2 Dept., 2000)

*Matter of Linzenberg v. Summer*, 277 A.D.2d 316, 715 N.Y.S.2d 886 (N.Y.A.D. 2 Dept., 2000) *Long Island Affordable Homes, Inc. v. Board of Appeals of Town of Hempstead* (N.Y.A.D. 2 Dept. 2008) 57 A.D.3d 996, 871 N.Y.S.2d 259, leave to appeal denied 12 N.Y.3d 706, 879 N.Y.S.2d 53, 906 N.E.2d 1087.

*Matter of Nathan v. Zoning Bd. of Appeals of Vil. of Russell Gardens*, 95 A.D.3d 1018, 943 N.Y.S.2d 615 (N.Y.A.D., 2 Dept., 2012)

*Matter of Jonas v. Stackler*, 95 A.D.3d 1325, 945 N.Y.S.2d 405 (N.Y.A.D., 2 Dept., 2012)

*Matter of Alfano v. Zoning Bd. of Appeals of Vil. of Farmingdale*, 74 A.D.3d 961, 902 N.Y.S.2d 662, (N.Y.A.D. 2 Dept., 2010)

*Matter of Kaufman v. Incorporated Vil. of Kings Point*, 52 A.D.3d 604, 860 N.Y.S.2d 573 (N.Y.A.D. 2 Dept., 2008)

*Matter of Martin v. Brookhaven Zoning Bd. of Appeals*, 34 A.D.3d 811, 825 N.Y.S.2d 244 (N.Y.A.D. 2 Dept., 2006)

*Matter of Milburn Homes v. Trotta*, 7 A.D.3d 531, 776 N.Y.S.2d 312 (N.Y.A.D. 2 Dept., 2004)

*Necker Pottick, Fox Run Woods Builders Corp. v. Duncan*, 251 A.D.2d 333, 673 N.Y.S.2d 740 (N.Y.A.D. 2 Dept., 1998);

*Frank v. Scheyer*, 227 A.D.2d 558, 642 N.Y.S.2d 956 (N.Y.A.D. 2<sup>nd</sup> Dept., 1996);

*Berko v. Kern*, 215 A.D.2d 476, 627 N.Y.S.2d 575 (N.Y.A.D. 2<sup>nd</sup> Dept. 1995);

*Malhotra v. Town of Brookhaven*, 185 A.D.2d 817, 586 N.Y.S.2d 643 (N.Y.A.D. 2<sup>nd</sup> Dept., 1992);

*Graziano v. Scalafani*, 143 A.D.2d 664, 532 N.Y.S.2d 931 (N.Y.A.D. 2<sup>nd</sup> Dept., 1988);

*Matter of Pacheco v. De Salvo*, 127 A.D.2d 597, 511 N.Y.S.2d 396 (N.Y.A.D. 2<sup>nd</sup>, 1987);

*Matter of McDermott v. Rose*, 148 A.D.2d 615, 539 N.Y.S.2d 80 (N.Y.A.D. 2<sup>nd</sup>, 1989);

*Petruzzelli v. Zoning Bd. of Appeals of Village of Dobbs Ferry*, 181 A.D.2d 825, 581 N.Y.S.2d 105 (N.Y.A.D. 2<sup>nd</sup> Dept., 1992);

*Sakrel, Ltd. v. Roth*, 176 A.D.2d 732, 574 N.Y.S.2d 972 (N.Y.A.D. 2<sup>nd</sup> Dept., 1991);

*Matter of Krape v. Trotta*, 12 A.D.3d 677, 784 N.Y.S.2d 888 (N.Y.A.D. 2 Dept., 2004)

*Khan v. Zoning Bd. of Appeals of Village of Irvington*, 87 N.Y.2d 344, 662 N.E.2d 782 (N.Y. 1996) “an *area variance* involves ‘matters such as setback lines, *frontage requirements*, lot-size restrictions, density regulations, and yard requirements’ *Khan* citing 2 Anderson New York Zoning §23.06, at 351);

*Sasso v. Osgood*, 86 N.Y.2d 374, 657 N.E.2d 254 N.Y., 1995. Court of Appeals cited its holding in *Conley v. Town of Brookhaven Zoning Bd. of Appeals* for premise that *area variances* were required [for] oddly shaped parcel that did not meet frontage and side yard requirements.”

The State Legislature's intent to have a frontage variances deemed as 'area variances' can be further verified through other enabling legislation expressly mandating that zoning boards treat relief from 'frontage' requirements as an 'area variance'.

Town Law §280-a and its counterpart, Village Law §7-736, similarly condition all building permit issuance upon an applicant's demonstration that the subject lot have sufficient **frontage** upon particular qualifying roads meeting town specifications, and where such requirements cannot be met, an applicant is specifically authorized by statute to file an appeal to the zoning board seeking an "**area variance**" from such requirements:

"The applicant for such a permit may appeal from the decision of the administrative officer having charge of the issue of permits to the board of appeals or other similar board, in any town which has established a board having the power to make variances or exceptions in zoning regulations for: (a) an exception if the circumstances of the case do not require the structure to be related to existing or proposed streets or highways, and/or (b) **an area variance** pursuant to section two hundred sixty-seven-b of this chapter, **and the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on zoning regulations.** The board may in passing on such appeal make any reasonable exception and issue the permit subject to conditions that will protect any future street or highway layout." Town Law §280-a (3)

On November 14, 2013, in a similar case handled by HEWC's counsel, the Town of Bedford Zoning Board, following the legal authorities set forth above which were provided to it by counsel, granted to the Stepping Stones Foundation, which operates the National Landmark home of the founder of Alcoholics Anonymous on a Town road, an area variance from Bedford's similar special permit requirement that an eleemosynary/philanthropic use have frontage on a County or a State road.

Finally, as noted above, in 2007, the local Yeshiva was granted an area variance from the Town similar frontage requirement for seminaries. In that case, the Yeshiva was represented by the same counsel as the neighborhood opposition with respect to HEWC's proposed use has been

to date, Zarin & Steinmetz. In the Yeshiva case, the opposition group's counsel agreed that the Zoning Board could and should grant a variance from the State road frontage requirement and took the position that said variance was, indeed, an area variance, offering proof of the Yeshiva's compliance with the statutory criteria for such an area variance. (See the pertinent excerpts of the Minutes of the July 18, 2007 Zoning Board hearing annexed as **Exhibit 4** to the Appendix hereto.) The Zoning Board granted that area variance. (See **Exhibit 3** to the Appendix hereto.)

On the basis of the foregoing, it is clear that the subject State road frontage variance is an area variance.



**VII. THE APPLICANT MEETS THE STATUTORY  
CRITERIA FOR THE ISSUANCE OF AN AREA VARIANCE**

HEWC has demonstrated its entitlement to the subject area variance from the State road frontage requirement.

The criteria for the granting of an area variance, which comprise the oft-referenced “balancing test”, are set forth in Town Law §267-b, as follows:

In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

Section 307-92(A) of the Town Zoning Ordinance provides:

The Zoning Board of Appeals shall have all the powers and duties prescribed by §267 of the New York State Town Law, as may from time to time be amended.

HEWC respectfully submits that it satisfies the above-referenced statutory criteria of the “balancing test” for the issuance of the subject area variance. In this regard, the Board is referred in particular to the comprehensive “Expanded Environmental Assessment” (“EEAR”) prepared by HEWC’s planning and engineering consultants, John Meyer Consulting (“JMC”), for a full, detailed discussion of all aspects of HEWC’s proposed hospital use and its benefits and

lack of adverse impacts, which will not be reiterated in this Memorandum, but which shall be deemed incorporated by reference herein as if fully set forth below.

In sum, the benefit to HEWC's principals of being able to operate the proposed specialty hospital to treat those with addictions is significant, not only in economic terms, with the anticipated return on their investment in the Property through the income to be generated by the hospital, but in also enabling those principals to fulfill their deep commitment to helping those afflicted with the disease of addiction. In contrast, HEWC believes the Record will demonstrate that the operation of its hospital will pose no detriment at all to the health, safety and welfare of the neighborhood or community, and in fact, will provide significant benefits to the Cortlandt community as a whole, as well as to the neighborhood.

Among the substantial benefits which the granting of the variance will result in for the neighborhood and the community, which will easily off-set any minimal adverse impacts on the neighborhood resulting from the hospital use, are the following:

1. The continued refurbishing of the Property and the buildings thereon and the securing of same against any further trespassing and the negative impacts associated therewith.
2. A projected increase in real property taxes to the Town and school district of some \$560,000 per year, without generating any school children and with minimum use of Town resources.
3. Seventy-five percent of the 20.83 acre Property will remain undisturbed, open space, as will the 27.8 acre adjoining property, in furtherance of the Town's Open Space Plan.
4. Given the absence of new construction, which would occur with other uses of the Property, there will be no disturbances caused by substantial demolition and construction activities, and there will be no disturbance whatsoever to any sensitive environmental features of

the Property or the adjoining parcel, including no impacts whatsoever on wetlands, wetland buffers, steep slopes or trees.

5. The hospital will give preference to Cortlandt residents seeking its services, including by reserving a reasonable number of beds for such residents, and by its favorable fee structure, and will accept their private insurance.
6. HEWC will work closely with the Town and community organizations to address the substance abuse epidemic in the Town and region, including by providing expert speakers and programs for the Town, its schools, and local organizations such as DARE.

Thus, the benefit of the variance to HEWC far outweighs any detriment to the neighborhood or community, which in fact, will benefit as well.

With respect to the first specific criterion of the balancing test -- whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance -- there will be no such undesirable change or detriment. The proposed specialty hospital use is consistent with the historical hospital and other institutional uses of the site and will utilize only the existing buildings and access drive on the Property, thereby remaining in harmony with the neighborhood and avoiding any detriment to nearby properties. No additional buildings are proposed. The buildings and use will be 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, along with some 75% of the Property, will remain undeveloped to provide a substantial additional buffer, while preserving significant open, green space.

As noted, HEWC has already invested substantial sums to repair and renovate the existing buildings, which had fallen into great disrepair due to neglect and vandalism. HEWC has secured all requisite permits and certificates from the Town for such work and has expended

in excess of \$2 million to date on performing that work, not including its substantial legal and consulting fees. (See Appendix O to EEAR.) HEWC's affiliate purchased the severely neglected and damaged Property in 2010 for \$1.15 million and pays some \$56,000 per year in taxes on the Property. Significantly, in regard to the character of the neighborhood, HEWC has secured the Property to prevent all of the aforementioned trespassing and resulting nuisances, which had been occurring for years at the site, at great detriment not only to the Property, but to the neighborhood.

As the JMC EEAR demonstrates, there will be no significant traffic or any other negative impact on the neighborhood or the community.

Other institutional uses in the vicinity include the Danish Home at 1065 Quaker Ridge Road East, which is an independent retirement residence, founded in 1906, licensed by the New York State Department of Health as an adult home for some 21 residents. There is also a commercial horse farm situated directly across the street from the Property.

With regard to the second criterion of the balancing test – whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance – the answer is simply “no”. As the Property is not located on a State road, the proposed hospital use may not take place without the issuance of a variance from the State road frontage requirement.

With respect to the third balancing test criterion – whether the requested area variance is substantial – the applicable case law requires that this is not merely a mathematical computation – which would not lend itself well to the State road frontage requirement in any event, as either a property is located on such a road, or it is not – but is a criterion to be reviewed in the context of the particular case, i.e., the evaluation of substantiality is dependent upon the particular facts.

Case law recognizes that consideration of the substantiality component of the area variance test is primarily dependent on whether the deviation from the zoning standards has substantial impacts, not simply the extent of the numerical deviation from the regulation to be varied. For example, in *Aydelott v. Town of Bedford Zoning Board of Appeals*, 6/25/03 NYLJ p. 21, col. 4 (Sup. Ct. Westchester Co. 2003), the court annulled the denial by the Town of Bedford Zoning Board of Appeals of a variance that would have allowed, among other things, building coverage of 7.1 percent, where only 3 percent was permitted by zoning and impervious surface coverage of 11.7 percent, where zoning imposed an 8 percent maximum. The court held that the zoning board engaged in improper analysis by focusing only on the percentage magnitude of the variance in the abstract. In pertinent part, the Court stated as follows:

A review of the record reveals that the ZBA was primarily concerned with the extent of the deviation from the standards established by the zoning code without considering the impacts on the surrounding community . . . . The ZBA's consideration of this percentage deviation alone, taken in a vacuum, is not an adequate indicator of the substantiality of the Petitioners' variance application. Certainly, a small deviation can have a substantial impact or a large deviation can have little or no impact depending on the circumstances of the variance application. . . Substantiality must not be judged in the abstract. The totality of the relevant circumstances must be evaluated in determining whether the variance sought is, in actuality, a substantial one . . . (citations omitted)

See, also in particular, all of the frontage variance cases cited in Section VI above, where the subject properties likewise lacked *any* of the required frontage, thereby requiring what likewise could be construed mathematically as a 100% variance, including *Healey v. Town of E. Fishkill Zoning Bd. of Appeals*, *supra*, where Cortlandt's Town Attorneys, Wood and Klarl, as Town Attorneys, on behalf of the Town of East Fishkill, prevailed in upholding the zoning board's granting of a 100% road frontage variance.

*See, also, Kleinhaus v. Zoning Board of Appeals of the Town of Cortlandt*, 3/26/96, NYLJ p. 37, col. 3 (Sup. Ct. Westchester Co. 1996) (annulling a zoning board's denial of a variance to allow an amateur ham radio operator to erect a 120-foot-tall freestanding antenna in his yard, where the zoning height limitation was 35 feet (a 283 percent variance), based on the court's reasoning that "the deviation only becomes relevant if it relates to the adverse effect in the neighborhood."<sup>1</sup>)

Clearly, the putatively substantial magnitude of a variance is normally overcome by a showing that granting the variance will not have significant adverse impacts on neighborhood character or physical or environmental conditions. *See L & M Graziose, LLP v. City of Glen Cove Zoning Board of Appeals*, \_\_\_ A.D.2d \_\_\_, 2015 WL 1542234 (2d Dep't April 8, 2015) (holding that even though a zoning board's finding that the requested variances were substantial was rational, denial of the variances had to be annulled because, among other things, "there was no evidence before the ZBA that the granting of the variances would have an undesirable effect on the character of the neighborhood or community . . ."); *Quintana v. Zoning Board of Appeals of Incorporated Village of Muttontown*, 120 A.D.3d 1248, 1249, 992 N.Y.S.2d 332, 334 (2d Dep't 2014), *lv denied*, 24 N.Y.3d 918 (Feb. 24, 2015) (invalidating denial of an area variance that was arguably substantial in magnitude, because there was no evidence that granting the variance would produce an undesirable change in the character of the neighborhood or adversely

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<sup>1</sup> Notably, case law is full of examples where, when looking strictly at the numbers, variances might seem substantial, but when taken in the context of the application and the existing character of the community, the courts have held them not to be. *See, e.g., Sasso v. Osgood*, 86 N.Y.2d 374, 384, 633 N.Y.S.2d 259, 264 (1995) (upholding the grant of area variance reducing the required 12,000-square-foot minimum lot area to 5,200 square feet and the required lot width from 100 feet to 72 feet at the waterfront and 50 feet at the street line); *Witzl v. Zoning Board of Appeals of Town of Berne*, 256 A.D.2d 775, 771, 681 N.Y.S.2d 634, 635-36 (3d Dep't 1998) (annulling the denial of an area variance to allow construction of a single-family residence on a 3.5-acre lot in a zone with a minimum lot size of 5 acres); *Baker v. Brownlie*, 248 A.D.2d 527, 528-529, 670 N.Y.S.2d 216, 218 (2d Dep't 1998) (reversing the denial of a 27.6-foot variance from the required 40-foot rear yard setback); *O'Hara v. Zoning Board of Appeals of Village of Irvington*, 226 A.D.2d 537, 641 N.Y.S.2d 87 (2d Dep't 1996), *lv. Denied*, 88 N.Y.2d 810, 649 N.Y.S.2d 377 (1996) (annulling the denial of an area variance to allow construction of a home on an approximately 20,000-square-foot lot which had been rezoned to require a minimum lot size of 40,000 square feet).

impact on physical or environmental conditions); *Friedman v. Board of Appeals of Village of Quoque*, 84 A.D.2d 1083, 1085, 923 N.Y.S.2d 651, 653 (2d Dep't 2011); *Filipowski v. Zoning Board of Appeals of Village of Greenwood Lake*, 38 A.D.3d 545, 547, 832 N.Y.S.2d 578, 581 (2D Dep't 2007).

In this case, the variance should *not* be considered as substantial, because the Property was used historically for a specialty hospital and other institutional purposes, and was even afforded a special permit in 1989 for another hospital, long before the enactment of the State road frontage requirement in 2004, with the access drive from the Town road always in the same location where it exists today. The same buildings will be used for substantially the same purposes. Most importantly, the State road frontage requirement is presumably intended to prevent the impacts of a high traffic use – such as a general hospital – on local roads – albeit many other uses permitted as of right or by special permit under the Town Zoning Ordinance, for which State road frontage is not required, could easily generate more traffic than the proposed hospital use. This traffic consideration is not relevant in this case, where the patients will be staying for extended periods, without the use of vehicles, and with visitation limited to one weekend day per month, and where there will otherwise be limited traffic. Thus, this specialty hospital will have substantially less traffic than a general hospital. As demonstrated by JMC's expert traffic report in its EEAR, there will be no significant adverse traffic impacts on the road or the neighborhood.

Any issue of substantiality of the frontage variance is also mitigated by the fact that the Property generally far exceeds the other specific bulk requirements for a hospital special permit, i.e., the Property's 20.83 acres is more than double the minimum lot size area, the provision of 9,864 square feet for each bed of the proposed maximum 92-bed count is almost five times the

minimum lot area per bed requirement of 2,000 square feet, the Property's frontage of 600 square feet is six times the minimum lot frontage requirement of 100 feet, the building coverage is only 2% or only one-tenth of the maximum building coverage requirement of 20%, the front yard setback of the hospital building is 340' versus the required 200' setback, its side yard setback is 190' versus the required 125' setback, and its rear yard setback is 1,230' versus the required 125' setback.

The substantiality of the State road frontage variance is further mitigated by the fact that there are many uses permitted in the R-80 zoning district, whether as of right or by special permit, which are not subject to such frontage requirement and which could easily have far more traffic and other impacts than the proposed use, including: churches and other religious uses with associated nursery schools, public and private schools, museums and art galleries, farms, public parks and recreational facilities, nursery/day care centers, country clubs, tennis, yacht, and membership sports and recreation clubs, marinas, livestock farms, kennels, riding academies, and public utilities.

The substantiality issue is also further mitigated by the fact that the Planning Board, in lieu of the Zoning Board's issuance of a variance from the State road frontage requirement, arguably may grant a waiver of that requirement for this hospital facility pursuant to §307-59(B)(6)(a) of the Zoning Ordinance, entitled "Waiver of Requirements", which states:

Where a hospital or nursing home facility which has previously received a special permit proposes to utilize, alter or modify any building or structure which is in existence on the date of the application for a new or amended special permit approval pursuant to this section, or where an existing hospital proposes to construct a new building or structure or addition thereto, the planning board, subject to appropriate conditions, may waive the requirements for minimum building setback, maximum height, total floor area, **minimum lot**



**frontage, maximum building coverage, required parking, and any such other dimensional regulation, standard or condition, including landscaping and buffering requirements, or other requirements as set forth in this chapter.**  
(Emphasis added.)

This waiver provision was added on May 17, 2005, subsequent to the addition of the State road frontage requirement in §307-59(B)(9) on September 14, 2004. The subject “hospital facility” did in fact “previously receive a special permit” in 1989 and “proposes to utilize . . . any building or structure which is in existence on the date of the application for a new . . . special permit approval pursuant to this section”. Thus, it is HEWC’s position that, as an alternative to a variance, the Planning Board may grant a waiver from the State road frontage requirement.

With respect to the fourth criterion of the balancing test – whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district - JMC’s EEAR demonstrates that there will be no significant adverse environmental impacts. The proposed specialty hospital use is in character with the historic hospital and institutional uses at the site, and will utilize only the existing buildings on the Property and therefore, will not have any adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

As demonstrated by the expert traffic analysis in the EEAR, traffic impacts will be minimal. The proposed use will not generate any significant traffic volume, since the clients will not drive and there will generally be no visitors, except on weekends when only 25% of the patients may be visited each weekend. Patients will typically be picked up and dropped off at a discharge location and a shuttle vehicle operated by the facility will transport them between the Property and the train station or other locations as required. The majority of site-generated

traffic volumes will be comprised of staff, a large portion of which may be expected to be consolidated and transported by HEWC from off-site in passenger vans to significantly reduce staff-related vehicles. No additional buildings are proposed.

Adjacent lands and buildings will be screened by additional landscaping and the fencing recently installed on the Property, and the adjoining 27.8 acre forested property owned by an affiliate of HEWC, along with some 75% of the Property, will remain undeveloped to provide a substantial additional buffer.

Given the absence of new construction, there will be no impact whatsoever on any sensitive environmental features, such as wetlands, wetland buffers, trees, or steep slopes. All well and septic use by the hospital is within the jurisdiction of the County Health Department, but as demonstrated by HEWC's expert analysis, there will be no impact at all on the wells in the neighborhood, the nearest one of which is some 1,000 feet away. The Property is not located on an aquifer. There will be very minimal medical waste.

With respect to the fifth criterion under the balancing test -- whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance -- HEWC respectfully submits that, under the circumstances of this case, there is no self-created difficulty with respect to the State road frontage issue. The historical use of the Property, long before the 2004 amendment adding the State road requirement to the special permit requirements for hospitals, was much like the proposed use and, in fact, for decades, included the same type of specialty hospital for addiction treatment. A court-ordered special permit was issued in 1989 for a second hospital. Special permits were issued for other institutional uses as well. The location of the access drive has not changed. As indicated above, the proposed specialty hospital will generate insignificant

traffic, thereby rendering the State road requirement essentially irrelevant to this particular use.

The existence of the recent Yeshiva precedent for the issuance of a similar road frontage variance, and the status of HEWC's patients as a federally protected class, also obviate any issue of self-created difficulty.

**VIII. THE ZONING BOARD MAY NOT DENY THE VARIANCE ON THE BASIS OF NEIGHBORHOOD OPPOSITION**

It bears noting that the neighborhood group opposing HEWC's proposal has concurrently been objecting to a special permit and variance application submitted by Sunshine Children's Home and Rehab Center ("Sunshine") before the Zoning Board of Appeals of the Town of New Castle. Sunshine seeks to expand its existing facility from some 19,000 square feet to 147,000 square feet and to increase its bed count from 54 to 122 on its 33 acre property on Spring Valley Road. In addition to seeking an amendment of its special permit, Sunshine seeks a variance to exceed the maximum bed threshold in New Castle, which is 83, and as in this case, a variance from the New Castle State/County road frontage requirements for its use, which preceded the enactment of that requirement. The opponents have made the same types of spurious claims with respect to purported traffic, well impacts and the like in the Sunshine matter as they have thus far raised with respect to HEWC's application, on the basis of which they have called for Sunshine to submit a Full Environmental Impact Statement. New Castle's Director of Planning and its other professional consultants reviewed and strongly refuted the Sunshine opponents' claims at great length and accordingly, recommended that the Zoning Board adopt a "Negative Declaration" under the State Environmental Quality Review Act ("SEQRA"), i.e., a determination that the project will not have any significant adverse environmental impact and that therefore, no Environmental Impact Statement is required. The New Castle Zoning Board accepted that recommendation and on July 25, 2016, unanimously rendered its Negative Declaration, thereby apparently paving the way for the expeditious approval of the Sunshine special permit amendment and issuance of the two variances, including the State/County road frontage variance.

The opponents in HEWC's matter have consistently linked the Sunshine application with HEWC's. It is respectfully submitted that the lesson to be drawn by the Cortlandt Boards from the Sunshine case, and the astute and courageous actions of the Town of New Castle Zoning Board and its professional consultants with respect thereto, is that the opposition group is severely lacking in credibility and its often hysterical claims are baseless, at best.

Notwithstanding, given the presence of the vocal neighborhood opposition group in connection with HEWC's proposed hospital, it is important to reiterate the oft-cited principle of zoning law that an application for a variance or other land use approval may not be denied on the basis of community pressure. The general rule, which has been stated by the courts on many occasions, was set forth by the Second Department in *Sunrise Highway, LLC v. Town of Oyster Bay*, 287 A.D.2d 714, 732 N.Y.S.2d 83 (2d Dep't 2001), in a decision which stated in its entirety as follows:

While scientific or expert testimony is not required in every case to support a determination of a zoning board, a zoning board may not base its decision solely upon generalized community objections (*see, Matter of Twin County Recycling Corp. v. Yevoli*, 90 N.Y.2d 1000, 1002, 665 N.Y.S.2d 627, 688 N.E.2d 501; *Matter of Holbrook Assocs. Dev. Co. v. McGowan*, 261 A.D.2d 620, 621-622, 690 N.Y.S.2d 868; *Matter of Chernick v. McGowan*, 238 A.D.2d 586, 587, 656 N.Y.S.2d 392; *Matter of Gordon & Jack v. Peterson*, 230 A.D.2d 856, 857, 646 N.Y.S.2d 824; *Matter of Framike Realty Corp. v. Hinck*, 220 A.D.2d 501, 502, 632 N.Y.S.2d 177; *Matter of Huntington Health Care Paternership v. Zoning Bd. of Appeals of Town of Huntington*, 131 A.D.2d 481, 481 482, 516 N.Y.S.2d 99). Here, the ZBA was improperly influenced by community pressure in making its determination. The generalized complaints of the residents and the findings of the ZBA were uncorroborated by any empirical data or expert testimony and were therefore insufficient to counter the expert testimony presented by the petitioner. Thus, the determination of the ZBA was not supported by substantial evidence.

732 N.Y.S.2d, *supra*, at 83-84.

An expert's opinion cannot be refuted by generalized objections from the public or members of the administrative body. When, as here, the expert testimony is refuted, or irrefutable, an application cannot be denied merely on the basis of community opposition, no matter how vocal. *See Oster Bay Development Corp. v. Town Board of the Town of Oster Bay*, 88 A.D.2d 978, 451 N.Y.S.2d 796 (2d Dep't 1982); *Triangle Inn, Inc. v. Lo Grande*, 124 A.D.2d 737, 508 N.Y.S.2d 240 (2d Dep't 1986); *Frank v. Scheyer*, 227 A.D.2d 558, 642 N.Y.S.2d 956 (2d Dep't 1996); *C&A Carbone, Inc. v. Holbrook*, 188 A.D.2d 599, 591 N.Y.S.2d 493, 494 (2d Dep't 1992).

In *Chernick v. McGowan*, 238 A.D.2d 586, 656 N.Y.S.2d 392 (2d Dep't 1997), *lv.* Granted, 90 N.Y.2d 806, 664 N.Y.S.2d 268 (1977), *app. withdrawn*, 91 N.Y.2d 923, 669 N.Y.S.2d 265 (1998), the court stated:

It is impermissible to base denial solely on the generalized objections and concerns of neighboring community members . . . . Furthermore, the testimony of the Town planner was uncorroborated by empirical data or expert opinion and thus was insufficient to counter the compelling evidence submitted by the Petitioner's experts.

238 A.D.2d at 587, 656 N.Y.S.2d at 394 (citations omitted); *Framike Realty v. Hinck*, 220 A.D.2d 501, 502, 632 N.Y.S.2d 177 (2d Dep't 1995), *lv. denied*, 5088 N.Y.S.2d 803, 645 N.Y.S.2d 446 (1996) ("generalized comments about traffic from local residents describing existing conditions are insufficient to counter expert opinion based on empirical studies"). *See also, Ernalex v. Belissimo*, 256 A.D.2d 338, 340, 681 N.Y.S.2d 298, 300 (2d Dep't 1998) ("since the comments submitted to the planning board were uncorroborated by empirical evidence or expert opinion, they were insufficient to counter the compelling evidence submitted by the petitioner's experts in support of site plan approval"). *See also, Pecoraro v. Board of Appeals*

*of Town of Hempstead*, 304 A.D.2d 761, 757 N.Y.S.2d 782 (2d Dep't 2003; *Moy v. Board of Trustees of Town of Southhold*, 61 A.D.3d 763, 877 N.Y.S.2d 186 (2d Dep't 2009); *Gonzalez v. Zoning Board of Appeals of the Town of Putnam Valley*, 3 A.D.2d 496, 771 N.Y.S.2d, 42 (2d Dep't 2004).

In *Necker Pottick Fox Run Woods Builders Corp. v. Duncan*, 251 A.D.2d 333, 673 N.Y.S.2d 740 (2d Dep't 1998), the court, in setting aside the denial of an area variance, stated:

... The only opposition presented in this case was the generalized grievances of a group of neighboring property owners. Further, this civic opposition was not based on facts, but on the weight of numbers, *i.e.*, how many neighboring property owners were in opposition. As such, the mere presence of community opposition or the unsupported conclusory allegations voiced by the neighboring property owners does not justify the denial of the variance application  
...

673 N.Y.S.2d at 741. In accord: *Twin County Recycling Corp. v. Yevoli*, 90 N.Y.2d 1000, 665 N.Y.S.2d 627 (Although scientific or expert testimony is surely not in every case required to support a zoning board determination, the board may not base its decision on generalized community objections . . . Given the present record established by petitioner, it is evident that the application was denied not because it failed to meet the applicable criteria, but because of generalized community pressure. The determination was, therefore, properly annulled.”); *Bianco Homes, Inc. v. Weiler*, 295 A.D.2d 505, 744 N.Y.S.2d 433 (2d Dep't 2002); *Hugel v. Campbell*, 276 A.D.2d 697 (2d Dep't 2000).

As a matter of law, the Zoning Board may not rule on the basis of neighborhood opposition premised on generalized, demonstrably unfounded fears and contentions, as that opposition has been comprised to date. Such vocal pressure may not supersede the voluminous

expert evidence submitted by HEWC in support of its proposed hospital use and the granting of the subject area variance.



**IX. CONCLUSION**

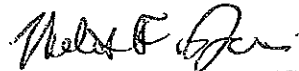
On the basis of the foregoing - including the Zoning Board's prior precedent, the Federally protected status of the prospective patients, the substantial expert analysis demonstrating the lack of any significant adverse impacts, the benefits to the community, and the clear satisfaction of the statutory criteria for the area variance – HEWC respectfully requests that the Zoning Board grant to it the requested area variance from the State road frontage requirement.

Dated: September 28, 2016  
Mount Kisco, New York

Respectfully submitted,

SINGLETON, DAVIS & SINGLETON PLLC

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## APPENDIX

# EXHIBIT 1



EXHIBIT 2(a)

*Paul, Victor Called*

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**HUDSON INSTITUTE**

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**HISTORY  
AND  
SITE  
DESCRIPTION**



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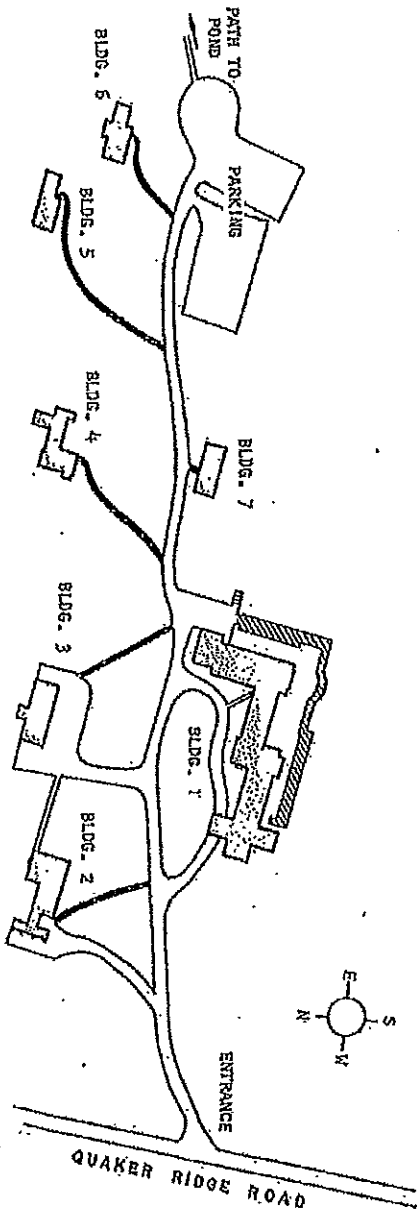
**CROTON-ON-HUDSON, N.Y.**

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Visitors to the Hudson Institute are often curious about the background of the various buildings on our grounds. This booklet was designed to answer some of the questions that are often asked.

### HUDSON INSTITUTE GROUNDS PLAN

The boundaries of the 21 acres are roughly at the woods line along the length of the property, and extend in back, several hundred feet down the hill into the woods, including a small pond.



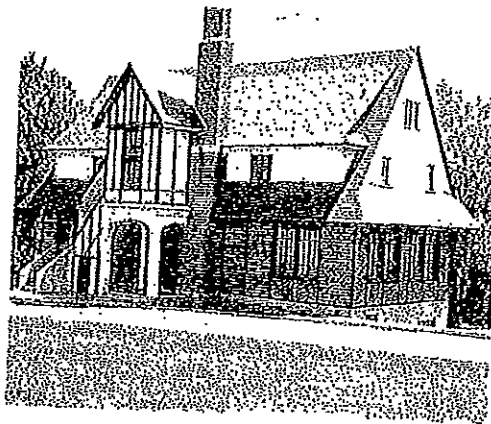






#### **BUILDING ONE**

contains the offices of the Director, the President, most of the General Research Staff, as well as the library, dining room, and executive conference room.



#### **BUILDING SEVEN**

is the main conference building for seminars and larger meetings. Our largest meeting room, furnished with audio-visual equipment, is on the ground floor, with three smaller meeting rooms above.

#### BUILDING TWO

houses additional offices for the Research Staff and facilities for the Corporate Environment Program including a conference room and library.



#### BUILDING THREE

was originally a garage but is now used for storage space and a workshop for maintenance operations.



#### BUILDING FOUR

is the Administration Building, where the accounting, purchasing and service departments as well as the office of the Controller and Assistant Treasurer are located.



#### BUILDING FIVE

provides additional office space for visiting consultants, visiting staff members of other institutions and facilities for the Executive-in-Residence Program.



#### BUILDING SIX

is the home of one of the maintenance crew and his family.



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## HISTORY

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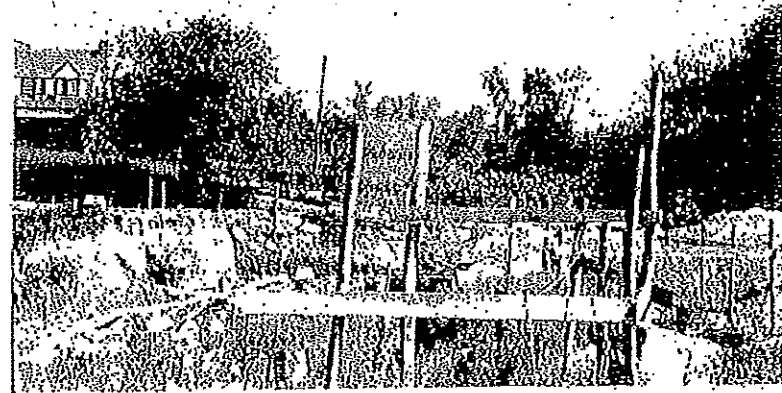
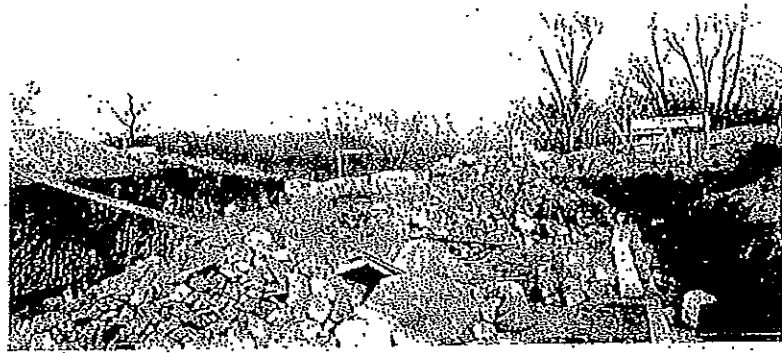
The present Hudson site once belonged to a New York physician, Dr. Robert Lamb, who purchased the acreage in 1920 and designed the seven-building complex as a special medical care center with the purpose of providing highly individualized attention for his patients (especially those requiring mental rehabilitation). Wanting to avoid a hospital-like atmosphere, Dr. Lamb planned the hallways in the main building with windows on one side and bedrooms on the other, lending a spacious and open air to the rooms. Most of the first and second floor area was divided into suites consisting of a patient's bedroom and bath plus a nurse's room. The third floor was for the housekeeping staff.

Building Three was completed while work on the main building was still in progress. It was used primarily as a garage, with living quarters on the second floor for male employees. Buildings Four, Five and Six were built between 1926 and 1931 to provide accommodations for a small number of special patients. Dr. Lamb's residence (our Building Two) was finished in 1932, as was Building Seven, originally a workshop for the maintenance crew.

Dr. Lamb retired from active practice and closed the center in 1948, although he lived on the grounds until his death in 1952. After 1948 the property was leased to several tenants and the rental income used to finance grants to the Albany Medical School and the University of Vermont Medical College, as stipulated by Dr. Lamb.

The first tenants were the Maryknoll Sisters, who needed interim accommodations while their new convent was being built in Ossining. They left in January 1957 and the estate was taken over by the IBM Research Division, also on an interim basis, until the Thomas J. Watson Research Center was completed in June 1961.

The buildings had been unoccupied for almost a year when in May 1962 the Hudson Institute, which had spent its first year at the United Nuclear Corporation's Research Center in Eastview, 12 miles further south on Route 9A, and already outgrown its quarters, selected the Lamb Estate as its permanent home. Few major changes were needed to make the building complex suitable

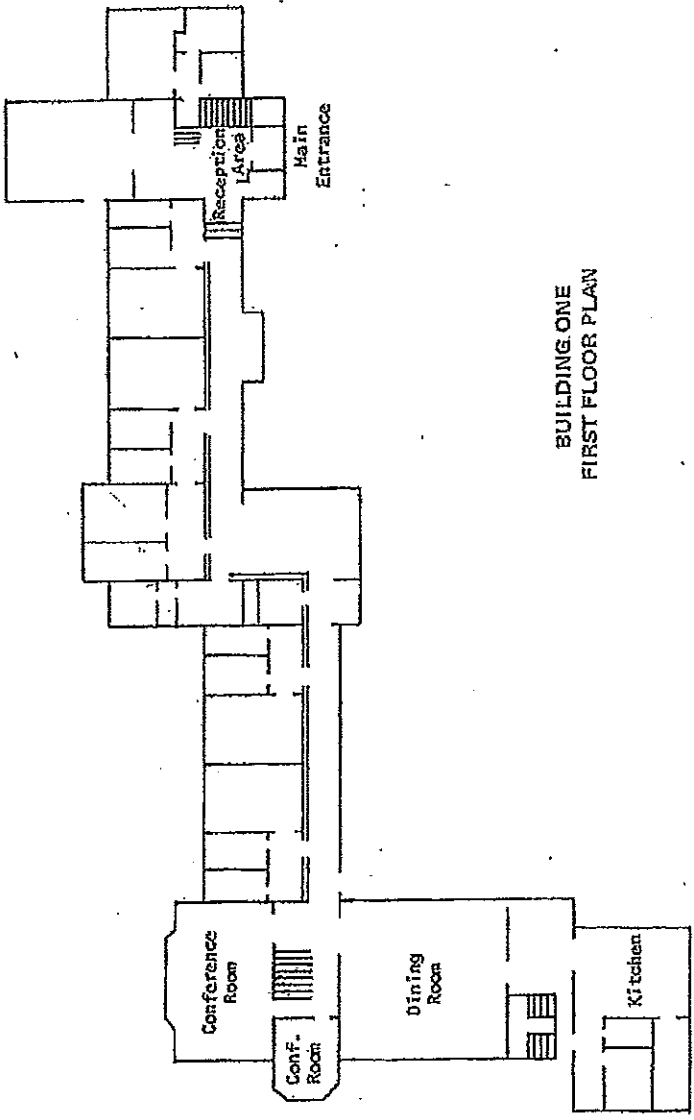


CONSTRUCTION OF THE MAIN BUILDING 1920-1922

and the move was completed the next month. In the following months partitions were torn down and carpeting, painting and furnishing completed in time to hold a fall open house for Hudson's new neighbors and friends.

In the years since, minor improvements have been made to meet various needs. The most extensive work has been done on Building Seven, which has been remodeled and air-conditioned to provide a comfortable area for seminars and meetings, and on the third floor of the Main Building, which has been converted from small offices to an open and spacious library.

In October 1966, the Institute held a second open house to celebrate its Fifth Anniversary and, in March 1967, Hudson took title to the property and the Lamb Estate became, officially, the Hudson Institute.



BUILDING ONE  
FIRST FLOOR PLAN



---

QUAKER RIDGE ROAD, CROTON-ON-HUDSON, N.Y. 10520

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**HUDSON INSTITUTE**

A NONPROFIT  
POLICY RESEARCH  
CENTER

#### HUDSON INSTITUTE IN BRIEF

The Hudson Institute is a private, non-profit research organization studying public policy issues, especially those related to long-range perspectives, to U.S. national security and world order, to social and economic development, and to urban affairs. Since its founding in 1961 it has attempted to help meet the growing need for research and analysis that complement the decision-maker's traditional sources of advice and ideas, in part through policy studies, employing experts from various academic disciplines and professions, and in part through seminars and briefings for those concerned with policy-making. Its goal is to promote better communication and understanding among those working on public policy problems, and where necessary, it seeks to develop special techniques to aid both research and exposition for this purpose.

The Institute is an independent organization, committed only to intellectual quality and to the national and world interest. It has no government sponsorship or control, and no official policy position or doctrine. Most current research is being done under contract and grants from government agencies, industrial firms, and other private organizations; however, independent grant-supported research is increasing.

Hudson Institute differs in at least two ways from other organizations that have been providing research and advice to the government. First, despite attention to operational and technical considerations, its primary concern is with overall policy, emphasizing the "important, but not necessarily urgent" issues. Second, Hudson feels a major responsibility for participating in and attempting to raise the level of public and professional discussion of various issues, through seminars, conferences and reports.

The research staff at Hudson numbers about thirty-five and there are more than one hundred consultants, drawn from university teaching, government service, industry, scientific and engineering research, law and journalism. The Institute strives to bring together a diversity of viewpoints as well as skills in a staff that works together in an organized manner, yet in an atmosphere of freedom of inquiry and emphasis. Therefore, our reports are signed by the authors as individuals, and the Institute assumes responsibility only for the quality and objectivity of the work and does not normally produce official Institute positions or recommendations. Hudson tries to provide a degree of time and detachment which is rarely possible in the studies of an official agency, and a degree of focus and integration which is rarely available in a university or university-based study center.

The Institute's location, at Croton-on-Hudson, offers a quiet, pleasant place to work. Situated in open, hilly country overlooking the Hudson River, about thirty miles north of New York City, it is convenient to rural and suburban housing and is less than one hour from Manhattan by car or train. The seven

buildings on the twenty-one acre site contain an active reference library, conference rooms of various sizes, a dining hall and space for private study-offices and support-facilities.

### POLICY RESEARCH OBJECTIVES

Hudson's major purpose is not to design blueprints for public policy or instructions for specific policy objectives. In policy making there rarely are definite "answers" or reliable "cures." While Hudson reports often contain detailed recommendations, the emphasis is usually on providing a broad, workable, conceptual framework within which intelligent and successful policy is more likely to be developed.

Hudson Institute studies emphasize long-range objectives and/or critical issues, especially those that are not currently perceived as pressing and immediate. In effect, the Institute attempts to act as a "lobby for the future" or at least as a "lobby" for these important but not urgent issues. We emphasize this because there are many operations — research, system-analysis and policy-research organizations which are filling "felt" needs of the government or private corporations. Even if they do a poor job their work can often be used — in part or in whole — because there is a clearly recognized need for it, and no obvious substitute. Rather than filling needs already felt to be urgent, Hudson seeks to do better (or differently) what senior members of the government or management must ordinarily do for themselves: namely, to determine what issues are important and which may become urgent though they are not yet recognized as such.

Although its usefulness is not always so easily appreciated, research to this end — if well done — seems necessary for long-range policy effectiveness.

The major objectives of such research are:

1. To stimulate and stretch the imagination
2. To clarify, define, name and argue major issues
3. To design and study alternative policy combinations and policy-making contexts

4. To design and create propaedeutic\* and heuristic\* aids
5. To improve intellectual communication and cooperation by the use of historical analogies, scenarios, metaphors, analytic models, precise concepts and suitable language
6. To increase the ability to identify new patterns and crises and understand their significance.

These six objectives underlie the Institute's work as a whole; they express something of the intellectual ambitions of the organization.

There are, as well, objectives that derive directly from our role as a contractor, and from our obligations to the public as an organization which is consulted on national policy. These objectives include making specific empirical and theoretical studies that devise, examine and assess currently realistic policy choices, emphasizing those that retain flexibility for reacting appropriately to a broad range of contingencies or otherwise increase the "immediate" ability of decision-makers and their staffs to react appropriately to likely crises and trends.

#### CONTRACT AND GRANT RESEARCH

Hudson Institute's work has been primarily in the following areas: international crises, with emphasis on crisis management and the significance of crises for arms control and patterns of international relations; conjectural studies about various national and international aspects of the Year 2000; some prob-

\* These rather pedantic words are used reluctantly but they seem to be the best available to describe Hudson's objectives. A "propaedeutic" aid or tool facilitates instruction in specialized knowledge without being oversimplified. Because creative integration of ideas and information can normally best be accomplished in a single mind, even a very sophisticated and knowledgeable policy maker, analyst, long-range planner, or member of an inter-disciplinary study group must absorb many ideas from unfamiliar fields. Hence, propaedeutic techniques can be exceedingly useful. A "heuristic" aid or tool can, without necessarily being scholarly or rigorous, facilitate discovery, or stimulate investigation, or just provide methods of demonstration that lead an investigator to probe further.

lems of world economic and social development with special emphasis on Latin America and on the future of Japan; developing patterns of world trade, with special attention to multinational corporations; issues related to the future of American cities, especially education, drugs, race, and crime; alternative future tactical and strategic nuclear postures, causes and techniques of insurgency and some of the technical and political problems of counterinsurgency warfare; the role and problems of command and control; strategic and political implications of future military technology; arms control implications of the current arms race generally and of various civil defense and ABM programs in particular; alternative European futures and various possible U.S. roles and European defense policies in these alternatives; United States national interest in international order and some of the basic political and strategic choices facing the U.S. (with special emphasis on the arms race and arms control).

Work is being or has been done under grants from the Department of Health, Education and Welfare, the American Academy of Arts and Sciences, the Corning Glass Works Foundation, the Inter-American Development Bank, the Research Institute of America, and various private individuals and companies; and under contracts with the Arms Control and Disarmament Agency, the Atomic Energy Commission, the Government of Canada, the Government of Colombia, the Council on Foreign Relations, the Executive Office of the President (Office of Emergency Planning), the International Business Machines Corporation, the Institute for Defense Analyses, Martin-Marietta, Inc., the Miltre Corporation, New York State, the New York City Planning Commission, the Office of Economic Opportunity, the Office of the Secretary of Defense (Director of Defense Research and Engineering, the Assistant Secretaries for International Security Affairs and Comptroller, the Advanced Research Projects Agency, and the Office of Civil Defense), Stanford Research Institute, System Development Corporation, and various agencies of the U.S. Air Force and the U.S. Army.

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The Institute's unclassified reports are deposited and may be obtained from the New York Public Library and the Library of Congress as well as the libraries of Columbia University, Cornell University, the Council on Foreign Relations, Creighton University, Dartmouth College, the Georgia Institute of Technology, Harvard College, the Industrial College of the Armed Forces, Massachusetts Institute of Technology, the Naval War College, New York University, Ohio State University, Princeton University, Stanford University, the U.S. Air University, the Army War College, University of California at Berkeley and Los Angeles, University of Chicago, University of Illinois, University of Minnesota, Notre Dame, University of Pennsylvania, University of Utah, University of Washington, Washington University, and Yale University.

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Hudson Institute, Inc. is a corporation of Public, Fellow and Employee Members, who are listed on the following pages. (As members of a New York non-profit corporation they have a degree of control analogous to that of stockholders in a business corporation.)

Public Members, who are elected to seven-year terms, are community leaders with a variety of relevant backgrounds.

Fellow Members are elected to five-year terms and are from the academic, scientific and professional communities. Many are consultants to the Institute.

Employee Members are senior members of the research staff. Once elected, their membership continues as long as they remain on the staff.

Each class of Members elects one Trustee a year for a five-year term. In addition, Herman Kahn, Hudson's Director, and Max Singer, its President, are Trustees by virtue of office. The Board of Trustees is generally responsible to the Members and to the public for the Institute's operation.

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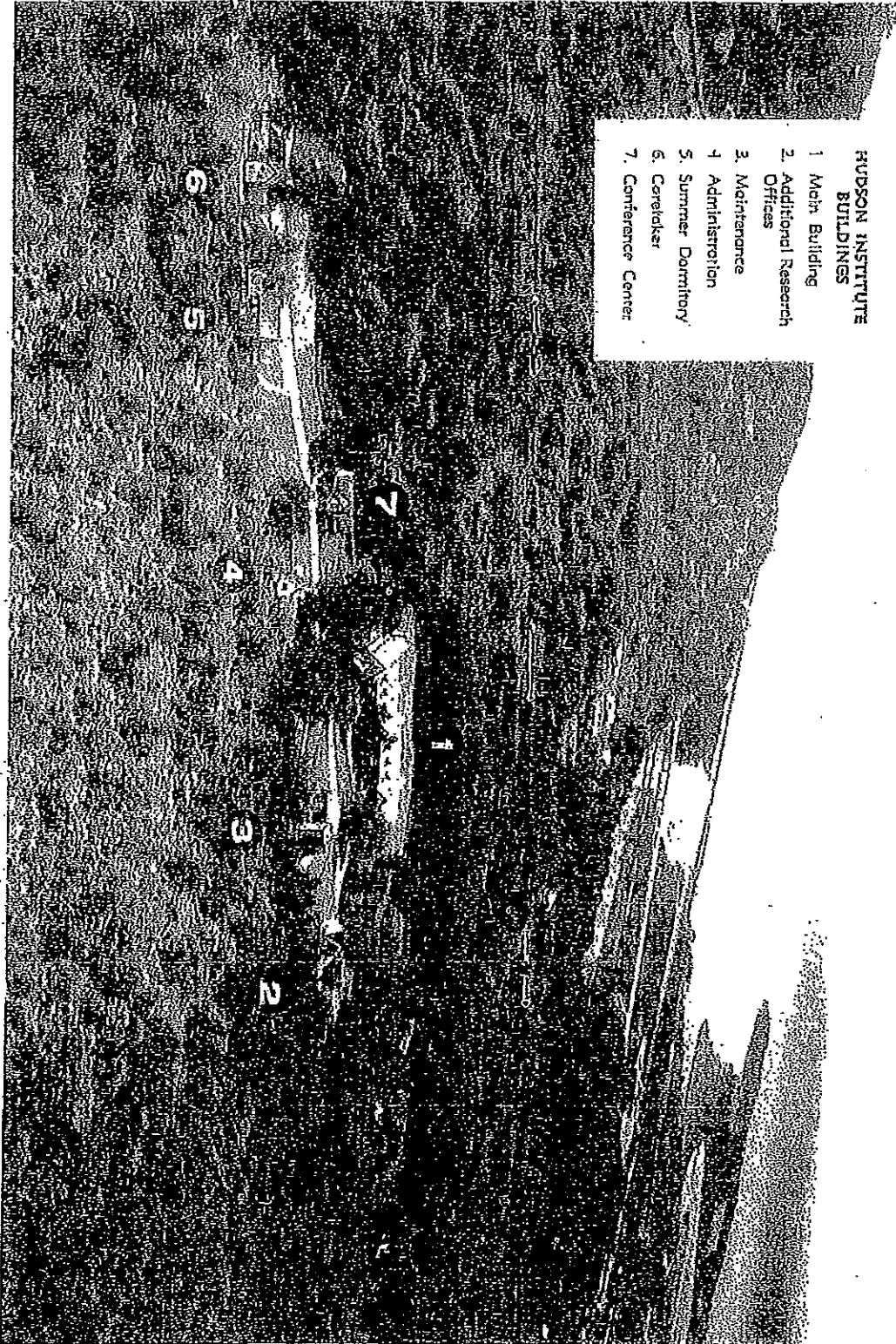
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Laboratoire Central d'Hydraulique de France  
Paris, France

Professor Max Lerner  
Department of Politics  
Brandeis University

Professor Leon Lipsen  
Yale University Law School

M. Jean Martin  
President  
Coyne et Beller  
Paris, France

Professor Max F. Millikan  
(1913-1969)

Professor Daniel P. Moynihan  
Center for Educational Policy Research  
Harvard University

Professor Richard E. Neustadt  
Director, Institute of Politics  
John F. Kennedy School of Government  
Harvard University

Professor Isador I. Rabi  
Department of Physics  
Columbia University

Professor R. Paul Ramsey  
Department of Religion  
Princeton University

Professor Edwin O. Relschauer  
Department of Government  
Harvard University

Professor Roger Revelle  
Director  
Center for Population Studies  
Harvard University

Professor Klaus Ritter  
Stiftung Wissenschaft und Politik  
Munich, West Germany

Professor John P. Roche  
Department of Politics  
Brandeis University

Mr. William D. Rogers  
Partner  
Arnold & Porter

Dr. Leo Rostan  
New York, New York

Professor Thomas C. Schelling  
Public Policy Program  
Harvard University

Dr. Donald A. Schon  
Organization for Social and  
Technical Innovation

M. Jean-Louis Servan-Schreiber  
Neuilly-Sur-Seine, France

Mrs. Chloethiel Woodard Smith  
Chloethiel Woodard Smith &  
Associated Architects

Professor Louis B. Sohn  
Bemis Professor of International Law  
Harvard University Law School

Dr. Omond M. Solandt  
Chairman  
Science Council of Canada  
Ottawa, Canada

Dr. Athelstan F. Spilhaus  
Fellow  
Smithsonian Institute

Dr. Albert M. Stone  
Technical Assistant to the Director  
Applied Physics Laboratory  
Johns Hopkins University

Dr. Harold Taylor  
New York, New York

Professor Edward Teller  
Associate Director of Physics  
Lawrence Radiation Laboratory

Dr. David B. Truman  
President  
Mt. Holyoke College

Dr. Ernst van den Haag  
Adjunct Professor of Social Philosophy  
New York University

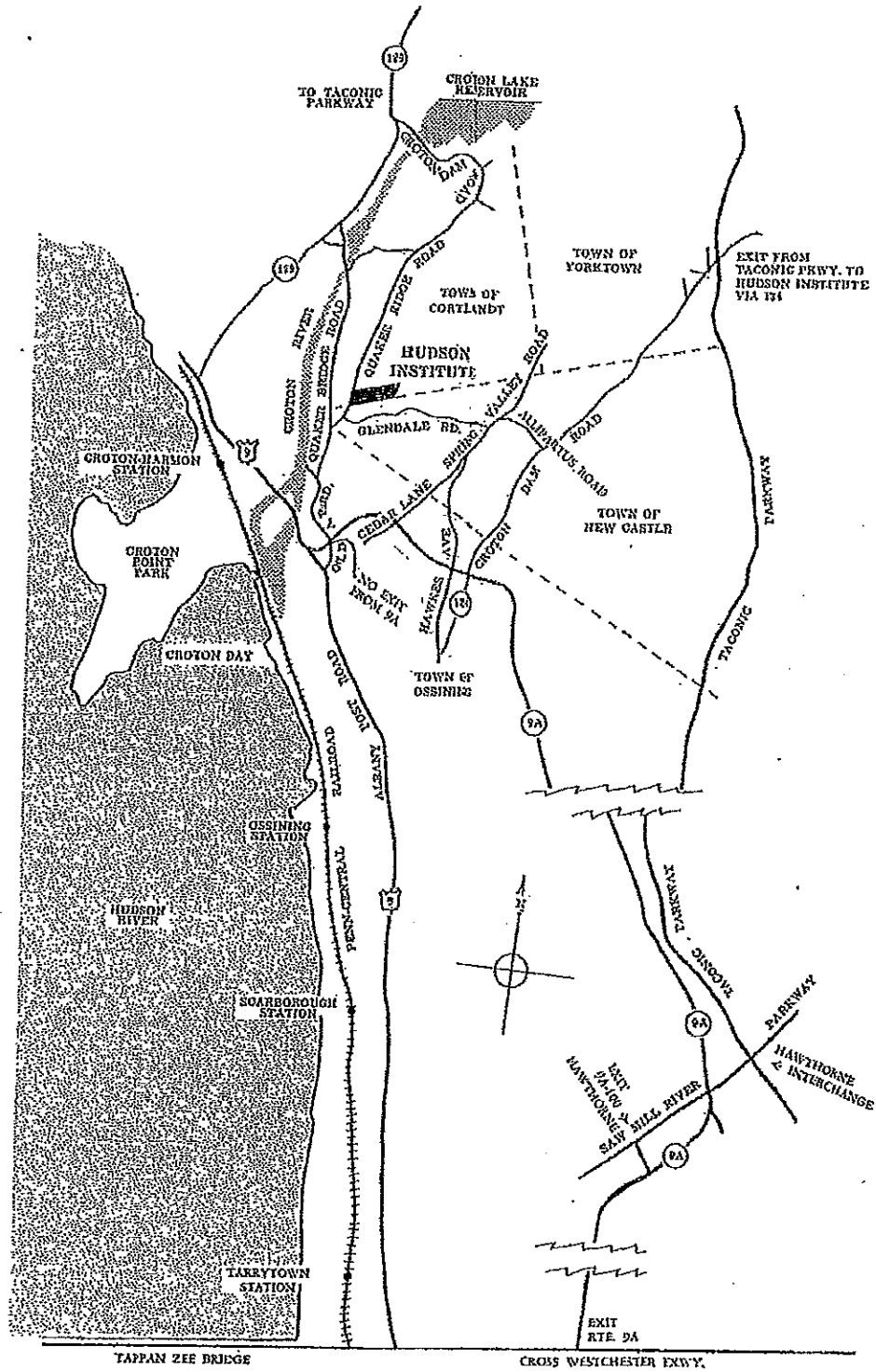
Mr. Paul Weidinger  
Consulting Engineer  
New York, New York

Professor Albert Wohlstaetter  
Department of Political Science  
University of Chicago

Mr. Kenneth T. Young  
(1916-1972)

#### EMPLOYEE MEMBERS

Frank E. Ambruster  
Donald G. Breinan  
Basil J. Candela  
Andrew G. Caranfil  
Raymond D. Gastil  
Herman Kohn  
Morton A. Kaplan  
Jane Newitt  
Robert Panero  
William W. Pfaff III  
Max Singer  
Edmund O. Stillman  
Anthony J. Wiener



TAPPAN ZEE BRIDGE

CROSS WESTCHESTER EXWY.

**DIRECTIONS TO HUDSON INSTITUTE**  
(Traveling North)

**FROM NEW YORK CITY (WEST SIDE)**

North on the Henry Hudson Parkway (West Side Drive) to the Saw Mill River Parkway.  
North on Saw Mill River Parkway to sign reading "9A-100 Hawthorne," continue North on Route 9A to Hawkes Avenue Exit, see below.

**FROM NEW YORK CITY (EAST SIDE)**

North on the Franklin D. Roosevelt Drive (East River Drive) to the Willis Ave. Exit.  
Willis Ave. Bridge to the Major Deegan Expressway.  
North on the Major Deegan Expressway, which becomes the Thomas E. Dewey (N.Y. State) Thruway.  
North on the Thruway to Exit 7A (Saw Mill River and Taconic State Parkways).  
North on Saw Mill River Parkway, about 5 miles from Thruway Exit, to "9A-100 Hawthorne Exit," continue North on Route 9A to Hawkes Avenue Exit, see below.

**From Kennedy Airport**

Van Wyck Expressway to Grand Central Parkway to Triborough Bridge to Major Deegan Expressway (then see ° above).

**From LaGuardia Airport**

Grand Central Parkway to Triborough Bridge to Major Deegan Expressway (then see ° above).

**From Route 9A**

Take the Hawkes Ave. Exit (1/10 mile north of the traffic light at the junction of Routes 9A and 134).  
From this Exit Road go to the right and follow Hawkes Ave. to the "Stop" sign at the "T" intersection (about 9/10 mile).

Turn right onto Spring Valley Road for about 1/10 mile only. Turn left onto Glendale Road.

Follow Glendale Road for 1 mile and take the first right hand turn which is Quaker Ridge Road (if you come down a short hill to Quaker Bridge Road, you have gone about 1/10 mile too far).

Hudson Institute sign is on your right.

**From Taconic Parkway**

West on Route 134 to Route 9A. North on 9A to Hawkes Avenue (See above — Route 9A).

**From Route 9**

Going north on Route 9 turn right onto the Old Albany Post Road (the turnoff is a few yards after the beginning of the "new" four lane Route 9, above Ossining, at the flashing traffic signal).

Follow this road for 1-1/10 mile to the top of the hill (the Old Albany Post Road becomes Quaker Bridge Road).

Turn right onto Glendale for 1/10 mile to the "Y" intersection. Bear left onto Quaker Ridge Road. Hudson Institute sign is on your right.



Croton-On-Hudson, New York 10520

(914) RO 2-0700

Telex 137343

61, Quai D'Orsay, Paris 7eme, France

1-11-46 Akasaka, Minato-Ku, Tokyo, Japan

Cable: SIMULCONFER

← OPEN FOR DETAILED MAP

AUGUST 1972

EXHIBIT 2(b)

## Historical Timeline of 2016 Quaker Ridge Rd, Croton-on-Hudson, NY

- 1920            Acreage purchased by Dr. Robert Lamb
- 1922            Main Hospital Building complex is constructed
- 1932 - 1950    Dr. Lamb uses property for alcoholics and run as a "dry out" sanatorium
- 1953            Building # 2 Constructed
- 1950 - 1953    Mary Knoll sisters rented it for nuns
- 1959            3 Out Buildings Constructed
- 1955 - 1961    IBM leased the property from Erst Dickter, Institute for Motivation Croton
- 1962 - 1985    Hudson Institute leased the property from the Berg Family
- 1967            Building # 7 Office/Conference Center Constructed
- 1977            Building # 3 Maintenance Garge/Office Constructed
- 1995 - 2010    Property owned by Marharishi Global Development Fund but never occupied
- 2010 - 2012    L&G Capital, LLC purchase property (similar ownership as Hudson Ridge)
- 2012 - Present Hudson Ridge Wellness Center, Inc. - current owners

The property was purchased in December 2010 by the current owners. The property had been vacant for almost 15 years prior to purchase. During that time it is apparent that the property was used as a local gathering point for youth. The property was an attractive nuisance for trespassers. Additionally many of the roofs were deteriorated causing not only an eyesore for neighbors but severely unsafe conditions. Upon purchasing the property the current owners set out to secure the property and each individual building. They started by replacing all of the roofs. They also installed an electronic security gate and privacy fencing. After replacing the roofs the owners then continued to ensure that each building was secured and free from further water infiltration and weather damage. The amount of debris within each building was massive and the owners spent countless hours and resources cleaning each building. While the owners developed their plans for the property they continued to work towards restoring the property back to its original splendor and use. Great care and consideration has been taken to return this beautiful property to the magnificent campus it once was in conjunction with removing the public eyesore and dangerous conditions it has fallen into in recent years.

EXHIBIT 2(c)

(1)

# NOTICE OF APPEAL

No. \_\_\_\_\_

Date February 18 1957

TO THE ZONING BOARD OF APPEALS

I (we) Lamb Foundation, Inc. of 66 Croton Ave. Ossining, N. Y. hereby  
Name Street and Number

appeal to the Zoning Board of Appeals from the decision of the Building Inspector denying the application for a building permit (or certificate of occupancy).

A description of the property is annexed hereto and marked "Exhibit A".

1. The property is located in a R-40 district at Quaker Ridge Road  
Street

2. The circumstances of this particular case are (set forth in detail). Applicant contemplates, in the event the special permit sought herein is granted, leasing the premises to International Business Machines Corporation, 590 Madison Ave., New York, N. Y. for laboratory and/or office use for a term of three years, with an option to purchase.

3. The specific provision of the Zoning Ordinance which is involved is Article IV, Section 6 A. (please refer to Section).

We claim that the following interpretation should be given to the said provision:

4. The special permit is sought upon the following grounds: Because of the size of the structures, their layouts and the purpose for which they were constructed, the premises are adapted for laboratory and/or office use. See addendum.

5. The details of the variance sought and the grounds upon which it is claimed that the same should be granted are as follows:

Dated: February 18 1957

*E. H. Huntington*  
Signature of Applicant

STATE OF NEW YORK }  
COUNTY OF WESTCHESTER } SS.

E. H. HUNTINGTON being duly sworn, says that he is the applicant (or if a corporation) the President of said corporation, applicant herein. That he has read the foregoing appeal and knows the contents thereof. That the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

Sworn to before me this  
8 day of Feb. 1957.

*Margaret S. O'Leary*  
Notary Public

*E. H. Huntington*

1. This appeal should be executed in triplicate.
2. The Building Inspector is not permitted to prepare notice of appeal.

ME (R) 2, SLACKS  
City of Ossining, N. Y.  
Westchester County  
and An Act of Mar. 31, 1957



ADDENDUM

1. The area of the premises is over 20 acres at least 250 feet of which have a frontage on a public highway.
2. The proposed laboratory and/or office use of the premises will be of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is situated and will not be detrimental to the orderly development of adjacent districts.
3. The location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, its site layout, and its relation to streets giving access to it will be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection with it will not be hazardous or inconvenient to the predominant residential character of the neighborhood or incongruous therewith or conflict with the normal traffic of the neighborhood.
4. The location and height of the buildings, the location, nature and height of walls and fences and the nature and extent of landscaping on the site will be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.
5. There will be no production manufacturing of products for sale.
6. No use of the site will be so conducted as to cause or result in the dissemination of noise, vibration, odors, dust, smoke, observable gases or fumes or other atmospheric pollutant beyond the boundaries of the immediate site of the building in which such use is conducted, hazard of fire or explosion or other physical hazard to any building or any plant growth.
7. Access and service driveways will be laid out in such a manner that connections with the public road, on which the site has a frontage, are located and designed so as to avoid unsafe conditions or traffic congestion.

8. All buildings on the site do not cover in the aggregate a total of more than 15 per cent of the area of the site.

9. Parking space will be provided on the site to accommodate company, employee and visitor motor vehicles with at least one car space for each two employees. Parking areas will be permanently improved and suitably screened with planting and will be set back from all site boundaries at least 50 feet.

10. There is extant no special permit for a laboratory and/or office use within Section 4 E as shown on the Zoning Map of the Town of Cortlandt where the premises are located. Employee occupancy will be limited to fewer than 225 persons.

Giving due regard for (a) the public health, safety and welfare of the community; (b) the relationship among the residential, commercial, industrial and recreational areas within the town; (c) the opportunity for the exercise of private initiative and choice of land and building development; (d) the intensification of land use in response to developmental forces; (e) the social and economic stability of all parts of the town; (f) the orderly and beneficial development of the town; (g) the protection of value of land and buildings; (h) the relation between uses of land and buildings and the movement of traffic, it is submitted that a resolution of the Board granting a special permit for a laboratory and/or office use of the premises would be in harmony with the general purpose of the Zoning Ordinance, as amended, and the applicable provisions of the Town Law, and would be consonant with the comprehensive plan set forth in Article I of said Ordinance.

A site plan showing the approximate location and uses of the existing buildings, structures and facilities on the premises including parking areas and driveways is annexed hereto and marked "Exhibit B".

A statement setting forth all future proposed buildings, structures and facilities and their uses, and stating with respect to each the minimum distance which will exist between the same and the nearest boundary line of the premises is annexed hereto and marked "Exhibit C".

BEGINNING at a point on the easterly side of the Old Road from Ossining to Croton Dam; which point is also the northwesterly corner of land now or formerly of Eleanor B. Newborn and thence along the easterly side of said road the following courses and distances: North 23 degrees 41 minutes east 329.02 feet; North 24 degrees 0 minutes 20 seconds east 200 feet and north 24 degrees 49 minutes 50 seconds east 70.98 feet; running thence through land of Catharine M. Lawrence south 81 degrees 56 minutes 20 seconds east 190.4 feet to the westerly line of land now or formerly of Eleanor B. Newborn and the center of a stone wall on said boundary line; running thence along said land and through the center of said stone wall the following courses and distances: South 47 degrees 28 minutes 30 seconds west 105 feet; south 45 degrees 58 minutes 30 seconds west 60 feet; south 47 degrees 59 minutes 10 seconds west 262.65 feet; south 39 degrees 15 minutes 10 seconds west 137.35 feet to a corner in said stone wall; thence still along said land now or formerly of Eleanor B. Newborn through the center of a stone wall, wire fence and another stone wall the following courses and distances: North 86 degrees 29 minutes 30 seconds west 171.64 feet; north 85 degrees 23 minutes west 296.40 feet; north 87 degrees 35 minutes west 61.11 feet; north 84 degrees 18 minutes west 111.88 feet; north 87 degrees 57 minutes 10 seconds west 200.04 feet; north 87 degrees 01 minutes west 300.01 feet and north 85 degrees 52 minutes 30 seconds west 589.04 feet to the easterly side of the Old Road to Croton Dam at the point or place of beginning. Containing within said bounds 20.89 acres of land. And being the same premises conveyed to the first party by Catharine M. Lawrence by deed dated December 15, 1919 and recorded in the Office of the Register of the County of Westchester, in Liber 2229 of Deeds, Page 373 on the 16th day of December, 1919, and being part of the same premises conveyed to the said Catharine M. Lawrence by Marcius L. Cobb and wife by deed dated the 4th day of October 1888 and recorded in the office of the Register of the County of Westchester in Liber 1147 of Deeds, page 367, on the 8th day of October 1888 at 11:15 A.M.

Together with all the right, title and interest of the party of the first part of, in and to the Old Road to Croton Dam in front of and adjoining the premises above described to the center line thereof.

*Robert A*

STATEMENT REGARDING FUTURE PROPOSED BUILDINGS,  
STRUCTURES AND FACILITIES AND THEIR USES

1. Parking space area for fifty-five cars will be constructed for use by employees and visitors. It will be at least fifty feet from the nearest boundary line of the premises.

2. Additional parking spaces for approximately fifteen and twenty cars, respectively, may be constructed for use by employees and visitors. They will be at least one hundred and fifty feet from the nearest boundary line of the premises.

*Exhibit C.*

(2)

The ZONING BOARD OF APPEALS herewith submits a bi-monthly report covering the months of February and March, 1968.

There were no Public Hearings scheduled for the February meeting.

The few hours of the meeting were utilized for a general discussion of the functions and of the limited prerogatives of the Board of Appeals. To define hardship cases is a matter of judgement and of objectivity. It is of importance to know that the ZBA does not act arbitrarily and thereby involve the Town into unjustified litigations which, in the long run, are costly.

\* \* \*

The following Public Hearing were conducted during the month of March:

CASE NO. 2-68: A Public Hearing to consider the case of HUDSON INSTITUTE of Croton-On-Hudson, New York for permission to build partitions for offices in the main building. Property is located at Quaker Ridge Road, an R-80 District of the Town of Cortlandt. The notice of appeal stated that "A few partitions to be built for offices, and the balance of area is to be used for reference." At the present time the Hudson Institute is under a Special Permit and was advised by said Board that any changes to be made must have the approval of the Zoning Board.

The contractor for the job was authorized by the appellant to present the case and provide the details in connection with the proposed changes. The spokesman for the appellant presented a complete layout of the proposed changes which are mainly of the interior of the building. However, the fire escape has to be changed slightly and also the two gable windows. The walls will remain intact. Mr. Aaron Cohen of New York City is the Architect for the proposed alterations.

- 2 -

The ZBA in considering the appeal for approval of the proposed alterations that are basically for the interior of the building, referred to the provisions of the Special Permit which was approved after a public hearing as of March 23rd, 1967, and which contains a number of stipulations binding the principals of the project to adhere to. One of the regulations embodied in the Special Permit listed as "H" reads: "No alterations shall be made to existing structures except necessary alterations and incidental improvements thereto."

The Hudson Institute, according to records, is a private, non-profit organization specializing in research of political and economic areas.

The ZBA RESOLVED to approve a Rider, to be known as RIDER-A to be attached to existing Special Permit as of March 23rd, 1967, approving the proposed changes as described at the public hearing. All other provisions as embodied in said Special Permit are to remain intact.

\* \* \*

CASE NO. 3-68: A Public Hearing to consider the appeal of ROBERT W. SCHLEMT of Peekskill, New York for a Variance to enlarge his existing house and it would thereby reduce the side line requirements. The property is located at 10 Beverly Road, R-10 District, Town of Cortlandt.

The appeal states: "With the proposed addition to my home, the side yard footage from the front right rear corner of the building will be 13 feet. The front yard (side-yard) dimension is below Town Specifications and I therefore appeal for the required Variance."

The appellant informed the Board at the hearing that he had occupied the house for 6 years, and with a growing family he finds it a must to enlarge the house. His plans are to convert the existing garage into a dining room and foyer.

EXHIBIT 2(d)





EXHIBIT 2(e)

(U)

### Town of Cortlandt

1 Heady Street  
Cortlandt Manor, NY 10567-1254  
(914) 734-1010

### Parcel History

Address: 2016 QUAKER RIDGE RD  
Parcel ID: 79.11-1-18

Issue Date	Item	Type	Status	CO/CC #	Close Date
3/7/1957	PERMIT #:no-398 Owner: MAHARISHI GLOBAL DEVLPMNT FUND Lab and offices: ZBA #3A-57, 4-57.	COMRE	CLOSD	241-57	3/31/2009
9/4/1981	PERMIT #:no-340 Owner: MAHARISHI GLOBAL DEVLPMNT FUND Prior to zoning- One fam. res. ZBA #2-68.	PTZ	CLOSD	4755	3/31/2009
1/20/1982	PERMIT #:no-341 Owner: MAHARISHI GLOBAL DEVLPMNT FUND Prior to zoning- Research Center. ZBA #170-86.	PTZ	CLOSD	4952	3/31/2009
1/27/2011	PERMIT #:20110200 Owner: L & G CAPITAL LLC Replace roof sheathing and shingles.	RESRE	CLOSD	20140565	9/12/2014
1/26/2013	PERMIT #:20130284 Owner: HUDSON RIDGE WELLNESS Temporary service on vacant property.	ELREW	CLOSD	20130508	9/17/2013

*IBM*

*for house*

*Check damage. nothing there. Check August 13*

*Big hospital*

*Mark 271-4762*

*Called 7/7/15  
Will pick up*

EXHIBIT 2(f)



This Decision supersedes the Decision adopted on February 23, 1987, issued on June 10, 1987; and the Decision adopted on August 17, 1988 following a rehearing held on March 16, 1988.

Z O N I N G   B O A R D   O F   A P P E A L S

Town of Cortlandt

Westchester County, New York

D E C I S I O N   &   O R D E R

Case No. 170-B6

Name of Petitioner: Sidney Berg, Trustee by:  
William Cohen, Esq.  
Address: PO Box 218  
Croton-on-Hudson, NY 10520

Location of Property: Quaker Ridge Road 7A.11-1-18  
Tax Map Designation: Section: 23, Block: 2 Lot: 11  
Present Zoning: R-80  
Nature of Petition:

[ ] Use Variance [ ] Area Variance [X] Special Permit [ ] Interpretation  
Describe Specific Request: This application is made pursuant to Section 88-36 of the Town of Cortlandt Zoning Ordinance seeking a Special Permit for a hospital and/or nursing home type use referred to by applicant as a Residential Community Re-entry Facility for the above mentioned premises.

Board Members

Present: Charles Falombini                      Absent: John Russo  
Thomas Bianchi  
Rosemary Boyle  
Charles P. Heady, Jr.  
Michael J. Palmietto, Jr.  
Dorothea Young

Pursuant to the Decision and Judgment by Judge Peter P. Rosato J.S.C. on Article 78 Petition, Index #12830/88, dated November 9, 1988, the Town of Cortlandt Zoning Board of Appeals hereby GRANTS a Special Permit pursuant to Section 88-36B of the Town of Cortlandt Zoning Ordinance to open and operate a Residential Community Re-entry Facility on the above stated premises for persons who have suffered head injuries. Further, pursuant to Section 88-36B(2) of the Ordinance, the Board hereby waives the side yard requirements for the existing buildings.

The above Special Permit is conditioned upon the following:

- (1) Petitioner, his successors or assigns, at their own expense, shall conduct a pre-admission screening of all prospective residents by a New York State licensed psychiatrist experienced in the evaluation of the brain-injured individual for the purpose of denying entrance to anyone found to have any present or past psychosis or other major mental disorder or who is deemed to be dangerous to self or others;
- (2) No increase in the size of the present buildings;
- (3) No new buildings shall be constructed;
- (4) The hedge existing on Quaker Ridge Road shall be maintained in its existing condition, except for circumstances beyond the control of the property owner;

(continued on Page 2)

Case No. 170-86

Page 2

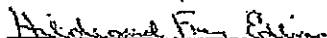
- (5) The existing entrance and driveway shall not be relocated;
- (6) The grounds, shrubs and trees shall be maintained in their existing condition, except for circumstances beyond the control of the property owner;
- (7) Number of patients is limited to a maximum of 75;
- (8) Total number of patients and employees is limited to 225;
- (9) The Special Permit is subject to renewal five (5) years from the date of issuance of the Certificate of Zoning Compliance.


Conditions #2 through #6 shall be shown on an as-built survey to be completed within 120 days.

That the granting of this Petition is in harmony with the general purpose and intent of the Zoning Ordinance, as amended, will not be injurious to the neighborhood and will not change the character thereof, or otherwise be detrimental to the public welfare,

NOW THEREFORE, Petition is granted and it is further ordered that in all other respects Petitioner comply with all of the rules, regulations and ordinances of the Town of Cortlandt, the Planning Department, the Engineering Department, and all other agencies having jurisdiction.

Adopted: February 15, 1989  
Croton-on-Hudson, New York  
Dated: March 15, 1989

  
Hildegard Frey Edling  
Clerk, Zoning Board

  
Charles Palombini  
Chairman, Zoning Board

## EXHIBIT 3

ZONING BOARD OF APPEALS

Town of Cortlandt  
Westchester County, New York

DECISION & ORDER

Name of Petitioner: Congregation Yeshiva Ohr Hameir Case No. 23-07  
Address: 141 Furnace Woods Road, Cortlandt Manor, NY 10567  
Location of Property: 141 Furnace Woods Road  
Tax Map Designation: Section 44.12 Block: 1 Lot: 3  
Present Zoning: R-40  
Nature of Petition:  
 Use Variance  Area Variance  280A Exception  
 Special Permit  Interpretation

Describe Specific Request: An Interpretation of the Town Code Enforcement Officer's determination that the dormitory housing its students is a pre-existing non-conforming use, and that a Special Permit is or may be required for the Yeshiva's operation or expansion on the property located at 141 Furnace Woods Road.

Board Members

Present: David S. Douglas  
Wai Man Chin  
Charles P. Heady, Jr.  
Adrian G. Hunte  
John Mattis  
Ray Reber  
James Selmarco

Absent:

The above-referred to Petition, having been duly advertised in The Gazette, the official newspaper of the Town of Cortlandt in the issue published on 5/10/07, 6/12/07 Town Board Resolution No. 151-88 having been complied with and the matter having duly come to be heard before a duly convened meeting of the Board on the following dates, May, June and July 2007 meetings at the Town Hall, 1 Heady Street, Cortlandt Manor, New York, and all of the facts, matters and evidence produced by the Petitioner, by the administrative official and by interested parties having been duly heard, received and considered, and a site inspection of the premises having been made, and due deliberation having been had, the following Decision and Order is hereby made:

This is an application by Congregation Yeshiva Ohr Hameir for an Interpretation of the Town Code Enforcement Officer's determination that the dormitory housing its students is a pre-existing non-conforming use, and that a Special Permit is or may be required for the Yeshiva's operation or expansion on the property located at 141 Furnace Woods Road.

This property consists of 37.32 acres and is located in the R-40 Single-Family Residential District.

This Board is aware that in 2006, under EB 16-06, the Planning Board had before it a Site Development Plan application for certain buildings to be demolished, certain buildings to be renovated or constructed, and various other site improvements. The ZBA is also aware that the Applicant subsequently amended its Planning Board application to request a Special Permit under Town Zoning Ordinance Section 307-50 ("University, College or Seminary"). Therefore, the September 2007 Planning Board Meeting included the Special Permit application as part of the Applicant's total application and Public Hearing that night (and going forward). Thereafter, in 2009, under EB 7-09, the Applicant submitted a new application for significantly scaled-down site improvements, including the construction of a new on-site Wastewater Treatment Plant and for the renovation/reconstruction of the existing Dodge City Building for classroom and dormitory space.

This Board held Public Hearings on the Applicant's ZBA application at our May, June and July 2007 meetings, where much information was submitted by the Applicant, and adduced by the Board. At the conclusion of the July 2007 meeting, this Board closed our Public Hearing and reserved Decision. To allow for coordinated review under SEORA, this Board agreed with the Planning Board to hold the ZBA's Decision & Order in abeyance ("Reserve Decision" status) until the Planning Board completed its Site Development Plan application, Special Permit application, Wetland and Tree Removal Permit applications, closed its Public Hearing, and was ready to adopt its Planning Board Resolution.

Our review of the Town's records, the submissions from the Applicant, and the testimony at the Public Hearings revealed the following to this Board:

1. The Yeshiva property is used as a "place of worship and religious instruction" with the housing of students in dormitories. The "place of worship and religious instruction" is a permitted use under the Town Zoning Ordinance's Table of Permitted Uses, Part 1, Sections 307-14 and 15.
2. The property has a Certificate of Registration from the NYS Education Department - Certificate No. 10-504, dated July 27, 1990.
3. The present operation of Yeshiva Ohr Hameir has been recognized as a lawful and permitted use in the Town by the former Director of Planning, John T. Felt, AICP, in his letter, dated May 3, 1985, to the Applicant's then attorney, Seymour Levine, Esq.
4. The Town has issued approximately fifteen (15) Building Permits over the years for a variety of construction activities, including Building Permits for "dormitory" use. The Town's records show that in 2002 the Town permitted the Yeshiva's rehabilitation of a building for "dormitory rooms" to replace an existing dormitory building (known as the "Dodge City Building"). The Town records reveal that the creation of "new" dorms would simply be the continuation of the long-standing dormitory use of the property (for this "out of Town" Yeshiva).

At the outset of this ZBA application, the Yeshiva's position was that as a "place of worship and religious instruction", the Yeshiva is a permitted use as-of-right, under the Town of Cortlandt Zoning Ordinance. However, this Board received and took testimony concerning Town Zoning Ordinance Section 307-50 ("University, College or Seminary") which provides:

A. Purpose. The purpose of this section is to allow higher educational facilities to locate in the Town in a manner which is compatible with and not disruptive to the residential neighborhoods and business areas of the Town.

B. Standards and Conditions.

(2) Yard requirements. All structures shall be set back at least 100 feet from any lot line or street line.

(8) Access to the premises shall be via state or county highways only.

This Board hereby concludes that a review of the Town Zoning Ordinance, and the testimony and letters received by this Board, clearly mandate an interpretation that the Yeshiva must apply for and obtain a Special Permit under Section 307-50 ("University College or Seminary"). The clear testimony from the Yeshiva's personnel and representatives was the Yeshiva trains its students in Talmudic learning and is a "seminary". In fact, several Board members and neighbors testified as to the "seminary" signs posted at the property for many years now.

As to the two (2) variances that the Applicant originally had to obtain under Section 307-50(B):

(B) "All structures shall be set back at least 100 feet



from any lot line or street line." This portion of the application is now moot. The Applicant's current application does not propose any new structures to be located within 100 feet from any lot line or street line.

(8) "Access to the premises shall be via state or county highways only." Here, the Yeshiva is located on Furnace Woods Road, the same road for the Blue Mountain Middle School, the Furnace Woods School, a restaurant and a shooting range. Students are bused to these two schools daily, while the Yeshiva's students reside on campus. As a result, the Town has no "rational basis" under NYS Law, or "compelling governmental interest" under Federal Law, to terminate the Yeshiva's use of its property on Furnace Woods Road (a Town road).

It also might be noted the requirement of a Special Permit under Section 307-50 ("University, College or Seminary" only came into the Town Code with "ZORP" in 1994 (10 years after Yeshiva began its religious use on the property). Therefore, before 1994, the Special Permit requirement, let alone the two above-described variances, were not part of the Town Zoning Ordinance (and not required).

For all the foregoing reasons, this Board hereby:

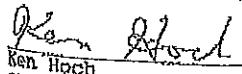
1) ACKNOWLEDGES receipt of PR Resolution 1-10, adopted on January 13, 2010 (under PR No. 7-09), by which the Planning Board approved the application of Yeshiva Ohr Hamo'ed for Site Development Plan Approval, a Special Permit pursuant to Chapter 307-50, a Wetland Permit and a Tree Removal Permit, for site improvements including the construction of a new on-site Wastewater Treatment Plant and for the renovation/reconstruction of the existing Dodge City Building for classroom and dormitory space as shown on drawings recited in the Planning Board's Resolution 1-10. In addition, the Planning Board also adopted a Negative Declaration at its meeting on January 13, 2010 to complete the SEQRA process;

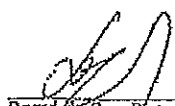
2) INTERPRETS that the Town Zoning Ordinance requires the Applicant to apply for and obtain a Special Permit under Section 307-50 (which the Applicant accomplished by the approvals granted in PR Resolution 1-10); and

3) GRANTS a variance from the requirement under Section 307-50 (8) of the Town Zoning Ordinance which requires access to the premises via state or county highways only. With this variance, the Applicant can continue its present access to its premises from Furnace Woods Road (a Town road).

NOW THEREFORE, Petition is granted and it is further ordered that in all other respects Petitioner comply with all of the rules, regulations and ordinances of the Town of Cortlandt and all other agencies having jurisdiction.

Adopted: March 17, 2010  
Cortlandt Manor, New York  
Date filed: March 17, 2010

  
Ken Hoch  
Clerk, Zoning Board

  
David S. Douglas  
Chairman, Zoning Board

## EXHIBIT 4

7-1, 23

Variance 159000

THE REGULAR MEETING of the ZONING BOARD OF APPEALS of the Town of Cortlandt was conducted at the Town Hall, 1 Heady St., Cortlandt Manor, NY on Wednesday, July 18, 2007. The meeting was called to order at 7:00 p.m., and began with the Pledge of Allegiance.

John Mattis, Chairman presided and other members of the Board were in attendance as follows:

- Raymond A. Reber
- Richard Becker
- David Douglas
- James Seirmarco
- Wai Man Chin, Vice Chairman
- Charles P. Heady, Jr.

Also Present: John J. Klarl, Deputy Town Attorney  
James Flandreau, Code Enforcement

**ADOPTION OF MINUTES: 5/16/07**

Mr. Heady made a motion to adopt the minutes for 5/16/07, Mr. Reber stated I had a few typographical corrections to be made to those minutes and second the motion based on those corrections with all voting "aye."

Mr. Mattis stated before we begin the meeting tonight I want everyone to turn their cell phones off. It went off a couple of times last week, and it's very discourteous. Ours are all turned off, and I expect the same out there. If the cell phone goes off, I am going to ask you to leave. It is really disturbing.

**ADJOURNED PUBLIC HEARINGS**

CASE NO. 09-07 ROSENTHAL JCC for an Interpretation if the proposed improvement constitutes an expansion of a nonconforming use or a Use Variance to allow the expansion of a nonconforming use on the property located at 500 Yorktown Rd., Croton-on-Hudson.

Mr. Mattis stated this is a Reserve Decision & Order. I will turn it over to our attorney for his summarization.

Mr. Klarl stated on the agenda last month we closed the public hearing and reserved decision, and tonight we have that Reserve Decision sitting in front of you from the Board. It indicates that the camp which we call Camp Discovery is operated by Rosenthal JCC under a lease from the Westchester Jewish Community Services. The property is in the R-80 district. It consists of

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Mr. Mattis stated so we'll have a Reserve Decision for next month.

CASE NO. 17-07 FRANCESCA P. DEMAS for an Area Variance for a side yard set back for a proposed addition on the property located at 45 Fowler Ave., Cortlandt Manor.

Mr. Flandreau stated I received a letter from the applicant asking to withdraw the case.

Mr. Mattis stated so Case No. 17-07 is withdrawn by the applicant.

CASE NO. 23-07 CONGREGATION YESHIVA OHR HAMIER for an Interpretation /reversal of Code Enforcement Officer's determination that the dormitory housing its students is a pre-existing, nonconforming use and that a Special Use Permit is or may be required for the Yeshiva's operation or expansion and if required an Area Variance for required yard set back and an Area Variance to allow access to the premises for a non state or county highway on the property located at 141 Furnace Woods Rd., Cortlandt Manor.

Mr. Daniel Richmond, Esq. appeared before the Board. He stated I am from the law firm of Zarin & Steinmetz, and I am here representing the Yeshiva. As the Board is aware it is the Yeshiva's position that it is permitted as of right on its' property. The Town Code specifically permits places of worship, and religious instruction in this zone at the property. From our perspective efforts to find that the Yeshiva is a place of worship, and religious instruction are strained. There is an action of land use law zoning restrictions are strictly construed if any ambiguity is resolved in favor of the property owner. As such, if the Board has any doubts as to whether the Yeshiva is a place of worship, or religious instruction respectfully such doubts should yield the Yeshiva just as they were for any other private property owner. Moreover, as we have previously noted our view of the Town's records pursuant of the Freedom of Information Law show that the Town has consistently treated the Yeshiva as a permitted use, as of right. That being said, we are aware the Board has found that the Yeshiva requires a Special Permit as university, college, or seminary pursuant to Zoning Code Section 307-50. Since the Yeshiva's goal is to rebuild its' existing facilities rather than prolong the process with the Town for the time being is willing to go along with the Board's designation of it as a Special Permit, and have the matter referred to the Planning Board and seeing the Planning Board would have reasonable conditions to a Special Permit to the Yeshiva. Accordingly, without prejudice to its' position, without waiving its' rights under State and Federal Law, the Yeshiva respectfully explains why if the Board should categorize the Yeshiva as a Special Use, it should grant it certain variances from the standard with respect to the front yard set back in requiring that access be only a State or County highway. In issuing, respectfully, the Board ultimately lacks legal authority under NY Law to deny the Yeshiva a variance from Zoning Code, Section 307-50d8, which requires that access be via State or County highways. Such denial would be tagamout to prohibit the Yeshiva without any proof that its' operation adversely effect the public, health, safety or general welfare. The Town cannot rationally assert that public safety mandates the Yeshiva would be on a State or County or road when on the very same road two major schools,

which generate far greater traffic impacts operate without question. In particular the Blue Mountain Middle School, which according to the NY State Department of Education had an enrollment in 2004, and 2005 as 694 students is located on the same road seven tenths of a mile away, and the Furnace Woods Elementary School which has an enrollment of 422 students, and is located a mile and a half also on the same road. No students reside at either of those two public schools. As such, in essence of 1,000 students commute to those schools daily. In contrast, the Yeshiva which has approximately 1/4 of that number of students who all reside on the grounds, there is expediently less traffic hence less need to be on a major traffic corridor. Unless the Town would argue that the Blue Mountain Middle School, and Furnace Woods School should be relocated to State and County roads thus believing their present locations threaten the public safety, the Town has no rational basis under State law to discontinue the Yeshiva's use of its' property. For similar reasons Federal law also compels the issuance of this variance. Under Federal religious land use and institutionalized persons act the Town cannot impose a substantial burden on the Yeshiva in the absence of a compelling governmental interest. Again, the Town would be hard pressed under a certain compelling governmental interest requiring that the Yeshiva be relocated to a State or County road when two schools, a restaurant, and a shooting range are all located on the same road. Furthermore, RLUIPA requires government to implant land use regulations equally among religious and non religious institutions. Again, it would be hard to imagine a more flavorant example of mistreatment. For the Town allow secular schools with far greater traffic impact to continue to operate on Furnace Woods, the discontinuing of the Yeshiva use of the property on the same road. Even beyond these legal constraints the balancing analysis generally applicable to variances also indicates that the Board should grant them. Generally in considering an Area Variance the Board is bound to benefit the applicant if the variance is granted as weighed against the detriment to the health, safety, and welfare of the neighborhood or community. In considering this balancing the Board must guided by two more considerations. First, educational institutions and places of worship are by law deemed apparently beneficial in the land use context, and presumptably serves public welfare and morals. Second, the law is clear that the municipal land use cannot be based on subjective considerations such as generalized community opposition. Generalized community opposition is particularly present where as here there is a large part of misinformation about the projects, and gross mischaracterizations of the applicant's intentions. While I recognize the site planning issues and the applicable conditions that would be attached to a Special Permit, we are not before your Board but will be addressed by the Planning Board. I think it is important at this time to restate the basics and facts. The goal of the Yeshiva is not to have a massive expansion but is in fact, simply to modernize, replace, and rebuild its' existing facilities. The heart of the project that we are talking about is to replace an existing 27,000 square foot building which was used for many years for dormitory purposes with an approximately 26,000 square feet of modern dorm space. As we had previously explained, the Town was long aware that the existing 27,000 square foot building was being used for dorm space, would be demolished and allow the Yeshiva to temporarily relocate dorm space to another building specifically to allow them to recreate modern housing. As such, the Town's records verify that the 26,000 square feet of new dorm space would simply be a continuation of a long standing permitted use of the property. The only other part of the Yeshiva's project is a creation of classroom space, which again is to replace existing facilities that are no longer adequate for the student's needs. Contrary to rumors planted

in the community, the Yeshiva has no desire to massively increase its' student body. At its' highest enrollment, which was in 1999 to 2000 the Yeshiva had a student population of 250. The Yeshiva has no intention of ever expanding beyond that number, and would be willing to have a cap of 250 students as a condition of the Special Permit. As such, ultimately all that is at issue is the Yeshiva's desire to update, modernize, and rebuild its' existing facilities. Ultimately there is going to be no change to what is already going on at the property. Taking all of this into account, and walking through the factors applicable to variances again, the balance should be in favor of granting the variances. Neither variance would create an undesirable change in the character of the neighborhood or the detriment to the nearby properties. As the Board is aware the Yeshiva has been part of the neighborhood for a quarter of a century. As we have shown in our recent submission, home values in the area have gone up consistently with market trends in the area during the Yeshiva's tenancy of the property. For example, as we have shown a house sold in 1983 on Furnace Woods Road for \$142,000 sold for \$640,000 in 2003. Another house that sold for \$62,000 in 1987 sold for \$452,000 in 2003. Any argument that the Yeshiva will have an adverse impact in the area of property values lacks an empirical foundation. Moreover, allowing the Yeshiva to improve and rehabilitate will only enable to increase its' positive influence in the community. With respect to the set back variance, as the Board knows the subject building is a pre-existing, nonconforming building for which only a minor bump out is requested. The Yeshiva intends to present to the Planning Board a landscaping plan that will show that the Yeshiva will be screened from neighboring properties. Accordingly, since the building is pre-existing it cannot be argued that it will attract negativity. Then for the next criteria, the benefit the Yeshiva seeks cannot be achieved by any other means, again, there is no way around the road variance, and the bump out is set in the logical place there is, ie.. an addition to the Rabbi's residence. Third, the subject variance is unsubstantial, again, the Yeshiva creates minimal traffic impact particularly when compared to proximate secular schools, and the addition is to an existing, nonconforming building. For the same reasons it will add little adverse impact to the physical environmental conditions in the neighborhood. Finally, and perhaps most significantly the alleged difficulty was not self created. As the Board is aware, the Yeshiva predates the Town's adoption of Section 307-50, and ultimately should be deemed grandfathered from these requests. Once again, rightfully the Board should overturn the April 5<sup>th</sup> memorandum, and instead rule that the dormitory housing is permitted as of right. To the extent, however, that the Board will find that the Yeshiva requires a Special Permit pursuant to said Zoning Section 307-50, it should grant the variances requested herein. As always, the Yeshiva intends to work willingly with the Town, and with its' neighbors to conduct itself as it has done quite peacefully for the past quarter of a century. Thank you. Are there any questions?

Mr. Becker stated I would like the public to speak first. I would like to hear what they have to say, and then I will comment.

Mr. Mattis stated okay, before we turn this over for public comment, apparently there were some flyers distributed at the train station, and that is probably why we have so many people here, and I'm glad you came out because that is part of the democratic process, and that is what makes this a wonderful country, and makes this Board work. However, there is a mistake here that says the Zoning Board of Appeals is convening with a plan to grant a Special Permit, we do not grant

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impossible for the Yeshiva to talk with people that don't want the Yeshiva at this site, but the rest of the members of the community with open arms the Yeshiva would be willing to meet, and sit down. Briefly, I won't go into Mr. Flandreau's interpretation of the code. We respectfully disagree with everything he said, and that is why we are here, we're appealing it. It is our position that we're a permitted use, and I would just point out with respect to the nonconforming issue. A nonconforming use means you are not permitted where a respectfully permitted use is permitted.

Mr. Klarl stated yes by Special Permit.

Mr. Richmond stated by Special Permit, but it is a permitted use. Again, I won't get into that issue again. The Yeshiva again, is permitted has been as in our view been as of right from the get go, and is permitted as a right now, but we are willing to contemplate the Special Permit so we can go forward. We do share some legitimate concerns like people walking in the streets, and we are already taking proactive measures here to discourage the students from doing that, and to make sure that doesn't happen at night. We're only here for a narrow issue. I don't think I have heard any comments directly challenging either of the variances. If anyone on the Board can correct me, I think there was only one person who questioned what the need for it was, and I think I would agree with some of the Board members who pointed out that whatever the need for it was it seem applicable to the schools down the road, and I don't see how you could again, deny the Yeshiva a variance to be on a county, state road, when you already have schools there except there are emergency services that need to be for the schools, and the same would be for secular schools. In terms of I think one of the most recent speakers talked about signs, and again, that is something I think the Yeshiva thinks is a great idea. They would like to have signs in the area so that people slow down when approaching especially if there is a student body. Again, I don't want to go through all the other issues. I think just one quick point on the number of legal cases mentioned earlier. One case he cited dealing with the body of land use law, and religious advocater only for small churches, the case he cited was about Cornell University, which is a big university, and the fact is the Court of Appeals said that is the reason the courts need to step in is because they provide a broad reign to the overall community though not necessarily benefitting the immediate community, but again, I think the Yeshiva can, and ultimately will benefit the adjoining community because of the landscaping plan we have proposed before the Planning Board. I would ask that the Zoning Board close the public hearing at this time, and if the variances are granted that you would refer this back to the Planning Board so that we can proceed with this application. As I said at the beginning ultimately the interest of the Yeshiva is to get going, and start moving to rebuilding, modernizing its' site.

Mr. Mattis asked before we close are there any other comments?

Mr. Arnold Gray appeared before the Board. He stated I live at 17 Red Oak Lane, and I hear a lot of variance terms, and I am not a lawyer so I don't know a lot of stuff, but what I did here was Mr. Reber said that a university or a school needs to be on a state highway, because of people driving. Then someone else said well it's a school so it doesn't matter whether it is 8, or 8,000, or 800 it can do what they want. I have seen some of these students from the Yeshiva,