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September 11, 2023

Village of Upper Nyack
328 North Broadway
Upper Nyack, New York 10960
Att: Janet Guerra

Re: ZBA Application of Gregory Fisher on behalf of NBroadway LLC and 603
North Broadway LLC for Lot Merger of 603 and 611 North Broadway

Dear Ms. Guerra:

I understand from your recent email that you have been asked to request us to submit an amended Zoning Board application in the above referenced matter to include a request for a lot coverage variance. We will not be submitting an amended application because no variance is needed for lot coverage and no determination has been made to the contrary.

A variance was previously granted in July 2011 permitting lot coverage of 37.3%, and the applicant in fact developed the property to that figure in reliance on the variance granted. That variance and subsequent improvements conveyed a vested property right to that lot coverage percentage, which is now the governing condition (not the Code provision), and it runs with the land. Matter of St. Onge v. Donovan, 71 N.Y.2d 507, 520, 527 N.Y.S.2d 721, 522 N.E.2d 1019; Matter of Holthaus v. Zoning Bd. of Appeals of Town of Kent, 209 A.D.2d 698, 619 N.Y.S.2d 160 (2d Dep't 1994); 2 Anderson, New York Zoning Law and Practice § 23.53 [3d ed.]; Cooperstown Eagles, LLC v. Vil. of Cooperstown Zoning Bd. of Appeals, 161 A.D.3d 1433, 1435 (3d Dep't 2018) ("The issuance of an area variance, on the other hand, would vest petitioner with an immediate property right relieving it from the Code's owner-occupancy requirement").

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The present application before the Board is to simply add additional lot area (not lot coverage) by merging the adjacent lot into the subject lot. There is no development proposed and no proposal to add any lot coverage. To the contrary, merging the adjacent lot into the subject lot decreases lot coverage by increasing the lot area. Accordingly, there is no new or increased lot coverage created by the action and approval sought, so no additional variance is required.

This stands in contrast to the lot width variance for which approval is sought, which, by virtue of the merger, a brand new non-conformity not previously existing is created under the Village Code. The lot coverage, on the other hand, is governed by the prior variance, not the Code, and no expansion of lot coverage beyond existing conditions is sought so no variance is required.

Further, although the Code was amended in the interim to deduct certain steep slopes from the lot area calculation resulting in the current lot coverage based on the same existing improvements being computed as 42.1% under the new Code, still no variance is required for the same reasons. It is pre-existing, non-conforming and no new development is proposed.

We look forward to seeing you tomorrow evening.

Very truly yours,



J. David MacCartney, Jr.

JDMjr./bk

cc: Noel Wolfson, Esq., Village Attorney