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August 6, 2018

Town of Canandaigua Planning Board
5440 Route 5 & 20 West
Canandaigua, New York 14424

Re: 5993 County Road 32, Town of Canandaigua Special Use Permit Application

Dear Board Members:

At our last appearance before the Town of Canandaigua Planning Board on July 24, 2018, we discussed a couple modifications to Mr. Layton's Special Use Permit Application. I have attached his Second Amended Application and a Revised Statement of Operations, hereto.

Contained therein, you will find:

1. The addition of Anthony Tripodi as an Applicant, as he is the Deed holder of the property;
2. As stated above, a revised Statement of Operations;
3. A description of the landscape plan created with Charlie May, owner of Mayflowers Nursery in Canandaigua, New York;
4. A reduction in the number of waivers requested from 7 to 3;
5. A suggested limitation/boundary for the Board to place on the Special Use Permit so there is not the risk that the Special Use Permit is to be abused in the future by the Applicant or any future owners;
6. A written explanation for the hours of operation requested;
7. A response to the concerns raised by neighbor Joyce Marthaller; and
8. Other minor changes the Applicants believe are relevant

We are requesting that this Special Use Permit run with the land in this instance, as a Special Use Permit typically does, specifically because, although Mr. Layton is an Obligor under the Promissory Note and Mortgage on the property that is the subject of this application, he is not the Deed holder. Therefore, if Mr. Tripodi were to Deed the property to Mr. Layton, this would effectively terminate the Special Use Permit and obligate Mr. Layton to go through this rather rigorous process all over again. Mr. Layton believes that at some point, in the not so distant future, this deed transfer may occur (possibly for estate planning purposes), and it would be a shame, and not at all what I believe the Board's intentions are, for the Special Use Permit to terminate as a result of the Tripodi's attempts to plan for their future and the future of their family, when the use of the property will not at all change. Mr. Layton, at all times, intends to comply with the mandatory 3 year inspections, and he believes any concerns with regard to the sufficiency of the use of the Special Use Permit can be adequately addressed through these means.

The Applicants reassert the previously submitted 'Amended Application' in all respects where it is not amended in the herein submitted 'Second Amended Application', including exhibit submissions.

We would also like to extend our most sincere 'thank you' to each of the members of the Board for your thoughtful consideration of this application. Although this process can be lengthy, your decision is very important to the future of Mr. Layton and his business. We welcome any questions the Board may have and look forward to addressing your concerns on August 14th.

Very truly yours,



Erika S. Schuppenhauer, Esq.

Amended Statement of Operations

This Statement of Operations is made pursuant to a Second Amended Application submitted to the Canandaigua Town Planning Board on August 6, 2018 in order to induce the issuance of a Special Use Permit at the property located at 5993 County Road 32 in the Town of Canandaigua, New York 14424.

The intent of the Applicants is to use the existing Agriculture Driveway and the portion of the Sketch Plan labelled "Storage Area" that was before the Board on July 24, 2018. At the suggestion of the Board Members, the Applicant is requesting permanently limiting the Special Use Permit, unless a subsequent application is made, to the Northside of the stream, approximately where Town Lot 92 meets Town Lot 14, as depicted in Survey Map Entitled "Subdivision Plan of Land by Martin C. McMillan" completed by David A. Freeland, L.S. dated July 10, 2001 and filed in the Office of the County Clerk on December 17, 2001 as Map Number 26636, attached hereto. The goal being to significantly limit the potential for the Special Use Permit to be abused in the future.

The Storage Area will consist of trucks, trailers and construction machinery equipment. The purpose of requesting the Special Use Permit is so employees of Layton Construction and Tripodi Construction may come and pick up a vehicle that is necessary to complete a job that is being conducted offsite, typically only returning either at the end of the day, when the job is completed, or to get additional equipment. No customers will be coming to the proposed storage yard and it will not be an area frequented by large amounts of people.

The Applicants are requesting hours of operation between 5:00AM and 9:00PM. The Applicants actually intend to operate their business regularly during the hours of 7:00AM and 6:00PM Monday through Saturday. However, in the construction business, occasions do arise where deadlines need to be met, requiring the Applicants to operate outside of their regular business hours. Rather than result in a violation from one of the neighbors, forcing the Code Enforcement Officer to launch an investigation, resulting in the use of tax payer dollars and the unnecessary utilization of Town funds, the Applicants believe that being proactive and requesting the largest possible parameter of hours from the outset is the best possible approach.

SECOND AMENDED APPLICATION – ROGER LAYTON

This Amended Application is being made by and on behalf of Roger Layton and Anthony Tripodi, hereinafter “the Applicants”. Herein, the Applicants will reference the sections of the Town of Canandaigua Zoning Ordinances that are relevant to the Application currently pending before the Board, made by Roger Layton and on behalf of Anthony Tripodi. Namely, Chapter 220, Article VI, Section 220-62, incorporating Chapter 220, Article VI, Section 220-35 and Chapter 220, Article VI, Section 220-66.

SPECIAL USE PERMITS - CHAPTER 220, ARTICLE VI, SECTION 220-62

The property located at 5993 County Road 32 is located in the Town of Canandaigua, in an AR-2 Agriculture Rural Residential District. In accordance with this Section of the Town Code, the Town Planning Board may approve a Special Use Permit for the Construction Company/Contractor Storage Yard operation within an AR-2 District, provided that the provisions within the subsections are satisfied, as well as the general provisions, enumerated in Chapter 200, Article VI, Section 220-35. Previously submitted as Exhibit #1, was a copy of Section 220-62, the Applicants’ responses to the regulations governing Special Use Permits are set out, in order, respective to their alphabetical categorization in the statute.

- A. The lot size of the property in question is 81.267 acres. The Applicants seek to use approximately 4 acres of the property for the Special Use Permit, which would amount to less than 5% of the property, which clearly falls within the bounds of the 30% requirement of this subsection. Below, the Applicants will also suggest a proposed “limit” to place on the Special Use Permit, in an effort to address some of the concerns that were raised by Board Members at the July 24, 2018 meeting.
- B. The Applicants are respectfully requesting a waiver of the requirements under this subsection stating that a storage yard may not be permitted where there is a dwelling unit on the property. The justification for the requested waiver is as follows: the purpose of not allowing construction company/contractor storage yards to be issued Special Use Permits where a dwelling unit exists is to maintain the sanctity of residential properties. However, the property that is the subject of the foregoing application is also zoned as an AR-2 Agricultural Rural Residential District. The intention of the Applicants is to house vehicles, such as pickup trucks, as well as equipment such as trailers and large building tools. The Applicants do not intend to stockpile or store materials such as stone, gravel, sand or mulch piles, or anything else that would cause a visual disturbance for neighbors or passersby. Any materials that will be stored on the property (e.g. 2x4s, drywall, cinderblocks, etc.) will be stored solely in the Pole Barn – NOT outside and will not be visible by neighbors or from the road. Additionally, the expectation of an Agriculture District is that large equipment, such as a hay baler, previously submitted as Exhibit #2, a Tomato Harvester, previously submitted as Exhibit #3, and a Strip-Till, previously submitted as Exhibit #4, will be utilized within the district and stored on the Residential Agricultural District in which the Farmer typically resides, and also farms. The Farm equipment shown in the exhibits, is significantly more unsightly than the pickup trucks and the much smaller equipment the Applicants intend to store on the property. The Applicants do not intend to use the property in the manner this subsection was intended to protect, which is to prevent large storage areas of waste piles, supply piles, and the like. For the foregoing reasons, the Applicants are respectfully requesting a waiver of the requirements of this subsection.

- C. The Applicants do not intend to stockpile materials as if the property were a storage yard. Any materials on the property will be kept in the Pole Barn, hidden from view. The Pole Barn makes up .28% of the property – less than 1/3 of one acre out of the over 81 acres owned by the Applicants, well below the 15% cap provided for in this subsection.
- D. The Applicants do not intend to do any excavating on the premises. Therefore, this subsection is not relevant to this application.
- E. After extensive work with Charlie May, the owner of Mayflowers Nursery in Canandaigua, he has steered the Applicants away from the Arborvitae trees and directed informed them that the Blue Spruce tree would be a better choice. Mr. May's reasoning for this was as follows: although the Arborvitae are "known for" being durable and resistant, this is actually a major misconception that people have and he finds that deer actually flock to the arborvitae, and inevitably destroy them leaving them looking sparse and dead shortly after planting. As such, Mr. May suggested the Blue Spruce, which the deer have no interest in and which cover a significant amount of ground and also provide lush beautiful coverage.

If all landscaping goes as planned, the Applicants would intend to plant 11 Blue Spruce trees (subject to practicability come time of planting) spaced approximately 15 to 18 feet apart, as depicted on the Sketch Plan previously submitted as Exhibit #5, along the North portion of where the property meets County Road 32, under section labeled "proposed hedge". The trees would have a starting height of approximately 6 feet. Mr. May says that once the trees are established, they should expect to see a growth rate of approximately 20-25% per year, which is approximately 14 to 18 inches from starting height. This should provide for a quick, dense, year-round coverage to act as a barrier to the property that is the subject of this application.

Blue Spruce trees are also beautiful year-round, fragrant, and require virtually no maintenance, so there is no fear that a future homeowner may allow them to fall into disrepair. These trees are extremely durable, drought, deer, insect, and ice and snow resistant. A photo of the Blue Spruce trees is attached as Amended Exhibit #6 for the Board's reference. The trees would be planted in a way that, when coupled with the currently existing trees, would provide full coverage of the area during all four seasons.

Two photos were previously submitted, as Exhibit #7, to show where the trees would line the property, in order to provide a visual barrier to the vehicles on the property, while also providing a beautiful aesthetic to motorists passing by. These trees would butt up against a graded area depicted in previously submitted Exhibit #8. Said graded area, already significantly blocks the location where the vehicles and equipment would be parked. The Applicants believe that this will allow for the most aesthetically pleasing view, while also not allowing any landscaping modifications to cause a visual obstruction to any users of the driveway, current or future.

Mr. May has conveyed that these trees are typically planted in early Fall – usually in September, so if we are able to give him the go-ahead by this time, the hedge can be in within the next few months and it can begin 'establishing' in the best timeframe possible to ensure maximum success and growth.

- F. The Applicants do not intend to perform maintenance on their own vehicles on the property and instead, hires a mechanic to do servicing to the vehicles. Therefore, this subsection is not relevant to the present application.
- G. The Applicants do not intend to possess any fuel/dispensing units or storage tanks. Therefore, this subsection is not relevant to the present application.
- H. The Applicants do not intend to stockpile any aggregate material on the property that is the subject on this application. Therefore, this subsection is not relevant to the present application.
- I. The Applicants are requesting hours of operation between 5:00AM and 9:00PM. The Applicants actually intend to regularly operate their business during the hours of 7:00AM and 6:00PM Monday through Saturday. However, in the construction business, occasions do arise where deadlines need to be met, requiring the Applicants to operate outside of their regular business hours. Rather than result in a violation from one of the neighbors, forcing the Code Enforcement Officer to launch an investigation, resulting in the use of tax payer dollars and unnecessarily utilizing Town efforts and funds, which could be much better spent elsewhere, the Applicants believe that being proactive and requesting the largest possible parameter of hours from the outset is the best possible approach.

The only issue the Applicants foresee with early or late hours of operation would be the occasional and short lived reverse beeping noise of the occasionally used large construction vehicle, and as the neighbor Joyce Marthaller, had suggested idling pickup trucks. However, due to the significant spacing that exists between properties, we believe this small amount of noise will not impact surrounding property owners in a significant way, if at all. Ms. Marthaller actually expressed at the July 24, 2018 meeting that any reverse beeping noise of construction vehicles or any other construction vehicle noise has never caused a disturbance to her – the idling of the pickup trucks was her sole noise complaint. However, the Applicant will reassert, as was expressed at the July meeting, the sound of idling pickup trucks is something that almost every person has encountered in every town, city and village within this state. It has absolutely no relevance to the Special Use Permit application being made and the Applicants strongly maintain that it should bear no impact on the Board in their decision making, as a Special Use Permit is not required for the use, operation or storage of a pickup truck anywhere in New York State, the County of Ontario or the Town of Canandaigua and it would be unjust, unduly burdensome on the Applicants and a complete failure of due process for one woman's extreme sensitivities to impact the Applicants' abilities to successfully seek a Special Use Permit with reasonable parameters. Additionally, the Applicants do believe that once the hedge is erected that the Town is recommending, this will act as not just a visual barrier, but also a sound barrier and may help to quell Ms. Marthaller concerns over idling pickup trucks.

As stated in the original Amended Application, farm vehicles that have similar noises are regularly operated in the region during early morning hours, with no issue. Pickup trucks of all makes, models, and fuel types are also regularly operated in the Town of Canandaigua, with no issue. The Applicants are hyper aware of the potential noise issue that has been brought to the forefront with this Application and they will take every step possible to ensure that any operation of their construction company related vehicles are as quiet as reasonably possible.

- J. The Applicants assert that all lighting is currently in compliance with the Town lighting regulations contained in Section 220-77 and the Applicants do not intend to make any changes to lighting at this time. However, if a time comes that lighting changes do need to be made, the Applicants will go through the appropriate procedures to make such changes. At all times hereafter, the Applicants intend to remain in compliance with the Town lighting regulations.
- K. Currently the Applicants have a crusher run stone driveway. The Applicants contend that this is a dust-free surface. According to the experts, crusher run stone driveways are "easily compacted and held together, debris in the air is minimized". The Applicants believe that current crusher run agriculture driveway is the best solution, creating minimal dust and debris, while also avoiding any environmental impacts to the nearby stream with laying an asphalt drive, as discussed below in Subsection N.
- L. There will be a parking area designated for the parking of company vehicles and also for any potential employee vehicles or any potential visitor's vehicles, neither of which the Applicants are intending to have regularly present on the site. This area will be the area that in front of the Pole Barn, towards the roadside, labeled "storage area" on the map.
- M. The Applicants are respectfully asking for a waiver of this subsection. The reason for this request is that there will not be substantial use of water or sewer facilities on the property at any time. The property would be used primarily for picking up and dropping off vehicles and materials.
- N. Currently, there are two driveways serving the property. One of these driveways would serve the residence, while the other driveway would solely serve the construction company yard. The Applicants are asking for a waiver of this subsection. The reason for this request is as follows: when the Applicants and the Applicants' employees enter the roadway, they enter onto the shoulder first to promote safety of all motorists and pedestrians. Once the Applicants and their employees have deemed that the roadway is safe to enter, the driver will then enter the roadway at an appropriate speed, using caution. Utilizing this approach, the applicants have found no issue, and have also found that this minimizes any dust that the Town is worried could potentially occur. Additionally, if the Applicants were required to lay blacktop for the entire length of the driveway and to grade the driveway, the Applicants believe this may have environmental impacts that they are strongly seeking to avoid. There is a stream on the property not far from the driveway location that flows into Canandaigua Lake. If the Town were to require blacktopping, the chemicals used could possibly seep into the stream, and therefore run into Canandaigua Lake. The Applicants seek to prevent and/or minimize any and all environmental impacts this construction company yard may have. They strongly believes that in order to do this, the driveway should remain non-blacktopped and other precautions should be taken, such as entering the roadway at the appropriate speed, shoulder entry, astute visual observation of oncoming traffic, and the like. The first picture provided in previously submitted Exhibit #9 shows that vehicles headed North on County Road 32 are able to see vehicles leaving the driveway that is the subject of this subsection entering onto the shoulder of the road, extremely clearly, from at least 850 feet away, and likely much farther. The second picture provided in previously submitted Exhibit #9 shows that vehicles headed South on County Road 32 are able to see vehicles leaving the driveway that is the subject of this subsection entering onto the shoulder of the road, extremely clearly from at least 650 feet away. Even the pickup

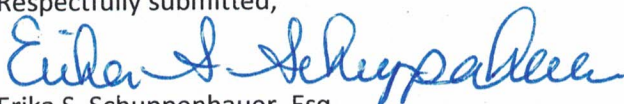
truck can be seen by southbound traffic from 850 feet away, as depicted in the third picture of previously submitted Exhibit #9. So, it seems that the Applicants and their employees entering the shoulder first, then proceeding to enter the roadway, would solve two problems: 1. The issue of having the driveway blacktopped, while also avoiding any possible dust and any possible environmental impacts; and 2. It would provide a significant sightline for oncoming motorists from both directions.

- O. The Applicants do not intend to offer heavy construction equipment and machinery for sale on their property at this time. If this is something the Applicants seek to do in the future, they will make a subsequent application containing this request.
- P. The Applicants will comply with the installation of appropriate highway entry signage as recommended by the Town Highway and Water Superintendent and County Highway Superintendent.
- Q. The Applicants herein submit an Amended Statement of Operations, in accordance with Article VI, Section 220-35, attached hereto.
- R. The Applicants believe their request for a Special Use Permit is in compliance with all New York State Uniform Fire Prevention and Building Code provisions and intend to keep all activities within such compliance throughout the duration of such uses.

The Applicants have been residents of the Town for many years, they are successful members of the community who bring valuable services to the community and to each of the members who reside within it. The Applicants wish wholeheartedly to maintain the sanctity of the Agriculture Rural Residential District within which they reside. In fact, the setting of the location is one of the primary reasons that these Applicants chose to take residence in this district – so that they could raise the chickens and pasture goats as their families have done for a number of years. The Applicants have spent hundreds, likely even thousands of dollars, in an effort to preserve the look of the fields, which are extremely wet and partially swampland, and have proven to be extremely difficult to mow and maintain, so as to keep the property aesthetically pleasing to Town residence and passersby. They appreciate the importance of the safety of motorists on the roadway where their vehicles are entering and they intend to take every effort possible to ensure that the highest levels of caution are used when entering and exiting the roadway. The Applicants intend to use this Special Use Permit mainly for the parking of vehicles and the storage of extremely small amounts of materials, which will be stored in the Pole Barn, which is an enclosed structure.

The Applicants truly believe that this use will not interfere with surrounding properties, with the flow of traffic on the roadway or with the aesthetics of the area, especially once a hedge is erected. The Applicants are very grateful for your thoughtful consideration of this application.

Respectfully submitted,



Erika S. Schuppenhauer, Esq.

Attorney for Applicants Roger Layton and
on behalf of Anthony Tripodi