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March 24, 2023

**Via E-Mail [droemer@dobbsferry.com](mailto:droemer@dobbsferry.com); [scollins@dobbsferry.com](mailto:scollins@dobbsferry.com)**

Honorable Chairperson and Members of the Board of Appeals  
112 Main Street  
Privileged  
Dobbs Ferry, NY 10522

Re: 0 North Mountain Drive, Dobbs Ferry, New York 10522 – Building Coverage  
Determination Appeal and Variance Request for Building Coverage

Dear Honorable Members of the Dobbs Ferry Board of Appeals,

As you are aware, my firm has been retained by Tanya Giglio, the owner of 0 North Mountain Drive (the “Property”). Currently, we have an appeal of the building inspector’s determination dated July 27, 2022 (the “Building Lot Determination”) pending relating to the property being a “building lot”. In the alternative, if the Zoning Board of Appeals (the “Board” or “ZBA”) does not overturn the Building Lot Determination, we are seeking an area variance of approximately 23% for the Property to qualify as a building lot (the “Building Lot Variance Request”). On January 28, 2023, almost eight (8) months after the application of the Property was submitted, the Village’s consulting planner informed us that the Building Inspector has interpreted “Building Coverage” based on the net lot area rather than the gross lot area and that we are also in need of a variance for Building Coverage (the “Building Coverage Determination”). As a result, we are now amending our original application to add the following requests: 1) an appeal of the “Building Coverage” determination rendered on March 21, 2023 calculating building lot coverage using net lot area instead of gross lot area; or, in the alternative, 2) an area variance for Building Coverage.

### **Procedural History**

Ms. Giglio is seeking to construct a new single-family home with a three-car garage and swimming pool. The Property is located in the OF-2 zoning district which requires a net site area of 20,000 square feet. The OF-2 district permits single family homes and other accessory uses. The Property consists of 23,337 square feet but, due to steep slope calculations recently performed, the square footage for building lot determination is reduced to 15,241 square feet. The proposed home and swimming pool is otherwise compliant with the other bulk regulations in the OF-2 district.

We are currently pending before the Planning Board as the ZBA sought to have the Planning Board confirm that the proposed site plan could meet the Village Code requirements, be situated on the Property and go through a full Planning Board review process including the public hearing before granting Ms. Giglio's variance request. Over the last six months, we have received significant input from the Planning Board and the Village's professional consultants and have revised the plans and answered the questions accordingly. A public hearing has now been set for the April 6, 2023 Planning Board meeting and we are anticipating that the hearing will be closed and a resolution adopted. As part of its deliberations, the Planning Board has taken a hard look at stormwater runoff, on-site water retention, site distances concerns related to the driveway, massing of the proposed single-family home in relationship to the surrounding neighborhood, and rock removal, among other things.

As a result, the two "requests" pending before this Board both have two prongs: 1) As it relates to the Building Lot Determination, we are requesting the ZBA to overturn the Building Lot Determination; or, in the alternative, a variance of approximately 23%; and 2) as it relates to the Building Coverage Determination, we are requesting the ZBA to overturn the Building Coverage Determination, or, in the alternative, a variance of approximately 9.46%. Our arguments related to the Building Lot Determination are covered in our prior submission from September and will not repeated herein.

**THE BUILDING COVERAGE DETERMINATION IS  
ARBITRARY AND CAPRICIOUS**

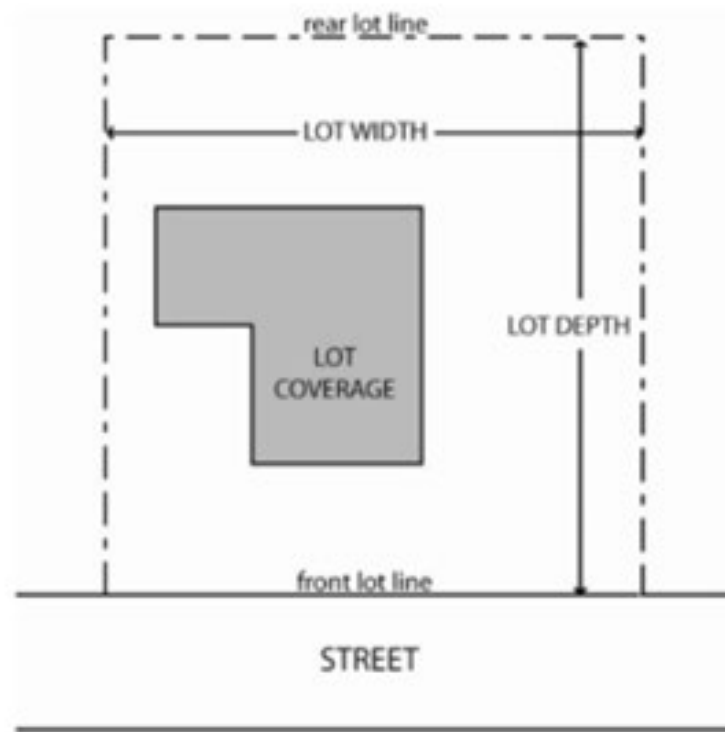
As set forth in our power point presentation (copy attached hereto), both the plain language of the Village Code and the way in which the provisions of the Village Code have been interpreted compel the ZBA to overturn the Building Coverage Determination. It has been held that a decision of a zoning board of appeal or other administrative agency which is inconsistent with its prior precedent and fails to explain its reasoning for a dissimilar result on essentially the same facts is arbitrary and capricious. See *Knight v. Amelkin*, 68 N.Y.2d 975, 510 N.Y.S.2d 550 (1986).

**A. The Plain Language of the Village Code**

Under Village Code Section 300-14, the term "Lot Coverage" is defined as "the amount of building coverage, impervious surface coverage, or a combination of the two, divided by the lot area, and expressed as a percentage." The diagram below the definition clearly shows that in order to determine lot coverage, you take the gross lot area (not the net).

## LOT COVERAGE

The amount of building coverage, impervious surface coverage, or a combination of the two, divided by the lot area, and expressed as a percentage.



## **B. The Village's prior decisions and interpretations**

Consistent with the plain reading of the statutory language, the Village has interpreted Building Coverage as being expressed as part of the gross lot area dozens of times in a variety of situations in the past. By way of example, the following addresses are just some of the projects that have been approved with building lot coverage being calculated based on a percentage of gross lot area:

- 10 Tiernan's Lane
- 41 Magnolia Drive
- 7 Myrtle Avenue
- 1 Myrtle Avenue
- 289 Clinton Avenue
- 19 McClelland Avenue
- 1 and 3 King Street
- 27 Virginia Avenue
- Cyrus Place
- 60 Florence Avenue
- 82 Belden Avenue
- 31 Maple Street
- 130 Palisade Street
- 40 Devoe Street
- 60 Washington Avenue

The definitions relating to Building Coverage have not changed and the Village's professionals have not provided *any* rationale for why a new and different interpretation is being rendered at this time. Without a basis for a change in interpretation, a court will find such a decision to be arbitrary and irrational. There is nothing in the ZBA's record or contained within the Building Coverage Determination letter that supports such an interpretation. Inconsistent determinations result in ad hoc land use decisions and exposes the Village to litigation risks unnecessarily. Similarly situated property owners must be treated in the same manner. The most recent Building Coverage Determination turns years of precedent on its head.

Based on the plain language of the Village Code and the countless examples provided to the ZBA, this Board must overturn the Building Coverage Determination and find that the calculation of Building Coverage is based on gross lot area.

## **IN THE ALTERNATIVE, THE ZONING BOARD OF APPEALS SHOULD GRANT THE NECESSARY VARIANCE FOR BUILDING LOT COVERAGE**

If the ZBA does not overturn the Determination, the ZBA should grant the necessary Building Coverage Variance to allow the proposed home to be built. The role of the ZBA is to provide a safety valve and flexibility from the rigid enforcement of the zoning ordinance. Salkin, New York Zoning Law and Practice §§ 27:08 & 27:09 [4<sup>th</sup> ed. 2022]. As I know this board is well-aware, the New York Court of Appeals has held the standard for granting an area variance is a balancing test, weighing the benefit to the applicant against the detriment to the health, safety

and welfare of the neighborhood or community. *Sasso v. Osgood*, 86 N.Y.2d 374 [Ct Ap 995]; *Monroe Beach, Inc. v. Zoning Bd. Of Appeals of Long Beach*, 898 N.Y.S.2d 194, 195 [2d Dept. 2010]. The basic inquiry for zoning boards at all times is whether the strict application of the ordinance in a given case will serve a valid public purpose which outweighs the injury to the property owner. *See Grace v. Palmero*, 182 A.D.2d 820, 582 N.Y.S.2d 284 (2d Dep't 1992).

Under Village Law, the following standards/criteria must be considered and balanced by the ZBA in considering whether to grant the requested variance. For the following reasons, the requested variance should be granted.

- a. Whether an undesirable change will be produced in the character of the neighborhood.

The OF-2 zone is a single family zone that only permits residential homes and normal and customary accessory uses. The application proposes a single family home of a similar size to the homes immediately surrounding the Property. The Building Coverage Variance would not have any undesirable change in the character of the neighborhood and would be a complement to the existing homes. The size of the Property is larger than required so there is sufficient area to comply with all necessary setbacks and other bulk regulations.

- b. Whether the benefit sought can be achieved by some other feasible method

We are seeking a variance to simply allow the Property to be used for a single-family home that is consistent in size with other development in the neighborhood.

- c. Whether the requested variance is substantial

The request is not substantial in the context in which it is being sought. Here, using the gross area would have resulted in a compliant building coverage calculation. Although using the net lot area calculations results in a 9.5% variance, this is not a significant request when looking at the size of the lot and the Planning Board's approval that the home fits well within the area of the Property.

- d. Whether the variance will have an adverse effect or impact on the physical or environmental conditions

There will be no adverse impact on the physical or environmental conditions. The Planning Board thoroughly reviewed the potential impacts when it approved the site plan. In addition, the proposed single family home's building envelope reflects the environmentally sensitive nature of the property and the Planning Board has extensively reviewed issues related to stormwater runoff needs, traffic, site distance concerns, rock removal, access to the site, and other typical and necessary site plan considerations.

- e. Whether the need for the variance is self created

The hardship is self created but the reason for this particular variance is directly the result of a new interpretation of the Village Code and the need is reasonable and justified. Again, this

factor does not outweigh the cumulative impact of the other four factors and the ZBA should grant the requested Building Coverage Variance.

### **Conclusion**

The binding precedent of prior decisions and the plain reading of the Village Code undoubtably point to an interpretation that “Building Coverage” must be calculated on gross net lot area rather than net lot area. There has been no basis provided for any other interpretation and appears that this new interpretation has just come to light based upon a confusion as its relation to the steep slope ordinance. As the caselaw outlined above clearly indicates, failure to follow precedent or failing to provide an explanation or rationale for not following prior decisions results in an arbitrary and capricious decision and will be overturned by the courts. As such, this Board should overturn the Building Coverage Determination. In the alternative, the applicant has clearly met the requirements set forth for an area variance. The Building Coverage Variance Request will not result in an undesirable change to the neighborhood, is consistent with other homes in the immediate neighborhood, is not significant when reviewing it in the context of the gross lot size is, and will not harm the environment. As a result, all of the factors tip in favor of the Building Coverage Variance Request being granted.

Respectfully submitted,

/s/

Kristen K. Wilson

Cc: Dan Pozin, Esq.  
Lori Lee Dickson, Esq.