

September 21, 2022

NOTES ON ZONING BOARD OF APPEALS APPLICATION O NORTH MOUNTAIN DRIVE - DOBBS FERRY, NEW YORK

This Memorandum provides background information for an application to the Dobbs Ferry Zoning Board of Appeals requesting the variances needed to permit the use of an existing parcel located on North Mountain Drive in Dobbs Ferry as a building lot for a single family home with a building coverage and impervious coverage based on the gross lot area of 23,337 square feet. The subject property was created by subdivision in 1989, but has not yet been assigned a street address. It is identified as 0 North Mountain Drive, as are the adjacent parcels flanking the subject property, which were created by subdivision around that same time.

The subject property is located in the OF-2 Zoning District, which permits single-family homes on building lots with a minimum lot area of 20,000 square feet. While the subject property has a lot area of 23,337 square feet, the Village has a provision in its Code by which steep sloped areas must be calculated and a portion deducted from the gross lot area to determine the net lot area. There are sufficient steep slopes on the property to result in a deduction of 7,621.5 square feet, which reduces the net lot area to 15,715.5 square feet.

The Building Inspector in the Village of Dobbs Ferry has indicated that, because of the steep slopes deduction, the subject property is not a building lot and cannot be used for the construction of a single family home. Moreover, the Building Inspector has also opined that he is permitted to limit the permitted building area and permitted impervious site coverage of improvement to the subject property to percentages of the "net" lot area, following the deduction for steep slopes, instead of the "gross" lot area as defined in 300-14.

The applicant contends that the subject property is a building lot created knowingly and intentionally by the Dobbs Ferry Planning Board after the Steep Slopes Ordinance was adopted and that the permitted building coverage and permitted impervious coverage of the lot is limited to the percentages stipulated in the Code based on the gross lot area of the parcel.

In the event that the Zoning Board does not agree that the decisions by the Building Inspector should be overturned, the applicant requests that the variances required to build this house on this property be granted.

Property Owner -

The Owner of the property, Tanya Giglio, purchased the property for more than \$550,000 with the intent of building a large house on the site. Unfortunately, there was no disclosure by the seller at that time that there was any question that this parcel was a compliant building lot. In fact, the real estate agent, as well as a builder working with the Purchaser prior to the closing confirmed with the Building Inspector at the time that this was indeed a building lot in compliance with the Code.

The Owner currently lives in Hawaii and is represented locally by Joseph Locascio, an attorney with an office at 560 Warburton Avenue in Hastings-on-Hudson, New York. Mr. Locascio has a Power of Attorney agreement with the Owner, authorizing him to act on her behalf in all matters pertinent to this property. The attorney representing the Owner before the Zoning Board of Appeals is Kristen Wilson, with an office at 235 Main Street in White Plains, New York.

Subdivisions of Properties on North Mountain Drive -

The subject parcel was created by subdivision of the Hempleman property located at 79 North Mountain Drive in 1989. An application was filed by Philip and Colleen Hempleman in June of 1989 for the subdivision of the subject parcel from their existing property, which was improved by a single-family home. While the application was noted on the agenda of the June 28, 1989 Round Table Meeting conducted by the Village Staff, there was no comment at that time.

At its July 6, 1989 meeting, the Planning Board conducted a preliminary discussion for the proposed subdivision. The attorney for the applicant noted that all required documents had been submitted and requested a Public Hearing at the next meeting, which was granted.

At its August 3, 1989 meeting, the Planning Board opened the Public Hearing for consideration of the subdivision of the Hempleman property. The attorney for the applicant made a presentation and Chairman Plotkin noted receipt of a letter from the Westchester County Department of Health concerning the size of the existing sanitary sewer line intended to be used by the new parcel. The Chairman advised that the Board would defer action on the application pending resolution of that matter. [In recent discussions with the Village Building Inspector, the Inspector has questioned how we could confirm that the subdivided parcel was intended to be a building lot. The fact that the sanitary sewer serving the parcel was a concern to the Planning Board, as well as front, side, and rear setbacks included on the subdivision plan should confirm that was the intent.] The Public Hearing was adjourned to the September 7, 1989 meeting.

The Round Table conducted a meeting on July 31, 1989 at which the Hempleman subdivision was discussed. At that meeting receipt of a letter from the Westchester County Department of Health was acknowledged. It should be noted that, while it seems that this letter was discussed for the purposes of the Hempleman subdivision, it actually was written to address the needs of the Adler subdivision, which had been approved at the June 1, 1989 Planning Board meeting.

The Public Hearing for the Hempleman subdivision was continued at the September 7, 1989 Planning Board meeting. The attorney for the applicant confirmed that the requests made at the last Round Table meeting had been completed. After some discussion, motion was made to approve the Preliminary Subdivision, which carried with a vote of 4 to 1.

The Planning Board considered the Final Subdivision of the Hempleman property at its meeting on October 5, 1989. The attorney for the applicant submitted a revised plan which the Minutes of the meeting report "met all of the requirements of the newly enacted Steep Slopes Ordinance." After a brief discussion on the street and the general health, safety, and welfare of the neighborhood, motion was made to approve the subdivision of the Hempleman Subdivision Map dated July 21, 1989 and revised to October 5, 1989. The motion carried with all voting "aye", except for one abstention.

It should be noted that, prior to the subject parcel being created, another property was subdivided to create new building lots also on North Mountain Drive; the application of Alfred and Susan Adler. While the Hempleman subdivision was not contentious, the Adler subdivision had opposition from neighbors, although there was also support.

The process that was followed for the Adler subdivision is included here, due to the fact that the Adler's request for a subdivision of their property was a catalyst for changes that were subsequently made to the Village Code, including deductions for steep slopes. These changes are discussed in more detail below and are the basis for the determination by the Building Inspector that the subject parcel created by subdivision of the Hempleman property is not a building lot. Pertinent to the Hempleman Subdivision, but prompted by the Adler's request for a subdivision, as well as other similar applications in the Village, the Board of Trustees adopted a change to the Village Code on September 19, 1989.

This change, adopted prior to the approval of the Hempleman's Final Subdivision, required building lots to have a net lot area compliant with the minimum area listed on Table B-1: OF Districts Dimensional Standards. The difference between the gross lot area and the net lot area is defined in the Code as being calculated by deducting a percentage of the steeply sloped areas on the property from the gross lot area, with the result being the net lot area.

The application submitted by Alfred and Susan Adler for the subdivision of their property on North Mountain Drive was first heard by the Dobbs Ferry Planning Board at its November 3, 1988 meeting. At that meeting, the Chair explained that the proposed building lots were not compliant with the "square /rectangle requirements of the Village Code." The "Rectangle Ordinance was a provision adopted by the Village to reduce the yield possible from the further subdivision of existing parcels. Regardless, the attorney for the applicant requested a "preliminary conditional approval from the Planning Board in order to be able to go to the Zoning Board of Appeals." The Chair agreed to the request and called for a Public Hearing at the next Planning Board meeting.

The Public Hearing was conducted by the Planning Board on December 1, 1988. The proposed subdivision was denied because it did not conform to the 1987 Village Law regarding square/rectangle. The Minutes suggest that the intent was for this matter to go to the Zoning Board of Appeals, but there is no record of this matter being heard by the ZBA.

At the Planning Board's February 2, 1989 meeting, a presentation for a proposed subdivision of the Adler property was heard.

Chairman Plotkin read the minutes of the previous meeting in regard to the Adler property, which was followed by a brief discussion "concerning the density and heavily traveled area of North Mountain Drive." A topographical map was requested by Planning Board member Stephen Hunter for the next meeting.

The matter was heard at the March 2, 1989 Planning Board meeting at which the topographical map of the property was discussed. Chairman Plotkin directed the Clerk to call for a Public Hearing for Preliminary Review of the Subdivision at the next meeting.

A Round Table Meeting was conducted by the Village Staff on April 5, 1989 at which the subdivision of the Adler property was discussed. A list of five recommendations was created and forwarded to the Planning Board for consideration at the Public Hearing.

The Public Hearing was opened at the April 6, 1989 meeting of the Planning Board and the comments from the Round Table were read by Chairman Plotkin. The Hearing was adjourned to the next regular meeting.

The Public Hearing was continued at the May 4, 1989 Planning Board meeting. The attorney for the Adlers confirmed that the documents submitted for this Hearing included the items requested by the Board as outlined by the Round Table. Chairman Plotkin stated that engineering drawings should be submitted for the retention of water on the two lots being created. Neighboring residents spoke in opposition to the application, citing slope problems, storm drainage issues, and concerns about traffic problems, particularly a lack of visibility for the driveways given the claim that the street has dangerous curves. Two of the persons speaking in opposition cited that "the gradual deterioration of the quality of the houses being built would create an eyesore," and that "the property value of the area [would be adversely affected] by over populating." Chairman Plotkin requested that the applicant agree to a 30 day extension on the Preliminary Subdivision application, which was granted.

The Public Hearing was continued at the June 1, 1989 Planning Board meeting. The attorney for the applicant reported that the applicant had appeared before the Conservation Advisory Committee and that the CAC indicated that the request for subdivision was appropriate for that area on North Mountain Drive.

A traffic engineer was in attendance at the June meeting and spoke on behalf of the applicant. There was discussion about the safety of the existing road, which serves the Ardsley Country Club. The traffic engineer noted that, if it is the volume of traffic that makes the curvy road unsafe, the issue has to be with the activities of the Country Club, and that traffic generated by two additional houses was di minimus in comparison with the traffic generated by the Country Club. Asked by the Chair whether there was anything that could be done to improve the safety of the road, the traffic engineer suggested that a curve sign with the speed limit could be posted in that area or that the Village could improve the road by cutting back the road to eliminate the curves. There was discussion about drainage and the Village Building Inspector requested that the water retention system for each lot be independent of the other lots. The Public Hearing was closed.

A motion was made to approve the subdivision subject to 1. The retention system must comp with all Village standards, and 2. The easements for the driveway must be filed with the Clerk's office prior to the Building Department reviewing same. The motion passed 3 to 1, with one abstention.

For the purposes of the current application pending before the Dobbs Ferry Zoning Board of Appeals for Giglio, it should be noted that the Adler subdivision approval was concurrent with the beginning of the Village's decision to change the Village Code to include the Steep Slopes Ordinance.

The Hempleman's subdivision review was conducted concurrent with the procedures to amend the Code to add the Steep Slopes Ordinance, with the revisions to the Code completed three weeks prior to the Final Subdivision creating the subject parcel being granted.

Steep Slopes Ordinance -

There were several projects in front of the Board of Trustees and the Planning Board in the years between 1985 and 1989 that involved steeply sloped properties. This was also a time during which the value of building lots increased significantly. There were two ordinances that were adopted by the Board of Trustees during that time. The reason for both new ordinances was to reduce the yield possible from the resubdivision of existing properties. The sentiment that the character of the Village was being threatened by "surgical subdivisions" crowding neighborhoods and burdening the Village with overdevelopment was primary to the adoption of these ordinances.

The first change to the Code was 300-34.(1) adopted in 1987 which required that any lot to be created by subdivision had to be able to fit a rectangle capable of containing 80% of the required lot area with the minimum side of the rectangle having to be a minimum of 80% of the required lot width. This meant that if a 10,000 square foot property in the OF-6 zoning district, which requires a minimum net lot area of 5,000 square feet, could not contain two rectangles containing 4,000 square feet each (80% of 5,000) with a minimum dimension of 40 feet (80% of the require minimum lot width of 50 feet), it could not be subdivided.

The second change to the Code to reduce the development yield from residential properties within the Village was 300-34.(2) adopted in 1989. At the July 18, 1989 Board of Trustees meeting, one month following the approval of the Subdivision of the Adler property, the Village attorney announced that a proposed Steep Slope Regulation, prepared at the request of the Planning Board, with discussion already held by the Board of Trustees and Village Staff, was being considered by the Board of Trustees, Building Inspector, and Planning Board. The Board of Trustees adopted a Resolution declaring itself lead agency under SEQR and referred the matter to the Planning Board for review.

The Planning Board considered the matter at its August 3, 1989 meeting and the Minutes record the following: "Chairman Plotkin, noting the preponderance of applications recently considered by the Planning Board for subdivision, resubdivision, or road improvement specifications for properties that were previously considered undevelopable due to steep terrain and inaccessibility, supported the proposed steep slope ordinance citing the need to consider environmental concerns such as erosion control, soil stability and disturbance of existing drainage systems when considering applications." The Planning Board unanimously voted to recommend that the Board of Trustees adopt the "steep slope" regulations. The record for applications considered in the decades preceding 1989 shows that these concerns were already carefully considered by the Planning Board under Chairman Plotkin's leadership.

At its August 15, 1989 meeting, the Board of Trustees conducted a Public Hearing to consider the addition of the Steep Slopes Ordinance. There were people who spoke both in support of the Ordinance and expressed concerns with it. The Public Hearing was adjourned to the next meeting of the Board of Trustees.

Again, while the verbiage cited concerns about protecting environmentally sensitive lands, preserving the Village's natural resource, and promoting the orderly development of land, the only impact that the change to the Village Code actually had was to require larger gross lot areas than the area required by the numbers listed in Table B-1. There was no restriction to prevent development on the steeply sloped areas and all of the requirements of stormwater management, erosion and sediment controls, and the stability of site conditions were already integral to the Village's Site Plan Review process.

The Public Hearing was continued at the September 5, 1989 Board of Trustees meeting, which again had comments supporting both sides, and then adjourned to the next meeting of the Board of Trustees, presumably to facilitate the Planning Board being able to prepare Findings in support of the adoption of the new Ordinance.

At its September 7, 1989 meeting, the Planning Board reaffirmed its August 3, 1989 Resolution supporting the adoption of the Steep Slope Ordinance and set forth Findings of Fact for that Resolution consisting of 5 points. The points generally state the need for the Steep Slope Ordinance to protect environmentally sensitive site conditions and to protect the Village from intensive development, burdening the Public Works with expenditures[?].

This seemed intended to insert concerns with the economic well-being of the Village and its residents as justification for the new Ordinance. Preventing landslides, erosion, and sedimentation are mentioned. The real intent was framed in Finding 4: "To relate the intensity of development to the steepness of the terrain in order to minimize grading, the removal of vegetation, run-off and erosion and to help ensure the utilization of land in accordance with its natural capabilities to support development;" In other words to reduce density. A motion was made and passed unanimously adopting the Finding of Fact.

With the exception of Finding 4, all of the other Findings were already conditions that were addressed during Site Plan Review. While it may never have been stated directly by a Board member, it was clear from the discussions at the Board of Trustees and Planning Board that the intent was to reduce the yield in residential units that could be generated by properties in the Village. Several of the residents commenting during the Public Hearing explained that the need for this ordinance was to prevent the subdivision of existing parcels, which could result in an increase in the number of people living in the Village. Traffic, parking in the downtown, and overcrowding the schools were mentioned as the reason this new ordinance was required. No research was provided or reports submitted in support of the claims made in the Finding of Facts.

This ordinance requires that for a parcel to be considered a building lot, the net area of the parcel has to be equal to or greater than the area listed in Table B-1: OF Districts Dimensional Standards. Before that change to the Code, the minimum area listed in Table B-1 was the gross lot area. The difference between the gross lot area and the net lot area as stipulated by this change to the Code was determined by deducting 50% of the lot area that has a sloped of 25% or steeper and deducting 25% of the lot area that has a slope steeper than 15%, but less than 25% in slope. While this ordinance included verbiage about protecting environmentally sensitive site conditions, the actual intent was to reduce density and the subdivision of existing parcels. This is supported by the fact that nothing in the ordinance prevented disturbance of the steeply sloped areas of the site.

Similar to the Rectangle Ordinance, properties that previously could have been subdivided on the basis of the gross lot area, now had to provide that same square footage as the net lot area. Even existing building lots that were 50 feet by 100 feet in the OF-6 zoning district, where 5,000 square feet of lot area was required, suddenly were questionable, if a portion of the lot had a slope exceeding 15%.

Dobbs Ferry is a steeply sloped Village and lots without slopes exceeding 15% are rare. It should be noted that, during the deliberations on adopting the Steep Slopes Ordinance, it was clear that most of the Trustees were not familiar with just how sloped a 15% area actually was. There was confusion over the difference between percent slopes and the degrees of an angle of slope. When asked by a local resident at the Public Hearing what the percentage of a 45 degree angle is, the Trustees agreed that it would be 50%, which is not correct: it is 100%. A 15% slope is an area that changes by 1.5 feet in 10 feet. The fact that the concern was not sincerely driven by protecting steeply sloped properties for their environmental sensitivity was evident by the fact that the restrictions were only mathematical.

Code Sections Pertinent to the Requested Variance -

As noted earlier, the subject property has steep slopes that combine to reduce the gross lot area from 23,337 square feet to a net area of 15,715.5 square feet. Since the OF-2 zoning district within which the subject property is located requires a net area of 20,000 square feet, the Building Inspector has determined that a variance is required.

Following are the pertinent sections of the Code:

Section 300-14 General terms [Definitions].

Building Coverage

The area of a lot covered by or permitted to be covered by principal and accessory building(s) and structures on the ground level. Percentage of building coverage is the area of principal and accessory building(s) at the ground level divided by the lot area and expressed as a percentage of the lot area.

Impervious Coverage

The part of a lot that is covered by impervious surfaces, expressed as a percentage of the **gross** lot area.

[Note: There was never discussion during the adoption of the Steep Slopes Ordinance that the net area would have any purpose, other than requiring larger lot areas when steep slopes were present. There was never discussion that the permitted Building Coverage or Impervious Coverage would use the net lot area instead of the gross lot area to reduce the size of the house permitted to be built. While the definition for Impervious Coverage clearly states that the gross lot area is used to determine the permitted coverage, the word "gross" is not included in the definition of Building Coverage. We contend that this is an oversight and, if the type of lot area were to be defined for Building Coverage, it would be "gross" lot area, not "net" lot area.

There may be confusion on this and it should be confirmed with the ZBA. According to the Building Inspector, some applicants have used the net lot areas for their calculations of building and impervious coverage. This seems to have created confusion in the Building Department about this. It makes no sense that the Impervious Coverage would be based on the Gross Lot Area, but the Building Coverage would be limited to the Net Lot Area.

Lot Area, Gross

The total square footage of a lot prior to any reductions pursuant to this chapter.

Lot Area, Net

The area of the lot after any reductions pursuant to this chapter have been deducted. For the purposes of calculating lot area, $\frac{1}{2}$ of the area of the lot with slopes measuring 25% or greater shall not be included in the total lot area, and $\frac{1}{4}$ of the area of the lot with slopes measuring at least 15% but less than 25% shall not be included in the net lot area.

Section 300-34.(2)

Reductions for steep slope areas. In order to protect environmentally sensitive lands, preserve the Village's natural resources and promote the orderly development of land through standards that acknowledge the varied topography in Dobbs Ferry, net lot area shall be determined as the gross lot area less:

- (a) Fifty percent of the gross area of a lot with slopes measuring 25% or greater.
- (b) Twenty-five percent of the gross area of a lot with slopes measuring more than 15% but less than 25%.
- (c) Sloped areas with a horizontal dimension of less than five feet and/or an area of less than 150 square feet may be considered an anomaly by the Planning Board and not deducted from the site area as otherwise required above.

300-46.C.

Steep slopes. Development shall not be permitted in any area measuring 1,500 square feet or more with a slope of 35% or greater, subject to the following exceptions:

- (1)(a) In considering disturbance and development within steep sloped areas, the Board of Trustees and the Planning Board shall require the implementation of appropriate engineering methodologies to prevent slope instability, erosion, and/or sedimentation.
- (2) Building in areas with more than twenty-five-percent slope or areas containing slide potential and other geotechnical hazards shall be avoided unless no alternative building site is available.

[Note: 300-46.C. is an ordinance that actually addresses the impacts that need to be considered and potentially mitigated when building on a property with steep slopes. 35% slopes is a more appropriate threshold for the identification of a steep slope that should be avoided when possible and require mitigating measures when avoidance is not possible. The presence of this ordinance in the Code supports the understanding that 300-32 is about something other than the protection of steep slopes.

Documents Provided in Support of the Variance -

Sheet A-1 "Slope Analysis", prepared by Gotham Design under the supervision of Laura Wakefield R.A. and dated 06/15/2022, uses the topographic survey prepared by The Munson Company, Land Surveyors to locate and quantify the areas of slopes that exceed 15%, but are less than 25%, and those that are 25% and greater.

Sheet A-1 documents that 13.6% of the site has a slope of 15% or less, 42.1% of the site exceeding 15% but less than 25% (9,819.2 square feet), and 44.3% of the site 25% and greater (10,333.4 square feet). Using these areas, the deductions required by the Steep Slopes Ordinance are 2,454.8 square feet for the slopes exceeding 15% but less than 25%, and 5,166.7 square feet for the slopes 25% and greater. Subtracting the total of 7,621.5 from the gross lot area of 23,337 results in a net lot area of 15,715.5 square feet. This is 4,284.5 square feet less than the net lot area required for a building lot in the OF-2 zoning district. To better illustrate the sloped areas on the subject property, Sheet A-1.1 has been provided showing the areas exceeding 15% slopes, but less than 25% in green, and the areas 25% and greater in slope in blue.

Since a 25% slope, which is 2.5 feet in 10 feet and still a slope that can be maintained by a lawnmower without challenge, Sheet A-1.2 has been provided showing the more challenging areas of the site with 35% slopes and greater in red. While 18.58% (4,335.9 square feet) of the site has slopes of 35% or greater, there is an opportunity with the subject property to locate a significant house with usable terraces and a driveway such that the development will substantially not be located on or otherwise adversely impact the areas of the site that are sloped 35% or greater. Sheet A-1.2 is illustrated with a building that has a coverage of 17.9% and a impervious coverage of 33.3% based on the use of the Gross Lot Area. This assumes the use of permeable paving for the terraces and walkways.

Documents in Support of the Subject Property Being Approved as a Building Lot -

A copy of the "Subdivision Map Prepared for Philip and Colleen Hempleman" prepared by Charles Riley, Land Surveyor, dated as completed July 10, 1989, dated as revised October 5, 1989, and dated as filed with the County Clerk of Westchester County Division of Land Records December 20, 1989, which includes the signature of Chairman Plotkin dated October 16, 1989.

Above Chairman Plotkin's signature is the statement "Approved under authority of a Resolution adopted October 5, 1989 by the Planning Board of the Village of Dobbs Ferry for filing in the County Clerk's office, Westchester County (Division of Land Records) if filed within 90 days from the date thereof."

This Subdivision Map clearly shows "Parcel A" as a separate lot labeled with an area of 23,337 square feet. It also shows the front, side, and rear yard setbacks that are required by the Village of Dobbs Ferry Zoning Ordinance for the construction of a primary building on the parcel. The Subdivision Map also includes a statement signed by the Westchester Commissioner of Health, dated November 30, 1989 approving the parcel "subject to the provision of public water supply and public sanitary sewer facilities to serve all structures intended for human occupancy constructed herein."

The Subdivision Map also includes conditions stipulated in the Minutes of the Public Hearing conducted by the Planning Board for the creation of this separate Parcel A from the Parcel B, which is 79 North Mountain Drive.

The conditions read "100% retention required for house and impervious surface for Parcel A. Subject to the construction of a retention system which complies with all Village of Dobbs Ferry standards."

A copy of Sheet 003.010 of the Tax Map of Town of Greenburgh, dated July 1, 2007 that shows both Parcels A and B, designated as parcels 3 and 4 in Block 1 consistent with the filed Subdivision Map.

A copy of the Planning Board Minutes dated October 5, 1989 at which the Public Hearing for the Subdivision creating the subject parcel was continued and then closed, which includes the following statements:

"Submitted a revised plan which in her opinion meets all the requirements of the newly enacted Steep Slope Ordinance."

"Motion was made by Mr. Hunter seconded by Mr. Cryan, to approve the subdivision of Mr. & Mrs. Hempleman dated July 21, 1989 and revised to October 5, 1989, drawn by Charles Riley, licensed land surveyor, subject to the appended sheet being signed and sealed by a licensed land surveyor. Motion carried, Mr. Hunter, Mr. Cryan, and Chairman Plotkin voting "aye", Mr. Klein abstaining."

At the same meeting on October 5, 1989, another application was also being considered with the impact of the steep slopes ordinance on the yield of residential units being the concern. Mr. Richard Salerno, the owner of property on Livingston Avenue, was before the Planning Board for his project Livingston Ridge. The project had already been approved for 22 residential units, but there was concern that the new Steep Slopes Ordinance could require an adjustment on that yield. The following is from the Planning Board minutes for that meeting:

"Mr. Salerno asked how a steep slope is determined? Chairman Plotkin stated that as in the previous case, Hempleman, the surveyor took the individual contours, difference in elevation between the contours, distance between the two contours give horizontal distance and he worked out the percentage. Another way to interpret the ordinance would be a reasonable engineering determination of the slopes of the property."

Mr. Salerno agreed to have his property evaluated for steep slopes to see what adjustment was required under the new ordinance. Following that evaluation being performed, the number of units in Livingston Ridge was adjusted. It increased from the previously approved 22 residential units to 24 residential units.

A copy of the Town of Greenburgh Property Card that documents that the unimproved parcel is assessed with a value of \$549,800. The Town of Greenburgh Tax Assessor's office considers this parcel to be a building lot, which is consistent with the value of its assessment.

Summary -

The subject parcel is a building lot approved by the Dobbs Ferry Planning Board and maintained as such since its creation on October 5, 1989.

The building coverage permitted in the OF-2 zoning district within which the subject parcel is located is limited to 18% of the gross lot area of 23,337 square feet, which calculates to 4,200.66 square feet.

The impervious coverage permitted in the OF-2 zoning district within which the subject parcel is located is limited to 40% of the gross lot area of 23,337 square feet, which calculates to 9,334.8 square feet.

While the Building Inspector has indicated that he may interpret the limits on the coverages of buildings and impervious surfaces to the net lot area, following the deduction of the areas for steep slopes, there is nothing in the Dobbs Ferry Village Code that mandates or even supports this interpretation or right to do so.

Although the definition of "Building Coverage" in the Code does not indicate "gross" or "net" area, the definition of "Impervious Coverage" does indicate "gross lot area." Where there is ambiguity in the Code, specifically with whether it is net lot or gross lot area that is to be used for determining the limit for building coverage in this case, the interpretation has to be decided in the applicant's favor. In this case, that means that the permitted building coverage should be calculated using the gross lot area, consistent with the permitted impervious coverage. Moreover, given a primary concern with the creation of this building lot by the Planning Board being the management of stormwater runoff, it would be incongruent for the house itself to be restricted to the net lot area, but the impervious surface to then be permitted to be determined by the gross lot area.

On September 28, 2010, the Village adopted a new Chapter 300 Zoning and Land Use. This new Code still includes all of the sections cited above. The method for determining the slope was codified in the new Code in Section 300-34.A.(3). A formula is provided, which is what was used for the current application.

It is a fact that this lot was created by the legal process of subdivision by the Planning Board on October 5, 1989.

It is clear that the Chair of the Planning Board, who was directly engaged in the process of determining the Steep Slopes Ordinance that was added to the Code and continues to this day should be used.

The fact that the Chair signed the Plat Map that was filed with County Records documents that he believed this parcel to be a building lot under the requirements of the Steep Slopes Ordinance.

Since the lot was created after the Steep Slopes Ordinance was added to the Code, we have argued that the Building Inspector erred in his determination that this is not a building lot.

If the Zoning Board of Appeals determines that the Building Inspector was correct in his determination, we request a variance for the strict interpretation of the Code to permit this parcel to be a building lot, despite the net area being less than the required 20,000 square feet.

We also ask that the Zoning Board of Appeals confirm our interpretation of the Code that the Building Coverage and the Impervious Coverage are both based on the Gross Lot Area and not the Net Lot Area.

Attachments -

Planning Board Minutes	November 3, 1988	Addressing Adler Subdivision
Planning Board Minutes	December 1, 1988	Addressing Adler Subdivision
Planning Board Minutes	February 2, 1989	Addressing Adler Subdivision
Planning Board Minutes	March 2, 1989	Addressing Adler Subdivision
Round Table Minutes	April 5, 1989	Addressing Adler Subdivision
Planning Board Minutes	April 6, 1989	Addressing Adler Subdivision
Planning Board Minutes	May 4, 1989	Addressing Adler Subdivision
Round Table Minutes	June 28, 1989	Addressing Hempleman Subdivision
Planning Board Minutes	July 6, 1989	Addressing Hempleman Subdivision
Board of Trustees Minutes	July 18, 1989	Addressing Steep Slopes Ordinance
Round Table Minutes	July 31, 1989	Addressing Hempleman Subdivision
Planning Board Minutes	August 3, 1989	Addressing Steep Slopes Ordinance
Planning Board Minutes	August 4, 1989	Addressing Hempleman Subdivision
Planning Board Minutes	August 4, 1989	Addressing Steep Slopes Ordinance
Board of Trustees Minutes	August 15, 1989	Addressing Steep Slopes Ordinance
Board of Trustees Minutes	September 5, 1989	Addressing Steep Slopes Ordinance
Planning Board Minutes	September 7, 1989	Addressing Hempleman Subdivision
Planning Board Minutes	September 7, 1989	Addressing Steep Slopes Ordinance
Board of Trustees Minutes	September 19, 1989	Addressing Steep Slopes Ordinance
Planning Board Minutes	October 5, 1989	Addressing Hempleman Subdivision