



**TOWN OF NORTH CASTLE
WESTCHESTER COUNTY
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Armonk, New York 10504-1898**

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**PLANNING BOARD
Christopher Carthy, Chair**

R E S O L U T I O N

Action:	Site Plan and Tree Removal Permit Approvals
Application Name:	100 Business Park Drive – Fill Storage [2020-016]
Owner/Applicant:	A&R Real Estate Holdings LLC
Designation:	108.03-1-51
Zone:	PLI Zoning District
Acreage:	11.27-acres
Location:	100 Business Park Drive
Approval Date:	July 13, 2020
Date of Expiration:	July 13, 2021

WHEREAS, a site plan application has been submitted to store 5,000 cubic yards of fill from an offsite construction project on the site that would be utilized later on the subject site if Planning Board approval is granted in the future; and

WHEREAS, the Applicant has reduced the size of the proposed amount of fill to be stored on the site from 5,000 cubic yards to 1,000 cubic yards; and

WHEREAS, the property is approximately 11.3 acres in size and lies within the PLI zoning district; and

WHEREAS, the site is currently developed with a 62,782 square foot office/light industrial building with associated off-street parking; and

WHEREAS, the proposed action would be classified as an Unlisted Action pursuant to SEQRA; and

WHEREAS, the Applicant has proceeded within an uncoordinated SEQRA review; and

WHEREAS, the application for site plan approval requires referral to the Westchester County Planning Board pursuant to § 239-m of New York State General Municipal Law (GML) since the subject site is located within 500 feet of I-684; and

WHEREAS, the Westchester County Planning Board recommends that the Planning Board not approve the proposed application as detailed in their June 12, 2020 letter to the Planning Board stating that:

The County had several concerns about the construction of a new warehouse building and parking within a floodway and a floodplain. In addition, our letter pointed out that the site is adjacent to the Byram River, which is a County stream, and that a Stream Control Permit would likely be required. The County Department of Public Works and Transportation has informed us that the applicant had not yet made the application for the Stream Control

permit. With this in mind, we ask the Town to not approve the current application for the stockpile until the County's concerns with respect to the Byram River are addressed. It is important for the Town to understand that development along the Byram River has the potential of impacting flooding further downstream all the way to the Village of Port Chester.

WHEREAS, a duly advertised public hearing was conducted on June 22, 2020 and July 13, 2020 at which time all those wishing to be heard were given the opportunity to be heard; and

WHEREAS, the neighboring property at 130 Business Park Drive has provided a communication to the Planning Board stating that "Aero Hardware & Parts Co. Inc. (located at 130 Business Park Drive) opposes this request prior to the approval of the site plan by the North Castle Planning Board" with respect to the proposed soil stockpile; and

WHEREAS, the project site is partially located within the FEMA Regulated 100 year floodplain and floodway; and

WHEREAS, the project site is partially located within a locally regulated wetland buffer associated with the Byram River; and

WHEREAS, the project site is partially located within the Westchester County stream channel setback associated with the Byram River; and

WHEREAS, the Planning Board has received and considered comments from the public, Town Attorney, Town Engineer and Town Planner; and

WHEREAS, the Planning Board has determined that the temporary storage of fill on the site is a permitted use in the PLI Zoning District as the proposed use would be an accessory use customarily incident to the permitted office and warehouse use; and

WHEREAS, the Planning Board authorizes the removal of a maximum of two trees for the soil stockpile area; and

WHEREAS, the requirements of the Zoning Ordinance and the Town of North Castle Comprehensive Plan Update have been met;

NOW THEREFORE BE IT RESOLVED, that the Application for site plan and tree removal permit approvals be, and it hereby is, granted, and the Planning Board Chairman is authorized to sign the site plan subject to the conditions identified below; and

BE IT FURTHER RESOLVED, that, except as otherwise expressly amended herein, all other terms, provisions and conditions of all previous resolutions of approval adopted by the Planning Board are incorporated herein by reference and shall remain in full force and effect; and

BE IT FURTHER RESOLVED that, this amended site plan approval shall expire one (1) year after the date of this resolution unless all of the conditions and modifications identified below have been substantially completed or an extension of time has been requested by the applicant or granted by the North Castle Planning Board; and

BE IT FURTHER RESOLVED that, the approved fill on the property shall be used on the site by December 31, 2021. If not used on the site by December 31, 2021 all fill shall be fully removed from the site and area restored to its existing natural state.

Prior to the Signing of the Site Plan:

(The initials of the appropriate Town Official and date shall be placed in the space below to indicate that the condition has been satisfied)

- _____1. The Applicant shall submit a site plan depicting the location of the proposed 1,000 cubic yards of fill and any existing stockpile of soil/debris to the satisfaction of the Planning Department and Town Engineer. The plan shall illustrate and define the extents of the existing and proposed stockpile area, the overall height of the stockpile, required tree removal and whether any screening or interim vegetation measures would be implemented.
- _____2. The Applicant will need to obtain a County Stream Control Permit from the Westchester County Department of Public Works, or provide confirmation that a permit is not required, to the satisfaction of the Town Engineer.
- _____3. The Byram River flows generally north to south along the eastern property boundary. This watercourse is a locally regulated wetland, as well as a New York State Department of Environmental Conservation (NYSDEC) Class C(T) Stream. Further, the property is located within the check-zone of two (2) adjacent NYSDEC Freshwater Wetlands, Wetlands No. G-1 and G-2. The applicant shall provide a validation of the wetland boundary and confirmation from the NYSDEC, indicating whether a Freshwater Wetland Permit is required to the satisfaction of the Town Engineer.
- _____4. The 100-foot locally regulated wetland buffer of the Byram River extends onto the property and potentially within the proposed stockpile area. A local Wetland Permit may be required. The submitted plan shall be designed in a way that a wetlands permit would not be required to the satisfaction of the Town Engineer.

- _____5. The Applicant will need to obtain a fill permit pursuant to Chapter 161 of the Town Code. The site plan shall include notes to the satisfaction of the Town Engineer specific to this chapter as it relates, at a minimum, to the owner's requirement to provide soil manifests for all fill material delivered to the site stating the date of delivery, the origin of the fill, the type of fill and a representation that there is full compliance with 6 NYCRR, Part 360. Further, the owner will be required to hire an independent inspector, who shall be either a duly Licensed Engineer, a soil scientist or a representative of a New York State certified testing laboratory, to independently provide certification that the fill delivered is in compliance with 6 NYCRR, Part 360 for Beneficial Use as General Fill.
- _____6. If fill is proposed in the floodplain, the Applicant will need to obtain a floodplain development permit from the Building Department pursuant to Chapter 177 of the Town Code. The applicant shall prepare a plan demonstrating compliance with Chapter 177 - Flood Damage Prevention of the Town Code. Any fill shall not be placed within the regulated floodway. Any fill stockpiled below the base flood elevation will require compensatory storage, as required by Section 177-14 B (3) of the Town Code to the satisfaction of the Town Engineer.
- _____7. The applicant shall prepare an Erosion and Sediment Control Plan for review, illustrating and detailing, at a minimum, temporary measures to protect the site and downgradient areas from erosion and sediment transport, construction staging and stockpile areas, tree removal and protection to the satisfaction of the Town Engineer. Should the disturbances associated with the temporary fill plan exceed one (1) acre, the owner will be required to obtain coverage under the NYSDEC General Permit (GP-0-20-001) for Stormwater Discharge from Construction Activities.
- _____8. Pursuant to Section 127-17 of the Town Code, the applicant shall submit a detailed quantity cost estimate for all site improvements proposed, with the quantities certified to by the applicant's engineer, to the satisfaction of the Town Engineer.
- _____9. Submission to the Planning Board of a suitable legal agreement, in form satisfactory to the Town Attorney, assuring the Town that the applicant will deposit cash or file a surety bond or other security acceptable to the Town Board (such as a Letter of Credit) for the removal of all deposited soil on the site and the restoration of the site if the soil is not utilized by December 31, 2021, the amount of said bond or other security to be determined by the Town Board. Such bond shall be released after completion of the site restoration to the satisfaction of the Town Engineer.

In the event that the issuer of the bond or other security furnished to the Town hereunder becomes insolvent or, for any reason, disaffirms the validity of such security, the applicant shall notify the Town Board immediately and replace the invalid security with a new bond or other security acceptable to the Town Board within thirty (30) days thereafter. The existence of a valid bond, letter of credit or other security shall be a condition precedent to the validity of any permits issued or to be issued in connection with this site plan.

- _____10. Payment of all applicable fees, including any outstanding consulting fees.
- _____11. The applicant shall submit to the Planning Board Secretary two sets of plans (with required signature block located in the lower right corner of all plan sheets) incorporating all required amendments to the plans as identified in this resolution of approval to the satisfaction of the Town Planner, Town Engineer and Town Attorney.

Prior to the Issuance of a Building Permit:

(The initials of the appropriate Town Official and date shall be placed in the space below to indicate that the condition has been satisfied)

- _____1. The approved site plan shall be signed by both the Planning Board Chairman and the Town Engineer.
- _____2. Payment of all outstanding fees, including professional review fees.
- _____3. The applicant shall establish an engineering inspection escrow account equal to 3% of the estimated cost of construction.
- _____4. The applicant shall obtain a Fill Permit pursuant to Chapter 161 – Filling and Grading of the Town Code.
- _____5. The applicant shall obtain a Floodplain Development Permit pursuant to Chapter 177 - Flood Damage Prevention of the Town Code or provide confirmation that said permit is not required.
- _____6. The applicant shall obtain a County Stream Control Permit from the Westchester County Department of Public Works or provide confirmation that a permit is not required.
- _____7. The applicant shall obtain a Freshwater Wetland Permit from the NYSDEC or provide confirmation that a permit is not required.

Prior to the Issuance of a Certificate of Occupancy:

(The initials of the appropriate Town Official and date shall be placed in the space below to indicate that the condition has been satisfied)

- _____ 1. An "as built" survey shall be submitted to the Town Building Inspector.
- _____ 2. Payment of all outstanding fees, including professional review fees.
- _____ 3. The Applicant shall submit confirmation from the North Castle Building Department that the fill permit has been satisfactorily closed.
- _____ 4. The Applicant shall submit confirmation from the North Castle Building Department that the floodplain development permit has been satisfactorily closed.
- _____ 5. The Applicant shall submit documentation from the Highway Department stating that Business Park Drive was not damaged or adequately restored as a result of the delivery of the fill material.
- _____ 6. The Applicant shall submit confirmation from the NYSDEC, to the satisfaction of the Town Engineer, that the NYSDEC Freshwater Wetland Permit has been satisfactorily closed.
- _____ 7. The Applicant shall submit confirmation from the WCDPW, to the satisfaction of the Town Engineer, that the WCDPW County Stream Control Permit has been satisfactorily closed.

Other Conditions:

1. Compliance with all applicable local laws and ordinances of the Town of North Castle and any conditions attached to permits issued thereunder.

Applicant, agreed and understood as to contents and conditions, including expiration,
contained herein

Date

A&R Real Estate Holdings LLC

NORTH CASTLE PLANNING OFFICE, as to approval by the North
Castle Planning Board

Date

Valerie B. Desimone, Planning Board Secretary

Certified as Approved by the North Castle Planning Board

KELLARD SESSIONS CONSULTING
As to Drainage and Engineering Matters

Date

Joseph M. Cermele, P.E.
Consulting Town Engineer

STEPHENS BARONI REILLY & LEWIS LLP
As to Form and Sufficiency

Date

Roland A. Baroni, Jr. Esq., Town Counsel

NORTH CASTLE PLANNING BOARD

Date

Christopher Carthy, Chair