

**TOWN OF POUGHKEEPSIE  
ZONING BOARD OF APPEALS  
AREA VARIANCE APPLICATION  
AMENDED NARRATIVE**

*6/22/2022*

**Submitted by**

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## **BACKGROUND**

The site, which is the subject of this application, is located at 20-50 Love Road, Town of Poughkeepsie, County of Dutchess and State of New York bearing tax identifier #6261-01-187898 ("the site"). The site is zoned B-H and is comprised of 4.59 vacant acres. The purpose of B-H zoning districts is to provide a variety of shopping and commercial facilities for adjacent residential areas and the community at large where the lot has frontage on a major state highway, such as Dutchess Turnpike and Love Road.

This site was the subject of an application to the NYS DEC under the Brownfield Program. Over many years, applicant undertook much testing and remediation work which culminated with the issuance of a Certificate of Completion (COC) and an Environmental Easement (EE) in favor of the NYS DEC. The COC and EE permit this site to be developed into residential and/or commercial uses.

Love Road is owned by the State of New York and maintained by the Town of Poughkeepsie. The site also borders Dutchess Turnpike, another state highway.

An application has been made to the Planning Board to obtain site plan approval and a special use permit for the construction of an approximate 71,413 SF temperature controlled self-storage building. This is a permitted use provided that the applicant obtains site plan approval and a special use permit (See §210-35(C)). The PB application is pending. On May 19, 2022, the PB issued a Negative Declaration under SEQRA which enables this application to proceed. A public hearing was held by the PB which was adjourned until July 21, 2022 pending application to the ZBA.

## VARIANCES SOUGHT

The site plan shows that the site will be Code compliant with the exception of the (1) front yard setback, (2) side yard setback, (3) wall mounted lights on the front of the building, (4) lighting in excess of 0.2 footcandles which spills over into the Love Road cul-de-sac, (5) a monument sign which applicant wishes to place on another's property and (6) parking. **This Narrative is submitted to amend the pending application to include the request for a variance for parking spaces.**

Section 210-148(D) provides that area variances are permitted where an application is made and approved by the ZBA provided that certain criteria is met to the satisfaction of the ZBA.

The criteria to be reviewed and considered by the ZBA is:

1. Whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by the granting of the area variance.
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
3. Whether the requested variance is substantial.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA but shall not necessarily preclude the granting of the area variance.

Pursuant to Town Code §210-148D and Town Law §267-b, the ZBA must use the balancing test in assessing whether to issue variances. This test requires the ZBA to balance the benefit to the Applicant in granting the variance against the potential detriment to the surrounding properties and to the public health, safety and general welfare. This site has been dormant for decades with Love Road bisecting portions of the site which imposes constraints that limit its development potential. Here, the variances will provide a substantial benefit to the Applicant as it seeks to open its business and operate in an efficient and economic manner. This benefit far outweighs any alleged detriment to the surrounding properties and neighborhood. As a matter of fact, the surrounding properties and neighborhood will greatly benefit from this project in that an eye sore of a site will be transformed into an aesthetically pleasing project.

The Court of Appeals has held that a zoning board of appeals performs a “quasi-judicial” function when it considers applications for variances, and, as such, should act according to its own precedent. Knight v. Amelkin, 68 NY2d 975 (1986). Thus, where a local zoning board is considering an application that is substantially similar to a prior application that had been previously determined, the zoning board is required to provide a rational explanation for reaching a different result.

## PARKING

**Applicant seeks a variance from the Town Code requirement for parking where the Code requires a parking space for each 2,000 SF or 36, in this case, to 21 parking spaces or a variance of 15 spaces.**

*Whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by the granting of the area variance.*

The site is literally surrounded by other commercial uses such as banks, Job Lots, Shop Rite, Verizon, Burger King, liquor stores, a county office building and a health club. Applicant's use of the site will not change the character of the neighborhood or be a detriment to nearby properties.

*Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.*

A strict interpretation of the Code parking requirements is not needed given the nature of Applicant's use of the site. Strict compliance would only result in parking spaces that will never be used.

*Whether the requested variance is substantial.*

The variance is not substantial in that the need for parking spaces for a self-storage facility historically is much less than Code requirements. Applicant has other self-storage facilities and, based upon this personal knowledge, this site would demand parking spaces for only about 10-12 spaces on any given day. In other words, the parking demand at self-storage facilities is sporadic and irregular and does not require the same amount of parking as other retail businesses.

Despite the dimensional extent of the requested variance, substantiality is not measured by mathematical means alone. Instead, it must be assessed by consideration of the facts and circumstances surrounding potential impacts if the variance is granted. Soho Alliance v. New York City Bd. Of Standards and Appeals, 264 AD2d 59 (1<sup>st</sup> Dept 2000). Indeed, the spatial extent of the requested variance is ameliorated by the absence of any tangible, detrimental effect cast by the variance. The requested variance is not substantial when considered in the context of the surrounding area.

*Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.*

The granting of this variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. This building will be “off the beaten track” and not subject to through traffic. The only users of Love Road will be customers of Applicant and those who may wish to access the Dutchess County Rail Trail using an easement donated by Applicant to the County.

*Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA but shall not necessarily preclude the granting of the area variance.*

While one could argue that the alleged difficulty is self-created, a self-created hardship cannot solely be the reason for the denial of a variance. See Byron Associates v. Zoning Board of Appeals of the Town of Mamaroneck, 142 AD2d 643 (2d Dept. 1988) and Springer v. Zoning Board of Appeals of the Town of Somers, 109 AD2d 888 (2d Dept. 1985).

