

## **PURCHASE AGREEMENT**

This **PURCHASE AGREEMENT** (this "**Agreement**") dated as of June 28, 2022 (the "**Effective Date**") is hereby made and entered into by and between:

**DEREK PERSSE** ("Persse");

**DAVID SCHLOSSER** ("Schlosser");

**EMPIRE SYRACUSE LLC**, a New York limited liability company with a business address of 472 South Salina Street, Syracuse, New York, 13202 ("Managing Member") ("Empire Syracuse");

**EMPIRE SYRACUSE MANAGING MEMBER LLC**, a New York limited liability company with a business address of 472 South Salina Street, Syracuse, New York, 13202 ("Managing Member"), and

**EMPIRE SYRACUSE MASTER TENANT LLC**, a New York limited liability company with a business address of 472 South Salina Street, Syracuse, New York 13202 ("Master Tenant", and together with Persse, Schlosser and Empire Syracuse and Managing Member, the "Seller")

and

**BLUE DOVE PROPERTY MANAGEMENT**, a       NJ LLC       with a principal address of 1901 10<sup>th</sup> Avenue Brooklyn NY 11205 ("**Purchaser**").

### **RECITALS:**

1. Empire Syracuse LLC is a New York limited liability company formed to own that certain tract or parcel of land together with all improvements located thereon, with a mailing address of **472 South Salina Street, City of Syracuse, County of Onondaga and State of New York (City Tax Parcel No. 101.-10-05.0)** (collectively, the "**Premises**"), the legal description and survey of the Premises is included as **Exhibit A**; and

2. Empire Syracuse sole owner of the Premises.

3. Empire Syracuse LLC is owned 90% by Managing Member and 10% by Master Tenant.

4. As of January 1, 2018, the Premises were rehabilitated and developed in a manner that qualifies for the federal and State of New York historic rehabilitation tax credit allowed for qualified rehabilitation expenditures incurred in connection with the "certified rehabilitation" of a "certified historic structure" (the "Tax Credits") pursuant to the Sections 47 and 50 of the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law (the "Code"), or N.Y. Tax. Law §606(o) as amended;

5. As part of the Tax Credit rehabilitation, Empire Syracuse LLC “master leased” the Premises over to the Master Tenant in a manner that permitted the Tax Credits for the redevelopment to be allocated to the “Investor Member” of Master Tenant (Enhanced Capital HTC Fund 1 LLC) pursuant to a Master Lease dated March 2, 2017 (the “Master Lease”). The Master Lease must remain in place until December 31, 2022;

6. Master Tenant is owned 1% by Managing Member and 99% by Enhanced Capital HTC Fund 1 LLC (the historic Tax Credit investor member). Master Tenant is managed and controlled 100% by Managing Member subject to certain restrictions in the Amended and Restated Operating Agreement of Master Tenant which were put in place to protect the Master Lease and Tax Credit structure until December 31, 2022, and

7. Schlosser and Persse are the sole members of Managing Member.

8. As of January 1, 2023, membership interest in Master Tenant will automatically “flip” such that Managing Member will own 86.05% of Master Tenant and the Investor Member will own 13.95% of Master Tenant;

9. Beginning on or about December 18, 2022, Investor Member shall have the right to require Master Tenant to redeem its interest in Master Tenant for the lesser of the fair market value of Investor Member’s interest or \$50,000, as further described in Article XIII of the Master Tenant’s operating agreement (this option is structured to comply with the safe harbor provisions set forth by the Internal Revenue Service in Revenue Procedure 2014-12) (the option payment is fully-funded through an operating reserve Investor Member requires to be maintained that fully funds all amounts due to Investor Member through exercise of the option) (“Investor Member Buyout Price”);

10. Managing Member will transfer and assign all of its membership right, title and interest in Empire Syracuse and Master Tenant (the “Membership Interests”) and all rights associated with the Property to Purchaser.

11. At Closing, the following shall occur:

- i. Schlosser and Persse shall convey their membership interests in Empire Syracuse and Managing Member to Purchaser;
- ii. Purchaser’s Operating Agreement shall be amended to provide a Class B membership interest to be held by Persse pursuant to the terms of this Agreement for so long as the Acquisition Note referenced in 2(b)(iii) below is outstanding;
- iii. Seller shall fund an account with the Investor Member Buyout Price which shall be used by Purchaser to fund the Buyout of Investor Member;
- iv. Investor Member shall execute all documents necessary to evidence the buy-out of its interest which documents shall be held in escrow until January 1, 2023;

- v. Purchaser shall assume the Existing Mortgage on the Premises; and
- vi. Purchaser shall execute the Acquisition Note and fund the balance of the Purchase Price to Seller pursuant to this Agreement;
- vii. The Purchaser, through assignment of the Membership Interests, shall take title to the Premises subject to the Master Lease.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants, promises and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are all hereby acknowledged by each of the parties hereto, the parties hereto mutually agree as follows:

### 1. PURCHASE AND SALE

Seller hereby agrees to sell to Purchaser and Purchaser agrees to purchase the Membership Interests as a means to convey all of Seller's interest in the Premises, as more particularly described in **Exhibit "A"** attached hereto, together with all buildings and improvements located thereon and all rights, title and interest of the Seller in and to: (a) any and all easements and right-of-ways appurtenant thereto; (b) any and all land lying in the bed of any streets, roads, highways, alleys or driveways in front of and adjoining said land; (c) any and all strips and gores adjacent to or abutting said land; (d) all fixtures used in connection with and located at the Premises and owned by the Seller; and (e) any miscellaneous property within the Premises not otherwise removed by Seller (collectively, the "**Property**") all as more fully set forth in the RECITALS above, which are incorporated herein by reference.

### 2. PURCHASE PRICE

In consideration for the grants, sales, transfers, assignments, conveyances and deliveries by Seller to Purchaser in accordance with this Agreement, Purchaser shall pay to Seller the sum of **FIFTEEN MILLION, SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$15,750,000.00)** (the "**Purchase Price**"). The Purchase Price shall be payable as follows:

a. A deposit of **FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$500,000.00)** ("**Deposit**") to be delivered to Seller's attorney, Lynn D'Elia Temes & Stanczyk LLC, as escrow agent ("**Escrow Agent**"), upon on or before the Effective Date and Purchaser shall provide Seller with reasonably satisfactory proof of delivery of funds to the Escrow Agent. The Escrow Agent shall hold the Deposit in a non-interest-bearing account in accordance with the terms and conditions of this Agreement. The Deposit shall be released and paid over by the Escrow Agent in accordance with the provisions of the Escrow Agreement, attached hereto.

b. Balance of **\$15,250,000.00** through a combination of cash and financing as follows:

- i. assumption of current Note and Mortgage Obligations due Arbor Commercial Funding I, LLC ("**Arbor**"), currently estimated to be financing in the amount of **NINE MILLION SIX HUNDRED THOUSAND AND 00/100 DOLLAR (\$9,600,000.00)** in accordance with Paragraph 5(a) below; and

- ii. cash in the amount of **TWO MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$2,500,000.00)** together with the Deposit for a total of \$3,000,000.00, subject to Prorations set forth in Paragraph 3 below, all of which shall be due and payable at the Closing by wire transfer pursuant to instructions to be furnished by Seller, which may, in part, be funded from proceeds of the Secondary Loan.
- iii. Note due Persse ("Acquisition Note") in the amount currently estimated to be **THREE MILLION ONE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$3,150,00.00)** in accordance with Paragraph 4(b) below.

### **3. PRORATIONS and COSTS**

The following shall be adjusted and prorated between the parties as of the Closing Date: (a) all real property ad valorem taxes and assessments; (b) publicly read water charges and sewer charges, based on the fiscal period for which assessed; (c); (d) ; (e) security deposits of any tenant; and (f) rent for post-Closing occupancy received prior to Closing. All adjustments shall be made as of 11:59 p.m. the day prior to the date of Closing. Seller shall arrange for final readings of utility services to the date of Closing. Seller shall pay the New York State transfer tax payable by reason of the transfer of the Property, and recording/filing fees for the TP-584. Purchaser shall be responsible for the payment of New York State mortgage tax, if any, and all recording fees. Seller and Purchaser shall each be responsible for their respective legal fees in connection with this Agreement and the transaction contemplated herein.

### **4. FINANCING CONTINGENCY**

- a. Purchaser's obligation to purchase the Property and Seller's obligation to sell the Property are each subject to Purchaser securing financing through an assumption of the existing mortgage on the Premises, the details of which are set forth on **Exhibit B** ("Existing Mortgage"). Purchaser shall be solely liable for any and all costs incurred in satisfying this Financing contingency. Seller's obligation to close shall be further contingent upon receipt and satisfactory review of a release releasing Schlosser and Persse from all liability associated with the Existing Mortgage. Purchaser represents and warrants that it will use good faith and commercially reasonable efforts to obtain consent and assume the Existing Mortgage as required to close title on or before the Closing Date as set forth herein.
- b. Secondary Loan. Purchaser's obligation to purchase the Property shall be subject to Purchaser obtaining the "Supplemental Financing" in the amounts and upon the terms as set forth in the term sheet from Arbor dated December 30, 2021, which is incorporated herein by reference. Purchaser understands that the terms of the Supplemental Financing may change due to changes in the financial market.

- c. Seller's obligation to sell the Property is subject to Purchaser granting Persse, or his assignee ("Preferred Equity Holder"), preferred equity in Purchaser, or such entity as may be appropriate to secure the obligation under Acquisition Note (the "Preferred Equity").
  - i. Preferred Equity shall be paid as follows:
    - 1. Preferred Equity Holder shall have a capital account in the full amount of the Acquisition Note.
    - 2. The Acquisition Note shall be in the amount required pursuant to paragraph 2(b)(iii) above, shall be personally guaranteed as provided in (iii) below, shall bear interest at the rate of six percent (6%) per annum, quarterly interest only payments and due in full four (4) years from closing unless Purchase elects to pay an extension fee of \$25,000.00 at closing, in which case the Acquisition Note shall be due in full five (5) years from closing.
    - 3. Preferred Equity Holder shall have priority rights in all cash distributions to the extent necessary to make payments due under the terms set forth above.
  - ii. Preferred Equity Holder shall be entitled to immediate payment in full of the amount of the Acquisition Note if Purchaser (i) sells, transfers or otherwise conveys the Property or any equity/membership interest in Empire Syracuse, Managing Member or Master Tenant, or (ii) refinances the Arbor obligations or obtains any new debt secured by the Property.
  - iii. Payments due the Preferred Equity Holder and under the Acquisition Note shall be guaranteed by individual members (the "Guarantors") of Purchaser and such members shall be obligated to make capital contribution to Purchaser if Purchaser lacks sufficient liquid assets to make any payment due under the Acquisition Note. The individual Guarantors must be approved by Seller. All obligations hereunder shall be secured by Guarantors' membership interests in Purchaser. Further, in the event Purchaser misses any payment under the Acquisition Note or Guarantors fail to make any duly required capital contribution, Acquisition Note holder shall, without further action, have the immediate right to take over as manager and may take immediate assignment of rights of Purchaser to bring action in Acquisition Note holder's name against Guarantors. Further, in the event Guarantors fail to make capital contribution due to satisfy obligations under the Acquisition Note, Purchaser will immediately assign all rights against Guarantors to Acquisition Note holder, or its assignee, to bring an action in its own name against Guarantors for balance due under the Acquisition Note.

- iv. Guarantors shall indemnify and hold harmless the Preferred Equity Holder for any guaranty of obligations under the Existing Mortgage, including any costs of defense, attorneys' fees, costs and expenses incurred in connection therewith.
- v. At Closing, Preferred Equity Holder shall assume any unpaid liabilities to Schlosser due from Empire Syracuse, Managing Member or Master Tenant.

## 5. DUE DILLIGENCE PERIOD

a. Purchaser's obligation to purchase the Property is further subject to and contingent on the Purchaser's satisfactory inspection of the Property, including any and all financial records, contract or leases impacting or pertaining to the Premises or any part thereof. Purchaser shall provide to Seller a list of all documents that Purchaser wishes to review as part of Purchaser's inspections. Seller shall use good faith and commercially reasonable efforts to provide the requested documents to Purchaser as soon as practicable following such request. Purchaser will complete all inspections on or before the fifteenth (15<sup>th</sup>) day following the Effective Date (the "**Due Diligence Period**"). The above inspections shall be at Purchaser's sole expense and if Purchaser is dissatisfied with the inspections for any reason, the Purchaser may terminate this Agreement by written notice to Seller on or before the end of the Due Diligence Period. Upon receipt of such Notice, the Deposit shall be refunded to the Purchaser, this Agreement shall terminate and neither party shall have any further liability to the other arising from this Agreement.

b. Purchaser and Seller hereby agree to keep confidential any information regarding the Property obtained in the course of conducting the due diligence inspections and agree further not to disclose any such information to government entities or representatives or any other person or entity, other than their respective attorneys and consultants, without the other party's prior written consent, subject to any legal obligation either may have to divulge such information.

c. Purchaser shall accept the Property "as is" and in its condition on the date of Closing subject only to the express provisions of this Agreement.

DISCLAIMER AS TO THE PROPERTY. EXCEPT AS EXPRESSLY SET FORTH HEREIN, IT IS UNDERSTOOD AND AGREED THAT SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

"AS IS" SALE. PURCHASER ACKNOWLEDGES AND AGREES THAT UPON CLOSING SELLER SHALL SELL AND CONVEY TO PURCHASER AND PURCHASER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS", EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT.

## 6. TITLE

a. A copy of the existing Owner's Title Policy, Leasehold Owner's Policy and Loan Policy are attached hereto as **Exhibit C**. Within ten (10) business days after the Effective Date, Purchaser shall request, at Purchaser's expense, that a title company (the "**Title Company**") deliver to Purchaser & Seller a title report for commitment for title insurance (the "**Commitment**") for the issuance of an owner policy of title insurance covering the Property to Purchaser at Closing, along with copies of any and all instruments referred to in the Commitment as an exception or restriction upon the title of Seller, or otherwise affecting, title to the Property (the "**Exceptions Documents**"). Seller shall also, within five (5) business days after the Effective Date, provide to Purchaser any abstract of title or survey and current deed available and in Seller's possession to Purchaser (collectively, the title report and Exception Documents shall be referred to as the "**Title Documents**"). Purchaser shall pay the premium for a standard form of Owner's Policy of Title Insurance (the "**Title Policy**") with liability in the amount of the Purchase Price insuring that fee title to the Property vests in Purchaser subject only to the Permitted Exceptions (defined below) and containing such additional endorsements as the Title Company has made available and Purchaser has elected to obtain at Purchaser's sole expense.

b. Title Review; Approval Period. Purchaser shall have fifteen (15) days from the date of receipt of the Title Documents ("**Title Review Period**") to review the Title Documents and to deliver in writing (which may be accomplished by delivery of title report to Seller's attorney ) to Seller and the Title Company any objection ("**Title Objections**") to anything contained in the Title Documents which impacts or impairs the marketability of the Premises (other than those items shown or referenced on the attached Survey, or the Master Lease, which items shall be deemed to be "**Permitted Exceptions**"). Purchaser's failure to timely notify Seller and Title Company of any Title Objections within the Title Review Period shall constitute approval of the Title Documents. If Title Objections are delivered to Seller and the Title Company by Purchaser, Seller shall have ten (10) business days after receipt of Purchaser's Title Objections to give Purchaser, with respect to each Title Objection, either (i) evidence satisfactory to Purchaser and the Title Company of the removal of the Title Objection or that the Title Objection will be removed or cured on or before the Closing (in which event such cure or removal shall be a condition precedent to Purchaser's obligation to proceed with the Closing); or (ii) written notice that Seller elects not to remove or cure such Title Objection. Seller's failure to timely respond to Purchaser's Title Objections shall be deemed an election by Seller not to remove or cure such Title Objections. If Seller elects (or is deemed to have elected) not to remove or cure any Title Objection, then Purchaser may terminate this Agreement by written notice to Seller within ten (10) days of receipt of Seller's written notice of its election (or deemed election) not to cure the subject Title Objections. If Purchaser timely notifies Seller of its election to terminate this Agreement, this Agreement shall terminate effective as of the date Seller receives (or is deemed to have received) Purchaser's notice, whereupon the full amount of the Deposit shall be returned to Purchaser in accordance with Paragraph 6, and except for any obligations set forth herein that expressly survive the termination of this Agreement, Purchaser shall have no further liability or obligation under this Agreement. If Purchaser fails to timely notify Seller of its election to terminate this Agreement, Purchaser shall be deemed to have elected to waive any Title Objection. The foregoing notwithstanding, any Title Objection based upon a monetary lien such as a judgment, mechanic's lien, assignment of rents or other lien, unless such lien is currently being challenged, which may be satisfied with the payment of money shall automatically be deemed objected to and Seller shall cure such Title Objections prior to or at closing.

c. Conditions of Title. At the Closing, Purchaser, through its acquisition of the Membership Interests, take good, marketable, insurable, and indefeasible, fee simple title to the

Property, free and clear of all liens and subject to no exceptions other than those title exceptions shown on the Survey attached hereto, permitted herein, or as may be approved by Purchaser or deemed approved pursuant to Purchaser's waiver of an objection thereto, and an exception as to taxes limited to taxes for the current year and subsequent years that are not yet due and payable (collectively, the **"Permitted Exceptions"**). Notwithstanding any provision to the contrary contained in this Agreement or any of the documents to be executed in connection herewith or pursuant hereto, none of the Permitted Exceptions shall give rise to any liability of Seller, irrespective of any covenant or warranty of Seller.

## **7. REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller, to induce Purchaser to enter into this Agreement, represents and warrants to Purchaser as follows:

- a. Seller has the requisite power and authority to enter into and consummate the transactions contemplated by this Agreement and the person signing this Agreement on behalf of Seller is authorized to do so.
- b. After the execution of this Agreement and until the Closing or earlier termination of this Agreement, and except for the rights noted in Paragraphs 8(b) above, (a) Seller will continue to operate the Property and will continue to make all necessary repairs to the Property; and (b) Seller will not: (i) grant or consent to any new easements, leases, or other agreements for occupancy of the Property or any part thereof, without the prior written consent of Purchaser, not to be unreasonably withheld or delayed; (ii) enter into or agree to any modification or amendment of any existing lease, easement, license, grant or any other interest or estate affecting the Property or any part thereof without the prior written consent of Purchaser, not to be unreasonably withheld or delayed; or (iii) further encumber or permit any liens against the Property or any part thereof that will not be satisfied or discharged at or before the Closing.
- c. Seller shall disclose any-and-all notices received from any municipality or governmental agency of any violation of building, fire, zoning or health codes, rules or regulations applicable to the Property (a **"Violation"**) that has not been remedied. In the event Seller receives any such notice between the date hereof and the Closing Date, Seller will remedy the Violation, if reasonably able; provided however, that Seller shall have the right to appeal the notice of Violation by any means afforded by applicable statutes provided that such appeal does not result in any delay in Closing. Seller shall be required to remove any violations prior to closing.
- d. The execution and delivery of this Agreement and the performance of its obligations hereunder by Seller will not conflict with any provision of any law or regulation to which Seller is subject or any agreement or instrument to which Seller is a party or by which it is bound or any order or decree applicable to Seller or result in the creation or imposition of any lien on any of Seller's assets or property which would materially and adversely affect the ability of Seller to carry out the terms of this Agreement. Seller has obtained any consent, approval, authorization or order of any court or governmental agency or body required for the execution, delivery or performance by Seller of this Agreement.
- e. Seller has not commenced a voluntary bankruptcy case concerning Seller, to Seller's knowledge, no involuntary bankruptcy proceedings have been commenced against Seller, Seller has



not commenced any other proceedings under any reorganization, arrangement, readjustment of debt, relief of debtors, dissolution, insolvency, or liquidation or similar law of any jurisdiction and no such proceeding has been commenced against Seller.

f. Seller has not made an assignment for the benefit of creditors, admitted in writing its inability to pay its debts generally as they become due, or consented to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof and no assets of Seller have been attached, seized, levied subjected to a writ or distress warrant, or levied upon, or come into the possession of any receiver, trustee, custodian, or assignee for the benefit of creditors.

g. To the best of Seller's knowledge, there is no pending claim, lawsuit, proceeding or other legal, quasi-legal or administrative challenge concerning the Property or the operation thereof or any condition thereon, and no such claim, lawsuit, proceeding or challenge is threatened in writing by any person or entity, except for claims for property damage or personal injury covered by insurance.

h. Neither Seller nor, to the best of Seller's knowledge, any predecessor user or other person has ever generated, stored or disposed of any Hazardous Substance (as hereafter defined) on the Property. To the best of Seller's knowledge, no Release (as hereafter defined) of a Hazardous Substance has occurred at, on, under, above or from the Property in violation of an Environmental Law (as hereafter defined), no conditions exist at the Property that pose a substantial likelihood of a Release, no Hazardous Substances are present on, in, under or above the Property in violation of any Environmental Law and the Property is in compliance with all applicable Environmental Laws. "Hazardous Substance" means, without limitation, any flammable explosive, radon, radioactive material, asbestos, urea formaldehyde foam insulation, polychlorinated byphenyls, oil, petroleum and petroleum products, methane, hazardous material, hazardous waste, hazardous or toxic substance and any other material defined as hazardous in any Environmental Law. "Release" means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, vaporizing, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance). "Environmental Law" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601, et. seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sections 1801, et. seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sections 6901, et. seq.; Articles 15 and 27 of the New York State Environmental Conservation Law, Article 12 of the New York State Navigation Law, or any other federal, state, or local law, regulation, rule, ordinance, bylaw, policy, guideline, procedure, interpretation, decision, order, or directive, whether existing as of the date hereof, relating to the protection of the environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, ordinances, bylaws, policies, guidelines, procedures, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

i. There are no actions, suits, claims, citations, proceedings, arbitrations, investigations, or inquiries, governmental or otherwise, seeking money damages, injunctive relief, remedial action or any other remedy pending or threatened against or affecting the Property relating to: (i) a violation of or non-compliance with, or any matter otherwise arising under, any Environmental Law; (ii) the release or threatened release of any Hazardous Substance; or (iii) the exposure to any Hazardous Substance or any other contaminant or pollutant, noises or vibrations to the extent the same arises from the condition of the Property or Seller's ownership or use of the Property. Seller does not know

or have reason to know of any condition, event or occurrence or other reasonable basis that could give rise to any such action, suit, claim, citation, proceeding, arbitration, investigation or inquiry against or affecting the Property.

j. If any of the representations and warranties set forth in this Section 8 are not true and correct in any material respect as of the date when made, Purchaser may, at its election and as its sole remedy, terminate this Agreement by delivery of written notice to Seller, whereupon the Deposit shall be returned to Purchaser and neither party shall have any further obligation to the other hereunder. If Purchaser proceeds to the Closing and consummates the transaction contemplated by this Agreement with actual knowledge that Seller has breached any of its representations and warranties in this Section provided, Purchaser shall be deemed to have waived its right to object to any such breach. Seller's representations and warranties set forth in this Section 8 shall survive the Closing.

k. All information set forth in the Rent Schedule attached to this Contract is true, complete and accurate; the rentals indicated on such rent roll are currently being collected; the leases delivered for review to the Purchaser are the only leases for the Premises and same are true and complete in all respects and there are no other verbal or written agreements; there are no apartments which are being sublet (except those identified in the said Rent Schedule which accurately sets forth the amount of any sublet rent that is being charged to the prime tenant) no leases contain any unusual provisions and all leases contain clauses fully subordinating all of the tenant's rights to those of any existing and all future mortgages of any kind; no tenant has been granted any option to extend or renew its lease or purchase the property; Seller has not applied any security deposits or collected any rents or occupancy payments more than thirty (30) days in advance; all brokerage commissions and other fees earned in connection with any lease are and at closing will be paid in full

l. The Premises and all spaces within the Premises are legally occupied; a final/permanent Certificate of Occupancy or appropriate certificates, if applicable, for all structures, alterations, extensions, additions and improvements are on file with the appropriate building departments, or agency.

m. None of the covenants, restrictions or agreements to which Purchaser is obligated to close "subject to" (i) are violated by any improvements, or current use of, the Premises (ii) provide for reverter or a right of re-entry or forfeiture in the event of a violation thereof (under which the Purchaser can be cut off, subordinated otherwise disturbed), (iii) impose any monetary obligation upon the owner of the Premises, (iv) contain any restrictions or grant any rights to third parties relating to or which would affect alterations or demolition of any improvements on the Premises, or (v) contain any restrictions with regards to rentals.

n. Seller warrants and represents that the building-wide plumbing (including the sprinkler system, if any), heating and electrical systems and all fixtures and equipment included in this sale shall be in working order, and the roof shall be free of leaks, at the time of closing.

o. Seller represents and warrants that there are no regulatory agreements or other rent control agreements which limit the maximum legal rents which may be permissibly charged at the Property under any local, state or federal law.

## **8. REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser represents and warrants to Seller as of the date hereof and as of the Closing:

a. Purchaser is duly organized, validly existing and in good standing under the laws of the State of \_\_\_\_\_ and has all the requisite power and authority to enter into and carry out this Agreement according to its terms and the person signing this Agreement on behalf of Seller is authorized to do so.

b. This Agreement has been duly authorized, executed and delivered and constitutes a legal and binding obligation of each Purchaser, enforceable in accordance with its terms, except as may be limited by bankruptcy and other laws affecting creditors' rights generally.

#### **9. PROVISIONS WITH RESPECT TO THE CLOSING**

a. Seller shall execute, as required, and deliver to Purchaser at the time of the Closing the following to effectuate the transfer of the Property by Seller to the Purchasing Entity:

- i. Assignment of Membership Interests in Empire Syracuse and Managing Member;
- ii. A Non-Foreign (FIRPTA) Affidavit pursuant to Section 1445 of the Internal Revenue Code;
- iii. A Combined Real Estate Transfer Tax Return / Credit Line Mortgage Certificate and Certification of Exemption from Estimated Personal Income Tax (Form TP-584);
- iv. A Statement of Sale with applicable prorations as of the date of Closing;
- v. A certificate of good standing and a certified copy of the organizational documents of the Seller.
- vi. A resolution signed by the members/managers of Seller authorizing the transactions contemplated by this Agreement;
- vii. Such other affidavits and any and all of the documents as may be reasonably required by the RECITALS, Purchaser's title insurance company providing title insurance to Purchaser or Purchaser's or Seller's attorney;
- viii. Amended and Restated Operating Agreement for Purchaser, or such other entity as necessary, incorporating the terms of Section 4(b) above;
- ix. A management agreement between Purchaser and Derek Persse for property management services. Such services shall be provided to Purchaser for a period of one (1) year from closing at a fee of three percent (3%) of the total rent roll.

b. Purchaser shall execute as required and deliver to Seller at the Closing the items listed above, all necessary funds, and such other documents and certifications which Seller or Purchaser's title company may reasonably request.

c. Transfer of Membership Interest (the “Closing”) shall be held at the Seller’s attorney’s office within thirty days (30) days of approval of Lender for assumption of existing loan, and Secondary Loan on a mutually agreeable date. In the event that the Lender has not approved the assumption of the existing loan or the Secondary loan within ninety (90) days from the date hereof, the Seller may terminate this Agreement. Purchaser may extend time to close for an additional thirty (30) days if Purchaser provides notice of such election prior to the expiration of the original thirty (30) day period and deposits an additional \$250,000 with Escrow Agent to be held subject to the same terms and conditions as the Deposit. Possession of the Property shall be transferred to Purchaser at Closing, subject to the rights of the tenants. Subject to the terms set forth above, the place or date of the Closing may be changed by mutual agreement between the parties or their respective attorneys.

## **10. NOTICES**

All notices, requests and other communications under this Agreement shall be in writing and shall be emailed, or personally delivered or sent by certified mail, return receipt requested, addressed to the parties at their respective addresses shown at the beginning of this Agreement, or at such other address which the parties shall have given notice of as herein provided. All such notices, requests and other communications shall be deemed to have been sufficiently given for all purposes hereof, on the date of personal delivery or the receipt or refusal thereof as the case may be.

Copies of any notice (as an accommodation and not as a condition to its effectiveness) shall likewise be sent by the same means to the attorney for the respective parties, as follows:

Purchaser’s Attorney: Fink & Zelmanovitz PC  
Att: Neil Fink  
4119 Ave T  
Brooklyn NY 11234  
[neil@fzpclaw.com](mailto:neil@fzpclaw.com)

Seller’s Attorney: Lynn D’Elia Temes & Stanczyk LLC  
100 Madison Street, Suite 1905  
Syracuse, New York  
Attn: Timothy Lynn, Esq.  
David C. Temes, Esq.  
[tim@ldts-law.com](mailto:tim@ldts-law.com)  
[david@ldts-law.com](mailto:david@ldts-law.com)

## **11. DAMAGE, DESTRUCTION & CONDEMNATION**

a. If, prior to the Closing, all of or a portion the Property is destroyed or damaged by fire or other casualty, Seller shall promptly notify Purchaser of such fact. Seller shall then either proceed promptly and with due diligence to make the repairs or notify Purchaser that Seller elects not to make such repairs. Purchaser shall have the option, to be exercised by notice to Seller within ten (10) business days after receipt of such notice of the occurrence of such casualty, to either (i) terminate this Agreement, even if Seller has agreed to make the repairs and receive a return of all of the Deposit, or (ii) proceed to Closing with an assignment to Purchaser of all of the rights of Seller to the proceeds, if any, under Seller’s insurance policies covering the Property with respect to such damage or destruction which has not been repaired by Seller and there shall be credited against the Purchase

Price the amount of any deductible and proceeds previously received by Seller. The provisions of this Section 12 shall survive the Closing.

b. Seller represents that it has no knowledge of any proceedings instituted or to be instituted by any municipal, state or federal agency to condemn or acquire the Property or any portion thereof, by eminent domain. In the event Seller is informed of the initiation of any condemnation proceeding, Seller agrees to promptly notify Purchaser in writing, forward to Purchaser copies of any and all notices, maps and documents received in connection therewith and permit Purchaser to participate in such proceedings and/or negotiation. If a condemnation is initiated, then Purchaser, within ten (10) business days of Seller's notification, shall notify Seller that Purchaser either:

- i. Elects to cancel this Agreement, whereupon the Deposit shall be returned to Purchaser and neither party shall have any further obligation to the other hereunder; or
- ii. Elects to accept delivery of the Assignment of Membership Interests and Purchaser shall then pay the full purchase price as set forth herein (less any condemnation award actually received by Seller) or take at Closing an assignment of all Seller's right in and to any condemnation award not yet received by Seller pertaining to the Property so taken, including substitution of Purchaser in any pending condemnation proceeding.

c. Purchaser shall be deemed to have elected option (ii) in paragraph b above if it fails to notify Seller of its election within the time frame stated above.

## **12. SIGNAGE**

Purchaser may, after the conclusion of the Due Diligence period and upon prior written approval of Seller, at Purchaser's sole cost and expense and in compliance with all applicable laws, regulations, rules and ordinances, install and/or erect signs on, at and upon the Property to market the Property for lease. Prior to installing/erecting any sign, Purchaser shall obtain any municipal permits required for the signage.

## **13. DEFAULT**

a. Seller's Remedies. If the sale is not completed as herein provided solely by of any material default of Purchaser, Seller shall be released from any further obligations hereunder. Insofar as it would be extremely impracticable and difficult to estimate the damage and harm which Seller would suffer due to such failure, and insofar as a reasonable estimate of the total net detriment that Seller would suffer from such failure is the amount of the Deposit, Seller shall retain or cause Escrow Agent to deliver the Deposit to Seller, which amount is not intended to be and is not a penalty, and which shall be Seller's sole remedy for damages arising from Purchaser's failure to complete the acquisition.

b. Purchaser's Remedies. If the sale is not completed as herein provided solely by reason of any material default of Seller, Purchaser shall be entitled to terminate this Agreement (by delivering notice to Seller which includes a waiver of any right, title or interest in or to the Property) and obtain the return of the Deposit along with reimbursement for its 3<sup>rd</sup> party expenses or Purchaser may pursue

any and all other remedies available to Purchase at law or in equity, but Purchaser waives any right to seek, claim or obtain punitive damages.

#### 14. MISCELLANEOUS

a. Entire Agreement / Modifications. This Agreement embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by a written agreement of such waiver, modification, amendment, discharge or termination executed by the parties and then only to the extent set forth in such instrument.

b. Applicable Law. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of New York.

c. Captions. The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

d. Binding Effect / Assignment. This Agreement, when executed by both parties, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns. Purchaser shall not have the right to assign its rights and/or obligations under this Agreement without the prior consent of Seller; provided however, that prior to Closing Purchaser shall have the right, upon notice to Seller, to assign its rights and obligations under this Agreement to a business entity to be formed by Purchaser to acquire title to the Property pursuant to this Agreement, such entity to be owned or controlled by the principals of Purchaser.

e. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures delivered by facsimile or electronically via e-mail shall be deemed original signatures for all purposes of this Agreement.

f. Memorandum of Contract. The parties agree that neither this Agreement, nor a memorandum of this Agreement, shall be recorded and any attempted recordation by Purchaser shall be void and constitute a default hereunder.

g. Broker. The parties represent and warrant to each other that there are no brokers, individuals or entities entitled to a commission on this transaction other than Cushman and Wakefield ("Broker"). Seller shall be responsible for and shall pay all commissions and fees owed to Broker according to the terms of separate brokerage agreements. The provisions of this paragraph shall survive the Closing or any cancellation or termination of this Agreement.

h. Full Performance. The acceptance of the Assignment of Membership Interests by Purchaser shall be deemed to be the full performance and discharge of every agreement and obligation on the part of Seller to be performed pursuant to the provisions of this Agreement except those, if any, which are herein specifically stated to survive the closing.

i. No Interpretation Against Drafter. This Agreement has been entered into at arm's length and between persons sophisticated and knowledgeable in business and real estate matters. Accordingly, any rule of law or legal decision that would require interpretation of this Agreement against the party that has drafted it is not applicable and is irrevocably and unconditionally waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purposes of the parties and this Agreement.

j. Attorneys' Fees. If any action, suit, arbitration or other proceeding is instituted to remedy, prevent or obtain relief from a default in the performance by Seller or Purchaser of its obligations under this Agreement, each party shall be responsible for paying its own attorneys' fees.

k. Waivers; Extensions. No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other agreement or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

l. Severability. Any term or provision of this Agreement that is invalid or unenforceable will be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement, or affecting the validity or enforceability of any of the terms or provisions of this Agreement.

RIGHT OF ASSIGNMENT Purchaser shall have the right to assign its right hereunder to entity, without need of consent from Seller.

1031 EXCHANGE Purchaser reserves the right to include this transaction as part of an IRC, Section 1031 tax deferred exchange for the benefit of Purchaser, at no cost, expense or liability to Seller. Seller agrees to execute any and all documents (without charge to Purchaser) as are reasonably necessary in connection therewith. Closing is not contingent upon or subject to the completion of such exchange.

RENT ARREARS Seller shall transfer all arrears to Purchaser at Closing

Estoppel: Seller shall, at its sole cost and expense, obtain and deliver to Purchaser's lender, tenant estoppel certificates and/or subordination agreements for commercial tenants in form reasonably requested by Purchaser's lender, that match the rent roll in all aspects. Seller shall provide Landlord estoppel certificates with respect to the residential tenants in form reasonably requested by the Purchaser's lender, than match the residential rent roll in all respects.

PURCHASER'S RIGHT OF INSPECTION The Purchaser or its agents shall have the right to inspect the property at any time after the execution of this Agreement for purposes of determining the accuracy of the representations herein made or otherwise, provided that Purchaser shall first give the Seller reasonable advance notification of its intention to conduct any such inspection and that such inspection shall not reasonably impede the normal day-to-day business operation of the property

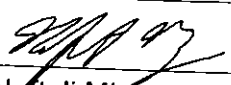
**Remainder of this page has intentionally been left blank.**



IN WITNESS WHEREOF, the parties hereto have executed this Agreement of Purchase & Sale as of the day and year first above written.

**PURCHASER:**

**BLUE DOVE PROPERTY MANAGEMENT**  
A NJ LLC

By:   
Name: **Natali Minzer**  
Title: Member

**SELLER:**

**DEREK PERSSE**

\_\_\_\_\_  
**DAVID SCHLOSSER**

\_\_\_\_\_  
**EMPIRE SYRACUSE MANAGING MEMBER LLC**  
A New York limited liability company

By: \_\_\_\_\_  
Derek C. Persse  
Manager

**EMPIRE SYRACUSE MASTER TENANT LLC**  
A New York limited liability company  
By: Empire Syracuse Managing Member LLC  
Its: Managing Member

By: \_\_\_\_\_  
Derek C. Persse  
Manager

**EXHIBIT A**

**SURVEY (WITH LEGAL DESCRIPTION)**

**EXHIBIT B**

**EXISTING MORTGAGE**

## **EXHIBIT C**

**Existing Owner's Policy, Leasehold Owners Policy and Lender's Policy**

## ESCROW AGREEMENT

\_\_\_\_\_ 2022

Re: Purchase and Sale Agreement dated \_\_\_\_\_ 2022 ("PSA") by and between Blue Dove Property management, a NJ LLC \_\_\_\_\_ ("Purchaser") and Derek Persse, David Schlosser, Empire Syracuse LLC, Empire Syracuse Managing Member LLC, a New York limited liability company, and Empire Syracuse Master Tenant, LLC, a New York limited liability company (collectively "Seller"), and Lynn DELia Temes and Stanczyk LLC ("Escrow Agent").

Escrow Agent acknowledges receipt of the earnest money deposit in the amount of \$500,000.00 (the "Deposit") on \_\_\_\_\_ 2022.

This Escrow Agreement and any action or proceeding brought on or with respect to this Escrow Agreement shall be brought only in a court of competent jurisdiction in Onondaga County, New York State (the "Chosen Courts"). Each party and the Escrow Agent (a) consents to jurisdiction in the Chosen Courts; (b) waives any objection to venue in any of the Chosen Courts; and (c) waives any objection that any of the Chosen Courts is an inconvenient forum. In any action commenced by a party hereto against another party to the Agreement, there shall be no right to a jury trial.

Escrow Agent agrees to maintain the Deposit (inclusive of and any Additional Deposit as defined in the PSA) until one of the following occurs:

- A. The transaction settles according to the terms of the PSA in which case the Deposit shall be delivered to the Seller and credited towards the Purchase Price at settlement; or
- B. Escrow Agent receives a written agreement executed by both the Purchaser and Seller directing disbursement or other disposition of the Deposit; or
- C. If Seller elects to terminate the PSA pursuant to any section of the PSA giving Seller the right to so terminate, which Seller shall include Escrow Agent on any such termination notice, and Purchaser does not deliver written notice to Seller and Escrow Agent within five (5) business days thereafter objecting to or contesting the validity of Seller's election to terminate the PSA and request a refund of the Deposit from Escrow Agent, then Escrow Agent shall release the Deposit to Seller without further written consent from Purchaser; or
- D. Escrow Agent disburses the Deposit in any other manner authorized by an order or judgment of a Chosen Court.

In the event of any litigation or dispute between Purchaser and Seller concerning the release of the Deposit, Escrow Agent's sole responsibility may be met, at Escrow Agent's option, by paying the Deposit into the Chosen Court in which such litigation is pending. Purchaser and Seller agree that, upon Escrow Agent's payment of the Deposit into the Chosen Court, neither Purchaser nor Seller shall have any further right, claim, demand or action against Escrow Agent regarding the release of the Deposit and Purchaser and Seller, jointly and severally, shall indemnify and hold Escrow Agent harmless from any and all such rights, claims, demands or actions. The Escrow Agent shall have no

liability on account of its duties hereunder in the absence of delivery of funds in violation of this agreement, gross negligence or willful misconduct on its part.

In any action or proceeding between Purchaser and Seller and/or between Purchaser and Escrow Agent and/or Seller and Escrow Agent resulting in Escrow Agent being made a party to such action or proceeding in a Chosen Court, Purchaser and Seller jointly and severally agrees to indemnify and hold Escrow Agent harmless from and against any and all liability, loss, cost, damages or expenses (including filing fees, court costs, service of process fees, transcript fees and attorneys' fees, subject to the cost and expense allocations in the paragraph below) incurred by Escrow Agent in such action or proceeding, provided that such Escrow Agent has not violated this Agreement or where action or proceeding does not result in a judgment against Escrow Agent. This Paragraph shall apply to any and all such actions or proceedings against Escrow Agent, including, but not limited to, any alleged act of misrepresentation, fraud, non-disclosure, negligence, violation of any statutory or common law duty, or breach of fiduciary duty by Escrow Agent. The provisions of this Paragraph shall survive settlement and shall not be deemed to have been extinguished by merger with the deed.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK  
SIGNATURE PAGE FOLLOWS]**

WHEREFORE, this Escrow Agreement has been executed as of the date first above written:

**PURCHASER:**

Blue Dove Mamangement LLC

A NJ LLC

By: 

Name: Naftali Minzer

Title: Member

**SELLER:**

**DEREK PERSSE**

DAVID SCHLOSSER

**EMPIRE SYRACUSE MANAGING MEMBER LLC**  
A New York limited liability company

By: \_\_\_\_\_

Derek C. Persse  
Manager

**EMPIRE SYRACUSE MASTER TENANT LLC**  
A New Yor limited liability company  
By: Empire Syracuse Managing Member LLC  
Its: Managing Member

By: \_\_\_\_\_

Derek C. Persse  
Manager

**ESCROW AGENT:**

**LYNN DELIA TEMES & STANCZYK LLC**

By: \_\_\_\_\_



David A. Schlosser, AIA  
Robert J. Seigart, AIA

August 3, 2022

Vera Patterson  
Town of Kent Planning Board  
25 Sybil's Crossing  
Kent Lakes New York 10512

RE: Putnam Nursing & Rehabilitation Center  
Resolution of Extension of Re-Approval  
May 2022

Subject: 90 Day Check-in on 9/8/2022

Please note that as of 8/1/2022, circumstances impacting the start of construction related to the above noted Project have not changed.

By NYS Department of Health regulations, expansion/renovation of Putman Nursing Home is not permitted to move forward until they act on and approve the Project's Certificate of Need. As of today, because of the on-going impact of the pandemic on nursing homes, NYSDOH is still delaying review and approval of applications involving additions and substantial renovations. Unfortunately, the Putnam Project falls into this category and therefore financing and start of construction remain on hold.

We want to emphasize that the Project delay is not of the Owner's choosing or within their control.

Should there be further questions as to the Project status, please advise.

Sincerely,

Schopfer Architects LLP

David A. Schlosser, AIA  
Partner

DAS/sjb

Cc: Elizabeth Axelson,  
Lizer Jozefovic,  
Jeffrey S Battistoni,  
Mark Zafrin  
Deena Kaye, Administrator





**ROHDE, SOYKA  
& ANDREWS**  
Consulting Engineers, P.C.

40 Garden Street  
Poughkeepsie, NY 12601  
Phone: (845) 452-7515 Fax: (845) 452-8335  
E-Mail Address: [jmangarillo@rsaengrs.com](mailto:jmangarillo@rsaengrs.com)

*Wilfred A. Rohde, P.E. • Michael W. Soyka, P.E. (Retired) • John V. Andrews, Jr., P.E.*

# Memorandum

To: Planning Board  
Town of Kent

Attn: Philip Tolmach  
Chairman

From: John V. Andrews, Jr., P.E.

Subject: Erosion Control Plan – Revised  
Submittal

Date: July 7, 2021

Project: Raneri – Hillside Road  
TM # 33.18-1-28, 33.80-1-1,  
44.24-1-3

The following materials were reviewed:

- Letter to Town of Kent Planning Board-Revisions to Plans- Raneri, Hillside Road from John Karell, Jr., P.E., dated June 8, 2021.
- Letter to Town of Kent Planning Board-Response to Comments- Raneri, Hillside Road from John Karell, Jr., P.E., dated October 31, 2019.
- Letter to Mr. Robert Bradley from Town of Kent Highway Department, dated October 23, 2019.
- Memorandum to Jack Karell, Jr. P.E.-Hillside Road Spur from Town of Kent Highway Department, dated June 8, 2021.
- Letter to John Karell, Jr., P.E. from Andy Tse dated April 2, 2019.
- Letter to John Karell, Jr., P.E. from New York Department of Health-Paneri & Realbuto Lots, dated August 22, 2019.
- Drawing-Raneri Sampling Locations, Hillside Road.
- Design Data Sheet-Stormwater-Raneri-Hillside Road.
- Stormwater Pollution Prevention Plan-Hillside Road, prepared by John Karell, Jr., P.E. dated May 31, 2021.
- Drawing S-1-Site & Erosion Control Plan- Raneri Hillside Road, prepared by John Karell, Jr., P.E. dated December 28, 2017, last revised June 5, 2021, scale 1"=30'.
- Drawing S-3-Existing Conditions- Raneri Hillside Road, prepared by John Karell, Jr., P.E. dated December 28, 2017, last revised July 4, 2019, scale 1"=60'.
- Drawing D-1-Health Department Details- Raneri Hillside Road, prepared by John Karell, Jr., P.E. dated December 28, 2017, last revised June 5, 2021, scale 1"=30'.
- Drawing D-2-Erosion Control Details- Raneri Hillside Road, prepared by John Karell, Jr., P.E. dated December 28, 2017, last revised June 5, 2021, scale 1"=30'.
- Drawing D3-Erosion Control & Steep Slope Notes- Raneri Hillside Road, prepared by John Karell, Jr., P.E. dated March 10, 2018 last revised June 5, 2021, scale As Shown.

The project proposes construction of a single-family home with driveway, well and septic. Information provided indicates the lot has Putnam County Health Department approval for septic, but copy has not been provided.

The project received a conditional 280A variance from the ZBA for open development plan on 7/15/2019.

Revised or supplementary comments are shown in **bold**.

The subject Erosion and Sediment Control Plan is not approved. The following comments are provided for the Planning Board's consideration from memos dated 10/5/2018 and August 8, 2019:

2. The proposed project is within the NYCDEP East of Hudson watershed and will disturb more than 5,000 SF of land. A Town of Kent Erosion & Sediment Control Permit is required as well as coverage under NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity, GP-0-15-002.
7. Refer to the Drawings:
  - e. Due to the steepness of the driveway (8-9%) a stabilized swale, series of stabilized discharge points or other method to reduce erosion of the slope from driveway runoff should be provided.
    - i. 1/7/2019 response letter indicates "driveway drainage is under design".
    - ii. **The plans reflect a swale with a single point of discharge. The identified point is not at the low point. The design does not address erosion in the steep sections. Check dams may be required to reduce velocity. The engineer needs to revisit the manner and method of discharge from the swale.**
    - iii. **The swale detail does not match the plan notations. The plan notations call for a "curtain drain with 8" perforated PVC pipe below.**
    - iv. **The provided SWPPP does not clearly address driveway drainage.**
  - h. Provide top and bottom wall elevations.
    - i. 1/7/2019 response letter indicates "wall designs are in process..."
    - ii. **Top and bottom wall elevations are provided for some of the walls but not all. All walls should be indicated with a top and bottom elevation. The guiderail is graphically shown behind the wall in plan view but on top of or in the wall in the detail.**
    - iii. **Walls are indicated on both sides of the driveway. The swale is shown between the face of wall and the driveway. There are two walls shown in a section. The engineer should provide 'to scale' cross-sections at key points to reflect the wall, driveway, swale, and their dimensional relationship.**
  - m. Drawing D-2 Erosion Control Details
    - v. For the retaining wall detail - Additional drainage through the walls (weep holes) may be needed. As the walls are for the driveway, they will have to be designed to carry emergency vehicles. Provide additional calculations. Guiderails should also be provided along portion of driveway.

1. 1/7/2019 response letter indicates “design of drainage for the driveway including guiderails are in process.”
2. **More information should be provided for the retaining wall. Wall construction is unclear. No design calculations or supporting information is provided.**
3. **No details are provided for the culvert crossing under multiple walls. See also the comments hereinbefore above concerning ‘to scale’ cross-sections at key locations.**
12. The applicant is responsible for full payment of actual costs of erosion control inspections. An initial inspection fee deposit of \$1000 is to be paid to the Town in accordance with the Town of Kent Fee Schedule. – **Comment remains applicable.**
13. We defer to the Planning Board’s environmental consultant regarding wetland issues. **It appears that a wetland permit will be required. There does not appear to be any work in the wetland but there are incursions into the wetland buffer area.**
14. We defer to the Planning Board’s planning consultant regarding planning and zoning issues.

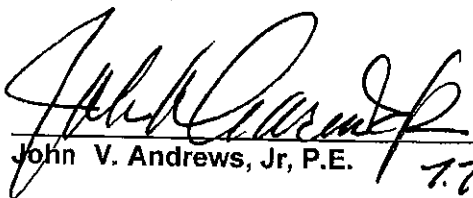
**New Comments:**

1. We defer review of deed and ownership issues to the Planning Board attorney. **It is still not clear that all ownership and access issues have been resolved.**
2. Regarding the miscellaneous, contaminated fill that the driveway will be constructed across, provide details regarding how the exposed contaminated soil will be handled and disposed of. Provide details on how driveway is to be constructed on stable ground, without unsuitable fill and organics beneath it. **Please see comment below concerning contaminated soils. Driveway construction on stable ground without organics needs to be addressed. A comprehensive written scope of work addressing construction and the handling, removal, and disposal of unsuitable soils whether contaminated or other should be provided.**

3. The email from Andy Tse of State Health Department states:  
“For the Raneri lot, the impacted soil, with the semi-volatile organic detections, can be used beneath the pavement or subsurface. The NYSDEC recommends that if there is any remaining impacted soil not be placed below pavement, that it should be properly disposed of offsite.”

There is more area of that fill section with “impacted soils” than just what will be capped beneath the asphalt driveway. How will the rest of the “impacted soils” be handled? Provide a letter from NYSDEC regarding how the rest of the “impacted soils” are to be handled. **The intent of the plan is unclear when it comes to the contaminated soils. The limit of the area containing the contaminated soils should be clearly indicated on the plan set. A detailed scope of work should be provided clearly outlining how the soils are to be treated, which soils are to remain, which soils are to be removed which soils are to be asphalt capped and lastly how soils to remain are to be addressed.**

4. Refer to Notes "Soil Erosion and Sediment Control Notes" on Drawing D-1 and D-2
  - a. #2 & #3 – remove inclusion of out-of-date timeframe of "21 days". **Resolved**
5. Provide a revised Erosion Control Bond Estimate once design of driveway drainage has been completed. Be sure to include the infiltration practices. **The estimate provided should be expanded to include the two(2) diversion swales.**
6. SWPPP – Provide a revision date. **SWPPP has been redated. The soil tests for the infiltration practice should be included in the SWPPP. In addition, minimum calculations establishing the sizing for the infiltration practice shown should be included.**
7. The applicant proposes to extend Hillside Road and further provide some form of an extension down Sunset Road with the driveway serving this project deriving its access off the Hillside Road extension and along the Sunset Road portion. The construction details of the Hillside Road extension are indicated in a simple note describing the desired specifications. This note should be expanded, establishing a minimum paved width, and identifying Town inspection requirements. A cross section would be helpful. Adequate and convenient provisions for a truck turn around should be provided at the terminus of Hillside Road and incorporated into the current design/layout.

  
John V. Andrews, Jr, P.E. 7.7.2021

cc: Planning Board via email  
Bill Walters via email  
18-261-999-157

Bruce Barber via email  
Liz Axelson via email

**JOHN KARELL, JR., P.E.**  
**121 CUSHMAN ROAD**  
**PATTERSON, NEW YORK, 12563**  
845-878-7894 FAX 845 878 4939  
jack4911@yahoo.com

Received  
mo/date/year

AUG 18 2022

Planning Department  
Town of Kent

---

August 16, 2022

To: Town of Kent Planning Board

**Re: REVISIONS TO PLANS, RANERI, HILLSIDE ROAD, KENT (T) TM # 44.24-1-3; 33.18-1-28**

Attached please find revised sheets for the captioned application in accordance with discussions at a recent meeting with the owner, consultants and Highway Superintendent.

At that meeting it was required to submit a more detailed plan of the terminus of Hillside Road at the intersection of the proposed driveway and the paper road known as Sunset Road.

It is hoped that these revisions will satisfy all parties and that this project can be approved.

  
John Karell, Jr., P.E.

**JOHN KARELL, JR., P.E.**

**121 CUSHMAN ROAD**

**PATTERSON, NEW YORK, 12563**

**845-878-7894 FAX 845 878 4939**

**jack4911@yahoo.com**

Received  
mo/date/year

AUG 18 2022

Planning Department  
Town of Kent

August 16, 2022

To: Town of Kent Planning Board

Re: REVISIONS TO PLANS, RANERI, HILLSIDE ROAD, KENT (T) TM # 44.24-1-3; 33.18-1-28

Attached please find revised sheets for the captioned application in accordance with discussions at a recent meeting with the owner, consultants and Highway Superintendent.

At that meeting it was required to submit a more detailed plan of the terminus of Hillside Road at the intersection of the proposed driveway and the paper road known as Sunset Road.

It is hoped that these revisions will satisfy all parties and that this project can be approved.

  
John Karell, Jr., P.E.

## MEMORANDUM

**TO:** Town of Kent Planning Board  
**CC:** Bill Walters  
John Andrews  
Julie Mangarillo  
Bruce Barber  
**FROM:** Liz Axelson, AICP  
**DATE:** July 7, 2021  
**RE:** Raneri Erosion Control Permit & SWPPP; & Single-Family Lot Development Zoning Requirements, Hillside Paper Road, Tax Parcel No. 33.18-1-28 / CPL# 60094.00

I reviewed the materials listed at the end of this memorandum. I also reviewed online mapping resources; and the Code of the Town of Kent, Chapter 77, Zoning. Based on my review I offer the following comments for the Board's consideration:

### Summary

1. The proposal involves construction of a single-family dwelling on an 9.11-acre site consisting of a single lot (see tax parcel noted above) in the R-10 (One Family Residence) zoning district. The proposed improvements for a single-family lot include a driveway to an "Unimproved Road".
2. The lack of frontage for the lot on which the home is proposed; and the lack of an improved road for access thereto pose problems for the lot development, which are partially addressed. Please refer to the zoning comments below, which detail zoning compliance issues; and recommended potential remedies, some of which have been addressed.

### SEQRA

3. The proposed action appears to be a SEQRA Type 2 action as per Part 617, section 617.5 (c)(11); (16); and (17) as it is the construction of a residential structure and related improvements.
4. Depending on the outcome of legal review of access and "paper street" concerns, a remedy may result in the action being an Unlisted action.

### Single-family Lot Development Zoning Requirements

5. I defer to the Planning Board's Engineering and Environmental Consultants about the specifics of the Erosion Control Permit & SWPPP; soils mapping; and soil testing results and related measures. The submitted response memorandum lists sheet S-2, Steep Slope Plan, which was not provided.
6. The Planning Board should continue to consult with the Planning Board's Consulting Attorney about access and frontage concerns noted in the code-related comments below. Please refer to the July 30, 2019 email attached to the prior memorandum, attached hereto, which is a reply to a July 24, 2019 memorandum submitted by the Applicant's Attorney, Joseph Charbonneau. Prior comments requested that further information be submitted to address the points raised in the Board's Attorney's March 27,



- 2019 memorandum. It is noted that a copy of a correction deed document, or parts thereof, was submitted apparently in response to the Planning Board Attorney's comments.
7. Prior comments described the project site as consisting of 3 tax parcels, which were then proposed to be merged by a lot line revision to make up one 9.2-acre site. The submitted copy of a correction deed document, or parts thereof, with pages dated November 3, 2020, lists 3 parcels, including 2 smaller lots and a larger, central parcel. Please refer to the attached maps based on the Putnam County eParcel mapping platform showing the current and prior tax parcel configurations. It appears that the correction deed described above resulted in a merger of the 3 parcels resulting in a single 9.11-acre lot. Address the following:
    - a. Provide the entirety of the correction deed documents, including any map or boundary description.
    - b. The entirety of the resulting lot should be properly shown on all plan sheets.
    - c. Notation must be added to all plan sheets to describe the deed correction action.
    - d. The plan set must be revised to correct survey references and notes and tax parcel numbers.
    - e. While I defer to the Planning Board Attorney, it is my understanding that due to the filing, which apparently resulted in a merger of the 3 former parcels into 1, there may be no need for a lot line revision map or approval.
    - f. If the above comment is correct, then there may be no need to show "lot lines to be removed" on any of the sheets in the plan set.
  8. Prior comments requested more information about the subject parcel, including of the "filed maps relative to this property". Address the following:
    - a. The response letter indicated that a copy of the "official Town Map" has been provided. Clarify why the previously submitted map, entitled Lake Carmel, only shows a portion of the Town.
    - b. The Planning Board should read the informative October 23, 2019 letter to Robert Bradley from the Town of Kent Highway Superintendent. Consultation between the Planning Board, Town Board and Highway Superintendent about how steps A through D at the end of the Highway Superintendent's letter would be implemented and, specifically, the roles of the Applicant and his representatives; and the role of the Town.
    - c. As noted above, continued consultation with the Planning Board Attorney is recommended.
  9. Sheet S-1 now includes a list of the plan sheets in the set. The Topographic Survey of Property sheet should be added to the plan set and referenced in the plans. Include all of the sheets in the plan set.
  10. As per prior comments, a zoning table of lot and bulk requirements was added to the plan set corresponding to the R-10 district as set forth in zoning section 77-16, A. through H. Revise sheet S-1 and the Zoning Schedule on sheet D-3 to demonstrate compliance with all of the requirements and proposed conditions as follows:
    - a. All labeled yard setbacks should include the total proposed lot area, which resulted from the apparent lot merger.
    - b. Label the lot width in the plan view for clarity.
    - c. Prior comments noted that the definitions of "highway frontage" and "street" meant that the large lot on which the home is proposed to be built would not have frontage. See 77-16, C; and that even if the 3 subject lots are merged, the resulting large lot would still not comply with the frontage requirement. However, a "280A variance" was obtained, which must be properly referenced in the notation under the zoning schedule. Please refer to the comment below about access.
    - d. The proposal does not appear to comply with the requirement for a "buildable lot" as referenced in section 77-16, H.; and the supplementary lot requirement in Article IX,





section 22-34.3. Accordingly, a development plan for the improvement of the unimproved street may be required. Continued consultation with the Planning Board Attorney is recommended regarding the ownership of the unimproved street and jurisdiction over review of any proposed development plan. Please refer to the comment below about access.

11. My prior comments noted Zoning section 77-51, Land use and building permits, subsection B.(1) stating no building permit shall be issued for "The construction or alteration of any building upon a lot without **access** to a street or highway except upon application to and approval by the Board of Appeals, as set forth in section 280-a of the Town Law." The Applicant and representatives applied to the Town of Kent Zoning Board of Appeals; and obtained approval on July 15, 2019 of a "280A variance". The decision with conditions is stated in a letter from Chairman Moccio as follows, which should be included as plan notation:  
" ... The Zoning Board of Appeals approves the 280A variance (with access revisions) contingent upon the following:  
The applicant(s) Mr. Raneri et al. comply with revisions requested by, and subsequently submitted to the Town of Kent Zoning Board of appeals on July 15<sup>th</sup> 2019 regarding access to property;  
The applicant(s) Mr. Raneri et al. Satisfy all questions, outstanding issues, and matters of concern brought forth in the letter from planning board attorney Jefferey S. Battistoni Esq., dated March 27<sup>th</sup> 2019;  
The applicant(s) Mr. Raneri et al. receive final approval from Town of Kent Planning Board to proceed with the project;  
No work extending from the decision of the Town of Kent Zoning Board of Appeals shall commence until the above items have been satisfactorily addressed. ..."  
12. Pending consultation with the Town Highway Superintendent and guidance from the Planning Board's Attorney, information about the "paper" streets' ownership, status and disposition is needed to determine how a development plan for the improvement of the unimproved street would be handled. I note the following:
  - a. According to Code Chapter 57, Roads and Driveways, the preparation and review of a road plan is needed.
  - b. It is suggested that such a road plan would be limited to portions of Unimproved Sunset Road and Unimproved Hillside Road to where existing roadway improvements are located.
  - c. This may involve review by the Planning Board and Town Board.13. A clearer note was added to plan sheet S-1 where the proposed asphalt driveway enters onto unimproved Hillside Road. I defer to the Planning Board's Engineering Consultant about the proposed specifications; and the Planning Board's Attorney about jurisdiction over any improvements to the unimproved road.  
14. Prior comments noted that a prior plan set lacked an "Existing Conditions" sheet, and though the current submittal provided existing conditions, the sheet must be updated for the next submittal.  
15. I will confer with the Planning Board Attorney about the above recommended procedural steps.



### Recommendation

16. In order to fully clarify ownership, status, and disposition of the existing “paper” streets, I recommend the following steps:
  - a. Direct the Applicant and their representatives to respond to the Planning Board’s Attorney’s March 27, 2019 memorandum; and
  - b. Review of any other plats or maps pertaining to the site and environs.
17. It is recommended that the Planning Board’s Attorney continue to be consulted about the comments herein.

If you have any questions, please do not hesitate to contact me at my direct line at 845-686-2309, or e-mail at [exelson@CPLteam.com](mailto:exelson@CPLteam.com).

### Enclosures

- July 30, 2019 email from Planning Board Attorney Jeffrey Battistoni;
- Map of current tax parcel configuration; and
- Map of prior tax parcel configuration.

### Materials Reviewed

- Response letter from John Karell, Jr, PE, dated June 8, 2021;
- Copy of Memorandum from Richard Othmer, Town of Kent Highway Department, regarding fill at Hillside Road Spur, dated June 8, 2021;
- Copy of Memorandum from Richard Othmer, Town of Kent Highway Department, regarding legal status of Hillside Road, dated October 23, 2019, with the following attachments:
  - o Raneri Sampling Locations map, preparer not indicated, not dated;
  - o Copy of design data sheet, preparer not indicated, dated 5/3/18 and 5/4/18;
  - o Copy of email from Andy Tse, dated April 2, no year;
  - o Letter from Andy Tse, NYS Department of Health, dated August 22, 2019;
- Copy of Putnam County Recording Page for Jerry Raneri, with Grantor/Mortgagor listed as Raneri/Raneri, with attached correction deed page with a date of 03 November 2020, with attached tax forms;
- Response letter from John Karell, PE, dated March 24, 2019;
- Plans entitled Jerry Raneri, Hillside Road, prepared by John Karell, Jr., PE, dated December 28, 2017, revised as noted below, received June 17, 2021, including the following:
  - o Existing Conditions, revised July 4, 2019; and
  - o Site & Erosion Control Plan, revised June 5, 2021;
  - o Health Department Details, revised June 5, 2021;
  - o Erosion Control Details, revised June 5, 2021;
  - o Erosion Control & Steep Slope Notes, revised June 5, 2021.

### Materials Previously Reviewed for August 9, 2019 Memorandum

- Email from Planning Board Attorney, dated July 30, 2019, responding to Charbonneau memorandum of July 24, 2019;
- Memorandum from Joseph Charbonneau, Attorney regarding deeds, dated July 24, 2019, with attachments;
- Copy of Zoning Board of Appeals Decision letter of July 15, 2019;
- Submittal letter to Zoning Board of Appeals for 280-a Variance from John Karell, PE, dated July 4, 2019;
- Plan sheet entitled Jerry Raneri, Hillside Road, Site & Erosion Control Plan, prepared by John Karell, Jr., PE, dated December 28, 2017, last revised July 4, 2019 (no other plan sheets were submitted);
- Response letter from John Karell, PE, dated March 24, 2019;
- Plans entitled Jerry Raneri, Hillside Road, prepared by John Karell, Jr., PE, dated December 28, 2017, revised March 19, 2019, except as noted below, including the following:
  - o Site & Erosion Control Plan,
  - o Steep Slope Plan;
  - o Health Department Details;
  - o Erosion Control Details; and
  - o Erosion Control & Steep Slope Notes, dated March 10, 2018, revised January 4, 2019.



Materials Previously Reviewed for February 14, 2019 Memorandum

- Response letter from John Karell, PE, dated January 17, 2019;
- Response letter to Bruce Barber from Evan J. Fogle, P.L.S., dated January 21, 2019;
- Response letter from John Karell, P.E., dated January 7, 2019;
- Description of parcel letter from Evan J. Fogle, P.L.S., dated January 7, 2019
- Resolution #100 of 2017 Putnam County Legislature;
- Liber 1487 Page 0360-0364, Putnam County Recording and Endorsement Page, dated October 7, 1999;
- Filed Map number 108a, "Hill & Dale Country Club Inc", dated July 14, 1931;
- Filed Map number 130D, "Fifth Map of Lake Carmel", dated June 2, 1930;
- Filed Map number 130L, "Fourteenth Map of Lake Carmel", dated August 18, 1930;
- Filed Map "Final Subdivision Plat of Gateway Estates", dated March 3, 1974;
- Topographic survey of property, parcels A and B, prepared by Evan J. Fogle, P.L.S., revised January 5, 2019;
- Plans entitled Jerry Ranieri, Hillside Road, prepared by John Karell, Jr., PE, dated December 28, 2017, revised January 4, 2019, except as noted below, including the following:
  - o Site & Erosion Control Plan,
  - o Steep Slope Plan;
  - o Existing Conditions;
  - o Health Department Details;
  - o Erosion Control Details; and
  - o Erosion Control & Steep Slope Notes, dated March 10, 2018, revised January 4, 2019.

Materials Previously Reviewed

- Response letter from John Karell, PE, dated August 30, 2018;
- Letter from Ted Kozlowski, Certified wetland Delineator, dated July 20, 2018;
- Design Data sheet dated May 4, 2018;
- Short EAF Part 1, signed August 30, 2018;
- Letter from the NYSDEC dated August 9, 2018;
- Memorandum from Richard Othmer, Town of Kent Highway Superintendent, dated June 5, 2018;
- Letter from Georgianne Berte, Premier Abstract, LTD, dated August 30, 2018; and
- Plans entitled Jerry Ranieri, Hillside Road, prepared by John Karell, Jr., PE, dated December 28, 2017, except as noted below, including the following:
  - o Site & Erosion Control Plan, revised August 9, 2018;
  - o Steep Slope Plan;
  - o Existing Conditions;
  - o Health Department Details, revised August 9, 2018;
  - o Erosion Control Details, revised August 9, 2018; and
  - o Erosion Control & Steep Slope Notes, dated March 10, 2018.
- Application for Steep Slope & Erosion, signed 2/13/18 with attached affidavits; certifications; agricultural data statement; and Request for Wetland Delineation Confirmation;
- Stormwater Pollution Prevention Plan, prepared by John Karell, Jr. PE, dated March 2, 2018 with attached NOI;
- Short EAF, unsigned, dated March 5, 2018;
- Copy of document entitled "Bargain and Sale Deed with Covenant Against Grantor's Acts" apparently executed on or about June 20, 2002;
- Plans entitled Jerry Ranieri, Hillside Road, prepared by John Karell, Jr., PE, dated December 28, 2017, except as noted below, including the following:
  - o Site & Erosion Control Plan;
  - o Steep Slope Plan;
  - o Existing Conditions;
  - o Health Department Details;
  - o Erosion Control Details; and
  - o Erosion Control & Steep Slope Notes, dated March 10, 2018.



**ROHDE, SOYKA  
& ANDREWS**  
*Consulting Engineers, P.C.*

40 Garden Street  
Poughkeepsie, NY 12601  
Phone: (845) 452-7515 Fax: (845) 452-8335  
E-Mail Address: [jmangarillo@rsaengrs.com](mailto:jmangarillo@rsaengrs.com)

*Wilfred A. Rohde, P.E. • Michael W. Soyka, P.E.(Retired) • John V. Andrews, Jr., P.E.*

# Memorandum

To: Planning Board  
Town of Kent

Attn: Philip Tolmach  
Chairman

From: John V. Andrews, Jr., P.E.

Subject: Erosion Control Plan – **Revised  
Submittal II**

Date: November 29, 2021

Project: Annunziata – Smalley Corners Rd  
TM # 21.-1-11

The following materials were reviewed:

- Response to comments-Annunziata, Smalley's Corners Road from John Karell, Jr., P. E.
- Town of Kent Planning Board Combined Application Form-Annunziata dated November 11, 2021.
- Town of Kent Planning Board Combined Application Form-Annunziata House Construction dated November 15, 2021.
- Short Environmental Assessment Form-Annunziata House Construction dated June 17, 2021.
- Deed-VMS Pizza
- Putnam County Department of Health-Application to Construct a Water Well-Annunziata, dated October 19, 2021.
- Putnam County Department of Health-Construction Permit for Sewage Treatment System-Annunziata dated October 19, 2021.
- Drawing S-1-SSTS Trench Plan- VMS Pizza 1, LLC Smalley's Corner Road prepared by John Karell, Jr. P.E. dated January 7, 2006, last revised November 9, 2021, scale 1" =30'.
- Drawing S-2-Steep Slope & Existing Conditions- VMS Pizza 1, LLC Smalley's Corner Road, prepared by John Karell, Jr. P.E. dated January 7, 2006, last revised November 9, 2021, scale 1" =30'.
- Drawing D-1-Details/Driveway Profile- VMS Pizza 1, LLC Smalley's Corner Road, prepared by John Karell, Jr. P.E. dated January 7, 2006, last revised November 9, 2021, scale 1" =20'.
- Drawing S-4-Site & Erosion Control Plan-VMS Pizza 1, LLC Smalley's Corner Road, prepared by John Karell, Jr. P.E. dated January 7, 2006, last revised November 9, 2021, scale 1" =30'.
- Drawing-Final Subdivision Plat-Upper Nimham Lake Estates-dated January 15, 1987, last revised April 23, 1987, scale 1" = 50'.
- Drawing-Final Subdivision Plat-Upper Nimham Lake Estates-dated January 15, 1987, last revised April 23, 1987, scale 1" = 50'.

The project proposes construction of a single-family home, well, septic and driveway. The lot has pre-existing, non-conforming dimensions for minimum lot width and minimum road frontage. Information provided indicates the lot has Putnam County Health Department approval for well and septic, but copies of current permits have not been provided.

The subject Erosion and Sediment Control Plan is not approved. Revised or supplementary comments are indicated in **bold**. The following comments are provided for the Planning Board's consideration from a memorandum by Julie Mangarillo, P.E., CPESC dated October 7, 2020 and our review memorandum dated August 9, 2021:

1. The proposed project is within the NYCDEP East of Hudson watershed and will disturb more than 5,000 SF of land. A Town of Kent Erosion & Sediment Control Permit is required as well as coverage under NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity, GP-0-20-001. **Comment remains valid.**
2. Refer to Combined Application Form:
  - b. 2<sup>nd</sup> page (13) – Complete response to #9. Provide a copy of the current deed per item #14. Requesting tree survey waiver – Prior correspondence appears to suggest that one was going to be provided. The Town environmental consultant should weigh in on this request. **Engineer confirmed tree survey waiver request. We defer to the Town Environmental Consultant on this matter.**
  - c. 4<sup>th</sup> page (15) – Date of boundary and topo used for base map is noted as January 15, 1987. Provide updated survey and topography. This is particularly important for where the lot meets Smalley Corners Road, the noted "intermittent drainage ditch" and adjacent properties within a minimum of 50 feet of the property line. Also provide information on the other side of Smalley Corners Rd. Based on aerial photos, there do not appear to be any driveways in proximity on the other side of the road, but this is to be confirmed. Updated survey and topography provided. A note has been added concerning the "intermittent drainage ditch" and an easement related thereto. A complete copy of Filed Map 2248A explaining the matter should be provided. **A copy of the filed map has been provided. The map contains no information on the easement referenced on the prior survey. Clarification from the surveyor should be obtained but it appears that may not be possible as the surveyor is retired or semi-retired.**
3. Provide the following information as required by Town Code Chapter 66-6.B.2: **The response letter indicates a Drawing identified as EC-1. No such drawing was provided for our review. This impacts Comment Items 4, 5 and 8 as well.**
  - c. §66-6.B.2.g – Provide "a soil erosion and sedimentation control plan designed utilizing the standards and specifications contained in the most recent version of New York State Standards and Specifications for Erosion and Sediment Control. The design, testing, installation, maintenance, and removal of erosion control measures shall adhere to these standards and any conditions of this chapter and the erosion control permit. This plan shall:"
    - i. [5] Include a timetable and schedule for completion and installation of all elements of the erosion control plan, together with a schedule for completion of the construction and disturbance proposed by the applicant.
    - ii. **[6] Provide an estimate for the cost of implementing all elements of the erosion control plan.**
      1. "Construction Method and Sequence" is provided on drawing EC-1. Provide timeframes for the individual steps.

2. The information was provided in the form of a separate 8 1/2x11 paper. We would strongly recommend that this be added in the form of notes on the plans set. Additionally, a number of notes included on the prior submittal appear to have been eliminated and should be returned to the current plan set for clarity.
4. Provide a note on the drawing stating "Per §66-6.K (1): Within 10 days after installation of all erosion control plan measures, the applicant shall submit to the Building Inspector a letter from the qualified professional who designed the plan for the applicant/landowner stating that all erosion control measures have been constructed and installed in compliance with the approved plan(s)." **Comment remains valid.**
5. Provide an erosion and sediment control only SWPPP in accordance with GP-0-20-001. Provide required information from Part III.B.1 including:
  - b. Part III.B.1.a – "Background information about the scope of the project, including the location, type and size of project;"
    - i. Provide improved Vicinity Map to locate the property. Provide information on adjoining parcels, such as owner name, tax map number and/or street address. **Comment remains valid.**
  - c. Part III.B.1.h – "The dimensions, material specifications, installation details, and operation and maintenance requirements for all erosion and sediment control practices. Include the location and sizing of any temporary sediment basins and structural practices that will be used to divert flows from exposed soils;"
    - ii. Provide details for stabilized construction entrance, stabilized soil stockpiles, concrete truck washout, riprap at outlet of footing & leader drain and for the "intermittent drainage ditch" crossing. Be sure to include these items in the "Erosion and Sediment Control Maintenance Schedule" on drawing EC-1. **Requested details have been provided The Erosion and Sediment Control Maintenance Schedule has been eliminated from the plan and should be restored.**
  - d. Part III.B.1.j – "A description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in the stormwater discharges;"
    - iii. Provide this information. **Comment remains valid.**
  - e. The Applicant and Applicant's design professional are expected to be familiar with the provisions of NYSDEC GP-0-20-001, particularly the sections regarding the maintenance of documentation on-site (Part II.D.2), provisions for modifying the SWPPP (Part III.A.4), trained contractor requirements (Part III.A.6), inspection and maintenance requirements (Part IV) and the procedure for termination of coverage in an MS4 community (Part V.A.4). These requirements are to be referenced in the SWPPP or on the drawings. **Comment remains valid.**
  - f. In accordance with Part III.A.6, provide copies of the Contractor Certifications and copies of training certificates prior to the start of earth-disturbing activities. **Comment remains valid.**

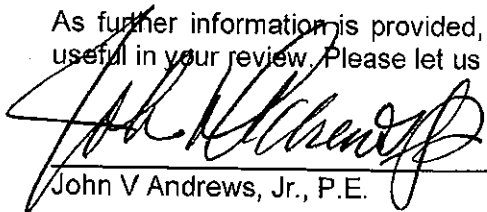
6. Provide a Notice of Intent (NOI) for review. **NOI provided as requested. Revisions are possible until a final SWPPP is accepted.**
7. Provide an MS4 SWPPP Acceptance Form with Sections I and II completed. **Form provided as requested. Form will be completed and returned when the SWPPP is ready for acceptance.**
8. Refer to the Drawings: **The various notes were eliminated rather than updated. The notes should be added back to the plan set and corrected/adjusted as applicable.**
  - b. On S-1 and EC-1: Under "Town of Kent Standards for Private and Common Driveways" update notes to match current standards in the Town Code, Chapter 57, Article II "Driveway Specifications".
  - c. Provide a driveway profile and cross-section details in conformance with Town Code Chapter 57. Profile provided. Does not match site grading plan. **See comments below.**
  - d. Indicate how runoff from the driveway will be handled before it reaches Smalley's Corners Road. Comment remains valid. **See comments below.**
  - e. Provide an as-built of the driveway, including centerline profile, prior to paving and prior to issuance of building permit as required per Town Code Chapter 57, §57-26.A(5)(c). Provide a note on the drawing.
  - f. Per letter from Richard Othmer, Jr, Highway Superintendent, dated April 1, 2019, to the Planning Board regarding final approvals, add a note to the drawing that reads, "The Owner will make modifications to the driveway as required by the Highway Superintendent."
  - h. Provide additional information on the "intermittent drainage ditch" crossing. **See comments below.**
  - i. Drawing EC-1, "General Notes" #2 – The area of disturbance is not consistent with the area of disturbance labeled on drawing S-1.
  - j. The outlet for the footing and leader drain appears to be discharging at the steepest part of the parcel. Relocate outlet to avoid discharging in the steep area. **Comment remains valid.**
9. Retaining walls over 3 feet in height require a building permit per Town Code Chapter 27, §27-8.B(5). If a retaining wall is over 3 feet in height and proposed within a yard setback, a variance may be needed from the ZBA. Consult with the Building Inspector. Comment remains valid. **The Engineer may wish to revisit the grading plan. It appears that the proposed retaining walls may be eliminated through grading. If walls are still proposed the comment should appear in the form of a note on the plan set.**
10. Provide copies of Health Department permits. Comment remains valid. **Putnam County Health Department approvals for the well and the onsite wastewater treatment system were provided as part of this submittal. Considered resolved.**
11. The applicant is responsible for full payment of actual costs of erosion control inspections. An initial inspection fee deposit of \$1000 is to be paid to the Town in accordance with the Town of Kent Fee Schedule. **Comment remains valid.**

12. Provide a written response with future submittals stating how the comments have been addressed.

**New Comments:**

- b. As noted above the grading for the driveway does not match the profile. This creates several issues that need to be resolved to move forward. **The driveway profile has been adjusted per discussion in the field with Mr. Karell, the Highway Superintendent and me.**
- a. The driveway profile includes a portion with a slope of 15%. A waiver from the Planning Board is required. Future submittals should include adequate justification for this waiver. The grading plan does not reflect this driveway slope. All driveway grades should be verified as meeting the requirements of Chapter 57. **The revised driveway includes a portion of 15% requiring a waiver from the Planning Board. We support the request of the Engineer justifying the waiver and recommend that the Planning Board consider granting the requested waiver.**
- b. The driveway does not include provisions for handling runoff at the road intersection. There is a suggested low point well back from the edge of pavement but without adequate drainage provisions this is nothing more than an area for ponding. The Engineer may want to consult the Town Highway Superintendent concerning this matter. **The grading for the driveway needs to be adjusted to reflect a swale, running from the low point to them shoulder of the existing road, allowing the low point to drain to the existing shoulder.**
- c. Cross sections should be provided once the design of the driveway has been settled at the culvert crossing and at the first retaining wall. **A simple cross section has been provided. While it provides some information, it does not address the necessary grading at the culvert. The cross section should be re-drawn at the culvert and detail the end treatment, inverts, and grading through the culvert.**
- d. According to the limited information available there is an easement associated with the intermittent drainage ditch identified on the plans. Justification for the sizing of the proposed culvert should be provided. The driveway culvert should pass a reasonable design storm ( 10-year storm event minimum) without overtopping the driveway or creating off street flooding. **As requested, simple culvert sizing calculations were provided. Further explanation should be provided justifying the c value used in the calculation and explanation of the culvert slope of 3.5%. The plans suggest a slope of approximately 1%.**

As further information is provided, additional comments may be offered. We trust the comments are useful in your review. Please let us know if we can be of additional assistance.

  
John V Andrews, Jr., P.E. 11.29.2021

cc: Planning Board via email  
Richard Othmer, Town Highway Superintendent via email Bruce Barber via email  
Bill Walters via email Liz Axelson via email  
20-261-999-171





**ROHDE, SOYF  
& ANDREWS**  
*Consulting Engineers, Inc.*

*Wilfred A. Rohde, P.E.*

# Memorandum

To: Planning Board  
Town of Kent

From: John V. Andrews, Jr., P

Date: April 11, 2022

The following materials were reviewed:

- Response to Comments  
March 4, 2022
- Affidavit by Owner.
- Putnam County Application
- Putnam County Application  
February 23, 2022.
- Short Environmental Assessment
- Erosion Control Bond E  
dated February 1, 2022.
- MS4 Stormwater Pollution  
Road, dated December
- Drawing S-1 - Site Plan  
P.E., dated October 26,
- Drawing S-2 - Overall Site  
Karell, Jr. P.E. dated October
- Drawing S-3 Alternative  
John Karell, Jr. P.E. dated
- Drawing D-1 - Details,  
P.E. dated October 26,
- Drawing P1 - Profiles,  
P.E. dated October 26,
- Drawing EC-1 - Erosion  
Vernon, prepared by J  
12, 2022, scale - As Shown

The following information  
question/comment email on

- Stormwater Pollution  
White & Tristan Vernon
- Madeline White &  
Sequence of Construction  
P.E. although not not

- **Updated NOI**

The project proposes the construction of single-family residence including a driveway, individual well and onsite wastewater disposal system.

The subject Erosion and Sediment Control Plan is not approved. The following comments are provided for the Planning Board's consideration based on our December 1, 2021, memorandum. New or supplementary comments are shown in **[Bold]**.

**NOTE: We reviewed the updated information. In addition, we have added responses to the Karell inquiry email and identified the responses accordingly when appropriate to do so.**

1. The proposed project is within the NYCDEP East of Hudson watershed and will disturb more than 5,000 SF of land. A Town of Kent Erosion & Sediment Control Permit is required as well as coverage under NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity, GP-0-20-001.
2. The Combined Application lists Tristan Vernon and Madeline White as the applicants. The Application identifies John Valerio as the record Owner. The Putnam County Tax records also identify John Valerio as the parcel Owner. The Affidavit to be Completed by Owner is completed by Tristan Vernon. This inconsistency needs to be cleared up before the application can properly processed. **[Resolved – Fully Executed Affidavit To Be Completed By Owner provided]**
3. The Combined Application indicates that a tree plan waiver is sought. No details and or justification for this waiver is provided. The matter should be addressed in future submittals. **[ Reviewed during the course of a field observation visit. No exception taken. We recommend the Planning Board grant the requested waiver]**
4. A Short Environmental Assessment Form (SEAF) was provided as part of the Application. The following items need to be expanded or corrected to provide a complete record: **[All Items satisfactorily resolved]**
  - Item 2- Putnam County Health Department Approval should be noted. NYSDEC SPDES General Permit coverage as well.
  - Item 13 – The YES response should be explained.
  - Item 13 – The YES response should be expanded and/or clarified.
  - Item 17 – The YES response should be described.
5. We defer to the Planning Board's environmental consultant regarding wetland issues
6. Provide the following information as required by Town Code Chapter 66-6.B.2:
  - a. §66-6.B.2.e – Provide "a soils and slopes map indicating existing soils on the property, based on the most recent United States Department of Agriculture (USDA) Soil Conservation Service soil survey for Putnam County. Generalized slope areas for slopes 0% to 15%; 15% to 25%; and greater than 25% shall be delineated. This map shall be drawn on a topographic base map with the date and source of the soils and steep slope data noted on said map." ( We note that

the soil type is included within the Notes on Sheet D-1 but the origin of the information and the extent of the soil types on site is not provided.)**[Note added on Sheet S-1 concerning soils – Slope Table provided – Information provided is inconsistent and not clearly indicated. RESPONSE – The slope information provided on our plan set is illegible- both the 0-15 & 15-25 ranges are shown the same. The slope mapping does not address the access drive. ]**

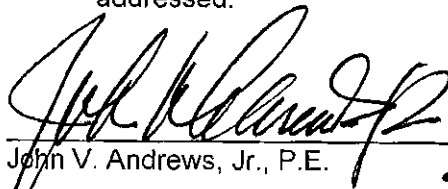
- b. §66-6.B.2.f – Provide “the depth to bedrock and depth to water table shall be identified in all areas of disturbance” (Except for applications involving one single-family dwelling). **[ Deep test info sufficient for this purpose]**
- c. §66-6.B.2.g – Provide “a soil erosion and sedimentation control plan designed utilizing the standards and specifications contained in the most recent version of New York State Standards and Specifications for Erosion and Sediment Control. The design, testing, installation, maintenance, and removal of erosion control measures shall adhere to these standards and any conditions of this chapter and the erosion control permit. This plan shall:”
  - i. [5] Include a timetable and schedule for completion and installation of all elements of the erosion control plan, together with a schedule for completion of the construction and disturbance proposed by the applicant. **[General schedule provided does not provide sufficient information (defined time frames) RESPONSE – The Construction Sequence submitted as part of the most recent submission is sufficient. We respectfully request that this sequence be incorporated into the SWPPP and specifically added as complete note on Sheet EC-1 ]**
  - ii. [6] Provide an estimate for the cost of implementing all elements of the erosion control plan. **[ Cost estimate provided. We have not evaluated the information submitted as the plans remain somewhat unclear.]**
- d. §66-6.B.2.h – Provide “the details of any surface or subsurface drainage systems proposed to be installed, including special erosion control measures designed to provide for proper surface or subsurface drainage, both during the performance of the work and after its completion.” **[limited facilities proposed – considered resolved]**
- e. §66-6.B.2.i – Provide “Any special reports deemed necessary by the Planning Board Engineer to evaluate the application, including but not limited to detailed soils, geologic or hydrologic studies.” **[ No such reports appear required at this time – It should be noted that no written SWPPP was provided. SWPPP provided as part of this most recent submittal. See comment above regrading modification]**
- 7. §66-6.B.3 – Provide “a written narrative explaining the nature of the proposal, including any future development anticipated for the property and whether alternative locations exist for the proposed activity” (except for single-family dwellings). **[No written SWPPP provided - SWPPP provided as part of this most recent submittal. Comment resolved]**

8. §66-6.B.4 – "Provide for compliance with the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s)."
9. §66-6.B.5 – "Provide for compliance with the New York City Department of Environmental Protection regulations for stormwater discharges. **[Response noted]**
10. §66-6.B.6 – Provide "copies of all applications, permits and approvals required by any other local, state or federal agency associated with the construction and site work/disturbance proposed by the applicant." **[Putnam County Department of Health Approval for the well and onsite wastewater disposal system provided]**
11. Provide an erosion and sediment control only SWPPP in accordance with GP-0-20-001. Provide required information from Part III.B.1 including: **[No written SWPPP provided. SWPPP provided as part of this most recent submittal. Considered resolved]**
  - a. Part III.B.1.a – "Background information about the scope of the project, including the location, type and size of project;"
  - b. Part III.B.1.b – "A site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map shall show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s), floodplain/floodway boundaries; wetlands and drainage patterns that could be affected by the construction activity; existing and final contours; locations of different soil types with boundaries; material, waste, borrow or equipment storage areas located on adjacent properties; and location(s) of the stormwater discharge(s);"
  - c. Part III.B.1.c – "A description of the soil(s) present at the site, including an identification of the Hydrologic Soil Group (HSG);"
  - d. Part III.B.1.d – "A construction phasing plan and sequence of operations describing the intended order of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance;"
  - e. Part III.B.1.e – "A description of the minimum erosion and sediment control practices to be installed or implemented for each construction activity that will result in soil disturbance. Include a schedule that identifies the timing of initial placement or implementation of each erosion and sediment control practice and the minimum time frames that each practice should remain in place or be implemented;"
  - f. Part III.B.1.f – "A temporary and permanent soil stabilization plan that meets the requirements of this general permit and the technical standard, New York State Standards and Specifications for Erosion and Sediment Control, dated November 2016, for each stage of the project, including initial land clearing and grubbing to project completion and achievement of final stabilization;"
  - g. Part III.B.1.h – "The dimensions, material specifications, installation details, and operation and maintenance requirements for all erosion and sediment control practices. Include the location and sizing of any temporary sediment basins and structural practices that will be used to divert flows from exposed soils;"

- h. Part III.B.1.i – “A maintenance inspection schedule for the contractor(s) identified in Part III.A.6. of this permit, to ensure continuous and effective operation of the erosion and sediment control practices. The maintenance inspection schedule shall be in accordance with the requirements in the technical standard, New York State Standards and Specifications for Erosion and Sediment Control, dated November 2016;”(Note: **On Plan set should be in written SWPPP as well**)
  - i. Part III.B.1.j – “A description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in the stormwater discharges;”
  - j. Part III.B.1.l – “Identification of any elements of the design that are not in conformance with the requirements in the technical standard, New York State Standards and Specifications for Erosion and Sediment Control, dated November 2016. Include the reason for the deviation or alternative design and provide information which demonstrates that the deviation or alternative design is equivalent to the technical standards.”
  - k. The Applicant and Applicant's design professional are expected to be familiar with the provisions of NYSDEC GP-0-20-001, particularly the sections regarding the maintenance of documentation on-site (Part II.D.2), provisions for modifying the SWPPP (Part III.A.4), trained contractor requirements (Part III.A.6), inspection and maintenance requirements (Part IV) and the procedure for termination of coverage in an MS4 community (Part V.A.4). These requirements are to be referenced in the SWPPP.
  - l. In accordance with Part III.A.6, provide copies of the Contractor Certifications and copies of training certificates prior to the start of earth-disturbing activities.
  - m. Please note, per GP-0-20-001, a SWPPP must be prepared by qualified professional, including a licensed Professional Engineer, Registered Landscape Architect or other NYSDEC endorsed individual(s).
  - n. Please note – With issuance of NYSDEC General Permit GP-0-15-002 and continuing in GP-0-20-001, per Part I.B.1.b ‘Soil Stabilization’ “In areas where soil disturbance activity has temporarily or permanently ceased...” and “...is located in one of the watersheds listed in Appendix C [Entire New York City Watershed located east of the Hudson River] the *application of soil stabilization measures must be initiated by the end of the next business day and completed within seven (7) days from the date the current soil disturbance activity ceased...*” (emphasis added).**[Add as note to plan set]**
12. SWPPP – GP-0-20-001 Part 1.F.8 - Provide documentation that the project complies with the requirements for historic or archeological sensitive locations. **[ SEAF indicates that the project is located in an are designated as sensitive for archeological sites. Further documentation is required]**
13. Provide a draft eNotice of Intent (eNOI) for review. **[ Old style NOI provided – No exception taken Note: Updated NOI provided – It is not the currently required eNOI but we take no exception as previously noted. When submittal to the NYSDEC is appropriate an eNOI is required]**

14. Provide an MS4 SWPPP Acceptance Form with Sections I and II completed. **[MS4 SWPPP Acceptance form provided. The form will be completed and signed when appropriate]**
15. Refer to the Drawings:
  - a. Sheet S-1- The proposed driveway runs outside the access easement. Per Filed Map 2886, Parcel 2 appears to have no rights outside the indicated Access Easement. The Applicant must demonstrate the ability to construct the driveway as shown. **[ Sketch provided which demonstrates that the driveway can be constructed within the existing access agreement]**
  - b. The construction required to render the driveway usable is unclear. Does the driveway need to be improved from Horse Pound Road to the house site or just the limited section into the property? There are two (2) stabilized construction entrances indicated. Are both to be constructed for this project? The extent of work associated with this proposal should be clearly indicated on both the plan and profile. A note should be added regarding the removal and restoration of driveway when the construction entrance is no longer needed. A note should be added regarding removal of any sediment that is tracked onto the road. A note should be added covering the installation of the paved apron connecting to Horse Pound Road. **[The driveway needs to be reviewed and comply with Chapter 57,§57-26. The driveway is to be paved for a distance of 30 feet from the road intersection. Regardless of who owns the property it is a shared driveway and must meet all width requirements. The driveway is in excess of 500. Pull offs are required. See also Item a above.**
  - c. Per Filed Map 2886, the driveway appears to be a common driveway shared by this Parcel and the adjoining parcel. If one does not already exist, it would appear that a cross access and maintenance agreement suitable in form and content to the Planning Board Attorney should be prepared and filed in the office of the county Clerk as part of this action. **[Engineer's response noted. The response does not address the issue. The right of way is for ingress and egress only. A Cross Access and Maintenance easement between this property owner and the adjacent property owner, which address all construction and operation of the driveway, is required. The easement will need to be suitable in form and content to the Planning Board Attorney]**
  - d. Sheet EC-1 - Overall the notes are difficult to read. Certain of the notes are not consistent with current standards. A large portion of the notes on the left side of the page appear to be folded or otherwise compressed rendering sections incomplete/illegible. **[Improved – Considered resolved]**
  - e. All time frames set forth in the notes should be checked for consistency with current standards and conditions of the General Stormwater Permit.
  - f. The Special Notes refer to a written SWPPP. No written SWPPP has been provided **[ Same – No written SWPPP provided]**
  - g. Under the "Town of Kent Planning Board - Steep Slope and Erosion Control Notes," Note A should read 5000 SF not one (1) acre **[Note appears to have been omitted rather than corrected]**

- h. Under the "Town of Kent Planning Board - Steep Slope and Erosion Control Notes," under C, replace "GP-02-01" with the current "GP-0-20-001." **[Note appears to have been omitted rather than corrected]**
  - i. The notes under Standards for Private and Common Driveways are at variance with Town Code Section 57-26 and should be revised accordingly **[Comment remains valid. Notes are still at variance with the applicable code section. RESPONSE - We printed out § 57-26 Driveway Access from the Town Code and attach it hereto. We leave it to the engineer to review the material and adjust the notes as appropriate. ]**
16. The applicant is responsible for full payment of actual costs of erosion control inspections. An initial inspection fee deposit of \$1000 is to be paid to the Town in accordance with the Town of Kent Fee Schedule.
17. Per §66-6.F, the public hearing can be waived as this is a minor project for an addition to a single-family house. We defer to the pleasure of the Planning Board in this regard. The Application in its current form is not ready for the scheduling of a public hearing should the Board chose to conduct a public hearing. **[The Application is ready for a public hearing should the Planning Board determine that a public hearing is required. The Engineer for the Applicant has requested in writing that the Planning Board waive the public hearing]**
18. Provide a written response with future submittals stating how the comments have been addressed.

  
John V. Andrews, Jr., P.E. 4.11.2022

Attachment – Town Code Section 57-26

cc: Planning Board via email  
Bill Walters via email  
21-261-999-177

Bruce Barber via email  
Liz Axelson via email

Town of Kent, NY  
Wednesday, March 30, 2022

## Chapter 57. Roads and Driveways

### Article II. Driveway Specifications

#### § 57-26. Driveway access.

- A. The following regulations shall apply to development of private and common driveways in the Town of Kent. The following standards are deemed to be the minimum necessary to assure the orderly development of driveways in the Town to provide for safe all-weather access for passenger, emergency and general-use vehicles. In areas where topography is such as to make it impractical to conform to the following specifications on driveway grades, the Planning Board may, upon the written recommendation of the Planning Board Engineer, set aside these specifications and have the Planning Board Engineer establish acceptable grade percentages for the area under development.
- (1) The driveway for any lot shall provide vehicular access to within 150 feet of the exterior wall of each habitable structure.
  - (2) For lots legally in existence as of the date of adoption of this chapter, for which no driveway permit has been issued, driveways proposed to serve three or fewer single-family residential lots shall meet the following standards:
    - (a) Finished grades for all parts of any proposed driveway shall not exceed 10% and shall not be less than 1 1/2% nor exceed 5% within 30 feet of the intersection of the driveway with the Town road or private road and shall be paved for a distance of 30 feet from said intersection. The driveway shall slope down and away from the Town road or private road in this thirty-foot-long segment, except in the case of a driveway with a culvert (Figures 15 and 25<sup>[1]</sup>). The slope shall not exceed 3% within 30 feet of a garage or parking pad. The Planning Board may grant a waiver for a driveway slope of up to 15% upon a showing by the applicant of practical difficulty in meeting these standards. The Board shall seek the input of the Town Highway Superintendent and Fire Department in such cases.
      - [1] *Editor's Note: Figures 15 and 25 are included at the end of this chapter.*
    - (b) Any section of a proposed driveway that exceeds 10% finished grade shall be paved, except that driveways intersecting unpaved roads of any type shall not be paved within 30 feet of the intersection with the road as shown in Figure 25. The following apron shall be installed:
      - [1] Filter cloth shall be placed over the eight-inch gravel base.
      - [2] A six-inch layer of one-inch to four-inch stone shall be placed over the filter cloth.
      - [3] The dimensions of this apron shall be the width of the driveway (12 feet minimum) plus an additional five feet on each side of the driveway.
      - [4] The edges of this apron shall be flush with the edges of the driveway and the road.
  - (3) For lots created after the date of adoption of this chapter, driveways proposed to serve three or fewer single-family residential lots shall meet the following standards:



- (a) Finished grades for the first 200 feet of any proposed driveway shall not exceed 10% and shall not be less than 1 1/2% nor exceed 5% within 30 feet of the intersection of the driveway with the Town road or private road and shall be paved for a distance of 30 feet from said intersection. The driveway shall slope down and away from the Town road or private road in this thirty-foot-long segment, except in the case of a driveway with a culvert (Figures 15 and 25<sup>[2]</sup>). The slope shall not exceed 3% within 30 feet of a garage or parking pad. Finished grades for the remainder of the driveway shall not exceed 10%, except that the Planning Board may grant a waiver for a driveway slope of up to 15% upon a showing by the applicant of practical difficulty in meeting these standards. The Board shall seek the input of the Town Highway Superintendent and Fire Department in such cases.

[2] *Editor's Note: Figures 15 and 25 are included at the end of this chapter.*

- (b) Any section of a proposed driveway that exceeds 10% finished grade shall be paved, except that driveways intersecting unpaved roads of any type shall not be paved within 30 feet of the intersection with the road as shown in Figure 25. The following apron shall be installed:

- [1] Filter cloth shall be placed over the eight-inch gravel base.

- [2] A six-inch layer of one-inch to four-inch stone shall be placed over the filter cloth.

- [3] The dimensions of this apron shall be the width of the driveway (12 feet minimum) plus an additional five feet on each side of the driveway.

- [4] The edges of this apron shall be flush with the edges of the driveway and the road.

- (4) For all driveways:

- (a) See Figure 25 for driveway intersections with a Town road.<sup>[3]</sup>

[3] *Editor's Note: Figure 25 is included at the end of this chapter.*

- (b) The minimum driveway width shall not be less than 16 feet with a travel-way width of not less than 12 feet and a shoulder width of not less than two feet on each side. For driveways in excess of 500 feet, the Planning Board shall require pull-offs to provide safe passage for users of the driveway and shall require designation of areas along the driveway for snow storage. Passing turnouts shall be placed at not more than five-hundred-foot intervals along the length of the driveway. The passing turnouts shall have an additional four feet of shoulder width. The minimum dimension of a turnout shall be 20 feet in width and 50 feet in length.
- (c) Shoulders shall be topsoiled, seeded with an appropriate grass or grass blend, and mulched.
- (d) All roots and stumps shall be grubbed, excavated and removed from the travel way and shoulders.
- (e) All unsuitable and unstable materials shall be completely excavated and removed, and all rocks or boulders larger than six inches across shall be excavated to at least eight inches below finished grade.
- (f) The foundation course of the driveway shall be a minimum of eight inches of clean, run-of-bank gravel.
- (g) The final course of the driveway shall be a minimum of four inches of Item 4 or processed gravel. Pavement, where required, shall be a minimum of three inches compacted thickness.
- (h) The paved and unpaved travel way, passing turnouts, shoulders and flow line of drainage ditches and swales shall be maintained in satisfactory condition to assure safe and continuous year-round access for all vehicles.

- (i) Trees and shrubs shall be trimmed and maintained so as not to hang into or obstruct the travel way, passing turnouts and shoulders. Overhead branches shall be trimmed and maintained to a height of not less than 13 feet six inches.
- (j) Common driveways. Private multiple-use driveways shall be classified as common driveways and shall be constructed in accordance with the standards as specified herein. All lots and properties served by a common driveway shall have easements and cross-easements for ingress and egress and a maintenance agreement, signed and recorded in the Putnam County Clerk's office, defining the rights and responsibilities of the lot and property owners and approved by the Planning Board, prohibiting parking on the common driveway easement and incorporating other standards acceptable to the Planning Board, its attorneys and the Fire Department. A maximum of three single-family residential lots can be served by a common driveway.

(5) Procedure:

- (a) A development plan for the driveway, together with driveway profiles and other information as may be required by the Town Building Inspector or Town Highway Superintendent to show compliance with this chapter, shall accompany an application for a steep slope and erosion control permit, and/or a highway work permit, prior to an application for a building permit being made.
  - (b) The development plan shall use as a base map an accurate boundary and topographic survey of the property depicting all existing improvements and grades prepared by a New York State licensed land surveyor. The plan shall depict all proposed improvements and shall be prepared by one of the following professionals licensed by the State of New York: a professional engineer, a landscape architect, or an architect. The development plan and profiles shall show conformity of the proposed driveway construction with these standards unless otherwise waived by the Planning Board.
  - (c) Upon completion of grading and placement of subbase material, and prior to final paving, the applicant's New York State licensed land surveyor shall provide to the Town an as-built survey depicting the actual grades and dimensions to which the driveway has been constructed. Such as-built survey shall accompany the application for issuance of a building permit for construction of on-site improvements. Upon completion of construction, the applicant's professional engineer shall certify to the Town that the driveway has been constructed in accordance with the approved plans and with these specifications.
- B. Driveway access from private roads. Access from private roads shall be deemed acceptable only if such roads are designed and improved in accordance with these regulations.



**ROHDE, SOYKA  
& ANDREWS**  
*Consulting Engineers, P.C.*

40 Garden Street  
Poughkeepsie, NY 12601  
Phone: (845) 452-7515 Fax: (845) 452-8335  
E-Mail Address: [jandrews@rsaengrs.com](mailto:jandrews@rsaengrs.com)

*Wilfred A. Rohde, P.E. • Michael W. Soyka, P.E. (Retired) • John V. Andrews, Jr., P.E.*

# Memorandum

To: Planning Board  
Town of Kent

Attn: Philip Tolmach  
Chairman

From: John V. Andrews, Jr., P.E.

Subject: Field Observation Visit – Close out  
Review

Date: August 11, 2022

Project: Sun ECP Westwood Drive  
TM # 19.12-1-20 & 19.12-1-23

The project involved construction of a single-family home with driveway, detached garage, individual septic and well. The applicant provided documentation that the parcel received an area variance from the ZBA in May 2019 and applied for the variance to be renewed in May 2020 with the renewal granted. Additionally, the project is within the NYCDEP East of Hudson watershed and disturbed more than 5,000 SF of land. A Town of Kent Erosion & Sediment Control Permit was issued and coverage under NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity, GP-0-20-001 was established.

The following comments are offered for the consideration by the Planning Board:

1. Field Observation Visit:

A field observation visit was made together with Bruce Barber, the Town environmental consultant on Wednesday, August 3, 2022. The site appears to have been constructed in conformance with the approved plan. The site is not yet fully stabilized. Grass has been planted. Germination has not yet reached acceptable levels. Given the lack of rain, this is understandable. The Applicant is making efforts to water, but germination levels remain low. It might be prudent to overseed again in the fall to ensure improved germination in the spring.

Remnants of silt fence exist at the limits of disturbance and the installed catch basin is still protected with filter fabric. The silt fence and the fabric can be removed and the area, raked seeded and mulched.

The Highway Superintendent identified certain improvements to be undertaken during construction. It is not clear that these items have been satisfactorily addressed. The Highway Superintendent has been Contacted via email dated August 11, 2022 for his review and input on these items. His requirements and comments on these matters will need to be resolved before the permit can be closed out.

The project does not meet the criteria for project close out. The disturbed areas are not considered fully stabilized in accordance with NYSDEC SPDES General Permit for

Stormwater Discharges from Construction Activity Permit No. GP-0-20-001. Germination and grass cover do not meet the required permit close out levels.

2. Future Permit Closeout:

Once conditions reach the point where close out can be considered, the Owner will need to submit a completed NYSDEC Notice of Termination (NOT) form for acceptance and sign off by the Town, including sign-off by the 'Qualified Professional.' A field observation by us will be required prior to signing the form on behalf of the Town. Submitting a completed Notice of Termination (NOT) (including completed MS4 sign-off on Page 2) to NYSDEC will close-out coverage under NYSDEC GP-0-20-001 and the Town of Kent Erosion Control Permit. Having the 'Qualified Professional' sign the Notice of Termination fulfills the requirement per Town of Kent Town Code, Chapter 66, §66-6.K(5) for a certification of completion of work.

An as built plan should accompany the NOT when submitted. The 'Qualified Professional' signing the NOT should be familiar with the work and should understand that he is certifying that the Cultec units were installed in substantial conformance with the approved plans.

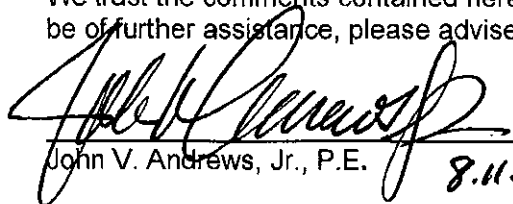
3. Stormwater Management Bond:

Per Chapter 66, §66-24.A regarding return of the stormwater management bond: "the performance guarantee shall remain in full force until the applicant and/or developer is released from liability by the Town, provided that such period shall not be less than two years from the date of final acceptance ... and that a two-year inspection has been conducted and the facilities have been found to be acceptable to the Town."

The two-year period begins on the date that the site achieves final stabilization. A properly completed Notice of Termination marks that date and serves as the final acceptance of the completed work.

The Town Planning Board in the matter of residential projects typically will consider the early release of a bond provided that the fully stabilized site goes through one winter and remains stabilized. The Project Sponsor is free to request, in Spring 2023, the early release of the bond provided that all vegetation survives the winter and is viable in Spring. Any such request by the Project Sponsor will need to be in writing to the Planning Board and will be subject to a confirmation inspection

We trust the comments contained herein are of value to you. If there any questions or we can be of further assistance, please advise.

  
John V. Andrews, Jr., P.E. 8.11.2022

cc: Planning Board via email  
Bill Walters via email  
20-261-999-169

Bruce Barber via email  
Liz Axelson via email  
Richard Othmer via email

Town of Kent Planning Board  
25 Sybil's Crossing  
Tel: 845-225-7802

email: [planningkent@townofkentny.gov](mailto:planningkent@townofkentny.gov)  
Kent, NY 10512  
Fax: 845-306-5283

Resolution #14

Year 2022

Date: September 8, 2022  
From: The Kent Planning Board  
To: Finance  
CC: [mrezza10@gmail.com](mailto:mrezza10@gmail.com)  
Re: T & M Rustic Homes  
1100 Rte. 52 - Suite 103  
Kent, NY 10512  
TM: 12.-1-55  
Release of funds in Escrow Account

Resolved: On September 8, 2022 the Kent Planning Board reviewed material pertaining to the recommendation noted above and agreed that it was appropriate to release the funds remaining in the escrow account for the above mentioned property. Attached is supporting documentation.

Mr. Tolmach asked for a motion to release funds remaining in the escrow account for the above mentioned property.

The motion was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. The roll call votes were as follows:

Phillip Tolmach, Chairman  
Dennis Lowes, Vice Chairman  
Simon Carey  
Sabrina Cruz  
Giancarlo Gattucci  
Hugo German  
Stephen Wilhelm

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The motion carried.

I, Vera Patterson, Planning Board Secretary of the town of Kent, County of Putnam, State of New York, do hereby certify that the foregoing is a true excerpt from the minutes of a meeting of the Planning Board of the Town of Kent held on September 8, 2022.

Dated: September 9, 2022

\_\_\_\_\_  
Vera Patterson  
Planning Board Secretary

Re: T & M refund of escrow

Michelle Rezza <mrezza10@gmail.com>

Thu 8/11/2022 9:34 AM

To: Planning Kent <planningkent@townofkentny.gov>

**TOWN OF KENT NOTICE**

THIS EMAIL IS FROM AN EXTERNAL SENDER!

DO NOT click links, DO NOT open attachments, DO NOT forward if you were not expecting this email or if it seems suspicious in any way! REMEMBER: NEVER provide your user ID or password to anyone for any reason!

Oh ok, I just wanted to make sure we didn't miss it.

Thanks -

Michelle

On Thu, Aug 11, 2022 at 9:26 AM Planning Kent <planningkent@townofkentny.gov> wrote:  
We haven't processed the Resolution yet to return your money. We're not having a meeting this month, but it will be done in September.

Vera Patterson  
Town of Kent  
Planning Board Secretary  
25 Sybil's Crossing  
Kent, NY 10512  
[planningkent@townofkentny.gov](mailto:planningkent@townofkentny.gov)  
845-306-5612 (T)  
845-306-5283 (F)

---

**From:** [mrezza10@gmail.com](mailto:mrezza10@gmail.com) <mrezza10@gmail.com>

**Sent:** Wednesday, August 10, 2022 6:31 PM

**To:** Planning Kent <planningkent@townofkentny.gov>

**Subject:** T & M

**TOWN OF KENT NOTICE**

THIS EMAIL IS FROM AN EXTERNAL SENDER!

DO NOT click links, DO NOT open attachments, DO NOT forward if you were not expecting this email or if it seems suspicious in any way! REMEMBER: NEVER provide your user ID or password to anyone for any reason!

Vera,

Hi there! I hope all is well! We still haven't gotten that check for the 250.00. Fo you know if it was mailed?

Michelle Rezza

Sent from my iPhone



ARCHITECTURE  
ENGINEERING  
PLANNING  
CPLteam.com

June 9, 2022

Phil Tolmach, Chairman  
Town of Kent Planning Board  
25 Sybil's Crossing  
Kent Lakes, NY 10512

and

William Walters, Building Inspector  
Town of Kent Planning Board  
25 Sybil's Crossing  
Kent Lakes, NY 10512

RE: T&M Rustic Home De Minimis Determination  
1100 Route 52, Suite 103, Kent Center / Tax Map ID # 12.-1-55  
CPL Project # 16570.08

Dear Chairman Tolmach:

We have received an application and materials for a sign approval for a sign located at 1100 Route 52, Suite 103, also known as the Kent Center, on property tax map identification number 12.-1-55, which is located in the C (Commercial) zoning district. The facade length of the plaza occupancy where T&M Rustic Home and the proposed wall sign would be located is twenty feet (20').

We have reviewed the following materials submitted sign plan approval application. In accordance with all pertinent regulations, requirements and standards of the Code of the town of Kent, Chapter 77, Zoning, including the following:

- combined application and documents sign or dated May 11, 2022; and received May 12, 2022;
- originally submitted detailed specifications of the proposed wall sign, dimensions and location on a photographic representation of the proposed eight foot by two-foot (8' X 2') sign, or sixteen square feet (16 SF), submitted by the Applicant, Michelle Rezza, apparently prepared by the sign creator, Extreme, screen shot 2022-04-28; and
- revised and resubmitted detailed specifications of the proposed wall sign, dimensions and location on a photographic representation of the proposed 5' X 2' sign, or 10 SF, submitted by the Applicant, Michelle Rezza, apparently prepared by the sign creator, Extreme, screen shot emailed on 6/3/22.

We also examined the site via Putnam County Parcel mapping, GoogleEarth Pro aerial photography and street views and the Town of Kent Zoning map, showing the existing commercial plaza and noting the proposed location of the sign and required setback from the subject property's front lot line.



Under the provisions of zoning section 22-50, a site plan approval before the town of Kent planning board would ordinarily be required for the proposed plan. However, as per section 22-50 b. Exceptions and variances for preliminary activities, construction, or maintenance work, it is my opinion that that this proposed plan is a deemed to be construction activity for which a site plan approval is not necessary. Under this zoning provision, I recommend that the Building Inspector issue a building permit.

**Summary:**

Elizabeth Arden

Flanagan  
CPL

Town of Kent Planning Board  
25 Sybil's Crossing  
Tel: 845-225-7802

email: [planningkent@townofkentny.gov](mailto:planningkent@townofkentny.gov)  
Kent, NY 10512  
Fax: 845-306-5283

# Memorandum

DATE: July 25, 2022  
TO: Finance Dept.  
CC: [mrezz10@gmail.com](mailto:mrezz10@gmail.com)  
FROM: Vera Patterson  
RE: T& M Rustic Homes Sign Approval  
TM: 12.-1-55 - Kent Center

Please process the attached invoice from the review account for the property noted above.

Attached is a copy of the summary for the review account.

Date	INVOICE #	VOUCHER NAME	AMOUNT	COMMENTS
07/19/22	Billing Period Ending 07/01/22	CPL Invoice 83792	\$ 250.00	See attached bill for breakdown \$ 250.00 Total Labor: \$ 250.00 Total Reimbursables: \$ 0.00 Total Amount Due: \$ 250.00

T & M Rustic Homes tm: 12.-1-55 (Sign approval)  
05/12/22 Keybank ck 31611 Application  
05/12/22 Keybank ck 31610 Review Fee  
07/25/22 CPL 83792

150.00  
500.00

(250.00)

500.00  
250.00

25 Sybil's Crossing  
Kent Lakes, NY 10512

DO NOT WRITE IN THIS BOX

**Claimant's  
Name And  
Address**

CPL  
255 Woodcliff Dr.  
Suite 200  
Fairport, NY 14450

Tax I.D. # 16-1283651

DATE VOUCHER RECEIVED		
FUND - APPROPRIATION	AMOUNT	
TOTAL		

VOUCHER NO.

ABSTRACT NO.

VENDOR'S REF. NO.

DATE	QUANTITY	DESCRIPTION OF MATERIALS OR SERVICES	UNIT PRICE	AMOUNT
7/19/2022		Invoice #83792 CPL# 16570.08 Kent-Planning Board 2022		\$250.00
		T & M Rustic Home Sign		
			TOTAL	\$250.00

### CLAIMANT'S CERTIFICATION

1. Timothy Moot, PG \$250.00 IS TRUE AND CORRECT; THAT THE ITEMS, SERVICES AND DISBURSEMENTS CHARGED WERE RENDERED TO OR FOR THE MUNICIPALITY ON THE DATES STATED; THAT NO PART HAS BEEN PAID OR SATISFIED; THAT TAXES, FROM WHICH THE MUNICIPALITY IS EXEMPT, ARE NOT INCLUDED AND THAT THE AMOUNT CLAIMED IS ACTUALLY DUE.

7/19/2022

DATE \_\_\_\_\_

**SIGNATURE**

(SPACE BELOW FOR MUNICIPAL USE)

Principal

**TITLE**

**DEPARTMENT APPROVAL**

The above services or materials were rendered or furnished to the municipality on the dates stated and the charges are in effect.

**APPROVAL FOR PAYMENT**

**This Claim is approved and ordered paid from the appropriations indicated above.**

7/24/22  
DATE

*Phil Tolrath*  
AUTHORIZED OFFICIAL

DATE \_\_\_\_\_

**AUDITING BOARD**



CPL  
ARCHITECTURE  
ENGINEERING  
PLANNING  
CPLteam.com

## Invoice

Town of Kent Planning Board  
Attn: Vera Patterson  
25 Sybil's Crossing  
Kent, NY 10512

July 19, 2022

Project No:

18570.08

Invoice No:

83792

Kent-Planning Board 2022 T & M Rustic Home Sign  
Professional Services for the period ending July 1, 2022  
Professional Personnel

	Hours	Rate	Amount
Axelson, Elizabeth 6/2/22 Prep fr/Atnd Plang Bd mtg;	6/3/2022 .60	125.00	62.50
Axelson, Elizabeth 6/2/22 Revw submit per cod/mapg resorce; prep revw nota;	6/3/2022 .50	125.00	62.50
Axelson, Elizabeth 6/3/22 Revw submit per cod/mapg resorce; cal/prep msg to Ap Rep/Plaza	6/3/2022 .50	125.00	62.50
Ownr/Bldg Dept w/Atchmt; coreap w/Plang Bd/Ap Reps;	6/10/2022 .50	125.00	62.50
Axelson, Elizabeth 6/9/22 Revw submitd materls/code/agency coreapndno; prep Deminimis let to			
Bldg Insp/Plang Bd; prep msg w/Atchmts; coreap w/Plang Bd/Bldg Dept			
Reps;			
<b>Totals</b>			
<b>Total Labor</b>	<b>2.00</b>		<b>250.00</b>

250.00

Total this Invoice

\$250.00

Timothy Moot, PG

26 IBM Road | Poughkeepsie, NY 12601 | 845.454.3411 | cplteam.com

Please remit payment to our corporate office at 255 Woodcliff Dr, Suite 200, Fairport, NY 14450

" PLEASE REFERENCE INVOICE NUMBER ON PAYMENT "



ARCHITECTURE  
ENGINEERING  
PLANNING  
CPLteam.com

June 9, 2022

Phil Tolmach, Chairman  
Town of Kent Planning Board  
25 Sybil's Crossing  
Kent Lakes, NY 10512

and

William Walters, Building Inspector  
Town of Kent Planning Board  
25 Sybil's Crossing  
Kent Lakes, NY 10512

RE: T&M Rustic Home De Minimis Determination  
1100 Route 52, Suite 103, Kent Center / Tax Map ID # 12.-1-55  
CPL Project # 18570.08

Dear Chairman Tolmach:

We have received an application and materials for a sign approval for a sign located at 1100 Route 52, Suite 103, also known as the Kent Center, on property tax map identification number 12.-1-55, which is located in the C (Commercial) zoning district. The facade length of the plaza occupancy where T&M Rustic Home and the proposed wall sign would be located is twenty feet (20').

We have reviewed the following materials submitted sign plan approval application, in accordance with all pertinent regulations, requirements and standards of the Code of the town of Kent, Chapter 77, Zoning, including the following:

- combined application and documents sign or dated May 11, 2022; and received May 12, 2022;
- originally submitted detailed specifications of the proposed wall sign, dimensions and location on a photographic representation of the proposed eight foot by two-foot (8' X 2') sign, or sixteen square feet (16 SF), submitted by the Applicant, Michelle Rezza, apparently prepared by the sign creator, Extreme, screen shot 2022-04-28; and
- revised and resubmitted detailed specifications of the proposed wall sign, dimensions and location on a photographic representation of the proposed 8' X 2' sign, or 10 SF, submitted by the Applicant, Michelle Rezza, apparently prepared by the sign creator, Extreme, screen shot emailed on 6/3/22.

We also examined the site via Putnam County Parcel mapping, GoogleEarth Pro aerial photography and street views and the Town of Kent Zoning map, showing the existing commercial plaza and noting the proposed location of the sign and required setback from the subject property's front lot line.

No lighting is proposed for the 10.57 wall sign, which is consistent with the general appearance  
placement of other wall signs for other businesses in the Kent Center commercial area. Based on the  
nature of the business, a facade of 10.57, where the proposed business and sign would be located,  
and zoning subsection 22.42, a (2), and the requirement that the sign be "readable from a square  
footage every two linear feet of the front building facade", then the proposed wall sign would be  
subject to a maximum area of 10.57 square feet. Notwithstanding the above, I received the  
applicant's letter that the sign would be subject to compliance, and a revised sign was then submitted so,  
the proposed 10.57 revised sign complies with the pertinent zoning code.

Under the provisions of zoning section 22.42, a sign approval before the town of Kent Planning  
Board would ordinarily be required for the proposed sign. However, under section 22.42, a sign approval  
and written determination regarding compliance with the zoning code, in my opinion that that this  
proposed sign is a de minimis construction activity for which a sign approval is not necessary. Under  
this zoning provision, I recommend that the Building Inspector issue a building permit.

Sincerely,  
Elizabeth Ferguson

Planner  
CPL.