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February 3, 2025

Town of Rockland
Zoning Board of Appeals
Town Hall
242 Union Street
Rockland, Massachusetts 02370

RE: 1119 and 1059-Rear Union Street

Dear Mr. Chair and Members of the Board:

This office represents the N&M RE HOLDINGS LLC (the "Applicant"), which is the owner and applicant of 1119 & 1059-Rear Union Street identified as Assessor Map 18, Lots 60 & 61 (hereinafter, collectively, the "Property".) The Applicant is filing herewith an application seeking a variance from Section 415-5.B of the Rockland Zoning Bylaw, which may be construed to prohibit the residentially zoned portion of this Property from being used to access an allowed industrial use on the industrially zoned portion of the property. The Applicant is also seeking a special permit to allow for the outdoor storage of materials on the industrial portion of the Property. The Board is familiar with this property because in December it denied without prejudice a requested identical special permit application and a Section 6 finding for the Project on the basis that the Applicant did not request the appropriate relief, that being the variance component.

The Property consists of approximately 25.63 acres of land having frontage on both Union Street and Lavina Avenue. The Property is located primarily in the I-2 Industrial Zoning District, except that a small portion of it at the frontage of Union Street is located in the R-2 Residence Zoning District. As indicated above, the Applicant previously proposed a permittable industrial use on the industrially zoned portion of the Property, but the Board felt that there was a question as to whether Zoning Bylaw Section 415-5.B. precluded access of the industrial portion using a driveway designed to accommodate industrial uses which traversed residentially zoned land[1].

[1] Rockland Zoning Bylaw Section 415-5.B. provides in its entirety: "Where a district boundary line divides a lot existing at the time such line is adopted, the regulations applying to the portion of such lot in the less restricted district may be considered as extending not more than 30 feet into the more restricted portion, but only if the lot has frontage on a street in the less restricted district. The provision shall not be used to diminish the buffer zone (rear yard dimensions) requirements between residential and non-residential districts as contained in § 415-22."

As the Board can see in the enclosed plans, if the Applicant were to file and obtain approval on a definitive subdivision plan which meets the Subdivision Rules and Regulations and which extends Lavina Avenue into the Property, then it would be able to access the industrial use from Lavina Avenue, as opposed to from Union Street. That potential alternative concept, while permissible, is certainly not the best utilization of the Property, and is an inferior plan when compared to the variance request currently before the Board. I therefore urge the Board to seriously consider approving the requested variance.

Rockland Zoning Bylaw Section 415-89.1 provides the authority that empowers the Board issue use variances, and sets forth the required criteria. Specifically, it provides, in part, as follows:

> § 415-89.1. Zoning variances
> A.
> The Zoning Board of Appeals may authorize a variance for a particular use of a parcel of land or to an existing building thereon from the terms of this bylaw where, owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such parcel or such building but not affecting generally the district in which it is located, a literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise, to the applicant, and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this bylaw. The Board may impose conditions, safeguards and limitations both of time and of use, including the continued existence of any particular structures, but excluding any condition, safeguards or limitations based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner. If the rights authorized by a variance are not exercised within one year of the date of the grant of such variance, they shall lapse, and may be reestablished only after notice and a new hearing pursuant to this section.

It is therefore necessary to address each one of these required findings separately.

Unique Condition of the Land Related to Soil, Shape or Topography

This Property has features relating to all three factors. The shape bottlenecks at Union Street and then opens-up into a large expansive area. The bottleneck requires once to travel more than 600 feet into the Property just to access the rear portion which then doubles back toward Union Street behind residential properties. Additionally, the topography is strikingly low-lying and the soils are such that there are four primary areas of jurisdictional wetlands, in addition to

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a stream. To make matters worse, the shape is complicated by the zoning layers; approximately 90% of the 25.63-acre parcel is zoned industrial, while only a small remaining portion at the narrow frontage on Union Street is residentially zoned.

Especially Affecting the Property but Not Affecting Generally the District in Which it is Located

This shape having frontage on two roads with four separate wetland areas, located in two zoning districts, is certainly a condition that is unique to this Property and does not generally affect both of the zoning districts in which it is located. It is rare to find a Property that was clearly intended for industrial uses that happens to require access from a street through a residential zoning district.

A literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise, to the applicant

The Applicant is not proposing to use the residentially zoned portion of the Property for industrial uses. In point of fact, Bylaw Section 415-5 is not even a "use" section of the Rockland Zoning Bylaws; it concerns "interpretation of boundaries." To interpret this provision literally so as to preclude using is as access, a use which is not specifically precluded in the Table of Uses of the Zoning Bylaw, would operate to preclude all uses of 90% of the 25.63-acre parcel. By no reasonable measure would denying access to the industrial zone NOT cause substantial hardship to the Applicant. All permissible and allowable industrial uses would thus be impermissible.

Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this bylaw.

The boundary of the I-2 and R-2 zones was artificially imposed by the Town of Rockland after the Property was laid-out. Allowing residentially zoned land to contain a driveway which is a safer alternative than the potential subdivision road extension of Lavina Avenue through multiple residential homes cannot be said to be a substantial detriment to the public good. In fact, it would be an asset to the neighborhood when compared to that potential alternative, and would enable the land to be used for the industrial purposes for which it was primarily zoned.

For the foregoing reasons, the Applicant believes that the variance allows for the safest and most responsible utilization of the industrially zoned portion of the Property. The issuance of a variance would obviate the need to pursue the alternative Lavina Avenue concept outlined above. Additionally, the Applicant believes it meets the special permit criteria on that application, and is happy to review that criteria with the Board at the hearing.

Kindly feel free to contact me with any questions.

Very truly yours,

Jeffrey A. De Lisi