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April 11, 2022

VIA ELECTRONIC MAIL

Shawna E. Bonshak, Town Planner
Town of Canandaigua
5440 Route 5 and 20 West
Canandaigua, New York 14424

**RE: Application for subdivision approval from the Town of Canandaigua (the
“Town”) Planning Board, CPN 22-030 – Applicant Response Letter**

Dear Shawna:

By application dated April 1, 2022, Cory R. Westbrook (“**Applicant**”) submitted the above-referenced application (the “**Application**”) to the Town of Canandaigua for the above-referenced project (the “**Project**”). Thereafter, the Town provided comments to the Applicant via email dated April 6, 2022 (the “**Town Comments**”).

Enclosed are the Applicant’s responses to the Town Comments. The Town Comments are in bold italicized type, followed by the Applicant’s responses in regular type:

- 1. Proposed Lot 2 does not have the frontage to meet the minimum requirements therefore you need to submit an area variance application (125’ required, 92.92’ shown on the current plan).***

Applicant Response:

The Applicant respectfully disagrees with the conclusion that an area variance is required for Proposed Lot 2. Proposed Lot 2 does not require an area variance for the same reason that the Town is not requiring an area variance on Proposed Lot 1, below: because it maintains sufficient minimum frontage by virtue of its fronting on the private drive (labeled on the Survey Plat as, “Private Right of Way”, and herein, the “**Private Drive/Private Right of Way**”). The frontage on Lot 2 totals 304.48 feet, measured as follows: 39.48 feet on Onnalinda Drive, and then three separate measurements along the Private Drive/Private Right of Way as shown on the Survey Plat: 117.95 feet, 70.07 feet, and 117.95 feet.

As stated in the Application, the Private Drive/Private Right of Way is no different than Onnalinda Drive in both its treatment on the Town Zoning Map (also labeled a private drive) as well as in its physical dimensions and ability to support ingress/egress, two-way

traffic, and emergency vehicles. See Exhibit E in the Application for a professional opinion from the Cheshire Fire Chief on these matters. In fact, the Private Drive/Private Right of Way is a 45-foot-wide right-of-way, while the portion of Onnalinda Drive that currently serves many of the other existing homes along Onnalinda Drive is only 30 feet wide. Thus, the Private Drive/Private Right of Way is even more equipped to handle these issues than Onnalinda Drive, which the Town has deemed sufficient for measuring frontage/lot width.

As you are aware, the Town Code (the “**Code**”) measures minimum frontage by lot width, which is measured per the Town Code “at the street line”:

LOT WIDTH

The horizontal distance across the lot between side lot lines **at the street line** (bolded for emphasis).

(Code §1-17).

The Code defines “street” very broadly:

STREET

Except as provided in Chapter 138, Multichannel Service Providers, a strip of land, **including the entire right-of-way, intended for use as a means of vehicular and pedestrian circulation** (bolded for emphasis). The term also includes highways and roads. Classes of streets are as follows:

A.

COLLECTOR STREET

Those which, in addition to giving access to abutting properties, intercept minor streets and provide routes, carrying considerable volumes of traffic, to community facilities and to major traffic streets, and include streets classified as secondary streets in the Comprehensive Plan, if adopted by the Town Board.

B.

MAJOR TRAFFIC STREETS

Those serving large volumes of comparatively high-speed and long-distance traffic, and include facilities classified as main and secondary highways by the New York State Department of Transportation and include streets classified as secondary streets in the Comprehensive Plan, if adopted by the Town Board.

C.

MINOR STREET

Those used **primarily to provide access to abutting property** (bolded for emphasis).

D.

MARGINAL ACCESS STREETS

Minor streets, parallel and adjacent to major traffic streets, providing access to abutting properties (bolded for emphasis) and control of intersections with the major traffic streets.

E.

PUBLIC STREET

A street dedicated to public use.

F.

RESIDENTIAL STREET

A street between two intersecting streets upon which an R District abuts, or where 50% or more of the abutting street frontage is in predominantly residential use.

(Code § 1-17).

If the Town has treated Onnalinda Drive as a “street” sufficient to meet minimum lot width/frontage requirements, the Town should also recognize the Private Drive/Private Right of Way as sufficient to meet minimum lot width/frontage requirements. In fact, the Town has effectively already made this determination by virtue of: (a) its approval and filing of the 2018 Westbrook Subdivision (as stated above),¹ as well as (b) its approval of frontage of approximately twelve (12) homes on Onnalinda Drive. In each of these prior instances, the Town approved a similar subdivision, and thereby recognized that both Onnalinda Drive and the Private Drive/Private Right of Way are streets by which the Town can measure frontage/lot width.

Further, in the 2018 Westbrook Subdivision, for Lot 2 shown thereon (which Lot would have otherwise been landlocked), the Town did not require a variance. In other words, the Town deemed the Private Drive/Private Right of Way as sufficient to measure lot frontage, and found it to be distinguishable from a driveway. The Town Code defines driveway as: “[a] roadway providing a means of access from a street to a property or off-street parking area. An access way may also be deemed a driveway.” (Code § 1-17).

The Private Drive/Private Right of Way provides access to multiple properties and serves as an extension of Onnalinda Drive—and serves as far more than just a providing of access from a street to a single property. Thus, the Applicant respectfully requests the Town to treat this Application consistent with similarly, if not identically, situated landowners.

Accordingly, not only is the Private Drive/Private Right of Way similar to, and even wider than Onnalinda Drive (a street which the Town previously deemed sufficient for measuring minimum frontage), but the Town Code’s own definition provides that minimum width is measured “at the street line,” with “street” defined very broadly to include entire rights of way, minor streets, and marginal access streets that provide access

¹ If, under Section 220-99 of the Code, the Zoning Officer has made an official determination that the Private Drive/Private Right-of-Way is not sufficient to measure minimum lot width, please provide a written copy.

to abutting property. Here, the Private Drive/Private Right of Way is large enough to support two-way traffic, emergency vehicles, and serves as a means for vehicular and pedestrian circulations, and so therefore could fall into one or more of the definitions of “Street” in the Code in order to measure minimum width/frontage. Further, as stated above, it was previously approved by the Town and recognized as sufficient to meet frontage requirements and to serve as ingress/egress to more than one property.

Accordingly, the Application is fully Code compliant and does not require a variance.

2. ***Proposed Lot 1 fronts on a private drive. You will have to request, of the Planning Board, that they allow this lot to front on a private drive. The attached request of waiver needs to be submitted, with a narrative explaining, why you would like the Planning Board to waive the requirement that the lot front on a public ROW and instead, on a private drive. (Fyi that NYS Town Law enables the Planning Board to waive, if reasonable, any requirements for the approval, approval with modifications or disapproval of subdivisions. Waivers are subject to conditions and may be granted if such requirements or improvements are found NOT to be essential to public health, safety, and general welfare or inappropriate because of inadequacy or lack of connecting facilities adjacent to or in proximity to the subdivision).***

Applicant Response:

The Applicant respectfully disagrees with the conclusion that a waiver from the Planning Board (the “**Waiver**”) is required in order for Proposed Lot 1 to be approved as shown in the Application.

Proposed Lot 1 does not require a Waiver or any form or relief from the Town Code because Proposed Lot 1 maintains sufficient minimum frontage on the Private Drive/Private Right of Way, at exactly 125 feet. Even though it fronts on the Private Drive/Private Right of Way, as stated above and in the Application, the Private Drive/Private Right of Way is no different than Onnalinda Drive in both its treatment on the Town Zoning Map (where Onnalinda Drive is labeled a private drive) as well as in its physical dimensions and ability to support ingress/egress, two-way traffic, and emergency vehicles. See Exhibit E in the Application for a professional opinion from the Cheshire Fire Chief on these matters.

In fact, as stated above, the Private Drive/Private Right of Way is a 45-foot-wide right-of-way, while the portion of Onnalinda Drive that currently serves many of the other existing homes along Onnalinda Drive is only 30 feet wide. Thus, the Private Drive/Private Right of Way is even more equipped to handle these issues than Onnalinda Drive, which the Town has deemed sufficient for measuring frontage/lot width. Further, and as stated above, the Private Drive/Private Right of Way meets the definition of “street” (as

distinguished from “driveway”), and the Town has already approved of the Private Drive/Private Right of Way by virtue of the signing and filing of the 2018 Westbrook Subdivision (see Exhibit G of the Application).

Considering the above, it is the Applicant’s position that the Applicant’s Subdivision Plat, as shown in the Application, is fully Code compliant and does not require a Waiver. Nevertheless, in an effort to be as expeditious as possible, the Applicant has submitted the requested Waiver with a narrative, and otherwise reserves all rights as stated herein and at law.

3. ***The plans are too small to read. We need a full-size set of the concept plans/exhibits in both PDF form and paper.***

Applicant Response:

Venezia Land Surveyors shall provide full-sized sets of plans for your review. Please note that the Site Plan (Exhibit H) has been included for visual, forward-looking purposes only, and the Applicant does not have any intention of developing this land himself.

4. ***Venezia is working with another application with a similar request for a waiver maybe they can help you with the additional submissions.***

Applicant Response:

The Waiver is enclosed.

Sincerely,



Stephen W. Fantuzzo

SWF/enc.

Cc: Cory R. Westbrook
Jennifer A. Jovcevski, Esq.