

December 18, 2022

## **Lombardo's Restaurant** **ADA Memorandum**

This Memorandum is to address concerns that the structure proposed at Lombardo's Restaurant to enhance the exterior dining area on the terrace located at 10 Hamilton Street will interfere with ADA compliant access to the Urgent Care facility located immediately to the south of the subject restaurant.

In 2020, in response to CoVid, the owners of the subject restaurant decided to create a dining area on terrace adjacent to the existing building. Seating for 60 patrons was created with a deck surface installed and a tent structure erected. In the same spirit of the "parklets" permitted in the Dobbs Ferry downtown business district, as well as the provisions in the Dobbs Ferry Code that permit sidewalk dining, Lombardo's was permitted to create temporary exterior dining. One difference, however, is that, where the temporary dining in the downtown is located on public property, the terrace at Lombardo's is private property.

The owners are interested in erecting a structure on the private terrace that will extend the number of months in the year that exterior dining can be enjoyed as well as provide protection from rain and shade from the sun. The proposed structure is considered "temporary" in the fact that it does not have a foundation and, while it is required to be secured to avoid becoming airborne in a wind event, it can be removed without requiring extensive reconstruction of the principal building.

As background, it should be noted that Gotham Design was the original planner for what became Rivertowns Square and actually initiated work on the transformation of what had been a decommissioned office complex for Akzo Noble six years before Dobbs Ferry Capital Partners made the offer to purchase the property. The concept of having active exterior areas was original to the project. This can be confirmed by reviewing the survey of the buildings facing Hamilton Street, which shows the public right-of-way with sidewalks and then additional paved areas between the right-of-way and the building fronts. While this sometimes includes the street parking by way of easements granted to the municipality by the property owners for public use of private property, most of the areas are open walkways and terraces that were provided with the hope that this would promote a more active street life.

While the inspiration for creating this exterior dining area was CoVid related, the fact is that this use is consistent with the original design intent of the Rivertowns Square Lifestyle Center. The terrace facing Hamilton Street at 10 Hamilton, which is the Lombardo's Restaurant, as well as the terrace facing Hamilton Street at 30 Hamilton, the Urgent Care location, are private terrace spaces adjacent to these commercial spaces provided in the hope that they would be used by the tenants as activity areas, bringing vitality to the area.

The fact that these were intended as two separate terraces is evidenced by the fact that a gate and fence was originally provided to separate the two adjacent terraces, as indicated on the as-built survey of the project. While this fence and gate has been removed, that does not alter the way in which this site was designed, reviewed, approved and built in full compliance with all ADA requirements.

The ADA compliant paths to the entries of the 30 Hamilton building and the 10 Hamilton building do not involve the use of the 10 Hamilton terrace.

The Dobbs Ferry Building Inspector has determined that there is a path that meets ADA compliance connecting the handicapped parking spaces in the parking lot to the north of 10 Hamilton Street with the entry to the Urgent Care business located at 30 Hamilton Street traversing the terrace at 10 Hamilton Street. The Consulting Engineer for the Village of Dobbs Ferry has supported the Building Inspector's determination, citing Section 206.2.2 Within a Site in the Americans with Disabilities Act (ADA) Standards. That Section states:

**206.2.2 Within a Site.** At least one *accessible* route shall connect *accessible buildings, accessible facilities, accessible elements, and accessible spaces* that are on the same *site*.

**EXCEPTION:** An *accessible* route shall not be required between *accessible buildings, accessible facilities, accessible elements, and accessible spaces* if the only means of access between them is a *vehicular way* not providing pedestrian access.

While the ADA Standards in the Law are being cited, New York State has adopted this law and integrated it into the 2020 Building Code of New York State. This Section in the Standards, including the Exception, is consistent with 1104.2 Within a Site under Section 1104 Accessible Route, matching word for word.

The applicant agrees that at least one accessible route shall connect accessible buildings, accessible facilities, accessible elements, and accessible spaces that are on the same site. The applicant also agrees that the Rivertowns Square development project was approved as a single site, which was divided into four separate parcels, each composed of a grouping of separate buildings under condominium ownership. Building J, also known as Condominium #8, is 10 Hamilton Street on Parcel II. Building K, also known as Condominium #10, is 30 Hamilton Street on Parcel II.

**As it applies to the application pending for Site Plan approval of the dining area on the terrace at 10 Hamilton Street, the concern is that the structure proposed for the terrace will eliminate a path between the parking lot north of the restaurant and the entry to the Urgent Care at 30 Hamilton Street, and that eliminating this path will mean that the properties will not be ADA compliant.**

If the only path connecting parking to the Urgent Care business was traversing the terrace at 10 Hamilton Street, the applicant would agree with the Building Inspector's determination.

However, the applicant questions the Building Inspector's interpretation leading to this determination:

The Building Inspector's interpretation appears to rely upon an interpretation that a "Site" is limited to the four boundaries of a property, meaning that any path connecting elements is required to be inside those boundaries.

"Site" is a defined term in both the ADA Standards and the 2020 Building Code of New York State:

**Site.** A parcel of land bounded by a property line or a designated portion of a public right-of-way.

As confirmed with the Northeast Offices of ADA<sup>1</sup> by phone (Jennifer Perry, Access Specialist), an ADA compliant path located in the public right-of-way that forms one of the boundaries of a property meets the requirement that there be a path on that site connecting site elements. Jennifer was clear that, for this to apply, the entire path from the handicapped parking spaces in the parking lot to the door entering the Urgent Care had to meet all ADA requirements.

The handicapped parking spaces in the parking lot north of the restaurant are located adjacent to the elevator and ADA compliant ramp that connects from the parking lot to the sidewalk in the public right-of-way adjacent to the parking lot. This sidewalk has the required curb cuts, width, grade, surface to meet all ADA requirements as an ADA compliant path. This sidewalk provides a straight line to the ADA complaint ramp that connects the sidewalk to the terrace in front of Urgent Care. This is not a circuitous route between the handicapped parking spaces and the Urgent Care terrace, but the most direct and accommodating path. While a path from the handicapped parking spaces to the Urgent Care terrace does exist traversing the Lombardo's terrace, this path is not more direct or shorter than the sidewalk in the public right-of-way. The parking spaces in front of the restaurant, which are the closest, to the Urgent Care are not ADA compliant.

If the interpretation supporting the Building Inspector's determination is that Lombardo's and Urgent Care are connected spaces, again requiring that the path connecting from the parking to the Urgent Care terrace must be within the four boundaries of the site, the following Section of the Building Code of New York State provides the following:

#### **1104.3 Connected Spaces**

**Where a building or portion of a building is required to be accessible, at least one accessible route shall be provided to each portion of the building, to accessible building entrances connecting accessible pedestrian walkways and to the public way.**

Consistent through both the ADA Standards and the 2020 Building Code of New York State is the fact that the requirement is "at least one accessible route." Since the sidewalk in the public right-of-way adjacent to this site provides a fully compliant ADA path connecting all of the site elements, the use of this path meets the requirement that at least one path has been provided.

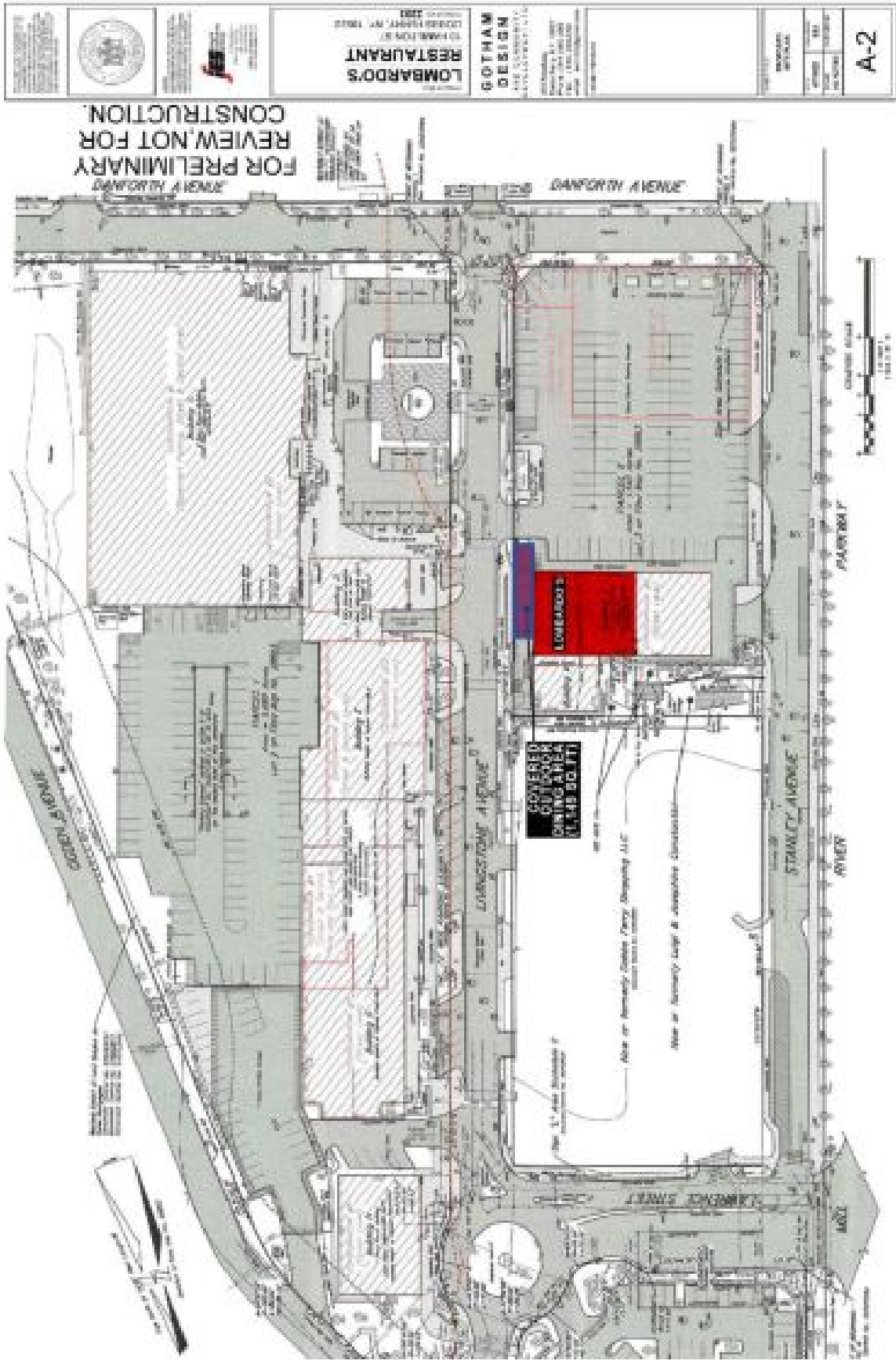
While the closest handicapped parking space to the Urgent Care entry is immediately across the street from Urgent Care and while there is an ADA compliant crosswalk connecting the handicapped parking space to the sidewalk directly at the base of the ADA compliant ramp that accesses the terrace from the sidewalk, the fact that this path requires crossing a public street makes it less desirable than the path connecting the handicapped parking spaces in the parking lot north of the restaurant to the same ADA compliant ramp that accesses the Urgent Care terrace (according to Jennifer Perry at Northeast ADA<sup>1</sup>).

**Summary:**

The applicant contends that the ADA compliant path connecting the handicapped parking spaces in the parking lot on the same site as the Urgent Care facility using the ADA compliant ramps and ADA complaint sidewalk in the public right-of-way adjacent to the subject property meets the requirement that at least one ADA path be provided connecting these elements.

<sup>1</sup> The Northeast ADA Center is a member of the ADA National Network funded by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR grant number 90DPAD0003). It provides information, guidance, and training on implementation of all aspects of the ADA. The Center is located at the Yang-Tan Institute at Cornell University. It's staff consists of individuals with and without disabilities who have extensive experience in the disability field.

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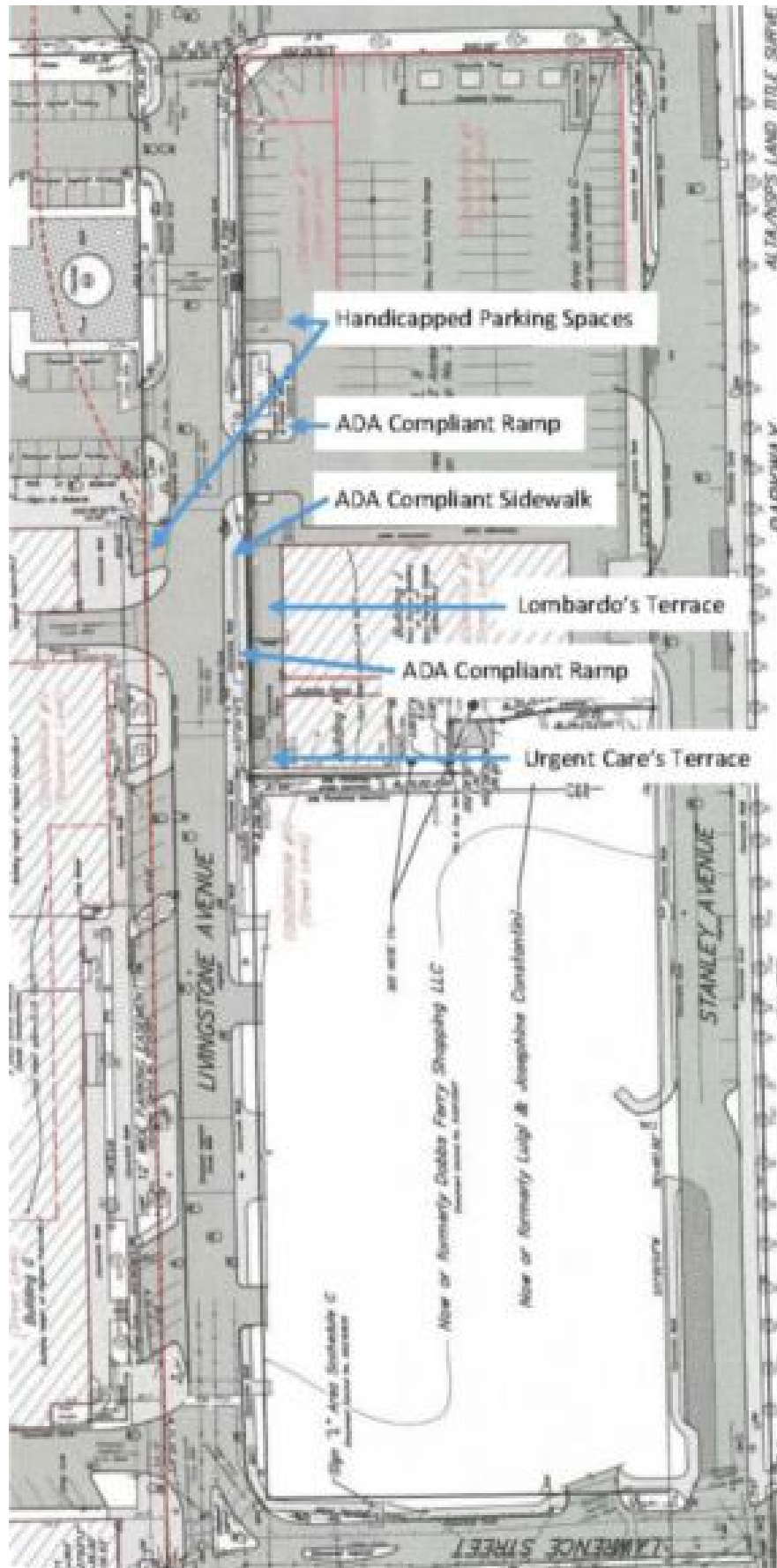






Photo 1

View looking northeast from Hamilton Street towards the sidewalk in the public right-of-way in front of the Lombardo terrace behind the ADA compliant ramp that accesses the Urgent Care terrace.



Photo 2

View looking southeast from Hamilton Street towards the sidewalk in the public right-of-way in front of the Lombardo terrace behind the ADA compliant ramp that accesses the Urgent Care terrace.



Photo 3

View looking south on Hamilton Street down the sidewalk in the public right-of-way with the ADA compliant ramp that accesses the Urgent Care terrace to the left. The railing and tents are in the area of the exterior dining area at Lombardo's Restaurant.



Photo 4

View looking southwest from the parking lot to the north of Lombardo's Restaurant looking at the structure housing the elevator and ADA compliant ramp that connects the parking lot to the ADA compliant sidewalk in the public right-of-way.



Photo 5

View west towards the structure housing the elevator and ADA compliant ramp with the ADA compliant handicapped parking spaces in the foreground.



Photo 6

View of the ADA compliant ramp that connects the parking lot north of Lombardo's Restaurant to the ADA complaint sidewalk located in the dedicated right-of-way adjacent to site.





Photo 7

View east towards the structure housing the elevator and ADA compliant ramp that connects the parking lot on the Lombardo's Restaurant site to the ADA complaint sidewalk in the public right-of-way immediately adjacent to the site.



Photo 8

View looking northeast towards the structure housing the elevator and ADA compliant ramp that connects the parking lot to the ADA complaint sidewalk in the right-of-way adjacent to the site.



Photo 9

View looking northeast towards the structure housing the elevator and ADA compliant ramp that connects the parking lot to the ADA complaint sidewalk in the right-of-way adjacent to the site.



Photo 10

View looking south from the parking lot towards Lombardo's Restaurant.



Photo 11

View looking southwest from the parking lot at the corner of Lombardo's towards the exterior dining area on the terrace facing the street.



Photo 12

View from the other side of Hamilton Street looking east towards the restaurant and exterior dining area on the Lombardo's terrace with the ADA compliant ramp and sidewalk in the dedicated public right-of-way connecting to the Urgent Care terrace and entry.